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The Imperial Promise of Protection

As William Hull advanced with American forces to attack Canada in July, 1812, the general issued a proclamation to the “inhabitants of Canada” promising protection of their “persons, property, and rights” if they would not oppose the American invasion. “I come to *protect, not injure* you,” Hull declared. Hull knew that his intended audience of white settlers, including British loyalists who had resettled in Upper Canada, would find the language of protection very familiar.¹ He used it to assure them that U.S. sovereignty would prevent the same expropriations of property that had sent so many settlers to Canada in the first place.

But meanings of protection were notoriously unstable in the region. British agents had for decades used the label “protection” to cast in the best possible light the empire’s relation with Indian polities. The Proclamation of 1763 had promised that Indians would “not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories” that had come “under our Sovereignty, Protection, and Dominion” but were reserved for Indians’ use.² That contorted formula bound up promises of autonomy with more troubling pretensions to annexation of Indian territories that blossomed after the Revolution. In 1796, when the British government blocked Indians from selling land they controlled under treaty in the Grand River Valley—a twelve-mile corridor running north along the river from Lake Erie—it argued that the Five Nations did not hold the land as a sovereign nation precisely because the Indians had

accepted the protection of the Crown. Conditions in the “flourishing” colony now made it impossible, officials argued, to approve the existence in Upper Canada of “so large an extrajudicial Territory across its Center.”³ In this view, coming under the protection of the British had turned allies into imperial subjects.⁴ Against this interpretation, Indian leader Joseph Brant asserted that protection meant something different and that the Six Nations remained “a free & independent Nation” living under “His Majesty’s immediate Protection.”⁵

In clearly linking protection to rule in 1812, Hull was ignoring such nuances. This was a risky strategy because enormous ambiguity persisted about whether accepting protection signaled alliance or submission, or something in between. That ambiguity accounted in part for the appeal of protection as a term of political art and legal argument, an appeal with a very long history. The early modern world teemed with treaties outlining agreements about protection. Most often the treaties referred to security arrangements in which a subordinate polity gave up the right to engage in foreign relations in exchange for the promise of military aid against external enemies. Ming power with regard to Melaka, Ottoman authority in relation to Wallachia, and the Japanese shogun’s permission for the Dutch to trade in Japan – in these and many other interpolity relationships, services of protection came with costs in the form of tribute. Some protecting powers even exacted payments in exchange for restraining the violence of their own agents, a function at the heart of the Portuguese sale of *cartazes*, for example, to allow ships to sail unmolested in Portuguese-controlled waters of the Indian Ocean. In most cases, parties operated without a clear understanding of the legal relationship between protected and protecting groups. This lack of precision offered strategic benefits. Beneficiaries of protection could, and often did, shift their loyalties and attach themselves to more powerful rivals—as did Indian nations in the Ohio Valley in the Seven Years’ War and the American Revolution. Dominant

powers, meanwhile, often wielded the discourse of protection rhetorically, showing greater interest in quickly fortifying claims to legitimate authority than in acquiring new subjects.⁶

The practice and discourse of protection also ran through jurisdictional politics within European empires. Some jurisdictional arrangements involving protection adapted longstanding claims by the Catholic Church to a special obligation to protect *personae miserabilae* by retaining jurisdiction over certain especially vulnerable categories of persons, such as orphans, widows, and travelers. The logic of protecting vulnerable subjects formed, for example, the basis for the Spanish Crown's decision to remove Indians from the jurisdiction of the Inquisition and to create *protectores de indios*, officials charged with advising and representing Indians in the empire's courts.⁷ Dutch and Portuguese settlements overseas created similar offices.

English colonies did not name Crown-appointed officials to represent the interests of Indians or strangers until the nineteenth century, but the theme of protection threaded through discourse about the governance of colonies. Various constituencies claimed the protection of the Crown against abuses by colonial rulers. In New England, for example, Mohegan and Stockbridge Indians made direct appeals to the Crown for protection, and English-born subjects and their descendants invoked protection as a responsibility to Englishmen beyond the realm.⁸ "Protection" came to mean both the protection *of* the Crown, as extended to especially vulnerable groups of subjects or to all subjects, and protection *from* the exercise of arbitrary power—even by those authorized to act for the Crown. Both valences established a space for metropolitan intermeddling in colonial constitutional arrangements that colonists—Americans in particular—alternately cherished and abhorred.⁹

A history of political and legal relations centering on these slippages differs substantially from the usual narratives of protection in the history of political thought. They trace the origins

of twentieth-century doctrines of protection in international law to early modern European political theory, in an arc running from Francisco de Vitoria to Emer de Vattel. Vitoria argued that the protection of rights to travel and trade under natural law provided a rationale for Spanish conquest and colonization in the New World. Hugo Grotius proposed that private as well as public parties could legitimately punish those who violated natural law. Thomas Hobbes highlighted protection as the core attribute of legitimate sovereigns and the force that created and sustained subjects' ties to the sovereign. In arguing for a more robust role for the state in determining the justice of acts of intervention or war, Vattel followed others in identifying "externally enforceable responsibilities for the protection of subjects." Intellectual histories of protection also point to the Treaty of Westphalia as a turning point in the construction of an international obligation of intervention inside other polities to protect religious toleration. Most assert that European political theories of protection derive from understandings of universal principles.¹⁰

We should be careful not to substitute this script for a world history of protection. As Europeans encountered peoples with their own ideas about protection and negotiated with them to create arrangements of layered sovereignty and legal pluralism, imperial officials and their legal advisers combined European and non-European repertoires in novel ways. Hull's proclamation, combining promises of protection from interference and harm combined with its projection of a coming shift in sovereignty, is an example of the imaginative uses of protection in the early nineteenth-century world. It hints, too, at important innovations in this period that developed in their fullest form within the British Empire soon after.

In seeking to understand the ways imperial agents advanced claims about protection in the early nineteenth century, this chapter explores the adaptation of discourses of protection to fit

shifting schemes of imperial administration. Whereas a focus on universal claims with regard to protection illuminates, as Jennifer Pitts has put it, the positioning of “a European order writ large” as a facsimile of “global legality,” our analysis of evolving imperial administrative practices reverses this angle of vision. We begin to see how the British Empire encompassed and structured interpolity legalities under the framework of the imperial legal order in ways that blurred the distinctions between individual and corporate protection, and between intra-imperial and interpolity relations.¹¹ In the process, we find a messier and more ambiguous legal path to that late nineteenth-century moment when references to protection became little more than a prelude to intrusive and intimate colonialisms excused by international law. Antony Anghie found the root of this collusion between empire and international law in early modern legal theory.¹² We find it in much more mundane places—chiefly in promiscuous colonial practice that bled over the geographical and cultural boundaries of distant colonies and into the poky offices of Whitehall.

To some degree early nineteenth-century colonial legal conflicts blurred the lines between internal and external legal relations simply by unfolding at the same moment. Conversations about the protection of slaves and indigenous people within the empire formed the background to references to protection as a rationale for territorial expansion after 1815.¹³ Indeed, these projects were directly connected. British officials self-consciously described schemes to overhaul judicial administration in newly acquired imperial territories as projects to shore up the property rights and privileges of vulnerable people and/or British traders. Men, sometimes with scant legal training, found themselves charged with overhauling complex colonial legal orders to consolidate imperial power and with commenting on phenomena with an “international” character: Did agreements between the imperial government and local political

leaders qualify as treaties between states? Were the conventions of diplomacy governing these relationships the same as those between imperial powers? Who qualified as a British subject? How far and in what ways did British jurisdiction extend? And did British treaties or commercial agreements with other powers also apply to subjects of polities that were partially inside, and also still partially outside, the empire?¹⁴

As they grappled with such questions, colonial officials returned again and again to the touchstone of protection. Beginning in the late eighteenth century, the East India Company repeatedly signed treaties with states that ceded control over external affairs in exchange for protection by the Company, an opening gambit in a relationship of increasing, if incremental, legal meddling.¹⁵ In places where the British succeeded the Spanish or Dutch as colonial rulers, they often adapted and inserted the office of “protector” into new, hybrid legal systems that nested English practices within existing institutions; the Protector of Slaves in Trinidad is an example. Abolitionists used the term to describe the enfolding of slaves and freed blacks under British law as a function of enhanced imperial legal authority. They did this aspirationally in older West Indian colonies with intransigent colonial legislatures, and more directly in Crown colonies where officials in London imposed changes through orders-in-council.¹⁶ The office also migrated to regions where British jurisdiction was less certain as in the Protector of Aborigines established in the Port Philip region in southeastern Australia. There protectors functioned to expand jurisdiction geographically over illegal pastoral enterprises on the jurisdictional boundaries of New South Wales and Van Diemen’s Land.¹⁷

In blending the promise of shelter from enemies with the rationale of protection against the arbitrary power of despots and tyrants, the British discourse of protection used the term in new ways that carried global legal significance. Imperial references to protection positioned the

British Empire, rather than the international community, as an entity uniquely capable of deciding when intervention was called for, both in disputes among other polities and in internal contests about how best to order marginal peoples. Discourses of protection could blend with calls to defend the status quo. More often, as the nineteenth century progressed, they connoted something more—advocacy of colonial legal reform, the reordering of the rights and privileges of plantation owners or squatters, imperial expansion, or the exercise of new jurisdiction over foreign polities. For British officials, promises of protection did not rest on the universal rights of those whom British power claimed to protect: they served to reinforce the legitimacy of British imperial jurisdiction.

The association between intervention and jurisdiction is no longer an explicit part of the international law doctrine of the “responsibility to protect.” Humanitarian missions are not supposed to resemble conquest or lead to annexation. Yet the stamp of imperial history is subtly apparent in recent international interventions justified on such grounds. This chapter exposes early nineteenth-century origins of protection as a category neatly blending imperial preoccupations with colonial rule and inter-imperial legalities. We analyze the legal meanings of protection in two settings, Ceylon (modern-day Sri Lanka) and the Ionian Islands. In Ceylon, a dizzying array of plans for restructuring legal administration on the island framed British engagements with the Kingdom of Kandy—an independent polity that controlled the central highlands. Officials represented the conquest of Kandy as a necessary part of the empire’s mission to create a new legal order throughout the island. They also self-consciously manipulated the record of British-Kandyan relations to justify war on the grounds that British subjects and Kandyans needed British protection and British law to shelter them from the arbitrary power of local elites.

In the Ionian Islands, British officials struggled to redefine treaty-based protection legally and politically to bolster the British mandate to effect internal legal reforms. The process involved ongoing negotiations with other imperial powers about the degree of authority over Ionian affairs bestowed by the Treaty of Paris, which named Britain as “Protecting Sovereign.” Endemic British intermeddling in the legal affairs of the island, combined with ad hoc calls by Ionians for protection as British subjects abroad, pushed at the boundaries of shared European understandings of treaties of protection, foreshadowing contests about the legal framework of European expansion into Africa in the late nineteenth century. These case studies, read with the proliferation of protection strategies in slave and settler colonies, demonstrate that protection formed a central theme in ordering the empire and asserting its global reach.

