The Kandyan Convention: consolidating the British Empire in colonial Ceylon

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A: Introduction

The Kandyan Convention (1815) is the definitive legal instrument in the consolidation of British sovereignty over the entire island of Ceylon (Sri Lanka) in the early nineteenth century. The signing of the Treaty, and in the associated Proclamation, in effect, marked the cession of the Kandyan Kingdom to the British Crown, an outcome perhaps not fully realised by the Kandyan Chieftains at the time. Under the Convention, the acquisition of sovereignty by the British was to proceed on the basis of certain ‘protections’ to the Kandyan population. These ‘protections’ had clear resonances of natural rights, including the recognition of Kandyan property rights. The practical, spatial result of the Convention was that the Kandyan Kingdom, which was the sole region of Ceylon not under direct British control at the time, came under full British governance by 1818. However, the nature of the Convention reflected a subtle shift in British colonial policy regarding the acquisition of territories of Empire. Upon cession of territory, and as consistent with the Doctrine of Recognition at International Law, the Kandyan Convention recognised local law and custom, but also laid down the preconditions for the administrative measures by the British under which it would later assume political, economic and ultimately religious control of this strategically important island.

Unusually, the Kandyan Convention was not an agreement between two sovereigns of independent territories. The Kandyan King, Sri Vikrama Rajasingha, who was Ceylon-born, but of Malabar or Nayyakar (South Indian Tamil) descent, had been involved in a power struggle with the nobility of the Kingdom, who were Sinhalese. Following what was, effectively, a proclamation of war on him by the Governor of Ceylon in January 1815, the King lost control of his Kingdom. In the vacuum created, the signatories to the Convention were the Kandyan nobility or Chieftains, and on the other hand; the British Crown, which at that point was represented by Robert Brownrigg, Governor of Ceylon.

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2 Ceylon Government Gazette Extraordinary, March 6th 1815, The National Archives, CO54/55.
3 See Figures 1, 2 and 3 below.
5 Tennent, James Emerson, *Ceylon; an Account of the Island Physical, Historical, and Topographical with Notices of Its Natural History, Antiquities and Productions*: Volume 2 (2nd ed, 1859), 87; Ludowyk, above n 1, 41; de Silva, above n 1, 294-99.

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The Kandyan Convention can be viewed as being singular for several reasons. First, it is remarkable in that it is an early treaty of cession in South Asia. In line with prevailing practice by the Office of War and the Colonies, Article IV of the Convention vested the sovereignty of the Kandyan Kingdom in the British Crown, exercised for ‘the time being’ by the Governor or Lieutenant Governor of Ceylon. This was a common model for British governance of its colonies, with similar arrangements in contemporary situations, such as that in Australia. However, the Convention also expressly extinguished the claims of sovereignty to the Kandyan throne by the deposed Kandyan Nayyakar King and his descendants. In effect, this Article constituted the Sinhalese nobility and religious leaders as the traditional authority structure, and at this particular moment, they were well disposed towards the direction of British interests because of their own local, political aims. Secondly, the Convention made a specific commitment to ‘protect’ the Buddhist faith. The centrality of Buddhism to Sinhalese society and its governance made this Article of the Convention a powerful inducement for the Sinhalese Chieftains to enter into the Treaty, even though its existence in the document was of concern to the Secretary of State for War and the Colonies.

Thus, at one level, the Kandyan Convention represents a classic Imperial acquisition by Treaty, involving cession of territory that required the British Crown to ‘recognise’ local Sinhalese authority, custom and law consistent with International law principles. From another perspective, however, the Convention denoted the beginnings of a transition in British colonial policy, coming as it did after the American and French Revolutions, in according ‘natural rights’; albeit that in the case of the Kandyan Kingdom, it was based on opportunism and practicability. This transition was part of the development of the peculiarly British mode of imperial administration that distinguished its Empire over the nineteenth century. Hannah Arendt suggests that this colonial bureaucratic form of imperial power was deployed in many parts of the British Empire, and it derived from the sense that ‘inferior’ persons required ‘protection’. In this vein, the Convention was both a legal instrument that straddled an emerging sense of ‘rights’ for colonised (i.e. inferior) people, whilst simultaneously laying the preconditions for indivisible British Sovereignty through its administrative measures.

Moreover, against the backdrop of the French and American Revolutions and emerging liberal philosophy in Britain, concern about ‘natural rights’ and religious tolerance suggests that the

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6 Ceylon Government Gazette Extraordinary, March 6th 1815, Proclamation Article IV, The National Archives, CO54/55.
7 For further discussion on role of colonial governors, see, foe example, Evans Julie, *Edward Eyre: race and colonial governance* (University of Otago Press, 2005).
8 Brownrigg to Bathurst, March 15th 1815, The National Archives, CO54/55.
10 Arendt suggests, ‘Of the two main political devices of imperialist rule, race was discovered in South Africa and bureaucracy in Algeria, Egypt, and India; ... the latter was a consequence of that administration by which Europeans had tried to rule foreign peoples whom they felt to be hopelessly their inferiors but at the same time in need of special protection.’ Arendt, Hannah, *The Origins of Totalitarianism* (Harcourt Brace Jovanovich, first published 1958, 1994), 207.
Convention may also have exemplified wider transitions; that is, a shift in how the British Crown viewed its legal relationship with the peoples it was absorbing into Empire. Arguably, a similar model of agreement-making, which sought to offer ‘protections’ to local inhabitants for cultural treasures, was later deployed in the Treaty of Waitangi, whereby, in 1840, the British acquired sovereignty over New Zealand.11

B: Context

Understanding how history is made has been the primary source of emancipatory insight and practical political consciousness, the great variable container for a critical interpretation of social life and practice. Today, however, it may be space more than time that hides consequences from us, the ‘making of geography’ more than the ‘making of history’ that provides the most revealing tactical and theoretical world.12

If space and time are complicit in hiding consequences, then in this next section we turn to both the ‘making of the geography’ as well as the ‘making of the history’ around Ceylon in the early nineteenth century to understand how at tactical and theoretical level colonial spaces were constructed in a dialectic with history and law. In this manner, we situate the specific events around the Kandyan Convention as a means to ground more abstract analyses of British policy and practices of colonialism and imperialism that manifested in Empire.

International law, domestic law and administrative practice existed in a synergistic relationship that produced the normative preconditions for Empire.13 Across the eighteenth and nineteenth centuries, the ambit of international law expanded as it was increasingly instituted to assert European sovereignty14 over non-European lands. Conquest, cession and occupation were commonly accepted means of acquiring territory in the eighteenth and nineteenth centuries within the framework that had been established in international law for the ordering and classification of non-European lands.15 European civil law, with a foundation in Roman property classifications, was influential in the early phases of international law.16 Similarly, British imperial expansion involved reference to domestic

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11Note: it is acknowledged that it is highly contested as to whether the Treaty of Waitangi ‘recognised’ cultural heritage of the Maori peoples or offered a more fulsome recognition of Maori sovereignty; see for example, J. Philip, ‘The Treaty of Waitangi: a text for the performance of nation’ (2004) 4(1) Oxford University Commonwealth Law Journal 1.
12Soja, Edward, Postmodern Geographies: The Reassertion of Space in Critical Social Theory (Verso, 1989),1.
15See Lorimer, James, The Institutes of the Law of Nations: A Treatise of the Jural Relations of Separate Political Communities (W. Blackwood and Sons, 1883), 3 (doctrine of recognition).
16Simpson argues that there were five classic modes under this tradition, occupation (settlement) conquest, cession, accretion and prescription (1993, p. 203). Secher identifies four methods, namely occupation (settlement) conquest, cession
English property law and concepts to construct the ordered spaces of Empire. In turn, the ordered spaces of British sovereignty laid the preconditions for the administration of ‘indivisible sovereignty’ in the geographical consolidation of European power in Ceylon.\textsuperscript{17}

The interest of Europeans in the island of Ceylon dated back to the 16\textsuperscript{th} century, when the Portuguese established a presence in 1505. Their primary reason for being in Ceylon was trade in cinnamon, for which the island had been known for several centuries by Arab traders and others in South and Southeast Asia\textsuperscript{18} The Portuguese were eventually supplanted by the Dutch in 1658, who were also drawn to the island by the wealth generated by the quality of the cinnamon produced on the island.

