

# The role of the *Valentior pars* for the maintenance of liberty in Marsilius of Padua's *Defensor Pacis*<sup>1</sup>

## O papel do *Valentior pars* para a manutenção da liberdade em *Defensor Pacis* de Marsílio de Pádua

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### Abstract

The objective of this paper is to demonstrate the importance of the community in the legislative work in Marsilius of Padua's *Defensor pacis*. Firstly, I will make a small biographical outline of Marsilius of Padua. Secondly, I will mention the importance of the community in the legislative work, but I will also define the concept of *communitas*. I suggest that in Marsilius's political system the princes are restrained by the legislative force of the citizen body. Finally, I will explain the condition in which the citizen's liberty is protected. In my contention, for Marsilius liberty is the capacity of the body of citizens to participate in the public affairs of the city. In this way, I attempt to demonstrate the existence of an implicit republican preference in the *Defensor pacis*.

**Key words:** secular power, liberty, *civitas*, *universitas civium*, *communitas*.

### Resumo

O objetivo deste artigo é mostrar o peso que a comunidade tem na legislação da cidade *Defensor Pacis* de Marsílio de Pádua. Neste artigo, primeiramente, faço um breve resumo sobre a bibliografia de Marsílio de Pádua. Em seguida, trato sobre a relação entre a comunidade e a parte legislativa da *civitas*, mas não antes de definir o conceito *communitas* de Marsílio. No sistema proposto por Marsílio, os príncipes são limitados pela ação legislativa da comunidade, dando mais peso para o corpo cidadão. Finalmente, explico as condições em que a liberdade é protegida em uma cidade. Sugiro que a liberdade de Marsílio é a capacidade do corpo cidadão de participar na vida pública da cidade e por isso tento mostrar que há uma implícita preferência republicana no *Defensor Pacis*.

**Palavras-chave:** poder secular, liberdade, *civitas*, *universitas civium*, *communitas*.

<sup>1</sup> I used two versions of the *Defensor pacis* for this paper. For English references, I relied on the translation of Annabel S. Brett (2004), but for references in Latin I used the bilingual version of Carlo Vasoli (1991).

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## Introduction

It is indisputable that the *Defensor pacis* was set out to refute the doctrine of the papal fullness of power. The principal objective of Marsilius of Padua's main work was to prove that the pope is not a legitimate source of power. Instead, Marsilius placed the source of all coercive power within the community. Firstly, this paper intends to define what the community or *valentior pars* meant for Marsilius. Secondly, I want to demonstrate the crucial role that the *valentior pars* played for Marsilius in the legislation and execution of power. In this sense, my intention is to prove that in the *Defensor pacis*, the community — referred to as *valentior pars* — has a very active role in governing itself by making the city's laws. Finally, my intention is to show some of the opinions written by contemporary scholars about Marsilius of Padua's concept of political liberty.

Marsilius Mainardini was born around 1275-1280 in Padua in the region known as the March of Treviso. Although he came from a family of prominence in the civil administration in Padua, he was an obscure figure until 1313 when he was elected rector of the University of Paris. Later on, his name achieved notoriety when he became involved in the dispute over investitures in support of the Holy Roman emperor.

The first reference to Marsilius's political ideas was his knowledge of the communal life that had developed in his native Padua during the thirteenth century. Like other cities in northern Italy, Padua had been ruled by a republican system of government in which the legislation imposed a *potestas* based on a combination of councils and elected officials. The second intellectual resource for Marsilius was the philosophy of Aristotle and the Roman law. The University of Padua has generally been credited with the resurrection of Roman legal tradition and grammatical studies, but Aristotle's philosophy was also well known in Italy through the commentaries of Arab scholars.

While at the University of Paris, Marsilius engaged himself further with the philosophy and natural sciences of Aristotle. In the academic milieu, his vision of Aristotle's science was shaped by Averroës's commentaries. Averroës's philosophy has also been associated with some of the masters at the University of Paris, including Marsilius's own Jean Jardun. For this reason, scholars such as George de Lagarde saw in Marsilius's *Defensor pacis* an example of political Averroism (de Lagarde, 1953, p. 335). However, the most important influence on the *Defensor pacis* was the explosive political context of the second decade of the fourteenth century. In 1324, John XXII had excommunicated Ludwig of Bavaria, and Ludwig had accused the pope of heresy and declared his papacy illegitimate. In 1324, Marsilius completed the *Defensor pacis* in which he refuted the doctrine of papal fullness of power (Kilkulen, 2012).

