

MEDIEVAL CONCEPTS OF LIMITED GOVERNMENT

Thesis for the Degree of M. A.
MICHIGAN STATE UNIVERSITY

Richard Franklin

1960



MEDIEVAL CONCEPTS OF LIMITED GOVERNMENT

By

Richard Franklin

AN ABSTRACT

Submitted to the College of Science and Arts of
Michigan State University in partial
fulfillment of the requirements
for the degree of

MASTER OF ARTS

Department of History

1960

Approved

Richard E. Lector

Richard Franklin

ABSTRACT

This thesis is a study into the nature of the medieval concept of authority. Evidence is adduced from the political writings of certain key figures in the church-state controversy, beginning in the eleventh century and culminating in the fourteenth, to indicate that the medieval concept of political authority was in no way absolute. These key figures have been selected because they represent important concepts as to the limited nature of medieval authority.

The first of these key figures is Pope Gregory VII who represents the attitude of the papacy and the medieval church toward secular authority. The doctrine of papal supremacy had never been stated so strongly and embodied so thoroughly by a pope as by Gregory VII. His strong personality is very evident in his correspondence with important church and lay officials. His far-reaching claims and the dominance of his personality implied and imposed severe limitations upon secular authority. Secular authority must fit into and take its proper place in the divine direction and ordering of the universe.

The second key figure is Thomas Aquinas who combined Aristotelian and Christian principles into a theory of law resulting in a grandiose scheme of a hierarchical universe. This universe is ordered by the Divine Reason and man as a rational creature participates in this divine ordering. The secular authority participates by harmonizing its decrees and actions with natural and divine law. This harmony is necessary for authority to be just and legitimate. Otherwise the ruler can be declared a tyrant

Abstract

Richard Franklin

and no longer legally entitled to rule. The medieval doctrine of higher law found its best expression in the writings of Thomas Aquinas and is significant in any study of the nature of the medieval concept of authority.

The third important figure to this study of the nature of medieval political authority is Marsilio of Padua. His significance for this thesis lies in his concept of the doctrine of the popular will, that is-- that the ruler is directly responsible to the conscious determination of the people's will. The people's will is the unchallenged possessor of supreme authority. Final authority does not rest in the pope or in some form of higher law, but is embodied in a positive human agency, the legislator or the people. The Marsilian doctrine of the popular will sharply separated the nature of ecclesiastical and secular authority placing the former under the jurisdiction of the latter.

These medieval concepts as presented by certain key political thinkers present insurmountable evidence that the nature of secular authority had severe limitations placed upon it, that secular authority was in no way absolute, and that it was characterized by certain moral qualities which made it just and respected.

MEDIEVAL CONCEPTS OF LIMITED GOVERNMENT

By

Richard Franklin

A THESIS

Submitted to the College of Science and Arts of
Michigan State University in partial
fulfillment of the requirements
for the degree of

MASTER OF ARTS

Department of History

1960

Approved Richard E. Sullivan

6/12/60
17 60

ACKNOWLEDGMENTS

The author is indebted to Dr. Richard Sullivan for his patience and helpful advice, and to the Michigan State Library for aid in securing materials.

TABLE OF CONTENTS

Chapter	Page
INTRODUCTION	1
I. THE DOCTRINE OF PAPAL SUPREMACY	14
II. THE DOCTRINE OF HIGHER LAW	31
III. THE DOCTRINE OF POPULAR WILL	55
CONCLUSION	86
BIBLIOGRAPHY	96

INTRODUCTION

One of the great problems of the medieval period was the relationship between the ecclesiastical and temporal authority. This issue produced a considerable body of political theory seeking to clarify the position of each. The purpose of this thesis is to examine some of the literature arising from the problem of church-state relationships to see what ideas were propounded concerning limitations upon secular authority.

It became obvious soon after investigations had been undertaken that the amount of literature concerning church-state relationships in the Middle Ages was so great that some basis of selection must be made. Certain key figures soon emerged as representative spokesmen for the most significant ideas developed in the Middle Ages relating to limitations on secular authority. This thesis will consist of an analysis of the writings of these figures. Pope Gregory VII, Thomas Aquinas, and Marsilio of Padua have been selected as the most important theorists discussing limitations on secular power. This thesis will not attempt to examine the entirety of their political thought, but will restrict itself to that which concerns the nature of limitations on government.

The ideas of each of these men did not develop de novo. Each was a product of certain developments in the actual state of relations between church and state. To make their ideas on limitations on political authority clear demands that a brief description of their background be undertaken.

The earliest and most formative statement of the distinction between church and state authority was made by St. Augustine in the City of God. Man is a citizen of two cities, the city of his birth, and

the City of God. The earthly city is founded on the natural appetitive impulses of human nature; the City of God is founded in the hope of heavenly peace and spiritual salvation. The first is the kingdom of Satan, the second the kingdom of Christ. History is the dramatic story of the struggle between these two societies and of the ultimate mastery which must fall to the City of God. Only in the heavenly kingdom is peace possible; only the spiritual kingdom is permanent. Like all Christians St. Augustine believed that "the powers that be are ordained of God," though he also believed that the use of force in government was made necessary by sin and was the divinely appointed remedy for sin. Accordingly he did not think of the two cities as visibly separate. Throughout all earthly life the two societies are mingled only to be separated at the last judgment.

St. Augustine's theory of the relation between secular and ecclesiastical authority was no more precise than that of other writers of his time and consequently, in the later controversies on the subject, his authority could be invoked by either side. He set forth the generalities of the relationship but did not elaborate on the particulars. But what he put beyond question for many centuries was the conception that the state must be a Christian state, serving a community which is one by virtue of a common Christian faith, ministering to a life in which spiritual interest stands above all other interests, and contributing to human salvation by preserving the purity of the faith.

There seemed to be little contribution and addition to political thought between the early formative period and the Investiture controversy beginning in the eleventh century. Perhaps the most significant contribution

was the two sword theory of Pope Gelasius I, which implied a dual organization and control of human society. These two authorities had distinguishable jurisdictions, the one over the spiritual, the other over the temporal. The distinction between the spiritual and temporal authority was an essential part of the Christian faith. The combination of spiritual and secular authority in the same hands was typically pagan. In a Christian society it was unlawful for the same man to be both priest and king. This double aspect of Christian society produced a unique problem which in the end contributed perhaps as much as any other to European political thought.

The relationship between the temporal and ecclesiastical authority took on new meaning in the Carolingian period. Christmas day, 800, when Pope Leo III crowned Charles the Great Holy Roman Emperor, was one of the most significant events of the medieval period. It was significant because this spontaneous action of the pope created the office of Emperor. There was no election by the people, although they gave their joyous cries of assent to the newly crowned Emperor.

The coronation enhanced the importance of the temporal office of the ruler. The new title given to the German king increased the significance of the monarchical element of authority. The imperial and kingly offices theoretically were united in the person of the great monarch. The coronation brought to the forefront the theocratic element of political authority. The theocratic origin of the imperial office is certain. Charles looked upon the Empire as a divine state. He had a high sense of his divine mission in the world, and acted as the Plenipotentiary of God who had to maintain earthly order in a Christian

sense. Thus, necessarily connected with the Christian theocratic idea, was the concept of a strong authority. Charles placed himself at the service of theocratic ideas in order to combine them with his quest for power.

The coronation not only increased the significance of the kingly office but provided a basis for papal claims of supremacy. There seemed to be evidence that Charles did not wish the crown from the pope because he foresaw that the latter might build on it a right to crown, and so deduce claims to supremacy. From this time the papacy began to claim right to give final sanction to emperors and kings. In the Christian world there had long prevailed the idea of a priesthood set over the laity, the idea of a hierarchical order and of the papal primacy--and these ideas demanded unity in the sense that the supreme head of society could not be a secular monarch but only the Bishop of Rome. It can readily be seen that these ideas contradicted the theocratic-imperial ideas of Charles the Great. Thus there were two different currents tending toward unity after the year 800, often working together, often against each other--the tendency toward priestly universal rule and the tendency toward theocratic-Christian imperial power.

It was not until the eleventh century that the problem between the secular and ecclesiastical authority became an acute one. The church had developed into a well organized hierarchy, the pope being the most commanding figure. However, the church faced a grave danger. In the ninth and tenth centuries there was a process of decentralization of authority by which power passed out of the hands of the monarch into the hands of private landholders. The church began to accumulate land and

many church officials became landholders, and, as such, had certain feudal as well as clerical obligations. The church became entangled in the feudal system and the business of secular government. Ecclesiastical offices were based on political and monetary considerations rather than spiritual qualifications. Often ecclesiastical preferment was given in return for political services. The ecclesiastical and temporal authorities were gradually being intermingled in the feudal system.

The more conscientious clergymen became alarmed at the growing evils, and felt most keenly the menace to the spiritual office. There was a growing demand for reform within the church. The progress of reform necessarily contained possibilities of conflict between the ecclesiastical and temporal authorities, because of the deep entanglement in one another's affairs. Reform meant that the ecclesiastical authority must extricate itself from feudal entanglements and establish the church as a self-governing community, with ecclesiastical policy and administration in the hands of ecclesiastics. It was the reformation within the church that brought the relationship between the ecclesiastical and temporal authority to a crisis.

The crisis resulted in the spelling out of the relationship between temporal and ecclesiastical authority. The theoretical concepts were brought into the arena of a real living historical situation and tested as to their validity. It was the personal embodiment of these concepts in the lives of certain people which focused attention on the problem. Those political thinkers who were loyal to a cause or a person began to defend their position and to particularize the generalizations made by St. Augustine and the church fathers. The papacy sought the

realization of claims which had been made for centuries, but which had been somewhat static until the present controversy. The legitimacy of temporal authority had never been challenged to such a degree; consequently, there was no well developed basis for secular authority. The church had centuries of tradition with the claims of sacred and respected men in her favor. The imperialist position at the outset was on the defensive which proved to be a great disadvantage in the controversy.

From the eleventh to the fourteenth century there was a tremendous volume of political writings which was concerned with the controversy between the temporal and the ecclesiastical authority. In these writings is found the main literary source for the fruition of old political ideas and the inauguration of new ones. One noted author on the subject says that in the course of the controversy "controversialist on the one side or the other managed to touch on the most fundamental questions of the origin, the nature, the extent and the sanction of all forms of authority both spiritual and secular, and in some cases to anticipate theories of state we think of as only 'modern'."¹

The controversy was divided chronologically into several distinct struggles each with its own cause of friction, and between these periods of controversial activity were periods of relative tranquility. During these intervals the chief purpose of political writings was not to refute a particular position or to attack the opposition, but rather to survey in a calmer spirit social and political relations and to find a basis on which they could rest. Between the middle of the twelfth and the end of the thirteenth century was found such an interval when for a little time political works were more systematic than disputational.

¹ Charles Howard McIlwain, The Growth of Political Thought in the West From the Greeks to the End of the Middle Ages (London: The MacMillan Co., 1932), p. 203.

However, the period preceding and following this time of tranquility was characterized by conflict and controversy. In the eleventh century one of the most dramatic struggles of the medieval period was between Pope Gregory VII and the Holy Roman Emperor, Henry IV. The outbreak of the struggle occurred as a result of the Lenten synod of 1075 which prohibited lay investiture for the first time. Henry IV disregarded the action taken by the Lenten synod and continued to invest German bishops with their office. He filled the archbishopric of Milan, the most important see for the control of northern Italy, with a bishop of his own choice. This resulted in an ultimatum from the pope on December 8, 1075, threatening Henry with excommunication and deposition unless he submitted to the Apostolic See. Henry summoned a council of German bishops on January 24, 1076, at Worms where he retaliated by excommunicating "Brother Hildebrand." Gregory answered at the Lenten synod of 1076 in which he excommunicated and deposed Henry IV and released all those in Germany who had sworn oaths of allegiance to the king. The climax took place at Canossa where Henry appeared as a repentant son seeking absolution for his disobedience to his overlord, the pope.

The various arguments supporting papal claims to plenitude of power are contained in the correspondence of Gregory VII. The Registrum of Gregory's letters was the first nearly complete collection of the correspondence of a pope since that of Gregory I, nearly five centuries earlier. The Registrum was composed of nine books, of which the first seven were in strict chronological order, one book for each of the first seven years of Gregory's papacy. This carried the collection down to the year 1080-1081. The eighth book begins with the same chronological

system, but then shows many instances of disarrangement, letters often being placed before those of earlier date. In the ninth book covering the period from the spring of 1081 to the end of 1083, there is no pretense of strict sequence of time.

The text that will be examined in the first chapter of this thesis will be a selection of some of the letters of Gregory's correspondence translated by Ephraim Emerton. These letters are considered by him to be the most important of Gregory's correspondence. Encouched in many of these letters are succinct statements of the papal position in relation to royal authority. It is the purpose of the thesis to examine these statements and claims and their resultant effects on royal authority. These letters lack any systematic and philosophical arguments. The appeal is always to authority. The Scriptures, the Fathers of the Church, the decrees of popes and councils, the edict of emperors in so far as they favor the rights of the church, all are used to support the claim to power which is the primary object of Gregory's program.

In the interval of calm, between the middle of the twelfth and the end of the thirteenth century, there appeared one of the most monumental works of the medieval period, the Summa Theologica of Thomas Aquinas. The uniqueness of this work lies in its broad scope. The author's ability to weave the endless threads of thought and life into an organic unity, making these diverse interests not merely compatible but interdependent, and forming them into a hierarchy which leads every particular back to the whole, was perhaps his greatest contribution to philosophical thought. Another unique feature of St. Thomas' work was the provision made in his thought for the assimilation of new ideas and

adjustments to new situations. He maintained his thought on the metaphysical, and therefore eternal, plane, that his synthesis should not be a dated system, should not become static, final, and therefore bound to become obsolete. The great gift that Aquinas left to mankind was an ultimate synthesis, centered in God, and so elastic as to include future discovery and by so doing to unify all human knowledge, past, present, and future.

The significance of Aquinas in political thought rests primarily in his attempt to reconcile Greek political thought and Christian political thought. The result was a synthesis of reason and revelation with a strong emphasis on the rationality and goodness of man. His acceptance of Aristotle's principle of the social and political nature of man resulted in his rejection of the concept of political society as a conventional institution. This was a radical departure from the viewpoint of St. Augustine, for political society could be justified purely on a natural basis. The difference between St. Augustine's and St. Thomas' concept of the basis of political society was a result of their difference of viewpoint on the nature of man. St. Augustine saw man in his natural condition as devoid of goodness. The virtues of the Greeks were merely "splendid vices." Because of his condition man needed government to control his corrupt nature. St. Thomas pictures natural man as related to God through his reason and therefore capable of understanding and attaining virtue. The purpose of government is not primarily to restrain the evil impulses of man but rather to cultivate the life of virtue. Aquinas did not directly reject the patristic tradition, but rather sought to harmonize it with Aristotelian philosophy.

The significance of Aquinas for the purposes of this thesis is his embodiment of Christian political thought and Greek political thought in a theory of law. Aquinas' concept of law, beginning with God and emanating to His creatures and creation, is extremely important for the discussion on the nature and extent of authority in the Middle Ages. Aquinas demonstrated to a greater extent than any other medieval political theorist the moral responsibility of man under a universal system of law, and especially the responsibility of a secular ruler who participates actively and directly in the divine ordering of the universe. He was to function within the bounds prescribed by divine and natural law, otherwise his rule did not have the sanction of God and could legally be resisted. A ruler whose rule was not characterized by law was no ruler at all but rather a tyrant. The second chapter will be confined to a study concerning that aspect of St. Thomas' political ideas which relates to higher law with the purpose of demonstrating the limits that were placed on secular authority.

In the first half of the fourteenth century the struggle between the lay and ecclesiastical authorities was renewed with vigor. The struggle was between Lewis the Bavarian (1314-1347), and the popes of the church, namely Pope John XXII (1316-1334) and Clement VI (1342-1352). The occasion of this controversy was an attempt by Pope John XXII to intervene from Avignon in a disputed imperial election. The outcome was a repudiation of the papacy's effort to set itself up as an international arbitrator of disputed elections. In 1328 the imperial electors asserted in the Declaration of Rense that an election required no papal confirmation, thus embodying in constitutional law the independence which the emperors

since Henry IV had claimed. The Golden Bull, which in 1356 enacted a procedure for imperial elections, omitted all reference to confirmation by the pope, and Innocent VI had no alternative but to concede the point.

