

# Sir John Fortescue on Organic Politics

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CONSIDERING murder and incestuous marriage, Shakespeare's Richard III complains that his "kingdom stands on brittle glass" unless he carry out those criminal plans. The metaphor is an apt one to describe life at the top of the English heap in the mid-fifteenth century. Political arrangements came and went on a thin and treacherous crust, the fires of dynastic ambition and partisan struggle crackling just beneath the surface. It was an age we usually characterize as conservative, producing no new politics to handle urgent realities, its restless tumult only the chaotic backdrop for the English renaissance under the Tudors. Since we know the age saw feverish political struggle, one might expect a large deposit of writing to chronicle the changes. This is not, however, the case. In fact only one political writer of the age is notable, and he is more descriptive than theoretical. From the writings of Sir John Fortescue, however, the reader can extract a complex and sophisticated analysis of the medieval grasp of the organic unity of society, a unity being lost in England even as Fortescue wrote.

The facts of Fortescue's life have been set forth in detail on the usual occasions: in the introduction to Plummer's edition of *The Governance of England*; in the editor's essay in the Chrimes edition of *De Laudibus Legum Angliae*; and in the standard biographical references. To sketch his career briefly will suffice for the present purpose. He was born

around 1395, the descendant of a Norman conquest family. He may have been educated at Oxford, though this is not clear. He was enrolled at Lincoln's Inn to learn law, and in 1429 he was made a Serjeant-at-Bar. A decade later he was a Judge of Assize (1440-1441), and the next year saw him the "King's serjeant." In 1442 he became the chief justice of the realm, and in that office he was knighted. He became intimately involved in royal politics as a Lancaster partisan. That cause failing, in 1461 Fortescue was exiled to Scotland, then to Paris, but he soon gained pardon and the remission of attainder from the King—a reward for a pamphlet defending Yorkist claims! He spent his later years enjoying his large estate and died around 1479.

Similarly his works and pseudepigrapha are set out in the lists in Chrimes' edition of *De Laudibus*. Three major pieces deserve mention. *Opusculum de Natura Legis Naturae et caetera* appears to have been written in Scotland, 1461-1463. The immediate purpose of the *Opusculum* was to determine questions of succession, but the work goes much beyond such matters to discuss the natural law and its theological bases, the types of kingship, and the theory of kingship as a public office. It is not the best known of the corpus, but Chrimes finds it the most valuable.<sup>1</sup> *The Governance of England* is a late work (1471-1476) and broaches no new subjects, but is rather a prac-

tical pamphlet with suggestions for improving the king's actual management of the realm. The third and most famous of his works is *De Laudibus Legum Angliae* (1471), a rhetorical panegyric addressed to Prince Edward, written in dialogue form. It contains much of purely historical interest in its praise of the laws, the lawyers, the people, and the standard of living in England, especially to the disparagement of those of France. Some of the political theory of *De Natura* is repeated. The crucial thirteenth chapter, however, advances a theory of one kind of kingship (or, better, dominion) that has had a checkered career and has proven a joy to Whigs—though a careful reading indicates it is a Tory piece. Indeed the susceptibility to vividly opposite interpretations of Fortescue's rough sketch of the *dominium politicum et regale* in *De Laudibus* speaks for its subtlety (not to say ambiguity) and importance.

Chrimes notes<sup>2</sup> that post-Glorious Revolution Whigs called Fortescue up as authority to prove that kingdoms and commonwealths had existed before kings and to buttress the idea that a king could be picked and hired—or dismissed—by a kind of contractual agreement subject to unilateral abrogation. In our day, both Chrimes and Eric Voegelin have reread Fortescue's thirteenth chapter to find that he said something quite different. Far from seeing a modern in Fortescue, Frederick Wilhelmsen has used him in marshalling evidence to demonstrate the discontinuity of the modern political experience in the West from its medieval roots, a middle age of which John Fortescue was a tardy part, chiefly by virtue of his sense of the organic nature of the body politic.<sup>3</sup>

