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Author(s): Elliott Visconsi
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Vinculum Fidei: The Tempest and the Law of Allegiance

Elliott Visconsi

Abstract. In English constitutional law, Calvin’s Case (1608) laid down a new, deeply affective basis of personal allegiance; the bond between sovereign and subject was now to be understood in personal, embodied terms as a tie of obligation and love between natural men. This essay argues that Shakespeare’s The Tempest is a work of hypothetical constitutional commentary designed to illustrate the fragility and awkwardness of this new norm at home and abroad; it is, more over, intended to rebuke the theoretical ambitions of James I. The late Shakespeare, in this account, is not a political quietist but a skeptical constitutional theorist who in his play outlines a proleptic vision of the affective costs of personal sovereignty.

Keywords: Shakespeare, constitutionalism, allegiance, The Tempest, sovereignty

Crawling unburdened toward death. Devoting every third thought to the grave. These are not the desires of a power-mad usurper or an ambitious soul-commanding tyrant. They are, however, the terminal hopes of Lear and Prospero, Shakespearean princes who have been long understood as men who try to slip the bonds of sovereignty without any success. William Empson, for instance, throwing a bomb at Milton’s disagreeable Stalinist God, celebrated by contrast Prospero and Lear as “turbulent and masterful characters who are struggling to become able to renounce their power and enter peace.”2 In a similar line, Stephen Greenblatt has recently suggested that Prospero’s desire to “escape from the burdens of governance” is a doomed, quixotic aspiration, for power “exists to be exercised in the world; it will not go away if you close your eyes and dream of escaping into your study or your lover’s arms or your
daughter’s house.” Prospero, in this account, is an expression of Shakespeare’s idiosyncratic and “deep skepticism about any attempt to formulate and obey an abstract moral law, independent of actual social, political, and psychological circumstances.” I think Greenblatt is exactly right to read Prospero as an expression of Shakespeare’s discomfort with the stony rule of abstract moral laws, and I would extend his claim a bit more assertively to suggest that The Tempest may illustrate both the process and the deep costs of princely equity, that deliberative consideration of “actual social, political and psychological circumstances.” Prospero’s desire to withdraw from government is frustrated in part by the enduring need for his therapeutic judgment, but as I will argue in the pages that follow, the primary cause of his doomed aspiration to “enter peace” is the persistence of the indelible affective bonds of obligation between sovereign and subject.

Since his accession, James I had been in a constant skirmish with the defenders of English common law, probing and testing his interlocutors in Parliament; the king sought a union of England and Scotland, established the prerogative court of High Commission as an instrument to regulate heresy, and he announced his unpopular belief that “kings are justly styled gods” in their role as dispensers of equitable relief. James’ view that kings have an explicit responsibility for the cultivation and regulation of the souls of their subjects was visible in his works Basilicon Doron (1598) and The True Law of Free Monarchies (1599) and then developed in speeches to his often combative Parliaments in 1607 and especially 1610. The Tempest was first performed on Hallowmas Eve (October 31) 1611 and was almost certainly written in 1610–11 during the highly visible contests between James and the “common-law party” in Parliament. At stake were the “liberties of the subject” and the extent of the royal prerogative—James, it was feared, sought to advance the lex regia at the expense of the common law. That is, his opponents imagined the king as ambitious to introduce aspects of the continentally-inflected civil law in which the royal will had lawmaking force (the principle of lex regia). This was not a wholly unfounded fear, although it is accurate to say that James seemed to see the expanded prerogative as a supplement to rather than a substitute for the common law. His rivals, of course, hyperventilated that lex regia would become the fundamental law, abrogating the constitution and the timeless liberties and property rights of the subject. James had already won a significant victory on his path to a unified kingdom in Calvin’s Case (1608), in which the basis of allegiance was altered radically. The holding in this case,
which contemporary observers noted to be of the highest significance, ushered in the beginning of a modern, affective conception of political citizenship.\(^6\)