Out of this struggle came perhaps the most remarkable political treatise of the medieval period, the Defensor Pacis of Marsilio of Padua. It is remarkable because it contains a departure from medieval thinking in certain respects and also has a modern tone. Marsilio took the facts and principles of the medieval world and gave a new interpretation to them. The Defensor Pacis was addressed to Lewis the Bavarian, but was not written so much to defend the empire as to destroy the whole system of papal imperialism that had developed since Gregory VII. Marsilio's object was to define and limit the pretensions of the spiritual authority to control, either directly or indirectly, the action of secular government. His political concepts incidentally grew out of this main purpose.

One of these fundamental political concepts was the idea that the authority of the executive is derived from the legislative act of the whole body of citizens. It is therefore essential that this authority should be exercised in accordance with law and that its function and powers should be such as the people determine. In Marsilio the opposition to papal absolution took a new form: no longer an issue between spiritual and secular authority, but a question of absolute monarchy as against representative or constitutional monarchy. The problem was shifted to the relation between the sovereign and the corporate body which he ruled. Marsilio's discussion on this problem will be examined in the third chapter in order to demonstrate the limitations on secular authority.

The progress of the development of church-state relations, from

its early formative period to the crisis period beginning in the eleventh century and finally culminating in the fourteenth and fifteenth centuries, was gradually moving toward a separation of the two resulting in a strong secular state. In the formative period of Christian thought, church-state relations were not clearly defined although the distinction between the two was first made. The distinction in the jurisdiction of the temporal and secular authority became more pronounced in the Gelasian doctrine of the two sword theory. In the Carolingian period the importance of the secular office of the ruler was greatly enhanced by the addition of the new title of Emperor. The fact that the pope took the initiative in bestowing the title increased the claims of the papacy in respect to supremacy over secular authority. The right to approve of a ruler by the pope eventually became the right to also disapprove.

The crisis came in the relationship between the two powers in the eleventh century when the church sought to extricate itself from feudal entanglements and began to assert itself as never before in temporal affairs. Pope Gregory VII embodied all the papal claims of supremacy and sought their realization in the conflict with the Emperor, Henry IV. All the previous arguments for papal supremacy were re-emphasized but never had they been realized to such an extent. If the Emperor, Charles the Great, was the dominant figure in church-state relations in the ninth century, the situation was reversed in the eleventh and the pope became the dominant personality. In the latter part of the twelfth and the beginning of the thirteenth centuries the hierarchical claims of the papacy reached their fulfillment in the pontificate of Innocent III. But the most significant and extensive development of the hierarchical

idea was by Thomas Aquinas. Secular authority must fit into the order of the divine direction of the world. However, in Aquinas there is also a naturalism surrounding his political thinking which was acquired from Aristotle. The state could be justified purely on a rationalistic basis. This naturalism in Aquinas took an extreme form in Marsilio of Padua who separated sharply ecclesiastical and political authority. In the fourteenth century the imperialist cause began to revive upon the basis of a pure natural secular authority, and the influence of the church began to dwindle noticeably. The period between the eleventh and fourteenth centuries was one of great political ferment and from which there emerged highly significant political concepts. Not the least of these political concepts was the idea that political authority must in no way be arbitrary or absolute, but, rather, authority must be subject to careful delimitations.

.

CHAPTER I

In the eleventh century there were two great problems facing the Roman Catholic Church, one from without and one from within. The church was so involved in temporal matters that it was losing its religious uniqueness. Its intricate connection with the feudal system resulted in a loss of control over matters of discipline and standards in the church. In reaction to low standards and poor discipline, there grew up certain exclusive monastic orders with strict rules and regulations. The emphasis of monastic reform was upon ascetic living, self-mortification, and self-denial. The solution to the relationship of the spiritual to the temporal lay in complete exclusion from the temporal. These monastic groups sought to reclaim the simplicity, poverty, and personal religion of the early church. The Roman Catholic Church managed to absorb many of these orders, especially those that were a danger to its prestige, and thereby to control the critical elements within its own ranks. However, the absorption of the reforming orders into the church resulted in the penetration of the reforming spirit into the church hierarchy and in the imposition of reforming measures from above rather than from below. The papacy assumed leadership of the drive to revitalize the religious life of Western Europe. Papal leadership emphasized strong organization and strict adherence to dogma.

The papacy in the latter half of the eleventh century aimed at something higher than merely the removal of certain evils and abuses. It sought the realization of papal supremacy and the implementation of the hierocratic idea. Gregory VII was the personification of these ideas.

Ullmann states "rarely had an idea found such a protagonist who was at once its personal manifestation, effective expounder, and fearless executor."²

In formulating the rationale for papal supremacy and the hierocratic idea, Gregory VII set forth certain ideological concepts which placed definite limitations on secular authority. The concepts themselves were not new, but the terminology reflects the maturation of papal claims. Gregory's ability to set forth the papal position in concise pregnant terminology demonstrates this maturity. This chapter will consider the premises on which Gregory based his action rather than the acts themselves.

The Petrine doctrine is the fundamental basis of the whole papal structure. It may be summed up in three claims: first, that Peter was appointed by Christ to be his chief representative and successor and the head of his church; second, that Peter went to Rome and founded the bishopric there; third, that his successors succeeded to his prerogatives and to all authority implied thereby. It is beyond the scope of this thesis to examine the entire Petrine tradition. It is the third claim with which we are primarily concerned.

However, it does seem relevant to take note of the basis for the claim of Peter's special significance to the church hierarchy. Gregory, in a letter written to Henry IV admonishing him to show more deference to the Holy See, used two passages of scripture to substantiate the Petrine claims.³ The two passages are Matthew 16:18, 19 and John 21:15-17. In

²Walter Ullmann, The Growth of Papal Government in the Middle Ages (London: Methuen and Co., 1955), p. 272.

³The Correspondence of Pope Gregory VII, trans. Ephraim Emerton, Records of Civilization, Sources and Studies, Vol. XIV (New York: Columbia University Press, 1932), p. 87--hereafter cited as Correspondence.

the former passage Christ says to Peter, "Thou art Peter and upon this rock I will build my church." This text is made the basis for Peter's selection as head of the church, and supplies the strongest text in the arsenal of the Roman see. On the basis of Matthew, 16:19 the Church claimed that God had given Peter charge of ecclesiastical government. Peter is given the keys to the kingdom of heaven with the power to "bind" and to "loose." "And I will give to thee the keys of the kingdom of heaven and whatsoever thou shalt bind on earth shall be bound in heaven and whatsoever thou shalt loose on earth shall be loosed in heaven." The second passage, found in John 21:15-17, is known as the "pastoral charge." Christ says to Peter, "feed my sheep" and denotes Peter as pastor of the flock of Christ.

Peter's appointment placed him in a unique relationship to the church. He was the foundation and head of the church and, as such, deserved the reverence and allegiance of its members. As ruler and governor of the church he had the necessary power to execute its decrees and judgments. Finally, as pastor of the flock of Christ, he had the responsibility of the spiritual welfare of the members.

Gregory's claim for position was based on the Petrine commission. At the Roman Synod of 1076 he spoke of himself as the "constituted representative" or the Vicar of Peter.⁴ How real this was to Gregory was illustrated in a letter written to Henry IV in which he suggested that whatever Henry writes to the contemporary pope Peter himself receives, and "while we read what is written or hear the voice of those who speak,

⁴Correspondence, p. 91.

he discerns with subtle insight from what spirit the message comes."⁵

The pope rules by virtue of the Petrine commission. Through the instrumentality of Peter, God had given to the pope the unique power to bind and to loose on earth as well as in heaven. So Gregory states in his excommunication of Henry IV, "to me is given by thy grace the power of binding and loosing in heaven and upon earth."⁶ Those people who were entrusted to Peter's care by Christ are now under the spiritual jurisdiction of the pope. As Peter's representative the pope is entitled to demand of them unqualified obedience to his decrees. Gregory states in his bull excommunicating Henry IV, "I believe that it is and has been thy will, that the Christian people especially committed to thee should render obedience to me, thy especially constituted representative."⁷

Gregory claimed that he inherited the fullness of power bestowed by Christ upon St. Peter.. This claim to comprehensive universal power is revealed in a letter written to the king of Denmark, where Gregory states that he was "bound to care not only for kings and princes, but for all Christians as the universal government entrusted to us brings the interest of all men more specifically to us."⁸ Thus the universality of government cannot, logically enough, be limited to particular aspects or particular persons. It applies to all members of the Christian society.

⁵Correspondence, pp. 87, 88.

⁶Correspondence, p. 91.

⁷Correspondence, p. 91.

⁸Correspondence, p. 67.

Just as Peter had been set over the kingdoms of the world as Christ's vicar, so Gregory as Peter's vicar had inherited the same authority. He continues Petrine powers in all their fullness.

Gregory, as ruler of this universal ecclesiastical government, asserted his authority time and again over various kingdoms and rulers. In a letter to King Solomon of Hungary, Gregory claimed complete suzerainty over that kingdom, saying in effect that the kingdom was surrendered to St. Peter by King Stephen as the full property of the Roman Church and under its complete jurisdiction and control.⁹ He wrote to the rulers of Spain reminding them that the kingdoms of Spain "belong to St. Peter and the Holy Roman Church as handed down in ancient grants."¹⁰ He laid claim to temporal jurisdiction over the Island of Corsica and hastened to add that those who have held the island by force are guilty of the crime of sacrilege.¹¹ Gregory reached out to bring even the remotest places under his influence and control. For instance he sent legates into Russia bearing a letter to King Demetrius. The message contained the approval of Jarpolk, the king's son, as the new ruler of that territory.¹² By granting his approval of newly appointed rulers of distant territories, Gregory was able to extend the influence of the church in those areas. Such a procedure would set a precedent by which all future rulers would be subject to the approval of the pope, thus recognizing that ultimate

⁹Correspondence, p. 48.

¹⁰Correspondence, p. 124.

¹¹Correspondence, p. 126.

¹²Correspondence, p. 79.

authority resided in the supreme pontiff.

A claim was made by Gregory VII that the church was the final judicial authority with the pope as supreme judge. In a letter written to the bishop of Metz, he said, concerning the holy fathers, that "they have agreed as with one spirit and one voice that all major cases, all especially important affairs, and the judgment of all churches ought to be referred to her as their head and mother, that from her there shall be no appeal, that her judgments may not and cannot be reversed by anyone."¹³ Gregory believed that final judgment on all matters both temporal and spiritual resided in the supreme pontiff. He says, "to whom, then, the power of opening and closing heaven is given, shall he not be able to judge the earth? God forbid."¹⁴

This was not only jurisdiction over matters concerning the church, but jurisdiction over temporal affairs. "If the Holy Apostolic See, through the princely power divinely bestowed upon it, has jurisdiction over spiritual things, why not also over temporal things?"¹⁵ However, Gregory never considered himself as a temporal ruler, but as a spiritual father who was responsible for the spiritual well-being of the flock of Christ. His responsibility took on added significance in his relation to kings and rulers: "The greater the dignity and the higher the person, so much greater diligence and eloquence ought we to show in pointing out the right way to him."¹⁶

¹³Correspondence, p. 167.

¹⁴Correspondence, p. 168.

¹⁵Correspondence, p. 103.

¹⁶Correspondence, p. 32.

Gregory's claim of temporal jurisdiction was based on the principle of superiority and inferiority. The priestly office was superior to the royal office in two ways: superiority of origin and superiority of function. Kings and princes owe their origin to the devil. Had there not been sin, instigated by the devil, there would have been no need for a physical-material power to repress sinful conduct. Kings and princes raise themselves above their fellows by "pride, plunder, treachery, murder--in short, by every kind of crime."¹⁷ All good Christians are more properly to be called kings than are evil princes because the former "seeking the glory of God, rule themselves rigorously; but the latter seek to further their own interest and oppress others tyrannically. The former are the body of the true Christ; the latter the body of the devil."¹⁸

The sacred nature of the priestly function gives it a superiority over the function of the temporal ruler. By the mystery of ordination the priests are set apart from the people, so that through them may work the divine grace that alone brings salvation to men; the dignity of their service raises them far above ordinary humanity. Gregory pictures a Christian king upon his deathbed as a miserable suppliant asking the aid of the priest. Then he asks the question, "but who, laymen or priest, in his last moments has ever asked the help of an earthly king for the safety of his soul?"¹⁹ The priest alone is qualified to perform the sacred rites; he alone has the power to transform the bread and wine into the body and blood of the Lord; he alone is given the power to bind and

¹⁷Correspondence, p. 169.

¹⁸Correspondence, p. 172.

¹⁹Correspondence, p. 171.

loose in heaven and upon earth. "From this it is apparent how greatly superior in power is the priestly dignity."²⁰

Gregory went further than did his predecessors or his contemporaries in making a sharp distinction between the nature of priestly authority and that of secular authority. He made industrious use of the old argument in favor of priestly claims. Spiritual authority and secular authority were compared with soul and body, heaven and earth, gold and lead, sun and moon. By means of such comparisons the inferiority of the kingly office was postulated. Gregory drew a comparison between the exorcist, a minor order, and the emperor. The exorcist is a spiritual emperor, having power over demons and even more power over secular rulers, who are bound in wretched servitude to the demons and are their instruments. "If even the exorcist possess this superiority," writes Gregory, "how much more do the priest?"²¹

From the papal point of view, the king was to fulfill three functions: first, he was to protect the church; second, he was to execute divine law; third, the king was to be a standard of justice, filled with virtue, and a model of obedience. The primary responsibility of a king was the protection of the church. Gregory wrote a letter to King Haakon of Denmark exhorting him to imitate certain virtues, the first being the protection of the churches.²² The feudal oath, taken by a vassal of the church, always included first and foremost the safety of the church and its leaders. Robert Guiscard took a feudal oath to Gregory in which he

²⁰Correspondence, p. 171.

²¹Correspondence, p. 171.

²²Correspondence, p. 153.

made certain promises concerning the protection of the church. He promised to aid no plot or action against the person of the pope. He would render his aid in the protection of the revenues and properties of the church, and pay annually the tribute on "the lands of St. Peter" which came under his jurisdiction. Furthermore, he promised to support the clerical party in the event of the death of the present pope and the selection of a new one.²³ No doubt this was included in order to guard against the selection of a pope by temporal authorities. After such an oath taken by Robert Guiscard, Gregory summoned him to gather a force to enter Ravenna "to rescue the holy church from impious hands."²⁴ Finally, the pope promised absolution from all sin and "grace and blessedness in this world and the world to come" to those who were faithful in protecting the church.²⁵

A second function of the king was the suppression of evil, but what is and what is not evil must necessarily be left to those who are qualified to pronounce upon it, namely, the ordained members of the church. Divine law made known through the mouth of the Roman Catholic Church was to be executed by Christian rulers. The king received his sword from the church and was to use it for the defense and reform of the church. The temporal ruler, at the bidding of the pope, was to enforce papal decrees and commands within the church. His execution of human laws was left to his own volition, but was subject to the judgment of the pope..

The king was to be characterized by the qualities of justice,

²³Correspondence, p. 158.

²⁴Correspondence, p. 163.

²⁵Correspondence, p. 195.

virtue, and obedience. The first refers to his function as the executioner of law; the second, to his character; and the third, to his relation to the officials of the church. These points are best illustrated in a letter on September 10, 1074, by Gregory in condemnation of Philip I of France. The letter was occasioned by the policies of Philip I toward the pilgrims passing through France going to and returning from the shrines of the apostles. These pilgrims were captured, robbed, imprisoned, tortured, and held for ransom. He pictures the kingdom as having fallen into a state of ruin due to "neglect of law" and "contempt for justice." Philip I, "who is to be called a tyrant rather than a king . . . is the cause and fountainhead under the inspiration of the devil." The king has no respect for law and justice. "He who ought to be the guardian of law and justice, stands forth as the worst of plunderers"

Gregory indicates that Philip's kingly character leaves much to be desired. Gregory urges the clergy in France to warn the king to "amend his evil ways, abandon the practices of his youth and begin to restore the dignity and glory of the kingdom by adhering to righteousness." Instead of being a model of obedience, he has defied the orders of the pope and wasted the churches. Furthermore, his laxity of rule and the example of his aims and actions has encouraged crime among his subjects.²⁶

The indictment against Philip I demonstrated those qualities which were lacking, but which were expected to characterize a Christian king.

The church had recourse to three avenues of action against a king who failed to fulfill the kingly function and exhibit kingly virtues.

²⁶Correspondence, pp. 39, 40.