The *Defensor pacis* was furiously condemned by ecclesiastical authority. Marsilius had presented a rigorous theory of political power which broke with the ecclesiastical tradition that conceived the relations between the secular and the spiritual spheres as the coexistence of two equal powers (Bayona, 2009, p. 145). Moreover, he placed the origin of that power in a human sphere. It is Strauss's contention that Marsilius did this by consistently following Aristotle's *Politics* (Strauss, 1987, p. 277). The *Defensor pacis* seems like an appendix to Aristotle's *Politics*, agreeing with almost every definition of Aristotle's political philosophy. However, Marsilius considered that Aristotle was unaware of the disease afflicting civil society caused by the doctrine of papal plenitude of power and that "the fundamental political authority is not the government of the ruling part but the human legislator, and the human legislator is the people" (Strauss, 1987, p. 280). As a result, the *Defensor pacis* has become an example of secularism anchored in Aristotelian principles, which de Lagarde considers to be one of the first manifestations of laicism (de Lagarde, 1953, p. 333-334).

The *Defensor pacis* explained the causes by which tranquility exists and is preserved. The objective — to prevent and eliminate strife — was based on the premise that, when discord affects a community, there is uneasiness and mistrust among its members. When concord is missing, fighting immediately erupts and the functions of the city, which should work properly to sustain life, stop and prevent further co-operation. For this reason, the principal objective of *Defensor pacis* was to identify the causes of strife in a community and tackle the discontent among its members.

Lastly, the *Defensor pacis* was written in support of Ludwig IV in his fight against John XXII in one of the most critical moments of the struggle between secular and ecclesiastical powers in Medieval Europe. When Marsilius identified the main source of strife in his times, he pinpointed the false belief that Christians were the subjects of two governments — one spiritual and the other secular (Bayona, 2009, p. 143). The objective of the *Defensor pacis* was to prevent conflict between these two spheres, because only when the cause of strife — the false belief that the pope was the source of political power — was understood, would it be possible to prevent conflict and achieve peace (Brett, 2004, p. xviii).

## ***Valentior pars, community and legislative action***

Marsilius considered that the commonwealth exists to ensure that human beings can achieve a good life when engaging in the exercise of practical virtues (Strauss, 1987, p. 277). In particular, Marsilius consciously followed Aristotle because he was aiming to expose a theory of the general character of political government, a theory in which the two principal bonds that maintain peace within the communities are the existence and love of juridical institutions (Quillet, 2007, p. 533). For Marsilius, *civitas* and *regnum* refer to abstract categories and not to particular regimes. The aim of having a *civitas* is to guarantee peace because only in peace can individuals aspire to security and a worthy life (Bayona, 2009, p. 148).

For Marsilius, concord appears as a result of a peaceful interaction among the parts which form the *civitas* (Costa, 1993, p. 25). When peace prevails within the main human groups, generally understood as the arts and professions, each section can perform its function without interference and can ensure the self-sufficiency of the city. This led Marsilius to define the perfect community as an association of men who interact with others to sustain certain needs by performing differentiated tasks (Quillet, 2007, p. 533). Thus, Marsilius also agreed with Aristotle in considering plurality a necessary quality for the survival of any human association.<sup>3</sup> The community of humans for Marsilius, as Quillet points out, had a natural origin 'made explicitly by agreement of the wills' (2007, p. 533-534). Natural sociability is what forces humans to live together in society. When human beings started to live in society, they discovered new arts and began a process of specialization which led to the most perfect of human assemblies: the city. Marsilius remained anchored in Aristotle's philosophy when he affirmed that the perfection of the city is achieved when every part that comprises it performs its task. When this happens, the city is able to achieve self-sufficiency.<sup>4</sup>

<sup>3</sup> 'Hii autem hominum diversi ordines seu officia non aliud sunt quam pluralitas et distincio parcium civitatis' (Marsiglio da Padova, 1991, p. 90).

