

**State Territorial Sovereignty in the Political
Thought of the Late Middle Ages (13th-14th
centuries)**

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DECLARATION

Submitted in fulfilment / partial fulfilment of the requirements for the degree
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Durban, South Africa.

I declare that this dissertation is my own unaided work. All citations,
references and borrowed ideas have been duly acknowledged. It is being
submitted for the degree of in the
Faculty of Humanities, Development and Social Science, University of
KwaZulu-Natal, Durban, South Africa. None of the present work has been
submitted previously for any degree or examination in any other University.

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Abstract:

The idea of state territorial sovereignty occupied a central role in the political thought of the fourteenth century. During this period, medieval society witnessed the consolidation of the territorially sovereign state alongside other sovereign entities such as the empire and the papacy. Political thought attempted to account for these territorial entities and reconcile them with the dominant forms of medieval sovereign power, such as imperial and papal claims for universal sovereign jurisdiction. Both Baldus de Ubaldis and Marsilius of Padua made distinctive contributions to the idea of territorial sovereignty. Their theoretical accounts therefore mirror the unique circumstances of their historical context and thus reveal that they had specific historical objectives in mind when writing their works. Baldus's political thought for one constituted an acceptance of the universal claims of sovereignty of the emperor and pope as the basic starting point, and from which he develops his argument for the sovereign territorial state. His use of the juristic terms *de iure* and *de facto* sovereignty were highly innovative. The theoretical nature of Marsilius's arguments, on the other hand, were quite different. His objective was to destroy the papal claim of universal sovereignty and accord it to the only legitimate sovereign power in the state, the human legislator. Marsilius achieved this by developing a unique way of understanding the sovereign territorial state, that is, by examining the structure, nature and role of the perfect community or state. The impact of medieval political ideas in shaping our modern political concepts should not be undervalued. The remarkable historical change in late medieval Europe led to the fascinating and often discounted contributions of late medieval thinkers to the subject of territorial sovereignty as a whole.

Introduction

Stripped of its irrelevant paraphernalia, the medieval period in which, as far as the West is concerned, political ideas in the modern sense were born, is the period of Europe's apprenticeship, puberty and adolescence (Ullmann, 1965:7).

The fourteenth-century is widely regarded as the most productive and profound era in the development of political thought out of all of the Middle Ages. This period represents a 'fundamental shift in the nature of political thought' in general (Canning, 1996:135). At the level of discourse, political writing became especially sophisticated, as philosophers and jurists alike sought to understand and question the complicated events of their time. One of the major themes that preoccupied this discourse is the idea of the sovereign territorial state. But how can this new orientation in medieval political thought be explained, since medieval society is conventionally depicted as constrained by religiously inflexible doctrines of authority and sovereignty, which mar its ability to produce anything remotely modern?

The fascinating answer to this lies in a major and significant development, which takes place at the turn of the thirteenth and fourteenth century, where medieval society witnessed the 'consolidation of the territorially sovereign state' alongside other sovereign entities such as the empire and the papacy (Canning, 1996:136). Indeed, by the late thirteenth century there emerged a 'variety of kinds of territorial state, ranging from western monarchies, to the city-states of Italy' (Canning, 1996:83). This historical development was especially significant for the history of political thought. It became the primary focus in the conversations and discussions of fourteenth-century intellectual enterprise. It was a development that provided the background and forum for the elaboration of new and distinct political ideas, as it sought to question the role of the territorially sovereign states in the broader political context of the empire and papacy.

Political thought attempted to account for these territorial entities and somehow reconcile them with the dominant forms of medieval sovereign power that were prevalent during that

time, such as imperial and papal claims for universal sovereign jurisdiction. The theme of the relationship between universal and territorial sovereignty therefore, was not coincidental. Rather, the highly complex intellectual endeavours on state territorial sovereignty, evident in fourteenth-century political thought, were undeniably products of this particular context.

This thesis is an investigation into this critical period of philosophical and political thought, namely the Late Middle Ages (c.1290-c.1450). In particular, it is an attempt to contextualise and analyse the political writings of two remarkable thinkers of fourteenth century medieval Europe, Baldus de Ubaldis and Marsilius of Padua, who both made distinctive contributions to the idea of territorial sovereignty. It seeks to question one of the ways in which the issue of state territorial sovereignty was historically conceptualised in political thought. It argues that the relationship of the state to territorial sovereignty has become a conceptual given since the emergence of the modern state in political philosophy. Max Weber ([1918] 1994:360), for example, offers one of the most widely influential and traditional approaches to understanding the state. He defines the modern state as ‘that human community that successfully claims the monopoly of the legitimate use of physical force within a given territory’. Such a definition thus implies that a central feature of the state is the fact that its jurisdiction and function is always bounded within a particular territory. Similarly, this idea emphasises that the issue of territorial sovereignty is what makes the state different from any other form of political association.

This thesis argues that any interest in modern political ideas must be accompanied by a ‘heightened awareness of the need to understand how modern political concepts have become what they are’ (Ullmann 1965:7). The modern day view of the state, which clearly underlines the relationship between the state and territorial sovereignty, is itself hardly a new phenomenon. This is because, like most other concepts or political ideas, the issue of territorial sovereignty did not unexpectedly emerge as a contingent feature of the modern state. Rather, it is embedded in a historical process, which is both fluid and varied. It can thus

be described as historically continuous, having arisen in past historical moments, and then assuming a unique flavour and currency in the political realities of a later time. Furthermore, although past political ideas often assume different forms in later contexts, as Ullmann (1965:8) suggests, in ‘their substance, there is a remarkable genetic continuity’.

Following from this, this thesis will defend the assertion that the modern understanding of the political significance of territorial sovereignty in relation to the state, if examined within the overriding framework of the history of political ideas, may have its intellectual origins in the late Medieval Period. The thesis is thus predicated on the assumption that a comprehension of politics and more specifically the state is deeply mired in history. It argues that many medieval political concepts such as territorial sovereignty, would be either ‘absorbed, transformed, or argued against until the modern period’ (Coleman, 1999:1).

Bearing this in mind, this thesis can be largely described as an analytical attempt to trace the intellectual origins of the idea of state territorial sovereignty. It does not claim to purport that that one can squarely and neatly argue that the intellectual origins of territorial sovereignty are to be found in the late Medieval period. Instead, it hopes to illustrate through the lens of the ‘history of ideas’ that remarkable historical change in late medieval Europe led to the fascinating and often discounted contributions of medieval thinkers to the subject of territorial sovereignty as a whole. Thus, a historical analysis of territorial sovereignty would simply be deficient if it were not to recognise the intellectual and historical importance of this period.

In Chapter One of this thesis, I examine the contributions of the jurists and civilian lawyers towards the theoretical formulation of the idea of the sovereign territorial state. Whilst I focus mainly on the writing of a particular thinker, namely Baldus De Ubaldis, I also consider the significance of another competing juristic approach, that of the Neopolitans. I begin by demonstrating the manner in which Baldus’s political thought constitutes an

acceptance of the universal claims of sovereignty of the emperor and pope as the basic starting point, and from which he develops his argument for the sovereign territorial state. I then examine Baldus's use of the distinction between *de iure* and *de facto* recognitions of sovereignty as a means of justifying territorial sovereignty in a larger conceptual understanding of the hierarchy of sovereignty. I also explore the nature of this conception of *de facto* sovereignty of the territorial city-state by elaborating on Baldus's notion of the role of consent and the non-recognition of a superior through his use of the *ius gentium* argument. Finally, I explore how Baldus applies corporation theory to the idea of the *de facto* territorially sovereign state in order to create an abstract entity which exists for a purely legal purpose.

In Chapter Two, I investigate the notion of state territorial sovereignty in the writings of Marsilius of Padua. Before identifying all major stages of Marsilius's argument of sovereignty, I first consider the viability of the claim that Marsilius's notion of sovereignty is indeed territorially anchored. I then explore the nature of Marsilius's arguments located mainly in Discourses I of *Defensor Pacis (Defender of Peace)*, to argue that a notion of state territorial sovereignty as that which belongs to only one supreme political authority, the *universitas civium (corporation of citizens)*, is once again evident in the theories of fourteenth century political thought. Furthermore, I frequently bring to light the influence of Aristotelian philosophy on Marsilius's thought and the impact it had on his scholastic insights.

The need for such an analysis?

The modern state as we currently understand it in normative political theory has been a subject of thorough dissection and analysis on both a theoretical and conceptual level. As Skinner(1989:90) suggests, since the time Hobbes undertook his search into the rights of states and the duties of subjects, the idea that the state 'furnishes the central topic of political theory has come to be universally accepted'. A tradition such as this, firstly,

means that an attempt to delve into any specific area of the state is by most standards intellectually relevant. In this way, this project is focused on analysing one of the key features of the modern state: the fact that its jurisdiction and function is always bounded within a particular sovereign territory.

Secondly, many contemporary political thinkers argue that geographic borders and the issue of territorial sovereignty are critical to the definition of the state merely because they are 'overwhelmingly convenient'. Thus, their 'inclusion in the definition of the state can pass unchallenged' (Geuss:2001:19). This research hopes to challenge this notion, as it seeks to investigate where the conceptual basis for territorial sovereignty can be found.

Thirdly, in recent times there has been significant research on this critical subject of the state, with a burgeoning literature that is preoccupied with trying to conceive of what lies beyond the territorially sovereign state. Such a preoccupation firstly stems from an intellectual and analytical demand to think beyond the conceptual framings that modern political thought is so firmly rooted in vis-à-vis the state. Furthermore, such a preoccupation has increasingly been marked by a more practical global concern that new age technologies and advancements have made state borders redundant and on the retreat. This has initiated the 'globalisation debate', a subject that has become increasingly fashionable in both political theory and international relations discourse in the last few decades, as it attempts to deal with the 'changing nature and form', of the territorially sovereign state (see Hirst & Thompson, 1996 ; Held et al ,1999).

The globalisation debate has heralded the use of a new modern political language that analyses politics from the standpoint of the 'contemporary crisis of the nation state'. Hont (1995:166-170), provides a comprehensive historical perspective on this issue and observes that there are 'two obvious dangers' threatening states, first that they cannot 'preserve their territorial integrity' and second, that 'they cannot provide the people within

their territory with adequate welfare and comfort'. Hont makes an important point which speaks directly to this particular thesis, when he argues the following:

To bring the 'political-territorial' problem of the viability of states into focus, one needs to understand key aspects of the modern notion of popular sovereignty. I take it as given that without a historically informed understanding of the theory of popular sovereignty no clarification of the modern language of 'nation-states' and 'nationalism' is possible (Hont,1995:171)

Hont's above argument, is relevant in two ways. Firstly, it echoes the importance of this particular thesis, which is a study that provides some kind of historical perspective to the idea of state territorial sovereignty, in the contemporary context of globalisation. Secondly, it allows for the contemporary political analyst of the state, to draw interesting parallels between a historical perspective of territorial sovereignty in the late medieval period and territorial sovereignty as we know it today. These kind of parallels are already starting to emerge in the writings of globalisation theorists such as Bull (cited in Held, 1999:86) who argues for example, that globalisation can be regarded merely as a neo-medieval world order:

It is familiar that sovereign states today share the stage of world politics with 'other actors' just as in medieval times the state had to share the stage with 'other associations'...If modern states were to come to share their authority over their citizens, and their ability to command their loyalties, on the one hand with regional and world authorities, and on the other hand with sub-state or sub-national authorities, to such an extent that the concept of sovereignty ceased to be applicable, then a neo-medieval form of universal political order might be said to have emerged.

Lastly many matters that concern and affect the lives of citizens of states are caused by global problems and are thus only resolvable through international political solutions. A good contemporary example of this is the degradation of the planetary environment.

Methodology

This thesis is a philosophical and historical analysis that arises from a history of ideas approach. In particular, it is concerned with examining a set of ideas and arguments on the sovereign territorial state. These ideas are the human products of specific authors of political theory, and belong to classic texts of political thought. In this way, Dunn (1996:18) argues that the methodological approach one would employ for political thought, would always be guided by the significance of this understanding:

great texts of political theory, whether secular or devout, are essentially human artefacts; products of concentrated intellectual labour and imaginative exploration by palpably human agents.

As Dunn (1996:19) points out the most appropriate methodological approach for the study of political thought is the history of ideas method, most strongly associated with the contemporary historian from the Cambridge School, Quentin Skinner. This method attempts to analyse a group of primary texts, combined with some secondary and background textual material, that will help reveal the essentially historical nature of the writings of classical authors. One of its aims is to engage in a proper pursuit of intellectual history, by evaluating the historical context first, so as to promote what Skinner describes as ‘meaning and understanding in the history of ideas’ (2002:57-89).

By employing the objectives of the history of ideas method, this thesis promotes an understanding of the roots of modern political thought and its classic authors in their contexts. It argues that any meaningful engagement with the history of ideas must explore the social conditions and historical contexts out of which they arose. This is because the ‘historical character of texts are fundamental’ and the ‘key to understanding every such text’ (Dunn, 1996:19). Thus, it is vital that the reader focus on the ‘preoccupations and purposes’ behind the writing of the classic text, even if it means stringently questioning what ‘led the author to compose it at all’ (Dunn, 1996:19). In this way, the purpose of this thesis is not to

simply delve into the philosophical arguments of Baldus and Marsilius, that is, dealing with their arguments in the purely philosophical spirit, with no account of their essentially historical nature. Instead, as Skinner argues it is an attempt to situate these texts into their particular historical contexts:

If we want a history of philosophy written in a genuinely historical spirit, we need to make it one of our principal tasks to situate the texts we study within such intellectual contexts as enable us to make sense of what their authors were doing in writing them...not of course to enter into the thought-processes of long-dead thinkers; it is simply to use the ordinary techniques of historical enquiry to grasp their concepts, to follow their distinctions, to appreciate their beliefs and, so far as possible, to see things their way (2002:3).

As a way of making this explanation clearer, Skinner's argument seeks to address the problematic nature of the way in which the history of ideas method has been traditionally approached. He thus rejects the dominant method of studying and interpreting classic texts as simply a set of ideas that contain 'dateless wisdom', 'timeless elements', and 'universal' principles (Skinner, 2002:57). These claims purported by readers, academics and students of political thought have assumed continuing appeal in many sectors although they are objectionable and misguided for the study of political thought, and is exactly what my study tries to refrain from. As Skinner argues:

the belief that classical theorists can be expected to comment on a determinant set of fundamental concepts has given rise, it seems to me, to a series of confusions and exegetical absurdities that have bedevilled the history of ideas for too long (2002, 57-58).

Skinner attempts to deal with why limiting the history of ideas to a simple study of a given classical text may lead to confusions and absurdities. The first dilemma with this is the fact that it is simply impossible to separate one's own pre-judgements and pre-conceived notions about what these texts might actually mean. What is likely to occur as a result of this,

Skinner argues, is that these preconceptions will affect our ability to be true to these texts, as they may act as determining factors of what we think and perceive (Skinner, 2002:58).

The obvious danger with this approach to the history of ideas is that it will not be correct to assume what a certain historical text is supposed to mean in terms of our categories of understanding. This is because we might often presume that a thinker in his account really meant something that they might not have meant at all. This ‘unconscious application of paradigms’ to historical texts may often lead the reader to construct an account that in all likelihood would produce ‘mythologies’ rather than a history of thought (Skinner, 2002: 59).

Skinner highlights the forms in which these mythologies might manifest themselves. The most common of these, he argues, is when an intellectual historian, whether in the field of moral or political theory, articulates some doctrine on every topic ‘constitutive of the subject’ (Skinner, 2002:59). What prevails from such a phenomenon are two distinct types of intellectual histories, both of which are equally historically absurd:

One is more characteristic of intellectual biographies and synoptic histories of thought, in which the focus is on the individual thinkers. The other is more characteristic of ‘histories of ideas’ in which the special focus is on the development of some ‘unit idea’ itself (Skinner, 2002: 60).

In both these instances what needs to be especially avoided are the dangers of anachronism. The problem with anachronism being that a writer like Baldus or Marsilius may be discovered by myself ‘to have held a view, on the strength of some chance similarity of terminology, about an argument to which they cannot in principle have meant to contribute’ (Skinner, 2002:60). In this thesis the temptation of being anachronistic was routinely avoided. For example, I will note at the outset that trying to extract a modern day understanding of the ‘state’ from the writings of the late medieval period is not the intention of this thesis. Drawing from Black’s (1992:186) useful discussion on this issue I argue that to

understand the medieval idea of the state, is to first scrutinise the definitions we employ in our understanding of the modern state.

Some of the definitions which Black (1992:186) considers are: authority exercised over a defined territory and all its inhabitants or the monopoly of the legitimate use of physical coercion (as Weber put it). Black (1992:186) argues that the idea of the state in these senses was present or developing in this period. Thus a theory of the state in the medieval period all depends on 'how rigorous one wishes to be in applying the term' (Canning, 1988:350). Furthermore, although states in their strictly modern form did not emerge in the political thought during this period, there is certainly room for the view that some kind of 'state' did exist, both in fact and in idea during this period (Burns, 1996:2). As Skinner (1989:91) argues, as 'early as the fourteenth century the Latin term *status*- together with such vernacular equivalents as *status*, *regis*, *civitas* and *state*- can already be found in general use in a variety of political contexts'. It is clear that the meaning of the state was conveyed by this range of terms, although not fully abstracted as we know it in the modern sense. What is more important is that these usages common throughout late-Medieval Europe eventually gave rise to 'recognisably modern discussions of the concept of the state' (Skinner 1989:95).

It is the idea of state territorial sovereignty found in the captivating accounts of late medieval scholars that is foremost to this enquiry. This thesis uses the history of ideas method to analyse the illuminating accounts of Baldus and Marsilius, in their conceptualisations of the territorially sovereign state in the late Middle Ages. It achieves this by constantly locating the ideas of the historical texts it utilises (such as the *Defender of Peace*) into their appropriate historical context. It therefore attempts to provide an account not only of the meaning of what was said in the texts at hand, but also of that which the writer of the texts may have meant by what was said. The reason for this, as Skinner suggests, is that the understanding of texts, 'presupposes the grasp of what they were intended to mean and of how that meaning was intended to be taken (2002:86).' Simply, when dealing with a given text, the question this thesis asks first, is what the authors, who wrote at the time for the

specific audience they had in mind, could in a practical sense have intended to communicate in their textual pronouncements? This, as Skinner correctly points out, is the most constructive way of dealing with political ideas:

It seems to me, therefore, that the most illuminating way of proceeding must be to begin by trying to delineate the full range of communications that could have been conventionally performed on the given occasion by the issuing of the given utterance. After this, the next step must be to trace the relations between the given utterance and this wider linguistic context as a means of decoding the intentions of the given writer (2002, 87).

In this way the focus of study is undeniably a linguistic one, and the appropriate direction of this methodology is then to concern itself with retrieving the possible intentions of the writer of the historical text. This can only be achieved if we examine the social or historical context of the given author, as a way of assessing what linguistic meanings may have been conveyed:

The social context figures as the ultimate framework for helping to decide what conventionally recognisable meanings it might in principle have been possible for someone to have intended to convey (Skinner, 2002:87).

Adhering to these methodological principles was critical in my enquiry. Throughout this study I have provided an initial examination of the intellectual and physical contexts of the texts I analyse, before turning to the meanings I derive in my accompanying analyses, all the while cognisant of the impact of the medieval context. For example, the political, legal and religious realities of fourteenth century medieval Europe are ever-present in my understanding of the ideas conveyed by both Baldus and Marsilius. Hence I subscribe fully to the view that Baldus' political conceptions, for example, 'only surrender their historical meaning, if the reader bears in mind the particular institution, entities, and relationships with which the jurist was actually concerned' (Canning, 1987:2). Thus what is evident is the 'dialogue between philosophical analysis and historical evidence' (Skinner, 2002:87).

The history of ideas methodology does not flagrantly discount the philosophical importance of the ideas in classic texts. It simply argues that as intellectual historians we must be vigilant in our approach so as not to assume that classic texts are directly concerned with the current day predicament. As Skinner argues, informed by this sort of reasoning we are sure to see that:

Classic texts, especially in moral, social and political theory, can help us reveal, not the essential sameness, but rather the variety of viable moral assumptions and political commitments. It is here that there philosophical, even moral, value may be said to lie (Skinner,2006:88).

Furthermore, we should not assume that using the present context as a vantage point in our treatment of the history of ideas is necessarily the most effective method of dealing with political thought:

There is a tendency to suppose that the best, and merely the inescapable, vantage point from which to survey the ideas of the past must be that of our present situation, because it is by definition the most highly evolved. Such a claim cannot survive recognition of the fact that historical differences over fundamental issues may reflect differences of intention and convention rather than anything like a completion over a community of values, let alone anything like an evolving perception of the Absolute (Skinner, 2002:88).

In essence then, the aim of this research is therefore to meaningfully engage with a set of primary texts, by returning them to the precise contexts in which they were initially formed. It is thus to engage in a kind of study that is more complicated and reflexive, historically and philosophically. Furthermore, it is to discover from a methodology like the history of ideas that there have been a myriad of ideas and concepts which have belonged to the various societies of the past, and from this we are to discover a general truth not only about the past but also about ourselves (Skinner, 2002:89).

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Chapter One:

Introduction

The modern understanding of the political significance of territorial sovereignty, in relation to the state, if examined within the overriding framework of the history of political ideas, can be described as a 'direct heir or descendent' of both the political thought and historical circumstances of the Medieval Period (Ullmann, 1965:7).

Of the former I refer specifically to the collection of various discourses arising from sectors unique to medieval society, which have helped shape and transform the institutions and political ideas that we know today. This chapter is thus preoccupied with examining one aspect of this diverse discourse, namely the contributions of juristic writing that deal with the emergence of the territorial state from the period after the mid-12th century. Whilst it focuses mainly on the writings of a particular thinker, namely Baldus De Ubaldis, it also considers the significance of another competing juristic approach, that being the Neopolitans.

