EXPRESSIONS OF SOVEREIGNTY

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LAW AND AUTHORITY IN THE MAKING OF THE

OVERSEAS BRITISH EMPIRE, 1576-1640

By

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ABSTRACT

This thesis contributes to the body of literature that investigates the making of the British empire, circa 1576-1640. It argues that the crown was fundamentally involved in the establishment of sovereignty in overseas territories because of the contemporary concepts of empire, sovereignty, the royal prerogative, and international law. According to these precepts, Christian European rulers had absolute jurisdiction within their own territorial boundaries (internal sovereignty), and had certain obligations when it came to their relations with other sovereign states (external sovereignty). The crown undertook these responsibilities through various "expressions of sovereignty". It employed writers who were knowledgeable in international law and European overseas activities, and used these interpretations to issue letters patent that demonstrated both continued royal authority over these territories and a desire to employ legal codes that would likely be approved by the international community. The crown also insisted on the erection of fortifications and approved of the publication of semiotically charged maps, each of which served the function of showing that the English had possession and effective control over the lands claimed in North and South America, the North Atlantic, and the East and West Indies. Finally, the crown engaged in diplomatic negotiations with other

colonizing European powers, during which its envoys justified British overseas activities using an embryonic, common legal language in order to bring about the consensus of the international community. Because of the crown's expressions of internal and external sovereignty, this study concludes that the congeries of overseas territories ruled by Queen Elizabeth and the early Stuarts were — legally, structurally, and nominally, if not culturally, politically, and ideologically — an "empire". This conclusion challenges those of recent historians who have questioned both the crown's involvement in new found lands, and the efficacy of international law in the establishment of overseas sovereignty.

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Dr. Jim Alsop, as supervisor and mentor, offered thoughtful advice and criticism about a topic far different than that originally brought to him. Dr. John Weaver was interested in this project from the beginning and his exceptional knowledge of frontier communities was invaluable. Drs. Virginia Aksan and John Sainsbury, in addition to other members of my examination committee, encouraged me to think about the

implications of my research beyond the geographical and chronological scope that I envisioned. While at Brown University, I benefitted greatly from some lengthy discussions with Dr. James Muldoon, whose expertise in the late medieval and early modern legal and intellectual environment, about which this study is largely based, proved especially useful. Dr. David Armitage examined the thesis with a thoughful candidness that reflects the true spirit of academic discussion; his insights will be essential when this project is carried to that next, important stage. I also received constructive criticism on portions of the thesis presented within the Department and University, at the Mid-Altantic and North American Conferences on British Studies, and at Brown. The substance of chapter two has been published as two articles in the Canadian Journal of History and the Huntington Library Quarterly; the comments of the anonymous readers for those journals are greatly appreciated.

My friends and colleagues on the "fourth floor", especially Amy M., Dan G., David L., Greg S., Michelle V., Rhonda H., Patrick S., Sean G., and Wendy C., have contributed to the thesis in ways that might not be readily apparent. I was surprised to find that heightened cerebral activity was more the result of theme parks, softball, English pubs, and dessert bars than reading and studying. Thanks also to my family, who have patiently waited for me to finish my education. I hope they will not be too disappointed when they find out that there is no end in sight. Finally, Luna was as present in this marathon as in the other dozen or so we have completed together. This thesis is dedicated to her and my family — it's really the least I can do.

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ABBREVIATIONS

PRIMARY MATERIALS

APC Col.	Acts of the Privy Council, Colonial Series
BL	British Library
CO	Colonial Office Papers, PRO
CSP Col.	Calendar of State Papers, Colonial Series
HMC	Historical Manuscripts Commission
IOR	India Office Records, British Library
OIOC	Oriental and India Office Collections, British Library
NAW	David B. Quinn, Alison M. Quinn, and Susan Hiller. New American World: a Documentary History of North America to 1612. 5 vols. New York: Arno Press, 1979.
PC	Privy Council Records, PRO
Pilgrims	Samuel Purchas, Hakluytus Posthumus, or Purchas his Pilgrims. London, 1625.
PN	Richard Hakluyt, The Principal Navigations. London, 1589.
PRO	Great Britain Public Record Office
SP	State Papers, Domestic and Foreign Series, PRO

COMMONLY-CITED JOURNALS

AHR	American Historical Review
EHR	English Historical Review
HJ	Historical Journal
JAH	Journal of American History
JBS	Journal of British Studies
JICH	Journal of Imperial and Commonwealth History
SCJ	Sixteenth Century Journal
TI	Terrae Incognitae
VMHB	Virginia Magazine of History and Biography
WMQ	William and Mary Quarterly

NOTES ON DATES, NAMES, AND SPELLING

Except where noted, all dates are old style but the year is taken to begin on January 1. This work relies heavily on original documentation in which the spelling of place and personal names is not consistent. In the text, I have generally adopted the modern spelling and usage for these names, even if this leads to apparent stylistic inconsistencies. In all quotations, and book and tract titles cited in the text, spelling has been modernized, abbreviations silent expanded, and letters changed to conform to modern usage. The exception is book and tract titles in footnotes, which retain their original spelling to facilitate further reference.

LIST OF MAPS AND ILLUSTRATIONS

INTRODUCTION

This thesis contributes to the body of literature that investigates the making of the overseas "British" empire, with a focus on the Elizabethan and early-Stuart period, circa 1576-1640. It is pursued from the perspective of the political and legal world in which these activities took place. In particular, it explores contemporary concepts such as empire, sovereignty, the royal prerogative, and international law, the manner in which these ideas were expressed in the late sixteenth and early seventeenth century, and the ways they were applied in the establishment of sovereignty across the seas. This study grows out of a conviction that scholars have not adequately recognized and applied these important concepts to Tudor and Stuart forays into new found lands. Consistent with this belief, this thesis undertakes two central, co-related, tasks. First, it attempts to recover some agency for the British crown[1] in the establishment of overseas dominion and to

[1] In this study, "Britain" and "British" are used somewhat anachronistically for themes which possess a sweep wider than the geographical area of England, including Scotland, Ireland, and Wales. Although "Britain" as a political unit did not come into existence de facto until the accession of James I in 1603, and de jure until the Act of Union of 1707, the term is employed in this thesis because, in a strictly contemporary legal sense, for most of the period under discussion sovereign authority rested in a single individual who held several "crowns" within the British Isles. "Crown" refers to the rights and responsibilities of the monarch and his or her royal advisors, including the privy council. It does not refer to the houses of parliament or its advocates, which are usually subsumed under the term "state" or "government".

show in what ways this collection of territories was — legally, structurally, and nominally, if not ideologically, culturally, and politically — an "empire". Both of these contentions have been denied implicitly or explicitly by historians. The second task, which for reasons that will soon become clear occupies the substantive portion of this study, is to show how and why British sovereignty was expressed in the new found lands themselves and justified to other European nations who challenged Britain's title to overseas territories. In undertaking these tasks, this study offers some reflections on the character of the crown and its colonies, and of the British empire, in its early decades.

THE DEBATE: CROWN AND EMPIRE

Writing in 1883, J.R. Seeley argued in The Expansion of England that "Greater Britain is a real enlargement of the English State; it carries across the seas not merely the English race, but the authority of the English Government. We call it for want of a better word an Empire."[2] Seeley was pleading for a broader understanding of English political history, one that looked beyond insular England and into all areas where British authority existed. This was because, beginning in about 1607 with the permanent establishment of Jamestown in Virginia, the attachment of "the New World" to Britain "modifies and determines all the wars and negotiations, all the international relations of Europe, during that period."[3] For Seeley, who could not imagine even an early modern Britain where the parliament had a limited role, this state existed through a mixed constitution in which the

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[2] J.R. Seeley, The Expansion of England: Two Courses of Lectures (London: MacMillan & Co., 1883, repr. 1888), p. 43.

[3] Ibid., p. 54.

monarch (the "crown") ruled in conjunction with parliament. Since it was this one, central political state which governed the British overseas territories and made Britain's agglomeration of territories structurally an empire, there was good cause to reintegrate overseas activities into "Greater British" political history, and to think in terms of a "British Empire" beginning in the reign of James I.

Although it was contrary to his intention, with this book Seeley inspired, in David Armitage's words, "the creation of the new and separate subfield of Imperial history."[4] The existence of this subfield, plus the arguments of its main proponents, raised to an unprecedented degree the importance of the first British Empire to the study of British political and foreign affairs. Looking toward future developments, colonial historians such as G.L. Beer, William Foster, J.A. Froude, A.P. Newton, and J.A. Williamson, writing from the late-nineteenth to the mid-twentieth century, offered deeply Anglocentric interpretations, in which ideological monarchs, crown officials, and members of parliament pursued an aggressively expansionist policy in order to improve the size, wealth, and international status of the British Empire (with an ideologically-charged capital "E").[5] Several of these writings focused on the economic theory of mercantilism, which suggests that, as Jacob Viner has written, England was part of a great power struggle for supremacy in Europe, a battle that was defined by gaining "plenty" while

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[4] David Armitage, The Ideological Origins of the British Empire (Cambridge: Cambridge U.P., 2000), p. 17; Armitage, "Greater Britain: A Useful Category of Historical Analysis?" American Historical Review 104 (1999): 429-30; Peter Burroughs, "John Robert Seeley and British Imperial History," JICH 1 (1972): 191-211.

[5] The classic study employing this interpretation is G.L. Beer, The Origins of the British Colonial System, 1578-1660 (New York: MacMillan, 1922). See also: J.A. Froude, The English in the West Indies; or, The Bow of Ulysses (London, 1888); W. Foster, England's Quest for Eastern Trade (London, 1933); A.P. Newton, The European Colonizing Activities of the English Puritans (London, 1914); and J.A. Williamson, A Short History of British Expansion: The Old Colonial Empire (London, 1945).

denying the same to other nations.[6] Others (and some modern writers) focused on cultural issues, such as ideological thoughts of religious conversion or exploitation; here, the works of Richard Hakluyt and Samuel Purchas are often cited.[7] Recently this latter theme has become more common among literary scholars. For example, Edward Said, in his popular work Culture and Imperialism (1993), wrote that "from the sixteenth century on," the existence of a British Empire as a common moral, cultural, or ideological entity was celebrated by "poets, philosophers, historians, dramatists, statesmen, novelists, travel writers, chroniclers, soldiers, and fabulists."[8] The result of this approach to early overseas expansion has been to make the British Empire in its first half century appear to espouse the cultural and ideological "imperialism" that modern historians normally see beginning only in the eighteenth century. Seeley's belief that the first British Empire was in fact very fragile, and that it was the empire of the eighteenth century that helped Britain achieve international status, fell for a time on deaf ears.

Modern historians have returned to this concept of fragility, and in the process they challenge virtually every tenet of the earlier historiography. To them, there was no "imperialism" in the late sixteenth and early seventeenth centuries, the role of the state and crown in overseas affairs was purposely minimal, and overseas enterprises were

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[6] Jacob Viner, "Power Versus Plenty as Objectives of Foreign Policy in the Seventeenth and Eighteenth Centuries," (originally published in 1949), reprinted in David Armitage, ed., Theories of Empire, 1450-1800 (Aldershot: Ashgate Variorum, 1998), pp. 277-306.

[7] See, for example, Richard Helgerson, Forms of Nationhood: The Elizabethan Writing of England (Chicago: U. of Chicago P., 1992), chs. 3-4; Mary C. Fuller, Voyages in Print: English Travel to America, 1576-1624 (New York: Cambridge U.P., 1995).

[8] Edward Said, Culture and Imperialism (London: Chatto & Windus, 1993), esp. pp. 98-99. Cf. Jeffrey Knapp, An Empire Nowhere: England, America, and Literature from Utopia to The Tempest (Berkeley, 1992); Frances A. Yates, Astraea: The Imperial Theme in the Sixteenth Century (London: Routledge & Kegan Paul, 1975), part II and plates 6b, 13; and Helgerson, Forms of Nationhood.

driven solely by commercial desires. The activities were, therefore, extremely mundane and were not governed or operated at a sufficient level to bring about the origins of the British Empire. The seminal work explaining this interpretation is Richard Koebner's Empire (1961). While searching for ideological origins of the British Empire, Koebner pronounced that "during the whole Tudor and Stuart periods the crown lacked an 'empire' [because] . . . it was understood that the realm of England in its territorial confines was not imposing enough to qualify as an 'empire'."[9] To Koebner, having an "empire" meant having large territorial holdings, the ability to wield power and authority by force, and, in the process, gaining a voice in international power politics. Britain had none of these before at least the 1680s, when it finally had a vast, more fully integrated, territorial network and a strong enough navy to legitimately call itself a "sea empire."[10]

This argument has also encouraged historians to deny the existence, or importance, of crown and state involvement in transoceanic enterprises. This denial was made explicit recently in several important studies, including K.R. Andrews's Trade, Plunder, and Settlement (1984) and the new first volume of the Oxford History of the British Empire series, The Origins of Empire (1998).[11] Andrews, a self-proclaimed "anti-imperialist", blamed the fragility and failure of Elizabethan and early Stuart transoceanic ventures on monarchs who "did little to help", often turned "a blind eye", and provided,

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[9] Richard Koebner, Empire (Cambridge: Cambridge U.P., 1961), p. 61.

[10] Ibid., pp. 62-64.

[11] K.R. Andrews, Trade, Plunder, and Settlement: Maritime Enterprise and the Genesis of the British Empire, 1480-1630 (Cambridge: Cambridge U.P., 1984); Nicholas Canny, ed., The Origins of Empire: British Overseas Enterprise to the Close of the Seventeenth Century, The Oxford History of the British Empire series, vol. 1 (Oxford: Oxford U.P., 1998).

at best, "rather erratic support from behind".[12] As for the English state, it only "tardily and reluctantly" became involved in transoceanic ventures, but "in none of these enterprises [did it] take full responsibility."[13] Andrews, like other historians writing at about the same time, argued that the British Empire was primarily a maritime and commercial enterprise, and one that before 1630 was not particularly successful.[14] Because these enterprises were not likely to yield either economic dividend or power, the government (the king and parliament) was not much interested.

Much the same argument has been made by several contributors to The Origins of Empire. Editor Nicholas Canny began his introduction with a statement that pervades the volume: "The study of the British Empire in the sixteenth and seventeenth centuries presents special difficulties because no empire, as the term subsequently came to be understood, then existed, while the adjective 'British' meant little to most inhabitants of Britain and Ireland [at that time]."[15] Basing his comments on the contributors' essays, Canny found a "low level of state involvement", by which he meant the parliament and crown, in colonial activity before 1650.[16] Drawing upon the views of Andrews, John C. Appleby stated that these ventures were "of marginal concern" to the crown, a finding that was repeated by other writers in more specialized studies.[17] David Armitage strongly

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[12] Andrews, Trade, Plunder, and Settlement, p. 339. For a similar argument, see James Lang, Conquest and Commerce: Spain and England in the Americas (New York: Academic Press, 1975).

[13] Ibid., pp. 13-15.

[14] For example, D.B. Quinn and A.N. Ryan, England's Sea Empire, 1550-1642 (London: George Allen & Unwin, 1983).

[15] Nicholas Canny, "The Origins of Empire: An Introduction," in The Origins of Empire, p. 1.

[16] Nicholas Canny, "Preface," in The Origins of Empire, p. xi.

[17] John C. Appleby, "War, Politics, and Colonization," in The Origins of Empire, p. 56.

challenged the work of the literary scholars, by questioning whether there were any seeds of "imperialist" thought before the eighteenth century.[18] Armitage wrote that "only in retrospect did the Elizabethan era come to be seen as a golden age, and only with the rise of linguistic nationalism in the nineteenth century were literature and Empire traced back to common roots in the late sixteenth century."[19] To these writers, this lacklustre interest in overseas enterprises was caused by a weak central government, a small army and navy that were insufficient to govern and protect the colonies, lack of financial resources, and the general unwillingness of the crown to become involved in risky, speculative trading and colonizing ventures.[20] Therefore, monarchs and crown officials were content to leave overseas activities "firmly in the hands of private enterprise," as Appleby writes.[21] This was the case until at least Commonwealth and Restoration England, when the government strengthened the navy, created the Board of Trade and Plantations to supervise overseas activities, and began governing its new-found "empire."[22] Among these writers, Koebner's thesis essentially remained unchallenged.

The last word on the subject to date has been offered by David Armitage in his monograph The Ideological Origins of the British Empire (2000). He convincingly argued that "the emergence of the concept of the 'British Empire' as a political community encompassing [the British Isles and the] islands of the Caribbean and the

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[18] David Armitage, "Literature and Empire", in The Origins of Empire, ch. 5.

[19] Armitage, "Literature and Empire," p. 100.

[20] See the following essays in The Origins of Empire: John C. Appleby, "War, Politics, and Colonization, 1558-1625", ch. 3; Virginia DeJohn Anderson, "New England in the Seventeenth Century," p. 9; and Michael J. Braddick, "The English Government, War, Trade, and Settlement, 1625-1688," ch. 13.

[21] Appleby, "War, Politics, and Colonization," p. 64.

[22] The Origins of Empire: Jonathan I. Israel, "The Emerging Empire: The Continental Perspective, 1650-1713," ch. 19; and G.E. Aylmer, "Navy, State, Trade, and Empire," ch. 21.

mainland colonies of North America, was long drawn out, and only achieved by the late seventeenth century at the earliest."[23] Although he agreed with Seeley that an empire must be ruled by a central state, he also agreed with the recent writers that before this time the collection of insular territorial units was not an integrated political community, nor an arena of Protestant expansionist ideology, but rather simply an arena of "hemispheric and international trade. Its character was therefore commercial."[24] After 1603, "the Three Kingdoms of England, Scotland, and Ireland were united under the kingship of James VI, I and I . . . [who was] never a British emperor ruling a united British empire."[25] At best, the kingdoms of Scotland, Ireland, Wales, England, and the colonies across the sea were subsumed under a "multiple kingdom", a collection of independent (not integrated) political communities joined, as it happened, by the same monarch. The lack of an integrated political community, however, meant that: "All of the parts of the Stuart composite monarchy would pursue ventures across the Atlantic — the English in New England, Virginia, the Caribbean and Newfoundland; the Scots in Newfoundland and Cape Breton; the Welsh also in Newfoundland, or 'Britanniol'; the Irish on the Amazon — but they could no more create a pan-British empire abroad than they could create a pan-British monarchy at home. . . ."[26] Even the rhetoric of Protestantism and the attempts to create an "empire of the seas" were not consistent and

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[23] David Armitage, The Ideological Origins of the British Empire (Cambridge: Cambridge U.P., 2000), p. 7.

[24] Ibid., p. 8.

[25] Ibid., p. 59.

[26] Ibid., p. 60.

powerful enough to engender the origins of a united empire.[27] The key to Armitage's conception of empire, then, is its being an integrated community — political, cultural, and above all ideological — one whose size and structure allowed it to wield power, and one which was governed by a centralized body. By virtue of the limited involvement of the polis (the state or commonwealth), and the diversity and independence that still existed among the various kingdoms within the "British" Atlantic world, such a community did not exist under Queen Elizabeth and the early Stuarts.

The work of these writers has much to commend it. As contemporary primary sources imply through the lack of attention to overseas territories, parliament's role in overseas affairs was certainly minimal, which challenges Seeley's outdated notion that "Greater Britain" was ruled by the English state.[28] In addition, as Andrews and the others have implied, the British crown did take a laissez faire approach to colonial and trading activities in general. These ventures were underwritten by trading companies that were supported by investors and stockholders and the crown was, for the most part, unwilling to invest significant government funds into speculative enterprises. As George Raudzens has recently written (1999), "Until the mid-seventeenth century [Britain's] colonies were

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[27] Ibid., chs. 3-4.

[28] Charles H. McIlwain (American Revolution: A Constitutional Interpretation, Ithaca, New York, 1923) argued that before 1649, the colonies were governed solely by the king and not parliament. This notion has been challenged by Robert Schuyler (Parliament and the British Empire, New York, 1929) and Jack P. Greene (Peripheries and Center: Constitutional Development in the Extended Politics of the British Empire and the United States, 1607-1788, Athens, Georgia, 1986), who argue that parliamentary legislation and taxation extended to the colonies, though Greene admits the imperial constitution was different. I am persuaded by the recent work by Ian K. Steele, who argues not unlike McIlwain that it was only after 1643 that parliament became involved in colonial affairs, before which time colonial councils were governed by the monarch under the Privy Seal ("The British Parliament and the Atlantic Colonies to 1760: New Approaches to Enduring Questions," in Philip Lawson, ed., Parliament and the Atlantic Empire (Edinburgh: Edinburgh U.P., 1995): 29-46.)

largely financial failures and, in any case, generated no wealth to speak of and certainly no power."[29] Given this project of failure, it would be difficult to argue that ideological concepts such as "mercantilism" as akin to "power", and "Empire" as akin to "imperialism", were seriously-held ideologies in the period, regardless of what literati such as Edward Dyer, Richard Hakluyt, Edmund Spenser, and Philip Sidney had to say on the matter. It is also difficult to deny the contention that there was insufficient political or cultural union among the British Isles to speak of a "British" empire, or that the territorial extent of overseas holdings was limited, could play a very minor role in international power politics, and was, based on these criteria, not really an "empire". Indeed, Bruce Lenman argues that rather than overseas expansion being seen as the result of a "taut homogenous nation," it was, instead, "a result of the divided nature of an English nation whose identity was in turmoil."[30] Raudzens summarizes the current historiographical opinion: "The government was largely disinterested in what their colonists were up to and unconscious of the concept of 'empire' itself."[31]

The current interpretation of the origins of the overseas British empire under Queen Elizabeth and the early Stuarts, therefore, emerges through a series of components that were "lacking". The lack of a coherent imperial ideology, crown or state involvement, an integrated political community, significant territorial holdings, and a "language of power" normally associated with empire, all contributed to the idea that transoceanic activities in this period were mundane endeavours, pursued almost solely out

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[29] George Raudzens, Empires: Europe and Globalization, 1492-1788 (Sutton Publishing, 1999), p. 93.

[30] Bruce Lenman, England's Colonial War 1550-1688: Conflicts, Empire and National Identity (Harlow: Pearson, 2001), pp. 15-16.

[31] Raudzens, Empires, p. 93.

of proto-capitalist interests and having little to do with high-level politics or notions of sovereignty. Defined using these criteria, the origins of the British Empire was a phenomenon of the late seventeenth and early eighteenth centuries, when, for reasons ranging from financial rapacity to autocratic fervour, Charles II and his successors, and the Committee of Trade and Plantations under the formidable direction of William Blathwayt, amalgamated the disparate territorial holdings together.[32] As David Armitage, Michael Braddick, and the contributors to the second volume of the Oxford History of the British Empire series — especially Ian Steele — have suggested, it was in the period after 1660 that all of the components that were "lacking" were finally achieved, and royal authority was imposed over a "British Empire."[33] Before this time, the colonies were too politically, culturally, and ideologically scattered, lacking a nucleus with sufficient strength to hold its various protons and electrons together.

One significant result of this "de-Britishizing" and "de-imperializing" of overseas activities in its first century or so has been a large body of literature about Elizabethan and early-Stuart transoceanic enterprises that — though in itself is exceptionally valuable — focuses on individual colonies, trading companies, and adventurers, often without any mention at all of royal authority and imperial ideology, and sometimes using the term "British Empire" only out of tradition and for the lack of a better term. The works of

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[32] On Blathwayt, see Stephen Saunders Webb, "William Blathwayt, Imperial Fixer: From Popish Plot to Glorious Revolution," WMQ 26 (1968): 3-21; and Webb, "William Blathwayt, Imperial Fixer: Muddling Through to Empire, 1689-1717," WMQ 26 (1969): 373-415.

[33] See Armitage, Ideological Origins, chs. 5-7; Michael J. Braddick, "The English Government, War, Trade, and Settlement, 1625-1688," in The Origins of Empire, especially pp. 296-308; Braddick, State Formation in Early Modern England, c. 1500-1700 (Cambridge: Cambridge U.P., 2000), parts I and III; Ian K. Steele, "The Anointed, the Appointed, and the Elected: Governance of the British Empire, 1689-1784," in P.J. Marshall, ed., The Eighteenth Century, The Oxford History of the British Empire Series (Oxford: Oxford U.P., 1998); and, more generally, Marshall, ed., The Eighteenth Century.

K.R. Andrews and D.B. Quinn, plus that of a host of scholars studying the rise and fall of the various trading companies and colonies of the period demonstrate this tendency.[34] Even in the wake of J.G.A. Pocock's resounding plea beginning in 1973 for "New British History", which sought to reintroduce a widely inclusive treatment of British history, little effort has been made to consider the relationship of the peripheral colonies to the central authorities, especially in the period before about 1660.[35] British historians have distanced themselves from British history before 1660 that includes the colonies, and "overseas" historians have done just the opposite in avoiding discussing the crown in relation to its colonies.[36] It was as if the colonies and settlers before the late seventeenth century were self-contained, self-governing entities, receiving no guidance or governance from the homeland and increasingly differing in social customs, legal traditions, and governmental

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[34] Examples are too numerous to mention. See, for example, the works of David B. Quinn, England and the Discovery of America, 1481-1620 (New York: Alfred A. Knopf, 1974); Explorers and Colonies: America, 1500-1625 (London: Hambledon Press, 1990); and European Approaches to North America 1450-1640 (Aldershot: Ashgate Variorum, 1998); the greatly-respected work by K.R. Andrews, N.P. Canny, and P.E.H. Hair, eds., The Westward Enterprise: English Activities in Ireland, the Atlantic, and America 1480-1650 (Liverpool: Liverpool U.P., 1978); and the various publications of the Hakluyt Society.

[35] The seminal work is J.G.A. Pocock, "British History: A Plea for a New Subject," New Zealand Historical Journal 8 (1974): 3-21; and Pocock, "History and Sovereignty: The Historiographic Response to Europeanization in Two British Cultures," JBS 31 (1991): 358-89. For a trenchant commentary, see Armitage, "Greater Britain: A Useful Category of Historical Analysis?", pp. 431-34.

[36] A good recent example is Glenn Burgess, The New British History: Founding a Modern State, 1603-1715 (London: Tauris, 1999), a collection of essays in which there is no mention of transoceanic colonies. Reasons for this introversion are suggested in Armitage, "Greater Britain: A Useful Category of Historical Analysis,"; J.C.D. Clark, "The Strange Death of British History? Reflections on Anglo-American Scholarship," Historical Journal 40 (1997): 787-809; Nicholas Canny, "Writing Atlantic History; or, Reconfiguring the History of Colonial British America," Journal of American History 86 (1999): 1093-1114. Interestingly, however, American historians such as Jack P. Greene have been active in synthesizing British and American history, in part because of the interest in Atlantic history. See Jack P. Greene, Peripheries and Center: Constitutional Development in the Extended Polities of the British Empire and the United States, 1607-1788 (Athens, Ga.: U. of Georgia P., 1986).

structures.[37] If Seeley's work unexpectedly resulted in a subfield of "imperial" history that too strongly included the crown, ideologies of empire, and notions of international power politics, the work of Koebner and certain of his successors had the effect of creating a subfield of "overseas" (not even "colonial", which implies satellite status) history that elides these elements almost entirely. While this subfield has the advantage of showing that the various overseas territories were not united ideologically or even culturally, the disadvantage lies in the failure of this type of history to help us understand these activities in their contemporary contexts of British and European history, law, and authority.[38]

THE POINT OF DEPARTURE

Recent work on the concept of "empire" imposes a caveat on the conclusions reached by many modern writers. It suggests the possibility that there existed a more inclusive definition of notions such as crown and empire in their broader, international contexts. This interpretation is offered by Anthony Pagden in Lords of All the World: Ideologies of Empire in Spain, Britain and France, 1500-1800 (1995).[39] Pagden argues that by the early modern period there were several definitions of "empire" circulating

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[37] J.H. Parry, "Introduction: the English in the New World," in Westward Enterprise, pp. 1-6. For an excellent example of how this "New British history" can widen the field, see the excellent study by Karen Ordahl Kupperman, Providence Island, 1630-1641: The Other Puritan Colony (Cambridge: Cambridge U.P., 1993). Kupperman is careful to show the influences of English political and economic activities to the rise and fall of the Providence Island Company.

[38] Armitage, "Greater Britain: A Useful Category of Historical Analysis," pp. 438-45. As in his subsequent monograph (Ideological Origins of the British Empire), however, Armitage sees the eighteenth century as the time when the New British History can show the alliance between "British" and "Atlantic" history.

[39] Anthony Pagden, Lords of All the World: Ideologies of Empire in Spain, Britain and France, c. 1500 - c. 1800 (New Haven: Yale U.P., 1995).

throughout Europe, which derived from the legacies of the Roman and medieval empires. Its most important meaning was to convey the idea that an empire was any state that had imperium, which was the supreme legislative authority exercised by an individual who recognized no higher spiritual or secular power. By the sixteenth century, this concept had become virtually synonymous with "sovereignty." In fact, three complementary notions of imperium survived into the eighteenth century: it represented "independent or 'perfect' rule"; "a territory embracing more than one political community"; and "the absolute sovereignty of a single individual."[40] Each of these notions was being proclaimed by monarchs in the period immediately following the Reformation. Pagden noted that this ideology of empire was based on the monarchia universalis of Christianity — the idea that only Christian sovereigns could exercise imperium — and this interpretation enabled him to explain how European colonizing nations generally denied the rights of sovereignty to indigenous peoples.[41] Using this more universal understanding of "empire" Pagden implied (perhaps too implicitly), that there were some common features in the ideologies of empire among Spain, France, and Britain, those being the concepts of imperium and the monarchia universalis, which allowed for the legitimacy of ruling an empire.

A similar argument has been made by James Muldoon in Empire and Order: The

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[40] Ibid., pp. 12-18.

[41] Ibid., ch. 2. In these conceptions, Pagden is supported by, and some of his ideas clarified by: Franz Bobsach, "The European Debate on Universal Monarchy," in David Armitage, ed., Theories of Empire, 1450-1800 (Aldershot: Ashgate-Variorum, 1998), pp. 81-98; J.G.A. Pocock, "States, Republics, and Empires: The American Founding n Early Modern Perspective," in Terence Ball and J.G.A. Pocock, eds., Conceptual Change and the Constitution (Lawrence, Kansas: U.P. of Kansas, 1988), pp. 55-77; and J.S. Richardson, "Imperium Romanum: Empire and the Language of Power," Journal of Roman Studies 81 (1991): 1-9.

Concept of Empire, 800-1800 (1999) in the most recent and comprehensive work on the subject.[42] Stating the case more directly than Pagden, Muldoon argues that scholars have generally neglected to recognize that "the emergence of a political universe composed of sovereign states led to the development of international law as the logical consequence of the need to regulate relationships among them."[43] This became vitally important during the sixteenth and seventeenth centuries not so much to protect the traditional, contiguous territories of independent rulers, which were usually small and had "a comparatively homogeneous population that made possible the identification of the nations with the state," but rather because "European rulers were also becoming the masters of various overseas territories," of which each region often had "its own laws and customs, its own political, economic and social structures, perhaps even its own religion."[44] It was necessary for "European rulers, officials, and theoreticians to fit these new lands within the existing political order," that is, to show that they were part of its territorial and sovereign "empire".[45] Because the onus was on the sovereign monarch to demonstrate dominium (ownership) and imperium (sovereignty) over all territories within his dominions, this made each European state's collection of territories structurally and nominally an "empire", ruled by a single individual in whom was bestowed all the power the state could wield.

These recent interpretations of the contemporary concepts of empire and

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[42] James Muldoon, Empire and Order: The Concept of Empire, 800-1800 (New York: St. Martin's Press, 1999).

[43] Ibid., p. 7.

[44] Ibid., pp. 6-8, 144.

[45] Ibid., p. 144.

sovereignty provide the point of departure for this study. It argues that although there were clear limitations to the cultural, political, or ideological unity of the multiple kingdoms under Elizabeth and the early Stuarts, from the perspective of early modern notions of law and authority the crown — the ultimate sovereign authority in the state — was a British one, and the territory ruled by that monarch was collectively an empire (but with a small "e").[46] If, between about 1576 and 1640, the British Isles and the territorial holdings in North and South America and the East and West Indies had any common thread to tie them together as an "empire" that was "British" it was that these territories were ruled commonly by a sovereign monarch at a time when European states were declaring their independence from the Roman Catholic Church and the Holy Roman Emperor. By way of analogy, under this definition we can speak of an Iberian empire having legal authority over Spanish and Portuguese transoceanic holdings during the joint rules of Philip III of Spain, who was also Philip II of Portugal (1578-1621), and his son, Philip IV and III (1621-40). Thus, while it is true that most of the overseas activities undertaken in the Elizabethan and Stuart period were English, and that those enterprises undertaken variously by subjects from England, Scotland, and Ireland were not British in the cultural or political sense of a united nation, the common authority for all of these events was a single sovereign individual.

It is argued more extensively in chapter one below that according to contemporary understandings of the concept of sovereignty, Christian European rulers had absolute

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[46] The distinction between "Empire" and "empire" is not an artificial one. While the former conjures up the ideological, imperialist entity whose existence Andrews and Armitage have rightly challenged, the latter reflects the legal and nominal unity that derives from a group of territories being ruled by a single, sovereign individual in whom is bestowed the power of the state.

jurisdiction within their own territorial boundaries (internal sovereignty), and they also had certain obligations when it came to their relations among other sovereign states (external sovereignty). Within his or her own dominion, English monarchs had what came to be known in the early seventeenth century as the "absolute royal prerogative". This gave the monarch the right and responsibility to determine all laws and proceedings that were not addressed in the national ancient constitution, such as authorizing the settlement of overseas territories and overseeing their governance. As independent rulers, sovereign princes were also expected to adhere to certain supra-national legal systems, which were civil law, the law of nations, and an embryonic code of international law. Because of his superior status and because, as Pagden suggested, no nation could be allowed to exist that was not in a state of sovereignty, the onus was on the sovereign monarch to express his or her sovereignty (or imperium) over all territories within his dominions, and to demonstrate this sovereignty to other European powers. That is to say, the crown had a legal obligation to assert its authority through various expressions of sovereignty that were consistent with its declared internal and external sovereign rights.

This interpretation places much more importance on the crown and the concept of a united "empire" before about 1640 than previous historians have allowed. While this study does not seek to challenge recent historians in their refutation of a political, cultural, or ideological empire before the mid-seventeenth century, it offers an important addendum to these conclusions. The colonies that were settled, planted, and defended by subjects of the British crown were legally, structurally, and nominally united as an empire, particularly when viewed from the perspective of the internal and external sovereignty of the monarch. As Francis Jennings has written in a new study, entitled, The

Creation of America (2000), "England and its colonies were all part of the same empire," and although "latitude remained . . . for the colonies to establish individual identities within the whole," the core and dominant entity was the British crown which shaped a British empire.[47] Essentially, then, this study establishes a middle ground between the extremes of the imperial historians on the one hand, and the overseas, or anti-imperial, historians on the other.

EXPRESSIONS OF SOVEREIGNTY

The contention that the crown was necessarily more fully involved in the making of an overseas British empire before 1640 can be tested through an examination of the ways it asserted imperium, or expressed its sovereignty, throughout its transoceanic dominions. One could attempt a similar examination of demonstrations of sovereignty for other British territorial regions of the crown — Wales, Scotland, and Ireland. Their exclusion is based, in part, on the limitations of time and space, but also because it is the overseas territories, by virtue of their remoteness, where the British crown was most likely to be challenged in its claims by rival European colonial powers and, therefore, would be most required to express fully its internal and external sovereignty. Furthermore, because this study addresses issues of sovereignty, British contact with China, India, Japan, Persia, and Russia during this period will not be addressed. As C.H. Alexandrowicz has shown, these territories were ruled by "high ranking sovereigns" who, unlike the indigenous peoples of other overseas territories, were deemed by European

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[47] Francis Jennings, The Creation of America (Cambridge: Cambridge U.P., 2000), pp. 8-15, quotations on pp. 9, 11.

monarchs to meet the requirements of sovereign powers. In contrast, lower ranking "sovereigns", mostly native chieftains or rulers, were not accorded the same classification by Europeans. Natives in the Americas and the West Indies were considered to lack the qualities necessary for sovereign status, which was generally defined according to matters of civility and inter-state relationships. In the Spice Islands in the East Indies, petty rulers relinquished their sovereignty in favour of the European monarch, who was expected to govern according to his nation's laws and redress disputes through European channels, but, reciprocally, to protect the suzerain nations from European assault. Therefore, the overseas territories in which the British crown expressed its sovereignty in the Elizabethan and early Stuart periods include parts of North and South America, Greenland, the West Indies, and the Spice Islands, in those places where Britain exercised its own sovereignty and would be required to defend it, and the indigenous peoples, from usurpation.[48]

How did the crown express its sovereignty, or its imperium, in these regions? This question situates itself within the work of a number of historians who have considered how the British, and more particularly the English, monarchs and settlers established authority in overseas territories. Much of this literature focusses on the dispossession of indigenous populations, although by the mid-sixteenth century the arguments of European powers for dispossessing native peoples were more or less established. These usually entailed denying that the latter had rights of sovereignty because of their alleged incivility and heathenism, because the land was not fitly used

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[48] C.H. Alexandrowicz, An Introduction to the History of the Law of Nations in the East Indies (16th, 17th and 18th Centuries) (Oxford: Clarendon Press, 1967), ch. 2, pp. 97-110.

according to Christian law, or because of conquest, which awarded all spoil to the conqueror.[49] Since the native peoples were not accorded rights of sovereignty, these arguments were, as John T. Juricek has remarked, "abstract, absolute, and non-negotiable"; if denying sovereignty was the central contention of all European (Christian) powers, then further justifications were moot.[50] When compared with the amount of scholarship on the dispossession of natives, however, claims to imperium and expressions of sovereignty directed against rival European powers have received surprisingly little attention. This is because most writers who have addressed this issue do not accept that, or have not concerned themselves to determine whether, there was a relevant code of international law which regulated the relationships between sovereign states.

Most writers imply that there were conflicting codes, rival legal frameworks that existed for reasons ranging from national biases to fundamental linguistic and jurisprudential misunderstandings. As a result, each colonial power invented its own self-serving legal code in order to establish overseas authority, one that was usually based on the indigenous and traditional laws of the respective nation. For example, Juricek has argued that Spain and Portugal, as the earliest colonizing powers, established their legal claim to territory through a "preemptive code".[51] They argued that as first discoverers of

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[49] The classic study is Francis Jennings, The Invasion of America: Indians, Colonialism, and the Cant of Conquest (Chapel Hill: U. of North Carolina P., 1975). See: Pagden, Lords of All the World, ch. 3. John H. Elliott, "The Seizure of Overseas Territories by the European Powers," in Armitage (ed.), Theories of Empire, pp. 139-57. Anthony Pagden, "The Struggle for Legitimacy and the Image of Empire in the Atlantic to c. 1700," in Origins of Empire, pp. 39-41. Pagden shows that arguments for natives holding, if not sovereign rights, then land possessory rights, were common before about 1550 among certain thinkers, especially Franciso de Vitoria, and were expressed again in the eighteenth century, by John Locke and others.

[50] John T. Juricek, "English Territorial Claims in North America Under Elizabeth and the Early Stuarts," Terrae Incognitae 7 (1975): 7.

[51] Ibid., pp. 8-19.

the territory under question, it was immediately and permanently under their sovereignty, a belief which was "codified" by Alexander VI when he issued the papal bull Inter Cetera in 1493 awarding all terra incognita to the Iberian countries. The northern powers, Britain, France, and the Netherlands, turned to a "dominative code". Since they arrived late in the Atlantic and could not establish a claim as first discoverers, the monarchs issued letters of marque and under this sovereign authority the settlers travelled to the New World and occupied the territory.[52] Whereas the Iberian powers legitimized their claims to other Europeans based on "discovery", or preemption, the Northern powers legitimized their claims through actual, physical occupation of the territory under question, or domination. Ultimately, because there was no international law at this time, what was most important was the ability to hold the territory.[53]

Taking another approach to the topic, Patricia Seed has argued that, "at the core of the differences [between English and Iberian powers] were incompatible cultural and linguistic concepts of what constituted the right to rule colonial territory."[54] According to Seed, although each of the colonizing powers was familiar with the Roman (civil law) concepts such as "discovery", "possession", and "occupation", they defined these terms using indigenous, vernacular language, which could not be properly communicated throughout Europe. This is why, for example, the Spanish could justify their rights to sovereignty based on simple symbolic acts such as discovery, planting "markers, pillars, plaques, or piles of stone" on the territory, and "naming rivers, capes, and islands as part

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[52] See also Pagden, "The Struggle for Legitimacy," pp. 34-54.

[53] Juricek, "English Territorial Claims."

[54] Patricia Seed, "Taking Possession and Reading Texts: Establishing the Authority of Overseas Empires," WMQ, 3d ser., 49 (1992): 183-209; quotation at p. 200.

of the ceremony of taking possession," while the English summarily rejected these methods and instead, as Juricek also argued, emphasized the importance of settlement on the territory. In order to demonstrate the necessity of this act to secure sovereignty, the British crown issued a royal letter patent which commanded the patentees to "hold and occupy" any territories discovered which were not currently inhabited by Christians.[55] In her enlightening comparative monograph entitled Ceremonies of Possession (1995), Seed suggested that because the cultural and linguistic differences could not be overcome, the English took physical possession of the land by building houses, erecting fences, and tilling land, mundane "ceremonies" that were linked to English common law relating to the acquisition of property. By "affixing their own powerful cultural symbols of ownership — houses and fences — upon the landscape," the settlers established a legal right to the land and demonstrated an intention to remain.[56] But, Seed concludes, because of the linguistic disparities these methods "neither imitated Roman acts of possession nor recalled Roman laws and codes."[57] In contrast, the other colonizing powers employed methods ranging from the Portuguese staking their claims through astrological extrapolations to the Spanish establishing sovereignty by reading a text of conquest to the indigenous peoples.[58]

Anthony Pagden has made arguments that complement those of Juricek and Seed. Although he argued that the colonizing powers of England, France, and Spain used the

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[55] Ibid., pp. 185-99.

[56] Patricia Seed, Ceremonies of Possession in Europe's Conquest of the New World, 1492-1640 (Cambridge: Cambridge U.P., 1995), introduction and ch. 1. A similar argument is developed in Arthur S. Keller, et al, Creating Rights of Sovereignty Through Symbolic Acts, 1400-1800 (AMS Press, 1967).

[57] Ibid., p. 182.

[58] Ibid., chs. 2-5.

common legal languages of imperium and the monarchia universalis to justify their claims that natives did not have sovereign status and that Christian Europeans, therefore, had the right to impose dominion, he also believed that there was no agreed upon ideology among these European states. Whereas the Iberian countries justified their sovereignty through conquest, the English turned to the Roman law concept of res nullius, or "empty things." This notion held that because the land was not being fitly used, it was not effectively occupied and was, therefore, available to the sovereign monarch who chose to extend his imperium and authorize his subjects to "improve" the land.[59] But despite the fact that, according to Pagden, the English did not even believe in the efficacy of conquest, the lack of a supranational body or code of international law made such disagreement unimportant.[60] In making this argument, Pagden has essentially confirmed Juricek's argument for English "dominative" occupation and Seed's concept of establishing possession through mundane agricultural and architectural acts.

The strength of the work of Juricek, Seed, and Pagden is that they have isolated an important aspect of establishing authority in new found lands, which in the case of British overseas activities was the value placed on actual, effective occupation of territory. As these authors made clear, although the rival European powers defined this concept rather differently, methods of claiming sovereignty that did not involve this fundamental requirement were likely to be challenged. Perhaps because of the long tradition of denying the existence of a united empire before the eighteenth century, however, all these historians have turned to peculiarly mundane justifications for establishing sovereignty.

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[59] Pagden, Lords of All the World, ch. 3.

[60] Ibid., pp. 86-94.

In the process, they, like the school of anti-imperialists, also deny through elision crown authority in the establishment of dominion. A second weakness in these authors' arguments is their failure to recognize that the British did, in fact, make efforts to justify their sovereignty in new founds lands using methods similar to those employed by the Iberian powers, including the use of Roman law precedents.

O.P. Dickason and L.C. Green, for example, have made this argument in relation to the dispossession of natives. They suggested that although each country's methods differed in their particulars, their expressions of sovereignty could be understood and articulated within the contemporary framework of empire, sovereignty, and international law.[61] According to these authors, in order to justify their claims, the principal colonizing powers of Britain, France, and Spain employed the language of civil law, international law, and the law of nations, which was informed either by custom, written Roman law, medieval glossators and commentators of civil law, or contemporary civil lawyers. Thus, if there was no codified legal framework in place in the late-sixteenth and early-seventeenth centuries to adjudicate the relations among sovereign states, there was, in Dickason's words, "an evolving practice."[62] This argument has been fortified by writers who have considered the issue of a "universal" legal code applying not only to the dispossession of natives but also to claims directed against rival European powers. Carol Sparks, for instance, has suggested that England "legitimized" its claims to sovereignty in

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[61] O.P. Dickason, "Concepts of Sovereignty at the Time of First Contacts" and L.C. Green, "Claims to Territory in Colonial America," bound together in The Law of Nations and the New World (Edmonton: U. of Alberta P., 1993); O.P. Dickason, "Old World Law, New World Peoples, and Concepts of Sovereignty," in Stanley H. Palmer and Dennis Reinhartz, eds., Essays on the History of North American Discovery and Exploration (Arlintgton, TX: Texas A&M U.P., 1988), pp. 53-78.

[62] Dickason, Concepts of Sovereignty, p. 175.

the New World by drawing upon supposed travels that antedated Christopher Columbus. Since the Spanish supported their claim to America principally through Columbus's voyage, voyages such as that of the Welsh Prince Madoc in the twelfth century could obviate these claims.[63] Although Sparks made no effort to show how these common ideas were communicated to the international community, she did make a claim for the existence of a universal set of legal codes.

Similarly, James Muldoon suggested in a recent essay that the issuance of a letters patent by a Protestant monarch was analogous to the leader of the Catholic Church issuing a papal bull. Both were open, written, sovereign authorizations by supreme authorities, and both employed a common medieval legal language.[64] In Muldoon's words, "English charters authorizing the occupation of North America thus continued to employ the language of Inter caetera and the concepts of the medieval canonists that underlay Alexander's VI's letter." The reason for this common usage was because these events occurred simultaneous with "the modern attempt to create a legal regime that would govern the relations among the emerging nation-states of Europe."[65] That is, international law developed largely as the result of establishing sovereignty in overseas territories. This was, in fact, first implied three quarters of a century ago by A. Pearce

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[63] Carol Sparks, "England and the Columbian Discoveries: The Attempt to Legitimize English Voyages to the New World," Terrae Incognitae 22 (1990): 1-12.

[64] James Muldoon, "Discovery, Grant, Charter, Conquest, or Purchase: John Adams on the Legal Basis for English Possession of North America," in Christopher L. Tomlins and Bruce H. Mann, eds., The Many Legalities of Early America (Chapel Hill: U. of North Carolina P., 2001), pp. 25-46. Also see Muldoon, "The Contribution of the Medieval Canon Lawyers to the Formation of International Law," Traditio 28 (1972): 483-97.

[65] Muldoon, "Discovery, Grant, Charter, Conquest, or Purchase," pp. 25-46, quotations on pp. 43 and 26 respectively. Cf. Muldoon, Empire and Order.

Higgins in the Cambridge History of the British Empire (1929), a work that exemplified the old Imperial school begun by Seeley.[66] Higgins noted the importance of international law to British claims in the Atlantic and Pacific world, arguing that the British crown used a royal letter patent to authorize overseas activities in order to show the "outer world" (Europe) that these enterprises were under the auspices of a sovereign monarch. Through these patents, and in subsequent dealings with the colonies, the crown was concerned to ensure that the settlers had taken actual, physical control of the territory, all of which were in accordance with "universal" civil laws relating to property ownership. In addition, the British and other Europeans established their claims through treaty negotiations, which were undertaken as established by international law. Although Higgins admits that such legal arguments had more force after the Peace of Westphalia in 1648, they nonetheless helped to regulate claims to overseas territories in the century or so before this time.

Higgins also emphasized the reason why the use of international law at this time was important, one which subsequent historians have almost unanimously failed to recognize. Perhaps because of their general unwillingness to see Elizabethan and early Stuart activities as much more than mundane commercial enterprises, historians have often ignored the fact that the British crown was constantly challenged in its claims to dominion in new found lands. Between about 1580 and 1640, the crown received numerous diplomatic and belligerent challenges to its claims to sovereignty which

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[66] A. Pearce Higgins, "International Law and the Outer World, 1450-1648," in J. Holland Rose, and others, The Cambridge History of the British Empire, Vol. 1: The Old Empire from the Beginnings to 1783 (Cambridge: Cambridge U.P., 1929), pp. 183-206.

suggested that its demonstrations of authority and effective control — its expressions of sovereignty — needed to be powerful affirmations of territorial dominion, and of the British crown's historical and legal right to imperium over the territories settled or claimed by its subjects. The Spanish questioned Britain's claims in North and South America and the West Indies in 1580 and during the peace conference at London in 1604, and then sporadically planned assaults on British holdings in North America and the West Indies into the 1630s. The French complained of British territorial claims in the regions of Acadia and Quebec in 1613-32, and sent armed forces to recover these territories. The Dutch refused to accept British sovereignty in the East Indies in the 1610s and 1620s, which led to numerous physical and diplomatic challenges in this region. These and other, lesser challenges (such as complaints about activities in West Africa and Greenland) required the British monarchs to express their sovereignty in ways that were likely to achieve consensus, the absence of which could, in accordance with Renaissance theories of the laws of war and peace, result in acts ranging from insurgency and trade embargoes, to termination of diplomatic relations and declarations of war. However, in only a very few instances have historians attempted to reconcile these challenges with the expansion of the British empire, and in none have they admitted the importance of international law in their resolution.[67]

The expressions of sovereignty made by and for the British crown in order to establish imperium, authority, and dominion, in overseas territories, therefore, requires

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[67] See, for example, K.R. Andrews, "Beyond the Equinoctial: England and South America in the Sixteenth Century," JICH 10 (1981): 4-24; Andrews, "Caribbean Rivalry and the Anglo-Spanish Peace of 1604," History 59 (1974): 1-7; D.B. Quinn, "Some Spanish Reactions to Elizabethan Colonial Enterprises," Transactions of the Royal Historical Society, 5th ser., 1 (1951): 1-23.

more investigation than the topic has received. Although the work of Juricek and Seed is valuable because they have shown the importance of effective occupation as the root to possession, the now dated work of Higgins and the recent work of Pagden, Muldoon, and other writers in emphasizing the efficacy of certain universal legal codes suggests that some reconsideration and correctives are necessary if we are better to understand the nature of the British empire in this period. A significant weakness apparent in the existing scholarship is the heavy reliance on printed primary sources, and the commensurately small reliance on manuscript materials. The majority of the relevant manuscript material is to be found in the Public Record Office of Great Britain, in whose custody are the state papers proper, and the British Library, whose collections include the correspondence of many individual statesmen and ambassadors, and also the largest repository of primary materials on the East Indies.[68] These sources, which will be described in detail below, are used in this study in conjunction with contemporary printed material.

Chapter one will provide a full explanation of the theoretical and interpretive framework for this study. Thereafter, five thematic chapters examine different

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[68] These sources are listed in the bibliography. The PRO general colonial office volumes contemporary to this study (CO 1/1-10) are anachronistic because there was no actual colonial office established until the late seventeenth century. It should be emphasized that the papers in this series are papers received or prepared by crown officials. They were removed or abstracted from state papers and placed among the colonial office papers in the nineteenth century. Certain other CO volumes are contemporary collections, which were previously known as the "Colonial Entry Books". These are: CO 29/1 (Barbados); CO 38/1 (Bermuda); CO 124/1-2 (Providence Island); CO 195/1 (Newfoundland); CO 5/902 (New England); CO 5/1354 (Virginia). Most of the limited West Indies material is in the Barbados volume because the colonies of Antigua, Montserrat, Nevis, and St. Kitts were administered there. Material on the East Indies is distributed fairly equally between the PRO (CO 77) and the British Library's Oriental and India Office Collection (OIOC), in a series known as the India Office Records (IOR). Regarding Privy Council records (PRO PC 2/27-50), a fire in 1613 destroyed all records up to that time, leaving a lacuna in the period of this study which is not really rectified by any other source.

expressions of sovereignty made by and for the crown in new found lands, both to demonstrate its continued prerogative authority in these affairs, and to justify its activities to the international community. Although these themes do not pretend to offer a comprehensive examination of expressions of sovereignty, they are certainly representative and develop an argument for the employment of methods which were consistent with contemporary notions of law and authority. These included some peculiarly abstract concepts, such as the crown employing the polymath John Dee (chapter two) to demonstrate British "knowledge" of overseas territories, in contrast to other Europeans. Dee was also a leading figure in providing the crown with historical and legal justifications for its claims, through which he offered seminal discussions of civil law concepts such as "discovery", "possession", and "effective control", as he believed they were understood within international law. Sovereignty was also expressed by the crown through royal letters patent (chapter three). Like Dee's writings, these documents allowed the crown to show its greater "knowledge" of the regions, and also to demarcate cardinal points for the settlements and show the extent to which the colonies remained under the absolute prerogative of the monarch. In the patents the monarchs made no demands that the patentees partake in symbolic acts of possession, demonstrating certain limitations of the current interpretation.

Following the issuing of the patent, soldiers were employed, fortifications were erected, and, in some cases, military rule was imposed (chapter four), all in order to protect the colonies from attack and, thereby, to maintain and demonstrate effective control. Printed maps and charts (chapter five) served an equally valuable purpose. Through the use of semiotic devices on the maps, and carefully regulated publication and

dissemination of the maps, implicit and explicit statements of sovereignty were made. Sometimes, expressions of sovereignty such as a military presence and printed maps made a claim to effective control appear much stronger than it was in reality. Finally, the crown engaged in treaty negotiations with other sovereign states (chapter six), during which the historical and legal precedents of Britain's claims, its various methods of expressing sovereignty, and the nascent precepts of international law, could be brought to bear in order to demonstrate that the crown had sovereignty rights over the regions under dispute. As these negotiations indicate, in part the expressions of sovereignty which the British crown employed were also being used by other European states, who were building fortifications, drawing maps, and issuing royal letters of marque. By bringing common legal principles to the table, the commissioners could help to establish precedents for Queen Elizabeth's and the early Stuarts' expressions of sovereignty.

CHAPTER ONE

"SUPREME AND ABSOLUTE POWER": LAW AND AUTHORITY UNDER ELIZABETH AND THE EARLY STUARTS

The role of the crown and the expressions of sovereignty in new found lands are necessarily understood within the context of the political, intellectual, and legal world in which these activities took place. Throughout much of the twentieth century, historians have emphasized the difference between English and continental European writers regarding theories of politics and law. The assumption has been that England's adherence to the "ancient constitution", which embodies the traditions of common law and mixed monarchy, overshadowed continental political and legal discourse. As argued by Sir Edward Coke, who drew upon the medieval writings of John Fortescue, this gave England a unique intellectual climate when it came to concepts such as the rights of the sovereign monarch and the employment of civil law.[1] Viewed from this perspective, it is easy to understand why historians see acquisitions in new found lands as mundane acts linked most tangibly to English land law. Within this historiographical tradition no other

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[1] F. Pollock and F.W. Maitland, History of English Law (Cambridge: Cambridge U.P., 1911), and J.G.A. Pocock The Ancient Constitution and the Feudal Law: A Study in English Historical Thought in the Seventeenth Century (Cambridge, 1957; reissue 1987). Fortescue's work is De Laudibus Legum Anglie (1470); Coke's interpretations are in his Institutes of the Laws of England (London, 1671).

legal system was available for use. However, in recent years historians Glenn Burgess, Donald Kelley, Brian Levack, and Johann Sommerville have challenged that interpretation of English political and legal history, by arguing that the thinking of early seventeenth century English writers, in particular, was not distinctly English.[2] Rather, much of it was imported from the continent of Europe primarily by the civil lawyers who taught or were trained at the English universities, including William Fulbecke, Sir Matthew Hale, Sir Thomas Smith, and especially the Italian Alberico Gentili, who was regius professor of civil law at Oxford in the late sixteenth century.

Burgess and Levack have shown that civil law, as it was codified by the emperor Justinian and interpreted by Renaissance legal humanists, served a vital function in England. First, it could supplement English law when the common law was silent on a given issue or when the matter involved affairs outside of England. Both of these were the case for English acquisitions in new found lands, and both involved the monarchs employing their absolute royal prerogative, which was informed mostly by civil law. Second, this legal code was also needed to adjudicate controversies with other European monarchs, which inevitably occurred when various European states claimed dominion over the same parcel of overseas land. By the late sixteenth century, all European sovereign states used civil law, and its derivatives, natural law (jus naturale) and the law of nations (jus gentium), in their dealings with other sovereign states. These changes in

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[2] Glenn Burgess, The Politics of the Ancient Constitution: An Introduction to English Political Thought 1603-1642 (University Park, PA: Pennsylvania State U.P., 1992); and Idem., Absolute Monarchy and the Stuart Constitution (New Haven: Yale U.P., 1996); Brian Levack, The Civil Lawyers in England, 1603-1641: A Political Study (Oxford: Clarendon, 1973); Johann Sommerville, "English and European Political Ideas in the Early Seventeenth Century: Revisionism and the Case of Absolutism," Journal of British Studies 35 (1996): 168-94.

the political language of Europe arose from the development of the independent, sovereign state, which offered monarchs certain internal and external rights, while simultaneously requiring them to work within a legal code that would have some recognition among the broader European community. It was "languages"[3] of law and authority, and not indigenous common law codes, which became the dominant legal codes in overseas territorial acquisition and supra-national affairs.

THE CONCEPT OF SOVEREIGNTY IN EARLY MODERN EUROPE

Legal historians have often seen the definitive beginnings of the sovereign state at the Peace of Westphalia that ended the Thirty Years' War in 1648. In the words of Adam Watson, the peace legitimated a "commonwealth of sovereign states" and placed each state firmly in control of its internal and external affairs.[4] Most historians, however, accept that this was the end of a lengthy process. As early as the thirteenth century, European princes had been declaring an authority independent of the Holy Roman Emperor and the Pope within their territorial boundaries, and this opinion was supported by Renaissance legal humanists such as the Dominican monk Thomas Aquinas (1225?-74).[5] The most decisive change came about in the wake of the Protestant Reformation,

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[3] See J.G.A. Pocock, "The Concept of Language and the Métier d'Historien: Some Considerations on Practice," in Anthony Pagden, ed., The Languages of Political Theory in Early-Modern Europe (Cambridge: Cambridge U.P., 1987), pp. 23-35.

[4] Adam Watson, The Evolution of International Society: A Comparative Historical Analysis (London: Routledge, 1992), p. 186; Antonio Cassese, International Law in a Divided World (Oxford: Clarendon Press, 1986), ch. 2.

[5] Dickason, "Concepts of Sovereignty at the Time of First Contacts", ch. 2; F.H. Hinsley, Sovereignty, 2d ed. (Cambridge: Cambridge U.P., 1986); Pagden, Lords of All the World, ch. 2; Kenneth Pennington, The Prince and the Law, 1200-1600: Sovereignty and Rights in the Western Legal Tradition (Berkely: U. of California P., 1993), esp. chs. 2-4; Donald R. Kelley, "Law" in J.H. Burns, ed., The Cambridge History of Political Thought (Cambridge: Cambridge U.P., 1991), pp. 72-3.

which in one of its most important aspects was a rebellion of individual nations against the Church, and the consequent rise of the modern nation state. One of the earliest proponents of the division between Church and State was the Dominican friar Francisco de Vitoria (1480-1552), who was professor of theology at the University of Salamanca.[6] In a lecture delivered in 1528, Vitoria, drawing upon Aquinas, affirmed that "power and authority . . . belongs to the rulers and magistrates to whom the commonwealth has delegated its powers and offices [of which] . . . the greatest and best of all forms . . . is monarchy or kingship." A few years later, Vitoria denied that the Roman emperor was "master of the world", and denied that the pope had any secular authority.[7] Monarchs came to see themselves as having imperium, which in the late Roman republic referred to the right to rule an empire, and dominium, the right to possess territory and exercise political power. A ruler who had imperium and dominium acknowledged no higher allegiance, analogous to the universalist supremacy of the Roman Empire.[8] These views were expressed in England after Henry VIII's schism with Rome, when humanists Thomas Starkey and Thomas Elyot wrote tracts defending the rightness of an independent state led by a king.[9] This was powerfully affirmed, due in large part to the efforts of

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[6] See Anthony Pagden's introduction in his edition of Vitoria's writings: Francisco de Vitoria, Vitoria: Political Writings, ed. and trans. Anthony Pagden and Jeremy Lawrence (Cambridge: Cambridge U.P., 1991), pp. xiii-xxviii.

[7] Vitoria, Vitoria: Political Writings, pp. 12, 85, 254-64.

[8] See the following essays in Armitage, ed., Theories of Empire, 1450-1800: J.S. Richardson, "Imperium Romanum: Empire and the Language of Power," pp. 1-9; John Robertson, "Empire and Union: Two Concepts of the Early Modern Political Order," pp. 11-44; Franz Bosbach, "The European debate on Universal Monarchy," pp. 81-98. Pagden, Lords of All the World, chs. 1-2. Muldoon, Empire and Order, ch. 4 and conclusion.

[9] Brendan Bradshaw, "Transalpine Humanism," in Burns, ed., The Cambridge History of Political Thought, p. 96; and J.W. Allen, A History of Political Thought in the Sixteenth Century (London: Methuen, 1961), ch. 10. Thomas Starkey, Dialogue Between Pole and Lupset (London, 1529-32). Thomas Elyot, The Boke Named the Governour (London, 1531).

Thomas Cromwell, when parliament passed the Act of Appeals in 1533, which declared the English nation to be an "empire," severed the ties that bound England to Rome, and established the king as the supreme head of both church and state, and as a sovereign who recognized no higher temporal or spiritual authority.[10]

By the Elizabethan period, the concept of the monarch as a sovereign ruler free from all external control had become commonplace. It was not until 1576, with the publication of Jean Bodin's widely-circulated Six livres de la république (Six Books of the Commonwealth) that the early modern concept of sovereignty was clearly articulated. Early in the treatise, Bodin wrote that he prepared this comprehensive definition of "sovereignty" because "no jurist or political philosopher has defined it."[11] Bodin was a classically-trained Renaissance legal humanist whose ideas came to the attention of the French king Henry III in 1574. It was for Henry, and his heir apparent Francis, duke of Alençon, that Bodin wrote the République. Drawing heavily on classical thinkers such as Aristotle, Polybius, and Dionysius of Halicarnassus, and on slightly older Renaissance contemporaries, Bodin developed an absolutist theory of royal sovereignty, but one that was also sympathetic to the traditional restraints on the practice of governance. "Sovereignty," wrote Bodin, "is the supreme and absolute power over citizens and subjects."[12] It represented the authority of a monarch to act as the supreme legislator within a commonwealth. This authority was "absolute and perpetual" in that it was

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[10] The statute is 24 Henry VIII, c. 12. Quentin Skinner, The Foundations of Modern Political Thought, Vol. 2: The Age of Reformation (Cambridge: Cambridge U.P., 1978), p. 88. Brian P. Levack, The Civil Lawyers in England, p. 95.

[11] Jean Bodin, On Sovereignty: Four Chapters from The Six Books of the Commonwealth, ed. and trans. Julian H. Franklin (Cambridge: Cambridge U.P., 1992), p. 1.

[12] Ibid., p. 1.

indivisible. That is, while authority may be delegated to agents of the crown — for example, to privy councillors or territorial governors — sovereign power is ultimately entirely concentrated in a single individual, in whom was bestowed all the power the state could exercise because that person held certain prerogative rights associated with divine right kingship.[13] Despite appearing to espouse a form of "royal absolutism" akin to that which would develop in the late seventeenth century, Bodin did believe that a king was bound by customary law. But this was only to the extent that the customary law (in England, the common law or the ancient constitution) spoke to the issue at hand. In the absence of customary precedents, the authority for making laws rested solely and permanently in the sovereign monarch.