For both these powers, control of the island was limited to the littoral regions, the so-called Maritime Provinces. In the case of Portugal, their main bases were in the southwest and the northern Jaffna peninsula (see Figure 1), but in no sense could the Portuguese be said to have settled ‘Cilao’. Theirs was a mercantile operation, based on obtaining spice from the rulers of the interior kingdoms, including the Kandyan Kingdom.\textsuperscript{19} The centre of their operations was around the port of Colombo, not because of its navigational qualities, but because it was central to the Kingdom of Kotte, with whom the Portuguese had negotiated favourable trade concessions after landing, by chance, on that part of the coast in 1505. The Portuguese were not concerned with territorial gain ‘…so much as the control of commerce by subduing and dominating, by means of naval power, the strategic points through which it passed. … They were drawn into the politics of…the Kotte Kingdom…in their anxiety to establish a bridgehead for control over the island’s cinnamon trade’.\textsuperscript{20}

For the Dutch, however, their interest in ‘Ceilon’ was also heightened by the significance of the strategic port of Trincomalee on the NE coast (see Figures 1 and 2). One of the largest and best harbours in Asia, Trincomalee was controlled by the Kingdom of Kandy, which dominated the island from its focal point in the Central Highlands. Using its geographical advantages to the utmost, the Kandyan Kingdom had persistently resisted penetration by the Portuguese.\textsuperscript{21} It was able to maintain that independence through the Dutch colonial period and into the early years of British control, notwithstanding the diplomatic and military attempts made by the Dutch to subdue the Kingdom in order to obtain more direct control of Trincomalee and its surrounds.\textsuperscript{22}

\textsuperscript{17} For a parallel, see Edney, Matthew, \textit{Mapping an Empire: The Geographical Construction of British India} (University of Chicago Press, 1997).
\textsuperscript{18} Ludowyk, above n 1, 13.
\textsuperscript{19} Ludowyk, above n 1, 13.
\textsuperscript{20} de Silva, above n 1, 147.
\textsuperscript{22} Ludowyk, above n 1, 2; Somasunderam, above n 19, 65; de Silva, above n 1, 184-195.
The independence of the Kandyan Kingdom was one reason why European influence on Ceylonese life was far more profound in the coastal regions, where trade, the building of military forts and other imperial infrastructure had been centred. However, this isolation also had the effect of insulating the Kingdom from modernising socio-political influences, maintaining the intensely feudal system on which Kandyan society was based\(^\text{23}\). Part of this geographical intensification of Sinhalese culture was the view that Ceylon, and the Kandyan Kingdom, in particular, was guardian of its Buddhist faith. In this part of Asia, Hinduism was dominant in India to the north, and the influences of other religions such as Islam and Christianity on the Ceylon coast, through the conversions facilitated by the Arab and European traders respectively, helped to reinforce the concept of the Kandyan Kingdom as the

\[^{23}\text{de Silva, above n 1, 197-98.}\]
last bastion of Buddhism. This was reflected in the importance of the Bikkhu, or religious class, in the operation and governance of the Kandyan Kingdom.  

Figure 2: Dutch Possessions in Ceylon: 17th Century (de Silva, above n 1, 216)

Exclusive possession of Trincomalee was seen by the Dutch, and later the British and French, as a key element in establishing and maintaining naval control over the region. It provided a means of maintaining control of the spice trade, as well as facilitating their imperial ambitions in South Asia. The Portuguese had had no such interest in Trincomalee, only reacting when the Dutch negotiated with the King of Kandy for access to the harbour in exchange for helping him remove the Portuguese. In this, the King of Kandy was using a stratagem long favoured by his predecessors; playing a new European power off against an existing one, offering assistance to one in exchange for removing the other. In 1766, however, following an unsuccessful attempt by the King of Kandy to invade the Dutch provinces in the southwest, and the subsequent sacking of Kandy by Dutch forces, a Treaty was signed between the two parties that gave the Dutch sovereignty over its existing possessions (including Trincomalee) and other littoral territory.  

This established Dutch control of the entire coastline of the island in exchange for acknowledging the King of Kandy’s sovereignty over the rest of the island.

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24 The Kandyan Kingdom’s isolation, of course, was also a factor in its eventual demise, as it was effectively landlocked and surrounded by territory controlled by European powers; see, for example, Ludowyck, above n 1, 2-3.


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Consequently, it was this instrument that established the boundaries (see Figure 3) that defined the extent of the Dutch territories in Ceylon that were later ceded to the British.  

![Figure 3: The British in Ceylon: 1815 (Somasundaram, above n 16, 234)](image)

At the end of the eighteenth century, the upheavals in Europe caused by the effects of the French Revolution and the Napoleonic Wars saw Ceylon at the centre of deliberations once the Dutch and British declared war on each other in 1781. However, when the Dutch Stadtholder fled to England for sanctuary following the Napoleonic takeover in 1794, the Dutch forces in Ceylon were told to assist the British, wherever possible. Through the East India Company, the British, who placed much importance on the harbour of Trincomalee as part of the strategic naval network required to secure India as the ‘jewel’ of the British Empire, occupied the harbour by force in order to ensure that it was not taken over by the French.  

By 1796, all Dutch territories in Ceylon were under British control through the East India Company. The latter remained in charge of affairs in Ceylon until the appointment of Frederick North as the first

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26 ibid, 60-61.
27 Somasunderam, above n 19, 96.
28 Mendis, above n 19, 145; Ludowyk, above n 1, 16.
Governor of Ceylon, who took office in January 1798. This move, which placed control of British interests under the direct auspices of the Government, and not the trade-focused East India Company, was an indication of the British Government’s resolve to directly influence the future of Ceylon. Despite the fact that the negotiations between the European powers were not fully concluded until the Treaty of Amiens (1802) - in which Article V stated that the Batavian Republic (the Dutch) “…cedes and guarantees in full Right and Sovereignty to His Britannic Majesty all the Possessions and Establishments in the island of Ceylon, which belonged, before the War, to the Republic …or to their East India Company…” 29 - the reality was that Ceylon was being administered as a colony by the British Government four years before the Dutch possessions were officially ceded to them.

In 1802, the British were in full control of the Maritime Provinces of Ceylon (see Figure 3), with the beginnings of a full colonial administration centred in Colombo. For the next decade, British policy was to not engage in treaty negotiations with the King of Kandy30, despite the general view that stable control and administration of the island would ultimately depend upon direct communications through the Kandyan Kingdom between the colonial capital of Colombo in the southwest and Trincomalee in the northeast.31

The reasons originate with the previous ill-fated attempts by British authorities to negotiate a treaty with the King of Kandy in the late 18th century, working to a strategy aimed at securing Trincomalee by enticing the Kandyan King away from the Dutch. For instance, the East India Company had made an approach in 1782, but had failed because they made a diplomatic blunder in sending a civilian named Boyd to conduct the negotiations. The first Governor of Ceylon, Frederick North, attempted to use internal dissensions within the Kingdom to seize control by first trying to foment intrigue through the King’s Chief Minister, Pilima Talauve in 1802. He then attempted a military solution using the alleged ill-treatment of some Arab traders on the coast as a pretext, but the British force was resoundingly defeated in what was known as the First Kandyan War. Consequently, although the British long term interest may have been in securing the Kandyan Kingdom as part of Empire, in light of these and other unsuccessful diplomatic and military undertakings, the Office of War and the Colonies did not see incorporation of the Kandyan Kingdom into the Colony of Ceylon as a priority.32

Nonetheless, the third Governor, Robert Brownrigg, was a career soldier, with a long record of successful active service.33 Like North, he appears to have been aware of the lack of a clear plan in Whitehall for the future administration or development of Ceylon, 34 there being ‘no grand imperial

29 Treaty of Amiens, France–Great Britain–Spain–Batavian Republic, signed 27 March 1802, 56 Parry’s TS 289.
30 Ludowyk, above n 1, 1.
31 Ludowyk, above n 1, 42.
32 Ludowyk, above n 1, 27-28.
33 Ludowyk, above n 1, 41.
34 Ludowyk, above n 1, 35.
design which dictated what had to be done'. 35 However, given the sequence of events that followed, it can be argued that Brownrigg, as the man on the ground at the far extent of Empire, was far more predisposed than his predecessors to taking advantage of the opportunities presented by the confluence of circumstances that emerged in the years leading up to 1815. 36

