

# THE DEFENDER OF PEACE



## DISCOURSE ONE

### CHAPTER I: ON THE GENERAL AIM OF THE DISCUSSION, THE CAUSE OF THAT AIM, AND THE DIVISION OF THE BOOK

*Tranquillity, wherein peoples prosper and the welfare of nations is preserved, must certainly be desirable to every state. For it is the noble mother of the good arts. Permitting the steady increase of the race of mortals, it extends their powers and enhances their customs. And he who is perceived not to have sought for it is recognized to be ignorant of such important concerns.<sup>1</sup>*

THE benefits and fruits of the tranquillity or peace of civil regimes were set forth by Cassiodorus in this passage of his first epistle. Exhibiting through these great goods the greatest good of man, sufficiency of life, which no one can attain without peace and tranquillity, Cassiodorus aimed thereby to arouse in men the desire to have peace with one another and hence tranquillity. In this aim he was in accord with what the blessed Job said in his twenty-second chapter: "Be at peace, and thereby thou shalt have the best fruits."<sup>2</sup> Indeed, it was for this reason that Christ, son of God, decreed that peace would be the sign and messenger of his rebirth, when he wanted the heavenly choir to sing: "Glory to God in the highest: and on earth peace to men of good will."<sup>3</sup> For this same reason, too, he often wished peace to his disciples. Whence John: "Jesus came and stood amid his disciples and said, 'Peace be to you.'<sup>4</sup> Counseling them concerning the maintenance of peace with one another, he said, in Mark: "Have peace among you."<sup>5</sup> And he taught them not only to have peace among themselves, but also to wish it to others, whence in Matthew:

<sup>1</sup> Cassiodorus *Variae* 1. 1 (MGH, *Auctores antiqui*, XII, 10).

<sup>2</sup> Job 22:21.

<sup>3</sup> Luke 2:14.

<sup>4</sup> John 20:19.

<sup>5</sup> Mark 9:50.

"When you come into the house, salute it, saying: 'Peace be to this house.'" <sup>6</sup> Peace, again, was the heritage which he bequeathed to his disciples at the time of his passion and death, when he said, in the fourteenth chapter of John: "Peace I leave with you: my peace I give unto you."<sup>7</sup> And like Christ, his true heirs and imitators, the apostles, wished peace to the men to whom they sent epistles containing evangelical lessons and admonitions, for they knew that the fruits of peace would be the greatest goods, as was shown from Job and more fully exhibited through Cassiodorus.

2. Since, however, "contraries are [essentially] productive of contraries,"<sup>8</sup> from discord, the opposite of tranquillity, the worst fruits and troubles will befall any civil regime or state. This can readily be seen, and is obvious to almost all men, from the example of the Italian state. For while the inhabitants of Italy lived peacefully together, they experienced those sweet fruits of peace which have been mentioned above, and from and in those fruits they made such great progress that they brought the whole habitable world under their sway. But when discord and strife arose among them, their state was sorely beset by all kinds of hardships and troubles and underwent the dominion of hateful foreign nations. And in the same way Italy is once again battered on all sides because of strife and is almost destroyed, so that it can easily be invaded by anyone who wants to seize it and who has any power at all. Nor is such an outcome astonishing, for, as Sallust attests, writing about Catiline: "By concord small things increase, by discord great things perish."<sup>9</sup> Misled through discord into the bypath of error, the Italian natives are deprived of the sufficient life, undergoing the gravest hardships instead of the quiet they seek, and the harsh yoke of tyrants instead of liberty; and finally, they have become so much unhappier than citizens of other states that their ancestral name, which used to give glory and protection to all who appealed to it, is now, to their ignominy, cast into their teeth by the other nations.

3. Into this dire predicament, then, the miserable men are dragged because of their discord and strife, which, like the illness of an animal, is recognized to be the diseased disposition of the civil regime. Although strife has many original causes, almost all those which can emerge in the usual ways were described by the foremost of the philosophers in his *Civil Science*.<sup>10</sup> Besides these, however, there is one singular and very obscure cause by which the Roman empire has long been troubled and is still

<sup>6</sup> Matthew 10:12.

<sup>8</sup> Aristotle *Politics* v. 8. 1307b 29.

<sup>10</sup> See Aristotle *Politics* v, *passim*.

<sup>7</sup> John 14:27.

<sup>9</sup> Sallust *Jugurtha* x. vi.

troubled. This cause is very contagious and prone to creep up on all other cities and states; in its greediness it has already tried to invade most of them. Neither Aristotle nor any other philosopher of his time or before could have discerned the origin and species of this cause. For it was and is a certain perverted opinion (to be exposed by us below) which came to be adopted as an aftermath of the miraculous effect produced by the supreme cause long after Aristotle's time; an effect beyond the power of the lower nature and the usual action of causes in things. This sophistic opinion, wearing the guise of the honorable and beneficial, is utterly pernicious to the human race and, if unchecked, will eventually bring unbearable harm to every city and country.

4. The fruits of peace or tranquillity, then, are the greatest goods, as we have said, while those of its opposite, strife, are unbearable evils. Hence we ought to wish for peace, to seek it if we do not already have it, to conserve it once it is attained, and to repel with all our strength the strife which is opposed to it. To this end individual brethren, and in even greater degree groups and communities, are obliged to help one another, both from the feeling of heavenly love and from the bond or law of human society. This admonition Plato also gives us, as Tully attests in the first book of his treatise *On Duties*, when he said: "We were not born for ourselves alone; to part of us our native land lays claim, and to part, our friends." To this sentence Tully adds: "And so, as the Stoics were wont to say, the things that grow in the earth are all created for the use of men; but men are born for the sake of men. In this we ought to follow the lead of nature, and to bring forth common utilities for all."<sup>11</sup> But it would be no small common utility, indeed it is rather a necessity, to unmask the sophism of this singular cause of wars which threatens no small harm to all states and communities. Hence, whoever is willing and able to discern the common utility is obliged to give this matter his vigilant care and diligent efforts. For while this sophism remains concealed, this pestilence can in no way be avoided, nor its pernicious effect be completely uprooted from states or cities.

5. This task should not be neglected by anyone because of fear or laziness or any other blemish. For, as it is written in the second epistle to Timothy, Chapter 1: "God has not given us the spirit of fear, but of power and of love":<sup>12</sup> the power and love, I say, of spreading the truth; whence the Apostle continues: "Be not thou therefore ashamed of the

<sup>11</sup> Cicero *De officiis* i. vii. 22. The reference to Plato is Epistle ix. 358A (generally regarded as spurious); see also *Laws* xi. 923A.

<sup>12</sup> II Timothy 1:7-8.

testimony of our Lord." This was the testimony of the truth, for the bearing of which Christ said he had come into the world when he stated, in the eighteenth chapter of John: "For this was I born and for this came I into the world, that I should give testimony to the truth":<sup>13</sup> that truth, namely, which leads the human race to eternal salvation. Following the example of Christ, therefore, we must strive to teach the truth whereby the aforesaid pestilence of civil regimes may be warded off from the human race, especially the worshipers of Christ—the truth which leads to the salvation of civil life, and which also is of no little help for eternal salvation. Such striving is all the more obligatory for that person in whom the giver of graces has inspired a greater understanding of these things; and he who has the knowledge and the ability for this, but yet, like an ingrate, neglects it, commits a grave sin, as James attested in the fourth chapter of his canonic epistle, when he said: "To him who knoweth to do good and doeth it not, to him it is sin."<sup>14</sup> For this evil, the common enemy of the human race, will not be completely cut down, nor will the pernicious fruits which it has thus far produced be arrested, unless the iniquity of its cause or root is first revealed and denounced. For by no other path can the coercive power of rulers safely enter upon the final rout of the shameful patrons and stubborn defenders of this evil.

6. And so I, a son of Antenor,<sup>15</sup> heeding and obeying the aforesaid admonitions of Christ, of the saints, and of the philosophers, moved also by the spirit of an understanding of these things (if any grace has been given me), and of confidence sent to me from above (for as James attests in the first chapter of his epistle: "Every best gift and every perfect gift is from above, coming down from the Father of lights");<sup>16</sup> acting from reverence for the giver, from love of spreading the truth, from fervent affection for country and brethren, from pity for the oppressed, from a desire to save them, to recall the oppressors from the bypath of error, and to arouse the resistance of those who suffer such things when they can and should combat them; and beholding in you especially, most exalted Ludwig, emperor<sup>17</sup> of the Romans, God's servant, who shall give to this task that external fulfillment of it which you desire, and who by some special ancient birthright, as well as by your singularly heroic and outstanding virtue, have a firmly ingrained love of wiping out heresies, upholding and preserving the catholic truth and every other worthy discipline, uprooting vice, encouraging virtuous pursuits, extinguishing strife, and spreading and

<sup>13</sup> John 18:37.

<sup>14</sup> James 4:17.

<sup>15</sup> Antenor was the legendary founder of Padua. Cf. Virgil *Aeneid* 1. 242-49.

<sup>16</sup> James 1:17.

<sup>17</sup> This is the only place in the *Defender* where Marsilius refers to Ludwig as emperor.

nourishing peace or tranquillity<sup>18</sup> everywhere—I have written down the sentences which follow, after a period of diligent and intense study, thinking that these may be of some help to your vigilant majesty, who bestows careful attention upon the above-mentioned problems and others which may occur, as well as upon all matters affecting the public welfare.

7. It is my purpose, therefore, with God's help, to expose only this singular cause of strife. For to reiterate the number and nature of those causes which were set forth by Aristotle would be superfluous; but this cause which Aristotle could not have known, and which no one after him who could know it has undertaken to investigate, we wish to unmask so that it may henceforth be readily excluded from all states or cities, and virtuous rulers and subjects live more securely in tranquillity. This is the desirable outcome which I propose at the beginning of this work; an outcome necessary for those who would enjoy civil happiness, which seems the best of the objects of desire possible to man in this world, and the ultimate aim of human acts.<sup>19</sup>

8. I shall divide my proposed work into three discourses. In the first I shall demonstrate my views by sure methods discovered by the human intellect, based upon propositions self-evident to every mind not corrupted by nature, custom, or perverted emotion. In the second discourse, the things which I shall believe myself to have demonstrated I shall confirm by established testimonies of the eternal truth, and by the authorities of its saintly interpreters and of other approved teachers of the Christian faith, so that this book may stand by itself, needing no external proof. From the same source too I shall refute the falsities opposed to my conclusions, and expose the intricately obstructive sophisms of my opponents. In the third discourse, I shall infer certain conclusions or useful lessons which the citizens, both rulers and subjects, ought to observe, conclusions having an evident certainty from our previous findings. Each of these discourses I shall divide into chapters, and each chapter into more or less paragraphs depending upon the length of the chapter. One advantage of this division will be ease for the readers in finding what they look for when they are referred from later to earlier discourses and chapters. From this will follow a second advantage: a shortening of the volume. For when we assume in later pages some truth, either for itself or for the demonstration of other things, whose proof or certainty has been sufficiently set forth in preceding sections, instead of trifling with the proof all over again,

<sup>18</sup> As this passage indicates, Marsilius conceives the ruler as the "defender of peace." See also below, 1. xix. 3.

<sup>19</sup> This emphasis on secular happiness as the ultimate value is noteworthy. See Vol. I, p. 78.

we shall send the reader back to the discourse, chapter, and paragraph in which the proof was originally given, so that thus he may easily be able to find the certainty of the proposition in question.

## CHAPTER II: ON THE FIRST QUESTIONS IN THIS BOOK, AND THE DISTINCTION OF THE VARIOUS MEANINGS OF THE TERM "STATE"

ENTERING upon our proposed task, we wish first to show what are the tranquillity and intranquillity of the state or city; and first the tranquillity, for if this be not clear, one is necessarily ignorant also of what is intranquillity. Since, however, both of these seem to be dispositions of the city or state (let this be assumed from Cassiodorus), we shall consequently make clear what must be revealed at the very outset; namely, what is the state or city, and why. Through this, the definitions of tranquillity and of its opposite will be more readily apparent.

2. Following the aforesaid order for the definition of the tranquillity of the city or state, we must notice, in order to prevent ambiguity from entering our project, that the term "state" (*regnum*) has many meanings. In one sense it means a number of cities (*civitatum*) or provinces contained under one regime; in which sense a state does not differ from a city with respect to species of polity but rather with respect to quantity. In another sense the term "state" signifies a certain species of temperate polity or regime, which Aristotle calls "temperate monarchy";<sup>1</sup> in this sense a state may consist in a single city as well as in many cities, as was the case around the time of the rise of civil communities, for then there was usually one king in a single city. The third and most familiar sense of this term is a combination of the first and the second. In its fourth sense it means something common to every species of temperate regime, whether in a single city or in many; it was in this sense that Cassiodorus used it in the passage we quoted at the beginning of this book, and this, too, is the sense in which we shall use the term in our discussions of the matters under inquiry.<sup>2</sup>

3. Now we must define tranquillity and its opposite. Let us assume with

<sup>1</sup> See Aristotle *Politics* III. 7. 1279a 34; cf. *ibid.* v. 8. 1307b 30.

<sup>2</sup> This decision to use the term *regnum* to mean "something common to every species of temperate regime" is unique among the medieval Aristotelians in two respects, for the others use the term in Marsilius' third sense alone, i. e., as signifying a royal monarchy composed of a number of cities. See Vol. I, pp. 117, 126-27.

Aristotle in his *Politics*, Book I, Chapter 2, and Book V, Chapter 3, that the state is like an animate nature or animal.<sup>3</sup> For just as an animal well disposed in accordance with nature is composed of certain proportioned parts ordered to one another and communicating their functions mutually and for the whole, so too the state is constituted of certain such parts when it is well disposed and established in accordance with reason. The relation, therefore, of the state and its parts to tranquillity will be seen to be similar to the relation of the animal and its parts to health. The trustworthiness of this inference we can accept from what all men comprehend about each of these relations. For they think that health is the best disposition of an animal in accordance with nature, and likewise that tranquillity is the best disposition of a state established in accordance with reason. Health, moreover, as the more experienced physicists describe it, is the good disposition of the animal whereby each of its parts can perfectly perform the operations belonging to its nature; according to which analogy tranquillity will be the good disposition of the city or state whereby each of its parts will be able perfectly to perform the operations belonging to it in accordance with reason and its establishment. And since a good definition consignifies contraries, intranquillity will be the diseased disposition of the city or state, like the illness of an animal, whereby all or some of its parts are impeded from performing the operations belonging to them, either entirely or to the extent required for complete functioning.<sup>4</sup>

In this analogical way, then, we have defined tranquillity and its opposite, intranquillity.

## CHAPTER III: ON THE ORIGIN OF THE CIVIL COMMUNITY

HAVING defined tranquillity as the good disposition of the state for the functioning of its parts, we must now examine what the state is in itself, and why;<sup>1</sup> what and how many are its primary parts;<sup>2</sup> what is the function appropriate to each part,<sup>3</sup> their causes,<sup>4</sup> and their order in relation to one another.<sup>5</sup> For these are the main points required for the perfect determination of tranquillity and its opposite.

<sup>3</sup> See *Politics* I. 5. 1254a 31 ff.; v. 3. 1302b 34 ff. Cf. *ibid.* vi. 4. 1290a 24 ff.

<sup>4</sup> For the background of these definitions of tranquillity and intranquillity, and the uniqueness of Marsilius' interpretations of them, see Vol. I, pp. 95 ff.

<sup>1</sup> See below, I. iv. 1, 2.

<sup>2</sup> I. iv. 3-4; I. v. 1.

<sup>3</sup> I. v. 5-13; I. vi.

<sup>4</sup> I. vii.

<sup>5</sup> I. viii. 1; I. xv. 14.

2. However, before discussing the state and its species or kinds, since the state is the perfect community we must first trace the origin of civil communities and of their regimes and modes of living. From the imperfect kinds, men have advanced to perfect communities, regimes, and modes of living in them. For from the less to the more perfect is always the path of nature and of its imitator, art.<sup>6</sup> And men do not think that they have scientific knowledge of each thing unless they "know its first causes and first principles down to the elements."<sup>7</sup>

3. Following this method, then, we must note that civil communities had small beginnings in diverse regions and times, and growing gradually came at length to completion, just as we said happens in every process of nature or of art. For the first and smallest combination of human beings, wherefrom the other combinations emerged, was that of male and female, as the foremost of the philosophers says in the *Politics*, Book I, Chapter 1,<sup>8</sup> and as appears more fully from his *Economics*.<sup>9</sup> From this combination there were generated other humans, who first occupied one household; from these, more combinations of the same kind were formed, and so great was the procreation of children that a single household did not suffice for them, but many households had to be made. A number of these households was called a village or hamlet, and this was the first community, as is also written in the above-cited treatise.<sup>10</sup>

4. So long as men were in a single household, all their actions, especially those we shall henceforth call "civil," were regulated by the elder among them as being more discerning, but apart from laws or customs, because these could not yet have been discovered. Not only were the men of a single household ruled in this way, but so too was the first community, called the village. However, in some villages the case was different. For although the head of a single household might have been allowed to pardon or to punish domestic injuries entirely according to his own will and pleasure, this would not have been allowed the head of the first community called the village. For in this community the elder had to regulate matters of justice and benefit by some reasonable ordinance or quasi-natural law,<sup>11</sup> because thus it seemed appropriate to all by a certain equity, not as a re-

<sup>6</sup> See Aristotle *Physics* II. 8. 199a 9 ff.

<sup>7</sup> *Ibid.* I. 1. 184a 13.

<sup>8</sup> Aristotle *Politics* I. 2. 1252a 26 ff.

<sup>9</sup> Pseudo-Aristotle *Economics* I. 3. 1343b 8 ff.

<sup>10</sup> *Politics* I. 2. 1252b 9 ff. Aristotle, however, does not say that the village is the "first community," for he calls both the family and its several component relationships "communities." He says only that the village is "the first community for the sake of more than daily needs."

<sup>11</sup> For a similar interpretation of *lex naturalis* in the sense of a "law" which is primitive and unwritten, see James of Viterbo *De regimine Christiano* II. vii (ed. H. X. Arquillière [Paris, 1926], p. 229). See also below, II. xii. 7-8.

sult of prolonged inquiry, but solely by the common dictate of reason and a certain duty of human society.

