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The Idea of Body Politic in the English Thought in the XVth century

- The New Paradigm of John Fortescue –

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This paper aims to analyze the innovations brought by an xvth century English jurist, John Fortescue, to the already existent metaphor of the body politic, innovations which will open the way for a new type of “body politic” within the English political thought. The main works I focus on are *De Laudibus Legum Angliae* and *The Governance of England*, where Fortescue’s new corporal paradigm is expressed the most poignantly. Without dedicating an entire treatise to the corporal analogy, as some of his successors, like Thomas Starkey or Edward Forset, will do, Fortescue brings nonetheless an important contribution to the evolution of this metaphor within an English context, by taking several steps away from the traditional formula of the body politic. What he offers new is, first and foremost, a “national” particularization of the body politic, describing in his works the traits of the English body politic and contrasting them with other such “organisms”, and the abandonment of the excessive abstracting from his predecessors, by applying his considerations to the existing political and social realities.

Mots-clés :

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1. Lineages of Fortescue’s political and legal thought

The concept of “body politic” enjoyed a great popularity during the Middle Ages, being constantly reiterated in the political treatises of writers like John of Salisbury (c. 1120-1180), Aegidius Romanus (c. 1243-1316), Marsiglio of Padua (c. 1275-1342) or Christine de Pizan (c. 1363-1430), to name only the most significant ones. The basis of the metaphor was the analogy drawn between the human body, as a microcosm and mirror of the divinely inspired natural order, and the medieval state, in a form more close to the roman model than the medieval realities. The purpose of the metaphor was to propose an ideal type of government, either in a polemical or non-polemical manner, depending on the circumstances which each argument emerged from - as the analogy was often used in the political disputes of that period as a source of legitimacy. The use of the metaphor will continue past the xvth century, but this time in a new direction, reflecting the changes occurring in the European society within the Renaissance and Reformation context. Particularly in the xvıth and xvııth century England, new characteristics will set the new form of the metaphor of the “body politic” apart from its

medieval predecessors: the new generation of Tudor political writers preserved the main idea of the metaphor, but they gave it a different shape and some of them even developed it further, by granting a special place to the concept of “political disease”.

The one which opened the way for the xvıth century’s innovations was a preeminent lawyer and judge from the court of king Henry vı, John Fortescue (1395-1476/1480 ?), whom, in a series of treatises about the political and judicial organization of the English kingdom, created in turn a corporal template of the realm, inspired, as the author himself testifies, by Aristotle. This template belongs to the tradition of the body politic’s imagination, but the place of John Fortescue in the legal English literature is determined by the fact that he was the first who explained the nature of the English constitution and of the law which the former was founded upon, the first which drew a comparison between the English system and those of other countries, describing at the same time the organization of the English legal profession. For the professor Harold Dexter Hazeltine, editor of the collection *Cambridge Studies in English Legal History*, Fortescue was the successor of the medieval authors of political and legal treatises and at the same time the predecessor of the xvıth century English theorists (Hazeltine, comments in Fortescue, 1949, xlııı)[1], naming him “the precursor of all the later lawyers who contributed to the literature of English constitutional institutions and laws” (Hazeltine, comments in Fortescue, 1949, xxx) and noticing a series of resemblances in terms of purpose, methods and subject to the work of Thomas Smith, *De Republica Anglorum (*Hazeltine, comments in Fortescue, 1949, xxxııı). Hazeltine is not the only one which pointed towards similarities between some concepts in Fortescue’s work and those of other authors of political treatises from the xııth century until the xvıth century, whom, using a modern terminology, I could call the spokesmen of a line of thought which dominated that period of Middle Ages, where the political system, either secular or ecclesiastic, was imagined as analogous to the human body. Stanley Chrimes considers that the significance of John Fortescue resides in the fact that he represented a “strong link in the chain connecting the ideas of the medieval thinkers with those of the English theorists of the sixteenth and the seventeenth centuries” and, paraphrasing Plummer, that Fortescue was the first of the medieval writers which “based his theoretical analysis upon observation of the existing conditions” (Chrimes, comments in Fortescue, 1949, C). The remark of professor Chrimes is fully justified, because Fortescue focused his attention upon the legal and economical aspects of the kingdom’s functioning, abandoning the abstracting specific to the previous writers. I will offer one example in this regard, related to one of the most important ideas expressed by Fortescue: the concept of *dominium politicum et regale*, according to which an unlimited power of the sovereign had a harmful effect upon the whole kingdom. This idea was defended with the help of the corporal metaphor, but, at the same time, Fortescue made a series of very specific references to the policy of excessive taxation of the French monarchy and the monopolies which it enjoyed (such as the monopoly on salt), as well as the arbitrary implementation of justice. For Fortescue, a man of law himself, this issue of lawfulness was a very serious one, as he regarded the law as the ultimate element within the body politic.