It could excommunicate him from the body of the faithful, deprive him of his right to rule, and release his subjects from their oaths of allegiance to him. Of these three courses of action, excommunication was the one most often used. There was no greater weapon in the arsenal of the Roman see against royal prerogative than excommunication.

Excommunication was purely ideological at its base, but wielded the same power as a whole force of military men. It revealed as nothing else the tremendous influence and control of the church over the minds of men in the Middle Ages. It demonstrated how closely church and society were knit together, in that exclusion from the fellowship of the church meant in effect the ostracism of the individual from society.

The sentence of excommunication was decreed by bishops, archbishops, and popes. Usually the discipline of kings and rulers was administered by the pope, but often effected through legates and bishops. It was essential that the pope have unanimity among the clergy against an excommunicated person. Gregory exhorts the clergy in France to take a strong stand against the tyrant, Philip I, and not to surrender the independence of their priestly office. They were to warn the king that unless he amended his ways he would not escape the "sword of apostolic discipline."²⁷ If the priests failed in their responsibility to wield this sword, they would also be placed under a curse. Gregory reiterates again and again that passage of scripture "cursed be the man who holds back the sword from blood," meaning that he is cursed who fails to warn the sinner of the error of his way, even if the one in error be a king.²⁸

²⁷Correspondence, p. 24.

²⁸Correspondence, p. 40.

This function of the priestly office was just as important as the administering of the sacraments. Though the methods were different the aim was the same--to turn the sinner from the error of his way and to restore him to the fellowship of the church.

Excommunication was the juristic and concrete social exclusion from the corporate body of the Christians. It had definite social implications. Intercourse with the excommunicated individual was prohibited: he was to all intents and purposes socially isolated. He was as a leper who had been removed from the main body of society because of infection with a contagious disease, and those who associated with such a person were in danger of being infected and sharing the same fate. Gregory lodged a grievance against Henry IV for continuing his associations with excommunicated persons, and warned Henry that he could not receive the "favor of God nor the apostolic blessing" unless he disassociated himself from such people.²⁹

Excommunication had its religious consequences. The excommunicated individual was excluded from the fellowship and communion of the church and was deprived of the sacraments. The great majority of medieval people believed that the sacraments were the means of obtaining the grace necessary to assure eternal salvation. When people were excommunicated the means of obtaining grace were no longer available. They were bound in the bonds of "anathema" and could only be released through proper penitence. The aim of such discipline was not exclusion but restoration. Gregory admonishes those in Germany to pour the "oil of kindness" into

²⁹Correspondence, p. 87.

the wounds of Henry IV so that he might quickly repent and render obedience to his "superior and his mistress," the mother church.³⁰

The distinction must be made in theory between excommunication and deposition of a king. The latter was a consequence of the former. The king's social isolation, without contact with his subjects, obviously left him in no position to govern or execute divine law. The ruler was affected to a far greater extent under the sentence of excommunication than was the private individual. The former suffered the loss of political position and authority as a result of social exclusion, whereas the latter incurred the normal implications of social isolation. Excommunication was the consequence of moral or religious disobedience and could be applied to any member of society, whereas deposition was the consequence of the ruler's disobedience to papal orders and his failure to execute divine law. The former concerned his relation to the church as one of its members who had disobeyed its moral and religious precepts. The latter related more particularly to his failure to perform the proper functions of the kingly office. Excommunication concerned Henry the Christian, deposition Henry the king.

Gregory justified his right to excommunicate Henry IV in an extremely important letter written to the bishop of Metz. The Christian king, as part of the flock of Christ committed to St. Peter, is no more excluded from the discipline of the church than is any member. Gregory seeks support for his argument from the testimony of the holy fathers. He refers to the statement made by Pope Gelasius to the Emperor Anastasius,

³⁰Correspondence, p. 106.

"There are two powers, O august Emperor, by which the world is governed, the sacred authority of the priesthood and the power of the kings. Of these the priestly is by so much the greater as they will have to answer for kings themselves in the day of divine judgment." And a little further, "Know that you are subject to their judgment, not that they are to your will."³¹ Gregory cites the example of Constantine the Great who attended the Holy Synod of Nicaea and took his proper place below the bishops, not seeking to pass any judgment upon them. He also justifies his action on that taken by previous popes. Pope Innocent excommunicated the Emperor Arcadius because he consented to the expulsion of St. John Chrysostom from his office; St. Ambrose excommunicated the Emperor Theodosius I for the massacre of the citizens of Thessalonica. In matters within the jurisdiction of the church, St. Ambrose held that the emperor was subject to episcopal authority. "The emperor is within the church, not over it In matters of faith bishops are wont to be judges of Christian emperors, not emperors of bishops."³²

There was very little justification by Gregory of the pope's right to depose a king. He argues from the point of view of the pope's supremacy and the king's disqualifications. Since the Holy Apostolic See has jurisdiction over spiritual things, it certainly would have jurisdiction over temporal things. If spiritual men are to be judged by the church, then certainly men of this world should be held to account for their evil deeds. He refers to the words of Pope Gregory I: "If any king,

³¹Correspondence, p. 167.

³²Correspondence, pp. 168-170.

priest, judge or secular person shall disregard this decree of ours and act contrary to it, he shall be deprived of his power and his office"33

Deposition was justified on the grounds that the ruler was not qualified for his position. Gregory cites an instance when a Roman pontiff deposed a king of the Franks, "not so much on account of his evil deeds as because he was not equal to so great an office."³⁴ The proper function of a king was the protection of the church, but, if the king failed in this responsibility, the pope would have to assume the function of a king. Thus when Henry IV failed to protect the churches in Ravenna, Gregory assumed the responsibility to raise a fighting force to enter and "rescue the church from impious hands."³⁵

Closely allied to formal deposition was the release of the subjects from their oaths of allegiance to the ruler. The pope was entitled, through the power bestowed upon him to "bind" and to "loose," to release anyone from the obligation to fulfill an oath. Gregory assures the clergy in France who have made vows to Philip I that it is not contrary to law for them to censure his actions. "We can prove by every reason that he is far more loyal who rescues another from the shipwreck of his soul, even against his own will, than he who allows him to perish in the deadly whirlpool of his sins."³⁶ Not only were subjects released from their oaths to an excommunicated king, but they were forbidden to obey

³³Correspondence, p. 170.

³⁴Correspondence, p. 170.

³⁵Correspondence, p. 163.

³⁶Correspondence, p. 41.

him under the threat of suffering the same fate. Gregory put not only Henry IV but all his supporters under excommunication.³⁷

The sword of apostolic discipline was a very effective weapon against royal prerogative. It was effective because it was based on religious principles and sentiments which completely dominated the medieval mind. The great bulk of society was in the fold of the church and few doubted the authenticity of papal doctrine. The church was the vehicle of God's truth in the world, and the pope's pronouncements were merely putting into effect God's purpose. The unparalleled advantage which the papacy had over any other institution was its own storehouse of ideological memory, the papal archives. From this a basis was formed by the church for the legitimacy of her power and authority. The royal authority could not demonstrate a legitimate basis for judging popes and priests. The lay ruler was forced to take a defensive position and this was a distinct disadvantage.

Even with these factors in favor of the church there is some doubt as to their realization without the influence of Gregory VII. Gregory did not merely state theories, but embodied these theories in definite and precise action. He was not an innovator so much in his ideas as he was in enforcing the existing ones. The plenitude of his actual power became the basis of a theory justifying that power. No other pope previous to this time had made such far reaching claims and sought to have these claims realized. The key to such claims is found in the dying words of its author: "I have loved justice and hated

³⁷Correspondence, p. 151.

iniquity; therefore, I die in exile."³⁸ His highest aim in life was to bring about the reign of righteousness on earth. Justice and righteousness was part of the divine will of God to be realized on earth. The means of this realization was through the visible church. Whatever was favorable to the teaching of the church was fighting for the cause of justice and righteousness. Whatever opposed the dictation of the church was instigated by the devil. Everything else was secondary to this magnificent conception. It had the simplicity which a conquering idea must have, and lent itself with amazing success to the program of the Gregorian party.

³⁸Ephraim Emerton, "Introduction," The Correspondence of Pope Gregory VII (New York: Columbia University Press, 1932), p. XXIV.

CHAPTER II

We endeavored in the previous chapter to point out some of the peculiar problems that existed between the ecclesiastical and temporal authorities. The main problem was represented in the close ties of the church with the feudal system. Because of the close connection between the two, reform by the church necessarily meant a change in the existing relationship. The church found itself in the position of seeking to carry on a reform within a political system that desired the "status quo." The primary aim of the church under its leader, Gregory VII, was to gain the freedom of the church from lay control, and further to bring to fruition the idea of papal supremacy. The fundamental principle of the Gregorian program seemed to be that of the hierocratic idea. The idea of papal supremacy and the hierocratic principle placed some drastic limitations on royal prerogative.

The problem which the church faced in the first half of the thirteenth century was much different than that of the eleventh century. The first half of the thirteenth century was a very critical period for medieval orthodox Christianity. With the reintroduction of Aristotelian philosophy the church was faced with the problem of reconciling Christianity with Aristotelian principles. Some argued that orthodoxy could only be preserved by making a sharp distinction between reason and faith. Coming first to Europe through Jewish and Arabic sources, the works of Aristotle bore the stigma of infidelity. The earliest inclination of the church was to ban them, and their use at the University of Paris was forbidden in 1210, though the prohibition seems never to have been

very effective. Others saw nothing impossible in the reconciliation of Aristotle with orthodoxy. It was St. Thomas Aquinas who carried out the fullest and most impressive synthesis of Christianity and Aristotelian philosophy. St. Thomas saw absolutely no conflict between reason and revelation. Reason and faith, human nature and supernatural values were fundamentally in harmony.

The fundamental principle of medieval political theory in the thirteenth century was the supremacy of justice and law. It is the pursuit of justice which distinguishes a rational and moral society from a confused and lawless anarchy. In the judgment of the political writers of this period there is no doubt whatever that the end and purpose of the state is a moral one. The state exists for the maintenance of justice and the setting forward of the life according to virtue. The moral purpose for which political rule exists implies that authority ought to be limited and that it ought to be exercised only in accordance with law.

The most eminent scholar to deal with the relation of law to authority was St. Thomas Aquinas. He seems to have been the first to put forward a full definition of law taking into account both its fundamental qualities and a balanced division of its types. The primary qualities of law are reason and justice. The word "law," as a general term, includes the eternal law of God, the natural law, the divine positive law, and the human positive law. There are two sections of Thomas's Summa Theologica dealing with the nature of law. In the first section St. Thomas considers law in its relation to reason, in the second its relation to justice. The first deals primarily with eternal and natural law, the second with positive or human law. The purpose of this chapter

is to examine St. Thomas' conception of law and its relation to authority in order to demonstrate the limitations that were placed on the latter.

St. Thomas defines law as a regulation in accordance with reason promulgated by the head of the community for the sake of the common welfare.³⁹ He then proceeds to explain the parts of the definition. By regulation is meant a standard or measure of action by virtue of which one is led to perform certain actions and restrained from the performance of others.⁴⁰ The first principle in all matters of action is reason. This is based on the principle that in all multiplicity there must be some controlling principle. God is the controlling principle in the material world. Just as God regulates and controls the material universe, so reason regulates and controls the actions of the individual. Law is the rule and measure of human acts. It, therefore, belongs to reason, because that "which is the principle in any genus, is the rule and measure of that genus."⁴¹

Reason not only regulates action but it also directs it towards a good end. The principle object of reason is the happiness of the individual, and since law is related to reason it has the same object. The individual is not a separate entity, but because of his nature he is related to social and political groups as the part to the whole.

³⁹Thomas Aquinas, The Summa Theologica, trans. Fathers of the English Dominican Province 3rd ed. (London: Burns, Oates, and Washbourne, 1942), VIII, Part I-II, question 90, article 4--hereafter cited as S. Th. with the appropriate Part, question, and article.

⁴⁰S. Th., Pt. I-II. q. 90. a. 1.

⁴¹S. Th., Pt. I-II. q. 90. a. 1.

Therefore, the law is concerned with the universal happiness of all or the common good.⁴² Since that which is more perfect is greater than that which is less perfect as the whole is greater than the part, so universal happiness is greater than individual happiness. Law is a regulation enacted by reason for the common good and happiness of all. The law in order to have binding force upon those who come under its jurisdiction must be promulgated. The promulgation of law belongs either to the community as a whole or its official representative whose duty it is to inflict penalties. The one who decrees the ends also decrees the means.⁴³

The doctrine of natural law is the central point of St. Thomas' treatment of politics. It is from this central point that we shall discuss St. Thomas' conception of law and its relation to authority. The discussion will be broken down into four categories: the relation of natural law to eternal law; the relation of natural law to the individual; the relation of natural law to human laws and institutions; and the relation of natural law to authority.

St. Thomas defines natural law as the "rational creature's participation of the eternal law."⁴⁴ That is, natural law is the rational human apprehension of those principles of the eternal law which concern human nature and its natural ends. There are certain principles of eternal law which every man knows through natural inclination. These natural inclinations belong to natural law. In other words, only that

⁴²S. Th., Pt. I-II. q. 90. a. 2.

⁴³S. Th., Pt. I-II. q. 90. a. 3.

⁴⁴S. Th., Pt. I-II. q. 91. a. 2.

belongs to natural law to which man is naturally inclined.⁴⁵ For instance, there is in man a natural inclination toward reason and good; therefore, reason and virtue are precepts of natural law. Not all virtuous acts, however, come under natural law, since some things are done virtuously which human nature is not inclined toward at first, but which have been found by reason to be conducive to the common good.⁴⁶ Natural law as to its general or first principles is unchangeable and is the same for all, "both as to rectitude and to knowledge."⁴⁶ However, as to its specific or secondary principles it is subject to change, and may vary both as to rectitude and knowledge. The general principles of natural law cannot be blotted out from men's hearts, but the secondary principles can be removed either through "corrupt habits" or "evil persuasions."⁴⁷ Sin does not blot out the universal principles of natural law from the hearts of men, but blots out only particular principles or conclusions from the general principles. Natural law extends both toward God and toward man. It is the bridge thrown, as it were, across the gulf which divides man from his divine creator.

The essence of natural law theory is the belief that certain fundamental principles of right and justice are rooted in the very nature of the world; that man as a rational being is capable of knowing these principles and shaping his life in accordance with them; and that all positive laws and institutions have validity only in so far as they

⁴⁵S. Th., Pt. I-II. q. 94. a. 2.

⁴⁶S. Th., Pt. I-II. q. 94. a. 3.

⁴⁷S. Th., Pt. I-II. q. 94. a. 6.

correspond to the prescriptions of natural law. Great stress is put upon reason. This is the highest expression of an "intellectualistic" as against a "voluntaristic" theory of law. Law itself is not so much the expression of will as it is of reason. This is the key to a proper understanding of the rationalistic bent which is a distinctive feature of Thomastic philosophy. Man is distinguished from other created beings in that he alone participates intellectually and actively in the rational order of the universe through his reason. Let us now examine natural law in its relation to eternal law.

The natural order is for St. Thomas only a part of a higher order. He says that all laws in so far as they partake of right reason are derived from the eternal law.⁴⁸ The eternal law in the mind of God was the first exemplar of all laws and government. The whole universe is governed by divine reason; therefore, this universe has the character of law; the end of divine government is God Himself and His law is not other than Himself.⁴⁹ St. Thomas defines eternal law as God's plan for the governing of the whole universe to its ultimate ends.⁵⁰ It is the rational guidance of created things on the part of God. Guidance is realized in non-rational creatures by their implanted instincts which urge them to fulfill the role allotted to them by God. They are moved by divine providence rather than by divine commandment.

The universal or eternal law has an intimate connection with the

⁴⁸S. Th., Pt. I-II. q. 93. a. 3

⁴⁹S. Th., Pt. I-II. q. 91. a. 1.

⁵⁰S. Th., Pt. I-II. q. 93. a. 1.

natural law, but is not identical with it. "This eternal law is the timeless judgment of the Divine Reason, made binding by the Divine Will, known as it is by the blessed in paradise, and by us, through the reflection which flow from it."⁵¹ If man has in mind the nature of things in the universe, he is considering the natural law, but he does not yet proceed to the more fundamental eternal law. To come to the eternal law he must proceed to an interpretation of the universe and of all essences in the universe from the standpoint of the ultimate divine principle.

