

Den of Heretics:  
Marsilius of Padua and William of Ockham on Papal *Plenitudo Potestatis*

By

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## Abbreviations

- BCMP* *A Companion to Marsilius of Padua*. Edited by Gerson Moreno-Riaño and Cary J. Nederman. Brill's Companions to the Christian Tradition, vol. 31. Leiden: Brill, 2012.
- Brev.* William of Ockham. *Breviloquium de principatu tyrannico*. Translated in *A Short Discourse on the Tyrannical Government Over Things Divine and Human, but Especially Over the Empire and Those Subject to the Empire, Usurped by Some Who Are Called Highest Pontiffs*. Edited by Arthur Stephen McGrade. Translated by John Kilcullen. Cambridge Texts in the History of Political Thought. Cambridge: Cambridge University Press, 1992; reprinted 2001.
- CCFT* *Church and Crown in the Fourteenth Century*. Edited by A.I. Doyle. Studies in European History and Political Thought. Variorum Collected Studies Series. London: Routledge Revivals, 2000.
- CCO* *The Cambridge Companion to Ockham*. Edited by Paul Vincent Spade. Cambridge Companions to Philosophy. Cambridge: Cambridge University Press, 1999.
- CCS* Brian Tierney. *The Crisis of Church and State 1050-1300*. Englewood Cliffs, NJ: Prentice-Hall, Inc., 1964.
- CHMPT* *The Cambridge History of Medieval Political Thought c. 350–c. 1450*. Edited by J.H. Burns. Cambridge: Cambridge University Press, 1988.
- DP* Marsilius of Padua. *Defensor pacis*. Translated in *Marsilius of Padua: The Defender of the Peace*. Edited and Translated by Annabel Brett. Cambridge Texts in the History of Political Thought. Cambridge: Cambridge University Press, 2005.
- Epistola* William of Ockham. *Epistola ad fratres minores*. Translated, with *III Dial.* and *OQ III*, in: *A Letter to the Friars Minor and Other Writings*. Edited by Arthur Stephen McGrade and John Kilcullen. Translated by John Kilcullen. Cambridge Texts in the History of Political Thought. Cambridge: Cambridge University Press, 1995; reprinted 2001.
- III Dial.* William of Ockham. Part III of *Dialogus*.
- OQ III* William of Ockham. Question III of *Octo quaestiones de potestate papae*.
- PTAS* *Political Thought in the Age of Scholasticism: Essays in Honour of Jürgen Miethke*. Edited by Martin Kaufhold. Leiden: Brill, 2004.
- TMC* Anthony K. Cassell. *The Monarchia Controversy: An Historical Study with Accompanying Translations of Dante Alighieri's Monarchia, Guido Vernani's Refutation of the "Monarchia" Composed by Dante, and Pope John XXII's Bull Si fratrum*. Washington, D.C.: The Catholic University of America Press, 2004.
- TMW* *The Medieval World*. Edited by Peter Linehan, Janet L. Nelson, and Marios Costambeys. 2nd ed. London: Routledge, 2018.

## Introduction

All authority in heaven and on earth has been given to me.

*Matthew 28:18*

Long before Louis XIV, the ‘Sun King’ of France (r.1643–1715), ruled absolutely from Versailles, and other monarchs of Enlightened Europe emulated his model of rulership, Catholic popes, from the pontificate of Innocent III (r.1198–1216), claimed for themselves absolute sovereignty by divine right.<sup>1</sup> Theirs was the most — if not the only — effective centralized monarchy of medieval Europe, having been developed on the basis of an administrative structure inherited from the old Roman Empire.<sup>2</sup> In order to sustain the enormous weight of papal monarchy, popes began, from the twelfth century, to construct a grand theological and legal edifice of their claims to supremacy.<sup>3</sup> They were assisted by theologians and canonists who advocated these new papal claims to untrammelled earthly authority, designated ‘papalists’ or ‘hierocrats’ in what follows.<sup>4</sup> Unlike Louis XIV, hierocratic popes conceived their authority as extending not just over the people of a single realm, but over all Christians, and even the entire world. Moreover, they considered their supreme authority to encompass not only temporal affairs, directed toward justice, security, and prosperity in this life, but also the spiritual destiny of every Christian seeking eternal life in heaven. Papalists argued that all positive law depends on the pope for its validity, and that secular rulers and inferior churchmen may only exercise authority on papal sufferance. They likened pontifical authority to the sun, without which the heavens and the earth would be left in utter darkness, thus anticipating the sobriquet afforded to Louis. Sweeping papal authority derives, hierocrats asserted, from the status of each pope as vicar of Christ, the all-powerful Son of God — a status that no pope before the twelfth century, each fashioning himself as the vicar of

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<sup>1</sup> Hans-Joachim Schmidt, “The Papal and Imperial Concept of *plenitudo potestatis*: The Influence of Pope Innocent III on Emperor Frederick II,” in *Pope Innocent III and his World*, ed. John C. Moore (Brookfield, Vt.: Ashgate Publishing, 1999; repr. London: Routledge, 2016), 314; James Burns, “Fullness of Power? Popes, Bishops and the Polity of the Church 1215–1517,” in *TMW*, 620–1.

<sup>2</sup> Schmidt, 305; Burns, 619.

<sup>3</sup> Brian Tierney, *Foundations of the Conciliar Theory: The Contribution of the Medieval Canonists from Gratian to the Great Schism* (Cambridge: Cambridge University Press, 1955; repr. 1968), 148.

<sup>4</sup> Technically speaking, ‘hierocrats’ advocate the supreme authority of religious leaders in general, but I shall use both terms synonymously, as meaning advocates of absolute *papal* sovereignty in particular.

St. Peter, had dared to assert. In short, hierocratic popes claimed to wield fullness of power (*plenitudo potestatis*) on earth, and presented that claim as holy dogma.

The doctrine of papal *plenitudo potestatis* was controversial. Defenders of the prerogatives of bishops, for example, resented that the doctrine made episcopal authority dependent on the pope. Thus, they asserted that the authority of bishops proceeds directly from Christ, not through the pope as mediator.<sup>5</sup> Advocates of the rights of secular rulers also took issue with the papal claim to *plenitudo potestatis*. They protested that popes claiming fullness of power interfered in the affairs of rightful lay rulers, to the detriment of Christendom. In the thirteenth and fourteenth centuries, most polemical defenders of secular rulers employed dualist strategies to refute the doctrine of papal *plenitudo potestatis*, by which they sought to restrain popes to spiritual matters and to delineate an independent sphere of temporal rights and duties, established by God, for secular rulers to inhabit.<sup>6</sup>

Of all the polemicists who took aim at the doctrine of papal *plenitudo potestatis*, two in particular stand out: Marsilius of Padua (1275/90–1342/3) and William of Ockham, O.F.M. (c.1288–1347).<sup>7</sup> Both men were university masters who, in the 1320s, abandoned their classrooms in favour of the court of Ludwig IV, ‘the Bavarian’ (r.1314–47), German king and, from January 1328, Roman emperor. Ludwig offered Marsilius, Ockham, and other polemicists patronage and protection in exchange for intellectual ammunition that would, he hoped, further his efforts to assert kingly and imperial authority in the face of fierce resistance from Pope John XXII (d.1316–34) and his immediate successors, Benedict XII (r.1334–42) and Clement VI (r.1342–52). As the curia issued one condemnation after another, Ludwig’s court at Munich became, in the papal imagination, a den of heretics, at the centre of which sat Marsilius and Ockham.

The eminent historian Brian Tierney remarks that Marsilius and Ockham developed “revolutionary” ideas regarding papal power.<sup>8</sup> Antony Black suggests that Marsilius and Ockham

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<sup>5</sup> Brian Tierney, *Religion, Law and the Growth of Constitutional Thought 1150-1650*, The Wiles Lectures given at the Queen’s University of Belfast (Cambridge: Cambridge University Press, 1982), 49.

<sup>6</sup> For a good overview of the ideological dynamics of late-medieval disputes concerning ‘Church and State,’ see: Antony Black, *Political Thought in Europe 1250–1450* (Cambridge: Cambridge University Press, 1992), 42–84.

<sup>7</sup> This has long been recognized. See, for example: James Sullivan, “Marsiglio of Padua and William of Ockam I,” *The American Historical Review* 2, no.3 (1897): 409–26, and “Marsiglio of Padua and William of Ockam II,” *The American Historical Review* 2, no.4 (1897): 593–610.

<sup>8</sup> Tierney, *Foundations*, 9.

were the “most original” of all medieval scholastics who wrote on political matters.<sup>9</sup> Although not all scholars concur with Tierney and Black, evidence for their assessments is certainly plentiful.<sup>10</sup> In this thesis, I compare Marsilius’s and Ockham’s refutations of the doctrine of papal *plenitudo potestatis*. My findings suggest that both writers departed from the dualism of the previous generation of royal and imperial polemicists, such as John of Paris (d.1306) and Dante Alighieri (d.1321), and yet in drastically different ways. In his *Defensor pacis/The defender of the peace* (1324), Marsilius retained the ‘monism’ of the papalists by positing a single locus of supreme spiritual and temporal authority. He inverted the papalist formula, however, by arguing that it is not the pope who enjoys *plenitudo potestatis*, but rather the ‘faithful human legislator.’ He conceived this legislator as the universal body of faithful citizens or its prevailing part, or, put simply, the Christian people. By claiming *plenitudo potestatis* for themselves, Marsilius argued, popes had usurped sovereign authority belonging rightfully to the people. Whereas Marsilius, the papalists, and the dualists glorified institutional power, each in his or their own way, Ockham sought to delineate the limits of legitimate authority, within which individuals might live unhindered as free moral agents. In his *Breviloquium de principatu tyrannico/A short discourse on tyrannical government* (1337/47), Ockham argued that the rights and liberties of subjects impose these limits, and thus that rulers govern tyrannically insofar as they infringe those rights or liberties. Because the doctrine of papal *plenitudo potestatis* ascribed to popes the authority to infringe the rights and liberties of their subjects, Ockham denounced it as tyrannical and illicit.

Before I examine, in Chapters II and III, Marsilius’s and Ockham’s refutations of the doctrine of papal *plenitudo potestatis*, I must first examine the pair biographically and ground them in their historical and intellectual contexts. That is the task to which I now turn, in Chapter I.

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<sup>9</sup> Black, *Political Thought in Europe*, 191. Scholastics were practitioners of the scholastic educational method, characterized by a strong focus on logical or dialectical reasoning, that dominated monastic schools, cathedral schools, and finally universities in Europe from c.1100 to c.1700.

<sup>10</sup> The originality of Ockham, in particular, has been downplayed by some. Consider, for example, the following quotation from Richard Scholz: “In spite of all, Ockham is not an innovator. In no way does he, like Marsilius, wish to reverse the relationship between the spiritual and temporal power, between the Church and the State, or to elevate the empire over the papacy. His fundamental thought on the relationship of the two powers is wholly the conservative, traditional one of coexistence and concordance.” [Richard Scholz, ed., *Wilhelm von Ockham als politischer Denker und sein Breviloquium de principatu tyrannico* (Stuttgart, 1944), 26, quoted and translated in Takashi Shogimen, *Ockham and Political Discourse in the Late Middle Ages*, Cambridge Studies in Medieval Life and Thought, fourth series (Cambridge: Cambridge University Press, 2007), 19.]

# I

## Son of Antenor, Lesser Brother of Francis:

### Marsilius and Ockham in Context

#### (1) From Schoolmen to Political Actors

Emerging from the mists of the undocumented past, Marsilius of Padua (1275/90–1342/3) appeared on the historical stage in March 1313, when he was mentioned by a statute of the University of Paris in his capacity as rector, or head. Having inhabited this office for three months, the standard period of incumbency, he passed the torch to another young master of the liberal arts in late March.<sup>1</sup> Sometime after this, Marsilius returned from Paris to Padua, a northern-Italian city situated to the west of Venice in the March of Treviso. Marsilius had been born at Padua to the prominent Mainardini family of civil administrators, and, in all likelihood, began his university studies there before transferring to Paris.<sup>2</sup> It is certain that he returned to Padua by May 1315, when he served as a witness for the last will and testament of Peter Abano (1250–1315).<sup>3</sup> This famous Paduan doctor and scholar had taught Marsilius medicine, a discipline to which Marsilius devoted himself alongside his arts and, later, theological studies.<sup>4</sup>

In 1316, while still living at Padua but not teaching at the university, Marsilius was made a canon of the cathedral chapter there, with expectation of canonical stipend, by Pope John XXII (r.1316–1334). John was the pope newly elected at Avignon, a city located on the east bank of the Rhône River in Provence, where the papal curia had been situated since 1309.<sup>5</sup> Marsilius obtained this provision on the valuable recommendation of Jacobus Caetani Stefaneschi and Franciscus Caetani, two cardinals whom Marsilius knew through Nicolaus Ceccano, their nephew and Marsilius's peer at Paris. The Caetani cardinals were nephews of Pope Boniface VIII (r.1294–1303), a pope who, famously, had died in 1303 following a violent attempt by agents of French

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<sup>1</sup> William J. Courtenay, "University Masters and Political Power: The Parisian Years of Marsilius of Padua," in *PTAS*, 210; Frank Godthardt, "The Life of Marsilius of Padua," in *BCMP*, 14.

<sup>2</sup> Annabel Brett, ed. & trans., *Marsilius of Padua: The Defender of the Peace*, Cambridge Texts in the History of Political Thought (Cambridge: Cambridge University Press, 2005), xi; Godthardt, 15.

<sup>3</sup> Godthardt, 15.

<sup>4</sup> Brett, xi; William J. Courtenay, "Marsilius of Padua at Paris," in *BCMP*, 58.

<sup>5</sup> Courtenay, "University Masters," 215; Godthardt, 17.

King Philip IV, ‘the Fair’ (r.1285–1314) to drag him from Italy to France, so that he might be tried for blasphemy, heresy, usurpation of office, and other scandalous (if imagined) crimes by a general council of the church.<sup>6</sup> The assault and death of Boniface occurred at the climax of a seven-year conflict between the papacy and the French crown over Philip’s taxing of French clerics, or, as Boniface perceived it, his encroachment on clerical privileges.<sup>7</sup> The Caetani cardinals and the pope himself were happy to secure this provision for a proud native of Padua, a city traditionally aligned with the Guelf faction that supported papal authority in the Italian peninsula at the expense of imperial interests, rather than anyone whose sympathies might lie with their Ghibelline (pro-imperial) rivals, or with any other opponents of the papacy.<sup>8</sup> In April 1318, Marsilius obtained a second papal provision, this time a reservation of the next vacant benefice in the Paduan diocese.<sup>9</sup>

Within a year, however, Marsilius had defected from the circle of papal clients and, driven by motives that are not entirely clear, had joined the Ghibelline cause.<sup>10</sup> In early 1319, he attended a Ghibelline envoy to Charles, Count de la Marche and soon-to-be King Charles IV of France (r.1322–8). The envoy had been tasked by two key Ghibelline leaders, Cangrande della Scala of Verona (d.1329) and Matteo Visconti of Milan (d.1322), with convincing Charles to take command of the Ghibelline League that was warring against papal forces in northern Italy, a region, formally an imperial province, known as the *regnum Italicum*.<sup>11</sup> The mission failed, however, and so Marsilius, having burned his bridges at Padua and having forfeited all chances for papal sponsorship, returned to Paris in late 1319 or early 1320, partially at the urging of his friend Albertino Mussato (d.1329), a famous Paduan poet and historian whom Ronald Witt designates a second-generation Renaissance humanist.<sup>12</sup> At Paris, Marsilius resumed his arts

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<sup>6</sup> Courtenay, “University Masters,” 216–7; *CCS*, 184.

<sup>7</sup> *CCS*, 172–3, 180.

<sup>8</sup> Courtenay, “University Masters,” 218.

<sup>9</sup> Courtenay, “University Masters,” 218; Brett, xii; Godthardt, 17.

<sup>10</sup> William Courtenay argues that Marsilius shifted allegiance in late 1318, when military developments suggested that Padua — and its ecclesiastical wealth — would soon fall under the control of Cangrande della Scala, Ghibelline lord of Verona. According to Courtenay, therefore, Marsilius was driven to join the Ghibelline cause by a desire to advance his wealth and career. [Courtenay, “University Masters,” 219–21] While Courtenay’s theory has merit, it would be a mistake to dismiss Marsilius as a mere opportunist. Whatever his initial motives — and they were almost certainly mixed, not reducible to a single consideration — by the time Marsilius composed the impassioned *Defensor pacis*, he had developed a sincere disgust of papal ideology and practice.

<sup>11</sup> Courtenay, “University Masters,” 218; Godthardt, 17–8. The *regnum Italicum* included the area of Italy “north of the papal states, stretching as far north as Milan and including Padua in the north-east.” [Brett, xii]

<sup>12</sup> Courtenay, “University Masters,” 220, and “Marsilius of Padua at Paris,” 69; Godthardt, 19; Brett, xi; Ronald G. Witt, *In the Footsteps of the Ancients: The Origins of Humanism from Lovato to Bruni*, Studies in Medieval and Reformation Thought (Leiden: Brill, 2001), 117–73.

teaching and theological studies, probably supplementing his income by practicing medicine on the side.<sup>13</sup>

Nonetheless, Marsilius never forgot his status as a loyal “son of Antenor” (the mythical founder of Padua).<sup>14</sup> Thus he began, after returning to Paris, to compose a vast treatise in which he called on Ludwig IV, ‘the Bavarian’ (r.1314–47), German King and future Emperor of the Romans, to exert his rightful authority over the *regnum Italicum* and, thereby, put an end to the Guelf–Ghibelline strife plaguing it.<sup>15</sup> Marsilius blamed this civil discord on what he saw as papal intrusions into the rightful affairs of secular rulers, especially of Ludwig himself. Since 1323, Ludwig and Pope John XXII had been embroiled in a heated dispute concerning Ludwig’s right to function as King of the Romans without papal approval.<sup>16</sup> According to Marsilius, such intrusions were fueled by illicit papal pretensions to supreme temporal and spiritual authority, or fullness of power (*plenitudo potestatis*). After completing this treatise, the *Defensor pacis/The defender of the peace*, in June 1324, Marsilius and a university colleague, John of Jandun (d.1328), withdrew from Paris to the court of Ludwig the Bavarian at Munich. Shortly later, Marsilius and John accompanied the emperor, as advisors, on his ultimately unsuccessful expedition into Italy by which he sought to assert his kingly authority over the *regnum Italicum* (1327–9). During this expedition, Ludwig arranged his own imperial coronation, deposed John XXII *in absentia*, and instituted antipope Nicholas V (r.1228–30). Marsilius would remain under the emperor’s protection until his own death in late 1342 or early 1343.<sup>17</sup> The *Defensor pacis*, Marsilius’s first and only major work, provoked his excommunication in April 1327 and, six months later, his being declared a heretic by John XXII in the bull *Licet iuxta doctrinam*.<sup>18</sup> It has earned him a place

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<sup>13</sup> Courtenay, “University Masters,” 220, and “Marsilius of Padua at Paris,” 69.

<sup>14</sup> *DP* I.1.6; Godthardt, 24–5.

<sup>15</sup> Courtenay, “Marsilius of Padua at Paris,” 70.

<sup>16</sup> Kevin Lucas Lord, “Toward the Golden Bull and against the Pope: The Role of Custom and Honor in King Ludwig IV’s Nuremberg and Frankfurt Appellations (1323–24),” *Austrian History Yearbook* 51 (2020): 96–7. ‘King of the Romans’ was a title that German kings had inhabited from the reign of Henry II (r.1002–24) in expectation of imperial coronation, performed almost always by the pope.

<sup>17</sup> Godthardt, 26.

<sup>18</sup> Godthardt, 32. The earliest surviving writings attributed to Marsilius are a few brief works on metaphysics and logic, but the Marsilian authorship of most of these is problematic or doubtful. [Courtenay, “Marsilius of Padua at Paris,” 61–5] Shortly after completing the *Defensor pacis* in mid-1324, Marsilius composed a much shorter work called *De translatione Imperii (On the Transference of the Empire)*. In it, he attempted to subvert the dominant historical narrative that the popes were responsible for the transference of rights of imperial rule from the Byzantine Greeks to the Germans. Marsilius’s only known writings from his later career were written between 1339 and 1341. [Brett, xiii] First, he composed the *Defensor minor (Smaller Defender)* in response to the many attacks and critiques that had been levelled against the *Defensor pacis* since its composition fifteen years earlier, not only by allies of the pope, but also by fellow supporters of the emperor like William of Ockham. In the *Defensor minor*, Marsilius affirmed the core principles expressed in the *Defensor pacis* and occasionally explored new themes. Second, Marsilius wrote

as one of the most important — and radical — political and ecclesiological thinkers of the middle ages.

Unlike Marsilius, William of Ockham (c.1288–1347) is known best for his early scholarly career, before the mid-1320s when he, like Marsilius, leapt daringly into the fray of political and religious controversy. Ockham was born around 1288 to a family of unknown social standing, at the English village near London bearing his name. He somehow found his way into the Franciscan Order before he was fourteen years-old, probably having been ‘donated’ by his relatives.<sup>19</sup> This order of mendicant friars (from the Latin *mendicare*, ‘to beg’) had been founded in the early thirteenth century by St. Francis of Assisi (d.1226), the son of a prosperous Italian silk merchant. Following a mystical experience in 1206, by which he believed he had been commissioned by God, Francis renounced the life of commerce and devoted himself, instead, to one of active ministry and poverty, relying on voluntary donations obtained through begging, in emulation of the model he perceived Christ and the apostles to have set. In 1210, Francis and his early disciples — who flocked to him in droves — were granted authorization by Pope Innocent III (r.1198–1216) to form an official religious order, one that Francis dubbed the Order of Friars Minor (*fratres minores*, ‘lesser brothers’) because he wanted his friars to live humbly, regarded by themselves and others as subordinate and insignificant.<sup>20</sup>

In the opening years of the fourteenth century, Ockham received his arts training in philosophy and Latin grammar at the London convent of the Order, called ‘Greyfriars’ after the distinctive grey habits worn by Franciscans.<sup>21</sup> Although the life of learning and poverty seems to have been thrust on Ockham, given that he was just a boy when he joined the Franciscans, he nonetheless took to it with eagerness and great promise. By 1310, when he was about twenty-two, he had completed his arts education and had advanced to the study of theology at the University

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two short tracts concerning the legitimacy of a proposed marriage between Margaret Maultasch, countess of Tyrol and Carinthia, and Ludwig of Brandenburg, the emperor’s son. See: Marsilius of Padua, *Defensor Minor and De Translatione Imperii*, ed. Cary J. Nederman, trans. Cary J. Nederman & Fiona Watson, Cambridge Texts in the History of Political Thought (Cambridge: Cambridge University Press, 1993).

<sup>19</sup> William J. Courtenay, “The Academic and Intellectual Worlds of Ockham,” in *The Cambridge Companion to Ockham*, ed. Paul Vincent Spade, Cambridge Companions to Philosophy (Cambridge: Cambridge University Press, 1999), 18.

<sup>20</sup> John Kilcullen, introduction to *William of Ockham: The Work of Ninety Days: A Defense of Franciscan Poverty against Pope John XXII*, trans. John Kilcullen & John Scott (Charlottesville, VA: InteLex, 1992), accessed March 2021, <http://library.nlx.com.libproxy.mta.ca/xtf/view?docId=ockham/ockham.01.xml;chunk.id=div.pm.ockham.work.ninety.1;toc.depth=2;toc.id=div.pm.ockham.work.ninety.1;hit.rank=0;brand=default>.

<sup>21</sup> Courtenay, “The Academic and Intellectual Worlds of Ockham,” 18.

of Oxford.<sup>22</sup> In autumn 1317, Ockham began to lecture on the *Sentences* of Peter Lombard (d.1160), the standard theological textbook of the later middle ages, and in 1321 was appointed lecturer in philosophy at a Franciscan school in England, probably Greyfriars in London.<sup>23</sup> By this time, Ockham was a ‘formed bachelor’ awaiting promotion to doctoral studies at Oxford. The period between 1321 and 1324 was the most productive phase of Ockham’s scholarly career. He produced expositions of the Neo-Platonist Porphyry (c.234–c.305) and of Aristotle’s core logical texts, composed his own textbook on logic (*Summa logicae*), wrote a commentary and several scholastic questions on Aristotle’s *Physics*, and probably completed his treatises on the Eucharist (*Tractatus de quantitate* and *De corpore Christi*), to name only a few examples. Ockham formulated his philosophical and theological views in response not only to the leading scholastics of the previous academic generation, including Henry of Ghent (d.1293), Giles of Rome (d.1316), and especially John Duns Scotus (d.1308), but also notable contemporaries like Peter Auriol (d.1322).<sup>24</sup> During this period, moreover, Ockham’s scholarly opinions began to cause a stir, provoking stern critique from the likes of Walter Chatton (d.1343) and John of Reading (d.1346). One of Ockham’s most contentious views was his nominalist position that universals like ‘animal’ and ‘Christian,’ as opposed to individuals like ‘this animal’ and ‘Abelard,’ do not really exist, metaphysically speaking. Another was his voluntarist opinion, inspired by Duns Scotus, that there is no necessary connection between moral goodness and salvation, because salvation requires grace, a free gift from God that He is not bound to bestow on even the virtuous person.<sup>25</sup>

In 1323, the controversy surrounding Ockham’s philosophical and theological positions spilled out of the classroom and into the courtroom, when someone, perhaps John of Reading or John Lutterell, a former chancellor of the Oxford university, brought a formal complaint against Ockham to the papal curia at Avignon, accusing him of false and heretical teachings.<sup>26</sup> Ockham left England, never to return, around May 1324, taking up residence at the Franciscan convent at Avignon while inquisitorial proceedings against him were underway.<sup>27</sup> Whether Ockham was formally summoned to Avignon or went there voluntarily, optimistic about the outcome of the

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<sup>22</sup> Courtenay, “The Academic and Intellectual Worlds of Ockham,” 19–21.

<sup>23</sup> Courtenay, “The Academic and Intellectual Worlds of Ockham,” 22–3.

<sup>24</sup> Courtenay, “The Academic and Intellectual Worlds of Ockham,” 23.

<sup>25</sup> Courtenay, “The Academic and Intellectual Worlds of Ockham,” 24. On Ockham’s denial of universals, see: Paul Vincent Spade, “Ockham’s Nominalist Metaphysics: Some Main Themes,” in *CCO*, 111–2. On Ockham’s opinion concerning grace, see: A.S. [Arthur Stephen] McGrade, “Natural Law and Moral Omnipotence,” in *CCO*, 285.

<sup>26</sup> Courtenay, “The Academic and Intellectual Worlds of Ockham,” 24; Shogimen, *Ockham*, 2.

<sup>27</sup> Courtenay, “The Academic and Intellectual Worlds of Ockham,” 24.

proceedings, is a point of scholarly disagreement.<sup>28</sup> During this Avignon period of Ockham's career, he was able to bury his nose in a wider variety of scholarship than was accessible at Oxford, owing to the close relationship between the papal curia and the University of Paris, and to engage in disputations and discussions with Parisian scholars themselves, who frequented the curia.<sup>29</sup> Ockham's only writings under review at Avignon were his lecture-notes on the *Sentences*. His propositions on the nature of grace and its relation to salvation, above all, were subjected to careful scrutiny by the commission overseeing his case. This commission comprised several Parisian doctors of theology — nearly all Thomists and, as such, 'realist' opponents of Ockham's denial of universals — and the aforementioned John Lutterell from Oxford, another Thomist.<sup>30</sup>

Ockham's stay at Avignon was cut short when, on the night of 26 May 1328, he fled the city in the company of a few other Franciscan friars, including Michael of Cesena (d.1342), the Franciscan Minister-General, and Bongratia of Bergamo (d.1340), the procurator or representative of the Order at the papal curia.<sup>31</sup> In June, Pope John XXII excommunicated Ockham and his associates for departing Avignon without his permission and for refusing to return when summoned to do so.<sup>32</sup> Ockham and company soon made their way to Pisa, where they joined the court of Emperor Ludwig the Bavarian. At this time, Ludwig and his entourage, including Marsilius of Padua, were withdrawing from Italy after his expedition into the peninsula. By 1330, Ludwig's court had returned to Munich, where Ockham was to remain, under the emperor's protection, until 1347. Death took both men in that year, each a heretic unreconciled to the papacy.<sup>33</sup>

What had prompted Ockham to withdraw from papal obedience and join Ludwig the Bavarian, the pope's adversary? Was his departure from Avignon induced, perhaps, by a sudden turn for the worse in the inquisitorial proceedings against him? Those proceedings exerted, in fact,

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<sup>28</sup> Shogimen, *Ockham*, 2–3.

<sup>29</sup> Courtenay, "The Academic and Intellectual Worlds of Ockham," 24–5.

<sup>30</sup> Courtenay, "The Academic and Intellectual Worlds of Ockham," 25–6. Thomists were followers of the ideas of Thomas Aquinas (d.1274), whom the pope ruling at the time of the proceedings against Ockham, John XXII, had canonized in 1323. [Joseph Canning, *Ideas of Power in the Late Middle Ages, 1296–1417* (Cambridge: Cambridge University Press, 2011), 112.]

<sup>31</sup> Courtenay, "The Academic and Intellectual Worlds of Ockham," 26.

<sup>32</sup> Arthur Stephen McGrade, *The Political Thought of William of Ockham: Personal and Institutional Principles*, Cambridge Studies in Medieval Life and Thought, third series, vol. 7 (Cambridge: Cambridge University Press, 1974), 8–9n27; Shogimen, *Ockham*, 2.

<sup>33</sup> Gedeon Gál, O.F.M., "William of Ockham Died "Impenitent" in April 1347," *Franciscan Studies* 42 (1982): 90–5.

no effect on Ockham's decision to flee Avignon. Rather, he renounced his obedience to John XXII after examining, for the first time, John's bulls *Ad conditorem canonum* (1322), *Cum inter nonnullos* (1323), and *Quia quorundam* (1324), concerning the theology and practice of Franciscan poverty. Ockham seems to have been commanded to examine these bulls by Michael of Cesena, who had been engaged in a dispute with the pope regarding Franciscan poverty and had, in December 1327, been summoned to Avignon to answer for his public criticisms of John. Michael had become convinced that John had fallen into heresy by rejecting the orthodoxy of the Franciscan position on apostolic poverty, and Ockham, having examined the aforementioned bulls, came to agree with Michael and his 'Michaelist' followers, including Bongratia.<sup>34</sup> As Ockham recounted in a 1334 letter to the Franciscan general chapter at Assisi, he found in these bulls "a great many things that were heretical, erroneous, silly, ridiculous, fantastic, insane, and defamatory, contrary and likewise plainly adverse to orthodox faith, good morals, natural reason, certain experience, and fraternal charity."<sup>35</sup> Therefore Ockham, who was determined to uphold his understanding of Francis's vision for the Order, was compelled by his conscience to abandon his philosophical and theological speculations. At Munich, a place of relative scholarly isolation compared with London, Oxford, and Avignon, he devoted his energy to crafting polemics against John XXII (r.1316–34) and his successors, Benedict XII (r.1334–42) and Clement VI (r.1342–52), and in defence of his patron Ludwig the Bavarian.<sup>36</sup> At first Ockham sought, by means of an active pen, to help remedy the egregious situation in which the church seemed to have found itself, a situation wherein heretical pseudo-popes were inhabiting the chair of St. Peter. Later, however, the focus of Ockham's polemical treatises became institutional. Ockham came to believe, like Marsilius of Padua, that contemporary popes and their loyal supporters were attributing to the papal office authority that did not, in fact, belong to it: fullness of power (*plenitudo potestatis*) in spiritual and temporal matters. Such illicit pretensions to authority were detrimental not only to the interests of secular rulers like Ludwig, according to Ockham and Marsilius, but also to the spiritual and temporal welfare of Christendom as a whole.

The refutations of the papal claim to *plenitudo potestatis* that Marsilius and Ockham advanced cannot be understood outside their historical and intellectual contexts. In what remains of this chapter, I treat historical context first, by surveying the conflict between Ludwig the

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<sup>34</sup> Shogimen, *Ockham*, 1; Canning, *Ideas of Power*, 118.

<sup>35</sup> *Epistola*.

<sup>36</sup> Shogimen, *Ockham*, 1; Courtenay, "The Academic and Intellectual Worlds of Ockham," 26–7.