Fortescue practiced within the Lincoln’s Inn, one of the four professional associations of

lawyers from London, even from its first documentary attestations, in 1422, and he was its governor four times, being also elected for the Parliament no less than eight times, between 1421 and 1436. In 1442, he became chief justice of the King's Bench, serving at the same time as Justice of Peace. As such, Fortescue possessed a deep legal background and he also had ties to the Lancaster dynasty, which involved him later in the political conflicts which troubled England during the later years of his life. The consequence of his ties to the Lancasters had been the exile, first at Edinburgh, where Henry VI himself had taken refuge together with his family, and then in France. Captured by the troops of the house of York during the battle of Tewkesbury, in 1471, when prince Edward, heir to the house of Lancaster and the one whom *De Laudibus Legum Angliae* was dedicated to, was also killed, Fortescue was pardoned by the new king Edward IV, being even admitted in his council, before he died at an unknown date between 1476 and 1480. As it can be noticed, his own professional qualifications are a solid explanation for the legal character of his work and for the step forward which he takes in regard to the position of the law within the state and its relation to the medieval sovereign. The author's biography is not the only cause of his innovative political ideas, another one being the historical circumstances when he writes *De Laudibus Legum Angliae* and *The Governance of England.* As such, we can say that responsible for the "national" character which Fortescue gives to his works is the development of the English individualism in the XVth century, with England being practically forced to tear itself off from the continent, due to the political and military events occurring during the reign of Henry VI, whose consequence was the loss of all the continental possessions of England, except for the city of Calais. Also, the idea of the supremacy of the law within the commonwealth, which constituted a repudiation of the principle *Quod principi placuit legis habet vigorem* (Fortescue, 1949, 24-25) - whose practical consequence was the unequivocal assertion, through the organic analogy, of the impossibility of the sovereign to change the laws of the kingdom without the consent of his subjects -, can be considered an outcome of the evolution of the English governing system during the XIVth and the XVth centuries. I have in mind here the addition of a new element to the coronation oath of the English kings, which compelled the new monarch to preserve the laws he and his people have chosen (Lockwood, comments at Fortescue, 1997, XX). This political reality is pointed out by Fortescue himself in his tract *De Laudibus Legum Angliae*, clearly stating that "he [the king] is bound by oath at his coronation to preserve the law" ("quo ipse in coronacione sua ad legis sue observanciam astringitur sacramento") (Fortescue, 1949, 78-79).

2. The Prince within the Body Politic

The work of John Fortescue is dominated by his concern for the law, which becomes the foundation of every political authority, granting legitimacy and ensuring its proper functioning. Fortescue focused as such on the subject of England's constitutional and legal institutions, and his theories were presented in *De Natura Legis Naturae*, in *The Governance of England* and particularly in *De Laudibus Legum Angliae.* The same Harry Dexter Hazeltine names Fortescue's political theories as "the culmination of tendencies

in medieval thought and as the starting point of a later and modern current of ideas" (Hazeltine, comments in Fortescue, 1949, XLIV). Legal preoccupations already emerged during the Middle Ages, as jurisprudence was a permanent source of inspiration for political speculation. Within the English realm, this interest for the legal system of the *regimen* emerged a long time before Fortescue, without resorting though (except for John of Salisbury, but he writes his treatise from a general perspective of the entire *communitas Christiana*, as he expresses his views within the context of the Plantagenet monarchy, which was more French than English) to the corporal analogy present in *De Laudibus Legum Angliae* and, to a lesser extent, in *The Governance of England.* Among those "tendencies from the medieval thought", which professor Hazeltine alludes to, there is Henry of Bracton (1210 - 1268), author of the treatise *De Legibus et Consuetudinibus Angliae*, whose view in regard to the position of the king, subjected to the law, and whose idea that arbitrary exertion of the royal prerogatives means the nullification of sovereignty anticipates Fortescue's own opinions. The temptation to put the prince, under one form or another, under the power of the law was already there during the Middle Ages, but Fortescue abandons the typical medieval fascination with the Roman law, considering without hesitation that the English common law was not at all inferior to other systems already supported by a powerful tradition.

