The lack of precision in the medieval political vocabulary and the great diversity of literary genres involved in studying it make it far from easy to provide a full explanation of community, council, representation and constitution over the three hundred years from 1150 to 1450. In addition to that, the words themselves can refer to widely varying social and political realities. It is only very recently that law, ethics and politics have come to be considered independently of each other: the middle ages had no such divisions. Roman law and canon law are used with a liberal disregard for the texts and their original purpose which would be almost inconceivable today, and one result of this is that one may well come across material of prime importance to the subject under consideration here mentioned in passing in a theological commentary on some quite different topic. Medieval thinkers, in other words, tended to see human social and political affairs as one part of a whole, to think of man himself in relation to the world, to his fellow-men, and to God. There was some attempt, following the Latin-speaking West’s rediscovery of Aristotle, to unify terms and ideas under his influence: that is precisely the significance of the ‘commentaries’ on Aristotle, particularly those on the *Politics* and the *Nichomachean Ethics*. These must be understood as commentaries in the broad sense, for in fact one finds Aristotle’s thought in treatises which, while not pure commentaries, use his ideas at least as much as the formal commentaries, if not more. The most powerful influence on vocabulary, however, comes not from Aristotle but from the bible and the Church, for medieval political thinking was immersed in a total ethical and religious view of the world, so that there is a constant danger of making anachronistic interpretations. The term ‘representation’ for example cannot be taken in its modern sense, neither can ‘council’; ‘constitution’ even less. In fact, the meaning of these words has changed so radically in the course of their long evolution, that we face the risk of misunderstanding them altogether.

The first thing to remember in order to understand the range of practical and theoretical uses these expressions were put to, and the realities they
referred to, is the central importance of the idea of justice and the judicial function in the middle ages. Community is a term which includes both governors and governed, and the concepts of council and representation developed in the context of the administration of justice, and they are bound up with the constitutional forms that govern the whole body of society.

Politics, in brief, cannot be seen as a separate sphere of thought, even if we agree that its development is in the direction of the gradual emancipation that has been seen by some as a sort of ‘birth of the lay mind’. In any case, the words community, council and representation reflect an organic – even organicist – vision of society, in which communication between men is unproblematic because the individual is not taken into account in the overall analysis. This is the explanation of the supreme importance of the idea of community which dominates all social and political organisation.

**Community**

**Historical background**

Without going into the semantics of ‘community’, it is significant that the word is hardly ever used in the sense of collectivity, a social group whose members have something in common, in the treatises on philosophy and political theology that were written in the early middle ages. Generally speaking, authors of that period follow St Augustine in using terms taken from Roman law, such as *populus*, *respublica* or *civitas*, to refer to men united in pursuit of a common aim. A significant example of this occurs in Jonas of Orleans’ treatise *De institutione regia*, in which the word *communitas* scarcely appears; instead he uses the phrase *populus Dei* (which I shall have more to say about) to refer to the subjects of a king, or sometimes the term *subjecti*. When he uses *civitas*, it is in the Augustinian sense. The idea of *commune* is everywhere in the works of Cicero, particularly in the *De legibus* and the *De republica*; the term *communitas* itself occurs frequently in the *De officiis*. And Cicero’s model, of course, is the Roman republic. The word *communitas* does not have a precise connotation. Cicero defines the republic as the affair of the people (*res publica, res populi*: Book 1, Chapter 25), and *populus* he defines as ‘not a gathering of men grouped together anyhow’ (*non omnis coetus quoquo modo congregatus*) but as a multitude of men associated with each other by their adherence to one law and by a
community of interest (coetus multitudinis iuris consensus et utilitatis communione sociatus). Clearly the idea of that which is common is present in the word communio. Elsewhere Cicero defines the people as coetus multitudinis, a grouped multitude, while the civitas is constitutio populi, an ‘organised people’. He therefore makes a connection between multutudo, the great number, iuris consensus, or agreement to submit to the law, and communio utilitatis, the common interest. In De legibus he uses the word communio for the ‘society’ formed by man and God together, as ‘right reason is common to both . . . those who share law must also share justice’.\(^3\)

Community here is a community of reason (ratio communis). From the sixth to the ninth century communitas, strictly speaking, means ‘meetings of collectivities of a public nature’,\(^4\) and this is the sense in which the word comes to be generally used in the middle ages: ‘it refers to a body of individuals who, by their common action based on the existence of bonds between them, constitute a more or less institutionalised group’,\(^5\) but also one that varies in size and which may or may not be based on a particular territory. In other words, communitas is the word which refers to that basic concrete social reality which is established with the growth of politics, particularly in instances where the development of the political ideas of the community has been influenced by Roman and canon law. Communitas, universitas, corpus, civitas and less commonly societas come to refer to what we might generically call the social group.

Community and commune

‘Communitas generally refers to the whole population of a town, whether it is a commune or not’, writes Petit-Dutaillis.\(^6\) A commune, technically speaking, is certainly a community; but this does not mean that the reverse is always true, although the commune and the whole communal movement that characterises social and political development from the eleventh to the thirteenth century are an integral part of the history of community and the medieval awareness of it. Narrowly defined, a commune is an association on the basis of an oath: ‘Commune means exactly the same as a common oath.’\(^7\) The existence of the oath is the commune’s defining characteristic; essentially it is the incarnation of institutio pacis, that is its purpose is primarily a defensive one.

\(^3\) De legibus, i.vii.23: ‘inter quos autem ratio, inter eosdem etiam recta ratio communis est . . . inter quos porro est communio legis, inter eos communio iuris est’. For commune and communitas in De officiis, cf. i.xl-xliv.139–61; and for the distinction between commune and privatum, i.v-vii.18, 20–1.
\(^4\) Michaud-Quantin 1970, p. 148. \(^5\) Ibid.
\(^6\) Petit-Dutaillis 1947, pp. 32, 293 n. 64. \(^7\) Ibid., p. 35.
A brief survey of the way the communal movement developed during the second half of the middle ages, without going into too much detail, may shed some light on community in its proper sense. In France, for example, the communes originally provided a force in society on which monarchical power relied during the process of centralisation, but their existence was jeopardised from the moment they could be seen as antagonistic forces. At the same time they were no longer being established in response to a pressingly urgent need, but taking their place as part of a carefully defined juridical system: as soon as communes were regarded as having a juridical personality on the model of the moral person autonomous collectivities were deemed to possess under Roman law, they were provided with ius communitatis et collegii, that is, with a privilege. Thus Beaumanoir in his Coutumes de Beauvaisis 'draws a clear distinction, using a juridical criterion, between communities based on communes' and other towns.

In the fourteenth century the original communes were joined or replaced by other types of communities, particularly confraternities, craft corporations and communities, colleges, Hanse and guilds, which were primarily professional associations, whose members were normally referred to as sworn members or jurors. As these new types of association integrate or fuse with the old municipal system, or sometimes set up in competition with it, the commune tends always to find itself too rigid to adapt and the old form disappears.

Was there an analogous development of the commune in the different regions of the Latin West? The situation appears to have been different where there was no centralised power, as in the Empire, and more particularly in Italy where communes developed with striking success. The Commune of Padua is an example. The Sacramentum comunancie Populi paduani uses the formula ad honorem et statum civitatis padue et comunis. The term comunancia used here includes within itself both civitas and populus. The text also mentions the universus populus, and comunis status civitatis padue: the comunancia, that is the community, is here the whole body of the citizens of Padua, or those who are of the comunancia, or whose names are entered in the book of the comunancia, to the exclusion of all foreigners or outsiders. It is clear how little exactness of vocabulary there is for describing the inhabitants of a commune, and in practice there is not very much difference between comunancia (or comunanza), universus populus, civitas and societas. At all events, although the influence of Roman law on the medieval conception of the corporation or universitas is considerable, the term communitas itself—

as distinct from *corpus, societas* and *collegium*—does not seem to belong in its vocabulary. Yet paradoxically *communitas* comes to mean not just groups of varying importance depending on their size but to refer to ‘the fact that those who constitute them do not enter into a special institutional system within the whole body they constitute’.10

In France we find both communes in the proper sense of collectivities which have been granted a commune charter and, also, towns known as ‘bonne villes’ which do not have anything of that sort. So *communitas* can as easily refer to a juridically organised body as to a multitude, a collectivity with no precise unity either of composition or juxtaposition. *Communitas* does not, therefore, refer to a person, in the Roman law sense. Canon law, on the other hand, uses it to mean ecclesiastical collectivities: the Church itself is a community, *congregatio fidelium, corpus christianorum*, with its own organisational structures. In the Pauline tradition and in the strict theological sense community refers to ‘the close union between man and his fellows and between man and God’,11 of course, but it still comes back to having the means in common to achieve that union. In St Paul’s writings *koinonia* is based in a transcendent way on the life of the Trinity, but it is a human community nonetheless even if it is not purely so. The very definition of the Church as *koinonia* includes a vertical dimension of union between each believer and God as well as a horizontal dimension of brotherhood with all the other believers who make up the Church. This kind of structure, including within itself both a basic unity and a multiplicity, becomes the pattern for all forms of organisation of religious life, yet without precluding a hierarchical element which (it is worth emphasising) to some extent contradicts the vertical relation with the life of the Trinity. This communitarian model of the Church was not established without a certain amount of tension, one of the deepest sources of this being the monk’s or anchorite’s enclosure of himself in solitude, wanting no other relationship except union with God. Despite this, however, western monasticism rapidly adopted the form of communities, either under Benedictine rule or some other system. Some commentators have even talked about ‘monastic democracy’ in the case, for instance, of the Cistercians, where the role of the assembly was of fundamental importance, as will be apparent from the analysis below of the development of the idea of representation in the second half of the fourteenth century.12 One only has

10. Ibid., p. 148.
to read the Rule of St Benedict to recognise that the community was the model for the monks' communal existence, or to read St Bernard to see that he thought that the religious life could only be lived within a system based on community. In other words, the Church traditions had for a long time shown a preference for evangelical life which took the form of communal existence inside a monastery, or within a religious group; this might be either in relation to the monastic experience itself, with its requirement that all goods should be held in common, or in relation to the mendicant orders, or to any other community that formed part of the Church. And the rapid increase in the number of brotherhoods and confraternities and similar groupings among laymen provides additional confirmation of the inescapable attraction of this way of life.

The point to remember from this hasty sketch is that the emergence of the idea of community, and its persistence in a variety of forms, political and otherwise, does not just give rise to an awareness of belonging to a group, of whatever size; it also creates a desire on the part of the group's members to come together in order to organise and govern themselves. In this creative social ferment they manage to escape from the split between governors and governed by inventing a number of centres of power the intention of which is to divide it up and escape from the limitations imposed by the centralised possession of power on the part of lay or religious seigneurs or even a king. Medieval communities want to govern themselves; their social organisation is part of the process of redistributing political power; they want to take control of their destiny, not necessarily by rebelling against higher authority but often, on the contrary, by treating with it on an equal footing, and sometimes by lending it their support.

This rapid expansion in the number of forms of social existence, and this release of power into a growing number of collective authorities, may seem no more than the demand for what medieval authors like Ockham referred to as _iura et libertates_. But each group or collectivity tends to define itself as possessing juridical status, most often resulting from an agreement of individual wills; the basic purpose of the 'communities' is to have their collective freedom recognised, with the power of dispensing justice and exercising control over their own activities. And so the idea of community is a response to the new forms of social life in which the crucial issue is not the insistence on the rights of individuals but the definition of individuals precisely in terms of their participation in the collective entity: it is this that justifies an individual's existence and his social, political and legal rights.

At the doctrinal level it is almost impossible to over-estimate the
significance of the rediscovery of Aristotle in the development of these ideas, as witness the numerous commentaries on the Politics in particular, and an analysis of some of them will contribute to a clearer understanding of the doctrinal dimension of the medieval communitarian reality in the second half of the middle ages.

The doctrinal dimension

In William of Moerbeke’s translation of Aristotle *communitas* is the translation of the Greek *koinonia*: it refers to the civil community constituted by the city. In the context of the Politics, the *polis* is a species of the genus *koinonia*: ‘Now since we see that every city exists as a kind of community, and that every community has been established for the sake of some good . . . this is the case with what is called city and with every political community.’ Aristotle sees the origins of *koinonia* in a number of different groups such as couples like man and wife, master and slave, and in the family and the village, but also companions in arms, members of the same tribe and, of course, the city. The bond that creates *koinonia* is either interest or *suzen*, the two elements corresponding word for word with Aristotle’s two forms of friendship. Briefly, the concept of *koinonia* involves the following elements: a plurality of participants, with a common aim pursued by common action, with full differentiation between its members but without any relations of subjection or domination on the basis of it. Yet as Gauthier points out in his commentary on the Nichomachean Ethics ‘it is impossible to find an exact definition of what he means by *koinonia* anywhere in Aristotle’s work’. Characteristically the same imprecision recurs in medieval political thought, but so do the basic elements of *koinonia* outlined above: that it is an association of individuals whose distinguishing criterion seems to be the *to koinon*, ‘something in common’ to the members of the group, none of whom is a tool at the disposal of any other; and this demonstrates the extent to which the Aristotelian community is a place of freedom among equals within the group, and the importance of its purpose, the common interest, *to koinon sumphéron*, or the common good, *to koinon agathon*, which the group’s members pursue by common action, *to koinon ergon*.

14. *Politics* 1, 1252 a 24–1252 b 31; *Nicomachean Ethics* viii, 1160 a 9–30; *Eudemian Ethics* viii, 1241 b 24ff.
16. *Politics* 1, 1252 a 26; *Eudemian Ethics* viii, 1241 b 17.
Community, counsel and representation 527

The *Translatio vetus* uses the word *communitas* less frequently than *civitas*: by comparing the occurrences it becomes clear that, as in Aristotle's original text, the translation too uses *communitas* to refer to the male–female, master–slave groups, the *domus*; the city is the *communitas perfecta*, a community by nature; but every social group that has some common interest or activity is a community, so the *koinonia politikē* would appear to be the equivalent of *civitas*.

These are the concepts of the social group that provided medieval thinkers with their essential principles, which responded particularly clearly to political society as it was developing at the time, to the fragmentation and division of authority, while at the same time confirming the existence of two successive types of community, the first governed by blood relationships, and a second type, those that were later called historical societies, governed by political power. The chief lesson medieval thinkers learned from Aristotelian ideas was that these two elements, nature and art, were the two dimensions of human society.

