Coleridge in Wig and Gown: The 'Pirates' and the *Pelican*

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SHORTLY AFTER HIS APPOINTMENT AS ACTING PUBLIC SECRETARY on Malta by Sir Alexander Ball, the Civil Commissioner of Malta, Coleridge wrote to Southey concerning the prospects for British interests in of Egypt, 'I have seen translations of at least 20 mercantile letters in the Court of Vice Admiralty here, (in which *I have made a speech with a Wig & Gown*, a true Jack of all Trades)".[1] In casting the scene of his personal success, Coleridge chose to emphasise formal court dress as emblematic of his new role as Public Secretary[2]- a complex administrative role that would shortly overwhelm him.

What reason did he have for attending court and delivering advocacy? Coleridge did not elaborate because the impression that he was enjoying professional success mattered more in providing reassurance to his family that the "total eclipse of all Hope & Joy" lay in the past.[3] This omission is more than merely a biographical lacuna because the speech, the reasons for it, and its significance bear not only upon in Coleridge's achievement in Malta, but also on his later thought.

I shall briefly sketch the function of the Court before proceeding to examine Coleridge's role in it. Finally, I shall explore, from the point of view of British geo-political policy, the significance of Coleridge's intervention and briefly suggest how this may have helped shape his views on the limits of law.

The Court of Vice-Admiralty in Malta

The British established a Court of Vice Admiralty in Valletta in order to manage more effectively British prize-taking in the central Mediterranean. Surprisingly, neither the advocates, nor the judges assigned to the Court in 1803, had any knowledge of the Law of Nations when they left England.[4] This is significant and is considered further below.

The principal business of the Court concerned the adjudication of disputed claims for prize - that is to say, a claim for a share in the proceeds of sale of a vessel that the court rules has been lawfully captured from the enemy.[5] More important in the story of Coleridge's advocacy is the court's jurisdiction over salvage claims. Such a claim arises in equity where a salvor helps to rescue a vessel from a danger that is so grave that its crew cannot, unaided, save the vessel. The claim differs from prize, in so far as prize claims arise from seizing property from the enemy in time of war. A salvage claim can arise where a vessel is recovered from a captor who is a citizen of state with which Britain is

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1 Emphasis supplied by author. To Robert Southey, 2nd February, 1805, *CL* 2, 1164.

2 Coleridge's early penchant for self-dramatisation has recently been discussed by Gregory Leadbetter in the contest of the walking tour with Hucks in1794: Leadbetter, G., 'Coleridge and the Waters of Plynlimon', (2014) 43 (NS) *Coleridge Bulletin* 29.

3 To Mrs Coleridge, 11th September, 1803, *CL* 2, 985.

4 The Vice-Admiralty judge, Dr Sewell provided the Civil Commissioner with an account of the Court and its procedures which discloses the background of its legal staff: Sewell to Ball, 2nd March, 1805, Kew, CO 158/10.

5 Ninety-three prize and salvage cases were heard by the Court of Vice Admiralty in Malta during Coleridge's nine month period in public office ending on 21st September, 1805: Kew, HCA 549/100

not at war.[6]

The Court of Vice Admiralty also had a criminal jurisdiction. Most pertinent for present purposes is the jurisdiction over a range of offences committed at sea, such as mutiny, murder, desertion and piracy. The circumstances in which the taking of a ship constituted piracy was not fully resolved in Coleridge's day, and this important ambiguity almost certainly explains Coleridge's presence in the court.

Coleridge and the Court of Vice Admiralty

The possibility that Coleridge's Public Secretaryship required him routinely to manage an Admiralty case–load can be discounted as a reason for his advocacy. Coleridge's letter to Southey reported that he had to make a speech, not conduct a case, and the use of the singular suggests that this was an exceptional intervention. If court appearances were to be a routine part of his new public role, he would have reported to Southey that he, Coleridge, would henceforth be required to makes *speeches* in the Court of Vice Admiralty.

