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*Representation of Corporate Persons:
Marsilius of Padua and
Contemporary Political Theory*

Thesis
Submitted by

Gilles Mongeau, S.J.

in fulfillment of
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Introduction

The thesis which follows is concerned with developing a new approach to political theory as it is practiced in the Anglo-American tradition. This tradition has been characterized by certain assumptions regarding the foundations of political theory, the most important of which has been the primacy accorded to the individual and to the political rights which develop to protect this primacy. Political theory has been, in the mainstream, worried about protecting individuals from each other and from authority. Our ideas regarding democracy, fed by this reflection and by historical events (the rise of liberal capitalism, for example), have tended to reflect this individualist foundation.

Where attempts have been made to develop notions of the polity, and to work from these, these notions have been hindered by their idealism (Hegel or the Fabian Socialists) or their materialism (Marx). Recent political experience in the West, however, presents a strong challenge to the individualist stance. The rise of political interest groups, which serves as the empirical starting point for this thesis, has brought out the shortcomings of our democratic theory into the open. Various critiques, from a feminist, Marxian, ecological or other point of view, have shown how the individualism of our tradition has reached certain limits. These also show the need, I think, for a new development in political thought, one that takes into serious consideration

the role and nature of the polity.

The thesis is divided into two parts. The first part is diagnostic in nature: it seeks to isolate a specific question to be asked, a heuristic notion of representation that can serve as a template for further inquiry. This first part is made up of two chapters. The first chapter looks at representation from the point of view of the representative. The second chapter turns to the interests of the represented.

In the second part, which is made up of three chapters, the work of Marsilius of Padua is studied to try to glean a possible solution to the heuristic notion developed earlier. Marsilius' understanding of politics is founded on a corporate notion of the individual, which is why his work is of interest. The chapters develop, in order, Marsilius' historical context, some key notions in his text, and finally some conclusions for our own theoretical enterprise.

Part I:
Developing a Heuristic Notion of Representation

Chapter 1 - Political Representation

There is, at the centre of every theory of democracy, a basic understanding of the way in which government relates to the people. The question of modern political philosophy, therefore, can be framed as follows: How shall the government exercise authority over the people? Historically, the debate between theorists inspired by Rousseau and those inspired by Hobbes, for example, has hinged on whether government ought to be representative or responsible. Rousseauans insist that responsible government can only be achieved by the people themselves and that representation is impossible, while Hobbesians maintain that true representation is a function of the government's responsibility to the nation as a whole, and that government must therefore exercise authority over the people.¹

Debates such as the one delineated above have proven to be singularly insoluble. The reason for this has been investigated by two important thinkers, A.H. Birch in the field of political science, and Hanna Fenichel Pitkin in political philosophy. The analysis suggested by both is linguistic-conceptual, but there are important differences between the two. The purpose of this chapter is to examine the contemporary notion of representation in the light of Birch's and Pitkin's analyses, and in the light of a recent evolution in political life. The past twenty years have seen the rise, in Western democracies and elsewhere, of various kinds of political interest groups. These groups have been both violent

and non-violent, and have ranged from labour unions and business lobbies, to environmental groups and war protest movements. These groups share the characteristic of being issue-oriented rather than election-oriented. Unlike political parties, they do not attempt to insert themselves into the political process. Instead, they are content to act in a fashion parallel to established institutions. The one exception to this trend might be the Green party in Europe, although the proliferation of parties in many European states means that parties serve a different function than in countries in the Anglo-American tradition. We must make an important qualification, then, that the work to follow is restricted to studying the Anglo-American tradition.

From the philosophical point of view, the rise of political interest groups presents some difficulties. Political theory understands and explains contemporary democracy as a system that allows representation of all interests within established structures such as representative assemblies. Political interest groups such as the ones described above choose to act outside of such structures, and often call these structures into question. It seems, therefore, that established arrangements are not adequate to the representation of interests that exist in contemporary political life. The critique that is presented here, therefore, will lead to the development of what shall be called a heuristic notion of representation.

What is a heuristic notion? The Oxford English Dictionary defines heuristic as "serving to find out or discover." Computer programmers refer to heuristic programs which are able to assess whether a possible solution is a good one. A heuristic notion, then, is a tool for inquiry. It is a broad diagnosis of the problem, framed in such a way as to guide further research. It is formed from what is already known in general and the particular data presented to the researcher. Such a tool for inquiry uses what is already known as a means of creating parameters that will help assess solutions that present themselves as relevant or not, or as better or worse.

What, then, is a heuristic notion of representation? The general theory available to us is the theory of representation as it is understood by modern political philosophy. This is what will be analyzed and critiqued through the work of Pitkin and Birch. The data at hand is the fact that in contemporary experience, specific arrangements which are the result of the general theoretical understanding of representation are no longer adequate. The heuristic notion of representation will not provide an answer to this puzzle. It will merely set up the specific way in which the problem at hand can be addressed in further research.

We will begin our study, then, by detailing the work of Birch. This will be followed by a look at Pitkin's analysis. After synthesizing and assessing the information gleaned in this way, we shall develop a heuristic notion of

representation to guide further research.

The Nature and Functions of Representation

A.H. Birch has written extensively on the notion of political representation (see esp. his *Representative and Responsible Government*), but the most succinct presentation of his theory is to be found in a lecture given by him in 1971 at the University of Exeter.

Birch begins by appealing to the linguistic analysis of Ludwig Wittgenstein as a guide to his own work: "Words have usages rather than essential meanings, and the relationship between these usages is well captured, I think, by Wittgenstein's analogy with the relations between members of a family: they have a common origin and they may have a recognizable family character, but the student would be missing the distinctive nature of each member if he were to concentrate all his attention on what they had in common."² The notion of political representation has "four main usages, each of which is logically distinct from the other. Three of these have both political and non-political connotations, while the fourth is purely political."³

These four usages are labelled by Birch as follows: delegated representation, microcosmic representation, symbolic representation, and elective representation. These four types, Birch contends, are exhaustive of all forms of political representation. The four categories are logically independent of each other, and do not have anything in common beyond

family resemblance. They cannot be fit together, like parts of a whole, to give a complete picture of representation in its "true nature." We will return, at the end of the chapter, to this last point, and try to show that Birch's theory, while being essentially correct in emphasizing the independence of his four concepts of representation, must be nuanced if it is to give a complete account of representation.⁴

The first usage of the notion of representation is "delegated representation." Here, "the term 'representative' is employed to describe a person who has the acknowledged duty of defending or advancing certain interests specified by his principal."⁵ One thinks of the sales representative, the ambassador, or the lawyer representing her client in court or during important transactions. Successful representation is a function of "certain goals set by the principal, and the extent to which these goals are achieved."⁶

The question that remains unanswered is the amount of freedom enjoyed by the representative in acting for the represented. In terms of politics, one thinks of the delegates to the early parliaments and of the range of freedoms allowed them by the cities or guilds they represented. In Spain, delegates to the *cortes* had strict instructions as to what they could or could not agree to in the name of the cities they represented. In France, by contrast, delegates to the *états généraux* usually had great freedom to agree to new taxes and to bind their constituents without consulting them.

The second usage is captured by the label "microcosmic representation." This usage refers not so much to representation by a single individual, but to the composition of a representative assembly. "The term is used...to denote a person who is in some respects typical of a larger class of persons to which he belongs...a representative body would be ideally constituted, in this sense of the term, if it were a microcosm of the larger society."⁷ Such a use of the notion of representation is not so much functional as critical. Movements of parliamentary reform have often made use of this category to push for the inclusion of the lower classes in government: How can a member of the upper class govern the lower classes properly when he has none of their characteristics, or when his behaviour is governed by a different social context? A prime example of microcosmic representation in the Canadian context is the practice of appointing a certain proportion of senators from various regions and cultural groups to the Senate, and the related arguments surrounding the trading of Senate seats in the Meech Lake discussions of last year.

The third usage "is found when someone is described as representing a number of persons in a symbolic way...A symbolic representative calls to mind, or serves as an embodiment of, a whole group or category of persons."⁸ What is of importance here is not so much that a person acts in a way that is typical of a class (this would be no different

than microcosmic representation) but rather "that the appointment symbolizes the acceptance of the group as full members of the community."⁹ Again, the Canadian political scene provides a good example in the appointment of the first woman justice to the Supreme Court of Canada.

The fourth and final usage of 'representation' is purely political, and arises, according to Birch, only in the eighteenth century. "Elective representation" arises in England out of the belief that Parliament, not the King, ought to be the centre of political power. In order to be a decision making body, Parliament had to be made up of members who were independent of the will of their constituents. Thomas Hobbes develops this notion when he describes representation as "essentially a process of authorization...To say that a man is an elected representative in a national assembly is to say that he has been authorized by those who took part in the election to exercise certain powers. This concept of elective representation is in my understanding purely political and quite independent of the other concepts I have mentioned."¹⁰

It is important to Birch's argument that while common usage links elective representation with one of the other three types and infers that representation is better when such links are encouraged, "...this is an independent argument which does not follow from the nature of elective representation and is in my view of very doubtful validity."¹¹ An elective representative need not be symbolic, delegated or

microcosmic, whatever common usage suggests. We will return to this point later.

Birch's concern is to propose a value-free definition of the functions of representation, one that is not limited by ideological biases. We will see later, when we compare his views with those of Pitkin, that his assessment of these functions is itself based on a certain scientific ideology. Birch points out that representation has existed in political systems other than democratic systems, so that the functions of representation must be independent of democracy as a value.¹² The political scientist must not pronounce on the value of a political system, she must classify and sort out what goes on within systems so as to permit rational discourse on political issues.¹³ One of the functions of representation, as Birch understands it, is the mobilization of consent. The older parliaments, he writes, were summoned for this reason. He continues, "things have not changed much over the past seven centuries, except that Members of Parliament now sometimes play a smaller part in the mobilization of consent than the delegated representatives who act on behalf of interest groups. Insofar as the latter are successful in their negotiations with the administration they are inevitably drawn into the position of agreeing (explicitly or implicitly) to persuade their members that the compromises they have arrived at are satisfactory."¹⁴ The experience within Western political systems is that representation opens two-way

channels of communication. Not only do interest groups begin to mold themselves to the political process, but unavoidably an interest group that becomes recognized as legitimate begins to exercise a considerable amount of influence over representative institutions.¹⁵ We can think of powerful lobbies such as the Canadian Labour Congress, or the Insurance Institute of Canada, and more recently, the various Native rights groups as examples of such legitimate interest groups within the Canadian context.

Birch's analysis is important for its empirical content. The four uses of the notion of representation outlined in *The Nature and Functions of Representation* are grounded in empirical research and are a fair assessment of the various sorts of things people mean when they say they are citizens of a representative democracy. His approach is severely limited, however, by his own systematic concerns. His insistence that the four types of representation are separate defies the very popular usage he seeks to use as his starting point. We must return now to Birch's comment on elective representation. The fact that elective representation arises with democratic systems of the modern period leads him to argue that this type is independent of the others, and that arguments of the kind "an elected representative is more effective if he is also a representative in one of the other senses" are indefensible. This kind of assertion is, unfortunately, not supported by the evidence of history. The expansion of the franchise in

Britain, for example, came as a result of a perceived need to provide a voice for the lower classes, to have them represented institutionally. In other words, elective representation is linked, at least in this case, with either microcosmic or delegated representation. Mill's arguments for the expansion of the franchise as a way of ensuring the spread of political skills and virtues throughout society are another example of linkage of elective representation with values other than authorization.¹⁶ The various types of the notion of representation may not be logically connected, but they are nevertheless linked in some way. If we are to develop our heuristic notion, it will be our task to understand just what kinds of linkages exist among the various senses of "representation."

A related limitation of Birch's approach is that it is strictly a classification of types of representation. The four types being independent of each other, there is no possibility of investigating their relationships to each other in an attempt to understand why representation is what it is in political systems. There is also no attempt to distinguish representation in the democratic sense from representation in general, even when general intuition supports the idea that representation is "true" in a democracy and "false" in other political systems. Birch's presentation has low explanatory power due to the fact that he seeks a value-free classification. This, of course, does not invalidate its

important contribution as a means of sorting and classifying the empirical data which must ground an inquiry such as this one. We must be careful, however, to ferret out the root assumptions that guide Birch's theory. The further analysis we require in order to do this leads us now to consider the work of Hanna Pitkin.

The Concept of Representation

Pitkin's analysis of what she calls the concept of representation is also rooted in Wittgenstein's philosophy of language, but differs from Birch's work in two important respects: first, Pitkin has also read J.L. Austin, and is interested in the approach of "ordinary language philosophy"; second, her concern is not with empirical data, but with the use of the concept of representation in political theory. Of her method, she writes: "...I have attended carefully to the way in which we ordinarily use words when we are not philosophizing or wondering about their meanings. It means, further, attending not merely to 'representation' itself, but to the entire family of words on the root 'represent-', including 'representative' (both noun and adjective), 'represent', 'misrepresent', 'misrepresentation', and 'representational'. And it means attending to fine distinctions between such words and their close synonyms...For the borderlines of what 'representation' means are set, at least at crucial points, by what we might have said instead but did not -- by the available alternatives."¹⁷ Pitkin, then,

exploits not only the Wittgensteinian analogy of the family, but also the Austinian notion of etymology.

She begins by studying the strictly formalistic usage of political representation. This is the view typically held by political scientists.¹⁸ It is the view that representation consists in the giving of authority, where representation is a kind of container for the politician, determined by an initial vote, and inside which he can do whatever he wants.¹⁹ Aside from the version developed by Hobbes, there are two other important versions of this formalistic usage, that of the German *Organschaft* theorists, and that of Eric Voegelin.²⁰

What all these views share in common is that they define representation as a function of ascribing actions and the responsibility for actions to various actors in a system. Theories of authorization, however tend to conflate four very distinct ideas: (1) the actions of the representative are the actions of the represented; (2) the consequences of these actions (payment of taxes, going to war) are assignable to the represented; (3) the represented give the right to act to the representative; and (4) the representative has the right to act upon the represented, that is to command them.²¹ Authorization theorists begin with the first of these four notions, but "they then try to explicate what this means in terms of ideas two, three, and four. Yet these ideas are by no means coextensive or identical in meaning."²² Not all representatives have authority, for example: a member of the

opposition does not exercise a right to command her constituents.

There is another formalistic view of representation, which Pitkin calls accountability theory. This view, rather than emphasizing the transfer of authority to the representative, talks of the ability of the represented to remove the representative. This understanding of representation is diametrically opposed to the authorization view: "For these writers, the meaning of representative democracy is that the agents, the personnel of government, are held responsible to the society as a whole."²³

In both cases, Pitkin argues, it is not possible to speak of good or bad representation, since in neither case are we given criteria to assess what happens during representation. We do not know how a representative ought to act, only that she is put in place in a certain manner or removed by a certain procedure.²⁴

The key, then, is to penetrate to the substantive content of the concept of representation, which necessitates the linguistic analysis described earlier. Pitkin delineates three substantive notions of representation which are equivalent, in order, to Birch's microcosmic representation, symbolic representation and (with important qualifications) delegated representation.²⁵ Since the differences between the two thinkers appear only with delegated representation or what Pitkin calls representing as "acting for", let us examine this

notion.

