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Filimon Peonidis¹

Marsilius of Padua as a Democratic Theorist

Marsilio de Padua como pensador democrata

Abstract:

In this essay I focus on the form of government defended by Marsilius of Padua in the first Discourse of *Defensor pacis* (1324). The interpretation of his overall account depends heavily on our understanding of the “*major* and *valentior* part” of the citizenry upon which all legislative and elective powers are bestowed. I argue that there is sufficient textual evidence to believe that the above term refers not to some small elite group but to the totality of citizens or the overwhelming majority of them. I also argue that his imaginary polity meets all the necessary conditions that any political regime should meet in order for it to be characterised as an essentially democratic one. Thus, Marsilius deserves a more prominent position in the history of democratic ideas.

Keywords:

Marsilius of Padua; popular sovereignty; history of democratic ideas.

Resumen:

En este ensayo me centro en la forma de gobierno defendida por Marsilio de Padua en el primer discurso del *Defensor pacis* (1324). La interpretación de la tesis en su conjunto depende en gran medida de cómo entendamos la “*pars major*” (la parte mayoritaria) y la “*pars valentior*” (la parte más importante, de mayor peso) de la ciudadanía a la que le son otorgados todos los poderes legislativos y electivos. Sostengo que hay evidencia textual suficiente para creer que el término citado anteriormente no se refiere a una pequeña élite, sino a todos los ciudadanos o a la mayoría de los mismos. También defiendo que la forma de gobierno que imagina reúne todas las condiciones necesarias que cualquier régimen político debería cumplir para definirse como fundamentalmente democrático. Por tanto, Marsilio merece ocupar una posición más destacada en la historia de las ideas democráticas.

Palabras-clave:

Marsilio de Padua; soberanía popular; historia de las ideas democráticas.

¹ Professor of Moral and Political Philosophy - Aristotle University of Thessaloniki, Greece. E-mail: peonidis@edlit.auth.gr

Marsilius of Padua's *Defensor pacis* (1324), and particularly the first of the three Discourses² that compose it (hereafter D.I), constitutes a unique case in late medieval political philosophy. Its uniqueness lies in the fact that it contains ideas which do not merely diverge from those found in other similar works of the time, but which can also be seen (according to the interpretative approach that will be adopted here) as incorporating core elements of a form of government in which the people are sovereign. What impresses the reader is the way in which the philosopher, by making use of existing materials, mainly the works of Aristotle³ and the Bible, provides a coherent outline and defence of an ideal democratic polity, which differs considerably from the forms of government other authors were arguing for during his lifetime.⁴ In the first section of this essay I will offer a brief reconstruction and interpretation of the form of government Marsilius defends in the first Discourse of *Defensor pacis* and in the second I will make a case that his account deserves to be assigned a more prominent place in the history of democratic ideas.

I

Marsilius, having in mind the medical methodology he had probably learnt from Pietro d'Abano at Padua and in Paris,⁵ set himself the task of fighting the 'evil' that undermined the foundations of all politically organised collectivities, that is to say, the discord and strife that afflicted their citizens (D.I, c.1, §3). The latter constituted a disease that spread rapidly, corrupted all healthy –that is, calm and peaceful– civil communities, and prevented the attainment of the goal for which they had been established, which was not the salvation of the citizens' souls but the protection of their lives and welfare in this world (D.I, c.3). Deliverance from such misfortunes might come through some form of divine intervention but such an eventuality did not concern Marsilius, because he thought it was not susceptible to rational proof; what was required was something that could be achieved through the human will (*arbitrium*) and in this respect the empirical study of the development and

² In this essay I focus exclusively on the first Discourse of *Defensor Pacis* and it is not my intention to offer an overall assessment of Marsilius' political and theological thought. Such an undertaking should take into account the other two Discourses, the conspicuously pro-imperial *Defensor Minor* as well as the philosopher's personal involvement in the political developments of his time. The differences among various recent scholarly approaches to the Marsilian corpus are discussed in Canning (2011: 81-106). I would like to thank an anonymous referee for valuable comments and suggestions.

³ The presence in almost every paragraph of direct positive references to the works of the Stageirite may give the impression that Marsilius was not an original thinker. However, this impression is misleading. Marsilius selects from Aristotle those arguments that serve to support his own political proposal.

⁴ Cf., for instance, the justification of hereditary monarchy that appears in Aegidius Romanus' *De regimine principum* (c. 1287/1967). See also notes 12 and 17 below.

⁵ Syros (2012: 15) and Godthardt (2012: 5).

structure of city-states was of crucial importance.⁶ However, we should bear in mind, as it is revealed in the last chapter of the first Discourse, that Marsilius is particularly concerned with what he regards as the prime cause of the political and social unrest in all Christian cities and kingdoms of his time: the Holy See's ambition to prevail over all secular rulers.

