"The Chains of the Constitution"
Foundations of American Constitutionalism

Chapter III
The Will of the People
Marsiglio of Padua's *Defensor Pacis*

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A FIRM Union will be of the utmost moment to the peace and liberty of the States, as a barrier against domestic faction and insurrection. It is impossible to read the history of the petty republics of Greece and Italy without feeling sensations of horror and disgust at the distractions with which they were continually agitated, and at the rapid succession of revolutions by which they were kept in a state of perpetual vibration between the extremes of tyranny and anarchy. If they exhibit occasional calms, these only serve as short-lived contrasts to the furious storms that are to succeed. If now and then intervals of felicity open to view, we behold them with a mixture of regret, arising from the reflection that the pleasing scenes before us are soon to be overwhelmed by the tempestuous waves of sedition and party rage. If momentary rays of glory break forth from the gloom, while they dazzle us with a transient and fleeting brilliancy, they at the same time admonish us to lament that the vices of government should pervert the direction and tarnish the lustre of those bright talents and exalted endowments for which the favored soils that produced them have been so justly celebrated.
Hamilton, Federalist No. 9

Since, however, "contraries are [essentially] productive of contraries," {Aristotle, Politics 8, 1307b} from discord, the opposite of tranquility, the worst fruits and troubles will befall any civil regime or state. This can readily be seen, and is obvious to almost all men, from the example of the Italian state. For while the inhabitants of Italy lived peacefully together, they experienced those sweet fruits of peace which have been mentioned above, and from and in those fruits they made such great progress that they brought the whole habitable world under their sway. But when discord and strife arose among them, their state was sorely beset by all kinds of hardships and troubles and underwent the dominion of hateful foreign nations. And in the same way Italy is once again battered on all sides because of strife and is almost destroyed, so that it can easily be invaded by anyone who wants to seize it and who has any power at all. Nor is such an outcome astonishing, for, as Sallust attests, writing about Catiline: "By concord small things increase, by discord great things perish." Misled by discord into the bypath

attests, writing about Catiline: "By concord small things increase, by discord great things perish." Misled by discord into the bypath of error, the Italian natives are deprived of the sufficient life, undergoing the gravest hardships instead of the quiet they seek, and the harsh yoke of tyrants instead of liberty; and finally, they have become so much unhappier than citizens of other states that their ancestral name, which used to give glory and protection to all who appealed to it, is now, to their ignominy, cast into their teeth by the other nations.

Defensor Pacis *One I.2*

Prolegomena Hamilton was no friend of republicanism. Madison recorded Hamilton's comments during the Federal Convention, saying, "He acknowledged himself not to think favorably of Republican Government; but addressed his remarks to those who did think favorably of it, in order to prevail on them to tone the Government as high as possible." Hamilton preferred the British model, a constitutional monarchy with an hereditary aristocracy occupying the house of Lords, which "having nothing to hope for by change, and a sufficient interest by means of their property, in being faithful to the national interest, they form a permanent barrier against every pernicious innovation, whether attempted on the part of the Crown or of the Commons." Writing in the Federalist Papers, his damning praise of the Italian city-republics of the Middle Ages was a warning that popular sovereignty should always be suspect; that it could never maintain a civil society, and that it would always fall prey to factionalism. His aim may have been to reassure the segment of colonial society worried about radical change, or perhaps his views were those of the passing generation, about to be swept away by an America sure of its opportunities for self-determination. Hamilton's motives aside, his observation was correct: those city-republics did have their moment of brilliance, and they did fail. We have much to learn from a study of their history.

Unraveling the development of republican government in the Middle Ages is disturbingly akin to looking for a lost wallet at night on a side street: the only light is under the lampposts, but that may not be where the wallet lies. On the other hand, eyes grow accustomed to the gloom and you just may come across someone who has a match. There are no Federalist Papers, no Notes of Debates in the Federal Convention, no Madison-Jefferson correspondence; not much besides a few contemporary works, some scholarly, some religious, some allegorical, and most with a strong point to be made. Histories exist, but written many years after the fact. Fortunately, a careful search of these, aided by the scholarly effort of the nineteenth and twentieth centuries, yields the reward of insight into Europe at a time when what may be termed modernity can just be discerned. In order to make these sources as meaningful as possible, I will give you a "background briefing" on the Middle Ages. We start with a familiar name, although perhaps not one that you would expect: Aristotle.

The Politics of Aristotle was translated around 1250 by a Dominican scholar, William of Moerbeke. Word-for-word, Greek to Latin (despite the grammatical and syntactical differences of the two languages), and not always precisely correct, it was nevertheless one of the great treasures of the thirteenth century. Until then, the only available work of Aristotle treating of the forms of political associations was the brief section of the Ethics (8.10-11) which leaves the distinct but incorrect impression that Aristotle considered kingship to be unconditionally the best form

impression that Aristotle considered kingship to be unconditionally the best form of government. Moerbeke's translation of the Politics seemed to have come at the right time, for medieval scholarship was ready to slowly leave behind the rigid structure that was in place and confront new realities. St. Thomas Aquinas, who had met Moerbeke while both were with Pope Urban IV in the early 1260s, made extensive use of this translation. Moerbeke's translation of Politics became available to scholars throughout Europe during the next decade.

The scholarly tradition of the time was suspect of originality; new ideas had to be cloaked in copious references to traditional sacred and secular works. Aristotle was already accepted as one of the highest authorities of the "pagan" era, but his works were greatly distorted by scholars committed to either incorporating him into their framework or excluding him from consideration. "Aristotelianism" was hardly recognizable as the product of the Aristotle with whom we are now familiar. In spite of the dogmatism of these "schoolmen," the Politics showed itself a work of observation, not just theory. The humanistic framework of the Politics, scaling the

political association to human, not divine measures, provided the incentive and authority for completely re-evaluating the relation between church and state. Its observations extended beyond the locale of Athens, contributing to the legitimization a new scholarly approach that was willing to engage the real world.

At the end of the thirteenth century, three men, St. Thomas Aquinas, Dante, and Marsiglio of Padua, the last the subject of this chapter, formed a close progression in the development of political theory. St. Thomas (1225-1274) has been characterized as his time's leading authority in the works of Aristotle. St. Thomas finished his *Summa Theologica* in 1273, eloquently stating the harmony of Church and State, of Faith and Reason, attempting to demonstrate that Aristotle's ideas were compatible with this supposed harmony. It was a long way from St. Augustine's belief that mankind's fall from grace was at the heart of the existence of the state, to St. Thomas' acceptance of Aristotle's idea that "man is a social animal," and accordingly, the state naturally exists to fulfill mankind's needs. But fundamental to Thomas' philosophy was an intrinsic ascendancy of Church over State, since the redemption of the soul had to be the highest end of earthly existence. That harmonious view of the world disappeared (if it ever in fact existed outside of Thomas' works) within a generation after Thomas' death.

Dante (1265-1321) composed the Divine Comedy between 1307 and 1321. Around 1320, he had labored through the unpoetic De Monarchia, his strident and polemical statement of political principles where a single king is the ruler of a harmonious world. Italy was in turmoil and the Church was deeply involved in temporal matters even to the extent of fostering and participating in wars throughout Europe. Dante was devoted to the truth of the Catholic faith and angry at the failure of the Church to maintain its essential role as teacher of the way to salvation, an anger that appears repeatedly in the Comedy. He maintained the idealistic view that the State, embodied in its rulers, should see the origin of its power as being divine and thus should act rightly according to the principles of the true faith. Dante's misjudgment of the human nature of both temporal rulers and churchmen, combined with the lack of any way to resolve differences between *regnum* and *sacerdotium*, destined his view of the world to be short-lived.

Marsiglio of Padua (c.1275-1342) published the Defensor Pacis (Defender of Peace) in 1324, three years after Dante's death. Marsiglio, although always expressing himself as a devout Catholic innocent of any heresies, was not satisfied with the organization and behavior of the Church. He insisted on the explicit and unique control of temporal matters by the State, with none of the interference by ecclesiastical authority that had come to exist. The actions of the State were to be based not on spiritual right and wrong but on the necessary exercise of temporal power for the maintenance of peace. The Church, as an equal, competing power,

based not on spiritual right and wrong but on the necessary exercise of temporal power for the maintenance of peace. The Church, as an equal, competing power, exercising its authority within the physical realm of the State and over the temporal affairs of the people, interfered with effective government, and Marsiglio saw that interference as destructive of good government. Marsiglio's view appears closer to the realism of Machiavelli than to the idealism of Dante, and certainly far from St. Thomas' faith. In the style of his day Marsiglio incorporated hundreds of explicit references to Aristotle's Politics in the Defensor, carefully using these references to bolster his own arguments, if occasionally taking liberties with them. Thomas based his observations on political theory on Aristotle's Ethics with relatively little use of the Politics; Marsiglio did just the opposite. The field of battle had shifted from the ideal to the pragmatic, from authoritarian to empirical.

Characterizing The Middle Ages

A well-worn view has the Middle Ages as one long period of decline of European civilization, initiated by the collapse of the Roman Empire under the weight of barbarian invasions, recovering only with the Renaissance. According to this view, this was an Age of Faith which saw the Catholic Church grow in temporal power until it equaled and often triumphed over any secular authority. Scholarship during the twentieth century has to a large extent revealed this as simplistic and replaced it with a more realistic complexity and dynamism.

The Middle Ages of Western Europe range from about the fifth to the fifteenth century. The beginning was a long era extending to the middle of the eleventh century, which saw the slow emergence of a distinctive "western civilization" from a mixing of the ideas, habits, and institutions of the Greeks, Romans, the Germanic tribes and western Christianity. Following that, the high middle ages lasted through the thirteenth century, characterized by a flowering of culture which included the creative arts and scholarship. This time also saw the beginnings of the modern nation, with feudal lordships in the process of being replaced by sovereign monarchs. The later middle ages, the remaining two centuries, was a period of turmoil and conflict as tradition encountered new economic and political realities and modern Europe was painfully born.

During the high and later Middle Ages, nation-states began to coalesce from the fragmented political units of feudal times, and commerce and industry became prominent political and economic forces. Although Europe was still pre-industrial, there was wide-spread trade in woolen and cloth goods, agricultural products, and so on. The money economy, which had disappeared from most of Europe after the collapse of the Roman Empire, re-emerged. State and church were involved in ambitious, expensive activities of expansion and consolidation that required sophisticated funding methods. The need for money and the stratagems and accommodations required to obtain it were critical ingredients in the conflicts between church and state and in the shaping of national governments. Judicial systems, far more extensive and sophisticated than what had existed, were required to lift Europe out of suzerainty and into sovereignty. These developed at different paces and in different ways, but develop they did. An important further development took place: loyalties began to shift from families or rulers to a new entity, the nation.

By the eleventh century medieval scholarship was an integral part of the fabric of the age. The twelfth century saw the founding of universities, including one at Paris which was a center of European intellectual activity. Lawyers had become indispensable to both church and state by the start of the thirteenth century and

indispensable to both church and state by the start of the thirteenth century and their education as well as that of other professionals was provided in secular and cathedral schools. The Law Code of Justinian, also referred to as The Institutes of Justinian or the Corpus of the Civil Law, the compiled civil law of the Roman emperors, came under intensive study in Italy at the end of the eleventh century. Justinian was a Christian, a Byzantine emperor of the sixth century; the law code he describes had its roots a thousand years earlier. The study of Roman law was a renewal of contact between the European mind and pagan antiquity - the "dark ages" had erased European history and institutions from common knowledge. By the twelfth century the Code was in use throughout the Holy Roman Empire.

The Corpus of the Civil Law was the work of a distant time and had to be stretched and twisted to apply to the very different conditions of the twelfth century, a task undertaken by generations of scholars who seemed to take pleasure in arcane argumentation. It incorporates important concepts missing from the Germanic customs that otherwise would have been the law in the Empire, providing for

equity and rules of evidence, recognizing property as "free, heritable, and alienable." The Institutes are codified and written, recognizing a professional judiciary and the judicial procedures to match. At the same time, these Roman law were developed to support an authoritarian form of government, presuming the absolute supremacy of the emperor over the people. In contrast, the Germanic leaders were semi-elective and had restricted secular powers, mainly concerned with the waging of war. The famous phrase, *Quod principi placuit, legis habet vigorem* , "That which pleases the emperor has the force of law," is to be found in this Roman law code, as is also the terse description of Roman family structure, "The power which we have over our children is peculiar to the citizens of Rome; for no other people have a power over their children, such as we have over ours," a power which extended into the adulthood of descendants.

The law code matched the prevailing mind-set of the earlier Middle Ages when the authority of Church and State, embedded in a complex and shifting network of feudal relationships, was accepted. But feudalism was a brittle system incapable of serving those people outside the many overlapping layers of rulers, petty and grand. Through the cracks of its internal contradictions and in the new social and economic facts of the age, people began to see alternatives were viable and change became inevitable.

Feudalism, an amalgamation and adaptation of Roman and Germanic institutions, was part-and-parcel of the Middle Ages but did not really get under way until the eighth century, in the time of the Emperor Charlemagne when the bonds of military service, "vassalage," began to be directly tied to grants of land, "benefices." This system extended itself downward in many layers of subinfeudation. Ongoing struggles for power and authority played against overlapping and fragmented jurisdictions, and loyalties could remain coherent only in the presence of strong leaders such as Charlemagne. When the Carolingian empire decayed, a patchwork of local rulers grew in response to the destructive raids of Vikings, Saracens, and Magyars, extending the military protection and economic bondage of feudal lordships over an otherwise defenseless peasantry. Western Europe saw feudalism take on a concrete and wide-spread presence in the tenth century and reach its peak in the thirteenth. It provided an answer for a while; under its protective military shield agricultural productivity increased and the population multiplied.

At the bottom of this structure was the source of production in this pre-industrial age, the peasant, from whom almost all wealth derived. The Romans, primarily in the reigns of the Orientalist emperors Diocletian and Constantine, had institutionalized serfdom as the signal mark of feudalism. Tenant farmers were bound to the land unless released in writing, and this even extended to workers in

bound to the land unless released in writing, and this even extended to workers in the simple urban industries of the time. While conditions varied considerably over Europe, feudalism saw a large portion of the peasantry become serfs. Serfdom was defined by the law as *glebae adscripti* - bound to the earth - and the efforts of rulers, at whatever superior or subordinate level, seemed to be directed towards enlarging the scope of that serfdom.

A Few Good Generalizations The Middle Ages of European history were complex and permit only of doubtful generalizations. Nevertheless, it is safe to make a few broad, if qualified, statements pertinent to the subject of this book. For most of the Middle Ages, Europe was Christian, and the Roman Catholic Church occupied a special position; it was the "true church," although a good deal of variation in belief and practice existed. By the third century, the Church had become wealthy, powerful, and political; nevertheless it was not as centralized and hierarchical as it might at first appear. The wealth and political power of the Church, as well as the practice of appointing to high church offices those who were well-connected and not necessarily qualified for or interested in their redemptive roles, often made it indistinguishable from merely another competitor for temporal advantage. The Church had become an autonomous institution, necessarily and endemically in conflict with secular government; competing, as it were, for the same material prizes. General agreement existed regarding an afterlife of reward and punishment mediated by the Church, yet there was far from such agreement on the relation of state and church or the role that the papacy should play in temporal matters. In spite of the Roman Catholic Church's appearance of being monolithic, competing Christian religious movements were frequent and widespread. The Roman Church experienced reform and conflict; it adapted to some of these challenges by integrating the new dogmas and practices into its structure, and fought with others, labeling them heresies. In the East, the Greek Church established a dominance that still exists.