“Some middle power”

When the Dutch ceded their possessions on the island of Ceylon to the British in 1795, the colony composed an odd geography. British authority replaced Dutch rule in a coastal ring around the island’s perimeter. In the center of Ceylon, in a wet highlands region regarded by Europeans as a zone of epidemiological danger and intriguing botanical richness, the Kingdom of Kandy held tight control, policing movement across a porous border that admitted trade and allowed access for Kandyans access to the sea. Kandy also housed important religious sites visited by Sinhalese Buddhists throughout the island. Relationships between the Kandyan center and the coast were unsettled, and trading relations on the frontiers of Kandy were volatile. Like the Dutch before them, British governors regarded the Kingdom of Kandy as an obvious object of annexation.¹⁸

Beginning in 1795, British efforts to absorb Kandy invoked multiple discourses of protection. The first British governor of Ceylon, Frederick North, began by invoking a very familiar mode of protection in South Asia and Europe—protection by treaty. In April 1802 he pushed the king’s counselors to accept a treaty that confirmed disputed Dutch conquests in Kandy and granted a British monopoly over the cinnamon trade. North’s treaty also stipulated that the Kandyan king would not converse “with foreigners,” would not allow Europeans or Malays to enter Kandy without the British governor’s passport, and would sponsor and host a British force in Kandyan territory “for the better fulfillment of His Britannic Majesty’s Engagement to protect the Person and authority of the King of Candy.”¹⁹ Kandyan counselors refused to accede to most points. Yet North only expanded his demands: by November 1802 he also pushed the king to give Britain power to wield “direct influence on their Councils.”²⁰

Counselors to the king of Kandy invoked protection, too, but in different ways. When First Adigār (chief minister) Pilima Talauvē met with North in 1800 and 1802, he hinted broadly that Kandy was in chaos and that he wanted North’s help to overthrow the king.²¹ His grievances centered on the fact that the king was a foreigner. In the mid-1700s the Nayakkar dynasty ran out of local heirs, and had to import monarchs of appropriate caste from mainland India. In the generations that followed, the foreign kings of Kandy settled in, bringing mainland advisers and displacing Sinhalese elites.²² For Pilima Talauvē and his co-conspirators, the king’s foreign origins presented an opportunity to impugn the legitimacy of his rule. Pilima Talauvē alleged that the king displayed his unfitness for rule by persistently affronting local customs: arbitrarily confiscating property, destroying valuable trees, and slaughtering animals outside the Buddhist temple.²³

North balked at supporting the adigār's plans for a coup in 1802. But he did begin casting around for rationales for intervention, and when Kandyans confiscated some areca nuts from two "native subjects" of Britain trading in Kandy in April 1802, North seized on the provocation. It did not matter that the First Adigār had probably ordered the confiscation of trade goods from the two Puttalam traders in the hope of provoking a British invasion of Kandy. North first dispatched a commissioner to inquire whether any law or circumstances might excuse the alleged theft. He then threatened military action if the king did not compensate the traders. In his letters to the king in September, North explained that "the protection which I owe to the people subject to my Government" would require him to go to war against Kandy if the king did not settle the claim.²⁴ In January 1803, North expanded his demands to include compensation and submission to his treaty of protection. It seems that the king of Kandy prevaricated just long enough to give North an excuse to invade. North did not succeed in deposing the king, however. In a move he repeated to lesser effect nine years later, he simply abandoned the capital of Kandy as British forces advanced. After being detained in Kandy into the rainy season, and falling ill in droves, British troops were routed by Kandyan detachments in June. The Kandyans slaughtered sick men left behind and forced one retreating company to surrender. Ten years later, two British officers still languished in Kandyan custody.

The festering problem of the Kingdom of Kandy folded into another: how to define British legal order over "native subjects" in British territories. Conversations about legal ordering in British Ceylon and about the legalities of an advance on Kandy ran in intriguing parallel at first. After early interventions in the administration of justice by the Madras government ended in riot and rebellion, North was instructed by London not to meddle much with the layered legal administration created under the Dutch.²⁵ Nevertheless, North pressed for

the expansion of British jurisdiction in British territories (known as the Maritime Provinces) to fix a swirl of administrative trouble. In the “litigious province” of Jaffna, a backlog of cases clogged the system, producing a wave of petitions to the governor—too many to handle. No one could come up with any leads when a sitting magistrate appointed by the British was shot and killed on the veranda of his house. Law officers feuded openly, and one magistrate, Alexander Johnstone, received a formal reprimand for mixing private trade with public duties and for “arbitrary and violent” actions from the bench. North bemoaned the fact that no British functionary had a deep understanding of Ceylonese law, and, in a move that would later be repeated in Kandy, he assigned a junior official with knowledge of local languages to collect information that might form the basis for a “customary code” for the colony.²⁶ His brief romance with law reform met with stern rebukes from the central government, though it was his expensive failed war in Kandy that resulted in his recall.

When Thomas Maitland arrived as North’s successor in 1805, he took notice of North’s law reforms, but mainly to complain that North had implemented them “with a laxity . . . bordering on feebleness.”²⁷ North had declared martial law in some settlements, and it was still unevenly in force; Maitland wanted a return to ordinary tribunals but would not resort entirely to civil authority when the settlements were still “threatened with daily invasion.”²⁸ As a self-declared pragmatist and military strategist with no legal training, Maitland focused on getting military costs under control and did not seem at first to have much taste for tinkering with the legal system. Within a few months, though, he began advocating legal reform in the colony with the enthusiasm of a convert. Maitland shifted from criticizing North to blaming the Dutch for creating disorder on the island through their encouragement of arbitrary rule by a class of local elites referred to as *Mudaliyārs*. The Dutch government, according to Maitland, had thrown “the

whole of the power civil and military” into the hands of Mudaliyārs, whose unchecked power represented “the greatest evil that exists in the general administration of this island” and “a perfect Imperium in Imperio.”²⁹ Maitland proposed a suite of measures to strengthen the authority of midlevel judges and to extend the reach of executive authority to the local level.

Maitland also began to formulate a new vision of British power through law. The first element of this vision involved the magistracy. In his effort to constrain the judicial authority of Mudaliyārs without giving too much power to village headmen, Maitland laid singular emphasis on the importance of magistrates, whose appointment “at every station throughout our extensive yet narrow territory, is (however limited the office itself may be in point of power) of the greatest consequence to the morals, good order, and peace of the inhabitants.”³⁰ Initially characterizing his actions and proposals as improved versions of the system put in place by North, Maitland also began to design more extensive changes.³¹ He urged abolishing the Provincial Courts and extending the jurisdiction of the Supreme Court, both measures designed to provide greater control by British officials, and he created new posts for sitting magistrates at Colombo, Caltura, Negombo, and Barberya. These actions would, he suggested, finally undermine the arbitrary power of the Mudaliyārs while placing “all causes of consequence before the Supreme Court.”³²

A second element of Maitland’s evolving theory of rule emerged out of his conflict with British-appointed judges. Even as London officials were bristling at the legal changes on Ceylon and expressing concerns about both the repercussions of disturbing local elites and the wisdom of crafting legal policies so far from the center of the empire, Maitland was discovering an unintended consequence of his program: a strengthened British judiciary now threatened to curb his power.³³ At first Maitland’s concerns about the judiciary seemed to flow from personal animosity toward Chief Justice James Lushington.³⁴ But Maitland also began to insist that a

strong hand for the governor in legal matters was crucial to maintaining order. He framed a proposal to the imperial government for a new Law Charter in these terms and, when he met with some initial resistance from his superiors, dispatched Alexander Johnston to London to champion his plans for legal reform.

In his instructions to Johnston, Maitland struggled to describe his vision of “some middle power with regard to the Judicial.” This new configuration of legal power, he explained, should include authorization for the governor to intervene directly when needed in legal affairs. But the vision was not one of simple authoritarianism. Maitland imagined “middle power” as consisting of more than the capacity to suspend the chief justice or declare martial law; it would be embedded in the structure of legal administration.³⁵ Admitting to Johnston that he did not know the precise form the system should take or “how far such a power can be given consistently with the general principles of British jurisprudence,” Maitland hoped that Johnston could work with officials in London to devise measures to erect the legal order he imagined.³⁶

The results were not what Maitland had in mind. On one level, the 1810 Law Charter accomplished most of what Maitland had proposed, reestablishing Dutch courts, the Landraads, in some districts; appointing sitting magistrates in all districts; abolishing provincial judges; and distributing cases either down to the local level or up to the Supreme Court, whose justices would now be required to ride circuit.³⁷ But to Maitland’s dismay, the new charter concentrated oversight of the courts in the hands of the chief justice. The chief justice, not the governor, would have the power to “make what number of courts he pleases, with what jurisdiction he sees fit” and to control “the whole patronage of these courts.”³⁸ On the eve of his departure from Ceylon, Maitland warned that his successor as governor, Robert Brownrigg, would suffer the “evil consequences” of diminished executive power under the Charter.³⁹

Why did Maitland, Lushington, and others perceive the stakes of these debates to be so high? Like other colonial officials distributed around the empire at the time, they saw themselves as participants in resolving fundamental constitutional questions about it. They understood, too, that the structure of legal authority would affect not just the prospects for order in the colony but also its possibilities for expansion. Relations with Kandy had settled into a pattern of repressed hostility under Maitland, but the situation was hardly stable. Maitland noted that the British held “a narrow Stripe of Land on the Sea Coast all round the Island” with the center “occupied by a People, we must ever consider our constant and natural Enemies here, on whom no Treaty is binding.”⁴⁰ For Maitland, the standoff with Kandy necessitated strong executive control of courts in the Maritime Provinces. To illustrate this point, Maitland cited a case that had recently come before the Supreme Court challenging the power of his government to control trade into Kandy. Maitland thought the case, which dealt with the seizure of a horse by Kandyan officials at the border, would put him in a bad spot. If the unhelpfully independent court found the seizure invalid, “one of two Things must have happened, either I must have made a Legislative Regulation, prohibiting Importation of Horses into Candy; the most hostile Act I could have committed to that Court at the Moment; or had I not, the Importation would have immediately taken place, and the greatest Engine I had in my Hands at the time for controlling them wrested out of them.”⁴¹ So he called the owner in and pressured him to drop the suit. It was cases like these, Maitland argued, that demonstrated the need for “a Power vested in the Governor to stay Proceedings in the Supreme Court in any instance where he thought it might have an evil political tendency.”⁴²

In writing of the seized horse, Maitland was avoiding the more vexing topic of the seized Britons. The disastrous attack on Kandy in 1803 had ended not only in the massacre of soldiers

but also in the captivity of the commanding officer, Major Davie, and two others. Letters from Davie smuggled out of Kandy served as a reminder of the lost war and the powerlessness of the British in the interior. This powerlessness did not bother officials in London. They had warned against signing treaties with a Kandy government that had shown no signs of desiring peace—a position reinforced by the 1803 debacle.⁴³ At the same time, they urged recognition of Kandy’s autonomy and promoted a vision of pacifying the interior enough to build a road across it, with or without a permanent diplomatic presence.⁴⁴ The military stalemate of Maitland’s years seemed to suggest the possibility of a lasting balance of power on the island. Castlereagh praised Maitland’s “judicious abstinence from petty warfare” and hoped that the current “state of Neutrality bordering upon Peace” might yet give way to “a real accommodation.”⁴⁵

For Maitland and his successors in Ceylon, Kandy’s defiance chafed. Maitland argued that the situation with Kandy called for a combination of legal strategies, dependent on the actions of a strong governor. He begged for power to respond to Kandyan provocations unfettered by “fixed and invariable rules” and advocated a project of legal ethnography on the coastline and in Kandy—gathering information that might lead to a “code of customary laws” that would underpin the extension of British authority throughout the island.⁴⁶ Maitland’s successor, Robert Brownrigg, went further. He charged a Cambridge-educated official named John D’Oyly with acting as intermediary between Kandy and British Ceylon and gathering information about Kandyan disorder.⁴⁷ D’Oyly’s legal ethnography was not published for more than a decade, but his presence in Kandy opened a new avenue for British ambition.

