

Law and Empire in English Renaissance Literature

BRIAN C. LOCKEY



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LAW AND EMPIRE IN ENGLISH RENAISSANCE LITERATURE

Early modern literature played a key role in the formation of the legal justification for imperialism. As the English colonial enterprise developed, the existing legal tradition of common law no longer solved the moral dilemmas of the new world order, in which England had become, instead of a victim of Catholic enemies, an aggressive force with its own overseas territories. Writers of romance fiction employed narrative strategies in order to resolve this difficulty and, in the process, provided a legal basis for English imperialism. Brian C. Lockey analyzes works by such authors as Shakespeare, Spenser, and Sidney in the light of these legal discourses, and uncovers new contexts for the genre of romance. Scholars of early modern literature, as well as those interested in the history of law as the British Empire emerged, will learn much from this insightful and ambitious study.

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For Olivia and Benjamin

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Introduction: Romance and the ethics of expansion

On November 10, 1580 at the Golden Fort in Smerwick on the coast of Ireland, Lord Deputy Arthur Grey of Wilton ordered his troops to execute 600 Italian and Spanish soldiers who had just surrendered. These continental soldiers had recently occupied the fort in order to assist the Earl of Desmond's rebellion against English rule. Reporting to Queen Elizabeth, Lord Grey later wrote that, after the surrender, he purposefully sent into the fort "certain bands, who straight fell to execution. There were 600 slain."¹ According to the official report to Sir Francis Walsingham, "all the Irish men and women [were] hanged, and four hundred and upwards of Italians, Spaniards, Biscayans, and others put to the sword."² The slaughter occurred despite the fact that, according to many witnesses and popular tradition, the Italian commander negotiated an agreement with Lord Grey under which his soldiers would be taken alive and ultimately allowed to return safely to Spain.³

One way of viewing this atrocity is that it was one unremarkable massacre in a long series of such episodes that comprised the "scorched-earth" strategy that Grey employed to put down the Earl of Desmond's rebellion.⁴ Even so, contemporary standards on military discipline were quite clear in prohibiting the execution of prisoners of war. Such

¹ Lord Grey to Queen Elizabeth, 12 November, 1580, *Calendar of State Papers, Ireland 1574–85* (ed. Hans Claude Hamilton (London: Longmans, Green, Reader, and Dyer, 1867), p. lxxiii. See also pp. lxix–lxxvi, 267.

² Official Report to Walsingham, 11 November, 1580, cited in Alfred O'Rahilly (ed.), *The Massacre at Smerwick* (1580) (New York: Longmans, 1938), pp. 4–5.

³ See News from Madrid sent to Rome, 1580; Letter of Dr. Sanders, 9 January, 1581, both cited in O'Rahilly (ed.), *The Massacre at Smerwick*, pp. 6–7; 7–8. For other accounts, see pp. 8–21, and for O'Rahilly's conclusions, see pp. 32–34. See also Bernadino de Mendoza to the King of Spain, 11 December, 1580, *Calendar of State Papers, Spain, 1580–86*, ed. Martin A. S. Hume (London: Eyre and Spottiswoode, 1896), vol. 111, pp. 69–70.

⁴ G. A. Hayes-McCoy, "The Completion of the Tudor Conquest, and the Advance of the Counter-Reformation, 1571–1603," in *A New History of Ireland*, ed. T. W. Moody *et al.* 9 vols. (New York: Oxford University Press, 1976), vol. 111, p. 108.

standards point to the existence of a distinction between real warfare and its ideal or juridical incarnation, a distinction found throughout European thought during the Renaissance. In imperial Spain, for example, the brutal and immoral actions of the conquistadors stood in stark contrast to the moralistic just-war theory formulated by contemporary Spanish Dominicans, who condemned the cruelty of the New World conquests in lucid juridical terms.⁵ England followed Spain in this respect as it did in so many others. Comments by Barnabe Riche are a case in point. Riche, himself an experienced English soldier, was at the time of the Smerwick massacre on duty nearby in Limerick “with certaine companies of English Souldiers.”⁶ Later in the decade, his name appears in the rolls of Sea Captains alongside the name of Sir Walter Raleigh, then a young English officer who had either witnessed the Smerwick massacre or had been a major participant in the killing itself.⁷ Despite being involved in the very same military campaign, however, Riche’s recommendations for the treatment of prisoners of war were very different from Grey’s treatment of the Italian and Spanish prisoners. In the *Allarme to England* (1578), Riche’s early tract on the importance of military discipline, Riche exalts those military commanders who treated prisoners of war humanely and condemns those who slew them. He writes in special praise of Marcus Aurelius for “ministring of comfort, to such as [the Romans] had alreadie vanquished and subdued.”⁸ Likewise in 1589, an Italian civil lawyer named Alberico Gentili, who at the time of the Smerwick massacre had just begun teaching law at Oxford University, wrote an important legal treatise in which he outlined both the *ius ad bellum* [justification for war] as well as the *ius in bello* [laws followed

⁵ See especially, Francisco de Vitoria, *On the American Indians*, in *Political Writings*, ed. Anthony Pagden and Jeremy Lawrance (New York: Cambridge University Press, 1991), pp. 287–88, and Francisco Suarez, *A Work on the Theological Virtues: Faith, Hope, and Charity*, in *Selections from Three Works*, ed. James Brown Scott, 2 vols. (Oxford: Clarendon Press, 1944), vol. 11, p. 826. For the origins and history of this tradition, see Frederick H. Russell, *The Just War in the Middle Ages* (New York: Cambridge University Press, 1975), vol. 11, esp. pp. 258–91; James Turner Johnson, *Just War Tradition and the Restraint of War, A Moral and Historical Inquiry* (Princeton, NJ: Princeton University Press, 1981), esp. pp. 85–121; Paul Ramsey, *War and the Christian Conscience: How Shall Modern War be Conducted Justly?* (Durham, NC: Duke University Press, 1961); Maurice H. Keen, *The Laws of War in the Late Middle Ages* (Toronto: University of Toronto Press, 1965); and Michael Walzer, *Just and Unjust Wars, A Moral Argument with Historical Illustrations* (New York: Basic Books, 1977).

⁶ Barnabe Riche, *The Irish Hubbub* (London: 1617), p. B2. See Thomas Cranfill and Dorothy Hart Bruce, *Barnaby Rich, A Short Biography* (Austin, TX: University of Texas Press, 1953), pp. 28–29.

⁷ Cranfill et al., *Barnaby Rich*, pp. 36–37.

⁸ Barnabe Riche, *Allarme to England, foreshewing what perilles are procured, where the people liue without regard of Martiall law* (London: 1578), p. 1^v.

during warfare]. In the section on the laws followed during warfare, he condemned unequivocally the slaying or enslaving of prisoners of war, singling out for particular condemnation King Henry V's massacre of the French prisoners at the Battle of Agincourt.⁹

It may ultimately be some consolation that such views, which championed ethical rules for warfare, were contemporaneous with Grey's bloody act. It is also perhaps reassuring to find that later English commentators expressed discomfort that an English officer of Grey's stature had supposedly ordered surrendering enemy troops to be executed. William Camden reported that even Queen Elizabeth, "who from her heart detested to vse cruelty to those that yielded, wished that the slaughter had not beene, and was with much difficultie appeased and satisfied about it."¹⁰ Grey's secretary, the poet Edmund Spenser, claiming to have been present at the massacre, also understood the severity of the charges being made against his patron. In *A View of the Present State of Ireland*, his spokesman, Irenius, vehemently denied those reports that Grey "had promised [the prisoners] lief" or even that "he did put them in hope theareof." Spenser was more legalistic than most in justifying the massacre, claiming that Grey had declared that those executed "Coulede not iuslye pleade either Custome of war or lawe of nacions, for that they weare not anie lawfull enemies" since Spain and England were not officially at war.¹¹

And yet, the massacre at Smerwick is troubling as much for what it conceals about English cruelties as for what it reveals, for it is now clear that such massacres were all too commonly carried out against the Irish without any need of such legalistic justification. As we shall see, it is in this respect that the onset of British imperialism in Ireland differs markedly from the prior Spanish example. Alfred O'Rahilly, the Irish republican leader and academic who in 1938 analyzed the Smerwick massacre in great detail, summarized the situation with the following cynicism: "all this pother about slitting the throats of 600 prisoners by these romantic English gentlemen would, of course, never have arisen if

⁹ Alberico Gentili, *De Jure Belli Libri Tres* [1588–89], ed. James Scott Brown, trans. John C. Rolfe, intro. Coleman Philipson, vol. 1: photographic reproduction of 1612 edition, vol. 11: English Translation (Oxford: Clarendon Press, 1933), vol. 11, p. 212.

¹⁰ William Camden, *Annales: the true and royall history of the famous empress Elizabeth Queene of England France and Ireland &c.*, trans. Abraham Darcie (London, 1625), p. 699. Camden, *Annales Rerum Anglicarum et Hibernicarum, Regnante Elizabetha* (London, 1615), p. pp4^v.

¹¹ Edmund Spenser, *A View of the Present State of Ireland*, in *The Works of Edmund Spenser: A Variorum Edition*, ed. Rudolf Gottfried (Baltimore: The Johns Hopkins University Press, 1949), vol. 1x, lines 3358–59, 3367–70.

the victims had been Irish: the deed in that case would simply have been the ordinary procedure calling for no comment.”¹² Of course, O’Rahilly was right. For a large contingent of Englishmen involved in the planning and administration of settlements in Ireland, any legal rights or benefits that the inhabitants might have ideally had either to their own land or to charitable treatment went simply unacknowledged. Similarly, Richard Hakluyt’s *Discourse of Western Planting* (1584) cites many reasons why settling the New World would be to England’s advantage but very little in the way of benefits that would accrue to the inhabitants themselves.¹³ Especially within the context of the Irish Conquest, England produced nothing equivalent to the Spanish just-war theorists who sometimes agonized over the morality of Spain’s treatment of the Amerindians. There was no English equivalent to Bartolomé de las Casas, who bore witness to and condemned his countrymen’s ravages of the New World in juridico-religious terms. Neither was there an English version of so systematic a thinker as Francisco de Vitoria, who soberly evaluated Spanish claims to the New World in terms of natural and divine law, nor for that matter, a Juan Ginés de Sepúlveda, who used similarly constructed arguments in order to justify the Spanish conquests.¹⁴

In the chapters that follow, I show that, while one might expect religious or legal authorities to have formulated legal rationales for English expansionism, it was actually writers of romance fiction who employed juridical standards in order to evaluate acts of foreign intervention or conquest. They intended their works of fiction to comment narratively on recent international events in which English national identity was pitted against the identities of European and non-European polities and nations. In this respect, this book should be seen within the context of recent literary criticism on the intersections between Renaissance literature and

¹² See O’Rahilly, *Massacre at Smerwick*, p. 31.

¹³ See Richard Hakluyt, “That the Queene of Englandes Title to all the West Indies or at the Leaste to as moche as is from Florida to the Circle articke is more lawfull and righte then the Spaniardes or any other christian Princes,” *The Original Writings & Correspondence of the Two Richard Hakluyts*, intro. E. G. R. Taylor, DSc (London: The Hakluyt Society, 1935), vol. 11, pp. 290–97.

¹⁴ See Bartolomé de las Casas, *Apologia*, in *Obras Completas*, ed. Ángel Losada (Madrid: Alianza, 1988); Francisco de Vitoria, *On the American Indians*, pp. 231–92; and Juan Ginés de Sepúlveda, *Demócrates Segundo, o, de las justas causas de la guerra contra los indios*, ed. Ángel Losada (Madrid: Consejo Superior de Investigaciones Científicas, Instituto Francisco de Vitoria, 1984). See also Sepúlveda’s intellectual antecedent and main influence: John Major, *In secundum librum sententiarum* (Paris: 1519). For discussion of these writers, see Anthony Pagden, *The Fall of Natural Man, The American Indian and the Origins of Comparative Ethnography* (Cambridge: Cambridge University Press, 1986), pp. 15–108, and most recently Pagden, *Lords of All the World, Ideologies of Empire in Spain, Britain, and France, c.1500–c.1800* (New Haven, CT: Yale University Press, 1995), pp. 29–62.

various early modern discourses of conquest, expansionism, empire, and colonialism. In the last decade and a half, much of this criticism has focused on the representational component of rival national and racial identities or, following a loosely defined deconstructive logic, on the linguistic structure of binary oppositions (self/other, civilized/barbarian, natural/unnatural).¹⁵ Such work has shown how a privileged concept of whiteness, of civility, and of Christianity depends to a large degree on negating a figure of otherness.¹⁶

By uncovering how barbaric portrayals of the conquered or colonized subject have been integral to ethnocentrism and expansionism, such criticism has effectively deconstructed the insidious production of “otherness” that has propelled European imperialism throughout history. But ironically, the strength of this methodology is also its weakness. As one recent critic has pointed out, because they surface in such a broad array of literary and cultural production, early modern ideologies of difference rarely involve much specificity.¹⁷ By virtue of the lens through which the outside world was viewed, the outsider from one part of the world or one point in history is presented as sharing manifold characteristics in common with the outsider from another part of the world or point in history.¹⁸ More important to my own concerns in this book, analysis of oppositional representations or of linguistic binaries rarely interrogates and often even generates a generalized and non-specific notion of English civility. It may be true, for instance, that Irish “barbarism” helps to define the English as “civil,” but how does this insight reveal anything about the specific mechanisms of English expansion? This question seems especially important given the fact that the exportation

¹⁵ See Emily Bartels, *Spectacles of Strangeness: Imperialism, Alienation, and Marlowe* (Philadelphia: University of Pennsylvania Press, 1993); Patricia Palmer, *Language and Conquest in Early Modern Ireland: English Renaissance Literature and Elizabethan Imperial Expansion* (New York: Cambridge University Press, 2001); Sheila T. Cavanagh, *Cherished Torment: The Emotional Geography of Lady Mary Wroth's Urania* (Pittsburgh, PA: Duquesne University Press, 2001); David Read, *Temperate Conquests, Spenser and the Spanish New World* (Detroit, MI: Wayne State Press, 2000); Stephen Greenblatt, *Marvelous Possessions: The Wonder of the New World* (Chicago: University of Chicago Press, 1991), esp. pp. 8–25; Kim F. Hall, *Things of Darkness: Economies of Race and Gender in Early Modern England* (Ithaca, NY: Cornell University Press, 1995), esp. pp. 1–24; James Shapiro, *Shakespeare and the Jews* (New York: Columbia University Press, 1996); Arthur Little, *Shakespeare Jungle Fever: National-Imperial Re-Visions of Race, Rape, and Sacrifice* (Stanford, CA: Stanford University Press, 2000); and Andrew Hadfield, *Edmund Spenser's Irish Experience, Wild Fruit and Salvage Soyl* (New York: Oxford University Press, 1997), esp. pp. 4–12.

¹⁶ See Homi K. Bhabha, *The Location of Culture* (New York: Routledge, 1994), pp. 1–18.

¹⁷ Ania Loomba, *Shakespeare, Race, and Colonialism* (New York: Oxford University Press, 2002), p. 42.

¹⁸ Hall, *Things of Darkness*, p. 7; Hadfield, *Spenser's Irish Experience*, pp. 25–29.

and expansion of “Englishness” or later “Britishness” necessitated a complex edifice of legal, ethical, economic, and bureaucratic infrastructure.

In effect, an exclusive focus on representations and linguistic binaries tends to ignore or take for granted the domestic legal mechanisms and ethical paradigms that justified the expansionist project. Within the analysis of early modern writings on war, conquest, and colonialism, issues of law and ethics have largely been overlooked as if any early modern legal discourse in such international contexts was at best secondary and at worst a ruse employed to justify violent aggression against the other. Recently, however, literary scholars have begun to show that accounts of early modern literature and culture that omit discussion of the legal apparatus are incomplete, especially when one considers that so many English writers of political and poetic works were themselves lawyers.¹⁹ Equally significant, a small number of recent historians and literary critics, pointing to the unwillingness of much modern imperial historiography to consider the linked formation of the English/British nation-state and the British Empire, have emphasized the necessity of examining how domestic political and legal contexts intersect with the imperial context.²⁰

This book examines this intersection within a number of early modern fictional works. *Law and Empire in English Renaissance Literature* begins by illustrating the way in which romances incorporate a prevailing tension that existed in English domestic culture between the competing legal traditions of continental law and common law. As I show, the conflict between these two legal discourses played out across a number of related controversies involving competing court jurisdictions, legal ideologies, and religious and philosophical arguments. In the early sixteenth century,

¹⁹ See Charles Ross, *Elizabethan Literature and the Law of Fraudulent Conveyance: Sidney, Spenser, and Shakespeare* (Burlington, VT: Ashgate, 2003); Luke Wilson, *Theatres of Intention: Drama and Law in Early Modern England* (Stanford, CA: Stanford University Press, 2000); Constance Jordan, *Shakespeare's Monarchies, Ruler and Subject in the Romances* (Ithaca, NY: Cornell University Press, 1997); Peter Goodrich, *Law in the Courts of Love, Literature and Other Minor Jurisprudences* (New York: Routledge, 1996); and Elizabeth Fowler, “The Failure of Moral Philosophy in the Work of Edmund Spenser,” *Representations* 51 (Summer 1995), 47–76. Two recent exceptions to this trend are David J. Baker, *Between Nations, Shakespeare, Spenser, Marvell and the Question of Britain* (Stanford, CA: Stanford University Press, 1997); and Theodore Meron, *Henry's Wars and Shakespeare's Laws: Perspectives on the Law of War in the Later Middle Ages* (New York: Oxford University Press, 1993).

²⁰ David Armitage, *The Ideological Origins of the British Empire* (New York: Cambridge University Press, 2000), p. 13. For a recent application of Armitage's approach to Renaissance literary texts, see Mark Netzloff, *England's Internal Colonies: Class, Capital, and the Literature of Early Modern English Colonialism* (New York: Palgrave Macmillan, 2003).

it took the form of a jurisdictional battle between supporters of Chancery and supporters of the common-law courts, later to emerge as yet another jurisdictional conflict between the civilians and common lawyers. The conflict ultimately transcended the limited sphere of the law courts to become a broad controversy involving the Catholic doctrine of natural law and Protestant nationalism. I focus on the English romances of this period as narrative, dramatic, or poetic engagements in this debate.

The reader will note that this book is organized into two parts. The first part, “Romance and Law,” takes up the problem of the genre itself, specifically illustrating how a form condemned for frivolity was able to accommodate the ethical and political issues of transnational justice and the laws of war. I begin by focusing on the constituent parts of the romance genre, showing how the typical romance of this period actually comprises three conventions: the chivalric code, the pastoral, and the “mirror for princes” tradition. I go on to show how such writers as Sir Philip Sidney employed these conventions in order to define a concept of natural law that could be used to justify the notion of charitable conquest. Other writers including Barnabe Riche, William Warner, and Edmund Spenser perceived natural law doctrine to be antithetical to domestic English legal traditions. As a result, they either transformed English law into something consistent with such universals or condemned English law as altogether corrupt.

The second part of the book, entitled, “The Prerogative Courts and the Conquest Within,” focuses more specifically on how relations between the common-law courts and their rivals influenced the genre of romance. In particular, I consider the way in which Renaissance common-law jurists viewed the competing jurisdictions – of Chancery, the civil-law courts, the canon-law courts, and the Star Chamber – as paradoxically constituting a threat of “conquest” that originated from within the realm. After showing how the fear of conquest became internalized during the sixteenth century, I use Shakespeare’s *Cymbeline* and Lady Mary Wroth’s *The Countess of Montgomery’s Urania* as literary contexts in which to explore how later romances could present England as responsible for imposing a version of natural law on other nations while at the same time, and on the basis of native English legal traditions, justifying Britain’s subversion of those same universal laws. The uneasy compromise drawn between the two prevailing legal ideologies stresses the universal and civilizing effects of natural law at work within both charitable and violent conquest while preserving the separate identity of English common law and protecting it from subjection to natural law discourse.

Why did English writers of romance fiction, rather than English jurists (as one might expect), generate legal justifications for English expansion? The most direct response to this question is that the formal characteristics of the romance genre were consistent with the forms of just-war theory that often fell outside the gamut of traditional English legal thought. But to arrive at a comprehensive response, one also has to examine the insular character of Renaissance English law, which often caused English jurists to ignore legal matters involving international conflict. Although pockets of civil lawyers thrived within the complex English legal system, English common lawyers dominated the Renaissance legal scene and the law that they practiced was ill-suited to the consideration of transnational conflict. Indeed, whereas the civil lawyers' education in the *Corpus Iuris Civilis* and their prominent position in such comparatively marginal venues as the High Court of Admiralty prepared them to think more deeply about international affairs, the common lawyers focused narrowly on the artificial reasoning and customs of "native" precedent-based law.²¹

Thus, when the common-law jurist, Sir Edward Coke, who was so prolific when it came to defining the nature of English law, attempted to address the topic of conquest in legal terms, he seems to be writing from the standpoint of an earlier more religiously polarized era. As a point of comparison, Spanish jurists from a few generations earlier such as Vitoria had unequivocally forbade religious difference as a justification for war, but Coke writes as if he were completely unaware of such arguments. As late as 1608, he writes in Calvin's Case that "all Infidels are in Law *perpetui inimici*, perpetual Enemies (for the Law presumes not that they will be converted, that being *remota potentia*, a Remote Possibility) for between them, as with Devils, whose Subjects they be, and the Christian, there is perpetual Hostility and can be no Peace."²² In the same report, he goes on to posit a great "Diversity between a Conquest of a Kingdom of a Christian King, and the Conquest of a Kingdom of an Infidel." A Christian kingdom that is acquired by conquest does not automatically

²¹ J. W. Tubbs, *The Common Law Mind: Medieval and Early Modern Conceptions* (Baltimore, MD: The Johns Hopkins University Press, 2000), pp. 112–13, 141–72; Glen Burgess, *The Politics of the Ancient Constitution: An Introduction to English Political Thought, 1603–1642* (University Park, PA: Penn. State University Press, 1992), pp. 121–30.

²² Sir Edward Coke, *The Reports of Sir Edward Coke kt. in English, compleat in thirteen parts, with references to all the antient and modern books of the law: exactly translated and compared with the first and last edition in French, and printed page for page with the same: to which are now added the pleadings to the cases*, 7 vols. (London: 1727), book 7 [henceforth *The Seventh Report*], pp. D–D^v. Compare this to Vitoria's relectiones, *On the American Indians*, pp. 265–72, and *On the Laws of War*, in *Political Writings*, pp. 302–03.

have its laws abrogated by the conquering king, but “if a Christian King should conquer a kingdom of an Infidel, and bring them under his Subjection, there *ipso facto* the Laws of the Infidel are abrogated, for that they be not only against Christianity, but against the Law of God and of Nature, contained in the Decalogue.”²³ Coke’s formulation shares more with those medieval writers who saw non-Christian polities as illegitimate by the very fact that they were not Christian, than it does with sixteenth-century Neo-scholastics or humanists, who affirmed that non-Christians and Christians alike could have legitimate dominion over territory.²⁴

Because they could see beyond the insular tradition of nativist common law, writers of romance fiction rather than English jurists eventually provided ways of thinking about conquest and expansionism in more advanced legal and ethical terms. A crucial influence on such works was the doctrine of natural law, that ill-defined but crucial legal standard which continental jurists and civil lawyers saw as the fundamental source of all human law. For civil lawyers, natural law was both common to all nations and constituted the legal doctrine that regulated relations between nations. In contrast, English common lawyers often took a skeptical view of traditional natural-law doctrine. The English common law, employed in the Court of Common Pleas, the King’s Bench, and the Court of Exchequer, was of course the most important law of the land in England. Common lawyers liked to claim that the English common law was unique among the countries of Europe, and following popular medieval histories and romances, they believed that, throughout all the foreign invasions of Britain, the English had always retained their fundamental cultural and legal identity. This legal chauvinism led the common lawyers to eschew “external” legal foundations such as natural law or reason and to embrace the notion that English law could only be properly understood “internally,” on the basis of unique English custom and precedent.²⁵

Despite their power, the common-law courts were not the only venues that existed in the kingdom. Chancery, the Star Chamber, the civil-law courts, and the canon-law courts comprised what are now sometimes referred to as the “prerogative” courts, a term based on their close relationship with the sovereign’s conscience and power of prerogative.²⁶

²³ Coke, *Seventh Report*, p. D^v.

²⁴ See Vitoria, *On the American Indians*, pp. 243–44. See also Sir Thomas More, *The Utopia*, ed. Robert M. Adams, 2nd edn. (New York: Norton, 1992), esp. p. 41.

²⁵ Burgess, *Politics of the Ancient Constitution*, pp. 121–30; Brian Levack, *The Civil Lawyers in England, 1603–1641* (New York: Oxford University Press, 1973), pp. 131–50.

²⁶ J. H. Baker, *An Introduction to English Legal History*, (London: Butterworth, 1971), p. 50.

Whereas the common law was seen as closely related to unwritten English custom, each of these venues traced their legal doctrine to broader transnational notions of natural law, divine law, Roman civil law, or equity.²⁷ For a number of reasons, the “prerogative” courts were often viewed with suspicion and resistance among English common lawyers. During the sixteenth century, many jurists identified the doctrine of equity and the civil law with Rome as well as with contemporary continental law and legal philosophy. This was because, while in practice it was often mixed with customary law, the Roman civil law was, at least in theory, the law of the land throughout continental Europe. That the main text of the civilian education was the *Corpus Iuris Civilis* of Justinian, supplemented with works by such continental writers as Baldus, Bartolus, Alciatus, and Cujas, only increased the view that civil law was foreign to the realm.²⁸ The canon law, practiced in the ecclesiastical courts, was suspect for similar reasons. After the reformation, civilians took over many positions which hitherto had been occupied by clergy, but the law applied in the ecclesiastical courts remained essentially that which had been practiced before Henry VIII’s break with Rome.²⁹ As a result, the ecclesiastical courts were still identified with Catholic doctrine and were similarly marginalized on grounds that they were foreign to the realm.³⁰

Marginalization of the civil and canon law by the common lawyers proved to be problematic for conceptualizing an imperial identity, however, for how could English jurists insist on the implementation of English common law overseas when the common law was, as was frequently pointed out, uniquely suited to “the kingedome for which it was firste devized”?³¹ Within such foreign contexts, it was necessary to employ a set of claims based not on the singular customs of the English nation but instead on universalistic absolutes which transcended the boundaries of one nation. Such arguments about the primacy of universal legal principles in Britain bolstered the position of English writers who supported a greater role for natural law and Roman civil-law doctrine. These arguments also lent support to those who saw England as an emerging expansionistic power responsible for introducing Roman principles into less “civilized” realms such as Ireland. Nonetheless, strong belief in the exceptional nature of native English custom and law persisted throughout the Elizabethan and Jacobean periods. For Coke and other common

²⁷ Levack, *Civil Lawyers*, pp. 27–28. ²⁸ *Ibid.*, pp. 17–22. ²⁹ *Ibid.*, p. 183.

³⁰ *Law and Politics in Jacobean England, The Tracts of Lord Chancellor Ellesmere*, ed. Louis Knafla (New York: Cambridge University Press, 1977), pp. 123–54.

³¹ Spenser, *A View*, lines 644–45.

lawyers, the nativist common-law position and the Catholic inspired natural-law position were irreconcilable within the dominant religious and legal discourses of the time.

Ultimately, Renaissance writers of fiction, instead of jurists, began to generate works putatively viewed as external to legal discourse, which nevertheless went a long way towards resolving this conflict. Prominent prose, verse, and dramatic romances by Sidney, Spenser, Shakespeare, Wroth, and others together constitute a founding moment in the history of English imperialism, a moment in which English expansion became defined as an ethical imperative as well as a form of charity for the non-English other. All of these romance narratives illustrate an idiosyncratic “ethics of conquest” that would play a role in both the rise of English imperialism as well as ironically its final dissolution in the twentieth century.

Having established some of the literary, theoretical, and historical questions surrounding the genre of romance, it is worth pausing briefly to discuss the problematic notion of an “ethics of conquest” – the other fundamental issue treated in this book. Within the context of twentieth and twenty-first-century international politics, the idea that conquest could be in any sense ethical has become deeply controversial. The double standards and the asymmetries involved in the most recent wars initiated by Western powers have convinced many of us that the concept of humanitarian or ethical intervention disguises more fundamental rationales for war such as dwindling energy resources, the control of foreign economic markets, and protection of Neo-liberal economic policies. Looking for example at the recent invasion of Iraq, it is difficult for the least skeptical among us not to see such ulterior motivations as in play if not as of paramount importance. And yet, attempts to avert such wars by drawing attention to the “real” reasons for invasion have had little success, as humanitarian rationales for intervention continue to have immense purchase within the most powerful sectors of our society.

One purpose of this book is to attempt to understand better why such rationales have been so persuasive by considering the original theoretical and fictional contexts that first generated them. By returning to a time when charitable motivations were more transparently viewed as legitimate rationales for war and conquest, I hope to shed new light on their continued hold on our imagination. But what is even more important is to understand the contradictions at the heart of such rationales. As we shall see, the English attempt to generate a universal “ethics of conquest” was problematized again and again by the myth of English and later British

legal exceptionalism, which ironically placed Britain outside of the incipient transnational legal framework. Attending to such contradictions illustrates deep instabilities in the foundations of modern notions of charitable conquest.

Finally, an ethical and legal framework justifying acts of conquest and intervention on the basis of natural law inevitably generates its own opposition through the emergence of oppositional discourses and the incorporation of incompatible legal ideologies. As is often the case with the beginnings of English expansionism, the prior Spanish context is instructive. In 1510, the Scottish Dominican John Major justified the Spanish invasion of the Americas by arguing that the inhabitants of the New World were the natural slaves described by Aristotle in Books 1 and 3 of *The Politics*.³² Major's argument was based on the premise that the Amerindians were not fully rational creatures, and instead, had only a limited share in the reasoning faculties that characterized a people with true *dominium*.³³ Major was implying that the manner of Amerindian life lacked a basis in natural law and, as a result, justified Spanish Conquest and enslavement.

Major's natural-law argument justifying Spanish policy carried within itself the seeds of its own cross-examination, for it was only in response to Major that the Spanish Dominican Francisco de Vitoria made his groundbreaking assault on the legitimacy of the Spanish Conquests. Indeed, in their interrogation of the Spanish crown's policy in America, Vitoria and his pupils at the University of Salamanca utilized precisely the same Thomist notion of natural law used by the crown's apologists. Allowing that Major might be correct in his charges that the Amerindians practiced cannibalism, human sacrifice, as well as other sins that Aquinas had categorized as against nature, Vitoria nevertheless rejected Major's theory that the Amerindians lacked both the faculty of reason and order in their affairs.³⁴ Emphasizing the universalism of natural-law doctrine, Vitoria claimed that humans by nature were never beyond the bounds of reform. Hence, he concluded that a war could be declared in the name of

³² *Politics* 1253 a 2 ff, 1338 b 19 ff. See Major, *In secundum librum sententiarum*. For critical discussion of Major's reading of Aristotle, see Pagden, *The Fall*, pp. 38–41.

³³ Pagden, "Dispossessing the Barbarian: The Language of Spanish Thomism and the Debate over the Property Rights of the American Indians," in *The Languages of Political Theory in Early-Modern Europe*, ed. Anthony Pagden (New York: Cambridge University Press, 1987), pp. 79–98, esp. 85, and Pagden *et al.*, "Introduction", in Francisco de Vitoria, *Political Writings*, p. xxv. See also Pagden, *The Fall*, pp. 27–56.

³⁴ Vitoria, *On the American Indians*, p. 250. See also *On Dietary Laws, or Self-Restraint*, in *Political Writings*, pp. 207–30 and Pagden, *The Fall*, pp. 57–108.

reform but must not continue once the “barbarians” had ceased their unnatural practices. Moreover, a Christian prince should restrain himself from seizing goods or land from the conquered barbarians and should establish laws that would protect them from such dispossession.³⁵ In essence, Vitoria showed that the foundations of the ethical and legal arguments originally used to justify aggression and dispossession could be turned around in order to challenge those same rationales.

Factors explored in the pages that follow show that, in terms of legal and ethical justifications for war and conquest, England was unique and its early period of expansionism more complex than the prior Spanish example. Nevertheless, a final purpose of this book is to suggest how the English legal tradition also contained within itself the potential for disrupting the entire framework of the later British empire.

³⁵ Vitoria, *On Dietary Laws*, pp. 225–26.

PART I

Romance and law

Transnational justice and the genre of romance

Romance fiction has often been derided as either too tedious to study in much depth or simply too primitive, disorganized, or conventional to engage contemporary political discourse in any meaningful way. In the last decade, however, a number of authors, including R. W. Maslen, Joan Pong Linton, and Blair Worden, have begun uncovering the complexity of these works' engagement with the ideological, political, nationalist, and legal discourses of the Renaissance period.¹ To some degree, the prolonged prejudice against considering romance fiction from a more complex political standpoint may be due to the disparaging comments made by early modern critics themselves. Especially within the opposition of epic and romance, the romance has been forever denigrated as sub-standard. Today, the basic terms of this critical debate are still applied to the epic and romance forms even if contemporary critics have a greater sense than ever of the way in which the two forms are coterminous, virtually never existing in isolated form.

Modern critical discussion of epic and romance tends to reproduce the Renaissance understanding of epic as unified and that of romance as digressive.² In the most nuanced recent foray into the subject of the

¹ R. W. Maslen, *Elizabethan Fictions: Espionage, Counter-Espionage, and the Duplicity of Fiction in Early Elizabethan Prose Narratives* (Oxford: Clarendon Press, 1997); Joan Pong Linton, *Romance of the New World: Gender and the Literary Formations of English Colonialism* (Cambridge: Cambridge University Press, 1998); Blair Worden, *The Sound of Virtue: Philip Sidney's Arcadia and Elizabethan Politics* (New Haven: Yale University Press, 1996). For more traditional approaches to the subject, see David Margolies, *Novel and Society in Elizabethan England* (London: Croom Helm, 1985); Paul Salzman, *English Prose Fiction 1558–1700* (Oxford: Oxford University Press, 1985); Arthur Kinney, *Humanist Poetics: Thought, Rhetoric, and Fiction in Sixteenth-Century England* (Amherst, MA: University of Massachusetts Press, 1986); Walter Davis, *Idea and Act in Elizabethan Fiction* (Princeton: Princeton University Press, 1969). See also Reid Barbour, "Recent Studies in Elizabethan Prose Fiction," *English Literary Renaissance* 25 (1995), 248–76.

² Patricia A. Parker, *Inescapable Romance* (Princeton: Princeton University Press, 1979), pp. 16–31; Barbara Fuchs, *Romance* (New York: Routledge, 2004), pp. 67–78; Bernard Weinberg, *A History of Literary Criticism in the Italian Renaissance*, 2 vols. (Chicago: University of Chicago Press, 1961), vol. 1, pp. 445–52; vol. 11, p. 960.

epic/romance opposition, David Quint has focused on the political ideologies that attached themselves to the two generic forms.³ On the one hand, Quint has explored the way in which the epic genre continued during the Renaissance, as it had before, to be identified with the building of empire. On the other hand, he has demonstrated how romance episodes embedded within Renaissance epics are often subtle attempts to treat sympathetically the cause of those figures who are conquered or defeated during an epic narrative of imperial expansion. Such romance episodes tell the story of those whom Quint refers to as the “epic losers,” figures representing the alternative perspective that is silenced in the course of the epic’s narrative of conquest. These anti-imperial moments are directly inspired by Lucan’s *Pharsalia*, a work whose political resistance to Virgilian imperial values evinces itself not only in the work’s obvious sympathy for those who were defeated in the Roman civil war but also in the work’s resistance to the traditional linear unity of epic.⁴

Apart from a few isolated remarks, discussion of prominent sixteenth-century English works of fiction, including those by Sidney and Spenser, is notably absent from Quint’s study of the Renaissance epic. This omission in an otherwise astoundingly comprehensive work is the result of Quint’s viewing most English romances as lacking the drive towards empire. Quint, usually so attentive to ways in which a work incorporates competing generic conventions, views both Sidney and Spenser as notably susceptible to definitive categorization.⁵ It seems to me, however, that a host of English writers of romance might assume a significant place within Quint’s study of the epic. With some modification of Quint’s terms, I would suggest that English Renaissance romances do not exactly refuse sympathy for the “epic winners”; nor do they wholly champion the perspective of Quint’s “epic losers” as do the works of Lucan, Alonso de Ercilla y Zúñiga, and Agrippa d’Aubigné, which figure prominently in his book. Instead, English writers of romance attempt to theorize (paternalistically) the rules of conquest in such a way that the conquerors act according to what *they see* as the interests of the vanquished or potentially vanquished, either by punishing a barbarous people, reforming them, or defending a kingdom or legitimate sovereign from an unjust conqueror or usurper. Works such as Henry Roberts’ *Pheander*, Richard Johnson’s

³ David Quint, *Epic and Empire, Politics and Generic Form from Virgil to Milton* (Princeton: Princeton University Press, 1993).

⁴ *Ibid.*, pp. 131–209. ⁵ *Ibid.*, pp. 205, 316.

Seven Champions of Christendom, and William Warner's *Syrinx* all portray "justice" for the conquered, and in this way, they can be said to be written, if not from the perspective of the "losers," then from a paternalistic interpretation of universal justice by which the "losers" are accorded "ethical" treatment in the eyes of the conquerors.

How the sometimes denigrated genre of romance was able to accommodate such significant issues as universal justice and transnational law is the subject of this chapter. I begin by considering the influence that translations of continental romances had on England during the sixteenth century. The complex and never-ending narratives of certain popular Spanish romances presuppose a universal regime of justice based on Christian values. But a fundamental feature of these works is their ability to secularize such religious notions of justice in such a way that the assumption of natural or normative behavior can be extended to the non-Christian other. After discussing the vogue of Spanish romances of chivalry, I proceed to break down the English romance into its component parts. As I show, the secularized code of chivalry, pastoral conventions, and the "mirror for princes" tradition converged within the Renaissance genre of romance in a way that allowed writers to consider issues of justice within a transnational context.

THE VOGUE OF SPANISH ROMANCES OF CHIVALRY

An influx of continental romance fiction into England generated a great deal of popular interest in the genre. Throughout the sixteenth century, educated English readers read French, Spanish, and Portuguese romances in their original French or in French translation, while in the later part of the century a broader readership consumed them in English translation. The first Spanish romance of chivalry to have been translated into English was Book 1 of the *Espejo de príncipes y caballeros* by Diego Ortúñez de Calahorra, translated by the only female translator of a major romance, Margaret Tyler, and published in 1579–80. During the decades that followed, Anthony Munday and Lazarus Pyott followed Tyler's example and began englishing the other major Spanish romances, the first two books of *Amadís de Gaula* and several volumes of the *Palmerín* cycle.⁶

⁶ *The First Book of Amadis of Gaule*, trans. Anthony Munday (London: 1590?); *The Second Book of Amadis de Gaule*, trans. Lazarus Pyott (London, 1595); *Palmerin d'Oliua*, trans. Anthony Munday (London: 1588).

All three cycles, the *Espejo*, the *Amadís*, and the *Palmerín*, were vast in scope and had complex histories of publication. Garci Rodríguez de Montalvo of Medina del Campo is credited with having arranged and corrected the first three books of *Amadís de Gaula* from a lost source. In 1508, shortly after Rodríguez de Montalvo's death, they were published along with a fourth book that was at least partly his own composition. The original four books had been so popular in Spain that fifteen Spanish editions were published before the end of the century.⁷ Other authors continued to add to the *Amadís* cycle into the middle of the century so that by 1550, multiple authors had produced eleven separate volumes. A similar publishing history exists for the *Palmerín* cycle, and to some extent, for the *Espejo de príncipes y caballeros* as well.⁸

The countless editions and sequels to these works attest to their popularity in Spain and elsewhere. But, in certain circles, romance fiction was singularly unpopular, blamed for leading both women and men morally astray.⁹ In Spain, Juan Luís Vives compared the form to “serpents or snakes” presumably in order to associate it with the devil enticing people with carnal pleasures.¹⁰ In England, it was attacked similarly as a “pestilent infection,” causing a woman to “smelleth of naughtinesse even all hir life after,” and condemned in favor of tracts on domestic morality and virtue.¹¹ These pejorative attitudes toward romance fiction do not seem to have lessened the form's popularity in any significant way. In fact, such attitudes seem early on to have been incorporated into the genre itself, having an important hand in shaping the evolution and appeal of the romance form. Throughout the sixteenth century in England, many dedications of prose romances obliquely acknowledged

⁷ A fifth book, *Las sergas de Esplandián*, probably composed entirely by Rodríguez de Montalvo, was published in 1510. John J. O'Connor, *Amadís de Gaula and its Influence on Elizabethan Literature* (New Brunswick, NJ: Rutgers University Press, 1970), pp. 3–16; Edwin B. Place and Herbert C. Behm, Preface, *Amadís of Gaul Books I and II*, trans. Edwin B. Place et al. (Lexington, KY: University Press of Kentucky, 2003), pp. 10–11.

⁸ Daniel Eisenberg, *Romances of Chivalry in the Spanish Golden Age*, Proemio by Martin de Riquer (Newark: Juan de la Cuesta, 1982), pp. 35–46.

⁹ Arthur Heiserman, *The Novel Before the Novel: Essays and Discussion about the Beginnings of Prose Fiction in the West* (Chicago: University of Chicago Press, 1977), p. 4; Catherine Lucas, *Writing for Women: The Example of Woman as Reader in Elizabethan Romance* (Philadelphia: Open University Press, 1989), pp. 16–18.

¹⁰ Juan Luís Vives, *The Instruction of a Christian Woman* (trans. Richard Hyrde c. 1540); reprinted in Foster Watson (ed.), *Vives and the Renaissance Education of Women* (London: Longmans, 1912), p. 61.

¹¹ Richard Mulcaster, *Positions wherein those primitive circumstances be examined which are necessary for the training up of children* (1581); reprinted in R. H. Quick (ed.), *Positions of Richard Mulcaster* (London: 1888), pp. 176–77.

these condemnations either by advertising the work that followed as one that inculcated good morals or by agreeing with the critics and condemning the moral character of the work in question. Such acknowledgments usually came either in the form of the author's exaltation of his own work as containing exemplary figures of honor and courage or as an expression of condemnation or denigration of his own work as trivial or unworthy of serious scrutiny.¹² That critical attacks on romance fiction were later integrated into the very fabric of the genre itself is perhaps one explanation for why these narratives took up ethical issues on the grand scale that they did.

A knowledge of the original context in which sixteenth-century Spanish romances were produced is helpful before considering their presence in England.¹³ The extraordinary popularity of chivalric romances in Spain was made possible by a number of factors. One was of course the printing press. Romances were among the first works put to press after the introduction of printing in Spain, and the final years of the fifteenth century witnessed the publication of a number of translated and original fictional works in which chivalry played a substantial part.¹⁴ The publication of the original four books of Rodríguez de Montalvo's *Amadís de Gaula* in 1508 was a watershed event in Spain. In the years that followed, new romances were published at the rate of almost one per year, a phenomenon that was directly related to the enormous popularity of the *Amadís*.

Another factor in the popularity of these works was the royal court of King Carlos V (1517–55), especially the king's personal predilection for reading fictional narratives. Unlike his grandparents Fernando and Isabella, Carlos was greatly enamored of romances and taken by chivalric spectacles and festivities. Doubtless an important reason for his interest was that these narratives seemed to reflect the wars that had recently consumed Europe.¹⁵ Carlos' grandparents, the so-called Catholic monarchs,

¹² See Henry Roberts, *The Historie of Pheander, The Mayden Knight* (London: 1617), p. A3^v; Margaret Tyler's preface, in Margaret Tyler [reprint of Diego Ortúñez's *The Mirror of Princely Deeds and Knighthood*, trans. M. T. (London: 1580)], ed. Kathryn Coad (Brookfield, Vt: Ashgate Pub. Co., 1996), p. B1; Sir Philip Sidney, *The Old Arcadia*, ed. Katherine Duncan-Jones (New York: Oxford University Press, 1999), p. 3; Sidney, *A Defense of Poetry*, ed. Jan Van Dorsten (New York: Oxford University Press, 1999), p. 42; Barnabe Riche, *His Farewell to Military Profession*, ed. Donald Beecher (Binghamton, NY: Medieval and Renaissance Texts, 1992), pp. 126–27.

¹³ See Barbara Fuchs, *Mimesis and Empire: The New World, Islam, and European Identities* (Cambridge: Cambridge University Press, 2001), pp. 13–64.

¹⁴ *Oliveros de Castilla* (1499), *Paris e Viana* (1494), *Baldro del Sabio Merlin* (1498), and most importantly, the source of Garci Rodríguez de Montalvo's later "translation" of *Amadís de Gaula*. See Eisenberg, *Romances of Chivalry*, pp. 35–37.

¹⁵ *Ibid.*, pp. 41–42.

had anointed themselves defenders of Christian Europe within the larger conflict between Christendom and non-Christendom. In the 1470s, the couple were desperately trying to respond effectively to the Turkish invasion that was sweeping through Eastern Europe, through Venetian lands, to the gates of Salzburg, through Croatia, and finally into Italy's Apulia region. In response to the Turkish incursion into Italy, the Spanish crown initially forwent the re-conquest of Granada in order to assist in the defense of the Italian peninsula. Finally, in 1482, the Spanish crown began its ten-year war against the Muslim kingdom of Granada, and ten years later of course, the conquest of the New World began.¹⁶

The romances of this period take up as a major theme this conflict between Christian Europe and the infidel. The first three books of the *Amadís de Gaula* are exceptional in this respect since they follow the explicitly secular adventures of a number of hero knights-errant whose purpose is to punish knights that transgress the chivalric ideals. The culmination in Book 4 is a full-blown war between two Christian leaders, Amadís and King Lisuarte, but here the narrative takes an abrupt turn towards religious conflict. The war between Amadís and King Lisuarte is quickly overshadowed by a more serious conflict between Christendom and the pagan forces led by Arcalaus, the Arabian king, and seven other pagan kings (representing the seven deadly sins). The fifth book in the series, Rodríguez de Montalvo's *Las sergas de Esplandián*, continues in this vein, following the adventures of Amadís' son, Esplandián, who is exalted specifically as a Christian champion in the war against the infidel, having repudiated his father's chivalric campaign against evil knights. In subsequent romances such as the sixth book in the Amadís cycle, Ruiz Paez de Ribera's *Florisando*, conversion of the infidel becomes the singularly important function of the knight-errant.¹⁷ Likewise, the famous *Palmerín* cycle (consisting of *Palmerín de Oliva* (1511), *Primaleón* (1512), *Palmerín de Inglaterra* (1544)) recounts the heroic defense of Constantinople against the Great Turk and his Moorish allies.¹⁸

¹⁶ For analysis of the role of *Amadís* in all of these events, see William Thomas Little, "Introduction," in *The Labors of the Very Brave Knight Esplandián*, trans. William Thomas Little (Binghamton, NY: Medieval and Renaissance Texts, 1992) pp. 35–39. For the history of Spain's role in the defense of Europe, see *Diplomatari de l'orient catala*, ed. Antoni Rubio Lluch (Barcelona: Institut d'Estudis Catalans, 1947), and José Doussinague, *La política internacional de Fernando el católico* (Madrid: Espase-Calpe, 1944), pp. 44–47.

¹⁷ Judith A. Whitenack, "Conversion to Christianity in the Spanish Romance of Chivalry, 1490–1524," *Journal of Hispanic Philology*, 1988 Autumn 13(1), 13–39.

¹⁸ See *Palmerín D' Oliva, The Mirrour of nobilitie, Mappe of honor, Anotomie of rare fortunes, Heroycall president of Loue: Wonder for Chiualrie, and most accomplished Knight in all perfections*, trans. Anthony Munday (London 1588), sigs. B2 ff.

In all of these works, the code of chivalry functions as the code of the Christian warrior. Medieval handbooks of chivalry were clear in tying the knight's code of arms to the Christian faith as well as to the defense of Christendom. The earliest narrative sources for the code of chivalry, the *chansons de geste*, place the Carolingian war against the infidel at center stage. The most famous of these, the *Chanson de Roland*, recounts a patently religious struggle, in which the heavens are constantly invoked and implicated in the terrestrial war. The angel Gabriel stands guard at the foot of Charlemagne's bed as he sleeps and is by his side during the battle against the Emir – he is also at Roland's side as the great knight lies dying. Likewise, the Arthurian romances often reflected the crusading zeal. At the center of these romances is the story of the Holy Grail, which imbues the Celtic myth about the horn or dish of plenty with Christian significance.¹⁹

Despite the long history of interpenetration between chivalry and Christian doctrine, however, the code of chivalry also had secular origins and maintained aspects of this secular character throughout the Middle Ages.²⁰ In the most famous sixteenth-century Spanish romances, the first three books of *Amadís de Gaula*, this secular character of chivalry is emphasized, allowing the code to extend across national and religious boundaries. In French and English editions of these works, the secular character of Iberian chivalry was not only retained but was in some ways exaggerated. The 1590 English translation of Book I of the *Amadís de Gaula* cycle was based on the French translations of Nicholas de Herberay, which embellished the already-explicit sexual encounters recounted in the Spanish original.²¹ Similarly, Herberay deleted what may have seemed to be the excessive moralizing by Rodríguez de Montalvo as well as many of the allusions to the Catholic faith in order to mitigate the Catholic tone of the original, thus rendering it amenable to sixteenth-century French gentlemen, especially those of a Calvinist persuasion.²² Herberay's version of the *Amadís*, inherited by English readers, therefore had the effect of emphasizing the secular character of Rodríguez de Montalvo's version.

To the young Englishmen who read this work, the heroes of the *Amadís* served as models for the chivalric ideals of honor, courage, and loyalty. A book entitled *The Tresurie of Amadís of France* (1567) provided

¹⁹ See Maurice H. Keen, *Chivalry* (New Haven, Conn.: Yale University Press, 1984), pp. 44–63, esp. 51, 60.

²⁰ See Keen, *Chivalry*, pp. 18–43. ²¹ See O'Connor, *Amadís de Gaule*, p. 15.

²² *Ibid.*, p. 144. See also pp. 137–47. For a view that is opposed to O'Connor's on this question, see Donna Hamilton, *Anthony Munday and the Catholics, 1560-1633* (Burlington, VT: Ashgate, 2005), pp. 73–97.

the first English glimpse into the most famous Spanish romance.²³ It was translated from a French work entitled *Trésor des livres d'Amadis* (1559), which was intended to educate its readers in the rhetoric of chivalry and courtesy through a collection of courtly speeches culled from Herberay's French translation. According to the epistle to the reader, the *Treasure* was a manual meant to teach men how "to be noble oratours, wise and prudent counsellours, excellent Rhethoricians, expert captains" as well as how to adopt a number of other politicking skills.²⁴ There was nothing explicitly religious about such goals. The table of contents lists each speech as "A Forme . . .," as in "A Forme to declare his aduice, or to giue counsell of any thing to Lords, friends, parents, alies, or subiects," showing that the contents were to be learned or imitated for rhetorical use.²⁵ In the French court and to some degree the English court as well, *Amadis de Gaula* served similarly as a courtesy book that taught by example rather than by sermon.²⁶

As I noted earlier, the first Spanish romance to have been printed in its entirety in England was Book 1 of Diego Ortúñez's *Espejo de príncipes y caballeros*.²⁷ Ortúñez's *Espejo* is important in Spain not only because it was one of the most popular Spanish romances but also because its publication date (1555) coincides with the last year of Carlos V's reign. Given his love of romance fiction, Carlos' abdication of the crown in 1555 in favor of his son, Felipe, was probably the most important cause of an overall decline in the composition of new romances on the Iberian peninsula.²⁸ The form's decline in Spain coincided precisely with its rise in popularity in England.

Margaret Tyler's preface to her translation of the *Espejo* frames Ortúñez's romance narrative with her own concerns about the propriety or lack thereof of a woman translating such a work and thereby entering into a space that some regarded as belonging exclusively to men.²⁹ Significantly, Tyler published her translation under the title *The Mirror of Princely Deeds and Knighthood* without Ortúñez's original prologue, which provides the

²³ Anonymous (trans.), *The Treasure of Amadis of France* (London: 1567).

²⁴ *Ibid.*, sig. ¶iii. ²⁵ *Ibid.*, sig. ¶¶ii. ²⁶ O'Connor, *Amadis de Gaule*, p. 62.

²⁷ For English trans., see Margaret Tyler. For the Spanish original, see Diego Ortúñez de Calahorra, *Espejo de Príncipes y caballeros*, ed. Daniel Eisenberg (Madrid: Espasa-Calpe, S.A., 1975).

²⁸ Eisenberg, *Romances of Chivalry*, p. 48.

²⁹ Margaret Tyler, sigs. Aii–Aiiii. See Helen Hackett, *Women and Romance Fiction in the English Renaissance* (New York: Cambridge University Press, 2000), pp. 57–62, and Tina Krontiris, *Oppositional Voices: Women as Writers and Translators of Literature in the English Renaissance* (New York: Routledge, 1992), pp. 44–62.

Spanish author's own set of concerns. An examination of Ortúñez's prologue reveals a reading of the *Espejo* that might have been gleaned from the narrative itself but which was otherwise absent from Tyler's prefatory material. This reading emphasizes the fact that the chivalrous code of honor that pervades Ortúñez's work was suffused with natural-law concerns that are reminiscent of the concerns of the most important "natural-law" theorist and critic of the Spanish Conquests of America, the Neo-scholastic Francisco de Vitoria, who taught at the University of Salamanca until his death in 1546.

Ortúñez dedicated his *Espejo* to Martín Cortés, the second Marques del Valle de Oaxaca and the son of the famed conqueror of Mexico.³⁰ In his prologue, Ortúñez mentions the conquests of the senior Cortés at great length, declaring them to have exceeded the conquests and feats of the conquerors and heroes of the classical world. He declares that "the conquests of Julius Caesar and Alexander, the victories of Scipio and Camillus, the fortitude of Achilles, the valor and government of that great captain Hannibal, the works of Hercules, the shipwrecks of Ulysses," even presented in the most poetic of ways, do not equal the great feats of heroism which Cortés' father accomplished in the conquest of Mexico.³¹ Here and elsewhere, celebration of Hernán Cortés' heroism serves as one of the main reasons for Ortúñez's pledge of service to the less famous Martín Cortés. At one important point in the dedication, Ortúñez confesses that "the histories of [Cortés'] father are more exalted and immortal than are contained or could be recounted in this book."³² Thus are we to understand that, in some sense, the fictional acts of heroism recorded in the *Espejo* are meant to commemorate the true conquests which Cortés' father accomplished in his own lifetime.

Conquest and invasion are important themes throughout the *Espejo*. The narrative begins with the king of Hungary, Tiberio, unjustly invading Greece with the help of Prince Edward of England in order to usurp the title of Emperor from Trebatio, the current emperor. Tiberio's attempt at usurpation fails, resulting in emperor Trebatio laying siege to the city of Belgrade where Tiberio has retreated. During the siege of Belgrade, the good emperor Trebatio hears talk of Briana, the king of Hungary's beautiful daughter, immediately falls in love with her, and

³⁰ Ortúñez de Calahorra, "Prólogo," *Espejo de príncipes*, pp. 1–20. All translations from Ortúñez's preface are my own. For discussion of New World influences on Spanish and Italian romance, see Fuchs, *Mimesis and Empire*, pp. 18–34.

³¹ Ortúñez de Calahorra, *Espejo de príncipes*, p. 17. ³² *Ibid.*, p. 16.

ends up marrying her and impregnating her while disguised as her fiancé, Prince Edward. The heroes of the romance, Donzel del Febo and Rosicleer, are the twin offspring of this brief romantic interlude. Produced as a result of the righting of a wrong perpetrated against a rightful sovereign, both are spirited off to Persia and then Babylon where they are educated in the secular virtues of chivalry and statecraft.³³ Throughout the rest of the work, the two heroes are continually and virtuously at work restoring rightful sovereigns and punishing unjust usurpers. In this way, they are representative of larger forces whose duty it is to restore established and divinely sanctioned order.

This is consistent with the other prominent aspect of Ortúñez's prologue in which the author imagines a divine hierarchy reminiscent of ideas that Spanish scholastic thinkers had concerning the order that regulated conflict between nations. Ortúñez begins the prologue by refuting a passage from Pliny the Elder's *Natural History* in which the ancient writer describes humankind as fundamentally flawed. According to Pliny, whereas animals are naturally provided with coverings, land animals with fur, birds with feathers, and fish with scales, humans are not born with the necessary coverings to survive nature and therefore exist in fundamental misery.³⁴ Against this pessimistic view, Ortúñez sees humankind as dominant within the hierarchy of terrestrial beings because of the natural gifts of understanding and reason. He describes the position of humans within this hierarchy in the following terms:

As [God] wanted the other hunchbacked animals to look toward the ground, so he gave to man an uplifted face, so that he could see the sky, and know that his being and lordship raised him higher than those of the land. He gave him reason, He gave him speech, things that cannot be estimated or imagined. He gave him understanding, so that he could speak with Him and acquire all the things that would be necessary for survival. So that although the man is naked, with his ingenuity he could dress and adorn himself, eat, drink, and arm himself, and if he is lame or weak go by horse, in a litter or by cart.³⁵

He goes on to explain, reminiscent of the Book of Genesis, that far from being better suited to the world than humans, animals and their strengths exist only for the benefit of humans.

Ortúñez's argument against Pliny incorporates aspects of the scholastic natural-law arguments that were influencing Spanish and European

³³ Margaret Tyler, pp. B1^v-C3.

³⁴ Ortúñez de Calahorra, *Espejo de príncipes*, pp. 3-5.

³⁵ *Ibid.*, p. 7.

thought pertaining to the Americas. In addition to his works on just war and conquest, Francisco de Vitoria wrote a *Relectio* called *On Dietary Laws* in which he described the natural laws of the human diet, justifying the eating of animals based on their natural inferiority to humankind while on a similar basis judging unnatural acts of cannibalism that occurred among the “barbarian” peoples of the New World.³⁶ The natural order that Vitoria suggested existed with regard to the human diet was consistent with his definitions of just war and conquest. In both *On Dietary Habits* and *On The American Indians*, Vitoria condones temporary, humanitarian conquests that would abolish cannibalism, thus re-establishing the natural relationship between humans as well as the natural hierarchy between humans and animals.³⁷ To the degree that Ortúñez was writing for a prominent court official such as Martín Cortés, he would not have seen himself as allied with a Dominican monk like Vitoria, especially given the past history of antipathy between Carlos V’s court and the Dominican order.³⁸ Nonetheless, various aspects of Ortúñez’s work reflect a desire to use similar scholastic notions to defend and re-constitute the natural order when necessary. Indeed, his argument against Pliny pre-supposes a natural order that places humans above animals in a manner that is analogous to the way in which his heroes, Donzel del Febo and Rosicleer, are born and bred to re-establish legitimate rule and sovereignty. In this way, Ortúñez’s narrative serves as an illustration of the ideals that drove the debates over the legitimacy of the Spanish American Conquests. The question of whether invasion or warfare could be used to re-establish the natural order was central to this debate, and Ortúñez’s account of his protagonists’ acts of heroism in defense of legitimate sovereignty confirms that, in his opinion, chivalric warfare can be a selfless act intended to reconstitute such an order.

Furthermore, unlike some earlier romance writers, Ortúñez conceives of justice outside of the scope of religious boundaries. In addition to being the last great Spanish example of the genre, Ortúñez’s *Espejo* was one of the most secular Spanish romances since the first three books of *Amadís*. Whereas many earlier chivalric romances, including *Palmerín* and the later books of *Amadís*, recounted a conflict for the defense or expansion of Christianity against pagans and infidels, Ortúñez’s *Espejo* separates natural justice from an explicitly Christian justice. The legitimacy of the sovereigns that Donzel del Febo and Rosicleer defend in the

³⁶ Francisco de Vitoria, *On Dietary Laws, or Self-Restraint*, pp. 208–12.

³⁷ *Ibid.*, pp. 225–27; *On the American Indians*, pp. 287–91. ³⁸ See Pagden, *The Fall*, pp. 106–07.

Espejo does not depend on possession of Christian faith; rather Ortúñez defines such legitimacy on the basis of the secular ideal of chivalry. When the infant Donzel del Febo is recovered from an adrift bark by Florion, the usurped king of Persia, he and Florion's own son, Brandizel, are educated in Babylon according to the "lawe of the Gentiles" by their wise pagan teacher, Lyrgandeo.³⁹ Another young prince named Clauergudo is taught alongside them by his Christian tutor, Armineo, according to Christian beliefs.⁴⁰ However, Ortúñez presents the secular and chivalric education of all three princes as equivalent. Tyler's translation includes the following remark comparing the educations of Donzel del Febo and Clauergudo, two princes educated in different faiths: "Above all they wer so throughly instructed in lerning, that ther wer none able to come to controuersie with them, all this, equall to both, notwithstanding the difference of beleefes, which shall be a lyke ere it be long."⁴¹ Later in the same passage, Ortúñez notes the importance of Christian belief, explaining that the superior knowledge of Donzel del Febo's tutor, Lygandeo, will not save him from damnation. And yet, differences in religion are not responsible for causing those raised according to Christian belief to treat pagans as innate enemies: "the two young Gentlemen, albeit contrary in professions, yet in friendship and good will were conformable, as shall be declared in this storie."⁴²

In the next two episodes, the narrative universalizes a notion of natural justice, which extends beyond the boundaries of the Christian realm. First, the pagan Donzel del Febo defends legitimate sovereignty by defeating the usurper of the Cypres crown and restoring Radamira, the usurped princess of Cypres, to her kingdom.⁴³ Next, the pagan knight of the Sunne (formerly Donzel del Febo) and the Christian prince, Clauergudo, together confront the imperialist King Africano who has usurped Persia and now threatens to do the same to Babylon and the surrounding Assyrian peoples.⁴⁴ When Africano's messenger declares the usurper's intention to take over Babylon, the knight of the Sunne answers by declaring that the current pagan king of Babylon has "right and justice on his side" and labeling Africano's claim on the city "against all reason." The knight of the Sunne's further defense of the current king's claim to the city is based on an appeal to the

³⁹ *Margaret Tyler*, p. 6.

⁴⁰ In the 1580 edition, Clauergudo's name is changed to Clauerindo. It is "Claberindo" in Ortúñez's original.

⁴¹ *Margaret Tyler*, p. 6. ⁴² *Ibid.*, p. 6^v. ⁴³ *Ibid.*, pp. 62–67.

⁴⁴ The knight's name is "El Caballero del Febo" in Ortúñez's original.

pagan gods, and yet, Ortúñez implies that the justice such gods represent is not essentially different from Christian justice.⁴⁵ In doing so, Ortúñez defines a notion of justice based on natural law, which derives from Christian discourse but at the same time remains distinct from it. His prologue, in which he defends humanity's rightful place above the place of animals, is similar in that Christian-based notions of hierarchy are important but only implicit in his defense of the sovereign nature of humanity.

Tyler's translation omits Ortúñez's preface and thus passes over the author's commitment to a secular notion of natural hierarchy, but she retains a commitment within the narrative itself to a notion of chivalric justice that is transnational and extends beyond the confines of religion. As we shall see, subsequent English romances follow a similar commitment to secular codes of chivalry and natural law, even though such a commitment is complicated by the disruptive presence of native English legal discourse.

COMPONENT PARTS AND THE CODE OF CHIVALRY

Elizabethan romances are hybrid works, in which a number of different traditions and poetic and aesthetic codes are in play. Considering these various codes in a systematic way allows us to see how the romance form, as it was understood during this time, was particularly open to the consideration of such issues as just war and conquest. The first two codes can be considered explicitly literary characteristics, namely the chivalric code prevalent in chivalric romance and the pastoral conventions that become prominent in sixteenth-century English romance. The third characteristic proceeds from the way in which writers of sixteenth-century romances overtly position their works within the "mirror for princes" tradition whose origins are found deep within the medieval period.

The primary textual sources for the chivalric code of ethics are books of romance fiction.⁴⁶ Because the fictional nature of such works creates special difficulties for the historian, Johan Huizinga actually questioned whether the code comprised much more than an illusory veneer.⁴⁷ Nevertheless, subsequent historians do agree that the chivalric code was

⁴⁵ Margaret Tyler, p. H7^v.

⁴⁶ Keen, *Chivalry*, pp. 1–3. See also George Duby, *The Chivalrous Society*, trans. Cynthia Postan (Berkeley: University of California Press, 1977).

⁴⁷ Johan Huizinga, *The Waning of the Middle Ages* (London: Edward Arnold, 1927), chs. 4–7.

an authentic system of ethics to which members of the warrior class aspired.⁴⁸ Among the non-fictional sources often pointed to are the early writings of important religious figures who, in attempting to define the boundaries of the three estates, described the role of the warrior or knight in explicitly religious terms, namely that of defending the beliefs of Christ and his followers. Simultaneously, however, the code began to be understood in secular terms.⁴⁹

The thirteenth and fourteenth centuries saw the composition of three handbooks on chivalry that were continually read, translated, and adapted well into the Renaissance period: the *Llibre del ordre de cavayleria* by the Majorcan Ramon Llull, the celebrated crusader who later dedicated himself to employing peaceful means to spread Christianity, the anonymous French poem *Ordene de chevalerie*, and the *Livre de chevalerie*, by the French knight Geoffroi de Charny.⁵⁰ For England, the most important of these handbooks was Llull's, translated into Middle English by Sir William Caxton and printed in London between 1483 and 1485.⁵¹

Throughout his handbook, Llull stresses the importance of justice within the ethos of chivalry. The didactic portion of the book begins with an account of the origins of chivalry, particularly the decline that occurred after the fall from a Golden Age, whereby "Charyte / Loyaulte / Trouthe iustyce and veryte" were "fayllen in the world."⁵² In the aftermath of this decline, Llull notes that "iustyce" itself was reconstituted with the advent of a code of chivalry. Recounting the mythological origins of chivalry, Llull describes how the people were divided into groups of a thousand each, and how out of each group, one man was chosen for his superior loyalty, strength, courage, breeding, and manners. These traits were to assist the knight in his three-fold duties: to help him to defend the Holy Catholic faith, to defend his secular lord, and to administer justice throughout the lands.⁵³

This last duty, to administer justice, is of paramount importance. Knights are preeminently qualified to uphold justice since "none office sholde be so couenable to be a juge as chyualry for he that by justyce may

⁴⁸ Keen, *Chivalry*, p. 3. ⁴⁹ *Ibid.*, p. 3.

⁵⁰ *Ibid.*, pp. 5–17; Aldo Scaglione, *Knights at Court: Courtliness, Chivalry, and Courtesy from Ottonian Germany to the Italian Renaissance* (Berkeley: University of California Press, 1991), pp. 81–83.

⁵¹ Ramon Llull, *The Book of the Order of Chivalry together with Adam Loutfut's Scottish Transcript*, trans. William Caxton, ed. Alfred T. P. Byles (London: Oxford University Press, 1926).