C: British Opportunism

The circumstances that resulted in the Convention of 1815 included the readiness of Brownrigg to use power relations within the Kandyan Kingdom to the advantage of British interests. A central stratagem was his encouragement and support of one of his Agents or provincial leaders, John D'Oyly. The East India Company had learned that success was more likely if their representatives became associated with the local leadership networks, building a close working relationship through learning and understanding local languages and customs. D'Oyly followed the same path. A British civil servant with extensive knowledge of Sinhalese society and language37, he had developed a strong working relationship with the Sinhalese hierarchy in his District, a role that also required him to represent the Crown in relations with the Kandyan Kingdom in his role of Chief Translator.38 Given the central role played by the local Adikars (Chief Ministers) and Dissaves (provincial governors) in the governance of the Kingdom, the public significance of his position and his facility with the Sinhalese language, D'Oyly was able to cultivate a level of trust with one of the key factions in the ongoing power plays within the Kingdom. 39

While D'Oyly established strong relationships with the Kandyan Chieftains and appears to have had a genuine respect for Sinhalese culture, the weight of evidence suggests that he was ultimately working to secure British interests. Indeed, it is accepted that he formulated the January Proclamation and then the actual Convention of 1815.40 D'Oyly was able to facilitate these outcomes due to both his knowledge and understanding of the power struggle within the Kandyan leadership and his understanding of the primary place of Buddhism and the Bhikkus in Kandyan society41

The internal political dissension within the Kandyan Kingdom was the third significant factor in the precipitation of the Kandyan Convention. The contemporary King of Kandy, Sri Vikrama Rajasinha, was Ceylon-born, but descended from a Nayyakar or Tamil dynasty that originated in South India. This integration of Sinhalese and Tamil within Ceylonese society was not new, and can be seen as a

35 Ludowyk above n 1, 23.
36 Somasunderam, above n 19, 100; de Silva, above n 1, 277.
37 This was exemplified by D'Oyly, John, 'A Sketch of the Constitution of the Kandyan Kingdom' (1833) 3(2) Transactions of the Royal Asiatic Society of Great Britain and Northern Ireland 191, published after his death.
38 Somasunderam, above n 19, 29.
39 Somasunderam, above n 19, 30.
40 Ludowyk, above n 1, 43; Somasunderam, above n 16, de Silva, above n 1, 300.
41 Somasunderam, above n 19, 29, 173.
reflection of the continual ebb and flow in the nature of Kingdoms within Ceylon over the centuries, particularly in the north. Continual contact and intermarriage between Tamils and Sinhalese had led to a degree of cultural merging in both language and customs. However, ‘…the people living in this period would not have necessarily identified themselves as Tamil or Sinhalese, and would certainly not have identified themselves as Indian or Sri Lankan. These identities evolved in the twentieth century. To look back at ancient conflicts and see them as conflicts between the invading Tamils and the resisting Sinhalese is to see them from a twentieth-century perspective, which does not necessarily help in understanding the reality of earlier centuries’.  

Yet in the conflict that arose in the Kandyan Kingdom in 1815, the contrast of cultures between King and subjects seems to have been utilised by both the British and Sinhalese aristocracy to both explain and justify the events that followed, regardless of the reality of the intercultural dynamics within the Kingdom. Indeed, the resentment of the King by the Kandyan nobility resulted from a far more prosaic political situation. The King had been installed by the Chief Minister, Pilima Talauva, following the death of his childless predecessor. However, the King proved to be more independent that Pilima Taulava had anticipated, and the latter was executed for fomenting dissent against the King. His successor, Ehepola, along with the other chieftains, was even more open in his hostility towards the King, expressing complaints about the cruelty and oppression exerted by the King to the British through John D’Oyly.

D’Oyly, with his ability to talk directly with the Kandyan nobility in their own language, and with the prestige of his position, was able to gain their confidence. When Ehepola defected to the British in 1814, his wife and children were executed by the King. The myth built around the inhumane and brutal nature of the executions, which the British did nothing to dispel, certainly served to accentuate the correctness of the nobles’ cause. Interestingly, Tennent, who wrote a history of Ceylon in 1859 after retiring as Governor, justified British opportunism through a revisionist historical account that detailed the tyranny of the Kandyan King and repeated much of the sentiment expressed in the January 1815 Proclamation and the March 1815 Convention:

*During this interval, the career of the Kandyan king presents a picture of tyrannous atrocity unsurpassed, if it be even paralleled, in its savage excesses, by any recorded example of human depravity.*

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43 Ludowyk, above n 1, 41.
44 See Somasunderam, above n 19, 150-52.
46 Tennent, above n 5, 86-92.
The centrality of D'Oyly’s role to Brownrigg’s manipulation of the circumstances to further British colonial interests can be seen in his recommendation of D'Oyly for a baronetcy following the signing of the Kandyan Convention in 1815. Brownrigg referred to D'Oyly as ‘...a most estimable character and able servant of this government…’, and ascribes to his work ‘…the cordiality with which we have been received in this formerly hostile territory and to which I impute the facility with which the British sovereignty has been embraced throughout the Kandyan Province’. D'Oyly was also rewarded by being installed as Resident of the Kandyan Province and President of the Kandyan Board of Commissioners, in charge of administration of the new Province.

D: The Proclamation

On January 10th 1815, with tensions heightened between the King and his nobility, Brownrigg issued a Proclamation that expressed, ‘...the unavoidable necessity of resolving to carry His Majesty’s Arms in the Kandian country.’ Drafted by D'Oyly, the Proclamation, which in effect signalled an armed invasion of Kandyan territory, portrayed the British Government as benefactors and protectors, making it clear that the ‘...war is against the Tyrannical Ruler alone, not the Kandian people.’ The Proclamation also took the form of a petition by the Kandyan inhabitants imploring the British Crown to relieve them of the suffering at the hands of a tyrannical ruler. Accordingly, the Proclamation stated:

‘His Excellency The Governor and Commander in Chief of the British Settlements in the Island of Ceylon, could not bear with indifference the prayers of the Inhabitants of Five extensive Provinces…who, with one unanimous voice raised against the tyranny and oppression of their Ruler, taking up Arms in defence of their lives, or flying from his power, implored the Protection of the British Government…’

‘Neither could His Excellency contemplate, without the liveliest emotions of indignation and resentment, the atrocious barbarity recently perpetrated in Kandy upon Ten innocent subjects of the British Government…’

British intervention thus assumes the appearance of the Crown seeking to protect the natural rights of the Kandyan peoples to live without the threat of a King turned against his peoples;

‘His Excellency proclaims Hostility against that Tyrannical Power alone… [who has] deluged the Land with the blood of his subjects, and by the violation of every religious and moral Law become an object of abhorrence to mankind.’

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48 Brownrigg to Bathurst, March 9th 1815, The National Archives, CO 54/55.
49 Ceylon Government Gazette, March 2nd 1815, The National Archives, CO 54/55); Somasunderam, above n 19, 203.
50 Brownrigg Proclamation, Jan 10th 1815, The National Archives, CO 54/55.
51 ibid.
52 ibid.
53 ibid.
54 Proclamation, Jan 10th 1815, The National Archives, CO 54/55.
This sentiment is reinforced by the statement that, ‘His Excellency hereby proffers to every individual of the Kandian nation the benign protection of the British Government’.\textsuperscript{55} Importantly, the Proclamation ‘recognised’ the Kandyan Kingdom as a ‘nation’. However, whilst it declares ‘war’ against the Kandyan monarch,\textsuperscript{,} the Proclamation does not purport to claim sovereignty over the kingdom. A transfer of sovereignty was to be achieved by the later Convention.