In 1814 D’Oyly sent Governor Brownrigg a letter from the new first adigār of Kandy, Ehelapola Nilame, citing great “wrongs and injustices” committed by the king and suggesting that support for him in Kandy was waning.⁴⁸ Even more expansionist than North, Brownrigg

was intrigued by reports of Kandyan tyranny. He wrote to London asking for “some well considered system of policy” that might allow for a posture other than neutrality toward Kandy. He envisioned, for now, nothing more than a “feasible plan of increasing our means of intercourse and information respecting the internal affairs of Kandy,” but he also began to look for opportunities to develop a rationale for war.⁴⁹ After a group of 17 families with a force of 50 Malays and 500 armed Kandyans massed along the border, as if poised to seek a place of exile, Brownrigg declared the time “not far distant when the headmen of Kandy may jointly and openly declare themselves determined to resist the oppressions of their Malabar King, or solicit the protection of England.”⁵⁰

The theme of protection was taking on new life. In a February 1814 letter to the *adigār*, D’Oyly went further than Brownrigg in promising British protection if Kandyans rebelled.⁵¹ D’Oyly coached Kandyan elites to ask for protection, informing one authoritatively that the British government would not come to the people’s aid unless “it saw a distinct and unequivocal proof of the general wishes of the Kandyan people.”⁵² It was impossible, he explained, “to commence a war . . . without a distinct and manifest proof that the whole Kandyan people . . . are determined to withdraw their allegiance from the present ruler, and take refuge under the protection of the British government.”⁵³

One year later Brownrigg was convinced that the offer of protection provided ample cover for war. He signed a proclamation in January 1815 announcing the invasion of Kandyan territory. The proclamation supplied two main justifications for aggression: the provocation of a series of minor border incursions and the duty to aid Kandyans who had “implored the protection of the British government” from the “tyranny and oppression of their ruler.”⁵⁴ Brownrigg would offer “to every individual of the Kandyan nation the benign protection of the British

government.” In its last paragraph, the proclamation spelled out what this would mean. The British pledged to retain the “ranks and dignities” of the chiefs, not to attack the people’s religion, and to preserve “their ancient laws and institutions.” The proclamation represented these actions as consistent with “the extension of the blessings resulting from the establishment of justice, security, and peace . . . under the safeguard of the British Crown.”⁵⁵

Now protection was being offered to the inhabitants of Kandy as a condition of their submission to British troops and not just against the tyrannous king but also “against all Foreign and Domestic Enemies.”⁵⁶ A second proclamation issued on the same day advised British troops to respect “the cause of humanity” in dealing with the inhabitants of Kandy and outlined the different basis for interactions with Sinhalese and with both Malabars from the Coromandel Coast and “Moors” (Tamil-speaking Muslims). The former should be told that “their emancipation is the leading object of the war”: the British were rescuing them from the oppression of a foreign-born king. The Malabars and Moors could be promised safe passage back to South India and should be “exhorted to keep in mind” that they were “by their birth and parentage the natural subjects of His Britannick Majesty.” If they opposed British force, they would be labeled “not only as enemies, but as traitors.” Any other classes of people encountered by British forces might be extended “the general offer of protection, and invited to place themselves under the British Standard.”⁵⁷

Such pronouncements show the flexibility of the language of protection. Acting on their own and without instructions from London, British officials used protection capaciously, allowing them to treat Kandy as a separate polity while also opening the door to the formal integration of Kandy into British Ceylon. The bleeding edges of protection also came into view when D’Oyly drafted the terms of the peace after the king’s arrest.⁵⁸ D’Oyly prepared and

translated a document for presentation at a meeting on March 2, 1815, presided over by the British with the attendance of Kandy notables. The “Public Instrument of Treaty” was read, in English and Sinhalese, followed by the raising of the British flag and a cannon salute marking “the establishment of the British Dominion in the Interior.”⁵⁹ The report of the “convention” rehearsed the spectrum of British protections: the king had forfeited the right to rule by committing atrocities, obstinately refusing to establish peace, and pursuing a policy of “general oppression.”⁶⁰ But invasion rhetoric also shifted to include a critique of Kandyan law. The first section of the “treaty” explained that the illegitimacy of the Kandyan government flowed from actions “devoid of justice” and lay in “the arbitrary and unjust infliction of bodily tortures and the pains of death without trial, and sometimes without an accusation, or the possibility of a crime, and in the general contempt and contravention of all civil rights.”⁶¹ This statement prefaced a plan for Kandyan law reform. Reading more like one of Maitland’s early nineteenth-century dreams of gubernatorial legal power than a post-conquest settlement, the document outlined a new plural legal order that combined the selected exercise of martial law (with regard to some classes of people and some crimes), executive control of civil and criminal justice “according to established forms,” the sole discretion of the British governor over capital punishment, and a prohibition against torture.⁶² One day later, the colonial government added further qualifications, including exemptions for non-Kandyans and for British military personnel from the jurisdiction of Kandyan civil and criminal courts.

The tensions between the executive and judiciary that had plagued legal policy on the coast intensified in Kandy. Brownrigg sought to block the extension of the Supreme Court’s jurisdiction to the Kandyan provinces, arguing that the Charter of 1810 had intended “to reserve for the constituting authority alone to consider and decide, whether at all, and at what time, and

in what measure and degree, the system of Law and Form established by these charters would be applicable to a newly acquired territory.”⁶³ Kandy should remain legally anomalous: “I will not conceal from your Lordship my opinion, that a very considerable period must lapse before His Majesty's new Territory will safely admit the exercise of any Authority political civil or juridical, which does not in a direct and ostensible manner emanate from the Executive Government. And I think it decidedly adverse to the Consolidation of the British Dominion over these Districts, to introduce at present, a judicial establishment which in measure of Power stands in competition with the Executive.”⁶⁴ Brownrigg was rebutting the Supreme Court’s assertion that it was “obvious that every person in the newly acquired Provinces whether Native or European is subject to the *Criminal* jurisdiction of the Supreme Court and entitled to the privilege of a trial by Jury.”⁶⁵

The justices wanted to treat Kandyan provinces as part of the British administration in Ceylon, whereas Brownrigg was proposing that the “foreign” quality of Kandy meant that it represented something constitutionally novel—a conquered colony within a conquered colony, a place where representatives of the Crown could wield untrammelled power. The Convention, Brownrigg asserted, was not a directive of the colonial government but a treaty between two governments. As an international agreement, it was beyond the purview of colonial judges: “A Political negotiation between two States (according to my Idea of it) may indeed be weak, shortsighted and superficial, and marked with every thing that is imperfect, improvident, and unwise, it may be corrupt, immoral, or even barbarous, but cannot in consistency with any received Ideas be called Illegal any more than a Constitution however much at variance with good Policy, good Judgement or good Sense can with any correctness be declared contrary to Law.”⁶⁶ Here we see Brownrigg attempting to project executive authority into a newly acquired

territory by placing the relation between British power and Kandy in an international framework.⁶⁷ At the same time, the mention of a constitution was no mere analogy. In Brownrigg's imagination, the legal order of the island rested within an imperial constitutional framework that recognized the coexistence of multiple polities under British rule. So his claim was not that relations with Kandy were entirely in the realm of international relations. Rather, they comprised a variety of interpolity relations that fell under the regulation of the British imperial government.

If events confirmed the case for a strong executive authority, the outcome was hardly predictable. At the center of evolving British legal policy in Kandy, D'Oyly was pulling hard for a different outcome, a plural legal order in which British authority would merely cap existing Kandyan law without altering it fundamentally. Brownrigg appointed D'Oyly as resident in Kandy, investing him with judicial authority on behalf of the British government and charging him with cataloging the customary law of Kandy so that judgments could follow local law. D'Oyly undertook this task with gusto, producing *A Sketch of the Constitution of the Kandyan Kingdom*, a detailed account of the legal order in Kandy. The book was not published until 1832, eight years after D'Oyly's death. Well before this ethnographic compendium could inform legal policy, Kandy rose in revolt.

The revolt followed in many ways the script of the earlier conflicts with the British, with Kandyans using guerrilla tactics to engage selectively with isolated British forces. This time, however, some of the elites who had welcomed British protection joined the cause. British protection had articulated into British sovereignty, complete with the dissolution of the Kandyan monarchy. Neither the British promise to protect Kandyan elite privileges nor D'Oyly's efforts to create a compendium of Kandyan law as the basis for British rule with a light touch could dispel

the opposition of the chiefs to British rule.⁶⁸ They had sought protection of an older kind, the installation of a new monarchy of their choosing, not the imposition of Crown rule under the aegis of the British king. For its part, the colonial government used the rebellion to affirm its intention to treat Kandy as a distinctive legal zone: Kandy was ruled by administrative fiat until the Commission of Eastern Inquiry delivered its report in 1833. Rebellious elites in Kandy were cast as another iteration of the powerful local headmen who had threatened to destabilize British rule on the Coast a decade earlier.

Historians have detailed the lead-up to and engagements of the Kandyan wars, and Sri Lankan nationalists later argued that the British had failed to fulfill their promise in the Kandyan Convention to protect Buddhism.⁶⁹ Attention to the legal politics of coastal rule and annexation has, in contrast, mainly been relegated to recondite administrative histories.⁷⁰ Yet for the British, law was a touchstone of policy both inside and outside the confines of the crown colony.⁷¹ Colonial reform agendas influenced arguments about the legal basis for annexation of Kandy. The same logic that placed Mudaliyārs in the sights of colonial governors as they designed a new legal charter for British territories in 1810 extended to rationales for intervention in Kandy to depose a tyrannous king in 1815. Legal reform inside the colony commingled with the discourse of protection in diplomacy with Kandy; both projects resolved into plans for the extension of British jurisdiction. Debates of a constitutional character about the relative power of judicial and executive legal authority, meanwhile, carried over into discussions about the legal order of post-invasion Kandy. In representing the Kandyan Convention both as a treaty and as the foundation of a new plural legal order in Kandy, the British used the ambiguous discourse of protection to conjure an unbounded constitutional framework. Kandy served as a site of constitutional experiment in semi-authorized legal reform by gubernatorial autocracy.

A Status “hitherto unknown in the history of nations”

The history of law in the empire in the early nineteenth century is less about legislation than about legal strategy. British rule took shape under the guidance of British colonial officials who moved around the empire and served as conduits for the flow of information, including policy proposals and reports of legal practices. The career paths of these men threaded together distant and disparate colonies. Thomas Maitland’s career exemplifies this phenomenon. Before arriving in Ceylon as governor in 1805, Maitland had served as brigadier general in the West Indies, where he had negotiated in Haiti with Toussaint L’Ouverture and presided over an interim government in Trinidad in the wake of Colonel Picton’s sudden removal. After he left Ceylon in 1811, Maitland spent a year in England before being appointed the first British governor of Malta, which had been taken from the French in 1800 and was being turned into a colony central to consolidating British naval power in the Mediterranean. It is unclear how Maitland’s experiences in the West Indies colored his views of governance in Ceylon; it is easier to speculate about what Ceylon had to do with Malta, and with the Ionian Islands, Maitland’s next posting.