Bodin's theory of sovereignty is fundamental to this discussion because despite certain attempts to refine his concepts over the half century, it held primacy until it was modified by Thomas Hobbes in Leviathan (1651). According to Bodin's theory, which would become known in England through the writings of Sir Thomas Smith, Charles Merbury, and Alberico Gentili, among others, in two situations the sovereign had absolute royal authority.[14] These related to the monarch's "internal" and "external" sovereignty.[15] Regarding the monarch's internal sovereignty, which is the authority exercised within his or her territorial dominion, rule was absolute when a lacuna existed in common law. Where issues such as property within England were involved, the

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[13] Bodin, On Sovereignty, pp. 1-3.

[14] On the reception of Bodin in England, and for an explication of the "two situations", see Burgess, The Politics of the Ancient Constitution, ch. 5, and Absolute Monarchy, ch. 3.

[15] This dichotomy is a common distinction; see Dennis Lloyd, The Idea of Law (Middlesex: Penguin, 1970), p. 174; and Oscar Svarlein, An Introduction to the Law of Nations (New York: McGraw-Hill, 1955). The division is considered more implicitly in a leading discussion of the concept of sovereignty, Hinsley, Sovereignty.

actions of the monarch were guided by common law, using texts such as Henry Bracton's thirteenth-century work On the Laws and Customs of England. However, by virtue of its purely domestic nature and its adherence to predecents of common law also had its limitations. In situations where the common law did not speak to domestic affairs, monarchs turned to Roman, or civil law, and were guided in their decisions by a handful of important Elizabethan and Jacobean civilian lawyers. These rights came to be known as the monarch's "absolute prerogative," which were laws and directives determined by the monarch alone. This concept, as it applied specifically to the acquisition of new found lands, will be discussed in detail below.

Second, regarding the monarch's "external sovereignty", which was his or her relationship with other sovereign European monarchs, the absolute authority was necessary because the indigenous common law could not be applied to supra-national affairs. In the late Tudor and early Stuart period, especially following the Anglo-Spanish War and the resumption of diplomatic relations with Spain, a number of English civilians, including John Cowell, William Fulbecke, and Alberico Gentili, wrote tracts about the application of civil law, natural law, and the law of nations to affairs between and among sovereign states. These "universal" laws were necessary because, as F.H. Hinsley writes: "Despite the growing complexity of relations between independent states they still refused to abandon . . . the belief that there existed a single societas gentium [great society] in which the original and inextinguishable unity of mankind had survived the division of men into separate kingdoms."[16] By applying universal (or supranational)

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[16] Hinsley, Sovereignty, p. 183.

forms of law, which it was understood governed the diplomatic and belligerent relations between sovereign states, to acquisitions in new found lands, English monarchs could achieve recognition and acquiescence for these claims. Put another way, these claims had a better chance of receiving the consensus of the international community, and England could feel more secure in its extension of imperium and dominium in North and South America and the East and West Indies. A detailed treatment of this concept will follow the discussion on the absolute prerogative.

THE ROYAL PREROGATIVE IN BRITAIN AND THE DOMINIONS

In Tudor England, the monarch's royal prerogative was more customary than codified, and was at best vaguely defined.[17] At mid-century, the lawyer William Stanford, drawing upon a medieval statute known as "Prerogativa Regis," ambiguously defined the royal prerogative as those rights enjoyed only by the king which acknowledged his superior position and enabled him to discharge the task of governing.[18] Stanford proceeded simply to offer examples of the royal prerogative, largely concerning land tenures. Sir Thomas Smith, previously professor of civil law at Cambridge and Secretary of State to Queen Elizabeth I, in his well-known De Republica Anglorum (1583), went further by listing a number of additional traditional prerogatives, such as the right to declare war and peace, choose and dismiss councillors, and create peers.[19] In

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[17] G.R. Elton, The Tudor Constitution: Documents and Commentary, 2d ed. (Cambridge: Cambridge U.P., 1982), pp. 17-19.

[18] William Stanford [or Staunford], An Expocision of the Kinges Prerogative (London, 1567), f. 5. "Prerogativa Regis," BL Cotton MS Claudius D.II, f. 222v. Another version with slight modification is BL Harley MS 947. The statute is placed as if it was 17 Edward II, although this has not been proven.

[19] Thomas Smith, De Republica Anglorum [1583], ed. Mary Dewar (Cambridge: Cambridge U.P., 1982, pp. 85-8.

general, in the early modern period a full typology of the royal prerogative did not come about until the early seventeenth century, when it was associated with the constitutional crises of Stuart England.[20] This is not surprising given the political climate of the times, and the fact that the debate attracted the finest legal minds of the age, among them Francis Bacon, Edward Coke, John Cowell, John Davies, Thomas Egerton (Lord Ellesmere), and John Selden.[21] The best contemporary listing and discussion of prerogatives is Sir Matthew Hale's Prerogativa Regis, written probably during the interregnum of the 1650s, although Hale's treatise ends abruptly before he embarked upon the sections on such matters as land, monopolies, and other prerogatives in connection with royal revenues.[22]

Central to the discussion of prerogatives in the early seventeenth century was the clear division of these rights into ordinary and absolute (or limited and extraordinary) prerogatives, a distinction that Elizabethan authors did not make. Ordinary prerogatives were limited by the common law: as Bacon put it, the king's ordinary power "is declared and expressed in the laws, what he may do."[23] Because common law applied only within

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[20] The best discussions are Glenn Burgess, The Politics of the Ancient Constitution, pp. 139-62; and Pocock, The Ancient Constitution and the Feudal Law. Another good, though dated, source is Francis Wormuth, The Royal Prerogative, 1603-1649 (Ithaca, NY, 1939).

[21] Contemporary tracts describing these rights are: Francis Bacon, "Cases of the King's Prerogative," in James Spedding, and others, The Works of Francis Bacon (London: Longman, 1861), vol. 7, pp. 776-8. John Davies, The Question Concerning Impositions, Tonnage, Poundage, Prizage, Customs, &c. [16??] (London, 1656), p. 31. Thomas Egerton, Baron Ellesmere, "A Copy of a Written Discourse by the Lord Chancellor Ellesmere Concerning the Royal Prerogative (c. 1604)," in Louis A. Knafla, Law and Politics in Jacobean England: The Tracts of Lord Chancellor Ellesmere (Cambridge: Cambridge U.P., 1977), tract 9, pp. 197-201.

[22] Sir Matthew Hale, The Prerogatives of the King, ed. D.E.C. Yale (London: Selden Society, 1976). The seven tables, Hale's projected schema for the treatise, are on pp. xii-xx. This volume is Hale's incomplete "Prerogativa Regis" (c. 1650s) and "The Rights of the Crown" (c. 1640s). The volumes remained in manuscript until this printing.

[23] Bacon, "Cases of the King's Prerogative," p. 778.

the realm, ordinary prerogatives applied exclusively to domestic affairs, such as granting land, monopolies, pardons, liberties, creations, and commissions. These were matters that were considered to be part of custom and immemorial usage.[24] Absolute prerogatives applied where the common law had no jurisdiction, either when it gave no opinion on a domestic matter or when foreign affairs were involved. As Ellesmere, the Lord Chancellor, wrote, the absolute prerogative is "according to the King's pleasure [and is] revealed by his laws," which are laws only the king, by virtue of his superior and divine position, comprehends.[25] These rights included, for example, sending and receiving ambassadors, declaring war and peace, the importation and exportation of commodities, and adjudicating matters arising outside of the territorial limits of England. In these matters, as in all matters of the absolute prerogative, civil law and the law of nations were dominant. Speaking in Commons in 1621, Edward Coke, the outspoken lawyer and statesman who denounced interference with the liberties of parliament, put this duplex power (to used Glenn Burgess's apt phrase) in terms of "disputable" (ordinary) and "indisputable" (absolute) prerogatives, of which only the former was "tied to the laws of England."[26] This shows the acceptance of this notion of duplex authority among even the most assiduous common lawyers, and indicates that none but the king had jurisdiction over the absolute prerogative.

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[24] See Hale, Prerogatives of the King, tables 1 to 7 (pp. xii-xx)

[25] Ellesmere, "A Copy of a Written Discourse . . . Concerning the Royal Prerogative," p. 197. See also the recent discussion by Joyce Lee Malcolm, "Doing No Wrong: Law, Liberty, and the Constraint of Kings," Journal of British Studies 38 (1999): 161-86. Malcolm discusses the legal implications of the maxim that "the king can do no wrong," arguing that the king was under God and the law; where there is no law, the king rules by God's grace alone.

[26] Quoted in Burgess, The Politics of the Ancient Constitution, p. 158. His discussion of the duplex power is at pp. 139-62.

Matters relating to transoceanic activities were exercises of the absolute prerogative. At first glance, this statement might appear rather surprising, particularly in relation to the granting of land overseas and of trade monopolies. Historians have argued that England's claims to territory in new found lands generally conformed to common law usage.[27] As is well known, in the kingdom of England the monarch held dominion over all land in accordance with the traditions of common law, which in the early modern period was understood as it was codified by Henry Bracton in the thirteenth century, among others.[28] According to the "doctrine of tenures," all land was held mediately or immediately, that is directly or indirectly, by the crown. The notion that the crown was "owner" of the land is a modern construct. Contemporaries understood the doctrine not from a view of property but of overlordship: the monarch was lord, ultimately, of all the tenants in the realm, and, therefore, was supreme (land)lord over all lands occupied by English subjects.[29] Parliamentary statutes enacted under Henry VIII and Elizabeth I would appear to support the argument that the distribution of land was an ordinary prerogative right of the monarch under common law.[30] Hale called the granting of land a "common ordinary prerogative of the king", and, as we shall see, the overseas letters patent did often use the traditional language of indigenous land grants. Much the same

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[27] Kent McNeil, Common Law Aboriginal Title (Oxford: Clarendon Press, 1989). Also Seed, Ceremonies of Possession.

[28] Henry Bracton, De Legibus et Consuetudinibus Angliae [On the Laws and Customs of England] [c. 1440], ed. George E. Woodbine, trans. Samuel E. Thorne (Cambridge, Massachusetts: Harvard U.P., 1968).

[29] A.W.B. Simpson, A History of the Land Law, 2d. ed. (Oxford: Clarendon Press, 1986), pp. 1, 47-8, and ch. 3 passim. On contemporary understanding of "property," see G.E. Aylmer, "The meaning of property."

[30] See the "Statute of Uses," 27 Henry VIII, c. 10; and the statute regarding land grants, 18 Elizabeth I, c. 2, ss. 4-6.

argument for the employment of the ordinary prerogative could be made for the granting of monopolies and incorporating trade companies, which became commonplace under Queen Elizabeth and her Stuart successors. Although such grants often caused complaints in the House of Commons, this was a traditional right that (as Coke's complaints made clear) could not be abrogated by that body, what Hale called a "special ordinary prerogative".[31] Therefore, it is perfectly understandable to view the distribution of territory and the granting of monopolies for transoceanic affairs as exercises of an ordinary prerogative, subject to the common law, common weal, and national body politic. Warren M. Billings, for one, has argued that "one consequence of England's westward enterprise in the seventeenth century was the transfer of English law and its supporting institutions to the New World,"[32] an argument that Patricia Seed implicitly agreed with in suggesting that English colonists acquired possession by simulating symbols of the traditional English landscape.[33]

The essential difference, however, is that new found lands were outside of the jurisdiction of the common law and thus outside of the ordinary prerogative. Unlike civil law, common law possessed no doctrines for the acquisition of new territory. New found lands were considered to be foreign soil and thus not subject to indigenous laws. Moreover, because according to embryonic international law no land could be allowed to exist outside of a state of sovereignty, and only a sovereign prince could surrender or

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[31] The best study of monopolies is Maxwell B. Donald, Elizabethan Monopolies: The History of the Company of Mineral and Battery Works from 1565 to 1604 (Edinburgh: Oliver and Boyd, 1961). Certain monopoly patents may be found in Cecil T. Carr, Select Charters of Trading Companies, 1530-1707 (New York: Burt Franklin, 1913, rpt. 1970). Hale, Prerogatives of the King, table 6.

[32] Warren M. Billings, "The Transfer of English Law to Virginia, 1606-50," in Andrews et al, The Westward Enterprise, pp. 215-44.

[33] Seed, Ceremonies of Possession, ch. 1.

acquire sovereignty, the English monarch had absolute jurisdiction in this matter. English subjects could not acquire territorial sovereignty in their own right, but only in the right of their monarch, and because sovereignty could not be thrust upon the crown without its assent, the acquisition of new territory would have to be authorized, or at least subsequently recognized, by the crown for the territory to become part of its dominions.[34] These were dominions of the crown, not of the nation. Likewise, although the incorporation of trading companies and granting of monopolies would normally be drawn into the aegis of the ordinary prerogative, they were part of the absolute prerogative because this trade involved activities outside of the realm. The absolute prerogative employed by the monarch in overseas affairs included the traditional right to govern relations with foreign princes, including trade, controversies, and boundary disputes, which activities in new found lands inevitably involved. In short, transoceanic affairs were, to use the dichotomy first defined by John Fortescue in the fifteenth century and revived by Edward Coke in the seventeenth, dominium regale (rule by the king alone, usually with the advice of his privy council) rather than dominium politicum et regale (rule by the king and parliament).[35] This is a useful distinction, because parliament — in England, one bastion of common law traditions — had no jurisdiction over affairs in new found lands.

The argument for these acquests being made under the absolute prerogative is sustainable in both the Tudor and Stuart periods, although a general lack of primary

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[34] This concept is teased out nicely in McNeil, Common Law Aboriginal Title, pp. 110-16, 133.
[35] John Fortescue, The Governance of England (c. 1440). A good discussion is in J.H. Burns, Lordship, Kingship, and Empire: The Idea of Monarchy, 1400-1525 (Oxford: Clarendon Press, 1992), pp. 55-70. On Coke's use of this dichotomy, see Pocock, The Ancient Constitution and the Feudal Law, esp. ch. 2.

evidence makes the former somewhat more conjectural, especially given that the issue of new found lands, proper, did not at first make it into discussions of the prerogative. However, as we shall see, Elizabethan authors such as John Dee and Richard Hakluyt were certainly using the language of civil law, rather than common law, in their discourses, thereby implicitly recognizing its applicability and jurisdiction in transoceanic ventures. There was, though, no direct connection made between their personal views and the laws of the royal prerogatives. The clearest interpretation is expressed by Thomas Digges, a propagandist for overseas enterprises, in a tract written in 1578 tellingly entitled "Arguments proving the Queen's Majesty's property in the sea lands, and salt shores thereof, and that no subject can lawfully hold any part thereof but by the king's especial grace."[36] Digges skillfully combined the writings of Bracton and Justinian, recognizing that although the former set out the common law interpretation of property law, the views of the latter held precedence touching "sea lands", which to him included overseas territories. Because these lands were foreign and were "by the law of nature left in common" (because they currently had no possessor with sovereign authority), they were not addressed in the common law, nor were they mentioned in the "old books of Prerogative Royal," by which Digges presumably meant the medieval statute Prerogativa Regis. But since, by virtue of his special position, "the king's reach is larger than a private person's", he is "said to be the first seizer and possessor of any such new accident, and any other that shall seem to find or possess the same is to be taken as an intruder upon that which the prince by the prerogative of his dignity had first seized."[37] Where

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[36] BL MS Lansdowne 100, fos. 58r-64v.
[37] Ibid, fos. 58r and 61r.

Digges used Bracton's On the Laws and Customs of England, it was usually to show that these writings conformed with Justinian's, giving the civil law and the law of nations priority in these matters. Like his Tudor counterparts Stanford and Smith, Digges did not employ the language of absolute prerogative, a distinction that probably would have eluded him. Implicitly, though, Digges understood that the civil law took precedence when the common law was silent on a matter and when the subject at hand was outside of the territorial jurisdiction of the realm. It was the king's "prerogative of his dignity", then, that gave him exclusive rights in the matter.

In the early seventeenth century, legal authorities were compelled to make distinctions between common and civil law, and to recognize the difference between the ordinary and absolute prerogative.[38] The thrust of the argument of civil lawyers such as John Cowell, John Davies, William Fulbecke, Thomas Ridley, and James Whitlocke was that while they respected common law as the supreme domestic juridicial form, civil law and the law of nations were necessary to supplement the lacunae in common law and to assist in adjudicating foreign matters.[39] This is the reason, for example, that civil lawyers staffed the Court of Admiralty, which dealt with matters of foreign shipping and commerce, and were employed as ambassadors or as envoys on diplomatic missions.[40] The positive link between civil law and the absolute prerogative — although it had been implicitly understood in the writings of Coke and Bacon, among others — was made by

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[38] A good general discussion is Kelley, "Law", pp. 66-94.

[39] On this subject, see Burgess, The Politics of the Ancient Constitution, ch. 5.

[40] Brian P. Levack, "The English Civilians, 1500-1750," in Wilfred Prest, ed., Lawyers in Early Modern Europe and America (London: Croom Helm, 1981); Levack, The Civil Lawyers in England, ch. 1; and Donald R. Kelley, "Civil Science in the Renaissance: The Problem of Interpretation," in Anthony Pagden, ed., The Languages of Political Theory, pp. 57-78.

John Davies, who, while serving as the attorney general, wrote about James I's rights to levy overseas customs. He argued for the monarch's right to employ the absolute prerogative respecting the imposition of customs on items crossing the seas, not because of the king's rights over or against common law, but rather because civil law gave him rights outside of it. The common law did not speak to the issue and this was a matter of international trade that involved foreign princes.[41] None of these writers addressed the issue of new found lands. This is itself informative, suggesting that the matter was uncontroversial and that, perhaps, contemporary authorities implicitly recognized the king's absolute prerogative in this matter.

A valuable parallel may be found in the issue of the "British problem" and the multiple kingdoms debate which arose after 1603, when James VI and I came to the English throne. The English common law, by virtue of its purely domestic nature, had no jurisdiction over Scotland and Ireland. Within the limited exception of Poyning's law,[42] Scotland and Ireland were foreign territories, because although they were part of the dominions of the King of England, they were not part of the realm — that is, the common weal or body politic — of England. In Calvin's Case of 1608, for instance, which addressed whether or not Scots born after 1603 were citizens of England, the decision of Francis Bacon, then solicitor general, was that in the absence of a union between the two nations they remained distinct. To Bacon, at any rate, there was no ambiguity over the

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[41] Sir John Davies, The Question concerning Impositions, Tonnage, Poundage, Prizage, Customs, &c. (London, 1656), pp. 4-28.

[42] Implemented in 1494, this law declared that the English Privy Council must approve the summoning of any Irish parliament and agree to legislation, and that English laws applied to Ireland.

king's right to rule distinct dominions under the absolute prerogative.[43] Although the king might be bound by common traditions in those dominions, as indeed he was in the dominion of England, he exercised an absolute prerogative when viewed from the perspective of English law. As Davies had made clear in his writings on Ireland, the English ancient constitution had no authority on the Irish people, and civil law and the absolute prerogative was the only applicable law.[44] Essentially, as David Armitage has recently shown, Britain was a "multiple kingdom", in which various kingdoms, though being ruled by a single sovereign, maintained certain institutional and legal variation.[45]

The clearest statement on these issues was Hale's Prerogativa Regis of the 1650s.[46] That the tract was written after the period under examination by a reclusive royalist and was never disseminated in print should be borne in mind. Hale's hindsight, however, makes his work exceptionally valuable in part because he could discuss, in retrospect, the acquisition of new found lands. In a long chapter devoted to the "dominions of the king and crown of England," Hale discussed, among other "kingdoms", the dominions of England, Ireland, Scotland, and the "later acquests" in North America and the East and West Indies. Ireland was acquired through conquest by

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[43] These arguments are discussed in the vast literature that examines the union of the two kingdoms debate of the early seventeenth century. See especially Andrew D. Nicholls, The Jacobean Union: A Reconsideration of British Civil Policies under the Early Stuarts (Westport, Conn.: Greenwood Press, 1999); Bruce Galloway, The Union of England and Scotland 1603-1608 (Edinburgh, 1986); and, for contemporary documents, Bruce Galloway and Brian P. Levack, eds., The Jacobean Union: Six Tracts of 1604 (Edinburgh, 1985).

[44] For the Irish question, see Hans S. Pawlisch, Sir John Davies and the Conquest of Ireland: A Study in Legal Imperialism (Cambridge: Cambridge U.P., 1985); and Pawlisch, "Sir John Davies, the Ancient Constitution, and Civil Law," Historical Journal 23 (1980): 689-702.

[45] Armitage, Ideological Origins of the British Empire, pp. 22-23 and ch. 2.

[46] For a discussion of Hale's legal training, influences, and his arguments for the "rights of the crown", see Alan Cromartie, Sir Matthew Hale 1609-1676 (Cambridge: Cambridge U.P., 1995), especially chaps. 2-5.

King Henry II and that conquest was perfected by King John; because it was acquired by the king in his capacity as the King of England, the dominion was annexed to the crown of England and was perpetually held as a parcel of that crown. It could not, therefore, be a dominion purely distinct, although Hale was clear that "it is a distinct kingdom still," having its own courts, parliaments, and peers, so that "he that is in Ireland is extra regnum Angliae, though he be infra dominium regni Angliae," that is, outside of the realm of England but within a dominion of the King of England.[47] The tool of government that linked the two dominions was not parliament, whose acts "doth not regularly extend to Ireland," but rather the Great Seal of England, the employment of which fell within the king's prerogative.[48] Hale's discussion of Scotland, although tangential to our discussion, confirms early Stuart arguments. The accession of James VI and I to the throne meant only that both dominions were ruled by one monarch; Hale affirmed that "the kingdoms were not confounded but the rights continued distinct and several, the seals several, the coins several, the kingly capacities several, the laws [and] the parliaments several".[49] This allowed James VI to claim overseas territories solely as King of Scotland, as he did in the case of Nova Scotia until 1621.

This brings us to Hale's discussion "concerning . . . Virginia, New England, Bermuda, Barbados, St. Christophers and other islands and continents in and toward the West Indies . . . and the East Indies." Hale's interpretation of these acquisitions is highly

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[47] Hale, Prerogatives of the King, pp. 34-5.

[48] Ibid., pp. 35-8. Consistent with Poyning's law, Hale accepted that parliamentary acts which specially named Ireland had effect there, but solely because the King signed the bill; in Ireland, this was still a command under the Great Seal, not an action of the English parliament.

[49] Ibid., p. 53.

informative, not least because it is perhaps the earliest such statement by a recognized legal authority. It is worthwhile to quote this passage in full:

> 1. For the course and manner of their acquisition. The course was that the king issued a commission to seize such and such continents, between such and such degrees of latitude and longitude, in the name of the king, and to set up his standard in token of his possession. Thus the continents of Virginia and New England were seized by Gates and Somers by commission 4 Jac. [1606] . . . . The Caribbean islands seized in like manner by Warner and after granted to the earl of Carlisle and his heirs with the power palatine, 3 Car. [1627] and so for divers others.
> 2. The acquests that the king makes of these . . . by commission under his great seal of England . . . are acquired to the king in right of the crown of England and are parcel of the dominions though not the realm of England.
> 3. Presently upon the acquest the English laws are not settled there, or at least are only temporary till a settlement made. And therefore we see that there is in all these plantations administration of justice and laws much differing from the English laws. And thus it was with Ireland. The English laws were gradually introduced by the king without the concurrence of an act of parliament.
> 4. But the English planters carry along with them those English liberties that are incident to their persons. But those other laws that concern the lands, and propriety, and disposal of them, are settled according to the king's pleasure, who is lord and proprietor over them, till he shall dispose of them by patent.[50]

Clearly, Hale made a direct claim to the king's employment of the absolute prerogative in new found lands, an argument which he earlier asserted in his Rights of the Crown, written possibly a decade before Prerogativa Regis.[51] Because the king issued commissions under the Great Seal of England, he was functioning in the capacity of the King of England (rather than of Scotland or as Charles Stuart). But, because the territory was not indigenous to England and was therefore outside of the common law, the monarch retained individual proprietary rights and with them "the sole power of making laws &c".[52] Overseas territories were "not subject to the laws of England till the king

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[50] Ibid., pp. 42-3.
[51] This treatise is bound in the same volume as Hale's Prerogatives of the King.
[52] Ibid., p. 43n.

proclaim them." The king could (and did) "annex [new found lands] to the crown of England by referring the allegiance, tenure &c as of the Crown of England", but these remained distinct dominions, outside of the realm of England, and also its parliament and common laws, until such time as the king elected that they should be governed within these laws.[53] The monarch was here exercising his absolute prerogative as King of England to draw these lands and peoples into his territorial dominion, that is, as part of the British "Empire", but not into the political realm, that is, as part of the body politic or the commonwealth. To Hale, then, these dominions possessed the same relationship to England as did Ireland, which is to say none. The issue was not conquest; it was sovereignty. The strength of Hale's argument for overseas activities being under the absolute dominion of the British monarch lies partly in the fact that this writing arose not in a context of controversy. His discussion on the "later acquests" was brief, sandwiched into a very long chapter that dealt with ten other dominions of the English crown; this suggests that Hale had no particular agenda in mind when preparing his section on new found lands. It is instructive, however, that when the very issues analyzed by Hale did become controversial, in respect to St. Helena in the 1680s, the argument advanced in his point four was confirmed as valid in law.[54]

It is important that we frame the analysis of overseas affairs in terms of the absolute, rather than the ordinary, prerogative of the monarch. If new found lands were claimed under the aegis of the ordinary prerogative, then the king's jurisdiction and authority could be subordinated to other bodies, such as the common law, the English law

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[53] Ibid., p. 43n.

[54] BL IOR G/32/1, "Laws and Ordinances of St. Hellena [sic], 1677-1714," pp. 45-9.

courts, and parliament. Knowing that these claims were at least implicitly under what came to be termed the absolute prerogative naturally places considerable emphasis on the monarch, and his or her sovereign rights, in the acquest of dominion in new found lands. By legal definition, the monarch necessarily was actively and personally at the centre of the process. In the colonies, the common law was either non-existent or subordinated to the king's jurisdiction, and the adjudicating bodies were not the common lawyers and the traditional courts, but rather the monarch, his advisors, and his direct agents or proprietors in the colonies. The case for the absolute prerogative also assigns more agency to the privy council than has been accorded in past interpretations, because it was through this body that the English monarch customarily exercised administrative control. This interpretation raises the importance of crown involvement to a place of considerable status in the establishment of sovereignty in new found lands. Letters patent under the Great Seal, along with royal instructions, proclamations, and state memoranda, were the principal source through which the English monarch exercised dominion. The documents could (and, as we shall see, did) fundamentally affect the structure, future, and success of overseas enterprises. An examination especially of two types of documents, petitions and letters patent, demonstrates the nature and different system of rule employed in those regions, one that would have been foreign on British soil. It also strengthens further the case for overseas territories being claimed under the absolute prerogative, by demonstrating the involvement of the crown and privy council during the petitionary process, and the influence of civil law on the drafters of the patents. These documents, and their importance to overseas expansion, will be examined in chapters two and three below.

CONSENSUS AND THE INTERNATIONAL COMMUNITY

With sixteenth century writers such as Vitoria and Bodin denying the authority of the pope and emperor, and instead arguing that European monarchs had no higher earthly authority, a system had to be established that would govern the relations between sovereign states. A monarch might be supreme in his or her own nation, but who was to judge the correctness of activities that affected other sovereign states? It is here that we see the beginnings of an supranational community (societas gentium) and the law of nations (jus gentium). At its most fundamental level, the practice of international law enabled European countries involved in disputes to achieve the consensus of the broader community of sovereign states. Even without a governing body (such as today's United Nations) to adjudicate and enforce international law, the absence of consensus could result in acts ranging from insurgency and trade embargoes, to termination of diplomatic relations and declarations of war. Historians, though, tend to place the beginnings of international law with the writings of Hugo Grotius (Huigh de Groot), especially his De Jure Belli ac Pacis (The Laws of War and Peace) of 1625.[55] Although Grotius's treatise represents early-modern Europe's closest link with the modern concept of international law — a cooperative, positive code based principally on the consensus of the world community — the previous century had seen the development of a nascent set of laws that bound sovereign states together. As Kenneth Pennington has written, "the fusion of Roman, canon, and feudal law produce a jus commune and a common jurisprudence in

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[55] For example, Oppenheim, International Law, pp. 89-90; and Hinsley, Sovereignty, p. 189.

Europe between 1100 and 1600." This "common body of law" was developed as needed by civilian lawyers and used to solve problems within the international community.[56]

Before Grotius wrote his treatise, for example, the founding principles of international law had been considered by the legalists Vitoria, Bodin, and Gentili. Vitoria's belief that the law of nations was the dominant universal legal code was the logical extension of his denial that the pope or emperor had secular authority. Vitoria's lectures on law were based heavily on Thomas Aquinas's Summa Theologica, which was a fusing of classical (Aristotelian) and Christian (Justinian) philosophies. In a theory that came to be known as "Thomism", Aquinas divided the law into four general, interesecting categories. These were divine law (or canon law), based on moral standards that applied to all creatures as interpreted through scripture; natural law, unwritten, moral laws that applied only to creatures with reason, which was man; civil law, laws written by man that were originally intended to apply to individual communities (such as Roman city-states); and, occupying an ambiguous mid-point between the latter two, the law of nations, a body of customary or written laws approved by the whole community of man. In the sixteenth century, these ideas were applied to the contemporary political scene by the "neo-Thomist" Francisco Vitoria. In a lecture delivered in 1528 entitled "On Civil Power", Vitoria claimed that: "the law of nations (jus gentium) does not have the force merely of pacts or agreements between men, but has the validity of a positive enactment (lex). The whole world, which is in a sense a commonealth, has the power to enact laws which are just and convenient to all men, and these make up the law of nations. From

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[56] Pennington, The Prince and the Law, pp. 6-7. See also Muldoon, "Discovery, Grant, Charter, Conquest, or Purchase," p. 26.

this it follows that those who break the law of nations, whether in peace or in war, are committing mortal crimes." These crimes, Vitoria believed, deserved retribution, since "No kingdom may choose to ignore this law of nations, because it has the sanction of the whole world."[57]

Vitoria's notion of embryonic international law was relatively simple, and formed its leading principles well into the seventeenth century. To him, the law of nations — because it was based to some degree on common sense, civil law, and above all consensus — was the superior law. Even if it broke with natural law or civil law, the laws of nations was the dominant legal code because it was coordinated by the international community. This was the reason, for example, why most European nations approved of slavery despite its prohibition in natural law. Where no precedents existed for the law of nations to have formed consensus, then the jurist or monarch deliberating an issue could turn to civil law (the written laws of Justinian) and apply it to the societas gentium. Provided that these arguments had recognized or well-reasoned legal precedents to back them up, the civil law theory, which traditionally applied only to individual communities in the Roman republic, would form part of the universal law of nations. Where neither the law of nations nor the civil law spoke to an issue, jurists could turn to subordinate legal codes, such as natural law (the unwritten laws of common sense known

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[57] Vitoria, "On Civil Power," § 3.4 in Vitoria: Political Writings, p. 11. Cf. Justinian, Institutes, I.1.2.1-11; also Justinian, Digest, D.1.1.1.2-4.

to all reasoning creatures) or canon law (as interpreted from scripture).[58] These, too, could form part of the law of nations provided that they were rationally applied.

Vitoria's ideas came to be supported by a number of other "neo-Thomists" at the School of Salamanca throughout the sixteenth century. These men included jurists who achieved international fame, such as Domingo de Soto and Luis de Molina. Their works, plus Vitoria's lectures, which were published under the title De Indis et de Jure Belli Relectiones in 1557, became known throughout Europe and were adopted by one of neo-Thomism's most assiduous students, Alberico Gentili, regius professor of civil law at Oxford for the last quarter of the sixteenth century. In his De Jure Belli Libri Tres, written in 1612, Gentili wrote that the law of nations was "that which is in use among all nations of men," although he was emphatic that these laws were not necessarily established in written form, but rather that they had successively seemed acceptable to all nations and should, therefore, be regarded as the intention of the entire world. Like Vitoria, Gentili drew upon the writings of Aristotle, Justinian, and Aquinas, the "utterances of great authorities."[59] Like Vitoria and Bodin before him, Gentili devoted several chapters, and indeed whole other tracts, to the relationship which should exist between sovereign states. This involved sending and receiving ambassadors, and the laws governing the declaration of war and the negotiations for peace. Given his knowledge of Vitoria's central premises and his vast understanding of embryonic

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[58] See Pagden's introduction in Vitoria: Political Writings, pp. xiv-xvi, and Vitoria's exposition of these concepts in his lecture "On Law" in ibid., pp. 153-204. The lecture is presented as a series of questions and answers; the latter usually begins with a variation of "Aquinas replies that..."

[59] Alberico Gentili, De Jure Belli Libri Tres, trans. John C. Rolfe (New York: Oceana, 1964), § 1.1.10-15, pp. 8-10.

international law, it is not surprising that Gentili was consulted regularly by Queen Elizabeth on foreign matters, such as the explusion of the Spanish ambassador Bernardino de Mendoza from England in 1584, and England's right to prosecute the war with Spain beginning in 1585.[60]

By the early seventeenth century, the ubiquity of Vitoria's and Gentili's theory of the law of nations as the dominant legal code may be found in the writings of a host of English civil lawyers. In 1607, for example, Thomas Ridley wrote that "the law of nations is that which common reason hath established among men, and is observed alike in all nations, as distinctions of men's rights . . . [regarding] judgements of controversies, war, peace, contracts, obligations, succession, and such like."[61] By the first decade of the seventeenth century, then, the founding principles of international law were established, although it is true that they would exist polemically and de facto, rather than de jure, until the Peace of Westphalia in 1648 established a positive body of laws governing the relations between states. Brian Levack has shown that in England it was the civil lawyers such as Gentili who were employed as ambassadors and envoys to foreign countries because it was these men, and not contemporary common lawyers, who were taught and could apply the law of nations, civil law, and (when necessary) natural and canon law to matters affecting other sovereign states.[62]

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[60] E.P. Cheyney, "International Law Under Queen Elizabeth," English Historical Review 20 (1905): 659-72.

[61] Thomas Ridley, A View of the Civil & Ecclesiastical Law (London, 1607) (STC 21054). Cf. John Hayward, An Answer to the First Part of a Certain Conference (London, 1603) (STC 12988).

[62] Levack, "The English Civilians," p. 116; and Levack, The Civil Lawyers, ch. 1.

As James Muldoon pointed out, European activities in new found lands, matters which involved extra-territorial acquisitions and controversies, were inextricably linked with international law.[63] Given the need to receive the consensus of the international community, a primary concern for monarchs acquiring territory in new found lands was employing expressions of sovereignty that would lead to international recognition. Kent McNeil has aptly written that "for an assertion of sovereignty by the Crown to be effective internationally the criteria of the law of nations relating to the acquisition of territory would have to be met."[64] McNeil goes on to suggest, as has been demonstrated, that these criteria are derived mainly from the practice of nations and the opinion of prominent ancient, medieval, and contemporary jurists. In the case of England, indigenous land laws, regardless of their immemoriality, would have very little efficacy in the world community. Therefore, the acquisition of territorial sovereignty depended on these claims being made in accordance with the law of nations if a precedent existed, or by Justinian's law, which provided the Roman law rule governing the acquisition of land, or, at the least, the laws of nature and the divine laws. If these claims failed to achieve the consensus of the international community by being accepted in one or more of these ways, British monarchs ran the risk either of being drawn into a legal battle (whether diplomatic, insurgent, or belligerent) which could lead to usurpation of the territory, or the possibility that their sovereign claims to territory could be challenged at some time in the future.

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[63] Muldoon, Empire and Order, introduction.
[64] Kent McNeil, Common Law Aboriginal Title, p. 110 and ch. 4.

The modes of acquisition for territory formed an important chapter (book one, chapter forty-one) of Justinian's Digest. Because there were in the sixteenth century no precepts of the law of nations governing the acquisition of extra-territorial sovereignty (because these were still new activities that had not yet acquired consensus), this chapter was virtually the only legal precedent of international standing from which to draw. The so-called "fathers" of international law, including Vitoria, Gentili, and Grotius, each of whom at some point addressed specifically the issue of acquiring sovereignty in new found lands, all had to base their opinions on their interpretations of Justinian.[65] According to Justinian, title (and with it possession, sovereignty, and dominium) was acquired by one of only a few modes of acquisition: (1) physical occupation of res nullius, which is the settlement of territory not subject to the sovereignty of another state; (2) prescription, where title flows from effectual, long, continued, and undisturbed possession over a long period of time; (3) cession, the transfer of property by treaty; or (4) subjugation, the taking of possession from a conquered sovereign state.[66] In practical terms, only the first three modes of acquisition in new found lands were likely to be recognized by the world community, since the fourth was linked with territory taken during war.

The acquisition of territory through occupation, prescription, or cession gave European monarchs the best chance of having their claims recognized according to the

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[65] A good discussion, although one that addresses the dispossession of native peoples more than acquiring the consensus of the international community, is Green, "Claims to Territory in Colonial America," pp. 39-63.

[66] Jennings, The Acquisition of Territory, ch. 1. A fifth mode, accretion, does not concern us here: this is where the shape of the land is changed by nature.

precepts of the law of nations. It must be pointed out that "discovery" did not form part of this list. Since Justinian's work was used as a primer for these matters, it is clear that despite the writings of some contemporaries, even in the sixteenth century it was not possible to argue that mere discovery or the intent to settle land was sufficient to establish sovereignty, despite the efforts of the Spanish to employ the precedent of first discovery wherever possible. Historian John Juricek correctly noted that the so-called "preemptive" code which was thought to establish title merely by discovery or by "possession" through a symbolic act (which, for these purposes, could include the conquering of indigenous peoples) was never accepted as a legitimate form of establishing title in the world community.[67] This was because, according to Justinian, intent (animo) without physical control (corpore) was not allowed in civil law; the former could establish only an inchoate, or incomplete title.[68]

According to Justinian, for claims of occupation and prescription to be legitimate, the onus was on the sovereign state to show that this territory was effectively occupied. As a number of historians and legal writers have pointed out in recent years, the common feature of all civil laws relating to the acquisition of territorial sovereignty was the importance of actual, effective control of the region.[69] A territory could, for example, be discovered or its peoples conquered, but this title was still incomplete until the territory was under the effective control of the sovereign monarch. Juricek has termed this a

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[67] Juricek, "English Territorial Claims", pp. 8-10.

[68] Justinian, Digest, D.41.2.3

[69] See especially Jennings, The Acquisition of Territory; Freidrich Kratochwil et al, Peace and Disputes Sovereignty: Reflections on Conflict Over Territory (Landham, MD: U.P. of America, 1985); Malcolm Shaw, Title to Territory in Africa: International Legal Issues (Oxford: Clarendon, 1986), pp. 2-17.

"dominative" code, one which was more likely to acquire consensus among the international community.[70] The definition of "effective control" would remain an ambiguous one and would lead to considerable disputes among European states. In theory, the level of effective control was defined by Justinian: "When we say that we must take possession both physically and mentally, that should not be taken to mean that one seeking to possess an estate must go round every part of it; suffice it that he enters some part of the estate, but with the intent and awareness that thereby he seeks to possess the estate to its utmost boundaries."[71] This theory was difficult to put into practice, especially when the territory under consideration had the vastness of North America, whose exact size was unknown for much of the seventeenth century, or the diversity of the East Indies, whose specks of islands were difficult to draw into one territorial claim. No European colonizing nation, for instance, was willing to accept that the Spanish effectively controlled all of North America because of a few fledgling colonies in Florida.

In practice, effective control and the steps taken to achieve or maintain it had to be demonstrated in a number of ways. The more evidence that could be marshalled to demonstrate effective control, the better chances that the region would be safe from challenge or usurpation. The intriguing discussions by Arthur Keller, Anthony Pagden, and Patricia Seed highlights some of the ways that effective control was shown, such as planting symbols showing royal control, but even more tangibly through improving land and building houses and fences.[72] These methods would show potential usurpers that the

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[70] Juricek, "English Territorial Claims," p. 11.
[71] Justinian, Digest, D.41.2.3.1
[72] See above, introduction.

land was under the authority of a sovereign monarch. But these methods had their limitations. Most of them required other Europeans to be in sight of the territory to recognize these symbols of sovereign possession. The symbols could also be easily removed or demolished without trace, and replaced by the symbols of other monarchs. Although such acts might not be theoretically approved of by the international community, it would be difficult to prove a claim to effective occupation if the few symbols showing such possession no longer existed. Nor were most of these mundane methods very effective in showing that the territory was part of a growing British Empire, whose ruler was also a sovereign monarch. This was important because, in the eyes of Europeans, no territory could exist that was not in a state of sovereignty, which was a principal reason that rights of sovereignty was denied to indigenous peoples. It would take greater, stronger, and more official expressions of sovereignty to make the British empire valid in the eyes of the international community. These expressions will be discussed in successive chapters.

CHAPTER TWO

"TRUTH SUFFICIENT FOR HUMANE AND CIVIL SERVICE": JOHN DEE AND THE LIMITS OF THE BRITISH EMPIRE, 1576-80

Historians have examined in some detail John Dee's efforts on behalf of the British Empire.[1] From the mid-1550s he was recognized as an expert in geography and when seeking advice and instruction for trade expeditions it was to Dee that many explorers turned. Dee prepared maps and instructions for several explorers, including John Davis, Francis Drake, Martin Frobisher, Humphrey Gilbert, and Walter Raleigh, in their well-known attempts to search out trade routes and settle new found lands. As for Dee's efforts regarding Queen Elizabeth's sovereign title to new found lands, however, historians have been more hesitant to assign him an important role. Most writers accept that Dee created the phrase "British Empire", but otherwise argue that his imperial vision was simply propaganda and antiquarianism, without much practical value and of limited

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[1] Meyrick H. Carré, "Visitors to Mortlake: the Life and Misfortunes of John Dee," History Today 12 (1962): 640-7. Nicholas H. Clulee, John Dee's Natural Philosophy (London: Routledge, 1988), pp. 180-84. William H. Sherman, "John Dee's Role in Martin Frobisher's Northwest Enterprise," in H.B. Symons (ed.), Meta Incognita : A Discourse of Discovery : Martin Frobisher's Arctic Expeditions, 1576-1578, 2 vols. (Hull, Quebec: Museum of Civilization, 1999), I, 283-98. Charlotte Fell Smith, John Dee (London: Constable & Co., 1909), ch. 4. E.G.R. Taylor, Tudor Geography, 1485-1583, (London: Methuen, 1930), chs. 5-7.

interest to the English crown and state.[2] Recently, literary scholar William Sherman offered the most detailed examination of Dee's imperial writings so far attempted, including a brief discussion of his most important collection of manuscripts on empire, the "Brytanici Imperii Limites", which was only discovered in 1976. Like earlier writers, Sherman concluded that Dee's imperial writings, though demonstrating his exceptional erudition, were passively received by a small audience. Drawing upon Sherman, John C. Appleby has had the final word on the subject to date in the Oxford History of the British Empire (1998): "the impact of [Dee's] ideas . . . was limited."[3]

When Dee's writings on this subject are examined and reconciled with the nature of overseas enterprises at the time of their preparation, it becomes clear that his ideas were of more value than scholars have admitted. His imperial writings came at a vital period, corresponding directly with the most intense English overseas enterprises to date, when Frobisher, Drake, and Gilbert undertook their adventurers in new found lands. It is within the context of specific voyages that Dee prepared his early imperial works. The first, the General and Rare Memorials Pertayning to the Perfecte Arte of Navigation was written in 1576 to promote Frobisher's voyage and the trading goals of the Muscovy Company. It was published at a key time in 1577, with copies being furnished to important crown officials. The second, "Of Famous and Rich Discoveries", was written

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[2] Especially A.L. Rowse, The Elizabethans and America (London: MacMillan, 1959), pp. 17-21; and T.D. Kendrick, British Antiquity (London: Methuen, 1950), p. 43.

[3] William Sherman, John Dee: The Politics of Reading and Writing in the English Renaissance (Amherst, Mass.: U. of Massachusetts P., 1995), ch. 7. John C. Appleby, "War, Politics, and Colonization," in The Origins of Empire, p. 62. See also Armitage, Ideological Origins of the British Empire, pp. 105-7, who argues that Dee's ideas especially about sea sovereignty were generally at odds with prevailing Elizabethan beliefs.

in 1577 to promote Frobisher's second voyage and Francis Drake's circumnavigation, which departed in November of that year. Although neither of these works was especially influential at court, Dee established himself as an expert with these writings and was shortly afterward commissioned by the crown to prepare and present a series of works that were far more valuable. Copies of these works are extant in the "Brytanici Imperii Limites" ("The Limits of the British Empire"). The four manuscripts in the collection were prepared in 1577-78, and presented when Dee met with Elizabeth, Secretary of State Sir Francis Walsingham, and the Lord Treasurer, William Cecil, Lord Burghley. These crown officials were then involved in considering, and ultimately authorizing, the establishment of the first English colonies in the New World, Frobisher's settlement in the North Atlantic and Gilbert's in North America. In his most important audience with the queen and Burghley in October 1580, Dee informed the crown of its rights literally days after the Spanish ambassador lodged an official complaint upon Francis Drake's return from his famous circumnavigation. As these commissions and meetings at such propitious times attest, the crown placed some value on Dee's ideas about empire.[4]

Especially noteworthy is the maturation, complexity, and longevity of Dee's ideas. As plans for the expansion of the British Empire became more elaborate, shifting quickly from exploratory trading voyages into the unknown in 1576 to settlement of territory by 1578, and as Dee's ideas became increasingly desired and respected at court, his

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[4] John Dee, General and Rare Memorials Pertayning to the Perfect Arte of Navigation (London, 1577) (Memorials); "Of Famous and Rich Discoveries [1577]," British Library (BL) Cotton MS Vitellius C.VII, fos. 26-269 ("Discoveries"); "Brytanici Imperii Limites [1577-8]," BL Additional MS 59681 ("Limites"). On the latter manuscript's provenance, see Ken MacMillan, "John Dee's Brytanici Imperii Limites," Huntington Library Quarterly 63 (2000). I have incorporated my conclusions into the present essay. Dee's visits with the queen are recorded in John Dee (ed. J.O. Halliwell-Phillipps), The Private Diary of Dr. John Dee, Camden Society (1968), pp. 4-9 (Private Diary).

arguments became more focused and better grounded in evidence. Dee buttressed his claims by building up an impressive scholarly edifice of classical and contemporary historical, geographical, and legal evidence, at a time when each of these disciplines was increasing in use and importance.[5] Significantly, these writings show that the establishment of English sovereignty over new found lands was conceived by Dee in terms that were internationally intelligible, by employing nascent precepts of international law rather than English common law. This sets Dee's work apart from, and in certain ways above, the propagandist tracts written in the Elizabethan period, such as those of Humphrey Gilbert, Richard Hakluyt, George Peckham, and Walter Raleigh, which have been examined in detail.[6] Dee proclaimed the queen's right to trade in new found lands by natural law, and to draw into her dominion those lands that were discovered by English subjects and were not currently in the actual possession of a Christian prince by civil law, canon law, and the law of nations. He laid the foundation for the British claiming territory by occupation rather than mere discovery, recognizing that in civil law possession was not an act of will or intent (as the Spanish tended to see it) but of physical presence and effective control. He also challenged the Iberian countries' claims of dominion by taking on, almost as a lawyer arguing a case, the explicit language of Alexander VI's papal bull awarding all terra incognita to the Spanish and Portuguese. As

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[5] See D.R. Woolf, Reading History in Early Modern England (Cambridge: Cambridge U.P., 2000); Lesley B. Cormack, Charting an Empire: Geography at the English Universities, 1580-1620 (Chicago: U. of Chicago P., 1997); and Burgess, The Politics of the Ancient Constitution

[6] For example, Lesley Cormack, "Britannia Rules The Waves?: Images of Empire in Elizabethan England," Early Modern Literary Studies 4.2 (September, 1998): 10.1-20 <http://purl.oclc.org/emls/04-2/cormbrit.htm>; Mary C. Fuller, Voyages in Print: English Travel to America, 1576-1624 (Cambridge: Cambridge U.P., 1995); Andrew Hadfield, Literature, Travel, and Colonial Writing in the English Renaissance, 1545-1625 (New York, 1999); Thomas Scanlan, Colonial Writing and the New World, 1583-1671: Allegories of Desire (New York, 1999).

Anthony Pagden has shown, justifications of this nature were important to English officials, who encouraged overseas activities but who also knew that the Spanish and Portugese had already laid claim to the entire Western world by virtue of Columbus's discoveries and the papal donation.[7] Although they were developed within specific contexts, Dee's arguments were well enough grounded in scholarship to germinate into long-term intellectual justifications for claiming sovereignty.

General and Rare Memorials and "Famous and Rich Discoveries"

In the 1570s, Dee associated regularly with a group of men sometimes called by historians the "Sidney circle," whose goal was the creation of an empire that would bring wealth to their monarch, increase British importance in foreign affairs, and spread the Protestant cause. The group included several favourites of Queen Elizabeth, such as Sir Edward Dyer and Sir Philip Sidney, termed by one contemporary as "the two very diamonds of her majesty's court." Both of these men were at one time Dee's pupils and continued to visit their teacher at his home in Mortlake throughout the 1570s and 1580s. The group was also in close touch with Sir Christopher Hatton, by 1577 vice-chamberlain and a privy councillor, and Sir Francis Walsingham, the queen's principal secretary in the 1570s.[8] As we shall see, these would become useful connections for Dee in the late

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[7] Anthony Pagden, European Encounters with the New World: From Renaissance to Romanticism (New Haven, 1994), ch. 1; and idem., Lords of all the World; Seed, Ceremonies of Possession, chs. 1 and 3.

[8] On the Sidney circle: Roger Howell, Jr., "The Sidney Circle and the Protestant Cause in Elizabethan Foreign Policy," Renaissance and Modern Studies 19 (1975): 31-46; Roger Kuin, "Querre-Muhau: Sir Philip Sidney and the New World," Renaissance Quarterly 31 (1998): 349-85; and "Dyer, Edward," Dictionary of National Biography, VI, 283-4, quotation on p. 283. On Dee's relationship with the group: Graham Yewbrey, "John Dee and the 'Sidney Group': Cosmopolitics and Protestant 'Activism' in the 1570s," (Ph.D. thesis, University of Hull, 1981); French, John Dee, ch. 6; Clulee, John Dee's Natural Philosophy, pp. 180-88; and Private Diary, pp. 2-4, 8, 18.

1570s during his quest for royal patronage. It was Dyer, for example, who in 1576 interested Dee in Frobisher's northwest attempt and encouraged him to become active in the enterprise. Dee subsequently provided instructions to Frobisher and Michael Lok before the former's departure and possibly made a personal financial investment when the company was having difficulty raising funds.[9] To continue his support for the enterprise, in August 1576, while Frobisher was in the middle of his first attempt, Dee wrote in six days his General and Rare Memorials.[10] Consistent with the goals of the Sidney circle Dee advocated the creation of a large trading corporation under state annexation. This enterprise could be protected by a standing navy of sixty or more ships, fully manned and equipped, which would ensure that British merchants could travel unassailed into all parts of the world.

In justifying this activity, Dee's argument began to take on useful historical, geographical, and especially legal dimensions. Dee once wrote that while at the University of Louvain, where he studied in the 1550s, he had "entered into a plain and due understanding of diverse civil laws, accounted very intricate and dark."[11] Despite this training, Dee was not a civil lawyer, and his knowledge of civil law was not broad. Most of his arguments came directly from the collection of ancient civil laws codified by the Emperor Justinian in the sixth century AD. Writing in 1597, Dee indicated that during

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[9] Memorials, sigs. A1v-A2. See Symons (ed.), Meta Incognita: Sherman, "John Dee's Role in Martin Frobisher's Northwest enterprise," I, 289-90; James McDermott, "Michael Lok, Mercer and Merchant Adventurer," and "The Company of Cathay: the Financing and Organization of the Frobisher voyages," I, 119-78, especially pp. 154-7.

[10] See also David Gwyn, "John Dee's Arte of Navigation," The Book Collector 34 (1985): 309-22.

[11] John Dee, "The Compendius Rehearsal exhibited to her most gracious Majesty . . . Anno 1592," BL Cotton MS Vitellius C.VII, fos. 2-4 ("Compendius Rehearsal")

his life he had spent "some few hours" extracting "out of certain Roman, and other civil laws, judgements and answers, written De acquirendo rerum Dominio (in the book of Digests, contained)."[12] This was a reference to Justinian's Digest. The chapter named by Dee — book forty-one, chapter one, entitled "Acquisition of ownership of things" — has the most important legal precedents regarding possession and use of land and seas in all Roman jurisprudence. Heavily annotated copies of Justinian's works were to be found in Dee's library.[13] This limited source base does not undermine Dee's arguments. Together, the Digest and Institutes, the most often studied portions of Justinian's Corpus Juris Civilis, were the basis all non-religious legal education in both English universities.[14] England's adherence to traditions of common law made them slow to receive the medieval and renaissance interpretations of civil law. In Dee's England, Justinian remained the primary source for studies of civil science and legal humanism. The well-known early modern civil law commentaries of men such as William Fulbecke, Alberico Gentili, Hugo Grotius, and John Selden were still decades in the future.[15]

In Memorials Dee was concerned primarily with unmolested movement through trading routes and with protecting the queen's sovereign rights as "empress" within the "ancient bounds and limits" of the "British Empire".[16] For the first, Dee claimed that

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[12] John Dee, "Thalattokratia Brettaniki," BL Royal MS 7.C.XVI, fos. 158-66 ("Thalattokratia Brettaniki")

[13] R.J. Roberts and A.G. Watson, John Dee's Library Catalogue (London: Bibliographical Society, 1990), no. 741 (Justinian); also nos. 350, 806, 915, 1867, 2034. This is an annotated photo reproduction of a manuscript Dee prepared in 1583 (Library Catalogue).

[14] John Barton, "The Faculty of Law," in James McConica (ed.), The History of the University of Oxford (Oxford: Clarendon Press, 1986), III, 263-70; Levack, The Civil Lawyers in England, chs. 1-2.

[15] See especially Burgess, The Politics of the Ancient Constitution; Kelley, "Civil Science in the Renaissance: The Problem of Interpretation," pp. 57-78; Levack, The Civil Lawyers; Pocock, The Ancient Constitution and the Feudal Law.

[16] Memorials, p. 21.

common sea passage was a right of all sovereign princes and that neither the Portugese nor the Spanish kings had any right to restrict passage, for the purposes of trade, through all oceans and seas.[17] Justinian's code made a similar proclamation in the Institutes, that "by natural law, the following things are free to all men, namely: air, running water, the sea, and for this reason the shores of the sea. No one, therefore, is prohibited from approaching the seashore."[18] Dee's arguments for the second and more important matter were more complex, as he was required to define in some detail the limits of the British empire. In a lengthy chapter, Dee described the Saxon King Edgar's yearly circumnavigations of Albion and the "lesser isles, next adjacent". This gave him, by virtue of the historical precedent of first discovery, possession of this territory and therefore dominion of the entire "British Ocean," which extended north-west, encompassing Greenland and Iceland and possibly as far as North America.[19] Because this territory was in "ancient and lawful possession" of a sovereign prince no other country could claim any preexisting right to these territories.[20] Justinian's opinion was that "what presently belongs to no one becomes by natural reason the property of the first taker," which to Dee was Edgar.[21] Implicit in this passage is a distinction that Dee was not to recognize until his later writings, that the land had to be "taken", a physical act that required more than mere discovery. Finally, Dee argued that since the "British Ocean" was part of the British Empire, foreign countries could only enter it for the purposes of

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[17] Ibid, pp. 3-21, sig. ε*2; quotation on p. 21.

[18] Justinian, Institutes, I.2.1.1.

[19] Memorials, pp. 55-60.

[20] Ibid, pp. 21-3.

[21] Justinian, Digest, D.41.1.3.

trade but had no right to extract commodities such as fish from the waters and ore and minerals from land.[22] As Justinian recorded in the Digest, "a person entering another's land for the purpose of hunting or fowling can, if the latter becomes aware of it, lawfully be forbidden entry by the landowner".[23] Dee did not recommend forbidding such activities, but he proposed that all foreign persons be charged customs, which the navy would be responsible to collect and remit.

Before Memorials was published in September 1577, Dee embarked on his next major imperial writing. This was a large manuscript entitled "Of Famous and Rich Discoveries", which was written, according to several dated chapters, between 24 March and 8 July 1577.[24] These dates and other convincing circumstantial evidence outlined in detail by E.G.R. Taylor helps to show that it was promotional literature for Drake's voyage, to which we should add that it might also have been commissioned by Dyer and Sidney, and written to promote the Frobisher voyages in particular and exploration in general.[25] Dee had several purposes in mind while writing "Discoveries", each of which can be reconciled with Drake's and Frobisher's voyages. The first was to provide all known historical, geographical, and hydrographical details of the northern and eastern regions of the world to enable future pilots to travel to these areas by way of a north-east

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[22] Justinian, Institutes, I.2.1.2-5.

[23] Justinian, Digest, D.41.1.3.1.

[24] "Discoveries" was the fourth and last volume in Dee's "Brytish Monarchy" tetralogy. The second, "The Brytish Complement," was a series of gubernautical charts, but this does not survive. Dee abandoned the third work in progress and, according to his own account in the published version of Memorials, burned the manuscript.

[25] Taylor, Tudor Geography, p. 116. Taylor convincingly cites both internal and external evidence. Dyer, Sidney, and the Earl of Bedford, Drake's godfather, the three men most closely associated with Drake's attempt, visited Dee in January 1577 (Private Diary, pp. 2-3), about the time he abandoned the mysterious third volume of the tetralogy and began writing "Discoveries".

passage. Armed with this knowledge English merchants could more easily travel to and trade in "all the Oriental parts of Asia & the Isle of Chryse [Japan]".[26] The second purpose was to encourage discovery of terra incognita. Englishmen should, Dee wrote, "proceed upon the farther discovery of that part which yet is least known to Christian men, & lies in the eye of Envy, of other great Conquerous Christians."[27] These included the unknown lands in the northern part of North America and the "Isles of Spices" in the East Indies, areas of which ancient authorities conjectured but whose exact location and nature was not currently known. Here, again, Dee emphasized the importance of claims to first discovery leading to rights of possession. The last purpose, not unlike that in Memorials, was to prove "that all these Northern Isles and septentrional parts are lawfully appropriate to the Crown of this British Empire."[28] These final two chapters were written shortly after Frobisher departed on his second voyage; that they were written almost as an appendix to a large manuscript that focused up to that point on trade in the eastern world suggests that Dee, perhaps induced by the knowledge that Frobisher was travelling back to the Baffin Island region in hopes of finding gold, took this opportunity to explain how Elizabeth had come to have sovereign rights over these territories.

Dee knew that if Queen Elizabeth, Britons, and Europeans were to subscribe to his ideas he required substantial evidence to back up his claims. He needed to provide "truth . . . sufficient for . . . humane and Civil Service," that is, authorities with enough standing to convince the queen and potentially other European monarchs of the claims he

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[26] "Discoveries," f. 69v.

[27] Ibid., f. 69v.

[28] Ibid, f. 266v.

was advancing for the British Empire.[29] In addition to making claims to impeccable and vast research, Dee was careful to assure his reader that "the principal authors . . . are used and creditted", and he appended a bibliography of these writers and their works which occupies several folio sheets in the manuscript.[30] Indeed, Dee's use of evidence was impressive and deserves careful attention both because this empirical edifice would become the foundation of his future imperial writings and because, from a more intellectual standpoint, it shows how historical, geographical, and legal evidence was, for the first time in any detail, put to practical application in proving England's territorial claims in new found lands.

His most common proofs came from historical or antiquarian writings. At a time when, as Daniel Woolf has recently shown, the reading and writing of history and the ownership of historical books was increasing, Dee's use of this type of evidence provided considerable support to his arguments.[31] For the north-western regions Dee's authorities are all British chronicles, which he used, as did many of his contemporaries, selectively to serve his ulterior purposes. His historical agents were the Trojan Brutus, who allegedly discovered and conquered the "Septentrional British Islands," and his lineal descendant the sixth-century Welsh King Arthur, who conquered thirty northern kingdoms and supposedly planted colonies in those islands and regions.[32] Especially because Queen Elizabeth was herself of Welsh descent she was deemed to be a direct descendant of

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[29] Ibid, f. 65v.

[30] Ibid, fos. 125-7.

[31] Woolf, Reading History, especially chs. 1-3; and idem., The Idea of History in Early Modern England: Erudition, Ideology, and "The Light of Truth" From the Accession of James I to the Civil War (Toronto: U. of Toronto P., 1990).

[32] "Discoveries", fos. 52-60.

Arthur and was, therefore, entitled to all his conquered territories. Knowing the dubiety of this evidence, Dee devoted a dozen folios to proving the various activities of Brutus and Arthur in order to quell those who doubted their existence or actions, such as Polydore Vergil, who proclaimed in 1534 that the whole history of Arthur was a romantic legend.[33] Dee was not alone in Tudor England in proving (to their satisfaction, at any rate) the historical accuracy of the Brutus and Arthur legends. The British chronicles of John Bale, John Hardyng, John Leland, Humphrey Llwyd, and John Stowe, among others, all reinvigorated the legend begun by Geoffrey of Monmouth and infused it with historical evidence. Dee owned, read, and annotated all of these chronicles although Geoffrey's Britannia, annotated by Dee in 1574, was clearly his most influential source.[34]

For the north-east and south-east regions Dee's authorities are more diverse, generally respected, and international. He used ancient, classical, and contemporary collections of travel narratives, which were closest in scholarly method to English antiquarianism. They were highly descriptive yet non-political, making them, at least in Dee's opinion, useful and objective sources of information.[35] To Dee these works bridged the gap between history and geography. He turned to Ptolemy and Strabo for descriptions of ancient travels particularly to the eastern regions. Dee had seven copies of

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[33] Ibid, fos. 255-65. Polydore Vergil, An Abridgement of the Notable Works of Polydore Vergil (London, 1546) (STC 24654). Dee had other works of Vergil in his library (Library Catalogue, nos. 731, 865, DM18), but apparently not the Anglica Historia, though he was clearly aware of the argument, which was refuted expressly by John Prise in his Historia Brytannica Defensio (London, 1573) (STC 20309), an annotated copy of which was in Dee's library (Library Catalogue, no. 669).

[34] The titles of these works may be found in the Pollard and Redgrave Short Title Catalogue under the authors' names. For their presence in Dee's collection, see: Library Catalogue: nos. 274, 548, 601, 669, 1200, 1681, 1686-7, 1703, 1747, 1699-1702, 1968.

[35] Woolf, The Idea of History, p. 13.

Ptolemy's Geographia and his copy of Strabo's work had over 2000 marginal notes, probably the most heavily annotated book in his library.[36] He also used the travel narratives of more recent authors, such as Arrian and Krantz, believing these works to be as objective as their classical counterparts. A principal source of Dee's knowledge, from which he extracted the narratives of, for example, King Solomon and Marco Polo was Giovanni Battista Ramusio's well-known Navigationi et Viaggi (Venice, 1550-59), a collection of descriptions of world exploration that is an excellent example of how history and geography could be drawn together to create a complete renaissance narrative. Annotated copies of all these authors' works were in Dee's library.[37]

Modern geography was used by Dee as a form of scientific proof. This was the subject in which Dee was most at home, because the majority of his professional training was in mathematical geography during a period of intense geographical study in the English universities.[38] In the 1570s, Dee was a leading figure in a coterie of geographically-minded scholars, and he was with good reason the primary navigational advisor to nearly every overseas traveller into the 1580s.[39] While at the University of

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[36] Library Catalogue: Ptolemy, 140; Strabo, no. 112, and p. 83.

[37] Library Catalogue: Giovanni Ramusio, Navigationi et Viaggi (no. 273); Flavius Arrianus, Periplus (two editions, nos. 36, 405); Albertus Krantzius, various works (nos. 29, 1760, 1761, 1960); Olaus Magnus, Historia de rebus septentrionalibus (no. 283); Pliny the Elder, various works (nos. 237, 305, 603, 629).

