



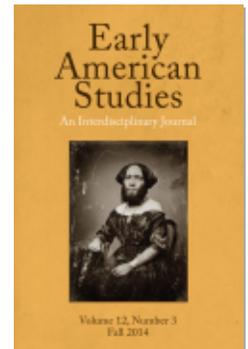
PROJECT MUSE®

Benign and Benevolent Conquest?: The Ideology of Elizabethan Atlantic Expansion Revisited

Ken MacMillan

Early American Studies: An Interdisciplinary Journal, Volume 9, Number 1, Winter 2011, pp. 32-72 (Article)

Published by University of Pennsylvania Press
DOI: [10.1353/eam.2011.0009](https://doi.org/10.1353/eam.2011.0009)



➔ For additional information about this article

<http://muse.jhu.edu/journals/eam/summary/v009/9.1.macmillan.html>

Benign and Benevolent Conquest?

The Ideology of Elizabethan Atlantic Expansion Revisited

KEN MACMILLAN

University of Calgary

ABSTRACT This essay revisits the language of conquest in metropolitan writings advocating Elizabethan Atlantic expansion. It argues that contrary to the belligerent connotations scholars usually attach to the word *conquest*, in Elizabethan England it was a term used in a benign and benevolent manner that fit within humanist goals for a noble, peaceful, and long-term relationship with both the people and land of America. By the early seventeenth century, however, this idea of benign conquest was overshadowed by factors such as the example of Spanish conquest in the New World, which tainted the English benign usage, and the transition from theory in the Elizabethan age to practice under the early Stuarts, which showed that the American Natives were not willing to accept English presence on the benevolent terms anticipated by English humanists. Another factor that led to the decline in the language of benign conquest was the formulation of the “conquest doctrine” in the law of nations, which gave the term an exclusively belligerent connotation. Owing to these various factors, by the time the permanent English empire in America was established, the idea of benign conquest no longer had a place in domestic, colonial, or supranational discourse.

Less than a generation ago, historians argued that English claims to territory in North and South America and the Caribbean were established by

The preparation of this essay was supported by the Social Sciences and Humanities Research Council of Canada and the Calgary Institute for the Humanities. Versions were presented at a CIH public lecture and at “The Law of Nations and the Atlantic World” conference held at the Newberry Library in April 2009. Both audiences provided valuable feedback, as did the readers for *Early American Studies*.

Early American Studies (Winter 2011)

Copyright © 2011 The McNeil Center for Early American Studies. All rights reserved.

conquest.¹ According to this tradition, England's mode of acquiring Atlantic territory was little different from the numerous conquests with which they had historical experience. These included their own subjugation by the Romans, Anglo-Saxons, and Normans; English "crusader ideology" during the twelfth and thirteenth centuries; and English conquests in Ireland, Wales, and Scotland during the late medieval period. Of living memory and closer in analogy was the Elizabethan conquest of Ireland, which involved men who would later have key roles in early Atlantic activities.² Also relevant were the methods used by the Spanish in the Atlantic, which were presented to an English audience as worthy of emulation by Richard Eden in his voluminous *Decades of the New Worlde* (1555).³ Thus, when the English began, to quote Robert Williams, the "Elizabethan Wars for America," various "discourses of conquest" were fresh to mind and just and proper to imitate.⁴

Recent writers have turned away from the idea that the English Atlantic was claimed through conquest. Instead, the English claimed sovereignty and possession over territory in the Atlantic world using a combination of other Roman, English, and supranational legal systems. They argued that an initial claim to sovereignty was established by right of first discovery over territory that was not inhabited by the subjects of another Christian prince.⁵

1. Francis Jennings, *The Invasion of America: Indians, Colonialism, and the Cant of Conquest* (New York: W. W. Norton, 1975); Robert A. Williams, *The American Indian in Western Legal Thought: The Discourses of Conquest* (New York: Oxford University Press, 1990). For a more recent study that employs similar notions of conquest, see David Day, *Conquest: How Societies Overwhelm Others* (Oxford: Oxford University Press, 2008).

2. Nicholas Canny, *The Elizabethan Conquest of Ireland: A Pattern Established, 1565–76* (Sussex: Harvester, 1976).

3. Jorge Cañizares-Esguerra, *Puritan Conquistadors: Iberianizing the Atlantic, 1550–1700* (Stanford: Stanford University Press, 2006), chap. 1; Jonathan Hart, *Representing the New World: English and French Uses of the Example of Spain* (New York: Palgrave, 2001), chap. 3; Williams, *American Indian*, 127–31.

4. Williams, *American Indian*, chap. 4 title and subtitle.

5. I do not mean the "discovery doctrine" expressed in the U.S. Supreme Court decision of *Johnson v. McIntosh* (1823), in which Chief Justice Marshall implied that claims to sovereignty and possession were asserted over indigenous peoples and lands by European nations upon the "discovery" of America. In the early modern period discovery was deemed to award only sovereignty and *not* possession, although it did entitle a monarch to claim exclusive rights vis-à-vis other Europeans to acquire indigenous territory through legitimate means. This topic now has a voluminous scholarship, but see Eric Kades, "The Dark Side of Efficiency: *Johnson v. McIntosh* and the Expropriation of Indian Lands," *University of Pennsylvania Law*

Numerous Elizabethan authors, especially John Dee and Richard Hakluyt, demonstrated that early English voyages to the North Atlantic and America (by, e.g., John and Sebastian Cabot, but also a number of earlier “British” travelers), in addition to a lack of Iberian activity in the portions of America of interest to the English, were sufficient to claim first discovery.⁶ To complete this claim, the Crown issued colonial charters to private individuals or trading companies, who were expected to travel to America, perform symbolic and mundane acts that had legal implications, and establish permanent settlements. The last task included building defensive fortifications, common buildings, houses, and fences; setting up familiar administrative structures and engaging in active governance; and cultivating the earth in emulation of traditional methods of English land use. These pluralistic cultural and legal mechanisms demonstrated that the English were effectively occupying the territory claimed through discovery, which fulfilled the requirements of establishing territorial sovereignty in the law of nations and helped secure the English Atlantic against the claims of European competitors.⁷

In the process of this legally pluralistic claim making, the English confronted the question of how to establish title to—or gain possession of—territory that was populated by indigenous peoples. It is generally argued that they resorted to the belligerent language of conquest in the age of Elizabeth, in part as a self-conscious emulation of successful Spanish methods of acquiring dominion, although by the early seventeenth century they had eschewed that ideology in favor of arguments regarding the purposeful settlement of land that, according to English and European standards, was

Review 148 (2000): 1065–90; and Jedediah Purdy, “Property and Empire: The Law of Imperialism in *Johnson v. McIntosh*,” *George Washington Law Review* 75 (2007): 329–71.

6. John Dee, *The Limits of the British Empire*, ed. Ken MacMillan (Westport, Conn.: Praeger, 2004); Peter C. Mancall, *Hakluyt’s Promise: An Elizabethan’s Obsession for an English America* (New Haven: Yale University Press, 2007).

7. Ken MacMillan, *Sovereignty and Possession in the English New World: The Legal Foundations of Empire, 1576–1640* (Cambridge: Cambridge University Press, 2006); Patricia Seed, *Ceremonies of Possession in Europe’s Conquest of the New World, 1492–1640* (Cambridge: Cambridge University Press, 1995), chap. 1; Brian Slatery, “Paper Empires: The Legal Dimensions of French and English Ventures in North America,” in John McLaren et al., eds., *Despotic Dominion: Property Rights in British Settler Societies* (Vancouver: University of British Columbia Press, 2004), 50–78; Christopher Tomlins, “The Legal Cartography of Colonization, the Legal Polyphony of Settlement: English Intrusions on the American Mainland in the Seventeenth Century,” *Law and Social Inquiry* 26 (2001): 315–72.

underutilized.⁸ This has come to be known to modern scholars as the *res nullius* argument, which held that “nobody’s things” became the possession of the first person to take control over them and put them to good use.⁹ This theory was used repeatedly by the English (and also the Dutch and French) during the seventeenth century and received its fullest exposition in John Locke’s treatment of native dominion in his *Two Treatises on Government* (1690). Thus, the English claimed title to vast parcels of “unoccupied” American territory, while (in theory) allowing that which the Natives cultivated or otherwise used effectively to remain in their possession.¹⁰

8. On the language of conquest under Elizabeth, see the works cited by Williams, Canny, and Hart in notes 1–3, above. On Spanish methods, see the works of Anthony Pagden, especially *Lords of All the World: Ideologies of Empire in Spain, Britain and France, c. 1500–c. 1800* (New Haven: Yale University Press, 1995), chaps. 2–3; and “Dispossessing the Barbarian: The Language of Spanish Thomism and the Debate over the Property Rights of the American Indians,” in Anthony Pagden, ed., *The Languages of Political Theory in Early Modern Europe* (Cambridge: Cambridge University Press, 1987), 79–98. For the continuation of these ideas into the seventeenth century, see James Muldoon, *The Americas in the Spanish World Order: The Justification for Conquest in the Seventeenth Century* (Philadelphia: University of Pennsylvania Press, 1994).

9. The term *res nullius*, brought into fashion by Pagden (*Lords of All the World*, 76–80), has come under criticism of late because its use in Roman law had a narrow and specific meaning that did not generally apply to land. Today historians accept that what has come to be termed *res nullius* was an early modern combination of the Roman legal concepts of prescription and occupation (two of the five modes of acquisition in Roman law) and that it did not necessarily award ownership (legal title) but instead offered a claim to possession (a right of tenancy) to land owned by another. The central ideas of *res nullius* are more accurately reflected by the term “effective occupation.” Nor is the hitherto accepted term *terra nullius* viable today, for reasons amply demonstrated in, e.g., Stuart Banner, “Why Terra Nullius? Anthropology and Property Law in Early Australia,” *Law and History Review* 23 (2005): 95–131; and Andrew Fitzmaurice, “The Genealogy of Terra Nullius,” *Australian Historical Studies* 129 (2007): 1–15.

10. Barbara Arneil, *John Locke and America: The Defence of English Colonialism* (Oxford: Oxford University Press, 1996); Andrew Fitzmaurice, *Humanism and America: An Intellectual History of English Colonisation, 1500–1625* (Cambridge: Cambridge University Press, 2003), chap. 5; Karen Ordahl Kupperman, *Settling with the Indians: The Meeting of English and Indian Cultures in America, 1580–1640* (Lanham, Md.: Rowman and Littlefield, 1980); Anthony Pagden, “The Struggle for Legitimacy and the Image of Empire in the Atlantic to c. 1700,” in Nicholas Canny, ed., *The Origins of Empire* (Oxford: Oxford University Press, 1999), chap. 2; Patricia Seed, *American Pentimento: The Invention of Indians and the Pursuit of Riches* (Minneapolis: University of Minnesota Press, 2001), chap. 1; Richard Tuck,

When the English colonists wanted land that was understood to be in Native dominion (that is, under their effective occupation), they secured it through a contract of purchase or treaty, the method of legal acquisition properly known as cession. This method, it has been recently shown, was the principal way that English colonists gained territory under Native dominion in North America, although there remain some questions about the use of coercion and limited Native understanding of perpetual private ownership.¹¹

Although establishing title by some combination of discovery, settlement, and cession became orthodox for the English in the seventeenth century, the fact remains that Elizabethan authors often used the language of conquest in their writings advocating Atlantic expansion. This essay revisits the Elizabethan ideology of Atlantic expansion by attempting to understand how and why imperial proponents used the language of conquest. This investigation reveals that conquest, contrary to the belligerent connotations scholars usually attach to the word, in England was a term with multiple meanings that fit within the broader goals of English Atlantic expansion. Conquest could, of course, refer to war and the rights accruing to the victor, including the subjugation of indigenous populations. England had a long history of such conquests throughout the British Isles, especially in Ireland, which has been seen as a prototype of English Atlantic expansion.¹² But conquest in England also had many benign and benevolent meanings. In English law the term described how territories that came under the jurisdiction of the Crown using nearly any means of acquisition—war but also cession and occupation—could be subsequently distributed and governed. Especially to English humanists, conquest could also refer to the subduing and civilizing of both people and nature, a peaceful mission that was often seen as a benevolent and long-term process that had little malevolent intent. In this context English imperial writers of the Elizabethan period often

The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant (Oxford: Oxford University Press, 1999), chap. 4.