The islands had a turbulent Napoleonic history. Having long been governed by Venice, the Ionians fell under French control for two years from 1797. Liberated by Russia and the Ottomans in 1799, they governed themselves as a republic from 1803 until reconquered by France in 1807. Britain occupied the first of the islands in 1809 and controlled six of them by the end of the war. The islands did not produce much wealth, but, combined with Malta, they promised Britain significant naval and commercial footholds in the Mediterranean. In August 1815, the British government was preparing to take possession of Corfu and complete its

possession of the seven Ionian Islands. In what turned out to be a bout of unfounded optimism, Bathurst supposed that there was “every reason to expect the annexation” of the islands, and he authorized the appointment of Thomas Maitland as the civil governor of all British possessions in the Mediterranean, except Gibraltar.⁷² Maitland would be expected to work alongside islanders to establish a government like the one on Malta and, presumably, to follow the pattern he had championed on Ceylon and Malta of consolidating Crown authority on the islands.

By the following autumn, British officials knew that they had miscalculated. Instead of authorizing the cession of the islands to Britain, the 1815 Treaty of Paris awarded England the role of “protecting sovereign.”⁷³ Russia had successfully blocked British acquisition of sovereignty over the islands, citing the emperor’s promise to support Ionian independence. Maitland would still travel to the islands from Malta, but now with a different mission: to create an assembly that would in turn design a new Constitution Charter for ratification. The treaty stipulated that the islands would regulate their own “internal organization,” subject to the “approbation of the Protecting Power.”⁷⁴ The meaning of the latter phrase was vague, leaving British officials confident that they would retain “all the real power.”⁷⁵ Maitland’s instructions were to begin negotiating with local elites to draft a new constitution for the islands. Bathurst thought the islanders might try to “make a constitution as they would make a pudding according to a British or French receipt” and he urged Maitland to “get them to slide into a constitution amending the existing form of government.”⁷⁶

Maitland had demonstrated no gift for gradualism in Ceylon or Malta. Even if he had favored a subtle approach, political and legal forces were soon urging him to accelerate the constitutional project. Greek nationalists fueled British islanders’ opposition to British authority. Diplomats and elite Ionians chafed at the British meddling in the legal system. As such groups

worked to restrict Britain's interpretations of its duties and prerogatives as protecting power, a series of legal cases pushed to broaden the umbrella of British protection.

Maritime cases begged the question whether Ionian subjects in the Ottoman Empire would have the status of British subjects. In demanding treatment as British subjects, Ionians captured by the Ottomans were seeking benefits under the capitulations, extraterritorial arrangements negotiated by Britain that required evidence presented against British subjects and any sentence against them to be recorded before the ambassador or consul.⁷⁷ The British government had already addressed the issue obliquely. Soon after the Treaty of Paris was signed, it had directed that Ionian ships should be given the same rights as British ships in entering British-controlled ports in the Mediterranean.⁷⁸ That seemingly simple directive did not end legal ambiguity about the status of Ionian sailors abroad, however. In 1817, British officials were complaining to the Ottoman court about the treatment of an Ionian captain and crew captured at Paros and accused of piracy. The Ionians were transported to Constantinople with a message from the provincial Ottoman government that they were "notorious robbers" and the recommendation "to punish their chief with death and send the rest to the Bagnio." When Bartholomew Frere, representing the British government, learned that one of the crew had been executed, he complained that by treaty "a British subject" was entitled to defend himself in ways permitted by "the laws of his own country" as established by treaty for British subjects in the Ottoman Empire.⁷⁹

Less than two weeks later, both sides were still disputing the status of the crew, though both sides had also adjusted their arguments slightly. Frere was now identifying the accused crew as "Ionian subjects," and the effendi (local ruler or lord) had agreed to have them examined before a British official. Despite Frere's initial claim that the Ionians should be treated as British

subjects, he now described the Ionian Islands as a “foreign nation” to which Britain had granted the protection of its flag. Frere explained that he “had claimed for the prisoners the privileges of British subjects”—a subtle difference from asserting without qualification that they *were* British subjects. In continuing to label the prisoners as pirates and “outlaws,” the Ottomans were implying that the captain and crew had removed themselves from British protection by the nature of their crimes. Ottoman officials also pointed out that the Porte (the Ottoman central government) had still not given its assent to the treaty granting Britain the status of protecting power and that Britain had specifically requested Ottoman approval. That request was proof, according to the Ottomans, that Britain did not have the undisputed right, as the British government was asserting, “to grant her flag to whatever foreign nation she chose” but instead recognized the need for approval by other imperial powers.⁸⁰

Both sides now also tied the fate of the prisoners to the diplomatic negotiations about broader issues. The Ottomans pointed out that in the past, they had “been willing to appear ignorant” of the “true character” of many Ionians by treating them as British subjects; in this case, the prisoners “were known and had declared themselves to be Ionians,” and it was therefore impossible to treat them as British subjects without also approving the recognition by treaty of Britain as the protecting power—the very issue the Ottomans were being asked to consider. The British ambassador tried to separate these issues but, at the same time, threatened to break off negotiations about the cession of Parga, a territory with a small community of Christians, to the Ottomans unless there was cooperation on the application of broad protections to Ionians.⁸¹ While taking what appeared to be a hard line, and continuing to insist that the prisoners could not be declared pirates without laying the evidence before the ambassador to that effect, Frere was now also asserting the right of the British to claim the Ionians’ treatment as subjects without

needing to establish proofs of their subjecthood.⁸² Such hair splitting did not alter that fact that everyone recognized that the nature of the Ionians' relation to British jurisdiction was a matter of law. But what law?

Questions about meanings of British "protection" in relation to Ionians at sea paralleled energetic protests that the British were interfering too much and too directly in internal Ionian governance. Emerging Greek nationalism combined with the Ionians' brief interlude of self-governance to feed simmering opposition to Britain's experiments at the boundary of protection and colonial government.⁸³ Even before Maitland's government was fully established, Ionians lodged complaints about British officials meddling in internal matters, especially by interfering with judicial decisions and removing unsympathetic judges. A notable of the island of Cephalonia, Gerasimo Cladan, whom the British referred to as Count Cladan, petitioned London officials for relief from "illegal" actions by British military commanders, including the execution of an Ionian who had been acquitted by the appeals tribunal and Count Cladan's own removal as judge of that court. British commanders rejected the count's complaints, noting that the "unsettled state" of the islands made it impossible to introduce "any material improvements into the practice of the courts of justice."⁸⁴

Maitland's plan to draft a new constitution for the islands brought its own complications. As Russian agents would later point out, there was already a constitution: the 1803 constitution of the Septinsular Republic, which had operated as a subsidiary polity of the Ottoman Empire under the informal protection of the Russian government. The British refused to recognize that constitution, arguing that the 1803 constitutional framework was a compendium of constitutions that, like the 1803 Constitution of Corfu, applied only to individual islands, not to the islands collectively. Here, as elsewhere, law reform lay at the center of British-led constitution-making:

Maitland was to make the Ionians understand the advantages attached to British protection by introducing “an impartial administration of justice.”⁸⁵

In taking the position that there was no constitutional order in place as a result of the 1803 constitutions, the British were not abandoning the language of constitutionalism. They argued that only the British-drafted 1817 Charter framed all the islands as a single political community. This argument linked the federated quality of the islands—they were called, after all, the United States of the Ionian Islands—to the legitimacy of British power over them singly and collectively. The posture became more important as Ionian opposition gained momentum. In response to violence on Santa Maura and the use of military force by the British to suppress it in 1820, Bathurst asserted that the only choices open to the British were “either abandoning the Protection of the Ionian States, or . . . asserting [the] determination unalterably to maintain that authority which the Treaty of 1815 and the Charter have conferred.”⁸⁶ Put differently, if the British were going to stay at all, they would stay as the controlling power, with the Charter as the embodiment of the international community’s charge.

As in Ceylon, Maitland faced opposition both from locals and from British-appointed judges who thought that the 1817 Charter concentrated power too heavily in the hands of the high commissioner. Ioannis Kapodistrias, the Cephalonian-born nobleman who was serving as Russian foreign minister, complained that the Charter drafted under Maitland’s direction in 1817 awarded excessive powers to the high commissioner, who would not only control the slate of nominees for election to the Senate and the legislative assembly but also had the power to veto its legislative acts. Kapodistrias argued that the international mandate to Britain did not include such meddling in internal affairs; it called for a constitutional order, a condition that should be fulfilled by reestablishing the 1803 Constitution.

Bathurst's reply included an intriguing interpretation of the nature of British protection and its authorization by treaty. First, he argued, Kapodistrias was mistaken in thinking that the Treaty of Paris explicitly limited the reach of British authority over internal Ionian affairs. It was true that the allies had "formally disclaimed interference in the internal government affairs of those states," but the same constraints did not extend to the government "to whose exclusive protection the islands were consigned." If the limits had applied, then "protection" would mean very little—nothing more than "the duty of garrisoning the fortress and of protecting them for [*sic*] foreign aggression." For Bathurst, there was no question that the improvement of the system of justice and of government administration was always contemplated, and "a direct interference" in internal affairs "was always deemed expedient."⁸⁷

Soon after, the British judiciary joined the fray. In June 1820 William Henry, a British judge and a member of the Supreme Council, resigned his position and presented "Memoranda of Abuses" detailing "abuses in the administration of justice in the Ionian islands." Henry reported that the justices of the Supreme Council were utterly beholden to Maitland and that "the doctrine of expediency," routinely cited, was subverting justice. He gave as an example sweeping blocks on litigation brought by people labeled as inconveniently litigious. The judiciary was complicit in such overreaching: "I can only say that under such a system of convenient justice, convenient justices must be sought." The result was unbecoming "a grand protecting power like England" and was giving rise to "experiments . . . in jurisprudence" such as declaring medical men "ex-officio residents of Courts of Civil and Criminal Justice throughout the islands to try offences" involving public health and quarantine procedures.⁸⁸

Henry joined a growing chorus of critics accusing Maitland of creating despotic government in the Ionian Islands. Maitland's actions had attracted the attention of the Radical

MP Joseph Hume, who used House of Common hearings on the Ionian Islands in 1821 and 1822 to expose Maitland's despotism. Hume pointed out that Maitland had been responsible for "arbitrary acts in different parts of the world" before arriving in the Ionian Islands and argued that he had turned the Constitution of 1817 into "a mockery of freedom."⁸⁹ Hume's associate Henry Bennet echoed Hume in calling the 1817 Constitution "a mere mockery, a trick, a juggle" and in deriding it as the kind of constitution the "French were in the habit of giving."⁹⁰ Maitland had misconstrued protection, according to his critics; he used it as constitutional cover for the concentration of power in the executive. As in Ceylon, Maitland's opponents did not get very far; he had the full support of the Secretary of State for War and the Colonies, who was also determined to establish a muscular British oversight of governance in the islands.

