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**THE CONCILIAR DOCTRINE OF MARSIGLIO OF PADUA:
POLITICAL RESONANCES AND THEOLOGICAL
CONNOTATIONS**

M.A. Thesis in Medieval Studies

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June 2003

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by
Martin N. Ossikovski
(Bulgaria)

Thesis submitted to the Department of Medieval Studies,
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Accepted in conformance with the standards of the CEU

Chair, Examination Committee

Thesis Supervisor

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I, the undersigned, Martin Ossikovski, candidate for the M.A. degree in Medieval Studies declare herewith that the present thesis is exclusively my own work, based on my research and only such external information as properly credited in notes and bibliography. I declare that no unidentified and illegitimate use was made of the work of others, and no part of the thesis infringes on any person's or institution's copyright. I also declare that no part of the thesis has been submitted in this form to any other institution of higher education for an academic degree.

Budapest, 1 June 2003

Signature

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LIST OF ABBREVIATIONS

<i>Defensor pacis</i>	Marsiglio of Padua, <i>Defensor pacis</i> , ed. Richard Scholz (Hannover: Hahnsche Buchhandlung, 1932).
<i>Defensor minor</i>	Marsiglio of Padua, <i>Defensor minor</i> , in <i>Marsile de Padoue, œuvres mineures. Defensor minor, De translatione imperii</i> , ed. Colette Jeudy and Jeannine Quillet (Paris: Éditions du centre national de la recherche scientifique, 1979).
<i>Dialogus</i>	William of Ockham, <i>Dialogus</i> , ed. John Kilcullen, George Knysh, Volker Leppin, John Scott and Jan Ballweg [Latin text and English translation on-line] (British Academy, 1999); available from http://www.britac.ac.uk/pubs/dialogus/ockdial.html ; Internet.

References to the different texts are given in the following format:

“*Defensor pacis* II.i.1” is *Defensor pacis*, *Dictio* 1, Chapter 1, paragraph 1.

“*Defensor minor* i.1” is *Defensor minor*, Chapter 1, paragraph 1.

“3.1 *Dialogus* 1.1” is *Dialogus*, Part 3, Tract 1, Book 1, Chapter 1.

CHAPTER ONE:

INTRODUCTORY

The enthusiasm in reading the works of Marsiglio of Padua (1275/80-1342/3) often comes from his being perceived as a forerunner of modern times, even of our own days. For the reason of his ambitious political programme, Marsiglio has been put next to authors like Machiavelli, Hobbes, Locke, Montesquieu, and Rousseau, and his ideas in the context of the French Revolution, socialism, and Marxism.¹ Scholars have justly insisted that such comparisons may do no good to the Paduan, that he did not belong to our time and therefore parallels in that direction could go out of context or simply wrong.² To this, at least one other serious danger can be added: the overemphasis on Marsiglio's political ideas can cause other parts of the world of his ideas to fall under their shadow. Such may be the case with his ecclesiastical teaching, which, being expounded in the strong framework of Marsilian political philosophy, seems to be simply its logical continuation.

Bearing in mind this potential problem, the present study is going to focus on one of the aspects of Marsiglio's ecclesiastical doctrine, his teaching about the *generale concilium Christianorum*, the general council of the faithful Christians. As I shall attempt

¹ See, for example, the generous review in Conal Condren, "Marsilius of Padua's Argument from Authority: A Survey of its Significance in the Defensor Pacis," *Political Theory*, vol. 5, no. 2 (May 1977): 206-207.

² "He is not, as appears to be thought by some writers who are not very well acquainted with medieval political literature, setting out some new and revolutionary democratic doctrine, but is rather expressing, even if in rather drastic and unqualified terms, the normal judgement and practice of the Middle Ages: he represents not the beginning of some modern and revolutionary doctrine, but the assertion of traditional principles." R. W. Carlyle and A. J. Carlyle, *A History of Medieval Political Theory in the West*, vol., *Political Theory from 1300 to 1600* (Edinburgh and London: William Blackwood and Sons, 1936), 9.

to show, it was at this point that his purely political ideas seem to have received a serious ecclesiastical application. In the following pages, I shall try to reveal the danger of overemphasising that relationship, and also to offer an interpretation which could avoid it. My ambition will be thus to contribute towards a clearer understanding of the Paduan's conciliar idea.

1. Some Current Interpretations

The approach towards Marsiglio's ecclesiastical teaching as being ultimately dependent upon his secular political doctrine is somehow traditional in the scholarship on Marsiglio.³ A good place to start with is Alan Gewirth's seminal study, *Marsilius of Padua and Medieval Political Philosophy*,⁴ which followed the first modern translation of *Defensor pacis*. Gewirth's basic thesis, that the core idea of *Defensor pacis* led towards a doctrine of popular sovereignty, had deep consequences on his interpretation of Marsiglio's ecclesiastical theory. According to Gewirth, the doctrine of the people's sovereignty resulted in subverting the entire hierarchical structure of the Church. Marsiglio "weakens the continuum between priesthood and God, reverses the superiority of clergy over laymen, and equalises priests, bishops, and pope in that respect in which

³ For the best review of the basic studies on Marsiglio, one should consult Georges de Lagarde, *La naissance de l'esprit laïque au déclin du moyen âge*. Vol. 3, *Le Defensor pacis* (new ed., Louvain and Paris: Éditions E. Nauwelaerts and Béatrice-Nauwelaerts, 1970), 10-30 (henceforth *Lagarde*). Lagarde covered all important works produced between the 1880s and the 1960s. The fullest bibliographies on Marsiglio are to be found in Hermann Segall, *Der "Defensor Pacis" des Marsilius von Padua. Grundfragen der Interpretation* (Wiesbaden: Franz Steiner, 1959), 78-86, covering the period until 1959, and Carlo Dolcini's recent *Introduzione a Marsilio da Padova* (Rome: Editori Laterza, 1995), 88-112, covering the period between 1960 and 1995.

⁴ Alan Gewirth, *Marsilius of Padua. The Defender of the Peace*, vol. 1, *Marsilius of Padua and Medieval Political Philosophy* (New York: Columbia University Press, 1951); henceforth *Gewirth*. See also his

their authority had been considered essentially spiritual.”⁵ This was a revolution: no more were the laity subjects of one ruling hierarchy; from the Marsilian point of view, the Church existed for all the faithful and, more importantly, was controlled by all the faithful, not solely by the clergy.⁶

The conciliar doctrine was only a completion of this ecclesiastical reform.⁷ Indeed, in accordance with the previous tradition, Marsiglio did not agree “to leave to each individual the content of the faith in which he will believe.” This authority had to be conceded to “some official agency for a reason which is the reverse of individualism.”⁸ Locating this authority in the general council of the Church, however, Marsiglio became the culmination of the entire preceding conciliar tradition:⁹ it was the council which was infallible through the guidance of the Holy Spirit, which had the sole right to determine questions of faith, which elected the pope and had the right to depose him.¹⁰ Gewirth considered this to be a change sufficiently drastic in itself. Not only, against the tradition, did Marsiglio substitute the council for the pope, but, being “the true founder of conciliarism,” he provided for the dependence of the pope upon the general council and also of the council upon the laity and hence upon the whole Church.¹¹ Thus, his conciliar position reflected his general “ascending” doctrine of political power: it “involves unlimited, unilinear authority: the pope is subject to the council, which is subject only to

“Introduction,” in *Marsilius of Padua. Defensor pacis*, tr. Alan Gewirth (2d ed., New York: Columbia University Press, 2001).

⁵ Gewirth, 262.

⁶ Gewirth, 263.

⁷ *Ibid.*, 283.

⁸ *Ibid.*, 284.

⁹ *Ibid.*, 285.

¹⁰ *Ibid.*, 285-6.

¹¹ *Ibid.*, 286.

the whole body of the faithful, which in turn is subject to no one in spiritual matters; and these relations are not reversible.”¹²

It would not be an exaggeration to say that Alan Gewirth’s study was quite firmly grounded in the tradition of Marsilian studies produced until the 1950s. From the late nineteenth century onwards, scholars have always been tempted to emphasise the “democratic” and “revolutionary” connotations of Marsiglio’s theory and, more importantly, to transpose them into the field of ecclesiology.¹³

One can observe that this derivative approach was preserved also in the years subsequent to Gewirth’s work. Jeannine Quillet, the French translator of Marsiglio’s chief work, took basically the same direction. Similarly to Gewirth, she perceived Marsiglio’s definition of the Church as *universitas fidelium* as a decisive refusal of an

¹² *Ibid.*, 392.

¹³ Two examples would suffice here. First, Karl Hirsch’s instructive study from 1903, probably the first attempt on the genesis of the conciliar theory in the centuries before the Great Schism. Regarding Marsiglio, Hirsch wrote as follows: “Die revolutione religiosa, deren sich der Paduaner wirklich schuldig machte, lag [...] in seiner Zuwendung der gleichen kirchlichen Gewalt an die einzelnen Kirchenmitglieder, mit anderen Worten: **in seiner Anwendung des Prinzips der Volkssouveränität auf die Kirche** [emphasis mine, M.O.], soweit dies von seinem Standpunkte aus möglich war. So wie die universitas civium die Staatsgewalt inne hat, so besitzt nach seiner Lehre die universitas fidelium die Fülle der kirchlichen Gewalt!” (Karl Hirsch, *Die Ausbildung der konziliaren Theorie* (Vienna: Verlag von Mayer, 1903), 29) And further: “Durch die Zuerkennung der kirchlichen Vollgewalt an die Gesamtheit der Gläubigen ist die Stellung des Generalkonzils innerhalb der Kirche bereits bestimmt. Das Generalkonzil ist [...] eine Versammlung von Kleriken und Laien, welche als Vertreter der Gesamtheit der Gläubigen kraft ihres Mandates die kirchliche Gewalt ausüben. **Dieser Konzilsbegriff war unerhört für die Zeit des Marsilius, aber aus dem Prinzip der kirchlichen Volkssouveränität vorgerichtet abgeleitet.** [emphasis mine, M.O.]” (*ibid.*, 31) Fifty years after Hirsch, in his synoptic expose on *Defensor pacis*, Hermann Segall took the same direction: “Die logische Grundlage der Marsilianischen Theorie über das Verhältnis zwischen geistlicher und weltlicher Gewalt besteht darin, daß ‘**civitas**’ und ‘**ecclesia**’ **einander analog entworfen sind** [emphasis mine, M.O.]. Auch bei der Definition des Begriffs ‘ecclesia’ geht der ‘Defensor Pacis’ von der Idee der Gemeinschaft aus. Der ‘civitas’ als ‘universitas civium’ entspricht eine ‘ecclesia’, deren Verkörperung die ‘universitas fidelium credentium et invocantium nomen Christi’ ist. Die ‘Gesamtheit der Bürger’ baut den Staat; die ‘Gesamtheit der Gläubigen’ bildet die ‘Kirche’.” (Hermann Segall, *Der “Defensor Pacis” des Marsilius von Padua. Grundfragen der Interpretation* (Wiesbaden: Franz Steiner, 1959), 67) It has to be noted that Segall’s study attempted a reconsideration of the entire tradition on Marsiglio from the 1880s onwards.

institution of a predetermined type.¹⁴ It was the simple believers who possessed the authority to carry out the internal organisation of the Church. At this point, Quillet also recognised the effect of the principles of popular sovereignty, which Marsiglio had defended with regard to civil government, an “affirmation – au moins théorique – de la souveraineté de la multitude des fidèles ou de la plupart d’entre eux [...]”¹⁵ This analogy became more complicated: as in the case of the civil community, where authority did not remain directly with the people but was transferred to higher levels by means of representation (through the princes to the emperor), so too the Church had to be “démocratique dans son fondement, représentative dans son fonctionnement.”¹⁶ It was the church council which fulfilled these two requirements: within the Marsilian system, it was both democratic in origin, and representative in exercising power. Quillet noted that here “les formules sont identiques à celles de la *Prima Dictio* lorsqu’il d’établir le fondement de l’autorité politique.”¹⁷

However, it was not to be forgotten that, with regard to questions of faith, the members of the council acted solely as “experts” and had no authority to execute their decisions; this authority belonged only to the general assembly of all citizens or their highest representative. Quillet emphasised that it was precisely this latter one, the supreme representative, who possessed the actual authority to convoke the council, execute and enforce its decisions, and punish whoever transgressed them. That was not a question of simple parallelism; it was “sur l’application des mêmes principes qu’est fondé

¹⁴ Jeannine Quillet, *La philosophie politique de Marsile de Padoue* (Paris: Librairie Philosophique J. Vrin, 1970), 168; henceforth *Quillet*.

