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Coleridge's Laws: A Study of Coleridge in Malta
(Open Book Publishers, 2010)
by Barry Hough and Howard Davis

DURING HIS TIME IN MALTA, Coleridge delivered a little-publicised lecture deploring the social ills of the day back in England and attributing many of these, including the frequently encountered dependency on narcotics, to marital breakdown and the loss of family life. He advised the Maltese to battle against attacks on family life with the same initiative and energy that the islanders had shown centuries earlier against the Turks during the Great Siege.

This somewhat startling statement might have represented a coup for the present reviewer had it disclosed a previously unknown lecture by Samuel Taylor Coleridge in 1804 or 1805. Alas, the lecture (reported in *The Times of Malta*) was delivered in Malta on 'International Day of the Family' in May 2010 by his five-times-great-nephew, Sir Paul Coleridge, a well-known English High Court Judge descended from the poet's brother, James. The point of the anecdote in the present context is to emphasise that, had STC never existed, the prominence of the family name would rest on a long line of distinguished English lawyers including a notable Lord Chief Justice. Law-making of one kind or another is in the Coleridge genes.

Barry Hough and Howard Davis are academic lawyers specialising in constitutional and administrative law and human rights. Their article 'Coleridge's Malta' (CB 29 NS, Summer 2007) outlined the political and legal challenges faced by the British administration at the time of Coleridge's visit to the island and provided some preliminary observations on his performance during his temporary appointment as Public Secretary in 1805. The article foreshadowed an extended monograph and this has now appeared as *Coleridge's Laws*.

The book supplements in fascinating and important ways Donald Sultana's masterful study of Coleridge's time in Malta.[1] For the first time, the 21 official announcements which appeared over Coleridge's name in his capacity as Public Secretary are now published in full and translated (by Lydia Davis) from the original Italian. And they are subjected to a meticulous jurisprudential analysis by the authors, with a full commentary based on archival material which they have unearthed in England and Malta. Hough and Davis argue that Sir Alexander Ball's government of the island as Civil Commissioner (in effect its governor) was riddled with administrative weaknesses, in which Coleridge as senior civil servant on Ball's staff found himself embroiled and which he proved unable to overcome; that Coleridge was complicit in Ball's use of his

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[1] Donald Sultana, *Samuel Taylor Coleridge in Malta and Italy*, Blackwell, Oxford, 1969.

powers to enhance his personal standing and consolidate British prestige; and that Coleridge played a part in manipulating the law to this end, contrary to principles of 'the rule of law' already well established in England and well understood by Coleridge. These are serious criticisms, but it is hard to escape the feeling that Hough and Davis are sometimes unduly harsh in their conclusions.

Following the islanders' uprising to eject Napoleon's garrison, aided by the British, Malta had been under British rule for less than four years when Coleridge arrived in May 1804. The legal and constitutional relations between the governing power and the Maltese were still fluid and unsettled. This was to remain true to a considerable extent for much of the remaining time that the island continued as a British possession. 'You might as well give a constitution to a man-of-war as give it to the Maltese' was the saying attributed to the Duke of Wellington.[2] A century later, in 1921, Winston Churchill at an Imperial Conference in London said, 'Everybody knows the argument against giving Malta a constitution. It was said you might as well give a constitution to a battleship. We have arrived at a dyarchical system: two governments in the island, one elective dealing with Maltese affairs, and the other dealing with purely military and naval interests.'[3] A constitution was nevertheless put in place after this, when Leo Amery was Secretary of State, but it failed: 'For a few years the new constitution worked happily enough. It was the vehemence of Maltese internal quarrels that caused the "Amery Constitution" to be temporarily suspended more than once from 1930 onwards and finally revoked in 1936.'[4] After the Second World War, in which Malta played such a notable role, a new constitution was introduced. Even so, a decade later, the leading Maltese politician, Dom Mintoff, went so far as to promote very seriously the idea that the island should be integrated with the United Kingdom and directly elect three MPs to the House of Commons. After much debate in the British Parliament, the contrary solution of complete independence won the day. This later history demonstrates that the problems faced by Ball and Coleridge were of an inherent and chronic nature. In their commentary, Hough and Davis make little allowance for the exigencies of wartime or the strategic imperative of maintaining British control of the island. Even Michael John Kooy, in his excellent Introduction (with which all readers of this book should definitely begin), admits that 'one does feel, at times, that their standard is very high' (xxi).

The early chapters of *Coleridge's Laws* set the scene with accounts of the Maltese social, political and economic context, the British model of government and the role and constitutional position of the Civil Commissioner. Coleridge's 21 Proclamations and Public Notices are then subjected to close examination and a thematic analysis. The two types of

[2] Quoted in Henry Frendo, *Party Politics in a Fortress Colony*, Maltese Social Studies, Valletta, 1991.
[3] Cmd 1474, Imperial Conference 1921: Summary of Proceedings and Documents, 37.
[4] Leo Amery, *My Political Life*, London, 1953, II, 196.

announcement are distinguished: Proclamations had the force of law, and were thus suitable for establishing new offences and penalties; Notices were merely administrative in nature, intended to clarify or emphasise existing laws. Ball and Coleridge did not always keep the distinction in mind. Accordingly, the legislative, judicial and executive powers might become mixed and attempts might be made to impose criminal liability and penalties by inappropriate means.

