

PROTECTION SHOPPING AMONG EMPIRES: SUSPENDED SOVEREIGNTY IN THE COCOS-KEELING ISLANDS*

In 1957, the Australian Minister for the Territories, Paul Hasluck, visited the Cocos-Keeling Islands, a group of twenty-seven small atoll islands in the Indian Ocean located more than 1,800 miles west of Perth, on a mission to clarify the territory's status. The Australian government insisted that Britain, having annexed the islands in 1857, had transferred sovereignty to Australia under the Cocos-Keeling Act of 1955. John Cecil Clunies-Ross, descendant of the family that had ruled the islands for five generations, saw things differently. According to Hasluck, he did not 'regard himself as an Australian, or a person in any way subject to the Australian Government'.¹ Instead, Clunies-Ross argued that his family had voluntarily 'entered into an arrangement with Queen Victoria' by which Britain pledged to defend the islands and manage their external relations but refrain from meddling in the islands' internal affairs.²

Reluctant to disrupt the status quo, Hasluck papered over differences with the 'king of the Cocos'.³ The result was to preserve the quasi-royal status of the Clunies-Ross family and extend its essentially unchallenged authority over the islands' several hundred Cocos Malay inhabitants, who lived and worked in a company-town-style regime organized around copra production and operated for the exclusive profit of the Clunies-

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¹ Quoted in Peter Hastings, 'A Tale of Two Islands: The Cocos/Christmas Story', *New Guinea and Australia, the Pacific and South-East Asia*, ix, 3 (1974), 10.

² Hastings, 'Tale of Two Islands', 10–11.

³ 'Cocos Islands Ruler Seeks Settlement', *Weekly Times* (Melbourne, Victoria, 1869–1954), 25 Mar. 1953, 4. Available online at <<http://nla.gov.au/nla.news-article224031560>> (accessed 15 Apr. 2021).

Ross family. As late as 1972, as another Australian minister prepared to visit the islands, Clunies-Ross could state simply that he rejected Canberra's authority over the islands.⁴ It was not until 1984 that the Cocos-Keeling Islands became part of Australian national territory and its inhabitants received voting rights.

The exchanges surrounding Hasluck's 1957 visit to the islands fit within a longer, global history of protection, sovereignty and island experiments.⁵ For over a century and a half, the islands existed in a state of ill-defined semi-autonomy. The indeterminacies of political status flowed in part from the territory's small size and sheer remoteness, conditions that militated against sustained imperial interventions and blocked scrutiny of the 'almost feudal relationship' between the Clunies-Ross family and the Cocos Malay population.⁶ In the islands' post-imperial phase, delayed national integration matched Australia's peculiar brand of racial imperialism.⁷ But deeper and longer-established forces were also at work. This article analyses a powerfully formative set of processes centred on the 'politics of protection'.⁸ Practices and discourses of protection stretched back to the uninhabited atoll's settlement in 1827 — and even before that, to the time of the first John Clunies-Ross and his participation with his compatriot Alexander Hare in a short-

⁴ 'Cocos "king" surrenders sovereignty', *Sydney Morning Herald*, 16 Sept. 1972.

⁵ Most memoirs and histories of the Cocos-Keeling Islands highlight their idiosyncrasies and ignore global contexts. See, for example, John C. Clunies-Ross, *The Clunies-Ross Cocos Chronicle* (Perth, 2009); Ken Mullen, *The Cocos Keeling: The Islands Time Forgot* (Sydney, 1974). Works that place the islands in a wider framework tend to focus on internal conditions and especially on the Cocos Malay population. J. G. Hunt, 'The Revenge of the Bantamese: Factors for Change in the Cocos (Keeling) Islands 1930–1978' (Australian National University, Canberra, MA thesis, 1989); R. A. Brockman, 'Captives on Cocos: The Origins and Evolution of the Plantation Community of the Cocos (Keeling) Islands' (Murdoch University, M.Phil. thesis, 1981). An important exception that treats the island in a wider context is Michael Laffan, 'A Most Colonial Moment: Australia Meets Islam in the Indian Ocean, 1955–1959', unpublished paper.

⁶ The description is from Hasluck; Hunt, 'The Revenge of the Bantamese', 136.

⁷ Antony Anghie, 'Race, Self-Determination and Australian Empire', *Melbourne Journal of International Law*, xix, 2 (2018); Duncan Bell, *Dreamworlds of Race: Empire and the Utopian Destiny of Anglo-America* (Princeton, 2020).

⁸ Lauren Benton and Adam Clulow, 'The Long, Strange History of Protection', in Lauren Benton, Adam Clulow and Bain Attwood (eds.), *Protection and Empire: A Global History* (Cambridge, 2018), 5.

lived colonial scheme in Borneo in the years before the two men founded competing settlements on the Cocos-Keeling Islands.⁹ The men drew on their experiences in Borneo as they sought pledges of imperial protection from Dutch and British officials and played one empire against the other. Later generations of the Clunies-Ross family adapted and refined the strategy that we label ‘protection shopping’. For their part, imperial agents embraced protection as a valuable framework, as they veered between intervention and restraint without marking a clear path to the islands’ political integration. Neither formal annexation of the islands by Britain in 1857 nor the transfer of control to Australia resolved indeterminacies of sovereignty. The microhistory of the Cocos-Keeling Islands provides a window on variants of a global phenomenon, the creation and preservation of ‘suspended sovereignty’.¹⁰

Protection has long served as a rubric for interpolity relations. Well before European empires extended their reach beyond Europe, diverse polities in different regions struck up arrangements whereby stronger political communities exacted strategic benefit or payments, including tribute, from weaker polities. The politics of protection structured imperial competition or collaboration for centuries, while persisting into phases of European imperial ascendance. In the Cocos-Keeling Islands, the Clunies-Ross family, imperial agents, metropolitan governments and the Cocos Malay population engaged in protection politics to create and adjust the condition of suspended sovereignty. Protection shopping positioned the islands between two empires in the long nineteenth century, and references to protection worked to

⁹ The first John Clunies-Ross was usually referred to as John Clunies Ross or John Ross. We use the later variant Clunies-Ross to refer to all five generations of the family.

¹⁰ On suspended sovereignty, see Rebecca Bryant and Mete Hatay, *Sovereignty Suspended: Building the So-Called State* (Philadelphia, 2020); Natasha Wheatley, *The Temporal Life of States: Central Europe and the Transformation of Modern Sovereignty* (forthcoming). On microhistory in global history, see John-Paul A. Ghobrial (ed.), *Global History and Microhistory* (Past and Present Supplement no. 14, Oxford, 2019), editor’s intro., ‘Seeing the World like a Microhistorian’. We counter arguments that global history overlooks small places and privileges the study of movement (David Bell, ‘This is what Happens when History Overuses the Idea of Network’, *New Republic*, 26 Oct. 2013; Jeremy Adelman, ‘What is Global History Now?’, *Aeon*, 2 Mar. 2017).

block resolutions of statehood or political incorporation into empire-states in the twentieth century.

In many ways the islands' history of unresolved sovereignty is consistent with a growing scholarly consensus about the 'protean', 'layered', 'flexible' and 'malleable' character of sovereignty.¹¹ As composite polities, empires were shot through with 'anomalous' territories that retained elements of autonomy while recognizing their subordination to imperial power.¹² Empires were legally 'lumpy' and gave rise to political communities labelled in various ways as 'juridically incomplete'.¹³ The condition of 'quasi-sovereignty', exemplified by Indian princely states, was a prominent, widely recognized by-product of divisible imperial sovereignty.¹⁴ Other variants of partial sovereignty resulted from the actions of corporate entities that jealously guarded their autonomy and blended elements of private and public authority.¹⁵ Taken together, studies of such phenomena debunk older accounts of sovereignty as a category that emerged fully formed in Europe and spread around the world.¹⁶ They also urge the revision of narratives constructed around the transition from empires to states. Scholars variously characterize polities emerging from empires as 'de facto states' that performed rituals

¹¹ Gerry Simpson, *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* (Cambridge, 2004), x; Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (New York, 2010), 8; Maria Adele Carrai, 'China's Malleable Sovereignty Along the Belt and Road Initiative: The Case of the 99-year Chinese Lease of Hambantota Port', *New York University Journal of International Law and Politics*, li, 4 (2019); Rose Parfitt, *The Process of International Legal Reproduction: Inequality, Historiography, Resistance* (Cambridge, 2019), 75.

¹² Benton, *Search for Sovereignty*, ch. 1; Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge, 2005); Steven Press, *Rogue Empires: Contracts and Commens in Europe's Scramble for Africa* (Cambridge, Mass., 2017).

¹³ Benton, *Search for Sovereignty*, 290; Natasha Wheatley, 'Spectral Legal Personality in Interwar International Law: On New Ways of Not Being a State', *Law and History Review*, xxxv, 3 (2017), 758.

¹⁴ Lauren Benton, *Search for Sovereignty*, ch. 5; Priyasha Saksena, 'Jousting Over Jurisdiction: Sovereignty and International Law in Late Nineteenth-Century South Asia', *Law and History Review*, xxxviii, 2 (2019).

¹⁵ Press, *Rogue Empires*; Philip J. Stern, "'Bundles of Hyphens': Corporations as Legal Communities in the Early British Empire', in Lauren Benton and Richard J. Ross (eds.), *Legal Pluralism and Empires, 1500–1850* (New York, 2013).

¹⁶ Examples of now common critiques of Westphalian sovereignty include Stéphane Beaulac, *The Power of Language in the Making of International Law: The Word Sovereignty in Bodin and Vattel and the Myth of Westphalia* (Leiden, 2004); and Benton, *Search for Sovereignty*.

of statehood to claim sovereignty; ‘breakaway states’ that exited empires to assert their capacity to act as states; ‘threshold states’ that straddled categories of protected polities and independent nations; and ‘states-in-waiting’ that queued for membership in the international community.¹⁷ Such polities shared a ‘permanent temporariness’ of their unresolved status and a ‘future-conditional’ prospect of statehood.¹⁸ The Cocos-Keeling Islands, together with a small and symbolically vexing group of other ‘dependent territories’, displayed some characteristics of suspended sovereignty but also developed a twist: they held no prospect of future statehood.¹⁹ Their history highlights the limits of sovereignty as a threshold capacity for participation in global and international orders.²⁰

The tiny Cocos-Keeling Islands, just over five square miles of land with seldom more than a few hundred inhabitants across the nineteenth and twentieth centuries, bring into sharp focus the ways in which small and seemingly marginal places — islands in particular — at times became symbolically central to global reordering. In the late eighteenth century, European empires competed for control of islands that were strategically positioned along contested sea corridors, creating island penal colonies in ways that conjured archipelagos of imperial authority.²¹ In the early nineteenth century, a handful of islands — Mauritius, Trinidad and Ceylon, for example — became Crown colonies in an ascending British empire and assumed outsized significance as places of ‘legal experiment’, constitutional ferment and rebellion.²² In the late nineteenth century, a handful of tiny

¹⁷ For a summary of the literature on these categories, see Bryant and Hatay, *Sovereignty Suspended*, ch. 1.