This investigation revealed that the smooth and peaceful functioning of a city-state required both a division of the practical arts that were essential to the livelihood of its inhabitants and also a separation of its higher civic and social functions. The latter include the ruling, the judicial, the advisory, the military, the financial and the priestly functions (D.I, c.5). Marsilius insists on strictly demarcating the authority of the priests, foreshadowing the harsh criticism that he makes of caesaropapism in the second Discourse of *Defensor pacis*. He hastens to make clear that the priestly part should be confined to “the instruction and education of men on the subject of those things which, according to the evangelical law, it is necessary to believe, do, or omit in order to attain eternal salvation and avoid eternal misery” (D.I, c.6, §8).⁷

A correct understanding and proper establishment of these functions or parts of the city (except for the priestly one) is to be achieved through acquiring a grasp of their four Aristotelian causes. In this light Marsilius goes on to claim that the final cause of these functions is the self-sufficiency of the city. Their material cause is the citizens that serve these functions, with their diverse abilities, skills and dispositions. The formal cause consists in the orders that the above citizens receive from the efficient cause, and the efficient cause is the “human legislator” (D.I, c.7). The first two causes can be easily understood. The third and fourth ones, however, in which the originality of Marsilius' thinking is more evident, require further discussion. Thus, the philosopher, after initially outlining five ways in which the collective or individual human will establishes the city's ruling function, is led to an analysis of the concept of law. Marsilius makes the law binding upon the ruler for the simple reason that without the guidance of the law he might easily be led astray, either out of ignorance or as a result of an unsuitable emotional disposition (D.I, c.11, §5).

As far as the semantics of the law is concerned, the philosopher distinguishes two senses of the term: it might denote “the just” and the “advantageous” or “a command ... which coerces by means of penalty and reward meted out in this world” (D.I, c.10, §4). All laws should satisfy both senses. On the one hand, their content should be of benefit to society. On the other, they should derive from a prudential and intellectual authority that is capable of imposing them with the threat

⁶ According to Ullmann (1979: 213), Marsilius “performed a surgical operation” in political theory by removing its Christian components.

⁷ All translations are from Marsilius of Padua (2005) with slight alterations.

of sanctions (D.I, c.10, §4). Thus the formal cause of the city's civic and social functionaries is the law, which is expressed in the form of an order to those functionaries, who are called upon to implement it. What, however, is the efficient cause? What, in other words, is the source of law? The prince, the nobles or the multitude?

It is hard to dispute that for Marsilius no law can be valid if it derives from a single individual (D.I, c.12, §8). However, there is an on-going controversy as to whether the human legislator consists in the whole body of citizens or in an elite of wise or noble men. Let us start with the textual evidence.

In the third paragraph of chapter 12, Marsilius states that:

“The ‘legislator’ i. e. the primary and proper efficient cause of the law, is the people or the [totality] of the citizens (*universitas civium*) or else its [weightier] part (*valentior pars*), 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.”

His references to the weightier part of the citizens that run through the first Discourse from this point onwards have been a cause of sharp disagreement among scholars. Some of them, relying on the very next sentence, which states that the weightier part includes “both the quantity and the quality of the persons in the community upon which the law is passed”, have concluded that in his reference to “quality” the philosopher is favouring aristocratic regimes in which the legislative power lies solely in the hands of a few wise or noble men. A typical example of this kind of reasoning can be found in Wilks (1964: 194-195), who put forward the view that “the greater the importance of the members of the *valentior pars*, the fewer they will need to be in number” as well as the view that, in his use of this term, Marsilius is alluding to the seven prince electors who made up the college that elected the *rex Romanorum* of the Holy Roman Empire. And more recently Condren (1980: 306) has claimed that the weightier part could only include “two or three magnates answerable only to their successors”.

This interpretation, however, is not supported by the text. On the contrary, one has reasons to believe that the weightier part, if it does not represent the whole body of the citizens, undoubtedly includes the overwhelming majority of them. Let us see why:

1. Marsilius himself generally uses the terms “totality of the citizens” and “weightier part of the citizens” as if they were almost identical in meaning. Moreover, at two points (D.I, c.12, §5 and c.13, §2) he explicitly asserts that “they should be taken for the same thing”.

2. In the fourth paragraph of c. 12 he presents two alternative ways of defining the composition of the weightier part. The first is not particularly enlightening as he maintains that it should be “identified from the honourable custom of politics”, without further clarification. The second way, however, is clearer as in this case Marsilius turns to Aristotle’s text and more specifically to the second chapter of the sixth book of the *Politics*. Here the Stageirite does not, of course, state how the weightier part is defined, but refers to the basic institutions and the *modus operandi* of the Greek democracies of his time, as well as to certain arguments championed by the supporters of popular rule. The chapter ends as follows:

“And from the type of justice that is agreed to be democratic, which consists in everyone having numerical equality, comes what is held to be most of all a democracy and rule by the people, since equality consists in the poor neither ruling more than the rich nor being alone in authority, but in all ruling equally on the basis of numerical equality, since in that way they would consider equality and freedom to be present in the constitution.” (1318a 3-10, C.D.C. Reeve trans.)