The constitutional controversies of 1608–1611 over the nature of allegiance as well as the moral and political extent of princely authority animate \textit{The Tempest}, and offer answers to some of the play’s thorniest questions. And yet, despite the fact that the play’s thematic and ideological concerns are so closely related to the constitutional struggle between James and Parliament, only Constance Jordan has offered a reading of the play as an attenuated intervention into the Jacobean struggle between proponents of absolute sovereignty and defenders of a generally secular mixed constitution. For Jordan, late Shakespearean romances such as \textit{The Tempest} are legible as “hypothetical renderings of [constitutional] debate, as projections of the possibilities it announces, as tests of the structures it theorizes.”\(^7\) But I argue that Jordan’s line of reasoning does not go far enough—whatever else it may be (romance, valedictory, paean to colonial expansion), \textit{The Tempest} is a work of hypothetical rather than polemical constitutional commentary on the crucial questions of its moment. The play tests the terms and qualities of allegiance and evaluates the psychological experience of sovereignty and subjecthood. I read the play not as a cautious leavetaking but rather as a chastening of James’ theoretical ambitions, a profanation of his political theology, and especially an illustration of the fragility of the new affective bond between sovereign and subject established in 1608 by \textit{Calvin’s Case}. In this view, in \textit{The Tempest} Shakespeare maintains the rhetorical mode of bold speaking (\textit{parrhesia}) on the topic of sovereignty and misrule that scholars have identified in \textit{King Lear} and other late plays touching kingship and political belonging.\(^8\) As such, my argument challenges the notion, advanced broadly by Alvin Kernan and others, that Shakespeare wrote as a “patronage dramatist” in the service of James I.\(^9\) With Julia Lupton, I read \textit{The Tempest} as a “counter-Jacobean” play, a monitory impressionistic vision of a nightmarish political future.\(^10\) This essay proposes a Shakespeare, and in particular the late Shakespeare so often accused of valediction and fatigue, working in 1611 as a skeptical political theorist engaged explicitly in what has been called “popular constitutionalism,” or the mediated public interpretation of fundamental law.\(^11\) The goal here is not to overturn the powerful colonial readings of the play, but instead to thicken our account of the play’s metropolitan ambitions, and in so doing, to suggest a productive critical synthesis, as David Kastan has recently done.\(^12\) \textit{Calvin’s Case} became the explicit legal basis of political allegiance in
England’s early modern colonies, and in my view, The Tempest is a play concerned to think through the psychological and political implications of the newly constitutionalized norm. As such, the play describes Shakespeare at work as a theorist of allegiance and jurisdiction, native title and sovereign will, power and law—both at home and in more enchanted climes abroad.

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Robert Calvin was born at Edinburgh in 1606, a subject of James VI of Scotland. Calvin was also heir to property outside of London, where the same prince ruled as James I of England, and even though Calvin was born a liege subject of James (in his Scottish capacity) he was an alien according to English common law. Calvin brought suit to liberate his freehold properties near Shoreditch from Richard and Nicholas Smith, who had “unjustly, and without judgment, disseised him” of these revenue-producing lands. The defendants countered that, as a foreigner, Calvin was barred by law from owning property in England: as laid down in feudal law,

whosoever is born infra ligeantum, within the ligeance of King James of his kingdom of Scotland, is alienigena, an alien born, as to the kingdom of England. [Thus], that subject, that is not at the time and in the place of his birth inheritable to the laws of England, cannot be inheritable or partaker of the benefits and privileges given by the laws of England.¹³

At stake in this case was more than the question of young Robert’s income, or indeed the question of the laws of inheritance. Calvin’s Case was a test case designed to adjudicate a broader, and more pressing, constitutional question. Were the postnati—those Scots born after James took the English throne in 1603, and for whom Calvin was a proxy—naturalized as subjects under English law, or did they remain alienigenae? James was deeply interested in creating a unified kingdom of Great Britain under a single and coherent legal regime. The question at stake in Calvin’s Case was jurisdictional, but as virtually all the principals in the case seemed to recognize, much more hung on this decision. The need to correct an obsolete feudal model of political obligation was apparent, and the jurisprudential result would have lasting consequences for the course of English law and political history.
The extant model, upon which the Smith brothers set their defense against Calvin’s suit, was a legacy of the feudal law and an expression of the juridical muddle often summoned into being by the doctrine of the king’s two bodies. The restriction against aliens owning property was a function of the view that subjects acquired at birth an indelible bond of obligation to their lawful lord which was “natural, absolute, &c due by nature and birth-right.” Such allegiance was crudely territorial and obligatory—allegiance was attached to the immortal political body of the king as a bond of “true and faithful obedience” to the crown. The feudal model was limited and overly schematic, but it was also, most crucially, impersonal; a subject owed his or her allegiance to an abstraction, to the king in his political or corporate capacity rather than to him as a natural man.

Lord Chancellor Ellesmere’s influential commentary on the case, which was printed independently in 1609, describes the new paradigm:

there is one part of it so strange and of so dangerous consequent as I may not let it pass: viz., that the king is as a king divided in himself, and so as two kings of two several kingdoms; and that there be several allegiances and several subjuncions due unto him respectively in regard of his several kingdoms, the one not participating with the other. This is a dangerous distinction between the king and the crown, and between the king and the kingdom. It reacheth too far; I wish every good subject to beware of it . . .

Upon this subtle and dangerous distinction of faith and allegiance due to the king and of faith and allegiance due to the crown and to the kingdom—which is the only basis and fundamental main reason to disable the plaintiff and all postnati—there follow too many gross and foul absurdities; whereof I will touch some few, and so conclude that in law and reason this subtle but absurd and dangerous distinction ought not to be allowed. This bond of allegiance whereof we dispute is vinculum fidei; it bindeth the soul and conscience of every subject severally and respectively to be faithful and obedient to the king. And, as a soul or conscience cannot be framed by policy, so faith and allegiance cannot be framed by policy, nor put into a politic body. An oath must be sworn by a natural body; homage and fealty must be done by a natural body, a politic body cannot do it. Now then, since there is but one king and sovereign, to whom this faith and allegiance is due by all his subjects of England and Scotland, can any human policy divide this one king and make him two kings?

