

Lord Chancellor Ellesmere and the Law of Nations
Kelly De Luca
kad91@columbia.edu
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It has often been observed that, for so important a figure in legal history, Sir Thomas Egerton, Lord Ellesmere published remarkably little during his lifetime and left few manuscript 'works' in the conventional sense of that term. Yet despite this lack of formal treatises upon which to draw, scholars have been able to piece together his views on a variety of topics based on those texts that have been published and, often more importantly, on surviving manuscript papers that include many informal notes that, while obviously never intended for publication, shed considerable light on the Lord Chancellor's processes of thought. This paper, which is part of a larger project on the intersection between national law and transnational legal problems in the late sixteenth and early seventeenth centuries, is an attempt to reconstruct Ellesmere's understanding and use of the law of nations.

This is, it is hoped, more than merely an antiquarian footnote to the study of Ellesmere. Lord Mansfield's dictum in *Triquet v. Bath* in 1764, which he repeated in similar language in *Heathfield v. Chilton* three years later, that there was 'no English writer of eminence, upon the subject',¹ is, of course, no longer accepted as an accurate assessment of early modern English scholarship concerning the law of nations. Yet English conceptions of the law of nations, English understandings of the relationship between it and municipal law, and the uses made by English courts of those ideas, remain largely neglected fields of historical inquiry. Moreover, most of the work that has been done on the law of nations in sixteenth- and seventeenth-century England has focused on the writings of civil law

practitioners who, indeed, engaged more frequently and more directly with such ideas than did their common law counterparts and who were, in some ways, part of a legal community that, like the law of nations, was understood in terms that transcended national boundaries. This paper examines what was argued or suggested about the law of nations by Ellesmere, who was educated and who practised in the common law tradition, but who was also interested in civilian ideas and texts, as a means of exploring questions about the intersection between the explicitly national common law and the notionally non-national *ius gentium*. I will argue that Ellesmere's understanding of the law of nations was informed by his views about the relationship between the common law and other legal systems more generally, and that he saw it through the lens of the jurisdictional conflicts of Jacobean England.

Ellesmere discussed the law of nations explicitly, or alluded to it in a fairly direct manner, in a number of contexts. The most obvious of these is in his published opinion concerning *Calvin's Case, or The Case of the Post-nati*, the 1608 decision that established that the King's Scottish subjects who were born after the regal union of 1603 were equally subjects in England and entitled to own property there.² The case had overtly transnational implications and the issues involved, which included the nature and sources of allegiance and the relationship between the several kingdoms of a single monarch, had been debated without a successful resolution in Parliament before they were left to the determination of the English judges. In the printed text of his judgement, Ellesmere explicitly observed that the law of nations was 'universal' and was part of the law of England.³ He also provided some indication of his views concerning the sources of its authority and the ways in which its content could be determined.

At first glance, Ellesmere's characterisation of the law of nations as 'universal' seems unremarkable. The *ius gentium* by its very name refers to a conceptual category of law having

force among all peoples or nations. Moreover, the interpretation of the law of nations as universally applicable was conventional. In the same case, Sir Christopher Yelverton referred to the law of nations and defined it as that which 'is observed alike in all nations'.⁴ Ellesmere himself applied this principle by looking to the practices of other places where multiple kingdoms were governed by a single monarch as a way of determining the content of the law of nations on that issue. This in itself is significant, as it shows that Ellesmere understood widespread customary behaviour to be probative in the determination of normative legal doctrine. The universal nature of the law of nations was, thus, closely tied both to its content and to the practical evidentiary problem of identifying that content. But some caveats are necessary with regard to this conventional understanding of the law of nations.