⁵² *Ibid.*, p. 14. ⁵³ *Ibid.*, pp. 15–16.

best be holden is more couenable to be a juge than any other.”⁵⁴ In effect, he that may be judged the most ethical person, namely the knight, will also ultimately make the best judge. In addition to the emphasis on justice, the ethos of chivalry also includes works of charity for the weak and oppressed, in such a way that the chivalrous knight should view his duty as assisting those “that ben vnder hym / and lass myghty / and lass honoured.” This dictum especially includes assistance for widows and other women in need, along with orphans and feeble men.⁵⁵

For the purposes of considering the genre of romance, what is most important is that the didacticism of these handbooks, written explicitly for the instruction of would-be knights, is framed in each case by a romance narrative. Lull’s *Llibre* begins with an allegorical narrative that would have been immediately recognized as inspired by romance fiction. A squire is riding through the forest on his way to the king’s court where he is to be knighted. Also in the forest is an aged knight who had long maintained the rites of chivalry but in his old age, has retired to a hermitage in order to spend the remainder of his life in religious contemplation. As the squire rides along on his horse, he falls asleep and the horse strays from the correct path, entering the forest where the Knight Hermit lives. Meeting the old man by a fountain, the squire explains that the purpose of his quest to the king is that he be knighted. This goal has unfortunately been undermined by the recent misfortune of his having strayed from the correct path. Immediately, the hermit expresses wonderment that the squire does not already seem to know the rules of knighthood and offers him a book that describes the Order of Chivalry. The squire eventually takes the book to the court, offering copies of it to any noble man who wishes to join the Order of Chivalry. As readers of romance fiction would have been well aware, the entire story is allegorical: a lone knight loses his way along the path of life, but his error allows him to fulfill an allegorical journey of religious and ethical self-discovery. The rest of Lull’s handbook containing the rules and duties of knighthood is supposedly a copy of the book itself, which the hermit has just presented to the young squire.

Elsewhere, the code of chivalry comprises an ethical regime that transcends national and religious boundaries. The anonymous *Ordene de chevalerie* assumes the form of a narrative poem in which Saladin captures Hugh, the Count of Tiberias, during the crusades. The famous Sultan, who by the time of the handbook’s composition had begun to embody

⁵⁴ *Ibid.*, pp. 30–31. ⁵⁵ *Ibid.*, pp. 38–39.

the values of the supremely ethical sovereign, agrees to free Hugh if the Christian knight illustrates the rituals by which knights are made under Christian law. Hugh reluctantly agrees to dub Saladin a knight according to the proper forms and, while performing the ceremony, he explains the significance of each ritual. While the rites themselves are specifically Christian, presented as a path to Christian salvation, Hugh's knighting of Saladin shows that they also have important secular characteristics that allow them to be adopted by the non-Christian warrior. The ritual does not have to be administered by a priest or in a church. And a sovereign such as Saladin, who is nominally an enemy of the Christian faith, can embody the virtues associated with the order.⁵⁶

As the *Ordene* illustrates, the code of chivalry included a number of rules that lent it to matters of "transnational" justice, matters which later romances took up in more extensive narrative form. The chivalric knight is itinerant and also responsible for personally upholding justice in the lands through which he travels. His code itself is informed by Christian doctrine but manifests itself within the secular realm of combat. In addition to valuing justice, the handbooks encourage the knight to be charitable to the unfortunate. All of these characteristics, the justice, the crossing of national and religious boundaries, and the emphasis on charity for the other, are matters that, as we shall see in subsequent chapters, the romance genre explored. Ultimately, the chivalric ideals and obligations of the knight-errant laid the groundwork for the later concept of the law of nations. During the fourteenth and fifteenth centuries, chivalric obligations were codified into law and applied in courts as part of what was understood as the *ius gentium*, the ancient Roman legal principle that regulated affairs between various provinces within the Roman empire.⁵⁷ During the period of history in question, it is still premature to perceive this legal discourse as an early manifestation of what would become the modern tradition of international law, since the kingdoms and principalities of the Middle Ages were not nations *per se*. Rather they were dependent on the integrated and supra-national society of Christendom, in which a knight owed his loyalty to a whole series of secular and religious masters. Even so, the simple fact that such rules were becoming codified and enforced in courts of law that were presided over by trained

⁵⁶ Anon., *Ordene de chevalerie* in Etienne Barbazan (ed.), *Fabliaux et contes des poètes françois des 11^{me}, 12^{me}, 13^{me}, 14^{me}, et 15^{me} siècles* (Paris: B. Wareae Oncle, 1808), vol. 1, pp. 59–82. See Keen, *Chivalry*, pp. 6–8, and Scaglione, *Knights at Court*, pp. 81–83.

⁵⁷ Keen, *Laws of War*, pp. 239–47, esp. 241.

lawyers signaled the beginnings of a broad tradition of justice based explicitly on the convergence of the doctrines of just war and chivalry.⁵⁸

While chivalry and just-war doctrine were becoming allied, other fundamental changes within the code of chivalry were afoot as we approach the cusp of the sixteenth century. The most important of these changes concerns the way in which the aristocratic chivalry begins to coexist with and reinforce a less restricted concept of courtesy. Aldo Scaglione has pointed to the thirteenth-century “mirror for princes” handbook, the *De regimine principum* written by Giles of Rome, as exemplifying a merging of the two codes of chivalry and courtesy. On the one hand, Giles includes a section in which he defines the code of chivalry according to the ancient Roman rules of warfare that the fourth-century writer Vegetius outlined in his *De re militari*. According to Giles, *militia*, rendered as *chevalerie* in the French translation, and *chivalrie* in the English, is said to be motivated by honor and a concern for law, qualities that make nobles better fighters than the common soldier.⁵⁹ On the other hand, an earlier chapter of this handbook contains a didactic component on the importance of courtesy (*curialitas*) among the ministers and courtiers who served in the court of Philip the Fair.⁶⁰ In essence, Giles’ book exemplifies the way in which chivalry and courtesy came to be seen as coexistent and centered performatively in the king’s court instead of within the person of the independent noble.

Scaglione shows that the late medieval romance began to stress the virtue of courtesy as much as – if not more than – that of chivalry.

⁵⁸ An example of how just-war doctrine and chivalry were merging during the fifteenth century is Christine de Pizan’s famous tract, *Livre des faits d’armes et de chevalrie*, translated into Middle English by William Caxton in 1489; Christine de Pizan, *The Book of Fayttes of Armes and of Chyvalry*, trans. William Caxton, ed. A. T. P. Byles (London: Oxford University Press, 1932). See Kate Langdon Forhan, *The Political Theory of Christine de Pizan* (Burlington VT: Ashgate, 2002) pp. 133–54; and Renate Blumenfeld Kosinski, “Christine de Pizan and the Political Life in Late Medieval France,” in *Christine de Pizan: A Casebook*, eds. Barbara K. Altmann and Deborah L. McGrady (New York: Routledge, 2003), pp. 9–24.

⁵⁹ Egidio Colonna Romanus, *De Regimine Principum* [reprint (Aalen: Scientia Verlag, 1967)] (Rome, 1607), pp. mm6–mm8, nn4; Romanus, *Li livres dou gouvernement de rois*, ed. Samuel P. Molenaer (New York: AMS Press, 1966), pp. 372–74, 380; Romanus, *The Governance of Kings and Princes: John Trevisa’s Middle English Translation of the De regimine principum of Aegidius Romanus*, ed. David C. Fowler et al. (New York: Garland Publishing, 1997), pp. 394–97; 402–03. See also Scaglione, *Knights at Court*, p. 85.

⁶⁰ Romanus, *De Regimine Principum*, pp. bb4–bb5^v; Romanus, *Governance of Kings and Princes*, pp. 280–85. For historical discussion of the origins of courtesy and courtliness, see Scaglione, *Knights at Court*, pp. 83–86; C. Stephen Jaeger, *The Origins of Courtliness: Civilizing Trends and the Formation of Courtly Ideals 939–1210* (Philadelphia: University of Pennsylvania Press, 1985); and Dianne Borstein, *Mirrors of Courtesy* (Hamden, Conn.: Archon Books, 1975).

Historically, the virtue that was upheld in such romance narratives was the exclusive characteristic of the aristocracy, and in the French Arthurian romances that had an early influence on the English, the centralizing authority of the emperor or the monarch was viewed as the enemy while the individual knight was seen as the true inheritor of wisdom and heroism.⁶¹ The late fifteenth and sixteenth-century romances, however, saw dramatic transformations in the way that the codes of chivalry and courtesy configured traditional loyalties. Chivalry transformed in such a way that the traditional oaths of loyalty between lords and vassals were re-interpreted as existing between the sovereign and his subjects.⁶² These changes are especially embodied in King James I's revival of the ancient court of chivalry, which had fallen into disuse during the sixteenth century, to handle armorial disputes, cases of slander, and cases of offended honor between English nobles. Because chivalry or the law of arms had been defined by this time as part of the civil-law code, seen as defending the king's powers of prerogative, James probably saw it as especially suited to consolidating his own power over potential domestic challengers.⁶³ But there is a certain historical irony in James' action given that the court's original medieval jurisdiction involved disputes between fiercely independent feudal lords over such matters as prisoners of war, ransom, and coats of arms.

Within Tudor and Stuart culture, traditional blood links were replaced by a new chivalric code of virtuous service to the sovereign and kingdom. There was an emphasis on education rather than lineage. Honor could be developed and nurtured, instead of being part of one's condition at birth. For its part, courtesy was replaced or at least complemented by a broader, naturalized notion of civility. Despite its origins in aristocratic feudal loyalties, this new universal conception of civility was viewed as having a civilizing effect on the entire kingdom as well as beyond its borders. In this respect, it could be seamlessly incorporated into the discourse of natural law, which served as the legal basis of empire. The moral outlook that pervades works of Tudor and Stuart romance is thus fashioned out of ideals of chivalry, courtesy, and civility that originate within but are not confined to the aristocracy. These ideals are broad enough to extend from

⁶¹ Scaglione, *Knights at Court*, p. 128.

⁶² Borstein, *Mirrors of Courtesy*, pp. 56–57; Nigel Llewellyn, "Claims to Status through Visual Codes: Heraldry on Post-Reformation Funeral Monuments," in *Chivalry in the Renaissance*, ed. Sydney Angelo (Rochester, NY: The Boydell Press, 1990), pp. 145–61, esp. pp. 149–50; Victor Sketkovic, "Chivalry in Sidney's *Arcadia*," in *Chivalry in the Renaissance*, pp. 161–75, esp. 170.

⁶³ J. H. Baker, *Introduction to English Legal History*, p. 54.

the very private domain of the family to the public domain of the battlefield, from the most ignoble to the noblest characters.⁶⁴ What is fascinating and not a little troubling about sixteenth and seventeenth-century romances then is not that the virtue of civility or courtesy which they uphold is a virtue of privilege, confined to or expected only from the aristocracy. It is, on the contrary, the paternalistic way in which such civility becomes detached from blood lineage, universalized, and then incorporated into the imperial outlook. As in the sixteenth-century works of Spanish scholasticism which considered the justice of the American Conquests, the ethics of conquest that romances incorporate are based not on the particular legal claims of the conquerors but on the civil or uncivil behavior of those who are to be conquered.⁶⁵ Ironically, this focus on the civility or incivility of the other has the effect of blinding the conqueror to the morality of his own actions. What happens when a defeated people refuse the “civility” which the conquerors attempt to apply? In the English romance, such uncivil figures are, like Turpine of *The Faerie Queene* Book 6, often violently punished. The ones that display unregenerate barbarism, such as the salvage nation or the Brigants, also of Book 6, are sanctimoniously destroyed.⁶⁶ In this respect, the “ethical” legacy of the early modern romance narrative probably led to as much blood and violence as the opposing legacy of warfare justified by the Machiavellian *ragione di stato*.⁶⁷

It is worth pausing for a moment to consider the significance of such a conclusion, for one might well question the value of taking such legal and ethical doctrines seriously, since in most cases they were utilized only to legitimize acts of violence. Would it not be more appropriate, for example, to assume a more skeptical stance and to treat the early modern appeals to chivalry and courtesy as just so much window dressing, ultimately concealing and enabling a more vicious reality? The best response to such an objection, I believe, is similar to the one that I provide at the end of the introduction, namely that the moral foundations used to justify aggression are malleable tools and can

⁶⁴ See for example, *The Faerie Queene* Book 6, in which the noble figure who lacks education such as the salvage man and the figure who lacks a noble birth such as the bear’s “babe” of Canto 4 are both capable of becoming civil or civilized (6.5.1; 6.4.36) [Citations are from Edmund Spenser, *The Faerie Queene*, ed. A. C. Hamilton (New York: Longman, 1977)].

⁶⁵ Pagden, *The Fall*, p. 39.

⁶⁶ See 6.3.26–51, for Turpine, 6.8.35–51, for the salvage nation, and 6.11, for the Brigants.

⁶⁷ For discussion of these two opposing traditions of warfare theory, see Tuck, *Rights of War and Peace, Political Thought and the International Order From Grotius to Kant* (New York: Oxford University Press, 1999).

eventually be turned on the conquerors or at least their apologists. England's engagement with legal justification for war and conquest was less direct than Spain's was, but even so, a similar pattern emerges. As we saw, the medieval aristocratic notion of chivalry transformed during the early modern period into a naturalized and universalized notion of courtesy/civility. The initial reasons for such a transformation might have been analogous to John Major's initial argument justifying Spanish Conquest of the Americas, namely to create standards which could be used to justify violence against those who transgressed the universal bounds of courtesy/civility.⁶⁸ Ultimately, however, we can expect this new universalized notion of courtesy/civility to lead to a universal discourse of rights, which undermines and replaces the notion of chivalry as the prerogative of the privileged few. Just as Major's use of natural law to condemn the American inhabitants led to Vitoria's later universalist defense of the New World inhabitants, so too would the analogous English notion of courtesy undergo a similar transformation.

COMPONENT PARTS: THE PASTORAL MODE

The related doctrines of chivalry and courtesy were not alone in both enabling and undermining legal rationales for expansionism. The pastoral mode of the early modern romance also provided a framework within which to imagine a transnational regime of justice that could generate sympathy for the conquered or colonized. While medieval romances were principally chivalric in character, many romances written during the Renaissance incorporate the pastoral. As a result, commentators often call such works "pastoral romances," but this label is deceptive since most of these works are at least as chivalric as they are pastoral.⁶⁹ The English work that best exemplifies the characteristics of pastoral romance is Sidney's *Arcadia*, which was itself based on earlier continental pastoral romances, including Jacopo Sannazaro's *Arcadia*, Jorge de Montemayor's *Diana*, and Gaspar Gil Polo's *Diana enamorada*. In turn, Sidney's own attempt at creating an Arcadian golden world spawned a series of English imitations, including Gervase Markham's continuation of Sidney's unfinished 1590 version, entitled *The English Arcadia, Alluding his Beginning from Sir Philip Sidnes Ending* (1607) and John Dickerson's *Arisbas, Euphues amidst his Slumbers* (1594).⁷⁰ Robert Greene and Thomas

⁶⁸ See Introduction. ⁶⁹ Davis, *Idea and Act*, pp. 55–93. ⁷⁰ *Ibid.*, pp. 57–61.

Lodge also wrote significant prose romances that are heavily indebted to Sidney's example, as did William Warner and Sidney's niece, Lady Mary Wroth.⁷¹ Also displaying Sidneian influences, Book 6 of Spenser's *Faerie Queene* constitutes the most significant example of pastoral romance written in verse during the English Renaissance.

Pastoral romances often oppose the golden world of the pastoral to the heroism of chivalry. In this respect, they are similar to what is regarded as simply the "pastoral" form. From Theocritus' *Idylls* to Virgil's *Eclogues* to Spenser's *Shepherd's Calendar*, the pastoral mode ostensibly orients itself on the side of country values in opposition to urban or urbane values. But it never does so in a way that is oblivious to what is outside of its own natural boundaries. In fact, pastoral poetry takes the corruption of the city as its primary critical focus, the basis from which to delimit its own privileged sphere. In this way, the herdsman-poet orients himself along the axis of an opposition between the country and the city, as well as related oppositions between nature and art, contemplation and action, simplicity and sophistication, *otium* and *negotium*, and peace and war. But pastoral poetry, of course, is ultimately an artistic genre that is read by the inhabitants of the city. For this reason, such oppositions are in no way exclusive or dichotomous – the challenge of pastoral poetry is that at the same time that it defines its own innocence in relation to an outside corruption, it also furtively undermines the very opposition through which its own purity is constituted.⁷² Thus on closer inspection, the pastoral mode figures such oppositions dialectically, "in such a way as to intimate simultaneously their interpenetration," according to Michael McKeon in an important recent article.⁷³ In other words, the pastoral is "about" nature but also "about" the question of how nature is enclosed, represented, and defined. In this respect, it is not simply another poetic convention – it is poetry that takes up the very problem of how

⁷¹ Robert Greene, *Pandosto, The Triumph of Time* (1588), *Menaphon Camillas Alarum to Slumbering Euphues* (1589) and *Ciceronis Amor. Tullies Love* (1589); Thomas Lodge, *The Delectable Historie of Forbonius and Prisceria* (1584), *Rosalinde, Euphues Golden Legacie* (1590), *Euphues Shadow, The Battaile of the Sences* (1592); William Warner, *Pan his Syrinx* (1584; 1597), Lady Mary Wroth, *The Countess of Mountgomery's Urania Part 1* (1621).

⁷² Michael McKeon, "The Pastoral Revolution," in *Refiguring Revolutions: Aesthetics and Politics from the English Revolution to the Romantic Revolution*, eds. Kevin Sharpe and Steven N. Zwicker (Berkeley: University of California Press, 1998), pp. 267–90, esp. 268. See also Frank Kermode, "Introduction," *English Pastoral Poetry from the Beginnings to Marvell: An Anthology*, ed. Frank Kermode (New York: Norton, 1972), p. 14; Raymond Williams, *The Country and the City* (New York: Oxford University Press, 1973), pp. 13–22; Paul Alpers, *What is Pastoral* (Chicago: University of Chicago Press, 1996); and E. Kegel-Brinkgreve, *The Echoing Woods: Bucolic and Pastoral from Theocritus to Wordsworth* (Amsterdam: J. C. Gieben, 1990).

⁷³ McKeon, "The Pastoral Revolution," p. 271.

conventions are defined, how they are delimited, as well as what they depend on. “The antithesis” between the country and the city is not mutually exclusive, McKeon says elsewhere, it “is also a circle” which constantly brings pastoral content in contact with its other.⁷⁴

What distinguishes the pastoral romance from the “normative” pastoral mode is that it actually foregrounds the “interpenetration” between pastoral and its opposite while the latter often conceals its own oppositional dependence. Many romance narratives depend on chivalric knights and shepherds moving from the court to the country and back again in a way that presents the two contexts as closely allied.⁷⁵ In Book 6 of the *Faerie Queene*, for example, the hero knight, Calidore, embodies the best aspects of the courteous and chivalric knight, but in Canto 9, he defers his quest in order to enjoy a pastoral interlude with an old shepherd named Melibee and his adopted daughter suitably named Pastorella. When Calidore begins his sojourn among the shepherd nation, his ancient host initially defines his own pastoral serenity against the arrogance and superficiality of the court:

To them, that list, the worlds gay shows I leaue,
And to great ones such follies doe forgiue,
Which oft through pride do their owne perill weaue,
And through ambition downe themselues doe driue,
To sad decay, that might contented liue.

(6.9.22)

Shortly after this speech, Melibee explains that he himself had once participated in the court life that he now disparages, having left home “in the first prime of my yeares” to work “in the Princes gardin” (6.9.24). After ten years at court, he decided to return to his native lands, having “learn’d to loue more deare / This lowly quiet life, which I inherite here” (6.9.25). Like the typical pastoral speaker, Melibee privileges humble authenticity and *otium* (“This lowly quiet life”) to the garish ostentation of the court.

But as Paul Alpers has recently shown, no other shepherd besides Melibee is directly quoted in Cantos 9 and 10 – we are told only indirectly of the other shepherds’ songs and caroling. More importantly, no one except Melibee (and later Colin Clout) is able to articulate a

⁷⁴ McKeon, “Surveying the Frontier of Culture: Pastoralism in Eighteenth-Century England,” in *Studies in Eighteenth-Century Culture*, eds. Syndy M. Conger and Julie C. Hayes (Baltimore: The Johns Hopkins University Press, 1998), vol. 26, p. 9.

⁷⁵ Hallet Smith, *Elizabethan Poetry* (Cambridge, MA: Harvard University Press, 1952), pp. 2–14.

pastoral consciousness. It seems that Melibee's entire knowledge of his own pastoral authenticity depends on his unique ability to speak, to sing, and to represent his own situation, all abilities that require an urbane self-consciousness that originates in the court. In effect, his experience at court provides a foundation for his own pastoral experience.⁷⁶ For his part, Calidore finds himself "rapt with double raiishment" at Melibee's description of pastoral *otium*, and after some difficulty adjusting to the ways of shepherds, the knight of courtesy doffs "his bright armes" and dresses himself in "shepherds weed," adopting the rustic ways of the shepherds as his own (6.9.26, 36). At the beginning of the tenth canto, Spenser presents Calidore's pastoral interlude as a dereliction of his duties as a knight who has sworn fealty to the *Faerie Queene*. And yet, as C. S. Lewis has suggested, it would be wrong for the reader to take Spenser's chastisement of Calidore at face value since the knight's interlude among the shepherds and his experience on Mount Acidale are the key to Spenser's entire conception of courtesy.⁷⁷ Spenser reminds us of the distinction between the country and the court, but he also presents a fluid translation between the two worlds. Melibee himself presents the pastoral state as one of mind rather than of a specific locale. When Calidore expresses envy for "this small plot of your dominion," Melibee corrects him by pointing out that all should "contented rest / With that they hold: each hath his fortune in his brest. / It is the mynd, that maketh good or ill, / That maketh wretch or happie, rich or poore" (6.9.28, 29–30). For Melibee, the pastoral is a universal, available to every human heart regardless of individual status or locale (6.9.20).

In the next stanza, Calidore confirms Melibee's definition by producing his own version of courtly pastoral. Mixing the chivalrous adventurer's code with the pastoral mode, Calidore asks Melibee,

Since then in each mans self . . .
 It is, to fashion his own lyfes estate,
 Giue leave awyhyle, good father, in this shore
 To rest my barcke, which hathe been beaten late
 With stormes of fortune and tempestuous fate.
(6.9.31)

⁷⁶ Alpers, *What is Pastoral*, pp. 185–94, esp. 193. Alpers notes that Coridon "finally speaks in 11.30–32. But this is after the brigands have wiped out the shepherds' world" (193).

⁷⁷ C. S. Lewis, *The Allegory of Love* (Oxford: Oxford University Press, 1936), p. 350.

Calidore's version of pastoral is not that of shepherds and sheep—rather it implies a sojourn from and an ultimate return to the figurative high seas. And yet, consistent with Melibee's definition of universal pastoral, Calidore's verse emphasizes the primary state of mind, *otium*, which defines the mode.⁷⁸

Through such interpenetration of court and country, pastoral is able to reinforce, rather than undermine, the universal appeal of chivalry as an ideal of transnational justice. At the beginning of Book 6, Spenser presents courtesy, the virtue of the book, as founded in pastoral symbolism:

Amongst them all growes not a fayrer flowre,
Then is the bloosme of comely courtesie,
Which though it on a lowly stalke doe bowre,
Yet brancheth forth in braue nobilitie,
And spreads it self through all ciuilitie.

(6.proem.4)

In this significant passage from the proem, Spenser defines the virtue, courtesy, which the rest of the narrative will explore. Courtesy (as well as the related concept of chivalry) is dependent on pastoral symbols, which ultimately present the virtue as undergirding civilization itself—“[it] brancheth forth . . . / And spreads it self through all ciuilitie.” Similarly, pastoral dependence on a code of chivalry/courtesy is confirmed at the end of the book when ruthless brigands attack the shepherd community during Calidore's absence on Mount Acidale. The shepherds are defenseless without a knight to preserve their natural state, and it is the knight of courtesy, Calidore, who avenges the shepherd massacre by slaughtering the unnatural brigands, presenting Coridon with their spoils and saving Pastorella (6.11.43–51).

The implications for an ideal of transnational justice are apparent when we consider what McKeon has called the macro-pastoral.⁷⁹ The early modern period saw the pastoral expand from the domestic opposition between London and its countryside to the analogous opposition between England and its colonies, especially Ireland. On the one hand, this expansion meant that Ireland and other colonial *loci* became identified with “backwardness,” barbarism, and denigrated primitivism in comparison with an England that stood for art, improvement, and modernization. On the other hand, the ineluctable appeal of the pastoral ideal meant that the colonized other could evoke the profound sympathy of the colonizers. Thus, Ireland became the privileged site of uncorrupted nature

⁷⁸ Alpers, *What is Pastoral*, p. 191.

⁷⁹ McKeon, “The Pastoral Revolution,” pp. 284–89.

while England stood for artifice, decadence, and pride. This sympathy for the colonized subject is shown especially well in Sir John Davies' 1612 pamphlet, entitled *A Discoverie of the True Causes Why Ireland was never Entirely Subdued, nor Brought under Obedience of the Crowne of England, untill the Beginning of His Maiesties Happy Raigne*, on why English administrators were unable to pacify Ireland until King James' reign. Although Davies was the English attorney general in Ireland, large sections of this tract complain of how English policies had served to exacerbate the difficulty of conquering the Irish people. At one point, Davies attacks the unjust English application of Coyne and Livery throughout Ireland, by which the Irish were subject to a taxation of "mansmeat, horsemeat, and money . . . at the will and pleasure of the [English] soldier."⁸⁰ He goes on to explain the unjust nature of such taxation by invoking a passage from Virgil's first eclogue:

This extortion of coyne and livery did produce two notorious effects: first, it made the land waste; next, it made the people idle. For when the husbandman had labored all the year, the soldier in one night did consume the fruits of all his labor, *longique perit labor irritus anni*. Had he reason then to manure the land for the next year? Or rather, might he not complain as the shepherd in Virgil?:

Impius haec tam culta novalia miles habebit?
Barbarus has segetes? En quo discordia cives
Perdixit miseris? En quis consevimus agros?

[Shall an irreligious soldier take possession of these fallow lands, so well cultivated? Shall a foreigner get hold of these cornfields? Is this the degree of misery to which strife has brought us citizens? For whom have we sown our fields?] (Virgil, *Eclogues*, 1.70–73)⁸¹

In this passage, Davies uses the pastoral mode to identify with the demands of the political and cultural other, justifying a critique of injustice at the hands of the colonizer at the same time that his ultimate purpose is to celebrate the conquest of Ireland and reform of Irish "barbarism."⁸² As we shall see, this universalist quality of pastoral enables the mode to embody those aspects of natural-law doctrine that undermine the politics and aesthetics of singularity.

⁸⁰ Sir John Davies, *A Discoverie . . .*, ed. James P. Myers, Jr. (Washington, DC: Catholic University of America Press, 1988), p. 166.

⁸¹ *Ibid.*, pp. 167–68.

⁸² For a related point, see the reading of Davies by Annabel Patterson, *Pastoral and Ideology: Virgil to Valery* (Berkeley: University of California Press, 1987), p. 141.

COMPONENT PARTS: THE MIRROR FOR PRINCES

The third important component of the romance form originates within the “mirror for princes” tradition, which existed from medieval times well into the early modern period. The purpose of the “mirror” tradition was the instruction of political leaders on how to govern according to Christian morality and Roman and Greek political ideals. The most important medieval examples of the mirror tradition were John of Salisbury’s *Policratus*, written in the twelfth century for the English court, and Giles of Rome’s thirteenth-century work, *De regimine principum*. Both of these works applied their author’s extensive knowledge of Greek and Roman political theory to medieval Christian Europe. Erasmus’ *Institutio principis Christiani* and Machiavelli’s *Il principe* were the most famous Renaissance examples of the mirror genre.⁸³

The mirror itself is an important symbol within medieval and Renaissance thought. As an invention, the mirror allowed the subject to examine his or her own body in ways that would not be ordinarily possible.⁸⁴ A symbolic mirror would presumably allow this process of self-examination to continue inside the self into the depths of the mind and ultimately the soul. In this respect, the “mirror” *par excellence* was the Christian Bible in which every good Christian would ideally see his life reflected in the exemplary life of Christ. A mirror for princes would serve the same role for the sovereign, and writing one essentially involved composing a doctrine that would reflect back to the king, simultaneously, an image of whom he was and whom he could ideally be. The main problem for the author of such a work has to do with the difficult act of writing an exemplum for a king. The priest could presume to advise his flock because to all appearances he himself led an exemplary life of Christian abstinence. How could anyone claim a similar authority for educating the prince, who by virtue of his position as sovereign presumably did not need any advice from his subjects?

As a result of this quandary, one important convention that invariably found its way into such works is a devout expression of humility. The

⁸³ For background, see Leslie K. Borne, “The Perfect Prince,” *Speculum* 3 (1928), 470–504; Cary J. Nederman, “The Mirror Crack’d: The *Speculum Principum* as Political and Social Criticism in the Late Middle Ages,” *The European Legacy* 3/3 (1998), 18–38; Dora M. Bell, *L’Ideal ethique de la royauté en France au Moyen Age* (Geneva: E. Droz, 1962); Jacques Krynen, *Ideal du prince et pouvoir royal en France à la fin du Moyen Age 1380–1440* (Paris: Editions A. et J. Picard, 1981).

⁸⁴ Ritamary Bradley, “Backgrounds of the Title *Speculum* in Medieval Literature,” *Speculum* 29 (1954), 100–15; Benjamin Goldberg, *The Mirror and Man* (Charlottesville, VA: University of Virginia Press, 1985).

author invariably begins a mirror with a statement proclaiming how unworthy he is to carry out the job of advising a political leader. Another related strategy endemic to the medieval period, in which original knowledge was denigrated in favor of ancient knowledge, was for the author to present him or herself as merely translating the wisdom of ancient sources such as Cicero, Seneca, Aristotle, and Plato. Equally, the author could present lessons based on exemplary historical narratives, for example, by citing the works of Plutarch or Livy.⁸⁵ For the sixteenth-century mirror authors, this characteristic expression of humility was deemed as necessary as ever.⁸⁶ The advent of humanism in the fifteenth and sixteenth centuries, however, produced a new regard for the production of original knowledge and for political theory that responded directly to recent historical events. Therefore, in some works, fictional narratives began to replace the historical narratives of statecraft that had been popular in earlier works. Hiding one's hubris behind a fictional or pseudo-historical narrative could be just as effective as using a "true" historical narrative for the purposes of advising the sovereign. In the *Utopia*, for example, Sir Thomas More uses the fictional character of Raphael Hythloday to criticize the acquisitive, warmongering sovereigns of his day at the same time that he clearly differentiates his own politics from that of the fictional Portuguese traveler.⁸⁷ Likewise, the Castillian Franciscan, Antonio de Guevara, presents his massive *El relox de principes* (1529) by way of an obvious pseudo-historical account of the book's origins. He writes that the volume, supposedly containing the "Life and Letters of Marcus Aurelius," had serendipitously been recovered recently in Florence and then translated into Spanish from its original Greek.⁸⁸

As was the case with the chivalric code and the pastoral, the "mirror for princes" tradition tended to emphasize the need for an exemplary king to establish a just realm. And similarly, the king's justice was often presented as ideally extending beyond the boundaries of his own realm. One episode, from Guevara's *El relox de principes*, in particular captures some of the most important ideas produced in the early debates on Spanish imperial policy over the question of justice for the conquered subject. According to a narrative recounted by the Emperor Marcus Aurelius, the

⁸⁵ Forhan, *Political Theory of Christine de Pizan*, pp. 30–32.

⁸⁶ See, for example, Nicolo Machiavelli, *The Prince*, trans. Quentin Skinner (New York: Cambridge University Press, 1988), p. 3.

⁸⁷ More, *Utopia*, esp. pp. 5–7, 84–85.

⁸⁸ Antonio de Guevara, *The Dial of Princes, Containing The Golden and Famous Booke of Marcus Avelius*, trans. Thomas North (London: 1619), pp. a5–A.

Romans conquered Germany solely in order to increase their territory, while the Germans themselves demanded the justice that only an ethical conqueror could afford them. One day, a German villain travels to the Roman Senate and gives an eloquent speech in defense of the sovereign rights of his nation in order to protest against the unjust Roman occupation. The villain characterizes the conquest of Germany in the following way: "For I let you know, if you do not know it, that when the wicked went before the triumphing chariots saying, 'Live, live, invincible Rome!,' on the other side the poor captives went saying in their hearts, 'Justice! Justice!'"⁸⁹ The villain complains elsewhere that the Roman judges who are sent to govern Germany are all unjust and continually steal as much as they can from the German people. Moreover, in a passage which presages one of Bartolomé de las Casas' principal complaints against the Spanish Conquest of the Amerindians, the villain condones the aim of reforming German barbarism but condemns the barbarous way in which the Romans have carried out such supposed reform: "If ye say ye sent to conquer us to the end we should not be barbarous, nor live like tyrants, but that you would we should live after your good laws and customs, if it be so I am well content. But how is it possible ye should give laws to strangers, when you break the law of your own predecessors?"⁹⁰ Of course, Guevara's purpose here was to use such an example of unjust conquest in order to instruct contemporary Spanish magistrates by reflecting back a possible negative image of the Spanish *imperium*. In essence, the villain endorses the reform of barbarism as a worthy goal, while pointing out, as more direct critics of the Spanish Conquests would a generation later, that the Roman magistrates proceed largely by immoral and illegal behavior.

In spite of their reputation for encouraging vice, romance fictions could be understood as part of this tradition of offering advice to magistrates by way of holding up a mirror or an exemplum. In some cases, this was announced in the title of the work. In their English translations, both Ortúñez's *Espejo de príncipes y cavalleros*, translated into English as the *Mirror of Princely Deeds and Knighthood*, and the Anonymous *Palmerín de Oliva*, translated as *Palmerin D' Oliua, The mirrour of nobilitie, mappe of honor, anotamie of rare fortunes, heroycall president of Loue: Wonder for chiuallrie, and most accomplished knight in*

⁸⁹ Antonio de Guevara, *The Dial of Princes*, trans. Sir Thomas North, ed. K. N. Colville (London: The Scholars Library, 1919), p. 100.

⁹⁰ *Ibid.*, pp. 111–12.

all perfections, would have been indistinguishable from a traditional mirror by title alone. Often, the author attempted to position his work within this tradition in the dedication or prologue by introducing stories about heroes to whom the sovereign or other magistrate might aspire. Using this approach, Rodríguez de Montalvo stressed the didactic purpose of *Amadís de Gaula* from the outset: "And what should we derive from them all [feigned histories] which would be fruitful for us?" he asks, answering, "Certainly nothing more than the good examples and teachings which most closely relate to our own salvation." Rodríguez de Montalvo is keen to present his work as something which will instruct "gentlemen, both old and young."⁹¹ Similarly, in *Pheander the Maiden Knight* (1595), the English writer Henry Roberts announces that he will write about "the famous actions of a King, a Scholler, & a Souldier, wherein you shall see the greatnes of Maiestie, the hardy aduentures of Knight-hood with his bounty, how many Challenges was made to gaine Fame, his learning shewing a Scholler, and his quaint conceits courting his love, al concurring in this Paragon of honour."⁹² Like Rodríguez de Montalvo's, Robert's narrative was ostensibly meant to teach the ruling class how to become good magistrates.

Most famously, Spenser repeatedly uses the metaphor of the mirror for princes to describe his poem. At the beginning of Book 2, for example, he implores Queen Elizabeth to "behold thy face, / And thine owne realmes" "In this faire mirrhour" of faeryland (2.proem.4). The proem to Book 3 includes a similar locution which idealizes the two bodies of the queen. He asks Elizabeth not to refuse "In mirrours more then one her selfe to see, / But either *Gloriana* let her chuse, / Or in *Belphoebe* fashioned to bee: / In th' one her rule, in th'other her rare chastitee" (3.proem.5). Elsewhere, Spenser is clear that the poem is not simply intended to be representative. Both the Faerie Queene, *Gloriana*, who has assigned the quests, and *Belphoebe*, the warlike virgin of Book 3, are meant to inculcate morality in the reader since as Spenser says in the letter to Raleigh, "so much more profitable and gracious is doctrine by ensample, then by rule."⁹³

In conclusion, similar to Guevara's *El relox de príncipes*, romance narratives written during the Renaissance reproduce an ideal of universal justice or natural law for a people that have been conquered or alternatively for a sovereign that has been usurped. What this entails is

⁹¹ Garci Rodríguez de Montalvo, *Amadís of Gaul*, trans. Edwin B. Place et al., pp. 19, 20.

⁹² Henry Roberts, *Pheander*, sig. A3^v. ⁹³ Spenser, *Faerie Queene*, p. 737.

imagining a standard to which every sovereign is subject in all of their political acts, even those that affect persons who are not that sovereign's own subjects. In one respect, this moral code is profoundly Christian in the sense that almost every account of medieval and Renaissance sovereignty presents the king as subject to God's ultimate authority. In another respect, however, it is clear that one strength of this concept of natural justice is that it crosses even religious boundaries. That it was rooted in nature itself meant that it could be applied equally to Christian and non-Christian, European and non-European, "civilized" and "barbaric" peoples alike.

*Natural law and charitable intervention
in Sir Philip Sidney's Old Arcadia*

Late sixteenth-century English perceptions of the Spanish policy in the Americas were based on the premise that the Spanish conquistadors were immoral perpetrators of cruelty and barbarism. This perception was shared by Sir Philip Sidney.¹ The long correspondence between Sidney and his French tutor, Hubert Languet, reveals an ongoing preoccupation with the affairs of the Spanish and their exploits on the continent and in the New World. In particular, both Sidney and Languet wished England to be a more determined impediment to the Spanish policy of conquest and expansionism.²

The question of how to commit England to such a role was complex. In the letters of Sidney and Languet, one detects a sustained unwillingness to meet Spanish aggression with a counterbalancing force of English aggression. Much of this unwillingness was simply the realistic fear of Spanish land-force dominance as well as the knowledge that the English queen would never commit wholeheartedly to the wars on the continent. Equally important, in my view, however, was the urge to imagine an “ethical” strategy of foreign engagement, one that would substitute the expansion of English influence on the continent for the Spanish strategy of territorial expansion.³ In his letters to Sidney, Languet warns of the necessity of the English to remain alert to the prospect of Spanish and French aggression. Instead of advising the English to respond with force, Languet urges a strategy that would strengthen English influence on the continent.⁴ In a letter written in January 1578, Languet tells Sidney that

¹ Greville, *A Dedication to Sir Philip Sidney*, in *The Prose Works of Fulke Greville*, Lord Brook, ed. John Gouws (Oxford: Clarendon Press, 1986), pp. 3–136, esp. 54–55, 61, 65–66.

² *The Correspondence of Sir Philip Sidney and Hubert Languet*, ed. Steuart A. Pears (Westmead, England: Gregg International Publishers Ltd., 1971), pp. 103, 108, 131–32, 133–36, 146, 151–52. For context, see Worden, *Sound of Virtue*, pp. 61–62, and Roger Kuin, “Querre-Muhau: Sir Philip Sidney and the New World,” *Renaissance Quarterly* 51.2 (1998), 549–85.

³ See McCabe, *Spenser's Monstrous Regiment: Elizabethan Ireland and the Poetics of Difference* (New York: Oxford University Press, 2002), pp. 226–27.

⁴ *The Correspondence of Sidney and Languet*, pp. 131–32.

England would do well “to send from time to time into Germany active men, and such as are acquainted with the affairs of this country [Germany], to strengthen their good feelings towards you, and to do what they can to conciliate the good will of others, for in this way the name of the Queen would be made more honourable.”⁵ Languet’s alternative to the familiar discourse of conquest and expansion, which was identified with Spain, substituted alliance formation and the opening of channels of influence for militant subjugation of the other. The goal was still to strengthen England’s position in continental affairs, but instead of violently demanding the allegiance of the other, the English were to send “such as are acquainted with the affairs of this country” and thus to recognize the other nation’s singularity. Coincidentally, Languet would divorce future English foreign policy from a doctrine of self-interest in order to convince beleaguered inhabitants of Germany that the English “are really interested in their [the Germans’] welfare.”⁶

In this chapter, I suggest that the frequent portrayal of Sidney as a “forward” Protestant militant does not reflect the depth of Sidney’s thinking on the issues of conquest and aggression that were consuming Europe at the end of the sixteenth century.⁷ Like Languet, Sidney was interested in positing an alternative to the traditional forms of territorial expansion epitomized in the perception of Spanish aggression both on the continent and in the New World. But ironically, Sidney grounded his ethical standpoint within a thoroughly Catholic set of values, and to the degree that he did so, he was able to avoid many of the ideological inconsistencies and contradictions caused by a commitment to native English law that can be found in later romances. The obvious place to consider this topic within Sidney’s corpus would be the *New Arcadia*, especially the second book, in which the disguised princes, Pyrocles and Musidorus, recount tales of their heroic interventions into the affairs of legitimate sovereigns who are threatened by cruel tyrants. Indeed, Sidney’s best friend, Fulke Greville, later wrote in his biographical *Dedication to Sir Philip Sidney* that the young writer’s true intent in the *New Arcadia* was to produce a work of political philosophy and statecraft.⁸

But as Blair Worden has pointed out, the *Old Arcadia* is at least as political a work as the revised version and an even more explicit commentary

⁵ *The Correspondence of Sidney and Languet*, pp. 135–36. ⁶ *Ibid.*, pp. 136.

⁷ For a discussion of Sidney’s commitment to militant Protestantism, see Worden, *Sound of Virtue*, pp. 50–51; Andrew D. Weiner, *Sir Philip Sidney and the Poetics of Protestantism: A Study of Contexts* (Minneapolis: University of Minnesota Press, 1978).

⁸ Greville, *A Dedication*, p. 10, line 24–p. 11, line 8.

on contemporary politics.⁹ It is my own contention that King Euarchus' charitable intervention into Arcadia in Book 5 of the *Old Arcadia* should be read as an antecedent (or, within the narrative of the 1593 *New Arcadia*, a culmination) of the princes' acts of intervention and legitimized conquest, which are recounted throughout Book 2 of the *New Arcadia*. The tales of Prince Pyrocles and Prince Musidorus aiding such beleaguered sovereigns as the King of Paphlogonia and Queen Erona are modeled after King Euarchus' virtuous assistance to Basilius' collapsed dukedom in Book 5 of the *Old Arcadia*.¹⁰ Predicting the episodes recounted in Book 2 of the revised version, the last book of Sidney's *Old Arcadia* is meant to provide a context in which to imagine in narrative terms an "ethical" form of conquest that would protect rather than annul that state's rule of law. Despite the ambiguities which have been shown to complicate any sense of closure in the fifth book of the *Old Arcadia*, it is possible to tease out a narrative doctrine that would privilege a legal and "charitable" form of intervention over the traditional mode of subjugation which Spain represented to the English.¹¹ Such a notion of "charitable conquest" represents yet another more subtle form of imperialism, which was perhaps even more effective precisely because it utilized ethical rationales in order to authorize English expansionism.

SIDNEY AND THE SPANISH EXAMPLE

One of the best examples of Sidney's youthful militant streak is found in his incomplete "Discourse on Irish Affairs," which he wrote in 1577 in order to vindicate the decision by his father, then Lord Deputy of Ireland, to administer the cess, or land tax, throughout the English Pale. Although at one point in the "Discourse" Sidney seems to advocate a measured solution, comprised of both "force and gentleness," to the problem of the "obstinate" Irish, the general tenor of the tract is that when it comes to civilizing "barbaric" nations like Ireland, "lenity" is not the best option.¹² Favoring force over gentleness, Sidney writes, "For little is lenity to prevail in minds so possessed with a natural inconstancy." As was the case

⁹ Worden, *Sound of Virtue*, pp. 15–16.

¹⁰ *The Countess of Pembroke's Arcadia (The New Arcadia)*, ed. and intro. Maurice Evans, 2nd edn. (New York: Penguin Books, 1977), pp. 275–78, 302–06.

¹¹ Stephen Greenblatt, "Sidney's *Arcadia* and the Mixed Mode," *Studies in Philology* 70 (1973), 269–78.

¹² Sidney, "Discourse on Irish Affairs," *Miscellaneous Prose of Sir Philip Sidney*, eds. Katherine Duncan-Jones et al. (New York: Clarendon Press, 1973), pp. 10, 11.

for Edmund Spenser, Sir John Davies, and many other English writers on Ireland, Sidney viewed the Irish as epitomizing the unnatural and uncivilized other "with whom no other passion can prevail but fear."¹³ His father, Sir Henry, apparently agreed with his son and appointed governors whose ruthless policies consisted of pacification through a scorched-earth policy of burning houses and crops.¹⁴

A very different view of English foreign policy can be found in the fifth and last book of Sidney's romance, *The Countess of Pembroke's Arcadia* [henceforth the *Old Arcadia*]. Whereas the "Discourse" favors a nationalistic policy of submitting the "inferior" Irish to the English will, the last book of the *Old Arcadia* presents a charitable ideal of foreign intervention or conquest. Rather than attempting to use foreign intervention as a means of increasing English territory, the conception of intervention contained in the *Old Arcadia* ostensibly places the interests of the national other ahead of the intervening nation. There are a number of possible reasons for the difference in the approaches between Sidney's "Discourse on Irish Affairs" and the *Old Arcadia*, the most obvious being that the conception of intervention found in Sidney's fictional world is an idealized or romanticized version of the one that Sidney promoted in Ireland. However, it is impossible to ignore significant developments and transformations that had occurred both in world affairs and in Sidney's life in the period between his composition of the "Discourse" and his completion of the *Old Arcadia* some four years later. In the interval, intervention into the affairs of continental Europe supplanted Sidney's passion for a full conquest and reformation of Ireland.

After 1576, the year in which Sidney and his father went to Ireland to survey the situation there, Sidney became increasingly involved in plans to ally England with anti-Spanish forces throughout Europe, especially with the continental Protestant movement. Sidney had already traveled widely throughout Germany, Poland, and Italy in the three years from 1572 to 1574. In 1577, the same year he wrote his tract on Ireland, he was sent to Prague as an envoy to the newly elected Holy Roman Emperor Rudolph. On the way, he attempted to renew contacts with European Protestants for the purpose of exploring the possibility of a defensive league capable of resisting Spanish aggression. In 1579, he and his father were deputed to greet Hubert Languet and the German Protestant, Prince

¹³ Sidney, "Discourse on Irish Affairs," p. 11.

¹⁴ Hayes-McCoy, "Completion of the Tudor Conquest," vol. 111, p. 102.

John Casimir, who were traveling to the English court to request English support for the rebellion in the Netherlands.

English intervention into European affairs was a great deal more perilous than intervention into Ireland. Spain was the dominant power of the sixteenth century, and its armies (and allied armies) were engaged in conflicts from the Netherlands to Italy. Because the English were also threatened by Spanish invasion, they tended to sympathize with the beleaguered princes of northern Europe. English intervention was therefore conceived of as helping to restore sovereignty to those princes threatened by Spanish usurpation. This was in contradiction to the pattern of English engagement in Ireland, where the aim was suppression of rebellious Irish nobles and consolidation of English power. While, in practice, the Dublin government was extremely ineffectual, the English queen could legally speaking claim sovereignty over Ireland from 1541, the year in which the Dublin parliament recognized Henry VIII as King of Ireland and head of the Irish Church.¹⁵ Moreover, the English believed that England enjoyed a form of *de facto* sovereignty over Ireland because Irish inhabitants were viewed as both naturally and culturally inferior to the English.¹⁶

The *Old Arcadia* illustrates a transformation in Sidney's ideas on conquest and foreign intervention. Rather than imagining an act of foreign intervention that accords the conquerors permanent dominion over the conquered, the last book of the *Old Arcadia* presents the interests of the conquered nation as equal to those of the conquering nation. During the period (autumn 1579 to spring 1581 by most accounts) in which Sidney was writing the first version of the *Arcadia*, a number of international political events seem to have coalesced within Sidney's narrative.¹⁷ Blair Worden has illustrated how one in particular influenced Sidney's romance. He explores how the Spanish occupation of the Netherlands embodied the tyranny which Sidney and fellow "forward" Protestants sought to reverse through the establishment of a reciprocal league or alliance similar to Euarchus' proposal of an alliance to guard against the incursion of the Latins and Asiatics in the *Old Arcadia*. According to Worden, Elizabeth's refusal to participate in such an

¹⁵ John McGuck, *The Elizabethan Conquest of Ireland: The 1590s Crisis* (New York: Manchester University Press, 1997), p. 4.

¹⁶ Nicholas Canny, *The Elizabethan Conquest of Ireland: A Pattern Established 1565–76* (London: The Harvester Press, 1976), pp. 119–20; Hayes-McCoy, "Completion of the Tudor Conquest," vol. 111, p. 95; and John McGuck, *The Elizabethan Conquest of Ireland*, pp. 3–24.

¹⁷ Worden, *Sound of Virtue*, p. xxi.

alliance was analogous to Basilius' retreat from the political stage and could, according to this analogy, cause her kingdom to fail in much the same way that the dukedom of Arcadia collapses.¹⁸

Worden's contribution to our understanding of Sidney's politics is extensive, but the majority of his conclusions result from his determination to view Basilius as the main fictional analogue of Elizabeth. In fact, equal justification may be found for construing an analogy between Elizabeth and the fictional King Euarchus of Macedonia, one that Worden himself pursues at certain times.¹⁹ Such an analogy makes sense on the basis of the respective ranks of the two fictional sovereigns and the meanings of their Greek names. Just as Elizabeth was Queen of England, Euarchus is a king and he embodies what his name signifies, namely a "good ruler." In contrast, Basilius is a duke in the *Old Arcadia*, and his name, simply meaning "king," lacks a qualifier. Beyond such details, pursuing this analogy allows us to consider the fictional dukedom of Arcadia from the privileged perspective of the protagonists, Musidorus and Pyrocles, who like Euarchus view the realm from the outside. Most importantly, the analogy between Elizabeth and Euarchus helps to uncover a narrative logic in the *Old Arcadia* that would offer England a novel foreign policy.

At least two contemporary foreign contexts embody the collapse of sovereignty that occurs in the fictional dukedom of Arcadia. One was the Low Countries, whose opposition to the Spanish occupation in 1578 was fragmented on the basis of both regional and religious differences.²⁰ This fragmentation was at its worst in the autumn of 1578 when Sidney was just about to begin his composition. At that time, both the Count Palatine John Casimir and the Duke of Anjou were leading allied armies into the Low Countries in order to consolidate the inhabitants' opposition to Spain.²¹ Both expeditions failed as a result of fractious Dutch politics. Casimir's Calvinism alienated the Catholic nobility based in the south who viewed him as a hostile occupier, while revolutionary Protestants immediately

¹⁸ Worden, *Sound of Virtue*, pp. 41–126, esp. 58–88. See pp. 89–114, for Worden's related analysis of Sidney's response to Elizabeth's proposed marriage to Francis Duke of Anjou in both the *Arcadia* and in his "Letter written to Queen Elizabeth, touching her marriage with Monsieur," in *Miscellaneous Prose of Sir Philip Sidney*, pp. 46–58.

¹⁹ Worden, *Sound of Virtue*, pp. 132–33, 251–52. More often, however, Worden contrasts Euarchus with Elizabeth. See p. 178.

²⁰ For the English perspective on the causes of such fragmentation, see *Calendar of State Papers, Foreign* [hereafter *CSPF*], 1578–79, ed. Arthur John Butler (London: Mackie and Co., 1903), pp. 50, 78–79.

²¹ *CSPF*, 1578–79, pp. 256–57, 259–60, 267–68, 274, 282–83, 309, 311, 372–73.

viewed Anjou's undisciplined army as their enemy. As a result, the absence of any centralized authority in the Low Countries left the states even more vulnerable to Spanish domination.

Technically, the conflict in the Low Countries involved a revolt against Hapsburg rule, but because Philip II had attempted to abolish ancient Dutch customs and liberties and had invaded the States with Spanish troops, Sidney and other Englishmen saw the conflict as involving an unjust Spanish invasion. According to Greville, Sidney believed that Philip II aimed "to transform his Low Country dukedoms – fallen to him by descent – into the nature of a sovereign conquest, and so, by conjoining the dominion and forces by sea to his large empires and armies upon the main, [he] would probably enforce all absolute princes to acknowledge subjection to him before their time."²² Queen Elizabeth sought to console both sides of the conflict, supporting the armies of both Casimir and Anjou as well as offering a settlement with Don John of Austria, the Spanish governor of the States. In June of 1578, she ordered an English legation, of which Sidney's father-in-law, Walsingham, was a part, to assure the Spanish governor of the Netherlands that the English recognized Spanish rule over the country and had used their "uttermost force to hinder" the French from attempting to "usurp the country to themselves." At the same time, the legation was to inform the Dutch rebels that if the States' forces, along with Casimir and Anjou, were unable to resist the Spanish armies, the queen would "send our forces out of England for their better relief."²³ From the cloistered vantage point of Wilton where most of the *Old Arcadia* was written, Sidney watched as the campaigns of Casimir and Anjou, both secretly allied to England, exacerbated the disunity and fragmentation that had afflicted the country, ultimately aiding the hostile Spanish army. The narrative that he wrote in response imagines a different form of intervention that unites the Arcadians through the application of impartiality and disinterested justice.

The other foreign context that embodies Arcadian analogies involved Portugal, whose issueless sovereign, King Sebastian, was killed in 1578 during his failed campaign to conquer North Africa. After Sebastian's death and the subsequent death of Henry, the "Cardinal-King" of Portugal, who briefly succeeded his nephew, seven different pretenders

²² Greville, *A Dedication*, p. 29, lines 7–12. For a similar contemporaneous view, see Sir Henry Spelman, "Of the Union," *The Jacobean Union, Six Tracts of 1604*, eds. Bruce Galloway et al. (Edinburgh: Clark Constable, 1985), p. 181. See also Worden, *Sound of Virtue*, pp. 248–50.

²³ *CSPF, 1578–79*, pp. 11–12.

came forward to claim the throne. Jean Marie d'Abadie, who was representing the claim of Catherine de Medici Queen Mother of France, described the discord and disunity in Portugal in a secret missive that found its way into the hands of Walsingham: "I have found great divisions in this realm and many private interests which might in the end be total ruin of it, great part of the nobility taking the part of the Catholic king [Philip]. The princes of the kingdom are divided all aiming to be the same thing (*aspirant tous a etre une meme chose*); while the people generally are resolved to be altogether ruined rather than accept subjection to the Spaniard of whom they have lost their fear."²⁴ King Philip II of Spain took advantage of the confusion, invading the country, seizing the crown by force, and exiling the most prominent Portuguese claimant, Dom Antonio, after the crucial battle of Oporto in August of that year. In October, Sidney sorrowfully noted the event in a letter to his brother: "Portugall wee say is lost, and to conclude my eies are almost closed upp, overwatched with tedeous busines."²⁵ During the years that followed, Sidney was to become intimately familiar with the cause of retaking Portugal. Dom Antonio wrote to Sidney early in 1581, requesting the young courtier's help in persuading Elizabeth to grant financial assistance to his cause, and Sidney subsequently acted as Antonio's principal representative at the English court.²⁶

From Wilton, Sidney had watched once again as England stood by while the Spanish crown conquered and occupied a crucial English ally. The situation of Portugal is especially analogous to that of Arcadia. Just as Basilius miraculously survives his own death to reassume his place as duke, King Sebastian was widely reputed to have survived at the battle of Alcaicer. Rumor had it that he had either been enslaved by the Moors or had secretly been spirited off by King Philip to Italy in order to facilitate the Spanish annexation of Portugal. The Portuguese themselves believed that it was only a matter of time before Sebastian returned valiantly to his place as head of state. In the ensuing years, numerous pretenders arose

²⁴ *CSPF, 1579–80*, ed. Arthur John Butler (London: Mackie and Co. Ltd., 1904), pp. 223–24. See Cobham to Walsingham, May 23, pp. 272–74, for the account of how this letter and others were intercepted and conveyed to Walsingham.

²⁵ Sir Philip Sidney, "Letter to Robert Sidney," in *The Prose Works of Sir Philip Sidney*, ed. Albert Feuillerat, 4 vols. (Cambridge: Cambridge University Press, 1963), vol. 111, p. 133.

²⁶ *Letters and Memorials of State in the Reigns of Q. Mary, Q. Elizabeth, King James, King Charles the First, Part of the Reign of King Charles the Second, and Oliver's Usurpation written and collected by Sir Henry Sidney, et al.*, ed. Arthur Collins, 2 vols. (London: 1746), vol. 1, p. 294. For context, see Alan Stewart, *Philip Sidney, A Double Life* (London: Chatto and Windus, 1998), pp. 240–42, pp. 270–72, and Katherine Duncan-Jones, *Sir Philip Sidney, Courtier Poet* (New Haven, CT: Yale University Press, 1991), pp. 215–16.

claiming to be the lost king, and during the early years of the seventeenth century, several accounts of Sebastian's real-life adventures after the battle were translated and published in England by Anthony Munday.²⁷

Both of these foreign contexts, in which the absence of a strong sovereign leaves the people vulnerable to foreign invasion, are reflected in the chaos which takes over the headless realm of Arcadia. In Book 5, King Euarchus intervenes not to conquer the country for his own personal gain but instead in order to "see whether by his authority he might withdraw Basilius from this burying himself alive" (310).²⁸ Thus, he goes to Arcadia to see if he can persuade Basilius to come out of retirement, and using a phrase that unwittingly captures Basilius' current immobilization between states of life and death, he seeks to rescue the duke from a figurative paralysis and to restore him as an active sovereign of Arcadia.

‘‘HAVING THIS ADVANTAGE OF BASILIUS’ COUNTRY LAID OPEN
UNTO HIM’’: EUARCHUS AND THE CHARITABLE CONQUEST

At the beginning of Book 5, Euarchus of Macedonia enters Arcadia on a mission to organize the Greek states into a defensive alliance. He soon learns from Philanax, an Arcadian royal counselor, that Duke Basilius of Arcadia has just been murdered. On behalf of the Arcadian people, Philanax goes on to invite Euarchus to assume the role of protector of Arcadia in order to judge the guilt or innocence of the accused conspirators. Throughout the process whereby King Euarchus assumes temporary sovereignty over Arcadia, all of the parties involved harbor suspicions that Euarchus, as protector of Arcadia, might be mistaken for or might in fact become a traditional conqueror. When he agrees to assume the position of judge of the accused regicides, Euarchus chastises the Arcadians against addressing him in a manner that would suggest that his role is anything but provisional. His first order is to proclaim that "no man, under pain of grievous punishment name me by any other name but protector of Arcadia; for I will not leave any possible colour to any of my natural successors to make claim to this, which by free election you

²⁷ José Teixeira, *The Strangest Adventure containing a discourse concerning the success of the King of Portugal, Dom Sebastian*, trans. Anthony Munday (London: 1601); José Teixeira, *The True History of Dom Sebastian* (London: 1602); and José Teixeira, *A Continuation of the lamentable Aduentures of Don Sebastian* (London: 1603). See also Charles J. Sisson, "Introduction," *Believe as You List*, by Philip Massinger (Oxford: Oxford University Press, 1927), pp. xvii–xviii.

²⁸ Parenthetical references are from *The Countess of Pembroke's Arcadia (The Old Arcadia)*, ed. and intro. Katherine Duncan-Jones (New York: Oxford University Press, 1985).

have bestowed upon me” (316). Euarchus, as Sidney’s portrayal of the just sovereign, will become protector of Arcadia strictly for the purposes of enacting justice necessary to the continuance of the state’s viability and will punish any Arcadian who would suggest otherwise.

But the suspicion that he might be something other than that which he outwardly claims to be is ever-present. Sidney notes that “when Philanax first named Euarchus’ landing there was a muttering murmur among the [Arcadian] people, as though in that ill-ordered weakness of theirs he had come to conquer their country” (307). Euarchus himself is acutely aware of the Arcadians’ suspicions. His first thought after hearing Philanax’s proposal is to weigh “the just reproach that followed those who easily enter into other folk’s business with the opinion might be conceived love of seigniority rather than of justice had made him embark himself thus into a matter nothing appertaining unto him” (312). The ongoing suspicion that Euarchus will be perceived as, or will become, a conqueror ironically serves to distinguish the king of Macedonia from the traditional conquering role. For Euarchus, inhabiting Arcadia, rather than constituting an act of acquisition, is a benevolent act meant to restore justice to the beleaguered Arcadian subjects as well as to forestall the possibility that the “true” conquerors, the Latins and the Asiatics, will advance on a weakened Greece.

In an important passage from the beginning of the fifth book of the *Arcadia*, Sidney describes King Euarchus’ decision to enter the chaotic state of Arcadia by distinguishing it from the more typical decision to take advantage of the weakness of one’s neighbors. Faced with Basilius’ retirement from active rule, most princes, even the virtuous ones, would be unable to resist the temptation to conquer (309). Euarchus, in contrast, is presented as a wise king who would use the means of war only to defend his own sovereignty or to preserve his subjects’ well-being. Sidney says of the opportunity afforded by Arcadia’s weakness:

This measured by the minds of most princes, even those whom great acts have entitled with the holy name of virtue, would have been thought a sufficient cause (where such opportunity did offer so great a prey into their hands) to have sought the enlarging of their dominions, wherein they falsely put the more or less felicity of an estate. But Euarchus, that had conceived what is evil in itself no respect can make good, and never forgot his office was to maintain the Macedonians in the exercise of goodness and happy enjoying their natural lives, never used war (which is maintained with the cost and blood of the subject) but when it was to defend their right whereon their well being depended . . . So that, having this advantage of Basilius’ country laid open unto him, instead of laying

an unjust gripe upon it (which yet might have been beautified with the noble name of conquest), he straight considered the universal case of Greece deprived by this means of a principal pillar. (309)

This passage constitutes the beginning of a subtle narrative critique of the standard justification for acts of territorial expansion. Unlike most princes who place the “felicity of an estate” in “the enlarging of their dominions”, Euarchus understands that his principal duty as king is “to maintain the Macedonians in the exercise of goodness and happy enjoying their lives.” Accordingly, conquering Arcadia is defined as exactly the kind of self-serving act which will derogate from a prince’s principal duty to his subjects.

Beyond Euarchus’ duty to his subjects, this passage celebrates the justice of the king’s actions. In contrast to Euarchus’ regard for justice, Sidney implies that acts of territorial expansion reflect an “evil” and “unjust” Machiavellian sensibility. He informs us that, in rejecting such actions, Euarchus understands that “what is evil in itself no respect can make good,” thus eschewing the Machiavellian formulation which held that, where a prince’s struggle to preserve or increase his own power is concerned, the ends justify the means. Moreover, those princes who in Euarchus’ position would invade and acquire Arcadia, Sidney would accuse “of laying an unjust gripe upon it [Arcadia] (which yet might have been beautified with the noble name of conquest).” In a word, such princes by exclusively serving their own personal interests are accused of acting unjustly. They would, however, attempt to legitimize such acquisitions by adorning them “with the noble name of conquest,” in the process, defining “conquest” according to an ideology of heroism which serves to occlude the violent and self-serving injustice of territorial expansion.

Throughout the last book, it is the Latins and the Asiatics who threaten Greece with absolute conquest and are identified with the form of self-serving conquest against which Euarchus opposes himself. In describing Euarchus’ initial reasons for traveling to Arcadia, Sidney explains that Euarchus “saw the Asiatics of the one side, the Latins of the other, gaping for any occasion to devour Greece, which was no way to be prevented but by their united strength, and strength most to be maintained by maintaining their principal instruments” (310). Richard McCoy has pointed to such passages as comparable to the justification for Sidney’s attempts in 1577, to sound out support among German princes for an anti-Spanish

league.²⁹ Throughout the *Old Arcadia*, the Latin threat corresponds to the contemporary threat posed to the Protestant states by Spain. In the 1593 version of the *Arcadia*, Sidney is even more direct in identifying the Latins with the Spanish threat – like late sixteenth-century Spain, the Latins are said to have “already gotten into their hands, partly by conquest and partly by confederacy, the greatest part of Italy” before they look to the conquest of Greece.³⁰ On the other hand, the Asiatics probably refer to the other imperial power threatening Europe at the end of the sixteenth century, the Ottoman Empire. Hubert Languet’s 1574 letter to Sidney records his fears that disunity among the continental European states would open “a way for the Turks.”³¹ Sidney’s attempts to organize a league of states to counter these two threats, like Euarchus’ attempt to create a Greek alliance, was more than anything else an attempt to address the problem of disunity among the Protestant princes as well as among the anti-Spanish Catholic states.

The threat that is posed by the Asiatics and the Latins is that the Greek states will lose their own “laws, customs, and liberties” through conquest (308). In contrast, the defensive alliance which Euarchus seeks would serve to protect the integrity of the Macedonian and Arcadian states. In this respect, it constitutes the fulfillment of the obligation which an ethical ruler has to the sovereign and subjects of a neighboring realm. Euarchus’ justification for the defensive alliance and his later assumption of the protectorship are based on an ethos of charity toward a neighboring sovereign. He originally travels to Arcadia “to see whether by his authority he might withdraw Basilius from burying himself alive, and to employ the rest of his old years in doing good, the only happy action of man’s life” (310). More importantly, Sidney portrays Euarchus as charitably disposed toward the Arcadian people who have been abandoned by Basilius’ retreat into isolation. Euarchus is said to sympathize with “the pitiful case of the Arcadian people, who were in worse case than if death had taken away their prince” (310).

The Arcadian counselor, Philanax, makes all of this clear in his original request that King Euarchus assume control of the country during the turbulent trial of the accused traitors. In making his case for why

²⁹ See Richard McCoy, *Sir Philip Sidney, Rebellion in Arcadia* (New Brunswick, NJ: Rutgers University Press, 1979), p. 120.

³⁰ *The New Arcadia*, pp. 787–88.

³¹ See *The Correspondence of Sidney and Languet*, p. 44. For Languet’s discussion of rumors that the Spanish crown might make peace with the Turks, thereby increasing the Spanish threat to the Protestant states, see *The Correspondence of Sidney and Languet*, p. 108.

Euarchus should assume the protectorship of Arcadia, Philanax tells the Macedonian king of the pitiful state of affairs in which the Arcadian subjects find themselves:

Thou wilt lend thine arms unto her, and as a man take compassion of mankind, as a virtuous man chastise most abominable vice, and as a prince protect a people which all have with one voice called for thy goodness, thinking that, as thou art only able, so thou art fully able, to redress their imminent ruins. They do, therefore, with as much confidence as necessity, fly unto you for succour. They lay themselves open to you – to you, I mean yourself, such as you have ever been; that is to say, one that hath always had his determinations bounded with equity. (311–12)

In this passage, Philanax reminds Euarchus of the Christian dictum to love thy neighbor. Euarchus' assumption of the Arcadian protectorship, he explains, would be at the explicit request of the Arcadian people who "lay themselves open to you" as a means of redressing "their imminent ruin." Then there is the even greater necessity among the Arcadians for a king "that hath always had his determinations bounded with equity," a king who can restore justice to the failed state based on his own conscience. Implicit in this passage is a call for the resurrection of the state itself based on a legal regime founded on a sovereign's own understanding of natural law. Hence Sidney draws an ethical distinction between Euarchus' assumption of the protectorate in defense of natural law, Arcadian law, and Arcadian self-determination and the acquisitive strategy of conquest which Sidney perceived in Spain and the Ottoman Empire.