<sup>4</sup> According to de Lagarde, after the *Nicomachean Ethics* and the *Politics* became fundamental textbooks in the Western World, Aristotelian thinkers adopted with enthusiasm the axiom that considered men social animals by nature. Therefore, there was a preconceived ontological idea of society within the individual. In other words, there was an exigency of human nature that forced men to live in society (de Lagarde, 1967, p. 97-98).

Now a city, according to Aristotle in *Politics* I, chapter 1, is: 'a perfect community possessing every limit of self-sufficiency, as it is consequent to say, having thus come about for the sake of living, but existing for the sake of living well'. Now in saying, 'having come about for the sake of living, but existing for the sake of living well', Aristotle signifies its final and perfect cause, for those who live a civil life do not just live – which beasts or slaves do – but live well, sc. having leisure for the liberal activities that result from the virtues both of the practical and of the theoretical soul (Marsilius of Padua, 2004, p. 18).

As previously mentioned, for Marsilius, the city represented the space in which men can preserve themselves, and, even more important, have a worthy life.<sup>5</sup> The city also represented the place where men can better display their virtues and exercise their civility (Viroli, 1994, p. 35). This was possible, according to Dolcini, by elaborating new political definitions from Aristotle and from the constitutional literature of the fourteenth century Italian communes (1995, p. 27). To Marsilius, concepts such as *civitas*, *regnum* and *civilitas* became synonymous. These terms also related, as again remarks Dolcini, with *regnum*, which means 'any government ruled by laws', but this notion loses its monarchical character as it is understood as *government commune quidam ad omnem regiminis temperate speciem* (Dolcini, 1995, p. 27).

For de Lagarde, however, there is not a clear distinction between *regnum* and *civitas*. Both terms could mean 'political regime' or 'the way to rule a polity'. When Marsilius wanted to provide a definition of political community, he borrowed John of Paris's term *civitas aut regnum* (de Lagarde, 1967, p. 91). This word has four meanings: (i) cities under one government; (ii) a temperate monarchy (Strauss, 1987, p. 279); (iii) a dominant city; (iv) a temperate government (de Lagarde, 1967, p. 92). In this manner, *regnum* does not design any particular political regime but is an abstract term which describes a multitude ordained for the common advantage (Bayona, 2009, p. 146).

Following Aristotle, Marsilius considered that the perfection of the city depends on its degree of diversification. He divided the city into six constitutive parts related to agriculture, the arts, finance, the military, the priesthood and the deliberative part (*agricultura, artificium, militaris, pecunativa, sacerdocium, iudicialis seu consiliativa*). The first three parts are considered essential for survival; the latter three are in charge of executive functions and the good exercise of government. For Marsilius, it was necessary that there be a harmonious interaction between these parts to have peace and to live well (de Lagarde, 1967, p. 104). In other words, the city and its parts must be in the same relation of tranquility as 'an animal with its parts' in order to live well (Brett, 2004, p. xx).

The possibility of living well is only achieved when the city lives in a civil community (*civilis communitatis*) ruled by laws. In this case, the individuals would solve their disputes without resorting to force. Marsilius recognized that men's actions are usually governed by passions. Without the existence of institutions, men would be guided by their desires and personal interests. Without laws, the city would be ravaged by internal strife and separation. Otherwise, when men lived peacefully in a civil community, they would be able to devote themselves to their spiritual health.<sup>6</sup> The existence of a true civil community depends on having institutions that ensure peace (de Lagarde, 1967, p. 102). In this way, it is possible to advance another feature of the *civilis communitatis*: the rule before law. The reason appears to be

<sup>5</sup> 'Sic itaque determinata civitate propter vivere et bene vivere' (Marsiglio da Padova, 1991, p. 92).

<sup>6</sup> For Marsilius, the perfect community meant the whole political body comprised of believers (Quillet, 2007, p. 535).

practical. Unlike human beings, laws are not affected by affections or passions.<sup>7</sup> When a city is only ruled by laws, it is less likely to suffer from sedition and internal strife. Finally, it was the search for peace which forced men to gather and to form the state.

