

2019 Seminar Abstracts: Law, Literature, and Constitutional Authority
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Shakespeare's *The Tempest* and Early Colonial Legal Experience

This paper is an initial draft of the final chapter of my book manuscript: *Violent Ends: Shakespeare and Comparative Law*. *Violent Ends* recovers how English dramatists actively engaged with their comparative classical, medieval, and early modern sources to explore legal power. The project aims to expand current scholarship on law and literature to elucidate how Shakespeare's theatre became a coalescing site of transnational legal knowledge and influence. The final chapter initial draft here will include a Transatlantic perspective of Shakespeare's influences using *The Tempest*, a play based on the shipwreck of Christopher Newport while journeying to England's first colony at Jamestown. This paper will work through early colonial sources of Shakespeare in his depictions of mutiny, constitutionalism, and the rights or duties of citizens. I will synthesize literary texts and legal documents to reveal the social experiences of law in Shakespeare's Transatlantic source material. By focusing on the comparative sources in dialogue on the early modern stage, I hope to add new insight to current discussions of Shakespeare, early modern globalization, and law.

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Race, Jurisdiction, and Corporate Constitutions in John Fletcher's *The Island Princess*

John Dryden's *Amboyna* (1673) ends with a confrontation between the Dutch Fiscal and the English Captain Gabriel Towerson, who is to be executed by the Dutch East India Company on a manufactured charge of conspiring to destroy its fort. Though Towerson contends that "we are not here your Subjects, but your Partners: and that Supremacy of power you claim, extends but to the Natives, not to us," the Fiscal responds: "This Court conceives that it has power to judge you; deriv'd from the most High and Mighty States, who in this Island are Supream." 1 Drawing on the jurisdictional ambiguity present in this scene, my paper examines how earlier plays like John Fletcher's *The Island Princess* (c. 1619-21)—set, like *Amboyna*, in the colonial contact zone of the Maluku Islands—reflect productive constitutional tensions between European states, the international corporations that paralleled (and frequently challenged) them, and non-European political entities. Reading these plays alongside East India Company sources and recent scholarship in constitutional history, I show that English playwrights participated in these debates through their representations of marginal figures: the merchants, princesses, priests, guides, and soldiers who traversed the period's emerging orders of international law, commerce, and racial formation.

Urvashi Chakravarty
George Mason University

This paper will attempt to think through the nexus of race and periodization in relation to

2019 Seminar Abstracts: Law, Literature, and Constitutional Authority
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Shakespeare and Atlantic slave laws. What does it mean to ‘know’ political temporality? How do we create political, ethical and legal futures? And how are those futures secured or sutured by the imperative to generate particular modes of human and economic capital?

This paper examines these questions in light of early modern literary and political formations of slavery in the British Atlantic world. Looking at Shakespeare’s sonnets and *The Tempest* alongside later seventeenth-century texts, this paper suggests that as the legal, social and economic architectures of empire and slavery both promise and refuse the potential for political certainty and national prosperity, novel modes of racialized temporality and (bio)political life emerge. Looking at the (bio)political formations that both inhere in and are challenged by slavery’s imperative to racialized generativity, this paper seeks to reimagine the contours of political ontology by remapping the political topography of racial temporality.

Kevin Curran
University of Lausanne

The Commons of Personhood

This paper aims to give a basic account of pre-Lockean legal personhood in early modern England. Starting with sixteenth-century constitutionalism and some related traditions in early modern political and legal thought, the paper is especially interested in mobilizing Renaissance sources (literary and non-literary) to theorize a version of personhood that is collective and physical rather than individual and rational.

