

# *Sir John Davies's Agrarian Law for Ireland*

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## INTRODUCTION

This article examines the views of Sir John Davies, Solicitor General (1603–6) and attorney general (1606–19) in Ireland, concerning the idea of an agrarian law for Ireland.<sup>1</sup> The objective is to integrate scholarship surrounding the English colonial project in Ireland with recent developments in the history of republican thought, most notably the work of Eric Nelson, who has suggested that the “neo-Roman” opposition to the redistribution of landed property was broadly hegemonic in late Tudor and early Stuart political discourse. In this interpretation, only with the incorporation into English republican thought of precepts and maxims of politics derived from recent innovations in Talmudic scholarship did the general aversion

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<sup>1</sup> Hans S. Pawlisch, *Sir John Davies and the Conquest of Ireland: A Study in Legal Imperialism* (Cambridge: Cambridge University Press, 1985); Robert Armstrong, “Davies, Sir John (1569–1626),” in *Dictionary of Irish Biography from the Earliest Times to the Year 2002*, ed. James McGuire and James Quinn, 9 vols. (Cambridge: Cambridge University Press, 2009), 3:70–74; Paul Brand, “Sir John Davies: Law Reporter or Self-Publicist?” *Irish Jurist* 43 (2008): 1–21; Jean-Paul Pittion, “Land Rhetoric and Ideology in Sir John Davies’ Report on the *Case of Tanistry* (1615),” in *Property Law in Renaissance Literature*, ed. Daniella Carpi (New York: Peter Lang, 2005), 63–74; James P. Myers, “Early English Colonial Experience in Ireland: Captain Thomas Lee and Sir John Davies,” *Éire-Ireland* 23 (1988): 8–21; Eugene Flanagan, “The Anatomy of Jacobean Ireland: Captain Barnaby Rich, Sir John Davies and the Failure of Reform,” in *Political Ideology in Ireland, 1541–1641*, ed. Hiram Morgan (Dublin: Four Courts, 1999), 158–80; Jean R. Brink, “Sir John Davies: Lawyer and Poet,” in *Ireland in the Renaissance, c. 1540–1660*, ed. Thomas Herron and Michael Potterton (Dublin: Four Courts Press, 2007), 88–104.

to redistribution begin to fade.<sup>2</sup> The intellectual landmark in this development was the appearance of James Harrington's *Commonwealth of Oceana* (1656), with its emphasis on the need for an "equal" agrarian foundation to maintain the peace and stability of the commonwealth. Prior to Harrington, "the rejection of redistribution was a remarkably consistent feature of early-modern political discourse."<sup>3</sup>

The assertion of a generalized hostility towards redistribution may certainly have held true for England and for other European states; however, as in so many other instances, Ireland proved the exception. During the sixteenth and seventeenth centuries, the redistribution of Irish lands became an essential component in the "New" English colonial project in that realm. While Ian W. S. Campbell has characterized his thinking as "anti-Aristotelian," Davies's influential treatise *A Discovery of the True Causes Why Ireland Was Never Entirely Subdued [and] Brought Under Obedience of the Crown of England Until the Beginning of His Majesty's Happy Reign* (1612) also advocated the implementation of an agrarian law in all future Irish plantations, reflecting a more distributive understanding of justice.<sup>4</sup> Davies's arguments for the reformation of Ireland combined a unitary, Bodinian conception of sovereignty, in which the monarch enjoyed sole exercise of the marks of sovereignty, with a distributive conception of justice in which gross disparities in wealth and landed property constituted a serious threat to the stability and good governance of the commonwealth.

The argument here, therefore, offers an alternative interpretation to that of Nicholas Canny, who, in a series of influential publications, has stressed the formative influence of *A View of the Present State of Ireland* (MS c. 1596), usually attributed to the Munster planter and poet Edmund Spenser (c. 1552–99), in the emergence of a distinctive Anglo-Irish identity during the seventeenth century.<sup>5</sup> The *View*, written amid the crisis of the

<sup>2</sup> Eric Nelson, *The Hebrew Republic: Jewish Sources and the Transformation of European Political Thought* (Cambridge, Mass.: Harvard University Press, 2010), 62–63; Nelson, *The Greek Tradition in Republican Thought* (Cambridge: Cambridge University Press, 2004), 89–91.

<sup>3</sup> Nelson, *Hebrew Republic*, 63.

<sup>4</sup> Ian W. S. Campbell, "Anti-Aristotelian Sovereignty in Stuart Ireland," *Historical Journal* 53 (2010): 586–88; Sir John Davies, *A Discovery of the True Causes Why Ireland Was Never Entirely Subdued [and] Brought Under Obedience of the Crown of England Until the Beginning of His Majesty's Happy Reign*, ed. James P. Meyers (London, 1612; Washington, D.C.: Catholic University Press, 1969). All further citations are to this critical edition.

<sup>5</sup> Nicholas P. Canny, "Edmund Spenser and the Development of Anglo-Irish Identity," *Yearbook of English Studies* 13 (1983): 1–19; Canny, "Identity Formation in Ireland: The Emergence of the Anglo-Irish," in *Colonial Identity in the Atlantic World, 1500–*

Nine Years' War (1594–1603), presented an ethnological analysis of Irish affairs premised on the inherent, “Scythian” barbarity of the native Irish and the degenerate condition of the “old English,” Anglo-Norman population, expressing a deep skepticism towards the efficacy of English law and political institutions as agents of reform.<sup>6</sup> Against other current reformist arguments emphasizing the role of persuasion and magisterial eloquence in the reformation of Ireland, the *View* advocated instead an extreme course of military-judicial violence in the reduction of Ireland's inhabitants to a civil state.<sup>7</sup> In Canny's interpretation, Davies “adhered rigidly to the ideas of Spenser.”<sup>8</sup>

This article argues instead that Davies operated from a much softer set of ethnological assumptions than those of the *View*, according to which the culturally transformative powers of the English law, aided when necessary by coercive violence, would bring Ireland's barbaric and degenerate inhabitants to a civilized state.<sup>9</sup> For Davies, the failure of all previous plantations lay not with any strong ethnological premise, but with the faulty political economy of Ireland's medieval past: the failure to establish an equitable agrarian base in all previous plantations since the initial Norman Conquest was the main reason why all previous English monarchs had been unable to communicate successfully the English common law and its “civilizing” potentials to the “mere” Irish. As a result, the reformation of Ireland into a civilized, unitary, and monarchical state after the example of England had

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1800, ed. Nicholas P. Canny and Anthony Pagden (Princeton: Princeton University Press, 1987), 159–212; Canny, “Reviewing *A View of the Present State of Ireland*,” *Irish University Review* 26 (1996): 252–67; Canny, *Making Ireland British, 1580–1650* (Oxford: Oxford University Press, 2001), chap. 1.