11. Stuart Banner, *How the Indians Lost Their Land: Law and Power on the Frontier* (Cambridge: Harvard University Press, 2005), chap. 1; Seed, *American Pentimento*. Either coercion or limited Native understanding of the terms could invalidate the contract of cession, since such contracts needed to be entered into voluntarily and with a full meeting of the minds (*consensus ad idem*).

12. See especially Canny, *Elizabethan Conquest of Ireland*. See also Hans S. Pawlisch, *Sir John Davies and the Conquest of Ireland: A Study in Legal Imperialism* (Cambridge: Cambridge University Press, 1985), esp. chap. 9.

used the term *conquest* much as terms such as *plantation* and *settlement* would come to be used in the seventeenth century. Thus, conquest did not have to be the business of captains and soldiers traveling to the New World and engaging in war to establish title through military force and subjugation. It was also the business of gentlemen and farmers, who acquired rights and territory through charters and settlement and controlled and improved their natural environment—both people and land—through, to quote Francis Bacon, a benign “conquest of the works of nature.”

By the early seventeenth century this idea of benign and benevolent conquest was overshadowed by several factors. One was English criticism of the belligerent example of Spanish conquest in the New World—the so-called Black Legend. Once the rapacious Spanish example was criticized (though not always fairly represented) by Elizabethan writers, it tainted the domestic language of benign conquest and made continued use of the term discomfiting to those who came to prefer terms more befitting farmers and merchants than captains and soldiers. Another factor leading to the decline of the language of benign conquest was the transition from theory and optimism in the Elizabethan age to the cold reality of experience under the early Stuarts. Almost immediately upon the permanent settlement of Jamestown, it was discovered that Americans were not willing to accept English presence on the benign and benevolent terms anticipated by Elizabethan humanists. When Anglo-Native relations moved toward a belligerent model, so too did the English language of conquest. A third factor leading to a change in terminology—and directly associated with the first two, as well—was the formulation of the “conquest doctrine” in the law of nations, especially that articulated by Francisco de Vitoria and Alberico Gentili, the latter a professor at Oxford University. These legalists gave the term *conquest* a belligerent, formulaic, and juridical connotation, soon to be codified by Hugo Grotius, the leading writer of supranational law in the early seventeenth century. With the term *conquest* now firmly ensconced in the law of nations, the English resorted instead to terms that reflected a similar ideology without having to face conquest’s belligerent connotations.

THE SPANISH EXAMPLE AND THE CONQUEST DOCTRINE

Though no longer allowed in international law, in the early stages of European expansion conquest was the language first resorted to and the one that would first engender academic disputation.¹³ In contrast to eastern North

13. The best study of legal and historical conquest is Sharon Korman, *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice* (Oxford: Oxford University Press, 1996). See also Paul Keal, *European Conquest*

America, where the fiction of effective occupation (*res nullius*) was eventually applied because of the sparseness of Native settlement and a supposed nomadic lifestyle, the regions of interest to Spain in the New World were heavily populated and socially and politically organized. This left only cession or conquest as viable modes of acquiring Atlantic territory.¹⁴ Cession was, generally, inconsistent with the beliefs and desires of the Spanish; in addition to title to real property—which was the only thing cession provided—Spaniards also wanted chattel property (moveable goods), human labor and tribute, and the ability to force Christian conversion. Conquest, when undertaken according to the rules of war and peace, could confer these rights.

The Spanish declaration of war that preceded their conquests was the *Requerimiento* (*Requirement*, 1513), a speech read in Castilian and (in theory) the language of the Native audience before all acts of war in the New World were undertaken. After setting forth the fact that there was one God and that his servant on Earth (the pope) donated America to Spain (in the papal bull *Inter caetera*, 1493), the indigenous audience was instructed to accept Catholicism and the overlordship of the king of Spain, to whom they were to give tribute. Failure to comply constituted a just reason for war:

[I]f you do not do this or if you maliciously delay in doing it, I certify to you that with the help of God we shall forcefully enter into your country and shall make war

and the Rights of Indigenous Peoples: *The Moral Backwardness of International Society* (Cambridge: Cambridge University Press, 2003). Conquest is no longer allowed as a means of acquiring sovereignty because it fails the legal principle *ex injuria ius non orbitur*, “a right cannot arise from a wrong.” Because title by conquest could, in classical international law, be secured through an unjust war (as allowed by Hugo Grotius), however, it is considered defective since “might makes right” regardless of the justice of the cause. See Korman, *The Right of Conquest*, chap. 1.

14. In addition to *conquest*, *cession*, and *effective occupation* (although this did not apply to land until Gentili’s formulation, about which see below), there were two other modes of territorial acquisition recognized in Roman law: *accretion*, where the shape of land changes over time; and *prescription*, in which title flows through continuous, peaceful, public, active, and uncontested usage over a lengthy period. Neither could be applied to Atlantic settlement in the age of discovery. See R. Y. Jennings, *The Acquisition of Territory in International Law* (Manchester: University of Manchester Press, 1963); Randall Lesaffer, “Argument from Roman Law in Current International Law: Occupation and Acquisitive Prescription,” *European Journal of International Law* 16 (2005): 25–58, esp. 38–47; M. F. Lindley, *The Acquisition and Government of Backward Territory in International Law* (London: Longmans, Green, 1926), part 3, esp. 166–80; Malcolm Shaw, *Title to Territory in Africa: International Legal Issues* (Oxford: Oxford University Press, 1986), 17–46.

against you in all ways and manners that we can, and shall subject you to the yoke and obedience of the Church and of their highnesses; we shall take you and your wives and your children and shall make slaves of them, and as such shall sell and dispose of them as their highnesses command; and we shall take away your goods and shall do to you all the harm and damage that we can, as to vassals who do not obey and refuse to receive their lord and resist and contradict him; and we protest that the deaths and losses which shall accrue from this are your fault, and not that of their highnesses, or ours, or of these soldiers who come with us.¹⁵

As we shall see, the punishments listed in this document—taking of goods, enslavement, persecution—were all consistent with the most extreme position taken by early modern writers of the conquest doctrine in the law of nations. It was under the auspices of the *Requirement*, which was largely inspired by the military and religious motives and methods that enabled the Spanish *Reconquista* (completed in 1492), that Spain's two most famous New World *conquistadores*, Hernán Cortés and Francisco Pizarro, subdued the Aztec and Inca empires and engineered the *encomienda* system.¹⁶

The *Requirement*, and the acts of conquest that were undertaken in its behalf, caused reaction from the Dominican “School of Salamanca,” best characterized by the work of Domingo de Soto, Francisco Suarez, and especially Francisco de Vitoria, a professor of theology at the University of Salamanca. In what has become a very well-known series of lectures—most important for this discussion, “On the American Indians” and “On the Laws of War,” together known as *De Indis*, delivered in 1539—Vitoria addressed the moral and legal status of American indigenous peoples. He denied that the Roman Catholic pope and Holy Roman emperor had any jurisdiction over non-Christians; that the American Natives were, in Aristotle's term, “natural slaves” who required a (Christian) master to lead them; that dominion could be achieved only through grace (that is, only those who practiced Christianity could have rights over property); and that the indigenous peoples could be deprived of their property rights by virtue of being intellectually irrational, children, or madmen. Vitoria's conclusion was that before the arrival of Europeans, the Natives were “true masters” of their

15. Quoted in M. C. Mirow, *Latin American Law: A History of Private Law and Institutions in Spanish America* (Austin: University of Texas Press, 2004), 13. The *Requirement* was used as the basis for conquest until the mid-1560s.

16. On these activities see, generally, J. H. Elliott, *Empires of the Atlantic World: Britain and Spain in America, 1492–1830* (New Haven: Yale University Press, 2006), part 1; and Charles Gibson, *Spain in America* (New York: Harper and Row, 1966), chaps. 2–3.

society and held dominion, which could not be denied merely on the grounds cited in the *Requirement*.¹⁷ Conquest undertaken under these pretexts was unjust and, therefore, illegal.

Because the indigenous peoples were rational human beings who lived in communal society, however, Vitoria accepted that they could be subjected to a just war for breaches of the law of nations, as “no kingdom may choose to ignore” those laws that were “just and convenient to all men.”¹⁸ In particular, Vitoria cited the right of all men to “natural partnership and communication.” These principles held that all humans had the right to travel to, and trade in, dwell in, and gain the benefits of neighborliness in any prince’s dominion, provided that all parties were at amity and that no harm was caused. Correctly citing the Roman law doctrine of *res nullius*, Vitoria also argued that visitors should benefit from those things that nature left in common or that were owned by nobody, such as “gold in the ground” and “pearls in the sea.” Another just cause for war included the denial of the right of Christians to preach the gospel to infidels, although the unwillingness of the latter to convert was not a just cause. Vitoria also allowed that it was the responsibility of all men to protect “the innocent against tyranny” and that the law of nations dictated that Spaniards could assist their Native allies in a legitimate war, in which case the rules of war regarding the rights of victors would apply. Finally, Vitoria accepted that breaches of natural law—such as cannibalism and human sacrifice—were just causes for war in order to protect the innocent from death, but that the war had to end once the “cause ceases,” and the rights of conquest could not be exercised in such conflicts.¹⁹

Historians have usually seen Vitoria as providing a “European discourse of conquest founded on secularly rationalizable norms and values,” although modern writers argue that Vitoria, in offering no situations in which the law of nations had been violated by the indigenous peoples, believed that the Spanish were generally acting illegally.²⁰ This recent reception of Vitoria

17. Francisco de Vitoria, *Political Writings*, ed. Anthony Pagden and Jeremy Lawrence (Cambridge: Cambridge University Press, 1991), 233–77.

18. *Ibid.*, 40.

19. *Ibid.*, 278–92.

20. Quote from Williams, *American Indian*, 106. For the newer interpretation, see, e.g., Andrew Fitzmaurice, “Moral Uncertainty in the Dispossession of Native Americans,” in Peter C. Mancall, ed., *The Atlantic World and Virginia, 1550–1624* (Chapel Hill: University of North Carolina Press, 2007), 384–87; and Anthony Pagden, *The Fall of Natural Man: The American Indian and the Origins of Comparative Ethnology* (Cambridge: Cambridge University Press, 1982).

is probably correct. Toward the end of “On the American Indians,” Vitoria emphasized that it was incumbent on the Spaniards to “remove any cause of provocation by reasoning and persuasion, and demonstrate with every argument at their disposal that they have not come to do harm, but wish to dwell in peace and travel without any inconvenience to the barbarians.” The *Requirement* (and, e.g., Cortés’s capture of Montezuma II a few days after his arrival in Tenochtitlán) could hardly be said to offer this type of assurance. Vitoria admitted that the Natives might resort to force when “fear moves them to mount an attack,” which would entitle the Spaniards to defend themselves through fortifications and warfare. But “once victory has been won and safety secured, they may not exercise the other rights of war against the barbarians . . . since in this case . . . understandable fears made them innocent. . . . The laws of war against really harmful and offensive enemies are quite different from those against innocent or ignorant ones.” A “complete” conquest could be secured (and the rights of victory claimed) only if, after victory was achieved, the Natives continued in a state of perpetual warfare and still refused to conform to the law of nations. In this case, they changed from “innocent enemies” to “treacherous foes,” and the laws of war and conquest were to be brought in full force. Thus, though Vitoria certainly offered a secular and juridical “conquest doctrine,” this was not a defense of Spanish Atlantic methods.²¹

For the purposes of our discussion, one of Vitoria’s more important contributions to the conquest doctrine—and one that scholars pass over—was the list of powers he awarded to, and limitations he placed on, the victor who had occupied enemy territory during the prosecution of a just war. He could: (1) reclaim through movable goods, or chattel property, the value of all losses caused by the war, but not more than that value; (2) ensure future security, including tearing down fortifications, building others, and depriving the vanquished of arms; (3) put any enemies, but especially combatants, to death or devolve them into slavery; (4) impose tribute on the defeated; (5) depose princes and set up new ones; and (6) “occupy and keep land . . . to the extent necessary for compensation of losses.” In the context of claims to title by conquest in the Atlantic world, all these powers and limitations deserve careful scrutiny, especially the rights over land. Although conquest allowed the victor to claim land as punishment, as compensation for losses, or for future security, “the governing factor . . . must be moderation.” At war’s end, occupied territory “ought to be returned . . . only keeping so

21. Vitoria, *Political Writings*, 281–83, 296–327.

much as may be considered fair in equity and humanity for the reparation of losses and expenses and the punishment of injustice. Punishment should fit the crime.”²² This was the first time in the early modern period that the rights of conquest, which would become very important in the emergent law of nations, were discussed in detail. In their conquests of America, the Spanish (at least in the eyes of Vitoria and certain Spanish and English commentators) claimed all these rights and more, exercising not moderation, equitable compensation, or fitting punishment, but absolute claims to dominion and ownership over land and peoples, as demonstrated by the *encomienda* system.