[38] Cormack, Charting an Empire, ch. 3, especially pp. 124-8

[39] Dee's contributions to imperial cartography have been well documented. His maps may be found in manuscript: BL Cotton MS Otho E.VIII, fos. 41-80; BL Lansdowne MS 122, f. 30; BL Cotton MS Augustus I.I.I. Other material is mentioned by Dee in John Dee, A Letter, Containing a Most Briefe Discourse Apologeticall (London, 1593), sig. B1v. On Dee's role in the development of contemporary cartography, see: Cormack, Charting an Empire; David N. Livingstone, The Geographical Tradition: Episodes in the History of a Contested Enterprise (Oxford, 1992); William H. Sherman, "Putting the British Seas on the Map: John Dee's Imperial Cartography," Cartographica 35 (1998): 1-10; Antoine de Smet, "John Dee et sa place dans l'histoire de la cartographie," in Helen Wallis and Sarah Tyacke (eds.), My Head is a Map: Essays & Memoire in Honour of R.V. Tooley (London: British Library, 1973). See also ch. 5 below.

Louvain, Dee studied under Gerard Mercator and Gemma Frisius, leading geographers of the age, and he was a regular correspondent with Pedro Nuñez, cosmographer royal in Portugal, and Abraham Ortelius, whose collection of geographical knowledge in Theatrum Orbis Terrarum (1570) was seminal for the period.[40] Dee's library was furnished with two of Mercator's globes, and he corresponded directly with the Dutchman during the preparation of "Discoveries", whose reply Dee interpreted as confirming his ideas about the northern regions and the conquests of Arthur.[41] In January 1577, Dee wrote a letter to Ortelius in which he asked specifically about the northern coast of the Atlantic; two months later Dee met with Ortelius in person and the following month he began writing "Discoveries".[42] Dee owned the geographical works of all these men plus those of other well-known geographers and cosmographers, such as Sebastian Münster and André Thevet.[43] Being a member of the Sidney group, it is not surprising that Dee would use this vast knowledge to advance an imperial ideology, cloaked under the guise of accuracy and objectivity. Dee's supposed "knowledge" of the regions he was describing — and his knowledge certainly equalled that of any contemporary — lent considerable strength to his argument, and although he had not yet provided the crown any cartographic evidence to bolster his narrative, his ability to define and describe the

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[40] Clulee, John Dee's Natural Philosophy, pp. 26-7. Dee dedicated his Propaedenmata Aphoristica (1558) to Mercator, and mentioned his and Gemma Frisius's tutelage in Louvain. French, John Dee, p. 177, and Taylor, Tudor Geography, pp. 83-5.

[41] "Compendius Rehearsal," f. 9. Mercator's letter (in Dutch) was copied directly into "Discoveries", fos. 264v-269v. It has been translated and examined by E.G.R. Taylor, "A letter dated 1577 from Mercator to John Dee," Imago Mundi 13 (1956): 56-68. See also Taylor, Tudor Geography, pp. 126-8 and 130-4.

[42] Dee to Ortelius, 16 January 1577, in Joannes Henricus Hessels, Abrahami Ortelii . . . Epistulae (1524-1628) (London: Cambridge U.P., 1887), I, 67.

[43] Library Catalogue: Gemma Frisius, nos. 362, 967, 1025, 1085, 1091, B74 (a globe), B228; Mercator, nos. 211, 212, 1658; Nuñez, nos. 100, 189, 674, 769; Ortelius, no. 213; Münster, nos. 88; Thevet, no. 238.

regions of the earth in such detail could make up for other evidentiary weaknesses.[44] Lesley Cormack has written that "the courts supplied an important venue for those who had studied geography," because the ideology of Dee and others "was precisely that which was best suited to the royal agenda."[45] In using geographical evidence to define the limits of the British Empire, then, Dee was offering exactly the type of justification for expansion that the English crown was interested in exploring.

Dee's final source was legal, relying upon much the same precedents he had used in Memorials. To trade to other parts of the world Dee employed the law of nature: "for, the whole Ball & Spherical frame of the earth & water is given Filii hominum: no part excepted: unto them to use & enjoy."[46] That is, the law of nature allows all men to use the oceans and seas, and to land in any territory for the purpose of trade. This was an explicit assertion that the Iberian countries had no right to stop England from traveling and trading throughout the world and we have already seen that Dee's views were supported by civil law.[47] As for reestablishing dominion over the lands under ancient British jurisdiction, Dee once again used the arguments of first discovery, which his detailed treatment of Brutus and Arthur were designed to show. In noting the various settlements of territory by King Arthur, Dee showed himself to be at least implicitly aware that possession stemmed mostly from inhabitation. But in general he had still not accepted that in civil law first discovery could be used only to lay an inchoate claim,

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[44] See below, ch. 5.

[45] Cormack, Charting an Empire, p. 229. This notion that geography helped to "create a shared ideology of the nascent English empire" is the heart of Cormack's argument (see pp. 225-30).

[46] "Discoveries," f. 76.

[47] Justinian, Institutes, I.2.1.1-4.

which had to be followed up with actual possession of the territory.[48] As long as the Iberian countries showed no interest in settling the northern territories, this was not a significant issue to address. On the whole, Dee's knowledge was impressive for a lay person, and this basic foundation would become stronger in future writings.

Dee wrote of Memorials and "Discoveries" that "never, in so small time, so much matter, of so great importance, with such sincere and dutiful zeal to pleasure his Native Country: had by any Subject (British or English) been delivered."[49] As this passage implies, Dee was above all seeking crown patronage, which he had hoped to gain through the publishing of Memorials as a limited run of 100 copies in September 1577. In the published version, Queen Elizabeth was the target audience. This, and the queen's role as "empress" of the British Empire, was made explicit in a descriptive title page of Dee's own design. At the top of the image are two Tudor roses positioned left and right, and the royal coat of arms centred above the title. Within the image, the figure of Elizabeth is controlling the rudder of a ship labeled the "Europa", and Europa is riding on a powerful bull beside the ship. Elizabeth, Dee writes, is sitting "at the helm of this Imperial Monarchy: or, rather, at the helm of the Imperial Ship, of the most part of Christendom." In the sea, and on the land adjacent, are ships, soldiers, and fortresses, defending British interests. In the ship are three supplicating gentlemen, receiving direction from their queen. From the sun, moon, and stars descends St. Michael, armed with sword and shield. On a fortress stands Occasio, offering a floral crown, which Elizabeth is steering her ship to seize. Kneeling beside an ear of corn that is deep within the earth is Lady

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[48] Justinian, Institutes, I.2.6.7. and Digest, D.41.1.3.

[49] Memorials, sig. ε*1r.

Britannica, appealing to Elizabeth to rule the waves and take advantage of the fertile ground and commodities in lands across the waters.[50] For all of its complex allegory, the message is fairly simple: God and Britain are behind Elizabeth's seizing the occasion to improve the wealth, strength, religious convictions, and European power of her empire through activities in other lands. Indeed, this image puts in pictorial form many of the chief elements that Dee included in both Memorials and "Discoveries."

The distribution of Memorials was limited. In a catalogue of his library prepared in 1583, Dee indicated that sixty copies were left on his shelf.[51] He gave copies of Memorials to Christopher Hatton, Francis Walsingham, and Edward Dyer, three potential links to the queen, in hopes that the queen would fund the printing of "Discoveries" and provide Dee with further employment.[52] There is one passage in "Limites" which shows that the queen saw Memorials and provides a vital clue why it (and perhaps "Discoveries") did not receive a larger audience. Dee wrote that he had recently penned a "little book, which by your Majesty's order is yet stayed in my hands [my italics] being the last year printed."[53] This suggests that the queen, having been shown a copy of Memorials, forbade Dee from further distributing it, either because she found its content subversive or, more likely, because she wanted to keep secret the ideas it contained. This also offers an explanation why "Discoveries" remained in manuscript. If Memorials

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[50] The title page has received much attention. See especially Cormack, "Britannia Rules the Waves?", paras. 2-6. Dee's original sketch, from Bodleian Library Ashmole MS 1789, f. 50, is reprinted in Gwyn, "John Dee's Arte of Navigation," p. 319, plate 2. Dee himself explains the title page in Memorials, p. 53.

[51] Library Catalogue, no. 1680, has a marginal notation beside Memorials reading "I left 60 of them ready corrected."

[52] Memorials, p. sig. ε*2v, and pp. 79-80.

[53] "Limites", p. 73.

would compromise English interests in the North Atlantic, surely "Discoveries", which made explicit mention of Drake's secret voyage and offered — were it to become public — enough geographical details to undermine English efforts, would also have been suppressed. Shortly after the printing of Memorials, however, Dee was commanded by Elizabeth to attend her at court and then to write the documents in "Limites". This means that his ideas were intriguing to the English crown, that Elizabeth, who was at this time interested in furthering English exploration, was impressed enough with Dee's justifications for the British Empire to hear more. For the good of the body politic, these ideas were to remain between himself and crown officials, and not disseminated through the popular press. These early works, then, put Dee on the path to patronage and also allowed him to develop historical, geographical, and legal foundations which, as we shall see, would become highly significant in "Limites".

THE LIMITS OF THE BRITISH EMPIRE

Dee's audiences with Elizabeth were initiated by reports that the Spanish and French had turned their attention to Frobisher's voyages, believing him to have returned to London recently with ships laden with gold ore. In October 1577 a notary in London was examined for translating into Spanish an account of Frobisher's second voyage and correspondence between the Spanish ambassador in London and King Philip II of Spain, preserved in the archives of Simancas, shows clearly the official interest of the Spanish. The French were kept informed of Frobisher's efforts through their ambassador in London, who tried to report as accurately as possible where Frobisher had extracted the

gold.[54] Given these potential challenges just prior to the third and most important Frobisher voyage it made sense for Elizabeth to call Dee into her presence and hear his opinions on her rights to the northern regions, as he had promised in Memorials. Dee was invited to Windsor, where between 22 and 28 November 1577 he declared to Elizabeth and Walsingham the queen's title to the northern islands. The content of these meetings was likely what survives as the first two manuscripts in "Limites", which were, as internal clues such as Dee's use of personal pronouns indicate, written expressly for the queen.[55] In these manuscripts, each only two quarto pages in length, Dee summarized much of what was in Memorials and the final two chapters of "Discoveries." He explicitly challenged the notion that the Spanish had any claims to the North Atlantic, and at this time informed the queen that "an accurate, comprehensive, and full account" of this and other matter relating to the queen's sovereign title had been "written lately in a large book in our vulgar tongue," a clear reference to "Discoveries."[56] It might have been at this meeting that Elizabeth ordered Dee to suppress Memorials, and this was probably the first that she had heard of "Discoveries."

There followed in 1578 two works of seminal importance to Elizabethan overseas travel. These documents are dated 4 May and 22 July 1578 respectively and were clearly

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[54] Bernard Allaire, "French reactions to the northwest voyages and the assays by Geoffroy Le Brumen of the Frobisher ore (1576-1584)," in Symons (ed.), Meta Incognita, II, 594-600; and Bernard Allaire and Donald Hogarth, "Martin Frobisher, the Spaniards, and a sixteenth-century northern spy," in ibid, II, 575-88. See also the Calendar of State Papers, Foreign Series (Spanish), II (1568-79), 567-70 and 583-615 passim (CSP Spanish)

[55] "Limites", pp. 4-5 and 7-9.

[56] "Limites", p. 7.

written as companion pieces, although they were presented to Elizabeth separately.[57] They were apparently prepared at Elizabeth's request, for Dee indicated that the "Brytanici Imperii Limites" was "compiled speedily at her majesty's commandment Anno 1578."[58] This command might have been occasioned by the intended voyage of Humphrey Gilbert to North America, which was in its initial planning stages. In November 1577, Gilbert had consulted with Dee and then submitted to the queen his "Discourse how to annoy the king of Spain," a proposal for piratical exploits, using Newfoundland as the base of operations.[59] Gilbert recommended that the queen issue a letter patent to show to any curious party that the enterprise was lawful, and under this "cloak" he could get ships to the Atlantic world without incident and engage with the Spanish in Newfoundland. This action, though perhaps enticing to the queen because of the recent beginnings of enmity with Spain, was clearly against the laws of war and peace, and therefore against the embryonic international law. The solution was the commissioning of Dee, who could provide a rationale, in the form of historical, geographical, and legal evidence, in support of a project of this nature. With English overseas activities directly impinging on territories claimed already by Spain in North America, and for the first time being concerned with territorial acquisition rather than merely commerce, it made sense for the crown to turn to Dee for an explanation of its rights in this matter.

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[57] Ibid, pp. 13-21 and 25-94. The date of the last manuscript reads "Anno Domini 1576, July 22" but I am convinced this is July 22, 1578. For more on the dating of the documents, and evidence that they are "companion pieces", see MacMillan, "John Dee's Brytanici Imperii Limites."

[58] "Thalattokratia Brettaniki," f. 161v.

[59] Dee, Private Diary, p. 3. Gilbert's treatise is at Great Britain Public Record Office (PRO) SP 12/118/12(1).

In the first document, entitled "Unto your majesty's title royal," Dee began by explaining succinctly what were, in his opinion, the limits of the British Empire. It shared much with Memorials and "Discoveries" but was also clearly his most aggressive formulation to date. It was:

> A brief remembrance of sundry foreign regions, discovered, inhabited, and partly conquered by the subjects of this British monarchy: And so your lawful title (Our most gracious Sovereign Queen Elizabeth) for the due claim, and just recovery of the same disclosed; which (in effect) is a title royal to all the coasts, and islands beginning at or about Terra Florida, and so alongst, or near unto Atlantis, going Northerly and then to all the most northern islands great and small. And so compassing about Greenland, Eastwards ["until the territories opposite unto the farther Easterly" added], and northern bounds of the Duke of Muscovy his dominions: which last bounds are from our Albion, move then half the sea voyage to the Cathayen [ie. China] westerly, and north on sea coasts.[60]

These lands and coasts plus the "huge main land" of America itself, Dee concluded, "the title royal and supreme government is due, and appropriate unto your most gracious majesty."[61] This document was intended to be a historical and legal treatise through which Dee could prove Elizabeth's sovereign title to these vast regions. Dee enumerated four points to be discussed: "the claim in particular" (the passage quoted above), "the reasons of the claim", "the credit of the reason", and "the value of the credit by force of law". In asserting these claims, Dee employed new evidence that considerably strengthened his previous arguments.

Dee's historical evidence was improved by additional reports of voyages and discoveries. He established Elizabeth's jurisdiction over the northern regions by repeating the story of the conquests in Iceland and Greenland by King Arthur circa 530,

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[60] "Limites," p. 13.

[61] Ibid., p. 21.

and introduced King Malgo's settling of several northern colonies in 583, the Irish cleric St. Brendan's discovery of western parts toward Atlantis in 560, and Edward III's settlement of "the four great northern islands" in 1380.[62] For Florida and the surrounding regions Dee related the discoveries of the Welsh Prince Madoc in 1170. In this apocryphal tale Madoc traveled westward, discovered the region, and then returned to Wales, gathered together people and equipment, and traveled back to Florida, planting a colony.[63] Dee's source was likely Humphrey Llwyd's Commentarioli Britannicae Descriptionis Fragmentum, published in 1572, of which Dee owned two copies and from which he may have adopted the phrase "British Empire."[64] In addition to these dubious, quasi-historical, medieval claims, Dee included modern discovery narratives. To strengthen his claims to North America and parts of the West Indies, Dee introduced the voyages of John and Sebastian Cabot and the Bristol fishermen from the 1490s through the 1550s, during which time various territories around Newfoundland and "Atlantis sea coasts made southerly" were discovered.[65] For the West Indies, Dee used the voyages of Robert Thorne, who had written a letter to Henry VIII in 1527 in which he claimed to have found North America, and then traveled down the coast 5000 leagues, until he reached "the Indians", the West Indies. Dee's copy of this letter is filled with his marginalia, including a note reading "Our title to the West Indians".[66] Finally, Dee cited

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[62] "Limites," pp. 14, 16-19. Dee believed there were four large islands forming a circle in the Arctic Ocean, a belief he derived from Mercator's world map of 1569.

[63] See Robert W. Barone, "Madoc and John Dee: Welsh Myth and Elizabethan Imperialism," The Elizabethan Review (Spring, 2000) <http://www.elizreview.com/articles/Dee.htm>.

[64] Bruce Ward Henry, "John Dee, Humphrey Llwyd, and the name 'British Empire'," Huntington Library Quarterly 35 (1971-2): 189-90.

[65] "Limites," pp. 14-16.

[66] BL Cotton MS Vitellius C.VII, fos. 329-45; the marginal note is on f. 338v.

Frobisher's first two attempts, securing for the English crown the islands of the northern "Atlantis sea coasts", presumably including Baffin Island and neighbouring territories.

As an improvement on his legal argument, Dee in this work acknowledged that claims to first discovery and repeated travels to these territories were not in themselves sufficient to establish sovereignty. Unlike in Memorials and "Discoveries" he recognized that civil law required that these preliminaries be followed by inhabitation, without which possession — that is, acquiring legal title to the territory — was incomplete. In the Digest, Justinian explained that possession could not be only mental (animo) but must also be physical (corpore): "there can be no acquisition of possession by intent alone, unless there be a previous physical holding of the thing."[67] This requirement, Dee argued, had been partly accomplished by Arthur, Malgo, Madoc, the Cabots, Frobisher, and others, who had inhabited, or at any rate peacefully used the territory for a long period. In civil law, such usage is called prescription, which, like discovery, lays an initial but inchoate justification for acquiring possession. But Roman law also subordinated discovery and prescription to actual, effective control of the territory. Justinian wrote that "any of these things which we take . . . are regarded as ours for so long as they are governed by our control. But when they escape from our custody . . . they cease to be ours and are again open to the first taker."[68] The legal expectation was that possession stemmed principally from control of the territory and, therefore, discovery and prescription, while establishing preliminary acts toward acquiring possession, had to be followed up by physical occupation. Dee recognized that regardless of prior discovery

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[67] Justinian, Digest, D.41.2.3.1-6.

[68] Justinian, Digest, D.41.1.3.2

and prescription, Elizabeth could only now possess those territories "which the Spaniard occupieth not."[69] Knowing that the Spanish were looking more seriously at North America north of Florida, Dee feared that the territories long deemed British by discovery and prescription were in jeopardy of being usurped because they were not currently governed by the British, leaving their title incomplete, and giving the Spanish title if they simply chose to settle, govern, and control the territory. Therefore, and there was urgency in Dee's writing, "this recovery and discovery enterprise is speedily and carefully to be taken in hand."[70]

Dee did not restrict himself to written (or positive) civil law. He also explained to Elizabeth that because "other Christian Princes do nowadays make Entrances, and conquests upon the heathen people, your highness hath also to proceed herein: both to recover the premises, and likewise to enlarge the bounds of your Majesty's foresaid title royal."[71] Dee was emphasizing here that it was the received wisdom of all Christian monarchs that making claims to territories in new found lands were lawful and therefore these actions had formed part of the "law of nations". These laws had their foundation in Justinian's civil law, but were based most fundamentally on the consensus, through regular usage, implicit recognition, or actual acquiescence, of the international community.[72] Finally, Dee appealed to divine law. As a Christian prince Elizabeth had the duty of "spreading abroad the heavenly tidings of the gospel among the heathen," a

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[69] "Limites," p. 21.

[70] "Limites," p. 20.

[71] Ibid, p. 20.

[72] Jennings, The Acquisition of Territory in International Law; Brierly, The Law of Nations.

civilizing and Christianizing mission that required inhabitation.[73] "Ergo," Dee concluded, "partly Jure Gentium," the law of nations, "partly Jure Civili," civil law, and "partly Jure Divino," divine law, combined to justify and legitimize among all European nations England's possession, by settlement and maintaining effective control, of its territorial discoveries.[74] Dee's rather hybridized, multi-legal arguments — which were not particularly unusual at a time when various legal codes were fighting for preeminence — had distinct advantages. To Dee, they together provided a watertight case for the crown's right to claim overseas territories. They also offered the possibility of Elizabeth or her councillors rejecting one or two of Dee's arguments while retaining sufficient international justification for sending Gilbert off to inhabit America. This was, then, to be another effort to provide sufficient evidence for civil service.

We do not know when Dee gave this treatise to Elizabeth but it was probably presented to her shortly after its completion on 4 May 1578. This is partly confirmed by, and the importance of Dee's arguments shown in, the letter patent issued to Gilbert on the eleventh of June. As the first letter patent authorizing actual settlement in new found lands the importance of this document can hardly be overstated as it in many ways provided a blueprint for patents over the next half century. Gilbert was instructed to "discover, find, search out, and view such remote, heathen, and barbarous lands, countries and territories not actually possessed of any Christian prince or people." He was ordered "to inhabit or remain there, to build and fortify," in defense of an invading force, of which

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[73] "Limites," pp. 20-21.

[74] "Limites," p. 21.

mention was made specifically to Europeans.[75] Elizabeth assumed through this patent the dominion of whatever territory Gilbert settled because in discovering, inhabiting, remaining in, and defending land not currently under Christian jurisdiction, sovereignty was asserted according to the precepts of civil law and was justified according to the law of nations. There was no language of divine law in the patent; the Sidney circle's Protestant vision was not strongly shared by the more practical Elizabeth or her senior officials. While Dee's treatise might not have had pivotal impact on Gilbert receiving his patent, it is nonetheless significant that in September 1580, Gilbert awarded Dee "the royalties of discovery [to all land] above the parallel of the 50 degree latitude," which would have given him most of present day Canada.[76] This grant probably rewarded Dee for more than simply providing navigational advice. No earlier document set out as clearly the legal precedents of establishing sovereignty in new found lands as Dee's treatise and given that only one month separated the tract from the patent, there is certainly considerable circumstantial evidence of Dee's influence.

Dee offered the companion piece to this treatise to Queen Elizabeth on 16 August 1578.[77] Elizabeth and her senior advisers were surely aware of the impact Gilbert's patent was likely to have on the Spanish king, who was informed by his ambassador resident in London, Bernardino de Mendoza, that Gilbert had received permission to sail to and settle North America.[78] Elizabeth again turned to Dee, and wished him to work

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[75] PRO Patent Roll C 66/1178, mm. 8-9.

[76] Private Diary, p. 8.

[77] Dee "went to Norwich with [his] work of Imperium Brytanicum," (Private Diary, p. 4) where the queen was currently in residence (Sherman, John Dee, p. 182).

[78] CSP Spanish, II, 591-607 passim.

swiftly so that Gilbert's voyage might proceed unencumbered. This document is the most substantial imperial work that Dee offered to the crown, shorter than "Discoveries" but more direct in its presentation. It is Dee's imperial tour de force, combining the principal elements of his writings over the past two years into a comprehensive and only rarely digressive text. Once Dee believed he had secured an interested patron in the person of the queen, he took full advantage.

Whereas in the "forepart of this record," the document prepared in May, Dee had described only such lands, islands, and territories that Elizabeth could possess without disturbing another Christian prince's dominions, in this document his plan was to record many other foreign regions that were "wrested from the government of your highness's ancestors." Dee proceeds to describe these territories in some detail, using near-exact passages from "Discoveries". The lengthy marginal lists of supposed ancient titles that Dee provided are, to say the least, impressive. They included virtually all of Europe and the Atlantic world north of Spain, encompassing the whole of Scandinavia ("Scantia"), including Denmark, Norway, Sweden, and all islands between England and Russia. Dee also provided a lengthy discussion of Elizabeth's "absolute and lawful chief superiority over Scotland," referring especially to Edward I's claim to Scotland after the death of Alexander III, King of the Scots, which is "abundantly testified by ancient records."[79] This is why for Dee the monarch — and the empire — was British, not merely English. As in his earlier writings, Dee marshaled a variety of historical, geographical, and legal evidence, including a better use of foreign resources than in previous attempts and an

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[79] "Limites," pp. 25-57; quotations on pp. 25, 57, 46 respectively.

intriguing suggestion that certain archaeological expeditions in these regions would undoubtedly turn up additional physical evidence ("monuments") of English activity. Internal evidence also suggests that with this document Dee provided Elizabeth a map to support his narrative, allowing the queen to "see" the outlying regions of her empire and, therefore, to make informed decisions about its recovery.[80]

This treatise shows part of Dee's skills as a propagandist and rhetorician. Although assertions of English sovereignty over much of Europe took up the bulk of the manuscript, they were incidental to Dee's real purpose, which was to state, once again, his previous arguments regarding Elizabeth's title to the northern islands and the Atlantic seaboard. He was distraught that because it was "Christian policy that good peace may be continued, yea rather increased with such Christian princes who long since have intruded into, or unjustly usurped and still do enjoy" the many territories in Europe which rightly belong to Elizabeth, these lands were lost to the British Empire forever. This was all the more reason that the queen should with all due haste and "royal ordinance" take possession of lands "where no Christian prince hath presently possession, or jurisdiction actual in any part of the British Empire." Probably, Dee's intention with this treatise all along was to petition Elizabeth, for the good of the realm, to become more involved in Gilbert's voyage. If the project was supported politically and financially by the crown, "obedient subjects will become marvelously emboldened . . . to spend their travails, goods, and lives (if need be) in the recovery, possession and enjoying of such your

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[80] "Limites," p. 25. Sherman has made the case for Dee's inclusion of a map with this treatise in John Dee, p. 186, and "Putting the British Seas on the Map," pp. 3-4.

majesty's Imperial Territories, duly recoverable, and to be possessed."[81] It is not difficult to see men like Gilbert and the Sidney circle in these words nor Dee's poorly-veiled efforts, as in Memorials, to engender more crown interest and support in the enterprise.

Dee had one more major plank in his imperial argument. In a key section far along in the document he put the force of his historical, geographical, and legal arguments to maximum use by taking on for the first time the Spanish and Portuguese claims to all new found lands. He correctly indicated that these countries claimed their right to these territories by virtue of first discovery (Columbus) and the papal gift of Alexander VI, made in May 1493. Regarding first discovery, Dee predictably pointed out the northern territories were in long and peaceful possession of the sovereign British prince, his argument from Memorials, and that North America had been discovered by Madoc and rediscovered by the more recent explorers, the argument developed throughout his writings. His analysis of the papal bull had to be more complex, because Dee fundamentally accepted the authority of the pope to make the reward. He could not have employed precedents of divine law had he not accepted the pope's spiritual jurisdiction to authorize Spain and Portugal to enter heathen lands to spread Christianity. He did not appear to share the opinion of many legal thinkers of the period, particularly Francisco de Vitoria, that divine and secular authority were separate spheres. As well as being the secular monarch, Elizabeth was the supreme governor of the Church of England.[82] To deny the pope's authority to extend Christianity to heathen lands by reason of his

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[81] "Limites," quotations on pp. 25, 26, 72, 65 respectively.

[82] Vitoria, "On the power of the Church," § 5.2, "On civil power," § 1.5, and "On the American Indians," § 2.2, in Vitoria: Political Writings.

Catholicism would be to deny Elizabeth's right in these matters as well, which would have undermined a portion of Dee's legal argument, not to mention the goals of the Sidney group.

This did not mean, of course, that he had no legitimate arguments to challenge Spain's and Portugal's pretensions. Dee addressed two particular passages of the bull, although he did not quote them directly. The first dissentient passage noted that the Iberian countries "for a long time had intended to seek out and discover certain islands and mainlands remote and unknown and not hitherto discovered by others."[83] Dee argued that the bull had been issued over eighty years before and despite much controversy and antagonism, neither Spain nor Portugal had endeavoured to discover many of these unknown lands. They had come to some agreement about regions south of forty-five degrees north latitude, but had not yet "blown their nails" regarding territory north of forty-five degrees (which bisects present day Nova Scotia.) Given that so much time had passed and in the mean time — and indeed, according to Dee's historical arguments, in the centuries before the bull was issued — English sailors had discovered and rediscovered much of this territory, making it no longer "remote and unknown . . . not hitherto discovered by others," the Iberians had relinquished any possibility of lawful jurisdiction.[84] The second, and to Dee much more significant passage of the bull, was that the Spanish and Portuguese were awarded jurisdiction over "all islands and mainlands found and to be found, discovered and to be discovered towards the west and

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[83] The bull is "Inter Cetera", reprinted in translation in Frances G. Davenport, European Treaties Bearing on the History of the United States and its Dependencies to 1648 (Gloucester, Mass.: Peter Smith, 1967), pp. 75-78; quotation on p. 76.

[84] "Limites", p. 65.

south ["occidentem et meridiem"], by drawing a line from the Arctic pole . . . to the Antarctic pole," the line to be located at about the centre of the Atlantic Ocean.[85] Dee argued that while the use of the Arctic and Antarctic poles were reasonable geographical references in order to make the division equitable, the key phrase was "west and south". To Dee, this meant that Alexander VI's original intent was to donate territories no farther north than Spain, about forty-five degrees north latitude.[86] Therefore, all territory above this latitude was available for discovery and inhabitation without risk of usurping any Christian prince's claims. Had Dee been particularly interested in regions south of forty-five degrees, he probably would have invoked, as he had in the past, historical precedents of discovery predating Columbus and lack of effective control of other regions. But because his interest, like Gilbert's, was in northerly regions he did not address this matter.

There is no evidence that the English crown had much immediate interest in this treatise. Dee's main proposals were too outrageous to be taken seriously, and his real purpose of gaining royal assistance in Gilbert's project was probably thwarted by the recent discovery that Frobisher's gold ore, the mining of which the queen had personally invested money, turned out to be rock. After this, the crown was disinclined to invest in speculative ventures. Furthermore, because Gilbert's voyage did not get underway until 1582, the Spanish chose not to initiate a diplomatic challenge to the patent, as it was expected they would. Dee's arguments, therefore, were not needed by the crown at this time. Two years later, though, Dee's expertise was necessary to solve a diplomatic crisis. This was shortly after Francis Drake arrived back from his voyage around the world in

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[85] Davenport, European Treaties, pp. 77-8.

[86] "Limites", pp. 66-7.

September 1580. Drake had returned with reports of land claimed in the name of Elizabeth, especially "Nova Albion," present day California (or, as recent historians have argued, Oregon), and a store of commodities taken from settlements in the West Indies and South America. Immediately, Mendoza lodged a formal complaint with Elizabeth alleging that these territories belonged to the King of Spain by virtue of first discovery and the papal bull of donation.[87]

Literally within days Dee was called into service. On October 3, Dee "delivered [his] two rolls of the Queen's Majesty's title". That afternoon Dee was summoned into the Privy Chamber, where Lord Burghley expressed doubt that Dee could make a strong argument for the vast title he pretended for Elizabeth. For the next two mornings Dee and Burghley spoke privately about the matter and Dee returned home the next day. Finally, on October 10, the queen went to Mortlake, called Dee out of the house (his mother had just died and lay within), and reported that "the Lord Treasurer greatly commended [his] doings for her title." She returned the two rolls to Dee, thus ending his involvement in the queen's title to foreign lands.[88] The two rolls were simply another form of the two companion pieces in the "Limites," so Dee did not offer his monarch any new contributions to his imperial vision at this meeting.[89] But Burghley's skepticism suggests that many of Dee's arguments became vitally important to the crown at this

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[87] CSP Spanish, III (1580-86), nos. 44-50 passim. See also: BL Additional MS 28420. This incident is recounted in Cheyney, "International Law Under Queen Elizabeth," pp. 659-60.

[88] Dee, Private Diary, p. 9.

[89] Sherman, John Dee, p. 187. A fifth section in "Limites" was actually an appendix to the "Brytanici Imperii Limites" proper, and when the collection was drawn together in 1593, the material "in the margents of the long roll" ("Limites", p. 75) became this appendix. This is clear evidence that the two rolls and the bulk of "Limites" consisted of the same material.

time. With the Mendoza-Drake affair, the English crown was required to defend its sovereign rights in new found lands and with remarkable speed the nation's foremost expert in these matters was called to court and given an extensive audience. Dee's work must have, as his diary indicated, satisfied the crown of its rights because following this meeting Elizabeth accepted into the Tower of London the fruits of Drake's voyage.

The crown's brief reply to Mendoza, formulated likely by Walsingham, Burghley, or some privy councillor, is undated and appears only in William Camden's Annales and not among state papers. Keeping these limitations in mind, it is still significant:

> The Spaniards have brought these evils on themselves by their injustice towards the English, whom, contra jus gentium, they have excluded from commerce with the West Indies. The queen does not acknowledge that her subjects . . . may be excluded from the Indies on the claim that these have been donated to the king of Spain by the pope, whose authority to invest the Spanish king with the New World . . . she does not recognize. The Spaniards have no claim to property there except that they have established a few settlements and named rivers and capes. This . . . imaginary right of property ought not to prevent other princes from carrying on commerce in those regions or establishing colonies there in places not inhabited by the Spaniards. Such action would in no way violate the law of nations, since prescription without possession is not valid. Moreover all are at liberty to navigate that vast ocean, since the use of the sea and the air are common to all. No nation or private person can have a right to the ocean, for neither the course of nature nor public usage permits any occupation of it.[90]

This response should immediately remind us of Dee's writings. It stated that the pope had no authority in temporal matters; that trade and the use of the oceans were free to all by the law of nature; and that prescription without effective occupation is not a valid possessory title, leaving unoccupied lands free for inhabitation, which was in accordance with civil law and the law of nations. The English, therefore, were free to trade throughout the world and free to establish settlement in all territories not already

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[90] Quoted in Cheyney, "International Law," p. 660.

inhabited by the Spanish. To be sure, these were not complex legal arguments and they could have been made by any civil lawyer from Oxford or Cambridge. Still there is no denying that based on extant evidence Dee was the most knowledgeable scholar on overseas activities and provided the crown with the most clear formulations on the subject. Given that he was approached immediately after the Spanish complaint it is probable that his views informed the crown's official response. At the very least, the response shows that Dee was all along arguing within respected and legitimate precedents.

CONCLUSION

Using history, geography, and law as his supporting evidence, John Dee helped the British crown to define and defend the limits of its empire. To Dee, this empire included all territories westward to the centre of the Pacific Ocean and north of forty-five degrees north latitude, which were either already discovered by British subjects, or remained terra incognita and were outside of the territory granted by the papal donation. In these areas, the English had the force of historical precedent up to and including Frobisher's last voyage, but these discoveries still had to be followed by inhabitation. In southern areas, those below forty-five degrees, which were claimed under the bull, pre-Columbian discovery was sufficient to establish precedent superseding the pope and the rights of the Spanish and Portuguese kings, but only to those lands that were not currently under the dominion of another Christian prince. Dee generally accepted that there was no terra incognita in this region, but peaceful usurpation of uninhabited or abandoned territory could still take place. It is noteworthy that Dee did not accept that any right

flowed from the conquering of Christians who inhabited these territories. Once actually inhabited by Christians, the land was lawfully theirs until it was abandoned. For this reason, it was of vital importance that all lands within the British Empire be inhabited as soon as possible. As for the trading component of Dee's imperial vision, he claimed for the British the right to free trade and travel in all parts of the world, which necessarily involved landing to conduct business. This allowed the British free passage to, for example, the West and East Indies, both of which were claimed by the Iberian countries. All of Dee's arguments had historical, geographical, or legal precedents and many, as we have seen, had a combination of the three. It was the cumulative force of this supporting evidence through which Dee was able to provide a strong case for his claims, one which would survive the test of European challenges.

During the reign of Queen Elizabeth, Dee was the first and most important proponent of these arguments.[91] This honour is usually given to Richard Hakluyt, whose "Discourse of Western Planting" was presented to the English crown in 1584 to advance Raleigh's voyages to America and has been called by D.B. Quinn "authoritative for the period."[92] Dee's writings not only preceded Hakluyt's but, taken together, were also a more comprehensive and persuasive blueprint for the expansion of the British Empire than Hakluyt's "Discourse". It is almost certain that Hakluyt personally knew his older contemporary. He read Dee's Memorials and "Discoveries" before preparing his own

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[91] In this I am supported by William Sherman, who termed Dee one of the British Empire's "earliest. boldest, and most ingenious advocates" (Sherman, John Dee, p. 148).

[92] D.B. Quinn, "Introduction," in Richard Hakluyt, A Particuler Discourse . . . Known as the Discourse of Western Planting (London: Hakluyt Society, 1993). This is a photo reproduction of the manuscript ("Discourse").

works and given his membership in the Sidney circle it is likely that he read at least "Unto your majesty's title royal" (the first of the companion pieces), which Dee had summarized and provided probably to Dyer in another format.[93] In the chapter of the "Discourse" concerning the queen's sovereign title, the most scholarly portion of the treatise, Hakluyt argued that the queen had title to the West Indies and Florida northward to the Arctic based on the voyages of Madoc, Cabot, Thorne, and others mentioned by Dee.[94] Some of Dee's other legal arguments, such as taking physical possession to avoid usurpation and the right of travel to new lands by virtue of the law of nature were, at best, weakly and clumsily expressed within a deeply propagandist framework.[95] On the whole, Dee's works were better received and utilized by the English crown than Hakluyt's "Discourse", which Quinn admits had little impact on the queen or state officials.[96]

In assessing Dee's influence on the crown and his importance in defining and defending the British Empire from about 1576 to 1580, we should remember that Dee's broader maritime scheme remained largely theoretical. The crown had little interest in becoming financially involved in speculative enterprises, nor in establishing a royal merchant navy, collecting customs, spreading the Protestant cause, or overseeing the

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[93] E.G.R. Taylor, The Original Writings and Correspondence of the Two Richard Hakluyts (London: Hakluyt Society, 1935), doc. 26 and pp. 404, 446 have textual and editorial evidence of Dee's contributions to Hakluyt's works. The first of the companion pieces in "Limites" was copied onto the back of a map Dee prepared in 1580, BL Cotton MS Augustus I.I.I, which Hakluyt was probably able to consult. Dee's influence on Hakluyt can also be seen in other ways. Hakluyt reprinted Dee's account of King Edgar's conquests verbatim in his Principall Navigations, Voiages and Discoveries of the English Nation (London, 1589), II; and the first five chapters of "Discoveries", which were among Hakluyt's papers upon his death, were summarized by his literary successor, Samuel Purchas, in his Hakluytus Posthumus, or Purchas his Pilgrims (London, 1625), I, 93, 97, 105-6, 108-16.

[94] Western Planting, cap. XVIII.

[95] Western Planting, caps. VIII-IX, XV.

[96] But cf. Armitage, Ideological Origins of the British Empire, pp. 70-80, who sees Hakluyt's (and Samuel Purchas's) works as advocating state-building, which was not Dee's purpose.

recovery of a vast empire. In these respects, previous writers have fairly seen Dee's work simply as furthering the goals of Edward Dyer, Philip Sidney, and others. Nor did Dee receive patronage preferment for his considerable efforts. In his "Thalattokratia Brettaniki" of 1597, the last of his writings for the crown, Dee lamented that "little account" had been taken of his "care & diligence" on behalf of the British Empire; he was frustrated that his labours were "vainly employed."[97] But Dee's failure to convince the crown of his worth and of his fuller plans for expanding the limits of the British Empire should not distract us from the significance that may be attached to his writings. These works came at an important time, when Elizabethan England was taking its first, uncertain steps into new found lands, when the promise of wealth flowing into the nation made overseas activities desirable, and when permanent settlement in these regions was first being debated and authorized. This was also a time when the English crown was potentially or actually challenged by European monarchs because of the overseas activities of its subjects. In this context, as Humphrey Gilbert's letter patent and the Mendoza-Drake affair shows, Dee's works provided the crown with valuable justifications for its claims to sovereignty in overseas territories. The crown's interest in, and use of, Dee's ideas also helps to show that the monarch and her advisors were more involved in overseas activities than historians such as K.R. Andrews and several

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[97] "Thalattokratia Brettaniki," f. 104. In November 1592, Dee presented his "Compendius Rehearsal" to two of the queen's gentlemen, from which he had hoped to remind the crown of his service in exchange for a living. At that meeting, Dee pointed to the two great rolls and said that he was once offered £100 for them (f. 7v). In response, the gentlemen returned three weeks later and gave Dee the same amount in gold and silver (f. 13). This was apparently the only money Dee received for his imperial writings. It was given not as payment for his services but so that the crown could acquire a copy of his writings, because BL Additional MS 59681 ("Limites") was compiled in 1593, and might have been prepared by Dee or an amanuensis.

contributors to the new Oxford History of the British Empire have recognized.[98] As the civil lawyer Charles Merbury wrote in 1581, "Master Dee hath very learnedly of late (in certain tables by him collected out of sundry ancient, and approved writers) showed unto her Majesty, that she may justly call herself Lady, and Empress of all the North Islands."[99] Merbury went on to suggest that Dee's efforts placed Queen Elizabeth and the English crown on an equal (or superior) footing with other European monarchs. As we have seen, the queen's role as empress and the necessity of the crown's involvement because of European challenges, were explicit in Dee's arguments.

Even beyond his role as the leading theorist of, and the crown's expert on, Britain's territorial empire into the 1580s, Dee's arguments were well enough grounded in scholarship to germinate into long-term intellectual justifications for claiming sovereignty. He was one of the earliest British writers to employ the precepts of civil law and embryonic international law to situations involving other European princes. In doing so, he anticipated the writings on international law and the law of nations that proliferated in Britain in the early part of the seventeenth century.[100] Furthermore, time and again over the next half century, arguments grounded in historical precedents, geographical boundaries, the legitimacy of the papal bull, precedents of discovery and prescription, the absence of eminent dominion by another Christian monarch, and effective occupation as the root to possession, were employed by the British as justification for establishing sovereignty in new found lands. For example, these historical, geographical, and legal

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[98] Andrews, Trade, Plunder, and Settlement; and Canny, ed., The Origins of Empire, introduction and pp. 55-78.

[99] Charles Merbury, A Briefe Discourse of Royal Monarchie (London, 1581), p. 4.

[100] See above, ch. 1, pp. 55-6.

arguments formed the foundation of Britain's negotiations during the Treaty of London (1604), which addressed British rights in North America and the East and West Indies; the conferences with the Dutch over the East Indies (1613-22); and the capture of Acadia (Nova Scotia) and Quebec and their restitution to the French (1613-32).[101] It was the efforts of John Dee between 1576 and 1580 that helped these arguments become conventional.

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[101] See below, ch. 6.

Fig. 2.1. Cover page to John Dee, General and Rare Memorials (1577)

CHAPTER THREE

"OF OUR ESPECIAL GRACE": LETTERS PATENT AND THE ACQUEST OF DOMINION

As John Dee's efforts help to demonstrate, planting colonies in new found lands was not simply a matter of sundry trading companies amassing ships, men, and money, traveling across the ocean, and settling the territory. Before these activities could take place, colonial agents required the express, written, permission of the monarch. This was because overseas activities intersected with several prerogative rights of the crown. These were the right to distribute land; the right to grant company incorporations and trade monopolies; the right to draw new found lands into its territorial jurisdiction; the right to demand the allegiance of subjects in any territory within its jurisdiction; and the right to deal with all matters that involved foreign princes. The assertion of these rights of sovereignty and prerogatives were encapsulated in the royal letters patent, which were passed under the Great Seal of England at the discretion of the monarch. Surprisingly, given this important role, the letters patent for overseas affairs have received relatively

little attention from historians.[1] Through an examination of state papers, colonial records, and privy council records,[2] it becomes clear that the letters patent played a vital role in the acquest of dominion, containing numerous distinct expressions of sovereignty and including all of the criteria that were necessary under the standards of the international community for the crown to lay claim to new found lands.

In the preparation, issuance, enforcement, and, in some cases, the recall of the letters patent, important aspects of the crown's authority in overseas affairs becomes readily apparent. The process began with petitioners submitting to important members of the state, petitions, position papers, and treatises. In these documents, the authors were expected to explain their requests, and, in particular, the historical and legal precedents that allowed the requested privilege or activity to take place. Only after the crown had considered and approved of these petitions would the attorney- or solicitor- general be ordered to prepare a patent for the monarch's signature. In the patents themselves, the bulk of the text related to matters of the monarch's internal and external sovereign rights and to his or her royal prerogatives. Following settlement, the crown became involved in colonial affairs when it perceived that certain articles of the letters patent were not being respected, or when the traditional rights of subjects or the prerogative rights of the monarch were being abrogated by the monopolisitic trading companies. This led, beginning in the 1620s, to proactive steps taken by the crown to revoke colonial self-

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[1] The most complete investigations have been Patricia Seed, "Taking Possession and Reading Texts," pp. 185-9; John Juricek, "English Territorial Claims in North America"; and James Muldoon, "Discovery, Grant, Charter, Conquest, or Purchase: John Adams on the Legal Basis for English Possession of North America," pp. 25-46. Each of these discussions is valuable, but brief, and does not sufficiently take into account crown authority or the international component of the patents.

[2] These are, respectively, PRO SP 12-16; PRO CO 1-10; and PRO PC 2/27-50.

government, which often meant the revocation of the patent as well, and to rule the colonies from England as foreign plantations of the crown. What becomes clear from this investigation is that the crown did not, at any point, relinquish its sovereign authority over overseas territories to individual proprietors or trading companies.

PETITIONS AND FOREIGN POLICY

The letter patent was the principal document through which the monarch exercised royal prerogatives. From the thirteenth century, it was a document issued under the direct, sovereign authority of the crown and had the force of law. This was confirmed in Elizabeth's reign by an act of 1578, which noted that "all Letters Patents, &c. granting Lands, &c. from the Queen to Subjects, . . . [are] declared valid."[3] The crown's superior role in the letters patent was always indicated in their preamble. Humphrey Gilbert's patent, for example, opens with "Elizabeth by the grace of God Queen of England &c," a formula that changed only to reflect the name of the current monarch.[4] As this preamble indicates, the authority for granting whatever right was bestowed on the patentee came directly from the monarch, who alone had sovereignty by God's grace. These were not documents intended for internal, domestic, reading. The letters patent was addressed "To all people whom these presents come, greeting." Unlike letters close, private letters that

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[3] 18 Elizabeth, c. 1, quotation is marginal notation in s. 2. A similar statute was prepared in 1554 for Queen Mary, 1 & 2 Philip and Mary, c. 1.

[4] Letters patent to Humphrey Gilbert, 11 June 1578, PRO Patent Roll C/66/1168, mm. 8-9. Quoted from a reprint in Quinn, NAW, 3:186. Virtually the same preamble was used in all letters patent. Cf. the patent issued to John Cabot in 1496: "Henry by the grace of God, King of England & France, and lord of Ireland, to all to whome these presents shall come, greeting." Hakluyt, Principal Navigations [1589], 2: 510.

were sealed up, letters patent were open, indicated by the Latin patente, or "open".[5] The patentees were issued the original patents so that they could, when necessary, show to other Englishmen and Europeans that their activities had the express authority of a sovereign monarch. This was a normal practice for all European countries, where monarchs issued letters of marque expressing their desires, so that the letters patent had international standing as well. It was these patents, then, issued on the sovereign authority of the monarch under the Great Seal, and addressed to all persons, that were required in order to trade in or settle new found lands.[6]

The process of acquiring a letter patent for overseas affairs began with writers submitting to particular patrons political treatises, position papers, and petitions. It is not necessary to discuss these documents in detail, because they generally conformed to a formula, which became more formalized in the Stuart period. As I earlier demonstrated, John Dee's Memorials and "Limites", presented to Queen Elizabeth, led to the preparation of instructions for Drake and Frobisher and a patent for Gilbert, and Hakluyt's "Discourse of Western Planting", presented to Secretary of State Francis Walsingham, led to the patent issued to Walter Raleigh. Both authors were concerned to explain the historical and legal precedents of their requests using the language of civil law, international law, and the law of nations. A similar paper was prepared in 1583 by

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[5] S.R. Scargill-Bird, A Guide to the Principal Classes of Documents Preserved in the Public Record Office, 2d. ed. (London: PRO, 1896), pp. 34-5.

[6] Because most of the overseas patents issued between 1578 and 1640 also authorized men to incorporate into a trading company, they were often termed by contemporaries and historians as "charters", "grants", or "commissions". However, as Hubert Hall has shown, by the early sixteenth century these documents employed the same formula and legal language as the letters patent, and all were authorized under the Great Seal. Hubert Hall, A Formula Book of English Historical Documents (Cambridge: Cambridge U.P., 1908), vol. 1, pp. 24-5, 54-60.

Christopher Carleill, Walsingham's stepson, after Gilbert's efforts faltered, a scheme that was revived by Carleill and Edward Hayes in 1592.[7] Like Dee and Hakluyt, these authors cited the Queen's right to North America based on its "being before unknown", and asserted that "her Majesty [is] the successor and rightful inheritor unto all those ample dominions of America . . . which large tract of lands was first discovered by the English nation," using as evidence the voyages of the Cabots.[8] Each of these documents was considered in some detail by a sub-committee of the privy council, and each was successful in engendering crown authority for the proposed enterprise, although other factors resulted in the voyages not being undertaken.[9]

In the Stuart period, the admixture of propaganda, rhetoric, and discursive arguments that was so apparent in the lengthy Elizabethan petitions was replaced by a more routine and mundane process. Rather than working through a patronage network, writers of petitions submitted their shorter and more direct documents to the monarch and privy council. This is itself informative; the petitioners recognized the superior role of the crown in overseas enterprises and knew that patrons, even those well favoured by the crown, were not in a position to authorize these activities. Early in 1606, Edward Hayes

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[7] Christopher Carleill, "A Brief and Summary Discourse upon the Intended Voyage to the Hethermost Parts of America" (1583), reprinted in Quinn, NAW, 3:27-33. [Edward Hayes and Christopher Carleill], "A Discourse Concerning a Voyage Intended for the Planting of Christian Religion and People in the North West Parts of America" (1592), reprinted in Quinn, NAW, 3:156-172.

[8] [Hayes and Carleill], "A Discourse Concerning . . . the North West Regions of America," Quinn, NAW, 3:157.

[9] These "other factors" were Raleigh's voyage, which eclipsed the first petition, and the war with Spain, which made the second impractical. The privy council's commentaries are at PRO CO 1/1/1 and CO 1/1/9. The first document is dated in the CSP Col. 1, p. 1 as "1574" but this is incorrect; the document is entitled "Points set down by the Committee appointed . . . to confer with Mr. Carleill upon his intended discovery and attempt in the northern part of America," and its content makes clear that it is a response to Carleill's 1583 treatise. The second document is dated in the same source as "1600?', but it is clearly a response to the Carleill-Hayes project, and probably dates between 1592 and 1597.

submitted to Secretary of State Robert Cecil, Earl of Salisbury, a petition which led to preparation of the first Virginia Company patent in April of that year (with Salisbury himself as the chief patentee).[10] The petition was divided into a series of inducements, which enumerated the importance of trade to England's economy, and the reasons the settlement should proceed. "The Law of nations," reads the fourteenth inducement, reminiscent of Dee's conclusions, "giveth unto us the Coast first found out by our industry, forasmuch as whatsoever a man relinquisheth may be claimed by the next finder as his just property." The author affirmed that the French intended shortly to inhabit Virginia and that, therefore, it was not sufficient simply to set foot in a country for trade, "but to possess and hold it, in defence of an invading force".[11] Indeed, as Andrew Fitzmaurice has recently shown, the Virginia Company promoted itself in explicitly "civic" terms, that is, in terms of national allegiance and the pursuit of the common good. This was done, in part, so that the crown would be convinced that these activities were not being undertaken to practice "proto-capitalist individualism," but rather to increase the honour of the monarch and the wealth of the commonwealth.[12]

A similar petition was submitted to the privy council in 1610 by certain merchants of London for a Newfoundland charter. Confident that the land was inhabitable, the

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[10] The document is BL Lansdowne MS 160, fos. 356-7; interestingly, it is entitled "Reasons to move the high court of parliament to raise a stock [&c]", suggesting that parliament, and not solely the crown, had some authority in this area. That the privy council considered this request without consulting parliament shows us that it did not. For reasons that are unclear, one "T. Gerolyn" submitted this treatise to Sir Julius Caesar in January 1607 as if it were his own, although, as D.B. Quinn has shown, Hayes was almost certainly the author (Quinn, NAW, 5:168-70).

[11] BL Lansdowne MS 160, fos. 356-7.

[12] Andrew Fitzmaurice, "The Civic Solution to the Crisis of English Colonization, 1609-25," HJ 42 (1999): 25-51.

merchants asked simply for permission to "leave with a few men fitting for a plantation to make trial thereof." The authors expressed concern that "any foreign Prince or State" who "possessed & fortified" could debar the English from the "quiet enjoying of the said harbours & fishing", whereas if the crown quickly undertook to plant the territory, which they knew was "yet never inhabited by any Christian people", it could secure English fishing rights on the Grand Banks.[13] This resulted in the letters patent to the Newfoundland Company in 1610. After reading Richard Whitbourne's lengthy "Discourse and Discovery of New-Found-Land," which was dedicated to the "most high and mighty prince, James," in 1620, the council appointed a sub-committee to consider the benefits of planting. It subsequently recommended the book for publication and sent letters to the Archbishops of Canterbury and York requesting that they promote the discourse in the parishes in their archdioceses.[14] By 1622, enough interest and capital had been raised for George Calvert, former secretary of state and recently created Lord Baltimore, to receive a patent. In the petition by men who wished to plant in New England in 1620, the authors plainly requested the territory called "New England", to be settled from 40° to 45° north latitude and west-east "from sea to sea."[15] The privy council struck a committee to "take notice of the petition, [and] consider of [their]

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[13] Trinity House, London, Transactions, 1609-25, fos. 1-1v.

[14] The book was published "under authority", as the title page reads, under the same name. It is reprinted in Gillian T. Cell, Newfoundland Discovered, pp. 100-206. On the privy council's dealings with Whitbourne's treatise, see PRO PC 2/30, pp. 425, 578; and PRO PC 2/31, p. 76 (paras 2 and 3).

[15] PRO CO 1/1/47, dated 3 Mar. 1620.

lordships' demands for privileges."[16] The New England patent was issued shortly thereafter.

Despite the success of these Elizabethan and Jacobean petitions for overseas activities, it would be wrong to conclude that the petitioning process was mere formality. The crown required sufficient reasons to allow the activity to take place, which is why the authors emphasized the issues of first discovery, physical occupation, and the absence of dominion by another Christian prince, and appealed to civil law and the law of nations rather than indigenous common law. More importantly, perhaps, the fate of the petitions depended on the current state of foreign affairs, matters that were strictly within the purview of the monarch. The speculative voyages of Drake, Gilbert, and Raleigh occurred when relations with Spain were breaking down, principally because England came to the aid of the Netherlands in 1578. Given this political climate, the crown could use some leverage in the New World, as Gilbert's "Discourse how to annoy the King of Spain" amply demonstrated. That each of these voyages was kept secret as long as possible shows that they were of some strategic importance to Elizabeth, beyond simply improving the wealth of Britain. From 1585 to 1604, England was engaged in the Anglo-Spanish War, which also inhibited overseas expansion in the 1590s. The lack of crown financial backing consequent upon the need to fund such an expensive war was probably the reason that the Carleill-Hayes expedition did not manage to get underway. In the

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[16] Ibid., marginal notation dated 3 Mar. 1620.

Elizabethan period, the value and practicality of overseas activities was delicately balanced with current foreign affairs.[17]

Following the Treaty of London in 1604 and throughout his entire reign, James I was anxious to avoid collision with Spain and the council knew that he would not sanction any projects that threatened confrontation.[18] Territories such as Virginia, Newfoundland, and New England were relatively safe; the Spanish, although certainly not pleased with English and Scottish settlement in these territories, had shown little serious concern about them, settlements far north of Spanish Florida. Even so, when the petitions involving these regions were sent to the privy council, that body had to keep the king's pacifist policy in mind when deliberating and making its recommendations. Unfortunately, there are no records of privy council sub-committees, so the content of these deliberations remain unknown. But given the king's intentions, potential petitioners were surely aware that, for instance, no plans for the West Indies or northern Florida would receive royal approval. When Edwin Sandys, Dudley Digges, and others, with the blessing of parliament, approached the king with detailed plans to create a West India Company between about 1621 and 1625, the king, not wishing to upset the Spanish at this time, and during the sensitive negotiations for the "Spanish match", denied the petition.[19]

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[17] On the impact of foreign affairs on Elizabethan overseas ventures, see especially D.B. Quinn, "Some Spanish Reactions to Elizabethan Colonial Enterprises," pp. 1-23; and K.R. Andrews, "Beyond the Equinoctial: England and South America in the Sixteenth Century," pp. 4-24.

[18] On James I's foreign policy regarding transoceanic ventures, see Andrews, "Caribbean Rivalry and the Anglo-Spanish Peace of 1604"; Quinn, "James I and the Beginnings of Empire in America"; and Lorimer, "The Failure of the English Guiana Ventures 1595-1667 and James I's Foreign Policy." For more on the Treaty of London, see below, chapter 6.

[19] John C. Appleby, "An Association for the West Indies? English Plans for a West India Company, 1621-29," JICH 15 (1987): 213-21.

The foreign scene changed quickly under Charles I. The Anglo-Spanish War of 1625-30, which was prosecuted heavily in the West Indies, and the Duke of Buckingham's assistance to the Protestants in La Rochelle, France, in 1628, renewed the belligerence between England, Spain, and France, making James I's cautious policy no longer relevant. Over the next half decade, the privy council seriously considered proposals for a West India Company and the planting of Carolina (the region between Virginia and Spanish Florida), both of which, though successful in engendering crown authority, were failures. Other petitions for the planting of the "Caribee Islands" and Providence Island in the West Indies between 1627 and 1630 and portions of Canada in the 1620s and 1630s led to England's first permanent forays into these regions.[20] In the petition requesting trading rights in Canada, submitted by William Alexander and David Kirke in 1632 — advocating a joint Scottish and English enterprise — the privy council considered and deliberated at some length before a decision was made. The petition was made shortly after a peace settlement was finally reached with France, in which Quebec was restored to the French, and, therefore, the council was concerned to ensure that the patent did not infringe on any articles in the treaty.[21] The current state of foreign policy, then, had a direct impact on the type of petitions submitted and the success of these petitions. For this reason, above all, the crown's superior role in these affairs was recognized.

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[20] On the West India Company, see Appleby, "An association for the West Indies?". For the Carolinas project, see Paul E. Kopperman, "Profile of Failure: The Carolana Project, 1629-1640," The North Carolina Historical Review 59 (1982): 1-20.

[21] 21 Nov. - 22 Dec. 1632, PRO PC 2/42, pp. 281, 333-4, 354. For more on the treaty negotiations of 1632, see below, chapter 6, pp. 272-5.

WRITING THE PATENT

After the monarch and council had approved of a petition and considered particulars in committee, the next step was having a letter patent prepared for the king's signature. Although there is little information about the preparation of letters patent in the Elizabethan period, the privy council records after 1613 help to explain the steps immediately following the petitionary process. For example, a letter from the privy council to the Attorney General, written in 1625, reads as follows:

> Whereas Thomas Warner at the charge of Ralph Merrifield, having lately discovered towards the Continent of America four Islands vizt. St. Christophers alias Merwar's Hope, Nevis, Barbadoes, and Monserratt inhabited by Savage people, and not in the possession or government of any Christian Prince or State. Hath been an humble suitor to his majesty to take the said Islands into his royal protection and to grant licence to the said Ralph Merrifield his partners and agents, to traffic to and from the said Islands paying the customs due, and to transport men, and do all such things as tends to settle a colony and advance trade there. . . . Their lordships think fit, and this day order, that his majesty be moved to pass such a grant as is desired. Whereof his majesty's Attorney General is to take notice, and to prepare the same ready for his majesty's royal signature.[22]

This passage, and several others using virtually the same formula in the council records,[23] contains a number of valuable elements. The document reveals the direct role of the crown in these affairs; Charles I took the enterprise into his royal protection and gave direction that the patent be prepared for his signature. It shows the usefulness of the petitions that the crown received, which in this case "convinced" it that it had an unassailable right of sovereignty over this territory. The territory had been discovered by

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[22] 30 Aug. 1625, PRO PC 2/33, f. 103. The commission may be found in PRO CO 1/3/44, dated 13 Sep. 1625. The petition itself is not extant.

[23] See also: PRO PC 2/27, f. 43v (15 Jul. 1613) to Solicitor-General Francis Bacon; PC 2/30, p. 158 (18 Apr. 1619); PC 2/30, f. 218 (13 Jun. 1619); PC 2/30, p. 574 (23 Jul. 1620), all to Solicitor-General Thomas Coventry; and PC 2/32, f. 103 (30 Aug. 1625, addressee unknown).

English travail and no other Christian prince had taken physical possession. This was a formula that assured the crown it had the right to establish sovereignty by virtue of first discovery and actual possession, a claim that could be finalized by maintaining effective occupation. These warrants demonstrate clearly that the crown found the historical and legal precedents of discovery and settlement convincing, and essential.

Perhaps most importantly, the aforementioned letter to the attorney-general was his warrant to prepare a patent, which shows that this office was responsible for drafting the letters patents, although this task likely fell to his subordinate, the solicitor-general. More often than not the council directed the solicitor-general to prepare an overseas patent without even involving his superior.[24] Despite occasional references in the privy council records, however, there is no way to judge who actually prepared each overseas patent. Most of those that survive in manuscript in the patent rolls and colonial office papers are copies rather than originals (the originals were given to the trading companies and have been lost) and, therefore, the drafters have long since become anonymous. This is the case for the Gilbert patent of 1578 and the first Virginia Company patent of 1606 (which was destroyed along with the company records upon the dissolution of the company in 1624, on which see below), arguably the two most important overseas patents because they served as blueprints for future patents.

It is not as important to know who prepared each patent as it is to understand the type of training the drafters brought to the task. Significantly, in the Elizabethan and Stuart periods, both the attorneys- and solicitors-general were usually men with training

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[24] Maureen Mulholland, sv. "attorney-general" and "solicitor-general", in John Cannon, ed., The Oxford Companion to British History (Oxford: Oxford U.P., 1997), pp. 63-4, 875.

in civil as well as common law. Bromley, for example, was a bachelor of civil law from Oxford.[25] Many other men who held these offices between about 1580 and 1640 — including Thomas Coventry, John Davies, and Edward Doddridge — had some professional training in civil law.[26] Brian Levack has shown that most civil lawyers in Elizabethan and Stuart England were members of the court, and were able to gain wealth and prestige because they were relatively few, and because their expertise in matters relating to international law was highly desirable.[27] Solicitors-general Thomas Bromley and Sir Francis Bacon, for example, both rose to become lord chancellor. Another case in point is Thomas Egerton, who graduated civil law at Oxford (1556) and common law at Lincoln's Inn (1572), was solicitor-general (1581-92) and attorney-general (1592-4), and was created Baron Ellesmere in 1603 upon his promotion to the chancellorship, a post which he held until 1617. According to his biographer, Louis Knafla, Ellesmere was appointed to the solicitorship because his knowledge of land law was exceptional, for which he was "relied upon extensively by the Queen and Privy Council."[28] As we have seen (chapter one), Bacon and Egerton both put their civil law training to practical use in their discourses on the king's prerogative rights. Given their knowledge of civil law and the monarch's prerogative rights, these drafters also knew that the overseas letters patent had to conform to international law.

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[25] Entry for "Bromley, Thomas" in P.W. Hasler, The House of Commons, 1558-1603 (London: HMSO, 1981), II: 491-2.

[26] See DNB entries under personal names.

[27] Levack, The Civil Lawyers in England, chs. 1-2.

[28] Knafla, Law and Politics in Jacobean England, esp. pp. 12, 39-40.

The hybrid and complex nature of transoceanic patents required the duplex legal training of their drafters. The patents served as land grants, or grants of feoffment, and also as monopoly and incorporation grants, or grants of liberties, both of which were traditional and commonly-issued patents in early modern England.[29] Neither of these types of grants was addressed by the civil law, which was more universal in its scope, and, therefore, common law precedents could be employed. The civil law — and its derivatives international law and the law of nations — was employed in the letters patent for a number of other reasons. First, to ensure that these titular and possessory claims would be recognized as lawful in the international community. Second, to ensure that the standard rules of supranational affairs (the horizontal relationship between states of equal rank), particularly regarding war, peace, and territorial security, were being followed. Third, and perhaps most importantly, to assure other sovereign monarchs that these activities had express sovereign authority according to recognized European traditions, that the dominion was now within the territorial jurisdiction of the British sovereign, and that the monarch's sovereignty would continue to be exercised, and defended, as it was in any other dominion in Britain.