De Laudibus Legum Angliae, the main work which I refer to in this paper and where the analogy between the state and the human body is expressed in the most poignant terms, was written between 1468 and 1471, while John Fortescue was in exile together with the court of queen Margaret, the wife of king Henry VI. The purpose of the tract was to offer prince Edward, the heir to the throne of England, a look at the laws and the institutions of the English kingdom, following the tradition of the *speculum principis* genre, just as Aegidius Romanus had done with his *De Regimine Principum,* written for (future) king Philip IV[2]. The original title is not the one which the respective treatise became known under, professor Stanley Chrimes doubting whether even there was such an "original title", the current one emerging barely in a printed edition from 1616 (Chrimes, comments in Fortescue, 1949, LXXXV). Fortescue had basically written a constitutional study, comparing the constitution and the common law of England to the legal and constitutional systems from other states, and in order to determine whether the English system was superior, he appealed to the foreign and Greek political theories regarding the nature of the secular commonwealths. The main comparison was drawn between the English system, which was a *dominium politicum et regale*, and the French one, which was only a *dominium regale*. Fortescue discusses the origin of the kingdoms ruled "politically" - in other words, according to Aristotelian terminology, ruled by the entire body politic of the kingdom - in opposition to kingdoms such as France, which was ruled "royally", only by the king (Kantorowicz, 1957, 222). For Fortescue, the superiority of the English system comes without any doubt from his preference for the system of a "limited monarchy" - a surprising choice having in mind the context when *De Laudibus Legum Angliae* was written, with a triumphal France under the rule of Louis XI and an England which struggled to recover from the crisis caused by the defeats it had suffered during the last phase of the One Hundred Year War and the dynastical problems of the house of Lancaster. The reason for the differences between the English constitutional

system and the French one had to be looked for in the difference between the economical and social conditions (Fortescue, 1949, 67-73).

Just as Christine de Pizan several decades earlier in France, John Fortescue had written his work during a time of deep crisis of the English monarchy, determined by the dynastical instability originating from the usurpation of Henry IV in 1399, the defeats suffered on the continent after 1429 preventing the new dynasty to gain the necessary prestige in order to consolidate its position. Just as it was the case for Charles VI of France, the association between the weakness of the king and that of the kingdom was impossible to avoid, having in mind the emphasis placed by all the political theorists of the Middle Ages upon the relationship between the qualities of the king and the well-being of the *regimen* (and, implicitly, of their subjects), starting from John of Salisbury. In the comments to the 1997 edition of John Fortescue's works, *On the Laws and Governance of England*, Shelley Lockwood used the expression of "negation of the virtues which were expected from a monarch" in order to summarize in a single phrase both the weakness of king Henry VI and the impact it had upon the psychology of the king's contemporaries (Lockwood, comments in Fortescue, 1997, xvii). Fortescue did not resort to the metaphor of the king as physician of the body politic - absence which is conspicuous, having in mind that this position of the sovereign appears in most of the tracts where the organic analogy between the human body and the state can be found. Besides, the room given to the metaphor of the body politic is rather small, despite its essential significance in order to justify the whole concept of *dominium politicum et regale*. The life and the prosperity of this body politic depend first and foremost on the *intencio populi*, analogous to that heart which, in the works of his medieval predecessors, like Aegidius Romanus, was given the role of distributing the elements necessary for the life of the body, preventing this way the emergence of some potentially diseased states. Roughly speaking, Fortescue is more concerned by the actual illustration of all aspects of the governance of England rather than by such metaphorical considerations. But, even though he is no more a direct physician of the kingdom, the prince remains, indirectly this time, a factor which can have a strong influence on the symbolical "health" of the realm: we can draw this conclusion from the repeated warnings of Fortescue against the temptation of that *dominium regale*, which is basically equated with tyranny. Fortescue no longer establishes a direct link between the health of the two entities - the sovereign and his kingdom -, like Christine de Pizan had done before or Edward Forset would do later, at the beginning of the xviith century. But the king can contribute to the destruction of that *dominium politicum et regale* which Fortescue regarded as the ideal system of government. The consequence of this fact would have been a miserable state of the kingdom, where its inhabitants suffer both economically and legally, in opposition to the prosperity and the satisfaction provided by a government which rules according to the principle *dominium politicum et regale* (Fortescue, 1949, 80-89). We also have to take into consideration the issue whether this political doctrine of John Fortescue was not inspired by the work of Thomas Aquinas and Ptolemy of Lucca, *De Regimine Principum*. If initially Stanley Chrimes rejected this idea, later he questioned whether the origin of this concept can be found in the phrase *regimen regale et politicum*: in the case of Thomas Aquinas, the respective