When representation is understood as "standing for", the role of the representative is passive. In symbolic representation, her representativeness is a question of being acceptable or convincing to the represented. In the case of microcosmic representation, her representativeness is a question of accuracy (does she make the right amount of money, or does he have the requisite 2.4 children). But representation is not merely a state. There is also an activity of representing, which involves more than being a woman, or being convincing to the voters. The representative acts by voting, choosing sides in a debate, proposing motions, defending positions, and so on.¹⁶ There emerges from Pitkin's analysis various analogies to representing as acting for: agency, trusteeship, substitution, and delegation or embassy.¹⁷ Each of these expresses a different facet of the concept, but cannot capture the whole of it. The problem centres on the meaning of the phrase "acting in the interest of". An agent acts in the interest of his principal when he does what the principal asks. A trustee or guardian acts in the interest of her ward by using knowledge or ability the represented person does not have. A substitute acts instead of those he represents. Finally, a delegate is one who is missioned officially, sent with certain powers to act that originally resided in the principal. Pitkin is thus led to consider the mandate-independence controversy, which turns on

the question of interests.²⁸

Pitkin points out that the controversy, as traditionally formulated, cannot be consistently solved. Her interim solution consists of setting up parameters around what can consistently be said about representation: although the representative is independent, she must act in such a way that she does not come in conflict with the general wishes of her constituents. This sets up an area within which theorists of representative democracy can dialogue, but it does not resolve the controversy. There remain differences that depend on how a theorist views the relative intelligence of ruler and ruled, on whether interests are understood to be attached or unattached, on the importance of national versus local issues, and so on.²⁹ In order to gain some conceptual clarity, Pitkin examines the idea of interests in the writings of Burke and of liberal political theory in general.

Interests are broadly defined by Burke, writes Pitkin, as being "few in number and clearly defined, of which any group or locality has just one. These interests are largely economic, and are associated with particular localities whose livelihood they characterize, and whose overall prosperity they involve. He speaks of a mercantilistic interest, an agricultural interest, a professional interest. To a very great extent, these interests are conceived as unattached; it is not the interest of farmers but the agricultural interest - - an objective reality for Burke apart from any individuals it

might affect."³⁰ The job of representatives, then, is to speak for these interests in Parliament, where conflicts between these interests that arise at the national level can be resolved through rational discussion and negotiation. This kind of representation is grounded in the actual representation of persons through suffrage. The vote that sends a representative from a coal town to Parliament, however, is a vote on behalf of the mining interests, including those mining towns that do not (in Burke's day) have access to the vote.

The liberal model is one of representing people who have interests. For someone such as James Madison, writing in the *Federalist Papers*, "the concept of interests...is much more pluralistic than it ever was for Burke, and it is essentially pejorative. Interests are identified with 'factions', and are evil ...[The] diversity of human faculties leads to property and hence to the variety of interests in society. No longer are interests the clearly defined, broad, objective groupings that compose the nation; no longer do people or places 'belong to' or 'partake of' an interest. An interest is something men 'feel'."³¹ Representative government acts as a filter for these plural and factional interests, by placing a few people in command of a large and diverse state. Thus, each representative must herself weigh a wide range of interests, and the probability of interests aligning for effective action is lower. What a representative democracy allows for, Madison

thinks, is a large number of competing interests that nullify each other. The best indicator of a stable government, then, is its ability to maintain the status quo. In those rare cases where positive action is needed, Madison believes there will be enough support to carry through a course of action. This position is supported by the work of Jeremy Bentham, whose utilitarian analysis of interests depends on a psychological notion of interests which pushes the role of self-interest in political life to such an extent that one must ask how any person can truly represent another.³² What saves representation, as a political notion, from being meaningless is that people have both public and private interests. The task of the representative and specifically of the legislator is to enlighten the people and convince them, through proper laws, that public interests come first.³³

Pitkin's work on the concept of interests brings some clarifications, but one important question remains unanswered. While it seems accurate to say that the Madisonian understanding of interests has prevailed in Anglo-American democracies, one wonders if the Burkean model of unattached interests ought not to be re-examined. Is it not the case that some interests seem to be larger than the interests of one or other individual taken separately? Are there not broad "national interests" that ought to be accounted for? It will be the work of the second chapter of this thesis to study these questions.

At the end of this conceptual analysis, then, what is political representation? Pitkin suggests that contemporary thinkers need to understand representation in a dual light, both formal and substantive. A representative government is the result of institutional arrangements: there are laws, practices and concrete institutions that ensure a structure or process. These formal arrangements ensure a basic attitude of responsiveness to public interests.³⁴ When there are clear public wishes, the institutional arrangements of a representative democracy ought to ensure that these wishes are considered seriously by government. There is, in tension with this, a substantive component: are rulers in fact responding to public wishes? The formal arrangements may not, in a particular case, succeed in securing the appropriate behaviour from a representative or from the represented, and yet the state governed by such arrangements is still understood to be a representative democracy.

We are now in a position to compare the views of Birch and Pitkin in a more complex way, and to evolve a heuristic notion of representation.

The Heuristic Notion of Representation

(A) The act of representing and the state of representation

Let us first explore the relationship between Birch's delegated representation and Pitkin's representing as "acting for". They are indeed related: delegated representation involves defending or advancing certain interests, and this is

partially what Pitkin intends by "acting for". Pitkin's analysis is more complex than Birch's, however, and serves to highlight the active rather than passive character of delegated representation. She also shows that advancing or defending an interest is not merely a question of agency or delegation. A representative can act for an interest without being responsible to a principal in the sense intended by Birch.

Understanding this, we can also understand why delegated representation is not logically connected to either symbolic or microcosmic representation. As Pitkin shows, the latter two senses of representation are states. They are facts about representatives. The act of representing (dropping the limited concept of delegated representation) is just that, an act, a part of a process.

Having understood the difference between the act of representing and the state of the representative, we can also understand how they are reconcilable. It is not possible, as Birch says, that these senses of representing could be reconciled as "parts of a circle", which circle would represent the total nature of representation. Rather, the act of representing is to be understood as developing or creating the state of representativeness. This is difficult to organize, but perhaps the simplest way is to provide two analogies.

The field of education provides the first analogy. The

verb "to educate" has as its correlate in the passive voice the construct "to be educated". A teacher educates, that is performs acts of educating, which, in an ideal situation, result in the students being educated. We thus see that an educator, by acting in a certain way, creates a relationship with others, the students, that results in the students being educated.

The second analogy comes from the philosophy of Thomas Aquinas and rests on the distinction between essence and existence. Aquinas' analysis of being parses two senses of the verb "to be". Concrete beings have a structure that is instantiated, that is, there is organized material. We can understand the organization and concreteness of this or that being independently of whether or not this or that being exists now in front of us (think of the scientific study of dinosaurs). This is the essence. But at any given time, this essence is active or not: it is or is not, in the sense that it exists or not. There is a static reality and an active one, both of which make up the beings around us.

How do these two analogies help us understand the relation between the act of representing and the state of the representative? The act of representing, or representing as "acting for", stands to the state of representing, or representing as "standing for" (symbolic or microcosmic representation), as educating stands to being educated, or as existence stands to essence for Aquinas. It is by acting for

certain interests that a representative comes to be accepted in political life as standing for these interests. For example, there are many labourers in Poland, any one of which is, in the general sense, a microcosmic representative of the Polish labourer. But Lech Walesa acted and acts for these interests on the political stage, and so he comes to be the political representative of Polish labour interests. Immediately, we must limit this statement by emphasizing the other side of the relationship. When an individual begins to act for an interest, those who are part of the interest (or who have the interest -- this point is not yet resolved) can and do endorse or reject the activity of the person in question (this individual does not speak for us, or the actions of this individual are not actions we support). In the case of political representatives, the represented can vote a politician out of office, or in some cases impeach him or her. Thus, by the time one is recognized as a representative and accepted as such, it is because one's acts of representing are both recognizable and acceptable. There is a dialectic, then, between the act of representing and the state of representation, and between the representative and the represented. This dialectical understanding of representation will be of importance to the development of our heuristic notion, when we show that the present dilemma stems from the fact that the kinds of interests held by political interest groups do not have an institutional correlate.

(B) Formal representation and substantive representation

The second point to address is that of the difference between what Birch calls elective representation and his other three senses. This is the same as what for Pitkin is, respectively, the formal understanding of representation and its substantive content. This is done easily enough, for Pitkin's analysis directly provides us with the solution.

Once again, Birch is correct in pointing out that elective representation is not logically connected to the other senses. This is because, as Pitkin points out, elective representation is a formal notion while the other three senses are its substantive content. Elective representation refers to legal, institutional and social arrangements that are designed to ensure and foster certain activities, behaviours and attitudes, both on the part of representatives and represented. It is important to point out, however, that while elective representation is a convenient term, Pitkin's analysis shows that the arrangements involved include much more than holding elections.

(C) The heuristic notion of representation

The broad lines of our understanding of representation, as they emerge both from the analysis of Birch and Pitkin, and from the synthesis above, can be summarized as follows: there exists a set of formal arrangements (legal, institutional and social), called representative, that structure and facilitate the performing of certain activities and behaviours of

representing and being represented, which activities and behaviours allow a certain state or fact of representation to emerge. We have seen earlier how the acts of representing and being represented are the poles of a dialectic. The formal sense of representation, that is, the specific arrangements that are in place to ensure the requisite activities and behaviours, are now seen to be the concrete structure of the dialectic between these two activities. Given that these specific arrangements vary from one representative government to the other, we can understand that the practical embodiment of the dialectic can change. We can also see that as understanding of contemporary political life develops, it is possible (and necessary) to develop new structures, so that the act of representing and the act of being represented will more accurately reflect the needs of contemporary humanity. This development implies the need for an evolution, not just in praxis (concrete action) but also in theory (understanding). We must understand the symptoms before prescribing the cure.

Which brings us to the question of our heuristic notion of representation. Having achieved a general picture of representation, we must now bring in the specifics of the case at hand, in order to understand where we are to look when we do further research. The problem at hand, as stated at the beginning of this paper, is that certain political interest groups act outside of the arrangements established to

facilitate representation. From the general understanding of representation outlined above, we see that the problem would lie, then, at the formal level. There are, actually, individual representatives who do act for the interests of the political groups in question, but these representatives are not in a formal relationship with the groups in question. The dialectic links these representatives with their constituencies. The problem is not so much with being substantively represented on an issue at a specific time: it is with the fact that formal arrangements do not exist to ensure such representation in general.

This leads us to consider the last point of contact between the analyses of Birch and Pitkin. Birch states that delegated representation is the representation of specific interests, and that such representation is best exemplified by the spokespersons of political interest groups (see page 8, footnote 14). Pitkin, on the other hand, leaves unresolved the debate between unattached interests and interests of persons. Political interest groups concern themselves with the kinds of interests that Pitkin calls unattached interests, and at the same time contradict Pitkin's understanding of these interests as unattached. The formal arrangements now existing in most democratic states (at least in the West) are developed from the model of "persons with interests". Any further work in this area, then, must seek to understand better the nature of interests.

The work ahead, therefore, will seek to develop a new understanding of the formal arrangements that make a government representative, an understanding that will account for the kinds of interests with which political interest groups concern themselves. And this, simply put, is our heuristic notion of representation. At this time, it circumscribes a large number of possible solutions. The next chapter will seek to achieve a better understanding of the concept of interests, in order to resolve some of the questions that remain unanswered here, and allow us to focus our heuristic notion of representation with more precision.

Endnotes

1. Benjamin Barber in "Democracy," in The Blackwell Encyclopedia of Political Thought, pages 114-119.
2. Birch, A.H. The Nature and Functions of Representation, University of Exeter Press, 1971, page 5.
3. *ibid.*
4. *ibid.*, page 11.
5. *ibid.*, page 5.
6. *ibid.*, page 6.
7. *ibid.*, page 7.
8. *ibid.*, page 9.
9. *ibid.*
10. *ibid.*, page 10.
11. *ibid.*
12. *ibid.*, page 11
13. *ibid.*, pages 11 and 20.
14. *ibid.*, page 17.
15. *ibid.*, pages 18-19.
16. see especially Duncan, Graeme, "Mill, Marx and the State", in Democracy and the Capitalist State, pages 109-111.
17. Pitkin, Hanna, The Concept of Representation, page 6.
18. *ibid.*, page 38.
19. *ibid.*, page 39.
20. *ibid.*
21. *ibid.*, page 51.
22. *ibid.*
23. *ibid.*, page 56.

24. *ibid.*, page 58.

25. these substantive notions are, in Pitkin's terminology, "standing for" as descriptive representation, "standing for" as symbolic representation, and representing as "acting for".

26. *ibid.*, pages 113-114.

27. *ibid.*, pages 121-141.

28. *ibid.*, pages 144-167.

29. *ibid.*, pages 166-167.

30. *ibid.*, page 174.

31. *ibid.*, 191-192.

32. *ibid.*, pages 198-201.

33. *ibid.*, pages 203-206.

34. *ibid.*, 232-233.

Chapter 2 - Political Interests

In the first chapter of this work, a heuristic notion of representation was developed which was meant to serve as a guide to further research into political representation, and more specifically, into the role political interest groups can play in a democratic political system. At the end of that chapter, however, one question remained unanswered: what is the nature of political interests? Burke, as we saw, recognized only unattached, abstract interests as legitimate matter for political representation. Hobbes, on the other hand, with the utilitarians after him, thought of interests as attached and highly subjective. In the case of Jeremy Bentham, these interests were understood to be so subjective that the ability of another human being to represent them came into question. What restored some balance in this situation was the recognition by Bentham, and subsequently by Mill, that there were both private and public interests. In this chapter, we shall first take a common sense look at political interest groups. We shall then review the question of interests in the Anglo-American tradition. This shift of viewpoint from representative to represented involves a methodological shift. We will show first that the tension between public and private interests remains unresolved within the Anglo-American tradition. We shall then look to the Continental tradition, as represented by Hegel, for an alternative analysis of interests. This will allow us to refine the heuristic notion

of representation developed in the first chapter.

Political Interest Groups

Let us begin then, with a quick, common sense look at political interest groups. They are corporate bodies with more or less internal organization. At the minimal end of the scale, members pay dues and receive an internal information sheet. They implicitly or explicitly agree to have the leaders of the group represent their views. We can think here of tax revolt movements such as those that have developed recently over the imposition of the Goods and Services Tax. At the opposite end of the scale, members are legal corporations, with statutes of their own, who come together under a carefully worked out charter to take collective positions on a broad range of related issues. We can think here of the Canadian Chamber of Commerce, of the Association of Canadian Police Chiefs, or of the Canadian Labour Congress. In between these two extremes are any number of possible combinations and permutations. What all such groups seem to share is (a) the willingness of members to act in common and (b) the willingness to delegate some sort of authoritative voice to group leaders.