In addressing Prince Edward, Sir John set himself a curious problem. The prince is his superior, heir to England's throne, and in no way constrained to listen to the "aged knight." Yet it appears he needs to listen to someone, and he does. The "introduction to the matter,"<sup>4</sup> rehearses briefly the history of the imprisonment of Henry VI and the banishment of Queen Margaret and Prince Edward to the Duchy of Bar. That foreign sojourn had evidently somewhat alienated the prince from his English roots. Further, this prince, so soon as mature, gave himself wholly to "military discipline"

and seemed prepared to carry on the history of rule by arms and the continuation of "savage and most detestable civil war." A lawyer, particularly one who had borne the brunt of the political upheaval, must have found that a discouraging prospect. Fortescue, in his role as chancellor and lawyer, presumes to guide the young prince. He speaks humbly, but he speaks with authority. The rhetorical stance is consonant with Wilhelmsen's understanding of authority and power in the matrix of medieval politics: "Authority can do nothing other than speak. The execution of its commands depends upon a Power humble enough to listen."<sup>5</sup> The "aged knight" speaks because he wears the mantle of authority; the prince, though endowed with power, yet listens, thereby showing himself worthy to exercise power. The seeming audacity of Fortescue's position marks him as steeped in a tradition in which the law and its representatives were able to approach the seat of power, address it with authority, and be heeded. The author thus shows himself part of a society which respected authority, in which power was no juggernaut, but a part of the social fabric all taken as one. The treatise is part and parcel of the medieval political mind, and the rhetorical position of the writer sheds interesting light.

The structure of the book appears as the dialogue unfolds. Chapters i-xi deal principally with the chancellor's blandishments to the prince to study the law if he would rule well. Holy Scripture and various medieval authorities bolster the argument. The prince proves predictably tractable, and Fortescue continues. Chapters xii and xiii are the heart of the matter in which the chancellor distinguishes between political dominion and despotic dominion (see below). The fourteenth, fifteenth, and sixteenth chapters deal with natural law, the prince quoting handily from the *Opusculum*. The thirty subsequent chapters (xvii-xlvi) are an extended exposition of English law as Fortescue knew it, contrasted to law springing from Roman origins, the focus being a *mise en relief* of the felicity of Englishmen in comparison with the misery of their contemporaries in France. This done, Fortescue indulges in a few rubrical digressions on

the creation of serjeants-at-law in what he would think proper fashion (chapters xlvii-li). Three final chapters urge the king not to move hastily in legal spheres and exhort the prince to hold fast to the study of law. An ascription to the Savior brings all to fitting conclusion. In general, the book is of primary merit as a descriptive text. The chauvinism aside, it provides a good historical overview of the legal situation in England and France at the time. The real interest, however, is generated in the twelfth and thirteenth chapters where is the seedbed for all the thought which permeates and prejudges the remainder. Further, there is here some political insight and articulation of the first order.

Prince Edward was frequently in exile with his virago of a mother, Queen Margaret d'Anjou. This woman had shown herself a real battler in protecting her slow-witted husband's rights in the wars of the roses, and the Prince of Wales was ever at her side. As early as age seven, he showed a bloodthirstiness that cut off heads without hesitation.<sup>6</sup> Further, his mother's connections in and frequent dealing with France could possibly have tainted the prince with ideas of Gallic origin. Fortescue, expecting this stripling one day to hold sway in England, was doubtless apprehensive about the kind of king the boy might make. Hence the chancellor sets himself the task of explaining the way England is and must be ruled, using an extended comparison of the dominion obtaining in England with that in France.

He begins to play his hand in chapter ix when he introduces the distinction between a king ruling with a dominion "only regal" and a king ruling with a dominion "not only regal, but also political." He points out that a king ruling only regally can change laws and impose taxes at will as a result of a Roman-derived civil law which holds that what pleases the prince has the force of law. A prince ruling regally and politically, on the other hand, can in no way deprive the citizenry of its just possessions and must seek public consent to change laws or impose them. Sir John admits that a good man ruling only regally would be disinclined to tyrannize his subjects, but history and St. Thomas demonstrate that the best man does not

always rule and that the restraint of political law is desirable as a brake on regal power.<sup>7</sup> Thus Fortescue introduces his thesis: there is more than one kind of kingship, indeed at least two—regal dominion *and* regal dominion tempered by political and binding law—and these two kinds of kingship are susceptible to distinction and judgment on their relative merits. The author clearly favors the mixed mode of dominion and thinks the purely regal mode is the spawn of civil law, *i.e.* of Rome. The exemplum now must be made concrete and specific.

Fortescue here inserts a footnote in the form of a question by Wales: if one king rules regally and another regally and politically, is not then the latter inferior in power to the former? The chancellor sends his audience packing to his *Opusculum* where, as Dr. Chrimes points out in the Alexander Prize essay for 1934,<sup>8</sup> the king ruling under either type of dominion is still absolutely the king. One power was established by force, the other by consent; but the power rests absolute. It is the nature of the power and, more critically, of the authority which differ.

