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CAMBRIDGE TEXTS IN THE HISTORY OF POLITICAL THOUGHT

“和平的保卫者”和 “帝国的变迁”

*Defensor minor
and De translatione
Imperii*

Marsiglio of padua

帕多瓦的马西利乌斯

Edited by

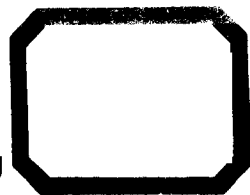
CARY J.

NEDERMAN

中国政法大学出版社

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MARSIGLIO OF PADUA



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“帝国的变迁”

Writings on the Empire

Defensor minor and De translatione Imperii

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MARSIGLIO OF PADUA
Defensor minor and De translatione Imperii

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剑桥政治思想史原著系列

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在政治理论领域，“剑桥政治思想史原著系列”作为主要的学生教科丛书，如今已牢固确立了其地位。本丛书旨在使学生能够获得从古希腊到 20 世纪初期西方政治思想史方面所有最为重要的原著。它囊括了所有著名的经典原著，但与此同时，它又扩展了传统的评价尺度，以便能够纳入范围广泛、不那么出名的作品。而在此之前，这些作品中有许多从未有过现代英文版本可资利用。只要可能，所选原著都会以完整而不删节的形式出版，其中的译作则是专门为本丛书的目的而安排。每一本书都有一个评论性的导言，加上历史年表、生平梗概、进一步阅读指南，以及必要的词汇表和原文注解。本丛书的最终目的是，为西方政治思想的整个发展脉络提供一个清晰的轮廓。

本丛书已出版著作的书目，请查阅书末。

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My interest in the later career of Marsiglio of Padua can be traced to an undergraduate seminar given by Professor Julian Franklin at Columbia University in 1977. Professor Franklin and his colleagues in the Political Science, Philosophy and History Departments at Columbia promoted a standard of scholarship which I have always sought to uphold. More recently, my research on Marsiglio has benefited from the friendly yet critical comments of Professors Neal Wood and Conal Condren and Dr Janet Coleman. My friends Professors Kate Langdon Forhan and Carole Levin lent moral support at critical moments. My partner, Arlen Feldwick, read the entire text, making many valuable suggestions for its improvement. She also created the indices and critical apparatus. The University of Canterbury Minor Research Grant Programme defrayed some of the expenses incurred in preparing the manuscript.

During five years of association with the University of Canterbury, I was fortunate to teach a large number of remarkably gifted and stimulating students, some of whom are now pursuing their own academic careers. I can only mention a few names: Catherine Campbell, Michèle Hollis, Erik Koed, Kirsten Mackay, Martin Morris, Michael Shaw, and Tim Sinclair. These students and their contemporaries often taught me far more than I was able to impart to them. My dedication of this book to them is a small way of acknowledging their special contributions.

Editor's introduction

The reputation of Marsiglio of Padua (sometimes known by the Latinized version of his name, Marsilius) rests almost entirely on his authorship of the *Defensor pacis* ('The Defender of the Peace'). Completed in 1324, the *Defensor pacis* has been an object of curiosity and controversy since its own century, both because it advocates a startlingly secularist concept of the origins and nature of the political community and because of its unwavering opposition to the powers and prerogatives of the church and the papacy as forces in temporal life. The fame of the *Defensor pacis* spread as its doctrines were borrowed by some later medieval authors, even as Marsiglio's teachings were also reviled in strident attacks by orthodox churchmen. When judged according to its innovations as well as its influence, the *Defensor pacis* must be counted in the first rank of contributions to the development of political theory during the Latin Middle Ages.