A very few examples will be enough to illustrate this: St Thomas Aquinas in his commentary on the *Politics*, for instance, writes that just as human reason constructs ships out of wood and houses out of stone, so in the same way it arranges communities for the unity of men, the most perfect form of which is the city, which he refers to as a self-sufficient community. The examination of the perfect community comes under the heading of political science, Aquinas establishing the need for it by explaining that although it is a practical science it comes under the science of morality rather than one of the mechanical genera. That is why political science is the most worthy and important of the practical sciences. Its object is the rational study of the city, the 'ideal type' of all human communities, which are measured by reference to it. Every community in fact is established for a certain good; in addition to that, every community is a totality, *quoddam totum*. There is also the phrase *communitas civitatis*, which is defined as *naturalis*. The relationship between *communitas* and *civitas* is in terms of purpose: 'But the city is the end of the aforesaid communities', that is, of the *domus* and the *vicus*, but it stems from these two original communities: 'since the city takes its origin from the aforesaid communities, which are natural'. All communities therefore

18. *Politics* 1, 1252b 9 and Michaud-Quantin (ed.) 1961, p. 4 (52b 7); 1252b 16 and Michaud-Quantin (ed.) 1961, p. 4 (52b 10, 14); 1252b 29 and Michaud-Quantin (ed.) 1961, p. 5 (52b 29): 'Ex pluribus autem vicis communitas perfecta civitas, jam omnis habens terminum per se sufficientiae, ut consequens dicere, facta quidem iigitur vivendi gratia, existens autem gratia bene vivendi.'

Downloaded from https://www.cambridge.org/core. UCL, on 11 Jun 2021 at 00:40:03, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms.
Development: c. 1150—c. 1450

are natural. The city is also defined as a *congregatio hominum* or a *quaedam civium multitudo*, when it is considered from the point of view of the citizens. It is also, in the familiar phrase, *communitas liberorum*. As the city is a *multitudo diversorum* its *unitas* and *communitas* are established by means of well-founded laws. In other words, the law provides the constitutive unity and community of the city. Reiterating Aristotle’s criticism of Plato’s proposals for community of wives and children, Aquinas demonstrates very clearly the opposition—as well as the complementarity—between that sort of community and the unity of the city, from which it can be seen that a community of that sort, or any sort of community, is not necessarily a unity, and that community of goods does not necessarily contribute to the unity of the city; indeed, community of that sort goes against the very structure of the city, since it makes it impossible to separate the multitude in its diversity from the members that constitute it. Aristotle’s division of the city into parts, which is broadly adopted by all the commentators on the *Politics*, corresponds closely to the changes that were being brought about in society itself by the dismantling of monolithic structures, and by giving each section of the city a function appropriate to it. A society that by nature was corporative and associative could not fail to find reassurance for its aims in the Aristotelian model which made it intelligible in theoretical terms. Aquinas is no exception: a city of the kind Socrates wanted to establish, with separate parts and different functions, like those of the husbandman or the artisan, could not exist if there was community of goods, for in a united city the parts composing it must be *quasi duas civitates sibi contrarias*, since everyone pursuing his own activity and owning his own goods must be able to exchange them with others in such a way that there is no conflict of activities and so that the parts of the city form a harmonious unity out of the complementary actions and functions they perform. *Communitas* lies at the heart of the aporia of the one and the many, or the problem of reducing multiplicity to unity: it is what makes unity, in one form or another, possible; but it is not itself unity. It refers rather to *socialitas*, man’s social dimension, his aptitude for living in society, than to any specific political reality. Because it is natural it exists by the very fact of man’s *impetus naturalis*, for there is a natural impulse in man towards society, just as there is a natural impulse towards the virtues. As the virtues are acquired by education so the city is established by human art and skill. The most

---

Community, counsel and representation

important thing is the vital human need to communicate, as the De regimine principum confirms: 'Man therefore is more inclined than any other animal to communicate with others.' Community represents the total absence of 'war between men', and the complete negation of individual 'solitude': in modern terms, it is sociability. In Lachance's formulation: 'Sociability seen at the moment when it comes fully into being appears as an instinct that in its scope and its force transcends all the system of political society.' The social and political state stems from the will of nature . . . in essence, man is part of one multitude or another.' In other words Aquinas sees community as the centre from which all the institutional forms of political organisation are to grow. It does not take any supernatural dimension for its foundations, which are entirely human. It derives its autonomy and its rationality from within itself. It is designed by nature for ethical life and the achievement of the common good.

At the other end of this chain of influence is the vernacular commentary on Aristotle’s Politics by Nicole Oresme, bishop of Lisieux, which, being written in the late fourteenth century, provides a second reference point for the analysis of doctrines about community. The Livre de Politiques, translated from the Latin in 1371, is not just one of the earliest works of political philosophy in French, it also includes a series of glosses following the order of Aristotle’s text and designed to explain the translation or to illustrate it with comments and examples which now provide vivid evidence about the social and political structure of life at that time. As far as community is concerned, Oresme seems not to challenge its natural origins, remaining in this respect close to the Aristotelian position. Although there is no exact definition of community in the Livre des Politiques, Oresme does differentiate it from the city proper as being 'part of it and under it'. In this sense, the union of man and woman creates a natural community which is also a voluntary one, for marriage is essentially a contractual association. In the same way village communities easily establish relations between neighbours which are also natural. But there are also urban communities, and they should really be called cities as ‘a city is composed of a number of streets’, as Oresme translates the Latin vicus. The city is itself the place of ‘natural communication’. ‘All partial communities tend naturally, by way of generation, towards the city community, which is complete community.

27. Spiazzi (ed.) 1954c, p. 258 (§ 743): ‘Magis igitur homo est communicativus alteri quam quocumque alius animal.’
29. Ibid., p. 228 and n. 48: In Eth. lect. 1 n. 4.
And therefore it is natural. In other words, 'communication is the natural purpose of the city' as man ‘is naturally civic’ (est naturellement chose civile), ‘ordained by nature to live in civic community’.31 The city therefore is ‘community of men’. To show how well-founded his argument is, Oresme chooses a counter-example: the opposite of communication is excommunication and ‘according to canon law this is very severe punishment. And it is a sign that political communication is very natural and fitting for human beings.’32 After all, did not God himself say, in Genesis, that ‘It is not good that man should be alone’?33

The city, furthermore, is an organic community, ‘for just as a hand cannot truly be a hand if it is not part of a man, so a man is not properly a man if he is not part of a community’. There are, of course, some solitary contemplatives who live away from communities and yet are self-sufficient, not needing help from anybody, ‘as some hermits do’; but this does not mean that ‘all [men]’ have any the less ‘natural inclination towards civic communication’ and, Oresme adds, ‘this is completed by human skill’, by which he means that it is human reason, rooted in nature but transcending it, which provides the necessary organisation and discipline for man’s original sociability. It is justice or law that perfects the natural community and makes a true political organism out of it. Yet the way Oresme uses the word city indicates his reservations and uncertainties: he uses it as a theoretical concept by means of which he can bring together the problems of man’s common life, but he also uses it in the sense of town, even of kingdom. And while he follows Aristotle in rejecting the territorial criterion as a definition, he says that it must be taken into account nonetheless. For him a city is, first and foremost, an episcopal town; but it is also ‘a great multitude of houses or habitations, adjacent or near to each other, in one place’. He also uses it to mean a kingdom which in sum, as he says, is ‘like a great city’. Even ‘the glorious company of Paradise is called a city’, he writes, and we can see in this Augustine’s two cities showing through under the Aristotelianism. But the Church is a city too, for it is ‘the multitude of those who are, or have been, or will be of the catholic communion in the faith of Jesus Christ’. The clergy can thus be seen as a city as they have their

31. Ibid., p. 48 (fol. 7 b–c): ‘Par voie de generation toutes communités partiales tendent par nature à communauté de cité, qui est communauté parfaite. Et donc elle est naturelle . . . communiquer en cité est fin naturelle, car l’homme est naturellement chose civile . . . ordonné de nature à vivre en communauté civile.’
32. Ibid., p. 49 (fol. 8 a): ‘selon les droits canons, ce est très grand paine, et ce est signe que communication politique est très naturelle et très convenable à humaine créature’.
Community, counsel and representation

own distinct government. This institutionalised body has 'governance distribution and disposal of certain possessions and certain public offices (honorabietés)'.

When he is dealing with community in the strict sense, then, Oresme prefers to use the term multitude in order to qualify it, as for example here: 'When a small multitude of people who live together communally starts to grow and becomes larger and larger... as soon as it reaches a size at which it is able to support itself and live well, that is when it can satisfy all its own requirements, that is when it becomes a city, and not before.' This self-sufficiency is the touchstone for the 'very best size (quantité) for a city'. The smallest size for a city is that at which a multitude can be self-sufficient: smaller than that it would not be sufficient; but, he adds, 'it is not a matter of being three or four men short, for one cannot be so mathematically precise as that in this sort of subject'. He solves the problem of the unity of the city by opting for plurality, that is, for diversity and difference. He does not approve of the reduction of all cities to a single unity, as the supporters of the Empire try to do. It must be considered that 'the multitude of all men is not a body or thing that can be ordered under the command of one man'. The kingdom of France, in other words, is not subject to the authority of the emperor: the king is 'emperor in his own kingdom'.

As well as the commentaries properly so called on Aristotle's Politics, there is another source of information about the doctrinal aspects of communitas, the literary genre of 'treatises On Power' which, for the most part, were written as polemical responses to events in the conflict between the temporal and spiritual powers. Examples are the De potestate regia et papali of John of Paris, Dante's Monarchia and the Defensor pacis of Marsilius of Padua.

34. Menut (ed.) 1970, pp. 119-20 (fols. 78 b–79 b): 'Je di donques que aucunes foix est prinse cité pour une grande multitude de hostelz ou habitacions qui sont prochaines ou ensemble en un lieu... tout un royalmoe ou un pais est une grande cité... Item, la glorieuse compagnie de Paradis est appellée cité... Item, la multitude de ceuls qui sont ou ont esté ou seront de la communication catholique en la foy de Jhesus Crist peut estre dite cité... ceulz quo nous appellons gens de Eglise sont comme une cité; car ils ont une polici que la gouvernation, distribucion et ordenance d’aucunes possessions et d’aucunes honorabietés publicques.'
35. Menut (ed.) 1970, p. 289 (fol. 246 d): 'Quant une petite multitude de gens qui communient ensemble procede en cresissant est faicte plus grande et apres encore plus grande... si tost comme elle vient a telle quantite que elle est par soi suffisante pour vivre bien, ce est a dire quant l’en y peut trouver tout ce qui fault, adonques est-elle premièremen cité, et devant non.'
36. Ibid., p. 289 (fol. 247 c): 'La plus petite quantité de cité est de multitude par soi suffisante laquelle, si elle estoit mendre, ne serait pas par soi suffisante; elle ne doit pas etre dite mendre pour trois hommes ou pour quatre, car l’en ne doit pas prendre en ceste matiere mesure mathematique ou precise.'
John of Paris's treatise dates from the beginning of the fourteenth century and was written in response to the dispute that had arisen between Boniface VIII and the king of France, Philip the Fair. Like the author of the *Rex pacificus*, John defends a certain amount of independence for the temporal power, in this case the power of the king of France. His model of the political community is the *regnum*, that is to say the *regimen multitudinis perfecte ad commune bonum ordinatum ab uno*. The members of the kingdom constitute a *multitudo* the *telos* of which is the good or common interest. Men are united by what they have in common. Although he basically uses the Aristotelian and Thomist formulations, John lays more stress on the problem of the unity of the kingdom than on the community of interest of its members which can be taken for granted in his perspective.

In both the *Convivio* and the *Monarchia* Dante is concerned to examine, from the Aristotelian point of view throughout, the *civilitas humana* which is the union of different individual societies, particularly the *communitates perfectae*. The *humana civilitas* is ordained for the purpose of furthering the life of happiness, which nobody can achieve without the help of others. It is the property of human nature to be sociable, and this precedes any concrete political organisation. Taking this as his starting-point, Dante proceeds with great originality to argue for a universal human society, *societas humani generis*, the community of the entire human race, under the authority of a universal monarch. However, he does not overlook the fact that, as he himself says, 'nations, kingdoms and cities have different ways of life, and different laws are required to govern them'. Yet it is to give these various sorts of communities common rules that Dante argues the need for a single universal monarchy, as one monarch is better able than a number of rulers to secure and protect what is common to all. He makes it clear that he regards the Roman Empire as the only historical figure of a political society that would encompass the whole human race. Such a universal community will be both natural and rational; it is neither established nor created by anything other than man's natural tendency to live communally with his fellows in the pursuit of a common aim, the highest form of which is the human happiness that comes from wisdom.

40. *Convivio*, iv.iv.1; *Monarchia*, i.iii.
41. *Convivio*, iv.xxv.1: ‘poi che noi non potemo perfetta vita avere senza amici, si come ne l’ottavo de l’Etica vuole Aristotile'; also i.i.8: ‘pero che ciascuno uomo a ciascuno uomo naturalmente è amico . . .’.
42. *Monarchia*, i.xiv.
43. *Monarchia*, i.xiv.5: ‘habent namque nationes, reges et civitates inter se proprietates, quae legibus differentibus regulari oportet . . .'.
The political community, in short, develops out of this natural tendency: there is no need to search for any foundation outside that. This emphasis on the natural and rational character of the political community and therefore on its autonomy finds one of its most radical expressions in the work of Marsilius of Padua.44

At the beginning of the *Defensor pacis*, Marsilius writes in praise of peace, claiming that ‘individual brethren, and in even greater degree groups and communities are obliged to help one another, both from the feeling of supernatural love and from the bond or law of human society.’45 Communities are thus characterised both in terms of a human, juridical bond, and the bond of love that transcends human values. Whatever Marsilius’ rhetorical purpose may be here, the fact remains that the accent is not placed on the innate naturalness of the bond, but on the brotherhood of men living together, which is essentially an ethical value, although the stoic aspect of this primary sense does not, of course, mean that there is no natural bond. It is also interesting that he uses the word *collegium*, with its canon law associations probably uppermost. In Chapter 3 of the first part of *Defensor Pacis* (‘on the origin of the civil community’), Marsilius remains faithful to the Aristotelian tradition, tracing the origins and development of the perfect community, or city, after the manner of Aristotle in the *Politics*, although, it can be argued, also showing the influence of Averroism and even of the thought of al-Farabi.46 He defines the perfect community as the association of men who join together to arrange for all their needs to be met by the allocation of specific tasks to every part of the city and, most importantly, to ensure the rule of justice. Among these needs, it is to be remarked, is that of achieving the good life—in other words, civil happiness, happiness to be enjoyed in this world as well as in the world to come. It is in this perspective that Marsilius justifies the existence of the priesthood in the city, whose task is to minister to man’s desire to seek salvation in this world and, by the same token, to find celestial bliss in the next.47

Marsilius refers to the perfect community either as being the whole body of the citizens (*universitas civium*), or as the ‘weightier part’ (*pars valentior*)48—an aspect to be considered later in connection with representation.