It was one thing to imagine a completely refashioned judicial system, quite another to implement that vision. By the mid-1830s, little had been done to overhaul the Ionian courts, and a new governor, Howard Douglas, complained about "a mass of dead letter legislation" and a legal system that was "in an embarrassing and even alarming condition . . . after so many years of tutelage and protection."⁹¹ Douglas found himself in a battle of wills with several British judges about the constitutionality of a provisional penal law code promulgated during a legislative recess in 1832. One of the British justices, William Blair, refused to participate in the next criminal case before the court because he could not apply penal laws that were not legally in place. Justice Blair and his ally Chief Justice Kirkpatrick questioned the authority of the Ionian legislature to approve a provisional penal code without its ratification by the British government. In his instructions to Douglas about the controversy, Lord Glenelg ruled—he thought definitively—that the penal code was valid because the Supreme Tribunal of the Ionian States had approved it. Glenelg asserted that to rule otherwise would be to place the Ionian Islands

outside the British imperial constitutional framework, when the judiciary should have the same separation from administration “as in every part of the British dominions.”⁹²

To Douglas’s annoyance, the British judges did not now give up their cause but wrote a letter to Glenelg explaining why they thought the penal code was unconstitutional. The logic of their appeal is revealing. If the question was merely about the correct procedure for determining the legality of the penal code, the judges argued, then Glenelg had indeed settled the case. But the peculiar relationship between Britain and the Ionian Islands meant that the issue raised “was not a municipal question merely, but might become an international question also.”⁹³ The code appeared to be unconstitutional given that the 1817 Charter had asserted that “the actual courts of justice” of the islands should be preserved.⁹⁴ Accordingly, the constitutionality of the code was, by definition, open to interpretation according to international understandings of the relationship between Britain and its protectorate. The high commissioner’s ruling about the legality of the penal code was binding on the courts and on the parties before them, but it “was not binding on the Ionian States in their collective and national capacity. It was still open to them to allege that the treaty and charter had been misinterpreted and they were still at liberty to call on the British sovereignty to redress any such error.”⁹⁵

This statement spotlights the tangle between imperial and international law in the Ionian Islands. Protection exposed all internal matters to evaluation under some external law. While arguing that the Ionian states had a right to advance constitutional arguments different from those of the executive, the judges were affirming that any questions about the nature of the treaty or charter should be referred to “British sovereignty.” The constitutional questions might have the character of international legal questions, in other words, but they could be addressed only by the

imperial government acting in its role as regulator of domestic Ionian law—a power awarded under international agreement.⁹⁶

Perhaps not surprisingly, this circular logic left open the major questions about law in the islands. The puzzle of whether Ionians had any rights to British magisterial oversight when accused of committing crimes in Ottoman territories was not settled; London now favored referring such cases from the British Consul to the Ionian States executive power as a delegation of British jurisdiction, but one that might result in a less vigorous British defense of Ionian interests.⁹⁷ When a Turk and a Greek were caught recruiting Albanians “for the Service of the Pasha of Egypt,” Douglas ordered their removal, presumably with Ionian approval.⁹⁸ As the high commissioner reacted on an ad hoc basis to such incidents, he was aware of the ambiguities of the British position. He traced them directly to the vague understanding of protection, noting that the islands were “in the anomalous condition of being in a sort of middle state between a colony and a perfectly independent country, without, in some respects, possessing the advantages of either.”⁹⁹

Even as some Ionian elites pushed for the expansion of British protection, opposition to the government convened under the 1817 constitution grew steadily and had reached an acute stage by 1849. A new high commissioner, Henry Ward, faulted prior British administrations for taking a hard line against Ionian supporters of Greek nationalism and for meddling excessively in internal Ionian affairs. Ward deemed reform and some measures of democratization essential to averting the stark choice between abandoning the protectorate and retaining possession “by military means.”¹⁰⁰ It was slowly dawning on British officials sequestered at Corfu that ongoing violence by peasants in Cephalonia aimed at “expelling Her Majesty’s troops from Cephalonia, and of ultimately annexing that island to Greece.”¹⁰¹ But Ward remained convinced that elites on

all the islands abhorred the idea of “a transfer from the protection of England to that of any other power; but, more especially, a transfer to Greece.”¹⁰² He even imagined that the great majority of poor and landless men saw clearly the advantages of British protection. He joined London officials in casting around for measures that would promote “peace, order, and security.”¹⁰³

Realities on the ground were making a mockery of the best-laid British plans. The disorder made Lord Grey wonder whether the empire might resettle poor and rebellious Cephalonian youths in a colony in Western Australia.¹⁰⁴ When reports of another violent uprising in Cephalonia reached Ward at the end of August 1849, his resolve to apply softer measures cracked. He announced that he would proclaim martial law in any district where “insurrection” was taking place or where the British surmised it was brewing. His analysis of the violence against elites on the island linked the losing battle to sustain internal order to the vagaries of Ionians’ international position. This juxtaposition, Ward noted, was producing in the peasantry a powerful “double motive” for vengeance, as they responded to Greek encouragement and directed their violence “partly against the proprietors, and partly against the friends, or agents, of the Protecting Power.”¹⁰⁵ The revolt had the markings of a civil war—“of tenants against landlords, of contadini [peasants] against signori, or debtors against creditors”—but it was also being led by men “carrying a large Cross, and a Greek flag” who were accusing the English of various atrocities, such as desecrating an old Greek convent by using it to house troops.¹⁰⁶

The crackdown on the insurgency proceeded without apology.¹⁰⁷ The “capos” were arrested, convicted, sentenced to death, and executed, and Ward placed the blame for the uprising on a “secret society” on Cephalonia and Corfu.¹⁰⁸ At the same time, both in the islands and in London, debates returned to the constitutional meanings of protection. Ward blamed Maitland’s administration for having created “a Despotism under Constitutional forms.”¹⁰⁹ In

England, Ward's own campaign of repression prompted a flurry of pamphlets and letters by Lord Charles Fitzroy, who had served as governor of Zante, and an Ionian merchant who lived in London, Georgios Dracatos Papanicolas, decrying the "tyrannical abuse of power" perpetrated by the British in the islands. Fitzroy called repeatedly for what by then had become a familiar salve for colonial legal confusion: a commission of inquiry.¹¹⁰

Conclusion

Historians have noticed the role of protection in the extension of British authority beyond the empire, but their accounts often start from the very end of our period. The 1850 Don Pacifico affair features as a key moment when the British government articulated an expansive right to protect its subjects anywhere in the world. When set against the colonial history of protection in the early nineteenth century British Empire, the case takes on a slightly different cast.

The Don Pacifico affair grew from a minor local conflict into an international affair because of the letter-writing talents of its protagonist. David Pacifico was a British subject by virtue of his birth in Gibraltar. A Sephardic Jew with ties to Portugal, he was living in Athens when an anti-Semitic mob attacked his home in April, 1847, looting personal property as well as consular papers that Pacifico was holding to support a disputed claim for payment of services to the government of Portugal. Pacifico appealed for British intervention, and Lord Palmerston directed the British minister in Athens to deliver a detailed list of Pacifico's losses to the Greek government for compensation.¹¹¹ Greek government representatives complained that Pacifico had not bothered to seek redress through local tribunals and had in effect appointed himself "judge in his own case," also fixing the value of damages on his own. A year later, as the British continued to press for restitution, the Greek government complained that Pacifico had adopted

the “strange pretension to be indemnified out of the regular course of justice.”¹¹² Greek officials also pointed out that Pacifico might be a British subject but that he had not corrected anyone’s impression in Athens that he was Portuguese; on one occasion he had sought representation by the Spanish government. He seemed to be shopping for protection.¹¹³

Pacifico’s case was unfolding against the background of renewed complaints to the Greek government about the treatment of Ionian mariners and their goods. In December 1846, Palmerston had written to demand compensation for six Ionian boats taken at Slacina, where “Greek robbers and pirates” had taken possession of the customhouse.¹¹⁴ In this attack, too, the Greek government denied responsibility and stated that its “only obligation” was “to do its utmost to bring the culprits to justice.”¹¹⁵ In July 1846, the consul at Patras forwarded a petition from “an Ionian subject” who reported he had been tortured by Greek authorities to get him to confess to a petty theft.¹¹⁶ Other complaints followed, including a report that two Ionians “had been seized, handcuffed together, and thumbscrewed,” then paraded through the streets of Pyrgos for displaying Greek, English, and Ionian flags on a coffee shop awning.¹¹⁷ Forty Ionians signed a petition to the British consul at Patras appealing to “the strong arm of the nation that protects the Ionians” in the face of “unjust menaces and persecutions.”¹¹⁸ In June 1847, the British consul sought depositions in the case of several Ionians who reported having been arrested and then flogged at Pyrgos.¹¹⁹ Greek officials deflected these complaints and responded to the demand for compensation for the flogged Ionians with “astonishment” that the authorities might be taken to task merely for preserving the public peace.¹²⁰

In response to the Greek refusal to pay Pacifico compensation, Palmerston ordered British navy ships to blockade Athens. Assailed by critics at home for so bellicose an act, Palmerston delivered a long speech to the House of Commons in defense of the government’s

actions. Famously comparing the protection due to British subjects to the protection by Rome of its citizens, the speech prompted contemporaries, and later historians, to elevate the Don Pacifico affair to a watershed moment marking the explicit recognition of a doctrine of British global power based on a limitless prerogative of the imperial government to intervene, militarily when necessary, on behalf of its subjects.

Most accounts of the affair forget about the Ionians—and for that matter the rest of the colonial context.¹²¹ But Palmerston’s speech was not about British imperial might in a general sense; it was about the authorization of British intervention in foreign jurisdictions by law. The speech in the House of Commons painted a complex picture of protection that followed the outlines of colonial legal politics. Rather than asserting an unconstrained right to act to protect British subjects, Palmerston claimed the authority of the British government to determine when a limited right to intervene might be justified. In this sense, the Don Pacifico affair formed an integral part of the colonial legal reform project that had developed over the first half of the century—another effort to make disorderly law comport to imperial standards of fairness.