The Proclamation and the Convention were far from being hasty responses to unexpected circumstances. Brownrigg had signalled as much in an earlier note to the Executive Council of Ceylon, asking them to recognise the importance of not losing the, ‘…opportunity to be missed…it would be culpable neglect to do so…for the honour and advantage of the Mother Country.’\textsuperscript{56} At the same time as the Proclamation was issued, Brownrigg wrote to Lord Bathurst, the Secretary of State for War and the Colonies, outlining in detail his justification for the intended plan to take military action against the Kandyan King.\textsuperscript{57}

The grounds for military intervention by Brownrigg was the fact that the Kandyan Kingdom had arrested a few British subjects from the Maritime provinces, who were formally tried for spying in the service of the exiled Kandyan Chief Minister who had defected. The men were punished by gross mutilation in accordance with Kandyan law – a punishment that Brownrigg denounced as a cruel act, ‘constituting a ground for intervention’.\textsuperscript{58} Significantly, Brownrigg was later called upon to account for this use of armed force in light of the Whitehall’s clearly expressed policy of non-intervention in the Kandyan Kingdom.\textsuperscript{59} The orders to invade the Kingdom and occupy the capital, Kandy, were only given when it was assured, as D’Oyly had advised, that the King would be captured and that no harm would come to the Adikar (Chief Officer of State), who was supporting the British and was the source of much intelligence for John D’Oyly.\textsuperscript{60}

On hearing of the British advance, the Kandyan King fled the capital and was later captured on February 18\textsuperscript{th} 1815. D’Oyly, it is said, went to each of the chieftains with a copy of the Convention in his back pocket in order to personally persuade them to sign the document, and the Convention was proclaimed on March 2\textsuperscript{nd} 1815 and gazetted on March 6\textsuperscript{th} \textsuperscript{61}. 

\textsuperscript{55} ibid. 
\textsuperscript{56} Brownrigg to Executive Council of Ceylon, Jan 3\textsuperscript{rd} 1815, The National Archives, CO54/55. 
\textsuperscript{57} Brownrigg to Bathurst, January 17\textsuperscript{th}, 1815, The National Archives, CO54/55. 
\textsuperscript{58} Ceylon Government Gazette Extraordinary, Kandyan Convention, March 6\textsuperscript{th} 1815, The National Archives, CO 54/55, preamble. 
\textsuperscript{59} See Somasunderam, above n 19, 153 and Brownrigg to Bathurst, Despatch 86 of 30 October 1815 CO 54/53 S.L.N.A.,5. 
\textsuperscript{60} D’Oyly to Brownrigg, Jan 16\textsuperscript{th} and 17\textsuperscript{th} 1815, The National Archives, CO 54/55. 
\textsuperscript{61} Ceylon Government Gazette Extraordinary, March 6\textsuperscript{th} 1815, The National Archives, CO 54/55.
The influence of international law precepts governing acquisition of territory by European powers is readily discernible in the specific language of the January Proclamation and the later Convention. The language resonates with the assumption that, ‘Empire, actual or potential was ... supported by an ideology that claimed universal authority over all peoples’.62 The Convention is formally defined as a Treaty of Cession.63 Cession is defined as, ‘the intentional transfer of sovereignty over territory by one sovereign state to another.’64 The question whether the transfer of sovereignty under the Kandyan Convention was ‘intentional’ by the Chieftains, given the language differences involved; (the Convention was written in English and then translated into Sinhalese) is elaborated further below.

However, as a matter of International law, the Convention validly transferred sovereignty, and brought into play the ensuing international law rules governing the acquisition of territory by European powers, most significantly, in this instance, the Doctrine of Recognition. The rules were based upon a classification system of the lands and societies being subsumed under European control, and they developed over the period of European expansion from the Peace of Westphalia in 1648.65 International law over this time progressively weakened the doctrines that recognised non-European peoples as political organisations with specific rights.66 Development of the rules therefore reflected international law’s heritage, which it, ‘must be said to be Christian, primarily capitalist and closely connected to imperial practices.’67 Thus, as ‘...peoples of the known world were part of large Empires…’, relations ‘were governed by an imperial “domestic” government and law’.68 In this instance, British domestic imperial governance often involved reference to common law within the policy and practice of the War and Colonial Office. Thus, within the overarching frame of international law, the British applied domestic law concepts to determine the relevant law at the point of acquisition of sovereignty.69 The applicable law derived in large measure from Blackstone’s Commentaries:

Plantations or colonies in distant countries are either such where the lands are claimed by right of occupancy only, by finding them desart [sic] and uncultivated, and peopling them from the mother country: or where, when already cultivated, they have been either gained by conquest, or ceded to us by treaties. And both these rights are found upon the law of nature, or at least upon that of nations.70

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63 See Buchanan, Ruth, Stewart Motha and Sundhya Pahuja, above n 14.
65 Ibid, 10.
66 Anaya, above n 14, 19.
67 Ibid.
68 Henkin et al, above n 58, 1.
Such categories were reflexive of English laws around land holding,\textsuperscript{71} but importantly, as the final sentence from Blackstone alludes to,\textsuperscript{72} the laws also reflected an understanding of the need for ‘recognition’ of traditional law and authority and natural rights where lands were already cultivated. This characterisation applied to the Kandyan Kingdom, which existed under a recognised system of law and authority, notwithstanding that the British had just used military force to depose the traditional monarch! The designation of categories of lands as either cultivated or non-cultivated was integral to the dichotomy set up within international law that divided the world into civilised and non-civilised places in accordance with its Christian civilising mission.\textsuperscript{73} Furthermore, the Doctrine of Recognition played a fundamental role in articulating the relationship between the initial acquisition of sovereignty\textsuperscript{74} and the later conduct of the incoming sovereign as it affected local authorities and law, or extinguished pre-existing rights. Elements of this Doctrine are evident in the January Proclamation, but given more precise content in several Articles in the Kandyan Convention itself.

F: The Articles of the Kandyan Convention

The Preamble to the Convention begins with a careful recitation of the status of Governor Brownrigg as the representative of the British Crown in all its majesty. It then turns to enumerate the various classes of Sinhalese nobility and religious authority (the two being closely combined) that were present as the representatives of the Kandyan people. Such recitation of the two parties meeting in accord, was more than mere formality, as it conferred on the document the status of an Agreement with inherent legal effect. Despite the document purporting to record a mutual agreement, the general consensus is that D’Oyly was responsible for drafting the actual terms of the Convention\textsuperscript{75} and for negotiating with the Kandyan aristocracy.\textsuperscript{76} Previously D’Oyly had skilfully negotiated a settlement with the captured Nayakkar King, whereby it was agreed that the King would peacefully move into exile. Thereby, ‘an impression was conveyed that there had been no radical changes, except a salutary change of the monarchs.’\textsuperscript{77} The Convention, in part, reproduced governance arrangements that had already been established in the colony of Ceylon; that is, the Maritime Provinces.\textsuperscript{78} Other Articles were aligned with contemporary British Colonial practice, notwithstanding that these were also influenced by the political factors operating in the Kandyan Kingdom.\textsuperscript{79} These political considerations equated to making concessions ‘...essential to the purpose of conciliating groups that rendered valuable assistance.

\textsuperscript{71} P. Fitzpatrick, “Enacted in the destiny of sedentary peoples”: racism, discovery and the grounds of law’, 

\textsuperscript{72} Interestingly, Blackstone equivocates on the derivation of law as natural law, or in line with the increasing prominence of positivist conceptions as obtaining from the laws of nation states.

\textsuperscript{73} Anghie, above n 64, 4.

\textsuperscript{74} Secher, above n 15, 703.

\textsuperscript{75} Ludowyk, above n 1, 42. de Silva above n 1, 300.

\textsuperscript{76} Somasunderam, above 19, 175.

\textsuperscript{77} \textit{ibid}.

\textsuperscript{78} de Silva, above n 1, , 325-6.

\textsuperscript{79} \textit{ibid}, 300.
to the British interests',\textsuperscript{80} (i.e. the Kandyan Chieftains and Bhikkhus, or religious ministers). The most important of these concessions was protection of the Buddhist faith. This Article was included, ‘... at the insistence of D’Oyly, who, knowing the great influence that Buddhism and the Buddhist clergy had within the kingdom realised it would assist in a smooth transfer of political power to the British.’\textsuperscript{81} D’Oyly’s diary records the sentiment, ‘I beg the Priests will rest assured that they will receive under the British government full Protection and Security.’\textsuperscript{82}

The Articles contained in the Kandyan Convention tend fall into distinct parts. The first three Articles are focused on the rationale for British intervention against the deposed King, while the fourth Article actually vests the ‘dominion of the Kandian provinces’ in the ‘Sovereignty of the British Empire’. The next group of Articles acknowledge protections for Kandyan inhabitants; including preserving the Buddhist religion and classic natural rights of bodily integrity for subjects. Other Articles deal with the administration of criminal and civil justice. The final Articles reveal the British preoccupation with the process required to ‘fund’ imperial expansion and colonial administration, as well as the matter of trade concessions.