The community itself has a natural foundation, made explicit by the mutual agreement of wills, and it achieves the status of *city* through reason

45. *Defensor pacis*, i.1.4: ‘singuli fratres, atque magis collegia et communitates se invicem iuvare tenentur, tam supernae caritatis affectu, quam vinculo sive iure societatis humanae.’
and art. The basic datum is 'the natural desire of man to live in society': as for the result, the existence of the community rests, in the final analysis, upon the will, not of all its members, but of the citizens who constitute it.

A possible ambiguity in the simultaneous assertion of a natural desire for life in society and of the mutual agreement of wills has led some historians in discussing Marsilius' thought to advance the hypothesis that a contract is involved. But in fact it can be shown that it is artificial to see a dilemma between naturalism and voluntarism in this context. The city is, of course, the result of a voluntary association of men, but this only expresses their natural tendency to group themselves together. The perfect civil community, in my reading of Marsilius, is a natural entity, as it is in the works of those predecessors of his — Aquinas, Giles of Rome, John of Paris, for example — in the Aristotelian tradition. Marsilius, it is true, does not use the often repeated formula of man as a political animal; but even if we take as typical the argument designed to justify the existence and responsibilities of the priesthood in the city by using the Augustinian vision of the state as remedium peccati, all his arguments about the constitution of the perfect community still derive in all their essential elements from Aristotelian naturalism. It is, again, true that the universitas civium, which is the key concept from chapter 12 of the first part of Defensor pacis onwards, and the pars valentior as well, is also the universitas fidelium, and it is difficult to see how the community of the faithful can be founded in nature, except by recourse to the artifice of metaphor and analogy: 'Understood in another sense, the truest and most fitting of all in regard to the first application of the term or the intention of those who first applied it, though not now so familiar or in accordance with modern usage', the Church is 'the whole body of the faithful who believe in and invoke the name of Christ, and all the parts of this whole body in any community, even the household'. Marsilius therefore does not see the Church as a community in the real sense; it is the corpus mysticum, the famous canonist metaphor, the specific meaning of which varies from instance to instance. Yet he does use the term 'perfect' to qualify a community of the faithful whose prince is also faithful. No matter how perfect a civil community may be in terms of a purely

49. Ibid., i.xiii.2. 50. Cf. Quillet 1970a, pp. 93–9, and Grignaschi 1955. 51. Quillet 1970a, p. 81. 52. Defensor pacis, i.i.6. 53. Ibid., ii.ii.3: 'Rursum, secundum aliam significationem dicitur hoc nomen ecclesia, et omnium verissime et propriissime secundum primam impositionem huius nominis seu intentionem primorum imponentium, licet non ita famose seu secundum modernum usum, de universitate fidelium credentium et invocantium nomen Christi, et de huius universitatis partibus omnibus in quacumque communitate, etiam domestica.' 54. Ibid., ii.xvii.15; ii.xxv.3.
Aristotelian definition, if the prince is not one of the faithful then the community cannot be perfect in that its ruling institutions will not be able to respond adequately to the second fundamental desire of man in society, the search for salvation in the hope of finding celestial bliss in the world to come. Such a desire can only be satisfied in the perfect community of the faithful governed by a faithful prince, since the Christian ministry alone is true, and only the Christian faith possesses the truth and the right knowledge of God.\(^{55}\) What in fact makes the political community really a perfect community – and this, it seems, has not always been sufficiently emphasised by interpreters of Marsilius’ thought – is attaining the status of a community of the faithful, of faithful citizens, the whole body of whom, the universitas, or the weightier part of them, or the political authority delegated by them to the government of whatever sort, which is the same thing, is Christian; because a community of that sort can respond to the need to live and to live well, that is to say, to the need for earthly happiness and the search for bliss in the next world. The perfect community thus means the political body of citizens who are also believers.

In this community Marsilius explains that there is a distinction to be drawn between the 'plebeian multitude'\(^{56}\) and the parts of the state ‘in the strict sense’, to wit, the priests, the army and the judges, who are the notables; the multitude encompasses the peasants and artisans, the people who in the Italian cities were categorised as the popolo minuto, while Marsilius’ honorabilitas corresponds to the popolo grosso.

Marsilius’ doctrine of the community is thus not very far removed from the traditional organicist conception derived from Aristotle. He shares with his predecessors an imprecise terminology when it comes to referring to the community: it may be the populus, the multitudo sive populus, the universa multitudo, the tota or the subjecta multitudo. But whichever word he uses the meaning is always more or less the same: a community is a multitude ordered into a unity, of whatever sort, whose aim and purpose is to achieve peace and tranquillity for the whole social body, as that is the necessary condition for human social existence. By its nature the political community is essentially ethical, and as such responds to the needs of man defined as someone who communicates with his fellows; it constitutes a totality out of which and within the context of which the individual emerges.

Marsilius of Padua, it was observed, does not use Aristotle’s concept of the political animal expressis verbis, preferring to emphasise the means

\(^{55}\) Ibid. i.v.13. \(^{56}\) Ibid. i.v.1.
human reason has of establishing the community. Duns Scotus, approaching the question from a quite different set of perspectives, is also dissatisfied with that concept, which he regards as inadequate to deal with the practical problems raised by man's adaptation to the demands of the public interest. His view of political society is Augustinian, with the state as *remedium peccati*, and he thus describes the community as a result of a pact which men, free by nature, reach among themselves despite their fall, to form a political body so that they can live in the least bad conditions possible in a *communitas humana* defined as a 'suitable disposition of equal and unequal persons'. An arrangement of this sort is not absolutely natural, partly because of sin, which has corrupted nature, and partly because of the finite and contingent character of human beings, the fragility of the union of body and soul and the freedom enjoyed by human beings, the *ultima solitudo*, able to abide by or deny the prompting of right reason. There is clearly much less sense of dependence on or respect for Aristotle in this perspective, and the theological and metaphysical point of view is very different from, say, that of Aquinas. As well as the paternal authority which is natural, there is in addition the social pact. Men come together in civil communities in order to combine their separate *dominia* (such as that of the father). The civil community is thus the product of a convention. Men, strangers to one another (once free from paternal authority), come together to enter into a *pactum subjectionis*. The new bond that unites them is by definition external to the family. This suggests a genuine will for association, since none of the constituent parties was bound beforehand to obey any other. In other words, the *viaiores* of this world are called to govern a community whose basis is contingent, certainly, but they must do so in accordance with an order aimed at minimising injustice and maximising utility, with due regard for persons and for the rules of strict equity. From this point view, consent and election are the *ultima ratio* of political society. Beyond the individuals and the fulfilment, on these lines, of the community, Duns Scotus is concerned to elaborate the notion of personality: *personalitas est negatio communicationis*57 – 'personality is the denial of communication', in the sense that its separate existence is not like that of a member of a totality. Its liberty precludes any kind of natural dependence: 'Personality requires an ultimate solitude—the negation of any dependence, actual or potential, in regard to any person of another nature.'58 The political community, in this

57. Gandillac 1968, p. 685 and n. 7, which refers to *Ordinatio* iii, d. 1, q. 1, n.17.
58. Lagarde 1956–70, vol. ii, p. 237; and *Opus oxoniense* iii, d. 1, q. 1, n. 6 and 17: 'Ad personalitatem requiritur ultima solitudo, sive negatio dependentiae actualis et aptitudinalis ad personam alterius naturae.'
perspective, is a *communitas aggregations*, its unity entirely composite.

This position, indications of which are scattered at different points in Duns Scotus' theological works, seems to run counter to the essentially corporatist societies described above. There is usually a connection made between the development of urban institutions and the development of political Aristotelianism, particularly in relation to the 'natural' character of civil communities, and the predominance of the whole community over the individuals who compose it. With Duns Scotus, and even more with Ockham, the connection becomes problematic, and the definition of the political community is no longer derived from the natural sociability of man. Yet this does not necessarily mean that the social philosophy of the *Venerabilis Inceptor* is out of touch with the political realities of the time. As has been pointed out, after all, the medieval world teemed with associations, leagues, colleges and fraternities, all jealous of their rights and freedoms. However it must be realised that the spirit of these diverse 'communities' was leading them in the direction of Aristotelian interpretations of the meaning of life in society and that the doctrines of Duns Scotus and Ockham, with their stress on the individual, could not but be at variance with this tendency. Ockham's notion of the political community, to put it briefly, and without going into the detail of his moral and political ideas, is that it is constituted by the whole body of individuals who compose it, whether in the case of the entire human race, *universitas mortalium*, one city, *una civitas*, a group, *unum collegium*, or more broadly the *connexio inter omnes mortales*.59

This sort of perspective is bound up with a vision of the world within which the logical category of *relatio* is only a word 'signifying a number of absolutes, or to put it another way, it is a plurality of absolutes in the same way as a people is a plurality of men and no single man is a people'.60 The notion of the unity of a community thus becomes rather circumscribed. In one sense it can mean a degree of order, so long as by order is understood nothing more than a particular arrangement of elements or absolutes; but there can be no talk of unity except in an improper sense of the term: 'Something is said to be one improperly and loosely, as when a kingdom is said to be one, or a people, or the world is said to be one.'61

59. Sikes, Bennett and Offler (eds.) 1940–, vol. I, pp. 14–15 and 39–41 (Octo quaestiones, q. 1, c. 1 and 9); also Dialogue III, tr. 2, l. 1, c. 1, and l. 3, c. 17 and 22.
60. Baudry 1958, pp. 232ff; Ockham, *In I Sent.*, d. 30, q. 1; *Quodlibet VI*, q. 15. 'Relatio est... tantum intentio vel conceptum in anima importans plura absoluta vel est plura absoluta, sicut populus est plures homines et nullus homo est populus.'
61. Baudry 1958, p. 175: 'Aliquid est unum improprie et large, sicut regnum dicitur unum, vel populus unum et mundum unum.'
The structure of society is therefore constituted by a network of arrangements and agreements of which the ultimate aim is the maintenance of order and peace. It is the people, defined as an aggregate of individuals, who have the power to establish institutions: natural freedoms must not be suspended nor even curtailed against the wishes of those who possess them; there is thus respect for the customs and freedoms of the intermediary bodies 'through which were expressed historically (for fourteenth-century man) the fundamental rights of those free, rational individuals who, socially speaking, are the only ones to have any real existence'.

These are the theoretical reasons why, in the political dimension of his thought, William of Ockham exemplifies both the defence of the Empire, which he conceives as the whole body of mortals ruled by a single prince — which ties up with Dante's universalist notions of the human race — and the assertion of the *jura et libertates* of particular groups, thus paradoxically bringing together what may be termed the two antagonistic tendencies in medieval political thought: the concern for universality on the one hand, and on the other, a profound awareness of sub-groups as making up the web of human social existence. This had a significant consequence for the definition of political authority which Ockham and followers of his like Pierre d'Ailly brought to light: whatever form political authority may take, it resides first and fundamentally in the community as a whole, whether it be civil or ecclesiastical. Political institutions, civil or ecclesiastical, fulfil the same role in political philosophy as do general ideas in speculative philosophy: they have no existence or purpose except with reference to the multitude which constitutes them.

By the end of the fourteenth century and the beginning of the fifteenth theorists had to deal with the political community from more or less fixed viewpoints, in particular that of the kingdom. The persistence of the communitarian vision of society, however, led them now to speak of the 'community of the realm'. A long process of evolution, which there is no need to describe here, had culminated in the emergence of distinct national entities, particularly in France and England. By looking at some of the usages of 'community' in vernacular treatises, sermons and literary works, an attempt will be made to show that while the doctrinal arguments continued, so did the perenniality of a communitarian vision of man's social existence.

In this respect the teachings of Jean Gerson are particularly important. His sermon *Vivat rex*, especially, lays great emphasis on the fundamentally organic nature of the kingdom: in it, he develops three dimensions of life, 'living corporeally, living civically and politically, and living spiritually and everlastingly', devoting most attention to the second of these, which he calls 'civil, political or universal life'. This second aspect of the king's life, for it is in him that all three meet, is 'permanent'; civil life 'is maintained in the union and unity of lord and people in one lawful and just order'. Its purpose is the common good. This is why it is governed by moral philosophy, 'ethics, economics and politics, which the arts and the law deal with'. In the 'considerations' that follow, Gerson questions the basis of this second aspect of life, to wit, its unity, the order that presides over the diversity of its parts. The bond that unites the king's subjects is a bond of love; order is maintained by the exercise of the four cardinal virtues, prudence, temperance ('attrem-pance'), fortitude and justice. Such a life, not only the corporeal dimension 'but civil and mystical', is comparable to an organism because the subjects of the king are 'like the body having different members for the different estates and offices of the kingdom'. Throughout, Gerson unflaggingly emphasises the close mutual dependence of the prince and his subjects: 'since a king cannot long endure or rationally live without subjects, nor subjects without a king, agreement is necessary'. In other words, the king cannot exist without his subjects; he is a part – the principal part – of the community.

Ernst Kantorowicz has analysed and described the transition of the idea of *corpus mysticum* from reference to the Church to its secular use as a description of the state, the kingdom or to the political community in general. All that is needed here in this connection is to say that the glorification of regal power provided late medieval political thinkers with an opportunity to breathe new life into the organicist metaphor that John of Salisbury had used in the twelfth century to refer to the *corpus quoddam reipublice*, now become the community of the realm. The very idea of political community is thus – as in Gerson's work – connected with the mystical character previously conferred upon the Church; the *communitas mortaliam* is, in a way, coeternal to the Church, and being in reality entirely subject to time, it can find a means of escape from that domination by becoming an intellectual and mystical fact, and a juridical and moral person, all at the same time. The model of the kingdom was to facilitate the visible incarnation of the community in the king's person, or in his 'two bodies', or,

64. Glorieux (ed.) 1968.
to use Gerson’s formulation, in his three lives, the first of which corresponds
to the sublunary state of creation, bound to decay — the life of the body — the
second transcending that fate in the perpetuity of an eternal present — the
political life — while the third is the true spiritual life, totally outside time. This
appears to be a rather strange interpretation of the Aristotelian doctrine of the
eternity of the world, for while Aristotle did in fact put forward an argument
of that sort at the level of phusis he seems never to have extended it to apply
to the political sphere, which he sees as the realm of change and destruction.
While one might say that one of Aristotle’s central preoccupations in the
Politics is with knowing how to avoid revolutions, or with ensuring that
constitutions degenerate as little as possible, this clearly reflects his sense that
nothing is in fact more vulnerable to change than the political domain. The
late medieval political thinkers seem to have followed an exactly opposite
train of reasoning, by doing their utmost to attribute a kind of ‘aeviternity’ to
the political community, modelled on the Church to some extent, but
principally derived from the teachings of Aristotelian physics.