The doctrine of natural law is vital to justifying Euarchus' assumption of the protectorship of Arcadia. But given the wide range of concepts that can be subsumed under the heading of natural law, the particular interpretation of natural-law doctrine to which Sidney ascribed is still to be determined. William Dinsmore Briggs has argued that Sidney was influenced by the constitutionalist and anti-tyrannical arguments of the *Vindiciae contra tyrannos*, attributed to the Huguenot, Philippe Du Plessis-Mornay.³² Briggs suggests that Sidney was influenced by the

³² William Dinsmore Briggs, "Political Ideas in Sidney's *Arcadia*," *Studies in Philology* 28 (1931), 137–61, esp. 141–43. See also Worden, *Sound of Virtue*, pp. 282–92. For this argument's most recent incarnation (which effectively applies Briggs' thesis to Sidney's *Defense of Poetry*), see Robert E. Stillman, "The Truths of a Slippery World: Poetry and Tyranny in Sidney's *Defense*," *Renaissance Quarterly* 55.4 (2002), 1287–319. For critical discussion of Sidney's education in and knowledge of political theory, see Katherine Duncan-Jones, *Sir Philip Sidney, Courtier Poet*, pp. 60–85; Worden, *Sound of Virtue*, pp. 206–354, and W. Gordon Zeeveld, "The Uprising of the Commons in Sidney's *Arcadia*," *Modern Language Notes* 48 (1933), 209–17. See also Sidney's 1580 letter to

Vindiciae's argument that an ethical prince should assist the rebellious subjects of an oppressive tyrant when those subjects are unjustly oppressed for religious or other reasons.³³ But in spite of some similarities with Sidney's romance, the notion that such ideas inspired Euarchus' intervention in Arcadian domestic affairs is doubtful, especially since Basilius is hardly the type of oppressive tyrant which the author of the *Vindiciae* has in mind.³⁴

More recently, R. S. White has documented the influence of traditional Catholic natural-law doctrine on Sidney's *Arcadia*, noting that Sidney explicitly associates Euarchus' narrative function with the traditions of equity and natural law employed in the English court of Chancery (312). As White shows, Sidney's background in natural-law doctrine would have proceeded first from his knowledge of medieval and Renaissance interpretations of Aristotle's *Politics* and *Ethics*, and possibly from the legal tradition of equity practiced in Chancery.³⁵ However, much of his background also bears some resemblance to the Thomist-inspired theological debates in Spain concerning the Spanish policies in the Americas in which Francisco de Vitoria, Juan Ginés de Sepúlveda, and Bartolomé de las Casas played such an important role. The assumption that Sidney knew a great deal about Spanish intellectual life might strike us as surprising especially given Sidney's well-documented commitment to bringing an end to Spanish dominance. But as much as Sidney felt it a strategic and religious necessity to check Spanish expansionism, it is also clear that the Sidney family had a long history of openness to Spanish influence and that the young Philip Sidney was rather unique in having been raised in a circle in which Spanish was an important modern language.³⁶ Sidney's interest in

Edward Denny (*The Oxford Authors: Sir Philip Sidney*, ed. Katherine Duncan-Jones (New York: Oxford University Press, 1989), pp. 287–90).

³³ *Vindiciae Contra Tyrannos*, in Julian H. Franklin (ed.), *Constitutionalism and Resistance in the Sixteenth Century* (New York: Pegasus, 1969), pp. 80–85. See Briggs, "Political Ideas In Sidney's *Arcadia*," 143.

³⁴ *Vindiciae*, pp. 197–99. For further refutation of Briggs, see Irving Ribner, "Sir Philip Sidney on Civil Insurrection," 259–60, 262–63, 264; Irving Ribner, "Machiavelli and Sidney: The *Arcadia* of 1590," *Studies in Philology* 47 (1950), 160–66.

³⁵ R. S. White, *Natural Law in English Renaissance Literature* (New York: Cambridge University Press, 1996), pp. 137–48, esp. 143. For evidence of Sidney's knowledge of Aristotle, see *The Correspondence of Sidney and Languet*, pp. 28, 195.

³⁶ Gustav Ungerer, *Anglo-Spanish Relations in Tudor Literature* (Bern, Switzerland: Francke Verlag, 1956), pp. 67–69. Judith M. Kennedy has documented numerous parallels between the *Arcadia* and George de Montemayor's *Diana*, suggesting that Sidney read the earlier romance in the original Spanish. See Judith M. Kennedy, "Introduction," *A Critical Edition of Yong's Translation of George of Montemayor's Diana and Gil Polo's Enamoured Diana* (Oxford: Clarendon Press, 1968), pp. xxxiii–xxxix.

the Spanish tradition of scholasticism and natural-law doctrine would have been a singular anomaly within militant Protestant circles of the late sixteenth century. Quite apart from the fact that Spain constituted the major threat to England, there was the additional fact that such scholastic ideas were readily identifiable with Catholic religious doctrine. Militant Protestant intellectuals of the early modern period were largely resistant to the notion that God's sovereignty was based on rational principles that could universally be comprehended; instead, they viewed God's power as primarily voluntaristic, shrouded in a mystery which would remain forever concealed from human understanding.³⁷ To argue otherwise was to confine God and his creation to the finite comprehension of humankind. As a result, when such writers did use natural-law terminology, they either did not grasp the full meaning of such terms or, like the *Vindiciae's* author, they used the term "natural law" to mean instinct, thereby redefining the concept in direct opposition to the scholastic use of the term.³⁸

Evidence that, despite his Protestant upbringing, Sidney was open to influences from Catholic intellectual sources can be found in his cosmopolitan education. Sidney spent three years (1572–75) touring continental Europe, and against the advice of his Protestant mentor, Languet, spent almost a year in Italy studying in Venice and Padua in addition to traveling to Genoa and Florence. In Padua, Sidney studied for several months at the university of law, whose curriculum was centered around Justinian's *Corpus Iuris Civilis*, a primary textual source for natural-law doctrine. The university itself had traditionally been organized into regional groups or "nations," and Sidney fraternized with the English expatriate community, most of whom were Catholics. Although not formally enrolled in the university, Sidney did participate in its intellectual life, acting as a witness to the doctoral defense of one English student.³⁹

Later in 1577, Sidney was appointed ambassador to the Spaniard Don John of Austria as well as to the newly crowned Holy Roman Emperor, Rudolf, whose overt Catholic sympathies worried the English crown.

³⁷ For further discussion of this point, see chapter 5.

³⁸ See John Dykstra Eusden, *Puritans, Lawyers, and Politics in Early Seventeenth-Century England*, 2nd edn. (New York: Archon Books, 1968), pp. 131–41; *Vindiciae*, pp. 187–88. For the opposing scholastic approach to such questions, see Thomas Aquinas, *Summa Theologiae*, ed. and trans. Thomas Gilby OP (New York: McGraw Hill, 1966), vol. 28, 1a2ae 94, 4–6; 1a2ae 95, 2.

³⁹ Stewart, *Philip Sidney, A Double Life*, pp. 115–28. For a discussion of the importance of the University of Padua within English legal education after the reformation, see Jonathan Woolfson, *Padua and the Tudors: English Students in Italy, 1485–1603* (Toronto: University of Toronto Press, 1998), pp. 10–72.

Both figures were magnets for disaffected English Catholic recusants. At the court of Rudolf, Sidney briefly renewed his family's friendship with the famous English recusant, Edmund Campion, who later secretly reported to John Bavand that Sidney seemed on the verge of a Catholic conversion.⁴⁰ In Ireland, in the late 1560s and early 1570s, Sidney's father, Sir Henry, had been patron to Campion and in March 1571, had actually saved Campion's life by warning Sir James Stanihurst that Campion was to be arrested for recusancy. In turn, Campion's famous *Two Bokes of the Histories of Ireland*, revised by James Stanihurst and included in Holinshed's *Chronicles*, was dedicated to Sidney's uncle, the Earl of Leicester, and figures Sidney's father, then Lord Deputy of Ireland, as the work's climactic hero.⁴¹

In contrast to his posthumous reputation as the Elizabethan ideal of English Protestantism, Sidney seems to have lived a double life during his continental education.⁴² Given his secret history of Catholic fraternization on the continent, it would be hardly surprising to find the influence of Thomism in Sidney's romance. Knowledge of the sixteenth-century revival of scholasticism in Spain is a more doubtful assumption. And yet, in 1571, three years before Sidney's arrival in Italy, Cristobal Zaneti published in Venice the third edition of the writings of Francisco de Vitoria, whose lectures at the University of Salamanca did so much to revive scholasticism in Spain.⁴³ In addition, at least one important acquaintance of Sidney was familiar with the works of both Francisco de Vitoria and his student Domingo de Soto. Alberico Gentili, the Italian jurist from the University of Perugia, arrived in England in August 1580 and immediately obtained authorization to teach Roman law at Oxford on the recommendation of Leicester, then Chancellor of the university. Gentili dedicated his second book, *De Legationibus Libri Tres* (1585) to Sidney, praising him as the ideal ambassador in the lengthy dedication. He describes a correspondence and "frequent personal interviews" with Sidney, which seemed to have begun shortly after he arrived in England

⁴⁰ Stewart, *Philip Sidney, A Double Life*, pp. 175–177; Duncan-Jones, *Sir Philip Sidney, Courtier Poet*, pp. 124, 126–27.

⁴¹ A. F. Vossen, "Introduction," in Edmund Campion, *Two Bokes of the Histories of Ireland*, ed. A. F. Vossen (Assen: Van Gorcum and Comp., 1963), pp. 20–21. Edmund Campion, *Two Bokes of the Histories of Ireland*, p. 176. See also Duncan-Jones, "Sir Philip Sidney's debt to Edmund Campion," in *The Reckoned Expense, Edmund Campion and the Early English Jesuits*, ed. Thomas M. McCoog (Woodbridge: Boydell Press, 1996), pp. 85–102.

⁴² Stewart, *Philip Sidney, A Double Life*, pp. 5–8.

⁴³ Fr. Luis G. Alonso Getino, "Introducción," *Relecciones de Francisco de Vitoria* (Madrid: La Rfa-Abtao, 1933), Tomo 1, p. xxvii.

possibly during the time that Sidney was finishing the first *Arcadia*.⁴⁴ Years later after Sidney had died at the Battle of Sutpen, Gentili would write one of the most important just-war tracts of the sixteenth century, *De jure belli libri tres*, a book which Hugo Grotius cited as the major influence on his own work. In both *De jure belli* and in his later *Hispanicae advocacionis libri duo*, Gentili cites from both Vitoria and Soto as well as candidly commenting on the Spanish conquest of the Americas and Northern Europe.⁴⁵ In a 1935 edition of Vitoria's writings published in Spain, Fr. Luis G. Alonso Getino documented in parallel text twenty-four distinct passages from Gentili's *De jure belli* in which Gentili's arguments resemble Vitoria's own prior writings on just war. It is clear from these unacknowledged citations that the Dominican's influence on Gentili was equal to that which Gentili would have on Grotius a quarter of a century later.⁴⁶

Sidney may also have been familiar with the style of scholastic argumentation from his education at Oxford. The reformation had brought about a great deal of change at Oxford and Cambridge, the most drastic of which occurred in the faculties of law and theology. In the faculty of law, canon-law courses ceased altogether to be given, and although the civil law continued to be taught, fewer venues existed where the doctors of civil law could practice their trade. In theology, enormous change occurred as well. Under the old education regime, Peter Lombard's *Sentences* comprised a central place in the curriculum, while the new statutes of 1564 bluntly stated that wherever the statutes read "the book of the *Sentences*," one should understand "the book of the Holy Scripture."⁴⁷ In spite of such changes, education within the faculties of theology and arts retained the traditional scholastic form of a lecture, followed by disputations and declamations. In the faculty of arts at Cambridge University, for example, students devoted themselves to the study of Aristotelian ethics, and during the first half of the seventeenth

⁴⁴ Alberico Gentili, *De Legationibus Libri Tres*, trans. Gordon J. Laing (New York: Oxford University Press, 1924), vol. 11, p. iii.

⁴⁵ Gentili, *De Jure Belli Libri Tres*, vol. 11, pp. 31, 39, 55, 89, 122, 126, 159, 168, 332. See also Gentili, *Hispanicae Advocacionis Libri Duo*, trans. Frank Frost Abbot (New York: Oxford University Press, 1921), vol. 11, p. 49.

⁴⁶ Getino, "Introducción," *Relecciones de Francisco de Vitoria* (Madrid: La Rafa-Abtao, 1935), Tomo 3, pp. xxxvi–xlxiii. For an account which opposes Gentili's humanism to Vitoria's scholasticism, see Tuck, *Rights of War and Peace*, pp. 16–50.

⁴⁷ See John Barton, "The Faculty of Law," in *The History of the University of Oxford* (Oxford: Clarendon Press, 1986), pp. 257–83, and S.L. Greenslade, "The Faculty of Theology," in *The History of the University of Oxford*, pp. 295–334, esp. 297.

century, Aristotle was often presented through the writings of Catholic commentators such as Vitoria and Soto.⁴⁸

Was Sidney aware of the Spanish Scholastics through his acquaintance with Gentili, his studies at Padua, or even his brief stint at Oxford? No direct external evidence points to such an awareness. Furthermore, why not locate Sidney's interpretation of natural law within less exotic contexts? The marginal traditions of civil law and equity that existed within the English law or even the moderate Anglican theological tradition that would produce Richard Hooker's *The Laws of the Ecclesiastical Polity* a decade later would certainly have been accessible to Sidney. What is crucial, however, is that Sidney's narrative depends on applying the ethical regime of natural law to acts of foreign intervention. It is probable that writing about transnational ethics, ethical intervention, and conquest in the final book of the *Old Arcadia* inevitably pushed Sidney towards an interest in this foreign tradition of thought. Whatever the case, whether through influence or simply coincidence, the *Arcadia* shares a common language and set of arguments with the Neo-scholastic tradition that Vitoria began.

NATURAL LAW, SPANISH SCHOLASTICISM, AND THE OLD ARCADIA

Conquest for the good of the people being conquered is a theme which runs throughout Vitoria's work on the just titles of Spanish *dominium* over the Americas. It is also a theme at work in Euarchus' temporary assumption of the protectorship of Arcadia. Vitoria lists as one of the only just titles for Spanish Conquest that of conquering them for their own benefit and education.⁴⁹ Vitoria viewed such conquest of the Amerindians as temporary, remarking that "princes would be bound to take charge of them as if they were simply children."⁵⁰ Once the Amerindians have developed into fully rational beings, he implies, their original *dominium* should be returned to them.⁵¹ Although, to our own sensibilities, Vitoria's argument might seem like a more subtle rationale

⁴⁸ William T. Costello, *The Scholastic Curriculum at Early Seventeenth-Century Cambridge* (Cambridge: Harvard University Press, 1958), pp. 7–69, esp. 11–34, 64.

⁴⁹ Vitoria, *On the American Indians*, p. 291. See also Jean Bodin, *The Six Bookes of a Commonweale* (Cambridge: Harvard University Press, 1962), p. 616. Getino raises the possibility that, like Gentili, Bodin owes much of his thought to Vitoria ("Introduccion," *Relecciones de Francisco de Vitoria*, Tomo 3, p. xlv). However, Bodin's notion of "protection" is the more traditional one in which weak states, such as "Lucca, Parma, and Siena," contracted more powerful kings to protect them from aggressors.

⁵⁰ Vitoria, *On the American Indians*, p. 290. ⁵¹ See Pagden, *The Fall*, p. 107.

for Spanish imperialism, the radical effect of his teachings can be gauged by the condemnations which they elicited from those who were in charge of the Spanish policy in the Indies. Carlos V issued a remonstrance to the prior of San Esteban, the Dominican monastery to which Vitoria belonged, for allowing his monks to discuss publicly the empire's right of conquest in the Indies. And subsequently, public discussion of the subject was officially prohibited and all sermons and existing writings were to be confiscated.⁵² In spite of such attempts to contain the damage caused by theological and legal challenges to official imperial policy, a tradition of thought was created through Vitoria's teachings that defended the Amerindian right of *dominium* in terms that were even more direct than those which Vitoria had used. When Juan Ginés de Sepúlveda attempted to publish his *Democrates Secundus*, which justified the Spanish Conquest by arguing that, by virtue of their unnatural customs and barbarous behavior, the Amerindians were the natural slaves which Aristotle had described in the *Politics*, his tract was roundly condemned by the universities and suppressed by theologians.⁵³

Emerging as the central figure of the second generation of Vitorian thought, Bartolomé de las Casas did the most to shape European perceptions of the Spanish imperial policy in the Americas. Widely available throughout Europe, Las Casas' *Brevissima relación de la destrucción de las Indias* was part of a collection of works intended as direct refutations of Sepúlveda's argument that the Amerindians were the embodiment of Aristotle's natural slaves.⁵⁴ Interestingly, the preface to the English edition, also included in the earlier French edition, shows that Las Casas' tract was understood not just as a defense of the Amerindians against the Spanish conquistadores but also as a warning to the European victims of Spanish aggression, especially the Dutch. The title to the preface declares that the volume is "to serue as a President and warning, to the xii. Provinces of the lowe Countries."⁵⁵ James Aligrodo, the author of the preface and translator of Las Casas' text, explains more specifically that

⁵² *Ibid.*, p. 106–07.

⁵³ Sepúlveda, *Demócrates Segundo*, ed. Ángel Losada. See also Pagden, *The Fall*, pp. 109–11, and Pagden, "Dispossessing the Barbarian," p. 91.

⁵⁴ Sidney might have read the *Brevissima relación* in either the 1552 Spanish original or the 1579 French translation. The French translation was entitled *Tyrannies et cruautés des Espagnols* (Antwerp, 1579). For a modern edition of the French translation, see *La destruction des Indes*, trans. Jacques de Migrodo, pref. Alain Milhou (Paris: Chandeigne, 1995). The London, 1583 English translation of the French, entitled *The Spanish Colonie* (reprint [Ann Arbor, MI: University Microfilms, 1966]), was published after Sidney had finished the first version of the *Arcadia*.

⁵⁵ James Aligrodo, "Preface," *The Spanish Colonie*, by Bartolomé de las Casas, p. 92.

his purpose is to cause the Dutch to resolve their differences in their struggle against the Spanish occupiers:

But two reasons haue moued me to publishe this preface, which I do dedicate to all the prouinces of the Lowe countreys: The one, to the end, awaking themselues out of their sleep, may begin to thinke vpon Gods iudgements: and refraine from their wickednes and vice. The other, that they may also consider with what enemie they are to deale, and so to beholde as it were in a picture or table, what stay they are like to bee at, when through their rechlesnesse, quarrels, controuersies, and partialities themselues haue opened the way to such an enemie: and what they may look for.⁵⁶

In dedicating the preface to the Low Countries, Aligrodo makes clear that, in his view, the Dutch are similar to the Amerindians in being subjected to brutal and unjust Spanish occupation. We can imagine that Sidney and other English supporters of the Dutch rebels read Las Casas' tract from a similar perspective. It is significant that Sidney seems to have wanted to grant assistance to the Amerindians in their own struggle against Spanish oppression. Echoing Las Casas' famous account of the Spanish atrocities committed in the Americas, Sir Fulke Greville wrote that Sidney's desire to overthrow the Spanish empire was born of the belief "that their inhuman cruelties had so dispeopled and displeased those countries . . . , so might he [Sidney] well hope the relics of those oppressed Cimeroons would joyfully take arms with any foreigner, to redeem their liberty, and revenge their parents blood."⁵⁷ In this passage, the role which Greville presents Sidney as favoring in the Americas was identical to the one which he favored and eventually took with regard to England's involvement in the Low Countries' rebellion.⁵⁸

In addition to influencing Sidney's general views on Spanish dominance in Europe and in the New World, Las Casas' tract seems to have

⁵⁶ Aligrodo, "Preface", *The Spanish Colonie*, p. 92^v. For a discussion of how the Spanish treatment of the Dutch was compared to Spanish treatment of the Amerindians, see Benjamin Schmidt, *Innocence Abroad, The Dutch Imagination and the New World, 1570–1670* (New York: Cambridge University Press, 2001), ch. 2.

⁵⁷ Greville, *A Dedication*, ed. Gouws, p. 65, line 21–p. 66, line 2. The editor, Gouws, wrongly defines "Cimaroons" as "escaped negroes from the Spanish settlements . . .," citing *The Naval Tracts of Sir William Monson*, ed. M. Oppenheim, 5 vols. (London, 1902–14), vol. 1, 334n. The origin of the word "Cimeroons" (or "Cimerons" as it appears in the 1652 original edition) is Spanish and, according to the *Diccionario de la lengua castellana de la Real Academia Espanola* (Madrid: Editorial Gredos, 1963), the word "cimarron" was a general term, "applied to Indians, negroes, and escaped or savage animals." From the context, it is clear that Greville is referring to Amerindians and not African slaves.

⁵⁸ Kuin, "Querre-Muhau: Sir Philip Sidney and the New World," pp. 80–83.

had a substantial influence on the *Arcadia* itself. In particular, Las Casas seems to have influenced the young poet's skepticism concerning traditional acts of conquest. In one of the lengthy passages which I cited in the section above, Sidney characterizes the virtuous Euarchus by opposing him to the hypothetical, unethical prince who would lay an "unjust gripe" upon a weak and vulnerable state and then present such an injustice as an act of heroism. Sidney describes how such a self-serving act "yet might have been beautified with the noble name of conquest" (309). In a passage which bears a striking resemblance to this hypothetical account of unjust conquest, Las Casas portrays the Spanish conquistadors constructing a similar ruse around the cruelties which they had committed in New Spain. Las Casas describes use of the term "conquest" as a linguistic strategy by which Spanish aggressors concealed their bloody oppression of the Amerindians. He recounts that

over the twelve years of which we are speaking, and during the course of what they term the "conquests" (which are really and truly nothing other than a series of violent incursions into the territory by these cruel tyrants: incursions condemned not only by the law of God, but also by all human law, and in practice far worse than the assaults mounted by the Turk in his attempt to destroy Christendom), the Spanish have, throughout these four hundred and fifty leagues, butchered, burned alive, or otherwise done to death four million souls, young and old alike, men, women, and children.⁵⁹

Here Las Casas is interrogating the way in which the term "conquest" itself can justify or, in Sidney's terminology, "beautify" acts of cruelty. Equally significant is the way in which this passage – as well as other similar passages – describes the Spanish as embodying the unnatural barbarism normally associated with the heinous acts of violence perpetrated by the Amerindians.⁶⁰

Sidney also shares with Las Casas a penchant for evaluating and justifying acts of foreign engagement by means of a discourse of universal law and justice. For example, in yet another passage found this time in the dedication to *Brevíssima relación*, Las Casas assures Prince Philip that if the prince had been informed of the cruelties perpetrated in the New

⁵⁹ Bartolomé de las Casas, *A Short Account of the Destruction of the Indies*, ed. and trans. Nigel Griffin, intro. Anthony Pagden (London: Penguin, 1992), p. 43. I have slightly altered this translation to reflect a more literal rendering of the text.

⁶⁰ This "reversal" in which Spanish barbarism was presented as more serious than anything the Amerindians had perpetrated is an important theme throughout Las Casas' *oeuvre*. See Bartolomé de las Casas, *Apología in Obras Completas*, 14 vols. (Madrid: Alianza, 1988), vol. ix [ed. Ángel Losada], pp. 83–85. See Pagden, *The Fall*, pp. 123–27, esp. 126.

World, he would have prevented “any repetition of the atrocities which go under the name of ‘conquests,’” bloody acts which in reality are “contrary to natural, canon, and civil law, and are deemed wicked and are condemned and proscribed by all such legal codes.”⁶¹ Sidney similarly uses a discourse of absolute justice predicated upon natural law in order to evaluate or justify King Euarchus’ actions. Sidney assures us that, as the quintessentially ethical sovereign, Euarchus’ actions have a legitimate legal basis. In contrast to “illegal” acts of foreign intervention, Sidney’s Euarchus promises the Arcadian people that he will submit his judgments of the accused regicides as well as his governance of Arcadia to the laws of nature: he promises that “to the uttermost of my skill, both in the general laws of nature, especially of Greece, and particularly of Arcadia (wherein I must confess I am not unacquainted), I will not only see the past evils duly punished, and your weal hereafter established, but for your defense in it, if need shall require, I will employ the forces and treasures of mine own country” (315–16). Here as elsewhere, Sidney shares Las Casas’ view that ethical and legal norms do apply to actions which a sovereign or his deputies take within a foreign realm.

What remains missing from the *Brevíssima relación*, however, is any mention of how the Spanish should ideally interact with the Amerindians, in effect, how the Spanish might positively affect them. Las Casas addressed this issue in a companion work, entitled *Aquí se contiene una disputa o controversia, entre el Obispo don fray Bartholomé de las Casas o Casaus y el doctor Ginés de Sepúlveda*, published in Seville in 1552. This was the only publication to give a detailed account of the Valladolid debate in 1550/1, in which Las Casas and his nemesis Juan Ginés de Sepúlveda discussed the nature of the Amerindians and their behavior as well as the justice of the Spanish Conquests. The tract consisted of three parts: a long introduction by Vitoria’s student, Domingo de Soto, recounting the principal arguments of the *Argumentum apologiae . . . adversus Genesium Sepúlveda*, an unpublished work which Las Casas read at the debate, twelve objections to these arguments by Sepúlveda, and twelve additional responses by Las Casas.⁶² In the introduction to this 1552 tract, Soto essentially describes the same ideal interaction which Las Casas had prescribed in the unpublished *Argumentum*. According to Soto, Las Casas had concluded that only “those who could teach good customs conforming to our faith would have license to enter [into Indian

⁶¹ Las Casas, *A Short Account*, p. 6.

⁶² For the text of the *Argumentum apologiae*, see Las Casas, *Apología* in *Obras Completas*, vol. ix.

societies], as well as those that could deal with them in peace.”⁶³ Like the *Argumentum*, this tract affirmed charitable and peaceful means of reforming the sins of the Amerindians. Both Christian charity and natural and divine law are central to Las Casas' notion of ethical intervention into the affairs of the “uncivilized.” Sidney seems to be invoking a similar combination of ethics and charity in portraying Euarchus as a virtuous sovereign who is ready to “lend thine arms unto them [the Arcadians], and as a man take compassion of mankind” (311).⁶⁴

In summary, Sidney's portrayal of charitable intervention in the *Arcadia* reflected Spanish scholastic thought in three major respects. First and most obvious, the account of Spanish atrocities contained in such works convinced Sidney that the English must approach foreign intervention from an “altruistic” standpoint. Second, Las Casas revealed the existence of pervasive European acts of barbarism, something which broke down the distinction between seemingly civil European nations and “barbaric” Amerindian polities. In a letter to Languet, for example, Sidney seems to follow Las Casas' example by describing the Spanish themselves as epitomizing the barbarous behavior that was usually used to describe the Amerindians. Sidney describes the Spanish as barbarous slaves “[who] have done nothing . . . but change their masters; for they have always been servants of Carthaginians, Romans, Vandals, Goths, Saracens, or Moors.” Accordingly, they had been temporarily “raised by the character of one man, Charles; and he was a Belgian: and since his death all the world sees with what speed they are hastening back to their original condition.”⁶⁵ Sidney would go on to use this aspect of Las Casas in order to portray the formerly civil Arcadians as descending into the most condemnable forms of unnatural behavior. Thirdly and perhaps most importantly, both Vitoria and Las Casas questioned whether any form of barbarism was essential and advocated peaceful means of

⁶³ Domingo de Soto, “Prólogo del Maestro Soto,” *Aquí se contiene una disputa o controversia, in Tratados*, eds. Lewis Hanke et al., trans. Agustín Millares et al. 2 vols. (Mexico: Fondo de Cultura Económica, 1965), vol. 1, pp. 283–85. See also Las Casas, *Apología*, p. 99, where Las Casas explains, “one should take into account that the barbarians should not be obliged in a rigid manner as says the Philosopher, but should be gently persuaded and invited with love to accept a better form of life.” Translations are my own.

⁶⁴ Assuming Sidney read the *Brevísima relación*, we can be relatively certain that he was also aware of the parameters of this debate since an appendix was included at the end of both the French and English editions of the *Brevísima relación* which gave an abbreviated account of Sepúlveda's and Las Casas' positions. It is also possible of course that he read the entire debate at Padua or learned of it more extensively from his acquaintance with Gentili. See Las Casas, *The Spanish Colonie*, pp. Q3–R2^v.

⁶⁵ *The Correspondence of Sidney and Languet*, p. 76.

charitably reforming “barbaric” nations. Sidney’s notion of charitable intervention also has the goal of peacefully returning civility to the uncivil polity of Arcadia. According to the principles which Sidney took from such writings, the goal of reforming seditious or uncivilized polities is a worthy one, except when it is prosecuted in an unjust or barbarous manner. Thus, the sovereign who undertakes such ventures must insure that he conforms to a rigid ethical standard conforming with the doctrine of natural law.

NATURAL LAWS, UNNATURAL VICICES, AND THE DILEMMA OF
CHARITABLE INTERVENTION

From its first sentence, the *Old Arcadia* is premised on Las Casas’ observation that even seemingly civil polities can erupt into unnatural behavior. At the beginning of the work, Sidney goes out of his way to depict a realm that abides by the laws of nature and by the principles of moderation and universal justice:

Arcadia among all the provinces of Greece was ever had in singular reputation, partly for the sweetness of the air and other natural benefits, but principally for the moderate and well tempered minds of the people who (finding how true a contentation is gotten by following the course of nature, and how the shining title of glory, so much affected by other nations, doth indeed help little to the happiness of life) were the only people which, as by their justice and providence gave neither cause nor hope to their neighbors to annoy them, so were they not stirred with false praise to trouble others’ quiet, thinking it a small reward for the wasting of their own lives in ravening that their posterity should long after say they had done so. (4)

The Arcadians, Sidney points out here, comprise a nation which follows the “course of nature” and has a high regard for “justice and providence.” Significantly, Sidney places these Arcadian virtues in opposition to the “shining title of glory” and the “false praise” which would come with threatening the sovereignty of their neighbors. In conformity with Las Casas’ ideal of civility, Arcadian civility is based on rejecting brutal acts of conquest and embracing peaceful coexistence with one’s neighbors.

The unnatural behavior which later overcomes Arcadia constitutes a subversion of civil society, and in this respect, what occurs to the Arcadian people is similar to Las Casas’ description of the first category of barbarism in the unpublished *Argumentum*, namely that barbarism to

which any civil society may fall prey. Arcadia's descent into barbarism is similar to the ancient example of the seditious Milanese (mentioned in the *Argumentum*) who rioted following the appointment of an unpopular bishop. It can even be compared to the barbaric cruelties perpetrated by the Spanish colonists, despite the crucial difference that Arcadian barbarism is largely confined to the state while Spanish barbarism is perpetrated against non-Spanish Amerindian polities.⁶⁶ The *Arcadia* is a narrative about the degeneration of the commonwealth, and as such, the state of law in which Arcadia begins in the incipit is short-lived. Among the subversive forces which erupt in the state, the most important are three unnatural vices which had interested Vitoria and other Spanish jurists: incest, sodomy, and cannibalism.⁶⁷ As Richard McCabe has noted, incest was grouped together with the other practices which Europeans considered transgressions of natural law, vices such as "sodomie, lying with beasts, or such like."⁶⁸ In summarizing his opponents' arguments, Vitoria grouped incest together with cannibalism and sodomy as those sins which possibly justified conquest of "barbarians."⁶⁹ Closer still to Sidney were the English who frequently accused the Irish of practicing the unnatural sins of incest and cannibalism. Recall that Sidney himself, in his "Discourse on Irish Affairs", complained that the Irish "choose rather all filthiness, than any law."⁷⁰

In the *Arcadia*, the theme of incest and sexual depravity begins with Basilius' aberrant and obsessive desire for the Amazon Cleophila (Prince Pyrocles in disguise). Sidney explicitly characterizes Basilius' affection for Cleophila as incestuous from the very start. Basilius' first flush of affection for the Amazon is introduced in the following ambiguous terms:

Whoever saw a man to whom a beloved child long lost did, unlooked for, return might easily figure unto his fancy the very fashion of Basilius' countenance – so far had love become his master. And so had this young siren charged his old ears, insomuch that . . . he fell to entreat her abode there for some time. (33)

⁶⁶ Las Casas, *Apología*, pp. 83–85. See Pagden, *The Fall*, p. 126.

⁶⁷ Sidney indicates a third transgression of natural law as well: Basilius' attempt to search out the unknowable divine by consulting the Delphic oracle is a transgression of the hierarchy which places him below God's authority. For natural law and oracles, see Richard Hooker, *Of the Laws of Ecclesiastical Polity*, intro. Christopher Morris, 2 vols. (London: J. M. Dent and Sons, Inc., 1965), vol. 1, pp. 150, 153.

⁶⁸ William Perkins, *The Workes* (London: 1612), vol. 111, p. 690. See also McCabe, *Incest, Drama, and Nature's Law*, p. 15.

⁶⁹ See Vitoria, *On the American Indians*, p. 273. ⁷⁰ Sidney, "Discourse on Irish Affairs," p. 11.

In this passage, Basilius' desire for Cleophila teeters precariously between licit paternal affection and illicit and passionate sexual lust. Falling prey to this confusion constitutes the essence of the unnatural crime of incest. In addition, because Sidney gives some indication that Basilius is aware of Cleophila/Pyrocles' true sexual identity, a comically sodomitical desire is at work here as well.⁷¹

Basilius' desire for Cleophila/Pyrocles quickly begins to poison proper relations with the other members of his family. His alienation from the royal family serves as the cause of the multiple incestuous tensions which follow. Sidney seems to have taken the pattern of desire here from Seneca's play *Hippolytus* in which King Theseus' implicitly homosexual affection for Pirithous and his adulterous pursuit of Persephone together lead to the incestuous tensions which follow, ultimately destroying the family itself.⁷² In both the *Old Arcadia* and Seneca's *Hippolytus*, the sovereign's sodomitical desire – clearly same-sex desire in the case of Theseus while more ambiguous in the case of Basilius – provides the impetus for the far more dangerous and consciously incestuous desire of mother for son – in the case of Phaedra, it is actually step-mother for son, while in the case of Gynecia, it is mother-in-law for future son-in-law.⁷³ Additionally, in the *Arcadia*, Basilius' quasi-same-sex desire for Cleophila/Pyrocles seems to prefigure the “uncouth love” which Philoclea has for Cleophila/Pyrocles, an affection which is also presented as dangerously ill-defined as well as eliciting the “unnatural” vices of same-sex desire and incest (5).⁷⁴ Of course, the violent outcome of Seneca's tragedy involving the death of both mother and son contrasts strikingly with Sidney's *Arcadia*, which ends with a comic re-affirmation of normative familial relations. Even so, the comparison between Seneca's tragedy and the *Arcadia* serves as a salutary reminder of the potential

⁷¹ See especially the early episode in which Basilius seeks to convince Cleophila/Pyrocles to remain at the royal lodge by commanding Dametas “to bring forth [Basilius'] wife and daughters – three ladies, although of diverse, yet all of excellent beauty” in order to entice her/him (33).

⁷² See Phaedra's initial accusations against her husband in Seneca, *Hippolytus*, in *Seneca's Tragedies*, with trans. by Frank Justus Miller, 2 vols. (Cambridge, MA: Harvard University Press, 1960), vol. 1, pp. 317–423, lines 90–100. The first English translation of Seneca's tragedies was edited by Thomas Newton and published in 1581, the year that Sidney was finishing the *Old Arcadia*.

⁷³ In *Incest, Drama, and Nature's Law*, pp. 43–46, McCabe discusses the central importance of mother–son relations in early modern fears of incest. Also see McCabe, *Incest, Drama, and Nature's Law*, p. 30, for a discussion of the reasons why affinal incest relations such as those between mother-in-law and son-in-law could be treated as seriously as their consanguine counterparts.

⁷⁴ See also Sidney, *Old Arcadia*, pp. 85–86.

seriousness of the aberrant sexual tensions taking place within the royal family of Arcadia.⁷⁵

The serious treatment which Sidney gives to Gynecia's love for Cleophila/Pyrocles and the violent jealousy which this love generates in Gynecia toward her daughter merits further attention. The beginning of the second book has Gynecia madly agonizing over the ethics of her love for Cleophila, whom she correctly suspects is a male disguised as an Amazon in an attempt to gain access to her daughter, Philoclea. Her consciousness of the "unnatural" quality of her love is bound up with the awareness that it is her own daughter with whom she is competing. After exclaiming that her heart is more full of "wild ravenous beasts" than the wilderness itself, she condemns this competitive arrangement as utterly unnatural at the same time that she declares herself unable to resist it (80):

No, no, it is Philoclea his heart is set upon (if he be a he); it is my daughter which I have borne to supplant me. But if it be so, the life I have given thee, ungrateful Philoclea, I will sooner with these hands bereave thee of than my birth shall glory she hath bereaved me of my desires. In shame there is no comfort but to be beyond all bounds of shame. (81)

The last sentence of this passage, in which Gynecia views the murder of her daughter as simply an extension of the shame which she is already experiencing, reflects, on one level, the violent intensity of Gynecia's affection for Pyrocles/Cleophila. In this monologue which a modern reader might see as anticipating the ruthlessness of Lady Macbeth, Gynecia will sacrifice even her own daughter to realize the fulfillment of her desires.

On another level, however, the violence which she displays here toward her daughter reflects the unnatural state to which she is portrayed as having descended. The "unnatural" aspect of this jealousy is that it denies the "natural" reciprocal alliance between mother and daughter, and instead involves the two in a confrontation with the possibility of a violent outcome in which one or the other will be eliminated. Among the

⁷⁵ There is an additional connection between the two works. Prominent characteristics of both Musidorus and Pyrocles represent the two sides of Hippolytus. Like Musidorus in the debate between the two princes in Book 1, Hippolytus vehemently hates and shuns women. On the other hand, like Pyrocles who dons the costume of an Amazon, Hippolytus is identified with the Amazons. His mother, Hippolyta, was an Amazon, and Seneca presents Hippolytus as noticeably effeminate at times. This is particularly evident in his rejection of Phaedra's attempts to seduce him. At one point, he responds to his step-mother's advances with obvious effeminacy: "*Procul impudicos corpore a casto amove / tactus*" ("Away with thy impure touch from my chaste body!") (Seneca, *Hippolytus*, lines 704–05).

first sentences of the second book, the narrator speaks of “the deformity” of Gynecia’s vice, and the monologue which she goes on to convey reflects a consciousness of having transformed into the less-than-human. “O sun,” she exclaims, “whose unspotted light directs the steps of mortal mankind, art thou not ashamed to impart the clearness of thy presence to such an overthrown worm as I am?” (80). Gynecia’s agony in this monologue is one of the first indications of an unspeakable excess in her feelings of guilt and shame, an excess which ultimately causes her to condemn herself unjustly of the crime of regicide. “I am the subject that have killed my prince,” she confesses to Euarchus later in Book 5, “I am the wife that have murdered my husband. I am a degenerate woman, an undoer of this country, a shame of my children” (330). All of Gynecia’s confessions greatly exaggerate her responsibility for Basilius’ supposed death, and in this excess of self-condemnation is the half-acknowledged, but unspeakable truth of incest.

It is worth noting that, within both the Calvinist and the Catholic traditions of natural law, sexual relations between mothers-in-law and sons-in-law were in theory as serious as the most flagrant form of incest, that which could occur between mothers and sons. Sexual relations between a mother and her son-in-law do not involve consanguinity directly; by extension of marriage, however, the mother who seduces her son-in-law would be guilty of revealing her daughter’s nakedness.⁷⁶ Since Pyrocles is, by virtue of his age and status and his feelings for Philoclea, destined to marry her, it is difficult not to see in Gynecia’s consciousness of the competition with her daughter a corresponding and unspeakable consciousness of incestuous sin. Moreover, by having sexual relations with Philoclea at the end of Book 3, Pyrocles actually enters the royal family of Arcadia – during the sixteenth century, affinity was thought to arise both from illicit intercourse as well as from marriage.⁷⁷ “The renewed sting of jealousy” which Gynecia experiences for her daughter even after she has realized that Pyrocles and Philoclea are having sexual relations and her “determined patience” to play the part of Cleophila for Basilius in the cave show that Gynecia is ready to continue her pursuit of Pyrocles/Cleophila in spite of her knowledge of her own new affinity with Pyrocles (199, 200).

Beyond the unnatural violence implicit in the jealousy that Gynecia feels for her daughter and the now truly incestuous affection that she feels

⁷⁶ McCabe, *Incest, Drama, and Nature’s Law*, pp. 46–47.

⁷⁷ *Ibid.*, p. 52.

for Pyrocles/Cleophila is the threat implicit in the anonymous sexual encounter that occurs in Cleophila/Pyrocles' cave between Basilius and Gynecia disguised as Cleophila. What is significant here is that Basilius can unknowingly be led into a sexual encounter with another family member, albeit his own wife, and that during this encounter, his wife can successfully conceal her true identity. The threatening implications of such an encounter are inscribed in the possibilities. If Basilius can have sexual relations with his wife-as-other, then what will stop him from making the same mistake with his daughters? In effect, the cave encounter with Gynecia-as-Cleophila invokes the threat of more serious sexual confusion.

The duke's pattern of violating natural law not only infects his family, however; it infects the state of Arcadia itself. The idea that the sovereign's personal actions were the equivalent of law and could affect the entire body politic had a rich tradition in the most important handbooks on statecraft during the sixteenth century.⁷⁸ For example, the unnatural violence which Gynecia feels toward her daughter is both analogous to and concomitant in temporal terms with the chaotic violence which emerges within the state itself. The rebellion of the Phagonians occurs precisely at the moment in which Gynecia's jealousy for her daughter reaches its most virulent form (108).⁷⁹ Ironically, it is Gynecia who points out a similar (albeit this time metonymical) relation between Basilius' unnatural private rule over his family and his corresponding public rule over the Arcadian subjects. After the night which she shares with Basilius in the cave toward the end of Book 4, Gynecia points to the "natural" hierarchy which places husband above wife, upbraiding her husband for his fall from governor of his family to being subject to his wife's judgment. She goes on to invoke a metonymical linkage between the private and public realms of Arcadia by declaring that the prince who cannot rule his own personal appetites and family is also unable to rule his country: "Remember the wrong you do me

⁷⁸ See Desiderius Erasmus, *The Education of a Christian Prince*, trans. and intro. Lester Born, 2nd edn. (New York: Octagon, 1964), pp. 156–57, 170; and Sir John Fortescue, *De naturae legis naturae*, trans. Chichester Fortescue (New York: Garland Publishing, Inc., 1980), p. 220. See also Jordan, *Shakespeare's Monarchies*, pp. 12–14.

⁷⁹ An enraged Gynecia finds Cleophila dallying with Philoclea, and we are told, "then began [Gynecia] to display to Cleophila the storehouse of her deadly desires, when suddenly the confused rumour of a mutinous multitude gave just occasion to Cleophila to break off any such conference" (108). Throughout the rebellion episode which follows Gynecia's "unnatural" rage toward Cleophila and her own daughter, Sidney describes the attacking Phagonians as having descended into unnatural barbarism. They are "enraged beasts"; their attack on the lodge occurs in such a way that their minds are driven "past the bounds of obedience" so that they have lost the human ability to reason (113). Even the name of the Phagonians (*phagein* in Greek meaning "to eat") connotes the unnatural vice of cannibalism. Their rebellion can be seen as an attempt to cannibalize, in metaphorical terms, the state itself.

is not only to me, but to your children, whom you had of me; to your country, when they shall find they are commanded by him that cannot command his own indecent appetites; lastly to yourself, since with these pains you do but build up a house of shame to dwell in” (240). In effect, Basilius’ failure to maintain a personal code of ethics with regard to his own passions carries over into the duke’s rule over his own family and finally infects his command of the rest of the commonwealth.

The public rebellion and unruleness that follow this scene are similarly presented as violations of natural law. The duke’s “unnatural” private appetites have led to his “death”, which in turn leads to the expression of these appetites within the public realm. In the long speech in which Philanax declares publicly his decision to invite Euarchus into Arcadia, the counselor addresses the Arcadians as if they had transformed into those figures who have classically been associated with the violation of natural law. He calls them pirates and Cyclops, both of which were portrayed by just-war theorists as failing to respect natural laws, especially the laws of war and hospitality, and of course, he refers to them as cannibals readying to devour their prince’s dead body (306–7).⁸⁰ He goes on to ask them sarcastically, “before God, what either barbarous violence or unnatural folly hath not this day had his seat in your minds and left his footsteps in your actions?” (307). Philanax’s decision to provisionally crown Euarchus, making him arbiter of recent affairs, is identified in the sentences which follow as a direct result of the unnatural behavior of the Arcadians (307). According to Philanax, Euarchus “wilt lend thine arms unto her [Arcadia], and as a man take compassion of mankind, as a virtuous man chastise most abominable vice, and as a prince protect a people which all have with one voice called for thy goodness, thinking that, as thou art only able, so thou art fully able, to redress their imminent ruins” (311). Taking “compassion of mankind”, protecting a people from its own unnatural behavior, and redressing its imminent ruin comprise the essential characteristics of the notion of charitable intervention as it was defined by Vitoria and later by Las Casas.

THE TRIAL

I would like to end this chapter by addressing the significance of the trial scene in which Euarchus, assuming the role of judge, inadvertently

⁸⁰ See Gentili, *De Jure Belli Libri Tres*, vol. 11, pp. 86–92, and Vitoria, *On the American Indians*, pp. 278–84, for discussions of the natural law of hospitality, and Gentili, *De Jure Belli Libri Tres*, vol. 11, pp. 22–26, for a discussion of the status of pirates and brigands.

sentences his son and nephew, Pyrocles and Musidorus, to death. What is most important about Euarchus' judgment in terms of the logic of charitable conquest is not the judgment itself, which he makes without knowing the true identity of the princes, but his decision not to change the judgment once he learns that the princes are his own son and nephew. The issues here are far more complex than the terms which Euarchus uses to frame his decision to remain steadfast in his judgment. To be sure, Euarchus presents his decision as a choice between two natural imperatives, the imperative of a sovereign to uphold justice in the public realm and the imperative of a father to care for and protect his progeny (356). In the context of the ideal of charitable conquest, however, the two sides of this dilemma take on greater significance. Given the fact that his son and nephew are betrothed to the princesses of Arcadia and that, if spared, his adopted son, Musidorus, will become permanent ruler of Arcadia, Euarchus is effectively forced to decide whether his possession of the Arcadian crown will become a permanent settlement or only a provisional act.⁸¹ By sparing the princes, Euarchus' charitable conquest would suddenly become an act of territorial expansion and self-interest. By standing firm and condemning them to death, on the other hand, Euarchus remains true to the ideal of the charitable conquest, placing the conquered state's interest in justice and self-determination above his own territorial interests or even the interest of his own state to have an heir to the throne. In this judgment, then, the significance of Euarchus' self-interest in the land of Arcadia extends far beyond the private realm of his family and threatens to affect the self-determination of Arcadia itself. This threat, however, is precluded as soon as Euarchus refuses to spare his son and nephew.

The duke's apparent resurrection in the concluding episode has the narrative effect of confirming the legitimacy of Euarchus' decision not to reverse his condemnation of Pyrocles and Musidorus.⁸² Although I have attempted to avoid reading the last book in allegorical terms up to this point, it is worth looking at the resurrection as an allegory for a moment, because the resurrection itself seems to cut quite flagrantly against the elements of realism which suffuse this section of the narrative (359). Euarchus' decision to place the interests of the national other before his

⁸¹ For a reading of this episode, which presents the princes' ravishment of the two princesses of Arcadia as a transgression of the law of fraudulent conveyance, a law intended to punish debtors who attempted to defraud the Crown of its revenues or creditors of outstanding loans, see Ross, *Elizabethan Literature and the Law of Fraudulent Conveyance*, pp. 43–69.

⁸² For a thorough consideration of Basilius' revival and his subsequent pardoning of the princes, see Ross, *Elizabethan Literature and the Law of Fraudulent Conveyance*, pp. 60–62.

own familial interests (which also translate ultimately into the political interest of territorial expansion) is, on an allegorical level, an action which resurrects the sovereignty of Arcadia while, on a literal level, leading to the resurrection of the sovereign Basilius himself. The potion that Basilius has drunk, which turns out to be “neither . . . a love potion . . . nor a deadly potion,” is that magical element or, allegorically speaking, that indeterminate element which provided an opportunity for conquest or usurpation to take place (359). Euarchus denies himself this opportunity and the re-assertion of the duke’s power ultimately allows sovereignty to be transferred without the threat of usurpation coming to fruition. In fact, Euarchus’ self-denial and attempt at upholding justice inadvertently causes his power and territory to be expanded in a more legitimate way than the traditional strategy of conquest epitomized in the portrayal of the Latins and the Asiatics. Despite or rather because of Euarchus’ selfless act of justice, his nephew and adopted son, Musidorus, does indeed end up marrying Pamela and inheriting the Arcadian crown while the sovereign claims of Basilius are simultaneously protected and maintained. Hence, although a king might pursue a policy quite opposed to conquest, Sidney shows that his charitable preservation of the laws of nature within his neighbors’ borders will nevertheless result in a non-coercive and thus legitimate form of expansion. The legitimacy of such expansion is engendered in the fact that it is unintentional.⁸³

As with most of Sidney’s work, however, it is difficult not to see a modicum of ambivalence here concerning the decision which Euarchus has made. Indeed, it would be an exaggeration to say that Sidney has no reservations about the ideal of charitable intervention and its unintentional results.⁸⁴ In certain respects, the ideal of charitable conquest seems to constitute a goal which however laudable is ultimately unreachable. Whatever decision Euarchus makes, it seems, he is almost bound to suffer the accusation that he has used his role in Arcadia to further an interest in expansion and conquest. After the identity of the princes has been

⁸³ See Gesina H. J. Van der Molen, *Alberico Gentili and the Development of International Law* (Leyden: A. W. Sijthoff, 1968), p. 152, for a discussion of Gentili’s view that justice should always prevail over self-interest in such situations.

⁸⁴ A number of critics have discussed the problematic nature of Euarchus’ judgment in great detail. See Robert Stillman, *Sidney’s Poetic Justice: The Old Arcadia, its Eclogues, and Renaissance Pastoral Traditions* (Cranbury, NJ: Associate University Presses, 1986), pp. 214–28; Elizabeth Dipple, “‘Unjust Justice’ in the *Old Arcadia*,” *Studies in English Literature 1500–1900*, 10 (1970), 83–101, esp. 93–94; Clifford Davidson, “Nature and Judgment in the *Old Arcadia*,” *Papers on Language and Literature*, 9(1970), 348–65; and Ann W. Astell, “Sidney’s Didactic Method in the *Old Arcadia*,” *Studies in English Literature 1500–1900*, 24.1 (Winter 1984), 39–51.

revealed and Euarchus resolves that the executions will go forward, both princes accuse Euarchus of planning to execute Musidorus, heir to the throne of Thessalia, as a way of conquering the neighboring Greek state of Thessalia (356–58). It is Musidorus who first accuses Euarchus of being a self-interested conqueror:

'Enjoy thy bloody conquest, tyrannical Euarchus,' said he, 'for neither is convenient the title of a king to a murderer, nor the remembrance of kindred to a destroyer of his kindred. Go home and glory that it hath been in thy power shamefully to kill Musidorus. Let thy flattering orators dedicate crowns of laurel unto thee, that the first of thy race thou hast overthrown a prince of Thessalia.' (356)

The accusation that Euarchus is guilty of executing Musidorus in the interest of conquest is later echoed by Euarchus' son, Pyrocles, in his own address to his father – Pyrocles warns him to take heed "lest seeking too precise a course of justice, you be not thought most unjust in weakening your neighbour's mighty estate by taking away their only pillar" (238).

Even in his attempt to privilege justice over his own self-interests, then, Euarchus never escapes the charge which from the beginning he had sought to avoid, namely, that he has assumed the protectorship of Arcadia, not out of charitable motives, but in the interests of conquest and territorial expansion. In the end, it seems that Sidney endorses the ideal of the charitable conquest with a caveat. On the one hand, he shows that the only truly legitimate conquest is one motivated by charitable reasons. In this respect, Euarchus' example is one to be followed – his restoration of Arcadian sovereignty and law is successful. On the other hand, Sidney shows that any ethically motivated conquest, no matter how charitable its conception, can easily be perceived as or can even transform into that from which it seeks to distinguish itself, namely an opportunity to expand one's own territory and power at the expense of one's neighbor. As a result, the ethical prince who seeks to intervene in foreign lands must be extra-vigilant in insuring that his intentions are (or at least are perceived to be) virtuous.

*Natural Law and corrupt lawyers: Riche,
Roberts, Johnson, and Warner*

Like Sidney, writers such as Barnabe Riche, Henry Roberts, Richard Johnson, and William Warner used the genre of romance in order to explore issues of transnational justice. However, in contrast to Sidney who seems thoroughly unconcerned with native English legal traditions, these writers are alternately drawn to and repulsed by such traditions. Their ambivalence reflected an ongoing contemporary controversy concerning the nature of the common law tradition. J. G. A. Pocock has contributed a great deal to our understanding of this controversy by identifying a pervasive sixteenth and early seventeenth-century legal ideology which he has termed the “common-law mind.”¹ Pocock uses this term to describe the belief, beginning in the second half of the sixteenth century among English lawyers, that the English common law was uniquely compatible with the character of the English people. Coke’s thirteen *Reports* (1600–15), a voluminous recording of trials during the Elizabethan and Jacobean periods, collectively represent the most significant contribution to this Renaissance legal ideology.² But while Coke was certainly the common law’s most ardent champion, he was also simply one among a number of prominent adherents to some form of the

¹ See J. G. A. Pocock, *The Ancient Constitution and the Feudal Law, A Reissue with a Retrospect*, 3rd edn. (New York: Cambridge University Press, 1990), pp. 30–69, and Donald R. Kelley, “History, English Law and the Renaissance,” *Past and Present* 65 (1974), 24–51. Criticism of the common-law mind thesis has uncovered the extent to which continental and civil-law discourse influenced English law and sensibilities. See Christopher Brooks and Kevin Sharpe, “Debate: History, England Law and the Renaissance,” *Past and Present* 72 (1976), 133–42, and Hans Pawlisch, *Sir John Davies and the Conquest of Ireland: A Study in Legal Imperialism* (New York: Cambridge University Press, 1985), pp. 161–75. Most recently, in *Politics of the Ancient Constitution*, pp. 115–38, Burgess has shown that, while continental civil legal thought had a presence in England, common lawyers and civil lawyers largely employed separate political languages. For a similar view, see Tubbs, *Common Law Mind*.

² Coke, who had served as attorney general during the last years of Elizabeth’s reign, became chief justice of the Court of Common Pleas in 1606, and in 1613, became chief justice of the King’s Bench. See Coke, *Reports*.

common-law ideology, including Sir John Fortescue (whose fifteenth-century classic, *De Laudibus Legum Angliae*, was not published until the mid-sixteenth century), Sir John Davies, Thomas Hedley, Sir Henry Finch, John Doddridge, Edward Hake, and at least in selected parts of their respective corpi, William Lambarde and John Selden.³

Among the more salient aspects of this ideology, we can count a number of noteworthy items. According to Coke, the common law had existed from time immemorial, and in this respect, it was both superior to and older than any other existing law, including Roman civil law. It was the equivalent of English custom, and as such, centuries of use had worked to refine the common law and to make it a more perfect legal system than any one individual sovereign or political body could have devised. While law that was devised by a king or a parliament grew antiquated, English customary law had had a unique ability to resolve a nearly infinite number of conflicts over the centuries.⁴ Proof of the English law's perfection was in fact attributable to the notion that it had remained essentially the same law during the entire existence of the kingdom.⁵ Moreover, the common law was considered to be exclusively native to England as well as peculiarly suited to the English nature and disposition. According to Sir John Davies, for example, England was a separate and self-contained entity that had had and always would have the same law and form of government. For Davies, the common law was

so framed and fitted to the nature and disposition of this people, as we may properly say it is connatural to the Nation, so as it cannot possibly be ruled by any other Law. This Law therefore doth demonstrate the strength of wit and reason and self-sufficiency which hath been always in the People of this Land, which have made their own Laws out of their wisdom and experience, (like a

³ See Sir John Fortescue, *De Laudibus Legum Angliae*, *Hereto are added the two sums of Ralph de Hengham, with notes both on Fortescue & Hengham by John Selden* (London: 1672), esp. ch. 17; Sir John Davies, "Preface," *Le Reports des cases & matters en Ley, resolves & adjudges en les courts del roy en Ireland [Irish Reports]* (London: 1674); [Thomas Hedley], *Parliament of 1610, Proceedings in Parliament 1610*, ed. Elizabeth Reed Foster (New Haven: Yale University Press, 1966), vol. 11, pp. 170–97, esp. 173–79; Sir Henry Finch, *Law, or a Discourse thereof* (London: 1627), pp. 77–79; John Doddridge, *The English Lawyer* (London: 1631), pp. 101–02; Edward Hake, *Epieikeia, A Dialogue on Equity in Three Parts*, ed. D. E. C. Yale, pref. Samuel E. Thorne (New Haven: Yale University Press, 1953), p. 5; William Lambarde, *Archeion or, a Discourse upon the High Courts of Justice in England*, ed. Charles H. McIlwain et al. (Cambridge: Harvard University Press, 1957), pp. 45, 133–34; and John Selden, *Ad Fletam Disertatio* (Cambridge: Cambridge University Press, 1925), pp. 105, 167.

⁴ See Pocock, *Ancient Constitution*, pp. 30–69.

⁵ Sir John Davies, *Reports*, p. 55. For context, see Burgess, *The Politics of the Ancient Constitution*, pp. 20–37. Burgess (pp. 62–78) and Tubbs (*Common Law Mind*, pp. 141–72) have shown that more common lawyers subscribed to some conception of historical legal change than Pocock had originally claimed.

Silk-worm that formeth all her web out of her self onely) not begging or borrowing a form of a Commonweal, either from *Rome* or from *Greece*, as all other Nations of *Europe* have done.⁶

Of course, this passage from Davies' *Irish Reports* suffers from the contradiction at the heart of the entire ideology, namely how to reconcile the notion that the common law was "made" or manufactured "out of [the people's] wisdom and experience" with the fact that England has never been "ruled by any other Law." Despite its logical flaws, however, the passage quite powerfully expresses the widespread belief in the distinctiveness of English law among the European legal traditions. In contrast to the "other Nations of *Europe*," England had remained a paragon of self-sufficiency whose law as a result conformed exactly to the "nature and disposition of this people."

Finally, the common law was said to be *ius non scriptum*. As English custom, the essence of the English law was unwritten, existing not in codes but in the declared judgments of common law judges. Records of the king's courts had begun in the twelfth century, but rather than taking this as evidence that the common-law courts originated from that time, common lawyers simply regarded these records as summaries of prior law, in effect, more proof of the law's immemoriality.⁷ In essence, any record of the law was simply taken as proof that the law had existed prior to that recording. One reason why it was perhaps so important to insist on the unwritten nature of the common law was that the records which did exist, the Year Books and other reports, as well as court proceedings themselves, were written in law French, a wholly artificial language that had never been spoken outside of the English courts. Not coincidentally, the historical event that most threatened the notion that the common law had existed from time immemorial was the Norman Conquest, by which French had been introduced as the language of legal proceedings. Common lawyers went to great lengths to deny that the Norman Conquest had changed anything more fundamental than the language within which the law courts functioned. Thus, in his short history of the English law which he included in the preface to the *Third Report*, Sir Edward Coke openly recounted that the language of the law had changed a number of times throughout British and English history, thereby implying that legal fundamentals remained unaffected by each linguistic transformation.⁸

⁶ Davies, *Reports*, p. 55. ⁷ Pocock, *Ancient Constitution*, pp. 37–41.

⁸ See Coke, *Third Report*, pp. A8–b3, esp. A8, b2^v.

The need to deny that the Normans had either introduced the law now practiced in England or that they had irreversibly changed the English law amounted to an obsession for some common lawyers.⁹ Certain jurists such as Coke went even further, insisting that none of the ancient conquests of Britain had resulted in the introduction of new laws and that the English law had remained the same since pre-Roman times. Sir John Fortescue's *De Laudibus Legum Angliae* was a significant text in this respect. In the oft cited seventeenth chapter of *De Laudibus*, Fortescue had written,

The Realm of *England* was first inhabited of the *Britons*, next after them the *Romans* had the rule of the land, and then again the *Britons* possessed it, after whom the *Saxons* invaded it, who changing the name thereof did for *Briton* call it *England*, after then for a certain time the *Danes* had the dominion of the Realm, and the *Saxons* again, but last of all the *Normans* subdued it, whose discent continueth in the government of the kingdome at this present. And in all the times of these several nations and of their kings, this realm was still ruled with the self same customes, that it is now governed withall. Which, if they had not been right good, *some of those kings moved either with Justice, or with reason or affection*, would have changed them, or else altogether abolished them.¹⁰

In this passage, Fortescue claims not only that the Norman Conquest had had no effect on the English law but that every conquest of England or Britain had had no effect, and a number of seventeenth-century common lawyers clearly sympathized with this view to some degree. Coke's own statement on this matter is a faithful reiteration of Fortescue's to which is added a favorable comparison of the common law with the Roman civil law. "If the ancient Laws of this noble Island had not excelled all others," Coke remarks, "it could not be but some of the several Conquerors and Governors thereof, that is to say, the *Romans*, *Saxons*, *Danes* or *Normans*, and specially the *Romans*, who (as they justly may) do boast of their Civil Laws, would (as every of them might) have altered or changed the same."¹¹ Note that in both Fortescue's and Coke's formulations, evidence that repeated conquerors did not choose to abolish or modify the English law constitutes proof of its superiority.¹²

⁹ Burgess, *Politics of the Ancient Constitution*, pp. 83–6.

¹⁰ Fortescue, *De Laudibus Legum Angliae*, pp. F3–F3^v. ¹¹ Coke, *Second Report*, p. A5^v.

¹² Burgess has argued that Coke was part of a minority in adopting Fortescue's extreme view that no conquest of England had had any effect on the law – he claims that, in contrast, most prominent contemporary common lawyers traced the origin of the English law back to the Saxon invaders rather than the mythical Trojan presence in pre-Roman Britain. For these jurists, claiming that the common law had remained unchanged since before the Norman Conquest was sufficient for

A final measure of the persistent force of a belief in either limited or absolute immemoriality is the objections of civil lawyers. Civil lawyers and other opponents of the common-law ideology took every opportunity to refute Coke's claim that the law was in essence equivalent to pre-Roman law.¹³ Civil lawyers, immersed in the tradition of Roman law, were especially bothered by the claim that Roman law had never taken root in Britain because of their own professional stake in claiming that the *Corpus Iuris Civilis* had its own historical presence on the island. The civil lawyer, Sir John Hayward, for example, addressed Coke's thesis of immemoriality in two separate tracts.¹⁴ In his tract on the English–Scottish union, Hayward specifically invokes Coke's claim “that the lawes of *England* were neuer changed since the time of *Brutus*” in order to dismiss it as an opinion “not commonly receiued” and “neuer suitable but with artlesse times.”¹⁵ Hayward's dismissal of Coke's thesis was quite obviously motivated by its own oppositional civil-law politics. In the same tract, Hayward refers to an earlier tract in which he offers his own detailed account according to which the Romans themselves were the first to have planted laws in Britain.¹⁶ By claiming that the origins of English law were Roman, Hayward was proposing his own alternative historical narrative, by which the civil law, England's inheritance from the Roman Conquest, constituted the true essence of English law.

It is here that writers of romance such as Barnabe Riche, Henry Roberts, Richard Johnson, and William Warner made their own contribution by using the discourse of natural law in order to challenge the hold that the common law had over English legal thought. In their works of fiction, each of these writers is thoroughly invested in resolving a conflict that emerges between the natural laws that governed the universe and the more mundane law practiced in the English courts. The first three, Riche, Roberts, and Johnson, attempt to resolve this conflict by championing the

demonstrating its unique character and superiority to other legal traditions (Burgess, *The Politics of the Ancient Constitution*, pp. 74–78).

¹³ Burgess, *The Politics of the Ancient Constitution*, pp. 84–85; J. P. Sommerville, “History and Theory: The Norman Conquest in Early Stuart Political Thought,” *Political Studies* 34 (1986), 249–61.

¹⁴ John Hayward, *An answer to the first part of a certaine conference concerning succession* (London: 1603), pp. F–F^v. See also Hayward, *A Treatise of Union of the two Realms of England and Scotland* (London: 1604), pp. C2–C2^v.

¹⁵ Hayward, *A Treatise*, sig. C2.

¹⁶ Hayward, *An answer*, sigs. F–F^v. Certain Chancery-based common lawyers such as William Hakewill shared the civil lawyers' view of the Roman Conquest and Roman law. See William Hakewill, “The Antiquity of the Laws of this Island,” in *A Collection of Curious Discourses, written by eminent antiquaries upon several heads in our English antiquities*, ed. Thomas Hearne (Oxford: 1720), pp. A2–A3^v.

“faultless” exercise of the king’s prerogative and the warrior knight’s code of chivalry over the corrupt and venal practices of domestic lawyers. In contrast, Warner, a singular oddity among these writers, attempts to shape England’s national historical consciousness as a means of imagining a future (and past) English *imperium*. The fictions that these writers authored are conventional, and therefore, in some cases, it could be argued either that the evidence cited here is overdetermined or that these narratives comprise predictable plot formulas – for example, the story (reminiscent of *Romeo and Juliet*) of two young lovers whose mutual affection is impeded by cruel parents – that have little to do with specific historical contexts. But it is important to note that each of these figures also wrote non-fictional works on English history, military doctrine, warfare, urban life, and the profession of law which may serve as guidelines for their romance fiction. Using such materials, I suggest that the conventions of these romances participate in a larger discourse concerning the ideological justification of conquest and therefore that they function as more than generic conventions. My purpose here is to show that the conventional properties of their romances have wider implications beyond the boundaries of the fictional narratives, which they comprise.

BARNABE RICHE: THE VIRTUOUS SOLDIER VS.
THE CORRUPT LAWYER

Barnabe Riche’s history as a career soldier in Ireland had an overwhelming influence on his social commentary, military writings, and prose fiction. Throughout his writings, Riche presented the military profession as necessary for maintaining a healthy commonwealth, especially in comparison with more lucrative professions such as law, physic, and commerce. In one of his earliest tracts entitled *Allarme to England* (1578), Riche exalts soldiers as superior to lawyers and merchants. While soldiers have an unfair reputation for violence and sowing discord, lawyers are actually responsible for more serious discord within the commonwealth:¹⁷

Amongst the lawyers, are there not found many that creepe into the Innes of court, that seeke by lawe to overthrowe lawe, such as be termed by the name of *peti foggers*, brethelles, that practise nothing but to breede dissensions, strifes, suites, quarrels & debates between neighbour and neighbour, brother and brother, yea, sometimes between the father and the sonne:¹⁸

¹⁷ Riche, *Allarme to England*, c3^v-c4. ¹⁸ *Ibid.*, p. c4^v.

Elsewhere in *A Path-way to Military Practise* (1587), Riche likewise singles out the corruption of lawyers (as well as that of physicians), especially the disunity which they foment within the city and state, as worthy of condemnation. Agreeing with Plato, he remarks, "it is a token of a corrupted estate, where there are many Lawyers, and manie Phisitions, because the multitude of Lawyers are maintained by the contention of the people, and such store of Phisitions, by their excesse in dyet, drunkennes and gluttonie."¹⁹ In both of these early tracts, Riche seeks to show that in contrast to soldiers who should be rewarded for defending the unity of the state, many seemingly respectable professions, such as law, should be blamed for the state's continual decay into disunity and infighting.

