THE FOUNDATIONS OF MODERN POLITICAL THOUGHT

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The Renaissance

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both The Pastoral Eye and John of Viterbo in concluding that the highest
duty of any ruler must always be to serve as a model of probity, avoiding
at all costs the temptations of fraud and deceit. This is said to apply even
in time of war, for ‘one should place no credence in those who say that
one ought to purchase victory over one’s enemies by trickery as well as
force’ (p. 268). And in time of peace the maintenance of ‘a proper faith in
God and towards one’s fellow-men’ is said to be the greatest virtue of all,
and ‘the sum of all the others’, since ‘without good faith and loyalty there
can be no upholding of what is right’ (p. 394).

This concentration on the issue of political virtue was destined to
become one of the most characteristic features of later Renaissance
political thought. Two and a half centuries later, Machiavelli devoted his
most notorious chapters in The Prince – the chapters on ‘how a prince
should govern his conduct towards his subjects’ – to a consideration of
precisely the same range of themes (p. 90). Like Latini and his predeces-
sors, Machiavelli first asks whether the prince must actually possess, or
only appear to possess, ‘the qualities deemed to be good’ (p. 91). Then he
asks whether princes should be generous or parsimonious, cruel or com-
passionate, and finally whether they should always seek to honour their
word (pp. 92, 95, 99). Again like the earlier writers, Machiavelli agrees
that the central question at issue is how a prince can best hope to ‘keep
his state’, and how far a life of political virtue will in fact be conducive to
this end. The sole difference between his account and those we have just
examined is that, whereas Latini and his predecessors insist that the dic-
tates of prudence and virtue will always turn out to be the same, it is at
this point that Machiavelli introduces his crucial disjunction between the
pursuit of virtue and the achievement of success in political affairs.

Scholasticism and liberty

The previous chapter attempted to trace the process by which the
traditional study of the Ars Dictaminis gradually evolved in the course of
the thirteenth century into a political ideology capable of defending the
City Republics and their threatened liberties. This chapter will be con-
cerned with the way in which, shortly after this time, the same ideological
needs began to be met in a contrasting but no less influential style through
the introduction into Italy of the themes and methods of scholastic
political thought.

The reception of Scholasticism

The role of scholasticism in the development of Renaissance political
theory has been much debated. Ullmann and others have recently argued
that scholasticism ‘ushered in humanism’, and have even claimed to find
a direct line of descent running from the political theories of Marsiglio
to those of Machiavelli (Ullmann, 1972, p. 268; cf. also Wilks, 1963, p.
102). By now it will be evident, however, that this is to trace a misleadingly
straightforward path, since it overlooks the crucial contribution made to
the emergence of humanism by the earlier traditions of rhetorical instruc-
tion we have just examined. Nevertheless, the suggestion constitutes a
valuable corrective to the usual belief – expressed for example by Hazelt-
tine – that scholastic legal and moral philosophy made no contribution at
all to ‘the great intellectual awakening’ associated with the humanists,
since its practitioners remained entirely ‘aloof from the spirit and purpose
of the Renaissance’ (Hazeltine, 1926, p. 739). As the present chapter will
attempt to show, the belated yet brilliant flowering of scholastic studies in
the Italian universities in fact made a contribution of fundamental
importance to the evolution of Renaissance political thought.

The foundations of scholasticism were first laid with the gradual
rediscovery of the main corpus of Aristotle’s philosophical works. A
considerable number of Aristotelian texts, often preserved in Arabic
translations, began to filter into Europe through the Caliphate of Cordoba early in the twelfth century (Haskins, 1927, pp. 284–90). Due to the efforts of such scholars as Bishop Raymond of Toledo, these soon started to appear in Latin translations, a process which rapidly led to the transformation of the liberal arts courses in most of the leading universities of northern Europe (Knowles, 1962, pp. 188, 191). The first Aristotelian texts to be popularised in this way were the logical works, but by the middle of the thirteenth century the moral and political treatises had also been made available. A partial translation of the Nicomachean Ethics was issued by Hermannus Alemannus in 1243. A full translation of the same text was produced by the Dominican William of Moerbeke later in the same decade. And finally, the first Latin translation of the Politics, again by William of Moerbeke, was completed soon after 1250 (Knowles, 1962, pp. 191–2).

