

*The Manuscripts and Date of Marsiglio of Padua's
'Defensor Pacis.'*

RIEZLER,¹ who first gave the subject of the date of the *Defensor Pacis* of Marsiglio of Padua a scientific examination, thought that the work was probably written in the summer of 1324, and certainly in the period between the summer of 1324 and the autumn of 1326. A note found in a Vienna manuscript of the work (H, below), and printed in Michael Denis's *Codices Manuscripti Theologici Bibliothecae Palatinae Vindobonensis Latini*, vol. ii. part i., 1519 (1799), to which attention was called in 1879 by Carl Müller,² states that the work was completed on 24 June 1324.

There are, however, certain passages in the *Defensor* which put the date 1324 in some doubt. The first of these is the use of *Imperator* in the first chapter to describe Louis of Bavaria, who was not crowned emperor until 17 Jan. 1328, and who is everywhere else in the book spoken of as *rex*. The second passage is as follows:—

Demum vero suae malitiae aculeum, quem in nocumento et exterminatione credit extremum, foras emittet fortassis, in praedictum principem figere credens, blasphemiam videlicet suam quandam, ab ipso vocatam sententiam, licet re vera supremam dementiam, qua supradictum principem cum adhaerentibus aut obedientibus et faventibus sibi tanquam regi pronuntiavit haereticos et ecclesiae inimicos sive rebelles suorumque temporalium omnium mobilium et immobilium jure privavit, ea quidem per jam dictam sententiam indigne vocatam publicando, ipsa quoque occupare volentibus et occupantibus concedendo, et hoc licite fieri posse, per suas voces atque membranas inscriptas, per se vel pseudo quosdam praedicatores alios in omnibus provinciis nunciando, ipsosque rursum morte damnando et occidentibus, aut invadentibus, culparum atque poenarum omnium, convitiolorum, criminum, veniam concedendo, et si vivi capiuntur ubicunque fuerint in servitutem capientium redigendo.³

Here, as the text stands, there seems to be a reference to John XXII's bull of 8 April 1327, unless we accept Riezler's emendations of *pronuntiabit* and *privabit* in order to agree with *emittet fortassis*.⁴ Moritz Ritter⁵ thought it possible that a work was written at Paris and selections from it reached the papal curia for the condemnation which was issued 28 Oct. 1327. This

¹ *Die literarischen Widersacher der Päpste zur Zeit Ludwig des Baiern*, Leipzig, 1874, p. 196.

² *Der Kampf Ludwigs des Bayern mit der römischen Kurie*. 2 vols. 1879–80. Vol. i. p. 868.

³ *Def. Pac.*, Dictio II., ch. 26, in Goldast, *Monarchia s. Romani Imperii*, ii. 288, lines 45–55, Frankfurt, 1614; to the pages of which volume future citations refer.

⁴ Riezler, *op. cit.* p. 223, note 2.

⁵ Reusch, *Theolog. Literaturblatt*, 1874, no. 24, col. 550 f.; *Historische Zeitschrift*, xlii. p. 802 (1879).

work, however, he suggests, was not the *Defensor*, which was the work of a single writer, while the work condemned by John XXII was written by Marsiglio and John of Jandun, and was only a little book—*libellus*, as the pope calls it. The larger work, the real *Defensor Pacis*, was, according to Ritter, written by Marsiglio alone, while he was at the court of Louis of Bavaria, shortly before and during the Roman expedition, and while he was strongly under the influence of the events occurring in Germany and Italy at the time.

With the hope of throwing some light on these disputed points I have examined twenty manuscripts of the *Defensor Pacis* now preserved in libraries in England and on the continent. It seemed possible that if the first chapter were added later some manuscripts might be found without it, or if it were always there, that at least the word *Imperator* might prove to be an interpolation of a copyist, or of an editor of the text. The next point to be considered was whether the manuscripts would warrant the substitution of *promuntiabit* and *privabit* in the passage referred to above. Again it was hoped that a careful examination of the various catalogues of manuscripts of the libraries of Europe might reveal a new work by Marsiglio.

Of the manuscripts of the *Defensor Pacis* the six at Paris have already been examined and described by Carl Müller in the *Göttingische Gelehrte Anzeigen* for 1888.* He showed that the text as printed is not complete, but lacks a small portion of Dictio III. This portion he published in the same article, so that we now have a complete text of the *Defensor*, though in its present state it is very unsatisfactory. Of these six manuscripts only those designated by the letters A and C lack the additional portion and end, like the edition, with *praecludetur ingressus*.

MS. A. Paris, Bibl. Nat., MS. Lat. 15890. Parchment. XIVth century. Folios 18–100. $18\frac{3}{4} \times 9\frac{3}{4}$ inches. 2 columns. Initials in colour. Bound in boards covered with green parchment in a codex with other miscellaneous works, some of which are on the ecclesiastical and civil powers. The codex was formerly in the library of the Sorbonne.

MS. B. Paris, Bibl. Nat., MS. Lat. 15869. Paper. XIVth century. Folios 1–68. $10\frac{1}{2} \times 8\frac{3}{4}$ inches. 2 columns. Bound in green parchment-covered boards, with a tract entitled *De Dominio Civili Hominis*. From the Sorbonne.