The cause of this difference of regime in a single household and in a village is and was as follows. If someone in the single and first household or domestic family had killed or otherwise offended his brother, then the head of the household, if he so desired, was allowed not to give the wrongdoer the extreme penalty without any dangerous consequences resulting therefrom, because the injury seemed to have been done to the father alone, who forgave it; and because of the paucity of men; and again because it was less unfortunate and sorrowful for the father to lose one son than two. Our first ancestor, Adam, seems to have acted in this way when his first-born son, Cain, killed his brother Abel. For there is properly no civil justice of a father in relation to his son, as Aristotle wrote in Book IV of the *Ethics*, the treatise on justice.<sup>12</sup> On the other hand, in the first community, the village or hamlet, such procedure was not and would not be allowed, because the case here was different from that of the family; indeed, unless injuries were avenged or equalized by the elder, there would have arisen fighting and the separation of the villagers.<sup>13</sup>

Villages having multiplied and the community grown larger because of increasing procreation, they were still ruled by one man, either because of a lack of many prudent men or through some other cause, as is written in the *Politics*, Book III, Chapter 9.<sup>14</sup> The ruler, however, was the elder or the man who was regarded as better, although the regulations of these communities were less imperfect than those by which the single village or hamlet was ordered. Those first communities, however, did not have so great a differentiation and ordering of parts, or so large a quantity of necessary arts and rules of living, as were gradually to be found afterwards in perfect communities. For sometimes the same man was both ruler and farmer or shepherd, like Abraham and several others after him; but in perfect communities this was not expedient nor would it be allowed.

5. These communities having gradually increased, men's experience became greater, more perfect arts and rules and ways of living were discovered, and also the parts of communities were more fully differentiated. Finally, the things which are necessary for living and for living well were brought to full development by men's reason and experience, and there

<sup>12</sup> Aristotle *Nicomachean Ethics* v. 6. 1134b 9 ff. Cf. *ibid.* v. 1138b 6. Marsilius regularly refers to Book v of the *Ethics* as Book iv. It is to be noted that in the *Eudemian Ethics*, also probably by Aristotle, the same book on justice is Book iv.

<sup>13</sup> See Vol. I, pp. 86-88.

<sup>14</sup> Aristotle *Politics* III. 14. 1285a 2 ff. Cf. *ibid.* III. 15. 1286b 8 ff.

was established the perfect community, called the state, with the differentiation of its parts, to the discussion of which we shall now proceed.

Let this much suffice, then, concerning the rise of the civil community.

#### CHAPTER IV: ON THE FINAL CAUSE OF THE STATE AND OF ITS CIVIL<sup>1</sup> REQUIREMENTS, AND THE DIFFERENTIATION IN GENERAL OF ITS PARTS

THE state, according to Aristotle in the *Politics*, Book I, Chapter I, is "the perfect community having the full limit of self-sufficiency, which came into existence for the sake of living, but exists for the sake of living well."<sup>2</sup> This phrase of Aristotle—"came into existence for the sake of living, but exists for the sake of living well"—signifies the perfect final cause of the state, since those who live a civil life not only live, which beasts or slaves do too, but live well, having leisure for those liberal functions in which are exercised the virtues of both the practical and the theoretic soul.

2. Having thus determined the end of the state to be living and living well, we must treat first of living and its modes. For this, as we have said, is the purpose for the sake of which the state was established, and which necessitates all the things which exist in the state and are done by the association of men in it. Let us therefore lay this down as the principle of all the things which are to be demonstrated here, a principle naturally held, believed, and freely granted by all: that all men not deformed or otherwise impeded naturally desire a sufficient life, and avoid and flee what is harmful thereto.<sup>3</sup> This has been acknowledged not only with regard to man but also with regard to every genus of animals, according to Tully in his treatise *On Duties*, Book I, Chapter III, where he says: "It is an original endowment which nature has bestowed upon every genus of living things, that it preserves itself, its body, and its life, that it avoids those things which seem harmful, and that it seeks and obtains all those things which are necessary for living."<sup>4</sup> This principle can also be clearly grasped by everyone through sense induction.

3. But the living and living well which are appropriate to men fall into

<sup>1</sup> Reading, with Scholz, *civilium* for *scibilium*.    <sup>2</sup> Aristotle *Politics* I. 2. 1252b 27.

<sup>3</sup> Reading, with Scholz, *huic* for *hinc*. On the significance of this principle, see Vol. I, pp. 54 ff.

<sup>4</sup> Cicero *De officiis* I. iv. 11.

two kinds, of which one is temporal or earthly, while the other is usually called eternal or heavenly. However, this latter kind of living, the eternal, the whole body of philosophers were unable to prove by demonstration, nor was it self-evident,<sup>5</sup> and therefore they did not concern themselves with the means thereto. But as to the first kind of living and living well or good life, that is, the earthly, and its necessary means, this the glorious philosophers comprehended almost completely through demonstration. Hence for its attainment they concluded the necessity of the civil community, without which this sufficient life cannot be obtained. Thus the foremost of the philosophers, Aristotle, said in his *Politics*, Book I, Chapter I: "All men are driven toward such an association by a natural impulse."<sup>6</sup> Although sense experience teaches this, we wish to bring out more distinctly that cause of it which we have indicated, as follows: Man is born composed of contrary elements, because of whose contrary actions and passions some of his substance is continually being destroyed; moreover, he is born "bare and unprotected" from excess of the surrounding air and other elements, capable of suffering and of destruction, as has been said in the science of nature.<sup>7</sup> As a consequence, he needed arts of diverse genera and species to avoid the afore-mentioned harms. But since these arts can be exercised only by a large number of men, and can be had only through their association with one another, men had to assemble together in order to attain what was beneficial through these arts and to avoid what was harmful.<sup>8</sup>

4. But since among men thus assembled there arise disputes and quarrels which, if not regulated by a norm of justice, would cause men to fight and separate and thus finally would bring about the destruction of the state, there had to be established in this association a standard of justice and a guardian or maker thereof. And since this guardian has to restrain excessive wrongdoers as well as other individuals both within and outside the state who disturb or attempt to oppress the community, the state had

<sup>5</sup> See Vol. I, pp. 69-70; also below, I. v. 10; I. ix. 2; I. xii. 1; II. xxx. 4.

<sup>6</sup> Aristotle *Politics* I. 2. 1253a 29.    <sup>7</sup> Aristotle *On the Parts of Animals* IV. 10. 687a 25.

<sup>8</sup> It will be noted that this paragraph proves the necessity of "society," just as the first sentence of paragraph 4 proves the necessity of government, so that the two paragraphs might be viewed as proving that man is, respectively, a "social" and a "political" animal, without any need for referring to a "contract" of society and of government, as was to be the case in the seventeenth century. However, Marsilius' proofs, with their emphasis on merely biological needs as generating society, and on the need for regulating disputes as generating government, are also departures from Aristotle. See Vol. I, pp. 88-91, 103 ff. There may, however, be an influence of Avicenna here; see Avicenna *De anima* (*Sextus naturalium*) v. i (*Avicenne perhypatetici philosophi . . . opera* [Venice, 1508], fol. 22rb). See also I. Th. Eschmann's notes in his edition of G. B. Phelan's translation of Thomas Aquinas *On Kingship* (Toronto, 1949), pp. 4. 94-95.

to have within it something by which to resist these. Again, since the community needs various conveniences, repairs, and protection of certain common things, and different things in time of peace and in time of war, it was necessary that there be in the community men to take care of such matters, in order that the common necessity might be relieved when it was expedient or needful. But beside the things which we have so far mentioned, which relieve only the necessities of the present life, there is something else which men associated in a civil community<sup>9</sup> need for the status of the future world promised to the human race through God's supernatural revelation, and which is useful also for the status of the present life. This is the worship and honoring of God, and the giving of thanks both for benefits received in this world and for those to be received in the future one. For the teaching of these things and for the directing of men in them, the state had to designate certain teachers. The nature and qualities of all these and the other matters mentioned above will be treated in detail in the subsequent discussions.

5. Men, then, were assembled for the sake of the sufficient life, being able to seek out for themselves the necessities enumerated above, and exchanging them with one another. This assemblage, thus perfect and having the limit of self-sufficiency, is called the state, whose final cause as well as that of its many parts has already been indicated by us in some measure, and will be more fully distinguished below. For since diverse things are necessary to men who desire a sufficient life, things which cannot be supplied by men of one order or office, there had to be diverse orders or offices of men in this association, exercising or supplying such diverse things which men need for sufficiency of life. But these diverse orders or offices of men are none other than the many and distinct parts of the state.

Let it suffice, then, to have covered thus in outline what the state is, why there came about such an association, and the number and division of its parts.

<sup>9</sup> *Communicantes civiliter*. See Introduction, above, pp. lxxv-lxxvi, lxxix-lxxx.

## CHAPTER V: ON THE DIFFERENTIATION OF THE PARTS OF THE STATE, AND THE NECESSITY OF THEIR SEPARATE EXISTENCE FOR AN END DISCOVERABLE BY MAN

WE have now completely listed the parts of the state, in whose perfect action and intercommunication, without external impediment, we have said that the tranquillity of the state consists. But we must now continue our discussion of them, since the fuller determination of these parts, with respect both to their functions or ends and to their other appropriate causes, will make more manifest the causes of tranquillity and of its opposite. Let us say, then, that the parts or offices of the state are of six kinds, as Aristotle said in the *Politics*, Book VII, Chapter 7: the agricultural, the artisan, the military, the financial, the priestly, and the judicial or deliberative.<sup>1</sup> Three of these, the priestly, the warrior, and the judicial, are in the strict sense parts of the state, and in civil communities they are usually called the honorable class (*honorabilitatem*). The others are called parts only in the broad sense of the term, because they are offices necessary to the state according to the doctrine of Aristotle in the *Politics*, Book VII, Chapter 7.<sup>2</sup> And the multitude belonging to these offices are usually called the common mass (*vulgaris*). These, then, are the more familiar parts of the city or state, to which all the others can appropriately be reduced.

2. Although the necessity of these parts has been indicated in the preceding chapter, we wish to indicate it again more distinctly, assuming this proposition as having been previously demonstrated from what is self-evident, namely, that the state is a community established for the sake of the living and living well of the men in it. Of this "living" we have previously distinguished two kinds: one, the life or living of this world, that is, earthly; the other, the life or living of the other or future world. From these kinds of living, desired by man as ends, we shall indicate the necessity for the differentiation of the parts of the civil community. The first kind of human living, the earthly, is sometimes taken to mean the being of living things, as in Book II of the treatise *On the Soul*: "For living things, living is their being";<sup>3</sup> in which sense life is nothing other than soul. At

<sup>1</sup> Aristotle *Politics* VII. 8. 1328b 2 ff.

<sup>2</sup> *Ibid.* 1328a 2 ff. On this distinction, see Vol. I, p. 190.

<sup>3</sup> Aristotle *On the Soul* II. 4. 415b 14.

other times, "living" is taken to mean the act, the action or passion, of the soul or of life.<sup>4</sup> Again, each of these meanings is used in two ways, with reference either to the numerically same being or to the similar being, which is said to be that of the species. And although each of these kinds of living, both as proper to man and as common to him and to the other animate things, depends upon natural causes, yet we are not at present considering it insofar as it comes from these causes; the natural science of plants and animals deals with this. Rather, our present concern is with these causes insofar as they receive fulfillment "through art and reason," whereby "the human race lives."<sup>5</sup>

3. Hence, we must note that if man is to live and to live well, it is necessary that his actions be done and be done well; and not only his actions but also his passions. By "well" I mean in proper proportion. And since we do not receive entirely perfect from nature the means whereby these proportions are fulfilled, it was necessary for man to go beyond natural causes to form through reason some means whereby to effect and preserve his actions and passions in body and soul. And these means are the various kinds of functions and products deriving from the virtues and arts both practical and theoretic.

4. Of human actions and passions, some come from natural causes apart from knowledge. Such are those which are effected by the contrariety of the elements composing our bodies, through their intermixture. In this class can properly be placed the actions of the nutritive faculty. Under this head also come actions effected by the elements surrounding our body through the alteration of their qualities; of this kind also are the alterations effected by things entering human bodies, such as food, drink, medicines, poisons, and other similar things. But there are other actions or passions which are performed by us or occur in us through our cognitive and appetitive powers. Of these some are called "immanent" because they do not cross over (*non transeunt*) into a subject other than the doer, nor are they exercised through any external organs or locomotive members; of this kind are the thoughts and desires or affections of men. But there are other actions and passions which are called "transient" because they are opposed in either or in both respects to the kind which we have just described.<sup>6</sup>

5. In order to proportion all these actions and passions, and to fulfill them

<sup>4</sup> For this distinction between being and act, see *ibid.* II. I. 412a 10 ff. It is the distinction between first and second actuality.

<sup>5</sup> Aristotle *Metaphysics* I. I. 980b 27. Cf. *Politics* VII. 13. 1332b 3-6.

<sup>6</sup> On this distinction between immanent and transient acts, see also below, I. v. 11; II. II. 4, 5; II. VIII. 3; II. IX. 11; II. XVII. 8; and Vol. I, p. 61, n. 56, and pp. 101-4.

in that to which nature could not lead, there were discovered the various kinds of arts and other virtues, as we said above, and men of various offices were established to exercise these for the purpose of supplying human needs. These orders are none other than the parts of the state enumerated above. For in order to proportion and preserve the acts of the nutritive part of the soul, whose cessation would mean the complete destruction of the animal both individually and as a species, agriculture and animal husbandry were established.<sup>7</sup> To these may properly be reduced all kinds of hunting of land, sea, and air animals, and all other arts whereby food is acquired by some exchange or is prepared for eating, so that what is lost from the substance of our body may thereby be restored, and the body be continued in its immortal being so far as nature has permitted this to man.

6. In order to moderate the actions and passions of our body caused by the impressions of the elements which externally surround us, there was discovered the general class of mechanics, which Aristotle in the *Politics*, Book VII, Chapter 6, calls the "arts."<sup>8</sup> To this class belong spinning, leathermaking, shoemaking, all species of housebuilding, and in general all the other mechanic arts which subserve the other offices of the state directly or indirectly, and which moderate not only men's touch or taste but also the other senses. These latter arts are more for pleasure and for living well than for the necessity of life, such as the painter's art and others similar to it, concerning which Aristotle says in the *Politics*, Book IV, Chapter 3: "Of these arts some must exist from necessity, and others are for pleasure and living well."<sup>9</sup> Under this class is also placed the practice of medicine, which is in some way architectonic to many of the above-mentioned arts.

7. In order to moderate the excesses of the acts deriving from the locomotive powers through knowledge and desire, which we have called transient acts and which can be done for the benefit or for the harm or injury of someone other than the doer for the status of the present world, there was necessarily established in the state a part or office by which the excesses of such acts are corrected and reduced to equality or due proportion. For without such correction the excesses of these acts would cause fighting and hence the separation of the citizens, and finally the destruction of the state and loss of the sufficient life. This part of the state, together with its subsidiaries, is called by Aristotle the "judicial" or "ruling" and "delibera-

<sup>7</sup> On the significance of this allocation of agriculture to caring for a part of the "soul," see Vol. I, pp. 100-101.

<sup>8</sup> Aristotle *Politics* VII. 8. 1328b 6.

<sup>9</sup> *Ibid.* IV. 4. 1291a 2-4.



“tive” part, and its function is to regulate matters of justice and the common benefit.

8. In addition, since the sufficient life cannot be led by citizens who are oppressed or cast into slavery by external oppressors, and also since the sentences of the judges against injurious and rebellious men within the state must be executed by coercive force, it was necessary to set up in the state a military or warrior part, which many of the mechanics also subserve. For the state was established for the sake of living and living well, as was said in the preceding chapter; but this is impossible for citizens cast into slavery. For Aristotle the preeminent said that slavery is contrary to the nature of the state. Hence, indicating the necessity for this part, he said in the *Politics*, Book IV, Chapter 3: “There is a fifth class, that of the warriors, which is not less necessary than the others, if the citizens are not to be slaves of invaders. For nothing is more truly impossible than for that which is by nature slavish to be worthy of the name ‘state’; for a state is self-sufficient, but a slave is not self-sufficient.”<sup>10</sup> The necessity for this class because of internal rebels is treated by Aristotle in the *Politics*, Book VII, Chapter 6.<sup>11</sup> We have omitted the quotation of this passage here for the sake of brevity, and because we shall quote it in Chapter XIV of this discourse, paragraph 8.

9. Again, since in some years on earth the harvests are large, and in others small; and the state is sometimes at peace with its neighbors, and sometimes not; and it is in need of various common services such as the construction and repair of roads, bridges, and other edifices, and similar things whose enumeration here would be neither appropriate nor brief—to provide all these things at the proper time it was necessary to establish in the state a treasure-keeping part, which Aristotle called the “money class.” This part gathers and saves monies, coins, wines, oils, and other necessities; it procures from all places things needed for the common benefit, and it seeks to relieve future necessities; it is also subserved by some of the other parts of the state. Aristotle called this the “money” part, since the saver of monies seems to be the treasurer of all things; for all things are exchanged for money.

10. It remains for us to discuss the necessity of the priestly part. All men have not thought so harmoniously about this as they have about the necessity of the other parts of the state. The cause of this difference was that the true and primary necessity of this part could not be comprehended through demonstration, nor was it self-evident.<sup>12</sup> All nations, however, agreed that it was appropriate to establish the priesthood for the worship

<sup>10</sup> *Ibid.* iv. 4. 1291a 6.

<sup>11</sup> *Ibid.* vii. 8. 1328b 7.

<sup>12</sup> See above, i. iv. 3, n. 5.

and honoring of God, and for the benefit resulting therefrom for the status of the present or the future world. For most laws<sup>13</sup> or religions<sup>14</sup> promise that in the future world God will distribute rewards to those who do good and punishment to doers of evil.

11. However, besides these causes of the laying down of religious laws, causes which are believed without demonstration, the philosophers, including Hesiod, Pythagoras, and several others of the ancients, noted appropriately a quite different cause or purpose for the setting forth of divine laws or religions—a purpose which was in some sense necessary for the status of this world. This was to ensure the goodness of human acts both individual and civil, on which depend almost completely the quiet or tranquillity of communities and finally the sufficient life in the present world. For although some of the philosophers who founded such laws or religions did not accept or believe in human resurrection and that life which is called eternal, they nevertheless feigned and persuaded others that it exists and that in it pleasures and pains are in accordance with the qualities of human deeds in this mortal life, in order that they might thereby induce in men reverence and fear of God, and a desire to flee the vices and to cultivate the virtues. For there are certain acts which the legislator cannot regulate by human law, that is, those acts which cannot be proved to be present or absent to someone, but which nevertheless cannot be concealed from God, whom these philosophers feigned to be the maker of such laws and the commander of their observance, under the threat or promise of eternal reward for doers of good and punishment for doers of evil. Hence, they said of the variously virtuous men in this world that they were placed in the heavenly firmament; and from this were perhaps derived the names of certain stars and constellations. These philosophers said that the souls of men who acted wrongly entered the bodies of various brutes; for example, the souls of men who had been intemperate eaters entered the bodies of pigs, those who were intemperate in embracing and making love entered the bodies of goats, and so on, according to the proportions of human vices to their condemnable properties. So too the philosophers assigned various kinds of torments to wrongdoers, like perpetual thirst and hunger for intemperate Tantalus: water and fruit were to be near him, but he was unable to drink or handle these, for they were always fleeing faster than he could pursue them. The philosophers also said that the infernal regions, the place of these torments, were deep and dark; and they painted

<sup>13</sup> The use of the term “law” (*lex*) to mean a system of religion is not peculiar to Marsilius. See Introduction, above, pp. xc–xci.