The Middle Ages were an Age of Faith; they were also an Age of Authority. There were revolts against kings and plots against popes, but not against the institutions of monarchy or Church. Republican governments, in those few places where they could be found, had as their goal to elect their own magistrates and determine their own internal and external policies, in short, to control their own affairs. "Republicanism," in the sense of an ideology, hardly existed, and little if any attempts were made to export this form of government; it was a phenomenon determined by local or at best regional conditions with its attention turned inward. These governments were unavoidably entangled in a fabric of authority invested in monarchies, petty or grand, and in popes with their power over the souls of mankind, as well as over immense sources of wealth. Some political theorists did see political power having its source in the citizenry, and some city-republics did manage to govern themselves for a while. In almost all cases, however, the practical application of political power proved that it came from the top and moved downward.

The feudal system was not structured for economic vitality, not for invention nor technological advance. The basis was the peasant who worked a soil that was

technological advance. The basis was the peasant who worked a soil that was infrequently his own and who was repressively taxed as much as possible. Some important inventions had come about: iron-tipped, efficient plows; systematic rotation of land in and out of tillage; and the stiff, padded harnesses that made practical the use of horses as draft animals, although the Romans may have put a practical collar into use in the past. Continued productivity increases were lacking and the expansion of territory under tillage was necessary as the population grew. Ultimately the expansion had to stop in the region between the Rhine and the Rhone (roughly speaking, modern France) due to lack of worthwhile new land and the exhaustion of existing tillage. By contrast, the Germanic principalities continued moving eastward, reducing the status of the peasantry to serfs as they went; intent on power struggles within their own ethnic borders and slowly taking a back seat in European affairs. In Spain the major theme in political life was the Reconquest of the major part of the Iberian peninsula from the Islamic invaders; feudalism became installed there later than elsewhere in Europe. Economic energy was in the towns of Northern Italy and Flanders, especially the former, where the

urban life of the Roman Empire had never quite expired and the money-economy had never quite vanished. It was in the towns that commerce expanded wealth and created not so much a conscious rejection of feudalism as an alternative to it.

The later centuries of the Middle Ages have a modern ring in that political matters were frequently of European scope, not just local. Many disputes initially appearing to be of a moral or theological nature, such as simony and the right to invest bishops, are in great part aspects of struggles for power within and between church and state. Raw political power, unhampered by ideologies, was at issue. Care must be exercised to avoid taking controversies for what they might seem to be at first, and to see them from a properly cynical point of view.

In this Age of Faith and Authority, the scale of political and religious affairs was very grand, even divine. Humankind's daily and spiritual life was unified to an extent hard to imagine today; the many magnificent cathedrals of that time are a tribute to this integration. Yet conflict existed along with integration: man was created by the divine will, but nature, the everyday experience of life, only served to corrupt him. The study of nature was suspect, for serving the divine will and discerning its purpose must surely be the aim of man's existence. Put in a few words, no law would have been needed had not mankind fallen into sin in the Garden of Eden. But by the middle of the thirteenth century, even as St. Thomas Aquinas was making his great, if transient, synthesis of Faith and Reason by his incorporation of Aristotelian themes into Christian theology, the scale of the western world had already begun to change, and its measure was soon to forsake the divine and become human.

The world-view of western civilization did not consider "progress" an unbounded good, rather it was backward-looking. Custom, tradition, and social class had high values; change and new ideas were always suspect. Power came from the top down, even though there might be many competitors for the top and many competing loyalties. The political theorists of the high and later Middle Ages addressed most of their writing to the analysis of idealized institutions. In general, they did not study and characterize people, events, classes, relationships, and so on, with even the modern pretense of objectivity. Their formal arguments were based on the writings of the Church fathers and such ancients who received acceptance. They saw the laws and ways of the ancient Roman Empire, gone since the fifth century, as having direct relevance to their own time. A wide gap appears to exist between political theory and political fact, nevertheless a careful reading illuminates the uncertain emergence of the principles of republican government.

This chapter will focus on the development of republican government during

This chapter will focus on the development of republican government during roughly the first half of the fourteenth century, and only in northern Italy. However, cities that could be described as polities, where neither monarchy nor aristocracy nor oligarchy monopolized the political process and the citizenry played a direct role in governance, were by no means restricted to Italy. Flanders was another region that experienced economic growth during this same time and gave rise to the stubbornly independent people in Ghent, Bruges, and other cities involved in the production of woolen goods. Trade gave cities and their feelings of independence a way to grow; most were silent, leaving little to document their histories. Lombardy in the south and Flanders in the north, these were the two centers of trade, finance and self-government.

Representative governments existed in many places in the thirteenth century, such as the representative assemblies in Spain and southern France, and later in England, northern France, and Germany. That is different from what was taking place in northern Italy where individual cities undertook to govern themselves as city-

republics. These city-republics took sovereignty to themselves, even if it was briefly, imperfectly, and incompletely understood.

A quick tour of the Middle Ages will be helpful to provide a basis for understanding the contributions of Marsiglio of Padua and to reinforce the contention that the course of development of political freedom is not straight-forward even with hindsight. We will first look at the development and characteristics of the city-republics of northern Italy. After that we will view the struggle between Pope Boniface VIII and Philip the Fair, King of France, which so well illustrates the nature of the conflict between Church and State.

A Very Garden Of Delights

> How medieval communities came into being after the barbarian invasions may be as mysterious as the formation of galaxies but at the start of the Middle Ages such communities were defined by common descent, custom and language, or at least dialect.
> *Cambridge History of Medieval Political Thought c.350-c.1450, ed. J.*H.Burns, p. 163

I have recruited Bishop Otto of Freising, uncle and biographer of Frederick I, known as Barbarossa, as tour guide through the city-republics of northern Italy. Frederick I was a Germanic king of the Hohenstaufen line from 1152 to 1190, crowned Emperor of the Holy Roman Empire in 1167. Frederick was a powerful figure who shaped history, of interest here for the consequences of his Italian campaigns. Bishop Otto's biography includes the first of those campaigns and provides a rare contemporary account by a writer who had set out to be an historian first and a partisan second, accomplishing something of both. Otto was known not only as his nephew's biographer; he had established a reputation as an historian and philosopher and is still considered one of the outstanding intellectuals of his time.

Significant political changes had taken place during the century or so following Barbarossa's reign. The Holy Roman Empire was no longer of much political importance; St. Thomas doesn't even mention it in his political works. Nevertheless, Bishop Otto's account of Italy's attractions and personalities remains fresh and informative.

Bishop Otto, writing of Barbarossa's Italian campaign of 1154-55, described northern Italy in glowing terms:

> This land ... extends as a very garden of delights from the Tyrrhenian Sea to the shore of the Adriatic Sea ... It is watered by the course of the Po ... and of other streams, and by reason of the pleasantness of the soil and the moderate climate it is productive of wine and oil, to such a degree, indeed, that it brings forth fruit-bearing trees, especially chestnuts, figs, and olives, like forest groves …
> *2.13*

This was a land that could capture the attention of any king from the north of Europe. A sense of mission and ancient right helped to build the rationale for periodic incursions; the mere proximity of this rich land at the foot of the Alpine

periodic incursions; the mere proximity of this rich land at the foot of the Alpine passes was attraction enough.

> ... it has resulted that they far surpass all other states of the world in riches and power. They are aided in this not only ... by their characteristic industry, but also by the absence of their princes [i.e., the emperors], who are accustomed to remain on the far side of the Alps.
> *Bishop Otto, op. cit.*

The end of the barbarian invasions permitted the industrious population of northern Italy to concentrate its energy on building prosperous lives. The periodic destruction of towns and crops, the impossibility of maintaining any level of industry or of having safe trade routes became just bad memories, although as we shall see, the habit of violence had become ingrained. Trade amongst Italian cities and with the countries of the east led to fortunes being built upon commerce and

industry. It wasn't only the rich who prospered, for jobs in crafts and professions were necessary to keep commerce going, and so were guilds and an educational system to train lawyers, notaries, and accountants. People who had once been tied to the land could now make a living in cities; people who had previously been to a large extent denied the benefits of their own work were now able to determine their own ways. The cities were centers of activity and change. This was a setting where intelligence, hard work, and dependable business relations counted over the ability to wield a sword, although military force remained, as ever, a necessary tool of politics. The old structure based on military need and service could not adapt to a time of relative peace and was replaced or transformed, albeit with greatly varying speed in the many venues of Europe, by new political and economic realities.

Unlike what took place in many other regions, the Northern Italian nobility did not, in general, find commerce beneath their notice; they participated in its conduct and in its rewards. The basin of the Po was a productive agricultural area and cities on both coasts of Italy were well-placed for international trade; Genoa, Venice, and inland, Milan, were among the richest and most powerful cities of Europe. Further south, Tuscany was a prime wine producer, and Florence, which eventually became the most important city of Tuscany, was a center of the wool trade and of banking and commerce.

Population estimates for the cities of northern Italy are vague, but Florence, the largest, "had perhaps 50,000 inhabitants at the start of the thirteenth century and nearly double that number at its close". Few cities had populations in excess of 20,000 during the thirteenth century; most having 10,000 or fewer inhabitants. We are looking at towns on the scale of those in Classical Greece. The day-to-day business of these Italian towns and cities could have permitted participation by any interested citizens. The political writings of Aristotle, with their obvious relevance, had a great impact on the theorists of thirteenth and fourteenth century Italy.

The Absence Of Their Princes

The Western Roman Empire ceased to exist in 476 A.D.. It disintegrated in fact, but continued to persisted as a strong if out-of-focus mental image for over a thousand years. If ever there was a "good old days," memorialized not only in story and legend but also in the very law of the country, it was the memory of the Roman Empire in the mind of the Middle Ages.

In the west, that period of massive and far-traveling tribal migrations known as the barbarian invasions, a time remembered in great fear by its chroniclers, had begun in the fifth century and lasted until the middle of the eighth century. The "barbarians" included nomadic peoples from the Steppes, Arabs and, more importantly because they established a permanent role in European history, the many Germanic tribes. These tribes were no strangers to the Roman Empire, having been at one time or another enemies, allies, and soldiers of the legions since the first century A.D. The Roman Empire decayed slowly, and by the fifth century was no longer able to permanently protect even its Italian borders; the final breakdown of the Rhine frontier was in 406. The Germanic tribes were brutal in their methods; and the light of learning and culture was extinguished for a long period. Nevertheless what eventually resulted was not the destruction of the Roman civilization leaving a void to be replaced with something entirely different, but at least between the Rhone and the Rhine and southward into Italy, a synthesis of Roman and Germanic cultures out of which resulted feudalism.

During these centuries of darkness and due in large part to the influence of Roman institutions, Germanic political organization changed to such a degree that in 800, Charlemagne was crowned at Rome as the first Holy Roman Emperor by Pope Leo III. Islamic forces were also part of this picture, and while they were turned back or at least held in check in eastern and western Europe, they gained control of the Mediterranean trade routes and of Palestine. The Eastern Roman Empire, centered in Constantinople, remained as a bulwark against invasion of Europe by peoples from further east, Persians, Arabs and Turks. The final demise of the Byzantine Empire, although specifically the military triumph of the Turks in 1453, had been prepared by the military losses inflicted upon it - by the European Crusaders, not the Turks - during the Fourth Crusade, which began in 1204. This saw Christian army warring against Christian army in an expression of a stubborn struggle for economic and political power determined by the control of territory and trade, and also by the Crusaders' desire for combat and booty. History has left the popular conception of the Byzantine Empire in a sad condition, encapsulating its cruel and selfish internal politics as a pejorative, but it did defend the West against the East.

The confusion of kings, dynasties, battles, territorial conquests and losses, has been treated well in many other places. Suffice it to say that with Charlemagne began a

treated well in many other places. Suffice it to say that with Charlemagne began a stormy proprietorship, if only occasional presence, of German emperors over Italy, in convoluted political alliances with and against various popes. The power of the three dynasties, Carolingian, Saxon, and Hohenstaufen, that in series controlled Germany depended on the infrequent great leaders amongst them. The importance of the German dynasties declined but remained significant until the deadly struggle between Holy Roman Empire (it is hard to resist putting quotes around those three bedraggled words, since none of them had much to do with reality) and Church came to its end in the last years of the twelfth century, with the Church and its French allies defeating the last of the Hohenstaufens. The Empire henceforth exercised only a desultory influence on Italy through the ineffective Habsburgs. The thirteenth century saw more of a muddle as the French entered the picture in Italy with a not very commendable military and political presence. The scale of events changed to involve almost all of Europe, rather than only neighboring countries.

Republican Governments Otto portrayed the city-republics of Lombardy at the height of their independence and power:

> In governing their cities, and in the conduct of public affairs, they still imitate the wisdom of the ancient Romans. They are so desirous of liberty that, avoiding the insolence of power, they are governed by the will of consuls rather than rulers. There are known to be three orders among them: captains, vavasors, and commoners. And in order to suppress arrogance, the aforesaid consuls are chosen not from one but from each of the classes. And lest they should exceed bounds by lust for power, they are changed almost every year.
> *Bishop Otto, op. cit.*

The origins of the city-republics are lost, contemporary records being fragmentary at best, but it is clear that by the late eleventh century at least a half-dozen cities had developed a consular form of self-government. Familiar names were among them: Milan, Pisa and Genoa, all powerful centers of commerce. The eleventh and twelfth centuries were a time of vigorous economic activity, with no possible way for power to be denied to members of the commercial classes. At the end of the thirteenth century, in 1293, "the maritime taxes of the single port of Genoa yielded 3 1/2 times the entire royal revenues of the French monarchy".

Much earlier, as the Roman Empire collapsed, "real power ended by being local power" . In the cities power was frequently in the hands of bishops, many of whom displayed as their primary qualification for religious office not their piety but their descent. The Church, on a local rather than a "universal" basis, controlled large holdings of land, the source of wealth. Some of these holdings came from bequests of the faithful on the basis of religious belief; some came from donations founded on the pragmatic grounds that it was better in this world to be submissive to religious authority than to arbitrary secular rulers. The church, at its best, was a source of moral authority when legal authority was absent. On the other hand, its accumulation of power and wealth frequently put it on the side of vested interests and made an authoritative moral stance difficult if not impossible, a fact that would become all too apparent when the Reformation erupted in the sixteenth century. The feudal nobility, whose wealth mainly consisted of the land and its products and whose main activities were hunting and warfare, tended to maintain their distance from the cities, living in the countryside.

The cities of northern Italy began to experiment with self-government, trying a variety of forms, even changing frequently within individual cities. The devolution of political power to a local basis may have provided the opportunity for the populace of cities to dominate the bishops who previously held that power.

of political power to a local basis may have provided the opportunity for the populace of cities to dominate the bishops who previously held that power, although at times bishops and communes co-existed or even cooperated in a struggle against the feudal nobility. This process of change apparently often began with the establishment of a working consulate, whether large or small, along with an "inner council," and the entire qualified population of males attending mass meetings to affirm or deny consular decisions. The consuls were elected by the citizens; and in these times of profound respect for the social hierarchy, the leaders were essentially aristocratic, from the urban nobility. This was the consular commune. It is not difficult to imagine the inner council as the "smoke-filled room" of the time, nevertheless historical records show that consulate and citizenry were both integral parts of the machinery of governance. In Aristotle's terms, the early years of the city-republics were of a mixed form of government, a polity, combining elements of oligarchy and democracy. The consular communes were by no means broad-based democracies. Citizenship was subject to many qualifications and had an appearance fitting well with Aristotle's class-conscious view.