MS. C. Paris, Bibl. Nat., MS. Lat. 14508. Parchment. XIVth century. Folios 24–148. $12\frac{1}{2} \times 9$ inches. 2 columns. Initials in colour. Bound in parchment-covered boards with other miscellaneous works. From the Abbey of Saint Victor.

MS. D. Paris, Bibl. Nat., MS. Lat. 14619. Paper. XVth century. Folios 4–121. $11\frac{3}{4} \times 8\frac{1}{4}$ inches. Initials in colour. Bound in

* Pp. 922–925.

red morocco with Ockham's *Dialogus* and the *Articuli erronei Johannis Wyclif*. Folios 1 and 2 recto are taken up with a table of contents to the *Defensor* beginning 'Prima dictio huius libri continet capitula 19, quorum primum est de,' etc. This table was added by a corrector of the manuscript. From the Abbey of Saint Victor.

MS. E. Paris, Bibl. Nat., MS. Lat. 14620. Parchment. XIVth century. Folios 8-187. $12\frac{1}{2} \times 10$ inches. 2 columns. Initials in colour. Bound in red morocco with Gerson's *Tractatus de Potestate ecclesiastica* and the *Tractatus de Iurisdictione ecclesiasticae Potestatis* of Hervaeus Natalis. Folios 1 and 2 recto are occupied with a table of contents. Almost the whole of folio 8 recto is taken up with an elaborate painting in two sections. In the left-hand section is seated the emperor, with the sceptre in his left and the orb in his right hand, surrounded by his councillors and various representatives of the temporal power. In the section to the right is seated the pope wearing his crown and surrounded by his cardinals and bishops. At the bottom of the picture are some men kneeling and in the act of presenting a book to some others who are seated on the left. Both the sitting and kneeling figures are in academic gowns. The manuscript is from the Abbey of Saint Victor.

MS. F. Paris, Bibl. Nat., MS. Lat. 1778. Parchment. XIVth century. Folios 194-262. $12\frac{1}{2} \times 9\frac{1}{2}$ inches. 2 columns. Initials in colour. Bound in red morocco, with other miscellaneous works.

Müller is of the opinion that uncorrected A and D were taken from C, but a careful examination has led me to believe that C and D were taken from A.

To these we add a manuscript at Auxerre :

MS. G. Auxerre, Bibl. de la Ville, Codex 19. Parchment. XIVth century. Folios 1-110. $9\frac{1}{2} \times 6\frac{1}{2}$ inches. Initials in colour. This manuscript seems to have been taken from MS. A.

This begins with *Desiderabilis debet* and ends with *praecludetur ingressus*. The part beginning *Quod si tamen*⁷ in chapter 29 of Dictio II. and ending *ad earum*⁸ in chapter 30 is lacking because some leaves have been lost.

The four manuscripts at Vienna have as yet had no special description.

MS. H. Vienna, Hofbibl., Codex 464. Parchment. XIVth century. Folios 1-118 (117). $10\frac{1}{2} \times 8\frac{1}{2}$ inches. 2 columns. Initials in colour. Bound with Marsiglio's *De Translatione Imperii* and a *Catalogus Imperatorum*. On the inside of the first cover of the codex are a few lines with reference to the ownership of the codex in 1407 by a certain Franciscus de Rozet (?) of Vienna. On the bottom edges of the leaves is written 'Okam.' Folio 1 and part of folio 2 recto are taken up with the table of contents.

MS. I. Vienna, Hofbibl., Codex 809. Parchment. XIVth century. Folios 1-122. $8\frac{1}{2} \times 5\frac{1}{2}$ inches. 2 columns. Initials in colour.

⁷ Goldast, p. 303, line 21.

⁸ *Ibid.* p. 305, line 50.

Bound in boards and white leather with Ubertino of Casale's *De Paupertate Christi et Apostolorum*. On the back of the codex 'Gulielmi Occami' has been crossed out and 'Marrigii de Maynardino' put in its place. On a blank folio at the beginning is written 'Martini Tismonensis.' Folios 1 and 2 recto are taken up with the table of contents.

MS. J. Vienna, Hofbibl., Codex 4518. Paper. XVth century. Folios 1-87. 8½ x 6 inches. Initials in colour. Bound in boards and white leather, with the *Trilogus* of Wycliffe. On the back of the codex is 'Gulielmi Occam defensorium.' On folio 1 verso in the margin is written 'Incipit Defensor Occam.'

MS. K. Vienna, Hofbibl., Codex 5889. Paper. XVth century. Folios 1-201. 11½ x 8½ inches. Folios 1 and 2 are taken up with a table of contents. On folio 201 the work is called *Defensor Animo sex Pacis*. Following the ending of the work, 'fidelium Christianorum,' has been written in a different hand 'Marsili de Padua.'