Bavarian and Pope John XXII that served as the polemical setting in which Marsilius and Ockham formulated their ideas about papal authority. To that end, I examine two key aspects of the context of that dispute, namely, civil strife in the *regnum Italicum*, with relevance for Marsilius in particular, and the Franciscan poverty controversy, with relevance especially for Ockham. After that, I treat the details of the dispute itself. Turning next to intellectual context, I offer a proximate history and explanatory overview of the doctrine of papal *plenitudo potestatis*. Finally, I examine the dualist strategies employed by John of Paris (d.1306) and Dante Alighieri (d.1321), the most important anti-papal polemicists of the generation before Marsilius and Ockham, to challenge that doctrine.

## **(2) Peace, Poverty, and Prerogatives: The Dispute Between Ludwig the Bavarian and Pope John XXII**

### *(2.1) Civil strife in the regnum Italicum*

In the twelfth and thirteenth centuries, German kings and emperors of the Hohenstaufen dynasty, most notably Frederick I, ‘Barbarossa’ (r.1152–90) and his grandson Frederick II (r.1212–50), attempted to exert real control over the rich commercial cities of northern Italy, the *regnum Italicum*.<sup>37</sup> Emperors already wielded *nominal* authority over the region by virtue of its status as an imperial province, an arrangement with roots in Charlemagne’s conquest of the Lombard Kingdom in 774, but rights of imperial taxation, for example, had gradually been usurped by the communes themselves over the centuries, during periods of imperial weakness. Following, however, a brutal campaign in the mid-thirteenth century by which the popes, wielding the crusading indulgence, brought about the extermination of the Hohenstaufen, with the last of the dynasty, the fourteen-year-old Conradin, being executed at Naples in 1268, the popes stood triumphant as the dominant force in Italian politics. The Papal States had been expanding gradually since the reign of Pope Innocent III (r.1198–1216), but this trend only accelerated after the annihilation of the Hohenstaufen, with Ferrara, for example, being added to papal holdings in 1308 after three bloody years of fighting. Papal power in the Italian peninsula, exerted through

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<sup>37</sup> For a good general treatment of the medieval Italian communes, a source to which I refer throughout this section, see: J.K. Hyde, *Society and Politics in Medieval Italy: The Evolution of the Civil Life, 1000–1350*, New Studies in Medieval History, (London: Macmillan Education, 1973).

legates, remained alive and well even after 1309, when, owing to a rebellion in the Papal States that began in 1305, Pope Clement V (r.1305–14) was forced to resettle the curia at Avignon, an arrangement that would endure until 1378.

Not all inhabitants of the peninsula, however, appreciated papal domination, as that rebellion in the Papal States testified. Nowhere was this truer, perhaps, than in the *regnum Italicum*. The politics of that region had, ever since the late twelfth century, been characterized by factional strife between the Guelf party, that traditionally supported papal interests in the peninsula, and the Ghibelline party, that traditionally supported imperial claims. These groups were not monolithic structures, of course, and so there was room under one label or another for considerable diversity of policies and approaches, diversity that sometimes blurred the lines between factional identities. For example, the Florentine Guelf faction had, by the end of the thirteenth century, divided into the ‘Black Guelfs,’ who continued to support papal interests in the region, and the ‘White Guelfs’ (the faction of Dante before his exile from the city in 1301), who wanted to restrict papal interference in Florentine affairs.

In July 1319, Pope John XXII inaugurated a new Guelf offensive against the Ghibellines in order to restore papal fortunes in Italy. He appointed Bertrand du Poujet (d.1352), Cardinal-Bishop of Ostia, as papal legate in Lombardy, the wealthiest and most strategically-important region of the *regnum Italicum*. Poujet’s task was to lead a crusade against the Lombard Ghibellines, crush them, and put their leaders on trial for heresy, as obstinate rebels against papal authority. In particular, he was to subdue Cangrande della Scala, Matteo Visconti, and Passarino Bonaccolsi. These were the despots of Verona, Milan, and Mantua, respectively, who had been appointed imperial vicars by the previous emperor, Henry VII of Luxemburg (d.1313).<sup>38</sup> In the *Defensor pacis*, Marsilius reflected with disgust on John’s continued efforts, through Poujet and other legates, to destroy the Ghibellines. He expressed especial disapproval of the methods to which John was willing to resort in order to secure and increase his own authority in Italy, such as crusading, ecclesiastical censure (e.g., excommunication and interdict), and absolving the oaths of subjects to their lords:

It is with such methods (as praiseworthy and gratifying to God as anyone of sound mind and uncorrupted affections can gather) that the most recent so-called Roman pope together with his agents — whom he calls ‘legates’ — has moved against the oft-mentioned Ludwig

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<sup>38</sup> *TMC*, 21, 34; Lord, 96.

king of the Romans, and still does so; and likewise against his vicars and faithful subjects, especially in the provinces of Lombardy and Tuscany and in the March of Ancona.<sup>39</sup>

In March 1317, two years before he appointed Poujet legate, John had laid the groundwork for his offensive against the Ghibellines with his infamous decree *Si fratrum*. In it, he had recapitulated in direct and provocative terms a position already formulated by his predecessor Innocent IV (r.1243–54): that imperial authority derived from the pope, and thus that the pope became, *ipso facto*, the acting emperor in the case of imperial vacancy, until a new candidate could be chosen by the electors and then confirmed by the pope.<sup>40</sup> John wrote:

[When] the empire is left vacant (as it is thus now recognized to have been left vacant through the death of the late Henry [of Luxemburg], emperor of the Romans), since in this matter it is impossible to have recourse to secular judgment, the jurisdiction, government, and disposition of the aforesaid empire devolve to the Supreme Pontiff — to whom, in the person of the Blessed Peter, God Himself committed the rights both of the Earthly and the Heavenly Empire[.]<sup>41</sup>

John considered the office of King of the Romans to be vacant because the 1314 election of Ludwig the Bavarian had been contested, and neither Ludwig nor the other claimant had acquired papal confirmation. John was thus the acting emperor, he argued, and so the Ghibelline leaders needed his permission if they were to continue acting as imperial vicars.<sup>42</sup> Yet they had not sought or obtained the pope's permission, and so, he claimed, they were acting illegally. If they would not submit to him, John threatened, they themselves would face excommunication and their territories would suffer interdict, penalties that would also apply to anyone who abetted the Ghibelline leaders or recognized their authority.<sup>43</sup> John applied further pressure, moreover, by absolving all who served the Ghibelline leaders from their oaths as subjects, and by dissolving “all covenants, obligations, pledges, and pacts entered into by any one whatsoever in any way” detrimental to his rights. Oaths and covenants must not, John reminded, be bonds of iniquity.<sup>44</sup>

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<sup>39</sup> *DP* II.26.17.

<sup>40</sup> *TMC*, 21; Lord, 96.

<sup>41</sup> John XXII, *Si fratrum: A Warning Lest Anyone Dare to Assume the Title of Imperial Vicar When the Empire is Left Vacant*, in *TMC*, 198.

<sup>42</sup> John XXII, *Si fratrum*, 199; Lord, 96.

<sup>43</sup> John XXII, *Si fratrum*, 199–200.

<sup>44</sup> John XXII, *Si fratrum*, 200–1.

## (2.2) *The poverty controversy*

In the middle ages, there was a distinction between two main categories of Christian religious life.<sup>45</sup> On the one hand, ‘seculars’ included anyone, whether clergy or lay, who lived in ‘the world’ (*saeculum*). Bishops and parish priests were secular clergy, for example, being bound to celibacy but permitted to own property. On the other hand, ‘religious’ included monks, nuns, regular canons, and friars, all of whom lived in communities under a rule (*regula*) that mandated some degree of austerity separating its practitioners from the world. The orders of friars that emerged from the early thirteenth century, however, such as the Franciscans, Dominicans, Augustinians, and Carmelites, blurred the lines between ‘secular’ and ‘religious’ by their mendicancy. Whereas a Benedictine monk or nun might spend most of his or her life enclosed in a monastery, physically separated from the world, a Franciscan or Dominican friar would travel *through* the world on preaching journeys, manifesting charity to laypeople, especially the poor, in a visible and direct way. All religious took vows to own no property, abstain from sex, and observe perfect obedience to their superiors, such as an abbot, abbess, prior, or prioress. Such poverty usually involved a renunciation of personal property in favour of ownership in common, but the Franciscans were the exception. Their *Rule* (1221, revised, 1223), crafted by Francis himself, mandated that neither individual friars nor the Order *itself* should own any property, in conformity with Francis’s vision of how Christ and the apostles lived. In practice, however, this restriction posed a problem for Franciscans because it inhibited the effectiveness of their itinerant preaching. In order to preach well, after all, one must study the Bible and other religious texts, but such study requires leisure, shelter, and access to books. The demands of preaching explain why Dominican friars, for example, were permitted to handle money (something else forbidden to Franciscans) and to own a small amount of things, like books, in common. Whereas Francis emphasized holy poverty in emulation of Christ and the apostles, St. Dominic (d.1221) cared most about effective preaching. For Dominic, poverty was only a means to that end, because preachers are most persuasive when they demonstrate humility in their *actions* and not just in their words.<sup>46</sup>

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<sup>45</sup> For a good overview of the background and origins of the Franciscan poverty controversy, a source to which I refer throughout this section, see: Kilcullen, introduction to *William of Ockham: The Work of Ninety Days*.

<sup>46</sup> Patrick Nold, “Pope John XXII, the Franciscan order and its *Rule*,” in *A Cambridge Companion to Francis of Assisi*, ed. Michael J.P. Robson, Cambridge Companions to Religion (Cambridge: Cambridge University Press, 2011), 266.

In the years after Francis's death in 1226, the Franciscans developed a brilliant — and extremely controversial — solution to the friction between apostolic poverty and effective preaching, one that hinged on the distinction between use (*usus*) and ownership (*dominium*). Namely, the friars could not *own* anything as individuals or in common, meaning they had no legal recourse if their goods were stolen or damaged, but they could *use* things owned by a third party. This solution was enshrined in Pope Gregory IX's bull *Quo elongati* (1230), in which the pope permitted 'spiritual friends' (*amici spirituales*) to administer goods on behalf of the friars, and 'messengers' (*nuncii*) to spend money for them. In his bull *Ordinem vestrum* (1245), Innocent IV took matters even further by transferring ownership of all goods that the friars used to the papacy itself. Finally, in *Exiit qui seminat* (1279), Nicholas III affirmed the *usus–dominium* distinction and, drawing on the ideas of St. Bonaventure (d.1274), described the Franciscan system of *usus* without legal right as 'simple use of fact' (*simplex usus facti*). Nicholas also appeared to confirm that the Franciscan way of life was modelled after that of Christ and the apostles, as the friars had believed all along. Although Nicholas never actually wrote that Christ and the apostles enjoyed only simple use of fact, the implication was clear.<sup>47</sup>

The conviction that effective preaching requires education led Franciscans and other mendicants, especially Dominicans, to enter universities, eventually eclipsing the secular masters themselves as more and more schools passed into the hands of mendicant masters. This development provoked an intellectual and legal showdown in the thirteenth century, as secular masters like William of St. Amour (d.1272), Gerard of Abbeville (d.1272), and Henry of Ghent (d.1293) criticized the mendicants as leeches who did no manual labour and who competed for alms with the involuntarily poor. They also expressed their resentment that the mendicants — especially Franciscans — presumed to enjoy greater spiritual perfection than secular clergy, even bishops, on account of their supposed devotion to apostolic poverty. Moreover, the secular masters voiced frustration that popes consistently supported the friars against them, oftentimes overriding the decisions of local bishops in the process, an exercise of papal power that certain seculars decried as illegitimate. The principal spokesmen for mendicant clergy, most notably the Franciscan Bonaventure and the Dominican St. Thomas Aquinas (d.1274), responded with equal vigour in defence of their way of life. Moreover, some mendicants like Bonaventure defended the papal interventions in their favour by emphasizing that popes enjoy fullness of power, meaning

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<sup>47</sup> Nold, 266; Canning, *Ideas of Power*, 109–10.

that each pope is the source of all authority in the church and, as such, may reach down from on high to override the decisions of other bishops. The most important element of the critique levelled by the secular masters — and by some mendicants who were not Franciscans — was that *usus* and *dominium* cannot be cleaved apart. This is evident, they argued, if one considers things consumable in use, such as food. How can one eat a piece of bread that he does not own — and thus enjoys no right to use — without committing injustice? This is the case according not only to natural reason, the seculars argued, but also to human legal custom. Consider the following quotation from Gerard of Abbeville:

According to human laws [i.e., Roman law], in those things which pass away through use, use is not divided from possession, just as the use of money is not divided (i.e. from lordship), or of oil, corn or wine. ... [Thus, when transferred from me to you,] from being mine the thing becomes yours and thus passes into your lordship. ... How absurdly, therefore, do you assert that those things were "given" to the Apostles for use and not for possession, when they pass away through use, and possession or lordship cannot be separated from use! Otherwise, also, the lordship of those things would be altogether fruitless.<sup>48</sup>

According to Gerard, Christ and the apostles could not have lived in such a way as the Franciscans claimed, because they would have been acting unjustly, using things that were not theirs by right, but such a suggestion is absurd and plainly heretical. Franciscans like Bonaventure developed arguments against the secular position, upholding Franciscan orthodoxy. Indeed, Nicholas III composed his all-important *Exiit qui seminat* in 1279 principally to defend the Franciscans from their attackers, and, to that end, formulated the idea of ‘right of heaven’ (*ius poli*) to demonstrate that one can use something justly, having a right to it, while nonetheless lacking legal rights of *ownership*.<sup>49</sup> What is important for our purposes, however, is that these attempts to defend the Franciscan position were not decisive. More than half a century after Gerard of Abbeville died in 1272, Pope John XXII adopted, with practically no modifications, the secular master’s objection to the separation of *usus* and *dominium* in his dispute with Michael of Cesena and other leading Franciscans, including William of Ockham.

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<sup>48</sup> Gerard of Abbeville, extract from *Contra adversarium perfectionis Christianae*, drawn from Kilcullen, introduction to *William of Ockham: The Work of Ninety Days*.

<sup>49</sup> Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law 1150–1625*, Emory University Studies in Law and Religion, no. 5 (Grand Rapids, MI: William B. Eerdmans Publishing Company, 1997), 94–5, 121.

The majority of Franciscans were happy to believe that the distinction between *usus* and *dominium* allowed them to live according to the example of Christ, the apostles, and Francis while using things, like books for studying, that went beyond the bare minimum necessary for survival. Not all Franciscans, however, could approve what they perceived to be the new laxity of the Order. After Bonaventure, who had served as Franciscan Minister-General for nearly twenty years, died in 1274, there emerged a distinct rigorist party within the Order: the ‘Spirituals.’ These friars, such as Ubertino da Casale (d.1330) and Angelo Clareno (d.1337), maintained that the mainstream Franciscans, the ‘Conventuals,’ had veered unacceptably from Francis’s original vision for the Order, and, by extension, from the model set by Christ and the apostles. They stressed that poor use (*usus pauper*), a life of absolute destitution as vagrant preachers or hermits, needed to accompany a renunciation of legal rights if the Franciscans were to live as the *Rule* prescribed. Although the Spirituals, concentrated in Italy and Provence, formed a small minority of Franciscans, they proved an extremely vocal minority. Church authorities grew especially alarmed by the Spirituals once their rhetoric became entwined with millenarian ideas, inspired by writings attributed to Joachim of Fiore (d.1202), that had been condemned as heretical. For example, many Spirituals posited three ages of human history — the age of the Father, of the Son, and of the Everlasting Gospel or Spirit — and asserted that the third age, of which Francis was a prophet, would see the poor inherit the earth. The Spirituals also appropriated the ideas of Pierre Jean Olivi (d.1298). Olivi had distinguished, in his *Postilla in Apocalypsim*, his commentary on the Book of Revelation, the carnal church (*ecclesia carnalis*) from the spiritual church (*ecclesia spiritualis*), and the Spirituals came to identify the *ecclesia spiritualis* with themselves, predicting their coming triumph in apocalyptic conditions. Thus, they became excited in 1294 when a poor hermit, Pietro Angelerio, was elected Pope Celestine V and treated them favourably. The Spirituals were all the more devastated when Celestine, having discovered that he was not suited for the papal office, resigned in that same year. Owing to their disappointment, the Spirituals refused to accept the validity of the election of Boniface VIII (r.1294–1303), Celestine’s successor.<sup>50</sup>

Pope Clement V (r.1305–14) employed a strategy of compromise in dealing with the Spirituals. In his bull *Exivi de Paradiso* (1312), for example, he proclaimed that the Franciscan *Rule* required some poor use, but that it was up to the Franciscan leadership to decide on the amount. He also arranged the appointments, in certain Provençal convents, of Franciscan superiors

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<sup>50</sup> Canning, *Ideas of Power*, 110–1.

sympathetic to the Spiritual cause. This was not enough for the Spirituals, however, who refused to accept Clement's bull. When the elderly Jacques Duèze ascended to the Apostolic See in 1316, becoming Pope John XXII after a vacancy of nearly two years, he tried at first to continue Clement's policy of compromise. Before long, however, he saw that this was ineffectual, and adopted a new strategy of suppression. He launched an offensive against the Spirituals, who, like the Ghibellines in the *regnum Italicum*, had consistently disobeyed papal authority.<sup>51</sup> In his war against the Spirituals, John was aided by the leadership of the Franciscan Order, including Michael of Cesena and Bongratia of Bergamo, who sought, with the pope, to restore the Spirituals to discipline. In November 1317, John tasked Franciscan inquisitors with moving against certain Provençal Spirituals who, resisting John's bull *Quorundam exigit* (October 1317), had explicitly denied the authority of the pope to command the strictures outlined in the bull, ones that conflicted with their understanding of the Franciscan *Rule*. This denial of papal authority was enough to paint those Spirituals with the tar brush of heresy, leading to the famous condemnation and burning of four friars at Marseilles on 7 May 1318. Similar burnings took place sporadically until 1325, by which time the Spirituals had been decisively crushed.<sup>52</sup>

As his war against the Spirituals wore on, however, John decided to modify his strategy once again. He came to believe that he would only be able to crush the heresies of the Spirituals for good by doing away with a doctrine fundamental to the *entire* Franciscan Order, one enshrined in Nicholas III's 1279 decree *Exiit qui seminat*: that it is possible and meritorious to own nothing, and only to use goods belonging to others. To that end, John overturned *Exiit* by rejecting the Franciscan distinction between *usus* and *dominium*, and, by extension, the notion of simple use of fact. Like the secular masters of the previous century, John considered such separation between use and ownership to be impossible. In his bull *Ad conditorem canonum* (1322), John forcefully toppled the Franciscan *status quo* by revoking papal ownership of Franciscan goods, an arrangement that had been established by Innocent IV in 1245. Next, John's bull *Cum inter nonnullos* (1323) condemned as heretical the doctrine that Christ and the apostles owned nothing, either privately or in common, but only enjoyed simple use of fact. The Franciscan leadership denied that John had the right to overturn *Exiit* in this way, but John maintained that his papal

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<sup>51</sup> Patrick Nold argues that John was portrayed unfairly by his Franciscan enemies, a misportrayal that has influenced modern scholars more than they would like to admit. In fact, according to Nold, John "tried to be a faithful, if literal, interpreter of the Franciscan *Rule* rather than an antagonist who sought to destroy it." [Nold, 272] For John, the *Rule* of St. Francis emphasized the importance of obedience, not poverty, most of all. [Nold, 262–3]

<sup>52</sup> Nold, 259–62; Canning, *Ideas of Power*, 111–12, 115.

sovereignty allowed him to do so because *Exiit* had not, according to him, included any truths of Scripture or any doctrines accepted by the universal church, teachings that he would not be able to overturn. Next, John affirmed the Dominican teaching of the naturalness and sanctity of property in *Quia quorundam* (1324), whereas the Franciscans, following St. Augustine (d.430), held that everything existed in common before the Fall, with individually- and corporately-owned property being a postlapsarian innovation. By 1325, John had subdued the Spirituals thoroughly, but a moderate Conventual opposition continued to fester. It boiled over in 1328, when Michael of Cesena and his followers, including Ockham, joined Ludwig the Bavarian. The rest of the Order did not follow this minority into schism, however, and soon fell into line under new leaders. Thereafter, the ‘Michaelists’ lived as heretics at the imperial court in Munich, defending Ludwig’s interests and attempting, without success, to demonstrate that John and his successors were the true heretics, owing to their false teachings on apostolic poverty.<sup>53</sup>

### (2.3) *The dispute between Ludwig the Bavarian and Pope John XXII*

By his actions against the Ghibellines, against the Spiritual Franciscans, and against the foundations of Franciscan poverty itself, Pope John XXII proved himself a vehement and self-assured defender of what he considered papal prerogatives, an enforcer of the obedience that he thought was due the papal office. In this way, although civil strife in the *regnum Italicum* and the Franciscan poverty controversy seem, on the surface, to be unrelated issues, in the minds of those who criticized extreme papal claims to authority, such as Marsilius of Padua and William of Ockham, they reflected a common, disturbing trend. It is perhaps unsurprising, therefore, that Ludwig the Bavarian, in his dispute with John, drew on the energies of both Ghibelline and Franciscan opponents of the pope, including Marsilius and Ockham, to further his own cause.

After the death of Emperor Henry VII of Luxemburg in 1313, preparations commenced for an election to determine his replacement. When the candidacy of the young and inexperienced King John of Bohemia (d.1346), son of the late Henry, seemed hopeless, the Luxemburg party, led by the archbishop-electors of Mainz and Trier, rallied to Ludwig the Bavarian, a member of the Wittelsbach family. Seeking to defend their own autonomy, that would be compromised by

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<sup>53</sup> Canning, *Ideas of Power*, 112–5, 118; Nold, 271.

the election of a strong and determined king, the Luxemburg party much preferred the Wittelsbacher, who exercised only limited authority in Upper Bavaria, to Frederick ‘the Fair,’ duke of Austria and Styria and member of the Hapsburg family that had already produced two ambitious kings, Rudolf I (d.1291) and Albert I (d.1308). On 20 October 1314, the Luxemburgers prevailed when Ludwig was elected King of the Romans by a majority of electors: the archbishops of Mainz and Trier, a claimant to the Duchy of Saxony, the margrave of Brandenburg, and King John of Bohemia. The problem, however, was that Frederick the Fair was also elected, albeit by a minority of electors. He was chosen by a second claimant to the Duchy of Saxony, the archbishop of Cologne, and Ludwig’s brother Rudolf, Count Palatine of the Rhine, who did not appreciate Ludwig’s attempts to expand his own power in Bavaria at Rudolf’s expense. Ludwig was crowned king at the traditional place, Aachen, but by the untraditional archbishop of Mainz. Frederick, on the other hand, was crowned, as was traditional, by the archbishop of Cologne, but at an untraditional place: a Franciscan convent in Bonn. Neither Ludwig nor Frederick was willing to yield his right to the crown, and so the dispute was only settled after eight years of fighting, with Ludwig’s victory over his rival at the Battle of Mühldorf (28 September 1322). Unfortunately for the Luxemburg party that had propelled him to the kingship, Ludwig proceeded to consolidate his own power in Germany and his family’s control over imperial elections, especially by arranging the promotion of his eight-year-old son as margrave of Brandenburg, following the destruction of the Ascanian line. These exploits, however, left Ludwig without the reliable support of either of the great German dynasties, the Luxemburgs and the Hapsburgs, thus making his hold on power tenuous.<sup>54</sup>

Ludwig, in the wake of his triumph over Frederick the Fair, sent word of his victory to the papal curia, although no known copy of the letter is extant. Replying in December 1322, John XXII referred to Ludwig not as king but as “elected to the kingship of the Romans,” and offered to serve as a mediator between Ludwig and Frederick, his “*coelectus*.”<sup>55</sup> John’s refusal to recognize Ludwig as king, despite the Wittelsbacher’s victory over Frederick, reflected his conviction that it was the right of the pope to confirm the *electus* and later to coronate him emperor, because the pope was, as John expressed in *Si fratrum*, the fount from whom imperial authority flowed. Ludwig did not, of course, take John up on his offer to mediate, and instead

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<sup>54</sup> *TMC*, 34; Lord, 95–6.

<sup>55</sup> Quoted in Lord, 95–6.

directed his attention to the *regnum Italicum*, where he sought to exert his authority. He appointed his own imperial vicar in 1323 and sent military support to the Ghibelline leaders, who were still excommunicated heretics because they had not submitted to John. Ludwig's activities in the *regnum Italicum* alarmed John, who worried that these would turn the tide against the Guelfs, and so John initiated a legal process against Ludwig in October 1323. John threatened to excommunicate Ludwig if he continued to exercise the title and prerogatives of the King of the Romans without papal approval. He also condemned Ludwig for supporting the Ghibelline heretics, and warned him that he had three months to submit to papal authority, or else he would face the consequences.<sup>56</sup>

Ludwig did not submit, but instead hit back with a series of written appeals or 'appellations' that he promulgated at Nuremburg (18 December 1323) and then at Frankfurt (5 January 1324). At Nuremburg, Ludwig expressed doubt that the pope enjoyed the right to confirm the *electus*. Yet even if the pope did in fact possess such a right, according to Ludwig, it was only a power of *endorsing* the elected king widely. The election itself, not the papal confirmation, actually *bestowed* royal title and authority.<sup>57</sup> As Kevin Lucas Lord points out, Ludwig appealed to the old dualist understanding of the relationship between priestly and secular authorities in order to support his position:

[Ludwig] deployed classic imperial-papal imagery in comparing the pope and the emperor to the sun and the moon as two powerful lamps in the firmament of the Church Militant, with the former charged [by God] with the daytime disposition of spiritual affairs and the latter with the nighttime judgment over the temporal world. Ludwig accused John, however, of striving to choke the powers of the temporal light, thereby threatening to cast the holy church into confusion and error, amidst which heresies would arise, quarrels abound, and the church, lacking its proper advocate (King Ludwig), would be unable to withstand its enemies.<sup>58</sup>

Ludwig also accused John himself of being a heretic, although on grounds that are perhaps surprising in light of his later patronage of the Michaelists. Namely, Ludwig condemned the pope for declaring heretical the recently-articulated position of John of Pouilly, a Parisian secular master, that absolution by a friar wielding a papal preaching licence did not free parishioners from mandatory confession to their parish priests. Pope John's rationale for censuring Master John was

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<sup>56</sup> *TMC*, 34–5; Lord, 96–7.

<sup>57</sup> Lord, 100.

<sup>58</sup> Lord, 101.

that his stance implied limitations on the pope's supreme authority to assign a preaching licence to whomever he liked.<sup>59</sup> While Master John's argument applied to all friars, Ludwig concentrated on the Franciscans in particular:

For when it was described and properly related that the Franciscans are betrayers of the confessional seal of penitents in the serious and repeated complaints of the archbishops, bishops, and several lesser grades of prelates brought against the General Minister [Michael of Cesena (!)], custodians, guardians, and brothers minor of the Order of Saint Francis, it was sought from him [Pope John] that he, in accordance with his office, correct this just as if it were the most pernicious thing in the Holy Church of God, whence souls were imperiled, the approach to grace is blocked, and the remission of sins is ignored. That one, having turned his back, dissimulating and hiding, does not undertake to care for the pestilential sickness with the salubrious and necessary remedy, inflicting eternally the mortal death of the soul, setting himself up as a patron of the Brothers who are inimical to the Holy Roman Church and the universal faith.<sup>60</sup>

Ludwig closed the Nuremburg Appellation by calling for the convocation of a general council at which he would present his case in person. His Frankfurt Appellation largely echoed the Nuremberg one, with the key exception that it failed to reassert the charge of heresy against Pope John XXII. This was likely because the promulgation of *Cum inter nonnullos* on 12 November 1323, of which Ludwig was evidently unaware when he wrote the Nuremburg Appellation, fatally undermined his strategy of linking John to the Franciscans, who were still unpopular among secular clergy.<sup>61</sup>

On 23 March 1324, the excommunication of Ludwig that John had threatened several months earlier finally came into effect. John solemnly condemned Ludwig as contumacious, demanded that bishops support his measures at risk of suspension from office, and warned Ludwig's vassals that, if they failed to withdraw their support for Ludwig, they would face excommunication and their lands would suffer interdict. Echoing *Si fratrum*, John released all Ludwig's subjects from their oaths to him and dissolved any pacts binding them to him. Ludwig would incur further penalties, the pope warned, if he would not submit his election to the Apostolic See for approval and cease assisting the heretical Ghibellines in the *regnum Italicum*. In May, Ludwig responded by promulgating his most famous appeal against John: the Sachsenhausen Appellation. By this time, Ludwig had come up with a new way to defame John as a heretic, one

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<sup>59</sup> Lord, 108–9.

<sup>60</sup> Ludwig the Bavarian, extract from "Nuremburg Appellation," drawn from Lord, 101.

<sup>61</sup> Lord, 102–3.

that probably reflected a realization that the Franciscans were more useful to him as allies than as enemies, if he could channel their fervour to support his cause. At Sachsenhausen, therefore, he accused John of heresy once again, but this time for condemning as heretical the Franciscan position that Christ and the apostles exercised holy poverty by rejecting all rights of ownership and restricting themselves to simple use of fact. In doing so, Ludwig laid the groundwork for the Michaelists to seek his protection four years later and lend intellectual ammunition to his cause.<sup>62</sup>

Desperate to consolidate his claim to the throne, especially after John declared him deposed on 11 July 1324, Ludwig convened a Ghibelline congress at Trent in early 1327, attended by representatives from Milan, Lucca, Sicily, Mantua, Ferrara, and Verona who attempted to persuade him to invade Italy. One of the speakers at Trent was none other than Marsilius of Padua, who presented the ideas laid out in the *Defensor pacis* to the Ghibelline representatives. By this point, Marsilius had been a member of Ludwig's court for nearly three years. Ludwig followed the advice of the envoys — and certainly of Marsilius too — by agreeing to embark on an expedition through the *regnum Italicum* to Rome.<sup>63</sup> He and his allies marched down to Milan, where, on 31 May 1327, two bishops whom John had deposed crowned Ludwig with the Iron Crown of Lombardy, in recognition of his status as king of Italy. The incumbent archbishop of Milan, who was traditionally responsible for performing that crowning, was a Guelf who had fled some years earlier, after the city was placed under interdict following the promulgation of *Si fratrum*. While resting at Milan for a time, Ludwig appointed Marsilius as *administrator archiepiscopatus Mediolani in temporalibus*, the administrator of the archdiocese of Milan in temporal matters. While it is not certain what this position entailed, at the very least Marsilius exercised jurisdiction, deriving directly from Ludwig's authority, over all clerical goods of the archdiocese. He was not, however, responsible for spiritual matters like the liturgy or the sacraments. As Marsilius was not a priest, such authority was unavailable to him, according not only to canon law (for which he demonstrated little respect) but also to the very principles he had articulated in the *Defensor pacis*. That Ludwig granted him authority over the temporalities of the Milanese archdiocese, moreover, reflected Marsilius's central idea that the church should be

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<sup>62</sup> Lord, 110-1.

<sup>63</sup> Godthardt, 27-8; *TMC*, 35.

subject to the will of the so-called ‘faithful human legislator’ in all matters accidental to the priestly vocation, a vocation that he conceived as essentially sacramental.<sup>64</sup>

While Ludwig and his army slowly made their way southwards through Italy, towards Rome, Ghibellines in the Holy City expelled the prominent Guelf leaders Napoleone Orsini and Stefano Colonna. Among the Roman Ghibellines was the notorious (and elderly) Sciarra Colonna, one of the agents of the French crown who had assaulted Boniface VIII at the town of Anagni in the Papal States in 1303. Sciarra, who was clearly not on good terms with his kinsman Stefano, took this opportunity to organize his own election as ‘captain of the people,’ and began to rule the city with fifty-two advisors.<sup>65</sup> When Ludwig entered Rome on 7 January 1328, more than two months after John XXII had declared him a heretic on 23 October 1327, he was met by cheering throngs. Because John had, unsurprisingly, rejected Ludwig’s request to crown him Emperor of the Romans, Ludwig arranged to be coronated by other, less traditional means. On Sunday, 17 January 1328, he was consecrated by three Italian bishops whom John had deposed, and then four Roman aristocrats, acting on the authority of the citizens of Rome, coronated him emperor. According to legend, Sciarra Colonna was the one who actually placed the imperial crown on Ludwig’s head, but that claim is not borne out by contemporary sources.<sup>66</sup> Ludwig’s next major undertaking, the deposition of John XXII, occurred on 18 April. As he stood before a crowd assembled in front of St. Peter’s Basilica, he proclaimed, reading out his decree *Gloriosus Deus*, that John was guilty of heresy and treason and thereby deposed on the authority of the people and clergy of Rome. The crowd proceeded to burn John in effigy, and, ten days later, the newly-crowned emperor condemned the pope to death.<sup>67</sup> Meanwhile Marsilius, whom the emperor had appointed to a position at Rome somewhat similar to that he had held in Milan, oversaw the ruthless persecution of Roman clergy who obeyed the interdict John had imposed upon the city. According to one papal letter condemning the events in Rome, Marsilius went so far as to punish not only the clerics themselves who had obeyed the interdict, but even their relatives. He was not, however, acting then in any capacity as ‘spiritual vicar’ (*vicarius in spiritualibus*) of the city, as is usually supposed: his duties were distinctly administrative.<sup>68</sup> Finally, Ludwig arranged the

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<sup>64</sup> Godthardt, 28–9, 43.