**The Forfeit of the Claim to Title**

Essentially, the first Articles in the Convention list the depravations of the former King, decrying his extreme violence against his own people, by which it is held that he has surrendered his right to rule:

‘...That the Cruelties and oppressions of the Malabar Ruler in the arbitrary and unjust infliction of bodily tortures and pains of Death without Trial...have become flagrant, enormous and intolerable...entirely devoid of that Justice which should secure the safety of his subjects...’\textsuperscript{83}

In classical rule of law terms, Article One justifies the British use of military force against a foreign ruler where that ruler has breached natural rights of freedom from torture and death without trial. The echoes of ‘just war’ and the contemporary rules around the use of force at international law,\textsuperscript{84} with its resonances back to the writings of Vittoria in the fifteenth century, reverberate throughout this Article.\textsuperscript{85} Nonetheless, the language of the Article shows due deference to particular British phrasing of the requirements of justice, due process and natural rights. The terminology of rights that the British will recognise, in contrast to the January Proclamation, is associated with the obligations flowing from sovereign power, rather than any suggestion that the rights are universal or accrue otherwise than as required by the duties of sovereigns towards their subjects. Any allusion to more

\textsuperscript{80} ibid.

\textsuperscript{81} Somasunderam, above n 19, 176.

\textsuperscript{82} D’Oyly Diary, 230, as quoted in Somasunderam above n 19, 176.

\textsuperscript{83} Ceylon Government Gazette Extraordinary, Kandyan Convention, March 6th 1815, The National Archives, CO 54/55, Article I.

\textsuperscript{84} For a general discussion on ‘just war’ see L. Blank, ‘A New Twist on an Old Story: Lawfare and the Mixing of Proportionalities’ (2011) 43(3) Case Western Reserve Journal of International Law 707.

\textsuperscript{85} Anghie, above n 64, 27–28.

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freestanding values of individual liberty, equality is clearly absent, despite the French Revolution
having occurred within two decades of these events, and in spite of allusions to the breach of religious
and moral laws in the earlier Proclamation.

Against this backdrop of sovereign obligation, Article One reiterates how the Malabar King, ‘by the
habitual violation of the chief and most sacred duties of a sovereign’, has forfeited sovereignty.
Moreover, the forfeit extends to the family of the deposed King, who are forever excluded from any
claim to the throne in the Kandyan Kingdom. Within the terms of the Convention, such sovereign
rights were ‘…abolished and extinguished…’. Indeed, the King and his descendants were declared
enemies of the Kandyan Province and prohibited from entry without permission of the British
authorities under Article III. Martial law was declared under this Article, supposedly to enforce the
expulsion of the king and, ‘all male persons of the Malabar cast’. Despite the Articles effecting an
exclusion of the deposed king and his successors, de Silva argues that ‘…[t]he cession of the Kandyan
Kingdom to the British stemmed not from some deep crisis of confidence in the institutional and
ideological structure of Kandyan society but from a political conflict which in the main was confined
to the king and aristocracy’.88

While a former sovereign entity was barred from the Kandyan Kingdom, Article IV resonates with the
classic language of the vesting of a colonial dominion in an Imperial sovereign. Authority over the
dominion is to be exercised by the Governors or accredited agents, (with D’Oyly prominent among
those to be appointed). The Articles gives practical import to the acquisition of sovereignty by the
adoption of the administrative term, ‘province’ in substitution for ‘kingdom’,89 and this clearly
emphasises the cession of territory that has occurred. Nonetheless, in line with the Doctrine of
Recognition, the Article also saves to the Sinhalese nobility, ‘…the rights, privileges and powers of
their respective offices…according to the laws, institutions and customs, established and in force
amongst them.90

What may have been missed by the Sinhalese chieftains, however, in their eagerness to remove the
Nayakkar King, was that their rights and powers as defined under the Convention now depended
upon them being ‘… lawfully appointed by authority of the British Government’. Confirmation for
this view can be found in Governor Brownrigg’s correspondence with the Secretary of State for War
and the Colonies, in which he declared that the authority given to the Chiefs was purely a practical

86 Ceylon Government Gazette, March 2nd 1815, The National Archives, CO 54/55.
87 Ceylon Government Gazette Extraordinary, Kandyan Convention, March 6th 1815, The National Archives, CO 54/55,
Article IV.
88 de Silva, above n 1, 301.
89 Ceylon Government Gazette, March 2nd 1815, The National Archives, CO 54/55.
90 Ceylon Government Gazette, March 2nd 1815, The National Archives, CO 54/55.
91 ibid.
solution to a particular situation. In fact, he went so far to say that the authority, ‘...was neither practicable nor advisable to be abolished.’92 But, far from keeping their independence, the Kandyan chiefs had, instead, given up significant autonomy in the exercise of their traditional authority. Article IV also provided a saving for traditional Kandyan laws, giving a guarantee to all classes of persons, involving ‘the safety of their persons and property, with their civil rights and immunities, according to the laws, institutions and customs, established and in force amongst them’.93

However, it was Article V that appears to have been most at variance with established British colonial policy, purporting as it did to protect the Buddhist faith as a fundamental aspect of Sinhalese society:

‘The religion of Boodhoo professed by the Chiefs and Inhabitants of these provinces is declared inviolable, and its rites, ministers, and places of worship are to be maintained and protected.’94

This Article, when read in conjunction with the retention of traditional Kandyan authority structures in the former Article, (and given that religion and state in Kandyan society were closely combined) potentially required an extensive acknowledgement of non-Christian and thus according to prevailing British views of the time, non-civilized religion, institutions and practice.95 Indeed, Articles of this nature, purporting to protect a non-Christian faith, were highly problematic, given the overtly Christian proselytising force of European colonial expansion.96 Their inclusion caused consternation in the War and Colonial Office. Correspondence from Secretary of State for War and the Colonies, Lord Bathurst, to the Governor of Ceylon, Brownrigg, advised against adherence, as the British Crown viewed with unease the prospect of protecting the rights of non-Christian persons. Certainly, the potential for such disquiet was recognised by Brownrigg himself. Shortly after the signing of the Convention, he wrote to Bathurst, arguing the probity of what he had authorised, and addressed the very utilitarian reason for the inclusion of the clause:

“The 5th [Article] confirms the superstition of Boodhoo in a manner more emphatical than would have been my choice-But as the Reverence felt towards it at present by all of the classes of inhabitants is unbounded and mixed with a strong shade of Jealousy and doubt about its future protection – and that in truth our secure possession of the country hinged upon this point, I found it necessary to quiet all uneasings respecting it by an article of guarantee couched in the most unqualified terms.’ 97

92 Brownrigg to Bathurst, March 15th 1815, The National Archives, CO54/55.
93 Ceylon Government Gazette Extraordinary, Kandyan Convention, March 6th 1815, The National Archives, CO 54/55, Article IV.
94 ibid.
95 In his correspondence with Bathurst, Brownrigg consistently refers to ‘Boodhoo’ as being accorded as a privilege rather than a ‘right’. See Brownrigg to Bathurst, March 15th, 1815, The National Archives, CO54/55.
96 On this point, note de Silva, above n 1, 341, where he outlines the views of the later Colonial Secretary, James Stephen who strongly supports missionaries’ views about the disassociation of Buddhism and the state in Ceylon.
97 Brownrigg to Bathurst, March 15th, 1815, The National Archives, CO54/55.
Nevertheless, whilst the guarantee within the Convention was couched, ‘in the most unqualified terms’ later British actions were to undermine the security of that guarantee.

Other protections offered to the Kandyan inhabitants were less controversial, with Articles VI and VII abolishing torture and mutilation and providing due process before death sentences were executed. Article VIII reinforced the jurisdiction of the existing administration of civil and criminal justice in respect of Kandyan peoples, although it was made subject to a right of redress to the Governor. Jurisdiction in respect of the administration of criminal and civil justice for non-Kandyan inhabitants was conferred on the British Governor, with special provision for military personnel.

Other Articles of the Convention, towards the end of the document, were concerned with the question that vexed many imperial governments - how to finance the growing expenses of colonial administration. In what became a feature of much British administration in India later in the nineteenth century, Article XI provided that, ‘The Royal dues and revenues of the Kandian provinces are to be managed and collected for His Majesty’s use, and the support of the provincial establishment’.98 This funding arrangement for imperial government generated much hostility as it effectively undermined the income basis of the local Chieftains and religious nobility. The final Article is concerned with the trade concessions to be granted by the British Crown, arguably with the interests of the British East India Company primarily in view.