Like the more numerous manuscripts at Paris, those at Vienna are more complete than the editions, all four ending with *fidelium Christianorum*. All four are preceded by a table of contents as in manuscripts D and E at Paris. There is no doubt but that manuscript J is derived from I, and it seems probable that I and K, and possibly H, were taken from a common original.*

Manuscript H is the most interesting because it is at the end of this manuscript that the passage occurs on which Müller based his conclusion that the work was finished on 24 June 1324. This manuscript ends, like the more complete manuscripts, with *fidelium Christianorum et cetera*. Then follows in a different hand:

*Anno trecenteno milleno quarto vigeno
Defensor est iste perfectus festo Baptiste.
Tibi laus et gloria Christe.*

Now it is evident that this date may indicate either the time when the scribe finished the copy, or the time when the original work was completed. It is plain, however, both from its omissions and its corrections, that MS. H is not the original draft, but a much later copy. If, therefore, we accept *quarto vigeno* as meaning '24,' it must refer to the time of the completion of the original work. It is on the translation of these words that the whole doubt arises. Supposing that the manuscript read *quater vigeno*, there could be little doubt but that '80' (1380) was meant, and that date would evidently refer to the time of the completion of the copy by the

* The manuscript in the Haus-, Hof- und Staatsarchiv at Vienna in codex 768, which has always been said to be the *Defensor Pacis* of Marsiglio, is not that work but the *Octo Quaestiones* of Ockham. This is followed immediately by Marsiglio's tract *De Translatione Imperii*. As there is no indication of this in the manuscript, it is very easy to see how the whole work came to be ascribed to Marsiglio, especially if we turn to the ending of the tract *De Translatione*, which has in the last few lines 'ex nostro Defensore Pacis,' &c.

scribe; but *quarto* cannot possibly stand for *quater*, for the versification, halting as it is, does not admit of the substitution of the latter in its place. There is a bare possibility, though no examples are known, that *quarto rigeno* may be meant for '80,' but the use of *quarto* here instead of *quater* makes it almost certain that '24' is meant, and that therefore the date of 1324 here refers to the completion of the original *Defensor Pacis*, and not to the finishing of the copy—manuscript H.¹⁰ Another point which adds to the probability of the view that the date here refers to the time of the completion of the original work is the form in which the fact is mentioned: *Defensor est iste perfectus*. The usual formula for the completion of a mere copy of a work by a scribe is *finito libro* or *finis libri*, and other references are almost invariably to *liber*. Still another point in favour of supposing the expression to refer to the time of the completion of the original work is the coincidence of June 24 (St. John the Baptist's Day) with the time when the work was completed according to the story of Franciscus of Venice.¹¹

The Vatican manuscript (L) is closely allied to H and K, and was probably taken from the same original. It has a table of contents like D and E, and ends like F.

MS. L. Rome, Vatican Library, Codex Vaticanus 3974. Parchment. Dated April 1401. Folios 1-124. 18×9½ inches. 2 columns. Bound in red cloth and leather back, with John XXII's bull *Licet iuxta doctrinam*. On a blank leaf which precedes the work proper the *Defensor* is said to belong to a certain Peter of the Minorite Order. A later scribe, misunderstanding this as a claim of authorship, has noted the error and on the authority of Laurentius Arretinus ascribed the work to Ockham. A still later scribe denies this and declares that Laurentius attributed the work to Marsiglio of Padua.

An Italian translation of the *Defensor* made in 1868 from a French translation, which has not as yet been found, is at Florence:

MS. M. Florence, Bibl. Laur., Plut. XLIV., Codex XXVI. Paper. XVth century. Folios 1-286. 10½×8½ inches. For further description see Bandinus, *Catalogus Cod. Bibl. Laur.* p. 227, and Scaduto, *Stato e Chiesa*, p. 112. There is no indication in the manuscript as to who the translator was. The copyist has in various places left dotted spaces for words which he could not make out.

It is complete with the exception of the table of contents which we found in the Vienna and other manuscripts. It begins *A tutti reami* and ends *gienerale concilio de' fedeli Christiani*. The manuscript containing selections from this Italian translation, which were

¹⁰ I am indebted to Dr. Simonsfeld of Munich for the verification of these views, and to Mr. Poole of Oxford for calling my attention to the question of metre.

¹¹ See Riezler, *op cit* pp 36, 37.

made for philological purposes and which are in Codex 2197 of the Riccardian Library at Florence, does not deserve mention as a special manuscript.

The manuscript at Turin (N) begins and ends like F. It lacks the table of contents present in the Vienna manuscript, though a summary of the first eight chapters follows the concluding words.

MS. N. Turin, Bibl. Reale, Codex 121. Parchment, dated 1416. Folios 1-124. $12\frac{3}{4} \times 8\frac{1}{2}$ inches. 2 columns. Initials in colour. Bound with the *De Potestate Regia et Papali* of John of Paris, two smaller tracts on the same subject, some letters of Pierre de la Vigne, and a sermon of Nicolas of Oresme. The manuscript is from the Abbey of Saint Jacques at Liège. Written by Goffinus de Momalia, canon of the church of Saint Denis at Liège. It came into the possession of James Erre (?), licenciate in canon and civil law, who sold it in 1419 for eight French crowns to Philip of Othei, prior of the monastery of Saint Jacques in Liège. Prior Philip corrected and annotated the manuscript in 1420, evidently making use of another copy of the work in the possession of Magister Gerard Rondelli, canon of Saint Lambert at Liège, a copy which did not contain the summary of the first eight chapters. Gerson is quoted as having said of Marsiglio's work: 'Est liber mirabiliter bene fundatus. Et fuit homo multum peritus in doctrina Aristotelica et etiam in theologia et usque ad radicem resolutus quicumque ipsum fecit.'

The manuscript at London (O) was originally ascribed to Ockham, but afterwards to Marsiglio. It ends with *Christianorum*, but it lacks the table of contents.