<sup>6</sup> Edmund Spenser, *A View of the Present State of Ireland*, ed. W. L. Renwick (1934; repr., Oxford: Oxford University Press, 1970); Andrew Hadfield, “Briton and Scythian: Tudor Representations of Irish Origins,” *Irish Historical Studies* 28 (1993): 390–408; Jean R. Brink, “Constructing the *View of the Present State of Ireland*,” *Spenser Studies* 11 (1990): 203–28.

<sup>7</sup> Brendan Bradshaw, “Sword, Word, and Strategy in the Reformation in Ireland,” *Historical Journal* 21 (1978): 475–502; Bradshaw, “Robe and Sword in the Conquest of Ireland,” in *Law and Government under the Tudors: Essays Presented to Sir Geoffrey Elton, Regius Professor of Modern History in the University of Cambridge on the Occasion of His Retirement*, ed. Claire Cross, David Loades, and J. J. Scarisbrick (Cambridge: Cambridge University Press, 1988), 139–62; Ciaran Brady, “Spenser's Irish Crisis: Humanism and Experience in the 1590s,” *Past and Present*, no. 111 (1986): 17–49; D. Alan Orr, “Inventing the British Republic: Richard Beacon's *Solon His Follie* (1594) and the Rhetoric of Civilization,” *Sixteenth Century Journal* 38 (2007): 975–94.

<sup>8</sup> Canny, “Identity Formation,” 172.

<sup>9</sup> D. Alan Orr, “From a *View* to a *Discovery*: Edmund Spenser, Sir John Davies, and the Defects of Law in the Realm of Ireland,” *Canadian Journal of History* 38 (2003): 395–408.

stood incomplete until the reign of James I and the plantation of Ulster.<sup>10</sup> Rather than rejecting the equitable distribution of lands, Davies placed it squarely at the center of the New English enterprise in Ireland, emphasizing its absolute necessity for the reformation of the Irish commonwealth into a peaceable and unified polity after the pattern of England.

While Hans S. Pawlisch and Jean-Paul Pittion have emphasized the influence of Roman-civil law sources and continental jurisprudence on Davies's formation, his arguments for the reformation of the Irish commonwealth also reveal significant affinities with traditions of distributive justice identifiable with a more communitarian "Greek commonwealth tradition," and with a biblical ideal of the best state of the commonwealth, deriving from the example of the ancient Israelites and their divinely-instituted, "equal" commonwealth in the land of Canaan.<sup>11</sup> For Davies, the failure to make a perfect conquest of Ireland had begun with the Anglo-Norman failure to implement more comprehensively some form of agrarian law for Ireland, instead dividing title to the entire commonwealth among only a handful of great magnates. The plantation of Ulster would redress these longstanding errors of "civil policy," limiting the size of initial grants to individual undertakers, and establishing a more equitable agrarian foundation for the Irish commonwealth. The Irish commonwealth that Davies imagined, however, was still very much a monarchical state, in which the king acting providentially as God's lieutenant on earth was the primary agent of reform, "giving law" to the "mere" Irish, where hitherto they had possessed only the "lewd custom" of Brehon law to order their affairs. Where Cicero and later republicans like John Milton disparaged the idea of an agrarian law as a source of sedition, and utterly destructive to the commonwealth, Davies saw it as necessary for the "perfect" conquest and reformation of the king's realm of Ireland, bringing it to a peaceable, unified, and civil condition. Once the plantation was completed, Ireland would become a "New Canaan," a land of plenty, in which the "British" in Ulster as God's chosen people would flourish.

### TRADITIONS OF JUSTICE

Nelson has identified a central tension in classical republicanism between juridical, or Roman, conceptions of political justice, and more distributive

<sup>10</sup> *Ibid.*, 403–7.

<sup>11</sup> Pawlisch, *Sir John Davies*, chap. 9; Pittion, "Land Rhetoric"; Nelson, *Hebrew Republic*, chap. 2; Nelson, *Greek Tradition*, esp. chaps. 1–3; Nelson, "Greek Nonsense in More's *Utopia*," *Historical Journal* 44 (2001): 889–917.

Greek conceptions. The “Greek tradition” represented a communitarian ideal, in which all members of the commonwealth (or *polis*) did not lack the necessities of life. The ideal, perhaps best expressed in Books I and VII of Aristotle’s *Politics*, was moderation, with both luxury and poverty representing dangerous extremes that were potentially destructive to the commonwealth.<sup>12</sup> Concomitantly, the ideal commonwealth was neither so small in population that it could not defend itself from foreign domination, nor so populous that it would prove ungovernable.<sup>13</sup> While he did not advocate the abolition of private property, Aristotle’s ideal commonwealth was one in which no individual citizen would lack the means essential for his own subsistence.<sup>14</sup> Trade was necessary for sustaining the commonwealth as food sustained a natural body; however, an excessive accumulation of wealth that resulted in gross disparities between rich and poor citizens fostered civil discord and was utterly destructive to the commonwealth.<sup>15</sup> This tradition, with its “distributive” understanding of justice, was amenable to the redistribution of property, provided that it served the greater good of the political community, promoting self-sufficiency and harmony within the body politic.

The Roman tradition, in contrast, emphasized the individual’s right [*ius*] to what was his. It advanced and defended the right of individual citizens to enjoy their persons, goods, and estates free from the danger of being arbitrarily dispossessed through the actions of any public person or persons. While the Greek “commonwealth” tradition emphasized both moderation in the accumulation of wealth and the idea that all members of the commonwealth should enjoy sufficient means to sustain their households, Roman writers instead saw the acquisition of wealth as being in conformity with fundamental principles of justice, provided that wealth was not obtained dishonorably. In this view, best exemplified in the writings of Cicero, it was essential to keep faith not only with fellow citizens in all commercial dealings, but also with foreigners and aliens, including even sworn enemies in time of war.<sup>16</sup> For Cicero, “faithfulness” was “the foundation of justice.”<sup>17</sup> Without it none could be secure in their goods and persons, and the very frame of the civil society would dissolve.

<sup>12</sup> Aristotle, *The Politics and the Constitution of Athens*, ed. Stephen Everson, trans. Benjamin Jowett and Jonathan Barnes (Cambridge: Cambridge University Press, 1996).

<sup>13</sup> *Politics*, VII, § 4, 172–73.

<sup>14</sup> *Ibid.*, VII, § 10, 180.

<sup>15</sup> *Ibid.*, I, § 9–10, 22–25.

<sup>16</sup> Cicero, *Marcus Tullius Ciceroes Thre Bokes of Duties to Marcus his Sonne, Turned out of Latine into English*, by Nicholas Grimalde (London, 1556), fols, 148r–149r.

<sup>17</sup> *Ibid.*, fol. 9v.