Even with the class-consciousness of the time, these communes had something revolutionary about them. The citizens were an "association of men bound together by an oath and common interests". This was no feudal contract of vassalage underlining a top-down power structure. The members swore that they would obey their consuls and the consuls swore to "defend and uphold the association in all its rights and interests." This was so not only in Italy, but also in Germany, Spain, and France. It is no wonder that a twelfth-century ecclesiastical chronicler, Guibert de Nogent, said, "Commune, a detestable name."

Part of the antagonism of the Church toward the communes was due to the wide variety of religious sects that flourished in Lombardy throughout this period, finding many of their followers in the communes. The Roman Church was far from being universally loved, respected, or obeyed. However, it did have such power that its presence in political affairs was always dominant. Eventually, although not until the fourteenth century, the major heresies of Lombardy were eliminated.

The communes were self-governing and had defeated the exclusive control of bishops and feudal nobles; yet within a few generations, the violent rivalries of the aristocracy, as well as deadly factionalism and inter-city wars, split them apart. The nobility were "hopelessly divided in all the great communes". The base upon which the communes had been built - the cooperation needed for a republican form of government to succeed - disintegrated. Violence, and its companion rejection of compromise, were the tenor of the time.

From among the artisans and families engaged in commercial activities rose the demand for some sort of arbitration of factional and familial disputes. This was achieved for a time through the institution of the *podesta*, apparently primarily in the years from 1190 to 1225. The *podesta* (the word means "a power") was a man from another city, a hired "city manager," although his scope of control tended to be much wider than the modern office, including police and fiscal authority and even the making of external policy. The rationale for this office, as Waley points out, was in large part to find an outsider who could distance himself from internal quarrels and who would agree to carry out the affairs of the city according to its laws. The need for such an officer was diagnostic of the unresolvable dissension that eventually led to the abandonment of republicanism. There grew to be a pool of professionals who rotated between cities, and who held office usually for six months or a year. The conditions for service were strict; the actions and accounts of the *podesta* were subject to review at the end of his term with the prospect of severe penalties for dishonesty. A number of similarities can be seen between the *podesteria* and modern city managers: the consulate exercised close control; law suits

podesteria and modern city managers: the consulate exercised close control; law suits were brought by *podesta* for unpaid wages; firings and arguments about details of contracts ... It was a job for a practical, intelligent, and diligent manager.

At the same time that the podestarial government was taking shape, something else was going on; and this, even more than the consular commune and the *podesta,* is remembered as the heritage of those times. The *popolo* - the people - was declaring itself competent and ready for its turn at government. All the time, though, there was conflict within and between the cities, and it will be worthwhile to explore this ever-present turmoil before looking at the *popolo* in detail.

Territorial Control Bishop Otto's characterization of territorial control was an oversimplification, although it did contain the elements frequently found in Lombardy:

> ... as practically that entire land is divided among the cities, each of them requires its bishops to live in the cities, and scarcely any noble or great man can be found in all the surrounding territory who does not acknowledge the authority of his city. And from this power to force all elements together they are wont to call the several lands of each [noble, or magnate] their *contado*.
> *Bishop Otto, op. cit.*

The cities in Lombardy established sufficient control over bishops and nobles to require these notables to build and maintain homes inside the cities, and to mandate minimal periods of actual residence. This had mixed results, advantageous to the city governments in creating economic hostages, disadvantageous in quartering these divisive, violent factions within the cities. The Montagues and Capulets of Romeo and Juliet were not drawn as caricatures; their ready resort to violence was typical of the time. It was an age with a long memory, where vendettas lasted over generations and insults were not readily forgiven.

Outside the cities, the countryside was a source of wealth and of security, providing food, taxes, manpower, and acting as a buffer zone separating the frequently warring cities. The impetus for expansion into the surrounding country is easily understood, but Bishop Otto's point of view that the cities controlled the countryside has an alternative: the cities can be looked on as existing at the interstices of rural areas that were continually under military pressure from other cities and from the noble families that refused to yield to the power of the cities. Expansion was for selfish, not selfless, reasons. Few attempts were made to export an ideology of republicanism, rather the emphasis was on extending political and economic control.

Bishop Otto was a spokesman for the German emperors of the Holy Roman Empire and took umbrage at the insistence of people of this land to maintain their independence. In expressing his feelings, he showed that the German emperors had no intention of establishing a permanent presence in Italy, but they did demand control of its wealth:

> ... forgetful of their ancient nobility, they retain traces of their barbarian [Longobard] imperfection, because while boasting they live in accordance with the law, they are not obedient to the laws. For they scarcely if ever respect the prince to whom they should

> live in accordance with the law, they are not obedient to the laws. For they scarcely if ever respect the prince to whom they should display the voluntary deference of obedience or willingly perform that which they have sworn by the integrity of their laws, unless they sense his authority in the power of his great army. Therefore it often happens that although a citizen must be humbled by the laws and an adversary subdued by arms in accordance with the laws, yet they very frequently receive in hostile fashion him whom they ought to accept as their own gentle prince, when he demands what is rightfully his own ...

What are these rights? Merely to take whatever they saw fit and replace republican freedom with autocratic rule:

> ... as often as the kings have decided to enter Italy they send ahead qualified men of their retinue to go among the individual cities and towns to demand what pertains to the royal treasury ... Hence it

> comes about that, on the prince's arrival, most of the cities, towns, and strongholds that attempt to oppose this right ... are razed to the ground ... Likewise ... When the prince enters Italy all dignities and magistracies must be vacated and everything administered by his nod, in accordance with legal decrees and the judgment of those versed in law. The judges are said also to accord him so great authority over the land that they think it just to supply for the use of the king as much as he needs from all that the land customarily produces that is essential for his use and may be of advantage to the army, only excepting the cattle and seed devoted to the cultivation of the soil.

Otto's picture of military success was overly optimistic. Here are some major events that took place over the next three decades. Frederick needed to control Lombardy in order to consolidate his own position in German affairs by having a large personal domain from which he could derive revenues – his family estates in Swabia were insufficient. His Italian campaign of 1154-55 was reasonably successful, yet it was far from a decisive display of force and did not subject Lombardy to his rule. Otto describes the all too lengthy siege of the walled town of Tortona, demonstrating the inability of the medieval army to deal with a properly defended city. One far-reaching result of this campaign was the enmity of the Church and the Holy Roman Emperor. A history of conflict already existed, ostensibly due to the failure of Frederick to carry out conditions of a treaty; more likely it was an expression of conflicting interests of Empire and Papacy in controlling the several regions of Italy.

In 1158, Frederick again moved against Lombardy, intent on eliminating the power of Milan over that region. He demonstrated strength enough to achieve tactical victories, including the capture of Milan, but he could not control the entire area. At the Diet of Roncaglia, in 1158, he attempted to construct a settlement. The conditions were that the cities of Lombardy would recognize imperial rights over the area and in exchange would be granted the right to choose their own magistrates. The next year, the Pope died and two Popes were "elected" by the cardinals: one pro- and one anti-emperor. The papist candidate was eventually installed, the struggle between Emperor and Pope continued, and Roncaglia was no longer relevant.

Frederick made other sorties into Lombardy in the years that followed. He destroyed Milan in 1167 and that year, cities in Lombardy formed the Lombard League as a defensive alliance; one year later, having been defeated in southern Italy, Frederick returned to Germany almost the only survivor of the campaign. In 1174, he entered Italy for the last time and in 1176, he was decisively defeated at

Italy, Frederick returned to Germany almost the only survivor of the campaign. In 1174, he entered Italy for the last time and in 1176, he was decisively defeated at Legnano by the Lombard League. A truce was established and the Peace of Constance signed in 1183. This treaty recognized the right of the cities of Lombardy to elect their own magistrates, make their own local laws, and collect and control their own taxes within their walls. Frederick received some compensation from the cities for his lost revenues and retained the authority to tax the countryside. The League also agreed to give the Emperor support in his military actions further south, in Tuscany and the area controlled by Rome.

Other leagues were formed by the cities of Lombardy and Tuscany, besides various military alliances, although none led to a permanent confederation. The natural inclinations of the cities to remain separate overcame whatever cohesive forces there might have been. The cities of Lombardy established rights by law to their own self-government, which had been fact for nearly one hundred years, under the Treaty of Constance. Therein lies a fundamental difference between the city-states

of Italy and those of Flanders: in northern Italy imperial suzerainty had been demolished, in Flanders it had been bargained with. But the republicanism of the Italian cities already contained the seeds of destruction and would shortly begin to disappear.

Conflict, Internal And External Otto's conventional attitude saw the republicanism of the cities as an effrontery:

> That they may not lack the means of subduing their neighbors, they do not disdain to give the girdle of knighthood to young men of inferior station and even some workers of the vile mechanical arts, whom other people bar like the pest from the more respected and honorable pursuits.

His comment on "subduing their neighbors" was more than just a passing phrase. Inter-city wars were almost countless, destroying farms, crops, and cities, reading like a litany of brutal sport. In these days when mercenaries were only beginning to displace the citizen-armies, the need to field an armed force loyal to the city made it practical to give citizenship and even honors to young men from lower classes.

Dante despaired at the continual strife:

> ... within you, brother wars on brother,
> and though one wall and moat surrounds them all,
> your living sons still gnaw at one another.
>
> O wretched land, search all your coasts, your seas,
> the bosom of your hills - where will you find
> a single part that knows the joys of peace?
> *Purgatorio 6*

The inter-city wars are sometimes characterized as conflicts between allies of the Church, the Guelphs, and allies of the Emperors, the Ghibellines. Use of Guelph and Ghibelline as party labels was merely descriptive, not diagnostic. Alliances were opportunistic and pragmatic, not ideological or idealistic. Wars between cities, and wars on larger scale, were not in general fought for principle, rather, they were factional struggles for control of political and economic power.

The Italians of the time saw their most important political loyalty to their city; Italy in the modern sense did not exist and regional politics was characterized more by open warfare than by any lasting cooperation. Even this was subordinate to loyalty to family, which often resulted in bringing disaster and even destruction to the towns. The collective mind of that time apparently had no place for balancing self-interest against the sacrifices and compromises necessary for enduring republican government, and the conception of common regional interests that could produce nationalism lay far in the future. The Italians still use the word *campanilismo* to describe this localism, the campanile being the bell tower, a most familiar symbol

nationalism lay far in the future. The Italians still use the word *campanilismo* to describe this localism, the campanile being the bell tower, a most familiar symbol of Italian villages and towns. *Campanilismo* was not just an aspect of the Middle Ages; it is somehow part and parcel of the Italian national character. It was only in the nineteenth century that modern Italy became a united nation, and since the Second World War the Italians have had some fifty national governments. The other side of that coin is that strong national government easily transforms into tyranny, as it did under Mussolini. Each nation much choose its own path.

The campanile is perhaps the most pleasant and familiar architectural feature of the Italian cities and one that is replicated in many American locales, particularly on university campuses. But another characteristic feature is more foreboding: the fortress towers that still stand in many Italian cities. These towers were built by wealthy families or family blocs, the "tower societies," as part of their "domestic architecture." These were the same families that initially controlled the consulates, and the primary age of tower-building was from 1160 to 1260 peaking around 1200.

The primary aspect of the towers is their stolidity, no airy and open structures these. Their function was military, to support battles within a city, between families and forces indigenous to a city. As the campanile is a symbol of love for a city, the tower is a symbol of factionalism and the resort to violence for the settling of disputes. With hindsight the consular communes didn't have a chance of lasting.

The *Popolo*, The *Signorie* And The End Of Republican Government

Violence and its necessary opposite, defense, were the order of the day. The need for armed defense, the natural organization within these cities into neighborhoods, and the organization of the people on the basis of their professions, these were the ingredients that made possible an expression of political unity and power by the *populus*, the amalgam of the common people and the wealthy commercial families. The first half of the thirteenth century saw a "collective leadership that could rise above the different neighborhood and craft interests to convert the needs of the whole trade community into a collective force". The armed members of neighborhood militias and guilds provided the necessary force, and the demand to be included in the political process provided the community of interest: the *popolo* declared themselves full-fledged players in the game of civil politics.

The *popolo* demanded direct representation in the councils of the city. They wanted to elect as well as be elected, and to participate in governance. They wanted taxation put on a more equitable basis, since the nobility had long-standing ways to avoid many taxes; and they wanted to participate in the administration of justice, which had come to differentiate between noble and commoner, rich and poor. All of which sounds like Aristotle's definition of citizenship, which in fifteen hundred years had turned into a radical agenda. The *popolo* met with varied success, ranging from failure to short-lived control of cities.

The *popolo* frequently created a political structure parallel to the commune, even to having their own *podesta* and councils. These were no more democratic than the consular commune; unskilled or unorganized workers below the artisans on the social and economic scale were generally not represented in any way. Even when the popolo were in control, citizenship was an infrequent issue of discussion, at least as attested by written records; and there were always conditions of guild membership, or property, or payment of taxes for some period of years. Men were known by the family to which they belonged or to their profession or guild. The right to political participation didn't warrant much discussion.

One theme common from antiquity to modern times, and certainly dominant in Europe's Middle Ages, is that political change has to be fought for. The constitutional right to alter the form of government was not recognized, "no precedent gave warrant for awarding a political voice to a more representative portion of the urban community". So it was that in many cases, but not always, the *popolo* came to power through the use of force. Such unity and power did not last; if there was any sense of a common interest outside of times of crisis, it is hard to identify. Even looking at the guilds shows something of the aspect of a fortress

identify. Even looking at the guilds shows something of the aspect of a fortress raising barriers to the progression of those less fortunately endowed by family ties or other such accidentals. Many times the guilds acted to keep down the wages of poorer artisans who worked subordinate to the more prestigious guild members, weavers over fullers, butchers over skinners, and so on.

No one scenario described the development of these city-republics; there were as many variations as cities and regions, and so many timetables and sequences that it all appears as a great, uncontrolled experiment. One similarity was that even as the cities attained self-government, they had within them irreconcilable interests and no basis for any except brief recognition of a common good, and that most often during periods of threat. And all within the cauldron of the long struggle between Emperor and Pope, which did not permit neutrality. It was like Lebanon or the Balkans in our time except the weapons were swords and battering rams instead of machine guns and rockets, all to the end of substituting self-destruction for self-

government. Wars became more expensive as armies became professional. The expense of almost constant warfare put another strain upon the city-states.

