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Coleridge, Employment and the Sorcery of Wealth¹

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Introduction

The Friend and the *Lay Sermons* present the problem of how the employment relationship should be located within the public/private divide that operates in Constitutional theory. This article is concerned with the question whether, in Coleridge's thought, the low wages that caused the endemic poverty of the working poor engaged a role for the state, or whether the outcomes of contracting - the terms of the bargain between worker and employer - resided within an exclusively private realm with which the state should not, in principle, concern itself.² If a role for the state was envisaged, how could that role be fulfilled?

I shall argue that, whilst Coleridge's *Lay Sermons* explicitly propounded three influences for moderating the disruptive potential of *laissez-faire* liberalism, there is elsewhere in *Lay Sermons* and *The Friend* the embryonic form of a fourth mechanism that he fails to locate within this typology of remedies. In this article I am principally concerned with the fourth possibility rather than the remedies that Coleridge explicitly prescribed. I shall not be concerned with Coleridge's ideas on trade unionism, other than to note here that he did not argue for a regulatory regime that would tolerate collective industrial action. This was so because the coercive disciplinary powers necessary to enforce solidarity between workers was, in his view, incompatible with the moral freedom of the individual worker.³

The Challenge of the Employment Relationship

The question whether and, if so how, the employment market should be regulated had become a pressing problem. The old system, under which most wage-fixing had been

left to the magistracy, had fallen into desuetude.⁴ As the eighteenth century had progressed, workers had begun to organise to ensure that the rewards of society were distributed more generously to the working classes. Societies undertaking collective bargaining to press for higher wages and shorter working hours flourished until Parliament blocked their activities by passing the Combination Acts of 1799 and 1800. By criminalising combinations of workers, the legislation ‘atomised’ the workforce, compelling workers to deal with their employers as individuals. This weakened their bargaining power and thus their ability to influence employers to pay more.

Much of Coleridge’s early poetry was, of course, concerned with the problems of economic hierarchy.⁵ The Pantisocratic emigration project, which was conceived partly as a response to the corrupting forces of capitalism, proposed amongst its core convictions the notion that property was power; that poverty doomed its victims to powerlessness; that rational benevolence could only be achieved within family and community; and that government hindered moral progression.⁶ But this highly constrained conception of the state did not endure in Coleridge’s thought. By the time he re-published *The Friend* in 1818 Coleridge believed that the state has a legitimate interest in the employment relationship⁷ - an argument that he had stated in *Lay Sermons* in 1817.⁸ Whilst he was by then able to welcome the industrial achievements and economic benefits of a successful commercial nation, he concluded that continuing social injustice exposed the established order to the risk of popular revolt.⁹ Whilst rising aggregate wealth was welcome, it could not excuse the harm inflicted on the casualties of the new economic system, most particularly the working poor and unemployed who bore the brunt of unrestrained classical liberalism. *Lay Sermons* is Coleridge’s project to save capitalism from the angry mob by alleviating its excesses. But how did he imagine the constitutional status of the employment relationship? What, if any, aspects of the employment relationship should the state regulate?

Progressive Politics¹⁰

Coleridge’s anxiety about potential revolutionary upheaval derived from his observation of unbridled *laissez faire* liberalism, or as he dubbed it, *the overbalance*

*of the commercial spirit.*¹¹ This ‘overbalance’ arose from the uncompromising pursuit of wealth and the public policies that underpinned it. He was anxious that the new power relationships between capital and labour had rekindled discontent and ‘..plunged a peasantry ...into pauperism step for step with the rise in the farmer’s profits and indulgencies’.¹² The rising wealth of the more advantaged social groups thus coincided with declining living standards amongst the poorest. High unemployment and low pay signalled that some but not all ‘boats’ were being lifted on the economic tide.

Coleridge realised that wages would have to rise, but this was not the public policy lesson that government had derived from inequality and suffering. Malthus’s popular treatise expounding the iron law of law wages¹³ persuaded both government and employers that pay rises would merely result in higher staple food prices and in rapid population growth. Not only would this growth exceed the capacity of the cultivatable land to feed the population, but the excess supply of labour would eventually drive wages back to subsistence levels.¹⁴ Raising wages would thus encourage an increase in population without helping the poor. Low pay was unavoidable; and any policy addressing poverty that involved enhancing welfare payments could also be condemned as tending to produce the same results as wage increases.¹⁵

Malthus’s conclusion, which governments accepted, was that employment providing below-subsistence pay was not a problem that government could address, because policy intervention would ultimately be fruitless.¹⁶ The Census Act 1800 strongly signalled government’s faith in Malthusian economics. Rather than addressing the problem of low wages policy makers’ attention shifted to counting the population, albeit that there were, in some regions, limited improvements to the public welfare system.¹⁷ In general, public policy blamed the feckless poor as the architects of their own miseries.