God makes His mind known to His created rational beings in two ways: through divine revelation or divine law, made known to man through the scriptures, and natural law which is etched on man's conscience.⁵² There are certain eternal truths men can learn through revelation and there are others that are already known through natural inclination. St. Thomas says, "The natural law is promulgated by the very fact that God instilled it into man's mind so as to be known by him naturally."⁵³ God has instilled certain eternal truths into man's mind and holds him responsible to act in accordance with these truths. The eternal law is binding upon all creatures and includes, besides the principles of morality, what we should now call laws of nature or scientific laws. The eternal law transcends all legal categories including natural law and descends into created minds making men morally responsible. Everything is subject to the eternal law, nothing can withdraw from it; whoever attempts to

⁵¹W. G. de Burgh, The Legacy of the Ancient World (London: Macdonald and Evans, 1947), p. 387.

⁵²S. Th., Pt. I-II. q. 93. a. 2.

⁵³S. Th., Pt. I-II. q. 90. a. 4.

recede from it violates it. The eternal law bears the promise of supreme bliss as well as punishment and damnation.

Special attention should be given the "eternal" aspect of natural law, because this was absent from Aristotle and the ancients. Aristotle made extensive use of the concept of natural law, as did Plato, but they did not conceive of the close connection between the order of the universe and the concept of God. To them God was only a first cause or a first mover, and law, right, and morality were rooted in the ultimate reason of the universe. It has sometimes been asserted that Aristotle left no room in his ethical thought for the idea of conscience and duty. The teaching of St. Thomas Aquinas is not defective in these respects, and this teaching is a natural corollary of his conception of law. Man is morally and spiritually responsible to God because he participates in the eternal law through reason and revelation. Let us examine the relation of natural law to the individual more carefully.

The relation of natural law to the individual emphasizes the natural capabilities of man. St. Thomas appears to have a greater respect for the natural capabilities of man than did the patristic fathers. Man is capable of achieving immediate benefits in this life by participating in the political community. St. Thomas disassociates political society from original sin. Political society is neither a consequence of sin nor a remedy for sin. Its existence is not connected with the church or the Christian commonwealth. Thomas prefers to associate political society with the economy of creation; for him it is part of nature as God made it and would therefore have existed if man had never sinned.⁵⁴

⁵⁴ S. Th., Pt. I. q. 96. a. 4.

Sin or evil is that which is contrary to the natural ordering of things. Man by his natural will desires that which is good. Evil is a deprivation of good and is, therefore, against the will of man. All men naturally desire the absence of pain; therefore, pain, or that which concerns the "form and integrity of a thing such as physical or spiritual blindness, is evil. But evil also consists in the failure by the individual of perfect action in voluntary things, and this "has the nature of fault." "Therefore, every evil in voluntary things is to be looked upon as a pain or a fault."⁵⁵

His basis for disassociating political society from original sin is drawn from Aristotle. Man is by nature a civil, social, and political animal. St. Thomas was confronted with St. Augustine's contention that in the state of innocence man was not under the lordship of man. He answers by pointing out that the word dominium may be taken in two senses. It may signify the lordship of man over his slave or it may refer to the rule exercised by one man over other free men. The first could not have existed in a state of innocence, but the second would have been lawful even in a state of innocence. The second is lawful for two reasons: man is naturally a social and political animal, but social life is impossible unless there is some authority to direct it to the common good; and it would have been inconvenient if one man excelled the others in knowledge and justice, that this superiority should not be used for the benefit of others.⁵⁶

⁵⁵ S. Th., Pt. I. q. 48. a. 5.

⁵⁶ S. Th., Pt. I. q. 96. a. 4.

The idea of a social and political nature of man leads to a harmonious integration of individual life in the life of the community. The relationship between the individual and the community is a mutual one. Whatever is detrimental to the individual will damage the community, and whatever is for the benefit of the individual will contribute towards the betterment of the common good. "The common good is the end of each individual member of the community."⁵⁷ Likewise, the individual by contributing to the common good is advancing his own welfare. The well-being of the members depends on the well-being of the whole community. There is a twofold responsibility: the responsibility of the individual to conduct himself in such a way that all the members will be benefited thereby; and the responsibility of the community to compensate adequately the individual for his performance of duty. The integration of the individual into the community must be conceived as an enlargement and enrichment of his personality. All men, being a part of the political community, cannot be truly good unless they adapt themselves to the common good.⁵⁸ Thus the state was not just a physical organism, but it had moral qualities whereby the individual, by sharing in political life, realized a greater degree of virtue. St. Thomas placed the community and the individual in a relationship of mutual service and cooperation aiming to bring about the common good.

This integration of the individual into the community does not destroy the value of the human personality. Such destruction would be

⁵⁷S. Th., Pt. II-II. q. 58. a. 9.

⁵⁸S. Th., Pt. I-II. q. 91. a. 4.

contrary to St. Thomas' religious concept of a higher end for man. The concept of man in the natural law theory sets up certain barriers which prevent his complete absorption by the state. Man is not only a political and social animal, but he is also a spiritual and moral being, and there is a part of him which is related specifically to the supernatural. "Man is not ordained to the body politic, according to all that he is and has . . . but all that a man is, and can, and has, must be referred to God."⁵⁹ No human authority can be absolutely binding in conscience. The interior acts of man cannot be curbed and corrected by human law. There is need for a further law to direct man's interior acts in order to achieve the perfection of virtue. This is the divine law which directs man to his higher end.⁶⁰ The church is responsible for the execution of divine law. A higher authority is given to man which rises above the authority of the state; that authority is the church. Thus St. Thomas' theory of politics leads us back to a medieval theocracy. The state is not denied the right of existence, but it must fit into a scheme of hierarchical and graded society, and accept its subordinate place.

Aquinas is clear and emphatic in his statement of the doctrine that the authority of the ruler is derived from the divine order, that obedience to the ruler's authority is required of Christian men, and that disobedience is mortal sin. But he is equally clear and emphatic that the Christian is only bound to obey as far as the order of justice requires. The limits of obedience are necessarily fixed by the correspondence

⁵⁹ S. Th., Pt. I-II. q. 21. a. 4.

⁶⁰ S. Th., Pt. I-II. q. 91. a. 4.

of human authority with divine and natural law, that is, with justice.

"It must be said that a man is so far obliged to obey secular princes, as the order of justice requires; hence if the authority is not just but usurped, or if they command that which is unjust, a subject is not obliged to obey, except, according to the circumstances, to avoid scandal or peril."⁶¹ The subjects are not bound to obey a usurper or an authority which commands unjust things. Sedition is a mortal sin because it is directed against the unity of the community and the common good. However, a revolt against a tyrannical and unjust authority has not the nature of sedition, for such an authority is not directed to the common good, but only to the convenience of the ruler.⁶²

Law is the expression of reason and justice. The rational aspect of law, as has been noted, relates man to natural law and ultimately to God. Reason also directs individual action toward a good end. St. Thomas defines justice as "a habit whereby a man renders to each one his due by a constant and perpetual will."⁶³ Justice upholds the impartiality of the law, directing men in their external relations to one another and to the community, so that each man will get what is due to him according to his position in society.⁶⁴ Justice not only relates men's individual external actions to one another, but also the action of the individual to others in general.⁶⁵ Justice in this sense is the supreme virtue

⁶¹S. Th., Pt. II-II. q. 104. a. 6.

⁶²S. Th., Pt. II-II. q. 42. a. 2.

⁶³S. Th., Pt. II-II. q. 58. a. 1.

⁶⁴S. Th., Pt. II-II. q. 58. a. 12.

⁶⁵S. Th., Pt. II-II. q. 58. a. 5.

directing all other virtues to the common good.⁶⁶ Justice is to this world what love is to the next. Love has as its object the Divine good, while justice has as its primary object the common good. A positive law is unjust if it is contrary to the common good or opposed to the Divine good.⁶⁷ Authority, in order to be legitimate, must be according to law and law must express reason and justice. Therefore, if authority lacks these principles, it is not according to law. That leads us to our third main category, the relation of natural law to positive law and institutions.

To the people of the Middle Ages there was only one supreme authority in the state, that of law. Behind the law of the state is the law of nature to which the law of the state is subordinate. Natural law, while still keeping the form of legal precepts, actually becomes a structure of norms. It defines the goal to which human institutions are ordained and by which they must be measured; but does not prescribe the legal means through which that goal may be reached. The norms expressed in natural law were conceived as specific, permanent, and universally valid for the judgment of human institutions because they were rooted in the specific, permanent, and universal tendencies which scholastic philosophy conceived to be characteristic of human nature itself.⁶⁸

Aquinas described two ways in which human laws and institutions might be derived from natural law. First, they can be derived by logical deduction which adds secondary principles to the primary principles of

⁶⁶S. Th., Pt. II-II. q. 58. a. 6.

⁶⁷S. Th., Pt. I-II. q. 96. a. 4.

⁶⁸Ewart Lewis, "Natural Law and Expediency in Medieval Political Theory," Ethics, L (1939-40), p. 149.

natural law; second by the process of "particularization" through which the principles of natural law are embodied in specific form.⁶⁹ The former is the same throughout the world and its validity is independent of governmental action. The latter is identified with civil law which proceeds from governmental authority and varies in different states at different times. The former orders the punishment of evildoers, but the fixing of the penalty is left to the latter.⁷⁰ The laws derived from the natural law by the first way are binding not only as positive laws but also by reason of the natural law.⁷¹ Those derived by the second method possess validity only because of human promulgation. Human laws made in either of these ways derive their binding force ultimately from natural law, but do not attain the permanent and universal validity which characterize the primary principles of natural law.

There are three reasons for the variability in human law. First, operations of practical reason differ from the operations of speculative reason. Since the speculative reason deals entirely in abstractions the conclusions logically derived from its premises will be as universally true as the premises themselves. But the practical reason must adjust general principles to particular cases; and in proportion as it descends to particulars its conclusions become increasingly less universal. Second, human laws properly vary in accordance with the level of wisdom and knowledge attained by those who made them. The rational application of natural law to human affairs was to Aquinas a gradual historical process.

⁶⁹ S. Th., Pt. I-II. q. 95. a. 2.

⁷⁰ S. Th., Pt. I-II. q. 95. a. 2.

⁷¹ S. Th., Pt. I-II. q. 95. a. 2.

The perfect set of institutions which will realize the public good cannot be discovered all at once. Third, human laws will properly vary in accordance with the circumstances to which they are applied. Time and place, the character and capacity of the citizens, the custom of the country--all must be taken into account in judging whether a particular institution will be the most expedient means of attaining the common good.⁷²

Natural law as a rule or measure of human institutions has become identical with the "common good" or the "common utility."⁷³ Any law passed which is not for the common good will be contrary to natural law, and likewise, any ruler ruling for his private advantage rather than the common good, is opposed to justice and natural law. The institution of human law cannot abrogate the divine or natural law, but there are certain things which can be added to natural law by human reason. Such is private property. Natural law did not create private property, but rather private property was established by human reason for the advantage of human life. Natural law was not changed but only added to. However, the right to acquire and control things does not permit an unlimited right to use them for one's own convenience. According to the natural law the inferior things were to serve man's needs, and therefore the division or appropriation of things which was instituted by human law may not hinder their use for this purpose. If man possesses a superfluity of things, the natural law requires that this should be used for the maintenance of the poor. Those who have a surplus must give to those who are in extreme need, according to the dictates of natural law. If the individual is forgetful

⁷²S. Th. , Pt. I-II. q. 97. a. 1.

⁷³S. Th., Pt. I-II. q. 94. a. 2.

of his obligation, the state may intervene and act for the common good.⁷⁴

The common good is for St. Thomas the touchstone by which to judge the validity of all modification of law. The modification may be affected either by a conscious change carried out by direct legislative authority or by the more gradual pressure of custom. St. Thomas emphasizes that the first method should be resorted to only when there is clear evidence that the common good requires the law to be changed.⁷⁵ The rational character of customary changes in law is defended by the argument that such changes in action are just as much motivated by the reasoned will as are the written changes of statutory law.⁷⁶

A fundamental principle of the Middle Ages is that law is the expression, not so much of the deliberate or conscious will of any person or persons who possess legislative authority, but rather of the habits and usages of the community. According to Aquinas "custom has the force of law, abolishes law, and is the interpreter of law."⁷⁷ Human law is the expression of the reason and will of the legislator, but these are declared as plainly by men's actions as by their words. The frequently repeated actions of men, which constitute custom, can change or establish or interpret laws.⁷⁸ This does not mean that law is irrational. The custom of the community is determined by the conditions or the environment

⁷⁴S. Th., Pt. II-II. q. 66. a. 7.

⁷⁵S. Th., Pt. I-II. q. 97. a. 2.

⁷⁶S. Th., Pt. I-II. q. 97. a. 3.

⁷⁷S. Th., Pt. I-II. q. 97. a. 3.

⁷⁸S. Th., Pt. I-II. q. 97. a. 3.

under which it lives and by the moral ideas which possess the community. Customary law is not fixed but alters with the change of circumstances and ideas.⁷⁹ St. Thomas represents custom as the main source of positive law. Whatever forms of positive law there might be, he was clear that custom lay behind them, and was still paramount over them.

This leads us to our final main point of this chapter, the relation of natural law to authority. St. Thomas teaches that the ultimate source of all authority is God, but in the sphere of government, or elsewhere, He works through secondary agents. He does not exercise his authority directly but through men. There is a real sense then in which the people are the source of the authority of the law as St. Thomas says, "A law, properly speaking, regards first and foremost the order to the common good. Now to order anything to the common good, belongs either to the whole people, or to someone who is the vicegerent of the whole people. And therefore the making of a law belongs either to the whole people or to a public personage who has care of the whole people: since in all other matters the directing of anything to the end concerns him to whom the end belongs."⁸⁰ This describes the end and purpose of law, the legislator as the representative of the people, and the responsibility of the legislator for the good of the community. It is not mentioned precisely by St. Thomas how the public person or people come to possess this authority. He had no one definite theory as to the source of legislative authority but seems to think that in some constitutions the people are

⁷⁹S. Th., Pt. I-II. q. 97. a. 3.

⁸⁰S. Th., Pt. I-II. q. 90. a. 3.

the ultimate source of law, in some not.

The king did not have complete legislative sovereignty, nor had he any arbitrary or unlimited authority. The concept of an absolute monarch, the source of law and superior to all law, was alien to St. Thomas. When circumstances called for anything more than enunciation or restatement of custom, the ruler acted with the counsel and consent of the great men, lay and ecclesiastical, and behind them in more or less distinctly the whole community, for, as must be remembered, the custom of the community was the main source of positive law. However, St. Thomas did not commit himself to anything that remotely approached the idea of an original or natural right of the people. Some have tried to make him a proponent of the more modern theory of popular sovereignty. However, where St. Thomas speaks of the common good being the task of the whole people or the public person standing in the place of the people, he is not discussing the original subject of civil authority. He merely says that the power to make laws rests either with the people or with the person who represents the people.⁸¹ His conclusions and reasonings about the intervention of the church in secular affairs and his open preference for monarchy cannot be made to conform to the idea of popular sovereignty.

Not only have the people the right of choosing their ruler, but they can remove him from office if he abuses his power. St. Thomas says, "If it is the right of the people to choose the sovereign, they can without injustice remove the sovereign they have established or fix

⁸¹S. Th., Pt. I-II. q. 90. a. 3.

limitations to his power, if he abuses the royal power in a tyrannical manner. The people must not be considered as acting disloyally in so deposing a tyrant . . . for he himself deserves this fate because he has not faithfully conducted the government of the nation according to his vocation as a ruler."⁸² We must not misunderstand St. Thomas here. He repudiates the view that individual patriots are justified in rebelling against or assassinating the tyrant. He declares "it is more seemly to proceed to the overthrow of tyrants not according to personal presumption on the part of any one man, but on the public authority."⁸³

There is a legitimate basis on which the people can claim the right to depose a tyrant. The object of government is to secure the good of the community. The kingdom does not exist for the sovereign, but the sovereign for the sake of the kingdom. All government rests implicitly upon a contract. In a state where the political sense of the people is sufficiently far advanced and the populace well educated, the circumstances of the pact may be more or less recognized. But in every state there is always the implicit understanding that the authority of the monarch depends upon a kind of contract. The sovereign, by the very fact that he assumes the government of the state, contracts to seek in all his acts the good of the community. If the sovereign breaks his part of the contract, the people remain free to break theirs.

Earlier in this chapter we took note that according to St. Thomas man is by nature a rational being and a social and political animal.