THE “CONQUESTS” OF GILBERT AND RALEGH

Though initiating the development of the conquest doctrine in the law of nations in the 1530s, Vitoria’s writings were not widely known in England until late in the century. Meanwhile, the English routinely used the language of conquest in their writings advocating expansion into America. The first mention of the word *conquest* in an English Atlantic context can be found in the charter issued to John Cabot on March 5, 1496. Cabot was instructed to “conquer, occupy and possess whatsoever such towns, castles, cities and islands by them thus discovered that they may be able to conquer, occupy and possess, as our vassals and governors lieutenants and deputies therein, acquiring for us the dominion, title and jurisdiction of the same towns, castles, cities, islands and mainlands so discovered.” Similar charters were issued to Sir Humphrey Gilbert in 1578 and to his half brother, Sir Walter Raleigh, in 1584. Both men were ordered to bring about the “subduynge and possessing” of all land they could “discover search finde out and viewe . . . [in] heathen and barbarous landes countries and territories not actually possessed of any Christian prince or people.” Following the initial “jorney for discoverie,” Gilbert and Raleigh were authorized to undertake a “jorney for conquest.” According to the terms of the charters, the latter was to involve the emigration of loyal subjects to “travaile thither to inhabite or remayne there to build and fortefie . . . to live together in Christian peace, and civil quietnes ech with other.”²³

22. *Ibid.*, 314–26; the enumeration is mine.

23. “Letters Patent to Sir Humphrey Gilbert, 11 June 1578,” in D. B. Quinn, ed., *The Voyages and Colonising Enterprises of Sir Humphrey Gilbert*, 2 vols. (London: Hakluyt Society, 1940), 1:188–91; “Letters Patent to Sir Walter Raleigh, 25 March 1584,” in D. B. Quinn, ed., *Roanoke Voyages, 1584–1590*, 2 vols. (London: Hakluyt Society, 1955), 1:82–89.

Historians have often commented that the Tudor charters—and, indeed, Gilbert’s and Raleigh’s Atlantic activities in general—were self-consciously designed to imitate the language, if not always the intent, of Iberian Atlantic activities.²⁴ This could help explain the presence of words such as “subduynge” and “conquest” not only in these documents but also in others prepared in advance of these activities. The *capitulaciones* issued to Christopher Columbus in April 1492 indicated his plans to “conquer,” and Alexander VI’s papal bull *Inter caetera* (1493) was strongly oriented toward the prosecution of a religious crusade wherein “barbarous nations [must] be overthrown and brought to the faith.”²⁵ As we have seen, the *Requirement* of 1513 cited royal power and papal authority as the chief rationale for the Spanish conquests that were undertaken in America. But the English charters, though open (*patente*), imperial documents that spoke to the wider world, could hardly be said to be declarations of war against indigenous peoples or even letters of marque to distress the queen’s enemies.²⁶ Although they instructed Gilbert and Raleigh to “build and fortifie” in America and to “encounter expulse repell and resiste aswell by sea as by land” all those who sought to inhabit without the authority of the patentees, these directives were designed to prevent other Europeans from settling in the regions claimed under the queen’s authority. No mention whatsoever was made of the Natives, or of any plans to engage them in an offensive war for title to territory or breaches of natural law. The English were to enter “heathen and barbarous *landes*,” but were given no authority to destroy, displace, or subjugate heathen and barbarous *peoples*.

Despite the explicit requirement to undertake a “jorney for conquest,” scarcely any documents prepared for Gilbert’s voyage advocated belligerent action against indigenous populations that could lead to legal title by con-

24. See, e.g., Pagden, “Struggle for Legitimacy,” 34; 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: University of North Carolina Press, 2001), 32–38; Patricia Seed, “Taking Possession and Reading Texts: Establishing the Authority of Overseas Empires,” *William and Mary Quarterly* 49 (1992): 183–209.

25. Frances G. Davenport, ed., *European Treaties Bearing on the History of the United States and Its Dependencies*, 4 vols. (Gloucester, Mass.: Peter Smith, 1967), 1:62–77.

26. On letters of marque, see Kenneth R. Andrews, *Elizabethan Privateering: English Privateering Voyages in the West Indies, 1588–95* (Cambridge: Cambridge University Press, 1959).

quest. Gilbert's "Discourse how hir Majestie may annoy the king of Spayne," written in 1577, indicated his desire to commit piratical activities against Spanish shipping under the "colourable meanes" of a charter of settlement, but this was not a pretext for New World conquest, at least not against Native peoples.²⁷ When the Spanish ambassador resident in England, Bernardino de Mendoza, began inquiring into Gilbert's intentions (and those of Martin Frobisher, soon to begin his third voyage to *Meta Incognita*, in the North Atlantic) in March 1578, John Dee was asked to prepare a brief that explained English rights to the North Atlantic.²⁸ After reciting British historical voyages from King Arthur to Frobisher, Dee concluded that because "other Christian princes do nowe a dayes make entrances and conquestes upon the heathen people, your highnes hath also to proceade herein, both to recover the premisses and likewise by conquest to enlarge the bowndes of your Majesties forsaid title royall." Certainly, the double use of conquest in this sentence contains a suggestion of belligerent intention, but this passage, and the context of the document in which it appeared, was designed to encourage the effective occupation and, therefore, legal acquisition of land Dee believed to be British because of earlier discoveries, rather than aggressive war against North American Natives. Dee did admit that "this recovery and discovery enterprise" would enable "spreadinge abrode the heavenly tydings of the gospell among the heathen," a benevolent mission Dee believed to be within the canon legal obligations of all Christians. Otherwise, the indigenous peoples were absent from his discussion.²⁹

The more common English position, which focused on commerce and settlement, was suggested in the "Notes on Colonisation" prepared by Richard Hakluyt the elder around the same time that Dee prepared his brief. Far from advocating a just war of conquest against the Native inhabitants, Hakluyt recommended that "all humanitie and curtesie and much forbearing of revenge to the inland peoples be used, so shall you have firme amitie with your neyghbours, so shall you have their inland commodities [to] maintayne trafficke." In terms of planting a colony, which was the central focus of this (and Dee's) document, Hakluyt suggested settling in a

27. Gilbert, "Discourse how hir Majestie may annoy the king of Spayne," in Quinn, *Voyages of Sir Humphrey Gilbert*, 1:170–75.

28. Some of Mendoza's correspondence to Philip II is published in Quinn, *Voyages of Sir Humphrey Gilbert*, 1:186–224 passim.

29. Dee, *Limits of the British Empire*, 43–48. For context, see MacMillan, *Sovereignty and Possession*, chap. 2.

region with soil “of the temperature of the South part of Spaine,” so that the crops produced—especially grapes for wine and olives for oil—would relieve England from trading with the Iberians for goods that could be grown only in a temperate climate.³⁰ Similar sentiments may be found in another propagandist tract intended to support Gilbert’s enterprise, Christopher Carleill’s “Briefe and Summary Discourse upon the Intended Voyage to . . . America” (1583). Carleill indicated that in consequence of the planting of an English colony, the Natives through positive Christian example “will daily by little and little forsake their barbarous and savage living.” The implication here is that the English hoped to change the nature of the Natives, but he avoided any suggestion that Gilbert’s undertaking was a belligerent conquest.³¹

Gilbert’s death at sea after his initial “jorney for discovery” prevented his “jorney for conquest” from taking place. The goals of his enterprise were initially taken up by Sir George Peckham, a Catholic recusant who wished to take advantage of the huge land grant his investment in Gilbert’s scheme had purchased. Peckham’s *True Reporte of the Late Discoveries* (1583) showed, for the first time in England, familiarity with Vitoria’s *De Indis* lectures, which were then available in Latin. As a member of the gentry, Peckham had had a classical and humanist education that enabled him to demonstrate more than a passing knowledge of Vitoria’s arguments.³² He noted that the law of nations entitled all men to “mutuall society and fellowship,” which could not be forbidden unless harm was intended by the strangers. He also cited the right of Christians to preach the gospel, protect the innocent from tyranny, and maintain those privileges by force if they were “unjustly repulsed.” But, echoing Vitoria, Peckham also made it clear that the indigenous peoples were first to be told of the English intention merely to “dwell peaceably amongst them, and to trade and traficke with them for theyr owne commoditie, without molesting or greiving them in any way.” He acknowledged that the Natives were “fearfull by nature” and that this fear should be alleviated through “quiet peaceable conversation.”

30. Richard Hakluyt the elder, “Notes on Colonisation,” in Quinn, *Voyages of Sir Humphrey Gilbert*, 1:181–86. These notes were later published in Richard Hakluyt the younger’s *Divers Voyages Touching the Discovery of America* (London, 1582).

31. Christopher Carleill, “Briefe and Summary Discourse,” in Quinn, *Voyages of Sir Humphrey Gilbert*, 2:351–63.

32. On Peckham’s humanism, see Andrew Fitzmaurice, “The Civic Solution to the Crisis of English Colonization, 1609–1625,” *Historical Journal* 42 (1999): 30–31.

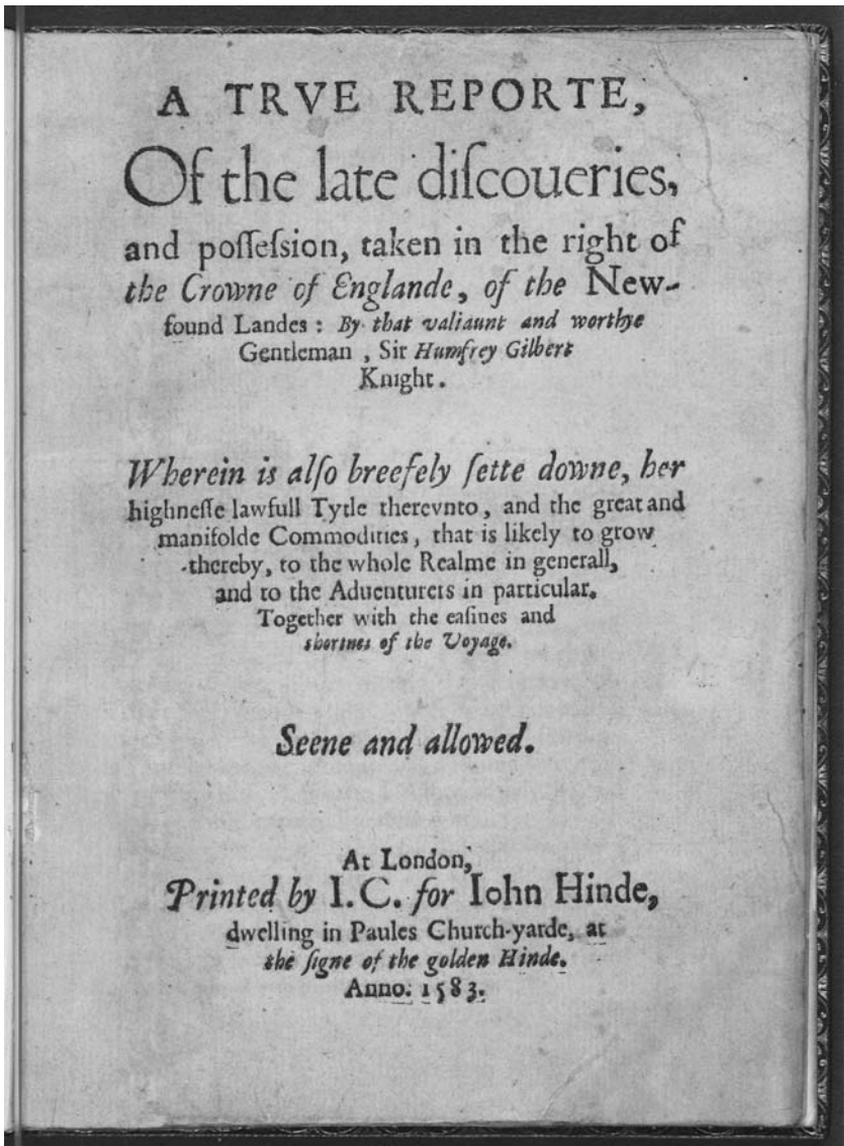


Figure 1. Title page to George Peckham, *A True Reporte of the Late Discoveries* (1583). Courtesy of the Henry E. Huntington Library, San Marino, California.