**Transition to British Governance**

In the Kandyan Provinces, despite the purported guarantees in the Convention, British rule after 1815 progressively displaced the economic, social and legal authority of the Kandyan Chieftains and religious leaders, resulting in violent conflict.99 As de Silva notes, ‘[A]lthough the British established a separate administrative structure for the British provinces and maintained intact most of the fundamental features of the traditional system, this did little to reconcile the Kandyans to British rule’.100 The administrative mechanisms formulated for control of the Kandyan provinces were increasingly centralised in the role of an autocratic Governor. There were few constraints upon the Governor’s powers and the judicial machinery was subject to his final decision. The Resident and Commissioners were vested with the judicial and revenue collection powers that had previously been exercised by the Kandyan Chieftains.101 Indeed, when the Kandyan aristocracy had procured the assistance of the British in removing an unpopular ruler in 1815 they had, ‘not contemplated the

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98 Ceylon Government Gazette Extraordinary, Kandyan Convention, March 6th 1815, The National Archives, CO 54/55, Article XI.
99 de Silva, above n 1, 331-3.
100 de Silva, above n 1, 301.
101 de Silva, above n 1, 334.
prospect of the establishment and continuation of British rule and when they awoke to the reality of foreign control they found it extremely irksome and unpalatable.  

This rather quaint designation of the response by the Sinhalese to British rule belies the fact that, in 1817-18, the British took military action to successfully suppress a rebellion against its control of the Kandyan Kingdom, which was being administered as a separate entity from the Maritime Provinces under the control of John D’Oyly, as Resident. It could be argued that the British did not understand the full cultural and political implications of removing the King from the complex structures of Kandyan traditional custom and authority. D’Oyly, despite his attempts to replicate the position and actions of the deposed King in his administration of the new Province, was unable to fulfil the traditional role of the King in Kandyan society, with all its fine nuances that extended into most aspects of life. Dissatisfaction with British rule was most acute in the more isolated districts in the southeast of the kingdom around Uva, and it is here that a Nayakkar pretender to the Kandyan throne appeared in the middle of 1817. Although the pretender’s claims came to be known as false by both sides, he was seen as a rallying point for the rebellion by some of the Kandyan nobility, most notably Keppitipola, who assumed leadership of the rebellion in November 1817.

Although the British were caught unawares initially by the upheaval, they were able to subdue the uprising and capture its leaders by late 1818. Primarily, this was achieved through a combination of importing reinforcements from India and employing ‘…scorched-earth tactics…’ against villages supporting the Kandyan guerrilla forces, causing ‘…dire privation among the people…’ For all Kandyans, however, it was the recapture of the tooth relic of Buddha, usually kept in the Temple of the Tooth in Kandy, and the prime symbol of Kandyan monarchy, that marked the true end of the rebellion, a fact noted by Brownrigg himself. In 1821, John Davey, who was Brownrigg’s physician, wrote an account of the interior of Ceylon, dedicated to Brownrigg, who was declared to be ‘…First governor of all of Ceylon’ and who had, rescued the Kandyan provinces, ‘from oppression and with the consent of the People made [them] an integral part of the British dominions’. Thus following the suppression of the rebellion in 1818, more direct British rule and Governance of the former Kandyan Kingdom was instituted.

These subsequent events cast the Convention not simply as a legal instrument effecting a benign ‘change of monarch’ that offered protection to the Kandyan peoples and the retention of traditional authority for the Chieftains. Rather, these events reveal a more profound effect for the Convention as

102 de Silva, above n 1, p.301.
103 Somasunderam, above 19, 200.
104 Somasunderam, above 19, 256-260; de Silva, above n 1, 302-306.
105 de Silva, above n 1, 305.
106 ibid, 306.
107 Davey, above n 43, xxi.
108 See Somasunderam, above n 19, 312, who describes this as a milestone in the history of Ceylon.
a mechanism to secure the utilitarian and strategic objectives of the British in the expansion of Empire. Arguably though, its full efficacy in this context could not be appreciated by the Sinhalese nobility as they negotiated with D’Oyly at the time, and if they had known about it, not even by the War and Colonial Office at the time of its Proclamation. Nonetheless, by the end of the rebellion, the British had moved from a position characterised by a series of attempted military and diplomatic interventions over several decades, to a successful armed action against the Kandyan monarchy followed by the cession of sovereignty, and then to an end point of substantial military, economic and social control, all in a matter of three years or so.

Under the Proclamation of November 21st 1818, following suppression of the rebellion, the protections afforded to the Buddhist religion were weakened. The Proclamation made reference to the fact that the British ‘…exercise of power was marked with the greatest mildness and forbearance to all classes; the strictest protection to the protection and maintenance of the rights, ministers and places of worship of the religion of Boodho; and a general deference to the opinions of the Chiefs…’. Where the 1815 Convention declared the Boodho religion inviolable, the 1818 Proclamation affirms respect for the Buddhist religion, but in an more equivocal manner, and introduces the need for the ‘…peacable exercise, by all other persons of the religion which they respectfully profess…’. The recognition of a diversity of religions arguably weakened the position of Buddhism, despite the formal assurances of its priority and authority.

In sum, only a few years previously, the British had justified their claim to sovereignty over the Kandyan territory and authorities on the basis of the protection of the natural rights of peoples subjected to tyranny and inhumane treatment at the hands of the last Malabar King. Ironically, in turn, the British justified their repression of the rebellion and subjugation of the Kandyans as a ‘just war’ predicated upon the Kandyan nobility and peoples having breached fundamental aspects of the Convention. As a response, the 1818 Proclamation ‘reminded’, ‘every person of every class... that the sovereign majesty of the King of Great Britain and Ireland, exercised by his representative the Governor of Ceylon and his agents in the Kandyan provinces, is the source alone from which all power emanates, and to which obedience is due’.

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109 See Somasunderam, above n 19. This thesis argues that there was a deliberate policy of ‘infiltration’ by the British that had commenced before, and indeed was instrumental to, the Convention coming to pass.
110 This is not withstanding the formal protection for the Buddhist faith.
111 Brownrigg Proclamation of November 21st 1818, Article 2, as reproduced in Davey, above n 43, Appendix II, 376-88.
112 Brownrigg Proclamation of November 21st 1818, Article 16, as reproduced in Davey, above n 43, Appendix II, 376-88.
113 Ludowyk, above n 1, 80; Brownrigg Proclamation of November 21st 1818, Articles 1-6, as reproduced in Davey, above n 43, Appendix II, 376-88.
114 Brownrigg Proclamation of November 21st 1818, Article 7, as reproduced in Davey, above n 43, Appendix II, 376-88.
The ‘making of the history’ of the Convention therefore allows us to critically examine how the ‘making of the geography’ of Ceylon as a unified Crown colony was created through the auspices of international law and specific instruments. The space of imperial power was thereby substituted for the customary and traditional space of the once independent Kandyan Kingdom. Further, given the assertion of ‘indivisible sovereignty’ by the British, the model of administration following the rebellion intensified the extent to which power was concentrated in a hierarchical structure, with the Governor at its apex. British officials increasingly displaced local Kandyan authority. It was Brownrigg’s objective to reduce the Kandyan chiefs to the, ‘…status of stipendaries charged with carrying into effect the regulations and orders of the government’ and to establish British officials as the ‘real organs of power’.115 Indeed, these development confirm the view of de Silva Wijeyeratne that ‘…[t]he idea of a unitary sovereignty...was the result of the administrative reforms initiated by the British colonial state in the mid-nineteenth century and was essentially alien to the Buddhist and Hindu rulers of the island in the pre-European period.’116

Summary

In the events that unfolded around the Kandyan Convention in the early nineteenth century, it is possible to discern the influence of intensely localised factors and the agency of specific individuals. However, in terms of broader implications surrounding the assertion of British sovereignty, the specific circumstances in the Kandyan Kingdom can be designated as a ‘colonial encounter’ that was to play out in various contexts as Britain pursued ‘Empire’ more aggressively into the later nineteenth century. The concept of a ‘colonial encounter’ draws on the work of Anghie who suggests that, the colonial encounter shaped the underlying structures of international law doctrines, the forms of colonial governance, and how they were implemented in the interaction between the colonising European nations and the peoples that progressively were subsumed as ‘other’ within Imperial domains.117 Sovereignty was not developed in Europe and then seamlessly transferred to the peripheries of Empire.118 The sovereignty doctrine, especially as it emerged in the nineteenth century was ‘generated by problems relating to colonial order’. The problem of colonial order figured prominently in both the circumstances giving rise to the Kandyan Convention, but more acutely in the efforts to implement sovereignty once it had been acquired. Accordingly, the next section considers how the Kandy Convention as a ‘colonial encounter’ reveals some wider aspects of Britain’s

115 De Silva, above n 1, 334.
116 see, for example, Wijeyeratne, Roshan de Silva, 'The Mandala State in Pre-British Sri Lanka: The Cosmographical Terrain of Contested Sovereignty in the Theravada Buddhism Tradition (Abstract)' (Paper presented at the Law, Spaces, Cultures & Empire: Engagements & Legacies, University of Singapore, July 5th -7th, 2012)
117 Anghie, above n 64, 6
colonial administration and the evolution of Imperial Governance, particularly those facets related to agreement-making with colonised peoples.