The second objection to any routine involvement arises from the practice of the Court itself. In a memorandum to the Civil Commissioner in March, 1805 the presiding Admiralty judge, Dr John Sewell, explained that the court was jealous in restricting rights of audience to advocates qualified in international maritime law who had a competency in the English language.[7] It was ostensibly on these grounds that the right of audience was denied to qualified Maltese lawyers.[8] Coleridge was not, of course, legally qualified (although he studied the Law of Nations whilst on Malta).[9] For these reasons Coleridge almost certainly delivered his speech as a part of a case in which partisan advocacy, in other words, advocacy representing the interests of the parties before the court, was provided by professional lawyers rather than by Coleridge. He can only have been present in court as *amicus curiae* – an advocate not appointed by either of the parties to advise the court on the law and the public interest bearing on the case.

Although a record of the speech has not survived, substantial clues to its substance survive in the Admiralty records in the British National Archive. The 'Returns', comprising the lists of causes and decisions reached by the Court of Vice Admiralty, Malta, afford an important insight into the case in which Coleridge is most likely have appeared.[10]

The case of the *Pelican*, decided on 26th January, 1805, is the only claim that came to trial in the Court of Vice Admiralty after 18th January, 1805 (when Coleridge assumed public office) and before 2nd February, 1805, when he wrote the above-mentioned letter to Southey. The possibility that this was the case in

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6 The legal principles applicable in Coleridge's time can be seen in the case of *The Wight,* (1804) 5 Robinson 318.

7 Above n.5.

8 *Ibid.*

9 Coleridge made an extensive study of the classical jurisprudence, as well as Robinson's Law Reports of leading cases decided in the British High Court of Admiralty: *Friend* I, 291.

10 British National Archive, Kew, HCA 49/100 part 2.

which Coleridge appeared is corroborated in the Notebooks: his observation on the nature of legal reasoning in the Court, the ' "betwixt and between" of positive law and dictates of right reason' falls between entries dated 23rd January, 1805 and 28th January, 1805 when he visited the Maltese hospital.[11]

The Returns reveal that the *Pelican* dispute is a salvage case involving the rescue of one British vessel by another. The second intriguing feature is that the Master of *Pelican* at the time is listed as a foreigner, "Haggi Aaly". This recording of the name is almost certainly a mis-recording by the Proctor's clerk of the Muslim name, Hadji Ali. The pronunciation "Ali" in the Arabic dialect of North Africa elongates the vowel "a", which may explain the clerk's misspelling of the name. Hadji Ali had evidently been captured when the *Pelican* was placed in British custody and carried to Valletta to await his fate.

The Return continues that the *Pelican* was recaptured by the schooner *Renard* commanded by Richard Spencer. Thus a significant narrative is beginning to emerge. We can infer that the British vessel *Pelican* had been attacked, captured and placed under "Haggi Aaly's" control. The North African Muslim name (and its pronunciation) furnishes the reasonable inference that this was an attack by a Barbary 'pirate'. The *Pelican* was then re-captured by the British vessel, *Renard* and the 'pirate' crew taken into British custody.

Of the Barbary States which might be suspected of the attack, Algiers as opposed to Tunis or Tripoli, is implicated because, as we shall see below, relations between Britain and Algiers were particularly strained, although open warfare had been avoided. After 10th May, 1801 Tripoli had been pre-occupied with its war with the United States; the Bey of Tunis was reported to be friendly and continued to respect the treaties with Britain.[12] As we shall see below, relations between Britain and the Dey of Algiers were altogether more turbulent. Britain was not, however, formally at war with the Dey; indeed, the treaties considered below prevented predations by the Dey's cruisers on British vessels. The ostensibly "friendly" status of the Algiers also explains why the crew of the *Renard* claimed salvage rather than prize for the recovery of *Pelican*. The Court's eventual decision was that the ship be restored to its British owners subject to a payment of one-eighth of its value as salvage to the captors.[13]

The diplomatic storm these facts conceal could not be over-stated. I shall turn now to the international context to explain why Coleridge's intervention in the Court's proceedings was required.

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[11] CNB 2413.