Marsilius chooses to refer to a chapter that concludes with the view that for the democrats, democracy is a form of government in which both rich and poor rule together on equal terms.⁸ If Marsilius had considered the weightier part to be the same as a ruling aristocracy, he would have included other passages from the *Politics* in order to support this view.⁹ This particular choice of passage, however, leads us to the reasonable assumption that in the form of government he is proposing, the supreme civil power, i.e. the legislative power, should be in the hands of all or most of the citizens.

3. This view is reinforced by the fact that Marsilius goes on to devote a part of the twelfth and all of the thirteenth chapter to refuting the arguments of those who claim that the “authority to make laws” should belong to the few and the virtuous and not the many and the vicious. He goes to great pains to show both the unsuitability of the few for the ascription of such a political privilege and the suitability of the many. The few are left out because they might fall into error or the laws they would pass might serve their personal or factional interests (D.I, c.12, §8). The arguments in favour of the many will be examined later.

4. It has been argued by Quillet (1988: 560) that the weightier part should be conceived in terms of the *maior et sanior pars*, i.e. the view that decisions regarding the

⁸ Cf. Mulgan (1991: 317-318) and Keyt’s commentary in Aristotle (1999: 202).

⁹ A similar line of reasoning is developed by Sullivan (2010), who, however, does not refer to the weightier part or the above passage from the *Politics* but to the democratic arguments in favour of the multitude that Marsilius borrows from Aristotle, showing that he embraces them fully.

election of ecclesiastical authorities required not only the support of the majority of the electoral body but also sound judgement on the part of those who made up the majority. She maintains that, in this context, Marsilius believed that only a handful of citizens were sufficiently qualified to participate in the weightier part and she reaches the conclusion that the philosopher must have had in mind the Electoral College mentioned above. However, even if we accept her premises, which are not supported by textual evidence, the conclusion she draws does not necessarily follow from them. We know that the Third Lateran Council that was convened in 1179 had decreed that for papal elections a “two-thirds majority *ipso facto* constituted the *sanior pars* of the electorate” (Monahan 1987: 140). Indeed, as time passed this interpretation came to prevail in other ecclesiastical elections. Consequently, even if Marsilius had had the *maior et sanior pars* in mind, in no way could this have meant that the minority should rule over the majority.

On the basis of these and other arguments,¹⁰ it is reasonable to assume that a polity in which the primary legislative power belongs to the weightier part of its citizens is a polity in which the laws are made with the wide participation of commoners. It is possible that Marsilius may have accepted a few other exclusions from the citizen body apart from the customary ones he mentions in c.12, §4 (children, slaves, aliens and women), but in no way would these have led to a body politic comprised only of the nobles or the wise.

The totality of citizens or the weightier part that represents it, can legislate directly or through the election of prudent and experienced men. These men should lay the new laws before the whole body of citizens, or the weightier part of them “for approval or rejection, so that if any citizen thinks that anything needs to be added to them or taken away, changed or totally repudiated he can say so: because as a result of this process the law can be more expediently framed” (D.I, c.13, §8, cf. c.12, §5).¹¹ The above passage shows Marsilius’ complete faith in the citizen body, granting them the power not only to ratify or reject the proposals of certain “specialists” or “experts” but also to form the content of the laws (changing them

¹⁰ Cf. Nederman’s (1995: 68) argument that “because citizenship itself arises from a horizon of diverse functions and roles, all of which require voice and deserve attention, it is not possible to eliminate large numbers of citizens from the exercise of effective involvement within their own community, because to do so would be to remove the multiplicity of perspectives that Marsiglio deems to be necessary for the realization of the common good and the maintenance of public peace”.