<sup>65</sup> *TMC*, 35.

<sup>66</sup> H.S. Offler, “A Political ‘Collatio’ of Pope Benedict VI. O.S.B.,” in *CCFT*, 136n164; Godthardt, 27–8, 34–5; *TMC*, 36.

<sup>67</sup> Godthardt, 43–4; *TMC*, 36.

<sup>68</sup> See Frank Godthardt’s excellent refutation of this standard misconception in Godthardt, 38–43.

installation of the Franciscan Pietro Rainalducci da Corbara as antipope Nicholas V on 12 May 1328. Having once again convened an assembly of Romans in the square before St. Peter's Basilica, Ludwig himself invested Nicholas with the insignia of office, including the fisherman's ring and a scarlet biretta (rather than a tiara or crown), thus displaying Nicholas's utter subjection to the emperor. Marsilius was almost certainly an architect of this finely-crafted ceremony. Ten days later, Ludwig, evidently insecure about the untraditional nature of his first imperial coronation, had his creature Nicholas, whom not even most Ghibellines actually recognized as pope, crown him emperor once again.<sup>69</sup>

By this time, John XXII had launched a crusade against the emperor, and in the summer of 1328 the pressure on Ludwig was mounting. For one, he was facing military pressure from Robert I, 'the Wise,' Angevin King of Naples (r.1309–43) and papal vassal. Moreover, discontent was building among the Roman people themselves. In April, Jacopo Colonna, an ally of papal legate Bertrand du Poujet and yet another member of the divided Colonna family of Roman nobles, had managed to ride into Rome, give a provocative public reading of the bull *Dudum volentes* by which John had declared Ludwig a heretic, affix the document to the door of the church of San Marcello, and hightail it out of the city unscathed.<sup>70</sup> Over the following months, public opinion turned sharply against Ludwig, until finally, on 4 August 1328, the emperor and his retinue departed Rome, accompanied by the jeers of angry citizens denouncing them as damnable heretics. The journey out of Italy was a slow one, with Ludwig and his entourage not returning to Munich until early 1330. By 8 August 1328, papal legate Giovanni Orsini had ridden triumphantly into Rome, accompanied by the cheers of the crowds, an ironic echo of Ludwig's entry eight months earlier. Under Giovanni's guidance, an assembly of Romans proceeded to annul every single act and edict of the emperor. Before long, the unfortunate Pietro da Corbara, his dreams of occupying the papal throne having been crushed in swift measure, surrendered himself to John XXII and renounced his sins before the consistory, dying under detention in October 1333.<sup>71</sup>

As for Ludwig, the failure of his Italian expedition did not deter him from continuing to resist, until his death in 1347, what he perceived as papal crimes against his imperial dignity, committed first by John XXII and then by his successors Benedict XII (r.1334–42) and Clement

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<sup>69</sup> Godthardt, 49–50; *TMC*, 36; Roberto Lambertini, "À la recherche de l'esprit laïque in the late Middle Ages," in *TMW*, 371.

<sup>70</sup> *TMC*, 36; Lambertini, "À la recherche," 371.

<sup>71</sup> *TMC*, 36–7; Godthardt, 50–1.

VI (r.1342–52). In these later years of his conflict with the papacy, Ludwig put up a good fight, orchestrating increasingly-impressive imperial diets in the late 1330s and early 1340s to rally his subjects to his cause. This effort culminated at Rhens in 1338, when the electors decreed that the pope did not enjoy the right to confirm the elected King of the Romans. In doing this, however, the electors were more likely acting to protect their own prerogatives than to defend their lord. Ludwig also proclaimed, in his law *Licet iuris* (1338), that an *electus* was to be adjudged true and legitimate *emperor* as soon as he was elected, without having to wait for a pope to coronate him, but this would not become the standard practice until the reign of Maximilian I of Hapsburg (r.1508–19) at the dawn of the modern era. During the later period of Ludwig’s dispute with the papacy, the Michaelists — and especially Ockham — composed polemics designed to undercut papal authority and, subordinately, to uphold their patron’s imperial rights. Marsilius’s time in the spotlight, however, had ended with the Italian expedition. As far as scholars can ascertain, he wrote nothing in the 1330s, perhaps spending his time practicing medicine at Munich. Then, shortly before his death in 1342/3, he put pen to parchment once again, composing a few minor tracts that demonstrated that he had not budged from the core principles articulated by the *Defensor pacis*.<sup>72</sup> The object of Marsilius’s polemical fury, one that Ockham came to share in the late 1330s, remained the papal claim to *plenitudo potestatis*, a doctrine laying, he thought, at the root of the civil strife that continued to plague the *regnum Italicum*.

### (3) Papal *Plenitudo Potestatis* and its Earlier Opponents

#### (3.1) *Overview of the doctrine and its background*

When the term *plenitudo potestatis* first appeared in papal documents in the early middle ages, it did not refer to the supreme jurisdiction of the pope in spiritual and temporal affairs, nor did it describe the power of the pope at all. Rather, it referred to the delegated power of papal legates or vicars, power that would only be ‘full’ within limits set by the pope himself.<sup>73</sup> As late as 1200, the ‘decretists,’ jurists who commented on the collection of canon law compiled by Gratian in 1139/40, the *Concordia discordantium canonum/Concordance of discordant canons*,

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<sup>72</sup> Lord, 111; Lambertini, “*À la recherche*,” 371. Recall 6n18 above.

<sup>73</sup> William D. McCready, “Papal *Plenitudo Potestatis* and the Source of Temporal Authority in Late Medieval Papal Hierocratic Theory,” *Speculum* 48, no. 4 (1973): 654; Schmidt, 308; Tierney, *Foundations*, 143–4.

called popularly the *Decretum Gratiani/Decree of Gratian*, employed the term in a variety of ways. They sometimes used it to describe the power of papal legates, other times the authority that communities bestow on their heads through election, but seldom papal authority in particular. Moreover, decretists like Huguccio (d.1210) considered papal *plenitudo potestatis* to differ from the authority of other bishops only insofar as it extends over a broader geographic area. Huguccio even wrote that the emperor enjoyed a sort of *plenitudo potestatis* conferred by the people.<sup>74</sup>

By 1300, however, *plenitudo potestatis* had come to acquire the meaning that Marsilius and Ockham engaged: that the pope enjoys supreme authority on earth in spiritual and temporal matters.<sup>75</sup> According to ‘papalist’ or ‘hierocratic’ advocates of this doctrine, the pope enjoys supremacy not by secular concession, as the notorious (and forged) *Donation of Constantine* appeared to describe, but because this authority is fundamental to the papal office itself.<sup>76</sup> The most extreme implication of the doctrine of papal *plenitudo potestatis*, endorsed explicitly by theologians like François de Meyronnes (d.1327) and Augustine of Ancona (d.1328), was that the pope must be obeyed without exception in everything not contrary to divine and natural law, or, in essence, everything not wrong in itself.<sup>77</sup> Thus, *plenitudo potestatis* was nothing less than a doctrine of absolute and all-embracing papal sovereignty.<sup>78</sup>

The meaning of *plenitudo potestatis* that Marsilius and Ockham challenged was grounded in the fundamental idea of vicariate, a conceptual holdover from when the term was used to describe the power of papal legates. Late-medieval popes each claimed to be the vicar of Christ, the sole representative of God on earth.<sup>79</sup> This status, according to papalist opinion, had been

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<sup>74</sup> Tierney, *Foundations*, 145–6.

<sup>75</sup> Tierney, *Foundations*, 147; Schmidt, 309.

<sup>76</sup> McCready, 655. During the middle ages, Constantine the Great (r.306–37), the first Christian Roman emperor, was thought to have given Pope Sylvester I (r.314–35) legal primacy over all other bishops, as well as temporal authority over Rome and its western possessions. During the Renaissance, the *Donation of Constantine* was exposed as an eighth- or ninth-century document by Lorenzo Valla (d.1457). The *Donation* had sometimes been used to support papal claims to universal temporal jurisdiction, but only cautiously, because it seemed to subordinate the pope to the emperor, who *conceded* him power. [George Garnett, *Marsilius of Padua and ‘the Truth of History’* (Oxford: Oxford University Press, 2006), 110.]

<sup>77</sup> *Brev.* II.1–2; Shogimen, *Ockham*, 163–5; Augustine of Ancona, extracts from *Summa on Ecclesiastical Power*, drawn from *The Cambridge Translations of Medieval Philosophical Texts*, vol. 2, *Ethics and Political Philosophy*, eds. Arthur Stephen McGrade, John Kilcullen, Matthew Kempshall (Cambridge: Cambridge University Press, 2001), 448.

<sup>78</sup> Tierney, *Foundations*, 147.

<sup>79</sup> Francis Oakley, *The Emergence of Western Political Thought in the Latin Middle Ages*, vol. 3, *The Watershed of Modern Politics: Law, Virtue, Kingship, and Consent (1300–1650)* (New Haven, CT: Yale University Press, 2015), 18; Michael Wilks, *The Problem of Sovereignty in the Later Middle Ages: The Papal Monarchy with Augustinus Triumphus and the Publicists*, Cambridge Studies in Medieval Life and Thought, New Series, vol. 9 (Cambridge: Cambridge University Press, 1963), 274–6.

bestowed on Peter and his successors to the Roman See when Jesus proclaimed the following in Matthew 16:18–9, after Peter had confessed Jesus as the Christ:

[You] are Peter, and on this rock I will build my church, and the gates of hell shall not prevail against it. I will give you the keys of the kingdom of heaven, and whatever you bind on earth shall be bound in heaven, and whatever you loose on earth shall be loosed in heaven.

As vicar of Christ, the pope wields fullness of power appropriate to that status. To borrow William McCready’s formulation, the papalists held “(a) that Christ even as a man possessed both priestly and royal power, and (b) that his sole vicar here on earth is the Roman Pontiff; and hence... [they concluded] (c) that the pope possesses authority in both spiritual and temporal affairs.”<sup>80</sup> All authority, therefore, descends to the rest of the church from the pope, who acts as the bridge between the earthly and divine.<sup>81</sup> In this case, ‘church’ (*ecclesia*) must not be understood as the ecclesiastical hierarchy, but rather as Christian society itself: the mystical body of Christ (*corpus Christi mysticum*). The pope, as Christ’s vicar, is both the head and whole of this body.<sup>82</sup> Hence the following quotation from *Unam sanctam* (1302), an infamous bull that Pope Boniface VIII promulgated during his conflict with King Philip IV of France (r.1285–1314): “Therefore there is one body and one head of this one and whole church, not two heads as though it were a monster, namely Christ and Christ’s vicar.”<sup>83</sup>

According to the papalists, the ultimate end of this Christian society is a spiritual one, eternal beatitude, that only the pope can bring to fruition because he is the fount of divine wisdom, the supreme interpreter of evangelical law.<sup>84</sup> Lay rulers are merely instruments of papal policy, exercising coercive power to assist the Roman pontiff as he guides society toward its supreme end.<sup>85</sup> In this vein, Augustine of Ancona wrote that no “one is exempt from both the pope’s direct lordship and his indirect lordship. Clergy are under ecclesiastical government directly, the laity are under it through lay government, which has been given to the supreme spiritual authority to

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<sup>80</sup> McCready, 660.

<sup>81</sup> Francis Oakley, *The Emergence of Western Political Thought in the Latin Middle Ages*, vol. 2, *Mortgage of the Past: Reshaping the Ancient Political Inheritance (1050-1300)* (New Haven, CT: Yale University Press, 2012), 134; Wilks, 275.

<sup>82</sup> McCready, 660; Oakley, *Watershed*, 18; Wilks, 21, 31, 35, 37, 262; Gerhart B. Ladner, “Aspects of Mediaeval Thought on Church and State,” *The Review of Politics* 9, no. 4 (1947): 415.

<sup>83</sup> Boniface VIII, *Unam sanctam*, in *CCS*, 188.

<sup>84</sup> Wilks, 252, 275; McCready, 661, 663.

<sup>85</sup> Wilks, 69, 253; Oakley, *Mortgage*, 129.

serve and assist it.”<sup>86</sup> If secular rulers fail to live up to this purpose, however, such as by refusing to obey papal directives, they can and should be removed from office.<sup>87</sup> Indeed, while a pope should not abandon the use of lay rulers altogether, in favour of direct universal rule, this does not mean that he is unable to rule directly should a genuine need arise — and he is the one who determines whether such a need exists.<sup>88</sup> The same reasoning applies also to the ecclesiastical hierarchy, with the pope retaining the right to exercise lower ecclesiastical functions directly, should that become necessary for the good of the church.<sup>89</sup> To borrow the words of Francis Oakley, the papalists held that, in

God and the pope alike there resides an absolute power (*potentia absoluta*) or plenitude of power (*plenitudo potestatis*) by which they can do directly and without the intermediary of any secondary agency (whether secondary natural causes or subordinate human agents) whatsoever they do indirectly by means of them.<sup>90</sup>

The papalists employed the analogy of ‘two swords,’ deriving from Luke 22:38, to explain this absolute power of the pope.<sup>91</sup> Namely, they posited two sorts of authority, figured by swords: the spiritual and the temporal. Both of these belong to the pope, even though, in normal circumstances, the temporal sword is wielded by a lay agent of the pope on his behalf, and not by him directly.<sup>92</sup> As Boniface VIII wrote in *Unam sanctam*, both swords “are in the power of the church, the material [or temporal] sword and the spiritual. But the one is exercised for the church, the other by the church, the one by the hand of the priest, the other by the hand of kings and soldiers, though at the will and suffrance of the priest.”<sup>93</sup>

If it is true that the pope is the representative of God on earth, how might a malfeasant pope be brought to justice? On this question, the principal hierocratic theorists of the late thirteenth and early fourteenth centuries responded in unison that the pope is set above all mortals and thus may not be judged by them. Positive law cannot constrain him, as Augustine of Ancona declared, because “all positive law depends on him [for its power], either by direct promulgation (canon law) or by confirmation and approval (civil law).”<sup>94</sup> There existed some disagreement among the

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<sup>86</sup> Augustine of Ancona, extracts from *Summa*, drawn from McGrade, Kilcullen, Kempshall, eds., 451.

<sup>87</sup> Wilks, 160–1, 167, 250; Oakley, *Mortgage*, 135.

<sup>88</sup> McCready, 656; Wilks, 252.

<sup>89</sup> Oakley, *Mortgage*, 206.

<sup>90</sup> Oakley, *Mortgage*, 205.

<sup>91</sup> “And they [the apostles] said, “Look, Lord, here are two swords.” And he said to them, “It is enough.””

<sup>92</sup> Oakley, *Mortgage*, 198. 9

<sup>93</sup> Boniface VIII, *Unam sanctam*, in *CCS*, 189.

<sup>94</sup> Augustine of Ancona, extracts from *Summa*, drawn from McGrade, Kilcullen, Kempshall, eds., 448.

papalists, however, regarding whether one may appeal a decision of the pope to God himself. Whereas Giles of Rome (d.1316), for example, suggested that such an appeal is possible,<sup>95</sup> Augustine of Ancona dismissed the question as ridiculous: the judgement of the pope, as Christ's vicar, is one with God's judgement, and it is impossible to appeal to the pope against his own sentence.<sup>96</sup> If the pope falls into blatant heresy, he can be tried by a general council of the church, but only because he ceases, in such an instance, to be pope at all on account of his heresy.<sup>97</sup> In every other case, Augustine maintained, the pope and God speak with the same divine voice.

How had the meaning of the term *plenitudo potestatis* changed so substantially between c.1200 and c.1300? Most scholars agree that the pontificate of Innocent III (r.1198–1216) provided the key turning-point, when Innocent utilized *plenitudo potestatis* in the sense that Marsilius and Ockham encountered in the early fourteenth century.<sup>98</sup> In his writings on the relationship between ecclesiastical and secular power, Innocent formalized the idea that the papal office has inherited *all* the priestly and kingly power of Christ, “after the order of Melchisedech,” a priest-king mentioned in Genesis 14.<sup>99</sup> According to Innocent and subsequent papalists, all legitimate political power, and even all property rights, derive from the fount of papal authority and thus can be exercised licitly on papal sufferance alone.<sup>100</sup> Demonstrating this point in his 1198 letter to the Tuscan nobility, *Sicut universitatis conditor*, Innocent likened the relationship between pontifical authority and secular power to the relationship between the sun and the moon:

Just as God, the founder of the universe, has constituted “two great lights” in the firmament of heaven, so that the greater light might preside over the day and the lesser light might preside over the night [Genesis 1:16], in the same way within the firmament of the universal Church, which is signified by the name of Heaven, He established two great dignities, the greater to preside over souls, corresponding to the day, and the lesser to preside over bodies, corresponding to the night. These are the pontifical authority and the royal [or imperial] power. Thus, as the moon receives its light from the sun and for this

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<sup>95</sup> The “supreme pontiff is to be judged by God alone. For . . . it is he who judges all and is judged by no one: that is, by no mere man but by God alone.” [Giles of Rome, extracts from *De Ecclesiastica Potestate*, drawn from Ewart Lewis, *Medieval Political Ideas*, 2 vols. (New York: Routledge & Kegan Paul, 1954), reprinted for Routledge Revivals (Abingdon, Oxon: Routledge, 2013), 579.]

<sup>96</sup> Oakley, *Watershed*, 21. There “is one consistory of the pope and of God, and the pope is doorkeeper of this consistory and holds its key. No one, therefore, can appeal from the pope to God, just as no one can enter God's consistory except by means of the pope, who is keyholder and doorkeeper of the consistory of eternal life.” [Augustine of Ancona, extracts from *Summa*, drawn from McGrade, Kilcullen, Kempshall, eds., 421]

<sup>97</sup> Augustine of Ancona, extracts from *Summa*, drawn from McGrade, Kilcullen, Kempshall, eds., 434–5.

<sup>98</sup> E.g.: *TMC*, 5; Schmidt, 307–8; Tierney, *Foundations*, 147.

<sup>99</sup> *TMC*, 5. Quotation taken from Innocent III, “Letter to King John of England accepting his feudal homage (April 1214),” in *CCS*, 135.

<sup>100</sup> McCready, 655, 657; Schmidt, 307–8.

very reason is inferior both in quantity and in quality, in its size and in its effect, so the royal [or imperial] power derives the splendor of its dignity from the pontifical authority.<sup>101</sup>

By differentiating pontifical *authority* from secular *power*, and thus subordinating the latter to the former, Innocent was drawing on the famous distinction, made by Pope Gelasius I (r.492–6) in his letter *Duo sunt* (494) to the Byzantine Emperor Anastasius I (r.491–518), between “the sacred authority [*auctoritas*] of the priesthood and the royal power [*potestas*].”<sup>102</sup> Exercising proximate influence on Innocent was the theologian Hugh of St. Victor (d.1141/2),<sup>103</sup> who, in his influential *De sacramentis/On the sacraments* (1134), wrote that “the spiritual power has to institute the earthly power [so] that it may be and to judge it if it has not been good.”<sup>104</sup> To employ Innocent’s celestial language, the sun may withdraw its light from the moon if necessary, such as happens during a lunar eclipse. While Innocent did not invent the analogy of the sun and moon, his rendition of it was extremely influential and enduring.<sup>105</sup> As we have seen, a version of this analogy, one excluding the inconvenient part about royal and imperial power deriving from the pope, was even employed by Ludwig the Bavarian in his Nuremberg Appellation. More significantly, Innocent’s version of the sun and moon analogy exercised tremendous influence on Hostiensis (d.1271) and other ‘decretalists.’ These were jurists who commented on the canon-law books promulgated under Pope Gregory IX (r.1227–41), called the *Decretales* or, collectively, *Liber Extra*. Gregory had issued these books to supplant the *Decretum* and sustain papal claims to authority over the universal church.<sup>106</sup>

Decretalists like Hostiensis were almost all devoted papalists, and built, in the words of Brian Tierney, “a great edifice of papal claims” to fullness of power throughout the thirteenth and fourteenth centuries.<sup>107</sup> Indeed, from the pontificate of Innocent III in the early thirteenth century to that of John XXII in the fourteenth, every pope of any historical consequence was a canon lawyer. These lawyer-popes enthusiastically contributed to this edifice, and desperately defended it from critics who sought to undermine its foundations and, thereby, bring the entire

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<sup>101</sup> Innocent III, extract from *Sicut universitatis conditor*, drawn from *TMC*, 86.

<sup>102</sup> Gelasius I, extract from *Duo sunt*, drawn from *CCS*, 13.

<sup>103</sup> Walter Ullmann, *Law and Politics in the Middle Ages: An Introduction to the Sources of Medieval Political Ideas*, *The Sources of History: Studies in the Uses of Historical Evidence* (Cambridge: Cambridge University Press, 1975), 144.

<sup>104</sup> Hugh of St. Victor, extracts from *De Sacramentis Christiane Fidei*, drawn from *CCS*, 95. On Hugh, see: *TMC*, 16–8.

<sup>105</sup> *TMC*, 86–8.

<sup>106</sup> *TMC*, 12–3, 87–8; Schmidt, 313.

<sup>107</sup> Tierney, *Foundations*, 148.

superstructure tumbling down.<sup>108</sup> When Gregory IX's *Liber Extra* became outdated because of the litany of papal decrees that had accumulated since he had compiled it, his successors ordered the creation of further collections — in which the decretalists buried their noses — so that not a single precious word of God's spokesman on earth would be missed.<sup>109</sup> Pope Innocent IV (r.1243–54) contributed to the edifice of papal claims by formulating the notion that the pope was the true emperor and could, as such, exercise imperial power directly if necessary. Innocent also postulated that the authority of the pope extends, by right, beyond Christendom to non-Christian peoples inhabiting the far reaches of the earth, although this authority is not honoured in fact.<sup>110</sup> The main contribution of Boniface VIII (r.1294–1303), unlike Innocent, to hierocratic discourse was not that he introduced any significantly novel ideas (he did not), but rather that he offered, in the words of Walter Ullmann, a “pithy, succinct and concise” — and, I might add, intensely provocative — “formulation of mature hierocratic ideas.”<sup>111</sup> Most infamously, Boniface closed his bull *Unam sanctam* by declaring that “it is altogether necessary to salvation for every human creature to be subject to the Roman pontiff.”<sup>112</sup>

Marsilius of Padua and William of Ockham were not the first polemicists to attempt to tear down this edifice of papal claims to supreme and sovereign authority. In the generation before Marsilius and Ockham, for example, writers like John of Paris (d.1306) and Dante Alighieri (d.1321) had tried to demonstrate that the doctrine of papal *plenitudo potestatis* as asserted by Boniface VIII was illicit. John and Dante, like most contemporary critics of the doctrine, adopted dualist strategies. That is, each sought to restrict the pope to distinctly *spiritual* rights and duties, so that secular rulers, particularly the French king in John's case and the emperor in Dante's case, might oversee their own *temporal* duties unhindered. The final task of this chapter is to examine, in brief, the strategies employed by John and Dante, strategies that, as we shall see, differed fundamentally from those Marsilius and Ockham would adopt.

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<sup>108</sup> *TMC*, 12–3.

<sup>109</sup> Ullmann, 145–6; Burns, 621–2.

<sup>110</sup> *TMC*, 18, 21; Tierney, *Foundations*, 148.

<sup>111</sup> Ullmann, 276.

<sup>112</sup> Boniface VIII, *Unam sanctam*, in *CCS*, 189.

### (3.2) *The dualisms of John of Paris and Dante Alighieri*

Political dualism had deep roots. Pope Gelasius I (r.492–6), one of the first men to inhabit the Roman See after the 476 deposition of Romulus Augustulus, the last of the old Roman emperors in the west, formulated the notion that secular rulers enjoy authority that is distinct and separate from the authority enjoyed by popes and bishops. He was motivated to a large extent by a desire to deny the emperor — now only the eastern emperor — control over priestly affairs, and so to reverse a precedent set by Constantine the Great (r.306–37), the first Christian emperor and the convoker of the first ecumenical council of the church, at Nicaea, in 325.<sup>113</sup> According to Gelasius, secular rulers like the emperor are responsible for preserving peace and order, whereas priests are supposed to aim at the salvation of souls. Both sets of responsibilities are important and dignified, although the latter more so. Hence St. Paul recognized that secular authorities, just like spiritual ones, have divine origins (Romans 13:1–2). The two powers each need to remain independent so that both might achieve their divinely-ordained ends, with the sole exception being that the secular ruler is subject to the priest in spiritual matters and the priest to the secular ruler in temporal ones. Gelasian dualism endured as the common political theory of ecclesiastical and secular powers in western and central Europe until the high middle ages (c.1000–c.1250), when the doctrine of papal *plenitudo potestatis*, a monist doctrine because it posited a *single* supreme authority, began to take shape.<sup>114</sup> Kingly monism or caesaropapism, presenting the lay ruler as the vicar of God after the order of Constantine, also enjoyed a limited resurgence.<sup>115</sup>

Even as the dualist consensus began to break down, however, it remained in many ways the standard, and enjoyed more than its fair share of defenders.<sup>116</sup> As Innocent III was formulating his ideas about papal supremacy, the decretist Huguccio (d.1210) and his followers were drawing

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<sup>113</sup> Oakley, *Mortgage*, 69.

<sup>114</sup> Unn Falkeid, *The Avignon Papacy Contested: An Intellectual History from Dante to Catherine of Siena* (Cambridge, MA: Harvard University Press, 2017), 25; Wilks, 233. For a good overview of the fate of the Gelasian theory through the middle ages, see: Sophia Menache, “The Gelasian Theory from a Communication Perspective: Development and Decline,” *Revista de Historia* 13 (2012): 57–76.

<sup>115</sup> Ernst H. Kantorowicz, *The King's Two Bodies: A Study in Medieval Political Theology*, intro. Conrad Leyser, pre. William Chester Jordan, Princeton Classics (Princeton: Princeton University Press, 1957; repr. 2016), 87–8; Wilks, 233–8. This is seen in the historian Wipo of Burgundy's account of a sermon preached by Aribio, Archbishop of Mainz, at the coronation of Conrad II as King of the Romans on 8 September 1024. According to Wipo, the archbishop declared: “All power of this transient age is derived from one most pure fount. ... [You, O King,] have come to the highest dignity: *you are the vicar of Christ* [my emphasis].” [Wipo of Burgundy, *Gesta Chuonradi/The Deeds of Conrad [II]*, in *Imperial Lives and Letters of the Eleventh Century*, trans. Theodor E. Mommsen & Karl F. Morrison, ed. Robert L. Benson (New York: Columbia University Press, 1962), 66–7.] I wish to thank William Lundell for bringing Wipo's account to my attention.

<sup>116</sup> Kantorowicz, 456.

on dualist passages in the *Decretum* to elaborate theories of the proper separation of the secular and priestly, theories that were a far cry from the monism embraced by the later decretalists. The emperor did not derive his authority from the pope, Huguccio argued, but from the imperial electors as spokesmen of God.<sup>117</sup> Moreover, kingly monism or caesaropapism was, in the thirteenth century, unable to withstand the polemical assault that the papalists levelled against it. As Giles of Rome pointed out, Scripture contains no mention of any sort of Caesarian commission, only a Petrine one. This difficulty led most secular rulers and their polemical defenders to determine that dualist strategies, having the comparatively modest purpose of delineating a sphere of secular independence, would be more effective than monist ones.<sup>118</sup>

During the showdown between Philip IV, the Fair, of France and Pope Boniface VIII in the late 1290s and early 1300s, John Quidort (better known as John of Paris), a Dominican theologian who taught at the University of Paris, joined the other Dominicans at the Convent of St. James in supporting their liege against the pope. His most famous and important work, *De regia potestate et papali/On royal and papal power* (1302/3), was completed not long after the promulgation of *Unam sanctam*. It was a thoroughly scholastic work, designed to appear detached from contemporary issues, in this case the conflict between Philip and Boniface that it only referenced several times, while presenting a mosaic of arguments from multiple points of view. Even the most basic analysis of the text, however, reveals that John's goal was undoubtedly to undercut papal pretensions to fullness of power in order to uphold French sovereignty and defend Philip's political authority.<sup>119</sup> To that end, John employed the time-tested strategy of asserting a dualist separation of powers, thereby demonstrating an especial familiarity with the contributions of the decretists.<sup>120</sup>

According to John, there are two parallel ends or purposes of human life: a natural end and a heavenly one. In making his case for dual ends, John went beyond strictly-Gelasian principles by drawing on the Thomist interpreters of Aristotle, who argued that humans are social and political animals by nature, and that the natural end of man, earthly happiness, consists in living virtuously in political communities. Because this end is natural, it ought to be pursued for its own sake by Christians and non-Christians alike, and yet it also facilitates heavenly beatitude for

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<sup>117</sup> *TMC*, 5, 13–4.

<sup>118</sup> Wilks, 238.

<sup>119</sup> Canning, *Ideas of Power*, 49–50.

<sup>120</sup> Tierney, *Foundations*, 162.

Christians.<sup>121</sup> According to John, these ends each have their own guardian: the secular ruler guides humans to virtue and earthly happiness by ruling for the common good, and the pope guides Christians to heavenly beatitude by overseeing the administration of the sacraments, the essential priestly task.<sup>122</sup> The pope also manages ecclesiastical property, and prevents schism by settling cases in which there are disagreements about the articles of the faith. The threat of schism is the main reason why, according to John, divine law requires a single man to hold supreme spiritual authority.<sup>123</sup> Interestingly, however, John asserted the opposite concerning temporal affairs: owing to human diversity with respect to climate, language, and other considerations, no universal temporal ruler exists by divine or natural law. This claim is perhaps unsurprising, since John sought not to leave French sovereignty vulnerable to imperial assertions of universal overlordship.<sup>124</sup>

Certain papalists like the theologian James of Viterbo (d.1308) admitted that the proximate duty of secular rulers is to guide humans to earthly happiness, but asserted, unlike John, that the supreme and overriding duty of secular rulers is to serve the pope, from whom their authority derives, because he leads Christian society to its highest end: heavenly beatitude.<sup>125</sup> While John conceded, citing Innocent III and Hugh of St. Victor, that the dignity of the priesthood is greater than the dignity of secular power on account of its nobler, celestial purpose, he maintained that kings are not thereby subject to the pope:

For the lesser secular power is not related to the greater spiritual power as having its origin from it or being derived from it as the power of a proconsul is related to that of the emperor, which is greater in all respects since the power of the former is derived from the latter. The relationship is rather like that of a head of [royal] household to a general of armies, since *one is not derived from the other but both from a superior power* [my emphasis].<sup>126</sup>

Royal authority derives from God without papal mediation, and so the secular and priestly exist *in parallel*.<sup>127</sup> The secular ruler is not the creature of the pope, therefore, as the sun and moon analogy suggested. On the one hand, papal authority derives from God directly, by means of the original commission to St. Peter and his successors. The choice of the *individual* inhabiting the

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<sup>121</sup> John of Paris, extracts from *De regia potestate et papali*, drawn from CCS, 207–8; Canning, *Ideas of Power*, 51; Kantorowicz, 457. For a good overview of the dualist sensibilities of Aquinas, see: Wilks, 305–11.

<sup>122</sup> John of Paris, extracts from *De regia potestate et papali*, drawn from CCS, 208.