¹⁸ Bryant and Hatay, in *Sovereignty Suspended*, 5, note the ‘permanent temporariness’ of suspended sovereignty in the Turkish Republic of Northern Cyprus. Natasha Wheatley, in *Temporal Life of States* explores the ‘temporal life’ and ‘future-conditional sovereignty’ of inter-war Balkan states.

¹⁹ Bryant and Hatay, *Sovereignty Suspended*; Sam Erman, *Almost Citizens: Puerto Rico, the U.S. Constitution, and Empire* (Cambridge, 2018); Ron J. Smith, *Freedom Is a Place: The Struggle for Sovereignty in Palestine* (Athens, Ga., 2020). While independence was occasionally presented as one of a suite of options for the Cocos-Keeling islands by the Australian government, it was never seriously pursued.

²⁰ Edward Keene, ‘What is the International System?’ unpublished paper presented at the Yale Global and International Workshop, 12 April 2021.

²¹ Benton, *Search for Sovereignty*, ch. 4.

²² Lauren Benton and Lisa Ford, *Rage for Order: The British Empire and the Origins of International Law, 1800–1850* (Cambridge, Mass., 2016) ch. 7; Sujit

(cont. on p. 6)

Pacific islands produced nitrates that fuelled agricultural expansion in a vast complex of neo-ecological imperialism.²³ The history of the Cocos-Keeling Islands reflects and parallels these patterns. Alexander Hare and the first Clunies-Ross, fresh from a colonial experiment on Borneo, played on imperial visions of archipelagic power in their efforts to secure Dutch and British protection; successor rulers of the islands followed suit. In 1837, a rebellion on the islands drew an American whaler, British officials, Indian sepoys and a quasi-enslaved population into a combustible mix. Moments of political posturing that draped the islands in imperial cloth included visits by intermeddling naval captains, London sojourns of opportunistic Clunies-Ross family members, and cameo appearances by Charles Darwin and Queen Elizabeth II. As post-war debates about self-determination washed over other island colonies and former colonies, Clunies-Ross's successors could represent themselves as rulers whose legitimacy was rooted in their protection of Cocos Malay residents from corrupting outside forces. Operating over the *longue durée*, the politics of protection sculpted the temporal and spatial dimensions of suspended sovereignty around the world and in one very small place.

I

A PLACE BETWEEN EMPIRES

Before anyone went to live on the Cocos-Keeling Islands, the strategies that would guide their settlement and colonization were being tried and refined over a thousand miles away. Two British subjects, one a merchant turned colonial entrepreneur named Alexander Hare and the other his employee, John Clunies-Ross, collaborated on a project to establish an independent polity on a vast plantation in Banjarmasin, on the south coast of Borneo. The men turned first to British and then to Dutch authorities for protection for their venture. In doing so, they modelled a strategy of protection shopping that they would later use in the Cocos-Keeling Islands and that

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Sivasundaram, *Waves Across the South: A New History of Revolution and Empire* (Chicago, 2021).

²³ Gregory T. Cushman, *Guano and the Opening of the Pacific World: A Global Ecological History* (Cambridge, 2013).

successive island rulers would deploy with variations for generations.

Protection shopping was indispensable in a region entering an increasingly volatile phase. In 1809, the Dutch had withdrawn from Borneo in order to concentrate their forces in the defence of Java against the British during the Napoleonic Wars. The Dutch retreat dangerously exposed the Sultan of Banjarmasin, who had long relied on guarantees from Batavia to secure his position. The sultan responded by seeking protection from the British. His representatives approached Alexander Hare, who had worked in an agency house in India before establishing himself as an independent merchant in Malacca.²⁴ In the same year that the Dutch withdrew, the sultan invited Hare to set up a trading outpost in Banjarmasin. Even as he declined the offer, Hare introduced the sultan's ambassadors to Stamford Raffles, British Lieutenant-Governor of the Dutch East Indies, who returned the favour by appointing Hare in 1812 as political commissioner in Borneo and Resident of Banjarmasin.

Hare's new position proved highly profitable. Acting on behalf of Raffles, he concluded a new treaty with the sultan that gave the British 'full rights of sovereign jurisdiction' over a substantial territory, including the Dutch fortifications of Tatas and Tabanio, and guaranteed British aid to defend the sultan against all Asian and European enemies.²⁵ Hare was scheming to advance his own interests. On the same day that the treaty was finalized, he signed a private agreement with the sultan awarding a 'voluntary grant' of 1,400 square miles of land in an area known as Moluko, to 'himself and his heirs, in perpetuity'.²⁶

²⁴ C. A. Gibson-Hill, 'Documents Relating to John Clunies Ross, Alexander Hare and the Early History of the Settlement on the Cocos-Keeling Islands', *Journal of the Malayan Branch of the Royal Asiatic Society*, xxv, 4/5 (1952), 20. This collection of primary documents remains indispensable for histories of the Clunies-Ross family and the later settlement of the Cocos-Keeling islands. For a valuable study of Hare, see James Oats, 'The First White Rajah: Alexander Hare in Southeast Asia, 1800-1831' (Univ. of New South Wales/Australian Defence Force Academy MA thesis, 1997).

²⁵ Graham Irwin, *Nineteenth-Century Borneo: A Study in Diplomatic Rivalry* (The Hague, 1955), 17.

²⁶ Memorial of Alexander Hare to the Lords Commissioners of His Majesty's Treasury, complaining of ill treatment by the Dutch authorities in Java and Borneo, 11 Sept. 1819, British Library, London (hereafter BL), Board's Collections, IOR/F/4/788/21403, fo. 16.

Overnight Hare found himself in control of his own micropoly. It was a territory rich in resources and agricultural promise, but it had one fatal flaw: it lacked a labour force. To secure workers, Hare turned to his friend and patron Raffles, who obliged by ordering the transfer of ‘convicts’ and ‘vagrants’ from Java, then under British control. According to one estimate, the project resulted in the transfer of more than five thousand people to work in Hare’s territory.²⁷ Even in an imperial context that encouraged British subjects to combine official duties with the pursuit of private trade, Hare’s enterprise in Moluko was unusual in scope.²⁸ To help manage the territory, Hare relied on John Clunies-Ross, who had abandoned a lucrative stake in a whaling voyage to find employment as captain of one of the merchant’s trading vessels. Later, Clunies-Ross was placed in charge of Hare’s estate, a position that put him on the frontline in the clash over the territory’s status.

In Moluko, Hare set about building a grand residence befitting his new status while amassing a large entourage of women, some enslaved, others procured and held by ‘coercive and unjustifiable means’.²⁹ He seemed set to rule unchallenged and unhindered by external authority, but after initial success, Hare’s scheme rapidly began to crumble. A treaty signed in 1814 between Britain and the Netherlands promised to restore to Dutch control ‘the Colonies Factories and Establishments which were possessed by Holland at the commencement of the late War, viz. on the 1st of January, 1803’.³⁰ No one was sure whether Banjarmasin would revert to the Dutch or if the sultan’s treaty with the British overrode the subsequent agreement to restore Dutch control. The status of Hare’s estate at Moluko represented, meanwhile, a puzzle within a puzzle. Hare insisted

²⁷ ‘Nederlandsch-Indië in 1817’, *Tijdschrift voor Nederlandsch-Indië*, xxiii, 1 (1861), 359.

²⁸ It foreshadowed the better-known case of James Brooke, who established himself as both a British agent and ‘rajah’ of Sarawak, on Borneo. Benton and Ford, *Rage for Order*, 140–5; Nicholas Tarling, *Piracy and Politics in the Malay World: A Study of British Imperialism in Nineteenth-Century South-East Asia* (Melbourne, 1963), 115–28.

²⁹ Thomas Abraham, Robert Stuart, and C. Methven, Report of the Commission of Enquiry into Banjarmasin, 24 Jan. 1817, BL, Board’s Collections, IOR/F/4/788/21403, fo. 155.

³⁰ Irwin, *Nineteenth-Century Borneo*, 33. There were some named exceptions.

that it was entirely separate from British interests in Banjarmasin and that the territory had 'become exclusively his personal property'.³¹ After all, he minted his own currency in Moluko and held a population including a large household retinue of slaves entirely under his personal control.³² There seemed to be a slim but real possibility that Moluko could take its place as an enclave under the private control of a British subject within an area of Dutch dominion.

The British Government of India sent three commissioners in 1816 to sort out the terms of the transition and wind up British affairs at Banjarmasin. Having determined that the 1812 agreement between the British and the sultan prevented them from simply handing over Banjarmasin to the Dutch, the commissioners prepared for a British withdrawal that would allow the Dutch to sign a treaty of their own with the sultan.³³ The question of Hare's estate, which the commissioners described as a separate colony 'insulated and detached from the Company's possessions in Banjarmasin', remained unresolved.³⁴ To complicate matters further, Hare was physically absent from the territory, and his property was being administered by his subordinates, most notably John Clunies-Ross. The commissioners lamented that they could not even review the agreement between the sultan and Hare because 'the original is with Mr. Hare and the Sultan's copy is reported by His Highness to be lost'.³⁵ In the end, the commissioners opted to acknowledge Hare's claims to Moluko but allow his relations with the Dutch to determine the estate's future. It 'rested with Mr Hare', they wrote, 'to decide whether or not the Dutch Government was to possess the whole or any portion of his

³¹ Memorial of Alexander Hare to the Lords Commissioners of His Majesty's Treasury, 11 Sept. 1819, BL, Board's Collections, IOR/F/4/788/21403, fo. 17.

³² On this currency, see J. P. Moquette, 'Iets over de munten van Banjarmasin en Maloeke', *Tijdschrift voor Indische Taal, Land- en Volkenkunde*, xlviii (1906), 489–504.

³³ Irwin, *Nineteenth-Century Borneo*, 42.

³⁴ Abraham, Stuart and Methven, Report of the Commission of Enquiry into Banjarmasin, 24 Jan. 1817, BL, Board's Collections, IOR/F/4/788/21403, fo. 153.

³⁵ Abraham, Stuart and Methven, Report of the Commission of Enquiry into Banjarmasin, 24 Jan. 1817, BL, Board's Collections, IOR/F/4/788/21403, fo. 216.

estate (over which his agents claim in his name Sovereign Jurisdiction)'.³⁶

The British flag was lowered over Banjarmasin in November 1816, taking with it the imperial protection on which Hare's estate at Moluko depended. In response, the Sultan of Banjarmasin quickly orchestrated a switch from one protector to another. On 1 January 1817, he signed a new treaty with the Dutch stipulating that they would stand alongside 'the Sultan and protect him with their arms against all domestic as well as foreign enemies'.³⁷ The sultan's strategy undercut Hare and Clunies-Ross's own attempts at protection shopping. A Dutch commissioner, Jacob Dirk Jan d'Arnaud van Boekholz, suggested that Hare's original agreement with the sultan did in fact support Hare's claim to ownership, but the commissioner also acknowledged that the situation had grown far more uncertain with the sultan's repositioning of his territory under Dutch protection. Frustrated and unsure how to proceed, Van Boekholz wrote to his superiors for instructions.³⁸

While Dutch officials waited for a response from Batavia, a state of uneasy co-existence continued for around eighteen months, during which time Clunies-Ross worked to manipulate both sides of the political divide. He managed to rile Dutch authorities by continuing to fly the British flag and erecting defensive gun batteries. When confronted, he replied in a way that suggested that he saw himself only as a loyal Dutch subject: 'His Netherlands Majesty has not a subject in the Malay Archipelago, who respects his Government or its members more than myself'.³⁹ Hare, too, appeared strikingly flexible, denouncing his subordinate for flying the British flag and declaring his intention to respect Dutch authority.⁴⁰

³⁶ Abraham, Stuart and Methven, Report of the Commission of Enquiry into Banjarmasin, 24 Jan. 1817, BL, Board's Collections, IOR/F/4/788/21403, fo. 253.

