MARSILIUS OF PADUA AND THE CHRISTIAN SOCIETY

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AND

THE CHRISTIAN SOCIETY

By

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INTRODUCTION

To review the history of interpretation of any political philo-
sopher, and the reception he has received at the hands of academic commen-
tators and historians of political thought, is, to say the least, an
unrewarding task.

Interpretations of the thought of Marsilius of Padua are many and
various.[1] They range from Laski's verdict[2] of deep, original insight, to
Carlyle's verdict[3] of ordinary, unoriginal traditionalism, through count-
less attributions of general, and more precise, concepts of political
philosophy and countless denials of their applicability.[4] Quasi-dilettante
essays on Marsilius, the general vehicle of Marsilian interpretations,
seemed to Carlyle the root of the trouble,[5] "moderns" attempting to under-
stand a mediaeval political philosopher's writing against the background of
their own times, conceptions, and terminology.

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1. See A. Gewirth, Marsilius of Padua, the Defender of Peace,
I. 3 - 5.

2. H. J. Laski, "Political Theory in the Later Middle Ages", in
Cambridge Mediaeval History, VIII, 650.

3. W. and A. J. Carlyle, A History of Mediaeval Political Theory
in the West, VI, 9.

4. The concepts include, among others, socialism, liberalism,
democracy, totalitarianism, aristocracy. As Laski put it, "Marsilius'
writings foreshadow almost every point of modern [only?] political philo-
sophy". Laski, op.cit., 629.

5. Carlyle, op.cit., VI, 9.

Yet the understanding of Marsilius of Padua has not exactly

been clarified by mediaevalists, either of Maitland's[6] "aimless" brand or

otherwise, nor has further interpretation been exhausted by Gewirth's

two-volume comprehensive study in depth and translation,[7] the first of its

kind. F. Gaines Post, when reviewing it, protested that "a simpler inter-

pretation is needed".[8] E. Lewis[9] attempted to supply such an interpre-

tation, but this has not deterred more complex analyses, such as that of

M. J. Wilks.[10]

Of course, the root of the controversy lies in the nature of

political philosophy itself as normative, deductive, non-empirical, unveri-

fiable inquiry; the interpretation of it "suffers" from the same character-

istics.[11] Also, it lies in the linguistic problem of meanings of words:

if I write of the doctrine of law in the Defensor Pacis, my interpretation

is an interaction of my meaning of "law" with my opinion of Marsilius'

meaning of "law", and either one or both are likely to differ from other

6. O. Gierke, Political Theories of the Middle Age,
F. W. Maitland, Introd., 9.

7. Gewirth, op.cit.

8. F. Gaines Post, Review, in Amer. Hist. Review, LVIII (1963),
338-40.

9. E. Lewis, "The Positivism of Marsilius of Padua", Speculum,
XXXVIII (1963), 541 ff.

10. M. J. Wilks, The Problem of Sovereignty in the Later Middle
Ages. See particularly 100 ff.

11. The question of documentation, or citation of texts, does not
alter things much. There is no scientific, correct way of handling texts;
one can lie with them or they can lie to one. The history of the Bible in
mediaeval political theory, or, for that matter, generally, is a pregnant
example. Nor does it make any difference that interpretation of political
philosophy is a more dispassionate occupation; states of mind do not make
for objectivity, if the subject-matter precludes complete objectivity.

people's, not considering the different interactions possible in any event.
The linguistic philosophers have analysed the problem of the st$_a$tus of
normative statements about political phenomena;[12] the problems of statements
on these statements are infinitely more complex.

Complex, and yet simple. Finally, it is here suggested, interpre-
tations of a political philosopher are, like Dilthey's solutions of hier-
oglyphics, the fruit of "a relationship of _empathy_ between the author and
the expositor,"[13] and not only a result of the interpreter's "intellectual"
"processes" confronting the philosopher's "intellectual" "processes". Not
that any diminution of intellectual processes is involved; empathy is
indeed the dynamic, the momentum of such processes. But, in R. D. Laing's
terms,[14] not only "behaviours" are meeting in the task of interpretation,
but also "experiences", and experiential meetings are, by their nature,
firstly unique, and secondly only experientially understood. Thus the
success of the interpretation can be seen finally only in the degree of
achievement or "consummation" of empathy, and judgement on this comes only
from further empathy. Interpretation, then, is not merely exploration into
knowledge of theories, but also into "knowing" the man.

This thesis simply purports to bring to bear empathy to the writings
of Marsilius of Padua. It deals with him in the light of the central theme
of the Middle Ages, which was the organization of the Christian society, and
also considers the main contributions to the theme made before the issue of

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12. P. Laslett, ed., _Philosophy, Politics, and Society_, Introd.,
VII ff. T. Weldon, _The Vocabulary of Politics_, 15 ff.

13. R. K. Bultmann, "The Problem of Hermeneutics", in _Essays_, 238.

14. See the writings of R. D. Laing, especially Chapter 2 of
The Divided Self.

his major work, the Defensor Pacis, in 1324.

The decree of the fading Roman empire in 380, by which the Christian religion was made the religion of the Empire, foreshadowed a problem the solution of which preoccupied both the writings and actions of nearly every major figure of the European Middle Age. The problem was fundamentally one of the nature of political and social change. If a society undergoes some transformation in its customs and ideas, what will be the consequence of this for its political organization and practices? If there is a change in the "substructure" of the society, what, if any, will be the effect on the "superstructure"? If society becomes Christian, what difference will or should this make for the political organization of society?

The first part of the Thesis submits several basic attempts of the Dark and Middle Ages to deal with this problem, which is referred to as the "problem of the Christian society." These reflections of mediaeval philosophers on the "problem of the Christian society" always contain a conception of "some" interplay between Christianity and society at the level of, or by the medium of, political power, i.e., they never contain modern conceptions of a thoroughly secular political organization. Such interplay is seen by them as the very "idea of the Christian society", and I use this phrase to signify this general point of consensus.

The remainder of the Thesis considers Marsilius' unique response to both the idea and the problem of the Christian society.

CHAPTER I

ST. AUGUSTINE: THE POSITIVISM OF DESPAIR

A. General

The influence of Augustine on Marsilius of Padua went largely unrecognized till Gewirth's study[1], despite the frequency with which the latter quotes the former.[2] Gewirth compares the "positivism" of Marsilius of Padua with the "positivism" of Augustine.[3] By "positivism", he means[4] exclusion of normative criteria from definitions of terms like state, law, etc. Consequently, the validity of such definitions does not depend on normative[5] considerations.

What, then, would be the positivist "view" on the problem of the Christian society? Surely it would be that the political organization[6] would in its nature remain untouched whatever changes occur in the beliefs

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1. Gewirth, op.cit., I, 37.

2. In all, Marsilius quotes Augustine 55 times. This is more than he quotes any other writer. Ibid.

3. The ascription of "positivism" to Augustine is in itself not new. See John Neville Figgis, The Political Aspects of St. Augustine's "City of God", 61-2.

4. It is in this sense that the word will be used throughout this work.

5. By 'norm' and 'normative', I refer to moral conceptions, which their authors, or those who subscribe to them, believe to be absolute. There is no notion of generality or normality implied.

6. I use this term hesitantly, for the concept of the "political" is unknown in the Middle Ages, till the re-introduction of Aristotelian works in the thirteenth century. I mean by it those who rule, and the method and machinery of ruling. It is thus more inclusive than "government" often suggests and less inclusive than "state" often suggests. In "rule", I include both executive and legislative aspects.

and practices of the subjects of its authority. For example, law would still be law whether it adhered to Christian doctrine or not. The King would still be a King whether he carried Christian "credentials" or not. We are not here concerned with what the root of political validity is (different positivists will have different views), but with the agreement that questions of normative criteria are irrelevant.

This is Marsilius' view?[7] Law, for instance, is a coercive command, and its coerciveness does not depend on the substance of the command. The change to a Christian society may alter the substance of the command, as law proceeds from the popularly based "human legislator"[8] and will doubtless reflect changes in the beliefs of the people,[9] but the nature of the law, and of that which issues it and enforces it, remains untouched. Here we have the view, then, that the change to a Christian society does not change the organization of that society, which is constant; rather, the organization acts as a transmission-belt for the society, by which its changes in ideas pursue changes in practice.

The positivist, then, sees the nature of political organization as constant amidst the variables of society's beliefs and practices, the Heraclitean world of flux. Were it not so, it is usually argued, there

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7. E. Lewis, op.cit., disagrees fundamentally, as does Carlyle, op.cit.

8. Gewirth, op.cit., Vol. II, Bk. 1. XII. 3. All the references to Marsilius relate to Gewirth's translation.

9. Thus, the human legislator in the Christian society is the "faithful human legislator" (Defensor Pacis, II. XXI. 1.), signifying not only its character but its output or function. Its legislative nature and power change not at all: Defensor Pacis, II. XVII. 2.

would be anarchy, discord, strife.[10] If the state's "validity" depended

on its satisfying "normative" criteria, it would be emasculated of its

necessary power, as its command would be continually questioned on the

grounds that its substance did not conform to the criteria established.

These criteria vary and change through time and space, and thus cannot

define the political structure, or, if they do, they impede the workings

of that structure. The aim here is to show that Augustine's "positivism",

if such it can be called, is of an entirely different nature. His posi-

tivism is not based on the essentially variable, changeable nature of man,

morals, and life, but on its essentially static, immoral nature. The

justice of a government is not the touchstone of its validity, not because

such a situation constantly impedes government, but because a government

can never be truly just. Man and society are essentially unjust and sinful;

their state (as condition), and state (as political entity), will inevitably

fall short of justice, and thus the political organization of society cannot

depend on normative considerations. Augustine's positivism is one of

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10. T. Hobbes, Leviathan, Part II, Ch. 26. Although, of course, Hobbes admits a Law of Nature, he repudiates it in the way generally held, as capable of restraint of government, by allowing every man to interpret it in his own way. Thus "he swept away the support which the various English factions found in the moral law". (R. G. Gettell; History of Political Thought, 220). Hobbes argument from anarchy is later used by Austin. Marsilius' argument (Defensor Pacis, I. XIX 4) of the papacy's providing an "impediment" to the "ruling part", causing intranquility must also be seen in this light. It is not the papacy's power that is impeding government, but its interference in government by relating govern- ment to Christian norms interpreted by itself, and pronouncing a verdict which often tended to destroy political obligation. See also H. J. Laski, The State in Theory and Practice, 34: "The mediaeval commonwealth broke down exactly because the applications of its criteria of value gave rise to varying interpretations about which men were prepared to kill one another."

despair.[11]

This first political philosopher of the Christian era, thus, is one who basically disbelieves in the Christian society. Seeing his world in purely dualistic[12] terms, with basic oppositions of (exclusively Christian) morality and immorality, spirit and flesh, he denies any possibility of change from one part of the dualism to the other as regards society as a whole (change is possible in the individual alone). There will never be a heaven on earth. Nor is there any importance in any change within the earthly domain, for the dualism alone is important. Yet, strangely, his ideas are the foundation of the Christian society's views of the Middle Ages. Augustine states the "ideal" of these views, the definition of the State in Christian terms,[13] in order to contrast it with the "real", and then goes on to define the latter in positivist terms. But if the ideal was seen to be a possible reality, if the Christian state actually came about, which terms would then apply? The positivist approach to the Christian society, that this society's political organization is merely a continuation, though perhaps a variation, of the political organization of the pre-Christian society, of all societies, could blatantly not be deduced from Augustine, for he defines the political organization of the pre-Christian society on the basis of its being unchristian, which

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11. This interpretation is partially agreed with by C. H. McIlwain in The Growth of Political Thought in the West, 154 ff. But Mcilwain tends to treat the "positivist" part of Augustine merely as a reductio as absurdum of the heathen state and not as a "statement" in it's own right, an actual view, also.

12. The City of God, Bk. XIV, Ch.21. The translation used for Augustinian quotations is G. G. Walsh, D. S. Zema, G. Monohan, D. J. Honan, The City of God (New York, 1950). Sometimes, however, the translation has been altered, or the Latin left to stand., when the translation seems not to give full force to what Augustine is trying to say.

13. Ibid., Bk. II, Ch. 21; Bk. XIX, Ch. 21.

obviously a Christian society cannot be. Clearly, in the Christocentric world of the Middle Ages, the positivist parts of Augustine were no longer valid;[14] the ideal had come into play, and politics were to be rigidly defined,indeed, controlled by that ideal.

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14. They were not, as some commentators imply, slyly "ignored". See, for example, Gewirth, op.cit., 37, and Figgis, op.cit.; 64.

B. The Republic and Justice

The substantial and central part of the De Civitate Dei dealing

with Cicero's discussion of the republic and justice, illustrates these

basic points: the high "ideal", exclusively Christian, the depraved real

nature of politics, the positivism of contempt and despair.

In Cicero's discussion,[1] Scipio argues that a commonwealth cannot

be governed without justice,[2] for, logically, a commonwealth is the "ideal"

of the people", and a people is essentially "a gathering united by justice

(iuris consensu) and for the common good"[3] If there is no justice, there

is no people, no weal of the people, no commonwealth, or republic. Augustine

at several points accepts and utilizes this definition,[4] yet later[5] intro-

duces a "positivist" definition of the people as a "multitude having common

interests", which thus enables the "weal of the people" or "commonwealth"

to be seen without reference to justice. It is important to understand the

purpose of the uses of these definitions and the relation between them.

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1. Cicero, De Republica, ed. C. W. Keynes, 1. 25. This discussion
is recorded in The City of God, Bk. II, Ch. 21, Bk. XIX, Ch. 21. Here I
have slightly altered the Walsh translation.

2. In ancient and mediaeval political philosophy, it should be
remembered, "justice" is a much larger conception than in the present day.
"Righteousness" and "morality" (in an absolute sense) are nearer equiva-
lents, and "goodness" also, including the idea of "benefit".

3. "Populum autem non omnen coetum multitudinis, sed coetum iuris
consensu et utilitatis communione sociatum esse determinat".