¹⁵ *Ibid.*

¹⁶ *Ibid.*, 169; on the idea of “representation,” central for this interpretation, see *ibid.*, 84-91 and also Quillet’s “*Universitas populi* et représentation au XIV^e siècle,” *Miscellanea Mediaevalia* 8 (1971): 193 and “Community, Counsel and Representation,” in *The Cambridge History of Medieval Political Thought* (Cambridge: Cambridge University Press, 1988), 560.

le pouvoir politique, qui détient à la fois pouvoir temporel et pouvoir spirituel; puisque l'autorité est une, on ne voit pas pourquoi son domaine n'irait pas jusqu'à la gestion des affaires religieuses."¹⁸ Thus, the conciliar doctrine fulfilled a twofold task: on the one hand, "garantir la pureté de l'Eglise" by protecting the Church from oligarchy; on the other hand, and more importantly, "respecter l'unité de l'autorité qui s'incarne dans le chef suprême d'une instance à la fois politique et religieuse."¹⁹ Marsiglio's conciliarism, after all, did not make an exception of the core idea of his political doctrine, as Quillet saw it: namely, defence of the traditional values of the medieval imperial order.

Indeed, although contrasting on the question of whether the Marsilian system was revolutionary or not, the interpretations of both Jeannine Quillet and Alan Gewirth had one important thing in common: the emphasis on the application of the principles of secular politics in the ecclesiastical sphere. It was Georges de Lagarde, in the third volume of his study on the laicist spirit in the Middle Ages, dedicated to Marsiglio of Padua, who reconsidered and criticised this position.²⁰

Lagarde's starting point was decisive: Marsiglio was the first theoretician of the laicist state. Within this basic perspective, Lagarde approached the Marsilian notion about the Church as having the chief aim of narrowing the limits of spiritual authority: "Pour achever la libération de la cité humaine," he stated, "il ne reste plus qu'à retirer à ceux qui se disent détenteurs du pouvoir spirituel, le droit de se faire les seuls interprètes qualifiés d'une vérité divinement révélée, que tous les fidèles ont le devoir de respecter et

¹⁷ *Quillet*, 169.

¹⁸ *Ibid.*, 176.

¹⁹ *Ibid.*, 180.

de divulguer.”²¹ Due to the same ambition was Marsiglio’s strict adherence to the Biblical text, and especially to the corpus of the New Testament; he wanted simply to “retirer au sacerdoce le droit de nous enseigner une religion incontrôlable. Après la plupart des sectes hétérodoxes, il a voulu faire du ‘livre’ le garant de la liberté des fidèles.”²²

However, while trying to reduce and overcome the clerical power in human society, Marsiglio did not become an anarchist. Although he gave priority to the simple faithful in the Church, he was by no means ready to leave them the authority to deal with faith; the soundness of the determinations regarding faith, especially in terms of keeping them from going against the interests of the civil community, had to be accomplished on another level.²³ This level was the general council of the faithful: including members elected by all the faithful, and with the especially emphasised participation of non-clerics, it was the council which was responsible for the determinations of faith, thus protecting it from usurpation by an uncontrollable clergy.²⁴ Lagarde noted that the role of those “laics” was not to be exaggerated, since the clerics were especially given priority by Marsiglio in the conciliar discussions.²⁵ The important point was the authority possessed by the council: it was by no means coercive; the sole right to execute the conciliar decisions belonged to the unified governmental part of the civil community.²⁶ This complete subjection of the Church was especially obvious in the history of the primitive Christians. “Une minorité chrétienne a dû vivre au milieu d’une communauté civile infidèle. S’est-

²⁰ See n. 3. We will use the second edition of this work for the reason that it contained noteworthy remarks concerning the opinions of Gewirth and Quillet.

²¹ *Lagarde*, 209.

²² *Ibid.*, 212.

²³ *Ibid.*, 213.

²⁴ *Ibid.*, 216.

²⁵ *Ibid.*, 213.

elle constituée en société séparée? Non. Elle a accepté les lois et l'autorité du législateur infidèle et de son prince [...].”²⁷

In other words, Lagarde's interpretation culminated in the Church's being a department thoroughly subjected to the Marsilian “state.” More importantly, this meant that one could not consider the Church to be a society, a different one, from the civil society. In Marsiglio, the term “*ecclesia*” was simply a designation of the whole aggregation of the faithful. It was here that Lagarde disagreed with Jeannine Quillet and Alan Gewirth: it was wrong to approach Marsiglio's ecclesiastical doctrine as if it were a simultaneous application of the same “democratic principles” which resided in his secular political theory. The former case was subject to the latter, not parallel to it; any analogy was as ill-judged as if “l'on disait qu'on a appliqué au cercle les caractéristiques du rond.”²⁸

2. Plan of This Study

The “unilinear ascending,” the “imperialist,” and the “laicist” interpretations of the Paduan's system present us with contrasting conclusions. The problem of what Marsiglio's authentic message was with regard to the structure of the social order, somehow exhausted by scholars, will not be discussed in this study. I will concentrate on the conciliar part of Marsiglio's ecclesiastical teaching – the one which seems to be most intimately connected with, and even arising from, the principles of popular sovereignty of his political programme. Indeed, after the instructive position of Georges de Lagarde, one

²⁶ *Ibid.*, 221.

²⁷ *Ibid.*

²⁸ *Ibid.*, 223.

can still at this point insist that Marsiglio's "conciliarism" was not, and could not be, a mere application or transposition of the principles of secular government. The precise status of his conciliar position, however, still remains under question. A more recent study on the history of the conciliar idea in the West has already noted the importance of this problem;²⁹ for my part, I would expand it into two directions: first, I will argue that Marsiglio's conciliar doctrine contains elements which clearly show that **it was not elaborated out of principles identical with the purely political ones in *Defensor pacis***; second, I will try to demonstrate that, whilst elaborating on the conciliar problem, **Marsiglio attempted to ground himself on primarily Biblical foundations.**

In brief, these two points are what the following pages will concentrate on. In the next chapter I will attempt to reconstruct Marsiglio's conciliar theory as it appeared in the two most speculative works of the Paduan, *Defensor pacis* (1324) and *Defensor minor* (1342). In chapter three, with an understanding of what the basic presuppositions of Marsiglio were, I will approach the dimensions of his conciliar position within the framework of his own ideas about civil government, on the one hand, and within the context of ecclesiastical tradition which may have influenced him, on the other. Finally, it is hoped that an understanding of Marsiglio's conciliar position will be reached which would in a way allow a reconsideration of Alan Gewirth and Jeannine Quillet's "derivative" approaches.

²⁹ "Weil die Konzilstheorie des Paduaners im Zentrum seines Entwurfes einer neuen Gesellschaft steht, hat kaum ein Forscher, der sich in der Vergangenheit mit dem *Defensor Pacis* befaßt hat, dieses Thema ganz ausgespart. Und doch scheint eine Neubehandlung angebracht; denn entweder wird das Konzil tatsächlich nur en passant behandelt oder unter so spezieller Rücksicht, daß nicht das Gesamtphänomen in den Blick kommt. **Die beiden wichtigsten neueren Untersuchungen zu unserer Frage, die von A. Gewirth und Jeannine Quillet, bestimmen die Konzilsidee des Paduaners fast ausschließlich verkimmanent** [emphasis mine, M.O.] und heben entsprechend nicht genügend auf das radikal Neue seiner Theorie im Vergleich zur vorausgehenden Tradition ab." Hermann Sieben, *Die Konzilsidee des lateinischen Mittelalters (847-1378)* (Paderborn, Munich, Vienna, Zurich: Ferdinand Schöningh, 1984), p. 369.

CHAPTER TWO:

AUCTORITAS HAEC SOLIUS SIT GENERALIS CONCILLII CHRISTIANORUM. FROM DEFENSOR PACIS TO DEFENSOR MINOR

1. The Works and Their Circumstances

Two out of the few texts ever produced by Marsiglio were engaged, among the other problems, with elaborating the conciliar idea: *Defensor pacis*, the major ecclesiopolitical treatise of the Paduan, and the much shorter *Defensor minor*, a restatement and defence of the theses of *Defensor pacis*. A brief outline of the history of these two texts will be necessary in order to approach the meaning of their content correctly.³⁰

According to the Paduan's own testimony, *Defensor pacis* was completed on St. John the Baptist's Day of 1324.³¹ Since the work was very integrated in its content, one can justly assume that the author had been formulating his ideas and working on the text at least for several years.³² That takes us back to the early 1320s, a time when Marsiglio was still in Paris, teaching natural philosophy and practising medicine. To be sure, Paris had made him acquainted with the controversies on evangelical poverty and the troubles experienced by the "Spirituals."³³ It was, most probably, during this period that Marsiglio got to know in person two of the chief opponents in the poverty controversy, Michele of

³⁰ For a more detailed account on the history of the two texts, see Cary J. Nederman, "Editor's Introduction," In *Marsiglio of Padua. Defensor Minor and De Translatione Imperii*, ed. Cary J. Nederman (Cambridge: Cambridge University Press, 1993), xi-xxiii.

³¹ *Defensor pacis* III.iii (the concluding words of the text): "Anno trecenteno milleno quarto vigeno Defensor est iste perfectus festo baptiste. Tibi laus et gloria, Christe!"

³² Kenneth Brempton, "Marsiglio of Padua: Part I. Life," *The English Historical Review* 148 (October 1922): 507; henceforth: "Brampton."