To conclude this hasty sketch of the vernacular literature, we may
consider one of the themes closest to the heart of Philippe
de Mézières, author of the Songe du Vieil Pèlerin and tutor to the future Charles VI,
previously Chancellor to the king of Cyprus and, most important of all, one
of the circle of Charles V the Wise at the end of the fourteenth century. He
advocates a form of collaboration between the various ‘estates’ of the
political community for the smooth running of the kingdom, as we shall see
when we deal with the problems of representation, but he also presents a
view of the kingdom in its total sense as being for the practical pursuit of the
‘common good’, something which is not the concern of the king or his
councillors alone, but of all orders of society at their own appropriate level.
Authority still resides fully in the person of the king, there is no doubt
about that: but there is also no doubt that Philippe de Mézières’ emphasis
falls on the kingdom as a whole. This is borne out by the evidence of the two
allegories which he uses to describe political society.

The first, briefly, is the chess board, an allegory he develops in Book III of
the Songe du Vieil Pèlerin. The game itself was fashionable at Charles V’s
court, and the king himself possessed copies of French translations of the
work of Jacques de Cessoles in his ‘library’. The chess board represents the
kingdom of France, and the city itself, which must follow the rules of its
progress if it is to endure. Even more significant is the allegory of the ship of
France, 'gracious and sovereign', whose various parts and different roles Philippe describes at length. It consists of 'four triple hierarchies of the twelve orders or singular estates of the kingdom of France', each of which is examined in turn. Burgesses, merchants, tradesmen and labourers, officers of the courts, lawyers and all the 'offices' of the city are described minutely and criticised severely, especially the lawyers towards whom Philippe feels particular animosity, in the familiar French tradition of hostility to red tape. Nor is the seigneurial hierarchy spared criticism: it comprises 'the king, the princes of the royal house and the great lords, the knightly order and the ordinary nobles and captains of the realm'. Thus the knights are badly educated nowadays, he says, and their values are out of date. And the great lords are flatterers who misuse their influence on 'the king's innocent majesty'. Meanwhile the people in the lowest rank, the 'common people' taken as a whole, suffer the varied ills that war and taxation bring with them.

The description is long and detailed, but all that need concern us here is the way the symbolism of the social body is worked into various allegorical figures, one of which, reverting to the traditional tripartite division of the 'estates', rests on a metaphorical representation of the Trinity itself. The clergy thus become the symbolic figure of the Father, the people — 'gros et menu' — become the Son, and the nobles become the Holy Spirit. The fatherhood of the Church is then justified because by its administration of the sacraments it sustains the life of the soul, both of the people and of the nobles. The Son symbolises the people because by their labour and the 'sweat of their body' they provide bread and the life of the body just as Christ provides the bread of life with his own body. The nobles stand for the Holy Spirit, which is 'ardent love proceeding from the Father and the Son'. In the same way, the lives of the nobles 'must be converted into love' and proceed from the Church and the people, the former for the life of the soul, the latter for the life of the body. Kings, princes, barons and knights are thus 'taken for the person of the Holy Spirit'.

The other figure which it is interesting to examine is that of the ship. There is of course a long tradition of ships being used to represent the social body, but although it is not a new idea Philippe de Mézières's description is particularly eloquent. The ship is large, lofty, splendid and stately; its name is Gracious and Sovereign. It is built of cedarwood, which does not rot in the water, and it has three levels. On the poop there is a royal palace, supported by another smaller palace; at the wheel is a castle for defence and, if necessary, for attack. Around these buildings are grouped all sorts of
dwellings and offices ‘for all manner of people of all trades and professions, for husbandmen in various kinds of tillage’, not forgetting merchants and burgesses. The important thing is that the ship has two doorways, one at the prow, the other at the poop, through which the three levels can communicate.

Philippe also describes the ship’s inhabitants, and here the whole structure of the kingdom unfolds before us. And so the ship goes on its way towards its final destination, the holy city of Jerusalem. As it sails on, keeping close inshore to avoid the perils of the open sea in accordance with contemporary practice, it has various unpleasant encounters, as when it meets the Unneighbourly Ship, recognisable as England. ‘Once one of the XVII ships, called Unneighbourly, collided against the sovereign ship with such force that it carried off the six castles on the gracious ship’s right side.’

In her treatise Le livre du corps de policie, Christine de Pisan takes up, in an almost literal way, the symbolism of the social body that John of Salisbury had used in his Poli craticus, which was translated into French in 1372 by Denis Foulechat, one of Charles V’s translators. There are three parts to Christine’s work, the first addressed to princes, the second to nobles and knights and the third to the ‘university’ of all the people, as she puts it. For her, as for her predecessors, the king is the head of the body – the ‘Chief’, the understanding, with the knights as the arms and hands, and the people symbolised by the legs and the feet. If the king is ‘the head of the living image of the body of the state’, nobles and knights are the arms and the hands. Each is responsible for the order established by God, and must maintain himself in the state where birth has placed him – ‘that is to say, the nobles as nobles should, the common people likewise in the place appropriate to them, and all alike related to the one body of the same state, so as to live together in peace and justice as they should’.

The ‘totality of the common people’ is symbolised by the legs and feet of the social body, so that the latter may be ‘living, complete, and healthy’. The continued health of the social body, in fact, like that of the human body, requires the harmonious co-operation of all its parts:

for as the body of a man is not whole but defective and deformed when it lacks any of its members, so the body of the state cannot be complete, whole, or healthy unless all the orders [of society] are well joined and united together so that they can succour and help one another, each fulfilling the function allotted to it; for these different functions, when everything is considered, are established and should

operate only for the preservation of the whole, just as the members of the human body help to govern and nourish the body as a whole.

The ‘whole body of the people’ is itself differentiated into a number of estates, harmony among which is a function of the harmony that must exist between them and the other orders of society. The burgesses, whose ‘lineage has been long established in the cities’, who have ‘a proper name, a surname, and bear arms of ancient date’, are the mediators between the ‘common’ (meaning people and the princes: they play a fundamental role in the body of the state, for they are merchants, and the merchant estate ‘is most necessary’, since ‘the royal and princely estates and likewise the polity of cities and of countries could by no means do without’ their assistance.67

It is clear then that the concept of political community continues to figure in vernacular literature, and is adopted with striking unanimity by most of the political thinkers of the period. A final example of this may be taken from the De Concordantia Catholica of Nicholas of Cusa,68 written in 1433, during the council of Basel, one of its aims being to bring about a reconciliation among the various opposing factions. The theme of concord naturally goes far beyond these purely temporal and political considerations: concord is ultimately the ‘deep divine harmony of the Church (profunda divina ecclesiae harmonia) – the Church here being one of the most general figures of human society; concord is the agreement of differences, it being understood that, in principle, unity is the first consideration:

This is why every creature in its own way comes gradually, by a natural effluence, to bear a diminishing resemblance [to the primary being]; and it is, so to speak, as a shadow or figure or similitude of the higher nature which precedes it that the lower nature finds its place in the scale, until the multiplication of lower and less noble beings exhausts the radiance of life-giving nature. At this final point the process of multiplication comes to a halt, for the radiance, having reached the lowest point at which it can sustain its own existence, has nothing left to communicate; and thus the lowest being in this hierarchy ends in shadow.69

Communication, the means by which beings relate to one another, is the key word in this definition. There is no need to go into the detail of Nicholas’ doctrine, but the idea of concord itself implies a recognition of the

---

69. 1.i.i.9: ‘Unde suo modo naturali fluxu gradatim minus similitudinis gerunt et quasi in umbra, figura seu similitudine praecelementis altioris naturae disponit inferior gradatim, quosque multiplicatio versus inferius et ignobilius ita in radio deficit vitalis naturae, quod abscis multiplications amplius quiescat in ultimo puncto, ita parum habens virtutis, quod tantum sibi sufficit et non amplius communicare potest, et sic ultimum illius ordinis in umbra terminatur.’

---
bond between created beings, and between them and their creator. This recognition is fundamental to Nicholas of Cusa's philosophy and governs the whole of his outlook on the political community. In fact in Book III of *De Concordantia* he argues that 'provided from the outset with reason, to set them apart from other animals, men understood by reasoning that companionship and community were extremely useful, and indeed necessary for their survival, and for the purpose of living itself, and so they came together by natural instinct and, living together in that way, built villages and towns'. He follows Aristotle and the commentators in describing man as 'a political and civil animal, who tends naturally to live the life of a citizen', but he places his emphasis not only on a sort of *pactum subiectionis* such as was elaborated by Duns Scotus, but also on a real consensus, implying a kind of 'continued contract' between the members of a political community and the authority that they establish, 'for if men have equal power and equal freedom by nature, the only way to establish the true and well-ordered power of a single ruler must be by election and consensus on the part of the others'. Quoting Gratian's *Decretum*, he adds, 'It is clear that, since human society, by means of a universal contract voluntarily agrees to obey its kings . . . the ruler himself must be elected.'

It is not necessary to emphasise here how much Nicholas of Cusa was influenced by the political ideas of Marsilius of Padua. What is worth noting in conclusion is that Nicholas gives the society of the human race a universalist dimension which is interesting in that he goes beyond the notion of a specific community, and defines the universal society (in the *De Pace fidei*) as the society of all believers, or, as Gandillac puts it, as the manifestation of the 'community of minds', anticipating the formulations Leibniz was to use in his attempt to create a 'religious organisation of the earth'. Nicholas of Cusa sees a concord between natural groups which provides a basis and sanction for the progressive development of a 'universal

70. iii, Prooemium, 269–70: ‘Homines vero ratione prae cunctis animalibus dotati a principio consolidatatem et communionem suae conservationi ac etiam fini, propter quem quiesque est, multum conferre, immo necessarium rationabili discursu intelligentes, naturali instinctu se univere ac sic cohabitantes villagia urbesque construxere . . . Videamus enim hominem animal esse politicum et civile et naturaliter ad civilitatem inclinari.’
71. i.xiv.127: ‘Nam si natura aeque potentem et aeque liberi homines sunt, vera et ordinata potestas unius communis aeque potentis naturaliter non nisi electione et consensu aliorum constitui potest, sicut etiam lex ex consensu constituitur, 2 di. Lex, 8 di. Quae contra . . . Ecce, quia pacto generali convenit humana societas velle regibus oboediere, tunc . . . in vero regiminis ordine ipsius rectoris electio fieri debet . . .’
74. Gandillac 1941, p. 442; and cf. Gandillac 1953.
commonwealth’ as the utopian conclusion of an ecumenism whose theoretical foundations he propounded with a boldness that goes well beyond Dante’s anticipatory ideas in the *Monarchia*.

**Counsel and councils**

**Terminology: doctrinal origins**

One of the most important aspects of communal life in the middle ages is reflected in the widespread use of the terms ‘counsel’ and ‘council’. It is therefore necessary to make a brief excursion into their semantic field before going on to analyse their content. Counsel means a decision, a deliberation, advice, plan or opinion; the reference is thus to practical wisdom, to action, whether by one or a number of individuals or by one or a number of groups. It is essentially an ethical concept, which has both Greek and biblical origins. *Euboulia* is primarily a warrior virtue, the characteristic of a good general, but it also has a peacetime connotation, when it becomes the virtue practised in connection with everyday affairs in the ‘councils’ of the city, such as the *ekklesia* at Athens. It is therefore also a political virtue, which allows the members of the assembly to govern the city wisely. There is, finally, the sense of a private virtue, which, as it were, enables a man to exercise self-control. For Aristotle, *euboulia*, good counsel, ‘is a sort of deliberation’ which includes a ‘right principle’ consisting in ‘attaining a good end’, or in other words, ‘the right principle that consists in finding that which is of use for the purpose of which wisdom is a true apperception’.75 The term also has a long pedigree in the realm of theology where it is one of the Gifts of the Holy Spirit: this reaches back to the bible, and a long Christian tradition of commentary on the relevant verses in Isaiah.76 St Thomas Aquinas, for instance, regards counsel, *boulè*, as to some extent symbiotic with Aristotle’s prudence: ‘It is proper to the rational creature to be moved through the research of reason to perform any particular action, and this research is called counsel.’77 It is prudence that enables us to offer good counsel to ourselves and others. Because of the contingent nature of the events of this world, and because human reason is unable to understand them in their

75. *Nicomachean Ethics* vi, 1142 b 16.
76. *Isaiah* 11: 2: ‘And the spirit of the Lord shall rest upon him, the spirit of wisdom and understanding, the spirit of counsel and might, the spirit of knowledge and of the fear of the Lord.’
77. *Summa Theologiae* 11a 1ae, q. 52, art. 1: ‘Est autem proprium rationali creaturae quod per inquisitionem mentis moveatur ad aliquid agendum; quae quidem inquisitione consilium dictur . . .’.
singularity, 'man needs the guidance of God in taking counsel, just as in human affairs 'those who are unable to take counsel for themselves need to seek counsel from those who are wiser'. It may be objected that in the hierarchy of the acts of prudence counsel is the least exalted, being placed beneath judgement and commandment: but Aquinas challenges this classification and, setting the gift of counsel beside the 'powers' which move the human soul, he defines it as that which 'helps' (adjuvans) prudence and perfects it (perficiens).

A final comment on the philosophical and theological status of counsel: it is generally distinguished from precept by the criterion de necessitate salutis. This is an important distinction, particularly in Marsilius of Padua’s Defensor pacis, because that is how the extent of the prince’s coercive power is delimited. Taking that as his starting-point, Marsilius defines coercive law as that which is ‘a coercive precept with appropriate punishment or recompense to be received in this world’. Counsel, on the other hand, comes into the domain of what Marsilius calls ‘permitted acts’, acts which are not subject to penal constraint, and is seen as an act ‘meritorious according to divine law’. Thus supreme or meritorious poverty comes under counsel rather than precept. It is easy to see how counsel as it operates at the individual human level, in the framework of moral action and practical wisdom, is a prefiguration of its role in political thought, where it becomes the prerequisite of judgement and thus of the very commands and precepts that give rise to action. Thus the notion of counsel pervades an analysis of prudence, an integral, if not the most important, part. And if it is true that, as Aristotle said, prudence is the virtue appropriate to a prince, that it is architectonic, its natural purpose must be to command, or in other words, to govern. This then shows us the theoretical level counsel operates at, and how its metonymy occurs: at first the word refers to an act of human reason and will, and then becomes incarnate, so to speak, in the person or persons who pronounce it. This ties up with the other fundamental aspect of counsel, its interpersonal aspect, its social and political importance, and its connections with justice and the art of government.