The initial objection here is to the danger of a “king divided in himself,” that is to say, a king sitting on several thrones, at the head of discrete potentially
competing legal systems. The “dangerous distinction between the king and the crown” is here figured as a kind of kingly psychomachia, an inner struggle to manage the “several allegiance and several subjections due unto him.” But Ellesmere’s chief interest in the passage above is to sketch out a unitary executive and to outline the legal, moral, and political benefits of a system which allegiance is due to the natural person of the king. And so, he not only objects to the “many foul and gross absurdities” created by an “absurd and dangerous” distinction between king and crown, but also most crucially describes allegiance as a bond between natural men. The “vinculum fidei,” he writes, “bindeth the soul and conscience of every subject . . . to the king.” The key move here, for Ellesmere, is to elaborate upon the moral status of the bond; allegiance is no longer legible as an abstract debt to the crown, but is rather, in the new account, a tie of faith explicitly located in the “soul and conscience” of the subject. Moreover, Ellesmere continues, the vinculum fidei is a useless abstraction unless seen as a bond between the natural bodies of subject and sovereign. “Faith and allegiance,” he writes, “cannot be framed by policy, nor put into a politic body. An oath must be sworn by a natural body; homage and fealty must be done by a natural body, a politic body cannot do it.” Ellesmere’s view that a political body cannot receive allegiance, and that policy cannot shape the soul of the subject, is emblematic of the innovative finding in Calvin’s Case. The decision constitutionalized the principle that allegiance is a moral and affective tie between embodied individuals rather than an abstract debt to the crown. The judges in Calvin’s Case presented the transformation of the law of allegiance as a clarification, an act purifying the feudal muddle rather than instituting a radical break. As such, the decision is a paradigmatic example of the “common law mind” in action, a case of constitutional self-correction where the law is matched to the enduring ethos of the English people.

Although he had a radically different view of the king’s executive capacities, Coke reported on the finding of Calvin’s Case in nearly identical terms. Like Ellesmere, Coke imagined allegiance as a tie of obedience established indelibly at birth: “ligeance, and faith and truth which are her members and parts, are qualities of the mind and soul of man, cannot be circumscribed within the predicament of ubi.” Once allegiance is stripped of its largely territorial basis and established as a foundational soul-bond to the pater patriae, it becomes inherently portable: allegiance “cannot be circumscribed within the predicament of ubi.” Following Bacon’s lead, Coke links this new model of
allegiance directly to the law of nature. The goal of the appeal to natural law is to free allegiance from its simply territorial basis while redefining the principle as an indissoluble affective bond to the natural person of the sovereign. Coke describes natural law as the “moral law written with the finger of God in the heart of man,” and argues that “by this same Law of Nature is the Faith, Ligeance, and Obedience of the Subject due his Sovereign or Superior.”

(Coke, 195–6). If the vinculum fidei between subject and sovereign is rooted in natural law, it is not a mere and fungible political contract between lord and liegeman. Instead, for both Bacon and Coke, the tie of faith binding subject to sovereign precedes positive law as a fundamental debt upon which government rests. As Bacon puts it, “allegiance is of a greater extent and dimension than laws or kingdom, and cannot consist by the laws merely; because it began before laws, it continueth after laws, and it is in vigor where laws are suspended and have not their force.”

In this line, Coke asserts that the tie of allegiance must be permanent (indelibilis and immutabilis): “seeing that Faith, Obedience, and Ligeance, are due by the Law of Nature, it followeth that the same cannot be changed or taken away.”

The assembled judges who heard Calvin’s Case were hardly a pack of radicals legislating from the bench, but they were prepared and eager to purify the archaic model of allegiance. This group of fifteen (including Coke, Ellesmere, and Bacon) reached a nearly unanimous finding; at birth young Robert had in fact been a natural born subject of James I of England, with all the rights, benefits and duties that such status conferred. The decision naturalized the post-nati, delighted James, and moved him closer to his desired integration of his English and Scottish jurisdictions. But the constitutional effect of the decision was far broader than these relatively incremental victories for an ambitious king. Calvin’s Case overturned the abstract impersonality of the feudal mode and attached the subject’s indelible allegiance to the natural person of the king—to the man James and not the immortal political body of the King. One of the chief objectives of this case was to supply the king with “a legal community of allegiance that was as unified, extensive, and enduring as possible,” as Rogers Smith has written. There was remarkable consensus in support of this finding, which Coke especially was quick to identify as the actual correct meaning of late-medieval common law. Calvin’s Case became the basis of imperial allegiance; any individual born within the dominions of the English king, however distant or local they might be, obtained an indelible affective tie to the person of their king. Bacon saw the decision as a faithful expression of
the “law of a warlike and a magnanimous nation fit for empire,” and such a view of allegiance anchored in the soul of the citizen became an essential prop of English colonial expansion overseas. Although the sovereign had long been understood as *parens patriae*, *Calvin’s Case* gave that metaphor a legal basis and raised its public profile; the decision legally clarified rather than invented the inherently affective bond between sovereign and subject. This case posited a community of emotional belonging that had been heretofore only implied inconsistently, and it amplified the figure of the nation as an *oikos* or household at the head of which stood the beloved father.