<sup>123</sup> Canning, *Ideas of Power*, 52, 54–5; Tierney, *Foundations*, 166.

<sup>124</sup> Canning, *Ideas of Power*, 54.

<sup>125</sup> McCready, 663.

<sup>126</sup> John of Paris, extracts from *De regia potestate et papali*, drawn from CCS, 209.

<sup>127</sup> Canning, *Ideas of Power*, 51–2.

Roman See, however, falls on the College of Cardinals acting on behalf of the universal body of Christians.<sup>128</sup> On the other hand, royal authority derives from God indirectly through the people, who act according to the political natures that God implanted in them by electing individual rulers or whole dynastic lines.<sup>129</sup> If necessary, popular consent can be withdrawn in *both* the royal and papal cases: just as the people can depose their king if he does not uphold the common good, so the universal church, usually acting through the cardinals or a general council, can depose the pope if he fails at his duty to lead souls to salvation.<sup>130</sup>

While John maintained that the royal and priestly powers should normally undertake their duties without interfering with each other, he also recognized, certainly influenced by the concrete realities of medieval Christian society, that the line demarcating the spiritual from the secular is somewhat blurred.<sup>131</sup> In cases of salvific necessity, he argued, the pope can intervene drastically in the affairs of secular rulers, and secular rulers can intervene in papal affairs should the common good so demand. Yet, John described such intervention as distinctly *indirect*. For example, the pope might incite the people to depose a heretical ruler by means of ecclesiastical censures like interdict, and in this sense overthrow him “incidentally.”<sup>132</sup> The pope is not permitted, however, to depose the king directly or use methods, like military action, not pertaining to his spiritual authority. Likewise, a secular ruler might call on the cardinals to remove a scandalous or criminal pope. Should the cardinals refuse to act, he can turn to a general council — as Philip IV tried to do — or even the Christian people themselves, perhaps imposing corporal penalties on the people to prevent their serving the pope.<sup>133</sup> In this way, secular rulers and popes can hold each other accountable, if necessary, without overstepping the limits imposed on their authority by God.<sup>134</sup>

Another thinker who employed a dualist strategy in order to refute the papal claim to fullness of power was Dante Alighieri. After Black-Guelf partisans of Pope Boniface VIII expelled Dante (a White Guelf) from Florence in 1301, the great poet grew determined to find a

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<sup>128</sup> Tierney, *Foundations*, 174, 176; John of Paris, *De regia potestate et papali*, in *CCS*, 210.

<sup>129</sup> John of Paris, extracts from *De regia potestate et papali*, drawn from *CCS*, 207–8; Canning, *Ideas of Power*, 51–3.

<sup>130</sup> John of Paris, extracts from *De regia potestate et papali*, drawn from *CCS*, 210; Canning, *Ideas of Power*, 53; Tierney, *Foundations*, 170–2.

<sup>131</sup> Canning, *Ideas of Power*, 56.

<sup>132</sup> John of Paris, extracts from *De regia potestate et papali*, drawn from *CCS*, 209–10; Canning, *Ideas of Power*, 57.

<sup>133</sup> John of Paris, extracts from *De regia potestate et papali*, drawn from *CCS*, 209–10; Canning, *Ideas of Power*, 57.

<sup>134</sup> John of Paris, extracts from *De regia potestate et papali*, drawn from *CCS*, 210.

secular ruler who might punish his native city. Like Marsilius after him, Dante wanted this ruler to impose peace on the strife-ridden *regnum Italicum* and punish the pope, whom he accused of perpetuating the discord to further his own power.<sup>135</sup> Thus, Dante became optimistic when Henry VII of Luxemburg, King of the Romans (r.1308–13) invaded the Italian peninsula in 1312, anticipating the later actions of Ludwig the Bavarian. Dante’s optimism only increased when, on 29 June 1312, Henry was crowned emperor by Pope Clement V (r.1305–14). The poet was crushed, however, when the emperor died unexpectedly in the following year. Dante probably wrote his sole political treatise, *De monarchia/On the monarchy*, after Henry’s death, perhaps while he was living in Verona under the protection of Cangrande della Scala between 1312 and 1318. Some scholars have proposed that *Monarchia* was intended principally as a defence of Cangrande, one of the Ghibelline leaders targeted by John XXII’s bull *Si fratrum* in 1317.<sup>136</sup>

Like John of Paris, Dante upheld the Thomistic idea that the end of human life is twofold: earthly happiness consisting in the virtuous life and eternal happiness achieved in heaven, with the former facilitating the latter but also being valuable in its own right. Dante agreed with John that the pope is the guardian of eternal blessedness, but diverged from John by identifying the Roman emperor, in particular, as the guardian of earthly happiness.<sup>137</sup> The emperor ought to exercise authority over the whole world, Dante argued, because such a universal ruler would be free from cupidity, already possessing everything, and thus would govern only for the sake of the people. He would be a philosopher-king, the paragon of virtue, and so uniquely-equipped to achieve absolute peace and liberty for humanity. Dante conceived liberty in a positive sense: one enjoys true freedom when he possesses a virtuous disposition, being no longer enslaved to appetite.<sup>138</sup> In the first book of *Monarchia*, Dante established that peace is necessary for earthly happiness: “[In] the tranquillity of peace, mankind is able to attend without hindrance or difficulty to its own proper functioning [namely, theoretical speculation], which is a functioning almost divine...[.] Accordingly, it is clear that universal peace is the most important of all things that are ordained for our beatitude.”<sup>139</sup> Because peace is necessary for earthly happiness, Dante argued, the pope must be restricted from exercising political jurisdiction. For, in doing so, he intrudes into

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<sup>135</sup> Falkeid, 29–30.

<sup>136</sup> Falkeid, 30–1.

<sup>137</sup> *TMC*, 104, 106; Falkeid, 44.

<sup>138</sup> *Monarchia* I.4.2, I.12.10–2, III.16.10; Falkeid, 39, 40–4, 51. That is, the virtuous man is no longer enslaved to non-rational desires of the body, especially for food, drink, and sex.

<sup>139</sup> *Monarchia* I.4.2.

the purview of the emperor and thus foments strife.<sup>140</sup> The pope must also emulate Christ and the apostles by practicing poor use (*usus pauper*), another claim distinguishing Dante from John. Clearly, Dante was inspired by the Spiritual-Franciscan discourse on poverty.<sup>141</sup>

Echoing John, Dante refuted the sun and moon analogy that posited the dependence of secular power on spiritual authority, by asserting that the authority of the emperor derives from God without papal mediation.<sup>142</sup> The poet was more extreme than John, however, insofar as he stressed that the emperor's commission is, for all intents and purposes, a *directly* divine one:

If this is so, God alone elects, he alone confirms, since he has no superior. From this we may gather further that neither those who are nowadays, nor others who may in any way have been called "electors," should be given that name. *They should be called, rather, "heralds of divine providence [my emphasis]."* Whence it has happened that sometimes those to whom the honor of heralding has been granted fall into disagreement, either because all, or certain among them, are so beclouded by the fog of cupidity that they do not discern the face of divine dispensation. *Therefore, it is thus obvious that the temporal authority of the monarch descends to him from the Fount of universal authority [i.e., God] without intermediary [my emphasis].*<sup>143</sup>

Thus, God is more than just a distant force behind imperial election. Because the Roman Empire played a central role in providential history, being the authority under which Christ and the apostles lived and died, it is clear, according to Dante, that the imperial institution is divinely ordained.<sup>144</sup>

Church and Empire exist on equal footing as institutions ordained by God, and so neither pope nor emperor enjoys fullness of power. Both are vicars of Christ in *restricted* senses.<sup>145</sup> Even Dante recognized, however, that the priestly dignity is superior to the imperial dignity because salvation is more important than earthly happiness. He proclaimed that the emperor should show the pope "reverence that a firstborn son should show his father, so that, illuminated by the light of paternal grace, he may enlighten the globe of the earth more powerfully, for he presides over it solely by way of him [God] who is the ruler of all things temporal and spiritual."<sup>146</sup> Thus Dante, like John of Paris, denied that the temporal and spiritual spheres are completely divorced from

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<sup>140</sup> *TMC*, 103–4; Falkeid, 43.

<sup>141</sup> Falkeid, 32, 43; *TMC*, 8.

<sup>142</sup> *TMC*, 83–4, 102.

<sup>143</sup> *Monarchia* III.16.13–15.

<sup>144</sup> *Monarchia* II.10.4; Falkeid, 43.

<sup>145</sup> Falkeid, 43–4.

<sup>146</sup> *Monarchia* III.16.13–15.

one another. Relations between emperor and pope should be characterized, rather, by dialogue and peaceful balance, as these men work together to lead humanity to happiness in this life and the next.<sup>147</sup>

Marsilius of Padua rejected this paternal image of emperor and pope, each ordained by God, working in harmony to lead Christian society to earthly and heavenly happiness. For Marsilius, the only way to achieve peace in the *regnum Italicum* and elsewhere was to subordinate *both* secular rulers and clerics to the people as legislator, wielding supreme authority on earth in temporal and spiritual matters. By claiming *plenitudo potestatis* for themselves, Marsilius argued, popes had usurped authority belonging rightfully to the people alone.

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<sup>147</sup> Falkeid, 39.

## II

### Vicars of Lawlessness:

### Marsilius of Padua's Answer to Papalism in the *Defensor Pacis*

#### (1) Introduction

Standing before an assembly of his cardinals at Avignon on 10 April 1343, Pope Clement VI announced that Marsilius (or Marsiglio) of Padua, “the heresiarch,” was dead.<sup>1</sup> As one might expect, the pope did not give the Paduan a favourable obituary, reporting instead that “we have almost never read a worse heretic than that Marsilius. For we have extracted from the mandate of Benedict [XII] our predecessor on a certain book of his more than 240 heretical articles.”<sup>2</sup> The book to which Clement referred was the *Defensor pacis/The defender of the peace*, Marsilius's first and only major work. He composed it at the University of Paris between 1319/20 and 1324, while he was studying as an auditor in theology, before completing it on the feast of St. John the Baptist (24 June 1324).<sup>3</sup> In the *Defensor pacis*, Marsilius lamented the “darkness” into which the people of his northern-Italian homeland, the *regnum Italicum*, had “been plunged as a result of this discord or strife among themselves.”<sup>4</sup> He identified the “singular and well-hidden cause” of this strife as

*a certain perverted opinion, which we shall unfold in what follows [my emphasis].... This opinion, surely sophistic, wearing the mask of the honourable and the beneficial, is utterly inimical to the human race and will in the end, if it is not checked, bring unendurable harm to every civil order and country.*<sup>5</sup>

After much anticipation, Marsilius provided further insight into the identity of this “perverted opinion” in the last chapter of the work's opening discourse:

This wrong apprehension on the part of certain Roman bishops — and perhaps also their perverted inclination for principate, which they assert is due to them from the plenitude of

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<sup>1</sup> Godthardt, 55.

<sup>2</sup> Quoted in Brett, xi.

<sup>3</sup> *DP* III.3; Courtenay, “Marsilius of Padua at Paris,” 69–70; Godthardt, 22–3.

<sup>4</sup> *DP* I.1.3.

<sup>5</sup> *DP* I.1.3.

power [*plenitudo potestatis*] handed them (as they say) by Christ — is the singular cause that we have said is productive of intransquillity or discord in a city or realm.<sup>6</sup>

Thus, Marsilius set out in the *Defensor pacis* to expose the doctrine of papal *plenitudo potestatis* as a sophism, an argument or claim, especially one intended to deceive, that is invalid despite appearing correct in form. In his day, this sophism was being advanced as divine truth by popes and other defenders of untrammelled papal authority in spiritual and temporal matters (so-called ‘papalists’ or ‘hierocrats’), in order to justify what Marsilius perceived as illegitimate papal interference in the affairs of rightful secular rulers, especially the Roman emperor. Marsilius dedicated his treatise to Ludwig IV, ‘the Bavarian’ (r.1314–47), German king and future emperor of the Romans, who understood all-too-well the threat posed by his papal foe.<sup>7</sup> Ludwig had been locked since early 1323 in a heated dispute with then-Pope John XXII (r.1316–34) over the legitimacy of his imperial election and his rights to administer the *regnum Italicum* and other imperial territories.<sup>8</sup> Marsilius called on Ludwig to “give this work the ending it hopes for from outside” by restoring peace to the *regnum Italicum* on the basis of his coercive authority.<sup>9</sup> The Bavarian had to punish those responsible for disordering that region with the “ultimate corporal punishment,” as befits crimes of treason committed against legitimate governments.<sup>10</sup>

There exists some contention in the English-language scholarship concerning Marsilius. Recently, George Garnett has issued a stinging critique of certain scholars who, according to him, engage in anachronism by approaching Marsilius using what I call a ‘philosophical’ method.<sup>11</sup> This approach is characterized by attempts to draw connections between ideas arising in different regional, cultural, and temporal contexts, demonstrating especially how ideas from the past retain a value for contemporary philosophical discourse. One scholar whom Garnett criticizes for employing this method is Alan Gewirth, a political philosopher “who published the first substantial book in English on Marsilius’s thought in 1951,”<sup>12</sup> and whose 1956 English translation of the *Defensor pacis* — the first translation of the work into a modern language — has shaped

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<sup>6</sup> *DP* I.19.12.

<sup>7</sup> *DP* I.1.6.

<sup>8</sup> Lord, 96–7.

<sup>9</sup> *DP* I.1.6 (quotation); Godthardt, 19–22, 25–6.

<sup>10</sup> *DP* II.28.29.

<sup>11</sup> Garnett, 1–14.

<sup>12</sup> Garnett, 4 (quotation); Alan Gewirth, *Marsilius of Padua: The Defender of Peace*, vol. 1, *Marsilius of Padua and Medieval Political Philosophy*, Records of Civilization, Sources and Studies (New York: Columbia University Press, 1951).

much subsequent interpretation of the Paduan.<sup>13</sup> Gewirth suggests that “Marsilianism can be described by the same epithets customarily assigned to the modern era: naturalism, secularism, movement away from hierarchic controls and towards a libertarian individualism mingled with egalitarian collectivism.”<sup>14</sup> Another scholar whom Garnett lambastes is Cary Nederman, a political scientist whose 1995 monograph on Marsilius has remained very influential.<sup>15</sup> For Nederman, “[i]nclusion, diversity, freedom, interdependence, reason, community, [and] consent” are “key terms [that] form the common currency of Marsiglio’s political thought.” Garnett mocks Nederman’s assertion that, through “the refractive power of Marsiglio’s text, the possibilities of politics in our time and place come into focus with special clarity,”<sup>16</sup> remarking that modern “political theorists can, as it were, overleap the intervening centuries and engage in direct ‘dialogue’ with Marsilius about modern concerns.”<sup>17</sup>

Against these and other scholars, Garnett upholds an ‘historical’ method, characterized by a focus on locating a particular set of ideas within their historical context.<sup>18</sup> This is done best in the case of Marsilius, according to Garnett, by examining reactions of his contemporaries to the political and religious claims advanced in the *Defensor pacis*. These reactions tended, more often than not, to voice outrage.<sup>19</sup> Taking these as his starting-point, Garnett develops an important and new interpretation of the *Defensor pacis* by arguing that it “is a work of Christian providential history, focused on the Roman Empire.”<sup>20</sup> Other scholars following the ‘historical’ method have, however, focused on different aspects of Marsilius’s context, thus coming to remarkably wide-

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<sup>13</sup> Garnett, 6; Alan Gewirth, trans., *Marsilius of Padua: The Defender of Peace*, vol. 2, *The Defensor Pacis*, Records of Civilization, Sources and Studies (New York: Columbia University Press, 1956). I utilize Annabel Brett’s superior 2005 translation that has made Gewirth’s outdated.

<sup>14</sup> Gewirth, *Marsilius of Padua: The Defender of Peace*, vol. 1: 315.

<sup>15</sup> Cary J. Nederman, *Community and Consent: The Secular Political Theory of Marsiglio of Padua’s Defensor Pacis* (Lanham, MD: Rowman & Littlefield Publishers, Inc., 1995).

<sup>16</sup> Nederman, 147.

<sup>17</sup> Garnett, 7–8. Other English-language treatments of Marsilius that exemplify the ‘philosophical’ approach include: Vasileios Syros, *Marsilius of Padua at the Intersection of Ancient and Medieval Traditions of Political Thought* (Toronto: University of Toronto Press, 2012); and Mary Elizabeth Sullivan, “Democracy and the *Defensor Pacis* Revisited: Marsiglio of Padua’s Democratic Arguments,” *Viator* 41, no. 2 (2010): 257–70.

<sup>18</sup> It should not be thought, in light of Garnett’s hostile remarks, that scholars who follow the ‘philosophical’ method simply *ignore* Marsilius’s historical context. Rather, while they acknowledge it and sometimes even stress it, they attempt also to look for value and meaning in Marsilius’s thought *outside* of it. Nederman, for example, pays close attention to Marsilius’s historical context even while following the ‘philosophical’ method. He argues, very influentially, that Marsilius’s political vision was “generic.” That is, in order to make his invective against papal claims to temporal power as universally relatable — and thus effective — as possible, the Paduan devised “a set of criteria for the good social and political life in general, without reference to [particular] constitutional, institutional, or territorial considerations.” [Nederman, 20]

<sup>19</sup> Garnett, 15.

<sup>20</sup> Garnett, 194.

ranging interpretations of the *Defensor pacis*. Many share Garnett’s preoccupation with the imperial–papal struggle in which Marsilius was immersed, and, as a result, come to similarly ‘imperialist’ interpretations (though without Garnett’s providentialist spin). These scholars, like Michael Wilks and Jeannine Quillet, suggest that Marsilius had imperial politics primarily if not solely in mind in the *Defensor pacis*, a reasonable conclusion to draw given his anti-papal polemical drive.<sup>21</sup> Others, however, paint a very different picture of Marsilius’s thought by emphasizing his Paduan (communal–republican) background. In the words of Joseph Canning, these scholars, like Nicolai Rubinstein and Antony Black, assert that “Marsilius elaborated a thesis of popular sovereignty with the communal regime of the city-republic of his native Padua in mind.”<sup>22</sup> But Gregorio Piaia and William Courtenay challenge this fixation on Marsilius’s supposed republican roots. They propose instead that he was influenced most heavily by the signorial — not republican — regimes of the *regnum Italicum* (Piaia), or that the “core” of Marsilius’s world was actually “the University of Paris and a circle of friends, most of them Italian, who were active in the faculties of arts, medicine, and theology, yet with connections to the royal court of Philip IV, Philip V, and Charles IV” (Courtenay).<sup>23</sup> Finally, Conal Condren takes the focus on Marsilius’s historical context to an extreme, arguing that Marsilius was so consumed by his desire to curb papal pretensions to temporal power that the *Defensor pacis* should not be considered a work of political philosophy at all.<sup>24</sup> Rather, Condren maintains, Marsilius made his core theoretical concepts intentionally ambiguous so that *any* society could associate itself with them, because any attack on the church that was anything less than universal began with a disadvantage.<sup>25</sup>

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<sup>21</sup> Treatments by these scholars include: Wilks; Jeannine Quillet, “Community, Counsel and Representation,” in *CHMPT*, 520–72; J.A. Watt, “Spiritual and Temporal Powers,” in *CHMPT*, 367–423; Janet Coleman, *A History of Political Thought: From the Middle Ages to the Renaissance* (Oxford: Blackwell Publishers, 2000); Brett; Canning, *Ideas of Power*; Bettina Koch, “Priestly Despotism: The Problem of Unruly Clerics in Marsilius of Padua’s *Defensor Pacis*,” *Journal of Religious History* 36, no. 2, (2012): 165–83; Oakley, *Watershed*; and Falkeid.

<sup>22</sup> Canning, *Ideas of Power*, 84. Treatments by these scholars include: Nicolai Rubinstein, “Marsilius of Padua and the Italian Political Thought of His Time,” in *Europe in the Late Middle Ages*, eds. J. R. Hale, J. R. L. Highfield, B. Smalley, 44–75 (London: Faber and Faber Limited, 1965); Quentin Skinner, *The Foundations of Modern Political Thought*, vol.1, *The Renaissance* (Cambridge: Cambridge University Press, 1978); and Antony Black, *Guilds and Civil Society in European Political Thought From the Twelfth Century to the Present* (Ithaca, NY: Cornell University Press, 1984).

<sup>23</sup> Gregorio Piaia, “The Shadow of Antenor: On the Relationship between the *Defensor Pacis* and the Institutions of the City of Padua,” in *PTAS*, 193–207; Courtenay, “Marsilius of Padua at Paris,” 70.

<sup>24</sup> Conal Condren, *The Status and Appraisal of Classic Texts: An Essay on Political Theory, Its Inheritance, and the History of Ideas* (Princeton, NJ: Princeton University Press, 1985), 189.

<sup>25</sup> Condren, 195–6. Condren’s position should not be conflated with Cary Nederman’s idea that Marsilius’s political vision was ‘generic’ (recall 6n18 above). For Nederman, Marsilius was *committed* to certain criteria of

Unlike Garnett, I do not fail to appreciate the value of the ‘philosophical’ approach to interpreting the *Defensor pacis*. Canning says it best when, in his review of Garnett’s book, he remarks that it is “by no means holy writ that the historical, contextual method is the only correct one for assessing the significance of the *Defensor pacis*.”<sup>26</sup> My present examination of the *Defensor pacis*, however, follows the ‘historical’ approach: it treats the work in the context of the supremely polemical and rhetorical purposes of its creator, although without going as far in this direction as Condren does. Specifically, I use *Defensor pacis*’s third discourse as an interpretive lens through which to view Marsilius’s refutation of the doctrine of papal *plenitudo potestatis*.<sup>27</sup> What becomes apparent is that Marsilius not only asserted that the pope is supreme in *neither* temporal nor spiritual affairs, but also inverted the papalist formula to argue that it is actually the ‘faithful human legislator,’ the universal body of faithful citizens or its prevailing part, that wields supreme jurisdiction in *both* temporal and spiritual matters.<sup>28</sup> It is the *legislator*, not the pope, that enjoys *plenitudo potestatis*.

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legitimate government, however general, whereas Condren argues that Marsilius was so dedicated to his polemical purposes that he held all other considerations, such as legitimacy, to be unimportant.

<sup>26</sup> Joseph Canning, review of *Marsilius of Padua and ‘The Truth of History,’* by George Garnett, *EHR* 125, no. 512 (2010): 159.

<sup>27</sup> I explain my interpretive method in greater detail below. For the only dedicated treatment of Discourse III in English of which I am aware, see: Gerson Moreno-Riaño, “Marsilius of Padua’s Forgotten Discourse,” *History of Political Thought* 29, no. 3 (2008): 441–59.

<sup>28</sup> According to Marsilius, a citizen is “one who participates in a civil community, in the principate or councillor or judicial function, according to his rank. This description separates boys, slaves [or serfs], foreigners and women from citizens, although in different ways: for the sons of citizens are citizens in proximate potential, lacking only age.” [DP I.12.4] Marsilius did not, however, deem farmers or other persons of ‘lowly’ status to be unfit for citizenship. I say more below on how Marsilius’s definition compared to the standard Aristotelian one, and to the political realities of his day. The concept of the ‘prevailing part’ (*valentior pars*) is much more contentious among scholars. Below, I argue that the prevailing part is not the *real* legislator, an individual or group of elites ‘representing’ the citizen body in a sense more symbolic than real. Rather, Marsilius’s prevailing part is simply the group *within* the universal body of citizens that ‘carries the day’ in cases of electoral disagreement, the dimensions of which are determined by local custom or a mix of quantitative and qualitative (wealth-related) considerations.

## (2) A Call to Action: The Discourses of the *Defensor Pacis*

In the first chapter of his *magnum opus*, Marsilius of Padua described and justified the tripartite division of the work into three *dictiones*, or discourses. The first discourse, he wrote, was meant to “demonstrate what I intend by sure methods discovered by human ingenuity, consisting of propositions that are self-evident to any mind not corrupted by nature, custom or perverse affection.”<sup>29</sup> Rather than confronting the papal claim to *plenitudo potestatis* directly, this discourse laid the groundwork for Marsilius’s assault on the doctrine by dealing with the origins, structures, and forms of human government as perceived by unaided natural reason. His main reference text was the *Politics* of Aristotle, as befitted a fourteenth-century schoolman. The “best of philosophers” could lead Marsilius only so far, however, because neither he “nor any other philosopher of his time or earlier could have recognised the origin and species” of the principal cause of civil strife in Marsilius’s own day: the papal claim to *plenitudo potestatis*.<sup>30</sup> The papalist position was, for Marsilius, a perversion of right Christian doctrine, doctrine that had originally been transmitted to humankind after Aristotle’s time, through an act of divine revelation, when God *intervened* in the natural order of things by sending His Son to earth. That position could not, therefore, be demolished using natural reason alone.

In Discourse II, on account of the limits of natural reason, Marsilius corroborated the conclusions advanced in Discourse I “with testimonies of the truth founded upon eternity [i.e., from Scripture], and also with authoritative passages of the saints, its interpreters, and other approved doctors of the Christian faith.”<sup>31</sup> It is here that Marsilius confronted *plenitudo potestatis* head-on, working with the definition of it that he provided at the end of Discourse I:

The sense of this title among the Roman bishops is therefore this, that just as Christ had plenitude of power and jurisdiction over all kings, princes, communities, collective bodies

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<sup>29</sup> *DP* I.1.8.

<sup>30</sup> *DP* I.1.3. Marsilius used to be cast as one who “adopted unmitigated Aristotelianism,” [Wilks, 87] but this characterization has been challenged in recent years. See, for example: Nederman and Syros, both *passim*.

<sup>31</sup> *DP* I.1.8. Pointing to the division between Discourses I and II, some scholars posit that Marsilius was influenced by the so-called ‘Latin Averroists,’ a group of thirteenth- and fourteenth-century scholastics centred at Paris, including Marsilius’s friend John of Jandun (d.1328), who are thought to have been especially influenced by the approach to interpreting Aristotle of Abu al-Walid ibn Rushd (Averroes), a twelfth-century Muslim Andalusian philosopher. As Annabel Brett describes, ‘Averroism’ has traditionally “been taken to imply a theory — an heretical theory — of ‘double truth’: that there are truths of philosophy or science, and truths of revelation, and that these are independent of each other.” [Brett, xv] For the problems with suggesting that the *Defensor pacis* is a work of ‘political Averroism,’ and, more generally, with the notions of ‘Latin Averroism’ and ‘double truth,’ see, for example: Brett, xv–xvii; Syros, 23–4; and Michael J. Sweeney, “The Spirituality of the Church: Scripture, Salvation, and Sacraments,” in *BCMP*, 198–9.

and individual persons, so they too, who call themselves the vicars of Christ, should have this plenitude of coercive power, defined by no human law.<sup>32</sup>

For Marsilius, reason and revelation converge on the opposite conclusion, one lying at the heart of his entire project: contrary to the claims of hierocrats, not only is it false that the pope enjoys *supreme* temporal jurisdiction on earth, but also, neither he nor any other clergyman enjoys, on his own authority, *any* coercive jurisdiction.<sup>33</sup>

Finally, in Discourse III of the *Defensor pacis*, Marsilius drew “a number of conclusions or lessons of the utmost utility, which all citizens — those in the position of prince as much as those who are subject — should heed, and which are evidently certain as a result of what has been previously determined.”<sup>34</sup> For each conclusion, Marsilius cited relevant sections from the first two discourses where evidence for his assertions could be found.<sup>35</sup> He hoped that these conclusions would be “given diligent attention in thought and in deed,” so that civil strife and its “sophistic cause” would be “removed from realms without difficulty.”<sup>36</sup> In the final discourse, therefore, Marsilius joined together theory and deed, setting out a practical plan of action to uproot the destructive and heretical doctrine of papal *plenitudo potestatis*, the predominant cause of civil strife in the *regnum Italicum* and elsewhere, and to restore political communities and the institutional church to their proper forms, as determined, respectively, by natural reason and Scripture.<sup>37</sup> Until that action was accomplished, the *Defensor pacis* would remain ‘unfinished.’<sup>38</sup>

Because Marsilius developed theory for the sake of action, it is reasonable — and perhaps most proper — to interpret the *Defensor pacis* by working backwards from the conclusions presented in Discourse III.<sup>39</sup> Therefore, each following section of the body of this chapter, excepting several sections that explain basic concepts employed by Marsilius, takes one or several conclusions set down in Discourse III as its starting point(s), before providing clarification using evidence given elsewhere in the *Defensor pacis*.<sup>40</sup> Through this interpretive method, it becomes

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<sup>32</sup> DP I.19.9. Marsilius referred only to the temporal aspect of *plenitudo potestatis*, in this quotation, because that related directly to earthly strife — the sickness he sought most of all to cure. It is clear throughout the *Defensor pacis*, however, that Marsilius denied *both* aspects of the papal claim to fullness of power, as I elaborate below.

<sup>33</sup> Lambertini, “*À la recherche*,” 370.

<sup>34</sup> DP I.1.8.

<sup>35</sup> Moreno-Riaño, 448.

<sup>36</sup> DP III.1.

<sup>37</sup> DP I.19.11; Moreno-Riaño, 447; Nederman, 16.

<sup>38</sup> DP I.1.6.

<sup>39</sup> Coleman, 139.

<sup>40</sup> The following sections are excepted: 3.0–2, 3.7, and 4.0.

apparent that Marsilius not only asserted that the pope is supreme in *neither* temporal nor spiritual affairs, but also inverted the papalist formula to argue that it is actually the ‘faithful human legislator,’ the universal body of faithful citizens or its prevailing part, that holds supreme jurisdiction in *both* temporal and spiritual matters, thus enjoying *plenitudo potestatis*. In what follows, I demonstrate first that Marsilius’s legislator wields supreme temporal authority, and then, that it enjoys supreme spiritual jurisdiction too.

### **(3) The Supremacy of the Faithful Human Legislator in Temporal Matters**

Marsilius enumerated several possible definitions of ‘temporal,’ the most relevant of which for this chapter is the following:

[This] term ‘temporal’ is predicated of those voluntary human actions and passions which are transitive in respect of the convenience or inconvenience of someone other than the doer. These are what legislators of human laws are mostly concerned with.<sup>41</sup>

Therefore, ‘temporal jurisdiction’ is associated with human laws and their enforcement by governing authorities.<sup>42</sup> Before I can work backwards from Discourse III to elucidate the identity of the ‘faithful human legislator’ and demonstrate its supremacy in temporal matters, however, I must shed further light on the above definition by explaining two foundational Marsilian concepts: (1) the sufficient life and (2) contentious acts.

#### *(3.1) What is the sufficient life and how is it achieved?*

For Marsilius, humans enjoy a ‘sufficient life’ when they live a recognizably civilized life in which they are not at the mercy of unchecked elements, whether these be external to individual persons (e.g., weather and physical violence inflicted by others) or internal to them (e.g., hunger and thirst). A measure of decorum or luxury is also to be expected for the sufficient life, with the arts of living, including food production, manufacturing, trade, and defence, having all been developed as a result of efforts to bring such a life about.<sup>43</sup> Indeed, Marsilius held as a self-evident

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<sup>41</sup> *DP* II.2.4.

<sup>42</sup> Bettina Koch, “Marsilius of Padua on Church and State,” in *BCMP*, 146.

<sup>43</sup> Brett, xx.

and fundamental principle that “all men not deficient or otherwise impeded naturally desire a sufficient life, and by the same token shun and avoid those things that are harmful to them.”<sup>44</sup> Because it is impossible, however, for an individual or a small number of individuals to master all the arts of living to a degree necessary for the sufficient life, humans have gathered into political communities, allowing different people to hone their natural abilities and to devote their efforts to distinct professions or offices (*officia*).<sup>45</sup> It is this differentiation of function that forms the real basis for political community, as conceived by Marsilius.<sup>46</sup> In the words of Cary Nederman, Marsilius accepted the ‘communal functionalist’ position that communities are, at their core, “composed neither of individuals nor of citizens but rather of functional groupings or parts, arranged according to the nature of their contribution to the communal whole.”<sup>47</sup>

Such offices include, according to Marsilius, “agriculture, manufacture, the military, the financial, [and] the priesthood.”<sup>48</sup> Workers in agriculture and manufacture are concerned, respectively, with moderating the excesses of the nutritive part of the soul (e.g., hunger) and of the environment (e.g., cold). The military protects the community from internal and external threats, and the financial sector facilitates the workings of the other offices by administering finance and by collecting and storing goods.<sup>49</sup> Unlike these offices, each of which contributes something necessary for the sufficient life, the priesthood looks to the *next* life. As such, priests’ main tasks are to preach the divine law and to administer the sacraments in accordance with it.<sup>50</sup>

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<sup>44</sup> *DP* I.4.2.

