

Taking Possession and Reading Texts: Establishing the Authority of Overseas Empires

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THE Admiral [Christopher Columbus] went ashore in the armed launch, and Martín Alonso Pinzón and his brother Vicente Yañes, who was captain of the *Niña*. The Admiral brought out the royal banner and the captains [brought] two flags of the green cross . . . with an F [Ferdinand] and a Y [Isabella], and over each letter a crown, one [letter] on one side of the [cross], and the other on the other [side]. . . . The Admiral called to the two captains and to the others who had jumped onto land, and to Rodrigo d'Escobedo, the notary and registrar of the whole fleet, and to Rodrigo Sánchez de Segovia; and he said that they should bear faith and witness [as to] how he, in the presence of all, was going to take, and in fact, did take possession of said island for the king and for the queen, his lords, making the solemn declarations required to preserve their rights, as is contained at greater length in the legal instruments of proof made there in writing."¹ Columbus's son Fernando's version of the events of October 12, 1492, is that "The Admiral . . . took possession of it in the name of the Catholic Sovereigns *with appropriate ceremony and words*."²

In 1583, Sir Humphrey Gilbert, in the first English effort at New World settlement, at St. John's Harbor, gathered together the Portuguese,

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¹*The Diario of Christopher Columbus's First Voyage to America 1492-1493: Abstracted by Fray Bartolomé de Las Casas*, trans. Oliver Dunn and James E. Kelley, Jr. (Norman, Okla., 1989), 62, 64. I have used their transcription of the Las Casas text rather than the translation. A "*protestación*," for example, in Spanish law is and was "a solemn declaration for the purpose of preserving one's right;" "*testimonio*," both "proof by witness" and "an instrument legalized by a notary."

²*The Life of the Admiral Christopher Columbus by his Son Ferdinand*, trans. Benjamin Keen (New Brunswick, N. J., 1959), 59 (emphasis added).

French, and English merchants and shipmasters trading and fishing off the banks of Newfoundland and informed them of his written authorization to possess the territory for England. He then "had delivered unto him (after the custom of England) a rod [small twig] and a turf of the same soil."³ No banners were unfurled, no elaborate ceremonies observed upon landing. Where Columbus declared the intent of the Spanish crown to remain by a solemn speech duly recorded by notaries, Gilbert indicated his intent to settle by having a twig and a piece of earth brought to him.

Even as the conquest of the New World was often accomplished by military means or by occupation, its authority—that is, the right to rule—was established by language and ceremony. For Columbus, it was the ritual landing of the royal banner and twin flags, together with the language of his well-witnessed solemn declarations, that established the right of the crown of Castile to this territory, later known as the New World. Columbus's first step was to mark his presence on the land—the customary first element in the Roman tradition of taking possession. Like Venetian John Cabot, who had planted a cross and two flags on the coast of Cape Breton only a few years later, Columbus borrowed the ceremonial elements marking his arrival in the New World from his Mediterranean seafaring predecessors.⁴

Ceremonies of arrival, marking physical presence on the land, no matter how compelling, frequently used, or well witnessed were only the first step. The second part of the Roman-derived conception of possession was manifesting intent to remain, which Columbus did, in his son's report, by "appropriate ceremony and words." Columbus's solemn declaration and due recording of the intent to claim the land were far from improvised. By the terms of his agreement with Ferdinand and Isabella, Columbus was required to make a grave declaration of the intent to remain and to record those words for posterity by writing them down.⁵ The Spanish monarchs considered such statements critically important to establish their posses-

³ Richard Hakluyt, *Principal Navigations, Voyages, Traffiques, and Discoveries of the English Nation*, 12 vols., Hakluyt Society Publications, Extra Series (Glasgow, 1904), VIII, 53–54; "Vortigern be king Be-taehste heom al his lond ne bileafð him an beonde a turf of lond," *Lazamon's Brut or Chronicle of Britain* (ca. 1205), quoted in the *Oxford English Dictionary*, "Turf."

⁴ Lorenzo Pasqualigo to his brother, Aug. 23, 1497, in Henry Harrisse, *Jean et Sébastien Cabot; leur origine et leurs voyages* (Amsterdam, 1968; orig. pub. 1882), 322; see also James A. Williamson, *The Cabot Voyages and Bristol Discovery under Henry VII* (Cambridge, 1962), 208. According to Harrisse, Cabot was Genoese by birth, like Columbus, but Venetian by adoption (pp. 1–41). The use of banners and insignia was also recommended in Henry VII's letter patent; Hakluyt, *Divers voyages touching the discoverie of America, and the Islands adjacent . . .* (1582), ed. John Winter-Jones (London, 1850), 21.

⁵ "Carta de merced . . . a Cristóval Colón" in Antonio Rumeu de Armas, *Nueva Luz sobre las capitulaciones de Santa Fe de 1492 concertadas entre Los Reyes Católicos y Cristóbal Colón* (Madrid, 1985), 239–241.

sion and rightful power.⁶ No specific device or words need be employed. What mattered was the solemnity of the utterance.

Immediately after Columbus's return to Spain, the monarchs sought formal legal authorization for their title from the pope. For much of the sixteenth century, the Spanish crown's right to rule the New World was embedded in the 1493 donation of Pope Alexander VI and constituted by reading a text containing an account of that donation, called the Requirement.

For English monarchs the language used to constitute their right was also embedded in a written text (letters patent), but the right was executed in the act of settling on land in the New World. In June 1578, four years prior to the voyage to Newfoundland at which he received the "rod and turf," Sir Humphrey Gilbert received a royal patent authorizing him to "discover . . . such remote, barbarous, and heathen lands, countreys, and territories not possessed by any Christian prince or people nor inhabited by Christian people and the same to have, holde, occupy and enjoy." This patent was subsequently renewed on behalf of Gilbert's half-brother, Sir Walter Raleigh, and used to found the first semipermanent English settlement in the New World, the colony at Roanoke in the territory later known as Virginia.⁷ By contrasting the language of the official authorizations for empire—the English letter patent and the Spanish papal bull—and their divergent forms of cultural expression—taking possession and reading texts—this article will contrast English and Spanish practices in establishing the authority of overseas empire.⁸

The word "patent" comes from the Latin *patente*, signifying "open." Letters patent are open letters, as distinguished from letters close, private letters closed up or sealed.⁹ Letters patent came from a sovereign (or other person in authority) and were used to record an agreement, confer a right, title, or property, or authorize or command something to be done. Queen Elizabeth's letters patent to Gilbert and Raleigh authorized—that is, liter-

⁶ "Seendo por vos descubiertas e ganadas las dichas islas . . . e fecho por vos . . . el juramento e solemnidad que en tal caso se requiere." "Carta de merced . . . a Cristóval Colón," Rumeu de Armas, *Nueva Luz*, 239–241. See also Rafael Diego Fernández, *Capitulaciones Colombinas (1492–1506)* (Zamora, Méx., 1987).

⁷ The text of two patents is in Hakluyt, *Principal Navigations*, VIII, 17–23 (Gilbert), 289–296 (Raleigh).

⁸ In medieval times *imperium* (empire) was synonymous with the Holy Roman Empire, but in the 14th century it began to acquire in popular works the more general meaning of a great realm, a usage current in the period of European expansion; Richard Koebner, *Empire* (Cambridge, 1961), 46–47; Robert Folz, *The Concept of Empire in Western Europe from the Fifth to the Fourteenth Century*, trans. Sheila Ann Ogilvie (New York, 1969; orig. pub. 1953).

⁹ S. R. Scargill-Bird, *A Guide to the Principal Classes of Documents Preserved in the Public Record Office*, 2d ed. (London, 1896), 34–35. Letters patent were first used in 1201; the forms became fixed early in the 13th century; minor modifications occurred between 1460 and 1482. By the early 16th century they replaced earlier forms of both the writ and the royal charter; Hubert Hall, *A Formula Book of English Official Historical Documents*, vol. 1 (Cambridge, 1908–1909), 24–25, 53–54.

ally established the authority for—Englishmen to venture into the New World. From similar and sometimes identical patents in the next century came the authorizations for the settlement of Virginia, New England, Maryland, and the Carolinas.

The patent makes explicit what the queen legitimated. Her twin authorizations, on the one hand, to “discover, find, search out, and view” and, on the other, “to have, holde, occupy and enjoy” relate not to the peoples of the New World but to the lands, which are described as “remote, barbarous, and heathen.” There is a critical elision at the core of this definition because, while land can be remote, it cannot be barbarous or heathen; only people can have these qualities. If, as is sometimes alleged, attributing a characteristic of a people to a place is common in English, this simply tells us that the language itself allows for suppressing knowledge of the existence of peoples. But far from being an insignificant or merely rhetorical feature of the English language, **this omission of persons plays a central role within a crucial political document**, the first formal authorization that actually led to English settlement in the New World and the model used for all subsequent English patents for occupying the New World.

Elizabeth’s letters patent specify what Gilbert was entitled to “have, hold, occupy and enjoy,” namely, “all the *soyle* of all such lands, countreys, and territories . . . and of all Cities, Castles, Towns and Villages, and *places* in the same.”¹⁰ The official authorization is limited to subduing space that **is implicitly occupied but to whose inhabitants the patent does not refer**. It is to the “soyle,” not the people, that Gilbert and Raleigh were granted rights to hold and enjoy. The very definition of what is to be possessed elides—that is to say, suppresses by omission—the question of inhabitants by focusing on the “soyle.” **And it is possession of the soil that Gilbert then ceremonially enacted on the banks of Newfoundland in 1583.**

Furthermore, the Gilbert and Raleigh patents both state, these lands were granted “with full power to dispose thereof, and of every part in fee simple or otherwise, according to the order of the lawes of England.”¹¹ In other words, **the land of the New World is given to use and to distribute**

¹⁰ Hakluyt, *Principal Navigations*, VIII, 18. Subsequent patents only expanded the basic idea of space—“lands, woods, soil, grounds, havens, ports, rivers, mines, minerals marshes, waters, fishings, commodities, and hereditaments” (Virginia, Apr. 10, 1606), in Alexander Brown, *The Genesis of the United States* (New York, 1964; orig. pub. 1890), 54; “land, soyles, grounds, havens, ports, rivers, waters, fishing, mines and minerals” (Massachusetts, Mar. 4, 1628), “soil, lands, fields woods, mountains, fens, lakes, rivers, bays and inlets” (Lord Baltimore, June 28, 1632), “lands, tenements, or heridements” (Connecticut, Apr. 23, 1662), “tract or part of land” (William Penn, Feb. 28, 1681), in Samuel Lucas, *Charters of the Old English Colonies in America* (London, 1850), 32, 89, 48, 106.