⁸²Thomas Aquinas, De Regimine Principum, I. C. 6, as quoted in A Short History of Western Philosophy by S. J. Curtis (London, 1950), p. 191.

⁸³Thomas Aquinas, De Regimine Principum, I. C. 6, as quoted in A Short History of Western Philosophy, by S. J. Curtis (London, 1950), p. 191.

If the state is founded upon the very nature of man then it will be characterized by the same qualities. The state is the natural expression and embodiment of the moral as well as the physical characteristics of human nature. Political institutions are an aspect or part of natural morality. As such they can be justified on a purely human plane, independent of religious values, which do not alter the natural order. This implies that the pagan state had positive value. "It must be granted that government and authority are derived from human law, while the distinction between believers and unbelievers is introduced by divine law. Now the divine law, which is founded on grace, does not abolish human law, which derives from natural reason. Hence the distinction between believers and unbelievers, considered in itself, does not abolish the government and authority of unbelievers over believers."⁸⁴

Though the state has positive value outside the religious realm, yet its action and value, as part of the natural order, must be considered in the general frame of the divine direction of the world and are entirely subservient to that direction. This is so because the natural order is for St. Thomas only part of a higher order, as natural law is but a part of the eternal law of God. This in no way qualifies the statement that political authority is in itself justified as an expression of human and natural law. Political authority can be justified on the basis that it contributes to the common good. The state's right to dominion may with justice be abrogated by order of the church in virtue of her divine authority. This refers primarily to newly established governments and the danger to

⁸⁴S. Th., Pt. II-II. q. 10. a. 10.

the faith of the believing subjects in letting an infidel become the ruler.⁸⁵ Such a ruler might easily, especially in despotic forms of government, issue commands that would conflict with the faith and that might be obeyed by the faithful subjects because of the weakness of their character.

Sovereignty is the essential attribute of political power and its exercise can and must be subject to careful delimitations. There are certain international limitations placed upon all nations. War is evil unless it is a just war. The common good and the preservation of peace may make the recourse to force inevitable. There are special conditions required for a just war--a legitimate authority, a just cause, and a rightful intention.⁸⁶ War can be resorted to only in the absence of a superior authority.

There are also certain internal limitations placed on authority. The structure of the state itself places limitations on monarchy. The essential feature of the best form of government is for St. Thomas some form of constitutional system in which the principles of monarchy, aristocracy, and democracy are combined, and the prince is dependent on the rule of the law as the expression of the will of the community.⁸⁷ Following Aristotle, Aquinas distinguishes three forms of constitutions according to whether the government is in the hands of one man, a few men, or the many. These forms are monarchy, aristocracy, and democracy. There are three perverted forms corresponding to the normal types

⁸⁵S. Th., Pt. II-II. q. 10. a. 10.

⁸⁶S. Th., Pt. II-II. q. 40. a. 1.

⁸⁷S. Th., Pt. I-II. q. 95. a. 4.

previously mentioned: tyranny, oligarchy, and anarchy.⁸⁸

St. Thomas feared anarchy and tyranny; hence he is suspicious of democracy. He describes democracy as government by the people where the decrees of law arise from the commonalty.⁸⁹ He feared that democracy could easily get out of hand and lead to the abuse of liberty, mob tyranny, and the oppression of the other classes in the state by the proletariat. This does not mean that he excludes people from participation in government. How far the people may be permitted to govern themselves depends upon their aptitude for the task. St. Thomas considers that it is extremely dangerous to assume that in every case a people is capable of participation in government or even of electing their ruler. The exercise of political power by a populace which is not ripe for it exposes the state to perils as grave as those of government by an irresponsible monarch.

In theory there is no doubt as to the best form of government. The most important need of every state is unity, and this is best secured when there is a mixed form of government.⁹⁰ If a perfect man could be found, a monarchical form of government would be ideal. St. Thomas is impressed that the perfect man never turns up. Therefore, in practice an absolute monarch is always a potential danger. He can so easily become a tyrant.⁹¹ Hence the people must have safeguards against

⁸⁸ S. Th., Pt. I-II. q. 95. a. 4.

⁸⁹ S. Th., Pt. I-II. q. 95. a. 4.

⁹⁰ S. Th., Pt. I-II. q. 105. a. 1.

⁹¹ S. Th., Pt. I-II. q. 105. a. 1.

an undue extension of the monarch's power. Although, in special cases, St. Thomas would choose a hereditary monarch, on the whole he prefers an elected one since every election gives the opportunity for the people to place new restrictions on his power, if these are deemed necessary.⁹² On the other hand, he shows that he realizes the advantage of an hereditary monarchy in the avoidance of the troubles attendant on a disputed succession. It is not the form of the constitution but rather the character that makes it a good or a bad one.⁹³

Government has for its object the common good. The state is the sum total of all the individuals who compose it. The principal business of the state is to promote the good of all the individuals who compose it, for without them the state would cease to exist. The state has reference to the immediate need of man on this earth and its aim is temporal good. The benefits of the future life can only be attained through the gift of supernatural grace. The authority, St. Thomas tells us, that will lead men to their supernatural end and which has not been entrusted to earthly rulers, is the church.⁹⁴ The temporal good which is made possible for man through the government of the state can be achieved only through the good life. Hence, the state should be organized to establish the good life amongst its citizens, to maintain it and to develop it to a still higher level.

⁹²S. Th., Pt. I-II. q. 105. a. 1.

⁹³S. Th., Pt. I-II. q. 105. a. 1.

⁹⁴Thomas Aquinas, De Regimine Principum, as found in Ewart Lewis, Medieval Political Ideas, I (London, 1954), p. 179.

This chapter can be summed up by referring to its central theme, natural law, and its various relations to God, the individual, human law, and authority. Natural law is the supreme standard for all human acts. Every human authority is subject to it. No human authority can demand obedience against it. All human authority remains such only so far as its commands do not contradict natural law. This is the moral guarantee of liberty. An absolute authority whose will and act would be right simply because it wills this or that would destroy liberty. The dignity of the human person demands the subordination of authority to natural law, because this itself is the basis and reason of human dignity.

An authority freed from natural law and following only political expediency is no authority at all. The commands of authority must justify themselves before the bar of reason and law. Never can mere actual will give these qualities of law. Experience and history demonstrate that freedom and dignity of the human being cannot be preserved when the conviction vanishes that both the subject and the human authority are subjected to the same paramount law. This paramount law is an empty phrase if it is not synonymous with natural law. In natural law any possible conflict between power and authority, will and reason, truth and expediency, is abolished because natural law originates from God, who is at once perfect reason and omnipotent will.

CHAPTER III

In the previous chapter we examined Thomas Aquinas' political theory, centering in his discussion of law, in order to demonstrate the limited nature of political authority in its relation to law. It was noted that political authority which has the character of law is in harmony with the universe, because God orders the universe by means of law. Political authority is ultimately responsible to God and must conform to those general principles which have been devised by Him for the proper ordering of the universe. The ruler is not only responsible to God but also to the people. This is so because certain principles of God's law have been etched on the conscience of men, and he will express these principles both by action and by word. Thus, the custom of the community is the main source of positive law. Human or positive law is the expression of the will and reason of the legislator. Political authority which is in opposition to higher and customary law is without legitimate basis and legally can be resisted by the citizen body. It was Aquinas' intention to try and harmonize the various elements of divine and human law in order to construct a rational scheme of God, nature, and man within which society and civil authority find their due place.

Aquinas' conception of law was being modified by another--that is that law is the expression of the conscious determination of the people's will. The person primarily responsible for this new emphasis in the definition of law was Marsilio of Padua. Law implies a legislator which Marsilio considered to be composed of the people or its prevailing part. Human law arises by the corporate action of a people setting up rulers to govern the acts of its members. Political authority is ultimately

responsible to the legislator or the people. Its function is to execute the laws as prescribed by the legislator. The Marsilian concept of the legislative sovereignty of the people is very important in an examination of the medieval concept of the nature of political authority.

Marsilio, unlike Aquinas, made a sharp distinction between reason and faith, the character of divine and human law, and the nature of political and religious authority. His treatment of law is in the sharpest contrast to that of Aquinas, which presented divine and human law as all of a piece and stressed the rational derivation of human law from the law of nature. Marsilio distinguishes human from divine law by giving to the former earthly coercive power while reserving coercive power for the latter in the future life. Human law, therefore, is not derived from divine law but is contrasted to it. Any rule that involves an earthly penalty for its violation belongs exclusively to human law and has its authority from human enactment. Marsilio did not deny the means of faith as a means of eternal salvation, but rejected its relevance to secular matters. His distinction between the nature of religious and political authority played a decisive part in producing a purely secular theory of the state. In the process of making the distinction, he places both the political and religious authority under the sovereignty of the people's will. Perhaps no other document of the Middle Ages has raised such a storm of controversy among modern scholars as the Defensor Pacis of Marsilio of Padua. Most critics find it difficult to be perfectly nonpartisan in the treatment of Marsilio. This is so because of the many diverse themes treated in the Defensor Pacis which reach into the political, religious, and social relationships of man. At the same time it is regrettable that

so many writers on Marsilian thought have all too often taken the opportunity to interpret it in the light of their own convictions for or against the Roman Catholic Church, the lay state, democracy, liberalism, and totalitarianism. The result has been that Marsilio has been made a proponent of many ideas and movements for which he is not directly responsible. We need to discover not so much what the Defensor Pacis means for the twentieth century but what it meant for the fourteenth.

The Defensor Pacis is first and foremost an attempt to destroy the doctrine of papal supremacy and to undermine the whole structure of ecclesiastical jurisdiction as set forth in the canon law. Marsilio felt that the abuse of papal power and ecclesiastical jurisdiction did incalculable harm to the unity and peace of the Latin world. He attempted to correct this situation by asserting the supremacy of the temporal power, and by drastically limiting the bounds of clerical jurisdiction. This involved the proving of two thesis, one positive and the other negative. Positively, he sought to establish the legitimate basis for all human authority with the purpose of trying to untangle the complexities of church-state relations. This included an examination of the nature, structure, and ideal of the state, and of the community in which men live and by which they regulate their mutual relations. This Marsilio does in Discourse One of the Defensor Pacis.

Negatively, Marsilio attempts to refute the basis of papal supremacy. The great majority of the people in medieval Europe in his time accepted papal supremacy and independent ecclesiastical jurisdiction as of divine appointment; this being the case, their abolition was believed to be against God's will and against the natural order. It

was necessary then to show that no special divine revelation created papal supremacy and independent ecclesiastical jurisdiction. In Discourse Two Marsilio not only refutes the basis of papal supremacy from scripture, but asserts what government and powers were really laid down by divine revelation for the Christian church and clergy. Discourse Three is merely a review of the principal aims and conclusions of Discourse One and Two.

There are other distinguishing characteristics between the two discourses. Both discourses are concerned with the causes of civil peace and strife. The first discourse treats of the "usual" and "general" causes, while the second treats of the more particular cause, namely, the acts and pretensions of the papacy deriving from its claim to plenitude of power. The first discourse applies to any period in history or to any race, while the second deals more particularly with the intrusion of the papacy and its hierarchy into temporal affairs. Discourse Two also contains the practical program to end this disastrous state of affairs. There is yet another distinction between the two discourses. The first presents demonstration based on human reason, supported by Aristotle, while the second discourse confirms the first by the authority of the New Testament. Reason and revelation, Aristotle and the New Testament, are in complete agreement that no part of the state must interfere with the functioning of the ruling part.

The purpose of this chapter does not involve the entirety of Marsilian political thought, but only that aspect which pertains to his doctrine of the legislative sovereignty of the people. The first section of this chapter will be concerned with defining the term "legislator."

A proper understanding of the meaning of this term is absolutely necessary before proceeding to the various implications of the term. The second section of this chapter will consider the function of the legislator in its relation to law, to government, and to the church.

Marsilio defines the legislator as "the people or the whole body of citizens, or the weightier part thereof."⁹⁵ The terms needing clarification are "people," "citizen," and "weightier part." An understanding of the terms "citizen" and "weightier part" is necessary in order to discern the meaning of the comprehensive term "people." The whole can be better understood after defining the parts.

Marsilio defines a citizen as one who participates in the civil community in the government or the deliberative or judicial function according to his rank.⁹⁶ He categorically excludes children, slaves, aliens, and women, although the sons of citizens are citizens in "proximate potentiality."⁹⁷ There is little regard for the rational capabilities of women. They are rather easily "misled." Children are not citizens by reason of their age and aliens by reason of their nationality. Slaves are distinguished from citizens in two ways: in that they do not "have leisure for liberal functions,"⁹⁸ and that they do not "wish the polity to endure."⁹⁹ The slave does not desire the basic conditions making

⁹⁵Marsilius of Padua, The Defensor Pacis, trans. Alan Gewirth, in Marsilius of Padua: The Defender of Peace, Records of Civilization, Sources and Studies, No. XLVI (New York: Columbia University Press, 1956), II, Discourse I, Chapter XII, paragraph 3--hereafter cited as Defensor with the appropriate Discourse, Chapter, and paragraph.

⁹⁶Defensor, I. XII. 4.

⁹⁷Defensor, I. XII. 4.

⁹⁸Defensor, I. IV. I.

⁹⁹Defensor, I. XIII. 2.

possible men's social life. It would seem that Marsilio would include the slaves in that group of persons who have a deformed nature, because "all men not deformed or otherwise impeded naturally desire a sufficient life."¹⁰⁰ This natural desire is similar to St. Thomas' natural inclination, but is related more to the will than to the reason. There are certain natural desires common to all men, namely, sufficiency of life and the objects which are necessary for such life. Deformity is an abnormality in man's will causing him to act contrary to his own natural desires, thereby impeding the functioning of the various parts of the state whose purpose it is to fulfill these desires.

However, there are those who do not have leisure for liberal functions and yet who are citizens, such as the artisans and farmers.¹⁰¹ Likewise, not all those who have a deformed nature are slaves. Marsilio says that the difference between the whole body of citizens and the weightier part is the few relatively "deformed" persons.¹⁰² Neither nondeformity nor leisure can be an exact criterion for citizenship. Whether the relatively few deformed persons of the citizen body have the same deformity as the slaves is not clearly explained. If so, the slaves could not logically be excluded from citizenship purely on the basis of a deformed nature, because certain of the citizen body are also deformed. Marsilio excluded the slaves from citizenship no doubt because he

¹⁰⁰Defensor, I. IV. 2.

¹⁰¹Defensor, I. XIII. 4.

¹⁰²Defensor, I. XII. 5.

realized the potential danger of increasing the deformed part until the existence of the state would be threatened. This is especially evident in his discussion of the "weightier part" in which he seeks to get a proper proportioning both qualitatively and quantitatively between the various classes in the polity. If those who did not wish the polity to endure gained control then doubtless the polity would be abolished. It would almost seem that Marsilio considers slavery volitional rather than natural. He speaks in one place of certain inhabitants of Asia who endure the rule of despots "without protest" because of their barbaric and slavish nature.¹⁰³ His definition of a slave as one who does not desire the polity to endure would seem to indicate the same thing. However, there is a strain of natural slavery in his statement that "those who live in a state do not only live, which beast or slaves do, but live well, having leisure for the liberal functions" ¹⁰⁴

Marsilio defines the "weightier part" both in terms of quantity and quality. He states "by the weightier part I mean to take into consideration the quantity and the quality of the persons in that community over which the law is made."¹⁰⁵ Most scholars in the past interpreted the "weightier part" simply as "the majority." Quite recently, however, examination of the manuscripts disclosed conclusively for the first time that Marsilio had specified the "weightier part"

¹⁰³Defensor, I. IX. 4.

¹⁰⁴Defensor, I. IV. 1.

¹⁰⁵Defensor, I. XIII. I.

by quality as well as by quantity.¹⁰⁶ The translation "weightier" was originally suggested by C. W. Previte-Orton and seems to best embody the complexities of the qualitative and quantitative features.¹⁰⁷

There seems to be little distinction made by Marsilio between the "weightier part" and the "whole body of citizens." As has already been noticed there are those relatively few "deformed persons" within the citizen body who refuse to agree to the common judgment. These relatively few deformed persons are the quantitative difference between the whole body of citizens and the weightier part. That this is the quantitative meaning is also shown by the expression that Marsilio uses as synonyms for the weightier part. Such expressions are used as "the exceeding majority,"¹⁰⁸ the "greater number,"¹⁰⁹ or "the more ample part"¹¹⁰ of the citizens. It would seem from this that the weightier part means the great bulk of the citizens rather than a small aristocratic group. When Marsilio used the expression "the whole body of citizens" and "the weightier part thereof" in the same sentence, he follows with such expressions as "which is assumed to be the same thing,"¹¹¹ and "which must be taken from the same thing."¹¹² This would seem to indicate

¹⁰⁶C. W. Previte-Orton, "Marsiglio of Padua, Doctrines," English Historical Review, XXXVIII (1923), p. 8.