*Calvin’s Case* created a new constitutional definition of allegiance, and by extension, a new account of English political identity. The case also helps to explain more fully the political philosophy of *The Tempest*, and especially the vexed relations between Prospero and Caliban. Like a providential history play such as *Richard III*, *The Tempest* seems at first glance to partake of a basic structural narrative of mythic redemption, a vaguely eschatological arc that figures the action of the play as a move from violent to peaceful and from worldly to transcendent. Such a pattern is appropriate for the norms of comic romance—Prospero and Miranda are reintegrated into civil society on favorable terms, their injuries remedied and their foes rebuked without bloodshed. Even in the darker readings of the play, like Greenblatt’s, in which Prospero delights in his ability to harrow and renovate the souls of others, the cascade of pardons, the promised marriage of Miranda and Ferdinand, and the restoration of Prospero at the end of the play seem to promise a redemptive escape from mastery, violence and political vigilance. In such a reading, the play’s proto-Hobbesian account of political obligation is only a temporary or contingent phenomenon—like Prospero’s magic itself, the violence that ties Caliban to Prospero has been abjured, and replaced with conditional forgiveness. By drowning his book and breaking his staff, abdicating his executive power over the isle, redeeming the usurpers, pardoning Caliban, and marryng Miranda to Ferdinand in order to gesture in the direction of worldly futurity, Prospero hopes to leave behind all the worldly entanglements of sovereignty, revenge, territory, and enchantment and move into the idealized, dreamlike condition of a heavenly apotheosis.

But as Harry Berger has written, the play strains consistently against such a sentimental pattern, and the redemptive teleology of romance is defeated by the persistence of the political. Prospero’s eschatological vision—his desire to contemplate a heavenly transcendence with “every third thought”—fails
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because he is unable to leave behind the memory of his political injuries or the responsibilities of his princely office. Prospero insists on policing in still-unrepentant brother Antonio well into the future, he offers Caliban a conditional pardon, he repeatedly promises to unfold a detailed autobiography of his injuries, and even the marriage of Miranda and Ferdinand is deferred until after the play’s end. The sentimental pattern that pushes towards redemption is frustrated, deferred, by the enduring necessity of political lordship. Whether or not he retains his “rough magic” and his secret policeman and his ability to crack mountains and raise the dead, Prospero’s eschatological fantasy, his dream of escape from the unwelcome burdens of sovereignty, is never realized.

I propose that a key to understanding the failure of the sentimental pattern in The Tempest—that romance aspiration to redemption and apotheosis—may be found in Calvin’s Case. Prospero’s longing for transcendence fails because of the stubborn persistence of the oikos constituted around his person; the indelible affective tie between sovereign and subject binds the prince permanently to his wayward, bestial, and unregenerate subjects. As such, we can see the play as a cautionary sketch of the psychological consequences of the new model of affective obligation recently constitutionalized in Calvin’s Case. The new law, in the play’s account, is dangerously personal. By giving allegiance an emotional basis and remaking the polity as an extended oikos, the decision in Calvin’s Case seems to promise only a nightmare vision of political obligation in which allegiance devolves into resentment, sovereignty into domination, and the therapy of the soul into the surveillance of criminal intent. In the play’s proleptic vision of England, sovereign and subject will come to resemble Prospero and his unregenerate foes Caliban and Antonio. As Constance Jordan has written, Caliban is designed to be “a figure of the slave the Commons fear they will become,” but so too I argue that Prospero is legible as a figure of the king that James should fear he will become. Prospero is unable to slip the bonds of sovereignty, however much he longs to do so—he is tied permanently to the goats as well as the sheep, to the hard-hearted traitors as well as the loyal children. His oikos is founded on violence and fear, and even after he abjures his magic and becomes “just a sot” in Caliban’s terms, his princely responsibilities remain fully intact. Shakespeare had wrestled with the persistence of sovereignty and allegiance in King Lear, where Kent’s unbending personal loyalty to Lear stands with Cordelia’s filial piety as the play’s only affirmative norms of political obligation. Caliban is a
demonic version of Kent—in each case, the subject is bound indelibly to a sovereign who seeks unsuccessfully to quit their political functions, erase the bonds of allegiance, and go unburdened towards the grave. If Caliban is a demonic Kent, Gonzalo may come closest to inhabiting the role of loyal subject, generous beyond the norm but also tainted by his prince’s overthrow. He is indeed these things, but also, at times, the fool—a clownish or comic version of Kent. Miranda, for whom the *pater patriae* is mostly just *pater*, is a loyal subject who presents no political problem and offers to Prospero not counsel but posterity. Ariel, who surely resembles Caliban in his bondage, is nonetheless chiefly an instrument of Prospero’s jurisgenerative will; he is the Blackwater contractor in Prospero’s security apparatus rather than a born subject of his sovereign. Ariel is never born into Prospero’s *oikos* the way Caliban is—he is merely released and then constantly reminded of his consent to serve, admonished with his status as contractor rather than political subject.