78. Ibid., q. 51, art. 1, ad 1: ‘Sed quia humana ratio non potest comprehendere singularia et contingentia quae occurrere possunt. . . ideo indiget homo in inquisitione consilii dirigere a Deo. . . sicut etiam in rebus humanis, qui sibi ipsi non sufficiunt in inquisitione consilii a superioribus consilium requirunt.’
80. Defensor pacis, 1.x.4: ‘praecceptum coactivum per poenam aut praemium in praesenti saeculo distribuenda’.
81. Ibid., ii.xi.4: ‘Horum . . . permisorum propriis, non obligantium scilicet, quaedam sunt meritoria secundum Legem Divinam et vocantur consilia’.

78. Ibid., q. 51, art. 1, ad 1: ‘Sed quia humana ratio non potest comprehendere singularia et contingentia quae occurrere possunt. . . ideo indiget homo in inquisitione consilii dirigere a Deo. . . sicut etiam in rebus humanis, qui sibi ipsi non sufficiunt in inquisitione consilii a superioribus consilium requirunt.’
80. Defensor pacis, 1.x.4: ‘praecceptum coactivum per poenam aut praemium in praesenti saeculo distribuenda’.
81. Ibid., ii.xi.4: ‘Horum. . . permisorum propriis, non obligantium scilicet, quaedam sunt meritoria secundum Legem Divinam et vocantur consilia’.
From counsel to council: the political dimension

Michaud-Quantin has pointed out that there is a problem involved in distinguishing between concilium and consilium when they refer to a group or a gathering of people; it is difficult to place any reliance on the writing in manuscripts, in addition to which there is, according to J.F. Niermayer, ‘a long history of confusion’ between consilium and concilium when the word means an assembly. It is also important, as Kantorowicz emphasises apropos the relationship between the king and the law, to be aware of the distinction in English between counsel and council; it is a distinction that also occurs in French, where ‘conseil’ in the broad sense refers to all the members of which the council is composed, while ‘concile’, although it has assumed a technical sense in the ecclesiastical sphere, is not really etymologically similar. However that may be, and considering only the term consilium, it should be borne in mind that in Rome the Senate was the ‘consilium publicum of magistrates who govern the commonwealth’. Moreover, as J. Devisse has pointed out, consilium is a classic word in the vocabulary of canon law. Hincmar of Rheims uses consilium to mean consultatio, and Gregory the Great notes that it is quite right that ‘preachers are called counsellors, since they give their audiences the counsel they need for life’.

The council (as a group, rather than the deliberation or counsel itself) is a constant factor in religious life. In the medieval sense, first of all, it was understood in terms of the collectivity, and seldom had to do with the exercise of authority; the council had powers of deliberation, not of decision. This is true of religious communities, as for example in the Benedictine order, where the Rule provided for the superior to have a small group of councillors around him for the purposes of consultation, these to be drawn, of course, from among the ‘wisest’ in the community. This type of relationship between a community and its ruler is taken over into lay organisation, and in England and France a permanent royal council (curia regis) soon makes its appearance, composed of ordinary councillors. One of the characteristic features of these councils is that they are instituted by the king, who himself chooses the members. They act as the king’s high court of justice and as the supreme political council. The council is principally a service, much more of a duty than a right. Article 14 of the Magna Carta for instance defines the Great Council in such a way that for an aid to be validly

83. Ibid., pp. 135–6.
85. Devisse 1968.
Development: c. 1150–c. 1450

agreed, the archbishops, bishops, abbots, earls and principal barons of the kingdom had to be summoned by name. All other direct vassals of the king had to be summoned through the intermediary of the sheriff, and at least forty days in advance. The composition of those assemblies, of course, was strictly feudal. 86

Generally speaking the king, both in the Anglo-Norman and in the Capetian monarchy, governs with the assistance of the counsel of his faithful subjects: from this point of view curia and consilium mean much the same thing. The councils have both political and judicial jurisdiction, without however having powers of delegation or authority of their own. The Great Council, composed of legists, nobles and dignitaries of the Church, comes to have a separate existence from the close or privy council in France at the beginning of the fourteenth century, and without going into the organisational detail it needs to be emphasised that these consultative organs are an indispensable auxiliary to the power of the king, despite the fact that they have no real autonomy and exist at his discretion, summoned whenever they are needed without any regularity. What is important here is that they represent an awareness of the need to govern ‘by means of the counsel of many wise men, both laymen and clerics’. In Gerson’s words, ‘How much sense has one single man? Wherefore the wise man says: do everything by counsel and you will never repent.’ Gerson puts the emphasis on the need for the counsel offered to the king to be sincere: he criticises councillors who want to further their own interests through flattery, but he also criticises the prince who refuses to listen to good advice, even if he does not happen to like it: ‘the seigneur must not only ask for counsel, he must believe it and act on it, and keep it secret, so that the decision can be put into practice without any interference . . . Secrecy is the best and most powerful defence against misfortune in the state.’ He adds a graphic illustration of this: ‘Quintus Fabius Maximus once said that if his own shirt knew the secret of his plan against Hannibal, he would throw it away.’ Councillors therefore need to be wise, men who ‘fear God and conscience, and who place the common good before their own profit, as otherwise they will not speak truth without fear or favour’.

It is interesting that Gerson believes that councillors should be recruited from all the orders of the kingdom: ‘It would seem very expedient for the principal parts of the kingdom to be called and heard, nobles, clerics and burgesses alike’, not out of any ‘democratic’ concern, but because their

86. Pasquet 1914; and for more recent interpretations cf., e.g., Davies and Denton (eds.) 1981; Fryde and Miller (eds.) 1970.
experience gives them concrete knowledge of the kingdom’s difficulties, and they are thus more likely to offer judicious and practical counsel: otherwise ‘the life [of the kingdom] shrinks to its heart’ (that is, it must not be limited to the life of the heart, which as we know symbolises the king, or the king and great seigneurs). Finally, still on the same theme, Gerson compares a king who lacks ‘prudent counsel’ to a ‘head on a body that has no eyes, ears or nose’.  

Gerson’s recommendations and his teachings about the council are a particularly characteristic illustration of the usage of ‘conseil’ in late fourteenth-century France. Although it does not yet have the institutional character that it is easy to attribute to it anachronistically, it does have a moral value and expresses, even implicitly, the sense of obligation which requires the king to consult if not all his subjects, then either members of all three estates or at least men of prudence and experience. This was what Nicole Oresme put forward, mainly in the Livre de Politiques, but also in the Livre de Ethiques d’Aristote: thus in the former he sets out various rules which the king must observe in respect of his councillors and which seem to him to be indispensable to the proper functioning of the kingdom, which the king cannot attend to entirely on his own. The prince must not surround himself with councillors who ‘are accustomed to lie’, scriptural confirmation for which advice comes from the Book of Proverbs, nor with men who care nothing for the common good, being preoccupied with their own interests. Men of this sort, who in Oresme’s eyes are necessarily men of high rank, must be ‘men of great prudence and wisdom’ (expers), and they must not be young, as young men lack experience. There is no requirement for these councillors to be particularly eloquent or accomplished, it being enough that ‘they be outstanding in goodness and prudence’. When choosing his councillors, the king should be guided by the Holy Spirit which gives him

87. Glorieux (ed.) 1968, pp. 1164–6: ‘Le seigneur n’en doit pas tant seulement demander conseil mais le croire et l’exécuter et le tenir secret . . . Qu’est-ce du sens d’un homme seul? Pour ce dit et commande le saige, fait tout par conseil et jamais ne t’en repentiras . . . Secret est le plus fort et le meilleur remède contre tout adversité de la chose publique . . . Quintus Fabius Maximus disoit que se sa chemise savoit son secret contre Hannibal, il la getteroit dehors . . . ‘Tels doibvent estre appelles es conseulz qui doubtent Dieu et conscience, et qui mettent le bien commun devant leur propre prouffit, car autrement ja ne diront vérité sans crainte ou sans faveur . . . ‘. . . il sembreroit tres expediant que dez principalez partie du royaulme fussent auncuns appelles et oyz, tant nobles comme clerz et bourgeois, pour exposer franchement le miserable estat de leur pays; car trop mieulx le scavent . . . par experience, que ne font ceux qui sont tout aise en leur estat a Paris ou est toute la gresse du royaulme et ou la vie se retrait au coeur. ‘Car roy sans le prudent conseil est comme le chief en ung corps sans yeulz, sans oreillez et sans nez.’
the gift of counsel, as it says in Ecclesiastes. Generally speaking, in a ‘very good policy’ the ‘counselling part’ is one of the three main parts of the government of the state. The tasks of this ‘part’ of the city are numerous and important, and include the arrangement of alliances, the legislative function and discussions about the common good, all of which have to be debated in public council.

The same teachings are stated in his glosses on the Nichomachean Ethics in connection with euboulia (or good counsel) in the analysis of human action. From this perspective, Oresme examines the content and purpose of counsel, which is concerned, not with the purpose of the action, but with the means of achieving that purpose, concerned with feasibilities: ‘with things that can often happen and which are far from certain and of importance, for small things do not require counsel’.

Describing the manner and method of giving counsel, Oresme establishes the protocol of the efficient councillor, as it were:

and thus it appears that in counselling the first necessity is to establish the end that is required, such as the peace of the city or the country in time of war. Then one must think, search and discover the shortest means to that end, which might mean negotiating with the enemy, or fighting them, or so to order and rule one’s country as to prevent the enemy from doing any harm. Then one must choose by good judgement one of these means, such as fighting them. Then one must counsel how this should be done, and when, and by whom, and in what numbers. Then they must be chosen, and armed, trained, and so on to the point where the decision has to be put into practice, such as finding money or making arms or any other demands consequent upon the deliberations, and proceeding further in procuring and pursuing the known end by the means agreed upon.

This kind of analysis of Aristotle’s Ethics rather suggests that this was the method Nicole Oresme himself used when he was one of the councillors of Charles V the Wise. In practice, however, as far as the king’s council in the second half of the fourteenth century in France is concerned, its function is a ‘service’. It has to inform the prince about the ‘state of the kingdom’. As one historian of the reigns of John II the Good and Charles V has said, the council ‘is a meter of political activity and a means of research’; as such, and as a reflection of the ‘public opinion’ of the time, it is a ‘very flexible instrument’ with a shifting composition, and ill-defined responsibilities. R. Cazelles, in fact, has collected the lists of letters patent for a specific period – here between 1345 and 1365 – ‘which has made it possible to tabulate the

council’s activity, the frequency of its sessions and the people who attended’. On the basis of these figures it is possible to say that the council was capable of meeting frequently, as in 1357, when there were 108 councils, and later, after the coronation of Charles V, much less frequently, with only fifteen in 1365. But then 1357 was the year of what is usually called the Paris revolution; the French king had been taken prisoner after the defeat at Poitiers in 1356, and the Dauphin, devoid of resources, had to try to collect enough money to pay the ransom demanded for his father’s freedom. Study of the statistics thus indicates that the need to summon the council was not nearly so urgently felt once Charles V was able to exercise his royal power to the full. Under these circumstances it is hard to describe the council as a true organ of government, although on many occasions it did have a number of important responsibilities.  

Another member of Charles V’s entourage, also tutor to the Dauphin, the future Charles VI, Philippe de Mézières, emphasises what might be called the ethical and religious aspect of the king’s council. The council is mentioned frequently in the Songe du Vieil Pèlerin, especially in the course of the ‘moral chess board’ allegory which Philippe develops as a way of expressing his conception of the office of the king. The vivid description of a royal council here is extremely interesting: Queen Truth reminds her royal interlocutor that the Holy Spirit must always be present during the deliberations, and recommends him to appoint to his council ‘a secular person equipped with knowledge of divine, civil and moral laws, a man of honest life, not greedy for promotion or wealth. He should know the world and the good customs of this kingdom of Gaul. He should not be obstinate, but he should be bold in God and prepared to stand for truth and speak it without fear of any man. He should be paid at the same rate as other members of the council.’ The function of this prud’homme was to be very similar to that of the procureur in the Parlement; it would be his job to defend the royal interests, if necessary by arguing against the ordinary councillors; he would be able to oppose the ‘prelates and clerks’ who composed the regular council members; similarly, he would take part in discussion of the lay members’ proposals. The queen goes on to say that her proposal has many advantages, as royal councillors are generally so burdened with a multitude of matters, not slight or unimportant ones but substantial, perilous and weighty issues, and they are further complicated by personal interests, enmities and oppositions . . . that it is hardly surprising if the councillors, thus burdened and perplexed, are divided among themselves, some

taking one side and some the other, both believing they are acting for the best; or if they sometimes fail to choose the better part in the royal council, for it is written that when a man’s mind is occupied with a number of matters he will not be able to bring his whole judgement to bear on specific issues.

Philippe de Mézières evinces considerable distrust of councillors, criticising their behaviour, accusing both clerics and laymen of looking after their own interests rather than those of the king and the public good. He sees the ‘procureur of divine goodness’, as he calls the member of the council responsible for ensuring the propriety of its discussions and the integrity of its decisions, as a figure analogous to ‘the good counsellor of David’ and concludes, ‘It is good to have such a councillor in the royal council.’

It is quite clear from these few examples that the council is an acknowledged fact. It is composed of the body of councillors, sapientes, boni homines prudentes, it is a more or less broad assembly, close to the authority of the law, whose basic purpose is to formulate opinion, although without actually taking decisions. It is interesting now to compare that with the kind of council found in the towns of northern Italy, as being particularly characteristic of communal organisation.

Here it seems the council as assembly, as the municipal institution, had a much more decisive role to play. The members of the various bodies which administered the city with the podestà and consuls were known as consiliarii. In Padua, the basic organ of government was the Grand Council (Consilium...
Community, counsel and representation

majus) but unlike the assemblies already examined this represented the whole body of the citizens. Now the Consilium majus is the equivalent of what Marsilius of Padua in the Defensor pacis calls the pars valentior civium, the ‘weightier part’ of the citizens, the preponderant part both qualitatively and quantitatively. From the end of the thirteenth century, the Grand Council was composed of 1,000 members. Only citizens entered in the city’s estimo for at least fifty pounds could take part. The Grand Council’s principal task was legislative, but it also elected the podestà, which was entrusted with executive responsibility. The comparison, or to be more precise the correspondence, between this kind of institution and Marsilius’ formulations is too well-known to need restatement here. It is perfectly clear that the way the council was appointed, its composition, and its functions are all very different from the way the council developed in the monarchies of England and France.