EXEMPLAR: THE CASE OF CAPTAIN ROGER NORTH

Before proceeding with an examination of the letters patent, the case of Captain Roger North is a useful extended example that shows the importance placed on petitions, foreign policy, and the significant role of the crown in authorizing transoceanic

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[29] These are best discussed in Hall, A Formula Book of English Historical Documents, 1: 24-5, 54-60; Simpson, A History of the Land Law; and Carr, Select Charters of Trading Companies, 1530-1707.

enterprises. In March 1619, North and certain other gentlemen petitioned the privy council for a patent to settle and trade in Guiana, under the incorporated name of the "Amazon Company."[30] Upon investigation, the council determined that this region had been granted to Robert Harcourt in 1613, but because the latter had not yet planted, his patent was recalled, and a new one was issued to North and his associates on 13 June.[31] Over the next several months, the new company amassed funds and equipment, only to find that just as North was ready to set out in April 1620, the Spanish ambassador, Count Gondomar, complained on behalf of his master that Guiana was part of the Amazon region previously claimed and partly settled by the King of Spain. Consistent with his accommodating foreign policy, James I ordered a stay of North's voyage and put a hold on the patent pending an investigation of Gondomar's claims.[32] In early May, "without licence or leave from His Majesty or the State here and contrary to His Majesty's commandments," North nonetheless departed for Guiana from Plymouth. Outraged at this blatant disregard for the king's commands, the privy council reacted incisively. In a series of letters dated 7 May 1620, it cancelled the Guiana patent and all related documents, ordered the Lord Deputy of Ireland to capture North should he put in at an Irish port, directed the Lord High Admiral of England to furnish all outgoing ships with instructions to apprehend North if they should meet him, and sent a missive to officials at

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[30] "Complaint made by Roger North . . . and divers Noblemen," 7 Mar. 1619, PRO PC 2/30, p. 124.

[31] 14 Mar. to 13 Jun. 1619, PRO PC 2/30, pp. 131, 133, 158, 218. See also Thomas Locke to Dudley Carleton, 30 Apr. 1619, SP 14/108/85.

[32] 4 Apr. 1610, PRO PC 2/30, p. 469. See also John Chamberlain to John Digby, 26 Feb. 1620, SP 14/112/104. Joyce Lorimer, "The Failure of the English Guiana ventures, 1595-1667," JICH 21 (19??): 1-30, shows superbly that James I's foreign policy directly influenced the activities in Guiana, including North's voyage (pp. 22-3).

several English ports directing them, under pain of their "uttermost peril", not to assist North in any way whatsoever.[33] The following week, the king issued a printed proclamation to the same effect.[34]

North was not captured until his return to England from Guiana in ships laden with tobacco in January 1621. He was immediately arrested and sent to the Tower, where, in punishment for his contempt, he remained for six months.[35] His tobacco was impounded and placed into the Customs House awaiting the king's pleasure on its disposition, because Gondomar had sued for possession of it.[36] As promised, the privy council investigated Gondomar's complaints thoroughly (though slowly) and in January 1623 it presented to the king "certain brief motives to maintain the King's right to the River Amazon and the coast of Guiana."[37] Predictably, the authors noted that the king's subjects had for many years found the country free from any Christian prince, and were granted legal commissions before that of North -- those to, for example, Robert Dudley in 1595 and Harcourt in 1613 -- without contention from the Spanish. Although Gondomar's complaint had "suspended all our proceedings" for a time, their lordships concluded that the complaint was without merit, as the English had historical and legal precedents to support their claims. Even then, James I was hesitant to allow any proceedings that might cause complaint from Spain, and any further attempt on the part of North had to await a new monarch and a new foreign policy. In March 1626, with the

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[33] 7 May 1620, PRO PC 2/30, p. 487-8; and 16 May 1620, ibid., p. 495.

[34] 15 May 1620, CSP Col. 1, p. 23.

[35] PRO PC 2/30, pp. 661, 685; PRO PC 2/31, pp. 30, 100.

[36] PRO PC 2/31, pp. 102, 109, 148, 166.

[37] Jan. 1623, PRO CO 1/2/18.

policy toward Spain significantly altered, North provided detailed notes to George Villiers, Duke of Buckingham, on all that had happened regarding Guiana since 1619, in which he petitioned the duke to have the patent, "formerly suspended, renewed," so that "this great business" could proceed.[38] Apparently, the king and duke agreed, and in the same month Attorney General Heath received instructions to prepare a new patent containing the same privileges as were previously granted.[39] A letter patent was prepared, appointing Buckingham governor of the corporation and North deputy governor.[40]

This case study strengthens the general argument that the crown was fundamentally involved in authorizing overseas affairs. Although North had petitioned the privy council, which subsequently investigated his request and ordered the preparation of a letters patent that was passed under the Great Seal, all of which was according to normal procedure, the subsequent cancellation of the patent meant that North's plans were to cease immediately. When he did not heed this directive, he was punished, and when, after investigation, the council found the King of England to have rights to the territory, the petitionary process began afresh, this time with more success. Explicit in this example are: the authority of the king, privy council, and royal directives, in claims to overseas territories; a concern that these activities receive the acquiescence of other European countries and were in accordance with precepts of international law; and clear evidence that the letters patent and subsequent crown intervention were vital aspects of claiming territory and trading rights in new found lands.

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[38] Mar. 1626, PRO CO 1/4/3-4.

[39] The king to Attorney General Heath, Mar. 1626, PRO CO 1/4/8; 3 Apr. 1626, PRO SP 16/24/20.

[40] 20 June 1626, PRO CO 1/4/28.

THE LETTERS PATENT

In the patents, the monarch's official permission for these enterprises was, in the words of the Gilbert patent of 1578 and all other Elizabethan overseas patents, "our especial grace, certain science, and mere motion."[41] This passage is to be found in nearly every overseas patent of the Stuart period, where the word "science" is uniformly replaced with "knowledge," which is probably what Elizabeth had meant by "science". In some patents, the passage is repeated four or five times, which suggests that it was also part of a formula for letters patent.[42] Its first usage can be traced back to several monopoly patents issued for overseas trade beginning in 1568, which is itself informative, suggesting that it had its beginnings in patents that dealt with foreign affairs.[43] Broken down and taken together, the phrase conveys a number of distinct rights associated with sovereignty. The pronoun "our" and the adjectives used — "special", "certain", and "mere" — are all very personal, designating the monarch as the sole and ultimate source of authority. "Especial grace", like the phrase in the preamble of each patent "by the grace of God," designated the source of royal authority, the idea that it derives from God

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[41] PRO Patent Roll C/66/1168, m. 8 and PRO Patent Roll C/66/1237, m. 38. Both are reprinted in Quinn, NAW, 3:186 (Gilbert), 267 (Raleigh). The East India Company patent is at Purchas, Purchas His Pilgrims, I: 1139-47 (second pagination); the phrase is at p. 140.

[42] The phrase appears, usually four or more times, in: the Newfoundland Company (1610) patent, Quinn, NAW, 4:132-43; the second Virginia Company patent, Quinn, NAW, 5:205-12; the third Virginia Company patent, Quinn, NAW, 5:226-32; the Bermuda patent of 29 June 1615, PRO CO 38/1, fos. 1-46; the New England patent, 3 December 1620, PRO CO 5/902, fos. 1-28; the Massachusetts Bay patent, Lucas, Charters of the old English colonies, pp. 32-45; the Providence Island patent, 4 December 1630, PRO Patent Roll C 66/2573 and CO 124/1, fos. 2-10; the Maryland patent, 20 June 1632, PRO CO 5/723, fos. 1-19; and the Maine patent, 3 April 1639, PRO CO 5/902, fos. 61-92. Interestingly, it does not appear in the first Virginia Company patent, Quinn, NAW, 5:191-7.

[43] These patents, or royal charters, are all printed in Carr, Select Charters of Trading Companies, pp. 1-30; the phrases may be found on pp. 6, 12, 16, 19, 21, 22, 29.

and comes to the crown by grace.[44] This religious ethos applied to all western European monarchs in the early modern period, and because the letters patent was an open letter, God's grace was invoked vis-à-vis other monarchs as well. This is an assurance that the enterprise has the express authority of a sovereign, Christian, monarch.

The final two phrases are more difficult to interpret. "Certain knowledge" or "certain science" implies that the monarch has particular and accurate information that could be exploited. It is useful here to invoke Michel Foucault's concept of pouvoir-savoir ("power-knowledge"). Foucault wrote that, "there is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time power relations."[45] That is, put simply, knowledge brings power. In the context of the patents, "knowledge" could mean that information was gathered through the travels of Englishmen, such as explorers who set out on voyages of discovery, and also through the considerable education of learned men, such as Dee. Gathered by English travail, this knowledge, which in turn brought power (or, lawful authority), could be exploited for the benefit of the King of England. More abstractly, in the early modern period, sovereign monarchs were assumed to have a God-given intelligence and knowledge through a process that John Fortescue called "angel intelligence". This concept conjoined God, knowledge, and power in a particular way, as the divine-right monarch was perceived to know things that his or her subjects did not

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[44] Ernst H. Kantorowicz, The King's Two Bodies: A Study in Medieval Political Theology (Princeton: Princeton U.P., 1957), p. 48. Patricia Seed has also done a good job discussing this passage, in "Taking Possession and Reading Texts," pp. 185-7.

[45] Michel Foucault, Discipline and Punish: The Birth of the Prison, trans. Alan Sheridan (New York: Vintage, 1979), p. 27.

themselves understand. This was the very essence of divine-right sovereignty, a clear and direct assertion of eminent dominion and continued royal authority.[46] Finally, "mere motion" suggests that the monarch has the ability to exploit his or her knowledge, or has been requested, or has the recognized authority, to do so.

Taken together, the passage "of our especial grace, certain knowledge, and mere motion" is a singular assertion that these activities demand, and have been given, sovereign authority, and that no individual or group (whether British subjects or not) can act independently of the monarch's direction or question the monarch's right to make the donation. Here is an assertion of the absolute prerogative of the monarch, who alone can authorize overseas activities. Indeed, from the perspective of the crown, the letter patent was the most important step in the acquest of dominion, a statement that is borne out by an examination of the documents themselves. The principal letters patent were issued to Gilbert (1578), Raleigh (1584), and the East India Company (1600) in the Elizabethan period, and then, successively in the Stuart period: to the Virginia Company of London and Plymouth (1606); the Virginia Company of London (1609 and 1612); the Newfoundland Company (1610); Robert Harcourt for Guiana (1613); the Somers Island Company, Bermuda (1615); the New England Company (1620); George Calvert, Lord Baltimore, for Newfoundland (1623); Thomas Warner (1625), the earl of Carlisle (1627) and the earl of Montgomery (1628) for the West Indies; the Massachusetts Bay Company

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[46] See Kantorowicz, The King's Two Bodies, esp. pp. 272, 495; J.G.A. Pocock, The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition (Princeton: Princeton U.P., 1975), pp. 21-2; and the introduction to the very intriguing John Michael Archer, Sovereignty and Intelligence: Spying and Court Culture in the English Renaissance (Stanford: Stanford U.P., 1993), esp. pp. 1-8.

(1629); the Providence Island Company (1630); Baltimore for Maryland (1632), and Hamilton and Kirke for Newfoundland (1637).[47] These patents, and there are others that could also be drawn upon which conform to the same general formula, contain a number of expressions of sovereignty, showing how monarchs asserted their authority over territory and subjects.

A chief purpose of the overseas letters patent was to award land and monopolies to the patentees. These awards were fairly uniform throughout the Elizabethan and early Stuart period, and conformed to traditional usage. Gilbert and Raleigh were to "have, hold, occupy & enjoy . . . all the soil of such lands, countries, & territories so to be discovered or possessed . . . and of all Cities, Castles, Towns and Villages, and places in the same . . . within the said lands or countries of the seas thereunto adjoining."[48] Subsequent patents only expanded upon the basic idea of space. The Virginia Company patent of April 1606 generously granted "all the lands, woods, soil, grounds, havens, ports, rivers, mines, minerals, marshes, waters, fishings, commodities, and hereditaments."[49] The second Virginia Company patent of 1609 was even more explicit, giving, in addition, all "jurisdictions, royalties, privileges, franchises, and preeminences .

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[47] For this section, I have used the best rendering of each patent, collating these, where possible, with other copies. Most of the originals have not survived. Patents relating to North America up to 1612 are reprinted in Quinn, NAW, vols. 3-5, who has usually taken these directly from the patent rolls (PRO Patent Roll C 66). For ease of reference, I have used the patents in these volumes. Faithful renderings of other patents are in the Colonial Entry Books, records kept for each colony into which the original patent was copied, usually as the first document.

[48] Quinn, NAW, 3:187, 267-8.

[49] PRO Patent Roll C 66/1709 and CO 5/1354, fos. 7-47, reprinted in Quinn, NAW, 5:191-7, quotation on pp. 192-3.

. . whatsoever."[50] These phrases may be found with minor variations in every overseas patent. In these portions of the patents dealing with land tenure, the common law was invoked as the guiding authority to exploit, sell, and inherit the tenure and monopoly, which were traditional, intrinsic, rights of sovereignty in England.

For most of the trading companies, the land tenure was held in free and common socage, which meant that the land could be sold or inherited, was expected to be "improved", and was held mediately (indirectly) of the crown. Grants of this nature were normally made for land that was thought to be worth relatively little in terms of yearly rent, which was certainly the case for the undeveloped lands in North America.[51] That is, the crown expected little real income to derive from these territories and, therefore, awarded it, in James I's words, in the "basest and meanest service."[52] All the crown demanded was one-fifth of all gold and silver ore mined, a figure that would have amounted to much less than yearly rents and tributes. Free and common socage also allowed the trading companies to distribute the land without relinquishing their patent or paying transfer fees to the crown, which better enabled the patentees to draw adventurers in their enterprises. This was the case for the lands in Virginia, Bermuda, Newfoundland, New England, Massachusetts, Trinidad and Tobago, Guiana, and Providence Island. As we will see below, it was in part the liberal nature of this type of tenure that would ultimately lead to tighter crown control over these regions.

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[50] PRO Patent Roll C 66/1796 and CO 5/1354, fos. 54-133, reprinted in Quinn, NAW, 5:205-12, quotation on p. 206. See also PRO CO 5/1354, fos. 136-99, reprinted in Quinn, NAW, 5:226-32, p. 227-8.

[51] See Viola Florence Barnes, "Land Tenure in English Colonial Charters of the Seventeenth Century," in Essays in Colonial History (New Yaven: Yale U.P., 1931), pp. 4-15.

[52] Quoted in ibid., p. 18.

A different tenurial system was used for the proprietary colonies awarded in the 1620s and 1630s. These included Nova Scotia (1621), granted to William Alexander (which was also the first territory granted from the king by his crown of Scotland), Avalon (1623) and Maryland (1632) to Baron Baltimore, and the Caribbean Islands (1627-28) to the Earls of Carlisle and Montgomery, and Canada (Newfoundland, 1637) to Sir David Kirke. These lands were held by the patentees in knight's service in capite, meaning that the land was crown land (held immediately), and the owner was normally expected to perform military service and pay rent to the crown at certain times (such as when an eldest son inherited or when the land was transferred), in exchange for exclusive use of the land.[53] Other tributes were also demanded. In the patent to Baltimore for Avalon in 1623, James I demanded a white horse whenever he went to the territory; in the patent to Kirke, he demanded two white horses. In the patent issued to the Earl of Montgomery for Trinidad and Tobago in 1627, Charles I was to be paid a pound of gold whenever he visited the islands.[54] Of course, Newfoundland did not have white horses and the king would not likely go to the West Indies to receive his pound of gold. Rather than serving as actual payments for privileges, these tributes were symbolic gestures, intended to demonstrate clearly that the land was still part of the king's dominions. The king would be treated according to his proper, superior, status if he were to visit these territories within his dominion. But, as we shall see, in exchange for receiving more

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[53] PRO CO 1/4/30.

[54] PRO CO 195/1, fos. 1-10; PRO SP 39/5/22, extract in PRO CO 1/4/39.

tribute than he would receive in most of the North American colonies, the king also implied that the proprietor had significant autonomy.

In the Elizabethan period, the boundaries of the territory being claimed were simply those lands that were discovered in all territories "not actually possessed by any Christian prince or people."[55] The exact placement of the colony, or the amount of land that could be claimed in the region, was not stated. In the case of Gilbert's and Raleigh's grants, it was generally understood that the colonies would be on the eastern coast of North America north of Spanish Florida, which the English believed was theirs because of the historical precedents by virtue of first discovery, as outlined by Dee and Hakluyt. In the East India Company patent, the "places of freedom" for trade and settlement were broadly defined as all places within the East Indies, Asia, and Africa, but "not in any place . . . already in the lawful possession of any such Christian prince or state in league or amity" with England.[56] Beyond this, the boundaries were as elastic as the discoverers wished to make them, provided that the land was not, as in the words of the Gilbert and Raleigh patents, "before planted or inhabited" by the subjects of another European monarch.[57] In these patents, the phrases "not actually possessed by any Christian prince or people" and "not before planted or inhabited" are ambiguous. While they recognized the importance of physical presence and occupation, it is unclear whether current occupation was a prerequisite of possession, or whether any former occupation or landing was sufficient. The phrase "or people" also made it unclear whether these acts required

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[55] Quinn, NAW, 3:187.

[56] Purchas, Purchas His Pilgrims, 1:142.

[57] Quinn, NAW, 3: 186-7, 267-8.

the authority of a sovereign monarch. This ambiguity is also to be found in the law of nations at the time, for as Kent McNeil has written, "at the dawn of the colonial era . . . there were no set rules for the acquisition of territories which were not already within the jurisdiction of a recognized sovereign."[58] While the British had claimed first discovery and knew that physical occupation was ultimately necessary to complete an inchoate title, there was as yet no established practice.

The crown was probably erring on the side of caution. With so much land available for settlement that was not in dispute, there was no wisdom in Elizabeth allowing her subjects to settle territory where any doubt existed whether it had been discovered or settled by Europeans. Such precautions were the best way to avoid future disagreement with European monarchs. This need to demonstrate intent to settle was probably the reason why, in the Elizabethan period, settlers performed the acts described by Arthur Keller as "creating rights of sovereignty". When Humphrey Gilbert arrived in Newfoundland in 1583, "he took possession in the same harbour of S[t]. Johns . . . , invested the Queen's Majesty with the title and dignity thereof, had delivered unto him (after the custom of England) a rod and a turf of the same soil, entering possessing also for him . . . : And signified unto all men, that from that time forward, they should take the same land as a territory appertaining to the Queen of England."[59] Other Elizabethans — Martin Frobisher in Resolution Bay, Francis Drake in Nova Albion (California or Oregon), Robert Dudley in Trinidad — planted permanent symbols, such as plaques with

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[58] McNeil, Common Law Aboriginal Title, p. 110.

[59] "A report of the voyage . . . [of] Sir Humphrey Gilbert . . . by M. Edward Haies," in PN[1589], 2:687.

the Elizabethan coat of arms, which demonstrated English presence.[60] In each of these cases, these symbols were represented with the person, either through name or image, of Queen Elizabeth, a clear expression of the eminent dominion of a sovereign, Christian monarch. These acts both proclaimed that the land was not "before planted or inhabited" and that planting had now been, or was shortly to be, accomplished by the English, by which the discoverers hoped to ward off Europeans who would otherwise believe the land was not claimed.

Despite their utility, however, these symbolic acts of possession should not be confused with "creating" sovereign rights, as Keller and Patricia Seed appear to do. These authors' arguments for the mundaneness of English claims to sovereignty have implicitly removed the crown from the equation. As we have already seen, the claim to sovereignty in these territories flowed through the letter patent sealed by a divine-right monarch; that is to say, sovereignty (although in an incomplete form) was established at the time the patent was issued. The acquisition of sovereignty was not dependent upon the performance of a symbolic act, which was never made a prerequisite in the text of the patents. This claim to sovereignty was incomplete (or incohate) until such time as the territory being claimed was under the effective control of the sovereign body. In practical terms, although assertions of discovery, symbolic acts of possession, and (in the case of the Iberian countries) papal bulls, could help fortify shaky claims during diplomatic disputes, sovereignty came through effective control of the territory, which meant continued, physical occupation, and a presence of sufficient magnitude to hold off other

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[60] Keller, Creation of Rights of Sovereignty, ch. 5.

European claimants. Dee had understood this concept quite clearly by 1578, which is probably why Gilbert and Raleigh were ordered to "inhabit or remain there, to build and fortify." This represented an unassailable right to claim dominion over property according to civil law.

The situation had changed by the Stuart period, by which time more Christian monarchs were becoming interested in new found lands, consequently making it more important to define the boundaries of the territory being claimed. The ambiguity in the Tudor patents was recognized and solved. Instead of "not actually possessed by any Christian prince or people," the standard phrase was changed to "not now actually possessed by any Christian prince."[61] Here are two subtle but important distinctions: the inclusion of the imperative "now", and the exclusion of the phrase "or people". The first shows the increased importance placed on continued, physical occupation, rather than simply having the intent to settle (as displayed by symbols) or having settled and then quitted the territory. According to civil law, once the territory was abandoned — that is, once it was no longer actually controlled by Christians, because natives were not accorded sovereign rights — it returned to its natural state of freedom and was open to the next taker. The Spanish, for instance, marshalled Columbus's voyages and the papal bulls as evidence of their sovereignty over all of North America, and the simple use of the word "now", or in a variation in the Bermuda patent of 1615, "being not at all at this time actually possessed", makes clear that even if sovereignty had previously been

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[61] Quinn, NAW, 5: 192; PRO CO/124/1, f. 2v.

claimed, it was the current state of the land that was at issue.[62] This does not mean that claims of first discovery could not be marshalled as the need arose, but it does suggest that they were not foremost in the establishment of sovereignty, and could be superceded by actual, physical occupation. In other words, to James I, possession was — in the proper seventeenth-century usage of a popular cliché — eleven (of twelve) points of the law. The second subtle change in the Stuart patents, the removal of the clause "or people" from Elizabethan patents, was designed to ensure that claims to overseas territory were made under the direct, sovereign authority of a monarch, and not simply by the subjects of another prince. As Justinian wrote, "a man possesses lawfully who possesses by the praetor's authority," but the man cannot possess by his own will alone.[63]

Two patents in particular serve as examples of the importance these changes had to British acquests. The Newfoundland Company patent of 1610 reads as follows: "And by the law of nature and nations We may of our royal authority possess our selves and make grant thereof without doing wrong to any other prince or state, considering they cannot justly pretend any sovereignty or right thereunto in respect that the same remaineth so vacant and not actually possessed and inhabited by any Christian prince."[64] This passage expresses two central principles of civil law relating to possession. First, that injury could only be done (and that redress was lawful according to the law of nations) if the land was at that time physically, rather than mentally, possessed by another Christian prince, despite any prior claims of possession. Second, that while any Christian subject

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[62] PRO CO 38/1, p. 1.

[63] Justinian, Digest, D.41.2.11.

[64] Quinn, NAW, 4:133.

who had the express authority of his sovereign had a claim to title if he was in actual possession, the claims of those without this sovereign authority were invalid, because no land could exist that was not in a state of sovereignty. This both recognizes the sovereignty of other Christian monarchs, and expresses the sovereignty of the English monarch. This type of thinking is confirmed in the New England patent of 1620: "[W]e have been certainly given to understand," it reads, that "there is no other the subjects of any other Christian King or State by any authority from their sovereign lords or princes actually in possession of any the said lands or precincts whereby any right claim, interest, or title may, might, or ought by that means accrue, belong, or appertain unto them or any of them."[65] Therefore, regardless of whether other Europeans were settled in patches of the territory that the patent granted, the lack of sovereign authority made their possessory claims invalid.

Importantly, both of these patents were written amidst grumblings and challenges regarding England's plantations in Virginia. By the time the Newfoundland patent was written, the British crown had received numerous letters from its ambassadors in Madrid, Lisbon, and other capitals, informing it that the Spanish and Portuguese kings were deeply displeased with the settlement in Virginia, which he asserted was his by prior discovery and the papal donation.[66] The New England patent was written with the knowledge that Dutch merchants were operating on the coast near New England, trading with natives and considering planting a colony, a matter which the ambassador at the

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[65] PRO CO 5/902, f. 3. Emphasis added.

[66] Many of the correspondence between the ambassadors and state regarding these controversies may be found in HMC 9 Salisbury XIX, pp 28, 53, 57, 78, 171, 178, 185, 194-5, 207; and HMC Salisbury XXI, pp. 87, 288. The situation is described in detail below, ch. 4.

Hague was ordered to address.[67] Making explicit overtures in the patents about actual, physical possession, the necessity for transoceanic enterprises being authorized only by a Christian monarch, and the continued presence and eminent dominion of a sovereign ruler, were perhaps designed to explain to other Europeans the correctness of England's claims, and the strong crown and state support for these ventures. The very fact that the English inhabitants of the territory, through the trading companies, were in possession of a letters patent, was sufficient to demonstrate this latter point. By implication these passages also affirmed that English settlements were to remain under the continued jurisdiction of the English crown as well.

Likely also because of the increased interest in North America and the West Indies in the first decades of the seventeenth century, and because of the British monarchs' desires to avoid disputes, the Stuart patents were much more rigorous in defining the boundaries of the land being granted. In the Virginia patent of 1606, the patentees were permitted to place two colonies on any land "situate, lying and being all along the sea coasts between four and thirty degrees of northerly latitude from the equinoctial line and five and fourty degrees of the same latitude and in the main land between the same four and thirty and five and fourty degrees, and the islands thereunto adjacent or within one hundred miles of the coast." Using the colony as a static reference point, the grant extended fifty miles toward the east and northeast, fifty miles toward the west and southwest, and all islands within 100 miles of the coast. Although the stated latitude lines for the first colony (34° and 41°) and the second colony (38° and 45°) overlapped,

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[67] See ch. 6.

the patent ordered that 100 English miles separate the two plantations so that there would be no conflict between the colonies.[68] These boundaries were subsequently enlarged in the 1609 and 1612 patents to the Virginia Company, the latter including Bermuda, which was found by the "industry" (in fact, an accident) of certain members of the company.[69]

Following the early Virginia patents, all of the Stuart letters patents included some form of geographical reference to demarcate the boundaries. The Newfoundland patent of 1610 was quite specific as to the reward. It was to be the territory south of Bonavista Bay and east of the longitude line that ran through Cape St. Mary on the eastern edge of Placentia Bay (54°), with rights to all sea and islands between 46° and 52° north latitude, roughly the Avalon peninsula plus Cape Bonavista.[70] A smaller patch of land was given to George Calvert for the "Avalon province" in 1623: from Fermeuse (about 46°50') north to Port Petit (about 47°40', just south of St. John's), and west to the other colony.[71] The New England patent of 1620 and the Massachusetts Bay patent of 1629 granted all land from 40° to 48° north latitude and west-east "throughout the mainland from sea to sea."[72] Patents for the islands in the Lesser Antilles in the West Indies became even more

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[68] Quinn, NAW, 5:192-3.

[69] Quinn, NAW, 5:206, 226.

[70] Quinn, NAW, 4:134. My reading of these boundaries is different than that of Gillian Cell, who believes the patent awarded the whole island to the company. The patent reads: "All that part . . . which is situate . . . southward of the parallel line to be conceived to pass by the cape . . . by the name of Bonavista, . . . and also which is situate . . . to the eastward of the meridian line to be conceived to pass by the cape . . . known by the name of Cape Saint Maries. . . ." Although the word "parallel" is confusing, to me the imperative phrase is what I have emphasized above, suggesting that the first series of references were to be longitudinal (ie. "meridian'), which were often missing in contemporary maps and therefore required landmark references, followed by latitude references. If the grant was indeed for the entire island, there would be no reason to give these landmark references at all. Cell, Newfoundland Discovered, p. 5.

[71] PRO CO 195/1, pp. 2-3.

[72] PRO CO 5/902, pp. 4-5 and 29-59.

specific. The 1625 patent to Thomas Warner named the islands of St. Christophers, Nevis, Barbados, and Montserrat explicitly. The grant to the earl of Carlisle, issued in 1627, granted a list of islands (including those just listed that he purchased from Warner) and all other islands in the Caribbean between the equator and 20° north latitude, and that to the earl of Montgomery in 1628 for certain islands between 8° and 30°, which caused considerable confusion among the latter two patentees.[73] The Providence Island patent of 1630, too, was specific as to the boundaries of the grant, this one also offering longitudinal references.[74] Certainly, there remained considerable room for interpretation in the patents. It was difficult, for example, to sustain that a New England colony on the Atlantic seaboard represented sufficient occupation to claim land westward to the Pacific Ocean. Probably, this represented simply a poor contemporary understanding of the amount of territory being granted. As we shall see below (chapter five), even into the 1620s the geography of North America was not well known.

That being said, the increasing precision in the allocation of territory did result, in part, from improvements in geographical knowledge. Representations of space in sixteenth century maps were decidedly circumspect, but by the seventeenth century most maps included at least latitude lines and many had detailed place names, enabling specific referencing. But demarcation was also a matter of sovereign authority. As the cases of Newfoundland, Virginia, and the Caribbean islands show, better references were necessary because of the number of petitioners who were seeking land grants during this

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[73] PRO CO 1/3/44 (Warner); CO/29/1, fos. 1-12, extract in CO/1/4/30 (Carlisle); CO 1/4/39 (Montgomery). Warner sold his rights to Carlisle in 1627.

[74] PRO CO 124/1, f. 2.

period. It would have been up to the crown to resolve differences and it clearly did not want the trading companies to settle arbitrarily any patch of land that they wished, especially given that these agents were not very concerned about the international component of their claims. When, for example, the New England colony was broken up into various colonies in the 1620s and 1630s and distributed to men including Ferdinando Gorges, John Mason, and John Wollaston, it was particularly important that detailed references accompany the patents to avoid disputes.[75] In addition, the ability to define and prove boundaries represented a strong claim to dominion, which (as I shall argue in chapter five) is one reason that cartography in the early seventeenth century saw dramatic improvements. More careful demarcation was useful to ensure that other European nations' holdings were not disturbed. The colony to be planted in Carolina in 1630 was to be between 34° and 37° north, virtually bordering it on Spanish Florida.[76] The Leeward and Windward Islands in the West Indies bordered dangerously close to the islands claimed by the Spanish Empire just westward in the Greater Antilles, and any grant to land in the Caribbean had cautiously to avoid this latter region in order to circumvent violence or disputes.

Another important aspect of the patents was the establishment of the government and legal systems to be used in the colonies, which were clear expressions of sovereignty over subjects. For most of the period, both of these rights were placed into the hands of the individual patentees or trading companies. Gilbert and Raleigh were awarded their

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[75] Most of these patents are printed in PRO CO 5/902, pp. 29-142, dating from 1622 to 1639.

[76] PRO CO/1/5, arts. 18, 21, 30, 53, 65, and 90

lands as individuals, and were authorized to act as sole and permanent governors. In these patents, Lord Burghley and any four privy councillors were ordered to oversee the transportation of equipment and peoples out of England and to take whatever actions they thought necessary "for the better relief and supportation" of the colony, but they were not made superior to the patentees. Gilbert and Raleigh were each given "full and mere power and authority to correct, punish, pardon, govern, and rule by their and every or any of their good discretions and policies, as well in causes capital, or criminal, as civil," without recourse to English court systems. This was a legal system bordering closely on martial law, although the patent did specify that all such laws, statutes, and ordinances were to be agreeable to the laws of England.[77] The government of the East India Company was given to Sir Thomas Smith (or Smythe), who was to be the first governor, to rule in conjunction with a twenty-four person committee. Elizabeth I also appointed by name the members of the first committee, established the rules for appointing new Company officers, and commanded each officer to take a corporal oath swearing their allegiance to the Company's body politic. As with the earlier patents, the Company officers were authorized to establish such laws and punishments as they saw fit, provided that these were "not contrary or repugnant" to the laws of the realm.[78] Both forms of government established in the Elizabethan period — those to individual proprietors and trading companies — would serve as prototypes for early Stuart colonial governments.

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[77] Quinn, NAW, 3:269.

[78] Purchas, Purchas His Pilgrims, 1:140-43.

The Virginia Company patent of 1606 provides the first departure from the form of government and law established in the Elizabethan patents. Initially, the royal prerogative was strongly asserted. In the patent, provisions were made for three distinct councils. Two of these, one for each colony, were to consist of thirteen people each and be resident in Virginia. Another, also of thirteen people, was to be a royal council resident in England. This "Royal Council for Virginia" was to be appointed personally by the monarch, to have "the superior managing and directing only of and for all matters that shall or may concern the government."[79] That is, while matters relating to trade and the monopoly granted in the patent were to remain under the jurisdiction of the company, those matters relating to government were placed firmly under royal control. The authority of the monarch and the royal council was made clear in a clause of the patent that provided for the creation of seals for the councils. The seal for each colony was to have "the King's arms engraven on the one side," surrounded by the words "Sigillum Regis Magna Britania, Francia et Hibernia" — "Seal of the King of Great Britain, France, and Ireland." On the other side was to be an image of James I, surrounded by "Pro Consilio Primo [or Secundo] Colonie Virginie" — "Council of the First [or Second] Virginia Colony". The complementary council in England was also to have the King's arms and portrait, with the back side of the seal reading "Pro Consilio Suo Virginie" — "The Council of Virginia".[80] Extant in the Public Record Office are several colonial seals from the 1620s, some of which contain these specifications and all in some way

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[79] Quinn, NAW, 5:193-4.

[80] Quinn, NAW, 5:194.

emphasize the rule of the king.[81] When laws, ordinances, and instructions were necessary, these were to be drafted by the royal council and "given and signed with our hand or sign manual and passed under the Privy Seal of our realm of England."[82] Here was a clear assertion of royal rule.

The royal council established in 1606 was a clumsy device that was never effective; while its members quarrelled among themselves, the government of the Company was left to Thomas Smith, the head of the participating merchants in London. Also, by 1609, when a new patent was necessary to reinvigorate the failing efforts of the Virginia enterprise, the Plymouth merchants (of the northern colony) had failed to plant, and, therefore, it made sense simply to award full governance to the Virginia Company of London without a royal council to confound matters, a structure approximating that of the East India Company. The patent of 1609, in addition to revoking the rights previously granted to the Plymouth merchants, allowed for a "careful and understanding Council" of the Company, headed by Smith, to be resident in England and responsible for making and enforcing laws without constantly seeking crown approval. As with the East India Company, the members of first council were appointed by the monarch, and subsequent appointees were to be presented to the Lord Chancellor, Lord Treasurer, or Lord Chamberlain to take the oath before being admitted into the Council.[83] The following year, in 1610, the Newfoundland Company was structured in the same manner as the Virginia Company, including a council resident in London operating under a seal

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[81] See especially PRO SP/9/198, arts. 1a and 23.

[82] Quinn, NAW, 4:193-4.

[83] Quinn, NAW, 5:207-8.

engraved with the King's royal arms — the similarity in wording between the 1609 Virginia patent and the 1610 Newfoundland patent makes clear that the former helped to mould the latter.[84] The 1612 Virginia Company patent again changed this government, modifying the oligarchical character of the Company by making its Council elective of the shareholders at quarterly meetings, instead of being appointed by a majority of the Council.[85] This governmental structure, which was also established with little amendment for the Somers Island Company in 1615, the New England Company in 1620, the Massachusetts Bay Company in 1629, and the Providence Island Company in 1630,[86] was retained until 1624, when the Virginia Company was dissolved and the government was placed firmly back into royal hands. The dissolution of the Virginia Company and its highly significant ramifications will be examined in detail below.

Because of their alternate form of tenure, the proprietary colonies were accorded a different form of government. Alexander, Baltimore, Carlisle, Kirke, and Montgomery were awarded sole governance of the territories, and were not required to rule with a council. In concert with the majority of the shareholders, these men were authorized to publish reasonable laws "not contrary to the laws of England," and to constitute judges and courts and punish offenders by corporal punishment or death. As to their relationships with the crown, these men, though "absolute lords and proprietors of the premises," held their powers salve fide et legancia, that is, as loyal deputies of the king.

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[84] Quinn, NAW, 4:135-6.

[85] Quinn, NAW, 5:228-9.

[86] See PRO CO 38/1, pp. 1-5; PRO CO 5/902, pp. 1-28; Lucas, Charters of the Old English Colonies, pp. 37-9; PRO CO 124/1, fos. 2v-6.

All of these men were appointed Captain-Generals, and their colonial governors were appointed Lieutenant-Generals by the crown. In this capacity, the patentees were authorized to use martial law in the case of mutiny or rebellion, "as [any] general or lieutenant of any the king's dominions may do."[87]

Although the government and legal system of the colonies was, with the exception of the first Virginia Company experiment, mostly left to the patentees to determine, we should not suppose that the crown relinquished any sovereign authority over these territories. All inhabitants of the colonies, whether they travelled there or were born there, were to "enjoy all the privileges of free denizens and persons native to England," as if they had been born and still resided in the mother country.[88] They were also ordered to remain within the allegiance of the monarch. Gilbert was warned to guard against the attempts of others "to withdraw any of the subjects of people of those lands or places from the allegiance of us . . . as their immediate Sovereigns under God".[89] It is unclear whether this clause included the indigenous populations. The Avalon patent was also very explicit, possibly because Baltimore and his fellow colonists had declared themselves to be Catholics and left England in order to avoid persecution under the recusancy laws: "We do strictly enjoin, constitute, ordain, and command that the said Province of Avalon shall be of our allegiance." The governors of Newfoundland in 1610 and 1637 were instructed through their patents to administer the oaths of allegiance and

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[87] PRO CO 195/1, f. 135v; CO 1/3/44 and 1/4/30, 39.

[88] Quinn, NAW, 3:187; 4:137; 5:195; Lucas, Charters of the Old English Colonies, p. 42; PRO CO 38/1; CO 195/1, f. 134v; CO 1/4/30, 39.

[89] Quinn, NAW, 3:187.

supremacy to all men above twelve years, thereby recognizing the king as their supreme authority in matters both of Church and State.[90] In certain patents, there was also concern that the patentees would attempt to distribute land to subjects of a foreign nation; any such attempt was strictly forbidden, and the patentee who tried to do so was to forfeit his land in punishment.[91] Clearly, all three monarchs involved in overseas activities from 1578 to 1640 expected the colonies to remain dominions of the crown of England, and that the colonists remain subjects.

As subjects of the British crown, the patentees and their colonists were commanded to respect the international laws of war and peace. Virtually all of the patents contain the following phrase: "We do hereby declare to all Christian kings, princes, and estates, that if any person . . . of the said several colonies and plantations . . . shall at any time . . . do any act of unjust and unlawful hostility to any . . . the subjects of any king, prince, ruler, governor, or state being then in league or amity with us . . . and that upon . . . just complaint of such prince [etc.], . . . the said person . . . [shall] make full restitution or satisfaction of all such injuries done, so as the said princes or others so complained may hold themselves fully satisfied or contented."[92] In addition to asserting the monarch's absolute preogative to deal with foreign matters, this passage recognized that the subjects of any sovereign monarch had the right to travel the seas unassailed, and to land in certain ports for the express purpose of trade, traditional rights which could not

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[90] Quinn, NAW, 4:138-9; PRO CO/195/1, fos. 11-27.

[91] See various patents in PRO CO/5/902, dated between 1622 and 1635.

[92] Quinn, NAW, 5:196. The passage is also to be found in the patents for Newfoundland (1610), New England (1620), Avalon (1623), Massachusetts Bay (1629), and Providence Island (1630).

be denied. The passage was designed principally to forbid piratical or unlawful insurgent acts committed by English subjects in open waters or in adjacent foreign colonies; in such an event, the English monarch, according to international law, was responsible to foreign princes. A firm warning was given to the patentees which resounds with sovereign authority: if full restitution was not made in the prescribed time, then "from and after such time, . . . the said places within their habitation, possession, and rule, shall be out of our allegiance and protection, and free for all Princes and others to pursue with hostility, as being not our subjects, nor by us any way to be avouched, maintained, or defended, nor to be holden as any of ours, nor to our protection, or dominion, or allegiance any way belonging."[93] As subjects of the British monarch, the colonists were assured full protection; when that valuable protection was withdrawn, the colonists would have to fend for themselves, a threat that, in a time of increasing warfare, the patentees surely took very seriously.

Another good example of the crown's concern that the law of nations be respected is found in the Newfoundland Company patent of 1610. James I knew that the Grand Banks of Newfoundland had long been a valuable source of fish for France, Portugal, and Spain, a resource that he could not, according to the laws of nature, deny them because the sea and its commodities were common to all. The king declared in the patent that "there will be saved and reserved unto all manner of persons of what nation soever . . . which do at this present or hereafter shall trade or voyage to the parts aforesaid for

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[93] Quinn, NAW, 3:188, 270; 4:138, 5:196; PRO CO 5/902, p. 25; Lucas, Charters of the Old English Colonies, p. 44.

fishing, all the singular liberties . . . as they have heretofore used and enjoyed."[94] A similar passage appeared in the 1637 Newfoundland patent to the Marquess of Hamilton and David Kirke, which forbade the building of houses within six miles of the coast or taking as their own the "most convenient" beaches.[95] What the monarchs were claiming in the patents, therefore, was their sovereign right to exercise dominion over the territory, by virtue of its "vacancy", while at the same time not abrogating the traditional rights of princes to interpret and exercise the law of nature. Expressions of British sovereignty, and of continued, eminent dominion, therefore, were abundant in the text of the overseas letters patent.[96]

INTERNAL SOVEREIGNTY: CROWN AUTHORITY IN OVERSEAS LANDS

Did the crown's role end after the patent was issued, leaving colonial affairs to the sundry trading companies and proprietors? Did it truly do "little to help," often turn "a blind eye," fail to "take full responsibility," and provide, at best, "rather erratic support from behind"?[97] Historians have answered these questions in the affirmative, but such conclusions fail to take into account the considerable evidence which challenges their theses.[98] Examples of the British crown employing its prerogative authority in colonial

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[94] Quinn, NAW, 4:134.

[95] PRO CO 195/1, pp. 11-27.

[96] A final expression of sovereignty in the patents, the ordering of patentees to fortify their colonies and defend against an enemy, will be discussed below, chapter four.

[97] Andrews, Trade, Plunder, and Settlement, pp. 13-15, 339; Canny, The Origins of Empire, pp. xi, 56.

[98] A notable exception is H.E. Egerton. Writing in 1925, Egerton noted that especially after the dissolution of the Virginia Company in 1625, the Privy Council took primary responsibility over colonial affairs, although they did so while maintaining a "phantom existence." H.E. Egerton, "The Seventeenth and Eighteenth Century Privy Council in its Relations with the Colonies," Journal of Comparative Legislation and International Law, 3d ser. 7 (1925), reprinted in A.J.R. Russell-Wood, Government and Governance of

affairs after the patent was issued are more abundant than one might suppose given the current scholarship on this topic. The crown authority was shown in two important ways: 1) it was concerned to maintain the rights of all subjects, and its own sovereign rights, in the colonies, that is to say, its internal sovereignty; 2) it was concerned to defend its sovereignty and maintain the territorial boundaries of the colonies in the face of challenges from other European countries, an assertion of its external sovereignty. Let us turn briefly to the first of these types of involvement (expressions of the second type are examined in chapters four through six below.)

Regarding the crown's involvement in the internal affairs of the colonies, evidence is wanting in the Tudor period. This is both because the colonial records (PRO CO 1/1) are incomplete and because many privy council records before 1613 were destroyed by fire.[99] The general lack of success of transoceanic enterprises under Elizabeth, their privately funded and managed nature, and their cessation during the Anglo-Spanish War, meant that the crown was probably not heavily involved after the patent was issued. This is partly confirmed by the small amount of correspondence relating to overseas affairs in the domestic Elizabethan state papers (housed at the Public Record Office) and the Lansdowne manuscripts (Lord Burghley's papers housed at the British Library), which together provide most of the crown records under Elizabeth. In the Stuart period, the records are much more complete, enabling the historian to reconstruct crown involvement in internal overseas affairs with a fair degree of accuracy.

European Empires, 1450-1800, vol. 2 (Aldershot: Ashgate-Variorum, 2000), pp. 559-74.

[99] Only the first ten documents of PRO CO 1/1 address the period 1580 (when the volume begins) to 1603. The privy council records for the Elizabethan period are not extant.

An examination of the privy council records, colonial records, and state papers reveals a valuable conclusion. While crown involvement during most of James I's reign was minimal and non-paternalistic, beginning in 1623 the crown became increasingly involved, so that by 1640 it was vital to the success of overseas activities.

Before about 1623, the crown became involved in important, though minor and generally unobtrusive ways. Overseas activities were considered to be matters of private enterprise, and the crown had little interest in abrogating the traditional rights of monopolists and trading companies to exercise free and private enterprise or to govern their own companies. In a few instances, it helped to facilitate the success of the plantations. The privy council in 1613 tried to reinvigorate the failing Virginia enterprise by approving of a scheme in which prospective emigrants could benefit from a lottery. Over the course of the next six years, until it was suspended because of alleged abuses, approximately £29000 was raised, enabling the emigration of families who otherwise could not have been able to afford their overseas travel.[100] Similarly, the crown authorized the transportation of poor children, vagrant adults, and criminals, sometimes with the blessing of the colonial governors who appreciated the additional labour, and sometimes to their consternation, for this effort was clearly also an attempt to rid England of undesirables.[101]

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[100] John Chamberlain to Dudley Carleton, 12 Feb. 1613, PRO SP 14/68/62; 16 Feb. 1613, PRO PC 2/27, f. 273; 22 Feb. 1615, PRO SP 14/80/37; 4 Mar. 1621, PRO PC 2/31, p. 11; CSP Col. 1, p. 25. The lottery system is described, and the estimated amount raised calculated in, Robert C. Johnson, "The Lotteries of the Virginia Company, 1612-21," Virginia Magazine of History and Biography 74 (1966): 259-92.

[101] Thomas Dale to Salisbury, 17 Aug. 1611, PRO CO 1/1/26; Edward Sandys to Robert Naunton, 28 Jan. 1620, PRO SP 14/112/49; 15 Jan. 1623, CSP Col. 1, p. 35. For other emigration demographics, see: Games, Migration and the Origins of the English Atlantic World, pp. 14-15, 82-3; and David R. Ransome, ""Shipt for Virginia": The Beginnings in 1619-22 of the Great Migration to the Chesapeake," Virginia

In general, however, between 1607 and 1623, the crown was non-paternalistic and laissez-faire. As we have seen, the trading companies were operating under fairly strict patents, and, therefore, the crown only had to become involved when the rights of individual subjects or patentees were infringed, that is, when the king's residual judicial authority was necessary to resolve difficulties. The privy council records between 1613 and 1625 contain hundreds of petitions from trading companies, individual proprietors, settlers, and merchants, requesting redress for some wrong done to them. Many of these were mundane, and for the most part the council appears to have swiftly and fairly handled these requests. In 1618, for example, a number of fishermen from the western ports of England, who had traditionally fished off the Grand Banks of Newfoundland, petitioned the privy council because the Newfoundland Company forbade them from, or charged fees for, fishing, using the harbours, and gathering birds for bait. The Company answered that their "chargeable maintenance of a colony" entitled them to choose their fishing places, and that their patent gave them rights in these matters. In their response to this answer, the petitioners stated that there was no privilege given in the patent to the colonists over others, but rather that (and we have seen this above), in compliance with the laws of nature and nations, the patent expressly allowed traditional fishing rights to all persons. The privy council agreed, and ordered the company to forbear from hostile or unlawful acts against the fisherman, and reminded the patentees that this territory was a dominion of the English king.[102]

Magazine of History and Biography 103 (1995): 443-58.

[102] Dec. 1618, PRO CO 1/1/39-41; 18 Mar. 1620, PRO CO 1/1/48; PRO PC 2/30, p. 453.

A number of other efforts were made to enforce the rights of the patentees as outlined in the patents. In 1621-22, the crown issued a series of letters and finally a royal proclamation against English subjects who attempted to inhabit or trade in New England without permission of the patentees.[103] In another, fairly important, dispute that shows the value of detail in the patents, the privy council was ordered by the king to investigate the boundaries of the Carlisle and Montgomery patents for the West Indies, which seemed to refer to the same territories, particularly that of Barbados, an island currently under the jurisdiction of Montgomery. The decision of Lord Keeper Coventry, who was appointed to arbitrate, was that while Barbados was not part of the "Caribee Islands" (it is east of the Leeward Island group of the Lesser Antilles), it was mentioned explicitly in the Carlisle grant, which was issued before Montgomery's, and, therefore, Carlisle was the legitimate patentee of these islands. The governorship of Barbados was transferred to Carlisle, although both lords were requested to apply themselves to a friendly peace.[104] In all of these situations, the nature of the award in the patent was the primary consideration in resolving the conflicts. The crown conscientiously looked after the rights of its subjects, as would be expected of any good government, while leaving the merchantile and commercial interests to the trading companies.

Beginning in 1623, the non-interventionist policy of James I's government began giving way to fundamental crown involvement. As extended examples of the crown's internal expressions of sovereignty go there is none better than this highly significant

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[103] 28 Sep. 1621, PRO PC 2/31, p. 148; 23 Oct. 1622, PRO PC 2/31, p. 498; 6 Nov. 1622, CSP Col. 1, p. 33; 6 Feb. 1633, PRO PC 2/42, p. 426.

[104] Feb. to Apr. 1629, PRO CO 1/5, arts. 1, 10, 11, 13.

transformation. It began because of bitter factionalism between two rival groups of investors in the Virginia Company, those associated with Sir Thomas Smith, who had been governor until 1619, and Sir Edwin Sandys, who had wrested the government from Smith in that year. The events leading up to the dissolution of the Virginia Company have been told in detail by Wesley Frank Craven and need not be repeated here.[105] An examination of crown involvement in these affairs, however, is valuable because this has generally been overshadowed by the Company activities during this period. The privy council became involved in the situation in 1622, when John Bargrave, a planter in Virginia, complained of abuses committed by the Company against his property. He alleged that these problems were caused by the "popular" (democratic) form of government, which allowed party strife and the ability of certain wealthy members to exploit the colony. Bargrave ended his petition by begging that the king establish a commission "to examine, rectify, and order the government so that it may be fixed in a dependency on the Crown of England."[106] The council ultimately dismissed Bargrave's petition, but it soon became clear that the conflict ran deep. In a famous tract by Nathaniel Butler, "The unmasked face of our colony in Virginia," the author accused Edwin Sandys of maladministration. The plantations were poorly situated, the settlers were starving and treated like slaves, there were no fortifications to defend against a foreign enemy, and the government and laws were in many respects expressly contrary to

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[105] Wesley Frank Craven, Dissolution of the Virginia Company: The Failure of a Colonial Experiment (Gloucester, Mass.: Peter Smith, 1932, repr. 1964.)

[106] Petition of John Bargrave to the Privy Council, 12 Apr. 1622., PRO CO 1/2/4-4(II).

those in England.[107] These were substantial complaints. While the crown might overlook poor administration and bad accounting methods, it could not sit idly by while its letters patent and the rights of its subjects were subverted by popular government and inappropriate laws.

In April 1623, the king issued a commission under the great seal for an examination into the government and laws of the Virginia Company.[108] By the middle of May, the "Jones Commission", named after its chairperson William Jones, a justice of the court of common pleas, reviewed the cases against Smith and Sandys, and by July it had concluded that a new structure for the Company's government was necessary. The privy council undertook this task, appointing the "Grandison Commission", headed by Lord Grandison, which recommended that the 1612 patent to the Virginia Company be recalled, and that a new patent change the form of government from its current structure to a council consisting of one governor and twelve assistants in Virginia, to be dependent on a sub-committee of the privy council.[109] This was essentially a return to the government outlined in the Virginia Company's patent of 1606, which established a Royal Council for Virginia. The council of 1623, however, was even more centralized upon the crown because of its direct connection to the privy council. Clearly, the more liberal system allowed in the second and third Virginia Company patents had not worked to the advantage either of the English subjects in Virginia or the crown.

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[107] Nathaniel Butler, "The unmasked face of our colony in Virginia as it was in the winter of the year 1622," PRO CO 1/3, fos. 30-39v. The Company's response to this treatise is at PRO CO 1/2/20, 20(II)

[108] 17 Apr. 1623, PRO PC 2/31, p. 668; 28 Apr. 1623, PRO PC 2/31, p. 675; Lord Treasurer Middlesex to Secretary Conway, 18 Apr. 1623, CSP Col. 1, p. 44; Chamberlain to Carleton, 19 Apr. 1623, PRO SP 14/143/22. 22 May 1623, PRO PC 2/31, p. 714.

[109] 3-8 Oct. 1623, PRO SP 14/152/14; CO 1/2/45; PC 2/32, p. 123.

In revoking the patent, the crown's employment of the absolute prerogative becomes evident. Attorney General Coventry and Solicitor General Heath investigated numerous legal precedents before declaring to the king that he could command the Company voluntarily to turn in its patent, or, if the Company should refuse, he could call in the patent through the machinations of the King's Bench.[110] In fact, the Company did refuse and, using his royal prerogative, the king had a writ of quo warranto issued in November 1623.[111] The case took a long time coming to trial, with the result that the order for dissolution did not come until 24 May 1624. In another exercise of the prerogative, and an intriguing foreshadowing of later constitutional crises, in late April the king expressly forbade parliament from becoming involved in the matter when it began showing interest, because the king "had reserved the whole cause to his hearing." According to parliamentarian Sir Francis Nethersole, the House of Commons assented to this royal message in silence, "but not without muttering that any other business might in the same way be taken out of the hands of parliament."[112] Both the recalling of the patent and the king's message to the Commons emphasized the employment of the absolute royal prerogative regarding overseas affairs.

By June 1624, a new commission was in place, known as the "Lords Commissioners of Virginia and the Somers Islands" and called by historians the "Mandeville Commission" because it was headed by Henry Viscount Mandeville, lord

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[110] 2-31 July 1623, PRO CO 1/2/35-35(I); SP 14/148/19, 33; PC 2/32, p. 76; CSP Col. 1, p. 50; SP 14/149/76; SP 14/150/31; CO 1/3/43-43(II).

[111] 15-20 Oct. 1623, PRO CO 1/2/46-7; PC 2/32, p. 126; SP 14/153/67; 21 Nov. - 8 Dec. 1623, PRO PC 2/32, pp. 155, 188.

[112] Chamberlain to Carleton, 30 Apr. 1624, PRO SP 14/163/74; Nethersole to Carleton, 6 May 1624, PRO SP 14/164/46.

president of the privy council. In addition to Mandeville, the commission consisted of most senior officers of state, and a number of former executives of the Virginia Company.[113] The reformation that the commissioners were ordered to pursue was a company that would have free enterprise regarding trade but not government, which the king determined to take upon himself, to be administered through the Mandeville Commission and the privy council.[114] As Nethersole reported, the appointment of the Mandeville Commission was designed to avoid the "popularness" of the government, which was displeasing to the king.[115] Authority over the government of Virginia was now more centralized upon the crown than ever before. Indeed, the new patent for Virginia that the Grandison Commission had recommended was never issued, and Virginia became the first crown colony.

Finally, on 13 May 1625, Charles I issued a proclamation, the importance of which can hardly be overstated. He noted that "James 1st, having judicially repealed the letters patent of incorporation to the Company of Virginia, and undertaken the government, the King declares that the territories of Virginia, the Somers Islands, and New England shall form part of his empire and the government of Virginia immediately depend upon himself."[116] In making this proclamation, Charles did more than simply indicate the change of government for the Virginia Company. Although he did not fundamentally modify the governments of the Bermuda and New England Companies,

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[113] PRO PC 2/32, pp. 342-5.

[114] PRO SP 14/169/14; CO 1/3/17-17(I), 19.

[115] Nethersole to Carleton, 3 Jul. 1624, PRO SP 14/169/14.

[116] Proclamation of Charles I, PRO SP 45/10/10.

which remained for the moment in the hands of their respective treasurers, this proclamation was a clear expression of his continued sovereignty, as all the territories in new found lands were to "form part of his empire". By this point, the only other overseas trading company, the East India Company, was, de facto if not de jure, defunct. Lord Baltimore's colony that was just beginning in Newfoundland was the only overseas colony not encompassed by the proclamation, probably because it was a proprietary under the sole governorship of Baltimore. It is no coincidence that all of the letters patent issued after 1625 awarded tenure by knight's service in capite, because this ensured that the individual patentee had a direct, legal responsibility to the crown and would not become guilty of "popular" government or of abrogating the king's royal prerogative.

This proclamation, then, was a turning point in the history of Stuart trading companies. In the decade after 1625, the governorship of Virginia rested at first in the Mandeville Commission and then, slowly, because many of its members were themselves privy councillors, it evolved into a chief function of the privy council itself. This represented a significant change in the crown's authority in overseas affairs. Rather than enforcing the language of the letters patent, the jurisdiction of the crown after 1625 was used to supersede or modify it, as necessary.[117] The transformation was finalized by the rather obscure appointment of the "Lords Commissioners for Foreign Plantations" in 1634. The Commission was headed by William Laud, Archbishop of Canterbury, and, by this time, one of Charles I's few leading advisors. Other committee members included

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[117] On the subject of royal commissions relating to overseas colonies, see also Michael J. Braddick, "Government, War, Trade, and Settlement," in The Origins of Empire, pp. 299-300; and Charles M. Andrews, "British Committees, Commissions, and Councils of Trade and Plantations, 1622-1675," Johns Hopkins University Studies in Historical and Political Sciences, series 26, nos. 103 (1908).

the Lord Keeper, Treasurer, Archbishop of York, and ten other senior officers of state, of which a quorum was five members. Unlike the Mandeville Commission, none of the members strictly represented the trading companies, an explicit demonstration of centralized, crown control. The commission was tasked with "making laws and orders for government of English colonies planted in foreign parts," with power to impose penalties and punishments, instate and remove governors, appoint judges and establish courts, have power over all charters and patents, and "determine all manner of complaints from the colonies."[118] When the commission was reappointed in April 1636 it was ordered to govern "all persons, within the colonies and plantations beyond the seas."[119] This was the ultimate declaration of continued sovereign authority in the colonies.

From their inception, the Lords Commissioners were heavily involved in internal colonial affairs. They were not mere figureheads. In July 1634, the commissioners reminded the Virginia colonists that in matters of trade and land they enjoyed the same privileges as before the patent was recalled, although all "further powers" were now in the commissioners' hands at the "King's farther pleasure."[120] In the same year, the commission took proactive steps when it came to believe that subjects were travelling to New England because they were "ill affected, and discontended, with the Civil as Ecclesiastical Government."[121] The commission ordered a stay of eleven ships, and only lifted the stay after the emigrants had sworn their adherence to the Book of Common

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[118] 28 Apr. 1634, PRO CO 1/8/12.

[119] CSP Col. 1, p. 232.

[120] 22 Jul. 1634, PRO PC 2/44, p. 105.

[121] 21 Feb. 1634, PRO PC 2/43, pp. 501-3.

Prayer and had taken the oaths of allegiance and supremacy.[122] The king shortly afterward passed a proclamation that all passengers travelling to any foreign plantation had to take the oaths before embarking, an order that was apparently taken seriously by the officers at the ports.[123] Prospective passengers presented passes from their ministers and justices of the peace in their home parishes, in order to demonstrate their conformity to the Church of England, information that the clerks recorded carefully in the port register.[124] It was not long before the New England Company adventurers decided to surrender their charter to the king, finalizing their transformation into a royal colony.[125] In the same year, when the commissioners considered the renewal of the Amazon Company patent (to Roger North), they agreed to reissue the patent provided that he "submit to civil government, for which no provision was made in the patent" in 1626.[126]

EPILOGUE

By 1637, Virginia and New England were royal colonies that operated without letters patent to govern their conduct, leaving the government of the colonies completely in the hands of the crown. The other trading companies in South America, Bermuda, and Providence Island (until its collapse in 1641), though still operating under patents, had also submitted to the Lords Commissioners for the superior managing of their affairs. Had they not done so, they ran the risk of their patents not being renewed upon their

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[122] 4 Feb. 1634, CSP Col. 1, p. 174; PRO PC 2/43, pp. 501-503.

[123] PRO CO 1/9/78.

[124] Games, Migration and the Origins of the English Atlantic World, p. 23.

[125] 9 Dec. 1634 - 7 Jun. 1635, PRO CO 1/8, arts. 36, 52, 58, 66, 70

[126] 17 Mar. 1635, PRO CO 1/8/51.

expiration or the king recalling the patents by quo warranto, as he had done for the Virginia Company. Only the proprietary colonies were allowed a measure of autonomy from British civil government, although even these proprietors served as direct deputies of the king and brought their complaints to the privy council for adjudication. The Lords Commissioners did become involved when Charles I requested that they keep the Virginia colony from infringing on Baltimore's rights in Maryland, showing their superior jurisdiction when more than one colony was involved in a dispute. When infringements upon British subjects or the crown's authority occurred, the crown had no hesitation in expressing its rights of sovereignty. Together, the issuance of a letter patent to trading companies in order to govern their relationship with themselves, other colonies, the crown, and other European nations, and the continued — and increasing — presence of the crown in the affairs of the colonies, represented powerful affirmations of the crown's authority and sovereignty over its growing empire.

CHAPTER FOUR

"BY STRONG ORDER OF FORTIFICATION": DEFENDING SOVEREIGNTY IN NEW FOUND LANDS

Throughout British colonies in new found lands, the most tangible expression of sovereignty was stalwart fortifications, governed by experienced, commissioned military officers, manned by colonists who were exercised in the use of ordnance and munitions, and equipped with the habiliments of war. Territories that were fortified and defended in this way showed other European powers that the British crown maintained effective occupation of the region. It was able to defend its subjects and property from attack, both from natives and other Europeans, and could engage in offensive operations if necessary to protect its sovereign rights. The importance of expressing sovereignty and authority over the British empire through fortifying was made explicit in letters patent and the instructions to colonial governors and settlers that followed the patent. As shown in these documents, the crown expected the placement and building of strategically-located fortifications to be the first order of business upon landing. Even the selection of specific regions for settlement depended more on its suitability for defence and fortification than on the fertility of the land, and the proximity of the settlement to ports or commodities

which facilitated trade. The more mundane "ceremonies of possession" described by Patricia Seed, such as building houses, erecting fences, and cultivating fields in order to demonstrate sovereignty were secondary matters, to be attended to only after the colony was sufficiently fortified against attack.

Fortifications in new found lands also had a more pragmatic role than merely demonstrating sovereignty through effective occupation. During the reigns of Queen Elizabeth and the early Stuarts, fortified settlements were necessary to fend off potential and actual insurgent and belligerent attacks from the Dutch, French, Portuguese, and Spanish, when each of these colonizing powers became more involved in overseas activities in North and South America and the East and West Indies. The crown received a number of important challenges to its sovereignty, in the form of both physical attacks on colonies and reports from ambassadors resident in these European countries, who warned of impending armadas against the colonies. Regardless of how real these challenges were, they required incisive responses which took the form of strengthening the fortifications in new found lands and ensuring that these structures were properly staffed and equipped. The alternative was for the colonists to be caught unprepared, to have their land and property taken by other European powers, to lose effective control of the territory, and, as a direct consequence, to lose British sovereignty over the region. Although most of the colonial governors were military officers who recognized that their efforts protected the sovereign rights of the crown and endeavoured to defend their monarch's territory, the crown at times became directly involved in the affairs of the colony when it came to understand that insufficient fortifications threatened its sovereignty in the region.

THE LAW OF NATIONS AND THE MILITARY REVOLUTION

Defending and fortifying frontier settlements were direct expressions of sovereignty. In The Prerogatives of the King (c. 1650) Matthew Hale made clear the supremacy of "the king's power in reference to matters military and war, commissions of array, summitiones exercitus [raising an army], powers of fortification, and other matters of this nature both by land and sea, in reference to rebellions, insurrections, invasions, [and] foreign expeditions, which is a capacious subject."[1] This passage comes from a schema which opened the final chapter of Hale's treatise, and although the manuscript ended before the discussion of war and military affairs was addressed, there is no doubt that, above all, Hale would have drawn this into the absolute prerogative. This was an internal and external sovereign right of the monarch. In times of war or when matters relating to the military were involved (and the tenuous affairs in overseas territories often occurred under these conditions) the employment of the absolute prerogative was necessary and justified. Hale's arguments were supported by early writers of international law, who held that fortifications and a military presence headed by the crown were required by the law of nations to demonstrate effective control of the territory.