<sup>14</sup> *Sectarum*. See Introduction, above, pp. xc–xci.

all sorts of terrible and gloomy pictures of them. From fear of these, men eschewed wrongdoing, were instigated to perform virtuous works of piety and mercy, and were well disposed both in themselves and toward others. As a consequence, many disputes and injuries ceased in communities. Hence too the peace or tranquillity of states and the sufficient life of men for the status of the present world were preserved with less difficulty; which was the end intended by these wise men in laying down<sup>15</sup> such laws or religions.<sup>16</sup>

12. Such, then, were the precepts handed down by the gentile priests; and for the teaching of them they established in their communities temples in which their gods were worshiped. They also appointed teachers of these laws or doctrines, whom they called priests (*sacerdotes*), because they handled the sacred objects of the temples, like the books, vases, and other such things subserving divine worship.

13. These affairs they arranged fittingly in accordance with their beliefs and rites. For as priests they appointed not anyone at all, but only virtuous and esteemed citizens who had held military, judicial, or deliberative office, and who had retired from secular affairs, being excused from civil burdens and offices because of age. For by such men, removed from passions, and in whose words greater credence was placed because of their age and moral dignity, it was fitting that the gods should be honored and their sacred objects handled, not by artisans or mercenaries who had exercised lowly and defiling offices. Whence it is said in the *Politics*, Book VII, Chapter 7: "Neither a farmer nor an artisan should be made a priest."<sup>17</sup>

14.<sup>18</sup> Now correct views concerning God were not held by the gentile laws or religions and by all the other religions which are or were outside the catholic Christian faith or outside the Mosaic law which preceded it or the beliefs of the holy fathers which in turn preceded this—and, in general, by all those doctrines which are outside the tradition of what is contained in the sacred canon called the Bible. For they followed the human mind or false prophets or teachers of errors. Hence too they did not have a correct view about the future life and its happiness or misery, nor about the true priesthood established for its sake. We have, nevertheless, spoken of their rites in order to make more manifest their difference from the true priesthood, that of the Christians, and the necessity for the priestly part in communities.

<sup>15</sup> Reading, with Bigongiari (p. 37), *ex positione* for *expositione*.

<sup>16</sup> For antecedents of Marsilius' view of the socio-political basis and use of religion, see Vol. I, pp. 83-84.

<sup>17</sup> Aristotle *Politics* VII. 9. 1329a 28.

<sup>18</sup> This paragraph division is from Scholz.

## CHAPTER VI: ON THE FINAL CAUSE OF A CERTAIN PART OF THE STATE, THE PRIESTHOOD, SHOWN FROM THE IMMEDIATE TEACHING OR REVELATION OF GOD, BUT INCAPABLE OF BEING PROVED BY HUMAN REASON

IT remains now to discuss the final cause for which the true priesthood was established in communities of the faithful. This was in order to moderate human acts both immanent and transient controlled by knowledge and desire, according as the human race is ordered by such acts toward the best life of the future world. Hence it must be noted that although the first man, Adam, was created principally for the glory of God, just as were the other creatures, nevertheless, unlike the other species of corruptible things, he was created uniquely in God's image and likeness, so that he might be capable of participating in eternal happiness after the life of the present world. Also he was created in a state of original innocence or justice and also of grace, as is plausibly said by some of the saints and certain leading teachers of the sacred Scriptures. Now if Adam had remained in this status, the establishment or differentiation of civil offices would not have been necessary for him or for his posterity, because nature would have produced for him the advantages and pleasures of the sufficiency of this life in the earthly or pleasurable paradise, without any punishment or suffering on his part.<sup>1</sup>

2. But because Adam corrupted his original innocence or justice and grace by eating of the forbidden fruit, transgressing thereby a divine commandment, he sank suddenly into guilt and misery, and was punished by being deprived of eternal happiness, the end to which he had been ordered with all his posterity by the beneficence of glorious God. His desert for transgressing this commandment was to propagate all his posterity in lust. Every man after him was conceived and born in lust, contracting therefrom the sin which in the law of the Christians is called "original." The only exception was Jesus Christ who, without any kind of sin or lust, was conceived by the Holy Spirit and born of the Virgin Mary; which came about when one of the three divine persons, the Son, true God in the unity of his person, assumed a human nature. As a result of this trans-

<sup>1</sup> On the significance of Marsilius propounding of this Augustinian conception of the state as a consequence of sin, see Vol. I, p. 91.

gression of its first parents, the whole posterity of mankind was weakened in soul and is born weak, whereas it had previously been created in a state of perfect health, innocence, and grace. It was also because of this guilt that the human race was deprived of its best end to which it had been ordered.

3. But it is proper to God to have compassion for the human race, which he made in his own image, and which he had foreordained to a happy and eternal life. Hence God, who "never does anything in vain and never is lacking in necessities,"<sup>2</sup> willed to remedy the human plight by giving certain commands which men were to obey and observe, and which would counteract the transgression and heal the disease of the guilt resulting from it. Like an expert physician, he proceeded in a very orderly manner from the easier to the more difficult steps. For he first commanded men to observe the rite of holocausts, sacrificing the first fruit of the earth and the first-born of the animals, as if he wanted to test human penitence and obedience. This rite the ancient fathers observed with reverence for God, with faith, obedience, and thankfulness, down to the time of Abraham. To him God gave an additional command, more difficult than the first: the circumcision of the whole male sex in the flesh of the foreskin. By this command God seemed again to be testing even more severely human penitence and obedience. These commands were observed by some men down to the time of Moses, through whom God handed down to the people of Israel a law wherein he set forth, in addition to the previous commands, further ones for the status of both the present and the future world; and he appointed priests and levites as ministers of this law. The utility of observing all the prior commands and the Mosaic law was that men would be purged of sin or guilt, both original and actual or freely committed, and would escape and be preserved from eternal and temporal sensory punishment of the other world, although by observing these commands they would not merit eternal happiness.

4. It was such happiness, however, to which merciful God had ordered the human race and which he wished to restore to it after leading it back from the fall, following the appropriate order. Hence, most recently of all, through his son Jesus Christ, true God and true man in unity of person, he handed down the evangelical law, containing commands and counsels of what must be believed, done, and avoided. By observance of these, not only are men preserved from sensory punishment, as they had been by observance of the prior commands, but also through God's gracious ordainment they merit, by a certain congruity, eternal happiness. And for

<sup>2</sup> Aristotle *De anima* iii. 9. 432b 22. Cf. *De caelo* i. 4. 271a 34; *Politics* i. 1. 1253a 9.

this reason the evangelical law is called the law of grace, both because through the passion and death of Christ the human race was redeemed from its guilt and from the penalty of losing eternal beatitude which it had incurred as a result of the fall or sin of its first parents; and also because, by observing this law and receiving the sacraments established with it and in it, we are given divine grace, after it is given it is strengthened in us, and when we lose it, it is restored to us. Through this grace, by the ordainment of God and the passion of Christ, our works come by a certain congruity (as we have said) to merit eternal happiness.

5. Through Christ's passion the grace whereby men merit a blessed life was received not only by those who came after but also by those who had observed the first commands and the Mosaic law. Before Christ's advent, passion, death, and resurrection, they had been deprived of this beatitude in the other world, in the place called Limbus. But through Christ, they received the promise given to them by God, although in the prior commands of the prophets and of the Mosaic law such a promise had been handed down to them in a veiled and enigmatic manner, for "all these things happened to them in figure,"<sup>3</sup> as the Apostle said to the Hebrews.

6. This divine procedure was very appropriate, for it went from the less to the more perfect and finally to the most perfect<sup>4</sup> of the things appropriate to human salvation. Nor should it be thought that God could not have bestowed immediately at the outset, had he so wished, a perfect remedy for the fall of man. But he acted as he did because he so willed it and it was fitting, as required by men's sin, lest a too easy pardon be the occasion for further sinning.

7. As teachers of this law, and as ministers of its sacraments, certain men in the communities were chosen, called priests and deacons or levites. It is their office to teach the commands and counsels of the Christian evangelical law, as to what must be believed, done, and spurned, to the end that a blessed status be attained in the future world, and the opposite avoided.

8. The end of the priesthood, therefore, is to teach and educate men in those things which, according to the evangelical law, it is necessary to believe, do, and omit in order to attain eternal salvation and avoid misery.

9. To this office appropriately pertain all the disciplines, theoretic and practical, discovered by the human mind, which moderate human acts

<sup>3</sup> I Corinthians 10:11. Marsilius refers here only to the general argument of the Epistle to the Hebrews.

<sup>4</sup> Note that the same characterization is applied to nature and art, above, i. iii. 2.

both immanent and transient arising from desire and knowledge, and which make man well disposed in soul for the status of both the present and the future world. We have almost all these disciplines through the teaching of the admirable Philosopher and of other glorious men;<sup>5</sup> however, we have omitted to enumerate them here, both for the sake of brevity and because it is not necessary to our present consideration.

10.<sup>6</sup> With respect to this chapter and the one following, we must understand that the causes of the offices of the state, in respect of each kind of cause, differ according as they are offices of the state and according as they are habits<sup>7</sup> of the human body or mind. For according as they are habits of the human body or soul, their final causes are the functions which are immediately and essentially forthcoming from them. For example, the final cause of the shipbuilding part of the state is a ship; of the military part, the use of arms and fighting; of the priesthood, the preaching of the divine law and the administration of the sacraments in accordance with it; and so on with all the rest. But according as they are offices determined and established in the state, their final causes are the benefits and sufficiencies which perfect human actions and passions, and which are forthcoming from the functions of the aforesaid habits, or which cannot be had without them. For example, from fighting, which is the act or end of the military habit, freedom is forthcoming and is preserved for men in the state, and this freedom is the end of the acts and functions of the military. So too from the function or end of the housebuilding part, which is a house, there is forthcoming to men or to the state protection from the harmful impressions of the air, the hot, the cold, the wet, or the dry, which protection is the final cause for whose sake the housebuilding office was established in the state. In the same way, from observance of the divine law, which is the end of the priesthood, eternal happiness is forthcoming to men. Similar considerations apply to all the other parts or offices of the state. And the other kinds of causes of these offices—the material, formal, and efficient causes—are distinguished in the same or a similar manner, as will appear in the following chapter.<sup>8</sup>

<sup>5</sup> In thus placing philosophy within the function of the priesthood, Marsilius would seem to be following Aristotle; see *Metaphysics* I. I. 981b 20–24; *Nicomachean Ethics* VI. 7. 1141b 1 ff.; X. 7. 1177b 25 ff.; *Politics* VII. 9. 1329a 26 ff. Most of the other medieval Aristotelians, however, distinguish secular philosophy from religion. On the other hand, John of Jandun holds that the philosopher attains a this-worldly “knowledge of God” and is therefore “pre-supposed” by the priest. See *Quaestiones in duodecim libros Metaphysicae* Lib. I. qu. 18 (Venice, 1525) fol. 15 J-K; also Vol. I, pp. 78–79, n. 8.

<sup>6</sup> This paragraph division is from Scholz.

<sup>7</sup> For the meaning of “habit” (*habitus*), see Introduction, p. lxxi.

<sup>8</sup> For similar distinctions between the proximate and the remote, or the functional and the social, ends and other causes of parts of the state, see Albert the Great *Ethica* Lib. I. Tr. III. cap.

We have now finished our discussion of the number of the parts of the state, their necessity, and their differentiation through the sufficiencies which are their ends.

## CHAPTER VII: ON THE OTHER KINDS OF CAUSES OF THE SEPARATE EXISTENCE OF THE PARTS OF THE STATE, AND THE DIVISION OF EACH KIND IN TWO WAYS RELEVANT TO OUR PURPOSE

WE must now discuss the other causes of the offices or parts of the state. First we shall speak about their material and formal causes; then we shall inquire into their efficient cause. And since in things completed by the human mind the matter actually exists prior to the form,<sup>1</sup> let us first discuss the material cause. The proper matter of the different offices, according as the offices mean habits of the soul, is men inclined from their generation or nativity to different arts or disciplines. For “nature is not lacking in necessities,”<sup>2</sup> and is more solicitous for what is more noble;<sup>3</sup> among corruptible things, the most noble is the human species, which, perfected by different arts or disciplines, is the matter wherefrom must be established the state and its distinct parts necessary for the attainment of sufficiency of life, as was shown in Chapters IV and V of this discourse. Hence nature herself initiated this differentiation in the generation of men, producing some who in their natural dispositions were apt for and inclined toward farming, others toward military pursuits, and still others toward the other genera of arts and disciplines, but different men toward different ones. Nor did she incline only one individual toward one species of art or discipline, but rather many individuals toward the same species, to the extent necessary for sufficiency of life. Hence, she generated some men apt for prudence, since the judicial and deliberative part of the state must be composed of prudent men; some men apt for strength and courage, since the military part is appropriately composed of such men. So too she adapted the other men to the other genera of

x; Tr. VI. cap. I (*Opera omnia*, ed. A. Borgnet, VII [Paris, 1891], 42–43, 84–85); and Peter of Auvergne *In Politicorum Aristotelis libros commentarium* Lib. IV. Lect. 13 (*Thomae Aquinatis opera omnia*, XXI [Parma, 1866], 545–46). Marsilius’ chief use of the distinction is in connection with the priesthood. See below, II. xv. 2 ff.

<sup>1</sup> Aristotle *Metaphysics* VII. 7. 1032b 31.

<sup>2</sup> Aristotle *On the Soul* III. 9. 432b 22. See above, I. IV. 3.

<sup>3</sup> Cf. Aristotle *On the Parts of Animals* IV. 10. 686a 25 ff.

practical and theoretic habits which are necessary or appropriate for living and living well, so that out of the diversity of the natural inclinations toward habits of diverse genera and species in all men, she perfected what was necessary for the diversity of the parts of the state.<sup>4</sup>

The material causes of the offices of the state, according as the offices mean parts of the state, are already apparent. For these are men habituated by the arts and disciplines of diverse genera and species, from whom the diverse orders or parts are established in the state for the sake of the sufficiencies or ends forthcoming from their arts and disciplines. Considered in this way, as having been established in the state for this purpose, the parts of the state are properly called offices, in the sense of services, for they are ordered toward human service.

2. The formal causes of the offices of the state, according as they are habits of the human mind, are none other than these very habits. For these habits are themselves the forms of those who have them; they fulfill or perfect the human inclinations which exist by nature. Hence it is said in the *Politics*, Book VII, last chapter: "Every art and discipline aims to supply what nature lacks."<sup>5</sup> On the other hand, according as the offices of the state are established parts of the state, their formal causes are the commands which the efficient cause has given to or impressed upon the men who are appointed to exercise determinate functions in the state.

3. The efficient or productive causes of the offices, according as they mean habits of the soul, are the minds and wills of men through their thoughts and desires, individually or collectively. Also, in the case of certain offices, an added principle is the movement and exercise of the bodily organs. But the efficient cause of the offices, according as they are parts of the state, is frequently and in most cases the human legislator, although formerly, rarely and in very few cases, the immediate efficient cause was God, without human determination, as will be said in Chapter IX of this discourse and as will appear more fully from Chapter XII of this discourse and Chapter XV of Discourse II.<sup>6</sup> With regard to the priesthood, however, there is a different manner of establishment, which will be sufficiently discussed in Chapters XV and XVII of Discourse II.<sup>7</sup>

In this way, then, we have discussed the parts of the state and the necessity of their establishment from the three other kinds of cause.

<sup>4</sup> It will be noted that this doctrine of different "natural aptitudes" does not lead Marsilius to a doctrine of natural slaves and natural rulers, as it does Aristotle and the other medieval Aristotelians. See Vol. I, pp. 177-78.

<sup>5</sup> Aristotle *Politics* vii. 17. 1337a 1.

<sup>6</sup> Reading, with Scholz, "2<sup>o</sup>" after "15<sup>o</sup>." The passages referred to are i. ix. 2; i. xii. 1; ii. xv. 2 ff.

<sup>7</sup> See below, ii. xv. 2 ff.; ii. xvii. 2 ff.

## CHAPTER VIII: ON THE GENERA OF POLITIES OR REGIMES, THE TEMPERATE AND THE DISEASED, AND THE DIVISION OF THEIR SPECIES

WE must now show with greater certainty what was already shown to some extent above, that the establishment and differentiation of the parts of the state are brought about by an efficient cause which we have previously called the legislator. The same legislator establishes these parts, and differentiates and separates them as nature does with an animal, by first forming or establishing in the state one part which in Chapter V of this discourse we called the ruling or judicial part,<sup>1</sup> and through this the other parts, as will be indicated more fully in Chapter XV of this discourse.<sup>2</sup> Hence we must first say something concerning the nature of this ruling part. For since it is the first part of the state, as will appear below, the appropriate procedure will be to go from the indication of its efficient cause to the indication of the efficient cause which establishes and differentiates the other parts of the state.

2. There are two genera of ruling parts or governments, one well tempered, the other diseased.<sup>3</sup> With Aristotle in the *Politics*, Book III, Chapter 5,<sup>4</sup> I call that genus "well tempered" in which the ruler governs for the common benefit, in accordance with the will of the subjects; while the "diseased" genus is that which is deficient in this respect.<sup>5</sup> Each of these genera, again, is divided into three species: the temperate into kingly monarchy, aristocracy, and polity; the diseased into the three opposite species of tyrannical monarchy, oligarchy, and democracy. And each of these again has sub-species, the detailed discussion of which is not part of our present task. For Aristotle gave a sufficient account of them in Books III and IV of his *Politics*.

3. To obtain a fuller conception of these species of government, which is necessary for the clear understanding of what follows, let us define each species in accordance with the view of Aristotle. A *kingly monarchy*, then, is a temperate government wherein the ruler is a single man who rules for

<sup>1</sup> i. v. 7.

<sup>2</sup> i. xv. 2 ff.

<sup>3</sup> On these terms, see Introduction, above, pp. lxxxv-lxxxvi.

<sup>4</sup> Aristotle *Politics* iii. 7, 8. 1279a 17 ff.