First, Ellesmere wrote at a moment of transition in scholarly understandings of the law of nations. Spanish jurists had already begun using the term '*ius inter gentes*' rather than, or in addition to, '*ius gentium*'; the great Dutch writer Hugo Grotius would shortly use the term '*ius inter civitates*'; and the English civilian Richard Zouche, who would later argue in favour of the designation '*ius inter gentes*' in his textbook on the subject, was embarking on his career.⁵ This linguistic development reflected a conceptual one: the law of nations was beginning to be conceived of as the law governing interactions among states – the law 'between' nations – in a way more closely analogous to modern international law than the older 'universal law' understanding of the law of nations (or, the law of *all* nations). In light of references in modern writings about Ellesmere to his 'humanist' interests and greater use of Continental and civilian sources than was typical of early modern common lawyers,⁶ it is noteworthy that he was not on the cutting edge of this particular intellectual trend, and that when he referred to the law of nations, he clearly meant the *ius gentium*.

As well, it is worth emphasising that when Ellesmere referred to the practice of other nations, he used such comparative examples as evidence of what the *ius gentium* was; that is, as a means of identifying its existing content. He did not argue that its authority depended on its widespread acceptance and application. That is, the *ius gentium* was universal in the sense that it was part of the domestic law of all or most nations, and that consonance could help in its interpretation. But it was not law *because* of that consonance. This was still a world in which the authority of the law of nations was not premised on nor defined by the consent of states.

A further caveat is that Ellesmere's definition of 'universal' seems to have been more narrow than a modern understanding of the term suggests. In manuscript notes preserved in the Huntington Library about the judicial appurtenances of sovereignty, Ellesmere referred to 'the fundamental laws of... the realms of Christian kingdoms and empires',⁷ by which he seems to have meant the law of nations. Such a construction of 'universal' to mean 'throughout Christendom' was certainly not unique in the early seventeenth century. In *Calvin's Case*, Sir Edward Coke famously observed that the protections of the law of nations did not extend to infidels, whom he defined as 'perpetual enemies' with whom the only possible form of interaction was a state of war, and argued that the normal legal consequences of conquest did not apply when the people conquered were pagan.⁸ Such views were widely held in pre-modern Europe and similar restrictions on the scope of the *ius gentium* were commonplace in mediaeval and early modern writings on the subject. But this more restricted view of the scope of the *ius gentium* was not universally held by the early seventeenth century. Gerard Malynes, for instance, thought that the law of trade, which he and others defined as a part of the law of nations more generally, applied equally 'to all persons of all nations, even to Turks, Jews, Barbarians, and Pagans',⁹ and the expanding

Levant trade was already forcing a revisitation of traditional understandings of the place of non-Christian peoples in English legal and political thought.¹⁰ So, again, Ellesmere's views, while conventional, were by no means inevitable.

Similarly, Ellesmere's observation that the law of nations was part of the law of England seems, at first, to be unproblematic. After all, if the *ius gentium* is defined as law in all countries, or in all Christian countries, then it seems obvious that it must be law in England. Yet, in *Calvin's Case*, Ellesmere thought it necessary explicitly to note that English law 'extends itself to the... law of nations',¹¹ and to emphasise that the question before the court was one specifically and exclusively of *English* law, even though more universal norms were considered relevant.¹² Such comments were largely a response to the earlier Parliamentary debates on the same issues as those before the court, in which various MPs had suggested looking *outside* of English law *to* the law of nations in order to answer questions on which English law was thought to be silent.¹³ Both Coke and Sir Francis Bacon had denied the necessity of looking outside of English law during those debates in Parliament.¹⁴ When the issue came to be determined judicially rather than legislatively, the judges did indeed look to the law of nations as had been suggested, but stressed that, in doing so, they were not considering foreign law, because English law contained within it the principles to which they referred and on which they relied.¹⁵ Ellesmere's comments, therefore, were not as much of a truism as they might appear, and represent one side of a contemporary debate about the nature and sources of legal authority in England.

This debate must be further contextualised within the larger early modern conflict about the relationship between the common law and the other legal regimes that existed in England. The role Ellesmere played in the conflict between the common law courts and the Chancery in the early seventeenth century has been studied extensively,¹⁶ but it is worth

reiterating here that Ellesmere explicitly argued in 1615 that the Chancery was the King's court and should not be treated as a 'foreign' jurisdiction.¹⁷ Similarly, in *The Earl of Oxford's Case*, Ellesmere noted that 'the law' included 'the law of God, the law of reason, and the law of the land' and that all three – essentially, the traditional tripartite division of divine, natural and human law – were equally authoritative in England. He did not adopt this position merely as response to the rhetoric and ideology of the heated debates of the 16-teens; he had used similar language in a 1598 letter that is preserved among the *State Papers*.¹⁸ His defence of the law of nations as English law in *Calvin's Case* can be seen, therefore, as part of a larger project of resisting the increasing tendency to associate the common law primarily or exclusively with Englishness.