The question of an agrarian law, or *lex agraria*, brought these differences sharply into focus.<sup>18</sup> These laws, most famously championed by the ill-fated brothers Tiberius (d. 133 BCE) and Gaius (d. 121 BCE) Gracchus during their respective tribunates, proposed a series of redistributive measures concerning Rome's *ager publicus*. These were ostensibly public lands that had come to the Roman republic through wars of conquest that were then distributed among the citizens of Rome for their use, in exchange for a yearly tithe paid to the republic.<sup>19</sup> However, over the course of the republic's history, this process of redistribution had not been particularly equitable, and these lands became increasingly concentrated in the hands of a select group of patricians who "acquired hegemony over the uncultivated *ager publicus* by means of fraud and violence," finally neglecting to pay the required tithe.<sup>20</sup> In the chaotic social conditions prevailing in Rome after the close of the third and final Punic War (149–146 BCE), the disposition of these lands became a major political issue when "popular" reformers like the Gracchi sought a more equitable distribution of public lands as part of a program aiming to restore the more equitable agrarian foundation of the early republic. The idea of an agrarian law was nothing new, having first been proposed (and rejected) in 486 BCE under the consulship of Spurius Cassius Vicellinus, and while the Gracchi were neither the first nor the last to propose such measures, their proposals for an agrarian law were perhaps the most controversial.<sup>21</sup> Although lands designated *ager publicus* remained technically public property, by the time of the proposed Gracchan reforms of the second century BCE, much of these lands had been in private hands for generations, and the prescription of time had given them "the aura of private property."<sup>22</sup>

Unsurprisingly, these proposed laws aroused strong opposition. The most outspoken critic of the agrarian law in the later Roman republic was unquestionably Cicero, whose treatise *De Officiis* Nelson has characterized as "perhaps the central text of the neo-Roman tradition."<sup>23</sup> Widely available in a series of English translations from the time of the Reformation

<sup>18</sup> Hans Boren, "Tiberius Gracchus: The Opposition View," *American Journal of Philology* 82 (1961): 358–69; Ernst Badian, "From the Gracchi to Sulla, 1940–1959," *Historia* 11 (1962): 197–245.

<sup>19</sup> Ronald T. Ridley, "*Leges Agrariae*: Myths Ancient and Modern," *Classical Philology* 95 (2000): 459–67.

<sup>20</sup> Nelson, *Greek Tradition*, 52.

<sup>21</sup> *Ibid.*, 52–53.

<sup>22</sup> *Ibid.*, 52.

<sup>23</sup> Nelson, *Greek Tradition*, 58. See further Quentin Skinner, *Liberty before Liberalism* (Cambridge: Cambridge University Press, 1998); Skinner, "A Third Concept of Liberty," *Proceedings of the British Academy* 117 (2002): 237–68; Skinner, "Classical Liberty and the Coming of the English Civil War," in *Republicanism: A Shared European Heritage*,

onwards, this work occupied a central place in the English grammar school curriculum. Cicero's position was that although by nature all property was originally held in common, private property acquired its character as the rightful possession of particular individuals through three means: "aūcient possessiō, as of theirs, who in old time cam into waste groūd̄s; or by victorie, as of theirs, who got thinges in warre: or by lawe, couenant, condition, or lotte."<sup>24</sup> Landed property became private under the law through the prescription of time, conquest, or some form of legal conveyance. The ramifications of this view for any proposed agrarian law were decidedly negative: because the *ager publicus* had been in the hands of certain individuals for such long periods of time—generations and even centuries—to arbitrarily dispossess those individuals was to deny them their right to what was now justly theirs by the prescription of time. Justice was the "ladie, and quene" of all virtues in Cicero's hierarchy of cardinal virtues, and it guaranteed the individual the continued enjoyment of what was his by right [*iūs*].<sup>25</sup>

For Cicero the proposed redistribution of property was inimical to principles of justice because it defeated the very purpose for which cities and commonwealths had first been established. According to Nicholas Grimald's 1556 "Englised" edition of *De Officiis*, "cōmōnwelths, & countries ar ordeined to this ende speciallie, that men may kepe their owne. For although mē assembled together, nature beeing guide: yet they sought the defenses of cities for hope of safekeeping of their goodes."<sup>26</sup> It was the civic responsibility "of him, who shall govern the commonweale: that euerieman kepe his owne; and that ther be no impaying of priuate mēns goods, for cōmon charges."<sup>27</sup> In this view, without respect for the sanctity of private property, there could be no justice in the commonwealth, and civil government would inevitably degenerate into tyranny. Cicero warned against populist demagogues [*populares*] like the Gracchi, and later Caesar, who had proposed agrarian laws to appease the populace, as potential tyrants whose actions contravened fundamental principles of equity:

But whoso will be pēplepleasers: and for that cause, do either  
 attempt the mater of landes, that the owners be driuē from their

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ed. Martin van Gelderen and Quentin Skinner, vol. 2, *The Values of Republicanism in Early Modern Europe* (Cambridge: Cambridge University Press, 2002), 9–28.

<sup>24</sup> Cicero, *Three Bokes*, fol. 9r.

<sup>25</sup> *Ibid.*, fol. 119v.

<sup>26</sup> *Ibid.*, fol. 103r.

<sup>27</sup> *Ibid.*, fol. 103r.

holdes: orels do thinke meete that that loned money bee remitted to the detters: they shake the foundations of the commonweale: first they take awaie cōcorde: which can not bee, when money is pulled frō sōme, & forgiuē to other sōme: next they bānish equitie: which is hollie rooted oute: if it bee not lawfull for euerie man to haue his owne.<sup>28</sup>

While the Gracchi and Sulla hardly earned praise from Cicero, the archvillain in *De Officiis* was Caesar, who had pursued similar “people-pleasing” policies during his initial consulship (59 BCE). Caesar’s “popular” policies had undermined the very foundation of the Roman commonwealth, advancing a redistributive agenda contrary to fundamental principles of justice. According to Thomas North’s 1579 translation of Plutarch’s *Liues*, Caesar, upon entering office, “beganne to put foorth lawes meeter for a seditious Tribune of the people, than for a Consull: bicause by them he preferred the diuision of landes, and distributing of corne to euerie citizen, Gratis, to please them withall.”<sup>29</sup> Caesar secured the passage of his proposed laws over the objections of the Senate, with the support of the other Triumvirs, Crassus and Pompey, the latter who, after marrying Caesar’s daughter Julia, “by open force authorised the lawes which *Caesar* had made in the behalfe of the people.”<sup>30</sup> The tyrannical pursuit of these “popular” policies forced the redistribution of wealth, violating the rights of citizens to the lawful enjoyment of their lands and goods. For Cicero, Caesar’s assassination was a just act of tyrannicide carried out for the preservation of the republic.

Nelson has suggested that this “Roman” view of justice was broadly hegemonic in late Tudor and early Stuart England, particularly in republican circles. Given the centrality of Cicero’s works to the grammar school curriculum, and their increasing availability in the vernacular, this view remains highly persuasive. However, the demands of the English colonial project in Ireland presented a very different set of circumstances that were much more amenable to the idea of redistribution. For example, one problem confronting Davies and his contemporaries was that the native Irish

<sup>28</sup> Ibid., fols. 104v-105r.