Aristotle's moral and political theory at first appeared not merely alien but threatening to the prevailing Augustinian conceptions of Christian political life. Augustine had pictured political society as a divinely ordained order imposed on fallen men as a remedy for their sins. But Aristotle's Politics treats the polis as a purely human creation, designed to fulfil purely mundane ends. Furthermore, Augustine's view of political society had merely been ancillary to an eschatology in which the life of the pilgrim on earth had been seen as little more than a preparation for the life to come. Aristotle by contrast speaks in Book I of the Politics of the art of 'living and living well' in the polis as a self-sufficient ideal, never hinting at any further purposes lying beyond it which need to be invoked in order to invest it with its true significance (pp. 9–13).

It is thus a fact of overwhelming importance for the development of a modern, naturalistic and secular view of political life that the initial feelings of hostility – and condemnation – which greeted the rediscovery of Aristotle's moral and political writings were not allowed to stand. Instead an attempt was made to effect a reconciliation between the Aristotelian vision of the self-sufficiency of civic life and the more other-worldly preoccupations characteristic of Augustinian Christianity. This movement originated at the University of Paris, where the issues were most eagerly debated by the new teaching orders in the Church. It is true that the Franciscans, and especially Bonaventure, continued to oppose any such syncretic tendencies, but their rivals the Dominicans soon began to devote themselves to the elaboration of an entire philosophical system erected on the twin foundations of Greek and Christian thought (Gillon, 1955, p. 402). The leading pioneer in this development was Albert the Great (c. 1200–80) who was teaching at the University of Paris throughout the 1240s (Gillon, 1955, p. 277). The greatest exponent of the new approach was his pupil St Thomas Aquinas (c. 1225–74) who began to lecture at Paris in the early 1250s, returning there again between 1269 and 1272 (Gillon, 1924, pp. 2–3). By the time of his death two years later, Aquinas had completed all but the third section of his massive Summary of Theology, a complete Christian philosophy founded on what Knowles has characterised as a 'thorough acceptance' of Aristotelian moral and political thought (Knowles, 1962, p. 294).

Discussing The Politicis in his Theology and in his unfinished treatise on The Rule of Princes, Aquinas naturally sought to adapt Aristotle's views on law and civil society to the predominantly feudal and monarchical arrangements prevailing in northern Europe. It was obvious, however, especially to such theorists as Marsiglia di Padua, that Aristotle's own preoccupations were in fact more closely related to the problems of small-scale City Republics such as those of Northern Italy. So it is not surprising to find that, although the Italian universities played no part in the recovery of Aristotle's works, his moral and political philosophy soon came to exercise a powerful influence on Italian political thought (Kristeller, 1961, p. 36).

The influence of the Politics in Italy was disseminated through two main channels. First of all, the Roman lawyers at Bologna, possibly under the influence of the new law-schools in France, began to incorporate the concepts and methods of Aristotelian political theory into their glosses and commentaries. One of the earliest leading jurists to employ this scholastic approach was Bartolus of Saxoferrato. As well as restructuring the ancient law-books, as we have seen, in such a way as to vindicate the independence of the City Republics, Bartolus wrote a series of political tracts which are heavily reliant on Aristotle's Politics both in doctrine and style of argument. This dependence is especially marked in the Tract on City Government, but it is also evident in the Tract on the Guelfs and Ghibellines and in the famous Tract on Tyranny. It seems important to emphasise this point, since it is arguably underestimated even by the leading authorities on Bartolus's works. Ullmann, for example, speaks of the Roman law as furnishing 'the exclusive basis' of Bartolus's legal and political philosophy (Ullmann, 1965, p. 214). And Woolf even declares that Bartolus never regarded Aristotle as 'in any sense a particular authority' (Woolf, 1913, pp. 385–6). Such claims are potentially misleading, however, for Bartolus in fact quotes Aristotle repeatedly throughout his political works, in which the main aim – as Bartolus himself indicates – is to deploy an
Aristotelian theory of political society in order to diagnose and seek to remedy the internal weaknesses of the Italian City Republics.