However, of the latter, that is, the historical circumstances of the medieval period, I particularly note that the series of moments that make up the historical process necessarily condition the political ideas that emerge from that context. Simply, what this suggests is that the specific historical setting in which the thinkers of the medieval era wrote contributed directly to the formulation of their political views. It is incumbent, then, that any attempt to locate the juristic ideas of both state and territory during the late medieval period must first be accompanied by a discussion of the historical context that precipitated those ideas. In a sense this inadvertently acknowledges that the complicated developments of medieval society are mirrored in various unique outcomes, one of which is its political thought. As Skinner (2002:57) amongst others has pointed out, making sense of the historical context is part of a process of deriving 'meaning and understanding' from the history of ideas.

What then can we describe as the main historical developments that led to the emergence of a plurality of sovereign territorial states in the fourteenth century? How are we to trace the manner in which territorial states came into being? Note that I say this with a certain degree of circumspection, as the medieval historical process is never as straightforward as we want it to be. As I shall uncover below, the nature of medieval society, and the manner in which it is bound to a complexity of religious, social, political and historical forces, means that the medieval historical landscape is often ambiguous and varied. Take for example the many competing and often complicating structures of authorities that exist in the medieval set-up: emperor, pope, king, bishop, vassal etc. In this regard, many historians emphasise that medieval society is 'far from static' (Power, 2006:3). This is not to say, however, that certain key developments and events that shape the medieval historical landscape are not to be found.

What then are some of the key factors and events that occur during the 10th to the 12th centuries, which help facilitate the historical fact of independent territorial entities such as city-states and kingdoms, which as we shall discover in this discussion, are deemed sovereign within their defined borders? My aim here is not to inundate the reader with a detailed account of all historical events that span over these three centuries, but rather to create some sense of a background, as it were, to the way in which the territorial state came into being.

An 'empire anachronistic'

In around the year 800, the Frankish King Charles the Great, commonly known as Charlemagne, was anointed and crowned emperor by the pope. In many ways Charlemagne was seen to be the heir of the Roman emperor, an imperial title that was to epitomise the unification of Latin Christendom and facilitate the establishment of the Carolingian empire. Factually, the empire was a 'great multiracial state', whose territories extended across all of Western Europe, excluding the British Isles (Caenegem, 1988: 174). In a sense, for many, it was the rebirth of Rome. What had been described as 'the normal *ordo*', or the great ideal of the old order of the Roman Empire had been restored, and a much-needed

unification of Western Europe was once again taking place (Caenegem,1988:175). All people belonged under the ‘aegis of one monarchy and one church’ (Caenegem,1988: 175).

However, this stability did not last long. The great dreams of social and religious unification through the empire began to look like a false reality. Already by the ninth century, the lands of the empire were subject to territorial portioning. This division took place steadily, as members of the Carolingian dynasty each claimed a part for themselves. This particular moment in history, which saw the division of the Carolingian empire into kingdoms like France, is what laid the foundation for the ‘territorial distribution of the various powers in that part of Europe, for more than a thousand years’ (Gottmann,1973: 30).

Nevertheless, the political ramifications of this break-up are to be seen on another level also. In around the tenth century, there is a ‘second phase of disintegration’, which sees the further division of each kingdom into a number of regional political entities, commonly referred to as ‘territorial principalities’ (Caenegem,1988:175). Political authority is unwillingly transferred from the king to economically powerful families. Founded by royal officials, these principalities undermine the crown by taking ‘power into their own hands’ (Caenegem,1988:175). This process of fragmentation within the kingdom is a distinctly medieval political phenomenon.

But it was not to stop there. By the eleventh century, several of these territorial principalities, were divided once again into ‘tiny castellanies’, which consisted of small, autonomous political units, ‘with a castle at its centre’ and protected by knights all around (Caenegem,1988:176). This type of independent local power facilitated the first phase of feudalism, a kind of economic production, characterised by *vassalage*, the ‘personal bond between one man and another’ (Coleman,1999:13). Indeed this was only to further decentralise political authority and jurisdiction.

Many argue that the main reason for this overt decentralisation of power was the 'weakness of the crown' (Caenegem,1988:176). Simply, large kingdoms could no longer guarantee the safety of their subjects against foreign invaders. Protection was thus sought in 'the leadership of powerful local figures' (Caenegem, 1988:176). Consequently, this fragmentation, first of the empire, and then of the kingdom, heralded a decline in the exercise of the political authority of the state and its organs.

Furthermore, it is suggested that the disintegration of a great state, like the Carolingian empire, 'can naturally be expected to lead to a loss of quality in the public service' (Caenegem,1988:178). To say this is an understatement. In the early eleventh century, there is a clear breakdown of all previously functioning spheres of government. Public order had reached an abysmal low and constant warfare ensued. Political fragmentation had meant that 'all who boasted a castle of their own behaved as they liked and recognised no power above them' (Caenegem, 1988:180). The ruin of the empire, and its political authority in particular, was prevalent, and these varying degrees of anarchy were accompanied by a sustained wish for some type of order.

A desire for order, reinstating the state

By the middle of the eleventh century, a general disillusionment with the existing political condition was recognised, and a need for change became imminent. Thus in the period of the eleventh century, an 'opposite movement' was underway throughout Europe, that aimed at both 'strengthening the monarchy and the role of government' (Caenegem,1988:185). The geographical extent of this movement was especially extensive, targeting all politically fragmented sectors of society under larger and more stable governments or states. Some were incorporated into national or regional kingdoms or counties, but whatever the system, it no longer meant that the internal structure of these governments was fraught by division. Let me note that when I speak of the 'state', I do not refer to it in its modern sense. As Canning suggests, there is a 'usefulness in employing the term 'state', in an

analysis of medieval political organisation, as long as the limitations involved in this usage are recognised' (1988:350).¹

The principal reason for the revival of monarchic states was a 'deep-seated revulsion against the lawlessness and oppression' that was encountered during that time (Caenegem,1988:187). The series of events in the eleventh century had contributed to undermining the social and political authority that was previously present. A return to monarchic rule via the state apparatus was envisaged as a possible means of achieving the required stability. Indeed, the institutional arrangement of the state was reinstated mainly to remedy the damage that had already been done.

Such a point is particularly significant for this discussion, and in many ways runs a thread throughout this project, as it seeks to question the link between territory and security. It can be argued that the concept of territoriality connotes a certain reasonableness of human communities in their acceptance of geographical limitation for certain purposes, the foremost of which has been security. Whenever safety becomes questionable, as we have seen in the events of eleventh century medieval Europe, the demand for more effective political organisation on an institutional level becomes a priority. Ordinary citizens expect the creation of a more secure society from the political authorities in question. This is coupled with a greater emphasis on delineation of frontiers and borders, as the size of the territory is considered to ensure greater security. As in the case mentioned above, a process of rebuilding states and redefining territories was implemented to rectify the problem of the lack of security.

The role of feudalism

By the end of the eleventh century the impact of feudalism was well pronounced in medieval society. It is important to highlight this, as the relationship of

¹ Here I refer to the detailed discussion in the main introduction of the thesis on anachronism and the limitations involved in the usage of the term state in the medieval period.

medieval state formation and that of feudalism can never be underestimated. In short, feudalism was a distinct economic arrangement that revolved around a 'hierarchy of ruling classes who distributed land to subordinates in return for various rents and services' (Glassner & Fahrer, 2004:52). Now, with the re-establishment of centralised authority in the late eleventh century, feudal practices were played out differently. This is referred to by some as the 'second feudal age' (see Coleman,1999:14-15) and it saw kings using the existing structures of feudalism to serve their own ends. Simply, kings who employed existing feudal practices appeared to enjoy for themselves various services and revenues. This became further entrenched when kings restructured feudalism according to various orders of medieval society: 'clergy, nobility and labouring men' (Coleman, 1999:15).

It has thus been argued that feudal practices aided rather than impeded state formation. This is because feudal practices enhanced the 'centralizing strategies of kings' by providing them with a 'recovered monopoly over financial means and royal justice' (Coleman,1999:15). More importantly, feudalism offered a typically hierarchical construction of power. This meant that kings could now use feudalism to further legitimate their political authority (Coleman,1999:15). Thus, with political development and change, the practices of feudalism would lurk in the background.

Rediscovering Roman Law in the Twelfth-Century

Twelfth-century medieval Europe, often described as the 'twelfth century renaissance', is highly interesting on many fronts. Historically, it is considered a period of progress, in which new ideas were advanced and the pursuit of intellectual knowledge was pursued with a renewed vigour. In this regard, the acquisition and study of Aristotle's writings on natural philosophy were very significant, and would transform the general intellectual climate and illuminate previously inflexible doctrines of learning. For our purposes, however, there are

two reasons for the importance of the twelfth century, which I believe relate specifically to this discussion.

The first of these is the ‘self-conscious’ and comprehensive revival of Roman law in the twelfth century, approximately five hundred years after its initial compilation (Stein, 1999:43). As early as the sixth century, the Roman emperor Justinian had codified a collection of juristic texts on legal issues, referred to as the *corpus iuris civilis*. The significance of these documents can hardly be exaggerated. As the reader is to discover later in this discussion, the *corpus iuris civilis* occupied an important place in Medieval Europe not only as a source of rules, but also as a wellspring of intellectual and juristic debate. A culture of juristic excellence was to be formed after the revival of Roman law, as the practical application of Roman law to the changing political and social environment, initiated new and exciting intellectual debates.

Subject to this development, I identify the second reason for the importance of the twelfth century. With the revival of Roman law, the ruler of the time, Frederick Barabossa, declared new appeal to the ideas of the universal empire, based on the teachings of the *corpus*. Simply, Roman law, enabled Barabossa to ‘play the role of a new Justinian, God’s deputy as a universal law-giver and peace-maker, ruler of the holy empire’ (Nelson, 1988: 249). Such a claim for universal emperorship found an effective ally in the *corpus iuris civilis*, where a universalist conception of Roman imperial lordship was to be found. This meant that since Roman law enjoyed a universal acceptability within Latin Christendom, such claims for political authority were more difficult to challenge.

Moreover, at the same time a second claim for universal power in the continent was emerging from papal circles. However, this claim was evidently repealed by the Emperor Barabossa, who declared himself the only true ‘dominus mundi’ (lord of the world), and rejected vehemently all claims of ‘secular authority’ by the papacy. This began a series of imperial-papal conflicts, which would play themselves out during the period of the 12th to 15th centuries, as the quest for

ultimate territorial domination between the empire and papacy ensued. These claims are particularly important, as they became sites of scholastic interrogation and analysis and, as I shall highlight, preoccupy much of the political thought concerning the development of the state.

City-states and kingdoms

By the thirteenth century, in conjunction with the empire, two major examples of independent territorial state development were clearly evident in medieval Europe: city-states and monarchies. As noted earlier, I do not refer to the 'state' as it is known in its strictly modern sense. What can be discerned, however, is the 'emergence of politically organised communities with specific and defined territories within which the internal and external sovereignty of rulers of governments were developed' (Canning, 1988:350). But what exactly made these territorial entities independent and sovereign in practical terms?

The answer lies in the contemporary reality of the absence of the emperor in directing effective political authority over all the territories in his dominion. It is the lack of direct involvement by the emperor in the affairs and interests of all his territories, which created the room for territorial independence in many areas of Western Medieval Europe. In actuality these cities and monarchies functioned without any imperial jurisdiction, and therefore resorted to their own political devices: such as popular-rule of government and the establishing of law-making through the process of consent, within their jurisdictionally bounded territories. The 'existing bond of faith' between the emperor and his subjects was said to be 'broken on both sides', with the emperor being 'absent and impotent' and territorial entities such as cities becoming 'disobedient' (Canning, 1987:115).

Hence, we are able to see a clear shift in the ordering of medieval political authority, with the emperor emerging more as a redundant figurehead over many areas of Latin Europe, where there is evidence of the emergence of a plurality of sovereign states. The case of city-states in north and central Italy, like Florence

and Lucca, are good historical examples of cities with small-scale governments and civic independence that were able to demand genuine sovereignty. Similarly, national kingdoms such as France successfully consolidated their monarchies in the thirteenth century, producing another case for territorial sovereignty.

A turning point in thirteenth and fourteenth century political thought

These examples of independent state development presented a unique opportunity for innovation within the realm of political thought. In a sense, it meant that although claims for universal sovereignty of the empire were ever-present, not accommodating the sovereign territorial state within the greater intellectual discourse would reflect a disregard of the facts of the contemporary political reality. However, an understanding of territorial statehood and sovereignty in conceptual terms would be subject to first solving the technicalities of Roman law claims of universal sovereignty by the emperor. This is because the acceptance of the universal sovereignty of the emperor would be denying any true external sovereignty of these territorial states, since sovereignty is fundamental to any concept of the state.

The Commentators

Indeed it was to be the Commentators of the thirteenth and fourteenth century that made one of the most 'distinctive contributions' to the theoretical understanding of the state through the texts of Roman law (Canning, 1982: 1). Their writing was primarily centred on the practical intention of accommodating legal science to the prevailing contemporary historical reality. Complex juristic language accompanied their conceptual discussions on all issues of practical importance. These contributions are thus found in systematic and extensive commentaries on problems relevant to their context. Moreover, the Commentators believed that jurisprudence had a profound relevance, as it was concerned with human affairs:

Every art takes nature for its material...but the jurist takes the works of man for his material...Again, he interprets them; and thus our law is founded upon accidentals, that is on cases which emerge...for laws are

born of facts...But the common material [of legal science] is not concerned with the works of nature but of man (Baldus [1498] cited in Canning,1987:6).²

For the Commentators, then, the legal science was essentially ‘this-worldly’, and thus the study of Roman law and its application into new contexts would help illuminate their understanding of the changing conditions of human society. This is best reflected in the substantial number of legal opinions (*consilia*) which they wrote, as responses to new questions and ideas which were of relevance to their context.

Within the juristic and technical language of their writing, political ideas and arguments are an ever-emerging subject of discussion. However it must be said that these writers did not set out to establish a particular discourse of political theory. Instead, as is rightfully suggested, the Commentators ‘developed a recognition of political facts which amounted to a political dimension of discourse’(Canning, 1982:3).

Sources of Ideas

Before we are to delve into the discussion surrounding the two main threads of argument expressed by the Commentators, it is worth revisiting two key developments mentioned above, that were important sources for ideas, which informed and contributed to the views expressed by this group. The first is the influence of Aristotelian philosophy, which for the first time allowed thinkers of the Middle Ages to view the concept of the state in a ‘this-worldly’ dimension. Aristotelian thought made it possible to think of the state as existing for its own political ends, separate from all that which medieval thinkers commonly associated with it. Furthermore the language of the Commentators denoted a logical framework that was noticeably Aristotelian, as they ‘employed Aristotelian logical categories and forms of argument’ (Canning,1982: 3).

²All primary sources of the thinker Baldus De Ubaldis are rare unpublished manuscripts, which were unavailable to me. I have thus accessed them through a secondary source, that being, the books and articles of his greatest commentator, Joseph Canning .

The second source is the *Corpus Iuris Civilis*, or texts of Roman Law, which enjoyed a great amount of social, cultural and religious significance after its restoration and revival in medieval society after the twelfth century. The *corpus iuris civilis* had a direct impact on political thought as it ‘provided an articulated language for the public dimension of human activity necessary for the concept of political life’ (Canning, 1982:2). Medieval jurists were thus able to extract from the principles of Roman law to formulate their responses on contemporary matters. Dealing with the idea of the territorial state is one example of this, with jurists able to create a theory of the territorial state ‘whose points of reference were very clearly rooted in this world’ (Canning, 1982:2).

Two Approaches in the Roman Law Commentator Tradition

It is well documented that amongst the Commentators, two clear approaches are presented as ‘forms of solution’, or juristic explanations to the issue of territorial states (see Canning 1982, 1987). I will examine both these juristic explanations, so as to provide the reader with a general account of the manner in which ideas of the territorial state were expounded upon. Beyond this, I particularly wish for the reader to observe how two radically opposing views arise from the same point of departure. This said, my main point of focus is the discussion around the second group of Commentators, known as the French and Italian Commentators, and around the writings of one thinker in particular, namely Baldus de Ubaldis. My reasons for doing this are arguably of some importance and will probably be best understood at the end of this discussion, when the main thrusts of both the arguments have been unfolded. However, for purposes of explicating my intent to the reader, I will argue that the second group of Commentators are more interesting analytically, as they develop a deeper and more complex set of arguments whilst retaining their existing framework.

To demonstrate this, I begin by approaching both groups of Commentators through what is factually their most fundamental problem, and which might

preclude them from formulating ‘any concept of the territorial state at all’ (Canning,1982:3). Essentially, the difficulty for the Commentators in finding a solution for the sovereignty of the territorial state hinges on the express statements within the texts of Roman law, that true universal sovereignty is invested in the emperor. The emperor, who is declared *dominus mundi* (lord of the world), is thus accorded undeniable political authority.

The all-encompassing nature of Roman Law and its application to medieval society meant that the Commentators were required to factor this in, if they were to account juristically for any other form of sovereign power. The acceptance of this universal claim would mean something even deeper for the analytical conception of the state. It would simply deny external sovereignty to territorial city-states and kingdoms, and thus render them devoid of any real statehood (Canning,1982: 4). Hence any analytical or practical innovation of the political would first need to negotiate the matter of universal sovereignty of the empire.

When addressing the idea of sovereignty in relation to territorial city-states and kingdoms, the Commentators sought solutions to this fundamental problem in different ways. Indeed, it was to be a point of juristic divergence with two distinct types of solution emerging, both attempting juristically to justify the territorial state.

The Neopolitans

The first group of thinkers known as the Neopolitan jurists are of major relevance to medieval political thought. Its main proponents are the Italian civilian writers of the thirteenth and fourteenth centuries such as Marinus de Caramanico, Andreas de Isernia and Oldaradus of Ponte. Their views can be described as both radical and polemical, especially if examined within the context in which they were written. The Neopolitan stance is exemplified in a highly charged rejection of the claim of universal sovereignty of the emperor. Instead, it views ‘independent

kingdoms as existing on the same basis as the territorially restricted empire’ (Canning,1987: 4).

Whilst the Neopolitan argument might be theoretical in nature, it is centred on a more practical concern, that being the manner in which the King of Sicily may acquire complete sovereign independence from the Roman emperor. This however does not detract from its greater and more far-reaching application, ‘suitable for any independent monarchy’ (Canning,1982:5). Although the Neopolitan argument can be understood and contextualised in a myriad of ways, its greatest relevance to our enquiry (of territorially sovereign statehood) is through its usage of the *ius gentium* argument. However, before we delve into the complexities and merits of this *ius gentium* argument it might perhaps be worthwhile unpacking the notion of what the *ius gentium* actually is.

According to the principles of Roman law, a distinction could be drawn between the many kinds of laws that exist within Roman law texts. The most profound distinction is that the law can be embodied in three well-defined categories. The first of these is *ius naturale* or the natural law; the second is *ius civile*, which is the law of a particular community, like the Romans; and the third is the *ius gentium*, which is the law common to all people.

For our purposes, it is best to understand the *ius gentium* in two main senses. The first is to view it in its purely ‘practical’ sense, in that one can define the *ius gentium* as that part of Roman private law, which is open to all, ‘citizens and non-citizens alike’ (Hornblower & Spawforth,1996:790). The second sense is a more ‘theoretical’ one, and states that the *ius gentium* is associated with the philosophical construct of the law of nature (*ius naturale*). This is because it is a law that is ‘observed by all nations’,and this element of its universality means that it is grounded in ‘natural reason, which is established amongst all mankind’ (Hornblower & Spawforth 1996:790). In this regard, one of the most striking features of the *ius gentium* as understood by the Roman law jurists is the fact that it is governed by natural reason (*naturalis ratio*).

The question that arises then is how exactly did the Neopolitan jurists use the *ius gentium* argument to deny the universal sovereignty of the empire, and to justify the territorial sovereignty of kingdoms? Simply how were they able to justify that kingdoms derive their independent existence from the *ius gentium* (Canning 1982: 5)? The Neopolitan *ius gentium* argument is grounded in several key points, which although individually expressed by its most noteworthy writers, all confer the same meaning. Below I will attempt to demonstrate logically the rationale of these arguments, so as to provide the reader with a general understanding of their content and meaning.

The starting point for the Neopolitan argument is a scrutiny of the historical basis for the claim of the universal sovereignty of the emperor. Oldradus in his emphatic treatise *Consilium*, 69, argues that the *de iure* (lord of the world) claim of the emperor over independent kingdoms is fundamentally undermined if one considers the fact that the kingdoms derive their *de iure* independence, or sovereignty, from the *ius gentium*, which precedes the Roman empire in time. According to Oldradus, claims of universal sovereignty of the empire are based on the Roman civil law (*ius civile*), a product of the Roman empire itself, thus having less significance than the *ius gentium*, which is a natural law founded on human reason, and which has intrinsically evolved with human society:

From the primeval law of nature there are neither kingdoms nor an empire... From the *ius gentium* which is also called natural... from this law dominions are made distinct through occupation and kingdoms founded (D.I.I.5). And thus, since kings exist from this law, and emperors only existed from civil law, that is through the Roman people, kings, as will be made clear below, possess a juster title, since it remains firm and immutable forever by a form of natural law which was set up by divine providence (Oldradus [Lyon, 1550] cited in Canning, 1982:6).

From this perspective, then, kingdoms have a greater right to assert their sovereign independence than the 'emperor has to his empire' (Canning, 1982:5). This explanation of the historical nature of the *ius gentium* appears in the writing of other Neopolitan thinkers such as Marinus who similarly argues:

long before the empire and the Roman race from of old, that is from the *ius gentium* which emerged from the human race itself, kingdoms were recognised and founded (Marinus de Caramanico [Milan:1597] cited in Canning,1982: 5)

The Neopolitan *ius gentium* argument is then developed into a second stage, which deals with the manner in which kingdoms and empires can exist as separate territorial entities in the political world. For this, the Neopolitan thinkers turn to an already established Roman law concept known as '*rex qui superiorem non recognoscit*' (a king who does not recognise a superior) and extend it further by applying the notion of *rex in regno suo est imperator regni sui* (a king in his territory is commander of his own kingdom). The argument holds that based on the idea of *rex in regno suo est imperator regni sui*, kings within their territory possess the identical power of jurisdiction that the 'emperor possesses in the empire as a whole' (Canning,1982: 6). Simply, this meant that the claim of universal sovereignty of the emperor is denied and replaced with a more practical solution of the emperor retaining sovereignty and political authority over territories in which he can employ genuine political authority. In addition, kingdoms are to function as separate sovereign territorial bodies at the same time. It would therefore be the *ius gentium* then that would provide this 'legal title for monarchies' (Canning,1987:69).