These groups, by taking public positions on issues that refer to the good of all (we must save the environment if our race is to survive, the GST is ruining small business owners and therefore ruining the Canadian economy, guns should be banned to ensure everyone's safety), speak on behalf of all,

that is the whole community, even if particular individuals do not hold exactly the same opinion. They are parts speaking for the benefit of the whole. As such, the interests they further fall into the category of common, or public interests. This is why we must review the literature on this kind of interest.

At the same time that these groups purport to speak on behalf of the community, they often act outside established political paths. Such behaviour need not be dramatic marches on Parliament Hill, accompanied by civil disobedience. The activity can also be the simple act of placing a petition in cigarette packages to incite smokers to protest a new cigarette tax. The difference between these two examples is one of degree, not of kind. In both cases, a conscious decision is made to break political/social rules to make a point. The reason given for this behaviour is most often that traditional paths, such as the representative institutions of government, are not able to hear the particular point the political interest group wants to make, either because it is structured in such a way as to make these institutions constitutionally deaf, or because historical developments have made these institutions ineffective. Whatever the reason may be, the behaviours described above bring up interesting parallels with a traditional problem in political theory, the problem of the free rider. Political interest groups, while purporting to speak on behalf of the whole and while enjoying the benefits of free speech, civil protection by law and

police, and so on, consciously choose not to contribute to discourse within the political system established (at least legally) by the whole for the whole. In an interesting twist, many such groups accuse other sectors of society of being habitual free riders. Environmental groups, for example, will accuse the business sector of a free ride on public sewer systems while doing little to contribute to environmental cleanup and leaving such tasks to financially strapped municipalities.

The political discourse which these groups carry on is different from other political discourse in one important respect. While these groups often aim at concrete reforms, the reasons they give are often appeals to "quasi-transcendental" values: environmental groups appeal to the rights of future generations, the Chamber of Commerce to "the economy", and so on. All these values are structurally or logically transcendent of particular individuals, and function as promises or rewards of better times, or as dire predictions. This kind of language bears striking similarities to the Church's political discourse in the medieval period, which is one of the reasons Marsilius of Padua's text begins to look interesting to us.

In this chapter then, we shall examine the question of public, private and common interests. We shall also have to deal with the free rider problem. Let us look first to the Anglo-American tradition.

Public, Group and Private Interests

The notion advocated by Burke, that there are unattached, abstract interests which govern individuals who are "members" of these interests, and that it is these interests that are represented in Parliament rather than people, did not survive long beyond him. This meant that the individualist understanding of interests, whether it is the purely egoist notion of Thomas Hobbes or the altruistic interest of the post-Mill utilitarians, prevailed as the understanding of political interest. This historical development, however, did not imply that the problems that Burke attempted to address disappeared. Some thinkers chose to see all interests as private. The coincidence of my interest with yours has no meaning beyond that coincidence, except perhaps that we can work together at a practical level. Ultimately, you and I are individual voters with many interests, not all of which coincide. Our individual choices in the political arena are private and independent. This approach is problematic because it fails to account for what happens between elections. First, not all political interests are interests of voters. A business corporation, for example, has certain interests in the way an economy is run by the state. It can and does act in the political forum to influence the decision-making process of government, but it does not vote. Its economic interests are not reducible to the interests of those voters who also are its shareholders, or at least not directly so. Second,

some interests held by individuals are destructive of them (as well as others), and governments rightly legislate against them.¹ The legislated wearing of motorcycle helmets is a good example of this. Though many motorcyclists dislike wearing helmets for reasons of comfort, government enforces legislation to compel motorcyclists to wear protective headgear in order to preserve life in accidents. A similar argument is made for the enforced wearing of seat belts in automobiles. Third, and last, there are interests that we all share independently of our holding them consciously. As Rousseau pointed out, there is a general interest in preserving social order as a support for the personal interests of individuals. While I might achieve a greater material satisfaction if I disregarded the social order, the social order is what makes possible the more complex interests I have developed as a member of civilization. I do not consciously will the social order, but it is a presupposed interest within my particular interests. We will examine this third kind of interest more closely when we study the work of Hegel. One of the major issues to address in this study will be the so-called "free-rider" problem: what is to be done with members of a society who, though they recognize the interests they hold in common with others, refuse to contribute to the satisfying of these interests, preferring to let others do the work (pay taxes, volunteer time, etc.) while they enjoy the fruits?

Other thinkers in the Anglo-American tradition, while rejecting the notion that we have only private interests, have accepted the opposition between private and public interests postulated by Hobbes and Bentham and tried to sort out in which way public interests could be shown to have precedence. Shaftesbury, for example, attempted to show that while it was true that private and public interests clashed, members of a polity ought to give precedence to public interests on moral grounds. Shaftesbury grounds this moral claim in a philosophical anthropology that gives precedence to our "social affections". What makes us human is that we have these social affections. The private affections which we also experience (need for food, for example), we share with the animals. They are not distinctly human and should not play as important a role in human interactions.²

This approach, however, does not solve the problem, it merely turns it on its head. It is true that often, participants in the political process will perceive that their private interests clash immediately with a particular policy in the public interest. This does not always entail, however, that private and public interests need to be opposed in one's choosing. Situations are rarely solved by an either/or: more often it is possible to negotiate and harmonize various interests. The case of the Robert Mapplethorpe exhibit in the United States a few years ago is a perfect example of this type of situation. A number of museums, making use of money

from the National Endowment for the Arts (a government body), assembled a posthumous exhibit of photographs by Robert Mapplethorpe, an artist known for his erotic representations of homosexuality. Various groups organized protest rallies against museums who showed the exhibit, and two court challenges were made against the collection, which toured the nation over a period of a year. Mapplethorpe's right to freedom of expression in his artistic work was opposed by the community's right to determine its code of morality. Though supporters of both sides of the question were adamant that no reconciliation of interests was possible, some museums found that they could satisfy both sets of interests by publishing disclaimers and explanations similar to those issued by television networks when showing sensitive materials: "...the views expressed are not those of this station or its affiliates" or "...viewer discretion is advised."

Be this at it may, the characterization of public interests as being opposed to private interests, and of the dilemma as a moral one, has become typical of justifications of the public interest. In a book entitled The Public Interest, published in 1966, Richard Flathman attempts to show that questions of public interest are part of the normative discourse of politics, that is, that the notion of public interest is a measuring rod by which we judge particular policies. This notion is grounded in a Kantian universalizing principle: something is in the public interest if it can be

willed for all members of society. Showing how a particular policy can be universalized, how it is in the public interest, involves giving reasons, and engaging in political discourse.³ John Rawls' master work, A Theory of Justice, seeks a similar universal moral ground for the public institutions of the contemporary "welfare" state: the public interest is structured into the notion of the original position and the behaviour of the person behind the veil of ignorance. The problem with approaches of the kind advocated by Flathman and Rawls, just as the one advocated by Shaftesbury, is that they make the assumption that the opposition between private and public interests is a necessary one. Both Flathman and Rawls then seek to justify why we should prefer public over our own private interest. While it is true that in some cases acceding to the public interest means overriding the private interests of individuals this is not always the case.

The conceptual work of Brian Barry in his book Political Argument can be of help here. Barry defines personal interests in general as follows: something is in my interest if it increases my opportunities to satisfy wants, either by increasing my assets or by facilitating the use of those assets I already have.⁴ My political interests, then, are not the needs or wants I have, but rather the ability I have to satisfy them. By comparing the notions of common and public interests with other notions such as common good and public welfare, Barry is able to delineate a narrow conception of

public interest: the public interest is "those interests which people have in common qua members of the public."⁵ Taking inspiration from Lewis, Barry defines "public" as in public interest, as that which has no immediate relation to an assignable individual, but may at any given time come to directly affect such a particular individual. What makes an interest public is not that it affects everyone directly, but that it may. Thus not everyone needs the local hospital right now, but keeping it open is a matter of the public interest, since at some time, some members of the public will require its services. "The public" for Barry is an "indefinite number of non-assignable individuals".⁶ Goods or services consumed in common create various publics: thus, the public can be commuters, medical patients, car owners, national park users and so on.

For Brian Barry, the notion of a public interest is used in two ways, negatively and positively. When the notion is used negatively, it is used to discourage or prohibit certain types of societal behaviour. Typically, this usage comes through in rulings not to enforce contracts that are "against the public interest" because of their economic repercussions, their effect on established institutions (e.g. the family or the church), or their offense to public conscience.⁷ In its positive application, the public interest refers to positive action on the part of government to benefit "the public": road maintenance, cultural subsidies, employment subsidies, etc.

What makes these distinctions so useful is that they are pragmatic. Like Pitkin's work on representation, Barry's work serves to bring greater conceptual clarity to the issues. Armed with the distinctions, Barry examines justifications for government intervention on behalf of the public interest, which is, for him, the real question behind debates over the public interest. He rejects arguments similar to those we have already seen, stating that even if it were possible to show that shared interests ought to take precedence over private interests, this would not constitute a case for the state's involvement in the satisfaction of these interests. The best case for state involvement is the simplest one: unless government promotes such shared interests, "they will often not be promoted at all."⁸ Parties to a contract cannot be expected to be aware of all effects their agreement has on all third parties. The best protection the public has is to act through a "public authority." On the positive side, benefits accruing from street lighting, national defence, and so on, cannot be restricted to those who pay for them; the administrative headache of collecting "user fees" for other public services such as roads and parks makes a "prima facie" case for taxation by a central authority which provides these services.

Barry's pragmatic analysis is very helpful, but leaves two questions unanswered. First, what are we to do with the "free rider"? By concentrating on the actions of government on

behalf of public interests, Barry does not sufficiently address the problem of the egoist who recognizes that he benefits from the satisfaction of those interests he shares with other members of his society, but who refuses to contribute his share of support, since it is to his advantage not to disburse assets for services which will be provided nonetheless and whose revenues will not be affected significantly by one defection. In the chapters on "Constitutional Choice and the Public Interest", Barry deals with egoism in the context of developing constitutional structures, but this takes the form of a critique of the theories of Buchanan and Tullock.⁹ At the end of this critique, Barry argues that self-interest in politics may be less intense and less pervasive than the Anglo-American tradition supposes. He goes no further than this.

If we return to Barry's definition of the public interest, we can pinpoint the reason for this inability to face the free rider problem. The public interest is those interests which people hold in common qua members of the public. At a pragmatic level this is true. Behind this definition and the use Barry makes of it, however, one can detect a certain "foundational individualism". Barry's starting point, and this point can be extended to all Anglo-American political thought, is the individual understood as a kind of near-absolute. When Barry writes that the public interest is those interests which people hold in common, he

means that first people hold them, and second they are common. I have an interest in good roads; you have an interest in good roads; Gerry McDougall down the way has an interest in good roads: our interests are common in an additive sense. If political theory starts with the individual as a near-absolute, then the theorist has no measuring rod, no means of showing the egoist he is wrong. The egoist is an individual looking after his interests. He just doesn't want to emphasize those interest of his that he holds in common with others.

What Anglo-American political thought needs then, is to displace its foundations from the individual to something else. This "something else" ought to be, at least intuitively, some conception of the polity, the group of people who are members of the state. We cannot say more about this displacement until we have looked at Hegel's thought. Indeed, one of the reasons for studying Hegel's political philosophy is that he seems to understand the need for the kind of displacement we are talking about. As we shall see, however, Hegel only provides some important clues as to the nature of this displacement and its usefulness in building a case against the free rider. It is only when we come to the work of Marsilius of Padua that we will be able to develop a pragmatic answer to the free rider.

One final issue arises in this look at the Anglo-American tradition, that of the growth of group interest as a political phenomenon. Various pluralist theories of democracy have

arisen to account for the increased role of lobbies, special interest groups, etc. in the political system. Many of these trace their roots to the sociological work of Joseph Schumpeter in the early parts of this century.¹⁰ Typically, theories of this type describe democracy as a system within which interest groups and coalitions of interest groups compete to achieve their goals. The electorate brings to office a government whose role is to arbitrate between these groups and thereby create laws. William Nelson's critique of this economic-sociological approach is very important to note here. Nelson points out that this understanding of democracy cannot distinguish between legitimate political interests and illegitimate ones. The only important factor for pluralist theory is a group's political strength. As Nelson points out, however, "political parties do not simply assemble a platform that will appeal to groups representing any 51 per cent of the electorate. They seek a platform that they are willing to defend before the whole electorate."¹¹ There are further problems with the pluralist approach. Interests are not products which individuals or groups can own or "consume". Political interest groups are not some nebulous third party to the political process, entering into the fray to convince government and electorate to "buy" particular opinions or interests. Such groups are made up of the electorate itself.

Nelson's suggestion of an alternative to pluralist theory starts with this realization. Nelson understands these groups

to be made up of individuals appealing to other individual voters in the way described earlier: policies and interests must be justified by the giving of reasons. We have already seen the problems linked to this view, but there is a further problem when it is related to interest groups. Like Barry when he deals with the public interest, Nelson understands these groups to be made up of individuals. They are voluntary associations which act, like political parties, to aggregate opinions and votes. Political power still resides with the individual voter. This is simply taking the other extreme from the pluralist view, and does not fully account for the place of interest groups within political life. While it is true, as Nelson points out, that political power is not the only relevant factor to understanding interest groups, such groups do have some power: they not only represent the voting power of their members, but also have cultural, educational and economic influence as corporate entities. Thus, a merely individualistic understanding of their role misses the point, as we saw earlier with the example of business corporations.

We can look at a concrete example to understand just how groups may have interests that are not reducible to the interests of their members. Recently the Canadian Supreme Court ruled that labour unions had the right to use moneys collected from dues to support activities that the executive of the union judged to be worthwhile, even if individual members of the union did not support these activities. The

challenge had come from a union member who did not wish his dues to be used to support the pro-choice movement regarding abortion. The court ruled, however, that the executive of the union, as administrators of union funds and representatives of the membership, had the right to use moneys collected from dues as they saw fit. Members retain the right to vote an executive out of office, and the right to represent grievances during an executive's tenure, but this does not negate the right of the collectivity to act as a unit. There is a related example from recent political history. The New Democratic Party has, for many years, been actively supported by labour unions. The NDP receives funds from union coffers, and labour unions (although this is less and less so) carried much weight in policy discussions. A few years ago, a survey of union membership conducted before the federal election revealed that as individual voters, union members often voted, not for the NDP, but for one of the other two parties, both of which are usually thought to represent the interests of capital.

This second example is particularly revealing. Without giving the results of this survey undue attention, it seems that these voters understood themselves to have different interests as contributors to the economy and as private citizens. As labourers, it is in their interest that the NDP have a strong enough voice in the political process to effectively represent labour. Thus, the collectivity gives funds to the NDP. On the other hand, it seems that as

consumers, these same voters might wish to support the kind of strong fiscal measures suggested by the other two parties, since these measures are ostensibly meant to control cost-of-living increases and keep the cost of imported goods accessible to the majority. Thus, the individual votes independently of his union's support.

In both these examples, the interests of the group are not reducible to that of the individual members. To understand these groups as made up of individuals who have interests that in a second moment are found to be common is not sufficient. Somehow, another way must be found. We turn now to the philosophy of Hegel to obtain further clues.