¹¹ Maryland’s charter (1632) reads “in fee simple or in fee tail or otherwise”; Connecticut’s (1662) grants the right to “Lese, grant, demise, alien bargain, sell, dispose of, as our other liege people of this our realm of England”; Lucas, *Charters*, 89, 48.

“according to . . . the lawes of England,” as though full title were already established by virtue of the royal patent.

In English law of the time, only the monarch enjoyed full dominion over land, and hence the ultimate authorization for control over land—including the power to dispose of it—had to originate there.¹² To justify the right to rule New World “soyle” in terms of England’s legal code, official permission to distribute land had to be bestowed by the queen.

By what right did Elizabeth I authorize Gilbert and Raleigh to “have, hold, occupy and enjoy” with the additional “full power to dispose thereof . . . according to . . . the lawes of England” territories that she did not actually own? The patent lays out two “reasons” (or rationalizations) justifying English dominion over the New World: the authority of the crown and the eminent domain of Christian princes.

The authority invoked by Elizabeth originated first, in the words of the patent, from her own “especial grace, certaine science, and mere motion.” “Especial grace” designated the source of royal authority in medieval English thinking—the idea that royal authority derives from God and comes to the crown by grace. The queen’s special grace is therefore a power that comes to her directly from God, a concept of kingship unique in Western Europe in medieval and early modern times.¹³ Grace also signified favor or benignant regard on the part of a superior, as the ground of a concession (as opposed to a right or an obligation) or manifestation of favor. “Science” in the sixteenth century signified knowledge, but knowledge as a personal attribute. And “motion” was either moving, prompting, urging, instigating, or bidding—a ground or cause of action. The adjectives that qualify the three bases of royal authority are *special* (favor), *certain* (knowledge), and *mere* (motion), all personal: they depend solely on the distinctive qualities of the queen. The queen’s authority derives from her direct and personal relationship with the ultimate source of power. Neither popes nor compacts with the people or commonwealth disturb the singular assertion of that authority in granting land.

The second source of the queen’s authority is the absence of dominion over the lands by any other Christian ruler. Her grants are to those “lands, countreis, and territories not possessed by any Christian prince . . . nor inhabited by Christian people.” Here, for the first and only time, the letters patent refer to human beings, but the word “people” only encompasses Christians: the presence of native peoples is still suppressed by omission. In making possession possible for Christian sovereigns, the letters patent tacitly acknowledge the legitimacy of dominion of other Christian (that is, European) rulers while passing over in silence the potential legitimacy of the New World’s inhabitants. Although this right

¹² G. E. Aylmer, “The Meaning and Definition of ‘Property’ in Seventeenth-Century England,” *Past and Present*, No. 86 (1980), 87–96.

¹³ Ernst H. Kantorowicz, *The King’s Two Bodies: A Study in Mediaeval Political Theology* (Princeton, N. J., 1957), 48. “Special grace” was first used in letters patent in the first quarter of the 14th century during the reign of Edward II; Hall, *Formula Book*, 25.

of other Europeans was not always respected in practice, it was at least enshrined in theory.¹⁴

The authorization to occupy lands not possessed by another Christian monarch suggests that Elizabeth's jurisdiction was also implicitly grounded in the right of eminent domain of Christian rulers. While Anglican preachers such as Richard Hakluyt and Samuel Purchas and many Puritans advanced conversion as one reason for conquest,¹⁵ the letters patent fail to make English occupation of the land contingent upon proselytizing Indians.¹⁶ Only twice in subsequent patents did the crown make Christianization its goal. On both occasions, its aim was to solidify rule over its own subjects, not to assert authority over the Indians.¹⁷ All other sixteenth-century patents—French, Spanish, and Portuguese alike—insisted that legitimacy, the right to rule or even be present in the New World, was contingent on evangelizing the natives.¹⁸ In papal bulls and letters dating

¹⁴ James I of England granted the Virginia Company five-sixths of the territory between 40° and 46° N, which Henry IV of France had already granted the Sieur de Monts. James I's grant (Apr. 10–20, 1606) came just 3 years after the Sieur de Monts's (Nov. 8, 1603). De Monts's first charter is in Marc Lescarbot, *Histoire de la Nouvelle-France* (Paris, 1866; orig. pub. 1611), bk. 4, chap. 1, vol. II, 408–414.

¹⁵ Hakluyt, "Dedication," *Divers Voyages*, 8–18. For other Anglicans, including the bishop of London, see Louis B. Wright, *Religion and Empire: The Alliance between Piety and Commerce in English Expansion, 1558–1625* (New York, 1965; orig. pub. 1943), 12, 53, 93, 124, 138–139. John Winthrop expressed this as "the propagation of the gospel to the Indians. . . tending to the largment of the Kingdome of Jesus Christ"; *Winthrop's Conclusions for the Plantations in New England*, reprinted in *Old South Leaflets*, No. 50 (Boston, n.d.), 1; R. C. [Robert Cushman], "Reasons and Considerations Touching the Lawfulness of Removing out of England and into the Parts of America" (1621), in Alexander Young, *Chronicles of the Pilgrim Fathers of the Colony of Plymouth from 1602–1625* (Boston, 1844), 239–249.

¹⁶ Some American historians have erroneously claimed that the letters patent express a desire to spread Christianity as an official goal of colonization. G. L. Beer, *The Origins of the British Colonial System, 1578–1660* (Gloucester, Mass., 1959; orig. pub. 1908), 29; Perry Miller, *Errand into the Wilderness* (Cambridge, Mass., 1956), 101. The actual wording of the letters patent on which Miller based his assertion is simply that the crown is "greatly commending, and graciously accepting of, *their* [the colonists'] desires . . . in propagating of Christian religion to such people" (emphasis added); Brown, *Genesis*, 53–54. The charters to Cecil Calvert (June 28, 1632) and William Penn (Feb. 28, 1681) similarly acknowledge the grantee's desire to convert the Indians, but religious dominion is not the crown's concern; Lucas, *Charters*, 100.

¹⁷ "Our said people in inhabiting there may be so religiously, peaceably, and civilly governed, as their good life and orderly conversation may winne and invite the natives of that country to the knowledge and obedience of the the only true God and Savior of mankind and the Christian faith, which in our royal intention and the adventurers' free profession is the principal end of this plantation," Massachusetts colony charter, Mar. 4, 1628, Lucas, *Charters*, 43. In the second Virginia charter, May 23, 1609, sec. 29, the reason is to exclude Spaniards from Virginia; Brown, *Genesis*, 236; Lucas, *Charters*, 18. Mention of Christianization was dropped from subsequent patents for these areas.

¹⁸ François I's 1540 commissions to Jacques Cartier and the Seigneur de Roberval introduce the aim of French conquest—"to more easily bring the other peoples of these countries to believe in our Holy Faith." The authorization for

from as early as the fifteenth century, this was the condition of the right to conquer infidel or pagan territory accorded the crowns of Spain and Portugal.¹⁹ For the English queen, rather than being an aim of conquest, religion legitimated the power of the state. It was the Christian (European) prince who had a right to the land. And the dominion of the Christian sovereign was justified simply by his or her possession of Christianity, not by the desire to spread it. In the constitution of English rule over the New World, religion functioned as a prop for the authority of the state but not as a means of controlling subjects.²⁰

After obtaining the patent, the next step was for European adventurers to establish the authority articulated therein. Elizabeth's formula for instituting her authority was the phrase "to have, holde, occupy and enjoy," used synonymously with the phrase "to possess." The royal patent to Gilbert states that "Wee doe by these presents graunt, and declare, that all such countries so hereafter to be possessed and inhabited as aforesayd, from thesefoorth shall bee of the allegiance of us, our heires, and successors."²¹ In other words, all that is necessary for the territories of the New World to belong to the queen, her heirs, and successors is that the authority of the letters patent be enacted by taking possession.

Possession in Roman law (from which English as well as Spanish law derives) signifies two things: physical presence and intention to hold the territory as one's own.²² It is both an act and a mental process, an intention. Taking possession means establishing the intent to own and hence is incomplete or inchoate ownership. It is occupation on the way to ownership. Taking possession occurs at the moment when the authority created by the text of the letters patent is activated. The English style of taking possession was culturally distinctive. In the classic English legal treatise on possession, Frederick Pollock and Robert Samuel Wright declare that "in the eyes of [English] medieval lawyers, that possession largely usurped not only the substance but the name of property."²³ Not

Spain's declaration of war is the refusal of the natives to listen to the preaching of the priests. Roberval's commission is in *Collection de manuscrits contenant lettres, mémoires, et autres documents historiques relatifs à la Nouvelle-France*, vol. 1 (Quebec, 1883), 19, 30–36.

¹⁹ *Romanus pontifex*, Sept. 15, 1436, *Dudum cum ad nos*, Nov. 6, 1436, *Monumenta Henricina*, vol. 5 (Coimbra, Port., 1962), 281–282, 347–349.

²⁰ Neither the English nor the Dutch refer to Christianizing the natives as an authorization for their discovery or presence in the New World. See Arthur S. Keller et al., *Creation of Rights of Sovereignty through Symbolic Acts, 1400–1800* (New York, 1938), 134–135, and Allen W. Trelease, "Indian-White Contacts in Eastern North America: The Dutch in New Netherland," *Ethnohistory*, IX (1962), 137–146.

²¹ Hakluyt, *Principal Navigations*, VIII, 20.

²² John M. Lightwood, *A Treatise on Possession of Land* (London, 1894), 9; *The Digest of Justinian*, Latin text, ed. Theodor Mommsen, trans. Alan Watson (Philadelphia, 1985), sec. 41.2.3.

²³ Pollock and Wright, *An Essay on Possession in the Common Law* (Oxford, 1888), 5. For examples of the importance of possession in 16th- and 17th-century English

only was the authority in the New World over land, but, to the English, the concept of property (dominion over land) was synonymous with possession.

Another dimension of English thinking on possession is expressed most vividly in a popular version of the old legal proverb—"possession is nine-points of the law"²⁴—meaning that possession constitutes nearly all of the legal claim to ownership. Pollock and Wright establish this principle succinctly: "possession is the root of title," and the right to ownership (unaccompanied by actual possession) is merely a right to sue the possessor.²⁵ Where Roman law distinguished possession from the right to possess, English law collapsed the two categories.²⁶ Thus in English law and, interestingly, in English law alone, the fact of ownership creates a virtually unassailable right to own as well.