³⁷ P. H. van der Kemp, 'Het Afbreken van onze Betrekkingen met Bandjermasin onder Daendels en de Herstelling van het Nederlandsch Gezag Aldaar op den in Januari 1817', *Bijdragen tot de taal-, land- en volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia*, xlix (1898), 139–40.

³⁸ Irwin, *Nineteenth-Century Borneo*, 46.

³⁹ Van der Kemp, 'Het Afbreken van onze Betrekkingen met Bandjermasin', 87.

⁴⁰ Gibson-Hill, 'Documents', 50.

Even as they manoeuvred for protection from Batavia, both men were determined to safeguard their autonomy, or what Hare described as his ‘independent Rights’.⁴¹ The claim to these rights would prove a sticking point for the Dutch government, which refused, in Hare’s words, to extend ‘the protective sanction of its authority’.⁴² As the master of Moluko, Hare had imagined protection of the kind extended from one sovereign to another — a relationship similar to an alliance — rather than the proffer of imperial protection to him as a subject. But the Dutch proved unwilling to recognize his ‘claim for a sovereign power’.⁴³ A new legal assessment concluded that his ‘pretended rights of ownership’ had no legitimate foundation and on 22 May 1818, the colonial administration formally rejected Hare’s claims to the territory.⁴⁴

Faced with disaster, Hare reversed course and turned back to the British. He offered to bring the territory under direct British control, explaining that his ‘landed property on Borneo, to which he conceives he has an indisputable right ... might be valuable as a National possession’.⁴⁵ The ploy did not work. In July 1818, a Dutch fleet arrived to seize Hare’s territory. Clunies-Ross recorded the ceremony of possession, which included royal salvos and ‘the reading of a grandiloquent proclamation ... issued by their High Mightinesses of Batavia, and fulminating extremely vivid denunciations against all or any who might presume to think of offering resistance to the seizure of the territory’.⁴⁶

It is not especially surprising that the Dutch refused to tolerate ‘the beginning of a small English principedom’, as one scholar labels it, on the fringes of their empire, particularly one founded

⁴¹ Memorial of Alexander Hare to the Lords Commissioners of His Majesty’s Treasury, 11 Sept. 1819, BL, Board’s Collections, IOR/F/4/788/21403, fo. 19.

⁴² Memorial of Alexander Hare to the Lords Commissioners of His Majesty’s Treasury, 11 Sept. 1819, BL, Board’s Collections, IOR/F/4/788/21403, fo. 21.

⁴³ ‘Nederlandsch-Indië in 1817’, 362. Clunies-Ross would later write that the Dutch ‘refused to extend protection... unless upon unacceptable terms’: Gibson-Hill, ‘Documents’, 205.

⁴⁴ Van der Kemp, ‘Het Afbreken van onze Betrekkingen met Bandjermasin’, 162 and 89; Irwin, *Nineteenth-Century Borneo*, 48.

⁴⁵ Memorial of Alexander Hare to the Lords Commissioners of His Majesty’s Treasury, 11 Sept. 1819, BL, Board’s Collections, IOR/F/4/788/21403, fo. 29–30.

⁴⁶ Gibson-Hill, ‘Documents’, 205.

by someone with such close ties to Raffles and other British officials.⁴⁷ The sultan's quiet opposition was another force at work. A senior Dutch official reported that the sultan was pressing 'for protection against Mr. Hare' and his 'endless pretensions'.⁴⁸ No doubt the sultan was rattled by the increasingly likely prospect that the main export from Hare's enterprise would be impoverished runaways from his plantation into the surrounding countryside.

Although Hare's experiment in Banjarmasin collapsed suddenly and spectacularly, it had lasting consequences. It delivered to both Hare and Clunies-Ross an unmistakable lesson about the politics of protection. Having watched as his employer failed to secure the guarantees required for his private empire to survive, Clunies-Ross would have realized that insisting on sovereign rights was anathema to powerful empires in a way that arguments about protection were not. For his part, Hare left Borneo even more convinced of the necessity of finding a place where he could rule unhindered over the Javanese men and women he claimed as his property. But Hare, too, continued to feel the pull of protection as a framework for cultivating imperial favour and negotiating for greater autonomy. In a series of memorials to British authorities, he pressed for restitution for the failure of imperial protection and the resultant harms he had suffered.⁴⁹ By 1820, he had relocated to a remote farm in the Cape Colony, taking with him a sizeable entourage of former slaves who had been putatively freed but then rebound in permanent indenture. Despite the isolation of his farm, Hare's Cape Colony sojourn did not provide him with the combination of security from external authority and total control over his former slaves that he sought. Not ready to become a compliant subject and perhaps put off by the increased regulation of slavery in the Cape Colony by the British, Hare set out in search of a new home where he could rule undisturbed over his household-polity.⁵⁰

⁴⁷ Van der Kemp, 'Het Afbreken van onze Betrekkingen met Bandjermasin', 86.

⁴⁸ Irwin, *Nineteenth-Century Borneo*, 46.

⁴⁹ Memorial of Alexander Hare to the Lords Commissioners of His Majesty's Treasury, 11 Sept. 1819, BL, Board's Collections, IOR/F/4/788/21403.

⁵⁰ For Cape politics, see Kirsten McKenzie, *Imperial Underworld: An Escaped Convict and the Transformation of the British Colonial Order* (Cambridge, 2016).

II

PROTECTION SHOPPING AND ISLAND RULE

By 1826, Hare and Clunies-Ross had converged unexpectedly on the idea of settling on the uninhabited Cocos-Keeling Islands, which the latter had visited briefly and described to his employer. Hare got there first. When Dutch officials blocked his plan of moving to Java, where he still held property, Hare arrived with his captives on the Cocos-Keeling Islands in June of 1826. Clunies-Ross joined him there with his own much smaller retinue in 1827. News about the fledgling settlement eventually reached British officials, who dispatched the sloop *Comet*, under the command of Alexander Sandilands, in 1830 to investigate. Sandilands' visit marked the beginning of a new and highly active phase of protection shopping during which both Hare and Clunies-Ross energetically solicited imperial guarantees to secure their position.

Sandilands reported to E. W. C. R. Owen, the rear-admiral in charge of the East India Station, on the hazards of the anchorage and the islands' abundance of coconuts, two factors important to assessing whether the islands might serve as a refreshment station for ships.⁵¹ Sandilands also informed Owen that the islands were divided between two feuding camps. On the largest island, Hare presided over about fifty-seven adult 'Natives of the Eastern Islands' and several dozen children, and on another island Clunies-Ross ruled a smaller settlement that included 'his Wife, five Children, and a Servant maid, eleven Englishmen one Portuguese Cook and Javanese Boy'.⁵²

Sandilands also reported a deeply disturbing discovery. Hare's 'establishment' encompassed a shabby compound of sequestered female children ranging in age from 5 to 18, whom Hare had separated from their unhappy parents. When Sandilands sent his ship's surgeon to the palisaded dwellings, the inspection confirmed the captain's worst fears: the purpose of this confinement was to raise the young girls up for 'the sole purpose of prostitution' — in effect sexual slavery to Hare.⁵³

⁵¹ Owen's title was Commander-in-Chief, East Indies Station.

⁵² Rear Admiral Sir E. W. C. R. Owen to the Right Honourable J. W. Croker, Admiralty, 10 July 1830, BL, IOR/F/4/1357/54119.

⁵³ Enclosure C3, Report from the Surgeon upon his visit to Mr Hare's houses, BL, IOR.F/4/1357/54119.

Sandilands noted that Hare's settlement did not seem temporary, but that 'he contemplates fixing himself at those Islands so long as he is permitted to exercise an unconstrained authority over his People'.⁵⁴ Having made all efforts to dissuade Hare from continuing 'his present system' and warning him that 'whatever Government obtained the Sovereignty' of the Cocos-Keeling islands would likely put an end to such practices, Sandilands recommended to the admiral that the Royal Navy intervene to place the territory under the protection of the British government.⁵⁵

Sandilands received from Owen not reassurance that the navy would take action but a gentle reprimand for condemning Hare's system of sexual exploitation so openly. The rear-admiral worried that by criticizing Hare, Sandilands might have placed both Hare and Clunies-Ross in danger by giving tacit encouragement to the 'natives' to rebel. Hare's harem might be a disgrace, as Sandilands believed, but it was a disgrace perpetrated by a British subject who still required and deserved protection. And it was the navy's job to provide protection for British subjects overseas.⁵⁶ To British officials such as Owen there seemed no point in jeopardizing a potential British possession for the sake of sheltering a handful of Javanese children from Hare's sexual violence.

Owen's reflexive urge to protect Clunies-Ross and Hare as British subjects fitted within a sharpening discourse about the protection of subjects as foundational to the growing empire.⁵⁷ It also had a great deal to do with British competition with the Dutch in the region. With Java again in Dutch hands, the two imperial powers were in a state of uneasy truce under the Anglo-Dutch treaty of 1824, which divided the greater region into spheres of influence. Rising trade with China was intensifying demand for locally produced commodities and increasing

⁵⁴ Enclosure C1, Letter from Commander Sandilands to Sir E. Owen dated 22 March 1830, BL, IOR/F/4/1357/54119.

⁵⁵ On the navy bureaucracy, see Roger Morriss, *The Foundations of British Maritime Ascendancy: Resources, Logistics and the State, 1755–1815* (Cambridge, 2011), 140.

⁵⁶ Lauren Benton, 'Protection Emergencies: Justifying Measures Short of War in the British Empire', in Lothar Brock and Hendrik Simon (eds.), *The Justification of War and International Order: From Past to Present* (Oxford, 2021).

⁵⁷ Benton and Ford, *Rage for Order*, ch. 4.

incentives for slave-raiding around the region.⁵⁸ Owen was also clearly worried about the expansion of Dutch influence; Sandilands had been dispatched in part because of concerns that the islands might be annexed by Batavia.⁵⁹ In this context, the machinations of two ambitious British subjects on a tiny archipelago held symbolic significance.

