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The struggle for democratic government in Malta

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When Malta became part of the British Empire in the early 19th century, it was governed under an autocratic system, with the Governor ruling alone. Though constitutional reforms over the next century and a half saw gradual attempts at democratisation, autocratic tendencies remained. Since independence in 1964, the archipelago has been governed by a system based on the Westminster model. Despite this, myriad factors have meant that elements of autocracy remain a central feature of Maltese politics. This chapter traces the origins of Malta's Government from its autocratic roots, and analyses the circumstances that reflect a long-endured struggle to achieve genuinely democratic government on the islands. In so doing, the chapter engages with literature that examines the link between democracy and state-size and examines the extent to which Malta's small size and population underpin these concerns regarding government and democracy on the islands.

KEYWORDS: Malta; autocracy; democracy; smallness; Westminster model.

1. Introduction

The Constitution of Malta, granted to the islands in 1964 upon their independence from the British Empire, establishes the Westminster model of government on the archipelago. The Maltese Parliament, comprising a base-level 65 MPs (though capable of being made up of as many as 81 MPs) is elected every five years. The political party that commands a majority of the seats in the House of Representatives is appointed to Government by the President, though the legitimacy of that Government is predicated on it maintaining the confidence of a majority of the legislature, this being ensured through constant scrutiny and accountability. This chapter argues, however, that the full democratic potential of the Westminster model is not fully realised in Malta, and that this, in turn, permits the Government to display autocratic tendencies. This trend is exacerbated by the fact that struggles for democracy and the

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persistence of autocracy is long embedded within Maltese rule. Though there are several factors that underpin this reality, this chapter focuses specifically on the impact of Malta's small size.

2. Maltese constitutional history and autocratic experiences

2.1. Malta under the Knights of the Order of St John

Malta is an archipelago of five islands,[1] situated 100km south of Sicily, in the middle of the Mediterranean Sea. Covering just 316km^2 and with a population of over 550,000,[2] Malta is the most densely populated member of the European Union. Over the centuries, the country has been colonised by a range of global powers.[3] Sammut explains:

> Malta … has been inhabited for 7000 years. In the ninth century BC, the Phoenicians colonised the Maltese islands. A succession of other rulers followed[,] notably Carthaginians, Romans, Byzantines, Arabs and then Spanish. In 1530 Malta was ceded by the Emperor Charles V of Spain to the Knights of the Order of St John. During the next 250 years, Malta functioned as a *de facto* independent state ruled by the Knights. After the departure of the Order in 1798, the French forces briefly occupied Malta. Then at the request of the Maltese, the … islands were placed under British protection in 1799 and formally became part of the British Empire from 1814 under the Treaty of Paris. Malta gained its independence on 21 September 1964 and became a democratic constitutional monarchy. The Constitution was amended on 13 December 1974 turning Malta into a Republic …[4]

Whilst much of the focus of this chapter is on present-day Malta and, where relevant, the impact of its times as a British colony, it is worth noting the early emergence of autocracy on the islands. When the Knights of the Order of St John arrived in Malta in 1530, the

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[1] The five islands are Malta, Gozo, Comino, Comminotto, and Filfla.

[2] World Bank Group, 'Population, total – Malta' *World Bank Group* (nd): https://data.worldbank.org/indicator/SP.POP.TOTL?locations=MT.

[3] For deeper discussion of Malta's history, see: B Blouet, *The Story of Malta*, 9th edn (San Gwann, BDL Publishing, 2022); JS Abela, *Malta: a Brief History* (San Gwann, BDL Publishing, 2014).

[4] I Sammut, 'Introduction – The Maltese Legal System and the EU' in I Sammut and J Agranovska (eds), *The Implementation and Enforcement of European Union Law in Small Member States: A Case Study of Malta* (Basingstoke, Palgrave Macmillan, 2021) 1, 1 – 2.

Università and the *Consiglio Popolare* were the prevailing form of government.[5] It did not take long, however, for a new approach to be established. As Pirotta observes, 'the government of the Order in Malta was deeply influenced by Spanish and French ideals of absolutism … Autocracy was the dominant form of government to be found throughout Europe at the time'.[6] In addition:

> [T]he religious character of the Order may partly explain its readiness to extend and add to the paternalistic structures it found in Malta. However, as a consequence of the Order's never-ending feud with Muslim princes, within the administrative system adopted in Malta by the Knights, autocracy and paternalism overlapped significantly with the requirements of military security.[7]

The autocratic rule of the Knights was compounded by the reality that 'it was politically inconceivable for the Order to allow a rival administration to exist side by side with its own'.[8] The displeasure that the Maltese people experienced – at least latterly – under the Order of St John is reflected in the fact that, following the expulsion of the French in 1800, and contrary to the 1802 Treaty of Amiens, the local population petitioned to become a British protectorate rather than for the islands to be returned to the Order.[9] They 'presumed that the King of

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[5] The *Consiglio Popolare*, or Popular Council, was the representative assembly made up of 'influential people in the islands along with the mayors and representatives of each parish or village … [together] they deliberated about the taxes to be imposed; [and] the safeguarding of long-held privileges, established customs and sacred traditions' (Abela, *Malta: a Brief History* n 3 above, 112). The *Università* was more an administrative or governmental entity and was made up, in part, of four jurats chosen annually from the *Consiglio Popolare* (see: G Rapinet, *Lectures on the British Constitution and on the Government of Malta* (Valletta, A. Aquilina & Co, 1883) 158). I am grateful to Mark Sammut Sassi for his clarification on these institutions.

[6] GA Pirotta, *The Maltese Public Service 1800 – 1940: The Administrative Politics of a Micro-State* (Msida, Mireva Publications, 1996) 25, citing C Price, *Malta and the Maltese: A Study in Nineteenth Century Migration* (Melbourne, Georgian House, 1954) 1 – 2.

[7] ibid 25.

[8] ibid 26.

[9] Treaty of Amiens 1802, art 10 provided: '[t]he islands of Malta, Gozo, Comino, shall be restored to the Order of St John of Jerusalem, to be held on the same conditions on which they possessed them before the war'. See: J Stanton, 'In Search of Constitutional Supremacy in Malta' (2024) 30(1) *European Public Law* 23, 25.

Britain would reign, not rule, over the Maltese'.[10] In the event, and despite calls for protectorate status, Malta became a British colony in 1813 and it was, at this point, granted the first of its 11 colonial constitutions. Each would come to shape the system of government across the archipelago for the next 150 years.