MS. O. London. Brit. Mus., Royal MS. 10 A. XV. Parchment. XIVth century. Folios 8-98. $9\frac{1}{2} \times 6\frac{1}{4}$ inches. Initials in colour. Bound with John XXII's bull *Quia vir reprobis* and with Ockham's unpublished tract *De Imperatorum et Pontificum Potestate*. In the fifteenth century the book belonged to Magister Thomas Gascoygne, who gave it to Lincoln College, Oxford. A sixteenth or seventeenth century hand has noted that the editions were defective in not having the latter portion of the third part.

The Bodleian manuscript (P) is also complete. The table of contents precedes the work.

MS. P. Oxford, Bodleian Library, MS. Canon. Misc. 188. Paper. XVth century. Folios 1-67. $11\frac{1}{4} \times 8\frac{1}{2}$ inches. 2 columns. Bound with Maraglio's *De Translatione Imperii*, an anonymous tract entitled *Responsiones ad obiecta Papae contra Romanum Imperium*, and Marsiglio's tract entitled *Defensor Pacis Minor*. On these two tracts see below, pp. 800 ff., 806. The handwriting is exceedingly difficult.

The Magdalen (Q) and the Caius (R) manuscripts correspond in arrangement and completeness to that in the Bodleian, ending with *Christianorum* and having the table of contents at the beginning.

MS. Q. Oxford, Magdalen College, Codex 86. Parchment. XVth century. Folios 1-168. $11\frac{1}{4} \times 8$ inches. Initials in colour. Coxe's catalogue gives the age of this manuscript as of the fourteenth century, but on folio 171 recto it is dated 20 Jan. 1415.

MS. R. Cambridge, Gonville and Caius College, Codex 577 (511). Parchment. XIVth century. Folios 1-144. $10\frac{1}{4} \times 7$ inches. Bound with *Testamenta Patriarchum* and with Duns Scotus's *Summa Libri Physicorum*.

In Bremen there is a summary (S) of the first two books of the *Defensor Pacis* under the title of *Excerptum de libro Marsilii de Padua*. The summary is rather full, the first book having nineteen and the second thirty parts, corresponding to the chapters in those books in the original work.

MS. S. Bremen, Stadtbibliothek, Codex b. 85. Parchment. XIVth century. Folios 94-129. $10\frac{1}{4} \times 6\frac{1}{4}$ inches. Initials in colour. Bound with various tracts on the papal and imperial powers, the most important for us being the work beginning on folio 156 recto and entitled: *Responsiones ad illa que contra Imperium opponuntur* (see MS. P.), and the tracts of Marsiglio and Ockham on divorce.

A seventeenth manuscript of the *Defensor* at Hanover scarcely deserves mention, because it seems to be nothing more than a copy of the edition of the work printed in 1522.

Turning now to the questions which we hoped to answer by the examination of these manuscripts, we find, first, that not one of them lacks the first chapter or gives evidence of its having been added later; secondly, that the word *Imperator* invariably appears in the first chapter, but in all subsequent chapters the word *rex* is used when reference is made to Louis of Bavaria; thirdly, in all of the manuscripts examined *pronuntiabit* and *privabit* appear, and not *pronunciavit* and *privavit*; and fourthly, we make acquaintance with a new work of Marsiglio.

So far, therefore, as our examination goes, no satisfactory explanation can be offered for the use of the word *Imperator*. We know that Marsiglio upheld the theory that he who was elected king of the Romans had the right to assume the title and the duties of emperor without any coronation by the pope. Thus he might have addressed Louis as emperor because he was theoretically emperor, but this does not at all explain why he should call him *Imperator* in the first chapter of the work and then ever afterwards refer to him as *rex*.¹¹ The most plausible supposition is that the first chapter was added after the coronation of Louis as emperor on 17 Jan. 1328, or else that the word *rex* was in this particular instance changed to *Imperator*.

The question as to whether the long passage quoted from

¹¹ *Def. Pac.* pp. 283 ff.

chapter 26 of Dictio II refers to John's bull of 8 April 1827 may be answered absolutely in the negative. The general appearance of the future instead of the perfect tense of the verbs justifies Riezler's surmise that Marsiglio was forecasting coming events rather than referring to the past. In further support of this same contention is the fact that there is no similarity between the bull of John above referred to and the passage quoted. If Marsiglio had seen the bull, he certainly would not have written that the *principem cum adhaerentibus aut obedientibus et faventibus* was condemned in it, for no such words or even ideas occur in the bull.

As to the third point, that there was possibly another work smaller than the *Defensor Pacis* which was condemned by the papal curia on 28 Oct. 1827, my researches have only resulted in bringing to light an entirely new work of Marsiglio written many years later. In view of the other evidence adduced to show that the time of the writing of the *Defensor Pacis* was the summer of 1824, the *libellus* referred to by John can scarcely have been anything else than the *Defensor* itself. *libellus* in the middle ages was a word commonly used to designate a book of any size. If John, in his letter of condemnation, refers to two men as writing the objectionable *libellus*, there is also sufficient internal evidence in the *Defensor* to show that two men were engaged in the writing of it.¹²

The new work of Marsiglio, which is contained in the Bodleian MS. (P), is entitled *Defensor Pacis Minor*. It throws a great deal of light on some disputed points in connexion with the history of Louis of Bavaria, although it by no means supports Ritter's theory that there was a smaller work written in 1824 which was condemned by the pope. It begins on folio 70 verso of the codex, three fourths of a column from the top of column 1, with the title in red ink:

Incipit liber intitulatus Defensor Minor editus magistro Marsilio Paduano post Defensorem Pacis Maiorem.