Marinus applies this to the context of the Kingdom of Sicily and concludes that the king of Sicily may lawfully claim within his kingdom, 'all the legal rights and powers' which the leader (*princeps*) enjoys in Roman law, on the basis that Roman law has 'validity in Sicily' (Canning,1987:6). An obvious counter-reply to this, however, would be that if the universal sovereignty of the emperor is declared invalid, why should Roman law assume any validity in Sicily? Marinus's reply is one in favour of maintaining the kingdom's integrity. He believes that Roman law has validity in Sicily, 'because it was accepted by the custom of the kingdom' (Canning,1982:6).

The conceptual outcome of this reasoning is that the political sphere consists of a multitude of territorially sovereign kingdoms, and the empire is just one territorial entity among many. Andreas expounds this image of the distinction of monarchic and imperial power. Continuing in the line of the Neopolitan position, he argues that the king has the same power in his kingdom as the emperor has in the empire, and that they should both be distinguished as the same form of territorial body. He does however make a radical statement when he declares that this solution ensures that the world is restored to its true and pristine condition much like the world before the conquests of Rome:

With cause another king will be able to do in his kingdom what the emperor can in the land of the empire, which is small these days. In Italy he possesses only Lombardy, and not all of that, and part of Tuscany; the rest belongs to the Church of Rome, like the kingdom of Sicily also. The provinces therefore (which have a king) have returned to the pristine form of having kings, which is easily done. Free kings have as much in their kingdoms as the emperor in the empire (Andreas de Isernia [Lyon:1550] cited in Canning,1982: 6).

The above demonstration of the Neopolitan solution to the claim of universal sovereignty of the emperor can be regarded as fascinating and innovative in two significant ways. The first is in relation to the manner in which it attempts to subvert a dominant juristic injunction embedded in Roman law, which for many jurists and political thinkers operating in the realm of medieval society was a conceptual given, namely the universal sovereignty of the emperor. The second, which is foremost to this discussion as a whole, is the way it deals with the issue of territorial sovereignty and the concept of the state. Here I make reference to the suggestions of many contemporary medieval analysts (see Canning,1982 and Ullmann,1965) that the Neopolitan rejection of universal sovereignty of the empire indicates a clear movement towards the ‘development of the idea of the territorial state’. As demonstrated above, this is because the Neopolitan solution is based on the *ius gentium* argument, which views the empire (those territories in which the emperor exercises ‘actual political power’) and kingdoms as existing on the ‘same level’, as they are manifestations of what are essentially different territorial states (Canning,1987 :70).

Why the Neopolitan jurists did not arrive at a fully worked out state concept is open to debate, but in my view could most possibly lie in the peculiarities of the medieval context itself. Take for example the issue of the territorial sovereignty of Sicily. For most Neopolitan jurists, their real focus was centred on the ‘territorial sovereignty of the king, rather than of an entity such as the kingdom itself’ (Canning, 1982: 7). In other words the preoccupation of the Neopolitan thinkers was more concerned with the person of the king rather than the people that constituted that kingdom. This difficulty in abstracting the state as an institutional entity, I argue, is a result of the manner in which medieval society associated political authority with the actual person of a figure like the king.³ Nonetheless, the Neopolitan solution is perhaps the most progressive within medieval political thought, with regards to the conceptualisation of the issue of territorial sovereignty and the state.

Baldus de Ubaldis and the second juristic solution

In what follows, I shall present what might be described as the other solution to the problem of the claim of universal sovereignty of the emperor. Distinct in structure and method to the Neopolitan argument, this second solution (in its collective form) arises from the school of French and Italian Commentators, a tradition of civil lawyers of note, such as Bartolus of Sassaferrato, Baldus de Ubaldis, as well as Jacobus de Ravannis and Petrus de Bellapertica. However, as I have stated earlier, I have chosen to direct my attention to the conceptual arguments of just one of these thinkers, namely Baldus de Ubaldis, for two reasons. Firstly, Baldus is undoubtedly one of the greatest contributors of juristic writing to medieval political thought as a whole. He is for example posited as one of the ‘two most important Italian jurists of the fourteenth century’ (the other being his teacher Bartolus), and unanimously regarded as a ‘major luminary’ of the Commentator school (Canning, 1982:8). His legal opinions or *consilia* are the

³ An interesting discussion around the issue of political authority and the king in the Middle Ages, can be found in Kantorowicz, 1957 *The King's Two Bodies* where the two personae of the king are traced back to the medieval period.

It is Hobbes in the *Leviathan* who makes the most significant contribution to the modern idea of the state, as he successfully abstracts the state from that to which it was commonly associated.

largest number produced by any medieval jurist as he applies legal theory extensively to the political condition in which he lived.⁴ Secondly, since the set of arguments from the French and Italian school are a great deal more complex and emblematic of their period in that they accommodate more of the complexities of the medieval context⁵, I believe it is best to approach them via the writings of a single thinker.

A possible starting point for understanding Baldus's arguments (and for the other commentators of his tradition) is to identify the 'fundamental structure which underlies and informs' his arguments, that being 'the acceptance that universally sovereign authorities, in the form of the emperor and the pope, coexist with territorially sovereign entities, that is independent city-republics and kingdoms' (Canning 1987:17). In other words, what comprises the basis of Baldus's political thought is his exposition of the origin, nature, function and interrelation of two distinct forms of sovereignty, the universal and territorial. This implies that Baldus's solution would not reject the *de iure* claims of universal sovereignty of the empire and papacy, and instead resolve the demand for sovereignty of independent territorial states through some other means. However, would this not denote a contradiction of terms since one could easily argue that adhering to a notion of universal sovereignty automatically excludes the possibility of the recognition of a territorial entity such as a city? In short, are these 'two ideas mutually exclusive' (Canning,1987:17)?

Baldus does not seem to think so. Unlike the Neopolitan solution, Baldus and his school of thinkers maintained the universal sovereignty of the emperor by upholding the Roman law. Notice that the acceptance of a second claim of universal sovereignty, that of the pope, is also established by Baldus. At this stage I do not wish to explore this in any detail, except to say that Baldus recognised the papal claim for universal sovereignty as legitimate in light of the texts of Roman

⁴ Canning (1987:7) notes that the 'sheer volume of Baldus's juristic writing is prodigious (somewhat in excess of seven million words)'.
⁵ Here, Canning for example argues that the intricacies and juristic detail employed by this school of jurists renders them eligible for the 'prize for mental gymnastics'.

law. Unlike the emperor, however, he does limit papal sovereignty to the spiritual rather than the temporal, and as we shall see later in the discussion, he attempts to consider papal authority at all stages of his argument, even in relation to territorial states.

The Universal Claim of the Empire

For Baldus, then, the empire would serve as the basic point from which any theory of territorial states would emerge. Naturally, this acceptance of the universal claim of sovereignty of the emperor would pose a far greater challenge for Baldus, if he sought to accommodate the sovereignty of other territorial bodies. But an adherence to Roman law principles as the valid law of the empire meant that jurists like Baldus would not question the rights of the emperor, as they deemed them inherent to the *corpus* itself: ‘It is very true that the emperor is lord of the world with respect to all kinds of jurisdiction and supreme power’ (Baldus [Brescia:1490] cited in Canning,1987:24). Furthermore, emphasising the universal rights of the empire meant that Baldus and his school of commentators were ‘reflecting a legal reality in Italy which the study of Roman law had historically helped to shape’ (Canning,1987:24). Thus the demands of the historical context sought not to question imperial jurisdiction but to recognise it as a living, unquestionable reality.

Yet surely there must have been a ‘deeper reason’ behind Baldus’s purposeful stance in favour of the universal sovereignty of the emperor, above and beyond the fact that it was a product of Roman law (Canning,1982:24)? What else did Baldus ground his initial arguments on, in a way that sets him apart from the Neopolitans, and initiated the long series of juristic treatises on political thought which he wrote? The reason is actually quite simple given the religiously bound context out of which he was emerging. Baldus held that the emperor was ‘divinely instituted’ and because God himself bestowed this lofty status on the emperor, his authority cannot be questioned:

Note that we are all bound to the emperor because God, just as he is the emperor in heaven, has also set up the emperor on earth as his vicar and ruler in faith, truth and justice... Moreover sacred scripture says, "Let every soul be subject to the emperor" (Baldus [Brescia:1490] cited in Canning, 1987:25).

It is suggested that this tendency of according a 'theocratic origin to the power of the emperor' is characteristic of mainstream juristic interpretation (Canning, 1987:25). Hence for a jurist like Baldus, it would be perfectly natural to refer to the emperor as a representative of God on earth:

Note that everyone who takes an oath does not do so against the emperor, just as he does not against God. And thus an exception is made of the emperor in every oath of fealty, because he is the emperor of the world, and so to speak a corporeal God for the world (Baldus [Brescia:1490] cited in Canning, 1987:25).

But Baldus does not stop there. In order to substantiate his claim of the divine origin of the empire, he refers to the notion of the *lex regia* (incidentally derived from Roman law), which declares the Roman people as the original source of the emperor's authority. This would appear contradictory. If imperial authority is originally derived from the people how then can it also be God-given? Of course to the reader this would immediately constitute a problem, but Baldus puts forward a clever and well-thought out solution. This solution is a combination of texts from 'Roman law, canon law, and the New Testament' (Canning, 1982: 26). Baldus argues that the people were merely God's agents, and that the instatement of the emperor by the people was itself an act decreed by God:

Note that the emperor's authority depends on the *lex regia* which was promulgated at divine command; and thus the empire is said to be immediately from God (Baldus [Lyon:1498] cited in Canning, 1987:26)

Baldus continues by elaborating on how the origin of the empire was an intrinsically divine act, as it was instructed by divine command:

In the text there, 'at divine command', note that the emperor like the pope is divinely constituted, and the empire proceeded from God. And thus the

empire and the church fraternise, as in the beginning of the constitution. Innocent [IV] however said that he does not know whence the empire derived its origin. You can say that it had its beginnings from the sword with divine permission, for he wished the whole world to be subjugated to the Roman people. Thereupon the Roman people set up the emperor and transferred all its power to him, and afterwards this was confirmed by the express word of God, when he said, 'Let the image of God be rendered unto God and the image of Caesar unto Caesar'. And this was also approved afterwards by the church (Baldus [Lyon:1498] cited in Canning, 1987:27).

In the above passage, Baldus discloses what can be described as a four-step process of Roman rulership and imperial authority. Briefly, the process reads something like this: At first the Roman people were given power, which was God-granted. Next, the people transferred this power, through Godly instruction, to the emperor. Christ's confirmation then recognised the emperor's power as God given. The papacy institutionalised this process, as it played a role in approving the emperor. This process essentially confirmed for Baldus that the emperor was indeed appointed and instituted by God.

Baldus combines 'historical, theological and legal' arguments to achieve this insight (Canning, 1987: 27). Such an insight mirrors closely what can be described as Ullmann's ascending and descending theories of medieval political thought and government. Ullmann (1965:12) argues that medieval political thought in general can be categorised in two main theses of government and law, with both being operative at different periods of the Middle Ages. The major characteristic of the ascending theory is that original power is located in the people or the community itself. The descending theory, on the other hand, views original power as that which is located in a supreme being, which, 'because of the prevailing Christian ideas, came to be seen as divinity itself' (Ullmann, 1965:13).⁶ In this way, Baldus's conception of the *lex regia*, which declares the Roman people as the original source of power, is typically a manifestation of Ullmann's ascending thesis.

⁶ An example of this according to Ullmann (1965:13) is evident in the writings of other prolific medieval philosophers such as 'St Augustine, who in the fifth century had said that God distributed the laws to mankind through the medium of kings' or St Thomas Aquinas, who expressed a similar view when he argued that all 'power descended from God'.

However this confirmation of the divine origin of the emperor served as a reminder to Baldus that in fact the claim of universal sovereignty of the emperor was perfectly legitimate, and to doubt that would be to doubt the divine:

And again that supreme dignity was instituted by God, and cannot therefore be suppressed by man. This is the reason why the empire is sempiternal at the end (Baldus [Lyon 1498] cited in Canning, 1987:27)

I will now attempt to illustrate how Baldus's context may provide something in the way of understanding his conceptual position, in light of his interpretation of the divine nature of imperial authority and his reconciliation of popular and theocratic sources seen above. Thus I would like to reiterate a common theme in this discussion, which views Baldus's conception of political authority as one that is a product of the medieval condition. This is exposed in Baldus's solution of two apparently contradictory sources of imperial authority, the popular and the theocratic, which are eventually construed as an act of the divine. The idea of an omnipotent god, in command and control of all things powerful, stems from the dominant Christian ethos, which was central to the medieval experience. Similarly, for Baldus it is a given that the source of power and authority was historically restricted to the people of Rome. Why the Roman people were privileged historically as rulers of the world and granted the capacity to transfer 'divine' power is not open to question. Likewise, Baldus' use of the confirmation of Christ argument to emphasise divine intervention in the making of the emperor suggests that his arguments rely solely on religiously bounded reasoning, rather than concrete fact.

The de iure de facto argument

Baldus uses this conception of the divine nature of the emperor to develop the second stage of his argument that seeks to accommodate territorially sovereign cities in his overall notion of sovereignty. Here, Baldus draws from a juristic distinction introduced by the jurist Bartolus, who applies the notion of *de iure* and *de facto* to account for the sovereignty of other territorial bodies. It is this *de iure*

de facto argument that in my view is the critical innovation of his political thought as it forms the foundation of Baldus's theory of state territorial sovereignty.

Furthermore, it has become increasingly evident that this nuanced development of the *de iure de facto* sovereignty argument is also an object of concern within modern political theory itself.⁷ However, before I delve into Baldus's argument, let me briefly examine what exactly the concepts of *de iure* and *de facto* represent in juristic terms.

The term *de iure* can be translated as 'of law', as it refers to authority that is embedded in normative principles that have been formalised over time. Thus *de iure* recognition is the 'unconditional acknowledgment that a new government or state is independent and wields effective power in the territory under its control' (Elliott,1957:117). When applied to the medieval context, *de iure* authority confirms that the emperor is indeed king of the world and thus grants him all-encompassing rights of legitimacy. Hence it is an authority that exists in principle, based on a set of higher norms. On the other hand, *de facto* rule or power can be translated simply as authority that exists 'in fact'. Here, political authority is not derived from a formalised set of norms, so a particular political authority, regardless of whether it is derived from lawful or legitimate means, may exercise sovereignty in a given territory. *De facto* recognition is thus described as an 'act whereby a new government or state is recognised as being *actually* independent and wielding effective power in the territory under its control' although this may not necessarily have been accorded by a long-standing legal or theoretical set of norms (Elliott,1957:116). The importance of the conceptual distinction between these two forms of sovereignty or rule in the modern day context for example, is that 'it allows a distinction between the actual chance of someone in authority being obeyed which might be a matter of the number of available machine guns, and the way in which the right to be obeyed is justified, or seen as justifiable by any chosen audience' (Robertson,1985:77).⁸

⁷ The *de iure de facto* idea has of recent times become important to international relations theory. See for example Hirst & Thompson (1996) and Held, Mc Grew *et al* (1999).

⁸Robertson (1985:77) provides an interesting example of this, when he examines the official creation of the State of Zimbabwe: 'the UK had *de iure* authority in what used to be known as Southern Rhodesia, although in fact the society had been controlled by white Rhodesians in revolt against the

Bartolus uses this critical distinction in his justification for sovereignty of independent territorial bodies like city-states and kingdoms. His solution carefully assesses juristic discourse and, in particular, the statement ‘All peoples whom the sovereign authority of our clemency rules’ (Canning,1987:64), which may be understood in contrasting ways, that is, either as all-declaring or in a restrictive sense. Baldus uses the *de iure de facto* distinction to make his interpretation:

It cannot rightly be used restrictively with respect to the law, but with respect to facts it could be used restrictively according to Bartolus, and this statement is new, notable and well-said (Baldus [Pavis:1495] cited in Canning,1987:64).

Baldus thus argues that independent territorial states such as cities and kingdoms can attain ‘fully independent powers of jurisdiction’ on a *de facto* basis, as *de facto* authority can be conceptualised as something more than just power without legitimacy. Many contemporary medieval analysts view this type of reasoning as a considerable step within medieval political thought, as it accepts that ‘legal rights, duties and authority’ are constructed ‘from the facts of human existence’ (Canning 1982:9). Furthermore, it denotes how Aristotelian philosophy influenced medieval thinkers to conceive the realities of the political world or a state, which can be understood in a this-worldly dimension.

Still, Baldus takes this reasoning to another level, by arguing that while *de iure* sovereignty may constitute universal sovereignty, it is in fact ‘not whole’ as there are ‘gaps’ in the distribution of the jurisdiction of the emperor, especially where independent territorial bodies operate (Canning 1982:10). Baldus’s acceptance of these independent territorial states is therefore articulated in a complex explanation of what is described as the hierarchy of sovereign powers. I will briefly mention the three types of sovereign power that occupy this framework of sovereign hierarchy, as it informs to a large extent the remainder of Baldus’s argument on the issue of state territorial sovereignty.

UK government from 1965 until the creation of Zimbabwe. The distinction has considerable practical effects in the world order, because most countries would have refused to recognise the *de facto* government of that country, and would have assisted in applying what the UK took to be the legal order, as it was the *de iure* ruler’.

For Baldus, then, at the top of the scale of the hierarchy of sovereignty we find the *de iure* imperial and papal powers (only in a temporal sphere) of jurisdiction, which grants these sovereign powers full legitimacy and autonomy based on the laws of the divine. Second to this, Baldus places the city-states and *signori* that fall under the aegis of the empire or papal patrimony but who enjoy *de facto* authority, which equals sovereign power and independence. Lastly, Baldus places the independent monarchies, which are within the empire, but possess sovereignty from ‘direct imperial rule’ (Canning 1987: 65). In short, according to Baldus, it is only the emperor who is considered a *de iure* authority. All other territorial bodies, (except as we shall discover later in the discussion, ‘papal temporal rulership’) are in effect *de facto*:

I reply that all are subject [i.e. to the emperor] *de iure*, and rightly so; but not all are subject by custom, and they sin like the French and many other kings...And although the kingdom of France is not part of the Roman empire, it does not however follow that the empire is not therefore universal, for it is one thing to say, “universal”, and another “whole” (Baldus [Pavis:1495] cited in Canning, 1987:14).

The conceptualisation of these *de facto* rights for territorially sovereign bodies such as city-states had important implications for medieval political thought. It indicated that despite the origins of divine authority as instituted by God, a human this-worldly construction of sovereignty could grant independent territorial entities genuine sovereignty and legitimacy in their territorial rule. This said, the *de iure de facto* solution needs to be scrutinised as a ‘medieval rather than a modern’ view of territorial sovereignty, in that ‘universal and territorial sovereignty exist in a form of hierarchy with one kind not excluding the other’ (Canning, 1987:66).

Nonetheless, although Baldus reserves *de iure* authority for the emperor and pope (he being a product of his context), his expanded notion of what *de facto* may constitute for the territorial state seems to indicate that these late medieval pronouncements of *de facto* sovereignty suggest something further and deeper for the conception of political authority for the territorial state. Such an understanding of *de facto* sovereignty becomes particularly interesting in light of the contemporary debates on the crisis of the modern state, where some thinkers

grapple with questions of territorial sovereignty by assessing the notion of *de facto* sovereignty:

First I ask a very broad question: whether it has ever been possible to justify the existence of nation-states as sovereign occupiers of certain definite tracts of the surface of the globe (whether the territorial security of states could ever be expected to hold in anything but *de facto* terms. If not, then the insecurity of national states and their borders is a generic phenomenon, and cannot be seen as a sign of special and contemporary crisis (see Hont, 1995:171).

Baldus and the role of consent

Baldus develops the *de facto* argument even further, when he considers in detail how exactly territorial sovereignty for city-states can be theorised, even though the *corpus iuris civilis* provides little leeway in allowing for a juristic conception of the sovereignty of city-states. In fact, the position of cities in the corpus is that they were simply ‘licit corporations subject to imperial confirmation for their legal rights’ (Canning, 1987:94). In this way, we find that in the immediate background of Baldus’s theory on sovereignty of cities are Bartolus’s former conclusions on the issue, rather than the texts of Roman law. Indeed it was Bartolus who first developed an argument that shifted the focus of sovereignty from the city to the *city-populi*. He examined the idea of consent in the process of law-making in Italian cities and saw it to be a product of the will of people and not that of the emperor. This led Bartolus to devise a compelling argument, which postulated that, the ‘element of consent’ in ‘popular law-making’, be it statute or custom, could certainly act as a substitute to the will of superior (Canning 1987:96). The *civitas quae superiorem non recognoscit* (the city which does not recognise a superior) is as a result a *populus liber* (free people).⁹ Furthermore, Bartolus attributes to the city the same powers of jurisdiction in its specific territory, which the emperor enjoys in the empire as a whole. Thus the city-state is regarded as a ‘*civitas sibi princeps* (city which is its own emperor)’ (Canning, 1987:97).

⁹ It can be argued that this sort of reasoning on the part of Baldus hints towards a proto-republican style argument. See Skinner (1979), *Foundations of Modern Political Thought* vol 1.

Drawing on his notion of the overarching framework of the hierarchy of sovereignty, it is Baldus who demonstrates that the *de facto* solution would achieve the greatest 'level of sovereignty of which cities are capable' (Canning 1987: 93). Like Bartolus, Baldus maintains the independence of cities in relation to the recognition of a superior. He identifies two distinct levels of self-government. The first of these is 'local autonomy' below the level of sovereignty, and the second is 'full independence' which is sovereignty itself (Canning 1987: 98). Baldus then classifies that a *populus* can differ with regards to how much legislative power it wields, and this would ascertain the degree of autonomy and rights of jurisdiction that it would enjoy:

And the first question is whether every people is allowed to make statutes without the permission of a superior. And it seems that they are not. You are to say this: either the people which wishes to make a statute has no jurisdiction, but are subject to some city, as are villages and fortified places in the *contado*; or it has full jurisdiction conceded by the emperor or prescribed by custom in temporal or civil matters and in criminal ones, and this can be the case; or it has limited jurisdiction, for instance in civil matters only. If it has no jurisdiction, then either it wishes to make statutes about the distribution of money or something else which does not concern jurisdiction in which case it can do so, as long as such a statute does not involve financial corruption; or it wishes to make statutes about the deciding and hearing of cases, and it cannot do this without the permission of a superior on account of the aforementioned rights and [X.1.2.8 & 9] support this. And the reason is that making such statutes is part of jurisdiction, as is clear from the definition put forward in the gloss, and since it does not have jurisdiction, it cannot therefore have what derives from jurisdiction, then it can do so [ie. make statutes] without a superior's authorisation...as it clear in this and in [D.I.I.9], at the word, *populus* where permission to make statutes is given without distinction (Baldus [Pavia:1489] cited in Canning, 1987: 98).