For their part, Hare and Clunies-Ross manoeuvred to package their rival claims to possession for different audiences.⁶⁰ Clunies-Ross asserted that he had cleared some ground for planting on his earlier voyage and that those actions served as symbolic markers of possession.⁶¹ He flew the Union Jack above his compound and talked of servicing British ships stopping at the islands. Hare ridiculed Clunies-Ross for having brought plants 'to clap down' and for having 'manufactured a Bombast certificate of his taking the property for himself and the Sovereignty for the King'.⁶² By claiming 'prior ... occupancy', Hare aimed to colour Clunies-Ross as just another lawless rogue operating in 'lawless places' and to paint himself as the 'Absolute Sovereign and Proprietor of the soil of all these isles'.⁶³ Both men knew that evidence of possession would not only strengthen their individual claims but also appeal to an imperial protector eager to block a rival's claim.

Both Hare and Clunies-Ross continued to shop relentlessly for imperial protection. Clunies-Ross targeted British authorities in Mauritius with an appeal for protection and recognition for the fledgling colony. His first petition to the Governor of Mauritius, Charles Colville, asked for the islands to be admitted 'under the supremacy of this Government of Mauritius'.⁶⁴ In making his case for protection, Clunies-Ross sought 'a degree of local magisterial authority' and a title such as harbour master that

⁵⁸ See James Francis Warren, *The Sulu Zone, 1768–1898: The Dynamics of External Trade, Slavery and Ethnicity in the Transformation of a Southeast Asian Maritime State*, 2nd edn (Singapore, 2007).

⁵⁹ Gibson-Hill, 'Documents', 87.

⁶⁰ Lauren Benton and Benjamin Straumann, 'Acquiring Empire by Law: From Roman Doctrine to Early Modern European Practice', *Law and History Review*, xxviii, 1 (2010).

⁶¹ Gibson-Hill, 'Documents', 61.

⁶² 'Outlines of Facts, by A. Hare', filled in by Ross, copied by John George Hendrik Dill in 1851 from a copy made by Ross in 1830–3, Papers of Capt. John Clunies Ross, BL, Add M37631: 1824–1854, fo.20^v.

⁶³ *Ibid.*, fos. 52 and 114^v.

⁶⁴ Gibson-Hill, 'Documents', 138.

would buttress his position on the islands and in the imperial bureaucracy.⁶⁵ His timing was poor; Colville's relationship with officials in London was strained as he sided with French creoles against British legal reforms to ameliorate slavery.⁶⁶

Only a month after writing to Colville, Clunies-Ross penned a second petition, this one addressed to the king and drawn up in consultation with the Proctor to the Court of Admiralty of St Louis in Mauritius.⁶⁷ It requested that the Cocos-Keeling Islands be placed in a state of 'union' with the king's dominions and that he personally, and his heirs 'in perpetuity', be awarded a 'grant of the property' in the islands.⁶⁸ The details of the arrangements he requested in the two petitions differed, but both show that Clunies-Ross had in mind the same combination of protection and some formal recognition of his authority.

Hare meanwhile was cosying up to the Dutch on Java. His determination to preserve his personal rule, including continued sexual exploitation of his captives, did not blind him to the advantages of strengthening his connections with the Dutch administration in Batavia. He clearly perceived the possibility that he might stave off British intervention by solidifying Dutch support. On 12 December 1828, Hare penned a letter to senior Dutch officials in Batavia asserting that he was 'sensible of the advantage of adjacency to a protecting authority'.⁶⁹

Equally aware that there might be some advantage to be gained, Dutch officials encouraged the view that they might annex the islands. In October 1829, a naval officer, H. van der Jagt, arrived aboard the schooner *Blora* to investigate the status of the territory.⁷⁰ Since he was already in correspondence with far more elevated figures in Batavia, Hare showed little interest in revealing his hand to a junior officer, but he did explain that

⁶⁵ *Ibid.*, 134.

⁶⁶ Lauren Benton and Lisa Ford, 'Legal Panics, Fast and Slow: Slavery and the Constitution of Empire', in Dan Edelstein, Stefanos Geroulanos and Natasha Wheatley (eds.), *Power and Time: Temporalities in Conflict and the Making of History* (Chicago, 2021).

⁶⁷ Gibson-Hill, 'Documents', 141–7, 221.

⁶⁸ *Ibid.*, 139, 143.

⁶⁹ Enclosure B3, A letter from Mr Hare to the Commissioners General, 12 Dec. 1828, BL, IOR/F/4/1357/5411, fo. 36.

⁷⁰ H. van der Jagt, 'Beschrijving der Kokos-of Keeling-Eilanden', *Verhandelingen van het Bataviaasch Genootschap der Kunsten en Wetenschappen*, xiii (1831), 295–322.

'it would be pleasing for him if Dutch Government raised its flag there, but as an English subject he could not apply to the Netherlands government to do so'.⁷¹ Van der Jagt concluded that Hare wanted to 'withdraw from all social establishment' so that he could be 'lord and master' over his subjects. Like Hare, Clunies-Ross was frantically shopping for protection. According to van der Jagt, Clunies-Ross had declared his wish that the Netherlands East Indies government take over the islands and affirmed that he 'would rather be under Dutch than English rule'.⁷² This strategy required some sleight of hand, as Clunies-Ross concealed from Dutch officials his appeals in Mauritius and his assurances to British authorities that he would never abandon his status as a British subject or transfer allegiance to Batavia.

These machinations did more to preserve ambiguity about the islands' status than to promote clarity about imperial belonging. Neither the Dutch nor the British followed their visits by asserting claims to sovereignty over the islands. In fact, when given the chance to do so, both empires pulled back. In June 1830, the Governor-General, Johannes van den Bosch, decided that it would be a strategic error to take possession of islands that presented neither clear reward nor obvious threat.⁷³ For their part, the British recognized that under the usual formulas establishing imperial possession, the Hare and Clunies-Ross settlements might prove sufficient. Writing to London, Owen tepidly endorsed the idea that a firm claim to the islands would be beneficial, particularly given their placement between India and Australia.⁷⁴ But firmly establishing such a claim lay in the indefinite future. Instead, like their Dutch counterparts, British officials continued to frame relations with the islands within the idiom of protection without making any definitive commitment to rule.

The former slaves brought to the islands by Hare embarked on their own, partially successful attempts at protection

⁷¹ Van der Jagt, 'Beschrijving der Kokos-of Keeling-Eilanden', 312. See also Gibson-Hill, 'Documents', 155.

⁷² Van der Jagt, 'Beschrijving der Kokos-of Keeling-Eilanden', 319.

⁷³ As reported in 28 Sept. and 28 Nov. 1858, *Verslag der handelingen der Staten-Generaal 1857/8* ('s Gravenhage, 1858), 21 and 203.

⁷⁴ Enclosure C4, Sir E. Owen's acknowledgement of the foregoing papers relating to Mr Ross' settlement, BL, IOR/F/4/1357/54119.

shopping. In the Cape, where they had been putatively free but bound to a lifetime's service to Hare, they had fled to local officials with complaints of mistreatment but were swiftly returned and harshly punished.⁷⁵ On the islands, members of this captive community sought to blunt Hare's power by seeking protection from Clunies-Ross, a strategy that Hare described as 'my people's vagabondizing towards his quarter'.⁷⁶ Regarding their overtures as an existential threat to the precarious order he had constructed, Hare responded by exiling the offenders to a barren island where they could be more readily controlled. For his part, Clunies-Ross oscillated between playing protector to undermine his rival and resisting any claims to responsibility. Like British or Dutch authorities assessing his own petitions, Clunies-Ross offered a 'selectively attentive accessibility, and encouraging kind ear' but refrained from any decisive action.⁷⁷ Such actions show that protection politics flourished in miniature within the boundaries of the islands at the same time that Hare and Clunies-Ross were competing to position themselves as protected subjects before external authorities.

Hare departed the islands in 1831, leaving Clunies-Ross in sole possession of the territory. The catalyst for his departure came, according to one report, in the form of a dramatic shift in protection politics as the captive community 'deserted in a body, and claimed protection from Mr. Ross'.⁷⁸ The change left Clunies-Ross with scope for his vision of a plantation-style economy built on a foundation of mastery over an Asian labour force. Crucially, he was insistent that no rival power centres should be allowed to develop on the islands. Instead, Clunies-Ross would control the labour regime entirely by permitting no 'overseers, drivers, mandores' or 'discontented mutinous or malicious Europeans' who might challenge his rights over the population.⁷⁹

Yet such an enterprise still required a measure of protection. After the British naval vessel *Zebra* stopped on the islands in 1835,

⁷⁵ Gibson-Hill, 'Documents', 241.

⁷⁶ 'Outlines of Facts, by A. Hare', Papers of Capt. John Clunies Ross, BL, Add M37631: 1824–1854, fo. 59.

⁷⁷ *Ibid.*, 60^v.

⁷⁸ Gibson-Hill, 'Documents', 91.

⁷⁹ 26 August 1827, Letter from Ross to John Hare, Captain J. C. Ross letters, 1827–1830, Mitchell Library, Sydney, MLMSS 555. Mandores typically refers to overseers employed on sugar plantations.

Clunies-Ross decided to write to Rear-Admiral Sir Thomas Bladen Capel in Mauritius asking once again for the islands to be 'admitted to the general protection of the Imperial Power'.⁸⁰ The petition went much further than earlier communications in outlining the basis and strategic benefits of protection. It began by providing a long account of Hare's doomed venture in Moluko, where, according to Clunies-Ross, the lack of protection by the British had exposed the territory to Dutch seizure.⁸¹ Clunies-Ross explained that he had chosen the Cocos-Keeling Islands to settle and had rejected other possible sites such as the Falkland Islands precisely because of his assessment of the global topography of British imperial protection.⁸² Providing a detailed comparison of the relative merits of his and Hare's claims to the Cocos-Keeling islands, Clunies-Ross smeared Hare for cosying up to the Dutch and for making it impossible for the two men to appeal jointly to 'our native sovereign for an assurance of its continued protection'.⁸³

Clunies-Ross continued his lesson in the politics of protection by explaining the reasons British protection would benefit both the islands and the empire more generally. British authorities wrongly believed that protection of the islands would be costly, he asserted. By turning the islands into a 'commercial depot', he would make the territory self-sufficient.⁸⁴ In wartime, the islands might benefit from captured ships being taken there. In peacetime, the territory could service British, American and other European vessels and provide safe refuge in a dangerous ocean. All these functions required a pledge of British protection of a particular kind: recognition and security without investment or interference. According to Clunies-Ross, the British government would not need to station an agent in the islands if it endorsed his own unfettered authority over the Malay population.⁸⁵ Here he seemed to be taking a page from Hare's playbook of representing protection as a framework for preserving personal dominion. Certainly Clunies-Ross sought to reinforce the idea that 'the general protection of the Imperial

⁸⁰ Gibson-Hill, 'Documents', 229.

⁸¹ *Ibid.*, 228.

⁸² *Ibid.*, 209.

⁸³ *Ibid.*, 221.

⁸⁴ *Ibid.*, 226.

⁸⁵ *Ibid.*, 228.