The Prospero-Caliban relation is the chief medium of constitutional commentary in *The Tempest*, but before turning to a fuller consideration of that strained affective bond, I would like to explore briefly the “predicament of *ubi*,” Coke’s inelegant phrase for the irrelevance of territorial jurisdiction. Prospero is explicit in his desire to reject what Carl Schmitt would later call the “nomos of the earth,” the binding normative authority of land. Prospero’s “rough magic” is *locospecific*—it emanates from the island and depends upon the collaboration of the various elves and spirits. With certainty, Prospero lacked the arts of enchantment and omniscience in Milan, where his dukedom was usurped and his life nearly taken. It was the charity of Gonzalo alone that kept Prospero and Miranda alive after the deposition, and it is only when he arrived upon the island that his “secret studies” turned from scholarly introspective-ness into the “potent art” of coercive enchantment. Moreover, Prospero links his magic, its agents, and effects to the physicality of the island itself. He calls Ariel out of his imprisonment in the cloven pine, for instance, and makes the commonplace Ovidian claim that the island’s spirits, “weak masters though they be [are found in] the tides, hills, brooks, standing lakes, and groves.” Later in that same soliloquy, Prospero claims to have “called forth the mutinous winds,” shaken fiercely “the strong-based promontory,” uprooted forests and from graves “waked their sleepers, oped, and let ’em forth.” Prospero bends the land to his will, even as it gives him potency, and his “potent art” bespeaks expropriation. He turns the land into a spectacular as well as coercive resource, extracting the signs of his power from the materials of the place.
So when Prospero offers to bury his staff and drown his book—figures of internalizing reassimilation into the physical world—we are meant to perceive not just a flight from enchantment, but also a wholesale repudiation of the idea that land can be the source of political authority. Prospero does escape the predicament of *ubi*, in one sense—he does drown his book and returns to Milan as a secular Duke rather than an omniscient sorcerer. But the joke is on him, for even while he renounces the instruments of his authority and frees Ariel at last, the *vinculum fidei* binding him to Caliban cannot be so easily erased.

After their first encounter, Caliban is incorporated into Prospero’s household as a surrogate child, a son to be stroked and nurtured and taught language in place of his brutish gabbling. He is given “water with berries” and in return he shows Miranda and her father “all the qualities of th’ isle.” Caliban is, in Prospero’s account, something like a natural-born subject of Prospero—a prelinguistic savage when discovered alone on the island, Caliban is reborn as the subject-child of his new father. Caliban, she suggests, is an unsocialized “person in progress” when Prospero lands; he demonstrates practical but not moral autonomy, childlike resourcefulness but not adult deliberation. His incorporation into Prospero’s household is a rebirth out of blue-eyed savagery that institutes the affective bonds of allegiance and responsibility—abandoned in the wilderness, Caliban finds in Prospero a father to whom he is bound in affective, and only later political, terms. By figuring Sycorax, and likely Caliban, as blue-eyed, Shakespeare attaches the identity of the gothic barbarian to these two islanders, casting them as either anachronistic or contemporary expressions of a national racial past—Sycorax and Caliban are thus either Pictish savages from the past or their contemporary counterparts—the Irish. As a consequence of imagining himself as the political father of an abandoned, savage child, Prospero is able to brush aside Caliban’s native title without comment. When, after their falling out, Caliban angrily asserts a claim to the island of which he was once “mine own king,” Prospero needs to make no reply to his wayward child. Later both Prospero and Caliban will acknowledge the bitter memory of their former affection, that fractured emotional bond of guardianship and generosity now profaned by the violence of each.
The blistering rage that Prospero directs at Caliban throughout the play is haunted by the memory of a lost felicity; even while Caliban’s attempted rape of Miranda leads to a brutal, master-slave relation, Prospero still harbors the sentiments of both responsibility and affection for his “demi-devil” and “most lying slave.” Prospero takes Caliban’s betrayal very personally, and the attempted rape is a clear violation of hospitality aggravated by unrepentant hoots of “Oho! Oho! Would it had been done!” Caliban’s betrayal is an act of emotional treason, a piece of monstrous ingratitude requited with a moral demotion—the surrogate child becomes a demonic slave. The affective tie is strained to breaking by Caliban’s offer of sexual violence, but Prospero is compelled to maintain him as a bondsman just at the edges of his household. Although he pleas necessity—“things being what they are, / we cannot miss him,” Prospero cannot bring himself to banish or destroy his slave. Necessity is a tyrant’s plea—no doubt Ariel could carry the wood. The emotional bond of allegiance is indelible and not volitional; even the sovereign cannot undo such a tie without capital violence. Prospero is compulsively, repeatedly unable to rid himself of Caliban, who lingers as the residual memory of an unpolluted oikos and a pure vinculum fidei.35