Then follows the work itself:

Quoniam autem in prioribus recitavimus libris magistri sententiarum intentionem potestatem quandam ligandi atque solvendi sacerdotem habere, videlicet peccatores excommunicando et a communicatione tam spiritualium quam civilium seu temporalium et ab aliorum fidelium consortio praevidendo, quam quidem iurisdictionem appellant, convenienter utique inquirendum videtur: Quid sit iuradictio et quot modis dicatur, et utrum secundum modum aliquem imperatori, episcopis, sive sacerdotibus debeatur.

Iurisdiction ipse sicut sonat vocabulum est dictio iuris, sive dicere ius;

¹² Riezler, *op. cit.* pp. 195 ff., see also my paper in *Amer. Hist. Rev.* II. p. 412.

ius autem idem est quod lex. Lex vero duplex est, quaedam divina, quaedam humana, et sumenda in ultima et prima significatione sicut dictum est in Defensore Pacis distinctione l. c. x.

So the work continues, referring frequently to the *Defensor Pacis*. Marsiglio cites the work as his own, and in so doing uses the first person singular and the first person plural indifferently. The work is mainly a reproduction, and to a certain extent an expansion, of the arguments concerning the temporal and spiritual powers already advanced in the *Defensor Pacis Maior*. The language and style decidedly point to Marsiglio as the author.

His object in writing the work and the date of composition are not at once evident. On folio 76 recto, near the end of column 1, the full purpose of the tract becomes clear, when Marsiglio proceeds :

Ceterum ad proposita nobis primum restat inquirere et tractare problemata quaedam sive quaesita. Unum quidem utrum masculus et femella in humana specie vocati coniuges, seu vir et uxor, quorum combinatio matrimonium solet communiter appellari, possuntne tales matrimonio combinari propter causas aliquas, et per auctoritatem alienius impediri? Et rursum, si tales iam dicto matrimonio fuerint combinati, possint aut debeant propter causas aliquas, et per cuius auctoritatem, abinvicem de matrimonio separari? Secundum vero problema huic annexum est: An gradus aliquis consanguinitatis qui impedit licitum matrimonium per dispensationem possit aut debeat amoveri.

Ingredientes itaque ad diffinienda proposita, oportet attendere quod, quamvis combinatio masculi cum femella in humana specie naturalis sit et ad commixtionem invicem, quemadmodum et animalia reliqua naturaliter inclinantur propter generationem et propagationem, et demum divinam immortalitatem seu sempiternitatem participandam secundum possibilem sibi modum, quemadmodum dictum est instantia naturae, tamen quia genus hominum arte vivit et rationibus, iam dictorum coniugum et combinatio, certis modis et rationibus fieri et dissolvi, si liceat, est et fuit hactenus pluribus regulis seu statutis et aliquibus consuetudinibus instituta. Sed quoniam legum et statutorum diversa sunt genera sive modi, quorum quidam humani sunt et dicuntur, quidam vero divini, quae sectae solent communiter nominari, fuit et est praefata combinatio diversimode ac multifaria ordinata; dictarum autem legum, quae qualisvis differentia sit, quae descriptio, et quoniam secundum ipsas, quaedam sunt affirmativa praecepta et quaedam negativa, vocata prohibita, et alia neque praecepta affirmativa, neque negativa, nominata permissa, quorum etiam descriptio et differentia sufficienter dicta sunt nobis in Defensore Pacis divisione 2a. c. 12, et circa (?) principium tractatus huiusmodi, omissis tamen ad praesens sermonibus et tractatu de combinatione masculi cum femella, matrimonio iam vocato secundum leges reliquas sive factas, propositum est nobis tractare praemissa problemata circa matrimonium in secta solummodo Christiana et de ipsius dispositione per humanas leges atque divinas secundum sectam praedictam. Nam secundum ipsam, tali determinatione completa, potuerunt iam dicta

problemata sive quaesita, similiter seu proportionaliter in sectis reliquis diffiniri. Resumentes itaque proposita oportet scribere primum quid est matrimonium secundum Christianum ritum et estimationem communem. Nam matrimonium in sua significatione propria dicitur de combinatione masculi cum femella in humana specie facta, per utriusque consensum expressum per verba vel indicia de praesenti spontanea, non coactum, et in aetate determinata, consensu inquam obligante utrumque coniugum ad simul comuniendum et se corporaliter exhibendum ad carnalem copulam propter proles generationem, libidinem extinguendam, cum super hoc fuerit alter ab altero debite requisitus, quamdiu vixerint continuo duraturum. Sic itaque descripto matrimonio, de ipso cum propositis problematibus tractare debentes, propter certitudinem et ampliorem evidentiam dicendorum, oportet attendere, quod Christi fideles reguntur et vivunt sub duplici lege, humana et divina.

