

# by the Grace of God

To all to whom these

## Landmarks in Maltese Constitutional History

1849-1974

THE CENTRAL BANK OF MALTA SYMPOSIUM - 7 JUNE 2011

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# Landmarks in Maltese Constitutional History

1849-1974

*Edited by*  
HENRY J FRENDO

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### Front Cover

*Excerpt from the Letters Patent issued by the British Parliament granting the 1849 constitution. Malta, by the 1849 constitution, became the first British colony to have an elected minority on its Council of Government. The original Letters Patent is housed in the National Archives of Malta.*

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# The 1849 Constitution

ACTIONS AND REACTIONS CONCERNING THE BEGININGS  
OF POPULAR REPRESENTATION IN MALTA

*Sergio Portelli*

Ever since the successful uprising against the French in 1800, the Maltese educated classes were fully aware of the need to have a say in the public administration of the islands. The bitter experience of French domination showed that the islanders could not rely exclusively on the good will of foreign masters to reach their aspirations. When the British took control of Malta, hopes and expectations were high, but after the end of the Napoleonic era, it did not take long for the Maltese to realize that theirs was to be an uphill struggle. However, they proved to be very willing to take up the challenge.

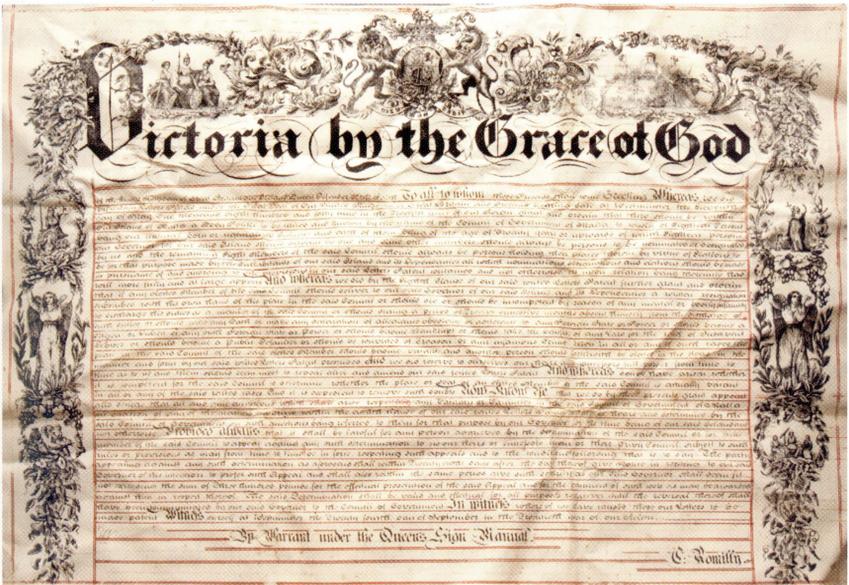
The constitution of 1813 placed power firmly in the hands of the Governor under the direction of the Home Government, much to the satisfaction of the autocratic Governor of the time, Sir Thomas Maitland. Malta was a military fortress; Europe and the Mediterranean were slowly emerging from the ravages of the Napoleonic wars, and the nationalist movements in Italy and elsewhere had not yet entered into action. The Governor had the option of appointing a consultative

Council, but unsurprisingly never did so. As time passed, discontent spread not only among the Maltese, but also among the English merchants on the island who saw their commercial activities hindered by the autocratic and military nature of the local administration.

Remonstrances were officially made in 1832 by the Maltese in the form of two petitions to His Majesty in Council, requesting an elected consultative Council consisting of landholders, professionals and merchants which could bring forward suggestions to improve the socio-economic conditions of the island. While conceding that autocratic rule left in the hands of the Governor was not advisable, the Home Government only went so far as to grant a new constitution in 1835 which provided for an lll-nominated consultative Council composed of four official members apart from the Governor (including the Bishop of Malta) and three unofficial members. Of the latter, two were to be selected from among the landowners and merchants who were 'native born subjects', while the other member was to be chosen from the group of British-born merchants resident on the island for at least two years. In practice, the Governor retained his absolute power and had the freedom to go against the recommendations of the Council, which had no right to bring forward any issues for discussion. The new constitution displeased everyone; the Maltese lamented the lack of elective representation, the British merchants were unhappy with the choice of Nicholas John Aspinall as their representative, and the Bishop raised two issues. The first issue was one of precedence and was dealt with by London, but the second difficulty was more serious as it concerned the nature of the oath to be taken by the members of the Council, and was referred to the Holy See.