¹¹ Marsilius alludes once to the alternative possibility of electing representatives who can take the responsibilities of the whole citizen body including the ratification and rejection of laws. However, this can be done only on condition that the laws have previously been discussed before the whole body of citizens to make their own comments (D.I, c.13, §8). This suggestion of his is faintly reminiscent of the way modern representative democracies are structured, although a wide initial deliberation on the proposed laws is not very common. It is interesting to note that, although Marsilius’ human legislator can function effectively only within the framework of a face-to-face society, certain of the philosopher’s proposals, such as the election of an executive authority and a legislative body by the whole electorate or the majority of it, would potentially make democratic rule possible in geographic areas of greater size than the medieval city-states.

wherever considered necessary), according to the will of the majority.¹² This is a far cry from what can be found even in important later works of the 16th and 17th centuries that subscribe to some form of popular sovereignty.¹³

What happens, however, with the other forms of civil power? Marsilius believes that the citizens should entrust the power to implement laws to a ruler (or a ruling group), which implies that this magistrate could “judge, command and execute sentences of what is advantageous or just in civil terms” (D.I, c.15, §6). The Marsilian ruler, envisaged as a bearer of a unified, indivisible and constitutive

¹² On the basis of the following passage, it can be assumed that decisions would be made on a majority basis: “[I]t is not always easy or even possible for all persons to agree upon one opinion because some individuals have a stunted nature ... But things that are to the common advantage should not be impeded or neglected because of the irrational objection or opposition of these people. The authority to pass or to institute laws belongs, therefore, solely to [the totality] of the citizens or its [weightier] part” (D.I, c.12, §5). Marsilius concedes that it is unrealistic to expect from every member of the citizenry to think in terms of the common good (D.I, c.12, §8). Consequently, it is reasonable to assume that the majority principle is the only method of decision-making that neutralises the views of the vicious and ignorant few in a relatively fair manner. Cf. also D.I, c.13, §3. For an opposing view, according to which Marsilius presents “a notion of free individuals in a multitude of free men whose corporate will about the common good necessarily is the same”, see Coleman (2000: 154).

¹³ For example, the Florentine Renaissance political thinker Francesco Guicciardini (1483-1540), in *Del modo di ordinare il governo popolare* (1512), claims that laws should normally be debated by small bodies and put forward only for approval to the wider-based *consiglio grande*. See Guicciardini (1997: 211). Of particular interest is the case of the German Calvinist political thinker Johannes Althusius (1557-1638). In his work *Politica* (1603) sovereignty resides with the commonwealth or the associated body, namely the “citizens and inhabitants of the realm” who are bearers of collective rights. The people, however, do not appear to perform any political function apart from appointing by consensus an administrative elite of wealthy citizens, the college of ephors, to pursue the common good on their behalf, as well as appointing the supreme ruler and censuring him for any aberration. The ephors make all the political decisions, since Althusius believes that it is not feasible for the citizens to vote. Also, it is the ephors that enact the law, which is none other than the law of God, in its various manifestations. It should be noted that Althusius is prepared to accept that, in the absence of ephors, their powers would be necessarily delegated to the people as a whole, who would decide by consensus, although this is an extreme case that should not be pursued. See Althusius (1995: 105-122). Finally, the English political philosopher and republican theorist James Harrington (1611-1677), in his imaginary *Oceana* (1656), entrusts the senate with the competence to debate laws, while granting to a representative assembly of citizens only the right to reject, approve of, or refer for further debate, the legislative proposals of the senate. Indeed, he goes so far as to claim that whoever introduces issues for debate at the said popular assembly should be punished with death. The reason underlying this exclusion might be his overriding conviction that the “wisdom of the commonwealth” lies in “a natural aristocracy”, which has all the qualifications necessary for successfully guiding the people. It is obvious that such a move considerably reduces the scope of popular sovereignty with regard to the making of laws, as it deprives the citizens of the power to determine the content of the laws. However, it should be admitted that the current practice of legislating exclusively through elected representatives without any essential involvement of the citizens is much worse. See Harrington (1992: 23-24, 126 and 167). As regards Marsilius’ contemporaries, the debate on sovereignty is confined to justifying the sovereignty of the ruler, who, in the best of cases, should be bound in his legislative activities by principles of morality and natural law, and should observe the agreements with his subjects. See Quagliani (2012: 65-75) and Pennington (1993). However, medieval Italian city-states had developed political institutions in which the people as a whole were sporadically acting as sovereign and the idea of popular consent as a prerequisite for making valid laws was taken seriously among certain jurists. It is reasonable to assume that these developments had a profound effect on Marsilius’ thought. For a detailed account see Ferente (2016).

power,¹⁴ is also assigned with the duty to fill all the positions that are required for the successful execution of the city's functions, and particularly its judicial and military functions, with the appropriate number of properly qualified citizens. For obvious reasons, Marsilius gives particular importance to defining the military powers of the ruler. The "armed force of the prince must be determined by the legislator" and should be large enough to impose justice and protect the polity effectively, though not so large as to tempt the prince to exploit it for his own ends (D.I, c.14, §8). Finally, in order to be able to implement the law, as defined by the human legislator, effectively, the ruler should possess certain virtues, such as prudence (which for Marsilius means sound judgement), justice and equity (in order to overcome the shortcomings and imperfections of the law) (D.I, c.14).