Space here permits only the shortest of Coleridge's Public Notices to be quoted and one example of the authors' analysis to be given:

> '12 June 1805
> His Excellency the Royal Commissioner has learned that there are false coins in circulation, found especially in silver pieces of one *scudo* with the imprint of the Grand Master Rohan. He wishes to avert the Public of this so that everybody is properly informed, and may then make every possible effort not to be tricked. Should anybody come across such a coin, he shall be obliged to deliver it at once to the Tribunal, or to the local lieutenant, indicating who gave it to him, or tried to give it to him, so that he may then be brought to justice.
> Government Offices 12 June 1805
> S.T. Coleridge Public Secretary to the Royal Commissioner' (338)

It is not entirely clear whether the curious wording 'He wishes to avert the Public of this…' arises from an error in the original Italian by the draughtsman of the Notice (whether Coleridge himself or some clerk), an error in the translation into English or merely a printer's error in the preparation of the book. Presumably the intention was to alert the public to the fact that counterfeit coinage was in circulation.

Hough and Davis' critique of the Notice (257-9) may be summarised as follows:

(1) Coleridge misspelt the name of the Grand Master whose image was on these coins. He was actually called Emmanoel de Rohan.

(2) Although it was stated that forged coins were not confined to one-*scudo* pieces, the Notice failed to say what other forgeries were circulating, and to that extent its usefulness was weakened.

(3) The obligations imposed on the recipient of a false coin were to hand it in and identify the person who had passed it to him. This risked possible retribution and vengeance from the forgers. However, the use of the Maltese as informers against wrongdoers was a commonplace strategy in Coleridge's notices and so was a familiar requirement and, presumably, accepted by the Maltese.

(4) However, the Notice contained a logical flaw in requiring the delivery to the authorities of a forged coin where there had merely been an *attempt* to pass it over, where the culprit had 'tried to give it'. In such a case the intended recipient would obviously be unable to comply with the requirement to deliver

up the coin.

This is one of many examples of loose or woolly wording, inappropriate to legal pronouncements, being used by Coleridge. More serious are the cases where Hough and Davis have identified manipulation and propaganda designed to secure the dominant goal of a stable society under British rule. Perhaps the most interesting case concerns the Notices issued by Coleridge connected with civil unrest against the Jewish population in May 1805, which, as Hough and Davis say, was amongst the most difficult of the matters that the Civil Commissioner had to deal with during Coleridge's period of office. The extent of public disorder on the island at this time is not certain—the evidence seems to be conflicting, though a notebook entry records, 'Saturday 18 May 1805—Valetta (sic)—the persecution of the Jews commenced' (CN II, 2668). Hough and Davis conclude that mobs, prone to assault their victims, were indeed operating on Malta at this time and that anti-Semitic hysteria was prevalent. In any event, the authorities clearly believed that outbreaks of violence against Jews were spreading. They responded with rapid punishments to nip the trouble in the bud.

A Notice of 22 May informed the populace of the punishments that had been meted out to three Maltese identified as originators of anti-Jewish rumours: they had been whipped and were to be exiled. The Notice, comment Hough and Davis, suggested that they had been sentenced by the Civil Commissioner rather than a court of law, contrary to principle; there might have been no fair trial; the Notice omitted to specify what offence had been committed 'and the question can be asked whether rumour-spreading was an offence known to the law' (216). Coleridge also purported in this Notice to extend existing laws so as to criminalise certain anti-social behaviour arising from the disturbances (repeating the false rumours or failing to undeceive those who heard them). This, Hough and Davis point out, went beyond what could properly be done by Notice. To create new law, a full-scale Proclamation was needed. They conclude that 'Coleridge's apparent willingness to have individuals punished without a legal justification… is a surprising lapse given his awareness of these fundamental constitutional values. Thus we have further evidence that, in his official capacity, Coleridge was not able to practise or respect the constitutional morality that he espoused in his political writings' (221-2). Now we do not in fact know whether there had been judicial proceedings in this case: the words that the authors believe suggest the contrary read, 'His Excellency is determined to treat in the same manner all others who are discovered to have started, or who have been complicit in similar gossip.' Whether by this was meant that the Civil Commissioner was intent on himself imposing severe punishment (contrary to his legitimate power) or on hauling offenders before a proper tribunal, it is hard to say. Hough and Davis prefer the former interpretation. But the Notice itself goes on to provide a way out from culpability for anyone listening to the offensive rumours: they are encouraged 'to inform the Tribunal of the Grand Court of

Valletta'. This suggests, at least, that the court had some role to play. There is indeed evidence of Ball interfering with the court trial of another anti-Semitic offender at this time so as to secure the imposition of a more severe sentence; and Hough and Davis see this as 'a signal failure to meet what today we would regard as the minimum standard of fairness' (220). It is certainly an early example of the ever-present tension over sentencing between the courts and the executive arm of government: many a minister today vents his spleen at what he regards as poor sentencing in specific cases. Our judges today are used to standing up to this sort of thing.

Despite the qualifications noted above, Hough and Davis have produced a very thorough and disquieting account, which challenges our understanding of Coleridge's liberal idealism and contributes a fine study in the field of British colonialism.