Baldus takes this argument a step further, when he attempts to neatly combine Bartolus's argument with his own. Thus in his overall account of justifying the sovereignty of the territorial city-state, he introduces the *ius gentium* argument. According to Baldus the *ius gentium* provides a juristic breakthrough, as it serves to stand as the universal law common to all man:

The *ius gentium* is what proceeds from the reason and understanding of peoples, and all peoples use it to an almost equal extent. It is always good and equitable, and mankind could not live without it, as here and below, and it differs from natural law as the brain of man differs from that of animals (Baldus [Pavia:1489] cited in Canning,1987:105).

Baldus regards the *ius gentium* as the ‘source of people’s existence’, arguing quite skilfully that ‘people and towns or villages, exist by the *ius gentium* and come into existence without the authorisation of a superior’ (Baldus [Pavia:1489] cited in Canning,1987:105). Furthermore he argues that the notion of government (*regimen*) is innate to people’s existence, and is thus a logical consequence of the *ius gentium*: ‘a people for the very reason that it has existence, consequently has governmental power as part of that existence’ (Baldus [Pavia:1489] cited in Canning,1987:105). According to Baldus then, people exist as *regimen populi*, self-government by the people. This feature of the people’s self-governing capability rests on the fact that they possess the ‘autonomous capacity to legislate through the exercise of consent’:

Moreover we should not demand more than the law does, because we should be content with the stand the law takes. But the law is content with the consent of the people, and therefore we should be too. Nor can it be said that it speaks in that law only of the Roman people, and the reason for this is provided by the beginning of the law, where it speaks only of another people (Baldus [Pavia:1489] cited in Canning,1987:105).

For Baldus, as long as the people legislate that which is noble and good, they can exist autonomously:

If therefore statutes are good ones bearing in mind the requirements of the place in question and the preservation of its public good, they do not need anyone else’s direction, because they have been confirmed by their own natural justice (Baldus [Pavia:1489] cited in Canning,1987:106).

Baldus and the non-recognition of a superior

Baldus extends the *ius gentium* argument to confirm the ‘non-recognition of a superior’ in relation to the sovereignty of the city (Canning, 1987:113). He argues

that a city (*civitas*) without the presence of a superior overseeing it in practical terms is entitled to liberty and self-government:

In the case of cities I do not however think they could act without the authority of a superior who possessed the actual power of one. But cities, which live in their own liberty, and enjoy absolute self-government do not require anybody else's assistance, because they use their own laws. The position is the same whether they act on the authority of a privilege or by virtue of prescribed custom (Baldus [Pavia:1489] cited in Canning, 1987:113).

This notion of excluding a superior, reiterates Bartolus's theory of *populus liber*, which as we have seen above declares a people free because of the role of consent in the making of people's laws, which Bartolus uses as justification for sovereignty of independent Italian cities. The condition of Baldus's historical context is a possible force behind Baldus's conclusion that cities are indeed sovereign within their territories. Here I refer to the practical reality of cities in Italy functioning as independent entities, without the involvement of a superior:

These days the superior has in fact no power since the cities do not obey Caesar...[A superior], may be said to be lacking, when he cannot take effective decisions, like the emperor and the pope as regards action against the tyrants of Lombardy and also against the peoples who live as by their own law in *de facto* liberty (Baldus [Pavia:1489] cited in Canning, 1987:114).

Therefore, to a large extent, Baldus believes that a solution which accords sovereignty to the city is inevitable, as it merely mirrors the prevailing status quo:

But, as I said, cities which in reality do not recognise superiors and appropriate regalian rights for themselves do this by custom, and what they have always has an established custom should not, it seems, be changed at all, as above. Let us bear this with equanimity, because it is not of our doing. But it is agreed *de iure* that power reserved to the emperor alone is denied to cities. But formerly there was an emperor who looked after the authority and general good of the commonwealth; now however, there is not the same bond of good faith between emperor and subjects, with the result that things have of necessity gone from one extreme to another (Baldus [Pavia:1489] cited in Canning, 1987:114)

In view of Baldus's arguments above, I hope to underline what I perceive as two important outcomes of his method of conceptualising state sovereignty. The first of these is connected to Baldus's vision in observing his historical context, and the attitude he employs as a civilian lawyer (see Canning, 1987:114-115). It is evident that Baldus's eventual reasoning rests on his acceptance of the factual realities of his situation. At no point does he attempt to privilege the position of the city over the emperor, but instead carefully uses key Roman law concepts to make sense of his lived reality. The second point, which in a sense relates to the first, is the issue of security in relation to territory, which Baldus uses to demonstrate the lack of effective authority:

[A superior], may be said to be lacking, when he cannot take effective decisions, like the emperor and the pope as regards action against the tyrants of Lombardy... (Baldus [Pavia:1489] cited in Canning, 1987:114)

As I have signalled elsewhere in this discussion, security as a result of effective authority is integral to the conceptualisation of territorial state sovereignty. As Baldus points out non-effective leadership against the 'tyrants of Lombardy' denotes a lack of successful political authority, and an insecure territorial space. This measures the need for some other sort of solution, which for Baldus (once reconciled juristically) is sovereignty for the territorial city-state.

The relationship of the papacy and the sovereign territorial state

As I have indicated earlier in this discussion, apart from the emperor, there existed another competing universalist claim for sovereignty in the form of the papacy, which sought to extend its power to matters beyond the spiritual. As with the imperial claim for universal sovereignty, it is the nature of western medieval society, in particular the deeply religious Christian influence that permeated Latin Europe, that makes certain such a claim cannot be simply ignored. Simply, the claim of ecclesiastical jurisdiction was considered justifiable on the grounds of its divine origin. It is evident that jurists such as Baldus saw the pope as a living

reality, firmly believing that ‘the power and authority of the church were facts that they could not ignore’ (Canning, 1982: 18).

In this regard, Baldus attempted to construct an appropriate conceptual understanding of papal political authority in relation to both the emperor and territorial states. Baldus, as a canonist of renown, deals with this subject in much depth, assessing in detail the position of the pope within his general theory of the hierarchy of sovereignty. It is not possible in the scope of my discussion to examine this in all of its detail, except to direct the reader to some of the important aspects of Baldus’s arguments concerning the universal sovereignty of the pope.¹⁰

It is important to note that whilst Baldus accepts the papal claim to sovereignty, his view is distinct from the hierocratic claims for ultimate universal sovereignty, which were (save from a few) especially ‘out-of-date in the fourteenth century’ (Canning 1987:20). Instead, Baldus introduces the concept of *plenitudo potestatis* (plenitude of power) which views the sovereignty of the pope as unrestricted and supreme, except when applied to laws which are natural and divine (Canning, 1987: 31):

[The pope] is not only a bishop but the chief of bishops and of others whom the intellect can imagine. To him has been given the full power of the keys and that highest and unrestricted power which is called power freed from all constraints of canon law and from every limiting rule except the law of the gospels and the apostles...For the statement that the pope can do all things should be understood to mean that he so acts using the key of discretion which does not deviate from the rules of the divine law and the precepts of the natural (Baldus [Brescia:1491] cited in Canning, 1987:31)

It is here that Baldus illustrates the limitations of papal power by clearly stating that divine and natural law constrain papal action. Furthermore, Baldus’s arguments seek to do something different: first to locate papal and imperial sovereignty within the hierarchy of sovereignty, then to conceptually limit

¹⁰ Baldus describes in immense detail the relationship between the powers of the ‘two divinely instituted authorities’ the emperor and the pope with reference to the practical realities of his context such as the impact of the Donation of Constantine. For further discussions of this, see Canning, *The Political Thought of Baldus de Ubaldis*, 1987:pp.30-64.

universal sovereignty, by differentiating between two types of sovereignty, the 'spiritual' and the 'temporal'.

Of spiritual sovereignty, Baldus concedes that the pope is the ultimate universal sovereign based on two significant historic facts stemming from the Christian tradition. The first of these is the act of coronation, or the right of the pope to confer the imperial title on the emperor:

The emperor is crowned with three crowns. The gold crown however is not necessary for conferring on him the power of administration which he possesses as soon as he has been legitimately elected in harmony or by the majority. What effect does the crown have? I reply that it is the final confirmation... You are to say that the last crown of gold which is conferred at Rome gives the ultimate perfection and is the chief of all crowns which are beneath heaven (Baldus [Brescia:1491] cited in Canning, 1987:36).

According to Baldus, this final confirmation of the emperor and conferment of the crown by the pope, is the decisive factor in the creation of the imperial title, as the pope is god's worldly representative ultimately ensuring that coronation is an act of the divine. Using similar reasoning, Baldus then argues that the pope also enjoys spiritual sovereignty over the emperor, as the pope has the right to 'depose' an emperor 'in extreme crisis' (Canning 1982: 18):

[The Roman emperor] has no one above him except God from whom however he may expect punishment if he commits injustice. From time to time the pope has deposed him for enormities in his rulership, as in [Sext, 2.I4.2], because the pope is more the vicar of God than the emperor is, for the pope is equated with the sun which is greater than the moon in quantity, dignity, office and sublimity (Baldus [Brescia:1491] cited in Canning, 1987:38).

Here Baldus reiterates the pope's superiority over the emperor using an example of the sun and moon to denote the different degrees of power that each of them enjoy. It is the emperor whose spiritual sovereignty is limited. Baldus consistently argues that whilst the position of the emperor is sacred and holy (spiritually of great magnitude), it is the pope that stands slightly above the emperor in

superiority for the simple fact that the existence of the imperial title is entirely dependent on papal confirmation:

Note further...that nothing is greater and holier than the empire with the understood exception of the apostle of St Peter. For since the pope confirms the emperor this is a clear sign of his superiority, as in Auth. 'De defensoribus civitatum', 'interim' [Coll.,3.2 = Nov.,15], and thus the emperor swears fidelity to the lord pope (Baldus [Brescia:1491] cited in Canning,1987:38).

Having made abundantly clear the superiority of the papacy in matters of the spiritual, how does Baldus attempt to delineate the domain of the temporal? Of course, here it becomes much trickier, as the temporal sphere consists of the actual territories in which these competing powers might enjoy jurisdiction, and thus universal sovereignty is questionable. A statement such as this indicates that it is the emperor whom Baldus believes enjoys greater sovereignty in the temporal sphere:

But the emperor has a superior, namely the pope...A just pope is the supreme vicar of God. Anyone who says to the contrary is a liar. As regards the world the emperor is greater than the pope, and the pope, if he is just, is greater as regards God: he is not greater than the emperor in this world (Baldus [Brescia:1491] cited in Canning,1987:38).

This is because Baldus's view of temporal sovereignty is born directly from his historical context. Indeed the 'papal-imperial' conflicts for power, the defeats of the papacy, and the rise of territorial states meant that universal papal temporal power was practically an 'irrelevant' claim (Canning,1987: 45). Thus, what was of immediate practical concern to Baldus was the pope's actual territorial power in central Italy where the patrimony of St Peter was situated (Canning,1987:45). It is only in these lands that papal sovereignty and the sovereignty of territorial states intersect. Let us briefly consider how this may take place, and what implications it may have for the sovereign territorial state.

For Baldus, temporal sovereignty and jurisdiction belong to the emperor, 'It is certain...that temporal jurisdiction is, as it were, rooted in the emperor (Baldus

[Brescia:1490] cited in Canning,1987:38)'. Nonetheless he attempts to consider how temporal sovereignty can be resolved so that the pope enjoys ultimate sovereignty in the papal patrimony, which is his territorial dominion, whilst the emperor maintains sovereignty over the rest of the imperial territories. Baldus constructs two juristic terms *terrae imperii* (lands of the empire) and *terrae ecclesiae* (lands of the church) to explicate his argument:

The emperor possesses imperial majesty everywhere because majesty is not divided, as is neither character nor fame. But he does not have imperial administration everywhere, for he has an *imperium* divided with the pope in such a way that the lands of the Roman church are not subject to the emperor either directly or indirectly...Again, just as the pope does not legitimise in the lands of the empire, neither does the emperor in those of the pope, as in the said [X.4.17.13], for in the papal lands the emperor is reduced to a status like that of a private person, and is he has no jurisdiction he cannot therefore grant privileges (Baldus [Brescia:1490] cited in Canning,1987:38).

It is apparent that for Baldus, the fundamental distinction between *terrae imperii* (lands of the empire) and *terrae ecclesiae* (lands of the church) is to ensure that temporal sovereignty of the empire is divided practically between the pope and the emperor, so that each one is the supreme political authority in his particular territory and that neither is undermined.

Nevertheless, how does this division of jurisdiction affect the sovereignty of the territorial state? Baldus's response denotes a coherent view, as it applies the principles of the 'non-recognition of a superior' argument, which I have considered earlier in this discussion. Simply, it argues that independent territorial states such as the cities of 'Perugia and Bologna' which belong to the *terrae ecclesiae* enjoy the exact 'relationship' with the pope as the cities in the *terrae imperii* enjoy with the emperor (Canning,1987:20). Thus, the territorial states belonging to the lands of the church are once again *de facto* sovereign, subject only to the *de iure* authority of the papacy.

The issue of territory

Throughout this discussion, I have suggested that Baldus's conception of sovereignty, be it *de iure* or *de facto*, that is of the empire or the city, is territorially bounded. Despite this, I argue, it is still important, for us to achieve a clearer sense of Baldus's official position on territory in relation to sovereignty. For this, we need firstly to determine what juristic term is employed by Baldus when he refers to the city without a superior. According to contemporary medieval analysts (see Canning, 1987; Ullmann, 1949) Baldus regards 'cities which in their government are not subject to a superior either *de facto* or by *de iure* concession' as *provinciae*, a term which applies to 'both sovereign and autonomous cities'. Baldus situates this definition of the city as a *provincia* into his theory of the hierarchy of sovereignty, which in effect is a theory that stratifies sovereign power based on juristic entitlement and which limits jurisdiction accordingly.

But by what means does Baldus suppose the sovereign power and jurisdiction of the city can be negotiated? The answer points directly to territory. For Baldus the 'city replaces the emperor within its territory' and thus 'territory defines as much as it limits a city's sovereignty' (Canning, 1987: 127). Baldus's analysis of the territorial sovereignty of the city is exemplified in his conceptualisation of the ideas of banishment and extradition, practices that were distinctive of medieval society.

Banishment may be described as a form of penalty practiced in fourteenth-century Italy (Canning, 1987: 127). Of banishment, Baldus argues:

Banishment does not affect a person except in the territory from which he is banished. This, therefore, is a penalty applying to a person in a particular place and not to a person simply, for jurisdiction which is limited as to place does not extend outside that place, for jurisdiction adheres to a territory, but a territory has its own boundaries...And thus, so to speak, such outlaws are banished from a particular part, namely the territory of the person banishing them, and are not outlawed as regards another part, namely in other places in which they have free domicile (Baldus [Pavia: 1489] cited in Canning, 1987: 128).

In Baldus's above statement on banishment, we are able to ascertain several important points with regards to territory. The most obvious of these is that the practice of banishment implies that a city's jurisdiction is territorially bounded. This is because the penalty of banishment can only be applied to the specific geographically bordered space (that is the actual city) in which it was meted out. In other words, the jurisdictional extent of the penalty is limited to the city in which it was sanctioned. Its sentence would be rendered fruitless elsewhere. According to Baldus, the notion of banishment can thus be construed as a signifier of territorial sovereignty of the city (Canning 1987:128).

With regards to extradition, Baldus constructs an argument on similar lines. He observes that cities which self-govern should not extradite members because they are equals. He uses the example of an outlaw in Pisa not fearing extradition in another self-governing city, as an indicator of the limits of jurisdiction of every city:

These days, however, we do not use these extraditions except in lands which are subject to one general ruler, and not however in lands which are not subject to the rule of anyone else. And this is the content of the custom which must be observed because it is general and of long standing. We therefore see that outlaws from the city of Pisa can stay here in security: they do not however fear extradition because it is not the practice that should apply between equals (Baldus [Brescia:1490] cited in Canning, 1987:129).

In effect, Baldus alludes to the fact that the curtailing of extradition denotes the territorial sovereignty of cities, because every city has a jurisdiction which is bounded within a particular territory. The concept of cities as equals further indicates that each city bears its own territorial integrity. This type of reasoning arises from the 'basic juristic principle': 'equals do not have authority over each other' (Canning, 1987:129). Furthermore, Baldus's reference to the idea of a long standing custom fits into his general argument of the role of custom in originating *de facto* sovereignty for city-states, explored earlier in this discussion (Canning, 1987:129).

Corporation Theory

Any study of Baldus's juristic, conceptual understanding of the development of the idea of the territorial state is not complete without a mention of his important contribution in abstracting the idea of the state through corporation theory. Today, many political theorists view this early fourteenth century, medieval contribution by the Commentators as a significant contribution in the historical process of the 'development of the early modern idea of the state' (see Canning, 1982:23, Skinner, 1978:352-358). It is particularly important, then, that I outline to the reader these juristic 'corporational concepts', which were utilised by Baldus, amongst others, to conceptualise the independent, territorial state as an 'abstract entity distinct from its government and members' (Canning, 1982: 23).

Of course, for the purposes of this discussion, it is not necessary to deal with this subject in all its depth and entirety. Instead, it is more important to demonstrate the juristic wholeness of Baldus's theory of territorially sovereign states. Here I refer to what I perceive as the two critical levels of his argument. On the first level, Baldus displays considerable theoretical depth in producing a juristic account, which accommodates the twelfth century phenomenon of independent territorially sovereign states (both cities and kingdoms) in his overall political thought, as I have outlined in the discussion above. Moreover, on the second level, Baldus goes even further, when he links this with corporation theory, so as to produce a full-scale theory of the idea of the territorial state, and define in greater detail the nature of these territorial entities (Canning, 1987:363).

When looking at Baldus's corporation theory there are two related issues that need to be probed. The first is to examine the concept of corporation, which Baldus uses to conceptualise the state as an abstract entity:

Every corporation is called a body, because it is something compound and collective in which the bodies [of men] are like the material. The corporation is however said to be the form, that is the formal condition [D.8.2.I.I]. A college, therefore is an image which is perceived more by the intellect than the senses (Baldus [Lyon:1525] cited in Canning, 1987:188).

In the above Baldus suggests that the sovereign territorial state made up of a self-governing, self-legislating *populus*, can be defined as a corporation in two respects: both as a body, which is composed of real, living members, and as an 'abstract entity' that is separate from these members. Furthermore, according to Baldus the *populus* in its abstract sense is an 'immortal entity', which is 'able to consent and act through the instrumentality of its mortal members organised in a structure of councils and represented city officials' (Canning, 1982:24). Simply, although the *populus* is politically active through the exercise of consent etc, in its earthly dimension, it is through the medium of these functions that a basis for its abstraction can be formed.

Baldus's description of the *populus* as an abstract entity is advanced even further, when he employs the juristic concept of a *persona* representing the corporation as a single, unitary concept:

Every collection of people, corresponding to one man, is to be regarded as a single person. It is also a corporate person which is understood as one person, but consists of many bodies, like the people; and this person similarly is regarded as corresponding to one man is considered to be an individual body. It is clear therefore that this word 'person', is sometimes used for an individual, sometimes for a corporation and sometimes for the head or prelate (Baldus [Lyon:1525] cited in Canning, 1987:189) .

This usage of the concept of *persona* (person) in reference to a corporation is a development of the existing medieval theoretical concept of '*persona ficta* (fictive person) first 'formulated by Innocent IV' in the thirteenth century (Canning, 1982:24). This 'constructive use of legal fiction' in reference to territorial states as abstract 'corporational entities' allowed Baldus to assign these states a unique 'legal personality': 'that is to say, these states as legal persons had a legal existence and capacity' distinct from its members (Canning, 1988:474).

Let us now consider the implications corporation theory had for the territorial state. Baldus constructs a detailed application of corporation theory to both sorts of

medieval territorial states that is cities and kingdoms, deriving the fundamental conclusion that all territorial states can be identified as a corporation, a collection of people belonging to a city or kingdom, which possesses an abstract, perpetual dimension, distinct from its members or government.

In this way, the fourteenth-century juristic idea of the state as an abstract entity is a formidable and valuable contribution to the development of the early-modern idea of the state.¹¹ However, since Baldus accepts, on a first level, that the territorial state is an association of real men that exists within a ‘this-worldly dimension’ and that is furthermore territorially sovereign ‘within the overall structure of the hierarchy of sovereignty’ and by this conception *de facto* sovereign, this view of the state is clearly ‘medieval’ in its outlook (Canning, 1987: 207). As I have echoed throughout this discussion, it is thus important that we consider the ‘limitations’ within which the term ‘state’ in its modern sense can be employed.

Conclusion

The Commentators of the late thirteenth and fourteenth century are unique in their practical application of legal science to problems and realities of their political condition. As with the emergence of the territorial state in the form of independent cities and kingdoms it is in the juristic tradition that we find a sustained need to accommodate these territorial bodies within their larger conceptual and theoretical framework.

In this chapter I have demonstrated how the medieval historical context is critical to the views that arise thereof. After introducing the reader to some of the main events that transpired in the build up to the political reality of territorial states in the late middle ages, I then attempted to probe into the civilian law tradition of the Commentators. Here I distinguished between the Neopolitans, and the French and Italian Commentators, who each applied the principles of Roman law to

¹¹ Hobbes in the celebrated work of modern political thought the *Leviathan* (1991) presents his central project of the conceptualisation of the modern idea of the state, as an abstract entity distinct from any person or government.

theoretically account for territorial states, yet achieving different outcomes. From the Neopolitans, it was revealed that the *ius gentium* argument was critical to their understanding of the territorial state, through which they justified the 'denial of universal sovereignty of the emperor, and treated independent kingdoms as existing on the same basis as the territorially restricted empire' (Canning, 1982:4). However, in contrast, the French and Italian Commentators sought to deal with the phenomenon of territorial states differently.