The question of the ruler's establishment and supervision is of particular importance to Marsilius. With regard to the former, in chapter 16 Marsilius sets out ten arguments employed by the advocates of hereditary monarchy in order to refute them one by one, promoting the view that the ruler should always be elected by the whole citizen body or the weightier part of it. However, the general philosophical grounds for supporting the election of rulers have already been put forward in c.15, §3:

"[S]ince it belongs to the [totality] of citizens to generate the form according to which all civil acts must be regulated, sc. the law, it will be evident that it belongs to the same body to determine the matter or subject of this form, to which it belongs to settle the civil actions of men in accordance with this form: viz. the princely part."

In other words, the legislative procedures in which the body politic directly participates would be incomplete if this body were unable to appoint the person (or persons) to whom it sought to entrust the faithful implementation of its decisions. However, once the citizens entrust the ruler with the execution of their legislative decisions, they have the right to turn against him if he betrays their trust. On this thorny issue Marsilius is not satisfied with general and vague allusions but, in chapter 18, offers us the outline of a legislative framework for indicting, punishing and expelling the ruler.¹⁵ Thus, he believes that, in order to protect the polity and

¹⁴ Marsilius, evidently affected by the chaos caused by the disputes over issues of political authority that were common in his day, considers it essential to devote an entire chapter, the seventeenth, to promoting the view that the absence of a unified and hierarchically structured executive and judicial power leads to "the destruction of the city or the kingdom".

¹⁵ Monahan (1987: 213) has claimed that Marsilius is simply expressing the widespread medieval belief that popular assent to the establishment of a ruler entailed "nothing more than acclamation or concurrence for an otherwise designated ruler". If this, however, were the case, then why would Marsilius have gone to such great lengths to convince his readers that they should in no way tolerate hereditary succession to power? In addition, one may wonder whether the formal or customary character of popular assent is compatible with the view that the human legislator should punish the ruler when he violates the laws he is called upon to implement.

avoid arbitrary rule, there should be legal provisions making the executive authority answerable to the people. If the prince is found to be guilty of a trivial violation of the law, which is of a transient character, he should not be punished because such an action would without good reason shake the citizens' faith in him, causing more harm than good. However, if the ruler persists in breaking the law, he should suffer sanctions because his behaviour is detrimental to the city's welfare. It goes without saying that the legislator has a range of penalties to choose from, which include the prince's suspension for a short period of time (D.I, c.18, §3) and, of course, his ultimate dismissal (D.I, c.15, §2). Looking at Marsilius' overall description of the ruler, we can safely assert that the supreme magistrate is merely an executive organ that is subject to correction by the totality of the citizens who brought him into office. The only element that smacks of monarchy is his election for life (D.I, c.16, §1), although, with the tight constraints imposed by Marsilius, it is very likely that, if the Marsilian polity ever took shape, most princes would end their lives as ordinary citizens.

Marsilius could hardly be unaware of the fact that his emphasis on popular rule would appear arbitrary and far-fetched to his audience. For this reason the philosopher feels the need to provide a series of arguments —some of which are quite extensively developed while others are less so— in order to justify the granting of full political sovereignty to the many. Let us look at the most basic of them:

a) The first argument (D.I, c.13, §2) aims to show that it is impossible that the many should desire the harm of the city, since “nothing is desired by the same specific nature, in its greater part and directly, at the same time as its destruction; for such a desire would be void”. For this reason the multitude can only desire what is beneficial and just for the polity. If the opposite happened, nature (and art which imitates nature) would err and be deficient, which would be at odds with the findings of the natural science. The next two arguments present reasons suggesting that the many, far from merely not wishing to harm the city, can and should play an active role in seeking the common good, as expressed in the laws that they draw up and approve as a collective body.

b) Marsilius briefly invokes Aristotle's user argument, according to which certain things can be assessed much more effectively by those who use them than by those who make them.¹⁶ As he points out in c.13, §3 “many make a correct judgment of the quality of the picture, house, ship or other work of art, who would nonetheless not know how to invent one themselves”. Just as the quality of a rudder can be judged better by the helmsman who uses it than the carpenter who made it, so can the content of laws be judged better by those who are called to conform to them than by an aloof lawgiver. To provide a modern example, nobody needs special

¹⁶ *Politics*, 1282a 17-23.

knowledge to understand the effects that an increase or decrease in their income tax would have on their lifestyle, or to understand the consequences of the abolition of the public health system. Consequently, the citizens should have a direct and substantial involvement in the legislative process. Marsilius wholeheartedly endorses the user argument and believes it to be empirically obvious.