For Marsilius, when human beings lived in a state of nature, they were governed by the oldest members of their group. Those individuals legislated and punished criminals only by following the mandates of the law of nature.<sup>8</sup> However, as the community grew bigger, these regulations were not enough. It was necessary to create a better method to control human desires and passions. In fact, it is possible to say that passions constitute the most challenging obstacle to the survival of the city. But Marsilius did not put down the human vices; he seemed to recognize that human beings always have the tendency to act with excess naturally. For this reason, he proposed a political solution to control human vices.<sup>9</sup> In Brett's opinion, 'the solution of excesses is the restoration of the situation of balance or equality that existed prior to the excess committed: equalization' (Brett, 2004, p. xxi). Marsilius's task was to establish a standard of what is equal and to determine who is the legislator or human law-maker (Brett, 2004, p. xxii). For Brett, Marsilius's solution constituted the bedrock of his political philosophy. The *universitas civium* or the body of citizens is 'the one person' with the best characteristics to make laws (Brett, 2004, p. xxii).

Let us say, then, in accordance with both the truth and the counsel of Aristotle, Politics III chapter 6, that the 'legislator', i.e. the primary and proper efficient cause of the law, is the people or the universal body of the citizens or else its prevailing part, when, by means of an election or will expressed in speech in a general assembly of the citizens, it commands or determines, subject to temporal penalty or punishment, that something should be done or omitted in respect of human civil acts (Marsilius of Padua, 2004, p. 66).

For Ullmann, the *universitas civium* was a corporation composed exclusively of citizens (1988, p. 397). It is considered a sort of human legislator with power similar to the *Rex Francorum*, *Rex Anglorum*. Ullmann argues that the *universitas civium* was not formed by an individual group or class, but by the totality of citizens (1988, p. 398). However, it is important to remark that even if Marsilius included in the *universitas civium* people who normally had been excluded from deliberative works, he also proposed a set of criteria to keep out the majority of population (Costa, 1993, p. 26). In Marsilius's works, the *universitas civium* resembled the hierarchical societal order of medieval towns (Chevalier, 1993, p. 208) in which women, children, foreigners and serfs were not included in political life (Dolcini, 1995, p. 29). In this way, *universitas civium* comprises only *men* who have the right to participate in political decisions of the community.<sup>10</sup>

<sup>7</sup> 'Neminem certe quantumcumque studiosum sic posse carere passione perversa et ignorancia, quemadmodum lex. Ideoque tucius est regulari iudicia civilia lege, quam arbitrio iudicantis committi, quantumcumque etiam studiosi' (Marsiglio de Padova, 1991, p. 184).

<sup>8</sup> 'In hac enim oportuit seniore[m] disponere iusta et conferencia rationabili aliqua ordinatione vel lege quasi naturali...' (Marsiglio de Padova, 1991, p. 88).

<sup>9</sup> 'Hoc autem sic primum videre est, quoniam secundum legem principari ipsorum iudicia preservat a defectu, contingente propter ignoranciam at affectionem perversam. Unde in seipsis et ad cives subditos regulari, minus paciuntur sediciones et per consequens suorum principatuum soliciones, que illis contingerent agentibus prave secundum suum arbitrium' (Marsiglio de Padova, 1991, p. 182).

<sup>10</sup> 'Civem autem dico...eum qui participat in communitate civili, principat consiliativ vel iudicativo secundum gradum suum. Per quam siquidem descriptionem separantur modus diversum' (Marsiglio da Padova, 1991, p. 194).

For Marsilius, the laws and prerogatives that govern the *communitas* are best discerned by the *universitas civium*, rather than a few citizens. On the other hand, when only a few citizens are in charge of making laws, they could have interests contrary to the common good and make laws that favor their particular interests (Brett, 2004, p. 69). Therefore, for Marsilius, the best way to maintain peace was to allow the community to decide on its best interests and the common good.

That this comes about in the best way solely through the universal body of the citizens or its prevailing part (which is moreover taken for the same thing), I show as follows: because that to which the whole of that body tends, in both understanding and inclination, enjoys a more certain judgment of its truth and a more careful attention to its common utility (Marsilius of Padua, 2004, p. 69).

In Marsilius's opinion, when the legislative power is granted to a few citizens, it contradicts the principle of equality in which no citizen can be inferior to another (Viroli, 1994, p. 36). However, it is important not to forget that for Marsilius the institutions in charge of providing justice may not always be controlled by the *universitas civium*; thus, the institutions could be granted to one individual. To recognize the community as the source of all legislative labour, Marsilius advanced one conclusion: The prerogatives which affect the well-being of all must be established by the *universitas* itself (Blythe, 2003, p. 64). As a result, the best laws, and certainly the most stable polity, would result when the community as a whole 'evaluates the laws proposed by the wise and educated men' (Blythe, 2003, p. 64).