It is clear from these explicit discussions of the law of nations that Ellesmere understood the term to signify fundamental legal doctrines having universal, or at least widespread, application, but not to be, as a consequence of this wider usage, something against which English law could be opposed in the way that a dichotomy could be seen to exist between English and foreign law.

Comments that Ellesmere made about analogous categories and issues further illuminate his views about the law of nations and its place within the English legal landscape. One such issue is that of jurisdictional divisions among courts. Since the law of nations was understood to be part of the law of England, more general discussions concerned with the negotiation of the relationships among the various parts of English law and the institutions by which they respectively were administered were relevant to the more specific question of the relationship between the law of nations and the rest of English law and, in particular, the common law.

Ellesmere did not defend only the Chancery against the encroachment of the common law; he opposed also the pattern of legal centralisation in general. In 1599 he complained that the exodus of gentlemen from the countryside to London and to the royal court was creating a lack of political and legal authority in the rest of the country,¹⁹ and Louis Knafla has called him a ‘champion of local interests’ for his interest in and defence of the non-London courts.²⁰ The conflicts that have received the most extensive examination by modern historians are the challenges to the jurisdiction of the Chancery and the ecclesiastical courts. But Ellesmere recognised that these disputes had implications for the other non-common law courts as well. He explicitly noted that such courts were also threatened by the expansionist tendencies of the common law. Ellesmere argued that challenging the jurisdiction of any court would bring into question the authority of all courts. He warned that the effects of raising such questions would ‘reach far and trench deep’.²¹

Of particular interest here is Ellesmere’s inclusion, among the courts whose jurisdiction he considered to be at risk, of the Admiralty court.²² The juridical authority of the Admiral over non-naval personnel was established to provide a venue for the trial of pirates; thus it had, from its origin, a close nexus with the law of nations under which piracy was a crime. Moreover, the court operated on the basis of procedures and doctrines that were understood as universally shared. It is clear from numerous manuscripts preserved in the Huntington Library that Ellesmere was very much aware of the transnational nature of the Admiralty’s jurisdiction and its role in the legal negotiation of commercial and political disputes that transcended national boundaries. His papers contain both accounts of proceedings in the Admiralty court and diplomatic correspondence concerned with questions of its jurisdiction.²³ Thus, Ellesmere’s views about the court’s authority can

contribute usefully to an understanding of his perception of the relationship between the common law and the law of nations.²⁴

Ellesmere observed that, through the more frequent use of prohibitions to constrain the exercise of its authority, and the common practice of falsely pleading in common law courts that foreign or maritime events had occurred in England, the Admiralty was deprived of business legitimately within its jurisdiction.²⁵ That is, Ellesmere thought that the common law courts were using more often their power to forbid other courts, such as the Admiralty, to hear a particular case on the grounds that it was outside their jurisdiction.²⁶ At the same time, he noted, the common law was itself exceeding its own formal jurisdictional boundaries by hearing cases arising outside of England by means of the simple expedient of pleadings that falsely alleged that the underlying events had occurred in London. Ellesmere called this practice ‘a novelty and a trick newly devised’, and characterised it as illegitimate.²⁷ This concern for the future of English maritime jurisdiction was by no means unique; the papers of Sir Julius Caesar and the records of the High Court of Admiralty are replete with similar protests about such derogation from the authority of that court.²⁸ Ellesmere’s comments are noteworthy, however, since they were made by a common lawyer with no personal interest in the preservation of the civilian Admiralty court. Moreover, the Lord Chancellor’s attention to the distinction between common law and maritime jurisdictions helps rebut the natural suggestion that his defence of the Chancery against the common law was entirely self-interested.