Cesena, the Minister General of the Order, and Ubertino of Casale, the leader of the strict followers of St. Francis's rule.³⁴ Like Marsiglio, these two were going to come into severe conflict with Pope John XXII later.³⁵ The Paduan's own troubles started towards 1326, when the authorship of *Defensor pacis* was revealed. Not having managed to start the course in theology that he was preparing, Marsiglio left for Nuremberg together with John of Jandun, his fellow scholar from Paris. The two men thus became one of the first to accept the protection of the Bavarian king, Ludwig IV.³⁶

Being the legal pretender to the imperial crown, and not recognised by Avignon, Ludwig himself was at odds with the Pope, a case for which the anti-hierocratic ideology of Marsiglio's treatise was more than appropriate. Marsiglio quickly became a personal advisor of the king. He joined his Italian expedition in 1328, an experience which culminated a real instantiation of the *Defensor's* programme: upon the "people's invitation," Ludwig entered Rome and was crowned Emperor in St. Peter's by Sciarra Colonna, a delegate of the people. John XXII was deposed and the minorite Peter of Corvara, accepting the name Nicholas V, was elected antipope. Meanwhile, Marsiglio had become spiritual vicar of the city.³⁷

³³ On Marsiglio's place in the poverty controversies, see *Quillet*, 203-226, *Lagarde*, 329-257, and Kerry Spiers, "The Ecclesiastical Poverty Theory of Marsilius of Padua: Sources and Significance," *Il pensiero politico* 10 (1977): 6-14.

³⁴ "Brampton," 506.

³⁵ Escaping from John, who had practically denied the principles of the Franciscan teaching on poverty with a series of bulls issued between 1322 and 1324, Ubertino and Michael fled from Avignon, respectively, in September 1325 and May 1328. For a detailed reconstruction of the events around the Franciscans' movements in the mid-1320s (which gave the historical background of Umberto Eco's story in *Il nome della rosa*), see, for example, John Moorman, *A History of the Franciscan Order. From its Origins to the Year 1517* (Oxford: Clarendon Press, 1968), 307-320.

³⁶ At that time, the *Defensor* was ascribed both to Marsiglio and John. Contemporary scholarship has agreed that it was only Marsiglio to whom the authorship belonged. See Alan Gewirth, "John of Jandun and the *Defensor Pacis*," *Speculum* 23, vol. 2 (April 1948): 267-272.

³⁷ "Brampton," 511.

The triumph, however, lasted only for a short time. Because of pressure supported by Avignon, Ludwig had to flee Italy. After this unsuccessful end of the “Italian expedition,” we do not have much information on what was happening with Marsiglio. In any case, things changed for him and, after the end of John XXII’s pontificate in 1334, Ludwig seemed ready to withdraw his protection.³⁸ There was also the clamour against the ideas of the *Defensor*. By the end of the 1320s, three reprobative treatises were written on behalf of the Pope against the Marsilian doctrines;³⁹ surprisingly, attacks came also from the other side, in the person of William of Ockham, one of the Friars Minor who were, together with the Paduan, under the protection of the Bavarian king.

Ockham himself was not in a lesser conflict with John XXII, whom he had accused of heresy, starting around 1334 with a short, but expressive text.⁴⁰ This “political period” in the works of the great English philosopher was marked by several impressive enterprises; among them was the *Dialogus*, a huge project, finally to remain unfinished, different parts of which were composed over the 1330s and 1340s.⁴¹ It was here that Ockham engaged in criticism against Marsiglio; the disagreement focused on ecclesiastical theory: Ockham did not accept Marsiglio’s radical rejection of papal primacy, and his teaching about the general council of the Church.

Ockham’s criticism was certainly one of the main reasons for which Marsiglio started a second treatise under the same rubric as *Defensor pacis*. Accordingly, the work

³⁸ “Brampton,” 515.

³⁹ Sybert of Beek’s *Reprobatio sex errorum*, William Amidani of Cremona’s *Reprobatio errorum*, and Peter of Lutra’s *Tractatus contra Michaellem de Cesena et socios eius*. The three texts were composed during the late 1320s; for details, see Richard Scholz, *Unbekannte Streitsschriften aus der Zeit Ludwigs des Bayern*, vol. 1, *Analysen* (Rome: Loescher & Co, 1911), 1-27. The texts are edited in the second volume: *Texte* (Rome: Loescher & Co, 1914): 1-63.

⁴⁰ That was the *Epistola ad fratres minores*, composed at some point during the spring of 1334.

was entitled *Defensor [pacis] minor*; it claimed to restate and defend what had been stated in the treatise from 1324. In one of its sections Marsiglio returned to his conciliar views and answered Ockham's objections. *Defensor minor* was destined to be the last work of the Paduan; shortly after completing it, he was no longer among the living.

Such were the time limits and the context which framed Marsiglio's discussion of the conciliar topic. With that in mind, we can now proceed to his position, approaching it from two different directions: its primary variant as in the treatise from 1324, and its subsequent restatement in *Defensor minor*.

2. The Conciliar Doctrine in *Defensor pacis*

a. General Division and Context of the Treatise

Defensor pacis had a simple structure: the entire work was divided into two big sections, *dictiones*, which elaborated on one and the same problem, but following different methods.⁴² The common problem was the preservation of human peace, a value of both human and divine nature, for the sake of which the papal claim for fullness of power, a new and special cause of strife and disorder in society, had to be disproved.⁴³ The first

⁴¹ The different parts of the *Dialogus* cannot be dated with full accuracy; for some rough orientation, see William of Ockham. *A Letter to the Friars Minor and Other Writings*, ed. Arthur S. McGrade and John Kilcullen (Cambridge: Cambridge University Press, 1995), xxxv-xxxvii.

⁴² A very good schematic outline of the full content of *Defensor pacis* is given by Alan Gewirth in his "Introduction," in Marsilius of Padua. *Defensor pacis*, tr. Alan Gewirth (New York: Columbia University Press, 2001), xxii-xxvi.

⁴³ The papal claim for *plenitudo potestatis* was a cause of civil strife "singularis et occulta valde, qua Romanum imperium dudum laboravit laboratque continuo, vehementer contagiosa, nil minus et prona serpere in reliquis omnes civitates et regna, ipsorumque iam plurima sui aviditate temptavit invadere." (*Defensor pacis* I.i.3; for the sake of being consistent with the rest of the Latin texts quoted here, and to make reading easier, Marsiglio's text will be given in classical spelling.)

Dictio approached the problem of peace in view of its general principles, by means of human reason and propositions self-evident to each individual of non-corrupted nature;⁴⁴ it was Aristotle whom Marsiglio considered to have sufficiently dealt with the general part of the question, and thus the *Politics* turned out to be the central authority of *Dictio prima*.⁴⁵ Of course, having lived in ancient times, the Stagirite was not aware of the newly arisen claim of the Roman bishops;⁴⁶ the same problem, therefore, had to be resolved also on the grounds of Christian tradition, which became Marsiglio's aim in *Dictio secunda*. There he attempted to disprove the Romanists' claims by the means of Scripture, the authority of the saints and of the fathers of the Christian Church. Elaborated in this way, the second *Dictio* stood for itself, self-sufficient, not needing additional external argumentation.⁴⁷

Scholars have different opinions with regard to the relationship between the parts of *Defensor pacis*.⁴⁸ For us it is important that in *Dictio secunda* Marsiglio dealt mainly with church constitution and, at a certain point, he faced the conciliar problem; he had already discussed the crucial problems concerning the relationship between priestly and

⁴⁴ "In prima [dictione] quarum demonstrabo viis certis humano ingenio adinventis, constantibus ex propositionibus per se notis cuilibet menti non corrupte natura, consuetudine vel affectione perversa." (*Defensor pacis* I.i.8)

⁴⁵ The original causes of civil strife were "plures et coniunctae non paucae, quas solitis modis evenire possibiles, philosophorum eximius in civili scientia [that is, Aristotle in the *Politics*] omnes fere descripsit [...]." (*Defensor pacis* I.i.3)

⁴⁶ Its origins "nec Aristoteles aut philosophorum alter sui temporis vel prioris conspiciere potuit. Est enim haec et fuit opinio perversa in posteris explicanda nobis, occasionaliter autem sumpta, ex effectu mirabili post Aristotelis tempora dudum a suprema causa producta, praeter inferioris naturae possibilitatem et causarum solitam actionem in rebus." (*ibid.*)

⁴⁷ "In secunda vero [...] confirmabo testimoniis veritatis in aeternum fundatis, auctoritatibus quoque sanctorum illius interpretum necnon et aliorum approbatorum doctorum fidei Christianae: ut liber iste sit stans per se nullius egens probationis extrinsece." (*Defensor pacis* I.i.8)

⁴⁸ While interpreting the text, some put at the centre the first part (to give a recent example, Cary J. Nederman, *Community and Consent: The Secular Political Theory of Marsiglio of Padua's Defensor pacis* (Lanham: Rowman & Littlefield, 1994); others, emphasising the significance of Marsiglio's religious theory, go the other way round (like J. Heckel's comparison between Marsiglio and Luther, "Marsilius von Padua und Martin Luther," *Zeitschrift der Savigny Stiftung für Rechtsgeschichte*, Kan. Abt. 44 (1958): 268-

secular power (chapters 3-12) and the limits and nature of the priestly power itself (chapters 15-17); in the central chapter eighteen, in the form of a compressed historical sketch, Marsiglio defended the central thesis of the treatise: the papal claim for *plenitudo potestatis* not only did not accord with the true nature of the priestly office and the mission of Christ's Church in the world, but was in fact a result of gradual and illegal usurpation of authority by popes.⁴⁹ The true tradition of the ancient Christian Church, even from Apostles' time, clearly revealed two things: firstly, the bishop of Rome, together with all other ecclesiastics, were subjected to the power of the secular ruler; secondly, the bishop of Rome did not have any exclusive authority over the other bishops. The claim for *plenitudo potestatis*, therefore, was false: not only in its civil, but also in its ecclesiastical dimensions.

But if not the pope, then to whom did the various authorities of ordaining church life belong, and in what sense? At this point Marsiglio turned to the "general council of the believers" in the Church. In the middle of the second *Dictio* he produced a "conciliar treatise," which presents us with the bulk of the Marsilian conciliar theory.⁵⁰ We will now see what the turning points of this section were.

b. The Conciliar Chapters

Marsiglio made his leading conciliar statement in *Defensor pacis* with regard to the question of how newly arisen questions of Christian faith had to be determined. His initial proposition was the existence of certain "doubtful questions or sentences of

336). For more examples, see Jeannine Quillet, "Présentation générale," in *Marsile de Padoue. Le Défenseur de la paix*, tr. Jeannine Quillet (Paris: Librairie philosophique J. Vrin, 1968), 34.

⁴⁹ The discussion developed in *Defensor pacis* II.xviii.3-7.

Scripture,” the interpretation of which was necessary for men’s salvation and for keeping the unity of the faith: the opinions of learned men on such questions often went in diverse directions and, without proper interpretation, schisms and quarrels arose among Christians and the people were led into error.⁵¹ How was this problem to be resolved? Marsiglio’s attention turned to the Christological and Trinitarian discussions of the first four ecumenical councils; after their example he stated that

huius determinationis auctoritas principalis [that is, concerning doubtful questions of Scripture], *mediata vel immediata solius sit generalis concilii Christianorum aut valentioris partis ipsorum vel eorum, quibus ab universitate fidelium Christianorum auctoritas haec concessa fuit.*⁵²

But how was one to understand this *concilium generale Christianorum* and the disjunctions which followed it? Marsiglio answered in the same paragraph:

*omnes mundi provinciae seu communitates notabiles secundum sui legislatoris humani determinationem [...] et secundum ipsarum proportionem in quantitate et qualitate personarum viros eligant fideles, presbyteros primum et non presbyteros consequenter, idoneos tamen, ut vita probatiores et lege divina peritiores [...] vicem universitatis fidelium repraesentantes [...] per universitates auctoritate concessa convenient ad certum orbis locum [...] in quo simul ea quae circa legem divinam apparuerint dubia, utilia, expedientia et necessaria terminari, diffiniant, et reliqua circa ritum ecclesiasticum seu cultum divinum [...] habeant ordinare.*⁵³

The determinations of the general council thus convoked were in no wise lower than Holy Scripture; in the same way, they had to be perceived and followed with irrevocable faith:

Est autem hoc, quod nullam scripturam irrevocabiliter veram credere vel fateri tenemur de necessitate salutis aeternae, nisi eas, quae canonice apellantur, vel eas, quae ad has ex necessitate sequuntur, aut scripturarum sacrarum sensum dubium

⁵⁰ The expression belongs to Hermann Sieben (“der Konzilstraktat des Marsilius”); see his *Die Konzilsidee des lateinischen Mittelalters*, 370 (see n. 29).