Marsilius identified the *universitas civium* with the 'prevailing part or *valentior pars*' (Dolcini, 1995, p. 27). As Dolcini has noted, Marsilius created the concept of *valentior pars* based on Book VI of the *Politics* (1995, p. 30). Aristotle considered that the basis of a democratic republic is liberty. One principle of this liberty 'is for all to rule and be ruled in turn' (Aristotle, 1949, p. 1347b40–5), but democratic justice is 'the application of numerical not proportionate equality; whence it follows that the majority must be supreme' (Aristotle, 1949, p. 1347b40–5). However, for Aristotle, the best constitution is not democratic, but is one controlled by a populous middle class.<sup>11</sup> This is not the case in the *Defensor pacis*. For Marsilius, it was unacceptable that a few take decisions to impede the common good; thus, the laws are made by the whole community itself. For Marsilius, the *valentior pars* was not only quantitatively superior but also qualitatively superior to any individual (Brett, 2004, p. xxiii). As a result, Marsilius suggested that the *valentior pars* not only have a primordial role in instituting laws, but it must be in control of the political institutions (Dolcini, 1995, p. 31).

Leo Strauss believes that by ascribing the principal part of government to the *universitas civium*, Marsilius was more democratic than Aristotle (Strauss, 1987, p. 281). However, as Costa points out, Marsilius's suggestion is still far from our modern concept of democracy. *Universitas* and *valentior pars* did not refer to citizens' rights, but instead to the disposition of the political order and its parts within a whole (Costa, 1993, p. 26). This proposal, as Canning argues, copied the constitutional legislations of the republican communes of northern Italy (Canning, 2007, p. 364). In this context, citizens were no longer considered subjects (*sub-ditus*, *Unter-tan*), but a very important part of the state: the *legislator humanus* (Ullmann, 1988, p. 397), even if the *potestas* was conferred on only a few citizens (Canning, 2007, p. 365). Finally, Quentin Skinner has suggested that the constitutional model proposed by Marsilius had a practical interest in mind: to secure their liberty by putting

<sup>11</sup> 'That the middle is best is evident, for it is the freest from faction: where the middle class is numerous, there least occur factions and divisions among citizens' (Aristotle, 1949, p. 1296a7-9).



the weight of government on the citizens themselves (Skinner, 2010, p. 60-61). Therefore, the purpose of recognizing the *valentior pars* as the *legislator humanus* was to avert threats against the common good (de Lagarde, 1967, p. 106).

For Marsilius, the *valentior pars* had to be involved in the creation of new laws by approving them because it was the only 'person' capable of perceiving the best interests of the city.<sup>12</sup> For Skinner, the body of citizens had a very active role in the *Defensor pacis*; they also elected their magistrates and removed them in case of necessity (Skinner, 2010, p. 64). This active involvement resulted in the creation of constitutional procedures which guarantee the interaction between citizens and their governors. Viroli agrees with Skinner by suggesting that the engagement of citizens in legislative functions became the foundation of the *vivere politico* in the *Defensor pacis* (Viroli, 1994, p. 35). For Marsilius, politics was the art of establishing laws that guarantee the common good. As a result, Marsilius linked the art of politics with the art of legislation (Viroli, 1994, p. 35).

[...] as we read in Politics III chapter 4, any and every citizen should be free and not suffer the despotism (i.e. the servile dominion) of another. But this would not be the case if someone or few of the citizens passed law upon the universal body of the citizens on their own authority, for in legislating in this way they would be despots over the others. And therefore the rest of the citizens (viz. the more extensive part) would either take this law badly – however good it was – or not accept it at all: as the victims of contempt, they would protest against it; and since they had not been involved in its passage they would not observe it at all. But every citizen would happily obey and accept a law passed as a result of an audience or consent on the part of all the multitude, even if it were less useful; in that with a law of this kind, each can be seen to have laid it upon himself, and therefore has no cause to protest against it, but rather to accept it with equanimity (Marsilius of Padua, 1994, p. 70).