The other way in which the influence of Aristotle's moral and political theory began to filter into Italy was through direct contact with the scholastic curriculum being taught at the University of Paris. An increasing number of Italian students were attracted to Paris after the middle years of the thirteenth century. Some of them - like Aquinas himself - remained there to study and teach, but others returned home to propagate the tenets of scholasticism, still virtually unknown in the Italian universities. One of the earliest political writers to follow this path was Remigio de Girolami (d. 1319). He studied for the Arts Degree at Paris in the 1260s, where he almost certainly attended Aquinas's lectures. Thereafter he returned to his native Florence, and taught for many years as lector in the Dominican school attached to Santa Maria Novella, where the young Dante may well have been one of his students (Davis, 1957, pp. 74, 81). As well as writing voluminous sermons and commentaries, Remigio produced two political tracts of a thoroughly Thomist and Aristotelian character, both of which he addressed to his fellow Florentines in the wake of the coup of 1301. The first, written in 1302, was entitled The Common Good; the other, completed two years later, was called The Good of Peace (Davis, 1960, pp. 668, 670). A second Dominican moralist who followed the same line of intellectual development was Ptolemy (or Bartolommeo) of Lucua (d. 1327). He too studied at Paris in the 1260s, and he tells us himself in his Ecclesiastical History that he 'very frequently had discussions' with Aquinas (col. 1169). Ptolemy later returned to Italy, where he was eventually appointed Bishop of Tortorella in 1318. His major political work, probably written between 1300 and 1305, boldly took the form of a continuation of Aquinas's unfinished account of The Rule of Princes. Aquinas was assumed throughout the later Middle Ages to have written the whole of this treatise, but in fact Ptolemy was the author of most of the second and the whole of the third and fourth books (p. 270). Finally, the most important political philosopher who helped to import the tenets of Aristotelianism into Italy at this time was of course Marsiglio of Padua. The son of a Paduan lawyer, initially educated at the local University, Marsiglio moved to Paris at an unknown date, stayed there to teach and rose to become Rector of the University in 1312 (Gewirth, 1951, p. 20). As we have seen, his major political work, The Defender of Peace, was completed in 1324. We have already considered the second of the two Discourses into which the book is divided, in which Marsiglio seeks to defend the liberty of the City Republics against the encroachments of the Church. We must now consider the more secular and purely political doctrines of the opening Dis-

The Scholastic Defence of Liberty

As with the rhetorical writers we have already discussed, the fundamental political commitment of all these scholastic theorists was to an ideal of political independence and republican self-government. Marsiglio opens his Defender of Peace by lamenting that 'the Italian natives' of his own day are being 'deprived of the sufficient life', since they are being forced to experience 'the harsh yoke of tyrants instead of liberty' (p. 4). Barolus expresses a similar outlook in his Tract on City Government. He begins by noting that the first regime to be established 'in the city of Rome after the expulsion of the kings' was a republican system 'founded on the body of the people' (p. 417). Then he makes it clear that the same form of government is the one most suited to the Italian cities of his own time. He concedes in Aristotelian vein that 'the question of what constitutes the best kind of rule' cannot be settled without knowing 'the grade of magnitude' of the polity involved, and he admits that 'in a really large polity' it may be necessary to institute the rule of kings (pp. 418, 419, 420). But he is sharply critical of Aquinas's assumption that monarchy is always the best form of government. He thinks there is no doubt that 'in smaller-scale cities the most appropriate type of rule is government by the whole body of the people' (p. 419). And he instancs the city of Perugia (where he spent much of his professional life) as a place where 'the government is at peace, and the city grows and flourishes' due to the excellence of its Republican institutions. The same commitment, involving the same

1 The first Discourse of The Defender of Peace has often been attributed to John of Jandun, one of Marsiglio's teachers at Paris, rather than to Marsiglio himself. (See for example Lagarde, 1948, pp. 31-3 and the references given in Gewirth, 1948, pp. 267 and note.) There are good internal reasons for doubting this attribution, since the arguments of the first Discourse are widely at variance with those of John of Jandun's known political works. (See Gewirth, 1948, pp. 368 et seq.) If my interpretation of The Defender of Peace is valid, moreover, it may be said to supply a further reason for doubting John's authorship. I take Marsiglio's main aim in the first Discourse to be that of amplying and seeking to vindicate the form of popular sovereignty embodied in such Italian City Republics as his native Padua. If this is correct, it seems highly unlikely that John of Jandun - who scarcely knew this politics - can have been the author of the first Discourse. It seems far more likely that Marsiglio - who witnessed his native city pass from Republicanism to tyranny within four years of completing The Defender of Peace - must have been the author of the entire treatise.