The *Defensor pacis* has consequently overshadowed Marsiglio's other writings. In addition to several works on metaphysical topics attributed to him, Marsiglio wrote two further political tracts: a recapitulation and synopsis of the main points of the *Defensor pacis*, entitled the *Defensor [pacis] minor*, and an historical survey of the origins and development of the Roman Empire, called *De translatione Imperii* ('On the Transfer of the Empire'). The significance of these political writings is three-fold. First, they extend the doctrines enunciated in the *Defensor pacis* and clarify some of its ambiguities. Second, they permit us to judge the extent to which he refined or altered his theoretical stance in the light of subsequent events and experiences. Third, they afford insight into the political and intellectual climate at the court of German King Ludwig IV

of Bavaria, who had lent his protection to some of the most prominent heretics and persecuted figures of early fourteenth-century Europe.

Early life

Born between about 1275 and 1280, Marsiglio was a member of the prominent Mainardini family of Padua. Among Marsiglio's immediate relatives were lawyers, judges and notaries; his father occupied the position of notary of the University of Padua. Because the professional guilds connected with the practice of law exercised great influence over the government of the commune of Padua, Marsiglio was directly exposed to the operation of urban political affairs from a young age. His early life and education is in the main obscure. He was trained as a physician (quite probably at Padua, one of Europe's leading medical schools). He was a friend of Paduan civic leader and noted prehumanist author Albertino Mussato, who, in a famous verse letter addressed to 'Master Marsilius, Paduan physician, censuring him for his fickleness', claims to have encouraged Marsiglio to undertake the study of medicine in preference to law. He was also associated with the powerful della Scalla family of Verona and with Matteo Visconti of Milan, in whose political enterprises he was to be engaged throughout his life.

The first date that may securely be assigned to Marsiglio is 12 March 1313, when a charter of the University of Paris identifies him as Rector of that institution. He would have occupied this position for three months in early 1313. Information about Marsiglio's activities improves thereafter. In 1315, he witnesses a profession of faith by a fellow scholar; in 1316, and again in 1318, he is promised ecclesiastical preferment by Pope John XXII; in 1319, he is mentioned (also in a letter of John XXII) as a member of a diplomatic mission on behalf of della Scalla and Visconti interests. Marsiglio's friend Mussato chides him about his failure to settle on an academic career: 'fleeing from the path of sacred study, you incline towards the disgraceful acts of men'. Indeed, the chief token of Marsiglio's 'fickleness' for Mussato was his attraction to political affairs.

When or where Marsiglio began to compose the *Defensor pacis* is uncertain. At roughly 500 pages in modern critical editions, and with frequent cross references, it seems to have been carefully constructed over a lengthy period of time by an author with access to a considerable library. Moreover, the text of the *Defensor pacis* speaks so often of King

Philip IV (the Fair) of France, and of that ruler's conflicts with Popes Boniface VIII and Clement V, as to suggest the recent memory of these figures. Philip died in 1314. That the *Defensor pacis* may have been started soon after 1315 is suggested by a reference in it to the French Baronial Leagues of 1314–15 as 'modern'. In any case, Marsiglio completed the *Defensor pacis* in Paris on the Feast Day of St John the Baptist (24 June) 1324.

The *Defensor pacis* is composed of three parts or discourses. Discourse 1 discusses the origins and nature of temporal political authority, concentrating on popular consent as the touchstone of good government without advocating any particular set of constitutional arrangements. The second discourse, nearly four times the length of the first, critically surveys and refutes a variety of claims made on behalf of the earthly power of priests and, especially, the pope, and proposes that the church should be governed by a general council of its members. A third brief discourse summarizes those conclusions derived from the preceding discussions which Marsiglio regards as especially useful or worthy of emphasis. The thematic division between Discourses 1 and II, implying a distinction between the treatment of temporal government and of ecclesiastical affairs, is unusual for its time. Most of Marsiglio's contemporaries integrated their secular political theory into writings which were primarily concerned with the relation between spiritual and earthly realms.