In Marsilius's claim, there were two methods to establish laws in the city: (i) by delegating this task to wise individuals; (ii) by designating a general assembly. In both cases, the citizens have an active role in the election of their assembly delegates and officers.<sup>13</sup> In Skinner's interpretation, the elective character of electing offices in the *Defensor pacis* ensured that only the best men (*pars principans*) are chosen to hold office (Skinner, 2010, p. 63). The problem was how to make sure that the actions taken by the ruler were kept fully under the control of the body of citizens. The answer was in the creation of constraints that were directly imposed on rulers. These constraints prevented the rulers from ignoring the will of the citizens (Skinner, 2010, p. 63). In this way, by instituting a number of restrictions and obligations on elected officials by the body of citizens, Marsilius believed that the elected princes would be forced to care for the common good.

Again, the new election of the future monarch renders the present monarch more careful in respect of the common civil guardianship of persons and goods; firstly because of his virtue, since we suppose this from the fact of his election; next, through fear of arraignment by the future monarch; and again, so that he can himself merit the future election of his successors (Marsilius of Padua, 1994, p. 104).

<sup>12</sup> 'Et quoniam sic late per auditum et consensum universo multitudinis melius observabuntur, nec adversus eas habebit aliquis reclamare' (Marsiglio da Padova, 1991, p. 222).

<sup>13</sup> 'Et propterea iusturum et conferencium civilium et incommodorum seu onerum communium et similium reliquorum regulas, futuras leges sive statuta, querendas seu inveniendas et examinandas prudentibus et expertis per universitatem civium comitii conveniens et perutile est; sic ut vel seorsum ab unaquaque primarium parcium civitatis... secundum tamen uniuscuiusque proporcionem, eligantur aliqui, vel ab omnibus simul conragatis civitus omnes eligantur experti seu prudentes viri predicti' (Marsiglio da Padova, 1991, p. 220).

Arguably, Strauss considers that the democratic character of the *Defensor pacis* was a product of Marsilius's profound anticlericalism. In his fight against the ecclesiastical authorities, Marsilius needed to ground his political theory in something other than theological sources (Strauss, 1987, p. 281), which led him to place the power of legislation in the multitudes. In this way, he could deny the plenitude claims of John XXII and his officials (Strauss, 1987, p. 284). Strauss casts doubt on the populist vocation of Marsilius. According to the German scholar, Marsilius favored a regime close to 'an aristocracy which is acceptable to the populace' (1987, p. 287). However, even if Marsilius did not explicitly suggest a politically active citizenship; he was also granting the body of citizens with an inherent wisdom to understand their own needs (Blythe, 2003, p. 65). Therefore, there is a tacit admission in Marsilius that the government has its source in the body of citizens.

## The democratic orientation of the *defensor pacis*

It is important to mention the characteristics of elected officials and princes in the *Defensor pacis*. The prince for Marsilius acts as 'an equalizer or regulator to bring actions into line' (Brett, 2004, p. xxvi). He acts as an executer in the civil order, but he does not decide the form of government without the legislator. In other words, the ruler only executes the laws that the legislator has made. In Marsilius's scheme, the princes could make some laws but only in conformity with the will of the body of citizens. In this sense, the princes are restrained by the laws created by the community (Brett, 2004, p. xxvi).

Following Book III of Aristotle's *Politics*, Marsilius identified monarchy, aristocracy and polity as the three well-tempered regimes and tyranny, oligarchy and democracy as the three bad forms of governments. While the good regimes make rules for the common good, in the distorted governments the prince acts as a legislator and an executioner of the laws (Brett, 2004, p. xxv). Thus, the bad rules deprive the body of citizens of their principal role, the legislative part, and they strip the body of citizens of the possibility of electing their prince (Brett, 2004, p. xxvii). Marsilius did not make any effort 'to speculate, however, about which may be the best of the tempered forms of principate, or which the worst of the flawed, and the relative ranking of the rest in terms of goodness or badness, is not our present concern' (Marsilius of Padua, 2004, p. 42).