In his speech, Palmerston allowed that where legal redress was locally available to British subjects, they should be required to submit to the laws of whatever place they resided in. His particular concern was with “cases in which no confidence can be placed in the tribunals.” He emphasized that “arbitrary or despotic” governments could come in many forms, including merely corrupt constitutional regimes. The right of intervention he was defending was the right to protect British subjects where local justice was not possible according to British standards. He therefore asked: “[W]ho is to be judge in such a case, whether the tribunals are corrupt or not? The British Government, or the Government of the State from which you demand justice?” Note that the choices were narrow. Palmerston did not appeal to broader norms of international law—

though one of his supporters did suggest that France and the United States had helped to establish such a norm through their actions to protect their own subjects. Palmerston was defending the right of the British government to define despotism, and to act accordingly.¹²²

Also implicit in Palmerston's remarks was the right of the British government to determine to whom different levels of protection might extend. Palmerston in fact devoted far more time to discussing injustices committed by Greeks against Ionians than he did to defending the government's actions to protect Don Pacifico, though published versions of the speech usually leave out the commentary on Ionians. Asserting a general tendency for abuses committed by the police in Greece, Palmerston noted that "in every town in Greece" there existed "a great number of persons whom we are bound to protect—Maltese, Ionians, and a certain number of British subjects." He distinguished Maltese and Ionians from British subjects but objected, too, that Greek authorities often failed to recognize that Ionians and Maltese were also not the same as Greek subjects. Palmerston did not suggest that Maltese and Ionians in Greece should have the same protections as Britons. Maltese were subjects of a colony, and they clearly carried the protections of British colonial subjects. The strength of the right and duty to protect Ionians flowed from Britain's treaty obligations, from the depth of Greek injustice, and from the British determination that injustice had taken place. The tyranny of the Greeks brought Ionians (and also Maltese) closer to having the legal status of Englishmen, but not all the way there. The right of the imperial government to decide whether a subject had been treated justly, meanwhile, placed the British government in the role of international arbiter.¹²³

Debates in Parliament about protection worked with the materials at hand: reports from a variety of sources about the legal politics, and some specific legal cases, in such places as Upper Canada, Ceylon, and the Ionian Islands. The issues clearly, on one level, belonged to the stuff of

foreign affairs: relations with Indian polities in Upper Canada, with the Kingdom of Kandy in Ceylon, with a crowded field of other empires and an emerging nation-state in the eastern Mediterranean. But on another level the porousness of any division between municipal and international law in the early nineteenth century rendered these problems as, mainly, imperial.

Protection talk developed precisely at the blurred border of inside and outside legalities. Internal protection efforts sought to bring exotic legal subjects—masters, slaves, indigenous people, convicts—within imperial jurisdiction. Protection claims across political boundaries reproduced some legal arrangements associated with intra-imperial protection, while also highlighting the cross-polity influence of imperial power. Participants in these projects throughout the empire appealed strategically to arguments about the international character of relations between the British Empire and indigenous polities—as officials did in both Ceylon in relation to Kandy and in the Ionian Islands—to claim broad authorization for legal reordering. In doing so, they implicitly promoted empire, and not the international community, as possessing the power to decide protected status and determine the conditions for intervention across and within borders.

The resulting vision of protection was hardly liberal, but it was also much more than purely authoritarian. Maitland's critics called him despotic, but the label that stuck for his brand of imperial administration was "constitutional despotism." By its very *structure*—a constitutional structure—the imperial legal order was supposed to corral petty despots within and to neutralize tyrants without, all in the interests of protection. British officials imagined that the empire had not just a special responsibility, but also a unique capacity, to discern despotism and temper it through the exercise of imperial jurisdiction. It did not matter that the result might be to fortify executive legal power to such an extent that charges of despotism would rebound. Protection

claims were utterly compatible, in this vision, with an increasingly complex and unwieldy legal order with different classes of rights-bearing subjects, imperial constituencies of uncertain legal status, and territories that were simultaneously inside and, for some purposes, outside the imperial legal order.

¹ “Proclamation issued by William Hull,” *Select Documents of Canadian War of 1812*, vol. 1, ed. William Wood (Toronto: The Champlain Society, 1920), 26, emphasis in original.

² “Royal Proclamation of 1763,” in *As Long as the Sun Shines and the Water Flows: A Reader in Canadian Native Studies*, ed. A. L. Getty and Antoine S. Lussier (Vancouver: University of British Columbia Press, 1983), 29–37.

³ Russell to Duke of Portland, 28 January 1797, TNA, Kew, United Kingdom, CO 42/321, 46v.

⁴ Robert S. Allen, *His Majesty’s Indian Allies: British Indian Policy in the Defence of Canada, 1774–1815* (Toronto and Oxford: Dundurn Press, 1992), 94.

⁵ Brant’s statement is quoted in Russell to Duke of Portland, 21 July 1797, TNA, CO 42/321, 108.

⁶ Lauren Benton and Adam Clulow, “Legal Encounters and the Origins of Global Law,” in *The Cambridge World History*, vol. VI, pt. 2 (Cambridge: Cambridge University Press, 2015), 80–100; Benton, “Shadows of Sovereignty: Legal Encounters and the Politics of Protection in the Atlantic World,” in *Encounters Old and New: Essays in Honor of Jerry Bentley*, ed. Alan Karras and Laura Mitchell (Honolulu: University of Hawai‘i Press, forthcoming).

⁷ Excellent regional studies of the Protectors of Indians include Mauricio Novoa, *The Protectors of Indians in the Royal Audience of Lima: History, Careers and Legal Culture, 1575–1775* (Leiden: Brill, 2016); Diana Bonnett, *Los Protectores de Naturales en la Audiencia de Quito, siglos XVII y XVIII* (Quito: Facultad Latinoamericana de Ciencias Sociales, sede Ecuador, 1992); and Charles R. Cutter, *The Protector de Indios in Colonial New Mexico, 1659–1821* (Albuquerque: University of New Mexico Press, 1986). More generally, see Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400–1900* (New York: Cambridge University Press, 2002), chapters 2 and 3.

⁸ Craig B. Yirush, "Claiming the New World: Empire, Law, and Indigenous Rights in the Mohegan Case, 1704–1743," *Law and History Review* 29:2 (2011): 333–373; Patrick Frazer, *The Mohicans of Stockbridge* (Lincoln: University of Nebraska Press, 1992).

⁹ Richard L. Bushman, *King and People in Provincial Massachusetts* (Chapel Hill: University of North Carolina Press, 1985); Jack P. Greene, *Peripheries and Center: Constitutional Development in the Extended Politics of the British Empire and the United States 1607–1788* (Athens, GA: University of Georgia Press, 1986); Jenny Hale Pulsipher, *Subjects unto the Same King: Indians, English, and the Contest for Authority in Colonial New England* (Philadelphia: University of Pennsylvania Press, 2005); Daniel J. Hulsebosch, *Constituting Empire: New York and the Transformation of Constitutionalism in the Atlantic World, 1664–1830* (Chapel Hill: University of North Carolina Press, 2005).

¹⁰ Luke Glanville, *Sovereignty and the Responsibility to Protect: A New History* (Chicago: University of Chicago Press, 2014), 32–33, 45–48; Anne Orford, *International Authority and the Responsibility to Protect* (Cambridge: Cambridge University Press, 2011), 112–25. For a valuable discussion of Vattel's views in context, "Law, War, and Casuistry in Vattel's *Jus Gentium*," *Parergon* 28:2 (2011): 87–104; Hunter, "Kant and Vattel in Context: Cosmopolitan Philosophy and Diplomatic Casuistry," *History of European Ideas* 39:4 (2013): 477–502. According to Brendan Simms "the Westphalian treaties of 1648 were nothing less than a charter for intervention: by fixing the internal confessional balance between German principalities and within the empire, they provided a lever for interference throughout the seventeenth and eighteenth centuries." Simms, *Humanitarian Intervention: A History* (Cambridge: Cambridge University Press, 2011). Luke Glanville makes a similar argument, stating that the "Peace of Westphalia now confirmed in treaty law the responsibility of states to ensure the protection of their religious minorities, and it bound neighboring states to enforce this responsibility." Glanville, *Sovereignty and the Responsibility to Protect*, 54. The phrase "externally enforceable responsibilities for the protection of subjects" appears on 59.

¹¹ Jennifer Pitts, "Empire and Legal Universalisms in the Eighteenth Century," *American Historical Review* 117:1 (2012): 98.

¹² Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2005).

¹³ Referring to the expansion of the East India Company in the early nineteenth century, Partha Chatterjee writes that “the principal justification for annexation became the plea that the people living under various Indian rulers needed to be protected from misgovernment.” Chatterjee, *The Black Hole of Empire: History of a Global Practice of Power* (Princeton: Princeton University Press, 2012), 190.

¹⁴ British Honduras is an excellent example here: Alan Lester and Fae Dussart describe it as an important bridge between the office of protector of slaves and protector of aborigines, *Colonization and the Origins of Humanitarian Governance: Protecting Aborigines across the Nineteenth-Century British Empire* (Cambridge: Cambridge University Press, 2013), 37–76. Much more interesting, for our purposes, are the rich, continual discussions about the limits of British jurisdiction in the settlement: e.g. Liverpool to Lt Col. Smyth, 31 May 1811, TNA: CO124/3, 17–21; Liverpool to George Arthus, 9 January 1815, 8 July 1815, 30 September 1816; 5 July 1818; 16 March 1822, *ibid.* These concerns became the object of a private commissioners’ report in 1829: Commissioners of Legal Enquiry 1829: Honduras and Bahamas Reports &c, TNA: CO318/77, F167–181.

¹⁵ See Pamela Nightingale, *Trade and Empire in Western India, 1784–1806* (Cambridge: Cambridge University Press, 1970); H. V. Bowen, *The Business of Empire: The East India Company and Imperial Britain, 1756–1833* (Cambridge: Cambridge University Press, 2008), 260–272; Chatterjee, *The Black Hole of Empire*, 185–195. For a contemporary account that also directly engages the uncertain relationship between imperial protection and protection in international law, see Charles Lewis Tupper, *Our Indian Protectorate* (London: Longmans, 1898).

¹⁶ See Lauren Benton and Lisa Ford, “Magistrates in Empire: Convicts, Slaves, and the Remaking of Legal Pluralism in the British Empire,” in *Legal Pluralism and Empires, 1500–1850*, ed. Lauren Benton and Richard Ross (New York University Press, 2013), 173–198; on abolitionist discourse and imperial jurisdiction, see Benton, “This Melancholy Labyrinth: The Trial of Arthur Hodge and the Boundaries of Imperial Law,” *Alabama Law Review* 64 (2012): 91–122.

¹⁷, 104-110; Jessie Mitchell, *In Good Faith? Governing Indigenous Australia Through God, Charity and Empire, 182--1855* (Canberra: ANU E-Press, 2011), 30–32, 89–97. At the same time, Protectors of Aborigines were sent to the new colonies of New Zealand, South Australia and Western Australia. They formed subtly different functions in each place: Lester and Dussart, *Colonization and the Origins of Humanitarian Governance*; Amanda Nettelbeck, “‘A Halo of Protection’: Colonial Protectors and the policy of Aboriginal protection as punishment,” *Australian Historical Studies* 43 (2012), 396–411.

¹⁸ The Portuguese had controlled the coast before the Dutch. For a more comprehensive analysis of colonial representations of the central region, see Sujit Sivasundaram, *Islanded: Britain, Sri Lanka and the Bounds of an Indian Ocean Colony* (Chicago: University of Chicago Press, 2013); see also Roshan de Silva Wijeyeratne, *Nation, Constitutionalism and Buddhism in Sri Lanka* (New York: Routledge, 2014), chapter 5.

¹⁹ See Terms of Treaty enclosed in North to Hobart, 16 April 1802, TNA, CO 54/6, F98–101.

²⁰ North to Lord Hobart, 21 November 1802, TNA, CO 54/7, F126–31.

²¹ De Silva, *Nation, Constitutionalism and Buddhism*, 78. The position was similar to that of regent.

²² It seems certain that not all Kandyan regarded the Nayakkar dynasty as “foreign,” though both the Dutch and British accepted this label and incorporated it within a confused and shifting set of classifications of social difference. See John D. Rogers, “Early British Rule and Social Classification in Lanka,” *Modern Asian Studies* 38:3 (2004): 625–647, especially 637.