Hegel's Theory of the Modern State

Continental thinkers in general, while recognizing the legitimate claims of the individual, have not been bound to what C.B. MacPherson has called the possessive individualism of Anglo-American theory. The thought of Hegel is in many ways the most complete articulation of Continental political philosophy, bringing in as it does elements from most of the various strands of Continental theory. We shall not try to give a full presentation of Hegel's theory, but rather we shall mine it for new insights into the nature of political interests. Accordingly, we shall concern ourselves with three questions: (a) the relationship between particular and universal interest; (b) the problem of class; and (c) the role of corporations. In order to guide us through Hegel's thought,

we shall make use of two commentators, Shlomo Avineri and Michael Mitias.¹²

For Hegel, reason becomes conscious of itself in the state: it is in the state that reflective and purposive efforts are made to organize the common life of human beings. Hegel understands the state as emerging from previous social structures, to complete what is lacking in them. The first structure is that of the family. The kind of order found in the family is partly circumstantial and partly reasonable, though the reason is heavily laden with feeling-content. It is in the nature of the circumstances that some members are parents and others children. The children had no say in picking a role or function within the family, and the parents do not have full control over the development of the children. As children develop, they separate from the family and grow more independent. They begin to make their own decisions.

This brings us to the second structure or level of organization, which Hegel calls civil society. Independent human beings leave the family and begin to make decisions about what they need to survive, where they will live, and so on. This brings them necessarily into contact with other individuals from whom they require goods and services, and to whom they can provide goods and services and thereby earn their livelihood. The kind of reason at work here is practical reason. Goods are exchanged, needs are met and a market emerges, but the social interaction is limited. It is

contractual or transactional. This kind of reason is able to organize many of the institutions required to meet the needs of individuals, but it is not enough. We come to the third structure, that of the state.¹³

What soon becomes apparent as civil society develops, is that some individuals are necessarily alienated and impoverished. Hegel understands that the market requires, because of its very structure, that some accumulate wealth and others do without it. He sees that the interdependence which the market creates out of the self-interest of the various participants (labour and capital) cannot be controlled by those within the structure. Adam Smith's hidden hand is for Hegel dialectical reason working in civil society, at the level of instrumental reason.¹⁴ With the pauperization of some comes the enrichment of others, but this enrichment is not enough to meet the deep needs they experience: no amount of material consumption seems enough. The poor seek redress so that they may meet even their most basic needs, and aspire to the same consumption as the rich.

This understanding of the needs of the rich and the poor is heavily dependent on Hegel's notion of reason as he develops it elsewhere. Since instrumental reason is, in Hegel's system, a necessary moment in the dialectical development of Reason (in people as well as in history), it follows that as people achieve satisfaction of the needs created by instrumental reason, "higher" needs such as those

that arise from transcendental reason would arise in their consciousness. This point is contentious because of its dependence on Hegel's logic, but it need not stop us here. We do not require allegiance to Hegel's idealism to glean the clues we need from his political philosophy.

Meeting the various needs discussed above requires a new kind of political reason. Human beings come together and conscious of their various needs begin to create laws and institutions to meet these needs. The reasoning involved here is more than instrumental. It is other regarding, aware of the interdependence that has developed among human beings. It seeks to manage this interdependence, to give everyone as much of the pie as possible. This kind of reasoning is moral reasoning. This is the level of the state.

The explanation above is clearly very sketchy, but it is enough to allow us to situate our particular concerns. The first point to be discussed is the relationship between particular and universal interests in Hegel's system. The difference between civil society and the state, as we saw, is that the laws and institutions created by and for the state arise from the realization that the "livelihood, happiness and legal status of one man is interwoven with the livelihood, happiness and rights of all."¹⁵ Even more than this, however, the state is the attempt to universalize conditions of freedom, to overcome the shortcomings of civil society so that all members may actualize their human freedom. Michael Mitias

observes that in this context, the interests of one particular person and that of the law are reciprocal.¹⁶ The universal interest of the state arises out of the particular interests of its members. It is not opposed to or different from particular interests, it is the condition of their fulfillment. Take, for example, Mitias' treatment of taxation: "A person may think...that paying taxes is harmful to his welfare. This way of thinking is erroneous, for the personal end of the people cannot be promoted without taxes: a country that does not receive taxes cannot provide services to its citizens. Hence in furthering the end of government a person furthers his own end."¹⁷ The state provides the universal conditions under which the individual pursues her interests. Each particular interest, each particular act of will, presupposes and includes these conditions, and this in two ways. On the one hand, the desires and interests of the modern individual are highly complex and refined. This complexity is the result of cultural development which is directly supported by the complex structures of the state. There is no enjoyment of Shakespeare without education and no universal education without the state. On the other hand, the individual who has these complex desires cannot follow through on them without the support system of the state. There is no Stratford Festival without government funding to keep ticket prices within reasonable limits. Thus, we see that universal interests and particular interests are related as conditions

to the conditioned. When an individual wills a particular end, he wills the various universal conditions required for that end.

Hegel's analysis runs even deeper than this. His ascending analysis, from the family through the individual to the state is a political anthropology very different from that of the Anglo-American tradition. Political theory begins with the group, not with the individual. This is the kind of displacement of the foundations of theory that was hinted at earlier in the chapter. The personal experience of community, and of one's dependence on the community to meet even basic needs, comes before the development of individuality, which itself is inseparable from the pseudo-community of civil society. The problem, of course, is that Hegel's analysis is heavily dependent on his idealism. Nevertheless, if it were possible to effect a similar displacement of the foundations of political theory from the individual to the community, how would this help us?

Hegel, by showing that the community is foundational of political life, creates a theory in which the free rider, and the egoist in general, cannot consistently defend his position. As we saw when we looked at the work of various Anglo-American political thinkers, political theory cannot defend itself against the egoist when its starting point is the individual. When it is understood, however, that political life starts not with the individual but with the community,

then political theory gains a lever it can use to critique the egoist, and this on two fronts. On the first front, the free rider can no longer argue that he is simply remaining inactive and that this stance is benign. The refusal to contribute, while it may result in little immediate damage to the state, is nevertheless, on this analysis, a positive action against the polity. On the second front, the polity, since it is foundational, has the right to defend itself against those positive acts that harm it. This includes, for example, creating sanctions to ensure that it will collect enough revenue to support itself and its activities.

There are two dangers to this stance. The first danger is, of course, that the state, in this understanding, may become so powerful as to obliterate the individual. This would be unacceptable. The polity must be of such a kind that it fosters the growth of and supports the choices of the individual who enters civil society. This brings us to the second danger, that which springs from Hegel's idealism. We would be in a better position to restrict the notion of the community if it were not idealized: we must generate an analysis that is similar to Hegel's, but rooted in a pragmatic or realist starting point. This is exactly what Marsilius of Padua's *Defensor Pacis* provides us with, as we shall see in the next chapter.

The second concern we have as we continue to mine Hegel's thought, is the question of class. Is it possible that

different classes within society would hold interests that differ from each other in kind as well as content? More specifically, is self-interest the only kind of political interest? In Hegel's understanding there are three social classes: the peasantry (which includes landed nobility), the commercial class, and the class of civil servants. Avineri points out that for Hegel, the question of class is much more a question of estates: the classes are not economic, but represent types of social consciousness. The peasantry can include both the farmers and the landed nobility because these groups have the same social consciousness, that is, they are immediate labour, not concerned with a product as such. Their "work relates to a natural object (land)".¹⁸ Their social consciousness is conservative, rooted in what has been done.¹⁹

The second class is the commercial class, which Hegel divides into burghers and businessmen. The burghers are the artisans, while the businessmen are those engaged in exchange. It is a curious thing that nowhere in his account of the commercial class does Hegel refer to labour, even though he has an important analysis of labour and impoverishment elsewhere in his political philosophy (as we have briefly seen). The consciousness of the commercial class is individualist. One seeks to fulfill one's self-interest, seeing property, acquisitiveness and social mobility as constitutive of one's reality. The artisan owns his own business and achieves self-esteem by hard toil on raw

materials. The businessman, on the other hand, works at a level of greater abstraction, that of monetary exchange. It is the businessman's work that makes money into a commodity.²⁰ The labourer, as was seen previously, has the same desires as the burgher and the businessman, but the structures of the market often require that he be impoverished so that others may gather wealth. Avineri suggests that what is interesting about this analysis is that while it is as lucid as Marx's and seems on the surface to be very similar, it is actually diametrically opposed to the Marxian analysis.²¹ Hegel's analysis is penetrating, but he seems reconciled to the state of affairs he dissects. He does not mention labour in his examination of the commercial class. Avineri suggests, ultimately, that Hegel does not include labour in any of his classes: "Yet it is this group [labour], more than any other, whose needs call for integration and mediation -- and one looks in vain for this class in Hegel's system of estates. Obviously the worker is not part of the peasantry nor does he belong to the civil service. But neither does the commercial estate, the class of businessmen, include him: in Hegel's account of this estate one finds the small independent artisan, but as for the worker, he is conspicuous by his absence; and certainly Hegel's paradigm of the burgher spirit cannot, of course, relate to the worker."²²

The third social class is that of civil servants. This is the class of consciousness of the universal, the class that

corresponds to the workings of the state. It is made up not only of government bureaucrats, but also of university professors, doctors, lawyers, diplomats and so on. The object of this class is knowledge itself.

What, for our purposes, is important about Hegel's analysis of social classes? The key insight we can cull from Hegel's treatment of social classes is that despite the importance of the market and of the business class, there are other interests at work in society. Leaving aside the question of the agricultural or peasant class and whether such a consciousness can still exist in modern society, let us focus on the class of civil servants. Even though the government be such that its involvement in civil society is minimal, the structures will require workers whose involvement in the social fabric is not within the market. The bureaucratic class, which is such a problem for Anglo-American thinkers, is here seen to be the carrier of necessary interests, interests that are part and parcel of the functioning of a political system. The system is bigger than civil society, since as we have seen earlier, there can be no society without some form of government. The Auditor General of Canada is a perfect example of someone who holds the public interest. If self-interest were his only motivator, the more reasonable course of action would be to act in such a way as to ensure a stable income for himself by not making too many waves. The annual report of the auditor general, however, has in recent years

made a number of waves and come under fire from the Cabinet for its broad criticism of government spending. It is possible for the universal, or public, interest to be held by individual members of the state. In other words, we need not be faced with the dilemma posed by Shaftesbury et aliter.

Before we move on, however, we must face the question of labour in Hegel's system. This question, it turns out, can be dealt with fairly directly. Hegel writes at a time before the political organization of labour. He sees the exploitation of labour, but does not see how this can be overcome to labour's advantage. For ourselves, writing after the organization of labour as a political force, it is not difficult to understand labour as a class, and to see how members of this class can rise out of the alienated consciousness imposed on them by the market. This understanding adds another kind of self-interest to civil society, but need not affect the insights we have gained from Hegel's analysis.

We come, finally, to the role of corporations in the political system. Hegel favours a system of election to the lower House (representing solely the commercial class) of a bicameral legislature by guild or corporation rather than by geographical constituency. The importance of this arrangement is in the fact that guilds and corporations are a means by which members of the commercial class overcome the self-interest which motivates them. For Hegel, "undifferentiated suffrage causes atomization and political alienation."²³

Membership in a guild, on the other hand, imposes on one a kind of other-regarding interest. The brothers must be supported, and those who fall on hard times must be supported financially. The widows of members were also of concern to the guild. The guilds and corporations thus mediate a more universal interest to the members of the business class. By voting for representatives from among their own, members of the commercial class are also assured that they are truly represented in the lower House, since the ones who are elected themselves incarnate the various group interests: a cobbler is elected by the cobblers, a stockbroker by the stockbrokers and so on. This arrangement is very similar to the various arrangements contemplated by proponents of group representation such as the Fabian Socialists in England at the end of the last century. There are problems with structures such as this, not the least of which is that certain guilds cannot elect representatives who are as politically astute as say, stockbrokers. This kind of structure can exploit the political weakness of some sectors, though nowadays most sectors are well organized. In addition to this problem there is the fact that not all issues of representation of interests have to do with one's function in civil society. People need representation in government when their homes are threatened, or their immediate environment is polluted, or when their next door neighbour builds a driveway that is six inches over the property line. Representation by constituency deals with

issues such as this more efficiently than representation by guild or corporation. Nevertheless, there is a key insight to Hegel's presentation. Members of civil society, as participants in the economy, are directly affected by government legislation and have specific interests as members of civil society that may not be adequately addressed by a constituency representative who must balance conflicting views for himself. Somehow, these two kinds of interests need to be recognized and integrated into a system of representation.

Let us quickly summarize what we have learned from our look at Hegel: (a) particular and universal interests can be understood to be related as the conditioned to its conditions: when I voice a particular interest, I presume a supporting structure of universal interest: this structure is such, in a democracy, that the rights of the individual are not forfeited to the polity; (b) there are members of the political system who work to voice universal interest, just as there are those who work to voice self-interest; and, (c) those who are members of civil society (the voices of self-interest) have two kinds of interest, one related to their function in the market, and the other related to their life outside the market: these two kinds of interests are not best represented by the same people.

Refining the Heuristic Notion of Representation

At the end of the first chapter, we developed a general notion of representation, which went as follows: there exists

a set of formal arrangements (legal, institutional and social) called representative, that structure and facilitate the performing of certain activities and behaviours of representing and being represented, which activities and behaviour allow a certain state or fact of representation to emerge. From this general understanding, a heuristic notion of representation was drawn out to meet the specific question at hand: there is a need to develop a new understanding of the formal arrangements that make a government representative, in order to expand these arrangements to include the interests of political interest groups.

At that point, however, the crucial question of the nature of political interests was left unanswered. It has been the work of this chapter to explore the question of political interests, and we are now in a position to refine our heuristic notion. The kinds of issues addressed by political interest groups would generally be termed to be "in the public interest": the problems of the poorer classes, such as unemployment, housing, and so on; questions relating to the environment, to foreign policy, to the workings of the economy; there are more examples. From our study of Hegel, we have seen that despite the assumption made by Anglo-American thinkers, such group interests are not opposed to self-interest, but are such that once structured into the state (as unemployment insurance, environmental law, contract law, and so on) they become the very means by which self-interest can

be achieved. The general, universal interest is presumed and included in concrete self-interest. In addition to this, we have seen that an individual has a "public" self-interest, related to his or her role in civil society, and a "private" self-interest that has to do with the enjoyment of private property, and that these two kinds of self-interest may not be best represented in the same way. Finally, we have seen that there already exists a set of people in government who further common interests: they are the civil servants, the bureaucrats.

At present, of course, it is not possible to say that the people have their group interest, be it the "public" self-interest that brings businessmen together in lobbies or the kinds of interests publicized by political action groups, represented by this class of bureaucrats. The substance of representing or being represented is missing.