From *quod Christi fideles* in the last sentence of our quotation, this work is, with slight variations, identical with Marsiglio's tract on divorce as far as *tempore ministranda* (Goldast, pp. 1386-1390). The first paragraph of the tract as printed in Goldast and the first words of the second paragraph down to *iam dicti Doctores* do not appear in the manuscript, nor the last two paragraphs beginning respectively *Ex praedictis* and *Nos Ludovicus* (Goldast, p. 1390). In the manuscript the words *tempore ministranda* occur near the end of column 1 on folio 78 recto. From this point onwards the manuscript continues with a digression on the differences and conflicts between human and divine law, the use of excommunication, and the consideration of matrimony as a human and not a divine institution. At the end of column 2 on folio 78 verso Marsiglio begins the discussion of the second problem which he has set out to solve:

Post haec autem dicere restat de annexo huic, et iam proposito problemate nobis, utrum gradus aliquis affinitatis sanguinis post primos parentes impediat matrimonium inter personas licite fieri secundum legem divinam aut proveniat impedimentum huiusmodi ab humano legialatore sive lege solummodo, demum vero cuius aut quorum sit auctoritas impedimentum huiusmodi amovere et de personis inter tales gradus consanguinitatis contrahere volentibus dispensare, sive penas quas ex hoc incurrerent relaxare.

Nos autem dicamus quod secundum legem antiquam sive mosaicam enuntiati sunt sive statuti gradus quidam consanguinitatis matrimonium licite fieri prohibentes, ad quorum siquidem observationem minime tenentur Christi fideles, praesertim cum talia in lege Christi prohibita non existant. Unde Apostolus, *Etiā transacto sacerdotio, necesse est ut legis translatio fiat*; ¹⁴ et rursus, *Soluti sumus* ¹⁵ *a lege veteri, in novitate servamus illi*.¹⁶ Secundum autem legem [*&c.*, as printed below, p. 304].

In the discussion of this topic, which occupies the rest of the

¹⁴ Hebr. vii. 12.

¹⁵ M8. 'sunt.'

¹⁶ Rom. vii. 6.

work, Marsiglio contends that such matters are a concern of human law, and the suspension of any law in regard to marriages between relations belongs to the temporal authorities. The work ends on the first line of column 1 of folio 79 verso. The last paragraph runs:

Quod autem leges in hoc seculo quasquam coactivas condere sive ferre, vel secundum ipsas coactivum iudicium exercere per penam siquidem realem aut personalem, arcando quamquam in hoc seculo, ad aliquod agendum vel omittendum ad nullus solius episcopi sive presbyteri aut alterius spiritualis ministri, vel ipsorum solius collegii communiter vel divisim, auctoritatem sive potestatem pertineat secundum legem divinam, seu eius concessione sive praecepto, sed eisdem potius interdicta sint, consilio vel praecepto, et quod factorum auctoritas et coactiva potestas sit universitatis civium, aut supremi principis Romanorum Imperatoris vocati et per veras rationes humanas et per Sacram Scripturam sive legem divinam Christianam, ac dicta sanctorum exponentium ipsam, nec non per Cronicas et per approbata historicis evidenter monstratum est in Defensore Pacis divisione prima capitulis 12, 13, 15, 17, et in 2a divisione eiusdem c. 4, 5, 8, 9, 10, 17, 19, 20, 28, 29, 30, quae inspicere poterit is, cui cura fuerit, certificari de iam dictis a nobis. De quibus omnibus suppositis vel probatis, rememorata et etiam explicata sunt plura in hoc tractatu, ex Maiori Pacis Defensore, per necessitatem tam sequentia quam deducta, propter quod Defensor Minor deinceps vocabitur tractatus iste. Amen. Laus Deo.

We are now in a position to settle the much vexed question of the genuineness of the divorce tract of Marsiglio. Held to be a forgery by Böhmer,¹⁷ and at first by Riezler,¹⁸ there can be no longer any doubt but that the words of that tract as it appears in the editions of Freher and Goldast were written by Marsiglio. The only other manuscript of it (S) gives it in the same form as that in which those editors published it; but it has never been known that it once formed part of a larger work of Marsiglio called the *Defensor Pacis Minor*.

The object of Marsiglio in writing the *Defensor Pacis Minor* is not hard to find. At the request of Louis of Bavaria or voluntarily he composed this work to give the emperor support in the matter of the divorce of Margaret Maultasch, duchess of Carinthia and countess of Tyrol, from her husband John, son of the king of Bohemia, and of her remarriage to the emperor's son Louis, Margrave of Brandenburg. Beginning with a general consideration of the papal and imperial powers, Marsiglio gradually brings the work to the subjects he has in mind,—divorce and the question of dispensation for marriages within prohibited degrees of relationship. The larger part of the manuscript, on the papal and imperial

¹⁷ *Regesta Imperii*, zweites Ergänzungsheft zu den 'Regesten Kaiser Ludwigs des Bayern,' p. 345.

¹⁸ *Op. cit.* pp. 234 ff.; See also my paper in the *Amer. Hist. Review*, II. p. 412, n. 5.

powers, it is not necessary to print, as it appears in substance in the *Defensor Pacis Maior*. The part on divorce is practically all contained in the tract on divorce as published by Goldast. The portion on dispensation has not as yet been printed, but if we compare the manuscript with the *Forma Dispensationis* as it appears in Goldast, we observe a striking similarity between the two.

Goldast, p. 1885.

MS. Canon. f. 79.