Into this turmoil came another player, another form of government, the *signoria*. The word *signoria* means lordship, in practice it was the dictatorial governance of a city by an individual, and secondarily, by the family he headed. Republican government melted away or was violently suppressed. The *signoria* arose in many different ways, sometimes through extension of the term of a *podesta* until the office became permanent, sometimes through outright violence. The general progression was from consolidation of power by suppression of any opposition, including the confiscation of the wealth of enemies, to relatively constructive exercise of authority. In many cases, the power of the *signoria* rested on popular support; so while dictatorial, it was not always maintained merely by force. By the mid-thirteenth century, the *signoria* was common among the cities of northern Italy, although the struggles for republicanism in some cities continued for almost another one hundred years. The *signoria* often became life-time offices, the first of these being in Genoa in 1339. That was when the sailors and silk-workers drove the Guelph nobles out and appointed Simon Boccanegra, some five hundred years later the subject of an opera by Verdi, as "lord for life." The office of *podesta* was retained under many of the *signoria* - running a city requires an administrative structure no matter who the ruler might be.

Whatever the process by which cities formed and prospered, their citizens came to understand that they could manage their own affairs. Conflict could be dealt with, at least destruction could be kept in abeyance, without the ersatz-feudalism of the bishops and without the real dangers of an overbearing, sword-in-hand nobility. But the city-republics failed to achieve peace and security, failed to discover or create a common interest that transcended violent quarrels, neither did they build a broad foundation that crossed class boundaries. They certainly did not include the poor, either from the city or the countryside, in any expression of political power. Eventually, self-government was replaced by dictatorship, self-determination by authoritarian oligarchy or single-man rule. These city-states were the "momentary rays of glory" that Hamilton held up to his countrymen as he argued for a strong national government. They do "dazzle us with a transient and fleeting brilliancy." Battles would be lost but the war was on the way to being won; these cities had proven that people could rise above long-established aristocratic domination to achieve republican self-government. The problem was how to hold on to it. There was no going back; literature, political thought, the political vision of common men had changed.

There still remains one pervasive area of medieval conflict to be discussed before

There still remains one pervasive area of medieval conflict to be discussed before we look at the contributions of Marsiglio of Padua, that between Church and State.

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Church and State in the Late Middle Ages

In the Middle Ages of western Europe, political events took place within a tightly woven matrix composed of the church and the state with no unraveling one from the other. Their relationship was anything except simple. It was filled with faith and perfidy, ideals and pragmatism, astuteness and delusion. A controversy that took place near the end of the thirteenth century, the conflict between Pope Boniface VIII and Philip the Fair, king of France, illustrates these complexities.

In November 1302, two years after the Jubilee Year and in the eighth year of his papacy, Boniface VIII issued the bull, Unam Sanctam. It was directed particularly at Philip the Fair:

> That there is only one Holy, Catholic and Apostolic Church we are compelled to believe and hold ... We are taught by the words of the Gospel that in this Church and in its power there are two swords, a spiritual, to wit, and a temporal ... he who denies that the temporal sword is in the power of Peter, has wrongly understood the word of the Lord ... both are in the power of the Church, namely the spiritual and material swords; the one, indeed, to be wielded for the Church, the other by the Church; the former by the priest, the latter by the hand of kings and knights, but at the will and sufferance of the priest ... the spiritual power has to establish the earthly power, and to judge it, if it be not good ... but if the supreme spiritual power err, it could be judged solely by God, not man ... we declare, state, define and pronounce that it is altogether necessary to salvation for every human creature to be subject to the Roman Pontiff.

In September 1303, Guillaume de Nogaret, Philip's chief counsilor, along with a

In September 1303, Guillaume de Nogaret, Philip's chief councilor, along with a band of Italians who had long been enemies of Boniface, arrived at the Pope's summer retreat in Anagni. They sacked the Pope's residence, proving him utterly powerless. Boniface VIII died of natural causes five weeks later, humiliated, still Pope, not a prisoner, not a martyr. In 1305, the Archbishop of Bordeaux was elected pope as Clement V. His coronation took place in Lyons and the Curia was kept wandering in France until settling, in 1309, in Avignon immediately across the Rhone from Philip's territory, thus beginning the "Babylonish Captivity" of the Church. The papacy did not return to Rome until 1377. Against this turbulent background the independence of the Italian city-republics vanished.

The Church Become The State-Church

> Gold and silver are the gods you adore!
> In what are you different from the idolator,
> save that he worships one, and you a score?
>
> Ah Constantine, what evil marked the hour -
> not of your conversion, but of the fee
> the first rich Father took from you in dower!
> *Dante, Inferno, 19*

Constantine the Great ruled the Roman world from 306 to 337 A.D., reuniting the Eastern and Western Empires, sole Emperor from 324 until his death. In 330, he renamed Byzantium as Constantinople and established it as the new capital of his empire, thus dividing what he had struggled so hard to unite. Constantinople was designated the Christian capital of the Eastern Empire (which included Greece), leaving the Western Empire, at that time much less Christianized than the East, to sort out its own religious nature. Constantine had adopted an eastern religion, moved his capital to the east. The Eastern Empire became the center of wealth, trade, and intellectual activity, leaving a violence-plagued west to its own devices.

Constantine forged a new relationship between state and church, specifically the Catholic Church. The Later Roman Empire had already incorporated a state religion deifying the emperors; they were the head of the state religion and also considered to be supernaturally consecrated. Religion was never a separate force challenging the secular leadership; the State would never tolerate a competing power. The size of the Empire along with its tenuous cultural reach into distant territories made it encompass many local religions, and the state religion did not claim exclusive rights over the beliefs and practices of people, just as long as there was no challenge to Imperial authority. The Empire had its religious problems primarily in the east, its wars against the Jews being the best known example. Persecution of Christians had begun with Nero, but was an on-again, off-again affair lasting into the fourth century. By the third century many Christians held important positions in the administration and hierarchy of the state, as well as a good number being in the armies. The Catholic Church had become the most wealthy religion and its hierarchy well-organized, with strong influence over the faithful.

The final great persecution of the Christians came under the emperor Diocletian, in 302. It began for reasons that were probably at their basis political. These were a combination of the fact that Christians would not acquiesce to the divine powers of the emperors, thus making themselves very visible targets for persecution in an age of intrigues, and the real, or imagined, prospects of Christian plots against the

the emperors, thus making themselves very visible targets for persecution in an age of intrigues, and the real, or imagined, prospects of Christian plots against the vested interests of those who held authority and power.

The persecutions initiated by Diocletian ceased, at least for a while, in 311 when the Edicts of Toleration and the Edict of Milan were issued by Constantine, as ruler of the West, and Licinius, ruler of the East. These reaffirmed an earlier ineffective edit of toleration of 261. The practice of Christianity was legalized and religious liberty proclaimed, the edicts saying "we have given free and absolute permission to practice their religion to Christians ... [and] for the sake of peace in our time a similar public and free right to practice their religion or cult is granted to others, so that every man may have free opportunity to worship according to his own wish." Shortly after, in 314, the dual rulership of Licinius and Constantine dissolved into outright conflict and Licinius re-instituted the suppression of Christianity in Asia and Egypt. Constantine finally defeated Licinius and established sole rule in 323. Earlier, in his consolidation of his rule of the West, Constantine had cast his lot with

the Christians, going forth into the decisive Battle of the Mulvian Bridge with Christian symbols on the shields of his army, ostensibly because his superstitious belief was captured by a vision. It was not until 323, upon defeat of Licinius, that he declared himself a Christian. It would seem likely that this astute ruler saw that Christianity, expressed through the hierarchical and effective organization of its "universal" Church, provided a potential for uniformity that was complementary to the organization of the state, filling out, rather than limiting, the power of the state.

Constantine granted special privileges to the bishops of the Church from early in his reign, but dogma and ritual were dependent on individual bishops; uniformity was not being achieved and religious quarrels were frequent. At the Church Council of Nicea, in 325, Constantine did what he could to see that the Church adopted a uniform dogma with the universal authority to enforce it. His presence and influence, his own authority to settle matters of doctrine and summon councils determined that state would be superior to church, that power in the church would be derived from the temporal authority. However, the Council was primarily an eastern, that is, Greek affair; western prelates were little interested in the matters of doctrine that were addressed. Christianity had made little impact amongst the people of the Western Empire at that time, and Constantine saw the Eastern Empire as the region where the total state and the total church could harmoniously exist.

Constantine had the vision of Christianity as the state church; but it was Theodosius, the final ruler of a combined Western and Eastern Roman Empire, who in 391 proclaimed Catholicism as the state religion and forbade all heathen cults anywhere in the Empire. He and his sons mobilized the force of the state to carry out this policy, turning the power of the state towards the elimination of heresy and paganism, the church's enemies. After 394, all of the privileges and advantages that had once attended pagan and Christian priesthoods were the possession of the latter alone. Within two hundred years, "the bishops and clergy within the remaining empire were actually both more numerous than the administrative officers and functionaries of the State, and received considerably higher salaries".

The Empire collapsed, the Church remained intact; the Empire was a memory, the Church a reality.

Political Answers To Political Problems The migratory waves that had rolled back and forth across Europe finally receded, damped by assimilation and military defeat; whatever elemental forces that had driven them now dissipated. As the millennium approached, a Europe emerged consisting of three political forces: the nobility and their military followers; the bishops and others who exercised the power of the Church; and the cities.

It was an unstable situation. Warlords, initially needed by a disintegrated Europe for some measure of protection, clung to their old ways and saw it as legitimate to acquire wealth by aggression and to settle grievances by armed conflict. The new Europe, freed of the barbarian threat and thoroughly imbued with a profound, unlettered religious belief, was ready for economic growth, and that required directing the forces of aggression away from the homeland. Pope Gregory VII saw that the control of the eastern Christian holy places by Islam provided an opportunity to mobilize European forces by the irresistible call of religion, glory, and riches. In 1074, Gregory put forth a program that called for an army of Occidental knights to come to the aid of the Christians of the Orient. Within two decades, this idea had taken hold and Pope Urban II proclaimed the first Crusade in 1095.

Gregory's idea was not entirely original. In the seventh century, just before the rise of Islam, a crusade had been led by the Eastern Empire against the Persians, who had taken control of the Holy Land. The Eastern Empire did not achieve its end of reclaiming these territories, nevertheless the Persians and after them, the forces of Islam were prevented from invading Europe from the east. Not until the sixteenth century did Islam again pose an imminent threat to eastern Europe.

Islam's rise had been meteoric. In 622 there was Mahomet and a handful of followers. Ten years later, at Mahomet's death, Islam controlled Arabia and by 717 its empire stretched from Spain to central India. The succeeding centuries saw a loss of political and religious unity within Islam and a decline in its military power. By the eleventh century, the Turks of Central Asia, who converted to Islam in the tenth century, had become its most formidable force. It was the Turks who came to control vast territories, including Jerusalem. The Byzantine army suffered a severe defeat by them at Manzikert in 1071; subsequently, the Eastern Empire was able to maintain a defense of its domain but could not engage Islam to recover the Holy Land.

Urban's call to a crusade was not directed only outward. The disintegration of the Carolingian kingdom had left a patchwork of petty rulers competing for land and power. Feuds were the order of the day; violence perpetrated upon most-often

power. Feuds were the order of the day; violence perpetrated upon most-often defenseless churchmen and peasants was a common occurrence. The only hope seemed to lie in using the "terror of spiritual sanctions"; the Church was the only body which had the organization, ability, and desire to be able to bring order out of that chaos. Besides, the Church had much to gain, including wealth from stability in farming and viticulture and power from enhanced temporal influence, as well as moving closer to the achievement of its religious and humanitarian missions. Urban adjured the bishops assembled at the Council of Clermont to put their own houses in order, saying, "First correct yourselves, so that without reproach you may be able to correct those under your charge." He reminded his bishops of their responsibilities as protectors of domestic safety, "You have seen the world troubled for a long time to such an extent that in some places in your provinces, as has been reported to us - mayhap through your weakness in administering justice - hardly anyone can venture to travel upon the highways, by night or day, without danger of attack by thieves or robbers; and no one is sure that his property at home or abroad will not be taken from him by the violence or craft of the wicked."

The weapons of the bishops were to be their moral authority, and the excommunication or interdict of any who resisted the commands for peace. The groundwork for this had been laid half a century earlier, in the period from roughly 1020 to 1060, when a Peace movement had been built in French territory. The Church had declared a Peace of God, which aimed to stop the warring nobility from attacking churchmen and church property and the poor. A Truce of God had followed that, where the nobility were told to avoid warring upon one another on the Sabbath, and eventually this was expanded to many other days during the year. This was tenuous at best; it was necessary to provide some external outlet for the nobility, whose livelihood, so to speak, was warfare.

Urban declared his call to "carry succor to your fellow brethren dwelling in the East, and needing your aid, which they have so often demanded." He spoke frankly, planning that the Church would take the lead in this enterprise, those participating in it would receive salvation, serfs would become freemen, and the scourge of domestic violence would be translated into a force for good:

> ... by frequent exhortation, urge men of all ranks, knights and foot-soldiers, rich and poor, to hasten to exterminate this vile race [the Turks] from the lands of our brethren ... the sins of those who set out thither, if they lose their lives on the journey, by land or sea, or in fighting against the heathen, shall be remitted at that hour...
>
> Let those who have formerly been accustomed to contend wickedly in private warfare against the faithful, fight against the infidel ... Let those who have hitherto been robbers now become soldiers of Christ. Let those who have formerly contended against their brothers and relatives now fight as they ought against the barbarians. Let those who have formerly been mercenaries at low wages, now gain eternal rewards. Let those who have been striving to the detriment both of body and soul, now labor for a twofold reward ...
>
> Let not those who are going delay their journey, but having arranged their affairs and collected the money necessary for their expenses, when the winter ends and the spring comes, let them with alacrity start on their journey under the guidance of the Lord.
> *Urban II, The Call To The First Crusade, 26 Nov 1095*

Three particular points are of interest here. First, violence in Europe had to be brought under control, and Urban presented his two-pronged approach: remind his bishops of their domestic responsibilities and divert the warriors, along with a

brought under control, and Urban presented his two-pronged approach: remind his bishops of their domestic responsibilities and divert the warriors, along with a good supply of criminals and ne'er-do-wells, on a holy mission across the sea.

Second, Urban began to arrange for funding this enterprise. The Church, starting with the First Crusade, put into place an administrative structure that could collect, distribute, and account for large sums of money, and in addition established its authority to determine that such collections would take place. Much of the money for the crusades was expended by the secular authorities who were on crusade, thus providing a tempting dual benefit, the Church acquired wealth and the infrastructure to keep on acquiring and controlling it, and the lay rulers found a source of funds that had up to then eluded them. The Crusades were also funded by large loans from families that had built powerful banking enterprises, but that is outside the scope of this book.

Third, trade with the east had existed for many years and the wealth of that region

was well-known in the west. Clear advantages lay in expanding control of lands in the east, and over the trade routes and sea lanes to them. This would lead to increased wealth and power, and western Europe was ready for just such an opportunity. Complementary to that was the appeal of establishing kingdoms in lands recovered from the Turks - a serious shortage of arable land in Europe was beginning to appear and new lands were at a premium.

It wasn't long before the definition of Crusade underwent a great change and appeared to forget its roots in the Peace of God. In the early 1200s, shortly after the disastrous Fourth Crusade had mortally wounded the Christian Byzantine Empire (Christian against Christian, the Turks had little to do with it), the popes Innocent III and his successor Honorious III mobilized Crusades against the people of the Languedoc (the area around Toulouse, naturally a geographical part of France, but at the time linguistically and culturally distinct). The erstwhile reason for this was the suppression of the Cathar and Waldensian heresies; be that as it may, the warfare resulted in massacres of thousands of non-combatants, the deliberate destruction of the economy of the region and the burning of hundreds of people judged to be heretics. The power of the king of France was extended southward into the Languedoc, where, before the Crusade, power had been held locally. It was Christian against Christian again with no quarter given. This was the time when the Dominican Order was founded and given charge of the Inquisition.