When the word council is used in this last sense, of an assembly, a group who form the community’s permanent administration – whether it is a municipal institution dealing with the area controlled by one town, or whether, as in the monarchies, it is a whole body of members appointed by a higher authority – it brings with it the problem of the distinction between communis consensus, common consent, according to which the decision reached must follow the opinion expressed, and the commune consilium, where the general opinion expressed by council members was taken into consideration but without any obligation on the part of the superior power to act in accordance with it. Yet the two expressions gradually come to mean the same thing, or at least to be treated as the same, so that the council assumes a special value as voicing the opinion of the people who will be affected by the authority’s decision. It is in this context that the sapiences, who were originally chosen for their own abilities, find themselves expressing the general opinion on behalf of those affected by the practical consequences of the decision. In other words, they become representatives of the citizens as a whole, but without ever having been given any specific mandate from them. Then by a gradual process of assimilation they come to represent particular interest groups. There is a similar broadening of the meaning of sapiens, which comes to refer both to the experts and to people with experience of this or that social or political problem, as a result of which, as Gerson (and before him Philippe de Mézières) pointed out, men from the three orders of society were drawn into the council to give

93. Quillet 1970a, pp. 23ff, 93ff; Gewirth 1951 and 1956, vol. 1, pp. 23ff; Defensor pacis, i.xii.3,4,5.
Development: c. 1150–c. 1450

authoritative opinions on issues that concerned them directly. Thus Gerson, writing about the reform of the kingdom in Vivat rex, says among other things that it would seem very expedient for the principal parts of the kingdom to be called and heard, nobles, clerics and burgesses alike, to explain the wretched state of their country in full; for those who have seen and experienced these things know them better than those who live comfortably in Paris. . . Things seen and felt have more force than those that are merely heresay.95

In this example, which is only one among many, we can perhaps see the beginning of the process that culminates in the emergence of the idea of representation.

Representation and delegation

Medieval terminology is as ill-defined when it comes to the different senses of representation as anywhere else, as a result of the complex intertwining of notions of morality, politics and law. For the sake of simplicity the discussion here deals only with the senses of delegation and proxy, and not with the symbolic, allegorical and metaphorical meanings of the word, even though these do have interesting political connotations.

First, the contribution of law to the development of the idea of representation: representation originally had a rather narrow legal sense.96 The representative, actor, syndic, procurator,97 usually nominated in accordance with established legal procedures, acts in the place of the group by whom he is mandated, either in his own discretion or according to rule. Here representation is a procedural matter: Roman law, as is well known, included a set of conditions governing its theory and practice. When it has to do with an individual, the problem is relatively easy; with collectivities, the same principle is involved but at a different level. A community is represented by a syndic when it is represented as a moral person, as laid down in the Digest.98 Where an actor deals with affairs of all kinds, a syndic is involved solely in judicial matters. Then there is a further distinction, between the syndic and the procurator: the latter represents an individual, the former a community, but with the difference that the procurator speaks

in the name of the person he represents, while the syndic appears in his own name, whether or not he has been mandated by the community.

Canon law's contribution to the development of the idea of representation is essentially contained in the declaration *Quod omnes tangit*, and its concrete applications. There is a substantial body of work devoted to this theme, so it is only necessary to mention its main characteristics and how it operated in different sorts of communities; but it is worth examining, as it was made the subject of numerous expositions in political thought proper. First, as Post rightly emphasises,\(^{99}\) it is impossible to talk about representation in the full sense in connection with the texts of canon law because of the ambiguity that lies at the heart of ‘power’ in the Church, whether that of an abbot or a general chapter of any other body; and this ambiguity reflects Ullmann’s distinction between ‘descending’ power, in which power is seen as coming from God, as in St Paul’s famous formulation, and being distributed hierarchically between the different orders, and an ‘ascending’ theme, in which power is derived from the ‘base’ and then chooses, as its preferred method of distribution, representation.\(^{100}\) Ullmann’s distinction is a very interesting one, and it has helped to clarify some of the complex issues that surround the nature of power in the middle ages; yet it is not entirely adequate. Temporal power as well as spiritual power claims to have a divine origin and, what is more, there are plenty of examples of representation in canon law, as well as in Roman law and its medieval institutions, even to the extent that one historian has talked about ‘democracy’ in the administration of religious communities (although that is probably stretching the term too far).\(^{101}\) Post is therefore right to say that it is not possible to use the word representation in its real sense in connection with the *Decretum*, because the only kind of representation that is truly worthy of the name is divine delegation; however, the successive interventions of the papacy – Innocent III’s in *Pastoralis cura*, and Alexander III’s in other texts – ended in reconciling the demands of the ‘descending theme’ with the most important aspect of the ‘ascendant theme’, the active participation of constituents, by means of election and delegation, in the conduct of affairs by those they have mandated. This is the point at which the canonical maxim ‘What concerns all must be approved by all’ finds its full expression. It is also the reason for the importance of *consensus*. The whole issue becomes more complicated when it is realised that this maxim was originally a procedural rule in the *Code*,\(^{102}\) which was adapted to the

---

canonic texts to meet the demands of the situation. It becomes yet more complicated when we realise that the rule of unanimity implicit in the famous maxim contradicts the rule of the majority. For there has to be a choice: either one looks for unanimous approval, in which case consent can be understood in the absolute sense; or else there is an agreement to follow the opinion or decision of the majority, in which case the notion of consensus must inevitably be limited, not to mention all the 'adjustments' the concept of majority is subject to. What is at stake is the whole concept of community, according to whether it is seen as an association of individuals or as an organically constituted body. On the second of these views, it is almost impossible to be unaware of the hierarchical implications which in theory and in practice lead to a preference for the idea of majority over unanimity, and the majority in this context is not simply a matter of quantity but is also viewed in terms of quality, which is precisely what is expressed by the phrase _major et sanior pars_. The main difficulty the representative principle had to cope with was the possibility of disagreement among the electors which would take away the whole point of representation itself. Obviously a crisis in the history of community occurs at this moment when there is a shift from a unanimist conception of the collective will to a majoritarian one, a shift which occurs, in essence, as a concession to the rule _Quod omnes tangit_. Yet there is a question whether unanimity is really a necessary basis for action. There seems to be a contradiction here between the actual idea of representation, which presupposes a small number who act for and on behalf of the majority, and the idea of unanimity which presupposes that anybody can act with full knowledge without having recourse to representation. If all the electors are in agreement then clearly their mandated representatives only have an executive function to perform. Yet the idea of representation as delegation does not seem to have been reduced to carrying out executive tasks: far from it. Nor should we think of these notions of unanimity, and majority, and consensus, purely as legal terms: in reality they were deeply impregnated with ethical and religious values, especially in the realm of canon law. At the beginning of this section it was mentioned that the counsellor was seen both as the _bonus vir_, the _sapiens_, and as the representative of a lay or religious collectivity: it is here that the two elements converge. Any analysis of the concepts of unanimity and majority in fact involves the whole problem of who the electors are and what procedures they adopt. Whether we are looking at royal councils, seigneurial councils, commune councils or at ecclesiastical assemblies, election (in the sense of choice, without its modern
Community, counsel and representation

connotations) is at the heart of the question. And of course representation means something rather different, viewed a parte post, if it includes the power to make decisions, instead of merely putting decisions into practice. M.V. Clarke argued\textsuperscript{103} that the idea of representation includes the idea of the substitution of a part for the whole, with all its connotations both symbolic and otherwise. She went on to claim that for it to be properly political the representatives, besides fulfilling certain other basic conditions, must be more than merely members of a deputation or delegation empowered to act hic et nunc on a specific issue. The real purpose of bodies such as these, if they are to be political, must be to make or change the laws. It is paradoxical that this practice starts in ecclesiastical institutions and spreads out from there to the purely temporal structures of society, particularly in the light of the Church's belief in the divine origin of power. In other words, it is clear that the link between the formation of the idea of community and the notion of representation is entirely bound up with the problem of how the collective will should be expressed. The adoption of the majoritarian system was the only possible outcome, but some qualifications need to be noted.

The Digest contained a number of rules which determined the concept of majority: 'That which the major part of the city does is considered as if it had in fact been done by all.'\textsuperscript{104} The use of 'as if' here reveals the conventional character of the rule, and its application created difficult problems such as deciding what the quorum of the majority should be. There is no need to go into the different ways the problem was resolved, the direct and indirect methods, or, in the latter case, the use of the vote. In this connection there are interesting details to be found in the Statuti of the Italian cities.\textsuperscript{105} In the institutions of the Church, the myth of unanimity diminishes in importance at about the same rate as their formal structures developed: in fact the elaboration of the doctrine of the major et sanior pars marks its disappearance.\textsuperscript{106} What is interesting about this formulation is that to some extent it implies the notion of the theoretical consent of everybody; it also lessens the difficulties caused by representatives disagreeing among themselves. The canonical doctrine enshrined in the phrase combines the requirements of arithmetic with the moral and religious ones which are more difficult to evaluate, being judged by criteria such as zeal, authority and the rational

---

\textsuperscript{103} Clarke 1936 (repr. 1964), pp. 278ff.
\textsuperscript{104} Michaud-Quantin 1970, p. 273 and n. 9; Digest, 41, 2, 1, § ult.; 4, 8, 19, § principaliter.
\textsuperscript{105} Statuti 1873; and cf. Ullmann 1962.
\textsuperscript{106} The literature on this topic is extensive: see the indications given in Quillet 1971; Michaud-Quantin 1970; Lagarde 1936-70, vol. v.
nature of the opinion or decision agreed upon. The arithmetical criterion loses its importance in this perspective, since an arithmetical minority can turn into a majority in terms of the major et sanior pars. The significance of this is, in the end, that, whatever form it may take, it should be a decision, or an action or a choice which represents the whole - that is to say, the community; and this is to arrive finally at an agreement (concordia) and thus to dispel that conflict whose threatening shadow - constantly reborn (to change the metaphor) from its ashes - the whole endeavour, at once speculative and practical, seeks to eliminate.

It was only with the work of Marsilius of Padua in the fourteenth century that the idea of representation came to occupy a prominent place in political thought. Reference has already been made to his definition of the community as the universitas civium, the whole body of citizens, or its 'weightier part' (pars valentior). 107 Here, fully developed, is the specifically political practice of the idea of representation identified by Clarke: the power to make, change and revoke laws. Not that Marsilius was entirely innovatory in this respect, as thinkers and theologians had found the theoretical foundations of popular sovereignty in Aristotle's Politics from the time his political ideas began to spread, while the Roman Lex Regia stated that the prince held his authority by delegation of concession of the people, the ultimate source of sovereignty. 108 Yet although Marsilius is not strictly an innovator in this area, he is the first to coin the phrase legislator humanus, which taken in the context of the whole of the Defensor pacis rather than just the Prima pars is the exact counterpart of the legislator divinus, the custodian and ultimate source of power, who is set over and above the legislator humanus and the power he holds. 109

The legislator humanus is the people, or the universitas civium: it is they who legislate at the human level. In the Defensor minor Marsilius actually uses the words of the Lex Regia to define it. 110 There is no need to dwell on the precise significance of the theme of popular sovereignty in Marsilius' work, except to say that it almost always takes the form of representation by delegation, and it is this aspect which is of concern to us. The very definition of the principle of representation is bound up with the notion of the human legislator.

The legislator, or the primary and proper efficient cause of the law, is the people or the whole body of the citizens, or the weightier part thereof, through its election or will expressed by words in the general assembly of the citizens, commanding or

107. Cf. pp. 533–7 above, and Defensor pacis, i.ix, xii, xiii passim.
determining that something be done or omitted with regard to human civil acts, under a temporal pain or punishment.\textsuperscript{111}

The theme of consent is very clearly expressed here, that of representation follows on from the very notion of \textit{pars valentior}, and the fundamental nature of popular power lies at the root of both. What we need to examine now is the distribution of authority, or in other words the way representation works politically, which as we have seen means in terms of legislation.

A legislator of this sort may act as such directly or he may expressly delegate one or a number of other people to be responsible. There could be as many of these delegations as the legislator wished, as long as it was established that the individual or individuals mandated were only acting on the authority of the chief legislator. Thus the legislator, or the whole body of citizens, elects prudent men, on whom the job of drafting the laws devolves. These men are to be 'the representatives of the whole body of the citizens, and of their authority': they will be a body of magistrates, \textit{vicem et auctoritatem universitatis civium representantes}.\textsuperscript{112} In this way, human power operates at all levels of political life by means of representation. This is confirmed by the doctrine of \textit{valentior pars}, a formulation which echoes canon law's \textit{major et sanior pars} in taking account of the actual realities of representation and of its links with the original statement of the popular source of sovereignty: \textit{pars valentior . . . totam universitatem representat}.\textsuperscript{113}

From this standpoint, the election of \textit{prudentes} remains subordinate to their competence, but it is the people, who elect them, who are the judges of their competence. Representation in its symbolic sense does not figure here at all: the word is used in its full sense. For if the people is indeed the whole body of citizens, a citizen in the political community is 'one who participates in the government or the deliberative or judicial function, in accordance with his rank'.\textsuperscript{114} This is the level at which Aristotle's influence on Marsilius is most marked: he uses the Aristotelian argument that the multitude is a better judge than a small number.\textsuperscript{115} But for Marsilius this 'multitude' is not simply any group (as it had been for his predecessors – St Thomas, Peter of Auvergne, and, first of all, Albert the Great): here once more the definition

\textsuperscript{111} \textit{Defensor pacis}, i.xii.3: '\textit{legislatorum seu causam legis effectivam primam et propriae esse populum seu civium universitatem, aut eius valentiorem partem per suam electionem seu voluntatem in generali civium congregatio per sermonem expressam, praeceptentem seu determinantem aliquid fieri vel omittit circa civiles actus hominum sub poena vel supplicio temporali}'.

\textsuperscript{112} \textit{Ibid.}, i.xiii.8; and cf. Quillet 1971, pp. 119ff.

\textsuperscript{113} \textit{Defensor pacis}, i.xii.5: '\textit{pars valentior . . . totam universitatem representat}'.

\textsuperscript{114} \textit{Ibid.}, i.xii.4: '\textit{Civem autem dico . . . eum qui participat in communitate civili, principatu aut consortiato vel iudicativo secundum gradum suum}'.