[12] Hardman, 41

[13] Each case depended on its facts, but an award of one–tenth value had earlier been held to be sufficient even in a case of "great merit": *The Blendenhall,* 1 Dodson's Reports 414. A one-eighth award suggests that the recapture of the *Pelican* had been a dangerous venture.

The Dey of Algiers and Mediterranean Passports

A serious deterioration in the relationship between Britain and Algiers occurred during the years following the surrender in 1800 of the French garrison in Malta to Britain and its allies. Apart from the removal from office of the British Consul in Algiers in breach of diplomatic protocol,[14] which was likely to have been encouraged by Ministers eager to pursue closer relations with France,[15] the numerous antagonisms principally focused on the disputed ambit of treaty obligations intended by the British to prevent the Dey from seizing British citizens, vessels and cargoes.[16] In one dispute, for example, the Dey had refused to deliver up the British vessel, *Ape*, because the majority of its crew were not British subjects.[17]

Central to the dispute, however, was Sir Alexander Ball's passport policy in the aftermath of the liberation of Malta. Foreign vessels had been issued with British "Mediterranean" passports to bring supplies to Malta because immediately before and after Valletta fell to British arms on 5th September, 1800 the Island had all but exhausted its food supplies. The Maltese merchant marine had been entirely destroyed by the French during their occupation,[18] which meant that the Civil Commissioner's only course of action was to resort to importing supplies in Sicilian and Neapolitan ships that could be crewed by Maltese.[19] The use of Maltese crews on foreign ships bearing the passports would, Ball reasoned, give the foreign vessels the protection of treaties concluded by Britain with the Barbary States.[20] The Dey, however, had taken a different view because the Neapolitan vessels belonged to his enemies.[21] Seventy-nine Maltese and Neapolitan citizens were eventually seized aboard Neapolitan vessels whose masters sailed under British passports.[22]

A squadron of the Royal Navy under Lord Nelson's command ultimately responded with robust action. In January, 1804, seven British vessels arrived off Algiers in what was ultimately an unsuccessfully attempt to intimidate the Dey into releasing the crews. After the Royal Navy withdrew without achieving

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[14] In April 1803 Consul Falcon was given twenty four hours to quit Algiers following allegations that he had offended the Dey on moral grounds. The British had not been invited to arrange his recall and insisted without success that he continue in office: Falcon to Hobart, 6th March, 1804, Kew, FO3/10/96.

[15] *Ibid.* Falcon presented the incident to his superiors as a "pretext"- an explanation that Nelson accepted: Nelson to the Earl of St Vincent, 19th January, 1804, *Nelson*, v, 379.

[16] *The Conduct of the Dey of Algiers,* paper numbered 650 in 'Coleridge Malta papers' special collection catalogue in the E.J. Pratt Library, University of Toronto, MS F14.2. The first treaty between Britain and Algiers intended to secure freedom of trade of British vessels and freedom from slavery for British subjects was made in 1646. Twelve safe navigation treaties were concluded between Britain and Algiers between1703 and 1830.

[17] Falcon to Cooke, 20th August 1804, Kew, FO 3/10/99.

[18] Ball to Cooke, 21 July 1805, Kew, CO 158/10/187. Coleridge later provided an account of the desperate state of the Island in the aftermath of liberation: *The Friend,* I, 567.There were other complaints about Ball's use of Sicilian vessels, e.g., from the Vice Consul at Tunis: Cooke to Ball, 29th March, 1805, Kew, CO 159/3/169-170.

[19] Ball to Cooke 21st July, 1805, Kew, CO 158/10/93.

[20] The passports were issued by Ball, and Lords Keith and Nelson, which suggest that Ball had not acted alone: Ball to Cartwright, 9th September, 1805, Kew CO 158/10/239

[21] Falcon to Hobart, 6th March, 1804, Kew, FO 3/10/96.