Riche's hostile attitude towards lawyers may stem from his own legal troubles over the years. During his privateering days in the 1560s, Riche incurred debts to a financier named Richard Cooke who had helped him outfit a ship at Maldon, Essex, but when the ship sank, Riche was arrested and later endured bouts of imprisonment as a result of defaulting on his obligations.²⁰ Likewise, during his public campaign against the Irish religious authorities in the 1580s and 1590s, Riche seems to have been unable to utilize the court system to protect himself from the ruthless attacks by Archbishop Adam Loftus and his brother-in-law Thomas Jones, Bishop of Meath. In 1592, Riche was physically assaulted and finally driven out of Ireland altogether.²¹ During the following year, Riche was once again in trouble with the legal authorities – in March of 1592/93, the Privy Council issued a warrant for his arrest to the Star Chamber. It has been speculated that the cause of the warrant was his 1592/93 tract, *Greenes Newes Both from Heaven and Hell*, in which he held his political enemies, especially Loftus and Jones, to public ridicule.²²

There is another explanation, however, for Riche's denigration of the English legal profession, which has to do with Riche's identity as an anti-Spanish writer who, like Sidney, favored a greater role for England overseas. In the *Path-way* and elsewhere, Riche presents the king of Spain as tyrannizing over his own subjects as well as over Spanish-ruled

¹⁹ Barnabe Riche, *A Path-way to Military practise. Containing Offices, Lawes, Disciplines and orders to be observed in an Army, with sundry Stratagems very beneficiall for young Gentlemen, or any other that is desirous to haue knowledge in Martiall exercises* (London: 1587), p. c. See also Barnabe Riche, *The Honestie of the Age: Proving by Good Circumstance that the World was Never Honest til Now*, ed. Peter Cunningham (London: T. Richards, 1844), p. 21.

²⁰ Cranfill et al., *Barnaby Rich*, pp. 19–23. Beecher, "Introduction," in Riche, *His Farewell to Military Profession*, pp. 16–17.

²¹ Cranfill et al., *Barnaby Rich*, pp. 62–66. ²² *Ibid.*, p. 77.

populations throughout the rest of Europe.²³ Against this vision of a tyrannical Spain, Riche imagined England as defending the oppressed peoples of Europe.²⁴ Of Elizabeth's role as a just and merciful sovereign, Riche recounts

howe many forraine princes haue sought to her for succours, that like as auncient *Rome* (while the gouernement rested in the souldiour) was the verie refuge for such as were distressed by oppressing Tyrantes, so the greatest parte of Christendome, hath thought their states the better assured, when they haue combyned with her Maiesty, and shrowded them selues vnder her gracious protection.²⁵

Riche's view of England as a potential champion of oppressed states necessitated some external juridical standard, one more universal than the insular tradition of common law. In Riche's tracts on military affairs, this transnational standard is normally divine law or "the lawes of God" in his phraseology.²⁶

Riche's condemnation of English lawyers is one aspect of a strategy of singling out the English sovereign as a new champion of transnational justice. Like later writers of romance, he views England's eclectic system of common law as an obstacle to the "ethical" foreign engagement which he favors. Riche thus condemns the arcane and inveterately corrupt laws of England, while celebrating the capability of the sovereign to participate in universal legal standards. In doing so, he makes a general assault on urban decadence, all the while exalting the bravery of those who – ironically – defend this fallen nation but who also redeem it through their heroic actions. Indeed, his condemnation of the sins and faults of individual lawyers sometimes folds over into a generalized indictment of the domestic legal system itself, which according to its critics was burdened increasingly by delays, inequities, and obscure legal language and formulations.²⁷

²³ Riche, *A Path-way*, pp. c3–c3^v, c4^v–d^v.

²⁴ However, in a manner that is typical of English officials of Ireland, Riche is blind to analogous English oppression of the Irish. Thus elsewhere, he inveighs against the barbarism of the Irish, which he characterizes as worse than that of the Amerindians (Riche, *Allarme to England*, pp. d2^v, e, e4). See also Barnabe Riche, *A New Description of Ireland: Wherein is described the disposition of the Irish whereunto they are inclined* (London: 1610), pp. c1–e3.

²⁵ Riche, *A Path-way*, p. c4^v. ²⁶ Riche, *Allarme to England*, pp. a1–c1^v, esp. c1–c1^v.

²⁷ Riche, *The Honesty of the Age*, pp. 13–23. Compare Thomas Starkey's complaints about the common law (Starkey, *A Dialogue between Pole and Lupset*, ed. T. F. Mayer (London: Royal Historical Society, 1989), pp. 129–30). See also J. H. Baker, *Introduction to English Legal History*, p. 43, and J. H. Baker, Introduction, *The Reports of Sir John Spelman* (London: Selden Society, 1978), vol. 11, pp. 40–41.

In contrast to his derogatory attitude toward lawyers and domestic law, Riche repeatedly sees the effective sovereign as uniquely educated in the strategies and ethics of warcraft. He has a firm belief that the good sovereigns of history have always acted in the ways he prescribes, and he can invoke numerous exemplary figures from history to illustrate such a code of ethics. In his early tract, *Allarme to England*, he defends war-making as consistent with Christ's teachings, especially when it is fought for the defense of one's country or of the greater Christian realm.²⁸ Elsewhere, referring to Philip of Macedon's conquest of Greece, Riche notes approvingly the example of the Athenian king, Demosthenes, who invaded Macedonia and then sent military support to the neighboring Olynthians in order to counter Philip's designs because Athens' "owne safetie did chiefly consist in the others [the Olynthians'] good successe."²⁹ In general, Riche's purpose here and elsewhere is to defend war as justified in certain contexts and not at odds with Christian dictums that might seem to counsel peace above all else.

He also presents war as justified by the higher laws which supersede the positive laws that govern a polity's subjects. At the end of the first part of *Allarme to England*, entitled "Of warre," he notes that "it is not agaynst the lawes of God" to go to war and advises princes that wars are justified when they are "erect[ed] . . . upon sufficient cause."³⁰ Likewise, he begins the *Path-way* by explaining that the legitimate decision to go to war can be viewed as having legal justification:

A prince therefore that mindes to enter into armes, is fyrst to consider of the equity of his cause, then making choise of a Generall, such a one as feares God, is likewise to fortifie him selfe with the goodnes of his quarrell, neither is there any meane more rather to incite men to valiaunce, then when they shall remember they goe to the fight in a righteous cause, for fortitude ever fighteth for equitie and iustice, and valiaunce without iustice is to be accounted rashnes.³¹

Riche's application of "equitie and iustice" to the context of warfare stands in stark contrast to his description of the domestic legal sphere, which is all about personal gain and petty disagreements, in turn causing strife within the nation. He goes on to counsel the prince on the best strategies for attaining victory on the battlefield, strategies that involve knowing when you have the advantage and how to behave honorably in

²⁸ Riche, *Allarme to England*, pp. A1^v-C1^v. ²⁹ *Ibid.*, p. A3^v. ³⁰ *Ibid.*, C1.

³¹ Riche, *A Path-way*, p. D4^v.

the face of an enemy's defeat.³² He concludes by pointing out that victory itself occurs by God's judgment, and by reminding his reader of the necessity of giving "thanks to the most high almighty God, humbly to acknowledge his grace and goodnes in all theyr accomplishentes, and this to be doon with all humilitie upon thyr knees."³³

The pattern of thought found in these military tracts is also reflected in narrative form within *His Farewell to Military Profession*, which once again reveals Riche's commitment to championing the extraordinary justice represented by sovereign acts of war over the corrupt and self-serving legal apparatus that serves to enrich the lawyer. In these stories, Riche illustrates, as he does in his tracts, the valor and innate goodness of soldiers over their counterparts in the city. For example, the fifth story, "Two Brethren and Their Wives," begins as a simple morality tale on the perils of marrying a woman for beauty or wealth, but it quickly transforms into a more complex narrative involving a comparison of soldierly and lawyerly versions of justice. The story of an older brother, who marries for beauty and is cursed with a woman who "cunningly armed his head with horns," quickly changes perspective from the unnamed husband to the beautiful but disloyal wife named Mistress Dorothy (234).³⁴ Riche begins the story of Dorothy by recounting the strategy she used to terminate two adulterous relationships with a lawyer and a doctor when she encountered a more attractive soldier. Included in this narrative is a typical debate over the worth of women initiated by a defamatory letter scribed by the lawyer. In this letter, the lawyer takes a misogynist position – typical of the Renaissance – which condemns female perfidy and cruelty.³⁵ In response, the soldier defends women, whom he claims were constructed by God from the best parts of man. At the beginning of his defense, the soldier condemns lawyers in terms that are familiar to readers of Riche's social commentary. "What art thou?" he asks rhetorically to the lawyer,

A man, a devil, or a subtle lawyer, yea surely, and so thou mayest well be, and herein hast thou showed thyself no whit at all to digress from thy profession. For as at the first the laws were constituted to minister justice and to give every one his right, so now are they made by the practice of a number of pettifoggers the instrument of all iniquity and wrong. (246)

³² Ibid., pp. H1^v–H4^v. ³³ Ibid., p. H4.

³⁴ Parenthetical references are from Riche, *His Farewell to Military Profession*, ed. Donald Beecher.

³⁵ For a discussion of the typical misogynist position, see Katherine Usher Henderson and Barbara F. McManus, *Half Humankind: Contexts and Texts of the Controversy about Women in England, 1540–1640* (Urbana, Chicago, IL: University of Illinois Press, 1985), esp. pp. 47–71, 99–112.

As in his military tracts, Riche uses the perspective of the soldier to delegitimize lawyers as corrupting the nation in such a way that the domestic legal apparatus itself becomes an instrument of injustice. In addition, the narrative is itself constructed around an important parallel between the lawyer's corruption of the public domestic order and his equal capacity, through his unwarranted possessiveness and jealousy, for corrupting and destroying the personal domestic order of Mistress Dorothy and her husband. In contrast, the soldier, in his role as her lover, helps Dorothy to rid herself of her unwanted suitors, and thus helps in a roundabout way to restore the sanctity of her marriage. At the end of the narrative, the soldier is said to have "lived in great credit" with Dorothy because he helped her to extricate herself from her bothersome romantic affairs. For his part, the soldier finally ends his affair with Dorothy by becoming employed in the "king's wars against foreign foes," where "he spent his life in his prince's quarrel." Mistress Dorothy grieved for a long while for her former lover, but ultimately, "fear[ing] to fall into any further infamy, contented herself to live orderly and faithfully with her husband all the rest of her life" (257). Whereas her illicit affairs with the lawyer and the doctor had the potential to foment discord in the domestic arena, her affair with the soldier ironically causes the patriarchal structure on which the Renaissance household depends to reassert itself.

Other tales in Riche's *Farewell* substitute the macrocosmic analogue of the state for the household. Throughout these narratives, the extra-judicial decisions of kings, bound only by their own reason and equity, are consistently privileged over routine legal decisions, custom, and personal interests. For example, in the fourth tale, "Of Fineo and Fiamma," two lovers are consistently forbidden to marry because of narrow familial and political interests. At the narrative's outset, the two lovers are separately enslaved and then taken together to North Africa. When they attempt a daring escape, the Moorish King of Tunis, who is originally determined to punish the couple, is suddenly "converted and changed into pity and compassion of their misfortunes" (229). His decision to help them constitutes an extraordinary application of equity which reverses a prior application of the law that would have punished them with the penalty of death.³⁶ Similarly, at the end of the sixth tale,

³⁶ See parallel with the relationship between the common-law courts and Chancery, which in the interest of equity sometimes reversed decisions arrived at through normal legal channels. J. H. Baker, *Introduction to English Legal History*, p. 50; John A. Guy, *The Public Career of Sir Thomas More* (New Haven: Yale University Press, 1980), pp. 42–49; Knafla, *Law and Politics*, p. 162.

“Of Gonsales and his Virtuous Wife Agatha,” the governor pardons a husband who has been condemned to death in a court of law for attempting to kill his virtuous wife in order to marry a courtesan – he reverses the death sentence because his conscience tells him that the husband will ultimately be reformed by his good wife (276). Finally, in the seventh tale, entitled “Of Aramanthus Born a Leper,” the Emperor of Turkey suddenly converts to Christianity and liberates the Christian King of Tolosia and his lands after conquering them when he finds out that his own general Aramanthus is the Christian king’s long-lost son (289). In all of these tales, stark reversals are presented as the just acts of sovereigns who disregard custom, personal interest, or narrow national interest and instead act according to notions of “universal” reason. Conforming to Riche’s counsels in the *Path-way* on military affairs, the decisions of Riche’s fictional sovereigns involve the exercise of extra-judicial powers in which the sovereign obeys his own conscience, bound by natural or divine law, without any consideration of domestic legal strictures.

The prerogative decisions which Riche’s fictional sovereigns exercise are presented as sanctioned by reason and by God. This is consistent with his tracts on military affairs in which he counsels the sovereign to act according to the laws of God or by imitating exemplary figures of the Bible. For example, in “Of Fineo and Fiamma,” Fiamma’s family is persuaded finally “that God and Nature had created those two young folk to be matched and joined together in wedlock” (230). Likewise, in the first story, “Sappho Duke of Mantona,” the natural bonds of love and family consistently trump seemingly binding contracts and narrow political decisions. Silvanus, a foundling with noble origins, and Valeria, daughter to the Duke of Vasconia, flee Vasconia in order to elope because the Duke forbids their marriage based on his objection to Silvanus’ apparent ignobility. Sanctioned by nature, their love ultimately prevails over his objections. Moreover, Silvanus is soon reunited with his natural father, the Duke of Sappho, “by the instigation or secrecy of nature, or otherwise by the will and pleasure of God,” and the Duke of Sappho is also reunited with his lost wife, Messilina (161). Ultimately, the Duke of Sappho uses his extraordinary powers to abrogate a contract that had bound Messilina to marry a merchant (171–72). In these instances, natural bonds and the extra-judicial decisions of the “virtuous” sovereign prevail before narrow interpretations of nobility or contractual arrangement.

Riche’s defense of the king’s prerogative over narrow personal interest is analogous to privileging equity, reason, and natural law over the artificial reason of the common law. In jurisdictional terms, it is like

privileging the prerogative courts, in particular Chancery and the Star Chamber, over the common-law courts.³⁷ In comparison to later writers, Riche's solution was the simplest way to resolve the overall conflict between natural law and common law that distinguishes the romance of this period. The highly conventional narratives that comprise Riche's *Farewell* stretch again and again beyond the level of fiction and into the polemics explored by his non-fictional writings. In the end, Riche's fictions complement his writings on military affairs by offering the sovereign a model of absolute justice that incorporates events beyond the frontiers of the state.

HENRY ROBERTS AND THE MERCHANT KNIGHT

The pattern whereby natural and divine law prevail over domestic custom and insular legal discourse is found in different forms in many of the English romances of this period. Like Riche's *Farewell*, Henry Roberts' *Pheander, the Maiden Knight* (1595) gives a negative portrayal of the domestic legal apparatus. In this popular romance, legalistic disputations within the royal court cause a prince to stagnate in irrational weakness whereas foreign military engagement tends to motivate the prince to act resolutely. *Pheander* begins with an account of how Dionisius, a Prince of Numedia, has fallen in love with the Princess Nutania of Thrace after hearing report of her "exceeding beauty" (B).³⁸ His passion for Nutania soon transforms into a deathly malady which causes his parents, the King and Queen, to be struck by such extreme grief that their own lives are in danger as well. With the government in jeopardy as a result of Dionisius' love-sickness, Thelarchus, the neighboring King of Thrace and father to the beloved Nutania herself, sends an embassy to Numedia "to comfort them, and to be aduertised of the truth of their estates" (B^v). Because he is incapacitated, the feeble prince invites the visiting embassy to his chambers, where he is entertained with a debate between two Thracian nobles, Lords Octavius and Cariolus, on whether Nutania or Brionella, Princess of Boheme, is the more beautiful woman. This debate quickly transforms into a seemingly irresolvable dispute over the worth of beauty.

Lord Octavius holds beauty to be a fleeting ornament while Lord Cariolus defends beauty and accuses Octavius of heresy and treason for

³⁷ Knafla, *Law and Politics*, pp. 159–70; J. H. Baker, *Introduction to English Legal History*, pp. 40–41; W. J. Jones, *Elizabethan Court of Chancery*, pp. 177–336; and T. F. T. Plucknett, *A Concise History of the Common Law*, 5th edn. (London: Butterworth, 1956), pp. 675–94.

³⁸ Parenthetical references are to Henry Roberts, *The Historie of Pheander, The Mayden Knight*.

preferring another lady's beauty before that of Princess Nutania, the princess whom he serves. As the impromptu debate proceeds, matters gradually begin to take on the qualities of a legal proceeding, especially when the Thracian ambassador, Lord Atlantus, who speaks first as an arbiter, later participates as yet another advocate. In the early stages of the debate, Octavius begs his friend Cariolus in legal terms not "to deliuer your friend prisoner at the bar, where the parties [beautiful women themselves] shall be Iudges, and my Iurie such" (C^v). Later, Lord Atlantus refers directly to Cariolus as "so great an Aduocate" for defending his princess, and admonishes Octavius to recant his heretical opinion, telling him to "confesse but thy fault and errour in the same, and an end, if thou louest thy owne good, refuse not this offer, lest worse befall thee then Acteon or to Paris for his rash iudgement" (C2, C2^v). The episode concludes with Atlantus taking on the role of an advocate and pleading for Octavius to retract his heretical characterization of Nutania and beauty (C2^v). For his part, Octavius impishly invokes a corrupt judge or court official willing to take bribes, suggesting that the other debaters "search out some subtill Lawyer, that can by his quirkes and quiddities in Law, make a bad matter good, and anointing the Iudge with *unguentum aurum*, cause him to incline" to judge in their favor (C2^v). Thus, the debate ends by indirectly pointing to domestic law as a fount of corruption and vice.

In the midst of this debate, Prince Dionisius is temporarily revived with the talk of Nutania, and yet even so, there is no true resolution to the discussion since shortly thereafter the lords in attendance ask the two debaters to forgo any further argumentation because of the Prince's sickness. In the days that follow, Dionisius is overcome by jealousy for Cariolus whose words of praise for Nutania's beauty lead the prince in his fevered state to believe that Cariolus himself harbors a secret affection for the beautiful princess. In a fit of anger, the prince strikes out at the innocent Cariolus with a chessboard, a domestic (and therefore degraded) analogue of international conflict, accusing him of attempting to steal away "my Lady, my Loue, my liefe and soules comfort" (D3).

All of the negative and self-destructive aspects of domestic legal wrangling, familiar to us from Riche's tracts, are allegorized in this legal debate and the violent events which follow. Octavius' invocation of the corrupt and bribable judge, the lack of any true resolution to the legal debate, and the resulting debilitation and violent jealousy of Prince Dionisius combine to symbolize the corrosive effects of a domestic legal system that derogates from the extraordinary powers of the royal family.

In the chapters that follow this opening scene, Roberts opposes the cerebral and inconclusive debate over beauty – a debate that leaves the crown’s domestic rule debilitated – to subsequent events in which the prince actually defends Princess Nutania and her father’s kingdom from unjust conquest.

In the events that follow, one is struck by a ubiquitous emphasis on the prince’s successful implementation of justice in the transnational realm. After returning to health, Prince Dionisius disguises himself as a merchant knight named Pheander and travels to the Thracian court in order to find his love, Princess Nutania. At the same time, the pagan Prince Mustapha Cortenia, son to the Emperor of Constantinople, decides to conquer Thrace and to force the princess to marry him. Prince Dionisius (now Pheander) leads the Thracian army to defeat the usurping pagan prince in a confrontation in which chivalric “honour” and the “law of armes” are explicitly at stake (H2, G4). He takes Prince Mustapha captive and makes him a prisoner of Thrace under the auspices of Princess Nutania herself. Roberts draws some attention to the religious contest between the Christian defenders and the pagan aggressors in this episode. Princess Nutania’s victory speech to Mustapha is explicitly exultant about the protection which “our God” affords such Christian polities as Thrace (H4). And yet, despite the explicit distinction which the princess and others raise between those who fight under the banner of Christ and the pagan forces, Nutania assures Mustapha that as a prisoner of war he will be treated with honor and dignity.

Distinguishing this work from an earlier romance tradition in which a totalizing commitment to Christian hegemony could be found, Roberts follows Alberico Gentili and other Renaissance theorists of just war who insisted that non-Christian combatants were not fundamentally different from Christian combatants.³⁹ Thus, later in the work, the Emperor of Constantinople himself travels to Thrace to ransom his son, Mustapha, and arriving at the Thracian court, affirms a desire to reconcile and ally himself with the Christian prince. Noting that his son has been treated with justice and hospitality, the emperor expresses regret that he has supported an unprovoked assault on such a just and chivalric sovereign. He wonders

that a King whom he had so much wronged, should vse such kindnesse to his Son, and curtesie to his messengers, extolling highly the honorable condition of

³⁹ See Gentili, *De Jure Belli Libri Tres*, vol. I, p. 65; vol. II, p. 41.

the King, and much lamenting his owne follies, so rashly without any occasion offered, to iniurie him so farre, as to spoyle his Countrey, and to rob him perforce of his only Child, his sole delight and comfort. (Q^v)

After peace is concluded, an alliance is formed between the Turkish emperor and the Thracian king on the basis of the universal code of honor and chivalry, which both share. The Turkish emperor agrees

to recompence all which, & to keepe his friendship, he presently elected other Nobles for Thrace, to be employed which with the Princes ransome, and manie rich Presents to the King and his daughter were dispatched, with Letters of loue, and desire of amity, all which comming to the Thracian king, were so heartily accepted as they could wish, and in presence of the Nobles & states of both Realms was the peace concluded, and a band of euerlasting friendship promised, to all their ioyes. (Q^v)

The Turk's amicable gesture in this passage reflects recognition of certain shared values between Christians and non-Christians, which explicitly undergird sixteenth-century just-war theory. Such values exist even between traditional religious enemies. According to Gentili, who was not alone in saying so, religious difference was not a sufficient ground for conflict since religious laws do not exist among humans or groups of humans – one's relations with other humans are bound by the law of nature, while religious law binds one's relations with God.⁴⁰

In subsequent chapters, events reinforce such trans-territorial values. Pheander and the forces of Thrace that he now commands go on to champion the cause of Theophilus King of Thessaly, who has recently been unjustly dispossessed by Donatio, the King of Egypt. Pheander travels to Thessaly in order to overturn the unjust regime that has undermined its lawful sovereign, capture the usurper, and deliver him to the rightful King of Thessaly (Q2^v–R3^v). Frequent reference is made throughout such episodes to universal codes of chivalry, especially the values of "honour," "reason," "courtesie," and the "law of armes," which the good princes enforce wherever they travel (I3^v, I4^v, G4, Q2^v).⁴¹

⁴⁰ Ibid., vol. 1, p. 64; vol. 11, p. 41; Francisco de Vitoria, *On the American Indians*, pp. 265–72; and Suarez, *A Work on the Three Theological Virtues*, pp. 767–76. For background on religious rationales for war and conquest, see W. S. Holdsworth, *A History of English Law*, 16 vols. (Boston, MA: Little, Brown, and Co., 1927), vol. v, pp. 29–36, and Pagden, *The Fall*, pp. 67–79, 134–36, 159–61.

⁴¹ Throughout *Pheander*, there are 141 uses of the word "honour," 20 uses of "reason," 5 uses of "courtesie," 3 of "courtly," one use of the phrase "law of armes," and one use of the phrase "law of humanity."

Roberts' privileging of the chivalric code within the international realm of his romance can also be found in his many pamphlets celebrating the exploits of English sea captains who were busy plundering enemy trading ships as they traveled to and from Africa and the Americas. Such pamphlets regularly incorporate the conventions of romance within narratives of "real-life" valor. Both *Ovr Ladys Retorne to England accompanied with saint Frances and the good Iesus of Viana in Portugall* (1592), which recounts the English capture of two Portuguese ships, and *Newes from the Levane Seas*, which recounts a Moorish king's capture of Captain Glenham's four ships in the Eastern Mediterranean Sea, contain narratives which might have been episodes within contemporary fictional romance narratives. Similarly, Robert's *Honours Conquest* (1598), a history of the heroic feats of Edward of Lancaster, is full of such conventions.⁴² In each of these works, Roberts uses romance narrative in order to celebrate the heroic acts of English subjects who risked their lives defending honor in foreign lands instead of "living at ease" within the boundaries of England itself.⁴³

Roberts' conception of commercial ventures as risky and heroic acts in service of the English nation has a contradictory two-fold significance within his corpus. In one respect, as Richard Helgerson has noted in his reading of *Os Lusíadas* by the Portuguese poet Luís de Camões, heroic portrayals of privateering are meant to hide the mercantile drive that was the primary motive of such ventures.⁴⁴ Similar to Camões who consistently conceals the profit motives of his hero Vasco da Gama's venture to India, Roberts sees Sir Francis Drake as motivated by "the desire of honor and not of wealth" and compares him to the great imperial ruler of antiquity, Alexander, overcoming the armies of King Darius of Persia.⁴⁵ Indeed, his pamphlet on Drake is particularly noteworthy for its tendency to ignore or obfuscate the commercial motivation of Drake's voyages and to stress his dedication to principles of honor and service to country. Throughout such propaganda, Roberts foregrounds the honorable and

⁴² See Henry Roberts, *Ovr Ladys Retorne To England, accompanied with saint Frances and the good Iesus of Viana in Portugall, who coming from Brasell, arriued at Clauelly in Deuonshire, the third of Iune 1592* (London: 1592); Henry Roberts, *Newes from the Levane Seas. Describing the many perillous events of the most worthy deserving Gentleman, Edward Glenham, Esquire*, ed. J. P. Collier (London: Priv. print, 1866); and Henry Roberts, *Honours Conquest. Wherein is contined the famous Historie of Edward of Lancaster* (London: 1598).

⁴³ See Henry Roberts, *A Most Friendly Farewell*, p. A2^v.

⁴⁴ Helgerson, *Forms of Nationhood, The Elizabethan Writing of England* (Chicago, IL: University of Chicago Press, 1992), pp. 155–63, esp. 157–58.

⁴⁵ Henry Roberts, *A Most Friendly Farewell to Sir Francis Drake* (1585), ed. E. M. Blackie (Cambridge: Harvard University Press, 1924), pp. A4, A2^v.

valorous Drake whose acts of bravery are not carried out for the captain's own profit and the profit of his investors, but in defense of the English nation. Like Barnabe Riche's portrayal of the English soldier who sacrifices an easy (and corrupt) domestic existence for the honor and rigors of a life on the battlefield, Roberts' Drake is celebrated as being among those "gallant Gents, who here might liue at ease, / Yet thrust [their] heads for countries welth in hazard on the seas."⁴⁶ Drake thus becomes heroic since he is ostensibly fighting for glory, fame, and national honor rather than profit.

In quite another respect, in such tracts as *Ovr Lady's Retorne to England accompanied with saint Frances and the good Iesus of Viana in Portugall*, Roberts does not shy from mentioning the "prises" of "fine white Sugars, and dyvers Negros" which the English privateers gain from their capture of two Portuguese merchant ships. Nor does he fail to mention the captain discharging "his goods royally, [paying] each man of his company with the most, so that as well the pesant as the best had no cause to complaine."⁴⁷ Recall as well that in Roberts' romance, there is essentially no contradiction between Pheander's role as a knight and his role as a merchant. When offering himself to the King of Thrace as his champion, Pheander candidly states that he is a youngest son whose "minority denyed such reuenues and liuings as might sufficiently maintaine my estate, which caused me to employ my stock in trade of merchandize, by which in time of peace I gained in your countrie wealth sufficient, which with my body I offer in your highnesse seruice." Far from being disdainful of Pheander's mercantile background, the king is "ouer ioyed at these frank affaires of his champion" (F3). In both of these works then, Roberts is very openly attempting to reconcile the self-interest of the merchant's profession with sacrifice for the sovereign's role as defender of a regime of transnational justice.

In the romance, Pheander's new identity as a merchant does not seem to conflict with his noble warrior identity. In his merchant disguise, Pheander leads the Thracian armies against the encroaching Turkish armies and then goes on to lead the assault on the usurper Donatio of Egypt. Note that, in this respect, Roberts' conception of the merchant is fundamentally different from Riche's. Whereas Riche sometimes viewed the mercantile values of the city as part of those domestic legal values that constitute an undermining and deeply corrupting force within the state, Roberts does not see the identities of merchant and hero knight as

⁴⁶ Ibid., B3. ⁴⁷ Henry Roberts, *Our Lady's Retorne*, p. 3^v.

mutually exclusive. Rather, his knightly merchant is not the greedy domesticated creature of Riche's tracts – he gains his courage precisely by giving up domestic tranquility for a life within the international sphere.

RICHARD JOHNSON AND THE CHIVALRIC CITIZEN

Richard Johnson builds on Roberts' optimism by portraying the city and its citizens as potentially redeemed by acts of heroism in foreign contexts. In many instances, Johnson seeks to resolve the tension – found in Riche's work – between chivalrous justice and corrupt urban values by portraying exceptional citizens of London as embodying the privileged values of chivalry in spite of their humble urban origins. Johnson's most famous romance, *The Renowned History of the Seven Champions of Christendom* (1596–97), recounts the famous lives and deaths of seven patron saints of the nations of Europe, including Saint George of England, Saint Patrick of Ireland, and Saint David of Wales, as well as the lives of their progeny. As in Roberts' *Pheander*, the heroes of this romance dedicate themselves to defeating the unjust and oppressive tyrants of the world and defending innocent victims of such oppressors. However, a very important difference exists between this romance and the others, which we have considered up to this point. Unlike most of the other romances published in England during this period, including *Pheander* and many of the stories of Riche's *Farewell*, the enemies of the seven champions are also religious enemies who repeatedly evince hatred for the seven champions because of their Christian identity. Correspondingly, the seven champion knights espouse and defend explicitly Christian values, and one prominent goal of these heroes is the conversion of non-Christians, especially Muslim and Jewish figures.

Still even in this romance, there are episodes in which both the defenders of Christianity and their enemies share the same value system based on the code of chivalry and honor which we have noted in other romances of the period. For example, the first adventure of Saint David of Wales, who is known for converting many pagan nations to Christianity, leads to a confrontation with the pagan Tartarians. After Saint David dispatches the pagan king's son in a duel, the king himself mourns and vows to take revenge against "that accursed Christian Champion." At the same time, this pagan king is reluctant to violate the law of arms, as the following passage shows: "intending to bee reuenged vpon Saint Dauid the Christian Champion: then presently his intent was crost with a contrary imagination, that it was against the Law of Armes

and a great dishonour to his Countrey, by violence to oppresse a strange Knight, whose actions haue euer beene guided by true honour."⁴⁸ Thus, even those early modern romances that explicitly hearken back to the religious-centered romances of the medieval period contain evidence of the secular code of chivalry, found in other contemporary romances.

The secular code of honor found in Johnson's *Tom a Lincolne*, published three years later, is more typical of the romances of this period. This picaresque romance tells the story of Tom, a foundling raised by farmers, who in reality is the illegitimate son of King Arthur. Clearly superior to his humble peers, the young Tom dubs himself the Red Rose Knight and leads his fellow cow-herds to rob and pillage rich travelers passing through their village. For his illegal actions, Tom is condemned and disavowed by his father, leading him to choose his proper course in life, that of a knight-errant. He finds his true vocation by joining King Arthur's round table and soon allies himself with virtuous knights against those forces throughout the world which threaten the legitimate rule of sovereigns. In ways that are reminiscent of the works of Riche and Roberts, Tom's ethical code applies to the transnational realm of statecraft and rightful sovereigns but does not function within the domestic realm. Tom's courageous and valorous feats are viewed on the domestic front as "unlawfull spoyles," which according to his adoptive father "wound" his "naturall Countrey."⁴⁹ Once again, we find a disjunction in this romance between the transnational and the domestic realm – the value system which functions in one being disconnected from the other.

Yet unlike Riche, Johnson actually wants to ameliorate this disjunction. In a pamphlet attributed to Johnson entitled *Look on me, London*, the author follows Riche in framing the issue along the opposition between the transnational realm and the corrupt urban context. Johnson speaks as a gentleman advising his son, who is on route to London, to avoid the manifold evils and temptations that exist in the city. According to the father's admonition, good sons from the countryside choose to go to London "either to studdy the common lawes of England, or become merchants to enrich their countrey," but the vices of the city, in particular

⁴⁸ Richard Johnson, *The Most Famous History of the Seuen Champions of Christendome: Saint George of England, Saint Denis of France, Saint Iames of Spayne, Saint Anthony of Italie, Saint Andrew of Scotland, Saint Patricke of Ireland, and Saint David of Wales* (London: 1608), p. 12.

⁴⁹ R. I., *The Most Pleasant History of Tom a Lincolne*, ed. Richard S.M. Hirsh (Columbia, SC: University of South Carolina, 1978), p. 12. See pp. xix–xxii for evidence showing that Richard Johnson was the most likely author.

the gambling, drinking, and sexual promiscuity, often cause the virtuous individual to spend “his whole substance, to the utter undoing of his posterity, and great shame of his kindred.”⁵⁰ As a result, the father implores the city magistrates, who heretofore have been ineffectually unwilling or unaware of the “wicked meeting places” where such crimes are committed, to “overlooke these evils, least these evils over-rule their posterity.”⁵¹ Similar to the vicious forces which he presents as responsible for the overthrow of legitimate sovereigns within his romances, Johnson implies here that the English nation itself is threatened with subversion from the vices which plague the city. The purpose of the tract then is to establish a regime of morality within the city, a system of values that will redeem its corrupt inhabitants.

Johnson points to the actual existence of such a regime in two other works, an earlier collection of poetic monologues called *The Nine Worthies of London* (1592) and *The Crown Garland of Golden Roses, Gathered out of England's Royal Garden* (1612), consisting of a collection of ballads and songs probably written at a much earlier period than their eventual publication.⁵² In these poetic works, instead of advising city magistrates to enforce a strict moral regimen within the city, Johnson actually redeems the urban London of *Look on me* by showing that its middle-class heroes are able to rise to the level of the knights celebrated in his romances. *The Crown Garland* is comprised of a lengthy series of nationalistic ballads intended to be put to music. Both the form and content of these ballads are obviously intended to appeal to a popular audience. Among the figures celebrated are commoners who share the glory of heroic service with the noble and royal figures of English history. The series begins appropriately with a song which celebrates the royal ancestry of King James.⁵³ It quickly strikes a more populist note with the second song, recounting the origins of the “Foure Famous Feasts of England” and focusing especially on the feast of the Merchant Tailor’s company.⁵⁴ From there, Johnson recounts ballads about a number of historical figures such as the Duke of Buckingham during Richard

⁵⁰ Richard Johnson, *Look on Me, London, I am an honest Englishman, ripping up the bowels of mischiefs, lurking in thy sub-urbs and precincts 1613*, ed. J. P. Collier (London: priv. printing, 1863), p. 7.

⁵¹ *Ibid.*, pp. 18, 23.

⁵² Richard Johnson, *The Nine Worthies of London, Explaining the honourable exercise of Armes, the virtues of the valiant, and the memorable attempts of magnanimous minds* (London: 1592); Richard Johnson, *The Crown Garland of Golden Roses: consisting of Ballads and Songs*, ed. W. Chappell (London: priv. printing, 1842), pp. v–vi.

⁵³ *Ibid.*, pp. 1–8. ⁵⁴ *Ibid.*, p. 9.

III's reign, Queen Elizabeth, and Jane Seymour. Included as well is the humble figure of Sir Richard Whittington, a figure born "of poor parentage," who later became "Thrice Maior of London."⁵⁵ Mixed in with these historical songs are others that are purely fictional, some of which are reminiscent of contemporary romance. These include one based on the Wife of Bath's tale and another entitled, "The Lamentable Song of the Lord Wigmoore, Governor of Warwicke Castle, and the Fayre Maide of Dunsmoore," about a lord who deflowers a shepherdess causing her to take her own life.⁵⁶ In all of these, Johnson displays a determination to integrate both the sovereign and London under an identical regime of justice. Hence, the first stanza of the second poem, "A Delightfull Song of the Foure Famous Feasts of England," describes a unity of court and city under the law: "The court is full of bravery, / The citty stor'd with wealth, / The law preserveth unity, / The country keepeth health."⁵⁷

The Nine Worthies, on the other hand, is a collection of first-person poems by middle-class luminaries of London who were eventually knighted in reward for their valor. Among these are nine historical figures who were originally vintners, grocers, merchant-tailors, a silkweaver, a fishmonger, and a mercer, several of whom later became Lord Mayors of London in addition to being knighted. All nine distinguished themselves in feats of heroism and chivalry that compare with the heroic acts celebrated in Johnson's more typical romance fiction. The acts for which the worthies are celebrated extend from the domestic realm into the transnational realm, which as we have seen forms the heart of English Renaissance romance. Johnson introduces the monologues by the nine worthies in the allegorical guise of Fame, who brings the muse of history, Clio, to record their stories. Fame explains to Clio that the monologues are "not of Kinges and mightie Potentates, but such whose vertues made them great, and whose renowne sprung not of the noblenes of their birth, but of the notable towardnesse of their well qualified minds, aduanced not with loftie titles, but praysed for the triall of their heroycal truthes."⁵⁸ Traveling to the Elysian fields where their souls rest, Clio is to record a poetic monologue from the perspective of each "worthie" himself. There is an explicit didactic function at work here – the monologues comprising *The Nine Worthies* are framed in such a way that each figure becomes an exemplar.

⁵⁵ *Ibid.*, p. 20. ⁵⁶ *Ibid.*, pp. 68–71, 14–20. ⁵⁷ *Ibid.*, p. 9.

⁵⁸ Johnson, *The Nine Worthies*, p. B2.

In what follows, each emphasizes his commitment to enforcing a chivalric code of justice. The first hero, Sir William Walworth the fishmonger, helped defend King Richard II and London from a rebellion that originated in Kent and Essex, while other worthies were active in foreign wars against France or in defense of Christendom.⁵⁹ In two of the nine poetic monologues, Sir Christopher Croker and Sir John Hawkwood recount how each knight helped an embattled sovereign to retain his throne, reminding us of similar episodes in Johnson's romance fiction.⁶⁰ Sir Christopher recounts how he spent his humble youth apprenticed to a vintner named Stodie. Despite being "Devoid of cars" and "not toucht with ogre want," he jumps at the opportunity to raise his own status by joining Edward III's campaign in France, boasting that he was the first through the gate during the siege of Bordeaux.⁶¹ The last part of his monologue involves the appeal to international justice which characterizes so much romance fiction of this era. Don Peter, the King of Spain, is overthrown "By an usurping Bastard of his line," and in response, King Edward sends ten thousand soldiers to restore the rightful king to his throne. In the stanza that follows, Croker participates in the restoration of the usurped sovereign, a campaign that results explicitly in the righting of a wrong: "With these [English soldiers] *Don Peter* put the Bastard downe, / Each Citie yeelded at our first approach, / It was not long ere he had got the crowne, / And taught his wicked brother to encroach."⁶² Sir John Hawkwood similarly recounts how he followed Edward III to France. Like Croker, Hawkwood also achieves his most heroic feats liberating the beleaguered sovereigns and oppressed kingdoms of Europe. First he travels to Italy where the "Duke of Milaine was distrest," and then he continues his role of supporting rightful sovereigns by assisting the Spanish king.⁶³

In each of these monologues, humble figures from the corrupt and mercantile center of London transform into the gallant knights of romance fiction. As a result, the London of *Look on me* is reformed and redeemed by the natural chivalric values embodied in its exemplary citizens-turned-knights. The corruption and greed of Riche's London is thus replaced by the chivalric values of the knight-errant such that the gap between domestic and transnational regimes of justice is momentarily bridged. As we shall see in subsequent chapters, Johnson's "bridging" of domestic and chivalric values presages more concrete reconciliations

⁵⁹ Johnson, *The Nine Worthies*, pp. B3–C2.

⁶⁰ *Ibid.*, pp. E2–F.

⁶¹ *Ibid.*, p. E2^v.

⁶² *Ibid.*, p. E3.

⁶³ *Ibid.*, p. E4^v.

between the doctrines of natural law and common law that occur in similar works by Spenser, Shakespeare, and Wroth.

WILLIAM WARNER AND THE HISTORY OF BRITAIN

Finally, let us explore how such tensions between the domestic legal realm and the transnational legal realm figure within the innovative fictions of William Warner, an attorney-cum-poet who practiced law at the Court of Common Pleas.⁶⁴ Warner is best known today for his prose romance, *Pan His Syrinx* (1584), which consists of seven consecutive framed tales narrated in the ancient context of a conflict between Assyria and the Medes. In ways with which we are already familiar, *Pan His Syrinx* explores in narrative terms the morality of those who exercise sovereignty, especially within the transnational context of usurpation and treason. The larger context here is the war between the Medians and the Assyrians, within which a number of other conflicts are brought under scrutiny. The subject of conquest is directly treated in the fifth story in which Prince Tymetes recounts how his father, the King of Lydia, has lost his kingdom to the neighboring King of Cilicia. The story begins with the Lydian king fleeing from an internal rebellion – begun by Deipyryus his nephew – to the neighboring state of Cilicia, “there desiring assistance against the rebels, the which in an evil hour he obtained” (101).⁶⁵ The king of Cilicia responds to Lydia’s request by invading the country under the pretext of protecting the rightful king from an internal rebellion. When he succeeds in putting down Deipyryus’ rebellion, however, Cilicia quickly takes advantage of the situation of the weak Lydian king and takes over his kingdom.

This episode initially bears some similarity to the episode in the fifth book of Sidney’s *Arcadia* in which King Euarchus assumes control of Arcadia.⁶⁶ Like Sidney’s Euarchus, the King of Cilicia seems to respond ethically to internal problems which threaten the stability of a neighboring state. Instead of restoring legitimate rule in Lydia as Euarchus eventually does in Arcadia, however, the Cilician king takes advantage of his neighbor’s weakness. His reasoning is one of Machiavellian self-interest and opportunism. When confronted by the Lydian king for his treachery, Cilicia responds, “Is it an easy matter (think you?) to transport

⁶⁴ David W. Becker, “Introduction,” *William Warner’s Albions England*, diss., 2 vols. (Rutgers University, New Brunswick, 1954), vol. 11, pp. 14–20.

⁶⁵ Parenthetical references are to William Warner, *Syrinx, Or A Sevenfold History*, ed. Wallace A. Bacon (Evanston, IL: Northwestern University Press, 1950).

⁶⁶ See chapter 2.

an army out of *Cilicia*, to hazard our lives in *Lydia*, and having encountered and conquered the enemy to convert the glory of the battle and gain of the booty to the profit of others?" He continues, "Let it suffice that I have, corrected your foes, and that yourself escape unrevenge of our ancient enmity, over and besides which undeserved friendship I give you a ship in all things well furnished with sufficient treasure to supply your expenses; and thus knowing my mind, the sooner you be packing the safer may it be for your person" (107). In this passage, the King of Cilicia suddenly transforms from the ethical selfless conqueror into the unjust conqueror bent on usurping a rightful sovereign. As a result, this evil king is ultimately punished for his avarice with legitimate re-conquest by the rightful Lydian king and the death of his son and daughter, deaths which cause the king himself to commit suicide by swallowing "down his throat red burning coals" (140). The justice meted out to the usurper of Lydia is reflective of a universal religious standard, which is summarily described in an earlier tale narrated by a ship's pilot: "Thus you may see (quoth the pilot) that land, seas, and ourselves are subject to one and the same God, and not to chance" (72).

There are other episodes in which this universal standard is at work. In a later episode, Queen Dircilla of the Medians is stranded among a nation of uncivil islanders, and an encounter ensues that conjures up contemporary English and European experiences in Ireland and the New World. Dircilla is exiled to a savage island during the conflict with the Assyrians, and in a first-person monologue, recounts how she went about reforming the islanders. She reminds the islanders that they were once "without gods, without religion, without laws, or government." They were "naked, wild, brutish, and beast-like feeding on roots, harboring in bushes, fearful of your own shadows, and to describe you in a word, monsters wrapped in man-like habits; but in these through my industry you have now reformation" (170). Her words narrativize the rationale for conquest and reform put forth by Vitoria and affirmed by Gentili, namely that the Amerindians could be placed under Spanish tutelage in order to educate them in universal codes of behavior and law. According to such logic, Dircilla transforms "naked, wild, brutish, and beast-like" creatures fully into human beings.⁶⁷

In *Syrinx*, Warner also shares the disdain that other romance writers display for the domestic system of justice which was presided over by

⁶⁷ Note similar acts of reform in Sidney's *Old Arcadia*. See chapter 2.

lawyers. The seventh tale, “Ophaltes,” is prefaced with a sentence which bears some semblance to Riche’s frequent statements concerning the opposite roles played by soldiers and lawyers in society: “new conquests do abrogate old customs and where the soldier endeth there the lawyer beginneth” (140). The tale itself begins with the legitimate King of Lydia having reconquered his state from the usurping King of Cilicia. The narrator, a humble farmer named Philargus, complains of having attempted unsuccessfully to bring a legal suit against a rich noble named Opheltes whom he accuses of abandoning his daughter after marrying her. His failure is a direct result of the wholesale corruption pervading the Lydian legal system which causes discrimination against suitors of humble means. He explains that his suit failed “not because I want matter whereof to complain, but money wherewith to corrupt” (143). As a result of this failure to find justice before the regular courts of law, Philargus makes his suit directly to the royal court and is finally given direct access to the king himself. His decision to do so reflects the actual state of the English legal system in which an injustice suffered at the common-law courts could be redressed within the Court of Chancery, a court that claimed to adjudicate according to the sovereign’s conscience. At Chancery, judgment proceeded according to the looser rules of equity and conscience as opposed to the often restrictive, arcane, and precedent-based law practiced in the common-law courts. In Renaissance England, Chancery was known for making more transparent and accessible decisions, especially for poor litigators, when compared to the decisions of the common-law courts whose rules were perceived as being more abstruse and therefore more corruptible.⁶⁸

In the king’s decision on Philargus’ suit, we witness another romance writer’s preference for justice meted out directly at the hands of the sovereign as opposed to the corrupt and abstruse law practiced within regular courts. The king explains the basis of his sovereign defense of absolute justice in the following way:

For mine own part, I have always carried this opinion, that not to do justice to others is to bring myself in danger of judgment, knowing that a prince ought to be the peace of his people, to the orphan a parent, to the succorless a refuge, to good men a protector, to ill men a terror, and to all men indifferent who in respect of the cause should reject the person, giving to every man that which is his; and for this cause are we appellative gods. (148)

⁶⁸ Plucknett, *Concise History*, pp. 176–90.

According to this passage, the sovereign holds the ultimate and extraordinary power to enforce or abrogate the existing law as he sees fit – in other words his decisions themselves have the force of law.

At the end of the tale, the straying noble Opheltes returns to his wife Alcippe, Philargus' daughter, but in a final moment of angry passion, Opheltes murders his old mistress, the courtesan Phaemonae, when she rails at his decision to return to his wife. Both Opheltes and Alcippe are apprehended for the murder, and this time their judge is her father Philargus whom the king has promoted to the status of a "justicer" (160). Displaying unique judicial restraint, Philargus recuses himself from judgment and causes the matter once again to be taken up by the king. Again, the king bases his judgment on equity and his own conscience instead of a strict reading of the law. He considers the "circumstances" of the crime, judges the "death of *Phaemonae* [to be] worthy her dishonest life," and acquits the reunited couple (161). His judgment, which Warner endorses, is again indicative of the doctrine of equity whereby principles of conscience and universal or natural law gain precedence over customary law.⁶⁹

Warner's *Syrinx* is certainly one of the more complex and politically astute romances of the period. During the Renaissance itself, however, it was exceeded in complexity by his later and more ambitious work, *Albions England*. Written in "fourteeners," *Albions England* recounts the history of England from ancient times to Elizabeth's reign – later editions took this historical narrative to James' reign. Within the narrative were interspersed a number of lengthy digressions, including various romance episodes. The first four books of *Albions England* were published in 1586. Over the next twenty years in which a total of six editions of the poem were published, Warner added twelve other books to the original 1586 work. In 1612, three years after Warner's death, the entire *Albions England* was published and consisted of well over ten thousand lines of poetry.⁷⁰

Albions England is certainly a most uneven and chaotic poetic achievement, combining romance fiction, pastoral fiction, versified history, mythology, digressions into philosophical and religious argumentation, and travel narratives. Throughout all of this, however, there is a unity. Similar to contemporary works of historiography, Warner's

⁶⁹ Christopher St. German, *The Doctor and Student together with Questions and Cases concerning the Equity thereof*, ed. T. F. T. Plucknett *et al.* (London: Selden Society, 1975), pp. 31–57; 111–13. See also Burgess, *Politics of the Ancient Constitution*, pp. 122–23.

⁷⁰ Bacon, "Introduction," *Syrinx*, pp. 20–23; Becker, "Introduction," pp. 101–25.

versified chronicle recounts the narrative of England's national construction through conquest.⁷¹ Warner begins his history with the legendary conquest of Britain by Brute and the other Trojans who are exiled to Britain from Italy (E7^v).⁷² As Warner explains, "Now, of the Conqueror, this Isle had *Brutaine* vnto name" (E8). From this point on, Warner's history consists primarily of an ongoing series of wars and foreign conquests which significantly alter the character of the British and then English inhabitants residing there. All the famous invasions are recounted in the pages that follow: those of Rome, of the Saxons, of the Picts, of the Danes, and finally of the Normans. The various foreign invasions of Britain are so central because they come to form the basis of the English nation. In addition, invasion is still a contemporary reality for Warner. The England in which Warner himself resided was threatened by conquest from overseas in the form of Spanish and Catholic aggression. At the beginning of Book 10, Warner explains, "Of Conquests *Spain*, of Converts *Rome* our Queen doth cheefly barr, / Gainst her therefore they chiefly wrought Conspiracies and Warre" (R2–R2^v). Throughout this book, Warner shows how England has steadily resisted contemporary threats to Elizabeth's rule.

Interspersed in this narrative of conquest, national construction, and contemporary defense are also tales of English exploration and trading ventures, in essence, comprising the beginnings of English expansionism. Some of these tales – those of Sir John Mandeville's travels as well as his love for Lady Elenor – are conveyed in the form of fictional romance. Others comprise the non-fictional accounts of actual sixteenth-century English explorers. Like England's earlier defenders from foreign aggression, these explorers are presented as working "for *Englands* common good" (T5). In this way, they are part of the historical process by which the repeated foreign conquests of England generate a nation capable of defending itself from foreign aggression and finally cause that

⁷¹ Warner relied on all the prominent works of contemporary historiography: Thomas Languet and Thomas Cooper, *Coopers Chronicle conteynyng the whole discourse of the histories as well of thys realme, as all other countries* (London: 1565); Robert Fabyan, *The Chronicle of Fabian, which he nameth the concordance of historie* (London: 1559); Richard Grafton, *A Chronicle at large and meere History of the Affayres of England and Kings of the same* (London: 1559); John Stow, *The Annales of England* (London: 1592). See Becker's wonderful discussion of the sources in "Introduction," vol. 11, pp. 71–81.

⁷² Parenthetical references are to William Warner, *Albions England. A Continved Historie of The Same Kingdome, from the Originals of the first Inhabitants thereof* (London: 1612).

nation to begin its own process of expansion. The task of exploration entails exploring those nations that England considers inferior, in the same way that the English themselves were once inferior to their conquerors. For example, Warner's account of Anthony Jenkinson's travels into Russia record him noting "the *Vaigats*, and the barbarous *Samoeds*," especially "Their Idols, Deer-skin Tents, how on their backs they bare their Botes" and how they "do eate their Dead" and "to feast their friends their children sometime slay" (T5).

How does this relate to the established pattern by which transnational justice is privileged over corrupt domestic law? As I noted earlier, common lawyers such as Sir John Fortescue held that throughout every conquest of England, the "realm was still ruled with the self same customs, that it is now governed with."⁷³ Although Warner was an attorney in the common-law courts, his position on history is closer to that favored by those civil lawyers who viewed the English law as originating with the Roman Conquest of the island.⁷⁴ Like Holinshed and others, Warner presents Julius Caesar as having faced serious difficulties in completing the conquest of Britain. Warner presents this difficulty as resulting from the fact that the British are essentially the same people as the Romans. In a revealing couplet, Caesar sums up the situation in the following way: "Nor let the Senate muse, for *Troy* with *Troy* doth here contend: / This warlike people (same is so) from whence sprong we discend" (F8). Unlike common lawyers who regarded English custom as essentially distinct from Roman custom and law, Warner sees the origins of England as rooted in essentially the same source as that of Rome.⁷⁵

Similarly, subsequent conquests are presented as dramatically transforming the ethnic character of Britain. When the Saxons invade, Cadwallader, the British king, is forced to flee the island. His farewell speech to Britain acknowledges that the character of the people and the land will be irrevocably transformed. He laments, "So, *Brutaine*, thou of Nation and of name endurest change, / Now balking vs whom thou hast bread, and brooking people strange" (G6^v). Most significantly, Warner admits, in a way not recognized by most prominent common lawyers, that the Norman Conquest resulted in a transformation of the legal traditions. He begins the fifth book by imploring his muse to tell

⁷³ Fortescue, *De Laudibus Legum Angliae*, pp. F3–F3^v.

⁷⁴ For an in-depth discussion of the civil-law version of history, see chapter 6.

⁷⁵ Burgess, *The Politics of the Ancient Constitution*, pp. 63–64; 74; Levack, *The Civil Lawyers*, pp. 200–02.

How, by the *Normane* Conquest, here an other world befell:
 New lawes (Not Labyrinths as now through wrested Quirkes) came in,
 New Lords also, at whom, for most, our ancient Crests begin.
 The *English* sinke, the *Normans* swim, all topsie-turuie was,
 Vntil the Conqueror had brought his whole command to pas.

(11)

Two important aspects of this passage should be noted. First, unlike Fortescue, Coke, and other prominent supporters of the common law, Warner views William the Conqueror as having instituted utterly “New lawes” in the realm – the last line of this paragraph describes him bringing “his whole command to pas.” With such “New lawes” comes a transformation in the composition of the island’s ethnicity such that “The *English* sinke, the *Normans* swim.” Second, Warner seems to regard the current domestic legal system as corrupt and inaccessible to the non-specialist. To this extent, the laws which the Normans originally implanted in England have deteriorated into “Labyrinths” no longer worthy of the name of law.

Warner’s message is a familiar one. Once again, he seeks to stress the preeminence of the sovereign’s extraordinary powers, in this case the power of the conqueror who establishes the law by fiat. The domestic tradition of English common law, on the other hand, is subject to decay over time and might be reformed by periodic juridical intervention – internal “conquests” if you will – by the current sovereign. Hence, at its foundational moment, a reign of justice is something that is best established by the sovereign for when it is left in the hands of magistrates and lawyers, legal corruption and decay ensues. Furthermore, Warner presents an England that had been built by a continual process of being conquered, which will in turn lead to its own process of expansion through the heroic efforts of its current sovereign. What is also implicit in this is the extension of the sovereign’s reign of justice by fiat through further acts of conquest.

Albions England does not end on this note of royal triumph, however. As I noted, Warner’s work underwent a process of transformation over the twenty-year period in which six new editions were published and long sections of the poem were added, a process that reflected the rapidly changing identity of English law during this period. The last additional segment comprised the separately published *Continuance of Albions England* (1606), whose ostensible purpose was to recount the ancient history of the Scots as an obvious tribute to King James VI’s succession to

⁷⁶ Unsold copies of the 1606 *Continuance* seem to have also been included in the final 1612 edition. See Becker, “Introduction,” p. 122.

the English crown.⁷⁶ Significantly, this theme is quickly overshadowed by other, almost antithetical concerns. Warner begins the *Continuance* with a dedication to Sir Edward Coke, who at the time held the position of Lord Chief Justice of the Court of Common Pleas. This was an enormous departure from Warner's earlier editions of the work, which styled Queen Elizabeth and her ancestors as the natural inheritors of the imperial might wielded by the multiple conquerors of England, especially William of the Norman Conquest. The earlier editions had all been dedicated to Henry Carey, Baron of Hunsdon, with whom Warner seems to have enjoyed a special relationship until his death in 1596. Henry Carey was first cousin to Queen Elizabeth, and served as her Lord Chamberlain and as a member of the Privy Council. As Lord Chamberlain, Carey was one of the most visible and significant representatives of Elizabeth's royal power, effectively controlling access to the queen.⁷⁷

In contrast, in the dedication to the 1606 *Continuance*, Warner compares Coke, who was emerging as the most prominent opponent of unrestricted royal power, to a conquering Caesar: "Great *Caesars* have less *Poems* grac't, / Less in Sublimitie this plac't."⁷⁸ Here and elsewhere, Warner was in the process of shifting the poem's focus from the sovereign's power of fiat to the English customs and laws that were favored by Coke and his fellow jurists as restrictions on the sovereign's power. At significant moments, the *Continuance* gestures towards the common-law account of an unbroken tradition of insular and independent nativism. The *Continuance* begins with a polemic in support of adopting "Britain" as the name of the political entity created by the union of England and Scotland.⁷⁹ For Warner the name "Britain" recalls the original Trojan inhabitants, the "Brutaines" as he calls them after the legendary Trojan founder.⁸⁰ Although certain common lawyers feared that such an adoption might cause the abolition of English institutions (since it implied some recognition of Scotland's system of civil law), Warner imagines a return to the national origins celebrated by Coke and others, who touted

⁷⁷ Warner, *Albions England*, p. A2. The 1596 edition of *Albions England* and both the 1584 and the 1597 editions of *Syrinx* included dedications to Henry's son, Sir George Carey. See Bacon, "Introduction," pp. xxxv–xxxvii.

⁷⁸ William Warner, *A Continuance of Albions England* (London: 1606), p. a.

⁷⁹ *Ibid.*, p. b. ⁸⁰ *Ibid.*, p. c.

⁸¹ For two opposing common-law views on the union, see John Doddridge, "A breif consideracion of the Unyon of twoe kingdoms," in *The Jacobean Union, Six Tracts of 1604*, pp. 142–60; and Sir Henry Spelman, "Of the Union," pp. 160–84. See Bruce Galloway, *The Union of England and Scotland* (Edinburgh: John Donald Ltd, 1986), pp. 20–23, 35–55; Bruce Galloway and Brian Levack, "Introduction," *The Jacobean Union, Six Tracts of 1604* (Edinburgh: Clark Constable, 1985), pp. xxviii–xliv.

the unbroken chain of English customary law.⁸¹ Furthermore, the *Continuance* begins with a catalogue of the kings of England, especially the difficulties and vices that characterized their reigns. One reason for this catalogue is to celebrate the virtues of the recently deceased Queen as remarkable in comparison to her progenitors (and possibly her successor as well).⁸² However, the catalogue has the additional effect of recording the abuses of unchecked sovereignty, thereby endorsing Coke's position that the king should be subject to the common laws. The *Continuance* ends with a common-law inspired celebration of Wales, the ancient refuge of the Britons after the Saxon invasion, as the true origin of island nationalism. Here, Warner recounts the story of Wales' glorious resistance to various English invaders.⁸³ Similar to an account popular with the common lawyers, Warner explains how the Welsh were finally conquered by the English but still retained their ancient character of independence and would not accept any king over them unless he was Welsh-born. As a result, Edward I bore his first son on Welsh soil, which resulted in the tradition of English sovereigns locating their ancestral origins in Wales.⁸⁴

While the directional changes that Warner incorporates into the end of *Albions England* do not signal a complete end to his imperial plans for England, they certainly complicate them by introducing an early seventeenth-century interest in maintaining ancient English legal traditions in the face of the new foreign-born sovereign, James VI. The first decade of King James' reign was characterized by jurisdictional conflicts between the common-law courts and the ecclesiastical and civil-law courts (the "Roman"-law courts), whom common lawyers viewed as invading forces threatening to damage the integrity of the English law. This controversy was not limited to the legal context. The common lawyers viewed such courts as an extension of the king's prerogative, which they sought to restrict by what they viewed as the ancient customs of the English law. In the *Continuance*, Warner follows those contemporary common lawyers who sought to uphold the ancient English liberties founded in English custom over the king's power of prerogative. At stake also was a different view of history, which saw England ruled by an unbroken tradition of common law. Warner's *Continuance* abandons the author's former concern with presenting England as an inheritor of those who conquered

⁸² Warner, *A Continuance*, pp. B-B2.

⁸³ *Ibid.*, pp. L3^v-L4^v. For context on this view of history, see T. D. Kendrick, *British Antiquity* (London: Methuen, 1950), pp. 34-98.

⁸⁴ Warner, *A Continuance*, pp. L4-L4^v.

it, especially the Romans. In doing so, the work de-emphasizes England as the center of a growing *imperium*. Rather, England becomes the mythical inheritor of its own insular character, which has been preserved in its original form in Wales.

Whereas the solution of Barnabe Riche, Henry Roberts, and Robert Johnson was to uphold the notion of universal justice while either condemning or redeeming the insular corruption of urban life and the corresponding native legal system, Warner's solution is more complex, based on narrative engagement with two competing traditions of English legal history. As a result, Warner's poem is uneven, favoring a civil-law version of history in the earlier sections and a competing common-law one in the *Continuance*. The task of other writers of romance such as Spenser, Shakespeare, and Wroth was largely an extension of Warner's failed attempt to reconcile these two competing traditions into one unified narrative.

Spenser's legalization of the Irish Conquest

In Elizabethan Ireland, English administrators employed legal means to control and suppress Irish subjects and to confiscate their land. That Edmund Spenser writes at length on legal reform is therefore a notable, although not surprising, feature of his conflicted and often contradictory political treatise on the Irish Conquest, *A View of the Present State of Ireland*. Like other English officials in Ireland, Spenser encountered the Irish through the medium of the law. In 1581, not long after his arrival in Ireland, Spenser was appointed clerk of Faculties in the Irish Court of Chancery, an office which he held for seven years. Although he was frequently absent from the post, its description that it be filled by “one sufficient Clerk, being learned in the course of the Chancery” reveals that the office-holder had at least to have a functional knowledge of the law.¹ In addition, correspondences and other documents which Spenser wrote as Lord Grey’s secretary show that Spenser was often a witness to and even participated in the trials and executions of native Irish and Anglo-Irish rebels. In short, Spenser seems to have been familiar with the legal mechanisms which functioned to subdue the rebellious Irish populations.²

In carrying out the task of using the law to “reform” the Irish, English administrators faced difficulties that contrasted in significant ways with Spain’s experience in the Americas. A common idea in the Renaissance was that the conquest of a foreign kingdom was normally accompanied by the imposition of the conqueror’s laws on those conquered.³ But Spenser shows that the difficulties plaguing the current English policy in Ireland had stemmed precisely from applying this straightforward model of conquest and forcing the English common law onto an unwilling Irish

¹ See Willy Maley, *A Spenser Chronology* (Lanham, MD: Barnes & Noble, 1994), pp. 18–19, 37–38, 46.

² Maley, *A Spenser Chronology*, pp. 16, 29–30, 32; Julia Reinhard Lupton, “Mapping Mutabilitie: or, Spenser’s Irish Plots,” in *Representing Ireland: Literature and the origins of conflict 1534–1660*, eds. Brendan Bradshaw *et al.* (New York: Cambridge University Press, 1993), pp. 106–07.

³ Sir Henry Spelman, “Of the Union,” p. 181.

people. Like the Spanish administrators of the American colonies, the English had attempted to impose English common law on the inhabitants of Ireland. However, whereas Spanish law was at least officially based on Justinian's *Corpus Iuris Civilis*, the universal Roman law system which had close affinities to natural-law discourse, English common law had its roots not explicitly in natural law but rather in the peculiar customs of the English people. As a result, while the Spanish were able to claim that they were replacing unnatural Amerindian customs with a legal system rooted in natural law, the English were attempting to reform the "unnatural" practices of the Irish by imposing a legal system defined by its insularity and its peculiar affinity with English institutions.⁴

Of course, elements within the English legal system had certain aspects in common with the Spanish, and more generally, continental legal tradition. For example, litigation involving foreigners was tried in courts specializing in continental civil law (identified explicitly, by way of ancient Roman law, with natural-law doctrine).⁵ At the same time, however, many sixteenth-century English jurists and political and religious writers, who drew their inspiration from the nativist, common-law tradition as well as from Calvinist theology, were skeptical of both the civil law and the doctrine of natural law, which they identified with Catholicism.⁶ Unlike Sidney, Riche, and others, Spenser seems to have shared this distrust of natural-law doctrine and was unwilling to base his conception of Irish Conquest exclusively on the natural-law model which Spanish jurists had applied to the American context. But Spenser also recognized that English common law was by definition unsuited to the Irish people and therefore unsuitable for the reform of Ireland. In turn, the difficulties which Spenser faced in justifying English Conquest and reform of Ireland have to do with the problem of reconciling what, from the perspective of many English subjects, were two mutually exclusive imperatives – the imperative of natural law and that of customary or common law. Spenser's *A View of the Present State of Ireland* fails in its

⁴ See Pagden, *The Fall*, pp. 27–118, and Pagden, *Lords of All the World*, pp. 11–62. For a recent look at how Spanish perceptions of the Americas applied to the Irish context, see Hadfield, *Shakespeare, Spenser and the Matter of Britain* (New York: Palgrave, 2004), pp. 12–27.

⁵ Burgess, *Politics of the Ancient Constitution*, pp. 121–30; J. H. Baker, *Introduction to English Legal History*, pp. 50–58; Levack, *Civil Lawyers*.

⁶ See McCabe, *Incest, Drama, and Nature's Law*, pp. 59–62; Alexander Passerin d'Entèves, *The Medieval Contribution to Political Thought: Thomas Aquinas, Marsilius of Padua, Richard Hooker* (New York: The Humanities Press, 1959), pp. 99–100; R. S. White, *Natural Law*, pp. 44–50; Burgess, *Politics of the Ancient Constitution*, pp. 128–29; John A. Guy, *Tudor England* (New York: Oxford University Press, 1988); and Eusden, *Puritans, Lawyers, and Politics*, pp. 131–41.

attempt to reconcile these competing legal foundations, but Spenser's use of them in the tract can serve as an effective tool for understanding several crucial episodes involving portrayals of savageness in Book 6 of *The Faerie Queene*. Much of Book 6 treats essentially the same issues of Irish Conquest and its legal justification as are at stake in *A View* with the crucial difference that Book 6 manages to resolve difficulties caused by the confrontation between English custom and Irish custom which *A View* leaves ambiguous.⁷

SPENSER, IRELAND, AND LAW

For Alberico Gentili and other sixteenth-century just-war theorists, the crucial test of a people's civility concerned whether its laws conformed to the edicts of natural law. Irish barbarism and incivility were, however, hardly stable notions in the minds of most English commentators on Ireland.⁸ While the Old English settlers of Ireland viewed Irish incivility as circumstantial, connected "rather to his educacion than to his naturall disposition," the New English and the English themselves mostly saw Irish barbarism in essentialist terms and viewed reform as the process of inculcating the Irish with the most basic aspects of civil society while keeping them subservient to the colonizing English.⁹ Although one might expect the English-born Edmund Spenser to share the views of his English and New English peers, his famous tract recalls elements of both

⁷ For analyses of the contradictions at the heart of *A View*, see Ciaran Brady, "Spenser's in Irish Crisis: Humanism and Experience in the 1590s," *Past and Present* 111 (1986), 17–49; Patricia Coughlan, "'Some secret scourge which shall by her come unto England': Ireland and Incivility in Spenser," in *Spenser and Ireland: An Interdisciplinary Perspective*, ed. Patricia Coughlan (Cork: Cork University Press, 1989), pp. 46–74; and Anabel Patterson, "The Egalitarian Giant: Representations of Justice in History/Literature," in *Reading Between the Lines* (Madison, WI: University of Wisconsin Press, 1993), pp. 98–99.

⁸ Gentili, *De Jure Belli Libri Tres*, vol. II, pp. 7–II, 22–26, 122–25. See McCabe, *Spenser's Monstrous Regiment*, pp. 57–78, esp. 59–62; Canny, *The Elizabethan Conquest*, pp. 125–28; Sheila T. Cavanagh, "'The fatal destiny of that land': Elizabethan views of Ireland," in *Representing Ireland*, pp. 121–22; and Palmer, *Language and Conquest*, pp. 8–39.