regimen was a *summa* and not a combination of two *regimens*, but professor Chrimes thought that it was possible for the first concept to have suggested the second (Chrimes, comments in Fortescue, 1949, XCIV; Chrimes, 1936, 314-318). The terminology is indeed in doubt, but there are reasons to suspect that Thomas Aquinas' views on tyranny influenced Fortescue's own: Aquinas accepts the medieval axiom that unity of power is to be preferred due to being the most effective in achieving its goals ("virtus unita magis est efficax ad effectum inducendum quam dispersa vel divisa"), but the dire consequence is that the tyranny becomes the worst form of government ("regimen tyranni est pessimum"), as the tyranny, degenerated form of monarchy ("regimen regis") strives for the interest of a single man - as opposed to the other flawed forms of the government, oligarchy and democracy, which pursue the interest of more people (Thomas Aquinas, 2005, 19-31). Fortescue refered to Aquinas multiple times in his works and was acquainted with his views about different forms of government (Fortescue, 1949, 26-27). The danger of tyranny is acknowledged as well by Fortescue and he immediately suggests the necessary remedy: the power of the prince should be restrained by political law ("potestas regia lege politica cohibetur"). Unlike Aquinas, Fortescue does not limit himself to the dichotomy good monarchy/bad tyranny: even those people ruled only through *dominium regale* can enjoy a prosperous life, but the danger of turning into a tyranny always hangs over the respective *regimen*. As such, both a *dominium politicum et regale* and a *dominium regale* can provide for the well being of their subjects, but only the people ruled by the former are actually secure in their prosperous state.

A similar concern about the danger of tyranny can also be found in the XIIth century treatise *Policraticus,* written by John of Salisbury (John of Salisbury, 2004, 25-28), where its author declares that it was "equitable and just to slay tyrants", because tyranny was worse than a public crime, while the prince is obedient to law and thus "deservedly conferred power over his subjects". A major difference between John Fortescue and John of Salisbury, but also between the former and other theorists who followed the latter, consisted of the relationship between the prince and the law: if all recognized the importance of limiting the princely power through the law, it is to be noticed that there is a significant difference in regard to the nature of the respective law. For John of Salisbury, that law was not one created by the prince, but *jus divinum*. Fortescue though had a completely different opinion about the relationship between the prince and the temporal law, because, in his view, the latter was created with the consent of the entire kingdom and not only by the will of the prince, and the English monarchy as *dominium politicum et regale* was limited not only by the divine law, but also by the consent of the Parliament. Professor Hazeltine points out though that we are not dealing here with a doctrine of a constitutional monarchy, but one of a "limited" monarchy (Hazeltine, comments in Fortescue, 1949, XLVII).

The body politic of England was defined not by the king or the head alone, but by the king together with his council and the Parliament - the kingdom was physically "visible" when the king found himself together with his Parliament and was represented through the abstract notion of Crown (Lockwood, comments in Fortescue, 1997, XXII). Ernst Kantorowicz used the term of "composite body" in order to define this concept of

multiple authority, which does not come only from the head, but from the entire body, concept which had already been expressed as early as 1365 by one of the jurists in the service of king Edward III (Kantorowicz, 1957, 224). Defining England as a *dominium politicum et regale*, Fortescue described a kind of government where not only the king, but the king and the *politeia* together shared the responsibility for the commonwealth. Ernst Kantorowicz considered that Fortescue could have borrowed this formula, which in turn originated in the Aristotelian political thought, from the treatise *De Regimine Principum* of Thomas Aquinas, continued by Ptolemy of Lucca, inspired from the Roman model, but also from the biblical one, that of the judges of Israel, whose government was approved by God Himself as their king (Kantorowicz, 1957, 225). The formula had immediate consequences for the usage of the medical metaphor several decades later, by Thomas Starkey, then, at the beginning of the XVIIth century, by Edward Forset. If the responsibility for the well-being of the realm does not rest with the king alone anymore, it means that other elements of the body can join in the healing process. Rather ignoring the medical implications of his considerations, Fortescue does not elaborate on the issue, but they will be addressed later by Thomas Starkey in *A Dialogue between Reginald Pole and Thomas Lupset* and Edward Forset in *A Comparative Discourse between Body Natural and Politique.* Basically, Fortescue created this way the grounds for the emergence of a "political physician" who did not necessarily have to be the king (albeit his contribution remained important). In fact, the king himself could have become a source of "illness": "Sometimes, by the negligence of such princes and the inertia of their advisors, these statutes are made so ill-advisedly that they deserve the name of corruptions rather than laws" (Fortescue, 1949, 40-41)3. Fortescue does not talk here about the "English customs", since these are declared to originate not just within the will of the prince alone, but within the consent of the entire realm and as such they cannot be detrimental to the people. The "statutes" which can turn into "corruptions" and injure the realm which they were supposed to protect and sustain are those specific to the *dominium regale* type of government - and which Fortescue had striven to prove as extremely flawed. Holding the English customs in high regard, the author of *De Laudibus* considers them exempt from such criticism - but the idea of "corruptions" arising through the fault of "princes and their councilors" (due to negligence or deliberate attempts to tamper with the constitution - by changing the laws without the consent of the people, something which they were not supposed to be allowed to do) will take roots and be reiterated later in regard to the English body politic by other writers which did not share Fortescue's positive outlook about the state of affairs within England.