F: The Kandyan Convention as a model of Colonial Administration and Imperial Governance

‘Administration’, it is widely argued, distinguishes British practices of Empire in the nineteenth century. In India and Ceylon, the ‘steel frame of the administration’ was the civil service, in that the administration was predominantly a form of colonial governance.\(^{119}\) Thus, the British Empire was both a colonial and an imperial regime. The rise of Empire was integrally connected to colonialism, as both proceed from an underlying ‘civilising mission’.\(^{120}\) As noted, central to that mission was the objective of bringing the benefits of British civilisation to ‘uncivilised peoples’. Law was central to giving effect to Empire and integral to the implementation of this mission.\(^{121}\)

At one level, therefore, it is possible to see the adoption of an increasingly uniform colonial form of governance for the Kandyan provinces, and indeed for the now unified Ceylon, as remarkably successful. For instance, D’Oyly oversaw the difficult process of replacing the traditional Kandyan system of administration with a typically systematic British hierarchy, a task that was facilitated by his deep knowledge of those traditional structures.\(^{122}\) Indeed, Ludowyk, writing in 1966 comments,

‘Had Brownrigg obeyed the Prince Regent’s instructions and left the Kandyan kingdom alone, the omission would probably have been repaired by some later governor, for the only logical future for Ceylon was what had been maintained throughout its history as its political destiny: an island ruled by the one sovereign power.’\(^{623}\)

In one sense, it can be argued that, for some in modern Ceylon, that same vision of a manifest destiny of unitary sovereign power for the island still exists. In this vein, the immediate administrative outcomes of British colonial governance in the Kandyan provinces were extremely effective, both progressively displacing a largely feudal regime and ‘modernising’ (that is, superseding customary) law and institutions.\(^{124}\) Davey, in his 1821 account, records some of the more inhumane aspects of that feudal regime.\(^{125}\)

\(^{119}\) de Silva, above n 1, Chapter 20; Somasunderam, above n 19, 320.
\(^{120}\) Pagden, Anthony, Lords of All The World: Ideologies of Empire in Spain, Britain and France C.1500-C.1800 (Yale University Press, 1995).
\(^{121}\) Anghie, above n 118, 26.
\(^{122}\) Somasunderam, above n 19, 186-226.
\(^{123}\) Ludowyk, above n 1, 47.
\(^{124}\) de Silva, above n 1, 325-330; Somasunderam, above n 19, 186-226.
\(^{125}\) Davey, above n 43, 239-241.
At another level, though, we might view the loss of ‘customary law as a living tradition’ as a less judicious outcome of the administrative absorption of the old Kandyan kingdom into the Crown Colony of Ceylon. Under the terms of the Kandyan Convention as an agreement between ‘sovereign parties’, the British representatives had acknowledged the existence of, the ‘laws, institutions and customs, established and in force amongst them’ and offered a saving to the Adigars and lesser aristocracy of their rights, privileges and powers, as well as protections to persons and property. However, they had breached many such guarantees in the relatively short period after 1815 whilst instituting an administrative system for the provinces as these requirements were found to conflict with various aspects of the institution of colonial administration for the Province. In sum, the administration of sovereignty largely failed to materialise the protections that were agreed. Thus, what the ‘colonial encounter’ between the British and the Kandyans reveals is now a familiar story of Empire. The success of instituting indivisible sovereignty through the modes of colonial administration resulted in the diminution of cultural difference, and typically resulted in colonial authorities breaching various ‘natural rights’. Such rights encompassed not only what we might now recognise as civil and political human rights, but also tolerance of religious diversity and the protection of the cultural heritage of colonised peoples. The bureaucracy that was invented as Arendt suggest under the impetus to ‘protect’ became the source of the impossibility of ensuring effective protection for many ‘rights’.

Similarly on the face of the document, the Kandyan Convention, seemed to represent a shift towards adoption of what we might now term ‘universal rights’ or at least a nineteenth century English liberal version. The influence of D’Oyly in drafting the document may be decisive here, particularly in its insistence of the recognition of the Buddhist religion in its association with the Kandyan state. However, when faced with the realities of recognising the rights of a non-Christian faith, Agreement faltered. We turn now to consider what this colonial encounter might reveal more generally about agreement making as a practice of Empire.

G: Treaties and Agreements

Agreement-making featured widely as a mechanism for ‘procuring’ the colonised spaces of Empire. The imagining of an agreement as a social contract – a compact between free and equal citizens – was strongly influential in elevating the concept of agreements and treaties to a form of political

126 Wijeyaratne, Roshan de Silva, above n 119.
127 For a diagram outlining the structure of that administration, see Somasunderam, above n 19 at 203.
128 The term is used loosely here, but fundamental to the history of Eurocentric international law was the recognition of natural reason and therefore the natural rights of non-European peoples. Such natural rights were rarely protected by colonising powers. See Anghie, above n 64, 14-15.
129 Somasunderam, above at n 1, 173.
governance and order from the eighteenth century onward.\textsuperscript{131} For European citizens, this was an emancipatory ideal and a source of political and legal legitimacy for Western nations.\textsuperscript{132} It accorded well with the traditional characterisation of international law as instituting ‘good order’ among sovereign and equal countries. The assumptions of equality, however, were not adopted when international law making encountered non-European peoples. Significant critiques exist of the role of agreements, in constituting a means by which to institute a divisive subordination of ‘non-civilised’ peoples.\textsuperscript{133} Agreement making thus constituted a means for the assertion of Sovereignty by a European state over subordinate peoples, and it is central to framings of the British Empire, and to the legal instruments that effected Empire. In a British Imperial context, the process of agreement-making also had very utilitarian ends in the facilitation of trade, strategic territorial acquisition as well as the ‘absorption of culturally diverse peoples’.\textsuperscript{134}

By the early nineteenth century, Britain had acquired considerable experience in agreement making in ‘settler colonies’ to define the rights and obligations of an Imperial power and indigenous peoples. In North America, particularly, treaties ‘…formed a legal basis for the interaction between the colonial power and those they sought to colonise.’\textsuperscript{135} However, the American Revolution had occurred prior to the events in the Kandyan Kingdom, with significant ramifications for the manner in which Britain subsequently ordered its ‘external affairs’. Colonial governance was, at the time of the Kandyan Convention, the responsibility of the War and Colonial Office under the Secretary of State for War and the Colonies. Thus, de Silva notes that ‘…British experience in North America in the last quarter of the eighteenth century...set in motion a trend toward concentration of power in the hands of Colonial Governors.’\textsuperscript{136} Brownrigg, as Governor of Ceylon, exemplified this concentration of power in the executive, particularly in the administration of the Kandyan provinces. Nonetheless, agreement making was to remain significant for the British in the nineteenth century, as it was the critical interface by which the British formally legitimated its claims to sovereignty in many instances.

Nonetheless, colonial governance and agreement-making encountered some different challenges in Ceylon and India (sometimes termed the ‘Second Empire’) to the experience of the British in the ‘First Empire’ of North America.\textsuperscript{137} As Somasundaram notes,

\textsuperscript{134} ibid, 34, 35.
\textsuperscript{135} ibid.
\textsuperscript{136} de Silva, above n 1, 325.
\textsuperscript{137} Somasunderam, above n 19, 320.
In Asia the challenge was to rule and administer a large extent of land with a big population of persons with a different culture and civilisation, and, under these circumstances, not available for European settlement. It was therefore a rule of a minority over a majority... The British rule and administration had to be accepted, and not opposed by the majority of the inhabitants. It is in this milieu that the study of British relations with the Kandyan Kingdom gives certain definite clues as to the new methods adopted for political expansion, and domination.  