< TRANSITION NEEDED HERE >

Philip the Fair became king of France when his father died in 1285 on a retreat from a failed crusade. The crusade was by the French against Aragon and the issue had nothing to do with heathens or infidels, the issue was the control by Europeans of European territory. During the thirteenth century, popes repeatedly declared Italian crusades - Innocent III, Gregory IX, Innocent IV, Alexander IV, Urban IV, Clement IV, Martin IV, Nicholas IV and Boniface VIII - as the papacy found its very existence threatened. However, "the papacy could never undertake a major campaign without an ally.". The need for a powerful ally and the shift in the thirteenth century from armies composed of communal militia to mercenary soldiers meant not only continual political negotiations - always a normal aspect of running a state - it also meant the need for money. The papacy might bring a small number of soldiers into service for 'theological wages,' but hard cash was required by the overwhelming majority.

European politics was complex and had many players. During the papacies of Gregory VII and Urban II (altogether from 1073 to 1099), there had been an ongoing struggle, known as the Investiture Contest, for political power between the Church

struggle, known as the Investiture Contest, for political power between the Church and the German Saxon dynasty. Its specific subject was the determination of who had the right to invest German bishops with their office; the broader issue was the redefinition of the authority of the *sacerdotium* over the *regnum.* The political aspects of this were unmistakable: the local nobility in German rose against the Emperor, with Papal blessing; and fifty years of civil war unfolded, by the end of which the peasantry had been reduced to serfdom.

The Normans, establishing themselves far from their original homeland in Europe's north, became key participants in Italian affairs. During the Investiture Contest, which wasn't settled until 1122 in a period of confusion of popes and antipopes, the Normans, as allies of the papacy, achieved control over a substantial portion of southern Italy, this in addition to the control of Sicily which they had already wrested from the Arabs a few decades before Gregory's vision of a Crusade. The Normans turned out to be very dangerous allies, sacking Rome in 1084, and the disillusioned Gregory died in exile in Norman territory at Salerno.

Regardless of that misstep, the Church triumphed, Gregory excommunicated the German king Henry IV in 1076, and subsequently Henry was defeated by his domestic foes. Shortly thereafter Henry came to Gregory as a penitent and at Canossa the church accepted him back, demonstrating the degree of power the Church had acquired. The story was long from over, Henry returned to the struggle against his German foes, was again excommunicated - this time permanently - and entered Italy where he stayed for twenty years. He eventually lost his Italian allies as well as German kingdom, betrayed by Henry V, his son.

After the Investiture Contest, there was no longer "the close partnership of imperial Church and Crown which had started with Charlemagne". The Church was a political power acting in political ways for political purposes, independent of the State, with the declaration of its temporal superiority nascent but soon to be born. Yet it was an obvious and unavoidable fact that no matter how ascendant the Church might be in proclaiming itself the source of power, it could not rule directly. It had to act through local rulers; temporal authorities would not simply vanish nor would they merely obey.

Two Sovereign States The Roman Church had acquired all the attributes of a sovereign state save one, its own military force. This lack meant that the popes were continually negotiating with other sovereigns, or the lesser nobility who controlled large bodies of men-at-arms, in order to achieve papal political ends. The papacy did have one other weapon that no temporal ruler had, the power of excommunication, the misuse of which Dante angrily decried:

> In earlier eras wars were carried on
> by swords; now, by denying this man or that
> the bread the Heavenly Father denies to none.
>
> But you who scribble only to scratch out,
> remember that Peter and Paul, who died for the vineyard
> you trample, still defend the good you flout.
> *Paradiso 18*

The end of the thirteenth century saw the throne of France and the Apostolic See occupied by two stubborn, proud men, Philip the Fair and Boniface VIII. Philip's reign lasted from 1285 to 1314, Boniface's papacy from 1294 to 1303. The quarrel between them, at once between individuals and sovereign states, epitomized the relationship between church and state in the late Middle Ages and utilized all the weapons available to both, even to the aspect of thirteenth-century warfare that did what it could to avoid pitched battles. This quarrel, in its cynical goals and resolution, illustrates the political conditions under which the Italian city-republics slowly gave up their independence.

Philip was a private individual who kept to a small circle of intimates, and most of what history records of his reign is spoken by his advisors and those who carried out his policies. He was of the Capetian dynasty, which had begun in 987, and completely committed to the principle that within his realm, the King of France was subject to no temporal authority.

Boniface VIII, born Benedict Gaetani, was of a good family with connections to previous thirteenth-century popes. He had risen to cardinal and had established a distinguished record in administration and diplomacy. He had a short temper, often speaking - and writing - insulting, angry words, his irascibility perhaps heightened by the painful ailment, probably stones, from which he suffered. He was committed to the principle of papal primacy in all matters spiritual, and he attempted to extend this "plenitude of power" so that temporal rulers would be subject to papal correction in temporal affairs. Two camps at war with one another, and neither looked upon neutrality with favor.

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This was a period of change for both *regnum* and *sacerdotium.* Philip reigned when lordship was evolving into sovereignty; when feudal states with overlapping jurisdictions and obligations were giving way to a central government with an institutionalized bureaucracy and relatively clear authority; when finance that depended on revenues from the king's own domain and from negotiated or traditional feudal payments was being replaced with the broader and more dependable basis of general taxation. Boniface saw a church confronted with the new nation-states that demanded taxes from the church's possessions inside their boundaries; with clergy whose loyalties were sometimes divided between pope and sovereign; with a war developing between France and England that could have nothing but ill effects for Europe; with Sicily, controlled by Aragon, already at war with the papacy.

The Roman Church was an object of particular interest to Philip (and also to

Edward I, king of England) because of its success in financing itself by collecting revenues from bishoprics throughout Europe. In terms of modern vintage, it was a "cash-cow" just waiting for an unfriendly takeover. What developed was a political struggle with no noticeable moral content, fought in mainly legalistic terms, and of which the rest of Europe took little notice.

The Quarrel Begins With A Dress Rehearsal Philip the Fair was not anti-church; there is no reason to believe that he set out on a policy of confrontation with the pope. He needed the moral authority of the French clergy to support his rule; and the clergy needed the privileges he granted them, and his courts of law, to protect their own interests. Whatever the extent of anti-clerical feeling or the future development of a French church, Philip's immediate need was for money and his policy was of consolidation of his realm and the extension of royal jurisdiction throughout it. In this era of the slow consolidation of sovereignty over all of France - of nation building - Philip had problems in the four corners of his realm. His troubles with Edward of England over Aquitaine did not come to a head until 1293; but early in his reign, Philip was already exploring ways to exert control over the fiscal resources of the French church.

From 1288 to 1290, before his infamous chief councillors, Flote and later Nogaret entered the scene, Philip had been engaged in a dispute with the bishops of Poitiers and Chartres. The essence of the matter was the extent to which Philip would have jurisdiction over the bishops' affairs, the argument having to do with the way things were before the acquisition by Philip of control over the territories in which the cities were located. The point of interest here is that the matter was turned over to Pope Nicholas IV for arbitration and Nicholas sent two negotiators, one of whom was Cardinal Benedict Gaetani, later to become Pope Boniface VIII. The matters discussed, the settlement and the players composed a dress rehearsal for what would come to pass in just over ten years.

Philip's policy of control over temporal matters in his realm was unmistakably clear at that time, and the settlement was much in his favor. Pope Nicholas IV was involved in the same Sicilian dispute that would plague Boniface during his papacy, and he chose to accommodate Philip just as Boniface initially would. Philip's tactics were blunt, even ruthless, he attacked the church but not with arms, he used propaganda and invective, demonstrating that even though threatened with ecclesiastical censure, he would not yield. The outcome of this affair with Poitiers and Chartres was an agreement stated as a royal decree, not one from the Roman curia; and it was the king, not the Pope, who guaranteed the privileges of the clergy.

By 1292, Philip was aware that the resources of the royal domain were insufficient to fund the military efforts needed to consolidate France. He engaged in a wide-ranging effort to raise money, expelled the Jews from the western part of his kingdom and through confiscation and fines made a profit (Edward of England, and the Aragonese monarchy had already used this tactic), taxed the Lombard traders in France, declared a hearth tax in parts of the kingdom, and asked some of

traders in France, declared a hearth tax in parts of the kingdom, and asked some of his great lords for money in place of military service. During the three decades of his reign hardly a year went by that some tax was not collected, whether from church, nobles, cities, or the people.

The war with England in Aquitaine, while not marked by extensive battles, was expensive for Philip because he had to maintain an army of occupation. England and France both built up navies, and even though no invasion was attempted, the financial strain on both countries was great. The war began in 1293 and there was a truce in 1297 - in which Boniface played a part - but no final settlement until 1303. It was during the early years of that conflict that Philip increased his attempts to obtain money from all sources. In 1294, Philip bypassed the pope and by maneuvering through a series of provincial councils was granted a 'tenth' on the French church's revenues for two years. This turned out to be such a good idea that he continued it and received a tenth in all but six years of his reign. Philip began collecting property taxes in 1295, a bold action in contradiction to conventional

feudal customs. He had already obtained large loans from rich clerics, burgers, and royal officials in 1288, and he repeated this again in 1295, repaying some but hardly all. He took the risk of manipulating the coinage between 1296 and 1303 but resistance to this was so great that he agreed to give up that tactic and make money good again.

Boniface VIII, elected to the papacy in 1294, who was also having money problems, saw the Capetian dynasty in France and the Plantagenets in England making taxes on the clergy integral parts of the funding of their kingdoms. Royal requests were becoming demands and there were negotiations directly with the national clergy if that appeared more productive than dealing with the Roman curia. Boniface's problems were not restricted to fiscal matters; Acre had fallen to Islamic forces in 1291 even though Innocent IV had ordered a new levy for its relief in 1289. A crusade into the east was needed, but the 'crusade' against Aragon demonstrated the bankruptcy of that once-powerful ideal, and the war between France and England was absorbing the energy and funds of those two countries. In addition, in 1297 Boniface's powerful and vindictive Italian enemies, the Colonna family, openly declared that the abdication of Boniface's predecessor had been illegal and consequently Boniface's election itself had been illegal.

In 1296, the French clergy made an appeal to Boniface VIII, declaring that Philip's taxation of them was contrary to the policies and interests of the church. In April 1296, Boniface VIII wrote the bull, *Clericis laicos*, in characteristically blunt terms:

> Antiquity shows us that the laity has always been exceeding hostile to the clergy; and this the experience of the present time clearly demonstrates ... They do not prudently observe that all control over the clergy, as well as over ecclesiastical persons and their possessions, is denied them, but impose heavy burdens upon the prelates of the churches, upon the churches themselves ... From such persons they require and extort the payment of a half, a tenth, a twentieth or some other quota of their property or income, and strive in many other ways to subject the churchmen to slavery and bring them under their control.
>
> And (with grief do we declare it) certain prelates of the churches and ecclesiastical persons, fearing where they ought not to fear, and seeking a temporary peace, dreading to offend a temporal more than the eternal majesty, do, without having received the permission or sanction of the Apostolic See, acquiesce in such abuses ...

We, therefore, desiring to check these iniquitous practices ... decree that whatever prelates or ecclesiastical persons ... shall pay, or promise or agree to pay to laymen ... likewise emperors, kings and princes ... who shall impose, exact or receive such payments ... likewise all who shall consciously lend aid, counsel or support in such undertakings, either publicly or privately ? shall, by the very act, incur the sentence of excommunication ...

No one, moreover, shall be freed from the above mentioned sentences of excommunication or of the interdict, except in the hour of death, without the authority and special permission of the Apostolic See, since it is our intention to make no kind of compromise with such a horrible abuse of the secular power ...
February 25, 1296

Behind these abrasive words was the hint of the compromise that was eventually effected, for the bull was not sent to France until August nor to England until October. In August, perhaps independently of Boniface's action, Philip declared an embargo on the removal of money, precious metals, jewels and negotiable documents from France, and he ordered foreign merchants to leave the country. This action of Philip's had been carried out before in times of war, nevertheless it was easily interpreted as a threat to the finances of the church. Boniface had so many problems of his own and was in sufficient need of French aid that he moved toward compromise. Between January and September of 1297, Boniface took several steps. He issued a clarification of *Clericis laicos*, stating that it was being misinterpreted and was meant to be nothing more than the addition of explicit penalties to existing canonical procedure. Moving even further, Boniface yielded an immediate tenth from the French clergy to Philip and declared that in cases of real necessity, the license for clerical taxation would be given. While it calmed things for a while, this was not a true resolution of the issue for it left in question just who would determine that an emergency had arisen. As one additional gesture of conciliation, Boniface caused Philip's grandfather, Louis IX, to be canonized, an action the French had wanted for many years. Boniface's willingness to compromise (very similar results had transpired in arguments between Edward of England and the Church) left the French clergy in a weaker political and financial position than they would have been had they dealt directly with Philip; this expensive lesson was remembered and played in the background of the events of the next decade.

Boniface's argument had been legal, not moral; Philip's actions were pragmatic, not anti-clerical. That was to be the nature of the ongoing struggle which led somewhat incidentally to Boniface's death.

Defensor Pacis

> This treatise will be called "Defender of Peace," because it discusses and explains the principal causes whereby civil peace or tranquillity exists and is preserved, and whereby the opposed strife arises and is checked and destroyed …
> *Defensor Pacis, Three.III*

Marsiglio was a son of Padua, spent his formative years there, knew its institutions well, and gives us a view of this city-republic in the Defensor. His book shows us an author with a love of country, a desire for peace, and a practical familiarity with the ways of power in both state and church.

Little concrete is known about Marsiglio's life. He was born in Padua somewhere between 1275 and 1280, the son of a notary. He probably studied at the University of Padua and certainly was rector of the University of Paris for a short period in early 1313. It appears that he started his professional career as a cleric and scholar but by 1319 was in the service of the rulers of Verona and Milan, perhaps performing diplomatic functions. He went back to the University of Paris and in 1324 published his confrontational and controversial Defensor Pacis, Defender of Peace. His authorship earned him the title of heretic in 1327. He left Paris and soon joined the service of Ludwig of Bavaria, who in 1322 had gained control of the Holy Roman Empire, such as it was. Marsiglio accompanied Ludwig into Italy in 1328; during this ineffective *Römerzug* Ludwig deposed Pope John XXII, declaring the pope a heretic. In the short time Ludwig remained in Rome, that is, before he was forced by the populace to depart, Marsiglio seems to have put into practice the tenets of the Defensor, although it does not appear that this was to any great avail. Marsiglio returned to Germany and remained, until his death in 1342, in Ludwig's court.

Within the wordy and authority-strewn style of the time, the Defensor includes hundreds of explicit references to the writings of Aristotle, the Church Fathers, and Roman sources. Marsiglio used the translation of Aristotle by William of Moerbeke, the same that St. Thomas had used. While this translation is inaccurate in places, and misleading in others, it made Aristotle's complete Politics (or Civil Science) available to scholars. The Defensor is arranged in three parts, called Discourses. The first consists of nineteen chapters devoted to the state *qua* state; the second Discourse has thirty chapters concerning the internal governance of the church and the relation of church to state; the third is a very brief summary of the other two. Marsiglio returns repeatedly to treat the specific matters that concerned him, each time with slightly different arguments. He is like a lawyer addressing a

other two. Marsiglio returns repeatedly to treat the specific matters that concerned him, each time with slightly different arguments. He is like a lawyer addressing a jury, making certain his case is understood; sometimes he is like a general making attack after attack against a well-entrenched enemy. At first glance he may seem to wander; actually he is attempting to build overwhelming arguments.