By the time Elizabethans showed interest in settling overseas territories, for example, Justinian, Francisco de Vitoria, and Jean Bodin, among others, had noted the importance of fortifications and defense as tangible expressions of sovereignty. To Justinian, whose works were the starting point of legal education at the English

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[1] Hale, The Prerogatives of the King, p. 286.

universities, "any of these things which we take . . . are regarded as ours for so long as they are governed by our control. But when they escape from our custody and return to their natural state of freedom, they cease to be ours."[2] Possession, according to Justinian, stemmed from the ability to keep effective control over the territory, to the extent that a person who chooses not to defend his land or flees when faced with a superior force, is said to have abandoned his rights to the land.[3] The choice and ability to defend territory from attack and to maintain control over it, therefore, was the root of possession and sovereign authority. Vitoria made clear the crown's obligation to defend its territorial sovereignty in a lecture delivered in 1539 entitled "On the Laws of War." He wrote that the crown has the right and obligation of defending its territories, and also, as Hale noted, that "waging a defensive war is the undertaking of a prince."[4] A few decades later, Bodin, in the Six Books of the Republic (1576), wrote a lengthy chapter questioning "whether it be convenient to train up the subjects in arms, and to fortify their towns or not."[5] He concluded that a town without walls and a citizenry not trained in arms were more likely to be attacked by an enemy. To Bodin, like Vitoria, defending territorial sovereignty was an act of the crown, which is "the whole estate next under God": it was the responsibility of a conscientious ruler to ensure that land was fortified and subjects were trained in arms. Particularly in need of fortification and trained soldiers were frontiers and borders, because these would be reached by an enemy first and, if these were

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[2] Justinian, Digest, D.41.1.3.

[3] Justinian, Digest, D.41.2.7; D.43.16.

[4] Vitoria, "On the Laws of War [1539]", § 1.2-4 in Pagden, ed., Vitoria: Political Writings.

[5] Bodin, Six Books of the Republic, 5:5.

weak, the unarmed "bowels" of the territory would quickly come under subjection.[6]

The civil law trained attorneys- and solicitors-general who prepared the overseas patents were not ignorant of these precedents. This is especially true given that Alberico Gentili, the leading authority of international law theory in England, taught the writings of Justinian, Vitoria, and probably Bodin in his lectures in the 1560s to the 1580s. At the end of the sixteenth century, Gentili himself wrote, as had Bodin, that it was "customary and lawful" and "in accord with the law of nations" to place fortresses especially on frontiers, so that a monarch could "maintain his own rights" in that territory.[7] The absence or neglect of fortifications and the unwillingness to defend territory from attack signalled a potential loss of possessory rights in the eyes of the international community. The author of the Virginia Company's petition of 1606 was, therefore, writing within accepted legal practice when he argued that, although the law of nations awarded a sovereign all territory discovered and settled by its subjects, it was not "sufficient to set foot in a Country but to possess and hold it, in defence of an invading force."[8] International law, then, allowed and demanded that a sovereign prince undertake to defend his or her territories from enemy attack. This was a level of effective control and permanent settlement that represented an unassailable right to sovereignty.

By the Elizabethan age, Britain was fully capable of defending its colonial holdings. In the last quarter of that century, it had experienced its own, small-scale "military revolution". Much has been written about the military revolution that

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[6] Ibid., 5:5, pp. 600-604.

[7] Gentili, De Jure Belli Libri Tres, 3.21.668-675, quotations at § 668, 670.

[8] BL Lansdowne MS 160, fos. 356-7.

supposedly swept Europe from about 1560 to 1660, which saw stronger, larger, and better commanded standing armies, the widening scope of warfare, new administrative methods that demanded centralized and royal authority, and significant beginnings in international relations and international law.[9] Until recently, historians have almost unanimously agreed that Britain was not part of this phenomenon. Rather, because its military engagements over this period were mostly low-intensity conflicts that did not significantly infringe upon its territorial sovereignty, British advancement in matters of military tactics, weapons, and fortifications was not "revolutionary", but instead static and in some ways backwards.[10] However, as James Scott Wheeler has shown in a recent study that draws upon decades of literature, Queen Elizabeth's efforts to attain, and then maintain, English suzerainty in Ireland (1560s to 1593), the mobilization and maintenance of the English militia during the Anglo-Spanish War (1585-1604), and England's committment to support the Dutch (1585 to 1603) and the French (1589 to 1593) in their efforts against the Spanish, resulted in "a reservoir of English officers and soldiers who had trained in the latest skills of the military art," and the importation into

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[9] The so-called "military revolution debate" includes a large body of literature that need not detain us. See especially the essays in Clifford J. Rogers, ed., The Military Revolution Debate: Readings on the Military Transformation of Early Modern Europe (Oxford: Westview Press, 1995). The debate has been updated by Derek Croxton, "A Territorial Imperative? The Military Revolution, Strategy, and Peacemaking in the Thirty Years War," War in History 5 (1998): 253-79; Kelly DeVries, "Catapults are Not Atomic Bombs: Towards a Redefinition of 'Effectiveness' in Premodern Military Technology," War in History 4 (1997): 454-70; DeVries, "Gunpowder Weaponry and the Rise of the Early Modern State," War in History 5 (1998): 127-45; David Eltis, The Military Revolution in Sixteenth Century Europe (London: Taurus, 1995); Bert Hall, Weapons and Warfare in Renaissance Europe: Gunpowder, Technology, and Tactics (Baltimore: Johns Hopkins U.P., 1997); Peter Wilson, "European Warfare, 1450-1815," in Jeremy Black, ed., War in the Early Modern World, 1450-1815 (London: UCL Press, 1999), pp. 177-206.

[10] See, for example, John Brewer, Sinews of Power: War, Money and the English State, 1688-1783 (New York: Alfred A. Knopf, 1989), p. 7; the chapter on England in Brian M. Downing, The Military Revolution and Political Change: Origins of Democracy and Autocracy in Early Modern Europe (Princeton: Princeton U.P., 1992), esp. pp. 161-8; Michael J. Braddick, "An English Military Revolution?", The Historical Journal 36 (1993): 965-75.

England, Scotland, and Ireland of "many of the recent tactical and technological lessons of the European Military Revolution."[11]

These lessons were put into practice in Ireland after the conquest of the 1560s and in the English countryside because of the fear of invasion during the high-intensity Anglo-Spanish War. Control of these frontier regions was firmly placed into the hands of a lieutenancy. Stephen Saunders Webb has called these men "civil-military" leaders, a number of highly-trained and skilled military commanders whose most important task was the defence of Britain's borders by mustering men and erecting fortifications or citadels. Their commissions came not from local gentry but directly from the crown, whose royal prerogative they represented, usually to the consternation of the local, traditional ruling elite.[12] According to Nicholas Canny, the English attempts to assert sovereignty over Ireland related directly to the situation in North America in the last quarter of the sixteenth century. The lessons learned in Ireland in the period 1565-76, especially regarding defending the lives, rights, and property of colonists, keeping dependent peoples in line through intimidation and force, and warning off Europeans who viewed Ireland as potential grist for their own expansionism, were brought to the New World. Indeed, Humphrey Gilbert, and several men involved in the early Roanoke

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[11] James Scott Wheeler, The Making of a World Power: War and the Military Revolution in Seventeenth-Century England (Phoenix Mill: Sutton, 1999), pp. 10-16, 66-76, quotation on p. 68.

[12] Stephen Saunders Webb, "Army and Empire: English Garrison Government in Britain and America, 1569-1763," William & Mary Quarterly, 3d ser., 34 (1977), esp. pp. 2-13; and Webb, The Governors-General: The English Army and the Definition of Empire, 1569-1681 (Chapel Hill, NC: U. of North Carolina P., 1979), esp. pp. 3-20 and 436-41. Also see Anthony Fletcher, Reform in the Provinces: the Government of Stuart England (New Haven: Yale U.P., 1986), ch. 9, which, though dealing with the seventeenth century, shows the inculcation of these ideas in Elizabeth's reign.

enterprises, had been part of the civil-military lieutenancy in Ireland.[13]

This change of control in the British frontiers also meant a change in the intellectual climate. The men who returned from campaigns on the continent brought with them considerable technical knowledge, which they quickly published in the popular press. The bookshelves of many gentry and county lieutenants contained military manuals, in which the latest practices were explained. The quality of the militia units and the state of fortifications in the frontiers was dependent on the readings of these men.[14] Paul Ive's The Practise of Fortification (1589), for example, reflected the current state of continental knowledge regarding defence.[15] Ive outlined in detail the purpose and placement of fortifications and, like contemporary international law theorists, especially noted the importance of fortifying in frontier regions, where an enemy was most likely to attack. The bastion-styled fortifications that Ive described in detail in his treatise were already familiar symbols on English and Irish frontiers, showing that Britain had long since adopted continental methods of defence.[16] In the Elizabethan period, then, the British had strong legal justifications, valuable precedents, and sufficient technical expertise for fortifying frontier regions.

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[13] Nicholas P. Canny, "The Ideology of English Colonisation: From Ireland to America," WMQ 30 (1973): 575-98; idem., The English Conquest of Ireland: A Pattern Established, 1565-76.

[14] Wheeler, The Making of a World Power; Eltis, The Military Revolution in Sixteenth-Century Europe, ch. 5; M.J.D. Cockle, ed., Bibliography of Military Books Before 1642 (London: Simpkin, Marshall, 1975).

[15] Paul Ive, The Practise of Fortifications (London, 1589) (STC 14289).

[16] For examples of fortifications, see Simon Pepper and Nicholas Adams, Firearms & Fortifications: Military Architecture and Siege Warfare in Sixteenth-Century Europe (Chicago: U. of Chicago P., 1986), ch. 1; and Andrew Saunders, Fortress Britain: Artillery Fortification in the British Isles and Ireland (Liphook, Hants: Beaufort, 1989), chs. 3-4.

THE ELIZABETHAN OVERSEAS EMPIRE

Perhaps more pragmatically than legal precedents and technical knowledge, even before the British had any official interest in overseas settlement contemporaries were well aware that accounts of Frobisher's voyages had made their way into Europe, and that the Spanish ambassador in London, Bernardino de Mendoza, kept the King of Spain informed of English plans in new found lands.[17] In addition, the Spanish settlements in Florida, South America, and the West Indies were fortified, which was both an issue of concern for the crown, and a clear precedent for protecting territory in new found lands. As evidenced by Gilbert's "Discourse how to annoy the King of Spain," the motives of the English were less than altruistic, and had Gilbert's plans materialized they would likely have engendered an insurgent response that would have required the British settlements in North America to be fortified against retaliation. This is the reason why, in the patent issued to Humphrey Gilbert in 1578 (and in the duplicate issued to Raleigh in 1584), Queen Elizabeth authorized and required Gilbert to protect her sovereignty in the face of disputes with other Europeans. Gilbert was ordered, for his defence and safety, to "encounter, expulse, repel, and resist . . . [all] persons whatsoever, as without special licence . . . shall attempt to inhabit within the said country." He was given the authority to "take and surprise by all ways and means" all persons and ships who attempted to land, settle, or trade in the colony, or in harbours and creeks, those places that according to the

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[17] See Bernard Allaire and Donald Hogarth, "Martin Frobisher, the Spaniards, and a Sixteenth-Century Northern Spy," in Symons, Meta Incognita, 2:575-88; Bernard Allaire, "French Reactions to the Northwest Voyages and the Assays by Geoffroy Le Brumen of the Frobisher Ore (1576-1584)," in Symons, Meta Incognita, 2:594-600; Quinn, "Some Spanish Reactions to Elizabethan Colonial Enterprises," pp. 1-23.

law of nature were not of common usage.[18]

Clearly, given the wording of these instructions the crown was much more concerned about Europeans than natives. In framing a series of notes in 1578 for Gilbert's voyage, the elder Richard Hakluyt recommended that settlement take place "on the seaside" rather than inland, so that the ships that accompanied Gilbert could patrol the area and keep the colony "safe from the enemy."[19] In 1582, when Gilbert was getting ready to set out on his western voyage, Edward Hoby, an agent of the crown and nephew to Lord Burghley, prepared a similar set of instructions. He advised Gilbert to "consider precisely whether the River of Norumbega may be defended" and, if not, to move upriver as necessary to find the best natural "havens of strength."[20] Though undoubtedly aware of the orders in the letters patent, Hakluyt and Hoby did not recommend that Gilbert fortify the settlement. Both authors knew that erecting fortifications was an expensive proposition which could not be easily borne by the trading company, and both assumed that Gilbert would engage the Spanish fleet by sea if it arrived.

When the younger Richard Hakluyt attempted to engender crown support for Raleigh's enterprise in 1584, however, physical fortifications were seen as the surest way to accomplish Gilbert's goal and, more importantly, to maintain jurisdiction over the territory. In his "Discourse of Western Planting," Hakluyt argued that "the planting of two or three strong forts upon some good havens . . . between Florida and Cape Breton"

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[18] Quinn, NAW, 3:187. Similar statements are found in the patent for Bermuda, New England, Providence Island, and Massachusetts Bay. See Quinn, NAW, 5:194-5; PRO CO 38/1, fos. 1-46; CO 5/902, fos. 61-92; CO 124/1, f. 6v; and Lucas, Charters of the Old English Colonies, p. 44.

[19] Richard Hakluyt the Elder, "Notes on colonization," reprinted in Taylor, Writings . . . of the Two Richard Hakluyts, p. 116.

[20] Edward Hoby's commonplace book, 1582, BL Add. MS 38823, fos. 1-3v.

would enable the English to engage with the Spanish fleet in the West Indies and along the Atlantic seaboard.[21] Hakluyt then devoted two chapters to describing the principal towns and forts of the Spanish in North America, by which, in part, he had hoped to impress upon Queen Elizabeth and her councillors the precariousness of Raleigh's undertaking and the need for strong fortifications authorized by the crown.[22] To retain possession, the colonies must be planted "by strong order of fortification" so that "being first settled in strength, with men, armour, and munition, we shall be able to . . . hold fast our first footing, and readily annoy such weary power of any other that shall seek to arrive." As was believed to have been the case in Ireland, the fortifications would also "keep the natural people of the country in obedience and good order". That is, the sheer presence of fortifications would overwhelm the natives and make them submissive. In a list of necessary provisions for Raleigh's voyage, Hakluyt included, among other requirements, "Men expert in the art of fortification" and "Captains of long and great experience."[23] Hakluyt's proposal was much more detailed than his predecessors', probably because, in accordance with his propagandizing, he viewed the enterprise in imperial terms and saw physical strength as a tangible expression of sovereignty. He was also clearly more concerned about the Europeans actually attacking the settlement by land than were his older cousin and Hoby. Hakluyt had good reason for such concerns, given the current relationship with Spain and certain intelligence that Spain's interest in English

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[21] Hakluyt, Western Planting, cap. 5.

[22] Ibid., caps. 9 and 10.

[23] Ibid., caps. 15 and 21.

colonial activities was greater than ever.[24]

Raleigh's enterprises were never successful in bringing about Gilbert's scheme, but the travelers to Roanoke were no less concerned to defend the territory from an invading force. Two young sea captains, Philip Amadas and Arthur Barlowe, were sent on a reconnaissance in 1584 with instructions to find a suitable area for settlement. Their selection of Roanoke Island was largely because it was sheltered between the mainland and the North Carolina Outer Banks. Their correspondence and everything else written about Roanoke Island was deliberately vague on its exact location in order to protect it from the prying eyes of the Spanish.[25] The governor of the new colony, Ralph Lane, an officer who had gained much of his experience as part of the crown's lieutenancy in Ireland, agreed with Amadas and Barlow's selection. He wrote to Francis Walsingham in August 1585 that the territory they had settled had many natural fortifications, and the best port, if fortified by a sconce (small fort), "could not be entered by the force of Spain."[26] Lane's employment, and his assurances to the queen's chief secretary, shows that the defensive capabilities of the colony was an issue of some importance to the

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[24] Quinn, The Roanoke Voyages, 1584-90. Much of the enmity with Spain is shown in CSP Spanish, 1580-86, pp. 520-70 passim. That Spain had considerable knowledge of these activities is shown in Irene A. Wright's translations for the Hakluyt Society of correspondence in the custody of the Archivo General de Indias in Seville and the Archivo General in Simancas. For the Elizabethan period, see the exceptionally valuable, though largely unexamined, series known as the Venezuela Papers, BL Add. MSS 36315-18, esp. 36315, fos. 82-88, 169-70, 186-268; 36316, fos. 54-59, 73-84, 129-32, 161-67, 187-92, 201-9; 36317, fos. 1, 51-79, 83-93, 125-29, 158-69, 231-26, 261-64, 346-53; 36318, fos. 39-51, 70-72. These volumes contain the incoming and outgoing correspondence of Spanish colonial governors, the Council of the Indies, and the king, and show both how well informed the Spanish were of English activities and how concerned they were to protect their settlements and weaken the English forces.

[25] The best modern accounts of the Roanoke colony are Karen Ordahl Kupperman, Roanoke: The Abandoned Colony (Totowa, NJ: Rowman & Allenheld, 1984); David Beers Quinn, Set Fair for Roanoke: Voyages and Colonies, 1584-1606 (Chapel Hill, NC: U. of Carolina P., 1984); and, for primary evidence, Quinn, The Roanoke Voyages, 1584-90.

[26] Lane to Walsingham, 12 Aug. 1585, PRO CO1/1/3.

crown. In an image that was both a map and a pictorial drawing which appeared in Theodor De Bry's edition of Thomas Hariot's Brief and True Report of the Newfoundland of Virginia (1590), Roanoke Island is shown sheltered within the Outer Banks, along which four ships, presumably Spanish galleons, have faltered and are in danger of sinking. Farther offshore, two other ships stay afloat, not willing to go closer and meet the fate of the others, and within the colony business proceeds as usual. This was a clear demonstration of Roanoke Island's supposed secure footing, no doubt published with the intention of reinvigorating Raleigh's enterprise.

Despite the natural fortifications and security which this image suggests, soon after their arrival in August 1585, Lane and the 107 male settlers set upon building fortifications on the north end of the island. The Roanoke Island fort was apparently built swiftly, because by the eighth of September Lane addressed a letter to Walsingham "From the New Fort in Virginia."[27] Modern archaeological evidence has revealed the general construction of this fort. A deep, wide trench surrounded the village, and the fort itself, which included ramparts and bastions with gun platforms, was of a star-shaped design, similar in most respects to the specifications outlined by Ive in The Practise of Fortification.[28] The similarity of the colony's defences with Ive's drawings and recommendations shows at least that the Roanoke fort was taken seriously and was made to conform to contemporary standards. In the end, the inability of the colonists to cope

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[27] Lane to Walsingham, 8 Sep. 1585, PRO CO1/1/6.

[28] See "The Surroundings and Site of Raleigh's Colony," in Annual Report of the American Historical Society for 1895 (1896), pp. 47-61; Bruce S. Cheeseman, Four Centuries and Roanoke Island: A Legacy of Geographical Change (Raleigh, NC, 1982), pp. 2-22; and Quinn, The Roanoke Voyages, 1584-90, 2:903-10. The fort has been reconstructed from archaeological evidence and is now known as the Fort Raleigh National Historic Site.

with the new environment and to achieve self-sufficiency saw them abandoning the fort within a year and returning to England.

When Walter Raleigh turned his attention to South America, the lessons he had learned through Hakluyt and the Roanoke experiences were evident. In the published narrative of his 1595 voyage to Guiana, Raleigh assured Queen Elizabeth that the territory was easily defensible with two strategically-located forts.[29] In another account that remained in manuscript, which was given to Elizabeth as a further inducement to colonize the Amazon region, Raleigh's broader plans for Guiana became known: "to conclude, if it might seem fit to her excellent Majesty that 4 or 5 hundred men (whereof some be leaders, some casters of great ordinance, some gunners, some armourers, &c) were landed by hundreds in several places next confining Peru, Nova Hispania, [etc.] or else where as shall be most convenient for provision or arms and munitions to furnish the people with instructions to set to war against the Spanish: it is greatly to be hoped that in a short time the Spaniards should be so occupied in defending their Border that we might rest more safely here in England."[30] Raleigh recommended that if the region of Guiana was taken and fortified, it would not only secure British rights in the region but could serve as a base of operation to engage the Spanish, which would divert the latter's attention away from England and thus change the direction of the Anglo-Spanish War. The queen did not approve of Raleigh's plan, which was probably too expensive and would remove valuable soldiers and weaponry from the British frontiers at a critical time. Still,

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[29] Walter Raleigh, The Discovery of the Large, Rich, and Beautiful Empire of Guiana . . . Performed in the Year 1595 [1596], ed. Robert H. Schomburgk (London: Hakluyt Society, 1848), p. 115.

[30] Walter Raleigh, "Of the Voyage to Guiana," BL Sloane MS 1133, fos. 8-8v.

reminiscent of Gilbert's and Hakluyt's recommendations in earlier decades, Raleigh believed that fortifying in new found lands could directly benefit the commonwealth and the crown.

By the end of the Elizabethan period, the idea of fortifying frontier territories, including new found lands, to secure crown sovereignty and defend from attack had become commonplace. In his essay "Of Plantations" (1601), Francis Bacon was emphatic that colonization should be undertaken not by merchants, whose "hasty drawing of profit" had been the destruction of previous plantations, but rather by noblemen, skilled captains, and experienced colonizers, who could look to the security and future of the colony, and to the crown's title and interests.[31] In 1602, John Brereton, who was chaplain on an exploratory voyage to New England earlier that year, published his Brief and True Relation, which was intended to induce the crown to authorize additional exploration and colonising schemes for North America. Echoing the younger Hakluyt and Bacon, Brereton noted that the attempt to settle New England should be made by "ancient captains" and "men most skillful in the art of fortification." These men were to be directed that "the mouths of great rivers, and the Islands in the same . . . be taken, manned, and fortified . . . [so] that we may be able to command and control all within."[32] Brereton was very familiar with Raleigh's attempts — his treatise opens with a brief report of the these activities — and he apparently found the efforts of the Roanoke colonists to fortify worthwhile and necessary. To him, "after we be once 200 men strong,

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[31] Francis Bacon, "Of Plantations," in Essays (London, 1601).

[32] John Brereton, A Brief and True Relation of the Discoverie of The North Part of Virginia [1602], reprinted in Quinn, ed., The English New England Voyages, p. 188.

victualled and fortified, we cannot be removed by as many thousands."[33]

Clearly, overseas affairs were, from at least 1578, to be quasi-military operations, which was consistent with the plans of Gilbert, Hakluyt, and Raleigh to engage the Spanish fleet. Each settlement was to be planted in a strategic location that commanded a good view of the sea to protect from invasion by Europeans. As Lane's activities in Roanoke showed, upon arriving in the territory, fortifications were the first order of business, taking precedence over pitching personal dwellings, planting crops, and trading commodities. The necessity of a military presence and fortified settlements led to the employment of experienced soldiers and commanders, who knew the priorities of defence, and who represented not the trading companies but the prerogatives of the monarch. This makes a strong case for the employment of the royal prerogative and international law precedents when it came to efforts to maintain sovereignty, and shows the extent to which the "military revolution" benefitted the establishment of the British empire.

CHALLENGES TO THE EARLY-STUART EMPIRE

The offensive and precautionary use of soldiers and fortifications advocated during the Elizabethan period changed quickly to necessary, defensive measures in the early Stuart period. Between 1604 and 1640, fortifications and defence were increasingly necessary because the Dutch, French, Portuguese, and, especially, the Spanish were more involved in overseas activities and showed themselves to be much more aware of,

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[33] Ibid., p. 174.

concerned about, and belligerent toward British colonial efforts. Although the Anglo-Spanish War came to an end in 1604 with the signing of the Treaty of London, contemporaries were still concerned about Iberian challenges to British territories in new found lands. This was, in part, because the treaty was deliberately vague on British rights or claims in the West Indies and North America.[34] This point was driven firmly home by George Waymouth, who, like Brereton, was an unsuccessful traveler to New England in 1602. In 1604, Waymouth presented a large manuscript entitled "The Jewell of Artes" to James I.[35] He argued that despite the recent peace settlement with Spain, "yet might the practice of fortification now, as necessarily be employed in the land of Florida in those parts thereof which long have been in possession of our English nation."[36] Waymouth used the term "Florida" broadly, to mean "North America," and his principal argument to the king was that fortifying was necessary to secure and maintain sovereignty in new found lands, in accordance with the precedents of international law. Even more than the Elizabethan writers, Waymouth emphasized that fortifying was the root to possession and control, which, in turn, was the root to sovereignty. As further inducement, and to impress upon the king his considerable technical skill, in the body of the treatise Waymouth included a number of very detailed, if not altogether very practical, drawings of town plans and fortified settlements which, if built, would protect the colonies and assert and maintain British dominion.[37] The fact that one of the two extant copies of

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[34] The treaty is discussed in detail below, chapter six.

[35] George Waymouth, "The Jewell of Artes," BL Add. MS 19889.

[36] Ibid., f. 202.

[37] Ibid., fos. 246v-51v. Some of these are reproduced in Quinn, The English New England Voyages, pp. 236-41.

Waymouth's manuscript is in an elaborate royal binding, which means that it was accepted into the king's library, helps to show that his ideas had a certain appeal, even if the fortifications were extravagant in their design and would have been extraordinarily costly to build.[38]

As Waymouth had anticipated, the Treaty of London did not stop Philip III of Spain (who was also Philip II of Portugal) from engaging in hostile acts in America. In 1605 he issued an edict commanding that "no stranger ship of any nation shall pass to India [ie. West Indies], Brazil, Guinea, or to the Islands, nor to any provinces or islands of my conquests or seignories."[39] The territories included in this edict appear to be deliberately vague, though they seem to have been clear enough to the Spanish sailors, who in that year captured two English ships heading toward New England via the West Indies (the prevailing winds made this course necessary.)[40] Charles Cornwallis, the conscientious ambassador in Spain, had good reason for warning the earl of Salisbury in February 1607 that "whosoever goes from England to America must provide go stronger; for if they be taken, they are to expect no remission."[41] Indeed, among the challenges that the British crown received regarding its colonies especially in Virginia and Bermuda, those of the Iberians have been least examined by historians. Probably this is because,

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[38] This is BL Add. MS 19889. The other copy is Yale University, Beinecke Library MS 565. In 1605, Waymouth was commissioned by the king to head a voyage to New England, although this enterprise, like the Roanoke and the other early New England attempts, was ultimately unsuccessful.

[39] Edict of Philip III of Spain, 9 Apr. 1605, HMC 9 Salisbury XVII, pp. 130-1.

[40] D.B. Quinn, "James I and the Beginnings of Empire," JICH 2 (1974): 135-52; and Quinn, The English New England Voyages, 1602-1608. The efforts of the Spanish ambassador to have the prisoners released are recorded in HMC 9 Salisbury XVIII, pp. 77, 452; XIX, p. 26; XX, pp. 53, 68; XXIV, p. 106. On Caribbean rivalry just before, during, and after the peace treaty, see Andrews, "Caribbean Rivalry and the Anglo-Spanish Peace of 1604," pp. 1-17.

[41] Cornwallis to Salisbury, 6 Feb. 1607, BL Harley MS 1875.

despite detailed reports of British and Iberian ambassadors, the challenges were more perceived than real, demonstrating more than anything the deep paranoia and suspicion that still existed between the two crowns.

Nonetheless, a review of this correspondence provides a good extended example which shows the official, systematic, and persistent challenges to permanent British settlements, and the need for the British crown to ensure that its colonies were fortified and outfitted with soldiers to protect its sovereignty. In January 1607, Zúñiga reported to Philip III that the English were equipping some ships to send to Virginia under license from King James. This letter was the first of many in which Zúñiga, with considerable flair and much confusion, reported to 1609 on English plans to inhabit Virginia.[42] In one letter written in 1608 he included a drawing of the Jamestown fort. This is proof that the Spanish had valuable intelligence about the Jamestown settlement, which is all the more intriguing because it is unclear how the information came into Zúñiga's hands. The rudimentary drawing shows the fort to be triangular in shape (which was good intelligence) and contains an "X" in the centre, probably depicting the location of the church. At the northern end is a drawing that would appear to be a flag, perhaps an English ensign, showing at what point it was flying on the fort, but it might also have been a ground plot of a portion of the settlement that was not within the fortification proper. This drawing, along with Zúñiga's other correspondence, is extant in the General Archives (Archivo General) in Spain.[43]

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[42] Archivo General de Simancas, Legajo MSS E 2571, E 2585-7. They have been translated and extracted in Barbour, Jamestown Voyages, vol. 1, docs. 8, 11, 23-7; vol. 2, docs. 45-7, 49, 56, 61.

[43] Zúñiga also sent Philip III a map of the Atlantic seaboard from Newfoundland to North Carolina, discussed below, chapter 5, p. 216.

A more valuable source that represents the British perspective of Spain's official interest is the correspondence between British ambassadors and the king and privy council. In July 1607, when Hugh Lee, the ambassador at Lisbon, wrote to Salisbury of "the evil disposition of the Spaniard towards the English nation above all others," news that came on the heels of a report that the Spanish were reinforcing troops in the West Indies.[44] Cornwallis reported that the Spanish very much "take to heart" the English plans to settle Virginia, and a few weeks later he wrote that Philip was amassing a navy to send to Virginia, and had discreetly inquired whether the king of England intended to guard the colony and its inhabitants with his own ships and supplies.[45] One William Eliston told Salisbury in May 1608 that he had learned of a man who said he worked night and day to cast brass ordnance in order to outfit eighty ships bound for Virginia.[46] It was also about this time that Zúñiga's drawing of the Jamestown fort was received in Madrid. This situation peaked June and July 1608. On 9 June, Cornwallis affirmed that the Spanish had "their hearts and their eyes" fixed upon the Virginian attempt, and would "endeavour to pull it up by the roots, as they did that of the French in Florida."[47] Despite efforts to keep the enterprise secret, Cornwallis was able to report on the eighteenth that the armada was to consist of "23 or 24 galleons besides some other lesser vessels, and well furnished with soldiers", and was to be in full readiness in July. He reported to the

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[44] Lee to Salisbury, 25 July 1607, PRO SP 89/3/86; John Ogle to Salisbury, 28 Jan. 1607, HMC Salisbury XIX, p. 28.

[45] Charles Cornwallis to Privy Council, 6 Feb. 1608, ibid., p. 53. Same to Salisbury, 21 Feb. 1608, ibid., p. 78.

[46] William Eliston to Salisbury, 24 May 1608, ibid., p. 171.

[47] Cornwallis to Salisbury, 9 Jun. 1608, ibid., p. 185.

privy council that it was likely this armada was destined for Virginia.[48] In the end, the armada and the apparent crisis fell apart. Cornwallis reported in early July that, although he was not sure what the Spanish Council of India planned regarding Virginia, the fleet was disbanded and the imminent threat no longer existed.[49] As an anonymous writer informed the king, although the Spanish condemned the action in Virginia, the colony's success was still uncertain, making it, in the eyes of the Spanish, "not yet worth taking pains to deluge them."[50]

By 1610, it had become clear through the letters of Lee and Cornwallis that the Spanish threat to Virginia and Bermuda was still serious. In April 1611, Francis Cottington, Cornwallis's replacement in Madrid, informed Salisbury about a potential new plan to assault the Virginia colony.[51] As reported by the British ambassadors, one Francis Limbrey, an English pilot who had long been in the service of the Spanish, had recently departed for Virginia with a dozen ships.[52] Limbrey had been admitted into the Virginia colony after falsely claiming that his ship was damaged. After an English pilot named John Clark was sent over to the vessel, the Spanish ship departed with Clark as a hostage. In Havana, Clark was interrogated and apparently provided details of the English settlements in the Chesapeake, facts which John Digby, Cottington's

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[48] Cornwallis to Salisbury, 1 Jun. 1608, ibid., p. 178; and same to privy council, 18 Jun. 1608, ibid., pp. 194-5.

[49] Cornwallis to Salisbury, 7 Jul. 1608, ibid., p. 207.

[50] Anonymous to king, 1609-1610?, HMC Salisbury XXI, p. 288.

[51] Francis Cottington to Salisbury, 10 Apr. 1611, PRO SP 94/18/59; and same to same, 23 Apr. 1611, PRO SP 94/18/65.

[52] Lee to Salisbury, 29 May 1611, PRO SP 89/3/164. Lee to Salisbury, 8 June 1611, PRO SP 89/3/166. Same to same, 6 July 1611, PRO SP 89/3/170.

replacement, shortly afterward confirmed.[53] By February 1612, Digby could also report that 4000 Spanish and Portuguese soldiers were being amassed for an armada bound for Virginia.[54] The Council of State in Madrid, Digby noted in a letter to Dudley Carleton, the ambassador at the Hague, "held it very unfit that a company of voluntary and loose people . . . without the command, or interposition of their king, should go forward with that which might in time prove of so much inconvenience to the King of Spain."[55] Clearly, from the Spanish perspective these were activities that did not have continued royal authority or sovereignty. In October 1612, Digby had received some intelligence that the Spanish had overthrown the colony in Virginia, although the Spanish Court had (correctly) assured him that this was not true.[56]

By 1613, it looked as if Bermuda was seriously in jeopardy of attack. Digby reported to the king that "concerning the English plantation in the Islands of the Bermudas, the [Spanish Council of the Indies were] resolved that the English must be removed." He recommended that "the Company of the Bermudas may have warning to make such preventions as shall be necessary, for these advices . . . may be well relied on.[57] This time, at least, Digby was proven correct, because in March 1614, two Spanish galleons were sighted off the island. Digby later reported that the attempt to displant Bermuda failed only because of incompetence. The ship sent to discover the island and

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[53] These documents are at AGI Seville, Indiferente General 1867; 147/5/16-17, reprinted in I.A. Wright, "Spanish Policy Toward Virginia, 1606-12," AHR 25 (1920): 470-79. See also John Digby to Salisbury, 4 Nov. 1611, PRO SP 94/18/216. Digby to Salisbury, 13 Dec. 1611, PRO SP 94/18/238.

[54] Digby to Salisbury, 2 Feb. 1612, PRO SP 94/19/24. See also same to the king, dated between 21 Aug. and 5 Mar. 1613, PRO SP 94/19, arts. 139, 143, 147, 170, 263, 293.

[55] Digby to Carelton, 10 Oct. 1612, PRO CO 1/1/28.

[56] Digby to [Edmondes?], Nov. 1612, BL Stowe 173, fos. 222-3.

[57] Digby to the King, 3 Sep. 1613, PRO SP 94/20/33.

determine the fittest course for the Spanish fleet, could not find the island and turned back. This seems to have been the official Spanish account.[58] Ten years later, following a fight with a Spanish ship near Bermuda, an English captain boarded the enemy ship and there was "found in the captain's cabin a commission directing an attempt upon the Somers Islands to cut our people's throats there. The which, if it be true, I doubt not that the King . . . as much unto the Company . . . require some fortification."[59]

The preceding extended example of Spanish interest in, and British concern for, the earliest permanent British settlements in North America, is strong evidence that physical challenges to British sovereignty were likely to continue. Indeed, sufficient evidence exists to provide similar examples for British colonies in North America and the West and East Indies throughout the first three decades of the seventeenth century. These challenges involved not only continued enmity with Spain, but also with France, the Netherlands, and Portugal. For instance, concerns about the French had existed since 1608, when Sir Ferdinando Gorges reported French activity in the region that would become New England, which was part of the Virginia Company charter. Gorges informed Salisbury that "at this instant, the French are in hands with the natives, to practice upon us, promising them, if they put us out of the country . . . they will give them succor, against their enemies."[60] In the following year, George Carew, the ambassador in France, informed Salisbury that the French intended to build forts in northern New England and thereby make themselves "masters" of the region.[61] Two decades later,

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[58] Digby to Trumbull, 22 May 1614, BL Add. MS 72284, no. 135.

[59] Butler to Rich, 22 Feb. 1624, Rich Papers, pp. 225-6.

[60] Gorges to Salisbury, 7 Feb. 1608, HMC Salisbury XX, p. 56.

[61] Carew to Salisbury, 5 Apr. 1609, abstracted in CSP Col 2, p. 183.

during the Anglo-French war of 1628-32, the privy council received a number of warnings about French plans to attack British settlements in Newfoundland and New England. The French set sail twenty fully-equipped ships under the command of Captain Daniell of Dieppe, who arrived in Newfoundland in early 1630 and surprised the colony with "barbarous and perfidious carriage."[62]

Natives threatened the security of the British colonies as well. They attacked the Jamestown colony almost immediately after it was settled, and a low-intensity war continued between the English colonists and the Powhatan natives through to 1614. In a well-known incident that occurred in 1622, the natives attacked Jamestown, killing 350 settlers and, thereby, reducing the colony to two-thirds its size. Between about 1628 and 1635, the colonies in the West Indies were at risk from the Spanish because of the resumption of hostilities between the two states as the result of the Thirty Years' War. In 1629, the Spanish attacked St. Christopher's and expelled the British residents; sovereignty was later reestablished by the colonists who had fled into the hills during the altercation. As Karen Kupperman has recently shown, the colony on Providence Island was often attacked by the Spanish during its brief existence (1630-41), and the governors of the Company were well aware of the "dangers to be apprehended through the near neighbourhood of the Spaniards."[63]

In the East Indies, the British experienced similar challenges. Ever since the East India Company had begun trading in the Indonesian archipelago, it had received

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[62] Aug. 1628-Jan. 1630, PRO CO 1/4/56-57; CO 1/5/3, 46, 74, 80.

[63] The taking of St. Kitts is related in PRO SP 16/151/20, 51, dated Nov. 1629; the assaults on Providence Island are described in PRO CO 124/1-2 and Kupperman, Providence Island, ch. 7.

challenges from the Dutch, Portuguese, and Spanish, who were fighting for dominance in the region. The English attempted to solve this enmity by approaching the East Indian petty rulers (sabandars) individually, promising to trade fairly and reciprocally for commodities, and also offering veiled promises to protect the indigenous inhabitants from European conquest. Letters of this nature were sent by Elizabeth I in 1601 and by James I from 1606 to 1610.[64] As a result, fortified trading factories were settled in key places throughout the East Indies, particularly in Bantam, the heart of local British government. This subterfuge did not go unnoticed by the other European powers. Beginning in 1607, Lee and Cornwallis were reporting the efforts of the Portuguese and Spanish to displace the English from the region. In February, Lee informed Lord Salisbury that three "great carracks" and 3000 men were enroute to the East Indies, while the following month Cornwallis wrote that the Spanish were claiming a "great victory" over the English there.[65] The Dutch were more aggressive. In 1611, the East India Company informed Salisbury that the Dutch had forcibly appropriated all traffic in the East Indies.[66] John Jourdain, a captain in the service of the Company, informed his superiors in England that the Dutch were "mortal enemies" to the English in the region, a report that was echoed in considerable detail in his journal.[67] In 1615, the sabandars of the Banda Islands of Pulau

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[64] These letters are at BL IOR B/2, fos. 1-2, 53-5, 80-85, 174-5. Many of these are reprinted in George Birdwood, The Register of Letters &c of the Governor and Company of Merchants Trading into the East Indies, 1600-1619 (London: Bernard Quaritch, 1893), pp. 19-21, 104-9, 348-55, 388-95, 421-6.

[65] Lee to Salisbury, 5 Feb. 1607, PRO SP 89/3/80; Cornwallis to Salisbury, 7 Mar. 1607, CSP Col 2, p. 150.

[66] EIC (East India Company) to Salisbury, Nov. 1611, PRO CO 77/1/34.

[67] The letters, dated January and October 1614, are at BL IOR E/3/1/128 and E/3/2/174. Jourdain's journal is entitled "A true declaration of the Hollander's abuses offered to our nation in the East Indies from the year 1612," BL Sloane MS 858, fos. 104-8. On Jourdain, see DNB 10:1102.

Run, Pulau Ai, and Banda Neira sent a letter to King James, in which they complained of the violence committed by the Dutch toward them. They requested that the British crown help to protect their islands from the Dutch, in exchange for surrendering their sovereignty and trading exclusively with English merchants.[68] This accepted invitation resulted in belligerence between the English and the Dutch in the region into the 1620s. These islands would have to be well fortified and defended in order to keep them under the sovereign jurisdiction of the British empire.

Beginning in 1605 and, sporadically, straight on through to the late 1630s, then, there were multiple threats of physical assault on the British colonies in North America and the East and West Indies. Clearly, the crown would have to demonstrate, powerfully and tangibly, its effective control over the British empire for the highly pragmatic reasons of protecting the colonists from harm and retaining possession. If the Dutch, French, and especially the Iberian acts of insurgence and belligerence resulted in the removal of the British, the regions could have been declared abandoned in civil law. In such cases, the new occupant was usually declared the possessor, regardless of the circumstances surrounding the usurpation. Although in theory the law of nations, as described by Bodin, Gentili, and after 1625 Grotius, did offer some opportunities to redress such assaults committed during periods when war was not declared between two nations, in practice, given the tenuous nature of international law at this time, what worked in the balance was force and actual, physical possession. Also, the length and breadth of the Thirty Years' War, in which Britain, France, Portugal, and Spain were all a part, and the

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[68] "Letter from . . . the principal states of the Islands Banda," BL IOR B 2, fos. 333-4.

declared war between the British and the Dutch in the East Indies, meant that it was relatively easy for usurping countries to claim that they had secured the territory as the result of conquest during times of war, which was a legal possessory title. This was all the more reason for the Stuart monarchs to protect their growing empire through fortifications and soldiers.

PROTECTING NORTH AMERICA, 1604-1625

While not abundant, the evidence of the early-Stuart crown's concern that the British empire be well fortified and protected against attack is sufficient to establish the general point that it placed a high value on physical presence, effective control, and the need to employ its royal prerogative when it came to matters of sovereignty, possession, and territorial empire. The crown and the members of the privy council took these affairs very seriously, especially when it was perceived that the colonies were not in a ready state of defence. This was shown in letters patent and instructions to colonial governors and trading companies, in commissioning crown representatives to command in the colonies, and in authorizing the transportation of weapons, munitions, and soldiers. As we have seen in this and preceding chapters, all of these were expressions of the absolute royal prerogative.

In Stuart patents, the command given to Gilbert in 1578 to "encounter, expulse, repel, and resist" enemy forces was often repeated, but was normally supplemented by a further, more powerful directive regarding the defensive state of the colony. Patentees for territory especially in North America and the West Indies were ordered that men in the colonies were to be mustered and trained in the arts of war, fortifications were to be

erected, and weapons, ammunition, and other habiliments of war were to be readily available.[69] In the patent granted to the Virginia Company in 1606, for example, the crown commanded the company to ship sufficient "armour, weapons, ordnance, powder, victual, and all other things necessary for the said plantation for their use and defence there."[70] This order was repeated in subsequent Virginia Company patents, and in those which allowed for the establishment of Bermuda, New England, and Massachusetts. Cecil Calvert, in his 1623 patent for Newfoundland, was ordered to "build and fortify castles, forts, and other places of strength for the public and their own private defence."[71] Virtually the same wording is found in the 1637 patent for Newfoundland when the region was awarded to David Kirke and the Adventurers of Canada.[72] While during the reign of James I these commands were primarily for defensive purposes, the more belligerent royal policies of Charles I can be seen in the patents issued after his accession. Thomas Warner's 1625 patent to the West Indies ordered the use of "force and strong hand to repress and annoy all such as shall in hostile manner attempt . . . to possess or invade" the islands.[73] Perhaps because of its location in the West Indies, the wording in the Providence Island patent was more specific. It ordered the erection of "forts, fortresses, platforms, castles . . . and all fortifications whatsoever. . . . And the same and every of them to fortify and furnish with ordnance, powder, shot, armour, and all other weapons, ammunition, and habiliments of war, both for defence and offence

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[69] See especially Quinn, NAW, 5:194; PRO CO 38/1; CO 5/902, p. 15; CO 195/1, f. 135v; CO 124/1, f. 5v.

[70] First Virginia Company patent, Quinn, NAW, 5:194.

[71] PRO CO 195/1, p. 5.

[72] Ibid., p. 18.

[73] PRO CO 1/3/44.

whatsoever."[74] The increasing urgency of frontier defence in the early Stuart period was directly proportional to the challenges the crown received during this time.

These concerns were reinforced in the instructions issued to the trading companies and colonial governors, which were often prepared either by the privy council directly or by a crown-appointed body responsible for transoceanic affairs. A chief concern of the authors of these documents was that the colony be placed in a strategic location that prioritized defensive capability over economic viability. In the instructions issued by the Royal Council of Virginia in 1606, which might have been written by the younger Richard Hakluyt on behalf of the crown, it was recommended that Captain Newport (the sea captain hired to transport the colonists) should place a small store of equipment and ten men at the mouth of the river, so that they could give warning if any foreign fleet arrived. The remainder of the colony was to be planted one hundred miles further upriver, where a fort was to be built at the narrowest point. Thus fortified and properly warned by the lookout post upriver, the English could successfully defend themselves from the enemy and retain effective occupation of the region. Regarding the natives, the instructions further warned the Company not to establish the colony too close to dense woods, because these could be used to the natives' advantage, and not to allow natives to inhabit in the one hundred miles between the fortified settlement and the seacoast, for fear that they would guide foreigners to the colony.[75] It was because of these instructions that the Jamestown colony was settled on 14 May 1607, after the first potential site,

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[74] PRO CO 124/1, f. 5v.

[75] "Instructions given by way of advice," [Nov. or Dec. 1606], reprinted in Philip L. Barbour, ed., The Jamestown Voyages Under the First Charter, 1606-1609, 2 vols. (Cambridge: Hakluyt Society, 1969), 1:50-51.

Archer's Hope, was rejected. While the latter location was too close to shallow water for good defensive measures, the former was chosen because the neck of the peninsula could be fortified against the natives, because there was a clear view downstream to watch for a foreign fleet, and because ships could be anchored close to the shore for quick access.[76]

The settling of Bermuda was also due, in large part, to its key defensive position, which helped the fledgling colonies on the Atlantic seaboard entrench themselves with less fear of usurpation. As is well known, the English stumbled upon the Bermuda islands by accident. Somers and Gates were tossed there by a hurricane and were forced to spend several months building new ships before they sailed to Virginia.[77] Until this time, the territory had generally been feared by all Europeans because of the frequency of hurricanes and other strange phenomena. In the sixteenth century, stories abounded of lost ships, and to the Spanish it was Daemonum Insulam, the "Island of Devils."[78] This fear worked in Britain's favour. Strategically, Bermuda was located between England and Virginia and the trade winds and currents demanded that ships journeying toward the northeast coast of North America had to first come near Bermuda before veering west. To the English this meant that Bermuda could be a base for a preemptive strike against a Spanish armada, such as that which they had been warned about in 1607. In addition to its strategic advantages, Bermuda also had natural fortifications. The whole of the islands were surrounded by a dense coral reef through which vessels could only pass in two

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[76] George Percy, "Observations gathered out of a Discourse. . . ," in Barbour, ed., The Jamestown Voyages, 1:138.

[77] The best contemporary description is book five of Smith, The Generall Historie, III: 335-391.

[78] For the role of Bermuda in the sixteenth century, see D.B. Quinn, "Bermuda in the Age of Exploration and Early Settlement," in European Approaches to North America, 1450-1640 (Aldershot: Ashgate Variorum, 1998), pp. 231-53. On the Spanish views, see the letter of the Earl of Northampton to the King, 2 Aug. 1612, PRO SP 14/70/23.

easily defensible locations.[79] Of one of these locations, Castle Harbour, Silvester Jourdain wrote in 1610 that "the coming into it is so narrow and straight between the rocks as that it will with small store of munition be fortified and easily defended with all advantage the place affords against the forces of the potentest king of Europe."[80] Richard Norwood, the surveyor sent to Bermuda in 1618, could report that "the country is round about environed with Rocks . . . by reason of [which] the country is very strong."[81] In his famous map, Norwood sandwiched a disproportionately-large image of Bermuda between Virginia on the west and Britain on the east, a clear statement of his belief that the island provided safety and protection for travellers to Virginia, who could therefore remain in effective occupation of their colony. It was largely because of all of these advantages that Bermuda was added to the third Virginia Company charter in 1612.

Like Virginia and Bermuda, Calvert's colony in Newfoundland was propagandized as a strategic location that could work to the advantage of the British.[82] In a treatise that was published at the command of the privy council in 1620, Richard Whitbourne described Newfoundland as "fit for harbour and relief, upon the way between us [ie. England] and Virginia, and consequently of advantage to us in any action that may

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[79] Bermuda's role in defending Virginia has been discussed, though briefly, in C. Walton Brown, Jr., "Colonising Bermuda—Defending Virginia," History Today 39 (1989): 36-41; and also in John G. Reid, "European Expectations of Acadia and the Bermudas, 1603-24," Histoire Sociale/Social History 20 (1987): 327-8.

[80] Silvester Jourdain, A Discovery of the Bermudas, Otherwise Called the Isle of Devils [1610], in L.B. Wright, ed., A Voyage to Virginia in 1609 (Charlottesville: U.P. of Virginia, 1964), pp. 103-16, quotation on p. 113.

[81] Richard Norwood, "Relation of Summer Ilands," in Purchas, Pilgrimes, p. 1798.

[82] For secondary accounts of Newfoundland's strategic importance, see G.S. Graham, "Newfoundland in British Strategy from Cabot to Napoleon," in R.A. MacKay, ed., Newfoundland: Economic, Diplomatic, and Strategic Studies (Toronto: Oxford U.P., 1946), pp. 245-64; and Reid, "European Expectations of Acadia and the Bermudas, 1603-24."

engage us, either by way of offence or attempt, in regard of those parts of the world."[83] Not only did Newfoundland lay "near half the way between *Ireland* and *Virginia*," but it also "lyeth so near the course which the Spanish ships, that come from *Mexico*, *Havana*, and other places of the *West-Indies*, hold in their return from thence, that they often sail within 190 leagues from the South part thereof."[84] In addition, Whitbourne believed that only the current peace treaties with England, Spain, and France kept those countries from planting, but that any breach of peace would lead to those countries settling and fortifying the region.[85] In a set of instructions given to the Newfoundland settlers in 1623, Lord Falkland, a privy councillor and chief investor in the Newfoundland Company, ordered that the settlement take place in the south east part of the island, the area that commanded the best view of the ocean and, therefore, of an incoming foreign enemy.[86]

The crown's involvement was also quite evident in the expectation that the colonies would erect, staff, and equip strong fortifications and use whatever means necessary to protect the monarch's sovereignty in the region. To this end, they commissioned experienced military officers, oversaw the erection of fortifications, and authorized the transportation of munitions and soldiers. Within days of settling, the Jamestown colony was attacked by natives and a dozen colonists were severely wounded, an event that gave further encouragement to Edward Wingfield, president of the colony, to order that the fort be pallisaded, the ordnance mounted, and the men armed and trained

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[83] Whitbourne, Discourse and Discovery of New-found-land [1620], in Cell, Newfoundland Discovered, pp. 109-10.

[84] Ibid., pp. 116, 127.

[85] Ibid., p. 128.

[86] Cell, Newfoundland Discovered, p. 244.

in the use of weapons. By the middle of June, the fort was completed.[87] The Jamestown fort was described by William Strachey, who was secretary of the colony: "A low level of ground . . . on the north side of the river is cast almost into the form of a triangle and so palisaded. . . . At every angle or corner, where the lines meet, a bulwark or watch tower is raised and in each bulwark a piece of ordnance or two well mounted. To every side . . . is a settled street of houses. . . . In the midst is a market place, a store house, and a corps de garde. . . . And thus enclosed . . . with a palisade of planks and strong posts . . . the fort is called, in honour of His Majesty, Jamestown.[88] Strachey's description suggests that the fort resembled in more simplistic form the designs of Ive and Waymouth. Thus constructed, the fort protected the English from natives, who, as Hakluyt had forecast, were reluctant to approach the fort once it was mounted with impressive weapons.[89]

On the heels of the information from the British ambassadors in Spain and Portugal, in about 1608 the crown authorized the transportation to Virginia of numerous habiliments of war. Four hundred "jerkins or shirts of mail," 2000 "iron skulls", fifty "murdering pieces", 2000 "pistols, daggers, &c.," and twenty barrels of powder were sent to the colony to facilitate its defence.[90] In addition to sending along this weaponry, the crown further required the colonial government in Jamestown, now headed by Captain

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[87] On early fortifications in Virginia, see the study by John Shea, The Virginia Militia in the Seventeenth Century (Baton Rouge, La: Louisiana State U.P., 1983), pp. 5-10.

[88] William Strachey, "A true reportory of the wreck and redemption of Sir Thomas Gates," reprinted in Louis B. Wright, A Voyage to Virginia in 1609: Two Narratives (Charlottesville: U. of Virginia P., 1965), pp. 79-81. See also the description of the fort in Percy, "Observations," in Barbour, ed., Jamestown Voyages, 1:143.

[89] John Smith, The General History of Virginia, New England, and the Summer Isles. . . [London, 1624], reprinted in Philip L. Barbour, ed., The Complete Works of Captain John Smith (1580-1631), 3 vols. (Chapel Hill, NC: U. of North Carolina P., 1986), 2:138-9.

[90] BL Cotton MS Otho E.X, f. 121. The document is undated, but 1608 seems likely based on its placement within the manuscript volume.

John Smith, to train the colonists for military service. By the time Smith left Virginia for England in 1609, he was assured that at least 100 of the 500 colonists were "well trained and expert soldiers."[91] Smith had also improved the fort, changing its structure to a pentagonal shape, stronger than the earlier triangular form and capable of repelling invaders from more angles.[92] Given his experience defending Virginia, it is no wonder that Smith was later employed by the crown as the "admiral" of New England.

Also partly because of the challenges from Spain, when the Virginia Company patent was reissued in 1609 the colonial government was replaced by a military regime under a rigid hierarchical system and governed by martial law. While the principal government of the colony rested in the Company headquarters in London, the day-to-day governing was placed into the hands of experienced military officers commissioned by James I. The new regime included Lord De La Warr (Thomas West), lord governor and captain-general, Sir Thomas Gates, lieutenent-general, Sir George Somers, admiral, and Sir Thomas Dale, high marshal. The titles given to these men make clear the style in which the colony was to be governed.[93] These were all men of long military experience, mostly in the Netherlands, and their express employment through a royal letters patent is a good example of the crown's concern for the safety of the colony. In a set of instructions given to the new leaders by the crown, fortifications were emphasized: "your defence must be upon advantage of the place . . , for forts have no other use but that a few men may defend and dispute their footing with them against a greater number and to win

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[91] This is described well in Shea, The Virginia Militia, pp. 10-12. The best, though biased, contemporary account of Smith's presidency and the battles with natives is book 3 to Smith, General History, 2:136-227.

[92] See Smith, Generall History, 2:181.

[93] See the DNB entries especially for Gates (7:943-4) and De La Warr (sv. West, Thomas, 20:1255-8).

time which, if you can do, a stranger cannot long abide where he must bring all his relief with him."[94] Gates and Somers, who were to arrive before De La Warr and begin instituting the new regime, were shipwrecked at Bermuda and De La Warr set out to Virginia under virtually the same set of instructions.[95] He arrived at almost the same time as Gates, who had made his way to Virginia in new ships built in Bermuda (where Somers died).

The new military regime was effective. The settlers were divided into six companies of fifty men, each commanded by a captain; they were trained and exercised in warfare and the use of weaponry; and a military command structure was imposed from captain-general through to ensign in the officer ranks and sergeant to private in the non-commissioned ranks.[96] Forts were swiftly improved and new ones were built, and the main colony was removed to Henrico, which was further away from the coast and more easily defensible against attacks from the sea. The Virginia Company propagandized this second Virginian experiment in a military manner, appealing directly to settlers who were experienced as soldiers or skilled in the art of fortification. By 1610, the Company could claim that "by this provision," that is, the institution of a military regime by the crown, the colony was now "seated as a bulwark of defence, in a place of advantage, against a stranger [sic] enemy." The colony was, moreover, more suited to defend "the honour of

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[94] "Instructions, orders and constitutions by way of advice . . . propounded to Sir Thomas Gates," BL Add. MS 21993, fos. 178v-89v, quotation on f. 182r. These are reprinted in Quinn, NAW, 5:212-18.

[95] De La Warr's instructions are also part of BL Add. MS 21993, fos. 178v-89v; reprinted in Quinn, NAW, 5:218-21. A passage at the bottom of the document makes clear that Gates's instructions remained in force.

[96] Shea, The Virginia Militia, pp. 14-16.

the king", as it could maintain his sovereign rights to the region.[97] In another pamphlet, the Company assured settlers that new and stronger forts had recently been erected; while "our forts assure the inhabitants," they "frustrate all assailants."[98] The best contemporary document showing the effectiveness of this military regime is the "Laws divine, moral and martial," promulgated by deputy governor Dale in June 1611, after De La Warr's departure.[99] Through this document, Dale instituted rigorous martial law with particularly sanguinary punishments, including whipping, imprisonment, and, in the case of a third infraction to the colony's rules, death.[100] These measure ensured that there would be no surprise attacks from the Spanish, and that the colony would remain in a ready state of defence. The existence of martial law also shows, as Hale later confirmed, that it was the king's laws that operated in the colonies, not the common law of England.

The crown showed itself to be similarly concerned about Bermuda's defensive capabilities. The first governor was Richard Moore, a master carpenter, architect, and builder, who was commissioned as a first priority to construct strong fortifications to be situated at key locations throughout the islands.[101] He had each man in the colony subscribe to a series of articles, of which the last affirmed that "We do herein . . . promise . . . that if at any time hereafter any foreign power shall attempt to put us out of this our

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[97] Governors and Councillors for Virginia, A True and Sincere Declaration of the Purpose and Ends of the Plantation Begun in Virginia (London, 1610) (STC 24832), sig. A4r and pp. 6-9.

[98] Council of Virginia, A True Declaration of the Estate of the Colonie in Virginia (London, 1610) (STC 24833), pp. 50-52.

[99] This document is discussed in Darrett B. Rutman, "The Virginia Company and its Military Regime," in Darrett B. Rutman, ed., The Old Dominion: Essays for Thomas Perkins Abernethy (Charlottesville: U.P. of Virginia, 1964), pp. 1-20.

[100] [Thomas Dale], Virginea Britannia. Lawes Divine, Morall and Martiall, etc. (London, 1612). These were printed by William Strachey, secretary to the colony, upon his return to England in 1612.

[101] See Allen Mardis, Jr., "Richard Moore, Carpenter," VMHB 102 (1984): 416-22.

lawful possession, not cowardly to yield up the same, but manfully to fight as Englishmen, for the defence of the Commonwealth we live in, and Gospel we profess, and that while we have breath we will not yield to any, that shall invade us upon any conditions whatsoever."[102] Clearly, these men were not farmers. By the year's end, the Virginia Company, fearful of invasion because of the ambassadors' reporting, sent thirty more men over from Virginia who could help to, in John Smith's words, "prepare with all expedition for their defence against the Spaniard."[103]

Moore was diligent in building the fortifications. He apparently drove the men so hard to complete the building that they were given no time for fishing or planting, which later caused a food shortage. But the hardships paid off: according to John Smith, between 1612 and 1615, Moore "built or laid the foundation of eight or nine Forts, called the King's Castle, Charles Fort, Pembroke's Castle, Smith's Fort, Pagit's Fort, Gates' Fort, Warwick's Castle, Saint Katherine's Fort, etc. mounting in them all the Ordnance he had."[104] The forts were brought to completion by two successive governors, Daniel Tucker and Nathaniel Butler. In 1617, Tucker (1615-19) wrote to Nathaniel Rich, a large shareholder in the Bermuda Company, that "these islands above all places in the world would most terrify the Spaniard," and writing about a year later, Tucker assured his benefactor that his time spent in fortifying would be well approved of, "for thereby we are

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[102] "A copie of the articles which Master R. More . . . propounded to the Company that were there with him . . . Anno 1612," in Purchas, Pilgrimes, 4:1795.

[103] Smith, The Generall History, p. 355.

[104] Smith, The Generall History, p. 354.

. . . strengthened against an enemy."[105] Certainly, the drawings of the forts provided by Smith in his General Historie, though undoubtedly more elaborate than were the actual forts, provide some evidence of just how important the multiple fortifications were to the character of the colony. Smith made it abundantly clear that the Bermudas were defined by their defensive capabilities and were not easily subject to usurpation or loss or occupation.[106]

New England was similarly fortified to protect against attack and defend Stuart sovereignty in the region. In 1622, the privy council authorized the master of the ordnance to transport thirty heavy pieces of armoury to New England. Thus equipped with crown-authorized munitions, the New England Company set about fortifying their territory. As reported by William Bradford in his History of Plymouth Plantation, in the summer of 1622 the colonists "built a fort with good timber, both strong and comely, which was of good defence, made with a flat roof and battlements, on which their ordnance were mounted, and where they kept a constant watch."[107] By 1630, Francis Higginson, John Smith, and residents in New England, could report that the colony had sufficient ordnance and fortification to "keep out a potent Adversary."[108] Writing in 1634, William Wood reported that every man above fourteen years of age was trained in

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[105] Daniel Tucker to Nathaniel Rich, 22 May 1617, in Vernon A. Ives, ed., The Rich Papers: Letters From Bermuda, 1615-46 (Toronto: U. of Toronto P., 1984), p. 39; and same to same, 10 Mar. 1618, ibid, p. 98. Hereafter Rich Papers.

[106] Smith, The Generall History, pp. 335-7.

[107] William Bradford, History of Plymouth Plantation [1630-48], ed. William T. Davis (New York: Charles Scribner's Sons, 1908), p. 138.

[108] [Francis Higginson], New England's Plantation (London, 1630) (STC 13449), sig. D1r. See also John White, The Planter's Plea (London, 1630) (STC 25399), sig. F2v; and John Smith, Advertisements for the Unexperienced Planters of New England (London, 1631) (STC 22787), sig. B2v, for additional evidence of the importance placed on fortification.

"military arms" and exercised in their use every three weeks.[109] In maintaining effective control in this way, Bradford was able to suggest that in 1635 the colonists in New England were successful in "maintaining possession for his Majesty" at a time when the French and Dutch were endeavouring "to divide the land between them."[110]

In addition to concerns for the strategic placement of colonies, the appointment and supervision of experienced commanders, and the authorization of the transportation of munitions and soldiers, the British crown became even more involved in colonial defence when it came to understand that the fortifications or military regimes were ineffective. In Virginia, the regime under Thomas Dale was initially so effective that the colonists swiftly prosecuted the war with the Powhatan natives and, by 1614, had become less concerned about self-defence. Colonists scattered to find the best land, while the fortified settlements were virtually abandoned, the companies dissolved, and military drill discontinued. The massacre of 1622 proved this lackadaisical attitude to be a costly mistake, and it encouraged the crown to once again assert its royal authority.[111] Writing to Dudley Carleton a few months after the massacre, John Chamberlain blamed the event on the apathy of the settlers, who brought the tragedy upon themselves "through their own

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[109] William Wood, New England's Prospect (London, 1634) (STC 25957), pp. 52-3.

[110] Bradford, History of Plymouth Plantation, p. 314. See also Jack S. Radabaugh, "The Militia of Colonial Massachusetts," Military Affairs 18 (1954), reprinted in A.J.R. Russel-Wood, ed., Local Government in European Overseas Empires, 1450-1800, Pt. 2 (Aldershot: Ashgate-Variorum, 1999), 371-88.