<sup>5</sup> Although the reference to the will or consent of the subjects is not entirely absent in the *Politics*, Marsilius' use of it as a basic and even primary criterion of a just or "well-tempered" government (see esp. i. ix. 5) is a departure from Aristotle and from the medieval Aristotelian tradition. See Vol. I, pp. 241-42; also pp. 60, 170, 220-23.

the common benefit, and in accordance with the will or consent of the subjects. *Tyranny*, its opposite, is a diseased government wherein the ruler is a single man who rules for his own private benefit apart from the will of his subjects. *Aristocracy* is a temperate government in which the honorable class (*honorabilitas*) alone rules in accordance with the will or consent of the subjects and for the common benefit. *Oligarchy*, its opposite, is a diseased government in which some of the wealthier or more powerful rule for their own benefit apart from the will of the subjects. A *polity*, although in one sense it is something common to every genus or species of regime or government, means in another sense a certain species of temperate government, in which every citizen participates in some way in the government or in the deliberative function in turn according to his rank and ability or condition, for the common benefit and with the will or consent of the citizens.<sup>6</sup> *Democracy*, its opposite, is a government in which the masses (*vulgus*) or the multitude of the needy establish the government and rule alone, apart from the will or consent of the other citizens and not entirely for the common benefit according to proper proportion.<sup>7</sup>

4. As to which of the temperate governments is best or which of the diseased governments is worst, and the relative goodness or badness of the other species, the discussion of these points is not part of our present concern.<sup>8</sup> Let it suffice to have said this much about the division of governments into their species and the definition of each.

## CHAPTER IX: ON THE METHODS OF ESTABLISHING A KINGLY MONARCHY, AND WHICH METHOD IS THE MORE PERFECT; <sup>1</sup> ALSO ON THE METHODS OF ESTABLISHING THE OTHER KINDS OF REGIME OR POLITY, BOTH TEMPERATE AND DISEASED

HAVING determined these points, we must now discuss the methods of effecting or establishing the ruling part of the state. For from the better or worse nature of these methods, viewed as actions<sup>2</sup> emerging from that nature to the civil regime, we must infer the efficient cause by

<sup>6</sup> On the meanings of "polity," see Vol. I, pp. 236 ff.

<sup>7</sup> On this conception of "democracy," see Vol. I, pp. 190-91, 195.

<sup>8</sup> On the basis and significance of this indifference as to the relative merits of monarchy, aristocracy, and polity, see Vol. I, pp. 117-18, 172-73. See also below, i. ix. 9.

<sup>1</sup> Reading, with Bigongiari (p. 39) and MSS, *perfectioris for perfectionis*.

<sup>2</sup> Reading, with Bigongiari (p. 40) and MSS, *actionum for actionibus*; hence also *provenientium for provenientibus*.

which these methods and the ruling part established by them will emerge more advantageously to the polity.

2. In this book we are considering the causes and actions by which the ruling part must in most cases be established. First, however, we wish to indicate the method and cause by which this part has been established in the past, although rarely, in order to distinguish this method or action, and its immediate cause, from those by which the government must regularly and in most cases be established, and which we can prove by human demonstration. For of the former method no certain comprehension can be had through demonstration. This method or action, with its immediate cause, by which the ruling part and other parts of the state, especially the priesthood, were formed in the past, was the divine will commanding this either through the determinate oracle of some individual creature or else perhaps immediately through itself alone. It was by this method that the divine will established the government of the people of Israel in the person of Moses and of certain other judges after him, and also the priesthood in the person of Aaron and his successors. With respect to this cause and its free action, as to why it did or did not operate in one way or another, we can say nothing through demonstration, but we hold it by simple belief apart from reason.<sup>3</sup> There is, however, another method of establishing governments which proceeds immediately from the human mind, although perhaps remotely from God as remote cause, who grants all earthly rulership, as is said in the nineteenth chapter of John,<sup>4</sup> and as the Apostle clearly states in the thirteenth chapter of the epistle to the Romans,<sup>5</sup> and St. Augustine in *The City of God*, Book V, Chapter 21.<sup>6</sup> However, God does not always act immediately; indeed in most cases, nearly everywhere, he establishes governments by means of human minds, to which he has granted the discretionary will for such establishment. And as for this latter cause, what it is, and by what kind of action it must establish such things, this can be indicated with human certainty from what is better or worse for the polity.

3. Omitting, then, that method of which we cannot attain certain knowledge through demonstration, we wish first to present those methods of establishing governments which are effected immediately by the human will;<sup>7</sup> next we shall show which of these is the more certain and the simpler.<sup>8</sup> Then, from the better nature of that method we shall infer the efficient cause from which alone it must and can emerge.<sup>9</sup> From these points, consequently, will appear the cause which must move to the best establish-

<sup>3</sup> See above, i. iv. 3, n. 5.

<sup>4</sup> John 19:11.

<sup>5</sup> Romans 13:1.

<sup>6</sup> St. Augustine *De civitate Dei* v. xxi (PL 41. 167).

<sup>7</sup> i. ix. 4-6.

<sup>8</sup> i. ix. 7.

<sup>9</sup> i. xv. 1-3. Cf. i. x. 1; i. xiv. 1.

ment and determination of the other parts of the state.<sup>10</sup> Finally we shall discuss the unity of the government,<sup>11</sup> through which it will also be apparent what is the unity of the city or state.<sup>12</sup>

4. In pursuit of this program, then, we shall first enumerate the methods of establishing kingly monarchy, by speaking of their origins. For this species of government seems rather kindred to us, and directly connected with the rule of the family, as is clear from what we said in Chapter III. After the determination of this point, the methods of establishing the other divisions of government will be made clear.

There are five methods of establishing kingly monarchies, according to Aristotle's *Politics*, Book III, Chapter 8.<sup>13</sup> One is when the monarch is appointed for one determinate function with respect to the ruling of the community, such as the leadership of the army, either with hereditary succession or for his own lifetime only. It was by this method that Agamemnon was made leader of the army by the Greeks. In modern communities this office is called the captaincy or constabulary.<sup>14</sup> This leader of the army had no judicial power in time of peace, but when the army was fighting a war he had the supreme authority to kill or otherwise punish transgressors.

Another method is that whereby certain monarchs rule in Asia; they receive their dominating authority through hereditary succession, and while they rule according to law, this law is like that of despots, being for the monarch's benefit rather than completely for the community's. The inhabitants of that region endure such rule "without protest,"<sup>15</sup> because of their barbaric and slavish nature and the influence of custom. This rule is kingly in that it is native to the country and is over voluntary subjects, because, for example, the monarch's ancestors had been the first inhabitants of the region. But it is also in a sense tyrannical, in that its laws are not completely for the common benefit but for that of the monarch.

A third method of kingly government is when the ruler receives his authority through election rather than hereditary succession, but governs according to a law which is not completely for the common benefit but rather for that of the monarch, like the law of tyrants. Aristotle, therefore,

<sup>10</sup> I. xv. 4-10.

<sup>11</sup> I. xvii. 1-9.

<sup>12</sup> I. xvii. 11.

<sup>13</sup> Aristotle *Politics* III. 14. 1284b 35 ff.

<sup>14</sup> Marsilius' terms are *capitaneatus* and *constabularia*. The former meant a position of army leadership; for a large number of references to the medieval use of this and cognate terms, see Du Cange, *Glossarium mediae et infimae Latinitatis*, s.v. *capitaneatus*, *capitaneus*. Du Cange has no entry for *constabularia*, but for the seemingly related terms *constabularia* and *contestabularia* (the latter found in some MSS of the *Defensor* instead of *constabularia*), Du Cange refers to *comes stabuli*, meaning the custodian of the royal stable, and gives a large number of citations, s.v.

<sup>15</sup> *Politics* III. 14. 1285a 23. See also Ptolemy of Lucca *De regimine principum* III. xi (fin.) (ed. J. Mathis [Turin, 1924], p. 63b).

called this species of government an "elective tyranny,"<sup>16</sup> a tyranny because the law was despotic, and elective because it was not over involuntary subjects.

A fourth method is that whereby a ruler is elected with subsequent hereditary succession, and governs according to laws which are completely for the common benefit; this method was used "in heroic days,"<sup>17</sup> as Aristotle says in the chapter previously mentioned. Those days were called "heroic" either because the stars then produced men who were believed to be "heroes," that is, divine, on account of their exceeding virtue; or because such men and not others were named rulers on account of their exceeding virtues and beneficial deeds, in that they brought together a scattered multitude and assembled it into a civil community, or they freed the region of oppressors by fighting and strength of arms, or perhaps they bought the region or acquired it by some other appropriate method and divided it among the subjects. At any rate these men were made rulers with subsequent hereditary succession, because of their bestowal of great benefits or their excess of virtue over the rest of the multitude, as Aristotle also said in the *Politics*, Book V, Chapter 5.<sup>18</sup> Under this species of monarchy, Aristotle perhaps included that in which someone is elected only for his own lifetime or a part of his lifetime; or else he designated it through the combination of this fourth species and the one called elective tyranny, because it shares features of both.

There is and was a fifth method of kingly monarchy, whereby the ruler is made lord (*dominus*) over everything in the community, disposing of things and persons according to his own will, just as the head of a family disposes at will of everything in his own household.<sup>19</sup>

5. To make clearer these concepts of Aristotle, and to summarize all the methods of establishing the other kinds of government, we shall say that every government is over either voluntary or involuntary subjects. The first is the genus of well-tempered governments, the second of diseased governments. Each of these genera is divided into three species or kinds, as was said in Chapter VIII. And since one of the species of well-tempered government, and perhaps the more perfect, is kingly monarchy, let us resume our previous statements about its various kinds or methods, by saying that the king or monarch either is named by the election of the inhabitants or citizens, or duly obtains the rulership without their election. If without the election of the citizens, this is either because he or his ancestors first inhabited the region, or because he bought the land and jurisdic-

<sup>16</sup> *Politics* III. 14. 1285a 32.

<sup>17</sup> *Ibid.* 1285b 4.

<sup>18</sup> *Ibid.* v. 10. 1310b 10 ff.

<sup>19</sup> See *ibid.* III. 16-17. 1287a 1 ff.

tion, or acquired it by a just war or by some other lawful method, such as by gift made to him for some great service. Each of these kinds of monarchy participates so much the more in true kingship, the more it is over voluntary subjects and according to law made for the common benefit of the subjects; and it savors so much the more of tyranny the more it departs from these features, that is, the consent of the subjects and law established for their common benefit. Hence it is written in the *Politics*, Book IV, Chapter 8: "These," that is, monarchies, "were kingly because they were according to law, and ruled voluntary subjects; but they were tyrannical because they ruled despotically and in accordance with their," that is, the monarchs', "own judgment."<sup>20</sup> These two features, then, distinguish temperate from diseased government, as is apparent from the clear statement of Aristotle, but absolutely or in greater degree it is the consent of the subjects which is the distinguishing criterion.<sup>21</sup> Now if the ruling monarch is elected by the inhabitants, it is either with all his posterity succeeding him or not. If the latter, this may be in several ways, as he is named either for his own lifetime alone, or for his own lifetime and that of one or more of his successors, or not for the whole lifetime either of himself or of any of his successors but only for some determinate period, such as one or two years, more or less. Again, he is named to exercise either every judicial office, or only one office such as leading the army.

6. The elected and the non-elected kingly monarchs agree in that each rules voluntary subjects. They differ, however, in that the non-elected kings rule less voluntary subjects, and by laws which are less politic for the common benefit, as we said before in the case of the barbarians. The elected kings, on the other hand, rule more voluntary subjects, and by laws which are more politic, in that they are made for the common benefit, as we have said.

7. From these considerations it is clear, and will be even more apparent in the sequel, that the elected kind of government is superior to the non-elected. This is also the view of Aristotle in that passage of the *Politics*, Book III, Chapter 8, which we cited above with reference to those who were made rulers in the heroic days.<sup>22</sup> Again, this method of establishing governments is more permanent in perfect communities. For at some time or other it becomes necessary to have recourse to this from among all the other methods of establishing governments, but not conversely. For example, if hereditary succession fails, or if for some reason the multitude

<sup>20</sup> *Ibid.* iv. 10. 1295a 15.

<sup>21</sup> On this important statement, see above, i. viii. 2, n. 5, and pages of Vol. I cited there.

<sup>22</sup> *Politics*. iii. 14. 1285b 2; above, para. 4.

cannot bear the excessive malice of that family's rule, they must then turn to the method of election, which can never fail so long as the generation of men does not fail.<sup>23</sup> Moreover, by the method of election alone is the best ruler obtained. For it is expedient that the ruler be the best man in the polity, since he must regulate the civil acts of all the rest.<sup>24</sup>

8. The method of establishing the other species of temperate government is usually election; in some cases the ruler is chosen by lot,<sup>25</sup> without subsequent hereditary succession. Diseased governments, on the other hand, are usually established by fraud or force or both.<sup>26</sup>

9. Which of the temperate governments is better, monarchy or one of the other two species, aristocracy or polity; and again, which of the monarchies is better, the elected or the non-elected; and moreover, which of the elected monarchies, that established with hereditary succession ensuing or that in which one man alone is named without such succession; which in turn is divided into the further alternatives of whether it is better to name the ruler for a whole lifetime, either of himself alone or of some of his successors also, or only for some determinate period, such as one or two years, more or less—in all these questions there is room for inquiry and reasonable doubt.<sup>27</sup> It must be held without doubt, however, in accordance with the truth and the manifest view of Aristotle, that election is the more certain standard of government, as will be more fully shown in Chapters XII, XVI, and XVII of this discourse.<sup>28</sup>

10. We must not overlook, however, that different multitudes in different times and places are inclined toward different kinds of polity and government, as Aristotle says in the *Politics*, Book III, Chapter 9.<sup>29</sup> Legislators and institutors of governments must hearken to this fact. For just as not every man is inclined toward the best discipline or study, whereupon it is appropriate that he be directed toward the acquisition not of that discipline but of some other good one for which he is more fitted, so too a multitude in some time or place may perhaps not be inclined to accept the best kind of government, and therefore recourse must first be had to that kind of temperate government which is more appropriate to it. For example, before the monarchy of Julius Caesar, the Roman people were for a long time unwilling to accept any definite monarch, either with

<sup>23</sup> There is a suggestion here of the Averroist doctrine of eternal generation. See below, i. xvii. 10, and texts cited in note thereto.

<sup>24</sup> This is a marked ignoring of the papalist claims of superior virtue. See also below, i. xv. 3.

<sup>25</sup> Cf. Aristotle *Politics* ii. 6. 1266a 9; vi. 2. 1317b 21, 1318a 2.

<sup>26</sup> Cf. *ibid.* v. 4. 1304b 8.

<sup>27</sup> See above, i. viii. 4.

<sup>28</sup> Below, i. xii. 3; i. xvi. 11 ff.; i. xvii. 11.

<sup>29</sup> Aristotle *Politics* iii. 14. 1284b 39, 1285a 19.



hereditary succession or even one who was named only for his own lifetime. The reason for this was perhaps that there was a large number of heroic men worthy of rulership among them, both families and individuals.

11. From these conclusions, then, it emerges clearly that those who ask which monarch is better for a city or state, the one who rules through election or the one who rules through hereditary succession, do not put the question in the proper way.<sup>30</sup> What they must correctly ask first is, which monarch is better, the elected or the non-elected. And if the elected, again which, the one who is named with hereditary succession ensuing or the one who is named without hereditary succession. For although a non-elected monarch almost always transmits the rulership to his heir, not every elected monarch does so, but only the one who is named to rule with hereditary succession ensuing.

Let these, then, be our conclusions about the methods of establishing governments, and that the absolutely better method is election.

## CHAPTER X: ON THE DISTINCTION OF THE MEANINGS OF THE TERM "LAW," AND ON THE MEANING WHICH IS MOST PROPER AND INTENDED BY US

SINCE we have said that election is the more perfect and better method of establishing governments, we shall do well to inquire as to its efficient cause, wherefrom it has to emerge in its full value; for from this will appear the cause not only of the elected government but also of the other parts of the polity. Now a government has to regulate civil human acts (as we demonstrated in Chapter V of this discourse),<sup>1</sup> and according to a standard (*regulam*) which is and ought to be the form of the ruler, as such. We must, consequently, inquire into this standard, as to whether it exists, what it is, and why. For the efficient cause of this standard is perhaps the same as that of the ruler.

2. The existence of this standard, which is called a "statute" or "custom" and by the common term "law," we assume as almost self-evident by induction in all perfect communities. We shall show first, then, what law

<sup>30</sup> Among those who put the question in this way are Egidius of Rome *De regimine principum* Lib. III. Pars II. cap. v; Augustinus Triumphus *Summa de ecclesiastica potestate* qu. 35. aa. 6-7.

<sup>1</sup> See above, I. v. 7.

is; <sup>2</sup> next we shall indicate its final cause or necessity; <sup>3</sup> and finally we shall demonstrate by what person or persons and by what kind of action the law should be established; <sup>4</sup> which will be to inquire into its legislator or efficient cause, to whom we think it also pertains to elect the government, as we shall show subsequently by demonstration.<sup>5</sup> From these points there will also appear the matter or subject of the aforesaid standard which we have called law.<sup>6</sup> For this matter is the ruling part, whose function it is to regulate the political or civil acts of men according to the law.

3. Following this procedure, then, we must first distinguish the meanings or intentions of this term "law," in order that its many senses may not lead to confusion. For in one sense it means a natural sensitive inclination toward some action or passion. This is the way the Apostle used it when he said in the seventh chapter of the epistle to the Romans: "I see another law in my members, fighting against the law of my mind."<sup>7</sup> In another sense this term "law" means any productive habit and in general every form, existing in the mind, of a producible thing, from which as from an exemplar or measure there emerge the forms of things made by art. This is the way in which the term was used in the forty-third chapter of Ezekiel: "This is the law of the house . . . And these are the measurements of the altar."<sup>8</sup> In a third sense "law" means the standard containing admonitions for voluntary human acts according as these are ordered toward glory or punishment in the future world. In this sense the Mosaic law was in part called a law, just as the evangelical law in its entirety is called a law. Hence the Apostle said of these in his epistle to the Hebrews: "Since the priesthood has been changed, it is necessary that there be a change of the law also."<sup>9</sup> In this sense "law" was also used for the evangelical discipline in the first chapter of James: "He who has looked into the perfect law of liberty, and has continued therein . . . this man shall be blessed in his deeds."<sup>10</sup> In this sense of the term law all religions,<sup>11</sup> such as that of Mohammed or of the Persians, are called laws in whole or in part, although among these only the Mosaic and the evangelical, that is, the Christian, contain the truth. So too Aristotle called religions "laws" when he said, in the second book of his *Philosophy*: "The laws show how great is the power of custom";<sup>12</sup> and also in the twelfth book of the same work: "The other doctrines were added as myths to persuade men to obey the laws, and for the sake of expediency."<sup>13</sup> In its fourth and most familiar

<sup>2</sup> I. x.

<sup>3</sup> I. xi.

<sup>4</sup> I. xii-xiii.

<sup>5</sup> I. xv. 2.

<sup>6</sup> I. xiv; I. xv. 3.

<sup>7</sup> Romans 7:23.

<sup>8</sup> Ezekiel 43:12-13.

<sup>9</sup> Hebrews 7:12.

<sup>10</sup> James 1:25.

<sup>11</sup> *Sectae*; see above, I. v. 10, and Introduction, pp. xc-xci.

<sup>12</sup> Aristotle *Metaphysics* II. 3. 995a 4.