Cum gradus affinitatis sanguinis, praesertim infra sorores et fratres, matrimonium non impediat divinae seu Christianae legis statuto aliquo vel praecepto; quemadmodum certitudinaliter novimus tam per nos quam per supradictae legis divinae idoneos ac probatos Doctores. Idque etiam asserente beato Augustino lib. 18 de Civit. Dei, cap. 16, dum de talibus affinitatis sanguinis gradibus tractans inquit; Quod hoc videlicet matrimonium licitum fieri inter affines consanguineos, nec lex divina prohibuit, et nondum prohibuerat lex humana. Quibus siquidem verbis duas sententias expressit Augustinus: unam videlicet supradictam, Quod lege divina legitimum matrimonium fieri non est prohibitum inter personas sanguinis affinitate coniunctas. Secundam vero sententiam scire fecit, videlicet quod talis prohibitio matrimonii inter consanguineos fieri habeat auctoritate legislatoris humani, aut eius principantis, supremi principis Romanorum. Idem quoque concedere atque fateri convenit Romanum episcopum Papam vocatum, cum suorum clericorum coetu, quos Cardinales appellant, veritate cogente. Nam praefatus Papa Romanus . . .

Secundum autem legem Christianam nullus gradus affinitatis sanguinis praesertim inter sorores et fratres matrimonium aliquod fieri licite prohibet. Unde Aug. 16. li. de Civit. Dei, c. 16, de talibus affinitatis sanguinis gradibus tractans inquit, quod hoc videlicet matrimonium licitum fieri inter affines consanguineos, nec lex divina¹⁹ legitimum matrimonium fieri non est prohibitum inter personas sanguinis affinitate coniunctas. Secundam vero sententiam scire fecit, videlicet quod talis prohibitio matrimonii inter consanguineos fieri habeat auctoritate legislatoris humani, aut eius principantis supremi, principis scilicet Romanorum. Idem quoque concedere atque fateri convenit Romanum episcopum Papam vocatum cum suorum clericorum coetu, quos cardinales appellant, veritate cogente. Nam praefatus Papa Romanus . . .

The edition and the manuscript continue in practical agreement down to *sanguinis affinitate coniunctis, ad Romanum principem pertinere* (p. 1885, l. 62, of Goldast's edition). The manuscript, however, instead of *ad Romanum principem* has *ad auctoritatem solius legislatoris humani, vel eius auctoritate principantis tantummodo pertinere, nequaquam non ad presbyterum sive episcopum quemquam,*

¹⁹ The scribe has evidently omitted the words from *prohibuit, et* to *Quod lege divina*.

etiam Romanum Papam rocatum, communiter aut divisim, cum humani legistatores non sint, inquantum huiusmodi communiter aut divisim, nisi fortassis secundum quod pars civilis communitatis existunt. Then comes the last paragraph of the work in the manuscript, beginning *Quod autem leges*, and ending *Laus Deo*, as given above (p. 303).

The close similarity between the two works shows us not only Marsiglio's object in writing his *Defensor Pacis Minor*, but also the date of writing, 1342. H. Theobald²⁰ has already advanced the opinion that the two documents printed in Goldast and referred to by Bohmer were written by Marsiglio and presented to the emperor along with the tract on divorce. In my opinion Marsiglio wrote his *Defensor Pacis Minor* in 1342, in order to assist the emperor's contemplated action in the matter of the divorce and dispensation. On this work as a basis the emperor then had prepared, by Marsiglio or by another, the two documents on the divorce and the dispensation, and a selection made from the *Defensor Pacis Minor* to give support to these. The Bremen manuscript (S, above) would seem to indicate that if Louis used these documents and the *Defensor Pacis Minor* as a partisan work for his own defence, he chose only that portion which was most suited to his needs, omitting altogether the chapter on dispensation as it was largely reproduced in the document on the same subject. The opinion I have expressed is borne out by the first paragraph of the printed text, which begins *Ad ampliorem* and ends *undique seminatae praefatorum Doctorum sententias sub breviluquo, quantum possunt, huius rescripto non inutiliter duximus inferendas*; and by the first words of the second paragraph, *Dicunt ergo et scribunt serius in suis tractatibus iam dicti Doctores*—neither of which portions appears in the manuscript of the *Defensor Pacis Minor*. The *Doctores* referred to are undoubtedly Marsiglio and Ockham, and possibly include others. They are referred to first in the document on divorce and then in that on the dispensation. In the latter is to be noted particularly the phrase *quemadmodum certitudinaliter norimus tam per nos quam per supradictae legis divinae idoneos ac probatos Doctores* which precedes the passage borrowed from Marsiglio's *Defensor Pacis Minor*. The absence of the two documents in a formal shape from the *Defensor Pacis Minor* does not tend to support the view of Theobald that they were written by Marsiglio and presented to the emperor along with his tract. It seems more probable that Marsiglio's *Defensor Pacis Minor* was written first and the documents with selections from the *Defensor* were compiled afterwards. It can scarcely be denied, however, that Riezler's and Böhmer's contention that the two documents never emanated from the chancery of Louis of Bavaria is correct. It

²⁰ See the *Neues Archiv*, xliii. 772 (1898).

is doubtful whether Louis ever gave them formal validity by issuing them through his regular officers. They were and probably remained only an adjunct to a polemical work written in his favour. Riezler was wrong, nevertheless, in thinking that the tract itself was written in the name of Louis, for our discovery effectively disproves that.