The most important problem Marsiglio saw confronting him was the same that had grieved Dante, the violence and political instability endemic to his native land. The Defensor is his attempt to diagnose and correct that tragic situation. A major part of his diagnosis was that the Roman Church was exerting control in temporal matters, interfering with the administration of justice by secular rulers, claiming it had the power to depose rulers and insisting no ruler was legitimate without its approval. "When there are two coercive dominions in respect of the same multitude," Marsiglio stated, "and neither is subordinate to the other, they impede one another..." The entire second Discourse of the Defensor is addressed to reform of the church and total elimination of its temporal authority. As fascinating as this is, the

focus here will be on the first Discourse, Marsiglio's analysis and prescriptions for a secular state wherein sovereignty resides in the people.

Marsiglio's ideas seem to have an "out-of-time" feeling to them, as though they belong two hundred years in the future, in the sixteenth century of the confrontational Reformation and the cynical Machiavelli. This stems from his putting bluntly to paper what rulers and the church had been implicitly acting upon, but to which few would admit. There is also a language problem, but not one of translation. The problem is that "sovereignty" wasn't to be understood as standing apart from the person of the ruler for another two hundred fifty years, in the time of the Reformation. Did Marsiglio conceive of a state having a continuity of existence, and deserving of loyalty, regardless of changes in government and leadership? Could he see a collection of buildings, walls and surrounding lands - and the people who claimed that place as their birthright - as a nation, in our modern sense? The answer to both these questions must be generally negative, for he dealt with the vocabulary and realities of his time. One need only read Shakespeare, writing from about 1590 to 1612, to see that even in the sixteenth century the notion of the state was still bound to the person of the ruler, although changes in thought, practice, and language were under way.

Marsiglio did not create new principles. As at the founding of our country, he "placed before mankind the common sense of the subject." He was not a creator but a synthesizer, and never afraid to bluntly state a truth as he saw it. Marsiglio was not by any means alone in putting forth ideas that challenged accepted thought. There were others, such as Bartolus of Saxoferrato (1314-57) and William of Ockham (1290-1349), who made contributions of lasting importance. And these men all owed debts to those who had preceded them, amongst them John of Paris (1240-1306) and the many churchmen who were proponents of conciliarism (the concept that the pope was subject to the decisions of a Council of the Church). Among these men, Marsiglio was particularly outspoken and clear on political matters and this chapter will be devoted to him.

The Will Of The People

Marsiglio saw the purpose of the state very much as had Aristotle and expected that all sensible people would agree, or put another way, he felt that anyone who disagreed put himself outside of society.

> The state, according to Aristotle in the Politics [1.2], is "the perfect community having the full limit of self-sufficiency, which came into existence for the sake of living, but exists for the sake of living well." [This] signifies the perfect final cause of the state, since those who live a civil life not only live, which beasts or slaves do too, but live well, having leisure for those liberal functions in which are exercised the virtues of both the practical and theoretic soul…
> *Defensor Pacis, One.IV*

> [Various things follow from tranquillity in the state.] These are the mutual association of the citizens, their intercommunication of their functions with one another, their mutual aid and assistance, and in general the power, unimpeded from without, of exercising their proper and common functions, and also the participation in common benefits and burdens according to the measure appropriate to each…
> *Defensor Pacis, One.XIX*

> Let us therefore lay this down as the principle of all the things which are to be demonstrated here, a principle naturally held, believed and freely granted by all: that all men not deformed or otherwise impeded naturally desire a sufficient life, and avoid or flee what is harmful thereto.
> *Defensor Pacis, One.IV*

During the Federal Convention, Charles Pinckney of South Carolina engaged in a characterization of the people of the United States, providing Madison with a written copy of part of his speech. Pinckney spoke about government having a responsibility toward providing people with the basis for living a "sufficient" life. There is little chance, though, that Marsiglio would have agreed with the wisdom of permitting religious liberty:

"Our true situation appears to me to be this. ? a new extensive Country containing within itself the materials for forming a Government capable of extending to its citizens all the blessings of civil & religious liberty ? capable of making them happy at home. This is the great end of Republican Establishments."
Madison, Notes, June 25, 1787

The concept of the self-sufficient state may have had some currency in Aristotle's time, although the slave-based economy of Greece needed the infusion of persons, bought or conquered, from other lands. It made no sense in Marsiglio's Italy, which depended so heavily on trade for its wealth. Yet Marsiglio's nod to Aristotle's authority does not interfere in any essential way with the progression of the Defensor's arguments.

Having discussed the ideal, Marsiglio becomes practical. The benefit of the state was a good life, but disputes, reasonable and unreasonable, can prevent that benefit from being achieved. The state, through those who act as its "guardians," must be able to establish justice and maintain law and order:

> But since among men thus assembled there arise disputes and quarrels which, if not regulated by a norm of justice, would cause men to fight and separate and thus would bring about the

> separation of the state, there had to be established in this association a standard of justice and a guardian or maker thereof. And since this guardian has to restrain excessive wrongdoers as well as other individuals both within and without the state who disturb or attempt to oppress the community, the state had to have within it something by which to resist these…
> *Defensor Pacis, One.IV*

Marsiglio discussed the political association in terms of individuals, Hamilton in terms of political sub-units. In the Federalist No. 9, Hamilton wrote in terms that might well have described Marsiglio's Italy:

"A man must be far gone in Utopian speculations who can seriously doubt that if these States should either be wholly disunited, or only united in partial confederacies, the subdivisions into which they might be thrown would have frequent and violent contests with each other. To presume a want of motives for such contests as an argument against their existence would be to forget that men are ambitious, vindictive, and rapacious. To look for a continuation of harmony between a number of independent, unconnected sovereignties situated in the same neighborhood would be to disregard the uniform course of human events, and to set at defiance the accumulated experience of ages."

Marsiglio considered the political association as something natural to humankind, as a product of efforts intended to solve humankind's problems, agreeing with Aristotle that man is a social animal. This was in disagreement with the Church's view that humankind's fall from grace justified life's political hardships, which should be accepted passively (an idea to take a prominent place two hundred years later in the Reformation). The Church was attempting to maintain two positions: one as the moral authority protecting citizens from predatory rulers; the other as the religious authority mandating humankind's behavior in all matters of the spirit, which the Church saw as having few bounds. These two positions collided in the real world of human affairs; there was no way to deny their contradictions.

In that great Age of Authority and Faith, Marsiglio was the spokesman of government responsible to and in the interests of the people. Here was the political philosophy of Aristotle restated in a time nearly two millennia after its origination. There were new realities, but Marsiglio insisted on the same human scale. Marsiglio spoke for those who saw the *sacerdotium* improperly entangled with the governance of the *regnum*, and who also saw the need to limit the *regnum* in its powers over the people. He saw the responsibility for the preservation of the benefits of the state to lie jointly with the people and the rulers. The expression of this parity shows the irreparable breach between republicanism, with Marsiglio as

benefits of the state to be jointly with the people and the rulers. The expression of this parity shows the irreparable breach between republicanism, with Marsiglio as its spokesman, and the autocratic church and state that typified the Middle Ages.

> ... this treatise enables both rulers and subjects ... to comprehend what must be done in order to preserve their own peace and freedom.
> *Defensor Pacis, One.III*

The ruler, who may be other than a monarch, has authority but is responsible to the people. Marsiglio is describing a compact with all its implications when he speaks of the "virtue and authority of government" being derived from the "expressed will" of the people. Aristotle can be heard in Marsiglio's insistence on a government based on law, but this compact between the people and the rulers is a step beyond what can be found in the Politics as well as a step towards the political theory of the eighteenth century:

> For through the human and divine truths written in this book ... the ruler (whether one or many), will comprehend that to him alone belongs the authority to give commands to the subject multitude ... and to mete out punishment to any person when it is expedient, in accordance with the established laws. And the ruler will also learn that he must do nothing apart from the laws, especially on important matters, without the consent of the subject multitude or legislator, and that the multitude or legislator must not be provoked by injury, because in its expressed will consists the virtue and authority of government.
> *Defensor Pacis, One.III*

Marsiglio's term, "the legislator," does not refer to an individual or governmental body with the authority to legislate, but to the body of the people from whom all political power is derived. The people have the responsibility to choose the rulers and also the authority and means to correct or change the rulers; if this is not exercised then we, the people, have no one to blame but ourselves:

> The subject multitude, and each individual member thereof, can in their turn learn from this book what sort of person or persons should be appointed to rule, and that for and in the status of the present world they are obliged to obey only the commands of the ruling part as coercive, and then only when those commands are in accordance with the established laws ... And the subject multitude will also learn the extent to which it is possible to see to it that the ruler or any other part of the community does not assume for itself the arbitrary discretion to make judgments or to perform any other civil acts contrary to or apart from the laws.
> *Defensor Pacis, One.III*

Madison often used a tone similar to Marsiglio's. In the Federalist No. 10, while speaking in particular of the dangers of factionalism, Madison laid out this prescription:

"It is in vain to say that enlightened statesmen will be able to adjust these clashing interests and render them all subservient to the public good. Enlightened statesmen will not always be at the helm. Nor, in many cases, can such an adjustment be made at all without taking into view indirect and remote considerations, which will rarely prevail over the immediate interest which one party may find in disregarding the rights of another or the good of the whole. The inference to which we are brought is that the causes of faction cannot be removed and that relief is only to be sought in the means of controlling its effects."

removed and that relief is only to be sought in the means of controlling its effects."

Marsiglio borrowed directly from Aristotle in order to leave no doubt as to the difference between "good" and "bad" states. While doing this, he added one phrase that reverberates as loudly as a bell in a Paduan campanile:

> There are two genera of ruling parts or governments, one well tempered, the other diseased. With Aristotle in the Politics [3.6], I call that genus "well tempered" in which the ruler governs for the common benefit, in accordance with the will of the subjects; while the "diseased" genus is that which is deficient in this respect.
> *Defensor Pacis, One.VIII*

"In accordance with the will of the subjects"! Aristotle had gone as far as to say that a polis is an association of freemen, and that the natural system of government is one in which citizens are equals and peers, and hold office by turns. Marsiglio

added that one important clause. These were not words put together by a cloistered scholar. Marsiglio, son of Padua, had heard the voice of the people in his own city and in the city-republics of Milan, Pisa, Piacenza, Mantua, Florence ... By the time the Defensor was published, these cities had for the most part lost their republican governments, traded them for the stability they had not been able to achieve, but the ideal would not be put to rest. This should not be misread ? this was the fourteenth century and Marsiglio was a professional in the service of a German king ? there is no call to revolution here, no populist demands, just the uncompromising statement of a person who declared his republican beliefs and stuck to them.

Aristotle had touched upon the idea of popular will, saying, "Kings cease to be kings when their subjects cease to be willing subjects, though tyrants can continue to be tyrants whether their subjects are willing or no". Marsiglio went beyond Aristotle's somewhat ambiguous wording, but did not favor an opportunistic radicalism that would lead to mob rule. He used words almost identical to Aristotle's to clarify his position.

> A "polity," although in one sense it is something common to every genus or species of regime or government, means in another sense a certain species of temperate government, in which every citizen participates in some way in the government or in the deliberative function in turn according to his rank and ability or condition, for the common benefit and with the will or consent of the citizens. "Democracy," its opposite, is a government in which the masses or the multitude of the needy establish the government and rule alone, apart from the will or consent of the other citizens and not entirely for the common benefit according to proper proportion.
> *Defensor Pacis, One.VIII*

This concern about a "tyranny of the majority" seems to be as old as government itself, and was one area where Madison and Hamilton found agreement even though their ideas for resolving it were quite different.

> *Madison saw a well-structured government as essential to the protection of minority rights in a republic. He advocated a bicameral legislature which balanced a popularly elected House against an indirectly elected, longer term Senate. Speaking of this in the Federalist No. 62, he said:*
>
> *"The necessity of a senate is not less indicated by the propensity of all single and numerous assemblies to yield to the impulse of sudden and violent passions, and to be seduced by factious leaders into intemperate and pernicious resolutions."*

to be seduced by factious leaders into intemperate and pernicious resolutions."

Summoning his powers of persuasion in the _Federalist No. 1_*, Hamilton contrasted the risks of unfettered democracy with the benefits of structured republicanism:*

"... a dangerous ambition more often lurks behind the specious mask of zeal for the rights of the people than under the forbidding appearance of zeal for the firmness and efficiency of government. History will teach us that the former has been found a much more certain road to the introduction of despotism than the latter, and that of those men who have overturned the liberties of republics, the greatest number have begun their career by paying an obsequious court to the people, commencing demagogues and ending tyrants."

Law And Coercive Force In the foregoing selections from the Defensor, Marsiglio described the law as determining the actions of the ruler, and as for the people, they did not have to obey any command that was not in accordance with the law. But what is law? According to Aristotle, law was to be discovered, not made; laws had been determined in the distant past and each generation could make adjustments to fit circumstances but not create new laws. Specifically, Aristotle stated that law is "a rule of life such as will make the members of a polis good and just".

The advent of Christianity as a state religion had, so to speak, changed the locale where laws could be discovered. It became the church's part to determine the moral framework within which the laws of temporal society would function. At the same time, custom remained as powerful a determinant as it had been in Aristotle's day. Marsiglio looked about him and saw that these views of the law confused, rather than clarified the issue. He pointed out that there are two aspects of law, the technical and the practical.

> Law may be considered in two ways. In one way it may be considered in itself, as it only shows what is just or unjust, beneficial or harmful; and as such it is called the science or doctrine of right (*juris*).
>
> In another way it may be considered according as with regard to its observance there is given a command coercive through punishment or reward to be distributed in the present world or according as it is handed down by way of such a command. It was in this sense that Aristotle also defined it in the last book of the Ethics, when he said: "Law has coercive force, for it is discourse emerging from prudence and understanding."
>
> Law, then, is a "discourse" or statement "emerging from prudence" and political "understanding," that is, it is an ordinance made by political prudence, concerning matters of justice and benefit and their opposites, and having "coercive force," that is, concerning whose observance there is a command which one is compelled to observe, or which is made by way of such a command.
> *Defensor Pacis, One.X*

Hamilton's Federalist No. 15 decried the ineffectiveness of the Confederacy in no uncertain words: "We may indeed with propriety be said to have reached almost the last stage of national humiliation." He argued that an effective national government had to be able to extend its authority "to the persons of citizens ?

government had to be able to extend its authority "to the persons of citizens ? the only proper objects of government." He continued, saying:

"Government implies the power of making laws. It is essential to the idea of a law that it be attended with a sanction; or, in other words, a penalty or punishment for disobedience. If there be no penalty annexed to disobedience, the resolutions or commands which pretend to be laws will, in fact, amount to nothing more than advice or recommendation. This penalty, whatever it may be, can only be inflicted in two ways: by the agency of the courts and ministers of justice, or by military force; by the COERCION of the magistracy, or by the COERCION of arms."