Power' was entirely compatible with his family's absolute rule over the internal affairs of the islands and their inhabitants.⁸⁶

III

TESTING PROTECTION

The pattern of protection that Clunies-Ross had stitched together was strained by a revolt against his rule that broke out in 1837. He blamed the revolt on a visit to the islands by Captain Fitzroy, whose ship, HMS *Beagle*, and its soon-to-be-famous passenger Charles Darwin arrived in 1836 while Clunies-Ross was away on a trading voyage.⁸⁷ Fitzroy, whom Clunies-Ross condemned as a meddling 'pseudo philanthropic fool', supposedly encouraged the revolt by meeting with one of his surrogates, a man named Leisk, who told the captain that 'many of the Malays were very discontented, and wanted to leave the Island'.⁸⁸ Far more important than Fitzroy, who spent just a few days on the islands, was Joseph C. Raymond, an American sailor who had reached the Cocos-Keeling Islands aboard a British merchant ship, the *Trusty*, a year earlier, in January 1836.⁸⁹ Raymond found a ready ally in Leisk, who shared his vision of turning the islands into a refreshment station for American whaling vessels rather than pursuing the plantation model embraced by Clunies-Ross, and he easily attracted followers among a Malay population that was angered by their treatment as de facto slaves.

The Raymond revolt commenced with a general strike and a demand for increased wages.⁹⁰ It ground the small colony to a halt, leaving Clunies-Ross dangerously exposed. In response, he appealed to the British to make good on their pledges of

⁸⁶ *Ibid.*, 229.

⁸⁷ Clunies-Ross later produced a detailed satire designed to attack Fitzroy and Darwin: 'Voyages of the Adventure and Beagle', Papers of Capt. John Clunies Ross, BL, Add M37631, 1824–1854. For the complete transcript see <<https://www.darwinproject.ac.uk/beagle-satire-transcription>> (accessed 8 April 2021). See also Katharine Anderson, 'Reading and Writing the Scientific Voyage: Fitzroy, Darwin and John Clunies Ross', *British Journal for the History of Science*, li, 3 (2018).

⁸⁸ John Clunies Ross, 'Letter of Ross to J. L. Adam', April 1854, and 'Voyages of the Adventure and Beagle', Papers of Capt. John Clunies Ross, BL, Add M37631, 1824–1854.

⁸⁹ Crew lists of the *Trusty* from other voyages record stops at Canton, Swan River, Mauritius, Quebec and St Petersburg and show the ship routinely taking on new crew members in some ports.

⁹⁰ Gibson-Hill, 'Documents', 269.

protection while also keeping open the possibility that he could turn to Batavia for assistance. In June 1837, Clunies-Ross travelled to Ceylon to complain to Admiral Bladen Capel about Captain Fitzroy's actions in fomenting the revolt by 'wilfully tampering with the feelings of the Natives and exciting in them a spirit of discontent'.⁹¹ Demanding 'protection and aid from the high authorities in India', Clunies-Ross asked for a naval ship to be dispatched to the islands to buttress his authority.⁹² He also again requested that he be appointed harbour master, an office that he supposed would both give him authority to put down the revolt and raise his status among visiting ship captains and crews.⁹³ Arguing that Clunies-Ross's loyalty 'justly entitles him to every proper countenance and assistance', Admiral Bladen Capel agreed to name him harbour master and dispatched the *Pelorus*, under the command of Captain Harding, to restore Clunies-Ross's control over the Cocos-Keeling islands.⁹⁴ Not leaving anything to chance, Clunies-Ross stopped at Madras to recruit a small contingent of Indian soldiers before returning to the islands.⁹⁵

The arrival of a heavily armed naval vessel under Harding's command put an end to the revolt. But the punishment of the rebels highlighted the still anomalous legal status of the territory. After interrogating the assembled residents, Harding resolved to remove fifty-two men, women and children from the islands, thereby effectively eliminating the threat to Clunies-Ross's authority.⁹⁶ The ruler of the islands joined the action in his self-proclaimed 'capacity of local Chief Magistrate of the said

⁹¹ Account of the Origins and Progress of the Settlement on the Cocos Islands, The National Archives, Kew (hereafter TNA), FO 37/362.

⁹² Gibson-Hill, 'Documents', 274.

⁹³ Typescript of John Clunies Ross to Administrator Capel, C in C East Indies, 29/6/1837, and longer, undated and incomplete letter to Capel outlining dealings with Hare and original 'Certificate' signed J C Ross, 1846, National Archives of Australia, A9752, 1.

⁹⁴ Letter from Vice-Admiral Bladen Capel, 1 Sept. 1837, TNA, ADM 1/217/S.88.

⁹⁵ John Clunies Ross, 'Letter of Ross to J. L. Adam', Apr. 1854, BL, Add M37631, 1824-1854.

⁹⁶ Extract of a letter from Commander Harding of HM Sloop *Pelorus* to Admiral Sir T. Bladen Capel, 27 June 1838, TNA, CO 167/214. On detention and exile as responses to rebellion in the Dutch and British empires, see Kerry Ward, *Networks of Empire: Forced Migration in the Dutch East India Company* (Cambridge 2008); Michael Lobban, *Imperial Incarceration: Detention without Trial in the Making of British Colonial Africa* (Cambridge, 2021).

Settlement under the Imperial Government of our Sovereign Lord, the King of the United Kingdom of Great Britain and Ireland, etc., etc., etc.’ and drew up a series of thirteen charges against the apparent ringleader.⁹⁷ Operating as if British law now applied in the islands, Clunies-Ross accused the American sailor of a litany of offences including usurping judicial authority by ‘illegally administering judicial oath within this settlement’ and other acts in ‘flagrant breach of the British imperial statute law’. The charges might have led to harsh punishment if Harding had not intervened to deport Raymond. Despite Clunies-Ross’s claim that he was exercising British jurisdiction, Harding wrote to his superiors that the navy had been careful to put down the revolt ‘without entailing any particular responsibility’ for Britain in the long term.⁹⁸

In London, British authorities were far from convinced that the navy had represented the empire’s interests with the proper degree of caution. Lord Normanby, the Home Secretary, declared in 1839 that the islands were ‘not entitled to be protected by this country’ as they did not constitute ‘a recognized British Settlement, and are not within the jurisdiction of any British judicature’. Normanby added that ‘neither Mr Ross nor his people should be led to mistake their position, and that they should all equally understand that they are living where there is no law to protect their rights’.⁹⁹ Normanby objected especially to the ‘Articles of Agreement’ drawn up by Harding and Clunies-Ross as ‘British Resident and Harbour Master’. The articles were signed by the heads of twenty Malay families who declared their intention to remain on the islands. The agreement regulated all aspects of labour and obliged the families to ‘duly obey all the lawful commands of the said J. C. Ross’.¹⁰⁰ A paragraph especially offensive to

⁹⁷ Charge laid against Joseph C. Raymond, TNA, CO 167/214 and ADM 125/131.

⁹⁸ Extract of a letter from Commander Harding of HM Sloop *Pelorus* to Admiral Sir Thomas Bladen Capel, 27 June 1838, TNA, CO 167/214.

⁹⁹ J. A. S. Stephens to Sir J. Barron, 24 May 1839, TNA, ADM 167/214. The initial date of this letter is unclear. For the correspondence that Clunies-Ross received, see ‘An Account of the Settlement of the Cocos or Keeling Islands annexed to the Dominions of Her Britannic Majesty March 1857’, Naval papers of Captain Stephen Grenville Fremantle (D-FR), Buckinghamshire Archives, Aylesbury, D-FR/213/12; Gibson-Hill, ‘Documents’, 102–3.

¹⁰⁰ Articles of Agreement, 21 Dec. 1837, TNA, ADM 125/131; Gibson-Hill, ‘Documents’, 279–81.

Normanby gave the signers recourse to ‘any Court of Her Britannic Majesty’s Judicature’ and prohibited them from taking a case ‘unto any other tribunal whatsoever’. Normanby wanted no such commitment to British jurisdiction in the islands, though he allowed that there ‘may be no objection to naval officers giving a friendly aid as arbitrators, to adjust differences amongst these adventurers’.¹⁰¹

After receiving a new petition from Clunies-Ross dated 10 April 1841, the government sought advice from Capel, who was recently retired and living in London. Capel affirmed that ‘Captain Ross is deserving of the encouragement and protection of the Government’.¹⁰² In response, the government confirmed that it was willing to protect Clunies-Ross and other residents as British subjects but not to recognize the islands as a British settlement. It directed Capel’s replacement ‘to give all the protection in his power to such of the Queen’s subjects as may be residing on these islands’.¹⁰³

Forced to settle for less than he wanted from London and seeking further guarantees against imperial meddling, Clunies-Ross looked again to the government of the Dutch East Indies. Batavia was still the closest major market for the islands’ main products, coconut oil and copra, and it was also the logical supply point for the labour needed to make his plantation economy function. Quickly, connections began to multiply. Clunies-Ross flew the Dutch flag briefly on the islands and sailed his trading vessels under Dutch colours. He claimed the title of Dutch burgher, which came with accompanying commercial privileges, referred legal cases to Batavia and recruited convict labour there. And in 1841, just four years after the Raymond revolt, he formally petitioned the governor-general in Batavia for recognition and protection.

As was the case with British authorities, Clunies-Ross found Dutch officials in Asia willing to lend a sympathetic ear but not to offer definite commitments. Governor-General Merkus sent Clunies-Ross’s petition for a ruling in The Hague, but in May 1842, J. C. Baud, the Minister for the Colonies, rejected

¹⁰¹ J. A. S. Stephens to Sir J. Barron, 24 May 1839, TNA, ADM 167/214.

¹⁰² Gibson-Hill, ‘Documents’, 104.

¹⁰³ ‘An Account of the Settlement of the Cocos or Keeling Islands annexed to the Dominions of Her Britannic Majesty March 1857’, Buckinghamshire Archives, Aylesbury, D-FR/213/12; Gibson-Hill, ‘Documents’, 104.

it.¹⁰⁴ When the decision filtered back to Clunies-Ross, he conveniently stopped citing the petition in favour of a narrative that stressed his commercial rather than political connections to the Dutch East Indies. In subsequent interactions with British authorities, Clunies-Ross emphasized that his interest in Batavia was rooted in property holdings and ongoing trade rather than a deliberate attempt to court Dutch protection.¹⁰⁵ Yet ambiguities persisted, including some that Dutch authorities seemed to tolerate, if not actively encourage. The islands featured, for example, on semi-official maps as a recognized part of the Dutch empire.¹⁰⁶

The ambiguities extended to a hybrid administration of law in the small settlement. Rare cases of serious crime were referred to Batavia, 'on the grounds that the parties were Dutch subjects'.¹⁰⁷ For example, when a Malay worker ran amok in 1845 and stabbed two people, he was captured and taken to Batavia to be 'disposed of as the judicial authorities may see fit'.¹⁰⁸ Despite these and other ties, the Dutch government repeatedly rejected formal incorporation of the islands, though officials were quick to maintain that Clunies-Ross had 'always considered himself as a subject of the Netherlands'.¹⁰⁹ They did not add that he simultaneously claimed subjecthood in the British empire, or that he confidently told the British navy that the islands' inhabitants 'look upon me as their King'.¹¹⁰ Protection shopping, combined with official reluctance to take on the

¹⁰⁴ J. E. de Meyier (ed.), *Indische Gids*, xxviii (Amsterdam, 1906), 737. Gibson-Hill, 'Documents', 85.