<sup>29</sup> Plutarch, *The Liues of the Noble Grecians and Romanes, Compared Together by that Graue Learned philosopher and Historiographer, Plutarke of Chaeronea: Translated out of Greeke into French by Iames Amyot, Abbot of Bellozane, Bishop of Auxerre, One of the Kings Priuy Counsel, and Great Amner of Fraunce, and out of French into Englishe, by Thomas North* (London, 1579), 769, sig. TTT1r.

<sup>30</sup> Ibid.

enjoyed a prescriptive right over their lands according to tanistry, their own indigenous, customary form of landholding in which land descended to the “most worthy” of the clan or “tanist,” rather than the first-born male heir.<sup>31</sup> Furthermore, as Steven G. Ellis has noted, under Gaelic law, “uninterrupted possession of land over a long period conferred ownership.”<sup>32</sup> It is unsurprising, therefore, that in legitimating the Jacobean plantation of Ireland Davies largely rejected the “Roman” view of justice and with it the Ciceronian criterion of “ancient possession.” The validity of a custom as positive law for Davies rested less on its continuance from “time out of mind” than on its rationality. In the *Case of Tanistry* (1608) he made this position clear, arguing that in spite of its long usage in Ireland, tanistry was invalid because

a custom which is contrary to the publick good, which is the scope and general end of all laws [*salus populi suprema lex*] or injurious and prejudicial to the multitude, and beneficial only to some particular person, is repugnant to the law of reason, which above all positive laws, and therefore cannot have a reasonableness or lawfull commencement, but is void *ab initio*, and no prescription of time can make it good.<sup>33</sup>

In asserting the English law’s superiority to native Irish landholding customs, Davies’s jurisprudence, unlike that of Coke, emphasized the presumptive rationality of the common law over its immemoriality.<sup>34</sup> The problem with tanistry, wrote Davies in September 1610 to Robert Cecil, Earl of Salisbury, was that “the Chieffy never descended to the eldest son of the Chieftain but the strongest of the sept,” and as a result the tenants “neither had . . . any certain estate in their tenancies, though they seemed to run in course of Gavelkind, for the Chief of the sept, once in two or three years shuffled and changed their possessions, by making a new partition or

<sup>31</sup> Pawlisch, *Sir John Davies*, 60–61.

<sup>32</sup> Steven G. Ellis, *Ireland in the Age of the Tudors, 1447–1603: English Expansion and the End of Gaelic Rule* (Harlow: Longman, 1998), 124.

<sup>33</sup> Sir John Davies, *A Report of Cases and Matters in Law Received and Abridged in the King's Courts in Ireland* (Dublin, 1762), 89.

<sup>34</sup> Glenn Burgess, *The Politics of the Ancient Constitution: An Introduction to English Political Thought, 1603–1642* (Basingstoke: Macmillan, 1992), chap. 1; J. G. A. Pocock, *The Ancient Constitution and the Feudal Law: A Study in English Historical Thought in the Seventeenth Century*, 2nd ed. (Cambridge: Cambridge University Press, 1987), chaps. 2–3; Orr, “From a View to a Discovery,” 404–5; Orr, *Treason and the State: Law, Politics, and Ideology in the English Civil War* (Cambridge: Cambridge University Press 2002), 144–45.

division amongst them, wherein the bastards had always their portions as well as the legitimate.”<sup>35</sup> The English custom of primogeniture was clearly superior to the Irish customs of tanistry and gavelkind because it provided certainty of succession through the eldest legitimate male heir; this security of title would encourage the “mere” Irish to improve their lands rather than leave them waste.<sup>36</sup> In Davies’s estimation no prescription of time could give a custom the force of law if the custom was “repugnant” to reason at its inception.

For Davies, the English victory in the Nine Years’ War and the subsequent Flight of the Earls (1607) represented an opportunity to correct the errors of previous plantations, and to consolidate more fully royal sovereignty over Ireland. However, in spite of his call for the consolidation of the rights and marks of sovereignty in Ireland, and his use of Roman civil law doctrines of conquest and consent, his advocacy of an agrarian law for Ireland suggests that the label “anti-Aristotelian” is not entirely satisfactory. Rather than rejecting the redistribution of lands—as one might expect from a common lawyer of the period—Davies embraced the idea of an agrarian law for Ireland as necessary for the success not only of the Ulster Plantation, but also that of all future plantation efforts in Ireland. While Pawlisch has stressed Davies’s engagement with Roman and civil law sources and authorities, he has also noted the selectivity with which Davies incorporated these into his imperial jurisprudence.<sup>37</sup> Davies combined Roman civil law traditions with both the traditions of the English common law and a distributive conception of justice that departed significantly from the neo-Roman tradition. This view of justice was hardly “anti-Aristotelian” but instead consistent with a more communitarian “Greek tradition” of thought, and with the example of the ancient Israelites and their divinely ordained, “equal” commonwealth in the land of Canaan.

### REDISTRIBUTION AND THE NEW CANAAN

There is significant evidence that Davies’s views on the need for an equitable distribution of land on any future Irish plantation were neither completely atypical for the time nor unprecedented. The former Queen’s

<sup>35</sup> C. W. Russell and John P. Prendergast, eds., *Calendar of State Papers relating to Ireland of the Reign of James I, 1608–10* (London: Longman, 1874), 498 (hereafter cited as *CSPI*).

<sup>36</sup> Davies, *Discovery*, 164–65.

<sup>37</sup> Pawlisch, *Sir John Davies*, chap. 9; Pawlisch, “Sir John Davies, the Ancient Constitution, and the Civil Law,” *Historical Journal* 23 (1980): 689–702.

Attorney for Munster, barrister, and planter Richard Beacon, in his *Solon His Follie, or a Politique Discourse touching the Reformation of Commonweales conquered, declined, or corrupted* (1594), was also concerned with the need to create a more equitable agrarian foundation for the Irish commonwealth. Writing on the eve of the Nine Years' War, Beacon made explicit, positive reference to North's *Plutarch*, and in particular to the actions of Caesar, Pompey, and Crassus in their forced implementation of an agrarian law, commending the laws made on the people's behalf as "profitable" to the "commonweale."<sup>38</sup> In his "Certain Considerations Touching the Plantation in Ireland" (1606), Sir Francis Bacon, who along with Davies played a prominent role in planning the Ulster Plantation, advised the king that

considering the large territories which are to be planted there, it is not unlike your majesty will think of raising some nobility there; which, if it be done merely upon new titles of dignity, having no manner or reference to the old; and if it be done without putting too many portions in one hand: and, lastly, if it be done without any great franchises or commands I do not see any peril can ensue thereof.<sup>39</sup>

Bacon was clearly concerned to prevent the emergence of "over-mighty subjects" in Ireland who might rival the king's authority after the fashion of a Kildare or Tyrone. Bacon further warned the king against the granting of great liberties and franchises to the nobility, particularly in the form of "counties palatinate, or the like which it seemeth hath been the error of the ancient donations and plantations in that country."<sup>40</sup> Similarly, Davies in the *Discovery* lamented the proliferation of palatinate jurisdictions in Ireland—as many as eight at one point in time—for both derogating from royal sovereignty and diverting valuable revenue away from the crown and its courts at Dublin.<sup>41</sup> While Markku Peltonen has characterized both Beacon's and Bacon's political thinking as "classical republican," their views on the reformation of the Irish polity, like those of Davies, did not suggest

<sup>38</sup> Richard Beacon, *Solon His Follie, or a Politique Discourse touching the Reformation of Commonweales conquered, declined, or corrupted* (Oxford, 1594), 9–11, sig. B1r–B2r.