If we are to refine our heuristic notion, then, we should proceed as follows: given that group interests in general exist in society already, and that the class of civil servants articulates and enflashes these interests within government, the new understanding we seek of the formal arrangements that make a government representative must be such that those who hold group interests and the class of civil servants come together in the same kind of public forum that constitutes already existing formal arrangements we call representative. As well, this new understanding must not do away with what

already exists, but must include somehow the arrangements we already have. This is why Hegel's idea of corporative representation cannot work: it ignores the important arrangements that ensure that as a holder of private interests, I am represented. With this refined understanding of the question, we can now proceed to examine the work of Marsilius of Padua.

Endnotes

1. See esp. Robert P. George, "Individual Rights, Collective Interests, Public Law, and American Politics," Law and Philosophy 8: 245-261, 1989.
2. Stanley Grean, "Self-Interest and Public Interest in Shaftesbury's Philosophy," Journal of the History of Philosophy, 2:37-46, April 1964.
3. Richard E. Flathman, The Public Interest: An Essay Concerning the Normative Discourse of Politics.
4. Brian Barry, Political Argument, pages 178-186; the full discussion of interests is contained in chapters X through XV and makes for enlightening, if difficult, reading.
5. Barry, page 190.
6. *ibid.*, page 192.
7. *ibid.*, pages 209-214.
8. *ibid.*, page 234.
9. especially in J.M. Buchanan and Gordon Tullock, The Calculus of Consent, Ann Arbor, 1962.
10. as quoted in William Nelson, On Justifying Democracy; Nelson refers to Schumpeter's Capitalism, Socialism and Democracy, 3rd edition, Harper and Row, New York, 1950.
11. William Nelson, On Justifying Democracy, pages 128-129.
12. Shlomo Avineri, Hegel's Theory of the Modern State, and Michael Mitias, Moral Foundation of the State in Hegel's "Philosophy of Right": Anatomy of an Argument.
13. this explanation is heavily dependent on Avineri's treatment of Hegel.
14. Avineri, Page 146.
15. Hegel, Philosophy of Right, translated by T.M. Knox, paragraph 183.
16. Mitias, page 19.
17. *ibid.*
18. Avineri, page 106.

19. *ibid.*, page 156.

20. *ibid.*, pages 106-107.

21. *ibid.*, pages 104 and 107. From page 104: "The truth of the matter is that Hegel's point of departure is the exact opposite of Marx's. For Marx, classes are aggregates formed by types of social labour, linked together by the common relationship of their members to the means of production, seeking a political articulation for their socio-economic interests. The class nature of political power is to Marx a sin against the state's presumed claim to express the universal as against the particularism and egotism of civil society. For Hegel, the institutionalization of class relationships into the political structure is the way through which the atomism of civil society becomes integrated into a comprehensive totality. The different classes represent to Hegel not only modes of production, but modes of consciousness which are relevant to a society differentiated in its structures according to the criteria of Hegel's general system. While for Marx classes represent a division of labour that has to be overcome, for Hegel they stand for the integration of this regrettable yet necessary division into a meaningful whole."

22. *ibid.*, page 109.

23. *ibid.*, page 162.

Part II:
Marsilius of Padua and Contemporary Political Theory

Introductory Note to Part II

At the beginning of the *Defensor Pacis*, Marsilius states that his purpose in writing the text was to address the conditions under which the natives of Northern Italy were living. These conditions, brought about by discord and a lack of peace and tranquility, deprived the Italians of their enjoyment of a sufficient life, which is all that they desired. This discord, he tells us, is caused by an element not foreseen by Aristotle in his *Politics*. Though we are not told until the end of the first discourse, we know that Marsilius is referring to the Roman Church under the rule of Pope John XXII. Based in Avignon, the papacy at this time was engaged in a campaign to increase its presence on the political scene by taking advantage of a dispute among the German princes over the election of the new Holy Roman Emperor. Two candidates had been elected by rival factions, and were engaged in settling militarily what had not been settled by due process. In northern Italy, which was nominally under the control of the Empire, the pope had been attempting to gain control of the major cities. The result was the creation of rival parties, the guelfs and ghibellines, one of which supported the emperor and the other the pope. Cities were split by the disputes, allowing the *signorii* to take control of them permanently, thereby putting an end to the reign of the democratic Communes. The conflict over who was rightful emperor was ended by the decisive victory of Ludwig of Bavaria, but the pope, who had supported the other

candidate, refused to crown Ludwig emperor, stating that no temporal power could rule without the approval of the Holy See, which represented God's power on earth and therefore gave God's sanction to temporal rule. In this way, the pope hoped to assert his "plenitude of power" over both temporal and spiritual affairs. What had begun one hundred years before as an attempt by Gregory to rid the Church of corrupt clergy had become a movement to assert the Church's authority in all matters.

Marsilius, looking at the situation from the relative comfort of the University of Paris, encouraged and helped by his Averroist colleague Jean de Jandun, reads a threat to all temporal power in the aspirations of the papacy both for Northern Italy and for the Empire in general. He then sets out to write the *Defensor Pacis*, to build the case for the independence of temporal power. In the process, he develops an important set of concepts.

Before we can look at these concepts, however, we must take a general look at the *Defensor Pacis*: this will be the role of chapter 3. In chapter 4, we will first look at Marsilius' conception of the Church. This will naturally lead to a discussion of Marsilius' corporate understanding of democracy through the notions of peace and tranquility, and of the perfect community or *regnum*. We shall follow this with a discussion of the so-called human legislator and of the related concept of the *valentior pars*.

Chapter 3 - Marsilius of Padua

Marsilio dei Mainardini of Padua was probably born around 1275. He died at the court of Ludwig of Bavaria in 1342, after Ludwig's botched campaign to receive the imperial crown from the citizens of Rome. In the roughly 67 years between these two dates, Marsilius studied at the University of Padua in medicine and possibly in law, and then at the University of Paris, where he was rector of the university in the early months of 1313. The document that interests us, the *Defensor Pacis*, was written during Marsilius' time at the University of Paris, and though dedicated to the emperor and obviously meant to assert the emperor's rights against the claims of the papacy of John XXII, it was probably not written at the emperor's request. Marsilius did not meet the Holy Roman Emperor until he was forced to flee Paris when it was discovered that he was the author of the *Defensor Pacis*. On the twenty-third of October 1327, the *Defensor Pacis* was condemned by a papal bull, and its author excommunicated. He took refuge in Ludwig's court, and though initially the emperor was not quite certain what to make of this scholar, Marsilius soon gained an important role as one of Ludwig's chief advisers. It is usually asserted that Ludwig's decision to make the journey to Rome in order to be crowned as Holy Roman Emperor was made on Marsilius' advice. Certainly, the fact that Marsilius accompanied Ludwig on this expedition and that he was made vicar of Rome by the emperor for the length of their short stay in the Eternal City seems to indicate that

Marsilius was a trusted adviser. After Ludwig's expulsion from Rome by a disenchanted populace, Marsilius wrote three more tracts, all of them at the request of the emperor: the *De Translatione Imperii*, on the historical transfer of imperial power from Constantine to Ludwig; the *Defensor Minor*, a summary of his original work recast to accommodate a more centralized understanding of the imperial power; and the *Tractatus de jurisdictione imperatoris in causis matrimonialibus*, written at Ludwig's request as an opinion of the emperor's ability to approve or dissolve marriages. These tracts, while related to the *Defensor Pacis*, represent a later Marsilius, one greatly influenced by his presence at the imperial court.¹

This in no way denies the very partisan nature of the *Defensor Pacis*. The text is divided into three discourses. The first discourse, which according to Marsilius outlines general principles according to reason, develops a general theory of politics. The second discourse addresses the question of the papacy's interference in temporal affairs. Most commentators agree that the second discourse, though it is mainly theological in its sources, is meant to be an application of the general principles developed in the first discourse. The third discourse recalls the various conclusions reached in the text.

Over the centuries since its writing, this text has proven to be singularly difficult to interpret. Early critics

were mainly concerned with condemning Marsilius' heretical leanings, and so concentrated on his treatment of the church. In this light, the Defensor was studied mainly as a work of theology, where it was understood to advocate church conciliarism.²

Renewed philosophical interest in Marsilius did not come until the last half of the 19th century. Since then, Marsilius has been promoted as a visionary prophet of modern republicanism, condemned as the first advocate of modern totalitarianism, castigated as an unabashed and careless medieval, and dismissed as an unimportant misinterpreter of Aristotle. Recent scholarship, while it is more careful and less inflammatory, is nevertheless just as split. Jeannine Quillet and George de Lagarde, the two most important French commentators of Marsilius, understand him to be firmly rooted in the medieval period, though they disagree on what this means.³ Alan Gewirth, on the other hand, has published the most extensive argument for Marsilius' important contribution to modern democratic thought, dismissing Marsilius' medieval historical context and medieval style as unimportant. Before we can begin to address the specific issues that concern us in this thesis, it will be necessary to try to clarify where we stand on the issue of Marsilius' general contribution to political philosophy.

The attempt to classify Marsilius, or any other thinker of the past, as clearly a modern or clearly a medieval is a

symptom of the subconscious allegiance contemporary thinkers hold to the notion that it is possible to mark a distinct boundary between modern and medieval consciousness. This distinct boundary is sharply focused. For some, it is the abandonment of argumentation from authority in favour of empirical evidence; for others it is the turn to the subject. In all cases, there is some one event, or some sharply defined group of inter-related events, that characterizes an (overnight or almost) revolution in thought. Recent scholarship has refined our notions of history, and contemporary thought may not be as naive as the portrayal above would suggest; indeed, the idea seems ridiculous when it is made explicit, and philosophers are quick to acknowledge the hundreds of years over which change takes place. The boxes seem to remain intact, however, and we continue trying to fit past thinkers into them.

What would happen if we treated thinkers as if they belonged, not to some abstract category, but rather to a concrete historical context within which they could be seen to develop their thought? In addition, what if the relationship between one thinker and another were understood historically rather than systematically -- in our case, what if we related Marsilius to Aquinas by understanding the historical process that links them or Marsilius to the moderns in the same way? Without being able to prove it in a general way, which would require a separate thesis, I think we would find that theory

shifts and changes in small amounts over long periods of time, that there is no clear boundary which is crossed from medieval to modern. Some "medievals" have ideas remarkably similar to "modern" ideas, and vice-versa.⁴

In order, therefore, to take a specific position on Marsilius' broad contribution to political thought, which we must do if we are to place our investigation of specific concepts in proper context, let us attempt to interpret Marsilius within his historical context. We will look at four facets of this history: the political life of the Italian Communes, the rise of a distinct middle class, early parliaments and estates, and the contemporary development of law.⁵

The Historical Context

The starting point of our investigation of Marsilius' context will be middle class politics at the beginning of the fourteenth century. In an article published in the University of Ottawa Quarterly in 1981, Cary Nederman, of York University, shows how the *Defensor Pacis* is significant in the context of emerging middle class values and interests in the early fourteenth century.⁶ The middle class ideological context of the Italian Communes understood peace and stability to be necessary prerequisites for the growth of commercial development. The right of every citizen to go about his or her own business was guaranteed by the peace and stability of the whole. Unlike the feudal insistence that peace could be

brought about only by subjection of factions to one lord, the middle class conception of peace emphasized the common subjection of all persons to a system of justice and law "Which would effect an equal apportionment of necessary burdens [like taxation] and other responsibilities."⁷ Government must be a positive force in commercial development.

For Marsilius then, only some combination of popular sovereignty with strong government powers could guarantee the political development he envisaged. This view is in some ways similar to the view expressed by Machiavelli in his *Discorsi*. To understand Marsilius' contribution, we must turn to the historical experience from which he benefitted in his quest to achieve such a blend. We shall begin with the political life of the communes.

The Institut d'Etudes Médiévales of the Catholic University of Louvain published in 1980 a short text by Roberto Celli, entitled L'Expérience des Villes-Etats Italiennes. This text, hailed by Louvain editor Léopold Gênicot for its solidity and originality, as well as for its rich documentation, breaks important ground in the area of the contribution of the Italian Communes of the eleventh and twelfth centuries to the rise of democracy in Italy. Celli is a historian of law, and concentrates on the development of formal structures in the Communes and on the practices which these structures supported.

Celli's thesis is simple: the political institutions of

the Italian Communes did not develop all at once, but rather evolved over the period of the rise of these same cities. He brings ample documentary evidence to light, showing the similarities and differences among the various communes of Northern Italy. In all cases, a popular assembly composed of all citizens, that is all free men roughly between the ages of sixteen and seventy, is the first institution to be created. This assembly arises out of the need of the cities to act on the political independence they enjoyed as a result of the new commercial wealth they generated. Initially, this popular assembly is able to meet all the political needs of the city, but as cities begin to gain even more independence from local feudal lords, they gain complementary responsibilities, especially in the area of military defence, both of the city itself, and of the commercial access to the city. Roads become an urban responsibility. These additional responsibilities require a system of taxation to generate revenues. The popular assemblies first meet these additional needs by appointing what we would call *ad hoc* committees to meet specific needs as they arise. This soon proves to be insufficient, and one after the other, the popular assemblies hire executives. The duties of these executives, who are alternately called consuls or podestats, among other names, make them a blend of what we would call an elected cabinet and the civil service.

With minor variations, the executive is hired or elected for a specific period of time. In many cases, he (or they)

come from outside the city, so that they will not favour one faction over another. During the period of his elected service, the executive wields much power, but with initially little autonomy. After the period of service is completed, the executive is subject to a review by the popular assembly as a whole, or by a committee of its members. If the executive has committed any crimes against city statutes, he is subject to punishment by the assembly.

Other important institutions develop at a later date to meet more complicated needs. In many cases, the executive is also required to render judgements at law, either in criminal or civil suits. In other cities such as Pisa and Padua, however, this task is reserved to professional judges. In Pisa, judges are named by the combined will of the bishop, the city executive and the popular assembly. Later, the executive and the assembly alone select judges, and even later, the executive by itself appoints judges. Celli underlines the fact that this evolution is important, since it points to the growing power of the executive.

As the power of the executive increases, a second assembly is created, the *consilium credentiae*. This is composed of jurists, judges and lawyers and serves as an advisory body to the executive, which is required to seek out its advice before it presents legislation to the popular assembly for ratification. Celli sees this development as a safeguard against the abuse of executive power: the *consilium*

is a repository and interpreter of the city's legal tradition. The executive that did not act on its advice risked popular revolt. The consilium is also the first institution to be able to claim representative status, given the quantity and quality of its members.

The novelty of Celli's scholarship is not so much in the volume of documentation he presents, but in his ability to show that the roots of all these developments are within the Christian understanding of the human person. All individuals, he points out, are equal in the eyes of the early Church. He recalls the early Church practice of calling a council of all the faithful to elect a new bishop, a practice which he points out lasted until the Investiture Controversy that opposed Gregory IX to Emperor Henry IV, and in some cases lasted beyond the Gregorian reform. These assemblies met for other purposes, which included the administration of church or common lands, the determining of dues, et cetera. Even where the practice was honored more by its being ignored than its being practiced, the principle of election was never challenged. With the investiture controversy and the consequent split of spiritual and temporal power, the popular assemblies, writes Celli, become the basis upon which lay political power in the cities is built. The importance of the Church to the rise of popular assemblies should not be underestimated. At a time when the lowest classes were refused participation in public life by the Roman law tradition, the

Church assemblies required the participation of all the faithful, even the most socially marginalized.