c) The most basic argument, however, judging by the space that Marsilius devotes to it, is the multitude argument.¹⁷ Aristotle, in his attempt to show that the many are fit to elect their rulers, advances the argument that when a crowd of people of limited abilities confer together, they make better decisions than those that would be taken by a small group of individuals with greater knowledge and abilities. Marsilius now “extends the validity of this doctrine to legislation and assigns the assembly of the citizens a broader range of powers than Aristotle, who confined himself to granting the people only deliberative and judicial functions” (Syros, 2006: 237).¹⁸ As has already been mentioned, Marsilius claims that the multitude should always have the upper hand in lawmaking. He recognises, of course, that it is not possible for anyone to draft legislative proposals, but he insists that the members of the multitude are able “to discern [true and useful insights concerning legislation] once they have been discovered by others ... and judge whether there is anything in what has been proposed which seems to need being added or taken away, completely changed or rejected” (D.I, c.13, §7). Marsilius, following Aristotle, appears to believe that it is collective deliberations —what he calls in c.12, §5 “the hearing ... of the entire multitude” (*ex auditu universe multitudinis civium*)— that produce what is right and beneficial for the polity, especially when the educated can also express their opinions. Thus, Marsilius’ reference to “the quality and quantity of the persons” in the weightier part does not entail a contradiction, since when the many decide collectively they acquire a quality they do not possess as individuals.

d) The final argument aims to show that the multitude is capable not only of judging and legislating wisely but also of implementing the legislative decisions it takes of its own accord. Thomas Aquinas, in discussing the Roman Republic in a relatively favourable light in the fourth chapter of *De regno*, argues that if there is no monarchical power the common people “no longer regard the common good as if it belonged to someone else, but each now regards it as his own” (2002: 15).¹⁹ If,

¹⁷ *Politics*, 1281a 42 – 1281b 38.

¹⁸ In the above article Marsilius’ argument is compared with the work of other political thinkers of his time, such as Peter of Auvergne, Nicholas de Vaudémont and Jean de Jandun, who made assiduous efforts to divest the multitude of any vestige of substantive political power.

¹⁹ Cf. a similar argument that is offered by Bartolus of Sassoferrato in his *Tractatus de regimine civitatis* (c. 1330): “[I]f the multitude is in command, assuming that they look to their own good, they nonetheless withdraw from the common good no further, in so doing, than if one person were ruling and were acting for his personal good: therefore it is better to be ruled by many” (Bartolus of Sassoferrato, 1997). This argument, which appears in a variety of forms, presupposes that the common good of the polity is equal to the common or non-conflicting interests of all its members. Consequently, in a democracy the pursuit of (at least) certain

however, the common good is connected with the legislative process, since this process aims to determine what is just and beneficial for the city, then the participation of all in this process is essential. In this way the citizens who agree on a law will perceive it as being their own work and as promoting the common good, and any of them “will better observe a law that he seems to have imposed on himself” (D.I, c.12, §6). On the other hand, if a citizen feels that the law is alien to him and imposed on him from above, he will have difficulty in abiding by it or he might do it for the wrong reasons.²⁰ Marsilius concludes that it is better for citizens to observe laws that they themselves have created, even if they are not flawless, than to have a system of perfect laws that are never implemented or implemented only improperly (D.I, c.12, §6).²¹

II

If these, in short, are the basic ideas expressed in the first Discourse of *Defensor pacis*, how can they be understood in more general terms and what is their place in the history of Western political thought? The answer to these questions can be neither simple nor definite, yet I shall attempt an interpretation of Marsilius’ political philosophy that seems to me more faithful to what he actually said.

It has been argued by Tierney (1982: 48) that Marsilius simply applied—though he expanded it further— “to both secular and ecclesiastical government” a consent theory that was popular among many political thinkers of the 14th century. We know, however, that the concept of consent is such an ambiguous one that it can be applied both in the case of a tyrannical regime which is merely tolerated through the passive acceptance of all those who live under it (Locke’s *tacit consent*)²² and also in the case of a modern democratic regime in which the citizens express their consent by electing those who will exercise the legislative and supreme

personal interests and of the collective interest coincide. If it is also borne in mind that in a democracy all citizens are considered equal and nobody is more powerful than anybody else, the pursuit of the common good is easier. On the other hand, in a monarchy, if the supreme ruler desires to rule justly and wisely, he should consciously align himself with the interests of the many, often setting aside his own interests, and this is not so easy, considering his ability to impose his will on his subjects. Bartolus drawing on Roman law argues for a form of representative government from which several classes could be excluded and it is confined to small city-states.

²⁰ Cf. *Politics*, 1281b 28-30.

²¹ It should be noted that both the user argument and the multitude argument have had a successful career in modern democratic theory and even today are used (in different versions) to defend aspects of popular sovereignty. See, on this point, Peonidis (2008: 283-294 and 2013: 7-11). In the context of modern liberal democracy, the fourth argument seems somewhat outdated, though not because we think it is a bad argument but because citizens are rarely directly involved in normal legislative procedures. Cf. note 30 below.