In *Lay Sermons*, Coleridge argued that the profit-motive, combined with the influence of Malthusian empiricism, posed particular threats to the moral order. He saw that the new economic logic ruthlessly failed to distinguish persons and things.¹⁸ Human beings and machines had alike become deployable to generate maximum

profit: either could be discarded when more efficient opportunities arose. He recalled how Scottish people had been driven from their homes to make way for more profitable sheep; entire communities of Scots, whose families had for centuries derived their livelihoods from a locality, had been swept off the land because their removal meant a more handsome profit for the landowner.¹⁹ Similarly, where children presented symptoms of malnutrition during food shortages, Coleridge found it an insufficient response that, at the aggregate level, prosperity was returning.²⁰ Policy-making that was influenced by selfish individualism and underpinned by Malthusian economics could not legitimize an intolerable disregard for the suffering of the most vulnerable. Coleridge's response can be read as a study both of the requirement for - and the implications of - active, compassionate citizenship in a *laissez-faire* economy.

***Laissez-faire* and the Public/Private Divide**

Laissez-faire's core assumption is that freedom can only be attained in the absence of regulatory restrictions. From about 1800 this ideology permeated the development of the Common law, which played a critical role in institutionalising disadvantage.²¹ The re-modelling of Contract law was carefully designed to separate legal doctrine from politics and morality. Rather than using the law to remove exploitation, the precarious existence and economic vulnerability of the labouring classes were being entrenched by newly re-cast legal principles that shifted economic power away from them.

When Coleridge published *The Friend* and *Lay Sermons* the English Law of Contract had become engaged in a revolution from which modern Contract law derives. John J. Powell published the first systematic treatise on English Contract law in 1790. His *Essay Upon the Law Contracts and Agreements*²² stated that contracts were binding because of mutual consent. This was founded on the 'will theory' of contract, which holds that the dominant consideration in assessing the validity of a contract is the agreement of the parties, not the fairness of the bargain. It followed that Powell would condemn equitable concerns with substantive justice or fairness because, in his view, overturning unfair contracts resulted in arbitrary

decision-making that was inconsistent with the Rule of Law. Powell was not alone in his thinking. Robert Pothier's *Treatise on the Law of Obligations*,²³ which was translated and introduced to English lawyers by William Evans in 1806, was also rooted in will theory. It became dominant in shaping the direction of Contract law in the nineteenth century and provided the very foundations of our modern Law of Contract. These influential treatises meant that law became concerned only with rules for ensuring 'free' competitive dealing, and for preserving and enforcing the reality of agreement.²⁴

The consequence was that, as Contract law developed after about 1800, it would not normally protect the defenceless. This mattered because contract underpins the employment relationship, often a relationship of inequality in which the employer holds greater bargaining power than the employee. If an employee agreed to serve a master who paid less than subsistence wages, the contract between them was valid and enforceable at law.²⁵ The Common law was content to uphold as contractually valid whatever impoverishing wages their workers could be persuaded to agree. Coleridge saw that employers seized the opportunity presented by the high unemployment in 1816-17 to use contractual power to drive down wages, because they had no incentive to pay more when there was an abundance of workers willing to work cheaply and the burden of subsistence was supported by welfare.

In the *Lay Sermons* Coleridge attacked the paradigm of selfishness in contract-making as deflecting economic actors from moral concerns. He complained: '..whether the persons [I contract with] are benefited or no, is no concern of mine.'²⁶ Coleridge's sentiment that it *ought* to be a concern now encountered an implacable foe in the emerging corpus of contractual doctrine.

Positive Duty

To redress the vulnerability of the labouring poor Coleridge thought that the public/private divide had to be confronted. He argued that the state has a positive duty to make 'the means of subsistence more easy to each individual.'²⁷ He described the minimum as follows: 'in addition to the necessaries of life he (i.e. the worker)

should derive from the union and division of labour a share of the comforts and conveniences which humanize and ennoble his nature'.²⁸

I shall refer to this as the state's primary positive duty. By taking this position Coleridge was asserting that the state had an interest in the moral and pecuniary health of each individual. Coleridge chose the word 'humanize' with care, because minimum material security was essential to the identity of the labourer as a moral being. This formulation of the state's duty also discloses something of Coleridge's theory of re-distribution. Coleridge is an advocate for the promotion of human dignity and not mere survival; his rationalisation of what might conveniently be termed a minimally decent life requires the promotion of a minimum threshold of healthy subsistence and social participation.²⁹

But this is not all. In Coleridge's schema the state's primary positive duty is not merely an exhortation to adjust the *income* of workers, which might occur by enhancing the welfare system; rather, Coleridge explicitly recognised that, as a core function of the state, government should prevent the employers' advantage-taking that resulted in wages that could not support the workers' minimum comforts of life (however defined). How was this to be achieved? It is important to answer this question in order to assess Coleridge's achievement in proposing realisable, practical public policies to address the problems he identified.