3. Law and "will of the people", basis of the new English body politic

An extremely interesting particularity of Fortescue's views is that the government of England is based upon consent. The idea, bearing a resemblance to that of Marsiglio of Padua, is mentioned in the treatise *The Governance of England,* written immediately

after *De Laudibus Legum Angliae*, between 1471 and (possibly) 1476, this time for the new king Edward IV. The concerns from *The Governance* are rather economic in their character, not legal, as it was the case in *De Laudibus.* Within this last treatise, there is also a reference to the old body metaphor which Fortescue had used in *De Laudibus*: "But aftirwarde, whan mankynde was more mansuete, and bettir disposid to vertu, grete comunaltes, as was the felowshippe that came in to this lande with Brute, willynge to be unite and made a body politike callid a reawme, hauynge an hed to governe it; - as aftir the saynge of the philosopher, every comunalte unyed of mony parties must nedis have an hed; - than they chese the same Brute to be Þer hed and kynge" (Fortescue, 1999, 112)4. The body politic is a human creation and only through *causa remota* a divine one, but, even when its origin can be traced to the will of a community, it has to comply with the natural model in order not to become a monstrous abnormality. In this situation, can we say that Fortescue resorted to a total laicization of the concept of state and of the body metaphor which the former is defined and legitimized through? It is obvious that Fortescue has a more pragmatic approach than, for instance, John of Salisbury or Aegidius Romanus, by applying his ideas to the conditions existing during his time and avoiding the excessive abstracting from the works of other writers. The role of this *jus divinum* for the creation of the political organism comes to attention with the emphasis put on the link between the human reason and *legis aeternae.* John Fortescue borrows from Thomas Aquinas the definition of natural law as *participatio legis aeternae in rationali creatura*, and the natural law offers the example to follow (Carlyle, 1936, 172).

John Fortescue expressed his ideas about the body politic and the role of the law most clearly in the XIIIth chapter from *De Laudibus Legum Angliae,* personally identifying two of the sources which, according to his testimony, had shaped the respective analogy. They were Saint Augustine with *De Civitate Dei* and Aristotle with *Politics*, two of the personalities whose influence over the medieval thought had been overwhelming. It is worth noticing that the medieval writers avoided depicting themselves as radical innovators, always seeking to legitimize their ideas by referring to an illustrious predecessor, either from the pagan Antiquity, or the patristic tradition. It is possible that this tendency determined John of Salisbury to invent that "Plutarch" from his treatise *Policraticus*, to which he attributed the origin of his political model. For John Fortescue, Aristotle, in particular, grants him a sufficiently solid foundation for his theories in order not to be compelled to resort to such subterfuges. Two fundamental elements have to be present, according to John Fortescue, in order for the emergence of the body politic to become possible, namely the consent of the law and the existence of a ruling organ, the head, but whose importance, as we will see, is decreased: "Saint Augustine, in the XIXth book from *De Civitate Dei*, chapter 23, had said that «A people is an assembly (*cetus*) of humans joined together by the consent of the law and common interests». But such a people do not deserve to be called a body (*corpus*) as long as it remains headless, that is, without a head. Because, just as in the natural bodies, what remains after beheading is not a body, but what we call a trunk, so in the bodies politic a community without a head is not any sort of body. That is why Aristotle, in the first book of the *Politics*, had said that «When a body consists of many, one will rule and the