For the most part, the act of taking possession in the English colonies was neither ritualized nor ceremonialized. Ceremonies of arrival are absent from English accounts of voyages to the New World. Neither the New England narratives of William Bradford and John Winthrop, nor the Virginia tales of John Smith and William Strachey, nor the report of the initial voyage of Philip Amadas and Arthur Barlowe describe a ritual of arrival.²⁷ Nor do most of them note a ceremony marking the transition of the land into the possession of the monarch. "English practice required no particular symbolic action or form of words, provided the intention was clearly expressed . . . and followed by actual entry," writes a prominent English authority on land laws.²⁸ Ceremonies were not necessary: the authority of England over the land was already created by the letters patent, and taking possession—the placing of the bodies of Englishmen on

law see the legal handbook *The Compleat Clerk* . . . (London, 1677), 98–104, 157–158, 316–318, 320–321, 742–744, 780–781, 867. Many of the formulas date from the reign of Elizabeth I.

²⁴ According to the *Oxford English Dictionary*, the 17th-century legal expression was: possession may be 11 points of the law (out of a total of 12 points), i.e., a majority of the points of law. For its subsequent legal use see James William Norton-Kyshe, *The Dictionary of Legal Quotations* (London, 1904).

²⁵ Pollock and Wright, *Essay on Possession*, 22. "It is one of the most general and long-settled rules of law that a person who is in apparent possession has all the rights, remedies and immunities of a possessor. . . . He cannot be disturbed except by another person who is able to show a present right to the possession" (p. 147). The "right to possession . . . is merely a right in one person to sue" (p. 145). For an example of this principle in colonial America see *The Colonial Laws of Massachusetts, Reprinted from the Edition of 1672* (Boston, 1890), 123–124.

²⁶ In Roman law the distinctions are *possidere* (a right) and *in possessionem esse* (physical possession); Pollock and Wright, *Essay on Possession*, 47.

²⁷ One of the few other examples is Alexander Harris, ed., *A Relation of a Voyage to Guiana by Richard Harcourt, 1613* (London, 1928), 77.

²⁸ Pollock, *The Land Laws* (London, 1896), 75. Charters emerged later for the purpose of maintaining a record. In English law, recording was not an important part of either the ceremony of possession or the proof of ownership as it was in the Spanish world.

American soil with the intent to remain—was sufficient to activate that authority.

While Gilbert's reception of the twig and turf was the ceremonial declaration of the intent to remain—the second critical element of possession—it was rarely observed subsequently.²⁹ In the medieval Anglo-Saxon tradition, the intent to remain was most commonly established through occupation—the building of fences or other boundary markers—and the construction of permanent edifices on the land.³⁰ In the New World, building houses, forts, or other property,³¹ which the letters patent describe as habitation, was sufficient to prove possession. Building permanent dwelling places or boundary markers manifested the intention to remain that was essential to taking possession.

The culturally distinctive characteristics of the English act of taking possession become apparent when contrasted with the practices of other European powers. In the conquest of the New World, as well as in their expansion into Asia and Africa in the sixteenth century, European explorers used a variety of symbolic acts to mark their presence or their contact.³² Beginning in 1483, Portuguese explorers placed *padrões* (pillars of stone) bearing the royal arms along the coasts of Africa, India, and Brazil. The first Portuguese to sail to Brazil in 1500 erected a cross similarly emblazoned.³³ A Dutch expedition to the East Indies landed on

²⁹ Bradford, *History of Plymouth Plantation, 1620–1647*, 2 vols. (New York, 1968); Winthrop, *The History of New England from 1630 to 1645* (Boston, 1825); Smith, *A True Relation of . . . Virginia*, in Philip L. Barbour, ed., *The Complete Works of Captain John Smith (1580–1631)*, vol. 1 (Chapel Hill, N. C., 1986); Strachey, *Historie of Travaile into Virginia Britannia . . .* (London, 1849); “The Proceedings of the English Colony in Virginia” (1606–1610), in Samuel Purchas, *Hakluytus Posthumus, or Purchas His Pilgrimes . . .*, vol. 18 (Glasgow and New York, 1906), 459–540. Amadas and Barlow are the first to state they took possession of Virginia for the queen; “First Virginia Voyage, 1584,” in Hakluyt, *Voyages to the Virginia Colonies* (London, 1986), 65–76.

³⁰ Lightwood, *Treatise on Possession*, 13.

³¹ Winthrop, *History*, I, 290; John Brereton, “Notes . . . out of a Tractate written by James Rosier to Sir Walter Raleigh” (1602), in Purchas, *Hakluytus Posthumus*, XVIII, 315.

³² A study that fails to make the distinction between official and unofficial acts and often makes errors of fact but is nonetheless interesting is Keller et al., *Creation of Rights*. Henry R. Wagner, “Creation of Rights of Sovereignty through Symbolic Acts,” *Pacific Historical Review*, IV (1938), 297–326, provides critical commentary on Keller but no footnotes. Francisco Morales Padrón, “Descubrimiento y toma de posesión,” *Anuario de estudios americanos*, XII (1955), 321–380, contains several interesting descriptions of ceremonies but ignores the extensive 16th-century Spanish legal literature on discovery and possession (see n. 77). John T. Juricek, “English Territorial Claims in North America under Elizabeth and the Early Stuarts,” *Terra Incognitae*, VII (1976), 7–22, unfortunately relies heavily on Morales Padrón.

³³ The first stone pillar was placed probably ca. May 1483 at the mouth of the Kongo River. António Baião, Hernani Cidade, and Manuel Múrias, eds., *Historia da expansão portuguesa no mundo*, 3 vols. (Lisbon, 1937–1940), I, 366. Notice of subsequent pillars is in *ibid.*, 380 (Dias), II, 104 (Almeida), and Carlos Malheiro Dias ed., *Historia da colonização portuguesa no Brasil*, 3 vols. (Oporto, Port.,

the uninhabited island of Mauritius, where the vice admiral nailed a wooden board bearing the arms of Holland, Amsterdam, and Zeeland to a tree.³⁴ Jacques Cartier raised a cross with a shield bearing the fleur-de-lis and the text “Vive le Roy de France” at Gaspé harbor on the St. Lawrence River in 1534. On the coast of Florida in 1562, Jean Ribault set up pillars with the arms of the king of France.³⁵ Vasco Nuñez de Balboa built a pile of stones to note his sighting of the Pacific Ocean and carved the names of the kings of Castile on some tall trees.³⁶ Some of these devices were not related to formal acts of authority but were designed to ceremonialize the occasion. And when the discoveries were unexpected, as was Balboa’s, the signs of possession—the stones and graffiti—were hastily improvised on the spot. But other actions, such as the placing of the stone pillars by the Portuguese, crosses by the Spanish, and wooden boards by the Dutch were regarded by their rulers as official acts indicating their dominion over the territory. The Portuguese saw the stone pillars as signaling their possession of territory following the Roman tradition of stone markers; the French and Spanish envisioned the cross as a sign of having taken

1924–1926), III, xxxi (Brazil). Fernão Lopes de Castanheda, *Historia do descobrimento e conquista da India pelos portugueses* (1551), 3d ed., 9 vols. (Coimbra, Port., 1924–1933), bk. 1, chap. 1, I, 6; “Carta de Pedro Vaz de Caminha sobre o descobrimento da terra nova (o Brazil) que fez Pedro Alvarez Cabral,” May 1, 1500, *Alguns documentos do archivo nacional da torre do Tombo acerca das navegações e conquistas portuguesas* (Lisbon, 1892), 108–121, esp. 119.

³⁴ *The Journall or Dayly Register Containing a true manifestation, and historicall declaration of the voyage, accomplished by eight shippes of Amsterdam, under the conduct of Jacob Corneliszten Neck Admirall, Wybrandt van Warwick, vice Admirall, which sailed from Amsterdam the first day of March, 1598 . . .* (Amsterdam, 1974; orig. pub. 1601). “In this Island, our Vice Admirall caused a shield of wood to be made & fastened to a tree, to the end that if any ships arrived at that place they might perceive that Christians had been there; & thereupon was carved these words ‘Christians Reformados’ reformed Christians, with the armes of Holland, Zealand, and Amsterdam” (p. 7). Dutch version in Isaäk Commelin, *Begin ende Voortang van de Vereenighde Nederlandsche geoctroyeerde Oost-Indische Compagnie*, vol. 1 (Amsterdam, 1646), voyage no. 3, fol. 4. The previous Dutch voyage (under Cornelius Houtman) followed well-known routes and landed only in places well populated with other Europeans.

³⁵ Cartier, *A Shorte and Briefe Narration of the Two Navigations and Discoveries to the Northwest Parties called Neue France* (1580), trans. John Florio (Amsterdam, 1975), 21; for similar cross planting on Cartier’s second voyage see Séraphin Marion, *Relations des voyageurs français en Nouvelle France au XVII siècle* (Paris, 1923), 5; “A notable historie containing foure voyages made by certaine French Captaines into Florida . . . by Rene Laudionniere,” in Hakluyt, *Principal Navigations*, VII, 457, 462. In 1613 Samuel Champlain also placed a cross with the arms of France; *The Voyages and Explorations of Samuel de Champlain*, trans. Annie Nettleton Bourne (New York, 1922), II, 15, 34–35. Seventeenth-century French missionaries on the Mississippi appear not to have attached regal emblems to the crosses; John Gilmary Shea, *Discovery and Exploration of the Mississippi Valley*, 2d ed. (Albany, N. Y., 1903), 16.