2.2. Malta as a British colony I – the emergence of a Council of Government

The form of government initially adopted by the British was an autocratic, gubernatorial one. The 1813 Constitution provided that:

> The chief authority is vested in the person of the Governor … The authority of the Governor is limited only by the orders of the King. He is responsible to His Majesty and to his country for his conduct; but his discretion is not to be shackled by any person or by any body of persons resident in Malta.[11]

Whilst the Constitution empowered the Governor 'to form a Council for the investigation and discussion of such matters relating to the civil interests of the Island' if they saw fit,[12] neither the first Governor, Sir Thomas Maitland, nor his immediate successors, adopted such a Council, opting instead to rule alone. In its most simple form, autocracy equates with a 'form of government in which absolute power is concentrated in the hands of an individual, whose decisions are not subject to popular control or external legal constraints'.[13] Maitland's governorship of Malta typified this class of leadership. He was 'a dour but benevolent autocrat. His was a one-man rule … he could take anything but opposition. His system was aptly described as driving and kicking mankind into obedience … he believed in ruling unaided and unhampered'.[14] In this vein, Maitland 'put himself in charge of all branches of

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[10] C Cassar, *A Concise History of Malta* (Msida, Mireva Publications, 2000) 146. See also: Stanton, 'In search of constitutional supremacy in Malta' ibid; P Caruana Galizia, *A Death in Malta: An assassination and a family's quest for justice* (London, Hutchinson Heinemann, 2023) 20 - 21.

[11] Constitution of Malta, 1813. The text of this Constitution is reproduced in W Hardman, *A History of Malta during the period of the French and British occupations, 1798 – 1815* (Uckfield, The Naval and Military Press Ltd, 1909) 527.

[12] ibid.

[13] N Dasandi, *Is Democracy Failing? A primer for the 21st century* (London, Thomas & Hudson, 2018) 27.

[14] JJ Cremona, *The Maltese Constitution and Constitutional History since 1813*, 2nd edn (San Gwann, PEG Ltd, 1997) 2, citing *Letters of the Rt Hon. George Cornewall Lewis Bart to Various Friends* (London, 1870) 69.

the state. He introduced jury trials, but there was no independent judiciary. There was no elected legislature. There was only Maitland'.[15]

Though, under Maitland's successors,[16] '[t]he power of the Governor remained more absolute than ever',[17] there was an acceptance that the system needed to change. The Constitution of 1835, therefore, established an unelected, seven-member Council of Government to assist the Governor in the exercise of his responsibilities.[18] This did not have the power to raise matters for discussion; it only met when instructed by the Governor. Moreover, the Governor was only required to resort to the Council for advice on matters of significant importance and 'retained his absolute power and had the freedom to go against the recommendations of the Council'.[19] Even after the creation of this Council, therefore, autocracy remained in Malta, leading to vociferous calls for a more meaningful, democratic model.

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[15] Caruana Galizia, *A Death in Malta* n 11 above, 21. The extent of Maitland's autocracy was evidenced by the way he dealt with opposition. In 1821, a petition was submitted by British and Maltese merchants to the House of Commons, complaining of the concentration of power in the Governor, and the lack of any form of check, opposition, or advice that might enhance his rule (see: JJ Cremona, *Malta and Britain: The Early Constitutions* (San Gwann, PEG Ltd, 1996) 34). The petition requested, *inter alia*, the 'formation of a Council or Colonial Assembly, without whose sanction no laws could be promulgated and no taxes imposed' (G Mitrovich, *The Cause of the People of Malta* (London, Effingham Wilson, Royal Exchange, 1836) 36). In response to this petition, Maitland 'met a deputation of the merchants[, and] … cunningly alternated bullying with appeasement tactics', ultimately causing the petition to be withdrawn (Cremona, *Malta and Britain* above, 34).

[16] Maitland (1813 – 1824) was succeeded as Governor by Francis Hastings (1824 – 1826) and Frederic Ponsonby (1827 – 1836). After Hastings, Alexander Woodford served as Acting Governor for three months before Ponsonby took office.

[17] Cremona, *Malta and Britain* n 16 above, 35.

[18] 'Four of these [members] were to be official members (the Senior Officer in command of the Land Forces … the Chief Justice, the Bishop of Malta and the Chief Secretary to the Government) and the rest were to be unofficial members' (two Maltese and one British) (Cremona, *Maltese Constitution and Constitutional History since 1813* n 15 above, 3 – 4).

[19] S Portelli, 'The 1849 Constitution: Actions and reactions concerning the beginnings of popular representation in Malta' in Central Bank of Malta, *Landmarks in Maltese Constitutional History 1849 – 1974: The Central Bank of Malta Symposium – June 2011* (23 June 2011) 11, 12.

This came under the Constitution of 1849, which increased the size of the Council to 18 members, eight of whom would be locally elected for five-year terms.[20] The powers of the Council also became more established. The Constitution granted 'to the Governor … with the advice and consent of the … Council of Government, full power and authority to make, ordain and establish Laws not being repugnant to the Law of England or to any Statute of the United Kingdom, or to any Order in Council made or to be made by our Royal Predecessors'.[21] Though any member of the Council could propose new laws, all were 'to be enacted with the approval of the Governor, who had the right to reject or reserve a law for consideration by the Home Government even if he had initially voted in favour'.[22]

The importance of the 1849 Constitution, on paper at least, cannot be overstated. The Maltese had 'succeeded in persuading the Imperial government … [to grant] some form of popular elective representation in the Council of Government, which had only been previously conceded to New South Wales among the colonies'.[23] This said, the new arrangements appeared to keep 'the Governor in total control of public administration', with the elected representatives in the minority on the Council.[24] Moreover, from 1881, an Executive Council was created to 'assist the Governor in the administration of the government'.[25] The Governor 'was required in all cases to consult this Council', though he remained free to depart from their advice, provided he explained to the Secretary of State the reason(s) for this departure.[26]

Majority democratic governance finally came under the 1887 Constitution, which made provision for 14 of the 21-member Council of Government to be locally elected.[27]

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[20] ibid 19.

[21] Constitution of Malta, 1849. The text of this Constitution is reproduced in *Laws, Letters Patent and Other Papers in relation to the Constitution of the Council of Government of Malta* (Malta, Government Printing Office, 1889) 13. The provision here quoted is at 16 – 17.

[22] Portelli, 'The 1849 Constitution' n 20 above, 19.

[23] ibid 21 – 22.

[24] ibid 20.

[25] Cremona, *Maltese Constitution and Constitutional History since 1813* n 15 above, 10.

[26] ibid 10.

[27] See: E Dobie, *Malta's Road to Independence* (Norman, University of Oklahoma Press, 1967) 37. This made the body a representative legislature under section 1 of the Colonial Laws Validity Act 1865, which defined

Whilst this was seen as a significant step in affording the Maltese greater autonomy over questions of local concern, the model *still* fell far short of meaningful representative government. Not only did the Governor retain his power of veto over the Council, but the British Government also retained its ability to exercise full power over the Maltese be through exercise of the prerogative. Problems also soon emerged with the way in which the different branches of the Maltese Government related to one another. Three members of the Executive Council were also members of the Council of Government, generating a potential conflict of interest and 'a feeling … that their freedom of action in the legislature might be impaired by the decision of policy previously taken in the Executive Council'.[28] Though, after 1891, members of the Executive Council would no longer sit on the Council of Government, this separated legislative and executive powers, the former being predominantly local; the latter being predominantly imperial.