Andrew Griffin
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Thomas Norton’s Republicanism

This paper emerges from preliminary research that I’ve undertaken for a new book-length project on the circulation of republican ideas in England between 1558 and 1642. The project seems already to have hit a roadblock, however, because I’m no longer convinced that republicanism -- as a coherent ideology -- existed in England in any meaningful way until the 1620s. As a result, I want to use this paper to think through that fundamental ideological incoherence of republicanism in the latter half of the sixteenth century, and to explore how our recognition of this incoherence allows us to better see the actual arrangement of political ideas and practices. To illustrate this claim in its broadest contours, I plan to look at Thomas Norton, a parliamentarian, lawyer, anti-Catholic polemicist, occasional radical, and -- curiously -- cat’s paw for the Elizabethan regime. Following from a reading of *Gorboduc* (which he co-wrote with Thomas Sackville) and some of his anti-Catholic tracts, I want to suggest that we see in Norton a figure who can hold opinions on questions of consent, representation, and the limits of sovereignty that -- in retrospect -- seem incompatible. The apparent incompatibility of his republican and anti-republican ideas -- in a thinker who was clearly systematic and cautious -- suggests the limits of “republicanism” as useful critical category as we consider political

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alignments that existed between the 1560s and (at least) the 1580s.

Matthew Kendrick
William Patterson University

Against the Law in *Measure for Measure*

Much critical attention has been given to Isabella's non-answer to Duke Vincentio's marriage proposal at the conclusion of *Measure for Measure*. What critics have failed to notice is that Isabella's non-answer is not a unique or singular moment in the play. In fact, as this paper will argue, the logic of subtraction, the negative gesture of non-compliance to which Isabella gives especially pronounced form, is fundamental to the structure of the play in its entirety. Isabella demonstrates the possibility of occupying a subjective orientation that is at once under the sway of the law and aware of the law's incomplete hold on the subject. Ultimately, I will show that the logic of subtraction and refusal has important implications for how the play understands the potential political power of various forms of labor, especially sexual labor.

Dan Kim
Stanford University

This essay, a working draft of a dissertation chapter, considers what the generic properties of romance can tell us about the vexed enterprise of weaving a simultaneously pure and heterogeneous genealogy of English nationhood in Shakespeare's *Cymbeline*. Past scholarship has often commented on the centrality of national myth making in the play—particularly against the backdrop of James's recent accession to the English throne and his desire for an Anglo-Scottish union—and has variously located the play's interest in either excising its Roman heritage or, conversely, celebrating its hybrid roots. This essay locates the play within the context of a broader strain of discourse on national purity and heterogeneity (e.g., Spenser's *A View of the Present State of Ireland*) that traces legal and cultural customs or habits as a way to frame the foreign and the familiar. I suggest how romance—as a genre animated by transformation, contradictions, and the miraculous—could perform a national genealogy that is paradoxically predicated on both purity and heterogeneity in *Cymbeline*.

Ben LaBreche
University of Mary Washington

Constitutional Limits? Popular Sovereignty, Natural Law, and the Parliamentary Cause

Henry Parker's *Jus Populi* (1644) illustrates a recurrent paradox in mid-seventeenth-century defenses of popular sovereignty: even as these texts made the people the source of political authority, they also attacked the people as “the rable,” the “inconsiderate multitude,” or “a vast, rude, confused, indigested heap of the vulgar.” Such criticism has often been seen as a mere expression of class bias or frustration with popular support for the monarchy; I will suggest instead that these attacks articulated a fundamental theoretical problem that arose during and

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after the English Civil Wars: Parliament during these years sought to produce a legally and ethically normative state, but in fact ruled only on the basis of violence.

In response, defenders of Parliament turned to the emergent public sphere as a venue of non-coercive rationality that could supplement and justify *de facto* rule; they also turned to natural law as a rational basis for revolutionary political arrangements. Early modern naturalism, however, reduced politics to the principle of self-preservation, which reintroduced the possibility of violence and undercut liberalizing appeals to the public sphere. Naturalism also reimagined the previously legal, dynastic, or confessional state in distinctly biopolitical terms. Such a shift made the people—understood as bare life—not a source of liberty and ethical government, but a locus for the passions and interests where rationality collapsed back into irrationality, and justice into force relations. The paradoxical juxtaposition of popular sovereignty and attacks on the people thus articulates the unresolved conflicts of an England positioned at—and beyond—the limits of constitutionalism.