⁹ Rowland White, "Discourse touching Ireland" (s.p. 63/31/32). For another example of the Old English perspective, see Weston to Cecil, 3 April 1568 (s.p. 63/24/2). For the New English perspective, see Fitzwilliam to Burghley, 25 September, 1572 (s.p. 63/37/60). All are cited in Canny, *The Elizabethan Conquest*, pp. 127–28. For further discussion of Old and New English views of the Irish, see Hadfield, *Spenser's Irish Experience*, pp. 32–33; Canny, *The Elizabethan Conquest*, pp. 126–30; Canny, "Identity Formation in Ireland: The Emergence of the Anglo-Irish," *Colonial Identity in the Atlantic World, 1500–1800*, eds. Nicholas Canny et al. (Princeton: Princeton University Press, 1987), pp. 162–64; and Canny, *Making Ireland British: 1580–1650* (New York: Oxford University Press, 2003), pp. 121–30, 403–18. Throughout this chapter, I use the term "Old English" as it was employed by Spenser to denote Irish descendants of the twelfth-century Anglo-Norman settlers as well as of later settlers who had adopted Gaelic customs and intermarried with the native Irish.

perspectives on the Irish. In this respect, Nicholas Canny is correct in recently identifying Spenser as the figure who “set the agenda” for all subsequent approaches to Ireland.¹⁰

Spenser begins by presenting the Irish as uncivil, paying particular attention to the barbarity of Irish customary law known as Brehon law, the origin and structure of which oddly mirror contemporary descriptions of English common law.¹¹ For example, just as English juridical writers often presented the common law as unwritten and based in English custom, Spenser’s principal interlocutor, Ireneus, defines Brehon law as “a certaine rule of righte vnwritten but deliuered by tradicion from one to another” (120–21).¹² The extent of the similarity between the two systems of customary law ends here, however, for Brehon law is a set of customary laws which Ireneus describes as “repugninge quite to godes lawe and mans” (123).¹³

Beyond the discussion of Brehon law, Ireneus lays out certain customary behaviors which Spenser’s readership would have looked for in determining the extent to which the Irish people violated the laws of nature.¹⁴ First, he associates their nomadic and supposedly lawless lifestyle with pirates or brigands, who, according to Gentili, had violated the universal laws of nation and war which derive from the laws of nature.¹⁵

¹⁰ Canny, *Making Ireland British*, pp. 1–58. There have been a number of important publications in recent years on Spenser and Ireland: McCabe, *Spenser’s Monstrous Regiment*; Willy Maley, *Salvaging Spenser: Colonialism, Culture and Identity* (New York: St. Martin’s Press, 1997); Hadfield, *Shakespeare, Spenser, and the Matter of Britain*; Hadfield, *Spenser’s Irish Experience*; Christopher Highley, *Shakespeare, Spenser and the Crisis in Ireland* (New York: Cambridge University Press, 1997); Andrew Murphy, *But the Irish Sea Betwixt: Ireland, Colonialism, and Renaissance Literature* (Lexington: University Press of Kentucky, 1999); and David J. Baker, *Between Nations*.

¹¹ See Murphy, ‘*But the Irish Sea Betwixt*,’ pp. 8–33.

¹² Parenthetical references are to the line numbers in *A View*, ed. Gottfried.

¹³ David J. Baker assumes that by the term “man’s law” Spenser means *jus gentium* or law of nations, a legal concept derived from natural law (*Between Nations*, pp. 101–02).

¹⁴ See Aristotle’s portrait of the barbarian in *The Politics* and his portrait of the bestial man in the *Nicomachean Ethics* (*Politics* 1253 a 2 ff, 1338 b 19 ff; *Nicomachean Ethics* 1148 b 19 ff). For discussion of how Aristotle’s ideas influenced European perceptions of the Amerindians, see Pagden, *The Fall*, chs. 2 and 3; Pagden, *Lords of All the World*, pp. 19–23; Pagden, “Dispossessing the Barbarian,” pp. 79–98, esp. 85; and Pagden *et al.*, “Introduction,” in Francisco de Vitoria, *Political Writings*, p. xxv. For analyses of the array of English representations of Irish, see Canny, *The Elizabethan Conquest*, pp. 117–36; Cavanagh, “The fatal destiny of that land,” pp. 116–31; and David Beers Quinn, *The Elizabethans and the Irish* (Ithaca, NY: Cornell University Press, 1966), pp. 34–57.

¹⁵ Gentili, *De Jure Belli Libri Tres*, vol. 11, pp. 22–26, 124. Aristotle, *The Politics*, pp. 1253 a 2 ff. For a comprehensive treatment of Gentili’s thought, see Van der Molen, *Alberico Gentili and the Development of International Law*, esp. pp. 113–58. For analyses of Spenser’s comments concerning nomadism among Irish inhabitants, see Ann Rosalind Jones and Peter Stallybrass, “Dismantling Irena: The Sexualizing of Ireland in Early Modern England,” in *Nationalisms and Sexuality*, eds. Andrew Parker *et al.* (New York: Routledge, 1992), pp. 158–61, and Canny, *The Elizabethan Conquest*, pp. 126–27.

Identifying the Irish as nomadic brigands was to present them as lacking in the kinds of communitarian laws which Aquinas had identified as the basis for civil society (1514–1663). Second, Ireneus focuses on their religious customs. But rather than dwelling on their Catholicism, Ireneus complains that what distinguishes the Irish is that they seem not to practice any religion at all. Accordingly, he claims that the Irish “are all Papistes by their profession but in the same so blindelye and brutishly enformed for the moste parte as that ye woulde rather thinke them *Atheists* or infidles” (2615–18). This is significant because, by the time Spenser had written *A View*, a number of prominent writers on just-war doctrine had ceased to view religious difference as a valid reason for conquest. Alberico Gentili is fairly typical of just-war theorists when he writes that “since the laws of religion do not properly exist between man and man, therefore no man’s rights are violated by a difference in religion, nor is it lawful to make war because of religion.”¹⁶ The utter absence of religious faith, on the other hand, associates the Irish with the sub-human – according to Gentili, atheists live more like beasts than men. Thus, he condones the use of force in order to compel such peoples “to adopt the usages of humanity.”¹⁷

The third and most shocking form of behavior associates the Irish with the bestial man of Aristotle’s *Nicomachean Ethics* (1148 b 19ff). Accounts of such practices as bestiality, sodomy, human sacrifice, and cannibalism in the Americas caused Gentili and others to argue that “the cause of the Spaniards is just when they make war upon the Indians, who practiced abominable lewdness even with beasts, and who ate human flesh, slaying men for that purpose.”¹⁸ It is within this context that Ireneus recounts the nefarious acts of Irish cannibalism which his readership expected to see.

¹⁶ Gentili, *De Jure Belli Libri Tres*, vol. 1, p. 64; vol. 11, p. 41. See also Vitoria, *On the American Indians*, pp. 265–72, and Suarez, *A Work on the Three Theological Virtues*, pp. 767–76. For background, see W. S. Holdsworth, *A History of English Law*, vol. v, pp. 29–36, and Pagden, *The Fall*, pp. 67–79, 134–36, 159–61. Brendan Bradshaw maintains that Protestant reformation was Spenser’s primary purpose in *A View*, while Richard McCabe argues that both *A View* and *The Faerie Queene* were heavily influenced by medieval just-war doctrine which considered the spread and defense of Christianity as the pre-eminent rationale for war. However, the sections of *A View* on religion are brief in comparison with and clearly secondary to the sections on the laws and the customs of the Irish (2615–794; 5025–116). Ireneus quite explicitly says that religious reformation will come only after civil order returns to Ireland and will be secondary to other more necessary reforms (2670–701). Bradshaw, “Sword, Word, and Strategy in the Reformation in Ireland,” *The Historical Journal* 21.3 (1978), 475–502; McCabe, “Fate of Irena: Spenser and Political Violence,” *Spenser and Ireland: An Interdisciplinary Perspective*, pp. 111–12; and most recently, Hadfield, *Spenser’s Irish Experience*, pp. 53–54.

¹⁷ Gentili, *De Jure Belli Libri Tres*, vol. 1, p. 65; vol. 11, p. 41.

¹⁸ *Ibid.*, vol. 1, p. 198; vol. 11, p. 122. See McCabe, *Spenser’s Monstrous Regiment*, pp. 246–47.

He explains such practices by deriving the Irish from their barbarous ancestors, in this case, the Gauls:

Allsoe the Gaules vsed to drinke theire enemyes blodd and to painte themselues therewith So allsoe they write that the owlde Irishe weare wonte And so haue I sene some of the Irishe doe but not theire enemyes but friendes blodd as namelye at the execucion of A notable Traitour at Limericke Called murrough Obrien I sawe an olde woman which was his foster mother take vp his heade whilst he was quartered and sucked vp all the blodd rinninge theareout Sayinge that the earthe was not worthie to drinke it and thearewith allso staped her face, and breast and torne heare [tore her hair?] Cryinge and shrikinge out moste terrible. (1933–42)

For English readers, accounts such as these would certainly have associated the Irish with the unnatural customs which New World communities supposedly had practiced and which, in the minds of Gentili and other just-war theorists, legitimized conquest and programs of reform.¹⁹ Interestingly, this passage seems to encapsulate the legitimizing logic of conquest – the woman’s shocking act of grieving by drinking her foster-son’s blood negates, even justifies, any cruelty at work within the execution itself. In this respect, Spenser’s portrayal of unnatural Irish custom was similar to other notable contemporary descriptions of Ireland by Barnabe Riche, Sir John Davies, Fynes Moryson, and others.²⁰ Despite clear variations in context, genre, and the communities of readers to which such figures wrote, all of these “reporters” of unnatural Irish behavior had a specific purpose in common.²¹ They sought to justify English involvement, and to the extent that they shocked and horrified their readers, these writers were able to conceal the history of violent English intervention implicated in the supposed barbarism which their works presented.

Irish acts of barbarism are, however, not the only subjects which interest Spenser in *A View*, for he can also be complimentary about the

¹⁹ For a recent discussion of how the Spanish New World influenced Spenser’s poem, see David Read, *Temperate Conquests*.

²⁰ Barnebe Rich, *A New Description of Ireland*, in *Elizabethan Ireland: A Selection of Writings by Elizabethan Writers On Ireland*, ed. James P. Myers, Jr. (Hamden, CT: Archon Books, 1983), pp. 132–33; Davies, *A Discoverie*, pp. 163–71; and Fynes Moryson, *An Itinerary Containing His Ten Yeeres Travell through the Twelve Dominions of Germany, Bohmerland, Switzerland, Netherland, Denmarke, Poland, Italy, Turkey, France, England, Scotland & Ireland*, 4 vols. (Glasgow: James MacLehose and Sons, 1908), vol. 1v, pp. 196–203. For discussion of contemporary views on Ireland, see Hadfield, *Spenser’s Irish Experience*, pp. 13–50.

²¹ For more indepth discussion of various English accounts of Irish cannibalism and other supposed acts of barbarism, see Hadfield, *Shakespeare, Spenser and the Matter of Britain*, pp. 12–20.

Irish, and in this respect, his tract differs from the writings of those New English settlers who were unremitting in their denunciations of Irish barbarity.²² One of the most virulent was certainly Andrew Trollope who concluded that the Irish were “not thrifty and civil or human creatures, but heathen or rather savage and brute beasts” – they were “worse than dogs, for dogs do but their kind.”²³ Like Spenser, Trollope attempts to base his justification of English involvement in Ireland on the “barbarity” of Irish customary behavior. Without Spenser’s attention for detail, however, Trollope tends to conflate categories which remain separate for Spenser (heathen, savage, beast), and he manages to condemn the Irish in such strong terms that he presents them as lacking any possibility of reform.

Spenser, on the other hand, was ambivalent about the essence of what he saw as Irish barbarism. Ireneus follows up his accusations that the Irish suffer from the most serious habitual vices with praises about their ancient ability to use letters, their riding ability, and their hardiness and courage as soldiers (1240–84, 2192–2202, 2240–50).²⁴ By including these passages, Spenser seeks to show that their “bestial” tendencies are not essential and to stress their potential for civility.²⁵ Recall that Spenser’s intention for this tract is to produce a map for Irish reform. To characterize the Irish as bestial to the extreme point of identifying them as Aristotle’s unregenerate bestial men who lack altogether the “internal origin” of understanding or potential for reform would be to abandon all hope for improvement.²⁶ Indeed, Ireneus even compliments Gaelic poetry as savoring “of swete witt and good invencion”, although he also criticizes the ways in which Irish bards abuse their talent (2339–40, 2256–345).²⁷ Hence, while Spenser wants to establish that Irish violation of natural law is serious enough to warrant decisive English intervention, he

²² For background on Spenser’s ambivalent attitude toward the Irish, see Hadfield, *Spenser’s Irish Experience*, pp. 30–38. An ongoing debate has been waged over where to locate Spenser’s views on Ireland with respect to contemporary English writings on Ireland. See Nicholas Canny, “Edmund Spenser and the Development of Anglo-Irish Identity,” *Yearbook of English Studies*, xiii (1983), 1–19, and Brady, “Spenser’s Irish Crisis: Humanism and Experience in the 1590s,” pp. 24–26.

²³ Cited in Nicholas Canny, “Identity Formation in Ireland: The Emergence of the Anglo-Irish,” p. 168. For discussion of such views, see McCabe, *Spenser’s Monstrous Regiment*, pp. 214–15.

²⁴ See Highley, *Shakespeare, Spenser and the Crisis in Ireland*, pp. 111–13.

²⁵ For the reformist perspective, see Vitoria, *On the American Indians*, p. 250; *On Dietary Laws, or Self-Restraint*, pp. 207–30; and Pagden, *The Fall*, pp. 57–108.

²⁶ *Nicomachean Ethics*, 1150a 1–7. For a condemnation of the Irish which leaves almost no room for reform, see Barneby Rich, *The Anatomy of Ireland*, in *Strangers to that Land: British Perceptions of Ireland from the Reformation to the Famine*, ed. Andrew Hadfield et al. (Gerrards Cross: Collin Smith, 1994), p. 47.

²⁷ See Highley, *Shakespeare, Spenser and the Crisis in Ireland*, pp. 20–25.

ultimately restrains himself from creating the perception that the Irish are utterly beyond human civility and natural law.

By presenting Irish custom as unnatural at the same time that he leaves open the possibility of the Irish becoming civil, Spenser sets the stage for reform. What remains problematic, however, is exactly how the English are supposed to organize their involvement so as to reform the unnatural practices of the Irish. Many modern readers of sixteenth-century English tracts on Ireland have correctly noted that a principal intention of these tracts is to illustrate Irish barbarism, but we should not assume that the English viewed conquest and reform as the straightforward process of replacing Irish barbarism with English law and civility.²⁸ The English not only viewed the Irish in hierarchical terms as naturally, or unnaturally, inferior to the English; they also viewed the Irish as possessing a separate and distinct set of cultural characteristics. In this respect, Irishness was not simply a “degraded” version of an English norm – instead, the Irish were sometimes viewed as having a distinct tradition in the same way that the French or the Spanish had their own traditions. Indeed, sometimes English observers presented the Irish as antagonistic to all things English because of an overwhelming attachment to their own customs, laws, and government. Thus, an anonymous writer notes that attempts to apply English government to Ireland are bound to fail because the Irish refuse “to mixe or suffer us to participate with them in any interest of their Soile unless we [become] mere Irish with them in Language Apparell and Manners.”²⁹ While in certain passages Spenser presents the Irish as unnatural and barbaric (albeit potentially civil), he also subscribes to the view that a profound cultural difference exists between the Irish and the English.

Moreover, the Spenser of *A View* never seeks to treat English common law as comprised of universal principles. Like most common lawyers of the sixteenth century, Spenser was not convinced that English common or customary law drew its foundation from universalist natural-law doctrine. Several passages in which Ireneus discusses English common law reveal an adherence to the ancient constitutional tradition which viewed the common law as uniquely suited to the English people (94–117, 308–41, 643–81). Spenser shows quite thoroughly that the Irish ability to

²⁸ See Cavanagh, “The Fatal Destiny of that Land,” pp. 122, 127–30, and Quinn, *Elizabethans and the Irish*, pp. 7–13, 20–33.

²⁹ Anonymous, “A Discourse of Ireland,” in *Strangers to that Land*, p. 50. As Hadfield has shown, such claims of inveterate difference do not necessarily exclude simultaneous claims of barbarism and “evill manners.” See Hadfield, *Shakespeare, Spenser, and the Matter of Britain*, pp. 20–21.

subvert English rule stems from the failure of English common law to fit the disposition of the Irish inhabitants. Ireneus recounts numerous instances – involving Irish churls lying under oath, their abuses of the jury trial system, and their abuses of English inheritance laws – in which conflicts between Irish custom and English common law have directly contributed to the subversion of English rule of Ireland (666–869).³⁰ Thus, whereas Ireneus bases his justification of English involvement on natural-law doctrine, he also displays a paradoxical inclination towards the tradition of nativist customary law – that is, he argues that the laws of a nation should be set up according to the disposition of the people which they are to govern in much the same way that Sir Edward Coke and Sir John Davies later described the customary laws governing England. Comparing the conquest of England by William the Conqueror to current attempts to conquer Ireland, Ireneus says of the laws which William established in England:

soe as the same [English] Lawes me semes Cane ill fitt with their [the Irish] disposition or worke that reformation that is wished: for lawes oughte to be fashioned vnto the manners and Condicion of the people to whom they are mente and not to be imposed vnto them accordinge to the simple rule of righte for then as I saie in steade of good they maie worke ill, and perverte iustice to extreame iniustice; for he that woulde transfer the lawes of the *Lacedemonians* to the people of *Athens* should finde a great absurditye | And inconvenience. (323–30)

The comparison with William's successful conquest of England is significant since Spenser seems to use it as a reference point from which to judge the success and failure of current English attempts in Ireland. By presenting English common law as having been established by the Norman Conquest rather than existing from time immemorial (as was held to be the case by most English common-law jurists), Spenser deviates from the standard ancient constitution argument. David J. Baker makes the compelling argument that, by doing so, Spenser was challenging his readers' common-law assumptions and offering an alternative rationale for royal absolutism, *jus gentium*, and natural law as the basis of Irish Conquest.³¹ It seems more plausible that Spenser was simply inconsistent, that he wanted to straddle both the natural-law and the common-law "camps" and was unable to do so convincingly. Despite Spenser's

³⁰ Ross, *Elizabethan Literature and the Law of Fraudulent Conveyance*, pp. 71–78; David J. Baker, *Between Nations*, pp. 102–07; McCabe, *Spenser's Monstrous Regiment*, pp. 225–26.

³¹ David J. Baker, *Between Nations*, pp. 108–14. For context, see Burgess, *Politics of the Ancient Constitution*, pp. 37–40, 58–78.

inconsistency on this point, it is clear from this passage that applying English common law to the Irish has failed because – and this is the essence of common-law logic – English law is ill-suited to the disposition and conditions of the Irish. Its failure is an important sign of the diverse natures of the two nations as well as the possible necessity of two separate systems of law.³²

By the beginning of the second part, which concerns particular strategies for Irish reform, Spenser finds that his project has been jeopardized by incompatibilities at work within his simultaneous use of natural-law doctrine and the doctrine of nativist customary law. The impasse at which Spenser finds himself is glaring. Recall that Spenser has largely justified intervention into the affairs of Ireland based on the belief that Irish customary behavior and Brehon law contravene the laws of nature. At the same time, however, he commits to an incompatible theory which holds that the laws of a nation must conform to the disposition of that nation's people. Like the hypothetical transfer of Lacedemonian law to Athens, English common law is ill-suited to the Irish nature and therefore fosters injustice instead of justice. Spenser's alternative, to establish law fitted to the Irish, has however also been rendered invalid since it would involve setting up a legal system which conformed to "flawed" Irish nature. For while it is true that Spenser has hinted that the Irish are potentially a civil people, he has also been quite thorough in condemning them for their supposedly unnatural behavior and existing customary law. It is therefore doubtful that such a system of law "fashioned vnto the manners and Condicion" of the Irish would differ from Brehon law which Spenser views as utterly unnatural. In short, establishing a system of law based on Irish nature would fail to achieve the principal purpose of *A View*, namely, to civilize the island's inhabitants. As is currently the case with Brehon law, such a system would instead once again institutionalize their unnatural behavior.

But there remains a further explanation for why establishing a law reflecting the Irish disposition runs counter to the purposes of *A View*, an explanation having more to do with English identity than Irish identity. A recurring anxiety runs through *A View* concerning the tendency of the Old English settlers to give up their first English natures and degenerate into Irishmen.³³ Indeed, Willy Maley has gone so far as to charge the

³² For an alternative view on this point, see Ciaran Brady, "The Road to the *View*: On the Decline of Reform Thought in Tudor Ireland," in *Spenser and Ireland: An Interdisciplinary Perspective*, pp. 25–45.

³³ See Art Cosgrove, "Hiberniores Ipsis Hibernis," *Studies in Irish History Presented to R. Dudley Edwards*, ed. Art. Cosgrove et al. (Dublin: University College Press, 1979), pp. 1–14; Canny, "Identity Formation in Ireland: The Emergence of the Anglo-Irish," pp. 169–70; and Canny,

majority of Spenser critics with erroneously focusing on the “barbarism” of the mere Irish, all the while failing to appreciate that Spenser’s real concern is with the degraded state of the Old English, whom Ireneus notes “are now muche more Lawlese and Licentious then the verie wilde Irishe” (1953–54).³⁴ The most memorable comments by Eudoxus, the less knowledgeable of the two interlocutors, are expressions of dismay that the English could ever renounce their native identity. In the following passage, Ireneus discusses the establishment of English settlements during the reign of Henry II and the subsequent degeneration of these inhabitants through contact with the Irish. Ireneus explains that the descendants of these early English settlements

are still a mightye people of soe manye as remayne Englishe of them

EUDOX: what is this that ye saie of soe manye as remayne Englishe of them? why? are not they that were once Englishe abidinge Englishe still./

IREN: no for the moste part of them are degenerated and growen almoste meare Irishe yea and more malituous to the Englishe then the verie Irishe themselves/

EUDOX: what heare I? and is it possible that an Englisheman broughte vp naturallie in suche swete Civilytie as Englande affordes can finde suche likinge in that barbarous rudenes that he shoulde forgett his owne nature and forgoe his owne nacion? how maie this be? or what I praye youe maye be the Cause heareof?

IREN: Surelye nothinge but the firste evill ordinaunce and institution of that Comon wealthe. (1474–88)

The ease with which Old English settlers have renounced their former identity and have “growen . . . meare Irishe” constitutes a threat to the pre-eminence and purity of English national identity. Like Sir John Davies, Sir Edward Coke, and other adherents to English common law, Spenser wants to assume throughout *A View* that English cultural identity is singular and that English laws and customs conform to that identity by nature. The evidence of Old English settlers becoming indistinguishable from Irish inhabitants contests the uniqueness of English identity,

“Dominant Minorities: English settlers in Ireland and Virginia, 1550–1650,” *Minorities in History*, ed. A. C. Hepburn (New York: St. Martin’s Press, 1979), pp. 60–62.

³⁴ Willy Maley, *Nation, State and Empire in English Renaissance Literature* (New York: Palgrave, 2003), pp. 72–91.

showing not only its vulnerability to barbarism but also its inability to separate itself from what should be utterly foreign to it. In the passage above, Ireneus is quite explicit about what has caused the degeneration of the Old English: living under the authority of Irish law and government, the “firste evill ordinaunce [custom] and instiucion of that Comon wealthe,” has turned them against their own nation. The prospect of governing English settlers by institutionalizing Irish customary law would thus further confirm Spenser’s deepest fears about the integrity of English identity, namely, that that identity is not unique and that it can succumb utterly to an alien social order which, by virtue of its unnatural practices, should be inferior to the English social order.

Ultimately, Spenser’s anxiety about the Irish threat to English identity causes his prescriptions for Irish reform in part two of *A View* to contradict his analysis of the problem in part one.³⁵ Ireneus prescribes that Ireland be governed by English common law even though the purpose of the first part has been to show that English law fails to function in Ireland because it is not suited to the Irish nature. We witness his change of heart in the following short passage in which he considers the future governance of the Irish and English inhabitants of Ireland:

I doe not thinke it Conueniente (thoughe now it be in the power of the Prince) to Change all the Lawes and make newe for that shoulde brede a greate trouble and Confusion aswell in the Englishe theare dwellinge and to be planted as allsoe in the Irishe for the Englishe havinge bene trayned vp allwaies in the Englishe Gouernement will hardelie be inevrde [inured] vnto anye other, and the Irishe will better be drawn to the Englishe than the Englishe to the Irishe gouernemente. (4413–20)

Whereas, throughout part 1, he regularly differentiates between the identities of the “Englishe theare dwellinge” and the English “to be planted,” Spenser seems now to consider the Old and New English collectively as comprising one undifferentiated identity.³⁶ In the last sentence of the passage, he both contradicts and attempts to mollify all of his earlier anxieties concerning the degeneration of the English in Ireland. Indeed, while up to this point Spenser has complained of the ease with which the Old English turn Irish and adapt themselves to Irish custom and law, this is the first time that he imagines that the reverse is true, that

³⁵ See Ciaran Brady, “The Road to the *View*: On the Decline of Reform Thought in Tudor Ireland,” pp. 35–37.

³⁶ For a related reading of Book 5, see Murphy, ‘*But the Irish Sea Betwixt*,’ pp. 60–97.

the English are utterly resistant to Irish law.³⁷ In doing so, Spenser suppresses the degeneration of English identity which he has so meticulously detailed in the first part and declares, to our surprise, that the English inhabitants “will hardelie be inevrde [inured] vnto anye other” government than the English one. Thus, he denies everything which he has laid out in the first part of *A View*.³⁸

In the end, many of the conflicting gestures which previous critics have noted in *A View* may be explained by Spenser's inability to reconcile the competing legal ideologies which he applies to the Irish context. At the dialogue's close, the rationales of natural law and customary law remain largely incompatible entities, each serving to undercut the other's legitimacy. A significant article by Jean Brink has pointed to compelling textual evidence – repetitive passages, blank spaces in the manuscripts, the absence of any tribute to Elizabeth – indicating that Spenser's *A View* is simply unfinished.³⁹ Given the contradictory rationales for conquest and reform to which I have pointed, we might also conclude that Spenser was unable to finish the dialogue. For having introduced natural law and customary law as separate and mutually exclusive foundational discourses, Spenser has no way of later uniting the two into one unified discourse. Hence, Spenser abandons both foundational discourses and returns to the failed strategy of violently forcing English common law onto the rebellious Irish. Ultimately, the aim of shoring up the identity of the degenerated English causes Spenser to resort to the very common-law solution which he earlier rejected.

“SO FORTH HE (ARTHUR) WENT HIS WAY, / AND WITH
HIM EKE THE SALUAGE . . .”

Lisa Jardine has suggested that Spenser may have been formulating his ideas on legal conquest and reform of Ireland as early as the 1570s through his contact with Gabriel Harvey.⁴⁰ Jardine's work illustrates the necessity

³⁷ See Canny, “Dominant Minorities: English settlers in Ireland and Virginia, 1550–1650,” pp. 52–60.

³⁸ For an alternative view on this inconsistency, see Hadfield, *Spenser's Irish Experience*, pp. 63–66.

³⁹ Jean Brink, “Constructing the *View of a Present State of Ireland*,” *Spenser Studies, A Renaissance Poetry Annual*, vol. xi, eds. Patrick Cullen et al. (New York: AMS Press, Inc., 1994), pp. 209–16.

⁴⁰ Lisa Jardine, “Encountering Ireland: Gabriel Harvey, Edmund Spenser, and English Colonial Ventures,” in *Representing Ireland*, pp. 63–70. In *Renaissance Self-Fashioning: From More to Shakespeare* (Chicago: University of Chicago Press, 1980), p. 186, Stephen Greenblatt originally made the point that “Ireland is not only in book 5 of *The Faerie Queene*; it pervades the poem.” For a discussion of how the Irish context has taken over Spenser studies in ways that assume that Ireland and Ireland alone pervades all aspects of *The Faerie Queene*, see Willy Maley, “‘To Weet to Work Irenaes Franchisement’: Ireland in *The Faerie Queene*,” *Irish University Review* 22.2

of revising our understanding of how Spenser's Irish experience and *The Faerie Queene* are related, given that Spenser may well have been contemplating a comprehensive legal theory of conquest throughout his entire career and not just during those periods in which he was writing Book 5 of *The Faerie Queene* and *A View*.⁴¹ One way to do so is to look beyond the traditional critical demarcations, which delimit Book 5 as Spenser's sole juridico-poetic attempt to deal with Ireland, to the many portrayals of savageness which *The Faerie Queene* contains. My own reading will focus on one of Spenser's notable portrayals of savageness, the figure of the salvage man in Book 6.

Before I turn to the salvage man, however, let me first make some general remarks about the theme of Book 6, especially the virtue, courtesy, which this book putatively treats. In addition to its obvious reference to the manners of the royal court, the courtesy of Book 6 has a further juridical significance. Courtesy is another English word for the anglicized Latin word *comity*, the principle upon which conflicts between legal systems of different polities were adjudicated and which later became the basis of international laws and treaties.⁴² As I noted in chapter 1, Spenser describes courtesy as a foundational principle – it is, at the beginning of Book 6, that virtue “Which of all goodly manners is the ground, / And roote of ciuill conuersation” (6.1.1).⁴³ And in another passage, Spenser describes courtesy as branching “forth in braue nobilitie, / and spread[ing] it selfe through all ciuilitie” (6.proem.4). “Ciuilitie” here signifies both the modern meaning of civility as well as the archaic meaning of civilization.⁴⁴ Like natural law, the courtesy of Book 6 would seem to constitute the foundation of civil polities such as England while being markedly absent from uncivil polities such as Ireland.

It is no surprise therefore to find that Spenser opens Book 6 with an episode in which conquest and reform of an uncivil or unnatural polity

(1996), 303–17. In my own reading, I have tried to stress the importance of a certain legal perspective to the Irish Conquest in Book 6 rather than to treat “Ireland” as having a stable or fixed identity.

⁴¹ For an important related discussion of equity and law in Book 5, see Hadfield, *Spenser's Irish Experience*, pp. 148–84.

⁴² Elizabeth Fowler, “Failure of Moral Philosophy,” 51–52.

⁴³ All citations are taken from Edmund Spenser, *The Faerie Queene*, ed. Hamilton.

⁴⁴ See Donald Cheney, *Spenser's Image of Nature: Wild Man and Shepherd in “The Faerie Queene”* (New Haven: Yale University Press, 1966), pp. 176–85. It is noteworthy that Spenser also uses the term “ciuill Conuersacion” in *A View* to distinguish the “obstinate” Irish from the potentially “obediente” Irish (3238–39).

occur. In the opening episode, the principal hero of Book 6, Calidore, conquers and reforms the domain of Briana and her seneschal, a place which Spenser describes as “a castle strong, / Which doth obserue a custome lewd and ill” (6.1.13).⁴⁵ Briana and her castle practice the “lewd” custom of shaving “Ladies lockes” and “knights berd for toll” in order to satisfy the desires of Crudor, the knight whose love Briana seeks to win (6.1.13). Crudor, in turn, has refused “to yeeld her loue againe, / Vntill a Mantle she for him doe fynd / With beards of Knights and locks of Ladies lynd” (6.1.15). Already, allusion to the Irish context becomes apparent. The name of the knight Briana loves, *Crudor* (undeveloped, cruel), seems to allude to the common English portrayal of the Irish inhabitant as the undeveloped or uncivil man, and the mantle which he demands of Briana reminds us of the mantles which facilitate the concealment of Irish outlaws and enable Irish men and women to live the proscribed nomadic existence which subverts English rule (*A View* 1514–1663). Furthermore, Crudor’s demand that Briana produce a mantle from the hair of ladies and knights alludes vaguely to the charges of Irish cannibalism, for like cannibalism, the production of cloth from human hair constitutes a failure to distinguish between human and animal bodies.⁴⁶

Originally, Calidore confronts Briana’s seneschal, Maleffort, on behalf of a squire whose lady Maleffort has taken prisoner in order to steal her hair. After he defeats the seneschal, Calidore enters Briana’s castle where the plight of the kidnapped lady becomes secondary to the theme of reform. When Calidore invades the castle, a conflict between two competing systems of laws ensues, beginning with Briana invoking her own law and accusing the knight of murder, thievery, and treason (6.1.25). Initially taken aback by the charges, Calidore goes on to invoke a higher law, declaring that shedding blood is no crime when it serves the cause of justice. He condemns Briana’s customs using the language of natural law and reform:

But they that breake bands of ciuilitie,
And wicked customes make, those doe defame
Both noble armes and gentle curtesie.
No greater shame to man then inhumanitie.

(6.1.26)

⁴⁵ For a similar analysis of the Radigund-Artegal episode of Book 5, see Clare Carroll, “The Construction of Gender and the Cultural and Political Other in *The Faerie Queene* 5 and *A View of the Present State of Ireland*: the Critics, the Context, and the Case of Radigund,” *Criticism* 32.2 (1990), 163–92. See also Highley, *Shakespeare, Spenser and the Crisis in Ireland*, pp. 126–27.

⁴⁶ Pagden, *The Fall*, pp. 85–86.

The issue here is that Briana's laws contravene the higher "bands of ciuillitie" such that Calidore can invoke and justify a more valid notion of law and conscience. He states as much in the next stanza when he replies that, "for dread of shame," she should "forgoe / This euill manner" (6.1.27). And after Crudor arrives, is defeated, and is finally reformed, Calidore goes on to invoke a formulation which approximates Christ's Golden Rule: "Who will not mercie vnto others shew, / How can he mercy euer hope to haue?" (6.1.42). Significantly, just-war theorists were unanimous about the centrality of New Testament laws to natural-law doctrine.⁴⁷

The events of this episode, conquest and then reform of an uncivil polity, follow a pattern which is central to the ideas of just-war theorists. They also reproduce what Spenser might have hoped to have established as the pattern in Ireland. Calidore's reformation of the domain of Briana and Crudor embodies the unambiguous success which the English administrators of Ireland had failed to realize. Despite Calidore's success, however, this episode fails to resolve the issues which the Spenser of *A View* perceives as the major problem of English policy in Ireland, namely what Spenser describes as the failure of English common law to fit the Irish disposition. The elfin Calidore does not represent England and its national aims – this is Arthur and, to a lesser extent, Timias' function, and the law which Calidore champions is not English law but rather an approximation of natural law. Moreover, Calidore is hardly an ideal hero as later episodes will bear out.⁴⁸ Thus, while Spenser prefaces the general theme of Book 6 here, his actual resolution of the conflicts which bedevil his analysis in *A View* emerges in a later episode which centers around the salvage man.

Like the Calidore–Briana–Crudor episode, the portrayal of the salvage man in Book 6 constitutes an allegorization of the legal and ethical issues which appear in *A View*. Several aspects of the salvage man are significant in terms of the opposition which Book 6 sets up between nature and custom, natural law and customary law. The salvage man makes his rudimentary passions known by means of gestures and moans, and

⁴⁷ Alberico Gentili, *De Jure Belli Libri Tres*, vol. 11, p. 103, and Aquinas, *Summa Theologiae*, vol. 28, 12ae 94, 4. See Pagden, *The Fall*, p. 77; Paul E. Sigmund, *Natural Law in Political Thought* (Cambridge: Winthrop Publishers, Inc., 1971), p. 37; and Quentin Skinner, *The Foundations of Modern Political Thought*, 2nd edn. 2 vols. (New York: Cambridge University Press, 1980), vol. 11, p. 150.

⁴⁸ Note especially his artful ability to conceal the truth about Priscilla (6.3.18), his interruption of Calepine and Serena's "quiet loues delight" which leads to the attack of the Blatant Beast (6.3.21), and later, his defection from the quest (6.10.1–2).

Spenser is intent upon distinguishing this pre-lingual form of communication from the perfidious speech which the rest of the figures in Book 6 employ (6.4.11).⁴⁹ Throughout Book 6, language is associated with the poisonous bite of the Blatant Beast, and the related forces of foreign custom are embodied most notably in Briana and Crudor's malevolent custom of cutting the hair of innocent knights and ladies. In order to depict nature itself, Spenser portrays the salvage man as outside of the realm of language and custom and significantly "obaying natures first behest" not to consume the flesh and blood of animals (6.4.14).⁵⁰ To the extent that the salvage man is never presented in the same context as the Blatant Beast, Spenser means to set the two up as the opposite extremes of untainted nature on one side and corrupted and omnivorous language and custom on the other.

The ultimate purpose of the portrayal of the salvage man, however, is to resolve the ethical contradictions concerning English Conquest of Ireland which Spenser is unable to overcome in *A View*. Spenser advances toward this purpose by having the salvage man alternate with those figures who are charged with defending the cause of courtesy. The first such alternation involves Calepine, the second and less courageous knight of courtesy in Book 6. After the salvage man has saved Serena and Calepine from Turpine's uncourteous assault and has helped to cure Calepine's wounds, the knight ventures out into the forest without his armor and weapons (6.4.17). By the end of Canto 4, Calepine has begun to take on the attributes which hitherto we have associated with the salvage man. He outruns and overcomes a ravenous bear "without weapon" (6.4.20), and later he significantly refuses Matilda's offer of "Both horse and armes" (6.4.39), preferring to travel on foot. At the end of the canto, in the final stanza, he throws himself on the ground to rest for the night (6.4.40).

Likewise, in the subsequent canto, the salvage man begins to assume the identity of Calepine, donning the knight's discarded armor and

⁴⁹ For a related analysis focused on language and rhetoric, see Ann Fogarty, "The Colonization of Language: Narrative Strategies in *A View of the Present State of Ireland* and *The Faerie Queene*, Book 6," in *Spenser and Ireland: An Interdisciplinary Perspective*, pp. 75–108.

⁵⁰ In *Spenser's Image of Nature*, pp. 210–11, Cheney argues that the salvage man's presence suggests the necessity of a union between higher powers (gentility) and lower powers (brutishness) for the creation and maintenance of a civil society. In contrast, in "Some secret scourge which shall by her come unto England": Ireland and Incivility in Spenser," pp. 51–52, Coughlan argues that Spenser portrays Book 6's salvage man as ambiguous, a loose and contradictory composite of rational and brutish qualities. Those aspects of the salvage man which are irrational perhaps reflect Spenser's attempt to integrate Calvinist voluntarism with traditional Catholic conceptions of natural law. For Calvinism's rejection of the traditional conception of natural law as a purely rational principle, see McCabe, *Incest, Drama, and Nature's Law*, pp. 59–60.

silently charging himself with the protection of Serena, whom hitherto Calepine has championed. Significantly, the scene in which the salvage man dons “Those warlike armes, which Calepine whyleare / Had left behind” reverses the recurring pattern whereby, according to Spenser and other English observers of Ireland, seemingly civil Anglo-Irishmen suddenly discarded their English ways and adopted Gaelic practices (6.5.8). For the New English, the Old English, and the “native” Irish inhabitants themselves, the refusal to wear English clothes constituted a metonymic symbol for an entire collection of aspects which distinguished the Hibernized Irish from the Anglicized Irish. In one notable instance, Ulrick and John Burk, sons of the earl of Clanricard, were said to have symbolized their rebellion in 1576 by “cast[ing] away their English apparel”.⁵¹ By having the salvage man willingly don the armor of a civil knight, Spenser imagines the ideal assimilation of the potentially savage other, an assimilation which is possible because the salvage man is from the outset abiding by natural law. Indeed, the substitution of the salvage man for Calepine serves to create an alliance between him and the nominal defenders of courtesy – it is a clear sign that uncultivated nature is on the side of the civil or courteous figures of Book 6.

The entrance of Prince Arthur and his squire Timias, who in the middle of the fourth book has been identified with Sir Walter Raleigh, introduces an English national/British imperial perspective into the concerns of Book 6. Spenser based his portrayal of Arthur on Geoffrey of Monmouth’s *Historia Regum Britanniae* (*History of the Kings of Britain*) (c. 1138), despite the fact that some sixteenth-century antiquarians such as Polydore Vergil and George Buchanan had challenged such medieval accounts of Britain’s legendary past.⁵² As Andrew Hadfield has shown, Spenser presents Arthur throughout the poem as the conquering, warrior prince of Geoffrey’s *History* rather than as “the doomed and aged, tragic figure” depicted in later English versions of the legend.⁵³ The mythopoetic history of the king’s illustrious forebears found in Book 2 – the Book of Temperance – is crucial to this aspect of Spenser’s portrayal of

⁵¹ Fitton to Burghley, 8 July 1576 (s.p. 63/56/3), cited in Canny, *The Elizabethan Conquest*, p. 143. For context, see Jones and Stallybrass, “Dismantling Irena: The Sexualizing of Ireland in Early Modern England,” pp. 164–69.

⁵² See Kendrick, *British Antiquity*, pp. 78–85. Elsewhere Spenser himself expresses skepticism concerning the historical truth of such figures as Brutus, which Geoffrey’s work had made popular. Concerning the “Tale of *Brutus*, whom [the English] devise to have first conquered and inhabited this Land,” Spenser notes that it is “impossible to proove, that there was ever any such *Brutus* of England” (*A View*, p. 82, notes).

⁵³ Hadfield, *Spenser’s Irish Experience*, pp. 88–89.

Arthur. In Canto 9 of Book 2, Arthur finds refuge in the House of Temperance where he accompanies Sir Guyon to the chamber of Eumnestes. There he peruses a historical narrative in which he himself figures as the last in a tradition of fervidly independent British sovereigns that began with Brutus and Dunwallo, all of whom have fought strenuously to defend the island from foreign invasion (2.10.3–68). It was this historical narrative drawn directly from Geoffrey's *History* that constituted an important source for the common lawyers' version of legal history, in which an unbroken legacy of resistance to foreign invasion was thought to have preserved and even fostered the unique tradition of English common law. Within this context, Arthur seems to figure as the embodiment of the argument, favored by Coke and other like-minded common lawyers, which denied that the countless invasions of Britain had ever transformed English custom.⁵⁴ As we shall see, Arthur's symbolism in this respect becomes significant in terms of the alliance, which Spenser later draws between the forces of nature, embodied in the salvage man, and the forces of English common-law nationalism.

Returning now to Canto 5 of Book 6, after Arthur and Timias' initial appearance in which the prince and his squire encounter and befriend the wild man and Serena, all four travel to the hermitage where Serena and Timias remain in order to recover from the wounds which they received from the Blatant Beast. At the end of the canto, Arthur leaves the Hermit's house, the salvage man accompanying him as his new squire:

... So forth he [Arthur] went his way,
 And with him eke the saluage, that whyleare
 Seeing his royall vsage and array,
 Was greatly growne in loue of that braue pere.
 (6.5.41)

The substitution of the salvage man for Timias in the role of Arthur's squire is comparable to his original substitution for Calepine, but within the logic of conquest which organizes Book 6, it is even more important. Now that he is dressed as a knight and has informally been apprenticed to Arthur, the allegorical defender of England, the salvage man has symbolically become aligned with the cause of the English. In Canto 6, the salvage man accompanies Arthur to the castle of Turpine and there helps Arthur in the conquest and attempted reformation of Turpine and Blandina (6.6.19–36). In the process, he helps in the attempt

⁵⁴ Pocock, *Ancient Constitution*, pp. 40, 96.

to extend natural law to those polities whose customs abrogate such fundamentals.⁵⁵

Moreover, in the salvage man's substitution for both Calepine and Timias, Spenser presents the salvage man as able to surpass those knights charged with defending (English) courtesy. Spenser draws a contrast between Calepine's fickle decision at the beginning of Canto 4 to "cast abroad" which leaves Serena without her champion, and the salvage man's subsequent unwavering loyalty toward her (6.4.17). Later on, the salvage man's blind loyalty to Arthur in the conquest of Turpine's castle stands in stark contrast to what Arthur sympathetically describes as Timias' tendency toward "wandring" (6.5.23). By presenting the salvage man in this way, Spenser once again reverses a tendency which he and others described in their writings on Ireland. Whereas English observers of Ireland continually complained that the Old English settlers were prone to becoming "more Irish than the Irish themselves", the salvage man enacts the reverse process by being, from the moment he meets Arthur, more loyally English than the "true" Englishman.⁵⁶

In general, the substitution of the salvage man for Timias presents natural man as the potential defender of England. Within the juridical context of Books 5 and 6 in which Spenser presents Arthur as the future law-maker of England, the relationship between the salvage man and Arthur has the effect of equating nature with English law. Ultimately, this equation serves as a narrative resolution to the equivocal situation which had resulted from attempting to apply English customary law to Elizabethan Ireland.⁵⁷ The salvage man can be viewed as a romantic portrayal of the nomadic inhabitants of the Irish forests who are the principal targets of reform in Spenser's *A View*. It is no coincidence that Arthur and Timias' initial impression of the salvage man is a misapprehension in which they mistake his attempt to help Serena arrange the bridle on her horse for a violent attack (6.5.25–26). The salvage man of Book 6, at the moment of the English encounter, is made to seem as potentially violent as the Irish rebel whose forest habitat provided the ideal concealment from which to launch incursions against English

⁵⁵ Turpine's castle is also accused of practicing a "wicked custome": despoiling knights "of arms" and ladies "of their vpper garment" (6.6.34). Like Calidore in the earlier scene, Arthur attempts to reform Turpine and Blandina, but in this instance, reformation fails. See Donald Cheney, *Spenser's Image of Nature*, pp. 206–12.

⁵⁶ Cosgrove, "Hiberniores Ipsis Hibernis," pp. 1–4.

⁵⁷ For an alternative view on the salvage man's significance, see Richard Neuse, "Book Six as Conclusion to the *Faerie Queene*," *Essential Articles for the Study of Edmund Spenser*, ed. A. C. Hamilton (Hamden, CT: Archon Books, 1972), p. 376.

settlements (*A View* 1532–50, 3061–270). But whereas the Irish forest-dwellers of *A View* are portrayed as insolubly barbarous, the salvage man is from the start naturally drawn to English law and custom. Thus, in the form of the salvage man, Book 6 presents a romantically optimistic vision of Irish reform. English law, the law which in *A View* Spenser had identified as conforming to the English disposition, becomes natural law, that law which should ideally be shared by every human polity. Accordingly, every man, including every Irishman, has English law inscribed in his heart.

Book 6 contains other allegorical representations of the Irish. The blatantly unnatural collectives of later cantos, the salvage nation which attempts to cannibalize Serena and the Brigants who attack the shepherds from the hinterlands, are clearly meant to portray the “wild” Irish.⁵⁸ Unlike the salvage man of the earlier cantos, Spenser presents both collectives as unredeemable and deserving of annihilation. They are analogous to those “evil” Irish which the Spenser of *A View* says “muste firste be Cutt awaie by a stronge hande before anie good Cane be planted” (2956–57). The allegory of the salvage man functions as part of Spenser’s justification of such violence. Book 6 defines the “good” Irish as naturally inclined to English law, while the “bad” Irish, like the salvage nation and the brigands, will exhibit the unnatural vices which mark all “unnatural” beings. The equation of common law and natural law which Book 6 achieves eliminates the need for a specific reform strategy since those Irish who are redeemable (or already redeemed) will naturally exhibit signs of Englishness.⁵⁹

BOLD SIR BRUIN AND THE BEAR: RECOVERY OF ENGLISH IDENTITY

As we shall see in another notable episode which occurs roughly simultaneously with the salvage-man episode, the equation of natural law with English customary law enables Spenser to imagine an English identity which is impervious to the corrupting forces of Irish barbarism which the Spenser of *A View* perceives as a major threat. Canto 4 presents a scene in which the familiar tensions between the English and Irish inhabitants of Ireland are at work. When a wandering Calepine encounters Matilda,

⁵⁸ See Sheila T. Cavanagh, “‘Licentious Barbarism’: Spenser’s View of the Irish and *The Faerie Queene*,” *Irish University Review* 22.2 (1996), 268–80; and Highley, *Shakespeare, Spenser and the Crisis in Ireland*, pp. 126–33.

⁵⁹ McCabe, *Spenser’s Monstrous Regiment*, pp. 241–46.

“The wife of bold Sir *Bruin*”, he prompts her to recount the narrative of her husband’s recent conquest of land from Cormoraunt the Giant (6.4.29). Spenser presents this conquest as an allegorized version of confiscations of Irish land by English settlers, Sir Bruin assuming the position of the “civilized” New English settler and Cormoraunt that of the “barbaric” Irish native.⁶⁰ Matilda fears that Cormoraunt will prevail in the end and re-acquire the conquered land because the couple has failed to produce an heir which can put up a legal defense (6.4.30–31). Her fear bears a strong resemblance to Spenser’s concern for the capacity of the Irish in *A View* to use “dishonest” legal means to defraud the English of their land claims in Ireland (666–81, 818–33). But whereas, in *A View*, the Irish are presented as largely successful at recovering lands confiscated by the Queen and English landowners, Sir Bruin and Matilda prevail in Book 6 because of Calepine’s intercession on behalf of the forces of nature. This intercession involves Calepine’s gift to Matilda of a foundling, a gift which seems to proceed from nature itself, ultimately insuring that the couple will have an heir capable of defending their claim to the land.

Calepine’s gift of the foundling is crucial to the logic of natural law in Book 6. This narrative logic begins when Calepine discovers “A cruell Beare, the which an infant bore / Betwixt his bloodie iaws, besprinkled all with gore” (6.4.17). After chasing the animal down and forcing him to relinquish the babe, Calepine kills the bear by lodging a stone in its throat. In doing so, the knight seems to have saved the child from a bloody death. Several facets of the bear’s description point in this direction. Spenser describes the bear as “cruell” as he carries the howling baby away in his “bloody iawes,” prompting Calepine “To rescue th’infant, ere he [the bear] did him kill” (6.4.17–18).

In other respects, however, it is unclear how convinced Spenser himself is that the child is in mortal danger – some of the bear’s potential violence toward the child is quite possibly a product of Calepine’s interpretation. After Calepine has vanquished the bear, he finds that the seemingly ferocious animal has been more gentle with the child than the “besprinkled gore” first indicated. Unlike the Blatant Beast, who readily inflicts festering wounds with his venomous teeth, the bear has refrained from puncturing the tender skin of the child’s body (6.4.23). Additionally, Richard Bernheimer has shown that, throughout the Middle Ages

⁶⁰ For a description of the Irish as descendants of giants, see Hadfield and Maley, “Introduction: Irish Representations and English Alternatives,” in *Representing Ireland*, p. 2

and the Renaissance, the bear in general was closely aligned with the figure of the wild man. According to Bernheimer, some variants of the medieval, wild-man hunt involved scenarios in which the wild-man "loses its name and becomes a bear: a transformation easily arrived at considering that the bear – the 'man of the woods' – may stand upright in its tracks like a man, while the wild man resembles it in his close-fitting fur."⁶¹ The medieval tradition linking the wild man – here we may think of Spenser's salvage man – to the bear is certainly at work in the fourth canto. The bear scene interrupts the narrative of the salvage man, a figure introduced earlier in the fourth canto, whom Spenser describes as "both rudely borne and bred" "Mongst saluage beasts" (6.5.2). In this respect, not only is the bear simply another more bestial incarnation of the salvage man; he also represents one narrative possibility of the salvage man's origins. By juxtaposing the bear scene with the salvage-man narrative, Spenser suggests that if Calepine had not interceded – if the bear had succeeded in carrying away the infant, the upbringing of the child might have resulted in something equivalent to the salvage man, that is, a figure living according to the most basic natural laws. The context in which Spenser presents the bear suggests therefore that the threat to the child is less immediate than Calepine initially assumes.

After his victory, Calepine transfers the babe from the bear to the besieged couple, Matilda and Sir Bruin, whose name also means "brown bear." By giving the couple the surname, "Bruin," Spenser draws a correlation between the identity of the couple and that of the bear. This correlation creates a corresponding alliance between the forces of nature which the bear represents, through his identification with the salvage man, and English civility which Matilda and Sir Bruin represent. Whether the infant is raised by the bear, thus ending up like the salvage man of the surrounding cantos, or is raised by Matilda and Sir Bruin, thus ending up with a more civil disposition, he will be schooled in English – or natural – law, English and natural law having now been made equivalent. The seamless way in which Matilda convinces Sir Bruin that the child "surely was his own" confirms this equivalency (6.4.38). Having portrayed English law as the equivalent of natural law, Spenser suggests no essential difference between the two possible destinies.

Nevertheless, the outward signs of English civility remain as a supplement which would complete or perfect natural Englishness. The

⁶¹ Richard Bernheimer, *Wild Men in the Middle Ages: A Study in Art, Sentiment, and Demonology* (New York: Octagon Books, 1970), p. 53.

natural origins of the child have prepared him well for inculcation of the outward forms of English civility. This is made clear in Calepine's speech in which he offers the babe to Matilda. Like the bear whelp which is licked into shape by its mother, this is a child on which "ye may enchace [engrave] / What euer formes ye list thereto apply / . . . / Whether ye list him traine in cheualry, / Or nourle vp in lore of learn'd Philosophy" (6.4.35). The universal child is utterly amenable to such inculcation, and in the process, both an essentialized Irish identity which would resist English government and civility and a privileged aristocratic English identity are denied. The "spotlesse spirit" of the orphaned child, "whose lineage was vnknowne" and who emerges from nature itself, is more promising than his counterparts "which haue been dandled in the lap" of their birth parents (6.4.35,36).

All of this has profound implications for the maintenance of English identity in Ireland as well as for the conversion of the Irish into "civil" English subjects. The Bruin episode alludes to Ireneus' anxious description of the Old English tendency to degenerate into "mere" Irishmen. In one respect, Bruins' adoption of the child functions as a reversal of the Old English practice of having English children fostered by Irish wet-nurses, an "evill Custom" which Ireneus cites as a principal cause of the Old English degenerating into Irish (*A View* 2101–34).⁶² In another more significant respect, the episode alludes directly to the Old English families of Ireland who, Ireneus complains, "haue quite shaken of their Englishe names and put on Irishe that they mighte be alltogether Irishe" (1999–2000). Ireneus describes the treachery of one particular English family named the Fitz-Ursulas ("sons of bears") who turned against England because of disputes with the English crown, subsequently moving to Ireland and taking the Irish name, Macmahon. Eudoxus responds by asking incredulously whether it is possible that any English family "shoulde so far growe out of frame that they shoulde in so shorte space quite forgett their Countrie and their owne names" (2001–03). In response, Ireneus recounts that the English Fitz-Ursulas "rebelled and Conspiring with the Irishe did quite caste of their Englishe name and Allegiance since which time they haue ever soe remayned and haue still sithens bene Counted mere Irishe" (2027–30). The Fitz-Ursulas or the "sons of bears" embody Spenser's worst fears about the fragility of English identity as well as the menace of Irishness – the family has cast off

⁶² In "Licentious Barbarism," pp. 275–78, Cavanagh discusses Astraea's abduction of Artegall in Book 5 in similar terms.

its “natural” English identity and assumed the corrupted existence of the Irish, accepting both an Irish name and Irish rebelliousness. In doing so, its members stand in sharp contrast to their nominal counterparts of Book 6, the Bruins, who, far from being corrupted by the giant Cormoraunt, have succeeded in maintaining their original identity as well as their land.

Initially, of course, the two situations are comparable. The Bruins, like the Fitz-Ursulas, are menaced by the impinging forces of Irish “degeneracy,” in this case symbolized by the giant. And since they have no heir, they also face the prospect of being engulfed by the surrounding Irishness. But whereas in *A View*, the Fitz-Ursulas renounce their English identity and fully transform into the Irish Macmahons, Spenser imagines the identity of the Bruins as protected by its direct correspondence to nature and natural law, allegorically represented by their connection to the bear and the salvage man. In the end, nature’s gift of a child guarantees the perpetuation of their stand against the forces of Irish degeneracy.⁶³

Thus in Book 6, Spenser imagines a narrative resolution to the problem of preserving English identity. The Bruins, in contrast to the Fitz-Ursulas, are able to resist the barbarity of the impinging Irish threat because Spenser has structured Book 6 around the converse of the familiar pattern which Ireneus complains of throughout the dialogue. In the Ireland of *A View*, Spenser presents the ease with which the English inhabitant “forgett[s] his owne nature and forgoe[s] his owne nacion,” while in Book 6, Spenser negates the threat of Irish contamination by imagining a universal English identity. Hence, from the perspective of the conqueror, Book 6 presents an optimistic (albeit ruthless) view of the maintenance of English identity, a view in which Irish custom is obviated and the unalloyed, natural – now English – self of the Irish child is accessible. The naturalization of English law utterly negates the possibility of a valid Irish cultural identity. Instead, all difference is defined in hierarchical terms according to strict natural law as unnatural. Ultimately, then, Spenser is able to dispel his fears about the threat to English settlers in Ireland and produce an ethical imperative for instituting English law in Ireland.

We are left with the question of why Spenser chose to address these legal issues in Book 6 rather than in some other form. Given the relationship which I have delineated between these two texts, it would be

⁶³ For more on the Irish background of the bear’s son episode, and its relation to fosterage and education, see McCabe, *Spenser’s Monstrous Regiment*, pp. 239–41.

tempting to conclude that Spenser wrote Book 6 shortly after he had written his tract on Ireland, and that, having laid out the crucial contradictions of conquest in expository form, he was able, with greater clarity, to resolve them using a poetic narrative. For all of its attractive simplicity, this conclusion is nevertheless dubious. For one thing, dates of composition for most of Spenser's works have been notoriously difficult to place, while the evidence which does exist points to Spenser having begun both *A View* and Book 6 before or around 1590 and having worked on them at irregular intervals throughout subsequent years.⁶⁴ Perhaps a better answer can be found by considering the form of Book 6 rather than searching for details surrounding its composition. The uniqueness of Book 6 within *The Faerie Queene* as well as within Spenser's entire oeuvre comes from the fact that it comprises so many romance elements. Whereas Books 1 and 2 are Spenser's epics, Book 6 is surely his romance.

The question of form is a crucial one for understanding Spenser, primarily because he himself seems to have spent a great deal of his career consciously thinking about how effectively to use fictional forms to influence the affairs of state. Naturally, what I have said about the code of chivalry, the pastoral mode, and the "mirror for princes" tradition applies to Spenser's romance.⁶⁵ But more than any other English Renaissance author, Spenser also made himself conscious of the role that narrative allegory could play in offering advice on statecraft to the ruling class. From *The Shepheardes Calender*, whose allegory both concealed and shadowed forth commentary on Elizabeth's court, to the last books of *The Faerie Queene* itself, Spenser's writing career was filled with allegorical compositions that self-consciously engaged the centers of English power.

Accordingly, one answer to this question of form can be found in Spenser's own comments on narrative allegory, which are found in his prefatory letter to Sir Walter Raleigh, published with the 1590 edition of *The Faerie Queene*. In explaining his reasons for using narrative allegory instead of argument, Spenser writes,

⁶⁴ Renwick has determined that Spenser wrote most of the tract during his visit to England in 1595 and 1596. Gottfried, however, gives evidence that some portion of the tract may have been written as early as 1590. Sections of Book 6 were probably written before 1590, although the bulk of it was probably written after Spenser had already published the first installment in 1590. See W. L. Renwick, "Commentary," in Edmund Spenser, *A View of the Present State of Ireland*, ed. W. L. Renwick (Oxford: Clarendon Press, 1970), pp. 171–72; R. Gottfried (ed.), *The Works of Edmund Spenser*, vol. ix, pp. 503–05; Ciaran Brady, "Spenser's Irish Crisis: Humanism and Experience in the 1590s," pp. 26–27, note 33; and Josephine Waters Bennett, *The Evolution of the Faerie Queene* (Chicago: Chicago University Press, 1942), pp. 231–44.

⁶⁵ See chapter 1.

To some I know this Methode will seeme displeasaunt, which had rather haue good discipline deliuered plainly in way of precepts, or sermoned at large, as they vse, then thus cloudily enwrapped in Allegoricall deuises. But such, me seeme, should be satisfide with the vse of these dayes, seeing all things accounted by their showes, and nothing esteemed of, that is not delightfull and pleasing to commune sence. For this cause is Xenophon preferred before Plato, for that the one in the exquisite depth of his iudgement, formed a Commune welth as it should be, but the other in the person of Cyrus and the Persians fashioned a gouernement such as might best be: So much more profitable and gracious is doctrine by ensample, then by rule.⁶⁶

In the many discussions of Spenser's letter that focus on some aspect of "self-fashioning," aspects of his declared project in *The Faerie Queene* are sometimes ignored. The last part of this passage is especially significant because it shows that, like Sidney before him, Spenser was in the business of fashioning not only gentlemen and noble persons but also kings and queens. His purpose was to affect the governance of England, and to that end, he claims that he can better instruct his reader through example than through argument. This is in essence what he intends in the last sentence in which he endorses Xenophon's writings over Plato's because Xenophon instructs the reader by narrative example while Plato instructs by "way of precepts." Spenser's choice of Xenophon over Plato is significant for additional reasons. Xenophon's account of Cyrus in the *Cyropedia* is a story not only of the building of the state which Cyrus governs; it is a story of his conquests and the growth of the Persian empire that he goes on to rule so successfully.⁶⁷ In contrast, Plato's *Republic*, as an account of the ideal commonwealth, is decidedly neutral on the question of imperial expansion.⁶⁸ In preferring Xenophon over Plato, then, Spenser not only chooses narrative over precept but empire over commonwealth.

Furthermore, there is the seemingly contradictory description of narrative allegory which is crucial to this passage. While in the first sentence, Spenser speaks of lessons "cloudily enwrapped in Allegoricall deuises," in the second, he speaks rather contradictorily of "the vse of these dayes, seeing all things accounted by their showes, and nothing esteemed of, that is not delightfull and pleasing to commune sence." In the first instance,

⁶⁶ Spenser, *The Faerie Queene*, p. 737.

⁶⁷ For a discussion of the Renaissance preference for Xenophon's *Cyropedia* over Plato's *Republic*, see James Tatum, *Xenophon's Imperial Fiction: On The Education of Cyrus* (Princeton: Princeton University Press, 1989), pp. 5–18.

⁶⁸ See Plato, *The Republic*, trans. and intro. Desmond Lee, 2nd edn. (New York: Penguin Classics, 1987), pp. 193–99.

his poem is characterized by an allegorical depth that can only be plumbed through rigorous exegesis. In the second, he speaks of his work as responding to superficial tastes, consisting of “showes” and everything that is immediately gratifying to the senses. This “contradiction” seems to be especially important in any reading of Book 6, in spite of the letter to Raleigh not having been included in the 1596 edition in which Book 6 first appeared. Seemingly comprised of formulaic, superficial narratives, romances are often characterized as narratives that are “delightfull and pleasing to commune sence,” which in turn do not lend themselves to allegorical interpretation. An earlier generation of commentators said exactly this about the narrative of Book 6, whose relative “transparency” seemingly made any form of allegorical interpretation simply redundant.⁶⁹

In fact, such commentary may be the twentieth-century equivalent of Renaissance condemnation of the romance form. As I have noted elsewhere, the romance was not just another proscribed form – uniquely condemned, the form became that against which more serious literary work distinguished itself. Censured in Spenser’s own day for its “open manslaughter and bold bawdry,” the chivalric romance was not the obvious choice for serious poetic endeavor.⁷⁰ Producing a notable contemporary manifestation of this condemnation, A. C. Hamilton once declared that “romance is essentially a popular genre, being ‘uncritical’, unlearned, and unliterary.”⁷¹ Indeed, allegory and romance may seem to exist on opposite ends of an axis of interpretation, by which allegories generate rich interpretations while romances can only generate summary and superficial commentary.

In my allegorical reading of Book 6, however, I hope to have shown that this seemingly contradictory account of romance is based at least partially on an illusion. In the letter to Raleigh, Spenser writes that his narrative strategy was a response to degraded contemporary tastes. But at both the opening and the close of the second section of the poem (Books 4 through 6), he indicates that Books 1 through 3 of the *Faerie Queene* had caused offense at court (4.proem.1; 6.12.41). From Spenser’s perspective, they did so because they were presumably too open to multiple interpretations and thus to misunderstandings. Within the political context,

⁶⁹ See Hamilton (ed.), “Introduction,” *The Faerie Queene*, p. 621; H.S.V. Jones, *A Spenser Handbook* (New York: F. S. Crofts, 1930), p. 293; Kathleen Williams, *Spenser’s ‘Faerie Queene’: the world of glass* (Berkeley: University of California Press, 1966), pp. 190–91; and Graham Hough, *A Preface to the Faerie Queene* (New York: Norton, 1962), p. 204.

⁷⁰ Ascham, *The Schoolmaster* (1570); ed. Lawrence V. Ryan (Ithaca, NY: Cornell Univ. Press, 1967), p. 69.

⁷¹ A. C. Hamilton, “Elizabethan Romance: The Example of Prose Fiction,” *ELH* 49 (1982), 287.

then, Books 5 and 6 may actually have been Spenser's most successful works to date, given that the historical allegory in the first was relatively transparent while the romance-inspired simplicity of the second might seem to resist allegorical interpretative altogether. To put all of this in another way, the romance characteristics found in Book 6 may have been part of a recently refined strategy for rendering fiction safe for royal consumption by making the allegory more impenetrable than ever. Since moralizing, especially when it was directed at the state, was always risky business for Elizabethan and Jacobean writers, what better way for Spenser to moralize, without the fear of retribution, than to hide his moral vision in conventions widely viewed as comprising a debased and uncritical form? If the romantic conventions of Book 6 are a form of self-censorship, a strategy to shield his "homely verse" from the Blatant Beast's "venemous despite", then perhaps Book 6 was successful in yet another way (6.12.41): Book 6 was printed in 1596 with the second half of *The Faerie Queene* while *A View* was most probably suppressed in 1598 and not printed until long after Spenser's death.⁷²

⁷² In *Salvaging Spenser*, pp.163–75, Maley argues convincingly that *A View* was suppressed. In "Constructing the *View of a Present State of Ireland*," pp. 204–09, Brink challenges the commonly held view that the tract was suppressed.

PART II

*The prerogative courts and the
conquest within*

*Historical contexts: common law,
natural law, civil law*

The combination of admiration, fear, and hatred that England felt for Catholic Spain coincided with a broad ambivalence towards the foreign legal traditions with which Spain was associated, especially the scholastic tradition of natural-law jurisprudence.¹ Natural-law doctrine was necessary to the universal principles on which to construct the future empire, but it was also seen by common lawyers as a foreign threat to the native common law. Precisely for this reason, many common lawyers viewed competing legal traditions that shared an affinity with natural-law doctrine, including the civil law, equity, and the canon law, as essentially foreign to the realm and in some cases, identified them with Rome. Aggravating such tensions, the Roman civil law was at least in theory the law of the land throughout continental Europe.² And just as Catholic Spain could apply civil-law principles in the Americas (or elsewhere) in order to evaluate or question the civility of indigenous customs, so too could English civil lawyers potentially use the same principles in order to undermine England's native legal system. Among English common-law jurists, this led to the fear of an internal threat, the fear of what was perceived as a foreign invader but in reality was simply one component of the complex English legal system. In the eyes of such jurists, those competing legal traditions that retained an investment in the natural law and the sovereign's prerogative constituted the paradoxical threat of a "conquest" originating from within the realm. Perceiving such domestic institutions as foreign threats, the English common lawyers were intent

¹ For discussion of Ireland in the development of such attitudes toward Spain, see Hayes-McCoy, "Completion of the Tudor Conquest," pp. 107–08, and O'Rahilly, *Massacre at Smerwick*. For discussion of the Netherlands in Anglo-Spanish relations, see G. D. Ramsay, "The Foreign Policy of Elizabeth I," in *The Reign of Elizabeth I*, ed. Christopher Haigh (Athens, GA: The University of Georgia Press, 1985), pp. 147–68, esp. 157–68. For some insight into how English writers viewed Spanish methods of colonialism and expansionism, see McCabe, *Spenser's Monstrous Regiment*, pp. 226–27.