¹⁰⁵ There are different accounts of how Clunies-Ross qualified for the status of burgher, but various sources agree that his schooner was sailing under a Dutch flag during this period.

¹⁰⁶ See the 1842 map produced by Gijsbert Franco baron Von Derfelden van Hinderstein. W. R. van Hoëvell, 'De Kokos-eilanden en de Engelschen', *Tijdschrift voor Neerland's Indië*, xix (1857), 166.

¹⁰⁷ Account of the Origins and Progress of the Settlement on the Cocos Islands, TNA, FO 37/362.

¹⁰⁸ Gibson-Hill, 'Documents', 289. Other connections to the Dutch East Indies included the family's continuing access to convict labour from Batavia. Margaret Ackrill, 'British Imperialism in Microcosm: The Annexation of the Cocos (Keeling) Islands' (London School of Economics and Political Science, Working Papers in Economic History, 18/94, March 1994), 21.

¹⁰⁹ 28 Sept. 1857, *Verslag van de Handelingen der Staten-Generaal 1857/8*, 18.

¹¹⁰ Account of the Origins and Progress of the Settlement on the Cocos Islands, TNA, FO 37/362.

responsibilities of rule, had produced an inter-imperial protection regime, one that we might label a state of co-protection.

IV

ANNEXATION AS ACCIDENT

The calculus of co-protection appeared on the surface to change dramatically around mid century. In 1857, a British navy ship captained by Stephen Fremantle arrived to annex the islands for the British. It soon became apparent that the annexation had resulted from what one observer described as a ‘ludicrous mistake’.¹¹¹ Fremantle had received instructions to take possession of another archipelago called the Cocos Islands situated north of the Andaman Islands in the Bay of Bengal. When the orders were sent to the Australian station rather than to a naval outpost closer to India, Fremantle logically assumed they referred to the Cocos-Keeling Islands, which were within his area of operations.¹¹² He sailed to the islands and conducted an improvised ceremony of possession in which he ‘caused a Flagstaff to be erected in view from the anchorage’, read a ‘Declaration’ to an audience of inhabitants and sailors, and deposited ‘a Tablet on which was inscribed the Proclamation’.¹¹³ The declaration announced that the islands were now ‘a part of Her Britannic Majesty’s Possessions, and they have been this day formally annexed’. Fremantle assumed that the government would soon dispatch a proper representative, but when none appeared, he had little choice but to appoint John George Clunies-Ross, who had taken control of the islands on his father’s death in 1854, to act as a ‘Temporary Superintendent’.¹¹⁴

However accidental, annexation seemed to signal the end of three decades of ambiguity about sovereignty. It directly threatened the benefits of protection shopping and the private prerogatives of the ruling family. According to Fremantle’s

¹¹¹ Henry O. Forbes, *A Naturalist’s Wanderings in the Eastern Archipelago* (London, 1885), 16–17.

¹¹² The circumstances leading to the mistaken annexation are covered in detail in Ackrill, ‘British Imperialism in Microcosm’.

¹¹³ ‘Taking Possession of the Cocos Islands’, TNA, FO 37/362. See the same document in Buckinghamshire Archives, Aylesbury, D-FR/213/12.

¹¹⁴ Appointment of John George Clunies-Ross, 30 Apr. 1857, TNA, FO 37/362.

perceptive analysis, John George Clunies-Ross exhibited 'a little dejection on the sudden abrogation of his absolutism, and perhaps some secret misgivings as to the possibility of restriction'.¹¹⁵ Two generations of the family had advocated for imperial protection while seeking to avoid the appointment of a British resident who would exercise authority directly. Now Fremantle seemed to suggest that such an official was already on his way to the islands. Even as annexation promised direct imperial supervision for the first time, it severed another benefit of the island's indeterminate status: the family's economic ties with Batavia. In a letter to the British consul in Batavia, Clunies-Ross complained that Fremantle's actions had deprived him of his 'right of naturalization as a subject of the Netherlands and the use of the Netherlands flag for my ships'.¹¹⁶ Writing to London for instructions, the consul, Alexander Fraser, explained helpfully that the 'small colony' established by the Clunies-Ross family was in fact 'principally supported by a trade with Batavia' that had now been cut.¹¹⁷

The unexpected annexation startled officials in London and The Hague, who faced new questions about the islands' status and the subjecthood of Clunies-Ross. Lord Clarendon, the Secretary of State for Foreign Affairs, presented Ralph Abercromby, Minister Plenipotentiary to the Netherlands, with a strange request. Clarendon wanted Abercromby to find out whether, in light of the obvious mistake, the British claim to the islands might be quietly abandoned and Clunies-Ross allowed to retain his newly awarded title, described by Clarendon as Lieutenant-Governor, 'as a symbol of authority over his little colony'. Abercromby was incredulous. Such a reversal could hardly be done quietly, if it could be accomplished at all. Clunies-Ross's trade, Abercromby wrote, could only be restored to him 'by an act of equal publicity'. Further, he predicted that the 'first question the Netherland Government will ask me, will be, are we to understand that Great Britain withdraws all

¹¹⁵ 'Taking Possession of the Cocos Islands', TNA, FO 37/362.

¹¹⁶ Letter from J. G. C. Ross, Aug. 1857, reproduced in The Report of E. W. Birch, deputed by the Office Administering the Government of the Straits Settlements to visit the Cocos-Keeling Islands, 1885, National Archives of Australia, A9752, 121.

¹¹⁷ Alexander Fraser, British Consul, Batavia to the Earl of Clarendon, 5 Sept. 1857, TNA, FO 37/358.

authority or possession over the Cocos Islands and has Captain Ross ceased to be Lieutenant-Governor in the name of the British Government'.¹¹⁸ It was highly unlikely that the Netherlands government would agree that a colony that was no longer a colony should be run by a British appointee. At the same time, British officials were sceptical that the islands could be administered as a British possession. The Secretary of State for the Colonies, Henry Labouchere, observed that such a small territory could not support the cost of a colonial establishment. The cleaner solution would be to recognize the act of annexation as 'a pure mistake' and to 'cancel it as nearly as can be done consistently with the national dignity and interest'.¹¹⁹ But a reversal of annexation came with its own political perils. Labouchere urged the government to turn its attention to John George Clunies-Ross, who possessed 'proprietary rights, and a sort of patriarchal authority'.¹²⁰ The path of least resistance would be to leave the family in de facto control without going any further to formalize British authority.

Annexation triggered a debate of a different kind in the Netherlands, where it was regarded as an act of political aggression by the British government. In the Dutch Parliament, a group of prominent colonial critics decried the government's surrender of a strategic territory that sat astride key Dutch shipping lanes. W. R. van Hoëvell, who had a long association with the Dutch East Indies, led the attack.¹²¹ He argued that the Cocos-Keeling Islands were clearly part of the Dutch empire. Its 'legal sovereignty' over the territory was supported by evidence of the long and intimate relationship between the Clunies-Ross family and Batavia.¹²² Eager to refute any criticism that he had surrendered valuable territory, the Minister for the Colonies,

¹¹⁸ R. Abercromby to Lord Clarendon, 9 Jan. 1858, TNA FO 37/364. We have opted to write out the abbreviations contained in this letter. See also Nicholas Tarling, 'The Annexation of the Cocos-Keeling Islands', *Australian Historical Studies*, viii, no. 32 (1959).

¹¹⁹ Herman Merivale to the Earl of Shelburne, 28 Dec. 1857, TNA FO 37/362.

¹²⁰ Fremantle reached the same conclusion in a letter dated 12 June 1857, TNA FO 37/362.

¹²¹ For a discussion of van Hoëvell's wider role in a critique of the colonial administration, see Cornelis Fasseur, *The Politics of Colonial Exploitation: Java, The Dutch, and the Cultivation System*, trans. R. E. Elson and Ary Kraal (Ithaca, 1992).

¹²² 28 Nov. 1858, *Verslag der handelingen der Staten-Generaal 1857/8*, 208–9.

Pieter Mijer, insisted that no official ties of sovereignty existed between the islands and the Dutch empire.

This muddled affair inserted the act of annexation awkwardly into the framework of protection. The Dutch government insisted that it had not lost a territory; British officials wanted to wind the clock back to a time before annexation while leaving some symbols of imperial rule in place; and John George Clunies-Ross manoeuvred to make sure he could continue to rule unencumbered by imperial oversight. The result was to erase the political consequences of annexation and quietly preserve the status of the islands as a quasi-sovereign polity with multiple protectors.

V

NEWS ABOUT SOVEREIGNTY

Over the next century, the islands edged further under the wing of empire while retaining an uncertain legal status. A series of administrative acts designed to tighten British oversight instead opened opportunities for further jockeying for advantage on the part of the ruling family and led, paradoxically, to the articulation of claims to island sovereignty that were stronger than anything advanced since the days of Alexander Hare.

The first new opportunity for clarifying the islands' status arrived when, without bothering to inform anyone on the Cocos-Keeling Islands, the British placed them under the Government of Ceylon in 1878.¹²³ John George Clunies-Ross II had died in 1871, succeeded by his son, George Clunies-Ross III. As the new ruler of the islands, George Clunies-Ross travelled to London to petition the government for explicit recognition of his status. He rested his case on a clearly fabricated claim that the British government had awarded his grandfather a 'Grant of Deed' that had been lost in a fire on the islands and would have conferred on the family absolute rights to the territory.¹²⁴ The precise claim was new, but in other ways Clunies-Ross was reprising a familiar argument that the islands'

¹²³ Forbes, *A Naturalist's Wanderings in the Eastern Archipelago*, 17.

¹²⁴ Rosemary A. Brockman, 'In Search of a "New Heaven, New Earth": A Socio-Economic History of the Cocos-Keeling Islands', (Murdoch Univ. Honours thesis, 1978), 64. Brockman cites multiple Colonial Office records that attest to Clunies-Ross's claims.

strategic value — now as a coal depot and submarine telegraph station — justified continued British protection without any need for intervention. As before, London officials equivocated. Some favoured recognizing Clunies-Ross as ‘a bona fide proprietor’, while others continued to worry about reports of quasi-enslavement and harsh labour conditions on the islands.¹²⁵

In 1885, the British government announced that it would transfer the islands to the Straits Settlement. The decision shifted responsibility to Singapore and its governor, Frederick Weld, to fix the status of the islands and settle the rights of the Clunies-Ross family. Weld dispatched an expedition led by E. W. Birch, the Second Assistant Colonial Secretary of Singapore, to discover if there was any impediment to affirming the islands as a British possession. Birch received specific instructions to confirm that no Dutch flag had flown over the islands since 1857. Birch’s subsequent investigation raised some concerns about the despotic rule of the Clunies-Ross family over the Malay population, but he also added evidence that Fremantle’s 1857 annexation had been performed correctly.¹²⁶

The Birch report led to a string of new edicts, including the appointment of the governor of the Straits Settlements as governor of the islands. In July 1886, British authorities granted an indenture awarding George Clunies-Ross and his heirs all the land within the islands, although the Crown retained the right to ‘resume possession’ of any part ‘required for public purposes without making any compensation’.¹²⁷ The document formalized British rule while continuing the arrangement tacitly in place since the accidental annexation of 1857. Announcement of the indenture marked a new high point for the Clunies-Ross family, whose members were now confirmed as masters over a territory protected by British naval power while retaining their capacity to extract profits from their labour force without fear of outside interference.