others will be ruled». So a people who wants to erect itself into a kingdom or into any other body politic must always choose a man to rule that body, who, by analogy with the kingdom, is, from «regendo», usually called a king [rex]. This way, just as the physical body grows from the embryo, ruled by the head, the kingdom is born from the people and exists as a mystical body, ruled by one man as its head" (Fortescue, 1949, 30-31)5. It is to be noticed that John Fortescue used the notion of "mystical body" in order to designate the kingdom, even though, until then, this expression had been used in an ecclesiological context, in order to designate the Church through the same corporal analogy. *Corpus mysticum* is a theological concept, signifying an immortal corporation and, as such, represents a more sophisticated theory than the organic one of the kingdom as a body politic, because it allows for the perpetuity of its plurality (Lockwood, comments in Fortescue, 1997, xxxvi). Ernst Kantorowicz considered that John Fortescue viewed this *corpus mysticum* "as the last stage of perfection of a human society which begun as a simple multitude (*cetus*) of men, earning then the status of «people», finally culminating with the development of a mystical body of the realm, a body incomplete without a head, the king" (Kantorowicz, 1957, 223).

Within the body politic imagined by John Fortescue, the main organ, which ensures its existence and proper functioning, is the same as the one chosen by Aristotle in his work *De Animalibus*, the heart, which, starting from the xiiith century, from the treatise of Aegidius Romanus, *De Regimine Principum* (Aegidius Romanus, 1966, 46-48), and Aquinas's treatise bearing the same name (Aquinas, 2005, 21), gained more and more ground at the expense of the traditional ruling organ, the head. In *De Laudibus*, the heart is no longer the medieval sovereign: faithful to the principle *dominium politicum et regale*, Fortescue avoided giving the prince such an important place within the body politic, and the heart becomes now "the will of the people", following a model of a popular proto-sovereignty introduced for the first time by Marsiglio of Padua in *Defensor Pacis*, 150 years before *De Laudibus*. This time, the people are the ones who deliver to the remainder of the organism the elements needed for life, identified by John Fortescue as "the political prudence for the interest of the people": And, just as in the natural body, as Aristotle had said, the heart is the source of life, having in itself the blood which it transmits to all the parts, which are invigorated and given life this way, also in the body politic the will of the people is the source of life, possessing the blood, namely political prudence for the interest of the people, which it transmits to the head and all the parts of the body, by which the body is kept alive and full of vigor" (Fortescue, 1949, 30-31)6. In a very radical manner for the time when *De Laudibus* was written, but perhaps not entirely surprising if we take into account the evolution of the English kingdom during the period preceding Fortescue, the king seems to be given a subordinate position. That is a major shift from Aegidius Romanus, for instance, where, if the king has to provide for the health of the political organism, he does this by directly delivering the "goods and honors" (Aegidius Romanus, 1966, 47-48). In *De Laudibus*, the head no longer "transmits" the source of life, but, as we have seen in a previous paragraph, he still has the task to rule the body politic. The difference, in regard to the roles reserved for the king, between Aegidius Romanus and John Fortescue suggests as well a shift in regard to what is the most important factor for the existence of the body

politic: from unity (for Aegidius) to the interests of the people (for Fortescue). As such, the king is no longer a creative force of the elements sustaining the life of the body politic (Aegidius specifically talked about "*his* [the king's] goods and honors" – "ses biens et ses henneurs"), his role of ruling the body consisting of defending it: "a kynges office stondyth in ij thynges, on to defende his reaume ayen Ï·air enemyes outwarde by the swerde; an other that he defende his peple ayenst wronge doers inwarde bi justice" (Fortescue, 1999, 116).

The legal background of John Fortescue greatly influenced his political thought, influence seen particularly in the significance he gives to the lawfulness of wielding the authority. According to Stanley Chrimes, this political and legal theories regarding the discrepancy between an absolute monarchy and a limited one grants his work one of its most distinguishing traits (Chrimes, comments in Fortescue, 1949, xiii): "The law, indeed, by which a group of men becomes a people, resembles the nerves of the physical body, because, just as the body is held together by the nerves, so this mystical body is knit together and united by the law, which comes from the word «ligando», and the members and bones of this body, which signify the solid basis of truth by which the community is kept alive, retain their rights with the help of the law, just as the natural body does the same thing with the help of the nerves" (Fortescue, 1949, 30-31)7. The rule of the law is based on cooperation and it has to involve the intent, deliberation and the consent of all the members of the body politic, including the king, but it cannot manifest itself as an action without the will of the king (Lockwood, comments in Fortescue, 1997, xxix). The next passage displays though one of the most categorical limitations of the royal power expressed during the Middle Ages: "And just as the head of the physical body cannot change the nerves or deny his parts the necessary strength or the nourishment of blood, so a king which is the head of the body politic cannot change the laws of that body or to deprive that people of their substance without their consent or against their will" (Fortescue, 1949, 30-33)8.