Counter-balancing a Zeal for Markets

Coleridge recognised that classical economic liberalism eroded the public's acceptance that an irreducible minimum of fundamental material interests belongs to all citizens. *Lay Sermons*, as Coleridge's response to the shifts in government ideology, economic policy and public discourse, is a complex treatise. Its prescriptions for the alleviation of poverty imagine responsibilities of both state and individual. It first presented a thesis in which controlling market excess is essentially privatised; in other words, the task of moderating the capacity of markets to cause injustice is conceived as a function performed by individuals who have been educated to act virtuously.

Coleridge explicitly identified three necessary ‘counterbalances to the mercantile spirit’:³⁰ first, a conception of real property that carried duties which, properly performed, were capable of social transformation. In Coleridge’s thought, property owners should be burdened with responsibilities akin to those of a trustee towards the disadvantaged, which meant their responsibilities were to ensure, as Coleridge stated it, a healthy and civically responsible tenantry. Coleridge did not unambiguously disclose whether a failure to fulfil these responsibilities could result in a legal claim against the owner, but the tenor of his argument was that the duties owed were moral rather than normative. If so, Coleridge did not regard it as necessary to reform the various legal and equitable property rights pertinent to the possession of land in order to ensure the delivery of social goods to the community. This matters, and is considered further below. The fulfilment by landowners of their responsibilities would only protect those who worked on the large estates, rather than those employed in factories. This is why, for the latter class of worker, the contractual relationship between employer and employee as opposed to the moral duties on landowners by virtue of their ownership of real property becomes of central interest and is considered below.

The second Coleridgean ‘counterbalance’ on markets was aimed at diminishing the influence of the hegemonic Malthusian empiricism. Philosophic inquiry practised by an accredited, learned and philosophic class should permeate public and private discourse in order to counter the damaging priority accorded to utility and efficiency. The final restraint arose from the proselytising influence of the Christian evangelist.

In his own times, Coleridge despaired that these bulwarks of social justice were either attenuated or, worse still, entirely absent from British society. He wrote: ‘We have found the first [the duties of the landowner] decaying, the second [the philosophic class] not existing.’³¹ What of the third, religion? Coleridge concluded that the likely influence of religion in moderating markets was diluted because contemporary religious practices required insufficient attention to be accorded to inward reflection and the diligent study of scripture. Rather than becoming ameliorating influences he found that persons holding religious belief were astute in

commercial life and, by implication, defenders of its core assumptions. This led Coleridge somewhat despairingly to conclude that this misguided, unreflective faith re-inforced rather than moderated the hegemony of markets.³²

Coleridge therefore recognised that his trinity of moderating influences would not be sufficiently radical. On the subject of the public/private divide he observed that ‘the spirit of commerce is itself capable of being at once counteracted and enlightened by the spirit of the State, to the advantage of both.’³³ His concluding remarks in *Lay Sermons* ultimately welcome a role for the public, regulatory role of Parliament. ‘Our manufacturers’, he asserted, ‘must consent to regulations...’³⁴

Whilst this injunction does not specify why only manufacturing should be regulated, or precisely what industrial activities should be regulated, or even the kind of regulation that he has in mind, and whether it extended to guaranteed minimum wages, it is evident that social improvement could not be realised within the private realm alone.

Elsewhere in his work Coleridge also hints at the desirability of a judge-made re-conceptualisation of contract that could perform a transformative role in the employment relationship. The problem is that each of these possible avenues for reform, (statute on the one hand and a reconceptualised model of the employment contract on the other) is obscured in an incompletely theorised manifesto. Neither *The Friend* nor *Lay Sermons* disclose any *explicit* appeal either to Parliament for a code of mandatory minimum wages, or to the courts for a re-fashioning of contract to embrace moral concerns including, but not limited to, fair pay. To what extent are these possibilities nascent in his arguments in these texts? Why did Coleridge hesitate in making his contentions and their consequences explicit?

Coleridge and Contract Law

Coleridge’s encounter with the Law of Contract which, as stated above, is the foundation of the employment relationship, arose from an unexpected source. In *The Friend* he wanted to argue that, despite not implementing the strict terms of Article X para 4 of the Definitive Treaty of Amiens, 1802, which required British troops to

leave Malta, Britain had not breached the Treaty. The problem Coleridge faced was that under Article X Britain had explicitly agreed to evacuate its troops from the Island - an unambiguous and unqualified undertaking that it had steadfastly refused to implement.