² In practice it was often mixed with customary law. See Levack, *Civil Lawyers*, pp. 17–21.

upon containing and even attacking them using their own legal means. Before considering the seventeenth-century romance in which such issues are explored in narrative terms, it is important to consider the historical, legal, and most importantly, jurisdictional forces that led up to the early seventeenth-century conflicts involving the Court of Common Pleas, the King's Bench, Chancery, and the ecclesiastical courts. Only by doing so can one fully comprehend the ways in which romances of this period attempted to resolve the conflict between the two legal ideologies.

JURISDICTIONAL CONFLICT AND THE FEAR OF FOREIGN LAW

J. G. A. Pocock's work has been indispensable for understanding the prevailing legal ideology of the English Renaissance.³ More recent work, however, has caused a re-evaluation of certain aspects of his theory, in particular the notion that the pervasiveness of the common-law ideology was chiefly due to an absence of contact with foreign legal sources that would have provided a basis of comparison from which to evaluate the English law.⁴ Indeed, subsequent legal historians have come to quite different conclusions about the place of other legal traditions, particularly the tradition of civil law, within English legal thought. They have shown that a small but influential community of civil lawyers, educated in Justinian's *Corpus Iuris Civilis* and continental legal sources, worked alongside the common lawyers and contributed greatly to the intellectual life of the country's legal thought. As a result, common lawyers were a great deal more knowledgeable about other legal traditions than Pocock credited them with being.⁵

But if the common-law ideology was not simply the result of a prevailing ignorance concerning the origins of English law, whence did it originate and what was its ultimate purpose? To understand the origin and the purpose of the common-law ideology within late Elizabethan and Jacobean England, we must keep in mind that a series of explosive legal battles occurred throughout the sixteenth and seventeenth centuries involving competing court jurisdictions. The first of these battles transpired over the role of Chancery with regard to the other central courts of England. During the early sixteenth century, Cardinal Thomas Wolsey,

³ See chapter 3. ⁴ Pocock, *Ancient Constitution*, pp. 56–69.

⁵ See Levack, *Civil Lawyers*; Christopher Brooks and Kevin Sharpe, "Debate: History, England Law and the Renaissance," pp. 133–42; Pawlisch, *Sir John Davies*, pp. 161–75; and Burgess, *Politics of the Ancient Constitution*, pp. 115–38.

Lord Chancellor from 1515 to 1529, pursued a policy of expanding the business and jurisdiction of the court of Chancery and the Star Chamber.⁶ As a result, tensions began to mount between those lawyers who supported these two courts and those who supported the older common-law courts. Throughout the remainder of the century, relations between Chancery and the common-law courts were tense but amicable, and it was not until the first decades of the seventeenth century that Chancery was once again involved in open conflict with other courts. Nevertheless, it is clear that this early jurisdictional controversy had a lasting impact on subsequent relations between the English courts. Throughout the remainder of the century, lawyers and judges who worked in the common-law courts continued to view most competing courts, including the civil-law courts and the ecclesiastical courts, as representing a threat to their own livelihood as well as to the English common law in general.⁷

On simply an economic level, the common-law courts saw themselves as in direct competition and feared a loss of business to what many litigants perceived to be more efficient and equitable venues.⁸ In addition, they often perceived the jurisdictional claims of these competing courts as threatening their own established jurisdictions, and in a number of instances, common-law judges did everything they could to restrict the expansion of such courts. The court of Chancery, the Star Chamber, the civil-law courts, and the ecclesiastical courts each had a separate function within England's complex legal system. But they had a number of things in common: the law and legal procedures practiced in such venues were based on Roman or quasi-Roman principles, which once again made it easy for their opponents to label them as foreign to English law. Chancery's principle of equity formed an integral part of the civil law and canon law, and the legal procedures of discovery, recovery and remedy were similar in all four venues.⁹ In addition, the jurisdictions of these courts had a common origin in the sovereign's power of administering justice outside of the ordinary channels – for this reason, they are often referred to as the “prerogative courts.”¹⁰

Returning now to the question of Pocock's “common-law mind,” rather than locating its origins in the ignorance and insularity of England's lawyers, it makes more sense to see this ideology as a reaction

⁶ John A. Guy, *The Cardinal's Court: The Impact of Thomas Wolsey in Star Chamber* (Hassocks: Harvester Press, 1977), chs. 2, 3, 5; Guy, *The Public Career*, pp. 37–40.

⁷ J. H. Baker, *Introduction to English Legal History*, pp. 43–45, 50–58.

⁸ Knafla, *Law and Politics*, p. 163. ⁹ Levack, *Civil Lawyers*, pp. 27–28.

¹⁰ J. H. Baker, *Introduction to English Legal History*, p. 50; Plucknett, *Concise History*, pp. 191–98.

to the perceived “foreign” threat, both ideological and jurisdictional, posed by the prerogative courts. I have already mentioned that Coke and other common lawyers were vehement in their denials that any conquest of England by a foreign power had ever transformed the English law. Coke was similarly averse to any hint that the common law had been changed or could be changed by Chancery. For example, in the preface to the *Third Report*, Coke gleefully recounts the example of Cardinal Wolsey who, at one point in his career as Chancellor, attempted to ordain courts outside of the common law in order to deal with an overflow of cases involving poor litigants. According to Coke’s account, Wolsey’s innovation in the structure of the common law was only temporary: the English people themselves soon tired of the inefficiency of these alternative courts as well as their inability to enforce their decisions. Ultimately, “every Man was weary of them, and resorted to the Common Law.”¹¹ In general, Coke presents Wolsey’s attempt and failure to change the fundamentals of the common law as analogous to William the Conqueror’s original attempt and failure to change the law through conquest.¹² Indeed, the larger purpose of the story, it seems to me, is to counsel vigilance against the continuing threat which Chancery posed to the English law.¹³

In terms of themes that the final chapters of this book take up, there was one other significant reason why the prerogative courts were perceived as posing a collective threat to the common-law courts. I have noted that the prerogative courts functioned on the basis of Roman legal principles and procedures. Part of this Roman inheritance, which had been passed down through Catholic theology, was a belief in a universal hierarchy of natural and divine laws. While common lawyers sometimes spoke of natural law or the law of reason as the basis of positive law, they more often viewed English custom as its primary foundation.¹⁴ In contrast, natural law was at the center of the law practiced in the prerogative courts. Civilians saw equity, the civil law, and the canon law as direct derivations from a universal natural or divine law.¹⁵ Moreover, the civilian conception of natural law was very much a scholastic one that was fundamentally identical to the one which Vitoria and his students were

¹¹ Coke, *Third Report*, p. B4^v. ¹² *Ibid.*, pp. B4–B4^v.

¹³ Knafla, *Law and Politics*, pp. 123–81; Plucknett, *Concise History*, pp. 176–98.

¹⁴ See Tubbs, *Common Law Mind*, pp. 112–13; R. S. White, *Natural Law*, pp. 44–50; Burgess, *Politics of the Ancient Constitution*, pp. 128–29; and Guy, *Tudor England*, p. 444.

¹⁵ Burgess, *Politics of the Ancient Constitution*, pp. 121–30; Levack, *Civil Lawyers*, p. 106; Knafla, *Law and Politics*, pp. 161–62.

applying to the Americas. Similar to Vitoria and the other Spanish Neo-scholastics, English civil lawyers saw the validity of any positive law as solely determinable from the perspective of natural law.

The civilian claim that all legal systems owed their validity to their correspondence with natural law sometimes conflicted with claims made by the common-law opponents of the prerogative courts. While common-law jurists did not object to natural law *per se* and could even utilize natural-law doctrine when it suited a particular legal argument, they were clearly ambivalent about the relation of common law to some higher, universal law (whether conceived as reason, natural law, or divine law).¹⁶ Whereas Coke and other common lawyers justified the common law from the “inside” based on a concept of “artificial reason,” they seemed to regard a concept of universal reason applied from the outside as a threat to the law’s integrity. In contrast, prominent civil lawyers such as Sir John Hayward held that the common law could only be properly evaluated or justified by using natural reason from the “outside.” In doing so, they allowed for the possibility that the common law might be in disagreement with natural law.¹⁷ The civilian view of the relationship between natural law and the common law was in essence the same as the view that European theologians and colonial overseers had of the relationship between natural law and Irish or Amerindian custom. The common law constituted a legal system based on customs which could be described as descending from the barbarous tribes of Europe. As a result, some Tudor humanists had gone so far as to condemn the common law for its unregenerate barbarism and had advocated its complete abolition.¹⁸

Puritan allies of common-law jurists were also understandably suspicious of the canon-law and the ecclesiastical courts. The canon-law code was derived in large measure from Justinian’s Codes as well as from Catholic theology. After the reformation, civilians took over many positions which hitherto had been occupied by clergy. However, the law applied in the ecclesiastical courts was much the same as that which had been practiced before the break with Rome. In the years immediately following the split between England and the Papal state, Henry VIII appointed a commission charged with making the canon law conform to English law, but the commissioners never finished their work. In

¹⁶ Tubbs, *Common Law Mind*, pp. 112–13, 141–72.

¹⁷ Burgess, *Politics of the Ancient Constitution*, pp. 121–30; Levack, *Civil Lawyers*, pp. 131–50.

¹⁸ See Levack, *Civil Lawyers*, pp. 131–33; G. R. Elton, *Reform and Renewal: Thomas Cromwell and the Common Weal* (New York: Cambridge University Press, 1973), pp. 138 ff. See also Starkey, *Dialogue between Pole and Lupset*, pp. 128–29.

subsequent years, there were other attempts to formulate new canons, but a new body of ecclesiastical law was never approved by later English governments.¹⁹ As a result of the failure to reform the canon law, the ecclesiastical courts were, after the reformation, still identified with Rome. Like the civil-law courts, they were thus marginalized on grounds that they were foreign to English law.²⁰

In general, Puritans shared the common lawyers' distrust of scholasticism. Similar to common lawyers, when Puritans used the term "natural law" in their writings, in most instances, they either did not understand the full extent of the term's meaning or intended something entirely different from the scholastic use of the term. For the Puritans, divine sovereignty was not based on rational principles; instead, it was concealed within the divine and eternal mystery of God's creation of the world. To claim that this mystery could be understood by rational principles was equivalent to limiting God's infinite power. In this respect, the Puritan conception of the divine was analogous to the common lawyer's belief in the absolute immemoriality of the common law. Just as the common lawyers were suspicious of attempts to point to a historical origin of the common law, the Puritans were suspicious of accounts which presented God's kingdom as a closed rational system.²¹

CHRISTOPHER ST. GERMAN AND THE HIERARCHY OF LAW

From such a juridical, nationalist, or religious perspective, the ability of the prerogative courts to interfere in or obstruct judgment at the common-law courts was analogous to a usurpation or a foreign invasion of the common law's jurisdictional territory.²² To understand the origins of the view that Chancery (and the other prerogative courts) constituted an invasive foreign threat, it is helpful to look back briefly at the tumultuous state of the relationship between Chancery and the rival common-law courts at the beginning of the sixteenth century. As we shall see in the next chapter, early sixteenth-century jurisdictional battles between Chancery and the common-law courts had a singular influence on later legal tensions, especially the early seventeenth-century jurisdictional disputes involving Coke and Lord Chancellor Ellesmere.

¹⁹ Levack, *Civil Lawyers*, p. 183. ²⁰ Knafla, *Law and Politics*, pp. 123–54.

²¹ McCabe, *Incest, Drama, and Nature's Law*, pp. 59–62; Passerin d'Enteves, *The Medieval Contribution to Political Thought*, pp. 99–100; Eusden, *Puritans, Lawyers, and Politics*, pp. 131–41.

²² See Lambarde, *Archeion*, p. 45, and W. J. Jones, *The Elizabethan Court of Chancery* (Oxford: Clarendon Press, 1967), p. 464.

The business of the common-law courts (the Common Pleas and the King's Bench) had receded substantially since the beginning of the fifteenth century, a decline which reached its nadir in the 1520s. While during the fifteenth century this decline had been due to factors outside of the control of the common-law courts, the failure of these courts to recover in the early sixteenth century was clearly caused by the mass defection of litigants to Chancery's court of equity as well as to the Star Chamber. The popularity of Chancery and the Star Chamber was due to the quite accurate perception that they were (in spite of Coke's claim to the contrary) more efficient and flexible courts that had overcome the corruption characteristic of the older benches.²³ During his tenure as Chancellor, Cardinal Thomas Wolsey had pursued a policy of offering still more accessible recourse to justice in the prerogative courts. As a result, by 1524–25, the combined business of the King's Bench and the Common Pleas had dwindled to 20 percent of the level it had attained in 1439–40.²⁴

In terms of judgment itself, the court of Chancery was less concerned with maintaining the rules of law than with how the law was applied in particular cases.²⁵ Chancery attracted petitioners unable to obtain justice by means of the ordinary channels. A petitioner at Chancery might be too poor to afford the process at the common-law courts, or in the case of a property dispute, he might lack crucial written evidence of a transaction. In such cases, the Chancellor proceeded according to a conception of conscience which superseded the rigidity of the law itself. Aristotle had called this notion of justice which corrected the law in particular cases "epieikia," a term which some sixteenth-century writers retained. Most however preferred the Anglicized Latin term "equity" by which the court of Chancery became known as the court of equity. Where the law gave no remedy, Chancery had the power to bind a party by his conscience and order him to do something on pain of committal for contempt. But the Chancellor's most formidable power was the ability to issue a writ of injunction to stop proceedings in another court, even a common-law court, which he deemed to have been unconscionable. In the early seventeenth century, this power was even used by Chancery to review judgments after they had been made at the common law.²⁶

²³ Plucknett, *Concise History*, pp. 176–90.

²⁴ Guy, *The Cardinal's Court*, pp. 51–78; Guy, *The Public Career*, pp. 37–41.

²⁵ J. H. Baker, *Introduction to English Legal History*, pp. 40–41; W. J. Jones, *Elizabethan Court of Chancery*, pp. 177–336; Plucknett, *Concise History*, pp. 675–94.

²⁶ Knafla, *Law and Politics*, pp. 159–70.

The early sixteenth-century conflict between Chancery and the common-law courts has been viewed by traditional legal historians as one episode within a larger struggle between the civil and common lawyers over the essential character of the English law. J. H. Baker claims, for example, that Cardinal Wolsey had only contempt for the common-law system and openly expressed a preference for continental law.²⁷ More recent historians such as John A. Guy have shown that the battle lines were more blurred than was originally thought, with common lawyers lined up on both sides of the conflict over the role of Chancery. Still, it is clear that the conflict constituted more than a simple jurisdictional dispute over volume of litigants, as Guy has sometimes presented the matter.²⁸ There were unmistakable doctrinal differences between the Chancery and the common-law approaches to the law. And if the Chancellor's approach to the law cannot be characterized simply as a civil-law approach, it certainly had important aspects in common with the civil law. As I have noted, like the civil law, the law practiced in Chancery was based on the scholastic foundations of natural law and conscience, two controversial principles within the common-law universe.

One way of characterizing the conflict between Chancery and the common-law courts was thus as a conflict between the combined doctrines of scholastic natural law and conscience on one side and certain mythologies which had become associated with the common law on the other.²⁹ The conflict can best be viewed within the context of a well-documented controversy over the role of Chancery, which occurred in the 1520s and early 1530s. During this period, a common-law jurist named Christopher St. German published a two-part dialogue entitled *Doctor and Student* in which he used scholastic principles in order to define the foundations of the common law as well as the function of Chancery with

²⁷ J. H. Baker, *Introduction to English Legal History*, p. 43. Note also the example of Chancellor Thomas Wriothesley (p. 44). See also Starkey, *Dialogue between Pole and Lupset*, pp. 129–30.

²⁸ Guy, *The Public Career*, pp. 38–49, esp. 40–43; John A. Guy, "Law, Equity, and Conscience in Henrician Juristic Thought," in *Reassessing the Henrician Age: Humanism, Politics and Reform 1500–1550*, eds. Alistair Fox and John A. Guy (New York: Basil Blackwell, 1986), pp. 179–98.

²⁹ Levack, *Civil Lawyers*, pp. 27–28. In spite of clear tensions which existed between the civil law and the common law during this period, most legal historians now dispute the once accepted thesis that, during the early Tudor period, a real possibility existed that the English common law might be altogether abolished and replaced by the civil law. The origin of this thesis was F. W. Maitland, *English Law and the Renaissance, The Rede Lecture of 1901* (London: Cambridge University Press, 1901). For accounts disputing Maitland's thesis, see William S. Holdsworth, *A History of English Law*, vol. 1v, pp. 252–93; G. R. Elton, *Studies in Tudor and Stuart Politics and Government: Papers and Reviews 1946–1972*, 4 vols. (New York: Cambridge University Press, 1974), vol. 11, pp. 223–24; and E. W. Ives, "The Common Lawyers in pre-Reformation England," *Transactions of the Royal Historical Society*, Ser. 5. No. 18 (1968), 163–65.

regard to the common-law courts. In response, an anonymous serjeant-at-law published a repudiation of St. German's dialogue which, on the basis of common-law chauvinism, defended the older courts against what the author viewed as Chancery's illegal incursions against the fabric of the common law.³⁰

St. German's defense of Chancery's doctrine of equity had much in common with the scholastic conception of law favored by contemporary Spanish theologians such as Vitoria and Soto. To be sure, St. German followed Aquinas in placing the human law as the lowest rung within a hierarchy of laws, a hierarchy also comprised of the eternal law, the natural law (or the law of reason), and the divine law. Moreover, as in Aquinas' *Summa Theologiae*, each of the lower levels of law was viewed as deriving from the one above it.³¹ St. German's Student is careful to point out that English customs are valid only "bycause the sayd customes be neyther agaynst the lawe of god / nor the lawe of reason / & haue ben alwaye taken to be good and necessarye for the common welth of all the realme."³² In other words, their validity, while not based directly on the divine law and the law of reason, is still dependent on their not contravening such foundational religious principles.

St. German's notion of conscience was also a scholastic principle. For him, conscience was that judgment faculty by which an individual chose to do good and to turn away from evil. Conscience functioned in accordance with reason, or the laws of reason, in such a way that the individual applied his knowledge of such universal laws in a particular context.³³ In spite of his debt to scholasticism, however, St. German was clearly more committed to the defense of the common law than his

³⁰ Anon., *A Replication of a Serjeant at the Laws of England*, appended to Christopher St. German, *The Doctor and Student*, ed. William Muchall (Cincinnati: Robert Clark and Co., 1874), pp. 341–353. For discussion of the authorship of the *Replication*, see John A. Guy (ed.), *Christopher St German on Chancery and Statute* (London: Selden Society, 1985), pp. 56–63. The *Replication* has generally been assumed to be the work of an anonymous serjeant-at-law, but based on St. German's minor corrections to the earliest manuscript, Guy offers a number of related possibilities: that the earliest manuscript was a copy of another made for St. German himself (p. 57), that St. German himself devised it as a synthesis of contemporary attacks on *Doctor and Student* (p. 57), that the tract recorded an actual discussion between a serjeant-at-law and St. German (pp. 60–61), or even that St. German, acting as an *agent provocateur*, was the tract's sole author (p. 61).

³¹ St. German, *Doctor and Student*, ed. Plucknett, p. 27. For context, see Plucknett's introduction to *Doctor and Student*; Robert E. Rodes, Jr., *Lay Authority and Reformation in the English Church: Edward I to the Civil War* (Notre Dame: University of Notre Dame Press, 1982), pp. 69–77; and S. B. Chrimes, *English Constitutional History in the Fifteenth Century* (Cambridge: Cambridge University Press, 1936), pp. 204–14. See also Aquinas, *Summa Theologiae*, vol. 28, 1a2ae 91–96.

³² St. German, *Doctor and Student*, ed. Plucknett, pp. 45–7. ³³ *Ibid.*, pp. 87–95.

opponents perceived him to be. As Guy has demonstrated, St. German was seldom an innovator and in most respects he was actually a very traditional common lawyer.³⁴ Nevertheless, while St. German had a conception of conscience that was mostly limited by the common law, some jurists still regarded his definition of the role of Chancery as a threat. The reason for this was that, like many civil lawyers who evaluated the common law from a civil-law perspective, St. German was able to view the English law from the perspective of an outsider.³⁵ Whereas a jurist like Fortescue saw the English law as self-sufficient and superior to other legal systems, St. German viewed the English law as derivative. For St. German, the final foundation which legitimized the common law was not custom but the combined doctrine of natural law and divine law, and the validity of every English law came from its conformity with these principles.³⁶ Thus St. German implied that conscience, the personal expression of conformity with the natural law, should depart from positive law and defer to natural and divine law in cases where the positive law contravened the latter two laws.³⁷

The situation in which common laws were declared invalid in cases where they contravened natural law was at the heart of the larger English conflict between the discourses of common law and natural or divine law. As a defender of the court of equity, St. German saw the Chancery's ability to abrogate law which conflicted with natural law as integral to achieving just court rulings. In opposition to this view, however, were certain extreme defenders of the common law who saw no need for going outside the letter of the law in order to achieve justice. This is, in essence, the complaint made by an anonymous serjeant-at-law in his short

³⁴ Guy, "Law, Equity and Conscience in Henrician Juristic Thought," pp. 190–98.

³⁵ Burgess, *Politics of the Ancient Constitution*, pp. 122–23.

³⁶ St. German, *Doctor and Student*, ed. Plucknett, pp. 31–57.

³⁷ In the critical passage, St. German writes, "Where the lawe is to be lefte and forsaken for consyence / is not to be vnderstande of the lawe of reason nor of the lawe of god: for tho two lawes maye not be lefte / nor it is not to be vnderstande of the lawe of man that is made in partyculer cases / and that is consonant to the lawe of reason / & to the lawe of god / and that yet that lawe shuld be lefte for consyence / for of suche a lawe made by man consyence muste be rewlyd as is sayde byfore: nor it is not to be vnderstande of a lawe made by man commaundyng or prohybytyng any thyng to be done that is agaynst [the lawe of reason / or the lawe of god.] For yf any lawe made by man / bynde any person *by way of precept or prohibition* to any thing that is agaynst [the sayd lawes/] it is no lawe / but a corrupcyon [& a manyfest error]." [A passage which does not appear in the Latin version is enclosed within brackets. A passage which only appears in the Latin is translated and interpolated into the English text.] (St. German, *Doctor and Student*, ed. Plucknett, pp. 111–13). Here, St. German posits the possibility of a conflict in which the human law contravenes the higher laws. In this situation, the Student explains that the human law itself is rendered invalid. See also St. German, *Doctor and Student*, ed. Plucknett, p. 207.

response to St. German, entitled *A Replication of a Serjeant at the Laws of England*.³⁸ Whereas St. German conceived of a Chancery whose decisions were heavily circumscribed by natural law, divine law, and human law, the serjeant-at-law views the Chancellor's decisions as completely exterior to any legal system. And whereas St. German imagined circumstances in which a Chancellor would have to subordinate common law to natural law, the serjeant continually attempts to elide the differences between common law and the higher laws of nature and God. Indeed, the serjeant repeatedly implies that there is no need to go outside of the common law since it is in reality equivalent to natural law.³⁹

Hence, later in the tract, the serjeant recommends simply following the letter of the law without recourse to any formal notion of conscience.⁴⁰ According to his judgment, there is no need to resort to legal discourses outside of the common-law universe such as conscience since nothing is more just or fundamental than the common law itself if it is followed closely enough.⁴¹ The serjeant ominously ends his tract by warning that Chancery's power of conscience constitutes a real threat to the continued integrity of the common law. Indeed, his conclusion is suffused with the concerns that Coke himself would later articulate at the beginning of the seventeenth century. At the center of the tract is the fear that the common law might be abolished or radically transformed by some upheaval caused by Chancery's encroachment. Warning of Chancery's unrestricted power, he writes, "And so in conclusion after my conceit, if this be not reformed by the great wisdom and policy of my lords and masters, the judges of this realm, the law of this realm will be undone."⁴² His conclusion foretells of an impending usurpation of the common law by Chancery and its power of *subpoena*, and he prescribes vigilance as a way of preserving the immemorial integrity of the common law in the face of a foreign threat. In this respect, the serjeant is translating Fortescue's denial that the common law had ever been abolished or transformed by conquest into a contemporary jurisdictional conflict. Like Fortescue (and Coke after him), who had declared the immemorial integrity of the common law in the face of various conquests of Britain, the serjeant

³⁸ *A Replication*, p. 349. ³⁹ Guy, *St German on Chancery and Statute*, pp. 67–75.

⁴⁰ "Wherefore if you observe and keep the law, as in doing all things that is for the common weal, and eschew all things that is evil, and against the comon weal, you shall not need to study so much upon conscience, for the law of the realm is a sufficient rule to order you and your conscience what you shall do in every thing, and what you shall not do" (*A Replication*, p. 349).

⁴¹ The serjeant repeatedly conflates the "law of the realm" or common law, the "law of reason," and the "law of god" as if all three were essentially one and the same law. See, for example, *A Replication*, pp. 346–347, 349. ⁴² *A Replication*, p. 353.

means to preserve the common law and to insure that it is not transformed by an entity which he deems foreign to it.

In the decades after this controversy, relations between Chancery and the common-law courts alternated between amicability and hostility. Almost a century later, during the second half of James I's reign, they finally erupted in full force over Coke's use of the writ of *praemunire*, a writ originally aimed at limiting the power of the Pope, in order to restrict Chancery's ability to meddle in the affairs of the common-law courts.⁴³ The more immediate reverberations of the conflict could be felt in relations between the common-law courts and the civil-law and ecclesiastical courts. The break with Rome had not caused any significant change in the canon law, and as a result, supporters of the common-law courts viewed the jurisdiction of the ecclesiastical courts with increased suspicion. While Chancery was also slowly encroaching on the work of the ecclesiastical courts, it was the common-law judges who most blatantly challenged the traditional ecclesiastical jurisdiction over tithes, marriages, and legacies.⁴⁴ As we shall see in chapter 6, by issuing writs of prohibition and *praemunire*, writs whose purpose had originally been to restrict the Pope's ability to intervene in state affairs, the common-law judges disguised their offensive against the civil-law and ecclesiastical courts as a defensive measure aimed at protecting the traditional jurisdiction of the common law.⁴⁵ Chancery attempted to protect the customary powers of both the ecclesiastical courts and the civil-law courts from the incursions of the common-law courts, but the common-law judges succeeded in significantly limiting their powers.⁴⁶

INDISPENSABLE NATURAL LAW

What we have seen, then, is that, for a number of reasons, there was a great deal of resistance to certain forms of natural-law discourse within English legal and theological circles. For supporters of the common-law courts, the idea that external natural laws formed the foundation of the English legal system put into question the legal rationales which allowed common-law judges and lawyers to justify their monopoly over the most

⁴³ See Knafla, *Law and Politics*, pp. 155–81.

⁴⁴ W. J. Jones, *Elizabethan Court of Chancery*, pp. 390–417.

⁴⁵ Knafla, *Law and Politics*, pp. 123–54.

⁴⁶ W. J. Jones, *Elizabethan Court of Chancery*, pp. 390–92, 399. See also Ellesmere, "Some notes, and remembrances, concerning prohibitions, for staying of suites in the ecclesiasticall courts, and in the courts of the admiraltie," in Knafla (ed.), *Law and Politics in Jacobean England, The Tracts of Lord Chancellor Ellesmere*, pp. 282–96.

important aspects of English law. In terms of religious belief, the idea that humans were part of a closed rational system governed by discernible laws threatened the emerging Calvinist belief in the inscrutability of God and divine creation. Ultimately, there was also a larger political context within which English resistance to natural-law discourse was situated. The English were increasingly voicing alarm at the perceived threat which Rome and Catholic Spain posed to the English monarch. They imagined that behind every act of the two arch-enemies of England was a conspiracy to overturn the English monarch. In fact, the Catholic-inspired political resistance to Elizabeth I and James I which did exist was heavily based on appeals to natural law. At the turn of the century, both the English exile, Robert Parsons, and the Spanish Jesuit, Francisco Suarez, justified usurpation of the English sovereign using arguments based on the foundation of natural law.⁴⁷ As a result, even within the purview of statecraft, the one area of English intellectual life where natural law might have been employed without controversy to bolster the king's sovereign claims to power and prerogative, the discourse became a double-edged sword.

At the same time that it was strenuously resisted, however, some conception of natural law was ultimately necessary to the proper foundation of religious and secular law. In fact, the scholastic conception of a hierarchy of laws uniting the natural world with the divine emerged in Anglican theology during the last decade of the sixteenth century, not as a defense against the threat of foreign Catholicism, but as protection against the internal threat which Calvinist thought had generated on English soil. Richard Hooker's *The Laws of Ecclesiastical Polity* is less an apolitical attempt to render the Anglican world-view than it is a defense of the Anglican ecclesiastical tradition against Puritan writers such as John Foxe who had presented all vestiges of tradition and hierarchy as the work of the Anti-Christ.⁴⁸

Even within common-law circles, an unsophisticated version of natural reason was necessary to English legal doctrine. Edmund Plowden, regarded as the best common-law reporter of the sixteenth century, was representative in sometimes identifying the common law with reason in

⁴⁷ Robert Parsons, *A conference about the next succession to the crowne of ingland, divided into two parts* (London: 1594), sigs. F8–G6; Suarez, *A Defence of the Catholic and Apostolic Faith – In refutation of the Errors of the Anglican Sect with a Reply to the Apologie for the Oath of Allegiance and to the Admonitory Preface of His Most Serene Majesty James, King of England*, in *Selections from Three Works*, vol. 11, pp. 667–725.

⁴⁸ See esp. Hooker, *Of the Laws of Ecclesiastical Polity*, vol. 11, pp. 174–87. For a discussion of Hooker, see Helgerson, *Forms of Nationhood*, pp. 249–94.

the universal sense. By “reason,” Plowden often means the “artificial reason” of the legal profession, but in other instances, he means the universal law of reason or of nature. While the former type of reason was something cultivated by years of study within the profession, the latter was common to humankind.⁴⁹ It is also true that, in singular cases, one finds common-law jurists who agreed broadly with St. German’s quasi-scholastic notion that positive laws not consistent with the law of nature are null and void.⁵⁰ More often, the common law was presented as the very embodiment of the natural law. As such, it would be ludicrous to claim, as civil lawyers often did, that the positive law might be nullified because of some imagined incompatibilities with a higher universal law. And indeed, it is this very notion of positive law as natural law that suffuses late sixteenth-century discussion of the equity of a statute, in which equity was imagined to inhere within the law itself rather than embodying an element which might be applied externally to the law. In such discussions, the “law” properly understood was said to depend on an interpretation of a statute according to the intention of the lawmakers instead of the literal words of the statute.⁵¹ The discourse of natural law could also be used opportunistically by common lawyers in order to define larger constitutional questions concerning the relation between the subject and the king. Never one for consistency, Coke engages in precisely this alternative form of legal discourse when defending the rights of the Scottish *post-nati* in Calvin’s Case.⁵² Since a universal code of law and justice was indispensable for these types of broad, constitutional decisions, it is no surprise to find that justifying England’s own expansionist ambitions in Europe, Ireland, and the New World also necessitated some recourse to natural-law doctrine.

What is different as we turn to the seventeenth century concerns the role that common-law discourse plays in advancing foreign intervention. Whereas writers such as Riche, Roberts, Johnson, and Spenser managed to resolve the legal conflict between natural and common law, later writers such as Shakespeare and Wroth see both legal imperatives as separately necessary to defining England’s or Britain’s imperial future. In the chapters that follow, I show that Shakespeare and Wroth attempted to

⁴⁹ Tubbs, *Common Law Mind*, p. 115. ⁵⁰ *Ibid.*, pp. 158–60.

⁵¹ See Samuel E. Thorne, “Introduction,” in *A Discourse upon the exposition & understanding of statutes with Sir Thomas Egerton’s additions* (San Marino, CA: Huntington Library, 1942), pp. 8–11.

⁵² The particular matter before Coke was how to adjudicate the inheritance rights of Scottish subjects born within the new united realms of England and Scotland. Because the common law was too narrow to address such matters, the case necessitated Coke’s recourse to natural-law doctrine. Coke, *Seventh Report*, p. B4^v.

strike a balance between the “offensive” natural-law imperative and the “defensive” common-law imperative by preserving each legal institution as a separate entity and allowing each to play its own unique role in advancing the cause of “ethical” foreign engagement. In doing so, their complex narratives form a coherent justification for both acts of conquest and warfare and simultaneously for defense of the kingdom from foreign invasion. In this respect, we shall see that the romance genre provided a particularly suitable form not only for redefining the relation of common law to natural law in order to justify an aggressive stance, but also for radically rethinking the relation of the sovereign to the law, and ultimately for determining the defense of England from the threat of neighboring countries and non-native legal systems.

Roman Conquest and English legal identity in Cymbeline

Applying the term “romance” to Shakespeare’s late plays is a relatively recent phenomenon. Samuel Coleridge called *The Tempest* a “romance” in his *Notes on “The Tempest”*, and later in the original Arden edition of *Cymbeline*, Edward Dowden clarified the term’s use: “In all [these plays] there is the same romantic incident of lost children recovered by those to whom they are dear – the daughters of Pericles and Leontes, the sons of Cymbeline and Alonzo. In all there is a beautiful romantic background of sea and mountain. The dramas have a grave beauty, a sweet serenity.”¹ As many subsequent scholars have done, Dowden was seeking to justify grouping the late plays under one rubric by attending to the formal characteristics that they hold in common.² But his attribution of shared elements reminds us that these plays are only distinct from the rest of Shakespeare’s corpus insofar as they share these same elements with the period’s prose and verse romances.³ Conventional narratives such as that of the orphaned prince or princess whose true identity is concealed and then discovered (and sometimes confirmed by the existence of a birthmark) are ubiquitous in the prose and verse romances of the period. Such elements shared by both dramatic and “true” romances explain why it is

¹ Cited in Roger Warren, “Introduction,” *Cymbeline* (New York: Oxford University Press, 1998), p. 15. See also Edward Dowden, *Shakespeare: His Mind and Art*, intro. Will David Howe, 2nd edn. (New York: Harper, 1918), p. 358.

² See, for example, Robert W. Uphaus, *Beyond Tragedy, Structure and Experience in Shakespeare’s Romances* (Lexington, KY: University of Kentucky Press, 1981), pp. 1–33; Robert M. Adams, *Shakespeare: The Four Romances* (New York: Norton, 1989), pp. 3–23; Joan Hartwig, *Shakespeare’s Tragicomic Vision* (Baton Rouge: Louisiana State University Press, 1972), pp. 3–33; and Howard Felperin, *Shakespearean Romance* (Princeton: Princeton University Press, 1972). For accounts based on a common set of political ideologies, see Constance Jordan, *Shakespeare’s Monarchies*, pp. 1–34, and Gordon McMullan and Jonathan Hope, “Introduction: The Politics of Tragicomedy, 1610–50,” in *The Politics of Tragicomedy: Shakespeare and After*, eds. McMullan and Hope (New York: Routledge, 1992), pp. 1–20.

³ For a recent discussion of Shakespeare’s romance sources, see Hackett, *Women and Romance Fiction*, ch. 9.

entirely appropriate to consider a Shakespearean romance in a study of this nature.

Still there are problems with the term, especially when applied to *Cymbeline*. If one considers that, for reasons which no scholar has adequately explained, *Cymbeline* appeared as the last of the tragedies in the First Folio, and that its main source was historiographical, the play certainly seems to be an oddity when set beside Shakespeare's other romances.⁴ As far as my own concerns with trans-national ethics and the common law, however, it is surprising how well *Cymbeline* lends itself to the approach that I have pursued with regard to earlier prose and verse romances. Like so many non-dramatic romances of this period, *Cymbeline* successfully balances the code of chivalry with the pastoral mode, especially in the wilderness scenes involving the characters of Guiderius, Arviragus, and Belarius. Likewise, as we shall see, King Cymbeline's rule mirrors aspects of King James' court, especially the imperial Roman identity that James was fashioning for himself.⁵ As for those romances considered in previous chapters, *Cymbeline* shares with Sidney's *Old Arcadia* a concern for the potential victims of imperial conquest as well as a focus on the royal family as a metonymy for the state.⁶ It converges with Warner's *Albions England* in that poem's exploration of competing common- and civil-law accounts of English legal history. And most importantly, similar to Spenser's *Faerie Queene*, *Cymbeline* explores the ethical justification for viewing conquest as an act that civilizes and reforms barbarous polities.

PRESERVING THE INTEGRITY OF COMMON LAW: LEGAL
CONSTITUTIONALISM AND THE WRIT OF *praemunire*

At the beginning of the third act of *Cymbeline*, the British royal family confronts the Roman envoy, Caius Lucius, and King Cymbeline makes a contradictory argument for Britain's independence from Rome. On the one hand, following his wife's previous bellicose expressions of island nativism, Cymbeline declares that the purpose of his rebellion against Roman rule will be to restore the kingdom to the state which existed before the Roman Conquest. In the process, he will revive the ancient British laws, "whose repair and franchise / Shall by the power we hold be

⁴ See Uphaus, *Beyond Tragedy*, p. 53.

⁵ See Jonathan Goldberg, *James I and the Politics of Literature: Jonson, Shakespeare, Donne and their Contemporaries* (Baltimore, MD: The Johns Hopkins University Press, 1983), pp. 28–55.

⁶ Jordan, *Shakespeare's Monarchies*, pp. 1–33.

our good deed, / Though Rome be therefore angry” (III.i.55–57).⁷ On the other hand, later in the same crucial scene, in the midst of a polite exchange of diplomatic niceties, Cymbeline offers Caius Lucius a very different justification for his rebellion against Rome. He recalls his education at the court of Augustus Caesar where he was knighted and explains that Caesar’s own valorous example “Behooves me keep at utterance [to fight to the death]” (III.i.71). In this second short speech, Cymbeline views himself as the new incarnation of Roman heroism and honor, the inheritor of a *translatio imperii* from Rome which obliquely promises to transform Cymbeline into a new Caesar and Britain into a new Roman empire.

Cymbeline’s conflicted justification for his rebellion against Rome reflects the two competing English legal ideologies of the times. Similar to Cymbeline’s initial desire to restore the ancient British legal customs, many English common lawyers were able to admit that changes in English law occurred by maintaining that, at some point subsequent to the alterations, prior law was always restored. Using this reasoning, Sir Edward Coke had grudgingly granted in his *Reports* that William the Conqueror’s conquest may have resulted in changes in English law by assuring his readers that his son King Henry I had “restored the [prior] antient Laws of *England*.”⁸ In arguing this point, Coke was relying on an entire legal tradition which denied that major alterations in English law had occurred. In their version of English legal history, seventeenth-century common lawyers based their claims for the immemoriality of English customary law on the idea that Britain’s various conquerors, especially the Romans and the Normans, had never made absolute conquests and therefore could not have abolished native law or imposed their foreign law on the region. Sir John Fortescue’s *De Laudibus Legum Angliae* was the most significant influence on Coke and subsequent English jurists. According to Fortescue’s original fifteenth-century claim (to which many later common-law jurists subscribed), every single conquest of England or Britain, including the original Roman Conquest, had had no permanent effect on English customary law.⁹

Against the nativist view, revisionist antiquarians and historiographers such as William Camden confidently dismissed mythical tales of valiant

⁷ All citations are from *Cymbeline*, ed. Roger Warren.

⁸ Coke, *Third Report*, p. b4. Also note *The Third Report*, p. c2, where Coke writes that when laws have been altered, “yet in Revolution of Time, the same . . . have been with great applause for avoiding of many Inconveniencies, restored again.”

⁹ Fortescue, *De Laudibus Legum Angliae*, pp. F3–F3^v.

ancient Britons and described the true ancient inhabitants as illiterate barbarians.¹⁰ Civil lawyers often went further, claiming that the Roman introduction of civil law into Britain constituted the very advent of legal codes on the island. Needless to say, they also dismissed the notion of an unbroken history of common law as pure myth. In the process, they created a historical basis for the civil law and thus their own professional presence within the island's complex legal system.¹¹ Cymbeline's description of himself as a sovereign educated and reared in the Roman court is similar to this revisionist view which saw the Roman Conquest as having introduced civility itself into Britain.

As noted in the previous chapter, a related series of legal battles was underway during the seventeenth century between common-law and civil-law courts over competing jurisdictions. As a result of such battles, seventeenth-century common-law jurists tended to view the civil-law courts, the closely aligned ecclesiastical courts, and even Chancery as the latest "foreign" threats to the common law's immemorial integrity. For common lawyers, these courts and the civil lawyers who worked in them became a contemporary incarnation of the ancient foreign invaders who had threatened and failed to abolish native English legal traditions through conquest.¹² *Cymbeline* reflects this conflict between the two juridico-historical accounts of the Roman Conquest of Britain popular among competing factions of English lawyers. The play incorporates juridical accounts of Britain's own history of having been conquered by Rome, thereby defining contemporary British imperialism as well as affecting thinking on current English expansion into Ireland and elsewhere. By addressing the historiographical question of the relationship between native common law and foreign civil law at the time of Britain's origins, Shakespeare's play helps to shape the ethics of contemporary expansionist ventures.¹³

¹⁰ Camden, "Of the Diversity of Names of this Island" (1604), in *A Collection of Curious Discourses*, p. 73. For context, see Kendrick, *British Antiquity*, pp. 99–133.

¹¹ See Levack, *Civil Lawyers*, and Burgess, *Politics of the Ancient Constitution*, pp. 115–38.

¹² See Coke, *Third Report*, pp. b4^v–b5.

¹³ There is ample evidence to suggest that Shakespeare's knowledge of the law of his time was extensive. See O. Hood Phillips, *Shakespeare and the Lawyers* (London: Methuen, 1972), esp. pp. 23–36, Daniel J. Kornstein, *Kill All the Lawyers? Shakespeare's Legal Appeal* (Princeton: Princeton University Press, 1994), esp. 11–21, Ian Ward, *Shakespeare and the Legal Imagination* (London: Butterworths, 1999), esp. 25–44, William Hawley, *Shakespearean Tragedy and the Common Law: the Art of Punishment* (New York: P. Lang, 1998); and Jordan, *Shakespeare's Monarchies*. See also George W. Keeton, *Shakespeare's Legal and Political Background* (London: Pitman and Sons, Inc., 1967), pp. 24–66, for a discussion of Shakespeare's use of legal terminology.

King Cymbeline's initial attitude toward imperial Rome seems to be lifted from the pages of historiography used by prominent common lawyers in order to illustrate the unchangeable nature of English law in the face of both foreign and "domestic" threats. Statements made by the British queen and Cymbeline in the third act reflect the common-law idea that Rome's conquest of Britain was partial. At the beginning of the third act, the queen says to the Roman envoy Caius Lucius, "A kind of conquest / Caesar made here, but made not here his brag / Of 'Came, and saw, and overcame'" (III.i.22–26). Although modern readers have questioned Shakespeare's endorsement of the queen's words in this passage, the queen would have had her supporters from both the historiographical and legal disciplines in making such a claim.¹⁴ In a recent article, J. Clinton Crumley has pointed out that the queen's version of this history had a basis both in Caesar's own account of the British Conquest in *De Bello Gallico* and in sixteenth-century English histories of the ancient conquest. He goes on to argue persuasively that Shakespeare's audience was pre-disposed to agree with the queen's nationalistic account of the conquest, even though the villainous queen herself is later proven to be guilty of treachery.¹⁵

Later in the same act, King Cymbeline himself gives voice to similar views. The king's initial argument for Britain's independence from Rome is made on the basis of a prior and separate British identity. Cymbeline's royal lineage is one aspect of this identity. However, equally important is the existence of native British laws which, although damaged, still exist in

¹⁴ See Geoffrey Hill, "'The True Conduct of Human Judgement': Some Observations on *Cymbeline*," in *The Morality of Art*, ed. D. W. Jefferson (New York: Barnes & Noble, Inc., 1969), pp. 18–32, esp. 25–26. As for his contemporaries, Shakespeare's primary source, Raphael Holinshed, confirms the queen's account of the ancient Roman Conquest. See Raphael Holinshed, *Chronicles of England, Scotland, and Ireland*, intro. Vernon F. Snow, 6 vols. (New York: AMS Press, Inc., 1976), vol. 1, pp. 464–78; 483–4. For contemporary, common-law views on the related Norman Conquest, see Lambarde, *Archeion*, p. 134, and Sir Winston Churchill, *Argumentum Anti-Normannicum* (London, 1632), p. d8'. For readings which argue that Shakespeare was opposed to the queen's view, see Leah Marcus, *Puzzling Shakespeare, Local Reading and Its Discontents* (Berkeley, CA: University of California Press, 1988), pp. 128–29; Joan Warchol Rossi, "Cymbeline's Debt to Holinshed: The Richness of III.i" in *Shakespeare's Romances Reconsidered*, eds. Carol McGinnis Kay and Henry E. Jacobs (Lincoln, NE: University of Nebraska Press, 1978), pp. 104–12; G. Wilson Knight, *The Crown of Life, Essays in Interpretation of Shakespeare's Final Plays*, 3rd edn. (New York: Barnes & Noble, 1966), pp. 136, 137–39; and John Curran Jr., "Royalty Unlearned, Honor Untaught: British Savages and Historiographical Change in *Cymbeline*," *Comparative Drama* 31.2 (1997), 287–303. For an alternative reading of the Queen's speech, see Coppelia Kahn, *Roman Shakespeare: Warriors, Wounds and Women* (New York: Routledge, 1997), p. 162.

¹⁵ J. Clinton Crumley, "Questioning History in *Cymbeline*," *Studies in English Literature* 41.2 (Spring 2001), 297–315.

spite of the Roman Conquest. Cymbeline declares to the Roman envoy that the basis of his insurrection against Rome will be the restoration and preservation of British legal traditions:

You must know,
 Till the injurious Romans did extort
 This tribute from us we were free.
 . . . We do say then to Caesar
 Our ancestor was that Mulmutius which
 Ordained our laws, whose use the sword of Caesar
 Hath too much mangled, whose repair and franchise
 Shall by the power we hold be our good deed,
 Though Rome be therefore angry. Mulmutius made our laws,
 Who was the first of Britain which did put
 His brows within a golden crown and called
 Himself a king.

(III.i.45–60)

In justifying his refusal to pay the Roman tribute, Cymbeline invokes a historical precedent for British sovereignty on the dual basis of ancestry and the law. In terms of ancestry, King Mulmutius functions as Cymbeline's personal forebear, the origin of his family lineage through which he has inherited the crown. In terms of British law, Cymbeline invokes Mulmutius as the origin of a collective national heritage centered in native legal traditions.

In Jacobean England, these two foundational narratives, one centered in ancestry and the other in law, roughly corresponded to two contemporary, often conflicting, discourses of governance, respectively the discourses of absolutism and legal constitutionalism. Cymbeline's claim that his forebear, Mulmutius, "made our laws" and was the "first of Britain which did put / His brows within a golden crown and called / Himself a king" echoes an absolutist account of the laws' foundation, an account often used to place the king above the law.¹⁶ However, in declaring that "our good deed" will be the "repair" of "our laws whose use the sword of Caesar / Hath too much mangled," Cymbeline echoes

¹⁶ See for example James VI's description of King Fergus' establishment of Scotland in *The True Law of Free Monarchies* (in *The Political Works of James I*, ed. Charles Howard McIlwain (New York: Russell & Russell, 1965), pp. 61–62). See also Paul Christianson, "Royal and Parliamentary Voices on the Ancient Constitution," in *The Mental World of the Jacobean Court*, ed. Linda Levy Peck (New York: Cambridge University Press, 1991), pp. 71–79.

the contemporary common law mythology. In attempting to repair or restore the damaged law, Cymbeline fulfills a role identical to the role assumed by King Henry I in Coke's formulation which I cited partially above and cite here in full: "after the Conquest *King Henry* the First, the Conqueror's Son, . . . a Man excellently Learned, because he abolished such Customs of *Normandy* as his Father added to our Common Laws, is said to have restored the antient Laws of *England*."¹⁷ Cymbeline's invocation of the need to repair the British law and to restore its integrity in the above passage is reflective of the contemporary preoccupation among common lawyers with the historical continuity of the common law.

In a manner which is strange but not unprecedented for the period, Shakespeare combines the two seemingly opposed discourses of absolutism and ancient constitutionalism into a two-pronged defense of British national integrity.¹⁸ In essence, what occurs in this passage is that opposite political discourses converge into one nativist argument for independence. Ultimately, of course, the play rejects Cymbeline's expression of nativism such that Cymbeline's anti-Roman stance is delegitimized as tyrannical absolutism and is abandoned in favor of reconciliation with Rome. Should we therefore view the play as saying something about the tyrannical excesses to which legal constitutionalism could be brought? This seems probable since, in those episodes where Cymbeline seems to be most tyrannical, his actions reflect unpopular and "tyrannical" strategies used by common-law judges to attack supposedly non-native legal traditions which posed threatening alternatives to the common law.¹⁹

In the decade preceding *Cymbeline's* first production in 1610, common-law judges were attempting with greater tenacity to limit the expansion of those courts which operated on the basis of civil law and canon law, the

¹⁷ Coke, *Third Report*, p. b4.

¹⁸ In doing so, he echoes certain early modern historiographical accounts of the law's origins which fused aspects of both discourses. Coke himself, that supposedly inveterate constitutionalist, relied on aspects of the absolutist account in order to illustrate the common law's antiquity. For example, in the preface to the *Third Report*, he proves that the English law predates the Norman Conquest by citing evidence showing that the foundational books of the common law were written by ancient British kings. See Coke, *Third Report*, pp. a8, b2^v. See also Pocock, *Ancient Constitution*, pp. 40–41. The discourses of absolutism and legal constitutionalism shared a common inclination towards isolationism in the area of foreign policy. See Linda Woodbridge, "Palisading the Elizabethan Body Politic," *Texas Studies in Literature and Language* 33.3 (1991), 327–54, for a discussion of James I's isolationism (as well as how this attitude figures in *Cymbeline*).

¹⁹ W. S. Holdsworth, *A History of English Law*, vol. v, p. 430, and Lord Chancellor Ellesmere, "The Lord Chancellor Egertons Observacions vpon ye Lord Cookes Reportes," in Knafla (ed.) *Law and Politics, The Tracts of Lord Chancellor Ellesmere*, pp. 297–319, esp. 307.

legal codes which had developed out of ancient Roman law.²⁰ These judges were doing so primarily by issuing writs of prohibition and *praemunire* against suitors of the civil-law and ecclesiastical courts as well as Chancery in order to prevent actions in those courts from proceeding further. The years from 1607 to 1611 witnessed significant disputes between common lawyers and civilians on a number of topics, the most important of which was the jurisdiction of the ecclesiastical courts.²¹

The history of the use of the *praemunire* writ by common-law judges against the ecclesiastical courts illuminates many of the broader themes of *Cymbeline*. The original intent of the *praemunire* statutes of the fourteenth century was to restrain the pope from claiming his authority and legal jurisdiction within areas in which the king claimed temporal jurisdiction.²² The first *praemunire* statute of 1307 suggested precisely the kind of conflict over tribute which Cymbeline has with Rome. The statute enacted that no person shall “secretly or openly, by any Device or Mean, carry or send, or by any Means cause to be sent, any Tax imposed by the Abbots, Priors, Masters or Wardens of Religious houses their Superiors, or assessed among themselves, out of [the sovereign’s] Kingdom and his Dominion, under the Name of Rent, Tallage, or any kind of Imposition.”²³ In the play, Cymbeline’s refusal to pay the Roman tribute can be seen as an action analogous to the original *praemunire* writ whose purpose was to restrict the ability of the competing papal authority to collect tithes and transfer them out of the realm.

Cymbeline’s actions also resemble measures taken against ecclesiastical courts during the early seventeenth century. In Jacobean England, the English king, and not the pope, wielded authority over the ecclesiastical courts. Nonetheless, in the years leading up to the first production of *Cymbeline*, the ecclesiastical courts were at the center of a jurisdictional conflict with the common-law courts not unlike that which had existed in the fourteenth century. That the ecclesiastical courts still operated on the basis of canon law rather than customary law caused common-law judges,

²⁰ Summarizing the various arguments on the dating of *Cymbeline*, Donna Hamilton, in *Shakespeare and the Politics of Protestant England* (Lexington, KY: The University Press of Kentucky, 1992), p. 209n, comes to the conclusion that 1610 is the most probable date of the first production.

²¹ See Knafla, *Law and Politics*, p. 138.

²² See Sir William Blackstone’s commentary on Sir Edward Coke, *The First Part of the Institutes of the Laws of England*, with additional notes by Francis Hargrave *et al.*, 2 vols. [1832; reprint, New York: Garland, 1979], vol. 11, p. 391.a.

²³ See 35 Edw. I stat.1, c. 2, in *The Statutes at Large From Magna Carta to the Thirteenth Year of King George II in Six Volumes*, vol. 1 (London, 1758), x4^v. See also 25 Edw. III stat. 6 (1350) [p. MM4], 27 Edw. III stat. 1, c. 1 (1353) [pp. NN2–NN2^v], and 16 Ric. II c. 5 (1392) [pp. Ggg^v–Ggg2^v].

even after the reformation, to attack them by using the writ of *praemunire*. Use of the *praemunire* writ to restrict the ecclesiastical and civil-law courts was indeed a major source of controversy during the first decades of the seventeenth century.²⁴ As Sir John Cowell and other civil lawyers pointed out, frequent use of the *praemunire* writ by common-law jurists reflected the erroneous and antiquated view among common lawyers that such courts were essentially still foreign to the realm.²⁵

Writs of prohibition, whose original purpose was to restrict papal power in a manner similar to the writ of *praemunire*, were another related source of contention between the ecclesiastical courts and the common-law courts. One use of the writ of prohibition seems especially relevant to Cymbeline's refusal to pay the tribute to Rome. After the reformation, the ecclesiastical courts continued to exercise their customary right to collect tithes. During the years leading up to 1610, however, Coke and other common-law judges held that, in certain cases in which a person refused to pay his tithe, the Court of Common Pleas had exclusive jurisdiction and was entitled to issue a writ of prohibition against the ecclesiastical courts as a way of compelling parties to adjudicate before the common law.²⁶ During this time, more than seventy-five per cent of the prohibitions issued by the common-law courts were attempts to restrict the ecclesiastical jurisdiction over tithes, and even more alarming for the civilians, two prohibitions were issued under the justification that all cases involving tithes were to be tried at the common law. It is clear that common lawyers considered the ecclesiastical courts' continued jurisdiction over tithes to be the equivalent of a foreign usurpation or invasion of England and its native institutions.²⁷

Tensions between Chancery and the common-law courts were also rapidly reaching a crisis by the beginning of the seventeenth century. The case-load in Chancery had been expanding dramatically in the last

²⁴ Edward Coke, *The Third Part of the Institutes*, 6th edn. (London, 1681), p. R2^v.

²⁵ In an entry on *praemunire* in his law dictionary, *The Interpreter* (1607), Sir John Cowell complained about current uses of the writ by reminding readers of the original fourteenth-century purpose of the *praemunire* statute. He explained that, in an attempt to prohibit English subjects from suing at the court of Rome, King Edward III "made a statute . . . against those that drew the Kings people out of the Realm to answer of things belonging to the kings court." He went on to complain about current misuse of the *praemunire* writ against the ecclesiastical courts, alleging that "our professors of the common law" have "wrought many daungers to the Iurisdiction ecclesiasticall, . . . pretending all things delt with in those courts to be the disherison of the Crowne, from the which, and none other fountaine, all ecclesiasticall Iurisdiction is now derived." John Cowell, *The Interpreter or Book Containing the Signification of Words: Wherein is set forth the true meaning of all . . . such Words and Termes, as are mentioned in the Law Writers, or Statutes* (1607; reprint, New York: Da Capo Press, 1970), pp. Ddd2–Ddd2^v.

²⁶ See Knafla, *Law and Politics*, pp. 140–44. ²⁷ Levack, *Civil Lawyers*, pp. 76–77.

decades of the sixteenth century, and the Chancellor's use of injunctions to prevent parties from continuing their suits in the common-law courts were being used with greater frequency and without any apparent fixed rule. As a result, a number of common-law judges began to speak out from the bench against Chancery's encroachment on their jurisdiction and to use the writ of *praemunire* to block Chancery's interventions.²⁸ Many common lawyers who worked in the common-law courts were as suspicious of Chancery as they were of the ecclesiastical and civil-law courts since the procedures and the law of equity practiced in Chancery had certain elements in common with the procedures and law practiced in the ecclesiastical and civil-law courts. More importantly, like these other courts, Chancery was constantly viewed as a threat to the power and prominence of the common-law courts.²⁹

In general, Coke and other common lawyers seem to have viewed the actions, procedures, and law used in the ecclesiastical courts, the civil-law courts, and the court of Chancery as foreign to the fabric of English law. These courts and the law practiced in them were seen as deriving from the continent as well as from the Roman Catholic tradition.³⁰ That the king was a foreigner and that these "Roman" law courts were identified with the king's powers of prerogative must only have exacerbated the mistrust which common lawyers felt.³¹ Coke therefore used the language of conquest and invasion, language which would re-emerge in *Cymbeline*, to describe the threat which he claimed these courts posed to the common law and against which he thought the common-law judges should be vigilant. For example, toward the end of Coke's response to Archbishop Bancroft's 1605 petition of grievances against the use of prohibitions against the ecclesiastical courts, Coke warns that "the temporal courts must always have an eye that the ecclesiastical jurisdiction usurp not upon the temporal."³² He was especially adamant about the illegality of

²⁸ Knafla, *Law and Politics*, pp. 158–69.

²⁹ The tensions between Chancery and the common-law courts did not become critical until 1615/16. See Lord Chancellor Ellesmere, "A Breviate or Direccion for the Kinges Learned Councill collected by the Lord Chancellor Ellesmere, *Mense Septembris 1615, Anno Jacobi Regis*," in Knafla (ed.), *Law and Politics, The Tracts of Lord Chancellor Ellesmere*, pp. 319–37.

³⁰ See John Curran, Jr.'s *Roman Invasions, The British History, Protestant Anti-Romanism, and the Historical Imagination in England, 1530–1660* (Newark: University of Delaware Press, 2002), pp. 130–36, and Eusden, *Puritans, Lawyers, and Politics*.

³¹ See Christianson, "Royal and Parliamentary Voices on the Ancient Constitution," pp. 71–94.

³² Coke, *Articuli Cleri*, in *Constitutional Documents of the Reign of James I, A.D. 1603–1625*, ed. J. R. Tanner (Cambridge: Cambridge University Press, 1930), p. 183. See also Coke's short historical preface to the *Articuli Cleri* in *The Second Part of the Institutes*, 6th edn. (London: 1681), pp. Gggg8 ff. For Lord Chancellor Ellesmere's response to Coke's attacks on the ecclesiastical courts, see "Some Notes, and Remembrances, Concerning Prohibitions, for Staying of Suites in the

Chancery's writ of injunction, a power used by the Chancellor both to restrain parties from litigating at the common-law courts and to review cases already tried there. He warned that if Chancery was allowed to review judgments at the common law, "it would tend to the subversion of the common law, for that no man would sue at the common law but originally begin in Chancery, seeing at the last he might be brought thither."³³ And in the case which eventually led to his downfall, Coke, deeply upset with a jury which had failed to issue a writ of *praemunire* against suitors at Chancery, gave an emotional speech in which he warned, "we must look about or the common law of England will be overthrown."³⁴

Other legal writers also treated Chancery's encroachments against the common-law courts as analogous to a foreign invasion. The antiquarian William Lambarde quite explicitly used the language of invasion when warning that "a good Chancellour will permit the Common Law to hold her just honour, and not make such violent irruptions upon her borders."³⁵ Even the king employed the language of usurpation and conquest to describe the jurisdictional battles of his reign. In a famous speech given in the Star Chamber in which he defended his own power of prerogative, James enjoined his judges to "keep your selues within your owne Benches, not to inuade other Iurisdictions, which is unfit and an vnlawful thing."³⁶

The writs of *praemunire* and prohibition were the primary weapons of the common-law ideology, and as I have stated, we find that the conflict between Rome and Britain which Cymbeline induces evokes the original function of the *praemunire* statutes. Just as, originally during the fourteenth century, English governments were using the writs of *praemunire* and prohibition to wrest jurisdictional territory from the papal-controlled ecclesiastical courts and to restrict the ability of the Roman Catholic Church to collect tithes in England, Cymbeline seeks to seize back sovereign authority from Rome by refusing to pay the Roman tribute. I have also shown that the original writs of *praemunire* and prohibition were being used, or misused, by Jacobean common-law judges to restrict Chancery, the ecclesiastical courts, and the civil-law courts, in short, those

Ecclesiasticall Courts, and in the Courts of the Admiralty," in Knafla (ed.), *Law and Politics, The Tracts of Lord Chancellor Ellesmere*, pp. 282–96, esp. 282 and 284.

³³ Cited in W. J. Jones, *Elizabethan Court of Chancery*, p. 46.

³⁴ Ellesmere MSS 5971, ff. i^v–2^v. Cited in Knafla, *Law and Politics*, p. 173.

³⁵ Lambarde, *Archeion*, p. 45. See also Hake, *Epieikeia*, p. 126.

³⁶ James I, "Speech in the Star Chamber, 1616," in *The Political Works of James I*, pp. 326–45, esp. 333.

contemporary courts which had preserved the traditions of Roman law in England. On this level, the tensions in *Cymbeline* between Britain and the Roman empire reflect contemporary legal and jurisdictional quarrels between the Jacobean common law and “Roman” law courts, especially those quarrels over the continued right of ecclesiastical courts to collect tithes. In addition to being based on pre-Christian British legal history, then, the play incorporates an anachronism whereby the Roman threat to pre-Christian Britain represents the perceived contemporary threat posed by “Roman” legal doctrines to the common law.

There are other important instances of anachronisms from the seventeenth century surfacing within the play. In two instances, Cymbeline is identified with the writ of *praemunire* as it was currently being used in the King’s Bench against Roman Catholics who refused to take the Oath of Allegiance. Cymbeline’s original banishment of Belarius, an event recounted in the third act, is reminiscent of this use of the writ of *praemunire*. Coke’s description of the punishment for an offense of *praemunire* is almost identical to that which Belarius has suffered: “the judgment in a *praemunire* is, that the defendant shall be from thenceforth out of the king’s protection, and his lands and tenements, goods and chattels forfeited to the king, and that his body shall remaine in prison at the king’s pleasure.” Coke goes on to remark, “so odious was this offence of *praemunire*, that a man that was attainted, might have been slaine by any man, without danger of law.” Consistent with the main aspects of Coke’s description, Belarius has been banished, his lands confiscated, and he enjoys no protection of the law (III.iii.99–103). Indeed, his fear of confronting Cloten is that he and the princes enjoy no legal protection from aggression (IV.ii.68–69; IV.ii.126–28).³⁷

Furthermore, Donna Hamilton has shown that Shakespeare couches the language which Belarius uses to describe his own loss of favor and banishment in the rhetoric employed by Robert Parsons to defend English Catholics from unjust accusation of the *praemunire* offence.³⁸ Like Parsons’ example of the loyal and unjustly accused Catholic, Belarius

³⁷ Coke, *The First Part of the Institutes*, vol. 1, p. 130.a. We know that Shakespeare was knowledgeable about the offence because, in *Henry VIII*, III.ii.340, Suffolk actually uses the term, *praemunire*, in order to indict Cardinal Wolsey, describing a punishment that is strikingly similar to Coke’s description and is identical to the punishment that Belarius suffers (*The Riverside Shakespeare*, eds. G. Blackmore Evans et al. (Boston: Houghton Mifflin Co., 1974)). See Keeton, *Shakespeare’s Legal and Political Background*, pp. 31.

³⁸ See Donna Hamilton, *Shakespeare and the Politics of Protestant England*, pp. 128–63, and Robert Parsons, *The judgment of a catholicke English-man living in banishment* (1608; reprint, New York: De Capo Press, Inc., 1972), p. c3.

is wrongly accused of having been “confederate with the Romans” by “two villains, whose false oath prevail’d / Before my perfect honor” (III.iii.66–68).³⁹ As a result, in a similar way to Parsons’ hypothetical English Catholic, Belarius takes revenge on his sovereign for charging him with crimes not committed. Cymbeline’s banishment of Posthumus also hints at contemporary issues surrounding the unjust accusation of *praemunire*. Like Belarius, Posthumus is guilty of an offense less than treason but serious enough that he is banished from the king’s protection, which he enjoyed as his ward (I.i.40–54). But whereas Belarius, even while in exile, never allies himself with the Romans, Posthumus does confederate himself with the Roman army in its invasion of Britain. In fact, from the beginning, Posthumus is in subtle ways identified with Rome – his father is called Sicilius, a Roman name, and Innogen compares Posthumus to an eagle, the symbol of Rome. In addition, his name alludes to the more contemporary foreign threat posed to English land by Scottish subjects. His name, Posthumus Leonatus, associates him with the *Postnati*, the legal term given to Scottish subjects born after the union who, much to the chagrin of English landowners, were entitled to inherit land in England.⁴⁰

To summarize briefly, Cymbeline bases his claim for Britain’s autonomy on the rationale of the common law’s founding principles, and using this basis, he rails against the Roman incursion into British sovereignty. And yet, he has done so and continues to do so in an unjust and arbitrary manner. His banishments of Belarius and Posthumus are classic acts of an unjust sovereign. These acts themselves are linked to the writ of *praemunire* as well as to the common-law mentality of Coke and other common lawyers. As I will show in the next section, witnessing the king’s tyrannical use of common-law principles triggers a realization that Roman rule may still be necessary to the civility of the British state after all. Ultimately, we see that Cymbeline’s reconciliation with Rome constitutes an attempt to posit an alternative to the common-law rationale for British

³⁹ The “two villains” perhaps allude to the “two Justices of the Peace” that, according to the statute which instituted the Oath of Allegiance (1606), could administer the Oath to those suspected of being recusants (See *Constitutional Documents of the Reign of James I*, p. 90).

⁴⁰ In “*Cymbeline*: Shakespeare’s Last Roman Play,” *Shakespeare Quarterly* 31 (1980), 31–41, esp. 36, David Bergeron states that Posthumus is “the most Roman of the British characters.” See also Robert Miola, “*Cymbeline*: Shakespeare’s Valediction to Rome”, *Roman Images: Selected Papers from the English Institute*, ed. Annabel Patterson (Baltimore: Johns Hopkins University Press, 1984), pp. 51–62, esp. 54–57, and Coppelia Kahn, *Roman Shakespeare*, pp. 167–68. For readings that presents Posthumus as a portrayal of the contemporary Scottish *post-nati*, see Marcus, *Puzzling Shakespeare*, pp. 106–46, and Jordan, *Shakespeare’s Monarchies*, pp. 74–75.

sovereignty. This alternative legal discourse could serve as the framework within which to build an imperial identity for Britain.