²² See Locke (1980: 63-64).

executive power. Therefore, it is important to see how Marsilius understands this concept at the few points in the first Discourse where it occurs. The first time it is mentioned is in c.8, §3, where the author, following Aristotle, states that in “tempered” systems of government (monarchies, aristocracies, polities) power is exercised with the consent of the citizens.²³ However, apart from this particularly broad use of the term “consent” to denote the approval given by subjects/citizens to three completely different systems of government, another, more specific use of it appears in connection with the system of government preferred by Marsilius himself. Thus, in c.13, §8 and c.17, §2, the citizens as a whole consent to comply with the laws which they themselves have established, and also to the implementation of these laws solely by officials that they themselves have selected for this purpose.²⁴ Therefore, here people’s consent amounts in effect to their agreeing to participate in a form of democratic regime. Consequently, Marsilius’ political theory is not primarily about consent but about a form of popular rule to which the whole body politic has every reason to consent.

It seems more appropriate to understand Marsilius, if not as a “radical democrat” (Gierke, 1900: 46), at least as a democratic thinker. However, one now runs into a new set of problems. If “consent” is an ambiguous concept, then “democracy” is an “essentially contested concept”. In what sense, then, can a thinker of the past be accurately described as democratic? I shall begin by defining in what sense Marsilius is *not* a democratic thinker.

Marsilius is undoubtedly not a champion of democracy in the sense he attributes to it in c.8, §3, namely that of a failed system of government in which the “mass” or “multitude” of the poor, which comprises the majority of the citizen body, wields power over the rest.²⁵ This is an Aristotelian notion that haunted the term “democracy” until at least the early 19th century and made its use prohibitive, since no political thinker wanted to be associated with a system of government that most believed was synonymous with anarchy, arbitrariness, factionalism and, occasionally, with radical views concerning the redistribution of property.²⁶ Also, Marsilius is not a champion of what we now call “liberal democracy”. This term has come to mean a system in which the decisions of the majority should be taken within a framework defined by a set of constitutionally entrenched rights, in order to prevent not only the abuse of power by the elected elites in whom power has

²³ Cf. D.I, c.9, §5.

²⁴ It is possible to discern the specific sense that Marsilius reserves for the citizens’ consent by comparing it with the completely different type of consent given by the multitude of men in Hobbes’ *Leviathan*, in which they entrust the exercise of all political powers to a sovereign in return for their protection and security.

²⁵ See Syros (2012: 92-93).

²⁶ See *inter alia*, Innes and Philp (2013). The Aristotelian definition is given in *Politics*, 1290b 17-19.

been vested but also the possibility of the minority being tyrannised by the majority. These rights have historically been understood to be natural rights, but what really matter in the polity outlined by Marsilius are positive law and the collective process of promoting the common good, and not any natural (pre-political) individual rights that citizens might possess from birth.²⁷

However, Marsilius of the first Discourse can be regarded as an exponent of democratic ideas in the following two senses. In a previous work, I proposed a model that lists a minimum number of conditions an existing or imaginary political regime (whatever its name) should meet in order for it to be characterised as an essentially democratic one. This model arose from an attempt to seek and highlight the common features shared by ancient and modern democracies. More specifically, I claimed that:

- “1. Democracy is conceived as rule by the people over a particular territory.
2. Popular rule or sovereignty means not only that the people are bearers of political power, but also that they should constitute the ultimate source from which every form of political power exercised within their territory emanates
3. The people are understood to be a set of individuals who satisfy the following necessary (but not always sufficient) conditions: (a) they are native-born and (b) their number is greater than the number of those belonging to the upper class, defined by any principle of distinction recognized in their society.
4. The people rule in the following ways:
 - a. They participate directly in political decision-making, and/or they freely appoint officials who decide on their behalf.
 - b. They are not unfairly disqualified from holding political office.
 - c. Appointed officials are accountable to the people. This accountability implies that all its members should have the power of auditing their officials and, among other things, of pursuing their replacement with others, if the members are not satisfied with the officials’ performance.” (Peonidis 2013: 1-5)

If this model is applied to the regime presented in the first Discourse of *Defensor pacis*, we find that it meets most of the conditions allowing us to describe it as democratic. The people participate directly in the exercise of legislative power

²⁷ In the first Discourse the only reference to natural law is in c. 19, §13, where it is considered to be the foundation of the individual’s moral obligation to avoid and prevent wrongdoing.