[22] Ball to Cartwright, 9th September, 1805, Kew, CO 158/10/239; Moncrieff to Ball, 13th October, 1805, Kew, CO 158/10/247. Thirty of the captives were Maltese: Ball to Castlereagh, 26th December, 1805, Kew, CO158/10/114.

success, Ball gloomily concluded that this ignominious retreat would encourage the Dey's future defiance of British imperial will, not least because of the Dey's increasing susceptibility to French influence.[23]

As the tally of complaints about the Dey's actions mounted a crisis of policy unfolded. One of Coleridge's first duties as a private secretary to Sir Alexander Ball [24] was to assist in developing a future policy for dealing with the "insults" offered to Britain by Algiers. Coleridge retained a draft of this manuscript when he left Malta.[25]

Ball's proposed policy urged ministers to adopt a strategy of close blockade of Algerian ports.[26] Nelson recommended an even more aggressive stance: the British fleet should destroy Algerine vessels at sea.[27]

The capture of *Pelican* appeared to vindicate Ball's fears that the Dey's ships might now deliberately prey on British ships. This was but one possible explanation for the *Pelican's* seizure. It is important to acknowledge the alternative possibility that Hadji Ali may have exceeded the authority conferred on him by the Dey when he captured *Pelican*.[28] This is centrally important in what follows.

The Law of Nations and the Maltese Captives

The Treaty concluded between Great Britain and Algiers on 3rd September, 1800 was in the following terms: "ships and other vessels, and *subjects and people of either side, shall not henceforth do to each other any harm, offence or injury*, either in word or deed; but shall treat one another with all possible respect and friendship,…".[29]

The French army of occupation on Malta surrendered to the British military on 5th September, 1800, - two days *after* the Treaty had been signed - which posed the question whether the Treaty had been intended to protect the Maltese. Malta could not, of course, have been in the Dey's contemplation when then treaty was agreed. As Coleridge himself would later argue, a treaty is not to be interpreted literally but according to the understanding of the parties at the time the treaty was made.[30]

The only possible argument that the Maltese did fall within the Treaty depended on their being regarded as British subjects from the moment Valletta surrendered on 5th September, 1800 and that the treaty was intended to protect

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[23] Above n.17 and n.22.

[24] A duty that he assumed from May 1804 to 18th January, 1805, when he became acting Public Secretary. It was in the latter capacity that he appeared in Court.

[25] *The Conduct of the Dey of Algiers,* above, n.17.

[26] *Ibid.*

[27] Nelson to Hobart, 19th January 1804, Sir N H Nicolas, *The Despatches and Letters of Vice-Admiral Lord Viscount Nelson* London: Henry Colburn, 1845, v, 378 (hereafter, Nelson).

[28] Had the seizure been a result of misidentification *Renard* would easily have re-captured *Pelican*. The amount of salvage awarded suggests that Hadji Ali had been determined to resist.

[29] *A Complete Collection of the Treaties and Conventions at present subsisting between Great Britain & Foreign Powers; so far as they relate to Commerce and Navigation; to the repression and abolition of the Slave Trade; and to the privileges and interests of the subjects of the high contracting parties*, London: T Egerton, 1820, vol. 1, at 83. (Emphasis supplied by author).

[30] *Friend* I, 273.

all British subjects regardless of the date they became subjects. British negotiators may have hesitated to press this point because the British military intervention in Malta commencing in 1798 had been under the authority of the Neapolitan Crown. Even as late as 1805 Britain had no wish openly to send a signal to its allies that it had decided to retain Malta as a British possession; indeed, the question of Malta's future status, and thus the publicly acknowledged status of the Maltese, was unresolved. To resolve this British made a revealing concession. By a subsequent treaty, concluded between Britain and Algiers on 19th March 1801, the British agreed:

> That from the 7th day of December last, 1800, the inhabitants [of Malta] shall be treated upon the same footing as the rest of His Britannic Majesty's subjects…

This meant that any Maltese captured on or after 7th December 1800 should have been be released under the terms of the treaty: but crucially the Dey did not have to treat as a British subject any Maltese who had been captured prior to 7th December, 1800. The treaty does not explain why 7th December, 1800 was the date when the Maltese gained protection, but it is likely to be linked to the problem of the Maltese captives. Some of these were captured on Neapolitan vessels bearing British passports during the siege of Valletta, or in its immediate aftermath-in other words, prior to 7th December, 1800.[31]