⁵¹ “primum [ostendere volumus] quod dubios sensus sive sententias scripturae sacrae [...] presertim circa fidei articulos [...] sit expediens et necessarium terminare. Quoniam expediens est, quinimo necessarium, sine quo fidei unitas minime salvaretur, error et schisma contingeret circa fidem inter Christi fideles.” (*Defensor pacis* II.xx.1) On the salvific function of these determinations, see n. 54.

⁵² *Defensor pacis* II.xx.2

⁵³ *Ibid.*

*habentium eis interpretationibus seu determinationibus, quae per generale fidelium seu catholicorum concilium essent factae, in hiis presertim, in quibus error dampnationem aeternam induceret, quales sunt articuli fidei Christianae.*⁵⁴

Scholars have justly emphasised the council's ultimate dependence on the authority of the secular ruler with regard to the procedure of its convocation as given by Marsiglio.⁵⁵ His immediate argumentation, however, fell completely within the field of theology. First he turned to the concluding verse of Matthew's Gospel: *Et ecce ego vobiscum sum omnibus diebus, usque ad saeculi consummationem.*⁵⁶ The Lord's promise was interpreted to affirm that, for the reason of faith's preservation, the Holy Spirit was always present among the faithful.⁵⁷ To confirm that, a second reference, to the fifteenth chapter of the Acts of the Apostles, was made; the narration stated that the decision regarding the circumcision of the gentiles had been taken in accordance with the will of the Holy Spirit: *Visum est enim spiritui sancto et nobis.*⁵⁸ The general council of the faithful, ran Marsiglio's interpretation, truly represented by succession the congregation of the Apostles and the other Christians from ancient times; as in the primitive Church, therefore, the virtue of the Holy Spirit, through its presence, directed and assisted the deliberations of faith made by the general council.⁵⁹ Marsiglio claimed that the same conclusion could be drawn also by infallible deduction from Scripture: if Christ had allowed that the gathering of the faithful be fallible in determining things which concern eternal salvation, the entire law of the New Testament would have been given in vain;

⁵⁴ *Defensor pacis* II.xix.1

⁵⁵ Such was the leading idea of Hermann Sieben, as he put it, "vom *consilium pontificis* zum *consilium principis*" (see n. 29).

⁵⁶ Matthew 28:20.

⁵⁷ "ad fidei conservationem spiritum sanctum pie tenendum est semper adesse." (*Defensor pacis* II.xix.2)

⁵⁸ Acts 15:28.

⁵⁹ "Cum igitur fidelium congregatio seu concilium generale per successionem vere repraesentet congregationem apostolorum et seniorum ac reliquorum tunc fidelium in determinandis scripturae sensibus

since this was impossible, the conciliar determinations truly took their origin from the supernatural assistance of the Holy Spirit and were free of error.⁶⁰

On the basis of these arguments, which comprised the theoretical core of Marsiglio's conciliar position, he was further able to enlarge the circle of the council's competencies, endowing it with full responsibilities for the religious life of the Christian community.⁶¹ The final conclusion hereupon was clear: only the general council of the faithful, convoked according to the conditions given by Marsiglio, possessed the full authority to control the life of the faithful within the Church. No single person, such as the Roman bishop, or partial congregation of persons, such as the pope together with the cardinals, possessed any fullness of ecclesiastical power. Thus, with the conciliar discussion from the second *Dictio*, Marsiglio completed his work on the main problem of the treatise: the falsity of the papal claim was proved, both with regard to civil and ecclesiastical affairs.

c. The "True Representation by Succession" and the Council's Infallibility

Two points deserve special emphasis in this argumentation: first, the presupposition that the general council truly represented the ancient Christian community, on which grounds the Holy Spirit's assistance was claimed, and second, the infallibility of the general council as a consequence of the divine presence. We have to pay some more attention to

dubiis [...] quinimo certum est, deliberationi universalis concilii spiritus sancti dirigentis et revelantis adesse virtutem." (*Defensor pacis* II.xix.2)

⁶⁰ "quoniam frustra dedisset Christus legem salutis aeternae, si eius verum intellectum, et quem credere fidelibus est necessarium ad salutem, non aperiret eisdem hunc quaerentibus [...] sed circa ipsum fidelium pluralitatem errare sineret. [...] Et ideo pie tenendum, determinationes conciliorum generalium in sensibus scripturae dubiis a spiritu sancto suae veritatis originem sumere [...]." (*Defensor pacis*, II.xix.3)

⁶¹ The general council was responsible for ordinances regarding ecclesiastical ritual, fasting, canonisation and veneration of saints, regulations concerning marriage (*Defensor pacis* II.xxi.4-8), excommunication

these two questions in order to understand Marsiglio's conciliar thesis in *Defensor pacis* better.

With the question of representation, one faces quite a basic notion incorporated deeply in the foundations of *Defensor pacis*. It was by means of representation that the civil legislative process was accomplished on behalf of the entire community, according to Marsiglio's main condition for perfect legislation, and without the direct participation of all citizens, which was indeed impossible.⁶² The case with the general council of the faithful was to some extent analogous. Marsiglio recognised that in the primitive Christian Church all Apostles together with the elder and more experienced faithful undertook the discussion and the definition of newly arisen questions of faith; thus, when it had to be determined whether the pagans converted to Christianity must be circumcised or not, it was not only Peter or only Paul who took the decision.⁶³ Even in Apostolic times, however, it had not been possible that all members of the community gather together. This would harm social life; moreover, many faithful were not proficient enough to take part in the discussions.⁶⁴ There had to be established a principle, then, according to which only one part of the community, as in earlier times, could properly perform the necessary determinations. Marsiglio's solution to this problem was representation: having received the authority to make determinations of faith from the entire community of the faithful, the members of the general council acted as its

and imposing interdicts (*Defensor pacis* II.xxi.9), appointment of ecclesiastics (*Defensor pacis* II.xxii), and, of course, for all kinds of changes of decisions made by earlier councils (*Defensor pacis* II.xxi.10).

⁶² Cf. *Defensor pacis* I.xii.5; I.xiii.8.

⁶³ "Non enim dubium illud de circumcisione beatus Petrus aut alter apostolus seorsum aut singulariter diffinivit, sed convenerunt super hiis omnes apostoli et seniores sive lege divina peritiores." (*Defensor pacis* II.xx.5)

⁶⁴ "Otiose namque et ac inutiliter ad congregationem hanc [that is, the general council] multitudo fidelium imperita, inutilitur autem, quoniam turbaretur ab operibus necessariis ad vitae corporalis sustentationem, quod onerosum ei esset aut importabile forte." (*Defensor pacis* II.xx.2)

“representatives.” In other words, by means of duly delegated authority, they stood for the entire community.

This simple principle was obvious still in the procedure which Marsiglio provided with regard to the convocation of the council: its members were to be elected by all the faithful, among all provinces of the world, thus duly receiving authority to act on behalf of the entire community.⁶⁵ From this point of view, his statement concerning the true representation of the Apostolic community should mean that the contemporary general council of the faithful has properly received authority to act also on their behalf. How is one to understand this, given the limits of space and time? It seems that it was precisely here that the *per successionem* was put into use. On the one hand, “succession” meant that the contemporary council of the Church exercised virtually the same office as the community described in Acts, that the latter community was itself a kind of “primitive *concilium generale*” of the Church.⁶⁶ To this, Marsiglio’s ecclesiological viewpoint added an important nuance. The Church, read his definition from earlier in the treatise, was the whole community of the faithful who believed in and invoked the name of Christ and all the parts of this whole community.⁶⁷ This ultimate unity was founded on Christ’s universal sacrifice: the redemption of His flesh and blood had been given for the entirety of human nature;⁶⁸ under this headship, all Christians comprised one indivisible,

⁶⁵ See n. 53.

⁶⁶ This succession in office was emphasised: “Sic namque fecerunt apostoli cum senioribus de hiis quae dubia circa evangelium occurrerunt, ut apparet Actuum 15° [...]” (*Defensor pacis* II.xix.5)

⁶⁷ “dicitur hoc nomen *ecclesia* [...] de universitate fidelium credentium et invocantium nomen Christi, et de huius universitatis partibus omnibus, in quacunque communitate, etiam domestica.” (*Defensor pacis* II.ii.3)

⁶⁸ “Sicut etiam expresse dicitur in glossa super illud Lucae 22°: *Hoc est corpus meum quod pro vobis datur*. ‘Pro vobis’, inquit glossa, *non significat pro solis apostolis corpus Christi datum et sanguinem effusum fuisse, sed causa totius humanae naturae*.” (*Defensor pacis* II.ii.3)

extratemporal *corpus mysticum*.⁶⁹ Being successors of the ancient Christians, therefore, the contemporary faithful remained in ultimate unity with them, precisely in terms of succession. Accordingly, the members of the contemporary council of the Church not only performed the same duties that the Apostles and the elders once performed; they literally stood in their place. Therefore, the grace of the Holy Spirit, once received by the primitive Christians for the sake of the faith's preservation, was nowadays received by their true successors, the members of the contemporary general council of the Church.

The infallibility of the council came as a simple consequence of this argument. Since the Holy Spirit assisted and directed the determinations made by the general council, these determinations were free of error and expressed the only true Christian faith. Infallibility here arose out of divine origin, and every Christian had to accept the conciliar determinations, just like canonical Scriptures, with irrevocable faith.⁷⁰

But what was the function of the members of the general council at all if its determinations came as pure divine revelation, thoroughly after the guidance of the Holy Spirit? In this regard, *Defensor pacis* presents us with an interesting picture. First of all, by being many rather than one, the participants of the council always remained closer to the truth. Just as the best civil laws, claimed Marsiglio, could emerge only from the whole body of the people insofar as many people could better judge about the truth, so too the general council of the faithful was better able to reveal the truth of the faith.⁷¹ But

⁶⁹ “Caput enim ecclesiae simpliciter et fidei fundamentum [...] unicum est Christus ipse [...] ut apertissime dicit apostolus [...]. Unde omnes apostolos, prophetas, doctores reliquosque fideles dicit constituere *corpus Christi*, quod est ecclesia, tamquam reliqua membra.” (*Defensor pacis* II.xii.5)

⁷⁰ See n. 54.