<sup>39</sup> Sir Francis Bacon, "Certain Considerations Touching the Plantation in Ireland Presented to His Majesty, 1606," in *The Works of Francis Bacon, Lord Chancellor of England: A New Edition. With a Life of the Author*, ed. Basil Montagu, 3 vols. (Philadelphia: Hart, 1850), 2:185.

<sup>40</sup> *Ibid.*

<sup>41</sup> Davies, *Discovery*, 147–49.

any “neo-Roman” hostility towards the redistribution of lands, but instead a measured approbation.<sup>42</sup>

Davies blamed the shortcomings of all previous plantation efforts in Ireland on the defects of “civil policy.” The first and foremost of these was the failure of the English monarchs to communicate fully the laws of England to the “mere” Irish. For Davies, the English common law was a potent agent of cultural change, and the key to raising the native Irish from their current state of barbarity was the supplanting of their existing customs of Brehon law and tanistry with the superior, more rational English customs of common law and primogeniture. Davies argued that the transformative powers of the English law had been severely obstructed as a result of another underlying defect of civil policy in Ireland: the maldistribution of landed property in all previous plantation efforts since the time of Henry II. The concentration of landed property in the hands of a few powerful magnates in the wake of the Norman conquest of Ireland had divided Ireland into a series of “petty kingdoms,” instead of a single civilized, unitary commonwealth after the example of England.<sup>43</sup> During the previous four centuries the great old English magnates of Ireland had assiduously and successfully obstructed any attempts to bring the native inhabitants of Ireland under the rule of English law, resulting in an “imperfect conquest.” This state of affairs prevailed until the English victory in the Nine Years’ War, the accession of James VI of Scotland to the English throne (1603), and the corrective redistribution of lands and estates undertaken in conjunction with the Ulster Plantation (1608–10).

Davies’s analysis of Irish affairs was sovereignty-centered: the English failure had been the failure to consolidate the “true marks” of sovereignty

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<sup>42</sup> Markku Peltonen, *Classical Humanism and Republicanism in English Political Thought, 1570–1640* (Cambridge: Cambridge University Press, 1995), chap. 4; Peltonen, “Politics and Science: Francis Bacon on the True Greatness of States,” *Historical Journal* 35 (1992): 279–305; Peltonen, “Bacon’s Political Philosophy,” in *The Cambridge Companion to Bacon*, ed. Markku Peltonen (Cambridge: Cambridge University Press, 1996), esp. 299–308; Peltonen, “Classical Republicanism in Tudor England: The Case of Richard Beacon’s *Solon His Follie*,” *History of Political Thought* 15 (1994): 469–503. See further Orr, “Inventing the British Republic”; Vincent Carey, “The Irish Face of Machiavelli: Richard Beacon’s *Solon His Follie* and Republican Ideology in the Conquest of Ireland,” in *Political Ideology in Ireland, 1541–1641*, ed. Hiram Morgan (Dublin: Four Courts Press, 1999), 83–109; Sydney Anglo, “A Machiavellian Solution to the Irish Problem: Richard Beacon’s *Solon His Follie* (1594),” in *England and the Continental Renaissance*, ed. Peter Mack and Edward Chaney (Woodbridge: Boydell, 1990), 153–64; Willy Maley, “‘Another Britain’? Bacon’s *Certain Considerations touching the Plantation in Ireland* (1609),” *Prose Studies* 18 (1995): 1–18.

<sup>43</sup> Davies, *Discovery*, 150.

into the hands of a single governing authority.<sup>44</sup> In this analysis he drew heavily on the writings of the French jurist and theorist of sovereignty Jean Bodin, leading one recent commentator to characterize the *Discovery* as “anti-Aristotelian.” Indeed, there are undoubtedly significant “anti-Aristotelian” elements in Davies’s proposed program of reform, particularly his rejection of the Aristotelian notion of a “mixed” polity. In a sovereignty-centered, Bodinian scheme like that which Davies adopted in his analysis of Irish affairs, there were only three forms of state: monarchical, aristocratic, or popular; there were no “corrupt” forms of these types of state, and a “mixed” state was not possible.<sup>45</sup> Davies argued for the necessity of consolidating the “true marks” of sovereignty, particularly the power to “give law” and the power of war and peace, as necessary for a more “perfect” conquest of Ireland. This, however, did not imply the introduction of a tyrannical or arbitrary government over the king’s subjects in that realm. For Davies, Ireland was a monarchical state in which the king gave law to his subjects there, not as a conquering despot but as a “royal monarch” governing his Irish subjects “by a just and positive law.”<sup>46</sup>

As he was a common lawyer concerned primarily with the relationship of the king’s subjects to landed property, one might expect Davies to have expressed marked hostility towards the idea of an agrarian law. However, while his Bodinian view of sovereignty and his rejection of the idea of a mixed polity might suggest an “anti-Aristotelian” bias, his understanding of the agrarian law’s essential role in the reformation of the Irish commonwealth suggests a very different line of interpretation. As previously mentioned, Davies blamed the failure of previous plantation attempts prior to 1603 on defects of “civil policy.” These defects had had two principal sources, the one leading from the other. The first and most significant had been the English failure to communicate their laws more fully to the indigenous population, much as the Romans had done to their subject peoples.<sup>47</sup> For Davies, the common law itself was an agent of cultural change, and the medieval failure to impose it fully on the “mere” Irish meant that they had continued in the practice of their barbarous laws and customs. The second source of this failure lay in Ireland’s medieval political economy as Davies

<sup>44</sup> *Ibid.*, 76–77; Orr, “From a *View* to a *Discovery*,” 403; Jean Bodin, *Six Bookes of a Commonweale*, ed. Kenneth D. McRae, trans. Richard Knolles (London, 1606; repr., Cambridge, Mass.: Harvard University Press, 1962), bk. I, chap. 10, 159–63, sig. P2r-P3v (irregular pagination).

<sup>45</sup> Bodin, *Six Bookes*, bk. I, chap. 8; Julian H. Franklin, *Jean Bodin and the Rise of Absolutist Theory* (Cambridge: Cambridge University Press, 1973).

