Legal Rhetoric and the Ambiguous Shape of the King’s Two Bodies in Calvin’s Case (1608)

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ABSTRACT
This essay examines how Francis Bacon’s speech in Calvin’s Case (1608) and Edward Coke’s report on the case engage with the doctrine of the king’s two bodies. While both texts portray the subject as perpetually obligated to the king’s personal body, the ambiguity of the doctrine combined with the topical resources of early-modern legal rhetoric allowed for disparate constructions of the king’s two bodies that could at once support and displace the absolute sovereignty of the king’s personal body. In the end, I argue that both texts offer distinct contributions to the early-modern era’s budding anti-royalist discourse.

In early modern England, the doctrine of the king’s two bodies was a master trope that depicted the arrangement of sovereign power as well as its mystical and transcendent manifestations. Developed by Medieval jurists, the doctrine sought to legitimize the hereditary transfer of sovereign power upon a king’s death. In doing so, jurists bifurcated the monarch into the material king-in-the-flesh that ruled over the realm and the mystical, transcendent body politic that endowed the king with sovereign power. The separation of bodies, however, came at a cost. The increasingly contentious political composition of England rendered the king’s two bodies notoriously ambiguous as the individual king competed for sovereign power with components of the body politic—mainly with Parliament and with the realm’s common lawyers. English legal historian William Holdsworth claims that by the Tudor era (roughly 1485–1603), jurists could not depict coherently where sovereign power originated and that “the doctrine of sovereignty was not grasped until the existence of a conflict between several competitors for political power made it necessary to decide which of these various competitors can in the last resort enforce its will” (Vol. 4, 208).

Though Holdsworth alludes to the role of the English Civil War (1642–1651) in forcing a decision on the nature of sovereign power, the history of English law demonstrates that the battle over the arrangement of
sovereignty figured in the doctrine of the king's two bodies was often fought *rhetorically*, in speeches in Parliament and in court, as well as in legal reports and texts. For this reason, Lorna Hutson and Victoria Kahn ("Political Theology") argue that the doctrine of the king's two bodies must be read within the context of the Renaissance revival of rhetoric, and understood as a significant topical resource for inventing arguments that troubled the nature of sovereign power. In this way, the doctrine of the king's two bodies formed part of a rich tradition of "juristic fiction-making" whereby legal maxims were creatively and contradictorily adapted by civil lawyers, canonists, and common lawyers, enabling the creation of legal abstractions and fictions that at times worked against the royal prerogative by separating the king's person from the body politic (Hutson 119, 122). Thus, the ambiguity noted by Holdsworth in the doctrine of the king's two bodies should not be seen as an aftereffect of political conflict. Instead, the doctrine's ambiguity should be seen as a key site for the production of new and contradictory discourses of sovereign power that authorized the political and legal reasoning for usurping the absolute power of the monarch during the mid-seventeenth century.

This essay examines one of the politico-legal conflicts that forced jurists to weigh competing interpretations of the king's two bodies in order to figure out to which kingly body the ultimate source of sovereignty pertained. Specifically, I analyze the judicial deliberation in *Calvin's Case* (1608), which was a property dispute between a Scottish subject born after James I united the crowns of England and Scotland in 1603 and an English landlord. In order to decide whether the Scottish person could inherit land in England—something that only natural-born English subjects could do—the jurists on the King's Bench applied the doctrine of the king's two bodies for the first time to the English law of subjects and aliens, which held that subject status derives from one's perpetual allegiance to the sovereign of the land in which one is born (Price 112). However, because James I was one person with two body politics, the case revealed an unsettled theory of sovereignty as the English law of subjects and aliens did not designate to which sovereign power the subject submits: to the king's corporeal body or to his political body. Both the plaintiff—represented by Francis Bacon, who was Solicitor General at the time—and the defense lawyers employed the doctrine of the king's two bodies as *topos* to determine which body was the ultimate source of sovereignty. In the end, a panel of fourteen jurists sided with the plaintiff, deciding that subjects are ultimately beholden to the king's personal body, and thus, that Calvin was an English and a Scottish subject. The case's holding went on to influence citizenship law all throughout the British Empire. However, despite Bacon's prominent role in the case, Sir Edward Coke's account as one of the fourteen jurists hearing the case became authoritative because "he published
it (and only it) in his *Reports*, which guaranteed its influence at a time when most opinions went unrecorded" (Hulsebosch 455).

In spite of the relatively unanimous and noncontroversial decision, however, Bacon’s speech as Calvin’s counsel in the Exchequer Chamber and Sir Edward Coke’s influential report demonstrate illuminative discrepancies in the *rhetoric* of the king’s two bodies. That is, even though both Coke and Bacon come to the same conclusion, how each jurist articulates the doctrine shifts the balance between subject, king’s person, body politic, and law in ways that complicate the case’s final decision. As such, even though Calvin’s initial victory appeased James I’s proclivity toward absolute royalism and preempted the English acceptance of Jean Bodin’s personal theory of sovereignty, the rhetorical afterlife of both jurists’ reconstructions of the king’s two bodies ended up undermining the doctrine of absolute sovereignty as they resurfaced in anti-royalist discourses in England, as well as in early American citizenship and property laws.

In order to situate and expand these claims, the first part of the essay historicizes Calvin’s Case and the Union of the Crowns, as well as the conflict between royalists, Parliamentarians, and common lawyers that led to the politicization of the case. The second part explains the role of the doctrine of the king’s two bodies in early modernity, showing how the doctrine’s composition sustained a contradictory balance between competing notions of sovereignty. Next, the essay compares how Coke and Bacon draw out the doctrine’s incongruities with recourse to their disparate approach to legal rhetoric. While Coke uses common-law reasoning and case construction to emphasize the king’s subordination to the law, Bacon explicitly maintains that the king’s person is the sole source of sovereignty. Nevertheless, Bacon’s performance of legal prudence, characterized by a reflexive rhetoric of legal maxims, commonplaces, figures, and tropes, undermines the speech’s royalist arguments by underscoring the artifice of the king’s two bodies. As such, even though both of the jurists’ conclusions uphold medieval notions of perpetual obligation to the king’s personal body, Bacon and Coke’s *rhetoric* in Calvin’s Case sheds light on the doctrine’s productive contradictions, as well as the era’s growing reflexivity concerning the rhetoricity of political and legal discourse. Thus, I conclude by situating Bacon and Coke’s legal rhetorics within the context of the budding anti-royalist discourse that would soon bring England to Civil War.