If war was necessary to enforce natural rights, this would be prosecuted with “as little discommoditie to the Savages as may bee, for this kinde of warre woulde be onely defensive and not offensive.” Still, like Vitoria, Peckham recognized that in the case of perpetual treachery by the Natives, it was lawful to “resist violence with violence,” and exercise the “Lawe of Armes” to hold a “lawfull possession.”³³ In sum, Peckham supported in its entirety the Vitorian position on New World conquest, expecting that English interaction with the Natives would be undertaken peacefully and that belligerence was to be a final and undesirable step should the Natives prove treacherous. Was this to be Gilbert’s “jorney for conquest”?

It was Gilbert’s half brother, Sir Walter Raleigh, and not Peckham (who was imprisoned for recusancy within a month of completing his treatise), who took up the Atlantic enterprise. Raleigh has often been styled as England’s only would-be conquistador, whose belligerent conquests of America were thwarted only by the failure of his enterprises.³⁴ Early in Raleigh’s planning, Richard Hakluyt the younger prepared his now well-known “Discourse of Western Planting” (1584). The treatise was intended to provide propaganda for Raleigh’s “jorney for conquest,” since a favorable “jorney for discoverie” had recently been completed by Arthur Barlowe and Philip Amadas. Hakluyt advocated “plantinge one or twoo Colonies of our nation uppon that fyrme,” where the colonists could develop an understanding of Native customs and languages. The Natives were to be treated with “discretion and myldenes” while the English worked toward religious conversion. One of Hakluyt’s main reasons for writing was to describe the depredations caused by the Spanish in the Atlantic world. The previous year, an English-language publication of Bartolomé de Las Casas’s *Briefe Narration of the Destruction of the Indies by the Spaniards* (1552) appeared. Published in English as *The Spanish Colonie; or, Briefe Chronicle of the Acts . . . of the Spaniards in the . . . newe World* in 1583, this translation—whose title implies that this was a true chronicle of Spanish methods rather than a dissenting indictment of them—represented the beginnings of the concept of the Black Legend.³⁵ Las Casas ridiculed the *Requirement*, criticized the cruel and avaricious actions of the Spanish conquistadores, and questioned the forced labor and “education” system in the *encomienda*. Hakluyt drew on this text when de-

33. George Peckham, *A True Reporte of the Late Discoveries . . . [of] Sir Humphrey Gilbert*, in Quinn, *Voyages of Sir Humphrey Gilbert*, 2:435–79, quotations at 450–53.

34. See, e.g., Elliott, *Empires of the Atlantic World*, 24, 37; Fitzmaurice, *Humanism and America*, 140; Pagden, *Lords of All the World*, 67–68.

35. See, e.g., Hart, *Representing the New World*, chap. 4.

scribing how the indigenous peoples—killed to the number of 15 million, according to Hakluyt—“have to revolte from the obedience of the Spaniards and to shake off[f] from their shoulders the moste intollerable and insupportable yoke of Spain.” Hakluyt recounted horrid tales of decapitation, disembowelment, killing babies, and roasting Native lords alive—acts that the English had to forbear when trading and settling among the Natives. If the English showed themselves more benevolent and paternalistic toward the indigenes than had the Spanish, Hakluyt assured Queen Elizabeth, the Natives would be far more likely to welcome them into America as saviors and cede their sovereignty in exchange for protection. Hakluyt did, of course, recommend that the English protect themselves against the possibility of Native insurrection, but otherwise the indigenous people, and their rights to dominion, were to be respected.³⁶

Another tract prepared in advance of Raleigh’s enterprise was the elder Hakluyt’s “Pamphlet for the Virginia Enterprise” (1585). This has been the source of a frequently quoted passage by scholars: “The ends of this voyage are these:/1. To plant Christian religion./2. To trafficke./3. To conquer. Or, to doe all three. To plant Christian religion without conquest, will bee hard. Trafficke easily followeth conquest: conquest is not easie. Trafficke without conquest seemeth possible, and not uneasie.” This passage, nearly always cited in isolation from the rest of the text, has suggested to scholars an increase in belligerency in English intentions in America that reconciled with Raleigh’s plans for his “jorney for conquest.” It would appear to be completely at odds with the elder Hakluyt’s own “Notes” of 1578, and also with the positions of Carleill, Hakluyt the younger, and Peckham. But Hakluyt continued: “If the people . . . content themselves with few things of meere necessity, then trafficke is not [possible]. So then in vaine seemeth our voyage, unlesse this nature may be altered, as by conquest and other good meanes it may be, but not on a sudden.” Conquest, then, was a “good meanes” to bring about trade, but it would take a while. Earlier in the same document, Hakluyt noted that “if our nation do not make any conquest there, but only use trafficke and change of commodities, . . . [the Natives] shall not dare to offer us any great annoy, but such as we may easily revenge with sufficient chastisement to the unarmed people there.” Not conquest, then, but sufficient chastisement for annoyances. Finally, in a passage that

36. Richard Hakluyt (the younger), “Discourse of Western Planting,” in E. G. R. Taylor, ed., *The Original Writings & Correspondence of the Two Richard Hakluyts*, 2 vols. (London: Hakluyt Society, 1935), 2:211–326, quotations at 215, 257–58.

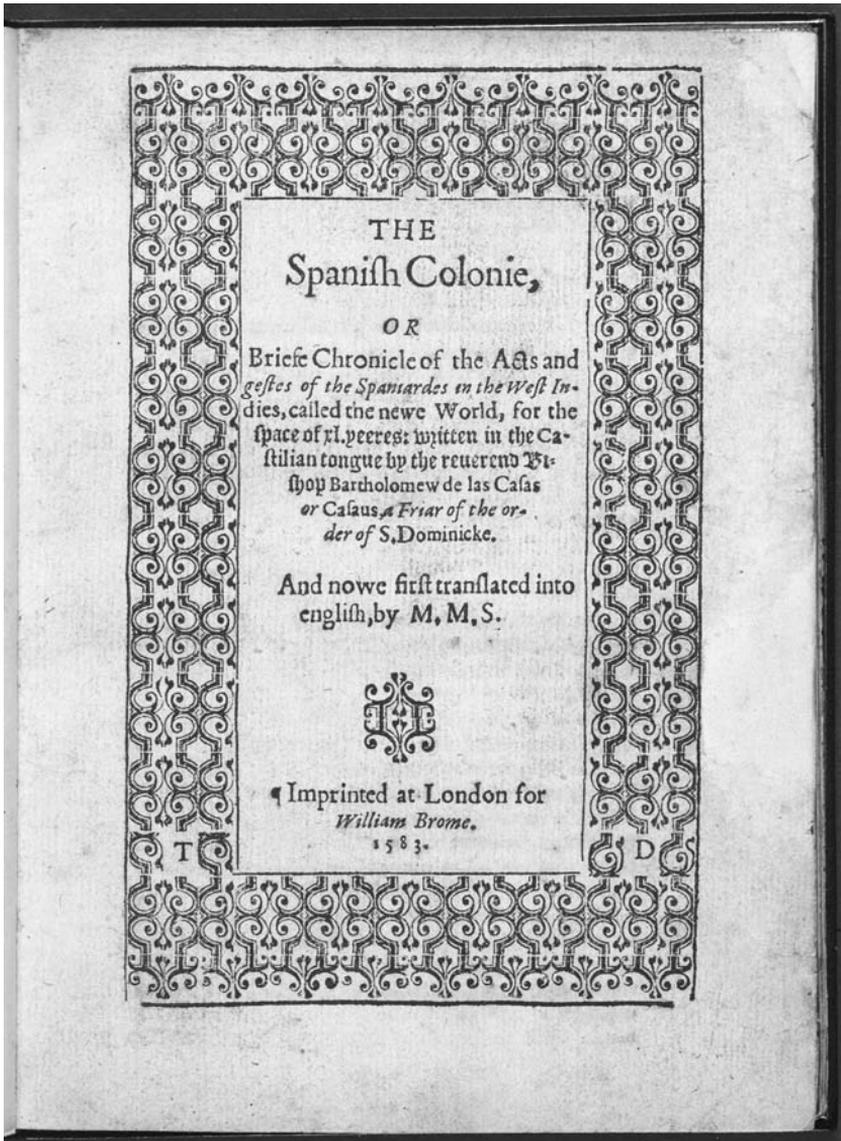


Figure 2. Title page to the English edition of Bartolomé de Las Casas, *The Spanish Colonie; or, Brief Chronicle of the Acts . . . of the Spaniards in the . . . newe World* (1583). Courtesy of the Henry E. Huntington Library, San Marino, California.

might have been inspired by Vitoria's *De Indis*, Hakluyt considered the possibility that the Natives might try to "expel us, and injuriously to offend us, that seeke but just and lawfull trafficke." His answer to this hypothetical was to "conquer, fortifie, and plant in soiles most sweet, most pleasant, most strong, and most fertile, and in the end bring them all in subjection and civilitie."³⁷

What did Hakluyt mean by his use of "conquest" in these various passages? The vast majority of the document in which they appear, far from advocating military aggression or offensive warfare, discussed those things that would make for an effective plantation. This document looks much like his "Notes" of 1578, as Hakluyt recommended seeking a good climate with rich soil ("to yeeld good Wine, or good Oile"), proximity to seawater for the cultivation of salt, and planters of all "manuall occupations," including fishermen, salt makers, vineyard workers, and gardeners. True, Hakluyt also recommended the employment of "men cunning in the art of fortification" and other trades of war (bowyers, fletchers, and pikemakers).³⁸ But it is very clear in these final pages of the document that what Hakluyt was outfitting was a plantation that had the ability to defend itself, not a military force to undertake an offensive conquest in America.³⁹ In "Discourse of Western Planting," the younger Hakluyt offered a similar list of requirements, which included "provisions tendenge to force," but contained lengthier lists of "provisions incident to the firste traficque and trade," "artesianes servinge our firste planters not in traficque," and "artesianes servinge our firste planters . . . for traficque."⁴⁰ Thus, while both Hakluyts recognized the need to build fortifications and equip them to defend the colony from falling into the hands of the Natives or, perhaps of greater concern, the Spanish, neither envisioned this as a war of conquest, certainly not akin to the Spanish example, which the English by then found repugnant.⁴¹ Raleigh's "conquest" of Virginia was to be a permanent, though sensibly forti-

37. Richard Hakluyt the elder, "Pamphlet for the Virginia Enterprise by Richard Hakluyt, Lawyer," in Taylor, *Original Writings of the Two Richard Hakluyts*, 2:328–32.

38. These artisans made bows, arrows, and arrowheads. Pikemakers also produced sticks of up to sixteen feet in length with pointed tips for use as weapons primarily against enemy cavalry on an open battlefield.

39. Hakluyt, "Pamphlet for the Virginia Enterprise," 330–38.

40. Hakluyt, "Discourse of Western Planting," 322–24.

41. On concerns that the Spanish would seek to expel the English from North America, see MacMillan, *Sovereignty and Possession*, 123–32.

fied, plantation from which Anglo-Native trade, and the slow alteration of the Natives' nature, could develop, so that they would embrace Christianity and desire European commodities.

