

Graduation Ceremony 3
Graduand's Address
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JESUITS' CHURCH – VALLETTA

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**THE ETHICAL VALUES AND THE VIRTUES OF THE
CONSTITUTION OF MALTA**

That constitutions go beyond their nature of legal instruments may be observed by the inclusion of Preambles containing the fundamental ethical values of a nation and which, even if not legally enforceable, would be considered essential for the proper functioning of the State.

The Preamble to the Constitution of the United States of America invokes the people's moral aspirations of a newly independent state. Justice, Domestic Tranquility, common Defence, the General Welfare and the Blessings of Justice are the values why "We the People of the United States of America ...do ordain and establish this Constitution for the United States".

The Preamble to the new Constitution of Hungary re-affirms the cultural, ethical and spiritual identity of an independent state desiring to register a fresh start. It contains 24 solemn "National Avowals of Faith", which include the preservation of the Hungarian Culture and "unique language", the "intellectual and spiritual unity" of the Hungarian nation "torn apart by the storms of the past century"; the role Christianity played in preserving the Hungarian nation and the respect of all the country's religious traditions.

At independence, the Constitution of Malta did not contain a preamble describing national avowals of principles or values intended to permeate the institutions founded by the Constitution of the new State of Malta.

However, the pivotal constitutional amendments introduced by Act LVIII of 1974 identified a select number of values describing what the State of Malta "is". Article one, sub-article one, of the Constitution succinctly states: "Malta is a democratic republic founded on work and on respect for the fundamental rights of the individual." The description is notable for its essential drafting. It is not prescriptive in nature, since it describes what the State "is" and not what it ought to achieve in terms of ethical values.

The article, as amended, did record the change from a monarchy to a republic, but served to re-affirm the two fundamental pillars on which the state of Malta is founded, namely

those of democracy and the respect of fundamental human rights. Together they firmly place Malta amongst the states observing the Rule of Law.

The 1974 amendment placed the two constitutional pillars in Chapter one of the Constitution on an equal plane to Malta's: neutral status; the territories of Malta; the National Anthem; the language and the religion of Malta. Each of these features of the state of Malta are enforceable by the Constitutional Court of Malta.

Yet, could the inclusion of 'work' as a constitutional value characterising the state of Malta, be considered to be an ethical prescriptive norm of the Constitution on the institutions of the state?

The Constitution dedicates Chapter Two to "Declaration of Principles" which although not "enforceable in any Court" are to be considered "fundamental to the governance of the country and it shall be the aim of the State to apply these principles in making laws."

Within this Chapter, the value of 'work' takes pride of place. Nine of the eleven articles forming Chapter Two concern 'the right to work'. These range from: the Protection of Work to The Equal Rights of Women and Men to enjoy all economic and social rights ; from the Minimum age for paid Labour to Social Assistance and Insurance. Significantly it includes the entrepreneurial dimension of 'work' by the Encouragement of Private Economic Enterprise, Artisan trades and Co-Operatives.

In this regard the inclusion of the value of 'work' in the amended article one of the Constitution may be considered the re-affirmation of ethical obligations on the State which existed from independence.

Yet, there exists a largely untapped source of ethical values within the Constitution which if utilised by the institutions would also be 'fundamental to the governance of the country and in making laws'.

Article two, sub-article two of the Constitution, uniquely recognises that beyond the notions of legality and illegality or of constitutionality and unconstitutionality, there exist the notions of 'right' and 'wrong' applicable to the State. This makes of the state of Malta an ethical entity by constitutional definition.

It would therefore appear that instead of adopting a long list of avowals in a one-time declaration contained in a preamble, the Constitution of Malta chose to make the State itself seek social virtue, in the Platonic sense of the term, on an on-going basis.

The Greek philosopher in *The Laws* postulated that the "law giver's duty is to isolate and explain what is good and what is bad in the way each individual reacts". The Constitution of Malta contemplates a prior stage, in the sense that it requires ethical social principles of what is right and what is wrong, be 'taught' in regard to the process of governance. The modern legislator tends to group laws according to subject matter whereas according to Plato they should be classified according to the virtues promoted by each law.

Our Constitution has in reality, improved on Plato's utopian philosophical vision. Instead of the Platonic State identifying 'virtue' by reason and theological thinking through the teachings of an enlightened Higher Council, the Constitution placed such a task in an organisation rooted in both the 'rational' and 'divine' culture of the nation, but which is completely independent and separate, in nature and function, from the political forces which run the state, namely in the Authorities of Malta's religion as recognised by article two sub-article one of the Constitution.

The Constitution, therefore, neatly provides the solution of granting the democratic institutions the full and unfettered authority to legislate whilst empowering the 'theology', in the rational Platonic sense of the term, by the teachings of an independent institution steeped in the national culture of the country.

