Unit Two: Part 6ix
Marsiglio of Padua and Contemporary Political Theory

Background

Personal Bibliography: Marsiglio of Padua (1275-1342) is so-named because he was born in Padua, Italy, then an Italian city-state in northeastern Italy west of Venice. He extensively studied medicine, before turning to the professional study of law. But early on, Marsiglio also became involved in politics because he opposed the intervention of Papal authority into the civil disputes of Italian politics, which at the time were divided into a number of warring city-states. Papal intervention was compounded by the fact that outside powers, particularly France and Spain, sought greater political influence in Italy by securing the support of Papal authority.

Eventually, Marsiglio was forced into political exile in 1326 under the protection of Ludwig of Bavaria where he continued his writing for the rest of his life. Marsiglio of Padua’s chief works are: Defender of the Peace (1324) and On the Transfer of Empire (1326). The latter defended the right of succession of Ludwig of Bavaria to the title of Emperor of the Holy Roman Empire (a title which had been the prerogative of German monarchs since Leo I in (962-973) on the grounds that the German monarchs had recognized the independent secular authority of the state.

History of Papal Doctrine: Beginning with the Papal rule of Gelasius I (492-496 A.D.), Papal doctrine held that while Church authority and state authority addressed different realms of civil rule the positive law of the state ruled by Christian princes would naturally conform the divine law of God as interpreted by the Church. But what became known as the “two-edged sword” of Gelasian teaching came to be challenged by the 12th century as Christian princes of the larger western European states, especially France and Spain, found certain Papal precepts to be in conflict with the modern nation-state.

Pope Innocent III (1198-1216) was the first to react to the civil challenge to Papal authority by proclaiming the papal “fullness of power” (plenitudo potestatis), which implicitly held that civil authority was subject to preaudit and review and potential revocation by the Church as the ultimately responsible to for all moral authority, including that addressed under civil law. This led Pope Boniface VIII (1294-1303) to challenge the right of King Philip IV of France (1285-1314) to tax the French clergy on its property holdings from ecclesiastical estates and tithes. In so doing, Boniface VIII issued a papal bull Unam Sanctum in 1302, which directly argued that Papal authority had the right to supervise over the secular power of the state in the Papal interpretation of divine law as the basis natural of natural law and civil law.

Eventually, the French king Philip IV had his way only by establishing his own headquarters of the Papacy in Avignon, France from 1312 until 1378, which has become historically known as the papal “Babylonian captivity.” And during this period, the papal authority naturally tended to support the foreign policy interests of France in its struggle with other European powers to gain political dominion in Italy.

Political Teachings

Basic Purpose: The immediate purpose of Marsiglio’s political teachings was to end papal intervention into the secular affairs of the Italian city-states, especially his native Padua, which he believed to be a critical center of civil turmoil instigated by competing domestic and foreign sources. To this end, he argued that the increasing claim of the Papacy under Innocent III and Boniface VIII to intervene in the secular authority of the state had no real basis in the assertion that divine law was the source of natural law and civil law established under natural law.
**Divine Law and Natural Law:** Marsiglio argued that *natural law* was grasped and codified by *human reason*. Human reason, in turn, was a singular product of the *state* acting as a corporative body of its various constituent units based on a common denominator of a *universal collective will* that treated justice as a means of *preserving civil peace and political cohesion*. And as such, the interpretation of natural law and civil law were under natural law was strictly a “this-worldly” matter the secular authority of the state. *Divine law*, by way of contrast, was law handed down by *scriptural authority* and based on faith and had no binding authority over the secular authority of the state. The enforcement authority of divine law rested strictly on the belief of and “other worldly” divine judgment.

In drawing such a contrast between divine law and natural law, Marsiglio of Padua was arguing for the basis of the strict independence natural law as “*positive law*” of secular state authority. As opposed to the scholastic tradition of Aquinas which argued that the natural law grasped by human reason was derived from divine law, Marsiglio of Padua was now arguing that they existed in two entirely separate spheres of reality. And from this it followed that the Papacy had no authority to superimpose its will over secular state law in arguing that natural law was derived from divine law.

Marsiglio of Padua thus led a movement toward what is known today as “*legal positivism*.” This, in turn, led to a change of latin name for civil law from *jus naturale* to simply *lex*. And it even led Marsiglio of Padua to endorse the right of the secular authority of the state to *preempt Papal authority* in decisions effecting the secular authority of the state. This included not only a supervening authority over ecclesiastical appointment and excommunications, but the establishment of global *General Council* that included secular authorities to oversee Church doctrine – a move that was to presumably promote world peace.

**Institutions of Civil Government:** In keeping with its primary function of preserving the civil peace and securing the sovereignty of the body politque from foreign influence, Marsiglio of Padua called for a *corporative policy-making body* representing *constituent elements of society* more than popular sovereignty as such. To ensure that the corporative policy-making body represented a community-wide consensus of positive law, Marsiglio of Padua also called for a weighted voting majority of a “*prevailing part*” (*valentior pars*) of the better educated and more informed members of the body politque who can best ascertain the community-wide consensus of positive law. Some identify such an approach to corporative policy-making as presaging a fundamental ideological component of later *Italian fascist doctrine*.

Unlike the quest for moral virtue in “practical wisdom” of Aristotle and Aquinas, the positive law of Marsiglio of Padua is primarily aimed at satisfying the *public interest* as the lowest common denominator of individual self-interest as set forth by modern policy-scientists in the notion of polyarchy. Additionally, the government would include separate *executive and judicial branches* to enforce and interpret the law, but only within the framework of the legislative branch of government as the supreme policy-making organ of government.

**Conclusions**

**The Supreme Sovereignty of Civil Law:** Marsiglio of Padua’s most important contribution to political theory is his *transformative approach to natural law* in advancing a modern-day notion of positive law, holding to the supremacy or sovereignty of secular law in the temporal realm. His purpose was to preclude any other basis to power in order to prevent on-going civil conflict. But eschewing natural law *set aside the most fundamental basis of moral conscience*. As already pointed out, the United Nations Convention on Human Rights is based on the principle of natural law, and with it the condemnation of Abu Ghraib.

Marsiglio of Padua attempted to deal with this problematic situation by offering the alternative of *civil disobedience*. But the very notion of civil disobedience contradicts the principle of sovereignty as supreme civil power.
Church and State: Another consideration of Marsiglio of Padua’s thought that affected later French history in particular was his call for civil authority to supersede and if necessary preaudit ecclesiastical authority. This caused enormous conflict between Church and State in France in the “Civil Constitution of the Clergy” in the Revolution of 1789, and later the Laic Laws of the Third Republic in the 1880s, which required secular state sanction of papal clerical appointments. Likewise, Marsiglio of Padua’s approach to “Conciliarism” in calling for a General Council with high-level secular authority has opened some controversy as to the secular input on papal doctrine since the reign of John XXIII (1958-1963).

Questions for Reflection

1. What did Pope Boniface VIII declare in his Papal Bull Unum Sanctum in 1302.
2. What was Marsiglio of Padua’s purpose in writing his Defender of Peace and what did he argue?
3. What type of representative policy-making body did Marsiglio of Padua call for to achieve what end as a polyarchy?
4. What secular power did Marsiglio of Padua give the state of the Church?