Coleridge first made the claim that Contract law is rooted in, and requires, conscionable behaviour; secondly that the Law of Nations, governing Treaties, shares the same principles as the Law of Contract.³⁵ Coleridge wrote:

'A Treaty is a writ of mutual promise between two independent States and the Law of Promise is the same to nations as to individuals. It is to be sacredly performed by each party in that sense in which it knew and permitted the other party to understand it, at the time of the contract.'³⁶ (My emphasis)

Although the details of his argument on the Law of Nations need not trouble us, it can be noted that Coleridge thought that France could not blame Britain for merely adhering to the national security goals of which the French were aware at the time of the Treaty. He concluded:

'it is...impossible...that any nation can be supposed by any other to have intended its own absolute destruction in a treaty, which its interests alone could have prompted it to make.'³⁷ Coleridge's central contention concerning the Law of Nations/ Law of Contract was that, when the meaning of an agreement was disputed, no contracting party could insist on a meaning contrary to that which they allowed the other party to understand. In other words, the meaning of treaties and contracts alike is derived from acquiescence and conscionable dealing. He thus accorded a priority to moral values extraneous to the formal words used to record the agreement. The literally understood language of the agreement should not govern the outcome of a dispute about the instrument's meaning. It was the *understanding* of the parties that mattered, not the words of an agreement.

A normative requirement for conscionable dealing is likely to have extended in Coleridge's thought beyond the court's interpretive function so as to embrace other

areas of Contract law. For example, Coleridge would be acting inconsistently if he contended that one party could be free to act unconscionably by offering misleading information to induce the other party to enter a contract that the latter would have declined had they known the true facts. Conscionable dealing, in Coleridge's thought, can be understood as a general requirement within the Law of Contract/Law of Nations.

Coleridge's ideas thus present significant potential for re-shaping the employment contract. If an enforceable promise is identified in some conception of conscionable dealing rather than literal expression, Coleridge's argument opened the possibility of setting aside unconscionably harsh terms. Just as a nation could not be understood to have signed away its existence, so a labourer could not be thought to have agreed to suffer only starvation wages. This follows from his central premise that the Law of Nations and the Laws of Contract stand *in pari passu*.

The prospect of judicial intervention to prevent one of the parties acting unconscionably in exploiting the other presented Coleridge with a potentially rich opportunity to subject unbridled *laissez-faire* in the labour market to a requirement that conscionable dealing may require minimum standards in pay. It was open to him to argue that whenever contracts providing for below-subsistence wages could be condemned as unconscionable, they should be set aside.

But there are a number of difficulties with Coleridge's essay. The first concerns whether Coleridge's statement of Law of Contract was accurate at the time he wrote *The Friend*.

Fairness in the Interpretation of Contracts

As we have seen, the Common law created Contract law to perform an economic and political function. Political ideology determined how far the courts would interfere with the outcomes of a written agreement; legal doctrine disguised this political choice. This approach meant that the outcomes of the negotiation (if any) expressed in the written agreement were deemed to be fair. Enforcing agreements served the interests of justice, even if the bargain was not genuinely negotiated and merely

reflected the interests of the dominant party. A contract of employment offering below subsistence wages was legally as valid as any other.

Two examples from the case law of Coleridge's era will demonstrate how committed the courts were to the literalist approach. These leading precedents are important because they unambiguously disclose that Coleridge misstated the law at the time he wrote.

In *Mansell v Burredge*³⁸ two former tenants of a farm were each accused of neglecting the repair of farm fences. Whilst disputing their individual responsibility, they had agreed *jointly and severally* to perform an independent adjudicator's award. If applied literally the words *jointly and severally* meant that each of them could be personally responsible for the *entire* sum awarded to the plaintiff, even if the adjudicator decided that each former tenant was only responsible for the share they incurred during their own period of occupation. Determining their respective shares of blame was, of course, the very purpose of going to arbitration, so neither would have intended to be subject to joint and several liability if they had understood the significance of those contractual words. If Coleridge had been correct, the understanding of the parties rather than the literal meaning words used would have prevailed: but the court held otherwise.

Lord Kenyon CJ candidly conceded that, '(t)his is a rather hard case on these two tenants'; but it was the strict, literal terms of the agreement, rather than their common understanding of it that the court upheld. This is, of course, in direct conflict with Coleridge's assertions in *The Friend*.