For Marsilius, the distorted forms of government are often obtained by fraud or force. However, he recognized two forms of government contrary to the common benefit but instituted by the rule of law. One is the monarchy instituted by hereditary succession. This type of regime is held by some monarchs in Asia where the laws are quasi-despotic by favoring the advantage of the monarch against the common good of the majority.<sup>14</sup> Another is the elective monarchy in which laws favor only the prince's own good, but not the common good. The only difference between these regimes is that in the elective monarchy some members of the *valentior pars* have the right to participate in the election of their prince.

Marsilius refers to the prince and the subjects as the primary elements of the civil order. Both the prince and the subjects come together to establish ways to better exercise their functions. Princes have the authority to command multitudes, but

<sup>14</sup> 'Alius autem modus est, quo quidam monarche in Asia principantur...secundum legem tamen, ad monarche conferens magis quam ad commune simpliciter, quasi despoticam. Sustinent enim habitatores illius regionis talem principatum nihil contristati, propter ipsorum barbaram et servile naturam et consuetudinis auxilium' (Marsiglio da Padova, 1991, p. 146, 148).



they must understand that they can do this only with the consent of the multitude. This is more likely to happen when the prince is voluntarily instituted by the body of citizens (Brett, 2004, p. xxvi).

Marsilius reckoned that one of the principal advantages of democratic principedoms is that it is relatively more frequent to elect virtuous princes by a politically active body of citizens. Marsilius preferred elective governments because these regimes express the will of the body of citizens better. In these political regimes, the rulers are forced to keep the 'prevailing part' happy and are also prevented from acting tyrannically.<sup>15</sup> In conclusion, the democratic principedoms were the best form of polity for Marsilius because the arrangements made in these regimes are normally more politically oriented to the common good.

Whereas succession by birth, which is for the most part by chance, cannot produce such a monarch with the same certainty. As it is evident from individual kingdoms that adopt their monarch in this way. Further: because every good quality that is absolutely required in a monarch, and which succession by birth or lineage gives, will almost always be produced by a new election, whereas the converse is not true. For it is open to a civil multitude to adopt the heir and successor of the previous monarch through election, if he is virtuous and prudent. But if he does not have this character, a fresh election will yield someone else who is virtuous and prudent: when hereditary succession could not produce such a man (Marsilius of Padua, 2004, p. 104).

In Viroli's contention, this notion of politics was embedded in Roman civil wisdom. In this sense, Viroli suggests that Marsilius's citizenry must possess some virtue as a whole (Viroli, 1994, p. 36), but this proposition is never clearly expressed in the *Defensor pacis*.

## Individual liberty and political participation

When Marsilius examined the conditions in which liberty is best safeguarded, he expressed that it is only possible when peace and concord prevail in the city. For Marsilius and other writers such as Remigio Romano, the chief danger to peace is the prevalence of factions and discord among citizens. When discord prevails within the body of citizens, the people neglect the common good, and injuries are not avenged or judged. The result is fighting and separation and, finally, the destruction of the state (Skinner, 2010, p. 57-58). The best method to tackle conflict is to set the sectional interests aside, 'and the good of each individual citizen equates with the good of the city as a whole' (Skinner, 2010, p. 58). In this way, the common good is attained and aimed at all times<sup>16</sup> and liberty is guaranteed.

Arguably Costa could advance one definition of liberty in the *Defensor pacis*: the space in which a city can affirm and develop its cultural identity. Liberty, then, is the ability of members of a community, as a corporation, to determine themselves by their own laws (Costa, 1993, p. 30), even if the personal degree of freedom depends in many cases on the person's status within the hierarchical order of society (Costa, 1993, p. 29). More generally speaking, liberty is defined as the capacity of the body

<sup>15</sup> 'Participat autem quilibet dictorum modorum tanto amplius de vero regali, quanto magis est ad subditos voluntarios et secundum legem latam ad comune conferens subditorum; tanto vero amplius tyrannidem sapiens, quanto magis exit ab hiis, consensu videlicet subditorum et lege ad ipsorum commune conferens instituta' (Marsiglio da Padova, 1991, p. 150, 152).

<sup>16</sup> 'Ab electione namque legislatoris humani quasi semper, raro deficiens, intenditur et perfecitur commune conferens civim' (Marsiglio da Padova, 1991, p. 270).

of citizens to participate in the public affairs of the city.<sup>17</sup> However, Blythe criticizes this suggestion. For Blythe, nothing in the *Defensor pacis* implies an active citizenship in a determinate political regime. What lies in Marsilius's most famous text was a consciousness of the participation in the legislative part of government for the common benefit. This makes the community live well, free of conflicts. For Marsilius all political constitutions might be acceptable and good if they are approved by the human legislator or the *valentior pars* (Blythe, 2003, p. 65). However, it is possible that this prevailing part, after creating the laws, may not get involved in the affairs of the polity.