Focusing on the writings of a single thinker, Baldus de Ubaldis, I have demonstrated, in the discussion above, the divine symbolic importance of the emperor and pope, so much so that it is their universal claim for sovereignty, which forms the basic starting point from which any theory of territorial states had to be developed. Employing a distinct *de iure de facto* argument, Baldus argues that the sovereignty of territorial states needs to be conceptualised within an overall understanding of the 'hierarchy of sovereignty'. It is upon the perpetual application of this *de iure de facto* distinction that all other stages of Baldus's arguments rest.

Chapter Two:

Introduction

The development of the idea of territorial sovereignty and the state, in the writings of fourteenth century scholars, reflects the complex nature of political thought during that period, as well as the changing political realities of its historical context. Thus far a significant part of my enquiry has been devoted to exploring the manner in which the jurists or civilian lawyers of the fourteenth century applied and exercised their conceptual and juristic tools in articulating a theory of state territorial sovereignty (albeit with a medieval outlook). This has therefore confirmed my initial claim that a conceptual argument for the political idea of territorial sovereignty is evident in the medieval period, insofar as it may be viewed in light of the extraordinary historical events during this period that saw the emergence of the territorially sovereign state.

In this last chapter I wish to emphasise and re-establish this claim of historical continuity in political ideas and concepts, by analysing the writings of another prominent medieval philosopher, namely Marsilius of Padua. Marsilius has been widely considered as ‘the most remarkable political writer of the Middle Ages’ (Canning 1996: 154). His publication of 1324, *Defensor Pacis (Defender of Peace)*, is said to be one of the most ‘extraordinary’, ‘thorough and original’ treatises to emerge from the Middle Ages in general (see Coleman, 1999; Canning, 1999; Watt, 1988).

Like the civilian lawyers or jurists such as Baldus, who wrote during his period, Marsilius too was deeply influenced by the events of his time. His intellectual and political milieu for example was the city-state of Padua. Marsilius’s writing could be described as a political commentary of his immediate experiences of the Italian city-republic. As an active member of the city-republic, Marsilius was able to observe and critically assess issues surrounding governance and the struggle for political authority. This however in no way suggests that Marsilius’s political theory is ‘merely historical redescription’ (Coleman, 1999: 138). Rather it highlights that his sophisticated philosophical understanding of the political

questions surrounding the problems of civil discord in the Italian city-republic, and the manner in which it can be remedied, drew significant insight from his practical knowledge.

In the *Defender of Peace* Marsilius identifies one major and destructive cause of civil unrest and political turmoil: papal power, authority and jurisdiction. To this end, it is correct to state that Marsilius's project is essentially about confronting papal claims to universal temporal jurisdiction, and to demonstrate that this claim commonly justified by the notion of 'plenitude of power' (*plenitudo potestatis*) has no sound theoretical basis. Marsilius 'intended to warn' all cities and states 'of the present and impending danger' of the papacy, and its attempts to 'usurp the temporal jurisdictions of all civil regimes' (Canning, 1999:135). This for Marsilius was the true cause of universal civil discord. The papal desire for universal sovereignty he therefore argued must be unequivocally rejected if real peace and political harmony is to prevail. Marsilius's prior objective in the *Defender of Peace*, was thus centred on intellectually demolishing the papal claim to temporal political authority.

What is particularly original about Marsilius however, and what sets him apart from his heretic contemporaries, is the precise manner in which he attempts to engage ecclesiastical jurisdiction. Here I refer to the complex manner in which he formulates his argument, which allows him to produce a real sovereign alternative. As I will highlight in the rest of this discussion Marsilius for example, examines the structure, nature and role of the citizen body in great philosophical detail. This process ultimately allows him to ascribe legitimate sovereign authority to a single entity, the *universitas civium* (corporation of citizens) within any territory. It is this aspect of Marsilius's thought that forms the foundation of my enquiry.

In this chapter it is my aim to identify all significant major stages of Marsilius's arguments, which contribute to his conceptualisation of sovereignty. I will use these arguments located mainly in Discourse I of *Defender of Peace*, to argue that a notion of state territorial sovereignty as that which belongs to only one supreme

political authority the *universitas civium* (*corporation of citizens*) is once again evident in the theorisation of fourteenth century political thought. Furthermore, I will frequently bring to light the influence of Aristotlean philosophy on Marsilius's thought and the impact it had on his scholastic insights.

A background of papal domination in the fourteenth century

Any study of Marsilius's political thought would not be complete without an overview of the relations between the papacy and other secular political authority prior to and during the fourteenth century, as it is this ongoing and varied historical context that influenced both the writing of the *Defender of Peace*, as well as the contents it espoused. This, according to Marsilius is the intervention by the Christian Church or the papacy in political matters over secular rulers, and of the papal greed for universal sovereign power. According to Marsilius, this attempt to appropriate the temporal jurisdictions of civil regimes is 'utterly inimical to the human race and will in the end, if it is not checked, bring unendurable harm to every civil order and country' (Marsilius [1324] 2005:5).

Papal versus secular relations during this period belong to an extensive and complicated history, which have formed the subject of lengthy historical, theological and philosophical study. It is therefore not within the scope of my discussion to deal with this at any length. Nonetheless, what I do hope is to bring to light for the reader what I perceive as two significant events of papal versus secular conflict; the one between Philip IV and Boniface VIII and the other between Ludwig of Bavaria and John XXII. These conflicts and the 'hierocratic pronouncements' they produced have been cited as historical evidence of 'the papal greed for secular power' (Coleman, 1999:140). Furthermore, it is the papacy's desire for universal sovereignty that not only inspired Marsilius's work, but also what directed his 'scorching polemic' (Watt, 1988:416). For our purposes then, they are well worth revisiting.

Philip IV and Boniface VIII (1290c-1350c)

After defeating the German emperors, a century earlier, by the late Middle Ages, the papacy sought the support of the French monarchs, and so was 'normally unwilling to endanger good relations with them' (Canning, 1988: 346). The conflict between Pope Boniface VIII and the French King Philip IV therefore marks the critical turning point in the history of church-state relations in the late Middle Ages. Of this I will only discuss the two most significant disputes between these competing powers, which illustrate the struggle for power and sovereignty, in the relations between papal and secular rule.

The first of the disputes between Boniface VIII and Philip IV occurred around 1296. The conflict was essentially a financial one, centred on the issue of wealth and taxation. The church like every ambitious great power required more money, and there arose a conflict of interest over its financial needs and those of the new national monarchies like France and England who were in the process of 'building up an efficient but costly central administrative machine to replace the old feudal system of extreme decentralisation' (Ebenstein, 2000:262).

In April 1296, Boniface VIII issued the bull *Clericis Laicos* where he explicitly stated that secular rulers had no jurisdiction over the church and its property, and that no lay authority was authorised to levy taxes on the church, neither was the clergy sanctioned to pay these taxes. Furthermore he argued that the 'imposition of paying such taxes without papal approval was put under the sanction of excommunication from the church' (Ebenstein, 2000:262). Neither England nor France would accept such a declaration favourably, as exempting the church (and all its vast property) from taxation would produce disastrous financial consequences. In addition such a declaration would massively undermine secular authority. Boniface VIII 'rapidly lost' the first dispute with Philip IV 'when the latter forbade the export of gold and silver from France, thus damaging papal revenues' and rendering the pope powerless to impose his doctrine (Canning 1996:138). Boniface VIII resorted to issuing another bill *Etsi de statu*, which granted Philip the right to tax the clergy.

The second major dispute between Boniface VIII and Philip IV occurred in about 1301, and this time concerned the decision by Philip IV to arrest and try the Bishop of Palmiers for blasphemy, heresy and treason in his royal court of Senlis. Boniface VIII considered this an infringement of the principle of canon law which stated that a bishop could only be tried and judged by a pope. He resorted to confrontation and demanded the Bishop's release, and went further to revoke the privileges of taxing the clergy as stated in *Etsi de statu*. He also convened a council for all the French bishops in Rome, to 'discuss the preservation of ecclesiastical liberty, the reform of the kingdom, the correction of the king's excesses and the good government of the kingdom' (Canning, 1996:138).¹ Thus in 1302, Boniface VIII issued the bull *Unam Sanctum*, widely acknowledged as one of the most important church documents in history. This document expressed most openly the papalist position on spiritual and temporal power:

there is "neither salvation nor remission of sins outside the holy catholic and apostolic church this one and only church had one body and one head, not two heads as if it were a monster... there are two swords, a spiritual and a temporal, and both swords are in the power of the church, the one by the hand of the priest, the other by the hand of kings and knights, but at the will and sufferance of the priest... One sword, moreover, ought to be under the other, and the temporal authority to be subjected to the spiritual... A spiritual man judges all things, but he himself is judged by no one... We therefore declare, say define, and pronounce that it is altogether a necessity of salvation for every human creature to be subject to the Roman Pontiff" (Boniface VIII cited in Ebenstein, 2000:263).

In response, Philip IV, who by this stage was already excommunicated gathered support in France and planned a coup which would capture the pope in Anagni and bring him back to France to face a General Council of the church that would try, condemn and depose him. However Boniface VIII never survived this, dying a few weeks after being imprisoned, and was succeeded by Pope Clement V.

It is interesting to note that at the point in which this second conflict occurred, the issue of universal spiritual and temporal authority produced a flood of tracts devoted to the questions raised in the *Unam Sanctum* (Canning 1987:140). It is in

¹ For further reading on this subject see Strayer's, *The Reign of Philip the Fair* (1980:267).

the context of these developments and debates on spiritual and temporal power, the role of the papacy in territorially independent kingdoms and states, as well as the structure of government and the nature of political authority, that we see Marsilius's systematic and thorough treatment of this subject emerging in the late Middle Ages. Undoubtedly, it is the papal rule of Boniface VIII that Marsilius selects as one of the chief culprits of civil strife in the *Defender* saying that Boniface's conception of power is destructive and expressed 'in language as insolent as it is harmful and contrary to the meaning of Scripture, and based upon metaphysical demonstrations' (Marsilius [1324] 2005:372).

Ludwig of Bavaria and John XXII (1305-1378)

Following the disputes between Philip IV and Boniface VIII, in around 1309, the pope and bishops of Rome moved from the holy city of Rome to a temporary papal possession in Avignon, France. During this period, the last medieval conflict between pope and emperor took place (Canning, 1988:343). This dispute was centred on the candidacy of the emperor. In 1314, the committee of electors of the Roman Empire held a double election for the crown in Germany, with both Frederick of Austria and Ludwig of Bavaria vying for the imperial title. It was Ludwig who was favoured over Frederick, by the majority. This decision however resulted in a protracted civil war between the rivals, until Ludwig finally emerged victorious in 1322.

During this period Pope John XXII declared that the emperor requires papal confirmation before being conferred his title, and thus Ludwig cannot be recognised as the ruler of Germany. In addition, he argued that the empire was vacant during the conflict between the rival candidates and that until and unless Ludwig received papal confirmation he may not reassume royal authority (Canning, 1988:344). When Ludwig reacted by rejecting these terms, and continued to rule without papal confirmation he was immediately excommunicated by the pope in 1324. Ludwig still did not give in. Instead, he invaded Italy in 1327 to gain the imperial crown by creating a rival pope, the excommunicate Bishop of Venice (Canning, 1988:344). Here, the representatives

of the people of the city crowned him emperor. Although Ludwig continued in an effort to foster peace with John XXII and his successors Clement VI and Benedict XII, he met with no success. During this period, one of Ludwig's principal advisers was Marsilius of Padua who actively supported him in his conflict with the papacy, and accompanied him on his invasion of Italy (Canning, 1996:154). *The Defender of Peace (1324)* was also completed and made public in this time. It is against this backdrop of papal versus secular conflict, and the knowledge of Marsilius's historical involvement in this conflict, that we can now assess Marsilius's work.

Marsilius and territorial sovereignty

In the discussion that follows I will make evident that Marsilius does indeed express the idea of sovereignty in his political thought. However, before I delve into the specific philosophical issues of this conceptual argument I shall begin by providing an interesting entry point to locate this discussion into the broader framework of my inquiry, which is whether from a purely conceptual standpoint this sovereignty expresses territorial implications. I note at the outset that to claim an argument of territorial sovereignty from Marsilius's thought as compared to Baldus's is slightly more complicated precisely because of what Ullmann describes as the manner in which sovereignty is 'personalised' in the *Defender of Peace* (Ullmann, 1988:397).² I will thus formulate my arguments in light of Ullmann's claims.

Ullmann argues that in Marsilius's conception of sovereignty, there is a 'considerable vagueness' surrounding the issue of territoriality, with no explicit declaration of the physical extent to which his sovereignty is enforceable (Ullmann, 1988:400):

The absence of mentioning of a territory or of a consideration of space in the exercise of jurisdiction or of any contemplation of locality in Marsilius's tract makes abundantly clear that this postulate of a reification

² See Walter Ullmann's 'Personality and Territoriality in the Defensor Pacis' (1988) pg 397-400

of sovereignty did not form part of his thought process (Ullmann, 1988:401)

In this regard Ullmann believes that Marsilius expresses a more subjectivised sovereignty which is neither territorially anchored nor indicative of any territorial connexion. Let me now assess this first part of Ullman's claim. It is apparent that if we are to accept Ullmann's argument above, any claim of territorial sovereignty from Marsilius's writings is significantly undermined. However, is what Ullmann saying completely true? Can we declare that Marsilius in all his perception and insight blatantly disregarded the issue of territory as important? An answer to this in my view would entail a mixed response, one that would accept some of what Ullmann is saying, but reject the rest. I will thus attempt to illustrate what I mean below.

In order to understand the notion of territory in relation to state sovereignty one needs to revisit what sovereignty means. It is widely held in political thought that sovereignty by definition means supreme authority within a territory. In any notion of sovereignty, whether expressed directly or indirectly, territoriality is therefore implicit. Equally 'historical manifestations of sovereignty are almost always specific instances of this general definition' (Mclean, 1996:464). In this way, I argue that the notion of territory is implicit in Marsilius's notion of sovereignty. An example of Marsilius's implicit use of territory is evident in his argument for state coercion:

And since this guardian must restrain those who unjustly exceed the standard, as well as other individuals from within and without who trouble or try to oppress the community, the state (*civitas*) had to have some element within itself whereby it might resist these people (Marsilius [1324] 2005:26).

Here, Marsilius makes an implicit reference to the notion of territory. This is because in order for any coercive force to function it has to be effective within a specified territory.

However Ullmann is probably right in arguing that Marsilius's notion of sovereignty did not emphasise territoriality in any detail. A possible answer for this as Ullmann suggests lies in the purpose of his writing the tract:

Peace was disturbed by the claims of jurisdiction made and largely exercised by the papacy and the law which it administered, based as it was on an interpretation of the Bible which he rejected...the target of attack was the ecclesiological system as it presented itself to him...the absence of the territorial component part of sovereignty can be explained by his all too closely following ecclesiological footsteps (Ullmann,1988:407)

Ullmann's argument is a valid one. The church in both its origin and history had no terrestrial boundaries; it was a universal body, and borders were of no real concern to it. In other words, the very concept of territory was meaningless within ecclesiological foundations. Marsilius in an effort to replace the claims of universal coercive sovereignty of the papacy tries to put forward his own theory of the state. But as Ullmann correctly points out, by following ecclesiological footsteps, where territory is not a major issue, Marsilius may have neglected to make territoriality, in his conception of sovereignty, a major issue. Nonetheless, I do not believe as Ullmann does, that Marsilius may have neglected the issue of territoriality completely. I will once again use the notion of security to justify my conceptual argument.

For Marsilius, the issue of peace and tranquillity was of real concern. The major part of his writing is focused on achieving this end of peace. The issue of peace and tranquillity presented major problems in Marsilius's city-state republic of Padua, where despite its *de facto* jurisdiction coercive authority was assumed by more than one player: 'the politics of city-states were constantly affected by the rival claims of empire and papacy to ultimate universal sovereignty in the region' (Brett, 2005:xiii). Marsilius recognised these problems and in the *Defender of Peace* tries theoretically to remedy them. As we have seen already, central to Marsilius's construction of the state is the well-functioning nature of its parts. These parts are integral to man achieving the sufficient life. When instituting these parts of the state, Marsilius deems it necessary to establish a 'military' office:

For the rest, given that the sufficient life could not be led if the citizens were oppressed or reduced to slavery by external enemies; again, given that the sentences of judges on internal miscreants and rebels must be carried out by means of coercive force; it was necessary to institute within the state a military or defensive part...For the state is established for the purpose of living and living well...but this is impossible if the citizens are reduced to servitude (Marsilius [1324] 2005: 26)

But why does Marsilius do this? The answer in my view lies in territorial sovereignty. Marsilius considered it necessary for a state to protect its borders. Security, as I have mentioned throughout this project, is central to the notion of territorial sovereignty. As Gottmann (1973:14) argues state territorial sovereignty may well be described as endowed with one main function: 'to serve as a shelter for security'. Marsilius believed that security for citizens was one of the prime objectives of the state, thus regarding the establishment of a military part of the state as part of achieving that objective. In this way, I would disagree with Ullmann that Marsilius's conception of sovereignty disregarded territory. Instead it is more fair to say as I have expressed above, that territory is implicit in his understanding of sovereignty, and to accept Ullmann's argument of the reason why Marsilius unlike Baldus did not deal with it in an explicit and overt sort of way. Having laid down these critical observations, it is now easier to explore Marsilius's contribution to the idea of territorial sovereignty in the late Middle Ages. Hence, I now turn to the philosophical dimensions of his argument.

Marsilius: on tranquillity or intranquillity in the city or state

As a way of introducing us to the subject of his book, Marsilius begins by stating that the sufficient life is the 'greatest of all human goods' and is therefore what all human beings aspire to (Marsilius [1324] 2005:3). But this sufficient life can only truly be achieved if civil regimes can provide peace and tranquillity, and men are at peace with each other. But because this is not always achievable, and 'contraries of themselves produce contraries', then discord or the opposite of tranquillity is often an inevitable outcome, which produces the 'worst of fruits in civil regimes' (Marsilius [1324] 2005:3).

This sense of discord is evident when one examines the history of the Roman Empire. According to Marsilius, when the inhabitants of Rome ‘lived together peaceably’, they benefited from the fruits of tranquillity. Peace was so beneficial and progressive, that it had far-reaching effects: the empire ‘subjected to themselves the entire habitable world’ (Marsilius [1324] 2005:4). In the same way, when ‘discord and strife arose among them’, the entire civil regime was troubled, and the empire was ‘subjected to the sway of hated foreign nations’ (Marsilius [1324] 2005: 4). Marsilius believes that this is exactly what is happening in the parts of Italy that were once part of the ancient empire. It is once again ‘torn apart on all sides because of strife’ and can easily be invaded by ‘anyone with the will and power to occupy it’ (Marsilius [1324] 2005:4).

Marsilius believes that while Aristotle in his *Politics* attempts to detect and explain the causes of civil strife, he did not know about one pervasive and destructive cause, the papal desire for power and universal sovereignty:

...still there nevertheless exists...one singular and well-hidden cause...This cause is highly contagious, and equally liable to spread over all other civil orders and realms, and has already, in its rapacity, tried to invade most of them...For it is, and was, a certain perverted opinion, which we shall unfold in what follows; assumed by way of occasion from a miraculous effect produced by the supreme cause, long after the time of Aristotle, beyond the possibilities of inferior nature and the usual action of causes in thing...wearing the mask of the honourable and the beneficial (Marsilius [1324] 2005: 5-6).

Now, Marsilius considers rhetorically that since we have established that the fruits of peace and tranquillity are much more beneficial than those of its contrary, strife, we should pursue peace with all imaginable human effort. To do this, Marsilius argues, our sense of duty towards ensuring we achieve peace, both on an individual and collective level, should be guided by the feeling of ‘heavenly charity’ as well as the ‘bond or right of human society’ (Marsilius [1324] 2005:6). It is considered that here Marsilius is referring to two religious traditions common to the medieval experience: ‘the Christian obligation of charity to neighbours as

expressed in the evangelical law of perfect liberty of the gospel' and 'the Roman tradition of *ius gentium* or law of nations' (Coleman, 1999:141). One can assume that for the medieval reader who is assessing how man is to achieve the common good in society, both of these points would convey a certain resonance.

Furthermore, as I have already pointed out in previous chapters, the impact of Roman law and the *ius gentium* in particular was considerable in theoretical writing as it had a wide-ranging and extensive applicability.

To further entrench his point on the need for man to strive in achieving the common good, Marsilius cites Cicero who says: 'We are not born for ourselves alone: our country claims for itself one part of our birth, and our friends another' (Marsilius [1324] 2005:6). This statement is followed by another invocation of the issue of the common good as Marsilius argues that we ought to follow nature by endeavouring to attain the common good. In this regard, it is necessary and important that we put an end to the false logic or 'sophism' which argues that the church's intervention in the temporal affairs of society will see to it that the common good is achieved. If we continue to subscribe to this idea, which plagues and threatens our communities it will bring unimaginable harm to all states and civil orders.

Marsilius then attempts to analyse closely the contraries tranquillity or in tranquillity in the city or state (*civitas aut regnum*). He argues that since we are aware that these characteristics of tranquillity and in tranquillity are characteristics of the city or state at different intervals, it is perhaps worth exploring what is meant by the city (*civitas*) or state (*regnum*) first.

To avoid, as Marsilius puts it the 'ambiguity which arises from a multiplicity of terms', he begins first by defining the word state (*regnum*) (Marsilius [1324] 2005:11). This term according to Marsilius has a variety of connotative meanings. The first of these 'implies a plurality of cities or provinces contained under one regime' (Marsilius [1324] 2005:11). This definition of the state is a territorially descriptive one, telling us that a *regnum* can simply be a number of cities or

provinces that are in the jurisdiction of a single authority. The second way in which *regnum* can be understood for Marsilius is as a ‘particular type of polity or temperate regime, which Aristotle calls temperate monarchy’ (Marsilius [1324] 2005:11). Here, Marsilius is referring to the *regnum* as that which can be found in a single city or in many cities, in whichever case, each city was under a specific type of temperate regime. An example, which Marsilius cites, is the early civil community where in most cases there existed ‘one single king in each single city’ (Marsilius [1324] 2005:12).