<sup>13</sup> *Ibid.* XII. 8. 1074b 3.

sense, this term "law" means the science or doctrine or universal judgment of matters of civil justice and benefit, and of their opposites.<sup>14</sup>

4. Taken in this last sense, law may be considered in two ways. In one way it may be considered in itself, as it only shows what is just or unjust, beneficial or harmful; and as such it is called the science or doctrine of right (*juris*). In another way it may be considered according as with regard to its observance there is given a command coercive through punishment or reward to be distributed in the present world, or according as it is handed down by way of such a command; and considered in this way it most properly is called, and is, a law.<sup>15</sup> It was in this sense that Aristotle also defined it in the last book of the *Ethics*, Chapter 8, when he said: "Law has coercive force, for it is discourse emerging from prudence and understanding."<sup>16</sup> Law, then, is a "discourse" or statement "emerging from prudence and" political "understanding," that is, it is an ordinance made by political prudence, concerning matters of justice and benefit and their opposites, and having "coercive force," that is, concerning whose observance there is given a command which one is compelled to observe, or which is made by way of such a command.

5. Hence not all true cognitions of matters of civil justice and benefit are laws unless a coercive command has been given concerning their observance, or they have been made by way of a command, although such true cognition is necessarily required for a perfect law. Indeed, sometimes false cognitions of the just and the beneficial become laws,<sup>17</sup> when there is given a command to observe them, or they are made by way of a command. An example of this is found in the regions of certain barbarians, who cause it to be observed as just that a murderer be absolved of civil guilt and punishment on payment of a fine. This, however, is absolutely unjust, and consequently the laws of such barbarians are not absolutely perfect. For although they have the proper form, that is, a coercive command of observance, they lack a proper condition, that is, the proper and true ordering of justice.

6. Under this sense of law are included all standards of civil justice and benefit established by human authority, such as customs, statutes, plebiscites, decretals,<sup>18</sup> and all similar rules which are based upon human authority as we have said.

<sup>14</sup> On these four senses of "law," see Vol. I, p. 133.

<sup>15</sup> This conception of coerciveness as the essence of law is a noteworthy departure from the medieval tradition's emphasis on reason as the essence of law. See Vol. I, pp. 133-34.

<sup>16</sup> Aristotle *Nicomachean Ethics* x. 9. 1180a 21.

<sup>17</sup> On Marsilius' uniqueness on this point in relation to the medieval tradition, see Vol. I, p. 134.

<sup>18</sup> See, however, below, I. xiii. 5; II. xxviii. 29.

7. We must not overlook, however, that both the evangelical law and the Mosaic, and perhaps the other religions as well, may be considered and compared in different ways in whole or in part, in relation to human acts for the status of the present or the future world. For they sometimes come, or have hitherto come, or will come, under the third sense of law, and sometimes under the last, as will be shown more fully in Chapters VIII and IX of Discourse II. Moreover, some of these laws are true, while others are false fancies and empty promises.

It is now clear, then, that there exists a standard or law of human civil acts, and what this is.

## CHAPTER XI: ON THE NECESSITY FOR MAKING LAWS (TAKEN IN THEIR MOST PROPER SENSE); AND THAT NO RULER, HOWEVER VIRTUOUS OR JUST, SHOULD RULE WITHOUT LAWS

HAVING thus distinguished these various meanings of "law," we wish to show the end or necessity of law in its last and most proper sense. The principal end is civil justice and the common benefit; the secondary end is the security of rulers, especially those with hereditary succession, and the long duration of governments. The primary necessity of the law, then, is as follows: It is necessary to establish in the polity that without which civil judgments cannot be made with complete rightness, and through which these judgments are properly made and preserved from defect so far as it is humanly possible. Such a thing is the law,<sup>1</sup> when the ruler is directed to make civil judgments in accordance with it. Therefore, the establishment of law is necessary in the polity. The major premise of this demonstration is almost self-evident, and is very close to being indemonstrable. Its certainty can and should be grasped from Chapter V, paragraph 7 of this discourse. The minor premise will now be proved in this way: To make a good judgment, there are required a right emotion of the judges and a true knowledge of the matters to be judged; the opposites of which corrupt civil judgments. For if the judge has a perverted emotion, such as hate, love, or avarice, this perverts his desire. But such emotions are kept away from the judgment, and it is preserved from them, when the judge or ruler is directed to make judgments according to the

<sup>1</sup> On the relation of this exaltation of law to the view taken in the preceding chapter (para. 5) that laws may be unjust, see Vol. I, pp. 139 ff.

laws, because the law lacks all perverted emotion; for it is not made useful for friend or harmful for foe, but universally for all those who perform civil acts well or badly. For all other things are accidental to the law and are outside it; but they are not similarly outside the judge. Persons involved in a judgment can be friendly or inimical to the judge, helpful or harmful to him, by making him a gift or a promise; and in other ways too they can arouse in the judge a desire which perverts his judgment. Consequently, no judgment, so far as possible, should be entrusted to the discretion of the judge, but rather it should be determined by law and pronounced in accordance with it.

2. This was also the view of the divine Aristotle in the *Politics*, Book III, Chapter 9, where he asks whether it is better for a polity to be ruled by the best man without law or by the best laws; and he replies as follows: "That is better," that is, superior for judging, "which entirely lacks the passionate factor," that is, the emotion which may pervert the judgment, "than that to which passion is natural. But law does not have this," that is, passion or emotion, "while every human soul must necessarily have it";<sup>2</sup> and he said "every," not excepting anyone, however virtuous. He repeats this view in the *Rhetoric*, Book I, Chapter 1: "Most of all" is this required, that is, that nothing be left to the discretion of the judge, to be judged apart from the law, "because the judgment of the legislator," that is, the law, "is not partial," that is, it is not made on account of some one particular man, "but is concerned with future and universal matters. Now the judge and the magistrate judge about present and determinate matters, with which love and hate and private benefit are often involved, so that they cannot sufficiently see the truth, but instead have regard in their judgments to their own private pleasure and displeasure."<sup>3</sup> He also makes this point in Book I, Chapter 2 of the same treatise: "We do not render the same judgments when we are pleased as when we are pained, when we love as when we hate."<sup>4</sup>

3. A judgment is also corrupted through the ignorance of the judges, even if they be of good emotion or intention. This sin or defect is removed and remedied by the law, for in the law is determined well-nigh perfectly what is just or unjust, beneficial or harmful, with regard to each human civil act. Such determination cannot be made so adequately by any one man, however intelligent he may be. For 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; indeed, what was said about them by the

<sup>2</sup> Aristotle *Politics* III. 15. 1286a 17.

<sup>3</sup> Aristotle *Rhetoric* I. 1. 1354b 4 ff.

<sup>4</sup> *Ibid.* I. 2. 1356a 14. See Vol. I, pp. 140-41, 206, 218.

first investigators and also by all the men of the same era who observed such acts was meager and imperfect, and attained its completion only subsequently through the additions made by later investigators. This can be sufficiently seen from experience, in the additions, subtractions, and complete changes sometimes made in the laws in different eras, or at different times within the same era.

Aristotle also attests to this in the *Politics*, Book II, Chapter 2, when he says: "We must not ignore that attention must be paid to the long time and many years of the past, in which it would not have remained unknown if these things were good,"<sup>5</sup> that is, the measures which are to be established as laws. He says the same thing in the *Rhetoric*, Book I, Chapter 1: "Laws are made after long study."<sup>6</sup> This is also confirmed by reason, since the making of laws requires prudence, as we saw above from the definition of law, and prudence requires long experience, which, in turn, requires much time. Hence it is said in the sixth book of the *Ethics*: "A sign of what has been said is that while youths may become geometers, and be learned and wise in such sciences, they do not seem to become prudent. The cause is that prudence is of singular things which become known through experience; but a youth is not experienced, for experience requires a long time."<sup>7</sup> Consequently, what one man alone can discover or know by himself, both in the science of civil justice and benefit and in the other sciences, is little or nothing. Moreover, what is observed by the men of one era is quite imperfect by comparison with what is observed in many eras, so that Aristotle, discussing the discovery of truth in every art and discipline, wrote as follows in the *Philosophy*, Book II, Chapter 1: "One man," that is, one discoverer of any art or discipline "contributes to it," that is, discovers about it by himself alone, "little or nothing, but by the contributions of all a great deal is accomplished."<sup>8</sup> This passage is clearer in the translation from the Arabic, in which it reads as follows: "Each of them," that is, each of the discoverers of any art or discipline, "comprehends little or nothing about the truth. But when a collection is made from among all who have achieved some comprehension, what is collected will be of considerable quantity."<sup>9</sup> This may especially be seen in the case of astrology.<sup>10</sup>

It is in this way, then, by men's mutual help and the addition of

<sup>5</sup> Aristotle *Politics* II. 5. 1264a 1.

<sup>6</sup> Aristotle *Rhetoric* I. 1. 1354b 3.

<sup>7</sup> Aristotle *Nicomachean Ethics* VI. 9. 1142a 12.

<sup>8</sup> Aristotle *Metaphysics* II. 1. 993b 2.

<sup>9</sup> For the Latin translation from the Arabic, see *Aristotelis opera*, ed. Manardus (Venice, 1560), Vol. IV, fol. 47v.

<sup>10</sup> Marsilius' special mention of "astrology" here may have been occasioned not only by his long acquaintance with Peter of Abano but also by the work he himself had done in the subject. See Vol. I, p. 20 and p. 22, n. 17.

later to earlier discoveries, that all arts and disciplines have been perfected. Aristotle indicated this figuratively with regard to the discovery of music in the same place cited above, when he said: "If there had been no Timotheus, we should be lacking much melody; but if there had been no Phrynes, there would have been no Timotheus";<sup>11</sup> that is, Timotheus would not have been so accomplished in melody if he had not had the melodies previously discovered by Phrynes. Averroes expounds these words as follows in the second book of his *Commentary*: "And what he," that is, Aristotle, "says in this chapter is clear. For no one can discover by himself the larger part of the practical or considerative," that is, theoretic, "sciences, because these are completed only through the assistance which an earlier investigator gives to the one following him."<sup>12</sup> And Aristotle says the same thing in the second book of the *Refutations*, last chapter,<sup>13</sup> concerning the discovery of rhetoric and of all other disciplines, whatever the case may have been with regard to the discovery of logic, whose complete development he ascribed to himself alone without the discovery or assistance of any predecessor; in which he seems to have been unique among men. He also makes the same point in the *Ethics*, Book VIII, Chapter 1: "Two persons are better able to act and to understand"<sup>14</sup> (supply: than one alone). But if two, then more than two, both simultaneously and successively, can do more than one man alone. And this is what Aristotle says with regard to our present subject in the *Politics*, Book III, Chapter 9: "It will appear most unreasonable if one man should perceive better, judging with only two eyes and two ears and acting with only two hands and feet, than many persons with many such organs."<sup>15</sup>

Since, then, the law is an eye composed of many eyes, that is, the considered comprehension of many comprehenders for avoiding error in civil judgments and for judging rightly, it is safer that these judgments be made according to law than according to the discretion of the judge. For this reason it is necessary to establish the law, if politics are to be ordered for the best with regard to their civil justice and benefit; for through the law, civil judgments are preserved from the ignorance and perverted emotion of the judges. This was the minor premise of the demonstration

<sup>11</sup> Aristotle, *Metaphysics* II. 1. 993b 15; inserting, with Bigongiari (p. 42), *non* before Phrynes.

<sup>12</sup> Averroes *Commentarius in Aristotelis Metaphysicam* Lib. II. cap. I, in *Aristotelis opera*, ed. Manardus (Venice, 1560), Vol. IV, fol. 49r.

<sup>13</sup> Aristotle *On Sophistical Refutations* 34. 183b 34 ff.

<sup>14</sup> Aristotle *Nicomachean Ethics* VIII. 1. 1155a 16.

<sup>15</sup> Aristotle *Politics* III. 16. 1287b 26. Aristotle himself uses this consideration as an argument for having many rather than few judges in cases not covered by the law, and not, like Marsilius, as an argument for the determination of judgments by law rather than by the discretion of the judges.

by which we have tried from the beginning of this chapter to prove the necessity of the laws. As to the method by which a dispute or civil lawsuit is to be decided or judged when it is not determined by law, this will be discussed in Chapter XIV of this discourse.<sup>16</sup> Laws, therefore, are necessary in order to exclude malice and error from the civil judgments or sentences of the judges.

4. For these reasons, Aristotle counseled that no judge or ruler should be granted the discretionary power to give judgments or commands without law, concerning those civil affairs which could be determined by law. Hence he said in the *Ethics*, Book IV, Chapter 5, the treatise on justice: "We must not allow man to rule, but" in accordance with "reason,"<sup>17</sup> that is, law; and Aristotle indicated the cause which we pointed out above, the perverted emotion which can be had by man. In the *Politics*, Book III, Chapter 6, he said: "The first question shows plainly above all that laws rightly made should govern,"<sup>18</sup> that is, that rulers should govern in accordance with laws. Again in the same treatise, Book III, Chapter 9, he said: "He who orders the mind to rule seems thereby to order God and the laws to rule; but he who orders man to rule," that is, without law, according to his own discretion, "instigates a beast";<sup>19</sup> and shortly thereafter he indicated the ground for this: "Hence the law is reason without desire,"<sup>20</sup> as if to say that the law is reason or knowledge without emotion. He repeated this view also in the *Rhetoric*, Book I, Chapter 1: "It is best, therefore, for rightly made laws to determine as many matters as possible and to entrust as little as possible to the judges";<sup>21</sup> giving the reasons adduced above, the exclusion from civil judgments of the judges' malice and ignorance, which cannot arise in the law as they do in the judge, as we have shown above. And even more clearly Aristotle says in the *Politics*, Book IV, Chapter 4: "Where the laws do not govern," that is, where rulers do not govern in accordance with the laws, "there is no polity," that is, none which is temperate. "For the law should govern all things."<sup>22</sup>

5. It still remains to show another reason why all rulers should govern according to law and not without it, and especially those monarchs who rule with hereditary succession: namely, in order that their governments

<sup>16</sup> See below, I. xiv. 3-6.

<sup>17</sup> Aristotle *Nicomachean Ethics* V. 6. 1134a 35. The expression "in accordance with" (*secundum*) is added by Marsilius. Note his other similar interpolations in this paragraph, all motivated by his literal conception that only man can "rule" or "govern," not reason or law. See Vol. I, pp. 139-40.

<sup>18</sup> Aristotle *Politics* III. 11. 1282b 1.

<sup>19</sup> *Ibid.* III. 16. 1287a 28.

<sup>20</sup> *Ibid.* 1287a 32.

<sup>21</sup> Aristotle *Rhetoric* I. 1. 1354a 32.

<sup>22</sup> Aristotle *Politics* IV. 4. 1292a 32. By "polity" in this passage Aristotle himself means a constitution of any kind, whether "temperate" or "diseased."

may be more secure and longer lasting. This was the second reason for the necessity of laws which we indicated at the beginning of this chapter. For when rulers govern according to law, their judgments are preserved from the defect which is caused by ignorance and perverted emotion. Hence the rulers are regulated both in themselves and in relation to their citizen subjects, and they suffer less from sedition and from the consequent destruction of their governments which they would incur if they acted badly according to their own discretion, as Aristotle clearly says in the *Politics*, Book V, Chapter 5: "For a kingdom is destroyed least of all by external forces: its destruction most usually comes from within itself. It is destroyed in two ways: one is when those who share the ruling power quarrel among themselves, the other is when they try to govern tyrannically, by controlling more things, and contrary to the law. Kingdoms no longer occur these days, but if monarchies occur, they are rather tyrannies."<sup>23</sup>

6. Someone will raise an objection about the best man, who lacks ignorance and perverted emotion.<sup>24</sup> As for us, however, we reply that such a man happens very rarely,<sup>25</sup> and that even when he does he is not equal in virtue to the law, as we proved above from Aristotle, from reason, and from sense experience. For every soul sometimes has a vicious emotion. We can readily prove this through the thirteenth chapter of Daniel; for it is there written that "two elders came full of wicked device against Susanna, to put her to death."<sup>26</sup> Now these were old men and priests and judges of the people that year: nevertheless they bore false witness against her because she would not acquiesce to their vicious lust. If, then, old priests, about whom it would least be expected, were corrupted by carnal lust, what should be thought of other men, and how much more will they be corrupted by avarice and other vicious emotions? Certainly no one, however virtuous, can be so lacking in perverted passion and ignorance as is the law. Therefore, it is safer that civil judgments be regulated by the law than that they be entrusted to the discretion of a judge, however virtuous he may be.

7. Let us assume, however, although it is most rare or impossible, that there is some ruler so heroic that in him neither passion nor ignorance finds a place. What shall we say of his sons, who are unlike him and who, ruling in accordance with their own discretion, will commit excesses which result in their being deprived of the rulership? Someone may say that the father, who is the best of men, will not hand over the government to such

<sup>23</sup> *Ibid.* v. 10. 1312b 38.

<sup>24</sup> Cf. *ibid.* III. 13. 1284a 3 ff.; III. 17. 1288a 15 ff. Cf. also Dante *De monarchia* I. xi, xiii.

<sup>25</sup> See Vol. I, pp. 205-8, and n. 22. Also below, I. xvi. 17.

<sup>26</sup> Daniel 13:28.

sons. This reply, however, is not to be granted, for two reasons: first, because it is not in the father's power to deprive his sons of the succession, since the rulership is a hereditary possession of his family, and second, because even if it were in the father's power to transfer the rulership to whomsoever he wanted, he would not deprive his sons of it no matter how vicious they were. Hence, Aristotle answers this objection as follows in the *Politics*, Book III, Chapter 9: "It is difficult to believe this," that is, that the father will deprive his sons of the rulership, "as it would require a greater virtue than human nature is capable of."<sup>27</sup> For this reason it is more expedient for rulers that they be regulated and limited by law, than that they make civil judgments according to their own discretion. For when they act according to law, they will do nothing vicious or reprehensible, so that their rule will be made secure and longer lasting.

8. This was the counsel which the distinguished Aristotle gave to all rulers, but to which they pay little heed. As he said in the *Politics*, Book V, Chapter 6: "The fewer things the rulers control," that is, without law, "the longer must every government endure, for they," that is, the rulers, "become less despotic, they are more moderate in their ways and are less hated by their subjects."<sup>28</sup> And then Aristotle adduces the testimony of a certain very prudent king called Theopompus, who gave up some of the power which had been granted to him. We have thought it appropriate to quote Aristotle's words here because of this ruler's uniqueness and his outstanding virtue, almost unheard of in anyone else throughout the ages. This is what Aristotle said: "Theopompus exercised moderation," that is, he lessened his power, which may perhaps have seemed excessive, "among other ways by establishing the office of the ephors: for by diminishing his power he increased his kingdom in time," that is, he made it more durable; "hence in a way he made it not smaller but greater. When his wife asked him whether he was not ashamed to give his children a smaller kingdom than he had received from his father, he replied, 'Not at all, for the power I give to them will be more lasting.'"<sup>29</sup> O heroic voice, proceeding from Theopompus' unheard-of prudence, a voice which should be heeded by all those who wish to wield plenitude of power over their subjects apart from laws! Many rulers, not heeding this voice, have been destroyed. And we ourselves have seen that from lack of attention to this voice not the least of kingdoms in modern times almost underwent a revolution, when its ruler wished to impose upon his subjects an unusual and illegal tax.<sup>30</sup>

<sup>27</sup> Aristotle *Politics* III. 15. 1286b 26. <sup>28</sup> *Ibid.* v. II. 1313a 20. <sup>29</sup> *Ibid.* 1313a 26.