These considerations at the micro level bring us to consider practices at the macro level, that is at the level of the Empire and other European monarchies. While it is true that development of popular assemblies was uneven in Continental Europe, A.R. Myers points out that English speaking historians tend to overlook the very important roles played throughout the continent by parliaments and estates: "...in the English speaking world the importance of these institutions is still insufficiently appreciated. There is probably some awareness of political the role enjoyed, at varying periods between the thirteenth and the eighteenth century, by the cortes of Aragon, the States-General of the Netherlands, the Riksdag of Sweden; but too often the Estates-General of France is still regarded as typical, whereas its history was in many ways exceptional."⁶ Despite the accepted wisdom, these institutions were not rare, narrow, transient and weak. Many of them had the kind of control over taxation that is understood to have guaranteed the survival of the British Parliament, but others that were quite successful did not have this control. In general, Parliaments appeared in what Myers calls "Latin Christendom" in the thirteenth and fourteenth centuries, which is of great importance to us, since this is the time at which Marsilius is writing in Paris.

Myers' research makes interesting reading, and

supplements Celli's microcosmic concerns in an interesting way. Myers shows that the larger scale assemblies, including the ones most likely to be familiar to Marsilius, like those of the Languedoc in the south of France, and those of the German principalities, were rooted in the development of Christian scholarship. After the Gothic invasion of the Roman Empire, the Roman law and other achievements of the Empire were preserved by monastic and other church institutions, not only in the form of "learning", but in their very structures and administrations. From these resources there began to develop a doctrine of royal authority which not only enhanced such authority by rooting it in the divine power, but also began to circumscribe the duties and limitations of kingship. Local lords and feudatories made use of this doctrine to secure their own voices in government. Their lead was followed by the rapidly developing cities. The system of estates was a system of corporations and guilds whose political "personality" was guaranteed by the Roman law: monarchs and lords granted charters to cities and guilds that made them legal persons with certain rights and privileges. The point of all this is to show that the people, including burghers and in a few cases (Sweden being the best example) peasants, had a much greater voice in "national" politics than is often assumed. Wily kings often played one estate against the other: in France, the king came to depend heavily on the bourgeoisie for money and political support against the nobility. This too

is part of the experience available to Marsilius.

We have mentioned Roman law on a number of occasions, and this brings us to study the work of Michael Wilks in this area.⁹ Wilks has attempted to understand Marsilius' dependence on the concepts of Roman law for some of his political ideas. He shows how important the legal notion of corporations acting as legal persons is to the *Defensor Pacis*. Corporations could express a will that was more than the combined will of their members. What Marsilius calls the "human legislator" and which some commentators have argued is a legal fiction that allows Marsilius to ground imperial power in an abstract people's will, Wilks shows to be much more important: "To borrow later terminology, it is a Leviathan or General Will, an abstraction which is visualized as being like a single person forever willing and choosing rightly. The human legislator is a *universitas*, a body with a will and choice of its own,...the real point of the analogy is that the state adopts the basic principle of corporation theory, namely, that the community acts by virtue of a unanimity distinct from the possibly divergent wills of the actual members."¹⁰ Membership in the state ensures freedom from irrational, unrighteous actions. It does not grant the right to perform such actions. Liberty is an attribute of right living in the Roman law tradition, and the one who acts wrongly denies his own citizenship.

Wilks provides an interesting development of the notion of the *valentior pars* which is so important to Marsilius and

has been the subject of much controversy among commentators. According to Wilks this notion was an elastic concept which could be applied to both the lowest and highest in the chain of corporations making up society. Quantity and quality of people were like both sides of an equation in the makeup of this concept. The lower the quality of the members, the more of them would be required to deliberate rightly and make just legislation. The greater the quality of the members, the fewer of them were required to come to decisions. At the same time, the greater the body concerned, the more likely it was that members of quality could be found. The point of the concept was that at varying levels of corporations different specific criteria would apply, but all would come from the basic principle of the need to achieve a balance between the two halves of the equation.

Marsilius of Padua and the Defensor Pacis

Let us turn to the text of the Defensor Pacis. In structure, it is similar to Aquinas' Summa and to other scholarly texts of the period, especially those on "disputed questions". There are many references to Aristotle's Politics, which has caused commentators such as Quillet to try to reduce the Defensor Pacis to previous scholarship. The contents of the first discourse, however, read like a description of the Italian Commune. The sorts of structures brought out in Celli's work are reproduced in Marsilius' text with great precision. In addition, there is a clear emphasis on the need

for law and institutions which cannot be found in other political texts of the period.

Where does Marsilius' text fit in the development of political thought? Let us begin by stating what the Defensor Pacis clearly is not. Jeannine Quillet writes that Marsilius is "un penseur médiéval, qui a pensé le problème politique en fonction d'un mythe qu'il s'est efforcé de restaurer dans les faits, ... [il est] un idéologue de la puissance impériale sous la forme mythique qu'elle prend au XIV^e siècle à ses débuts: celle d'une institution qui dérive directement de l'Empire romain, dont le sens le plus profond était de diriger la chrétienté..."¹¹ For Quillet, the references to the Italian Commune are but a device to maintain the myth of imperial power as the power the People have surrendered to their caesar, their emperor. What is of importance is the complex references to Aristotle, and Marsilius' concern for unity under one leader. This position is not acceptable, however, for the very reason that it downplays the role played by Marsilius' experience of politics. Marsilius' emphasis on the role of the people is too important to the development of his thought to be a mere device. We have also seen how the notion of the *valentior pars* in Roman law links even the highest levels to the grassroots, and we shall develop this further in the next chapter. Aristotle is important to the Defensor Pacis, but not central.

This does not mean, however, that we wish to picture

Marsilius as a prophet of the modern era. Alan Gewirth's work is impressive, but ignores too many important factors. Marsilius has a "medieval" notion of the individual as a member of the community, and does not rely on liberty as the starting point of his politics. Moreover, the so-called positivism upon which Gewirth builds so much of his case is more aptly characterized as a realistic assessment of the need for structures as the size of political systems increases. Marsilius is a political pragmatist, who realizes that the political structures of the Italian Communes, if they are to survive, need legal or constitutional support. In this sense, the *Defensor Pacis* can be seen as a diagnostic of what went wrong with the Italian Communes, an analysis of why they failed to survive against the encroachment of overlords.

Our position then is very similar to that of George de Lagarde in La Naissance de l'Esprit Laïque: Volume III, Le Defensor Pacis. Marsilius is fundamentally a thinker rooted in his immediate surroundings, a practical political philosopher who makes use of all the data available to him, both from the tradition and from contemporary political experience. He cannot be fitted neatly into any category, because his is a time of transition. He develops new ideas that have affinities, on the surface, with modern ideas. He is best described, however, as the systematician of a political system rooted in the Italian Communes. His politics outlines a system, though perhaps a fragile one, that links unity under

one leader (the emperor) to popular sovereignty. This last statement distances us somewhat from de Lagarde, who feels that an important failure of Marsilius' text is to leave the tension between imperial power and popular sovereignty unresolved. This position results from a misunderstanding of the notion of *valentior pars*, which de Lagarde does not trace back to its legal roots.

We must carefully assess Marsilius' stand on the church. All recent commentators have put forth the opinion that Marsilius, in some way, sought to revolutionize the relationship of church to state. This is, on the surface, true, but such a statement must be carefully understood. As Celli's and Myers' work brings out clearly, the political institutions of Marsilius' time had their roots in the Church. The separation of spiritual from temporal power was a recent phenomenon, not yet a hundred years old at the beginning of the fourteenth century. When Marsilius, in the second discourse, makes reference to the practices of the early church, he is not, as so many of the recent commentators seem to think, merely using a rhetorical device. As we have seen, the election of bishops was still a practice in Marsilius' time, despite the great inroads made by the centralizing Gregorian Reform. Marsilius' protest is motivated, not so much by a belief in the myth of imperial power, as Quillet suggests, but more by a kind of outrage that power in the church, and therefore possibly in society, is becoming

clericalized. Alfred Huraut, a theological commentator of the *Defensor Pacis* in the late nineteenth century, brings this out clearly.¹² The *Defensor Pacis* is revolutionary, but only because it champions practices that had been abandoned by the Church in the recent past.

The other nuance we must bring to our position, relative to that of George de Lagarde, is to point out that Marsilius' popular sovereignty is a "democracy of corporations". Guilds, cities, and corporations play an important role in Marsilius' thought. He understands the individual within the context of his or her membership in public endeavors, either as a merchant, or a citizen, or as a member of the community of the church. Marsilius does not seek to laicize politics in the sense of separating the spiritual from the temporal. Rather, he seeks to bring an important corporation into the political fold, to take, as it were, a group with political interests and make it a part of the political system. The point of defending the emperor against the peace-disturbing activities of the papacy, then, is to create one forum for political interaction. We shall develop this point at greater length in the next chapter.

ENDNOTES

1. this information is culled from various sources, notably:
 Alan Gewirth, Marsilius of Padua, volume 1, pages 20-23;
 George de Lagarde, La Naissance de l'Esprit Laïque: Le Defensor Pacis, pages 3-9;
 Jeannine Quillet, La Philosophie Politique de Marsile de Padoue, page 12; and
 Alfred Huraut, Etude sur Marsile de Padoue, pages 11-19.
2. this doctrine was most notably developed by the Protestant Reformation. It is the notion that the church ought to be governed by a council of either the clergy and laity together, or the laity by itself. The original condemnations of Martin Luther by the Roman Catholic Church averred that Luther had been infected by the poison of the heretic Marsilius.
3. Quillet tries to pull Marsilius' doctrine back into earlier medieval thought by emphasizing his similarities with Aquinas. She thus reads Marsilius as a staunch defender of the emperor's all-pervasive power. This is a mistaken interpretation of the links between the two thinkers: see the appendix to this chapter. George de Lagarde, understandably given his project of tracing the roots of the laicization of discourse in the West, emphasizes Marsilius' contribution to the beginnings of the Renaissance in the late Medieval period. The position we shall take will be similar to that of George de Lagarde, with important nuances that will develop further on in the chapter.
4. There is ample support for this position to be found in the work of Michel Foucault, for example. His book Discipline and Punish is a particularly skillful application of the approach we are suggesting. Foucault does not deny that new things happen, or that consciousness shifts and evolves over time. He does deny, however, that an evolution in a specific area means a general evolution of consciousness from a dark age to an age of enlightenment. Other important sources for our position include R.G. Collingwood and Bernard Lonergan, S.J.
5. it is important to note that both Quillet and de Lagarde make extensive historical references. Their use of history, however, is often subordinated to their doctrinal concerns. Neither mentions new scholarship regarding the political development of the Italian Communes, and both emphasize the fact that although there had been active democratic institutions in the cities, these had been taken over by the "signori" by the time Marsilius began to write. Gewirth, because of his interest in Marsilius' "republicanism", passes over great chunks of Marsilius' contemporary history.

6. Cary Nederman, "Marsiglio of Padua as Political Theorist: Ideology and Middle Class Politics in the Early Fourteenth Century", University of Ottawa Quarterly, volume 51, number 2 (April-June 1981), pages 197-209.
7. Nederman, page 200, quoting Alan Gewirth on page 24 of his commentary on Marsilius.
8. A.R. Myers, Parliaments and Estates in Europe to 1789, page 23.
9. Michael Wilks, "Corporation and Representation in the Defensor Pacis", Studia Gratiana XV, 1972.
10. Wilks, page 261.
11. Quillet, page 20.
12. Alfred Huraut, Etude sur Marsile de Padoue.

Marsilius of Padua and Thomas Aquinas

Jeannine Quillet quite rightly underlines the affinities of Marsilius' work with the work of medieval thinkers, including St. Thomas. Although she understands the *Defensor Pacis* to have been influenced by Averroism, that is, by heterodox aristotelianism, she finds in many instances similarities between the work of the Angelic Doctor and the oeuvres of the Paduan. But these affinities do not make Marsilius an imperial traditionalist. It is important to underline the radical nature of Thomas' politics if we are to comprehend the similarities between Aquinas and Marsilius.

In his commentary on the Politics of Aristotle, Aquinas asks which is the better constitution: the monarchical, the aristocratic, or the republican? Ideally, it is a monarchy, because the monarch provides a principle of unity. But it is not enough to have an ideal: there is a best form of government in the practical sense as well. The best constitution, in this light, will be a mixture of monarchic, aristocratic, and popular elements. It is important that the people have a sufficient share of power if they are to feel responsible to the constitution.¹

This theme is taken up in the *Summa Theologiae*, specifically in the 1a2ae, question 105, article 1. In the context of examining the reasons for judicial precepts, Thomas states "There are two things to be observed concerning the ordering of rulers in a state or people. One is that all

should have some share in government; this makes for peace among the people, and commends itself to all, and they uphold it, as Aristotle says....This is the best form of constitution, a mixture of monarchy, in that one man is at the head, of aristocracy, in that many rule as specially qualified, and democracy, in that the rulers can be chosen from the people and by them."

We can see, then, that affirming Marsilius' links to St. Thomas does not constitute an argument for making Marsilius a supporter of imperial plenitude of power. Neither Aquinas nor Marsilius believes that the emperor should have unchallenged authority over the people. We could further cite question 96, article 5 of the 1a2ae, where Aquinas examines the relationship of the ruler to the law. Here, he makes it clear that the sovereign is bound by natural law, that is by the order of things and by right reason, to submit to the law. It is not a question of deciding to submit to the precepts of the law because this is the right thing to do. On the contrary, the ruler does not even have a choice in the matter: the leader who does not submit to the law is no longer a monarch, but a tyrant, to whom allegiance is not owed and against whom sedition is laudable rather than sinful. Once again, we see that Aquinas limits the power of the ruler in order to protect the political order, which is for the benefit of all.

This short appendix is not meant to be a fully developed argument for the important role of popular sovereignty in the

philosophies of Aquinas and Marsilius. We have hopefully seen enough indications of Aquinas' concern for the political power of the people, however, to show that relating the Defensor Pacis to Aquinas' thought does not imply that Marsilius favors imperial plenitude of power.

ENDNOTE

1. Commentaire de Saint Thomas d'Aquin sur la Politique d'Aristote, translated from the latin with an introduction by Léon Charette; see esp. roman numeral pages 141-142 of the introduction, and the passages noted in the footnotes on the same pages.

Chapter 4 - The Defensor Pacis

At the end of the first part of this thesis, we had formulated a heuristic notion of representation. This notion consisted of a series of specific problems. First, we perceived a need for new formal arrangements that would accommodate the interests embodied by political interest groups. Second, we realized that in order to create these arrangements, we needed a pragmatic or realist understanding of common and public interests that would fill the gaps remaining after an examination of both the Anglo-American and Continental modern traditions.