Raleigh's colony, under the command of Sir Richard Grenville, made its way to Roanoke Island within the North Carolina Outer Banks on June 26, 1585. Although they had arrived too late in the season to plant crops, one of the factors that would ultimately lead to the ruin of the first colony, the 108 settlers nonetheless began building houses and a fortification on the north end of the island. Ralph Lane, the colony's military expert and first governor, dispatched a ship with a letter to Secretary of State Sir Francis Walsingham on August 12. He assured Walsingham that despite their arrival late in the season, he had secured "the conquest of" Virginia in Queen Elizabeth's name. Walsingham was assured that they would hold their position, preferring to "loose our lives then to deferre possession" of the colony to "the tyranny of Spain."⁴² Lane wrote his letter to Walsingham before experiencing any significant trouble with the Algonquian Natives, which would soon result in the evacuation of the colony—Sir Francis Drake had arrived early the following June and offered the grateful and starving colonists a ride home—and a less-than-favorable report written by Lane about his experiences with the Natives, one of the few such indictments to be written in the Elizabethan age.⁴³ Had Lane indeed made "the conquest of" any portion of North America through the process of building a few houses and a small fort a mere month after his arrival and before he had significant involvement with the indigenous peoples? What Lane had in fact erected was a rudimentary English village in America, not unlike that envisioned by both Hakluyts.⁴⁴ As Grenville reported to Walsingham in October 1585: "I have possessed and peopled the same to her majesties use, and planted it with suche cattell & beastes as are fitte and necessary for manuringe the countrey and in tyme to geve relief with victuall, as also with such frutes and plantes as by my travaile by the waie thetherwards I mighte procure."⁴⁵ Lane's conquest—similar to early seventeenth-century acts of possession in

42. Lane to Walsingham, August 12, 1585, National Archives of the United Kingdom (hereafter NA), Colonial Office Papers (hereafter CO), 1/1/3.

43. "Ralph Lane's Discourse on the First Colony," in Quinn, *Roanoke Voyages*, 1:255–94.

44. Karen Ordahl Kupperman, *Roanoke: The Abandoned Colony*, 2nd ed. (Lanham, Md.: Rowman and Littlefield, 2007), 20–22.

45. Grenville to Walsingham, October 29, 1585, NA, CO 1/1/7.

America—was an initial claim to sovereignty in the name of the English monarch, followed by the rather mundane beginnings of an English plantation.

From the perspective of imperial proponents back in England, the most fruitful outcome of the early Roanoke experiences was the publication of Arthur Barlowe's *Discourse of the First Voyage* (1585) and Thomas Hariot's *Briefe and True Report of the New Found Land of Virginia* (1588), which was soon to be republished with images and distributed to a wide European audience. Both these eyewitness works were carefully edited as part of a propaganda campaign directed to a body of would-be humanist promoters and cautious investors, "metropolitan-minded men" such as Dee, both Hakluyts, Raleigh, Philip Sidney, Edmund Spenser, and many others who were not necessarily interested in hearing about the challenges of life in America.⁴⁶ In anticipation of this audience, Barlowe described the Natives as "very handsome, and goodly people, and in their behaviour, as mannerly and civill, as any of Europe." They were "most gentle, loving, and faithfull, void of all guile, and treason, and such as lived after the manner of the golden age."⁴⁷ Barlowe found the Natives willing trading partners and the soil extremely fertile and ready for cultivation with only minimal labor. Hariot offered "to the adventurers, favorers, and wellwillers of the enterprise for the inhabitting and planting in Virginia" a similar assessment. The second edition of 1590 was illustrated with the drawings of John White, which showed the Natives to be a strong, honorable, and civil people, not unlike the ancient Britons themselves.⁴⁸ This latter message was emphasized in the 1590 edition by the inclusion of several images of the ancient Picts, the forebears of the British. Together, Barlowe and Hariot confirmed the expectations of Peckham and both Hakluyts about the passive readiness of America's people and its land for English colonization. If the nature of the Native peoples was to be conquered and brought up to the standards of

46. Michael Leroy Oberg, *Dominion and Civility: English Imperialism and Native America, 1585–1685* (Ithaca: Cornell University Press, 1999), 31. See also Karen Ordahl Kupperman, *Indians and English: Facing Off in Early America* (Ithaca: Cornell University Press, 2000), chaps. 1–2; and Kim Sloan, *A New World: England's First View of America* (Chapel Hill: University of North Carolina Press, 2007), esp. chaps. 4–5.

47. "Arthur Barlowe's Discourse of the First Voyage," in Quinn, *Roanoke Voyages*, 1:98–99, 108.

48. Thomas Hariot, *A Briefe and True Report of the New Found Land of Virginia* (Frankfurt, 1590; facsimile ed., New York: Dover, 1972). An annotated catalog of White's drawings is in Sloan, *A New World*, 93–223.

European and Christian civility, belligerence would not need to be part of the protocol of conquest, at least according to these “autoptic” testimonies.⁴⁹

After the failure of the first colony, Hakluyt the younger addressed Raleigh in the preface to his edition of Peter Martyr’s *De orbe novo* (1587):

[Y]ou freely swore that no . . . misfortunes could or would ever tear you from the sweet embraces of your own Virginia, that fairest of nymphs . . . whom our most generous sovereign has given you to be your bride[.] If you persevere . . . your bride will shortly bring forth new and most abundant offspring, such as will . . . cover with disgrace and shame those who have so often dared rashly and impudently to charge her with barrenness. For . . . no one has yet probed the depths of her hidden resources and wealth, or her beauty hitherto concealed from our sight[.] . . . For to posterity no greater glory can be handed down than to conquer the barbarian, to recall the savage and the pagan to civility, to draw the ignorant within the orbit of reason, and to fill with reverence for divinity the godless and the ungodly.⁵⁰

Historians have a penchant for quoting the last sentence of this passage, where the glory of undertaking a seemingly belligerent conquest for the purpose of bestowing civility and godliness on Natives is manifest, if a little unusual in the broader scope of Hakluyt’s (and Elizabethan humanists’) thought.⁵¹ But the majority of the passage speaks to quite another type of conquest. Virginia, named for Queen Elizabeth, is a “nymph” and Raleigh’s “bride,” though “no one has yet probed the depths of her hidden resources” to “bring forth new and most abundant offspring.” There is no mistaking the message here: it is the land to be entered, implanted, and conquered. As was common in the Elizabethan ideology of expansion, the benign and benevolent conquest of the land was at least as important as that of its people.

Eight years later Raleigh returned from the Amazon and wrote his *Discoverie of the Large, Rich and Bewtiful Empyre of Guiana* (1595). Hakluyt’s

49. Karen Ordahl Kupperman has recently emphasized the role that allegedly truthful though carefully prepared “autoptic” sources (i.e., those that describe things seen with one’s own eyes) played in the quest for investment and adventure under Elizabeth. See Kupperman, *The Jamestown Project* (Cambridge: Harvard University Press, 2007); and Ken MacMillan, “Knowledge and Experience in the Founding of Jamestown,” *Reviews in American History* 36 (2008): 15–23.

50. Richard Hakluyt the younger, “Epistle Dedicatory to Sir Walter Raleigh,” in Taylor, *Original Writings of the Two Richard Hakluyts*, 2:367–68.

51. See, e.g., Fitzmaurice, *Humanism and America*, 140; Pagden, *Lords of All the World*, 64; Pagden, “Struggle for Legitimacy,” 35.



Figure 3. Title page to Theodore de Bry's edition of Thomas Hariot, *Briefe and True Report of the New Found Land of Virginia* (1590). Courtesy of the Henry E. Huntington Library, San Marino, California.

imagery cannot have been far from Raleigh's mind: "Guiana is a Countrey that hath yet her Maydenhead, never sackt, turned, nor wrought, the face of the earth hath not beene torne, nor the vertue and salt of the soyle spent by manurance. . . . It hath never been entred by any armie of strength, and never conquered or possessed by any Christian Prince."⁵² Raleigh's conquest metaphor is even more sexually rapacious than Hakluyt's.⁵³ Like Hakluyt in "Discourse of Western Planting," Raleigh took this opportunity to rehearse the terrorizing activities of the Spanish, and to assure the queen that his conquest would be more "chaste" and "virtuous." Raleigh would build forts and install a "smal army a foote" with the blessing of the Native inhabitants, who (echoing Hakluyt the younger's claim in "Discourse") would gladly give tribute to the English monarch in exchange for being "delivered from the servitude" of the Spanish overlords.⁵⁴ It would be a conquest, yes, but (as Benjamin Schmidt has recently argued) it would be a gentlemanly and courteous pursuit that would distance English Protestants from Spanish Catholics and take the Native peoples into the protection of the English so that their dominion, far from being denied them, would be restored and respected.⁵⁵ If treated with courtesy and protected from Spanish tyranny, the "innocent" Amazon people would reciprocate with tribute in the form of treasure and other riches that would enable England to rival the wealth of Spain without having to engage in the latter's aggressive methods.

CONQUEST IN ENGLISH CULTURE AND LAW

Comparing the Spanish example of conquest (or at least what the English perceived that example to be) and the language of the Vitorian conquest doctrine with the manner in which *conquest* and closely related terms were used by the English when advocating the Gilbert and Raleigh voyages re-

52. Walter Raleigh, *Discoverie of Guiana*, ed. Joyce Lorimer (London: Hakluyt Society, 2006), 211.

53. On the theme of sexual conquest and the exploitation of land, see Louis Montrose, "The Work of Gender in the Discourse of Discovery," in Stephen J. Greenblatt, ed., *New World Encounters* (Berkeley: University of California Press, 1993), 177–217.

54. Raleigh, *Discoverie of Guiana*, 217–19. The "smal army a foote," or a company of foot soldiers, was the least expensive and least well-trained branch of the military, which would normally also include guns (artillery) and horses (cavalry). Thus, to induce a hesitant and financially strapped monarch to offer support, Raleigh emphasized the ease by which the conquest could occur and the territory held.

55. Benjamin Schmidt, introduction to Walter Raleigh, *The Discovery of Guiana*, ed. Benjamin Schmidt (Boston: Bedford, 2008), esp. 32–35.

veals significant contrasts. The only major exception was Peckham, who clearly had access to Vitoria's writings as he prepared his treatise, and who, like Vitoria, argued against belligerent conquest, believing that a more gentle means was possible and preferable. The Elizabethan conquest of America was perceived by the Hakluyts, Peckham, Raleigh, and others as having a benign and benevolent (if, of course, highly Eurocentric) and especially plantation-oriented quality. This was the conquest ideology that befitted gentlemen, farmers, merchants, humanists, and Protestants, rather than that of greedy, grasping, and vicious (Spanish Catholic) soldiers.