While quoting from Aristotle in order to lend authority to his own work, Marsiglio launched in a different direction: law is an ordinance supported by coercive force, a command that must be followed because of the consequences of not following it. He shifted the focus from moral content, custom, and divine intent to pragmatism: a

law is such because it can be enforced:

> Not all true cognitions of matters of civil justice and benefit are laws unless a coercive command has been given concerning their observance ... Indeed, sometimes false cognitions of the just and the beneficial become laws, when there is given a command to observe them, or they are made by way of a command. An example of this is found in the regions of certain barbarians, who cause it to be observed as just that a murderer be absolved of civil guilt and punishment on payment of a fine …
> *Defensor Pacis, One.X*

Marsiglio's relativism is apparent here, although gently put, perhaps out of concern for censure. His choice of murder as the topic is intriguing since the Eastern and Western Churches had significantly different attitudes regarding the act of killing in warfare. The Western Church was ready to launch a Crusade and grant forgiveness to those involved, the Eastern Rite more reluctant. Reading between these lines divulges the hint of criticism of the former. Marsiglio had taken a step away from Aristotle, who referred to the ideal when he said, "laws which are in accordance with right constitutions must necessarily be just." Marsiglio, it appears, was carefully presenting his own agenda of pragmatism. Law existed as a practical tool. After many quotes from Aristotle, Marsiglio states,

> Laws are necessary in order to exclude malice and error from the civil judgments or sentences of the judges.
> *Defensor Pacis, One.XI*

Marsiglio was not a ruthless pragmatist; he did provide a basis for discriminating between good and bad laws. But before discussing those issues, it is worthwhile to further consider Marsiglio's political philosophy.

The Ruler Is A Human Being Whether it was Aristotle in the fourth century B.C., Marsiglio in the fourteenth century A.D., or Jefferson and Madison in the eighteenth, honest political observers never yield to a ruler any right to appear superhuman. Indeed, they reduce the ruler to a very human measure:

> Since the ruler is a human being, he has understanding and appetite, which can receive other forms, like false opinion or perverted desire or both, as a result of which he comes to do the contraries of the things determined by the law. Because of these actions the ruler is rendered measurable by someone else who has the authority to measure and regulate him. For otherwise every government would become despotic, and the life of the citizens slavish and despotic.
> *Defensor Pacis, One.XVIII*

One of the issues debated in the Federal Convention was whether the President would be impeachable. There was some argument that this should not be the case but the final vote was one-sided, eight States in favor, two against. Madison records Elbridge Gerry's contribution to the debate as:

"A good magistrate will not fear [impeachment]. A bad one ought to be kept in fear of [it]. He hoped the maxim would never be adopted that the chief magistrate could do no wrong.
Madison, Notes, July 20, 1787

During the same debate, George Mason, a consistent champion of sovereignty residing in the people, said:

"No point is of more importance than that the right of impeachment should be continued. Shall any man be above Justice? Above all shall that man be above it, who can commit the most extensive injustice?"

Marsiglio continues with his skeptical view of rulers, using as an example Philip the Fair. He refers in particular to a tax laid on in 1314:

> As [Aristotle] said in the Politics, "The fewer things the rulers control," that is, without law, "the longer must every government endure, for they become less despotic, they are more moderate in their ways and are less hated by their subjects." ... Many rulers, not heeding this advice, have been destroyed. And we ourselves have seen that from lack of attention to this voice not the least of kingdoms in modern times almost underwent a revolution, when its

> kingdoms in modern times almost underwent a revolution, when its ruler wished to impose upon his subjects an unusual and illegal tax.
> *Defensor Pacis, One.XI*

Using Aristotle as his source, Marsiglio again states that in a well-tempered government actions of the ruler and judges are subject to limits. This is a concise description of the *podesta* common to the Italian city-republics: a ruler or judge who was granted specific powers to be used in accordance with the laws of the city.

> Aristotle counseled that no judge or ruler should be granted discretionary power to give judgments or commands without law, concerning those civil affairs which could be determined by law.
> *Defensor Pacis, One.XI*

Marsiglio's pragmatic view of the law and its enforcement could be nothing more than a justification of arbitrary power. But that was far from his republican state of

mind, as he makes clear in his discussion of the source of legislative authority.

The Source Of Authority Marsiglio states many times that the law, and the legitimate power of the ruler, are derived from the same authority.

> It must be remembered that the true knowledge or discovery of the just and the beneficial, and of their opposites, is not law taken in its last and most proper sense, whereby it is the measure of human civil acts, unless there is given a coercive command as to its observance, or it is made by way of such a command, by someone through whose authority its transgressors must and can be punished. Hence, we must now say to whom belongs the authority to make such a command and to punish its transgressors. This, indeed, is to inquire into the legislator or the maker of the law.
> *Defensor Pacis,* One.XII

He begins by agreeing with Aristotle as to who is a citizen. Marsiglio, in continued agreement with Aristotle, "distinguishes from citizens children, slaves, aliens and women, although in different ways". This parochial view of society was *de rigeur* among political theorists even though female rulers played critical roles throughout the Middle Ages.

> A citizen I define in accordance with Aristotle in the "Politics" as one who participates in the civil community in the government or the deliberative or judicial function according to his rank.
> *Defensor Pacis,* One.XII

Marsiglio condensed into the shorthand phrase, "according to his rank," Aristotle's exclusion of artisans, farmers, and so on. He departed from Aristotle by recognizing the separation between the executive and legislative functions of the state which had been the practice of the Italian city-republics for two centuries. Marsiglio was consequently able to be less dogmatic than Aristotle and recognized that governance did not necessarily require the direct involvement of every citizen. This point of view justified more people to qualify as citizens.

> Let us say, then, in accordance with the truth and the counsel of Aristotle in the Politics, that the legislator, or the primary and proper efficient cause of the law, is the people or the whole body of citizens, or the weightier part thereof, through its election or will expressed by words in the general assembly of the citizens, commanding or determining that something be done or omitted with regard to human civil acts, under a temporal pain or punishment.
> *Defensor Pacis,* One.XII

Defensor Pacis, One.XII

Marsiglio interjects his 'standard disclaimer' intended to prevent government dominated by the poor:

> By the "weightier part" I mean to take into consideration the quantity and the quality of the persons in that community over which the law is made.
> *Defensor Pacis,* One.XII

The Federal Convention left suffrage qualifications for election of the House to be determined, unevenly, by the States. The Senate was chosen by the State legislatures, the President by the Electoral College. In the Federalist No. 57, Madison found a way to make this sound as though it had been a triumph for republicanism, but the distrust of a broad-based electorate cannot be obscured:

"Who are to be the electors of the federal representatives? Not the rich, more

than the poor; not the learned, more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscure and unpropitious fortune. The electors are to be the great body of the people of the United States. They are to be the same who exercise the right in every State of electing the corresponding branch of the legislature of the State."

In a neutral, technical fashion, Marsiglio describes the delegation of powers from the people to an elected legislature, a hallmark of the Italian city-republics:

> The aforesaid whole body of citizens or the weightier part thereof is the legislator regardless of whether it makes the law directly by itself or entrusts the making of it to some person or persons, who are not and cannot be the legislator in the absolute sense, but only in a relative sense and for a particular time and in accordance with the authority of the primary legislator.
> *Defensor Pacis, One.XII*

Then he urges his readers to understand that this delegation is not an alienation and attempts to forestall subterfuge:

> And I say further that the laws and anything else established through election must receive their necessary approval by that same primary authority and no other, whatever be the case with regard to certain ceremonies or solemnities, which are required not for the being of the matters elected but for their well-being, since the election would be no less valid even if these ceremonies were not performed. Moreover, by the same authority must the laws and other things established through election undergo addition, subtraction, complete change, interpretation, or suspension, insofar as the exigencies of time or place or other circumstances make any such action opportune for the common benefit. And by the same authority, also, must the laws be promulgated or proclaimed after their enactment, so that no citizen or alien who is delinquent in observing them may then be excused because of ignorance.
> *Defensor Pacis, One.XII*

Madison attended to the definition of a republic in the Federalist No. 39, where he stresses that all office holders are accountable to the citizenry:

"We may define a republic to be, or at least may bestow that name on, a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their office during pleasure for a limited period, or during good behavior."

body of the people, and is administered by persons holding their office during pleasure for a limited period, or during good behavior."

Marsiglio was a strong defender of popular government, but he did not romanticize the wisdom of the people:

> Although the multitude cannot by itself discover true and useful measures, it can nevertheless discern and judge the measures discovered and proposed to it by others, as to whether they should be added to, or subtracted from, or completely changed, or rejected. For many things which a man would have been unable to initiate or discover by himself, he can comprehend and bring to completion after they have been explained to him by someone else ... "That man is best who has achieved an understanding of all things by himself. But he too is good who hearkens to the wise words of another." [*Ed. Which continues, "But who, himself being witless, will not heed another's wisdom, is worthless indeed."*]

D.P.,One.XIII

Madison continued in the Federalist No. 39, emphasizing that while republican government is necessarily representative, it cannot be derived from a narrow segment of society:

"It is essential to such a government that it be derived from the great body of the society, not from an inconsiderable or a favored class of it; otherwise a handful of tyrannical nobles, exercising their oppressions by a delegation of their powers, might aspire to the rank of republicans and claim for their government the honorable title of republic."

"It is sufficient for such a government that the persons administering it be appointed, either directly or indirectly, by the people; and that they hold their appointments by either of the tenures just specified; otherwise every government in the United States, as well as every other government that has been or can be well organized or well executed, would be degraded from the republican character."

Ever since the time of the Greeks, western political thinkers have grappled with justifying popular government, that is, constitutional government based upon the will and participation of an enfranchised citizenry. Marsiglio was no exception. His approach was to overwhelm his readers with arguments, so that even if exception could be taken with one or a few of his points, the mass of them would prove him correct. Here is an argument based on the premise that the sum is greater than any of its parts:

> That at which the entire body of citizens aims intellectually and emotionally is more certainly judged as to its truth and more diligently noted as to its common utility. For a defect in some proposed law can be better noted by the greater number than by any part thereof, since every whole ... is greater in mass and in virtue than any part of it taken separately.
> *Defensor Pacis, One.XII*

This argument is based on the premise that no one knowingly harms himself:

> Moreover, the common utility of a law is better noted by the entire multitude, because no one knowingly harms himself. Anyone can look to see whether a proposed law leans toward the benefit of one or a few persons more than of the others or of the community, and can protest against it. Such, however, would not be the case were

> can protest against it. Such, however, would not be the case were the law made by one or a few persons, considering their private benefit rather than that of the community.
> *Defensor Pacis, One.XII*

He chose two ways to present the premise that self-imposed law is tolerated better then that imposed from without:

> That law is better observed by every citizen which each one seems to have imposed upon himself. But such is the law which is made through the hearing and command of the entire multitude of the citizens ... "the state is a community of free men," as it is written in the Politics, every citizen must be free, and not undergo another's despotism, that is, slavish dominion. But this would not be the case if one or a few citizens by their own authority made the law over the whole body of citizens ...

> On the other hand, a law made by the hearing or consent of the whole multitude, even though it were less useful, would be readily observed and endured by every one of the citizens, because then each would seem to have set the law upon himself, and hence would have no protest against it, but would rather tolerate it with equanimity.
> *Defensor Pacis, One.XII*

Yet every individual argument has its weaknesses and trusting to reason alone means that one is subject to being out-argued point by point. A counterproposal to dependence solely on reason as the basis for supporting popular, constitutional government was made by John Dickenson of Delaware during the Federal Convention debate on the powers of the Senate and House:

"Experience must be our only guide. Reason may mislead us. It was not Reason that discovered the singular & admirable mechanism of the English Constitution. It was not Reason that discovered or ever could have discovered the odd & in the eye of those who are governed by reason, absurd mode of trial by Jury. Accidents probably produced these discoveries, and experience has given a sanction to them."
Madison, Notes, August 13, 1787

The Efficient Cause Of The Ruler Marsiglio the pragmatist, not without some humor, turned his attention to the mechanism by which a legitimate ruler would be authorized to hold that position:

> It now remains to show the efficient cause of the ruler, that is, the cause by which there is given to one or more persons the authority of rulership which is established through election. For it is by this authority that a person becomes a ruler in actuality, and not by his knowledge of the laws, his prudence, or moral virtue, although these are qualities of a perfect ruler. For it happens that many men have these qualities, but nevertheless, lacking this authority, they are not rulers …
> *Defensor Pacis, One.XV*

In the confidence of the secret sessions of the Federal Convention, Hamilton expressed strong opinions about the inaptness of republican government for choosing a good Executive:

"As to the Executive, it seemed to be admitted that no good one could be established on Republican principles. Was not this giving up the merits of the question: for can there be a good Government without a good Executive. The English model was the only good one on this subject. The Hereditary interest of the King was so interwoven with that of the Nation, and his personal emoluments so great, that he was placed above the dangers of being corrupted from abroad - and at the same time was both sufficiently independent and sufficiently controlled, to answer to the purpose of the institution at home ..."
Madison, Notes, June 18, 1787

Argument over the virtues of hereditary succession had gone on long before Marsiglio and would continue long afterwards. Marsiglio had direct experience of the strictly hereditary Capetian rulers of France. He had also seen the German approach, which required the election as well as the nomination of its rulers, even though the electorate was very limited - by no means resembling republicanism - and dynastic lines were strongly adhered to. He also had the experience of the Italian cities, small as was their scale compared to contemporary kingdoms and empires. He made the point that once it is granted that sovereignty resides in the people, election of the rulers is a logical necessity:

> Since it pertains to the whole body of citizens to generate the form, that is, the law, according to which all civil acts must be regulated, it will be seen that it pertains to the same whole body to determine this form's matter, that is, the ruler, whose function it is to order,

> this form's matter, that is, the ruler, whose function it is to order, according to this form, the civil acts of men ... Hence it seems that it can appropriately be inferred that the ruler who is elected without hereditary succession is put at the head of the polity by a method which is absolutely superior to that which operates in the case of non-elected rulers, or of rulers named with hereditary succession ensuing.
> *Defensor Pacis, One.XV*

Delegate Roger Sherman of Connecticut was a proponent not only of election, but of frequent elections. Sherman might well greet the present-day near certainty of re-election of the national legislature as something he never intended:

"Government is instituted for those who live under it. It ought to be so constituted as not to be dangerous to their liberties. The more permanency it has

> *the worse if it be a bad Government. Frequent elections are necessary to preserve the good behavior of rulers. They also tend to give permanency to the Government, by preserving that good behavior, because it ensures their re-election."*
> *Madison, Notes, June 26, 1787*

Although he was frequently blunt and realistic, at least in one instance Marsiglio sounded as though he was ignoring experience in order to sell his ideas:

> It must be held, I believe, that for the sufficiency of civil life it is absolutely better for the commonwealth that each monarch be named by a new election rather than be hereditary succession. For this method ... will always, or with rare failures, operate to yield the best possible ruler; either a perfect one or at least an adequate one. For by the election of the human legislator the common benefit of the citizens is always aimed at and achieved, rarely failing ...
> *D.P.,One.XVI*

The Italian city-republics had used a variety of ways to elect their rulers and Marsiglio's travels in France and Germany no doubt showed him more. It was the substance of the process, not its form, that mattered:

> The method of coming together to effect the aforesaid establishment or election of the ruler may perhaps vary according to the variety of provinces. But in whatever ways it may differ, this must be observed in each case, that such election or establishment is always to be made by the authority of the legislator, who, as we have very frequently said, is the whole body of the citizens or the weightier part thereof.
> *Defensor Pacis, One.XV*

The People, The Sovereigns

Through his citations and arguments Marsiglio laid a foundation of pragmatics and ideals for the republican government that had, for a while, existed in the cities of northern Italy. We can now see the structure that rested upon this foundation. First, what might be a warning to citizens and rulers, chiseled into the lintel-stone:

> In laws being rightly made consists a large part of the whole common sufficiency of men, while under bad laws there arise unbearable slavery, oppression, and misery of the citizens, the final result of which is that the polity is destroyed.
> *Defensor Pacis, One.XII*

Marsiglio recognized the complexity of governance and the varied capabilities, interests and ambitions of any citizenry which naturally lead to a delegation of political authority. He described, if condescendingly, a representative government wherein the people retained their sovereignty:

> It is hence appropriate and highly useful that the whole body of citizens entrust to those who are prudent and experienced the investigation, discovery, and examination of the standards, the future laws or statutes, concerning civil justice and benefit, common difficulties or burdens, and other similar matters. Either some of these prudent and experienced men may be elected by each of the primary parts of the state ... according to the proportion of each part; or else all these men may be elected by all the citizens assembled together. And this will be an appropriate and useful method whereby to come together to discover the laws without detriment to the rest of the multitude, that is, the less learned, who would be of little help in the investigation of such standards, and would be disturbed in their performance of the other functions necessary both to themselves and others …
> *Defensor Pacis, One.XIII*

Delegate Gouverneur Morris had strong opinions, but remained open to persuasion. In the debate over impeachment, Madison reports Morris's changing characterization of the chief Executive in this way:

"[His] opinion had been changed by the arguments used in the discussion. He was now sensible to the necessity of impeachments, if the Executive was to continue for any time in office. Our Executive was not like a Magistrate having a life interest, much less like one having an hereditary interest in his office ... This Magistrate is not the King, but the Prime Minister. The people are the King."