Concerns about the system put in place in 1887 were addressed by a reversion back to a system with an unelected majority. The 1903 Constitution retained the 21-strong Council established in 1887, but reduced the number of elected members to eight.[29] This was criticised, and described by the elected members as 'one of the narrowest and most oppressive oligarchies that ever mocked the form of free government'.[30] Consequently, elected members would frequently abstain from the Council.[31] The model established in 1903 remained in place throughout the First World War, after which shifts in imperial aspirations motivated significant change. In the more than 80 years since the first Council of Government had been established, though, the Maltese had not yet achieved a system that was truly – and satisfactorily – representative of local needs. The various models that had

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such an institution as 'any colonial legislature which shall comprise a legislative body of which one half are elected by inhabitants of the colony' (see further: ibid 16).

[28] JJ Cremona, *An Outline of the Constitutional Development of Malta under British Rule* (Malta, Malta University Press, 1963) 17.

[29] The new Council of Government was made up 'of the Governor as President, a Vice-President, the holder of the office of Lieutenant Governor and Chief Secretary to the Government and seventeen other members. Of these, nine were official members (the Crown Advocate and eight other public officers to be nominated) and the rest were unofficial members elected by eight electoral districts, one of which consisted of Gozo' (Cremona, *Maltese Constitution and Constitutional History since 1813* n 15 above, 21).

[30] *Parliamentary Papers 1903,* xliv (Cd. 5217) 1, cited at ibid 22.

[31] See: Cremona, *Maltese Constitution and Constitutional History since 1813* n 15 above, 22.

been introduced had remained inherently imperial, even in the face of attempts to increase local democratic representation.

2.3. Malta as a British colony II – experiments in self-government

After the First World War, desire for a stronger sense of home rule grew across the British Empire.[32] Malta was no exception: after the war, 'a general dissatisfaction against the British Imperial Administration began to emerge'.[33] Widespread unemployment and 'a high rate of illiteracy ran parallel to a general low standard of living and poor educational provision'.[34] Though emigration schemes were introduced to help tackle these challenges, they did little to suppress a tense political environment, which reached its height on 7 June 1919 when riots broke out amid protests that called for stronger political autonomy for the Maltese.

As a consequence of these various factors, the 1921 Constitution established self-government in Malta.[35] This came in the form of a diarchy. Two Governments were created. The first, which had responsibility for purely local matters, was a Maltese Government that was accountable to a bicameral legislature, comprising the Legislative Assembly and the Senate.[36] Seven of the 15 Senate Members were elected, as were all 32 members of the Legislative Assembly. Elections took place through the single-transferable vote model and established a system based on the Westminster model. Government itself was still exercised by an Executive Council, which 'consisted of the Head of the Ministry and not more than six other members'.[37] The second form of government was 'a Maltese Imperial Government … [This was led by the Governor, and it] administered the so-called reserved matters which

[32] Including, for example, in Ireland, Egypt, India, Pakistan, Malta. See: JM Pirotta, *1919 Consequences of Imperial Conceit: Four Case Studies* (Valletta, Midsea Books, 2022).

[33] A Cutajar, *Remembering Sette Giugno 1919* (Ħamrun, Kite Group, 2019) 12.

[34] ibid 13.

[35] See, for further discussion on the 1921 Constitution: D Fenech, *1921 Self-Government in Malta: 1921 – 1933* (Valletta, Midsea Books, 2021).

[36] See: T Borg, *A Commentary on the Constitution of Malta*, 2nd edn (Ħamrun, Kite Group, 2022), 1.

[37] JM Pirotta, 'The 1921 Self-Government Constitution' in Central Bank of Malta, *Landmarks in Maltese Constitutional History 1849 – 1974: The Central Bank of Malta Symposium – June 2011* (23 June 2011) 33, 38.

included the defence of Malta, all the British forces of the Crown, foreign, security and defence policy, coinage and currency, to mention but a few'.[38]

This experiment in self-government was short-lived and was abandoned after just 12 years. Though it had initially worked well, 'with few matters being referred to London',[39] the Constitution was suspended in 1930 amid a political crisis triggered by efforts to replace Italian with Maltese as the language of the courts and exacerbated by the tension that this created between the Maltese Government and the (Catholic) Church. Following settlement of the language question[40], the Constitution was reinstated in 1932. However, when the governing Nationalist Party 'immediately started to enhance the place of Italian in [Maltese] education',[41] the British suspended the Constitution again in November 1933. It was never reinstated.

2.4. Malta as a British colony III – the final steps to independence

An interim system of government was established under the 1936 Constitution. This comprised a fully appointed Executive Council with no fewer than eight members. 'The Governor legislated by means of Ordinances, but power of concurrent legislation by Order in Council was expressly reserved to the Crown, as also [was] power to revoke, alter or amend the Letters Patent'.[42] A more permanent form of Government was introduced under the 1939 Constitution. This kept the 1936 iteration of the Executive Council, and re-established a Council of Government made up of 10 elected members, five *ex officio* members, and five members appointed by the Governor.

After the end of the Second World War, local desire for – and imperial willingness to introduce – a new Constitution were prominent. The subsequent 1947 Constitution bore close resemblance to that granted in 1921, creating a diarchic system of self-government, albeit with a unicameral legislature. This experiment in self-government, however, would be as short-lived as the first. Amid a broader trend of decolonisation across the Empire, significant

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[38] Borg, *Commentary on the Constitution of Malta* n 37 above, 1.

[39] Blouet, *Story of Malta* n 3 above, 212.

[40] 'Maltese became the language of the courts, English and Maltese were to be taught at the elementary school level, and Italian not introduced until the secondary level' (ibid 212).

[41] ibid 213.

[42] Cremona, *Maltese Constitution and Constitutional History since 1813* n 15 above, 39.

discussions throughout the 1950s regarding Malta's relationship with Britain defined the next chapter of its history. The Nationalists favoured – and sought, unsuccessfully – dominion status within the Empire, whilst the Labour Party pursued the idea of integration.[43] This initially found favour both with the Maltese – who endorsed it in a referendum – and the British Government, which went so far as to set the finer details of the arrangement and propose legislation that would give it legal effect. 'In October 1957[, however,] … differences arose … connected with the proposed change in British defence policy and its deleterious effects on Malta's economy'.[44] This led to the resignation of the Maltese Labour Government and, in a drastic reversal in aspirations, calls for independence. Following Labour's resignation, responsible government was again suspended and an absolute gubernatorial system operated for a while before another Executive Council was established under the 1959 Constitution.[45] This system was also short lived, with the 1961 Constitution establishing self-government for a third time.

The system in place under the 1961 Constitution was the most significant to date, not least because of its departure from the diarchic system that had previously operated. The 1961 Constitution 'provided for a [unicameral] Legislative Assembly of fifty members with full legislative and executive powers'.[46] The Governor retained power to appoint judges, as well as a power of veto, whilst the British Government continued its broad oversight of Malta, and the Crown preserved the power to amend or revoke the Constitution by Order in Council.[47] Despite the system put in place in 1961, 'it was made abundantly clear that this Constitution did not represent the final word so far as the constitutional development of Malta was concerned'.[48] Amid the broader trend towards decolonisation across the Empire, in August 1962, Nationalist Prime Minister, George Borg Olivier wrote to the Secretary of State

[43] '[T]hat is to say, the gradual incorporation of Malta into the political, financial and social structure of the United Kingdom whilst retaining its local autonomy and legislature' (ibid 53).