Chapter xii defines those differences. A history of the origin of "kingdoms ruled entirely regally" teaches that greedy and powerful men by main force subjugated everyone they cared to or could and established their rule over those beaten. If this rule could be extended in time, the desires of the rulers received from them the sanction of law. The people, weak and fearful of subsequent aggressors, acquiesced in the tyranny in order to prevent a series of oppressors while living under the hand of a single one. Such kingship is, briefly, usurpation. Examples come from Holy Scripture—Nimrod, Belus, Ninus—and Rome, held up as usurper of the government of the whole world, the epitome of tyranny.<sup>9</sup> It is worth noticing that Fortescue's examples are drawn from the East, the notorious home of empire and the spawning bed of dictators, and for their most noted heir he selects Rome, perpetuator of the Hellenized empire (with its clear grasp of *kratos*) and mother of the Latin agglomeration whose kings ruled regally (Spain's excepted).<sup>10</sup> The purely regal kingship and dominion Fortescue calls

usurpation by nature and tyrannous to the core. It goes without saying that it is illegal. All kingdoms so ruled are tarred with that unwholesome brush—from the ancient near eastern empires to imperial Rome and her brood, France included. In the later descriptive chapters, Fortescue's attack on France refines that accusation.

In order to clarify the origin of "kingdoms ruled politically," Fortescue summons St. Augustine and at once falls back on the language of analogy. He quotes *De Civitate Dei*: a people is a body of men united by consent of law and by community of interest. From this happy choice of the image of the body, he proceeds. The description, he points out, is not complete. A body must have a head, else it is "acephalous," a mere trunk. In order to prove its vitality and its viability, it must raise its head. To undergird this, Aristotle: whensoever one body is constituted out of many, one will rule and the others be ruled. To describe this process, Fortescue needs careful quoting.

So a people wishing to erect itself (*se erigere*) into a kingdom (*in regnum*) or any other body politic must always set up one man for the government of all that body, who . . . is . . . usually called a king. As in this way the physical body grows out of the embryo, regulated by one head, so the kingdom issues from the people (*ex populo erumpit regnum*), and exists as a body mystical (*corpus mysticum*), governed by one man as head.<sup>11</sup>

The analogy of the body is continued and drawn out to compare laws to nerves, members and bones to individual members and institutions of society. The impossibility of the head's arbitrary rearrangement of its body points to the king's inability to tax or legislate singlehandedly. Just as the head must protect and take care for the body, so must the king thus ruling protect and care for the body politic. Finally, Fortescue instructs the prince that England is such a kingdom and that it "blossomed forth into a dominion regal and political" (*in dominium politicum et regale prorupit*) from its first foundation.<sup>12</sup>

There are two points which should not be overlooked. First, Fortescue uses the word

"wishing" (*volentem*), and we are at once in the realm of volition. Second, he uses the words "grows" (*erumpit*) and "blossoms" (*prorupit*), and we have society as an organic and living phenomenon. (Obviously *erumpere* and *prorumpere* are not usually translated to *grow* and *to blossom*. Both mean essentially the same thing, *to burst out*. Yet Fortescue uses each distinctly, *erumpere* to indicate an initial, *prorumpere* a final stage of organic development. In the context, the language of botany seems at least more elegant than *to pooch out*.)

Note here the sharp contrast to the situation in chapter xii: no volition there, save that of the "greedy and powerful men," the subjugated peoples taking it willy nilly; and the society there is no organic and growing thing, but rather "an amorphous dough . . . shaped this way and that by Power."<sup>13</sup> It is to his credit that Fortescue has taken the sterile description by Augustine and Aristotle and enlivened it with the vitality of his extended analogy of growth from an embryo.

It has been a recent contribution of Dr. Eric Voegelin to recognize and elucidate the perception of Sir John in *The New Science of Politics*,<sup>14</sup> and here we retrace the steps of that sure-footed scholar. Voegelin finds Fortescue athwart his path in his discussion of "articulation," that process whereby amorphous social statuses come into being as defined and operative political units. This kind of birth out of chaos is closely akin to Fortescue's "eruption." Further, Voegelin calls the creation of rulers from within "representation," and he hears in Fortescue's "prorruption" a strong echo of his own thought. An unorganized society suddenly appears articulated as a realm: *erumpit*. It raises one of its own by its own will to be king: *prorupit*. There is, first, no contractual element, but a sort of leap from disorganization into unity; and, second, the appearance of the king is no imposition of will from without, but an internal and continuous part of the growing action which necessarily produces the head of the body newly created.