One of the most important points in Marsilius's thought is that liberty is not grounded by an ontological value, but it is grounded by the active participation of the people in the legislative work (Dolcini, 1995, p. 37). According to Brett, Marsilius did not make any effort to define freedom conceptually, he just related the freedom of the communities with the personal liberty of the individuals within these communities. Then for Brett, the value of liberty for Marsilius appears to be only practical because only free individuals can aspire to live well (Brett, 2004, p. xiv).

In effect, there are not clear definitions of the concept of personal liberty in the *Defensor pacis*, but it would be erroneous to extrapolate our modern concept of liberty as non-interference with Marsilius of Padua. In this way, it is necessary to remember that for medieval scholarship, the existence of civic life is what determines the presence of spaces of non-interference by which citizens can freely set their laws and institutions (Costa, 1993, p. 31). As Costa points out, for Marsilius, the capacity of the community to set laws up freely may implicitly guarantee the general good of each of its members (Costa, 1993, p. 32). Costa's contention is also supported by Quentin Skinner. In Skinner's claim, the link of personal liberty with that of the community is proof of Marsilius's republican orientation (Skinner, 2010, p. 57-58). In this sense, the highest authority becomes the community because it has the power to elect its rulers and to create its own laws. The source and the efficient cause of the political power is, thus, the citizen-body.<sup>18</sup>

For Marsilius, the participation of the 'prevailing part', whether limited or not, is more important than the role played by the prince (de Lagarde, 1967, p. 113). The reason is that peace and unity are secured only when the *valentior pars* is in charge of legislation (Dolcini, 1995, p. 37). Laws and government get their approval from the body of citizens and not from the spiritual power. Therefore, when the body of citizens became the source for legitimizing political power, the role of the ecclesiastical authorities would be limited only to spiritual matters. In this way, the state would avoid the existence of political strife.

It remains now to show that all those in the position of prince should exercise their function in accordance with the law, not beyond it, and especially monarchs who exercise this function together with all their posterity, so that their principates may be more secure and long-lasting. We can see that this is so in the first place because to exercise the function of prince according to the laws saves their judgments from defects arising from ignorance and perverted inclination. As a result, being regulated both in themselves

<sup>17</sup> 'Amplius ad principale sic: quoniam illud agibile, in cuius debita institucione consisit maxima pars communis sufficiency civium in hac vita, et in cuius prava institucione commune detrimentum immitet, per universitatem civium tantummodo debet institui; hoc autem est lex; ergo ad universitatem civium tantummodo illius pertinent institucio' (Marsiglio da Padova, 1991, p. 200).

<sup>18</sup> 'Quod quidem igitur legumacionis seu institucionis auctoritas, et de ipsarum observacione coactivum dare preceptum, ad solam civium universitatem seu ipsius valenciorem partem, tranquam efficientem causam, pertineat, aut ad illum vel illos, cui vel quibus auctoritatem hanc concesserit iam dicta universitas, sufficienter ex dictis demonstrasse putamus' (Marsiglio da Padova, 1991, p. 222, 224).

and towards the citizens who are their subjects, they suffer fewer acts of sedition (and consequent dissolution of their principate) than they would encounter if they acted badly in accordance with their own discretion (Marsilius of Padua, 2004, p. 62).

Finally, the *Defensor pacis* integrated the image of the political man of *Politics* and *Nicomachean Ethics* to Ciceronian language. The assimilation of Aristotle is also observable in the works of Dante and Brunetto Latini. In the fourteenth century, as has been expressed by Viroli, Aristotelian language gave a new application to the word *politicus*. It described a state in which the ruler obeys the laws and does not regard the commonwealth as a private possession (Viroli, 1994, p. 36). In agreement with Viroli, the spread of Aristotelianism reinforced the view of politics as the art of preserving a community, living under a rule of law in which the source of political power did not have a divine origin (Viroli, 1994, p. 36).

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