<sup>30</sup> This is a reference to the leagues formed in France to protest against Philip the Fair's new taxation in 1314.

It is clear, then, from what we have said, that laws are necessary in politics if they are to be ordered with entire rightness and their governments are to be longer lasting.

CHAPTER XII: ON THE DEMONSTRABLE EFFICIENT CAUSE OF HUMAN LAWS, AND ALSO ON THAT CAUSE WHICH CANNOT BE PROVED BY DEMONSTRATION: WHICH IS TO INQUIRE INTO THE LEGISLATOR. WHENCE IT APPEARS ALSO THAT WHATSOEVER IS ESTABLISHED BY ELECTION DERIVES ITS AUTHORITY FROM ELECTION ALONE APART FROM ANY OTHER CONFIRMATION

WE must next discuss that efficient cause of the laws which is capable of demonstration. For I do not intend to deal here with that method of establishing laws which can be effected by the immediate act or oracle of God apart from the human will, or which has been so effected in the past. It was by this latter method, as we have said, that the Mosaic law was established;<sup>1</sup> but I shall not deal with it here even insofar as it contains commands with regard to civil acts for the status of the present world. I shall discuss the establishment of only those laws and governments which emerge immediately from the decision of the human mind.

2. Let us say, to begin with, that it can pertain to any citizen to discover the law taken materially and in its third sense, as the science of civil justice and benefit.<sup>2</sup> Such inquiry, however, can be carried on more appropriately and be completed better by those men who are able to have leisure, who are older and experienced in practical affairs, and who are called "prudent men,"<sup>3</sup> than by the mechanics who must bend all their efforts to acquiring the necessities of life. But it must be remembered that the true knowledge or discovery of the just and the beneficial, and of their opposites, is not law taken in its last and most proper sense, whereby it is the measure of human

<sup>1</sup> See above, I. ix. 2; also I. vi. 3.

<sup>2</sup> See above, I. x. 3. This is really the first subdivision of the fourth sense of law.

<sup>3</sup> This seems to refer both to Aristotle's conception of "prudence" (e.g., *Nicomachean Ethics* vi. 8. 1141b 23 ff.) and to the *prudentes* of the Italian communes. Scholz cites Dino Compagni *Cronica* I. iv; II. viii (*Scriptores rerum Italicarum*, Vol. IX, Part 2, pp. 16 f., 99, and n. 3).

civil acts, unless there is given a coercive command as to its observance, or it is made by way of such a command, by someone through whose authority its transgressors must and can be punished.<sup>4</sup> Hence, we must now say to whom belongs the authority to make such a command and to punish its transgressors. This, indeed, is to inquire into the legislator or the maker of the law.

3. Let us say, then, in accordance with the truth and the counsel of Aristotle in the *Politics*, Book III, Chapter 6,<sup>5</sup> that the legislator, or the primary and proper efficient cause of the law, is the people or the whole body of citizens, or the weightier part thereof, through its election or will expressed by words in the general assembly of the citizens, commanding or determining that something be done or omitted with regard to human civil acts, under a temporal pain or punishment. By the "weightier part" I mean to take into consideration the quantity and the quality of the persons in that community over which the law is made.<sup>6</sup> The aforesaid whole body of citizens or the weightier part thereof is the legislator regardless of whether it makes the law directly by itself or entrusts the making of it to some person or persons, who are not and cannot be the legislator in the absolute sense, but only in a relative sense and for a particular time and in accordance with the authority of the primary legislator. And I say further that the laws and anything else established through election must receive their necessary approval by that same primary authority and no other, whatever be the case with regard to certain ceremonies or solemnities, which are required not for the being of the matters elected but for their well-being, since the election would be no less valid even if these ceremonies were not performed. Moreover, by the same authority must the laws and other things established through election undergo addition, subtraction, complete change, interpretation, or suspension, insofar as the exigencies of time or place or other circumstances make any such action opportune for the common benefit. And by the same authority, also, must the laws be promulgated or proclaimed after their enactment, so that no citizen or alien who is delinquent in observing them may be excused because of ignorance.

4. A citizen I define in accordance with Aristotle in the *Politics*, Book III, Chapters 1, 3, and 7, as one who participates in the civil community in the government or the deliberative or judicial function according to his

<sup>4</sup> See above, I. x. 4-5.

<sup>5</sup> Aristotle *Politics* III. II. 1281a 39 ff.

<sup>6</sup> The words *personarum et qualitate* were omitted from a younger group of manuscripts and from early printed versions, thereby leading to a mistaken interpretation of Marsilius' position as purely majoritarian. On the sources and meaning of his concept of "weightier part" (*valentior pars*), see Vol. I, pp. 182-99.

rank.<sup>7</sup> By this definition, children, slaves, aliens, and women are distinguished from citizens, although in different ways. For the sons of citizens are citizens in proximate potentiality, lacking only in years. The weightier part of the citizens should be viewed in accordance with the honorable custom of polities, or else it should be determined in accordance with the doctrine of Aristotle in the *Politics*, Book VI, Chapter 2.<sup>8</sup>

5. Having thus defined the citizen and the weightier part of the citizens, let us return to our proposed objective, namely, to demonstrate that the human authority to make laws belongs only to the whole body of the citizens or to the weightier part thereof. Our first proof is as follows. The absolutely primary human authority to make or establish human laws belongs only to those men from whom alone the best laws can emerge. But these are the whole body of the citizens, or the weightier part thereof, which represents that whole body; since it is difficult or impossible for all persons to agree upon one decision, because some men have a deformed<sup>9</sup> nature, disagreeing with the common decision through singular malice or ignorance. The common benefit should not, however, be impeded or neglected because of the unreasonable protest or opposition of these men. The authority to make or establish laws, therefore, belongs only to the whole body of the citizens or to the weightier part thereof.

The first proposition of this demonstration is very close to self-evident, although its force and its ultimate certainty can be grasped from Chapter V of this discourse. The second proposition, that the best law is made only through the hearing and command of the entire multitude, I prove by assuming with Aristotle in the *Politics*, Book III, Chapter 7, that the best law is that which is made for the common benefit of the citizens. As Aristotle said: "That is presumably right," that is, in the laws, "which is for the common benefit of the state and the citizens."<sup>10</sup> But that this is best achieved only by the whole body of the citizens or by the weightier part thereof, which is assumed to be the same thing, I show as follows: That at which the entire body of the citizens aims intellectually and emotionally is more certainly judged as to its truth and more diligently noted as to its common utility. For a defect in some proposed law can be better noted by the greater number than by any part thereof, since every whole, or at least every corporeal whole, is greater in mass and in virtue than any

<sup>7</sup> *Politics* III. 1. 1275a 22, 1275b 19; III. 3. 1277b 33; III. 13. 1283b 42. See Vol. I, pp. 175-79.

<sup>8</sup> *Politics* VI. 3-4. 1318a 3 ff. See Vol. I, pp. 198-99. <sup>9</sup> See Vol. I, pp. 58-59, 186-87.

<sup>10</sup> *Politics* III. 13. 1283b 40. The word "presumably" is owing to William of Moerbeke's having translated Aristotle's *ισως* as *forte* instead of as *aequaliter*; for Aristotle's own meaning is, "That is equally right. . . ."

part of it taken separately.<sup>11</sup> Moreover, the common utility of a law is better noted by the entire multitude, because no one knowingly harms himself.<sup>12</sup> Anyone can look to see whether a proposed law leans toward the benefit of one or a few persons more than of the others or of the community, and can protest against it. Such, however, would not be the case were the law made by one or a few persons, considering their own private benefit rather than that of the community. This position is also supported by the arguments which we advanced in Chapter XI of this discourse with regard to the necessity of having laws.

6. Another argument to the principal conclusion is as follows. The authority to make the law belongs only to those men whose making of it will cause the law to be better observed or observed at all. Only the whole body of the citizens are such men. To them, therefore, belongs the authority to make the law. The first proposition of this demonstration is very close to self-evident, for a law would be useless unless it were observed. Hence Aristotle said in the *Politics*, Book IV, Chapter 6: "Laws are not well ordered when they are well made but not obeyed."<sup>13</sup> He also said in Book VI, Chapter 5: "Nothing is accomplished by forming opinions about justice and not carrying them out."<sup>14</sup> The second proposition I prove as follows. That law is better observed by every citizen which each one seems to have imposed upon himself. But such is the law which is made through the hearing and command of the entire multitude of the citizens. The first proposition of this prosyllogism is almost self-evident; for since "the state is a community of free men," as is written in the *Politics*, Book III, Chapter 4,<sup>15</sup> every citizen must be free, and not undergo another's despotism, that is, slavish dominion. But this would not be the case if one or a few of the citizens by their own authority made the law over the whole body of citizens. For those who thus made the law would be despots over the others, and hence such a law, however good it was, would be endured only with reluctance, or not at all, by the rest of the citizens, the more ample part. Having suffered contempt, they would protest against it, and not having been called upon to make it, they would not observe it. On the other hand, a law made by the hearing or consent of the whole multitude, even though it were less useful, would be readily observed and endured by every one of the citizens, because then each would seem to have set the law upon himself, and hence would have no protest against it, but would rather tolerate it with equanimity.<sup>16</sup> The second proposition of

<sup>11</sup> On this argument, see Vol. I, pp. 212-19. <sup>12</sup> Cf. I. xii. 8 and note 20 thereon.

<sup>13</sup> *Politics* IV. 8. 1294a 3. <sup>14</sup> *Ibid.* VI. 8. 1322a 5. <sup>15</sup> *Ibid.* III. 6. 1279a 21.

<sup>16</sup> On this argument, and the conception of freedom which it involves, see Vol. I, pp. 218-23. The point that those who "have some part in government" will "love" it and will work

the first syllogism I also prove in another way, as follows. The power to cause the laws to be observed belongs only to those men to whom belongs coercive force over the transgressors of the laws. But these men are the whole body of citizens or the weightier part thereof. Therefore, to them alone belongs the authority to make the laws.<sup>17</sup>

7. The principal conclusion is also proved as follows. That practical matter whose proper establishment is of greatest importance for the common sufficiency of the citizens in this life, and whose poor establishment threatens harm for the community, must be established only by the whole body of the citizens. But such a matter is the law. Therefore, the establishment of the law pertains only to the whole body of the citizens. The major premise of this demonstration is almost self-evident, and is grounded in the immediate truths which were set forth in Chapters IV and V of this discourse. For men came together to the civil community in order to attain what was beneficial for sufficiency of life, and to avoid the opposite. Those matters, therefore, which can affect the benefit and harm of all ought to be known and heard by all,<sup>18</sup> in order that they may be able to attain the beneficial and to avoid the opposite. Such matters are the laws, as was assumed in the minor premise. For in the laws being rightly made consists a large part of the whole common sufficiency of men, while under bad laws there arise unbearable slavery, oppression, and misery of the citizens, the final result of which is that the polity is destroyed.

8. Again, and this is an abbreviation and summary of the previous demonstrations: The authority to make laws belongs only to the whole body of the citizens, as we have said, or else it belongs to one or a few men.<sup>19</sup> But it cannot belong to one man alone for the reasons given in Chapter XI and in the first demonstration adduced in the present chapter; for through ignorance or malice or both, this one man could make a bad law, looking more to his own private benefit than to that of the community, so that the law would be tyrannical. For the same reason, the authority to make laws cannot belong to a few; for they too could sin, as above, in making the law for the benefit of a certain few and not for the common benefit, as can be seen in oligarchies. The authority to make the laws be-

harder for the common good is made by Thomas Aquinas *S. theol.* II. 1. qu. 105. a. 1. Resp.; *De regimine principum* I. iv (ed. J. Mathis [Turin, 1924], pp. 6-7); see also Ptolemy of Lucca *De regimine principum* II. viii (ed. J. Mathis [Turin, 1924], p. 90), and John of Paris *De potestate regia et papali* cap. xix (ed. D. J. Leclercq, *Jean de Paris et l'ecclésiologie du XIII<sup>e</sup> siècle* [Paris, 1942], pp. 236-37). In none of these authors, however, is this point made with Marsilius' insistence that the supreme legislative authority can belong only to the people.

<sup>17</sup> See Introduction, above, pp. xxxix-xl, lxxxvii.

<sup>18</sup> On this famous maxim, see Vol. I, pp. 223-24.

<sup>19</sup> Reading, with Scholz, full stop after *pauciores*.

longs, therefore, to the whole body of citizens or to the weightier part thereof, for precisely the opposite reason. For since all the citizens must be measured by the law according to due proportion, and no one knowingly harms or wishes injustice to himself,<sup>20</sup> it follows that all or most wish a law conducing to the common benefit of the citizens.

9. From these same demonstrations it can also be proved, merely by changing the minor term, that the approval, interpretation, and suspension of the laws, and the other matters set forth in paragraph 3 of this chapter, pertain to the authority of the legislator alone. And the same must be thought of everything else which is established by election. For the authority to approve or disapprove rests with those who have the primary authority to elect, or with those to whom they have granted this authority of election. For otherwise, if the part could dissolve by its own authority what had been established by the whole, the part would be greater than the whole, or at least equal to it.

The method of coming together to make the laws will be described in the following chapter.

### CHAPTER XIII: ON SOME OBJECTIONS TO THE STATEMENTS<sup>1</sup> MADE IN THE PRECEDING CHAPTER, AND THEIR REFUTATION, TOGETHER WITH A FULLER EXPOSITION OF THE PROPOSITION

OBJECTIONS will be made to our above statements, to the effect that the authority to make or establish laws does not belong to the whole body of the citizens.<sup>2</sup> The first objection is that those who for the most part are vicious and undiscerning should not make the law. For these two sins, malice and ignorance, must be excluded from the legislator, and it was to avoid them in civil judgments that we upheld the necessity of law in Chapter XI of this discourse. But the people or the whole body of citizens have these sins; for men for the most part seem to be vicious and stupid: "The number of the stupid is infinite," as it is said in the first chapter of Ecclesiastes.<sup>3</sup> Another objection is that it is very difficult or impos-

<sup>20</sup> Cf. J. J. Rousseau *Contrat social* II. vi: "nul n'est injuste envers lui-même." Cf. also *ibid.* I. vii. See Vol. I, p. 211, n. 34.

<sup>1</sup> Reading, with Scholz, *ad dicta* for *addicta*.

<sup>2</sup> For antecedents and possible sources of these objections, see Vol. I, pp. 199-203.

<sup>3</sup> Ecclesiastes 1:15.



sible to harmonize the views of many vicious and unintelligent persons; but such is not the case with the few and virtuous. It is more useful, therefore, that the law be made by the few than by the whole body of the citizens or the exceeding majority of them. Again, in every civil community the wise and learned are few in comparison with the multitude of the unlearned. Since, therefore, the law is more usefully made by the wise and learned than by the unlearned and uncultivated, it seems that the authority to make laws belongs to the few, not to the many or to all. Furthermore, that which can be done by fewer persons is needlessly done by more. Since, therefore, the law can be made by the wise, who are few, as has been said, the entire multitude or the greater part of it would needlessly be occupied therein. The authority to make the laws does not belong, therefore, to the whole body of the citizens or to the weightier part thereof.

2. From what we assumed above as the principle of all the things to be demonstrated in this book, namely, that all men desire sufficiency of life and avoid the opposite,<sup>4</sup> we demonstrated in Chapter IV the civil association of men, inasmuch as through such association they can attain this sufficiency, and without it they cannot. Hence too Aristotle says in the *Politics*, Book I, Chapter 1: "There is in all men a natural impulse toward such a community,"<sup>5</sup> that is, the civil community. From this truth there necessarily follows another, which is presented in the *Politics*, Book IV, Chapter 10, namely, that "that part of the state which wishes the polity to endure must be weightier than the part which does not wish it."<sup>6</sup> For nothing is desired by the same specific nature in most of its individual members and immediately at the same time as the thing's destruction, since such a desire would be futile. Indeed, those who do not wish the polity to endure are classed among the slaves, not among the citizens, as are certain aliens. Hence Aristotle says in the *Politics*, Book VII, Chapter 13: "Everyone in the country unites with the subjects in the desire to have a revolution," and then he adds: "It is impossible that there be so many persons in the government," that is, rebellious, or not caring to live a civil life, "that they are stronger than all the others,"<sup>7</sup> that is, than those who wish to carry on a political life (*politizare*). Why this is impossible is obvious; for it would mean that nature errs or is deficient for the most part. If, therefore, the weightier multitude of men wish the state to endure,

<sup>4</sup> See above, I. iv. 2.

<sup>5</sup> Aristotle *Politics* I. 2. 1253a 29.

<sup>6</sup> *Ibid.* IV. 12. 1296b 14. It will be noted how Marsilius' interpretation of this statement in terms of biological necessity removes the hypothetical character which it has for Aristotle.

<sup>7</sup> *Ibid.* VII. 14. 1332b 29 ff. It will be noted that Marsilius' interpolations are precisely contrary to the meaning of Aristotle. Perhaps he misunderstood the term for "government" (*politaeumate*). On this term, see Introduction, pp. lxxviii-lxxix; and on Marsilius' misinterpretations of Aristotle in this paragraph, see Appendix, pp. 433-34.

as seems to have been well said, they also wish that without which the state cannot endure. But this is the standard of the just and the beneficial, handed down with a command, and called the law; for "it is impossible for the best-ruled state," that is, the state governed according to virtue, "not to be well ordered by laws," as is said in the *Politics*, Book IV, Chapter 7,<sup>8</sup> and as we demonstrated in Chapter XI of this discourse. Therefore, the weightier multitude of the state wishes to have law, or else there would occur deformity<sup>9</sup> in nature and art in most cases; the impossibility of which is assumed from natural science.<sup>10</sup>

With these manifest truths I again assume that common conception of the mind, that "every whole is greater than its part," which is true with respect both to magnitude or mass and to practical virtue and action. From this it clearly follows of necessity that the whole body of the citizens, or the weightier multitude thereof, which must be taken for the same thing, can better discern what must be elected and what rejected than any part of it taken separately.