4. The City of God, Bk. XIX, Chs. 21-3.

5. Ibid, Bk. XIX, Ch. 24.

St. Augustine uses the normative definition for two purposes. The first links up with the central purpose of the de Civitate Dei: to answer criticism that Christianity caused the decline and fall of Rome.[6] He begins the chapter in which the definition first occurs[7] by recapitulating his basic theme of the previous chapters that the Republic was a "sink of iniquity" long before Christ, and then quotes Cicero, the mastermind of the Republic, to this same effect. The Cicero-Scipio definition of the republic is then introduced to show that if a republic cannot be governed without justice, if justice is essential to a republic, then even within Cicero's time, the Roman Republic had fallen, had ceased to be a republic. It fell in terms of its own (and Cicero's) standard, its own definition of what it should be.

Then, Augustine later uses the definition[8] to prove that the Roman republic never was a true "republic", for it never possessed true justice. This is because justice is "giving due", and the most important indebtor of "due" is God in terms of praise and obedience. No government can be just without giving God his due, and just government is essential to the republic. Augustine is here clearly setting forth a normative definition of republic in terms of Christian norms. States by their very natufe must be organized with reference to Christian norms or values, and these norms or values make up "justice".

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6. The City of God, Bk. 1, Preface, and Chs. 8, 15, 36, among others.

7. Ibid., Bk. II, Ch. 21.

8. Ibid., Bk. XIX, Ch. 21.

How, then, does this relate to the later "positivist" definition[9], where a people is "a multitude of reasonable beings voluntarily associated in the pursuit of common interests", and a commonwealth simply such a multitude's "affairs", and under which the Roman republic is included? Why does he bother to dispute the nature of the Roman regime only to reaffirm its original state? This raises the question of the relationship between the definitions.

Firstly, the normative definition stands in relation to the positive one as a deductive "truth" about political life to an inductive "truth" about political life, or, perhaps, in a more simpler light, as an observation of the heart to an observation of the senses. Secondly, the progression of the argument from the normative to the positive, is seen as a necessary progression, since the first relation is one of conflict; the normative truth does not fit the empirical facts, or, more properly, vice-versa. The normative truth is discarded not because it ceases by the conflict to be a truth, but because it fails to describe political regimes as they are. The argument reflects not the falsity of the moral definition itself, but, rather, it is a reductio ad absurdum of the application of moral criteria to political life, an assertion of the basic immorality of politics.

Truth is a fickle jade, as the mediaeval experience well shows. Augustine says he wishes to show "that that ancient creation, Rome, was never a true republic", though " according to some definitions that are

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9. Ibid., Bk. XIX. 24. "Populus est coetus multitudinis rationalis rerum quas diligit concordi communione sociatus".

nearer the truth, it was a commonwealth-of a sort."[10] The "true"

something-or-other in Augustine ("true" justice, "true" republic etc.)

always reflects the normative thought, the deductive "truth". The "truth"

of a republic lies in its justice, which "truly" lies only in obedience

to God: "What fragment of justice can there be in a man who is not subject

to God?", Augustine asks.[11] Yet he would seem to admit of "counterfeits"

to the "true" justice, the "true" republic: "republics", "justices",

without the designation "true", which, indeed, are not "true", because

not Christian, not ideal. These bear some semblance in form to their

"true" counterparts and thus partake of the names "republic" and "justice".

He admits these "counterfeits" because the "true" phenomena, these

normative "truths", cannot describe political life as it is in fact, in

this world; as truths about realities, they can describe only what happens

in the City of God.[12]

"The fact is that any civil community made up of pagans who are

disobedient to God's command that he alone receive sacrifices, and who,

therefore, are devoid of the rational and religious control of soul over

body and of reason over sinful appetite, must be lacking in true justice."[13]

Not only does the normative definition exclude the Romans, but also the

Greeks, the Egyptians, and "any other pagan people whose government

excercised real political control, however much or little."[14] "Real

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10. Ibid., Bk. II, Ch. 21.

11. Ibid., Bk. XIX, Ch. 21.

12. Ibid., Bk. II, Ch. 21.

13. Ibid., Bk. XIX, Ch. 24.

14. Ibid.,

political control" obviously is something else than the Ciceronian definition: the allusion has always been made that it might not be "correct".[15] But the incorrection, it must be remembered, lies not in the "true" moral propositions it makes - these are said to be "true" - but in their inadequacy to include actual political organizations. The positivist definition covers the latter, and relates to the normative definition as one sort of truth to another.

The second way the relationship is to be understood is not as a simple comparison of truths, but as a process of argument from the one to the other. The process is as implied in the comparison: a rejection of ideals and definitions which do not fit the facts in favour of more "positivist" ones, which do. But this begs the question of what the process is all about. Why does Augustine create the ideal, only to reject it? Why does he disprove the Roman "Republic", only to reinstate it? Why does he not just say "politics is bad" and leave it at that?

"We must not he carried away by hollow blasts and allow our judgement to be confused by the high-sounding words of prattlers about nations, kingdoms, and provinces."[16] The contempt for pagan normativism, especially about politics is central to the De Civitate Dei.[17] Augustine, as we shall

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15. Ibid., Bk. II, Ch. 21.

16. Ibid., Bk. IV, Ch. 3.

17. Not enough attention has been given to Augustine's sarcasm and satire in this regard e.g. Bk. XVIII, Ch. 24., on the deification of Romulus, because his corpse could not be found: "Cicero gives great credit to Romulus for having won such distinction not in an age when men were primitive, illiterate, and easily taken in, but in one when men were both cultivated and learned, even though the razor-sharp and fine-spun volubility of the philosophers was yet to bud and burst into foaming bloom". See also on the origin of Athens, Bk. XVIII, Ch. 9, and Bk. XIX, Ch. 1.

see, continually attacks attempts to define the real political level as
anything above that of "magna latrocinium"[18] and it is here that we must
look for the raison d'être of the discussions about the "republic: they
make up an argumentum ad absurdum in order to reduce to absurdity the
pretentions of pagan political philossophy to idealism in political life.
The first use of the normative definition to show how Rome fell short of
its own standards reveals those standards as "hollow blasts", "high sounding
words". The limiting of the definition to Christian justice furthers the
argument by revealing that the ideals that politics pretend to are not
"true" ideals anyway. As for Christian ideals, the true ideals, no State
lives up to them. Thus, one cannot apply normative truths (let alone
moral untruths) to politics.

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18. "Great robber-gangs", ibid., Bk. IV., Ch. IV.

C. The Kingdom without Justice

What, then, are the views on politics that call forth the "positivist" definition? Despite being clouded by the contempt with which he expresses them, Augustine is setting forth in the City of God concrete and complex political views, and not mere denunciations, though they are such as well.

The famous remark that "remota itaque iustitia regna nisi magna latrocinium,"[1] for instance, follows soon after the "hollow blasts" attack, and is, in part, another denunciation of the pretensions of pagan political philosophy. Words like "kingdom", and "justice" are fine, but we must not be misled by them, for hidden behind them lurks only gangsterism. This is because life is a dualism only,[2] and in persons, families, nations, there is either goodness or badness, happiness or folly, God, or the devil. Either a state is moral (Christian) or completely immoral (robber gang). There is no midstream political morality.

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1. "Kingdoms without justice are nothing but great robber gangs", ibid., Bk. IV, Ch. 4. This passage has been variously interpreted. E. Barker seems to see it as a statement like "Thank God, kingdoms have justice!", that kingdoms necessarily have their own relative justice; Introd. to G. Tasker, ed., The City of God, XXXIV - XXXV. R. W. Carlyle thinks also that justice saves the kingdom from being gangster-like, in his "St. Augustine and the City of God", F. J. C. Hearnshaw, ed. The Social and Political Ideas of some great Mediaeval Thinkers, 51. Carlyle thinks that Augustine made "a deplorable error" for a "great Christian teacher", if, as C. Dawson suggests, only a difference in scale is meant between kingdoms and robber-gangs. "St. Augustine and his age" in M. C. Darcy, ed., A Monument to St. Augustine, 63. N. H. Baynes, The Political Ideas of St. Augustine's "De Civitate Dei", Historical Association Pamphlet No. 104, 8, and Deane, The Political and Social Ideas of St. Augustine, 95, agree. Barrow holds that Augustine meant kingdoms might either be just or unjust, and if unjust, they were like robber gangs.

2. The City of God, Bk. IV, Ch. 3.

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But the remark is also an attempt at understanding political

organizations, for Augustine goes on[3] solicitiously to compare the organi-

zation of the state with the organization of a robber-gang. Both are

groups of men under the rule of a leader, bound together by common agree-

ment, dividing their booty according to a settled principle. Moreover, if

the robber-gang were to acquire enough power, enough to subdue populations,

it would receive the title of kingdom, "not by the renunciation of greed,

but by the increase of impunity".[4] What characterizes the political organi-

zation of the state, then, is its possession of a sovereignty of force, an

impunity.

The passage is not a mere analogy: elsewhere it is shown that the

political ruler is he who has been successful in the war of each against

each, which preceded his dominion. Temporal goods and honors cannot be

shared,[5] individuals are drawn by their passions to pursue their private

purposes,[6] they inevitably lust and strive for domination.[7] Cain had to

kill Abel, Romulus had to kill Remus.[8] Men necessarily struggle for power,

and in getting it become political rulers.

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3. Ibid., Bk. IV, Ch. 4.

4. Ibid. Thus, the pirate's excuse to Alexander the Great: "I do
my fighting on a tiny ship, and they call me a pirate; you do yours with a
large fleet and they call you Commander". An imaginary history of an
increase in a robber-leader's power to the king's position of immunity and
title is traced in Bk. XIX, Ch. 12.

5. Ibid., Bk. V, Ch. 5.

6. Ibid., Bk. XVIII, Ch. 2.

7. Ibid., Bk. XIV, Ch. 28.

8. Ibid., Bk. XV, Ch. 5.

It is in this context that we must see the <u>end of the state</u>, its pursuance of temporal <u>peace</u>,[9] which d'Entreves sees as the redeeming feature of Augustine's politics.[10] Such an interpretation misunderstands the nature of peace in Augustine. Peace is the completely successful outcome of the struggle for power, which results in clear superiority of one rival over the rest. "Where vistory is not followed by resistance there is a peace that was impossible so long as rivals were competing, hungrily and unhappily".[11]

It is also in this context that the famous description of the state as God-given, "<u>poena et remedium peccatum</u>",[12] must be seen. Without the state and its peace, civil chaos and horror would be even greater than it is. The state as an institution remedies this. But there is no mention that the state loses its robber-gang nature in the task. Indeed, the state is spoken of as "<u>meritum</u>" and "<u>poena</u>" peccati, a reward and punishment merited by sin.

God not only gives man in the state at best a blessing in disguise - he also gives him a clear good hiding.[13]

This state of affairs is continual,[14] the political organization

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9. <u>Ibid.</u>, Bk. XV, Ch. 4.

10. A. P. D'Entrèves, ed., <u>Aquinas. Selected Political Writings</u>, Introd., XI.

11. <u>The City of God</u>, Bk. XV., Ch. 4. See also Ch. 7 and Bk. IX, Ch. 7.

12. <u>Ibid.</u>, Bk. XIX. 15.

13. Thus, <u>ibid.</u>, Bk. V. 21: God gave Rome bad Emperors as well as good.

14. There is no lasting peace, for being based on the struggle for "<u>impunitas</u>", "the power to reach domination is not the same as the power to remain in perpetual control". <u>Ibid.</u>, Bk. XV, Ch. 4.

persists through "change" only in the sense that different persons occupy the seat of sovereign impunity which defines it: plus ça change; plus c'est la même chose.[15] Change is only possible on the individual level; then, by the change, those who are saved cease to be, strictly speaking, members of earthly society, but rather are of the City of God. Earthly society is defined by its immorality, its basically fleshly, earthly concern. The City of God is defined by its justice, its spiritual concern. The two cities will exist till the end of time. "My kingdom is not of this world" is Augustine's favourite text. "His words gave no support to the hope that the world will gradually be brought to belief in Christ and that earthly society could be transformed into a city of God".[16]

This, then, is Augustine's pessimistic picture of the earthly State. Yet, he defines it not in terms of immorality but in quasi-positivist terms. In doing so, in the "common interests" definition, he seems to indicate, that in certain cases such interest might occasionally coincide with "the good", for example, in the case of a Christian Emperor,[17] "even though" we know from history "what kind of interests people have had."[18] Nonetheless, it is a quite different positivism from that of Marsilius. The latter wishes to break the yoke of a Christian normativism which obstructs

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15. Deane, op.cit., 159: "Politics is the realm in which fallible, sinful men work out precarious, imperfect solutions".

16. Ibid. See also the dark pessimism of The City of God, Bk. XIX, Ch. 4.

17. Ibid., Bk. V, Ch. 24.

18. Ibid., Bk. XIX, Ch. 4.

the ruler and the people's will. Augustine wishes to remove the gaffe of

pagan normativism which obstructs a clear vision of the nature of God as

solely moral and politics as immoral. Yet, contrasts he used in the process

served the Christian society's idea of an interplay between politics and

Christianity as well as any doctrine of such interplay. The contrast was

of (and cliches well express it) a shining ideal (of a thoroughly inter-

twined politics and Christianity) and a black reality (of politics without

Christianity). The real world had nothing to offer the idea, while the

ideal had everything to offer the real, if only the real could take it.[19]

Christianity offered politics a santification, but purely on its

(Christianity's) terms; there were no others.

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19. By "real", I mean that which is actual and perceptible. By
"ideal" I mean that which is perfect but not perceptible, or that which is
a conception of imperceptible perfection.

CHAPTER 2

THE CHRISTIAN SOCIETY

A. The Papcy

(i) The Complex

Augustine had written his major work to decry the suggestion
that Christianity had produced the decline and fall of the Roman Empire.
Whatever the casual connexion, undoubtedly Christianity profited by the
latter, as it became the only focus of unity in a well-nigh anarchic
society. The Church was representative of this unity, and was credited
with many administrative tasks as a result, gaining wealth in the process.[1]
With the actual rise of the Church to a position of influence, those
Christian philosophers who advocated a powerless Church, a Church com-
pletely separated from the State,[2] exerted less influence, and many
writers began to demand some positive relationship. It is only in the
light of a spreading Christian society, a Church rising in importance,
that we can see the problem of Church and State; tautologically, but
basically, there had to be an independent Church of some magnitude and
influence for the problem to exist at all.