The *Defensor pacis* initially circulated without any attribution, although clues to its authorship (such as the self-identification of its author as 'a son of Antenor' (the legendary founder of Padua) and a lengthy encomium of Matteo Visconti) abound in the text. Only in 1326, under circumstances which continue to be mysterious, was Marsiglio publicly connected with the *Defensor pacis*. He fled Paris immediately, along with his colleague John of Jandun (who for centuries was erroneously thought to be co-author of the *Defensor pacis*), finding refuge in Nuremberg at the court of the German king, Ludwig, who was in the midst of a longstanding dispute with the papacy over his rights to exercise royal and imperial powers within Germany and Northern Italy.

De translatione Imperii: origins and purpose

One of the papacy's polemical weapons against independently-minded emperors such as Ludwig was a document known as the 'Donation of Constantine'. The 'Donation' purports to be a fourth-century grant of

lordship over all the lands within the Empire to the bishop of Rome by the first Christian Emperor, Constantine I. (The Roman bishop then relinquished the day-to-day supervision of the imperial administration back to the emperor.) This document, in turn, became the basis for medieval explanations of how the seat of the Empire was transferred first to the Franks and later to the Germans: it fell to the authority of the papacy, as warranted by the 'Donation', to assign imperial rights to one particular dynasty or people. During the Renaissance, the 'Donation of Constantine' was revealed to be an early medieval forgery, and even in Marsiglio's day there were doubts about its authenticity. Nevertheless, it proved to be powerful ammunition for late medieval popes and the writers who served their cause.

In the *Defensor pacis*, Marsiglio had attempted to refute the conclusions which papal proponents derived from the 'Donation'. In particular, he argued that since the exercise of rulership in any temporal society can stem only from the community itself, or its greater part, no pope or other priest can rightfully invoke his own authority to transfer political power from one person to another or the seat of the Empire from one place to another. Such a position depended directly upon his teachings about the nature of secular politics in Discourse 1. Two conclusions were possible on the basis of this argument: first, that the papacy had on its own initiative directed the transfer of the Empire amongst individuals or nations, and hence that all such transfers were illegitimate; or second, that the role of the papacy in successive transfers of the Empire was not decisive, but rather that these transfers in fact occurred in accordance with the principles outlined in the *Defensor pacis* and so were *de iure* as well as *de facto*. Marsiglio says in Discourse 11 that, while he will assume the latter conclusion to be valid, the legitimacy of the successive imperial transfers needs to be demonstrated, a task which he proposes to undertake in another work, by which he clearly means the text known as *De translatione Imperii*.

De translatione Imperii cannot be dated with great precision. Because it refers to and draws explicitly from a work on the same topic by Landolfo Colonna, which was completed in 1324, it was certainly begun only after the *Defensor pacis* was finished. But whether Marsiglio turned to this project at once, or postponed it, cannot be ascertained. The most likely conjecture is that he wrote the treatise while still in Paris, or at least prior to the death of Pope John XXII in 1334, since John in particular had encouraged the view that the papacy enjoyed an historical

authority to transfer the imperial seat, and hence to appoint and depose Emperors.

The purpose of *De translatione Imperii* is two-fold. First, it seeks to establish that the current incumbent of the office of the Roman Emperor holds his position as the result of a series of rightful transfers of power and in accordance with the correct procedure for his selection. Second, it aims to show that no matter how central a role the papacy may have played in facilitating the transfer of the imperial seat to the Franks and later to the Germans, its function was purely honorific and incidental. Thus, even if custom has permitted popes to crown new emperors, the source of imperial authority is not the papacy but an earthly historical process outside of papal control. The challenge for Marsiglio becomes the collection of historical evidence to support his position.