3. Now that we have laid down these obvious truths, it is easy to refute the objections whereby one might try to prove that the making of the law does not pertain to the whole body of the citizens or the weightier multitude thereof but rather to a certain few. As for the first objection, that the authority to make laws does not belong to those who in most cases are vicious and undiscerning, this is granted. But when it is added that the whole body of citizens is such, this must be denied. For most of the citizens are neither vicious nor undiscerning most of the time; all or most of them are of sound mind and reason and have a right desire for the polity and for the things necessary for it to endure, like laws and other statutes or customs, as was shown above. For although not every citizen nor the greater number of the citizens be discoverers of the laws, yet every citizen can judge of what has been discovered and proposed to him by someone else, and can discern what must be added, subtracted, or changed. Hence in the major premise's reference to the "undiscerning," if what is meant is that because most of the citizens cannot discover the law by themselves, therefore they ought not to establish the law, this must be denied as manifestly false, as is borne out by sense induction and by Aristotle in the *Politics*, Book III, Chapter 6. By induction we can see that many men judge rightly about the quality of a picture, a house, a ship, and other works of art, even though they would have been unable to discover or produce them.

<sup>8</sup> *Politics*, IV. 8. 1293b 42.

<sup>9</sup> *Oratio*. On this term, see Vol. I, pp. 58-59.

<sup>10</sup> Cf. Aristotle *Physics* II. 8. 199a 9 ff.; *Nicomachean Ethics* I. 9. 1099b 20-24. On this argument from the non-futility of natural desire, and its relation to the Averroist doctrine of the unity of the intellect, see below, Appendix, pp. 435 ff. See also Vol. I, pp. 57 ff., 208-12.

Aristotle also attests to this in the place just cited, answering the proposed objection with these words: "About some things the man who made them is not the only or the best judge."<sup>11</sup> He proves this in many species of arts, and indicates that the same is true for all the others.

4. Nor is this position invalidated by those who say that the wise, who are few, can discern what should be enacted with regard to practical matters better than can the rest of the multitude. For even if this be true, it still does not follow that the wise can discern what should be enacted better than can the whole multitude, in which the wise are included together with the less learned. For every whole is greater than its part both in action and in discernment. This was undoubtedly the view of Aristotle in the *Politics*, Book III, Chapter 6, when he said: "The multitude is justly dominant in the more important matters," that is, the multitude or the whole body of citizens or the weightier part thereof, which he here signifies by the term "multitude," should justly be dominant with respect to the more important matters in the polity; and he gives this reason: "The people is composed of many persons including the council and the judiciary and the honorable class, and all of these together are more ample than any single person or group, including the few rulers who hold high governmental offices."<sup>12</sup> He means that the people, or the multitude composed of all the groups of the polity or city taken together, is more ample than any part of it taken separately, and consequently its judgment is more secure than that of any such part, whether that part be the common mass, which he here signified by the term "council" (*consilium*), such as the farmers, artisans, and others of that sort; or whether it be the "judiciary," that is, those officials who assist the ruler in judicial functions, as advocates or lawyers and notaries; or whether it be the "honorable class," that is, the group of the best men, who are few, and who alone are appropriately elected to the highest governmental offices; or whether it be any other part of the state taken separately. Moreover, even if we assume what is indeed true, that some of the less learned do not judge about a proposed law or some other practical matter equally as well as do the same number of the learned, still the number of the less learned could be increased to

<sup>11</sup> Aristotle *Politics* III. 11. 1282a 17.

<sup>12</sup> *Ibid.* 1282a 38 ff. Marsilius' misinterpretation of this passage is owing to the fact that he, like the other medieval Aristotelians, interprets *honorabilitas* (William of Moerbeke's translation of Aristotle's *τιμημα*) to mean "the honorable class," rather than "assessed property." See Vol. I, p. 180, n. 7, and pp. 189-99. In William of Moerbeke's translation as found in Susemihl (p. 197), there is a full stop after *praetorium* ("judiciary") and no comma after *honorabilitas*, so that, without Marsilius' misinterpretations, the English translation should read: "and the assessed property of all of these together is greater than that of the persons who either as individuals or as members of small groups hold high governmental offices."

such an extent that they would judge about these matters equally as well as, or even better than, the few who are more learned. Aristotle stated this clearly in the place cited above when he undertook to confirm this view: "If the multitude be not too vile, each member of it will indeed be a worse judge than those who have knowledge; but taken all together they will be better judges, or at least not worse."<sup>13</sup>

As for the passage quoted from the first chapter of Ecclesiastes that "the number of the stupid is infinite," it must be replied that by "stupid" was meant those who are less learned or who do not have leisure for liberal functions, but who nevertheless share in the understanding and judgment of practical matters, although not equally with those who have leisure. Or perhaps the wise author, as Jerome says in his commentary thereon, meant by "stupid" the unbelievers who, however much they may know the worldly sciences, are stupid in an absolute sense, in keeping with the statement of the Apostle in the first epistle to the Corinthians, Chapter 3: "The wisdom of this world is stupidity with God."<sup>14</sup>

5. The second objection carries little weight, for even though it be easier to harmonize the views of fewer persons than of many, it does not follow that the views of the few, or of the part, are superior to those of the whole multitude, of which the few are a part. For the few would not discern or desire the common benefit equally as well as would the entire multitude of the citizens. Indeed, it would be insecure, as we have already shown, to entrust the making of the law to the discretion of the few. For they would perhaps consult therein their own private benefit, as individuals or as a group, rather than the common benefit, as is quite apparent in those who have made the decretals of the clergy, and as we shall make sufficiently clear in Chapter XXVIII of Discourse II.<sup>15</sup> By this means the way would be opened to oligarchy, just as when the power to make the laws is given to one man alone the opportunity is afforded for tyranny, as we showed above in Chapter XI, paragraph 4, where we quoted from the fourth book of Aristotle's *Ethics*, the treatise on justice.

6. The third objection can be easily refuted from what we have already said: for although the laws can be better made by the wise than by the less learned, it is not therefore to be concluded that they are better made by the wise alone than by the entire multitude of citizens, in which the wise are included. For the assembled multitude of all of these can discern and desire the common justice and benefit to a greater extent than can any

<sup>13</sup> *Politics* III. 14. 1282a 15 ff.

<sup>14</sup> I Corinthians 3:19. Cf. Peter Lombard *Collectanea* on I Corinthians (PL 191. 1543-44, 1563). See also Haimo *Expositio in epistolas s. Pauli* on I Corinthians 1 (PL 117. 515 ff.).

<sup>15</sup> See below, II. xxviii. 29.

part of that multitude taken separately, however prudent that part may be.

7. Hence those do not speak the truth who hold that the less learned multitude impedes the choice and approval of the true or common good; rather, the multitude is of help in this function when it is joined to those who are more learned and more experienced. For although the multitude cannot by itself discover true and useful measures, it can nevertheless discern and judge the measures discovered and proposed to it by others, as to whether they should be added to, or subtracted from, or completely changed, or rejected. For many things which a man would have been unable to initiate or discover by himself, he can comprehend and bring to completion after they have been explained to him by someone else. For the beginnings of things are the most difficult to discover; as Aristotle says in the second book of the *Refutations*, last chapter: "Most difficult is it to see the beginning,"<sup>16</sup> that is, of the truth proper to each discipline. But when this has been discovered, it is easy to add the remainder or to extend it. Hence, while only the best and most acute minds can discover the principles of the sciences, the arts, and other disciplines, nevertheless when these principles have been discovered, additions can be made to them by men of humbler mind. Nor should the latter be called undiscerning because they cannot discover such principles by themselves; on the contrary, they should be numbered among good men, as Aristotle said in the *Ethics*, Book I, Chapter 2: "That man is best who has achieved an understanding of all things by himself. But he too is good who hearkens to the wise words of another,"<sup>17</sup> that is, by listening to him attentively and not contradicting him without reason.

8. It<sup>18</sup> is hence appropriate and highly useful that the whole body of citizens entrust to those who are prudent and experienced the investigation, discovery, and examination of the standards, the future laws or statutes, concerning civil justice and benefit, common difficulties or burdens, and other similar matters. Either some of these prudent and experienced men may be elected by each of the primary parts of the state enumerated in Chapter V, paragraph 1, according to the proportion of each part; or else all these men may be elected by all the citizens assembled together. And this will be an appropriate and useful method whereby to come together to discover the laws without detriment to the rest of the multitude, that is, the less learned, who would be of little help in the investigation of such

<sup>16</sup> Aristotle *On Sophistical Refutations* 34. 183b 24.

<sup>17</sup> Aristotle *Nicomachean Ethics* 1. 2. 1095b 10, quoting Hesiod *Works and Days* 293.

<sup>18</sup> Scholz, in his note to this passage, points out that in MS C (15th century) there is a note to this passage reading: "sic regulantur consilia anglicorum" ("the councils of the English are regulated in this way").

standards, and would be disturbed in their performance of the other functions necessary both to themselves and to others, which would be burdensome both to each individual and to the community.

After such standards, the future laws, have been discovered and diligently examined, they must be laid before the assembled whole body of citizens for their approval or disapproval, so that if any citizen thinks that something should be added, subtracted, changed, or completely rejected, he can say so, since by this means the law will be more usefully ordained. For, as we have said, the less learned citizens can sometimes perceive something which must be corrected in a proposed law even though they could not have discovered the law itself. Also, the laws thus made by the hearing and consent of the entire multitude will be better observed, nor will anyone have any protest to make against them.

These standards, the future laws, will thus have been made public, and in the general assembly of the citizens those citizens will have been heard who have wanted to make some reasonable statements with regard to them. Then there must again be elected men of the qualities, and by the method, indicated above, or else the aforesaid men must be confirmed; and they, representing the position and authority of the whole body of the citizens, will approve or disapprove in whole or in part the afore-mentioned standards which had been investigated and proposed, or else, if it so wishes, the whole body of the citizens or the weightier part thereof will do this same thing by itself. After this approval, the aforesaid standards are laws and deserve to be so called, not before; and after their publication or proclamation, they alone among human commands make transgressors liable to civil guilt and punishment.<sup>19</sup>

We think we have adequately shown, then, that the authority to make or establish the laws, and to give a command with regard to their observance, belongs only to the whole body of the citizens or to the weightier part thereof as efficient cause, or else to the person or persons to whom the aforesaid whole body has granted this authority.

<sup>19</sup> As Previté-Orton points out, the procedure here set forth by Marsilius corresponds well with that of the Italian communes of his day. See also Vol. I, pp. 23, 197, 254.

CHAPTER XIV: ON THE QUALITIES OR DISPOSITIONS  
OF THE PERFECT RULER, THAT IT MAY BE KNOWN  
WHAT KIND OF PERSON SHOULD BE NAMED TO  
THE RULERSHIP. WHENCE THERE APPEARS ALSO  
THE APPROPRIATE MATTER OR SUBJECT OF HU-  
MAN LAWS

WE must next discuss the efficient cause of the ruling part of the state. This will be to show by demonstration who has the authority to elect this part, and consequently to establish the other parts of the state. The establishment of the non-elected ruling part has been sufficiently discussed above in Chapter IX, paragraph 5. We shall begin, however, by determining what kind of person should appropriately be elected or promoted to the rulership. For from this we shall proceed with greater certainty to the authority which effects his election or establishment.

2. The man who is to be a perfect ruler should have two intrinsic habits which cannot exist separately, namely, prudence and moral virtue, especially justice.<sup>1</sup> Prudence is required in order that his understanding may be guided in ruling. As it is said in the *Politics*, Book III, Chapter 2: "Prudence alone is the virtue proper to a ruler, for it seems appropriate that the other virtues be common to rulers and subjects."<sup>2</sup> The other habit, moral virtue, especially justice, is required in order that the ruler's emotion be right. As Aristotle says in the fourth book of the *Ethics*, the treatise on justice: "The ruler is the guardian of justice."<sup>3</sup>

3. Prudence, then, is necessary for the man who is to be a ruler because it makes him magnificently capable for his proper function, the judgment of matters of civil benefit and justice. For in those civil human acts where the act itself or its manner is not determined by law, the ruler is guided by prudence in his judgment of the act or its manner or both, as well as in his execution of the judgment, whereas without prudence he might err. To take an example from Sallust's *Catiline*,<sup>4</sup> when the accomplices of Catiline, powerful Roman citizens, conspired against the republic and hence were liable to the death penalty, if Cicero the consul had punished them according to the law in the customary time, place, and manner,

<sup>1</sup> On the background and significance of Marsilius' doctrine of the "perfect ruler," see Vol. I, pp. 243-44.

<sup>2</sup> Aristotle *Politics* III. 4. 1277b 25.

<sup>3</sup> Aristotle *Nicomachean Ethics* v. 6. 1134b 1.

<sup>4</sup> Sallust *De conjuratione Catilinae* cap. lv.

there would very likely have arisen civil war destructive of the polity because of the sedition which these conspirators had incited among the people against the consul and the other rulers. Cicero, the consul or ruler of the city, avoided this danger through his prudence; for he handed the accused men over to the executioners and commanded that they be killed in the prison which perhaps for this reason is called "Tullian."

4. Prudence, then, guides deliberations concerning practical affairs, so that Aristotle in the *Ethics*, Book VI, Chapter 4, said that prudence is "a true reasoned habit of action with regard to the goods and evils of man,"<sup>5</sup> insofar as he is man. The reason for this is that the human laws in accordance with which the ruler must regulate human civil acts deal for the most part with practical affairs, and it does not always seem possible to determine by law all such affairs at once, or the manners or circumstances in which they are involved, because these vary and differ with time and place. This is clearly taught by experience, and Aristotle attests to it in the *Ethics*, Book I, Chapter 1: "Political science deals with the good and the just; but there is such great difference and variation among these that they seem to exist by law alone, not by nature,"<sup>6</sup> that is, because men wish thus to legislate concerning them, and not because the nature of the practical affairs themselves is so determined that one thing is just and something else unjust.<sup>7</sup> Aristotle also expressed the same point more fully in the *Politics*, Book III, Chapter 9: "But since some things can be comprehended under the laws and other things cannot, it is these latter which make men doubt and question whether it is preferable for the best law rather than the best man to rule. For it is impossible that the things about which they," that is, men, "deliberate be decided by law"<sup>8</sup> (supply: in all cases).

5. For these reasons it was necessary to entrust to the discretion (*arbitrio*) of rulers the judgment of certain aspects of men's civil acts, that is, those aspects which were not determined in themselves, or as to some manner or circumstance, by law. For in those aspects which have been determined by law, the ruler's duty is to follow that legal determination. This was the view of Aristotle in the *Politics*, Book III, Chapter 6: "The ruler, whether one man or many, must have the supreme authority in those cases concerning which the laws cannot speak with certainty, because it is difficult for laws universally to determine about all things."<sup>9</sup> He repeated this view in Chapter 9 of the same book: "There are even now some magistrates, such as judges, who are dominant in judging those cases which the law

<sup>5</sup> Aristotle *Nicomachean Ethics* vi. 5. 1140b 5.

<sup>6</sup> *Ibid.* 1. 3. 1094b 14.

<sup>7</sup> It is to be noted that Marsilius does not himself endorse this conventionalist position here.

<sup>8</sup> Aristotle *Politics* III. 16. 1287b 19.

<sup>9</sup> *Ibid.* III. 11. 1282b 3.

cannot determine, since no one doubts that in those which it can, the law commands best."<sup>10</sup> Prudence, therefore, is necessary to the ruler in order to judge such cases which cannot be determined by law. This view of Aristotle, which is almost self-evident, can be seen to be certainly true by anyone who cares to demonstrate it through what we said above in Chapter XI.

6. Also necessary to the ruler is moral goodness, that is, virtue, especially justice; for if the ruler be perverted in moral character, the polity will be greatly harmed, however much it be formed by laws. For we have already said that it is difficult or impossible to determine all things at once by laws, but some matters must be entrusted to the discretion of the ruler; and in these matters he can harm the polity if he be of perverted emotion. This was also the view of Aristotle in the *Politics*, Book II, Chapter 8: "Men who are dominant in important matters do much harm if they are villainous," that is, morally vicious; "and they have already harmed the Chalcedonian state."<sup>11</sup> And since they are preserved from this by moral virtue, especially justice, it is therefore appropriate, if we may call "appropriate" what is necessary, that no one who is to be a ruler lack moral virtue, especially justice.

7. It is also appropriate that the future ruler have a certain virtue called equity (*epieikeiam*) by which the judge is guided, especially with respect to his emotions, in those cases where the law is deficient. As Aristotle said in the fourth book of the *Ethics*, the treatise on justice: "This is the nature of equity, that it is a rectification of the law when it fails because of the particular."<sup>12</sup> This, I think, is what the jurists mean by "fairness" (*aequitas*). For it is a benign interpretation or moderation of the law in some case which the law comprehends under rigorous universality, and in which the law is said to be deficient because it does not except that case from the universality of the standard rule, although it would have done so either entirely or with some moderation if it had foreseen its occurrence.<sup>13</sup>

Also, together with these virtues the future ruler is required to have an outstanding love or benevolence for the polity and the citizens. For by this love the ruler's actions will be directed with solicitude and goodness toward the benefit of the community and of the individuals in it.

8. Besides these habits and dispositions the ruler must necessarily have a certain external organ, namely, a definite number of armed men, through whom he can execute his civil sentences upon rebellious and disobedient men by coercive force. As Aristotle said in the *Politics*, Book VII, Chapter 6: "For those who are associated with one another," that is, in civil

<sup>10</sup> *Ibid.* III. 16. 1287b 15.

<sup>11</sup> *Ibid.* II. 11. 1272b 41.

<sup>12</sup> Aristotle *Nicomachean Ethics* v. 10. 1137b 27.

<sup>13</sup> Cf. *Corp. jur. civ., Digest* I. III. 18.

association, "it is necessary to have arms," that is, a multitude of armed men, "because of those who disobey the government,"<sup>14</sup> that is, to punish those who disobey the rulers; for the laws and civil judgments would be useless unless they could be carried into execution. But this armed force of the ruler must be determined by the legislator, like the other civil functions: it must be so great that it exceeds the force of each individual citizen separately and of some of the citizens taken together, but not that of all or the majority of the citizens taken together, for otherwise it might happen that the ruler would attempt or be able to violate the laws, and to rule despotically without them or contrary to them. As Aristotle says in the *Politics*, Book III, Chapter 9: "The ruler must have a force which is so great that it is larger than that of a single individual or of several taken together, but smaller than that of the multitude."<sup>15</sup> The phrase "several taken together" (*simul plurium*) must be understood not in a comparative sense, as meaning "majority," but in a positive sense, according as it is derived from "plural number" in the sense of some multitude, but not the weightier part of the citizens. For if it were not understood in this way, Aristotle's words would be self-contradictory. Also, it is not necessary that the future ruler have this coercive power before his election to the rulership, unlike his intrinsic dispositions about which we spoke above. For otherwise, virtuous poor men would never attain to the rulership.<sup>16</sup> The opposite of this was desired by Aristotle himself, when he said in the *Politics*, Book II, Chapter 8: "The very first thing which it is necessary to provide is that the best men be able to have leisure and not be dishonored in any way, not only when in office but also when living as private persons."<sup>17</sup>

9. Let us now summarize the qualities of rulers and the other things necessary to them. Before election, prudence and moral virtue are necessary to the man who is to be elected ruler—or to the men, if there are to be several rulers, as in an aristocracy. Also, to the ruler who holds the highest governmental office of the city or state armed force is necessary as an instrument or external organ for executing his sentences made according to the laws; however, he is not to have this force before his election, but it is to be bestowed on him at the same time as the rulership. Furthermore, out-

<sup>14</sup> Aristotle *Politics* VII. 8. 1328b 7.