### The Union of the Crowns and the Contentious Politico-Legal Context of Calvin’s Case

The dispute in Calvin’s Case resulted from the Union of the Crowns in 1603. When Queen Elizabeth I died in 1603 she did not leave an heir, and her cousin King James VI of Scotland became King James I of both
England and Scotland. Though the kingdoms of England and Scotland were united at the head, they retained separate national legislatures, court systems, and churches. In this way, the king’s personal body was one, but it presided over two distinct political bodies. Attempting to unify the two bodies, James I renamed the realm “Great Britain” and proposed three new statutes intended to facilitate governance and trade between England and Scotland. The statutes rescinded incompatible laws between the two kingdoms; created a uniform commercial law; and put forth a Naturalization Act that would mutually naturalize both the Scots and the English (Moore 559). James I wanted to naturalize in perpetuity both the Scottish population called the *antenati*, or those born before the Union, and the *postnati*, or those born after the Union, melding both the head and the people into one body.

Francis Moore, the politician who reported on *Calvin’s Case* to the English Parliament in 1608, claimed that while the Scottish Parliament accepted all three of James I’s proposals, the English Commons disputed the Naturalization Act by citing the lack of precedent for the precise kind of naturalization that the act outlined (560). Even though common law did not have a firm doctrine of precedent before the eighteenth century, Renaissance and early modern common lawyers did not see law as something mandated by the king’s will or by nature (Postema 589). Instead, common lawyers held that the law developed through legal practice as it was handed down from lawyer to lawyer by tradition, use, and experience (Postema 589). As such, Moore indicates that the common lawyers in the Commons contested the king’s ability to make legal decisions that diverged from legal custom (Moore 563). The common lawyers’ arguments against the king stemmed from their belief that they possessed legal knowledge, or what Edward Coke termed “artificial reason,” that the king and his “divers sages” did not, granting common jurists the unique ability to make legal decisions (Moore 563). Since there was no legal precedent that upheld the type of naturalization that James I requested, the king did not have the ability to pass a law that would contradict custom.

The Commons also feared the expansion of James I’s royal power. As mentioned above, the beginning of the seventeenth century witnessed the culmination of centuries of struggle between the monarch, Parliament, and common lawyers. Moreover, legal texts, trials, and Parliamentary orations were key battlegrounds in these struggles over sovereign power. Coke’s legal texts were central to judicial and Parliamentary struggle against royalism as his *Reports* on English trials consistently depicted the English common law as an ancient body of wisdom predating and preceding the monarchy in its authority (Pocock 35). In fact, according to Holdsworth, Coke’s *Reports* preserved the medieval idea of the supremacy of the law, “at a time when political speculation was tending in the direction of the supremacy of a
sovereign person or body which was above the law” (Vol. 5, 480). Thus, *Calvin’s Case* takes place within an ongoing dispute between the king, Parliament, and common lawyers who were all striving for the position as the source of sovereignty.

Following the dispute in the Commons, James I’s Naturalization Act remained inert until 1607, when Robert Calvin’s father sued Nicholas and Robert Smith on his behalf for withholding property that he had inherited in England (Moore 559). Calvin was born after James I’s personal union in 1603 and was an infant at the time of the trial. The Smiths claimed that under the English law of subjects and aliens, Calvin could not inherit property and could not sue in English courts because he was born in Scotland, and thus was not a natural subject of England. According to Daniel Hulsebosch, even though the case’s central question was whether a *postnati* could sue in English common-law courts, “the case was a collusive effort to reverse the Commons’ conclusion that Scots were not subjects of the English king and settle the legal consequences of the Union of Crowns” (454). As such, *Calvin’s Case* was highly politicized because it offered an opportunity for James I to extinguish the Commons’ opposition by forcing common lawyers to set a legal precedent regarding the subject status of the *postnati*. To answer this question, the king appointed a special court made up of the Lord Chancellor and all fourteen judges from all three of the courts—the Exchequer, the King’s Bench, and the Common Pleas. As Solicitor General, Francis Bacon served as Robert Calvin’s counsel. Richard Hutton and Laurence Hyde, two common lawyers who were vocal opponents of the King’s Naturalization Act, argued for the defense (Price 27; Moore 561).

According to Coke’s report, the jurists divided the question into four *topoi*, or “*nomena operativa* from which all of the arguments were drawn”: *ligeantia* (allegiance), *leges* (laws), *regna* (kingdom), and *alienigena* (alienage) (Coke 610). Regarding *ligeantia*, the defense argued that there are two *ligeances*, “one from England, and another from Scotland,” because there are two *regnas* (kingdoms) and two *leges* (rules of law) (Coke 610). Since a subject was either born “*infra ligeantiam*” or “*alienigena*,” and one person cannot have two allegiances, Calvin was born in *ligeance* to James VI as King of Scotland and *alienigena* to James I, King of England. Therefore, Calvin could not inherit land in England because he was not a natural subject. The defense supported its arguments by citing English inheritance laws as well as the tradition *ad fidem Regis*, or the subject’s natural allegiance to sovereign power. However, since the English and the Scots had the same king, *ad fidem Regis* could support both sides of the case, as the tradition did not stipulate how someone becomes perpetually bound to a king. To resolve this ambiguity, the defense utilized the doctrine of the king’s two bodies, and claimed that allegiance was due to the king’s body politic. The defense supported this argument by appealing to the maxim *ligeantia et lex*, which
derived allegiance from the laws that comprise the body politic. In contrast, Bacon, and by extension Coke, whose report agreed with Bacon’s claims, argued that ad fidem Regis necessitates subjection to the king’s personal body for two reasons. First, historically, allegiance to a personal sovereign who ruled by equity, or judgement, preceded the formalized rule of positive law. Second, Bacon described allegiance as a personal feeling of mutual obligation between sovereign and subject. Accordingly, Bacon argued that the impersonal force of the law cannot replace the personal body of the sovereign as a source of mutual obligation. Despite their agreement, however, Bacon and Coke’s descriptions of the doctrine of the king’s two bodies, the distinct ways in which they employ the inventive resources of classical rhetoric and the common law to reconstruct the doctrine, betray a significant ambiguity in regards to the position of the law and the people relative to the king’s personal body.

The Doctrine of the King’s Two Bodies

In deciding what sort of subjection ad fidem Regis stipulated, Francis Bacon, the defense lawyers, and Edward Coke all employed the doctrine of the king’s two bodies as topos for their arguments. The doctrine has a centuries-long history, but by the Tudor and early modern era, jurists represented the king as a dual body made up of his natural personal body and his transcendent political body. As mentioned above, however, the doctrine was not set in stone, and instead was manipulated by jurists and politicians in order to construct legal fictions that suited the case, or the political agenda, at hand. The doctrine enabled such rhetorical creativity because the various maxims and images that comprised the doctrine were ambiguous and frequently contradictory.