Marsiglio meets the challenge by adapting Landolfo's *Tractatus de translatione Imperii* ('Treatise on the Transfer of the Empire') to suit purposes for which it was not intended. Landolfo had collated the available chronicles and historical literature on the subject in order to vindicate the papal interpretation of its rights over the Empire. By judicious editing and critical reexamination of the sources, Marsiglio's purported summary of Landolfo's work reaches a radically different conclusion. Marsiglio is not engaged in the enterprise of historical writing in a recognizably modern sense; his goals are wholly polemical. Yet his *De translatione Imperii* represents an ingenious attempt to confront the historical claims of papal supporters directly and to dismantle them by means of a sort of immanent critique. History constitutes for Marsiglio still another battlefield – along with the realms of reason and revelation – upon which the pretensions of papal supremacy in the temporal sphere need to be repulsed.

Later career

Marsiglio's public identification as author of the *Defensor pacis*, and subsequent flight from Paris, occasioned a new phase in his career. Cut off from a formal academic environment, he devoted himself to the active promotion of the interests of his protector, Ludwig. The German king had captured his crown in 1322 after a prolonged struggle against another claimant, but Pope John XXII refused to acknowledge his royal and imperial rights and prerogatives. Ludwig's desire for allies in what would prove to be another two decades of (ultimately fruitless) conflict with the

papacy explains his readiness to act as patron to Marsiglio and his friend John of Jandun, as well as to a host of other influential fourteenth-century figures, among them the philosopher William of Ockham, the lawyer Bonagratia of Bergamo, the theologian Ubertino de Casale, and Michael of Cesena, the head of the Franciscan order and leader of its so-called 'Spiritual' wing.

That Marsiglio's work was immediately associated with Ludwig's cause by the Roman curia is suggested by the contents of the October 1327 bull *Licit iuxta*, in which John XXII condemns the author of the *Defensor pacis* on the basis of reports of some of its leading ideas. The specific propositions which *Licit iuxta* identifies as heretical indicate much about the motives behind John's condemnation. Five claims are singled out: (1) that Christ, in surrendering tribute to Roman authorities, did so because he was subject to the coercive power of the temporal ruler; (2) that the apostle Peter enjoyed no special authority over the other apostles or the church as a whole; (3) that the emperor can appoint, remove and punish the pope; (4) that all priests, regardless of title or rank, are equal in spiritual authority, so that distinctions within the clergy are entirely a matter of imperial concession; and (5) that the church can punish no person coercively without the grant of the emperor. These assertions all relate directly to the terms of the conflict between Ludwig and John XXII. Marsiglio's book, together with his presence at Ludwig's court, provided further justification for the pope's proclamations that the German king was a heretic.

The expressly political nature of John XXII's motives for the condemnation of the *Defensor pacis* are also suggested by Marsiglio's public role at the time. In early 1327, Ludwig had launched an expedition into the Italian peninsula designed to establish his influence over the *Regnum Italicum*, that is, the provinces of Northern Italy which were traditionally subject to the German Empire. He undertook this journey on the advice of his Italian supporters, including the Visconti and della Scalla families, who counselled that the pope's absence from Rome (the papacy had resided at Avignon under French protection since 1305) enhanced Ludwig's chances of promoting his cause among the cities of Italy. He visited numerous locations in Lombardy during the spring and summer of 1327, where he was uniformly welcomed, and meanwhile continued to engage in diplomatic manoeuvres with the papacy.

The autumn saw Ludwig move southward into central Italy, heading toward Rome, where he arrived on 7 January 1328. Following a meeting

of the commune of the city, he was formally invited to enter Rome and on 17 January was crowned Emperor in St Peter's by Sciarra Colonna in the name of the Roman people. Was this part of Ludwig's plan all along, or was it instead the result of his frustration with John XXII's intransigence? The evidence is ambiguous. Even after these events, Ludwig maintained diplomatic efforts to resolve his differences with the papacy, although they were consistently rebuffed. Eventually, however, he deposed his papal adversary and appointed an anti-pope, who took the name Nicholas V.