Yet, while the Roman Empire existed, whether in the West of the
East, either in its original or Byzantine form, there was no Church-State
problem within its bounds, for the Emperor absorbed the functions of both

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1. See J. B. Morrall, _Political Thought in Mediaeval Times_, 9.

2. The early Church Fathers: Tertullian, Lanctanctius, Cyprian,
and others.

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king and priest, and took on the position of Christ's "vicegerent" on earth, inheriting his fullness of power.[3] The implications of this for political theory are predictable: the emperor's laws are the laws of God,[4] the emperor is omnipotent[5] and, the emperor has also full powers in the Church to appoint bishops, regulate doctrine and liturgy, etc.[6] This view of power in the Christian society as contained in one supreme figure regulating both Christianity and society represents a view that the Christian society demands no change in the organization of society. For society has always contained a divine element, and the ruler of society has carried out priestly functions as the representative of the divinity, the point of contact between God(s) and society. Ancient Egypt, as well as Ancient Rome, illustrates pagan antiquity's conception of the relation between religion, politics, and society; the caesaro-papist view sees the Christian society as still subject to a priestly king.

"But by the second half of the fifth century, the imperial government at Constantinople found in the Roman papacy a severe obstacle to the unchecked implementation of its governmental ideas."[7] The fact was that

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3. See W. Ullmann, A History of Political Thought. The Middle Ages, 33, and E. Barker, Social and Political Thought in Byzantium, 36.

4. E.g., Justinian, "The laws originate in our divine mouth" and are "divine precepts". Carlyle, op.cit., I, 69.

5. The Emperor is "vicar of the Pantokrator", the "Autokrator" on earth. See W. Ullmann, op.cit., 35.

6. Ibid, 36. See also the decree of the Council of Constantinople, 536, that "nothing must be done in the Church against the command and will of the Emperor".

7. W. Ullmann, op.cit. 37.

the problem of the Christian society was not so easily solved. The traditional Church-State relationship was based on a history of partnership, which expressed the history of the society. The religion of society ·expressed that society's identity - and no other. Society viewed itself as dependent upon its God(s) for its survival and success, but, likewise, the religion depended on the society's existence for its own existence.[8] The distinguishing feature of Christianity is that in its origin (the crucifixion) and in its development through persecution it not only was a religion independent of any society or state, but was constantly aware of society and state as enemies rather than allies. It grew up as a unity of belief and not as a unity of civic, national, and societal identity; and the guardianship of this belief and those who subscribed to it came to rest in a Church, which transcended national barriers and developed its authority without reference to political institutions. In the fifth century the Church had existed for four hundred years without any government's taking note of it; its members, in the absence of any societal leader who represented their religion, looked solely to the Church as guardian of their souls, and for them, as for the rest of the world, the Church became identified with Christianity.

Thus, in this light, we must understand Ambrose, in the early days of the Christian society, claiming[9] that "the Emperor is within the

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8. See the classic account of this relationship in Fustel de Coulanges, The Ancient City, esp. 172-3: "Society developed only as fast as religion" and though "we cannot say that religious progress brought social progress", still "both were in accord". The origin of the religion of the ancient state, according to de Coulanges, is the fusion of household religions, which accompanies or produces the origin of the state itself. The causal relationship is of necessity unclear.

9. Carlyle, op.cit., I, 180.

Church not above it". By changing the faith of himself, he had subscribed to a faith which antedated himself, and was independent, irrelevant of himself. While he would like to, and did, view the change to a Christian society as the Empire becoming a Christian Empire, the imperial idea remaining constant, the papacy could more properly view it as the Empire joining the Church, an ecclesiastical empire, the ecclesiastical idea being the constant. The Rock of the Church was well established: Mahomet must come to the Mountain and could not expect the mountain to move to him, whatever the intensity of his faith. The existence of an independent Church complicated the problem of the Christian society, it did not allow its solution to be phrased in traditional terms.

At least, this was so, given the conditions of the time. The Byzantine Empire was able by the force of its internal administration, and the strength of its imperial tradition, to impose a completely effective caesaro-papist solution. In the West, however, following the demise of the Roman Empire, all was flux, and political ideas and organizations were less firmly entrenched. Here, also, the identification of Church and Christianity was strongest. Even when the states of the West had the power of pursuing their own "Christian society" regardless of the papacy, they were reluctant to use it, for they then ran the risk of alienating themselves from a body which with some justification could call itself the true representative of Christ, the holder of the keys of heaven and hell.

(ii) Ideal Authority

How then did this independent Church view the change to a Christian society? Fundamentally it saw it as changing the function of the political organization, so that some interplay between society and Christianity at the level of power existed. But from this, it argued, more significantly, that the qualification to fulfill this function must be in terms of knowledge of the faith, "scientia" of Christianity, which only the Church possessed. "Direction of the community was dependent upon an understanding of its real nature and the purpose for which it existed"; the Christian society was built on the Christian faith, "thus knowledge of this faith became the supreme criterion for government".[10] Thus, the pope as head of the Church could claim himself "pater republicae", for he had the duty and ability "cognoscere quod utile republicae et quod non".[11]

It is basically an <u>objectification</u> of the Christian society that marks the papal approach. The Christian society had come about only by the <u>wills</u> of princes and people, yet having willed it in the first place, the Church implied, princes and people could no more will, for ultimately the development of the Christian society could not take place according to will, but according to the Christian ideal, the knowledge of which only the Church possessed. Society was not to direct its "ideal"; the ideal, seen apart

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10. Wilks, <u>op.cit.</u>, 52. See also 56 ff. and 343 ff. Also, the theme of "functional qualification" is expressed in all W. Ullmann's works (see Bibliography), but most cogently in the opening chapters of <u>The Growth of Papal Government in the Middle Ages</u>.

11. Quoted in W. Ullmann, <u>Principles of Government and Politics in the Middle Ages</u>, 67.

from those who subscribed to it, was to direct society.

'Direction' of the Christian society, or the authority to supervise the Christian society's development, was all at first the Church and papacy claimed. They saw the political organization as _instrumental_ to their direction, as an effecting force of Christian principles pronounced by them.

This is expressed in different forms throughout the Middle Ages. Leo I (440-461) expresses[12] the relationship as one of father to son, the son bearing the sword at the direction of the father to administer Christian principles. Colasius expresses it as a clear contrast between _auctoritas_ and _potestas_, where potestas is "_dicere non docere_".[13] Isidore talks of "princely terror" to enforce papal commands.[14] Gregory I's theme is the "_societas respublica Christanae_" to be directed by "_successor Petri_", with the ruler's aid.[15] Whereas for Voltaire in the eighteenth century the Holy Roman Empire was neither holy nor Roman nor an empire, in the Middle Ages, "Holy" meant expressly papal direction and "Roman Empire" expressed the ruler's function as "_patricius Romanorum_", protector, of the Roman Church.[16] Coronation ceremonies, where the pope entrusted

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12. Ullmann, _A History_, 22 ff. Unfortunately, the lack of publications of most papal and publicist writings makes recourse to accounts of their works necessary.

13. _Ibid._, 40 ff.

14. W. Ullmann, _Principles_, op.cit., 80; Morrall, _op.cit._, 23.

15. Ullmann, _The Growth of Papal Government_, op.cit., 65.

16. _Ibid._

the sword to the ruler, or anointed his shoulder-blades, symbolized

these political ideas.[17] As Nicholas I (858-67) expressed it: "The

sword is given for the sake of the exaltation and peace of the Church".[18]

The same idea appears frequently in papal publicist writings. For instance

Giles of Rome writes: "The art of governing people is in reality the art

of managing material goods according to the disposition of the ecclesi-

astical power".[19]

But these are not mere suggestions on how the politics of the

Christian society might best be run; they are meant as definitions of the

nature of politics. Rulers cease to be proper rulers if not papally

directed, and, similarly, laws cease to be laws. As Augustinus Triumphus

puts it: "Potestas papae est maior omnia aliam maioritate causalitas,

quia eius potestas causat omnem aliam potestatem examinando, confirmando

et iudicando" and "quia cuiuslibet ordinis dignitatem et potestatem,

Romanus pontifex habet instituere et confirmare".[20] The jump from 'ought'

to 'is' in political theory is hardly more strikingly expressed than in

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17. Ullmann, A History, 85 ff.

18. Quoted in ibid., 78 ff.

19. Also, "the will of the pope is expressed in words, but force is needed to compel obedience, and it is for this reason that the lay ruler is given the sword" Wilks, op.cit., 269.

20. Quoted in Wilks, op.cit., 69. See also his comment: "The very esse of the lay ruler, it may be said, stems from Peter and his successors". The doctrine of papal utterances as the source of government and law may be found in the writings of innumerable popes. See in particular those of Nicholas I, Adrian II, Gregory 7, in W. Ullmann A History, 78 f, 80, 102 f, or Carlyle op.cit., II, 164, IV, 182-94, or for that matter, any history of mediaeval political thought. Also, W. Ullmann's Principles, op.cit., Ch. 3, "The Secular Prince and Papal Law".

papal political theory. The papacy used the change to a Christian society to define the political organization in terms of that society, in terms of Christianity, in terms of Church guidance.

Here, we must remember Augustine. The only "true" republic in Augustine was the Christian republic, yet its truth was not the truth of fact; it did not, because it could not, refer to the actual wordld. In the at least partial realization of the Christian State, the "true" State ideal becomes meaningful in the world of political affairs. It is capable of contrast with the non-Christian State, not in the Augustinian contrast of heaven to earth, not as other-worldly ideal to this-worldly real, but as one reality to another. But once this sort of contrast is possible, it no longer needs to be made: the Christian State's "truth" has become the truth of the actual world, the sole truth.

There are no politics except Christian politics.

(iii) Ideal Power

Papal government had become a possible reality; the idea of it as the only real government is an attempt to jump the gun, an attempt to impose a solution to the problem of the Christian society. By the subscription of society and the political organization to the Christian ideal, society and the political organization had found their "true" nature, the papal case seems to claim. Yet, ultimately the Church does not wait on this realization of the ideal, it proceeds to idealize the real. It makes its deductions about politics not from the truth of political events and phenomenae but from the truth of Christianity. It sees the Christian society not as earth reaching towards heaven, but as heaven coming down to earth.

It is only by considerations of this sort that one can understand the increasing expression, during the later Middle Ages, of the papal position as power, as the fount of power, as the fullness of power.

Fullness of power, "plenitudo potestas", means exactly what it says. Power in its totality resides in the papacy, and any other power, including and especially the political, is derivative, a gift of the papacy.[21] It is a power over everything, every human being, every state.[22]

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21. See the writings of Giles of Rome, Augustinus Triumphus, and Alexander de St. Elpidio in Wilks, op.cit., 67 ff.

22. See the claims of Boniface VIII: R. Hull, "Church and State, the Unam Sanctam of Boniface VIII", Irish Ecclesiastical Record, 33 (1929), 225-36.

Its possible applications are limitless. As Giles of Rome shows,[23] in the political sphere the pope can not only institute and depose the temporal ruler but intervene at will (flexibilis and causalis) in government.

Justification in terms of inheritance of the Petrine powers given by Christ, or by inherent "vicegerency" of God's powers, does not interest us here and tends to stifle the almost insane quality of the doctrine. What place does it have in the approaches to the change to a Christian society? If the politics of the ideal world had, as we have seen, become, in the papal approach, the politics of the real world, then this refers to power also. If deductions about politics were to be made from the ideal, which was assumed realized, then deductions of power also were to be made. The "realities" of power in the ideal world had become the "realities" of power in the actual world. Thus, Alexander de S. Elpidio states clearly: "cui ergo concessa est potestas spiritualis, concessa est temporalis".[24]

Those who held temporal power, however, questioned this consequence, at first ineffectually, yet later effectually by reversing the papal logic; not by objectifying the Christian society, by considering the nature of the Christian ideal which had to some extent been realized in the Christian society, but by considering the nature of society, which had to some extent been Christianized.

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23. See Wilks, op.cit., 307 f. Ullmann, A History, 124 ff, and A. Lerner and M. Mahdi, eds., Mediaeval Political Philosophy: A Sourcebook, 391-407.

24. Wilks, op.cit., 67.

B. The Ruler

Somehow there is always something defensive[1] in other interpretations of the Christian society, in sharp contrast to the offensive nature of the papal thesis. The root of this must be sought in the position of the monarchs and their publicists. They were, first and foremost, Christians, members of the Church; they could not by the nature of their faith adopt a caesaro-papist position in relation to the Church.[2] And yet, the papal-caesarist approach of the Church hindered the functioning of the ruler's own political organization. The solution the monarchs and publicists at first proposed was a dualism, accepting the rule of the Church in the "spiritual sphere" but denying it in the "temporal sphere". The Christian society was thus seen as involving a societal political organization which dealt with the mundane, the non-religious, the societal, and a Christian organization defining and ruling the society's faith.

The nature of the dualism, while inconsistently expressed, is generally seen in two main ways. The first way is as a dualism of jurisdictional subjects, with the lay ruler having complete control over the

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1. What this means will be aparent from what follows. It is perhaps typified by Henry IV's remark in interpreting the "Two Swords" allegory as a dualism: "It is enough", meaning a duality is sufficient. W. Ullmann, A History, 138. Henry IV was the originator of the dualism in 1045. See W. Ullmann, The Growth of Papal Government, 345 f.

2. Even Charlemagne, who flouted the papacy's pretensions in most directions, accepted the teaching primacy of Rome.

3. W. Ullmann, Principles, 76 ff, 97 ff.

laity, the pope controlling the sacerdotium. There thus exists a double set of laws, and a double set of executive political organizations. This is largely the view of Peter Crassus of Ravenna,[4] but it is not the most common view. Generally, "the dualism was a separation of temporal and spiritual matters not persons", "each individual was subject to a divided jurisdiction".[5] In this separation what is marked out for each side varies, with the exception that the teaching primacy of the Roman Church is always accepted. This was a fundamental weakness, for the Church taught no dualism.