2 Cf. also Barolus's insistence at the start of his Tract on Tyranny that, just as tyranny is the worst form of government, so rule by the people (directe regimine) is normally the best (p. 322). For a useful discussion of the ways in which the Italian jurists of the fourteenth century in general supported an ideal of active citizenship, see Riesenfeld, 1966, pp. 246-7.
criticism of Aquinas, is reiterated by Ptolemy in his continuation of The Rule of Princes. Aquinas had started this treatise by distinguishing between 'regal' and 'tyrannical' types of rule, as a preface to his claim that while tyranny is the worst kind of government, hereditary monarchy is the best (pp. 225, 233). Ptolemy prefers to distinguish between 'despotie' and 'political' forms of rule, defining a 'political' regime as one in which the government is 'conducted according to law' and 'on behalf of the main body of the people' (p. 283). This leads him to reverse Aquinas's preference, since it prompts him, as he says himself, 'to include "regal" within the category of "despotie" regimes', and to argue that an elected form of 'political' system ought always to be preferred (p. 391). He admits it may not always be possible to establish such a free and self-governing type of regime, since 'some areas of the world are more suited to servitude than to liberty' (p. 287). But he maintains that in any country where the people 'have virile spirits, courage in their hearts and confidence in their intelligence', such a 'political' system not only constitutes the best but the most natural form of rule (p. 383). He concludes by boasting that this is why 'this type of regime flourishes above all in Italy', a country in which the people prize their liberty so highly that - as he approvingly but rather optimistically asserts - 'no one is able to wield perpetual power or to rule in a tyrannical way' (p. 381).

This preference for Republicanism is underpinned by a new vision of ancient Rome and its history, a vision barely hinted at by the earlier rhetorical writers. The scholastic theorists now begin to think of the Republican period rather than the Empire as the age of Rome's greatest excellence. As a consequence they adopt a new attitude towards the leading figures of the later Republic, especially Cato and Cicero. Previously these men had tended to be seen purely as stoic sages, and hence as models of aloofness from the turmoil of political life. Now they are praised instead as great patriots, as paragons of civic virtue who saw that the liberty of the Republic was in jeopardy and attempted to preserve it from the onrush of tyranny.

Hans Baron has popularised the belief that before the early quattrocento there was no expression of an historical preference for Republicanism in Italian political thought, and hence no appreciation of Cicero's 'civic doctrine' or his commitment to Republican political values. It is arguable, however, that the main elements in this humanist historical consciousness

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1 As Davis, 1967, p. 427, has already observed, some elements of this outlook can be found even earlier, in Latini's account of the fall of the Roman Republic in his Books of Treasure. Latini regards the Catilinarian conspiracy as the beginning of the end of Roman liberty (p. 44). He accordingly glorifies Cato's attack on Caesar's alleged complicity in the plot, treating it as one of his main examples of great rhetoric in action (pp. 348-51). And he praises Cicero not merely as 'the most eloquent man in the world' but also as a great patriot who 'by his great wisdom' and the 'complexion of the people' (p. 44). Davis has used this and other evidence, in a sequence of valuable articles, to challenge Baron's thesis about the originality of quattrocento 'civic humanism'.

2 This counterevidence to Baron's general thesis is the only one acknowledged by Baron himself. See Baron, 1966, pp. 55-57.
strong in a different region, while none is strong enough to prevail over the others" (p. 418).

One of the main concerns of these theorists is thus to ask why the system of
government they so much admire should have proved so vulnerable to
the coming of the despotys. They scarcely pay any attention to the idea – so
prominent in the rhetorical writings we have examined – that the growth
of private wealth may have served as a corrupting political force. They
tend on the contrary to support the view which is often taken to have been
developed for the first time in the early quattrocento – the view that private
wealth, as Bartolus puts it, "tends to promote virtue", since "it tends to
promote magnanimity, which is a virtue, as St Thomas himself agrees"
(vol. 9, p. 117). They strongly agree with the rhetorical writers, however,
that the most dangerous weakness in the City Republics is their extreme
factiousness, their continual discord and lack of internal peace. And they
deploy their Thomist and Aristotelian sources in such a way as to make
this familiar point in a novel and far more emphatic style.

The basic contention they all advance is that the attainment of peace and
concord, pax et concordia, represents the highest value in political life.
One of Remigio's tracts, as we have seen, is actually entitled The Good of
Peace, and opens with the claim that "peace is the chief aim and the
greatest good of the people" (p. 124). Marsiglio similarly stresses the
centrality of peace in the title of his great work, which begins with an elab-
orate apostrophe to 'quarrelling and peace' as the condition most of all
commended to us by Christ and his Apostles (pp. 3-4). Bartolus endorses
the same outlook at several key points in his political works. He starts his
Treaty on City Government by arguing that the basic aim in government
must always be 'peace and unity', and he repeats it in his Treaty on Tyranny
that 'the main aim in a city', and hence the main duty of a just ruler, must
always be 'to maintain the citizens in peace and quietness' (pp. 325,
418).