In the light of these considerations, it becomes vital to keep separate and distinct the constitutional recognition of the Catholic religion as the religion of Malta from the duty entrusted by the Constitution on the Authorities of the Church to teach what is right and what is wrong.

President Emeritus of Malta, Dr. Ugo Mifsud Bonnici , a protagonist of the 1974 'republic' amendments, explained lucidly the distinction between the two in *Kif Sirna Repubblica* . He explains that the recognition of the Catholic religion in sub-article one was in deference to the fact it was the religion of the majority. However, the former President states clearly that the Law cannot impose a religion, in that no law should even attempt to impose a religion; for this reason the article on the religion of Malta was left to the absolute majority of Parliament to amend.

In contrast, he explained, Parliament entrenched sub-article two at the two-thirds majority because even if the Catholics in Malta were to be in the minority, the fundamental right of the Church to teach morality ought to remain nonetheless, as a balance to the introduction of the Corrupt Practices clause in 1974.

This year marks the ninetieth anniversary from the promulgation of the 1921 Constitution, the first one granting 'responsible government' for Malta. We should be proud as a nation to note that the protection of the freedom of religion and of religious belief of each person has been protected in the three self-government constitutions and in the 1964 Constitution.

The issue of ethical values of peoples and the law makes its appearance also in the application of the European Convention of Human Rights which forms part of Malta's domestic law, and of the Lisbon treaty of the European Union.

In the Lautsi case, decided on the 18th March 2011, The European Court of Human Rights held that :

“beyond its religious meaning , the crucifix symbolised the principles and values which formed the foundation of democracy and western civilisation, and that its presence in classrooms was justifiable on that account.”

In so doing the Court admonished that:

“reference to a tradition cannot relieve a Contracting State of its obligations to respect the rights and freedoms enshrined in the Convention and its protocols”.

It cannot be a co-incident that the Judge from Malta on the Court embodied the nation’s symbiosis between the national culture and our religious identity. In a Concurring Separate Opinion, Judge Giovanni Bonello stated :

“A Court of Human Rights cannot allow itself to suffer from Alzheimer’s. It has no right to disregard the cultural continuum of a nation’s flow through time, nor to ignore what, over the centuries, has served to mould and define the profile of a people”. He added: “No supranational court has any business substituting its own ethical mock-ups for those qualities that history has imprinted on the national identity.”

In turn, Article 17(3) of the Treaty on the Functioning of the European Union presents interesting comparisons with the Maltese Constitution. The Treaty stipulates that: “The Union shall maintain an open, transparent and regular dialogue” with churches and organisations of a philosophical nature to fulfil the obligation of ‘openness and transparency’ incumbent on the European Union. This is precisely the scope behind article two of the Constitution.

The importance of giving moral values recognition even if contained in a preamble or a declaration of principles lies in their providing useful rules of interpretation to judicial authorities as in ‘the human embryo case’ decided by the European Court of Justice on the 18th October 2011.

The Court whilst recognising that the “question of definition of a human embryo is a very sensitive issue in many Member States, marked by their multiple traditions and value systems” clarified that it was not called upon to “broach questions of a medical or ethical nature.” However it referred to the preamble of the relevant Directive stipulating that ‘patent law must be applied so as to respect the fundamental principles safeguarding the dignity and integrity of the person’, and to article 6 of the Directive which lists situations as contrary to *ordre public* or morality and therefore excluded from patentability or processes for cloning human beings.

Allow me to conclude by referring to the Address made by President Emeritus of Malta, the late Professor Guido de Marco, on the Occasion of the visit of His Holiness Pope John Paul II of the 9th May 2001. Then, the highest authority of the State demonstrated that, constitutionally, the State may ‘learn’ ethical values ‘taught’ by the Highest Authority of the Church without prejudicing the State’s prerogatives in deciding on how its institutions are to apply them.

In the words of President de Marco :

“In this voyage, in the footsteps of St. Paul, You have taught us the nobility of forgiveness, the sharing in the suffering of those who are denied their rights, the conviction that force will give way to dialogue, and that only peace can bring to peoples trust and prosperity.”

It becomes legitimate, therefore, to conclude that just as cultural arrogance is the hallmark of an absolutist state, more so would the display of the virtues of humility and wisdom by the State through the learning from other cultural entities, become the hallmark of a state which practices democracy and fundamental human rights.

References

De Marco, G. (2002). *Momentum*, Office of the President, p.117.

Plato, *The Laws*, Translated by T.J. Saunders, Penguin Classics, 1970.

Mifsud Bonnici, U. (1999). *Kif Sirna Repubblika*, Pubblikazzjonijiet Indipendenza, p.38.

The Case Lautsi and Others v. Italy, European Court of Human Rights, application 30814/06, paras 67, 68 and 1.1 in page 68.

The Case Brustle v. Greenpeace, European Court of Justice, C-34/10, paras. 30,33.