In this light, the Kandyan Convention represented a 'new method' and a shift in British colonial. The Convention demonstrates how it was necessary for agreement making to comprehend the integration of two or more cultures, economic systems and social fabrics, and to give some formal expression to 'protections' for existing law, cultural and political structures rather than simply occupying 'Discovered' territory. The language in which protections were couched was increasingly one of 'rights'. Whether the French and American revolutions, as opposed to the evolution of domestic British liberalism, contributed significantly to this shift is difficult to determine without more wide-ranging research. However, given the momentous nature of the rupturings of the European and British Imperial models of sovereignty, as well as the redefinition of the relationships between sovereign and citizen posed by the Revolutions, at least some influence might be posited. Against these larger backdrops though, the more immediate problem of colonial order remained. Successive colonial administrations needed to address the problem of how Britain might constitute its relationship with the peoples that it was absorbing into Empire in various parts of the globe.  

In North America, in the same period, there was a process of redefining how indigenous peoples should be accorded legal status and what interaction between an Imperial power and colonised peoples might comprise. The developments in the Kandyan province in Ceylon are virtually contemporaneous, for example, with the formulation of the 'Marshall doctrine' of domestic dependent nations, which commenced with Johnson v McIntosh in 1823. Of course, this doctrine was elaborated under the general umbrella of the Doctrine of Discovery and the pre-emption 'rights' of a sovereign power. More widely, there is a substantial body of scholarship that has illuminated the distorting assumptions that operated to designate lands as unoccupied and open to be 'discovered' by European powers. In acknowledging that scholarship we are not suggesting that there are direct correlations in many respects between agreement making in settler colonies and in the Kandyan Convention. However, despite the very different legal modes of acquisition of sovereignty, arguably similar inequalities and

138 ibid.  
139 Debates remain as to whether international law can be cosmopolitan in character. For a recent discussion of whether international law should recognise diversity or protect 'universal rights', see Macklem, Patrick, 'What is international human rights law? Three applications of a distributive account' (2007) 52(3) McGill Law Journal, 575.  
141 ibid, 15-19.
assumptions about ‘non-civilised’ peoples were operating with respect to the manner in which sovereignty was conceived and implemented through colonial governance practices in both contexts.

Given potential comparisons, does the Kandyan Convention offer any particular insights to inform the broader understanding of agreement-making and colonial governance in ‘Empire’ as it unfolded from the early nineteenth century? In this regard we turn to briefly examine one situation that offers some parallels – that of the Treaty of Waitangi in New Zealand. A comprehensive comparison between the Kandyan Convention and the Treaty of Waitangi is beyond the scope of the present paper. Instead, the following briefly discusses in what manner these two agreements attempted to deal with problem of colonial governance and order to potentially integrate and respect cultural difference.

H: Parallels between the Kandyan Convention and Treaty of Waitangi?

The Treaty of Waitangi (1840) as a ‘tool of colonisation’ has been designated as unique. The Treaty has also been construed as a ‘progressive’ agreement in terms of the protections that it afforded indigenous rights and interests, although scholarship is divided on the extent to which indigenous rights were effectively protected. Formally, it is a Treaty of Cession similar to the Kandyan Convention, and like that Treaty, it was signed by a series of Chieftains. Unlike the Kandyan Convention, however, the Māori Chieftains were not incorporated within a hierarchical governance structure. Further, recent scholarship has argued that the British claimed sovereignty through a mixture of the signed Treaty (which not all chiefs signed), but in the shadow of the Doctrine of Discovery. Indeed, Ruru argues that the British, ‘eventually claimed sovereignty of the lands via a treaty of cession but with actions steeped in a Discovery mindset’.

The exact characterisation of the Treaty might be contested, and indeed the acquisition of sovereignty was much more complicated than the single act of a Treaty being signed. Yet for these purposes one of the most significant aspects is that the Treaty of Waitangi is a bilingual document, and as is well known, there are significant controversies over whether the English or Māori interpretation should prevail. While many see the bilingual nature of the Treaty as unique, given that the Kandyan Convention was written in English and Sinhalese, this view may require revision. More significantly, there are major disputes between the two translations of the Treaty of Waitangi as to whether the Māori ceded absolute sovereignty to the British, or whether this was only a cession of governance and Māori retained sovereignty over their ‘treasures’.

143 ibid, 207.
144 ibid, 209.
145 Miller, above n 135, 23.
146 Jacinta Ruru, above n 137, 210-11.
Kandyan Convention as to what the Kandyan Chieftans may have understood what they were ‘trading’ in ‘substituting one monarch for another’ under the terms of the Convention. Further, under the Kandyan Convention, the delineation of the scope of protections that were offered to the Buddhist faith and traditional law and authority may well have been differently interpreted in the English and Sinhalese versions. These speculations hinge around whether the Kandyan Convention, in a similar manner to the Treaty of Waitangi, did mark a shift toward a more liberal colonial policy of recognising the ‘rights’ and the sovereignty and authority of colonised peoples. Clearly more research is needed.

However, what is clear is that in each instance there was a considerable ‘retreat’ from the recognition of customary law and authority as British colonial administrations sought to ‘implement’ British Sovereignty as matter of practical governance. The Proclamation of 1818 in the Kandyan context marks a significant departure from the initial recognition of the customs and traditional authority associated with Buddhism to the point where sovereignty and authority is sourced only in the British Crown. In New Zealand the trajectory of case law from the mid 19th century tells a similar story whereby Māori sovereignty was quashed in the face of aggressive colonisation and the Agreement afforded little actual security for Māori. In Wi Parata v Bishop of Wellington in 1877, for example, the Treaty of Waitangi was held to be a ‘simple nullity’ on the grounds that New Zealand had been inhabited by ‘barbarians’ prior to the British Crown gaining sovereignty. In each instance as the colonial encounter between the British Crown and colonised peoples proceeded, it tended to confirm to successive colonial administrations the necessity for British Imperial power to emanate from a unitary model of sovereignty.

I: Conclusion

Sovereignty, Anghie argues, ‘was improvised out of the colonial encounter’. In the process, of colonisation and imperialism, the sovereignty of non-European peoples was rendered uniquely vulnerable and dependent. We have looked to the making of history, as well as the making of geography in the colonial encounter that led to a unified Ceylon. Accordingly, this paper has attempted to offer a lens by which to understand the relationships engendered by the Kandyan Convention, both in terms of a discrete historical exploration as to how it emerged as a confluence of place and peoples, but also as a legal mechanism that was part of the governing practices of the British Empire. As Cass comments, ‘…[i]f law and its history are simply structures of certain repeating practices and arguments, then these tools must be questioned and unravelled, not only revealed...’

148 Jacinta Ruru, above n 137, 207, 219; 228.
149 Anghie, above n 64, 6.
150 ibid.
The unravelling of the colonial encounter that was formalised in the Kandyan Convention clearly reveals much about how sovereignty and agreement making was constructed in a way that ultimately secured British interests in a strategically important island in South Asia. It brought into being the unified Crown Colony of Ceylon in a space that previously had been one of competing spheres of power. While there was ‘no grand imperial design’ in the War and Colonial Office regarding the incorporation of the Kandyan kingdom into the administration of the colony of Ceylon prior to 1815, local circumstances of internal conflict between King and nobility, the ambition of a Governor sufficiently empowered and remote to allow free rein to military opportunism, and the facility of the agent provocateur and Sinhalese cultural sympathiser John D'Oyly, all combined to ‘improvise’ British Sovereignty in a manner that achieved a cession of Kandyan territory. Ultimately, this was the measure that subsequently led to a loss of traditional authority and protections for the Buddhist faith.

Whether the Kandyan Convention did embody a significant shift in how Britain was to constitute its legal relationship with the people being absorbed into Empire towards a more expansive conception of cultural difference is hard to judge. The more liberal expression of rights contained in the Convention are remarkable given the 1815 date of the document, and yet the administration of a colonial province was to severely test their practical implementation. More generally, it seems to confirm that the Convention was both a legal instrument that straddled an emerging sense of ‘rights’ for colonised people, whilst simultaneously laying the preconditions for indivisible British Sovereignty through its administrative measures.

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