The ambiguity driving the use of the doctrine on both sides of Calvin’s Case centered around the tenuous relationship between the king’s personal and political bodies. By the Tudor era, the king’s political body connoted his position as ruler over the commonwealth, which was characterized by the figures of the Crown and the People. While the Crown signified the incorporation of the realm’s public lands and other material goods that exceeded the monarch’s individual property claims, the People referred to an abstract and permanent population of subjects (Kantorowicz 342). Importantly, these figures began to take on a mystical presence. Kantorowicz maintains that after the Renaissance, the continuity of the Crown and the king’s office was guaranteed by the mysticism of the “Polity” instead of by God’s grace (231). As such, the king was said to “never die” because the Crown and the People lived on even after the physical death, or the demise of the king’s personal body.

The rhetorical construction of the immortal body politic allowed for the unabated transference of power between monarchs. However, the mystical
force that jurists depicted as *making* the body politic immortal remained uncertain. While the divine power of God was the original source of immortality in the Medieval era of the doctrine, by the Tudor era, jurists increasingly portrayed the Law as the ultimate mystical force (Kantorowicz 150–1). Even so, jurists and politicians portrayed the king as simultaneously above the Law, and thus, as the ultimate source of power that immortalized the body politic, as well as below the Law. The king’s unsettled position resulted from the incorporation of the Roman doctrine *lex regia* and the maxim *quod principi placuit* into descriptions of the king’s bodies by Henry de Bracton (Kantorowicz 151). The *lex regia* held that the monarch came to power originally through a transference of sovereignty from the people to him (Lee 26). Meanwhile, *quod principi placuit*, or the notion that the law is what the king wishes, espoused the monarch’s “equity,” or his ability to upend and interpret law as he wills. Bracton and other medieval legal scholars were aware of these paradoxes and, much to the chagrin of the monarchs, often interpreted the maxims and doctrines in ways that upheld the supremacy of the Law (Kantorowicz 152). Nevertheless, the legal deliberations in Calvin’s *Case* demonstrate that the king’s personal body’s relationship to the Law as well as to his body politic remained ambiguous. As such, if subjects were naturally subjected to the source of sovereign power, as the *ad fidem Regis* doctrine stipulated, was the subject beholden to the king’s person, to the Law, or to the transcendent body politic?

**Sir Edward Coke and the Agency of the Common Law**

To understand how Coke’s report on Calvin’s *Case* answers this question, it is necessary to interrogate how the report treats the English common law throughout its entirety. Like Coke’s many other reports, his treatment of Calvin’s *Case* mobilizes the generic conventions of the legal report—the seemingly objective recording and pedagogical analysis of legal proceedings—to expound the supremacy of the common law (Holdsworth, Vol. 5, 480). Though royalists and civilian scholars often objected to Coke’s unabashed advocacy of the common law, his reports were widely circulated and read at the Lawyers’ Inns where young men trained in the common law by reading the Register of Writs and the Reports published by Coke as well as other scribes such as Plowden and Fortescue (Hulsebosch 442). As will be detailed below, in line with his advocacy of the common law, Coke’s report constructs the decision-making process as solely determined by the transparency and agency of the English common law. Therefore, when grappling with the circular logic of the king’s two bodies, the *common law* emerges as the agent that binds the king to the body politic, transforming the theory of personal sovereignty catalogued in the report’s holding.
The common law takes on a central role from the beginning. In demonstrating how the case was argued by Bacon and the lawyers for the defendants, Coke divides his report into three parts: the writ of assize, or the official order to try a land or property dispute; the question; and the judgement. After stating the writ of assize from the Register of common law cases, Coke narrates the process whereby the jurists argued their positions. Coke claims that, even though this case was not easily decided via common law custom, the lawyers “told no strange histories, cited no foreign laws, produced no foreign precedents … for that the laws of England are so copious” (612). By calling English common law “copious,” which connotes endless potentiality, the report references the common-law belief that sound law only transpires through the engagement with and use of common law over historical time. Coke continues the introduction in a similar vein, suggesting that the laws spoke for themselves, untainted by the lawyers’ thoughts. He states, “And in the Arguments of those that argued for the plaintiff I specially noted, that albeit they spake according to their own heart, yet they spake not out of their own head and invention” (612). Here, the report explicitly denies that the lawyers’ capacity for invention figures in any way in deciding the case. Instead, the report indicates that the laws themselves actively shape the ultimate decision because their meaning is transparent and self-evident to the trained lawyer. Thus, no outside reference aliunde or authority figure such as the monarch is necessary to aid judicial reasoning. Lawyers only needed to speak sincerely, from the heart, and let the laws speak for themselves.

Resuming the introduction to the case’s questions, Coke demonstrates the difficulty that the case presented to common law, stating that the “plea is a great stranger to the laws of England” (613). Illustrating the case’s strangeness, the report personifies English law as a body and categorizes its diverse parts:

And albeit I concurred with those that adjudged the plaintiff to be no alien, yet do I find a mere stranger in this case, such a one as the eye of the law, our books and bookcases, never saw, as the ears of the law (our reporters) never heard of, nor the mouth of the law, for “judex est lex loquens,” the judges our forefathers of the law never tasted: I say, such a one, as the stomach of the law, our exquisite and perfect records of pleadings, entries, and judgements, that make equal and true distribution of all cases in question, never digested. (613)

The metaphor of the body of law severed into working parts is highly characteristic of Renaissance and early modern texts. However, the report employs two rhetorical moves here that are important for understanding Coke’s interpretive practices as a common lawyer, as well as for understanding how he frames the ultimate decision in Calvin’s Case in terms of the king’s body. First, Coke constructs the law and judge as one body broken into harmonious sense organs, each performing a specific function that keeps the “perfect and exquisite” machine going. In this way, law and lawyer are
depicted as mutually interdependent; one cannot be severed from the other. Building on this amalgamation of law and lawyer, Coke also modifies the Roman legal maxim favored by James I, *Rex est lex loquens*, or, “the king is the law speaking” (Kahn, *Wayward Contracts*, 42). By saying that the judge, *judex*, is the spoken law, Coke’s report displaces the king’s role in legal doctrine and centers the law/lawyer body. As mentioned above, common lawyers believed that only common-law judges—with their “artificial” professionally educated reason—could declare law. Further down, the report elucidates the theory of “artificial reason” when it claims that “the legal and profound reason of such as by diligent study and long experience and observation are so learned in the laws of this realm, as out of the reason of the same they can rule the case in question” (616). Put another way, the lawyer’s “artificial reason” is the product of his memory as a storehouse of common law, not a product of the human’s natural propensity to reason through arguments. Thus, the lawyer works as a kind of handmaiden for the law by deciphering its words and then reporting its will in Writs and Reports. As such, legal decisions were imagined to arise through the lawyer’s role as a mediator of an autonomous Law.