Significantly, Ellesmere did not merely point out that the jurisdiction of the Admiralty was being encroached upon; he argued that the notional integrity of the common law itself was threatened by this departure from its traditional and proper boundaries.²⁹ Ellesmere noted that the use of fictional geography to bring a matter before a common law

court violated the fundamental principle of common law jurisdiction, which required that a matter be tried in the county in which the underlying events occurred.³⁰

In a similar vein, he complained that the encroachment by the common law on the Chancery's jurisdiction would 'confound the distinct jurisdictions of common law and of equity.'³¹ His extensive writings about prohibitions and how such jurisdictional conflicts among English courts should be resolved reflect the same concerns. In a manuscript tract about prohibitions dating from around 1609, the Lord Chancellor challenged the authority of the Court of Common Pleas to issue prohibitions barring other courts from hearing particular cases, unless the issue in question were also pending before the Common Pleas itself.³² This was, perhaps, merely common sense: a court having literally no business in a suit ought not to prevent another court from hearing that case, as there is in such a situation no possibility of contradictory verdicts, which is the most compelling of the conventional justifications for the use of the writ. It had been argued, however, that when any court exceeded its jurisdiction, it thereby committed a contempt against the King and his laws by which jurisdictional boundaries were established. Under this view, the Common Pleas' issuance of prohibitions was not intended to protect its own interests, but, rather, served to punish such contempt and to defend the concept of jurisdictional divisions. Ellesmere dismissed this argument as being 'so absurd and so directly contrary to the true foundation and constitution of that Court, as never any Judge hath hitherto affirmed it'.³³ In essence, the Lord Chancellor pointed out that, by appointing itself as the enforcer of jurisdictional boundaries, the Common Pleas itself exceeded its own jurisdiction. This was, indeed, the position of the English judiciary when the issue was referred to the judges by the King early in 1610.³⁴

Ellesmere seems to have agreed, however, with the premise that jurisdictional divisions had meaning and ought to be enforced by someone, and on the grounds of an ideological commitment to those boundaries rather than merely as an exercise in professional rivalry. In some unpolished notes on the subject of prohibitions, also from around 1609,³⁵ the Lord Chancellor identified the Chancery as the more appropriate venue for the issuance of prohibitions, thereby claiming for his own court the responsibility for determining and enforcing the limits of other courts' authority. Ellesmere, apparently anticipating the charge that his assertions would seem as self-serving as those he decried in the Common Pleas, provided a number of justifications for assigning the responsibility for prohibitions to the Chancery. These included both historical practice and lower cost to the parties. Of greatest interest for present purposes is the claim that Masters in Chancery were better able to understand and decide the issues in question because they, unlike the personnel of the Common Pleas, were familiar with both the common and civil laws.³⁶ The reasonable conclusion to draw from this is that Ellesmere thought that it should fall to those best able to identify the implications of assigning specific legal matters to one or the other legal regime to make such assignments. The Lord Chancellor seems here to have realised that what was at stake was not merely the relative case loads of various courts and the corresponding fees of their personnel, but the negotiating of the practical and ideological place of the common law in a larger legal universe.

Tying all this together, it is clear that Ellesmere believed that, while the law of nations was part of English law, it – like equity, and like the law Christian – could not be conflated with the common law and ought to remain both conceptually and institutionally separate from it. In this, the noted affinity between the views of the 'humanist' Lord Chancellor and civilian writers is observable: Malynes argued that the law merchant, which

he understood as the primary means by which the law of nations was enforced in practice, ought to be applied by specialised mercantile tribunals rather than by the common law courts, and Zouche and John Godolphin would make similar claims in the mid-seventeenth century about the necessity for dedicated courts to determine matters related to the law of nations in its maritime incarnations.³⁷ These views are significant, as they demonstrate the survival into the seventeenth century of a commitment to the pluralistic legal regime that characterised pre-modern England, and Ellesmere's participation in the debate provides evidence of resistance to the hegemonic tendencies of the common law from within that tradition. For Ellesmere, the law of England was more than the common law, and it was important that the other substantive and procedural categories not be absorbed into the common law. Jurisdictional divisions mattered, for practical and ideological reasons, but not on the basis of greater or lesser degrees of authentic Englishness.