[111] Edward Waterhouse, A Declaration of the State of the Colony and Affairs in Virginia (London, 1622), reprinted in Susan M. Kingsbury, ed., The Records of the Virginia Company of London, 4 vols. (Washington, 1906-35), 3:550-6. This is the only significant primary source of the massacre. It has been examined in detail by historians, especially: William S. Powell, "Aftermath of the Massacre: The First Indian War, 1622-1632," VMHB 66 (1958): 44-75; and Alden T. Vaughan, ""Expulsion of the Salvages": English Policy and the Virginia Massacre of 1622," WMQ, 3d ser., 35 (1978): 57-84. Also see Shea, The Virginia Militia, pp. 25-7.

supine negligence in living in scattered and straggling houses far asunder." Chamberlain was especially distressed because "no other nation would have been so grossly overtaken."[112] If, in the previous few years, the crown had turned its attention away from Virginia, the massacre reminded it that effective control was still the root of possession. The privy council, therefore, gained from the king permission to transport additional arms to Virginia, sent Richard Norwood, a man who had "proven his skill in setting out the form of towns and fortifications" to Virginia to begin strengthening the colony, and began an investigation into its defensive state, which was undertaken on-site by John Harvey.[113]

Early in 1623, Nathaniel Butler reported in his "Unmasked face of our colony in Virginia" that the fortifications were structurally weak and unmanned, and that they could not protect against native or European assault.[114] A few years earlier, Butler had expressed similar concerns when he was governor of Bermuda (1619-22). Although he approved of the fortifications, he felt the Company had slighted his demands for munitions, without which "the best forts you have, in the case they are now, are little better than "scare-crows"."[115] In a list of grievances of the Council of Bermuda delivered to the Virginia Company in October 1622, Butler complained that the lives of the settlers were in jeopardy because of the lack of munition, which was only sufficient for a three-hour fight. And although there were by this time eleven forts and fifty-three pieces of

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[112] Chamberlain to Carleton, 13 July 1622, PRO SP 14/132/38. The event was also reported by Sir Thomas Wilson the next day, PRO SP 14/132/41.

[113] PRO SP 84/111/227.

[114] Nathaniel Butler, "The unmasked face of our colony in Virginia as it was in the winter of the year 1622," PRO CO 1/3, fos. 30-39v.

[115] Nathaniel Butler to Rich, 12 Jan. 1621, Rich Papers, p. 229.

ordnance, there was only one gunner in the Company's pay.[116] To be sure, none of these misgivings were evident in Smith's artwork. In an undated manuscript delivered to the crown probably about the same time, Butler emphasized the importance of Bermuda to British interests. Not only did it have good harbours and enough food for a fleet of ships, it was also situated in such a way that Spanish ships leaving South America or the Caribbean had to pass within thirty leagues. A few ships waiting in harbour at Bermuda, therefore, could attack and severely weaken the Spanish fleet.[117]

Basing his knowledge almost solely on Butler's reporting, the king expressed his displeasure and made colonial defense a fundamental issue to be addressed by the Jones Commission.[118] Indeed, even more than concerns about popular government, it was the poor defensible condition of the colonies, which had led, in the case of Virginia, to such a brutal attack on his sovereignty, that induced James I to assemble the commission. The Jones commission commanded Lords Conway and Carew, masters of the ordnance, to "take into consideration the security and safety of the place and persons that shall be in Virginia; what forts and places of strength are to be erected and maintained there: and an estimate of the cost and equipment to maintain them."[119] As this directive suggests, by April 1625, only one month before Charles I officially proclaimed Virginia a royal colony, the privy council assumed all authority for the defence of the colony, including the financial encumbrances. It shortly afterward sent over soldiers, arms, and munitions

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[116] "Grievances of the Council of Bermuda," Oct. 1622, Rich Papers, p. 237.

[117] Butler, "A design upon the West Indies fleet by way of the Bermudas and how to be managed," BL Add. MS 41616, fos. 29v-31.

[118] 28 Apr. 1623, PRO PC 2/31, p. 675.

[119] Privy council to John Harvey, 24 Oct. 1623, PRO PC 2/32, p. 137; Same to Conway and Carew, 22 Oct. 1624 and 22 Apr. 1625, PRO PC 2/32, p. 474 and PRO CO 1/3/38.

specifically to fortify the "country" against a foreign enemy.[120] The Commission assured James I that Bermuda was "of singular importance for preservation and defence of the colonies in Virginia, And [in] sundry ways commodious and beneficial to the rest of your Majesty's dominions." It concluded that the chief reason the Somer's Island Company could not adequately maintain the fortifications was because of the excessive taxes on tobacco and it recommended that the taxes be reduced so that the defences could be kept up.[121] In this instance, then, the crown was willing to sacrifice its financial well-being to ensure that Bermuda could remain strongly fortified and effectively occupied.

Finally, the new governors in Virginia were given strict instructions. In March 1626, Charles I commissioned Sir George Yeardley to be governor of Virginia, succeeding Sir Francis Wyatt. He was ordered to "daily expect the coming of a foreign enemy", and, therefore, to use diligence in ensuring that the colony was always in a ready state of defence in order to protect "the safety of the said colony, and our honour."[122] The same set of instructions was given to John Harvey in August 1628 when he was appointed governor. Within a year, Harvey had surveyed the entire region, made substantial recommendations to the privy council, and received permission and funding to proceed with his plans for fortifying the colony.[123]

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[120] 24 Oct. 1625, PRO PC 2/33, f. 147; and 15 Apr. 1626, PRO PC 2/33, f. 300(b).

[121] Commissioners' proposal to James I, June 1623, Rich Papers, pp. 268-9.

[122] Yeardley's commission of 4 Mar. 1626 is at PRO CO 5/1354, f. 258; his further instructions of 19 Apr. 1626 at PRO PC 2/33.

[123] Harvey's instructions of 6 Aug. 1628 are at PRO PC 2/38; his efforts at fortifying shown in PRO CO 1/5/22-3 (Aug. 1629).

EXEMPLAR: THE CASE OF THE BANDA ISLANDS

Halfway across the world, in the Indonesian archipelago, similar concerns to maintain effective occupation through fortifications and other means of defence were evident. Indeed, the obscure events which occurred in the tiny Banda Islands between 1615 and 1622 show, in particular, the importance of the principles which underpinned frontier fortification. When the petty rulers of the Banda Islands agreed in 1615 to surrender their sovereignty to James I, the king commissioned Captain Nathaniel Courthope, an experienced military commander. Courthope was ordered to occupy the island of Pulau Run, which by virtue of its small size was a good strategic location, fortify it, and hold it indefinitely.[124] On 23 December 1616, Courthope arrived at the tiny island and drew up the articles of cession for Pulau Run and its neighbours Pulau Ai, Wayre, and Rosinging.[125] When this was done, on Pulau Run Courthope's men "spread Saint George upon the island and shot off most of our Ordnance," two clear and tangible expressions of sovereignty designed to show England's effective occupation to the Dutch.[126] Courthope ordered that six pieces of ordnance be put ashore, three to be mounted on a platform atop a cliff and three to be mounted in a strategic location that commanded the "Road," the only sailing route linking the Banda Islands. By January 1617, Courthope's occupation was challenged by the Dutch, who also captured two of his

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[124] Most of what follows is from Courthope's (or Courthopp) journal, that of Robert Hayes, his second in command, and a series of letters written between Courthope and other members of the East India Company, all of which appeared in Purchas, Pilgrimes, 1:664-683. On Courthope, see DNB 4:1273 and Giles Milton, Nathaniel's Nutmeg or, The True and Incredible Adventures of the Spice Trader who Changed the Course of History (New York: Farrar, Straus & Co., 1999), a popular biography short on analysis but still the most comprehensive work on the subject.

[125] "The contents of the surrender of the Islands of Pooloway and Poolaroone," Purchas, Pilgrimes, 1:701-2. "The surrender of Rosinging and Wayre to his Majesty," Purchas, Pilgrimes, 1:702-3.

[126] "The Journal of Master Nathaniel Courthop," Purchas, Pilgrimes, 1:664 (hereafter Courthope, Journal.)

ships, warned him of plans to remove the English settlers from the islands, and apparently doubled their strength in preparation for the ensuing battle.[127] Courthope, following his commission, refused to give up the islands, for in doing so, he would "turn traitor unto my King and Country, in giving up that right which I am able to hold; and also betray the Country people, who had surrendered up their land to our King's Majesty."[128] In order to "prolong time for our better fortification," Courthope ordered that ordnance be mounted on Neylackey, a speck of an island to the north-east of Pulau Run that was on the "Road", and that would serve as a lookout post and early warning for Courthope should the Dutch attack.[129]

In June, the Dutch General, Laurens Reael, arrived with ships on the coast of Neylackey. They were welcomed, Courthope writes, with "fourteen shot," and Reael departed. A few months later, Reael informed Ball that he had ordered his men to "attack with arms vehemently the English, French, and others whoever they are" who traded anywhere in the East Indies, including the Banda Islands.[130] Courthope continued to hold out, requesting that George Ball, president of the Council of India, send additional men and equipment.[131] The three ships Ball sent were captured by the Dutch, and Courthope marvalled that so small and weak a force was sent.[132] He had good reason for this

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[127] Ibid., p. 665.

[128] Ibid., p. 666.

[129] Ibid., p. 665.

[130] William Carmichael to the king, 5 Apr. 1617, PRO SP/84/77/8; Lucas Antheuniss to Thomas Roe, 21 Mar. 1617, BL IOR E/3/4/461; Nicholas Ufflete to George Ball, 24 Jul. 1617, BL IOR E/3/5/514. Reael's declaration and related material are in BL IOR I/3/XC(a) (Nov. 1617, order to attack English) and IOR I/3/XCI (Nov. 1617, Reael's letter to Ball); and IOR I/3/XCIX (early 1619?, account of the war between England and the Netherlands).

[131] Courthope to Ball, 24 Apr. 1618, BL IOR E/3/6/644.

[132] Courthope, Journal, pp. 666-7 and Courthope to Ball, 24 Apr. 1618, BL IOR E/3/6/644.

concern: he was reduced now to thirty-eight men and believed that a great force of Dutchmen were assembling to invade Pulau Run. Courthope received another letter from Ball in early 1619 which gave some small cause for hope. Ball informed him that the privy council in England had decided to send a fleet of eleven ships, under command of Sir Thomas Dale (recently returned from Virginia), to prosecute what had by then become a declared war with the Dutch. Until the fleet arrived, Courthope was commanded to continue in his efforts, placated with the promise that "the Honourable Company will highly reward you and all those that faithfully and truly do their endeavour."[133] The only advantage of the war for Courthope was that it diverted Dutch attention to other parts of the East Indies, leaving Pulau Run, for the present, secure in its limited defences. Courthope could not have known that a treaty of peace was signed in England late in 1619, and it took a while for the news to reach the East Indies.

Courthope was shot and killed by the Dutch in October 1620 when, for the first time in three years, he broke cover from Pulau Run and rowed over to the neighbouring island of Lonthor to finalize the details of its surrender to James I.[134] His second in command, Robert Hayes, took charge, and sent to Lonthor a small supply of men and three pieces of ordnance to begin the fortification and defence.[135] This would ensure through effective occupation that the island was under British sovereignty. The Dutch were not willing to allow the surrender of Lonthor, which they believed to be in their "possession", and invaded the island in March 1621, taking the English settlers prisoner.

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[133] Courthope, Journal, p. 676.

[134] This story is reported by Robert Hayes, who continued Courthope's Journal in Purchas, Pilgrimes, 1:679-83 (hereafter Hayes, Journal).

[135] "Translation of the surrender of Lantore," Purchas, Pilgrimes, 1:703.

They next swarmed Pulau Run, pulled down the fortifications, ordnance, and other signs of British dominion, and by May 1621 the island's inhabitants signed articles of agreement ceding their land to the Dutch. Hayes and his men sailed away to Amboyna. Despite what must have been a humiliating defeat for the English, the story of Courthope, Hayes, and their efforts on behalf of the King of England is a valuable one. Courthope, in his eyes, received a lawful surrender of sovereignty of both Pulau Run and Pulau Ai, the latter of which was already under the military occupation of the Dutch. Pulau Run, on the other hand, was still unoccupied by Europeans and, therefore, Courthope made this his base of operations, setting up fortifications, mounting ordnance, and governing as a military commander. His continued presence and his ability to assert and maintain his monarch's sovereignty represented virtually an unassailable right of dominion. Being the lawful possessors by virtue of effective control, any usurpation of the territory by Europeans would not, at least under the precepts of the law of nations, be legal.

When the issue of the Banda Islands came up in negotiations between the English and the Dutch in 1622, these principles were asserted. Both sides agreed that Pulau Run had been lawfully surrendered to King James in 1616, was physically inhabited, and that the English had met the legal requirement of defending the territory from an invading force; their lengthy, undisturbed possession and effective occupation gave them dominion. The island was, therefore, returned to the British crown, in whose custody it remained until 1667 (when it was ceded to the Dutch in exchange for New Amsterdam in North America.) Pulau Ai and Neira, though, regardless of their surrender to the English, had never been in English possession because there was no effective control, giving the English an inchoate possessory title that was never completed. These islands were not

returned to England. The decision regarding Lonthor was that, although the English had lawfully received sovereignty, taken physical inhabitation, and begun fortifying the island, they did so after the Accord of 1619 was signed, which provided for joint trade and defence of the East Indies. In this case, it was determined that the English forts on Lonthor would be taken down, with new ones to be erected in their place and the island to be held jointly by both countries.[136] To be sure, this amicable negotiation did not end the enmity between England and the Netherlands in the East Indies. But the case of the Banda Islands is a good example of the importance placed on actual, physical presence and defensive measures in new found lands, as the root of sovereignty.

CONCLUSION

Much corroboration for the preceding arguments is found in Karen Ordahl Kupperman's recent study of Providence Island, which includes a chapter on "Military Requirements and the People's Response."[137] Using principally the Providence Island colonial entry books for 1630-41,[138] Kupperman has shown that the colonial governors and officers, especially Philip Bell, Samuel Axe, and William Rudyerd, were men of long military experience, hired because of the importance placed on defence and effective control. They were given instructions to "take special care of fortifying the Island in all places which you conceive to be most dangerous" because "there is no peace between us [ie. the peace treaty between Britain and Spain signed in 1630] in the Latitude wherein

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[136] Order of the Privy Council, 1 Aug. 1622, PRO CO 77/2/20; "Order of His Majesty concerning Pooloroon and Lantar," Sep. 1622, PRO CO 77/2/21.

[137] Kupperman, Providence Island, ch. 7.

[138] PRO CO 124/1-2.

you are."[139] Thus forewarned, Kupperman writes, they "expected all hands to set to work on the fortifications under their direction immediately on arrival" but were always concerned that the building proceeded too slowly because they were "environed with enemies."[140] Additional men — including Dutch engineers, who were believed to be the most skilled military architects in Europe — and weapons were sent from England throughout 1630-36. When the Spanish attacked the island in 1635, the colonists were able to repel the enemy and provide a base of operations for the ensuing, albeit brief, Anglo-Spanish conflict. It was the colonists' ability to maintain effective occupation of the island that guaranteed continued British sovereignty, and when the Providence Island Company dissolved in 1641, this was due more to internal political factions than to the poor physical state of the colony.

It is clear, therefore, that the monarch and his or her crown representatives were concerned about, and proactive in, the defensive capabilities of the colonies within the British empire. The crown issued letters patent with specific instructions regarding fortifying and protecting its sovereignty. It also instructed the strategic placement of colonies. Perhaps what is most interesting about such strategic efforts in North America was the structural hegemony they suggested for the British empire. The combined strength of Newfoundland to the north, Virginia to the south, and Bermuda to the east, meant that the multitude of British colonies on the North American Atlantic seaboard were protected, including the New England colonies and Maryland, which were within this defensive triangle. The three strategically-placed colonies could protect not only

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[139] PRO CO 124/1, fos. 13-19.

[140] Kupperman, Providence Island, pp. 192-93.

themselves but also the sovereignty of the British monarch and the lives of British subjects in other territories in the empire. The crown's sovereignty in individual colonies was further protected through the its commissioning of experienced military officers who knew the priorities of defence and the current teachings of the military revolution. It also exercised its prerogative to authorize the shipping of weaponry, munitions, and soldiers, and took the necessary steps when it was perceived that the colonies were not sufficiently fortified. By using such generally unobtrusive, but nonetheless apparent, methods of keeping the colonies strong in the face of an enemy, the crown was fulfilling its right and responsibility as a sovereign state to defend its frontiers from potential usurpation, which was allowed and required by the law of nations. This also ensured that effective occupation was maintained, in accordance with Justinian's and his glossators' precedents for possession of property, and that the crown's prerogative would be enforced by its own representatives in the colonies.

CHAPTER FIVE

"MORE PLAINLY DESCRIBED BY THIS ANNEXED MAP": THE CARTOGRAPHY OF NEW FOUND LANDS

A "silent" expression of sovereignty in new found lands is to be found in the printed maps of the territories made by British cartographers, engineers, and colonial agents. Historian Benjamin Schmidt has observed recently that in comparison to Dutch cartographic techniques, "English printed maps of America were inadequate: limited, derivative, or just plain inferior."[1] From a strictly scientific viewpoint, Schmidt is correct. Early English published maps were less accurate than their Dutch counterparts, but this was not necessarily because English map-makers were themselves inferior. Rather, Schmidt, like other historians who have examined the cartographic tradition in new found lands, are attempting to answer the question: how accurate were English colonial maps?[2] For our purposes, a more valuable question is: what did the map-makers

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[1] Benjamin Schmidt, "Mapping an Empire: Cartographic and Colonial Rivalry in Seventeenth-Century Dutch and English North America," WMQ, 3d ser. 54 (1997): 563.

[2] For example, William P. Cumming, "Early Maps of the Chesapeake Bay Area: Their Relation to Settlement and Society," in D.B. Quinn, ed., Early Maryland in a Wider World (Detroit: Wayne State U.P., 1982), pp. 267-310; James E. Kelly, Jr., "Distortions on Sixteenth-Century Maps of America," Cartographica 32 (1995): 1-13; D.B. Quinn, "Artist and Illustrators in Early Mapping of North America," in Explorers and Colonies, pp. 62-66; Quinn, "The Early Cartography of Maine in the Setting of Early

and their patrons, especially the British crown, want others to know about new found lands? In early modern Europe, printed maps were more than mere geographical representations. In J.B. Harley's words, they "articulated symbolic values as part of a visual language by which specific interests, doctrines, and even world views were communicated."[3] Harley argued that printed maps should be deconstructed as texts, because despite their claims to scientific accuracy of representation, maps were not value-free and innocent, but rather were laden with political and ideological messages.[4] By the early modern period, "mapmaking was one of the specialized intellectual weapons by which power could be gained, administered, given legitimacy, and codified."[5]

Harley's work has been criticized as being too theoretical,[6] but a number of historians have drawn upon his arguments and have agreed that a chief political and ideological purpose of early modern maps was to demonstrate boundaries, frontiers, and

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European Exploration of New England and the Maritimes," in European Approaches to North America, pp. 41-67; Arthur H. Robinson, "It was the Map-Makers who Really Discovered America," Cartographica 29 (1992): 31-6.

[3] J.B. Harley, "Meaning and Ambiguity in Tudor Cartography," in Tyacke, ed., English Map-Making 1500-1650, p. 22.

[4] See the following works by J.B. Harley: "Meaning and Ambiguity," pp. 22-45; "Maps, Knowledge, and Power," in Denis Cosgrove and Stephen Daniels, eds., The Iconography of Landscape: Essays on the Symbolic Representation, Design, and Use of Past Environments (Cambridge: Cambridge U.P., 1985), pp. 277-303; "Silences and Secrecy: The Hidden Agenda of Cartography in Early Modern Europe," Imago Mundi 40 (1988): 57-76; "Deconstructing the Map," Cartographica 26 (1989): 1-20; "Historical Geography and the Cartographic Illusion," Journal of Historical Geography 15 (1989): 80-91; and Kees Zandvliet, "Art, Science, and Power in Sixteenth-Century Dutch Cartography," Cartographica 29 (1992): 10-19; "Maps and the Invention of America," Map Collector 58 (1992): 8-12.

[5] J.B. Harley and David Woodward, "Concluding Remarks," in their History of Cartography, vol. 1: Cartography in Prehistoric, Ancient, and Medieval Europe and the Mediterranean (Chicago: U. of Chicago P., 1987), p. 506.

[6] See Barbara Belyea, "Images of Power: Derrida, Foucault, Harley," Cartographica 29 (1992): 1-9; Matthew H. Edney, "Theory and the History of Cartography," and "Toward a Cultural History of Cartography," both in Imago Mundi 48 (1996): 185-97.

the eminent dominion of a sovereign monarch.[7] Peter Barber has shown that the new ability of the monarch to "see" the outlying regions and frontiers of his or her dominions, and to convey the desired official view of the territories in question through publication, turned maps into political tools of the crown.[8] In Elizabethan and early-Stuart England, crown officials were the most important patrons to cartographers.[9] The atlas of Christopher Saxton (1579), for example, was commissioned by Queen Elizabeth, and Saxton was awarded a letters patent "to be the sole printer and seller of maps of England or Wales." Richard Helgerson and Lesley Cormack have made similar observations about the atlases of William Camden (1607), John Speed (1611), and Michael Drayton (1612), all of which were commissioned by crown officials.[10] Consistent with the desires of their patrons, these map-makers deliberately included various rhetorical devices, intentional, implicit statements which, while silently expressed, were designed to be persuasive and impressive. Politically-charged title pages, and maps displaying royal and aristocratic coats of arms, ships in the seas displaying the British and English ensign,

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[7] See: "The Structuring of Political Territory in Early Printed Atlases," Imago Mundi 47 (1995): 138-55; Peter Barber, "Maps and Monarchs in Europe, 1500-1800," in Robert Oresko, et al, eds. Royal and Republicanism in Early Modern Europe (Cambridge: Cambridge U.P., 1997), p. 79; David Turnbull, Masons, Tricksters, and Cartographers (Amsterdam: Harwood, 2000), ch. 3; Michael Wintle, "Renaissance Maps and the Construction of the Idea of Europe," Journal of Historical Geography 25 (1999): 137-65; Denis Wood, The Power of Maps (New York: Guilford Press, 1992). Two excellent studies that use this interpretation in the context of new found lands, though of a later period, are Matthew Edney, Mapping an Empire: The Geographical Construction of British India, 1765-1843 (Chicago: U. of Chicago P., 1997); and D. Graham Burnett, Masters of All They Surveyed: Exploration, Geography, and a British El Dorado (Chicago: U. of Chicago P., 1999), esp. chs. 1-2, 7.

[8] Barber, "Maps and Monarchs in Europe," pp. 75, 82-3.

[9] Peter Barber, "England II: Monarchs, Ministers, and Maps, 1550-1625," in David Buisseret, ed., The Emergence of Cartography as a Tool of Government in Early Modern Europe (Chicago: U. of Chicago P., 1992), esp. pp. 62-77; Swen Voekel, "'Upon the Suddaine View': State, Civil Society and Surveillance in Early Modern England," Early Modern Literary Studies 4.2 (1998): 2.1-27 (http://purl.oclc.org/emls/04-2/voekupon.htm).

[10] Richard Helgerson, Forms of Nationhood, pp. 108-24; Cormack, "Britannia Rules the Waves".

distinctly English, Scottish, Irish, and Welsh place names, and descriptive narrative cartouches attested to British sovereignty and crown authority over all or part of the region depicted on the map. These messages were communicated by cartographers and their patrons along side demonstrations of scientific accuracy.

Printed maps of new found lands, and primarily of North America, contained far more powerful political and ideological statements than maps of the British Isles, because these frontier regions were more likely to draw the attention of an international audience and to have less-defined, disputable, boundaries. For reasons of security and secrecy, the best geographical knowledge conveyed through British-drawn maps of new found lands, which was far more accurate than Schmidt and others have recognized, remained in manuscript, so that the crown and the trading companies solely could benefit from this valuable intelligence. Printed maps of new found lands were usually optimistic, speculative, and unrepresentative, and could be used as propaganda without compromising secret intelligence, but they also contained a number of rhetorical devices that demonstrated crown sovereignty and authority. Many of these maps give an impression of British possession and effective control that rarely mirrored reality. Rather than accurately representing the geographical landscape depicted in the map, which was what they purported to do, the map-makers imposed a false reality upon it. In doing so, they made a claim to sovereignty considerably stronger than could be made through written descriptions of the territory or by ceremonial acts of possession, two of the expressions of sovereignty that have been occupying scholars in recent years.[11] Published

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[11] These are discussed above, in the introduction. But see, for example, Seed, Ceremonies of Possession, ch. 1; Pagden, Lords of all the World, ch. 3; Fuller, Voyages in Print.

maps of new found lands, then, and the descriptive works in which they appeared served as a locus for the points made in the narrative, literally existed as expressions of sovereignty, possession, and effective control. Moreover, after their initial, crown-authorized publication in British books, many of these maps were subsequently republished either in their original form or with minor changes, by continental cartographers in their atlases. This gave an international audience to these maps, and offered the possibility that other Europeans would better recognize British sovereignty in new found lands.

THE CROWN, SECRECY, AND CENSORSHIP

The first published English maps of new found lands were cartoon-like in their simplicity. Humphrey Gilbert's 1576 map of the world, which appeared in his Discourse of a Discovery (fig. 5.1) presented the world in a heart shape for accuracy, but otherwise the representation is optimistic and non-scientific.[12] Overseas territories much desired by the English are depicted as being proximate and easily accessible. Greenland, Labrador, and "Canada" are shown too close to the British Isles, a proximity that makes them accessible, relevant to British interests and, perhaps, gives Queen Elizabeth a stronger claim to them. The wealthy islands of "Giapan" (Japan), and the "Insulae Molucae" (the Molucca Islands) are shown to be virtually at the egress of an easily navigable northwest passage. A similar map by George Best was published in his True Discourse of 1578.[13] Representing the world less accurately and even more optimistically than

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[12] Humphrey Gilbert, Discourse of a discovery (1576), BL C.32.b.29.

[13] George Best, A True Discourse (1578).

Gilbert's, Best's map shares all of the same flaws: China, Japan, and the Spice Islands are easily accessed through a wide Frobisher's Strait that runs across the entire northern coast of North America. Another map found in Best's work is a very simplistic rendering of Frobisher's travels into "Meta Incognita", which makes no pretence at accuracy.[14] Michael Lok's map of North America, which appeared in Hakluyt's Divers Voyages (1582) and was the most widely distributed of the three, while having the pretence of accuracy through the use of latitude and longitude lines, is the least accurate of all (fig. 5.2).[15] In Lok's depiction, North America is connected at its centre by a narrow body of land; while the southern part, Florida and Mexico, is clearly the dominion of the Spanish monarch, the northern part contains numerous signs of English possession. The voyages of John and Sebastian Cabot and Martin Frobisher, and the years in which their discoveries were made, are indicated. Lok's message is clear: the English have sovereignty, based on the precedent of first discovery, over a large land mass whose borders are easily identifiable.

Gilbert, Best, and Lok were propagandists and explorers, not cartographers. Better information than they published was available. The projections of the continental cartographers Gemma Frisius, Gerard Mercator, and Abraham Ortelius were all significantly more advanced in their representations of the world, and were available

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[14] Most of the maps discussed in this chapter have been reproduced as plates in Philip D. Burden, The Mapping of North America: A List of Printed Maps, 1511-1670 (Hertfordshire: Raleigh Publications, 1996). For ease of reference, I will refer to the plate numbers in that volume where possible. The Best "Meta Incognita" map is reproduced in Burden, Mapping of North America, pl. 51.

[15] Richard Hakluyt, Divers Voyages (1582), BL C.21.b.35. Burden, Mapping of North America, pl. 55.

through atlases and globes by the 1570s.[16] Mercator's world atlas of 1569 was the most advanced cartographic representation of the sixteenth century, and was widely available to British viewers. It contained the so-called "Mercator projection", the modern method of centring the world map on Western Europe and including latitude and longitude lines to provide a perspective.[17] English geographers and cartographers, too, had far more knowledge than was demonstrated in early English printed maps. As Lesley Cormack has shown, England was fully involved in the cartographical revolution that occurred in Europe during the sixteenth and seventeenth centuries.[18] The revolution was marked by the improvements in land surveying and measuring, the inclusion of scales and latitude and longitude lines in maps, the removal of speculation about the unknown from maps, and the increase of map ownership, use, and display. In the period after 1580, cartography was a popular field of study in the English universities and an important part of English discourse.[19]

John Dee's three manuscript maps, drawn between 1580 and 1582, are considerably more accurate than those English maps simultaneously published.[20] All of

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[16] See, for example, Rodney W. Shirley, The Mapping of the World: Early Printed World Maps, 1472-1700 (London: Holland Press, 1984), plates 102 (Mercator's Mappamundi of 1569) and 104 (Ortelius's Typus Orbis Terrarum of 1570). Also see Burden, Mapping of North America, plates 39-40 (Ortelius's maps of the Americas and the North Atlantic.)

[17] Gilbert's map might have been drawn as early as 1566, predating Mercator's atlas, but it is still more rudimentary than contemporary continental maps.

[18] Cormack, Charting an Empire, chs. 3 and 5.

[19] Ibid., introduction and conclusion. For other investigations of map-making in England during this period, see: Sarah Tyacke, ed., English Map-Making 1500-1650 (London: British Library, 1983); P.D.A. Harvey, Maps in Tudor England (Chicago: U. of Chicago P., 1993); R.A. Skelton and P.D.A. Harvey, eds., Local Maps and Plans from Medieval England (Oxford: Clarendon Press, 1986); Catherine Delano Smith, "Map Ownership in Sixteenth-Century Cambridge: The Evidence of Probate Inventories," Imago Mundi 47 (1995): 67-93.

[20] These maps are discussed in Sherman, "Putting the British Seas on the Map: John Dee's Imperial Cartography," pp. 4-7.

these maps remained in manuscript throughout the age of exploration. Dee, who as we have seen was trained by, and remained in contact with, Frisius, Mercator, and Ortelius, conformed closely to the new learning on map-making.[21] The 1580 map (fig. 5.3) shows remarkable scientific accuracy for the time. He included latitude and longitude lines and, where possible, place names and accurate representations of the geography. Dee's knowledge of the eastern seaboard of North, Central, and South America, and of the West Indies, was impressive. In this respect, Dee's map is one of the most comprehensive of the time. On the west coast, Dee mapped what he could determine from other sources, which was the coastline of Central America northward to about Oregon, the region that Drake had recently discovered. The entire north-west portion of North America is blank on the map, because Dee did not have enough information and clearly did not wish to speculate. This map, which was given to Elizabeth or Burghley, was probably designed to assist the crown in future exploratory voyages and to assist sea pilots in their travels.

Another of Dee's maps, also drawn in 1580, was found among Lord Burghley's extensive map collection, sandwiched between two folios of Ortelius's Theatrum Orbis Terrarum. Drawn from a northern perspective, the projection shows 200 degrees of longitude and fifty degrees of latitude, stretching westward from England to Cathay, and conforming to the speculations that Dee made in "Of Famous and Rich Discoveries". Although its provenance is uncertain, this map was probably similar to the one Dee prepared for Charles Jackman and Arthur Pett to help in their search for the Northeast passage. Dee once noted that he provided them with a new chart which described the

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[21] See above, chapter 2, pp. 74-5.

route to China "more exactly, than any other, yet published."[22] Obviously, when offering navigational instructions, Dee was concerned that the information he was giving was accurate and unspeculative. Dee's 1582 map (fig. 5.4) is less accurate than those of 1580, though it is still far more detailed and scientific than the published maps of the period. He made the same error as his contemporaries in assuming the existence of an easy northwest passage, and he conceived of the St. Lawrence stretching westward and emptying into the Pacific Ocean. If this was true, of course, another potential sailing route to China and the East Indies existed, and within this context Gilbert's plans to colonize Newfoundland made perfect sense. This map seems to have had a more propagandistic purpose than the 1580 map

If such accurate information was available from respected European and English cartographers, why did Lok and his contemporaries print maps that they must have known were unrepresentative? The answer is that the English crown was concerned about disseminating intelligence that would prove advantageous to other Europeans. As Cormack argues, the more the English came to know about the world through geography and cartography, the more interested they were in exploring, writing about, and establishing authority over parts of it.[23] Therefore, the knowledge conveyed through maps was highly esteemed and was to be carefully guarded for fear of giving an advantage to other countries. Secrecy and the monopolization of knowledge were vital to the success of early English activities in new found lands. This is why, on the title page

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[22] Dee's instructions to Jackman and Pett are at BL Lansdowne 122, fos. 30-30v; and Cotton MS Otho E.VIII, fos. 78-80.

[23] Cormack, Charting an Empire, pp. 1, 229.

to his True Discourse, Best defended the simplicity of his maps by writing that they depicted Frobisher's voyages "so far forth as the secrets of the voyage may permit."[24]

Secrecy was the prevailing official crown policy. When Francis Drake returned from his circumnavigation in 1580, he presented Queen Elizabeth with, as Mendoza reported to Philip III, a "very large map."[25] Drake was also required to pass his Journal, without making a copy, to Lord Burghley. This is no longer extant, but it was apparently illustrated with maps "so naturally depicted that no one who guides himself according to these paintings can possibly go astray."[26] The journal, at least, was not available for public viewing. Richard Hakluyt could not consult it for his Principall Navigations of 1589, and even Drake himself was forbidden access when he was planning to publish an account of his own voyage in order to correct misrepresentations. Only the queen and her inner circle were allowed to share the secrets of Drake's voyage, for Drake and all others were strictly warned against disclosing his route or any particulars that would allow another nation to repeat his voyage, a prohibition that apparently still existed into the seventeenth century.[27] Even in Dee's "Discourse of the voyage made by Master Francis Drake," a treatise written in May 1580 for a popular audience, geographical references are noticeably absent, especially given Dee's considerable technical knowledge and his tendency to provide remarkable hydrographical detail when presenting material to the

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[24] Best, A True Discourse, title page.

[25] BL Add. MS 28420, f. 30.

[26] This is the opinion of a Spanish prisoner captured by Drake, quoted in Hellen Wallis, "The Cartography of Drake's Voyage," in Norman J.W. Thrower, ed., Sir Francis Drake and the Famous Voyage, 1577-1580 (Berkeley: U. of California P., 1984), p. 123.

[27] See Wallis, "The Cartography of Drake's Voyage."

court.[28]

The cartographical truth of Frobisher's and Drake's voyage was not the only suppression in this period. In his instructions to Humphrey Gilbert in 1582, Edward Hoby, Lord Burghley's nephew and an employee of the crown, told the explorer to "note the particular place where every such thing shall be found," and to "note all the islands, their bigness, commodities, and havens, and the elevations of every isle and set down this same both in your maps and journals."[29] But, as in Drake's voyage, these were to be turned in to the court, which would determine how best to use the intelligence. Also in 1582, Lord Burghley and Sir Francis Walsingham gave a set of instructions to Edward Fenton, captain-general of a voyage to the East Indies. The eighteenth article instructs that "you shall give straight order that none shall make any cartes [ie. charts or maps] or description of the said voyage, but such as shall be deputed by you the general, which said charts and descriptions we think meet that you the general shall take into your hands at your return to this our coast of England leaving with them no copies, and to present them unto us at your return, the like to be done if they find any charts or maps in those countries."[30] Like the orders to Drake and Gilbert, the purpose of this article was to ensure that any geographical knowledge obtained through the voyage be presented to the crown for its benefit, but that the information not be allowed to leak to the general public and foreigners.

In 1596, Walter Raleigh returned from his voyage to Guiana and reported to

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[28] John Dee, "A discourse of the voyage made by Master Francis Drake," BL Lansdowne MS 122, fos. 21-28b.

[29] Hoby's commonplace book, BL Add. MS 38823, f. 1.

[30] Instructions to Edward Fenton, 1582, BL Cotton MS Otho E.VIII, fos. 128-9.

Robert Cecil, the Queen's chief minister, that "how all these rivers cross and encounter, how the country lieth and is bordered . . . your Lordship shall receive in a large chart or map, which I have not yet finished, and which I shall most humbly pray your Lordship to [keep] secret, and not to suffer it to pass your own hands; for by a draught thereof all may be prevented by other nations. For I know it is this very year sought by the French."[31] Raleigh's manuscript of Guiana, though void of any signs of sovereignty because making such proclamations was not its purpose, is quite detailed and might well have cost English (or, later, Irish) lives or control of the region (the mythical El Dorado) if it ended up in the wrong hands.[32] A decade later, James Rosier, a traveller to New England, reported that "Because some foreign nation . . . have hoped hereby to gain some knowledge of the place . . . this is the cause that I have neither written of the latitude or variation most exactly observed by our Captain."[33] The earliest known detailed chart of the Chesapeake region of Virginia, drawn by Robert Tindall in 1607 and entitled "a draught of Virginia," also remained in manuscript.[34] If the instructions to earlier Elizabethan explorers are any indication, the discretion shown by Raleigh, Rosier, and Tindall seems to have reflected standing official crown policy.

The aforementioned writers all recognized that secrecy was necessary to prevent foreign nations from learning too much about British activities in new found lands. As

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[31] Raleigh, The Discovery of the Large, Rich, and Beautiful Empire of Guiana, p. 26.

[32] This map, dated 1596, is BL Add. MS 17940(A). On this map, see Charles Nicholl, The Creature in the Map: A Journey to El Dorado (London: Jonathon Cape, 1995), pp. 15-18; and Burnett, Masters of All they Surveyed, ch. 2.

[33] Quoted in Quinn, England New England Voyages, pp. 252-3.

[34] A copy of this map made in 1608 is in the British Library. It is reprinted in Barbour, Jamestown Voyages, 1:105.

we have already seen, the Spanish, in particular, kept a close eye on English overseas affairs, and received considerable intelligence from their ambassadors resident in London. In 1578, Mendoza reported to his king that he was "very hopeful of being able to obtain a chart of Frobisher's voyage," a telling indication of how valuable such material was to foreign powers.[35] In 1608, Zúñiga managed to get hold of Tindall's draft map of Virginia, which rather poorly depicted the region from Cape Henry to the Potomac River, and sent this to Phillip III in Spain. Three years later, a copy of a detailed map of the entire northeast coast of North America, from Newfoundland to the Cheaspeake, which was made for James I in 1610, was sent to the Spanish King by the new ambassador in England, Don Alonso de Velasco. Although the original is not extant, the fact that the writing on the map is in English and not Spanish suggests that it is a direct copy. In the lower left corner of the "Velasco map" there is a numbered table listing the names of rivers and towns settled by the English, which correspond to numbers on the mainland. Both the "Zúñiga map" and the "Velasco map" were received in Spain at the same time that the English ambassadors were warning their superiors in England about an impending armada assembling to attack Virginia.[36] Clearly, given such a challenge, these maps contained intelligence that the English would have preferred to remain secret.

The crown policy of secrecy should not lead us to the conclusion that British and European audiences were denied details of British activities in new found lands. On the contrary, without divulging information that the crown wanted to monopolize for its own purposes, considerable information could still be made public through carefully prepared

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[35] Mendoza to the King, 18 June 1578, CSP Foreign (Spanish), vol. 2, p. 594.

[36] See above, chapter 4, pp. 174-5.

and inspected texts demonstrating sovereignty and possession. The crown was proud of the accomplishments of its subjects, and knew that publishing information about them was the best way to inform the world of its assertions of sovereignty in certain regions and to gain, through implicit acquiescence, the recognition of the international community. If the crown reported its claims to the world — and if these claims were supported by rhetorical devices of a distinctly English or British nomenclature — a precedent for possession, prescription and effective control, and territorial sovereignty could be established. The essence to the passage of information was to convey this political and ideological message without compromising secret intelligence. In part, this political message was conveyed through rhetorical devices such as illustrated frontispieces (like Dee's coverpage to Memorials, fig. 2.1) and narratives of English activities in new found lands, such as the works of Gilbert, Best, Peckham, Hakluyt, and, later, Purchas.[37] In these writings, the authors often described in detail (using, to employ Mark Koch's term, a "cartographic gaze") the geographical landscape of new found territories.[38] These illustrations and descriptions could demonstrate knowledge of, and actual or pretended imperial authority over, new found lands.

The conveyance of the proper political message was accomplished through the use of crown censorship. License for publishing books came from the London Stationers' Company, which was incorporated in 1557. The Company assumed the role previously held by appointed crown officials to license books printed in England. A Company agent

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[37] Early Modern Literary Studies 4/2, Special Issue 3 (September, 1998) <URL: http://purl.oclc.org/emls/04-2/04-2abs.htm>. See especially the articles by Lesley B. Cormack, Mark Koch, and Swen Voekel. Also see Cormack, Charting an Empire, ch. 4.

[38] Mark Koch, "Ruling the World: The Cartographic Gaze in Elizabethan Accounts of the New World".

was required to review manuscripts for potential subversive elements and then refuse or allow their publication. Although certain works were published without appearing on the Stationers' Register (the list of all approved books), recent scholarship suggests that the practice of censorship was effective, and that works which would have displeased the crown or divulged secret political intelligence, would not have gained approval and, therefore, remained in manuscript.[39] Nearly all printed maps of new found lands were folded into English travel narratives and forming part of the manuscript they, too, would have been subject to censorship. Samuel Purchas, when he was compiling maps for his collection in 1625, lamented that he was not able to include either Humphrey Fitzherbert's new maps of the East Indies or Thomas Dermer's maps of the Chesapeake because the policy of secrecy still prevailed.[40] By far, the most accurate map ever to appear in an English travel narrative before 1640 was Edward Wright's map of the world that appeared in Hakluyt's Principal Navigations in 1600. Being a map of the world, it lacked sufficient detail to compromise English interests. With this exception, like the maps of Gilbert, Best, and Lok, nearly all printed maps of new found lands were drawn not by professional cartographers but by colonial agents, artists, or engravers. This suggests that scientific accuracy was subordinated to political or ideological messages; provided that this message was the desired one, there was no resason for these maps to be censored by the crown.

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[39] See especially Mark Bland, "'Invisible Dangers': Censorship and the Subversion of Authority in Early Modern England," Publications of the Bibliographical Society of America 90 (1996): 151-93; Cyndia Susan Clegg, Press Censorship in Elizabethan England (Cambridge: C.U.P., 1997), pp. 1-66 and 218-24. There is, unfortunately, no way to determine which manuscripts were reviewed and refused publication by the Company of Stationers.

[40] Purchas, Purchas His Pilgrims, I.v.700 and IV.ix.1779.

PRINTED MAPS OF NEW FOUND LANDS

Placed in crown-approved travel narratives, the printed maps provided a focus and locus for the descriptive text. They offered a central feature upon which the viewer could gaze, helping to contextualize and strengthen the content of the narrative. The printed maps gave an impression of knowledge, possession, and control that the text, because of all the limitations of the written word when compared to visual media could not convey alone. That is to say, description of territory without visual imagery was not very effective. As John Smith wrote in 1624, "For as Geography without History seemeth a carcass without motion, so History without Geography wandereth as a vagrant without a certain habitation."[41] Most of the texts were written in English, which was far from becoming an international language in the sixteenth and seventeenth centuries. In addition, to certain viewers a map was worth at least a thousand of Hakluyt's and Purchas's words. It could be displayed on a wall, where its visual imagery and aesthetic appeal could engage the viewer. It could also communicate information to a less literate audience. Printed maps, then, played the dual role of functioning independently and making silent expressions of sovereignty through rhetorical devices, and functioning as a complement to the text and making the latter appear more concrete. While the crown could not, of course, control the publication of information outside of Britain, it still managed to control the dissemination of knowledge because nearly all of the maps of British-controlled territories published in Europe were either first published in England, or were derived from maps prepared in England.

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[41] Smith, Generall History, 5:124.

The only known description of Drake's manuscript map was written by Samuel Purchas, who viewed the map in 1618 and published his narrative of it in Purchas His Pilgrims in 1625. This was presumably long after the intelligence had ceased to be useful, and Purchas's primary reason for publishing his description was to offer criticism to the claims of Dutchmen Jacob Le Maire and Willem Schouten to have discovered Cape Horn. In part, he wrote that "the Map of Sir Francis Drake's Voyages presented to Queen Elizabeth, [is] still hanging in His Majesty's Gallery at Whitehall. . . . The name Elizabeth is expressed in golden letters, with a golden Crown, Garter and Armes affixed."[42] As this description attests, the map apparently contained certain signs of English sovereignty, including a bold proclamation of Drake's claims to Cape Horn for Queen Elizabeth, confounding that of the Dutch. Drake's map probably perished in the fire that destroyed Whitehall in 1698, so we cannot confirm Purchas's description. Its being put on display allowed visitors to view it, which is likely how derivatives of it came to exist. These derivatives are the world map by Nichol van Sype, published at Antwerp about 1583 (fig. 5.5), and the so-called "Drake-Mellon world map," drawn some time after 1586. Although a legend on the van Sype version indicates that Drake saw and corrected the map ("veuee at corige par le dict siegneur drack"), it is unlikely that Elizabeth would have been concerned about the publication of either map or the disclosure of the information they contained. Van Sype probably produced this map in England; indeed, he might have been commissioned by the crown, as it was not unusual for the crown to hire Dutch cartographers, whose mapping techniques were at that time

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[42] Purchas, Purchas His Pilgrims, 3:461.

considered the best in the world.[43] The Drake-Mellon map is probably a derivative of van Sype's.

Like other published maps of the period, both of these were cartoon-like and lacked scientific precision. While they were not detailed enough to disclose secret intelligence, both contain expressions of sovereignty that would have pleased the crown and served as texts of possession. The van Sype map shows mini-Elizabethan coats of arms at the Strait of Magellan (in fact, at what Drake named "Elizabeth Island" within the Strait) and Nova Albion (California/Oregon). The Drake-Mellon map shows flags of St. George, which has a white background with a red cross and is known as the English ensign or "jack" when flown on ships, planted at the same places, and also in Meta Incognita (Greenland) and Virginia (Roanoke). Both maps also included distinctly English, or English-originated, place names: "Meta Incognita," named by Elizabeth I; "Virginia" named by Walter Raleigh as a tribute to his queen; and "Elizabeth Island" and "Nova Albion" named by Drake when he asserted possession of those regions. Both maps also show the track taken by Drake's ship, the Golden Hind, to North and South America and the East Indies, and contain several narrative cartouches (drawings of scrolls containing text) and pictorial insets attesting to Drake's and Raleigh's activity in these regions. Through changes in coloration, both also bisect North America between the Spanish settlement in the south and the English settlement in the north, leaving the impression that the northern parts lay open to English interests, a fact supported by

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[43] See Kees Zandvliet, Mapping for Money: Maps, Plans, and Topographic Paintings and their Role in Dutch Overseas Expansion during the 16th and 17th Centuries (Amsterdam: Batavian Lion International, 1998).

display of the flag of St. George in Virginia on the Drake-Mellon map. All of these precedents of discovery and possession could prove useful, and the fact that these maps were published in the Netherlands and available to an international audience lent a measure of acquiescence to Drake's claims in Elizabeth's name.

These claims were strengthened over the following few years, and made known beyond the British Isles. In 1587, Richard Hakluyt published a map of the Americas in his edition of Peter Martyr's De Orbe Novo (Paris, 1587).[44] The map is clearly based on Ortelius's 1570 map of the Americas, but Hakluyt, following the lead of van Sype and Mellon, has indicated that Greenland, Virginia, and the Strait of Magellan were "ab Anglis inventa" and thus "jur. Reginae Elizabetha" — "discovered by the English" and "ruled by Queen Elizabeth". By being written in Latin and published in Paris, Hakluyt's edition would have had an international audience. Hakluyt's ten page epistle to Walter Raleigh also helps to show explicitly English activity in North America. Both Baptista Boazio, in the map that accompanied Walter Bigges's Summary and True Discourse of Francis Drake's West Indian Voyage (London, 1589), and Giovanni Battista Mazza, in his map of North America (Venice, 1589) give the toponym of Virginia and demonstrate that it is in the possession of the British crown.[45] Boazio, who might actually have been employed by Sir Francis Walsingham as official cartographer on Drake's voyage,[46] does so by planting an ensign in Virginia, which is made more authoritative and internationally

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[44] Petri Martyris Anglerii, De Orbe Novo (Paris, 1587). The fold-out map is tipped in between Martyr's epistle to Emperor Charles V and the first page of text.

[45] Burden, Mapping of North America, plates 70 (Boazio) and 73 (Mazza).

[46] Using strong circumstantial evidence, Mary Frear Keeler establishes Boazio's presence in "The Boazio Maps of 1585-86," Terrae Incognitae 10 (1978): 71-80.

recognized by his planting of a French flag at "Canada" and Spanish flags in Florida, South America, and Mexico. This map was also published in the Latin, French, and German editions of the Summary.[47] Mazza's map was the first to show Roanoke Island as an English territory. In his terrestial globe of 1592, which was the first globe made in England, the Frenchman Emery Molyneux, a Huguenot who had emigrated to England, superimposed the queen's arms on Atlantis (America), a clear declaration of Elizabeth's rights to possession of America north of Florida.[48] By the early 1590s, then, and only half a decade after Raleigh's temporary settlement of Roanoke Island, foreign map-makers, at least, recognized English possessions in the New World. Subsequent maps of North America nearly always included "Virginia".

In the sixteenth century, the best representation of English possession and royal authority and sovereignty in new found lands is found in Theodor de Bry's edition of Thomas Hariot's Brief and True Report of the New Found Land of Virginia, published in 1590.[49] Hariot travelled to Roanoke with Richard Grenville in 1585 as official historian and botanist, and he spent his time there, in collaboration with the artist and later governor of the colony John White, describing the natural habitat and indigenous peoples. In 1588, Hariot published a report of his discoveries, which was mostly a list of the trees and crops that were found in the region. Two year later, this treatise was reprinted by de Bry, a Dutch engraver and publisher, accompanied by White's drawings. Among these

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[47] Henry C. Taylor, "A Discussion of the . . . General Chart and City Plans of Baptista Boazio," in his edition of Thomas Greepe, The True and Perfecte News [1587] (Hartford, CT, 1955), pp. 53-4.

[48] Helen Wallis, "Emigre Map-Makers of the Late Sixteenth Century and the Protestant New World," Proceedings of the Huguenot Society of London 24 (1985): 210-20.

[49] Thomas Hariot, A Brief and True Report of the New Found Land of Virginia (Frankfort, 1590) (STC 12786).

was included a map entitled Americae pars, Nunc Virginia dicta, primum ab Anglis inventa (The part of America called Virginia, first discovered by the English) which was de Bry's rendition of a meticulous and detailed manuscript map prepared by White (fig. 5.6).[50] The differences between the two maps are more important than the similarities. White drew his map correctly oriented (that is, with north at the top), from the mouth of the Chesapeake River southward to the tip of the North Carolina Outer Banks. The name "Virginia" and the location of several Indian tribes are indicated in small, non-obtrusive letters. White also included drawings of seven English ships along the coast, one of which is flying the ensign, and a rudimentary drawing of a non-descript coat of arms is placed on the mainland. But for these two exceptions, White's map is a model of the scientific approach to the cartographic revolution; it is geographically detailed but unspeculative and neutral, and lacking politically-motivated cartouches, legends, or decoration.

De Bry's engraving (fig. 5.7) of White's manuscript map tells a different story. It is oriented west-east (west is at the top), which immediately suggests that accuracy has been sacrificed to other considerations. Most notably, de Bry's orientation makes the land, rather than the ocean or the coastline, the primary feature, which complements and emphasizes Hariot's descriptive text. In the upper right corner is an oval, decorated cartouche, on the top of which rests Walter Raleigh's coat of arms. Within the oval, we are told in Latin that the territory depicted on the map was taken by Raleigh in 1585, under authority of Queen Elizabeth in her twenty-seventh year of lawful rule. To confirm

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[50] De Bry's map is reproduced in Burden, Mapping of North America, pl. 76. White's manuscript map is British Museum Department of Prints and Drawings, 1906-5-9-1(3).

this exercise of legitimate, royal authority, the cartouche is visually balanced with a large Elizabethan coat of arms located in the upper left corner. The royal arms speak not only of the source of authority used to claim the territory, but also the continued influence of that power over the land depicted on the map. Other symbols and images speak to the control (the "power") that the English have established over the environment and peoples. The ocean is choppy and turbulent, contains huge sea creatures, and White's seven ships have become eight much more prominent ones, four of which are flying the English ensign. This is a statement of the bustling commercial, and perhaps military, activities of the English in the region. On the mainland, the names of native tribes (the "Chawanook", "Weapemeoc" and "Secotan") and their geographical location are written in large block letters. Much larger still is the word "Virginia" which runs across the top portion of the image, and gives the impression of English authority over everything depicted on the map. Finally, de Bry has decorated the vacant and unknown spaces on the land, by arbitrarily placing trees and rivers, speculating about the lay of rivers that were not shown on White's map, drawing pictures of Indian men and women, and adding, at the top centre of the map, a mountain range that is not part of the North Carolina landscape.

Clearly, White's and de Bry's maps differ in several important ways. The former has enough accuracy to be used by sea captains and perhaps to assist the crown in planning its activities in this region. The land, ocean, natives, and other knowledge of the region are all shown with relative impartiality. However, for aesthetic appeal and political value, there is no question that de Bry's map, with its multiple symbols of authority and demonstrated (though inaccurate) knowledge of the territory, is the superior, politically-charged product. Effective control is demonstrated by filling up every inch of

the land and water with pictures that show the English colonists' knowledge and use of the territory. Those viewing this map would see expressions of English sovereignty, eminent dominion, and power over places and people. They would not see mundane, scientific detail; there are, for instance, no latitudinal or longitudinal references, nor is there much of a concern for accuracy of scale. Although De Bry's volume on America in which his map appeared was published in Frankfurt, the expressions of sovereignty explicit on this map, the verbatim use of Hariot's text (which was published, we are told on the title page, under the special grace and privilege of the queen's majesty), and the dedication to Walter Raleigh, to whom de Bry professed "to remain still your humble servant", together imply that the book was commissioned by the English. Distributed throughout Europe, his book was no doubt seen by Spanish and French subjects who also had pretensions to these regions. The popularity of this volume led to several subsequent editions printed in English, French, German, and Latin,[51] and de Bry's map was published again by William Strachey in his History of Travel into Virginia Britannia in 1622, which also enjoyed considerable popularity. White's map, on the other hand, remained in manuscript.

The maps of Virginia and New England produced in 1612 and 1616, respectively, by Captain John Smith brought the use of de Bry's rhetorical devices to near perfection. Historians have questioned whether Smith, a soldier and colonial governor, was actually the cartographer of these maps. Probably, Smith prepared rough drafts from his own extensive surveys and from the few manuscript maps that were available to him, and,

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[51] See the entry in Pollard and Redgrave, STC 12786.

after placing all of the important rhetorical devices, he left it to an engraver to produce maps of publishable quality.[52] Certainly, the political and ideological expressions on the maps are Smith's, so for our purposes their authorship is a moot point. The map of Virginia of 1612 was folded into a pamphlet published in the same year tellingly entitled A Map of Virginia, with a Description of the Country, the Commodities, People, Government and Religion.[53] This title makes it clear that it is the large, folded map (which is the size of two folio sheets), and not the text, which is the central document in this small quarto volume. Following the map, which is the first document after the dedication, Smith included a detailed description of Virginia: "Virginia is a country in America that lieth between the degrees of 34 and 44 of the north latitude. The bounds thereof on the east side are the great Ocean. On the South lieth Florida: on the North nova Francia. As for the West thereof, the limits are unknown. Of all this country we purpose not to speak, but only of that part which was planted by the Englishmen in the year of our Lord, 1606."[54] All of this information, Smith assured the reader, is "more plainly described by this annexed Map, which will present to the eye, the way of the mountains and current of the rivers, with their several turnings, bays, shoals, isles, inlets, and creeks, the breadth of the waters, the distances of places and such like."[55] In making the map such a prominent feature of the treatise, Smith has emphasized that everything he

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[52] On the authenticity of Smith's map of Virginia, see Alexander Brown, "Queries: The Map of Virginia," Magazine of American History 8 (1882): 576; Worthington C. Ford, "Captain John Smith's Map of Virginia 1612," Geographical Review 14 (1924-5): 433-43; and Coolie Verner, "Smith's Virginia and its Derivatives." Map Collectors' Circle no. 45, 1968.

[53] John Smith, A Map of Virginia, With a Description of the Country, the Commodities, People, Government and Religion (Oxford, 1612) (STC 22791).

[54] Smith, A Map of Virginia, p. 1.

[55] Ibid., p. 10.

describes in the remaining thirty quarto pages, including geographical landmarks and the disposition of the native peoples, is authentic and incontrovertible, because it is supported by "scientific" proof. The map is the locus for the narrative.

Even more so than de Bry's map of Virginia, Smith's represents effective occupation by filling up the entire space, and sovereign authority through symbols and images (fig. 5.8). Smith shows a much smaller portion of America than de Bry, focusing on the Chesapeake region itself, which is disproportionately emphasized by orienting the map with west at the top. At the top of the map, a cartouche in the form of an unrolled ribbon proclaims in large letters that the land is known as "Virginia". Just below it is a prominently displayed royal coat of arms, and at the bottom of the map, in the water, is an English ship. On the land there are thirty-two English place names, including Capes Henry and Charles, named after the sons of King James I, and Jamestown, named after the king himself. These toponymic references demonstrate English presence and offer tribute to the authority responsible for their existence, the English monarch. Smith makes this clear in his narrative.[56] The map is further distinguished by two illustrations representing the indigenous peoples. In the first, King Powhatan is shown sitting in the regal, though benign, fashion in which he received Smith as his prisoner in 1607. The second illustration is a large figure of a native, holding a bow in one hand and a club in the other. Both figures were probably based on prototypes taken from White's drawings that de Bry inserted into his edition of Hariot's treatise.[57] In addition, on the land there

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[56] Smith, A Map of Virginia, p. 2.

[57] Hariot, Brief and True Report, plates 3 and 21-22. An interesting, though circumspect, interpretation of these images is in Raymond M. Brod, "The Art of Persuasion: John Smith's New England and Virginia Maps," Historical Geography 24 (1995): 91-106. Apparently unaware of de Bry's edition of Hariot's text,

are printed the native names of ten tribes, 166 villages, and sixteen rivers. The location of approximately two dozen "King's houses" is also indicated, an emphasis on the petty nature of the native kings' dominions; in the text, Smith terms them "inferior kings".[58] All of the references to natives on the map suggests that a symbiosis has occurred, that the English and native peoples have intermingled, an implicit statement of England's sovereignty over the land and its peoples. This is confirmed by Smith in his legend, in which he noted that a cross on the map, of which there are approximately a dozen, represents the limits of English exploration into the region; the outlying areas have been voluntarily described by the natives, for Smith's benefit. In the text, Smith wrote that he had "subjected the savages to our desired obedience, and received contribution from 35 of their kings, to protect and assist them . . . in which order they continued true & faithful, and as subjects to his Majesty."[59] Of course, the English were fighting with the natives sporadically until 1614, so the pacific symbiosis that Smith projects, both in the map and in the text, is more myth than reality. A Map of Virginia was a propagandist tract intended to induce colonization, so Smith was careful to minimize any threat, but in the process of conveying this message, prescription and effective control are implicitly shown.

Coolie Verner has produced a highly useful cartobibliography of Smith's map of

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Brod suggests that the Powhatan illustration could have been based on the way the English court sat in the presence of Queen Elizabeth, and that the native figure is drawn similar to a Greek statue in order to portray the "unknown and mysterious inhabitants of Virginia as a noble an classic group of individuals" (p. 98).

[58] Smith, A Map of Virginia, p. 36.

[59] Smith, A Map of Virginia, p. 39.

Virginia.[60] Beyond its initial distribution, Smith's map, though unaccompanied by the text, dominated published maps of the region throughout the seventeenth century. Between 1612 and 1625 Smith's map underwent twelve different states, through which changes were extremely minor. In one of the earlier states, for example, Smith's coat of arms was added to the bottom right corner of the map, and in another longitude references have been added, although these are not drawn through the map itself. Different states were placed into Purchas's Pilgrimage (1613, 1614, 1617) and Pilgrims (1625), and six editions of Smith's General History of Virginia, New-England, and the Summer Isles, published between 1624 and 1632.[61] The first derivative was produced by Jodocus Hondius in 1618 and published as a separate unit, in which each of Smith's rhetorical devices are reproduced except the ship in the "Virginia Sea." Other derivatives were printed in Johann Theodore de Bry's (the son of Theodore de Bry), Dreyzehender Theil Americae (1628), and various editions of Mercator's Atlas Minor (1628, thirteen editions to 1636), Atlas Sive Cosmographicae (1630) and L'Appendice de l'Atlas (1633). Each of these contained only minor variants from Smith's original map, and each was widely distributed throughout Europe.

Two other derivatives of Smith's map deserve mention. The first was produced by the engraver Ralph Hall in 1636 (fig. 5.9).[62] Hall's map pays tribute to Smith's but bears few similarities. There are three illustrations taken directly from de Bry's edition of Hariot, and the royal coat of arms, astride which are the letters "C" and "R" (that is,

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[60] Verner, "Smith's Virginia and its Derivatives," pp. 18-38.

[61] Entries in Pollard and Redgrave, STC 22790-22790d.

[62] Reproduced in Burden, Mapping of North America, pl. 244.

"Carolus Rex", or King Charles) is even more central and prominent than Smith located it. Three ships sail down the Chesapeake River flying the English ensign, and Englishmen in contemporary dress are shown on the mainland shooting at wild game or, perhaps, at a native. Verner notes, "this absurd little map is one of the curiosities of Virginia cartography. It is a copy of the John Smith map, but represented the whim of the engraver rather than any concern for geographical accuracy or even care and attention in copying."[63] Regardless, Hall's map appeared in the 1636, 1637, and 1639 editions of Michael Sparke and Samuel Cartwright's Historia Mundi, or Mercator's Atlas, printed in London and on the continent of Europe. The other derivative is Cecil Calvert, Lord Baltimore's, map of Maryland, which was folded into his brief treatise entitled A Map of Maryland in 1635 (detail, fig. 5.10). It is oriented the same as Smith's and shows generally the same region, although it is entitled Nova Terrae-Mariae Tabula, depicting the "new region of Maryland", which was named in honour of Charles I's queen, Henrietta Maria. To the south is shown "Virginie Pars", the land of Virginia, and eastwards is "Nova Angliae", New England. In showing other English settlements that extend beyond the physical boundaries of the map, this image demonstrates possession of a vast region of America. In the place of toponyms and symbols of possession in the region of Maryland, which is shown on the map as being north of Virginia and west of New England, are two coats of arms. The first, which takes up one-sixth of the map of the map surface, is the largest and most elaborately decorated royal coat of arms to be found on any printed map of the period; just below is a smaller, though equally elaborate,

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[63] Ibid., p. 35.

display of Baltimore's arms. These images make it even more clear than Smith's that this region is possessed by the British crown, whose sovereignty is protected, in proprietorship, by a member of the English nobility. Similar indications of overseas enterprises being noble undertakings by loyal deputies of the crown have been seen in other maps, such as Gilbert's map displaying Raleigh's arms, and Lok's displaying those of Philip Sidney.

Smith's next map was of New England, which he prepared for his treatise entitled A Description of New England in 1616 (fig. 5.11).[64] It is based on Smith's own explorations of the region in 1614, and on other manuscript material that was available to him. Although it is somewhat more scientific in that it contains latitude and longitude references on its border and is oriented with north at the top, the map contains many of the same rhetorical devices as its Virginia counterpart. The significant toponym "New England", which Smith named, is prominently displayed; in naming the territory, Smith was no doubt aware that there was by this time a New Spain and a New France. Just beside the title is the royal coat of arms, which is more elaborate than the previous rendition because astride it are the lion and unicorn, traditional symbols of England's strength and honour. In the upper left corner is a large portrait of Smith, the "Admiral of New England," which is surrounded by images representing English land and sea power. Arriving from the direction of England is a flotilla of eight ships, all flying the English ensign. The most notable feature of this map, in comparison with the Virginia map, is the complete absence of evidence of indigenous peoples: there are no images of natives, nor

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[64] Reproduced in Burden, Mapping of North America, pl. 187.

any native place names. This elision was a deliberate act of Smith. Earlier in 1616, he had sent a letter to the fifteen year old Prince Charles, accompanied by a manuscript copy of his map. "My humble suit is," Smith wrote to Charles, "you would please to change their Barbarous [Indian] names, for such English, as Posterity may say, Prince Charles was their Godfather."[65] Smith's manuscript map, then, contained native names for key places along the coast of New England.