The information we gathered in chapter 3 puts us in a position to appreciate just why Marsilius is useful to our project. His conception of democracy is a corporate one, but it is also a kind of political pragmatism. The importance of law and institutions to Marsilius' thought was developed sketchily in the last chapter. As we shall see below, law and institutional arrangements are one of two pillars of Marsilius' political thought. We begin, however, with the other pillar, the corporative nature of political life, and we do so by examining Marsilius' conception of the Church as an element of the political system. This will lead us to speak more generally of the corporative nature of the civil community. Finally, we will address the question of the role of law and institutions.

The Church

In chapter five of the first discourse, Marsilius

outlines the parts of the state, of which there are six. The Church is the last part Marsilius describes. Human thinking about the "priestly part of the community" has been far from clear in the past, but all nations have in general agreed that "it was appropriate to establish the priesthood for the worship and honoring of God, and for the benefit resulting therefrom for the status of the present or the future world".¹ Even the pagans have erected a priestly part for their states, since they realized that quite apart from the benefits in the afterlife, religion played an important role in the life of the state: "This was to ensure the goodness of human acts both individual and civil, on which depend almost completely the quiet or tranquility of communities and finally the sufficient life in the present world."²

In the Christian world, the priestly part of the state is organized hierarchically into separate corporations under various bishops,³ which corporations purport to be independent of the control of civil authority. The members of these corporations have access to their own courts, which dispense a justice that is not governed by the laws of the community, but rather by supposed divine law. But the Church in its truest sense is the whole community of the faithful, which corresponds to the civil community.⁴ This means that some members of the civil community, both priestly and not, are subject to a parallel justice. This parallel justice creates discord, since there is no unity of government in the

community:"...suppose, as frequently happens, that...a man is called by several rulers not ordered one below another, to answer charges at the same time...[The] man who is summoned is bound to appear before one of the rulers, lest he be regarded as being in contempt...Either, therefore, he will appear before all the rulers at once, or before none of them, or else before a certain one and not before the other...[Even if he could appear at once before both], he will perhaps be convicted by one ruler and be acquitted by another, of the same crime; or if convicted by both, with different penalties."⁵ This disturbs the peace of the community, which requires one standard of justice and one figure of authority to be unified. The rule of the Church, therefore, cannot be coercive in the community. Consequently, the priestly part of the community must, in matters of civil justice, be subject to the civil ruler.

Marsilius goes even further, however, by stating that the ruler also has jurisdiction over the priestly part in spiritual matters. This is the purpose of the entire second discourse, and it is easy enough to see why this must be the case, if we recall Marsilius' original statement that the priestly part plays an important political role by regulating human actions. The government is dependent on the priestly part, and "receives some things through...the actions of the lower parts of the community".⁶ The priestly part, however, as a lower part of the community, receives some important

things from the government, namely protection from injury and the rule of civil justice. The priestly part can be judged then, by the coercive rule of the prince. The moral teaching of the priestly part, however, is not a judgment in the same way. The priest is a judge in a particular sense, that is, he is a practical teacher, a diagnostician of good and evil. The judgment of the priest is like the diagnostic of the physician. It does not carry coercive power over anyone, especially not over the ruler.⁷

A problem is created in the civil community, then, when the priestly part, which is only a part of the community, tries to take over those powers which are properly assigned to the government. The problem is not that the priestly part speaks on behalf of the whole community. This it does legitimately, in virtue of its proper role in the civil community. The problem is that the priestly part seeks to act outside the civil law, to create its own law and usurp the powers of government. It is in order to stop the discord created by this arrogance that it must be made clear, once and for all, that the ruler has complete authority over the whole of the civil community, in matters both temporal and spiritual.

Let us summarize, then, Marsilius' conception of the Church. It is, on the one hand, equivalent to the civil community, since all member of the community are also numbered among the faithful. But "the Church" can also refer merely to

that group which is organized corporately, with its own body of law and its own leader. that is, the clergy and the bishops. In this sense, the Church is the priestly part of the community. This priestly part, because it judges between good and evil and provides moral teaching to the faithful, plays a role in the civil community, and must therefore be subject to the laws and institutions of the civil community: it must be included in political discourse rather than allowed to remain outside of it in a system of parallel justice.

Marsilius' conception of the Church as a part of the civil community, once his exposition is stripped of its rhetoric, is remarkably similar to our own conception of political interest groups. His solution to the problem created by the priestly part is also similar to the general solution envisaged by our heuristic notion of representation: the priestly part must be included within the political system by important alterations to that system. Before we can examine Marsilius' solution, however, we look more closely at Marsilius' proposal for a renewed political system under the rulership of the emperor.

The Corporate Nature of the Civil Community

(A) The Perfect Community and the *Regnum*

In this chapter, we have used the term "civil community" without so far specifying what this term referred to, whether city, or state or some other political entity. The term "civil community" is meant to translate Marsilius' Latin term *regnum*,

and the reason we make use of such a general term is to emphasize its flexibility. Translators such as Alan Gewirth render *regnum* as "the state", but this, as shall become clear, is too restricted an interpretation. Our own usage shall be to keep the term *regnum* and vary it with the English equivalent "the civil community", which places us in line with Jeannine Quillet and George de Lagarde.⁹ As we study the concept of the *regnum*, we shall be able to glean some interesting insights into Marsilius' political system.

The concept of a "civil community" finds its origin in the medieval notion of the perfect community, which thinkers inherited from Aristotle's definition of the polis. This is a self-sufficient city, where the needs of the citizens can be met internally because of the high level of differentiation of tasks. Aristotle's term "polis" was translated early in the medieval period as *civitas*. Medieval thinkers expanded the meaning to include political entities larger than a city, and soon spoke of "*civitas vel regnum*", that is, the city and/or the-royal-monarchy-composed-of-several-cities.

Marsilius gives his own account of the perfect community, which leads to a slightly altered meaning of *regnum*. Chapter three of the first discourse is titled "On the Origin of the Civil Community". It traces the supposed chronological development of the civil community, which is the perfect community, from imperfect ancestry. More than an accurate historical account, however, this chapter is a narrative

definition of the perfect community. The first community is that formed by a man and a woman. This union generates other human beings, called children, who form with their parents households. The new human beings move on to reproduce the behaviour of their parents, such that new households are created when one household is too small to accommodate everyone. This is the creation of the village or hamlet. At this point, the pattern of authority undergoes a shift. Prior to the multiplication of households, paternal authority was sufficient to preserve order within the community, since the community consisted of one household. No law or custom was required, since the head of the household's will was taken as sufficient.⁹ With the multiplication of households, and the separation of families, paternal authority did not suffice, since no one person was recognized as holding such authority. The head of a village required some objective measure of justice and order, and so the first customs and quasi-laws come into existence to assist the judgment of the leader.¹⁰

These early communities "did not have so great a differentiation and ordering of parts, or so large a quantity of necessary arts and rules of living, as were gradually to be found afterwards in perfect communities. For sometimes the same man was both ruler and farmer or shepherd, like Abraham and several after him."¹¹ As communities grew larger and developed more complex needs, human experience of community also increased as did human knowledge of the various arts and

rules of living. In the end, those things which are necessary for the sufficient life of human beings were all to be found within one civil community. This community is the perfect community, and its perfection is characterized by its ability (a) to meet all the needs of the sufficient life through separate orders or offices;¹² (b) to function as a unity under one ruler; and (c) to order justice according to an objective norm.¹³ These three points are the key to Marsilius' conception of the perfect community.

The civil community, or *regnum*, is the empirical equivalent of the theoretical perfect community. In chapter two of the first discourse, Marsilius distinguishes four different senses of *regnum*. Two of them seem to correspond to the typical medieval definition we have already seen: one or more cities under the rule of a royal monarch. The third is nebulously defined as some combination of the first two. It is the fourth sense that Marsilius intends for the term *regnum*, which for him will be interchangeable with *civitas*: "it means something common to every species of temperate regime, whether in a single city or many..."¹⁴ *Regnum* thus applies equally well to the Italian Commune or the empire. As Quillet points out, the difference is in size, not in species. *Regnum* is a flexible term that denotes what cities and empires have in common, and this is why its rendering as "the state" is so limited and biased.

We must note, in addition, that Marsilius' use of *regnum*,

which as we saw corresponds to the theoretical perfect community, implies some important nuances to this theory. If both the city and the province, the royal monarchy and the empire, can equally be an instance of the civil community, this means that the theory perfect community must itself be understood in a flexible fashion. The city is self-sufficient in some ways, but not in others. This is especially true in Marsilius' time, with the rise of trading economies here and there in Europe. Cities need to band together to improve trade, or to improve their ability to protect themselves and so on. The province or territory united under one rule is self-sufficient in this sense, but perhaps not in others. It may be able to order itself internally and provide internal protection, and in this way be self-sufficient, but not be able to protect itself against its neighbours. The chain continues on up to the empire, which may be the largest perfect community. All these levels of community are civil communities, or regna, and all share the three characteristics of the perfect community in some way. We shall see later, when we touch upon laws and institutions, how these shared characteristics become concretized differently at the various levels.

(B) Peace and Tranquility

The reason for the regnum's existence is that it best fosters peace and tranquility. Marsilius, rather than founding the civil community on personal liberty, which his

contemporaries in the Italian Communes did when writing city charters, founds it on peace and tranquility. This is a social rather than individual notion, which as we have already seen in chapter three is understood to guarantee personal freedoms. Tranquility is defined by analogy to the living body: "...just as an animal well disposed in accordance with nature is composed of certain proportioned parts ordered to one another and communicating their functions mutually and for the whole, so too the regnum is constituted of certain such parts when it is well disposed and established in accordance with reason. The relation, therefore, of the regnum and its parts to tranquility will be seen to be similar to the relation of the animal and its parts to health."¹⁵ The peace and tranquility of the regnum is assured by the proper functioning of all its parts, both in relation to one another and to the rest of the world.

There are six parts of the civil community. The first three, which are the priestly, the warrior, and the judicial, share with each other the property of being concerned with the welfare of the whole of the regnum, though each in different ways. The judicial part is also called the ruling part. It acts to preserve order and justice in the regnum. It is assisted in this task by the warrior part, which is the physical embodiment of the coercive nature of the civil community's laws and institutions. We have already seen the role of the priestly part, and its proper relationship to the

ruling part.

The other three parts of the regnum are as follows: the agricultural, the technical (the productive arts), and the financial. The majority of the members of the regnum is to be found in these three parts.

The division into six parts is made by type of contribution to the civil community. We have already seen the function of the ruling part, the warrior part and the priestly part. The agricultural part is composed not only of agriculture proper, but also of hunting and fishing, and of "all other arts whereby food is acquired by some exchange or is prepared for eating".¹⁶ The technical part is made up of all the productive arts, from those that protect us from the elements to those that moderate our senses for pleasure and living well. Medicine falls in this category.¹⁷ The financial part includes both the public treasury and what we would refer to as the financial sector. By gathering funds, and saving "monies, coins, wines, oils and other necessities, ...it seeks to relieve future necessities."¹⁸

All parts of the regnum are under the ruling part. This is one of the three key traits of the perfect community. The government is the guarantee of the civil community's unity, but this unity is of a specific kind. It is a unity of order, which is to say that all the parts are ordered to the government.¹⁹ In other words, the key to the unity of the civil community is a formal ordering under one rule, either by

a constitution or charter or other such law. There may be another kind of unity, such as tribal kinship, or language, but the key to the unity of the regnum is its formal ordering.

(C) Summary, and Some First Conclusions

The fundamental political concept of Marsilius' system is the regnum, or civil community. This community exists to ensure peace and tranquility, which is a foundational political value. Peace and tranquility, as we saw in chapter three, fosters the freedom of the members of the community to go about their business, contribute to economic and social growth, and enjoy the fruits of their contribution.

The regnum, as an instance of the perfect community, is characterized by three things: (a) it meets all the needs of the sufficient life through a set of orders or offices, which can be divided into six parts; (b) it is a unity defined by its ordering to one rule; and, (c) it orders justice according to objective norms or laws. The regnum, as a political concept, is flexible enough to refer to the entire spectrum of political units from the city through the province to the empire, since it refers to something that applies to all temperate government. This something is a formal ordering by laws such as constitutions or charters.

Let us begin to draw some conclusions about Marsilius' contribution to our problem. We know from the third chapter that Marsilius seeks to create a system that links a democratic base such as the Italian Communes with strong

central rule by the emperor. We see in this section, however, that this central rule is not so much personal, but rather linked to an office. The relation of the five parts of the regnum to the sixth or ruling part is to be spelt out by laws. While this seems to give much power to the ruling part (Marsilius even talks of the ruling part assigning members of the civil community to the other five parts), it also severely limits the freedom to act that the ruling part has. It can only act along the channels that have been created by the founding laws of the civil community and for the purposes outlined in these laws.²⁰ It is time now to look at the second leg of Marsilius' overall argument, the nature of law and of representation.

Law and Representation

(A) The Human Legislator

The primary cause of law, for Marsilius, is the human legislator: "the legislator, or the primary efficient cause of the law, is the people or the whole body of citizens, or the *valentior pars* thereof, through its election or will expressed by words in the general assembly of the citizens, commanding or determining that something be done or omitted with regard to human civil acts, under a temporal pain or punishment. By the *valentior pars* I mean to take into consideration the quantity and quality of the persons in that community over which the law is made."²¹ This for Marsilius is the foundational sense of the human legislator. Whatever else he

will say, however he may temper or nuance his views, the passage we have just quoted remains the cornerstone of his legal edifice. The description that follows this passage, and references elsewhere in the text make it clear that Marsilius is taking the Italian Communes as a primary model.²² Almost immediately, however, he introduces a "hedge": "the aforesaid whole body of citizens or the valentior pars thereof is the legislator regardless of whether it makes the law directly by itself or entrusts the making of it to some person or persons, who are not and cannot be the legislator in the absolute sense, but only in a relative sense and for a particular time and in accordance with the authority of the primary legislator."²³ This second passage paves the way for Marsilius' use of the term human legislator in the second discourse, where it refers exclusively to the emperor. It is very easy to speak of the people when one refers to the Italian Communes. The people of the empire, however, cannot be gathered in one place to approve legislation, and so they entrust the making of it to their valentior pars, which at the level of the empire might be the emperor and the seven electors, or the emperor and his feudatory princes. We will say more about this when we study the valentior pars in the next section.

The law that is created by the human legislator is understood by Marsilius to be "the science or doctrine or universal judgment of matters of civil justice and benefit,

and of their opposites."²⁴ This is further specified in two ways. On the one hand, the law "shows what is just or unjust, beneficial or harmful."²⁵ On the other hand, under the observance of law, there is given a command to act in a certain way which is coercive because it imposes punishment for failure to act in the way commanded. This second feature is what makes a law and differentiates it from a simple request. Marsilius recognizes that not all laws in this sense could be guaranteed to be just. He insists that such laws, though "they have the proper form, that is, a coercive command of observance, they lack a proper condition, that is, the true and proper ordering of justice."²⁶

The problem, then, is to find some way of ensuring that the laws that are made have the proper condition. How is this to be done? Marsilius finds his solution in Aristotle's *Politics*. The best law, whether it is the law that founds the civil community or the laws made thereafter, is that which is for the benefit of the regnum and the citizens, and is made by the whole body of the citizens or the valentior pars thereof. This is because the greater number will be able to find defects in the law more readily than any one part, no matter how intelligent. Every whole is "greater in mass and virtue than any part of it taken separately. Moreover, the common utility of a law is better noted by the entire multitude, because no one willingly harms himself."²⁷ For all of these reasons, the primary legislator must be the people, even if

this is only practical at a local level.