<sup>46</sup> Davies, *Report of Cases*, 111.

<sup>47</sup> Davies, *Discovery*, 140.

understood it, and in the overconcentration of lands in the hands of only a handful of Anglo-Norman adventurers:

The next error in the civil policy which hindered the perfection of the conquest of Ireland did consist in the distribution of the lands and possessions which were won and conquered from the Irish. For the scopes of lands which were granted to the first adventurers were too large, and the liberties and royalties which they obtained therein were too great for subjects, though it stood with reason that they should be rewarded liberally out of the fruits of their own labors, since they did *militare propriis stipendiis* and received no pay from the Crown of England.<sup>48</sup>

According to Davies, Henry II's initial grants to the Norman adventurers who "conquered" Ireland had been so large that "all Ireland [was] cantonized among ten persons of the English nation; and though they had not gained the possession of one-third part of the whole kingdom, yet in title they were owners and lords of all, so as nothing was left to be granted to the natives."<sup>49</sup> He was particularly critical of the Anglo-Norman Earls of Kildare and Ormond who, in abrogation of the sovereign power, "presumed to make war and peace without direction from the state."<sup>50</sup> These great magnates had, during the course of the thirteenth and fourteenth centuries, vociferously defended their claims to title over their respective portions of the Irish commonwealth, obstructing any attempt to bring the "mere" Irish under the rule of English law and insisting on the continuing legal distinction between "English subjects" and "Irish enemies":

Assuredly, by these grants of whole provinces and petty kingdoms those few English lords pretended to be proprietors of all the land, so as there was no possibility left of settling the natives in their possessions, and by consequence the conquest became impossible without the utter extirpation of all the Irish, which these English lords were not able to do, nor perhaps willing if they had been able. Notwithstanding, because they did still hope to become lords of those lands which were possessed by the Irish, whereunto they pretended title by their large grants, and because they did fear that

<sup>48</sup> Ibid., 144.

<sup>49</sup> Ibid., 146.

<sup>50</sup> Ibid., 83, 150.

if the Irish were received into the king's protection and made liegemen and free subjects, the state of England would establish them in their possessions by grants from the Crown, reduce their countries into counties, ennoble some of them, and enfranchise all and make them amenable to the law, which would have abridged and cut off a great part of that greatness which they had promised unto themselves, they persuaded the king of England that it was unfit to communicate the laws of England unto them; that it was the best policy to hold them as aliens and enemies, and to prosecute them with a continual war.<sup>51</sup>

Henry VIII's raising of Ireland from the status of a lordship of the English crown to that of a kingdom in its own right in 1541 had theoretically marked the end of legal distinctions between "English subjects" and "Irish enemies."<sup>52</sup> However, this legislative measure enfranchising the Irish as subjects of the crown fell short, in Davies's view, because of continuing errors of civil policy that had left the concentration of landed property in the hands of a few great magnates. Furthermore, Davies saw these errors of maldistribution as having persisted in later plantations, most recently the Munster plantation of the 1580s, "imperfect in many points."<sup>53</sup> In contrast, he praised the recently established plantation of Ulster, "the most rude and unreformed part of Ireland, and the seat and nest of the last great rebellion," for having corrected the errors of all previous plantations.<sup>54</sup> The Ulster plantation had been for Davies divinely instituted through God's lieutenant on earth, King James, for making a "perfect conquest" that would ultimately bring peace and prosperity to the Irish commonwealth:

For as the disposing of those lands did not happen without the special providence and finger of God, which did cast out those wicked and ungrateful traitors, who were the only enemies of the reformation in Ireland, so the distribution and plantation thereof had been projected and prosecuted by the special direction and care of the king himself; wherein His Majesty corrected the errors before spoken of committed by King Henry II and King John in distributing and planting the first conquered lands. For, although

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<sup>51</sup> *Ibid.*, 150.

<sup>52</sup> Brendan Bradshaw, *The Irish Constitutional Revolution of the Sixteenth Century* (Cambridge: Cambridge University Press, 1979).

<sup>53</sup> Davies, *Discovery*, 210; Brink, "Sir John Davies," 101.

<sup>54</sup> Davies, *Discovery*, 221.

there were six whole shires to be disposed, His Majesty gave not an entire country or county to any particular person; much less did he grant *jura regalia* or any extraordinary liberties. For the best British undertaker had but a proportion of 3,000 acres for himself, with power to create a manor and hold a court-baron, albeit many of these undertakers were as great birth and quality as the best adventurers in the first conquest.<sup>55</sup>

With the implementation of these “equal” reforms, Davies concluded, “The strings of this Irish harp, which the civil magistrate doth finger, are all in tune (for I omit to speak of the state ecclesiastical) and make a good harmony in this commonweal.”<sup>56</sup> Ireland would “hereafter be as fruitful as the land of Canaan.”<sup>57</sup> Davies then directly quoted the description of the land of Canaan from Deuteronomy 8:7–9:

7. For the Lord thy God bringeth thee into a good land, a land of brooks of water, of fountains and depths that spring out of valleys and hills;
8. A land of wheat, and barley, and vines, and fig trees, and pomegranates; a land of oil olive and honey;
9. A land wherein thou shalt eat bread without scarceness, thou shalt not lack any thing in it. <sup>58</sup>

Davies’s explicit comparison of Ireland to the land of Canaan is highly significant, and its implications bear further examination. A perfect conquest also necessitated the erection of a perfect commonwealth, and for Davies as for Harrington, what better example could there be than the divinely ordained, “equal” commonwealth of the ancient Israelites? The land of Canaan was, after all, the “promised” land given to God’s chosen people in the Old Testament, and, as Nelson has emphasized, according to Leviticus 25:23–24 the land would be held directly from God and subject to “release” every seven years at the time of the jubilee—an occasion that would also see the remission of debts.<sup>59</sup> The method of division between

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<sup>55</sup> Davies, *Discovery*, 221–22; *Conditions to be Observed by the Brittish Vndertakers of the Escheated Lands in Vlster* (London, 1610), 1–2, sig. A2r–v.

<sup>56</sup> Davies, *Discovery*, 223.

<sup>57</sup> Davies, *Discovery*, 223; Flanagan, “Anatomy of Jacobean Ireland,” 169–71.

<sup>58</sup> Deut. 8:7–9 (King James Version; hereafter cited as *KJV*); cited in Davies, *Discovery*, 223–24.