⁷¹ “ex universae multitudinis auditu et praecepto tantummodo feratur lex optima [...]: **quiniam illius veritas certius iudicatur**, et ipsius communis utilitas diligentius attenditur, ad quod **tota intendit civium**

plurality did not stand alone for itself; still with the starting definition, under the much-celebrated term *pars valentior*, Marsiglio applied to the general council criteria both quantitative and qualitative. It was important that many persons experienced in divine law, yet non-clerics, were given membership.⁷² When disagreement among clerics arose, it was this multitude, comprising a “weightier part” according to their quality and quantity, which was to decide which one of the disagreeing parties was the *sanior* and had to be given priority.⁷³ The presence of many such members, whether they were part of the hierarchy or not, was thus a matter of bringing human proficiency in matters of faith into the utility of confessional discussions. It could assist and direct them so that in cases of discord and quarrels the dubious questions were determined correctly and the unity of faith rescued. Thus, proficiency in matters of faith was an immediate practical tool for carrying out the conciliar determinations. It is noteworthy that after presenting the argument about the assistance of the Holy Spirit according to Acts, Marsiglio moved more and more to the this latter aspect.⁷⁴ The transition was important: initially claimed to be an immediate effect of the divine assistance, the conciliar infallibility according to *Defensor pacis* turned out to be achieved in practice also through human proficiency in matters of faith.

universitas intellectu et affectu.” (*Defensor pacis* I.xii.5); the same argument, by direct reference, was stated on behalf of the general council of the faithful (*Defensor pacis* II.xx.4).

⁷² “Fideles, vita probatores, in lege divina peritiores” according to a passage already quoted (see n. 53); “literati et in lege divina periti.” (*Defensor pacis* II.xx.13)

⁷³ “Unde sacerdotibus invicem dissidentibus de credendis ad salutem aeternam, de ipsorum saniori parte fidelium pars valentior debet iudicare.” (*Defensor pacis*, II.xx.5)

⁷⁴ Thus, when at the very beginning of the discussion of the functions of the general council of the faithful Marsiglio stated the equity of its determinations and canonical Scriptures, he drew mainly on divine assistance (*Defensor pacis* II.xix.3,4). In the following chapter, moving to the more practical problem concerning the composition of the council’s membership, the proficiency in matters of faith fell into focus: it was the qualitative criterion for the “weightier part” (*Defensor pacis* II.xx.2) and truly expedient for

d. Summary

Bearing in mind these core elements of Marsiglio's thesis in *Defensor pacis* II.xx.20, we may summarise his position so that its turning points become clearer: **(i)** by representing the contemporary community of the faithful, **(ii)** which remained by succession one with the ancient Christian Church, **(iii)** the contemporary general council of the faithful, just as in Apostolic times, received the Holy Spirit's grace; for this reason, and also **(iv)** for the common proficiency of its members, **(v)** it was infallible; **(vi)** by the token of this infallibility, it was only the general council that possessed full authority with regard to the internal life of the Church.

3. The Restatement of the Conciliar Thesis in *Defensor minor*

a. Ockham's Attack

As we mentioned, one of the main reasons why Marsiglio composed a second treatise under the same rubric as *Defensor pacis* was the criticism of his fellow exile in Bavaria, William of Ockham. One of the things which Ockham chose to attack was precisely the conciliar part of the Paduan's programme; in order to perceive properly its restatement and defence in *Defensor minor*, we need to outline the main points of Ockham's criticism against Marsiglio.

Ockham dealt with *Defensor pacis* in one of the books from the third part of the *Dialogus*. The central problem of the entire part concerned the limits of papal power:

Claves regni caelorum esse datas a Christo Romano pontifici, id est beato Petro, Christianorum non ambigit, ut aestimo, multitudo; quare non dubitat quin sit a Christo aliqua concessa potestas. Plures etiam auctoritates sanctorum patrum

resolving difficult questions of faith (*Defensor pacis* II.xx.12); contrasting illustrations of priestly wickedness strengthened this insistence (*Defensor pacis* II.xx.13).

*videntur asserere quod aliquam ex humana ordinatione acceperit potestatem. De quarum utraque, si utramque habeat, interrogabo quamplura: Quam videlicet et quo iure, divino scilicet an humano, habeat potestatem super spiritualia et ecclesiasticas personas? quam et quo iure super laicos in spiritualibus? quam et quo iure super res et iura temporalia quae ad solam Romanam spectant ecclesiam? quam et quo iure super res et temporalia iura quae ad alios clericos pertinere noscuntur? quam et quo iure super personas, res et iura temporalia fidelium laicorum? quam et quo iure super res infidelium et etiam personas ipsorum?*⁷⁵

The discussion on that problem supposed that a number of authoritative writings were to be taken into consideration. But what kinds of writings had to be accepted by the Christian with irrevocable faith? Upon the Student's request, the Master put forward five possible opinions, the first one of them being Marsiglio's own:

*Una est opinio tenens quod nullam scripturam irrevocabiliter veram credere vel fateri tenemur de necessitate salutis aeternae nisi eas quae canonicae appellantur vel eas quae ad has ex necessitate sequuntur, aut scripturarum sanctarum sensum dubium habentium eas interpretationes seu determinationes quae per generale fidelium seu catholicorum concilium essent factae, in his praesertim in quibus error damnationem aeternam induceret, quales sunt articuli fidei Christianae.*⁷⁶

The discussion of this *opinio prima* lasted for several chapters of Book Three of the third part of the *Dialogus*.⁷⁷ The criticism focused on the notion of infallibility, the crux of Marsiglio's argumentation in *Defensor pacis*. According to the Master, no partial congregation of persons, such as the general council as imagined by Marsiglio, was immune against erring in matters of faith. On the contrary, its members could always fall victims to their own human will against the divine truth; no infallibility could be claimed on behalf of the general council of the Church:

una sola est ecclesia, scilicet militans universalis et tota, cuius concilium generale est solummodo pars, quae non potest errare contra fidem; [...] illa congregatio quae valet ex voluntate humana dissolvi et cessat, cuiusmodi est concilium generale, potest contra fidem errare; [...] omnes illae personae quae

⁷⁵ 3.1 *Dialogus* 2.1.

⁷⁶ 3.1 *Dialogus* 3.1 (compare to Marsiglio's own words here, p. 16).

⁷⁷ 3.1. *Dialogus* 3.1, 8-11.

*existentes in diversis locis possunt contra fidem errare, etiam si ad eundem locum convenirint poterunt contra fidem errare; [...] nulla vocatio humana certarum personarum et paucarum nec commissio humana facta pluribus personis praesertim paucis potest eas confirmare in fide; [...] congregati in concilio generali non sunt dicendi non posse errare, neque propter sapientiam eorundem, neque propter sanctitatem, neque propter auctoritatem vel potestatem, neque propter promissionem factam a Christo, quae salvari potest si fides in aliis extra concilium generale remaneat.*⁷⁸

One would note that this position proceeded from a very sharp distinction between “human” and “divine,” even from an impossibility of unifying the two spheres. Precisely because it contained a human element, the gathering of the *concilium generale* could not be considered infallible. Ockham’s logic was inductive: the council itself was composed of separate persons, each of whom was possibly fallible; infallibility, therefore, could not be predicated of the whole gathering. By the token of human fallibility, conciliar decisions could also deviate from truth and therefore need not be accepted by the Christian with irrevocable faith, equally to Scripture, out of necessity for eternal salvation. From this point of view, Ockham reinterpreted the two Biblical passages which played such an important role for Marsiglio’s argument in *Defensor pacis*. Now it turned out that neither of them had any special relation to the conciliar problem. The promise from Matthew needed not to be understood for the *concilium generale*, but for the universal Church of Christ. Ockham was diligent enough to show that the interpretation of Rabanus was used by Marsiglio in a speculative way:

*Ad illam quae in promissione Christi Matthaei ultimo est fundata, respondetur quod Christus futurus est cum ecclesia universali usque ad consummationem seculi, et ideo, ut dicit Rabanus (sicut allegatum est), “usque in finem seculi non sunt defuturi in mundo qui divina mansionem et inhabitationem sunt digni.” [...] Ergo secundum Rabanum illa promissio Christi non de concilio generali sed de universali ecclesia debet intellegi, ut pie et absque dubio sit tenendum semper Spiritum Sanctum adesse universali ecclesiae.*⁷⁹

⁷⁸ 3.1. *Dialogus* 3.5.

⁷⁹ 3.1. *Dialogus* 3.9.

As for the event described in Acts, there was no reason to assume, together with Marsiglio, that the Holy Spirit would necessarily assist and direct the gathering of the council as had happened in Jerusalem in the Apostles' time:

*determinatio facta per apostolos et seniores de qua fit mentio Actuum 15 facta fuit per revelationem Spiritus Sancti miraculosam, qualis adhuc fieri possit in concilio generali, sed non est necesse quod fiat, nec semper fuit facta, nec forte semper fiet quandocumque celebrabitur concilium generale.*⁸⁰

In other words, everything was a many-sided play of “necessity” and “possibility”: it was possible that the council did not err against faith, but it was not necessary; and it was necessary that what had been obtained by divine revelation was infallible, but it was not necessary that only the general council was to be the subject of that revelation. The faith of the universal Church was to be preserved, according to the Lord's promise from Matthew, until the end of the world; however, how that was going to happen was a question of no necessity: it was possible that even a single baptised child be turned into the sole vessel for the divine revelation.⁸¹

b. Marsiglio's Response

It has to be admitted that Ockham was much more precise in formulating his position, and not only with regard to logic, but also the interpretation of the relevant Biblical places. Indeed, there was no ground on which one could, together with Marsiglio, refer Acts 15 and especially Matthew 28 to the conciliar practice of the Church *stricto sensu*.

⁸⁰ *Ibid.*

⁸¹ 1 *Dialogus* 5, 35. For a detailed analysis of this position, see John Kilcullen, “Ockham and Infallibility,” *The Journal of Religious History* 16 (1991): 387-409 and also the studies on which Kilcullen develops his argument, mainly B. Tierney, *Origins of Papal Infallibility, 1150-1350* (Leiden: Brill, 1972), 235-6), J. J. Ryan, “Ockham's Dilemma: Tierney's Ambiguous Infallibility and Ockham's Ambiguous Church,” *Journal of Ecumenical Studies* 13 (1976): 37-50.

In *Defensor minor*, however, Marsiglio did not find it necessary to answer these questions; at the centre of his response came Ockham's inductive formula that the council was not infallible insofar as infallibility could not be predicated of any one of its members taken separately. The figure, according to Marsiglio, was false:

*Nec obstat paralogismus, quod positiones et divisiones, quo quidam inferunt inducendo, hic et ille potest errare in dubiis circa fidem, et sic de singulis, ergo et omnes. Deficit enim haec illatio secundum formam, ut diximus, quoniam licet in sensu divisio sit orta in singulis, tamen compositis pronuntiata est falsa, et apparet hoc etiam evidenter in aliis.*⁸²

The multitude gathered at the general council resembled a group of persons trying to haul a boat: no one could do the task on his own but only joined together with the rest. With the council things were analogous: the minds of the members "were stimulated reciprocally to the consideration of the necessary truth" so that it was finally revealed to the whole multitude despite the fact that the separate individuals, being singularly fallible, were not capable of doing that on their own.⁸³

To what extent this was a successful answer to Ockham's criticism is another question.⁸⁴ For us it is important that, once again, it revealed the peculiar "human" aspect of Marsiglio's conciliar theory. In *Defensor pacis* we saw it as general insistence that the members of the council had to be proficient in questions of faith and divine law; the formula in *Defensor minor* clarified and strengthened this point of view: by being proficient enough, they could recognise and prevent possible errors to which the opinion

⁸² *Defensor minor* xii.5.