In its third manifestation, a *regnum* according to Marsilius is merely a combination of the first and second types. Here Marsilius is referring to the state, which was most familiar in his day, a mixture of territorial and temperate monarchy elements. Still, it is Marsilius’s last definition of *regnum*, which is most interesting for our discussion.

Marsilius introduces a fourth understanding of the term *regnum*, one which he prefers most: *regnum* is that where there exists ‘something common to every type of temperate regime, whether in a single city or in several cities...we too shall use the term in determining the answers to our questions’ (Marsilius [1324] 2005:12). This definition of *regnum* or state is particularly relevant to this enquiry, as toward the end of this discussion, I will demonstrate how Marsilius used the concept of sovereignty invested in the corporation of people, or citizens, as the ‘common something’ that is shared by all types of states. This argument views the idea of sovereignty, ‘in any regime that is ruled over by one, few or many’ as that which will always be with the citizen or people, as it is the will of the people that is ‘represented by the one, few or many’ (Coleman, 1999:142).

Marsilius now shifts back to his initial question on defining more closely tranquillity and its opposite. This time he employs a figurative analogy, which compares the *regnum* or state with an animal or its animate nature. The state he argues, is ‘like’ an animal which according to its natural disposition is ‘composed of certain proportionate parts’ which are not only arranged in the most correct and ordered manner, but are capable of ‘communicating their actions between

themselves' to ensure the correct functioning of the whole (Marsilius [1324] 2005 :12). In Marsilius's analogy, the main difference between the animal and state, is that the animal and its parts are 'established in accordance with nature', whereas the state and its parts are created and maintained by reason (Marsilius [1324] 2005: 12).

Marsilius argues that the relation between the animal and its parts, to health, is similar to the relation between the state and its parts, to tranquillity. Such reasoning, he believes, has one main 'inference on the basis of what everyone understands about both' (Marsilius [1324] 2005: 12). This is, that as, according to nature, the most favourable condition for the animal is health, then too, according to reason, the most favourable condition for the state is tranquillity. Marsilius argues that in the case of the animal, this can be confirmed by an 'expert physician' who would define health as: 'that good condition of an animal, in which each of its parts is enabled perfectly to perform the operations appropriate to its nature (Marsilius [1324] 2005:12-13). Based on this, Marsilius believes that if we were to define tranquillity, it would be that optimal condition of the city or state, in which all of its parts are functioning perfectly as maintained by reason. On this, a point to note, is that the state, unlike the animal (whose healthy disposition and well-functioning is not rationally guided), requires a sense of consciousness and 'rational effort' to ensure it maintains tranquillity (Coleman, 1999:142).

Marsilius now attempts to define intranquillity as the logical contrary to tranquillity. His response is based on what he has defined as tranquillity already, arguing that 'any good definition signifies at the same time the contraries of what is being defined' (Marsilius [1324] 2005: 13). Hence, intranquillity is simply the bad or unhealthy condition of the state, in which all or some of the parts of the state are impeded in fully achieving what it is optimally designed to do. At this point, Marsilius is satisfied with his figurative explanation of the terms tranquillity and intranquillity, and now attempts to explore what the state is in itself and what it exists for.

On the origins of the civil community

Before developing his idea of what the state is in itself and what it exists for (as it is the perfect community), Marsilius sought to first introduce the origins of the civil community and its way of living. Of this Marsilius states:

And men are not judged to know any particular thing unless they know it together with its primary causes and its first principles right down to its elements (Marsilius [1324] 2005:14).

This notion of deriving knowledge from a first principle approach is a typically Aristotelian idea (see Brett in Marsilius, 2005:14). Marsilius believes that the evolution of the civil community from an imperfect to a more perfect sort has been a natural, historical progression. Civil communities at various moments of time and place have started out as small entities, gradually developing into something greater. This progression towards perfection, argues Marsilius, is the course of 'every action of nature or art' (Marsilius [1324] 2005:15). The civil community is no different in Marsilius's view. Starting out as the basic 'minimum human combination' of male and female, it gradually increased until it 'filled one household' (Marsilius [1324] 2005, 5). Through the process of procreation, this multiplied until the establishment of several households, which can be characterised as the first village or community.

Marsilius makes a very pertinent point, when he considers how actions were regulated in the single household and first communities. This suggests that Marsilius is very aware of human nature and the need for authority in even the smallest community; an argument that he would later use to determine the need for sovereign authority in the perfect community or state. Of course, the fact that Aristotle deals with these arguments on primitive kingship in *Politics I* should also be taken into consideration (Marsilius [1324], 2005:143). According to Marsilius, then, when human beings were in a single household, their actions were regulated by an elder. Similarly, when they formed the first community or village, their

actions were regulated as well, albeit in a slightly different manner. Where in the case of the single household, the elder would be able to ‘punish domestic wrongdoings entirely at his wish and pleasure’, such a course of action would be entirely inappropriate, or in the Marsilian term not ‘licit’ for him as the ‘chief of the first community’ (Marsilius [1324] 2005:16).

The head of the community would thus have to implement order and justice through a ‘general ordinance of reason or quasi-natural law’ (Marsilius [1324] 2005: 16). The question is how does the elder acquire this sense of reason? Marsilius believes that attaining a sense of justice and rationality is not something one is able to learn, or enquire about. Rather it is a ‘common dictate of reason’ known to all man, coupled with a ‘duty for human society’ (Marsilius [1324] 2005,16). Thus Marsilius argues that the function of rule in the earliest communities was guided by a sense of justice and concern for human society and by the common dictate of reason known to all men. Unlike the early households, ‘arbitrary rule’ was replaced by an ‘implicit appeal to a commonly held rational dictate that equity must be done to all for the sake of the common good...a quasi-natural law’ (Coleman, 1999: 143).

Up to this stage, Marsilius has delineated the origin of the civil community. Now, he discusses the movement away from early imperfect communities to a more perfect way of living in the state:

As these communities gradually increased, human experience increased likewise, and more perfect arts and rules of living were discovered while the parts of the communities were also differentiated further (Marsilius [1324] 2005: 17) .

Here Marsilius makes an implicit reference to the issue of territory in relation to the state. The increase of communities he speaks of denotes the growth in the size of political spaces, principally reflected through territory. Within a larger populus and territorial space, we witness the acquiring of more perfect rules of living and further differentiation. This leads us to the path of the perfect community or state. This is Marsilius’s way of leading us to the state, where man through ‘reason and

experience' is able to deal with the 'differentiation of its parts' in a more sophisticated manner (Marsilius [1324] 2005: 17).

On the perfect community or state and the division of its parts

By way of introducing us to the state, and the issue of the differentiation of its parts, Marsilius cites Aristotle's definition of the state: 'a perfect community possessing every limit of self-sufficiency, as it is consequent to say, having thus come about for the sake of living, but existing for the sake of living well' (Marsilius [1324] 2005: 18). This definition conveys two main ideas. The first of these is that the central aim for those living in a state should not just be to live as ordinary 'beasts and slaves' do, but to live well. The second concerns what it means to live well: 'having leisure for the liberal activities that result for the virtues both of the practical and theoretical soul' (Marsilius [1324] 2005:18). Marsilius thus incorporates this definition into his theoretical account, by accepting the Aristotelian view that sees the state as existing for the final and perfect cause of living well. Here, he specifically argues that 'moral and intellectual virtues' must be engaged in an 'extraordinarily active way' (Coleman, 1999:145). This method will make certain that all requirements of the civil life are met, and is not just about a satisfactory material existence. His precise purpose is to use this understanding of living well as a fundamental or basic principle of what he is going to demonstrate. Thus Marsilius presents us with this first premise:

A principle naturally held and believed and freely conceded by all...that all men not deficient or otherwise impeded, naturally desire a sufficient life, and by the same token shun and avoid those things that are harmful to them (Marsilius [1324] 2005:18).

Marsilius believes that there are two modes in which human beings can achieve their purpose of living-well. The first is in the 'temporal' or 'worldly' realm, and the second is in the 'eternal or heavenly' realm (Marsilius [1324] 2005:19). Of the former, it is the philosophers who have made absolute sense of the subject. But

there are two reasons, according to Marsilius, why political society is fundamental to a satisfactory human life (see Black, 1992:63):

And although the experience of the senses teaches us this, we nonetheless wish to introduce the cause we spoke of with greater definition, and say that because man is by nature composed of contrary elements, and as a result of their contrary actions and passions is almost continually losing something of his substance; and again, because he is born naked and undefended against the excesses of the air which surrounds him, and of the other elements - passible and corruptible, as they say in natural science; therefore he stood in need of arts of different kinds and types in order to resist the said damage (Marsilius, [1324] 2005:19-20).

Marsilius presents us with two very plausible reasons why we require a political society to achieve the end of living well. The first reason that Marsilius provides us is with regards man's actual abilities. On this, Marsilius argues that human beings are born without any skills, 'naked and unarmed', and are consequently defenceless in the community. They are dependent on the availability of a large and diverse set of skills or arts, which would allow them to defend themselves against harm. These arts could only be made available in a community with a 'large number of men', who through their mutual consent, 'gather together to secure the advantage to be had from them and to avoid disadvantage' (Marsilius [1324] 2005:20).

The second reason Marsilius provides concerns the nature of human beings who, according to Marsilius are made up of 'contrary elements' and are thus continually 'losing something of their substance'. Here Marsilius goes further than Aristotle, when he recognises that when men are brought together, there is a potential for discord, argument and quarrel. And because dispute is inevitable in this scenario, Marsilius believes that it is necessary to 'institute within this community a standard of justice and guardian executor of it' (Marsilius [1324] 2005: 20). Implementing a regulatory force, or standard of justice, is of paramount importance in such a setting, as fighting will cause the disunity and separation of people. This would severely jeopardise the perfect community, ultimately leading to what Marsilius believes is the destruction of the state (Marsilius [1324]

2005:20). It is interesting to contrast this Marsilian view of man's contrary nature with Hobbes notion of a self-interested man in the state of nature, who is most certain to encounter 'quarrel' leading to a 'solitary, poor, nasty, brutish, and short' existence (Hobbes, 1991: pg 80-90). Both these scenarios of man are applied in the development of the idea of the state.

Marsilius develops this argument further when he introduces the need for state coercion:

And since this guardian must restrain those who unjustly exceed the standard, as well as other individuals from within and without who trouble or try to oppress the community, the state (*civitas*) had to have some element within itself whereby it might resist these people (Marsilius [1324] 2005:26).

It is my view that here Marsilius is producing a theory of coercive power in state or perfect political community, by arguing that there must be some means of resisting people who exist in or out of the state. It would be correct to state that that Marsilius is referring to the notion of a 'police force or army' (see Black, 1992:63). This is also another instance of Marsilius's implicit use of the idea of territory. In order for a coercive force to function it has to be effective within a specified territory. This is an idea he builds on later, when he seeks to differentiate the parts of the state, and identifies a 'military or defensive part', which acts as the coercive force in the territorially sovereign state. In addition, this fits well into Marsilius's project of destroying papal claims to coercive power and transferring it to the sovereign. Some have even described this issue of coercion as Marsilius's prime contention of the *Defender of Peace*, 'that coercive jurisdictional power was in the wrong hands' (see Canning, 1999:2005).

Marsilius then reiterates his earlier point of the state's need to acquire certain common goods:

Again, since the city stands in need of certain supplies, repairs and stores of various common goods (and these differ in time of peace or war) it was necessary that it should contain people to provide such things, so that the

common need could be met whenever it was expedient or required (Marsilius [1324] 2005: 20).

Marsilius makes an important point here, when he recognises the state, or perfect community as functioning for the common good. For him, men who are gathered together with the sole purpose of living the sufficient life are able not only to 'obtain for themselves' their 'necessities', but to share also in the common good (Marsilius [1324]: 2005:21). This gathering of people, epitomised by perfection, the limit of self-sufficiency, and regulated by a guardian who serves justice that achieves the common good, is called the state.

Marsilius does not stop here. In fact this is why his theory of state sovereignty cannot be considered a mere 'secular, utility calculation' (Coleman, 1999:146).

Instead Marsilius states:

But beyond the things just mentioned, which meet the needs of this present life alone, there is something else which those who share a civil community need for the status of the world to come, promised to the human race through the supernatural revelation of God; and which is also useful for the status of this present life: the worship and honouring of God, and the giving of thanks both for blessings received in this world and those to be received in the future world as well (Marsilius [1324], 2005:20).

In the above, Marsilius recognises the role of religion in the present life of the perfect community. The need for worshipping and honouring God is a self-evident human need. Thus, the state appoints 'certain teachers' to 'guide men' in the present life. Such an understanding stems from the medieval idea of the eternal good life, which as Marsilius admits, although promised to man through revelation, can only be achieved through the worshipping and honouring of God. Thus it is evident already that Marsilius's understanding of religion and the state so far is that of the state delegating or appointing teachers to offer guidance to man in his spiritual pursuits, This will be confirmed later on in this discussion, when we will discover how this role is something in stark contrast to that fullness of power (*plenitudo potestas*) which the papacy has assumed for itself.

Of course, Marsilius acknowledges that people who want to live the sufficient life have ‘needs of different kinds’, which can only be supplied by a community that ‘contains different orders or offices’ (Marsilius [1324] 2005: 21). The perfect community or state was established ‘naturally’, through ‘experience and rational reflection’, and the differentiation of parts are towards the ‘functioning’ of the common good (Coleman,1999:144). He thus attempts to elaborate on these different orders or offices of men, or what he defines as the ‘differentiation and identification of the parts of the city’ (Marsilius [1324] 2005:22).

Now, Marsilius attempts to offer the reader an elucidation of the parts of the state, so as to clarify further his initial inquiry of the causes of tranquillity and intranquillity. On this, he identifies the parts or offices of the state in six useful categories. These are ‘agriculture, manufacture, the military, the financial, the priesthood and the judicial or councillor’ (Marsilius [1324] 2005: 22). According to Marsilius, of these categories, three are in an absolute sense parts of the state. They are the priesthood, the military and the judicial. The others are only ‘called parts in a broad sense’, in that they are offices of the state which are occupied by the multitude (Marsilius [1324] 2005:22-23). I do not wish to explore and analyse all of these categories which Marsilius provides. Nonetheless I see fit to explore the last two, termed the judicial and priestly offices of the state, which are of particular relevance to this discussion. But first, I will address briefly Marsilius’s main philosophical ideas of the differentiation of these functioning parts.

Marsilius considers the necessity of these parts of the state as ‘self-evident’, arguing that that the state is ‘established in order that the human beings within it may live and live well’ (Marsilius [1324] 2005: 23). By this stage, we have a clear sense that Marsilius’s view of living well is the ultimate purpose or aim of man in the perfect community, and that these different areas of state function are to enhance the prospect of living well. Yet the question remains: through what means is man expected to achieve this?

Marsilius argues that nature provides man with the first level that is the instinct or desire to live:

And although living in both of its said modes - that which is peculiar to man as well as that which he has in common with the other animals - is dependent on natural causes...that sort of consideration belongs within the natural science...(Marsilius [1324] 2005:24).

Marsilius believes that through the study of natural science, we can make complete sense of the way in which natural causes lead both man and animals to desire the object of living. However, what is of greater importance to his present inquiry, argues Marsilius, is the second level, or the ways in which man goes beyond natural causes to accomplish his goal of living well. This according to Marsilius is achieved through 'reason', and 'art':

If man is to live and live well, his actions must be done and done well, and not just his actions, but his passions too...man needed to go beyond natural causes and use his reason to create those things needed to complete the production and preservation of his actions and passions of both body and soul. And these are the different kinds of work and worked objects that result from the virtues and the arts, both practical and theoretical (Marsilius[1324] 2005:24).

In the above, Marsilius brings to light an important idea. That is, to live well, man needs to temper his actions and passions, which can only be achieved by employing reason and rationally, something that goes beyond the realm of natural instinct. In other words, some actions or passions are performed by man through appetitive desire and cognition, and is therefore not an 'instinctive, biological response to an external condition' (Coleman, 1999:146-147). Furthermore, coupled with reason, it is through the arts that man is also able to achieve his purpose of living well, as once his actions and passions are tempered, man is free to discover different kinds of arts and virtues. Of course, as mentioned already, Marsilius believes that there is an important reason why men should practice these arts, that is, in order that they may 'remedy human need' (Marsilius [1324] 2005: 25)

On the judicial and priestly offices of the state

I will now briefly view how Marsilius deals with the judicial part of the state, as it is this ruling part that derives its authority ‘from, the divine will of the people’, or the human legislator, and is, as we shall later see, instructed ‘to institute all the other five parts’ (Black, 1992:64). How then does Marsilius describe this judicial part and its functions?

In order, however, to moderate the excesses of acts that originate from our abilities to move in respect of place as a result of cognition and appetite- which we called ‘transitive’ , and which can take place either to the convenience or inconvenience or injury of someone other than the agent for the status of the world- there was of necessity instituted within the city a particular part or office through which the excesses of such acts might be corrected and reduced to equality or due proportion. For otherwise they would cause fighting and consequently the separation of the citizens, and in the end the destruction of the city and the loss of sufficient life. This part is called by Aristotle the judicial or the princely and councillor, together with the things that minister to it, and it belongs to this part to regulate what is just and beneficial to the community (Marsilius [1324] 2005:26)

In the above passage Marsilius reveals both the rationale and function of the judicial or ruling part of the government. To do this, he begins first, by defining a particular type of action, which he terms as transitive. But what does Marsilius mean by the word transitive? In the context in which Marsilius mentions it, transitive acts refer to those ‘actions and passions performed by man as a result of his knowledge and conscious choices’ which affect others around him (Coleman, 1999:147). Marsilius thus argues that the state itself is essentially preoccupied with correcting and reducing the effects and consequences of those human actions which affect others.

According to Marsilius, a state is not meant to question our actions. Instead, it serves more as a mediator which ‘oversees how we act and whether these actions foster or obstruct the conditions for the achievement of the common good, that is the tranquillity necessary for the collective sufficient life’ (Coleman, 1999:147). For this, Marsilius envisions the need to institute a specific office of the state that would deal with the transitive actions or consequences of the people’s actions.

Furthermore, Marsilius reiterates once again that this office is there to avoid the possibility of fighting and separation of people that would lead to the ruin of the state. Marsilius believes that it is the judicial or princely part of the state that must be commissioned with dealing with the ramifications or excesses of transient acts. These actions must be corrected so as to accomplish equality or due proportion in the state. The main function of the judicial office is therefore to regulate by serving justice for the common good. Hence, these transitive acts are fundamental to his 'vision of the scope of legitimate political rule' (Coleman, 1999:147).

Marsilius's true aim in creating the priestly office of the state was to argue for the subordination of the church to one sovereign power, the human legislator. Hence, from the moment he introduces the need for the priestly office, he brings its necessity into question, arguing that it is a matter that is neither clear nor easy to rationally demonstrate:

It remains for us now to say something of the necessity of the priestly part, concerning which there has been no such general agreement among men as upon the necessity of the other parts of the city. And the reason for this has been that its true and primary necessity could not be understood through demonstration, and neither was the matter clear of itself (Marsilius [1324] 1999:28).

However, as a means of justifying his argument Marsilius believes that there is some historical agreement around the issue of the necessity of the priestly office within the state. This, according to Marsilius, is the 'worship and honour of God' and 'the benefit consequent upon these practices for the status of the present world or of that to come' (Marsilius [1324] 2005:28). Marsilius cites these two reasons as historically embedded, declaring that they have come to be established as fact, even though they rely on unseen reality: 'for many religions or followings promise reward for those who do good, and punishment for evildoers, to be meted out by God in a future world' (Marsilius [1324] 2005:28). Marsilius argues that this is something which we believe without it being demonstrated. Marsilius thus turns his attention to how we can demonstrate the need for a religious element to the state, a reason which would confirm its benefit to the status of life in this world.

This reason he argues, is that religions contain a particular degree of moral advantage:

And this was the goodness of human actions both as individuals and as citizens; upon which the clam or tranquillity of communities, and ultimately the sufficient life of this present world, almost wholly depends (Marsilius [1324] 2005: 28).

I note with interest Marsilius's deep-seated commitment toward religion, a conviction of which he perceived as positively influential to life in the perfect community or state. Religion for him supplemented a civil code of law as its moral virtue and ethics would continue to foster a sense of virtue and goodness. In this world-view, men would act out of fear and terror avoiding acting in a wrongful manner and inspired to 'virtuous deeds of piety and mercy', something which would affect their actions toward themselves and others (Marsilius [1324] 2005:29). Of course, the legislator would not be able to compel man into religious belief: 'for there are certain acts that a legislator cannot regulate by human law' (Marsilius [1324] 2005:29). However, a religious-minded citizen body would profit the legislator itself, in that men would enjoin good and forbid evil, motivated by religion only. This would in turn radically reduce the amount of 'disputes and injuries' within the state, and engender 'peace or tranquillity' and the 'sufficient life of human beings', all of which are evident in the status of this present world (Marsilius [1324] 2005: 148).

On this, Marsilius ends by clearly stating that the final end or function of the priestly office of the state is limited to the 'instruction and education of men' on religious issues arising from 'evangelical law', so as to guide and help men to 'attain eternal salvation and avoid eternal misery' (Marsilius [1324] 2005; 148). By doing this, Marsilius makes an important conceptual breakthrough in his theory of the state. He accords, as with almost every other medieval writer a place for the Christian church. However, his idea of the role of religion in the state is not universal, or all-encompassing, deeming what he regards as the rightful and appropriate place for the Christian church. This is to educate and teach man the evangelical law.

This role of the church is something which he considers as demonstrably useful to worldly life, nothing close to the power that has been claimed by the papacy in their desire for universal sovereign jurisdiction. Marsilius refines this role even more when he places the human legislator above the priestly office, so as to ensure that the church or papacy does not pursue temporal power. More importantly this is particularly significant when I expound in the remaining discussion his full theory of state territorial sovereignty, which is something which belongs to only one coercive power, the human legislator.