³⁶ Bartolomé de Las Casas, *Historia de las Indias*, 3d ed., 3 vols. (México, D. F., 1986), lib. 3, cap. 48, II, 595. In the absence of trees, Francisco Cano in 1568 carved a cross into nopal cactuses; Morales Padrón, “Descubrimiento y toma de posesión,” 362.

possession of the territory;³⁷ and the Dutch similarly regarded nailing the arms of the States General to a tree.³⁸

Because their concept of dominion was bound up with residence on the land and with the nearly synonymous use of “possession” and “property,” the English believed that symbolic manifestations such as crosses, shields, and stone pillars functioned merely as mnemonic devices, or at best as navigational beacons.³⁹ And this is how such markers were seen by many of the earliest English explorers. A member of a 1580 expedition searching for a northeast passage to the Far East described a cross he left for a fellow explorer: “Upon the said crosse Master Pet did grave his name with the date of our Lourde . . . to the end that if the William did chance to come thither, they [sic] might have knowledge that wee had beene there.”⁴⁰ During the voyage resulting in the memorable wreck of the *Sea-Venture* in Bermuda, the fleet that reached Virginia left a cross at Cape Henry to signal that it had sailed that way.⁴¹ On occasion, the English

³⁷ For the French see above n. 35. On Roman stone markers in the Iberian peninsula see *The Visigothic Code*, trans. S. P. Scott (Boston, 1910), 348. “Instrucción que dió el Rey a Juan de Solis, Nov. 24, 1514,” Martín Fernández Navarrete, *Colección de los Viajes y Descubrimientos que hicieron por mar los españoles . . .*, 5 vols. (Buenos Aires, 1945–1946; orig. pub. 1825–1837), III, 149–150; “Instrucción de Don Antonio de Mendoza” (1539), *Colección de documentos inéditos relativos al descubrimiento . . . en América y Oceanía* (hereafter *CDI*), 43 vols. (Madrid, 1864–1884), III, 325–328; “Ordenanzas sobre descubrimiento nuevo y población” of Phillip II, July 13, 1563, *ibid.*, 484–538, esp. 490. For examples of actions see “Testimonios de un auto de posesión que tomó el Gobernador Pedrarías Dávila, Jan. 27, 1519,” *ibid.*, II, 549–556; Hernando Grijalvo (1533), *ibid.*, XIV, 134–135; “Relación y derroteo de una armada” and “Relación de Fray Marcos de Niza” (Culiacán, Mar. 7, 1539), *ibid.*, III, 337; “Relación de Lope de Varillas sobre la conquista y población de Nueva Córdoba (Guyana, 1569), *ibid.*, IV, 470; “Sumaria relación de Pedro Sarmiento de Gamboa, Gobernador y Capitán general del estrecho de Magallenes,” Sept. 15, 1589, in *ibid.*, V, 286ff., esp. 370–371; Domingo de Vera, Apr. 1593, in Halkuyt, *Principal Navigations*, X, 434–438. Ironically, when it came to the dispute between the Portuguese and the Spanish in the Moluccas, the Spanish argued a position closer to the English; Charles V to D. João III, Dec. 18, 1523, in Navarrete, *Colección*, IV, 283–290.

³⁸ Adriaen Van der Donck, Jacob van Couwenhoven, and Jan Everts Bout, *Vertoogh van Nieuw Nederland, Wegbens de Ghelegentheydt, Vrruchtbaer heydt, en Soberen Staat desselfs* (1650) (Representation of New Netherland, Concerning its Location, Productiveness, and Poor Condition), in J. Franklin Jameson, ed., *Narratives of New Netherland 1609–1664* (New York, 1909), 293–354, esp. 309.

³⁹ This is also the argument that Cartier used in addressing the native leaders at Gaspé harbor. See Gian Battista Ramusio, *Navigazioni et Viaggi*, 3 vols. (Amsterdam, 1967; orig. pub. 1556). “*Dipoi su mostrato con segni, che detta croce era stat piantata per sar dar segno, & cognoscenta come s’bauessa da entrar in detto porto.*” *ibid.*, f. 375. The French original was discovered in 1867 and is reproduced in H. P. Biggar, *The Voyages of Jacques Cartier* (Ottawa, Can., 1924), 66. “*Et puis leurs monstrames par signe, que ladite croix avoit esté plantée pour faire merche et ballise, pur entrer dedans le hablé.*”

⁴⁰ “The discoverie made by M. Arthur Pet and M. Charles Jackman of the Northeast parts” (1580), Hakluyt, *Principal Navigations*, III, 288.

⁴¹ “To sett up a cross upon the pointe . . . to signify our coming in [the harbor].” Governor and Council of Virginia to the Virginia Company of London, July 7, 1610, in Brown, *Genesis*, 402–413, quotation on 403.

planted crosses with the name of the monarch to replace those of other powers, as a sign of supersession. When the English attacked a French settlement at Saint Sauveur on Mount Desert Island, they took down the cross that the French fathers had erected and placed their own, inscribed with the name of James I.⁴²

Placing a cross, even if ceremonial rather than official, was a political act directed not at the natives but at other Europeans. "And this we diligently observed," wrote Captain George Waymouth, "that in no place . . . we could discern any token or signe that ever any Christian had beene before; which either by cutting wood, digging for water, or setting up Crosses (a thing never omitted by any Christian travailours) wee should have perceived some mention [written or spoken commemoration]." ⁴³ The Dutch carved the name of their religion *in Spanish* on a board in Mauritius, clearly warning Spaniards to stay away; Queen Isabella in 1501 ordered one of her subjects to "place landmarks with the coat of arms of their Highnesses, or with other known signs . . . in order to obstruct the *English* from discovery."⁴⁴ These markers functioned in much the way that the placing of national flags on the North Pole, the South Pole, and the moon have functioned in the nineteenth and twentieth centuries.⁴⁵ The medium of the cross defined dominion over territory at a time when the dream of a universal Christian empire still prevailed; the additional decorations of the coats of arms of cities or kings symbolized the connection to secular power—the divisions within that dream.

Unlike other Europeans, the English rejected the idea that signs—markers, pillars, plaques, or piles of stone—could establish dominion over a territory or that anything other than "taking possession" (constructing permanent residences) constituted dominion. Where Portuguese sovereigns saw their stone pillars with crosses and royal arms "as a sign of how they saw said lands and islands . . . and acquired . . . dominion over them," the English refused to recognize anything other than occupation or settlement.⁴⁶ Because the concepts of what constituted possession were

⁴² Champlain, *Voyages and Explorations*, I, 152.

⁴³ Waymouth, "Wee carried with us a Crosse to erect at that point," "Extracts of a Virginian Voyage made An. 1605 by Captaine George Waymouth . . .," in Purchas, *Hakluytus Posthumus*, XVIII, 353. They are called "testimonies of Christians" in *A True and Sincere Declaration of the purpose and ends of the Plantation begun in Virginia set forth by the authority of the Governors and Councillors established for that Plantation* (1609), Brown, *Genesis*, 338–353, esp. 348–349.

⁴⁴ Real cédula, Queen Isabella and Alonso de Hojeda, June, 8, 1501, in Navarrete, *Colección*, III, 100.

⁴⁵ "Before we went from thence, our generall caused to be set up, a monument of our being there; as also of her majesties, and successors, right and title to that kingdome, namely, a plate of brasse, fast nailed to a great and firme post; whereon is engraven her graces name, and the day and yeare of our arrivall there, and of the giving up, of the province and kingdome, both by the king and people, into her majesties hands"; Sir Francis Drake, *The World Encompassed* (London, 1628), 80.

⁴⁶ Julio Firmino Judice Biker, *Coleção de tratados e concertos des pazes que o estado da India portugueza fez com os reis e senhores . . . da Asia e Africae oriental . . .* (Lisbon, 1881), I, 55. See also n. 47.

mutually exclusive and the respective imperial aims competitive, **conflict over the meaning of sovereignty was inevitable.**

In 1562 the Portuguese ambassador to Elizabeth's court lodged a formal protest against English trading in Guinea on the west coast of Africa, justifying an exclusive claim on the basis of Portugal's discovery, propagation of Christianity, and peaceful domination of the commerce of that territory for sixty years. He further complained that the English had placed an arbitrary interpretation on the concept of dominion and asked the queen to forbid her subjects to trade in Portuguese areas. "They [the English] decide that he [the Portuguese king] has no dominion but where he has forts and receives tribute . . . but as the words are doubtful, he desires her [Queen Elizabeth] . . . to change them into such others [words] as may comprehend all the land *discovered* by the Crown of Portugal."⁴⁷ The queen replied that "her meaning . . . is . . . to restrain her subjects from haunting [frequenting] . . . land . . . wherein the King of Portugal had obedience, dominion, and tribute, and *not* [to prevent their trading] from all places *discovered* whereof he had no superiority at all."⁴⁸ An annoyed ambassador responded that "his master *has* absolute dominion . . . over those lands already discovered."⁴⁹

At the core of this exchange were two fundamental cultural and linguistic differences between Portuguese and English. First, **to the Portuguese ambassador "discovery" signified the establishment of legitimate dominion.** For the Portuguese, the concept of "discovery" was linked to the technology and knowledge that they had pioneered. They had invented the navigational aids, found the most efficient sailing routes to west Africa, located the African groups willing to supply the goods most desired by the European market. Expressed in more modern terms, "discovery" was the insistence that the Portuguese held a patent on the technology—maps and sailing devices—and the knowledge of trading seaports, latitudes, and sea-lanes that they had acquired.⁵⁰ **The English crown refused to consider discovery, so understood, as a legitimate source of the right to rule.**⁵¹

⁴⁷ Replication of the Portuguese ambassador, June 7, 1562, in Joseph Stevenson, ed., *Calendar of State Papers, Foreign Series, of the Reign of Elizabeth, 1562 . . .* (London, 1867), 77 (emphasis added).

⁴⁸ Answer to the Portuguese ambassador, June 15, 1562, *ibid.*, 95 (emphasis added).

⁴⁹ Second replication of the Portuguese ambassador, June 19, 1562, *ibid.*, 106 (emphasis added).

⁵⁰ The idea of "invention" continues to play a more important role in the meaning of discovery in Portuguese than in English. Contrast the *Oxford English Dictionary's* definition of discovery with that of Luiz A. P. Victoria, *Pequeno Dicionário de Sinônimos* (Rio de Janeiro, 1970). The argument for invention or innovation did apply to the Portuguese South Atlantic voyages but was considerably more difficult to make for navigation in the Indian Ocean, which had been sailed for millennia. Luis Filipe Ferreira Reis Thomaz, "Estrutura política e administrativa do Estado da Índia no século XVI," in Luis de Albuquerque and Inácio Guerreiro, eds., *Actas do II seminário internacional de história Indo-Portuguesa* (Lisbon, 1985), 526.

⁵¹ The debate about discovery seems, from 1940 to the early 1960s, to have

A second and greater difference concerned the understanding of the word "possession." The phrase closest to the English "taking possession" that appears in Portuguese charters of exploration and discovery is "*tomar posse*" ("to hold something with the objective of taking some economic advantage from it"), a form of economic *jouissance*. Dom João II's 1530 instructions to Lopalvarez, for example, ordered him to "*tomar posse*"—that is, "to hold with the intention of taking economic advantage, whatever land, places and islands which said captains . . . discover or see, to hold and thus in my name acquire dominion over said places, lands, and islands." After ordering his captains to "*tomar posse*" the lands that had been "discovered"—the territories to which the Portuguese had located the sea-lanes—João went on to specify how Portuguese dominion was to be exercised, the precise object of Portuguese "taking possession." João's captains were to "take with the intention of obtaining economic benefit the navigation, trade, and commerce of said lands, places and islands"—in other words, anything that could be reduced to money.⁵² The principal object was not land, as for the English, but trade and commerce.