Coke’s treatment of maxims bolsters the agentic position of the law in the report. In common law jurisprudence, maxims functioned as a rhetorical means to make definitive deductions from precedent and tradition, allowing the law to speak for itself. This is because, contrary to other kinds of maxims, common-law maxims were not broad general principles. Instead, common lawyers thought of maxims as part of the original structure of the law that were beyond dispute (Stein 160). Thus, after introducing the questions and dividing them into parts for consideration, Coke’s report goes through each contention by referring to every analogous case, statute, and report, and then citing the common-law maxims that have been developed by past reporters like Fortescue and Glanville. For example, leading up to the common-law maxim, “Ligeance is a true and faithful obedience of the subject due to his sovereign,” Coke catalogs all of the variations of allegiance that the term *ligeantia* allows, coupled with the corresponding cases and statutes that support these variations (613). Moreover, in explaining the difference between a subject’s relation to a liege lord and a subject’s relation to a natural liege sovereign, Coke cites two statutes that illustrate the bond between liege lord and subject, followed by Fortescue’s gloss on lord and subject in St. Augustine’s *City of God*, “‘rex ad tutelam legis corporum et bonorum subditorum erectus est’ [The good king protects the body of law and his subjects]” (614; Fortescue 21–23). Functioning as the last word on the question of the nature of “liege” in relationships that are bound by agreement, this phrase is treated as a maxim that settles the question. After the citation, Coke proceeds to the next type of “liege,” the kind between king and subject that is characteristic of English tradition. After citing legal authorities
and multiple statutes, Coke ends this contention with the chiasmus (in Latin) “protectio trahit subjectionem, et subjectio protectionem’ [protection demands subjection, subjection demands protection]” (614). Again, the maxim ends the discussion.

Coke’s use of maxims in his reconstruction of the king’s two bodies also allows the report to make a metaphoric substitution between common law and king, whereby the king is cast as the object of the law. For instance, after providing an overview of the decision-making process of the jurists and a summary of their contentions, Coke’s report narrates how ad fidel Regis was considered by both sides in relation to the four nomina operativa: allegiance, laws, kingdom, and alienage. Regarding allegiance, Coke counters the defense’s use of the Roman maxim, lex et ligeantia, or that allegiance is derived from laws, by agreeing with the plaintiff that people are bound to the king’s person. Importantly, however, Coke centers the role of not only an abstract lex in the creation of the king’s two bodies, but also the role of the English common law in this process. After listing the ways in which the specific statutes and policies in English common law occasion the king’s political body, he claims,

And these are the causes wherefore by the policy of the law the king is made a body politic: so as for these special purposes the law makes him a body politic, immortal and invisible, whereunto our ligeance cannot appertain. But to conclude this point, our ligeance is to our natural liege sovereign, descended of the blood royal of the kings of this realm. (emphasis mine, 629)

Although Coke cedes that allegiance is due to the natural king, this configuration of the king’s two bodies emphasizes Bracton’s revival of the Rex legia in the description of how the king is made sovereign. This allusion to the Rex legia in the doctrine of the king’s two bodies allows the report to make this metaphoric substitution between common law and king whereby the king is cast as the object of the common law’s power. Thus, the common law is portrayed as the subject that infuses the king’s natural body with his political office, granting the common law the mystical essence that originally was vested upon God’s grace. The personification of the law, indeed, its ability to modify things and persons, is consistent with the rest of Coke’s report. Throughout the document, the law assumes an active role in generating the lawyer’s decision making as well.

The report’s remaining contentions augment the agency of the common law even as they reference natural law. In regards to the second consideration, leges, Coke resorts to natural law to claim, “the ligeance or faith of the subject is due unto the king by the law of nature” (629). Coke’s reliance on natural law is surprising because common lawyers tended to reference Registers of writs, Yearbooks, and Reports (Postema 593). However, during the consolidation of the common law in the early seventeenth century, Coke
and other common lawyers began making a synecdochical connection between common law and natural law, portraying “this law of nature as a part of the laws of England” (Coke 613). Importantly, Coke and other common lawyers did not deny the validity of natural law, but instead they “considered that its legal effect in England is determined by having been incorporated into the English common law” (Berman 1692).

The structure of Coke’s report on Calvin’s Case reinforces the synecdochical relationship between natural law and common law. After referencing the natural law rule of amicus or inimicus by conceding that “Every one that is an alien by birth, may be, or might have been an enemy by accident; but Calvin could never at any time be an enemy by accident,” Coke cites twelve sections from the Magna Carta coupled by citations of statutes and case holdings (652). He goes on to elaborate on the natural law theory of subjecthood, stating, “Whoever are born under one natural ligeance and obedience, due by the law of nature to one sovereign, are natural-born subjects” (Coke 652). This phrase, however, is also followed by citations of past writs and common-law maxims. The use of the Magna Carta in discussing natural law is especially important because for anti-royalist common lawyers such as Coke, the Magna Carta was an important rhetorical weapon against encroaching absolute royalism because it was cast in legal lore as an emblem of Rex legia, as a contract between sovereign and subject (Kahn, Wayward Contracts, 42). Often, “Magna Carta” was invoked by common lawyers as a symbol for the limits of monarchical power (Berman 1687). For Coke, then, the Magna Carta and common-law writs validate appeals to natural law, not the other way around. Moreover, continuing to look at the structure of the case, the last line of the entire report punctuates the relative supremacy of the common law. The report’s final phrase is: “See now the [King’s] statutes for the Union of both kingdoms,” as if to say “now that the law has spoken, the king can have his way” (658). In the report, common law speaks in place of the king in both the figurative and the structural registers.

In the last two sections, regnum and alienigena, Coke’s report reinforces the agency of the common law by developing a theory of jurisdiction that stifles the power of the king’s person over his subjects in other lands. Elaborating on regnum and alienigena, Coke maintains that even though England and Scotland remain separate political bodies with separate judicial and municipal laws, the natural personal bond between subject and sovereign allows the postnati to be born in ligeance to James I of England and Scotland. In ober dicta, however, Coke clarifies that the postnati, like all English subjects, can hold land in England and sue in English courts, but cannot maintain the privileges and duties of English political membership outside of English territory, which he explicitly links to the king’s protection (613, 655). At first, he upholds his decision regarding the sovereignty of the king’s personal body, claiming that only the “ligeance to the king in any of his
kingdoms or dominions whatsoever” matters and that the “place [of birth] shall not be material,” if the subject sues in English courts (655). However, he undermines the breadth of the king’s power in the last instance by claiming that the place of birth becomes material depending on “whereupon they were at issue, and that issue was tried where the writ was brought” (655). Moreover, Hulsebosch argues that writing the *ober dicta* was excessive, since at the time no one would have interpreted the law to translate overseas (458). As such, Hulsebosch maintains that the *ober dicta* functioned as an explicit ploy to limit the king’s jurisdiction abroad (458–59).