So too is Caliban unable to rid himself of Prospero. Fetching some more wood for his master, Caliban encounters the drunken butlers Stephano and Trinculo, to whom he quickly tries to transfer his allegiance. Fortified by liquor, Caliban adores and worships the fool Stephano whom he takes initially for a god and then for a surrogate human master: “I’ll kiss thy foot. I’ll swear myself thy subject” he offers. Caliban’s promissory gestures of allegiance figure him as a willing slave to an unworthy master: “I’ll show thee the best springs; I’ll pluck thee berries; / I’ll fish for thee, and get thee wood enough. / A plague upon the tyrant that I serve! / I’ll bear him no more sticks, but follow thee, / Thou wondrous man”36 But the joke is now on Caliban, whose native credulity is amplified by drink; although he swears himself subject to a new master, his treachery or rebellion is rewarded only with burlesque. Caliban prods his new masters into a half-hearted assassination plot of so little significance that Prospero nearly forgets about it, and this comic low-plot is meant mostly to describe the spectacular humiliation of the unfaithful subject. The interrupted masque itself is an emblem of Prospero’s enduring responsibility; the enchanted spectacle of nymphs and reapers collapses at the moment Prospero recalls the “foul conspiracy” which summons him back to his governmental function. Here, as Jordan writes, Prospero “gives up timelessness
for time, and *ars for prudencia.*”37 The failed plot tutors Caliban, preparing him for the later moment when he can promise to “be wise” and “seek for grace” after Prospero offers him a conditional pardon.

It may be the case that Prospero’s pardon of Caliban is purely strategic or perhaps just ritualistic—one last exertion of dominance over his slave or a nod to his redemptive ambitions—but it is certainly meant to illustrate his complete repudiation of the revenge plot. Moreover, just prior to the offered pardon, Prospero accepts responsibility for Caliban:

> These three have robbed me, and this demi-devil (for he’s a bastard one) had plotted with them To take my life. Two of those fellows you Must know and own; this thing of darkness I Acknowledge mine.38

Scholars have taken this speech as a last act of possession—yet another gesture of knowing and owning Caliban as a chattel slave; by acknowledging the thing of darkness as his own property, Prospero commits the kind of domination characteristic of colonial mastery.39 But I suspect Shakespeare is thinking of a different sort of paternity—the newly constitutionalized model of the *parens patriae*, the natural man at the head of the *oikos* to whom one has an indelible soul-bond. By acknowledging the thing of darkness his own, Prospero reaffirms the tie of responsibility and obligation established at the moment of Caliban’s political birth. As sovereign and subject, lord and bondsman, these two are bound together despite their distaste for each other’s company. The affective bond, however soured or violent, is a two-way street; even after he leaves Caliban to his isle and returns to Milan, Prospero’s responsibility endures.

Antonio is the Barnardine of *The Tempest*, another “stubborn soul” who refuses to be tutored into repentance and who is forgiven chiefly on ritualistic terms. Although he has gone to great pains to abjure the instruments and offices of sovereignty that he finds so distasteful on the isle, upon his return to Milan, Prospero will inhabit the same office and presumably revert to the same style of contemplative idealism that undermined him once before. When in Act I he described to Miranda the treachery of Antonio, Prospero claims to have had in his brother “a confidence sans bound” even while the usurper “set all hearts i’ th’ state / To what tune pleased his ear.”40 He continues to practice such limitless trust during and after his deposition of Antonio, although the beneficiary of his “confidence sans bound” is no longer his brother but himself.
While in the end Alonso cancels quickly the debt of tribute from Milan to Naples and asks Prospero to “pardon me my wrongs,” Antonio displays no signs of repentance. When, for example, as a minister of fate Ariel confronts the castaway princes with their crimes, Alonso mourns his guilty trespass. Antonio, with Sebastian, simply offers to fight the spirits with drawn sword. The malevolent Antonio is mostly absent from the play’s last act, and despite Prospero’s redemptive stratagem, the treacherous brother remains silently beyond the power of moral reform. Some sort of penitential profession from Antonio would ratify Prospero’s project in soul-therapy but none is forthcoming. Perhaps Antonio’s hardheartedness is related to an unspoken and very subtle grudge against Prospero for the presumptive loss of his son and heir in the storm, a fact that David Kastan has suggested as the sole exception to the play’s providential arc. But there is little overt evidence in the play that Antonio harbors such sentiments, even after Prospero reveals himself to be the author of the storm. Antonio is, however, “unnatural,” and he is, I think, meant to function as a theoretical antitype of Prospero’s sovereignty. Unlike his brother, who longs for a release from power, Antonio’s demonic aspiration is to accrue power at every turn in the face of his familial obligations.