¹²⁵ Clunies-Ross, *Clunies-Ross Cocos Chronicle*, 67–8.

¹²⁶ During his time on the islands, Birch interviewed Neh Basir, one of the original captives brought to the islands by Hare. His mother had been ‘gifted’ to Hare by the Sultan of Banjarmasin. The Report of E. W. Birch, deputed by the Office Administering the Government of the Straits Settlements to visit the Cocos-Keeling Islands, 1885, National Archives of Australia, A9752, 121.

¹²⁷ The complete document can be found in Senate Standing Committee on Foreign Affairs and Defence, Report on United Nations Involvement with Australia’s Territories (1975), appendix 2.

The apparent confirmation of British rule paradoxically opened up a space for the family to equate their own rule with sovereignty and to embrace their self-representation, never hidden far from the surface, as kings. When George Clunies-Ross died in 1910, he left two wills, one conveying his property in England and the other leaving his proprietorship over the islands to his son, John Sidney Clunies-Ross. Family lawyers claimed that the second will could not be registered or, indeed, contested anywhere because the Cocos-Keeling Islands were ‘under the jurisdiction of no foreign Government, and themselves provide no legal machinery for the administration of wills’.¹²⁸ John Sidney Clunies-Ross held the islands ‘by possession’, and he served, in his own words, as ‘Chief Magistrate and Commander in Chief, as well as King’ with responsibility for settling ‘all disputes — civil, ecclesiastical, and moral’.¹²⁹ In newspaper interviews, he declared that he was ‘a king with more power than most monarchs’.¹³⁰

In general, the British government was content to tolerate Clunies-Ross’s claims to kingship, although there were periodic flare-ups over income tax and continuing allegations of coerced labour. On the islands, the Clunies-Ross family selectively intermarried with the Cocos Malay population, while also being careful to construct elaborate genealogies that reimagined such wives as queens with their own separate claims to royal blood.¹³¹ Over time, a wider ‘royal Family’ of interlinked families tied by kinship emerged to dispense patronage while propping up Clunies-Ross rule and effectively suppressing dissent.¹³² The blurring lines between the ruling family and the Cocos Malay population prompted a warning from British authorities that intermarriage threatened the family’s claims to a unique ‘status as that of a race boasting a higher civilization than that of the

¹²⁸ ‘KING OF COCOS ISLANDS.’ *The Border Morning Mail and Riverina Times (Albury, New South Wales)*, 17 Sept. 1910, p. 6, available online at <<http://nla.gov.au/nla.news-article111386595>> (accessed 16 Apr. 2021).

¹²⁹ ‘New King to Rule in Cocos Islands’, *New York Times*, 14 Aug. 1910.

¹³⁰ ‘King Sidney I of Cocos’, *The Argus (Melbourne, Victoria)*, 17 Sept. 1910, p. 5, available online at <<http://nla.gov.au/nla.news-page364051>> (accessed 16 Apr. 2021). Hunt discusses the considerable evidence that Clunies-Ross considered himself a royal figure and was widely perceived as such by the Cocos Malay population: Hunt, ‘The Revenge of the Bantamese’, 137.

¹³¹ John Sidney Clunies-Ross described his grandmother as the ‘beautiful S’pia Dupong, a Malay of Royal Solon blood’, although there is no evidence of such claims.

¹³² Brockman, ‘Captives on Cocos’, 46–7.

natives'.¹³³ The family's efforts to retain British protection by reasserting its whiteness received reinforcement when John Sidney Clunies-Ross married an English woman, Rose Nash, in 1927.

In the aftermath of the Second World War, the next 'king of the Cocos', John Cecil Clunies Ross, the fifth in the line, began to reassert the view that his ancestors had never surrendered sovereignty but had 'voluntarily joined the British Empire' in order to secure the Crown's protection.¹³⁴ Clunies-Ross's self-image was reinforced when Queen Elizabeth and Prince Philip visited the islands in 1954. News reports described John Cecil and his wife as the islands' 'owners' or sometimes simply as their King and his Queen.¹³⁵ Official photographs included a greying British administrator but foregrounded the young John Clunies-Ross, looking very much like a classmate (in every sense) of the prince.¹³⁶ And there were other, subtle signs that this meeting was being staged as an encounter between sovereigns rather than as a royal audience. Newsreel footage showed Clunies-Ross ambling alongside the Queen with a noticeable lack of deference, and a royal entourage little concerned about ritual. The images of the visit contrasted strikingly with those taken at the royals' next stop, Ceylon, where the Queen wore her crown and coronation gown to open parliament.¹³⁷ Clunies-Ross's encounter with Queen Elizabeth fitted well with his own self-declared view that he had a personal channel to the monarch that would enable him to withdraw the islands' association with Britain. Three years after the Queen's visit he would explain to a visiting Australian minister that 'at any time in the past he, in a discussion with the Queen, could have reached a decision to stay in the Empire or to leave it'.¹³⁸

¹³³ *Ibid.*, 45.

¹³⁴ Hastings, 'Tale of Two Islands', 10.

¹³⁵ "'King" of Cocos welcomes Queen', *Advocate (Burnie, Tasmania)*, 6 Apr. 1954, p. 3, available online at <<http://nla.gov.au/nla.news-article69966717>> (accessed 16 Apr. 2021).

¹³⁶ Photograph, Ministry of Information and the Arts Collection, courtesy of National Archives of Singapore, 'Queen Elizabeth II and Duke of Edinburgh Visit Cocos (Keeling) Islands', 05/04/1954, Media - Image No: 19980001060 - 0003.

¹³⁷ For images of the queen's visit, see <<https://nla.gov.au/nla.obj-148663080/view>> (accessed 16 Apr. 2021).

¹³⁸ Hastings, 'Tale of Two Islands', 10–11.

The relaxed ceremony no doubt reflected British planners' knowledge that talks were already underway to transfer the islands to Australia. Their tiny size, economic dependence on outsiders, and a century and a half of protection politics made independence out of the question. But there also was no great incentive to preserve the islands as integral to the empire. In 1955, the British Parliament approved the transfer to Australia and decided that the Cocos-Keeling Islands and their king would be absorbed into a Commonwealth country.

VI

SUSPENDED SOVEREIGNTY AND THE NATION STATE

The transfer to Australia in 1955 did not initially bring great change. In Canberra, Paul Hasluck, the Minister for the Territories, publicly promised that 'the rights of the Clunies Ross family will remain unaltered'.¹³⁹ The government's official representative had to request permission to travel to the Clunies-Ross estate, and his jurisdiction was confined to West Island, leaving Home Island, where the Malay population was based, under the control of the Clunies-Ross family.¹⁴⁰ The Australian government proved remarkably accommodating, with Hasluck declaring in 1957 that in 'the final issue we could insist that Mr Clunies-Ross obey Australian law, but we do not want to come to that final issue'.¹⁴¹ For his part, Clunies-Ross conceded that Australia had responsibility for external relations including defence, but he adamantly denied its authority over internal matters. Affirming his status as ruler of a polity within the British Commonwealth, Clunies-Ross insisted that on weighty questions of sovereignty he had to deal directly and personally with the Queen, while refusing to recognize that any correspondence with Buckingham Palace might be rerouted via the Australian government.¹⁴² Clunies-Ross also discovered that he now had a new card to play in positioning himself as protector of the islands' distinctive Cocos Malay culture. In

¹³⁹ Martin Mowbray, 'The Cocos (Keeling) Islands: A Study in Political and Social Change', *Australian Journal of International Affairs*, li, 3 (1997), 384.

¹⁴⁰ Kenneth Chan, *Cocos (Keeling) Islands: The Political Evolution of a Small Island Territory in the Indian Ocean* (Hawaii, 1987), 3.

¹⁴¹ Quoted in Clunies-Ross, *Clunies-Ross Cocos Chronicle*, 169.

¹⁴² Mowbray, 'The Cocos (Keeling) Islands', 385; Hastings, 'Tale of Two Islands', 11.

fending off change, he repeatedly cited a paragraph included in the 1955 Cocos (Keeling) Islands Act stating that the 'institutions, customs and usages of the Malay residents of the Territory shall ... be permitted to continue in existence'.¹⁴³

The framework of protection had something to offer all parties. Clunies-Ross poured old wine into new bottles in proposing that the Cocos-Keeling Islands become an 'associated state' with its own government and legal system. Predictably, under this system he would assume the position of head of state. In making the case for this arrangement, he argued that it was not an innovation, but simply a 'recognition of our status as it is now'.¹⁴⁴ Attempting with some sophistication to bring his arguments for rule in line with international law, Clunies-Ross observed that while 'annexation was once an acceptable basis of association between states, it is no longer so. Nowadays the more acceptable basis is a freely negotiated association between independent states'.¹⁴⁵

Favouring its own understanding of the status quo but reluctant to deepen its involvement, the Australian government willingly refrained from exercising sovereignty over its own territory for two decades. Instead, it embraced a hybrid system of rule in which island governance was conducted under what observers described as 'a loosely-knit condominium'.¹⁴⁶ It would take external intervention to spur significant change. In 1974, the United Nations Special Committee on the Implementation of the Declaration of the Granting of Independence to Colonial Countries and Peoples, more commonly known as the Committee of Twenty-Four, arrived to assess the status of the islands. Its members described an 'anachronistic, feudal relationship' between the Clunies-Ross family and the Cocos Malay population and criticized the Australian government for not asserting its authority.¹⁴⁷ In a scathing report, the committee expressed outrage at the incoherence of the islands' legal system, noting that members

¹⁴³ Quoted in Hunt, 'The Revenge of the Bantamese', 131.

¹⁴⁴ 'Cocos King: I would shoot any person who murdered', *Sydney Morning Herald*, 3 Sept. 1972.

¹⁴⁵ Hastings, 'Tale of Two Islands', 13.

¹⁴⁶ 'The island "king"', *Sydney Morning Herald*, 31 Aug. 1972.

¹⁴⁷ Senate Standing Committee on Foreign Affairs and Defence, Report on United Nations Involvement with Australia's Territories (1975), 155.

were 'not able to understand clearly which laws applied ... whether the laws of Singapore, the laws of Australia or perhaps no laws at all'. The report urged the Australian government to 'reaffirm its sovereignty' over the territory.¹⁴⁸

The United Nations report highlighted the clash between late twentieth-century understandings of sovereignty and the view of sovereignty that appeared to have regulated the status of the territory for nearly all of its history. In particular, it found that 'the interpretation given by Mr Clunies-Ross of the concept of sovereignty is vague and somewhat erroneous and appears to be inconsistent with internationally accepted principles'. Questioning the validity of protection as a sufficient and legitimate framework, the committee stated categorically that it 'rejects Mr Clunies-Ross' statement that the Australian Government should not interfere in the internal life of the community'.¹⁴⁹ For the first time, the protection arrangements that for over 150 years had formed the framework for negotiations surrounding governance of the islands came forcefully under attack.