In the Portuguese conception of dominion, imperial authority over the "important transactions, commerce and trade" was usually asserted either by a formal agreement such as a treaty with the native inhabitants, or by informal agreements that the Portuguese termed "introducing and maintaining the rules of prudence" (what we now call the market).⁵³ Portuguese authorities claimed to be bringing prudence and market discipline into communities they described as previously operating solely on individual greed.⁵⁴ No permanent physical presence or fixed dwellings were necessary for the Portuguese to assert dominion, only a set of contractual agreements or customary practices relating to trade. Portuguese dominion was that of a market economy.

The Portuguese ambassador further argued as evidence of his king's

focused primarily on the intention of the individual actor, rather than on imperial intention. Samuel Eliot Morison, *Portuguese Voyages to America in the Fifteenth Century* (Cambridge, Mass., 1940), 5–10; Marcel Bataillon and Edmundo O'Gorman, *Dos concepções de la tarea histórica: con motivo de la ideal del descubrimiento de América* (México, D. F., 1955); O'Gorman, *The Invention of America: An Inquiry into the Historical Nature of the New World and the Meaning of its History* (Bloomington, Ind., 1961); Wilcomb E. Washburn, "The Meaning of 'Discovery,'" *American Historical Review*, LXVIII (1962), 1–21.

⁵² "Tratado de paz entre El-Rey D. João II e os habitantes da ilha de Sunda, e auto de posse que se tomou em nome do dito Rey, da mesma ilha," Biker, *Colecção de tratados*, 55–57. The object of *posse* is still "anything that can be reduced to money" in contemporary Brazilian law. Tupinambá Miguel Castro do Nascimento, *Posse e propriedade* (Rio de Janeiro, 1986), 130–131.

⁵³ For examples of the conditions of trade established in the treaties with India see Biker, *Colecção de tratados*.

⁵⁴ "[São] gentes sem ley nem regras de prudencia, sômente se governava & regia pelo impeto da cobiça que cada huítinha; nos o reduzinos & possemos em arte [do commercio] com regras universaes & particulares como tem toda las sciencias." João de Barros, *Ásia, primeira decada* (1539), 4th ed., rev. António Baião (Coimbra, 1932; orig. pub. 1534), 10 decada 1, liv. 1, cap. 1.

dominion over the commerce of the Guinea region the king's longtime peaceful possession of the title "Lord of Guinea, of the conquest and navigation and traffic of Ethiopia, Arabia, Persia, and the Indies." The title, which dated from news of Vasco de Gama's return in 1499, described the geographic reach of Portuguese vessels in the spice trade's sea-lanes and ports where vessels of other nations customarily sought Portuguese safe-conduct passes in order to navigate.⁵⁵ The failure of other powers to contest the monarch's use of that title constituted acceptance of his right to dominate the economic markets of the region.

The English responded by denying Portuguese dominion. Their arguments derived from differing cultural and linguistic conceptions of "discovery" and "taking possession."⁵⁶ The role of translation in fixing the meanings was critical, for in this dispute Robert Cecil read the ambassador's "*tomar posse*" as "taking possession," thereby imposing the English conception of possession as property (land) on the Portuguese conception of economic arrangements as the core of dominion.⁵⁷ Cecil's translation guaranteed that each side could remain convinced that the other was engaged in an outrageous violation of obvious principles. The act of translation was thus involved in shaping the political misconceptions of the sides in this cross-cultural dispute.

Nearly two decades later, a similar dispute erupted between England and Spain, turning on mutually exclusive concepts of the legitimate means of establishing political empire. In 1580, the Spanish ambassador protested Francis Drake's intrusions into territory claimed by Spain during his voyage around the world (1577–1580). The official chronicler of the reign of Queen Elizabeth, William Camden, reported that the queen responded by denying Spanish dominion over the territory in the following words: "[Spaniards] had touched here and there upon the Coasts, built Cottages, and given Names to a River or Cape which does not entitle them to ownership; . . . Prescription without possession is worth little."⁵⁸ Eliza-

⁵⁵ Barros elaborates the reasons for the title "Senhor da conquista, navegação, e comercio da Etiopia, Arabia, Persia e India"; *ibid.*, liv. 6, cap. 1. Earlier the Portuguese envoy to Bengal in 1522 defended the title on grounds that "The King, our lord, is called by his titles. . . . [F]or this reason, where his ships sail, no others may sail without his permission [*seguros*]." For a modern critical history of safe-conduct passes see Thomaz, "Estructura politica," 522, 525.

⁵⁶ The only semiofficial enunciation of the Portuguese in terms of international law is by Justo Seraphim de Freitas, *De iusto imperio lusitanorum asiatico* (Valladolid, Sp., 1625), a response to the publication of Hugo Grotius, *De mare liberum* (Leiden, Neth., 1609).

⁵⁷ Contrast the original version of the Portuguese ambassador's remarks in *Quadro elementar das relações politicas e diplomaticas de Portugal*, ed. Visconde de Santarem (Paris, 1854), XV, 128–134, 136–145, with William Cecil's translation in Stevenson, ed., *Calendar State Papers*, 41–42, 54–55, 75–79, 106–107.

⁵⁸ "*Nec alio quopiam jure quam quod Hispani hinc illinc appulerint, casulas possuerint, sslumen [sic] aut Promontorium denominaverint quae proprietatem acquirere non possunt . . . cum praescriptio sine possessione haud valeat*"; William Camden, *Rerum Anglicarum et hibernicarum Annales regnante Elisabetha* (London, 1625), 328. The Latin text was translated by R. N., Gent., as *Annals or a History of the Most*

beth was quoting a commonplace of medieval English law: "A man cannot by prescription [that is, by declaration or decree] make title to land,"⁵⁹ an understanding, as already noted, not shared by Spaniards or indeed by any other European power of the time. Her observations on the lack of relationship between naming and the establishment of sovereignty denied legitimacy to Spanish cultural and linguistic conceptions of taking possession. These conceptions can be seen as early as the actions of Columbus during his first journey to the New World.

Fernando Colón's account of the events of October 12, 1492, begins with his father's going ashore bearing banners with a cross and the symbols of the crowns of Castile and Aragon. Before the solemn declarations that Ferdinand and Isabella had required of him in order to assure Spanish dominion and "after all had rendered thanks to Our Lord, kneeling on the ground and kissing it with tears of joy, . . . the Admiral [Columbus] arose and gave the island the name San Salvador." Beginning with this small strip of land, on his first voyage Columbus claimed to have named 600 islands, leaving 3,000 islands unnamed and thus unpossessed, only "scattered on the waves."⁶⁰ On some days he plunged into what one commentator calls "a veritable naming frenzy."⁶¹ At midnight on January 11, 1493, "he left the Rio de Gracia . . . [sailing] east four leagues as far as a cape that he called Bel Prado; and from there to the southeast is the mountain to which he gave the name Monte de Plata . . . From there, 18 leagues east by south . . . is the cape the Admiral called Del Angel. . . . [f]our leagues to the east is a point which he named Del Hierro, and in the same direction four more leagues there is another point that he called Punta Seca. And from there in the same direction six more leagues is the cape that he named Redondo, and from there is Cabo Francés. . . . One league from there is Cabo del Buen Tiempo; from this [cape] south by southeast there is a cape he called Tajado."⁶²

Renowned and Victorious Princesse Elizabeth, Late Queene of England, 3d ed. (London, 1635). The widely cited 20th-century translation of this passage by Edward Cheyney, "International Law under Queen Elizabeth," *English Historical Review*, XX (1905), 660, differs significantly from the 1635 English translation on several scores. Most important, Cheyney renders the final phrase categorically as "prescription without possession is not valid." R. N., historically closer to the Latin original, is more equivocal: "prescription without Possession is little worth"; he accepts symbolic acts as valid but demeans their importance.

⁵⁹ Thomas Arnold Herber, *The History of the Law of Prescription in England* (London, 1891), 2. Similar sentiments are expressed in *Nova Britannia: Offring Most excellent fruites by Planting in Virginia* (London, 1609), excerpted in Brown, *Genesis*, 262.

⁶⁰ *The Life of the Admiral . . . by his son Ferdinand*, 59. Peter Martyr, *De orbe novo de Pierre Martyr Anghiera*, trans. Paul Gaffarel (Paris, 1907), dec. 1, chap. 3, 45. Martyr interviewed members of Columbus's expedition, including Columbus himself.

⁶¹ Tzvetan Todorov, *The Conquest of America: The Question of the Other*, trans. Richard Howard (New York, 1984), 27.

⁶² *Diario*, ed. Dunn and Kelley, 322–325. I have worked from their transcription.

Columbus's practice of naming or, more accurately, renaming rivers, capes, and islands as part of the ceremony of taking possession was repeated throughout the conquest of the New World and constituted one of the culturally specific acts of Spanish imperial authority.⁶³ The practice represents a form of ritual speech that undertakes a remaking of the land. Naming geographical features in effect converts them from their former status to a new European one: the external body of the land remains the same, but its essence is redefined by a new name. The use of ritual speech to name territory is analogous to the process of baptism practiced upon the peoples of the New World. These two key elements—the renaming of landmass and the ceremonial declarations—instituted Spanish colonial authority through an act of speaking, a dramatic enactment of belief in the power of words.

For the English, naming was merely symbolic, in the same category as planting crosses. George Percy, who visited the shores of the Virginia territory in 1606, described the conjunction between naming and placing a cross: "The ninth and twentieth day we set up a Crosse at Chesupioc Bay, and named that place Cape Henry."⁶⁴ Naming for the English had no connection with the establishment of the authority of empire. For the Spanish, it was critical.

Elizabeth, in this dispute, dismissed other components of Spanish possession as merely touching "here and there upon the Coasts," building "cottages" as a substitute for setting up residence. Both rejections relate to the way in which Spaniards established a relation to land. In place of settling on the land they merely glanced off its fringes, "touched . . . upon the Coasts"; rather than erecting substantial buildings they constructed a few cottages.⁶⁵ Thus one part of Elizabeth's response stemmed from her objection to the Spanish understanding of "taking possession" as an essentially symbolic act, the other from the allegedly impermanent character of Spanish relationship to land.