Now whereas some Whiggish writers have evidently tried to use Fortescue to support contractual (and modern) constitutional politics, Voegelin recognized that the vitality of Fortes-

cue's image carries it far beyond such barren application. There is in any animate being some "mysterious substance" which makes up the "binding force" of that body. Since Fortescue sees society as animate, where does he locate that force? To flesh out the analogy yet further, Fortescue elevates the image of body (*corpus*) in its biological sense to the level of the Mystical Body (*corpus mysticum*) of Christian symbolism. (Voegelin here draws the conclusion that the transfer of symbolism, in that it could appear to invest the *dominium* with religious dimension, indicates the theretofore unperceived decay of both empire and Church into state—which helps explain how some statist philosophers might misuse Fortescue, misconstruing him to propound what he actually only implies.) Fortescue's immediate purpose was to get in some way at the mystical bond which he firmly believed bound a true body politic together; and the *corpus mysticum*, bound together by the *Logos*, offered the ideal opportunity. Already established was the image of the living, growing body. Now this body appears as one bound together not only organically, but one bound together mystically as well. For analogy with the *Logos* of the Christian mystical body, Fortescue offers the "will of the people" (*intencio populi*)—a resonation of the use of *volentem* above. Voegelin sees this as completing the mystical analogy. Far from being "amorphous dough" compelled and shaped by a bully power, society is a living body (*corpus mysticum*), growing up (*erumpere*) from living material, blossoming forth (*prorumpere*) into members, nerves, and a head, filled with life, animated by the will of the people (*intencio populi*). Voegelin thus singles Fortescue out as one of the guideposts along the highway of political history in the West and places himself firmly alongside the antique Englishman.

There are, however, two criticisms of Voegelin's analysis to offer. One seems picayune on the surface, but has implications of importance. Voegelin likens the *dominium politicum et regale* to a modern constitutional monarchy.<sup>15</sup> Dr. Chrimes is at great pains to illustrate<sup>16</sup> that there is no theory of constitutional government to be found in Fortescue's work,

and to say so is to read modern ideas back into the text. There is no idea of contract; rather the articulation of political society and the prorup-tion of the monarch as its head are one and the same activity, a continuous growth both logical and necessary to Fortescue's thinking. A constitutional monarch is limited by statute, the king of the *dominium politicum et regale* only by essence and role. Perhaps the distinction is too fine, but not to draw it lends support to a modern, Whig interpretation of Fortescue.

In second place, Voegelin seems to draw back just at the point of a fuller penetration of Fortescue. He does not place Fortescue within the theological matrix discussed in Dr. Wilhelmsen's article on Don Juan Donoso Cortés, quoted earlier. Cortés saw the integrity of medieval society proceeding from a balance between power and authority, a balance which depended upon the refusal to confuse the two, a refusal which stemmed from a vivid awareness of the radical variety in unity of all phenomena as part of the created manifestation of the Triune God. The confusion of power with authority and the investment of both in the modern state and its representatives (making an integral society impossible) Wilhelmsen sees as the fault of enlightenment and rationalist thinkers who had lost sight of the catholic synthesis, Montesquieu in particular. Now as Voegelin points out, Fortescue's application of the *corpus mysticum* to the body politic can in hindsight be called a signal of exactly what Wilhelmsen deplures. The integrity-in-separation between power and authority collapses into a fusion, both functions passing to a state with limitless police power and erastian religion. Still we must remember that Fortescue surely had no such thing in mind. Sir John's education was Augustinian and Thomistic, and he should be placed square in that orthodox and catholic tradition. To do so helps throw at least one more light on his thought.

A clue comes from the title of the treatise: a praise of the *laws* of England. Fortescue was a lawyer, and in the *Opusculum* he affirms that all things move according to natural law. All natural law must begin with God, or it ceases to be law and degenerates into recidivist circumstance. In describing the body politic in terms

of Christian symbolism, Fortescue knew his own mind. Just as he would have asserted that the creation of the Mystical Body of the Church by God was immutable and fixed by the natural and necessary course of things in the divine mind, so he asserts that the creation and fledging out of any true society is a process with a natural and necessary path. Once the initial incorporation, the eruption, takes place, the rest follows with the rigor of the development of a fetus from a zygote. The life force, the *intencio populi*, provides for public welfare, and that involves the maintenance of temporal law. Since all law is a progression from natural *ergo* divine causes, the realm and its head are simply the instruments of God for the furthering of His aims. As Chrimes points out,<sup>17</sup> king and law are bound irrevocably together: he is the

natural product of the body, and his job is to maintain the body. Without the body there is neither king nor law to maintain; without the head, there is no maintenance of the law or of the body. There is no question of rights surrendered or powers usurped, only the matter of a proper stewardship of a set of given political facts, facts that were fairly commonplace in medieval political thought. The king ruled according to law, checked by the authority which dwelt thickset in the fabric of the body politic of which he, as king, was part. It was a conservative view, really, despite its later expansion and exploitation at the hands of revolutionaries. Its very strangeness is a clear indicator how far the Western experience is now removed from its reassuring synthesis.