The dualism suggested by the actual political organizations used as its justification the basic weapon the political organization possessed, i.e. actual power, just as ultimately the papacy's case rested on its basic weapon: "scientia" of Christianity. Thus, whereas the papacy starts from the ideal and proclaims it reality, the political organization starts from real power and proceeds to idealize it. The political organization has power, and "all power is from God", therefore the political organization exists by the grace of God, and its power is a direct gift of God.[6] The monarch is "Rex Dei Gratia", with his own power in his own sphere.

The attempt at demarcation is a confused attempt at solving the problem of the Christian society, and perhaps in the last resort effectually, though unconciously, a denial of the idea of the Christian society, for instead of a fusion, it points "Christianity" and "society" existing

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4. Ullmann, A History, 118 f, Carlyle, op.cit., 223-4.

5. Wilks, op.cit., 76.

6. See Wilks, op.cit., 236 ff.

side by side. The diffusion and the confusion arise from the incompatibility of the mediaeval theocrat's basic premisses and desires. He believes that only in the Church is true Christianity to be found; he wishes to see himself as a Christian political organization in a Christian society; and yet he wishes to be an independent political organization in Christian society. He wants to be free of papal dictate, yet not free from Christian dictate, though in the last resort he believes they are the same. He wishes to define the political organization in normative, Christian terms, and yet he wishes the body that, he admits, guards Christian norms to keep apart from the political organizations. His faith and political ideas conflict; without the former he could adopt a caesaro-papist solution, without the latter, the papal approach; as it is, he is in an impasse.

His way out lies in ceasing to define the political organization in Christian terms, for while he does, and accepts the identification of Church and Christianity, there can be no clear-cut political independence, however sharp the line of dualism is drawn. He cannot see clearly that while it may transmit Christian norms, the political organization in itself is and must be something unique, independent of normative criteria, or otherwise it cannot fulfil its function as guardian of the existence and welfare of society. He lacks the terminology, the concept of _political_, the idea of positivism, for, indeed, such ideas were as yet non-existent.

This is the major part of the "way out", but it is not the whole of it. While the Church is viewed as sole repository of Christianity, even in the positively defined Christian society, where there is foreseen

some interplay between society and Christianity on the level of power,[7]

the Church, even if not by its political standing, but merely by its

Christian standing, must be destined to intervene. Here, of course, a

solution on the caesaro-papist level is possible but it is not the only

solution. The Marsilian solution, as we shall see, proposes that the

political organization transmit society's Christianity into action, and

back on that society again, back into the world. This will become clearer

later.

The dualist arguments thus tend to be easily refuted by the papal

logic, yet they represent a sense of false position among the political

organizations, which, however, only a different way of viewing the

Christian society can rectify.

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7. Which the monarch always does foresee, whatever his dualist
principles.

C. Aristotelianism and Aquinas

The influx of Aristotelian writing into Europe in the late twelth and thirteenth centuries brought a concept of the political association as grounded in the nature of man as a social animal, its necessity and origin lying in securing "life itself",[2] even though its end is "the good life". This provided a means with which the political organization of the Christian society could express itself as ruler of the Christian society not by normative criteria, by its position in the Christian order, its Christian credentials, but by positivist criteria, its "necessity" in the social order, its "political" credentials. The Christian society was not necessarily to be seen as unique, the only "true" society, but as a variation on a theme, a society of a Christian character. As such, it was subject to principles of political organization discoverable by reason reflecting on societies in general, and not by faith reflecting upon itself. The logical step taken since Augustine, that since the ideal had been realized, it should, because now it could, define the real, could be rejected. The Christian society did not necessarily by the "truth" of its ideal obliterate positivist, inductive "truths" based on observation of the actual world.

But what if the latter tended to obliterate the ideal? If so, how ere they compatible with a Christian society? Faith, the ideal,

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1. See G. Leff, Mediaeval Thought; St. Augustine to Ockham, 171 f.

2. Aristotle, The Politics, Bk. I, Ch. 2, 27-8, Bk. III, Ch. 6, 114.

necessarily had to be considered. While the Islamic Philosophers such as Averroes,[3] could offer a "double truth" theory, an acceptance of discord between rational and fideistic inquiry, which some Christians could accept,[4] generally faith would not accept such discord. Even Abelard could write: "I do not want to be a philosopher if it means resisting St. Paul; I do not wish to be Aristotle if it must separate me from Christ"[5]. This, of course, is the collision between faith and reason which dominated the philosophy of the thirteenth and fourteenth centuries, which the struggle between a rational view of the state and a Christian normative view reflects and partly sustains.[6] While extremes were possible in the argument and often vigorously held, a compromise view of the Christian society was also inevitable, given the political organizations wish to be independent yet Christian, and given the existence of men like Aquinas in the Church who felt it necessary to come to terms with an increasingly accepted current of thought, which, if not Christianized, might overthrow the Church.

Yet, this was not the approach of the Church as a whole; the papacy's response to the new ideas was simply to deny them, and reassert its own, to assert the supremacy of faith over independent reason (and, at that, its own solely "true" version of the faith) and its plenitude of power.[7]

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3. Leff, op.cit., 155-62

4. E.g. Siger of Brabant, Boethius of Dacia. For their doctrines see E. Renan, L'Averroes et L'Averroisme.

5. Quoted in Leff, op.cit., 114.

6. See Wilks, op.cit., VII-XI.

7. The expressions of this doctrine at its peak by Giles of Rome and Augustinus Triumphus occur at the time of greatest Aristotelian influence.

Yet, the papacy's reasserted ideas merely presupposed the conflict; and thus there is certain irony in the situation. The papal argument states objectively that faith is superior to reason, yet the argument and the acceptance of it rest on faith. Whether faith is decisive, supreme over reason, depends on whether it will be. The papal reassertion brought matters to a head, which was precisely, with hindsight, we may say, the place which least favoured its arguments, which proved their downfall, for, ultimately the sort of faith they rested on was not there after all.

Aquinas attempts to incorporate rational Aristotelian elements into his political philosophy. He defines the State without reference to Christian normative criteria, he recognizes the political and social nature of man as man. It is not only the Christian political by virtue of its true Christian norms that is the "true" political.

What makes the State in Aquinas is basically its possession of "potestas coactiva" and "sufficientia ad omnia necessaria vitae".[8] The "potestas" is, of course, divine in origin (causa formalis[9]), yet on earth (causa materialis) it rests in the people, in the society: it is a "potestas publica".[10] Political authority and law derive from this power,[11] and find their raison d'etre in being means, "vis directiva" to ends

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8. De Regimine Principium, Bk. 1, Ch. I, in A. P. D'Entreves, Aquinas, Selected Political Writings, 2-9. The page numbers given as reference to quotations from Aquinas always relate to this source.

9. Commentary on the Sentences of Peter Lombard, II. XLIV, 2, 2, 182-3.

10. Summa Theologica, 1. 11. Qu. 90, Art 3, ad 3um, 113.

11. Ibid.

chosen by man's desire,[12] and in guaranteeing the peaceful unity which such ends presuppose.[13] Thus, the goodness, the justice, of the political organizations, lies in its rejecting personal, particular aims, and pursuing the common welfare.[14] The king is the conscientious navigator of the ship of state, only concerned with getting his passengers to their destination, and guarding their welfare while on board.[15]

Here are simple enough voluntarist political principles which could be applied directly to the Christian society. Man's desire, will, lies in living a Christian life, and the political organization transmits and directs these desires accordingly. The change to a Christian society was a change in ends; the helmsman of the ship of state changes course in conformity, yet he is still the helmsman and the ship is still the same ship.

Yet, Aquinas declines to see the Christian society in this light: indeed, he refuses to see society and political organization in the light of these political concepts as they stand. The voluntarism and positivism of the political concepts are eroded away by their normative interpretation and application. "Direction" takes place either rightly or wrongly, justly or unjustly, according to whether society is brought to an end which befits it or not.[16] The end befitting the society is the common good,[17]

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12. De Regimine Principium, Bk. 1, Ch. I, 3.

13. Ibid., Bk. 1, Ch. II, 11.

14. Ibid., Bk. 1, Ch. III, 15.

15. Ibid., Bk. 1, Ch. I, 3, Bk. 1, Ch. III, 15.

16. Ibid., Bk. 1, Ch. I, 7.

17. Ibid., Bk. 1, Ch. II, 11. S. Theol. I: II. Qu. 90. Art. 2, 3. concl.

but the common good, like Augustine's justice, cannot "truly" be seen in
other than a Christian light. Man wants his good, he desires it, but
"God alone can satisfy the desire that is in a man".[18] And the final object
of human association can be no different from that of the individual man.[19]
Thus, the State has an objective destiny, the ship of State has an appointed
destination, and to govern is to guide it there. "A ship is sailed on its
right course to port by the skill of a sailor".[20]

Here, in Aquinas, we have again an example of the objectification
of the will, of the voluntarism of the Christian society, which typifies
many mediaeval political philosophers. In Aquinas will and desire are
stated as central, and yet prejudged. The people necessarily will their
own good, therefore, they will Christianity, with the consequence that
ultimately the Church, holding the "scientia" of Christianity, ratifies
and directs the political as means to the common good.[21] The people,
willing Christianity, ultimately say: "Not my will but thy will be done".

Yet, ultimately, Aquinas is a moderator of the traditional papal
position on the political organization. For while he views the Christian
political organization of the Christian society as the necessary "telos"
of all political organizations, the "perfection", in the Aristotelian
sense, of the political, states do not have to meet this perfection in
order to be called states, nor does their "justice" ultimately depend on

18. De Reg., Bk. 1, Ch. VIII, 45.

19. Ibid., Bk. 1, Ch. XIV, 75.

20. Ibid., 73.

21. Comm. Sent., 11. XVIV, 3, 4, 187.

meeting it, although Aquinas implies this in places.[22]

This is because "justice" consists not only of a <u>theological-moral</u> code, founded in the divine law,[23] but, in another light, consists of precepts found by natural reason, a <u>rational moral</u> code, the natural law.[24] Government and dominion relate for their <u>legitimacy</u> to the latter and not the former.[25] They must relate for their commands to be valid, to be laws.[26]

Ultimately, as Wilk's work aims to show, these principles led to the breakdown of the acceptance of papal claims, by enabling the political organization to present itself as just without relation to Christianity and the Church.[27] But in Aquinas, we must remember, natural justice is always seen as insufficient; the state can never be really just, truly moral unless it is "formed and perfected" by grace.[28] The natural-moral is seen as subordinate to the theological-moral. How else? While the morality of the political and of the theological-moral admits of comparison, the status of the political will always be inferior. Aquinas himself gives no indication that the political can be sufficiently just without being Christian, and no guide as to how it can be just and Christian without being Church-directed, and yet this is the ruler's aim in the Christian

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22. <u>De Reg</u>. Bk. 1., Ch. I, 7.

23. <u>S. Theol</u>. I, II. Qu. 90, Art. 4, 115.

24. <u>Ibid</u>., I. II. Qu. 90. Art. 2, 113-15.

25. <u>Ibid</u>., II. II. Qu. 10. Art. 10, 153-5.

26. <u>Ibid</u>., I, II. Qu. 90, Art. 1, ad 3um, 111.

27. <u>Wilks</u>, op.cit., 139.

28. <u>S. Theol</u>. II, I, Qu. 109. Art. 2.

society.

Moreover, in his contrasting voluntarist, natural-moral, and theological -moral views of politics and society, he contrives no workable arrangement of the Christian society. Founding his political principles first on society's and the political organization's will and force,[29] he then makes their operation dependent firstly upon, reason and ultimately upon faith. He offers a reconcilitation between reason and faith, but no explanation of how the realm of will and force, society and the political organization, can become moral and Christian without submitting to normative laws and institutions and thus losing their voluntarist, coercive nature. Nor does he suggest, alternatively, the reverse. But these are the vital tensions and contentions of the Christian society.

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29. By "will" I mean the human faculty of desiring or designing, or the amalgam of desires and designs which spring from a human faculty. By "force" I mean power to execute designs and desires.

CHAPTER 3

MARSILIUS OF PADUA

A. General

All the above "conceptions" of the Christian society were extant
at the time of Marsilius.[1] The fundamental question they are all
answering is the question of the relationship between society, the poli-
tical organization, and the Christian religion and its Church, where
there is viewed some interplay between Christianity and society at the
level of power. This last proviso is important; it is not suggested that
the existing society should be viewed in a void, devoid of a Christian
element (even though society as society may not be necessarily Christian),
nor is it suggested that the political organization of the day should not
refer to Christianity (even though as itself it is not necessarily
Christian).

Moreover, and indeed at the root of the above, it is viewed that
this association of society and Christianity is the association of society
with "truth". Thus, in normative conceptions of society and politics of

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1. The thought of Dante might seem a glaring omission, but funda-
mentally his writings do not conceive of a Christian society, where there
is any interplay between Christianity and society at the level of power.
Society and the political organization pursue the "possible intellect", a
humanist end; the Church is of a different, separate order. This is, in a
sense, the old dualism, but the ruler in the traditional daulism always saw
his function and end as divine; there was never any conception that society
and the political organization should pursue other than Christian ends,
even if the dualist conceived of a final demarcation between political and
ecclesiastical concerns. Fundamentally, the dualist was still arguing
about the Christian society and this was his weakness, trying to separate
the inseparable. Dante's "daulity of ends" avoids this weakness, but also
avoids the problem.

the age, politics and society are defined in Christian terms, since it is only by association with Christianity that they gain truth, that they become truly, essentially, themselves. But even if politics and society refer to different truths, truths of their "necessity", man being a political and social animal, if politics and society are to be "truly", "perfectly" moral, they must again refer to Christianity and the Church.

The Church has the necessary "scientia" of the Christian truth. It has the qualification to lead society to its Christianity, yet lacks the ability to enforce its direction. It can claim it has power, given by God, but this is not the same as effectually having it. It can more forcefully claim to give sanctity and morality to cure régimes, but they can either take it or not. The Church attempts to subdue historical events, but it can really only await their outcome.

What is lacking from the political organization's point of view is a way of being moral and Christian without the Church. The political organization does not need power and position: what it needs is assurance that it can be moral by itself, or at least by the help of another party than the Church.