Brian C. Lockey
St. John's University

**The Cosmopolitical Foundations of Edmund Spenser's Commonwealth:
 New Legal and Theological Contexts**

Edmund Spenser's investment in natural law was extensive but contradictory in that the universal and transnational aspect of his use of traditional Scholastic natural law doctrine conflicted with Spenser's otherwise Erastian investment in the Elizabethan Settlement. In this paper, I consider how Spenser's conception of conscience and universal law and justice in *A View of the Present State of Ireland* can be understood within the context of jurist Christopher St. Germain's early sixteenth-century tract on equity and the common law and his subsequent tracts on the reformation of Church corruption. This paper attempts to re-situate Spenser's engagement with legal and political theory within the context of English legal education as it had developed throughout the fifteenth and sixteenth centuries. Ultimately, I show that Spenser's engagement with law, theology and politics reflected a commitment to a new Protestant conception of transnational Christendom as well as a re-conception of England as a Protestant nation within that transnational entity.

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This paper aims to consider the relationship between constitutional political thought and fiction in the writing of the Scottish intellectual George Buchanan: in particular, his dialogue *De iure regni apud Scotos* [On the Law of Kingship among the Scots] and his tragedy *Baptistes* [The Baptist]. I argue that Buchanan intended both of these works to contribute to the education of magistrates, by employing fiction to analyze monarchy as a system of government in order to constitute a magistracy capable of moderating its worst excesses. In the *De iure*, a fictional dialogue between Buchanan and the young Scottish magistrate Thomas Maitland, fictional

2019 Seminar Abstracts: Law, Literature, and Constitutional Authority
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images help Maitland (and the reader) learn to distinguish monarchy from tyranny and evaluate historical and Scriptural evidence for the rights and obligations of subjects vis-à-vis rulers. In *Baptistes*, in turn, a Biblical tragedy about the execution of John the Baptist by the tyrannical King Herod, Buchanan offers a picture of tyranny as a complex system in which the actions and motives of ruler, magistrates, and people are interdependent. In both of these works, I suggest, Buchanan uses fiction in order to teach magistrates how to imagine their own constitutional position in relation to king and commons.

Joseph Mansky
Bard College

How to Read a Libel in Early Modern England

This paper recovers an eclectic archive of early modern libel reading. I focus on two fictional scenes: one in the Catholic libel *Leicester's Commonwealth* and the other in *Julius Caesar*. In both works, I argue, reading libel invokes the specter (or the promise) of what Lorna Hutson has termed England's "participatory legal culture." For jurists and commoners alike, libels were a kind of extrajudicial prosecution: they conscripted their readers into the roles of judge, jury, and even executioner. *Leicester's Commonwealth* dramatizes this process. The anonymous author suggests that reading libels, including the *Commonwealth* itself, might spark a public trial with "liberty given to good subjects, to say what they knew against the [earl of Leicester]." Shakespeare seems rather less optimistic about the prospect of such participatory justice. Brutus discerns the popular will from letters and libels—but letters and libels forged by Cassius. Yet Brutus's mistake reveals a pervasive assumption that libels really do ventriloquize the popular voice. From Catholic polemic to Shakespearean theater, reading libel threatened to constitute the people as a deliberative body.

Bernadette Meyler
Stanford University

The Not-So-English Ancient Constitution

While King James I's debt to French political theorist Jean Bodin and his *Six Books of the Republic* has long been acknowledged, recent scholarship on the legal and political theory of the early seventeenth century has demonstrated that Bodin's influence was more widespread than previously imagined. Hence in *Popular Sovereignty in Early Modern Constitutional Thought*, Daniel Lee traces a trajectory from Bodin—whom he reinterprets as furnishing a theory of popular sovereignty—to parliamentarians like Henry Parker, writing in the lead-up to the English Civil War. Although Lee looks to English civilians as conduits for Bodin's ideas, he largely neglects the arguments of common law judges like Sir Edward Coke in response to notions of prerogative derived from Bodin. This omission is important because it allows him to downplay the force of a judicial constitutionalism derived from the common law as opposed to the popular constitutionalism he locates in the parliamentarians' thought. In this sense, Ian Williams's article "Developing a Prerogative Theory for the Authority of Chancery: The French Connection"

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helpfully supplements Lee's work by illuminating the extent to which the stakes of jurisdictional debates among the courts were predicated on interpretations of and opposition to Bodin.