In part this contrast can be explained by the goals of the Elizabethan proponents of Atlantic expansion as compared to their Iberian competitors. The Spanish wanted land, but they also wanted labor to work the land and the ability to plunder the gold-rich regions of South and Central America, which involved gaining title to lands on which Natives had a clear presence. The English certainly would have welcomed gold if it could be readily found, but—stung by such failures as the 1576–78 Frobisher enterprise and his infamous “black ore”—even by the time Gilbert began his Atlantic efforts this was a dim possibility. Instead, as Hakluyt the elder's “Notes” of 1578 demonstrated, English goals focused on trade with indigenous peoples and on accessing rich farmland in order to grow commodities that would relieve them of having to buy these precious goods from the Spanish enemy. This ideology of Atlantic expansion was not unlike that which would characterize English activities after 1606. The English also had little interest in forcing Native labor: According to the Hakluyts, England had quite enough surplus labor to work the American plantations already.⁵⁶ As was also the case throughout much of the Tudor composite monarchy, there was even an advantage for the English to leave dominion in the hands of Native inhabitants. It relieved the English of responsibility for administering a wide Native confederacy and offered better opportunities for trade, because the Natives could continue to produce exotic commodities (such as furs) using their customary methods. Finally, there was little real desire for forced religious conversion. As we have seen, most contemporary commentators suggested, rather, that the English example of peaceful settlement and Christian civility in the New World would slowly but surely bring the indigenous peoples into the fold of God and civilization. Bringing about military conquest, therefore, would not meet the needs of the incipient English At-

56. For a fuller reading of the younger Hakluyt's rationale for colonization, see David Armitage, *The Ideological Origins of the British Empire* (Cambridge: Cambridge University Press, 2000), chap. 3; and Mancall, *Hakluyt's Promise*, chap. 8.

lantic enterprise. Military readiness was to be defensive rather than offensive, and English guns were generally aimed outward toward the Atlantic Ocean and European competitors, not inward toward the indigenes.⁵⁷

If this was the case, why use the language of conquest at all? Why not use terms that more befitted gentlemen, humanists, and planters? The answer is that the term *conquest* contained a variety of meanings in England that had broader relevance in English culture and law than aggressive military action followed by subjugation. Without ignoring the fact that many of England's conquests throughout the British Isles—particularly those in Ireland—were undertaken in a belligerent fashion, we can attempt to add to this English typology of conquest. This effort at typology is complicated by the fact that a number of Latin words can be translated into English or otherwise interpreted—by early modern English writers and modern scholars—as *conquer* or *conquest*. These include *domare*, *subjugare*, *victoria*, and *questus*. The word *subdue*, for example, is sometimes used to translate the verbs *subjugare* in the Cabot patent and *domare* in Hakluyt's address to Raleigh, whereas other translators choose the more colloquial *conquer*.⁵⁸ This vernacularizing—then and now—results in various discursive possibilities and rhetorical ambiguities. Even by the sixteenth century, for instance, depending on its contextual usage, the verb *to conquer* could mean to tame, bring under control, establish mastery over, gain through struggle, win affections, make submissive, reduce in force or intensity, acquire through effort, overcome, and subdue.⁵⁹ Such acts of conquest could be undertaken with violence and belligerence, but they could also possess benign and benevolent connotations.

One such benign meaning is to be found, of all places, in English law. The single historical event that English subjects would have understood as “the conquest” in England was, of course, the Norman Conquest of 1066. Among the many consequences of this event was the introduction of the ancient Roman feudal law (the *ius feudale*) in England, which included the

57. On military preparedness and defense, see MacMillan, *Sovereignty and Possession*, chap. 4.

58. See, e.g., the version of the Cabot charter at Yale Avalon Project (<http://avalon.law.yale.edu/15thcentury/cabot01.asp>); and David Harris Sacks, “Discourses of Western Planting: Richard Hakluyt and the Making of the Atlantic World,” in Mancall, *The Atlantic World and Virginia*, 437. Sacks suggests that *subdue* is “closer to the original Latin,” although Taylor, in *Original Writings of the Two Richard Hakluyts*, preferred *conquer*.

59. For this variety of usage, see, e.g., the entries for *conquest*, *conquer*, and *subdue* in the *Oxford English Dictionary*, 2nd ed. (1989).

distinction between two types of land possession.⁶⁰ In the treatise commonly attributed to Ranulf de Glanvill, produced circa 1188, its author distinguished between “*hereditas et questus*,” which modern authors (including Glanvill’s editor) prefer to translate as “inherited and acquired,” but which was known to contemporaries as “inherited and conquered,” because the Latin *questus* referred to “acquisition as the result of effort.”⁶¹ To Glanvill, inherited land—that is, land that had passed naturally as a result of the death of the previous occupant and thus took no effort to acquire—had to be delivered according to the laws of descent (primarily through primogeniture) and could not be otherwise alienated. Land that was “conquered,” which was gained through prescription, war, or any means of cession (such as purchase, marriage, or treaty), could be delivered to whomever the owner wished.⁶² This distinction enabled William I to allow the Duchy of Normandy to pass through inheritance to his son Robert, whereas “conquered” England was alienated to his younger son, William Rufus. Likewise, the first generation of Norman occupants on English land were deemed to have acquired their land *per conquestus*, since it was not inherited and was gained by effort. This allowed the new Norman nobles to divide their large parcels of land among all their sons or to other members of their retinue who aided in the conquest, rather than having to deliver it merely to the eldest son. The second and all subsequent generations of occupants, however, had to alienate the land as inherited, which limited their choice of heirs.

Although the distinction between inherited and conquered land thus fell into desuetude in England shortly after the Norman Conquest, this benign usage of *conquest* was nonetheless common in English writings in the early modern period and was especially relevant to the wider empire.⁶³ This was

60. Donald R. Kelley, “Law,” in *The Cambridge History of Political Thought, 1450–1700* (Cambridge: Cambridge University Press, 1991), 66–67.

61. G. D. G. Hall, ed., *The Treatise of the Laws and Customs of the Realm of England Commonly Called Glanvill* (London: Selden Society, 1965), 70–74, quotation at 71; F. Pollock and F. W. Maitland, *The History of English Law before the Time of Edward I* (Cambridge: Cambridge University Press, 1968), 308.

62. See J. C. Holt, “Politics and Property in Early Medieval England,” *Past and Present* 57 (1972): 3–52, esp. 12; S. E. Thorne, “English Feudalism and Estates in Land,” *Cambridge Law Journal* 17 (1959): 193–209; and Pollock and Maitland, *History of English Law*, chap. 6, sections 1–2.

63. For example, in his *Chronicles of England* (1480), William Caxton wrote of Brenne, who had “conquerd a grete lordship thurgh maryage,” and in his English-Latin dictionary *Abcedarium Anglico-Latinum* (1552), Richard Huloet benignly defined *Conquyre* as “get, *adquiro*.” In the *OED* the first meaning of *conquer* is “To acquire (by effort).”

demonstrated in Sir Edward Coke's *obiter dicta* in Calvin's Case (1608), which has garnered a great deal of attention with regard to America even though Coke did not discuss these territories.⁶⁴ But Coke was very much interested in the recent Virginia settlement and is a likely candidate to have drafted its charter of 1606, so scholars see the Atlantic context in his decision.⁶⁵ Coke categorized all lands of the empire as either "inherited" or "conquered," a distinction that, as we have seen, derived from feudal law. Because the lands in America were newly discovered and claimed under Elizabeth, they were clearly not inherited realms, which meant they must have been conquered, as there was at this time no third category.⁶⁶ This was not necessarily a military conquest, but rather was any acquisition made through effort in the name of the monarch. This type of benign conquest was clearly reflected, for example, in Lane's mundane "conquest of" Virginia, which in his case involved an acquisition through the effort of traveling across the Atlantic and beginning the mundane process of settlement. This conquest was not about just war, religious conversion, or exercising the rights of conquest against a subjugated people. That is, it was not about conquest in the sense of the Spanish example or of the emergent Vitorian conquest doctrine, but in historical usage in English law. Because this was

64. For example, Daniel J. Hulsebosch, "The Ancient Constitution and the Expanding Empire: Sir Edward Coke's British Jurisprudence," *Law and History Review* 21 (2003): 439–82; Gavin Loughton, "Calvin's Case and the Origins of the Rule Governing 'Conquest' in English Law," *Australian Journal of Legal History* 8 (2004): 143–80. For the text of the case, see Edward Coke, *The Selected Writings and Speeches of Sir Edward Coke*, ed. Steve Sheppard, 3 vols. (Indianapolis: Liberty Fund, 2003), 1:166–232, esp. 206–8.

65. Williams (*The American Indian*, 199–204) saw Coke as providing legal sanction for the "conquest of America" on the grounds that in Calvin's Case "infidels" were described as "perpetual enemies" (*perpetui inimici*). Thus, Williams argued that the Virginia Company charter was "the English equivalent of the *Requerimiento*." Setting aside the fact that the charter is very difficult to interpret along these lines, in Calvin's Case Coke was addressing the issue of what types of aliens could gain action at common law. In this context, he argued that no infidel, or non-Christian, could do so, which probably would have included American Natives but also included, e.g., Ottoman Turks, no small concern at this time. Whatever might be said about Coke's statement, this was not a protocol for belligerent conquest. For the use of this notion elsewhere, however, see Pagden, *Lords of All the World*, 94.

66. A third category, settlement, was developed in the late seventeenth century and drew from Gentili's (about which, see below) and later Locke's notion that unoccupied land could be possessed through settlement. This notion was generally imposed retroactively to the "settlement" of Virginia. Hulsebosch, "Ancient Constitution and the Expanding Empire," 470–72.

a conquest rather than an inheritance, the land could be distributed as the “conqueror” saw fit. In the case of Gilbert and Raleigh, for example, their “jorney for conquest” was supposed to secure their gain *per conquestus*, which entitled them subsequently to distribute their land to whomever they wished, including, in the case of Gilbert, John Dee and George Peckham. Otherwise, they would have been obligated to alienate the vast reaches of America merely to their direct heirs, rather than to their investors and supporters. Because the land was “conquered,” it offered the Crown and patentees more flexibility in how it was distributed among settlers in the first generation of the Atlantic enterprise.⁶⁷

Within the broader typology of English usage, conquest could also involve the purportedly benign controlling, subduing, and even wooing of *people*, as may have been Hakluyt the younger’s meaning when he enjoined Raleigh “to conquer [*domare*] the barbarian, to recall the savage and the pagan to civility.” As David Harris Sacks has recently demonstrated in his analysis of this passage by Hakluyt, this type of conquest was not a martial enterprise, but rather was intended to be a slow, peaceful, humanitarian, and civilizing process that would ultimately benefit the Native populations. The remainder of the verbs used in that passage—to recall, draw, fill—also “represent the beginning of a long-term process” of civilization, though through calm example, good teaching, and paternalistic treatment, not force and subjugation.⁶⁸ Similarly, when Hakluyt the elder advocated the possibility of conquering in order to facilitate trade, he pointed out that this “good meanes” would help “alter” the Natives’ nature (something John Dee and Christopher Carleill also advocated)—thereby making them more desirous of European commodities for trade—“but not on a sudden,” another endorsement of the slow, patient, and almost parental approach to conquering the nature of the indigenous inhabitants. The English expected a steady

67. Though generally beyond the scope of the present discussion, *conquest* had far more complex meanings in English and colonial law, which also helped determine the introduction of laws and subsequent sovereign oversight. One important issue that was highlighted in Coke’s decision in Calvin’s Case was the “continuity theory,” by which conquered territories inhabited by Christians (such as England after the Norman Conquest) could continue to use ancient laws, provided these were consonant to reason, whereas infidel territories required an entirely new body of laws that were consistent with the universal laws of humanity. This issue was of importance in both Ireland and America. See Hulsebosch, “Ancient Constitution and the Expanding Empire”; MacMillan, *Sovereignty and Possession*, chap. 1, and Pawlisch, *Sir John Davies and the Conquest of Ireland*.

68. Sacks, “Discourses of Western Planting,” 436–46, quotation at 444.

alteration of Native nature, so that they would eventually realize their potential and act in accordance with the norms of European humanity and civility, ultimately to include embracing Christianity and, especially, a desire for English commodities. Raleigh's "conquest" of the Amazon was styled as an obligation of the "conqueror" to protect the Native peoples and their property against all insurgents, another claim to a benevolent conquest to benefit natural inhabitants. Provided the Natives of America proved as receptive to Christianity and European civility as observers such as Barlowe and Hariot suggested they would be, this benign conquest was plausible and preferable to a more belligerent model.

Closely related—and perhaps indistinguishable from it, given the direct association Europeans made between indigenous populations and their natural surroundings (as words such as *savage*, *heathen*, *barbarous*, and *natural* could be and were applied to both people and land)—was the act of conquering *nature*.⁶⁹ This can be interpreted in the injunctions to subdue and conquer "heathen and barbarous landes" in the Elizabethan charters and again in both Hakluyts' uses of *conquest* and *conquer* in their writings. The common denominator in the various passages we have seen about conquest, when considered in the wider context of the writings in which they appeared, is the emphasis placed on planting the land, metaphorically or otherwise. Exploiting the land through settlement and cultivation has long been recognized as the central means by which the English expanded into the Atlantic world. One of the most common biblical passages quoted in England's claiming of the Atlantic was Genesis 1:28, in which God commanded Adam to "replenish the earth, and subdue it." Patricia Seed observed that "in medieval England, and in England alone, Gen. 1:28 became widely understood as signifying agricultural rather than human fertility."⁷⁰ That which was to be conquered through subjugation was the earth through cultivation. In England this act was properly known as "improvement," the practical process of turning land from wilderness to garden that signaled rights of possession in English law.⁷¹ Agricultural and human fertility could also be combined metaphorically: in England, as elsewhere in Europe, the ritualistic maypole dance performed by virgins at the beginning of spring was a reference to the renewed and fertile earth being implanted by seed

69. See these various terms in the *OED*.

70. Seed, *Ceremonies of Possession*, chap. 1, quotation at 34.

71. *Ibid.*, 24–25. See also John C. Weaver, *The Great Land Rush and the Making of the Modern World, 1650–1900* (Montreal: McGill-Queen's University Press, 2003), chap. 2.

through human effort, which would later result in a rich crop. Hakluyt the younger's sexualized reference to Virginia implies precisely this type of conquest, as does Raleigh's desire to tear the "maydenhead" of Guiana.