Sometime after the manuscript of the Description had been typeset, but before the first edition was printed, Charles undertook the task requested of him, and although it was too late for Smith to change the names in the narrative, he did manage to procure a new engraving of his map with the new names replacing those of the natives. The new map, containing distinctly English toponyms such as Cape James, Cape Elizabeth, Plymouth, Oxford, Cambridge, Charles River, and "Stuards [sic]" Bay, was placed into the published volume. Under the title, Smith added that "The most remarkable parts [are] thus named by the high and mighty Prince Charles, Prince of Great Britain." This, like the royal coat of arms, is an indication of the sovereign authority attached to the land. The process of renaming by the crown, and of making the New England landscape mirror that of its namesake, was as effective a symbol of sovereignty, possession, control, and knowledge, as were coats of arms and English ensigns. In a German-language version of the Description of New England, produced by Levinus Hulsius (Frankfurt, 1617), all of the text is in German except the place names, which remain Anglicized as named by the prince. Like his map of Virginia, Smith's map of New England was republished several

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[65] John Smith, A Description of New England (London, 1616), p. 2r.

times. It appeared in his General History (1624-32) and his Advertisements for the Planters of New England (1631), and in Sparke and Cartwright's Historia Mundi, or Mercator's Atlas (1636-9). In the latter, the words "Prince of Great Britain" under the title were replaced by "now King of Great Britain."

Smith's use of toponyms and description as expressions of sovereignty in his map of New England became a dominant feature of maps of new found lands in the 1620s and 1630s. At the same time, with the exception of Hall's and Baltimore's derivatives of Smith's Virginia map, there occurred a significant decline of signs and symbols. Descriptive cartouches and place names began to dominate the maps, and accuracy came to be more valued. The reason for this transition is probably the improvement in mapping techniques and the increasing production of atlases in Europe. Although, as we have seen, many of these atlases did contain the maps of Smith and Hall when other maps of certain regions were not available, most of the maps in these collections were more accurate and textually rich. In addition, this transition might have been the result of the steadily increasing number of English and Scottish settlements in new found lands, which made symbolic rhetorical devices as substitutes for actual settlement less necessary.

For example, when Richard Norwood drew his famous map of Bermuda in 1618, the number of settlements allowed the cartographer to demonstrate possession and control without resorting to symbolic devices.[66] On his map, Norwood shows that each part of the islands has been allocated to individuals by ruling off each plot and carefully naming each "tribe" (a group of plots awarded to one person) and region. Thus, on the map will

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[66] Margaret Palmer, The Printed Maps of Bermuda (London: Map Collectors' Circle, 1965).

be found the tiny islands of "Ireland," "Somerset", "Elizabeth", "St. Georges", and "St. Davids", and the tribes of the principal investors in the Somer's Island Company: Devonshire, Hamilton, Pembroke, Sandys, Smith, Southampton, and Warwick. There are, in addition, the names of a dozen forts. The overall impression that these numerous Anglicized place names create is one of complete territorial occupation and the intent to remain. This map, or one of its derivatives, appeared in Smith's General Historie (1624-32), John Speed's immensely popular Prospect of the Most Famous Parts of the World (1627), and the atlases of Blaeu, Hondius, and Mercator in the early 1630s. The Blaeu and Hondius derivatives include all of the toponyms of Norwood's original map, and a decorative cartouche in which King Neptune sits astride an English royal coat of arms while holding a ship flying the English ensign. This is an indication that by the 1630s English sovereignty over Bermuda was internationally recognized, at least by the map-makers.

John Mason's map of Newfoundland, published in his Brief Discourse of the New-found-land (1625) and William Vaughan's Cambrensium Caroleia (1625 and 1630), is another good example of the use of words to designate sovereign authority (fig. 5.12).[67] The only symbol of authority is a plain looking royal coat of arms located on the mainland. But narrative cartouches and place names serve equally well as designators of possession and effective control. Surrounding the Avalon Peninsula and the entire west coast of Newfoundland are the names of dozens of settlements with distinctive English and Welsh toponyms, such as Cardigan, Ferryland, Formosa, and Pembroke, and the

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[67] Burden, Mapping of North America, pl. 216.

names of the principal settlers and patentees: George Calvert, Baron Baltimore; Henry Cary, Viscount Falkland; and Sir William Vaughan. At the top centre of the map, Latin text identifies the territory as being under the jurisdiction of Charles I, who recently (upon the death of his father) assumed sovereignty over the land first discovered and possessed by the English. A lengthy cartouche in the lower left corner of the map provides a synoptic history of the colony. The island was discovered and named by John Cabot in 1499 under the authority of Henry VII. It was settled, the narrative continues, under the authority of Queen Elizabeth's letters patent to Humphrey Gilbert in 1577 [sic], and then in 1609 [sic] James I incorporated the Company of Merchants of London and Bristol under the Great Seal. Afterwards, Englishmen settled the region and shared the harbour, and parts of the territory were subsequently awarded to Vaughan, Falkland, and Baltimore. This cartouche, in proving that English activity in Newfoundland has been authorized by a legitimate, Christian sovereign, is a powerful affirmation of England's rights to possession. At the bottom of the map (which is oriented with south at the top), "Part of Nova Francia" is shown, a recognition of France's legitimate claims to portions of Canada, and an implicit statement that European countries should also recognize England's territories.

Similar textual devices are used in several of the maps that appeared in Purchas's Hakluytus Posthumus in 1625. In addition to Smith's map of Virginia, Purchas included five other maps: two maps of East India and China, Thomas Edge's map of "Greenland", Sir William Alexander's map of Nova Scotia, and Henry Brigg's map of North

America.[68] Edge's map show the island of Spitsbergen, to which he travelled extensively in the 1610s. The map itself is visually unremarkable, except that it, like Smith's map of New England and Mason's map of Newfoundland, purports to demonstrate through distinctly British-originated place names that the entire island and its surrounding regions are settled by the English. "Hakluyt's Headland", "Point Purchas", "Sir Thomas Smith's Island", "Edge's Island", and "Charles Island" are only a few of the regions over which British authority has been established. The map is also surrounded by various panels that show the manner in which a whale is captured, killed, and cleaned. In showing this process, English activity in the ocean and the mainland — that is, their prescriptive use of the territory — is made clear. This map was drawn at a time when British claims to Greenland and its surrounding regions were being challenged by the Spanish and especially the Dutch. Alexander's map of Nova Scotia (fig. 5.13) is perhaps the least decorative printed map of new found lands prepared in the Tudor and early Stuart period.[69] But it shows place names in Newfoundland, Nova Scotia, and New England, an assertion of British possession over these regions. The absence of additional rhetorical devices suggests that the British, at least, were comfortable in their belief that the territory was under British sovereign authority. Of course, much of this territory was returned to the French in 1632 and the French, English, and Scottish were engaged in a dispute over the region until the outbreak of the French and Indian War in 1756, so this proclamation of British control was once again less reality than hopeful myth.[70] This map was

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[68] For information on the inclusion of these maps in Purchas's collection, see Wallis, "Purchas's Maps", pp. 145-66.

[69] Burden, Mapping of North America, pl. 208.

[70] On the return of Acadia and Canada to the French, see below, chapter 6, pp. 272-5.

reprinted in Alexander's The Map and Description of New England (1630).

The centrepiece of Purchas's maps was Henry Briggs's drawing of North America.[71] Briggs was a mathematician who was a professor at Cambridge and Oxford from 1592 to 1630. It is not surprising, therefore, that his map was more accurate than many of those that preceded it. Importantly, Brigg's map is the first English printed map of all of North America, before which, as we have seen, maps were centred on individual settlements or, at most, small portions of the Atlantic seaboard north of Florida. As such, this map is an indication that the policy of secrecy about North America, which appears to have prevailed into the 1620s, was no longer relevant, likely because the increase in cartographical knowledge in the early seventeenth century meant the information it contained was no longer secret. The map contains latitude and longitude references, drawn completely through the image using the now-conventional Mercator projection. Briggs terms the northern regions "Nova Brittannia", which includes the English territories (with English toponyms) in the North Atlantic: Greenland, the Davis and Hudson Straits, and "Hudson's" and "Button's" bays, the latter two named by Briggs himself.[72] In cartouches, Briggs identifies that many of these regions had been recently entered and charted for England by Henry Hudson (1609-10), Thomas Button (1612), and William Baffin (1615). The French territories in "Canada", the British territories in Newfoundland, New England, and Virginia, and the Spanish territories in Florida, California, the West Indies, and "New Spain" (Mexico), are shown in detail. California is shown to be an island, a belief that derived from a Spanish chart and one that would

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[71] Burden, Mapping of North America, pl. 214.

[72] Brigg's "Hudson's Bay" would become James Bay, and his "Button's Bay" would become Hudson Bay.

remain for over a century. Many of Briggs's ideas about North America, and in particular his place names and division of the territory among the three primary colonizing powers, were used in John Speed's map of North America that appeared in his Prospect of the Most Famous Parts of the World (1627).[73]

EPILOGUE

During the decade before 1640, virtually no new maps of British overseas territories were produced. Those of Hall and Baltimore are the only significant exceptions. In large part, the lack of printed maps between 1630-40 can be attributed to the fact that there were few new settlements and not many new published accounts of British overseas activities into which maps could be placed. But before this time, the crown had implicitly staked its claim in the maps of de Bry, Smith, Norwood, Mason, Briggs, and Speed, among others. As we have seen, these maps continued to be published well into the 1630s by the respected apprentices and sons of de Bry, Hondius, and Mercator, providing a large, international audience for British printed maps of America. Drawing upon the claims made by British cartographers, the compilers of these world atlases, in their own renderings of North America and the world, generally included the North Atlantic, Newfoundland, and the Atlantic seaboard north of Florida, among British possessions in the New World. British settlements in South America, and the East and West Indies, however, generally failed to appear on British or European maps. The

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[73] Burden, Mapping of North America, pl. 217. For Speed's use of Briggs, see Ashley Baynton-Williams, "Biography: John Speed II," Map Forum 3 (March/April 1999) <URL: http://www.mapforum.com/march.html.

explanation for this is probably a simple one. In the East Indies and South America, English activities were never very successful (although Robert Dudley's 1646 map of Guiana quite clearly depicts English sovereignty in this region), and were much more oriented toward trade than permanent settlement. Furthermore, the East and West Indies settlements were on islands, regions whose boundaries were easily identified. Each of the expressions of sovereignty made in the printed maps — defining boundaries, showing effective occupation, demonstrating the continued authority of a sovereign monarch, and, overall, showing the common identity of the British empire — would become issues during negotiations with other European countries in the first few decades of the seventeenth century.

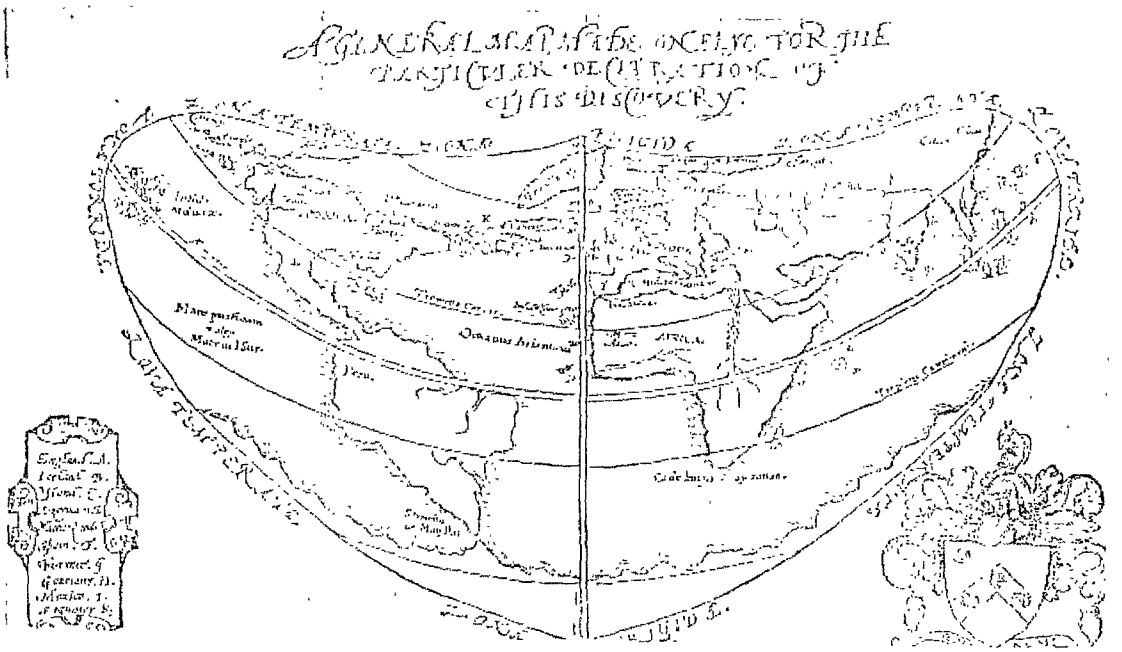


Fig. 5.1 — From Humphrey Gilbert, A Discourse of a Discovery (1576).

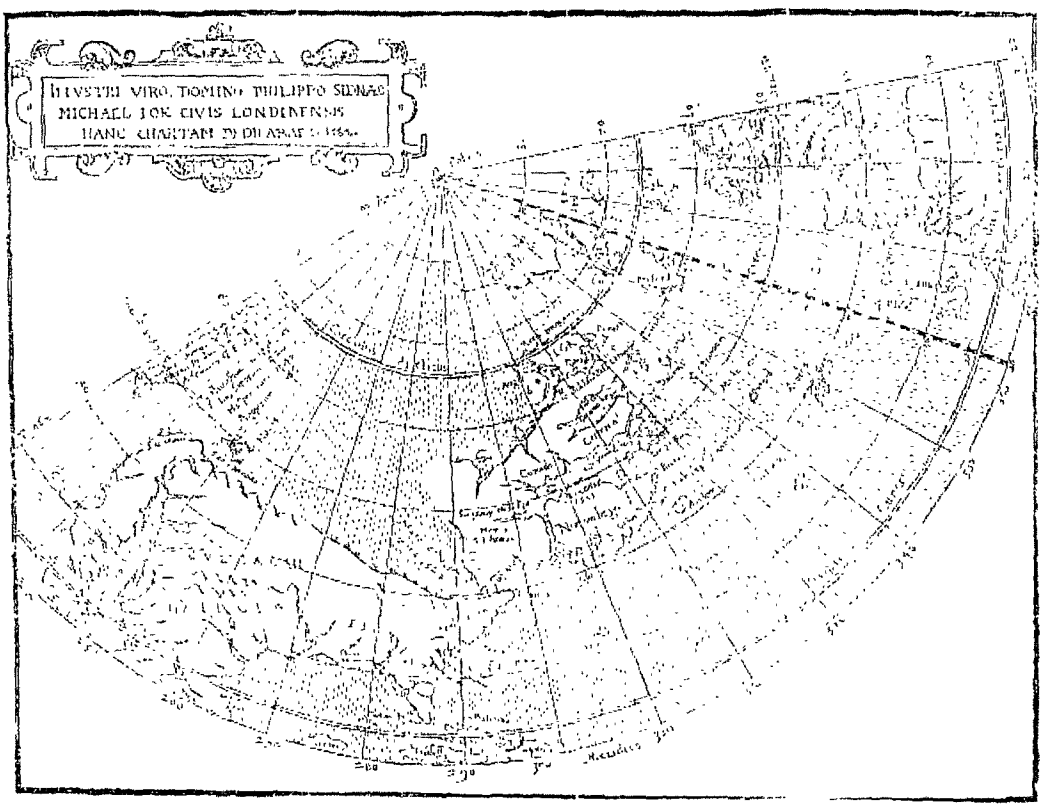


Fig. 5.2 — Michael Lok, from Richard Hakluyt, Divers Voyages (1582).

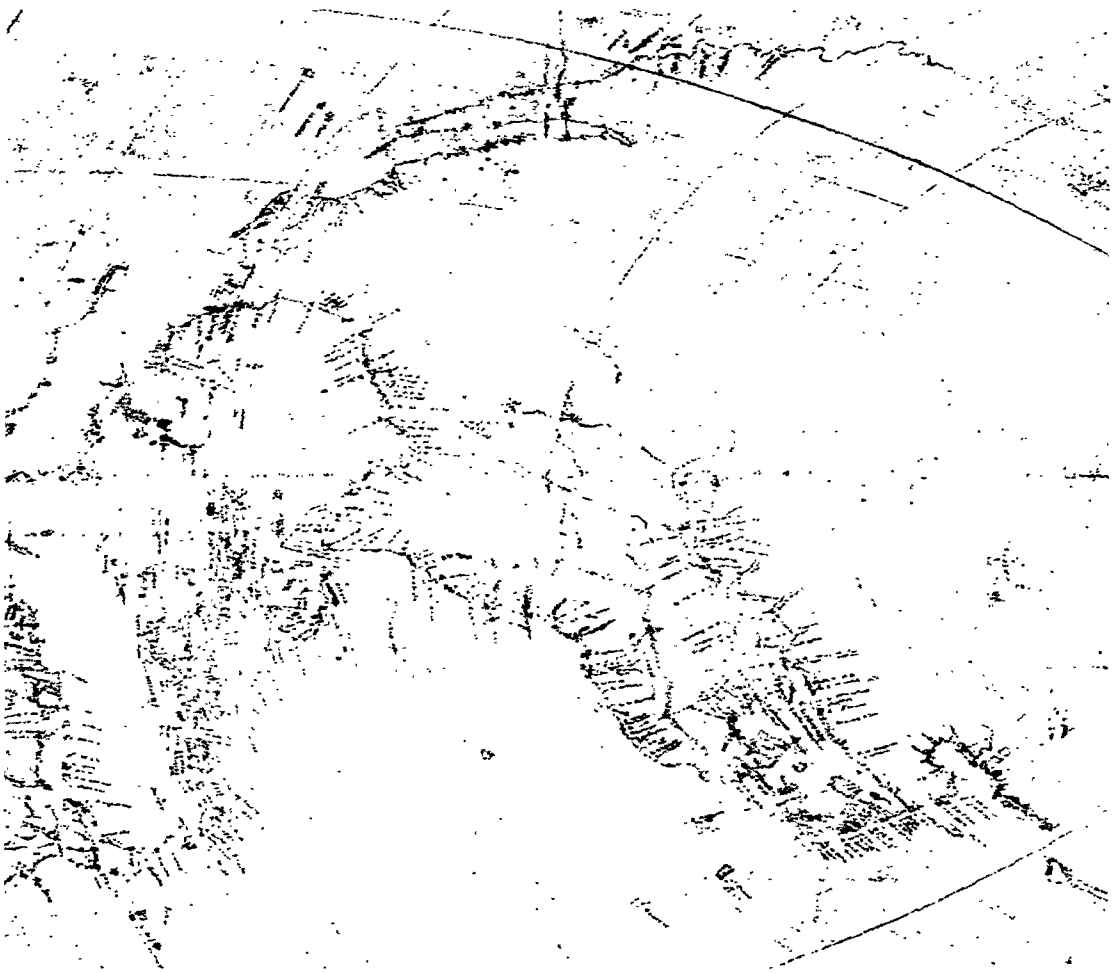


Fig. 5.3 — Detail from John Dee's manuscript map of America, BL Cotton MS Augustus I.I.I (North is to the right).

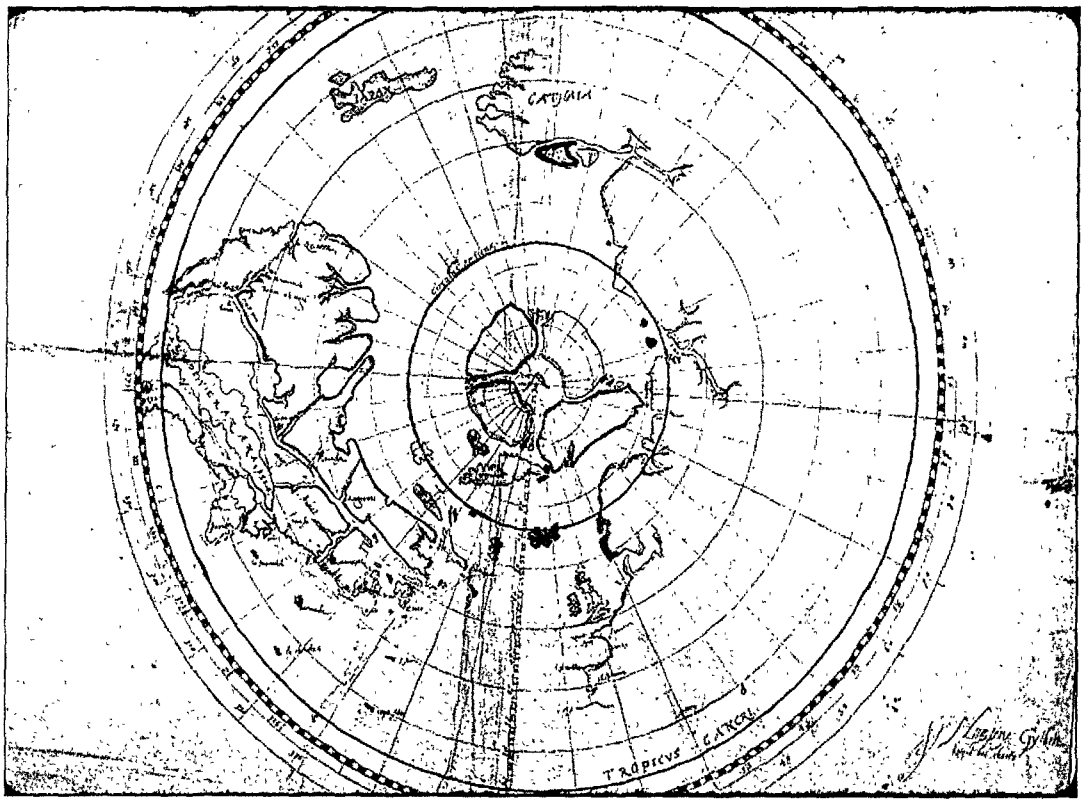


Fig. 5.4 — John Dee's manuscript of the northern hemisphere (1582).

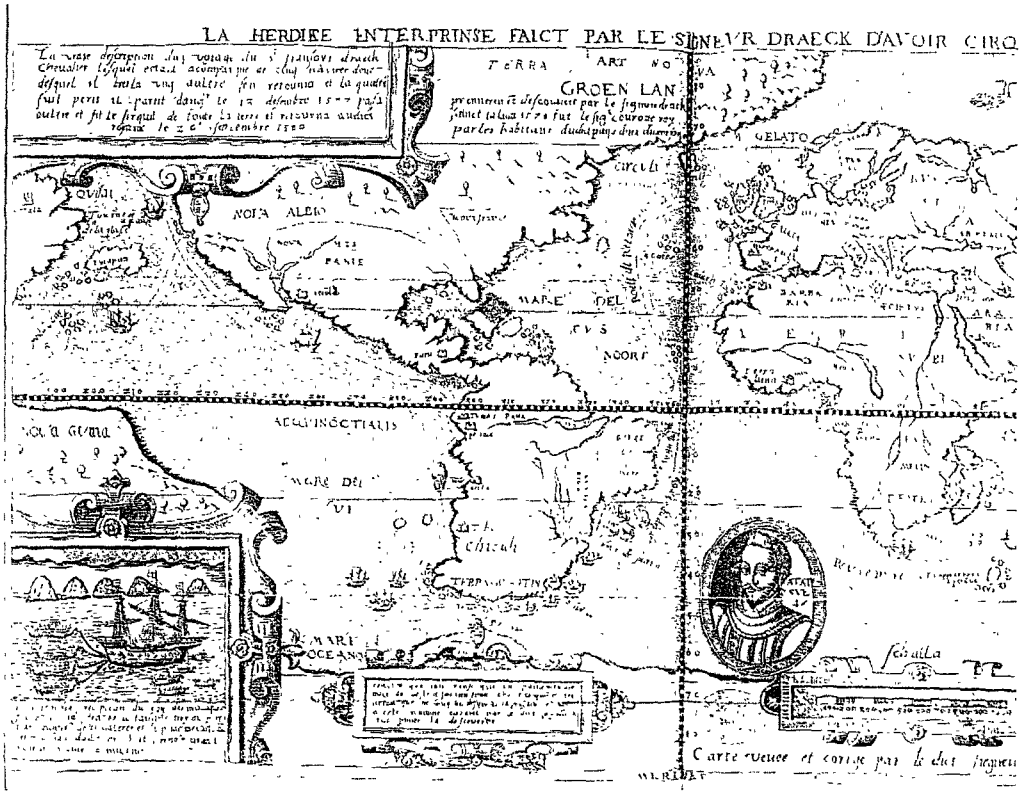


Fig. 5.5 — Nichol van Sype, La Herdike Enterprinse Faict (1583)

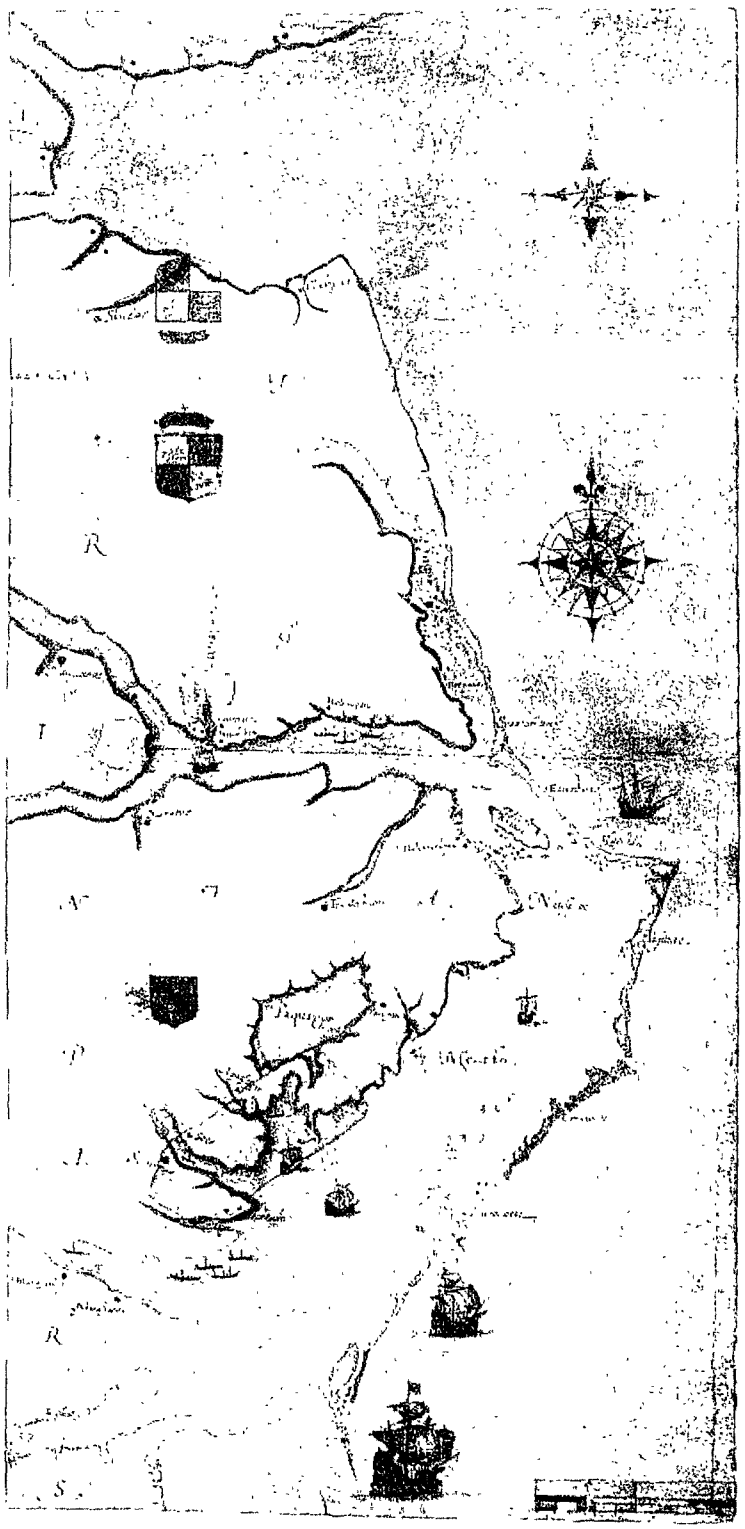


Fig. 5.6 — John White's manuscript map of Virginia and Carolina (1585).

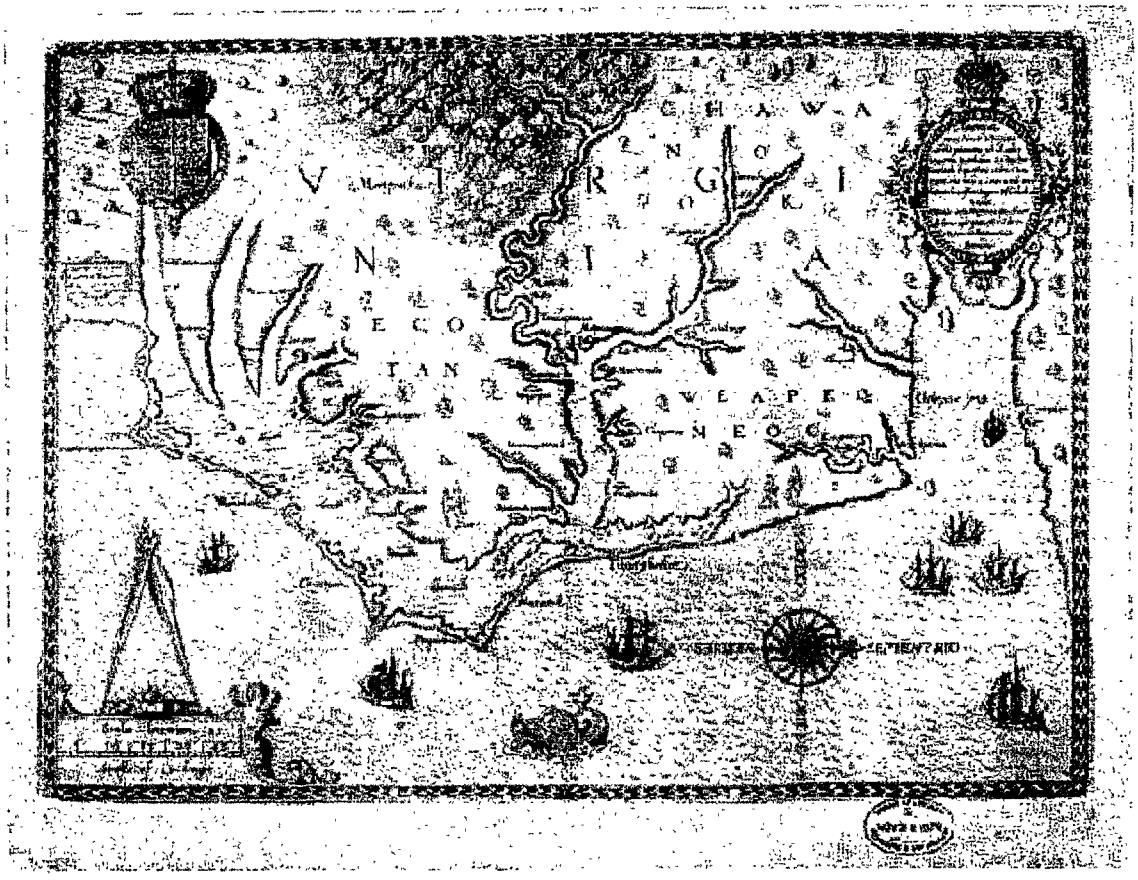


Fig. 5.7 — Theodor de Bry, Americae Pars, Nunc Virginia dicta, primum ab Anglis Inventa (1590)

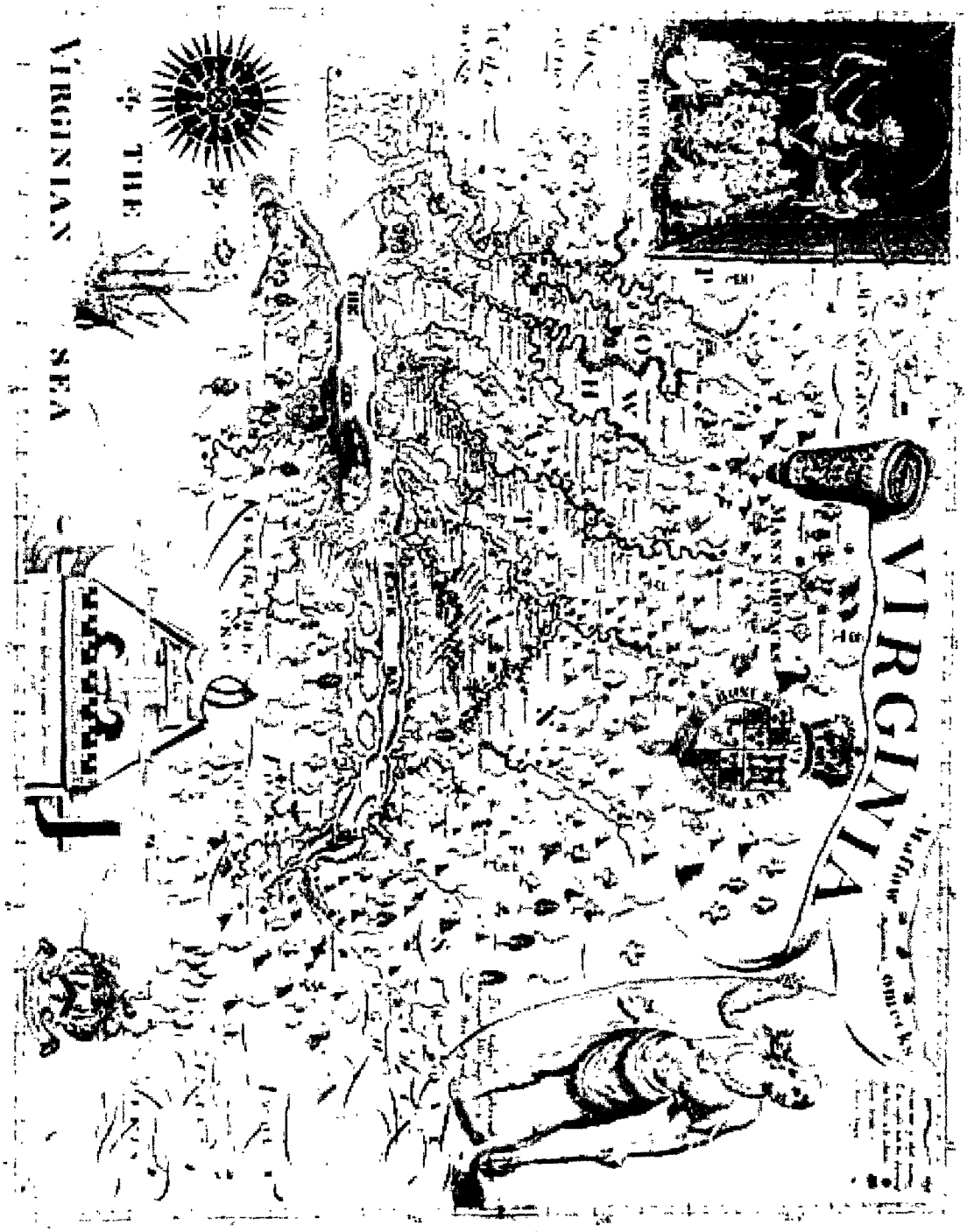


Fig. 5.8 — From John Smith, A Map of Virginia (1612)

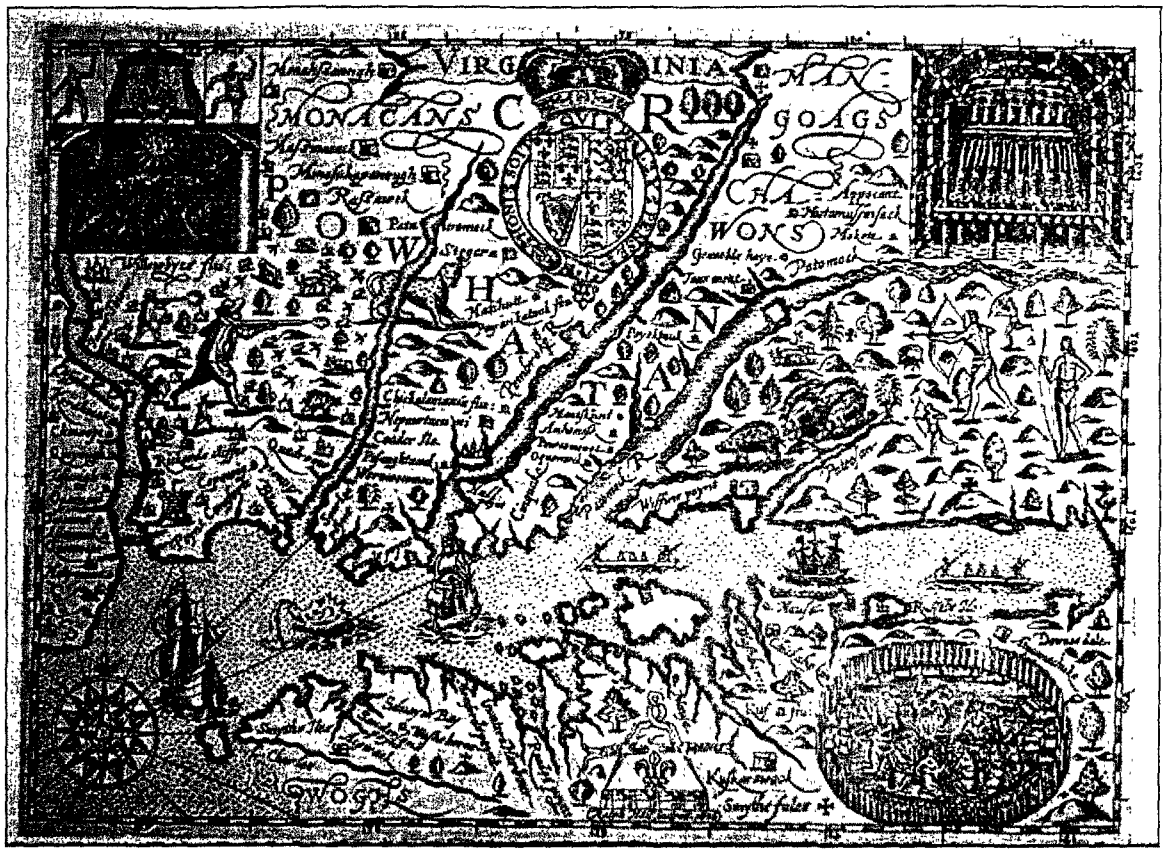


Fig. 5.9 — Ralph Hall, from Michael Sparke and Samuel Cartwright, Historia Mundi, or Mercator's Atlas (1636).

Fig. 5.10 — Detail of Cecil Calvert, Map of Maryland (1635).

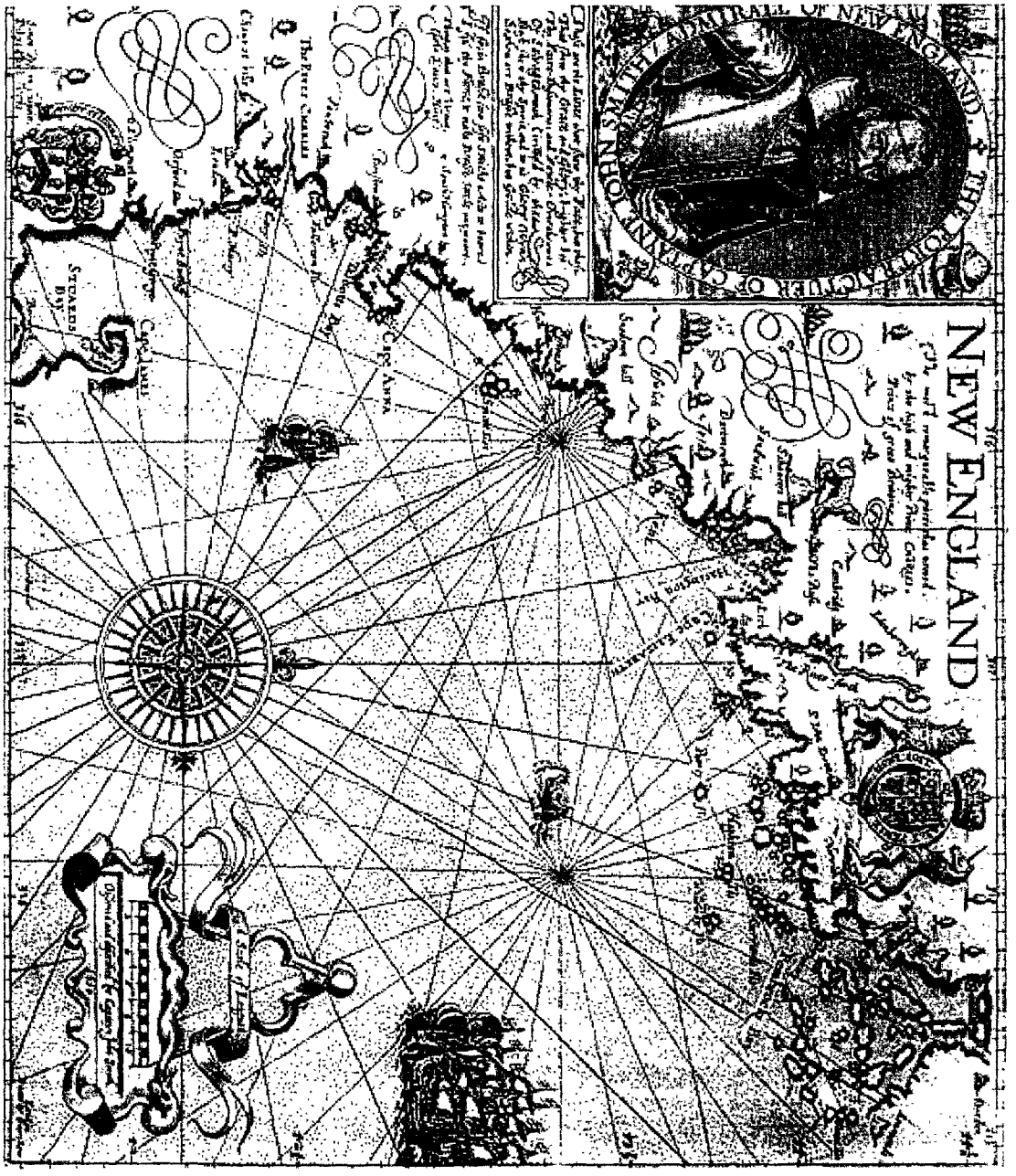
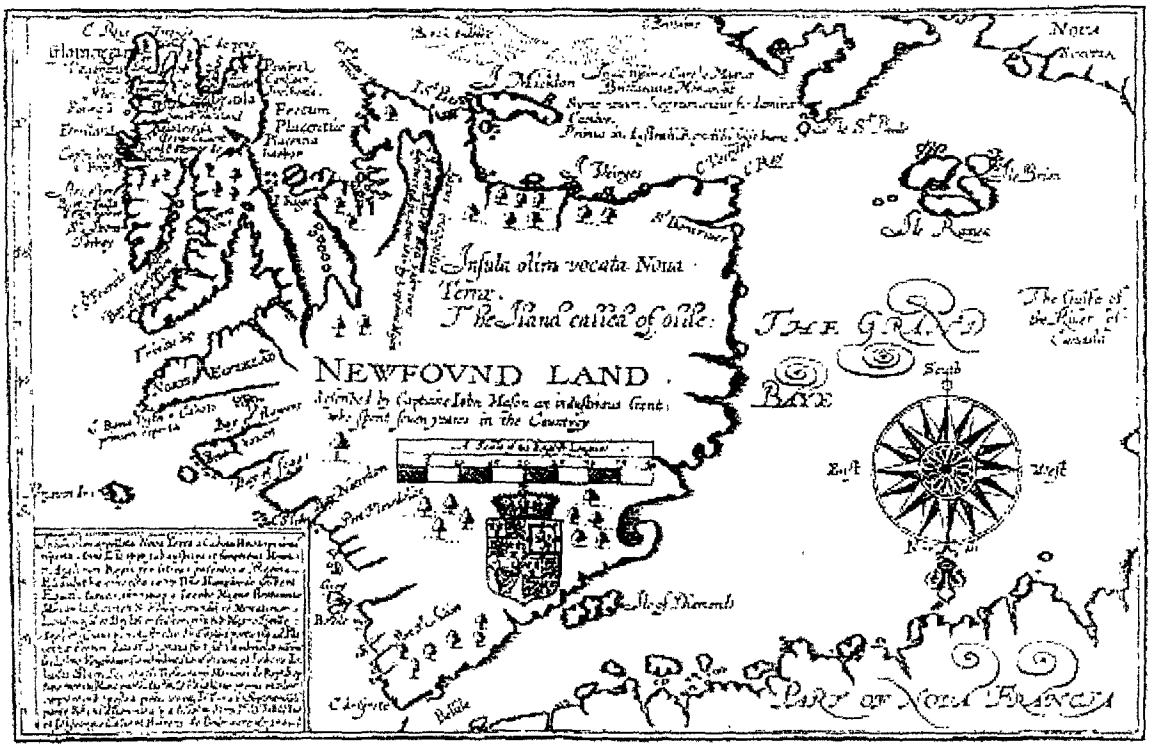


Fig. 5.11 — From John Smith, A Description of New England (1616).



.Fig. 5.12 — John Mason from Brief Discourse of the New-found-land (1625).

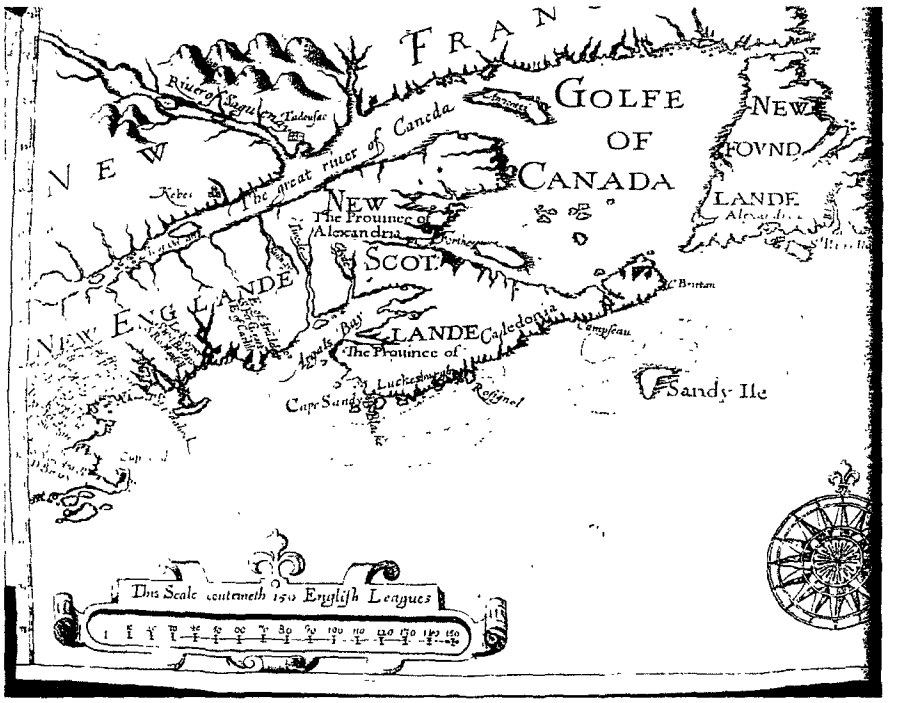


Fig. 5.13 — From William Alexander The Map and Description of New England (1630).

CHAPTER SIX

"THE LAWS OF GOD, NATURE, AND NATIONS": PRECEDENTS OF INTERNATIONAL LAW

The surest way for the crown to determine which methods of securing sovereignty were likely to receive the consensus of the international community was to engage in treaty negotiations and diplomatic relations with other European countries who participated in overseas affairs. As previously demonstrated, the crown received diplomatic challenges to its claims to sovereignty in the 1570s and 1580s, which was one reason why John Dee, Richard Hakluyt, and others were employed to advise the crown of its rights. It has also been shown above that the British ambassadors in France, Portugal, and Spain kept the crown informed of the increasing enmity felt by these countries because of British claims to empire in the first few decades of the seventeenth century. Some of these challenges, and other aspects of British foreign policy, helped the crown in its decision whether to authorize certain petitions and issue letters patent.[1] Within this

[1] These arguments will be found above, in chapters 2 to 4 passim. See also: Quinn, "Some Spanish Reactions to Elizabethan Colonial Enterprises," pp. 1-23; Quinn, "James I and the Beginnings of Empire in America," pp. 135-52; Lorimer, "The Failure of the English Guiana Ventures 1595-1667 and James I's Foreign Policy," pp. 1-30; Andrews, "Caribbean Rivalry and the Anglo-Spanish Peace of 1604," pp. 1-17; Appleby, "An Association for the West Indies? English Plans for a West India Company, 1621-29," pp. 213-41; and Paul E. Kopperman, "Ambivalent Allies: Anglo-Dutch Relations and the Struggle Against the Spanish Empire in the Caribbean, 1621-1641," Journal of Caribbean History (Barbados) 21 (1987): 55-77.

tenuous political climate, entering into diplomatic negotiations was another way that the crown could express its sovereignty and demonstrate its justifications for continued authority over its empire.

This chapter will examine, in addition to some miscellaneous documents, three sets of negotiations intended to resolve disputes involving new found lands between 1604 and 1632. The first set involves the treaty negotiations that brought an end to the Anglo-Iberian wars that waged from 1585-1604. A substantive portion of these negotiations involved discussions of British rights in North and South America and the East and West Indies. The British wanted the right to trade throughout these regions and to settle those areas not currently occupied by the Iberians. Philip III, representing the multiple kingdoms of Spain and Portugal, wanted to deny this British trade and settlement, and to secure through the treaties the expulsion of all British subjects from the territories designated by papal donation. The second set of evidence involves several Anglo-Dutch conferences and treaty negotiations between 1613-19. These meetings were called after the Dutch refused the East India Company merchants access to several ports in the East Indies and employed superior military force to expel the English from the Banda Islands. During these negotiations, the British asserted their right to free trade based on the law of nations, and to exclusive trade and settlement based on agreements signed between them and the petty East Indian rulers. The Dutch asserted their right to exclusive trade based on the costs they incurred defending the region and its inhabitants from Iberian attacks. The third set of evidence is the exchanges which took place in 1613 and 1629-1632, after the English had forcibly removed French subjects from Port Royal in Nova Scotia and from Quebec. During these debates, each side asserted its crown's right to claim

sovereignty over, and settle, these regions.[2]

On the whole, these negotiations were projects of failure rather than success for the British crown. The Treaty of London of 1604 was ambiguously worded, the negotiations with the Dutch were unsuccessful, and those with the French resulted in the restitution of Acadia and Quebec. Neither side in these disputes was willing simply to surrender its claims to sovereignty in new found lands. The pliability of international law resulted in the existence of multiple legal principles, nearly any of which were sufficient for a team of skilled envoys to concoct a stronger or older precedent than their adversary. In addition, regardless of the assertion of internationally-recognized legal principles, there was no system in place to enforce treaty negotiations, which often prevented definitive resolution. Even so, during these negotiations, both sides conformed their arguments to the principles associated with "the laws of God, nature, and nations," knowing that these precedents, however multiple and elastic, offered the best justifications for claiming empire. This makes a strong case for the importance to be placed on international law theory in resolving disputes involving new found lands. At the heart of these negotiations lies proof that British expressions of sovereignty in new found lands were, all along,

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[2] In addition to standard accounts of British overseas activities in new found lands, especially those by D.B. Quinn and K.R. Andrews, readers are referred to the following works for narratives of these events. Quinn, "James I and the Beginnings of Empire in America"; Andrews, "Caribbean Rivalry and the Anglo-Spanish Peace of 1604"; Paul C. Allen, Philip III and the Pax Hispania, 1598-1621: The Failure of Grand Strategy (New Haven: Yale U.P., 2000), chs. 5-6; Joel D. Benson, Cooperation to Competition: English Perspective and Policy on Anglo-Dutch Economic Relations During the Reign of James I (New York: Peter Lang, 1990), pp. 143-82; John G. Reid, "The Scots Crown and the Restitution of Port Royal, 1629-1632," Acadiensis 6 (1977): 39-63. The principal primary sources for these negotiations are: Iberian — Anonymous, "Diary of the conferences and proceedings in the Treaty of London 1604," BL Sloane MS 1851, fos. 1-116; PRO SP 103/64, fos. 140-238; and PRO SP 103/65, fos. 61-153. Dutch — [Clement Edmondes?], BL Add. MS 48155; PRO SP 84/89-91; PRO SP 113/36, fos. 224-43; PRO CO 77/1/3; CSP Col. 2, pp. 377-409. French — PRO CO 1/5/77; PRO SP 78/85-91; PRO SP 103/9-11.

developed according to international legal practice.

KNOWLEDGE & MAGNITUDE: DISCOVERY & PRESCRIPTION

The legal principles of discovery (first sighting) and prescription (frequenting the territory) came up in all of the negotiations between Britain and the other European expansionist powers. During the sixteenth and early seventeenth centuries, most colonizing Europeans believed that new found lands especially in the Western hemisphere either were "empty lands" (terra nullius), pristine or abandoned, or were occupied by uncivilized indigenous peoples for whom principles of international law did not apply. Therefore, with the notable exception of Francisco de Vitoria and his neo-Thomist followers, most Europeans eschewed arguments which accorded natives sovereign authority, and based their initial claims on assertions of discovery and prescription. Both could function as inchoate expressions of sovereignty by demonstrating a certain magnitude of knowledge and use of the territory in question. Discovery, however, was a principle of considerable debate in the first century of European overseas settlement because Justinian's civil law, the positive (written) legal code most often resorted to, made no mention of new discoveries. The medieval Roman Emperors presumed that the whole world, or at least the part that was capable of human inhabitation, was already known. Prescription was more familiar to Europeans, because through this positive principle title could flow to a claimant in the same way that long use gave property rights to a squatter in Roman law.

Discovery was the earliest expression of sovereignty to be addressed by British and European negotiators because it was virtually the only legal precedent employed by

the Spanish and Portuguese. During the peace negotiations of 1604, James I was content to limit British activity in those regions which King Philip's subjects had legitimately discovered, but he asserted his sovereign right to trade and settle in those areas which his subjects had learned about "by their own discoveries".[3] As this instruction suggests, James based British rights to undertake activities in new found lands on the historical precedent of first discovery. This legal principle was asserted early in the negotiations by the Iberian commissioners, who claimed that Columbus had "discovered" the entire Western hemisphere on behalf of their monarch. To the Iberians, Columbus's acts of landing in the Bahamas, Cuba, and Hispaniola in 1492-94 were sufficient to discover the entire new world. The vast extent of Columbus's discovery was subsequently confirmed by Alexander VI's papal bull when the entire hemisphere was awarded to Spain in 1493. In the eyes of the Iberians, this lent great weight to their case, for who was going to question the opinion of the pope? Furthermore, because these discoveries were enabled at great expense by the Iberian crown, it was natural that King Philip would restrict these regions, both for settlement and trade, to his own subjects.[4] Although the Iberians strongly emphasized their rights through first discovery and the papal bull, they did not employ the legal argument of prescription, which they possibly saw as an unnecessary step in establishing sovereignty, or knew that their limited prescriptive use in the sixteenth century of North America north of Florida, eastern South America, the East Indies, and the Lesser Antilles portion of the West Indies would do little to further their

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[3] James I to the commissioners of 1604, PRO SP 94/10, fos. 17-28; and BL Cotton MS Vespasian C.XIII, f. 61.

[4] "Diary of the conferences and proceedings in the Treaty of London 1604," BL Sloane MS 1851, fos. 100-109.

case.

For a counter-argument, the British commissioners turned to Sir Robert Cotton, a man who was skilled in matters of diplomacy and who had immense knowledge of both history and civil law. Cotton, though not a trained civil lawyer, was a member of the Antiquarian Society and associated with William Camden, John Selden, and John Davies, who (as we have seen) were foremost in their age as scholars of history and civil law theory. Cotton had also been involved in the abortive attempt at peace in 1600, and had previously amassed evidence in advance of those negotiations.[5] In his treatise[6], Cotton argued that Britain had prior "possessionary title" of substantial portions of North America and the West Indies through the voyages of John and Sebastian Cabot and the Bristol fisherman, who had discovered and frequented parts of North America, and Robert Thorne, who had discovered "divers parts of the West Indies." Clearly, to Cotton, a single act of discovery, such as that of Columbus, represented a claim to a relatively small patch of the Americas, while the amount of land that could be claimed increased with the number of discoveries; discovery, then, was a matter of magnitude. He could agree that Columbus had made certain discoveries, but these had been limited only to a few islands in the Greater Antilles region of the West Indies, and he did not question the Iberian crown's rights to these smaller areas. Moreover, the British voyages were all authorized by the royal letters patent of Henry VII and Henry VIII, which meant the discoveries were made on behalf of a sovereign lord.

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[5] DNB, IV, 1233-4.

[6] Robert Cotton, "Reasons for the trade into the East and West Indians for the Merchants of England, gathered for the treaty between his Majesty's commissioners and the King of Spain's," BL Cotton MS Vespasian C.XIII, fos. 47-50v, quotation on f. 47r. See also BL Sloane MS 1851, fos. 85-89.

Cotton's arguments were expressed during the negotiations by Henry Howard, earl of Northampton, who was one of four privy councillors assigned to the peace talks. Northampton was also well read in history and had penned several treatises that showed his considerable knowledge of civil law. As Cotton's patron, he had access to the same network of skilled politicians and rhetoricians.[7] Drawing upon Cotton's treatise, Northampton cited the early British activities in the west, but he added some ideas of his own. When advancing his argument in relation to discovery, he made a curious gaffe that may or may not have been intentional. He claimed that Henry VII had used his royal prerogative to send John Cabot "for discovery of the Indies" in "quinto Martii Anno 7", that is, in the seventh year of rule, or 5 March 1492.[8] Probably this was simply an error, but it is interesting to note that such a claim would have antedated the Columbus patent. The Spanish were surely aware that the Cabot patent was issued on 5 March 1496, not 1492. Northampton also emphasized the importance of claims to first discovery being supported by the sovereign authority of the monarch, which in his mind fully validated Cabot's discoveries and invalidated those of Columbus. The latter had been given a patent to discover a passage to China and India and instead he and his men found the West Indies not "by their skill but by mere chance they being cast up in those places by shipwreck, not guided by foresight or knowledge."[9] Cabot, on the other hand, was issued a patent with the explicit purpose of finding the West Indies and America.

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[7] Linda Levy Peck, Northampton: Patronage and Policy at the Court of James I (Winchester, Mass.: Allen & Unwin, 1982).

[8] "An abstract of such reasons as were used by the Earl of Northampton in defence of English trade in the Indies, while the Commission of Treaty for Peace with Spain was handled," [2-5?] July 1604, PRO SP 103/64, fos. 26-28v.

[9] Ibid.

Northampton also introduced into the negotiations the principle of prescription. He argued, as had John Dee, that whereas British prescriptive use of these territories was "beyond living memory" because the fishermen had regularly frequented North America for over a century, the Iberians had not shown much serious interest in North America and the West Indies before about the 1560s. Prescription, according to Justinian, was to be long, peaceful, and uninterrupted. The Spanish and Portuguese had often abandoned territories when they were no longer economically valuable or when driven out by natives. The British, on the other hand, had maintained regular, peaceful activity in Newfoundland, which was, essentially, an expression of sovereignty based on the act of squatting. Don Juan Fernández de Velasco, the experienced Spanish statesman entrusted by Philip III with the negotiations in 1604, understood the importance of this precedent. As he travelled to London for the conference in March, he reported that the British could rightfully claim that they had navigated to, and placed temporary settlements near, the Grand Banks of Newfoundland for at least half a century; if this was not beyond living memory, then it was nearly so.[10]

In the end, the bantering over discovery and prescription did not result in a consensus of opinion in 1604, and the issues remained unresolved. Still, the arguments used by the commissioners are valuable. To Cotton and Northampton, the acts of first discovery and prescription were to be legally authorized and purposeful, not the result of accident or pretense. The British crown had authorized discovery based on "certain knowledge", while the Iberian crown had no such knowledge. The British commissioners

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[10] D.B. Quinn, "James I and the Beginnings of Empire in America," p. 139.

failed to mention that their knowledge came from accounts of Columbus's voyages. By citing not only the discoveries of Cabot but also those made by authorized British subjects in the following half century, these authors also implied that for the act of discovery to lead ultimately to rights of sovereignty, a certain degree, or magnitude, was required. Even if they accepted, for the sake of argument, that Columbus's activities were legitimate voyages of discovery, the Iberians' inchoate claims to sovereignty based on these enterprises were limited to, at best, the Greater Antilles, which in comparison to the voyages of the British could hardly qualify as discovery of the entire Western hemisphere. The Iberians could not, therefore, claim that they were lords of all new found lands by virtue of Columbus's "discoveries" alone. In the minds of the British negotiators, this gave the British crown stronger rights to much larger portions of North America and the West Indies than the Spanish and Portuguese could claim were part of their empires. By employing this argument, it was a logical next step to argue explicitly that the papal bull was illegitimate, since it was issued based on the fallacious assumption that the vast amount of land granted in these documents had been legally discovered, seen, and known, by subjects of the Iberian powers. This was an even greater challenge to the papal bull than Dee had issued in 1578; while Dee had merely questioned the northern limits of the award (45°), Cotton and Northampton questioned the very nature of the award itself.

In 1613, after John Digby reported to James I the Iberian crown's disapproval of the settlements in Virginia and Bermuda, the principles associated with first discovery and prescription asserted by Cotton and Northampton were employed by an anonymous writer. This author began by listing at length the discoveries made by the Spanish and

Portuguese in the Western hemisphere. Using latitude references, the author isolated those portions of North America (chiefly Florida), South America, and the West Indies which were discovered by Columbus or his successors, but according to "their own later histories, writers, and journals . . . and our Englishmen's manifold experience", they had discovered no further.[11] The North American eastern seaboard from 32° to 72° had not been discovered by the Iberians, but rather was discovered by Cabot, John Davis, Martin Frobisher, and Humphrey Gilbert. The latter had made initial prescriptive use of the territory in the 1580s. Moreover, the Pacific seaboard from 24° to 43° had been discovered by Francis Drake.[12] In making these arguments, this author repeated the importance of the "magnitude" of first discovery and prescription, and drew upon historical and geographical precedents in much the same way as John Dee had done in 1578. The introduction of latitude references is also important, because through these the author could clearly demonstrate the northern and southern boundaries of individual and collective British discoveries, which offered an exactness that the Iberians, because of their belief in the ubiquity of Columbus's discoveries, were unwilling to provide.

As established by Cotton, Northampton, and the anonymous author to place British claims to sovereignty in the best possible light, the arguments advanced between about 1604 and 1613 for first discovery and prescription were used with little alteration over the next two decades. As John Dee had made clear in his General and Rare Memorials, British rights of sovereignty over the North Atlantic were based principally

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[11] "The true limits of all the countries & provinces as [are at] present actually possessed by the Spaniards & Portugals," PRO CO 1/1/32, f. 107.

[12] Ibid, f. 107v.

on these legal precepts. In 1613, John Digby complained to the Spanish crown that its subjects were illegally landing on, and fishing off the coasts of, Greenland and surrounding islands, which he claimed were part of the British empire.[13] The Spanish secretary who heard the complaint responded that the Spanish had "for so many years fished in the Northern Seas" without challenge from any Christian prince, which was a strong case for their right to use the region through prescription. He also claimed that the region was "without controversy discovered" by the Iberian crown. This helps to explain the Iberians' position on the legal precept of discovery. There is no convincing evidence that the Iberians had ever discovered Greenland, in the British sense of actually sighting the region. Rather, like the claim to sovereignty over the entire Western hemisphere, the Spanish claims to the North Atlantic were probably based on Columbus's discoveries, which were confirmed by the papal bull. These were old arguments, and Digby simply responded that the papal bull "was grown to be so slightly esteemed that it was almost left to be alleged [ie. useless to be used] by them". Regarding the argument for prescription, Digby said that the Spanish secretary had been misinformed and that, in fact, the Spanish had only known about, and begun frequenting, the northern regions in "the late summer [ie. in 1612] when an Englishman led them thither." According to the British position on the magnitude and immemorality of prescription, this certainly was not a strong enough precedent to supersede that of the British.