John Fortescue is the one which proposes the so-called principle of "double majesty", including both *dominium regale* and *dominium politicum* at the same time (Hanson, 1970, 218). The question arises, of what exactly limits the royal power in the view of John Fortescue? Donald Hanson offers an interesting argument in favor of the idea that this *dominium regale* of the English monarchy is limited by the so-called "common law": if it was the natural law imposing this limitation, then the king of France would have been restricted in a similar manner, because the natural law is common to all people, and John Fortescue emphasizes that the French monarchy is only a *dominium regale* (Hanson, 1970, 361). But as the king of France does not rule *politicum*, while still being subjected to the natural law, the only possibility which remains in order to explain the existence of this *dominium politicum* within the English monarchy is the fact that the English king is subjected to the "common law". Fortescue suggested this idea directly, multiple times: first, by insisting that the will of the people is the source of the life of the body politic, then categorically asserting that the king "cannot change the laws of this body". James Blythe considers that the ideas of Fortescue "are quite close and without any doubt influenced by the conciliar concepts": the pope needs the approval of the College of Cardinals in order to apply the law in particular cases and the consent of a

general council for important issues or in order to change the law (Blythe, 1992, 263).

4. Conclusions

Fortescue's position is a reassertion of the hierarchical metaphor of the body. The organic metaphor functions as a way to set the constitutional limits of the political power and the physical constitution of the human body becomes a model for the legal constitution of the body politic. Cary Nederman points out though that the physiological analogy which forms the basis of the "civic collectivism" of John Fortescue is economical in nature, the direct consequence of the organic community being the defense of material interests (Nederman, 2009, 274). The innovation will be found later in Thomas Starkey's *A Dialogue between Reginald Pole and Thomas Lupset*, where the metaphorical diseases afflicting the body politic are described in a manner which makes one wonder whether there was not a direct influence between Fortescue and Starkey. Prior to the former, the main misfortune which could befall the body politic was discord, rebellious body parts acting against the ruling ones, with no concern for the well being of the whole or for the fulfillment of the tasks entrusted to them. But, in the xvıth century, we found the political writers (Thomas Starkey, for instance) worrying about things like "idleness" of the people when designing their "body politic" and this trend in English political thought was kicked off by John Fortescue.

The most particular trait of Fortescue's work though is its English character: John of Salisbury, Aegidius Romanus, Marsiglio of Padua were offering an extremely general political model, which could have been applied to any state structure, without suggesting the superiority of one over another. Fortescue wrote about *England* and opened the path for the writers of the next century, from Thomas Starkey to Edward Forset, who applied to England the same corporal analogy, of the state as a political organism, which functions according to the principles of the human body, having the same structure, suffering from the same afflictions and needing the same remedies. Fortescue literally cast off the medieval habit to gain legitimacy by appealing to the tradition of the Roman law and did not hesitate to declare the "customs of the English" as the best.

1 There are multiple editions of *De Laudibus Legum Angliae* and I had the possibility to use the bilingual edition, in English and Latin, realized by professor Stanley Chrimes in 1949, in the collection *Cambridge Studies in English Legal History,* collection edited by professor Harry Dexter Hazeltine. Also, I read as well a more recent edition, only in English this time, published in 1997 by professor Shelley Lockwood in the collection *Cambridge Texts in the History of Political Thought*, in a single volume together with the other political and legal treatise written by John Fortescue, namely *On the Governance of England.* According to professor Lockwood, the edition from 1997 is nothing else than a revised version of the one realized by Stanley Chrimes in 1949, with some minor differences in regard to the translation of some words into English.

2 It is worth pointing out that John Fortescue was familiar with Aegidius Romanus' *De*

Regimine Principum, as he made a short reference to it in the beginning of his treatise *On the Governance of England*, claiming that, together with Aquinas' tract bearing the same name, it had served as a source of inspiration for his own concept of *dominium regale et politicum*.