Finally, a linguistic difference lay at the core of the misunderstandings between Spaniards and English in this dispute. By "taking possession" the English meant residing or inhabiting. When Spanish officials referred to settlement, they used the verb "to people" ("*poblar*"). But even this word

⁶³ "Llegados allá con la buenaventura, lo primero que se ha de fazer es pone nombre general a toda la tierra general, a las ciudades e villa e logares." Ynstrucción para el Gobernador de Tierra Firme (Pedrarias Dávila), Aug. 4, 1513, in Manuel Serrano y Sanz, *Orígenes de la Dominación española en América* (Madrid, 1916), I, 279–280, esp. 280. Bernal Díaz del Castillo cites literally hundreds of instances of renaming in *Historia verdadera de la Conquista de la Nueva España* (México, D. F., 1960; orig. pub. 1632), a point Ranajit Guha noted while reading Díaz for *An Indian Historiography of India* (Calcutta, 1988), personal communication.

⁶⁴ Percy, "Observations gathered out of a Discourse of the Plantation of the Southerne Colonie in Virginia by the English, 1606," in Purchas, *Hakluytus Posthumus*, XVIII, 409.

⁶⁵ Spanish authorities would sometimes order erection of a symbolic house and gallows on a hill, visible from the ocean, in order to discourage other Europeans from entering the territory. See the instructions for Juan de Solís for Golden Castile and lands south (1514) in Navarrete, *Colección*, III, 149–150.

bore connotations and significance that diverged sharply from the English word “habitation.” “*Poblar*” defines the arrival of *people* rather than the construction of buildings or dwellings as the critical step in occupying a region. Furthermore, to the Spanish crown, peopling (*poblando*) did not establish the right to rule but was an activity sometimes taken after imperial authority had been established by naming and solemn declarations.⁶⁶ From the Spanish perspective, one shared by other European powers, the English had no respect for international conventions or rights but simply marched into a territory, settled, and declared it theirs.⁶⁷

While described legally in the same Roman-inspired terms as the Spanish—placing a body over the land with the intention of remaining—the English customarily manifested *both* by erecting permanent dwelling places or homes. But even though sixteenth-century Englishmen denounced other nations for invoking mere “signs” or symbols to hold overseas territory, these same English failed to realize that their own belief in “taking possession” or the creation of rights to suzerainty through the construction of permanent buildings was itself a symbolic act, as culturally distinctive as that of any other European power of the time. The only difference was that the primary symbolism of the English conception of sovereignty was architectural.

At the core of the differences were incompatible cultural and linguistic concepts of what constituted the right to rule colonial territory: “possession,” “appropriate ceremony and words,” or “*tomar posse*.” Allied to these linguistically irreconcilable ideas about the basic nature of entitlement to overseas rule were incompatible cultural images of how such rights were ceremonially enacted over territory.

Like the English, the Spanish in the New World used a written document to ensure the legitimacy of imperial authority. For the English, authority was established by letters patent; for the Spaniards it was created by a papal bull. *Inter caetera* of Pope Alexander VI in 1493 gave Spain the exclusive right to present the Gospel to the natives of the New World and guaranteed Spain’s right to rule the land in order to secure the right to preach.⁶⁸

⁶⁶ On the subsidiary role of instructions to “*poblar*” even in early agreements see Fernández, *Capitulaciones colombinas*; for a later example (May 15, 1522) see Hernán Cortés, *Cartas de relación* (México, D. F., 1970), 165.

⁶⁷ “Instrucción que dió el Rey a Juan Díaz de Solís,” Nov. 24, 1514, in Navarrete, *Colección*, III, 149–150. For French comments on English practices see Marion, *Relations des voyageurs français*, 38–39. Dutch observations are in David Pietersz. de Vries, *Korte historiael* (S’Gravenhage, Neth., 1911), 233, and Van der Donck et al., *Vertoogh van Nieuw Nederland* (1650), in Jameson, ed., *Narratives of New Netherland*, 309.

⁶⁸ *Bullarum diplomatum et privilegiorum sanctorum romanorum pontificum* . . . vol. 5 (Rome, 1858), 361ff. Portugal received the same rights for Africa and Asia, as well as, it later turned out, a tiny portion of South America that was expanded into the territory now known as Brazil. For negotiations and intrigue surrounding the acquisition of these bulls see Manuel Giménez Fernández, “Las bulas alejandrinas

Alexander VI granted the New World on these terms: of his "own motion, mere liberality, certain science, and apostolic authority" "*motu proprio, mera liberalitate, et ex certa scientia, ad de Apostolicae potestatis*"—language near that used by Queen Elizabeth—"especial grace, certain science, mere motion."⁶⁹ The parallels are even greater than this. Not only the language but also the parchment form, scribal style, and great seals of Elizabethan patents are identical to those of medieval papal bulls. Finally, "letter patent" was the most common sixteenth-century English translation of the Latin *bula*. At the time, "bull" more often referred to the lead seal than to the document itself.⁷⁰

Although Elizabeth's language in the royal patent differs only slightly from that of the papal bull, the differences are instructive as to the origins of both sources of authority. The word "grace" in Elizabeth's terms meant both a special authority from God and the queen's own freely bestowed favor—the latter being the exact sense of the papal "liberality." As for the "apostolic authority," by the mid-fifteenth century Edward IV was using the phrase "of our special grace, ful power, and authority royall" on royal charters, substituting "authority royall" for the papal "authority apostolic."⁷¹ In using the formula of the Roman pontiff to establish authority over the New World, the queen implicitly asserted her authority as equal to his.

As did the English letters patent, the papal bull also granted Spaniards territory "not possessed by any Christian prince." (In many Spanish translations this is rendered as "the right that any Christian prince has gained," and "possession" is not used.) Just as the letters patent concede the authority to dispose of the New World, so did the bull give the New World to Spain "with free and absolute power, authority, and jurisdiction." But the English patent altered the papal formula to characterize the grant of absolute authority over the New World as decidedly English—"according to the lawes of England."

The most profound changes made by the English in the papal formula

de 1493 referentes a las Indias," *Anuario de estudios americanos*, I (1944), 171–430, and the critique by Alfonso García Gallo, "Las bulas de Alejandro VI y el ordenamiento de la expansión portuguesa y castellana en Africa e Indias," *Anuario de historia del derecho español*, XXVII–XXVIII (1958), 461–829.

⁶⁹ *Bullarum*, V, 361ff.

⁷⁰ *Dictionnaire de Theologie Catholique*, vol. 2, pt. 1 (Paris, 1910), 1255–1264; A. Amanieu, ed., *Dictionnaire de Droit Canonique . . .*, vol. 2 (Paris, 1925), 1126–1132; A *Treatyse of the Donation Gyven unto Sylvester Pope of Rome by Constayne* (Amsterdam, 1979; orig. pub. 1534). On the clerical origins of English charters generally see Hubert Hall, *Studies in English Official Historical Documents* (New York, 1969; orig. pub. 1908), 167–177.

⁷¹ Charter of Edward IV, Apr. 16, 1462, in Hakluyt, *Principal Navigations*, II, 147–158. Cabot's patents use "grace especial" (Feb. 3, 1498) and "special goodness" and "own motion" (Mar. 19, 1501); Williamson, *Cabot Voyages*, 226, 243. The substitution of royal for apostolic authority was common practice in other European courts. The Portuguese kings when making land grants used the phrase "*de nosso moto proprio, çierta çiencia, livre vontade, poder reall e aussoluto*." Note, however, the omission of "special grace." "Carta de donação de El-Rei D. Manuel a Miguel Corte Real," Jan. 15, 1502, in *Alguns Documentos*, 131–132.

restricted the category of dominion to the “soyle” and added the phrase “remote, barbarous, and heathen lands” to characterize the object of English empire. These alterations to the papal format reveal English cultural biases regarding the target of imperial authority.

For the twenty years following Columbus’s arrival in the New World, Spaniards employed the methods described above. Upon landing at or entering into a new territory (an enterprise they termed “discovery” or “entry”),⁷² Spaniards ritually invoked the crown of Castile and the pope in a solemn fashion, often renaming the land as well.⁷³ Spanish officials did not require any specific language in the ceremonies that inaugurated their rule.⁷⁴ But while the practice of activating Spanish authority through ceremony and ritual speech continued to be followed throughout the colonial period, the speech itself was altered in the third decade of Spanish settlement in the New World.

Because the pope’s grant was contingent upon conversion of natives, a challenge was not long in coming. It came from Dominicans newly arrived on the island of Hispaniola. In a December 1511 sermon, Father Antonio de Montesinos attacked Spanish officials on the island (including one of Columbus’s sons) in a scathing critique focusing on their failure to convert the natives.⁷⁵ The criticism found its mark, for the following year King Ferdinand ordered a reconsideration of the matter of Spanish title to the New World. He convened a commission to draw up new laws governing treatment and conversion of Indians (the Laws of Burgos) and asked a canonist and a jurist to consider how the authority of the Spanish empire might be better legitimated. The canonist was the Dominican Fray Matías de Paz of the University of Salamanca; the jurist, Juan López de Palacios Rubios.⁷⁶ Their treatises expanded and elaborated the reasons for the conquest. From Palacios Rubios’s essay government officials extracted a portion that could be used to justify Spain’s future conquests of New

⁷² Réal provision, Apr. 10, 1495, Navarrete, *Colección*, II, 196–199; real cédula, June 8, 1501, to Alonso de Hojeda, *ibid.*, III, 99–102; June 12, 1523 to Lucas Vázquez de Ayllón, *ibid.*, 166–173; real carta, Queen to Juan de Agramonte, Oct. 1511, *ibid.*, 137–140; instrucción to Ferdinand Magellan, May 8, 1519, *ibid.*, IV, 123; Cortés, *Cartas*, 163. Pedrarias used a white banner; *CDI*, II, 549–556.

⁷³ See above nn. 61, 63. Also *CDI*, II, 558–567, III, 337, IV, 467–470, V, 211–215, 221–229, 370, X, 12–18; XIV, 128–135, XV, 306–307, 320–323, XVI, 165–373.

⁷⁴ For some examples of the variety of language used see Morales Padrón, “Descubrimiento y toma de posesión,” 347–348. This often fascinating collection of ceremonies is marred by a misunderstanding of possession in 16th-century Spanish legal theory. An excellent English introduction to the subject is James Brown Scott, *The Spanish Origin of International Law: Francisco Vitoria and his Law of Nations* (Oxford, 1934), esp. 116–136.