⁸³ "nam ex auditu unius ad alterum excitabitur mens ipsorum invicem, ad considerationem aliquam veritatis, ad quam nequaquam perveniret ullus ipsorum seorsum existens sive ab aliis separatus." (*ibid.*)

⁸⁴ Concerning this question, see the following works: James Sullivan, "Marsiglio of Padua and William of Ockham I," *The American Historical Review*, vol. 2, no. 3 (April 1897): 409-426, the second part in vol. 2, no. 4 (July 1897): 593-610, and, most of all, Roberto Lambertini's "Il Concilio Generale, la logica e l'ecclesiologia: convergenza e dissenso tra Marsilio da Padova e Guglielmo d'Ockham," in *La povertà pensata* (Modena: Mucchi Editore, 2000), where the whole complexity of the disagreement is reconstructed from the point of view of the different metaphysical positions of the two authors.

of one or another particular member could lead; this was the way to achieve the common infallibility of the whole gathering.

4. Summary

In terms of argumentation, from *Defensor pacis* to *Defensor minor* the Paduan's position did not change substantially: he did not enlarge the circle of his Biblical references, and neither did he offer any new speculative argumentation on behalf of the council. The difference between the two treatises, henceforth the stages in which Marsiglio's conciliar doctrine developed, lay in the different aspects emphasised by Marsiglio. The argumentation in *Defensor pacis*, on the one hand, was centred on the two crucial references, to Acts and Matthew, on which the infallibility of the council as an immediate consequence of the divine cooperation was claimed. Still here, on the other hand, we observed a number of insinuations on the personal proficiency of the council's members as a way to achieve that infallibility in practice. That *momentum* came at the centre of the short restatement of the conciliar thesis in *Defensor minor*: through their proficiency, the members of the council could exercise a check upon each other, errors could be avoided, and infallibility pursued and achieved.

The *concilium generale*, hereupon, elected by all of the faithful Christians around all the provinces of the world, was endowed with full authority with regard to matters of faith and, consequently, to internal ecclesiastical affairs; the papal claim for *plenitudo potestatis* was disproved and rejected. Returning to the interpretations of Alan Gewirth and Jeannine Quillet, we may recall that this position seemed to be a consequence of the

democratic doctrine which was to be found in the Paduan's civil programme. Bearing in mind the different aspects of the conciliar teaching of Marsiglio which we followed, we can now revise this approach and face the question posed in the opening chapter of this study: namely, what the status of Marsiglio's conciliar theory was with regard to both its own political context and possible sources.

CHAPTER THREE:

SIC FECERUNT APOSTOLI CUM SENIORIBUS. TOWARDS THE ORIGINS OF MARSIGLIO'S CONCILIAR DOCTRINE

Did the Paduan's conciliar position indeed transpose the civil programme of *Defensor pacis* into the field of ecclesiology? At least two arguments could support the answer that it did. First, the conciliar thesis itself repeated the much-celebrated definition of the "human legislator." The authority to define questions concerning faith, as we have seen, belonged to the general council of the Christians, or their "weightier part," or to those who had duly received authority from the entire community to act on their behalf.⁸⁵ So too, the human legislator was

*populum seu civium universitatem aut eius valentiorum partem per suam electionem seu voluntatem in generali civium congregatione per sermonem expressam precipientem seu determinantem aliquid fieri vel omitti circa civiles actus humanos [...].*⁸⁶

Then again, there was the argument supporting this definition, which Marsiglio applied also to the case of the council. The ultimate legislative power belonged only to those from whom the best laws could emerge; for the reason of their better capability to aim to the common good, that was the whole community of the citizens; therefore it was that whole community to whom the ultimate legislative power belonged.⁸⁷ The same condition applied also to the general council of the faithful:

⁸⁵ See n. 52.

⁸⁶ *Defensor pacis* I.xii.3. Marsiglio grounded this famous definition on a misinterpretation of Aristotle, perhaps the most important one throughout the *Defensor*; cf. *Politics*, III.11.1281b: Aristotle's point was only that one could credit the majority of the citizens with the ability to be better governors than the few best. Concerning Marsiglio's misinterpretations of Aristotle, see Alan Gewirth, "On Marsilius' Misinterpretations of Some Texts of Aristotle," in *Marsilius of Padua. Defensor Pacis*, tr. Alan Gewirth (New York: Columbia University Press, 2001), 432-433.

⁸⁷ This syllogism was expounded and analysed in *Defensor pacis* I.xii.5.

Quod autem solius generalis iam dicti concilii sit auctoritas praedicta diffiniendi seu determinandi [...] consimilibus demonstrationibus et scripturae sacrae auctoritatibus convinci potest, qualibus legumlationem [...] 12^o primae [dictionis] [...] monstravimus pertinere, sola demonstrationum minori extremitate mutata [...].⁸⁸

The two cases, one could conclude, were analogous: determinations of faith performed by the council did not essentially differ from civil legislation in principle. In order to examine this statement, at which point the discussion on the origins of Marsiglio's conciliar doctrine is obliged to start, we must put forward the question whether, and if so to what extent, the idea of popular sovereignty, as one finds it in the definition of *legislator humanus*, was valid also with regard to the doctrine about the general council of the faithful.

1. Determinations of Faith and Civil Legislation: Reconsideration of the “Derivative” Approach

In the previous chapter we have pointed out that one of the key requirements concerning the membership of the general council was the members' personal proficiency in matters of faith. Not only did Marsiglio assert that the members of the council were to be elected as “more experienced” among other faithful, but inexperienced persons were not to participate in conciliar discussions.⁸⁹ Marsiglio's idea seems to have been that only a small multitude of Christians who had the necessary “qualification” to resolve confessional problems should gather together and carry the necessary determinations out, and these determinations were further to be accepted by the other faithful as infallible truths, equal to Scripture in this regard. Truly, the members of the council were elected by all the

⁸⁸ *Defensor pacis* II.xx.4.

⁸⁹ See n. 64.

members of the Christian community; apart from elections, however, the will of those affected by conciliar decisions played no role at all: the decisions were to be imposed and accepted, by the same token as Scripture itself.

With civil legislation it was precisely the opposite. To be sure, as in the case of the council, Marsiglio insisted that the actual creation of laws, as particular prescriptions for the doing or omission of certain acts, had to be entrusted only to a small group of prudent men who were capable of discovering and formulating the appropriate norm.⁹⁰ To become true laws, however, it was necessary that these formulations be given coercive force over the whole community of citizens affected. In line with the definition of the *legislator humanus*, Marsiglio asserted that all members of the community were to participate in this process, whether it be in a direct or an indirect way; this common participation went beyond simple voting: each individual citizen, even when he was not among the prudent law-makers, could contribute by judging with regard to particular laws.⁹¹ In this way, Marsiglio truly entrusted legislation to the whole body of the citizens, and that principle had its clear expressions in *Defensor pacis*.

In other words, beyond the formal similarities, we face a crucial difference between how conciliar determinations and civil legislation proceeded, and this difference was predetermined so as not to allow that one and the same principle, that of popular sovereignty, be applied in the two cases. The differences developed as follows: the council was engaged with adherence to the divine truth, the human legislator with pursuing the common good of the citizens' community; the legislator was all-inclusive in

⁹⁰ The composition of particular laws “conventius fieri possit et compleri melius ex observatione potentium vacare, seniorum et expertorum in agibilibus quos prudentes appellant [...]” (*Defensor pacis* I.xii.2)

terms of membership, while the council was limited to a small number of proficient men, who, after the Apostolic example, were turned into vessels of divine grace; most importantly, conciliar decisions did not depend on the will of those whom they concerned.

From this point of view, I think, it is good to return and reconsider the interpretations of Alan Gewirth and Jeannine Quillet. As for the former, it should be noted that Gewirth reduced Marsiglio's conciliar thesis entirely to its elective aspect in order to affirm then that it reflected the theme of popular sovereignty, central, as he presented it, for the first *Dictio*. Probably for this reason Alan Gewirth did not translate quite correctly the central thesis from *Defensor pacis* II.xx.2. According to his translation,

the principal authority, direct or indirect, for such determination of doubtful questions belongs only to a general council composed of all Christians or of the weightier part of them, or to those persons who have been granted such authority by the whole body of Christian believers.⁹²

Marsiglio's text gives us no reason for introducing "composed of all Christians" for the genitive; *concilium generale Christianorum* suggested rather that the council existed for the sake of the entire community of the believers and certainly not, as was mentioned, because it was all-inclusive. Gewirth's translation reflected his own "ascending" interpretation of Marsiglio's conciliar thesis: the ultimate basis of the council's authority was the entire body of the believers, from whom, on a linear, irreversible direction, this

⁹¹ "Adhuc ex universa multitudine magis attenditur legis communis utilitas, eo quod nemo sibi nocet scienter. Ibi autem inspicere potest quilibet, an lex proposita magis declinet ad cuiusdam aut quorundam commodum, quam aliorum et in contrarium reclamare." (*Defensor pacis* I.xii. 5)

⁹² *Marsilius of Padua. Defensor Pacis*, tr. Alan Gewirth (New York: Columbia University Press, 2001), 280. Cf. the Latin text given here, p. 16. Quillet's variant appears to be more precise: "Je montre à la suite que l'autorité principale, médiate ou immédiate, pour effectuer une telle détermination, revient seulement au concile général des chrétiens ou à leur partie prépondérante, ou à ceux auxquels une telle autorité a été

authority could be transferred on higher representative levels.⁹³ What must be stated at this point is that the popular will, as Marsiglio turned to it with regard to elections, did not appear to have power over taking and affirming conciliar decisions. Once the council was elected and composed, things followed the opposite direction: it was the entire community of the Christians who accepted, and irrevocably, the authoritative decisions taken by the council's members.

The same remark applies also to the case of Jeannine Quillet, for whom the idea of imperial primacy comprised the overtone of the doctrine: again, the determinations made by the general council had the force of divine truth equal to Scripture; no human institution, therefore, could possibly be conceded the authority to deal with conciliar decisions on a separate basis, even in the case of the supreme representative, whom Quillet considered to be the sole incarnation of authorities both political and ecclesiastical.

To be sure, Marsiglio's leading idea with regard to the status of the Church within the civil community was the one of subjection: the Church was only one of its *partes*,⁹⁴ not to be given governmental power insofar as that would result in plurality of governments and, consequently, in civil disorder and strife. But how was the community of the faithful to be controlled by the governmental part in this case? The Paduan presented a clear solution: regarding all matters which concerned the well-being of the civil community's members, the ultimate authority to take and execute decisions

conférée par l'ensemble des fidèles chrétiens; [...].” *Marsile de Padoue. Le défenseur de la paix*, tr. Jeannine Quillet (Paris: Librairie philosophique J. Vrin, 1968), 396.

⁹³ See p. 3.