[44] ibid 55.

[45] See: R Mangion, *Constitutions and Legislation in Malta 1914 – 1964,* Volume 2: 1933 – 1964 (Oxford, Whitelocke Publications, 2017), 167.

[46] Cassar, *Concise History of Malta* n 11 above, 230. Powers over defence and external affairs were exercised concurrently with the British Government.

[47] See: Cremona, *Maltese Constitution and Constitutional History since 1813* n 15 above, 64 and 69 – 70.

[48] ibid 72.

'to invoke … the right [of Malta] to be an independent state'.[49] This was granted on 21 September 1964 by virtue of the Malta Independence Order 1964 and the Malta Independence Act 1964. The Constitution that came into effect upon independence was granted by the UK Government and was set out in a Schedule to the 1964 Order. Though the Constitution bore many similarities to other such texts granted to former colonies seeking independence at this time, there was an element of local involvement. The Maltese Attorney General at the time, JJ Cremona, played a central role in the drafting of the Constitution, whilst the finished text was approved by the Maltese people in a referendum.[50]

The first half of this chapter, then, has explored the development of government in Malta, with a particular focus on its time as a British colony. During this period, Malta's system evolved from a gubernatorial autocracy, to one that gradually accepted a democratic element in its Council of Government, finally reaching its height in the – ultimately unsuccessful – attempts at self-government. Whilst increasingly democratic models were established on the islands, however, the mixed success with which these were met ultimately meant that an element of autocracy featured consistently during Malta's time as a British colony. The next section now explores the evolution of government post-independence.

3. Independent Malta – the persistence of autocracy

3.1. Mintoff, the early years, and polarised politics

The system of Government put in place in 1964 remains in operation. Though, for the first decade of independence, Malta was a constitutional monarchy, with Queen Elizabeth II as Head of State, since 1974, it has been a republic. The Constitution formally vests executive power in the President, who is appointed by a two-thirds vote in Parliament for a non-renewable five-year term.[51] In reality, the President is largely a ceremonial figurehead, with the exercise of executive power lying with the Prime Minister and the Government. Based on the Westminster model, the largest party in the unicameral House of Representatives forms the Government. The chamber comprises between 65 and 81 MPs, elected through the single

[49] Cited in H Frendo, *The Origins of Maltese Statehood: A Case Study of Decolonization in the Mediterranean* (San Gwann, BDL Publishing, 2000) 7.

[50] Though the referendum passed with a 51.5 per cent majority (on a turnout of just 74 per cent – low by Maltese standards), the fact that the Nationalists had won the 1962 election with pursuit of independence central to their manifesto further legitimised its realisation.

[51] See: Constitution of Malta, art 78(1).

transferable vote mechanism. The precise number of MPs will depend on the operation of two electoral corrective mechanisms. The first, introduced in 1987 and subsequently amended,[52] ensures that the political party that wins the most votes is able to secure a parliamentary majority. Following the election result, additional MPs from the winning party are elected to ensure that it has a majority of seats in the House. The second mechanism, introduced ahead of the 2022 General Election, 'means that, if one gender is represented by less than 40 per cent of the House, then up to 12 seats can be assigned to MPs of that gender, the allocation being split equally between the parties'.[53] Despite operating within a model that is familiar, common, and democratically credible across the world, in the years since independence, the political climate in Malta has been somewhat volatile, and certain circumstances and events have presented concern for the state of the Maltese democracy.

During the first 40 years after independence, Maltese politics became increasingly polarised with the two parties, the Nationalists and Labour, adopting contrasting stances with respect to the way in which Malta would develop post-independence. Nationalist Governments[54] tended to pursue agendas that were more neo-liberal, facilitating Malta's engagement with the wider world and stronger alignment with the West, also liberalising the economy. It was the Nationalists, for example, who incorporated the ECHR into Maltese law,[55] and who oversaw Malta's accession to the European Union in 2004 and adoption of the Euro in 2008. By contrast, Labour Governments[56] adopted an approach that sought to prioritise Malta's own interests. Labour favoured close ties with Gaddafi's Libyan regime,[57] they negotiated the closure of the British naval base in 1979, and even attempted to halt the

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[52] The procedure was amended in 1996 and 2007. See: A Bencini, *Malta's Hybrid Electoral System: A Constitutional Review*, 2nd edn (Ħamrun, Kite Group, 2022) 163.

[53] J Stanton, 'Maltese independence and the 1964 Constitution' in T Borg and J Stanton (eds), *The Constitution of Malta at Sixty* (Ħamrun, Kite Group, 2024), 43, 59.

[54] Post-independence, Nationalist Governments were in office in Malta between 1964 – 1971, 1987 – 1996, and 1998 – 2013.

[55] See: European Convention Act 1987.

[56] Post-independence, Labour Governments were in office in Malta between 1971 – 1987, 1996 – 1998, and 2013 – present.

[57] E Saliba, 'Gaddafi and Malta-Libya relations' *Times of Malta* (1 September 2011): https://timesofmalta.com/article/Gaddafi-and-Malta-Libya-relations.382747.

process of EU accession during their two years in Government from 1996 to 1998. Prominent during Labour's early periods in office was Dom Mintoff, who served as Labour Prime Minister between 1955 and 1958 and between 1971 and 1984. In an obituary, published the day after Mintoff's death in 2012, Maltese journalist, Debono, opined that

> On an international level, Dom Mintoff … cross[ed] the line several times by courting dictators like North Korea's Kim Il Sung and Romania's Nikolai Ceaucescu, while earning a certain notoriety for his brinkmanship in dealing with a Western world pitted against the eastern bloc at the height of the Cold War.[58]

One of the most notable trends underpinning government in Malta in the years after independence, is the continued tendency towards autocracy, something that was exemplified by Mintoff's leadership style. The former Prime Minister was invariably described as an 'autocrat', 'authoritarian', and as 'harbouring dictatorial tendencies'.[59] Throughout his time in office, Mintoff displayed these tendencies in myriad ways. One example is shown by the 'excesses of overzealous "Mintoffjani" thugs, emblemized by the attacks on the Opposition leader's Birkirkara home, as well as the Times building in Valletta, in October 1979'.[60] Mintoff was notoriously sensitive to criticism and intolerant of opposition. Earlier in the 1970s, he took action that hindered the work of judges, most notably by suspending the operation of the Constitutional Court amid a dispute with the Opposition Party regarding constitutional reform. Moreover, in 1973, Mintoff forcibly took over the shares of the National Bank of Malta, violating the owners' rights.[61] It is in the context of more recent political circumstances, however, that this chapter examines autocracy in Malta.

3.2. Autocracy today

Autocracy can take many forms and display varying characteristics. From a broad perspective, it entails the 'undermining of democratic institutions' and a disregard for

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[58] J Debono, 'Death of a patriarch: Dom Mintoff' *Malta Today* (21 August 2012): https://www.maltatoday.com.mt/news/national/20450/death-of-a-patriarch-dom-mintoff-20120821.

[59] See, for example, ibid.

[60] ibid.