<sup>45</sup> *DP* I.4.2; Syros, 46. While accepting that there is a natural human impulse towards political association, deriving from a desire for the sufficient life, Marsilius refrained from reciting the standard Aristotelian dictum that man is by nature a ‘political’ or ‘social and political animal.’ [Nederman, 30–1] Likewise, whereas Aristotle considered the end of the polity to be flourishing (*eudaimonia*), characterized by communal friendship and by the inculcation of moral and intellectual virtues, Marsilius left such considerations out of his discussion almost entirely, with the exception of a passing reference in *DP* I.4.1. Marsilius aimed at the less-exalted goal of the sufficient life, without which flourishing is impossible, because that is what papal crimes disrupted. [Nederman, 53; Brett, xx–xxi]

<sup>46</sup> Nederman, 54; Coleman, 144.

<sup>47</sup> Nederman, 55.

<sup>48</sup> *DP* I.5.1.

<sup>49</sup> Syros, 69–70.

<sup>50</sup> *DP* I.6.9. Marsilius admitted, however, that the activities of the priesthood contribute to the sufficient life in an indirect or secondary sense. By teaching people about the terrors or pleasures of a future world, to be experienced by doers of evil and good respectively, priests (even non-Christian ones) make people less inclined to commit crimes that cause civil strife — thus disrupting the sufficient life — if left unchecked. [*DP* I.5.11]

(3.2) *What are contentious acts, and how do they relate to the sufficient life?*

Marsilius classified human acts into two categories. The first includes those that take place apart from human knowledge, resulting ‘automatically’ from the intermixture of the contrary elements composing the human body (e.g., acts of the nutritive faculty). The second category includes human acts and passions, of which the agent is aware, that occur through the workings of the cognitive and appetitive faculties.<sup>51</sup> This group can be subdivided into ‘immanent’ and ‘transitive’ acts. Immanent acts “do not cross over into a subject different from the agent nor are they performed by means of an external organ or limb moved in respect of place. Such are the thoughts and desires or inclinations of men.”<sup>52</sup> Immanent acts remain ‘inside’ the subject performing them. They cannot, therefore, be regulated by laws and governing authorities; only God is able to judge an individual on the basis of his immanent acts. Transitive acts, by contrast, are performed by the limbs or other organs that produce external effects, such as the speech organs.<sup>53</sup> Thus, these “can take place either to the convenience or the inconvenience or injury of someone other than the agent for the status of this world.”<sup>54</sup> When such acts inconvenience or injure someone other than the doer, they can be classified as ‘contentious’ because they are liable to cause conflict and, ultimately, the destruction of the polity if they are not ‘tempered’ or ‘equalized,’ that is, if legal justice is not carried out. For Marsilius, after all, it is natural for human beings to react, by force if necessary, against excesses committed by others against them, just as it is natural to shelter from wind and rain.<sup>55</sup>

Therefore, in order to prevent civil faction, there must be a standard of what is just or equal as well as an equalizer who brings contentious acts back into line with that standard. When contentious acts are not tempered in such a way, the sufficient life is impossible because it demands an harmonious interchange of functions among inhabitants of the polity.<sup>56</sup> To illustrate this point, Marsilius drew parallels between peace and health, between strife and disease:

A city and its parts would therefore seem to be in the same relation to tranquillity as an animal and its parts is to health. ... [Health] is that good condition of an animal, in which each of its parts is enabled perfectly to perform the operations appropriate to its nature. If we follow this analogy, tranquillity will then be that good condition of a city or realm, in

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<sup>51</sup> Syros, 56–7.

<sup>52</sup> *DP* I.5.4.

<sup>53</sup> Syros, 57; Coleman, 160.

<sup>54</sup> *DP* I.5.7.

<sup>55</sup> Brett, xxi. Brett notes that Marsilius’s contemporaries, by contrast, tended to attribute civil strife to vice.

<sup>56</sup> Brett, xxi; Syros, 47.

which each of its parts is enabled perfectly to perform the operations appropriate to it according to reason and the way it has been established. And because any good definition signifies at the same time the contraries of what is being defined, intranquillity will thus be that bad condition of a city or realm (just like the sickness of an animal) in which all or some of its parts are prevented from performing the operations appropriate to them, either in absolute terms or at least to their full extent.<sup>57</sup>

Human law is that necessary standard of what is just, by which the health of the polity may be preserved; it “commands and coerces its transgressors with punishment or penalty for the status of the present world.”<sup>58</sup> The enforcer of this standard is the prince, who must “judge, command and execute sentences of what is advantageous or just in civil terms.”<sup>59</sup> In the words of Joseph Canning, without the prince “the laws would become dead letters — pious wishes: they would be mere norms.”<sup>60</sup> The princely office (*pars principans*) is thus the sixth and most necessary office of the polity. Whereas it is possible, albeit difficult, to import what is normally contributed by the other parts of the city (e.g., food and manufactured products), “without the presence of the principate a civil community cannot survive or at least not long survive.”<sup>61</sup> For Marsilius, the threat of civil schism never ceases. The prince must remain ever-vigilant because if he neglects his duty to equalize contentious acts, even momentarily, or if he is prevented from fulfilling his duty by an external force, perhaps a pope with pretensions to temporal supremacy, the polity will become deathly ill and the sufficient life will be lost.<sup>62</sup>

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<sup>57</sup> *DPI*.2.3. Marsilius was trained in medicine, having studied either at Padua or Paris under the great Paduan master Peter of Abano, and used many other biological metaphors in the *Defensor pacis*. [Courtenay, “Marsilius of Padua at Paris,” 58] For more on Marsilius’s use of such metaphors, and the importance of medieval medical understanding for his political ideas, see: Takashi Shogimen, “Medicine and the Body Politic in Marsilius of Padua’s *Defensor pacis*,” in *BCMP*, 71–115.

<sup>58</sup> *DP* II.8.5.

<sup>59</sup> *DP* I.15.6. I refer to the singular ‘prince’ for the sake of simplicity, but I am describing flexibly anyone who serves the ‘princely’ role in the political community. As Nederman points out, Marsilius advanced a ‘generic’ political theory (recall 6n18 above) according to which a variety of political arrangements may be classified as licit, regardless of whether they involve rule by one man, several, or many.

<sup>60</sup> Canning, *Ideas of Power*, 99. Another task of the prince, although one that is less important for our purposes, is to regulate the various offices of the polity, preventing the unnatural growth or dominance of one office at the expense of the community. [*DP* III.2.12; Syros, 61; Brett, xxvii]

<sup>61</sup> *DP* I.15.6.

<sup>62</sup> It might seem to follow from Marsilius’s analogy between health and tranquillity that the prince is akin to a physician, his role being to maintain the health of the polity. In fact, however, Marsilius emphasized that princes, unlike physicians, enjoy coercive power to enforce their ‘treatments.’ As we shall see, it was actually *priests*, not princes, whom Marsilius likened to physicians.

(3.3) *How does human law differ from divine law?*

In Discourse III of the *Defensor pacis*, Marsilius declared that “no one is commanded in evangelical scripture to be compelled to observe the commands of divine law by temporal penalty or punishment.”<sup>63</sup> While this conclusion seems, at first glance, to have more to do with spiritual matters than with temporal ones, it nonetheless provides vital insight into Marsilius’s conceptions of divine and human law. For him, human laws *alone* are coercive in this life.<sup>64</sup>

Marsilius defined law in its proper sense as “a standard in respect of which a transgressor is constrained by a coercive power that has been granted to the one who must judge in accordance with it.”<sup>65</sup> Law *imposes* justice by means of an enforcer like the prince, who carries out its punitive prescriptions.<sup>66</sup> Laws may be created according to a false understanding of justice, but it is *impossible* for a precept to be a law, properly speaking, if it does not prescribe coercive penalties. Unjust laws may be imperfect, but they are still *laws*.<sup>67</sup>

In the words of Roberto Lambertini, by prioritizing the coercive element of law, Marsilius made divine law “almost irrelevant to political issues, because it punishes and rewards in the eternal life. And natural law too is reduced to a secondary role.”<sup>68</sup> That is, although divine law has punishments and penalties attached to it, and thus is law properly speaking, the coercive force of divine law does not strike humans in this life, but only in the next.<sup>69</sup> With respect to the status of men in *this* world, therefore, “it ought to be called a teaching, not a law.”<sup>70</sup> It follows that priests have no coercive power to enforce divine teachings. Co-opting a traditional image, Marsilius likened priests to physicians, who *inform* their patients “about those things that are useful to be done or omitted in order to achieve bodily health,” but cannot *force* them to become healthy.<sup>71</sup> Indeed, Marsilius considered it contrary to the spirit and purpose of divine law for people to be forced to obey it, because “God wants men to be taught to know and acknowledge him, sc. through

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<sup>63</sup> DP III.2.3.

<sup>64</sup> DP II.9.10.

<sup>65</sup> DP II.9.3.

<sup>66</sup> Canning, *Ideas of Power*, 96.

<sup>67</sup> DP I.10.5. By making the coercive element decisive, Marsilius presented a positivist view of law. [Canning, *Ideas of Power*, 97] For a different interpretation, see: Nederman, 79–83.

<sup>68</sup> Lambertini, “*À la recherche*,” 369. Marsilius conceived natural law, to which he devoted little attention, as “the dictate of right reason in practical matters, classified under divine law.” [Nederman, 81; cf. DP III.2.4]

<sup>69</sup> Brett, xxii; Wilks, 103–4.

<sup>70</sup> DP II.9.3.

<sup>71</sup> DP II.9.2.

faith, and not for anyone to be coerced: this he rejected.”<sup>72</sup> With respect to regulating the external or transitive acts of men, therefore, human law stands unchallenged. By extension, whoever or whatever enjoys the authority to create human laws holds ultimate temporal jurisdiction.<sup>73</sup>

### (3.4) *What is the efficient cause of human law?*

In Discourse III of the *Defensor pacis*, Marsilius asserted that “only the universal body of the citizens [*universitas civium*] or its prevailing part [*valentior pars*] is the human legislator.”<sup>74</sup> Elsewhere he defined the legislator as “the primary and proper efficient cause of the law,” meaning that only it or someone else by its authority may promulgate human law.<sup>75</sup> Likewise, only the legislator enjoys the ultimate authority to grant dispensations from the law.<sup>76</sup>

Marsilius followed Aristotle in distinguishing between four kinds of cause: the material cause, the matter out of which a thing is made; the formal cause, that which organizes the matter to make the thing what it is, formally speaking (e.g., a giraffe as opposed to a tiger); the efficient cause, that which drives the thing into being; and the final cause, the purpose for which the thing exists.<sup>77</sup> Therefore, to say that the universal body of citizens or its prevailing part is the human legislator, and thus the efficient cause of human law, is to say that it propels law into being; the law is promulgated on its authority. Marsilius introduced the legislator in the twelfth chapter of Discourse I:

[Let us say, then,] that the ‘legislator,’ i.e. the primary and proper efficient cause of the law, is the people or the universal body of the citizens or else its prevailing part, when, by means of an election or will expressed in speech in a general assembly of the citizens, it commands or determines, subject to temporal penalty or punishment, that something should be done or omitted in respect of human civil acts. ... This is so whether the said body of citizens or its prevailing part does this [i.e., commanding or determining, etc.] directly of itself, or commits the task to another or others who are not and cannot be the legislator in an unqualified sense but only in a certain respect and at a certain time and in

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<sup>72</sup> DP II.9.5; cf. Gewirth, *Marsilius of Padua: The Defender of Peace*, vol. 2: lxii–lxiii.

<sup>73</sup> Oakley, *Watershed*, 190. Recall definition of ‘temporal’ at p.47 above.

<sup>74</sup> DP III.2.6; cf. III.2.8. Recall 44n28 above.

<sup>75</sup> DP I.12.3. Annabel Brett clarifies, in the notes on her translation, that *universitas* connotes a universal–particular rather than a whole–part relationship. For this reason, she renders *universitas civium* as ‘universal body of the citizens’ rather than ‘whole body of the citizens,’ as Alan Gewirth translates it. [Brett, I]

<sup>76</sup> DP III.2.8.

<sup>77</sup> Brett xli–xlii. The material cause of a cup, for example, might be glass; its formal cause is the design by which it was manufactured; its efficient cause is perhaps the glass-blower who crafted it; and its final cause is to hold liquid.

accordance with the authority of the primary legislator. And in consequence of this I say that *laws and anything else instituted by election must receive their necessary approval from the same primary authority and no other* [my emphasis].<sup>78</sup>

Just as the legislator alone enjoys the ultimate authority to promulgate law, it alone may interpret, overturn, or grant dispensation from it.<sup>79</sup>

This idea of the legislator is probably the most contentious in all of Marsilius scholarship. Scholars are primarily divided on what Marsilius meant by the terms he used. On the one hand, ‘citizen’ is relatively straightforward, being defined by Marsilius as

one who participates in a civil community, in the principate or councillor or judicial function, according to his rank. This description separates boys, slaves [or serfs], foreigners and women from citizens, although in different ways: for the sons of citizens are citizens in proximate potential, lacking only age.<sup>80</sup>

Marsilius followed the conventional Aristotelian formula insofar as he excluded children, *servi*, foreigners, and women from citizenship. At the same time, he refused to draw the Aristotelian conclusion that certain ‘lowly’ functions — the manual tasks of farming, manufacturing, and commerce — disqualify their practitioners from participation in the civil order, and thus from being citizens. For Marsilius, the salient criterion for citizenship reflects the polity’s communal-functional foundations: a man is a citizen by virtue of his contribution to the good of the community according to his office, whether he be a farmer working the fields or a well-educated magistrate managing the day-to-day affairs of government.<sup>81</sup> The Paduan’s view was informed by the traditional ideology and constitutional realities of late-medieval communes in Italy and elsewhere.<sup>82</sup> In the words of Antony Black, most scholastics “portrayed civic and guild life with as much clarity as an astronomer observing the moon through a magnifying glass. Marsiglio, on the contrary, was evidently in close contact with the constitutional and ideological phenomena with which he was dealing.”<sup>83</sup> Thus, if we pay attention only to Marsilius’s idea of citizenship, his conception of lawmaking seems very broadly based indeed. That the universal body of citizens *or*

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<sup>78</sup> *DP* I.12.3.

<sup>79</sup> *DP* I.12.9.

<sup>80</sup> *DP* I.12.4.

<sup>81</sup> Nederman, 63–5. Recall p.48 above. Marsilius did not think that just any citizen is qualified actually to *hold* governmental or princely office, reserving that privilege to the ‘notables’ alone. [*DP* I.13.4] All citizens, however, are qualified to participate in *making* the laws, despite not being able to serve a princely role. [Coleman, 150] Hence Marsilius’s above assertion that each citizen participates in the civil community “according to his rank.”

<sup>82</sup> Black, *Guilds and Civil Society*, 49–52, 89, 92–5.

<sup>83</sup> Black, *Guilds and Civil Society*, 95.

its ‘prevailing part’ is human legislator, however, appears to make things more complicated. It will be easier to understand this term, and thus the nature of Marsilius’s legislator, if it is first established *why* the universal body of citizens enjoys the rightful authority to promulgate law.

Marsilius had, in the words of Janet Coleman, massive confidence that the corporate gathering of the people can, “more than any individual wise man or men,” come to “know and will the laws which are most conducive to the sufficient life of the collectivity.”<sup>84</sup> Marsilius’s confidence was grounded in his principle that all people without stunted natures (an exceedingly large majority) desire a sufficient life, seeking to avoid what is harmful to them.<sup>85</sup> By extension, most people desire the survival of the polity, and thus seek to establish “that without which the polity cannot endure,” namely law. If this were not the case, then nature would be largely deficient, an impossibility according to Aristotelian natural science.<sup>86</sup> Having established that an overwhelming majority of people seek to institute laws, Marsilius argued that the multitude possesses the ability to create laws that are, in Coleman’s words, most “conducive to justice as rationally understood by all healthy men.”<sup>87</sup> Because the “primary human authority... to pass or institute human laws belongs to that from which alone the best laws can result,” a principle that Marsilius considered almost self-evident, the multitude holds that authority.<sup>88</sup>

Marsilius propounded three main arguments for why the multitude institutes the best laws. He asserted first, citing Aristotle, that the whole is wiser and more discerning than any of its parts alone, even its best part.<sup>89</sup> Allowing that the wise few make better laws than do the same number of less discerning citizens (e.g., farmers), Marsilius declared that “it nevertheless does not follow that the wise know how to discern what needs to be established better than the entire multitude, *which includes them along with the rest of the less learned* [my emphasis].”<sup>90</sup>

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<sup>84</sup> Coleman, 137.

<sup>85</sup> *DP* I.4.2. See pp.47–8 above. Presumably, people with ‘stunted natures’ would include, to use modern language, those suffering from disabilities or mental-health issues (e.g., severe depression) that cause them not to value their own wellbeing.

<sup>86</sup> *DP* I.13.2.

<sup>87</sup> Coleman, 137.

<sup>88</sup> *DP* I.12.5.

<sup>89</sup> Mary Elizabeth Sullivan, 260–1. In her article, Sullivan proposes that this and other ‘democratic’ arguments, propounded by contemporaries to Aristotle who supported Athenian democracy, were borrowed from the Philosopher quite disingenuously. Indeed, Aristotle expressed dissatisfaction with each of them. By contrast, Marsilius suggested — clearly knowing better given his familiarity with Aristotle — that these arguments reflected his actual opinions. Sullivan goes too far in taking from this that Marsilius was a ‘democrat,’ but her account still has its value.

<sup>90</sup> *DP* I.13.4.

Second, Marsilius argued that although the multitude is not the most qualified to *draft* laws, it is nonetheless the most capable of *judging* the quality of laws that have already been drafted by more prudent men, choosing to approve, reject, or modify them.<sup>91</sup> Marsilius gave the example, borrowed from Aristotle, of how most people who are not skilled enough to create art can, nevertheless, recognize good art when they see it.<sup>92</sup> Nor would it be practical, in any case, for every citizen to devote the significant amount of time required to draft new laws, because most citizens have other important tasks to which to attend: the farmer must mind his fields, the artisan needs to keep up with demand for his product, and so on.<sup>93</sup>

Lastly, Marsilius suggested that the multitude should have a hand in lawmaking so that citizens are most inclined to obey the laws.<sup>94</sup> No law, however just it may be, can be called ‘good’ if no one follows its commands, “for a law would be redundant if it were not obeyed.” The best way to ensure obedience, according to Marsilius, is to craft laws that each citizen “seems to have imposed on himself. But such is a law that has been passed as a result of an audience and command on the part of the universal multitude of the citizens.”<sup>95</sup> Indeed, if a single citizen or small group of citizens promulgated laws on his or their own authority, imposing them on everyone else, it is very likely that the rest of the citizens would react badly, even violently.<sup>96</sup> Such laws would likely be unjust, in any case, because an individual or small group promulgating laws on his or their own authority usually seeks to advance selfish ends, not the common good.<sup>97</sup> Even if the laws were just, however, the multitude would nonetheless resent them and protest against them, leading to civil strife and thus to the disruption of the sufficient life. But “every citizen would happily obey and accept a law passed as a result of an audience or consent on the part of all the multitude,” having, in a sense, “laid it upon himself.”<sup>98</sup>

Marsilius’s above arguments for why the multitude, the universal body of citizens, creates the best laws, and thus for why the multitude alone enjoys authority to promulgate laws, give insight into the meaning of ‘prevailing part.’ In the twelfth chapter of Discourse I, Marsilius

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<sup>91</sup> Mary Elizabeth Sullivan, 261. Although “not every citizen, nor the greater multitude, may discover the laws, every citizen is nonetheless capable of a judgement on those which have been discovered and put to him by another, and of perceiving if something should be added or removed or changed.” [DP I.13.3]

<sup>92</sup> DP I.13.3.

<sup>93</sup> DP I.13.8.

<sup>94</sup> Mary Elizabeth Sullivan, 261.

<sup>95</sup> DP I.12.6.

<sup>96</sup> DP I.12.6.

<sup>97</sup> DP I.13.5.

<sup>98</sup> DP I.12.6.

specified that he referred to the ‘prevailing part’ while taking into consideration “both the quantity and the quality of persons in the community upon which the law is passed.”<sup>99</sup> He added that the “prevailing part of the citizens should be identified from the honourable custom of politics, or determined according to the opinion of Aristotle, *Politics* VI chapter 2.”<sup>100</sup> Jeannine Quillet suggests that Marsilius associated the legislator with the universal body of citizens only to give weight to the decisions of the prevailing part, the *real* legislative body composed of a small number of elite citizens (or even a single citizen). According to Quillet, the prevailing part promulgates laws on behalf of the *universitas civium* as a sort of representative body, although this representation can, in practice, be more symbolic than real.<sup>101</sup> I find Quillet’s interpretation unconvincing in light of the extensive argumentation, examined above, that Marsilius devoted to showing why the *multitude*, not some body acting on its behalf, institutes the best and most effective laws. My own position lands closer to that of Antony Black, who argues that Marsilius offered three alternatives for legislation: “legislation by the whole citizen body, by its weightier [or prevailing] part, or by a specially and conditionally deputed person or persons.” While Marsilius accepted “the validity of each method, [he] was especially concerned to safeguard the traditional principle of *the sovereignty of the commune as a whole*.”<sup>102</sup> Marsilius allowed the primary legislator to delegate inferior legislators — even the prince himself — to undertake the actual activity of lawmaking, but he betrayed a clear *preference* for lawmaking by as wide a body as possible.<sup>103</sup>

Quillet and Black both treat the *valentior pars* as a representative body, a smaller group acting by itself on behalf of the multitude, but I consider this characterization misguided. Aristotle’s *Politics* VI, chapter 2 (specifically 1318a27–b1), a chapter that Marsilius cited to

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<sup>99</sup> DP I.12.3.

<sup>100</sup> DP I.12.4.

<sup>101</sup> “The ‘people’ have to be separated into the *vulgus*, sunk in their daily work, and the *honorabilitas*, which also includes the priests, although they do not play any part in government or council. When we remember that the rest of the citizens have to be of ‘a certain rank’ we can also exclude all the artisans and the peasants. In fact there is only a small number of citizens remaining who satisfy the criteria for membership of the *pars valentior*. . . . Marsilius does not seem very interested in the arithmetical aspect of the constitution of the *valentior pars*, frequently saying that it can be ‘one or many.’ *This is why, by successive stages of delegation, the representative principle and its workings enable Marsilius to describe the prince himself as pars valentior, since it is the whole people which is expressed through him* [my emphasis].” [Quillet, 560] Quillet does not cite any particular passages of the *Defensor pacis* to support her claim that the *valentior pars* can, according to Marsilius, be “one or many,” even the prince himself, nor have I been able to find any such instances myself.

<sup>102</sup> Black, *Guilds and Civil Society*, 91.

<sup>103</sup> Brett, xxvi. Recall DP I.12.3: Such inferior legislators “are not and cannot be the legislator in an unqualified sense but only in a certain [e.g., secondary] respect and at a certain time and in accordance with the authority of the primary legislator.”

provide a possible model for the specific dimensions of the *valentior pars*, does not contain a discussion of how to decide which men should compose such a representative body. Rather, it treats the issue of which side *prevails* in the case of legislative disagreement, proposing a mix of quantitative and qualitative (wealth-related) considerations.<sup>104</sup> Likewise, Marsilius's prevailing part is simply the group of citizens that 'carries the day' when legislative consensus is impossible.

(3.5) *What is the efficient cause of the princely office?*

In Discourse III of the *Defensor pacis*, Marsilius concluded that "the election of any principate or other office to be established through election, especially one which has coercive force, depends solely on the express will of the legislator."<sup>105</sup> In addition to being the sole efficient cause of human law, therefore, the legislator is the only efficient cause of legitimate principates. And, once again, the legislator alone may *unmake* what it has made, enjoying sole authority to correct the prince or even to depose him.<sup>106</sup>

As in the case of lawmaking, the legislator is the efficient cause of legitimate principates because the involvement of the multitude ensures the best outcome.<sup>107</sup> In this case, the multitude is most capable of electing a candidate for office who possesses what Marsilius considered the qualities of the model prince: prudence, moral virtue (especially justice), equity, and love for the community.<sup>108</sup> Although election is not the *sole* legitimate method of instituting princes, "it is only through this mode of institution that the best prince can be had."<sup>109</sup> Princely institution by hereditary succession can also be counted as a legitimate arrangement as long as the prince rules for the common good and, most importantly, over willing subjects. Lacking regular elections,

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<sup>104</sup> Recall Marsilius's statement regarding "the quantity and the quality of persons" on pp.55–6 above. Whereas Quillet does not, in my opinion, take the quantitative element seriously enough, other scholars do not give due attention to the qualitative element. Cary Nederman, for example, suggests that "the *valentior pars* is constituted by everyone within the community who is minimally rational" and hence who recognizes the necessity of law for political association. [Nederman, 87] It is evident, given Marsilius's acceptance of the Aristotelian principle that nature cannot be in the most part deficient (recall p.54 above), that such a group would include the overwhelming majority of citizens. But Aristotle's mix of quantitative and qualitative factors, endorsed by Marsilius, yields a prevailing part that is far smaller than an exceedingly large majority, although not one so small as to give too much weight to the wealth of citizens. Thus, Nederman's view is unconvincing.

<sup>105</sup> *DP* III.2.10.

<sup>106</sup> *DP* I.15.2, III.3; Brett, xxvi.

<sup>107</sup> *DP* I.15.2.

<sup>108</sup> *DP* I.14.1–7, I.16.8; Nederman, 108; Syros, 111.

<sup>109</sup> *DP* I.9.7.

however, there is a greater chance that there will be a bad prince.<sup>110</sup> Moreover, elected regimes like that of the empire are superior because they depend on the *express* will of the primary legislator or its deputy, not settling for merely tacit consent.<sup>111</sup> In any case, Marsilius sought most of all to ensure, in the words of Cary Nederman, “that no force external to the community itself will play a role or enjoy influence in the endowment of the *pars principans* with power.”<sup>112</sup> There may be various ceremonies or solemnities involved in princely institution, such as the coronation of the emperor by the pope, but these “are not required for the results of an election to stand but for their good standing, and even without which the election would be no less valid.”<sup>113</sup>

Because the human legislator is the sole efficient cause of the princely office, there may only be a single supreme principate within a given realm.<sup>114</sup> For there to be multiple legitimate principates in the same realm, there would need to be more than one universal body of citizens, but this is impossible. This is not to say that there cannot be division of jurisdiction within a single realm, with a plurality of lesser principates each ruling within set functional or geographic boundaries — such a system is all but essential in realms of significant size.<sup>115</sup> If division of jurisdiction exists, however, there must be among the lesser principates “one in number that is supreme over all, to which and through which the rest are reduced and regulated, and any errors that arise in them corrected.”<sup>116</sup> According to Marsilius, there will be disastrous consequences if governments within a realm are not all subject to a single supreme principate, from which they cannot appeal.<sup>117</sup> Not only will the separate principates likely clash with one another, but an overlap in judicial authority will result, leading to the insufficiency or failure of the justice system because crimes will go unpunished.<sup>118</sup> The accused might be called to answer charges before multiple courts, and perhaps even simultaneously, something that is impossible to do.<sup>119</sup> Injuries will remain unavenged, and thus there will be “fighting, disintegration and ultimately the destruction of the city or realm” and the loss of the sufficient life.<sup>120</sup>

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<sup>110</sup> *DP* I.9.5, I.16.11.

<sup>111</sup> *DP* I.9.6; Brett, xxvii.

<sup>112</sup> Nederman, 115.

<sup>113</sup> *DP* I.12.3.

<sup>114</sup> *DP* III.2.11.

<sup>115</sup> *DP* I.2.2, I.17.1.

<sup>116</sup> *DP* I.17.1.

<sup>117</sup> Syros, 54.

<sup>118</sup> *DP* I.17.3; Koch, “Marsilius of Padua on Church and State,” 154.

<sup>119</sup> Koch, “Marsilius of Padua on Church and State,” 154.

<sup>120</sup> *DP* I.17.3 (quotation); Koch, “Marsilius of Padua on Church and State,” 154.

(3.6) *What are some implications of what has been discussed for the temporal power of clerics?*

When Marsilius warned against allowing a plurality of supreme principates, at the front of his mind were the papal monarchy and traditional clerical independence from temporal authority. Hence, he proclaimed in Discourse III that the prince, acting on the authority of the legislator, enjoys coercive jurisdiction “over every individual mortal person [in the realm] of whatever condition they may be, and over every collective body of laypersons or clergy.”<sup>121</sup>

By enjoying sole rightful authority to promulgate and overturn human laws and to institute and depose princes, the legislator stands in formal opposition to the claim, advanced by popes and their hierocratic supporters in Marsilius’s day, that the pontiff wields full power in temporal matters.<sup>122</sup> Indeed, according to Marsilius, there is *no* coercive authority attached to any clerical office, papal or otherwise.<sup>123</sup> *Only* the prince, acting on the authority of the legislator, is permitted to exercise coercive power. Because popes promulgated decrees on their own supposed authority, not on that of the legislator, these documents were nothing more than “oligarchic ordinances” lacking true legal force.<sup>124</sup> Thus, Marsilius called on Christians, especially rightful princes, to rise up against the papal tyrants. He expressed confidence, moreover, that such popes would face the coercive wrath of God in the next life.<sup>125</sup>

For the sake of consistency and against his polemical urges, however, Marsilius admitted that it is within the untrammelled temporal authority of the legislator to *concede* some coercive jurisdiction to a cleric. That cleric exercises coercive authority *conditionally*, so litigants can appeal to the legislator, likely the prince acting on its authority, from his coercive rulings.<sup>126</sup>

Marsilius was equally insistent, however, that when human law and divine law happen to conflict, Christians should obey the latter, the law of eternal salvation.<sup>127</sup> And Scripture is abundantly clear “that neither the bishop of Rome who is called the pope, nor any other bishop or priest, or deacon, has and should have any principate or judgement or coercive jurisdiction over

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<sup>121</sup> DP III.2.15.

<sup>122</sup> Condren, 193.

<sup>123</sup> DP III.2.14.

<sup>124</sup> DP II.5.5 (quotation), III.2.7; Canning, *Ideas of Power*, 104; Koch, “Marsilius of Padua on Church and State,” 148.

<sup>125</sup> DP II.1.1, II.28.29; Falkeid, 59; Koch, “Priestly Despotism,” 170.

<sup>126</sup> DP II.29.11, III.2.37.

<sup>127</sup> Koch, “Marsilius of Padua on Church and State,” 152. For example: “[Christ] commanded that every human soul should observe those [human] laws and obey princes in accordance with them, *at least in those matters which did not oppose the law of eternal salvation* [my emphasis].” [DP II.9.9; cf. II.5.4–5, 7]

any priest or non-priest, prince, community, collective body or individual person of whatever condition.”<sup>128</sup> Thus, clerics should *refuse* to take up coercive principate *even if* it is offered to them by the legislator or someone acting on its authority. Marsilius referenced a number of scriptural passages in which Christ and the apostles submit themselves to temporal power and refuse to exercise such power themselves, and asserted that all clerics must follow their example “on pain of eternal damnation.”<sup>129</sup> For instance,

when Christ was accused before Pontius Pilate [in John 18:33–7], vicegerent of the Roman prince in Judea, for having said he was the king of the Jews, Pilate asked him whether he had indeed said this and whether he called himself a king. Christ replied to Pilate’s question with, among others, the following words: ‘*My kingdom is not of this world,*’ *i.e., I did not come into this world to reign with temporal government or dominion, in the way that the kings of the world reign. ... [He] resumes: ‘but now is my kingdom not from hence,’ my kingdom sc. that I have come to teach [my emphases].*”<sup>130</sup>

Therefore, Christ came into the world to teach the divine law, not to exercise coercive power. He imposed the same strictures on the apostles:

Christ said [in Luke 22:25–6]: ‘The princes of the Gentiles exercise dominion over them. But ye’ (sc. the apostles) ‘shall not be so.’ Christ, king of kings and lord of lords, did not therefore hand on to them the power to exercise the secular judgements of princes, nor coercive power over anyone; on the contrary he explicitly forbade them this....<sup>131</sup>

By extension, the priestly successors of the apostles may not exercise coercive power, but are subject to the jurisdiction of princes ruling on the authority of the legislator.<sup>132</sup>

Although priests are forbidden from ruling coercively, God has bestowed them with important *spiritual* authority. Compared to the standard view, however, Marsilius conceived this spiritual power modestly. Upon ordination, according to Marsilius, priests receive from God their ‘essential’ or ‘inseparable’ authority, a disposition of the soul that bishops possess to the same degree as regular priests. It comprises the sacramental power of transubstantiating the Eucharistic bread and wine into the true body and blood of Christ, the ‘power of the keys,’ and the power to ordain new priests.<sup>133</sup> But the power of the keys as envisioned by Marsilius differed from the

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<sup>128</sup> DP II.4.1 (quotation); Garnett, 109.