⁹⁴ Cf. *Defensor pacis* I.v.10.

belonged solely to its governmental part.⁹⁵ That condition, which was in full harmony with Marsiglio's basic proposition on the unity of government as necessary for the preservation of human peace, resulted in a series of restrictions on the ecclesiastics which went certainly beyond the tradition of Marsiglio's own time. Ecclesiastical property, excommunication from the Christian community, determination of periods of abstinence, regulations concerning marriage, prohibition of certain types of activities: insofar as all these had implications precisely in the civil, this-worldly life of the community, they had to be sanctioned by the secular ruler.⁹⁶ This solution was specifically Marsilian; one can recognise it by the consistent repetition of the *legislator humanus* formula each time when decisions concerning ecclesiastical life had to be established within the civil community.⁹⁷

At the same time, the scheme was not that simple. While elaborating on the problem that the Church had to be subjected to the government of the civil community, Marsiglio only faced the particular case of the *communitates iam perfectae*, those which had already accepted Christ's Gospel as the proper way to achieve, apart from sufficient life in the present world, also salvation in the world to come. The community of the citizens, in this case, coincided with the community of the faithful.⁹⁸ For this reason, in

⁹⁵ "diffinitorum seu iudicatorum et reliquorum ordinatorum [...] per generale concilium observationis coactivum ferre praeceptum seu dare decretum super omnes indifferenter, tam sacerdotes quam non sacerdotes, eiusque praecepti sive decreti transgressores arcere poena reali aut personali vel utraque, **in hoc etiam saeculo** [emphasis mine, M.O.] transgressoribus infligenda, sit auctoritas humani legislatoris fidelis superiore carentis [...]" (*Defensor pacis* II.xxi.4)

⁹⁶ The full list is to be found in *Defensor pacis* II.xxii.8 and the following paragraphs; especially interesting is the case with teaching licences and notarial commissions in II.xxii.11.

⁹⁷ For example, regarding the distribution of benefices: no individual cleric or special group possessed this authority "absque iam dicti concilii vel fidelis humani legislatoris determinatione" (*Defensor pacis* II.xxi.11). The same condition applied to determination of fasting periods, canonisation, regulations concerning marriage, excommunication, and all kinds of temporal punishments due to breaking the ecclesiastical discipline (*ibid.*, II.xxi.8).

⁹⁸ The unification was first made with regard to the election of priests: "in communitatibus iam fidelium iam perfectis **ad legislatorem humanum solummodo seu fidelem multitudinem eius loci** [emphasis

his formulae concerning the acceptance and establishment of decisions concerning religious life, one would find the ruler as *legislator humanus fidelis*, the special case of a “Christianised human legislator,” one who possessed authority over the introduction of ecclesiastical decisions into practice, but who was himself a part, and a subject, of the Church.⁹⁹ What if the case was the opposite, namely the community of the faithful still living under non-Christian power, as it was in Apostolic times? The answer could be only one: on the one hand, the faithful were to obey civil government, just as Christ, the Apostles and the early Christians used to obey it. But then again, such a government, being pagan, could not have power to control church legislation; Marsiglio put forward this question, precisely with regard to the conciliar problem, and argued for the council’s independence:

*Non est autem praetereundum silentio, quod sub legislatoribus infidelibus [...] fideles, tam sacerdotes quam non sacerdotes [...] eadem lege divina obligantur, si congrue possint, convenire ad eius ensus dubios diffiniendum et determinandum [...].*¹⁰⁰

The council, therefore, was originally autonomous, and it was only with the Christianisation of the civil community, the emergence of the *legislator humanus fidelis*, that this relationship was changed so that the ruler acquired the authority to confirm and enforce the conciliar decisions. Even in this case, however, it did not seem that the case was unanimous: the ruler himself remained a member of the ecclesiastical body and had to accept the Christian truth, being subject, not superior, to its conciliar determinations. No doubt, the ruler could participate in the council; he could, conversely, refrain from

mine, M.O.], super quam intendere debet promovendus minister, pertineat eligere, determinare ac praesentare personas ad ecclesiasticos ordines [...].” (*Defensor pacis* II.xvii.9; this remark belongs to Alan Gewirth, *Gewirth*, 291)

⁹⁹ See n. 97.

¹⁰⁰ *Defensor pacis* II.xxii.12.

participating and yet still accept and obey the decisions which proceeded out of purely conciliar origin. In case that he turned back from the faith, as had happened under Julian, the old formula started to work again: preserving faith, the Church was to remain closed in itself, solely responsible for the religious life of its faithful.

To summarise: **(i)** the limitations on the membership of the council were rather in discord with the principles of popular sovereignty of Marsiglio's civil theory; **(ii)** the secular ruler had fullness of power over introducing conciliar decisions insofar as they affected secular affairs, especially in the case of a Christianised community, **(iii)** but himself being a Christian he remained a subject of those decisions by the same token as he was subjected to Scripture. The conciliar theory and the principles of popular sovereignty could not have grown out of one and the same root: not only, as Lagarde correctly pointed out, could the Church not comprise a separate society, a parallel one to the civil society; the very nature and scope of civil legislation and conciliar determinations appeared to be different.

2. Marsiglio and Contemporary Conciliar Thought

Provided that the observations made up to this point are correct, then the question on the origins of the Paduan's conciliar theory is still to be asked, and we are still to expect an answer to this question which would allow us to see the status of the conciliar theory better.

One likely solution would be to say that Marsiglio found himself engaged in discussions which were already active in the 1320s. With regard to ecclesiastical theory,

scholars have claimed that such was the case with his views on ecclesiastical poverty theory.¹⁰¹ So too, the idea about the primacy of general council was nothing new in the fourteenth century and, indeed, Marsiglio's theses appeared to be quite contextual. Still in the *Decretum* we discover a passage which resembles the Paduan's own position that questions of faith had to be determined by many persons rather than one. Gratian took this text from a letter of Pope Nicholas I:

*Ubinam legistis, imperatores antecessores uestros sinodalibus conuentibus interfuisse, nisi forsitan in quibus de fide tractatum est, que uniuersalis est, que omnium communis est, que non solum ad clericos, uerum etiam ad laicos et ad omnes omnino pertinet Christianos.*¹⁰²

This was one of the many ambiguous places in the *Decretum* that had left the problem concerning the confessional life of the Church open for discussion. It was Brian Tierney, in his *Foundations of the Conciliar Theory*,¹⁰³ who demonstrated that between the twelfth and the fourteenth century the Christian West succeeded in elaborating a nearly-completed conciliar theory, striving for primacy of the council over the pope in crucial matters of ecclesiastical life. The conciliar option, it turned out, gradually emerged in the works of Gratian's followers, who were concerned with shedding light on the ambiguities of the *Decretum* itself.

Among the authors that Tierney took into consideration, there was John of Paris (†1306), one of the authors whom scholars have often compared to Marsiglio.¹⁰⁴ With

¹⁰¹ See Kerry Spiers, "The Ecclesiastical Poverty Theory of Marsilius of Padua: Sources and Significance," *Il pensiero politico* 10 (1977): 3-21. Spiers proves that Marsiglio's views were traditional and did not depend on Franciscan arguments.

¹⁰² Dist. 96, cap. 4.

¹⁰³ Brian Tierney, *Foundations of the Conciliar Theory: The Contribution of the Medieval Canonists from Gratian to the Great Schism* (Cambridge: Cambridge University Press, 1955; new enl. ed. Leiden, New York, Cologne: Brill, 1997); henceforth Tierney, *Foundations*.

¹⁰⁴ *Gewirth*, 285; *Quillet*, 173.

regard to the problem of determinations of questions of faith, John made a statement quite close to the passage from Gratian already quoted:

*Amplius cum fides christiana sit catholica et universalis non potest summus pontifex hoc ponere sub fide sine concilio generali quia papa non potest destruere stauta concilii, xix d., Anastasius. Nam licet concilium non possit papae legem imponere [...] tamen non intelligitur in hiis quae fidei sunt, eo quod orbis maior est urbe et papa cum concilio major et papa solo, xciii d., Legimus.*¹⁰⁵

To what extent this position was based on canonistic grounds is obvious not only from the direct references to the *Decretum*. According to John's solution, questions of faith were to be determined by the council together with the pope; it was not the case that the council alone had primacy. As Tierney commented, this position had the effect that papal authority was augmented, being concentrated not in the person of the pope, but, starting with the higher levels of the hierarchy, diffused among all members of the Church.¹⁰⁶ Now this problem had been already subjected to debate by previous thinkers with regard to smaller ecclesiastical corporations. The solution, given in a clear form by Hostiensis, a thirteenth-century commentator on Gregory IX's *Liber extra*, stated that the head of the ecclesiastical corporation (the chapter) possessed authority of only derivative origin and that authority could not be exercised against the common good and the consent of the members of the corporation (the canons).¹⁰⁷ John of Paris's position, so to speak, transposed the principle of Hostiensis onto the highest hierarchical level. The body formed by the general council together with the pope did not make an exception to the usual rule of corporation law: outside the council, the pope possessed no *plenitudo potestatis*.

¹⁰⁵ *De potestate regia et papali* (Paris: J. Leclercq, 1942), 243 (quoted in Tierney, *Foundations*, 154).

¹⁰⁶ Tierney, *Foundations*, 154-155.

¹⁰⁷ *Ibid.*, 102-103.

From this point of view, the peculiarity of Marsiglio's position becomes clearer. Unlike John of Paris and his canonist predecessors, the Paduan could not ground his position on the corpus of canon law. On the contrary, the rejection of canon law regulations was a basic step towards the disproof of the claim for *plenitudo potestatis* and, at the same time, a central element of Marsiglio's own conciliar theory. The "canonical Scriptures" were only those

*quae in volumine Bibliae continentur, non quidem decretales aut decreta Romani pontificis et suorum collegii clericorum, quod cardinales appellant: neque alia quaevis humana statuta, de humanis actibus aut contentionibus et humano spiritu adinventata. [...] Hoc enim [that is, to consider the decrees and decretals canonical] impium est [...] quoniam in humana traditione dicta vel scripta error et falsum contingere potest, quod in canone secundum veritatem dicto aut eiusmodi, quam per generale concilium canonicae scripturae interpretationem factam diximus, nullatenus evenire contingit.*¹⁰⁸

So, Brian Tierney was right in his reluctance to place Marsiglio among the "true founders" of the conciliar theory, as scholars had done earlier.¹⁰⁹ While authors such as John of Paris had used the canonistic scholarship as a primary basis on which to found the conciliar idea, Marsiglio's case was the opposite: papal "decrees and decretals" were not only a product of the popes' wrongful ambition to acquire fullness of power within the Christian Church; these were also products of purely human origin, unlike the conciliar determinations inspired by the Holy Spirit, whose acceptor was the contemporary *concilium generale*.

I think that these contrasts, which we have outlined only very briefly, demonstrate well the fact that the conciliar theory elaborated in *Defensor pacis* and *Defensor minor*

¹⁰⁸ *Defensor pacis* II.xix.6.

¹⁰⁹ Tierney, *Foundations*, 7-10; Tierney's chief opponent in this regard was V. Martin, "Comment s'est formée la doctrine de la supériorité du concile sur le pape," *Revue des sciences religieuses* 17 (1937): 121-143, 261-289, 404-427; see also Tierney's "A Conciliar Theory of the Thirteenth Century," *Catholic Historical Review* 36 (1951): 415-440.

was a more isolated fourteenth-century case, or at least isolated from the context of the far more moderate debates of the medieval canonists. At this point, therefore, we are able to state rather where Marsiglio did not derive his propositions from: it was not the political framework of the *Defensor* so that the conciliar doctrine would look like an ecclesiological transposition of the principles of popular sovereignty; standing outside the context of the relevant scholarship, it was also not a part of the growing, and rather specialised, canonistic debate on the limitations of papal and conciliar authority.