A literal interpretation of the contract, as opposed to the parties' mutual understanding of its purpose, also prevailed in *Gerrard v Clifton*.³⁹ In this case a contract was intended to ensure that a plaintiff, who owned several collieries, would share in the proceeds of the sale of coal extracted by the lessee who operated the mines. The agreement stated that the owner was to have a share of the proceeds from the sale of coal sold *at the pit head*. As time went by some coal was no longer sold in this way, so the owner brought an action to recover a sum reflecting the amount that the volume of coal would have made if it had been sold at the pithead. The owner's action failed because the court's interpretation of the contract meant that he was only

entitled to share in the proceeds of coal actually sold at the pithead rather than the proceeds of sales concluded elsewhere. This literal interpretation undermined one of the major commercial purposes of the contract; moreover, it allowed the tenant, with the approval of the court, to evade a moral obligation.⁴⁰

Coleridge's statement of the law on the judicial approach to interpreting contracts was thus inaccurate. There was no requirement for a conscionable meaning where the literal words of the contract allowed one party to act otherwise.

Coleridge's Understanding of Contract Law

Coleridge's essay on the Law of Nations may, of course, be understood as a political intervention rather than a legal treatise: his purpose was both to salvage national honour and to justify what might have been seen in diplomatic circles as British duplicity in its dealings with France. However, his decision unnecessarily to invoke Contract law to support his case, when it so obviously undermined it, is perplexing—all the more so when he was well aware of the ample case-law emanating from the Courts of Vice-Admiralty to support him in his argument concerning the interpretation of international agreements.⁴¹

Ignorance of Contract law might explain his lapse; but this possibility is unconvincing when it is recalled that Coleridge had for many years been familiar with Blackstone's *Commentaries on the Laws of England*. He had, for example, quoted from Blackstone as early as 1795.⁴² An alternative explanation should therefore be admitted. He seems to have been concerned to remind the reader that the Law of Contract had not always been as it had become at the in final years of the eighteenth century. His work can be read as advocating a return to the Contract law jurisprudence of the previous century, which was very different from that promoting competitive individualism that had since emerged.

As Morton Horwitz later concluded, the 'law [for the greater part of the eighteenth century] was conceived of as protective, regulative, paternalistic, and above all, a paramount expression of the moral sense of the community.'⁴³ Contract law's concern had once been to impose an objectively just moral order. Until the close of the eighteenth century the Chancery Court set aside contracts that were

judged to be examples of unfair advantage-taking. These interventions were based on a very different conception of what constituted unfair advantage-taking than that which had replaced it by the time Coleridge wrote *The Friend*. Thus it is possible that Coleridge's thought was drawing on an earlier conception of Contract law rather than the re-modelled version.

Two examples of the old Chancery jurisprudence are illustrative of how conceptions of permissible advantage-taking had altered, and these furnish support for Coleridge's argument in *The Friend*. In *Heathcote v Paignon*⁴⁴ the purchaser of an annuity had paid two-thirds below what the court termed the 'real' value and one fifth below the market price. This evidence allowed the court to infer that the purchaser had acted opportunistically by taking advantage of the distress of the plaintiff. The contract was set aside.

It was likewise in restraint of trade cases. Where, for example, a baker who sold a business bound himself not to compete in the same parish as the business sold to the purchaser the non-competition agreement was enforceable only if the agreed price or consideration for the sale of the business was adequate, valuable and fair.⁴⁵ Equity judges reasoned that gross inadequacy of the consideration for a contract (in crude terms, the price received under the contract) could only be explained where the recipient was either misled or the victim of an abuse of power. Either required the intervention of the law in its protective role.

When Coleridge re-asserted the principle that Contract law was rooted in conscionable dealing, his argument aligned with the former jurisprudence. This earlier case-law might have provided him in *Lay Sermons* with the armoury he required to advocate and develop a more compromising model of *laissez-faire* individualism, which infused contract law with moral principle. It would have allowed him to suggest that, consistent with principle, the owner/employer's rights arising from a contract of employment should be on a par with a land owner's possession of real property; in other words, possession of land and the Law of Contract were alike informed by moral duties to ensure minimum standards of well-being of the tenant or employee respectively. The potential to revive the old Chancery jurisprudence can be imagined as a further and forceful counterbalance to the trinity of property, religion, and philosophy. But whereas real property rights were not to be

re-shaped to make normative the landowner's moral duties, a re-shaping of Contract law in the form of a return to the former equitable jurisprudence was a possible element of Coleridge's prescription for reform.

Statute

In *Lay Sermons*, Coleridge presented the case for regulation as an alternative means of addressing the plight of factory workers without making explicit what regulations were required. Statutory intervention, like the potential of the Common law discussed above, would also recognise that the employment relationship is not simply a matter of private agreement.