¹⁰⁷Alan Gewirth, "Introduction," Marsilius of Padua: The Defender of Peace, II (New York, 1956), p. XVI.

¹⁰⁸Defensor, I. XIII. I.

¹⁰⁹Defensor, I. XII. 5.

¹¹⁰Defensor, I. XII. 6.

¹¹¹Defensor, I. XII. 5.

¹¹²Defensor, I. XIII. 2.

that he does not think of the weightier part as being distinct from the whole; rather, they are almost identical.

Marsilio attempts to get a proper balance or proportion in the polity between quantity and quality. He condemned "democracy" as the rule of the masses alone and not "according to proper proportion."¹¹³ The common class would numerically outweigh the honorable class; it is for this reason that qualitative considerations are invoked. The proper proportion would operate both against oligarchy or aristocracy and against democracy. Marsilio upholds a polity "in which every citizen participates in some way in the government or in the deliberative function in turn according to his rank and ability or condition, for the common benefit and with the will or consent of the citizens."¹¹⁴ The degree of participation of each citizen will depend upon his rank, and the rank, in turn is determined by the functional group to which he belongs. There are three general functional groups which participate in government: the "council" or the "common mass," the honorable class, and the judiciary.¹¹⁵ The members of the honorable class are elected by the citizens to fill the highest offices of the state. The judicial body assists the ruler in matters concerning law and government. The "council" participates in electing the ruler and judging as to the practical worth of certain laws. It is this ranking of various groups of people in the polity into lower and higher divisions that Marsilio fits most closely to the whole orientation of medieval thought.

¹¹³Defensor, I. VIII. 3.

¹¹⁴Defensor, I. VIII. 3.

¹¹⁵Defensor, I. V. I.

There are certain characteristic features that qualitatively differentiate the groups within the polity. It has already been noticed that it is leisure for liberal functions which distinguishes the citizen from the slave;¹¹⁶ but it is also leisure which distinguishes that group of citizens which devote a great deal of time to deliberative functions from the mechanics and artisans who are so preoccupied with making a living that they do not have time for such activities.¹¹⁷ Marsilio thus divides society into a small leisure class and a large body of men involved in common labor. However, the line of demarcation is not strictly drawn between the leisured and the nonleisured as to participation in government. He insists that those who do not have "leisure for liberal functions' should share in political power, for they "participate in the understanding and judgment of practical affairs, although not equally with those who have leisure."¹¹⁸

Another quality concomitant with leisure is prudence. Prudence belongs primarily to those men who have leisure, and who are "older and experienced in practical affairs."¹¹⁹ Prudence is also one of the important qualities of a "perfect ruler." The nonleisured have prudence but not in the same respect as the leisured class. The mechanics and artisans lack that quality of prudence which is necessary for the discovery of truth and justice, but they do have prudence in the sense of being able

¹¹⁶Defensor, I. IV. I.

¹¹⁷Defensor, I. XII. 2.

¹¹⁸Defensor, I. XIII. 4.

¹¹⁹Defensor, I. XII. 2.

to judge the practical worth and the common utility of that which has been originated and discovered. Marsilio says that "most of the citizens are neither vicious nor undiscerning in most cases and most of the time; for all or most are of sound mind and reason . . .";¹²⁰ but he says that what is just and beneficial is "better" and more "appropriately" carried out by those who are able to have leisure and who are called "prudent men."¹²¹ This does not mean that this particular group of "prudent men" are wiser than the whole body of citizens. Marsilio states "the assembled multitude of all these can discern and desire the common justice and benefit to a greater extent than any part of the multitude taken separately however prudent that part may be."¹²² That particular group of "prudent men" may have a greater quality of prudence than any other particular part of the polity, but not greater than the whole taken together.

Marsilio does not indicate the exact proportion in which the mass of nonleisured citizen laborers are to be weighed against the leisured and more prudent. It should be kept in mind that the quantity or quality spoken of by Marsilio is not that of equal individual units but rather of groups. The quality of the group can be increased by increasing the quantity. He says that if we assume that the less learned cannot judge as accurately on some practical political matter as do the learned, "still the number of the less learned could be increased to such an extent that

¹²⁰Defensor, I. XIII. 3.

¹²¹Defensor, I. XII. 2.

¹²²Defensor, I. XIII. 6.

they would judge about these matters equally as well as, or even better than, the few who are more learned."¹²³ However, there are some limitations to this quantitative determination of quality. One limitation that is mentioned is that of particularism where one class such as the nonleisured will get out of proper proportion and dominate the other parts of the polity.¹²⁴ He seeks to leaven quantity with quality to avoid such particularism. The other limitation on the quantitative determination of quality relates to primitive communities where there is a lack of prudence and experience.¹²⁵ In such a situation quality does not always accompany quantity.

After examining these several aspects of Marsilian thought perhaps some conclusion can be drawn as to what the author meant by the term "legislator" or "people." The people are composed not of individual units as such, but of groups or classes: namely, the common class which includes the farmers, mechanics, artisans, and suchlike; the judiciary or those officials such as lawyers and notaries who assist the ruler in judicial functions; and the "honorable class," that is, the group of the best men, who are few, and who alone are appropriately elected to the highest governmental offices.¹²⁶ These groups share in political authority, the share being determined both by quantitative and qualitative standards in order to prevent a disproportioning of political power. The people or the legislator was believed to be the all-inclusive body of the state

¹²³Defensor, I. XIII. 4.

¹²⁴Defensor, I. VIII. 3.

¹²⁵Defensor, I. III. 4.

¹²⁶Defensor, I. XIII. 4.

which could act as one.

It has been our purpose so far to define what is meant by the term "legislator." The remainder of this chapter will consider the function of the legislator in relation to law, to government, and to the church. The relation of the legislator to law will consider primarily the three arguments proposed by Marsilio to defend the legislative sovereignty of the people. The function of the legislator in relation to government will be concerned primarily with the election and correction of the ruling part. The function of the legislator in relation to the church will be considered from the viewpoint of the strong distinction made by Marsilio between the character of authority which belongs to the legislator and that which belongs to the church.

Law is defined by the author as a principle of right supported by the force necessary to put it into execution.¹²⁷ Some scholars have emphasized the point that Marsilio establishes his philosophy of law on force and coercion instead of conformity to a moral code as, for example, does St. Thomas Aquinas. Yet Aquinas himself defines the power of compulsion as one of the essential characteristics of law.¹²⁸ Nor is it true to say that Marsilio disregards entirely the moral factor in lawmaking. He follows up his definition of law as coercive with a statement that a knowledge of the principles of morality is essential if a law is to be perfect.¹²⁹ The difference between Marsilio's concept of law and that of

¹²⁷Defensor, I. X. 4.

¹²⁸S. Th., Pt. I-II. q. 90. a. 4.

¹²⁹Defensor, I. XI. 5.

Aquinas is one of emphasis. The former places the greater emphasis upon will, the latter upon reason. But to say that Marsilio's conception of law is purely voluntaristic would be as false as to say that St. Thomas' conception is entirely rationalistic. However, St. Thomas would not agree with Marsilio in saying that a law is not a law unless it has the element of coercion.

The efficient cause of the law is the people. The author says that the "best" laws are made by the weightier part of the people.¹³⁰ The term best does not mean primarily the content of the law, but rather its coercive element. He states "law in its last and more proper sense concerns the coercive command as to its obedience."¹³¹ This is so because the end of law is not some rational goal, but the principle end of law is "civil justice" and the "common benefit."¹³² The secondary end of law is the "security of the ruler and the duration of government."¹³³ It can readily be seen that the primary emphasis of Marsilio is not upon rational ends but upon efficient means. The laws under which men live are derived from their own will and consent and can be justified on this basis without any conformity to any higher or natural law.

Marsilio does not explicitly state the exact form of government which should characterize the polity. Whether the will of the people is expressed directly in the general assembly or through chosen representatives is not of utmost importance. It is, however, very important that any

¹³⁰Defensor, I. XII. 5.

¹³¹Defensor, II. XII. 5.

¹³²Defensor, I. XI. 1.

¹³³Defensor, I. XI. 1.

addition, subtraction, complete change, interpretation, or suspension of law has the final sanctions and approval of the legislator.¹³⁴ It is also important that the promulgation and the ultimate power of enforcement of law rest in the legislator. Hence, the source of coercion is collectively the same as the individuals who severally undergo it. The Marsilian legislator exercises a threefold control over the law. It is responsible for the election of the law making body of deliberative experts who will propose certain rules of justice and civil benefit for possible enactment into law;¹³⁵ it is the final judge as to the adequacy of these proposals;¹³⁶ and finally by its sanction it determines the coercive command which makes the actual law.¹³⁷

The basis for these controls is examined in the three arguments of Marsilio upholding the legislative sovereignty of the people. First, he argues that the majority of the people desire the common benefit and laws embodying it; second, that the whole body of people are capable of rationally understanding what is the common good; third, that self-legislation is essential to freedom. Let us consider each of these arguments in turn.

The first argument is based on certain natural desires which the author considers are common to all the nondeformed people in the polity. It has already been noted that all men desire sufficiency of life. Marsilio

¹³⁴Defensor, I. XII. 3.

¹³⁵Defensor, I. XIII. 8.

¹³⁶Defensor, I. XIII. 8.

¹³⁷Defensor, I. XIII. 3.

proceeds further on this principle. If all men naturally desire sufficiency of life, they must also desire the means by which that sufficiency is obtained or else there would be a deficiency in nature.¹³⁸ Sufficiency of life can only be attained properly in a civil community. Hence, there is in man a natural desire for a civil community. It follows from this that "the part of the state which wishes the polity to endure must be weightier than that part which does not wish it."¹³⁹ In other words, it is impossible that, while all the members of the human species have a natural desire to live in the state, most of the members of that same species should at the same time desire the destruction of the state. From this Marsilio deduces that, if the weightier part desires the endurance of the state, they must desire the laws necessary for this endurance. These laws are for the common benefit; consequently, the majority of the people desire the common benefit and the laws embodying it.

The achievement of the common benefit through the rule of one or a few is impossible. Marsilio considers two things necessary in judgment: right emotion of the judge, and a true knowledge of matters to be judged.¹⁴⁰ A few men, either through "perverted emotion" or through "ignorance" would be more likely to make an erroneous judgment than would the entire body of citizens. If one or a few men were entrusted with supreme authority, they would in all probability pervert it to their own interest. Even the

¹³⁸Defensor, I. XIII. 3.

¹³⁹Defensor, I. XIII. 3.

¹⁴⁰Defensor, I. XI. 1.

best man sometimes has a "vicious emotion."¹⁴¹ Original sin is not considered as leading to a necessity for law, but instead Marsilio speaks of impartial law as needful because of the emotional factor in all men.¹⁴² It is this emotional factor which makes it necessary for the legislator or the weightier part to be the final and ultimate authority, because "the entire body of citizens can intellectually and emotionally determine truth and the common utility better than any part."¹⁴³

It would seem that if every human soul is characterized by this "vicious emotion" that the whole body of citizens would be characterized by the same. However, "no man knowingly harms or wishes injustice to himself" and "all or most of the citizens want a law conducive to the common benefit."¹⁴⁴ The common benefit is simply the sum of the private benefits, either of all or at least of the "weightier part" of the citizens of the state. Marsilio distinguishes between the will of all together and the will of each taken separately. All or most taken together have characteristics which do not pertain to each taken alone. The fact that the whole is greater than its part means that "the assembled multitude of all can discern and desire the common justice and benefit to a greater degree than can any part of that multitude taken separately."¹⁴⁵ Equality holds not between individuals but between classes; each member of the common class is inferior to each member of the honorable class, but the

¹⁴¹Defensor, I. XI. 6.

¹⁴²Defensor, I. XI. 2.

¹⁴³Defensor, I. XII. 5.

¹⁴⁴Defensor, I. XIII. 8.

¹⁴⁵Defensor, I. XIII. 6.

whole of the common class is equal or superior to the whole of the honorable. Marsilio says that many who are less learned "can judge equally as well or better than the few who are more learned."¹⁴⁶

This leads to the second argument that not only does the majority of the people naturally desire the common good, but that the whole body of citizens is capable of rationally understanding what is the common good. Marsilio states that "Every whole is greater than its part which is true with respect both to magnitude of mass and to practical virtue and action."¹⁴⁷ In this second argument the distinction must be made between discovery and judgment. Not all men are capable of discovering the law, but all or most can judge it and discern what must be changed, because they live under it and are sensitive to its effects.¹⁴⁸ Marsilio illustrates by showing that many men are capable of judging concerning the quality of a picture, a house, a ship, and other works of art even though they are incapable of producing them.¹⁴⁹ The law embodies the collective wisdom and experience of the whole community and this is why it is preferable to that of any one man, however good.

The third argument that self-legislation is essential to freedom emphasizes the necessity of a free people controlling its own destiny. The consent of the subjects is the primary criterion of good government. The subjects will voluntarily obey a law that they have imposed upon themselves.

¹⁴⁶Defensor, I. XIII. 4.

¹⁴⁷Defensor, I. XIII. 2.

¹⁴⁸Defensor, I. XIII. 3.

¹⁴⁹Defensor, I. XIII. 3.

"That law is better observed by everyone of the citizens which each is seen to have imposed upon himself."¹⁵⁰ But the reason for this is that every citizen must be "free," and if one or a few men by their own authority made law over all the rest, the former would be "despots," and such a law, "no matter how good it would be," would be obeyed either unwillingly or not at all by the other citizens. On the other hand, when the law is made by the hearing or consent of the entire multitude, then "even if less useful," it is readily obeyed by each citizen, "because is seen to have imposed it upon himself."¹⁵¹

The function of the legislator in its relation to government is tied directly to the preceding discussion of law. The law which has been sanctioned by the legislator is the standard by which the ruler is to govern. He is not to govern on the basis of his prudence and experience, but is to depend on the impartiality of the law. One or a few men can be led astray either through "perverted emotion" or "ignorance," but the law is without emotion and the impartial judge of all men.¹⁵² The primary responsibility of the ruling part is to execute the decrees which have been established and received the final approval of the legislator. When the ruler acts the entire community does because the ruler acts in accordance with the legal determination of the community.

One of the primary responsibilities of the legislator is the election of the ruling part of the state. The ruling part may be one man

¹⁵⁰Defensor, I. XII. 6.

¹⁵¹Defensor, I. XII. 6.

¹⁵²Defensor, I. XI. 1.

or several men depending upon the particular locality. The means of election also may vary "according to the variety of the province." But Marsilio hastens to add that "whatever ways it may differ this must be observed in each case, that such election or establishment is always to be made by the authority of the legislator."¹⁵³ He argues this from the proposition that "to whomever it pertains to generate some form, it also pertains to determine the subject of that form."¹⁵⁴ The legislator is compared to a builder who knows both the form of the house and the matter, that is, wood and bricks. Since the legislator is to determine the form, that is, the law, it pertains to the legislator also to determine the form's matter, that is, the ruler.¹⁵⁵

Marsilio considers that there are three definite advantages of election over hereditary succession. First, the best possible ruler is more likely to be obtained by election.¹⁵⁶ It is important to see what he meant by the best ruler. The qualities which are necessary for a perfect ruler are prudence, virtue, and benevolence for the polity and the citizens. The ruler must have prudence in order to judge concerning practical affairs which cannot always be determined by law.¹⁵⁷ Also necessary to the ruler is moral virtue, especially justice; "for if the ruler is perverted in moral character, the polity will be greatly harmed."¹⁵⁸

¹⁵³Defensor, I. XV. 2.

¹⁵⁴Defensor, I. XV. 3.

¹⁵⁵Defensor, I. XV. 3.

¹⁵⁶Defensor, I. XVI. 2.

¹⁵⁷Defensor, I. XIV. 4.

¹⁵⁸Defensor, I. XIV. 6.