On the human legislator and its functions

Marsilius begins his discussion of what is the human legislator by first identifying what he describes as the causes for the differentiation of the parts of the state. He argues that nature predisposes different men towards different ‘native dispositions’ and that some have:

a suitability and tendency towards agriculture, others toward soldiering, others to other kinds of crafts and disciplines - but always different people to different pursuits (Marsilius [1324] 2005: 37)

This inclination of human beings in respect to different functions is directed toward achieving the purpose of living: the sufficient life in the perfect community or state. It is nature that has endowed different people with ‘different characteristics suitable for different offices’ (Coleman, 1999;149). In this sense, the offices occupied by different members of the state are established for the common good. Following from this, Marsilius considers the ‘motive or efficient causes’ of all these different offices of the state (Marsilius [1324] 2008: 38). The idea of efficient cause as expressed by Marsilius is that of an agency which brings something into existence. Marsilius therefore considers the efficient cause of the state as:

the minds and wills of men expressed through their thoughts and desires - either individually or collectively, it makes no matter; and in the case of

certain offices, the originating principle is additionally the movement and exercise of bodily members. But their most efficient cause insofar as they are parts of the city is most often the human legislator, even if on occasion, rarely and only in a few instances, the immediate motive cause was God without any human determination (Marsilius[1324] 2005:38-89).

Hence, Marsilius believes that it is the minds and wills of all men, through their thoughts and desires whether individually and collectively, that constitute the human legislator of every state. Before the coming of Christ, argues Marsilius, in some rare cases the direct efficient cause of the state and its offices was God. This however did not consider any human determination. It is evident that Marsilius makes this point to show how, after the coming of Christ, it is the human legislators that would ‘now establish the office of Christian priesthood’ (Coleman,1999:149).

Marsilius goes on to provide an analogy of the role of the human legislator, as that which ‘institutes, differentiates and separates’ the parts of the state ‘in the manner of nature in an animal’ (Marsilius [1324] 2005:40). He argues that once the state is formed from the perfect community, the human legislator creates the first office or part of that state. This part is the judicial or princely office, the function and purpose of which I have described earlier in this discussion. According to Marsilius, it is after this judicial or ruling part of the state is established, ‘the first of all the rest’, that the other offices of the state such as the priestly, financial etc follow (Marsilius [1324] 2005:40). It is the establishment of this judicial or ruling part of the state that Marsilius now turns to, providing the reader with greater clarity with regards to its range of efficacy.

Marsilius distinguishes between two kinds of judicial or princely offices. The first is what he describes as ‘well-tempered’ and the second is what he terms ‘flawed’:

Together with Aristotle, *Politics* III, chapter 5, I call that kind ‘well-tempered’ in which what dominates exercises the function of prince for the common advantage in accordance with the will of those subject; ‘flawed’, that in which this is lacking (Marsilius [1324] 2005:40-41).

Marsilius differentiates a well-tempered judicial or princely rule (which sets it apart from a flawed one) according to two distinct factors. These factors are first, that the ruler or rulers, who regulate the princely office, govern in the spirit of achieving the common good, and second, that they do so in accordance with the will of the human legislator. As a way of making us more familiar with what he means by the idea of flawed and well-tempered, Marsilius provides examples of what forms both these types of rule are likely to take:

Each of these generic kinds subdivides into three types: the first (sc. the tempered) into royal monarchy, aristocracy, and polity; the second (sc. the flawed) into the three opposing species of tyrannical monarchy, oligarchy and democracy. And each of these specific types has, again, its own variants, but it is not part of the business in hand to discuss these in any more detail (Marsilius [1324] 2005: 41).

For Marsilius, then, temperate ruling is more likely to be found where princely rule takes the form of monarchy, aristocracy and polity, and in its ‘diseased versions’, tyrannical monarchy, oligarchy and democracy, the office of princely rule would most certainly suppress the will of the people and the common good that comes out of it for ‘factional interest’ (Coleman, 1999:149). Needless to say, Marsilius’s understanding of these concepts differs somewhat from our modern conceptualisations. His notion of democracy or polity, for example, is founded to a great extent on what he concedes ‘Aristotle understands’ of these ‘said species’ (Marsilius [1324] 2005:41). Still, Marsilius is considered to have gone beyond Aristotle, who in his criterion of well-tempered rule does not make any mention of the ‘willingness of those subjects’ (see Brett (2005), Coleman (1999)). It is this idea of the consent of the people which sets him apart from Aristotle, and other typically medieval views on sovereignty.

Marsilius on the election of a principate (ruler) by the human legislator

In what follows, Marsilius considers how exactly the ruling or princely office of the state is instituted or brought about by the human legislator. Simply, how does a ‘community determine whether it will be ruled or regulated by one, few or many’

(Coleman, 1999:15). Marsilius argues that if we consider biblical scripture, and the manner in which the principate of Israel was established, we cannot demonstrate through argument how it was established, and thus conclude that we 'hold it by simple belief without reasoning' (Marsilius [1324] 2005:44). Yet, in Marsilius's view, there exists a rational way in which we can understand the process of instituting the princely or ruling part of the state. This way is something 'which results immediately from the human mind, even if from God as the remote cause' (Marsilius [1324] 2005:44).

But what does Marsilius mean by this? Marsilius believes that God uses the human mind as an instrument or agency in which to establish a ruling or princely office of the state. Furthermore He (God), grants man the freedom to establish it in whatever way he pleases, and can be identified from what is 'better or worse for the polity'(Marsilius [1324] 2005:44). Marsilius is aware that this takes many methods or forms, and thus sets out to identify, for example, the five ways in which to institute a kingly monarchy. It is the conclusions that Marsilius draws from this that I wish to emphasise at this stage, as they are of major relevance to our discussion.

Of these, the first important point that Marsilius makes is in relation to election:

From all this it is plain - and this will become clear in what follows that the elected kind of a principate is superior to the non-elected...The mode of instituting the other types of tempered principate is also, for the most part, election (or in some instances by lot), without the continued succession of a line. Flawed principates are for the most part established by fraud, or violence, or both (Marsilius [1324] 2005:48).

Marsilius's conception of election needs to be scrutinised closely. He argues that in the perfect community or state, the most superior way of establishing the head of the princely or ruling office, a *principate*, is through choice or election by the people. In this vein, Marsilius argues that the elected principate would rule over willing subjects, and govern them with laws that are just or plainly in the spirit of achieving the common good. Marsilius does however consider the alternative or

the case of a legitimate non-elected ruler. Here, Marsilius is referring to the common medieval phenomenon of a ruler that is succeeded by heirs, and not one that is barbaric or tyrannical. On this, Marsilius states:

If without election by citizens, then this is either because he, or his predecessors from whom he stemmed, first inhabited the region; or because he bought the territory and the jurisdiction, or acquired it in a just war or in any other licit way, e.g. through a gift it made to him in recognition of some service rendered (Marsilius [1324] 2005: 47).

It is evident that Marsilius does not completely rule out the scenario of a non-elected ruler. However two points must be considered. The first is that Marsilius believed that an elected ruler was far superior (the surer standard of principate) than his non-elected counterpart. For example, Marsilius argued that it is only through the process of election, that the best leader can be found, and all other political evils avoided:

...if that kind of principate should for some reason become intolerable to the multitude because of the excessive evil of its regime, the multitude must then have recourse to election. For election can never fail, so long as the human race does not. Furthermore, it is only through this mode of institution that the best prince can be had. For it is appropriate that he should be the best of those who are versed in the polity, since he must regulate the civil actions of all the others (Marsilius [1324] 2005:48).

The second point is that Marsilius places the choice of the possibility of an elected or non-elected ruler for the state firmly in the hands of the human legislator. Thus the human legislator could choose the option of instituting a ruler (*principate*) by non-election, for example such as a hereditary royal monarch. Whatever the case, for Marsilius, as long as the human legislator decides it, it should be considered 'rule over the willing' (Marsilius [1324] 2005:48). Now, having established that the efficient cause of the ruler (*principate*) is none other than the human legislator, and that it is through election (a superior way) by the human legislator that such a ruler (*principate*) may be instituted, Marsilius attempts to consider more closely how exactly a ruler (*principate*) would be able to carry out his main function as a regulator. And this is what he now turns to.

Marsilius on the meaning of law (lex)

According to Marsilius, in all temperate states it is the function of the ruler (*principate*) to 'regulate human civil acts' according to a 'standard that is and should be the form of that which exercises it' (Marsilius [1324] 2005: 51). By this Marsilius refers to a system in which the ruler may regulate efficiently and in accordance with the common good. This standard is something Marsilius identifies as 'law' (*lex*), something which exists in the perfect community or state:

We suppose, then - as a thing almost self-evident by induction - that this standard, which is called 'statute' or 'custom' or by common term of 'law', exists in all perfect communities. Taking this as a given, we shall first show what it is (Marsilius [1324] 2005: 51).

Marsilius now turns to the myriad of meanings and significations typically associated with the term 'law'. These meanings vary according to the interpretations of members who belong to specific disciplines. For example, Marsilius considers the first meaning of law, as a natural science interpretation. Here, law is simply a 'natural inclination of the sense towards some action or passion' (Marsilius [1324] 2005: 52). Similarly, Marsilius considers the philosophical and religious significations of the term 'law'. Whereas of the former it is any trained capacity for a work of art, of the latter it is a set of rules containing admonitions for acts which order glory or punishment in the hereafter. However, it is Marsilius's fourth signification of the term 'law', which he chooses to develop further and which is at the centre of his inquiry:

Fourthly, however, and in a more widespread sense, this term 'law' implies a science or doctrine or universal judgement of those things that are just and advantageous in terms of the city, and their opposites (Marsilius [1324] 2005:53).

Marsilius argues that the implications of the above signification of the term 'law' twofold. First, it could simply be interpreted in itself, as a universal judgment of matters of 'civil justice and benefit', demonstrating what is just or unjust, beneficial or harmful. This is what 'Justinian described as a science or doctrine of

right, *iurisprudentia*' (Coleman, 1999:151). Second, it can be considered as a coercive command: 'by means of penalty or reward meted out in his world' (Marsilius [1324] 2005: 53). Marsilius believes that this is the truest sense in which we can describe the term law. This second implication is indeed of major theoretical importance, and is something I wish to discuss in more detail below.

It is commonly believed that Marsilius's definition of law, and the theory which he develops from it, denotes a clear conceptual break from that of Aristotle and other medieval writers (Ebenstein, 2000:266). The general trend within medieval political thought was that writers assumed law to be intricately connected to reason and the common good.³ Thus, Marsilius's 'emphasis on command as the constitutive element of law', is something quite 'unusual' in the medieval period (Canning, 1999:155). Furthermore, this conception of law as a 'coercive' precept that demands that actions will be rewarded or punished in the present life is in line with Marsilius's project, as it removes from the church any powers of sovereignty or coercion.

Marsilius thus attempts to develop his theory of law:

A law, then, is a 'speech' (or a pronouncement) 'from a certain' (sc. political) 'prudence and understanding', i.e. an 'ordinance concerning the just and the beneficial and their opposites, arrived at through political prudence' and 'having coercive power', i.e. that a command has been given in respect of its observation which an individual is forced to observe, or that it has been enacted by way of such a command (Marsilius [1324] 2005: 530).

Marsilius argues that law is in effect a statement that comes to being as a result of careful discretion and political understanding. Simply, a coercive command is a necessary requirement for the enactment of any law. This idea does not suggest that Marsilius views law as a mere expression of coercive power. In other words, for Marsilius, 'human law' was not simply 'an exercise of coercive power in an arbitrary way' (Canning, 1999:29). Marsilius clearly illustrates this idea, in what is

³ See St Thomas Aquinas for example, who argues that 'law is an ordinance of reason for the common good' (Cambridge:1998)

considered as one of the most important passages of the *Defender of Peace* (see Coleman (1999) Black (1992) Canning (1999)):

On the contrary, sometimes a false cognisance of things that are just and advantageous becomes law, when a command to observe it is given or it is delivered by way of command. We see this in the lands of some barbarians who cause it to be observed, as a just thing, that a murderer be absolved from civil guilt and penalty if he offers some price in goods for this offence, when however this is simply speaking unjust; and in consequence their laws are not unqualifiedly perfect. For allowing that they have the required form, viz. a coercive command that they be observed, they nonetheless lack the required condition, viz. the requisite true ordinance of what is just (Marsilius [1324], 2005: 54)

In the above, Marsilius clearly delineates between justice as that which arises from a proper and correct reasoning of what is beneficial, and law which is simply a coercive command. He thus argues that imperfect laws arise when there is no ‘concord between justice as correct cognition, right reason, and law as coercive command’ (Coleman, 1999:151). He provides a telling example of what he means by this, when he describes the laws of barbarian kingdoms. In such places Marsilius believes that there is a false cognition of what is good and beneficial, leading to the creation of unjust laws which would for example permit payment in return for absolution from crimes such as murder. Hence Marsilius argues that the element of law as a coercive command is not the only necessary condition that is needed for what may constitute the definition of what is law. Many laws which observe the command to coerce are still imperfect in the sense that they lack a fundamental element, which is ordering that which is just.

Marsilius on the necessity of law

In Marsilius’s explication of law so far, he has provided an understanding of what law in its most proper sense may constitute, his key idea being that law is a coercive precept, and a standard of human civil acts that achieves justice and the common good. Now, Marsilius turns to the subject of the necessity of making laws, as exercising laws are something fundamental in the rule of any *principate*

(ruler). Marsilius notes that we have already identified the ‘principal necessity of law’, that being ‘civil justice’ and achieving the common good (Marsilius [1324] 2005: 56). However, Marsilius argues that there is a ‘secondary necessity’ to law and this is ‘security for those in the position of prince’ (Marsilius [1324] 2005: 56). Marsilius elaborates further and in much detail on both these necessary functions of law, arguing that for both these reasons the ruler (*principate*) must rule according to law. I will consider briefly what arguments Marsilius uses to support the necessity of making laws.

The first necessity of law that Marsilius outlines concerns civil judgement. Here, he argues that it is ‘necessary to institute within a polity that without which civil judgements cannot be made’ (Marsilius [1324] 2005: 56). What does Marsilius mean by this? According to Marsilius, if civil judgements concerning citizens of the state are made without the framework of a law, they will not be made correctly. On the other hand, with the framework of a law present in the state, civil judgements have a greater ability to be just and fair in their rulings. Thus Marsilius describes civil judgements guided by law, as free from ‘defect insofar as this is possible for human acts’ (Marsilius [1324] 2005: 56). Furthermore, a ruler is directed by the law to make civil judgments in accordance with the common good. Marsilius argues that such a premise, that is the necessity of instituting law within a polity, does not need extensive demonstration as it is ‘self-evident’ or something that is intrinsically known to all men.

Marsilius believes that since it is perfectly possible for emotions to direct civil judgements thus tainting their ability to accord justice, no civil judgement should be left to the decision-making of an arbitrary person. It is the medium of the law which allows all judgements to be rid of ‘perverted affection...like hate or love or avarice’ (Marsilius [1324] 2005:152). In fact judgement should not even be ‘left to the discretion of the judge’, who may be influenced by external factors. It should instead be ‘defined in law and pronounced in accordance with it’ (Marsilius

[1324] 2005:57).⁴ Further to this, Marsilius makes an important point on the historical significance of legislation. He argues that since acts of legislation need prudence and good sense, which cannot be achieved by the collective experiences of any one person law should be laid down in respect of the ‘understanding it forged from the understanding of many’ over a long period of time (Marsilius [1324] 2005:60). Thus the necessity of law cannot be brought into question if one considers it to be an art perfected through the wise and useful experiences of others over a long period of time.

Now, Marsilius considers the second necessity of law, which is that rulers should also be regulated and limited by the law:

It is more expedient for those who exercise the function of prince to be regulated and limited by law, rather than pass civil judgements at their own discretion; for by following this law they will not do anything wrong or reprehensible, and as a result their principate will be made more secure and long-lasting (Marsilius [1324] 2005: 63)

Marsilius justifies his argument of the necessity of the *principate* (ruler) to be regulated by law in two ways. The first is that Marsilius is cognisant that every ruler (*principate*) is bound to possess some weakness or fallibility which would mar his discretionary powers. Thus, instead of allowing defects in civil judgments to arise on account of these fallibilities, Marsilius argues that it is important that even the ruler be regulated by the law, so as to avoid actions that would invoke turmoil or disorder. Marsilius does acknowledge that one could argue against this idea on the grounds that there might exist the possibility of the perfect ruler. Here Marsilius uses the Aristotelian defence, replying that the perfect man is indeed a rare commodity, and it would thus be safer for civil judgements to be regulated by law (which is after all the product of collective insight and wisdom) rather than the 'discretion of a judge, however virtuous' (Marsilius [1324] 2005: 62-63).

⁴ On this, Marsilius draws from Cicero's *De inventione* which argued that 'no single man and perhaps not even all the men of one era could investigate or remember all the civil acts determined in the law' (see Coleman, 1999:152).

Connected to this, Marsilius presents a second justification for the regulation of the ruler (*principate*) by the law. Marsilius observes that if rulers are regulated both in themselves and towards their subjects, one can be certain that they would suffer less incitement of rebellion, and would consequently maintain a more permanent and secure government. This justification is interesting if one considers Marsilius's overarching theme of achieving peace and tranquillity in the perfect community or state. It is clear in my view that Marsilius endeavours to consider all the possible permutations of maintaining peace in his construction of the state. Further to this, his claims of the necessity of the regulation of the ruler by law facilitate the next major stage of his discussion, which is to accord to the human legislator the authority to will the laws most appropriate for the state.

Marsilius on the efficient cause of law, the human legislator

Throughout this discussion Marsilius has referred to the concept of 'efficient cause', which I have simplified to mean the agent that brings something into existence. Marsilius returns once again to the concept of 'efficient cause' with regards to law:

For I do not intend here to identify the mode of institution that can come about, or has already existed...but only of that mode of establishing laws and principates which results directly from a decision of the human mind (Marsilius [1324] 2005: 65)

Marsilius begins by describing how this efficient cause may be demonstrated. He argues that every citizen is capable of discovering the law, if we consider law in a limited sense, that is, as the 'science of what is just and advantageous' (Marsilius [1324] 2005: 66). Law as understood in this sense is accessible to all citizens and can consequently be discovered and studied. In fact, it is possible for citizens who have the time at their leisure, and are also older, wiser and more experienced, to observe the law fairly adequately.

But Marsilius argues that this meaning of the term law, as simply that which is just and advantageous, is not law in its proper signification. Rather, as expressed to the

reader earlier, law is a coercive precept that is necessary for achieving the common good: ‘unless either a coercive command has been given in respect of its observation’ (Marsilius [1324] 2005: 66). In light of this reasoning one can understand why for Marsilius it very important to conceive of the most appropriate efficient cause with regards to law. This is because at the practical level, this would constitute assigning the role of law-making to a political authority. Moreover, since the fundamental purpose of the law is to establish coercive commands, it is vital that those who make laws do so in respect of achieving the common good, or else laws would provoke oppression and tyranny. Marsilius thus identifies the human legislator as the efficient cause or authority with whom rests the task of making laws:

It is therefore appropriate for us to make clear what individual or individuals have the authority to give such a command and to constrain those who transgress it; and this is to inquire into the legislator or the lawmaker (Marsilius [1324] 2005: 66).

An inquiry into the human legislator

It is apparent thus far in my discussion that Marsilius has placed much emphasis on the importance of the human legislator. First he described it as the authority responsible for instituting the ruler (*principate*). Next, Marsilius described the efficient cause of law (*lex*) in the perfect community or state as the human legislator. In what I have expressed so far, no mention has been made about what this may constitute. On the election of the ruler for example, Marsilius referred to the consent of subjects (Marsilius [1324] 2005: 47). Therefore, what I now wish to define more closely is what Marsilius meant by the human legislator? In other words, what exactly, according to Marsilius, is the human legislator composed of? Is it all the citizens of the state or only a few representatives of the multitude? In chapter twelve of the *Defender of Peace* Marsilius addresses this question:

Let us say, then, in accordance with the truth and the counsel of Aristotle, *Politics III chapter six*, that the ‘legislator’ i.e. the primary and proper efficient cause of the law, is the people or the universal body of the citizens

or else its prevailing part (*valentior pars*) when, by means of an election or will expressed in speech in a general assembly of the citizens, it commands or determines, subject to temporal penalty or punishment, that something should be done or omitted in respect of human civil acts (Marsilius [1324] 2005: 66).

Marsilius argues that the human legislator constitutes the people. This would clearly mean that Marsilius recognised all members of the state or the universal body of citizens as the human legislator. Yet Marsilius qualifies this with what he describes as ‘the prevailing or weightier part’ (*valentior pars*). What does Marsilius mean by the weightier part, and why does he include this qualification?

Many contemporary medieval analysts argue, that Marsilius introduces the qualification of its prevailing/ weightier part, ‘on the grounds that it would be unacceptable to allow a few deformed natures to impede decisions for the common advantage’ (Brett, 2005: xxiii). In other words Marsilius considers the prevailing or weightier part to mean the multitude that comprise the universal body of citizens save from a few that are in conflict with what is unavoidably the common good. In simple terms, then, the prevailing part is the majority of citizens. Thus Marsilius intentionally excludes the small group of people in conflict with the common good, making clear that the prevailing part are the rest of the citizens, both the ‘quantity and the quality of persons in the community upon which the law is passed’ (Marsilius [1324] 2005: 67). Both these elements of quantity and quality, in describing the prevailing part suggest that even in this sense Marsilius considers those who consist of the human legislator as superior. It could thus be argued that the qualification was only included for pragmatic reasons.

Marsilius clarifies this idea further when he speaks of the possibility of the delegation of the legislative function:

This is so whether the said body of citizens or its prevailing part does this directly of itself, or commits the task to another or others who are not and cannot be the legislator and in an unqualified sense but only in a certain respect and at a certain time and in accordance with the authority of the primary legislator (Marsilius [1324] 2005: 67).