Marsilius, in my opinion, is attempting to help the political organizations, in this case the Italian city-states and the Holy Roman Empire, to solve this problem. He does this in two basic ways, first by denying that Christian morality is either the sole morality or the supreme morality to which any other is subordinate,[2] and second, by denying that the repository of Christianity is the Church as it stands, and thus régimes can be Christian without it. The foundation for these changes is a new view of "morality" as not being dependent on the realization of one particular set of moral principles, but on the expression of society's will.

2. Even though Christianity is "true".

B. Society and Christianity

While Marsilius' Defensor Pacis is in part a tract against the papacy as the cause of "strife", he is drawn in, perhaps not unwillingly, to discuss peace and strife, and the state as a whole.[1] This latter discussion occurs in Discourse I, which deals with society and the state in their essential natures. Discourse II deals with the aggrandizement of power by the Papacy in the Christian society and thus Marsilius, whilst attacking this,[2] is drawn also to discuss what the relationship of Christianity and the Church to society and the political organization ought to be.[3]

Perhaps the most important point about Discourse I is that society and state, seen in their essential natures, already contain a moral or religious element. Marsilius uses the term "secta" to describe any system of religious law,[4] and such systems are apparent in all nations.[5] Sectae are "admonitions for voluntary human acts according as these are ordered toward glory or punishment in the future world".[6] Under this category come

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1. Defensor Pacis (DP), I, II, I.

2. DP., II, Chs. I - VIII, XXIV - XXVII.

3. DP., II, Chs. IX - XXIII.

4. Gewirth, op.cit., II, XC. Most mediaeval philosophers tellingly use the words to mean heresy. However, Marsilius is not original in his usage, which is common to Averroism.

5. DP., I. V. 10.

6. DP., I. X. 3.

not only the religions of the Moslems and the Persians but also the

Christian religion.[7] These religions serve to honour God (sic) and to

nurture the people to a future world status[8] and also to ensure the good-

ness of human acts in this world by the carrot principle: eternal life is

held out to induce good living.[9] The only difference of the Christian

religion is that its teachings are true,[10] its carrot is real; but this

is a principle held "by faith alone".[11]

The Christian society had hitherto been viewed as something

unique, because of its possession of the sole perfect moral norm. For the

papalists its sole "reality" defined the reality of political institutions.

For Aquinas its sole perfection demanded the subservience of political,

natural morality. Whatever the case, Christian society was seen as

markedly different from all other societies. For Marsilius, Christianity

is neither sole reality nor sole perfect morality. Its relationship with

society and politics is thus nothing exceptional, nothing which is to be

decided by looking at the norm itself and seeing what relationship it

poses, by looking at the ideal to judge the real. The Christian ideal

is one of many ideals or religions, and its relationship with politics

and society must be decided by envisaging the usual relationships between

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7. Ibid.

8. DP., I. V. 10 - 11.

9. DP., I. V. 11. See also I. X. 3, "Myths to persuade men to
obey the laws". This quasi-sociological view of religion has often been
commented on: See P. Sorokin, Contemporary Sociological Theories, 544.

10. DP., I. V. 14, II. VIII, 4.

11. DP., II. XXX. 4.

religions and politics and society.

Not only are there, and have there always been, other religions, but also there have always been institutions representing these religions, "priestly parts" of society.[12] "The necessity of this part cannot be comprehended through demonstration nor is it self-evident"[13] (i.e., it is dispensable), but all nations have established such priesthoods to worship and honour God and to concern themselves with man's actions in relation to his after-life destination.[14] Marsilius describes the gentile priests as examples: these were basically teachers of the religious law, and ministers of worship, sacraments, and sacred objects.[15]

The relation between the Christian priesthood and society can be compared to the relationship between priesthood and society in all societies, and in Discourse I, Chapter VI, Marsilius turns his eyes to the Christian society, to "communities of the faithful". Similar to the gentile religions, the "true" priesthood is concerned with man's actions relative to the future life.[16] It teaches the "evangelical law": God's commands in the New Testament of what must be done to attain eternal life, and it ministers divine sacraments. Clearly, the difference between the Christian religions and priesthood and other religions and priesthoods is

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12. DP., I. V. 10. The word "part" applied to the priesthood is also important in Marsilius' theory; the priesthood ranks as only equal to other "parts" of society.

13. DP., ibid.

14. DP., I. V. 10 - 11.

15. DP., I. V. 12 - 14.

16. DP., I. VI. 1, 7 - 8.

merely "truth".

The emphasis on the role of the priesthood in society, then, whether Christian or no, is, firstly, that it is engaged in non-compulsive matters, and, secondly, that its terms of reference are essentially not this life but the next. The aim of Discourse II is thus to demonstrate that in the Christian society neither "the pope nor any other priest" "has or ought to have (any) coercive jurisdiction".[17] It belongs only to the political organization to judge coercively;[18] the priest has only "judgement" in the sense of discernment, "scientia" of the divine or evangelical law.[19] He is analogous not to a kingly judge but to a physician who can diagnose and prescribe remedies but cannot coercively enforce them. He is a physician of souls regarding their eternal health.[20]

Human acts either pertain to something where rewards and sanctions are involved, or not. Also, they either pertain to the present or future life.[21] The priesthood's concern is actions pertaining to future life. Ultimately, sanctions and rewards are involved with these actions, but the coercive judgement, the dispensation of these sanctions and rewards, takes place in the after-life by Christ himself.[22] The standard by which these dispensations occur, by which God's coercive judgements of acts referring

17. DP., II. I. 4.

18. DP., II. II. 8.

19. DP., II. VI. 12, II. IX. 2, II. VIII. 5.

20. DP., ibid.

21. DP., II. 1. VIII ff.

22. DP., II. VIII. 5, II. IX. 1, II. VII. 5.

to eternal life are made, is the divine law. This law was never meant to be a coercive-regulative principle for this life:

> "We are guided by the evangelical law with respect to what we must do or avoid in the present life, although for the status of the future life, for the attainment of eternal salvation and the avoidance of eternal punishment. It was for this purpose of effecting by civil means the reduction of men's contentious acts to due equality or proportion for the status of sufficiency of the present life, inasmuch as Christ came into the world to regulate such acts not for the present life, but for the future life only".[23]

It is the human law and not the ruler which deals with actions relating to rewards and sanctions in the present life.

Thus, the priesthood and its religious moral law are separated by means of enforcement and purpose from rulership and political law. This does not preclude a unity of contents, but it means that even when this unity occurs, the two agencies and phenomena are distinct.[24] The two laws may agree "passively": what is commanded or prohibited in one may also be commanded or prohibited in the other, but they differ when viewed "actively". Even when there is an accord, there still exist two different phenomena: one, a non-coercive relation between Christianity and society regarding eternal life, and, two, a coercive relation between politics and society regarding the present life. But the relation between

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23. DP., II. IX. 12.

24. See the Defensor Minor of Marsilius, XV, 5. The two laws are, on outward appearances, often completely the same, but differ fundamentally "secundum omnes causorum", i.e., their efficient causes (makers), final causes (purposes), etc. See also DP., II. X. 3: Then punishment in such an agreement of contents is not a punishment for sinnings against divine law. "No-one is punished in this world for sinning against theoretical or practical disciplines as such, but only for sinning against human law. For if human law did not prohibit drunkeness, etc., these things would be permitted (with) no punishment". Also: "for a person is not punished by the ruler solely for sinning against divine law. For there are many mortal sins against divine law (e.g. fornication) which the legislator knowingly permits, yet which the priest does not, but cannot use coercive force".

Christianity and society is not one between sole morality and society,
thus indicating that politics, if it wishes to be moral, must somehow get
into this relationship; rather, it is a relationship between one of many
sectae and the political world. Christianity's position of possessing
"absolute justice"[25] does not alter the relationship.

Ultimately, however, Marsilius, wishing to align politics and
morality while evading Church control, does not wish to suggest that
politics can be moral by reference to any of the other sectae of equal
moral validity with Christianity. The notion of equally valid sectae
serves to remove Christianity from politics by a "positivist" view of
religious morality. The uniting of politics to morality is achieved by
a "positivist" view of morality without reference to religion, as will be
seen.

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25. DP., II. XII. 8.

C. Politics and Society

(i) Introductory

The relationship between politics and morality up till Marsilius
had always been stated in terms of government meeting certain norms:
either theologico-moral norms or natural moral ones. Either way the
norms frustrate the independence of the political organization in the
Christian society. Even if it meets the norms of the natural law, the
latter's imperfection demands a further response of the political organi-
zation towards Christian norms, which, under Church guardianship, amounts
to an ecclesiastical ratification of the response, a ratification of
political power in general. John of Paris alone declares the sufficiency
of natural morality, but even he allows for Church incitement to deposition
if the ruler is deficient in the theologico-moral sphere.[1] Clearly, to
substitute other norms than Christian to enable the political organization
to be moral without the Church is unsatisfactory, for in a Christian world
these norms must always compare with Christian ones, either as wholly
false or deficient, and the political organization meeting them persists
as unrighteous or deficient.

Marsilius thus avoids arguing a relationship of politics and
morality in terms of normative requirements. Yet, he wishes to present a
way that politics can be moral without the Church, and in such a way that
its morality does not admit of unfavourable comparison with the Christian,
the theologico-moral code of morality. He does this in two ways: firstly,
by referring the theologico-moral code to a non-political sphere, to a

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1. Gewirth, op.cit., I. 55.

non-earthly sphere, in fact (although involving actions on earth), as we have seen. The theologico-moral code refers to actions in reference to eternal life, so any comparison with earthly morality is unfair: it is not a matter of better and best, imperfect and perfect - they are just completely different.[2] But, in the second place, he does not go on to embrace the natural-moral outlook: he decisively rejects natural law,[3] for as a specific morality it can still in a sense compare with the theologico-moral.[4] Rather, he views morality in a "positivist" way, as the off-shoot of the people's will, and the relation of politics and morality is the relation of politics and society. The morality of the political lies not in its meeting certain norms, but in its following the dictates of society.

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2. Moreover, the theological is undemonstrable. DP., I. IV.

3. It is not on the same level as the rationally established political principles.

3. By referring it to other philosophers, and fusing (confusing) it with, on the one hand, the "ius gentium" (DP., II. XII. 7), and, on the other, the divine law (DP., I. XII. 3).

4. Gewirth sees this (op.cit., 56) in terms of "grace" and "nature": "Whereas the Thomist interpretation of human nature" could readily lend itself to a finalistic culmination, the primitivist biological nature of Marsilius tends to desires, values, and acts which are diametrically opposed to those produced by grace. From this opposition result some of the most characteristic doctrines of Marsilius: the denial that divine law is really a law in the present world, the subordination of the priesthood to the secular government, and, in general, the complete autonomy of the secular sphere in relation to the religious". But it is not, in my view, the biological nature of man as it stands that provides the tool for this autonomy, for an autonomous primitive, biological state is indefensible to moral attack: as such, surely, it most stands in need of grace. It is not "justified" by its biologicality, and Marsilius is definitely not arguing for an unjust or an amoral state. It is the capability of the biological nature to achieve "morality" that matters.

(ii) First Principles

A "well-tempered" government is one in which the ruler governs for the common benefit, in accordance with the will of the subjects".[5] This is common enough parlance in the later Middle Ages. Aquinas uses it, as we have seen, to make Christian government the truly just government: the common benefit, the will of the citizens, is Christianity. From this viewpoint, ultimately it is not the relation between government and subjects that matters, but the relation between government and Christian norms, which in fact, alone enables the former relation; will is objectified. The relationship of politics and society is an effect of the relation between politics and morality. What Marsilius states, however, is the complete reverse: that a relationship of politics and morality is achieved by the relationship of politics and society.

This latter relationship could be looked at in two ways. Politics could be moral by a certain way of transacting society's business, by a régime's suitability of organization for society's business: e.g. aristocracy, may be "right" because it brings to bear expertise to judgements of society's benefit, or monarchy, because it brings unity. But Marsilius refuses to discuss[6] the relative merits of "constitutions" except to favour elective government.[7] The second way in which politics could be moral by its relation to society would be by seeing society as moral, and politics as transmitting this morality. This is the way of Marsilius.

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5. DP., I. VIII. 1. See also I. IX. 5.

6. DP., I. VIII. 4.

7. DP., I. IX. 9.

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It is by relation to a "moral society" that politics becomes moral. Yet, this does not imply that politics must meet certain inviolate norms which society possesses, it does not mean that the guardianship of certain unique moral truths is seen as no longer in the Church but in society. This could hardly be a defensible position, for morality tends to vary from society to society. And this is precisely it: morality is essentially flexible. Once the political philosopher accepts this, as few mediaevals could, he can argue for political justice on a different, wider plane, by reference to different "justices" or different "perceptions of the just. What is "just" in Marsilius depends, though not entirely, on what society conceives as "just". This quasi-positivist view of morality enables Marsilius to bind politics with society, and free it from the grip of the Church.

Thus, a great difference between Aquinas and Marsilius is that the latter does not define terms like "common benefit", "sufficient life", etc., in a Christian manner, for to do so instantly lays the field open to Church direction. Nor does he "define" them at all,[8] in the sense of prescribing the content of these values, for any normative definition, regardless of its adequacy, would be deficient from the Christian stand-point and thus ultimately limit the political organization. To defend the independence of the political organization, he cannot resort to normative arguments; yet, to assert the morality of the civil régime, he must deal in moral terminology. He is thus drawn to look at morals as subjective, positivist, voluntaristic, the offshoot of the people's will.

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8. Take the "sufficient" or "good" life, the final aim of man (DP., I. I. 7) and the state (I. IV. 1). A perusal of its countless contexts (I. I. 1 - 2, 7, I. IV. 1ff, I. V. 7, II. I. XIII. 2, II. VIII. 5 - 7, III. III., for example) will encounter not one "definition".