<sup>129</sup> DP II.4.3; Koch, “Marsilius of Padua on Church and State,” 152.

<sup>130</sup> DP II.4.4.

<sup>131</sup> DP II.4.13.

<sup>132</sup> DP II.4.13, II.5.4; Oakley, *Watershed*, 219.

<sup>133</sup> DP I.19.5; Garnett, 78; Sweeney, 213–4.

canonistic conception of it as a jurisdictional power exercised by priests *themselves*.<sup>134</sup> According to Marsilius, it is really *God* who looses (absolves) or binds (does not absolve) a person's sins during the sacrament of penance or confession. The priest only *reports* whether binding or loosing has occurred, just as a jailer himself does not clear or convict anyone of civil fault or penalty, but responds to the judge's decision by opening or closing the prison cell.<sup>135</sup> For Marsilius, therefore, the power of the keys is declarative, not truly jurisdictional.<sup>136</sup> The same is true of ordination: it is *God* who bestows priestly authority on the ordinand when the ordaining priest, acting as God's instrument, prays and lays hands on him.<sup>137</sup>

### (3.7) *What is the faithful human legislator?*

In this section, I have established that Marsilius of Padua attributed supreme temporal or coercive authority to the 'human legislator,' the universal body of citizens or its prevailing part. Operating on the authority of the legislator, governments enforce its laws to regulate contentious human acts. These injure someone other than the doer and thus pose a threat to the tranquility of political communities, and, by extension, to the sufficient life that all humans desire by nature. I set out to show in this section, however, that Marsilius considered the *faithful* human legislator to enjoy ultimate temporal authority. What, then, is the faithful human legislator?

I have previously defined the faithful human legislator as the universal body of faithful citizens or its prevailing part. This definition is nearly indistinguishable from that of the human legislator, and for good reason: the human legislator and the faithful human legislator are *identical* in societies that have been 'perfected,' that is, Christianized fully, with each citizen having been reborn as a faithful citizen.<sup>138</sup> Because the human legislator enjoys supreme temporal authority, the faithful human legislator does as well. But its power, unlike that of its 'unfaithful' counterpart, is not limited to temporal matters. Rather, it extends to spiritual affairs, in which the faithful legislator alone — not the pope or any group of clergy — is supreme.

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<sup>134</sup> Oakley, *Mortgage*, 130–2.

<sup>135</sup> *DP* II.7.3; Sweeney, 216.

<sup>136</sup> Oakley, *Watershed*, 220.

<sup>137</sup> *DP* I.19.5; Garnett, 78.

<sup>138</sup> *DP* II.17.8–9, 11, 17; Oakley, *Watershed*, 221; Garnett, 149–50.

#### (4) The Supremacy of the Faithful Human Legislator in Spiritual Matters

In Discourse II of the *Defensor pacis*, Marsilius enumerated possible definitions of ‘spiritual,’ the most relevant of which for our purposes is the following:

[This term is predicated of] the divine law and... the teaching and learning of commands and counsels in accordance with it and through it. Into the signification come all the sacraments of the church and their effects, all divine grace, all the theological virtues, and all the gifts of the holy spirit that order us towards eternal life.”<sup>139</sup>

Using this definition as a starting point, I establish below that Marsilius considered the faithful human legislator to enjoy supreme spiritual authority, similar to that claimed by the pope under *plenitudo potestatis*. For instance, the legislator concedes to clerics any ‘accidental’ or ‘separable’ authority they might enjoy. Temporal possessions, too, are within the power of the legislator to grant clerics. Furthermore, the legislator alone provides the authoritative interpretation of Scripture, and only it can rule coercively on spiritual matters that are neither commanded nor prohibited by Scripture, such as those concerning church ritual.

##### (4.1) *The legislator as source of ‘accidental’ authority of clerics*

In Discourse III, Marsilius concluded that “all bishops are of equal authority directly through Christ, and neither can it be persuaded according to divine law that there is any pre-eminence or subordination amongst them either in spiritual or in temporal things.”<sup>140</sup> By making this assertion, as Francis Oakley points out, Marsilius undercut “the hallowed claim that the hierarchical structure of the church and the monarchical preeminence of the pope were of divine institution.”<sup>141</sup> As we have seen, Marsilius thought that God provides *all* priests, including bishops, with the same essential authority: the bishop of Rome is no exception. Thus, the pope is *not* vicar of Christ, divinely-ordained head of the church:

[Those who argue for papal *plenitudo potestatis*] should be the object of laughter, not remotely believed and still less feared, since *what they proclaim is the opposite of Scripture in its literal and manifest sense* [my emphasis]. For Saint Peter never had any such power over the apostles or others, but rather (as we have already said) observed equality with them in accordance with Christ’s command. Thus in Matthew 23[:8]: ‘But be not ye called

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<sup>139</sup> DP II.2.5.

<sup>140</sup> DP III.2.17.

<sup>141</sup> Oakley, *Watershed*, 218 (quotation); Watt, 416–7.

Rabbi: for one is your Master, even Christ; and all *ye are brethren,* ' i.e. equal. And he said 'all,' *excepting no one* [my emphasis].<sup>142</sup>

Because the pope is not vicar of Christ, he is not the mediator through whom all other clerics derive their authority. Nor does he enjoy special powers to interpret Scripture, or supreme legislative authority in matters of church ritual.

As the above quotation suggests, Marsilius upheld a literalistic approach to Scriptural exegesis.<sup>143</sup> The misconception that Christ granted Peter and his successors ecclesiastical headship derived, according to Marsilius, from "alien expositions of Scripture that seem to smack of... corrupt opinion and perverted affection."<sup>144</sup> For example, he insisted that the power of the keys, given to Peter in Matthew 16:18–9, was extended later to the rest of the apostles:

For Jerome says on that passage of Matthew 16: 'And whatsoever thou shalt bind on earth etc.,' 'The other apostles have the *same* judiciary power [my emphasis]' (supplying, as Peter had) 'to whom he' (sc. Christ) 'says after the resurrection: "Receive ye the Holy Ghost: Whosoever sins ye remit, they are remitted unto them etc."<sup>145</sup>

Misinterpretations of Scripture, especially ones couched in excessive allegory, also underpinned the papal claim to *plenitudo potestatis*, according to Marsilius. For instance, he attacked the famous 'two swords' doctrine deriving from Luke 22:38:

Saint Ambrose explains the said words according to this sense, paying sufficient attention to the word of the Lord, when he says: 'Two swords are allowed, one of the New, the other of the Old Testament, with which we are armed against the attacks of the devil. And he [Christ] says: "It is enough," because nothing is lacking to one who is armed with the teaching of both testaments.'<sup>146</sup>

It might seem that Marsilius broke with his own exegetical method by advancing a *metaphorical* reading of Luke 22:38 to counter the interpretation of it championed by papalists, namely, that Peter and his papal successors wielded ultimate spiritual *and* temporal authority, signified by the two swords. The real purpose of Marsilius's literalistic approach, however, is to determine Christ's or the author's *intentions* for a particular passage. These often correspond to the most basic, apparent reading of the text, but not always. In this case, for instance, the 'literal' meaning is

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<sup>142</sup> DP II.16.6.

<sup>143</sup> Sweeney, 188–9. For more on Marsilius's exegetical approach, see: Sweeney, *passim*.

<sup>144</sup> DP II.28.24.

<sup>145</sup> DP II.15.4. Recall p.28 above.

<sup>146</sup> DP II.28.24. Recall p.29 above.

actually a metaphorical one, because Christ, through his words, *intended* to signify that nothing is lacking from the Old and New Testaments.<sup>147</sup>

Although Marsilius insisted that the ecclesiastical hierarchy was not instituted by Christ, even he was not daring enough to deny its legitimate existence *in fact*. He portrayed it, in the words of Francis Oakley, “as nothing more than a human organizational contrivance, grounded either directly or at one or other remove in the will and consent of the faithful.”<sup>148</sup> According to Marsilius, any clerical authority extending beyond ‘essential’ priestly authority to administer the sacraments is ‘accidental’ or ‘separable.’ It has human origins and thus can be removed or revoked without rendering priests unable to perform what Marsilius considered their core functions, namely, to administer the sacraments in accordance with their essential authority and to teach the divine law.<sup>149</sup> Non-priests like deacons, moreover, enjoy *only* separable authority. Notably, the office of bishop is separable, having emerged during the era of the primitive church as a way to impose greater hierarchical order on the growing priesthood.<sup>150</sup> Likewise, before the Roman bishop was conceded legal primacy by the *Donation of Constantine*, the Roman church had enjoyed *de facto* pre-eminence by the common consent and custom of the world’s faithful, in recognition of Rome’s unmatched learning and renown and the venerability of its first bishop, Peter.<sup>151</sup> But no bishop, including the pope, enjoys greater “perfection through the holy ghost” than other priests, even the lowliest ones.<sup>152</sup>

Because the province or region in which a priest is instituted is also accidental to his authority, according to Marsilius, the body of the faithful living in a given region should elect clerics to serve them.<sup>153</sup> Marsilius found evidence for this practice especially in the book of Acts, a book that shows the faithful selecting men from among themselves to serve ecclesiastical roles.<sup>154</sup> Peter is never seen appointing clerics on his own authority, nor do others institute them

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<sup>147</sup> Sweeney, 190–1.

<sup>148</sup> Oakley, *Watershed*, 218.

<sup>149</sup> *DP* I.6.9.

<sup>150</sup> *DP* II.15.6.

<sup>151</sup> *DP* II.15.6, II.18.5; Garnett, 104. Elsewhere, Marsilius expressed doubt that Peter was the first bishop of Rome, thinking it more likely, on the basis of scriptural and historical evidence, that Paul was first. [*DP* II.16.15] On the *Donation*, recall 27n76 above.

<sup>152</sup> *DP* II.17.3.

<sup>153</sup> *DP* II.15.10, II.17.4; Garnett, 89.

<sup>154</sup> For example: “Hence Acts 6, as above: ‘Then the twelve called the multitude of the disciples unto them’ (that is, the multitude of the faithful, who at that time were all called disciples...) ‘and said, It is not reason that we should leave the word of God, and serve tables. Wherefore, brethren, look ye out among you seven men of honest

on his behalf. If a given realm is ‘imperfect,’ meaning that Christians mingle with non-Christians under a common principate, then it is the decision of the faithful alone, not the entire body of citizens, that is authoritative in such matters.<sup>155</sup> If the realm is ‘perfect,’ however, then the legislator itself is the efficient cause of the accidental authority of clerics, acting often through its agent the prince.<sup>156</sup> In Marsilius’s own time, therefore, it was proper for popes to be instituted by the faithful human legislator that ‘lacks a superior,’ that is, the universal body of faithful citizens of Christendom as a whole, or its prevailing part. This ‘super-legislator’ could act either through a general council or through the Roman emperor, the supreme prince of Christendom. Marsilius called the emperor the “faithful human legislator *who* lacks a superior [my emphasis]” because his authority derived from that of the primary legislator, and thus he was legislator in a *secondary* sense. The faithful human legislator lacking a superior also enjoyed the authority to depose the pope, because legislators always reserve the right to unmake what they have made.<sup>157</sup>

Just as the legislator promulgates the best laws and institutes the ablest princes, it is apt to elect the best possible candidates for the priesthood and for higher ecclesiastical office.<sup>158</sup> By Marsilius’s day, it had fallen out of practice for the faithful to elect their clerics, having been replaced first by election performed by the clergy alone, then by election by canons of a single cathedral, and increasingly often by direct papal institution (an application of supposed *plenitudo potestatis*). As a result, according to Marsilius, the entire ecclesiastical hierarchy had become saturated with “persons ignorant of divine letters, idiots and the untrained, and very often men who are of corrupt mind, and well-known criminals who cannot even communicate with the peoples over which they are appointed in their own language or speech.”<sup>159</sup> How could such individuals be expected to fulfill their priestly duties adequately? This was one respect, Marsilius maintained, in which papal attempts to exercise fullness of power endangered Christian souls.<sup>160</sup>

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report, full of the Holy Ghost and wisdom, whom we may appoint over this business. ... And the saying pleased the whole multitude: and they chose Stephen... and Philip [as deacons],’ and all the rest likewise.” [DP II.17.10]

<sup>155</sup> Recall section 3.7 above. While a milestone in the historical process of ‘perfection’ was certainly the legalization of Christianity by Constantine the Great (d.337) and then its imposition on imperial subjects by Theodosius I (d.395) and his successors, Marsilius understood that the conversion of those we call ‘Europeans’ to Christianity was an uneven process spanning centuries. For example, the conversion of Italians was completed much sooner than that of the Germans. Thus, faithful human legislators of certain realms predated those of other realms.

<sup>156</sup> DP II.17.5, II.17.17, II.18.8, III.2.23; Garnett, 84, 89–90.

<sup>157</sup> DP II.22.9 (quotation), III.2.41; Coleman, 159; Oakley, *Watershed*, 221; Garnett, 162–4.

<sup>158</sup> DP II.17.10.

<sup>159</sup> DP II.24.2.

<sup>160</sup> DP II.24.11; Koch, “Priestly Despotism,” 182; Garnett, 163.

Like the civil schism that plagued the *regnum Italicum*, this situation could only be remedied by returning unimpeded authority to its rightful possessor: the faithful human legislator.<sup>161</sup>

#### (4.2) *The legislator as lord of temporal possessions of clerics*

Marsilius denounced clerical wealth as another threat to Christian salvation. After all, those who teach contempt of the world are clearly hypocrites, and as such will not be heeded, if they themselves possess riches.<sup>162</sup> Moreover, according to Marsilius, clerics enjoying even modest wealth act against the example set for them by Christ and the apostles, who practiced holy poverty.<sup>163</sup> He explained in Discourse III that someone practicing supreme poverty, in pursuit of spiritual perfection, subsists on “what is necessary by food and covering, at least on a daily basis.”<sup>164</sup> That person may keep superfluous goods *temporarily*, but only if he intends to sell them as soon as possible, donating the proceeds to the poor. He never *owns* any of the goods in his possession, however, and thus enjoys no legal recourse if these are taken or damaged.<sup>165</sup>

By maintaining that it is possible to use possessions licitly without actually *owning* them, Marsilius upheld an official stance of the Franciscan Order, one that Pope John XXII challenged in his dispute with the friars.<sup>166</sup> All things considered, however, Marsilius’s views on poverty set him apart from mainstream Franciscans. Echoing the radical ‘Spiritual Franciscans,’ he insisted that it is not enough for one seeking perfection simply to renounce legal *ownership*: he must also abstain from *possessing* any goods that are unnecessary for survival or for supporting the poor, even ones not technically owned.<sup>167</sup> Marsilius went further than even the Spirituals, however, by asserting that *all* clerics must practice supreme poverty, not just a select group of friars.<sup>168</sup>

Because clerics must not own anything, the ownership of goods provided to support their basic needs and the needs of the poor is retained by the individual or corporate body that donates them. In perfected communities, Marsilius argued, this responsibility falls especially to the faithful

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<sup>161</sup> DP I.1.5.

<sup>162</sup> DP II.11.3. Recall the Dominican position on p.14 above.

<sup>163</sup> Garnett, 146; Canning, *Ideas of Power*, 106. For a good overview of this aspect of Marsilius’s thought, see: Roberto Lambertini, “Marsilius and the Poverty Controversy in Dictio II,” in *BCMP*, 229–63.

<sup>164</sup> DP III.2.39.

<sup>165</sup> DP III.2.38. Cf. DP II.12.13–5, II.12.19, II.13.30–1.

<sup>166</sup> Lambertini, “Marsilius and the Poverty Controversy,” 246. Recall section 2.2 of chapter I, above.

<sup>167</sup> Tierney, *Religion, Law and the Growth of Constitutional Thought*, 49.

<sup>168</sup> Garnett, 120; Lambertini, “Marsilius and the Poverty Controversy,” 258–9.

human legislator.<sup>169</sup> Thus, the legislator exercises a role similar to the one Innocent IV, in his bull *Ordinem vestrum* (1245), claimed for the papacy with respect to Franciscan goods, a role later to be renounced by John XXII.<sup>170</sup> For Marsilius, temporal possessions are merely *conceded* to clerics: if the basic needs of clergy and the poor have first been satisfied, clerical goods may be repossessed by the legislator to further common utility and defence.<sup>171</sup>

#### (4.3) *The authority of the legislator to interpret Scripture and to rule on other spiritual matters*

Because the ecclesiastical hierarchy is a *human* institution, for Marsilius, neither the office of pope nor any other ecclesiastical office confers special powers to interpret Scripture.<sup>172</sup> Not even the faithful human legislator may grant dispensation from a command or prohibition of divine law, but it alone, acting through a general council, provides an authoritative interpretation of Scripture in cases of uncertainty.<sup>173</sup> Hence the following statement in Discourse III:

[Only] a general council of the faithful or its prevailing multitude or part should determine the senses of divine law where there is doubt over the definition, especially those matters which are called the articles of the Christian faith, and anything else that must be believed of necessity of salvation[.]<sup>174</sup>

Once again, Marsilius found support for his position in the book of Acts, a book that shows questions about doctrine being “decided through the common deliberation of the apostles and others of the faithful who were more learned, and not by the [sole] decision of Peter or any other apostle.”<sup>175</sup> According to Marsilius, the popes of his day were far less venerable than any apostle — some even being heretics — so why should they have been allowed to make such decisions?<sup>176</sup>

A general council is legitimate, Marsilius argued, only if it is convoked on the authority of the faithful human legislator that lacks a superior, most likely by the emperor in emulation of

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<sup>169</sup> DP II.14.7–8, III.2.39.

<sup>170</sup> Canning, *Ideas of Power*, 109, 114.

<sup>171</sup> DP III.2.27.

<sup>172</sup> Sweeney, 194.

<sup>173</sup> DP III.2.5; Sweeney, 194; Koch, “Marsilius of Padua on Church and State,” 171–2. Nor did hierocratic popes claim the authority to overturn precepts of divine law (recall pp.18–9, 27 above).

<sup>174</sup> DP III.2.2.

<sup>175</sup> DP II.16.5. For example: “Hence in Acts 15, a disagreement had arisen between the preachers of the gospel as to whether one should circumcise the uncircumcised faithful in order to achieve eternal salvation, some saying that one should whereas Paul and Barnabas objected to it; at this point *‘the apostles and elders came together for to consider of this matter [my emphasis].’*” [DP II.16.5]

<sup>176</sup> DP II.20.6. For example, Marsilius accused John XXII of heresy for his views on poverty. [DP II.13.6]

Constantine the Great, convoker of the Council of Nicaea in 325. This legislator also attaches coercive sanction to the determinations of the council, imposing obedience on all Christians.<sup>177</sup> Because most clerics of his own day were not sufficiently learned, Marsilius held, lay experts in divine and civil law had to attend councils alongside clerics.<sup>178</sup> Most councils of the medieval church, including the formative Lateran councils of the high middle ages, did not meet these criteria. Thus, Marsilius did not recognize their validity.<sup>179</sup>

Marsilius asserted that councils should be composed of men from each Christian polity, having been sent by their respective legislators “in proportion to the quantity and quality of persons” in the realm. Upon arrival, these smaller bodies come together as a single council acting on the authority of the faithful human legislator that lacks a superior, the universal body of faithful citizens everywhere.<sup>180</sup> In a mystical sense, however, the council represents the *whole* church too, including faithful noncitizens like women and children. It is thus infallible, being guided by the Holy Spirit.<sup>181</sup> Marsilius supported this conclusion by citing Christ’s final words to the apostles in the book of Matthew:

[‘And], lo, I am with you always, even unto the end of the world.’ ... Since, therefore, the gathering of the faithful or general council truly represents, through succession, the gathering of the apostles and other elders of the faithful at that time, it is very likely, indeed certain, that in resolving doubtful senses of Scripture — especially those in which error would cause a danger of eternal damnation — the force of the holy spirit, guiding and revealing, is present at the deliberations of the universal council.<sup>182</sup>

If councils were fallible, Marsilius insisted, there would be no way to determine with confidence the true interpretations of ambiguous sections of Scripture. God would be allowing humans to live in error, and so divine law itself would ultimately be “useless for salvation.”<sup>183</sup>

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<sup>177</sup> DP II.18.8, II.21.1–2, 8; Garnett, 164; Oakley, *Watershed*, 221; Sweeney, 192; Koch, “Marsilius of Padua on Church and State,” 171–2. Garnett has suggested convincingly, against the scholarly grain, that Marsilius wanted the emperor to be recognized as supreme coercive judge over all Christians — although not over the whole *world*, as Dante had sought. [Garnett, 162–4] Clerics themselves lack coercive authority, after all, so how else could it be ensured that conciliar decrees would be respected everywhere, preserving Christian unity? For the mainstream view that Marsilius did not support a ‘universal’ empire, see: Nederman, 22.

<sup>178</sup> DP II.20.3, 5, 13; Sweeney, 194; Garnett, 140; Koch, “Marsilius of Padua on Church and State,” 173.

<sup>179</sup> Garnett, 140.

<sup>180</sup> DP II.20.2; Garnett, 164; Koch, “Marsilius of Padua on Church and State,” 173.

<sup>181</sup> DP II.2.3; Koch, “Marsilius of Padua on Church and State,” 172–3; Sweeney, 193, 196–7.

<sup>182</sup> DP II.19.2. The verse quoted is Matthew 28:20.

<sup>183</sup> DP II.19.3 (quotation); Koch, “Marsilius of Padua on Church and State,” 173.

The prerogatives of the general council, acting on the authority of the faithful human legislator that lacks a superior, extend also to affairs relating to “church ritual or divine worship and the peace and unity of the faithful.”<sup>184</sup> The authority of the legislator in these matters is characteristically extensive, as Marsilius pronounced in Discourse III: it can order or prohibit all things that Scripture does not mandate or forbid, binding “people to fault or penalty for the status of this present world or of that to come.”<sup>185</sup> This is no less than fullness of power *par excellence*.

## (5) Conclusion

Shortly after completing the *Defensor pacis* in the middle of 1324, Marsilius withdrew from Paris to the court of Ludwig the Bavarian at Munich, accompanied by his university colleague John of Jandun (d.1328).<sup>186</sup> Mistaking John to be a co-author of the work, Pope John XXII excommunicated the pair in April 1327, and six months later declared them to be heretics in the bull *Licet iuxta doctrinam*.<sup>187</sup> He identified as heretical five propositions drawn from the work:

1. That Christ paid tribute to Caesar in Matthew 17:26] not with condescension out of liberality or piety, but forced by necessity. ... [Thus, that] all temporal affairs of the Church are subject to the emperor and he can accept these things as his own.
2. That blessed Peter the Apostle had no more authority than the other apostles had nor was he the head of the other apostles. Likewise that God did not send forth any head of the Church, nor did he make anyone his vicar.
3. That it pertains to the emperor to correct, to appoint, to depose, and to punish the pope.
4. That all priests, whether the pope or archbishop or a simple priest, are by the institution of Christ equal in authority and jurisdiction.
5. That the [clergy of the] whole Church joined together can punish no man by forced punishment, unless the emperor permits this.<sup>188</sup>

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<sup>184</sup> *DP* II.20.4.

<sup>185</sup> *DP* III.2.5, cf. *DP* II.21.8. A substantial number of the conclusions given in *DP* III.2 are simply instantiations of this aspect of the authority of the council, or, more fundamentally, of the faithful human legislator that lacks a superior. These conclusions include, for example: III.2.34, on feasting and fasting; III.2.35, on canonization; III.2.19, on marriage dispensations; III.2.29, on approving/establishing religious orders; and III.2.16, on excommunication.

<sup>186</sup> Godthardt, 26.

<sup>187</sup> Godthardt, 32; Garnett, 20.

<sup>188</sup> John XXII, “The Condemnation of Marsiglio of Padua and John of Jandun, 1327,” in *Heresy and Authority in Medieval Europe: Documents in Translation*, ed. & intro. Edward Peters, Middle Ages Series (Philadelphia: University of Pennsylvania Press, 1980), 230–1.

When *Licet iuxta doctrinam* was promulgated, Marsilius and John of Jandun were accompanying Ludwig the Bavarian on his ill-fated expedition into Italy. This journey reached its climax in January 1328, when Ludwig was consecrated, at Rome, by three Italian bishops whom John XXII had deposed, and then was coronated emperor by four Roman aristocrats acting on the authority of the citizens of Rome.<sup>189</sup> Then in April Ludwig deposed John XXII *in absentia* for treason, again on the authority of the people of Rome, and arranged in May the election and installation of Nicholas V as (anti)pope. Marsilius was surely an architect of the installation ceremony, one that was crafted to display the total subjection of the pope to the emperor.<sup>190</sup> Under military pressure from King Robert I of Naples, however, Ludwig was soon forced to withdraw from Rome in August 1328 and to leave Italy entirely a year later. As the imperial entourage passed through Pisa on its route northward, it was joined by a small group of dissident Franciscans who had fled from Avignon on 26 May 1328.<sup>191</sup> These included the Franciscan Minister-General, Michael of Cesena, the procurator of the Order at the papal curia, Bongratia of Bergamo, and the great theologian and scholastic philosopher William of Ockham, who, in the 1330s, would eclipse Marsilius as the foremost polemical defender of their imperial patron.<sup>192</sup>

I have sought to demonstrate, in this chapter, that the refutation of papal *plenitudo potestatis* advanced by Marsilius of Padua in his *Defensor pacis* was no less than a complete inversion of the papalist formula. Marsilius abandoned the dualistic tendencies of anti-papal polemicists of the previous generation, such as John of Paris (d.1306) and Dante Alighieri (d.1321). Whereas these men propounded, in the words of James Watt, “the logic of co-ordinate powers, combined with respect for the autonomy of the spiritual power and conceding to it a certain superiority,” Marsilius denied the legitimacy of *any* independent clerical jurisdiction.<sup>193</sup> In both temporal and spiritual matters, the pope and other clerics are subject to a faithful human legislator, especially the faithful legislator that lacks a superior, that God alone surpasses in sovereign power.<sup>194</sup> Marsilius’s contemporaries were understandably taken by this radical assertion. Hence, the five errors that John XXII outlined in *Licet iuxta doctrinam* concerned the temporal and spiritual subjugation of the pope to the emperor, the legislator in a subordinate and

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<sup>189</sup> Godthardt, 27–8, 34–5.

<sup>190</sup> Godthardt, 43, 49–50.

<sup>191</sup> Lambertini, “*À la recherche*,” 371; Brett, xxxvii–xxxviii; Garnett, 30.

<sup>192</sup> Garnett, 30; Lambertini, “*À la recherche*,” 371.

<sup>193</sup> Watt, 419 (quotation); Oakley, *Watershed*, 18.

<sup>194</sup> Watt, 416, 420–1; Wilks, 101.

practical sense.<sup>195</sup> John XXII might have understood Marsilius to be subordinating the spiritual to the temporal, but in truth he *unified* the temporal and the spiritual.<sup>196</sup> Marsilius maintained that clerics do not form their own, uniquely spiritual estate.<sup>197</sup> Rather, *each* member of the faithful is ‘spiritual’ insofar as he directs his life toward Christ.<sup>198</sup> The universal body of faithful citizens is, therefore, just as much a spiritual body as it is a temporal one. Not only is the legislator the sovereign guardian of the sufficient life on earth, without which happiness in this life is impossible, but, in addition, it bears on its shoulders the eternal spiritual destiny of every believer.

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<sup>195</sup> Garnett, 21; Godthardt, 32.

<sup>196</sup> Gewirth, *Marsilius of Padua: The Defender of Peace*, vol. 2: lv.

<sup>197</sup> “Most recently of all, however, and highly inappropriately and improperly, some people stretch this term [‘spiritual’] to cover the voluntary actions and omissions on the part of priests or bishops, deacons, and other ministers of God’s temple.” [DP II.2.5]

<sup>198</sup> Recall the definition of ‘spiritual’ provided at p.62 above.

### III

## Tyrant in Peter's Chair:

## William of Ockham's Theory of Tyranny in the *Breviloquium*

### (1) Introduction

On 11 July 1343, three months after he delivered the speech in which he announced the death of Marsilius of Padua, infamous 'heresiarch,' Pope Clement VI stood before his cardinals at Avignon once again.<sup>1</sup> This time, he alleged that Marsilius had been inspired by another long-time enemy of Clement and his immediate predecessors: William of Ockham (d.1347). The pope announced that Ockham had "taught and still teaches diverse errors against the power and authority of the Holy See, and from William that Marsilius and many others learnt and received those errors."<sup>2</sup> As George Garnett cleverly remarks, this statement

reveals nothing other than that papal intelligence was no more infallible than Marsilius considered the pope to be. For it is certain that those works of William of Ockham which are concerned with the same subjects as the *Defensor pacis* were written long after it, and that some of them explicitly responded to it.<sup>3</sup>

Indeed, Ockham devoted tremendous energy, in his polemics against contemporary popes, to differentiate his own positions from those of Marsilius.<sup>4</sup> Ockham disagreed with Marsilius on issues such as conciliar infallibility (affirmed by the Paduan, but denied by Ockham),<sup>5</sup> the divine

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<sup>1</sup> Offler, "Collatio," 126.

<sup>2</sup> Quoted in Garnett, 30.

<sup>3</sup> Garnett, 30. Some scholars argue that the above passage from Clement's speech is not genuine, but was inserted into the document later to slander Ockham by taking advantage of Marsilius's notoriety. [Garnett, 30n140]

<sup>4</sup> Garnett, 30–3.

<sup>5</sup> On Marsilius's position, see: section 4.3 of chapter II of this thesis. Ockham's own position is contained in III *Dialogus* I.3.8–11. For comparisons of their stances, see: Roberto Lambertini, "Ockham and Marsilius on an Ecclesiological Fallacy," *Franciscan Studies* 46, William of Ockham (1285–1347) Commemorative Issue Part III (1986): 301–15; and Shogimen, *Ockham*, 189–94. On Ockham's positive vision of the role of general councils, see: Arthur P. Monahan, *Consent, Coercion, and Limit: The Medieval Origins of Parliamentary Democracy* (Montreal: McGill-Queen's University Press, 1987; repr. 2014), 238–53. Concerning Ockham's stance on infallibility, conciliar and otherwise, see especially: Brian Tierney, *Origins of Papal Infallibility 1150-1350: A Study on the Concepts of Infallibility, Sovereignty and Tradition in the Middle Ages*, Studies in the History of Christian Thought, vol. 6. (Leiden: Brill, 1972), 205–37; and John Kilcullen, "Ockham and Infallibility," *The Journal of Religious History* 16, no. 4 (1991): 387–409.

institution of the papacy (denied by Marsilius, but affirmed by Ockham),<sup>6</sup> and the necessity of there being a single supreme authority in a given polity (affirmed by Marsilius, but denied by Ockham).<sup>7</sup> In the end, however, the friar could not escape association with Marsilius. Both men, despite substantial differences in opinion, were companions of Emperor Ludwig the Bavarian and fierce critics of the papacy, and this was enough to chain them together in popular imagination.<sup>8</sup>

Ockham's polemical career, unlike that of Marsilius, did not begin until he joined Ludwig's court in May 1328, having fled Avignon in the company of other dissident Franciscan friars, including Michael of Cesena, Franciscan Minister-General, and Bongratia of Bergamo, procurator of the Order at the papal curia.<sup>9</sup> Following Arthur Stephen McGrade, I identify two main phases of Ockham's subsequent polemical activity: the personal and the institutional.