3. The Biblical Argumentation of the Conciliar Thesis

Given that, how are we to approach the Paduan's conciliar position in the end? One is faced by a situation similar to the one with his ecclesiastical poverty theory: while produced in the flow of rigorous ecclesiastical debates, it could not be reduced to the framework of contemporary polemics.¹¹⁰ I think that, in terms of context, our case is even more difficult, for the Paduan was simply an outsider if one bears in mind the canonists' solutions with regard to the status of the general council. Therefore, keeping a look at what the main content, after all, of Marsiglio's argumentation was, I would suggest the following: to the extent in which he was acquainted with them at all, Marsiglio consciously avoided the context of the contemporary debates; he rather presented a conciliar theory which had the claim to stand on solely Biblical foundations and to restore the authentic practice of the Christian Church.

As for the latter point, it would suffice to recall that the bigger part of the *Konzilstraktat* presented examples of ecclesiastical practice from the times before the

false claim of the popes to *plenitudo potestatis* arose. In these illustrations, Marsiglio adhered to one of his main authorities, the *codex Isidori*. He quoted documents which supported his view about the status of the general council within the civil community.¹¹¹ But then, there was not only the historical evidence; the conciliar practice, above all, was a Biblical truth:

*Sic namque fecerunt apostoli cum senioribus de hiis quae dubia circa evangelium occurrerunt, ut apparet Actuum 15o [...]. Non enim dubium illud de circumcisione beatus Petrus aut alter apostolus seorum diffinivit, sed convenerunt super hiis omnes apostoli et seniores sive peritiores in lege.*¹¹²

I think that the whole conciliar discussion, first in *Defensor pacis*, and then in *Defensor minor*, depended ultimately on this parallel. The network of Marsiglio's arguments which he expounded with regard to ecclesiastical affairs proceeded from his attempt at restoring the ancient, authentic practice of the Christian Church. Thus, the entire approach to the problem of the pope's *plenitudo potestatis* evolved around the thesis that the emergence of this false claim was nothing more than gradual and wrongful usurpation of authority by the popes, finally resulting in an alienation from the Church's true, Apostolic example. Hereupon Marsiglio's polemic went in the direction of its restoration. It was from this point of view that he developed his turning ecclesiological points: the limits and nature of the priestly power, the ecclesiastical poverty, and the status of the ecclesiastics within the civil society, all these problems Marsiglio discussed around one and the same leitmotif, the Apostolic example of the ancient Church.¹¹³ Arriving at the conciliar problem, he remained consistent to this basic principle of argumentation; the coherence of his position led him to pick out and expound upon Acts 15 as the necessary authentic justification for

¹¹⁰ See n. 101.

¹¹¹ These were exposed throughout *Defensor pacis* II.xxi.

¹¹² *Defensor pacis* II.xx.5.

the conciliar part of his ecclesiastical programme. Accordingly, as we have said in the previous chapter, Marsiglio presented here his *concilium generale* as a true successor of the ancient Apostolic practice.¹¹⁴

Things become more interesting when one looks at the structure of this parallel. The members of Marsiglio's council, those *vita probatiores et lege divina peritiores*, corresponded to the *seniores* from Acts, and then, the conciliar gathering of both clerics and non-clerics to the gathering of the Apostles and the "elders." In the Biblical text, however, the *seniores* stood for *πρεσβύτεροι*, a word that the Latin variant kept transliterated in other places. For example, the story in Jerusalem began thus:

And certain men which came down from Judaea taught the brethren, and said, Except ye be circumcised after the manner of Moses, ye cannot be saved. When therefore Paul and Barnabas had no small dissension and disputation with them, they determined that Paul and Barnabas, and certain other of them, should go up to Jerusalem unto the apostles and elders (*apostolos et presbyteros*) about this question.¹¹⁵

Then there was the place to which Marsiglio referred:

And the apostles and elders (*apostoli et seniores*) came together for to consider of this matter.¹¹⁶

Paul's advice on what the personal qualities of these "elders" had to be was given in the Epistle to Titus, a text which is closely related to the two passages from Acts:

For this cause left I thee in Crete, that thou shouldest set in order the things that are wanting, and ordain elders in every city, as I had appointed thee: **if any be blameless**, the husband of one wife, having faithful children not accused of riot or unruly. For a bishop must be blameless, as the steward of God; not selfwilled, not soon angry, not given to wine, no striker, not given to filthy lucre; but a lover of hospitality, a lover of good men, sober, just, holy, temperate; **holding fast the**

¹¹³ See p. 13.

¹¹⁴ See p. 18, sqq.

¹¹⁵ Acts 15:1-2 KJV; the Latin text, here and in the next quotation, is given according to the Vulgate.

¹¹⁶ Acts 15:6 KJV.

faithful word as he hath been taught, that he may be able by sound doctrine both to exhort and to convince the gainsayers.[emphases mine, M.O.]¹¹⁷

Returning to Marsiglio's own position with that in mind, we face a correspondence and, as it seems, an inconsistency, perhaps the most serious one with regard to the Biblical argumentation of the conciliar thesis. As for the correspondence, it is notable that in his requirements for the personal qualities of the council's members, Marsiglio appears to have adhered to the instructions from Titus. As Paul put it, so too Marsiglio required his *seniores* to be "persons of most blameless lives, having deep experience in matters of faith."¹¹⁸ Direct reference to the Apostle was not made, but I think it is well arguable that Marsiglio had precisely this passage in mind when constructing the instructive section on how the *concilium generale* was to be composed.¹¹⁹ But then, according to the passage from Acts, the *seniores* were precisely members of the ecclesiastics' community. Earlier in the *Defensor pacis*, Marsiglio had shown himself to be aware of the connection:

*Verum ubi communis litera canonis habet senior aut consenior, beatus Ieronimus [...] habet presbyter aut compresbyter, quoniam hiis nominibus tamquam synonymis utebantur apostoli.*¹²⁰

In his interpretation of Acts 15, however, he speculated with a neutral meaning of the word *seniores* and, taking on an equivocation, referred it to the personal proficiency in matters of faith, his main criterion for conciliar membership. The central argument on behalf of the *concilium generale* was then built on this basis: the clerics and the non-clerics who comprised the conciliar gathering nowadays corresponded to the *apostoli et seniores* who had once gathered in Jerusalem; the contemporary general council therefore

¹¹⁷ Titus 1:5-9 KJV.

¹¹⁸ See n. 53.

¹¹⁹ Titus 1 was quoted only a few paragraphs later, in the middle of the conciliar discussion (*Defensor pacis* II.xx.13).

¹²⁰ *Defensor pacis* II.xv.5.

truly represented by succession the ancient Apostolic gathering and, by virtue of this, received the supernatural assistance of the Holy Spirit by the same token as had happened in the Apostles' own time.

Of course, this was all a “selective” interpretation. Marsiglio picked up one particular verse from the Biblical text which fitted quite well within the tenor of his argument, but could have had completely different consequences if taken in its proper context. Still, given the ideological network of the *Defensor*, the argument based on Acts 15 worked perfectly well. One should only take into consideration the fact that the status of these *seniores* was itself a problem for Marsiglio. Truly, the “elders” appeared to be only clerics according to the Biblical text and therefore the gathering at Jerusalem did not at all correspond to the conciliar formula *presbyteri primum et non presbyteri consequenter*. But at this point, Marsiglio reversed his whole perspective: it was not the ecclesiastical status of those men which mattered, but only their personal proficiency regarding problems of faith. The fact that at Jerusalem it was only clerics that gathered together was for the reason that in those times only such persons had the necessary “qualification” in accordance with the Apostle’s instructions from Titus. It was at this point that Marsiglio quoted the passage¹²¹ and concluded that

*Propter quod tales [that is, as the Apostle described them] existentes sacerdotes ad difficilia vel dubia circa scripturam et fidem interpretanda et diffinienda quasi soli convenire solebant.*¹²²

Leaving aside the purely nominal context of their being *πρεσβύτεροι* in the strict sense, that is members of the ecclesiastics’ community, Marsiglio actually focused on the description from Titus, and hence his reference to Acts 15 remained internally coherent.

¹²¹ See p. 43.

¹²² *Defensor pacis* II.xx.13.

The “elders” were, above all, men proficient in matters of faith and divine law: from this point of view, there was no essential difference between them and the members of the Paduan’s own *concilium generale*.

This complex use of Biblical material was significant. Practically, we can understand Marsiglio’s argument in its full potential by putting the different Biblical references together. The conciliar thesis, as already said, had the central ambition of **restoring the true, ancient practice of the Christian Church**. We are now able to see the exact procedure through which this restoration was achieved: **a speculation over Acts 15**, elaborated in the context of a peculiar interpretation of the relevant passage from Paul’s Epistle to Titus.

CONCLUSION

At the beginning of this study, I tried to formulate my starting point in the context of one particular problem detectable in scholarship on Marsiglio, namely the “derivative” approach to his conciliar teaching. To a certain extent, I have developed my discussion in opposition to it. The results of this attempt can be now summarised and restated.

In the first place, despite the fact that the conciliar thesis was developed and expounded in the heart of a very intensive political programme, Marsiglio developed his core argumentation on an independent basis. Indeed transposition of purely political arguments was possible, and Marsiglio did not abstain from it. However, his immediate argumentation was developed on primarily Biblical grounds, whence the two crucial arguments on behalf of the *concilium generale* were elaborated: its true succession of the ancient Apostolic community and its infallibility, achieved through the supernatural assistance of the Holy Spirit.

Secondly, the understanding of the Marsiglio’s *concilium generale* as some sort of “ecclesiastical application” of the principles of popular sovereignty proved to be a double-edged sword. On the one hand, his prescriptions concerning the composition of the council clearly affirmed that it should accord with the common will and the consent of all members of the ecclesiastical community. However, Marsiglio imposed strict limitations on the membership of the council itself and, more importantly, did not leave room for the common will of those who were affected to intervene and regulate conciliar decisions. The case with civil legislation appeared to be the opposite: all citizens could

participate in civil legislation, and each individual citizen, regardless of his personal disposition, could play a role in controlling the legislative process.

Consequently, the general council of the faithful did not fit into the “ascending” scheme of civil government. The community of those affected, whether taken as a whole, or in the person of its supreme representative, could not be conceded authority over conciliar decisions. From this point of view, the theses of Alan Gewirth and Jeannine Quillet appeared to be in need of revision.

With regard to these problems, I have tried to show that Marsiglio’s conciliar position had origins different from the principles of civil government exposed in the first *Dictio* of *Defensor pacis*. Bearing in mind that it appeared also to be an “outsider” to the canonistic debates over the relationship between papal and conciliar authority, I have returned to the Biblical sources of this position. Examining the structure of his central reference, the one to the fifteenth chapter of Acts, I have concluded that his interpretation proceeded from a complex and speculative use of several important Biblical passages.

At this point, I conclude my study. If nothing else, it could contribute to a clearer perception of the conciliar idea in the framework of what is called the “Marsilian doctrine.” I have consciously developed my argument in a rather narrow context, rarely going beyond the limits of Marsiglio’s own works. On the one hand, I find such a way of reading sensible; but then again, I thus reserve for myself the right to start reading Marsiglio anew, attempting, within the limit of my own abilities, a better reconstruction of what I find the most engaging part of his writings, the teaching about the nature and functions of Christ’s Church.

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