<sup>1</sup>Chrimes, S.B. ("Sir John Fortescue and his Theory of Dominion," *Transactions of the Royal Historical Society*. Series iv, vol. xvii. London, 1934), p. 125. <sup>2</sup>Chrimes, S.B. editor (Sir John Fortescue's *De Laudibus Legum Angliae*. Cambridge, 1949), p. cvi. <sup>3</sup>Wilhelmsen, Frederick ("Donoso Cortés and the Meaning of Political Power," *The Intercollegiate Review*, January 1976), p. 115. <sup>4</sup>*De Laudibus*, p. 3. <sup>5</sup>Wilhelmsen, p.112. <sup>6</sup>Churchill, Win-

ston (*A History of the English Speaking Peoples*, New York, 1956), p. 328. <sup>7</sup>*De Laudibus*, p. 24ff. <sup>8</sup>Chrimes, p. 143. <sup>9</sup>*De Laudibus*, p. 29. <sup>10</sup>Wilhelmsen, p. 112. <sup>11</sup>*De Laudibus*, p. 31ff. <sup>12</sup>*De Laudibus*, p. 31. <sup>13</sup>Wilhelmsen, p. 115. <sup>14</sup>Voegelin, Eric (*The New Science of Politics*, Chicago, 1952), p. 42 *passim*. <sup>15</sup>Voegelin, p. 42. <sup>16</sup>Chrimes, p. 141ff. <sup>17</sup>Chrimes, p. 142.

# The Legacy of Allen Tate

ROBERT DRAKE

WITH THE DEATH, in his eightieth year, of Allen Tate on February 9, only Robert Penn Warren survives of what might be termed the great Vanderbilt Quadrilateral of Fugitive-Agrarians of the 1920's: Donald Davidson and John Crowe Ransom had already preceded Tate in death. Only these four—Ransom, Davidson, Tate, and Warren—were members of both groups—Fugitives and Agrarians. The Fugitive poets also included, among others, Merrill Moore, later a psychiatrist and prodigious sonneteer, Walter Clyde Curry, English professor and Chaucer scholar, and Jesse Wills and Alfred Starr, who later became Nashville businessmen. Among the Agrarians, a group more concerned with social, political, and economic matters, were such men as Andrew Lytle, novelist, H. C. Nixon, political scientist, Frank Lawrence Owsley, historian, John Gould Fletcher, Imagist poet, and Stark Young, novelist and drama critic.

Fittingly, after his distinguished writing and teaching career (Princeton and Minnesota, to name but two of his posts), Tate spent his penultimate years at Sewanee, where he had once edited the *Sewanee Review*, his final ones in Nashville, close to the two institutions to which he had given so much—the University of the South and Vanderbilt. And it was in Nashville that he finally died after several years of increasingly debilitating illness and then was buried at Sewanee.

Poet, critic, biographer (lives of Jefferson

Davis and Stonewall Jackson), and novelist (he produced one novel, *The Fathers*), Tate was at home in more than one creative discipline and in more than one "period," though to many readers he will always be remembered, as a critic, for his early championing of such twentieth-century poets as T. S. Eliot and Hart Crane and, as a poet, novelist, and biographer, for his commemoration, indeed his celebration of the Southern past. Also, he was a sojourner in Paris during the days of the American literary expatriates in the 1920's, a fact which might further enhance his reputation as being the most cosmopolitan of the Vanderbilt group.

Descended from Virginia and Tennessee forebears, he was born (1899) in Kentucky, educated at a preparatory school in Washington, then arrived at Vanderbilt just as the Fugitive poets began to "happen": he graduated in 1922, the year in which the first issue of *The Fugitive* appeared, to be published regularly through 1925. And, for the record, it is just as well to note here that that is precisely how the Fugitives began: they just "happened," they were certainly not planned or "programmed." Indeed, they seemed to flourish not so much because of Vanderbilt University but in spite of it: Donald Davidson once observed that he saw no reason why the group could not have appeared at some other, perhaps more favored Southern university, given the common commitment to the discipline and practice of poetry which this group of some dozen or so Vander-