Even Williams does not flesh out the full extent of Bodin's influence, however, and he does not consider Coke—who assiduously maintained the English origins of the ancient constitution—as a reader of Bodin. Two French versions of Bodin, from 1576 and 1580, appear in the published *Catalogue* of Coke's library, and the book list from Holkham Hall, where what remains of his library has been reassembled, includes an Italian version as well as the expanded Latin one. Most important, the first French edition contains extensive annotations in Coke's hand, particularly in passages pertaining to royal power. This paper is the first to consider Coke's annotations and explain their implications for Coke's conceptions of both sovereignty and constitutionalism.

Carolyn Sale
University of Alberta

Fiscal Republicanism, the Common Law's Common Reasoning, and *Hamlet*

My paper argues for the theatre's capacity to help shape amongst its participants a sense of their constitutional authority that has implications for their relation to the common law. I pursue this through a return to an aspect of republican thinking for which we find the trace in Kantorowicz's discussion in *The King's Two Bodies* of the medieval civilian writer Baldus. Baldus's conception of the two "bodies" of political theology assigned primacy not to the "king," but to the corporate intellection for which the "king" was mere sign, making this corporate intellection the driver or cause of the king's actions. My paper shows how this intellection is both fiscal and republican in order to argue for the capacity of early modern plays such as *Hamlet* to contribute to this intellection. Baldus's fiscal conception of the corporate intellection of the body politic had special purchase, I suggest, for the English, whose unique form of law, the common law, depended upon a related notion of reasoning commonly held or shared. In *Hamlet* we see the struggle to extricate a republicanism oriented to the nurturance of the corporate intellection of the body politic from the problem that the common law's feudal ramifications posed for the ideals of the common law's common reasoning.

Anne-Marie E. Walkowicz
Central State University

**“Am I a king and must be over ruled?”:
 Marlowe's Edward II and Constitutional Monarchy**

The centrality of the king's favoritism for Peirs Gaveston has long been a part of the historical tradition surrounding Edward II's reign. Christopher Marlowe's *The Troublesome Reign of Edward the Second* (1594) is no exception, and the play quickly establishes the king's favoritism for Gaveston. However, the concentration of critical scholarship on issues of favoritism has hindered our understanding of the play as a representation of the tensions within the precedents of limited government that defined Elizabeth's reign. This paper will argue that Marlowe

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dedicates much time to working through the cluster of peer-related problems and the political struggles for power that emerge. The critical perspective that constitutionalism affords demonstrates that Marlowe's dramatic conflict between Edward and the peers is informed by terms that reflect Elizabethan political institutions and the locus of constitutionalism that existed in sixteenth-century conceptions of her rule.

Marlowe stages the political conflict between Edward II and his peers to expose the legalistic tyranny that defined the king's administration. The peers rebel against the king under the guise of seeking to restore the social compact that governed relations between the king and his subjects, but Mortimer Jr.'s ambition for the crown lurks beneath the surface. In the resulting struggle between Edward II and his peers, Edward II extends his authority through royal prerogative, and the peers expand their authority by deposing the king and replacing him with their own more preferable candidate. This analysis of the play reveals that Marlowe was aware that the relationship between the monarch and the peers was fraught with tensions between the monarch's sovereign capacity and the political institutions of constitutionalism. The play participates in the political debates of the time, presenting Marlowe's unique perspective on the shifting balance between royal prerogative and its limitations within the English constitutional tradition. The play's representation of Edward II's deposition becomes an ideologically charged site, which exposes that in spite of its overall strength, the weakness inherent within England's constitutional monarchy was the lack of any institutional device to hold the monarch accountable to the law.