Prodded into action, the Australian government began to assert more extensive legal control over the territory. In 1975, it created the new position of administrator to replace the older, defanged government representative. The new official held explicit authority to regulate the Clunies-Ross estate. In 1976, Clunies-Ross submitted a petition, under his name and on behalf of 180 Cocos Malays, seeking self-government for the islands and free association with Australia.¹⁵⁰ It was a last-ditch effort to represent the islands as a quasi-independent entity. The campaign suffered a fatal setback when the Australian government purchased almost all of the land under the family's control for 6.5 million Australian dollars.

By 1984, Canberra had laid the groundwork for a decision on the status of the islands. After a century and a half of subordination to the Clunies-Ross family, the referendum gave islanders a clear say at last over their political future. It presented the Cocos Malay community with three options: independence,

¹⁴⁸ *Ibid.*, 156 and 154.

¹⁴⁹ *Ibid.*, 155.

¹⁵⁰ Phillip Tahmindjis, 'Australia, the Cocos Islands and Self-Determination', *Queensland Institute of Technology Law Journal*, xiii, 1 (1985), 189.

integration with Australia, or free association with Australia.¹⁵¹ Still hoping to retain some degree of control, members of the Clunies-Ross family, who were also permitted to vote in the referendum, campaigned aggressively for independence but only secured 9 votes against 229 for integration. The decisive vote ended the family's privileged position and laid the basis for extending Australian administrative state bureaucracy in the islands.

VII

IMPOSSIBLE STATES

The history of the Cocos-Keeling Islands reveals the intricate workings of successive protection regimes over more than a century and a half, from settlement in 1827 to full integration with Australia in 1984. Across this long period, protection talk was everywhere. The Clunies-Ross family, Alexander Hare (while he remained on the islands), the Cocos Malay population, naval officers and British and Dutch colonial officials cited protection as they negotiated divisions of authority and jockeyed for jurisdiction. Protection politics encompassed periodic claims to local autonomy and absorbed the actions of empires and states to hedge against the possibility of strategic loss if the territory aligned itself with rivals. A situation of perpetual flux resulted in a commitment on all sides to non-resolution of the sovereignty question.

The Cocos-Keeling Islands were not alone in having a founding story that featured slavery under other names and a persistent racial divide sustained by imperial connections. The islands had plenty of company as a place wedged between empires and tucked uncomfortably and incompletely inside multiple imperial circuits of interest and influence. In the twentieth century, the category of 'dependent territories' gave a name to places with a similarly undefinable status. Dependent territories, most of them small and consisting of islands or groups of islands, appeared to be odd-fitting pieces within the international order. The international community struggled to define their political status. The United Nations Charter recognized the categories of 'non-self-governing territories' and

¹⁵¹ Chan, 'Cocos (Keeling) Islands', 13.

'trusteeships' but associated protection only with trusteeships, which were supposedly subject to a 'system of supervision'.¹⁵²

In the middle decades of the twentieth century, both trusteeships and non-self-governing territories were expected to evolve toward self-government of some sort.¹⁵³ But a diverse array of places had no clear path to statehood. They attracted new labels with imprecise definitions such as 'overseas collectivities', 'special administrative regions', 'constituent countries', 'autonomous collectivities', and 'associated states', as well as older, repurposed labels, such as 'unincorporated territories' and 'crown dependencies'.¹⁵⁴

Powerfully shaped by the politics of protection, such territories did not fit the dominant twentieth-century narratives of either pending state formation or radical anti-imperialism. Their history and status also did not align with other anomalous categories that international lawyers were puzzling over as they grappled with 'statelessness' in the wake of the century's cataclysmic wars.¹⁵⁵ Stubborn in-betweenness when it came to sovereignty was longstanding and purposeful, a condition shared by a diverse set of small political communities. In some cases, as in the Cocos-Keeling Islands, micropolities merged the qualities of private preserve and imperial outpost. In other cases, their uncertain status was elaborately, if still elliptically, described by

¹⁵² US Senate Subcommittee on United Nations Charter, Study No. 9, 'United Nations and Dependent Territories' (27 June 1955), 14.

¹⁵³ *Ibid.*, 16.

¹⁵⁴ Virtually every aspect of the status of such polities was controversial, including such a seemingly mild bureaucratic matter as whether the UN Charter required the collection of information on the political conditions of non-self-governing territories or merely recommended doing so as a matter of policy. US Senate Subcommittee, 'United Nations and Dependent Territories', 16; 'Dependency Status', CIA, The World Fact Book, <<https://www.cia.gov/the-world-factbook/field/dependency-status>> (accessed 2 July 2021). For the British empire, the list of dependent territories changed little after 1983. Most are small islands or island groups, such as Anguila, the Cayman Islands, and St. Helena and its dependencies. George Drower, *Britain's Dependent Territories: A Fistful of Islands* (Aldershot, 1992), xi, xv.

¹⁵⁵ Unlike refugees or other individuals labelled as 'stateless', inhabitants of the Cocos-Keeling Islands belonged to a political community. Unlike the successor states of the Ottoman or Habsburg empires, the islands were not encountering a new sort of indeterminacy about their status resulting from imperial dissolution or war. Mira L. Siegelberg, *Statelessness: A Modern History* (Cambridge, Mass., 2020); Wheatley, *Temporal Life of States*.

case law and administrative practices.¹⁵⁶ Some cases even produced a hyper-sovereignty of unfiltered legal oversight by the protecting power, as in the tiny territory of Palmyra, a Pacific archipelago of US guano islands, which came to enjoy ‘more comprehensive constitutional protections than any other non-state area claimed by the United States’.¹⁵⁷ A darker example of hyper-sovereignty growing out of an assertion of protection is that of Diego Garcia, a small island in the Indian Ocean where all residents were expelled to make way for an Anglo-American military base and where military occupation persists despite the International Court of Justice’s ruling in February 2019 that former residents possess the right of return.¹⁵⁸

If the history of the Cocos-Keeling Islands illuminated only the fate of a handful of very small ‘impossible states’, it would be interesting although not significant. But the history of dependent territories forces us to think in new ways about the imperial and inter-imperial origins of indeterminate sovereignty and international inequality. Post-war accounts often portrayed colonial polities as failed states that could not demonstrate state capacities and join the international community. Historians of decolonization have debunked this view by showing that structural inequality in the international order, rather than choice, corralled former colonies into the conditions that led to their labelling as rogue or failed states.¹⁵⁹ Yet this critique does not go far enough. The framework of protection blocked some political communities — many, though not all, very small places — from positioning themselves for statehood. In the tiny Cocos-Keeling Islands, independence made a brief appearance as a box on a referendum ballot, but for most of the islands’ history it was ignored as a possibility. Protection shopping and its correlates composed a durable framework for sustaining a modicum of self-rule inside larger political formations — imperial, inter-imperial, national and international.

¹⁵⁶ Puerto Rico, which is not recognized by the United Nations as a dependent territory, has a similar status: see Erman, *Almost Citizens*.

¹⁵⁷ Christina Duffy Burnett, ‘The Edges of Empire and the Limits of Sovereignty: American Guano Islands’, *American Quarterly*, lvii, 3 (2005).

¹⁵⁸ David Vine, *Island of Shame: The Secret History of the U.S. Military Base on Diego Garcia* (Princeton, 2011).

¹⁵⁹ Parfitt, *Process of International Legal Reproduction*.

Histories of dependent territories challenge aspects of a narrative that associates post-war imperial resistance with ‘worldmaking’ visions of non-domination and equality in the international order.¹⁶⁰ Here, again, micropolities disappoint. As in the Cocos-Keeling Islands, to the extent that advocacy for autonomy surfaced, it was not linked to calls for revolutionary restructuring. The islands’ one brief revolt, which was driven both by outside agitators and genuine demands for better wages and conditions by its Malay workers, provides a cautionary tale. Not only did it prompt greater imperial intervention, but it also motivated the tightening of ties to a second imperial power. More disturbingly, protection politics proved compatible again and again with undemocratic rule, economic exploitation and racial hierarchy. Reflecting a broader — indeed, global — pattern, human rights talk and pledges of local cultural preservation could be reconciled with advocacy for semi-autonomy. The results left little or no space for the assertion of social and economic rights.¹⁶¹

If the history of protection politics in very small places casts a shadow over the idea that self-determination became ‘the dominant answer to the problem of empire’, it also suggests that ‘the problem of empire’ was not always the dominant question.¹⁶² Protection politics forged an interpolitical framework of layered and divisible, but also perennially indeterminate, sovereignty that could serve the interests of small groups and was compatible with multiple political trajectories and formations. The Cocos-Keeling Islands, with their uncrowned ‘kings’, present a history that is more than merely scandalous and colourful; it deepens understanding of the specific mechanisms shaping global and international ordering. Very small places engaged in protection shopping, cultivated unstable arrangements of co-dominance and sheltered exploitation and captivity. In the process they interacted with empires, states and international organizations that were

¹⁶⁰ Adom Getachew, *Worldmaking after Empire: The Rise and Fall of Self-Determination* (Princeton, 2020).

¹⁶¹ Samuel Moyn, *Not Enough: Human Rights in an Unequal World* (Cambridge, Mass., 2018).

¹⁶² Getachew, *Worldmaking after Empire*, 78, 84; compare Jane Burbank and Frederick Cooper, ‘Rules of Law, Politics of Empire’, in Benton and Ross (eds.), *Legal Pluralism and Empires*.

curating their own unpredictable mixes of intervention and restraint. Protection politics made sovereignty a perpetually open-ended proposition and rendered its suspension fully compatible with global empires, anti-imperial movements, exploitative regimes and proliferating states.

Lauren Benton

Yale University, New Haven, USA

Adam Chulow

University of Texas at Austin, USA

ABSTRACT

The political status of the Cocos-Keeling Islands, a group of twenty-seven small atoll islands in the Indian Ocean about 1,700 miles west of Australia, remained unresolved from the time of the islands' settlement in 1827 until their effective incorporation into Australia in 1984. For a century and a half, protection shopping helped to create and sustain the islands' condition of suspended sovereignty. During the nineteenth century, the ruling family actively cultivated the protection of Dutch and British imperial agents and played one empire against the other. Imperial agents veered between intervention and restraint, and Cocos-Keeling islanders invoked protection to blunt rulers' power over them. The politics of protection continued into the twentieth century. Despite international attention to self-determination, the Cocos-Keeling Islands were not positioned for statehood, and full and effective integration into the British empire or Australia was perennially delayed. The territory's history as a place of seemingly permanent semi-autonomy illuminates a global pattern in which protection politics worked to suspend sovereignty and in some cases perpetuate social and racial inequalities, both inside political communities and across the international order.