"That is presumably right which is for the common benefit of the state and the citizens" quotes Marsilius[9] from Aristotle, "but that is best achieved by the whole body of the citizens". It is true that Marsilius does not here define "common benefit", and thus, ultimately, "justice", by the people's will. He envisages, rather, an objective "standard of the just and beneficial "[11] which is best "achieved", "perceived", by the people. His view is thus not entirely voluntarist, positivist.[12] But this is inevitable. Marsilius has not the language, or, for that matter, the Weltanschauung, of scientific positivism; he must argue the case for the subjective morality not from the subjectivism of morals but from the moral capability of subjects. Moral capability necessarily implies an objective standard.

At the same time, however, the principle that only the people is morally capable means that the objective standard can only be objectified by the people's will. In unconditionally resting the interpretation of "the standard of the just" in the people's will alone, without prejudging the form it takes, Marsilius gets as near a positivist view of justice as could be possible in the Middle Ages. The form justice takes is ultimately conditioned by the operation of the people's will.[13]

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9. DP., I. XII. 5. See also I. XIII. 2.

10. Politics, III. 13.

11. DP., I. XIII. 2.

12. Thus D'Entreves' point, that in Marsilius "human decision is raised to nothing less than the standard of truth", is not entirely true. See A. P. D'Entreves, The Mediaeval Contribution to Political Thought, 62.

13. Thus, Gewifth, op.cit. I, 90: "Justice and other political values are the consequence or derivative of human association".

"The whole is greater in "virtue", "perception", "judgement" of "truth", "utility", the standard of the just and beneficial, than any part taken separately".[14]   Marsilius lengthily denies that the above qualities pertain to the few and that the masses are vicious and undiscerning.[15] Every whole is greater in mass and in virtue than any part taken separately.[16] Moreover the, entire multitude wishes the common benefit, and will not knowingly do itself injustice or harm,[17] whereas the few may seek private benefit. To wish the end is to wish the means; the state depends for its existence, on the general wish it continue, but it cannot exist without justice, which, thus, is necessarily the will of the people.[18] Thus, the people's will and ability[19] can be relied upon to produce justice, and the common benefit: "the common benefit of the citizens is almost always aimed at and attained, rarely failing".[20]

It is on these principles that Marsilius bases his political views that the whole people or "human legislator" is the sole efficient cause, sole maker of laws and governments.[21] Politics becomes just by

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14. DP., I. XII. 5 ff, I. XIII. 2 ff.

15. DP., See the whole of I. XIII.

16. DP., I. XIII. 5.

17. DP., I. XII. 5. 8. Compare, of course, J. J. Rouseau, The Social Contract, II. VI.

18. DP., I. XIII. 2.

19. Arguments of people's will as descisive because it is based on the power of the people, and because of the likelihood of obedience to its own dictates, also occur (DP., I. XII - XIII). But they are supports to the principle and not foundations of it.

20. DP., I. XVI. 11.

21. DP., I. XII. 3, I. XV. 2.

its relationship with society. Law both epitomizes and secures this

relationship.

(iii) Law and Society

Law can mean many things,[22] but in its most familiar sense it means "the science or doctrine of universal judgement of matters of civil justice and benefit, and their opposites".[23] In this sense it may be considered in two ways; first, as "showing what is just or unjust, beneficial or harmful", and, second, as a "coercive command".[24] Law, then, is a "statement emerging from prudence and political understanding, that is, an ordinance made by political prudence, concerning matters of justice and benefit and their opposites, and having coercive force".[25]

Must law be just to be true law? Marsilius deals with this pregnant question in a much disputed passage.[26] What is certain from the passage is that there is a shift in emphasis: the moral, cognitive aspect of law is seen as less central to law than the positive, coercive aspect. Law cannot be seen in the way of Aquinas, as essentially directive or cognitive. Marsilius is quite clear that "true cognitions of matters of civil justice and benefit are not laws unless a coercive command has been given concerning their observance".[27] His position on the reverse, whether

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22. DP., I. X. 1 ff.

23. DP., I. X. 3.

24. DP., I. X. 4.

25. Ibid.

26. I. X. 5. For the disputation, see E. Lewis, "The Positivism of Marsilius of Padua", in Speculum, XXXVII (1963), 541-82.

27. DP., I. X. 5.

commands must contain "true cognitions" in order to be law, is less sure.[28] He says that they are necessarily required for a "perfect" law and, like Aquinas, that laws without them lack the "proper conditions" of law. But, nevertheless, he talks of false cognitions becoming laws[29] by coercive command, for example, that murderers should only have to pay a fine.

The mere presence of justice as an aspect of law should not make one assume that Marsilius is not propounding a positivist notion of law.[30] Indeed, its inclusion is essential for his purpose of arguing that the political organization may be independent of normative limitation and yet just.[31] The justice of the political organization refers to the justice and common benefit of the people and this is seen "subjectively", as their will.[32] That it is viewed "subjectively" does not mean that it is any the less common benefit or justice. Indeed, it is one of Marsilius central theses that the people knows its own benefit and thus invariably reaches it, that it invariably has "true cognition".

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28. The view of G. de Lagarde in "Marsile le Padous ou le premier théorician de l'etat laique" in La Naissance de l'esprit laique au declin du Moyen Age,I, 171, that "La loi est ce que tu dois faire si tu ne veux pas etre pendu", is too simplistic. Even if it ultimately amounts to that, Marsilius clearly does not wish to see it like that.

29. And not, as in Aquinas, being merely on appearances "law" or "bearing a relation to law". See S. Theol. I. II. Qu. 92, Art. I. ad 4um, Qu. 93, Art. 3. ad. 2um, Qu. 96. Art. 4, concl.

30. As Lewis, art.cit., seems to argue.

31. Lagarde, op.cit., 172, misses the point: "Il faut choisir. Ou la loi est l'expression d'une realité objective: le juste ou l'utile ou elle n'est autre chose que la volonté de celui que tient le pouvoir".

32. Marsilius states clearly that absolute justice is not required in the human law (DP., II. XII. 8-9).

Invariably, but not always.[33] The qualification shows a tension
between Marsilius' subjective view of justice and his understanding of
some norm of justice, which is absolute. He could not admit that to fine
murderers is just; indeed, he calls it <u>absolutely</u> unjust, and the laws
which provide it not <u>absolutely</u> perfect.[34] Only "true cognitions" of the
just make for "perfect" law, yet "law" as such is <u>not dependent</u> on them.
Yet, law as such, as a coercive command of a people able to perceive
justice, <u>is necessarily linked</u> with such cognitions, with justice.

Generally,[35] justice will emerge from the political prudence and
political understanding of the people concerning matters of justice and
benefit.[36] And, thus, ultimately, law can be seen purely with reference
to the people's authority: "under the most familiar sense of law are inclu-
ded <u>all standards</u> of civil justice and benefit established by <u>human authority</u>
such as customs, statutes, <u>plebiscites</u>" and "<u>all similar rules which are</u>
<u>based on human authority</u>".[37]

What Marsilius is trying to achieve is a <u>coincidence of coercive</u>
<u>command and justice</u>, but from the viewpoint of coercive command becoming
just, rather than justice being realised by coercive command. He views this
coincidence as taking place in law, as justifying law: law's necessity lies
in its being "that without which /coercive/ civil judgements cannot be made

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33. "All or most" wish justice which is always "or mostly"
attained. The phraseology occurs throughout the <u>Defensor Pacis</u>. See
especially I. XII. 8. and I. XVI. 11.

34. <u>DP</u>., I. X. 5.

35. <u>DP</u>., I. XI. 6.

36. <u>DP</u>., I. XI. 4.

37. <u>DP</u>., I. X. 6.

with complete rightness;[38] but the conditions of its taking place are not

the conditions of coercive command's meeting certain normative criteria.

Rather, the conditions lie in whether coercive command expresses the

society's will, which necessarily tens to the good and the just. It is a

different view of morality and justice which enables the coincidence to

take place.

"The legislator, or the primary and proper efficient cause of the

law, is the people or the whole body of citizens, or the 'valentior pars'[39]

thereof, through its election or will expressed by words in the general

assembly of the citizens".[40] This, then, is the fruition and practical

political expression of all the foregoing. Law epitomizes the relationship

between politics and society, which makes politics just without the Church.

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38. DP., I. XI. 1. Also II. II. 8.

39. The objection that the valentior pars "means" more influential part or some such aristocratic conception is dealt with later (Section F).

40. DP., I. XII. 3. Because Marsilius relates justice and law, as well as expressing this doctrine, it is often assumed that his view is the same as that of most mediaevals, who always identified law with justice and included populist elements in their philosophies. Thus Carlyle, op.cit., VI, 9-10: "We have drawn attention · · · to the words of works attributed to Irnerius and Bulgarius that it is the populus · · · which is the ultimate source /sic/ of the law and it is evident that they had learnt this from the Roman Law books · · · Marsilius is restating the doctrine of the ancient Roman Law and of the mediaeval civilians · · · there is hardly any trace in mediaeval political theory of law being made by one person without the advice and consent /sic/ of the people". Cf. Lewis, art.cit., 548: "Marsilius' human law is simply a condensed paraphrase of traditional civilian exposition". This sort of interpretation has basic weaknesses. Firstly, Marsilius refers not to one civil lawyer and, indeed, "shows little knowledge of civil law" (C. W. Previté - Orton ed., Defensor Pacis, Introd., X.),. Secondly, Marsilius does not use terms like "advice" or "ultimate source" to describe the people's position vis-a-vis law but talks of actual popular law-making power and procedures. (See DP., I. XIII. 8). Finally, these interpretations fail to consider different usages of terms like "justice" and "law" and consider a coincidence of words to be necessarily a coincidence of views.

(iv) Government and Law

Law not only exemplifies the relation between the political organization and society which "enables" the morality of the political organization; it is also that which ensures it. The political organization as executive government obviously cannot be the whole people; of necessity, there must be a ruling part (<u>pars principans</u>). The ruling part judges coercively[41] matters of civil benefit and justice.[42] Yet, it is necessary "that such judgements be made with 'complete rightness' and be "preserved from defect as far as humanly possible".[43] That which ensures this is "the law, when the ruler is directed to make civil judgements according to it."[44]

The prime function of the ruler, then, is to enforce law as people's will. Marsilius seems thus to conceive of the political organization as a transmission centre, where society's wishes are received as "inputs" and converted into "outputs" of coercive enforcement on society itself. Since the ruler is conceived also as a general watch-dog of the community,[45] indeed as the defender of peace itself,[46] necessarily matters

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41. <u>DP</u>., II. II. 8.

42. <u>DP</u>., I. XIV. 3, I. V. 8.

43. <u>DP</u>., I. XI. 1.

44. <u>Ibid</u>.

45. <u>DP</u>., I. XV. 13.

46. <u>DP</u>., I. XIX. 3.

will arise not coverable by law,[47] where the ruler's discretion must be trusted.[48] These matters are, however, to be kept to a minimum;[49] indeed anything capable of regulation by law must be dealt with by law.[50] Neither has the ruler the power of his own interpretation of the law; the people alone interpret the laws.[51]

Law, then, cements the relationship between ruler and people which enables the former's justice.

47. _DP._, I. XIV. 4.

48. _DP._, I. XIV. 5.

49. _DP._, I. XI. 3-5.

50. _DP._, I. XI. 4.

51. _DP._, I. XIII. 3, 9.

(v) Government and Society

We have seen, in Aquinas and the Papacy, examples of the complete

divorce from realities of will and force which characterize the mediaeval

political philosophers. They surround the political organization with

definitions restricting its structure and action to normative principles

of justice in theory, without any concern about restrictions in fact.

While in words they may accept society's will and force, they demand its

submission to faith and reason, as if faith and reason were supreme in will

and force. This is their basic weakness in dealing with the Christian

society, which held to its origins as a voluntary creature, never consis-

tently accepting the regulation of any "scientia" on the social and politi-

cal levels.

While Marsilius' principles may be impracticable in some respects,

the union of will, force, and justice that he presents is in some sense

credible, for that which demands the justice of the ruler by recourse to

its own dictates as law, i.e., the people, is also that which has the power

to ensure compliance. To the human legislator "belongs" the power to

establish, depose, and correct the ruler.[52] While the pope might disagree

and claim such for himself from God, Marsilius can not only point to the

qualifications of the people for assuming such powers, but to the superior

force of the citizens as a whole. Indeed, such superior force is expli-

citly,[53] realistically assumed for his political system to work.

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52. DP., I. XV. 2. Also I. XVIII.

53. DP., I. XIV. 8.

It is the powers of society over the political organization,
especially the corrective power,[54] which complete the Marsilian system,
for when the law "inputs" of people's will have been, by the ruler, con-
verted coercively into executive "outputs" of civil judgement, the people
will again measure the result,[55] and put further inputs of demand or
support into the political system.[56] Fundamentally, however, these
relationships are not merely scientific, but relationships of states and
morals.

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54. DP., I. XVIII.

55. DP., I. XVIII. 3.

56. The phraseology for this interpretation comes from D. Easton,
A Systems Analysis of Political Life.

(vi) Tranquillity

Peace, or tranquillity, is nothing else than the social and political systems in working order, in health, the proper balance and interaction of parts ensured by the ruler.[57] If the ruler has the proper qualities and performs his function rightly, all should be well.[58] However, if the ruler's function be impeded, intranquillity will follow.[59] The jurisdictional power claims of the papacy are such an impediment.[60] They interfere in the Christian society by claiming by that ideal that "just as Christ had plenitude of power and jurisdiction over all kings, princes, communities, groups, individuals",[61] so, too, does the pope.

Thus follows Discourse II to show that the Christian society is organizationally no different from any other society, and that neither the Pope nor the Church has any coercive jurisdiction over rulers or any member of society.[62] Marsilius is also, in the process, brought to "show the nature and extent of the priestly power",[63] the position of the Church in the Christian society.

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57. <u>DP</u>., I. XIX. 2. Also I. II. 3.

58. <u>DP</u>., I. XIV.

59. <u>DP</u>., I. XIX. 3-4.

60. <u>DP</u>., I. XIX. 12 ff.

61. <u>DP</u>., I. XIX. 9.

62. <u>DP</u>., II. I. 4.

63. <u>Ibid</u>.

D. Politics, Christianity, Society, and Church

The four variables that make up the problem of the Christian

society are differentiated and interrelated in Discourse II. The relation-

ship between politics and society, which makes for the tranquillity and

morality of the state, is confronted with the relationship between

Christianity, the priesthood, and society, which concerns men's lives in

so far as they have an eternal destination, the priesthood advising and

teaching with regard to this.