<sup>59</sup> Nelson, *Hebrew Republic*, 68.

the Israelites would be by lot, with the aim of creating an “equal” agrarian settlement.<sup>60</sup> In Numbers 33: 51–56, God instructed Moses to lead the Israelites across the Jordan, into the promised land, driving out the existing inhabitants, and then upon settlement to divide the land by lot between the tribes of Israel:

51. Speak unto the children of Israel, and say unto them, When ye are passed over Jordan into the land of Canaan;
52. Then ye shall drive out all the inhabitants of the land from before you, and destroy all their pictures, and destroy all their molten images, and quite pluck down all their high places:
53. And ye shall dispossess the inhabitants of the land, and dwell therein: for I have given you the land to possess it.
54. And ye shall divide the land by lot for an inheritance among your families: and to the more ye shall give the more inheritance, and to the fewer ye shall give the less inheritance: every man's inheritance shall be in the place where his lot falleth; according to the tribes of your fathers ye shall inherit.
55. But if ye will not drive out the inhabitants of the land from before you; then it shall come to pass, that those which ye let remain of them shall be pricks in your eyes, and thorns in your sides, and shall vex you in the land wherein ye dwell.
56. Moreover it shall come to pass that I shall do unto you, as I thought to do unto them.<sup>61</sup>

In Numbers 34: 13–15, Moses dutifully carried out God's commands, instructing the Israelites according to God's will:

13. And Moses commanded the children of Israel, saying, This is the land which ye shall inherit by lot, which the Lord commanded me to give unto the nine tribes, and to the half tribe:
14. For the tribe of the children of Reuben according to the house of their fathers, and the tribe of the children of Gad according to the house of their fathers, have received their inheritance; and half the tribe of Manas'seh have received their inheritance:

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<sup>60</sup> *Ibid.*, 66–67.

<sup>61</sup> Num. 33:51–56 (*KJV*).

15. The two tribes and the half tribe have received their inheritance on this side Jordan near Jericho eastward, toward the sunrising.<sup>62</sup>

Unlike Spenser, who sought the complete destruction of Anglo-Norman civilization in Ireland, returning the commonwealth to a point of first institution, Davies was more concerned with the gradual reformation of an existing commonwealth, repairing past defects of civil policy.<sup>63</sup> While he did not propose wiping the slate clean, neither did he completely eschew the use of violence. As Pawlisch has observed, “English sovereignty had behind it the ultimate sanction of force, and the maintenance of an army in Ireland was indispensable in ruling the country as a conquered nation.”<sup>64</sup> Nevertheless, operating under a much softer set of ethnological assumptions than Spenser, Davies envisioned the common law itself as a transformative agent that would make the native Irish more amenable to the adoption of English manners, customs, and language. The equitable redistribution of lands was an essential step in this process of reformation, creating a class of freeholders drawn not only from “British” colonists but from those native Irish “found fit to be made freeholders.”<sup>65</sup> These freeholders would enable the extension of English practices of local government to Ireland, serving on juries and holding local offices when required.<sup>66</sup> For Davies, the solution to Ireland’s problems lay not with an extreme course of military-judicial violence but with the creation of an equal agrarian base, as well as with the culturally transformative potentials of the English law.

Davies’s ideal Irish commonwealth, however, was not a mixed state after the fashion of *Oceana*, but clearly a monarchical one in which the monarch represented the sole law-giving power in the realm. In this context God’s chosen people were the “British” in Ulster, who under the direction of their divinely-anointed sovereign would now divide the land equitably between themselves, perfecting the conquest of the “new Canaan,” with King James, as God’s lieutenant and vice-regent on earth, playing the part

<sup>62</sup> *Ibid.*, 34:13–15.

<sup>63</sup> Canny, “Reviewing *A View*,” 260–262; Stephen Greenblatt, *Renaissance Self-Fashioning: From More to Shakespeare* (Chicago: University of Chicago Press, 1980), 186–88.

<sup>64</sup> Pawlisch, *Sir John Davies*, 5.

<sup>65</sup> *CSPI*, 497.

<sup>66</sup> Mark Goldie, “The Unacknowledged Republic: Officeholding in Early Modern England,” in *The Politics of the Excluded, c. 1500–1850*, ed. Tim Harris (Basingstoke: Palgrave Macmillan, 2001), 153–94; Phil Withington, *The Politics of Commonwealth: Freeman and Citizens in Early Modern England* (Cambridge: Cambridge University Press, 2005).

of Moses.<sup>67</sup> Under his direction, the errors of civil policy that had hampered previous plantations would be rectified, and all former Irish rebels would become subjects of the crown, coming under both the protection and the transformative powers of the English law. Rather than leading to the destruction and dissolution of the body politic, an agrarian law would facilitate the complete conquest and reformation of the Irish commonwealth where all previous efforts had failed.

## CONCLUSION

Davies's call for the redistribution of lands in the conquest of Ireland, and his support of an agrarian law for the "New Canaan," suggest two parallel conclusions. First of all, we must remember that Davies was, as Pawlisch has observed, in most things a king's man, who wrote strongly in support of the king's right to collect impositions without the consent of parliament and vigorously advanced the king's rights over the Irish customs farm at the expense of the old-English dominated civic corporations.<sup>68</sup> His death shortly after his appointment as chief justice of England in 1626 prohibits the full extent of his support for the royal prerogative from becoming clear, but had he lived another fifteen years it is very possible that most historians would be more than comfortable with the label "absolutist" in describing his views.<sup>69</sup> We can more safely assert that he combined a robust, unitary, Bodinian understanding of sovereignty with a distributive understanding of justice in which the sanctity of private property stood subordinate to the greater welfare of the commonwealth. This position was more in keeping with both the biblical model of the commonwealth of the ancient Israelites and a more communitarian Greek "commonwealth tradition" of political thought than with the conception of justice emanating from Cicero's *De Officiis* and the neo-Roman tradition.

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<sup>67</sup> James VI and I, *Political Writings*, ed. Johann P. Sommerville (Cambridge: Cambridge University Press, 1994), 65, 72, 147. See further Glenn Burgess, *Absolute Monarchy and the Stuart Constitution* (New Haven: Yale University Press, 1996), chap. 4; Burgess, *British Political Thought, 1500–1660: The Politics of the Post-Reformation* (Basingstoke: Palgrave Macmillan, 2009), 142–52; Johann P. Sommerville, *Royalists and Patriots: Politics and Ideology in England, 1603–1640*, 2nd ed. (London: Longman, 1999), chap. 1; Roger A. Mason, *Kingship and the Commonwealth: Political Thought in Renaissance and Reformation Scotland* (East Linton: Tuckwell, 1998), chap. 8.

<sup>68</sup> Sir John Davies, *The Question Concerning Impositions, Tonnage, Poundage, Prizage, Customs etc. Fully stated and argued from Reason, Law, and Policy* (London, 1656); Pawlisch, *Sir John Davies*, chap. 7.

<sup>69</sup> Sommerville, *Royalists and Patriots*, 152, 248–49.