\textsuperscript{115} \textit{Politics}, iii, 1281 b–1282 a.
of the political community provides the key to understanding the doctrine of representation and of the *valentior pars*. The community, as we have seen, is the people or the whole body of the citizens. But only those with specific political responsibilities are defined as citizens. It is not to be supposed that the numerical majority of members of the community are in that position, especially if women and children are excluded from that totality, and if the definition of a citizen is matched by particularly strict rules of membership—rules based on rank, position, function and so on. Leaving aside slaves, where does this leave the *banausii*? So while the *valentior pars* may be both qualitative and quantitative, even quantitative in this context does not mean simply the largest number. The 'people' have to be separated into the *vulgus*, sunk in their daily work, and the *honorabilitas*, which also includes the priests, although they do not play any part in government or council. When we remember that the rest of the citizens have to be of 'a certain rank' we can also exclude all the artisans and the peasants. In fact there is only a small number of citizens remaining who satisfy the criteria for membership of the *pars valentior*. Yet although this might appear to be a disguised return to an oligarchical system (disguised, because Marsilius severely condemns such systems in the name of democratic principles) oligarchy is in fact judged by other criteria. Nor is it really admissible to see the *valentior pars* as a symbol of the people: it is in fact the very opposite of that, its constituent body. The quantitative criterion should be clear enough now not to be misleading: *mutatis mutandis*, it is an adaptation of the *major et sanior pars*. In any event, Marsilius does not seem very interested in the arithmetical aspect of the constitution of the *valentior pars*, frequently saying that it can be 'one or many'. This is why, by successive stages of delegation, the representative principle and its workings enable Marsilius to describe the prince himself as *pars valentior*, since it is the whole people which is expressed through him. If the prince is an Emperor, the *valentior pars* quite legitimately becomes the seven Electors, without contradicting the theoretical foundations of popular sovereignty. The prince, or the Emperor, can use the authority of a delegation from the legislator to assert his power; if his power is absolute, that is precisely because it comes from such a delegation. Hence in *Defensor minor*, for instance, one comes across phrases like 'There is, similarly, according to human law, a legislator— to wit, the whole body of citizens or its weightier part, or again the supreme Roman prince who is called emperor.'

116. XII.9: Jeudy and Quillet (eds.) 1979, p. 280: 'Est etiam similiter secundum legem humanam legislator, ut civium universitas aut eius pars valentior, vel Romanus princeps summus imperator vocatus.'
At the centre of Marsilius’ doctrine of the *valentior pars*, then, lies the idea of representation by delegation; and the form he prefers is that of the elective monarchy, to which he devotes many pages of the *Defensor pacis*. Obviously he did not find the concept of popular sovereignty in the least incompatible with the unity, or even the unicity, of power.

When these principles are applied to the Church, the most innovatory aspect of Marsilius’ thought lies in his attempt to define the General Council and set it in opposition to the *plentitudo potestatis* of the papacy. The conciliar theme, in fact, is entirely centred upon the idea of consent and representation. The Church is the body of the faithful (*universitas fidelium*); the council is composed of members who represent it. The same process which leads to the representation of the whole body of citizens by their ‘weightier part’, whichever form that takes, reappears in the representation of the whole body of the faithful by their ‘weightier part’. As *congregatio fidelium*, the Church is represented by the General Council: this is representation by delegation again. The council is composed of elected priests and laymen, who are mandated by the members of the universal Church to settle questions about matters of faith. The rights of the faithful of the universal Church are thus entrusted to the ‘weightier part’ of the council. In the event of disagreement among the members of the ‘weightier part’ then it is the major et sanior pars which prevails, for Marsilius has no hesitation about borrowing the formulation from canon law and using it on several occasions.

The reason for this similarity in procedure between political and religious communities is that by considering the Church as *corpus mysticum*, or as a moral person, it is possible to apply the same rules to it: the legislator thus becomes the ‘faithful human legislator’, and the same political structures enable the *pars valentior* of the faithful to represent the whole body of the faithful citizens. Political society, therefore, considered as a *persona ficta*, as *populus*, provides a set of rules which can also be applied to the Church, so that the representative principle, along with consent and election, can play its full part in the constitution of the General Council. Just as the *universitas civium* delegates its authority to the *pars valentior*, so the *universitas fidelium* entrusts its rights to the *pars valentior* of the faithful.

William of Ockham’s conception of community has already been touched upon: the same nominalist standpoint colours his idea of representation.

Ockham rejects the notion of collective personality or the artificial moral person: he has similar reservations about representation. He asks what reality outside the soul it corresponds to. No body of people, whether political, or religious, or even the Church itself, can be an artificial person, he writes in the context of the dispute on evangelical poverty, in reply to the arguments put forward by John XXII, in the *Opus nonaginta dierum*:

For if the Order of Friars Minor is a represented and imaginary person, then by the same argument the Church and *any community* whatever must be a represented and imaginary person, which is absurd: for that which is merely represented and imaginary is a creature of fantasy and has no being in anything outside the mind. But the Church is no creature of fantasy with no existence outside the mind, therefore it is not represented and imaginary. The argument can be confirmed on the following lines: either the Church exists outside the mind, or it exists only in the mind, or it is a composite being, partly in the mind and partly outside it. First, then, if it exists only in the mind, or if it is a composite being partly in the mind and partly outside it, then it cannot have any reality or jurisdiction; and to say this of the Church is impious and blasphemous. On the other hand, however, if the Church exists outside the mind, then it is either one thing or several; and whether it be one thing or several it is not a represented and imaginary person, nor by the same argument is the Order of Friars Minor such a person.¹¹⁹

For Ockham, in fact, *repraesentare* is essentially part of the process of knowledge: ‘To represent is to be that by which something is known, as something is known in the process of cognition.’ In this sense, God represents all things, because his essence is the knowledge of all things. But he represents them only to himself, since he alone knows himself. In a secondary sense, the image represents that which it depicts; and in the third sense *repraesentare* means that which causes knowledge as an object does. Consequently the *repraesentativum* is that which, once known, can, as a partial cause, evoke the memory of a known thing, for example its image or trace. Also Ockham thinks of the *fictum* as a mental representation of

¹¹⁹ Sikes, Bennett and Ofier (eds.) 1940–, vol. n, p. 568 (*Opus nonaginta dierum*, ch. 62): ‘Quia si Ordo Fratrum minorum est persona represtentata et imaginaria, eadem ratione ecclesia et quaelibet communitas esset persona represtentata et imaginaria, quod est absurdum, quod enim est tantum represtentatum et imaginariurn est fantasticum, et non est in re extra animam. Sed ecclesia non est quid fantasticum non existens extra animam, ergo non est persona represtentata et imaginaria. Confirmatur: Quia aut ecclesia est extra animam, aut in anima tantum, aut aliquid compositum ex ente in anima et ente extra animam. Si est in anima tantum, vel aliquid compositum ex ente in anima et ente extra animam, ergo nullum reale nec jurisdictionem realem potest habeare: quae dicere de ecclesia est impium et blasphemoum. Si autem ecclesia est extra animam vel ergo est una res, vel plures: et sive sit una sive plures, non est persona represtentata et imaginaria. Ecclesia ergo non est persona represtentata et imaginaria; et eadem ratione ordo Fratrum Minorum non est persona represtentata et imaginaria.’
something that exists, or that can exist, although in the Dialogue he draws a
distinction between *fictum* and *figmentum*, the latter referring to the mental
representation of an impossible thing such as a chimera.\(^{120}\)

Given, then, that the idea of representation implies a conception of the
whole and its parts, since it is a process which in one way or another involves
taking the part for the whole, it becomes clear why Ockham regards this
notion of the whole as metaphorical, and therefore improper: 'In another
sense it is taken to mean something that is common to a number of other
things, as the genus is said to be a whole with respect to the species and the
species with respect to its individual members.'\(^{121}\) It is therefore always
incorrect to speak of the whole of a community. Two separate senses of the
word 'part' need to be distinguished: the first sense refers to the essential
part, the essence of a whole, without which the whole could not exist; the
other is the integrant part. But whereas the first cannot constitute a
complete being when it is separated from the whole, the integrant part,
despite being incomplete as a part, can nevertheless be an *ens completum*
because it can exist on its own in the genus even when separated from the
whole.\(^{122}\) The parts of a community clearly come under the heading of
integrant parts, which makes it difficult to see how they could, without
absurdity, be taken for the whole. This view is confirmed in Ockham's
commentary on the first book of the Sentences: in response to the question
whether the universal is really separate from the individual thing, he
concludes his comment as follows:

Accordingly my answer to the question is that there is not in the individual some
universal nature which is really distinct from the contracting difference [or
principle of individuation], for no such nature could be located there unless it were
an essential of the individual itself; but there is always a proportionality between the
whole and the part, such that if the whole is singular and not common, every part is
likewise singular proportionally, for one part cannot be more singular than
another. Either, therefore, no part of the individual is singular or every part is; but
the former alternative is false, therefore every part is singular.

And finally, on the same topic, but as concerns the relation of the part and
the whole: 'but between whole and part, as between subject and accident
[since the integrant part of a being cannot be its essential part] there is
proportionality such that if one is singular so will the other be: therefore

\(^{120}\) Baudry 1958, pp. 93, 234; Ockham, *Quodlibet iv*, q. 3, and *In I Sent.*, d. 3, q. 9 b.
\(^{121}\) Baudry 1958, p. 272; Ockham, *Summa Logicae* i, c. 35: 'Aliter accipitur pro aliquo communi ad
multa sicut genus dicitur totum respectu specierum et species, respectu individuorum.'
\(^{122}\) Baudry 1958, p. 188; Ockham, *Quodlibet iv* and *Expositio Aurea*, fols. 17b, 37 d.
every such thing is singular and consequently not universal'. In other words, the accidental, or integrant part cannot be taken for the whole.

This set of attitudes would prevent the 'invincible doctor' from accepting, for instance, Marsilius' conception of representation, and the notions both of pars valentior, and of major et sanior pars. 'The whole principle of legal substitution, and the transmission of sovereignty that results from representation, is completely contradicted' as Lagarde puts it; 'Collegial structure adds nothing to the reality of things'.

Is Ockham's philosophy therefore totally opposed to representation by delegation? There seems to be a constant tension in his work between that and the theme of unanimous consent required by his individualist perspective, and supported by his literal interpretation of Quod omnes tangit, to the point where Bartolus himself responds to his criticism of the conception of the community as a moral or fictitious person, and its implications, by saying: 'The philosophers tell us there is no real difference between the whole and its parts, and this is true in the proper sense of actual reality; nonetheless we believe it is essential for us jurists to sustain the juridic fiction which treats the universitas as a reality quite distinct from its individual members.'

Ockham exposes the limits of this sort of substitution, but without rejecting the idea of representation, which seemed to him to be well enough suited to the normal exercise of political and religious power. He does not question the representativeness of any particular organ, such as Emperor, Pope or General Council, but he argues that they are subordinate to the consent of those concerned, taken individually, as autonomous persons enjoying specific rights and freedoms. Duns Scotus had stressed the importance of consensus and electio in the delegation of political authority, as an agreement reached between strangers (by which he meant people belonging to different families) can only perform its constitutive role if it expresses the mutual consent of everybody. And Ockham's 'elucidations', whatever else, do emphasise the ambiguities in the idea of representation by delegation and in the majority principle, and the

123. Brown and Gál (eds.) 1970, pp. 158–9 (d. 2, q. 5): 'Ideo dico ad questionem quod in individuo non est aliqua natura universalis realiter distincta a differentia contrahente, quia non posset ibi poni talis natura nisi esset pars essentialis ipsius individui: sed semper inter totum et partem est proportion, ita quod si totum sit singulare non commune, quaelibet pars eodem modo est singularis proportionaliter, quia una pars non potest plus esse singularis quam alia: igitur vel nulla pars individui est singularis vel quaelibet; sed non nulla, igitur quaelibet . . . sed inter totum et partem, similiiter inter subjectum et suum accidens . . . est talis proporcion quod, si unum sit singulare reliquum erit singularis: igitur omnis talis res est vere singularis et per consequens non est universalis.'


unavoidable difficulties involved in the unanimity of *consensus*. That emphasis reveals the perplexities involved in the sharing and distribution of power at the end of the middle ages. It shows too that there was, in the platonic sense, a ‘mixing’ between the wisdom of councillors or representatives or lawmakers with their capacity to represent the whole body of citizens, as if it went without saying that it is the best who are appointed to represent all the members of social group. What is involved here is not so much a movement towards ‘populism’ as an indication that the ethical ideal, which sees political society in moral terms, still permeates the discourse, even though that discourse, inaugurated by Marsilius of Padua, may now be regarded as properly ‘political’ in character.

Nicole Oresme’s position on these issues is interesting. Strongly influenced by Marsilius, he sees the multitude as the foundation of political power; he also insists that it must be a ‘reasonable multitude’. And he does not hesitate to say that royal power ‘must be less than that of the whole multitude, or its weightier part’. The power itself is controlled by laws, and one of the council’s functions is to ensure that the power is kept within reasonable limits. That he does go as far as to say that councillors represent the reasonable multitude, the whole body of the citizens, can be seen from a number of his glosses on the *Politics*. As for example in Book VI, where he comments on the institution of the Ephors: first he explains that it is an institution in a regime where the multitude controls the ‘sovereignty of the polity’, not just any multitude, as in ‘democracy’, ‘but the multitude and universal congregation of all the princes or officers and principal citizens’ which, as such, ‘has sovereign dominion’. This multitude corresponds to the *universitas civium* of Marsilius, or to his *valentior pars*, and to illustrate what he means, adds that ‘such an arrangement is somewhat like the general assembly of the masters of the university of Paris’. Council here is being used in the sense mentioned above (pp. 545-55), of an elected assembly which acts through representation by delegation and, in theory at least, on the basis of the unanimous consent of the citizens. Yet for all this we know that Oresme shows a marked preference for what he terms ‘royal polity’, that is, royal government: however he does not hesitate to assert that ‘perhaps it is expedient for the reasonable multitude, or part of it, to have this power’; royal power, in other words, whatever its origin (and he is quick to state his preference for an elective monarchy in other parts of his work), must be ‘counselled’ by a reasonable multitude, meeting in an assembly or in council. But he goes further than this when he makes ‘the king and his close

council... a small part of this multitude'. This is clearly far removed from any notion of royal absolutism, and nothing appalled Oresme more than government by a tyrant who prevented the functioning of the assemblies appointed by the reasonable multitude. The reason for describing the ‘king and his close council’ as ‘a small part of this multitude’ is that they work for the common good, as does the multitude which ‘knows best how to consider and order everything that is good for the public realm’. Oresme sees in this an illustration of the principle of _Quod omnes tangit_ : ‘And also, that which is done and approved by all is stronger and more stable, more acceptable and more agreeable to the community, and provides less opportunity for murmur or rebellion than there might otherwise be.’ These principles were to be applied equally to the government of the Church, which is why the pope’s power should not be tyrannical, and should not exceed that of the General Council.

The next question concerns how and when such a multitude should be assembled. It could, for example, be summoned for a period as the need arose, as the councils were, or at all events at regular intervals; it could be summoned both by those whose office or function it was, and by those who composed the council; to which Oresme adds that ‘in an aristocracy and a kingdom the chief princes have the power to call these people together, and they must do so whenever circumstances require it and it is possible, or when the time for one falls due.’ Finally, perhaps to moderate the impact of his proposals, he explains: ‘I say all this without insistence, except that it seems to me to follow from the teachings of Aristotle.’