A second avenue of argument by analogy uses the conventional association between the law of nature and the law of nations to derive some indication of Ellesmere's views on the law of nations from his commentary about natural law. Ellesmere associated the authority of the Chancellor with the law of nature in a number of contexts;³⁸ moreover, the law of nature and the law of nations were related in early modern understandings, as is reflected in Ellesmere's own association of the two constructs in his opinion in *Calvin's Case*.³⁹ This association of the law of nature with both equity and the law of nations implies that they were understood by Ellesmere in ways that overlapped to some extent. While they are, of course, different in both nature and function, they are of at least a common family if not the same species.

Ellesmere's defence of Chancery jurisdiction against the common law in general and Sir Edward Coke in particular is well known. It is also clear that, while the personal conflict

between those two legal giants was important, there was more at stake than their respective egos. The clash was one of legal principle: the finality of legal decisions and the significance of *res judicata* as a legal doctrine. And it was one of jurisdictional hegemony: the extent to which the common law could establish itself as the pre-eminent, and possibly the only legitimate, English legal authority.⁴⁰ For this reason, it was also one with implications for the political and ideological mindset of the seventeenth century. Equity was said to be too closely associated with foreign law and not really as ‘English’ as was the common law. In short, the Chancery was construed in legal discourse in general as part of an transnational legal order if not precisely of the law nature or of nations.

In Ellesmere’s writings, this parallel is continued and the relationship between Chancery and transnational legal norms is examined in several ways. Most importantly, his discussion of the role of equity in English law contains an explicit discussion of its status as part of English law rather than as a foreign interloper. He distinguished the situation of an appeal being made to the Chancellor from a decision in a common law court from that captured by the fourteenth-century statutes of *praemunire* that made it an offence to resort to foreign justice in cases properly determinable in English courts.⁴¹ The mischief those statutes sought to avoid, he argued, was not disagreement with the common law, but rather the violation of English sovereignty by the exercise of legal authority within England or concerning English matters by foreign powers.⁴² Taking a case to Chancery rather than to a common law court, therefore, was not analogous to taking a case to Rome rather than to an English ecclesiastical court. It is significant here that Ellesmere thought that the subject’s ability to have recourse to the King’s courts for his legal grievances was fundamental to the bond between King and subject.⁴³ Similarly, Ellesmere believed that recusancy was a problem only for the potential for treason that Catholicism created through the maintenance

of a form of allegiance to a foreign power, and distinguished between those who resisted Anglicanism through simplicity or naïveté from those consciously and dangerously aligned to the papacy against the King.⁴⁴ Extrapolating from these positions, combined with what Ellesmere says more directly about the law of nations in *Calvin's Case*, it seems reasonable to conclude that, for Ellesmere, it was not the doctrinal content that made a law English rather than foreign, but the authority and institutions by which it was enforced. The application of universally-accepted legal principles was not problematic for the Lord Chancellor, as long as the application was being done by an English court.

To conclude, the printed and manuscript writings of Lord Chancellor Ellesmere provide considerable evidence of his views regarding the early modern law of nations. He understood it as a point of intersection between national and universal concerns, doctrines and values but, nonetheless, as much a part of English law and as much a part of English national identity as the common law. For Ellesmere, debates about the relationship between the law of nations and other English legal norms were not conflicts between domestic and foreign authority, but rather part of the larger question of how the various English jurisdictions fit together.