3 "Quandoque eciam inadvertencia principum huiusmodi et sibi consulentium inertia ipsa tam inconsulte eduntur, quod corruptelarum nomina pocium quam legum illa merentur".

4 In regard to this treatise, I had at my disposal two editions: the one published in 1997 by professor Shelley Lockwood (in a single volume together with *De Laudibus Legum Angliae)* and an edition published for the first time in 1885 by professor Charles Plummer (and republished in 1999). The one edited by professor Lockwood is an edition which modernizes the original spelling, as it was at the end of XVth century, while the version of professor Plummer keeps the original spelling unaltered. It is also worthwhile to point out that the current title, *On the Governance of England*, is not the original one, the respective treatise becoming known under this name only after it was used by professor Plummer for his critical edition from 1885. Formerly, the title which this treatise was circulating under was *Of the Difference between an Absolute and Limited Monarchy*, which Charles Plummer turned into a subtitle in his edition.

5 « Sanctus Augustinus, in libro xjx° De Civitate Dei, capitulo xxiij°, dixit quod *Populus est cetus hominum iuris consensu et utilitatis communione sociatus*. Nec tamen populus huiusmodi dum acephalus, id est, sine capite est, corpus vocari meretur. Quia ut in naturalibus capite detruncato residuum non corpus, sed truncum apellamus, sic et in politicis sine capitas communitas nullatenus corporatur. Quo primo Politicorum dixit Philosophus quod *Quandocumque ex pluribus constituitur unum inter alia, unum erit regens, et alia erunt recta.* Quare populum se in regnum aliudve corpus politicum erigere volentem semper oportet unum preficere tocius corporis illius regitivum, quem per analogiam in regno a regendo, regem nominare solitum est. Hoc ordine sicut ex embrione corpus surgit phisicum, uno capite regulatum, sic ex populo erumpit regnum, quod corpus extat misticum, uno homine ut capite gubernatum". A special attention has to be paid here to the terminology each of these writers uses, both the original ones and their modern editors, as the English translations are sometimes not very faithful to the Latin original. Stanley Chrimes, in his bilingual edition from 1949, translated the word „cetus" as „body", but, this way, confusion can emerge, as the respective translation can conceal the transition from one state to another, from "cetus" to „corpus", by using the same term for two completely different notions. More appropriate are the translations for "cetus" offered by Ernst Kantorowicz ("multitude"), Shelley Lockwood („group") or Philip Schaff („assemblage" in his translation of *De Civitate Dei* from 1890). The literal meaning of the word „cetus" is that of „union" or "group" (and attention must also be paid to the spelling of the word: the original "coetus" which Augustine used means what I already pointed out, but Fortescue's quotation uses the form "cetus", which actually means „large sea animal") and Augustine's original phrase is "ubi ergo non est ista iustitia, profecto non est coetus hominum iuris consensu et utilitatis communione sociatus". Augustine's main idea was that the lack of justice

(implying lack of respect for God's commands) led to the emergence of an union („coetus") which lacked „consent of law" and "community of interests" and such a group is not a people ("populus") - and a republic ("res publica") even less.

6 „Et sic ut in naturali corpore, ut dixit Philosophus, cor est primum vivens, habens in se sanguinem quem emittit in omnia eius membra, unde illa vegitantur et vivunt, sic in corpore politico intencio populi primum vivens est, habens in se sanguinem, videlicet, provisionem politicam utilitatis populi illius, quam in caput et in omnia membra eiusdem corporis ipsa transmittit, quo corpus illud alitur et vegitatur".

7 „Lex, vero, sub qua cetus hominum populus efficitur nervorum corporis phisici tenet racionem, quia sicut per nervos compago corporis solidatur, sic per legem, que a ligando dicitur, corpus huiusmodi misticum ligatur et servatur in unum, et eiusdem corporis membra ac ossa, que veritatis qua communitas illa sustentatur, soliditatem denotant per legem ut corpus naturale per nervos, propria retinent iura".

8 „Et ut non potest caput corporis phisici nervos suos commutare, neque membris suis propria vires et propria sanguines alimenta denegare, nec rex qui caput corporis politici est, mutare potest leges corporis illius, nec eiusdem populis substancias proprias subtrahere reclamantibus eis aut invitis".

Aegidius Romanus, *Li Livres du Gouvernement des Rois*. *A XIIIth Century French Version of Egidio Colonna's De Regimine Principum*, first published from the Kerr Ms., together with introduction and notes and full page facsimile by Samuel Paul Molenaer, AMS Press, Inc., New York, 1966.

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