Marsilius does not deem it compulsory for the universal body of citizens or its prevailing part to directly make laws. He allows for the option of the citizens assigning and entrusting the responsibility of making laws to some person or persons, be they the ruler or regulator so long as the will of the people is represented. Marsilius asserts that this will not undermine the superiority of the human legislator, as the supreme legislator of the state can and will always be the people. In addition the secondary legislator, be it the ruler or regulator, can only serve a limited term in that position and will do so purely at the will of the primary legislator. Thus there is always flexibility in this arrangement and security for the citizens of the state, as ultimate authority is still with the human legislator, that is the universal body of citizens or its prevailing part. Marsilius considers that the election of rulers is the only valid way in which this process can take place. Furthermore, once the ruler or regulator enacts laws, these laws are not permanent or unalterable:

I say further that it is by the same authority that laws and anything else instituted by the election must receive any addition or subtraction or even total overhaul, any interpretation and any suspension: depending on the demands of time and place and other circumstances that might make one of those measures opportune for the sake of the common advantage in such matters (Marsilius [1324] 2005: 67)

Marsilius grants allowances for changes to the law by the human legislator for the sake of maintaining the common good. Since ultimate political authority is vested in the hands of the human legislator, with them rests the power to undertake even a complete overhaul of laws. Such a modification of enacted laws is justified on the basis that they might be wholly unsuitable for a certain place or context, and are thus simply hindering the ability of achieving the common good. According to Marsilius, it is also the duty of the human legislator to ensure that laws which are enacted are pronounced to the citizens in the public realm, so as to ensure that no citizen or person can claim ignorance for non-observance. All this is to ensure that there is total compliance with the law and that the state is closer to realising its end which is peace and tranquillity.

So far I have clarified who the human legislator is, by providing and explaining Marsilius's description of the universal body of citizens or its prevailing part. I have not however examined in any detail Marsilius's conception of the citizen, thus obscuring, however slightly, his conceptualisation of the human legislator. I will explain what I mean by this below.

Marsilius does indeed engage with the idea of the citizen, offering a clearer and more refined version of who is the human legislator:

I call a 'citizen', together with Aristotle in Politics III chapters 1,3 and 7, one who participates in a civil community, in the principate or councillor or judicial function, according to his rank. This description separates boys, slaves, foreigners and women from citizens, although in different ways: for the sons of citizens are citizens in proximate potential, lacking only age (Marsilius [1324] 2005:67)

Marsilius describes the citizen as a person that is active in the civil community or occupies a position in either in the government, council or judicial offices or part of the state. By this definition Marsilius excludes all children, slaves, foreigners, and women of whatever rank as citizens of the state, as each of these groups possess specific limitations. Marsilius is thus referring to men who participate in the civil community. One cannot hold Marsilius accountable for this type of discriminatory and exclusionary vision of citizenship. To do this in my view would be missing the point of Medieval political thought, which is informed to a large extent by the realities of its historical and intellectual context. Also as Marsilius states above, this definition of citizenship is largely borrowed from Aristotle, who given his own context (i.e. the ancient Greek city-state) accepts a very limited and subordinated role for women, slaves etc. I note also that Marsilius does not include the members of the priestly office in this definition of citizenship. Of course this makes sense if we consider that part of his great intellectual scheme is to demolish the coercive and sovereign claims of the papacy in the sphere of the temporal life.

Marsilius extends this point further arguing that this specification of the human legislator is there simply to ensure that the ‘primary human authority’, that is those who pass and institute human laws, must ‘belong’ to those men ‘from which alone the best laws can result’ (Marsilius [1324] 2005:68). But to whom is Marsilius referring? Would not the best laws emerge from those most learned in the field of legal science and jurisprudence, that is, the specialists of law? Marsilius argues not. He is not referring to the experts of law, but rather to the universal body of citizens or its prevailing part, which ‘represents the whole of that body’ (Marsilius [1324] 2005: 68). Marsilius believes that this first proposition, which is that the universal body of citizens or its prevailing part represents that whole body, is close to self-evident.

Marsilius considers a second proposition. He argues that what is correct in the matter of law, while at the same time of benefit to the state and the common good of the citizens can only come about through the human legislator. This is because the whole body of citizens strives ‘in both understanding and inclination towards a more certain judgement of its truth’ and a ‘more careful attention to its common utility’ (Marsilius [1324] 2005: 153). In other words the whole body of citizens aims in both the intellectual and emotional sense towards achieving the common good:

For the greater number is more able than any one of its parts to notice a defect regarding a proposed law since every whole - or at least, every corporeal whole- is greater in mass and in strength than any part of it by itself. Again from the universal multitude there results a greater attention to a law’s common utility, since no one willingly harms himself (Marsilius [1324] 2005:69).

What then is the essence of Marsilius’s logic as stated above? To begin with, Marsilius employs a first principles approach, which presupposes that the common good is what all men (except a deformed few) want and thus strive for. The argument follows that legislation carried out by the universal body of citizens or its prevailing part augurs the best results. On the other hand legislation by one or a few is not certain to realise the common good. Marsilius contends that in respect to legislation by the multitude, the advantage is that anyone is able to observe

whether laws may favour one or a few. Furthermore, in view of the fact that the multitude are involved in the creation of these laws once laws are enacted, 'they are observed better...for the law would be redundant if it were not obeyed' (Marsilius[1324] 2005: 69). Such an argument is compelling mostly because it identifies the common good as the 'sum of individual interests' (Black, 1992: 65). This notion of the common good as that which can be harnessed by the collective spirit takes for granted that the interests of all men are the same. It does not consider for example the real problem of factionalism and self-interest. Of course such considerations would undermine Marsilius's most fundamental principle of demonstration which I have elaborated earlier in this discussion: 'a principle naturally held and believed and freely conceded by all', which is that all men not deficient or otherwise naturally desire a sufficient life (Marsilius [1324] 2005:18).

Marsilius supports this second proposition with an argument that concerns the issue of freedom. Marsilius argues that his initial declaration of the state as a 'community of free men' would be fundamentally challenged if one or few of the citizens legislates (Marsilius [1324] 2005: 70). But why does Marsilius claim that freedom in the state is obstructed if it were up to individuals and not the universal body of citizens to legislate?

Marsilius provides several layers of reasoning to substantiate his argument. First, laws passed on the authority of a few would promote individual interests and despotism. Second, the remaining citizens of the state would refuse to subscribe to such unjust laws and such contempt would breed unhappiness, protest and eventual non-compliance. Third, in a counter scenario, if it were up to the universal body of citizens to legislate, such unhappiness would be avoided, and all citizens would gladly obey and accept laws that are passed. Fourth, if laws are made in this way, where the multitude are given an audience or the power of consent, citizens would willingly subscribe to laws knowing well that the legislative process established the consent of the multitude, even if this process

were less useful.⁵ This is because it would seem to the citizen that he ‘laid’ the law ‘upon himself’ and would thus see no cause for protest accepting the law with ‘equanimity’ (Marsilius [1324] 2005: 70). According to Marsilius, all this will ensure that freedom in the state is not curtailed.⁶

Marsilius justifies this second proposition from one last angle. Here he argues that the power to impose obedience of laws belongs only to those who have the power to coerce the transgressors of laws (Marsilius [1324] 2005:70). As we have seen elsewhere in this discussion, for Marsilius the power of coercion rests firmly in the hands of the human legislator, or the universal body of citizens or its prevailing part. It follows, then, that they are not only the ones with the authority to legislate, but they also have effective coercive control over a particular territory.

Marsilius’s theory of sovereignty

In order to ascertain Marsilius’s notion of sovereignty one needs not to look for something further than what has been said already. A doctrine of sovereignty is one which argues that there is only one coercive jurisdictional power in the state. In other words sovereignty ‘is the claim to be the ultimate political authority, subject to no higher power as regards the making and enforcing of political decisions within a given territory’ (Collin,1988:196-197 & McClean,1996:464).⁷

Marsilius undeniably produces such a doctrine. By this I mean that state sovereignty, as Marsilius understood it, is exemplified in Marsilius’s conception of the universal body of citizens, which forms the human legislator. Marsilius grants the power of coercive jurisdiction and authority to a single entity within the state that is the human legislator, which is made up of the universal body of citizens or

⁵ An interesting debate has emerged from this point, that even if laws are less useful for the common good they still have coercive force and are therefore binding, as it suggests that Marsilius is a legal positivist. As Canning argues, whether Marsilius was proposing a kind of legal positivism remains an ‘unresolved debate among modern historians’. For more on this issue see (Coleman ,1999:154) and Canning ‘The role of power in the political thought of Marsilius of Padua’ (1999:29-32).

⁶ Marsilius does not offer a theory of freedom. As Brett argues, he merely gives a ‘series of hints about what it might be in the different domains of nature, politics and religion’. This is not because the answer is ‘unimportant’ to him, but that, ‘like the good life of which it is a crucial part, it is deferred’. For more on this, see Brett , ‘Politics, right(s) and human freedom in Marsilius of Padua’ (2006).

⁷ These are standard dictionary definitions of sovereignty as it has been conceptualized in political theory.

its prevailing part. This notion of sovereignty is best embodied in one of the concluding statements of discourse one of the *Defender of Peace*:

From what has been said in this chapter, and in chapters 9, 12, 13 and 15 of this discourse, it can be concluded by clear demonstration that no individual person, of whatever rank or status he may be, nor any collective body has any principate or coercive jurisdiction over anyone in this world unless that authority has been given to him or it directly by the divine or human legislator (Marsilius [1324] 2005: 122).

It has been widely acknowledged by contemporary medieval historians and analysts that this universal body of citizens is certainly a sovereign corporation, clearly expressing the notion of sovereignty (see Black, 1992; Coleman, 1999; Ullmann, 1965). Some have termed Marsilius's notion of sovereignty as 'medieval corporation theory with a vengeance' (Coleman, 1999:137). But what is meant by the corporation and how does this contribute to Marsilius's notion of sovereignty⁸? To allow the reader to get a clearer sense of what I mean I will briefly look at how Marsilius presented the notion of universal body of citizens as a sovereign corporation.

From what we have learnt of Marsilius's political theory thus far we have seen that Marsilius presents certain philosophical axioms, one of which he describes as the truth which is self-evident to all man concerning the common good. This is a standard of judgement which is used by all citizens to resolve whether a 'specific law is worthy of consent or not' (Coleman, 1999:154). What is self-evident to Marsilius concerning the common good is the notion of free individuals in a multitude of free men whose will about the common good necessarily is the same and can therefore be represented by the universal body of citizens or its prevailing part. Differently expressed, Marsilius believed that the 'common good can only be willed by each individual will, but its content is the same for all citizens' (Coleman, 1999:154). Marsilius thus believes that the universal body of citizens or

⁸ Marsilius's corporation theory differs somewhat from that expressed by the jurists/civilian lawyers such as Baldus. See Canning's 'Law, sovereignty and corporation theory' (1988: pp. 461-462) For more on Marsilius's notion of corporation see Wilks 'Corporation and representation in the *Defensor Pacis*' (1972: pp.251-292).

its prevailing part is more able to perceive what ought to be chosen and what ought to be rejected than any of its parts by itself: ‘every whole is greater than its part, which is equally true in size or mass as in active power and action’ (Marsilius [1324] 2005: 75). The whole according to Marsilius consists of a ‘univocal, rational will to the common advantage’, which is individually stated by every member (Coleman, 1999: 155). This is what corporation theory discourse is all about. In a summary, it argues that:

A collected group of people, the multitude, can have their objective view on the common advantage represented by the voice of one man or several, that a representative can accurately mirror the collective will of a community, a will that is the product of rationally logical interferences from experiences. The faculty of will for Marsilius... was always seen as a cognitive function guided by reason. The will is not simply pure sensual desire but a desire informed by what, for humans, it is reasonable to desire (Coleman, 1999:154).

In this regard, some have argued that Marsilius’s notion of sovereignty which belongs to the corporation of citizens is a ‘kind of sovereignty that is unparalleled in any medieval political theory’ (Coleman, 1999:138). This point it supported significantly by Marsilius’s arguments in Discourse II of the *Defender of Peace*. Here, Marsilius’s uses biblical and evangelical texts to justify that all temporal powers of sovereignty exercised by the papacy, and characterised by the common expression plenitude of power (*plenitudo potestatis*) does not belong to the church but rather to the one and only sovereign power of the state the universal body of citizens, represented by the human legislator.⁹ Thus, matters such as excommunication, the dispensation of marriages and electing the office of the prince are not papal privileges.

And what of the principate or ruler?

⁹ For a quick and informative summary of how Marsilius denies papal plenitude of power and accords the powers of sovereignty and coercion to only one entity in the state, the universal body of citizens or human legislator, see Discourse III of the *Defender of Peace*, where Marsilius states the main conclusions to be drawn from his book, pg’s 547-558

But what about the *principate* or ruler of the state, does he enjoy any sovereignty considering that he might on occasion be instructed as the delegated secondary legislator? Furthermore, does Marsilius's construction of the ruling office of the state undermine in any way the sovereignty of the universal body of citizens? To answer this question, and for the purposes of coherence and lucidity, I will now review in a brief manner what is the relation of the *principate* to the universal body of citizens. It has been apparent in my discussion thus far that Marsilius considers two necessities for regulating the 'transitive acts' of human beings in the state: 'a standard for what is equal or just' or law, and an 'equaliser or regulator to bring actions into line with that standard', a principate (Brett, 2005:xxv). Much of my discussion has been focussed on the former necessity and the manner in which Marsilius uses it to demonstrate that the only viable sovereign and legitimate political authority of the state is the universal body of citizens, who when gathered together is the human legislator.

Although during the course of my discussion I have intimated Marsilius's notion of the principate, the reader would not have until now developed a complete sense of the role of the principate in relation to the state. Earlier in this discussion we have seen that Marsilius argues that the princely/ruling office is the first of part of the state that is to be instituted if the polity is to exist, and that the function of the principate who occupies this position is to regulate actions in accordance with the law. Furthermore the universal body of citizens or primary human legislator may opt for the principate ruler to serve as the secondary legislator of the state. Marsilius has also argued that there can be only one principate within any state. Now, does the principate enjoy sovereignty given that he has the power of regulator, of ensuring the well-functioning of the other parts of the state and a role which necessitates coercion? Marsilius answer is simple and is summarised in the final discourse of the *Defender of Peace*:

The elected principate, or any other office, depends solely upon the election of the body that has the authority for it, and upon no other confirmation or approval... That the election of any principate or other office to be established through election, especially one which has coercive

force, depends solely on the express will of the legislator (Marsilius [1324] 2005:549).

Marsilius's answer is that the ruler or prince is not the legislator, but rather the 'executor of a law' made by the legislator, whose function is merely to regulate (Brett, 2005:xxvi). By this token he cannot be the sovereign authority of the state. But what about the fact that Marsilius allows for the prince to be the secondary, designated legislator? Even here, the prince will not be making laws for his benefit and interest, as he can only enact laws that have been willed by the universal body of citizens. In addition, the principate is also regulated by these laws, thus confirming that true sovereignty is vested in only one political authority: the universal body of citizens.

Conclusion

Marsilius of Padua does indeed articulate the notion of state territorial sovereignty in his writing. He argues that sovereignty belongs to only one supreme political authority the *universitas civium* (corporation of citizens). Marsilius achieves this by developing a unique way of understanding the sovereign territorial state, that is, by examining the structure, nature and role of the perfect community or state. He argues that the perfect state is one which achieves peace and tranquillity and attains the common advantage. This perfect state is characterised by a division of its parts, which consists of offices tasked with specific functions. One of these for example, is the executive or ruling office, which elects a principate to govern the state. Marsilius used the argument of the necessity of law as a means of maintaining the good functioning of these offices of the state. His final argument is that the human legislator, which consists of the universal body of citizens or its prevailing part, possesses a supreme sovereignty and can thus act as the only coercive power in the state. Although Marsilius makes less reference to the idea of territory I argue that territory is implicit in his notion of sovereignty. The reason territory does not feature greatly in his writing, is because of his rigid following of ecclesiological arguments

Conclusion:

There has been a common charge of ‘antiquarianism’ regarding the study of medieval political ideas by many intellectual historians who argue that this sort of study is merely ‘aimless medievalism’ and historically and philosophically ‘quite irrelevant if not trivial’ (Maitland cited in Ullmann, 1965:229). Such an argument not only overlooks the significance of medieval political ideas (which in themselves were highly complex and conceptually remarkable) but also unashamedly disregards their value to the broader study of the history of political thought. This thesis reveals how one of the ideas developed in the late Middle Ages: the concept of state territorial sovereignty has immense significance and value in any historical inquiry of the origins of territorial sovereignty. It therefore considerably undermines any scorn of antiquarianism with regards to the relevance of such a study and instead seeks to highlight that even in the fourteenth century, thinkers, philosophers and jurists alike were (given their context) extremely advanced in matters of the political.

By using the history of ideas method, this thesis has substantially demonstrated the conceptual prowess of the writing of late medieval scholars such as Baldus de Ubaldis and Marsilius of Padua on the subject of state territorial sovereignty. Both these thinkers witnessed a significant development in their time, the consolidation of the territorially sovereign state alongside other sovereign entities such as the empire and the papacy. Their theoretical accounts therefore mirror the unique circumstances of their historical context and thus reveal that they had specific historical objectives in mind when writing their works.

By way of summary, I will highlight some of the significant points discussed in this thesis, regarding Baldus and Marsilius’s respective formulations of state territorial sovereignty. Baldus’s political thought for one constituted an acceptance of the

universal claims of sovereignty of the emperor and pope as the basic starting point, and from which he develops his argument for the sovereign territorial state. His use of the juristic terms *de iure* and *de facto* sovereignty were highly innovative. He utilized *de facto* sovereignty to justify the territorial sovereignty of territorial states, such as cities, and *de iure* sovereignty to maintain the sovereignty of the emperor and pope. This is done in a broader conceptual understanding of the hierarchy of sovereignty. Baldus argues that *de facto* sovereignty can be conceptualised as something more than just power without any legitimacy. He expands on the notion of *de facto* sovereignty of the territorial state even further, using the role of consent in law-making and the non-recognition of a superior as arguments for the territorial independence of these states. His position was unlike that of the Neopolitans, another branch of juristic thought evident during this period, which simply denied universal *de iure* sovereignty of the empire and argued instead for a plurality of territorially sovereign states.

The theoretical nature of Marsilius's arguments, on the other hand, was quite different. Being a philosopher and not a jurist, Marsilius's project was 'intellectually freer' as he could argue from 'first principles' rather than Roman law (Canning, 1999:34). His objective was to destroy the papal claim of universal sovereignty and accord it to the only legitimate sovereign power in the state, the human legislator. Marsilius achieved this by developing a unique way of understanding the sovereign territorial state, that is, by examining the structure, nature and role of the perfect community or state. He argued that the perfect state is one that achieves peace and tranquillity and attains the common advantage.

Marsilius's perfect state is characterised by a division of its parts, which consists of offices tasked with specific functions. One of these, for example, is the executive or ruling office, which elects a principate to govern the state. Marsilius used the argument of the necessity of law as a means of maintaining the well functioning of these offices of the state. His final argument was that the human legislator, which

consists of the universal body of citizens or its prevailing part, possesses a supreme sovereignty and can thus act as the only coercive power in the state . Although Marsilius makes less reference to the idea of territory it was argued that territory is implicit in his notion of sovereignty. The reason it featured in a less prominent way as compared to Baldus was because of his rigid following of ecclesiological arguments.

It is important to note that both Baldus and Marsilius's ideas featured strongly in the works of later centuries and subsequent discussions on this subject of territorial sovereignty. Marsilius's political thought for example continued to be prime sources in later discussion of political thought. As Canning (1996:186) points out, the writings of 'Francisco de Vitoria, Jean Bodin, Francisco Suarez and Hugo Grotius, amongst many others illustrates this trend'. Baldus's juristic ideas, too, became 'increasingly consolidated' in sixteenth and seventeenth century political thought, where his writings were not only referenced, but also of significant influence to prominent writers such as Bodin:

Thus in the sixteenth century, quite apart from Italian jurisprudence which continued almost universally to revere the medieval civilians and canonists, the works of French jurists...are full of references to Baldus... In Germany too the reception of Roman law meant that Baldus's works became a pillar of legal education and practice...Into the seventeenth century... reference to Baldus is frequently to be found in political writers. Bodin, for instance, made a very large number of references to Baldus' works, although his use of Baldus has not yet been systematically studied (Canning, 1987:228-229).

Fourteenth century ideas of state territorial sovereignty were either 'quoted, followed, amended or rejected' up until the modern period (Canning, 1996:186). Although there is a tendency to ignore the medieval period in the history of political ideas as a whole, it is evident that in terms of scholarship the Middle Ages made distinctive, long-term contributions to political thought. Hence, the impact of medieval political ideas in shaping our modern political concepts should not be undervalued. As I have

mentioned earlier, the remarkable historical change in late medieval Europe led to the fascinating and often discounted contributions of late medieval thinkers to the subject of territorial sovereignty as a whole. Thus, the origins of state territorial sovereignty may well lie in the medieval period. As Canning (1996:187) argues: 'the Middle Ages were the seed-time of European civilisation: without a knowledge of them, it is not possible fully to understand political thought in later centuries.'

By examining fourteenth century contributions to the concept of state territorial sovereignty, this thesis has shown the historical course many of our modern political ideas have taken. In this regard, Ullmann (1965:229) argues that the study of medieval political ideas thus 'promotes the understanding of how and why modern society has assumed the complexion it has'. It is apparent that through the history of ideas, we are able to reflect quite deeply on the historical nature of many of our modern political ideas such as state territorial sovereignty. The modern theory of the state as a territorially sovereign entity, for example, is firmly embedded both in political philosophy and in political practice today. Perhaps the time has come for us to see what lies beyond territorial sovereignty and conceive of the state differently. Does the medieval existence of an array of sovereign authorities from the transnational and supranational, coexisting with an evolving system of territorially defined units have similarities with the contemporary period (Held, 1999:85)? Can we perhaps use Baldus's medieval notion of a hierarchy of sovereignty in the modern political context of interdependency and globalisation? How does the modern world of politics look if the concept of the sovereign territorial state is transformed and rearticulated into something new? Can we conceptualise a global political world in which territory and sovereignty are not limited to state actors? The answers to this are something to leave for a later, undoubtedly intellectually fascinating and groundbreaking inquiry.

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