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- ¹ *Triquet v. Bath* (1764), 3 Burr. 1478; 97 ER 938; *Heathfield v. Chilton* (1767), 4 Burr. 2015; 98 ER 51.
- ² Lord Ellesmere [Sir Thomas Egerton], *The Speech of the Lord Chancellor... touching the Post-nati* (London, 1609).
- ³ Ellesmere, *The Speech of the Lord Chancellor... touching the Post-nati*, 32.
- ⁴ ‘Sir Christopher Yelverton’s Argument in the Exchequer Chamber in the Case of the Post Nati’, British Library, Hargrave MS 17, f. 218v; ‘Speech of Sir Christopher Yelverton as to whether Scotchmen are to be considered as aliens, in an assize between Robert Calvyn, plaintiff, and Richard Smith and Nicholas Smith, defendants, concerning a messuage in Shoreditch’, Huntington Library, Ellesmere MS 1869, f. 60v.
- ⁵ For instance, Francisco Vitoria, *De Indis et De Iure Belli Reflectiones* (1532), ed. Ernest Nys (Washington, 1917); Hugo Grotius, *De jure belli ac pacis* (1625), reproduction of 1646 edition (Washington, 1913), Prol., s. 1; Richard Zouche, *Iuris et Iudicii Faecialis, sive, Iuris Inter Gentes* (1650), ed. T. E. Holland (Washington, 1911).
- ⁶ For instance, L. A. Knafla, *Law and Politics in Jacobean England: The Tracts of Lord Chancellor Ellesmere* (Cambridge, 1977), 40.
- ⁷ Huntington Library, Ellesmere MS 1763.
- ⁸ *Calvin’s Case* (1608), 7 Co. Rep. 17a-b; 77 ER 397-8.
- ⁹ Gerard Malynes, *Consuetudo, vel, Lex Mercatoria, or, The Antient Law-Merchant...* (London, 1636), 130.
- ¹⁰ See, for instance, John Le Patourel, ‘The Legal Position and Functions of Consuls’ *American Journal of International Law* 26 (1932): 193-449; C. H. Alexandrowicz, *An Introduction to the History of the Law of Nations in the East Indies (16th, 17th and 18th Centuries)* (Oxford, 1967); Niels Steensgaard, ‘Consuls and nations in the Levant from 1570-1650’ *Scandinavian Economic History Review* 15 (1967): 13-55; S. A. Skilliter, *William Harborne and the Trade with Turkey 1578-1582: A documentary study of the first Anglo-Ottoman relations* (London, 1977); Eliyahu Ashto, *Studies on the Levant Trade in the Middle Ages* (London, 1978).
- ¹¹ Ellesmere, *The Speech of the Lord Chancellor... touching the Post-nati*, 32.
- ¹² Ellesmere, *The Speech of the Lord Chancellor... touching the Post-nati*, 68.
- ¹³ *Journal of the House of Commons*, Volume I, 28 Feb. 1607; British Library, Additional MS 48101.
- ¹⁴ The National Archives/Public Record Office, SP 14/26/64, SP 14/26/65.
- ¹⁵ ‘Yelverton’s Argument... in the Case of the Post Nati’, British Library, Hargrave MS 17, f. 212r; ‘Speech of Sir Christopher Yelverton...’, Huntington Library Ellesmere MS 1869; The National Archives/Public Record Office, SP 14/32/40; *Calvin’s Case* (1608), 7 Co. Rep. 4a; 77 ER 381.
- ¹⁶ See, for instance, J. P. Dawson, ‘Coke and Ellesmere disinterred: the Attack on the Chancery in 1616’, *Illinois Law Review* 36 (1941): 127-52; J. H. Baker, ‘The common lawyers and the Chancery’, *Irish Jurist* ns 4 (1969): 368-92; rpt. in *Law, Liberty and Parliament: selected essays on the writings of Sir Edward Coke*, ed. Allen D. Boyer (Indianapolis, 2004), 254-81; Knafla, *Law and Politics in Jacobean England*, 155-81.
- ¹⁷ ‘A Breviate or Direccion for the Kinges Learned Councell Collected by the Lord Chauncellor Ellesmere’, in Knafla, *Law and Politics in Jacobean England*, 330-1.
- ¹⁸ *Calendar of State Papers, Domestic*, V:89.
- ¹⁹ *Calendar of State Papers, Domestic*, V:347-8.
- ²⁰ Knafla, *Law and Politics in Jacobean England*, 146. See also Huntington Library, Ellesmere MSS 1756; 1762-3.
- ²¹ Huntington Library, Ellesmere MS 2019.
- ²² Huntington Library, Ellesmere MS 2019; Thomas Egerton, Lord Ellesmere, ‘The Lord Chancellor Egertons Observacions upon ye Lord Cookes Reportes’ (1615), printed in Knafla, *Law and Politics in Jacobean England*, 302, 306.
- ²³ Huntington Library, Ellesmere MSS 482, f. 227v; 1625-6; 1630; 1632-3; 1636-40; 1644-5.
- ²⁴ Ellesmere commented explicitly on the affinity of the common law and the law of nations in *Calvin’s Case*. Ellesmere, *The Speech of the Lord Chancellor... touching the Post-nati*, 32.
- ²⁵ Ellesmere, ‘Some Notes and Remembrances, Concerning Prohibitions, For Staying of Suites In the Ecclesiasticall Courts, And in the Courts of the Admiraltie’ (1611), printed in Knafla, *Law and Politics in Jacobean England*, 282-96.
- ²⁶ Ellesmere, ‘Memorialles for iudicature’ (c. 1609), printed in Knafla, *Law and Politics in Jacobean England*, 276-9; Ellesmere, ‘Notes... Concerning Prohibitions’, 290-1.
- ²⁷ Ellesmere, ‘Memorialles for iudicature’, 275; Ellesmere, ‘Notes Concerning Prohibitions’, 294.
- ²⁸ In the British Library and the National Archives/Public Record Office, respectively.
- ²⁹ Ellesmere, ‘Notes... Concerning Prohibitions’, 294.
- ³⁰ Ellesmere, ‘Notes... Concerning Prohibitions’, 294.