The 1835 constitution did not reflect the requests made in the 1832 petitions. However, it proved that political activism was a way to engage in dialogue with the Home Government. The unstinting efforts by Giorgio Mitrovich in London, aided by British Members of Parliament William Ewart and Joseph Hume, as well as the political strategies adopted on the island by Camillo Scerberras and the other influential figures of the *Comitato General Maltese*, kept piling up pressure on the

Imperial authorities by requesting the re-establishment of the *Consiglio Popolare*, an elective local legislative assembly which would deal with civil matters without prejudice to British Imperial interests. The sending of two petitions, however, reflected the differing opinions on the way forward between a larger faction led by Sceberras and Mitrovich, and a smaller one led by Paolo Sciortino, Raimondo Rocco and Giacomo Pantaleone Bruno. This factional split in the Maltese camp was to characterize the opposition to the local administration for years to come. The Sceberras faction also availed itself of the inspiring presence in Malta of Italian liberal exiles such as Tommaso Zauli Sajani, Carlo Cicognani Cappelli and especially Nicola Fabrizi, a prominent member of Mazzini's *Giovine Italia* and one of the co-founders of the *Legione Italica*. Liberal exiles from Italy started seeking refuge on the island since the early 1820s, when the poet and literary critic Gabriele Rossetti came over to Malta from the Kingdom of the Two Sicilies. Those among



The Letters Patent issued on 11 May 1849 as a result of which the Maltese could elect representatives to sit on the Council of Government, albeit in a minority.

them with an intellectual disposition brought with them their political views and aspirations, which they conveyed to the Maltese educated classes during their social interactions made possible by the latter's knowledge of the Italian language.

The strong lobbying pressure exerted by the Maltese patriotic movement persuaded the Home Government to send a Royal Commission to carry out an inquiry into the Maltese situation. Commissioners John Austin and George Cornewall Lewis arrived in Malta in the autumn of 1836 amid the hopes of many and the distrust of the Sceberras faction. The latter's suspicions were further aroused as time passed due to the Commissioners' choice to deal with the issue of elective representation only after examining other matters such as public administration, the economy and freedom of the press. The *Comitato Generale* felt that the Commission was dragging its feet on the matter of representation, and became even more suspicious when Paolo Sciortino broke ranks and gave his wholehearted support to the inquiry. A petition was sent in 1839 criticizing the Commissioners' attitude regarding the representation issue. The *Comitato* rightly suspected that Austin and Cornewall Lewis were against the establishment of an elected legislative assembly in Malta.

Despite their contrariness to the Maltese request for effective elective representation, the Commissioners were instrumental in the abolition of censorship and the consequent birth of a free press on the island in 1839, despite opposition from prominent Tories, the Holy See and foreign states. From a purely political point of view, press freedom was a fundamental step for future achievements and served as a platform for public debate, lobbying and factional propaganda which not rarely degenerated into invective and personal vilification. Both local political factions seized the opportunity and established newspapers to gain influence and make their voice heard both locally and in London. In 1838, even before the official establishment of the free press in Malta, Sciortino started his *Portafoglio Maltese* and Zauli Sajani founded the *Mediterraneo*, which served the interests of both the *Comitato Generale* and the *Giovine Italia*. Protestant and imperial interests were promoted by John Richardson's *Harlequin* (later the

*Malta Times*) and *Phosphorus*, while local clerics such as Salvatore Cumbo and Giuseppe Zammit joined the fray in the early Forties to defend both the Catholic Church and their personal professional interests.

The abolition of censorship introduced the press as a new force to be reckoned with in the political struggle, which characterized the decade that preceded the 1849 constitution. Diverging views on how to achieve an acceptable balance between Imperial and local interests found a more efficient way to gain the attention of the public and of the Home Government itself, which received copies of the *Portafoglio*, the *Mediterraneo* and the *Malta Times* on a regular basis. Controversial issues were certainly not lacking. The Royal Commission's proposals, the law of libel, the justice system, the influence of the Jesuits and that of the Italian liberal exiles provided the ever-increasing newspapers with ample material for heated debate and vitriolic attacks on groups and individuals alike. This was a normal consequence of the sudden freedom of speech obtained after a strict censorship regime, and things improved somewhat after the mid-1840s.

The rise of the free press also became a factor that influenced the island's administration. In a dispatch to the Secretary of State for the Colonies Lord Stanley dated 12 September 1844, the new Governor Sir Patrick Stuart lamented that the press had reached

a most ungovernable and scandalous height, not only from its attacks on private Individuals, but also on the local Government and Her Majesty's Government at home, tending to lower both in the estimation of the people here.