ROMAN CIVIL LAW IN CYMBELINE'S BRITAIN

In the tradition of Coke and other common lawyers, Cymbeline declares in the third act that he will rebel against Rome in order to repair and preserve the damaged British laws. In the process, he will restore Britain's native sovereignty. But Shakespeare introduces a second justification for Britain's rebellion against Rome. The second rationale derives from Shakespeare's appropriation of the Roman civil-law tradition, which posited natural law as the universal origin for every system of law and sovereignty.⁴¹ According to this rationale, Cymbeline will paradoxically rebel against Rome based on the universal example of Roman imperial sovereignty and legal civility. Britain will in effect adopt the principles of Rome in wresting its own sovereignty from Rome. As we shall see, Shakespeare's final presentation of Britain as an emerging imperial power is based on subordinating the legal imperative of the common law to that of the Roman civil law.⁴²

The tyranny of Coke's ancient constitutional position constituted an obstacle to greater foreign engagement. During the first decade of the seventeenth century, it had presented an obstacle to England's proposed union with Scotland. With their persistent fear of legal change, many common lawyers valued England as a stable and unchanging entity. For them, the union of Scotland and England had raised the fearful specter of conquest, and they tended to reject any measure which might threaten the integrity of native law. Hence, even those measures, like the union, which could reasonably be expected to lead to an expansion of English power were viewed in terms of usurpation and legal upheaval.⁴³

⁴¹ Burgess, *Politics of the Ancient Constitution*, pp. 121–30, and Levack, *Civil Lawyers*, pp. 131–50.

⁴² For other readings that see Shakespeare favoring Rome, see J. P. Brockbank, "History and Historions in *Cymbeline*," *Shakespeare Survey* 11 (1958), 42–49; Bergeron, *Shakespeare's Romances and the Royal Family* (Lawrence: University of Kansas Press, 1985), 136–57; and J. Leeds Barroll, "Shakespeare and Roman History," *Modern Language Review* 53 (1989), 327–43. For a reading that argues that Shakespeare ultimately champions nativism, see Robert Miola, *Shakespeare's Rome* (Cambridge: Cambridge University Press, 1983), pp. 206–35.

⁴³ For a discussion of various reactions to the union, see Bruce Galloway, *The Union of England and Scotland*, pp. 30–55. See also Mary Floyd-Wilson, "Cymbeline, Scotland, and the English Race," in *British Identities and English Renaissance Literature*, eds. David J. Baker and Willy Maley (New York: Cambridge, 2002), pp. 101–19, and Tristan Marshall, *Theatre and Empire, Great Britain on the London Stage under James VI and I* (New York: Manchester University Press, 2000), pp. 67–79.

Moreover, as I have shown in chapter 4 with regard to Edmund Spenser, the insular tradition of the common law was an unsuitable foundation from which to cultivate England's nascent expansionism, including England's policy in Ireland. In 1610 at the time that *Cymbeline* was first being staged, the British crown was engaged in the massive plantation of the Ulster province, the attempt to settle English and Scottish undertakers on land that was expropriated after the "flight of the earls" in 1607. Even the city of London was invited to undertake the corporate plantation of one county (which would become Londonderry). In spite of a plan whereby native Irish inhabitants were to be removed and segregated from those areas which had been assigned to English and Scottish undertakers, the stated intention of the government of Ireland was still reformatory, to "civilize" the supposedly barbaric natives with English law and values.⁴⁴ But as Hans Pawlisch has shown, the common-law system could not function in Ireland without frequent recourse to the civil law and native Irish law.⁴⁵

From a civil-law perspective, this made perfect sense. Civil lawyers tended to view conquest and legal change very differently from common lawyers. They viewed the civil law as closely allied with the natural laws which bound every civilized human polity and therefore saw its exportation through conquest as the natural process of introducing civilization abroad. And as I have noted, in terms of ancient British history, they were generally skeptical of the idea that English common law constituted the immemorial law of the island. In fact, civil lawyers and similar-minded antiquarians claimed that Roman civil law was the first legal system to have been planted in England; accordingly, the Romans had introduced civility itself into what had been a barbaric British polity. They viewed English history as comprised of a series of catastrophic events – most notably, the conquests – which had utterly transformed the government and institutions of law.⁴⁶

A prime example of this perspective is contained within the tract by the civil lawyer Sir John Hayward entitled *An answer to the first part of a certaine conference concerning sucesion* (1603), in which Hayward implies that the Roman introduction of the civil law constituted the very advent

⁴⁴ See Aidan Clarke with R. Dudley Edwards, "Pacification, Plantation, and the Catholic Question, 1603–1623," *A New History of Ireland*, ed. T. W. Moody et al. (Oxford: Clarendon Press, 1976), vol. 111, pp. 187–232, esp. 194–210, Brendon Fitzpatrick, *Seventeenth-Century Ireland: The War of Religions* (Totowa, NJ: Barnes and Noble, 1989), pp. 22–35; and Richard Bagwell, *Ireland under the Stuarts* (London: Holland Press, 1963), vol. 1, pp. 63–90.

⁴⁵ Hans Pawlisch, *Sir John Davies*, pp. 3–14, 84–161.

⁴⁶ See Burgess, *Politics of the Ancient Constitution*, pp. 121–30.

of a legal system in Britain. Hayward lays out two general theories of the law's origin in the commonwealth, the second of which, law introduced by conquest, described the origins of law in Britain.⁴⁷ He explains that as the Romans "permitted libertie of lawe to no other countrie vnder their obedience, so here [in Britain] also they planted the practise of their lawes: and for this purpose they sent ouer manie professors, and among other *Papinam*, the most famous both for knowledge and integritie, of all the authors of the ciuill lawe." Hayward omits any mention of what particular form of British government existed before the Roman one, implying that Britain was still in a pre-legal state in which adjudication was the sole prerogative of a king.⁴⁸

At the same time that Hayward was writing, English antiquarians were also in the process of debunking the myth of Britain's noble pre-Roman past to which writers such as Coke subscribed. William Camden pointed out that contemporary knowledge of ancient Britain had its origins almost wholly in the writings of foreign visitors from Greece and Rome – the original British inhabitants were, contrary to popular belief, illiterate and barbarous. As a result, the ancient Britons were not even capable of transmitting "their Originals [original names] to posterity."⁴⁹ Elsewhere in the *Britannia*, Camden challenged other popular myths about the ancient Britons, describing a primitive people who practiced the barbaric custom of painting their bodies. He claimed that the name Britain itself comes from the native word *Brit* or *Brith* which, "among the Britans, denotes what the Britans really were, *painted, stained, colloured*."⁵⁰

Drawing upon such revisionist notions of early British history, even figures such as William Hakewill, a common lawyer who had extensive Chancery practice, portrayed the Roman Conquest as having introduced civility into Britain. Hakewill noted that the Romans always altered the laws of the nations they conquered and would certainly have done so in Britain since it was "a province so far remote, and [inhabited by] a people ever by nature disobedient."⁵¹ According to such revisionist accounts, the Romans introduced, among other things, their laws into Britain as a way of civilizing its barbaric inhabitants.⁵²

⁴⁷ Hayward, *An answer*, pp. E4–F.

⁴⁸ *Ibid.*, p. F. See also Hayward, *A Treatise*, pp. C2–C4^v.

⁴⁹ Camden, "Of the Diversity of Names of this Island" (1604), p. T3.

⁵⁰ William Camden, *Britannia*, trans. and enlarged by Richard Gough (London, 1789), s2. See also Floyd-Wilson, "Cymbeline, Scotland, and the English Race," pp. 102–07.

⁵¹ Hakewill, "Antiquity of the Laws," p. A2^v.

⁵² Floyd-Wilson, "Cymbeline, Scotland, and the English Race," pp. 103–04.

Following such accounts in part, the Roman presence seems to have had a civilizing function within Cymbeline's Britain. At the same time, however, Shakespeare continually evokes the threat that Britain may still be struggling to emerge from the brink of barbarism. Much of the play's dramatic tension is generated by the presentation of a struggle between the forces of retrogression and the hope for a newly realized British civility. In a number of scenes, Shakespeare generates and then thwarts suspicions that barbarism still exists throughout Britain. Innogen's description of Belarius and the princes' cave-dwelling as "some savage hold" (III.vi.18), and Cloten's later speech about "Some villain mountaineers" both invoke rumors that savage elements still exist on the margins of Britain (IV.ii.73).⁵³ When the Romans arrive at Milford Haven at the beginning of their invasion, they encounter what is surely the most disturbing tableau of barbarism, Innogen/Fidele lying next to Cloten's beheaded body. This gruesome encounter is the first which the invading Roman army has with the native Britons, and Caius' mention of the violation of natural law – "nature doth abhor to make his bed / With the defunct, or sleep upon the dead" – evokes the suspicion that unnatural sins are being practiced in Britain before the eyes of the invading Romans (IV.ii.358–59).⁵⁴ The final British victory over Rome dispels these rumors and signals a new equivalence between Britain and Rome, but the process of arriving at this ending is fraught with danger.

The threat that British barbarism will re-materialize haunts the play until the last scene when it is finally exorcised, and the prospect of a new Roman Conquest is doubtless connected to the threat of British barbarism returning. Throughout the early modern period, conquest was imagined as an ethical solution when it was carried out in order to reform a people which continually indulged in unnatural behavior. In the years preceding the first production of *Cymbeline*, the Irish were repeatedly

⁵³ See John E. Curran, Jr., "Royalty Unlearned, Honor Untaught: British Savages and Historiographical Change in *Cymbeline*," pp. 282–87; Lisa Geller, "*Cymbeline* and the Imagery of Covenant Theology," *Studies in English Literature* 20 (1980), 241–55, esp. 252–53; and Peggy Munez Simonds, *Myth, Emblem, and Music in Shakespeare's Cymbeline: An Iconographic Reconstruction* (Newark: University of Delaware Press, 1992), pp. 159–61. For an analysis of the way in which the play is structured around the kinds of misperceptions which occur in these scenes, see Cynthia Lewis, "'With Simular Proof Enough': Modes of Misperception in *Cymbeline*," *Studies in English Literature* 31 (1991), 343–64.

⁵⁴ For analysis of the symbol of the headless body, see Jordan, *Shakespeare's Monarchies*, pp. 94–95; Jodi Mikalacki, "The Masculine Romance of Britain: *Cymbeline* and Early Modern English Nationalism," *Shakespeare Quarterly* 46.3 (1995), 109–10; and Erica Sheen, "'The Agent for his Master': Political Service and Professional Liberty in *Cymbeline*," in *The Politics of Tragicomedy*, pp. 55–76.

accused of committing unnatural vices such as incest, cannibalism, transhumance, and atheism as a pretext for English conquest of Ireland.⁵⁵ The hints of unnatural vice and barbarism in Cymbeline's Britain serve a similar purpose. They raise the prospect that Britain should once again be conquered and reformed by the civil Romans.

The younger generation of Britons, Posthumus and Innogen, make statements about a new British civility which are intended to assure us that reform at the hands of foreigners is no longer necessary. These characters claim that the Britons have matured into a people as civil as their Roman adversaries. Significantly, Posthumus describes this civility in terms of a new military order capable of repelling the conquering Romans. When his Italian friend, Philario, predicts that Cymbeline will finally give in to the Romans and grant them the tribute, Posthumus disagrees, remarking, "Our countrymen / Are men more ordered than when Julius Caesar / Smiled at their lack of skill" (II.iv.20–22). Posthumus is commending the improved military order of the Britons, but whether this order is military or otherwise, the fact that the Britons are "more ordered" also means that they are more civil. His further statement that the Britons "are people such / That mend upon the world" denotes a progression through which the Britons have developed greater "discipline" (II.iv.23,25–26). In effect, British military and civil order combine as a new defense against not only the Roman conquerors but also against the most compelling rationale for conquest, namely the reformation of barbarism.

As for the continual fears about the existence of nomadic mountaineers and brigands, Innogen/Fidele is amazed to find that the cave-dwellers, Belarius, Guiderius, and Arviragus, are hospitable and remarks that Britain's frontiers are more civilized than has been rumored at court:

These are kind creatures. Gods, what lies I have heard!
 Our courtiers say all's savage but at court;
 Experience, O thou disprov'st report!
 Th' imperious seas breeds monsters: for the dish
 Poor tributary rivers as sweet fish.

(IV.ii.32–36)

According to Innogen's formulation, Britain's "poor tributary rivers" are more civil than the Roman imperial seas. Innogen's realization,

⁵⁵ Canny, *The Elizabethan Conquest*, pp. 117–36; Cavanagh, "The fatal destiny of that land," pp. 116–31; and Quinn, *Elizabethans and the Irish*, pp. 34–57.

coming shortly before the Roman invasion, is yet another recognition that, by virtue of its newly attained “civility,” Britain deserves its own sovereignty.

Such declarations of British civility are made by drawing comparisons to Roman civility or to past conflicts with Rome. The British are capable of ruling themselves because they are now as ordered and civil as, if not more civil than, their rulers. There is clearly a developmental process which is implicit in these claims, a process which derives from the natural-law progression by which “barbaric” polities are reformed and become civil. In using Rome as a reference point, these defenders of Britain implicitly acknowledge Roman civility and its role in civilizing the island. The British military is more ordered because it has fought against the Roman army, and Britain is no longer savage because of the Roman influence. In short, British civility is the result of the translation of Roman civility.

As part of this translation, Shakespeare integrates into the play one historiographical account recorded in Holinshed of a specific Roman attempt to civilize Britain. Significantly, this account leads directly to Cymbeline’s second justification for the rebellion against Rome. In the *Chronicles*, Holinshed recounts that the ancient British sovereign, King Kymbeline, had been “brought vp in Rome & knighted in the court of Augustus” and that other British youths were trained by the Romans “whereby they might learne both to behaue themselues like ciuille men, and to atteine to the knowledge of feats of war”.⁵⁶ Cymbeline includes this same account of having been educated in Rome as part of his own heritage. After Cymbeline has announced to Lucius his intention to rebel against Rome in order to repair British law, he welcomes the Roman general to the British court and then recounts the personal narrative of his youth:

Thy Caesar knighted me; my youth I spent
 Much under him; of him I gathered honour,
 Which he to seek of me again perforce
 Behooves me keep at utterance [defend to the death].
 (III.i.68–71)

Here the play alludes once again to the notion found in civil-law and new antiquarian accounts that the Roman presence constituted the origin of British civility. The notion that British kings had been educated by the

⁵⁶ Holinshed, *Chronicles*, vol. 1, pp. 479–80.

Romans in Roman “lawes and civilitie” was also attractive to such revisionist common lawyers as William Hakewill.⁵⁷ For antiquarians, civil lawyers, and like-minded common lawyers, the account of British kings being educated in Rome proved that Roman legal principles had existed in England from the ancient days of Britain.

In *Cymbeline*, not only is Roman law and civility the origin of a new British civility, it is also ultimately partly responsible for Cymbeline’s rebellion against Rome. “Of [Caesar] I gathered honour, / Which he to seek of me again perforce / Behooves me keep at utterance [defend to the death],” Cymbeline declares, in effect claiming that his Roman education has served as part of the inspiration for his declaration of independence from Rome. Instead of inculcating subjection to Roman rule and law, Caesar’s tutelage has taught Cymbeline to think himself the equivalent of the emperor. Cymbeline will therefore replicate in Britain Caesar’s imperial sovereignty over the Roman empire.

It is important to point out that this rationale for standing against Rome is distinct from the rationale for rebellion which Cymbeline and the royal family have articulated earlier in the scene. Recall that before this passage, the queen speaks of an incomplete Roman Conquest and Cymbeline declares the need to repair the corrupted native laws of the island, statements which locate the origin of British sovereignty in the strength and integrity of British law and custom. Cymbeline’s talk of his Roman education locates the origin of the king’s rebellious stance in the Roman empire itself, and his subsequent statement, “I am perfect / That the Pannonians and Dalmatians for / Their liberties are now in arms, a precedent / Which not to read would show the Britons cold,” links Britain to the rebellions of other Roman provinces (III.i.71–74). In these verses, Cymbeline presents his actions as one component of the larger international context rather than as exclusively inspired by the common-law mentality.

Hence, there are actually two rationales for refusing to pay the tribute, one based on the common-law mentality and the other based on the Roman law model. Ultimately, the Roman model of British autonomy becomes the more dominant model of independence. In the fourth act (in which the Roman invasion takes place), the Britons are given indispensable aid by the exiled characters, Belarius and Posthumus, who have

⁵⁷ Hakewill claimed that, in addition to introducing Roman laws into Britain, the Romans “trained up some of the British Kings and many of their noblemen even in the city of Rome itself, which they did for no other purpose, than to instruct them in their lawes and civilitie” (Hakewill, “Antiquity of the Laws,” p. A2”).

been accused of being confederate with or have actually aligned themselves with Rome.⁵⁸ During the battle scene, the British troops are forced to retreat and Cymbeline is taken hostage when Belarius, Guiderius, Arviragus and later Posthumus come to his rescue and go on to repel the Roman troops. Meanwhile, those figures whom we have identified with island patriotism and the common-law mentality fall by the wayside. Guiderius kills Cloten toward the beginning of Act 4, and at the beginning of the final scene, the doctor announces the death of the queen.

But while to some degree the civil-law model becomes the preeminent model of restored British sovereignty, the last scene has the effect of resolving the ongoing conflict between British and Roman values without establishing one or the other set of values as exclusive of the other. The scene begins with the entrance of the royal procession. After the doctor, Cornelius, informs Cymbeline of the queen's confession and suicide, the Roman prisoners are led in to face the king's judgment. This is a crucial moment in the play's denouement. Cymbeline's trial and sentencing of the Roman prisoners signals the re-emergence and restoration of British law. In effect, Cymbeline has restored the native law and will now apply that law in order to judge the Roman invaders. Moreover, during the trial itself, Cymbeline takes on the role of the stereotypical common-law judge, the judge who would rule according to the common law without regard for equity.

Cymbeline begins by noting the reversal which the English victory has meant, that the Romans are now subject to Britain instead of Britain being subject to Rome. But it is not simply that the Roman prisoners have become subject to Britain – they are subject to its laws and to the king's judgment according to those laws:

Thou com'st not, Caius, now for tribute. That
 The Britons have razed out, though with the loss
 Of many a bold one; whose kinsmen have made suit
 That their good souls may be appeased with slaughter
 Of you their captives, which ourself have granted,
 So think of your estate.

(v.v.69–74)

⁵⁸ Belarius is linked to Rome through legal discourse as well. From his first appearance in Act III, Belarius' only solace, in the face of Cymbeline's unjust banishment, is divine law and his own conscience (III.iii.99–100). Posthumus is identified with divine and natural law as well in the vision of Jupiter in v.iii. See Jordan, *Shakespeare's Monarchies*, pp. 92–3.

Cymbeline's acknowledgment of the kinsmen's "suit" reminds us that this is a court of law and that Cymbeline's subjects have rights to sue under that law. In turn, his judgment is an attempt to grant restitution to the victims of the Roman aggression. Looking more closely at Cymbeline's judgment, however, there is a recognizably "barbaric" element at work here. Cymbeline's granting of the suit of the relatives of the dead so that their "good souls may be appeased with slaughter / Of you their captives" contains a strong hint of ritualized human sacrifice. Moreover, the king's decision to execute prisoners of war would have been seen as contravening the law of nations, the scholastic principle derived from natural law which governed acts of war.⁵⁹

The judgment of the Roman prisoners is not the only death sentence which Cymbeline gives in this scene. Later, Guiderius unwittingly confesses to having slain Cloten, and Cymbeline's judgment of him is similarly harsh. Shunning any recourse to equity in both judgments, Cymbeline mechanically follows the law and disregards the extenuating circumstances which should mitigate each sentence's severity. In the case of the death sentence of the Roman prisoners, Lucius Caius implores, "Consider, sir, the chance of war. The day / Was yours by accident," but his appeal, which points to the context of war within which the deaths occurred, falls on deaf ears (v.v.75–76). Similarly, Guiderius recounts the circumstances of his crime:

The wrongs he [Cloten] did me
Were nothing prince-like, for he did provoke me
With language that would make me spurn the sea
If it could so roar to me.

(v.v.293–96)

But Cymbeline rejects such appeals for equity, choosing instead to remove his own agency as judge and to adhere to the letter of the law. Warning Guiderius of the consequences of having confessed to killing Cloten, Cymbeline declares that the death sentence will be automatic: "I would not thy good deeds should from my lips / Pluck a hard sentence" (v.v.288–89). More importantly, he implies that Guiderius' former good deed of having saved the king on the battlefield will not mitigate his crime. When Guiderius does confess, Cymbeline immediately sentences him to death: "I am sorrow for thee. / By thine own tongue thou art condemned, and must / Endure our law" (v.v.298–300). In these lines,

⁵⁹ See Gentili, *De Jure Belli Libri Tres*, vol. 11, pp. 208–15.

the king deprives himself of any power of prerogative to contravene the law; instead, the law speaks through Guiderius' own lips.

In fact, the persistent reputation of the common-law courts was that common-law judges followed the law so closely that verdicts often ended in injustice.⁶⁰ And like a common-law judge, Cymbeline holds his harsh judgments in opposition to what Caius Lucius seems to identify as Roman equity. When Cymbeline sentences the Roman soldiers to death, Caius Lucius protests that the Romans would have shown their prisoners mercy. He remarks, "Had it [the war] gone with us, / We should not, when the blood was cool, have threatened / Our prisoners with the sword" (v.v.76–78). These lines stand in relation to Cymbeline's mechanical interpretation of the law as equity stood to the law within the seventeenth-century English legal system. Early in the sixteenth century, Christopher St. German showed that the Roman concept of equity was to be applied in Chancery as a corrective to the law when the law alone could not provide justice.⁶¹ At this juncture of the play, Cymbeline disregards the corrective of equity. Later in the scene, however, he reconsiders.

Many readers have viewed the opposition between Cymbeline and Caius Lucius in terms of pre-Christian and Christian morality, with Cymbeline's death sentences representing the harsh retribution of Old Testament law and Caius Lucius' appeal representing the advent of Christian mercy.⁶² But such an overtly Christian reading of the play tends to resolve the conflict between Rome and Britain by stepping outside of the secular, legal context presented in the play and into the symbolic realm of Christian forgiveness. It is my view that Caius Lucius can also be seen as offering Cymbeline an alternative discourse within the secular law, namely the discourse of Roman and natural law which provides an opportunity to critique the common-law discourse. When Caius Lucius tells Cymbeline that the Romans would have considered the context of battle in which the deaths occurred and would on that basis have foregone executing their prisoners, he is using the Roman civil-law perspective to draw attention to the rigidity and possible injustice of the common law. In doing so, Lucius resembles the position of marginal and yet persuasive

⁶⁰ See J. H. Baker, Introduction, in *The Reports of Sir John Spelman*, vol. 11, pp. 40–41. Baker cites a chief justice of the King's Bench as saying, in justification of the court of equity, "sometime *Extremum jus is summa injuria*, that is to say, extreme right is extreme wrong."

⁶¹ See Guy, *The Public Career*, pp. 42–49, and Knafla, *Law and Politics*, p. 162.

⁶² See, for example, Felperin, *Shakespearean Romance*, pp. 184–85, Robert G. Hunter, *Shakespeare and the Comedy of Forgiveness* (New York: Columbia University Press, 1965), p. 176, and J. Leeds Barroll, "Shakespeare and Roman History," pp. 330–43.

contemporary civil lawyers who saw native English law as backwards and barbaric. As early as the 1530s, the humanist civil lawyer, Thomas Starkey, had criticized English common law as deficient with regard to other legal traditions. Starkey had called much of the common law “barbarouse & tyrannical.” His ambitious plan was, among other things, to induce “the hedys of our cuntry . . . to receyve the cyvyle law of the romaynys, the wych ys now the commyn law <almost> of al chrystyan natyonyes” and to abolish uniquely English customs such as primogeniture “for hyt ys again reson & the ordur of nature that the eldyest brother shold have al & the rest non at al”.⁶³ During the early seventeenth century, there was never so adamant an advocate of complete legal reform as Starkey had been during the early sixteenth century, and yet important arguments were made in the Jacobean era as well by such civil lawyers as Cowell and Hayward for reconciling English common law with the more universal civil law.⁶⁴

While Shakespeare is certainly more optimistic about native English customary law than Starkey was, *Cymbeline* contains unmistakable signs of the necessity for Roman law and civility. Posthumus’ judgment of Giacomo is integral to the process whereby Roman law becomes entrenched on British soil. After Guiderius, Giacomo is the only remaining character who has yet to be judged and to atone for his crime, and Posthumus’ judgment of him will have dramatic repercussions for the king’s earlier sentences. Approaching Posthumus, Giacomo prostrates himself, declares that he feels the pangs of conscience, and begs Posthumus to punish him by taking his life (v.v.414–16). But Posthumus spares him, saying, “The power that I have on you is to spare you, / The malice towards you to forgive you” (v.v.419–20). This is an important moment in the course of the last scene because Posthumus’ judgment seems to cause Cymbeline to reverse his earlier rulings and to accept the principle of equity. Cymbeline admires Posthumus’ judgment and chooses to imitate it, declaring to the court, “Nobly doomed! / We’ll learn our freeness of a son-in-law. / Pardon’s the word for all” (v.v.421–23). Cymbeline pardons the prisoners, and in doing so, exercises his kingly prerogative (his “freeness”) to contravene the letter of the law in the interest of justice. In this respect, he would have been seen as exercising the sovereign’s prerogative power which civil lawyers viewed as crucial to the existence of the civil-law courts. Significantly, instead of a

⁶³ Starkey, *Dialogue between Pole and Lupset*, pp. 129, 130.

⁶⁴ See Levack, *Civil Lawyers*, pp. 131–50, and G. R. Elton, *Reform and Renewal*, pp. 138 ff.

reckless or tyrannical act, Cymbeline's exercise of prerogative constitutes a "responsible" surrender to universal notions of justice.⁶⁵ Cymbeline accepts the place of Roman equity over British law, and then goes on to agree to submit to Roman authority and to pay the tribute – Britain submits to Rome as British law submits to Roman equity.

Shakespeare presents Cymbeline's exercise of prerogative in pardoning the prisoners as a departure from the tyranny which characterizes many of the king's previous decisions. This in itself constitutes a reversal of the identities of civil-law discourse and common-law discourse as they were generally understood at the time. The widespread perception that many English civil lawyers had absolutist sympathies constituted yet another threat to the common lawyers.⁶⁶ For the common lawyers, tyranny would be the ultimate result of unrestrained civil-law courts and an unfettered power of prerogative. In order to avoid such tyranny, most common lawyers were adamant that the king submit himself and his prerogative to the common law.⁶⁷ Shakespeare's play shows, however, that the common law itself could be equally tyrannical. Cymbeline's unjust and tyrannical banishments of Belarius and Posthumus and his sentencing of the Romans and Guiderius to death are all decisions which are linked to the common-law ideology. Significantly, it is only when Cymbeline exercises his prerogative that his rulings begin to conform to justice. In this respect, Shakespeare redeems the king's exercise of prerogative, presenting it as conforming to the Roman ideals of universal justice and equity.

Hence, the final scene in Shakespeare's *Cymbeline* elevates Roman legal principles to a place of prominence within Britain.⁶⁸ At the same time, native legal institutions are preserved. In the famous speech in which Cymbeline declares, "Let / A Roman and a British ensign wave / Friendly together" (v.v.480–82), symbols of Roman and British sovereignty co-exist side by side. Equally significant is that the revelation of the identity of Cymbeline's sons, a revelation which enables the British crown to be inherited according to the English custom of primogeniture, leads

⁶⁵ See J. H. Baker, *Introduction to English Legal History*, p. 50. See also Judiana Lawrence, "Natural Bonds and Artistic Coherence in the Ending of *Cymbeline*," *Shakespeare Quarterly* 35.4 (1984), 440–60; Robert Y. Turner, "Slander in *Cymbeline* and Other Jacobean Tragicomedies," *English Literary Renaissance* 13.2 (1983), 182–202; and Leah Marcus, *Puzzling Shakespeare*, pp. 135–36.

⁶⁶ Levack, *Civil Lawyers*, pp. 3–6, 86–121. In *Absolute Monarchy and the Stuart Constitution* (New Haven, CT: Yale University Press, 1996), pp. 63–90, Glenn Burgess shows that, despite the widespread perception of civilian absolutism, most seeming absolutists such as Hayward did not fit the definition of the term "absolutist" *per se*.

⁶⁷ J. H. Baker, *Introduction to English Legal History*, pp. 43–45, 50–58, and Levack, *Civil Lawyers*, pp. 27–28.

⁶⁸ See Maley, *Nation, State and Empire in English Renaissance Literature*, pp. 31–44.

directly to the king's decision to privilege equity in his judgments and to mitigate the harsh sentences which he has just given to the Roman prisoners. Almost simultaneously, then, Cymbeline both preserves the widely recognized English custom of primogeniture (which Starkey had called "again reson & the ordur of nature") and acknowledges the overall authority of Roman rule of law and equity.⁶⁹

There are a number of reasons why Shakespeare's audience would have considered Cymbeline's final endorsement of both Roman equity and British law to be a significant engagement with contemporary English legal controversies. Most obvious is that it would have been seen as gesturing towards a resolution to the ongoing tensions which I have outlined above between, on the one side, the ecclesiastical courts, the civil-law courts, and Chancery and, on the other, the common-law courts. Moreover, the play celebrates a united Britain by presenting Roman legal principles as having previously existed throughout the entire island. Finally, while recognizing the foreignness of Roman legal principles, Shakespeare nevertheless shows that such principles were necessary to the national identity as well as to the imperial identity which Cymbeline, or his contemporary counterpart James I, was cultivating. Hence, the play presents a model of empire for a future Britain based on the dual legal foundations of civil law and common law.

The play ends on a note of imperial triumph. In the last lines, the Roman soothsayer, interpreting a vision which he had earlier, declares a translation of the Roman empire to Britain: "Th' imperial Caesar, should again unite / His favor with the radiant Cymbeline / Which shines here in the west" (v.v.475-77). The play itself has shown that what is necessary to this *translatio imperii* is the transfer of Roman law as the mode of imperial conquest. Shakespeare was not alone in looking to Roman law for a possible rationale for conquest. As I noted in chapter 4, Lisa Jardine has shown that, as early as the 1570s, Sir Thomas Smith, Gabriel Harvey, and probably Edmund Spenser as well were debating the efficacy of various Roman legal strategies of conquest for use in Ireland. Both Sir Thomas Smith and Sir John Davies presented the English as the new

⁶⁹ This compromise between Roman law and English customary law is implicit in Belarius' speech on the mole which proves Guiderius' identity: Guiderius is one "Who hath upon him still that natural stamp. / It was wise nature's end in the donation / To be his evidence now" (v.v.366-69). In this overtly legalistic passage, the "natural stamp" of nature or natural law (which is linked as I have noted to Roman civil law) gives evidence of Guiderius' identity and thus leads to his restoration to the throne. Nature therefore serves to restore the male heir to the throne as well as allowing the throne to pass on to the eldest male heir as it should in English custom. Nature is responsible for the fulfillment of English custom.

Romans who would conquer and civilize Ireland, much as Rome itself had conquered and civilized the Britons.⁷⁰

A universal legal foundation was crucial to imagining such a campaign of conquest and reform. In his own tract on Ireland, much of which focuses on the reformation of Irish legal institutions, Edmund Spenser treats the example of Roman Conquest as something to which the English should aspire. Spenser repeatedly uses the example of an anciently barbarous England in order to advance his argument for the conquest and reform of Ireland.⁷¹ By recounting the strategies which various English kings and conquerors of England had successfully used in order to subdue the rebellious English populations, Spenser uses the civilizing of ancient England as an exemplary point of comparison from which to judge current strategies of conquest and reform in Ireland. The final imperial images of *Cymbeline* seem to place this play within a similar context. Shakespeare presents Roman rule as necessary to English law and civility, but what is implicit here is that Rome and Roman Conquest of Britain serve as the universal examples which the now civil realm of Britain can follow with regard to less civil nations. The coastal town of Milford Haven, which serves as the port of entry for the Roman invasion, was not only historically significant as the entry point for various conquests of England; it was also known to have been the English military base used for the conquests of Wales and Ireland – it had been, for example, the point of embarkation for Henry II's twelfth-century Irish campaign.⁷² What serves as the historical opening which Rome and others used to enter into England would therefore later serve as the opening from which England would begin its own imperialist future. In the end, *Cymbeline* preserves native custom and law as a buttress against foreign invasion but upholds Roman law and civility as the basis of this nascent imperialism. What is necessary to a sustainable model of English conquest is a legal system whose universalistic foundations can be said to be grounded not in any one people's customs but in nature itself.

⁷⁰ Jardine, "Encountering Ireland: Gabriel Harvey, Edmund Spenser, and English colonial ventures," pp. 60–75, esp. 62–64. See Canny, *The Elizabethan Conquest*, pp. 128–29.

⁷¹ Spenser, *A View of the Present State of Ireland*, ed. W. L. Renwick, pp. 67, 143. See also pp. 10–11, for Spenser's similar use of the Norman Conquest. See also Hadfield, *Shakespeare, Spenser, and the Matter of Britain*, pp. 17–19, 90–104.

⁷² Ronald Boling, "Anglo-Welsh Relations in *Cymbeline*," *Shakespeare Quarterly* 51.1 (2000), 33–69, esp. 41.

*Love's justice and the freedom of Brittany
in Lady Mary Wroth's Urania part I*

Most recent scholarship on Lady Mary Wroth has focused on the gender politics of her writings.¹ Such a focus, however, may inadvertently serve to limit and circumscribe a writer such as Wroth as an authority only when it comes to topics having to do with a narrow definition of gender. The approach which I have taken throughout this book is in part meant to resist the temptation to present romance fictions that are putatively addressed to female readers – or authored or translated by female writers – as essentially feminine texts. The dangers of such a labeling are twofold. First, it may unintentionally reinforce and reproduce in modern criticism Renaissance attempts to marginalize romances by presenting them either as dangerously feminine or simply as frivolous, unserious, and digressive works of fiction. Secondly, it may wrap women and romance into a neatly enclosed domestic space, safely shut in from the “serious” matters which exist outside of the domestic realm. In the process, it risks further marginalizing Renaissance women as capable only

¹ Kim F. Hall, “‘I rather would wish to be a black-moor’: Beauty, Race, and Rank in Lady Mary Wroth’s *Urania*,” *Women, Race, and Writing in the Early Modern Period*, eds. Margo Hendricks and Patricia Parker (New York: Routledge, 1994), pp. 178–94; Carolyne Ruth Swift, “Feminine Identity in Lady Mary Wroth’s Romance *Urania*,” *English Literary Renaissance* 14.3, (1984), 328–46; Barbara Keifer Lewalski, “Revising Genres and Claiming the Woman’s Part: Mary Wroth’s Oeuvre,” in *Writing Women in Jacobean England* (Cambridge, MA: Harvard University Press, 1993), pp. 243–307; Anne McLaren, “An Unknown Continent: Lady Mary Wroth’s Forgotten Pastoral Drama ‘Love’s Victorie,’” in *Renaissance English Women in Print: Counterbalancing the Canon*, eds. Anne M. Haselkorn and Betty S. Travitsky (Amherst: University of Massachusetts Press, 1990) pp. 276–94; Marion Wynnes-Daies, “‘For Worth, Not Weakness, Makes in Use but One’: Literary Dialogues in an English Renaissance Family,” in *This Double Voice: Gendered Writing in Early Modern England*, eds. Danielle Clarke and Elizabeth Clarke (New York: St Martins, 2000), pp. 164–85. A notable exception to this pattern in Wroth studies is Cavanagh, *Cherished Torment*. For an analysis of the public/private dichotomy in Wroth, see Paul Salzman, “The Strang[e] Constructions of Mary Wroth’s *Urania*: Arcadian Romance and the Public Realm,” in *English Renaissance Prose: History, Language, and Politics*, ed. Neil Rhodes (Tempe, AZ: Medieval & Renaissance Texts & Studies, 1997), pp. 109–25.

of reading and understanding fiction that is in turn defined as exclusively about gender.²

This last chapter considers how the issues of conquest and transnational justice considered in earlier works and the topic of gender are not necessarily mutually exclusive. As we shall see, romances are often unique in presenting narratives about marriage and domestic conflict while simultaneously engaging with and defining England's national identity as well as its relation to national, religious, and ethnic figures of otherness.³ In the pages that follow, I suggest that Wroth self-consciously presented the first part of the *Urania* as a feminine text but at the same time, her narrative can be read as interrogating the boundaries between what were viewed at the time as masculine and feminine ideals of justice.⁴ As a result, her romance constitutes a further engagement in the ongoing Renaissance discussion of what constituted an ethical foreign policy.

WOMEN AND ROMANCE FICTION

Before considering the *Urania*, it is worth examining in some detail the alliance, formed during the early modern period and continued in modern times, between femininity and the romance genre. Books directed to female readers – identified as such through titles, dedications, and subject matter – increased markedly during the final three decades of the sixteenth century.⁵ Among the works that often included dedications to women in general or to specific female patrons were prominent prose romances. These included such diverse works as George Pettie's *Petite Pallace of Pettie his Pleasure*, John Lyly's *Euphues and his England*, Robert Greene's *Mammalia*, Thomas Lodge's *A Margrite of America*, Barnabe Riche's *His Farewell to Military Profession*, and of course Sir Philip

² Jonathan Goldberg, *Desiring Women Writing: English Renaissance Examples* (Stanford: Stanford University Press, 1997), pp. 3–15, and Anne Baynes Coiro, "Writing in Service: Sexual Politics and Class Position in the Poetry of Aemilia Lanyer and Ben Jonson," *Criticism* 35 (1993), 357–76.

³ See Josephine Roberts, "Radigund Revisited: Perspectives on Woman Rulers in *Urania*," *The Renaissance Englishwoman in Print: Counterbalancing the Canon*, ed. Anne M. Haselkorn et al. (Amherst, MA: The University of Massachusetts Press, 1990), pp. 187–207; and Josephine Roberts, "Critical Introduction," in Lady Mary Wroth, *The First Part of Lady Montgomery's Urania*, ed. J. Roberts (Binghamton, NY: Medieval and Renaissance Texts and Studies, 1995), pp. xxxix–liv. For larger context, see Bernice Carroll, "Christine de Pizan and the origins of peace theory," in *Woman Writers and the Early Modern British Political Tradition* (New York: Cambridge University Press, 1998) pp. 22–23.

⁴ See Bernadette Andrea, "Pamphilia's Cabinet: Gendered Authorship and Empire in Lady Mary Wroth's *Urania*," *ELH* 68 (2001), 335–58.

⁵ See Suzanne Hull, *Chaste, Silent and Obedient: English Books for Women 1475–1640* (San Marino, CA: Huntington Library, 1982).

Sidney's *Arcadia*.⁶ In spite of such dedications, however, there is reason to question the extent to which these fictional works were narrowly intended for female readers. Recently, Helen Hackett has begun the task of problematizing what has sometimes been viewed as a simplistic relationship between women and romance. Her book, *Women and Romance in the English Renaissance*, raises a number of significant questions concerning the degree to which romances were written with real women in mind at all. In a few crowded pages, she is able to catalogue every recorded instance of a female reader of romance during the late sixteenth and early seventeenth centuries. In light of the limited evidence of women reading such fiction during the Renaissance, she goes on to make a number of valuable theoretical points about these prefaces.⁷

Hackett observes that the woman-centered prefaces to romances, whether they moralized to women, satirized them as readers, or included a sincere address to a female patron, all have a fictional status, not unlike the fictional status of the romance narratives which they precede. As she writes, "we can certainly deduce from such textual evidence . . . that these authors wished their works to be *perceived* as directed at gentlewomen."⁸ That they wanted their works to be perceived as such does not, however, mean that the intent of these authors was to address these works first and foremost to female readers. Thus it is quite possible, she notes, that an author's reasons for dedicating his/her work to such readers or to a female patron are not completely transparent, that such prefaces conceal a second unstated intent.

Hackett's observations about the fictional status of such prefatory material should have the salutary effect of causing us to re-evaluate the status of the alliance which existed during the Renaissance (and which continues today in popular contexts) between women and romance fiction. There may be something about the genre itself, and not its primary readers, which caused both writers and critics to associate the romance genre with women.⁹ One anxiety about romances seems to concern the act of reading itself, an act that could be perceived as passive and therefore

⁶ See Lucas, *Writing for Women*, pp. 8–12.

⁷ Hackett, *Women and Romance Fiction*, pp. 6–9. See also Lucas, *Writing for Women*; Hull, *Chaste, Silent and Obedient*; David Cressy, *Literacy and the Social Order: Reading and Writing in Tudor and Stuart England* (New York: Cambridge University Press, 1980); and Margaret Ferguson, "Renaissance Concepts of the 'Woman Writer'," in *Women and Literature in Britain 1500–1700*, ed. Helen Wilcox (New York: Cambridge University Press, 1996), pp. 143–68.

⁸ Hackett, *Women and Romance Fiction*, p. 10. See also pp. 6–10.

⁹ Michael McKeon, *The Origins of the English Novel, 1600–1740* (Baltimore: Johns Hopkins University Press, 1987), p. 52.

“feminine” as opposed to the active and “masculine” activity of writing. In this respect, the reading of romance fiction, an activity demanding countless hours of leisured passivity, might be perceived as emasculating males by rendering them too passive. This seems to be confirmed in some of the sixteenth-century caveats against the reading of romance fiction that warn young males to be wary of their femininely seductive qualities.¹⁰ By viewing the text itself as female, such caveats by contrast assume a male reader, once again problematizing any easy characterization of the readers of romance. Hackett goes on to explain, “It appears that some sort of connection was developing between women and romance which had less to do with actual women’s reading habits than with cultural perceptions of romance as ‘women’s reading.’”¹¹ Interestingly, during the late seventeenth century and eighteenth century, what began as a fictional connection may have created its own reality, as women had a more substantial role in the writing of both seventeenth-century fiction and particularly the eighteenth-century novel. In effect, seventeenth-century editions of sixteenth-century romances may have been read less problematically by both printers and readers as if these books had all along been directed at female readers.

The possibility that the early modern connection between women and romance fiction was essentially fictional evokes important questions about the nature of reading and its effect on the reader him or herself. Clearly, on the one hand, endless works of romance fiction could be *perceived* as having the power to render their reader dangerously passive. Perhaps the best example of this is the scene in *Cymbeline* in which the King’s daughter Innogen – famously celebrated by Tennyson as a feminine ideal – puts herself to sleep by reading for three hours. She has obviously been reading a long narrative, perhaps Ovid’s *Metamorphoses*, and Giacomo reveals that she has turned her page down at the point in the story, in which Philomela has surrendered herself to Tereus who rapes her in a violent act that is ultimately followed by him silencing her by cutting her tongue out. Innogen’s act of reading seems to have the identical effect of silencing her, rendering her passive, and making possible her figurative rape at the hands of Giacomo.¹²

On the other hand, roles taken from romance fiction could actually be empowering for a woman who was attempting to enter the traditional

¹⁰ Hackett, *Women and Romance Fiction*, pp. 16–17. ¹¹ *Ibid.*, p. 10.

¹² See *Cymbeline*, Act 2, scene 2.

masculine realm of state politics. Barbara Lewalski has shown that King James I's daughter, Elizabeth Stuart, and her husband Frederick, the Elector Palatine, were not only avid readers of romance narrative; they also used their familiarity with such narratives to model their own royal identities after romance heroines and heroes. During the Bohemian crisis, Elizabeth began actively scripting such roles to her own needs, participating in hunting parties and cultivating a reputation with her crossbow as a new Diana. And after Frederick's disastrous acceptance of the Bohemian crown and the subsequent Spanish invasion of Bohemia and the Palatinate, she presented herself in the traditional role of the persecuted romance heroine, the virtuous and constant queen married to her lost kingdom and the Protestant cause which it came to represent. Elizabeth used this role in all of her appeals for English help and in doing so, eclipsed her father as the champion of continental Protestantism.¹³

I would suggest that romances could similarly be empowering for their male readers. It is often forgotten that when writers of romance include an epistle dedicated to female readers or to a female patron, one to male readers often follows it.¹⁴ Hackett suggests that the writer's ultimate purpose in pairing such dedications was to titillate male readers and to encourage them to spy into the erotic secrets of women. For Hackett, the imagined woman reader is actually a man in drag, who like Sidney in the *Defense of Poetry*, compares himself to a mistress in order to judge the worth of erotic writings by men.¹⁵ Hackett's suggestion is certainly persuasive, but I believe there is another reason for why these works often include a second preface to men. The combination of such dual prefaces actually has the effect of distinguishing male readers from their female counterparts in a way that creates an illusion of masculine activity, an illusion that could in turn motivate masculine action. Such an illusion often involves a complex process in which the author uses a second preface to accentuate the masculinity of the male reader by undermining his own (masculine) authority. Like travel narratives, many romances

¹³ Lewalski, *Writing Women in Jacobean England* (Cambridge, MA: Harvard University Press, 1993), pp. 45–66. For a discussion of how Elizabeth's mother, Queen Anne, similarly used the masque form in order to manipulate international politics, see J. Leeds Barroll, *Anna of Denmark, Queen of England, A Cultural Biography* (Philadelphia: University of Pennsylvania Press, 2001), pp. 74–117.

¹⁴ See, for example, Barnabe Riche, *His Farewell to Military Profession*, pp. 123–34; Robert Greene, *Penelopes Web*, in Alexander B. Grosart (ed.), *The Life and Complete Works in Prose and Verse of Robert Greene*, 12 vols. (London and Aylesbury: Huth Library, 1881–3) vol. v, pp. 144–45; and John Lyly, *Euphues and His England*, in R. Warwick Bond (ed.), *The Complete Works of John Lyly*, 3 vols. (Oxford: Clarendon Press, 1902), vol. 11, pp. 8–12.

¹⁵ Hackett, *Women and Romance Fiction*, pp. 11–12.

seem to depend on the author's special access to foreign lands, access that the majority of both his male and female readers would not have shared. In *A Margrite of America*, for example, Thomas Lodge explains in his dedication to Lady Russell that he wrote the fiction in "those straits christned by Magelan; in which place to the southward many wonderous Isles, many strange fishes, many monstrous Patagones withdrew my senses."¹⁶ Here, Lodge speaks as the heroic explorer whose masculinity places him in the privileged position of one who, unlike Russell herself, could witness the dangerous wonders of the Straits of Magellan. The truth is that the majority of male readers – even powerful male courtiers, in spite of their privileged position – found themselves in precisely the same "passive" position as a female reader. Like Russell, they read the book from the perspective of an onlooker who was safe from the "causes of feare," the "mightie discouragements," and the "many crosses" that Lodge supposedly faced during the voyage.

But in the second epistle "To the Gentlemen Readers," Lodge undermines this uncomfortable truth by contradicting his first epistle, rendering the work safe for such male readers by portraying his own authorial stance as actually passive and "feminine." In the second epistle, he presents the narrative not as the product of a dangerous voyage but instead as a translation of a Spanish book that he found by "chance in the librarie of the Iesuits in *Sanctum*." And in place of the dangers that he claims to have faced in the epistle to Russell, he goes on jocularly to complain of nothing more serious than an upset stomach brought on by seasickness.¹⁷ In this way, Lodge is able to carve out an empowering place for male readers in his romance by exposing his earlier (now fraudulent) claims of heroism. He effectively minimizes the difference between his own heroic "activity" and their feminine "passivity" by placing himself in the "feminine" role of translator.¹⁸

Similarly, Barnabe Riche includes dual dedications in *His Farewell to Military Profession*. The combination of his two dedications, one to gentlewomen and the other to soldiers, reveals a contradictory authorial stance whereby Riche is willing to revel in and celebrate the essential frivolity of the genre while simultaneously agreeing with those critical voices who condemned the genre for its promotion of moral laxity.

¹⁶ Thomas Lodge, *A Margrite of America*, in *The Complete Works of Thomas Lodge*, 3 vols. (New York: Russell & Russell, Inc., 1963), vol. 111, p. 3.

¹⁷ *Ibid.*, p. 4.

¹⁸ Krontiris, *Oppositional Voices*, p. 20. For a dissenting view on translation as a uniquely feminine genre, see Goldberg, *Desiring Women Writing*, pp. 75–90.

Riche's first dedicatory epistle, "To the Right Courteous Gentlewomen, both of England and Ireland," frames the work biographically as the product of Riche's transformation from a life dedicated to Mars and soldierly hardship to one dedicated to Venus and diversionary pleasure. Humbly presenting himself as not innately suited for pleasurable pursuits, he nevertheless compares his romance to other "feminine" activities such as dancing and singing.¹⁹

There is definite sarcasm in his request to be admitted to the parish of woman, but the full extent of the irony is not apparent until the second dedicatory epistle, "To the Noble Soldiers both of England and Ireland." Here Riche takes a high moral tone which contrasts with his earlier newfound dedication to frivolity. He complains about "the abuses of the age" "such that follies are better esteemed than matters of greater weight."²⁰ He goes on to imply that his own romance was one such folly – an unworthy occupation, comparable to popular feminized dress that had emasculated the men of his time. "How many gentlemen shall you see at this present date that, I dare undertake, in the wearing of their apparel, in the setting of their ruffs and the frizzling of their hair, are more newfangled and foolish than any courtesan in Venice," he remarks, implicitly condemning his own work and undermining the first dedication with an expression of opprobrium for feminized masculinity.²¹ But this expression of self-abasement precedes a more sincere nationalistic passage on how God has blessed England with good fortune in the face of its foreign and domestic enemies, along with a plaintive request that "God send all soldiers that hath honestly served their country better consideration than of long time they have had." In doing so, Riche makes clear that, while his own fighting career seems to have been prematurely curtailed and replaced by feminized story-telling, he wishes a better future for his former comrades-in-arm. In the final paragraph, he addresses his male readers as "noble soldiers and gentlemen" and invites them to assume the role of active masculinity that he himself has forfeited.²² Far from becoming feminized, Riche's male reader will with any luck escape the effeminate role that Riche himself has assumed and will go on to perform real acts of heroism.

Finally, the dual epistles to Henry Roberts' *Pheander, The Mayden Knight* (1596) carry out an even more impressive balancing act. Rather than contrasting his general male readers with their female counterparts,

¹⁹ Riche, *His Farewell to Military Profession*, pp. 123–26.

²⁰ *Ibid.*, p. 127.

²¹ *Ibid.*, p. 128.

²² *Ibid.*, p. 134.

Roberts contrasts them with the heroic offspring of Sir Humphrey Gilbert, the explorer. On the one hand, Roberts dedicates the work to Rawleigh Gilbert, son of Sir Humphrey Gilbert, and compares the nobility of his hero Pheander to that of the younger Gilbert who was himself a landowner in the New World. In this first epistle, he stresses the superior quality of his hero, Pheander, noting in him “the famous actions of a King, a Scholler, & a Souldier, wherin you shall see the greatnes of Maiestie.” Similarly, the young Gilbert is singled out as “not only a Souldier professed, but a louer of discipline, and a fauourer of religion.”²³ Both figures are clearly heroic and exceptional beyond the common lot of mankind, and Roberts who speaks of his own travels is implicitly allied with them.

On the other hand, in his address to the general reader, Roberts assumes a quite different, almost egalitarian stance. He addresses the book “To my beloued Country-men, the curteous Readers” and goes on to implore his countrymen to welcome Pheander as they would a humble traveler to Britain:

Gentiles, my hope is, your accustomed fauour to all strangers shall not be denied, being a Cauallere of Fame: how plainly soeuer you see him attired, yet accept him, and as a Traueller coming of good will, bid him welcome, and with fauour peruse his honours in Armes gained, which I hope may in some sorte delight you if happily it prove as I desire, hee hath his wish.²⁴

As the above sentence illustrates, this epistle imagines Pheander being introduced to Roberts’ countrymen as an equal or even as an inferior – he is a man of plain attire who seeks acceptance from the “Gentiles” of Britain. Having been introduced to Pheander in this way, Roberts’ countrymen are figuratively brought into the narrative realm of action in which Pheander himself exists. The overall effect is to elevate Roberts, countrymen to the heroic nobility of the mythical Pheander. In this way, Roberts imbues his general male readers with the illusion of masculine activity, an important element if the romance was to address the traditional masculine issues of war and justice.

What I have outlined here should provide a fruitful context within which to consider Lady Mary Wroth’s *Urania*, the only English romance written by a woman during this period. In one respect, Wroth’s romance clearly provides a unique vision of feminine justice, responsible for protecting the interests of women coerced into marriage as well as female

²³ Henry Roberts, *Pheander*, sig. A3^v. ²⁴ *Ibid.*, sig. A4.

rulers under siege from unlawful conquerors. In another respect, I would suggest that the purpose of Wroth's romance was not essentially different from the purpose of those earlier romances written by Lodge, Riche, and Roberts. Although her book lacked any prefatory epistle, her authorial stance is in fact comparable since like them, she can be understood as pushing for masculine initiative in her reader from the "feminine" standpoint of the romance author. In the figure of Amphilanthus, Wroth was constructing a notion of imperial justice, which was ultimately intended as a more muscular version of King James' timid foreign policy. In terms of the hostilities that were engulfing Europe from 1618 to 1621, the period in which most of the *Urania* was written, its author was encouraging its English readers to support a more aggressive foreign policy.²⁵

NATURAL LAW AND WROTH'S LAWS OF LOVE

In comparison with previous early modern romances, Lady Mary Wroth's *Urania* dramatically expands the notion of universal political justice so that it covers a combined field of narrative events that occur within the realm of courtship and love as well as within the international and political realms.²⁶ The hero of the romance, Amphilanthus, has a similar dual role; he upholds justice both within the domestic sphere – the "feminine" realm of the household – and the international realm. With the formation of Amphilanthus' *imperium*, a standard of universal justice is put forth which was intended to influence King James' foreign policy. The universal justice that Amphilanthus and his allies uphold throughout Europe is tied to his early title as "King of the Romans" (45).²⁷ By giving her hero this title toward the beginning of the narrative, Wroth posits a version of justice grounded in natural-law discourse, which as I have noted throughout this book had its doctrinal origins in ancient Roman legal traditions as well as in the Catholic legal tradition which grew out of those Roman sources. At the same time, Wroth's interpretation of natural law marks her as an innovator.

²⁵ See Josephine Roberts, "Introduction," *The Poems of Lady Mary Wroth* (Baton Rouge, LA: Louisiana State University Press, 1983), p. 31.

²⁶ See Salzman, "The Strang[e] Constructions of Mary Wroth's *Urania*," pp. 109–25.

²⁷ Parenthetical citations are from *The First Part of the Countess of Montgomery's Urania*, ed. Josephine Roberts.

Wroth's unconventional interpretation of universal justice should be viewed within the context of dramatic changes in the entire theory of natural law which occurred during the first half of the seventeenth century as a result of Protestant influences. Protestant thinkers generally rejected the notion that the universe was rationally ordered and that the laws of nature could be perceived by human reason.²⁸ The most famous Protestant writers on natural law of the early seventeenth century, the Dutch natural-law theorist, Hugo Grotius, and the English common lawyer, John Selden, were skeptical of significant aspects of the traditional doctrine of natural law, especially its scholastic investment in rational order.²⁹

Whereas prior to this period, most discussions of natural law concerned those things that were rationally prohibited by the individual conscience, the early work of Grotius and Selden identified the fundamental laws of nature as instinctual and intuitive. Instead of obligating the individual to refrain from certain "unnatural" vices, natural laws were imagined as *rights* that entitled the individual to certain fundamental behaviors. In an unpublished essay later entitled *De iure praedae commentarius*, Grotius begins by positing two such fundamental natural laws which an individual's survival was premised on: "first, that *It shall be permissible to defend [one's own] life and to shun that which threatens to prove injurious*; secondly, that *It shall be permissible to acquire for oneself, and to retain, those things which are useful for life.*"³⁰ The older obligatory forms of natural law evolved only after one's own survival was secured. In other words, one could begin to care about the preservation of another individual after securing preservation of one's own self.

Grotius was in effect theorizing the conditions that made possible the establishment of the obligatory laws that allowed civil society to function. Although the full implications of Grotius' new understanding of natural law would only become apparent with the next generation of political philosophers, Grotius had already begun imagining a state of nature in proto-Hobbesian terms.³¹ The objection to the existence of such a pure state of nature was that, since no one had actually lived outside of human

²⁸ Eusden, *Puritans, Lawyers, and Politics*, pp. 131–41.

²⁹ Richard Tuck, *Natural Rights Theories*, pp. 58–100; Tuck, *Philosophy and Government 1572–1651* (New York: Cambridge University Press, 1993), pp. 154–221, esp. 172; Tuck, *Rights of War and Peace*, pp. 78–140.

³⁰ Hugo Grotius, *De iure praedae commentarius*, trans. Gwladys L. Williams (New York: Oceana Publications, Inc., 1964), p. 10. See Tuck, *Philosophy and Government*, pp. 172–74; *Rights of War and Peace*, pp. 84–87.

³¹ See *ibid.*, pp. 8–9, 84–5.

society, no one could ever be sure that it had existed. According to Grotius, however, such a state did in fact exist within the present international realm. If one wanted to know how an individual behaved in the natural state, one only had to look at how an individual state behaved in relation to other states.³² It is this proto-Hobbesian aspect of Grotius that is relevant to Wroth's romance. Although some of Grotius' early unpublished manuscripts were circulated among English acquaintances such as John Selden, *De iure praedae commentarius* was inaccessible to English readers, including Wroth.³³ Nevertheless, the *Urania* shares with Grotius' early work an uncannily similar set of assumptions. To begin with, the international context in which Wroth's narrative is set conforms precisely to Grotius' hypothetical conception of the individual actor as a miniature state. Each royal figure in Wroth's narrative acts as the equivalent of an atomized polity whose first impulse is to maintain dominion over what is his or her own territory. The case of Pamphilia, the romance's main heroine, is perhaps the best example of this because Pamphilia actually shares the same name with her kingdom.³⁴ Other royal figures are similar since in almost every instance, there is essentially no perceptible difference between the interest of the sovereign and his or her kingdom.

Wroth also shares Grotius' endorsement of the doctrine of divine voluntarism as well as of the notion that the natural order is intuitive rather than rational.³⁵ In contrast to the scholastic understanding of natural law popular among Catholics, both Grotius and Selden thought the obligatory laws of nature were the equivalent of the volition of a divine power and as such could be patently irrational. Since the law was divorced from human reason, it needed to be enforced by the threat of punishment. In the later record of Selden's conversations entitled *Table Talk*, Selden concludes that universal prohibitions could come only "from a higher Power, [for] nothing else can bind. I cannot bind my self, for I may untye my self again; nor an equal cannot bind me, for we may untie one another. It must be a superiour Power, even God Almighty."³⁶ Similarly, Grotius began the *De iure praedae commentarius* with the statement, "What God has shown to be His Will, that is law."³⁷

³² Grotius, *De iure praedae*, p. 18. ³³ Tuck, *Philosophy and Government*, pp. 209–10.

³⁴ See Cavanagh, *Cherished Torment*, pp. 21–30.

³⁵ Richard Tuck, *Natural Rights Theories*, pp. 59, 92–5.

³⁶ John Selden, *Table-Talk*, ed. Edward Arber (Westminster: A. Constable and Co., 1895), p. 66.

³⁷ Grotius, *De iure praedae*, p. 8.

Elsewhere in the same work, Grotius posits love as the first principle of God's natural order: "From this fact the old poets and philosophers have rightly deduced that love, whose primary force and action was directed to self interest, is the first principle of the whole natural order."³⁸ For Grotius, love constitutes both the primordial principle of individual self-preservation and an acquisitive instinct that could lead the individual outside of the self in order to pursue his or her own happiness. Like Selden and Grotius, Wroth's notion of natural law is irrational and voluntarist. Throughout the *Urania*, the laws of nature derive from the tyrannical and irrational government of Love. Wroth characterizes it as that "Uncertain Tyrant Love, that never brings thy Favourits to the topp of affection, but turnes againe to a new choice" (124). Throughout her romance, Wroth repeatedly figures Love as a cruel tyrant and portrays lovers as slaves to his rule. In the process, Wroth constructs a notion of universal order around instinct and intuition rather than rational order.

Wroth's notion of a government of love also owes something to the largely imaginary tradition of medieval justice which had regulated affairs of the heart. This tradition was recorded and explicated by Andreas Capellanus in his famous *Tractatus amoris et de amoris remedio*. Literary historians have primarily explored the importance of Capellanus' work within the tradition of courtly love as it expressed itself in medieval and Renaissance poetry. Unfortunately, this has obscured its importance within the history of law.³⁹ Recently, legal historian Peter Goodrich has addressed this omission. In a book on legal traditions that have been marginalized by the dominant traditions of English and European law, Goodrich illustrates how an elaborate legal system based on rules of love, which he categorizes as "feminine justice," has been systematically erased from legal history. Goodrich recalls that actual courts of love, intended to resolve disputes between lovers, were formally established by Charles VI of France in 1400.⁴⁰ He goes on to show that the ideal of a court system based on rules of love had tremendous purchase within the history of courtship throughout the rest of Europe.⁴¹

³⁸ Grotius, *De iure praedae*, p. 9.

³⁹ Peter Goodrich, *Law in the Courts of Love*, p. 35. For examples of legal historians who have ignored this legal tradition, see James Brundage, *Law, Sex and Christian Society in Medieval Europe* (Chicago: University of Chicago Press, 1987), p. 309, and Henry Ansgar Kelly, *Love and Marriage in the Age of Chaucer* (Ithaca, NY: Cornell University Press, 1975).

⁴⁰ Goodrich, *Law in the Courts of Love*, p. 1.

⁴¹ *Ibid.*, pp. 35–37. For a discussion of how the tradition of courtly love overlapped with the tradition of chivalry, see Maurice Keen, *Nobles, Knights, and Men-at-Arms in the Middle Ages* (London: Hambleton Press, 1996), pp. 63–82.

I would suggest that Wroth's project of refiguring rules of love as natural is based on this medieval conception of love that was opposed to marriage and held that extra-marital relations embodied constancy.⁴² As Capellanus explained their function within the medieval courts of love, the laws of love were a species of natural law. Within Capellanus' *Tractatus*, these laws are viewed as replacing more traditional conceptions of natural law, and in this respect, they often conflicted with patriarchal interpretations of natural law.⁴³ One of the most important of Capellanus' ideas was that the rules of love were antithetical to the patriarchal rules of marriage: "We declare and we hold as firmly established that love cannot exert its powers between two people who are married to each other. For lovers give each other everything freely, under no compulsion of necessity, but married people are in duty bound to give in to each other's desires and deny themselves to each other in nothing."⁴⁴ Like the ecclesiastical laws, the laws of love were intended to govern the realms of sexuality and the body. At the same time, they offered a significant contrast to ecclesiastical laws without being a simple inversion of such laws. The eternal life that was the focus of ecclesiastical jurisdiction is replaced in the courts of love by the temporality of carnal and extra-marital love relations. Whereas ecclesiastical law encouraged the sublimation of carnal desire to an other-worldly end, the laws of love acknowledged the worldly and bodily aspects of love. Ultimately, the purpose of the *regulae amoris* was to do justice to unacknowledged spheres of intimacy, to enforce justice within personal relationships, and to elevate relationships to the level of seriousness with which other legal matters were treated.⁴⁵

Throughout the *Urania*, female figures and rulers are often trapped within oppressive marriages and then rescued from them by knights who are figured as upholding such laws of love or intimacy. The first and perhaps most notable episode in which Wroth opposes love and marriage occurs around the figure of Limena. Early in the first book of the romance, Perissus recounts to Urania the story of him and his love's misfortunes. The father of Limena, Perissus' love, chooses to marry her to

⁴² For related work on Wroth's similarly tolerant attitude towards bastardy, see Mary Ellen Lamb, "The Biopolitics of Romance in Mary Wroth's *The Countess of Montgomery's Urania*," *English Literary Renaissance* 31 (2001), 107–30, esp. 121–25.

⁴³ Goodrich, *Law in the Courts of Love*, pp. 52–53, 65–70.

⁴⁴ Andreas Capellanus, *The Art of Courtly Love* [*De arte honeste amandi*, Also titled *Tractatus amoris et de amoris remedio*], ed. and trans. John Jay Parry (New York: Norton & Company, 1969), pp. 106–07.

⁴⁵ Goodrich, *Law in the Courts of Love*, pp. 50, 52.

“a great Lord in the Country” against her wishes (5). Her new husband, Philargus, soon becomes jealous of her love for Perissus and threatens to punish her by killing her. In the end, instead of killing her, he abuses her “with daily whippings, and such other tortures, as pinching with irons, and many more so terrible” (88).

At the center of this episode is a conflict between two ethical regimes, which we can characterize as the laws of love and the laws of marriage. When the jealous husband bids Limena to summon Perissus so that he may exact his revenge on him, she refuses to commit the crime of treason against her lover. Expressing her refusal in politico-legal terms, Limena declares, “nor will I blott my fathers house with Treason, Treason? Nay, the worst of Treasons, to be a Traytor to my friend” (13). In English law, the crimes committed by a wife in killing her husband or committed by a servant in murdering his lord were referred to as acts of petit treason, called thusly because such crimes were analogous to regicide.⁴⁶ In this passage, however, the crime of treason is defined as such within love’s regime, not within the regime of marriage. Thus, while Philargus upholds the law of marriage (his ritualistic punishment of Limena, while excessive and cruel, is meant to uphold this system of rules), Limena upholds the laws of love and defines the murder of her lover as treason with regard to such laws.

Ultimately, Wroth draws a compromise between the laws of love and those of marriage. Initially, Parselius defeats Philargus and saves Limena, who is immediately reunited with Perissus. But at the close of the episode, a dying Philargus makes a last request to Perissus and Limena, that they agree to marry each other after he is dead (86). With this ending, Wroth begins a pattern which runs throughout the *Urania*, a pattern whereby she fosters compromises between traditional patriarchal notions of justice and her own laws of love which embrace certain vices traditionally deemed unnatural.

This pattern culminates at the beginning of the fourth book of the *Urania* with the “Tomb of Love” episode. Here, Wroth celebrates a compromise between the natural laws which govern marriage and those which govern love relations. The “Tomb of Love” episode endorses the prohibitions against incest according to traditional interpretations of natural law, at the same time that it endorses incestuous love as an

⁴⁶ See entry for “treason” in *Black’s Law Dictionary*, 4th edn. (St. Paul, Minn.: West Publishing Co., 1968), p. 1672. See also J. G. Bellamy, *The Law of Treason in England in the Later Middle Ages* (London: Cambridge University Press, 1970), pp. 225–31.

exemplar for all other lovers to follow. The episode begins when Parselius and his new wife Dalinea, Queen of Achaia, return to Achaia from their travels. The narrator immediately recalls that the marriage of Parselius and Dalinea began as a love relationship (518). At the current time, they are still “both thus equally bent to love” (518). After their arrival, Parselius and Dalinea are led by “an ancient fine woman” into a “large, and spacious Hall” with an altar upon which rests a book (518, 519). The religious connotations are unmistakable – there are benches in the hall, an altar, a sacred book, and candles. Almost immediately, “an ancient gravefull old man”, a kind of priest, appears and tells the story of the Queen’s great uncle, a figure named Distantes, who was deeply in love with a married lady (519). Like other accounts of love in this romance, this one fits a pattern whereby love is preferred over marriage:

[Distantes] had loved her before her marryage, she had likewise deerely loved him, and gave so lively proofes of it, as he was made possessor of what was most desired by him, and the other [her husband] only made a colour for their loves, losing what was by marriage his due, but the others by the right of love, so as he was the right Husband, the other the servant that had but by stealth, Distantes possessing freely. (519–20)

Here as elsewhere, Wroth privileges love over marriage because it is possessed “freely” instead of under duress. In addition, we see that love confers its own “right[s]” on lovers which are in certain respects more legitimate than those of marriage.