²³ Transcript of negotiations, 5 February 1802, enclosure in North to Hobart, 16 April 1802, TNA, CO 54/6, F94–97.

²⁴ North to the King of Kandy, 9 September 1802, TNA, CO 54/6, F185.

²⁵ Nira Wickramasinghe, “Many Little Revolts or One Rebellion? The Maritime Province of Ceylon/Sri Lanka between 1796 and 1800,” *South Asia: Journal of South Asian Studies* 32:2 (2008): 170–188.

²⁶ North to Camden, 10 July 1805, TNA, CO 54/18.

²⁷ Maitland to Camden, 19 October 1805, TNA, CO 54/18. Besides complaining about North's impenetrable proclamations, Maitland observed the government had based the design of the courts on "mere theoretic principles" rather a deep understanding of locals. Camden to Maitland, 21 February 1807, TNA, CO 55/62, F115.

²⁸ Camden to Maitland, 19 April 1805, TNA, CO 55/62, F111.

²⁹ Maitland to Camden, 19 October 1805, TNA, CO 54/18.

³⁰ Ibid. The recommendations accompanied a list of nearly two dozen measures, ranging from changes with regard to the use of stamped paper to the creation of a new circuit court, to be presided over by a judge of each Provincial Court. Enclosure in Maitland to Camden, 19 October 1805, TNA, CO 54/18.

³¹ Maitland characterized the changes as minor adjustments to the system put in place by North: "The number of Sitting Magistrates have been indeed considerably increased, but I have left the Provincial Courts very much as they stood, and have not interfered with the limits of the Jurisdiction of the Supreme Court and settled by my Predecessor Mr. North." Maitland to Windham, 28 February 1807, TNA, CO 54/25.

³² Maitland to Windham, 28 February 1807, TNA, CO 54/25.

³³ Castlereagh worried that the reforms would "greatly indispose the Modeliars" and warned Maitland that such major reforms should come before the government for approval. Castlereagh to Maitland, 29 February 1808, TNA, CO 55/62, F209.

³⁴ Lushington had left and then returned to Ceylon, where he publicly challenged Maitland's authority over various judicial matters. Maitland astutely appealed to London for support, and Castlereagh sided with him, chiding the Chief Justice and urging him to show "more consolidation towards the governor." Castlereagh to Lushington, 6 October, 1809, TNA, CO 55/62, F237.

³⁵ Maitland's Instructions to Johnston, Enclosure in in Maitland to Castlereagh 25 January 1809, TNA, CO 54/31.

³⁶ Ibid.

³⁷ Liverpool to Maitland, 30 September 1810, TNA, CO 54/62.

³⁸ Maitland to Peel, 30 August 1811, TNA, CO 54/41, F84.

³⁹ Ibid.

⁴⁰ Maitland's Instructions to Johnston, Enclsure in Maitland to Castlereagh 25 January 1809, TNA, CO 54/31.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Hobart to North, 14 May 1803, TNA, CO 55/62, F69-70.

⁴⁴ Ibid., F70-72.

⁴⁵ Castlereagh to Maitland, 14 April 1807, TNA, CO 54/62.

⁴⁶ Maitland's Instructions to Johnston, Enclosure in Maitland to Castlereagh 25 January 1809, TNA, CO 54/31.

⁴⁷ On D'Oyly, see Brendon Gooneratne and Yasmine Gooneratne, *This inscrutable Englishman : Sir John D'Oyly, Baronet, 1774–1824* (London, New York: Cassell, 1999).

⁴⁸ Enclosure in Brownrigg to Bathurst, 10 February 1814, TNA, CO 54/51, F122v.

⁴⁹ Brownrigg to Bathurst, 10 February 1814, TNA, CO 54/51, F119, 120.

⁵⁰ Brownrigg to Bathurst, 20 March 1814, TNA, CO 54/51, F175.

⁵¹ D'Oyly seemed to be acting on his own in making promises on behalf of the British government. D'Oyly to First Adigār, 28 February 1814, TNA, CO 54/51, F179.

⁵² The meeting with a chief of the Jaffragam district took place at D'Oyly's house; when the chief told him of the willingness of Kandyans to join English troops in opposing the king, D'Oyly informed him. Report by D'Oyly on meeting with Edkneylogoada Koditurwakka Milame, 4 March 1814, TNA, CO 54/51, F132.

⁵³ It is very likely that D'Oyly's interlocutor was already well informed about the discourse of protection. Report by D'Oyly on meeting with Edkneylogoada Koditurwakka Milame, 4 March 1814, TNA, CO 54/51, F132.

⁵⁴ "Proclamation by His Excellency Lieut. Robert Brownrigg Governor and Commander in Chief and over the British Settlements and territories in the Island of Ceylon with the dependencies thereof," Enclosure in Brownrigg to Bathurst 15 March 1815, TNA, CO 54/55. Brownrigg cited both specific and general evidence that the King of

Kandy was unfit to rule. The specific act of “atrocious barbarity” was the excessively brutal punishment of “ten innocent subjects of the British empire.” Kandyan forces had intercepted a group of “Moorish” traders from British-controlled territory and had cut off an arm of each one of them; several of the traders had died and the rest were sent to make the trip back across the border with severed arms hanging around their necks. Alongside these acts of brutality and aggression, Brownrigg noted that the King of Kandy was individually responsible for “the rejection of all relations of amity.” There appeared no possibility of negotiating with him as a legitimate sovereign in the context of “a state of relations unsettled and precarious beyond all precedent” in which the king had rejected all possibilities of establishing “relations of amity.” Some uncertainty about whether the impulse to protect Kandyans sufficed as a reason for hostilities seems to have prompted Brownrigg to list an additional grievance: the “irruption of an armed Kandyan force into the British territory.” The raid was not a significant incursion, but Brownrigg seized upon it as a factor that “supersedes every deliberative consideration” in justifying a British military response. Brownrigg to Bathurst 16 January 1815, TNA, CO 54/55.

⁵⁵ “Proclamation by His Excellency Lieut. Robert Brownrigg Governor and Commander in Chief and over the British Settlements and territories in the Island of Ceylon with the dependencies thereof,” Enclosure in Brownrigg to Bathurst 15 March 1815, TNA, CO 54/55.

⁵⁶ Brownrigg and other officials continued to add detail and nuance to their understanding of the nature and extent of projected British authority as their forces were advancing on Kandy. One proclamation of February 11, 1815, declared three of the “occupied” Kandyan provinces to be “integral parts of the British possessions in the island of Ceylon.” “Proclamation by His Excellency Lieutenant General Robert Brownrigg Governor and Commander in Chief in and over the British Settlements and Territories in the Island of Ceylon with the Dependencies thereof,” Enclosure in Brownrigg to Bathurst 15 March 1815, TNA, CO 54/55.

⁵⁷ “Proclamation by His Excellency Lieutenant General Robert Brownrigg Governor and Commander in Chief in and over the British Settlements and Territories in the Island of Ceylon with the Dependencies thereof,” enclosure in Brownrigg to Bathurst 15 March 1815, TNA, CO 54/55. On the broader set of shifting British categories of difference on the island, see John D. Rogers, “Colonial Perceptions of Ethnicity and Culture in Early Nineteenth-

Century Sri Lanka,” in Peter Robb, ed., *Society and Ideology: Essays in South Asian History Presented to professor K.A. Balhatchet* (Delhi: Oxford University Press, 1993), 97–109.

⁵⁸ D’Oyly later fell out of favor with Brownrigg, but at the moment of taking possession of Kandy, the Governor plainly admitted his dependence on D’Oyly for formulating policy toward the kingdom, even writing to Bathurst that he was “not prepared to present to your Lordship any connected view of the complicated and important considerations of a Political and Civil nature with arise out of this great change” while D’Oyly was with the deposed king and had not yet joined Brownrigg in Kandy. Brownrigg to Bathurst, 25 February 1815, TNA, CO 54/55, F103.

⁵⁹ Ceylon Government Gazette, 6 March 1815, Enclosure in Brownrigg to Bathurst, 15 March 1815, TNA, CO 54/55.

⁵⁹ Ceylon Government Gazette, 6 March 1815, TNA, CO 54/55; Enclosure in Brownrigg to Bathurst, 15 March 1815, TNA, CO 54/55.

⁶⁰ Ceylon Government Gazette, 6 March 1815, TNA, CO 54/55, Enclosure in Brownrigg to Bathurst, 15 March 1815, TNA, CO 54/55.

⁶¹ Ibid.

⁶² Ibid.

⁶³ Brownrigg to Bathurst 15 March 1815, TNA, CO 54/55, F122.

⁶⁴ In advancing this position, Brownrigg was forced to argue both that the Charter of 1811 was constitutionally authoritative and that it was a document created for a “decidedly foreign” context so that most of its substance was inapplicable to Kandy. Brownrigg to Bathurst 15 March 1815, TNA, CO 54/55, F122–122vv.

⁶⁵ Gifford to Brownrigg 11 March 1815, TNA, CO 54/55, F172v–173v.

⁶⁶ Notes respecting the Proceedings in Council on the reading of the Convention , 1 April 1815, TNA, CO 54/55, F201v.–202.

⁶⁷ It is worth noting that Brownrigg might have made a similar argument by claiming Kandy was a conquered colony and that executive power should continue until a new constitution was settled. That argument would have referenced *Campbell v. Hall* (see our discussion in chapter 2). But there was little talk of conquest, perhaps because

it would have clashed with the protection language and the idea that the British had come to the aid of opponents of the king.

⁶⁸ Robert Aldrich, “Out of Ceylon: The Exile of the Last King of Kandy,” in *Exile in Asia*, ed. Ronit Ricci (Honolulu: University of Hawai‘i Press, forthcoming); De Silva, *Nation, Constitutionalism and Buddhism*, 84–87.

⁶⁹ Accounts of the Kandyan wars include Geoffrey Powell, *The Kandyan Wars: The British Army in Ceylon, 1803–1818* (London: Leo Cooper, 1973); Channa Wickremesekera, *Kandy at War: Indigenous Military Resistance to European Expansion in Sri Lanka, 1694–1818* (New Delhi: Manohar, 2004). On Sri Lankan nationalist interpretations of the convention, see Michael Roberts, *Collective Identities, Nationalisms, and Protest in Modern Sri Lanka* (Colombo, Sri Lanka: Marga Institute, 1979), 234; and De Silva, *Nation, Constitutionalism and Buddhism*, 168.

⁷⁰ For example, Tambyah Nadaraja, *The Legal System of Ceylon in its Historical Setting* (Leiden: Brill, 1972). An exception is Sivasundaram’s *Islanded*, which, while not centering on law, describes the efforts to design a new law charter and links legal talk about Kandy to its representation as a dangerous and exotic zone. See especially pages 119–132. And see also De Silva, *Nation, Constitutionalism and Buddhism*.