For nine years after he joined Ludwig, Ockham's attacks against the papacy were intensely personal, his concern being to demonstrate that *particular* popes — especially John XXII (r.1316–34) and Benedict XII (r.1334–42) — were heretics, and, as such, not true popes at all.<sup>10</sup> At first, Ockham was entirely concerned with matters relevant to the Franciscan poverty controversy. He sought to prove that John's formal attacks on apostolic poverty were heretical, and thus that John himself was a heretic.<sup>11</sup> Ockham's most important works from this period include his *Opus nonaginta dierum/Work of ninety days*, *Epistola ad fratres minores/Letter to the friars minor*, and

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<sup>6</sup> On Marsilius's position, see: section 4.1 of chapter II of this thesis. Ockham's affirmation that Christ instituted the papal office in the person of Peter, the traditional Catholic position, is contained in III *Dialogus* I.4.8–11, 22. For the standard account of Ockham's view, see: McGrade, *Political Thought*, 149–68. For an alternative view, see: Shogimen, *Ockham*, 185–8, 216–31. Shogimen argues that, while Ockham affirmed that Christ instituted *Peter* as head of the Church, he denied that the papal *successors* of Peter also enjoy headship by divine grant. The following sections are substantial evidence against Shogimen's position: *Brev.* II.16; and III *Dial.* II.3.7.

<sup>7</sup> On Marsilius's 'monist' position, see: chapter II of this thesis, *passim*, but especially sections 3.4–5. On Ockham's so-called 'dualist' position, see especially: *OQ* III.9–10, 12. For standard accounts of Ockham's 'dualism,' see: McGrade, *Political Thought*, 78–172; Arthur Stephen McGrade, ed., *A Letter to the Friars Minor and Other Writings*, trans. John Kilcullen, Cambridge Texts in the History of Political Thought (Cambridge: Cambridge University Press, 1995; repr. 2001), xii–xxxiv; and Oakley, *Watershed*, 44–9. At the close of this chapter, I take issue with the characterization of Ockham as a dualist.

<sup>8</sup> Garnett, 34.

<sup>9</sup> Garnett, 30.

<sup>10</sup> McGrade, *Political Thought*, 27. Ockham subscribed to the commonly held view that a pope who falls into heresy is *ipso facto* deprived of his office, despite continuing to masquerade as pope, knowingly or otherwise. [John Kilcullen, trans., *Brev.*, 138n13; Tierney, *Infallibility*, 57–67]

<sup>11</sup> Kilcullen, *Brev.*, 169n27. Ockham supported the standard principle that one must believe a doctrine contrary to Catholic truth *pertinaciously* to be a heretic, but asserted, apparently without precedent, that a pope who errs on a pronouncement of faith is *already* pertinacious and thus a heretic. On this, see: John Kilcullen, "The Political Writings," in *The Cambridge Companion to Ockham*, ed. Paul Vincent Spade, Cambridge Companions to Philosophy (Cambridge: Cambridge University Press, 1999), 309–10; and Tierney, *Infallibility*, 215–6. For more on Ockham's theory of heresy, papal and otherwise, and his ideas about action against a heretical 'pope,' see especially: McGrade, *Political Thought*, 47–77; and Shogimen, *Ockham*, 75–155.

Part I of the colossal *Dialogus/A dialogue (between a master and a student)*, all completed by late 1334.<sup>12</sup> The *Opus* and *Dialogus* are examples of Ockham’s ‘detached’ works, in which he wrote as a theologian, *qua* theologian, laying out reasons for the truth behind a veil of objectivity. The *Epistola* is an example of his ‘assertive’ works, in which he wrote *qua* Christian, plainly bearing witness to the truth as he saw it.<sup>13</sup> Later in the ‘personal’ phase of Ockham’s polemical career, his focus shifted to debates provoked by John XXII’s allegedly heretical sermons on the beatific vision, a matter of wider public concern than the debate over apostolic poverty, a distinctly *Franciscan* issue.<sup>14</sup> Important writings from this period include the *Tractatus contra Ioannem/Treatise against John (XXII)*, an ‘assertive’ work that Ockham began to compose in 1335, a year after the death of its target.<sup>15</sup>

The ‘institutional’ phase of Ockham’s polemical career began in 1337, with the completion of *Tractatus contra Benedictum/Treatise against Benedict (XII)*. In this ‘assertive’ work, Ockham directed his attention to the powers of the papal and imperial *offices* themselves, and away from a focus on the *persons* inhabiting those offices.<sup>16</sup> Some other writings from this period include two ‘detached’ works, Part III of *Dialogus* and *Octo quaestiones de potestate papae/Eight questions on the power of the pope*, and the ‘assertive’ *Breviloquium de principatu tyrannico/A short discourse on tyrannical government* — the focus of this chapter.<sup>17</sup> Seeking to demarcate the limits of true papal power, Ockham asserted that an extreme version of the claim to *plenitudo potestatis* was the ideological wellspring from which papal injustices, especially against the emperor, flowed.<sup>18</sup> Ockham defined the papal claim to ‘such’ fullness of power, the object of his literary assault in the *Breviloquium*, as the assertion that

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<sup>12</sup> Kilcullen, *Brev.*, 169n27; Shogimen, *Ockham*, 181; McGrade, *Letter*, xxxvi.

<sup>13</sup> McGrade, *Political Thought*, 64; Kilcullen, “Ockham and Infallibility,” 390. I follow McGrade in distinguishing between these two ‘genres’ of Ockham’s polemical writings. Whereas McGrade refers to ‘personal’ and ‘impersonal’ writings, however, I have opted to use the terms ‘assertive’ (Kilcullen’s word) and ‘detached.’

<sup>14</sup> Kilcullen, *Brev.*, 169n27. John’s successor, Benedict XII, condemned John’s assertion that the saints were not already in heaven, and would only look upon God directly (the beatific vision) after the resurrection of the body at the end of days. He did not, however, backstep on John’s teachings concerning poverty and property, hence why Ockham considered Benedict, too, to be a heretic. [Kilcullen, “Ockham and Infallibility,” 388]

<sup>15</sup> Kilcullen, *Brev.*, 169n27; Shogimen, *Ockham*, 5; Tierney, *Infallibility*, 216n1.

<sup>16</sup> McGrade, *Political Thought*, 27; Shogimen, *Ockham*, 5.

<sup>17</sup> Kilcullen, *Brev.*, 169n27; Shogimen, *Ockham*, 5; McGrade, *Letter*, xxxvi–xxxvii.

<sup>18</sup> McGrade, *Political Thought*, 20; Kilcullen, *Brev.*, 169n27. As we shall see, Ockham thought that there is a *modest* sense in which the pope wields fullness of power. [*Brev.* II.1; Arthur Stephen McGrade, ed., *A Short Discourse on the Tyrannical Government Over Things Divine and Human, but Especially Over the Empire and Those Subject to the Empire, Usurped by Some Who Are Called Highest Pontiffs*, trans. John Kilcullen, Cambridge Texts in the History of Political Thought (Cambridge: Cambridge University Press, 1992; repr. 2001), xx.]

the pope has fullness of power from Christ in such a way that in matters both temporal and spiritual he can do by right all things not against natural or divine law — to this extent, that although he would sin mortally in actually commanding or doing some of these things..., he would [nonetheless] have to be obeyed of necessity for salvation.<sup>19</sup>

Those who attributed to the pope ‘such’ fullness of power insisted that he must be obeyed in anything not wrong in itself, notwithstanding the demands of human law or custom.<sup>20</sup>

The English-language scholarship concerning Ockham *qua* polemicist, like that regarding Marsilius of Padua, is characterized by great contention. Some scholars like Michael Wilks and Brian Tierney, pointing especially to Ockham’s ecclesiology, present him as nothing less than a destructive anarchist.<sup>21</sup> Indeed, Ockham’s understanding of Christian doctrine was cognitive, meaning that he cared only about the *independent* truth of propositions, not the *authority* that pronounces them.<sup>22</sup> He considered it a very real (if distant) possibility that nearly all clerics and lay Christians could become heretics, leaving behind as few as a single true Christian, even a lowly woman or baptized infant.<sup>23</sup> The only thing preventing that last Christian from also falling into heresy is Christ’s promise in Matthew 28:20 to be with his flock until the end of the age.<sup>24</sup> Given Ockham’s striking insistence that each and every church institution might fall into heresy, Tierney argues that Ockham left Christians with no means to attain certainty regarding true doctrine: “From this point onward our search for objective criteria of faith in his work leads only to a morass of total subjectivity.”<sup>25</sup>

Other scholars, however, are inclined to view Ockham in a more constructive light. For example, interpreters like Arthur Stephen McGrade and John Kilcullen present him, above all, as a dualist thinker in the constitutionalist tradition.<sup>26</sup> They argue that Ockham placed limits on the

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<sup>19</sup> *Brev.* II.1.

<sup>20</sup> *Brev.* II.2.

<sup>21</sup> See: Wilks, *passim*; and Tierney, *Infallibility*, 205–37.

<sup>22</sup> Shogimen, *Ockham*, 193. On his cognitive view, see: Shogimen, *Ockham*, 36–155; McGrade, *Political Thought*, 47–77; and Coleman, 186–7. Ockham proposed three sources of Christian truth: Scripture, apostolic tradition, and post-apostolic revelation. [Tierney, *Infallibility*, 220] For an alternative but less convincing view, that Ockham anticipated the Protestant notion of *sola scriptura*, see: Falkeid, 87–9.

<sup>23</sup> *Epistola*; Tierney, *Infallibility*, 230; Canning, *Ideas of Power*, 131.

<sup>24</sup> Marsilius, by contrast, cited this promise as evidence that the Holy Spirit guides properly convoked general councils, making them infallible. Recall section 4.3 of chapter II of this thesis.

<sup>25</sup> Tierney, *Infallibility*, 228. A number of scholars have disputed this and other claims that Tierney advances regarding Ockham’s ecclesiology. See: Kilcullen, “Ockham and Infallibility”; Shogimen, *Ockham*, 75–155; and Falkeid, 89. In my opinion, however, none of these scholars has successfully refuted Tierney’s rather convincing conclusions.

<sup>26</sup> See: the writings of McGrade cited above at 73n7, and Kilcullen, “The Political Writings.”

power of governments by prescribing the regular separation and mutual non-interference of secular and spiritual authorities. Others like Janet Coleman, Francis Oakley, Unn Falkeid, and even Tierney himself, in a later book, emphasize Ockham's capacity as a theorist and defender of individual rights and liberties.<sup>27</sup> Against such scholars, however, James Blythe dismisses the importance for Ockham of individual rights and liberties, suggesting that his only real concern was expediency.<sup>28</sup> Finally, some scholars like Joseph Canning and Takashi Shogimen consider it best not to view Ockham as a *political* thinker at all.<sup>29</sup> For example, Canning argues that Ockham considered the best human life to be one of Christian poverty outside the world of politics and law, and in that sense "was a non-political or even an anti-political writer."<sup>30</sup>

There is at least some truth to all the above interpretations, in part because Ockham's polemical strategies shifted over time, even as his principal targets — the popes — remained the same. As I have discussed, the 'personal' polemics of his early career were meant to demonstrate that *particular* popes were heretics and, as such, not true popes at all. By contrast, Ockham's polemics after 1337 were 'institutional,' concerned with defining the boundaries of the imperial and especially papal *offices*. The focus of the present chapter is Ockham's institutional side, because it treats his 'theory of tyranny' in the *Breviloquium*. My goal is to shed light on his refutation of the papal claim to 'such' *plenitudo potestatis*, the ideological source, he thought, of injustices committed by popes of his day. I argue that, according to Ockham, the *essential* feature of tyranny is that the ruler infringes the rights or liberties of his subjects, whereas it is only an *accidental* feature of tyranny that the ruler neglects common utility for the sake of private gain. Therefore, although no tyrant in fact rules for the common good, if a tyrant were somehow to begin doing otherwise, he would nonetheless remain a tyrant as long as he continued to infringe the rights or liberties of his subjects, because a ruler governs tyrannically only insofar as he does so.<sup>31</sup> Because Ockham accused contemporary popes of tyranny, it follows that he considered their

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<sup>27</sup> See: Coleman, 169–98; Oakley, *Watershed*, 44–9, 196–9, 222–4; Falkeid, 75–94; Tierney, *Rights*, 13–42, 93–203, especially 170–94.

<sup>28</sup> James M. Blythe, *Ideal Government and the Mixed Constitution in the Middle Ages*, Princeton Legacy Library (Princeton: Princeton University Press, 1992), 165–70, 180–3.

<sup>29</sup> See especially: Canning, *Ideas of Power*, 107–32; and Shogimen, *Ockham*.

<sup>30</sup> Canning, *Ideas of Power*, 118–9. For a fuller historiography, see: Shogimen, *Ockham*, 1–35.

<sup>31</sup> Likewise, it is an accidental feature of giraffes that they are not purple, since a giraffe that were somehow to turn purple would still *be* a giraffe. On the other hand, we might say that it is an essential feature of giraffes that they have long necks, because it is partly *insofar as* this is true that they are giraffes. The distinction between essential and accidental features might appear too subtle to matter when applied to Ockham's theory of tyranny, but I think that Ockham himself would have disagreed fervently. Indeed, one of his main nicknames was 'the More than Subtle Doctor.' [McGrade, *Short Discourse*, xv]

definitive crime to be that they infringed the rights or liberties of their subjects — including secular princes, over whom they asserted temporal and spiritual authority. In fact, Ockham thought that popes infringed *both* rights and liberties. They also harmed common utility by advancing bloated claims to authority, but this was accidental to their *being* tyrants.

In what follows, I first examine how Ockham conceived individual rights and liberties. Then, I develop the central claim of this chapter by demonstrating that, according to Ockham, the essential feature of tyranny is that the ruler infringes the rights or liberties of his subjects, whereas the accidental feature is that the ruler neglects common utility for the sake of private gain. Next, I apply these findings to Ockham’s denunciation of papal tyranny in particular, against which he provided his ‘witness testimony’ in the form of the *Breviloquium*. I conclude by examining Ockham’s positive conception of the papal role. Although Ockham was a fierce critic of contemporary popes, he was, unlike Marsilius, ultimately trying to *save* the pope as divinely instituted head of Christianity — a distinction that must not be forgotten.<sup>32</sup>

## **(2) Ockham on Individual Rights and Liberties**

### *(2.1) Rights*

Classical Roman lawyers conceived right (*ius*) in an objective sense, as ‘that which is right,’ and this understanding reigned unchallenged through most of the middle ages. William of Ockham was an important early articulator of ‘subjective right,’ or right conceived as a power (*potestas*) of the individual that can often be renounced or transferred to another party.<sup>33</sup> In the 1970s, Michael Villey, being unable to discern the notion of subjective right in the works of earlier scholastics like Thomas Aquinas, proposed that Ockham was led by his nominalist sensibilities to invent it. Nominalism is the position that only individuals like ‘Peter’ and ‘this rock,’ as opposed to universals like ‘man’ and ‘rock,’ really exist, and that humans come to understand the world by constructing propositions about present and existing individuals.<sup>34</sup> Villey’s proposal has since been disproved by Brian Tierney, however, who discerns the origins of the notion of subjective

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<sup>32</sup> Falkeid, 82.

<sup>33</sup> Canning, *Ideas of Power*, 121–2; Shogimen, *Ockham*, 30.

<sup>34</sup> Shogimen, *Ockham*, 30; Monahan, 240; Coleman, 172.

right in the works of twelfth-century canonists, who were by no means nominalists.<sup>35</sup> Nevertheless, Tierney admits that Ockham was central to the early development of the concept, arguing that one “could make a good case for regarding the *Breviloquium* as the first essentially rights-based treatise on political theory.”<sup>36</sup>

For Ockham, subjective rights can be divine, deriving from pronouncements of God, natural, deriving from the state of nature or from the demands of reason, and positive, deriving from human ordinances.<sup>37</sup> In what follows, I focus on natural and divine rights. These are closely connected, according to Ockham, because many rights that humans derive from nature have also been mandated by God directly, and divine law can be extended to include all natural law.<sup>38</sup> Although Ockham held that positive rights also impose limits on the authority of rulers, he was mostly concerned with divine and natural rights because they stem from authorities that he considered especially unimpeachable.<sup>39</sup>

Ockham distinguished between three types of natural law: (1) immutable natural law, (2) natural law from the state of nature before the Fall, and (3) natural law on supposition.<sup>40</sup> The first type is “in conformity with natural reason that in no case fails,” and includes commands like ‘Do not commit adultery’ and ‘Do not lie.’<sup>41</sup> The second type of natural law derives from “the state of nature as originally established” before the Fall, and would be absolutely binding if all people were to return to that sinless condition, renouncing their wickedness and living only as natural reason and divine law prescribe.<sup>42</sup> For example, Ockham held that all things existed in common between Adam and Eve before the Fall. There was no appropriation and division of property because ownership was *irrational*, and so Adam or Eve would have transgressed natural law if either one had claimed ownership over anything.<sup>43</sup> On account of the lingering effects of Original Sin, however, it is impossible for any — let alone all — people actually to return to that natural

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<sup>35</sup> Shogimen, *Ockham*, 31. See: Tierney, *Rights*, 13–42. As Janet Coleman points out, even Marsilius had a “subjective meaning for *ius* as a voluntary act, power or habit in conformity with objective law.” [Coleman, 179]

<sup>36</sup> Tierney, *Rights*, 185.

<sup>37</sup> Tierney, *Rights*, 182.

<sup>38</sup> III *Dial.* II.3.6.

<sup>39</sup> *Brev.* Prologue; Coleman, 175–6.

<sup>40</sup> Tierney, *Rights*, 177–80; Coleman, 182–4.

<sup>41</sup> III *Dial.* II.3.6.

<sup>42</sup> III *Dial.* II.3.6.

<sup>43</sup> III *Dial.* II.3.6; Coleman, 183; Falkeid, 85. This was the standard ‘Michaelist’ argument, whereas John XXII had argued that Adam was the sole *owner* of the world before the creation of Eve. [Tierney, *Rights*, 154]

condition, even though certain groups like the Franciscans can approximate it.<sup>44</sup> Because the postlapsarian state of humanity will last until Final Judgment, certain things like ownership are presently in conformity with natural law — being reasonable *here* and *now* — that were not so before the Fall.<sup>45</sup> This is where the third type of natural law comes into play. Natural law on supposition is “gathered by evident reasoning from the law of nations or another [law] or from some act, divine or human, unless the contrary is enacted with the consent of those concerned.”<sup>46</sup> Put differently, it is a *conditional* natural law deriving, in the words of Brian Tierney, from “rational responses to contingent situations.” *Supposing* ‘x’ is true, certain things are reasonable that might not remain reasonable if ‘x’ ceases to be true, that is, if circumstances change.<sup>47</sup> Notice, too, that Ockham specified that what is contrary to natural law on supposition can be enacted “with the consent of those concerned.” Thus, his argument shifts from natural law (*ius*) to natural right (*ius*). While someone cannot waive a natural law, he can often renounce or transfer a *right* that he holds in accordance with that law.<sup>48</sup> For example, it is within the right of someone who loans out money to forgive the debt, even though evident reason concludes that the money should be repaid.<sup>49</sup>

The most significant alienable rights that Ockham identified were the rights to own property and to establish coercive rulers. These rights derive from natural law on supposition, having arisen as rational responses to a contingent situation, namely, the existence of human wickedness in a world corrupted by Original Sin.<sup>50</sup> Echoing St. Augustine (d.430), Ockham insisted that it became necessary, after the Fall, “to restrain the immoderate appetite of the wicked” by dividing goods previously held in common and by setting up governments to punish evildoers, such as those who steal or damage the property of others.<sup>51</sup> The rights to own property and to establish coercive rulers, like all suppositional rights, are both natural *and* divine, because God gifted humans the power to manage “earthly things that right reason pronounces to be necessary, expedient, fit, or useful, not only for living but also for living well.”<sup>52</sup> Ockham stressed that this

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<sup>44</sup> *Brev.* III.7.

<sup>45</sup> Coleman, 183; Falkeid, 84; Canning, *Ideas of Power*, 119.

<sup>46</sup> III *Dial.* II.3.6.

<sup>47</sup> Tierney, *Rights*, 179.

<sup>48</sup> Tierney, *Rights*, 180–1.

<sup>49</sup> Tierney, *Rights*, 179.

<sup>50</sup> Tierney, *Rights*, 173; Coleman, 183.

<sup>51</sup> *Brev.* III.7 (quotation); Tierney, *Rights*, 173; Canning, *Ideas of Power*, 122.

<sup>52</sup> *Brev.* III.7. Ockham cited Ecclesiasticus 17:5: “Wisdom and tongue and eyes, ears and a heart he gave them for thinking.”

grant was *direct* and that these rights — and all other natural rights — are enjoyed by *all* humans, even unbelievers. This precludes any notion that God conferred them through the pope as vicarial mediator.<sup>53</sup> Since the rights in question are alienable, however, they can usually be renounced or transferred to another party, and individuals might sometimes be deprived of them on account of some crime, or for another sufficient reason like urgent necessity.<sup>54</sup>

Some other rights on supposition that Ockham identified were rights of inheritance, succession, and taking action in court, all of which derive from the rights to own property and to set up coercive rulers.<sup>55</sup> *Supposing* that humans enjoy the right to own property, for instance, reason demands that people be able to bequeath it to their children or others when they die. By far the most important ‘derivative’ right that Ockham identified, however, was the right to elect a ruler or head, whether secular or ecclesiastical, belonging to all rational individuals over whom he will govern or preside:

For *supposing* that someone is to be set over certain persons as prelate, ruler, or rector, it is inferred by evident reason that, unless the contrary is decided on by the person or persons concerned, those whom he is to be over have the right to elect the one to be set over them, so that no one should be given to them against their will.<sup>56</sup>

Crucially, it follows from this principle that neither the pope nor anyone else may institute or confirm temporal rulers unless having been granted this power by the ruled.<sup>57</sup> In particular, Ockham was defending the legitimacy and sufficiency of Ludwig the Bavarian’s imperial election of 1314, an election that lacked papal approval.<sup>58</sup> Although Ockham located original electoral power in the people, he did not consider the people to be sovereign, as Marsilius had maintained. In Ockham’s vision, as we shall see, the political role of the people effectively ends after the initial election of a temporal ruler, as long as that ruler does not govern tyrannically. Through such election, after all, the people alienate to the ruler their right to choose future rulers or to appoint electors, as well as the authority to make laws.<sup>59</sup>

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<sup>53</sup> *Brev.* III.8, IV.10; Tierney, *Rights*, 172–3; Coleman, 183.

<sup>54</sup> *Brev.* III.8.

<sup>55</sup> *Brev.* II.5 (inheritance); *Brev.* IV.1, IV.8 (succession); *Brev.* III.15 (taking action in court).

<sup>56</sup> III *Dial.* II.3.6 (quotation); Tierney, *Rights*, 181–2; Coleman, 181. To support his claim, Ockham cited the well-known juristic principle that ‘what touches all ought to be approved by all’ (*quod omnes tangit ab omnibus approbari debet*). [III *Dial.* II.3.6]

<sup>57</sup> *Brev.* VI.2.

<sup>58</sup> McGrade, *Political Thought*, 22.

<sup>59</sup> *Brev.* VI.2; III *Dial.* II.3.6; Tierney, *Rights*, 181–2.

Rights are alienable in most cases, but Ockham identified at least one inalienable natural right: the right to self-preservation. It derives from the second type of natural law discussed above, relating to the state of nature in which humans, comprising Adam and Eve, could freely use and manage all temporal things as they wished. This right, too, is both natural *and* divine because it proceeds also from a divine grant to Adam and Eve and their posterity.<sup>60</sup> Although humankind no longer exists in its natural state, the right to use all things freely has not vanished, but lies dormant behind the power to appropriate property.<sup>61</sup> It rises from its slumber, however, when one's survival is threatened, trumping alienable rights and thus making it licit, for instance, "to use a thing against the will of its owner."<sup>62</sup> Yet it can also *reinforce* alienable rights by virtue of its own inalienability. In situations of extreme necessity, for example, property rights cannot be given up or taken away, having become entwined with the right to self-preservation.<sup>63</sup>

## (2.2) *Liberties*

In the *Breviloquium*, William of Ockham referred jointly to "rights and liberties" at least seven times.<sup>64</sup> Ockham clearly considered these two concepts to be inherently connected, and to complement each other. Indeed, the reader is sometimes tempted to think that Ockham conflated the two terms, but he did in fact distinguish them. In the words of Brian Tierney, the "temporal *iura* can best be understood as interests; the *libertates* related to areas of free moral choice."<sup>65</sup> Whereas one comes to know his divine and natural rights by reading Scripture and by reasoning deductively from contingent premises, one understands *intuitively* that he enjoys fundamental liberty, because he simply experiences that his will is unrestrained by the dictates of reason and by external forces.<sup>66</sup> This inalienable liberty of will is the ultimate basis for alienable political freedom, to be enjoyed by Christians and non-Christians alike.

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<sup>60</sup> *Brev.* III.7. Genesis 1:28–9: "And God said to them [Adam and Eve], "Be fruitful and multiply and fill the earth and subdue it, and have dominion over the fish of the sea and over the birds of the heavens and over every living thing that moves on the earth." And God said, "Behold, I have given you every plant yielding seed that is on the face of all the earth, and every tree with seed in its fruit. You shall have them for food...."

<sup>61</sup> *Brev.* III.7.

<sup>62</sup> *Brev.* II.24.

<sup>63</sup> *Brev.* III.8; Kilcullen, *Brev.*, 91n38; Coleman, 184; Tierney, *Rights*, 194; Falkeid, 76.

<sup>64</sup> *Brev.* Prologue; II.18; II.20; IV.1; V.1; V.2.

<sup>65</sup> Tierney, *Rights*, 190.

<sup>66</sup> Coleman, 189–90; Falkeid, 86. Ockham was a 'voluntarist' because he held that the will is contingent, needing not to abide by the dictates of the intellect.

Ockham's own starting point for developing his ideas about human liberty, however, was Scripture. He maintained that the gospel law is a "law of perfect freedom" (James 1:25) because it imposes fewer burdens than the law of Moses.<sup>67</sup> Ockham conceived gospel liberty as follows:

For this is the liberty of the gospel law, that nothing, especially nothing heavy, that is supererogatory, or not required by natural law or explicit divine law, can be imposed by virtue of the gospel law upon its observers against their will without some fault of theirs, except in a case of urgent necessity and clear utility.<sup>68</sup>

In particular, Ockham was targeting the papal claim to be able to impose, by virtue of *plenitudo potestatis*, supererogatory spiritual burdens on Christians, or burdens like fasts and celibacy that are not necessary for salvation, but only for spiritual perfection.<sup>69</sup> Similarly, Ockham denied temporal rulers, to whom he assigned the limited role of punishing the wicked to preserve peace, the authority to impose such unnecessary burdens or analogous political ones.<sup>70</sup>

Ockham conceived political liberty as largely negative and moral: he was concerned with placing *limits* on ruling authorities in order to preserve an environment in which humans can live out their moral lives without interference, as morally and spiritually autonomous beings.<sup>71</sup> Such freedom makes a virtuous life possible, Ockham thought, because it gives humans the ability to *choose* to conform themselves to right reason and to the will of God.<sup>72</sup> Ockham's negative conception of liberty is not, however, the same as the one Isaiah Berlin defined as freedom from constraints, because Ockham considered liberty *logically antecedent* to official power.<sup>73</sup> Human beings have always been fundamentally free, enjoying liberty of will, but they have not always been subject to governmental authorities.

In the above quotation from the *Breviloquium*, Ockham asserted that one's gospel liberty is inviolable *unless* he has committed a severe fault or there is a case of "urgent necessity" or "clear utility." A perceptive reader might remember that these are the same circumstances in which, according to Ockham, one may licitly be deprived of his rights. While it is easy to understand why someone who commits a crime might be deprived of certain rights and liberties

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<sup>67</sup> *Brev.* II.3.

<sup>68</sup> *Brev.* II.17.

<sup>69</sup> *Brev.* II.17; McGrade, *Political Thought*, 146.

<sup>70</sup> Oakley, *Watershed*, 197; McGrade, *Political Thought*, 218.

<sup>71</sup> Shogimen, *Ockham*, 234, 256.

<sup>72</sup> Shogimen, *Ockham*, 247, 249; Falkeid, 76; Coleman, 190; Tierney, *Rights*, 189. Cf. Dante's positive conception of liberty (recall p.37 above).

<sup>73</sup> Shogimen, *Ockham*, 249.

as punishment, or for public safety, the second exception might appear to subvert the limits that Ockham sought to impose on official power. In the words of Joseph Canning, however, urgent necessity or utility was the “stock exception” to practically every constraint on governmental authority in the middle ages.<sup>74</sup> By the late thirteenth century, it had become well-established that ‘necessity has no law,’ and thus that rulers could act unrestrained by the law and by the liberties of their subjects in times of emergency, in order to secure the general welfare.<sup>75</sup> Ockham attached the necessity exception to every principle of his institutional thought, no matter how sacred.<sup>76</sup> He was a philosopher of *contingency*, after all, and thus considered no political values to be impervious to the necessities of concrete circumstance.<sup>77</sup> And it is not the case that Ockham subverted his theory of tyranny, at least in his own mind, by accepting that necessity has no law. Ockham conceived necessity as he understood Catholic truth: cognitively. That is, he cared about the *independent* truth of statements and not about the *authority* pronouncing them.<sup>78</sup> Thus the pope, for example, cannot simply infringe his subjects’ rights and liberties as he pleases, on the pretence of necessity, because whether there is *actually* sufficient necessity is independently true or false. All Christians, no matter how lowly, can judge for themselves whether this condition is met, and they must resist the pope as a tyrant if they determine it to be absent, just as they must oppose him if they find him to be a heretic.<sup>79</sup> Even if they judge wrongly, it is the responsibility of the *pope* to clear his own name, and those resisting perceived papal tyranny are not obligated to return to obedience until he has done so.<sup>80</sup>

Although Ockham’s espousal of the necessity exception did not meaningfully undermine his devotion to individual liberty, one should not suppose that he advocated *total* freedom. For example, he never claimed that gospel liberty prevents believers from living in servitude, only that the gospel *itself* imposes no heavy yoke: “it makes no one the slave of another, and in respect of the outward worship of God it does not impose on Christians as great a burden” as weighs upon

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<sup>74</sup> Canning, *Ideas of Power*, 129 (quotation); McGrade, *Political Thought*, 164.

<sup>75</sup> Wilks, 133; Shogimen, *Ockham*, 182. Cf. John of Paris (recall p.36 above).

<sup>76</sup> An important example is that Ockham held that the Christian faithful can temporarily transform the papal monarchy, despite its divine institution, into an aristocracy if necessity demands as much. [III *Dial.* 1.2.20–30] James Blythe goes too far, however, when he argues that Ockham’s *only* concern was expediency. [Blythe, 170]

<sup>77</sup> Recall 81n66 above. See also: Blythe, 165, 169; Oakley, *Watershed*, 46, 49; and Coleman, 172.

<sup>78</sup> Recall p.75 above.

<sup>79</sup> McGrade, *Political Thought*, 145–6. If an arrangement of the pope is “just and useful others are bound to obey; but if it is unjust and useless [and thus tyrannical] they are obliged to resist him.” [Ockham, *An princeps* 6.219–31, quoted in Kilcullen, *Brev.*, 63n96]

<sup>80</sup> Kilcullen, “Political Writings,” 310–1.