The same argument was applied when the British and the Dutch debated who had sovereignty over Greenland. In 1615, during a conference that took place at the Hague,

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[13] John Digby to William Trumbull, 3 May 1613, BL Add. MS 72284, no. 142.

the British commissioners informed the Lords of the States General that the subjects of James I and his predecessors had "discovered and frequented" Greenland and other islands in the North Atlantic.[14] Subsequently, James had given special order, "as of the precedent of other Princes in like cases," that the region of the North Atlantic that bordered on the islands under his sovereignty, was to be appropriated for the sole use of his own subjects.[15] The States General responded by citing the precedents of Dutch discovery and prescriptive use of the North Atlantic predating the British, especially, it noted, in the years 1594-7. These discoveries were recorded in published journals and maps, and could be certified by men still living. The Dutch failed to demonstrate any knowledge of the British voyages to the North Atlantic between the 1550s and 1570s, and the commissioners crafted a response that relied on these precedents. The royally-authorized voyages of Hugh Willoughby and Martin Frobisher were described at some length, in order to demonstrate that the British had, with legal authority, discovered and frequented the region at least forty-three years before the Dutch, and that this land was claimed on behalf of the British crown. In addition, various capes, havens, and bays were named after British adventurers, which the Dutch cartographers gave in their own maps. This was an assertion of long, prescriptive use.

Similar arguments were employed earlier, in 1613, by British envoys during a conference with the Dutch. This conference was initiated by a complaint made in 1611 by the East India Company that the Dutch had "forcibly appropriated divers of the chief

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[14] BL Add. MS 48155, fos. 40-42v.

[15] See below, pp. 276-79.

places of traffic which of right belong to the English" in the Indonesian archipelago.[16] Working through Sir Ralph Winwood, the British ambassador at the Hague, Salisbury arranged to have a meeting in London to resolve the dispute. Early in the conference, the Dutch demanded to know by what precedents the British claimed right to trade in the East Indies. In part, the British cited their legal theory of discovery, describing at some length the voyage of Francis Drake (1577-79), whose first discovery was proven by a ring that Drake presented to Queen Elizabeth on behalf of the King of Ternate, a petty East Indian king. The discovery of additional islands, and at least initial prescriptive use, was conducted between 1582 and 1603 by Cavendish, Fenton, Hawkins, Lancaster, and Middleton, the latter of whom also returned with a present and letter from an East Indian king.[17] In the eyes of the British, these precedents, which preceded the voyages of the Dutch and involved more extensive discovery and frequenting of the region, were sufficient to guarantee British rights of free trade in the region, if not exclusive trading rights to the whole. At this time, the British were not particularly interested in settlement, except to place a few trading factories.

The issues of discovery and prescription, and their association with knowledge, magnitude, and lawful royal authority came up again during the negotiations with the French in 1613. This was after Sir Samuel Argall, an employee of the Virginia Company, was dispatched with orders to seek out and destroy any French settlements within the

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[16] East India Company to Privy Council, Nov. 1611, PRO CO 77/1/34.

[17] BL Add. MS 48155. The minutes for the Conference of 1613 are at fos. 1-19. A Latin version of the same journal is at PRO SP 113/36, fos. 224-43, and a synopsis of the conference is to be found at PRO CO 77/1/32. The conferences of 1613 and 1615 were probably recorded into this journal by Clement Edmondes, clerk of the privy council.

limits of the Company's legal jurisdiction, as set out in its patent. In October 1613, Argall made his way to Port Royal (present day's Annapolis Royal in Nova Scotia) and discovered an unmanned fortification; the twenty or so settlers were apparently working in nearby fields. After removing booty from the forts, Argall ordered the fortification to be torn down, all symbols of French possession to be defaced, and all ordnance to be transported to Virginia for the use of the English colony.[18] Two official complaints came from France, one from Henri de Montmorency, the Admiral of France, and the second from the Sieur de Bisseaux, the French ambassador resident in London. Both complainants demanded restitution for Argall's actions, reminding the British crown that the French had been in possession of New France for over eighty years, ever since it had been discovered by Jacques Cartier in the 1530s and 1540s.[19] The senior British crown official (perhaps a judge of the admiralty court) who prepared the response to these complaints noted that "the histories and public registers of England" showed that between about 1496 and 1606, monarchs had issued letters patent to Robert Thorne, Hugh Eliot, John and Sebastian Cabot, Humphrey Gilbert, and Walter Raleigh to search out, discover, and plant in new found lands. During these voyages, most of which predated Cartier's explorations, the entire Atlantic seacoast of North America from the Carolinas northward had been discovered on behalf of the British crown and frequented by its subjects, which were initial claims to sovereignty.

In 1624, these principles were again marshalled against French claims. As the King of Scotland, James VI had awarded the region of "New Scotland" — which

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[18] See Jones, Gentlemen and Jesuits, pp. 227-35.

[19] CSP Col. 1, p. 15; BL Cotton MS Otho E.VIII, fos. 252-53; PRO SP 103/9, fos. 273-74.

included the present-day regions of Nova Scotia, New Brunswick, Prince Edward Island, and the territory south of the St. Lawrence including Maine — to Sir William Alexander in 1621. As Alexander was preparing his fleet in 1624, the French ambassador in London, the Count de Tilliers, presented a "memorial" to Secretary of State Conway. Tilliers acknowledged that the British had title through first discovery of the region in America from New England southward 500 leagues, to the north of Florida, but he asserted the French king's right to Acadia based on Cartier's discoveries.[20] Conway, writing to support Alexander, feigned surprise that the French would challenge British rights of sovereignty, based on discovery, to the region between 40° and 48°, "which has been so long recognized by both nations."[21] He listed the discoveries of Sebastian Cabot, the letters patent of Gilbert and Raleigh, and James I's commissions. To Conway, this represented a stronger claims than that of the French, who could marshall only the belated discoveries of Giovanni de Verrazano and Jacques Cartier. Like the earlier responses prepared for the Iberians by Cotton and Northampton, Conway was asserting sovereignty not only because of first discovery, but also because the sheer weight of evidence, showing considerable British "discovery" and "knowledge" through prescription, suggested that the British had more rights to sovereignty than the French.

Finally, in 1630, when the restoration of Port Royal was again under consideration during the Anglo-French peace conferences, Charles I commanded the Scottish Privy Council to formulate an argument for his title to New Scotland. Alexander's patent had been revoked in favour of a British enterprise comprised of English and Scottish

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[20] Count de Tilliers, French ambassador in England, to Secretary Conway, Apr. 1624, PRO CO 1/3/13.

[21] Answer to above, [May?] 1624, PRO CO 1/3/14.

adventurers in March 1629. Shortly afterward, the brothers David and Thomas Kirke reclaimed the Acadian region for Charles I, displacing remaining French settlers in the area. The Scots reply, intended for use by the British negotiators René Augier and Henry de Vic during 1630-31, came in September 1630. The authors of this document did not simply deny French rights to Canada, as had Conway, but emphasized the crown's title to much of North America including New Scotland, in order to challenge other potential claimants. They argued that "Immediately about the time that Columbus discovered the Isle of Cuba, Sebastian Cabot set out from England by Henry the seventh [and] did first discover the continent of America, beginning at the Newfoundland, and thereafter going to the Gulf of Canada and from thence having seen Cape Breton all along the coast to Florida. By which discovery his Majesty hath the title to Virginia, New England and New Scotland, as being then first discovered by Cabot at the charges of the King of England."[22] The French, "neglecting this knowledge", sent Cartier long after Cabot's voyages of discovery, making any pretensions of French discovery illegitimate.

What is, perhaps, most interesting about this reply is that Cabot's discoveries alone were employed as justification for claiming all of North America north of Florida. Although the author did emphasize that Cabot's discoveries (in comparison to Columbus's and Cartier's) had great magnitude, his argument is reminiscent of the Iberians' justifications for claiming the entire Western hemisphere based solely on Columbus's discoveries. This author claimed that by Cabot's discoveries the British had "possessed themselves of the whole continent discovered by them," a single, determinist argument that was not

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[22] Anonymous. 1630, PRO CO 1/5/77, fos. 225-26, quotation on 225r.

generally as advanced as those offered by British writers in earlier negotiations.

This anonymous author's argument does, however, help to demonstrate that each of the European countries was arguing within acceptable, international legal precedents, although these could be presented in different ways to offer the best possible argument. Where they disagreed, and what prevented definitive resolution, was a question of degree and definition. How much territory could be claimed through one act of discovery? Did the discovery of Cuba represent also the discovery of the Greater Antilles, of the West Indies, of North America, or of the Western hemisphere? Did a series of discoveries or prescriptions closely related by time or voyage represent a stronger claim? Did discovery have to be preceded by royal authorization and "knowledge" of the act about to be undertaken? With the exception of their dealings with the French in 1630-32, the British generally asserted that a single discovery represented an inchoate and relatively small claim, which they could justify because of their more intense activities in North America during the sixteenth century. But this claim was strengthened both by the royal authority and knowledge associated with the acts of discovery, and the subsequent, peaceful, prescriptive use of the territory. On the other hand, with the exception of debates regarding Greenland, neither the Iberians, Dutch, nor French looked upon the issue of "multiple" discovery or prescription as being very important, perhaps because in comparison to the British their prescriptive use of the new found lands that were of interest to the British was somewhat less tangible.

PHYSICAL POSSESSION AND EFFECTIVE CONTROL

Although claims to discovery and prescription could offer inchoate rights of

sovereignty, dominion over land ultimately came from having possession, which to the British inevitably involved having physical presence in the territory. At the time that these negotiations between Britain and other colonizing powers took place, about 1604 to 1632, the British were only seriously interested in "possessing" portions of North America, so their employment of the legal principles of possession was normally applied for issues involving this part of the new world. According to civil and international law, possession was the most powerful assertion of dominion, because it represented an unassailable, tangible finalization of a process which began with discovery and prescription. Possession could also be used to claim land to which Britain had a relatively weak claim to discovery and frequent use (such as the El Dorado region of South America), but which was not currently occupied by a Christian prince and was, therefore, deemed either abandoned or open to the first European monarch who chose to occupy and defend the territory. To Justinian, possession stems from "physical holding" and ensuring that the region is "governed by our control," without which it is "open to the first taker."[23] Justinian also wrote that "ownership of property attached to the soil is . . . easily obtained . . . where anyone gains possession of land which is unoccupied on account of the absence or negligence of the owner."[24] This was to be a valuable argument for the British commissioners. Like the principles of discovery and prescription, though, "possession" was subject to much interpretation, and the British developed a legal formula that worked best for their particular situation.

In his defense of British sovereignty in new found lands written in 1604, Robert

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[23] See above, ch. 2, and Justinian, Digest, D.41.1.3.2 and D.41.2.3.1-6.

[24] Justinian, Institutes, I.2.6.7.

Cotton introduced the ideas of possession during the negotiations for the Treaty of London. He claimed that it was part of the laws of God that nations throughout the world should enjoy "sacred religion and humane society," and that it was the responsibility of all Christian princes, therefore, to spread Christian doctrine and civilize pagans.[25] It was likewise a precept of "the Law of Nations, which is nothing else but the general conformity of reason dispersed amongst all men," that any Christian monarch could authorize the settlement of his or her subjects in territory that is wholly ungoverned or headed by a "pagan prince." Cotton argued that by failing to plant in new found lands, the Iberians had not fulfilled the laws of God, nature, and nations. In North America and the East Indies, the Spanish and Portuguese had no obedience of the natives, but more importantly they had no forts to defend their sovereignty.[26] To confirm these claims, Cotton passed along to the negotiating team a map which identified Spanish overseas holdings in yellow and Portuguese holdings in red, based on those regions where the Iberians had strong, physical presence and the allegiance of the natives. The map is not extant, but we can be certain that it contained fewer Iberian possessions than those two countries believed were part of their empires.

The Earl of Northampton, perhaps drawing on Cotton's map, claimed that the Spanish and Portuguese "do not possess the twentieth part" of the East Indies, which meant they had no right to forbid settlement of the British in these regions, especially given Britain's additional precedents of discovery and prescription.[27] But even in the

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[25] Cotton, "Reasons for trade," BL Cotton MS Vespasian C.XIII, f. 47r.

[26] Ibid., f. 50.

[27] "An abstract of such reasons as were used by the Earl of Northampton," PRO SP 103/64, f. 27v.

absence of these inchoate precedents, possession of unoccupied territory could still take place. Like Cotton (and John Dee), Northampton argued that as Christian princes the British monarchs had an obligation according to canon law, civil law, and the law of nations, to settle new found lands in order to bring "comfort" to the pagans. Because "charity was the badge of Christ," Northampton informed the Iberian commissioners that "it is sin to act" contrary to these laws. Thus, because the Iberians chose not to settle North America and civilize the natives, as was evident both by the lack of royal interest in the area and by the lack of physical occupation, it was incumbent upon the British to do so according to "the laws of God, nature, and nations."

How successful Cotton's and Northampton's arguments regarding possession were remains an open question. In the Treaty of London, no mention was made either way about settlement in North America or the West Indies. Robert Cecil wrote to Sir Thomas Parry in 1604 that they had secured through the treaty the ability to (or at least had not lost their right to) establish a "plantation in uninhabited countries" where "the Spanish had no actual possession." This was, Cecil believed, "a pregnant affirmative for us rather than against us."[28] The British, therefore, believed that because there was no prohibition, their sovereignty through possession was tacitly approved. Over the next few years, however, the Iberians made it clear that they had formed a different interpretation of the treaty in regard to establishing possession. In April 1605, before he even ratified the treaty, King Philip of Spain and Portugal issued an edict forbidding any "stranger ship of any nation" to pass to any provinces under Iberian dominion in the Americas or

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[28] Cecil to Parry, 5 Sep. 1604, PRO SP 78/51, fos. 253-4.

Indies.[29] In 1605, the English ship Castor and Pollix was captured off the coast of North America, and the Richard and the Triall were taken in 1607 as they entered the West Indies on their way to Virginia.[30]

In light of these and other events, the anonymous author discussed earlier, who formulated a response in 1613 to the Iberian challenges to British activities in North America, carefully identified those regions where the Spanish had possession. He clearly believed, as had Cotton and Northampton, in the importance of effective control in making claims to sovereignty .[31] Once again employing the latest cartographical and hydrographical learning, the author reported that the Iberians had possession of two fortified towns in Florida, of the "kingdom of Mexico," which referred to much of Central America, to five towns in the Brazil region of South America, and to many towns and cities in Peru. "These before mentioned," the author assured his readers, "are the principal provinces, cities, and towns actually possessed by the Spaniards upon the main of America." But they had "no farther actual possession." Within the Straits of Magellan they "have not any town upon the north or south shore"; indeed, from 37° south latitude and southward for 300 leagues, "they have no inhabitation at all." In the West Indies, the Iberians possessed only Puerto Rico, Hispaniola, Cuba, and Jamaica, while the other islands were "utterly desolate or inhabited by a few savages." Therefore, "all those huge

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[29] HMC 9 Salisbury XVII, pp. 130-31.

[30] See Andrews, Trade, Plunder, and Settlement, chs. 13-14; Quinn, "James I and the Beginnings of Empire in America," pp. 141-47; Quinn, "The Voyage of the Triall, 1606-1607: An Abortive Venture," in Explorers and the Colonies, pp. 363-82; and, for similar activities in the East Indies, Calvin F. Senning, "Piracy, Politics, and Plunder under James I: The voyage of the Pearl and its Aftermath, 1611-1615," Huntington Library Quarterly 46 (1983): 187-222.

[31] "The true limits of all the countries & provinces . . . actually possessed by the Spaniards & Portugals," PRO CO 1/1/32, fos. 107-8.

coasts and mighty islands lying southward of the Tropic of Cancer, which hitherto are quite free from any Spanish government, and all those large and spacious countries on the east part of America from 32 to 72 degrees of northerly latitude, have not no never had any one Spanish colony planted in them." This author claimed that the British did not yet have absolute sovereignty these region either, regardless of Cabot's, Drake's, and Raleigh's activities. This was all the more reason to continue the current efforts at plantation, in order to finalize the legal title that began with discovery and prescription. Like John Dee, Richard Hakluyt, and Robert Cotton, this author did not challenge the Iberians' right to claim sovereignty over those territories which they actually possessed and effectively occupied.

This author's use of latitude references is especially important given that, as we have seen, beginning in 1606, the letters patent authorizing overseas plantations all made increasingly better use of this geographical device when claiming sovereignty. A royal document authorizing not only settlement but also declaring the outer boundaries of the future colony, was a direct statement of the magnitude of territorial possession. There was, however, still the question of the extent to which the British crown had to maintain control of the entire region claimed through the patent. Was the erection of one or two fortifications or towns in the Chesapeake Bay area, for example, sufficient to establish permanent, undisputed sovereignty over the vast region granted by the letters patent to the Virginia Company? In the patent issued in 1606, this region was from 34° to 45° north latitude, ranging along the Atlantic coast from South Carolina to Nova Scotia. Even the most capable colonial governors would have known it was impossible to control and police this entire area, regardless of the establishment of strategic colonies in

Newfoundland and Bermuda. Justinian addressed this very issue: "But when we say that we must take possession . . . that should not be taken to mean that one seeking to possess an estate must go round every part of it; suffice it that he enters some part of the estate, but with the intent and awareness that thereby he seeks to possess the estate to is utmost boundaries."[32] Was "effective control", then, in large part a symbolic gesture intended to meet the requirements of international law, rather than an assertion of Britain's actual ability to defend the territory from attack? Was it enough for the British to plant and fortify a single colony within the region granted in the patent to secure legal title to the whole?

During the debate between the British and French over Argall's taking of Port Royal in 1613, these exact questions arose. In its justification for Argall's actions, the Virginia Company argued that, in addition to the voyages of discovery and prescription conducted by Cabot and Gilbert, Acadia had been inchoately "possessed" by the British when James I included the geographical region in the letters patent issued to the Virginia Company in 1606 to 1612.[33] As soon as British ships arrived in the Chesapeake Bay and established the first fortification, this possession became complete and incontestable, so long as the settlement remained populated and the fortifications staffed. The authors acknowledged that King Henry VI of France had issued a letter patent to the Sieur de Monts in 1603, before the British were permanently planted, and that a colony had been established in Acadia. Although, in the British interpretation, these two steps could lead to sovereign possession, the Company justified reclaiming the land for James I on the

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[32] Justinian, Digest, D.41.2.3.1.

[33] PRO SP 103/9, fos. 273-74.

grounds that Port Royal had been abandoned, leaving it open to the first taker. Argall had apparently found the colony devoid of people and the fortifications, therefore, unmanned. In the meantime, James I had issued a letter patent to the Virginia Company and they had established and continued to reside in a fortified colony, which were unassailable rights to the region granted in the patent. Therefore, because the French could not defend the sovereignty of their monarch in the region, and because another, rightful claimant had come along, it was reasonable and lawful for Argall to "demolish such relics of any fortifications, or other marks of claim or plantation to the said Port, being in 44 degrees or thereabouts, and within the limits and precinct of our Colony." The Virginia Company could not "protect the claims and title of our said colony to the said Port Royal without taking away all such silent pretense, and ensigns of dominion, as the arms of Princes are."[34] These authors, then, believed that British possession of the territory from Carolina to Nova Scotia flowed from the patent and the physical taking of land granted within it. They did not, however, believe it was reasonable to expect that the British colonists should have absolute control over the entire region, but that the fortifications, in addition to serving the pragmatic role of defending territory, were important, symbolic assertions of the dominion of a Christian sovereign. Since the British had occupied a portion of the region specified in the patent, the crown had sovereignty over the territory to its outer boundaries.

In the negotiations which took place in 1630 concerning French rights to Canada, the same principles were asserted. Charles I commanded the Scottish privy council to

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[34] BL Cotton MS Otho E.VIII, fos. 252-53.

certify "how far we and our subjects are interested therein, and what arguments are fit to be used when any question shall occur concerning the same, for the defence thereof."[35] Responding in September 1630, the Scottish Privy Council recommended that the king "seriously take to heart the maintenance of your royal right to the lands, and to protect the undertakers in the peaceful possession of the same, as being a business which toucheth your majesty's honour."[36] Although it was admitted that the English "were not able to possess the whole" of their discoveries at first, this had been completed "by a colony in the south part thereof now called Virginia, and by another in the north part thereof now called New England and New Scotland planted by Justice Popham."[37] Sir William Alexander subsequently defended his rights to Acadia based on his patent to the "Company of Adventurers to Canada", which clearly indicated the boundaries of his claims, and the completion of possession by his son, who went to Port Royal in 1627 and allegedly found the remnants of the colony abandoned.[38] Perhaps most importantly, the Scottish authors emphasized that the possession of the region had been accepted previously by the French crown, by the natives in Canada, and by Claude de La Tour (the "chief commander" of the French), who, recognizing the British crown's right to the area, "turned tenant" and gave his allegiance over to Alexander. In fact, La Tour had been a long-time resident of Acadia who was captured by the Kirke brothers in 1628 and taken prisoner to England. There, he was induced by the solicitations of the Huguenot refugees

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[35] Charles Rogers, ed., The Earl of Stirling's Register of Royal Letters Relative to the Affairs of Scotland and Nova Scotia from 1615 to 1635 (Edinburgh, 1885), II, 463.

[36] Council of Scotland to the King, 9 Sep. 1630, BL Egerton MS 2395, f. 18.

[37] PRO CO 1/5/77.

[38] "Alexander's information touching Cape Breton and Port Royal," 1630, BL Egerton MS 2395, f. 23.

in London to change his allegiance and assist in the settlement of Port Royal by English and Scottish colonists. The Scottish authors had little interest in questioning France's right to Quebec. In addition to being conquered by the Kirkes after the Treaty of Susa was signed in 1629, which meant that it had to be returned to the French, the Scots knew both that the territory had never been drawn into a British letter patent and that the French continued to settle and defend the region. In the end, both Acadia and Quebec were returned to the French, but this was a political decision made by Charles I, probably in order to secure the remainder of the dowry of his wife, Queen Henrietta Maria.

The legal principle of possession had the same definitional problems as discovery and prescription. To the Spanish and French, possession was much less important than discovery, whereas to the British, arguing within the framework of positive civil law, it was the most important step in acquiring undisputed sovereign rights. It represented a symbolic statement of the "taking" of overseas land, and the intent to remain, a physical statement of force. To the Spanish, the British justified their rights of possession based on the fact that the former did not have any physical control, but also on the argument that it was the duty of all Christians to possess pagan land and improve it according to the laws of God and nature. This also supported an argument that possession could lead to lawful sovereign dominion regardless of prior discovery and prescription. Afterward, when the British had actually issued letters patent and settled certain areas, their position on possession shifted. When speaking to the Spanish and the French after 1607, they justified claiming initial possessory rights based on declaring the boundaries of territory through royal documents and finalized these claims by placing permanent settlements. In coming to this conclusion, we can, in part, corroborate the arguments of Patricia Seed and

Anthony Pagden that the British placed a heightened emphasis on the physical use of land. However, at least when speaking to other Europeans, the British rarely cited their "ceremonies of possession", such as planting crosses and flags, and never used as evidence the building of houses, the planting of fields, or the erection of fences. Instead, effective control was emphasized. We have seen in previous chapters how important maintaining such effective control was to the British, which was demonstrated both through well-staffed fortifications and also through the distribution of maps which emphasized this level of control.

FREE TRADE AND FREEDOM OF THE SEAS

As David Armitage and Kenneth Andrews have shown, the British empire in the seventeenth century was primarily a commercial enterprise. This necessarily involved extracting commodities from the land and seas, and trading with natives and other Europeans in new found lands. We have seen that when North America north of Florida, Greenland, and to a lesser extent the East Indies were in question, the British turned to precedents of discovery, prescription, and possession to claim these trading rights. Important British writers, such as John Dee in the late sixteenth century, and William Welwood and John Selden in the early seventeenth, used aspects of these three precedents, or at least the British interpretation of them, to argue for exclusive fishing and frequenting rights based on a mare clausum, or closed sea, in the region of the north Atlantic and the seas surrounding the British Isles. The seventeenth-century authors were writing in response to Dutch claims, most tangibly formulated by Hugo Grotius in 1609, to a mare liberum, or open sea, in all waters, including those off the coast of a monarch's

dominion. The British based their rights to exclusive coastal fishing and trade on their possession of the land around which the water flowed. These arguments were highly interpretative, but were well-steeped in the laws of God, nations, and nature.[39]

Although the argument of mare clausum was employed by the British when there were strong precedents of discovery, prescription, and possession, they were not useful when the British crown wanted to assert its sovereign rights to authorize subjects to trade in the East and West Indies, South America, or other new found lands either where they had no possession, or where another European monarchs did have legitimate possession.[40] In these situations, the British turned away from the concept of mare clausum and instead employed the Grotian argument of mare liberum, in order to deny that the other European colonizing powers had exclusive trading rights to new found lands. There was an inherent contraction in, on the one hand, asserting mare clausum in the northern seas and, on the other, asserting mare liberum in other regions under the sovereignty of another European prince, but the British had little trouble arguing both with equal fervour and legal arguments. The issue of free trade in new found lands were foremost in the mind of the British commissioners during the Treaty of London in 1604, and in the conferences with the Dutch in 1613 and 1615.

In 1604, the Iberian commissioners made it clear that the British were to be

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[39] Dee, Memorials; Dee, "Thalattokratia Brettaniki"; Welwood (or Welwod), De Deminio Maris (London, 1615); Selden, Of the Dominion, Or, Ownership of the Sea (1617, published London, 1635). On these arguments, see Sherman, John Dee, ch. 7; J.D. Alsop, "William Welwood, Anne of Denmark and the Sovereignty of the Sea," Scottish Historical Review 49 (1980): 171-4; Christianson, Discourse on History, Law, and Governance in the Public Career of John Selden, pp. 246-50; and Armitage, Ideological Origins, pp. 107-13.

[40] A notable exception is the British possession of Pulau Run in the East Indies, by which they claimed exclusive trading rights with the Banda natives. See above, chapter four.

excluded from trade in the East and West Indies, which they claimed were, respectively, under the jurisdiction of the Portuguese and Spanish. They argued that although free commerce was not normally forbidden (in accordance with the laws of nations and of nature, as was the case in the Spanish dominions in Europe), the case of the Indies was different. Since the Iberian monarchs had expended great sums of money to enable their subject to seek out and discover these territories, it was reasonable for King Philip to restrict these regions to his own subjects for the benefit of the Iberian nations.[41] When the Iberian position was referred to James I for his consideration, the king responded that by the laws of nature he could not restrict his subjects from making their fortunes in all places either outside of any Christian prince's jurisdiction (such as North America north of Florida), or governed by any prince with whom he had peace and amity.[42] Thus, in their treatises, Robert Cotton and the Earl of Northampton sought to support James's lay opinion by the word of law. The fact that Cotton's argument is formally titled "Reasons for the trade into the East and West Indians for the Merchants of England", and Northampton's "An abstract of such reasons . . . in defence of the English trade in the Indies," shows how weighty this matter was in the negotiations.

Cotton defended British rights to trade throughout the entire world based on "the laws of God, nature, and nations for trade and navigation in all the seas, coasts, and havens of the world allowed to all men."[43] He emphasized that the "universal gathering of waters by God" was designed to be a "highway" to join the nations together for

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[41] "Diary of a conference," BL Sloane MS 1851, fos. 100-109.

[42] Ibid., f. 90.

[43] Cotton, "Reasons for trade into the East and West Indians for the Merchants of England," BL Cotton MS Vespasian C.XIII, f. 47.

"humane preservation, which is supported by intercourse." Only God, therefore, could be deemed the sovereign of the oceans and the seas, while monarchs could claim only the rivers within their territories and the right to charge "accustomed duties" to those who extract commodities from these lands or their coastal areas.[44] This argument is similar to Dee's suggestion to employ a royal navy to claims customs from foreign fishermen in the northern seas. It also helps show how the British justified their claims to mare clausum in the northern seas; because of the number of islands and territories under British "sovereignty", all fishing would be done in coastal waters. Therefore, if the Iberians (or the Dutch) wanted to fish in these areas, they would have to pay for a special license from the British crown. Moreover, Cotton argued that international law allowed the subjects of any prince to make use of ports and harbours, regardless of the fortifications or other signs of possession located on them. He admitted that there were two situations allowed by civil law to restrict this free access. These were during times of war, in which case ports could not be open to enemies for fear of providing "them occasion of offensive arms and intelligence", and when the territory would be corrupted by the admission of "Infidels and Saracens."[45] Neither case apply to Britain and the Iberian countries, which were Christian and would, after the treaty was signed, be at peace and amity with each other. For, Cotton asked, "what marks more of hostility, than to be received as enemies into their [ie. allies'] ports and haven"? Finally, Cotton argued that rights to free trade in the East and West Indies should be allowed because of previous "articulated contract." In the decades before the war (the 1550s and 1560s), these two sovereign nations had signed

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[44] Ibid., fos. 47-48.

[45] Ibid., fos. 48-9.

treaties and contracts which provided for reciprocal trade among all territories in their jurisdiction, which, he believed, should be reinstated, as was normal when peaceful relations resumed. All of these arguments used by Cotton were well known; Justinian had presented these precedents at length, and in the sixteenth century they were capably argued by Francisco de Vitoria, by other neo-Thomist civilians at the School of Salamanca, and by Alberico Gentili at Oxford.

Northampton, who had at his disposal Cotton's manuscript, employed the same legal arguments, although, as with the case he advanced for discovery and prescription, he provided additional evidence when directly addressing the Iberian commissioners. Like Cotton, he claimed that the seas and ports were common to all nations, admitted that the law of nations prohibited free trade in rivers "in respect they may be robbed of their fish," and pointed out the two reasons that free trade could be prohibited — "either for hostility . . . or in respect of infidelity."[46] But the ocean itself was too great an expanse to be claimed by a single prince, and was instead "conveyed by providence for traffic amongst all countries." Northampton then provided a list of treaties signed in former times, which allowed freedom of access to all ports and dominions of the kings of England and the Holy Roman Emperors. In the previous century, Henry VII treated with Maximillian and Henry VIII treated with Charles V, and since the subjects of Spain and Portugal were now subsumed under the same crown, these earlier contracts should be upheld.[47] For each of these arguments, Northampton drew upon Cotton's written opinions.

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[46] Northampton, "An abstract of such reasons . . . in defence of the English trade in the Indies," SP 103/64, f. 26-27.

[47] Ibid., f. 27.

Becoming more aggressive in his argument, Northampton next claimed that in the East Indies, where the Iberians had little or no possession, the right to trade was vested in the princes to whom the lands and seas belonged. Because the Europeans accorded East Indian rulers sovereign, possessory rights, neither the Iberians nor the Pope had any legal power whatsoever to treat over the issue of trade. Rather, the rulers invited the whole world to trade, demanding only the customs and tribute that any foreigner would be expected to pay.[48] Perhaps responding to a criticism made by the Iberian commissioners, Northampton claimed that it was true that in the sixteenth century the Iberians had been able to monopolize the West and East Indian trade because the King of Britain lacked "means". Now, however, "the providence of God having fitted this state more for trade than any other, in the making of ships, the situation of the monarchy, the capacity of ports, the disposition of men, the strength of their constitutions, and convenience of all ordinary means," the British were technologically, politically, and psychologically able to undertake free trade and travel in the Indies. Given their improved situation, the British were simply exercising their rights according to the canon, civil, and natural law to participate widely in world trade.[49] And since, as we have seen, Northampton did not believe the Iberians had prescriptive use "beyond living memory," no precept of international law could prevent British activities in the Indies.

To the Iberians' argument that they had the exclusive right to "reap the fruits of their own labours" because they were "put to so great a charge in making their way to those dominions," Northampton answered that "it did not rest in the liberty of any Prince .

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[48] Ibid., f. 27v.

[49] Ibid., f. 27v.

. . under Heaven to limit or slant those slopes of traffic or intercourse which nature had left at liberty." It was held by the civil lawyers as Christian obligation and natural law that "a man will bear the charge out of his own purse of . . . unbarring a haven," but this did not offer any special privileges subsequently. Whatever practical or rational reasons the Iberians had, therefore, for prohibiting the British from the Indies, they were not supported by the legal codes which were binding upon all nations. He alleged, finally, that given God's laws of free trade intercourse, the Pope was "least fit and worst qualified to decide these debates," and that his opinion was not important and his bull illegal.[50] That is, in issuing the bull, the Pope as the representative of God and canon law, had drawn himself into a legal contradiction. These arguments are strikingly similar to those of Vitoria, who denied the pope's authority in overseas affairs, emphasized instead the efficacy of canon, natural, and civil law, and declared that sovereign princes were justified in making war with natives who refused to allow free intercourse within their land.

When the Treaty of London (signed by James I on 19 August and ratified by Philip III on 15 June 1605) was drafted, the decision regarding trade appeared as the ninth article. "It was and is agreed and settled," the article reads, "that there shall be and ought to be free commerce between the said Most Serene King of Spain and the said Most Serene King of England, and the vassals, inhabitants of their kingdoms, and subjects of each of them, both by land and by sea and fresh waters, in all and singular their kingdoms, dominions, islands, other lands, cities, towns, ports, and straits . . . where

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[50] Ibid., f. 28.

commerce existed before the war, agreeably and according to the use and observance of the ancient alliances and treaties before the war."[51] The existence and wording of this article in the treaty suggests that the efforts of Cotton and Northampton were important to the treaty negotiations. It provided for free trade as established by previous agreements, although the British compromised by agreeing to limit the number of ships trading in any port to eight per year. The wording was, however, vague on British rights to trade in the East and West Indies, which were not specifically mentioned. Although the British believed they had managed a complete victory during the negotiations, the Iberians believed they had managed through article nine to "exclude both the Indies," as the margin of a letter sent to King Philip listing the "Capítulos de paz" reads.[52] "Commerce" as it "existed before the war" was a seemingly benign but, in fact, pregnant phrase, because the Iberians believed (with good reason) that the British had no legal activity in the East and West Indies before 1585. Even the limited activities of Drake in the region, very little of which took place before the outbreak of war, could not be construed as free trade in accordance with the rules of peace and amity.

An acceptable interpretation of article nine of the Treaty of London lay at the heart of the negotiations which ended the war between the British and Iberians of 1625-30.[53] The British envoy sent to Madrid was Francis Cottington, an experienced statesman and previous resident ambassador in Spain. The Spanish commissioners pressed Cottington to present for discussion a list of regions of the West Indies where the British had

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[51] Davenport, European Treaties, p. 256.

[52] William Cecil to Thomas Parry, 5 Sep. 1604, PRO SP 78/51, fos. 253-4; "Proclamatio de Pace cum Rege Hispania" (1605), Rymer, Foedera, XVI, 633-4; Allen, Philip III and the Pax Hispanica, p. 136.

[53] Papers relating to this treaty are found in PRO SP 103/65, fos. 61-153.

legitimately traded before 1585, which in their view of the treaty of 1604 would then be the only regions into which Britain could have intercourse. Cottington categorically refused. Such a list, Cottington reported to the king, would admit into the treaty "negative Articles" which could have placed the regions of the West Indies currently possessed by the earls of Carlisle and Montgomery in peril.[54] Cottington was not willing to "bar that trade by way of capitulation," and, after citing a Spanish account of Drake's circumnavigation of 1577-80 which mentioned his West Indian "discoveries", he desired that the wording of article nine be reissued, but with the explicit mention of the Indies. In the end, the wording of article seven of the treaty of 1630 allowed for commerce "as it was settled in the treaty of peace in the year 1604, in the ninth article," once again without any mention of the East or West Indies. To be sure, this article was a limited success for the British, but it did not, at any rate, deny the free access to valuable ports. Cottington correctly reported that "by these articles there is now nothing that prohibits" British trade in the Indies.[55] Although neither the treaty of 1604 nor that of 1630 explicitly awarded the British these rights, these negotiations show the importance placed on international law in resolving these disputes.

In the East Indies, the British were also challenged to their rights of free trade by the Dutch. The issues represented the most important areas of discussion during the conferences of 1613 and 1615. The British commissioners during these disputes were equally represented by the East India Company and the privy council, and the clerk of the privy council, Clement Edmondes, was probably the amanuensis of an extant

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[54] Cottington to the King, 17 Nov. 1630, PRO SP 103/53, fos. 149-51.

[55] Ibid., fos. 150-51.

comprehensive journal of the proceedings.[56] The Dutch commissioners were all representatives of the Dutch East India Company (the VOC) except one. To assist the merchants in their task, the Dutch States General sent along Hugo Grotius, the theorist on international law who had anonymously penned Mare Liberum in 1609. In this legal treatise, Grotius defended the Dutch right to freedom of the seas for fishing and also — reminiscent of the British arguments in 1604 — their right to free trade in the East Indies, despite the Iberian claims to exclusivity.[57] Although only four years separated the publication of this legal treatise and the Anglo-Dutch conference of 1613, the work had already received much attention, and could, ironically, assist the British in defending their rights to freedom of trade in the East Indies against Dutch claims. Possibly at the instigation of the East India Company, Richard Hakluyt translated Mare Liberum into English shortly after it first appeared. The commissioners in 1613 were, therefore, undoubtedly aware of its arguments, even though they likely did not know they were addressing its author.

Like Cotton and Northampton, the British commissioners began the conference by outlining their interpretation of their rights to trade in the East Indies, based on "the Law of Nations to have free trade and intercourse" and on the "contracts and covenants" that existed between the two sovereign states, "with whom we have always been in amity and friendship".[58] The Dutch commissioners replied that in undertaking to protect the East

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[56] BL Add. MS 48155. The minutes for the Conference of 1613 are at fos. 1-19. A Latin version of the same journal is at PRO SP 113/36, fos. 224-43, and a synopsis of the conference is at PRO CO 77/1/32.

[57] On this treatise and Grotius, see Armitage, Ideological Origins of the British Empire, pp. 109-12; and Hedley Bull, et al., eds., Hugo Grotius and International Relations (Oxford: Clarendon Press, 1990), especially ch. 3.

[58] BL Add. MS 48155, fos. 2-3.

Indies peoples from the Iberians they incurred considerable expenses, which only sole trading in the region could recompense. This counter argument was much like that made by the Iberians in 1604, when they declared that the great expenses associated with discovery should grant them exclusive rights. In exchange for offering protection to the Indian peoples in the Indonesian region, the Dutch claimed that they had "covenanted" with the natives, who had the sovereign freedom to "bind and engage themselves," to have exclusive trading of their commodities. Thus, they supported the British argument that "nothing is more agreeable to natural equity and justice and to the Law of Nations than for those contracts so agreed upon . . . to be observed and kept," but argued that their contracts with the East Indians superseded any treaties that existed with Britain. Since, according to the Dutch commissioners, "trade cannot be maintained in those parts without the cost of war," the British, who did nothing to protect the region, should expect "no fruit or benefit." The Dutch ended this reply, which was probably written by Grotius, by claiming that if the Dutch did not defend the region, the Spanish and Portuguese would overrun the area, expel the British and the Dutch, and claim their own exclusive rights.[59]

The British quickly informed the Dutch that the latter's defence of the region was "voluntary and not necessary, and not to be expected from us" because British merchants had, since 1604, traded quietly and safely without being forced to defend themselves or the natives from the Portuguese or Spanish. The "personal war" between the Dutch and Iberians should not injure British interests. Besides, the British could not assist the Dutch in protecting the East Indian peoples from Europeans with whom the British were at

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[59] Ibid, fos. 4-5.

peace. No matter how necessary the Dutch believed their defensive measure to be, the precedents of international law were what really mattered: "We stand upon our right of free trade by the Law of Nations, and . . . although we should admit that the Law of Nature and Nations do consist in general principles which are to be deduced by particulars by Positive Laws, yet the . . . principles themselves be never overthrown." The British were claiming here that even though the jus gentium was based on general consensus rather than strictly written civil law, the latter was the guiding law when the necessary principles were addressed therein. In the case of free trade, sufficient precedents of positive law existed (in the collections of Justinian and medieval writers) to make this matter uncontroversial, and, therefore, not subject to interpretation or the type of mitigating circumstances the Dutch were advancing. The British commissioners explicitly claimed that they could support their rights in the same manner as they had in the case of the Iberians, because the same legal codes were involved. They proceeded to offer lengthy precedents that mirror closely the arguments made by Cotton and Northampton in 1604, and proved to their satisfaction that the Dutch arguments were "disabled by the Law of Nations."[60]

The British position was strongly Grotian in its arguments, sometimes quoting directly from Mare Liberum, and the Dutch were forced to develop justifications that eschewed the law of nations and emphasized instead the importance of coming to an agreement through treating. The author of the response, again likely Grotius himself, argued that several things alleged by the British were "far otherwise." He mentioned

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[60] Ibid., fos. 5-7.

specific events in the previous decade during which the British were accosted by the Iberian powers, and he noted that despite the Treaty of London, the Iberians continued to "suffer no stranger to approach" the West or East Indies. In fact, the only reason the British had not been accosted by the Iberians in the past several years was because the Dutch defended the region. How could the British know they would be unaccosted if the Dutch removed their protection? Finally, the Dutch author offered a solution to the impasse: if they could agree jointly to defend the East Indies, then both countries could share equally in the profits.[61] This response was well-crafted and demonstrated an intimate and accurate knowledge of the problems that still existed between Britain and the Iberian nations. The British were lying to themselves if they seriously believed by about 1607 that the Treaty of London had allowed free access to the East Indies, and the Dutch author aptly tapped into this fallacious belief. The Dutch appear to have sincerely had the principles of consensus in mind, and were willing to share both defence and profits. The British, however, perhaps because the Dutch had come too close to the truth, found the Dutch reply and offer of mutual defence "indignant", and they shortly thereafter terminated the negotiations. Given the relatively small returns then coming in from the East Indies, it is unlikely that the British could have funded half the defensive network and still made a profit, not to mention their current peaceful relations with Philip III.

Negotiations resumed in 1615, when both sides met again over the same issues.[62] James I instructed his commissioners to insist upon free trade and commerce in the East

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[61] Ibid., fos. 10-13.

[62] The Conference of 1615 is recorded at BL Add. MS 48155, fos. 20-38. Other versions and extracts may be found in PRO SP 84/71, SP 103/37; and CSP Col. 2, pp. 377-409.

Indies, "notwithstanding any pretence to the contrary either of conquest or their great charge and expense or contract and convention as is by them alleged." They were encouraged to forge a trading alliance with the Dutch, although they were also instructed not to agree to anything that would be prejudicial to Britain's "good relations" with Spain and Portugal.[63] It is questionable whether these two instructions were reconcilable. As the negotiations got underway, the British commissioners, wishing to establish the "root" of the matter and not dwell on the "branches", enumerated four "maxims as grounds not to be disputed". These were: 1) that traffic is free to all nations and could only be hindered by war, else it is against the law of nations; 2) that such freedoms comes to every man by "nature and [Christian] birthright", that is, by the laws of nature and God; 3) restraint from such freedoms is a "bondage" which is dishonourable to God, "as no reward can induce a free spirit to undergoe it"; and 4) that amicable relations must contain mutual trade and commerce as inherent conditions, without which there cannot be peace.[64] In framing these maxims, the commissioners mirrored the arguments made by Cotton and Northampton in 1604, and those made two years earlier.

In their response, the Dutch averred that they did not deny the maxims proclaimed by the British. Rather, their position rested on the claim that the British could not trade for commodities that were already promised to the Dutch by the native princes. This matter "is properly that which must be built upon if we will seek the root and not the branches." Regardless of the freedom of trade guaranteed by the laws of God, nature, and nations, the root of the issue was that the Indian princes had the freedom to sell or oblige

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[63] BL IOR B/5/298-309; BL Add. MS 48155, fos. 19-20.

[64] BL Add. MS 48155, fos. 24-24v.

their own commodities however they wished. The existence of contracts showed that the native people wished to trade only with the Dutch, because it was the latter who provided them protection. Moreover, it was only the Spice Islands (primarily the Banda Islands) where the Dutch had this exclusive trade, whereas they made no such pretense to the vast remainder of the East Indies. The Dutch then returned to their earlier rationale for exclusive trading rights: they questioned whether trade could be maintained without a high level of defence, and whether these expenses could be borne without having the whole revenue of the Spice Islands. Here, they opened up, as they had in the first conference, the possibility of the British becoming involved in the defence of the East Indies, and, therefore, being also able to partake in the trade.[65] But the British were implacable: they continued to stand by the positive civil law, refused to believe the threat from the Iberians was as fierce as the Dutch pretended, and doubted whether any contract actually existed between the Dutch and the Bandanese.[66] This reply signalled the end of the conference, for no further progress would be made.

Four years later, when the Accord of 1619 was signed, which was intended to end Anglo-Dutch hostilities in the East Indies, both sides finally agreed to some measure of mutual defense and shared trade, although this effort was never successful and, in the end, the British were forced out of the East Indies by 1625. Their efforts to defend rights to free trade based on international law, while theoretically sound, did not work well in political practice.[67]

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[65] Ibid., fos. 25-27.

[66] Ibid., fos. 27-29.

[67] On Anglo-Dutch activities after 1615, see Benson, Cooperation to Competition, pp. 154-70; primary material is at PRO SP 14/107-110; SP 84/89-91; and BL Lansdowne MS 151.

The issue of free trade was certainly the most important aspect of the negotiations with the Iberians and Dutch. As early as 1604, the British formulated a fairly simple argument based on the laws of God, nature, and nations. Fortunately for them, the positive civil law was, more often than not, on their side, and they could resort to these arguments in a sophisticated, systematic way. It is valuable to note that the British challenged the more pragmatic arguments of their opponents by offering the opinion that the precepts of international law collectively represented the superior adjudicating code. Therefore, the Iberian and Dutch beliefs that the great expenses they incurred, the supremacy of the papal bull, and the claim to defense and contracts, gave them exclusive trading rights, did not have the same efficacy as international law in the eyes of the British. It is equally clear, however, that had the British wished to claim exclusive trading rights — as they did in Greenland — they would have made similar efforts to bend or negate international law, or wish to have their pragmatic more reasons form part of the law of nations through international consensus. Given the difficulty of enforcing international law at this time, the British knew that the only way they would ever achieve free commerce especially in the East and West Indies was to arm a more powerful armed maritime forces.

CONCLUSION

Despite the relatively few concessions the British gained through their negotiations with the Dutch, French, Portuguese, and Spanish between 1604 and 1632, the principles asserted by the British commissioners were expressions of sovereignty that drew upon well-recognized ideas. The arguments for discovery, prescription, possession,

and free and exclusive trade that were presented to Queen Elizabeth between 1577 and 1580 were often asserted. To the British commissioners, the frequent, royally authorized voyages of British subjects helped the crown stake an inchoate claim to all new found lands of interest to them. The letters patent and, occasionally, maps declared the outer boundaries of a territory and showed the amount of knowledge that could be brought to bear in justifying claims to sovereignty. The fortifications and military presence showed an essential level of possession and effective occupation, often in a symbolic way. Finally, like Dee, the commissioners used, wherever possible, the positive precepts of international law, knowing that these would have the most influence in the international community. Although the multiple and elastic legal principles prevented definitive resolution, the arguments of the British are useful to show that they were, all along, employing international law when expressing sovereignty in new found lands, and that other Europeans were generally arguing on the same principles. The failure to find a middle ground and, therefore, consensus, rested in the problems of definition and interpretation in international law at this time, and not because the colonizing European powers were using indigenous legal codes or refused to speak a common legal language. Finally, it is clear that the British crown, in commissioning experienced and learned crown officials to function as envoys during these negotiations, and in its belief that these matters had to be resolved through diplomatic channels, was exercising its sovereign rights and absolute royal prerogative, and, as such, remained fundamentally involved in the affairs of the British empire throughout the early colonial period.

CONCLUSION

At the same time that North and South America and the East and West Indies were being regarded, mostly for economic reasons, as areas for English, Scottish, and Irish expansion, changes in law, authority, and intellectual speculation were occurring. Partly as the result of the Reformation and associated wars, civil lawyers, ambassadors, and diplomats were considering to what extent classical and medieval legal principles could be used to develop a jus gentium, a code of international law that could adjudicate the horizontal relationship among monarchs of equal rank. In the universities, there was an increased interest in the humanities and sciences. Not only were educated English subjects interested in learning more about the political and religious world in which they lived, but they also turned their attention to the value and employment of history, geography, and law as subjects which could teach them about the world around them. These shifts in notions of sovereignty, international law, and secular speculation were aided by the development of improved printing techniques, which allowed wider and more rapid dissemination of ideas. It is within this Renaissance world picture that English, Scottish, and Irish subjects sought out, discovered, and settled new found lands.

As this study has shown, all of these changes influenced the ways that the crown

expressed its sovereignty throughout its young overseas empire. Through the seminal works of the Elizabethan era, particularly those of John Dee, the crown developed a formula of possession that would continue to be employed over the next half century, with some, fairly modest, variations as the situation dictated. Using the newest learning on history, geography, and law, Dee explained how British subjects, particularly those of Welsh descent, had used their geographical and navigational expertise to travel to the New World centuries before Columbus arrived there. This discovery antedating any Spanish claims made the regions no longer terra incognita, which allowed the British both to stake an inchoate claim to sovereignty and to challenge the efficacy of the papal bull of Alexander VI. Dee also challenged the bull by using his vast geographical knowledge, developing a legal argument through the use of scientific language. By drawing upon recent historical and geographical accounts, Dee also emphasized the importance of prescribing (frequenting) and possessing (settling) the regions to be drawn into the empire, in order to show that the territory was under the sovereignty of a Christian prince and to fulfill the civil law requirement of holding territory through effective occupation rather than simply staking a claim by the intent to settle, as the Spanish did. By appealing to divine law and the law of nations, Dee highlighted the significance of employing "universal" measures, which could be better explained to other Christian princes.

The British crown, when considering Dee's efforts and the petitions of adventurers, and when issuing letters patent, was conscious of its role as a supreme sovereign body. Overseas activities could not proceed without the written authority of the monarch, and the success of the petition in gaining this authority was usually dictated by the current foreign policy and the needs of the state rather than the desires of the

mercantile interests. That the patents were prepared by crown officials with duplex training in common and civil law ensured that although the land and monopoly grants were made according to traditional precedents, the documents also contained the elements necessary to justify British sovereignty in these regions to the international community. To that end, boundaries of the territory were increasingly better defined in order to demonstrate knowledge and effective control, the importance of the region being under the continued authority of a sovereign Christian monarch was made (at least in their eyes) a prerequisite of British and European claims to dominion, and the laws of nature which "guaranteed" commerce throughout the world, and the international laws relating to war and peace, were expressed and respected. The significance of these elements was shown in the crown's establishment and eventual drawing in of governmental controls, in its dealings with complaints from other British subjects who were refused traditional trading rights in these areas, and in its proclamation — made more to assure the international community than the patentees — that it would withdraw its sovereignty from the territories in question if the laws of nations were transgressed. Such an act would leave the colonies, factories, or trading interests outside of a state of sovereignty and, therefore, free for lawful usurpation by another Christian prince. This act was an explicit declaration that the territory granted in the patent was part of the British empire, and would perpetually be under the authority of that crown.

Sovereign authority was tangibly and forcefully shown in the erection, staffing, and equipping of fortifications on the overseas frontiers, and in the commissioning, drawing, and printing of semiotically-charged maps showing the eminent dominion of a sovereign monarch. Both fortifications and maps served the central purpose of

demonstrating effective, physical control of the environment and the intention to remain as permanent residents. As Dee and Richard Hakluyt had explained, as the letters patent showed, and as the current state of international law required, from the very beginning colonial enterprises were conceived in terms of control because the ability to defend territory from attack was an essential requirement of maintaining sovereign authority. In most of the early colonies the erection of fortifications was the first order of business, taking precedence over the construction of personal dwellings, planting crops, and trade. This action has normally been viewed by scholars as an act of primary defense against hostile indigenous peoples; that it was, but it also had other, vital symbolic and pragmatic value. Holding territory though fortifications and force of arms became increasingly more urgent as the Dutch, French, Portuguese, and Spanish tested the authority of the British crown by planning and sometimes actually undertaking insurgent actions against the outer territories in the empire. Furthermore, the employment of experienced military officials, who represented not the trading companies but the crown, and the occasional employment of martial law when necessity arose, ensured that the authority of the British monarch would continue to be exercised. These military governors knew that they were representing and defending the claimed sovereign rights of the British crown, as Nathaniel Courthope's holding of the Banda Islands in the East Indies powerfully showed.

This perpetual royal authority was shown in the printed maps of new found lands. In these maps, cartographical knowledge was subordinated to other expressions of sovereignty, through which the crown and its representatives, by employing censorship and patronage, could communicate the territorial limits of empire both to subjects and to

continental Europe. Semiotic devices such as the British and English jacks, descriptive cartouches, coats of arms, Anglicized and Gaelicized toponyms, images of armed ships in the water and fortifications on the mainland to show navigational knowledge and the ability to exert force, together had the effect of assisting the crown in asserting its often tenuous overseas claims. The maps visually demonstrated the borders of the territories under question, and showed these regions in relation to the borders of other British and European colonies. As these documents became increasingly distributed and copied, the semiotic devices they contained were copied into other maps of the period. These maps were drawn by professional cartographers from other European nations, offering implicit acquiescence and recognition of these claims to empire. Perhaps what is most striking about erecting fortifications, demonstrating force through soldiers and arms, and drawing and distributing maps, is that the presence of a united British empire and proof of effective control of the regions (particularly of North America) appeared much stronger than they were in reality. The demonstration of military force and large, defined borders, could make a small village with a few hundred colonists appear to be in control of a vast wilderness on behalf of their sovereign lord.

Although these expressions of sovereignty were distinctive from each other and could work independently to shore up claims of authority and dominion and show to British subjects the extent of the crown's authority, they could also have a cumulative effect. Together, they were most directly communicated to rival European powers during the treaty negotiations between Britain and, respectively, Spain and Portugal, the Netherlands, and France in the first few decades of the seventeenth century. The conclusion of the Anglo-Spanish War, the re-emergence of France, and the rise of the

Netherlands made this a particularly critical period. In these negotiations, each of the aforementioned expressions of sovereignty were employed to demonstrate that the British crown had legitimately established its authority in overseas territories according to "the laws of God, nature, and nations." The importance of claiming territory according to precedents of positive civil law, the commonly-understood laws of nature, and the universal canon law which applied to all Christians, were explicitly argued by envoys and advisors who had access to writings and theorists on civil and international law. It is important to note which potential arguments the British commissioners did not use as justifications for their overseas activities. The British did not base their arguments on theories of conquest, on the performance of ceremonial acts or the placement of symbols of possession such as planting crosses, or on the fact that they had "improved" the land according to Biblical directives. Although it is true that, as Patricia Seed, Arthur Keller, and Anthony Pagden have shown, these arguments were often used as rationales for dispossessing native populations, they had very limited agency in gaining the consensus of the international community. Nor was a single act of discovery sufficient to establish sovereignty. Instead, historical and legal precedents demonstrating the magnitude of British discovery, prescription, possession, effective occupation, and the rights of free trade, were employed. These, in conjunction with the rights of an independent, sovereign monarch to extend his imperium as far as the law of nations allowed, were seen by the crown as the only legitimate justifications. France, the Netherlands, Portugal, and Spain all to some extent drew upon international law and the law of nations during these negotiations, demonstrating that they were aware of the importance to be placed on these precedents. By 1640, in part because of these treaty negotiations, and because,

cumulatively, British expressions of sovereignty were becoming powerful assertions of dominion, British interests in America and the East and West Indies were on their way to being recognized by the international community as part of an emergent British empire.

In light of these conclusions, some middle ground between the orthodoxies of J.R. Seeley's school of imperial historians, and Richard Koebner's school of anti-imperialist and overseas historians is to be found. There were numerous expressions of British crown authority in the acquest of overseas dominion in the late sixteenth and early seventeenth centuries. Each expression of sovereignty served the common purpose of better legitimizing and authorizing the extension of imperium over the territorial units united by a single sovereign. Although, as Andrews and Armitage have argued, this involvement was generally unobtrusive in the mundane operation of the colonies, and did not embody the ideological, political, or cultural unity that Seeley and certain imperial historians believed existed, it was nonetheless apparent when viewed from the perspective of the legal, political, and intellectual world in which these activities took place.[1] Even though these individual expressions differed considerably from each other, they were each employed with the understanding that what was being protected and proclaimed was the monarch's sovereign right to extend his or her dominion over a territorial empire. This ensured that the congeries of territories comprising Britain's overseas holdings was, legally, structurally, and nominally, an "empire". The crown was directly, legally, responsible for the extra-territorial activities of its subjects because of its internal and external sovereign obligations. As Bodin explained the concept of

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[1] See the introduction, pp. 2-9.

sovereignty, these obligations meant that the monarch's authority was absolute in that it was indivisible. It could not be shared, delegated, or held by individuals or groups who were not independent rulers with equal status. Therefore, collectively British activities in overseas territories between about 1576 and 1640 were necessarily part of early efforts at empire-building. The monarch provided the legal and symbolic unity for all of the colonies regardless of their location and the failure, divisiveness, and torpidity that marked English, Scottish, and Irish transoceanic activities in this period. Put simply, the crown was "an emperor within his empire." But Armitage is likely correct in his contention that the empire would not acquire a cultural, political, or ideological unity until the end of the seventeenth century at the earliest.

There is a danger in making the British crown's acquest of dominion between 1576 and 1640 appear too complete from the inception of overseas enterprises, because such an approach obscures the historical process of change and innovation. There was certainly not a conscious effort beginning in the 1570s to amass a collection of expressions of sovereignty that would both defend the monarch's royal prerogative and have some weight in the international community. With the exception of Dee, Hakluyt, and their associates, there was not initially a deliberate effort to create a "British Empire", least of all by Queen Elizabeth. Nor is it fair to say that these expressions of sovereignty or the vital role of the crown were fully formed and recognized even by 1640. These ideas all took time, experience, and knowledge to develop. For the most part these expressions were ad hoc responses to real, perceived, and anticipated challenges to British sovereignty. Dee's works were prepared to advance specific voyages and his justifications were made to anticipate challenges from Queen Elizabeth and the Spanish

and Portuguese. The letters patent were, for the most part, based on traditional precedents and they changed over time from brief documents granting broad discretionary powers to the patentees, into lengthy, detailed ones which were increasingly concerned with territorial boundaries, government, sovereign authority, and international relations. This growing complexity was probably the consequence of several factors: more elaborate doctrines of civil and international law; the increasing number of British settlements across the seas; and the challenges initiated, and treaties ratified, by other nations.

Fortifications were initially conceived as offensive and precautionary measures to assault Europeans and fend off native attack. Eventually, when the letters patent made the building of these forts and the employment of governors general necessary as part of empire-building, the crown had gained more knowledge in international law and had seen the blood of its subjects shed because of the lack of control in the frontier regions. The expressions of sovereignty on the maps, such as those on DeBry's map of Virginia (fig. 5.7), were seemingly initially placed there for aesthetic reasons, to please the viewer and the crown representative who would approve their publication. Following events like the negotiations for the Treaty of London in 1604, it was understood that maps could also show territorial borders and the existence of a growing empire. Clearly, these expressions of sovereignty developed within a practical framework of necessity, and they could only wield their maximum cumulative force at the end of the period under investigation.

The recognition that these methods of expressing sovereignty were not born fully-formed and immediately effective, serves only to emphasize how these expressions of sovereignty related to the shifts in the early modern intellectual and legal landscape. These shifts were influential in helping to create the overseas expressions of sovereignty,

and in turn were influenced by their employment. John Dee's work, in particular, is exceptionally valuable in demonstrating the changes in history, geography, and law. Over the course of a few years, Dee's evidentiary foundation moved from antiquarian, geographical, and legal speculation in which he drew from ancient, classical, and medieval sources, to modern notions of historical scholarship, geographical and cartographical sciences, and theories of law based on contemporary events. Daniel Woolf has explained similar shifts in other historical scholarship of the period, a change which evolved as the result especially of the need for practical history which could serve a function in the civil sciences.[2] Lesley Cormack has shown that the English universities took a leading role in advancing geography and cartography in the period between about 1580 and 1630 because it was increasingly important for the British crown to understand the limits of its territorial holdings so that it could make informed decisions.[3] In the same period, the engineering of fortifications became a serious scientific endeavour. With the increase in high-intensity conflicts and the preparation of treatises such as George Waymouth's Jewell of the Artes and Paul Ives's Art of Fortification, the need for fortifications especially on frontier regions was better recognized. Indeed, Waymouth wrote his treatise with the express purpose of defending James I's rights overseas. Because of Elizabeth I's and her successors' desire to extend their authority into the peripheries of Britain, this period also saw the rise of a corps of professional crown

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[2] Woolf, The Idea of History and Reading History in Early Modern England.

[3] Cormack, Charting an Empire.

employees whose served as county lords lieutenant and governors general.[4] In the age of expansion, it made sense to extend the crown's influence into the overseas colonies through the employment of these governors, as Elizabeth I did in Ireland in the 1560s and 1570s.

Two of the most dramatic (and recently well-recognized and reported) political and legal shifts in the late Tudor and early Stuart period were the refinement of notions of sovereignty and the absolute royal prerogative, and the recovery in Britain of civil law and its derivatives. In the last decades of the sixteenth century, and the first few decades of the seventeenth, a number of important tracts were written by English and Scottish civilian lawyers and politicians which sought to explain, defend, expand, or contract the rights and codes relating to the absolute royal prerogative and the employment of civil law. Before about 1580, these ideas received only modest expression, but by 1640 — by the time the Long Parliament was called and less than a decade before the important Peace of Westphalia (1648) was signed — they were conventional aspects of British political and intellectual thought. Indeed, as Glenn Burgess has shown, the reception of these ideas in England became so common among the increasingly powerful group of civil lawyers, that they led directly to the crises of confidence and constitution for which the reigns of James I and Charles I are perhaps best remembered.[5] As we have seen (chapter one), the positive link between the employment of the royal prerogative, civil

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[4] Fletcher, Reform in the Provinces: the Government of Stuart England; Webb, "Army and Empire: English Garrison Government in Britain and America, 1569-1763; Webb, The Governors-General; Wheeler, The Making of a World Power. See also Braddick, State Formation in Early Modern England.

[5] See especially Burgess, Absolute Monarchy, part one and conclusion. See also the notes in chapter one above, pp. 38-50.

law, and the acquest of dominion in new found lands was made by Thomas Digges and especially by Sir Matthew Hale in his Prerogativa Regis, who explicitly addressed the crown's sovereign authority over the territories across the seas.

Finally, the half century before 1640 saw the beginnings of a code, both written and unwritten, of international law for adjudicating the relations between states. The works of Jean Bodin, Alberico Gentili, Hugo Grotius, and John Selden, among others, introduced into Britain and Europe the importance of the law of nations and the necessity for a method to achieve consensus within the international community. Even though these ideas were, admittedly, nascent in their conception and difficult to enforce, diplomatic relations, the exchange of ambassadors, and the negotiation of treaties were undertaken with the assumption that a universal code of conduct, the jus gentium, existed in practice as well as in theory.[6] As a number of historians have attested of late, more than perhaps any other factor, it was the expansionist activities of European powers which framed the debate and discourse on international law and the law of nations before 1640.[7] The works of John Dee and of the civil lawyers and envoys negotiating treaties about overseas territories, therefore, stand out as part of a highly influential discourse in the development of international law in the early modern period.

British expressions of sovereignty in new found lands proceeded apace with these shifts in intellectual and legal speculation. The changing states of history, geography, sovereignty, prerogative, civil law, international law, and the law of nations all

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[6] See the notes in chapter one above, pp. 52-61.

[7] Dickason and Green, The Law of Nations and the New World; Muldoon, Empire and Order; McNeil, Common Law Aboriginal Title.

influenced, and were to a lesser extent influenced by, the acquest of dominion across the seas. Necessarily, the usage of the particular expressions of sovereignty discussed throughout this study are consistent with, and employed under the aegis of, contemporary notions of law and authority. In coming to this conclusion, there is good reason to assimilate the history of the British empire between 1576 and 1640 with the history of Britain and Europe; this assimilation has been hinted at by Atlantic historians, but remains essentially an open field of inquiry.[8] While it would be unwise to suggest an assimilation to the extent, and of the nature, that J.R. Seeley appealed for in 1883, it is equally unwise to continue writing about the overseas Elizabethan and early Stuart British empire as if it functioned largely independent of Britain and the wider intellectual, political, and legal world.

[8] Most notably, in the teaching of Atlantic history, where scholars are, in part, encouraging comparative studies of British, European, and American institutions in order to bring about synthesis.

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