The British Diplomatic Response to the Capture of the Maltese

The policy paper on which Coleridge worked with Ball during 1804[32] effectively advocated the repudiation of the Treaty of 19th March, 1801 by demanding that the captives be recognised as British subjects regardless of when they were seized.[33] Its underlying assumption was that Britain should not have deprived them of legal protection and that they were entitled to be released. The policy paper further recommended that Algiers be blockaded if this demand (amongst others) was not met. This recommendation was submitted to policy makers in London.

The British Secretary of State, Lord Camden's decision, which was contained in a despatch to Ball dated 20th October, 1804, was tantamount to a rebuke of the Civil Commissioner and the maritime policies he had pursued immediately after the fall of Valletta. [34] Despite the emergency Ball had faced in 1800, the originating cause of friction with Algiers was said to be the Civil Commissioner's decision to issue the passports to the foreign owned vessels. The Civil Commissioner was effectively reprimanded and ordered in future to

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[31] Ball to Cartwright, 9th September, 1805, Kew, CO158/10/239. Some captives held by the Dey were probably captured in 1803 aboard Neapolitan or Sicilian vessels that misused the passports once the emergency of 1800 was over. This was why the dispute with Algiers lingered into 1805: Ball to Cooke, 21st July, 1805, Kew, CO 158/10/93.

[32] Above n.17.

[33] *Ibid.* Ball consistently emphasised his superiors that the Maltese captives were British subjects in law: Ball to Cartwright, above n.32.

[34] Camden to Ball, 20th October, 1804, Kew, CO 159/3/130-131.

restrict the issue of passports to British-owned vessels or British subjects. Camden also rejected the proposal for war against Algiers in favour of a conciliatory policy intended to avoid war.

Nelson had received news of the new policy from Camden on 25th December, 1804[35] and within days instructed Captain Keats to implement the core strategy for normalising relations. This involved Britain and Algiers reciprocally renouncing all their existing grievances, subject to the one condition that Britain would not resume diplomatic relations unless the Dey released the British vessel *Ape* and its foreign crew.[36] This was to be presented to the Dey as a legal entitlement under the treaties. No similar claim would be made for the Maltese captives, presumably because they were neither captured on British vessels nor were they, in the eyes of the British government, British subjects within the meaning of the Treaty of 19th March, 1801. The British thus did not regard themselves as entitled to demand the release of the Maltese as a matter of legal right under the treaties.

Camden's despatch to Ball dated 20th October, 1804 rejecting a policy of war with Algiers must have arrived in Malta at the end of 1804 or early in January, 1805, because Nelson, aboard *Victory* off Toulon, received his instructions from Camden dated 29th October 1804 on 25th December, 1804. This means that Ball was undoubtedly aware of the new policy before Coleridge donned wig and gown.

The fate of the Maltese captives was now precarious. Whilst the return of the *Ape's* crew was viewed by the British as a claim of right, British officials had to rely on the Dey's goodwill to secure the Maltese crews' release.[37] This left the Maltese captives in great peril; their fate depended on whether the Dey would be persuaded to make concessions.[38]

Thus, at the moment the *Pelican* case arose in the Court of Vice Admiralty (26th January 1805) Ball was under instruction from his superiors to de-escalate the tensions in relationship with Algiers. Ball knew, however, (and London did not) that Hadji Ali's capture of *Pelican* had ostensibly violated the long standing safe navigation treaties between Britain and the Dey. Hadji Ali's detention in British hands now raised profound sensitivities given the precarious fate of the Maltese captives held in Algiers. If Hadji Ali's fate (and the fate of his crew) were mishandled the policy of conciliation would probably lie in ruins, because it opened the way for retaliatory measures by the Dey. The prospects for the release of the Maltese captives would then immediately darken. Given *Pelican's* fate and the aggressive policy the Dey was ostensibly pursuing, attacks on other British shipping were highly likely;[39] and if war broke out, Ball would be blamed for the collapse of ministerial policy, as well as the failure to secure the release of the Maltese captives.