Finally, the ruler is to be characterized by "benevolence for the polity," for love will direct the ruler's actions for the common benefit of the citizens.¹⁵⁹ These qualities are necessary in a ruler in order that the common benefit might be realized. The ruler with these qualities is best obtained through election by the legislator; "by the election of the human legislator the common benefit of the citizens is almost always aimed at and attained, rarely failing";¹⁶⁰ "election is always done for the common benefit, which the human legislator almost always wishes and attains";¹⁶¹ "the legislator aims in most cases at what is just."¹⁶² The certainty of these qualities is less likely in a hereditary ruler because it depends "upon birth and is often fortuitous."¹⁶³

The second advantage of an elected ruler over a hereditary one is that an elected ruler will be more careful as to how he rules and more diligent in his guardianship of the persons and welfare of the community. This is for three reasons: first, because he is virtuous due to his being elected; second, because he will fear correction by the next ruler; and third, because he will want his children to be deserving of election in the future.¹⁶⁴ The third advantage of an elected ruler over a hereditary one is his novelty which will give rise to a greater admiration and respect

¹⁵⁹Defensor, I. XIV. 7.

¹⁶⁰Defensor, I. XVI. 11.

¹⁶¹Defensor, I. XVI. 19.

¹⁶²Defensor, I. XVI. 21.

¹⁶³Defensor, I. XVI. 11.

¹⁶⁴Defensor, I. XVI. 13.

for him; and this respect results in greater obedience.¹⁶⁵

The legislator is the "primary efficient cause" of the establishment of the various offices of the state, and the ruling part the "instrumental or executive cause."¹⁶⁶ The legislator follows the procedure of establishing the various offices by law and then designates the ruler to fill the offices with the appropriate officials. An example of this procedure is illustrated in Marsilio's discussion of the formation of an armed force in the state. The ruler needs this armed force to "execute his civil sentences upon rebellious and disobedient men by coercive force."¹⁶⁷ The general structure of this armed force is to be determined by the legislator. It is to be large enough to exceed the power of any individual citizen or several taken together, but not to exceed that of all or the majority of the citizens taken together. If the ruler had an armed force larger than the majority of the citizens, he would be in a position to violate the laws and to rule "despotically." The more specific structure of this armed force is left to the determination of the ruling part. The ruler is not to have the coercive force before the election, but it is to be bestowed upon him at the same time as the rulership.

If the legislator has the authority to elect the ruler, it also has the power to correct him. "For the authority to approve or disapprove rests with those who have the primary authority to elect, or with those to whom they have granted this authority."¹⁶⁸ Otherwise, if the part

¹⁶⁵Defensor, I. XVI. 16.

¹⁶⁶Defensor, I. XV. 4.

¹⁶⁷Defensor, I. XIV. 8.

¹⁶⁸Defensor, I. XIII. 9.

could dissolve that which had been established by the whole, the part would be greater than the whole. While the ruler is under correction he should be suspended from office, otherwise there would be a plurality of governments in the community which would result in schism, agitation, and fighting. He should also be suspended because he is not corrected as a ruler but as a subject who has transgressed the law.

The correction of the ruler depends upon the gravity and frequency of the offense.¹⁶⁹ A grave offense is one that will result in scandal or disunity in the community. If the offense be slight and occurs rarely, it should be passed over, otherwise, the ruler will become an object of contempt and the citizen will pay less respect and obedience to the law and to the ruler. If the offense is slight and yet occurs often, it should be administered the proper punishment. The punishment should always be determined by law whenever possible, but if the correction cannot be determined by law, then it must be determined by the sentence of the legislator. The legislator has the power to depose the ruler "if this be expedient for the common benefit."¹⁷⁰ This would seem to be the ultimate corrective measures to be taken by the legislator.

So far this chapter has been centered around the first discourse setting forth certain basic principles concerning the nature, structure, and ideals of the state. The second discourse takes these principles and applies them to the internal structure and to the external relations of the church. Many of these principles are not reiterated again but are assumed. For instance, the arguments upholding the legislative sovereignty

¹⁶⁹Defensor, I. XIX. 4.

¹⁷⁰Defensor, I. XII. 3.

of the people are not repeated in the second discourse when Marsilio speaks of the faithful legislator as the governing body of the church. He merely says that the assertions are the same as in Discourse One.¹⁷¹ Many new arguments based on scripture and the church fathers are presented as additional proof to the first principles. His primary concern in the second discourse is not with the church as a whole, but more specifically with the institutionalized or hierarchical part of the church and its claim to power.

Marsilio conceives of the church as the whole body of the faithful who believe in and invoke the name of Christ.¹⁷² The church is thus a corporate body made up of individuals whose claim to membership is based on belief in the name of Christ. By this definition he makes the basis for the claim to membership in the whole body of the faithful rest, not in belonging to a visible institutional church, but rather a belief in Christ, making one a member of a universal mystical body. He de-emphasizes the earthly institutional characteristics of the church and emphasizes the universal mystical aspects. His purpose is twofold: to tear down the basis of the papal claim to plenitude of power, and to erect a new basis of authority within the church, that of the whole body of the faithful.

Marsilio refutes the contention of the papacy that, because of the special nature of the function of the priesthood, the priests are exempted from the demands of human law and authority. Instead he positively asserts that it is because the priesthood is a part of the state that it is subject

¹⁷¹Defensor, II. XVII. 2.

¹⁷²Defensor, II. II. 3.

to all laws and authority of the state. The proof can readily be seen from his argument in Discourse One that "every whole is greater than its part." However, he offers additional proof by citing the deeds and words of Christ as found in the gospels. Christ left an example for his disciples to follow when he voluntarily subjected himself both in property and in person to the authority of this world. He wished to exclude himself from all worldly rulership or governance, judgment, or coercive power. Marsilio also cites many utterances of the Apostles and church fathers as further proof of the subjection of the priesthood to secular authority. He is very emphatic that the bishop or the priest who transgresses human law must be brought to justice and punished "by the judge who has coercive power over transgressors of human law in this world."¹⁷³ He makes one exception to this, where divine law and human law disagree, the former is to be obeyed.¹⁷⁴ However, the divine law has no coercive power in this world, and, furthermore, it is not determined by any individual believer or group, but by a general council composed of laymen and priests who are elected or appointed by the human legislator. The exception, then places no limitation upon the authority of human law.

The essential function of the priesthood consists only in the performance of the sacraments and the teaching of the means to salvation, and these can involve no coercive authority. Marsilio makes certain distinctions between religious obligation which is voluntary and political

¹⁷³Defensor, II. VIII. 7.

¹⁷⁴Defensor, II. V. 4.

obligation which is coercive, between human law and divine law, political authority and priestly authority, the sufficient life of this world and the eternal salvation in the next. He sharply separates political authority from ecclesiastical authority by emphasizing the specifically coercive quality which he assigned to the former. Coerciveness is the distinguishing characteristic of human law and authority, the end being the provision of sufficiency of life for all citizens. All citizens can be coerced into obeying the law in order that the common benefit might be maintained. The distinguishing characteristics of divine law and priestly authority in this world are teaching, admonition, warning, and the administration of the sacraments, in order to prepare the individual for the life to come. Religious obligation is purely voluntary in this world; the coercive aspect is reserved until the next life, when Christ, the only religious judge, shall execute the divine law.

Marsilio distinguishes the priests "essential" sacramental authority which is from God and equal in all priests, and their "accidental" institutional authority, which is from man.¹⁷⁵ The former is concerned with administering the sacrament of the Eucharist or of consecrating Christ's body and blood, and the power of binding and loosing men from sin. The "accidental" institutional character of the church resulted from the marked increase of church officials after the days of the Apostles.¹⁷⁶ They elected one of their number to guide and direct the others in the exercise of the ecclesiastical office and service in order

¹⁷⁵Defensor, II. XVI. 10.

¹⁷⁶Defensor, II. XV. 6.

to avoid conflicting desires, scandal, and schism. This election or appointment does not give to the elected person any greater essential merit or priestly authority, but merely gives him power to direct and regulate the other priests in matters pertaining to divine worship. Marsilio undermines the whole basis of the divinely appointed institutional aspects of the church and places all priests on an equal basis as far as their divinely appointed function is concerned. This leveling process brings Marsilio back to his original contention in the first discourse that all power and authority rest in the people or the weightier part thereof. The "faithful legislator" replaces the papal hierarchy as the source of authority in the church.

One of the difficulties in the second discourse is to define exactly what Marsilio meant by the term "faithful legislator." It is important to resolve the difficulty in order to determine if the church is controlled by the human legislator or just by the members of the church body. Marsilio assumes that for his own particular era the great majority of people are Christians. He differentiates the conditions as they existed during the era of the primitive church and as they exist presently. Then the great majority of people were without the fold of the church and were under the rule of infidels, whereas at present the great majority are within the church and are governed by Christian rulers.¹⁷⁷ The difference between the "faithful legislator" and "human legislator" is slight, if any, and, for all practical purposes, they are almost identical. In some places the two terms are combined into

¹⁷⁷Defensor, II. XVII. 15.

"faithful human legislator."¹⁷⁸

Marsilio takes all power of appointment, approval, correction, and removal of all ecclesiastical officials from the control of the church hierarchy and places this power in the control of the legislator. He states "in the perfect communities of believers, the election, assignments, and presentation of persons to be promoted to ecclesiastic orders pertains only to the human legislator or the multitude of believers in that place where the minister is to care."¹⁷⁹ This was not so in the primitive church because of the infidelity of the rulers and the legislator, but a difference in condition demands a difference in procedure. Whereas in the primitive church ecclesiastical offices were to be appointed by church officials because of the infidelity of the ruler and legislator, under the present conditions, with a Christian legislator and rulers, all appointments and approvals rest in the control of the faithful human legislator.¹⁸⁰ The responsibility also rests with the legislator to make sure that the appointed and approved officials function properly. For example, a priest can be compelled to administer the sacraments by the legislator "if, being vicious, he refused to do this."¹⁸¹ Otherwise many of the people, by the priest's perversity might "incur the peril of eternal death, through lack of baptism or some other sacrament."¹⁸²

¹⁷⁸Defensor, II. XXII. 9.

¹⁷⁹Defensor, II. XVII. 9.

¹⁸⁰Defensor, II. XVII. 15.

¹⁸¹Defensor, II. XVII. 12.

¹⁸²Defensor, II. XVII. 15.

If the priest proves unfit for his position, he is to be removed by the legislator.

All matters of church discipline are placed under the control of the legislator. This is so because human law is the only standard of judgment in this world, divine law having no coercive power until the future life. All matters of the church that demand coercive action must necessarily be judged on the basis of human law by the legislator. No one can be punished in this world for "sinning against theoretic or practical disciplines precisely as such, however much he may sin against them, but only for sinning against a command of human law."¹⁸³ This permits the teaching of any heretical doctrine as long as it is not prohibited by human law. Any judgment or condemnation of heretics must be based on human law and executed by the legislator. Likewise the power of excommunication belongs only to the legislator in the community in which it is to occur. The priests are to occupy the position of an advisory body, but they have no coercive power to acquit or condemn.

A medium through which the legislator works is the general council which is composed of ecclesiastical officials, persons especially versed in divine law, and laymen for the common utility.¹⁸⁴ These men are appointed by the human legislator from that particular community where they reside and they can be compelled to attend. A general council can only be called by the human legislator. It has no coercive authority, but is similar to the law experts in Discourse One who gather for the purpose of

¹⁸³Defensor, II. X. 4.

¹⁸⁴Defensor, II. XX. 2.

defining law. The general council is called usually for the purpose of settling disputes concerning divine law or matters of church ritual and ordinances. The decrees made by the general council are subject to the approval of the primary human legislator who alone can execute these decrees.

Marsilio's purpose, to tear down the institutionalized structure of the medieval church and to erect a new foundation, is based on his doctrine of the legislative sovereignty of the people. He strips from the papal hierarchy all its pretensions to plenitude of power and places it under the law and direction of the state. Politically, it participates only as a part of the state. Religiously, it performs sacramental functions necessary for salvation; admonishes, teaches, and warns people concerning their religious state; and serves in an advisory capacity on matters of divine law. These functions require no coercive power or authority. By establishing the sovereignty of the whole body of citizens, Marsilio leaves the papacy no jurisdiction and authority of itself. His church-state is more state than it is church.

The significance of this chapter lies in the Marsilian doctrine that the people's will is the unchallenged possessor of supreme authority. The final authority does not rest in the pope as the vicar of Christ or in some higher law embodying ultimate values or final causes, but rather in a positive human agency called the legislator. It is from the legislator that the laws derive their authority, and it is the laws, in turn, which regulate the functioning of the government. The people make the laws, elect and correct the government, establish the other parts of the state, including the priesthood, control excommunication and church discipline,

define articles of faith through the elected general council, and make binding all the council's enactments. The superior trustworthiness of the people's will, the greater intelligence of the whole than the part, and the necessity that a free people control its own destiny are principles which are given decisive affirmation by Marsilio, and which have been invoked by the defenders of republicanism and democracy in all ages.

CONCLUSION

We have endeavored in the previous three chapters to discuss the major political concepts of three medieval theorists whose concepts resulted in certain far-reaching limitations on royal power and authority. We took note of restrictions placed on royal authority by certain claims of the papacy for supremacy, directly in spiritual matters and indirectly in temporal affairs. Considerable attention was given to the supremacy of law and its relation to political authority. Political authority in order to be legitimate must remain within the bounds of law. Finally, it was noted that political authority was answerable in certain respects to the people, for they were responsible for the establishment of law and government. The ultimate authority rested in the legislator or the people. From these major political principles can be drawn certain general conclusions concerning the nature and extent of political authority in medieval thought.

First and foremost political authority was limited by its nature. There was no question in the minds of the political theorist of the eleventh, twelfth, and thirteenth centuries as to the divine nature of political authority, and the moral end and purpose for which it exists. In the patristic tradition society was a conventional institution brought into being in order to curb the evil instincts of man. The institutions of human society were the results of sin and the divine remedies for sin. However, with the reintroduction of Aristotelian philosophy in the thirteenth century, political society began to be thought of as a natural institution or one which was based on the very nature of man. Man is by nature a

political and social animal and his association in the political community will result in an enlargement and enrichment of his personality. The political community was to be the framework within which the individual was to enjoy the life of virtue. Whether political society was considered as a conventional or a natural institution, its origin and purpose was related to God.

Political authority was to fit into God's means of governing the universe. God governs the universe through his divinely appointed representatives, namely the officials of the church. The church is responsible for the spiritual welfare of its members, which includes moral discipline over every member of the Christian community. The secular ruler, as a member of the Christian community, is subject to the church in moral and spiritual matters. Gregory VII claimed the same right of discipline over an emperor as he had over every Christian. The effect of this discipline upon the ruler meant more than mere social isolation; it meant loss of his position and the allegiance of his subjects. By implication the Gelasian doctrine of the two equal authorities disappeared, not in the sense that the church would itself take over the functions of secular government, but in the sense that the pope would become a court of last resort on whose judgment a ruler's legitimacy would depend.

God also governs the universe by means of law. Law ultimately was not of human origin, but emanated from the divine reason, regulating the relationships between all creatures, animate and inanimate, animal and human. St. Thomas conceived of certain fundamental principles of right and justice rooted in the very nature of the universe. Law in a narrower sense was merely one aspect of a cosmic and universal system of law. This

is important to keep in mind in order to realize the magnitude of an unlawful ruler's offense. He was not primarily a violator of human rights and institutions, though he was that, but a rebel against the whole divine system by which God rules the world. Political authority could not be absolute because it is always limited by principles which are even more sacred than itself, the principles of the divine reason and the moral order.

The higher law theory expresses the dignity and worth of the individual. Man is different from all other created beings in that he alone participates actively in the rational order of the universe. The individual is tied directly to the supernatural which means that there is a part of man reserved for a higher end and cannot be absorbed by the state. The natural law theory prevents the encroachment of political authority upon the conscience of the individual. If the ruler commands that which is contrary to Christian conscience, Christian men are not bound to obey. This cannot in any way be taken as referring to any inherent individual rights. The emphasis is upon the duties of the individual, whether he be ruler or subject, to God and to the community. The ruler is as definitely bound by reason and justice as his subjects, and his power over the positive law arises from the need of keeping it in agreement with natural law.

There are two concepts as to the derivation of human law in the twelfth, thirteenth, and fourteenth centuries. There was the concept of law as custom, and the concept of law as conscious will and determination. The former was being modified by the latter during this period. This modification was the beginning of the modern theory of sovereignty--that

is the conception that there is in every political society the power of making and unmaking laws, that there is some final authority which knows no legal limits, and from which there is no legal appeal. This is the essence of Marsilio's legislative sovereignty of the people. It was normally held during this period that law was established not by the princes alone, but by the prince with the counsel and consent of the great men, and, in some general sense, the approval of the whole community. This is the principle of legislation which the Middle Ages left to the modern world.