D’Entrevès in his analysis of The Defender of Peace expresses some
surprise that Marsiglio should have taken this ideal of peace as his starting-
point (D’Entrevès, 1939, p. 50). This ceases to be surprising, however, as
soon as we recall the Aristotelian roots of Marsiglio’s thought, together
with his interest in explaining the loss of liberty in the City Republics of
his own day. Aristotle had already laid it down, and Aquinas had already
repeated, that the preservation of peace provided 'the means to uphold
the good and safety of the people'. Marsiglio simply reiterates this assump-
tion at the start of The Defender of Peace, arguing that good government

1 If this analysis of Marsiglio’s concept of pax is correct, it is misleading of Rubinstein to
claim that in early trecento political thought the concepts of pax et concordia were always viewed as
"the most desirable effects of just government" (Rubinstein, 1958, p. 187). Marsiglio’s argu-
ment seems rather to be that just government is the effect of which pax is taken to be the
precondition. For a full analysis of the role of peace in Marsiglio’s political theory, see
Gewirth, 1951, pp. 94-115.
emphasises that where 'men's contentions and injuries toward one another' are not 'avenged or measured by a standard of justice', the result is sure to be 'the fighting and separation of the assembled men and finally the destruction of the state' (p. 64). And Bartolus devotes the whole of his Tract on the Guelfs and Ghibellines to analysing the problem of endemic faction in the City Republics. He concedes, with an appeal to the authority of Aquinas, that it may sometimes be legitimate to promote a faction if the aim is 'to disrupt a tyranny' and to 'attain a just government' (p. 415). But he argues that where such parties are 'not for the public good' but are merely formed 'in order to remove another party from government', then 'their formation must be straightforwardly illicit', since they constitute the greatest danger to good order and peace (p. 415).

The main question for all these writers is thus to ask how faction and discord can be avoided and peace secured. Here they agree in general terms with the answer given by the rhetorical theorists we have already examined. They insist, that is, that all sectional interests must be set aside, and the good of each individual citizen equated with the good of the city as a whole. The aim is to ensure, as Marsiglio repeatedly demands, that 'the common benefit' is 'aimed at and attained' at all times (p. 72; cf. pp. 5-6, 42). While this is a familiar commitment, however, they often express it in a novel and dramatic style by introducing a deliberate ambiguity into the scholastic analysis of the concept of 'the common good'. The clearest example is provided by Remigio's adaptation of Aquinas, the effect of which is to produce a political doctrine which Kantorowicz has characterised as 'Thomist proto-Hegelianism' (Kantorowicz, 1957, p. 479). Aquinas had laid it down at the start of The Rule of Princes that 'a regime cannot be considered right and just unless it is established for the common good of the people' (p. 224). Remigio manages with a barely visible sleight of hand to convert this doctrine into a fierce demand for civic loyalty, since he treats the idea of acting 'for the good of the city' (pro bono communi) as interchangeable with the idea of acting 'for the good of the members of the community' (pro bono communi) (Rubinstein, 1958, p. 185). He then employs this strongly 'corporationist' commitment, as Davis calls it, as the governing assumption of his argument in The Good of Peace (Davis, 1966, p. 670). The specific question he raises is whether it is justifiable, in order to maintain peace between cities, to overlook injuries done to individual citizens (Davis, 1959, p. 107). He considers the case of someone's property being seized by the citizens of another city, and asks what kind of redress should be sought in such circumstances. The answer he gives is that, since the welfare of the city is of so much greater importance than the rights of any individual member, it may be necessary

in such a situation to overlook the injury altogether if the only alternative is a breach of the peace between the two cities involved.1

As in the case of the rhetorical writers, however, the announcement of this general commitment still leaves the central question begged. How is such a unity between the good of the city and the good of its individual citizens in practice to be established? It is when we come to the treatment of this problem that we find a complete contrast between the scholastic theorists and the writers we have already considered. As we have seen, one of the most characteristic moves made by the rhetorical writers at this point was to focus on the concept of 'true nobility', the aim being to determine the range of qualities we ought to look for in our rulers if we wish to ensure that they are genuinely devoted to the common good. The scholastic theorists by contrast exhibit much less interest in this theme. And when they do consider it, they tend to offer a strongly contrasting point of view. This is evident in Marsiglio's chapter on the election of rulers, but the clearest instance is provided by Bartolus's discussion of the concept of nobility at the end of his commentary on the Code (vol. 6, pp. 114ff.). This takes as its starting-point Dante's claim that virtue constitutes the only true nobility (p. 116). Bartolus concedes that this may be a correct account of what he calls 'spiritual' or 'theological' nobility. A man may be noble 'in the sight of God' simply 'because he is virtuous and is thus saved' (p. 118). But he maintains that, although one should be 'reverent towards the memory of so great a poet', there are two points at which Dante's analysis is nevertheless mistaken (p. 117). He thinks first of all that Dante exaggerates when he insists on divorcing nobility from inherited wealth. As we have seen, Bartolus believes that wealth is capable of promoting virtue. He also believes that 'anything which tends to promote virtue tends to promote nobility'. So he concludes, in line with such conservative moralists as Da Nono, that there must be at least some connection between the possession of riches and the achievement of nobility.2 His other argument is that Dante's account is oversimplified, since it fails to recognise that the concept of nobility is in part a legal one. A woman may attain nobility through marriage, while a man may become a noble simply because 'a prince may choose out of his grace or by the law