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[35] *Nelson,* vi, 304.
[36] Camden to Nelson, 29th October, 1804; *Nelson,* vi, 296-7; Nelson to Keats, 28th December, 1804, *Nelson*, vi, 302.
[37] Camden to Nelson, *ibid*; Nelson to Keats, 28th December, 1804, *Nelson,* vi, 302.
[38] Nelson to Ball, 1st January, 1805, *Nelson,* vi, 311.
[39] Above n.17.

Piracy and the capture of the Pelican

One of the risks that the Civil Commissioner would perhaps have most wanted to avoid was the treatment of Haji Ali and his crew as pirates within the meaning of the Law of Nations. There was the real risk that once the facts of the *Pelican* case were disclosed in court, the judge would grant the salvage claim and thereupon make an order that Haji Ali and his crew be tried before the court for piracy and, if convicted, hanged.

Of course, the taking of the *Pelican* by the Algerian cruiser was a wrongful capture because the seizure was a breach of the treaties between the Dey and the British Crown. Whether it constituted piracy was another matter, which raised complex questions involving the Law of Nations. Ball may have been especially anxious about how this issue would be judicially resolved because he knew that none of the lawyers appointed to the Court of Vice Admiralty, including the judge, Dr Sewell, had prior experience of the Law of Nations before their appointment to the Court.

At this time the law had not fully resolved the definition of the crime of piracy. It was, however, widely accepted that pirates were seafarers intent on self-enrichment who would prey on vessels of *any* nation without acting on the authority of a sovereign power: they were 'sea robbers'.[40] This meant that a pirate tried as such in law had to be acting for private motives and not as an instrument of state power engaged in international politics and inter-state rivalries.[41] This could not be said of the Barbary States who regulated the activities of their seafarers with a system of organised government.

If at the time he was captured, Hadji Ali had been acting under a licence from the Dey, and was returning with the *Pelican* to an Algerine port to have the status of the ship properly adjudicated, he would not, according to most leading authorities, be treated as a pirate,[42] which meant that, Hadji Ali and his crew could be returned unharmed to Algiers – an outcome with obvious advantages for pursuing concessions from the Dey in relation to the Maltese captives.

Although the precise facts are now lost to history, the legal complexity in Hadji Ali's case may have been that he and his crew captured *Pelican* in breach of his commission or licence from the Dey. This is so because the Dey is, on balance, unlikely to have openly and explicitly licenced his vessels to take British ships in breach of the treaties with Britain. If so, the question before the court would be whether Hadj Ali's unauthorised zeal (if such it was) made him and his crew pirates in law.

On this question there was a lack of consensus amongst international

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[40] Bynkershoek, C, *Questions of Public Law,* Bk 1, Ch. 1, 1737.

[41] Rubin, A., *The Law of Piracy*, Transnational Publishers Inc.: Irvington on Hudson, New York, 2nd edition, 1998, 91.

[42] Rubin, *ibid.,* at 90.

jurists. Bynkershoek (whom Coleridge read[43]) was of the view that the sovereign who provided the commission should normally judge alleged breaches of it.[44] If correct, this would mean that it was the Dey rather than the British Court of Vice Admiralty who should punish Hadji Ali if he had exceeded his authority in seizing *Pelican*. The problem with this statement of the law is that it was not supported by consistent state practice; moreover Bynkershoek entered a significant caveat. Having dealt with the normal rule that the sovereign who issues a commission should try cases of alleged breach of it (in this case the Dey) Bynkershoek continued: "..however I should readily permit such decisions [to try the suspect] *to be made by the Sovereign* whose subjects complain about depredations if the culprit is taken in his territory, or is brought before him".[45] The essence of this was that the Sovereign power in the territory in which the alleged pirate was held *could* put him on trial within that jurisdiction, but had no duty to do so. The reference to the 'Sovereign' inevitably raised a question as to which organ of state represented the relevant sovereign power on Malta.