This clarification cemented the territoriality of the kind of subjecthood solidified in *Calvin’s Case*. That is, because of Coke’s specific reconstruction of the case, *Calvin’s Case* was translated abroad in a way that constructed subjecthood—and later citizenship—as territorial and based on one’s birth within a specific jurisdiction. For example, in the monumental citizenship decision *U.S. v. Wong Kim Ark*, Justice Gray bases his majority decision on Coke’s delineation of allegiance within a bounded territory and mediated by law (660). Thus, Coke’s report not only underscored the capacity of English common law to breathe life into the king’s political body, but it also couched the king’s natural body within the confines of his legally derived territorial jurisdiction. It is for this reason that scholars estimate that Coke’s report on *Calvin’s Case* circulated so well in the colonial United States, when colonists were looking for reasons not to obey the British crown.

**Sir Francis Bacon and Legal Prudence**

Serving as counsel for Robert Calvin, Bacon presented his case in the Exchequer Chamber in front of all fourteen judges. As such, whereas Coke presented the case in a legal report, Bacon reconstructed the doctrine of the king’s two bodies to settle the *ad fidem Regis* question in a formal speech. Nevertheless, these genre differences are tangential to Bacon’s distinct presentation of the case’s underlying reasoning and, subsequently, the distinct presentation of the king’s two bodies. Thus, this section illuminates how Bacon’s speech utilizes legal maxims and *partitio* prudentially, and, in turn upholds and then undermines the king’s position above the law and thus, as *the* ultimate source of sovereign power. While Coke’s report on the case replaces one source of sovereign power for another, Bacon’s speech—most likely unintentionally—elucidates the role of prudence and, ultimately, artifice in the delineation of sovereignty.

Bacon’s divergence from common-law rhetoric illuminates the subtle distinctions between his and Coke’s descriptions of the king’s two bodies. Bacon’s legal career was marked by the lifelong pursuit of reforming the sprawling and unpredictable common law in favor of a science of *jurisprudence*. On the one hand, Edward Coke and other common lawyers retained a
medieval conception of law as primarily jurisdictional rather than jurisprudential, meaning that the common law was inseparable from the institutions that produced it (Hulsebosch 446). Bacon, on the other hand, advocated for a jurisprudence, a rationally organized set of rules and principles defined in reference to each other and not to the judges enforcing them (Hulsebosch 446). Thinking back to Coke’s construction of the law(yer) body, Bacon wanted to sever the law, lawyer, and court to articulate a legal science that stood on its own ground. Bacon sought to “reduce and perfect” the common law and wrote letters to both Elizabeth I and James I proposing a common law version of the Institutes of Justinian (The Works, 380). In addition to a restatement and consolidation of the body of laws, Bacon wanted to reform and systematize the kind of reasoning used by common lawyers. As Coke states in his report on Calvin’s Case, common lawyers did not use a uniform method of inference or judgement (613). Though common law necessitates analogical reasoning to make inferences from custom, each individual lawyer used interpretive freedom to make judgements on a case-by-case basis (Hutson 132; Postema 592). Bacon, however, envisioned a jurisprudence that utilized induction where the lawyer would proceed from particular cases to general, universal principles (Kocher 7). Holdsworth argues that Bacon’s knowledge of the civil law through his studies at Cambridge gave him the unique ability to pursue the general principles of the sprawling common law, and “of laying down the broad principle applicable to the case in hand, and of grouping his proofs and instances under it in an orderly way” (Vol. 5 248). Above all, Bacon imagined that inductive reasoning in legal practice would produce more certainty, which for him only resulted from disciplining particularity in pursuit of general, universal principles.

However, Bacon’s pursuit of legal certainty should not be confused with a pursuit of truth or with a modern scientific method of induction. In her work on Bacon’s engagement with the Renaissance tradition of the dialectic, Lisa Jardine argues that, in line with his education in the revisionist dialectic at Cambridge, Bacon separated the discovery of knowledge from its presentation (59). He conceived of the rules of dialectic as basic to all understanding of the organization of discourse and he envisioned a method of discourse oriented toward “the rules of judgement upon that which is to be delivered” (qtd. in Jardine 14–15). In this way, Bacon’s theory of method was “to a greater or lesser extent an artifice for a convincing presentation” (Jardine 15). Bacon’s attention to presentation led him to choose literary devices such as example, parable, and aphorism to make inaccessible ideas clear to an audience (Jardine 15). This attention to presentation and persuasion comes across in Bacon’s legal treatises. For example, in a letter to Queen Elizabeth, Bacon promotes his inventory of twenty-five legal maxims by claiming that his system will combat the law’s uncertainty by shedding light on the “true conceit of law by depth of
reason … to confirm the law, and to make it received one way” (The Works, 10). In other words, Bacon was far more concerned with presenting the English body of laws in a way that would ensure that they were received in the correct manner.

As Jardine and Kahn have both noted, Bacon’s performance in the legal and civil spheres was far more indebted to a Machiavellian prudence than to what any modern person would conceive of as science (Jardine 163–4; Kahn, Machiavellian Rhetoric, 114–5). Renaissance humanism conceived of prudence as a faculty of deliberation about particulars that was inherently linked to excellence and most of all to ethics. Machiavelli, however, separated prudence and ethics, and instead connected prudence more firmly to a rhetorical politics that recognized and grappled with contingency and the fact that anything can be argued on both sides of the question (Kahn, Machiavellian Rhetoric, 37–8). Bacon, who was an avid reader of Machiavelli, modeled this kind of rhetorical politics in his method of discourse, in which he harnessed the flexibility of maxims and examples to respond to the rhetorical situation at hand. Jardine, for example, notes that Bacon’s work is regarded as particularly effective not necessarily because it is scientifically sound, but instead because of his determination to utilize topical resources to craft clear and convincing arguments (15). Bacon recognized and exploited the possibility of assembling maxims and principles garnered through experience and example, and “arranging them to deduce the particular policy to be advocated in particular circumstances” (Jardine 167). Bacon models this kind of prudence in Calvin’s Case and, in turn, alters the figuration of the king’s sole claim to sovereignty in the doctrine of the king’s two bodies.