Jews.<sup>81</sup> Compared to the law of Moses with all its ritual prescriptions, the gospel law is indeed a “law of perfect freedom,” but it is not a law of *most perfect* freedom because such is unavailable in this life. Indeed, coercive government itself is antithetical to total liberty, and yet is necessary in the postlapsarian state of humanity.<sup>82</sup>

### (2.3) *Who enjoys rights and liberties?*

Because Ockham believed that only individuals really exist, he insisted that these alone, and not corporate entities like governments, can enjoy rights and liberties.<sup>83</sup> Therefore, he conceived governments as being composed of one or more *individuals* who enjoy special rights and liberties of lordship.<sup>84</sup> Usually princes gain power hereditarily or by decision of a small number of electors, but sometimes, if a prince is the first ruler of a new polity or if other arrangements for succession have broken down, it is the prerogative of the ruled themselves to bestow authority on a new prince.<sup>85</sup> Yet because, according to Ockham, individuals must not be deprived of their rights or liberties without some sufficient reason or fault, the ruled cannot, if that condition is absent, withdraw from licitly-acquired lordship.<sup>86</sup> A community of individuals may will a regime *into* existence, but it cannot will it *out of* existence arbitrarily. Moreover, Ockham did not think continued popular participation in government necessary for a regime to be legitimate; an absolutist regime is licit as long as the ruler avoids infringing the rights or liberties of his subjects.<sup>87</sup> By restricting the authority and political role of the people, Ockham certainly distinguished himself from Marsilius of Padua. Although Marsilius never advocated arbitrary removal of princes, he insisted nonetheless that the body of the people *can*, in its omnipotence, institute and remove governments at will. Furthermore, he made continued popular consent the definitive criterion of legitimate rule, and displayed a clear preference for direct popular participation in lawmaking.<sup>88</sup> Arthur Stephen McGrade suggests that “Ockham lacked a doctrine of continuing participation in politics because of the primarily negative functions he assigned to

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<sup>81</sup> *Brev.* II.4 (quotation); McGrade, *Political Thought*, 143–4; Tierney, *Rights*, 188.

<sup>82</sup> McGrade, *Political Thought*, 148.

<sup>83</sup> Recall p.77 above, on his nominalism.

<sup>84</sup> Coleman, 180.

<sup>85</sup> *Brev.* VI.2.

<sup>86</sup> *Brev.* IV.13. Recall p.80 above.

<sup>87</sup> Shogimen, *Ockham*, 256; Oakley, *Watershed*, 197; Tierney, *Rights*, 183; Coleman, 181.

<sup>88</sup> *DP* I.9.5. On these Marsilian themes, see: sections 3.4–5 of chapter II of this thesis.

government.”<sup>89</sup> This is a reasonable explanation. Although Marsilius agreed with Ockham that the main princely function is a negative one, punishing criminals, he differed from Ockham by attributing to the prince extensive positive authority in temporal and spiritual matters, as befits a deputy of the faithful human legislator.

Writing in his particular polemical context, Ockham was most concerned with defending the rights and liberties of secular *rulers* from papal incursions. He was also a devoted advocate, however, of the rights and liberties he thought all people enjoy. Hence, he asserted that rulers must govern their subjects “truly and legitimately and render to each his right.”<sup>90</sup> In maintaining that rights and liberties of subjects set limits on official power, not the reverse, Ockham seems to have been original.<sup>91</sup> Although he admitted that rulers might infringe licitly the rights or liberties of their subjects in cases of urgent necessity or utility, it is ultimately those *subjects* who decide whether this condition is present, as we have seen. In any case, rights and liberties granted by God and nature are themselves beneficial in all but the most extreme circumstances, so common utility normally *requires* that rulers honour them.<sup>92</sup> Rulers must also respect rights and liberties that derive from human law and custom, assuming these are consistent with divine and natural law.<sup>93</sup>

### **(3) Ockham’s Theory of Tyranny: Essential and Accidental Features**

#### *(3.1) Essential feature*

Despite the importance that Ockham assigned common utility, expressed by his espousal of the necessity exception, he believed that it is *only* insofar as a tyrant infringes the rights or liberties of his subjects that he rules tyrannically. Such infringement is the essential feature of tyranny. By contrast, Ockham considered it only an accidental feature of tyranny that the ruler governs for private utility at the expense of the common good.

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<sup>89</sup> McGrade, *Political Thought*, 127.

<sup>90</sup> *Brev.* IV.10.

<sup>91</sup> Shogimen, *Ockham*, 249; Coleman, 170; Falkeid, 86–7, 92; Tierney, *Rights*, 187–8, 192–3; Kilcullen, *Brev.*, 68n108; McGrade, *Political Thought*, 121–2; Oakley, *Watershed*, 197.

<sup>92</sup> Tierney, *Rights*, 190; Coleman, 185; Monahan, 250.

<sup>93</sup> Kilcullen, “Political Writings,” 312; Canning, *Ideas of Power*, 129; Falkeid, 83; Isabel Iribarren, “Ockham and the Avignon Papacy: The Controversy with John XXII, Benedict XII and Clement VI,” in *A Companion to Responses to Ockham*, ed. Christian Rode, Brill’s Companions to the Christian Tradition, vol. 65 (Leiden: Brill, 2015), 350.

The most substantial evidence against my interpretation of Ockham's theory of tyranny is found in a section of Part III of *Dialogus* in which the Master, at the Student's request, gives an exposition of certain key Aristotelian concepts.<sup>94</sup> One of these is Aristotle's conception of tyranny, that the Master defines as follows:

Every government is either ordered chiefly to the common good or benefit (i.e. the good of the ruler or rulers and also of the subjects) or not ordered to the common good. If it is ordered to the common good the regime is tempered and right; if it is not ordered to the common good the regime is defective and perverted [and thus]... tyrannical.<sup>95</sup>

This quotation shows plainly that Aristotle considered it to be the *essential* feature of tyranny that a regime exists for the private good of the ruler or rulers, not for the common good. Whether Ockham *agreed* with Aristotle, however, is a very different question. My assessment is that Ockham diverged from him on this issue.

First, the reader must keep in mind the stated purpose of the exposition of Aristotle: to “explain, in brief summary, who should rule others and how, according to Aristotle's intentions in the *Politics* and *Ethics* (as some understand him).”<sup>96</sup> Ockham sought to clarify the meanings of standard Aristotelian terms, ones that were “unknown to specialist jurists and others who have not studied moral philosophy.”<sup>97</sup> Therefore, the purpose of the Master's exposition of Aristotle was simply *educational*: Ockham wanted to ensure that his readers would grasp the Aristotelian language that he employed. As the above quotation suggests, many of the intended readers of Ockham's polemical works were jurists, including the ‘lawyer-popes’ at Avignon, for whom he had little respect because he considered them unlearned in the disciplines that he found valuable, like moral philosophy and theology.<sup>98</sup>

Second, it does not follow necessarily from Ockham's employing Aristotelian language that he agreed with Aristotle on all points. At the very least, he might have disagreed with the interpretation of Aristotle's *Politics* that was standard in his day, and that informed the Master's exposition. Ockham provided some not-so-subtle hints that this was the case. As we have seen, for example, the Student specifies that he wants the Master to elucidate the intentions of Aristotle “as *some* understand him [my emphasis].” Even more suggestive is the Master's own warning

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<sup>94</sup> Particularly, III *Dial.* I.2.3–8.

<sup>95</sup> III *Dial.* I.2.6. Cf. Aristotle, *Politics*, 1279a25–30.

<sup>96</sup> III *Dial.* I.2.3. These are the Student's words.

<sup>97</sup> III *Dial.* I.2.3. Again, the Student's words.

<sup>98</sup> Falkeid, 82–3; Coleman, 169; Shogimen, *Ockham*, 63.

about interpretive disagreement: “I will report to you Aristotle’s meaning in this matter according to the opinion of some (with whom, however, not everyone agrees at all points).”<sup>99</sup>

Third, nowhere does Ockham’s Master mention individual rights in his exposition of Aristotle. This is unsurprising, of course, because Aristotle himself did not have a theory of subjective rights. But Ockham *did*, placing great emphasis on them in his considerations of tyranny. At the very least, he must have deemed Aristotle’s theory of tyranny to be *incomplete*. The Master does reference liberty in his exposition of Aristotle, but presents a conception of it that differs greatly from the one Ockham offered in the *Breviloquium*. Namely, the Master proclaims that a king “can use subjects and their property however he pleases for the common good[,] but cannot use them however he pleases for his own good, and they are *therefore* not his slaves [my emphasis] but enjoy natural liberty.”<sup>100</sup> Whereas Ockham conceived individual freedom as setting limits on official power, the Master outlines a conception that supposes subjects to be free *insofar as* the ruler works for the common good. This positive idea of liberty contrasts sharply with Ockham’s own negative conception.

Finally, and most decisively, the Master’s description of what he claims Aristotle deemed the best constitution, monarchy unbound by human laws, bears an uncanny resemblance to papal monarchy in which popes enjoy ‘such’ *plenitudo potestatis*, of which Ockham was obviously no proponent: “[Someone rules] according to his will and not according to law if he reigns for the common good of all and is not bound by any purely positive human laws or customs but is above all such laws, though he is bound by the natural laws.”<sup>101</sup> Likewise, advocates of ‘such’ papal fullness of power claimed that popes could act unrestrained by human ordinances, having to be obeyed in everything not against natural or divine law, or, specifically, everything not wrong in itself.<sup>102</sup> What is more, Ockham explicitly *denied* kings such extreme authority in *Breviloquium*, drawing from that conclusion that popes do not wield fullness of power because prelates must, by Christ’s command, exercise less authority over their subjects than secular rulers do.<sup>103</sup>

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<sup>99</sup> III *Dial.* I.2.3.

<sup>100</sup> III *Dial.* I.2.6.

<sup>101</sup> III *Dial.* I.2.6.

<sup>102</sup> Recall pp.74–5 above. The conception of natural law underlying the claim to ‘such’ *plenitudo potestatis* is narrower than Ockham’s threefold division (p.78 above), being limited to the dictates of immutable natural law, such as ‘Do not lie.’

<sup>103</sup> *Brev.* II.6.

In light of the evidence that has been discussed, it is *exceedingly* unlikely that Ockham, at the time of writing this section of the *Dialogus*, agreed with Aristotle that the essential feature of tyranny is that a regime exists for the private good of the ruler, to the detriment of the common good. Yet even if he did agree, or was on the fence, it is certain that he had changed his mind by the time he composed the *Breviloquium*. To my knowledge, this departure from Aristotle has not caught the attention of other scholars of Ockham's polemics, who tend to assume that Ockham concurred with Aristotle as explicated by the Master in Part III of *Dialogus*.<sup>104</sup>

The most substantial evidence for my interpretation of Ockham's theory of tyranny is found in Book IV of *Breviloquium*. It contains a section that considers how, if the Roman Empire began tyrannically when Octavian seized power in 14 BC (about which Ockham was uncertain), it might have become licit in the brief chronological window before the time of Christ and the apostles, when it was certainly legitimate, as Scripture testifies plainly.<sup>105</sup> Agreeing with Augustine and Pope Leo I (r.440–61), Ockham maintained that a regime that begins tyrannically “can never be made true and legitimate by its subsequent goodness and utility, just as one who uses stolen property well, for example by giving alms, does not thereby become its true lord.”<sup>106</sup> It follows from this statement that, if the Empire began tyrannically but later became legitimate, this transformation could *not* have been generated by the regime's shifting its focus from private to common utility. The common good would certainly have benefited from this change to legitimacy, but only as an *effect*. Therefore, it is not an essential feature of Ockham's conception of tyranny that the ruler works for private utility, thereby neglecting or actively harming general welfare. If that were the only essential feature, as Aristotle held, then a regime would simply have to shift its focus from private to common utility in order to cease being tyrannical, but Ockham denied this explicitly by agreeing with Augustine and Leo. If it were one of several essential features of tyranny, then such a shift in focus would at least have *contributed* to the regime's achieving legitimacy, but Ockham provided no positive indication of this, and the available evidence suggests the contrary.

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<sup>104</sup> For example: McGrade, *Political Thought*, 159; and Shogimen, *Ockham*, 177.

<sup>105</sup> The section in question is *Brev. IV.9–11*. “For Christ and his apostles showed explicitly in words and deeds that they regarded unbelieving emperors as true emperors, though they did not approve of all they did. ... [Thus] Christ, although he blamed Pilate for treating him unjustly (“He who gave me up to you has the greater sin,” John 19:11), *yet did not rebuke him for any usurped jurisdiction* [my emphasis].” [*Brev. IV.10*]

<sup>106</sup> *Brev. IV.9*. Ockham cited this view to support a conclusion that he went on to refute, that the Roman Empire could never have become licit if it began tyrannically. Nonetheless, he confirmed in the following chapter that “the argument advanced from Augustine and Pope Leo in *c. Principatus* is sound.” [*Brev. IV.11*]

Ockham outlined three possibilities for how the Empire, if it indeed began tyrannically, might have become legitimate: (1) through the subsequent consent of the ruled, in accordance with their natural and divine right to set a ruler over themselves;<sup>107</sup> (2) through a just war, incited by a crime committed against the Romans by which the governed forfeited alienable rights and liberties;<sup>108</sup> or (3) through God's direct bestowal of the right to rule on the emperor.<sup>109</sup> All three of these possibilities have to do not with considerations of utility, but rather with the emperors' acquiring *rights* to authority that they had previously usurped and held illegitimately. The first and second options also highlight the centrality of subjects' rights and liberties. Thus, Book IV of *Breviloquium* offers strong evidence that only considerations of rights and liberties, not utility considerations, are essentially important to Ockham's conception of tyranny.

My interpretation of Ockham's theory of tyranny finds further support throughout his polemical corpus. Ockham indicated time and time again that acts of a ruler that infringe the rights or liberties of his subjects do not oblige them, but can licitly be resisted, if there is no urgent necessity. For example, Ockham declared in the *Octo Quaestiones* that "if blessed Peter had ordered anything, either generally or in particular, contrary to the rights and freedoms of the faithful, outside a situation of necessity and of a usefulness that could be equated with necessity, such an order would have obliged no one."<sup>110</sup> A second example appears in *Breviloquium*:

[As] was said before, the rights and liberties of others granted to them by God and nature are excepted from the pope's power, so that he cannot oppress the just and innocent against their will with heavy and burdensome ordinances, statutes, laws, or precepts going beyond the things that must be done of necessity, to which they are obliged by divine and natural law. *If he tried to do so he would be putting his sickle into another's crop and will be proved guilty of doing things that do not belong to his office, and his acts will therefore be null by the law itself* [my emphasis].<sup>111</sup>

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<sup>107</sup> "For from God and nature all mortals born free and not subject to anyone else by human law have the power voluntarily to set a ruler over themselves...; and thus all peoples could have subjected themselves voluntarily to the Romans and established one true Roman Empire." [Brev. IV.10]

<sup>108</sup> "Another way of establishing a true empire could have been through a just war. It could have been just either because others made war on the Romans, or because they refused to do things which they could justly be compelled to do — that is, were unwilling to return things they had taken, or committed injustices or other crimes which could rightly be punished and for which, once captured and subdued in just war, they could rightly be made the slaves of those capturing and subduing them." [Brev. IV.10]

<sup>109</sup> Brev. IV.10. This third way is the least likely option, according to Ockham, because one would expect to find mention of it in Scripture.

<sup>110</sup> OQ III.4.

<sup>111</sup> Brev. V.2.

A ruler is a tyrant when he exceeds the limits of his authority; he should not be obeyed in acts that draw on power not belonging to his office. At a certain point, moreover, such overstepping constitutes a sufficient reason for the ruler not to be obeyed *at all*, because individuals can be deprived of rights (in this case, rights of lordship) on account of crimes. Ockham defined the limits of official power only in terms of rights and liberties, as I have shown. After all, if it were an essential feature of tyranny that the ruler governs for private instead of common utility, one would expect Ockham to have added that a ruler should not be obeyed when acting against the common good. No such addition is to be found. Instead, one finds affirmations that a ruler can harm the common utility while holding true authority, and, as such, while meriting obedience, just as Nero ruled with a cruelty *befitting* a tyrant while nonetheless wielding *licit* authority.<sup>112</sup>

### (3.2) *Accidental feature*

We have seen that Ockham considered it almost always the case that the common utility requires rulers to honour the rights and liberties of their subjects.<sup>113</sup> It follows necessarily that, should a ruler infringe those rights or liberties *tyrannically* — an act unaccompanied, by definition, by overwhelming necessity or utility — the common good will *always* suffer. But it is only insofar as the ruler infringes rights or liberties, not insofar as he lets the common good suffer, that he rules tyrannically. A ruler's betrayal of the common good is only an accidental feature of tyranny.

This conclusion is confirmed by Ockham's statement in the *Octo Quaestiones* that the best regime exists “for the sake of the common good of the subjects, not for the ruler's own good. For by this the best regime... differs, not only from a regime that is illicit, vitiated, and unjust, but also from... all other regimes, even licit ones, not directed to the common good.”<sup>114</sup> Therefore, an illicit or tyrannical regime involves a ruler neglecting or harming the common good, but this connection is only accidental. After all, some *licit* regimes, too, might not be directed to the common good, such as the Roman Empire under Nero, and thus it is not *insofar as* a ruler neglects or harms the common good that he rules tyrannically.

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<sup>112</sup> *Brev.* IV.10.

<sup>113</sup> Recall p.85 above.

<sup>114</sup> *OQ* III.4.

#### (4) William of Ockham: Witness Against Papal Tyranny

The *Breviloquium* is William of Ockham's witness testimony against what he saw as papal tyranny. In the words of Unn Falkeid, the Avignon popes "surrounded themselves with canon lawyers; they brought actions against those who criticized the papacy, issuing charges of heresy and constantly producing new decretals. Ockham had been the one prosecuted for many years, but now it was his turn to bear witness against the pope."<sup>115</sup> Ockham's self-perception as witness against papal tyranny is seen best in the opening lines of the *Breviloquium*:

I grieve and lament over the iniquities and injustices that have most wickedly been brought upon you all, to the whole world's cost, by him who boasts that he sits in Peter's chair [i.e., Benedict XII] and by some who preceded him in tyranny and wickedness. The anguish I feel is the greater because you do not take the trouble to inquire with careful attention how much such tyranny wickedly usurped over you is contrary to God's honor, dangerous to the Catholic faith, and opposed to the rights and liberties given to you by God and nature...[.] I will in this short work try to attack with a free voice the errors of those who, not content with their own rights, do not fear, trusting in temporal power and favor, to reach out for others' rights, divine as well as human.<sup>116</sup>

Ockham's ultimate goal, like that of Marsilius, was to provoke real action by which a curb would "be placed upon the wickedness of those supreme pontiffs who have tried to rule like tyrants."<sup>117</sup> But who were the judges before whom Ockham was testifying? Who would take much-needed action? In the final analysis, the judges were each and every individual Christian, everyone from ecclesiastical and secular lords to lowly peasants.<sup>118</sup> Someone, *anyone*, had to act:

[Such] judgement concerning the pope should pertain first to some certain persons of the clergy; if they fail, whether through wickedness or through reprehensible negligence or through lack of power, this pertains to the supreme ruler [the emperor], if he is a sincere and fervent follower of the faith and the Christian religion. And if he fails..., the deposition of the pope (or at least his detention or prohibition from becoming insolent with impunity) pertains either to the whole congregation of the faithful or *to any faithful persons whatever able to have enough temporal power over him, so that a suitable remedy can be found* [my emphasis][.]<sup>119</sup>

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<sup>115</sup> Falkeid, 82, 75 (quotation from 82); Kilcullen, "Political Writings," 311.

<sup>116</sup> *Brev.* Prologue.

<sup>117</sup> *Brev.* II.1.

<sup>118</sup> Kilcullen, *Brev.*, 169n27; Iribarren, 348.

<sup>119</sup> *OQ* III.12.

As contingent circumstances had it, Ockham was a defender of the emperor as well as a critic of popes of his day, but his starting point, like that of Marsilius, was always the papacy.<sup>120</sup>

#### (4.1) *Fullness of power and papal tyranny*

The central charge that Ockham levelled against contemporary popes in the *Breviloquium* was that they infringed the rights and liberties of their subjects, including secular rulers, because, as this chapter has shown, he considered such infringement to be the essential feature of tyranny. He also deemed the popes blameworthy for pursuing private utility at the expense of the general welfare, as all tyrants do, but this feature was accidental to their *being* tyrants. Both the essential and accidental features of papal tyranny had roots, according to Ockham, in the papal claim to ‘such’ fullness of power. As we have seen, he defined this as the assertion that popes must be obeyed in all things not wrong in themselves, irrespective of human law or custom, because they enjoy supreme authority on earth in both spiritual and temporal matters.<sup>121</sup> It is not the concern of the rest of this chapter to examine Ockham’s refutation of ‘such’ *plenitudo potestatis* in all its vastness and subtlety. In any case, however, such an analysis would be mostly superfluous, since the principal argument that Ockham employed against the doctrine was precisely *that* it ascribed tyrannical power to popes.

Ockham lamented the terrible consequences of papal tyranny, such as those stemming from papal interference into the affairs of legitimate secular rulers. If the pope enjoyed ‘such’ fullness of power, after all, he could “by right despoil all kings and rulers of their kingdoms and lordships and confer them on his relatives or any other low persons he pleased, or keep them for himself; this could easily give rise to schisms, dissensions, and wars.”<sup>122</sup> Like Marsilius and Dante before him, Ockham saw the civil strife affecting Italy as a dark omen of what might be in store for the entire world if something would not be done to curb papal pretensions.<sup>123</sup>

It is my impression, however, that Ockham was alarmed less by the consequences of papal tyranny than by a conviction that tyrannical popes transgressed Christ’s *intentions* for the papal

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<sup>120</sup> Oakley, *Watershed*, 46; Falkeid, 81.

<sup>121</sup> *Brev.* II.3.

<sup>122</sup> *Brev.* II.3.

<sup>123</sup> *Brev.* II.19. Recall p.40 above.

office. Ockham insisted that Christ, whose example the pope must follow, “did not come to take away the temporal rights of others.”<sup>124</sup> A pope enjoying ‘such’ fullness of power, however, could infringe alienable rights of Christians as he wished. He could freely manage the temporal possessions of believers, for example, thereby infringing their rights of ownership. He could also depose secular princes at will, disregarding the right of the ruled to institute their own rulers.<sup>125</sup> Moreover, Ockham affirmed the traditional view that Christ intended the gospel law to be a law of liberty, but, without evident precedent, used it to undercut the claim to *plenitudo potestatis*.<sup>126</sup> If the pope enjoyed ‘such’ fullness of power, after all, he could impose supererogatory spiritual burdens on Christians, thus making them his slaves “in the strictest sense of the term.”<sup>127</sup>

The practical consequences of papal tyranny may, for Ockham, have been less significant than its offending Christ’s intentions for the papal office, but another aspect of these intentions is precisely *that* popes must rule for the common good of the faithful. If Christ had given Peter and his successors ‘such’ fullness of power, however, then “provision would have been made chiefly, not for the sheep [i.e., the faithful], but for Peter himself and for his honor.” How would it benefit Christians to be ruled by a pope who could infringe their rights without sufficient reason, and who could encumber them with burdens that would reduce them essentially to slavery?<sup>128</sup>

##### **(5) Conclusion: Legitimate Fullness of Power?**

Ockham, like Marsilius of Padua, was exceedingly hostile to the popes of his day, and criticized extreme papal claims to authority, but unlike Marsilius he sought to *save* the pope as the divinely instituted head of Christianity. His institutional polemics were designed to correct the errors proceeding from what he considered a perverted conception of papal power, to demarcate the limits of legitimate papal rule as envisioned by Christ.<sup>129</sup>

Although Ockham affirmed, against Marsilius, that there is a coercive dimension to the papal office, stipulating that it is necessary for all rulers to direct their subjects by commands and

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<sup>124</sup> *Brev.* IV.8.

<sup>125</sup> *Brev.* V.2.

<sup>126</sup> Shogimen, *Ockham*, 171; Iribarren, 351; McGrade, *Political Thought*, 141n179. Recall p.82 above.

<sup>127</sup> *Brev.* II.3.

<sup>128</sup> *Brev.* II.5.

<sup>129</sup> Falkeid, 82; Canning, *Ideas of Power*, 128; Coleman, 177.

prohibitions, he emphasized the *pastoral* aspect of papal headship.<sup>130</sup> Someone inhabiting the chair of Peter should, Ockham maintained, rule as a loving father of Christians and husband of the church. He cannot wield fullness of power, therefore, because a father does not enjoy such authority over his sons, nor does a husband over his wife, “because she is not a maidservant, and in many things is... entitled to equality.”<sup>131</sup> Ockham also conceived papal rule as distinctly *spiritual*. Reflecting his own Franciscan sensibilities, Ockham concurred with the Cistercian St. Bernard of Clairvaux (d.1153) that “the pope's power does not extend to possessions and possessors; gold and silver do not belong to him by apostolic right.”<sup>132</sup> Ockham did not mean that the pope is obliged to practice apostolic poverty, as Marsilius had insisted, but that he should not exert authority over the persons and goods of Christians, things falling under the rightful jurisdiction of secular rulers. Rather, he enjoys a more dignified authority over Christian *souls*. The pope even possesses a sort of fullness of power in spiritual matters, albeit one subject to substantial qualification and thus far-removed from the claims of papal absolutists.<sup>133</sup> Namely, according to Ockham, the pope should command Christians as is necessary for eternal salvation, but he must honour the rights and liberties of his subjects outside cases of the most extreme salvific necessity.<sup>134</sup>

Because necessity has no law, the pope might, however, *occasionally* exercise licit power in the temporal sphere, when all lay safeguards have failed on account of inability or neglect. The reverse is also true: secular rulers like the emperor may exert authority in spiritual affairs in cases of extreme necessity. Again, Ockham was painfully aware of the contingent nature of human existence, and understood the importance of accounting for exceptional cases in which even the most hallowed political values become temporarily detrimental.<sup>135</sup> Most scholars refer to Ockham's position on the relationship between the spiritual and temporal spheres as a form of dualism.<sup>136</sup> Joseph Canning and Unn Falkeid, however, take issue with that characterization.<sup>137</sup> They point out that dualists like John of Paris and Dante tasked secular governments with inculcating virtue in their subjects, thereby guiding their subjects to happiness. Thus, John and

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<sup>130</sup> *OQ* III.4.

<sup>131</sup> *Brev.* II.6.

<sup>132</sup> *Brev.* II.12.

<sup>133</sup> McGrade, *Short Discourse.*, xx–xxi.

<sup>134</sup> Kilcullen, “Political Writings,” 313; *Brev.* II.10.

<sup>135</sup> Oakley, *Watershed*, 49; Shogimen, *Ockham*, 235–6. Also, recall p.83 above.

<sup>136</sup> For example: McGrade, *Letter*, xii–xxxiv; McGrade, *Political Thought*, 78–9; Oakley, *Watershed*, 46–9; Coleman, 178; Tierney, *Rights*, 191; and Kilcullen, “Political Writings,” 313.

<sup>137</sup> Falkeid, 91; Canning, *Ideas of Power*, 124.

Dante offered *positive* conceptions of the function of secular power, just as they conceived the role of the pope, guardian of heavenly beatitude, positively.<sup>138</sup> Ockham, by contrast, joined Marsilius and St. Augustine in conceiving the function of secular power negatively, as consisting mainly in restraining evildoers in order to preserve peace, and not in making subjects virtuous. Indeed, Ockham went even further in this direction than Marsilius, who assigned the prince, as deputy of the faithful human legislator, extensive positive authority in temporal and spiritual matters too.

I am inclined to agree with Canning and Falkeid that it is misleading to characterize Ockham as a dualist. Unlike the dualists, Marsilius, and the ‘papalist’ or ‘hierocratic’ defenders of papal *plenitudo potestatis*, such as Hostiensis, Augustine of Ancona, and contemporary popes themselves, Ockham did not glorify ruling authorities, either secular or ecclesiastical. Papalists did so by locating the ultimate source of earthly authority in the vicar of Christ, the pope, who alone can lead the church to salvation. Marsilius did so by transferring supreme temporal and spiritual authority to the faithful human legislator, sovereign guardian of human happiness in this life and the next. The dualists, disapproving of the ‘monisms’ of the papalists and (later) of Marsilius, divided this guardianship between the temporal and spiritual realms, presenting secular rulers as defenders of earthly happiness and the pope as steward of next-worldly beatitude. Ockham, by contrast, sought not to glorify ruling authorities but to *legitimate* them.<sup>139</sup> He placed limits on official power that would, if honoured, permit individuals to live as free moral agents exercising their rights undisturbed, yet not in atomistic isolation from one another.<sup>140</sup> Canning and Takashi Shogimen perhaps go too far by suggesting that Ockham was a non- or even anti-political thinker, but Shogimen is persuasive when he argues that Ockham wanted to preserve individual autonomy *despite* politics.<sup>141</sup> The friar sought to determine how humans might be good people and Christians despite the reality of authoritative coercion, a regrettable necessity in the postlapsarian state of humanity.<sup>142</sup>

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<sup>138</sup> Canning, *Ideas of Power*, 50–1, 76–9; Falkeid, 10, 40, 44, 51, 91. John and Dante reflected the Aristotelian position (recall 48n45 above).

<sup>139</sup> Coleman, 177.

<sup>140</sup> Monahan, 180; Tierney, *Rights*, 189. For other discussions about how Ockham, despite his focus on the individual, by no means rejected human and Christian community, see especially: McGrade, *Political Thought*, 116–9; Shogimen, *Ockham, passim*.

<sup>141</sup> Recall p.76 above.

<sup>142</sup> Shogimen, *Ockham*, 262.

## Conclusion

Neither Marsilius of Padua nor William of Ockham succeeded in their polemical aims. Strife continued to ravage the *regnum Italicum* for centuries, perpetuated by politically-active popes, self-interested despots, opportunistic mercenaries, and expansionist foreign rulers. The silver lining, if there is one, is that this discord served as the backdrop of educational and cultural flourishing in the Italian Renaissance, spearheaded by humanists like Lovato Lovati (d.1309) and Marsilius's friend Albertino Mussato (d.1329), two Paduans, and later by Francesco Petrarca (d.1374), known commonly as Petrarch.<sup>1</sup> Pope John XXII and his successors were never executed for treason or deposed for heretical beliefs concerning apostolic poverty, and continue to be remembered as true successors of St. Peter today.<sup>2</sup> Ludwig the Bavarian never achieved victory in his decades-long dispute with the popes of his time, but his successors to the German kingship and imperial dignity managed to avoid the troubles that had plagued him for so long: Ludwig had participated in the last great struggle between *imperium* and *sacerdotium*.<sup>3</sup> As for the doctrine of papal *plenitudo potestatis* that Marsilius and Ockham had laboured so hard to destroy, it lived on, even as the divide between ideal and concrete reality of papal authority continued to widen as the middle ages drew to a close.<sup>4</sup> This process was accelerated, no doubt, by the blows to papal prestige and power inflicted by the schisms of the late-fourteenth and fifteenth centuries, the infamous delinquency of certain Renaissance popes, and, finally, the Reformation of the early sixteenth century. The doctrine of papal *plenitudo potestatis*, however, having been seared into the European imagination, prepared the way for the development of new theories of royal sovereignty that would be put into practice by the well-known absolute monarchs of the seventeenth and eighteenth centuries.<sup>5</sup> Even in the twentieth century, the German jurist Carl Schmitt (d.1985), a brilliant thinker tainted, unfortunately, by his involvement with the Nazi regime, grounded his discussions about sovereignty in the old notion of *plenitudo potestatis*.<sup>6</sup>

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<sup>1</sup> On Petrarch's own foray into politics, namely his involvement in Cola di Rienzo's 1347 revolution at Rome by which he sought to restore the Roman Republic, see: Falkeid, 95–120.

<sup>2</sup> Kilcullen, introduction to *William of Ockham: The Work of Ninety Days*.

<sup>3</sup> H.S. Offler, "Empire and Papacy: The Last Struggle," in *CCFT*, 21–47.

<sup>4</sup> Black, *Political Thought in Europe*, 191.

<sup>5</sup> Schmidt, 314.

<sup>6</sup> Carl Schmitt, *Dictatorship: From the origin of the modern concept of sovereignty to proletarian class struggle*, trans. Michael Hoelzl & Graham Ward (Cambridge: Polity Press, 2014), 13.

Although Marsilius and Ockham failed in their polemical aims, the ideas they advanced in their refutations of papal *plenitudo potestatis* certainly echoed down the centuries. Marsilius, with his committed assertion of popular sovereignty, anticipated the democratic ideas of later centuries even as he was drawing on traditional communal ideology fostered in Italian city-states like Padua. Ockham, emphasizing individual rights and liberties, anticipated later liberal ideas even as he was expressing Franciscan poverty ideology. Acknowledging such parallels does not, in itself, amount to anachronism. In any case, it is not *because* these parallels exist that Marsilius and Ockham are valuable objects of study. Rather, Marsilius and Ockham deserve to be read because both men, encountering a doctrine of absolute and all-embracing papal sovereignty that they considered erroneous, destructive, and even heretical, developed creative strategies by which to dismantle it, and were willing to live and die by the principles they held dear.

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