128. Menut (ed.) 1970, p. 274 (fols. 231 c–232 b): ‘Il me semble que en ceste maniere ii. choses sont a considerer: une quele chose doit avoir ou a qui appartient la souveraineté de la policie; l’autre est posé que ce est la multitude, par qui et comment elle doit estre assemblée . . . Et en democratia la multitude populaire tient la souveraineté . . . Mes en commune policie et en aristocracie la multitude non pas la populaire mais la multitude et congregation universele de tous les princeys ou offices et des principalz citoyens a la souveraine domination et la correction ou altération des particuliers princeys ou offices et le ressort ou cognaisance des tres grandes questions, et a elle appartient la reformation de la policie, et composer ou muer ou approuver ou accepter les loys . . . Et tele chose est aucunement semblable a l’assemblee general des Maistres de l’Etude de Paris. Et quant est en policie royal encor par aventure est il expedient que tele multitude raisonnable ou partie de elle ait ceste puissance . . . car toute ceste multitude de laquel le roy et son familier conseil sunt une petite parties sait miex considerer et ordener tout ce qui est bon pour la chose publique. Et aussi, ce que tous funt et approuvent est plus ferme et plus estable, plus acceptable et plus aggreable a la communite, et donne moins de occasion de murmures ou de rebellion que se il estoient autrement . . .

‘Quant au secunt point comment ceste multitude doit estre assemblée . . . aucune foiz en aristocracie et en royaume, les principalz princes ont puissance de faire ceste congregation, et la doivent faireoutes foiz que les cas le requirerent et il est possible ou quant il sunt requis duement. Et tout ce je dis sans affermer, fors en tant qu’il me semble que l’en devroit ainsi dire selon la doctrine de Aristote.’
Oresme puts forward similar arguments in his long discussion of the advantages and disadvantages of hereditary and elective monarchy: his own position, in which many distinctions are drawn, would take too long to expound here. For present purposes it may suffice to mention one of the arguments used to prove the superiority of elective monarchy. The former 'is made by the better part of the whole community, expressly or by tacit consent, or by custom'. This is Marsilius' argument, repeated almost word for word.

Oresme is clearly well aware of the real issues that underlie the idea of representation by delegation, and of the problems raised by the interpretation of the 'dominant part' and unanimous consent; his preference for royalty does not prevent him from mentioning the notion of major et sanior pars in connection with the law of 'democracies', as well as the practice of drawing lots in cases where opinion in the assembly is evenly divided. On the first issue, the major et sanior pars, which he translates as 'the greater and sounder part', Oresme’s interpretation is that it is not in any way majoritarian, and in this he is directly following canonistic tradition. On the second, the case of open conflict between equally divided parts of an assembly in a 'democratic' regime, he comments on Aristotle’s recommendation that lots should be drawn, and compares that to 'a game of odds and evens, or the method of choosing a twelfth night Bean King'. A royal government is much to be preferred, because in circumstances like that one can 'refer the problem to the sovereign prince'. It is possible, however, to imagine a situation even then when 'the laws appear contradictory, the councillors cannot reach agreement, and the king is perplexed': and in that situation drawing lots is the only answer, as Roman law and the 'holy Doctors' both attest, as the evils that arise out of discord, such as sedition, disturbances and corruption in the 'policie' are thus avoided.

Oresme's doctrines demonstrate very clearly the ideal asymptotic convergence between the representative system in its proper sense and the predominance accorded to wisdom: his representatives must be boni viri, and the prince must be the most excellent of them all, and yet they are simultaneously, and without contradiction, representatives of the 'people', the 'reasonable multitude'. The method of their appointment has to take account of both aspects, and reconcile consent, election and the common good. This is the perspective in which the doctrines of council must be seen,

129. Ibid., p. 109 (fol. 65 c–66 a): 'Item, election de lignage quant a ce est faicte ou fu faicte par la meilleur partie de toute la communite expressement ou par consentement taisible ou par coutume.' Cf. Marsilius, Defensor paix, 1.xvi.
and the various forms of representation and delegation, as they gradually came to take shape at the end of the middle ages under the twofold influence of Aristotelianism and of Roman law and canonical literature. This is without doubt because for most of the theorists the principle of representation did not in any way imply the rule of the majority, as Pierre d’Ailly and Jean Gerson can still point out at the turn of the century, both in terms of political power, and the representativeness of the council.

It only remains to consider how far this is still true of the political and ecclesiological thought of Nicholas of Cusa. In this context, the preface to Book III of his *De Concordantia Catholica* is very clear:

And thus by a kind of instinct the authority of the wise and the subjection of those who lack wisdom come harmoniously together by virtue of the common laws, of which the wise themselves are the principal authors, guardians and executors, while all the others concur in this and consent to it by voluntary submission.\(^{130}\)

Thus from the outset the basic conditions of political representation are established.

But law must be made by all those who are to be bound by it, or by the greater part in virtue of election by the rest; for it is intended to promote the common good, and that which touches all should be approved by all, and a common decision is taken only by the consent of all or of the greater part.\(^{131}\)

This is admittedly a somewhat heterogeneous text, as it takes over Marsilius’ doctrines of representation, consent and delegation, but also links them closely with a concern for the common good: the consent of everybody is fundamental, of course, but is it not primarily the justification of the voluntary subjection of all to a few or to a single man? In any event, the ‘wise’ or the virtuous are the people who make the laws, in accordance with natural law, which is a concept that occupies a central place in Nicholas of Cusa’s framework. The crux of his doctrine lies in the harmony which must exist between the wise men who legislate for the common good and the people who give their consent. The whole of Book II of the *De Concordantia* develops the central thesis of *consensus*, and the *electio* which is its corollary, and does so in the context of religious institutions. There are

\(^{130}\) III, Prooemium, 275: *Et sic naturali quodam instinctu praesidentia sapientum et subiectio insipientium redacta ad concordiam existit per communes leges, quarum ipsi sapientes maxime auctores, conservatores et executores existint, aliorum omnium ad hoc per voluntarium subiectionem concurrente assensu.‘

\(^{131}\) III, Prooemium, 276: *Legis autem latio per eos omnes, qui per eam stringi debent, aut maiorem partem aliorum electione fieri debet, quoniam ad commune conferre debet, et quod omnes tangit, ab omnibus approbari debet, et communis diffinitio ex omnium consensu aut maioris partis solum elicitar.‘
other works, or parts of works, of his, however, which display a much more traditional approach to this area, such as Chapter xiv of Book ii, where he writes:

Every ordinance is rooted in natural law, and if that law is violated the ordinance cannot be valid . . From this it follows that, since natural law is naturally inherent in reason, every law is of the same nature and origin with man. That is why we choose the wisest and most outstanding men as our rulers, so that they, endowed as they are with wisdom and prudence in their unclouded reason, will enact just laws . . . That is why those who are most outstanding in reason are the lords and rulers of the rest, but not by means of coercive law or judgment enforced upon unwilling subjects.

Election and the consent of subjects, in other words, is based upon the ethical criterion of wisdom and prudence. Men submit voluntarily by a sort of implicit or explicit recognition of the superiority of the wise over the others, not by constraint. By submitting in this way they give those who govern the power to command, ‘a power which prevents subjects from doing evil, and directs their freedom towards the good by fear of punishment’. The power to command obliges subjects to be virtuous, and punishes them where necessary. This power, Nicholas adds, ‘is founded upon concord alone and the consensus of the subjects’. Yet if it is true that ‘men naturally possess equal power and equal freedom’ the real power of a prince or a law must necessarily be different from, or at least not equivalent to, the power possessed by those who chose them. Nicholas of Cusa is more concerned here with the agreement that must exist among men than with the equality of their freedom or power. The primary task is to find agreement, and this cannot be achieved except in the form of consent, unanimity and election. As has frequently been pointed out, this involves a contract, but one still within the limits of pactum subjectionis rather than pactum associationis. It is a solution which would not have been rejected by Aristotle: consent is given to the general good, and to those who are meant to incarnate it, in a well-ordered politeia.

Nicholas uses the idea of representation itself at different levels and in

132. 11. xiv. 127: ‘Omnis constitutio radicatur in iure naturali, et si ei contradicit, constitutio valida esse nequit . . . Unde cum ius naturale naturaliter rationi insit, tunc connata est omnis lex homini in radice sua. Ideo sapientiores et praestantiores alii rectores eliguntur, ut ipsis in sua naturali clara ratione sapientia et prudentia praedita iustas leges eliciant . . . Ex quo eventit quod ratione vigentes sunt naturaliter alicorn domini et rectores, sed non per legem coercivam aut iudicium, quod redditur in invitum.’

133. Ibid.: ‘Unde cum natura omnes sint liberi, tunc omnis principatus, sive consistat in lege scripta sive viva apud principem, per quem principatum coercentur a malis subditet et eorum regulatur libertas ad bonum metu poenarum, est a sola concordantia et consensu subjectivo.’ Cf. the continuation of this passage in n. 71 above.
varying degrees: arguably the whole of his thought is concerned with it, in the sense that any reality is the 'figure' of a higher reality and bears its impression. This is the indispensable foundation of concord, and a necessary presupposition of a hierarchical universe, and we should bear in mind that it is the main sense of representation for Nicholas of Cusa. His use of the concept politically is the same in all major respects as Marsilius of Padua's. It does seem, however, at least in the De Concordantia Catholica, that the two different senses of symbolic and delegate representation interpenetrate one another somewhat. Between petra and Petrus for instance Nicholas sees 'several degrees of representation and signs, from the representation and the least clear figure to the stone which is the truth, passing through less uncertain and truer intermediaries'. This clearly involves the idea of symbolic representation. But he adds at once that the Church, which is one, 'can only be represented and signified by an assembly which is one.' Obviously some idea of delegate representation is involved here, yet it seems to be impossible to dissociate it completely from symbolic representation, which introduces some degree of ambiguity. 'From that and from the foregoing it manifestly follows that anybody who rules over others figures the collectivity of his subordinates.' And further on he writes: 'Whence also it follows clearly that the more particular the ruling position is, the clearer and the less ambiguous the representative character assumed by the ruler will be.'

In the preface to Book III of the De Concordantia, he proposes a set of reforms designed to restore the grandeur of the Empire, and in these too the theme of representation is central: first, as we have seen in relation to laws laid down 'either by all those they affect or by the greater part of them'; and second at the level of government, in that his preference is for an elective monarchy:

in order that the best man, by the will of all and serving the common interest, may at all times rule over the state, there is no better arrangement than to provide on each occasion for election by all or by the greater part or at least by those leading men who represent all the subjects with their consent.

134. ii.xviii.158: '... inter petram et Petrum sunt plures graduationes repraesentationum et significationum, quousque in petram deveniatur a confusissima repraesentatione et figura usque in veritatem per media certiora et veriora. unam autem ecclesiam significare et representare non potest nisi unus aut una congregatio'; and ii.xviii.163: 'Ex his et superius tactis manifestum est, quia quisque praeidens figurata generalitate subditos figurat... Deinde etiam ex hoc manifestum quod quanto particularior est praeidentia, tanto certior repraesentatio, quae apud ipsum praesidentem est et minus confusa.'

135. iii. Prooemium, 283: 'ut optimus omnium voluntate ad commune conferens praesit rei publicae semper, non est melior quisquam statuendi modus quam per novam electionem omnium aut maioris partis vel saltum eorum procerum, qui omnium uoces ex consensu habent'.
This is a sort of equivalent to Marsilius' *pars valentior*, embodied historically in the form of the imperial electors.

Among the practical measures he recommends, Nicholas includes the need for the prince 'to hold a daily council made up of delegates from all parts of the subject provinces, elected with the consent of his universal council'. Counsel and council have the same meaning for Nicholas of Cusa because of the way representation by delegation works:

the prince should have accomplished men from all those subject to him, elected for this purpose from every part of his kingdom, to assist the king in daily council. These councillors are to represent all the inhabitants of the realm . . . They must continually defend the public good of those whom they represent; they must give their advice and act as the due means whereby the king may govern and influence his subjects.136

In order to bring the recommended reform into effect, one of the first measures the Emperor should take is the establishment of an annual assembly and the appointment of judges throughout the provinces. And in each one there should be three judges, drawn from the three estates: clergy, nobles and the people. In the event of disagreement, the majority opinion should prevail.137

In the general economy of the *De Concordantia*, the theme of representation is only one of the forms taken by harmony 'that by which the Universal Church agrees in one and in many, in one Lord and many subjects. And from the only prince of peace, whose harmony is infinite, flows the sweet harmony of concord, by degree and succession, to all the subordinate, united members, so that the one God is all in all.'138 Everything in the universe represents, in its way, *secundum gradum suum*, unity; if it is true that human society, the highest figure of which is the *Ecclesia coniecturalis*, includes within itself structures and institutions which are both religious and political, the latter modelled on the former, the working of representation by delegation will enable the different orders or members who compose the one body, *corpus mysticum*, of the Church, to function harmoniously.

136. iii.xii.378: 'Habere quippe debet princeps ex omnibus de subiectis viros perfectos ad hoc de omni parte regni electos, qui in cotidiano consilio assint regi. Tales quippe consiliarii vicem gerere debent omnium regnicolarum . . . Et hii tales consiliarii eorum, quos represeant, bonum publicum debent continue defensare et avizare et medium proportionatum esse, per quod rex gubernet et influat sibi subiectis . . . Debent quidem isti consiliarii in universali congetatione regni concorditer ad hoc deputari . . .'.

137. Cf. iii.xxxii.508 and xxxv.519 (for the annual assembly); iii.xxxiii.510–11 (for the appointment of judges).

138. i.i.4: 'Concordantia enim est id, ratione cuius ecclesia catholica in uno et in pluribus concordat, in uno domino et pluribus subditis. Et ab uno infinitae concordantiae rege pacifico fluit illa dulcis discordantialis harmonia spiritualis gradatim et seriatim in cuncta membra subiecta et unita, ut sit unus deus omnia in omnibus.' See also Haubst 1971 and 1972; Gandillac 1972.
Development: c. 1150–c. 1450

together. The *De Concordantia* concludes with a grand metaphor which portrays it as a living organism, the very life of which depends on the harmony of its members. The ‘ecclesiastical republic’ has the priesthood as its soul and the Empire as its body, its organs are minutely described and its functions harmoniously divided; it is perhaps the last representation of the *respublica christiana* on the medieval pattern. Representation by delegation plays an important part in the hierarchy of resemblances; yet the Church, defined as *corpus mysticum*, has only a distant similarity to the *Ecclesia ipsa*: it is only a sign, a conjectural approach, and in this perspective representation is only a figure of the ‘filiation’ to which the people of the faithful aspire. Empire and Church are figures, representations of a community which is now no longer the Aristotelian *politeia*: it is a *universitas fidelium* ‘founded on the theological virtues’.