From the beginning of Bacon’s speech in Calvin’s Case, his distinct approach to legal reasoning and rhetoric is apparent through his use of partitio to unveil the underlying principle and reasoning at stake in the case. After first introducing the question, he then previews how he will answer it. He states,

And therefore your lordships do see the state of this question doth evidently lead me by way of inducement to speak of three things: the king, the law, and the privilege of naturalization. For if you well understand the nature of the two principles, and again the nature of the accessory; then shall you discern to whether principle the accessory doth properly refer, as a shadow to a body, or iron to an adamant. (“Speech” 577)

In contrast to Coke, Bacon’s partitio does not introduce the divisions that he will draw from the three terms, but instead it introduces the arguments that he will present in relation to the principles. Moreover, he claims that in presenting the case, the audience will follow the reasoning, like a shadow to a body, and come to the inevitable conclusion.
The speech’s attention to principle over holdings and reason over the content of individual laws differs from the dominant common-law approach to legal rhetoric at the time. For example, in Coke’s name-making speech as attorney general in Sir Walter Raleigh’s treason trial, he begins his indictment of Raleigh by naming the laws and statutes violated by the defendant (“The Trial” 6). However, explaining his distinct method of delivery, Bacon states that he will “begin with foundations and fountains of reason, and not begin with the positions and eruptions of a municipal law” (“Speech” 578). He goes on, claiming that beginning with reasons won’t detract from the sufficiency of our laws, as incompetent to decide their own cases … but rather addeth a dignity unto them, when their reason appearing as well as their authority doth shew them to be as fine moneys, which are current not only by the stamp, because they are so received, but by the natural metal that is the reason and wisdom of them. (“Speech” 578)

The comparison drawn between laws and coins coincides with Coke’s belief that laws possessed their own internal wisdom. However, just as the natural metal of the coin requires an economy within which to garner value, Bacon suggests that the lawyer must utilize some kind of overarching interpretive framework instead of merely “receiving” the supposedly self-evident positions of municipal law. Bacon continues to extoll the presentation of reason in the next paragraph when he claims that Thomas Littleton commended “but two things to the professors of the law…the one, the inquiring and searching out the reasons of the law; and the other, the observing of the forms of pleadings” (“Speech” 578). In unveiling the principles at stake, however, Bacon demonstrates that artful presentation, not the transparency of the law as Coke would have it, is what makes the shadow stick to the body. Moreover, Bacon’s presentation of the relationship between reason and the content of the law suggests that he recognizes that the law’s indeterminacy necessitates some sort of method of not only interpretation, but also of delivery. For Bacon, this method consists of not only locating the reasoning and form undergirding specific laws, but also of presenting the reasons to his audience of peers in a persuasive manner. Put another way, Bacon’s speech conveys that laws do not “speak”; they must be spoken about by the jurist, who has the capacity to present the laws in any which way.

In addition to the distinct presentation of the case, Bacon also uses maxims more for their formal power and less for their authoritative content. Similar to other common-law maxims, Bacon’s maxims were still derived from existing case law and he still thought of maxims as undeniable truths. Moreover, Bacon, like other common lawyers, saw maxims as a means to generate certainty, even though he wanted to localize the principle instead of the holding in the cases (Stein 172–3). Despite the apparent scientism, however, Bacon’s treatment of maxims in Calvin’s Case conveys the
importance of prudence and presentation. For example, after describing the law as an organ in the king’s two bodies, Bacon cites one of Bracton’s maxims, “lex facit quod ipset sit rex” [the law is what makes the king] (“Speech” 580). However, while this would be the end of the argument for Coke because he treated maxims as definitive judgements that did not need any further elaboration, Bacon uses the maxim to ruminate on the relationship between king and body politic, claiming that the law defines the title, but does not make the king’s person. He ends the contention by reasserting that the king is solutus legibus, or unbound by laws, even as his statutes must fit within the existing law (“Speech” 580). Another example of Bacon’s distinct use of maxims occurs when he explains one of the statutes that the defense uses to support its conclusions. After citing the statute, he claims “qui haeret in litera, haeret in cortice” [he who sticks to the letter, sticks to the bark], chastising the defense’s literalist reading of the statute (“Speech” 586). The metaphor of “sticking to the bark” then structures his refutation, as he punctuates the end of the section by claiming “if the bark make for them, the pith makes for us; for the privilege of liberty, which the statute means to deny to aliens of entertaining apprentices, is denied to none born within the king’s obedience” (“Speech” 586). In this way, Bacon employed maxims rhetorically, or as a way to “[tie] down the particulars of an argument” (Vickers 60). According to Vickers, throughout Bacon’s writings, he strategically employs maxims and aphorisms, which he regards as synonymous, to garner intellectual authority as well as to stimulate further thought and engagement with the audience (79). Thus, though Bacon aimed to systematize the common law into discrete maxims for the sake of intellectual certainty, in speeches he used maxims for their authority and for their rhetorical power. Maxims enabled Bacon to draw attention to particular parts of an argument with the authority and aesthetic value of the form.

Bacon’s speech also diverges from common-law protocol by performing equitable interpretation, or by drawing examples from outside the realm of common law. For example, after introducing his argument’s three proofs—allegiance, the king’s natural capacities, and five parliamentary acts—Bacon ties allegiance to the king’s person, claiming, “allegiance cannot be applied to the law or kingdom, but to the person of the king” (“Speech” 595). He supports this contention by demonstrating that the ad fidem Regis tradition is derived from natural law, which predates positive laws, dating back to “the original age of kingdoms … governed by natural equity” (“Speech” 596). The king’s natural equity referred to the belief that before positive law, the king ruled through his individual will and conscience (Bacon, “Speech” 596). However, like many legal and political terms associated with the king’s two bodies, equity had a double meaning that common lawyers such as Edmund Plowden had seized to advance the position of judges (Hutson 132). In sixteenth- and seventeenth-century England, equity could also refer to a
rhetorical mode of interpretation whereby the judge was free to draw from a variety of resources to come to an ethical conclusion (Hutson 132). Bacon surely recognized the double meaning because he constantly worked to advance the equity courts and, as evidenced by his performance in Calvin’s Case, he made use of a variety of topics to formulate conclusions. As such, in illustrating natural equity, Bacon employs an equitable mode of interpretation by appealing to historical examples of natural subjection to sovereign power outside of the common law. Drawing on expansive inventive resources, from Aristotle, to Xenophon, to the Bible, Bacon illuminates the underlying natural equity embodied by sovereign power prior to the rule of law (“Speech” 578–79). By making natural equity one of the central reasons for ad fidem Regis, Bacon’s version of the king’s two bodies underscores the maxim quod principi placuit and Rex est lex loquens over lex regia—the king speaks the law before any sort of civil society transfers power to him. Importantly, however, Bacon’s performance highlights his own position as equitable interpreter of the law.