1 Pp. 134-5. For the same general commitment, see for example Ptolomy, The Rule of Princes, p. 364 and Bartolus, Tract on Tyranny, p. 373. As Rubinstein has shown, the idea that 'the ruler' and 'the common good' should be the same is also central to the iconography of Lorenzo's famous fresco on 'good government' at Siena. See Rubinstein, 1958, esp. p. 181. The same commitment recurs in other treatises by Remigio as well, notably in The Commune Good. For discussions of this theme — together with extracts from Remigio's treatise — see Egerer, 1934 and Minio-Paluello, 1956.

2 See Bartolus, vol. 6, p. 117. The authorities he cites at this point are Aquinas and Aristotle in the Nicomachean Ethics, BK. IV. For Giovanni da Nono, see Hyde, 1966b, pp. 107-9, and for his views on nobility see Hyde, 1966b and Hyde, 1966a, pp. 64-5.
to confer a patent of nobility upon him' (p. 118). (This happened to Bartolus himself when the Emperor Charles IV made him a count in 1355 - Sheedy, 1942, p. 105.) It follows according to Bartolus that we must be prepared to recognise not merely 'godly' but also 'civil' nobility, 'which has been invented by us to be similar to, and an imitation of, godly nobility' (p. 118). But this in turn means that we cannot simply equate nobility with virtue, as Dante wishes us to do. For this is to overlook the obvious fact that genuine titles of civil nobility may sometimes be acquired or inherited by people who are not intrinsically worthy of them. As Bartolus concludes, we cannot avoid accepting the son of a king as a noble, 'even though he may be reprobate and infamous', since 'that which someone possesses by birth can never be taken away from them' (p. 118).

But the main contrast between the scholastic theorists and the earlier rhetorical writers lies in the type of political advice they think it most appropriate to give. It is clearly assumed by the scholastic theorists - and in the case of Remigio it is explicitly stated - that the arts of rhetoric are of marginal significance in political life, since they offer little more than a training in the techniques of 'verbal adornment' (Davis, 1965, p. 431; cf. McKeon, 1942, p. 23). So the scholastic writers spend little time on the favourite rhetorical pursuit of advising rulers and magistrates on how best to speak, write and generally comport themselves in the most persuasive style. They tend instead to devote their main attention to the machinery of government. They present themselves less as moralists than as political analysts, pinning their hopes less on virtuous individuals than on efficient institutions as the best means of promoting the common good and the rule of peace.

The main danger to peace which they isolate is, as we have seen, the prevalence of faction. So the major reason they propose are all designed to minimise the risk of factional disturbances. It seems important, especially in the case of The Defender of Peace, to stress the centrality of these practical interests. One reason is that Marsiglio's first Discourse has often been discussed - for example by Lagarde (1948) and Wilks (1961) - in virtual isolation from the circumstances in which it was composed. As soon as we focus on its immediate political context, however, it becomes evident that Marsiglio was not merely writing an abstract work of constitutional thought. He was also advancing a concrete set of political proposals which - while he undoubtedly believed them to be valid for all times - were manifestly intended in the first instance to resolve the specific problems of the Italian City Republics. A further reason for wishing to emphasise these more immediate concerns is that this enables us to gain a truer measure of Marsiglio's achievement. A number of commentators who have treated the first Discourse simply as a general theory have felt prompted to complain - as Lagarde does - at the 'freethness' of Marsiglio's constitutional ideas (Lagarde, 1948, pp. 199-200). As soon as we uncover the context in and for which he was writing, however, it becomes possible to vindicate a more positive sense of Marsiglio's originality. What we in fact find - in Bartolus as well as in Marsiglio - is not merely a conventional diagnosis of faction as the main threat to the liberties of the City Republics; we also find a new and radical answer to the question of how these liberties might best be secured.