As a matter of general principle, Coleridge did not favour statutory intervention to address social ills. Statutory law was ill-suited to a programme of social reform owing to its weakness in differentiating between the merits of individual cases. Moreover, the state's enforcement powers were generally sufficiently weak for many malefactors to escape justice. Enacting new statutory obligations would not by itself cure the targeted ills. An individual's decision to act according to moral responsibility was potentially more effective.

In a letter to Daniel Stuart⁴⁶ he cautioned against approaching complex and diverse social relationships with a single panacea, because the outcomes were often more oppressive than the problem the legislature sought to address. Accordingly, he famously wrote that

‘the object of a Governor...[is]to preserve the Freedom of all by coercing within the requisite bounds the freedom of each. Whatever a Government does more than this, comes of evil: and its best employment is the repeal of Laws and Regulations, not the Establishment of them..... the shortest code of law is the best.’⁴⁷

This did not mean, however, that the coercive power of legislation could never play a role in social reform. If private contracting produced morally unacceptable outcomes that allowed the dominant persons to curtail the freedom of others,

Coleridge conceded that statute should properly regulate. He made this case for legitimate regulation during the public debate concerning Sir Robert Peel's proposed legislation to curb the working hours of child labour in manufacturing.

One consequence of the private realm conception of contractual power was that it allowed employers to engage children under the age of nine years for factory work. These children could be required to work in excess of twelve hours a day for seven days a week.⁴⁸ Peel's Bill, which eventually became law in 1819, had the modest aim of preventing the employment of children under the age of nine years in factories and restricted the maximum working hours of those aged between nine and sixteen years. Despite its modest ambitions the Cotton Mills and Factories Bill, 1818 proved to be controversial, because it placed on public trial the ideological project of how the private realm was being framed.

The Bill met with ferocious resistance from mill owners on the grounds *inter alia* that it was illegitimate for the state to interfere in voluntary arrangements freely entered into by the parties. They asserted a negative conception of liberty that imagined freedom as freedom from the intrusion of state-inspired regulation. Children who did not choose to work long hours in mills were not compelled to do so. This argument asserted that the power to engage and regulate labour under employment contracts resided firmly in the private sphere into which the state should no longer venture. Furthermore, it could be proved that the long hours of factory work did not cause ill-health amongst the child workers. Empirical arguments thus aligned with the principles of *laissez-faire*.

The dispute that divided the reformers, who supported the Bill, from the advocates of the *laissez faire* status quo was essentially one concerning the nature of freedom. Reformers, such as Coleridge, recognised that positive liberty required the intervention of the state to empower individuals to live moral and civilised lives. Coleridge's main thrust rejected empiricism as the basis for social reform.⁴⁹ In other words, evidence that the children's health was not impaired by factory conditions did not make a convincing case for the status quo. The incessant servitude of their terms of hiring meant that the children's social identity had been reduced to that of

productive machines. Rather than promoting liberty, the unmoderated *laissez-faire* in the factory system undermined human freedom and human well-being.

If the state was to fulfil its primary positive duty in relation to wages the case for the statutory minimum wage was arguably stronger than it was for Peel's factory reform. Excessively low pay forced families to rely on welfare because employers had no incentive to pay more when the burden of subsistence was provided from poor relief. This created the moral problem that farmers and others were benefiting from the profits from labour that was partly funded by ratepayers.⁵⁰ Taxation removed from those taxpayers the opportunity to choose how their income was spent and, according to Malthus at least, was economically harmful. Thus, both moral and empirical arguments combined to make the case for some version of a statutory minimum wage.

Coleridge did not, however, explicitly advocate a statutory minimum wage policy, notwithstanding that it would be consistent with his argument that economic freedom cannot be asserted in ways that harm others. Thus Coleridge might be read as an author who was open either to the contractual or statutory reform of wages, but whose work failed unambiguously to advocate a fully reasoned case for either. We need to ask, why?

Morality and the Limits of Law

At the time he wrote *The Friend* Coleridge may not have completely thrown over his belief that freedom could not convincingly be delivered through public institutions – a conviction harboured since his Pantisocracy days. If freedom assumed individual agency it also assumed that individuals retained the freedom to act according to conscience. His strategy for reform therefore lay in educating individuals towards virtuous behaviour in all their dealings. Social transformation ultimately depended on the transformation of the self: individuals should actively exert themselves to develop and act according to their moral conscience - a voluntary, informed performance of civic duty.