In the second proof, regarding the king’s natural capacities, Bacon continues to highlight his own role in interpreting and presenting the law. Beginning the second proof, Bacon refers back to his introduction where he used the king’s two bodies to show that the king’s natural person animates and activates the laws of the realm. Contrasting Coke’s figuration of the king’s two bodies, Bacon posits that the king, not the law, is the agent that animates the body politic. He claims,

To speak therefore of Law, which is the second part of that which is to be spoken of by way of inducement. Law no doubt is the great organ by which the sovereign power doth move, and may be truly compared to the sinews in a natural body, as the sovereignty maybe compared to the spirits: for if the sinews be without the spirits, they are dead and without motion; if the spirits move in weak sinews, it causeth trembling: so the laws, without the king’s power, are dead; the king’s power, except the laws be corroborated, will never move constantly, but be full of staggering and trepidation. (“Speech” 580)

Bacon’s speech describes the law as an organ, while the king is the spirit that animates the organ. Without the king the laws are dead, but without the laws the king is only weakened and left staggering. Thus, in contrast to Coke’s figuration of the king’s two bodies, Bacon’s description of the doctrine remains strongly in line with its royalist iteration that grants the king himself the mystical capacity to move the body as a whole. Despite this figuration, however, it is here that Bacon’s speech begins to make his role as an equitable interpreter in constructing the king’s two bodies most obvious. In the next sentence Bacon states, “and although the king, in his person be solutus legibus, yet his acts and grants are limited by law, and we argue them every day” (“Speech” 580). In this pithy remark, Bacon centers the role of judicial argument and presentation. Here, the law does not bind the king, but
instead the lawyers—the arguers—act in ways that can limit or expand the acts of the king every day.

In describing in detail the king’s two capacities—as natural person and body politic—Bacon’s speech makes sure to guide the audience to the correct interpretation of the doctrine. Citing Plowden’s report on the Duchy, Bacon maintains,

Now then to see the mutual and reciprocal intercourse, as I may term it, or influence or communication of qualities, that these bodies have the one upon the other. The body politic of the crown induceth the natural person of the king with these perfections: that the king in law shall never be said to be within age; that his blood shall never be corrupted; and that if he were attainted before, the very assumption of the crown purgeth it; that the king shall not take but by matter of record, although he take in his natural capacity as upon a gift in tail; that his body in law shall be said to be as it were immortal; for there is no death of the king in law, but a demise, as it is termed. (“Speech” 597)

Even though this quotation could be used—and was used by readers such as Coke and John Selden, who found constitutionalism in Plowden’s writing—to call attention to the power of the common law in endowing the king’s personal body with perfections, Bacon frames Plowden’s words with an assertion of mutuality and reciprocity between law and king (Kahn, Wayward Contracts 32–33, 41). As such, instead of drawing out the role of the law in making the king sovereign and divine, Bacon’s speech preempts this possible inference by directing the audience’s attention to the interdependency of the parts of the body.

Bacon’s presentation of the third proof similarly values correct interpretation over information. In the third proof, Bacon glosses five acts of Parliament which document subjection to the king’s person. Instead of supporting the proof by reading the acts, as common lawyers would have done to let the law stand by itself, Bacon refutes the defense’s use of the acts by picking apart how they interpreted key words that stand in for parts of the king’s two bodies. In other words, Bacon presents the acts by modeling their correct interpretation for the audience. For example, referring to the banishment of Hugh Spencer during the reign of Edward II, he quotes the defense, saying, “Homage and oath of the subject is more by reason of the crown than by reason of the person of the king” (“Speech” 599). Instead of using counterexamples derived from past writs and statutes as Coke might have done, Bacon takes issue with the ambiguity of the term crown, which, as Kantorowicz showed, could stand in for both king’s person and for corporation (Bacon, “Speech” 599; Kantorowicz 340). Relying on common usage of the word—which Kantorowicz shows was highly ambiguous—Bacon claims, “therefore I assure myself, that those that now use and urge that distinction, do as firmly hold, that the subjection to the king’s person and to the crown are inseparable” (“Speech” 599). He goes on to add that the defense’s analysis “may easily slide into an absurdity” (“Speech” 599). Closing his analysis of the first act of Parliament, he claims that even the
n obility being banished through the act of Parliament at stake would gasp at the defense’s assertion that “subjection is owing to the crown rather than to the person of the king” (“Speech” 599). Thus, instead of using analogous cases to refute the defense, Bacon models the “correct” interpretation of “crown” before admonishing the defense for their uncouth use of the word. Even though the term “crown” was, in fact, an ambiguous term that could refer to the king’s person, the body politic, or the physical property incorporated in the realm, Bacon contends that in this act of Parliament, it undeniably refers to the king’s person. In other words, the crown is the king’s person because Bacon portrays it this way and because it is prudent to do so.

After briefly glossing the following four acts and pointing out how the defense was deceived by the “colours,” or the outward, literal appearance of the acts, Bacon ends his speech by encouraging the jury to use proper judgement to decide in favor of Calvin. He states, “some things I may have forgot, and somethings perhaps I may forget willingly; for I will not press any opinion or declaration of late time which may prejudice the liberty of this debate; but “ex dictis, et ex non dictis” [from what was said and from what was unsaid], upon the whole matter I pray judgement for the plaintiff” (“Speech” 606). This ending is important for two reasons. First, Bacon centers the role of the judge’s faculty for deliberation and interpretation. By considering the said and the unsaid, the judges must exercise their capacity for equitable interpretation and come to a conclusion after weighing all of the considerations. Second, Bacon also centers his own role in framing the case, saying that he will not introduce new arguments that may push the jury to his side. Accordingly, even as Bacon continuously utilizes the doctrine of the king’s two bodies for topical resources that support the plaintiff, Bacon’s meta-analysis of his own case construction sheds light on the artifice of presenting a case. Though, as Aristotle maintained, rhetoric is most effective when it conceals its own artifice, Bacon’s performance of legal prudence continuously reveals the artful manipulation of the doctrine and the case as a whole (On Rhetoric, 1404b 2–4).

While the English common law emerges as the dominant force in the king’s two bodies in Coke’s report, in Bacon’s speech, the king’s natural body is the primary agent in the fraught trope, but only because it works in Calvin’s Case. Though both authors treat the doctrine symbolically, as topos for legal arguments, Bacon’s speech makes its symbolicity evident by constantly referring to his own role in the composition of not only the case, but the law itself. Bacon’s speech presents the trope as a source of invention and as a legal fiction mobilized to prove a case in that instance.