The words of Francis Bacon in his essay "On Plantations" (1625) have frequently been used to explain the ideology of the English in the early seventeenth century: "I like a plantation in a pure soil; that is, where people are not displanted, to the end, to plant in others. For else it is rather an extirpation, than a plantation." He continued: "If you plant where savages are, do not only entertain them, with trifles and gingles, but use them justly and graciously, . . . and send off of them, over to the country that plants, that they may see a better condition than their own, and commend it when they return."⁷² Bacon strongly supported the cause of empire, particularly its economic benefits and its promotion of the English quest for greatness, but he rejected the notion that an empire of prosperity and liberty could be built on violent conquest or the extermination of Native peoples.⁷³ Rather than arrive in military force as a juggernaut—or "Nebuchadnezzar's Tree," to use Machiavelli's term for his preferred imperial model, and that suggested to the English by the Spanish example—Bacon wished the English to plant "a humble mustard seed," the smallest of all seeds but immensely strong once it becomes a mature tree.⁷⁴ Although Bacon was writing in 1625, which would therefore suggest a transition from the Elizabethan "conquest" to the Stuart "plantation" ideologies, his ideas, we have seen, were equally relevant to the goals of the Gilbert and Raleigh enterprises, at least according to its chief propagandists.

In sum, to a significant degree the Elizabethan expansionist ideology was—to misappropriate one of Bacon's most famous phrases, uttered in 1594—to be a "conquest of the works of nature," both human and land.⁷⁵ Elizabethan writers perceived the conquest of America to be a benign and benevolent pursuit that would benefit both the noble, innocent, and "unciv-

72. Francis Bacon, "On Plantations," in *The Essays* (Sioux Falls, S.D.: NuVision, 2005), 99.

73. On the quest for greatness (or *grandezza*) through colonization, see Andrew Fitzmaurice, "The Commercial Ideology of Colonization in Jacobean England: Robert Johnson, Giovanni Botero, and the Pursuit of Greatness," *William and Mary Quarterly* 64 (2007): 791–820.

74. Michelle Tolman Clarke, "Uprooting Nebuchadnezzar's Tree: Francis Bacon's Criticism of Machiavelli's Imperialism," *Political Research Quarterly* 61 (2008): 367–78.

75. This passage was part of Bacon's *Gesta Grayorum*, a speech made at Gray's Inn during the Christmas revels of 1594.



Figure 4. Image from Theodore de Bry's edition of Thomas Hariot, *Briefe and True Report of the New Found Land of Virginia* (1590). Courtesy of the Henry E. Huntington Library, San Marino, California.

ilized” Native inhabitants and the “uncultivated” land of the New World. To these metropolitan thinkers, America was still in a phase of “prelapsarian primitivism,” the period before the fall from grace and the subsequent corrupting influences of civilization.⁷⁶ In the 1590 edition of Hariot’s *Briefe and True Report*, this message was explicit: the very first illustration represented Adam, Eve, and the serpent in the moments before the fruit was picked from the tree of knowledge. In the fore- and background are depicted humans and animals—including a male lion—living in harmony, which was precisely the relationship Elizabethan humanists wished to communicate about America.⁷⁷ This conception of a “conquest of Eden” through civilization and cultivation was, of course, highly optimistic, and based on intellectual speculation and metropolitan desire rather than actual experience.⁷⁸ In the absence of such experience, English commentators perceived the American Natives—as opposed to the “wild Irish”—and American land as highly receptive to English benign acts of improvement. As a number of literary scholars have argued, much of the rhetoric of empire in the Elizabethan period was intended to make colonization plausible and pleasing to its chief agents, including the Crown, propagandists, and potential merchants and colonists. This message involved eschewing an acquisitive, belligerent, and rapacious example of colonization—such as that demonstrated by the Spanish—and emphasizing economic, civic, and humanist potential through honorable and just proceedings. To use the apt phrase of David Read, Elizabethans envisioned a “temperate conquest” of America, in part as a deliberate contrast to the intemperate conquests of the Spanish.⁷⁹ In pursuit of this noble goal, late Elizabethan metropolitan

76. On the “paradise” and “noble savage” myths in early English colonial discourse—turning to ignobility upon actual contact—see Bernard W. Sheehan, *Savagism and Civility: Indians and Englishmen in Colonial Virginia* (Cambridge: Cambridge University Press, 1980).

77. Hariot, *Briefe and True Report*, 39.

78. For an example of the use of this term, see, e.g., James Horn, “The Conquest of Eden: Possession and Dominion in Early Virginia,” in Robert Appelbaum and John Wood Sweet, eds., *Envisioning an English Empire: Jamestown and the Making of the North Atlantic World* (Philadelphia: University of Pennsylvania Press, 2005).

79. See, e.g., Rebecca Ann Bach, *Colonial Transformations: The Cultural Production of the New Atlantic World, 1580–1640* (New York: Palgrave Macmillan, 2000); Jeffrey Knapp, *An Empire Nowhere: England, America, and Literature from Utopia to The Tempest* (Berkeley: University of California Press, 1992); Michael G. Moran, *Inventing Virginia: Sir Walter Raleigh and the Rhetoric of Colonization, 1584–1590* (New York: Peter Lang, 2007); David Read, *Temperate Conquests: Spenser and the Spanish New World* (Detroit: Wayne State University Press, 2000). See also Fitzmaurice, *Humanism and America*, chaps. 1 and 4.

observers could easily overlook indictments of Native behavior by Lane in favor of the more pleasing and desirable accounts of, for example, Barlowe and Hariot.

ALBERICO GENTILI AND THE CONQUEST DOCTRINE

If the Elizabethan typology of benign conquest contrasted with the emerging conquest doctrine in the law of nations, the English did not necessarily know this until late in Elizabeth's reign. Before the regius professorships in civil (that is, Roman) law in Oxford and Cambridge were established by Henry VIII in 1540, the majority of legal education in England was either canon law in the universities or common law in the Inns of Court. Although it was generally recognized that other legal systems operated within the realm—and were employed in the Courts of Equity, Admiralty, and Star Chamber—civil law was still struggling for recognition in England.⁸⁰ The civilian lawyer working in England in the sixteenth century who showed the most sophisticated knowledge of Roman law in general and Vitoria in particular was Alberico Gentili, an Italian émigré who was regius professor of civil law at Oxford from 1587 to 1608. Recognized today as one of the triumvirate of the “fathers of classical international law” (together with Vitoria and Hugo Grotius), Gentili produced a number of civil law texts and advised Queen Elizabeth on various supranational affairs in the 1580s and 1590s.⁸¹

In his lectures on the laws of war and peace, and in the treatise that derived from them, the *De iure belli libri tres* (*The Laws of War in Three Books*, 1588–89, extended 1598), Gentili introduced the conquest doctrine

80. On the rise of civil law in England, see especially Glenn Burgess, *The Politics of the Ancient Constitution: An Introduction to English Political Thought, 1603–1642* (University Park: Pennsylvania State University Press, 1992), chap. 5; Brian Levack, *The Civil Lawyers in England, 1603–41: A Political Study* (Oxford: Oxford University Press, 1977). On the limitations of civil law in the time of Elizabeth, see Richard Helgerson, *Forms of Nationhood: The Elizabethan Writing of England* (Chicago: University of Chicago Press, 1992), chap. 2, esp. 65–78.

81. Gentili's reputation is still in the process of recovery. Although he has received valuable attention recently in, e.g., Tuck, *Rights of War and Peace* (chap. 1), many writers still virtually ignore his contributions to the law of nations and the conquest doctrine, such as Korman, *Right of Conquest*, and Keal, *European Conquest*. For context, see Peter Haggemacher, “Grotius and Gentili: A Reassessment of Thomas E. Holland's Inaugural Lecture,” in H. Bull et al., eds., *Hugo Grotius and International Relations* (Oxford: Clarendon, 1990), chap. 4; and Artemis Gause-Stamboulpoulou, “Gentili, Alberico (1552–1608),” in *Oxford Dictionary of National Biography*.

to England. Much of his treatise agreed with Vitoria's assessment of just war. War was unjust if it was undertaken merely for the thirst for power and riches, for the enlargement of empire, and in the name of Christianity. Taking an aggressive position, Gentili authorized a defensive, preemptive war against a perceived enemy to ensure self-preservation and the balance of power, provided that there was sufficient cause for fear and not "merely suspicion." In this regard, Gentili allowed that just war might be undertaken for imperial expansion, if it ensured the domestic security of the state. This principle has given Gentili a rather belligerent reputation among scholars. Echoing Vitoria, he permitted as just any war that was also undertaken for breaches of the law of nations regarding the "association of the human race." Gentili's fondness for metaphors encouraged him to analogize human society to "an arch of stones, which will fall, unless the stones push against one another and hold one another up." He also defended the justness of war when "some privilege of nature . . . is denied us by man." His examples, like those of Vitoria, included being prohibited from commerce, from passing through another's territory, from using harbors, and from using common lands or unowned things: "one who takes away such privileges inflicts a wound on human society. For . . . navigation, communication, and accommodation is the strongest bond of human interdependence."⁸²

Gentili explicitly engaged with Spanish justifications for conquest in the Atlantic, often citing—and opposing—Francisco de Vitoria. He argued, first, that the Spanish were always seeking dominion rather than commerce in the New World, so that claims to just war based on prohibition of trade and friendship (Vitoria's central argument) were disingenuous. He questioned whether being prohibited from some trade—such as items that were contrary to a nation's religious or moral codes—or from accessing some parts of the territory, constituted a breach of the law of nations. For "a guest is not said to be rejected when he is not admitted to every part of a house." Second, also contra Vitoria, Gentili denied that the Natives' refusal to hear the preaching of the gospel was sufficient cause for war, as this was conquest undertaken for the "pretext of religion." Third, Gentili accepted "that the cause of the Spaniards is just when they make war upon the Indians, who practiced abominable lewdness even with beasts, and who ate human flesh, slaying men for that purpose." Gentili stopped short of accepting the Aris-

82. Alberico Gentili, *De iure belli libri tres*, ed. John C. Rolfe (New York: Oceana, 1964), 38–78. "Common lands" refers to land that all inhabitants had the right of access to, such as seashores, pastures, and so on; it does not refer to "empty lands," which later would subsume the English agriculturalist argument.

totalitarian theory that all infidels were “natural slaves,” although that strain of thought may be discerned in this and other passages.⁸³ This was also opposite to Vitoria’s position. In “On Dietary Laws” (1537) Vitoria had admitted that breaches of natural law, such as cannibalism and human sacrifice, were sufficient cause for war to protect the innocent. But Vitoria had concluded that “if war is declared on the barbarians [for this reason] . . . it is not lawful to continue once the cause ceases, nor to seize their goods or their lands on this pretext.”⁸⁴ Thus, while generally denying Spanish claims to title by conquest on the grounds that they were refused natural rights of trade and friendship, or for the purposes of religious conversion (because these arguments were used merely as subterfuge and colourful pretext), Gentili endorsed conquest—and all rights ensuing therefrom—for the purpose of ending unnatural and barbaric practices or for self-preservation. These latter arguments were closer in tone to those of Vitoria’s opponents than to those of Vitoria himself.