The only question now is as to the meaning of Flacius Illyricus's reference to Marsiglio, in his *Catalogus Testum Veritatis* (lib. 18): *Vidi in vetusto quodam codice tractatum cui nomen Marsili erat adscriptum, in quo probatur, quod potestas coactiva tantum ad imperatorem pertineat. Sed erat nomine Ludovici Caesaris scriptus.* This may refer to the tract on divorce or to some other work of Marsiglio.²¹ The former is in the name of the emperor and touches on *potestas coactiva*; but it is of course possible that Flacius Illyricus saw a different tract written on *potestas coactiva*, and in the name of the emperor Louis, which was ascribed to Marsiglio. But that the *Defensor Pacis Minor* was not the work in question is obvious, because it is not written in the name of the emperor.

In conclusion it may be noticed that the Bodleian manuscript with which we have been dealing contains a tract entitled *Responsiones ad obiecta Papae contra Romanum Imperium*. This appears in a manuscript entirely devoted to works by Marsiglio, and stands between the *De Translatione Imperii*, which is not there ascribed to him, and his *Defensor Pacis Minor*. It extends from folio 69 verso column 1 to folio 70 verso column 1. It is undoubtedly the same as the tract which appears in the Bremen manuscript (8, above) on folio 156 recto and extends to folio 159 recto. In the latter the work is entitled *Responsiones ad illa quae contra Imperium opponuntur*. At the side in pencil is placed: *Apologia Ludovici contra Ioannem XXII*. In the Bodleian manuscript the work is divided into three parts under the titles of *Obiectio prima*, *Obiectio secunda*, and *Obiectio tertia*. The first begins:

In primis enim contra nos et imperialem auctoritatem, potestatem, et ius imperii allegatur et obicitur quod potestas et auctoritas imperialis est a Papa et quod electus in Regem Romanorum ex sola electione non est nec dici potest verus Imperator nec habet potestatem, iurisdictionem, et auctoritatem antequam inungatur, consecratur, et coronetur a Papa, quia ut dicunt tam in temporalibus quam in spiritualibus habet plenitudinem potestatis.

This work is nothing else than Louis of Bavaria's document beginning *Fidem Catholicam*, which was issued on 6 Aug. 1338. Its position in the manuscript makes clear how any reader might think that the work was written by Marsiglio. In this copy how-

²¹ As an illustration of the way in which works have been wrongly assigned I may mention the Vienna manuscript of the *Octo Quaestiones* of Ockham which is attributed to Marsiglio. See above, p. 296 n. 9.

ever, the scribe evidently did not finish this work, for he put no *explicit*. On comparing the manuscript with the document as published by Goldast²² we find that it lacks the introductory paragraph and paragraphs 1, 11, 12, 13, 14, 15 of the printed text. The appearance of the work in the Bremen manuscript, which was written before 1360, suggests that the substance of the *Fidem Catholicam* of Louis was put forth in a separate tract, possibly before, but more likely after, the publication of the document. Its author may have been any one of the many doctors grouped about Louis at this time; possibly Marsiglio, but more probably, as Müller supposes,²³ Bonagratia of Bergamo. Were it Marsiglio, we should have a partial explanation of the statement of Flacius Illyricus that he had seen a work on the *potestas coactiva* ascribed to Marsiglio, but written in the name of the emperor. However, until the manuscript collections of Europe are better catalogued, we shall be unable to decide definitely whether or not there is a fourth work written by Marsiglio.

JAMES SULLIVAN.

The Name of Navarino.

Even since Hopf published his history of medieval Greece writers on that subject have followed his opinion that the name of Navarino was derived from the Navarrese Company, which entered the Morea in 1381 to support the claims of Jacques de Baux, titular emperor of Constantinople and prince of Achaia, and which established its headquarters at the classic Pylos. Hopf adduces no evidence in support of this derivation, which he thrice repeats,¹ except that of the French traveller De Caumont, who saw at Pylos in 1418 *ung chateau hault sur une montaigne que se nomme chateau Natarres*.² But his opinion, mainly formed in order to controvert the anti-Hellenic theory of Fallmerayer, has been followed, also without proof, by Hertzberg,³ Mr. Tozer,⁴ and more tentatively by Paparregópoulos.⁵ The name of Navarino, however, seems to have existed long before the Navarrese Company ever set foot in Greece. Nearly a century earlier a golden bull⁶ of the emperor Andrónikos II, dated 1293, confirmed the possessions of the church of Monemvasia, among which it specially mentions τὴν Πύλον, τὸν καλούμενον Ἀβαρίνον. A little before the date of this imperial document (1287-1289) Nicholas II de Saint-Omer, lord of half

²² *Const. Imp.* i. 331.

²³ *Op. cit.* ii. 81.

¹ *Geschichte Griechenlands vom Beginn des Mittelalters*, in Ersch und Gruber's *Allgemeine Encyclopädie*, lxxv. 212, 221, lxxvi. 24.

² *Voyage d'Oultramer*, p. 89.

³ *Geschichte Griechenlands*, i. 138.

⁴ Finlay, i. 338, note.

⁵ *Ἱστορία τοῦ Ἑλληνικοῦ ἔθους*, v. 300 (4th ed.)

⁶ Miklosich und Müller, *Acta et Diplomata Graeca Medii Aevi*, v. 166-61.