Conclusion

This essay has argued that Coke’s report on Calvin’s Case and Bacon’s speech for the plaintiff differ in their rhetorical handling of the doctrine of the king’s
two bodies despite coming to the same conclusion. The ambiguity of the doctrine combined with the topical resources of early modern legal discourse allowed for disparate constructions of the king’s two bodies in ways that could support and displace the absolute sovereignty of the king’s personal body. As such, both texts are early contributions to the eventual figurative death of the king’s personal body as the ultimate source of sovereign power. That is, both texts, in their own way, preempt the construction of what Kahn terms the “anti-royalist idiom” that ultimately influenced anti-royalist discourse propelling the English Civil War, as well as to social-contract theories of governance (Wayward Contracts, 33).

Coke’s construction of the doctrine of the king’s two bodies provides rhetorical resources to a developing anti-royalist idiom by constructing the common law as the ultimate source of power that moves the king’s body as a whole. The report does this by portraying the English common law—its maxims, writs, and reports—as the final source of authority in deciding the case, as well as by casting the king as the object of the common law. Moreover, even when referring to natural law, the report casts the common law as the overarching body of law that renders natural law relevant to the case. As Pocock has shown in his history of the Whig rebellion that influenced the Civil War, Coke’s construction of the common law as not only preceding the monarchy, but also as displacing its figuration as the ultimate source of sovereignty, provided invaluable rhetorical resources for combating absolute theories of monarchical sovereignty. In the latter half of the seventeenth century, the English common law became an invaluable rhetorical weapon against absolute monarchical sovereignty (Kahn, Wayward Contracts 42).

In addition to constructing the common law as the ultimate sovereign, Coke’s report on Calvin’s Case also worked to bind the king’s prerogative to his location in a specific territorial jurisdiction, effectively subordinating the monarch’s absolute power to a bounded space. This development in theories of territorial jurisdiction helped to facilitate the development of social contract modes of governance, even as it ultimately subordinated subjects to the English common law. Critical legal scholar Richard T. Ford claims that the early modern development of territorial jurisdiction was a necessary movement in the epistemological shift from status to contract in modern political discourse (846). Developing out of modern cartography, the growing ideology of rational, humanist government, and the consolidation and expansion of the English common law, jurisdictional identities based on political territory largely displaced identities based on kinship or status in a naturalized hierarchy (Ford 881). In this way, the kind of territorial jurisdiction developed by Coke in his report on Calvin’s Case ended up displacing the adherence to the ad fidem Regis doctrine that the case’s holding furthers. Coke’s construction of the law’s place in the doctrine of the king’s two bodies aided in the construction of not only a political subject that is subjected to a law that precedes a monarch’s sovereign power, but also to a political subject
that is subjected to a territorially defined law that depersonalizes and limits the sovereign’s power. Thus, Coke’s report contributed to an anti-royalist idiom by displacing the power of the monarch to act outside of the field of English common law. However, despite displacing the centrality of the monarch’s person in the king’s two bodies, Coke’s report still upholds the notion that there is an ultimate source of sovereignty—in the form of the English common law—to which we must subject ourselves. In other words, Coke’s report contributes to the kind of anti-royalist idiom that led to the English Civil War and the subordination of monarchical sovereignty. However, the report did not necessarily locate sovereignty in the People, but instead in a common body of laws that needed to be interpreted by expert jurists.

Though Coke’s report replaces one ultimate source of sovereignty (the monarch’s person) with another (the common law), Bacon’s construction of the doctrine of the king’s two bodies draws attention to the artifice of sovereignty—a key ideological ingredient leading to the English Civil War, as well as to the emergence of social-contract discourse at the end of the seventeenth century. Put another way, Bacon’s rhetoric aided in the delineation of what Quentin Skinner calls the fictional theory of sovereignty put forth by authors such as Thomas Hobbes, who described the origin of state power as a collective mythology. As such, by highlighting his own role in constructing the law, Bacon’s performance of legal prudence exposes the artifice of the doctrine of the king’s two bodies.

In exposing the artifice of the king’s two bodies, Bacon’s speech participates in the creation of an early modern “metalinguistic self-consciousness” that allowed for a new way of thinking about rhetoric and its effect on political subjectivity. In her literary history of early modern social-contract discourse, Kahn maintains that the “metalinguistic self-consciousness,” afforded by rhetorical practices such as mimesis and deliberative argument on both sides of the question, allowed early social-contract thinkers such as Hobbes and Milton a lens through which to reject natural subjection to sovereignty as well as to imagine new modes of participating in political life (Wayward Contracts 1–10). This self-consciousness compelled authors to create not just an anti-royalist idiom, but also an entirely new political imagination that was fundamentally rhetorical (1–2). Thus, rather than assuming that government was natural, early modern writers argued that the state was an artifact that was brought into being “by a powerful, if sometimes fictional speech act” (2). Though Bacon’s speech is certainly not a part of social-contract discourse, his performance of legal prudence reveals the artifice of the king’s two bodies as an emblem of naturalized sovereignty. This kind of rhetoric—the kind that recognizes its own rhetoricity—would later be seized by Thomas Hobbes and John Locke in their treatises on the fictional construction of the state. Thus, both jurists subvert the absolutist
interpretation of the king’s two bodies, but Bacon provides the rhetorical resources for imagining a new and different mode of political membership.

Notes

1. In this essay, I employ the terms subject and subjectship to describe the kind of political membership that Calvin’s Case (1608) aimed to settle. Polly Price maintains that “citizen” was not used in English legal discourse in 1608, “and indeed in most of Europe ‘citizen’ was not used as a legal term outside of the Byzantine empire until well into the modern period” (87).

2. Calvin’s Case is named after the plaintiff, Robert Calvin. “Calvin,” however, was a corruption of “Colville”; he was actually born “Robert Colville” and his last name was recorded incorrectly as Calvin. See Price 81–2.

3. Coke’s depiction of the law’s body also references First Corinthians 2.9: “But it is written, Eye hath not seen, nor ear heard, neither have entered into the heart of man, the things which God hath prepared for them that love him.” Though this essay will not elaborate on the fruitful connections between legal rhetoric and Reformation or Pauline rhetoric during the Renaissance, Debora K. Shuger has shown that the Bible remained a core cultural source of invention in England well into the seventeenth century. Moreover, according to both Shuger and Ernst Kantorowicz, St. Paul’s depiction of Christ’s body was a central source of inspiration in the depiction of the king’s body and the body politic.

4. Bacon’s description of the king’s two bodies here is also reminiscent of Paul’s description of Christ’s body in First Corinthians 12: “Speech”.

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Works Cited


Kantorowicz, Ernst H. The King’s Two Bodies: A Study in Medieval Political Theology. Princeton UP, 1957.