Scholars have detected the hand of Marsiglio in the course of events during 1327 and 1328. Marsiglio entered Italy with Ludwig's entourage, although he was not constantly at the side of the German king. For instance, Marsiglio was present in Milan during November 1327, when Ludwig was in the vicinity of Lucca. Ludwig appointed Marsiglio 'spiritual vicar' of Rome, in which capacity he seems to have drafted a number of documents associated with his patron's residence in that city. Certainly, many of the formal and rhetorical features of Ludwig's Roman adventure bear a Marsiglian stamp. But the true extent of Marsiglio's role in designing the scenario remains unresolved.

Ludwig's triumph was short-lived. During the spring of 1328, the papacy augmented its efforts to remove the German presence from Rome, Italian opponents of the king began to marshal their forces, and the Roman populace grew disenchanted. Ludwig withdrew from the city on 4 August 1328, and retraced his steps through Italy until he reached the Alpine city of Trent in the following December. There he once again sought the counsel of his Italian supporters, reaffirmed the deposition of John XXII, and retired to Germany. Marsiglio was positively identified by a contemporary source as one of the members of Ludwig's retreating procession.

After his return to Germany Marsiglio's activities become obscure. His name is occasionally mentioned in correspondence between Ludwig and the papacy, but there is no evidence of any literary production during the next decade. Ludwig's cause was instead pressed in writing by William of Ockham, Michael of Cesena and other exiled churchmen and intellectuals at the imperial court. It is generally assumed that Marsiglio spent the 1330s practising medicine; it has been surmised that he fell out of favour with Ludwig and was perhaps banished from the circle of royal associates and advisors. Whatever his situation in the intervening years, Marsiglio did return to polemical pursuits briefly at the end of his life.

(Because of a passing reference in a document of Pope Clement VI, it is known that Marsiglio was dead by April 1343, and most probably died in late 1342.) The outcome of this final spurt of activity was the *Defensor minor*.

Defensor minor: circumstances of composition

Following the failure of his Italian expedition, King Ludwig eschewed further direct action and concentrated instead upon a diplomatic solution to his conflict with the papacy. He sent envoys on a regular basis to negotiate with John XXII and, after John's death, with his successor Benedict XII. Ludwig's instructions to his ambassadors throughout this period suggest an essential pragmatism and flexibility: he was prepared to recognize the papal right to approve the incumbent of the papal office and to submit to penance for offending the papacy by his conduct during the Italian expedition, but he would not concede any prerogatives (especially in regard to Italy) that might harm his material interests. His concerns centred upon tangible benefits and costs rather than symbolism.

Ludwig's policies augured poorly for Marsiglio, whose opposition to the papacy rested on intractable points of principle. More popular at Ludwig's court were William of Ockham and others who advocated a more moderate position towards the pope. In written instructions given to his emissaries to Avignon in 1331, and again in 1336, Ludwig volunteered to withdraw protection from Marsiglio should the king's servant not follow his master in the terms of some future reconciliation with the pope. Marsiglio's intransigence made him a liability in the context of delicate diplomacy.

For a time, Ludwig's diplomatic approach promised to bear fruit. Benedict XII, although he laid down strict prerequisites for the legitimation of the Bavarian claim to the crown, appeared more pliant than his predecessor, and by early 1337, it seemed that the gulf between the parties would be bridged. But a French desire to thwart any agreement, combined with lingering distrust of Ludwig's readiness to honour his promises, produced a breakdown in discussions. Never again, despite the concerted efforts of the royal ambassadors, would a reconciliation between king and papacy be so close.

These events may have lent weight to Marsiglio's assertion that any compromise with the papacy was not only untenable but futile, and hence encouraged him to take up the pen once again. But a more immediate

stimulus was a request from his patron for an opinion regarding the propriety of the divorce of Margaret Maultasch, Countess of Tyrol and Carinthia, and her proposed wedding to Ludwig's son, Ludwig of Brandenburg. Margaret had been married in 1330, when twelve years of age, to the ten-year-old Prince John Henry of Bohemia, a union which had allegedly never been consummated and of which she sought a dissolution in 1340. Ludwig's plan was to wed Margaret to his own offspring, thereby bringing Tyrol under his direct control. This second marriage, too, was problematic, for Margaret's grandmother and Ludwig's grandfather had been siblings, thus raising questions about the consanguinity of the prospective partners. Ordinarily, the procedure for effecting such a marriage would involve seeking the permission of the pope for the annulment of Margaret's first marriage and his dispensation for her to wed a blood relation. But Ludwig's standing with the papacy, and the interdict which had been placed on him and his associates, precluded this route.