[61] C Mangion, 'Mintoff's forcible take-over violated National Bank shareholders' rights' *Malta Today* (6 February 2014): https://www.maltatoday.com.mt/news/court_and_police/35759/mintoff-s-forcible-take-over-violated-national-bank-shareholders-rights-20140206. Also see: P Caruana Galizia, *A Death in Malta* n 11 above, 36.

established processes and systems, this taking place 'through a series of discrete changes in the rules and informal procedures that shape' the various elements of a working liberal constitutional democracy.[62] In addition, it is not uncommon in the process of autocratization to see an 'increasing power of actors that do not have electoral accountability'.[63]

With regard to this last characteristic, there are examples of clientelism[64] and cronyism[65] in Malta, these practices empowering leaders to use their authority to the advantage of professional and personal allies, and these allies, in turn, being potentially allowed to influence government activity. Observation of cronyism and clientelism in Malta is not novel,[66] and some instances of these practices are – or, at least, have been – enabled by the Constitution. Prior to reforms passed in 2020, the Prime Minister of Malta had the power to appoint judges, magistrates, the Attorney-General, and the Police Commissioner. Whilst, on paper, such appointments were made by the President, this was done loyal to the binding advice of the Prime Minister.[67] Even following the 2016 creation of a Judicial Appointments Committee, which makes an evaluation of potential judicial candidates before an appointment is made, '[t]he choice and ultimate decision … remained in the hands of the Prime Minister'.[68] That retention of this power by the Prime Minister potentially fostered a culture 'of … nepotism, discrimination in treatment, elitism and favouritism',[69] is evidenced by the fact that in 2019, a magistrate was appointed by Prime Minister, Joseph Muscat, who was the

[62] N Lindstaedt, *Democratic Decay and Authoritarian Resurgence* (Bristol, Bristol University Press, 2021) 22.

[63] ibid 22.

[64] Clientelism typically permits leaders to sustain relationships 'involving mutual benefits' and 'the exchange of favours' with non-political actors who are, in turn, able to influence government decisions and are often permitted to collect an unequal share of wealth (ibid 64).

[65] Cronyism is 'the practice of appointing known acquaintances or allies to given positions' (Stanton, 'Small States and Constitutional Reform' n 4 above, 35).

[66] See: W Veenendaal, 'How smallness fosters clientelism: a case study of Malta' (2019) 67(4) *Political Studies* 1034; ibid 31.

[67] See: Constitution of Malta, arts 96(1) and 100(1) (prior to reforms introduced in 2020).

[68] Borg, *Commentary on the Constitution of Malta* n 38 above, 521. If the Prime Minister chose to go against the evaluation of the Committee, he was required to explain his reasons to Parliament (see: Constitution of Malta, art 96(4) (repealed in 2020)).

[69] K Aquilina, *The Rule of Law à la Maltaise* (University of Malta Press, 2017) 50.

daughter-in-law of 'the Prime Minister's personal lawyer … [and] the Labour Party's main legal advisor'.[70] In 2018, the Venice Commission criticised Malta's judicial appointments process, stressing that:

> The principle of independence of the judiciary requires that the selection of judges and magistrates be made upon merit and any undue political influence should be excluded. The Prime Minister should not have the power to influence the appointment of Justices and Judges-Magistrates. This would open the door to potential political influence, which is not compatible with modern notions of independence of the judiciary.[71]

These views contributed directly to the introduction of the 2020 reforms, following which 'the government can now no longer exercise discretion in the appointment of judges, with appointment now by the President on the advice of the Judicial Appointments Committee'.[72]

Clientelism and cronyism is even more prominent when we examine the more informal government interactions in Malta. Delia, for example, in cataloguing myriad perceived scandals during the early days of Muscat's Government, opines that the new Prime Minister,

> decapitated the public service, firing nearly all euphemistically-called permanent secretaries and replaced them with people who owed their careers to him. Within weeks, all major and most middle-ranking positions of influence in Malta's administration were filled by handpicked cronies, sycophants and hangers on.[73]

Muscat resigned from office in January 2020 amid accusations of government corruption and alleged government involvement in the 2017 murder of investigative journalist, Daphne

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[70] N Camilleri, 'Lawyers might boycott Nadina Lia if she is made a magistrate' *Malta Independent* (3 March 2019): https://www.independent.com.mt/articles/2019-03-03/local-news/Lawyers-might-boycott-rumoured-new-magistrate-Nadine-Lia-6736204432.

[71] European Commission for Democracy Through Law, 'Malta – opinion on constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement' (Opinion No. 940 / 2018, 17 December 2018) [43].

[72] Stanton, 'Small States and Constitutional Reform' n 4 above, 45.

[73] M Delia, 'Which scandal will do it?' *Times of Malta* (8 October 2023): https://timesofmalta.com/article/which-scandal-it.1059636.

Caruana Galizia. Despite this, and other scandals that punctuated Muscat's tenure at Castille,[74] the new Prime Minister, Robert Abela, did not deny Muscat the opportunity of standing as a Labour candidate in European parliamentary elections, asking rhetorically 'Why should I say no to Muscat?'.[75]

Another element of autocracy is reflected in a disregard for established procedures and due process. In 2022, the Prime Minister told 'self-employed people and businesspeople … [that] if you feel terrorised by an institution … [c]ome directly to me so that I can defend you and so that you can keep on working and investing in the country'.[76]

This encouragement 'to circumvent due process and resort to … [Abela's] merciful benevolence[, b]ypass[ing] the courts, the police, [and] the tax department',[77] would appear, on the one hand, to undermine existing avenues of due process and compromise executive separation from the courts, and, on the other hand, jeopardise the independence of certain executive institutions, such as those pertaining to tax and the police. In a similar vein, in October 2023, Abela endorsed the actions of Transport Minister, Ian Borg, in his efforts 'to help certain candidates with their driving test applications', saying that such practices were 'part of Malta's political system'.[78] Explaining the broader concern with such practices, the Malta Employer's Association noted that:

> The Prime Minister's pronouncement … is a radical invitation to anarchy which encourages individuals and businesses to bypass what should be established and trusted structures to either get fast-tracked to obtain what they are eligible for, or

[74] Castille refers to the Auberge de Castille in Valletta, the 18th century building – constructed by the Knights of the Order of St John – that serves as the office of the Prime Minister.

[75] J Arena, '"Why should I say no to Muscat?" – PM' *Times of Malta* (27 January 2024) 1.

[76] T Diacono, '"Complain directly to me" Robert Abela urges Maltese businesses "terrorised" by institutions' *Lovin Malta* (24 January 2022): https://lovinmalta.com/news/complain-directly-to-me-robert-abela-urges-maltese-businesses-terrorised-by-institutions/.

[77] K Cassar, 'The language of autocracy' *Malta Independent* (30 January 2022): https://www.independent.com.mt/articles/2022-01-30/blogs-opinions/The-language-of-autocracy-6736240197.

[78] Times of Malta, 'Driving test scandal: Employers slam Abela's "invitation to anarchy"' *Times of Malta* (3 October 2023): https://timesofmalta.com/article/driving-test-scandal-employers-slam-abela-invitation-anarchy.1058859.

> worse, to acquire entitlements which they should never have at the expense of others.[79]

Autocrats across the world are also typically dismissive of criticism and opposition, and they often avoid challenge or scrutiny. This enables such leaders to galvanise their positions by undermining, discrediting, or dismissing views that are critical of or in opposition to their own. As Gessen notes, '[a]utocracy is incompatible with free and open media because autocracy does not brook transparency and accountability'.[80] In this vein, amid ongoing contentions concerning abortion laws in Malta, Abela 'didn't hesitate to denigrate and vilify one of Labour's own icons, [former President,] Marie Louise Coleiro Preca, for daring to contradict him. He unscrupulously dug up her views on divorce from a decade earlier to discredit her'.[81] Abela's intolerance of criticism and opposition extends to the Government's regard for the press. In January 2023, for instance, Maltese journalist, Kevin Cassar, reported that

> [a] whole army of lawyers paid through public funds is currently engaged in stopping us from finding out what Abela and his government are up to … [and] he's embarked on a mission to suppress the free press and extinguish the public's right to information … [Abela] is now brazenly and ruthlessly pursuing journalists for asking basic questions. He is determined to cripple truly independent media houses filing Freedom of Information requests with multiple financially ruinous lawsuits.[82]

Criticism of international organisations is a further sign of autocracy. Abela, for example, recently offered an 'open attack on the European Parliament' and openly criticised Maltese President of the Strasbourg legislature, Roberta Metsola, for 'swiftly removing [the] Vice President'.[83] This, says Cassar,

> puts him firmly in the camp of autocrats. [Indeed, h]is hostility towards the European Parliament matches that of Hungarian Prime Minister Viktor Orbán. Orbán uploaded

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[79] Ibid.

[80] M Gessen, *Surviving Autocracy* (London, Granta, 2020) 134.

[81] K Cassar, "Malta's New Year Resolution" *Sunday Times of Malta* (1 January 2023) 19.

[82] ibid 19.

[83] ibid 19.

> a mocking tweet attempting to ridicule the European Parliament. Abela and Orbán's approaches are perfectly aligned.[84]

The effect of this criticism of those offering opposing or critical views is exacerbated in Malta by the lack of challenge by those close to the Government and the Prime Minister, this providing a further example of autocratic behaviour. For instance, Labour MP, Rosianne Cutajar, was recently found to have taken money and done dealings with the businessman standing trial for orchestrating the 2017 assassination of journalist Caruana Galizia. This, however, did not stop her from being appointed by Abela as chair of the parliamentary health committee. It has been suggested that this trend has permeated the Labour Party more broadly. 'For Labour, [one journalist reports] the Leader is God. Nobody challenges him. Nobody disputes his decisions, no matter how malignant. Nobody criticises him, no matter how atrocious his behaviour. Party unity and cohesion override national interest. Partisan interests override morality'.[85]

This section has given numerous examples of recent trends that are indicative of autocracy in Malta. From the undermining of due process, to dismissing opposition criticism; and from instances of clientelism and cronyism, to allegations of corruption and assassination, the health of the Maltese democracy has come under strain in recent years. Whilst there are myriad factors underpinning this, this chapter now explores the extent to which Malta's small size might be a factor.

4. Smallness, autocracy, and the Westminster model in Malta

4.1. Autocracy and state size

There are two factors to consider in examining the impact of Malta's small size on the country's democratic struggles. First, as the chapter thus far has shown, autocracy is long embedded within Maltese governmental memory. This, it is argued, is linked to Malta's small size. There is a wealth of literature on the relationship between state size and democracy. With regard to small states, work here observes that small states tend to be more democratic

[84] ibid 19.

[85] K Cassar, 'What separated the parties?' *Malta Independent* (6 February 2022): https://www.independent.com.mt/articles/2022-02-06/blogs-opinions/What-separated-the-parties-6736240387.

than their larger counterparts.[86] Whilst there is much evidence to support these claims, the reality is that '[s]mall states … can look formally liberal-democratic [from the outside] but might be rather illiberal in their actual workings'.[87] Identification and examination of this trend in Malta has already been carried out, and it is not for this chapter to replicate those discussions.[88] In brief, though, the view holds that, from the outside, frequent and regular elections, an ostensibly free press, human rights, institutions upholding the text of the constitution and the rule of law, all exemplify ways in which Malta appears to be democratic. Closer examination, though, of the way in which the Maltese Government operates, the allegations of corruption, manipulation of the press, and concerns for the rule of law on the islands and for the way in which Government operates more widely, point towards 'an imperfect democracy'.[89] Concerns about autocracy, evidenced by cronyism and clientelism within the workings of government, examples of which were identified above, are perhaps central to these concerns, and they are, in turn, linked to Malta's small size. The close, and densely populated, nature of the Maltese community means that it is not only easy to engage with those in power, but also that it is easier for those in power to connect with the electorate, with businesses, and with other organisations. As Veenendaal observes, 'clientelistic relationships are particularly likely to emerge and persist in small societies, due to the direct, face-to-face contacts between citizens and politicians'.[90] The argument here, though, is that the appointment of known contacts as magistrates, and the appointment to government of people 'who owed their careers' to the Prime Minister,[91] for example – just two instances of clientelism and cronyism noted above – were possible due to the small nature of Malta and the political communities that are, as a result, able to be fostered.

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[86] See, for example, RA Dahl and ER Tufte, *Size and Democracy* (Stanford, Stanford University Press, 1973), 4 – 8; G Baldacchino, 'Islands and despots' (2012) 50(1) *Commonwealth and Comparative Politics* 103.

[87] J Erk and W Veenendaal, 'Is small really beautiful? The miscrostate mistake' (2014) 25(3) *Journal of Democracy* 135, 136. Also see: C Morris, 'Attempting constitutional reform on the island micro jurisdiction of Alderney' (2018) 47(2) *Common Law World Review* 105; Stanton, 'Small States and Constitutional Reform' n 4, above. 31.

[88] See: Stanton, 'Small States and Constitutional Reform' n 4 above.

[89] ibid 37.

[90] Veenendaal, 'How smallness fosters clientelism' n 96 above, 1035.

[91] Delia, 'Which scandal will do it?' n 74 above.

This being the case, '[c]ronyism and clientelism can … lead to a risk of corruption; a concentration and dominance of government power; a correlative lack or suppression of effective opposition, thereby jeopardising plurality; erosion of individual rights, and, possibly, a breakdown in the rule of law'.[92] It is here where consideration of potential government involvement in the assassination of journalist Daphne Caruana Galizia; the disregard for established procedures and processes; and dismissiveness of criticism and opposition are relevant. These were identified above as being features of the Maltese system and, as this section as demonstrate, are linked to Malta's small size and the densely populated citizenry.

4.2. The Westminster model in Malta

The second factor to consider regarding the impact that Malta's small size has had on its democratic struggles is that the full democratic potential of the Westminster model has not been fully realised on the islands, meaning that historic tendencies towards autocracy have been allowed to continue. There are two main reasons why this has been the case. First, the polarised and personalised, two-party nature of Maltese politics can make it difficult to achieve objectives requiring cross-party consensus and it can undermine those institutions that are not intended to be political. Secondly, whilst the structural features of the Westminster model are immediately identifiable in the Maltese system, the conventions and political practices that sustain that model in the UK are not fully present in Malta. I address each factor in turn, considering, both at the same time and separately at the end, the impact that Malta's small size has on both.

Politics in small states tends to be heavily personalised, divisive, and polarised. 'Due to the close personal links and social intimacy that follow from small population size, people are generally aware of each other's political affiliations, resulting in the almost complete absence of political anonymity for individual citizens'.[93] In Malta, the predominance of two parties means that this personalised system is further defined by 'strong polarisation,

[92] Stanton, 'Small States and Constitutional Reform' n 4 above, 35.

[93] J Corbett and W Veenendaal, 'Westminster in Small States: Comparing the Caribbean and Pacific Experience' (2016) 22(4) *Contemporary Politics* 432, 443.

antagonism, and longstanding rivalries between individual politicians'.[94] As Maltese journalist, Mark Said reports:

> the language of politicians themselves … [is] turning Maltese politics into an ugly, mean-spirited, and nasty affair … Both parties are using increasingly sophisticated campaign war rooms, armed with volumes of research on rival candidates and ready to attack every perceived disadvantage, to fuel the negativity … [Nationalist Party] politicians [are] embracing views further to the right and Labourites [are] moving further to the left … Character assassination and smears are intensifying not only when policy differences are profound but even when those agenda disagreements look petty and inconsequential.[95]

Such divisive and polarised politics can be problematic in the context of the Westminster model that prevails in Malta since there are instances when cross-party consensus is needed for certain decisions to be made, this being harder to achieve where politicians are so divided. For example, and following reforms introduced in 2020, appointments to various official positions, including that of the President of Malta, the Chief Justice, the Ombudsman, and the Chairman of the Permanent Commission Against Corruption, require approval by two-thirds of the House of Representatives. Such appointments are more difficult where political consensus is harder to achieve and predicated upon politically distant parties agreeing on the individuals to appoint.[96] Moreover, and with regard to the broader working of government, the personalised and polarised nature of Maltese politics also 'means that the supposedly impartial and neutral functioning of Westminster institutions like the civil service, the electoral commission, the ombudsman, and the judiciary is virtually impossible to realize'.[97]

In Malta, this concern is exemplified by the reality that the Constitution permits the Government to choose who chairs the Broadcasting Authority, meaning that the party in power can use this to their advantage. During the pandemic, for example, the Prime Minister

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[94] J Corbett and W Veenendaal, 'The personalisation of democratic leadership? Evidence from small states' (2017) 36(3) *Social Alternatives* 31, 33.

[95] M Said, 'Politics is turning nasty' *Times of Malta* (18 December 2023): https://timesofmalta.com/article/politics-turning-nasty.1073559 .

[96] This said, the first President appointed under the new procedure in 2024, Myriam Spiteri Debono, was approved by the two parliamentary parties relatively quickly.

[97] Corbett and Veenendaal, 'Westminster in Small States' n 87 above, 443.

used a 90-minute press conference on lockdown rules to promote government reforms on various matters. When the opposition protested, it took three and a half months for them to be given a right to reply. This state of affairs highlights the importance of having non-partisan public service institutions, which serve 'as an important handbrake on executive domination in Westminster systems'.[98] In Malta, however, where Government decides on public service appointments, this handbrake is lacking, permitting those in power to wield authority beyond the traditional responsibilities of government. One reason why this handbrake is lacking is because the notion of the bureaucratic state never really become established in Malta.[99] Weber espoused a bureaucratic state that consistent of ten essential elements:

1. Officials are free, subject to authority only in their official tasks.
2. Officials are organized in clearly defined hierarchy of offices.
3. Each office has a clearly defined sphere of competence.
4. Offices are filled by free contract.
5. Candidates for office are selected according to their qualifications, normally examinations and technical training.
6. Officials are salaried and granted pensions.
7. The office is the sole or primary occupation of the incumbent.
8. The office constitutes a career, involving promotion by seniority or for achievement.
9. The official is separated from ownership of the means of administration.
10. The official is subject to systematic discipline and control in official conduct.[100]

In the UK, from where Malta inherited the Westminster model, elements of the bureaucratic state are obvious and well-established. Government functions impersonally, impartially, according to rules and procedures, and in a well-organised hierarchical structure. Though heavily centralized, government tends to operate at arms-length and state intervention is

[98] ibid 443, citing RAW Rhodes, J Wanna, and P Weller, *Comparing Westminster* (Oxford, Oxford University Press, 2009).

[99] I am grateful to Mark Sammut Sassi for his input and guidance on this point.

[100] This summary is helpfully set out at: M Mann, *The Sources of Social Power* – Volume 2: The Rise of Classes and Nation-States, 1760 – 1914, 2nd edn (Cambridge, Cambridge University Press, 2012) 444, citing M Weber, *Economy and Society*, Volume I (New York, Bedminster Press, 1978) 220 – 221.

minimal.[101] By contrast, government in Malta – as has already been explained – shows tendencies towards autocracy, cronyism, and clientelism. As a consequence, official appointments are sometimes made and contracts awarded on the strength of personal connections and interests, power rests more clearly in a single office, rather than with a clearly established notion of the State,[102] leading to government according to the ruler's principles, rather than objective standards, and there are, in many instances, a blurring of offices.

There are a number of reasons why the bureaucratic state never really became established in Malta. One explanation, deeply informed by Malta's past connections with myriad global powers, is that the Maltese administrative system is 'often referred to as hybrid … with roots from several administrative'.[103] As a consequence, and unlike many other – particularly larger – European powers, the bureaucratic state envisioned by Weber never really became established in Malta. I argue, though, that this is also linked to the country's small size. In Malta, for example, those working within government are often known personally to a greater portion of the population. This, in turn, undermines the impersonality of politics, decision-making processes, and the impartiality of the system. Echoing this trend, Veenendaal observes that

> the smallness of Malta has created a strongly interconnected society, in which people constantly meet and engage with each other in various social roles. As Baldacchino argues, 'among themselves, the Maltese develop an intricate knowledge of the partisan affiliations and loyalties of friends, family, and acquaintances, effectively mapping a network of political influence, patronage, and obligation'. Within this densely networked society, politicians are in constant and direct contact with their

[101] See: A Scott and P Le Galès, 'A British Bureaucratic Revolution? Autonomy Without Control, or "Freer Markets, More Rules"' (2010) 51(5) *Revue Française de Sociologie* 117.

[102] Sammut Sassi argues that, in part as a consequence of the prominence of the British legal tradition in Malta, that 'the notion of the State is sketchy in the Maltese legal mind' (MA Sammut Sassi, 'The Inheritance of the Concept of State' in T Borg and J Stanton (eds), *The Constitution of Malta at Sixty* (Ħamrun, Kite Group, 2024) 77, 107).

[103] J Pierre, D Carelli, and BG Peters, 'The four worlds of politics and administration in the EU: how institutional arrangements shape the struggle against antimicrobial resistance' (2023) *Journal of European Public Policy* 1, citing E Camilleri, 'Public administration characteristics and performance in EU 28: Malta' *European Commission* (April 2018): https://op.europa.eu/en/publication-detail/-/publication/760341ab-9613-11e8-8bc1-01aa75ed71a1/language-en.

> constituents, with whom they frequently also have a personal relationship. Voters and politicians continuously meet and communicate with each other in a remarkable variety of settings, meaning that private and professional relationships easily become blurred, and permitting citizens to use their personal relationship with a politician to raise any political questions or requests that they might have.[104]

With regard to the second concern underpinning the workings of the Westminster model in Malta, there is a disparity between the clear, legal framework of the system, and the conventions and political norms that are designed to sustain that system. The Westminster model, in the context of the, UK at least, is allowed to function because of myriad conventions and political principles that have developed and evolved over the centuries to deliver a system that is workable and democratic. Reflecting this, Bulmer observes:

> History, tradition, fortuitous circumstance ... produced a system [in Britain] without theory or grand design. Incremental and pragmatic change, managed by 'good chaps' with a clear sense of what was 'done' and 'not done', resulted in a living constitution, consisting of an elaborate patchwork of statutes, conventions, rules of common law, institutional traditions and ingrained habits.[105]

Whilst Britain's own constitutional arrangements have always permitted the gradual evolution of these conventional and political principles, this was not always the case in many former colonies. Certainly, the colonies that became dominions experienced a more gradual path to independence,[106] this permitting an easier inheritance of conventions and principles relevant to the working of the Westminster model. Other colonies, though, for whom independence was a singular event, such as Malta, did not inherit such conventions and principles as easily.[107] Consequently, upon adoption, the model could be adapted or

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[104] W Veenendaal, 'How Smallness Fosters Clientelism: A Case Study of Malta' (2019) 67(4) *Political Studies* 1034, 1040, citing G Baldacchino, 'A Nationless State? Malta, National Identity and the EU' (2002) 25(4) *West European Politics* 191, 198.

[105] WE Bulmer, *Westminster and the World* (Bristol, Bristol University Press, 2020) 17.

[106] For example, Australia, Canada, and New Zealand.

[107] See: H Kumarasingham, 'Eastminster – decolonisation and state-building in British Asia' in H. Kumarasingham (ed), *Constitution-making in Asia: Decolonisation and state-building in the aftermath of the British Empire* (Abingdon, Routledge, 2016) 1.

manipulated to accommodate local factors. Writing in the context of 'Eastminster',[108] Kumarasingham observes that:

> Asian nations did not have centuries to interpret and adjust in order to develop their constitution as the British had. Instead within months they needed to formulate and design a constitution and therefore invariably drew upon the system of their imperial master. The local elites with the involvement of external actors like Sir Ivor Jennings determined that Westminster could work in the East. Since the Westminster system is based on convention and ambiguity and not rigid rules and clarity the same Westminster system could be adopted and manipulated to produce diverse results and reactions that would shape their countries forever.[109]

In Malta, whilst certain British constitutional conventions accompanied the Westminster model into the 1964 Independence Constitution in written form,[110] others did not. As a consequence, certain features designed to sustain a parliamentary democracy are lacking, leaving space for historic constitutional practices potentially to continue. Central to such features are those conventions and political principles that sustain, in an uncertain and uncodified system, the Westminster model. One such principle is categorised in the 'good chap theory of government'.[111] Blick and Hennessy explain:

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[108] 'Eastminster' is a term used by Kumarasingham to refer to the adoption of the Westminster model in certain Asian former colonies (see: ibid 1 – 2).

[109] ibid 1.

[110] For example, the appointment of a Prime Minister. In the UK, the position, and the method of appointment, is purely a matter of convention. There is no legal provision requiring that the UK have a Prime Minister and, as a matter of convention, an individual is appointed to the position where they can be said to command the confidence of a majority of the House of Commons. Reflecting a translation in written form into the Maltese system, Art. 79(1) of the Constitution of Malta provides that there will be a Prime Minister, and Art. 80 makes clear provision for the President's appointment of an individual to the office of Prime Minister.

[111] A phrase coined by Clive Priestley, a member of Margaret Thatcher's 'Efficiency Unit' in the 1980s (see: C Priestley, 'Promoting the efficiency of central government' in A Shenfield *et al* (eds), *Managing the Bureaucracy* (London, Adam Smith Institute, 1986) 117)). Peter Hennessy has further explored the notion. He states that the theory can be explained as 'being that a good chap knows what a good chap has to do and doesn't need to be told' (P Hennessy, '"Harvesting the cupboards": Why Britain has produced no administrative theory or ideology in the Twentieth Century' (1994) 4 *Transactions of the Royal Historical Society* 203, 205).

> A key characteristic of the British constitution is the degree to which the good governance of the United Kingdom … has relied on the self-restraint of those who carry it out … we have trusted politicians to behave themselves. We have long assumed that those who rise to high office will be 'good chaps', knowing what the unwritten rules are and wanting to adhere to them, even if doing so might frustrate the attainment of their policy objectives, party political goals, or personal ambitions – the argument being that 'good chaps' … know where the undrawn lines lie and come nowhere near to crossing them … The 'good chap' principle emerged over a long period of time. Its existence was assumed rather than expressly defined. As [Prime Minister, William] Gladstone put it in 1879, the British constitution 'presumes more boldly than any other the good sense and good faith of those who work it'.[112]

In short, the sustainability of the Westminster model in the UK has been attributed, in part, to the 'good chaps theory of government'.[113] This theory, though, is one example of a political rule that was not transplanted into post-colonial constitutions due to the unwritten, almost unacknowledged, role that it plays. In Malta, without a reliance on this self-restraint and presumption that government is practised by 'good chaps', there is a void in which local political practices have been allowed to develop and continue. Chief amongst these, particularly in the context of Maltese constitutional history, is a tendency toward autocracy. In the absence of this unspoken reliance on the notion that governing officials are 'good chaps' and presumed to act with 'good sense and [in] good faith', the space existed for the deeply embedded practice of autocratic government to continue, as the second part of this chapter has examined. This autocracy, and the features of Maltese politics that have hindered the realisation of the Westminster model, in turn, permitting autocracy to continue, are directly linked to Malta's small size, as this section has shown.

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[112] A Blick and P Hennessy, 'Good Chaps No More? Safeguarding the Constitution in Stressful Times' *The Constitution Society* (18 November 2019): https://consoc.org.uk/publications/good-chaps-no-more-safeguarding-the-constitution-in-stressful-times-by-andrew-blick-and-peter-hennessy/, citing Cabinet Office, 'The Cabinet Manual: A guide to the laws, conventions and rules on the operation of government' *Cabinet Office* (October 2011), 2: https://assets.publishing.service.gov.uk/media/5a79d5d7e5274a18ba50f2b6/cabinet-manual.pdf; WE Gladstone, *Gleanings of Past Years* Volume 1 (London, John Murray, 1879) 243.

[113] Whilst not for discussion here, Blick and Hennessy explore the extent to which the theory no longer applies in the UK itself.