Thus Hadji Ali's case raised difficult questions of both law and fact which the Court of Vice Admiralty would have to resolve. Did Hadji Ali have authority from the Dey to attack *Pelican*? If he had such authority he was not a pirate in law and he could be released. If, on the other hand, he had exceeded his authority, who should try him and his crew and who was lawfully empowered to decide this question?

The outcome of the case was, from Ball's point of view, uncomfortably indeterminate given the ministerial pressure he was under to de-escalate tensions with Algiers. The *Pelican* case also risked a constitutional crisis within Malta. Ball's predicament was that the Vice Admiralty Court held a commission in the name of the Crown and could, in Bynkershoek's words, claim to be the relevant institution of 'Sovereign' power authorised to decide Hadji Ali's fate. On the other hand, Ball, as Civil Commissioner, was the representative of the Crown in Malta and could also claim to exercise sovereign powers. Given his ministerial instructions and the tense diplomatic context he would naturally want to determine himself how Hadji Ali should be treated. An embarrassing collision between the judicial and the executive branches of the state was possible.

Ball almost certainly instructed Coleridge to present legal argument based on Bynkershoek's view that Hadji Ali was not a pirate in law and that he could be returned unharmed to Algiers. Alternatively, if the court was prepared to treat him in law was a pirate for having breached his instructions from the Dey, the Civil Commissioner, as the representative of the Sovereign on Malta, was the appropriate "sovereign" body who could decide Hadji Ali's fate. Coleridge would no doubt inform the Court that given the diplomatic and political context the Civil Commissioner was asserting the right to repatriate Hadji Ali

[43] *Friend* I, 291.
[44] Bynkershoek, above note 41.
[45] *Ibid.*

thereby ensuring that any punishment would be a matter for the Dey rather than the British courts.

Given the Court's lack of expertise on matters of the Law of Nations, Ball had to ensure that the Court's attention was properly drawn to the relevant legal authorities as well as the diplomatic context. This was the essence of Coleridge's likely role as *amicus curiae*; and it was a crucial one because under the British system of a separation of powers the judiciary are independent of government which means that judges are not under the control of politicians. That January day in 1805, when Coleridge donned the now famous wig and gown, the lives of the Maltese captives, and the fate of British diplomacy in its dealings with Algiers must have rested anxiously on Coleridge's inexperienced shoulders.

Did Coleridge's advocacy successfully persuade the Court to release Hadji Ali and his crew? Although there is no surviving record of their fate, we know that no executions took place in 1805, which suggests that Hadji Ali and the crew were not convicted and condemned as pirates.[46] Coleridge's speech which was based on a meticulous study of the Law of Nations seems to have avoided a difficult diplomatic crisis.

Coleridge and The Friend

Coleridge's private Notebooks and his later work reveal anxiety that the British conduct of international relations was arbitrary, unjust and despotic. His work implies criticism of three errors of policy: first, the British government's failure to support Ball's emergency policy of using, as a last resort, foreign vessels to feed a starving Maltese populace; the willingness to conclude a treaty to delay the status of the Maltese as British subjects until 7th December, 1800 thereby leaving those captured before that date without effective diplomatic protection; and the weakness of British policy in relation to Algiers, which posed an immediate threat to British overseas military and commercial interests. In relation to each of these goals, Coleridge in Malta witnessed the failure of political and legal institutions to deliver just outcomes. A contemporary Notebook entry signals his disquiet: "Our Polit. Connet. With the Barbary States [is] an anomaly in Diplomatic, the whole a crazy old Fabric of Compromise and Connivance, with no proportion but some apartments of convenience/ tho' there is no other way of getting to them but by back stairs & thro' dark Passages."[47]

His concern about unprincipled foreign policy re-emerged in *The Friend* where he explained that diplomatic strategy should be informed by conscionable choices designed to ensure the survival of the nation. How those goals should be achieved was a matter of morally informed judgment rather than the letter of the law. This can be read as a coded dissent from the British policy of using law so as to prevent British officials from subsequently making

[46] Ball reported to his superiors in London that the only execution carried out between 1800 and 1808 had taken place in 1802: Ball to Windham, 28th February, 1807, Kew, CO 158/13/83

[47] CNB 2513.

a formal, legal demand for the captives' release. Britain had a moral responsibility to look after those Maltese who had risked their own safety in supplying its military bases notwithstanding the concerns about their precise legal status as British subjects.