Ludwig thus posed the question: must the pope (or any clergyman) approve the dissolution of a marriage and/or the betrothal of persons related by blood? Both Marsiglio and William of Ockham seem to have been consulted about this matter; William produced a work entitled *Consultatio de causa matrimoniali* ('Consultation regarding the Marriage Case'), which has been dated to 1341. Marsiglio contributed three separate tracts: a brief exemplar for Ludwig's proclamation of Margaret's divorce (*Forma divorcii matrimonialis* or 'Form of the Dissolution of Marriage'); a much longer discussion of the essentially secular nature of the marital bond (*De matrimonio*); and a model for the imperial declaration of the legitimacy of marriage between individuals related by blood (*Forma dispensationis super affinitatem consanguinitatis*). The body of *De matrimonio* is substantially the same as chapters 13–15 of the *Defensor minor*, while chapter 16 is an adaptation of *Forma dispensationis*. These would have been completed prior to 10 February 1342, when Ludwig's plans for Margaret were realized in the celebration of her marriage to the younger Ludwig; they might even have been finished by November 1341, when John Henry was expelled from the Countess' household. That Marsiglio was asked for advice in this matter at all is perhaps the clearest indication that, whatever his status during the 1330s, he commanded the respect of the German court in 1340.

A third factor shaping Marsiglio's later literary production was no doubt the numerous attacks and critiques which the *Defensor pacis* had

spawned. From the late 1320s onwards, papalists repeatedly condemned the heretical features of his thought, concentrating on the refutation of his denial of a papal plenitude of power. Moreover, later authors had attempted to refine and restate the grounds for papal claims to authority in temporal affairs, and thus to undermine indirectly Marsiglio's arguments. Finally, his work had also been challenged by fellow supporters of the imperial cause, especially William of Ockham, who openly disputed Marsiglian doctrines in writings which probably date from the late 1330s and early 1340s. That Marsiglio was aware of the extent and range of the polemics directed against the *Defensor pacis* is evident from the *Defensor minor*, where he recurrently responds to 'certain people' who have adopted positions at variance with his own. The *Defensor minor* constitutes a sort of 'reply to critics' and reaffirmation of the principles contained in the *Defensor pacis*.

Except for his opinions about the divorce and remarriage of Margaret, one cannot date the text of the *Defensor minor* with any great precision. Since the sections on the Maultasch affair must have been composed between 1340 and the very beginning of 1342, the essential question about the rest of the *Defensor minor* is: did Marsiglio write it before he was consulted about the proposed divorce and marriage (in which case, chapters 13–16 were appended to an already completed work), or afterwards? Scholarship is divided over the answer. Some have argued that the first twelve chapters were composed in 1342, as a sort of explanation of and framework for the Maultasch opinions. But the weight of evidence points to 1339–40 as the most likely years for the composition of chapters 1–12, although parts of this section might have been drafted even earlier. The discussions of divorce and consanguinity seem to be independent of the main body of the *Defensor minor*. Perhaps after Margaret's marriage Marsiglio conceived the idea of weaving all the materials together. This would account plausibly for the level of repetition between chapters 1–12 and 13–16 and for the generally poor integration of the final four chapters into the overall argument of the treatise. The *Defensor minor* is thus most reliably dated to the period between 1339 and 1342.

Defensor minor: structure and purpose

The *Defensor minor* is, structurally speaking, a more conventionally medieval work than the *Defensor pacis*, in the sense that it does not