There was not only certain restrictions placed on the ruler by natural and human law, but there was a legal method of enforcing these restrictions. The refusal of obedience was the first aspect of what may be called the legitimate method of enforcing the limitation of the authority of the ruler. The release of the subjects from their oaths of allegiance was a means employed by the church to restrict the ruler. In some cases direct resistance to the arbitrary and illegal action of the ruler was itself legal. Deposition was resorted to only when it became clear that moderate means had failed to correct the situation. Unity and order was of utmost importance, and Christian subjects were to consider the total effects upon the welfare of all the citizens before taking action against a ruler.

Political authority was not only limited by its nature but also by its purpose. Political authority had as its object to attain and secure the common good. The common good was of far greater significance than the good of the individual, because any whole is greater than its part. Society was conceived as being composed not of individual units,

but rather of classes and orders. Like all nature society is a system of ends and purposes in which the lower serves the higher and the higher guides and directs the lower. Following Aristotle, Aquinas described society as a mutual exchange of services for the sake of a good life to which many callings contribute, the farmer and the artisan by supplying material goods, the priest by prayer and religious observance, and each class by doing its own proper work. Marsilio considered the state as a kind of "living being" composed of parts which perform the functions necessary to its life. The ruler is necessary in order to maintain the proper interaction between the various functional elements within the state and hereby to secure the common good.

Hence rulership is an office or trust for the whole community. The ruler's power is a ministry or service to the community of which he is the head. The office of rulership is a trust and service to the community because its derivation, both as a position and power, originated from the people. Though Aquinas and Marsilio both agreed as to the representative character of the ruler's office, yet there was a different emphasis as to the ultimate source of political power. Aquinas considered that ultimately the ruler's power is derived from God for the happy ordering of human life in order that people may realize the virtuous life. The moral purpose of government is paramount. Finally, this ordering must lead to a good beyond earthly society, to a heavenly life, but this is beyond human power and is in the keeping of priests rather than rulers. Marsilio felt that the ruler's power is derived from the people, and the ruler is to so direct and regulate temporal affairs that people might realize the sufficient life. The primary responsibility

of the ruling part is to execute the decrees which have been established by the legislator. The ruler acts with the legal determination of the community. Aquinas emphasized the limitations placed upon the ruler because of his moral responsibilities, whereas Marsilio stressed the legal responsibility of the ruler to the people.✓

Aquinas and Marsilio are in basic agreement that it is necessary, if the common good is to be realized, that the ruler not have absolute authority. There must be redress against tyrants and unlawful rulers who are seeking their own private benefit rather than the common good. Aquinas so closely aligned the common good and natural law that any ruler who was not governing for the former was acting contrary to the latter. He was morally irresponsible and on this basis the people were not obliged to obey him, and could take the proper action to have him removed if the circumstances warranted such action. Marsilio considered that the achievement of the common benefit through the rule of one or a few was impossible. One or a few men through ignorance or a vicious emotion would pervert supreme authority to their own interest and desires. They must, therefore, be subject to the impartiality of law which has been determined by the legislator.

It is from the Middle Ages that the modern world has inherited the representative system, and this system was the natural development of the fundamental political conception of medieval society--that is, that the community is the source of all political authority. The executive power is only the agent of the community to put into effect whatever decrees are issued by custom or directly by the community; and because of this unity there is no room for differences of jurisdiction or dispersion

of power. The ruler is to represent the common benefit and good of the whole community, and this can best be done by his working within the framework of the law and reflecting the will of the people in his every action.

One of the important political concepts that arises out of this period is the doctrine of the contract, between the ruler and the ruled, because upon this were built the principles of the nature and limitations of the authority of the prince. The ruler contracts to seek in all his acts the good of the community by assuming the government of the state. If he breaks his part of the contract the people remain free to break theirs. If the ruler proves unfit for his position, he can with justice be removed. When Marsilio laid special stress upon the principle that it was the community which was the source of all positive law, that it was from the community that the ruler received his authority, and that the community which had given the authority could also withdraw it, if he violated the law, he was implicitly asserting the doctrine of the contract.

Political authority was not only limited by its nature and purpose but also by its structure. The exact form that the constitution should take was never definitely stated. The form of the constitution would vary according to time and place. However, both Aquinas and Marsilio felt that the best form of government was one in which all the citizens participated. Aquinas considered that this best could be accomplished by combining the principles of monarchy, aristocracy, and democracy in a mixed form of government. Marsilio upheld a system of government in which all the citizens participate according to their rank and ability. He sought to achieve the proper proportion between the various functional

groups of society which would best advance the welfare of the entire citizen body. This type of government in which the various political orders and functional groups are properly mixed and proportioned prevents the ruler from exercising any undue authority.

The structure of the state limited the ruler in his function. The ruler's primary purpose was to provide the directive force necessary to preserve and maintain order and unity in the realm. But even in the provision of a military force necessary for the maintenance of order, Marsilio would have its size determined by the legislator in order to prevent any usurpation of authority. The ruler was to have the necessary coercive force to execute the laws prescribed by the legislator, but not enough power to exceed that of the entire or the majority of people. Aquinas' conception of the function of the ruler is not nearly as definable and specific as that of Marsilio. This is so because Aquinas conceived of the ruler operating within the framework of not only human law but also moral and divine law. Thus the ruler functions within the divine direction of the world which gives government moral and religious significance. But whatever the framework of government, the function of the ruling part was to provide the means necessary for the virtuous and sufficient life.

Finally, political authority was limited by its character. There were certain qualities which were to characterize the ruler in the exercise of his office. The most important quality befitting a ruler was justice. An unjust ruler was a usurper and a tyrant who ruled for private benefit and personal gain rather than for the common good; whereas, a just ruler executed the law with impartiality for the common benefit of all the citizens.

A quality concomitant with justice was prudence. Prudence was necessary in order that the ruler might judge properly concerning practical affairs indeterminable by law. The ruler should render obedience to the church so that he might secure the eternal welfare of himself and his subjects. However, Marsilio considered obedience to the church purely voluntary. Another quality which should characterize the ruler was benevolence. Without love for the polity and its citizens, the ruler would lack the proper motivation to secure the good of all.

Election is the means by which these qualities are most easily obtained. The qualities can be easily erased if there is a long extension of monarchical rule by hereditary succession. Whereas election presents the opportunity to secure new leadership with the accompanying desirable qualities. Furthermore, new restrictions on the ruler's authority can accompany an election; if these restrictions are deemed necessary. An elected ruler by virtue of receiving his office from the people will be more sensitive to their needs and more diligent to their welfare. The people who make up the citizen body are rational beings capable of knowing and judging the common good. They would, therefore, select a ruler with the qualities of character which would further the common good. Thus the expectation of the people as to those qualities which should characterize the ruler serves as a reminder to him to exemplify those characteristics.

The political order of the Middle Ages was built upon certain religious, moral, and legal principles which resulted in a system of limited and constitutional government. The culmination of this development was in the creation of a system of government which could be conceived of as representing the whole community. The proper character of the

of the political society of the Middle Ages is to be found in the principle that all political authority, whether of the law or the ruler, is derived from the whole community. It is the community which invests the ruler with legitimate authority, and only the ruler, in the last analysis, has the right to depose him. Justice can only be accomplished when the ruler and the ruled live together under the supremacy of law. The medieval period was one of conflict, controversy, turbulence, and sometimes violence, but a remedy was found for this condition, not in a monarchical absolutism, but in the recognition of the supreme authority of law and justice.

BIBLIOGRAPHICAL ESSAY

Primary Sources

The primary source materials used in the writing of this thesis are editions and translations of original works. The important source for a study of the papal theories and ideas of Pope Gregory VII are contained in The Correspondence of Pope Gregory VII, tr. Ephraim Emerton (New York, 1932). The letters are arranged chronologically and cover the period from 1073-1083. They are extracts from a much larger group of letters from the Registrum of Pope Gregory VII in Bibliotheca Rerum Germanicarum, ed. Philip Jaffé, II (Berolini, 1865), 1-519. Some of the more important letters were taken from the Epistolae Collectae in Bibliotheca Rerum Germanicarum, ed. Philip Jaffé, II (Berolini, 1865), 528-576. The Summa Theologica of St. Thomas Aquinas, tr. the Fathers of the English Dominican Republic, 22 Vols. (London, 1914-1942) is the primary source used for Thomas Aquinas' political thought. Especially important are Vols. 8 and 10 concerning law and justice. Appended to the translation is added information concerning scriptural references, ecclesiastical authorities, popes, general councils, synods, and philosophers referred to by Aquinas in the Summa Theologica. Marsilius of Padua: The Defender of Peace, tr. Alan Gewirth, Vol. II (New York, 1951) is the first English edition of Marsilio's work and a very important one for the student of political theory.

Other primary sources are A. P. d'entreves, Aquinas Selected Political Writings, tr. J. G. Dawson (Oxford, 1948), which consist of selected translated sections of Aquinas' political thought; The Political Ideas of St. Thomas Aquinas, ed. Dino Bigongiari (New York, 1957), which

presents the ideas of Thomas Aquinas on politics, justice, and social problems as set forth in the Summa Theologica, and on forms of government as presented in De Regimine Principum.

An important source for a knowledge of the basis of papal claims is contained in The See of Peter, ed. James T. Shotwell and Louis Roper Loomis (New York, 1927). This book is an anthology of quotations tracing by documentary outline the Petrine tradition and the rise of the Roman See for three hundred years after Peter's death. Alongside the translation of texts are brief editorial comments by the editors. This volume is an invaluable source of texts upon which the papacy rested its claims and asserts its great prerogatives. A work which is significant for medieval political theorists is Ewart Lewis, Medieval Political Ideas, 2 Vols. (London, 1954). The importance of this work is the translation of important medieval political ideas which otherwise would not be available to nonspecialists. The book follows a topical organization with a running commentary and a list of footnotes at the end of the book.

Secondary Sources

A survey of canonist political thinking from the second half of the twelfth to the end of the fourteenth century is contained in Walter Ullmann, Medieval Papalism (London, 1949). His contention is that the main medieval canonist tradition supported the theory of direct papal power in temporal affairs. With this should be compared a review of Ullmann's book by A. M. Stickler under the title "Concerning the Political Theories of the Medieval Canonists" in Traditio, VII (1951), 450-463, in which Ullmann's interpretation is strongly criticized as one-sided. In

a later book, The Growth of Papal Government in the Middle Ages (London, 1955), Ullmann attempts to trace the hierocratic papalist ideology of later medieval times back into the Dark Ages and even the patristic period. His most striking contention is that a theory of dualism in the relationship of the early medieval church and the secular power was the exception rather than the rule. The Gelasian theory itself was not an assertion of dualism but a claim for the papacy of monastic supremacy, even in the temporal sphere. The theme of the whole book is the conflict between this claim and the rival Caesaro-papist claim of the secular Christian authority.

A very valuable book for an examination of the philosophy of Thomas Aquinas is Hans Meyer, The Philosophy of St. Thomas Aquinas, tr. Rev. Frederic Eckhoff (London, 1944). This work contains a thorough but not extensive examination of Aquinas' theory of law; it also contains useful articles on the historical influences on Aquinas, and his contribution to philosophical thought. The author demonstrates a good understanding of the scope of Thomistic philosophy. Thomas Gilby, The Political Thought of Thomas Aquinas (Chicago, 1958), gives insight into the various influences on the political thinking of Aquinas. This book is divided into two sections. The first is introductory, containing events and ideas which Aquinas had to reckon with, arranged under four chapter headings on theology, law, social history and philosophy. What Aquinas made of these sometimes conflicting elements is discussed in the four corresponding chapters of the second part, and recapitulated in the concluding summary. Geral Vann, St. Thomas Aquinas (London, 1940) is written primarily for the non-Catholic reader "who finds himself attracted

to the breadth and depth of his wisdom." The author, not being an historian, leans heavily on Christopher Dawson and Etienne Gilson.

Alan Gewirth, Marsilius of Padua: The Defender of Peace, Vol. I (New York, 1957), believes that Marsilio's idea of the state embodies genuine democratic elements and that Marsilio's community retains a right of ultimate control over the ruling part. Gewirth holds that the Marsilian disassociation of politics from ethics was assisted partly by an emphasis on the biological rather than the teleological aspect of Aristotle's approach and partly from the utilization of St. Augustine's political pessimism. A brief summary of Marsilio's political philosophy is contained in Ephraim Emerton, The Defensor Pacis of Marsiglio of Padua (New York, 1951). The author takes the position that Marsiglio was the predecessor of certain modern political ideas such as majority rule.

C. Kenneth Brampton, "Marsiglio of Padua, Life," English Historical Review, XXXVII (1922), 501-516, contains some pertinent facts and events of the life of Marsilio. Alan Gewirth, "John of Jandum and the Defensor Pacis," Speculum, XXIII (1948), 267-272, adduces new evidence with respect to the question of the authorship of the Defensor Pacis. Gewirth contends that the Defensor Pacis was not of joint authorship but was written by Marsilio exclusively. He examines John of Jandum's Questions on Metaphysics in order to point out the difference in viewpoint between him and Marsilio.

Certain general works on political theory have been useful in preparing this study. Charles Howard McIlwain, The Growth of Political Thought in the West from the Greeks to the End of the Middle Ages (New York, 1932) traces European speculation on politics from its beginnings

in classical times to the transition from medieval to modern thought at the close of the fifteenth century. The main theme of the book is the combination of Graeco-Roman, Germanic and Christian concepts by medieval tradition to bring about a society in which central government was limited, not by specific constitutional checks, but by rights conceived as belonging in general and in particular to the members of the community. A book especially valuable for its extensive use of original sources is R. W. and A. J. Carlyle, Medieval Political Theory in the West, 6 Vols. (London, 1903-36). In general the earlier Middle Ages up to the thirteenth century are treated more satisfactorily than are the fourteenth and fifteenth centuries, which are dealt with more sketchily. The six volumes deal respectively with: classical and early Christian thought; the Canonists and Civilians; feudal and Germanic ideas; the Investiture Contest; the thirteenth century; the fourteenth, fifteenth, and sixteenth centuries.

Otto Gierke, Political Theories of the Middle Ages, tr. Frederic William Maitland (Cambridge, 1951) has as its main thesis that the men of the Middle Ages did not follow up the logical implications of their own political thought. Gierke holds that this thought, embodied in the ideals of unity and organic arrangement of society, necessarily implies the concept of "group personality." He attributes the failure to evolve such a concept to the intrusion of what he describes as "antique-modern" conceptions of politics, which tended to regard all legal entities other than the state and the individual as "fictitious." Maitland's introduction to his translation is a good exposition for English readers of Gierke's theory. An example of the stringent criticism to which Gierke's outlook

has been subjected in recent years in Ewart Lewis, "Organic Tendencies in Medieval Political Thought," American Political Science Review, XXXII (1938), 849-876.

Another book written to prove a thesis was Ernst Troeltsch, The Social Teaching of the Christian Churches, 2 Vols. (London, 1931). Troeltsch maintains that primitive and Patristic Christianity had no interest outside the spiritual life of its own fellowship, took no trouble to work out a political philosophy, but contented itself with taking over the already existing classical concepts, such as the Law of Nature. Medieval Catholicism, on the other hand, forced by circumstances into more intimate contact with civil society, sought to control the whole of social life. In practice, however, the church made little change in the classical idea of Natural Law, upon which it superimposed the sanctions and graces of revealed religion. Thus there was no attempt in the Middle Ages to create a distinctively Christian social or political ethic; the church was content to act as the interpreter and enforcer of rational natural law. Other general works are George H. Sabine, A History of Political Theory (New York, 1958), Chapters XII, XIII, XV being especially helpful; Sidney Painter, "Church and State in the Middle Ages," ed. Kenneth M. Setton and Henry R. Winkler, Great Problems in European Civilization (New York, 1954), 135-172 is significant for its presentation of the church-state controversy by means of original writings and editorial comments.

ROOM USE ONLY

~~JUN 6 1961~~

ROOM USE ONLY

MAR 19 1962

MAY 28 1962

~~AUG 1 1963~~

~~FEB 6 1964~~

~~4/9/69~~

~~DEC 19 1965~~

MICHIGAN STATE UNIVERSITY LIBRARIES



3 1293 03056 6495