⁷¹ There is considerable evidence that Kandyans, too, were very focused on the law. Not only were the elites engaging in negotiations with British officials clearly very savvy about making appeals for protection, but D’Oyly found willing informants to complete his survey on Kandyan law. In presenting the manuscript of *A Sketch of the Constitution of the Kandyan Kingdom* to the Royal Asiatic Society in 1831, Alexander Johnston suggested that Kandyans had furnished D’Oyly with information about Kandyan law because “the principal officers of the former Kandian government . . . at that time had no motive to suppress the truth, and were perfectly competent to give him an authentic account of all that related to the nature and the constitution of their former government.” They had, of course, plenty of motive to suppress the truth but were choosing to provide the information, probably as a self-conscious strategy of influencing British policy. *A Sketch of the Constitution of the Kandyan Kingdom*. By the late Sir John D’Oyly. — Communicated by Sir A. Jobxston, Vice-President, R.A.S., F.R.S. Read May 7, 1831. To Graves C. Haugston, Esq., M.A., F.R.S., Honorary Secretary to the Royal Asiatic Society. December 31, 1831, *Transaction of the Royal Asiatic Society*, 3.2 (1833), 191–252.

⁷² Banberry to Maitland, 18 August 1815, TNA, CO 136/300.

⁷³ “Treaty between Great Britain and Russia &c, Respecting the Ionian Islands; Signed at Paris,” 5 November 1815, in *Parliamentary Debates*, First Series, vol. XXXII (London: T. C. Hansard, 1816), 294–297.

⁷⁴ Bathurst to Maitland, 29 August 1816, TNA, CO 136/300; the full article of the treaty reads: “The United States of the Ionian Islands shall, with the probation of the Protecting Power, regulate their internal organization; and, in order to give all the parts of this organization the necessary consistency and action, his Britannic Majesty will employ a particular solicitude with regard to the legislation and the general administration of those States, his Majesty will therefore appoint a Lord High Commissioner to reside there, invested with all the necessary power and authorities for this purpose.” “Treaty between Great Britain and Russia &c, Respecting the Ionian Islands,” 296.

⁷⁵ Banberry to Maitland, 26 November 1815, TNA, CO 136/300.

⁷⁶ Bathurst to Maitland, 2 December 1815, TNA, CO 136/300.

⁷⁷ Bruce Knox, “British Policy and the Ionian Islands, 1847–1864: Nationalism and Imperial Administration,” *English Historical Review* 99 (1984): 506–529; Eleni Calligas, “Radical Nationalism in the British Protectorate of the Ionian Islands (1815–1864),” in *The Making of Modern Greece: Nationalism, Romanticism, and the Uses of the Past*, eds. Roderick Beaton and David Ricks (Farnham, UK: Ashgate, 2009), 151–160.

⁷⁸ Bathurst to Maitland, 2 December 1815, TNA, CO 136/300.

⁷⁹ *Ibid.*

⁸⁰ Frere to Castlereagh, 24 May 1817, TNA, CO 136/300.

⁸¹ Frere to Castlereagh, 24 May 1817, TNA, CO 136/300.

⁸² Frere asserted the requirement that accusations of piracy had to be supported by evidence presented before him in Frere to Castlereagh, 9 June 1817. TNA, CO 136/300.

⁸³ Bruce Knox, “British Policy and the Ionian Islands, 1847–1864: Nationalism and Imperial Administration,” *English Historical Review* 99 (1984): 506–529; Eleni Calligas, “Radical Nationalism in the British Protectorate of the Ionian Islands (1815–1864),” in *The Making of Modern Greece*, 151–160.

⁸⁴ Count Cladan to Bathurst, 17 October 1816, TNA, CO 136/300; Bunberry to Count Cladass, 30 August 1816, TNA, CO 136/300.

⁸⁵ Ibid.

⁸⁶ Bathurst to Maitland, 3 February 1820, TNA, CO 136/304.

⁸⁷ Bathurst to Capodistria, 19 February 1820, TNA, CO 136/304.

⁸⁸ Bathurst to Maitland, 6 June 1820, TNA, CO 136/304.

⁸⁹ “Ionian Islands, Conduct of Sir Thomas Matiland,” 7 June 1821, in *Parliamentary Debates*, New Series, vol. V (London: T. C. Hansard, 1822), 1149, 1132.

⁹⁰ Quoted in Maria Paschalidi, “Constructing Ionian Identities: The Ionian Islands in British Official Discourses, 1815–1864” (PhD thesis, University College London, 2009), 114.

⁹¹ Douglas to Glenelg, 19 June 1835, TNA, CO 136/75; Douglas to Glenelg, 8 July 1835, TNA, CO 136/75.

⁹² Glenelg to Douglas, 9 September 1835, TNA, CO 136/75.

⁹³ Douglas to Glenelg, 2 October 1835, TNA, CO 136/75.

⁹⁴ Kirkpatrick and Blair to Glenelg, 30 September 1835, TNA, CO 136/75.

⁹⁵ Douglas to Glenelg, 2 October 1835, TNA, CO 136/75.

⁹⁶ Kirkpatrick and Blair’s objections were regarded as more than a mere annoyance in part because imperial officials were eager to put other new codes in place, including a new Martial Code that would aid the response to increasingly frequent disturbances. London wanted the British Meeting Bill and Articles of War to be adopted as the Ionian Martial Code; Assembly members balked, citing especially their abhorrence of the code’s approval of flogging to punish soldiers. British respondents worried that adopting one code of laws for British soldiers and another for Ionians would create a condition in which soldiers serving side by side might be subject to different punishments. The debate prompted the President of the Legislative Assembly to remind the high commissioner that “British Law is not permanent” and its legitimacy as a single and unifying framework was not a goal to which all did or should subscribe. President of Legislative Assembly to Douglas, 28 November 1835, TNA, CO 136/75.

⁹⁷ Douglas to Glenelg, 23 August 1837, TNA, CO 136/75.

⁹⁸ Douglas to Glenelg, 22 June 1838, TNA, CO 136/88.

⁹⁹ Douglas to Glenelg, 21 June 1838, TNA, CO 136/88. Douglas noted that the lack of clarity extended to whether or not Ionians could enter into their own commercial agreements, a point of considerable importance to island traders. Douglas to Glenelg, 21 June 1838, TNA, CO 136/88. Commercial questions also posed challenges. With the price of grapes and currants plummeting, and “extreme misery” in grape-growing regions, farmers signed a petition in 1843 asking the British government to reduce the duty on currants imported from Cephalonia, Tante, and Ithaca. (Senator for Laute to Seaton, 4 May 1843, TNA, CO 136/120). Advocates argued that this privilege would attach some value to the islands’ relationship with Britain. In the same months this proposal was under consideration – it was roundly rejected in London – there were reports of violence on Cephalonia that British officials attributed to low prices for crops and farmers’ inability to pay their debts to landowners (Ward to Grey, 4 June 1849, TNA, CO 136/131).

¹⁰⁰ Ward to Grey, 4 June 1849, TNA, CO 136/131.

¹⁰¹ Ward to Grey, 20 June 1849, TNA, CO 136/131.

¹⁰² Ward to Grey, 9 July 1849, TNA, CO 136/131.

¹⁰³ Grey to Ward, 13 August 1849, TNA, CO 136/131. When an outbreak of violence in Cephalonia resulted in the death of a British captain, Ward extended amnesty to the participants in the uprising, except for those actually responsible for the captain’s death.

¹⁰⁴ Grey to Ward, 13 August 1849, TNA, CO 136/131. Ward noted explicitly that “the general state of excitement throughout Europe, in 1848” was probably having an influence in the islands, and he continued to champion a softer approach than previous administrations had adopted. Ward to Grey, 3 August 1849, TNA, CO 136/131. This equanimity dissolved with the uprising in Cephalonia in August 1849.

¹⁰⁵ Ward to Grey, 1 September 1849, TNA, CO 136/132.

¹⁰⁶ Ward to Grey, 1 September 1849, TNA, CO 136/132.

¹⁰⁷ Compare Ward to Grey, 4 June 1849, TNA CO 136/131.

¹⁰⁸ Ward to President of the Senate, 8 October 1849, TNA CO 136/132; Ward to Grey, 19 October 1848, TNA, CO 136/132.

¹⁰⁹ Ward to Grey, 1 September 1849, TNA, CO 136/132 [CK]

¹¹⁰ Charles Fitzroy, *Letters showing the Anomalous Political and Financial Condition of the Ionian Islands*, (London: James Ridgway, 1850), iii. See chapter 3 on commissions of inquiry.

¹¹¹ Viscount Palmerston to Sir Edmund Lyons, July 19 1847, in *Correspondence Respecting the Demands Made upon the Greek Government; and Respecting the Islands of Ceri and Sapienza* (London: Harrison and Son, 1850), 55. Pacifico took advantage of the opportunity to present another against the Greek government for land of his taken for the adjacent royal garden, and the British representative added this to the list of requested compensation for Pacifico. Sir Edmund Lyons to M. Glarakis, November 22 1847, in *Correspondence Respecting the Demands Made upon the Greek Government*, 93–94. For a good summary of the case that places it in the context of the politics surrounding Jews in the eastern Mediterranean, see K. E. Fleming, *Greece: A Jewish History* (Princeton: Princeton University Press, 2008), 24–31.

¹¹² M. Glarakis to Sir Edmund Lyons, Athens, 27 December/January 8 1848, in *Correspondence Respecting the Demands Made upon the Greek Government*, 96; M. Colocotronis to Sir Edmund Lyons, Athens, 16/28 July 1848, in *Correspondence Respecting the Demands Made upon the Greek Government*, 136.

¹¹³ Colocotronis to Sir Edmund Lyons, Athens, 16/28 July 1848, in *Correspondence Respecting the Demands Made upon the Greek Government*, 18

¹¹⁴ Viscount Palmerston to Sir Edmund Lyons, Foreign Office, December 16 1846, in *Correspondence Respecting the Demands Made upon the Greek Government*, 186.

¹¹⁵ Sir Edmund Lyons to Viscount Palmerston, Athens, April 9 1847, in *Correspondence Respecting the Demands Made upon the Greek Government*, 190.

¹¹⁶ Consul Crowe to Sir Edmund Lyons, Patras, July 29 1846, in *Correspondence Respecting the Demands Made upon the Greek Government*, 197.

¹¹⁷ Consul Wood to Sir Edmund Lyons, Patras, May 31 1847, in *Correspondence Respecting the Demands Made upon the Greek Government*, 239.

¹¹⁸ Petition of Forty Ionian Residents at Patras to Consul Wood, in *Correspondence Respecting the Demands Made upon the Greek Government*, 246.

¹¹⁹ Deposition of A. Sigouros, Deposition of N. Sigouros, Deposition of L. Markesini, in *Correspondence Respecting the Demands Made upon the Greek Government*, 258–267.

¹²⁰ M. Coletti to Sir Edmund Lyons, Athens, 2 October 1847, in *Correspondence Respecting the Demands Made upon the Greek Government*, 269.

¹²¹ See for example Laurence Fenton, *Palmerston and The Times: Foreign Policy, the Press and Public Opinion* (London: I.B. Tauris, 2012), 108–111; David Brown, *Palmerston and the Politics of Foreign Policy, 1846–55* (Manchester University Press, 2002), 101–111. Compare, for an account focusing on the status of Jews in the eastern Mediterranean, including Ionian Jews, K.E. Fleming, *Grece: A Jewish History* (Princeton University Press, 2008), 23–27.

¹²² “Speech by Palmerston on the Affairs of Greece,” 25 June 1850, in *British Prime Ministers of the Nineteenth Century: Policies and Speeches*, ed. Joseph H. Park (New York: New York University Press, 1916), 155.

¹²³ *Ibid.*, 159.