Secondly, it provides reason to pause when considering Nelson's suggestion that only with the incorporation of more distributive precepts of justice derived from recent Talmudic scholarship into English republican thought did a generalized hostility towards redistribution begin to fade from early modern political discourse. The intellectual landmark in this development was the appearance of Harrington's revisionist account of Roman history during the Interregnum. In Harrington's interpretation it had been the failure to implement an effective and equitable agrarian law, rather than the civilly divisive attempts to impose it, that had caused the decline of the Roman republic, torn asunder by faction. Furthermore, while hostility to redistribution may have been greatest in republican circles, in Jacobean England convinced republicans were clearly in the minority.<sup>70</sup> This is not to deny that republican themes such as the relative desirability of an agrarian law had some relevance in Jacobean political discourse, but merely to assert that they operated firmly within the prevailing constitutional framework of monarchical government.<sup>71</sup> In this context distributive conceptions of justice like that suggested in Davies's *Discovery* were perfectly consistent with a more robust, unitary conception of sovereignty, in which the monarch held all of the "true marks" of sovereignty, ruling with the help of his subjects, but subject himself only to his maker. Redistribution may have been antithetical to the neo-Roman tradition, but the idea of an agrarian law worked very well in concert with ideas that we might fairly characterize as, in the words of Peter Lake, "not merely monarchical but incipiently absolutist."<sup>72</sup>

In the history of republican thought, the idea of an agrarian law remains most closely associated with the figure of Harrington. Where Milton regarded the agrarian law as "never successful, but the cause rather of sedition, save only where it began with first possession," the rebalancing of

<sup>70</sup> Eric Nelson, "Shakespeare and the Best State of the Commonwealth," in *Shakespeare and Early Modern Political Thought*, ed. David Armitage, Conal Condren, and Andrew Fitzmaurice (Cambridge: Cambridge University Press, 2009), 254–55.

<sup>71</sup> Peltonen, *Classical Humanism*; Peltonen, "Citizenship and Republicanism in Elizabethan England," in van Gelderen and Skinner, eds., *Republicanism*, vol. 1, *Republicanism and Constitutionalism in Early Modern Europe*, 85–106; Andrew Hadfield, *Shakespeare and Republicanism* (Cambridge: Cambridge University Press, 2005), chaps. 4–5; Hadfield, *Shakespeare and Renaissance Politics* (London: Thomson Learning, 2004), chap. 3; Hadfield, "Republicanism in Sixteenth- and Seventeenth-Century Britain," in *British Political Thought in History, Literature, and Theory, 1500–1800*, ed. David Armitage (Cambridge: Cambridge University Press, 2006), 111–28.

<sup>72</sup> Peter Lake, "Puritanism, (Monarchical) Republicanism, Monarchy; or John Whitgift, Antipuritanism, and the 'Invention' of Popularity," *Journal of Medieval and Early Modern History* 40 (2010): 469.

Oceana's "dominion" in landed property stood at the heart of Harrington's vision for an "equal" commonwealth.<sup>73</sup> While perhaps lacking the Harringtonian notion of balance, Davies saw the situation in Ireland in terms that were roughly analogous to those in which Harrington would later envision fifteenth-century England. This had been a period in which the aristocracy had overbalanced the commons, resulting in a weakening of the crown, the critical third component of the mixed constitution charged with the execution of the law. For Harrington, the "Neustrian" conquest of Oceana had critically upset the balance of Oceana's constitution, conferring too much "dominion" on the aristocracy and impoverishing the commons. This had led to the emergence of "over-mighty" subjects by the later fourteenth century, who subsequently competed for military preeminence at the expense of both the king and his people. The result had been the prolonged military conflagrations of the fifteenth century.<sup>74</sup> In this interpretation the weakness of the commons had gone hand in hand with the weakness of the crown. Conversely, Oceana's (i.e. Britain's) more recent civil wars had resulted from the commons's acquiring too much dominion, overbalancing the commonwealth's agrarian in the opposite direction, to the dishersion and weakening of the aristocracy. The actions of Panurgus (Henry VII), seeking to abate the powers of the nobility, and his son Coraunus (Henry VIII), in the seizing of church lands and redistributing them among the commons, had turned the balance of dominion too far in favor of the populace, critically weakening the nobility.<sup>75</sup> The weakness of the aristocracy left the monarch with no other recourse in the maintenance of his state than a standing army, the instrument of a tyrant.<sup>76</sup>

Harrington's political economy, his advocacy for the redistribution of lands, clearly had significant precursors.<sup>77</sup> These may be found not only in obvious sources such as the writings of Bacon, whose essay "Of the True Greatnesse of Kingdomes and Estates" he quoted with approval in the opening passages of *Oceana*, and the arguments of Sir John Fortescue, who

<sup>73</sup> John Milton, *The Readie and Easie Way to Establish a Free Commonwealth; and the Excellence Therof Compar'd with the Inconveniencies and Dangers of Readmitting Kingship in this Nation*, 2nd ed., in *The Prose of John Milton: Selected and Edited from the Original Texts with Introductions, Notes, and Translations*, ed. J. Max Patrick (New York: Doubleday, 1967), 541.

<sup>74</sup> James Harrington, *The Commonwealth of Oceana and A System of Politics*, ed. J. G. A. Pocock (Cambridge: Cambridge University Press, 1992), 31.

<sup>75</sup> *Ibid.*, 54–56.

<sup>76</sup> *Ibid.*, 56.

<sup>77</sup> Phil Withington, *Society in Early Modern England: The Vernacular Origins of Some Powerful Ideas* (Cambridge: Polity, 2010), 167.

lamented both the poverty of the crown and the destabilizing influence of “over-mighty subjects,” but also in the argument of Davies’s *Discovery*. This order of argument was more in keeping with both a “Greek commonwealth tradition” and with the biblical ideal of a divinely ordained, “equal” commonwealth in the land of Canaan than with the neo-Roman tradition emanating from Cicero.<sup>78</sup> The characterization of Davies’s *Discovery* as “anti-Aristotelian,” therefore, is not entirely satisfactory, given his approbation of an agrarian law in the plantation of Ireland. Davies’s argument in support of the Ulster Plantation combined a unitary, Bodinian conception of sovereignty, in which the monarch exercised all the marks of sovereignty, with a distributive conception of justice in which gross disparities in wealth and landed property represented a grave danger to the continued stability of the commonwealth. Where for Cicero and his English followers the implementation of an agrarian law led to the subversion of the very frame of the commonwealth, Davies saw the equitable distribution of lands as essential to the further reformation of Ireland. With the mistakes of previous plantations redressed, it would now be possible for King James, guided by divine providence, to extend fully the rule of the English common law to all corners of the Irish commonwealth. The common law would then work its transformative powers on the “mere” Irish, raising them to a state of civility, rescuing the “old English” from their degenerate condition, and remaking Ireland into a peaceable, civilized, monarchical state after the pattern of England.

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<sup>78</sup> Harrington, *Oceana*, 4; Sir Francis Bacon, *The Essayes or Counsels, Civill and Morall of Francis Lo. Vervlam, Viscont St. Alban* (1625), 174, sig. Z3v; Sir John Fortescue, *On the Laws and Governance of England*, ed. Shelley Lockwood (Cambridge: Cambridge University Press, 1997), 92–93, 100–103.

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