This Magistrate is not the King, but the Prime Minister. The people are the King."
Madison, Notes, July 20, 1787

In this same passage, Marsiglio continued to press home the essential characteristics of a republic, one scaled to his home of Padua. He described a city government which, while too unwieldy for a larger political unit, appears to rejoice in its liveliness:

> After such standards, the future laws, have been discovered and diligently examined, they must be laid before the assembled whole body of the people for their approval or disapproval, so that if any citizen thinks that something should be added, subtracted, changed, or completely rejected, he can say so, since by this means the law will be more usefully ordained ...
>
> Then there must again be elected men of the qualities ... or else the

> aforesaid men must be confirmed; and they, representing the position and authority of the whole body of the citizens, will approve or disapprove in whole or in part the [standards], or else, if it so wishes, the whole body of the citizens ... will do this same thing by itself.

Madison repeatedly stressed the superiority of a representative democracy, a republic, over a direct democracy. The awkwardness of increasing the scale of Marsiglio's ideal government had to be avoided, but the underlying source of sovereignty and the mechanisms to ensure it had to be retained:

"However small the republic may be the representatives must be raised to a certain number in order to guard against the cabals of the few; and that however large it may be they must be limited to a certain number in order to guard against the confusion of a multitude."
Federalist No. 10

> After this approval, the aforesaid standards are laws and deserve to be so called, not before; and after their publication or proclamation, they alone among human commands make transgressors liable to civil guilt or punishment.
> *Defensor Pacis, One.XIII*

Contemporary with the American Revolution, the Englishman (or, more exactly, the Irishman) Edmund Burke was a consistent and eloquent voice in favor of the preservation of peace, as well as the preservation of tradition and stable government. In the early 1760's, writing of the unjustness of the the Protestant English treatment of the Irish Catholics, he laid out the natural extensions of Marsiglio's point of view to a more complex society then a city-state:

"The happiness or misery of multitudes can never be a thing indifferent. A law against the majority of the people, is in substance a law against the people itself; its extent determines its invalidity; it even changes its character as it enlarges its operation: it is not particular injustice, but general oppression; and can no longer be considered as a private hardship which might be borne, but spreads and grows up into the unfortunate importance of a national calamity. Now as a law directed against the mass of the nation has not the nature of a reasonable institution, so neither has it the authority: for in all forms of government the people is the true legislator; and whether the immediate and instrumental cause of the law be a single person or many, the remote and efficient cause is the consent of the people, either actual or implied; and such consent is absolutely necessary to its validity.

necessary to its validity.

An Intrusive State Marsiglio's time was one of faith and authority and the regulation of many aspects of public and private affairs. Reflecting that, Marsiglio endorsed a state that exerted control over who and how many pursued what profession, including the "priestly function":

> No one, especially aliens, is allowed to assume an office in the state at his own pleasure. For no one must or reasonably can undertake at will the exercise of the military or priestly function, nor must the ruler permit this, for the result would be an insufficiency to the state of those things which it is necessary to procure through the other offices. Rather, the ruler must determine the persons, the quantity and the quality of these parts or offices of the state, with respect to their number, their ability, and other similar considerations, in order that the polity may not be destroyed through an immoderate excess of one part in relation to the others.
> *Defensor Pacis, One.XV*

In a chilling paragraph, Marsiglio shows how far the desire for law and order could take even a person such as he, although this is still in accordance with Aristotle's thought:

> ... the action of the ruler in the state, like that in the heart of the animal, must never cease ... the command and the common guardianship of the things which are lawful and prohibited in accordance with the law must endure at every hour or minute, and whenever anything unlawful or unjust is done, the ruler must completely regulate such acts …
> *Defensor Pacis, One.XV*

A Single Government The second Discourse of the Defensor Pacis is Marsiglio's angry and detailed criticism of the church's internal organization and the relation of the church to the state. He prepared the ground for this in the first Discourse with arguments that are similar to those put forth by the Federalists in the 1780s:

> ... in a single city or state there must be only a single government; or if there is more than one government in number or in species, as seems expedient in large cities and especially in a state [*regno*] ... then there must be among them one in number which is supreme, to which all the other governments are reduced, by which they are regulated, and which corrects any errors arising in them ...

At the Federal Convention, there was extensive debate on the extent to which States should retain their powers. There were even those who wanted the States converted into "districts" with no intrinsic powers. George Mason of Virginia, who refused to sign the Constitution proposed by the Convention, argued against too great a concentration of power in the national government. He insisted on a bicameral national Legislature, and also refused to see the States abolished:

"Is it to be thought that the people of America, so watchful over their interests; so jealous of their liberties, will give up their all, will surrender both the sword and the purse, to the same body, and that too not chosen immediately by themselves? They never will. They never ought... notwithstanding his solicitude to establish a national Government, he would never agree to abolish the State Governments or render them absolutely insignificant. They were as necessary as the General Government and he would be equally careful to preserve them."Madison, Notes, June 20, 1787

> There would be strife among the governments themselves because one of them would want to be superior to the other; in addition, the governments would war against the citizens who refused to be subject to them. Moreover, when the rulers disagreed or quarreled among themselves, since they would lack a superior judge, scandals would also arise.
> *Defensor Pacis, One.XVII*

James Wilson of Pennsylvania had been a member of the Continental Congress during much of the Revolutionary War period. On June 20, in the Federal Convention, he reminded the delegates of the profound weakness of the Confederation:

Convention, he reminded the delegates of the profound weakness of the Confederation:

"He appealed to the recollection of others whether on many important occasions, the public interest had not been obstructed by the small members of the Union. The success of the Revolution was owing to other causes, than the Constitution of Congress. In many instances it went on even against the difficulties arising from Congress themselves."
Madison, Notes

In his 1985 book, Witnesses at the Creation, historian Richard Morris makes this statement on the nature of the Confederation, paralleling Marsiglio's comments,

"Instead of a federal system ... it created a system of dual sovereignty, which brought competition and conflict rather than cooperation and reconciliation. It deprived the central government of energy to initiate change, and removed its

cloak of respectability both at home and abroad."

In the second Discourse, Marsiglio shifted his subject from government in general to direct criticisms of the interference of the church in secular governmental affairs. He supported his argument by reference to the quarrel between Pope Boniface VIII and Philip the Fair, which had taken place only twenty years before the Defensor was published. He expressed many specific objections, such as that to the pope's attempt to use excommunication as a spiritual weapon against the temporal state. On a broader theme, he was a strong proponent of a general council of the church which would derive its authority from the body of the faithful and have the authority to elect and depose the pope.

> ... it can fittingly be deduced that only the general council, and no bishop or priest or particular group of them, has the authority to excommunicate any ruler, province, or other civil community, or to forbid them the use of divine offices. For if a priest or bishop or some particular group of them, moved by ignorance or malice, excommunicates or lays under interdict a ruler or a province, there results great scandal to the peace and quiet of all the faithful. This was very recently shown by "experience the mistress of things," when Boniface VIII, the Roman pope, tried to excommunicate Philip the Fair of bright memory, the catholic king of France, and to lay his kingdom and adherents under interdict, because this king protested against a written document beginning: "One holy catholic church" ...
>
> And although at that time Boniface was aiming particularly against the afore-mentioned ruler and his subjects and adherents, yet his intention was to stir up against him as many of the other Christian rulers and peoples as he could, as is evidenced by the immortal truth and the memory of many persons still living; and Boniface would have succeeded in this aim, had he not been removed from the ranks of mortals. But such a calamitous opportunity (rather than power) to stir up any other wickedness, which would inflict grave peril and schism on the believers, must be checked forthwith; and the procedure whereby such interdicts and excommunications are inflicted must be controlled and left only to the general council of Christians, whose judgment, under the guidance of the Holy Spirit, cannot be perverted by ignorance or malice.
> *Defensor Pacis, Two.XXI*

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Earlier, Marsiglio had been critical of Philip for his tax policy and he must have known that Philip had been involved in Boniface's death. His not very subtle remarks would no doubt have contributed to his being declared heretical for having written the Defensor.

Conclusion Marsiglio's "place" in history has been debated by historians for generations. He has been variously associated with the Middle Ages, the Renaissance and the Reformation. He has been called a populist, a "herald of a new world, a prophet of a new social order, acutely conscious of his modernness and not afraid to confess it", and it has also been said that the Defensor is "but the assertion of traditional principles". He has also been seen merely as an apologist for his employer, Ludwig of Bavaria, and the Defensor as not much more than a political tract intended to achieve the short-term political goal of elevating a German ruler over the pope. He is seen so differently because it is easy to be subjective with Marsiglio, to transfer his writings to one's own period, or to one's favorite time in history, to interpret his words in a vocabulary that did not exist in his time, and to find what appears to be directly applicable remarks. In that way, Marsiglio shares something with the Federalist Papers and the Notes on Debates in the Federal Convention; it is tempting to see these, too, out of their own time.

Marsiglio's importance lies in the fact that he spoke clearly and assertively for his own time, that he had a clear vision of what was of value in the political association of the state, and that he put himself at risk to fight for that vision. He despaired over the violence and despotism in his homeland but did not give up hope, nor did he give up his belief that the justness of government stems from the will of the people. Marsiglio looked about him and saw that the political association was natural, that without just laws the polity would degenerate into a despotism and the people would become slaves, and that the coercive force of the state determined what was law, regardless of custom and morality. He could have stopped there and joined the generations of political theorists who would yield all to a ruling class, but instead he insisted that the rulers of the state did not exist apart from the people they ruled - legitimate authority is derived from the people, period.

Marsiglio argued for an authoritarian government capable of achieving and maintaining law and order. At the same time, although he approved of the state's regulation of matters personal and public, he would not yield to arbitrary rule. He insisted on election of the rulers by the people and on public review and approval of legislation. It is tempting to think of him in twentieth century terms.

Marsiglio marshals argument after argument in an attempt to leave the reader with no basis for disagreement. Yet each argument is answerable and a person who engaged the Defensor with an already-formed belief in an autocratic form of government would hardly be convinced otherwise. This formalized approach, characteristic of his time, could be dull and unengaging, but it is not all that Marsiglio consists of, nor are its weaknesses sufficient to defeat him. Marsiglio's vituperative use of the term "slavery" seems to reveal the depth of his feeling and

vituperative use of the term "slavery" seems to reveal the depth of his feeling and shows us how strongly he argued for his beliefs. Merely to live was not sufficient to Marsiglio. "Those who live a civil life not only live," Marsiglio states as he quotes Aristotle, "which beasts or slaves do, but live well, having leisure for those liberal functions in which are exercised the virtues of both the practical and the theoretic soul". Contining to look down upon political subservience, Marsiglio agrees with Aristotle that some people may accept despotic rule, "certain monarchs [in Asia ...] receive their dominating authority through hereditary succession, and while they rule according to law, this law is like that of despots, being for the monarch's benefit rather than completely for the community's. The inhabitants of that region endure such rule 'without protest' because of their barbaric and slavish nature and the influence of custom". For Marsiglio, as for Aristotle, law is the basis for the political association, but not merely any law: "in the laws being rightly made consists a large part of the whole common sufficiency of men, while under bad laws there arise unbearable slavery, oppression, and misery of the citizens, the final result of which is that the polity is destroyed". Marsiglio refuses to admit that any

person may elevate him or herself above the ultimate source of power, the people: "the ruler is a human being [... and ...] is rendered measurable by someone else who has the authority to measure or regulate him, or his unlawful actions, in accordance with the law. For otherwise every government would become despotic, and the life of the citizens slavish and insufficient" .

In his insistence on an elective government based upon good laws and responsible to the citizenry, Marsiglio follows Aristotle in seeing that "constitutionalism" can be empty: "Kingships among uncivilized peoples are thus of the nature of tyrannies; but, being constitutional and hereditary, they are at the same time stable". Constitutionalism and stability were not enough for either Marsiglio or Aristotle, just as they were not enough for the Colonists who demanded a government of their own making.

One issue that the Defensor never fully engages is the factionalism that prevented Italy from finding peace. Marsiglio states that "to reiterate the number and nature of those causes [of strife] which were set forth by Aristotle would be superfluous", and thus he avoids the issue of factionalism. It might be because he could not properly weigh the internal divisions of his own people that he avoided any discussion of them.

The Italian city-republics fell by the wayside; they could not overcome the dissension within and the pressures without. Republican government is a stern test of human character and ability. Madison summed this up in the Federalist No. 55:

> As there is a degree of depravity in mankind which requires a certain degree of circumspection and distrust, so there are other qualities of human nature which justify a certain portion of esteem and confidence. Republican government presupposes the existence of these qualities in a higher degree than any other form. Were the pictures which have been drawn by the political jealousy of some among us the faithful likeness of the human character, the inference would be that there is not sufficient virtue among men for self-government; and that nothing less than the chains of despotism can restrain them from destroying and devouring one another.

We should be reminded of Jefferson's statement in 1798:

> ... confidence is everywhere the parent of despotism – free government is founded in jealousy, and not in confidence; it is jealousy and not confidence which prescribes limited constitutions, to bind down those whom we are obliged to trust with power: that

to bind down those whom we are obliged to trust with power: that our Constitution has accordingly fixed the limits to which, and no further, our confidence may go ... In questions of power, then, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution.