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Thomas Jefferson, the "Barbary Pirates" and the Law of Nations

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by

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Abstract

In his policy toward the states of the Maghrib, Thomas Jefferson employed ideas of justice and right, based on natural-law ideology as applied to statecraft. While seeing the governments of Barbary as capricious, he viewed their governments as states, possessed of sufficient sovereignty to participate in an international community of sovereign states. Thus, he formulated a policy which took into account obligations owed to the Maghribi states by the United States. In the war with Tripoli, Jefferson felt that the United States was vindicated, and entitled to use military means, by natural law. While commentators since have condemned his administration's conduct of the war, notably surrounding Hamet Qaramanli, from their view in Washington the Jefferson Administration felt it was acting well within the confines of the moral "prosecution of a just war."
William Eaton thought he knew what needed done but was enraged, because his superiors seemed lukewarm in supporting him. June of 1804 found Eaton sailing back to the Mediterranean, where for three years he had helped conduct a war between the United States and the Pashalique of Tripoli. Having returned to the United States with a plan of action—the employment of a usurped Pasha of Tripoli to overthrow his brother, the current Pasha—Eaton hoped to advocate a more aggressive foreign policy toward Tripoli. What he saw at Washington D.C. fell short of his hopes. Eaton found both President Thomas Jefferson and Secretary of State James Madison cautious. Most infuriating, he wrote his friend Colonel Timothy Dwight of Connecticut, was a conversation he had with Attorney General Levi Lincoln, in which Eaton tried to press his scheme. “He [Lincoln] waved the subject,” Eaton fumed,

and amused me with predictions of a political millennium, which was about to happen in the United States. That millennium was to usher upon us as the irresistible consequence of the goodness of heart, integrity of mind, and correctness of disposition of Mr. Jefferson. All nations, even pirates and savages, were to be moved by his influence of his persuasive virtue and masterly skill of diplomacy.

Eaton expressed to Dwight, if not to Lincoln, his derisive suspicions of both the “attributes of this American Baal,” as well as the possibility that the world would be receptive to this new statecraft.2

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1 Eaton then assured Dwight that he would “place my breast in this breach of confidence and good faith” in order to “convince the ally [the usurped Pasha] and the World of the consistency and fidelity in my country which, I myself am convinced, does not exist within our administration...” In this, Eaton stated to Dwight his intentions to exceed the instructions given him by the Jefferson administration. William Eaton to Timothy Dwight (June 1804?), in Charles Prentiss, The Life of the Late Gen. William Eaton;...Principally Collected From His Correspondence and Other Manuscripts. (Brookfield, 1813). 262-267.
2 William Eaton to Timothy Dwight (June 1804?), in Prentiss, Life of William Eaton, 263.
Since then scholars have debated Thomas Jefferson's approach to foreign policy in much the same language. Some have doubted his professions of a new, moral statecraft altogether, or have seen those professions heavily tempered with practical sense. Some have been more enthusiastic about Jefferson's "political millennium," and have spoken of it with the same enthusiasm as Lincoln's, chalkling up its failures to the narrow-mindedness of Jefferson's opponents. Others, more recently, have lambasted Jefferson's moralism as unrealistic, depicting Jefferson as dangerously taking an ideological, moral high-ground, often while he violated principles he had espoused previously.

Jefferson and his administration saw the undeclared (from the United States perspective) war against the Tripoli in ideological terms, as he did his republic's foreign policy toward Tripoli and its neighbors, for his entire career. Secretary of State Madison called this conflict "the prosecution of a just War," words that had meaning in contemporary understanding of international law. "The Barbarians," Jefferson explained to Tsar Alexander of Russia in 1803, by their "habitual violations of the laws of nature" had forced the United States into waging that war. 3 While harboring notions of the "Barbary states" as lawless and faithless in their dealings, he grounded his policy toward them in principles founded on the same Enlightenment conceptions of the "law of nature and of nations." 4

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4 The term "Barbary," used to describe those states on the northern coast of Africa—The Empire of Morocco, and the Ottoman states or provinces of Algiers, Tunis and Tripoli (today Algeria, Tunisia, and Libya respectively)—probably derived from various sources, including, from the European ethnocentric epithet "barbarian," as well as the name of a large ethnic group in the region, the Berbers. Many historians
what he perceived as lawlessness that infringed upon the rights of the United States, Jefferson demonstrated his adherence to an ideology of international relations. Jefferson and his administration formulated a policy toward the Maghrib around ideas promoting an international system of states drawn from European Enlightenment, and more specifically natural-law conceptions of relations between states.

The policy ultimately led to war, and Jefferson, informed by concepts of a European enlightenment, did not consider non-European conceptions of international affairs. The policymakers of Maghribi states quite understandably did not always agree with Jefferson’s interpretation of international justice. That Jefferson was proved right in his suspicion that force would be necessary to achieve his objectives in North Africa perhaps speaks less to Barbary’s uncompromising nature, than to his own.

Yet historian Lawrence Kaplan argues that Jefferson, despite his idealism, always retained a pragmatic approach to foreign policy. Jefferson, “the idealist as realist,” imbibed his foreign policy decisions with a sense of morality, but generally followed the path of the best interests for his country.⁵ James Sofka, specifically addressing the issue of Jefferson’s North African diplomacy, goes further and suggests that Jefferson was in fact very much a politician interested in the “reason of state,” the hallmark of eighteenth-century diplomacy that sought advantage for one’s state above all else, and at the expense of other states. Sofka rejects the idea that Jefferson harbored any notion of a system of

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⁵ Lawrence Kaplan, “Thomas Jefferson: Idealist as Realist,” in *Entangling Alliances With None* (Kent: Kent State University Press, 1987), 3-23. See also Lawrence Kaplan, “Jefferson, the Napoleonic Wars, and the Balance of Power,” in *Entangling Alliances with None*, 111-126, in which Kaplan argues that Jefferson’s cardinal error in the embargo was abandoning a practical, United States-serving neutrality.
mutual benefit between states. Both of these scholars view Jefferson as “realistic,” pitting against a notion of the “idealistic” that they do not sufficiently define.⁶

On the other hand, Charles Miller seeks purposefully to discover the root of Jefferson’s political philosophy—including toward international relations—in natural law ideology. Miller’s book represents a valuable guide to how “Jefferson deployed ‘nature’ not as a bright thread that led through his intellectual universe but as an unpatterned fabric that enveloped it.”⁷ Miller represents Jefferson’s variety of natural law as at times incoherent. Yet Miller’s treatment of the law of nations, as it was understood to be a product of nature, is less helpful, because Miller did not follow the subject sufficiently into its own body of primary sources, the European writers upon which Jefferson the statesman drew. The result is that Miller, like scholars focusing on diplomacy, portrays Jefferson as employing disconnected principles of natural law in “rhetorical opportunism” to support his policy.⁸

Daniel George Lang, focusing on international law in early republican foreign policy, evaluates at length Jefferson’s relationship with the law of nations. His effort is significant for highlighting the law of nations as a system of ideology, and moreover for formulating a cogent synthesis of that system, around its latest manifestation, the work of Emmerich de Vattel.⁹ Lang persuasively sees Jeffersonian statecraft as taking an internationalist perspective in which a system between nations could represent and

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⁸ Miller, Jefferson and Nature, 198. Miller points out Jefferson’s “uses are typically discovered and manipulated so as to serve his definition of the national interest.”
support their mutual benefit. Yet Lang contends that the leader of the Jeffersonian republicans departed from the law of nations as hitherto understood, in making "the nature of other countries’ regimes one criterion for constructing foreign policy or in considering the resort to force."\(^{10}\) While Miller fails to study the theoretical basis of Jeffersonian statecraft, Lang insufficiently explores the statecraft itself as done by Jefferson.

Robert Tucker and David Hendrickson’s broad interpretation of Jeffersonian statecraft is a synthesis, seeking to define where natural law ideology and political philosophy meet with reason of state in Jefferson’s foreign policy. These scholars see the relationship of natural law ideology and reason of state as, at times, intersecting but primarily pitted against one another in Jeffersonian foreign policy, which formed dynamically as Jefferson responded to the challenges of foreign powers throughout his career. Jefferson, Hendrickson and Tucker argue, believed strongly in the idea of an international moral order governed by a nature that saw states resolving differences peacefully. Like Lang, they see Jefferson’s conviction as differing from that of European law of nations publicists—and Hamiltonians—which was that states must be held to a moral code different in some respects from that between individuals. Rather, Jefferson believed morality between states ought to be the same as between individuals. Throughout his career, according to Hendrickson and Tucker, Jefferson’s philosophy of political economy—together with a strong tendency to produce moral and legal arguments in favor of United States policy—grew to such a fever pitch that his policies came full circle back to the “reason of state” that he so much deplored. Thus, the

\(^{10}\) Lang, *Foreign Policy*, 154.
Louisiana Purchase, the dispute over the Floridas with Spain, as well as the Embargo of 1807, all represented both Jefferson’s uncompromising nature in foreign policy. He equated issues along a moral spectrum of “right and wrong,” and then ironically violated principles to achieve ends.11

Much of the above scholarship criticizes Jefferson’s subsequent effect on United States foreign policy, most notably in Jefferson’s equation of moral principle with national interest. Kaplan, Lang, and Hendrickson and Tucker’s arguments are “neo-Kennanistic,” in that they all see Jefferson’s policy as badly marred by rigid moral and legal justification that ultimately leads to the disastrous policy of the Embargo, and later, war.12 Ironically, Louis Sears, another political scientist writing in 1919 about “Jefferson and the Law of Nations” saw Jefferson as the courageous forerunner to the League of Nations.13 Hendrickson and Tucker also compared Jefferson to Wilson, but with much less praise.14 This approach to analyzing Jeffersonian foreign policy is not without merit, and the purpose here is not to challenge essentially Hendrickson and Tucker’s argument.


12 George Kennan, policymaker and later historian of United States diplomacy in the 20th century, decried what he saw as the “excessive moralism and legalism” in American foreign relations. Several decades later Kennan found himself “wishing that there was a bit more of morality in our concepts of what is legal, and more attention to legality in our concepts of what is moral...” George Frost Kennan, American Diplomacy, (Chicago: The University of Chicago Press, 1951, 4th ed. 1985), vii.


14 Hendrickson and Tucker, Empire of Liberty, 11.
But whether scholars argue for or against Jefferson’s supposedly “realistic” understanding of statecraft, they ultimately see his ideology fundamentally as a source of his obstinacy in foreign policy decisions, without closely analyzing how Jefferson arrived at such decisions. As historian James Lewis has pointed out, “studies that test the decisions of the first two generations of American policymakers against modern standards of ‘realism,’ …have provided only partial insights into the thinking that shaped them at the time.” Indeed, Jefferson indicted himself according to the charges that he equated policy decisions of practical interest with a morality derived from human nature. Jefferson saw natural law as synthesizing individual states’ interests with an international system. “We are firmly convinced, and we act on that conviction, that with nations, as with individuals,” Jefferson told Congress in 1805, “our interests soundly calculated, will ever be found inseparable from our moral duties; and history bears witness to the fact, that a just nation is taken on its word, when recourse is had to armaments and wars to bridle others.” In the United States relations with the North African states, Jefferson thought no differently. Jefferson commented during the final stages of the Tripolitan war that “There is reason to believe the example we have set, begins, already to work on the dispositions of Europe to emancipate themselves from that degrading yoke. Should we

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16 Thomas Jefferson, Drafts of Address of Second Inaugural, 4 March 1805, Jefferson Papers LOC internet. To Rufus King in 1801, Jefferson explained this specifically in foreign policy terms: “We wish to cultivate peace and friendship with all nations, believing that course most conducive to the welfare of our own. It is natural that these friendships should bear some proportion to the common interests of the parties.” Thomas Jefferson to Rufus King, 13 July 1802, Jefferson Papers LOC internet. By 1810, Jefferson was bewailing what he saw was a change in the world, in that “All those calculations which, at any other period, would have been deemed honorable, of the existence of a moral sense in man, individually or associated, of the connection which the laws of nature have established between his duties and his interests, of a regard for honest fame and the esteem of our fellow men, have been a matter of reproach on us, as evidences of imbecility.” Thomas Jefferson to Caesar Rodney, 10 February 1810, Jefferson Papers LOC internet.
produce such a revolution there, we shall be amply rewarded for what we have done.”

After all, states were supposed to serve the interests of their members, according to the social contract that created them. Contests between states could transcend simply interests, and for the juridically trained Jefferson could be an effort to define precisely what natural law taught. That Jefferson served the interests of the United States does not mean simply that he imprinted his decisions selectively with a moral stamp.

Jefferson saw his conflict with the Maghribi states as a contest on moral principles, as Hendrickson and Tucker argue he did elsewhere, and this indicates that views such as Kaplan’s, Sofka’s, or even Miller’s, miss the complexity of Jefferson’s ideology; they mistakenly see pragmatism and “reason-of-state” ideology in its place. Moreover Hendrickson and Tucker, while correctly evaluating Jefferson’s moral ideology grounded in natural law, exhibit this more in terms of Jefferson’s pursuit of United States interests, and deemphasize when Jefferson may have conceded points to others in his statecraft, as he did toward Algiers. The incomplete treatment they afford the North African states in their analysis, in this respect, is important. Lang’s assertion that Jefferson constructed his statecraft by unfairly favoring regimes he preferred, needs to be qualified as well. Jefferson bore little respect for the rulers of the Maghrib, but it did not step in the way of his acknowledging their “rights,” when he defined them.

This project seeks to address those imbalances by analyzing Jefferson’s statecraft toward the Maghribi powers, and how it was influenced by natural law theory applied to international relations. First, Jefferson’s convictions concerning Barbary culture, society,

and government, are established using both his correspondence and viewing the
intellectual culture within which he moved during his long career. Next, the foundation
for his convictions about a natural basis for law between states, including the “Barbary”
states, together with the impact of those convictions on Jeffersonian foreign policy, is
recognized. Finally, this thesis turns to one of the most important diplomatic and military
operations of the war, and demonstrates that despite the criticisms of their enemies and
later historians, the Jefferson administration acted within the confines of what Jefferson
felt to be righteous under his coda of international law.

Thomas Jefferson’s view of the North African states, or any other, was not
culturally blind. Like his understanding of international relations, Jefferson’s knowledge
of the Maghrib was largely the product of European and Euro-American thought and
experience. As European writers did, Jefferson saw the forms of government in the
Ottoman world as arbitrary and tyrannical. That they practiced, in his view, a form of
sea-going extortion was contrary to his sense of international justice, and he accordingly
rejected their demands made on the United States. They refused to accept the
international system that Jefferson held to be based on “nature.” He was confident that
they would break their treaties with the United States in order to continue their practices.

If the sixteenth century saw a diplomatic revolution in which Ottomans became
intermittent allies of European states, the “long eighteenth century” of the Enlightenment
brought about some reassessment in how European publicists, intellectuals, and travelers
viewed Barbary society, politics, and culture. Enlightenment thinkers, throughout a
century and a half, diverged from each other in many aspects, but as Henry May suggests,
the Enlightenment in both Europe and America was bound by unifying threads: “first, that the present age is more enlightened than the past; and second, that we understand nature and man best through the use of our natural faculties.”\(^\text{18}\) The first phenomenon brought about closer inspection of Barbary by European observers, and in some ways more complex understanding, even broadmindedness. The second, however, became the point around which cultivators of the European Enlightenment criticized “Barbary” government, culture, and society.

European travel writers, and others informed from their works, brought the Islamic world into closer focus, through lenses shaped by European culture. In some cases traditional uninformed hostility toward the religious “other” gave way to classification of their culture, political systems, and society. As Ann Thompson has argued, the eighteenth century saw many Enlightenment writers approach a cultural understanding, even sympathy with the Barbary states, especially when comparing and criticizing European institutions at home. But by the end of the eighteenth century, and into the nineteenth, European observers returned to a more critical view, seeing their own society as more enlightened compared to the Maghrib, which they held as suspended in ignorance.\(^\text{19}\) Thus, the conclusions that many European Enlightenment writers arrived at

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\(^{19}\) Ann Thompson, *Barbary and Enlightenment: European Attitudes toward the Maghreb in the Eighteenth Century* (New York: E.J. Brill, 1987), 29. Thompson traces the development of European ideas concerning the Maghrib through the eighteenth century, and up to 1830, when the French invaded Algeria. As evident in her study, it is difficult to trace precisely when individual European ideas and attitudes about the Maghrib change, partly because Enlightenment writers themselves had difficulty classifying the Maghrib according to their own understandings of history and civilizations. However it is clear, as Thompson argues, that Europeans by 1830 saw Barbary as “African,” or more savage, with racial implications.
were different than older forms of hostility based in a more simplistic form of Christian-versus-Muslim conflict, but were often no less critical.

By the later eighteenth century, many criticisms leveled by a range of Enlightenment thinkers converged on the shape the Maghrib (and other Muslim) societies took as the result of their religion. In Islam Europeans and early Americans saw tyranny, within the home, within the community, and within its institutions. Even those writers who urged a more complex, or less hostile, understanding of Barbary recorded "the ignorance of these same inhabitants, the insolence of their rulers and their cruelty and despotism..."20 According to eighteenth-century writers on both sides of the Atlantic, Islam buttressed traditional forms of learning derived from revelation and authority, and so ran behind and contrary to the spirit of the Enlightenment, drawing its inspiration from reason and scientific observation. To Enlightenment thinkers concerned with notions of progress Islam discouraged individual motivation, "enterprise," and improvement through science.21 The institutions in the Maghrib, European Enlightenment publicists recorded, were largely (and deplorably) the result of a predominance of theocratic revelation and superstition that they saw in inherent in Muslim society.

A friend and correspondent of Jefferson, the celebrated French traveler Constantin Francois Chasseboeuf, Comte de Volney sojourned in the Ottoman Levant, and wrote several volumes in which he described these civilizations as in decline.22 Volney wrote extensively of the Turks who formed the Janissary governments in the

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20 Thompson, *Barbary and Enlightenment*, 97.
Levant (and North Africa) as the descendants of fierce Asian plains people, and that they brutally extorted their local subjects in Syria and Egypt. One thesis of Volney’s work was that “The moral character of nations, like that of individuals, chiefly depends on the social state in which they live...” by which Volney specifically meant government and religion. Even if Enlightenment thinkers tried in many ways to seek a new, more balanced understanding of the Islamic world they generally concluded that its culture and society, shaped by religion, made it the enemy of Enlightenment values.

In America, a wealth of popular literature appeared or was reprinted during the first crisis with Algiers at the end of the eighteenth century, and it supported what European writers had recorded about the Maghrib. After 1793, when 130 American captives were in Algiers and Congress deliberated between a peaceful and naval solution, books and plays appeared that illustrated early republican conceptions of Algerines, and showed how Americans were different. Mathew Carey, a correspondent of Jefferson, wrote a *Short Account of Algiers*, in which he described the North African state as littered with the decayed remnants of earlier empires. In noting several waterways running through Algiers, Carey noted that none were used for navigation, and that “Such is the gross ignorance of the natives in whatever concerns domestic improvement, that there is not a single bridge over any of these rivers.” The garrison of the town of Bona, he recorded, claimed to be Turks but were in fact “the sweepings of all the nations blended together.” The bulk of the people, Carey reported, were Arabs and Moors, who

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23 Constantin Francois Chasseboeuf, Comte de Volney, *Travels through Egypt and Syria, in the Years 1783, 1874, and 1785, Containing the Present Natural and Political State of These Countries; Their Manufactures and Commerce, With Observations on the Manners, Customs, and Government of the Turks and Arabs* (New York, 1798), 50, 59-60, 282-3 and passim.
were “great thieves.” 24 James Stevens Wilson’s *Historical and Geographical Account of Algiers* described Algerine society, generally deploiring the “most deplorable barbarism” and the religious intolerance that rendered Algiers “ferocious” toward Christians. 25 Novels and plays, drawing from the captivity narrative tradition, compared American and North African cultures, and found the North African societies wanting. These tracts considered only slavery to be an evil equally represented in North Africa and America. Much of the literature produced in America about North Africa, as with Volney, paused to consider the evils of slavery in both the old world and the new, and indeed, other works were devoted to the comparison. 26

In political and social institutions, Robert Allison has argued, people of all political persuasions in the young United States looked upon the Muslim world as an example of what they should not be. For Federalists the notion of a decaying, disintegrating empire had distinctly negative connotations. Jeffersonians in turn could

24 Mathew Carey, *A Short Account of Algiers... Containing Letters From Captains Penrose, M'Shane, and Sundry Other American Captives, with a Description of the Treatment Those Prisoners Experienced* (Philadelphia, 1794), 2-13.


deplore descriptions of Algiers as either a “military republic” or a “monarchy,”
embodying arbitrary rule. 27

The breadth of Jefferson’s society and correspondence suggests that he harbored
negative images of the Islamic and Ottoman worlds in general, North Africa in particular.
American consuls reported that the governments in Algiers, Tunis and Tripoli were states
largely independent of the Ottoman Sultan, but Turkish in origin. Members of these
military governments were “janissaries,” or soldiers. 28 Europeans perceived these men to
be the malevolent scrapings of Turkish society, a view that was possibly the result of
similar prejudices among those within Ottoman society itself. Philip Mazzei, before
coming to Virginia at the behest of his friend Jefferson, traveled to Turkey where his
efforts at befriending an Algerine merchant brought a warning not to associate with North
Africans. He was told that North Africa was a place for the Sultan to vent “rogues” from
his society. 29 Jefferson, friend and correspondent with Volney, together with Joel Barlow
(who had served as a U.S. consul in Algiers), collaborated on a translation of Volney’s
The Ruins, or a Survey of the Revolutions of Empires. 30 The U.S. Consul in Tunis for the

27 Allison, Crescent Obscured, 57-8.
28 Thompson, Barbary and Enlightenment, 51-2. Numerous U.S. agents wrote descriptions of these
governments. See for example P. R. Randall’s account to Jefferson in which he described “the Rapacity of
those Barbarians who have so little Regard for Treaties...A Gentleman who has been there 19 Years told
me at Algiers that he never saw a Moor he could trust or Turk whose Word he might depend on. Such is
this people and those are the Ideas my Voyage has furnished me with.” He also noted that “The meanest
Turk aspires to the Succession, but no Moor is admitted to any Employment, and there is but one Instance
in an half-booded Turk enjoying any office” P.R. Randall to Thomas Jefferson, 14 May 1786, The Papers
of Thomas Jefferson, ed. Julian Boyd, Charles T. Cullen, and John Catanzariti, 27 vols. to date (Princeton:
Tunis, and Tripoli, was an independent dominion, ruled by a local dynasty.
29 Later, Mazzei witnessed a pitched battle between visiting sailors and locals against recruits destined for
Algiers in which the local villagers rushed to the aid of the sailors. Philip Mazzei, Memoirs of the Life and
Pereginations of the Florentine Philip Mazzei, 1730-1786, ed. Trans. Howard R. Marraro (New York:
Colombia University Press, 1942), 50-8, 82-83. Thompson, Barbary and Enlightenment, 51-2.
30 Allison notes that their edition appeared in Paris in 1802. Allison, Crescent Obscured, 50.
first three years of Jefferson's presidency, William Eaton, reporting to John Adams' Secretary of State in 1799, assumed that "Volney's travels in Egypt and Assyria had been read" by American policymakers. "The General character there given the Turks," Eaton curtly remarked, "exactly fit them here."31

Jefferson indicated his sentiments in his correspondence on a variety of topics. He assured Madison in 1787 that Shay's Rebellion was not politically unhealthy. He said that much harsher regimes experienced revolts against authority more frequently, including his beloved France. "In Turkey," Jefferson reflected, "which Montesquieu supposes more despotic, insurrections are the events of every day."32 In 1811 he compared the powerful Royal Navy's influence in British Government to "Janizaries."33 As early as 1788 Jefferson reflected that "I cannot think that but that it would be desirable to all commercial nations to have that nation & all its dependencies driven from the sea-coast into the interior parts of Asia & Africa. What a field would thus be restored to commerce!" Jefferson's reflection on commerce was not merely a celebration of the economic possibilities. He lamented, "The finest parts of the old world are now dead in a great degree, to commerce, to arts, to science & to society. Greece, Syria, Egypt & the whole northern coast of Africa constituted the whole world to the Romans, and to us they are scarcely accessible at all."34 Jefferson was delighted at the thought that Greece might be liberated from its Ottoman overlords. Volney described Greeks in the Ottoman

31 Prentiss, Life of William Eaton, 140.
33 Thomas Jefferson to Thomas Law, 15 January 1811, Jefferson Papers LOC internet.
Empire as deceitful, flattering, and sneaky, the direct result of their state of "slavery" under Turkish rule, and Jefferson also felt that morality was corroded by bondage.\(^{35}\) Yet Jefferson held out hope for the Greeks. When the Turks, "with whom an opposition to all science is an article of religion" were removed, "the language of Homer and Demosthenes flow with purity, from the lips of a free and ingenious people."\(^{36}\) However, if Jefferson saw Islam as the despoiler of the virtues that he had come to embrace in the Enlightenment, it is less clear that he felt them unique in this respect. While Jefferson rejoiced at the possibility of Greece's liberation, he feared the Austrian and Russian liberators (officially Roman Catholic and Orthodox respectively) would maintain control there, replacing "one set of barbarians for another."\(^{37}\) Jefferson's own correspondence displayed his conviction that the Islamic world was politically, culturally, socially, and spiritually tyrannical. In the Ottoman world, specifically, he felt that rulers were arbitrary, extortionate, and content to rule through fear.

Jefferson was an avowed racist, particularly toward the enslaved Africans within the United States.\(^{38}\) He was, however, silent on North Africa, and who he thought governed there, whether "Asiatic" or African, presenting historians with difficulty in this respect. He perhaps personally met with North Africans only twice during his public service. The first was the Tripolitan ambassador in Europe in the 1780s, and the next, a Tunisian ambassador to the United States, Sidi Suliman Mellimelli, in 1807. While Jefferson wanted Mellimelli and his entourage shipped home as soon as possible, it is


\(^{38}\) The sources on Jefferson's racism are numerous, but the best place to start is Jordan, *White over Black*, specifically chapter 12.
unclear to what extent this was a dislike for a North African of international importance in his dominions, and how much it was a fear over an international incident developing out of the adventures of Mellimelli and his (defecting) followers. Jefferson equated Haiti with Algiers, expressing his fear to the French ambassador in 1802 that Haiti could act as a Barbary state in the Western Hemisphere. Nevertheless, whether it was because Jefferson did not equate the “Barbary pirates” with Virginians of African ancestry, or whether North Africa was simply too far away, Jefferson does not appear to have formulated his policy along racial lines.

Insofar as Jefferson viewed the culture of the Maghribi States as despotic, and prone to tyranny that fueled rapaciousness, he saw the North Africans as prone to violation of universal moral and natural principles. He concluded that only greed or fear motivated their policy and that they could not be trusted to keep the peace they agreed upon in treaty. Even the Tripolitan Ambassador’s explanation that North Africans sailed against Christians in holy war in 1786 failed to convince Jefferson that they were waging anything but a war of economic self-interest. From his first speculation that the Emperor of Morocco’s friendly, if persistent solicitations of friendship would lead to demands for tribute (in which Jefferson was wrong), until the writing of his

39 Several of Mellimelli’s entourage attempted to defect to the United States. See for example, Thomas Jefferson to James Madison, 16 September 1806, in Smith, Republic of Letters, 1439. “As to the Refractory Tunisians,” Jefferson wrote of the defected members of Mellimelli’s entourage, “I think we should pay their passage and get rid of them. If they would stipulate to deliver themselves to any Tunisian or other Barbary Agent in England, it would excuse us to the Bey of Tunis.”
41 The Tripolitan Ambassador reported to the American Commissioners that “that it was written in their Koran, that all nations who should not have acknowledged their authority were sinners, that it was their right and duty to make war upon them wherever they could be found, and to make slaves of all they could take as Prisoners, and that every Musselman who should be slain in battle was sure to go to Paradise.” American Commissioners to John Jay, 28 March 1786, Jefferson Papers, 9:357-8.
autobiography Jefferson never wavered from this conviction. "I know that nothing will stop the eternal increase of demand from these pirates," he wrote Madison in 1803, "but the presence of an armed force, and it will be more economical & more honorable to use the same means at once for suppressing their insolences."\footnote{Thomas Jefferson to James Madison, 28 August 1801, The Papers of James Madison: Secretary of State Series, ed. Robert Brugger et al., 4 vols. to date (Charlottesville: University of Virginia Press, 1998) 2:71.} Despite this conviction, Jefferson formulated a policy that gave the Maghribi states essentially the legal benefit of the doubt; so long as the treaties stood, Jefferson’s government would not be the one to violate them. In 1801, with treaties existing between the United States and the four North African powers, the Jefferson administration dispatched an “armed force” to Mediterranean with orders not to engage in unprovoked hostilities with North Africans, but rather to make port-calls, showing the capability of the United States at sea.\footnote{Samuel Smith to Richard Dale, 20 May 1801, in Knox, Naval Documents, 1:463-9.}

To understand Jefferson’s policy, particularly toward the Maghrib, it is necessary to note the practical and theoretical precedents set by Europeans. European states did not completely recognize Islamic states as political equals. European statesmen looked to the Ottoman empire after the Renaissance and Reformation for potential allies in dynastic and imperial struggles, but “the Turk” remained a “political pariah,” as Franklin Baumer explains, at least until 1699 or later.\footnote{Franklin L. Baumer, “England, the Turk, and the Common Corps of Christendom,” The American Historical Review 50, no. 1 (1944): 29, 48.} Yet while occasionally warring with Maghribi states, European nations also dealt with them in terms of a customary law, if not always in the same ways as with each other. As Ann Thompson notes, “However much hostility might be felt towards the Barbary states, with which the European nations were engaged in perpetual wars, they were precisely that: states with which the Europeans maintained
diplomatic relations and signed treaties, and to which they even paid tributes.45 The practical foundations of much international legal procedure developed in preceding centuries had come from those states surrounding the Mediterranean and specifically, in the case of the appointment and maintenance of consuls, in dealings between Christian and Muslim states.46 By the eighteenth century, European states had increasingly regular commercial, then diplomatic relations amidst occasional strife with the Maghrib. This revealed a mixture of treated obligations and customary law of nations.47

American diplomatic relations with the states of the Maghrib followed suit. In 1784, merchant Robert Montgomery met with the Moroccan ambassador, who was ostensibly headed to Vienna, anticipating the 1786 treaty between Morocco and the United States.48 In 1786 John Adams at first derided a Tripolitan ambassador in London, asking Jefferson rhetorically “How can We preserve our Dignity in negotiating with Such nations?” Adams had second thoughts after noting that Abdrahaman was a “universal and perpetual ambassador,” and a “Sensible Man, well known to many of the foreign

45 Thompson, *Barbary and Enlightenment*, 2. That Europe had dealt with the Maghrib as states in regular relations is crucial to Thompson’s thesis, indicating that nineteenth-century attempts to view Algeria as a “mysterious” land of exotic savagery represented a cultural “amnesia” on the part of the colonizing French.
47 Often these treaties were negotiations in themselves between the political cultures of Christian Europe and Islamic North Africa and were not seen by their participants as unequal. Europeans, for example, generally gained extraterritoriality or jurisdiction of foreign consuls over their nationals living in the Barbary states. Islamic International legal conception was not territorial in a national sense, but personal. Muslims could travel within the Islamic world crossing boundaries much more easily than Europeans in their own. Therefore Muslim states did not usually install consuls in European states and did not seek the extraterritoriality in European states because the concept to them was useless. One exception was the treaties between France and Algiers that contained remarkable degrees of reciprocity including extraterritoriality. Generally Muslim states sent special envoys to Europe instead of maintaining permanent diplomatic establishments. C. H. Alexandrowicz, “The Role of Treaties in the European-African Confrontation in the nineteenth century,” in *African International Legal History*, ed. A.K. Mensah-Brown (New York: United Nations Institute for Training and Research, 1975), 36.
Ministers who have seen him before....” After several meetings with the Tripolitan ambassador, Adams swallowed his pride and wrote to Jefferson with a new urgency, requesting that Jefferson cross the channel and help him negotiate with Abdrahaman, with the benediction that “There is nothing to be done in Europe, of half the Importance of this.”

Moreover Europeans influenced Jeffersonian—and early republican—statesmanship in a broader, ideological way. European publicists had for more than a century written treatises on a law or laws of nations based on “natural” law, and early American policymakers consulted these regularly. In 1775 the American minister in France, Benjamin Franklin, gratefully accepted three copies of Emmerich de Vattel’s *Les Droits des Gens* from Swiss publisher Charles W. F. Dumas, who was a correspondent of Jefferson as well. In thanking Dumas, the American minister commented that the volumes were “in good season where the circumstances of a rising state make it necessary frequently to consult the law of nations.”

In the 1780s Jefferson sent Madison much of the literature on the subject available in Europe. Americans consulted Vattel, Hugo Grotius, Samuel Pufendorf, Cornelius Van Bynkershoek, Christian de Wolff, and other canonists frequently when formulating or deliberating over policy. In fact, Jefferson sharply chastised the minister of France, Edmond Genet, for

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having little respect for these sources: "Nor could indeed any other authority be quoted for [the law of nations] but the exalted source from whence they have flowed."\textsuperscript{52}

The law of nations canon that early American statesmen studied was founded in Enlightenment natural law theory. The latest literary incarnation of natural law theory in international relations was by Swiss statesman and publicist Emmerich de Vattel.

Building on those before him, Vattel held that states in nature, like individuals, came together for mutual benefit and advancement. They were subject, then, to natural or "necessary" law that should guide statesmen and be "binding upon the conscience of nations." However, he instructed that, like individuals in nature, states were "free and independent," and an infringement of that "sovereignty" by another state was an injury, because an infringement of a state’s sovereignty compromised its ability to fulfill the social contract of its people, from whence the authority of the state is derived. It followed, Vattel wrote, that a "voluntary" law of nations existed that stipulated states’ rights to act independent of the judgment of other states.

Treaties, or the "conventional law of nations," made law, and so were regarded as sacred as the social contract between individuals. Vattel argued that states under voluntary law had imperfect obligations to other states, meaning things a state should do for other states, but that is not strictly mandatory, and is not cause for war by another state if those obligations are not met. Perfect obligations, however, were things a state should do (or respect, such as sovereignty), and failure by a state to meet those obligations meant another state may have just cause for war. Treaties, a form of positive law, made imperfect obligations perfect, and a state must comply with the articles in the

treaties it has ratified. If one nation signed a treaty with another, it was bound to observe this. Failure to do so allowed the other state to wage a just war. Vattel’s work, drawing from others, created a just-war prescription—the system of thought that held that war could be just, as well as necessary—that replaced older justifications for warfare, such as religious crusades, with validations centering on states’ rights.

The result was a “liberal” system of mutually-respected sovereignty allowing states considerable latitude, within a system of alliances. Arising out of this synthesis of voluntary law and natural rights theory and the reality of a rough equilibrium of states was the balance of power. Vattel saw the balance of power between European states as potentially enforcing an enlightened system between states based on mutually respected sovereignty, in place of a higher governing authority. A corollary was that while Vattel considered it impossible for both sides to wage a just war, he stipulated that by the voluntary law of nations, states—even those at war with each other—must grant certain rights as independent states to either side. Vattel encouraged states to weigh carefully the costs (such as debts, destruction, and despotism at home), versus benefits of warfare, together with the balance of power, and he advocated limited warfare, a popular concept in eighteenth-century statecraft.

Modern scholars of international law identify Turkey as the first culturally “non-European” state incorporated into the European community which lived under and

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45 Lang, *Foreign Policy*, 47-53.
46 Lang, *Foreign Policy*, 34-5.
47 Lang, *Foreign Policy*, 55.
48 Lang, *Foreign Policy*, 51.
received rights from the law of nations, in 1856. Some scholars have suggested further that prior to this, Europeans considered such states outside of the European family of nations in this respect. Indeed, various canonists of the law of nations from Alberico Gentili and Hugo Grotius up through the nineteenth century have been cited to contend that Europe should not grant them rights as sovereign states nor expect to live in peace with them. 58 Even Jefferson, mulling over a potential international squabble with Britain concerning porting of warships and neutrality in 1803, suggested as much. “Besides,” he reflected, “although nations have treated with the piratical States, they have not in practice ever, been considered as entitled to all the favors of the law of nations.” 59 While grasping at means to deny the British ports in the United States, Jefferson did not act upon his assumption.

By the eighteenth century, law of nations canonists advocated a system between states that operated irrespective of religions within state’s frontiers. Vattel, taking after Grotius, stated that in diplomacy “natural law is the sole rule of treaties in nations; religious differences are entirely foreign to them. Nations treat with one another as bodies of men and not as Christians or Mohammedans,” though the Swiss writer argued that nations should unite to “put down such fanatics” that threaten the international order with militant religious war. 60 The Protestant Gentili in the sixteenth century condemned the Ottomans because of his perception of their behavior and saw the Turks as one of two empires (the other being Spain) seeking hegemonic, and theological domination of

60 Vattel, Les Droits Des Gens, 162.
Europe. While he called for Europeans to continue faithfully deterring the Ottomans, he stated that Europeans did not war against them because they were Muslim. The understanding of the law of nations from which early republicans, including Jefferson, drew was primarily a Protestant tradition, that sought to break down the Medieval hegemony of “Christendom,” instead imagining nation states as sovereign equals in Europe, and potentially elsewhere. Law of nations writers condemned war on religious grounds, which they saw had gutted Germany in the seventeenth century, and they promoted the limited warfare that they envisioned for a more civilized Europe in the eighteenth. The emphasis on sovereignty derived from natural law coincided with fears of universal monarchy under Catholic crowns perceived by Protestants as the goal of the Hapsburgs Charles V and Phillip II, and the Bourbon Louis XIV. The Spanish invasion of the Central and South America was an oft-cited example of an unjust war by various canonists, because the Spanish could not claim moral-religious grounds for warfare.

When by the end of the eighteenth century, Moroccan Emperor Muhammad III

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61 Gentili states: “Do not all men with complete justice oppose on one side the Turks and on the other the Spaniards, who are planning and plotting universal dominion? True, the Turk does not injure many, nor does the Spaniard; neither one nor the other is able to do so; but they injure some, and who injures some, threatens many. We have heard about the Turks before and we all have our opinion of them. If any one does not know about the Spaniards, let him learn...that their disposition is also lawless and greedy for power...” Alberico Gentili, *De iure bell i libri tres* ed. John Rolfe, The Classics of International Law (New York: Oxford University Press, 1924), 64.

62 C.H. Alexandrowicz, “The Role of Treaties in the European-African Confrontation in the nineteenth century,” in *African International Legal History*, 33. Alexandrowicz perhaps overstates the case, describing natural law as creating “a universality of the family of nations irrespective of race, creed, civilization, or continent.” Still, as he demonstrates (cited below) North African states at least were able to achieve some reciprocity in their dealings with European states.

63 Lang, 3-4.

64 Vattel, *Les Droits Des Gens*, 131-3. It is important to note that many of their legal precepts were drawn from Catholic publicists. Here Vattel drew from Vitoria who wrote, like his compatriot and fellow Dominican Las Casas, a polemic of the Spanish invasion of the New World. Vitoria’s work, however, adopted a legalist perspective in condemning the conquest. See Nussbaum, *Law of Nations*, 79; Francisco Vitoria, *De Indis et De Ivre Bell i Relectiones*, ed. trans. Ernest Nys. The Classics of International Law (Washington: The Carnegie Institution of Washington, 1917).
concluded a series of treaties with European states that emphasized trade and peaceful communication and took steps to dismantle corsairing, the French journal *Le Moniteur* wrote that “The principles of the sacred International law have moved out of the philosopher’s books and landed in the court of the Moroccan Sultan where they have triumphed. Religious differences no longer constitute in his eyes an obstacle to the rapprochement between peoples…”

Law of nations canonists prescribed harsh measures toward piracy, but their references specifically to the North African states was ambivalent. While Vattel believed treaties between “Christians or Mohammedans” entirely valid, he condemned the Maghribi states on other grounds. “Brigands” according to the Swiss publicist were states or people who held “universal” principles of justice in contempt, violate them at every term, and became “enemies of the human race.” In this category Vattel included the “expeditions” of the Maghribi states. It followed from his treatise that states were not obliged to render them rights granted under the law of nations. Vattel decreed that such people should be the target of international efforts aimed at “punishing, even exterminating, such savage people.” Yet Vattel’s indictment of the Maghrib was not the consensus among canonists. Grotius ruled that states should feel obliged to keep their word, even when they enter into treaties even with “pirates.” While Vattel and Pufendorf disagreed with Grotius, the latter specifically refuting him, Van Bynkershoek

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65 Qt. in Fatima Harrack, “Foundations of Muhammad III’s Western Policy” in *The Atlantic Connection*, 37.
went further and suggested that the states of the Maghrib specifically were doctrinally
to rights precisely because they were not pirates:

The peoples of Algiers, Tripoli, Tunis, and Salee [Morocco] are not pirates, but
rather organized states, which have a fixed territory in which there is an
established government, and with which, as with other nations, we are now at
peace, now at war. Hence they seem to be entitled to the rights of independent
states.68

That these states broke treaties with casual pretexts did not render them exclusive,

Bynkershoek wryly noted, from their European counterparts. Specific references in law
of nations scripture provided very different suggestions of how to view and deal with the
Maghrabi states. What these texts did provide, was a broader framework for international
law based on a “law of nature.”

Jefferson was influenced heavily by natural law ideology, and his statecraft was
no exception. The writings of European jurists and publicists were his major guides in
understanding relations between states. Jefferson’s 1793 report to President Washington
concerning the French treaty was one of many times Jefferson cited European law of
ations writers. This memorandum outlined best his understanding of the law of nations
and represented both his reliance on European sources as well as his interpretation of
them. For Jefferson, natural law, or the “moral laws” that “nature” had written in the
“head and heart of every rational and honest man,” governed individuals as well as
ations.69 Because certain publicists excelled in codifying what Jefferson (and many
other intellectuals in the eighteenth century) believed was a universal moral writ, several
writers on the law of nations formed a canon from which he drew insight, direction and

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68 Cornelius van Bynkershoek, Quaestionum Juris Publici Llibri Duo, trans. Tenney Frank, ed. James
justification for his conception of foreign policy. Like other statesmen of his day, Jefferson harbored his own interpretation of these texts, and at times engaged with them in exploring the "nature" of international law.\(^7\)

Throughout his career, Jefferson advocated a consistent policy toward the Maghribi states that drew upon natural law ideology. He recognized them as states with which he expected to negotiate within the framework of the law of nations, despite his musings to the contrary. His case against them was founded in their violation of the natural law, specifically as it regarded oceans. Yet the treaties signed by his Federalist predecessors, representing international, conventional law, and prevented him from immediately taking the vigorous action against the Barbary states he had advocated earlier.

Jefferson, like Bynkershoek, felt that the North African states practiced criminal policy, but were not stateless bands. Throughout his life Jefferson referred to the Maghribi states as "pyratical," though his casual use of this term was not a strict legal definition, nor did it guide his policies. Law of nations canonists generally agreed that piracy was to be annihilated whenever and wherever found, prosecuted by the first lawful authorities that met it. Pirates were regarded as enemies of humanity and were generally tried, convicted, and hanged. Jefferson, however, never seriously advocated harsh extra-

\(7\) Jefferson wrote that "Those who write treatises of natural law, can only declare what their moral sense and reason dictate in the several cases they state. Such of them as happen to have feelings and a reason coincident with those of the wise and honest part of mankind, are respected and quoted as witnesses of what is morally right or wrong in particular cases. Grotius, Puffendorf, Wolf, and Vattel are of this number. Where they agree their authority is strong: but where they differ, and they often differ, we must appeal to our own feelings and decide between them." Thomas Jefferson to George Washington, memorandum, 28 April 1793, Jefferson Papers, 25: 613.
legal treatment of the North Africans or their sea-going crews. Commo-
dores Dale and Morris were ordered to treat North African
prisoners “with humanity and attention, and
land them on any part of the Barbary shore most convenient to you.” Navy
Secretary Smith wrote that this was humane, indicated to the North Africans that the United States
did not fear “what such men can do,” and would hopefully bring the Maghribi leadership
“back to a sense of justice, which they owe to us.” Christians (presumably captives)
found among them were to be “treated kindly” and put ashore in Christian territories, if not recruited.
After the first years of the war fell short of expectations, the policy
toward prisoners was amended to seek opportunities to exchange prisoners with the
Pasha, or failing that, the prisoners were to be handed over to other states at war with
Barbary for safe keeping “with a reservation, that they shall be restored to the United
States in the event of their demanding them on an adjustment of our differences with
Tripoli.”

Part of this policy probably stemmed from a desire not to provoke worse
treatment from Maghribi rulers on captured United States mariners. But Jefferson and his

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71 In 1803, however, in his frustration with a lackluster performance by the navy he may have indulged in a bit of bloodlust, though not outside the bounds of eighteenth-century practice in warfare, and certainly not exceeding its typical magnitude. As noted below, he wished for Commodore Preble to have the chance to “knock the town about their ears” (Thomas Jefferson to James Madison 27 April 1804, in Smith, Republic of Letters, 1324), and deliver to the Tripolitans “the just severities we contemplate” (Thomas Jefferson to James Madison, 15 April 1804, in Smith, Republic of Letters, 1308). However, as battles such as Yorktown demonstrated, bombardment of civil centers was not eschewed, in practice. However, even as Sofka comments, Jefferson accepted Lear’s agreement with the Pasha because principally he wished “that the Tripolitan navy and its ability to commit further acts of piracy had been crippled.” Sofka, “Jeffersonian Idea of National Security,” 542.

72 Secretary of the Navy to Richard Dale, 20 May 1801, in Knox, Naval Documents, 1:467.

73 Secretary of the Navy to Edward Preble, 13 July 1802, in Knox, Naval Documents, 2:475.
administration considered that the sailors of the Barbary powers were acting under the orders of their sovereign. When a question arose concerning the ketch *Gheretti*, a possibly Ottoman-Turkish vessel that had joined Tripolitan vessels in attacking a US warship, Jefferson then employed “pirates” in a more strictly legal sense. He argued that

She had joined our enemies in war against us....Had we considered her crew as Ottoman subjects, we must have hung them up as pirates and perhaps complained to that government. We thought it a proof of moderation to identify them, as they had done themselves with the Tripolines, to confiscate the vessel, and, on the peace, to discharge them.74

Turkey was at peace with the United States, a posture Jefferson wished to preserve, and did not relish disturbing with this particular incident. But if the crew of the *Gheretti* was in fact Turkish, Jefferson reasoned, they had warred against the United States without either orders or a letter of marque from their sovereign, the Sublime Porte in Constantinople. They should thus be considered as stateless pirates warring on their own behalf.

Before Jefferson offered his opinion on the *Gheretti* case, he had dealt likewise with those he saw as genuine “pirates” closer to home. In 1805 European privateers of various flags congregated off United States coasts, unlawfully stopping and seizing ships that were leaving American ports. Jefferson noted that they did so “some without commissions, some with insufficient commissions, and some doing what their commissions do not warrant, all of which is within the definition of piracy.”75 As he explained to Congress, Jefferson ordered a squadron to patrol off the United States coast

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75 Cabinet Minutes, 8 July 1805, Jefferson Papers LOC internet.
for these maritime reprobates “and to bring the offenders in for trial as pirates.”\textsuperscript{76} As Jefferson realized, the law of nations defined pirates as those who warred without (sufficient) warrant from a lawful sovereign. At no time did Jefferson conceive the “Tripolines” as pirates in this sense but, as Vattel described them, as crewmen of warships whose actions were “authorized by their sovereign,” in this case the Pasha of Tripoli, who had declared war against the United States.\textsuperscript{77}

The primary contention between Tripoli, the other nations of the Maghrib, and the United States was the attempt by North African powers to establish tributary agreements with the United States. Such relationships meant the United States paid for the ability to transit the waters adjacent the North African coast. The Turkish title of the Dey of Algiers’s equivalent Fleet Admiral was \textit{Vekil-i Karaj} or “Minister of Tax.”\textsuperscript{78} Abdrahaman, the Tripolitan ambassador to London in 1786, explained to John Adams that in spite of America’s having “done no injury to Tripoli” Americans would have to negotiate with the North African states, who were “the souvereigns of the Mediterranean, and there could be no navigation or peace without a Treaties of peace.”\textsuperscript{79} In a fit of amateur anthropology, Consul Eaton arrived at a sort of interpretation for political culture in Mediterranean North Africa when he noted that their customs seemed like those of

\textsuperscript{76} Thomas Jefferson’s address to Congress, 3 December 1805, \textit{Am. St. P.}, 1, \textit{Foreign Relations} 1: 66.
\textsuperscript{77} Vattel, \textit{Les Droits Des Gens}, 258.
biblical times, when rulers such as Solomon and the Queen of Sheba gave and received gifts on official occasions. In this sense he was like many of his European contemporaries when he depicted the civilizations of the “East” as suspended in the past. Yet he felt that there was lack of reciprocity, and “Christians,” he fumed, “have been stupid enough to let it become usance, law of nations, here.” The Bey of Tunis saw reciprocity in action, however, when querying the American consuls who complained about a lack of mutual give-and-take, “if it were no favor to have free navigation into the Mediterranean, why do you ask it?” Barbary powers had, amidst the centuries of warfare between Christian and Muslim in the Mediterranean, carved out a customary law through warfare and negotiation that even European states had accepted if for their own mercantilist pretensions, as in the case of France or England, or their inability to do otherwise, as in the case of lesser powers.

These tributary agreements made by European states Jefferson rejected unconditionally. Jefferson was aware of this North African “usage” but did not accept it

80 Prentiss, Life of William Eaton, 73.
81 Prentiss, Life of William Eaton, 67-75. North African customs ensured that North African rulers did present personal gifts to foreign officials. Foreign consuls were sometimes given a presentation attigan, or sword, by the Dey of Algiers. Hamet ebn Abdul Hadir, an Ottoman leader in Egypt wrote to “Thomas Jefferson Emir, who commands Emirs,” to present his gift of a “beautiful young female camel (or dromedary) for your excellency’s own use,” but lamented that no means presently existed to transport the animal (Hamet ebn Abdul Hadir to Thomas Jefferson, 18 August 1805, Jefferson Papers LOC internet). In 1805 the Bey of Tunis’ ambassador to the United States Sidi Suliman Mellimelli brought with him, “according to the custom of his country, a number of presents intended for the President one Item of which is four Arabian Horses” (Thomas Turner to Edward Preble, 13 November 1805, in Knox, Naval Documents 6:308). Jefferson responded in kind with presenting the Bey of Tunis with a ship to replace the one which was at the center of the diplomatic dispute arising from the Tripolitan War, though not without a written lesson in the (European) legal practice of blockades (Thomas Jefferson to the Bey of Tunis, 28 June 1806, Jefferson Papers LOC internet). The most serious example of reciprocity was when Dey Hassan Pasha wrote letters to the rulers of Tunis and Tripoli, obliging them to make peace with the United States. When the Bey of Tunis still proved recalcitrant, the Algerian Dey threatened him with military power. Long after United States officials had discerned that one of Yusuf Pasha of Tripoli’s biggest complaints about the 1796 treaty was the implication that he was a vassal to Algiers, the Dey still supplied a letter insisting the Pasha relent. Tobias Lear wisely pocketed the letter in 1803, but thanked the Dey nonetheless.
as valid in the face of his concepts of the law of nations. At the simplest level Morocco, 
Tripoli, Tunis, and Algiers had initiated hostilities with the United States at different 
times between the American Revolution and 1803. But more importantly the practice of 
the North African states exacting tribute for Mediterranean transit, as Jefferson saw it, 
was a violation of an important tenet of natural law.

Jefferson's rejection of the Maghrib's claim of the right to tax those transiting the 
sea first rested on the grounds of natural law. He and other United States policymakers 
had engaged in wearisome battles in favor of free, unmolested trade on the high seas 
since the Revolution. In 1791, citing a battery of law of nations canonists, he contested 
the Spanish right to close the Mississippi to traffic:

If we appeal to [the law of nations], as we feel it written in the heart of man, what 
sentiment is written in deeper characters, than that the Ocean is free to all men, 
and the Rivers to all their inhabitants? Is there a man, savage or civilized, 
unbiased by habit, who does not feel and attest this truth?82

After the war with Tripoli, Jefferson had outlined the freedom of the seas principle in the 
context of North African policy, and to a North African ruler. The Bey of Tunis in 1806 
was subjected to a harangue when Jefferson wrote to him that "nature having placed the 
ocean as a common highway for the intercourse between nations, all have equal right to 
its use, and that in the maintenance of that right, we calculate neither expense nor 
danger."83 His conflict with the North Africans rested on a state's perfect right, 
guaranteed by natural law, to transit the sea unmolested in peacetime. Importantly, this 
was specifically inscribed in the law of nations canon by Vattel. The European law of 
nations admitted, under no circumstance, a custom such as the Maghrib's in which states

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83 Thomas Jefferson to the Bey of Tunis, 28 June 1806, Jefferson Papers LOC internet.
declared it their ability to possess and exact tribute for the use of a certain patch of sea. What the Maghribi states did, however, in calling for a tributary toll on transit of the Mediterranean amounted to the infringement of maritime freedoms, and was a violation of a nation’s right (derived from its sovereignty) as a state under the natural law. The states of the Maghrib were infringing on other states’ basic rights to freedom of the sea without an equivalent grounds founded in their own rights (because Europeans and Jefferson would reject any pretense of “self-preservation”).

Jefferson’s concerns about freedom of the seas were not limited to Muslim states. He later leveled similar complaints about “piracy,” as well as shrill accusations of being a piratical state, in support of a war against Great Britain. In 1801 Jefferson was forced to admit that at least on some issues, Britain’s claim to search and seizure on the high seas in wartime was legitimate, according to the law of nations. Prior to 1805 Jefferson had considered Britain’s behavior to include what he felt were violations of the law of nations, but found them insufficient reason to risk war, even a just war, against Britain’s power. The British Orders-in-Council, together with the Leopard’s attack on the Chesapeake in 1807, caused Jefferson to consider war with Britain, and to finally commit the United States to a detrimental embargo, a form of economic warfare he could not have waged against Tripoli, but one that had been a mainstay threat of the Jeffersonian

84 See for example Vattel, Les Droits Des Gens, 106-7. As stated above, Jefferson’s early plans for an alliance against North African powers was envisioned to “bring them to reason,” which was on par with Vattel’s call for an alliance against those who do “an injury to all nations,” in order to “check its claims” to control of the sea. Vattel discussed controlling the sea in terms of excluding others, but Jefferson’s identical arguments to the Barbary rulers themselves indicate the analogy. Furthermore, Vattel admitted that states can treaty away their rights, as the United States did by agreeing to buy treaties in North Africa.

administration’s foreign policy. By 1809, Jefferson was, he confessed to President James Madison, “for some time been persuaded that the government of England was systematically decided to claim a dominion of the sea, and to levy contributions on all nations, by their licenses to navigate, in order to maintain that dominion to which their own resources are inadequate.” Jefferson did not spare either belligerent when he bemoaned to John Adams in 1812 that “As for France and England, with all their preeminence in science, the one is a den of robbers, and the other of pirates.” In 1813 Jefferson raged that “Ever since the rupture of the treaty of Amiens, the object of Gr. Britain has visibly been the permanent conquest of the ocean, and levying a tribute on every vessel she permits to sail on it, as the Barbary powers do on the Mediterranean which they call their sea.” In Jefferson’s mind, war with the Muslim, African Maghrib and Christian, European Great Britain was centered on the same grounds; injuries done to the United States according to the law of nature and of nations.

 Upon assuming the presidency, Jefferson, having spent his political life advocating opposing the North African states instead of paying tribute, was displeased

86 For Jefferson’s consideration of war see for example Thomas Jefferson to Robert Smith, 3 September 1807, Jefferson Papers LOC internet.
87 Thomas Jefferson to James Madison, 19 April 1809, Jefferson Papers LOC internet. Thomas Jefferson to James Madison, 15 October 1810, Jefferson Papers LOC internet. To Henry Middleton Jefferson wrote, railed against both “a ruthless tyrant drenching Europe in blood...on the other a nation of buccaneers, urged by sordid avarice...” Thomas Jefferson to Henry Middleton, 8 January 1813, Jefferson Papers LOC internet. To George Logan Jefferson wrote of England’s “innovations on the law of nations to cover real piracies.” “But the desire of seeing England forced to just terms of peace with us,” Jefferson continued, “makes me equally solicitous for her entire exclusion from intercourse with the rest of the world, until by this peaceable engine of constraint, she can be made to renounce her views of dominion over the ocean, of permitting no other nation to navigate it but with her license, and on tribute to her; and her aggressions on the persons of our citizens who may choose to exercise their right of passing over that element.” Thomas Jefferson to George Logan, 3 October 1813, Jefferson Papers LOC internet. Matthew Carey also shared Jefferson’s comparison of Britain to “Barbary,” as early as the 1790s writing that the practice of plundering shipwrecked vessels was as common to the English coast as it was to the North African. Carey, Short Account of Algiers, 4.
89 Thomas Jefferson to William Short, 18 June 1813, Jefferson Papers LOC internet.
with the treaties made by his Federalist predecessors. But President Jefferson was just as committed as Secretary of State Jefferson to the United States faithfully and honorably adhering to its treaty obligations, per the law of nations. When he drew up his “Proposed Convention against the Barbary States” back in 1786, he recognized that where the coalition’s plans “would interfere with treaties actually existing between any of the parties and the said states of Barbary, the treaty shall prevail, and such party shall be allowed to withdraw from the operations against that state.”

Subsequently the United States had made treaties with the North Africans stipulating the payment of tribute either in lump sum or in perpetuity, and Jefferson felt it had to fulfill those stipulations to the letter. Jefferson did not mean to overthrow the system of the North African states, as Hendrickson and Tucker assert, but not simply because he was trying to limit the scope of his naval action. Rather, Jefferson would not overthrow the conventional law that made the United States a participant in that system. He reported to Congress in his first address that having found the United States lagging behind in payment of its stipulations to the Maghribi powers, he “made immediate measures” to rectify this, to reserve “to ourselves the right of considering the effect of departure from stipulation on their side.”

He quickly added that the letters from consuls and other documents he presented should


91 The Jeffersonian Administration like the previous ones sought to renegotiate with Barbary leadership to have the treaty stipulations in naval stores commuted to a cash annuity. This was partly the result of an uneasiness about arming the Barbary states, and partly to simplify the process overall. One argument that consuls were told to put forth was that in light of the European belligerents, such articles might more easily be seized as contraband while crossing the Atlantic.

92 Hendrickson and Tucker, Empire of Liberty, 294-9.
help the Congress judge whether or not the Maghribi states would be as faithful in their obligations as well. To Madison he fumed “I am an enemy to all these douceurs, tributes & humiliations. What the laws impose on us let us execute faithfully; but nothing more.” The President then suggested putting before Congress a report that would demonstrate the false economy of relying on the Maghribi powers to be consistent, reasonable, and faithful towards the United States. Yet Jefferson admitted to James Monroe in 1801 that “Algiers threatens and has a right, there being 3. years arrears of tribute due to her, while our Treasury has been overflowing with money.” While Jefferson argued strenuously for military-naval action instead of payment, he would also honor the letter of the law that granted Algiers a “right” to tribute, even better than the administrations who had signed the treaty. Only if the North Africans nullified the treaties (and Jefferson felt certain they would), could the United States be released from its treaty obligations.

With Tripoli, the United States had, the Jefferson administration felt, fulfilled its treaty obligations, and no yearly tribute was stipulated. Therefore the Jefferson administration sought to maintain the 1796 treaty with Tripoli. Jefferson felt that any

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95 Thomas Jefferson to James Monroe, 29 May 1801, Jefferson papers LOC internet. Michael Kitzen persuasively argues that the lethargy of the Adams administrations in dealing with and meeting the treaty stipulations of the North African states led to Tripoli’s declaration of war. See Michael Kitzen, “Money Bags or Cannon Balls: The Origins of the Tripolitan War, 1795-1801” Journal of the Early Republic 16, no. 4 (1996): 601-624. Jefferson wrote to Wilson Cary Nicholas that “We have taken these steps towards supplying the deficiencies of our predecessors merely in obedience to the law; being convinced it is money thrown away, and that there is no end to the demand of these powers, nor any security in their promises.” Thomas Jefferson to Wilson Carey Nicholas, 11 June 1801, Jefferson papers LOC internet.
new demands made by the Pasha were “unfounded either in right or in compact.”

When the Pasha declared war on the United States, Commodore Dale’s squadron was enroute to the Mediterranean, and upon arrival, Dale wrote several letters to the Pasha detailing his president’s position. “Your Excellency must be fully convinc’d,” Dale implored the Pasha, “that it is a Violation on your part in braking the Treaty of Peace and Amity, that was made and agreed to between” the United States and Tripoli. Even if the Pasha had a disagreement with the Jeffersonian government, the treaty stipulated that other means of arbitration should be pursued before war, which the Pasha had not taken. According to the “1st and 12 articles of the Treaty made the 4 of November 1796,” which Dale saw fit to restate in his letter, the Dey of Algiers should have been an arbitrator between the two nations when difference arose. As one scholar astutely points out this probably rubbed salt in an open wound as one of the Pasha’s principle complaints with the 1796 treaty was its implication that he was a vassal of the Algerine Dey. Despite Dale’s blunder, however, his stipulations indicated the Jeffersonian administration’s position: the United States had respected its part of the treaty—the Pasha should have respected his.

As seen above, Jefferson’s policy toward the Maghrib was framed by an ideology of a law of nations based on nature. Yet distances involved for transiting information to

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96 Among the Pasha’s claims on the United States government, at least according to Consul Cathcart, were a ship, and a renegotiation of the treaty to include yearly tributary payment. See Thomas Jefferson, Address to Congress, 8 December 1801, *Am. St. P.*, 1, *Foreign Relations*, 1:53.

97 Seyd Abedin, “In Defense of Freedom: America’s First Foreign War. A New Look at the U.S. Barbary Relations, 1776-1816,” (Ph.D. diss., University of Pennsylvania, 1974), 187. This issue would be addressed, as indicated above, later in the war, when United States negotiators were told to strike the Algerine arbitration from the treaty if the Pasha so wished it. The Pasha’s other claims on the United States government, at least according to Consul Cathcart, were a ship, and a renegotiation of the treaty to include yearly tributary payment. These were demands that Jefferson considered “unfounded either in right or in compact.” See Jefferson’s address to Congress, 8 December 1801, *Am. St. P.*, 1, *Foreign Relations*, 1:53.
and from Washington meant that often, when individual operations got underway, Jefferson could only await the results. But when Jefferson and his administration issued instructions to military and diplomatic officers, a prime concern was international legality.

Moreover Jefferson was not acting merely in support of trade. Sofka sees an aggressive Jeffersonian naval policy defending American commerce as "motivated by almost classic mercantilist logic."98 "A small neutral power," he points out, "could base its claims on little more than the sanctity of treaties and enlightened notions of free trade."99 Sofka is correct that Jefferson was not an unequivocal pacifist, but his portrait of Jefferson as a cynical belligerent is misleading. Jefferson was willing to carry out military operations in the Mediterranean, not merely defending trade, but also defending "enlightened notions" as well. He even grew irritable at the thought that the United States fought solely for the interests of merchants and their allies, the navy-men. Aware of the important implications of commercial interests in the Mediterranean he recognized that "honor and interest" were linked, and prospects for trade were part and parcel with the respect shown the United States flag in foreign parts.100 The administration was more concerned with the vigorous prosecution of the war than simply protecting commercial interests in the Mediterranean. When the navy secretary suggested supplementing the forces involved, Jefferson wrote to Madison in March of 1803 that "no new fact justifies such a change in plan...." Lambasting the navy for wasting resources convoying

100 Doron Ben-Atar comments that in Barbary policy, Jefferson had "another opportunity...to assert that the honor of the new republic was closely tied to its economic independence." Ben-Atar, Jeffersonian Commercial Policy and Diplomacy. (New York: St. Martin's, 1993), 107.
mercantile vessels instead of closely blockading Tripoli, he added that “Every officer in
the navy, and every merchant in the United States” would like to send another frigate,
“because they see but one object, themselves.”\textsuperscript{101} Commodore Dale’s first squadron to
the Mediterranean was not suffered to wait for merchant ships heading to that sea to form
a convoy.\textsuperscript{102} After the war Jefferson quickly drew down the burgeoning ocean-going,
commerce-protecting navy in favor of a defensive, militia-based coastal gunboat force.

Scholars have suggested that if Jefferson went into the war with Tripoli bearing
principles derived from the law of nations, he abandoned them, principally by offering
his albeit limited support of William Eaton’s plan to foment a \textit{coup d’etat} in Tripoli.
Hendrickson and Tucker comment that the subsequent peace “had also been effected in
part by the very methods that Jefferson had always set his face against,” notably the
limited support Jefferson did tender to the ex-Pasha, Hamet Qaramanli.\textsuperscript{103} Sovereignty,
so important to the eighteenth-century European law of nations, was a principle upheld
by Jefferson, especially in defense of the rights of the United States. Integral to a state’s
rights as sovereign was that foreign nations should not involve themselves in the
domestic problems of other states and certainly should not foment rebellion or
insurrection. In this light it seems easy to see Jefferson’s policy, regardless of the degree
to which the administration approved of cooperation with Hamet Qaramanli against his

\textsuperscript{101} Thomas Jefferson to James Madison, 22 March 1803, in Smith, \textit{The Republic of letters}, 1267-8.
\textsuperscript{102} Robert Smith to Thomas Fitzsimons, 4 June 1801, in Knox, \textit{Naval Documents}, 1:486; Fitzsimons was
the chairman of the Philadelphia chamber of commerce. A month later Smith offered to Fitzsimons that
any ship that wished may convoy themselves with the \textit{George Washington}. The \textit{Washington}, “although not
fully equipped and manned as a ship of war” was what the administration was willing to supply to protect
merchantmen, but only “so far as they may bound the same course.” Robert Smith to Thomas
Fitzsimmons, 1 July 1801, in Knox, \textit{Naval Documents} 1:496.
\textsuperscript{103} Hendrickson and Tucker, \textit{Empire of Liberty}, 298. Hendrickson and Tucker confined their entire
discussion of Jeffersonian diplomacy toward the Barbary states to a five page-long endnote.
brother, as a violation of Tripoli’s sovereignty, and thus of a cardinal principle of law of nations ideology. The received interpretation of the Hamet Qaramanli episode has been summed up by one scholar, that “in the fall of 1804, William Eaton was on assignment to incite an internal insurrection in the State of Tripoli.” \(^\text{104}\) Yet William Eaton’s plan against the Pasha’s government was not approved by the Jefferson Administration under terms that would have violated the law of nations strict maintenance of sovereignty.

Hamet Qaramanli’s case has been at the center of enduring controversy, since the second Jefferson administration. At issue is the cooperation of United States’ forces with the Tripolitan Pasha’s exiled brother. Pasha Yusuf Qaramanli assumed power after allegedly murdering one older brother, Hassan, and through treachery exiling another, Hamet, while keeping his family hostage. James Leander Cathcart, who up until the war was the United States consul in Tripoli first advocated the plan which was taken up in 1802 by William Eaton, United States consul in Tunis. After falling out with the Bey of Tunis and his government, Eaton returned to the United States to advocate Hamet’s case before the administration. Hamet, however, had accepted an offer by his brother and erstwhile usurper to assume the governorship of Derne, a port city to the East of Tripoli, by way of reconciliation. But in January of 1803 he wrote a letter to President Jefferson in which he declared his raising the standard of revolt to regain his rightful throne and asked for assistance. \(^\text{105}\) The Jefferson Administration sent Eaton back to the Mediterranean with support but, as Eaton complained to Dwight, it was limited after the


\(^{105}\) Sidi Hamet Qaramanli to Thomas Jefferson, 20 January 1803, in Knox, Naval Documents, 2:347. Qaramanli proposed to assault Tripoli with “an hundred thousand men.” He requested “Forty thousand Spanish Dollars” and military supplies, promising to repay them upon taking Tripoli, and to “remain the faithful friend of the United States of America.”

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President learned of the failure of Hamet’s first campaign and his flight to Egypt. Eaton nevertheless persevered. He found Hamet (embarrassingly, among the rebels against Ottoman rule in Egypt) and staged a march with several United States Marines, Hamet’s followers, Greek mercenaries, and numerous bands of locals to Derne, in Tripoli’s eastern territory. There, after taking that city Eaton and Hamet’s “army” was halted by Yusuf’s forces and a lack of resources. Meanwhile United States and Tripolitan officials had agreed upon a treaty and so Eaton, Hamet, his entourage, the marines, and the Greeks were spirited away from Derne in the night, abandoning the Muslim remainder to flee from Pasha Yusuf’s army. After the war Federalists latched onto Eaton and Hamet's cause, arguing that the Jeffersonians had done badly by the deposed monarch.

But the Jeffersonian administration thought it had the right under the law of nations to ally with Hamet and even to support him. To be sure, law of nations writers were wary of one state’s inciting insurrection in another. But Vattel, for example, did not condemn a state’s allying with one belligerent in a civil war against the other if it felt its cause was just, as the French aided the Continentals in the American Revolution.  

“Altho’ it does not accord with the general sentiments or views of the United States, to intermeddle with the domestic controversies of other countries,” Madison wrote to (ex-)consul James Leander Cathcart that it can not be unfair in the prosecution of a just War, or the accomplishment of a reasonable peace, to take advantage of the hostile cooperation of others. As far therefore as the views of the Brother may contribute to our success, the aid of them may be used for the purpose.  

107 James Madison to James Leander Cathcart, 22 August 1802, in Knox, Naval Documents, 2:244. To Eaton Madison wrote a similar, if abridged instruction: “Although it does not accord with the general sentiments or views of the United States, to intermeddle in the domestic contest of other countries, it cannot
By this Madison meant that the United States was cooperating with an ally whom the
Jefferson administration chose to treat as a faction in a civil war. Hamet’s complaint
against his brother long preceded the United States’ present troubles. When in 1803
Hamet wrote Jefferson declaring his intention to raise an army of followers, this only
confirmed the administration’s view. When the Jeffersonian administration voted to aid
its ally with 20,000 dollars in funds it did not, as Jefferson explained afterwards to
Congress, intend to “raise, pay, or subsist an Army of Arabs.”\textsuperscript{108} It was assumed that
Hamet Qaramanli would form his own force as he stated he would. As Eaton bitterly
complained, the 20,000 dollars was the smaller sum agreed upon after the administration
learned of the failure of Hamet’s first attempt to raise his standard at Derne, and reflected
the administration’s growing skepticism about the plan.\textsuperscript{109} Nor, as Jefferson explained in
1806, would the United States field its own land forces in support of a “union of our own
object with the fortune of the ex-Pasha.”\textsuperscript{110} The goals of the United States, the
administration maintained, must be kept separate from that of Hamet Qaramanli, even if
they were temporary allies.

Moreover the United States was not in principle (or, as it turned out, in practice)
attempting to overthrow the government of Pasha Yusuf and install a “puppet”

\textsuperscript{108} Cabinet Minutes, 26 May 1804 in Jefferson Papers LOC internet. Thomas Jefferson to Congress, 13
January 1806 in Jefferson Papers LOC internet.
\textsuperscript{110} Thomas Jefferson to Congress, 13 January 1806, in Jefferson Papers LOC internet.
government in its place. The Jefferson administration made no promises to put Hamet back on the throne of Tripoli. Secretary of State Madison informed the consuls that:

Should this aid be found inapplicable or his own personal objects unattainable, it will be the due to the honor of the United States, and to the expectations he will have naturally formed, to treat his disappointment with much tenderness, and to restore him as nearly as may be, to the situation from which he was drawn; or to make some other convenient arrangement that may be more eligible to him.  

Madison emphasized to both Eaton and Cathcart that the United States might make a treaty with the ruling Pasha, in which case the United States would not forget Hamet—but they were not to make promises in the meantime. Eaton blithely ignored such views and made his own compact with the deposed Pasha, declaring that the United States would fight until Hamet was once again the Pasha of Tripoli (in exchange for Danish and Swedish tribute as war-reparations).

Other officers, including the overall commander in the Mediterranean, had a clearer understanding of their orders concerning Hamet. As he learned of Eaton’s Herculean endeavors Commodore Barron developed “feelings of doubt and uneasiness.”

“You must be sensible, sir,” Barron (fruitlessly) cautioned Eaton:

that in giving their sanction to a cooperation with the exiled Bashaw, Government did not contemplate the measure as leading necessarily and absolutely to a reinstatement of that Prince in his rights on the regency of Tripoli. They appear to have viewed the cooperation in question as a means, which provided there existed energy and enterprise in the exile, & attachment to his person on the part of his former subjects, might be employed to the common furtherance and advance of his claims and our cause, but without meant to fetter themselves by any specific or definitely attainment as an end...
The Commodore saw fit to enclose that portion of his own instructions for Eaton’s perusal. He also reported his misgivings about Eaton’s plans and actions to the Secretary of the Navy.

That the Jefferson administration sought a limited alliance with Hamet Qaramanli was not novel; his administration also sought cooperation with Sweden, which in 1802 was also at war with the Pasha of Tripoli. Secretary of State Madison told the United States negotiator Cathcart that he could consult and cooperate with Swedish officials as “A joint appeal to the fears and interest of the Bashaw, by extinguishing his hope of dividing his enemies, will drive him to better terms with both.” But the resulting treaties must be independent of each other, Madison stipulated. Swedish and American goals, even if parallel, were mutually exclusive. The Secretary of State also stipulated that the US officers were not to use Sweden’s war against Tripoli to their own advantage, unless it appeared “that Sweden was playing such a game against us.”114 Similarly the goal of an alliance with Hamet was not a coup d’etat practiced merely opportunistically. Rather it was to further the interests of the United States and that of their ally, if appropriate.

When a political row later developed over the details of the operation, Jefferson vehemently argued his position. Hamet solicited the United States government for pecuniary support afterwards, and Jefferson suggested “sending him the extracts from our instructions, by which he will see that if our agent engaged any thing beyond that he went beyond his powers, and could not bind us.”115 While the United States agreed to provide support for Hamet, it did not intend to raise the army he implied that he had. When it

114 James Madison to James Leander Cathcart, 18 April 1802, in Knox, Naval Documents, 2:126-8.
115 Thomas Jefferson to James Madison, 21 October 1807, in Smith, Republic of Letters, 1510.
became clear that he did not possess such forces, Jefferson related all this along with
Hamet’s application for support to Congress, citing specifically early correspondence
written by Hamet himself to the effect that he understood the administration’s policy.
The president further argued that Hamet had first approached the United States to seek an
alliance and that “concerted operations by those who have a common enemy were
entirely justifiable... without binding either to guarantee the objects of the other....”\(^{116}\)
The Federalists might have been correct in pointing out the Jefferson administration’s
harsh parsimony toward the exiled Pasha after the 1805 expedition. And Jefferson’s
policy of allying Hamet Qaramanli on such limited terms appears cynical in the
aftermath, not least because of the dubious results of that alliance. Yet the Jefferson
administration did not exceed the bounds placed on it by the law of nations that they
accepted as binding, and their orders to their officers, and so to Hamet Qaramanli
himself, reflected this.

In his policy toward the states of the Maghrib, Thomas Jefferson employed his
ideas of justice and right, and the natural basis for these derived from the natural law
ideology as applied to statecraft. While viewing the Maghribi states as capricious, he
viewed their governments as states, possessed of sufficient sovereignty to participate in
an international community of sovereign states. He formulated a policy which took into
account obligations owed to the Maghribi states by the United States. When war did
come, he employed military power to seek what he saw as the justice to which his nation

\(^{116}\) Thomas Jefferson to Congress, 13 January 1806, in Jefferson Papers LOC internet. Jefferson reasoned
this in part by citing the ex-Pasha’s own words “your operations should be carried on by sea, mine by
land,” implying that the U.S. would not supply him with military forces.”

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was entitled. While commentators since have condemned his administration’s conduct of the war, notably surrounding Hamet Qaramanli, from their view in Washington the Jefferson Administration felt it was acting well within the confines of the moral “prosecution of a just war.”

Tucker and Hendrickson decry Jefferson’s tendency to equate his decisions with a moral right, and those of his political and diplomatic adversaries with injustice. In the case of the Maghribi states, this is true as well. True also is that Jefferson was at times inconsistent, and at others unable to resist decisions that might have fell short of his ideas of moral right. But this fact—indeed, judgment—must not mask the fact that Jefferson was not simply attaching moral constructions to each decision he made, but rather was making decisions heavily influenced by a comprehensive ideology. If natural law did not tell Jefferson how to chart his course, it dictated how he read the chart.
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