Distantes impregnates both his wife and his lover, the first having a daughter and the second a son, both of whom are unaware that they are half-siblings. The two children fall in love, concealing their affections from their parents. At this point, Distantes arranges a marriage for his daughter, who is unwilling to marry anyone but her half-brother. At the same time, Distantes’ lover, who is the mother of his illegitimate son, begins to be suspicious about her son’s affections for his half-sister. When the young lovers confess their love to her and implore her to enable them to fulfill their desire for each other, the boy’s mother replies, “you perfectest and best, though most unfortunate Lovers, I am the wretch that hath undone you and my selfe; your love’s unlawfull, I am the shamefull cause thereof” (524). She goes on to bid them to “turne your affections now to chast and just desires, for you are (ah that I must say so) Brother and Sister, children to one man” (524). The mother’s declaration that “your love’s unlawfull” is an indication of this episode’s engagement with

natural-law discourse. Whereas relationships between first cousins only partially induce the threat of incest, Wroth places sibling incest unambiguously beyond the pale of nature.⁴⁷

Josephine Roberts notes that Wroth probably borrowed this brother-sister incest plot from contemporary Cavalier dramas. However, against the more typical motif whereby, after discovering their origins, incestuous siblings go their separate ways in order to find more appropriate partners, Wroth's two lovers maintain their chaste union, dying in each other's arms in the forest locale where later the old man and woman establish a monument commemorating their love.⁴⁸ Their death is suffused with religious connotations: death leaves "their bodies cleare reliques of spotlesse truth, and cross'd affections malice" (525). Their lives and deaths involve the poetic justice with which they loved: "as they had justly at once begun their loves, they justly at one instant died a little before meeting" (525). And later, the old man describes Distantes' discovery of their bodies as involving supernatural forces: "The bodies by divine providence kept safe, the woefull Prince, Father to them, by destiny brought to them" (525). In the end, Distantes establishes the Tomb of Love to commemorate their love, and here the allusion to the Catholic worship of saints is reminiscent of Donne's poetry. Showing Parselius and Dalinea the remains of the two lovers, the old man opened "that place which seem'd like an Altar, wherein lay the two Lovers adorn'd as they dyed . . . The candles [the old man] then lighted, telling them that hee and his were ordain'd to doe that office, while any of them remained alive" (526). The religious symbolism confers divine legitimacy on this incestuous union such that this supposedly illicit relationship begins to exemplify and define licit love relations.

This episode illustrates the peculiar way in which Wroth wants to retain aspects of traditional natural-law discourse while at the same time lending legitimacy to love as a governing force. Although not completely capable of superseding natural laws such as the prohibition against incest, love has its own force of law. Parselius and Dalinea see the Tomb not as a warning against the unnatural sin of incest but as evidence that the power of love is all consuming. Wroth's last observation is that "Parselius and his Queene were made happy with

⁴⁷ The affair between Pamphilia and Amphilanthus is also to some degree incestuous since they are first cousins. See Lois E. Bueler, "The Structural Uses of Incest," *Renaissance Drama* 15 (1984), pp. 115-45, esp. 117-18.

⁴⁸ Josephine Roberts, "Critical Introduction," p. lxxvii.

the rarest accident of love, and the richest Tombe Love in the world had, they return'd with all content, honouring above all other places the Tombe of Love, returning soone after to their settled Court" (526). Nowhere does Wroth mention the prohibition against incest as part of the lesson of the Tomb. And in fact, if there is a lesson within this episode, it is that love prevails in spite of the ingrained and incontrovertible prohibitions against incest and does not compromise itself in the face of such prohibitions. The two lovers would rather die than surrender to the overwhelming force of natural law. In this respect, love's edicts become at least as important as traditional natural law.⁴⁹

Throughout the rest of Wroth's romance, Amphilanthus and the good princes allied with him are responsible for upholding the principles of Wroth's modified notion of natural law, the most important of which is Capellanus' axiom that love must be given and received freely, that it cannot be coerced. The inconstant lover of Pamphilia, Amphilanthus' initial title is King of Naples, but early on in the narrative, he is crowned King of Rome after defeating the Duke of Saxony (45). Later, he is elected Holy Roman Emperor and still later, he is referred to as "Master of the greatest part of the Westerne World" (568). Throughout the narrative, he is involved in episodes in which ethical conquest of a usurper achieves justice for a figure who has been dispossessed of his or her kingdom or liberty. The best example is the ongoing plot in which the good princes allied with Amphilanthus unite in order to conquer the various usurped kingdoms of Albania and return them to their rightful king, Steriamus (346–60). There are also numerous episodes involving the usurpations of Romania, Macedon, Hungaria, and Bohemia. Finally, there is the King of Celicia's unjust attempt to conquer both Queen Pamphilia and her kingdom, also named Pamphilia, as well as Montaltanus' unjust attempt to force the Princess of Lycia to marry him by conquering the domain of a friendly noble.⁵⁰ All of these episodes are based on a conflation of domestic and political conflict, normally involving an attempt, sometimes successful, to force an unwilling princess or prince into marriage. Ultimately, except for the usurpation of Hungaria, each usurpation is reversed through just conquest by Amphilanthus or the princes united with him.

⁴⁹ For a related reading of Wroth involving notions of race and female beauty, see Kim F. Hall, "I rather would wish to be a black-moor," pp. 178–94.

⁵⁰ See the *Urania*, pp. 33, 51–58; pp. 24, 157–60; pp. 78–80; pp. 268–70; pp. 505, 566–71; pp. 585–87.

CONTEMPORARY CONTEXTS: THE THIRTY
YEARS WAR

The *Urania* can also be read as intervening in contemporary crises in which actual unlawful usurpations had occurred on the international stage. Wroth completed the first part of the *Urania* by July 13, 1621, the date on which the work was entered into the Stationers' Register.⁵¹ In the years and months leading up to this date, battle lines were being drawn throughout Europe over the usurpation of the crown of Bohemia by Frederick, the Elector Palatine. Let me briefly set out the events of this international crisis which impacted upon the English court, and then we will consider how this crisis figures in the pages of Wroth's romance.⁵²

In 1613, Frederick V, the Elector Palatine, married James I's daughter, Elizabeth. Almost immediately, the elector and the new queen of the Palatinate became the focus of Protestant aspirations throughout Europe, especially because of the alliance which Frederick was seen to have made with the powerful king of Protestant England and Scotland. King James probably saw the marriage very differently: he sought to balance his crown strategically between the opposing forces of Continental Protestantism and Spanish Catholicism, and in keeping with this strategy, authorized negotiations for a marriage between his son, Charles, and Maria, the daughter of King Philip III of Spain. Unfortunately, James had little control over how Frederick and Elizabeth saw their own role within the broader European Protestant cause.⁵³ In May 1618, the Protestant nobles of Bohemia began an uprising against Ferdinand II, the Catholic King of Bohemia, stripping him of his crown. In 1619, they offered the Bohemian crown to Frederick – an offer which Frederick accepted later that year.

After some initial hesitation, James opposed Frederick's decision to accept the crown of Bohemia. His opposition was due in some measure to a scarcity of funds within British government coffers as well as to his famous reluctance to convene Parliament in order to increase the amount

⁵¹ For discussion of the controversy concerning the possible suppression of the *Urania*, see Rosalind Smith, "Lady Mary Wroth's *Pamphilia to Amphilanthus*: The Politics of Withdrawal," *ELR* 30 (2000), 408–31, esp. 408–17.

⁵² See Geoffrey Parker (ed.), *The Thirty Years War*, 2nd edn. (New York: Routledge, 1987); Hubert G. R. Reade, *Sidelights on The Thirty Years War*, 3 vols. (London: Kegan, Paul, Trench, Trubner, and Co., 1924); D. H. Pennington, *Europe in the Seventeenth Century* (New York: Longman, 1989), chs. 11, 13; and Anthony F. Upton, *Europe 1600–1789* (New York: Oxford University Press, 2001), part 1.

⁵³ See Lewalski, *Writing Women in Jacobean England*, pp. 45–67.

of the subsidy.⁵⁴ There were, however, other reasons for James' reluctance to support the cause of his daughter and son-in-law. Unlike many of his advisers and the majority of Parliament members, James was unwilling to go to war for religion.⁵⁵ The king had already declined proposals that he assume the head of a Protestant alliance earlier in his reign, and while many of his advisers repeatedly raised the specter of a united Catholic force, James remained skeptical that any formal Catholic league still existed.⁵⁶

James' main concern throughout the Bohemian crisis and the invasion of the Palatinate which followed was to avoid involving Britain in a broader war throughout the whole of Europe.⁵⁷ Instead, he favored assuming a mediating role between the two warring sides of the Bohemian conflict or committing English support to limited engagements.⁵⁸ When, late in 1620, defeat of the Protestant forces of Bohemia seemed imminent and Ambrogio di Filippo Spinola, the commander of the Spanish forces, had begun invading the Palatinate, James finally approved a declaration in support of his daughter and son-in-law's legitimate claim to the Palatine throne.⁵⁹ But his hesitancy in the face of the Spanish threat amounted to a pattern. Venice and Savoy were also threatened by Spanish forces and their Milanese allies. Both appealed for assistance from Britain, but James was equally unwilling to honor his commitments to his allies among the Italian states.⁶⁰ In 1621, after he had committed tepid support

⁵⁴ See Allan Hinds, "Preface," *Calendar of State Papers and Manuscripts relating to English Affairs, Venetian* [hereafter *CSPV*] 1619–21 (London: Hereford Times Co., 1910), vol. 16, pp. xxxix–xliii. See also vol. 16, pp. 152–54.

⁵⁵ See *CSPV*, vol. 16, pp. 91–94. See also "Francis Cottington to Sir Robert Naunton, Madrid September 17, 1618," in Samuel Rawson Gardiner (ed.), *Letters and Other Documents Illustrating the Relations between England and Germany at the Commencement of the Thirty Years War* (London: Camden Society, 1855), pp. 9–12, esp. 10–11. For context, see Reade, *Sidelights on The Thirty Years War*, vol. 1, pp. 178–94, 352–69, and Simon Adams, "Foreign Policy and the Parliaments of 1621 and 1624," in *Faction and Parliament: Essays on Early Stuart History*, ed. Kevin Sharpe (Oxford: Clarendon Press, 1978), pp. 139–72, esp. 166.

⁵⁶ See Simon Adams, "Spain or the Netherlands? The Dilemmas of Early Stuart Foreign Policy," in *Before the English Civil War: Essays on Early Stuart Politics and Government*, ed. Howard Tomlinson (New York: St. Martin's Press, 1983), pp. 79–102, esp. 87–88, 94, and Geoffrey Parker (ed.), *The Thirty Years War*, p. 29.

⁵⁷ For James' pattern of equivocation and delay, see *CSPV*, vol. 16, pp. 27–28, 34–35, 70–71, 76–77, 371–73, 393.

⁵⁸ Geoffrey Parker (ed.), *The Thirty Years War*, p. 32.

⁵⁹ *CSPV*, vol. 16, pp. 428–32, 495–97. See also Allen B. Hinds, "Preface," *CSPV*, vol. 16, pp. x–xvi.

⁶⁰ See Allan Hinds, "Preface," *CSPV*, 1615–17 (London: Mackie and Co., 1908), vol. 14, pp. xix–xxiv. For a history of Savoy's general importance and involvement in the Thirty Years War, see Toby Osborne, *Dynasty and Diplomacy in the Court of Savoy, Political Culture and the Thirty Years' War* (New York: Cambridge University Press, 2002). For the history of relations between Spain and Venice during this period, see Kenneth M. Setton, *Venice, Austria, and the Turks in the Seventeenth*

to Frederick's defense of the Palatinate, James abandoned his other Protestant allies on the continent and dismissed Parliament when it passed a petition requesting that James declare war on Spain.⁶¹

Despite abandoning his continental allies in these instances, James had reason to believe that he had acted justly throughout much of the affair. To begin with, he had always been quite clear in condemning any usurpation of legitimate sovereignty.⁶² No matter how much he might have personally delighted in his son-in-law's increase in fortune and power, James still viewed the Bohemian uprising as well as Frederick's assumption of the Bohemian crown as constituting an illegal usurpation of a sovereign king.⁶³ In essence, he supported King Ferdinand's grievance that he, as the legitimate king of Bohemia, had been unjustly usurped by Frederick.⁶⁴ On hearing the news that his son-in-law had accepted the crown of Bohemia, James told his ministers that he "would not embarke [his subjects] in an unjust and needlesse quarrell."⁶⁵ Employing a notion of justice which Wroth would have recognized as her own, James refused to countenance English involvement in an unjust usurpation of a legitimate king.⁶⁶

As the crisis developed, however, he became angry and astonished that Spain seemed determined not to follow his own ethical code of respecting the rights of legitimate sovereignty. Throughout 1619, there was every indication that Spinola would invade the Palatinate, but James refused to believe that the Spanish would break their word to him. When they did

Century (Philadelphia: American Philosophical Society, 1991), chs. 1–3; Allan B. Hinds, "Preface," *CSPV*, vol. 14, pp. xiii–xxx; and Allan B. Hinds, "Preface," *CSPV*, vol. 16, pp. xxv–xxvii. For indications of the English–Venice alliance against Spain, see *CSPV*, 1613–15, ed. Allen B. Hinds (London: Mackie and Co., 1907), vol. 13, pp. 214–15, 540–41, 556, 568, 572; *CSPV*, vol. 16, pp. 379, 407–08.

⁶¹ Conrad Russell, "The Foreign Policy Debate in The House of Commons in 1621," *The Historical Journal* 20.2 (1977), 289–309, esp. 296; and Adams, "Foreign Policy and the Parliaments of 1621 and 1624," pp. 163–64.

⁶² See *The True Law of Free Monarchies*, pp. 53–70, esp. 61.

⁶³ *CSPV*, vol. 16, pp. 13, 47–48, 62, 204–05. At one point, the Venetian ambassador records the king's Secretary of State clearly informing the ambassador of the Palatinate that Frederick was wrong to have accepted the crown: "The King of Bohemia had decided to accept the crown without [James'] consent; the princes of the [Protestant] union were not yet attacked; the new king in possession of the crown of Bohemia might be called the aggressor and the Austrians the defenders" (p. 205).

⁶⁴ For example, see *CSPV*, vol. 16, pp. 47–48. See also Geoffrey Parker (ed.), *The Thirty Years War*, p. 53.

⁶⁵ Cited in G. P. V. Akrigg, *Jacobean Pageant, or The Court of King James I* (Cambridge, MA: Harvard University Press, 1962), p. 335.

⁶⁶ See *CSPV*, vol. 16, p. 13, in which the Venetian Ambassador to the Netherlands notes James profession to be "a just prince," who desired first "to be informed whether the deposition of Ferdinand is legitimate or no, and how the Palatine's election took place."

begin to invade in September 1620, James felt bitterly betrayed and complained to this effect to the Spanish ambassador. In October, the Venetian ambassador records James complaining to the Spanish ambassador that the Spanish had deceived him by telling him "that only Bohemia was in question" in return for which James had promised that "he would not meddle there." Now that the Spanish had invaded Frederick's own kingdom and threatened to usurp the Palatine crown, James vowed "never again [to] trust any Spanish ambassador or minister."⁶⁷

Certainly, James' support for legitimate sovereignty at all costs was somewhat self-serving since it was tied to how he viewed the threat of usurpation to his own crown. Since the Gunpowder Plot, James had been particularly sensitive concerning the subject of usurpation. Among those foreign powers that threatened his rule, James most feared the Pope, who claimed to have a divine right to depose sovereigns that had transgressed divine law, and who might have authorized Catholic sovereigns or even English Catholics to overturn the king's rule.⁶⁸ By authorizing and justifying Frederick's usurpation of the Bohemian crown on the basis of religion, James would have been supporting the same logic that the Catholics might use to justify usurpation of James' own crown. Instead, James viewed himself as the supporter of legitimate sovereignty, regardless of any religious difference between the sovereign and his subjects.

Like James, Wroth was a supporter of absolute monarchy and a staunch supporter of the absolute rights of legitimate sovereigns. Although, to our own sensibilities, it may seem a contradiction for a woman to endorse a patriarchalist political philosophy such as absolutism, commentators have noted that many seventeenth-century women writers defended absolutism both as a personal and a political strategy of empowerment.⁶⁹ Wroth's support for versions of political and personal absolutism permeate both volumes of the *Urania*. For example, one rebellious gentleman who is arrested and imprisoned for attempting to overturn his king admits that "a subject ought not upon any termes to weare armes against his rightfull King" (445). When Nereana returns to her kingdom after venturing out in search of Steriamus, her subjects choose to replace her with her sister and Wroth remarks unambiguously

⁶⁷ *CSPV*, vol. 16, p. 431.

⁶⁸ See Suarez, *A Defense of the Catholic Faith and Apostolic Faith*, in *Selections from Three Works*, vol. 11, pp. 647–728, esp. 724.

⁶⁹ Catherine Gallagher, "Embracing the Absolute: the Politics of the Female Subject in Seventeenth-Century England," *Genders* 1 (1988), 24–39.

that what her subjects have done is wrong: “so as they chose rather to commit a fault unpardonable, then to venture under her pardon, as if one should burne all the furniture of a House, because one Roome was infected with the Plague” (337–38). Wroth also seems to have agreed with James that the Bohemian people were wrong to have deposed King Ferdinand – in the second part of the *Urania*, she describes the Bohemians as “ever the most turbulent, heriticall and tumultuous people.”⁷⁰

In addition, James’ support for the rights of legitimate sovereigns, regardless of religious or familial loyalties, seems to have inspired the universal and secular ideal of transnational justice upheld throughout the *Urania*. Wroth’s portrayal of Amphilanthus is clearly in some sense a tribute to her cousin and lover, William Herbert, Earl of Pembroke, but the figure also functions as an ideal version of King James. Amphilanthus actually enforces James’ notion of transnational justice without the English king’s signature bouts of hesitation and engages in acts of heroism within a less complex world than the one England actually faced.⁷¹ For example, whereas James was against entering a war for the sake of religion, especially a religious war that involved Spain, only his counterpart Amphilanthus can actually implement a system of transnational justice that transcends the strictures that religious difference imposed on real-life events.⁷² Hence, Wroth’s depiction of Amphilanthus seems to be an attempt to reflect back to James an idealistic foreign policy that would transcend the unbridgeable religious oppositions that had hitherto been central to issues of sovereignty in an international context.

The model of Amphilanthus suggests a sincere commitment to the defense of those legitimate princes who were under attack on the continent as well as a fulfillment of the imperial style in which James was adorning his court.⁷³ Wroth presents Amphilanthus’ position as based on all of the imperial claims that were associated with the Pope, but at the same time, she offers a secular alternative to the Catholic vision of the Pope as a spiritual arbiter of kings. As I have noted, Amphilanthus’ initial home is Italy where he is titled King of Naples and later King of the Romans. Later still, he is elected Holy Roman Emperor, after which he is frequently referred to simply as the Emperor – in this respect, he may also

⁷⁰ *The Second Part of The Countess of Montgomery’s Urania*, eds. Josephine Roberts, Suzanne Gossett, and Janet Mueller (Tempe, AZ: Renaissance English Text Society, 1999), p. 181. See also Josephine Roberts, “Critical Introduction,” pp. xlvi–xlix.

⁷¹ See Josephine Roberts, “Critical Introduction,” p. xlvi.

⁷² In the one religious conversion which does occur in the romance, that of the King of Cyprus, Wroth makes a point of presenting the King as freely choosing to accept Christianity (170).

⁷³ See Goldberg, *James and the Politics of Literature*, pp. 28–55.

figure as a secular version of Archduke Ferdinand, the defender of Catholicism and close ally of the Pope, who was elected Holy Roman Emperor in 1619 (441).⁷⁴ Like the Pope, he assumes responsibility for punishing usurpers and protecting legitimate kings. But whereas the Pope's power was based on his being spiritual head of the Church, Amphilanthus is a temporal ruler whose exalted place among other kings is due to his strength and valor. Furthermore, while the Pope was responsible primarily for upholding a notion of justice based on divine law, Amphilanthus and his friends uphold a modified notion of natural law, a concept which Wroth refers to as "love's government" and which I have been calling the laws of love.

The natural law which Amphilanthus and his allies uphold throughout Europe is reminiscent of the Roman civil-law tradition, which, as we have seen in the previous chapters, serves as one basis for King Cymbeline's rule of Britain. Like Shakespeare, Wroth presents a conception of empire based on universal legal and ethical imperatives which derive from Roman sources. And yet, unlike Shakespeare's model of a coherent British empire based on the translation of the Roman model to Britain, Wroth's model of empire is based on a collection of united independent states who regard Amphilanthus as their supreme leader and who under him separately pursue the defense of legitimate sovereignty. The English Protestant dream of a broad alliance of Protestant states becomes, for Wroth, a secular-based alliance in pursuit of justice based on her unique interpretation of natural law.⁷⁵

Ironically, Wroth's portrayal of "Brittany" or Britain is outside of and almost completely exempt from Amphilanthus' administration. The first part of the *Urania* ends with what is in many respects a strangely incongruous portrayal of Britain. The Prince of Venice, the Duke of Savoy, and the Duke of Florence are lamenting the loss of Amphilanthus (at this point in the romance, Amphilanthus has been enchanted in the Hell of Deceit and has lost his wits). While they search for him at sea, their ship is lost in a tempest in a typical passage which compares their vessel to a rudderless state, and is swept "into the Brittain Sea" where the three princes "perceived for their comforts, . . . the faire Rocks of

⁷⁴ According to the Venetian Ambassador, in 1619, members of the Bohemian party in England were encouraging James that, as his son-in-law had two votes in the election for emperor, he himself might someday aspire to be Holy Roman Emperor (*CSPV*, vol. 16, p. 92).

⁷⁵ The secular character of Part 1's narrative transforms abruptly in Part 2 – Suzanne Gossett and Janet Mueller appropriately remark, "there is a newly virulent strain of revulsion towards Islam that threads itself through Part Two" ("Textual Introduction," *The Second Part of The Countess of Montgomery's Urania*, p. xxxiii). For an analysis of Part 2, see Cavanagh, *Cherished Torment*, ch. 1.

Brittany, anciently called Albion; but by happiness after many misfortunes againe called Brittany." They land on the shores of Brittany and are immediately struck by the "marvellous beauty" of the British women. They are still, however, tormented by Amphilanthus' absence and continue their search for him in Brittany (627).

Throughout the princes' British adventure, Wroth repeatedly remarks on Brittany's separateness from the other kingdoms which we encounter in the *Urania*. Compared with such idyllic kingdoms as Arcadia and Morea, Wroth's Brittany has many of the unromantic trappings of contemporary Britain. There is an inn filled with carousers who "fellow-like drunke" engage in singing, dancing, quarrelling, and "calling for more drinke" (629). There is a countryman "driving a Cart which had carried wood, (a commodity in those parts)," and finally, there are judges and officers who conduct a prisoner to a "sharpe prison" (630; 646). Moreover, Wroth makes her only mention of the existence of different languages and the confusion which they can cause in this episode: at one point, the Duke of Florence is struck by the overly familiar manners of the "talking" British knight, but, Wroth explains, the Duke "bore with his (as he heard it in his language) rudenes" (634). In other episodes in Brittany, cultural difference surfaces as a problem. When the princes encounter some haughty British ladies soon after they arrive, Wroth notes that the Duke of Florence was unfamiliar with "the nature of the Brittaines," a remark that Wroth never makes about the people of other nations that figure in the romance (628). The Duke approaches these ladies, attempting to converse with them in the typical courtly language of romance, but they leave him "in his speech, and taking handes walked away, as who would say, by that time the Oration is done, wee will come againe" (629). This comical but failed meeting between the Duke of Florence and the ladies of Brittany underscores a pattern of national and cultural difference which permeates the entire episode. The Duke of Florence later falls in love with a British lady and the Prince of Venice falls in love with a British shepherdess, but their respective loves are never reciprocated. In general, there is always a sense of distance at work within these amorous encounters which differentiates them from other love affairs figured in the *Urania*.

In one respect, the incompatibility between Wroth's portrayal of Brittany and the rest of the kingdoms that figure in the *Urania* is a sign of the distance between contemporary Britain and the imperial ideal to which Wroth wanted James to aspire. The Italian princes travel to Brittany to find their champion, Emperor Amphilanthus, but he is nowhere to be

found. Amphilanthus' absence from Brittany is a symbolic mark of the effects of James' timid foreign policy which, according to the more militant court faction, had served to isolate Britain from the rest of Europe and to diminish its influence overseas. Indeed, there is a very specific reference here to Britain's refusal to honor outstanding foreign commitments. The failure of Venice, Savoy, and Florence either to find Amphilanthus or to engage in any meaningful dialogue or relationship with the inhabitants of Brittany seems to be a veiled indication of James' personal refusal to honor the alliances that he had formally made with anti-Spanish forces in Italy.

Wroth seems to be alluding specifically to the difficult situation which the Italian states faced during the second decade of the seventeenth century. In the years preceding the publication of Wroth's *Urania*, the governments of both Venice and Savoy were looking to Britain and France for financial and military assistance against the Spanish threat in Italy. Although the Grand Duke of Florence was tied through family relations to Archduke Ferdinand, he – along with the Florentine people – was also said to harbor secret support for Venice's campaign against Spain and the Hapsburgs.⁷⁶ The republic of Venice in particular was attempting to improve its lot by enhancing its already close relationship to the English crown. One strategy, which the republic enthusiastically pursued, was to steer James away from his plans to marry his son to a Spanish infanta, which it feared would create a greater English alliance with Spain. In 1617, the Duke of Savoy joined such efforts by offering Charles the hand of a Savoyard princess with a Venetian dowry.⁷⁷ In spite of the strong alliances which he had declared with Venice and to a lesser extent Savoy, James consistently attempted to evade his responsibilities to the Italian states.⁷⁸ Throughout 1516 and 1517, he ignored provisions of the Treaty of Asti, under which he was obligated to protect the Duke of Savoy if the Spanish recommenced hostilities in that region.⁷⁹ Later in 1620, James ignored Venetian appeals for English help during the Spanish occupation of the valley of Valtelline.⁸⁰ Wroth seems to figure these failed

⁷⁶ See *CSPV*, vol. 16, p. 468.

⁷⁷ *CSPV*, vol. 14, p. 323; vol. 16, pp. 278–79. For context, see Toby Osborne, *Dynasty and Diplomacy in the Court of Savoy*, pp. 47–48, and Reade, *Sidelights on The Thirty Years War*, vol. 1, pp. 205–27, esp. 215–17, vol. 11, pp. 112–26.

⁷⁸ See for example, *CSPV*, vol. 14, pp. 314–15, 355–57, 398–402, 410. For background, see Allen Hinds, "Preface," *CSPV*, vol. 16, pp. xix–xxiv.

⁷⁹ See Allen Hinds, "Preface," *CSPV*, vol. 14, pp. xix–xxxi.

⁸⁰ *CSPV*, vol. 16, pp. 362–65, 399–401, 412–15, 503, 573–76.

alliances in the difficulties which the fictional Italian knights have in relating to the standoffish British inhabitants.

Wroth does so first by presenting a Britain that is militarily unprepared as well as distinct from the chivalrous and amorous codes which the Italian princes uphold. Throughout the princes' travels, the inhabitants of Brittany do not seem to be wholly governed by the same amorous laws of chivalry that govern the rest of Wroth's romantic world. Instead, Brittany is presented as governed by a combination of peace and freedom, two nativist ideals that were identified respectively with James' absolutism and the common-law mentality.⁸¹ During his exploration of Brittany, the Prince of Venice encounters a lady and a shepherdess, both of whom have a relation to the laws of love that is distinct from the relation which other female characters of the romance have to such laws. The Prince's first encounter with them is significant: he leads the lady – named Rossalea – over a stream, and when she arrives at the place where the shepherdess Celina is sitting, Wroth tells us that the shepherdess and the lady “both thanked the Knight, desiring to know what accident brought him thither, especially armed, where little Armes was required, or used; blessed Peace, the comfort of soules, having only government in that place” (639). The “blessed Peace” which has the “only government in that place” in this passage is probably a reference to James' motto *Beati Pacifici* as well as to his foreign policy of avoiding military engagement in Europe at all costs.⁸² As I noted earlier, in the Bohemian crisis, James concentrated all of his efforts on mediating for peace between the warring parties. Unfortunately, this policy had not only failed to avert greater conflict between the Catholic and Protestant forces; it had also served to isolate Britain from its European allies. Wroth conveys this sense of British isolation and a general lack of military preparedness from the beginning of the meeting between the Prince of Venice and Rossalea and Celina. When the Prince asks Rossalea if adventuring knights exist in Brittany, she responds by saying that although they have a “good store” of knights, “they seldom are put together, our Knights leaving the adventuring part, unless out of necessitie, none loving a happy, and worthy peace better” (640). In effect, Brittany has no knights assembled and little need for questing champions such as the Prince of Venice.

British isolation is further illustrated in Celina's rejection of the regime of love that reigns outside of Brittany. Celina brags, “We are armed with

⁸¹ See chapter 6.

⁸² Sir Anthony Weldon, *The Court and Character of King James* (London, 1651), p. M8.

strong resolutions . . . and defended by our own vertue, so as wee feare no enemy, if not lurking in our owne breasts, which yet have not appeared, I am certaine have not had the boldnesse to adventure in my sight" (640). Here, Celina declares, in militant language, that she is free from love's tyranny, implying therefore that a knight's defense is unnecessary. Rossalea also implies that she was until recently free of love's tyranny – of late, she "had the same subject-like freedome which [Celina] had." Unfortunately, she has recently "yeelded to another Prince, and in that am a Traytor; for alas I have another Monarchy ruling in me, than the true one of this country" (640). Rossalea's declaration that she is a traitor to the true monarchy of Brittany is figuratively equivalent to a declaration that she has recently abandoned the government of freedom for the government of love.

When Rossalea confesses to having succumbed to love's government, Celina chastises her for having forfeited "the richest stocke, and treasure of true, noble, and vertuous freedome" (641). Celina has implicitly retained her "freedome," and later another shepherdess, Lemnia, is introduced who also prefers liberty to love. By associating the language associated with freedom from tyranny with Brittany's natives, Wroth would have been seen as alluding to contemporary common-law ideology used to defend the rights of British subjects against the crown. Indeed, defense of the subject's liberty became the rallying cry of Coke and other common lawyers during the latter part of James' reign. In the parliament of 1621, for example, Coke spoke repeatedly in defense of the Commons' right to its ancient liberties.⁸³ And later, in his notes on the *Magna Carta*, Coke declared that "the liberty of a mans person is more precious to him, then all the rest that follow."⁸⁴

These two women who can claim (or could recently claim) not to be subject to love's government are notable in that only one other female character in the first part of the *Urania* attempts to reject love altogether, namely a shepherdess named Alarina, who, as a result of being rejected by her lover, takes a vow of chastity and changes her name to Silvina (224–25). Unlike Alarina who rejects love only after having been betrayed – and who is ultimately unsuccessful in her resistance to love – the British ladies seem to have rejected love not out of disillusionment but out of a desire to be loyal to the alternative principles of peace and

⁸³ Stephen D. White, *Sir Edward Coke and "The Grievances of the Commonwealth": 1621–1628* (Chapel Hill: University of North Carolina Press, 1979), p. 176.

⁸⁴ Coke, *The Second Part of the Institutes*, p. 64^v.

freedom (483–84). Throughout the British episode then, there is a sense that Wroth's universal laws of love do not govern Brittany as completely as they do elsewhere in this romance – as Rossalea says, love is not “the true [Monarchy] of this country.”

As I noted at the beginning of chapter 6, James' particular brand of inward-looking absolutism and the common-law mentality reinforced each other in the area of foreign policy. Both tended to isolate Britain culturally and militarily from the rest of Europe. Affiliated with the war party in James' court, Wroth was probably aware of this problem. But it is not clear that she understood how to bridge the gap between the international character of natural-law discourse and the native value systems in order to imagine an imperial Britain. On the one hand, Wroth seems to favor the encroaching and imperial government of love to the native government of peace and liberty even while associating love with tyranny. On the other hand, Wroth seems to view the authentically British value systems of peace and liberty as crucial to the defense of the kingdom against the threat of Catholic usurpation. In effect, Wroth was also committed to the myth of British legal and cultural exceptionalism.

Both sides of this tension become apparent in the rest of the episode involving the Prince of Venice's encounter with Rossalea and Celina. While the female Britons are ruled by the native government of freedom and peace before the Prince of Venice arrives, things begin to change in Britain soon after his arrival. When Venice is first introduced to Lady Rossalea, she is complaining that love's government has newly taken hold of her heart – she has just fallen in love with the Keeper of the Forest (640). Soon after, when the Prince of Venice and the ladies find the Keeper lying face down in the river with a wound in his side, the more stalwart Celina falls in love with him as well (642). Later in the episode, Lemnia (who is also introduced as initially rejecting love's government) falls in love with the Prince of Venice (651). Hence, a gradual introduction of the government of love occurs in Britain during the Prince of Venice's visit.

The introduction of love's government is never complete however. For one thing, no love alliances are made between the foreign princes and the female inhabitants of Britain. By the time Lemnia has fallen in love with him, the Prince of Venice has already begun his trek back to meet Florence and Savoy. More significantly, Britain seems to lack ready knights, such as Venice and the other princes, who can enforce the regime of love through combat. Even apart from Rossalea's statement that “our Knights [have left] the adventuring part,” a marked absence of both male lovers

and knights is apparent throughout the episode in Britain (640). We encounter only one knight in Britain during the Duke of Florence's travels, the Talking Knight, whose loquacity makes him an unlikely combatant or enforcer of the laws of love.

As a result, the foreign princes, Venice, Savoy, and Florence, are forced to assume the role of law-enforcers in Britain. When a cruel lord named Vicianus attempts to assassinate the Keeper of the Forest (645), it is the Prince of Venice who saves the life of the wounded Keeper by dressing his wounds and who then captures Vicianus and turns him over to British officers. During his own travels, the Duke of Savoy also saves "a distressed Lady set on by theeves" (657). But even these foreign champions are ultimately disarmed by the alternative set of values which exists in Brittany. Venice gives up his knightly capacities after playing a game of "Kings and Queenes" with Celina, Rossalea, and others.⁸⁵ During the game, Celina commands "the Venetian to stay no longer in those parts, but to goe unto his friends, and in witsesse of his captivitie, to travell unarmed, till he met them or was forced by injurie to put them on" (651). Celina's banishment of the Prince of Venice and her order that he disarm have implications outside of the game itself. They effectively mark the end of the Prince's enforcement of the regime of love within Brittany. Moreover, they signal Brittany's resistance to the value system which the Prince represents as well as Brittany's retention of native values. In general, then, although the regime of love begins to pervade Brittany, it is halted before it takes hold. Recalling Shakespeare's *Cymbeline*, Wroth's *Urania* presents Britain as based on a different legal regime from the one which reigns outside of the country. Unlike *Cymbeline's* Britain, however, Wroth's Brittany never fully integrates the foreign legal regime which is figured as encroaching on the island nation.

Also in ways that recall *Cymbeline*, Wroth makes a number of conflicting statements about the civility of the country. When the Italian princes arrive on the shores of Brittany, Wroth presents an island that is still barbaric:

On in the Country they pass'd till they came to a Desart that prov'd onely rich in Ayre, and that in greatest bounty, in a few places it was inhabited, the rest all Desart, and as wilde as any civill Country could bee. Many places they passed, stony, wooddy, rocky, and as odde as could bee, lamentable travelling in it, the people rude and churlish. (627)

⁸⁵ This game seems to be a restrained, courtly forerunner of the modern "Truth or Dare."

This passage describes a barbarous country that may warrant a fresh introduction of civility through chivalric heroism. Elsewhere, however, the three princes view Brittany as a privileged site of virtue and happiness. In a passage that recounts the myth of Britain as a blessed other world, the Duke of Florence declares that Brittany “hath beene counted the most pleasant, delightfull, and happiest Countrey in the world, being for all bounty of contents a world it selfe, nothing missing or wanting to the full plenty of happinesse” (653). Later, the Prince of Venice calls Brittany “the flower of peace, beauty, honour, vertue, happinesse, and most of Shepherdesse” (654). Such statements presenting Britain as either less civil or more virtuous than other countries serve to isolate it further. Indeed, both its incivility and extreme virtuousness make Wroth’s Brittany a realm that defies the version of universal justice pervading the rest of this romance.

Finally, like Shakespeare, Wroth is able to articulate a native discourse of conquest only by imagining Britain defending itself against the threat of invasion. But, as in so many instances in this romance, conquest is defined within an amorous context, in this case, a flirtatious dialogue that neatly expresses the way in which, during this period, the imperial discussion went hand-in-hand with fears about the prospect of Britain’s own overthrow. In the following exchange, the Prince of Venice and Celina converse about love in terms of the imagery of war and political violence, and Wroth makes a symbolic comment about Britain’s defenses against aggressors as well as its potential for overcoming its enemies. In an attempt to court Celina, the Prince of Venice compliments her in the following terms: “you doe carry charmes enough about you to overthrow Armies of hearts, then making so many yeeld, how can you be but in peace, when none dare warre against such powers.” To which the shepherdess replies (in a passage already cited above), “Wee are armed with strong resolutions . . . and defended by our owne vertue, so as wee feare no enemy, if not lurking in our owne breasts, which yet have not appeared, I am certaine have not had the boldnesse to adventure in my sight” (640). Having fallen in love with the shepherdess, the Prince has just been symbolically “overthrown” or conquered by her. But what has served to defend Celina (and by analogy Britain as well) against the Prince’s foreign assault is “our owne vertue,” an authentically British value system that stands outside the prevailing system of chivalric justice which the Prince represents. “Our own vertue” is our own singular virtue, which protects us against the regime of love that rules elsewhere. In related passages, Wroth suggests that, because of their virtue, Celina and Rossalea have enjoyed

"freedom" which love regularly denies to lovers. Hence, similar to King Cymbeline employing the common-law mentality to resist Roman law and rule, a separate British virtue existing outside of the laws of love symbolically functions to define the singularity and independence of Wroth's Brittany.

In the end, Wroth reproduces a rift reminiscent of the rift between common law and Roman civil law which we saw in *Cymbeline*. Just as King Cymbeline uses the common-law rationale to define Britain as separate from and independent of the Roman empire, Wroth symbolically defines Brittany as separate from the imperial rule of Amphilanthus. Recall that the Prince of Venice, the Duke of Savoy, and the Duke of Florence go to Brittany in search of Amphilanthus but fail to find the emperor there: at the end of this episode, the Duke of Brunswick arrives in Brittany to inform them that Amphilanthus has been found elsewhere. Amphilanthus' absence from Brittany at this critical moment in the narrative is significant because it serves symbolically to accentuate the way in which Brittany is off limits to the ambitions of the emperor and the princes united with him. In effect, Amphilanthus cannot be found in Brittany because his imperial hegemony does not extend over the fiercely independent kingdom.

Second and perhaps more important, his absence reminds us of the difficulty of reconciling Britain, the potential empire based on natural law, with Britain, the self-sufficient and inward-looking legal entity. On the one hand, in response to the threat of usurpation which existed on the continent, Wroth presents Amphilanthus as a champion of legitimate sovereigns, an alternative to the diffident and ineffectual James, as well as a secular alternative to the Pope. On the other hand, in response to the threat of Catholic usurpation of the British throne, Wroth presents a Britain that is impervious to foreign invasion. But she is unable or unwilling to reconcile the imperial values embodied in Amphilanthus with her portrayal of an independent and legally separate Britain. Indeed, the distance which separates Amphilanthus and Brittany is equivalent to the distance between two contemporary visions of British rule and law: one based on James as an imperial ruler presiding over peace throughout Europe and one based on Britain as a unique and independent kingdom unconquerable by the Pope and his allies. Ultimately, like James himself, Wroth found it impossible to reconcile these two visions of Britain into a coherent whole.

Wroth's final inability or unwillingness to imagine a reconciliation at the end of the *Urania* stands in contrast both to Shakespeare's *Cymbeline* and Book 6 of *The Faerie Queene*. Recall that, at the end of *Cymbeline*,

Shakespeare has the king reconcile native common law with Roman civil law by integrating the Roman legal tradition into a triumphant Britain while preserving a separate space for native law. In the process, a translation of Roman imperial values to Britain occurs. Recall also that Spenser overcomes some of the same tensions between common law and natural law by naturalizing native English law and thereby universalizing English nature itself. In contrast to these earlier writers, Wroth ends the *Urania* by presenting the conflict between the two legal systems as largely intractable.

Why should this be the case for Wroth and not for these previous writers? One answer may be found in the ongoing strength of the common-law ideology of an independent and legally separate Britain. While the conflict between the common-law courts and the civil-law courts had diminished somewhat by 1621, it had not been resolved. In 1616, a major obstacle to some form of reconciliation had been removed when James finally dismissed Coke from the Bench for his continued attacks on Chancery. In the years which followed, however, the common-law courts continued their encroachment on the jurisdiction of the civil-law courts, and calls for the reform and codification of the common law or for the advent of some form of unity between the two legal systems were never heeded.⁸⁶ While on the one hand, Wroth might have wanted James to aspire to the heroics of an Amphilanthus, to extend his vision of justice into Europe, and to quash the common-law ideology altogether, she seems on the other hand to have had her own contradictory investment in England's legal and cultural isolation. Indeed, an important aspect of Wroth's initial description of Celina shows that Wroth has her own personal investment in the fiercely independent shepherdess. When the Prince of Venice arrives at the edge of the river-bank where Celina is tending her sheep, Wroth compares the shepherdess to Urania and thus to Urania's real-life counterpart, Susan Herbert, Countess of Montgomery.⁸⁷ By choosing to identify Celina, the symbol of British or English legal isolation, with her own literary patroness, Wroth effectively endorses an ideology which contravenes the prevailing imperial ideology of the romance. In the end, the personal and political independence which Celina represents is just as important to Wroth as her desire to imagine a system of universal justice which would punish illegal usurpations of marriage and the state.

⁸⁶ See Levack, *Civil Lawyers*, pp. 136–40.

⁸⁷ Wroth writes of Celina: "close by on the banke lay such a Shepheardess as Urania was" (638). See Josephine Roberts, "Critical Introduction," pp. lxxvi–lxxix.

Conclusion: English law and the early modern romance

The civil-law tradition persisted temporarily within the complex system of English jurisprudence so that for a time Roman legal principles and the related discourse of natural law continued to constitute an alternative to the common-law tradition. For their part, the civil lawyers as well as some sympathetic common lawyers saw themselves as the champions of such principles, and on this basis, defended an alternative juridical sensibility. As I have shown, writers of romance occupied a unique space between the two camps. In one respect, these writers were influenced by the common-law ideology, and in quite another, their desire to imagine a universal legal foundation for English or British expansion caused them to favor the marginalized traditions of the civil law and natural law. Hence, while there may have been no formal reception of Roman law in the English common-law courts, a kind of Roman reception did in fact occur, albeit outside of established legal and political institutions.

As a way of gaining some historical perspective on this issue, it is worth briefly reviewing what the father of modern legal historiography, Frederick Maitland, famously said concerning the possible reception of the Roman law during the Renaissance. In his capacity as the 1901 presenter of the prestigious Rede lecture at Cambridge University, Maitland located the sixteenth century as a defining historical moment, not just within the history of English law, but within the history of the British Empire. Maitland identified the common law, with its emphasis on precedent and judge-made law, as inevitably working against the unity of imperial Britain and its colonies. According to Maitland, the tradition was responsible for “our complex and loosely knit British Commonwealth,” and he expressed deep misgivings for the future unity of such a political entity. In contrast to the common-law foundation which Maitland saw as modern Britain’s somewhat ill-fated inheritance, the legal basis of a codified Roman law would have provided a real synthesis for the British Empire. In England’s sixteenth-century failure to adopt the

Roman law, Maitland prophetically located the seeds of the Empire's eventual dissolution. As a result, he viewed the continued survival of the British Empire as dependent on the shared legacy of the English law, and he urged his fellow jurists, its caretakers, to insure that whatever loose unity existed be preserved.¹

Since 1901, Maitland's thesis about the conservative nature of English legal institutions has been both challenged and amended by subsequent legal historians.² In particular, historians have shown that Maitland was largely incorrect in arguing that the English legal system was on the verge of a wholesale reception of Roman civil law.³ However, his essay still points to some important truths about English legal institutions. While English and continental legal institutions underwent many of the same transformations during the sixteenth century, a deep antipathy for the Roman civil law developed among English jurists that had no equivalent overseas.⁴ Maitland saw his own lecture as an attempt to challenge this tendency in English law, and even in 1901, he still held out hope that the British parliament would introduce legal reforms – thus performing a kind of modern day reception of Roman law – that would preserve the unification of the British Empire. Granting that parliament could no longer dictate law to the colonies, he hoped that it could at least set an example by “clear[ing] away the rubbish that collects round every body of law” and “mak[ing] law that is worthy of acceptance by free communities that are not bound to accept it.” Thus he implored a new generation of English lawyers to become conscious of the heavy responsibility which

¹ Maitland, *English Law and the Renaissance*, pp. 33–4.

² See Holdsworth, *History of English Law*, vol. 1v, pp. 252–93. See also G. R. Elton, *Studies in Tudor and Stuart Politics and Government*, vol. 11, pp. 223–24; E. W. Ives, “The Common Lawyers in pre-Reformation England,” *Transactions of the Royal Historical Society*, Ser. 5, No. 18 (1968), pp. 145–73, esp. 163–65; S. E. Thorne, “English Law and the Renaissance,” in *La Storia del Diritto nel Quadro delle Scienze Storiche* (Florence: L. S. Olschki, 1966), pp. 437–45; and Wilfred R. Prest, *The Inns of Court under Elizabeth I and the Early Stuarts, 1590–1640* (Totowa: Roman and Littlefield, 1972), pp. 3–4. For a more comprehensive list of critics as well as positive re-evaluations of Maitland's thesis, see Helgerson, *Forms of Nationhood*, pp. 313–14, footnote 4.

³ Of Maitland's critics, perhaps the most significant has been J. H. Baker who has claimed that “medieval common law, though surviving in an organic sense, actually underwent substantial reformation in the Renaissance period.” See J. H. Baker, “English Law and the Renaissance,” *The Legal Profession and the Common Law: Historical Essays* (Roncerverte, WV: Hambleton Press, 1986), pp. 461–76, esp. 461. See also J. H. Baker, Introduction, *The Reports of John Spelman*, vol. 11, pp. 23–51.

⁴ According to J. H. Baker, Maitland overstated his basic premise that English legal traditions were unique in their medieval conservatism when set beside the traditions of continental Europe (J. H. Baker, “English Law and the Renaissance,” pp. 466, 467, 473–76). Moreover, according to J. H. Baker, the Romanist revival of the continent has been overstated. See J. H. Baker, Introduction, *The Reports of John Spelman*, vol. 11, pp. 27–28.

was assumed “when English law schools saved, but isolated, English law in the days of the Reception.”⁵

At the turn of the seventeenth century, of course, the aim of English writers of romance was not that of preserving the unity of the English law but of overcoming the isolation and insularity that constituted their own common-law inheritance. Even so, the fictional works of these writers seem to presage Maitland’s expression of misgiving that the British Empire had not been modeled after the example of Rome or replicated the framework of Roman civil law. Their aim was identical to Maitland’s in this respect. In addition, the disunity in the British Commonwealth of which he complained in 1901 can be viewed as anchored in the nativist mentality which the Renaissance common-law ideology had engendered. In their own attempt to overcome this ideology, the writers of romance had imagined the early stages of English expansion as based on the Roman model. The tradition of natural law would provide the justification for conquest, and the civil law would provide the extra-national foundation of imperial justice.

Ultimately, of course, Roman law did not become the legal foundation of the Empire, but the failure of the Roman model nevertheless leads to an important series of questions: how did British expansion proceed at all given the insular character of the common law? And what was the role of fiction, and in particular, the romance genre in later stages of the British Empire’s rise? An answer to the first question can be found by briefly considering historical events subsequent to the publication of Wroth’s *Urania* (1621). The uneasy balance between the two legal ideologies, which we encountered at the end of *The Urania*, broke down in subsequent years. Throughout the late 1620s and 1630s, the civilians became ever more identified with royalism and the established Church. While, during James’ reign, the writings of many civil lawyers had subordinated the king to natural law and divine law, they were increasingly viewed by their opponents as supporting absolutism. Moreover, civilians who held positions in the ecclesiastical courts were largely responsible for enforcing Archbishop William Laud’s stringent standards of ecclesiastical conduct.⁶ On the other side of the divide, the common lawyers were aligning themselves more closely with Puritanical factions and Parliament against the king.⁷ As a result, relations between the two camps became explosive.

The political and professional affiliations of the civilians caused their fortunes to sour at the outbreak of the Civil War in 1642. Permanent

⁵ Maitland, *English Law and the Renaissance*, pp. 34–35.

⁶ Levack, *Civil Lawyers*, pp. 188–95.

⁷ See Eusden, *Puritans, Lawyers, and Politics*, pp. 149–80.

damage was done to the entire profession when the ecclesiastical courts were stripped of their main function, that of correcting men's morals. In 1642, many civilians who were overtly Royalist fled to the continent, while others, facing unemployment, were able to find service under the auspices of Parliament. Faced with popular contempt for their profession, the remaining civil lawyers attempted to disassociate themselves from the ecclesiastical affiliations which had caused their unpopularity. They advised the government on international law, administered the courts of Admiralty and Chancery, and worked in what was left of the Church courts, mainly proving wills and governing marriages. When the king returned in 1660, both those who had fled and those who had remained filled the posts which they had abandoned earlier in the century. After the Civil War, however, they never regained the positions of power which they had enjoyed in earlier periods. Although the traditional civil-law education was preserved at the universities, whatever hold civil-law thought might once have had on English politics was loosened forever.⁸

Simultaneously, English thought on natural law was rapidly turning away from its former identification with Roman civil law and medieval scholasticism. John Selden and his followers were investigating the still novel distinction between laws and rights, ultimately focusing their attention on those natural rights which an individual enjoyed in the state of nature.⁹ Eventually, the radical skepticism of Thomas Hobbes questioned the very existence of international norms based on prohibitive natural laws. While Selden and those who were most immediately influenced by him saw the threat of divine punishment as an important natural prohibition against immoral behavior, Hobbes turned away altogether from the notion of divinely inspired edicts.¹⁰ For Hobbes who had witnessed both the Thirty Years War and the English Civil War, the international scene effectively replicated the chaotic state of nature before the emergence of the state. He explained that war between nations was perpetual and that a system of natural law which would regulate such international conflict simply did not and could not exist: "The notions of Right and Wrong, Justice and Injustice have there no place. Where there is no common Power, there is no Law: where no Law, no Injustice. Force, and Fraud, are in warre the two Cardinall vertues."¹¹ In Hobbes' perpetual war, every nation competed for finite resources, and the distinction

⁸ Levack, *Civil Lawyers*, pp. 196–202. ⁹ Tuck, *Natural Rights Theories*, pp. 101–18, esp. 102–03.

¹⁰ Tuck, *Natural Rights Theories*, pp. 119–42. See also Tuck, *Rights of War and Peace*, pp. 109–39.

¹¹ Thomas Hobbes, *Leviathan*, ed. with intro. C. B. Macpherson (New York: Penguin, 1981), p. 188.

between an offensive and a defensive war, acts of conquest and acts of resistance, became blurred.¹² Given the common law's investment in self-preservation and resistance, it is perhaps the blurring of this distinction between defensive and offensive war which was the ultimate enabling factor in Britain's emergence as an imperial power.

The seventeenth-century development of the romance is largely analogous to the political transformations outlined above. Among the excellent literary histories that have traced the development of the romance form throughout the late Renaissance and Restoration, the most significant is Michael McKeon's account of the genre's place within the origins of the English novel.¹³ McKeon has outlined a dialectical process by which the romance – as well as its successor category, the novel – developed through parody, internalization, and negation of a variety of earlier forms. The pre-modern history of the romance form is crucial to this dialectical process. Emerging from ancient and medieval times, the romance originally encompassed both fictional and non-fictional accounts of “history.” Only during the early modern period was this amorphous category separated from, and then to some extent made obsolete by an objective notion of “true history.”¹⁴ This separation is itself analogous to the critical distinction made between “poetry” and “history” by Sidney and other Renaissance critics, as well as the corresponding distinction between the ideals of poetic verisimilitude (imitation) and historicity (factual truth) characteristic of the two opposing forms.¹⁵ The two ideals were ultimately incompatible and although in the long term, the ideal of verisimilitude would prevail, in the short term the claim to historicity was clearly dominant. As I noted in chapter 1, the romance initially internalized the assaults on romantic falsehoods by incorporating them into prefatory material as self-criticism. But this internalization also affected the narrative form itself. As McKeon shows, the late sixteenth and seventeenth-century romance defended itself “against assault in part by becoming modestly historicized, by becoming ‘antiromance’.”¹⁶ As we saw throughout this book, especially in Warner's combining of historiography and romance, in Sidney's and Spenser's respective politico-historical allegories, in Shakespeare's historical

¹² Hobbes, *Leviathan*, p. 184. ¹³ McKeon, *Origins of the English Novel*. ¹⁴ *Ibid.*, pp. 39–47.

¹⁵ Sidney, *An Apology for Poetry*, pp. 88–94. See also Torquato Tasso, *Discourses on the Heroic Poem*, trans. Mariella Cavalchini and Irene Samuel (Oxford: Clarendon Press, 1973), pp. 39, 68–80. For background, see Patterson, *Censorship and Interpretation: The Conditions of Reading and Writing in Early Modern England* (Madison, WI: University of Wisconsin Press, 1984), pp. 161–62, and McKeon, *Origins of the English Novel*, pp. 52–55.

¹⁶ McKeon, *Origins of the English Novel*, pp. 52–55.

romance, and in Wroth's roman à clef, romance fiction of this period re-authenticated itself by appealing to historical truth, in the process, regaining some respectability by self-negation and an appeal to the new discourse of what McKeon calls "naïve empiricism."

Eventually, the dominant generic categories of the century underwent a subsequent destabilization, a turn to what McKeon calls "extreme skepticism." The idea of history or contemporary news already carried "a double epistemological charge."¹⁷ In one respect, writers of the new vogue of news reports, memoirs, and historical accounts routinely attempted to ground their truth claims in credible claims to historicity, but in quite another respect, many skeptical readers and writers remarked that such claims to empirical truth were stylistically indistinguishable from similar claims found in the older genre of romance. Thus, a second negation occurred, in which the truth claims of the entire empiricist undertaking were interrogated and found to be unverifiable. Moreover, as was the case of naïve empiricism, the romance, or now the antiromance, once again internalized this turn towards extreme skepticism such that writers of prose narrative began to admit the fallibility of their own claims to historicity.¹⁸

McKeon dates the onset of extreme skepticism to the beginning of the eighteenth century. Nevertheless, incipient versions of such extreme skepticism are also found in the later romances considered in this book. As we saw, such works as *Cymbeline* and *Albions England* both utilize and interrogate a commitment to historicity, which they employ strategically, purposefully, and politically in order to present ethical and legal regimes under which kingdoms should function. The history, in other words, has value only insofar as it advances the code of law. The most obvious example is of course *Cymbeline* with its balanced incorporation of two historical narratives: the medieval romance-history of Geoffrey of Monmouth, which recounts the mythological ancestry of great Trojan kings going back to Brutus, and the new antiquarian view of Britain as a barbaric backwater, civilized by the Roman invasion, a narrative epitomized in William Camden's *Britannia*. While Shakespeare favors slightly the latter of these two historical narratives, ultimately he holds both up as offering instructive lessons about England's moral compass and attempts however imperfectly to reconcile what would seem to be two mutually exclusive accounts. In his larger corpus, Spenser could be similarly opportunistic when it came to history, anchoring *The Faerie Queene* to

¹⁷ Ibid., p. 50. ¹⁸ Ibid., pp. 47–64.

the mythological figure of Prince Arthur at the same time that in *A View*, he follows the new historiographers in dismissing the “Tale of Brutus” as “impossible to prove.”¹⁹ Finally, there is the clear tension in Wroth’s *Urania* between the romance-like, imperial, and honor-bound world of continental Europe, inhabited by Amphilanthus, Pamphilia, and the other royal protagonists, and the comparatively realistic island of Brittany, which functions according to an entirely different regime. In each of these cases, neither the claim to historicity nor the attempt to legitimize outdated historical narratives has any invested value outside of the ethical and political regimes and discourses with which they have come to be associated.

In the years following the publication of Wroth’s *Urania*, a related doctrine of extreme skepticism influenced the ethico-political outlook of the romance form. As we saw in the final chapter, the *Urania* itself incorporates the beginnings of such a skeptical outlook with regard to the doctrine of natural law. One component of Wroth’s interpretation of natural law involves the traditional scholastic investment in the innate discovery of a set of rational and universal rules, while a second proto-Hobbesian component skeptically posits nature as instinctual, irrational, and intuitive.²⁰ In her romance, Wroth was simply following contemporary natural-law theorists such as Grotius and Selden who had attempted their own philosophical reconciliation, however imperfect, between the earlier scholasticism and the notion of a natural state, comprised of irrational, selfish, and instinctual behavior.²¹ And although Hobbes would eventually settle the argument on the side of the latter, the struggle to define natural law remained a defining structural tension within the seventeenth-century romance. More importantly, perhaps, this tension supplanted the earlier related tension we have traced in this book between the insular doctrine of common law and the universal doctrine of natural law.

During the Caroline period and the Civil War, the genre of romance became increasingly inflected with a royalist political outlook, a trend which culminated with Charles I’s plagiarism of Pamila’s prayer from Sidney’s *New Arcadia* in his final written meditation, *Eikon Basilike* (1649).²² In 1653, the first installment of an ambitious romance with clear royalist sympathies was published anonymously under the title, *Cloria*

¹⁹ Spenser, *A View*, ed. Gottfried, p. 82, notes.

²⁰ See Tuck, *Rights of War and Peace*, pp. 1–16, 109–39. ²¹ See chapter 7.

²² Patterson, *Censorship and Interpretation*, pp. 178–79. For a broad overview of the romance genre and royalist writings during the Civil War and the interregnum, see Lois Potter, *Secret Rites and*

and *Narcissus*.²³ A year later, a second part was published, and in 1658, third and fourth parts were added. Finally, when the printing restrictions characteristic of the Protectorate were lifted, a finished five-part edition appeared entitled *The Princess Cloria: Or, the Royal Romance* (1661), which, like the *Urania* and John Barclay's *Argenis* (1621), allegorized recent and contemporary historical events. The anonymous author, called "a Person of Honour," focused especially on the tumultuous period between 1640 and 1660, recounting in detail King Charles I's downfall, the events of the interregnum, and Charles II's glorious return to the throne.²⁴ The author's royalist proclivities are immediately apparent from the preface to the work, in which he explains that the protagonist, Cloria, who represents Charles' daughter Mary, "is not onely to be taken for the Kings Daughter, but also sometimes for his National Honour: and so consequently appearing more or less in prosperity, as accidents increased and diminished: by reason of the unnatural Differences, and Rebellions were raised for so many years, in this most glorious Kingdom and Monarchy" (A2).²⁵ And yet, in spite of such royalist sympathies, the author is not entirely confident in the honor and morality of the king.

The romance unfolds familiarly, in the tradition of Sidney's *Arcadia*, with a king named Evarchus, King of Lydia (representing England), and the arrival in the Lydian court of the king's nephew Cassianus, a figure for Prince Frederick of the Rhine, son of the usurped Frederick and Elizabeth of Bohemia. Similar to the fifth book of the *Arcadia*, the occasion concerns an appeal for ethical intervention, in which Cassianus recounts how his father, King of Iberia (Bohemia), was overthrown by the evil Artaxis King of Armenia. He explains that, after traveling "through most part of Asia [Europe], to seek assistance amongst other Princes of my own rank" but finding them preoccupied with other troublesome business, he followed the advice of the King of Syria (France) and sought the help of his powerful uncle, Evarchus (B2^v–B3). The young prince's appeal for Evarchus' assistance immediately conjures up many of the ethical questions with which we have come to be familiar. Promising to consider

Secret Writings: Royalist literature 1641–1660 (New York: Cambridge University Press, 1989), pp. 72–112.

²³ Salzman, *English Prose Fiction*, pp. 157–76; Patterson, *Censorship and Interpretation*, pp. 190–202.

²⁴ See Patterson, *Censorship and Interpretation*, pp. 190–92; Salzman, *English Prose Fiction*, p. 157. Salzman identifies the author as Sir Percy Herbert without supplying the reasoning behind this attribution.

²⁵ Parenthetical citations are from Anon., *The Princess Cloria: or, The Royal Romance. In Five Parts* (London: 1661).

Cassianus' request, Evarchus consults his counselor, Polinex, who summarizes Evarchus' dilemma in the following terms:

A War wisely undertaken, ought chiefly to be accompanied with two considerations, the right of the Quarrel, and the power of the Quarreller, the first makes a man a just enemy, the second a prevailing Conqueror; without either of which, certainly a Prince cannot be fortunate, since he must be an oppressor or a loser; and why your Majesty should not give your self the liberty of such a resolution, notwithstanding the pressing necessity of your Kinsman, I know no reason, since your Kingdoms are more to be valued then his Countrey, and your honor then his benefit. . . (B4-B4^v)

Here, Polinex attempts to minimize the obvious tension between these "two considerations" or possible rationales for the declaration of war. The first consideration, "the right of the Quarrel," necessitates that the declared war be just, while the second, "the power of the Quarreller," calls for the war-maker to be more powerful than his future enemy. As we have seen, within the scholastic tradition of just war, the ideal of justice was paramount in importance while the pragmatic consideration of might was secondary. In this passage, however, Polinex elevates the importance of the second consideration, later going so far as to single out the sovereign's raw power as crucial to surviving the existing Hobbesian world in which providence alone is seemingly deficient: "certainly a Prince cannot be fortunate, since he must be an oppressor or a loser." Polinex goes on to pay lip service to the question of justice in his argument against attacking Armenia – "you are to consider with what Prince you are to have the difference, . . . a neighbour that never yet injur'd your right in any thing," but the real thrust of his royal counsel is based on Lydian self-preservation and the kingdom's "long neglect of Martial Discipline" in comparison with Armenia (B4^v).

The opposition between Cassianus' request for justice and Evarchus' subsequent disregard of his nephew's plight constitutes the first indication of an overriding structural tension within this romance: the tension between on the one side, the idealistic belief in natural justice and on the other side, the skeptical Hobbesian view of international relations as embodying a chaotic natural state. Looking back to Sidney's *Arcadia*, we see both parallel and contrast. Recall the idealistic and selfless terms which Philanax uses to convince Sidney's Evarchus to intervene in the affairs of Arcadia. Recall also the Arcadians' need for a just and selfless sovereign who would put the neighboring kingdom's needs over his own, a role which Evarchus fulfills with such rigor that he is willing to sacrifice

his own son and nephew to the cause of justice.²⁶ In contrast, Polinex's counsel to Evarchus which, in implicit authorial criticism, is said to have "extreamly pleased the King, who aimed rather at present content then future glory," is based first and foremost on what is immediately best for Lydia (B4^v).

The events of this romance, representing the Thirty Years War, the English Civil War, the execution of Charles I, the interregnum, and the restoration, constitute an extended exploration of this tension between idealism and extreme skepticism. The situation is foregrounded at several philosophical and retrospective moments. One such moment occurs early on when, in a significant meditation on his plight, Cassianus tells a priest of his doubt over whether God even troubles himself in the affairs of man (E1^v). Another such moment is captured later in the narrative by Creses, one of Evarchus' followers, in the following retrospective on Evarchus' rule:

For that *Euarchus* not many years ago, appeared so glorious and fortunate in his Government, crowned with a flourishing prosperity, in Wife, Children, Peace, and Power, that he was not onely the absolute envy of all *Asia*, but seemed to carry in his hand the arbitration of the world; being now cast down into so low, and I may call it miserable condition by a little faction of his own people, that he is not onely denied to be a King, but deprived of the comfort of all that ever was his: with an addition of a sharp and lasting captivity, according to the discretion sometimes of his meanest Subjects: whilst in the interim, Honour, Love, Justice, and Gratitude seem to be laid asleep in the deep center of the earth. (cc4)

Similar to his namesake in Sidney's *Arcadia*, King Evarchus is here described as the arbiter of the world. But finally political anarchy defeats this mostly benevolent king. In one of the most poignant phrases of the entire work, Creses explains that "Honour, Love, Justice, and Gratitude seem to be laid asleep in the deep center of the earth."

Ultimately, the author of *Princess Cloria* attempts a radical reassessment of what it means to be a just ruler by striking a compromise between idealism and Hobbesian skepticism. For Evarchus' son, Arethusius (Charles II), it is not enough to choose between the ideal of absolute justice and the pragmatism of political expediency. In what must have seemed to contemporary readers to have constituted a moment of supreme revisionism, his servant Meliander recalls the prince's grandfather, a figure for James I, whose indecision and neglect the author rescripts as dissimulation, a skill as "necessary in Princes actions, as the

²⁶ See chapter 2.

Sword of Justice” (Ddd4). In a lengthy conversation with the Prince, Meliander argues the necessity of utilizing secrecy, clandestine means, and deceit in the most effective rule of state. In the end, while he defends the virtues of courage, honor, and directness, Arethusius finally strikes a strained compromise with Meliander’s skepticism. He declares obliquely, “I would have a Prince alwayes to prosecute his designs although with secresie, yet without hypocrasie” (Ddd4^v).²⁷ In effect, the balance struck between universal law and insular custom, which we explored in the earlier romances, has for Arethusius transformed into a compromise between the older ideals of natural law and the new Hobbesian skepticism. The transition from conservative common-law insularity to Hobbesian skepticism is less awkward than it might at first appear to be. A hard kernel of skepticism concerning the political purposes of certain historiographical narratives underlies England’s romance of Trojan origins. Moreover, there is something uniquely war-like and thus compatible with Hobbes in England’s mythological reputation – explored in Part II of this book – as uniquely unconquerable by foreign invaders.

At the beginning of this book, I presented the genre of romance as embodying contradictory forces at the center of the English legal system that both enabled and impeded the drive towards expansionism and empire. If I am correct in drawing a line of influence between common-law insularity and Hobbesian skepticism, then the malleability of common-law doctrine is as noteworthy as that of the scholastic doctrine of natural law. As we saw in the first part of this book, the common-law tradition largely impeded the expansionist drive since it was by definition unsuited to non-English polities, while in later stages of British history, the corresponding Hobbesian doctrine of a state of nature may have had the opposite effect. For its part, the scholastic tradition of natural law continued to provide certain “ethical” and “charitable” rationales for foreign policy that appealed to an overarching rational structure that could be employed by a wide array of political affiliations, even if its hold on government policy waned. Most prominently, it emerges in works of royalist fiction such as Aphra Behn’s *Oroonoko*, especially in the narrator’s scathing critique of the barbaric treatment that British colonists mete out to the noble protagonist. Later, it would surface on the opposite end of the political spectrum in Robinson Crusoe’s charitable reform of Friday’s barbaric paganism. It would therefore be incorrect to conclude that Hobbes’ skeptical notion of the natural state eventually edges out the

²⁷ See Salzman, *English Prose Fiction*, pp. 164–75, esp. pp. 172–73.

older idealism of natural-law theory. In fact, the scholastic tradition of natural law also persisted, and if, during the sixteenth century, it primarily served to justify violence against the other, by the end of the seventeenth century it seems to point in the opposite direction, justifying both Behn's critique of the immoral British captain who kidnaps Prince Oroonoko and Crusoe's charitable, albeit paternalistic, reform of Friday. With its complex history of juxtaposing the insular with the universal, the mythological with the historical, the defensive and the offensive doctrines of war, the early modern romance thus continued to leave an indelible mark on later fiction and later modes of English foreign policy.

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