⁷⁵ Las Casas, *Historia de las Indias*, bk. 3, caps. 3, 4, II, 440–442.

⁷⁶ Rafael Altamira, “El texto de las leyes de Burgos de 1512,” *Revista de historia de América*, No. 4 (1938), 5–79; Palacios Rubios, *De las islas del mar océano*, and Paz, *Del dominio de los reyes de España sobre los indios*, trans. Agustín Millares Carlo. (México, D. F., 1954); Eloy Bullón y Fernández, “El problema jurídico de la dominación española en América antes de las Relecciones de Francisco Vitoria,” *Anuario*, IV (1933), 99–128, esp. 104–105.

World peoples. This text became known as the *Requerimento* or Requirement; it required the natives to submit to the authority of the Spanish crown. Used in explorations of the Caribbean after 1512, it would be employed whenever Spaniards encountered people in the New World. It was invoked in the conquests of Mexico and Peru, as well as in hundreds of other encounters with hunter-gatherers and small agricultural and fishing communities.⁷⁷ The Requirement served to legitimate Spanish authority over the New World until it was replaced in 1573 by a revised, less demanding version, the Instrument of Obedience and Vassalage.⁷⁸

In the instructions issued by the crown for discoveries and conquests after 1512, the Requirement was ordered to be read to the New World natives. In other words, from then on, the crown specified a ritual speech to be used in enacting the authority of its empire over people. No longer would any “appropriate ceremony and words,” as employed by Columbus, be sufficient; the words had to be those of the Requirement.

Just as the English did, the Spanish claimed a right to rule based on their possession of Christianity, a (self-proclaimed) superior religion. But the relationship between religion and the power of the Christian state was delineated differently in the Requirement than in the English letters patent. The opening phrases announce the status of the person reading as a messenger and servant of the king of Castile, whose sources of authority are provided by tracing a genealogy of power beginning with God and extending in an unbroken line to St. Peter, the pope, and finally to the papal donation made to Ferdinand and Isabella, by virtue of which “Their Highnesses are kings and lords of these islands and the mainland.”⁷⁹

The Requirement concludes by demanding two things: that the Indians recognize the genealogy of power and that they allow Christian priests to preach the faith. “Therefore, as best I can, I beg and require you to understand well what I have said . . . that it is just and that you recognize the Church as lady and superior of the universal world, and the Pontiff . . . in her name, and the King and the Queen our lords in his place as superiors and lords and monarchs of these islands and mainland . . . and

⁷⁷ Original rationales in Palacios Rubios, *De las islas*, 36–37, and Paz, *Del dominio*, 250–252. For examples of its use in small communities prior to the discoveries of Mexico and Peru see *CDI*, XX, 14–119; for examples of the Requirement as issued for Peru see Diego de Encinas, *Cedulario indiano*, vol. 4 (Madrid, 1945; orig. pub. 1596), 226–227; for Panama see Serrano y Sanz, *Dominación española*, I, 292–294, and Gonzalo Fernández de Oviedo, *Historia general y natural de las Indias*, vol. 7 (Asunción, Para., 1944), lib. 29, cap. 7; for Chile see José Toribio Medina, *El descubrimiento del Océano pacífico*, vol. 2 (Santiago, 1920), 287–289. Lewis Hanke, “A applicação do requerimento na America Hespanhola, 1526–1600,” *Revista do Brasil*, 3d Ser., (1938), 231–248. When no people were encountered, no specific speech was required in possession ceremonies.

⁷⁸ Instrument of Obedience and Vassalage, *CDI*, XVI, 142–187. For examples of its use see *ibid.*, IX, 30–45, XVI, 88ff, 188–207. One interpretation of the reasons for the shift is Hanke, *Aristotle and the American Indians: A Study in Race Prejudice in the Modern World* (London, 1959), 86–88.

⁷⁹ Serrano y Sanz, *Dominación española*, I, 293.

that you consent . . . to having the religious fathers declare and preach to you on this subject.”⁸⁰ If natives refused to acknowledge the papal donation and to admit preachers, the Spaniards considered themselves justified in commencing hostilities.

This document, according to Lewis Hanke, “was read to trees and empty huts . . . Captains muttered its theological phrases into their beards on the edge of sleeping Indian settlements, or even a league away before starting the formal attack . . . Ship captains would sometimes have the document read from the deck as they approached an island, and at night would send out enslaving expeditions, whose leaders would shout the traditional Castilian war cry ‘Santiago!’ rather than read the Requirement before they attacked.”⁸¹

Gonzalo Fernández de Oviedo, an early sixteenth-century *conquistador* and chronicler of the conquest, wrote, “I would have preferred to make sure that they [the Indians] understood what was being said; but for one reason or another, that was impossible. . . . I afterwards asked Doctor Palacios Rubios, the author of the Requirement, whether the reading sufficed to clear the consciences of the Spaniards; he replied that it did.”⁸² No demonstration of understanding was required: rather, the issue of reception was studiously ignored. It was the *act of reading the text* that constituted the authority. The only other action needed to legitimate Spanish rule was to record that the act of reading had taken place. Just as Columbus had been required to register his solemn declarations in (written) legal instruments, the final step in implementing the Requirement and establishing its legality was the order that a notary preserve a record of this reading with “a signed testimony.”

During the sixteenth-century debates over the Requirement, occasional consideration was given to the issue of translation.⁸³ But no deliberation was given to the strangeness of the act of reading to people who had not only never read but had never seen the act of reading. We who have grown up with reading can only imagine the questions. Why is someone holding up an object (a written document) in front of himself and looking at it while he speaks? Is it an avoidance taboo? Is he afraid? ashamed? Why is the speaker’s glance or gaze not directed at the listener but at the object he is holding? To New World societies with different body language conventions for speech, European reading (and even speaking) practices appeared strange.⁸⁴

⁸⁰ *Ibid.*, 294.

⁸¹ Hanke, *The Spanish Struggle for Justice in the Conquest of America* (Philadelphia, 1949), 33–34.

⁸² Oviedo, *Historia general y natural*, lib. 29, cap. 7, VII, esp. 131–132. The manner in which the Requirement was read appears at the start of cap. 7.

⁸³ *Ibid.*, cap. 8.

⁸⁴ On the strangeness to North American Indians of one form of European speech behavior (preaching) see Johannes Megapolensis, *Een kort Onwterp vande Mahakvase Indianen* (Aug. 26, 1644), “A Short Account of the Mohawk Indians,” in Jameson, ed., *Narratives of New Netherland*, 177–178. On the reaction of the Peruvian Indians to writing see Patricia Seed, “Failing to Marvel’: Atahualpa’s

While most of the commentators on the Requirement, from Walter Raleigh and Bartolomé de Las Casas to modern historians, have interpreted it in a derisive or ironical way, there is more to it than simple absurdity.⁸⁵ First, it expressed a traditional European form of establishing authority (the letters patent or bull) derived from the practices of the papal chancery. Second, lest the idea that the act of reading to an uncomprehending audience seem a bizarre or unusual form of legitimizing power, it should be remembered that there are dozens of similar examples in contemporary American criminal and civil law. The most obvious instance is the United States Supreme Court's *Miranda* decision, which legitimates the authority of the American government over an often uncomprehending suspect when he is *read his rights*. The dominion of the American criminal justice system is also established by reading. What the act of reading accomplishes, in contradistinction to English architectural symbolism or Portuguese stone posts and flag planting, is the establishment of authority over *people*. The central, most important act legitimating Spanish rights over the New World articulated authority over persons rather than over land or commerce.

For the Spaniards, the principal target of imperial authority was people, and all the major institutions of the first century of Spanish colonial rule established public and private authority over people. In addition to slavery, the Spaniards brought with them two other institutions exerting authority over persons. The *encomienda*, the principal reward sought by Spanish settlers in the New World, was a grant of Indian labor to private citizens; the *repartimiento* was a bureaucratic process for organizing rotating weekly pools of Indian workers. The major institutions of the first century of Spanish rule thus exerted authority over people. Grants of land (*mercedes de tierra*) came relatively late in the conquest and were subsidiary to grants of labor.⁸⁶

Encounter with the Word," *Latin American Research Review*, XXVI (1990), 7-32. Mexican pictographs appear to have been used as mnemonic devices that were "read" in the Western style. John B. Glass, "A Survey of Native Middle American Pictorial Manuscripts," in Robert Wauchope, ed., *Handbook of Middle American Indians*, vol. 14: *Guide to Ethnohistorical Sources*, pt. 3, ed. Howard F. Cline (Austin, Tex., 1975), 7-11; Charles Gibson, "Prose Sources in the Native Historical Tradition," in Wauchope, ed., *Handbook of Middle American Indians*, vol. 15: *Guide to Ethnohistorical Sources*, pt. 4, ed. Howard F. Cline (Austin, Tex., 1975), 313-315.

⁸⁵ Hanke, "The 'Requirimiento' and its Interpreters," *Revista de historia de América*, No. 1 (1938), 25-34; Hanke, "A aplicação"; Charles Verlinden, *The Beginnings of Modern Colonization* (Ithaca, N. Y., 1970), 41-42; Silvio A. Zavala, *Las instituciones jurídicas en la conquista de América*, 3d ed. (México, D. F., 1988), 78-81.

⁸⁶ Lesley Byrd Simpson, *The Encomienda in New Spain: Forced Native Labor in the Spanish Colonies, 1492-1550* (Berkeley, Calif., 1929); Zavala, *La encomienda indiana*, 2d ed. (México, D. F., 1973); William L. Sherman, *Forced Native Labor in Sixteenth-Century Central America* (Lincoln, Neb., 1979); Robert S. Chamberlain, "The Roots of Lordship: The *Encomienda* in Medieval Castile," in H. B. Johnson, Jr., ed., *From Reconquest to Empire: The Iberian Background to Latin American History*

It might be argued that the Spaniards came to rule over people, and the English over land, due to ecological exigencies rather than cultural predispositions: the English in North America encountered a lightly inhabited terrain, while the Spaniards encountered the most densely populated regions of the Americas. Several facts disturb this thesis.

First is the historical timing of the development of the Requirement and the institutions of Spanish rule over people. Indian slaving began with Columbus, and the New World *encomienda* originated in 1503.⁸⁷ The doctrine of the Requirement asserting imperial authority over people was created in 1512. Even by this late date, Spanish settlement was restricted to a few Caribbean islands no more densely populated than areas subsequently claimed by the English.⁸⁸ In other words, the institutions of rule over people were established long before the discovery of Central and South America with their sizable native populations.