and indirectly in the exercise of executive power by electing one or more officials to whom they entrust the duty of implementing the laws.²⁸ Further, they consist not of the higher class of the noble or the wise but of the whole body of citizens or the overwhelming majority of them. As far as condition 4 (b) is concerned, although at two points Marsilius mentions the Aristotelian contention that the king or the highest functionaries should be chosen from the class of notables (D.I, c. 13, §4, c. 16, §3), he himself does not appear to share this view. On the contrary, in c. 16, §17 he makes it absolutely clear that the rulers could come from one particular family *only if* the legislator considers it appropriate, provided that the family's ancestors have displayed prudence and virtue, while he does not omit to note, calling upon relevant passages from Aristotle, that the families of nobles are often prone to corruption and decay. If we also take into account the fact that in c. 14, §8 Marsilius holds that would-be rulers should not possess their own armed forces before their selection because, if they did, “no virtuous *poor* men would ever be raised to the principate” [emphasis mine], we may assume that he would probably disqualify citizens from occupying the supreme political office only on grounds of moral wickedness.²⁹ Finally, as has already been mentioned, the whole legislative framework that is put forward to provide checks on the prince (including the power to remove him from office) renders him totally accountable to the whole body of the citizens or the weightier part of it.

In addition, Marsilius can be regarded as belonging to the democratic tradition in a second sense as well. Rousseau, whose work forms an integral part of the basic corpus of democratic political theory, as it became consolidated during the 18th century, claimed that the legislative power belongs exclusively to the people, whose sovereignty can be neither represented nor alienated, while the executive power can be entrusted to a governing body charged “with the maintenance of freedom, both civil and political”.³⁰ Rousseau, of course, does not make such an extensive use of Aristotle and is considered to be a particularly original political

²⁸ One difference between Marsilius' regime and other historical democratic regimes is that in the latter the elected officials are not elected for life but only for a short term. Nevertheless, this ‘undemocratic’ element is counterbalanced by the direct participation of the people in the legislative procedure. It is noteworthy that Hobbes (1979: 246) holds that in commonwealths where there is “an elective King, whose power is limited to his life” the sovereignty lies in the assembly who elected him. These commonwealths are either democratic or aristocratic.

²⁹ Cf. the view he develops in c.16, §21 that there is nothing objectionable about the desire of any “prudent and worthy” citizen to rise to the office of ruler.

³⁰ Rousseau (1997: 83, 113-118). However, caution is needed to avoid finding similarities beyond the structural one mentioned above. For instance, I would have reservations about accepting D' Entrèves' (1965: 75) suggestion that Marsilius was a forerunner of Rousseau in developing the idea of the “general will”. I am not sure whether Marsilius would agree with the view that “when a law is proposed in the People's assembly, what they are being asked is not exactly whether they approve the proposal or reject it, but whether it does or does not conform to the general will, which is theirs” (Rousseau 1997: 124). Perhaps he would simply say that the common good would be determined through deliberation.

thinker, yet we cannot fail to notice a basic similarity in the structure of the democratic regime envisioned by these two men.³¹

Throughout the Middle Ages there were very few ideas that recalled something of the democratic achievements of the ancients; amongst these ideas stood out the principles of Roman law *leges nulla alia ex causa nos teneant, quam quod iudicio populi receptae sunt* (Digest 1.3.32) and *quod omnes similiter tangit, ab omnibus comprobetur* (Code 5.59.5.2). Marsilius of the first Discourse is perhaps the first medieval political thinker to succeed in describing and defending in a systematic and unwavering manner a form of government based on popular sovereignty. Although his attempt had no immediate followers, the publication of this work sufficed, in my opinion, to secure Marsilius an important place in the history of democratic ideas.³²

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³¹ References to Marsilius' democratic model are rare among contemporary political theorists and scientists. One notable exception is Michael E. Morrell (1999) who considers the legislative process elaborated in the first Discourse of *Defensor pacis* an ideally appropriate model for empirically testing the hypothesis that wider participation in democratic decision-making procedures will lead to an "increased acceptance" of the ensuing decisions. The hypothesis, he argues, proves to be a reasonable one provided that citizens would have frequent opportunities of political participation, which would cover a great variety of issues. Marsilius would concur.

³² The impact of Marsilius' ideas up until the 17th century was relatively limited and the most frequent references to his work were made by opponents who hasten to condemn the mistakes he made by criticising the primacy of the Pope and other views held by the Catholic Church; see Izbicki (2012: 305-333). However, it would be wrong to assume that his works did receive a more fair treatment by antipapal forces. Henry VIII, who was searching for arguments against the Holy See, published a heavily censored version of the *Defensor pacis* so as not to give the House of Commons cause to dispute his supremacy (Maiolo 2007: 175). For other attempts of a different kind to highlight the democratic elements in Marsilius' thinking, see Gewirth's introduction to his English translation of *Defensor pacis* (Marsilius of Padua, 2001: xxx-xlv); Skinner (1978: 53-65), and H.-Y. Lee (2008).

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Peonidis, Filimon
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