Coleridge's view, developed in *The Friend* and later in relation to the clerisy,[48] was that a government does not properly fulfil its function merely by adhering to legal norms; the values and moral purpose of law should awaken a moral judgement that will equip the decision maker to act appropriately even if it means acting outside legal norms. This relegates norms from the status of primary dispute resolution devices. Whilst States are always bound to act morally, his conception of morality is grounded in rationality and prudence because, as the emergency food crisis revealed, the possibilities of moral action are not necessarily confined within the parameters of positive law.[49]

Coleridge's task in interpreting legal texts to influence the court's judgement in resolving the legal status of Hadji Ali may also have been disquieting. Identifying the contemporary definition of piracy amongst ambiguous statements in classical texts, and the interpretive questions surrounding the nature of the sovereign power were challenging questions of law. These could only be resolved by the Court of Vice Admiralty judge examining authoritative legal texts assisted by Coleridge's advocacy and guidance. This narrowly circumscribed task of legal interpretation called exclusively on the internal logic and reasoning of the law. Coleridge's later thought suggests anxiety that justice could not be achieved if judges are entrusted with a monopoly over the interpretive function. Coleridge's argument in *Church and State* was that justice should arise from the interpretive endeavour of the clerisy –a cadre of critical literary and cultural guardians who would embody a shared knowledge and communal values. The clerisy ensured that legal texts would be informed by shared sense of custom and moral principle. Their role ensured that governmental action could be influenced and informed by civic society.

On the other hand, some strict legal rights were not susceptible to compromise even in the face of likely reprisal. "..surrendering the merest trifle that is our right-the merest rock which the waves will scarcely permit the sea fowl to lay its eggs at the demand of an insolent and powerful rival, on a shopkeeper's calculation of loss and gain, is in its final, and assuredly not very distant consequences, a loss of everything-of national spirit, of national independence, and with these, of the very wealth for which the low calculation is made." This may be a veiled dissent from the manoeuvrings to avoid confronting more robustly the Dey's unlawful seizures of British shipping.

It may also signal anxiety at allowing Hadji Ali to escape a penalty for the seizure of *Pelican*, which was repugnant to justice because it invited further damage to British trade. The failure to pursue a robust policy against Algiers

[48] S T Coleridge, *On the Constitution of Church and State,* 3rd edition , London: Pickering, 1839, 46-47, 49; John Colmer, Coleridge: Critic of Society (1959); P Allen, 'Morrow on Coleridge's Church and State' *Journal of the History of Ideas* Vol. 50, No. 3 (1989).

[49] *Friend* I, 290, 301.

left British vessels at risk. Worse still, it had not, by the time Coleridge left Malta, secured the desired release of the captives. Britain had apparently sacrificed its strategic interests for little gain.

In fact, the balance of power shifted shortly after Coleridge's departure. The murder of an influential pro-French minister ended the closer relationship between Algiers and France.[50] Famine affected the Mediterranean littoral: Algiers needed grain, which British maritime supremacy could guarantee, and Britain had grain to sell. The release of the Maltese (but not the Neapolitans held with them) was eventually allied to a bilateral trade deal.[51] It was the unprincipled and recondite 'dark passages' of diplomacy rather than the Law of Nations that eventually resolved the crisis.

[50] Cartwright to Ball, 16th July 1805, Kew, CO 158/10/233.

[51] Ball to Cartwright, 9th September, 1805, Kew, CO 158/10/239. The Maltese held in Algiers were eventually released unconditionally and carried to Malta aboard *Renard*. The Neapolitans captured with British passports were not released: Moncrieff to Ball, 13th October, 1805, Kew, CO 158/10/247.