As we have seen, one aspect of the central problem of faction which Marsiglio particularly emphasises is the danger of allowing power to become divided within the ruling councils of cities. It is accordingly one of the leading aims of his first Discourse to suggest a means of avoiding this difficulty. The solution he proposes is simply that magistracy must never be divided. He thinks that experience shows it to be impossible, 'if civil justice and benefit are to be conserved', for 'any city or state to have a plurality of governors or magistrates who are not subordinated one to another' (p. 82). So he insists that even though the government may consist of 'several men', it must be 'numerically one government with respect to office', thus ensuring a 'numerical unity' in 'every action, judgment, sentence or command forthcoming from them' (p. 81; cf. Gewirth, 1951, pp. 115-25).

But the type of factionalism which, as we have seen, the scholastic theorists fear most of all is the formation of rival parties by hostile groups of citizens. So the main question they raise is how this is to be avoided. The very radical solution which Bartolus as well as Marsiglio proposes is that 'the ruler' should be the whole body of the people, so that no such intestine fighting can in principle arise. It is sometimes suggested that in asking for a single and unified 'human legislator', Marsiglio is 'clearly thinking' (as Wilks asserts) 'in terms of the universal Roman Emperor' (Wilks, 1963, p. 195). But this seems insensitive to the essentially civic context of Marsiglio's political thought. It is evident from his own way of putting the point that Marsiglio is mainly thinking in terms of the Italian City Republics. He not only equates the figure of the legislator with 'the people or the whole body of citizens, or the weightier part thereof', but goes on to add that the will of the legislator must be 'expressed by words in the general assembly of the citizens', which he regards as the most authoritative forum for discussing all legal and political affairs (p. 45).

1 For a full discussion of Marsiglio's concept of 'the weightier part', see Gewirth, 1951, pp. 182-9. For the relations between the concept and the civic context of Marsiglio's thought, see Gewirth, 1951, chap. pp. 27-9 and 187.
same populist commitment, as well as the same civic concerns, are even more clearly revealed in Bartolus’s political works, especially his Tract on City Government. The most appropriate form of rule in any city other than the very largest, he maintains, must always be ‘a popular regime’ in which ‘the whole jurisdiction of the city remains in the hands of the people as a whole’ (p. 420).

The way in which Marsiglio and Bartolus go on to defend this central thesis involves them in a fundamental reappraisal of prevailing scholastic assumptions about popular sovereignty. Aquinas had laid it down in his Summary of Theology that, although the consent of the people is essential in order to establish a legitimate political society, the act of instituting a ruler always involves the citizen in alienating – rather than merely delegating – their original sovereign authority. Both Marsiglio and Bartolus argue the contrary case. Marsiglio insists that the ‘whole body of citizens’ remains the sovereign legislator at all times, ‘regardless of whether it makes the law directly by itself or entrusts the making of it to some certain person or persons’ (p. 45). This has sometimes been taken to be the expression of a uniquely radical defence of popular rule. Gewirth, for example, draws a firm distinction at this point between Marsiglio’s doctrine and that of the civil lawyers, who are said to have avoided any suggestion that ‘the active, continuing control of the laws and the ruler’ should be lodged at all times with the body of the people (Gewirth, 1951, p. 253). This contrast, however, seems somewhat overdrawn. It is true in general that the civil lawyers reject any idea of inalienable popular sovereignty, but this is not true of Bartolus, who clearly endorses Marsiglio’s more radical point of view. He makes the point most unequivocally in his defence of ‘those cities which de facto recognise no superior in temporal affairs, and so possess Imperium in themselves’ (vol. 6, p. 669). The legal position of the citizens in such a city, Bartolus contends, is that ‘they constitute their own princeps’, so that any ‘right of judgment’ held by their rulers and magistrates ‘is only delegated to them (sonecessum est) by the sovereign body of the people’ (vol. 6, p. 670).

Aquinas had further suggested in the Summary of Theology that, since the people always alienate their sovereignty in the act of setting up a government, it follows that all rulers must be genuine sovereigns who are legibus solutus, unfettered by any formal obligations to obey the positive laws. The same contention was generally advanced by the civil lawyers in discussing the Lex Regia, as well as by close disciples of Aquinas such as Egidio Colonna (c. 1243-1316), who lays it down in his Rule of Princes that ‘if we are speaking of positive law, it is far better for a people to be governed by the best king than by the best laws’ (p. 533). Again, however, both Marsiglio and Bartolus argue the contrary case. As Marsiglio insists, even if the people agree to transfer the right to exercise their sovereignty to a supreme ruler or magistrate, such an official can never become ‘the legislator in the absolute sense, but only in a relative sense and for a particular time’. The ultimate authority must remain at all times in the hands of the people themselves, who can always check or even remove their rulers if they fail to act in accordance with the strictly limited powers entrusted to them (pp. 45, 88). Bartolus endorses the same conclusion in his commentary on the Digest, as well as spelling out in greater detail the limitations to be imposed on all rulers and higher magistrates. No ruler, he contends, can ‘remit any sentences’ or ‘suspend the execution of any judgment’ or ‘alter any laws and ordinances’ or ‘make any statutes contrary to those agreed by the whole body of the people’. No action, in short, can be initiated even by our highest magistrates unless they have first ‘gained the authority of the people or at least a majority of their ruling Council’ (vol. 6, p. 670).