<sup>15</sup> *Ibid.* III. 15. 1286b 35.

<sup>16</sup> This point helps to throw into its true light Marsilius' combination of quantity with quality in respect of the legislator (above, I. XII. 3); it harmonizes with his defense of the *vulgus* in I. XII–XIII, as against his classification of democracy, where the *vulgus* "rules alone," among the diseased kinds of government (I. VIII. 3). The question whether poor men should be made rulers was discussed in detail by Ptolemy of Lucca on the basis of some texts of Aristotle; his answer is mainly in the negative: *De regimine principum* IV. XV, XX (ed. J. Mathis [Turin, 1924], pp. 99–100, 105–6). Cf., however, Aristotle *Politics* III. 11. 1281b 30.

<sup>17</sup> *Politics* II. 11. 1273a 32. See also below, I. XVI. 21.

standing love or benevolence for the state and the citizens adds to the goodness and solicitude of the ruler's civil actions, although this quality is not so necessary a requirement for him as are the others which have been mentioned.

10. Aristotle also upholds these views in the *Politics*, Book V, Chapter 9: "Those who are to rule in the supreme governmental offices must have three qualifications: first, love for the established polity; second, power for the chief tasks of the government; third, virtue and justice";<sup>18</sup> by "virtue" meaning prudence, which is the bond and mistress of all the virtues. As it is said in the *Ethics*, Book VI, last chapter: "If a man have the one virtue of prudence he will at the same time have all the moral virtues."<sup>19</sup> Aristotle placed prudence and moral virtue together because they do not exist separate from one another. Such seems to have been his view when he wrote in the same book and chapter: "This therefore is clear from what we have said, that it is impossible to be good in the full sense without prudence, or prudent without moral virtue."<sup>20</sup> In the passage from the fifth book of the *Politics* quoted above, Aristotle named the qualifications which we said should belong to the future ruler perhaps in the opposite order of their necessity.

From what we have said, the proper subject or matter of human laws is apparent. For this is the ruler when he will have been sufficiently prepared through prudence and moral virtue, especially justice. In this way, then, have we determined what kind of person the ruler of the city or state should be, and what things are necessary and appropriate to him.

<sup>18</sup> *Ibid.* v. 9. 1309a 33. For Aristotle the term which is here translated "power" means ability rather than physical force.

<sup>19</sup> Aristotle *Nicomachean Ethics* vi. 13. 1145a 1.

<sup>20</sup> *Ibid.* 1144b 30.

## CHAPTER XV: ON THE EFFICIENT CAUSE OF THE BEST METHOD OF ESTABLISHING THE GOVERNMENT; FROM WHICH THERE ALSO APPEARS THE EFFICIENT CAUSE OF THE OTHER PARTS OF THE STATE

IT now remains to show the efficient cause of the ruler, that is, the cause by which there is given to one or more persons the authority of rulership which is established through election.<sup>1</sup> For it is by this authority that a person becomes a ruler in actuality, and not by his knowledge of the laws, his prudence, or moral virtue, although these are qualities of the perfect ruler. For it happens that many men have these qualities, but nevertheless, lacking this authority, they are not rulers, unless perhaps in proximate potentiality.<sup>2</sup>

2. Taking up the question, then, let us say, in accordance with the truth and the doctrine of Aristotle in the *Politics*, Book III, Chapter 6,<sup>3</sup> that the efficient power to establish or elect the ruler belongs to the legislator or the whole body of the citizens,<sup>4</sup> just as does the power to make the laws, as we said in Chapter XII. And to the legislator similarly belongs the power to make any correction of the ruler and even to depose him, if this be expedient for the common benefit.<sup>5</sup> For this is one of the more important matters in the polity; and such matters pertain to the entire multitude of the citizens, as we concluded in Chapter XIII of this discourse, paragraph 4, from the statements of Aristotle in the *Politics*, Book III, Chapter 6. For "the multitude is dominant in the more important matters,"<sup>6</sup> as was said there by Aristotle. The method of coming together to effect the aforesaid establishment or election of the ruler may perhaps vary according to the variety of provinces. But in whatever ways it may differ, this must be observed in each case, that such election or establishment is always to be made by the authority of the legislator, who, as we have very frequently said, is the whole body of the citizens, or the weightier part thereof. This proposition can and should be proved by the same demonstrations

<sup>1</sup> It will be noted that Marsilius distinguishes, at least analytically, between election and the control of election. He has already shown that "election is the more certain standard of government" (i. ix. 9); but he must now show who effects or controls that election.

<sup>2</sup> See Vol. I, p. 244.

<sup>3</sup> Aristotle *Politics* III. 11. 1281b 31 ff.

<sup>4</sup> See Vol. I, pp. 237-38, 244-45.

<sup>5</sup> See below, i. xviii.

<sup>6</sup> *Politics* III. 11. 1282a 38.

whereby we concluded, in Chapter XII above, that the making of the laws, the changing of them, and all other acts regarding them pertain to the whole body of the citizens. Only the minor term of these demonstrations need be changed, by substituting the term "ruler" for the term "law."

3. This proposition and its truth are very probable, if we may call "probable" what is necessary. For to whomever it pertains to generate some form, it also pertains to determine the subject of that form, as may be seen in all the productive arts. As Aristotle says in the *Physics*, Book II, Chapter 4: "It pertains to the same science to know both the form and the matter to a certain extent, as the physician knows both health and also the bile and phlegm in which health exists, and the builder knows both the form of the house and the matter, that is, wood and bricks."<sup>7</sup> This is also apparent by manifest induction in other natural and artificial objects. The reason for this is that the forms with their operations are the ends for whose sake the matters exist or are generated, as Aristotle says in the same book and chapter. Since, therefore, it pertains to the whole body of the citizens to generate the form, that is, the law, according to which all civil acts must be regulated, it will be seen that it pertains to the same whole body to determine this form's matter, that is, the ruler, whose function it is to order, according to this form, the civil acts of men. And since this is the best of the forms of the civil community, there ought to be determined for it the subject with the best qualities;<sup>8</sup> which we also concluded by probable reasoning in the preceding chapter. Hence it seems that it can appropriately be inferred that the ruler who is elected without hereditary succession is put at the head of the polity by a method which is absolutely superior to that which operates in the case of non-elected rulers, or of rulers named with hereditary succession ensuing.

4. Having shown the efficient cause of this part of the state, we must now discuss, in accordance with our frequently announced plan, the efficient cause which establishes and determines the other parts or offices of the state. Now the primary efficient cause we say is the legislator; the secondary, as it were the instrumental or executive cause, we say is the ruler through the authority granted to him for this purpose by the legislator, in accordance with the form which the legislator has given to him. This form is the law, in accordance with which the ruler must always, so far as possible, perform and regulate civil acts, as was shown in the preceding chapter. For although the legislator, as the primary and proper cause, must determine which persons must exercise what offices in the state, the execution of such matters, as also of all other legal provisions, is com-

<sup>7</sup> Aristotle *Physics* II. 2. 194a 22

<sup>8</sup> Cf. above, I. ix. 7 and n. 24 thereto.

manded, or as the case may be, prohibited, by the ruling part of the state. For the execution of the legal provisions is effected more conveniently by the ruler than by the entire multitude of the citizens, since in this function one or a few rulers suffice, whereas the entire community would needlessly be occupied therein,<sup>9</sup> and would be distracted from the other necessary functions. For when the rulers do this, the entire community does it, since the rulers do it in accordance with the legal determination of the community, and, being few or only one in number, they can execute the legal provisions more easily.

5. In this respect human arrangements appropriately imitated nature. For the state and its parts established according to reason are analogous to the animal and its parts perfectly formed according to nature, as is apparent from Aristotle's *Politics*, Books I and V, Chapter 2.<sup>10</sup> The action of the human mind in appropriately establishing the state and its parts was proportionate, therefore, to the action of nature in perfectly forming the animal. This proportion, from which the efficient and determining cause of the parts of the state will appear more fully, we shall undertake to describe following Aristotle in the sixteenth chapter of his treatise *On Animals*<sup>11</sup> and also Galen in a certain book of his called *On the Formation of the Foetus*,<sup>12</sup> together with the more expert of their successors. By a certain principle or moving cause, whether it be the form of the matter or separate from it, or something else having the power to generate the animal and its parts, there is formed first in time and in nature a certain organic part of the animal itself. In this part there is a natural virtue or power, together with some heat as an active principle; and this power and heat have a universal active causality for forming and differentiating each of the other parts of the animal. This first-formed part is the heart, or something analogous to the heart, as Aristotle said in the above-mentioned text, and as is also said by the other more expert philosophers. These men should be believed because of their experience in this field, and we must now assume what they say without proof, since to demonstrate it does not pertain to our present inquiry. Now this first-formed part of the animal is nobler and more perfect in its qualities and dispositions than the other parts of the animal. For in generating it, nature established in it a power and instrument by which the other parts of the animal are formed from suitable matter, and are separated, differentiated, ordered with respect to

<sup>9</sup> On this "razor" argument, see Vol. I, pp. 235-36.

<sup>10</sup> Aristotle *Politics* I. 5. 1254a 31 ff.; v. 3. 1302b 38.

<sup>11</sup> See Aristotle *De partibus animalium* III. 4. 665a 29 ff.

<sup>12</sup> See Galen *De formatione foetus* cap. iv (in *Opera*, ed. R. Chartier [Paris, 1679], V, 292 ff.).

one another, conserved in their dispositions, and preserved from harm so far as nature allows. Also, lapses from their nature because of illness or other impediment are repaired by the power of this part.

6. The state appropriately established according to reason must be considered in an analogous manner. For by the soul of the whole body of citizens or of its weightier part, there is first formed or should be formed in that whole body a part which is analogous to the heart. In this part, the soul of the whole body of citizens establishes a certain virtue or form with the active power or authority to establish the other parts of the state. This part is the government; its virtue, universal in causality, is the law; and its active power is the authority to judge, command, and execute sentences concerning civil justice and benefit. Because of this, Aristotle said in the *Politics*, Book VII, Chapter 6, that this part is "the most necessary of all"<sup>13</sup> in the state. The reason for this is that the sufficiency which is had through the other parts or offices of the state could, if they did not exist, be had sufficiently from some other source, such as through shipping and other kinds of commerce, although not so easily. But without the existence of the government the civil community cannot endure, or endure for long, since "it is necessary that scandals arise,"<sup>14</sup> as it is said in Matthew. These "scandals" are men's contentions and injuries toward one another, and if they were not avenged or measured by a standard of justice, that is, the law, and by the ruler whose function it is to measure such things in accordance with the law, there would result the fighting and separation of the assembled men and finally the destruction of the state and loss of the sufficient life.<sup>15</sup>

7. This part of the state must be nobler and more perfect in its qualities, prudence and moral virtue, than the other parts of the state. As Aristotle said in the *Politics*, Book VII, Chapter 12: "If some men were as different from others as we believe gods and heroes to differ from men, in the first place being much superior in body, and then in soul, so that the superiority of the rulers over their subjects would be manifest beyond a doubt, it would clearly be better for the former to rule and the latter to be ruled once and for all,"<sup>16</sup> that is, for life. Also the efficient cause of the state, that is, the soul of the whole body of citizens, establishes in this first part a certain virtue universal in causality, the law, and also the authority or power to make civil judgments, to command and to execute them, and all this in accordance with the law, not otherwise. This can be seen again from our analogy. The innate heat of the heart, through which the heart or its form

<sup>13</sup> Aristotle *Politics* vii. 8. 1328b 13.

<sup>15</sup> See Vol. I, pp. 108 ff.

<sup>14</sup> Matthew 18:7.

<sup>16</sup> Aristotle *Politics* vii. 14. 1332b 16 ff.

fulfills all its functions, is guided and measured in its functioning through the form or virtue of the heart; otherwise it would not function toward its proper end. Also, the warmth which is called "spirit" and which is like an instrument for fulfilling its functions, is ruled throughout the whole body by the same virtue, for otherwise neither of these heats would function toward its proper end, since fire acts "in a manner inferior to instruments,"<sup>17</sup> as it is said in the second book of the treatise *On Generation* and also in the treatise *On the Soul*.<sup>18</sup> In a similar way, the authority of rulership which is given to some man, and which is analogous to the heat of the heart, and also his armed or coercive instrumental power which is analogous to the warmth which we called "spirit," must be regulated by the law in judging, commanding, and executing matters of civil justice and benefit, for otherwise the ruler would not act toward his proper end, the conservation of the state, as was demonstrated in Chapter XI.

8. Furthermore, in accordance with the aforesaid virtue, the law, and the authority given to him, the ruler must establish and differentiate the parts and offices of the state from the appropriate matter, that is, from men having the arts or habits appropriate to the offices. For such men are the proximate matter of the parts of the state, as was said in Chapter VII.<sup>19</sup> For this is the norm or law of well-established polities, to appoint to the offices of the state men who have the functional habits appropriate to the offices, and to ordain that those who do not have such habits, that is, youths, shall learn those habits to which they are naturally more inclined. This was the view of the eminent Aristotle in the *Ethics*, Book I, Chapter 1: "What disciplines there should be in states, and which one each person should learn, is ordained by this,"<sup>20</sup> that is, by political or legislative prudence, and consequently by the ruler, who arranges the polity in accordance with the law. Aristotle also said this in the *Politics*, Book VII, Chapter 13: "The statesman making laws should therefore consider all these things, with respect both to the parts of the soul and to their passions."<sup>21</sup> He says this also in Book VIII of the same treatise, Chapter 1: "No one will doubt that the legislator must greatly concern himself with the education of the young. For where this is not done the polities are harmed."<sup>22</sup> From the aforesaid, therefore, it is apparent that it pertains to the legislator to determine or establish the parts and offices of the state, and that the judgment,

<sup>17</sup> Aristotle *De generatione et corruptione* ii. 9. 336a 13.

<sup>18</sup> Aristotle *De anima* ii. 7. 418b 11 ff.

<sup>19</sup> Cf. above, i. vii. 1.

<sup>20</sup> Aristotle *Nicomachean Ethics* i. 2. 1094a 28. On the similarities and differences between Marsilius' use of this statement and that of the other medieval Aristotelians, see Vol. I, pp. 112 ff.

<sup>21</sup> Aristotle *Politics* vii. 14. 1332a 37.

<sup>22</sup> *Ibid.* viii. 1. 1337a 11.



command, and execution of that determination pertain to the ruler in accordance with the law.

9. This could be proved by the same demonstrations as we used in Chapter XII and earlier in this chapter with respect to the making of the laws and the naming of the ruler, simply by changing the minor term of the syllogisms.

10. As a consequence, no one, especially aliens, is allowed to assume an office in the state at his own pleasure. For no one must or reasonably can undertake at will the exercise of the military or priestly function, nor must the ruler permit this, for the result would be an insufficiency to the state of those things which it is necessary to procure through the other offices. Rather, the ruler must determine the persons, the quantity and the quality of these parts or offices of the state, with respect to their number, their ability, and other similar considerations, in order that the polity may not be destroyed through an immoderate excess of one part in relation to the others.<sup>23</sup> For this reason Aristotle said, in the *Politics*, Book V, Chapter 2: "Revolutions of polities also occur because of disproportionate increase. The body is composed of many parts, and it must grow in due proportion to preserve its symmetry; if this be not done the body will be destroyed, if it increases disproportionately not only in quantity but also in quality. Similarly, the state is composed of many parts, increase in some of which is often unnoticed, like the number of poor in democracies,"<sup>24</sup> and like the priesthood in the law of the Christians. Aristotle said the same thing in Book III, Chapter 7 of the *Politics*,<sup>25</sup> but I omit to quote it here for the sake of brevity.

11. Again, this part, the ruler, by his authority in accordance with the law, must command the just and the honorable and prohibit their contraries, both in word and in deed, by affecting with rewards or punishments the merits or demerits of those who observe or transgress his legal commands. In this way the ruler will conserve in its proper being each part of the state, and preserve it from harm and injury. For if any part should do or suffer injury, he who inflicts the injury must be cured through the action of the ruler, by sustaining punishment. For punishment is like medicine for a delict. Hence it is said in the *Ethics*, Book II, Chapter 2: "Punishments are given because of this," that is, because of the pleasures which are had in wrongdoing, "for they are kinds of medicine."<sup>26</sup> He on whom the injury has been inflicted will be cured by receiving com-

<sup>23</sup> See Vol. I, pp. 112 ff.

<sup>25</sup> *Ibid.* III. 12-13. 1282b 14 ff.

<sup>24</sup> *Politics* v. 3. 1302b 33 ff.

<sup>26</sup> Aristotle *Nicomachean Ethics* II. 2. 1104b 17.

pensation; so that in this way all things will be brought back to due equality or proportion.

12. Moreover, this ruling part of the state conserves the other parts and assists them in the performance of both their proper and their common functions. Their proper functions are those which have to emerge from their own proper offices, while their common functions are their intercommunications with one another. Both kinds of function would be disturbed if the ruler's action were to cease correcting men who do violence.

13. Consequently, the action of the ruler in the state, like that of the heart in the animal, must never cease. For although the actions of the other parts of the state may at some time cease without harm to any individual, group, or community—such as the action of the military part in time of peace, and similarly with the other parts of the state—the primary action of this ruling part and of its virtue can never cease without harm. For the command and the common guardianship of the things which are lawful and prohibited in accordance with the law must endure at every hour or minute, and whenever anything unlawful or unjust is done, the ruler must completely regulate such acts or must perform the preliminary steps toward such regulation.

14. From what we have said, it can be sufficiently clear what is the order of the parts of the state in relation to one another. For all the other parts are ordered by and toward the ruler as the first of all the parts for the status of the present world.<sup>27</sup> For in the civil community that part is first which has to establish, determine, and conserve the others in and for the status of the present world or the civil end. But such is the part which rules in accordance with human law, as we have already concluded by probable and demonstrative reasoning. Therefore, it is the first of all the parts of the state, and the others are ordered to it.

Such, then, are our conclusions concerning the efficient cause of the election of the ruling part, the establishment of the other parts of<sup>28</sup> the state, and their order in relation to one another.

<sup>27</sup> See Vol. I, p. 111.

<sup>28</sup> Omitting, with Scholz. *et* after *partium*.