(B) The Valentior Pars

In the third chapter, we saw how at the level of the empire, the human legislator is a "universitas, a body with a will and choice of its own, ... the real point of the analogy is that the state adopts the basic principle of corporation theory, namely, that the community acts by virtue of a unanimity distinct from the possibly divergent wills of the actual members."²⁸ At this abstract level, the human legislator cannot choose wrongly. What links the human legislator at this level to the human legislator as embodied practically in the city is the concept of the valentior pars of the people. We have left this term untranslated. Gewirth calls it the "weightier part" of the citizenry, but this makes it seem a simple majoritarian concept, which is only applicable to the cities. Again, Wilks has shown us how the term valentior pars functioned in Roman law. The quantity and quality Marsilius refers to in a passage quoted above function like two sides of an equation. The lower the quality of the members of the community, the more of them would be required to deliberate rightly. The greater the quality, the fewer the members required. In the city then, institutions are more democratic because there are fewer men of quality. The valentior pars, whether it is the consilium credentiae, or the podestat/consul who rules as the executive, can be elected by direct suffrage. At the other end of the scale, the empire,

only one person is required, since there exists a greater selection of men of quality. This person, however, is more accurately termed one officeholder, since what counts is that the one person embodies the will of the universitas. It is the office of emperor that is important, not the person who fills it. This is why Marsilius prefers an elected monarchy without hereditary succession.²⁹ From historical data, we know that the election of the emperor was the responsibility of seven electors, who cast their votes according to the will of the *Landstage*, the general estates of the empire. The suffrage, then, was indirect as far as the people were concerned. The officeholder, as representative of the will of the regnum, is bound by the existing charters, laws, constitutions and treaties.³⁰ This must be the case to ensure that justice be observed equally throughout the civil community. Though the emperor can change laws, no law that affects a group directly can be changed without their consent. The emperor, as the *valentior pars* of the empire, is entrusted by the people with the "investigation, discovery, and examination of the standards, the future laws or statutes, concerning civil justice and benefit, common difficulties or burdens, and other similar matters."³¹ The people, as primary legislator, must still approve of these possible laws if they are to become laws.³²

How does this work out? Let us recall some examples from the last chapter. A.R. Myers in his work Parliaments and

Estates in Europe to 1789 makes a point that is relevant to our enquiry, namely that European rulers often relied on the estate of burghers for money and support against the estate of nobles. Celli points out that many Northern Italian cities had managed to secure the right to counsel the emperor on the choice of a feudal lord for neighbouring duchies or earldoms. While it is true that for most matters the people of the empire were not consulted, they seem to have had some voice on occasion. This is the sort of political experience Marsilius had at his disposal, and it is this reality he seeks to systematize in the *Defensor Pacis*.

The concept of the *valentior pars*, then, links an office, that of the emperor, to the will of the people. The emperor, though he has complete coercive power practically speaking, is the representative of the will of the corporation that is the civil community. This understanding is equally applicable at intermediate levels, even though princes, dukes, and counts are not elected. In all cases, the primary model is that of the *podestat* or *consul*.³³

(C) Summary, and Some Further Conclusions

The foundation of all law is the human legislator, which is the whole body of citizens. At the grassroots level, this is concretely realized by actual assemblies like those of the Italian Communes. As the size of the *regnum* increases, the idea of a primary legislator that is equivalent to the people becomes more abstract. At the same time, the complexity of

legal and institutional constraints placed on the government increases, so that the unified rule of the emperor is more the rule of an office than the rule of the person occupying the office. This ensures that the abstract nature of the human legislator does not lead to concrete abuses of power against the members of the empire. It is possible to correct the ruler, even to depose him.³⁴

Marsilius' empire, then is not a democracy in our understanding of the term. This is why it is incorrect to present him as a prophet of modernity. At the same time, he tries to balance democratic elements at the base, where they count most in the daily living of citizens, with highly centralized but sharply delineated imperial powers. These powers ultimately serve to protect the arrangements at the base against attackers within the system, such as intermediate lords, and attackers outside the system, namely the Church. We are now in a position to examine Marsilius' solution for the Church in greater detail.

The Church Revisited

The second discourse of the Defensor Pacis is concerned with detailing Marsilius' solution for the Church's inclusion in the political system. Many scriptural and theological arguments are offered to support Marsilius' philosophical conclusions in the first discourse, and a concrete proposal is made to show how the Church is to be submitted to the will of the emperor.³⁵ The emperor, as highest representative of the

human legislator, together with a general council called by him, hold all rights over the naming of bishops and the awarding of benefices linked to these appointments.³⁶ The making of religious decrees is the responsibility of the emperor alone, or the council alone, or both the council and the emperor together. The council is made up of bishops, lower clergy, and the laity. There are "partial councils" at the more local level.

What has Marsilius done, if we place his solution in the context of his wider political theory? He has created semi-permanent "parliaments" to rule over spiritual affairs under the headship of the emperor, whose office serves as the principle of unity combining temporal and spiritual affairs. These assemblies are forums where issues affecting the members of the Church can be made public and possible legislation approved or disapproved. This is the Church in its truest sense, the assembly of all the faithful, which, as we pointed out at the beginning of the chapter, corresponds to the regnum. The priestly part of the civil community can now be a true judge of good and evil for the community, since the law it judges with comes from the human legislator, which can never choose wrongly.

For our own purposes, the key thing to note is that in altering the organization of the civil community to include the priestly part, Marsilius creates a public assembly within which the kinds of moral and religious issues facing the civil

community can be debated. He does not assimilate this kind of debate to the structures set up to administer temporal affairs, but rather creates a complementary structure united to the temporal structures by the office of the emperor.

ENDNOTES

1. Marsilius of Padua, Defensor Pacis, page 18-19. [henceforth, Defensor Pacis shall be rendered D.P.]. The reference to a future world is to the afterlife, not to a later earthly time.
2. D.P., page 19.
3. D.P., page 102-103.
4. *ibid.*
5. D.P., page 81-82.
6. D.P., page 419.
7. D.P., page 420-421.
8. see especially Quillet, La Philosophie Politique de Marsile de Padoue, pages 75-77.
9. D.P., page 10.
10. D.P., pages 10-11.
11. D.P., page 11.
12. D.P., pages 13-14.
13. D.P., page 13.
14. D.P., page 8.
15. D.P., page 9.
16. D.P., page 17.
17. *ibid.*
18. D.P., page 18.
19. D.P., page 85-86.
20. The reader is referred back to the appendix to chapter three for a comparison with Aquinas' approach to the problem. There is also an excellent study of the development of popular sovereignty in England and America published in 1988 by W.W. Norton and Company. The author, Edmund Morgan, argues in the early chapters that a legal fiction such as the divine right of kings is as limiting on the will of the monarch as it seems to be on the rights of the people. The title of the book is Inventing the People.

21. D.P., page 45.
22. see especially pages 46-47, in the same chapter, and also the following chapter, chapter thirteen, pages 49-55.
23. D.P., page 45.
24. D.P., page 36.
25. *ibid.*
26. D.P., page 36.
27. D.P., pages 46-47.
28. Michael Wilks, "Corporation and Representation in the Defensor Pacis", page 261.
29. see D.P., discourse I, chapter IX, pages 28-34; also chapter XVI, pages 68-80.
30. see D.P., chapter XI, pages 37-44.
31. D.P., page 54.
32. D.P., page 55.
33. see chapters XIII to XV, pages 49-67. These read remarkably like Celli's description of the consulate.
34. D.P., pages 87-89.
35. D.P., pages 287-298.
36. D.P., page 429-430.

Conclusion

At the end of chapter two, we had refined our heuristic notion of representation as follows: given that group interests and public interest exist already, and that public interest groups have been organized to articulate these interests, and given that the class of civil servants and bureaucrats already work within government to further these interests, the new understanding we seek of formal arrangements of representation must be such that these two sets of people come together in the same kind of public forums we presently call representative institutions. This new understanding must supplement existing arrangements, not do away with them.

In the third and fourth chapters, we came to see how Marsilius, faced with a set of political interests that challenged existing arrangements for the sake of "transcendental values", made use of a corporate understanding of society and political life to devise a democratic-oligarchic system of representation where secular and spiritual interests were heard in distinct forums that were united by the office of the emperor. If we look back to the conceptual analysis of the first chapter, we can see that Marsilius combined elective and delegated representation at the base with powerful symbolic representation at the top in a context of various parties "acting for" various interests. At the same time, however, we saw that the system Marsilius created went a long way towards making the symbolic

representative, that is the emperor, responsible to councils and laws for his behaviours: this is why we pointed out that the office of emperor was more important than the person who occupied it. These arrangements, again in terms of our earlier conceptual analysis, were such that a dialectic was created between the interests of various groups (the parts of the regnum) and the activity of the emperor. The emperor was formally bound to the people and was more or less bound, whether he personally liked it or not, to act on behalf of the interests of society at large.

At the end of the fourth chapter, finally, we noted that Marsilius' particular solution to the competing claims of temporal and spiritual administration kept these claims distinct. While Marsilius' knows that both discourses are effectively political, he also sees that they serve different purposes. The discourse of the priestly part is political discourse about meta-political interests: what is the good of the peasants in this situation, how shall we act well towards the French, and so on, where our basic concerns are to respond to "transcendental values".

In light of all this, it is possible to say a few things about the solution to our heuristic notion of representation. Corporate notions of society have been proposed in the past as solutions to various dilemmas created by Western democratic institutional arrangements. These notions have failed, as we noted in the second chapter, because they did not preserve the

very important arrangements that serve to protect private interests. These proposals, like Hegel's in the Philosophy of Right, have also tended to idealize the notions of community, guild and corporation.

Marsilius' analysis of his contemporary political milieu is based on a corporate understanding of society, but one that is very pragmatic. The various parts of the state have a reality, but their purpose is one of utility to the overall system. There is no deeper meaning to them than the preservation of social arrangements. These corporations and guilds function as the various organs of a living body (and here Gewirth's emphasis on Marsilius' practical "biologism" is right on), making it possible for individual members of society to live a sufficient life. Private interests can be pursued because the system provides the context and the goods needed to enjoy them. The discourse of the priestly part makes sense in this corporate context, where it is understood to be a contribution to the well-being of the system (so long as it does not try to act outside the system).

In terms of our own arrangements then, what can we learn from Marsilius? As we have already pointed out, the discourse of political interest groups appeals to quasi-transcendental values: the public good, future generations, and so on. This discourse is an important contribution to the life of political systems, but it often gets lost to practical political considerations under present arrangements. The

rationality of values is subordinated to the rationality of meeting competing interests and especially protecting rights and private interests. At the level of political discourse, the two contributions are not compatible. In order to talk of what is in the public interest or for the public good, we must use language which is different from the language of rights. Could we not adopt Marsilius' solution for the Church and develop parallel institutional arrangements to address these issues? In the same way that Marsilius' Church council creates a dialectic between emperor and priestly part, with mutual responsibility and accountability, could we not bring the class of bureaucrats and political interest groups into a permanent and public council whose political contribution would be to provide a forum where questions of the public good could be debated and some positive action taken to further these interests.

Such an arrangement would meet the requirements of our heuristic notion of representation in two ways. First, this new formal arrangement would establish a dialectic between the bureaucrats and the people, which would in turn establish the substance of representing or being represented. Second, the already existing arrangements would be supplemented rather than supplanted.

This solution is meant to be general, not specific. There are innumerable ways to implement it at the practical level. In Canada, one might think of a "corporate Senate", composed

of representatives of political interest groups and senior bureaucrats debating legislation from the point of view of the public good. Elsewhere, one might require a less permanent council meeting at intervals of three or more years to set general goals. The idea of this solution to our heuristic notion of representation is not to make practical proposals, but rather to begin to take political theory in a new direction, and to do so from considerations of praxis.

Let us state succinctly, then, what we have seen. We have learned from Marsilius that the discourse of political interest groups, appealing as it does to concerns of public interest and the public good, needs its own forum if it is not to be lost to other political discourses. This forum is required for the same reason that already existing arrangements protecting rights and private interests were originally required: executives and bureaucrats in government must be made accountable in a public and permanent context. Political theory, then, must develop in the direction of recognizing how and where the two political discourses are distinct and where similar. From this point, it must reinterpret the primacy of rights language in light of a new understanding of the social arrangements that underpin those rights and make them possible. By recognizing that present formal arrangements of representation are inadequate to support rational public discourse on the public good and public interest, and by adopting solutions like Marsilius', we

can further expand our understanding of political life.

The importance of doing this we can also learn from Marsilius. If discussion of public values remains subsumed to present arrangements, then it will not be possible to make public choices regarding which of these values is important to our political community. The choices will be made, but in ways beyond the control of present institutions. The result of this is similar to Marsilius' problem of two laws or two governments clashing over who or what has priority, which creates discord. The rule of representative institutions will be challenged by the rule of chance and of independent structural development of society. By attempting to understand the corporate nature of some interests as these have developed in political interest groups, this thesis has tried to show the need for new institutions to expand political discourse and increase our ability to make political choices. The context in which we hold our rights and private interests is an area of political debate too important to ignore any longer.

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ABSTRACT

The thesis is concerned with developing a new approach to political theory as it is practiced in the Anglo-American tradition. This tradition has been characterized by certain assumptions regarding the foundations of political theory, the most important of which has been the primacy accorded to the individual and to the political rights which develop to protect this primacy. Political theory has been, in the mainstream, worried about protecting individuals from each other and from authority. Our ideas regarding democracy, fed by this reflection and by historical events (the rise of liberal capitalism, for example), have tended to reflect this individualist foundation.

Where attempts have been made to develop notions of the polity, and to work from these, these notions have been hindered by their idealism (Hegel or the Fabian Socialists) or their materialism (Marx). Recent political experience in the West, however, presents a strong challenge to the individualist stance. The rise of political interest groups, which serves as the empirical starting point for this thesis, has brought out the shortcomings of our democratic theory into the open. Various critiques, from a feminist, Marxian, ecological or other point of view, have shown how the individualism of our tradition has reached certain limits. These also show the need, I think, for a new development in political thought, one that takes into serious consideration the role and nature of the polity.

The thesis is divided into two parts. The first part is diagnostic in nature: it seeks to isolate a specific question to be asked, a heuristic notion of representation that can serve as a template for further inquiry. This first part is made up of two chapters. The first chapter looks at representation from the point of view of the representative. The second chapter turns to the interests of the represented.

In the second part, which is made up of three chapters, the work of Marsilius of Padua is studied to try to glean a possible solution to the heuristic notion developed earlier. Marsilius' understanding of politics is founded on a corporate notion of the individual, which is why his work is of interest. The chapters develop, in order, Marsilius' historical context, some key notions in his text, and finally some conclusions for our own theoretical enterprise.