Coleridge's theory of morality was firmly rooted in a transcendental idea of the Reason that should be theologically informed and enjoy a relationship with the Divine. Humans, he wrote, 'are born with the god-like faculty of Reason, ... it is the business of life to develop (sic) and apply it'.⁵¹ Critically, however, the test for moral action was not the outward act but the internal motivation of actions.⁵² Thus Coleridge's moral theory in *The Friend* does not *require* political actors or individuals to address suffering and inequality.⁵³ It merely advocated an inward transformation of the individual to provide the necessary conditions for the conscience and morally informed behaviour. Being driven by the law to contribute to an enlightened society did not satisfy Coleridge's understanding of the spiritual or transcendental nature of morality, because the individual should act out of purer, voluntary motives rather than in response to the coercive power of the state. Moreover, Coleridge's rejection of a consequentialist version of morality meant that dutiful behaviour was not readily amenable to codification; in other words, how an individual should act morally when any given predicament arose could lead to different outcomes, since different responses could each be morally legitimate.

Conclusion

In *Lay Sermons* Coleridge's ambition was to present a model for the reform of liberal markets that was more responsive to his moral concern with social welfare. He succeeded in reminding readers that an irreducible minimum of fundamental material interests belongs to us all. Regrettably, the content of these minimum social rights is not fully explored in his work. Although his conception of the role of the state in employment relations is also under-theorised, his project nevertheless reminds us that social justice requires a sophisticated inter-relationship between public and private initiative. Whilst he unambiguously asserted that the state is legitimately interested in the outcomes of individual wage settlements, his apparent qualms about the available public policy tools in achieving this policy goal arguably blunted his attack on the public/private divide. His readership might, perhaps, have been disappointed not to discover a richer and more fully developed public policy manifesto.

However, his ideas cannot for that reason be dismissed. Coleridge's central argument rejects empiricism as the dominant metric by which public policy in employment relations should be assessed. He encourages us to interrogate policies and outcomes from a moral perspective that is antagonistic to those who regard economic growth as the overriding, or even the exclusive, criterion of success. Coleridge's suggestion that the employment relationship is a site in which all individuals should perform their social, personal and religious duties is particularly pertinent in our era. His apparent conviction that the contractual principles underpinning the employment relationship should also be re-cast to reflect moral concerns is also an important contribution that English courts have only recently begun to explore.⁵⁴

Coleridge's work also presents the possibility that when national governments, which are constrained by globalised markets, are either unable or unwilling to pursue progressive, redistributive policies the encouragement of individuals to virtuous action might prove to be one of the last remaining responses for achieving socially transformative action. This urges us to investigate *The Friend* and *Lay Sermons* to reinvigorate an urgently required debate about the nature of both corporate and individual citizenship and thereby to remind ourselves that the maximisation of overall utility (assessed in terms of orthodox economic analysis) is not necessarily the exclusive measure of a successful, "good" society.

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¹ S. T. Coleridge, *Lay Sermons* (London, 1852), 231.

² Although Parliament had the Constitutional authority to pass law on any subject matter if it chose to do so: see Sir William Blackstone, *Commentaries on the Laws of England*, (4 vols, Oxford, 1765-69), i. ch. 2. The fundamental question concerned how far Parliament should regulate.

³ *The Collected Works of Samuel Taylor Coleridge*, ed. Kathleen Coburn and Bart Winer, Bollingen Series LXXV, 4: *The Friend*, ed. Barbara E. Rooke, (2 vols, Princeton and London, 1969) [Short citation: *The Friend*, I].

⁴ The system had been introduced by the Ordinance and, two years later, the Statute of Labourers, 1351 which was amended by legislation as late as the Regulation of Servants and Apprentices Act 1746.