As Antonio stands charmed, Prospero forgives his disloyalty: “Flesh and blood, / You, brother mine, that entertained ambition, / Expelled remorse and nature . . . I do forgive thee, unnatural though thou art.” By branding him as “unnatural” in quality or character, and not just in action, Prospero seems to acknowledge the durable and essential corruption of his brother. When he forgives publicly this unnatural brother, Prospero does so in a tone of rigorous condemnation:

For you, most wicked sir, whom to call brother
Would even infect my mouth, I do forgive
Thy rankest fault—all of them; and require
My dukedom of thee, which perforce I know
Thou must restore.

This is far from mercy dropped from heaven—the pardon here is a strict political satisfaction; the compulsory restoration of the dukedom is a material remedy. Antonio’s soul is beyond reach at this moment. Prospero does even “require” Milan from Antonio, but unlike his prior use of that verb as a mode of seductive, “heavenly” persuasion, here he merely forces Antonio from the dukedom. The double entendre in “require” is articulate—when seeking an
explicitly political end (the duchy), Prospero commands assent; when he seeks an abstract ethical end (penitence in his foes), he seduces or persuades assent with “heavenly music.” There is no rehabilitation for Antonio’s soul, as there is for Alonso. Even Prospero’s forgiveness of the “rankest fault” is punctuated by an anacoluthon that casts his blanket amnesty as a magnanimous afterthought. Prospero forgives Antonio’s singular “rankest fault,” which is clearly the unfilial usurpation and there he is ready to stop, until he adds abruptly, with syntactical disagreement, that in fact he forgives “all of them.” The gesture of therapeutic forgiveness is revealed to be pro forma, demanded by the general occasion of Prospero’s stratagem rather than by the particular circumstances of Antonio’s potential or actual rehabilitation.

Prospero has hardly slipped the bonds of sovereignty—not only does he acknowledge his failure to reform the soul of his wicked brother, but also he enters into a monitory juridical contract with his brother and the equally treacherous Sebastian. In an aside to the two, he threatens to reveal their treason against Alonso:

By you, my brace of lords, were I so minded,
I here could pluck his highness’ frown upon you,
And justify you traitors. At this time
I will tell no tales.

Prospero here reveals his awareness of their regicidal plot against Alonso, even as he creates conditional leverage and forces the traitors back into the position of subjects under his law. By suggesting that “at this time [he] will tell no tales,” Prospero establishes a contract between parties that only he can police, a frustratingly indelible bond of vigilance and subordination that extends indefinitely into the future. When it comes to Antonio, Prospero is not likely to commit the same mistake of “limitless trust” he once did, but he has here reconstituted the indelible bond between sovereign and subject that looks well beyond the play’s end. These promissory gestures doom Prospero to the reinhabit the distasteful role of the vigilant executive, although in Milan he will no longer have Ariel working as his secret police. In *The Sea and the Mirror*, Auden’s Antonio is cruelly aware of the lasting problem he presents to Prospero’s fantasy of heavenly apotheosis:

As I exist so you shall be denied,
Forced to remain our melancholy mentor,
The grown-up man, the adult in his pride,  
Never have time to curl up at the centre  
Time turns on when completely reconciled,  
Never become and therefore never enter  
The green occluded pasture as a child.47

As Auden here points out, the sentimental pattern of providential restoration and transcendental entry into a pastoral eternity is frustrated by the persistence of Prospero’s secular political responsibilities to govern Antonio, whose speech closes with a satanic credo: “My will is all my own; / Your need to love shall never know / Me; I am I, Antonio, / By choice myself alone.”48 (14).

The strained bonds between sovereign and subject, those indelible vinculi tying Prospero to Caliban and Antonio, are at the figural heart of the play’s finding on the consequences of the new constitutional model of allegiance and obligation. In the wake of Calvin’s Case, Shakespeare suggests, the bonds between sovereign and subject are likely to become increasingly passionate and overly personal, wildly unpredictable and dangerously absorbing. The subject, thus attached to their parens patriae, is pushed towards resentment, rebellion, and autarchy; the sovereign, thus attached to headstrong, wayward, or loyal subject-children, is denied his longing for apotheosis or redemption. Instead of a “king of souls” whose office is the moral therapy of his charges, the prince is reduced to the role of a secular political technician, a manager of acute political problems and surveillant of malign intent. As a proleptic vision of later seventeenth-century English history, The Tempest got it right.

1. I would like to thank Brian Walsh, Lukas Erne, Desmond Manderson, and Lawrence Manley for their comments and suggestions on this essay.
3. Stephen Greenblatt, “Shakespeare and the Uses of Power,” 44 New York Review of Books, 76 (2007). In this recent essay, Greenblatt revises his deeply influential reading of Prospero as a study in mastery and the psychology of colonial domination. Greenblatt’s earlier Prospero is a prince whose chief ambition is to “harrow the other characters with fear and wonder and then to reveal that their anxiety is his to create and allay.” His rough magic is the principal “instrument for shaping the inner lives of others” or reforming the soul of the disobedient or sinful subject; this was a point not lost on the West Indian writer George Lamming who in 1960 had described Ariel as nothing more than a “lackey . . . and a figure of the perfect and unspokeable secret police.” Greenblatt’s original reading is in Shakespearean Negotiations (Berkeley: University of California Press, 1988) while Lamming’s reading of The Tempest unfolds in The Pleasures of Exile (London: Jonathan Cape, 1960). The postcolonial readings of the play...