The primary difference in the two orders is that the relationship

established between politics and society is coercive, and that between the

priesthood and society is non-coercive. The judgement which the ruler

makes is primarily an act of force, the judgement the priest makes is pri-

marily an act of discernment from knowledge of religious matters.[1] This is

the basic distinction Marsilius wants to make, and this opinion, esta-

blished by reason, is seen to be also the position of Christianity: various

biblical and patristic "proofs" are offered along the lines of "my kingdom

is not of this world".[2] The idea of two coercive dominions, neither subor-

dinated to the other, is impossible; they impede one another.[3]

But the idea of the Christian society always conceives of some

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1. DP., II. II. 8, II. IX. 2.

2. DP., II. Ch. V ff. The arguments are interesting, but only
the point is relevant. See II. V. 9.

3. DP., Ch. I. XVII. 1 ff.

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interplay between Christianity and society at the level of power,[4] it
never supposes a modern distinction between Church and State. This inter-
play supposes both a judgement of discernment (what is Christian), and a
judgement of coercion (the enforcement of Christian ideas). The Church
had always claimed to be the sole authority to discern what is Christian
and thus direct power in the Christian society. Marsilius, however, con-
ceives the direction of power in all societies to rest in the society
itself, since it alone can discern what is just and beneficial, and the
direction takes place in the human law. Yet, Marsilius states that this
justice of the State, of the human law, must not be confused with the
absolute justice of <u>Christianity</u>, of the divine law,[5] which <u>the priesthood</u>
<u>discerns</u> and teaches.

But what if it is the state's wish to have 'absolute' justice;
to be a 'Christian' state? Are we not back in the same position, that
then it has to refer itself, for approval or validation, to the "scientia"
of absolute justice, Christianity, and to its repository, the Church? Is
it not the case that with respect to Christianity the people's will or the
ruler must be less discerning than the priesthood or Church? The two posi-
tions are brought dramatically face to face. If Marsilius has taken reli-
gion out of politics, to found the justice of politics in the people's will,
how can he involve it again in politics without the "scientia" of religion

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4. Marsilius does argue at times against coercion in religious
matters (see <u>DP</u>., II. V. 6) and his seeming volte-face is often commented
on (see Gewirth, <u>op.cit</u>., 159-60). There are several interesting possi-
bilities of explaining the contradiction, but these are not, again, rele-
vant here, for it is clear that Marsilius' final position encourages such
coercion.

5. <u>DP</u>., II. XII. 8.

and the Church dominating the field again?

Marsilius perceives the problem exactly:

"If only the ruler by the legislator's authority has juris-
diction over all forms of compulsion in the present life,
through coercive judgement and the infliction and exaction
of penalties in property and person, then it will pertain
to this ruler to make coercive judgements over heretics or
other infidels, schismatics, and to inflict, exact, and
dispose of the penalties in property and person. But this
seems inappropriate. For it might seem that it pertains to
the same authority to inquire into a crime and to judge and
correct the crime, but since it pertains to the priest, the
presbyter, or bishop, and to no-one else, to discern the
crime of heresy, it would seem to follow that the coercive
judgement or correction of this and similar crime also per-
tains to the priest or bishop alone".[6]

The answer to this problem is divided into two parts; as a whole, it epito-

mizes Marsilius' answer to the problem of the Christian society in general.

Firstly, heresy is only a crime if it is incorporated in the

human law as a crime, and not simply as a crime against divine law: "No-one

is punished in this world for sinning against theoretic or practical disci-

plines as such, but only for sinning against human law".[7] The political

principles remain fast, society decides whether it is beneficial that

heresy becomes a crime or not. Here is a conception of the Christian society's

politics as being Christian to the degree society wishes or considers advi-

sable. It does not commit itself to a Christian politics conceived as a

totality. It may wish to keep 'absolute' justice out of the political

sphere: "there are many mortal sins against divine law, (e.g. fornication)

which the legislator knowingly permits".[8] Christian society, at its own

6. DP., II. X. 1.

7. DP., II. X. 3.

8. DP., II. X. 7.

momentum, _atomistically_, one by one, decides which Christian elements shall enter. When they enter, they enter just as any other "input": through the human law. The priests may discern what is unjust, but whether what is discerned by them as just or unjust becomes law is up to the human legislator; such matters go through the normal political channels.

Secondly, "If human law were to prohibit heretics", then "heretics must be corrected as transgressors of the human law",[9] i.e., by the ruler. The priests may _discern what is heresy, but it is the ruler who decides whether it is unlawful_, and after investigation it is again the ruler who decides whether the heretic is guilty and whether he should be corrected. The priest's "scientia" lies in discerning the crime alone, not the criminal. he cannot make _ad hoc_ pronouncements on heretics and punish accordingly.

There is thus no question of sacerdotal direction in the Christian society; the priesthood is an accessory in a transmission of Christian ideals through the laws, at the pace and regulation of the society, and at the enforcement of the ruler. This is seen as justifiable by positivist, societal, principles which the Christian society does not alter but merely typifies.

All this gives society and politics an unshakeable foundation. While they may not have absolute justice, they do not need it, and they may have it as much as they wish. In the _Defensor Minor_,[10] Marsilius conceives that, in a Christian society, the human law and divine law will be practically the same in content. But the conjunction is not achieved by "grace" perfecting "nature", by God, through the Church, elevating society and the

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9. _DP_., II. X. 3.

10. _Op.cit_., XV, 5.

political organization; it is achieved by society and the political organization pursuing their natural courses at will.

E. The People's Church

The problem which Marsilius' theory of the Christian society as a creature of the people's will faces, once it is established, is a disjunction between the people's will and the will of the Church. The Church, which has the "scientia" of Christianity, may claim that the people's will is wrong, and if its "scientia" is correct, it is wrong, absolutely wrong. The people's will may ignore this, but at their peril, which is just what the Church was saying all the time. Even if justifiably by the positivist principles this "ignoring" occurred, it was not justifiable by the divine law, the absolute justice, which even Marsilius accepts. A Church could still rule by virtue of its influence over consciences, which, of course, all along, was the only power it possessed.

In sum, Marsilius tried to separate real and ideal truths about society, yet provide for their possible voluntary reunion. Yet, in the end, he does not seem to have much faith in voluntarism; he seems to fear that will, subject to Church influence, might enshrine the "Church" in the seat of authority. Thus, he takes, in his ecclesiastical theory, steps to prevent this. For he goes on to argue,[1] by further appeals to the people's "scientia" of the just and beneficial, and weak biblical exegesis, that the people must control the Church itself and have the authority to define the faith, to direct the Christian ideal. This is a quite different matter from directing society. Marsilius is claiming not only that truths about the

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1. DP., II. XVII. 9 ff, II. XX. 4.

people's own affairs[2] are necessarily perceived by those whose truths they are. He is not only arguing that justice viewed "positively" is a standard emanating from the people's will. He is arguing that "ideal" truth, or "absolute" justice, is also best perceived by the people's will. He is arguing that absolute truth is a positive truth, which is nonsense. Like the papacy, he has outstepped himself with his zeal. The papacy used normative arguments to try to make the earth run on heavenly lines, Marsilius in the end wants to make heaven run on earthly lines.

Marsilius thus argues that the faithful human legislator, either by himself, or represented by a general council, decides matters of faith, appointments of bishops, etc.[3] The knowledge of the priests is taken into account, as a "scientia" to be consulted,[4] but judgements on religious matters are finally made by the legislator, for "the whole is greater /has better judgement/ than any of its parts taken separately".[5]

This latter is, of course, the argument used for the authority of the people's will in civil matters[6] and, indeed, any objections to the above principles are considered exactly similar to objections against the people's will as supreme in society, answerable in the same way. Marsilius allows no distinction in the ability to discern civil matters and the ability to discern religious matters. Moreover, the people or council's authority

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2. All along the arguments have been conducted in terms of "political understanding" of "civil justice" (DP., I. X. 4).

3. DP., II. XVII, XX etc.

4. DP., II. XVII. 14.

5. Ibid.

6. DP., I. XII. 5.

over such matters is complete: "No ordinances regarding church ritual,
human acts" can be enacted, "unless made by the general council of supreme
faithful legislator".[7] Finally, the new Church's authority is just as
"infallible"[8] as the old's, so that "No mortal can dispense with the com-
mands and prohibitions of the Divine Law as set forth by the general
council".[9]

The Christian society is thus seen as fully voluntary. Society
voluntarily transmits Christianity through the laws into the political
organization which coercively forces society to obey its own, Christian,
dictates. Society rules its politics, and rules its Christianity. Politics
gets its morality and its Christianity from society; it needs no papacy.
This was what Marsilius intended, and what the rulers of Europe (who could
easily dilute features of popular control through the laws into a "lex
regia") wanted.

7. DP., II. XVIII. 8.

8. Ibid.

9. DP., III. II. 5.

F. Valentior Pars

Whereas the rulers of Europe who might use Marsilius' doctrines would undoubtedly submerge the populist elements, would this be the result Marsilius himself intended? Marsilius more often than not suffixes his statements about the role of the human legislator with the words "or its valentior pars".[1] This, up until 1923, signified to all his interpreters that he favoured a majoritarian assessment of the legislator. For he did, after all, write in one place: "I mean to take into consideration, by the valentior pars, the quantity (quantitate) of the persons in that community over which the law is made".[2] The discovery of earlier manuscripts, however, which contained the words "et qualitate" after "quantitate", revealed Marsilius, in many interpreters' eyes,[3] for all his talk about people's will, an aristocrat at heart. If this is so, then the conclusions we have made are nonsence, crass generalisations exploded by the pedant's perception. An examination in dept of the doctrine of the "valentior pars" is thus essential.

The source of the phrase is clearly Aristotle,[4] via Moerboeke's translation, in the passage where he speaks of the necessity that that part of the population which desires the maintenance of the constitution

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1. Previté-Orton, op.cit., XVI, translates this: "weightier part", which seems to be the best, though still imperfect, of a whole bunch of suggested English equivalents. See Gewirth, op.cit. I, 182-3.

2. DP., I. XII. 3.

3. See for instance C. H. Mcilwain, The Growth of Political Thought in the West, 301 ff.

4. The Politics, IV. 12.

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should be "valentior" than that which does not. This doctrine is not only where Marsilius gets his words from, but also one he uses himself,[5] not merely as a general observation, but as a ground for giving the law-making power to the "weightier multitude of men", for by his "ends-and-means" doctrine those who will the state to endure must also will that without which the state cannot endure, i.e. "law".

For Aristotle this "weightierness" can be measured either "qualitatively or quantitatively",[6] again bearing obvious resemblances to Marsilius' wording. Either qualities like freedom, wealth, education and good birth can, by their strong effect, serve to outweigh a numerical majority and thus be "valentior", or, vice-versa, the numerical majority is stronger. But from this and other passages in The Politics[7] it is clearly seen that by "quantity" Aristotle not only means number, but also the "vulgus", those without "qualities", those who are poor and ignoble, while by "quality" he refers to the "honorabilities". He also tends to regard the antagonism between "quantity" and "quality" as extremely unhealthy for the state.[8]

Marsilius by the valentior pars aims to take into consideration both quantity and quality of persons.[9] I wish to show, firstly, that to see these last two words as a softening of numerical majoritatian concep-

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5. DP., I. XIII. 2.

6. Ibid.

7. E.g., Politics VI. 3.

8. Ibid.

9. DP., I. XIII. 3.

tions basically contradicts what Marsilius is constantly saying elsewhere,[10] and thus is probably a mistaken interpretation, and, secondly, that another interpretation seems to fit the text more readily.

The first thing the "softening" viewpoint assumes is that there is an antagonism between quality and quantity in Marsilius' mind. Whereas Marsilius admits an inequality of wisdom and other qualities in the state, so that one part might be said to be "the wise" of the qualitative part, he claims that "it does not follow that the wise can discern what should be enacted better than the whole multitude, in which the wise are included together with the less learned".[11] And, again, "for although the laws can be better made by the wise than by the less learned, it is not to be concluded that they are better made by the wise alone than by the entire multitude of citizens, in which the wise are included".[12]

One must remember that it is not against government by the many that Marsilius is always arguing in the _Defensor Pacis_, but government by a privileged few. He denies strongly that _quantity_ is to be identified with ignorance, that "the number of the stupid is infinite", that "most of the citizens are vicious and undiscerning".[13] The mass of the citizens (quantity) have a useful role to play in the state, even if they do not reach the highest offices.

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10. E.g. "It is difficult to understand Marsilius' statements of reason for giving the law-making power to the human legislator or its 'valentior pars', if he doesn't have in mind substantial numbers". F. W. Coker, _Readings_ in _Political Philosophy_, 246.

11. DP., I. XIII. 4.

12. DP., I. XIII. 6.

13. DP., I. XIII. 3-4.

But the defense of "quantity" is not at the same time an attack on "quality", for "the best and acute minds" can better discover first principles and measures of common good, better examine and investigate such measures, and their role in the state is an essential one.[14] The picture of "prudent and experienced men" explaining in the assembly possible measures for the citizens to approve, reject, add to or subtract from, quaintly epitomizes Marsilius' _harmonious_ conception of quality and quantity.

Thus, I wish to claim that the doctrine of quality _and_ quantity in Marsilius means what it says, that both those with special qualifications and those with ordinary capabilities are to be included in the "valentior pars". The accent, if any, is not on the defense of quality in government against quantity, but rather _vice versa_.[15]

But besides oligarchical tendencies imputed to Marsilius by the phrase "quantity and quality", it is also suggested that Marsilius had in mind a system of weighting quality against quantity even _though_ both were included.[16] Certainly, this is Aristotle's idea of resolving the question of antagonism: weighting of votes in the assembly according to a property qualification.[17] A reference in Marsilius apparently to this passage[18]

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14. _DP._, I. XIII. 7 - 8.