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- ⁵ ‘To a Young Ass’, ‘Religious Musings’, ‘Ode to the Departing Year’, ‘Fire, Famine and Slaughter’, *Coleridge Poetical Works*, ed. E. H. Coleridge (Oxford, 1978), 74-76, 108-125, 160-168, 237-240.
- ⁶ M. Murphy, ‘Rereading Coleridge’s Pantisocracy’, *Coleridge Bulletin New Series* 18.2 (Winter 2001), 16-24.
- ⁷ *The Friend*, I, 252.
- ⁸ *Lay Sermons*, 249-251.
- ⁹ *Ibid.* 182.
- ¹⁰ An excellent critical account of Coleridge’s thought can be found in P. Edwards, *The Statesman's Science: History, Nature, and Law in the Political Thought of Samuel Taylor Coleridge* (New York, 2004).
- ¹¹ *Lay Sermons*, 189.
- ¹² *Lay Sermons*, 245.
- ¹³ T. Malthus, *An Essay on the Principle of Population* (London, 1798).
- ¹⁴ *Ibid.*, Ch 5.
- ¹⁵ *Ibid.*
- ¹⁶ Malthus thought that the poor had children that they could not afford to raise. Further, they chose to dissipate any disposable income in the alehouses rather than save: See note 13 above, 27-28.
- ¹⁷ See, for example, M. D. Neuman, *The Speenhamland County: Poverty and the Poor Laws in Berkshire, 1782-1834* (New York, 1982).
- ¹⁸ *Lay Sermons*, 253-4.
- ¹⁹ *Lay Sermons*, 240-243.
- ²⁰ *Lay Sermons*, 237.
- ²¹ A. V. Dicey, *Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century*, (London, 1963); M. Horwitz, ‘The Historical Foundations of Modern Contract Law’, *Harvard Law Review* 87.5 (March 1974), 917-956; M. Horwitz, ‘The Rise of Legal Formalism’ *The American Journal of Legal History*, 19.4 (October 1975), 251-264.
- ²² J. J. Powell, *Essay upon the Law of Contracts and Agreements*, (London, 1790).
- ²³ M. Pothier, *A Treatise on the Law of Obligations, or Contracts*, (London, 1806).
- ²⁴ W. Swain, ‘The classical model of contract: the product of a revolution in legal thought?’ *Legal Studies* 30.4 (December 2010), 513-532.
- ²⁵ See e.g., J. Wing, *Agricultural state of the kingdom, in February, March and April 1816* (London, 1816), 41; A. J. Peacock, *Bread or Blood: A study of the agrarian riots in East Anglia: 1816*, (London, 1965).
- ²⁶ *Lay Sermons*, 255.
- ²⁷ *The Friend*, I, 252.
- ²⁸ *Ibid.*, and see also *Lay Sermons*, 249.
- ²⁹ *The Friend*, I, 253.
- ³⁰ *Lay Sermons*, 222.

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- ³¹ *Ibid.*
- ³² *Lay Sermons*, 223.
- ³³ *Ibid.*, 258
- ³⁴ *Ibid.*, 266.
- ³⁵ *The Friend*, I, 273.
- ³⁶ *Ibid.*,
- ³⁷ *Ibid.*, 275.
- ³⁸ (1797) 7 T. R. 352.
- ³⁹ (1798) 7 T. R. 676, see especially *per* Lord Kenyon CJ , 678.
- ⁴⁰ The purpose of the contract had been clear to the court, as the Court of Common Pleas had acknowledged when the case first went to trial in 1796.
- ⁴¹ E.g., *La Gloire*, 5 Robinson 193, 201 (1804). The citation in this case refers to Robinson's Law Report series. In *The Friend*, I, 291 Coleridge wrote: 'I must add [to the distinguished contribution to International law [of the classical jurists]..with many important improvements and additions, Robinson's Reports of the Causes of the Court of Admiralty under Sir W Scott.' Coleridge had become familiar with Robinson's Reports in 1804 -5 whilst acting as Public Secretary in Malta.
- ⁴² *The Plot Discovered: An Address to the People Against Ministerial Treason* (Bristol, 1795). He also seems to have been aware of the change in legal doctrine: see *Lay Sermons*, 255, so Coleridge was not ignorant of the law as it was in 1818, or as it had been prior to 1790.
- ⁴³ M. Horwitz, 'The Rise of Legal Formalism', *American Journal of Legal History* 19.4 (October 1975), 251-264, 257 (1975). See further, P. Atiyah, *The Rise and Fall of Freedom of Contract* (Oxford, 1979). Note, however, Simpson's, riposte to what he regarded as Horwitz's romanticism: A.W.B. Simpson, 'The Horwitz Thesis and the History of Contracts' *University of Chicago Law Review*, 46.3 (Spring,1979), 533-601.
- ⁴⁴ (1787) 2 Bro. C. C. 167.
- ⁴⁵ *Mitchel v Reynolds* (1711) 1 P. Wms. 18.
- ⁴⁶ CL 3, 537-8.
- ⁴⁷ *The Friend*, I, 198-199.
- ⁴⁸ Even after the reform, children aged over nine years would work up to 11 hours.
- ⁴⁹ S. T. Coleridge, *Two Addresses on Sir Robert Peels' Bill, etc.*, (Hampstead, 1913).
- ⁵⁰ See, for example, M. D. Neuman, above, n.17.
- ⁵¹ *The Friend*, I, 58.
- ⁵² *The Friend*, I, 194.
- ⁵³ *Ibid.* This is discussed by M. Class, *Coleridge and Kantian Ideas in England, 1796-1817*, (London, 2012).
- ⁵⁴ The leading decision is that of the House of Lords *Malik v BCCI* [1997] UKHL 23.