Second is the timing of the English focus on land as their primary object. English concern with authority over land was apparent as early as the letter patent of 1578, *before* any expedition to settle the New World was launched, and it remained a constant feature of official authorizations thereafter. Furthermore, the English patents were issued after news of the Inca, Maya, and Nahua empires had spread throughout Europe, and there was the distinct (but unrealized) possibility that a similar empire would be found on the North American continent.

Finally, to the question of what the English might have done had they encountered such an empire, one can look to the eighteenth century, when they began to rule a continent more densely populated than central Mexico or highland Peru. In India, the first act of English officials was to *survey native land laws and to try to organize a system of taxation based on ownership of land.*⁸⁹ They subsequently invented the modern techniques of land survey in order to rule the Indian subcontinent.⁹⁰ Spanish officials in highland Peru and Mexico counted people, the English in India surveyed the land.⁹¹ *Spanish colonialism produced the census, British colo-*

(New York, 1970), 124–147; *Colección de Documentos Ineditos . . . de Ultramar*, 25 vols. (Madrid, 1885–1932), I, 105–106.

⁸⁷ The *encomienda* received its first legal recognition in the instructions sent to Nicolás de Ovando, governor of Hispaniola in 1503; *CDI*, XXXI, 209–212.

⁸⁸ When the Requirement was promulgated there were Spanish settlements on only 3 Caribbean islands, Jamaica, Hispaniola, and Puerto Rico; Las Casas, *Historia de las Indias*, lib. 3, cap. 8, II, 456.

⁸⁹ Guha, *A Rule of Property for Bengal* (New Delhi, 1981).

⁹⁰ The modern land survey's origin in British India was acknowledged at length in the 1911 *Encyclopedia Britannica* but disappeared by mid-20th-century editions. In later encyclopedias, the actual colonial origin is concealed by descriptive language, e.g., "the land survey is."

⁹¹ The remarkable *Suma de visitas*, the partial summaries in Juan López de Velasco's *Geografía y descripción universal de las Indias* and other counts of people are described in Peter Gerhard, *A Guide to the Historical Geography of New Spain* (Cambridge, 1972), 28–33. Similar reports exist from the reign in Peru of viceroy Francisco de Toledo; Noble David Cook, *Demographic Collapse in Indian Peru*,

nialism the map. It was not the ecology of peoples encountered, but cultural conceptions, that defined the central objects of European authority.

The Requirement officially ceased to be the means of enacting the authority of the Spanish empire overseas in 1573 when it was replaced by a new set of instructions called an "Instrument of Obedience and Vassalage." Eliminating reference to the papal bull, it described the king as "the only and singular defender of the Church." The Indians were invited to obey him, so that in exchange for protection from their enemies they might be beneficiaries of Spanish political and economic power. But although the source of authority was redefined, the method of enacting it was not. The Instrument of Obedience and Vassalage was still to be read to the natives, with the added provision that efforts be made to secure translators. In its new form, the Instrument was read not only to natives of the New World but also in the Philippines to legitimize Spanish conquest.⁹² While the obvious implausibility of asserting a papal donation was eliminated in an era that had witnessed the end of papal universality, the method of implementation, reading, continued.

Each of these separate targets of imperial authority—land for the English, labor for the Spaniards—was also the principal focus of internal struggle and contention over the legitimacy of imperial rule. English and Anglo-American critics of English imperial policy such as Roger Williams and others attacked the means by which Englishmen acquired land. Their Spanish counterparts—Las Casas and Juan Zumárraga—criticized the means by which Spaniards acquired the right to Indian labor. Neither developed substantial critical assessments of the other empire's principal object. Enslavement of Indians never came in for the scathing critiques in England or Anglo-America that it received in the Spanish empire, nor did the gradual dispossession of native peoples from their lands receive the same attacks in Spain that it did in the English empire. Discourses critical of imperial authority centered on the aspects each culture defined as crucial. In English culture, what mattered was the title to land; in Spanish culture, the right to use labor. The difference centered on the priorities of the two societies: the conquest of land and the conquest of peoples.

What the differing constructions of the authority of empire additionally illuminate is the very different responses to the problem of native depopulation. For the crown of Spain, widespread deaths of natives from disease and other causes were evidence of God's disfavor. Charles V in 1523 ordered Hernán Cortés to take into consideration "the monumental harm

1520–1620 (Cambridge, 1981), 7. The English experience in North America did not place them in contact with sufficient numbers of people, so techniques of surveying remained relatively primitive; Douglas W. Marshall and Howard H. Peckham, *Campaigns of the American Revolution: An Atlas of Manuscript Maps* (Ann Arbor, Mich., 1976); J. B. Harley, Barbara B. Petchenik, and Lawrence W. Towner, *Mapping the American Revolution* (Chicago, 1978).

⁹² Hanke, "A aplicação"; "Traslado de la posesión que en nombre des su magestad tomó Don Joan de Oñate, de los reinos y provincias de la Nueva México," *CDI*, XVI, 88–142.

and losses received by the said Indians through their deaths and dwindling numbers and the great disservice that Our Lord has received because of it.”⁹³ In a similar royal order to Juan Ponce de Leon two years later Charles added: “not only has our duty to God Our Lord not been performed because such a multitude of souls have perished . . . but we ourselves [the crown] have been ill-served by it as well.”⁹⁴ James I of England, on the other hand, in his 1620 patent for Plymouth Colony wrote: “Within this late yeares there hath by God’s Visitation raigned a Wonderfull Plague . . . to the utter Destruction, Devastacion and Depopulation of the whole Territorye, so that there is not left for many Leagues together in a Manner any [person] that doe claim or challenge . . . Whereby We in our Judgment are persuaded and satisfied that the appointed Time is come in which the Almighty God in his great Goodness and Bountie towards Us and our People hath thought fitt and determined that those large and goodly Territoryes, deserted as it were by their naturall inhabitants should be possessed and enjoyed.”⁹⁵ Massive numbers of native deaths are not to be mourned, nor are they to be taken as evidence of unjust and tyrannical conduct. Rather, they are proof of divine intervention on behalf of the English, “a Wonderfull Plague” demonstrating God’s “great Goodness and Bountie towards Us and our People.”

This sentiment was echoed by Puritan settlers as well as Catholic monarchs. John Winthrop suggested that the plague that hit the natives just before the Puritans arrived was evidence of God’s hand in creating a vacant land. “God hath consumed the Natives with a great plague in those parts soe as there be few in-habitants left.”⁹⁶ The Spanish critique of empire found its fulcrum in the devastating losses of people—losses that threatened the basis of the empire’s wealth in human beings. For the English, native deaths were more than unproblematic; they were declared signs of divine favor.

English and Spanish empires in the New World were Christian imperialisms, founded at the core on beliefs in the right of the religion of the West to rule the other religions of the world. For the English, religion functioned as a prop for the authority of the state; for the Spaniards it was a means of coercing Indians into European ways of thinking. In their invocation of Christian imperialism as the authority for expansion over the rest of the world, both English and Spanish empires addressed medieval tradition. The Spanish king appealed to the authority of the Roman

⁹³ Real cédula a Hernán Cortés, Jun. 20, 1523, in Encinas, *Cedulario indiano*, II, 185.

⁹⁴ *Ibid.*, 186.

⁹⁵ Ebenezer Hazard, *Historical Collections; Consisting of State Papers, and Other Authentic Documents* (Philadelphia, 1792), I, 105.

⁹⁶ Winthrop, *Conclusions*, 7. Similar sentiments were expressed by Edward Johnson in *Wonder-Working Providence, 1628–1651*, ed. Jameson (New York, 1937; orig. pub. 1654), 41, 79–80: “The Indians . . . began to quarrell with them [the English] about their bounds of Land, . . . but the Lord put an end to this quarrell also, by smiting the Indians with a sore Disease . . . Thus did the Lord allay their quarrelsome spirits, and made roome for the following part of his Army.”

papacy, and Elizabeth I similarly drew upon the same sources as the medieval Roman pontiffs in her letters patent. Their assertions were thus the last effort to claim a traditional medieval authority at the very newest moment, the start of the age of European expansion.

It is ironic that, by using letters patent, English rulers continued to invoke both the form and the substance of the medieval papal bull to legitimate rule over the New World through the middle of the seventeenth century. The English made little effort to alter their adaptation of the authority of the pontiff, even after Spain ceased to regard the bull as a legitimate source of authority.⁹⁷ While this can be seen partly as the result of the position of the English monarch as head of the church, its formulas were invoked unselfconsciously by Oliver Cromwell—no friend of the Church of England—to justify settlement of Nova Scotia.⁹⁸ Although the Spanish are often considered the most medieval of European powers, it was the English, whose formula for establishing empire became fixed in the late sixteenth century, who continued for the longest period to assert medieval concepts of sovereignty overseas. The language of Gilbert's 1578 patent was used for the last time in letters patent issued for Australia at the end of the eighteenth century.

Spanish imperial authority relied centrally upon articulating a relationship between Europeans and a living, breathing Other rather than simply demarcating space. It had to constitute its authority primarily through possession not of territory but of bodies and minds, by authority over persons rather than places. If possession in the medieval English world was synonymous with property, in the Spanish world it signified dominion over people. When the English conquered, they aimed to conquer territory, and when they took over an area, they sought to possess the land, not the people. Spanish authority was textual imperialism par excellence—the reading of a Western text to uncomprehending natives. Whereas the ultimate authority of each empire was founded on written language, that of the English empire in the New World was established by habitation, “taking possession,” while that of the Spanish empire was enacted by reading.

Historical memories of the origins of these two empires have been built around the central aims of each. We commemorate the origins of English settlement in the New World by place: Plymouth Rock, Jamestown, even Roanoke. But we do not remember the start of the Spanish empire by a location. Exactly where Columbus landed is uncertain in our memories as well as in our scholarship. We do remember the date on which he made his solemn declarations, the ceremony, and the words. We mark the conquest of land by the place where it began; we remember the ceremonies that initiated the conquest of people by commemorating a day, October 12, and a year, 1492.

⁹⁷ For its use by Oliver Cromwell, Aug. 6, 1656, see letters patent for Acadia and Nova Scotia in Hazard, *Historical Collections*, 616–617.

⁹⁸ “Concession faite par Cromwel,” Aug. 6, 1656, *ibid.*, 617–619.