15. Most passages referring to the "valentior pars" emphasize "quantity": _DP._, I. XIII. 2, I. XII. 5, I. XII. 6, 11.

16. See _A. P. D'Entreves_: "It is clear that in his determination of the "valentior pars" Marsilius introduced besides the notion of number that of quality. A system which is based not upon equality but upon inequality, in which votes must not only be counted, but weighed, cannot properly be termed democratic (sic?)" The Mediaeval Contribution, op.cit., 56.

17. The Politics, VI, 3.

18. _DP._, I. XII. 4.

provides the single piece of evidence for such a view.[19] It would be surprising if Marsilius meant to palm off such a view so casually.[20] There is no reference to any weighting of quality in his description of the workings of the assembly; no hint of a privileged position for honorabilitas, only that "quality" has an initiative in legislation.[21] Who would establish the system? Where is the efficient cause?

Again, a reference to the "valentior pars" being determined in accordance with the "honorable custom of polities"[22] is said to refer to the large council (1,000 members) in Padua based on a property qualification.[23] But nowhere does Marsilius mention anything like an Aristotelian or Paduan property qualification,[24] indeed, a property disqualification and other disqualifications in the Paduan constitution are quite antagonistic

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19. The reference, of course, does present a problem. Commonly, however, mediaeval references to Aristotle are unsure, i.e. they do not necessarily refer to the passage atipulated. Indeed, Previté-Orton, op.cit., 265, points to Pol., VII, 3 - 4 as the location of this reference, which would alter the point considerably.

20. E. Emerton thus writes: "If by "pars valentior" he had meant more competent", "it is hardly conceivable that he should not have followed his invariable practice and given a precise definition to his meaning". (The Defensor Pacis of Marsilius of Padua, a Critical Study). Of course, if Marsilius meant the weightier part as inclusive of quality and quantity, as suggested here, then he would have no need to define it precisely, to argue it, for he had done that already.

21. DP., I. XIII. 4.

22. DP., I. XII. 4.

23. Gewirth, op.cit., 196.

24. Anyway, what for? All these "solutions" presuppose that Marsilius wishes to arbitrate an antagonism. Yet, as we have seen, he does not see an antagonism.

to Marsilius' view of the abilities needed in the legislator, abilities which reside in most people.

Most people, but not all. This is what the "valentior pars" represents, another of the typically Marsilian retreats from no-exception generalizations. "The whole body of the citizens or its weightier part". is exactly similar to the statements of "all or most people have certain abilities"[25] that we have looked at before. Indeed, Marsilius states clearly that his reason for qualifying the statement that the whole body of citizens should make the laws with "or the valentior pars" is that "since it is difficult or impossible for all persons to agree upon one decision,[26] because some men have a deformed nature, disagreeing with the common decision through singular malice and ignorance".[27] Though this seems to show a somewhat naive understanding of legislative workings, nonetheless, it is clearly Marsilius' view that the "valentior pars" is not a "system", but the bulk of the people: all people of "quantity" or "quality", save those who are "deformed", i.e., in some ways obstreperous. Indeed, the Latin word "valentior" refers not only to strength but also to

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25. E.g., DP., I. XII. 8, I. XIII. 3.

26. Strangely enough, it is from this passage that Mcilwain (op.cit., 301 ff) deduces his idea that Marsilius' "valentior pars" is, like the Roman Senate, a small body formed because of the impossibility of all meeting together. He interprets "non possibile omnes personas in unam convenire sententiam" as "impossible for all persons to convene together for decisions", but this is clearly incorrect from the subsequent text. As for the impracticability of Marsilius' proposals, this "defect" he shares in common with most political theorists (e.g., Rousseau with his General Will), who do not set out to define ways and means of political organization.

27. DP., I. XIII. 5.

health.[28] Those who are not to be in the legislator are the sick minds, the all-minus-the-most who do not wish the state to endure, who do not even wish for a sufficient life: clerics perhaps. These must be excluded for the health of the state. "The common benefit should not be impeded or neglected because of the unreasonable protest or opposition of these men".[29]

Marsilius' doctrine of the "valentior pars" as inclusive of all classes of people, since all have capabilities, takes its place in the contemporary struggles of government of the few against government of the many. The canonist doctrine, for instance, of "sanior pars" shows striking resemblances. Often interpreted as "maior et sanior pars", it was also observed that "sanioritas" lies in "paucitas".

But most of all, the struggle between quantity and quality, "honorabilitas" and "vulgus", is seen in the Italian city-strife between "magnati" and "popolani", with which largely Marsilius is concerned.[30] All Italy, in the twelfth, thirteenth, and fourteenth centuries, was a scene for a struggle between urban patriciates either of merchants, nobles, or both, and mass movements aiming at political influence.[31] The dependence

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28. Cassell's Latin Dictionary under "valens" lists "well", "healthy", "sound". "Sounder part" might be a good translation of "valentior pars", but it has still aristocratic connotations.

29. DP., I. XIII. 5.

30. DP., I. I. 2.

31. See M. V. Clarke, The Mediaeval City State, Ch. 3. Edward Armstrong, "Italy in the time of Dante", Cambridge Mediaeval History, VII (1932), Ch. 1. Romolo Caggese, "Italy, 1313-1400", ibid., Ch. 11.

of city dwellers as consumers of imported goods contrasted with the desire

for profit of the merchant trade.[32] Economic laws for the common good

might be achieved only by popular government,[33] for the merchants would

seek their own advantage. Thus we find Marsilius, a member of the

popolani, constantly equating the few with sectional interest,[34] the many

with common interest,[35] and concerned with a sufficient life, seen largely

as pragmatic and material.[36] The effect of the Italian struggle was a

record of protests, strikes, riots, insurrections: thus Marsilius presents

his political doctrines as a defence of peace. Marsilius is not here

putting forward the model republicanism of an Italian city-state.[37] He had,

it seems, disgustedly[38] forsaken republican municipal affairs where a

formal majoritarian constitution hid the harsh reality of a de facto ruling

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32. A. B. Hibbert, "The Economic Policies of the town", Cambridge Economic History, III (1963), 161, 195.

33. See the Italian political though of the day reflecting this point in N. Rubinstein, "Marsilius of Padua and Italian Political Thought of His Time", in Europe in the Later Middle Ages, ed. J. R. Hale, J. R. L. Highfield, B. Smalley, Ch. 11. See also the thought of Girolami in Ch. T. Davis, "Fra Remigio de Girolami", Proceedings of the American Philosophical Society, CIV (1960), 662-7.

34. DP., I. XII. ', I. XIII. 5.

35. Ibid.

36. DP., I. XIX. 2.

37. As Rubinstein (art.cit., 46) and all suggest. J. W. Allen, "Marsilius of Padua and Mediaeval Secularism", in The Social and Political Ideas of Some Great Mediaeval Thinkers, ed. F. J. C. Hearnshaw, 183, is the only exception.

38. His escape to Can Grande, an ardent tyrant, may be due to a welcome of the "signori" as an end to republican misgovernment, or a cynical embrace of the irresistible attractions Can offered men of letters. See D. Sayers, ed., Dante: The Divine Comedy, Introd. 50.

clique,[39] and where in 1324 even the constitutions themselves, because of strife within them, had collapsed, to the dictatorships of the "signori".[40] The "valentior pars", including quality and quantity, is an attempted solution of, not participation in, the conflict of few against many.

39. The classical view of Sismondi about the "golden age" of communes is now thankfully discredited. See Hans Baron, Crisis of the Italian Renaissance, i, ii., Bueno de Mesquita's chapter in Europe in the later Middle Ages, op.cit., Ch. X, 301 ff., and L. F, Marks' review of Brucker's "Florentine Politics and Society, 1343-78, Past and Present, 25 (July 1963), 78: "Florence (the ideal commune) at its most democratic was ruled by its rich men, its bankers, merchants, industrialists". See also C. M. Cipolla, "Economic Policies in the Italian and Iberian Peninsulas", in Cambridge Economic History, III, Ch. VI, 395.

40. E.g., Padua, in 1318, to Jacopo da Carrara.

CHAPTER 4

CONCLUSIONS

The differences between political philosophy and political science often exclude the basically similar tendency in both "to reduce multiplicity to unity, to seek for explanations and hypotheses which cover an ever-wider range of events".[1] Also, both originate in sense-perception, the one by necessity, the other by design. It is the process towards generality which differentiates them, for then the political philosopher tends to use self-evident propositions to deduce results, rather than marshalling the facts to "induce" results. This is his way of obtaining certainty, "self-evident", in his eyes, meaning indubitable.[2]

With Marsilius, although he is by no means original in this respect, the comparison can be furthered, for his political philosophy, like political science, aims not at prescribing an ideal state, but at enunciating principles of how any state can exist at all. Peace, we find, is the health of the state, whereby its parts can perform their appropriate functions.[3] Any impediment to the function of parts is a danger to the state, and an impediment to the political part is often fatal. Intranquillity is the disease of the state which marks a decline and possibly

1. See F. C. Copleston, _Aquinas_, 22, for a comparison of science and metaphysics. See also D. Easton, _op.cit._, 471, where he talks of empirical theory as a response to an uncontrollable amount of fact, "to bring order, economy and stability".

2. See _DP._, I. IV. 2, I. X. 2, II. XIII. 3, 5.

3. _DP._, I. II. 2.

the demise of the state. This is the basis from which Marsilius argues his political principles. The primary function of the political part is to hold the state together.[4]

Yet, Marsilius refuses to view this function as taking place according to norms of right action; rather, he views it as taking place in response to the demands of society. The ruler only translates the laws, as people's will, into action. He transmits the values, the perceptions of the common good of society, back on to that society. Here there seems to be, as we have said, a "political system", "interactions" through which values are authoritatively allocated to society".[5]

Modern empirical theory[6] also talks of "disturbances": "those influences from the total enviroment of a system that act upon it so that it is different after the stimulus than /sic/ what it was before". These disturbances, unless dealt with, produce "stress". The political system must be able to cope with "stress", for disturbances are bound to arise in a world of change. The political organization must not only be able just to _exist_, but also to _persist_ through change.

What greater "disturbance", could there have been than the change to a Christian society? In most writers' eyes, it demanded a complete change in the political organization in response to the norms of the Christian faith. And yet, the political organization still had to persist in doing its job, in keeping the society together. As Reade puts it: "The

4. _DP_., I. XV. 13

5. Easton, _op.cit_., 22.

6. _Ibid_., 21 ff.

distinctive character of Mediaeval politics, contrasted with the ancient, arose from the conception of a society devoted to the pursuit of a celestial ideal, yet constrained to regulate the behaviour of man in his terrestrial end".[7] On the one hand, the political organization had to respond to Christianity, and on the other, to society; it had a dual obligation to the _ideal_ and the _real_.

But _whose_ ideal? From one point of view, society itself had voluntarily subscribed to Christianity, had "chosen" it, and thus in a sense it was _its_ ideal. The Christian society differed from other societies by _its_ ideals and values. From this point of view, there is no antagonism between the political organization's response to society, and its response to Christianity.

But from another point of view, society had chosen to subscribe to Christ's ideal; the Christian society was Christ's society. Thus, then, the political organization had to make a response to something beyond its subjects, something beyond itself as well. The political organization could not claim an inheritance of the ideal, for, manifestly, the Church was the sole heir.

The Church, unlike the political organization, had only one response to make, a response to the Christian ideal. It, by its very nature, was single-minded, to the extent that its ideal was seen by itself as the sole reality: its norms were the only norms. The Christian society was the only society.

The Christian society, in other words, presented a new dimension

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7. C. Reade, "Political Theory to 1300", _Cambridge Mediaeval History_, VI, 609.

of change. Not only did the political organization have to be responsive
to intra-societal needs, demands, and values, but to a world of norms com-
pletely separated from society, which belonged finally to God, but, in
this world, to the Church. Cut off from this world, the political organi-
zation was at best imperfect, at worst, a robber gang. Yet, the political
organization resented this subjection, and found it conflicting with its
own pride of independence and its necessary sovereignty for performing its
regulatory tasks.

The root of the trouble must be found in Augustine, who admitted
of no true justice which was not Christian, which, combined with Church
"scientia" of the Christian ideal, meant that the political organization
had to refer itself to the Church for any moral identity. The papacy,
controlling the Church, seized this, and by defining the state in moral
terms produced the situation whereby the state had to be Christian to be
political, since in Augustine no other morality was valid. Moreover,
since Christianity was necessarily the directing value of the State, its
chief representative, the pope, was necessarily the human director. Or,
put at its extreme, if God had all power, so did the Pope.

But, of course, he did not, nor did those who did have power wish
him to, but they accepted the exclusive morality of Christianity and
accepted the Church's "scientia". They accepted the Church, but not a
relationship with it on its terms. Their own terms, however, a separation
of Church spiritual power and political temporal power, were both contra-
dictory and against the moral reasoning of the body whose moral reasoning
they accepted. Finally, they wished to see themselves as just, and as
enforcing justice, yet how, with the spiritual controlling the moral,
could the temporal play a moral lead?

The introduction of Aristotelianism enabled the political to be

moral on its own terms. Aquinas, for instance, accepts a separation of the political natural-moral from the theological moral. Yet, the latter is superior, and the state, with its natural morality, cannot but be seen as imperfect, and must still embrace Christianity and the Church to be perfect and fit to rule a Christian society.

"Fitness to rule" was the Christian society's problem. But whom did the "fitness" have to satisfy? Looked at from the angle of power, the political organization had no compulsory obligation to satisfy the Church, although the Church, with its inability to separate real and ideal power, might argue thus. The political organization had to satisfy only those whose dissatisfaction could be potent, together with, perhaps, its own conscience. But what did those whom it had to satisfy, have to be satisfied with? Fundamentally, the morality of its workings. But if justice was only Christianity, and only the Church "knew" Christianity, how could the political organization lay its claim to be fit to rule without the Church? Marsilius, with his subjective emphasis on morals, his view of the people as morally capable, enabled the political organization to justify itself before society. Government, according to society's will, must be just, for society wills, and has the capacity to attain, "the standard of the just and beneficial". Christian society is still a society, and thus Christian government is merely a Christian society's will. The political organization need not change in structure as a result of the change to a Christian society, for as a transmission-belt of society's demands and values, it can cope, and cope justly (for society's demands and values are just), with the change, by merely transmitting society's Christian values into coercive political action.

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