6. Coke, Ellesmere, and Bacon all wrote accounts of Calvin’s Case; given the subsequent rivalries between these men, the fact that their accounts of this case were relatively similar is noteworthy. The view that Calvin’s case is a watershed in English constitutional ideas of citizenship is commonplace, but for the lasting American impact of the new model of allegiance, see Rogers Smith, Civic Ideals: Conflicting Visions of Citizenship in U.S. History (New Haven: Yale University Press, 1997).

7. See Jordan, supra note 4 at 7. I am arguing against the fairly widespread supposition that The Tempest is not concerned with law, but only with power. See, for example, John Gilles “Shakespeare’s Virginian Masque,” supra note 2.


9. Alvin Kernan, Shakespeare, the King’s Playwright (New Haven: Yale University Press, 1995); John Bender’s essay “The Day of the Tempest” reads the play as a local response to a seasonal pattern—a work designed to consolidate the messy energies of summer in preparation for the crawl towards winter—that is nonetheless written in the service of the crown’s public program. See Bender supra note 4 at 57.


11. The phrase “popular constitutionalism” belongs to Larry Kramer, who uses it in a sweeping way to describe the manner in which constitutional decisions are both shaped and interpreted in public culture outside the courts. See The People Themselves: Popular Constitutionalism and Judicial Review (New York: Oxford University Press, 2005). William MacNeil offers a more sweeping review of the image of law in popular culture in Lex Populi: The Jurisprudence of Popular Culture (Stanford: Stanford University
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Press, 2007). On Shakespeare as a political theorist, see Martin Dzelzainis, “Shakespeare and Political Thought” in David Scott Kastan, ed., A Companion to Shakespeare (Oxford: Blackwell, 1999) and John Cox, “Shakespeare and Political Philosophy,” 26 Philosophy and Literature, 107 (2002). In this article, I differ from Paul Yachnin, who has elegantly distinguished Shakespeare the literary writer from Shakespeare the polemist: for Yachnin, late Shakespearean plays express “literature’s willingness to allow the emergence of ideological contradiction and its unwillingness to attempt to police the production of meaning.” See Yachnin, “Shakespeare’s Politics of Loyalty; Sovereignity and Subjectivity in Antony and Cleopatra,” 33 Studies in English Literature 1400—1900, 343 (1993). While I agree that in general Shakespeare thrives on the unresolved presence of ideological contradiction, the late plays themselves seem to resist the utopian or transcendent impulse and hence do seem deliberately designed to narrow the interpretive horizon or police certain forms of meaning. In my reading, The Tempest demonstrates not just the persistence of the bonds of allegiance between sovereign and subject, but also the implausibility of any sort of leave taking for the greener world of aesthetic and religious contemplation.

12. See Kastan, supra note 2, passim.
15. See Coke, supra note 12 at 181.
18. See Holdsworth, supra note 14 at 81.
20. For an account of natural law jurisprudence in and after the decision, see Polly Price, “Natural Law and Birthright Citizenship in Calvin’s Case,” 9 Yale Journal of Law & Humanities, 75 (1997).
24. See Smith, supra note 5 at 47–8.
26. On Prospero’s desire to harrow and command the souls of others, see Greenblatt, Shakespearean Negotiations, supra note 2 at 129–164.
29. See Jordan, supra note 4 at 186.
By figuring Sycorax, and likely Caliban, as blue-eyed, Shakespeare attaches the identity of the gothic.

I cannot agree with Jordan's assertion that Caliban is an illustration of "Prospero's failure to create a


See Shakespeare, supra note 27 at I, ii, 97; 84–5.

See Shakespeare, supra note 2 at V, i, 74–79.

See Shakespeare, supra note 27 at V, i, 130–135.
The salient passage is the famous Ovidian soliloquy at the opening of Act V, in which Prospero abjures his so potent art: “But this rough magic / I here abjure; and when I have required / Some heavenly music (which even now I do) / To work mine end upon their senses that / This airy charm is for, I’ll break my staff, / Bury it certain fathoms in the earth, / And deeper than did ever plummet sound / I’ll drown my book.” See Shakespeare, supra note 27 at V, i, 49–57.

From a contrary view, Greenblatt compares Prospero to Elizabeth I insofar as each sovereign seems willing to let inward dissent slide so long as the subject produces the external display of conformity to law. Prospero does not seek a window into Antonio’s soul; see Greenblatt, Shakespearean Negotiations, supra note 2 at 142–146. Prospero certainly seems far from content with Antonio’s sullen silence, and as I suggest, promises to keep watching his disgraced and treacherous brother well into the future.

See Shakespeare, supra note 27 at V, i, 26–129.


Id. at 14.