Building on Vitoria’s work, Gentili also devoted space to the rights of the victor over the conquered, which would be the most important discussion before Hugo Grotius’s work of 1625. The victor could, of course, recoup his financial losses and impose tribute on the vanquished. In terms of taking vengeance, Gentili allowed that the victor could “deal more harshly with barbarians, for with barbarians violence is more potent than kindness,” although he also admitted that moderation befits a just conqueror and that cruelty is unnatural. Gentili also supported the idea that the conqueror could take lands from the vanquished, seize all “ornaments” (chattel property), destroy and sack cities, and devolve combatants into slavery, which though disapproved in natural law was acceptable in the law of nations.⁸⁵ Whereas Vitoria had recommended moderation in all things and wrote that land “ought to be returned” at the end of the conflict and that the “punishment should fit the crime,” Gentili provided an exhaustive set of privileges for a potentially vengeful victor, in which moderation was a choice, not an obligation.

We should remember that Gentili’s ideas on conquest were delivered annually as lectures at Oxford University in the two decades immediately preceding the permanent English empire in America. This period also witnessed the height of classical humanist education and the renewed reception of civil law in England. The problem for Gentili’s audience was that al-

83. *Ibid.*, 89–90, 122–23; Tuck, *Rights of War and Peace*, 34–36.

84. Vitoria, *Political Writings*, 207–30, quotation at 226.

85. Gentili, *De iure belli*, book 3, especially chaps. 2–9.

though arguments about inhumanity and barbarity were frequently used in the context of Elizabethan Ireland, those closely involved in promoting Elizabethan Atlantic expansion would have found them discomfiting when applied to the American setting.⁸⁶ As we have seen, two of the best-received autoptic testimonies of North America—Barlowe’s *Discourse* and Hariot’s *Briefe and True Report*—portrayed indigenous peoples of America as anything but inhuman and threatening. In the eyes of many metropolitan observers, this perspective was confirmed by actual experience with American Natives who had visited England. Frobisher, Amadas and Barlowe, and Lane had all taken North Americans to England, with positive (if short-lived) results.⁸⁷ These experiences demonstrated that even if the Natives were not civil by European standards, neither were they inhumane, natural slaves, or to be dealt with violently merely on the grounds of their barbarism. As Andrew Fitzmaurice has amply demonstrated, as early as the late Elizabethan period the English displayed “moral uncertainty” about the dispossession of Native Americans and tried to emphasize the justice, honor, and civic virtue of their enterprises.⁸⁸ English humanists imbued with classical teachings were also beginning to think, in contrast to their perception of the Iberian empire in America, that only an empire founded on liberty was an honorable undertaking.⁸⁹ These humanistic and civic-oriented goals could not be accomplished through the type of action advocated by the belligerent Gentilian conquest doctrine, even if a pretence for conquest according to the emergent supranational legal formulation could be found to exist, which was not generally deemed to be the case in the Elizabethan age.

Gentili did, however, offer a rationale for colonial expansion that could

86. Brian Lockey, “Conquest and English Legal Identity in Renaissance Ireland,” *Journal of the History of Ideas* 65 (2004): 545–48. See also Sheehan, *Savagism and Civility*, 54–56.

87. Kupperman, *Jamestown Project*, chaps. 3–4; Mancall, *Hakluyt’s Promise*, chaps. 8–9.

88. Andrew Fitzmaurice, “Moral Uncertainty”; *Humanism and America*, 138–48 and chap. 6; and “Civic Solution,” 30–32.

89. See, e.g., David Armitage, *Ideological Origins of the British Empire*, chap. 5; Armitage, “Empire and Liberty: A Republican Dilemma,” reprinted in Armitage, *Greater Britain, 1516–1776: Essays in Atlantic History* (Aldershot: Ashgate, 2004), essay 7; various essays in Jack P. Greene, ed., *Exclusionary Empire: English Liberty Overseas, 1600–1900* (Cambridge: Cambridge University Press, 2010); and Paul D. Halliday, *Habeas Corpus: From England to Empire* (Cambridge: Belknap Press of Harvard University Press, 2010), chaps. 8–9.

be reconciled with England's desire for land rather than labor, with its hopes for a laissez-faire overseas empire that would require minimal governance, and with demands for honorable and just proceedings, and that would satisfy those imbued with anti-Spanish sentiment. He observed: "The ruling of our jurists [citing Justinian's *Digest*] with regard to unoccupied land is, that those who take it have a right to it, since it is the property of no one. And even though such lands belong to the sovereign of that territory . . . yet because of that law of nature which abhors a vacuum, they will fall to the lot of those who take them. So be it, but let the sovereign retain jurisdiction over them. . . . *Let both nations unconquered form a union on equal terms and live under equal laws.*" The context of this passage was Gentili's belief that it was justifiable to make an offensive "war of necessity" if people were "driven from their own country" because of natural disaster (he cites earthquakes), pestilence, or "the excessive growth of their population."⁹⁰ Many in England—and especially the younger Hakluyt—saw population excess, plague, and the shortage of food and land as necessitating English Atlantic expansion. Gentili offered a way to possess land in America that could be done peacefully and lawfully, and which would not necessarily deny Native dominion or demand belligerent conquest or subjugation, although we might presume that Gentili's "equal terms" and "equal laws" were to be consistent with natural law, and thus European in derivation. But Gentili also admitted that the refusal of a "small number of inhabitants" to allow settlement on vast unoccupied spaces (which characterized North America much more than South and Central America) was a breach of the law of nations, which could be prosecuted through just war, with the rights of conquest to the victor. Whatever may be said for this argument, Gentili's employment of Justinian to prove his case was an error. Justinian offered a single example of land that was *res nullius* (islands arising in the sea), but he otherwise held that no land was subject to occupation because it was under the ownership of somebody. As Richard Tuck has pointed out, Gentili might have derived this notion from Thomas More's *Utopia* (1516), but whereas most in the early sixteenth century accepted More's ideas as little more than political rhetoric, "Gentili put the idea firmly into the minds of people engaged in constructing colonies in the New World."⁹¹

What Gentili did through his lectures and writings was give the language of conquest a strongly belligerent meaning, made even more discomfiting to

90. Gentili, *De iure belli*, 79–81; emphasis added.

91. Tuck, *Rights of War and Peace*, 49–50; also see Lesaffer, "Argument from Roman Law," 43–44.

the English when it was placed directly into the context of Spanish Atlantic activities, while simultaneously providing the language of effective occupation that would make the English ideology of a benign relationship with land and peoples possible. As we have seen, since at least 1578, when plans for permanent settlement began, the English had preferred to be viewed as benign planters, not belligerent conquerors. To Gentili's English audience, the fiction of an ancient plantation doctrine was considerably more palatable than his aggressive and belligerent conquest doctrine. It enabled those imbued with the spirit of *humanitas*, *civitas*, and *libertas* to establish settlements in the New World and begin the slow process of improving the atavistic nature both of land and of peoples, without resorting to a domestic language of conquest that was now muddied by the Spanish example and the new conquest doctrine. Thus, at least initially the Gentilian formulation led to eschewing the language of conquest and replacing it with the language of plantation. The 1606 Virginia Company charter—the blueprint for all subsequent Atlantic charters—did not use the term *conquest*, but instead referred repeatedly to a “plantation,” hoping that through peaceful “habitation” the colonists would “in time” bring the Natives to “human Civility, and to a settled and quiet Government.”⁹² This transition from the language of conquest in the Elizabethan charters to the language of plantation in the Virginia Company charter, however, was more a change in terminology than a change in ideology.

When the English gained on-the-ground experience of North American Native resistance after 1606, there was a fuller adoption of the Gentilian formulation. Robert Gray's *Good Speed to Virginia* (1609) is the clearest example of this. Gray affirmed that “there is no intendment to take away from [the Natives] by force that rightfull inheritance which they have in that Country. . . . [W]ee goe to live peaceable among them, and not to supplant them. . . . [N]either doe wee intend to take anie thing from them, *ex pacto & iure foederis* [except by contracts and treaties].” That is, the English desired a peaceful relationship with the Natives, and they planned to acquire land under Native dominion through legitimate means, while also believing that they had certain rights to land over which the Natives did not have a “rightfull inheritance,” presumably that which was unoccupied according to the Gentilian plantation doctrine. But since the English had already experienced the type of resistance from the Powhatan Natives anticipated by Vitoria, Peckham, and Gentili, there was also just cause for belliger-

92. First Charter of Virginia, April 1606, at Yale Avalon Project (http://avalon.law.yale.edu/17th_century/va01.asp).

erent action: “[A]ll Politicians [civil lawyers] . . . holde and maintaine, that a Christian King may lawfullie make warre uppon barbarous and Savage people, . . . and may make a conquest of them, . . . to reclaime and reduce those Savages from their barbarous kind of life. . . . [W]arre is lawfull which is undertaken, not for covetousnesse and crueltie, but for peace and unities sake.”⁹³ Gray expressed the twin tenets of the Gentilian formulation: peaceful and effective occupation, together with belligerent conquest, as the situation demanded, to defend natural rights. This Gentilian position thereafter became standard. English proponents for empire, such as John Donne, Samuel Purchas, John Smith, and William Strachey, argued that the peaceful settlement of a plantation on untilled ground was allowed by Roman law, as was the prosecution of a just war if such rights were refused, or if the Natives proved otherwise inhospitable or inhuman according to the laws of nature and nations.⁹⁴ In the first half of the seventeenth century, justifications of this nature would be used to prosecute wars with the Powhatan in the Chesapeake and the Pequot in New England, and they would result in a new “conquering and colonial rhetoric” that would characterize Anglo-Native relations throughout much of the seventeenth and eighteenth centuries.⁹⁵



This study reveals some of the problems that occurred among European colonizing powers when domestic ideas clashed with other cultural and legal systems, such as Spanish, canon legal, and supranational ideas of conquest. When Elizabethan humanists—from the comfort of their studies—were theorizing about their relationship with American people and land, the domestic language of benign and benevolent conquest was used to strong rhetorical effect. To be sure, it was still a language of power that upheld deeply Eurocentric notions of Christian superiority over the peoples and lands of North America, but there was little belligerence involved in its expression. Instead, their conquest of America was about the slow and noble process of subduing and improving the natural environment, both land and people. By the early seventeenth century, however, the idea of benign conquest had

93. Robert Gray, *A Good Speed to Virginia* (London, 1609), sig. C4r-v. On Gray's treatise, see Fitzmaurice, *Humanism and America*, chap. 5, and “Moral Uncertainty,” 396–409.

94. Fitzmaurice, “Moral Uncertainty.”

95. On the Pequot war, see, e.g., Andrea Robertson Cremer, “Possession: Indian Bodies, Cultural Control, and Colonialism in the Pequot War,” *Early American Studies* 6 (2008): 295–345, quotation at 345.

been tainted by the belligerent Spanish example, from which the English deliberately distanced themselves, and by the initial and militant meetings between the English and Americans, which showed that the theory of benign conquest was unlikely to function in practice. The domestic idea of benign conquest also became a casualty of the development of the conquest doctrine in the law of nations, which became still more aggressive when the ideas of Gentili were reified by Hugo Grotius in his important *De iure belli ac pacis* (1625). As the English “web of empire” spread in the late sixteenth and early seventeenth centuries, which involved gaining greater experience of the world and transitioning from insularity and inferiority to global interaction and claims to imperial supremacy, it became necessary to adapt culturally specific notions in favor of ones understood by the wider supranational community of independent, sovereign states.⁹⁶ In this context conquest had become a formulaic and exclusively belligerent concept enshrined in the recently adopted system of supranational law, the legal regime that all European colonizing powers used to justify, negotiate, and gain recognition for their Atlantic empires.⁹⁷ Thus, by the early seventeenth century the English idea of benign and benevolent conquest no longer had a place in domestic, imperial, or supranational discourse.

96. This phrase comes from Alison Games, *The Web of Empire: English Cosmopolitans in an Age of Expansion, 1560–1660* (New York: Oxford University Press, 2008).

97. MacMillan, *Sovereignty and Possession*, 41–47 and chap. 6; James Muldoon, *Empire and Order: The Concept of Empire, 800–1800* (New York: Palgrave Macmillan, 1999), 6–8, 144.