Bartolus and Marsiglio both assume that the people will in fact wish as a matter of convenience to delegate their sovereign authority to be exercised on their behalf by a pars principum or ‘ruling part’. This in turn raises a further difficulty to which they finally address themselves. If the citizens constitute the legislator, while the pars principum conducts the actual government of the city, the problem is how to ensure that the actions of the pars principum are in fact kept fully under the ultimate control of the sovereign body of the people.

Both theorists answer this question in exactly the same way. They each propose three constraints to be imposed on all rulers and magistrates to prevent them from ignoring the will of the people and so degenerating into tyrants. The first is summarised by Marsiglio in the form of the rule that ‘for the sufficiency of civil life it is absolutely better for the commonwealth that each monarch be named in a new election rather than by hereditary succession’ (p. 71). Bartolus endorses the same requirement, adding the proviso in his Tract on Tyranny that no election which is made ‘in fear’ should be regarded as valid, since ‘jurisdiction must always be voluntarily transferred’ (p. 323). The danger they both have in mind is that, as Marsiglio phrases it, ‘non-elected kings rule less voluntary subjects’, since they are more readily able to forget that their true status is merely that of elected officials who have been appointed as administrators of the law ‘for the common benefit’ (p. 32). Hence it follows, he adds, ‘in accordance with truth and the manifest views of Aristotle’, that some process of election must always be preferred in order to ensure ‘a more certain standard of government’ (p. 33).
The second constraint they both impose is that no ruler must ever be allowed more than the minimum possible discretion in administering the law. The problem they have in mind here—a very familiar one in the City Republics—is emphasized by Bartolus in particular at the end of his *Tract on Tyranny*. It is not enough to elect someone who appears to be a suitable ruler if he is then allowed to govern according to his own discretion. This is to leave open the possibility that he may turn into a 'silent or hidden tyrant', since he may be able after his election 'to gain so much power that he is able to conduct the business of the city in any way he likes' (p. 326).

The solution, as Marsiglio agrees, is to ensure that all civil judgments 'be made according to the law' rather than 'according to the discretion of the judge', so as to ensure that the business of government is preserved as free as possible from any intrusions of 'ignorance and perverted emotion' (p. 40). The general rule is later encapsulated by Marsiglio in the form of a characteristic appeal to the authority of Aristotle. 'As he said in the *Politics*, Book V, Chapter 6: "the fewer things the rulers control", that is, without law, "the longer must every government endure, for they", that is, the rulers, "become less despotic, they are more moderate in their ways and are less hated by their subjects"' (p. 43).

The final constraint discussed by Marsiglio and Bartolus takes the form of a complex system of checks to be imposed on all magistrates and ruling councils to ensure that they remain responsive at all times to the wishes of the citizens who elected them. Marsiglio raises the issue in the course of replying to possible objections to his theory of popular sovereignty (pp. 54–55). As Previté-Orton originally observed, the result is a general account of the constitutional procedures actually in operation in the surviving City Republics of Marsiglio's own time (Previté-Orton, 1935, p. 149). A very similar system is outlined by Bartolus in much greater detail in his commentary on the *Codex* 1. He envisages a pyramidal structure of government with its foundations in the will of the people. The basis of the system is provided by the *Parlementum* or general council elected by all the citizens. This assembly then elects a smaller council convened by the 'rector' or supreme magistrate. And this group in turn appoints as many officials as are needed to carry on the more technical aspects of government (p. 37). The aim is to devise a system which will at once be efficient and answerable. Its efficiency is guaranteed by the fact that the actual running of the city's affairs is placed in the hands of a number of administrative experts. Its responsiveness is assured by the fact that the

1 See *Works*, vol. 9, pp. 366f. Ullmann, 1961, presents a full analysis of Bartolus's ideal system of government at pp. 715–16. He notes both the 'very great agreement' between Bartolus's and Marsiglio's theories at this point, and the fact that Bartolus offers the more precise and detailed account. See pp. 726–33. I am much indebted to this important article.