Introduction: Romance and the ethics of expansion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[10] William Camden, *Annales: the true and royall history of the famous empresse Elizabeth Queene of England France and Ireland &c.*, trans. Abraham Darcie (London, 1625), p. Ggg. Camden, *Annales Rerum Anglicarum et Hibernicarum, Regnante Elizabetha* (London, 1615), p. Pp4^{v}.

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

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

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

[12] See O'Rahilly, *Massacre at Smerwick*, p. 31.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[23] Coke, *Seventh Report*, p. D^{v}.
[24] See Vitoria, *On the American Indians*, pp. 243–44. See also Sir Thomas More, *The Utopia*, ed. Robert M. Adams, 2nd edn. (New York: Norton, 1992), esp. p. 41.
[25] Burgess, *Politics of the Ancient Constitution*, pp. 121–30; Brian Levack, *The Civil Lawyers in England, 1603–1641* (New York: Oxford University Press, 1973), pp. 131–50.
[26] J. H. Baker, *An Introduction to English Legal History*, (London: Butterworth, 1971), p. 50.

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

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

[27] Levack, *Civil Lawyers*, pp. 27–28. [28] Ibid., pp. 17–22. [29] Ibid., p. 183.
[30] *Law and Politics in Jacobean England, The Tracts of Lord Chancellor Ellesmere*, ed. Louis Knafla (New York: Cambridge University Press, 1977), pp. 123–54.
[31] Spenser, *A View*, lines 644–45.