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- ³¹ Ellesmere, 'Memorialles for iudicature', 280-1.
- ³² Ellesmere, 'Some observacons Concerninge the grantinge of prohibicons in the Comon Placce', Huntington Library, Ellesmere MS 2011. Ellesmere similarly advocates such a definition of the Common Pleas' ability to issue prohibitions in 'Notes for Reformacon', Huntington Library, Ellesmere MS 766B.
- ³³ Ellesmere, 'Some observacons Concerninge... prohibicons...', Huntington Library, Ellesmere MS 2011, f. 1v.
- ³⁴ Letter from James Montague, the Bishop of Bath and Wells, to Ellesmere, Huntington Library, Ellesmere MS 2008; Letter from Thomas Walmsley to Ellesmere, Huntington Library, Ellesmere MS 2010.
- ³⁵ Huntington Library, Ellesmere MS 2015.
- ³⁶ Huntington Library, Ellesmere MS 2015, f. 2r.
- ³⁷ Malynes, *Consuetudo, vel, Lex Mercatoria*; Richard Zouche, *The Jurisdiction of the Admiralty of England asserted, against Sr. Edward Coke's Articuli Admiralitatis in XXII Chapter of his Jurisdiction of Courts* (London, 1663); John Godolphin, *A View of the Admiral Jurisdiction* (London, 1661).
- ³⁸ For instance, Lord Ellesmere [Sir Thomas Egerton], *Certain Observations Concerning the Office of the Lord Chancellor* (London, 1651), 44; *The Earl of Oxford's Case* (1615), 1 Rep. Ch. 1 at 6-7; 21 ER 485 at 486.
- ³⁹ Ellesmere, *The Speech of the Lord Chancellor... touching the Post-nati*, 32.
- ⁴⁰ Dawson, 'Coke and Ellesmere Disinterred', 127-52.
- ⁴¹ *Statute of Praemunire*, 27 Edw. III, c. 1; *Statute of Praemunire*, 16 Ric. II, c. 5.
- ⁴² Lord Ellesmere [Sir Thomas Egerton], *The Privileges and Prerogatives of the High Court of Chancery* (London, 1641), B3v; C1.
- ⁴³ Ellesmere, 'A coppie of a wrytten discourse by the Lord Chauncellor Elsemore concerning the royall prerogative' (c. 1604), printed in Knafla, *Law and Politics in Jacobean England*, 200.
- ⁴⁴ Knafla, *Law and Politics in Jacobean England*, 19.