Unlike his predecessor, the affable and well-liked Bouverie, Stuart stayed aloof from the Maltese, and his strict Protestant convictions made him adopt an uncompromising attitude towards local customs and beliefs. This made him a target for criticism by the press and he decided to do something about it. The Governor's efforts succeeded in obtaining the removal of Sciortino, the editor of *Il Portafoglio*, from his

post as professor of Political Economy at University, while the editor of *Il Globo*, Lorenzo De Caro, resigned from his university post a few days later. Moreover, Lord Stanley also prohibited Italian exiles from writing in the local newspapers and ordered them to relinquish their roles as editors, compilers and contributors. These restrictive measures achieved the Government's aim for some time; the exiles took a back seat in the press but remained active and influential behind the scenes, only to return to the fore when it became clear that the authorities were not interested in enforcing Stanley's orders very strictly.

Stuart's victory was short-lived due to the infamous events of February 1846, when the Governor thought fit to prohibit Carnival celebrations on a Sunday. Tensions started building in the preceding days and the Italian-language press, which included all the Maltese patriotic papers, fanned the flames of discontent and encouraged resistance to the Governor's orders. In its issue dated 19 February 1846, *Il Portafoglio* put the matter in very clear terms:

*L'abuso che si fa della pazienza di questo buon popolo è troppo grande, e noi desideriamo che i nostri concittadini stessero in guardia e non cedessero sì presto il campo, per cui li invitiamo di [sic] protestare energicamente contro tutto ciò che tende a ledere i loro interessi sotto qualunque siasi aspetto.*

The Governor's ill-thought decision was seen as an autocratic act that went well beyond the specific Carnival issue. The Sunday event brought things to a head when violent clashes broke out between local protesters on one side, and the police and the military on the other. Fortunately, no casualties were recorded, although several people suffered minor injuries. The press, with the notable exception of the *Malta Times*, accused the Governor of being personally responsible for the violent repression of the protest. Two months later, a petition was sent to London highlighting once again the fact that the 1835 constitution gave unlimited power to the Governor. The petitioners

renewed their request for a freely elected popular assembly with the power to check the Governor's arbitrary actions in civil matters.

The Maltese were further encouraged in their battle for their rights by overseas events. The liberal stance adopted by Pope Pius IX shortly after his enthronement, and the new Whig government in Britain heightened expectations as to the possibility of the Imperial Government acceding to their requests. Rumours began to circulate on the island regarding the replacement of Stuart with a civil governor who would be more willing to act on the pressing needs of the population. This in fact happened towards the end of 1847 when Richard More O'Ferrall, an Irish Catholic, was appointed Civil Governor of Malta by Queen Victoria. In theory, the choice should have cleared the air and created the conditions for a constructive relationship between the local authorities and the population. However, things did not work out as well as the Home Government and the Maltese had hoped.

More O'Ferrall proved his good intentions and willingness to improve the islanders' quality of life by the measures he took. Malta



*A print depicting the great welcome given to the Royal Commissioners John Austin and George Cornwall Lewis by the Maltese on 26 October 1836.*

became an important centre for the trans-shipment of grain, roads were improved, a Chamber of Commerce was established and the public service was heavily restructured for higher efficiency. He also tackled the thorny issue of the constitution and popular representation. The instructions given him by the Secretary of State Earl Grey provided More O'Ferrall with the possibility to nominate more members to the Council than previously allowed, but Grey also wanted the Governor to suggest modifications to the Council's structure in order to make it better suited to the island's needs.

The Governor was fully aware that the Maltese were closely following events as they unfolded in neighbouring Italy and Sicily, and that the gains made by those populations heightened local expectations. In a dispatch dated 10 July 1848, he told Earl Grey

Until recently, the contrast between the institutions and the government of Malta and the governments of Sicily and Italy was strongly in favour of Malta, but since the extension of extensive political rights in Sicily, with which Malta has so much intercourse, the feeling in favour of representation of some kind has greatly increased and is made the subject of constant discussion in the press and in the meetings of a body called the Popular Committee.

Keeping in mind what was happening in neighbouring states, More O'Ferrall made several proposals to the Secretary of State. He realized that public confidence in the Council of Government was of utmost importance if any real improvement was sought. The most important suggestion was certainly that of "a modified and restricted application of the principle of self-government", as this would bring the measures devised by the local authorities to the consideration of the popular representatives, who would then share responsibility for their adoption. The Government would also have the opportunity to explain these measures and the reasons behind them, in a way that the Council under the 1835 constitution was unable to do.

More O'Ferrall's proposals were accepted by the Colonial Office with some minor modifications. The new constitution provided for a Council of Government consisting of eighteen members. Ten were official members and included the Governor himself as president (with both an original and a casting vote), the General Commanding the Troops, the Chief Secretary to Government, the Auditor of Accounts, the Collector of Customs, the Crown Advocate, the Collector of Land Revenue, the Cashier of the Treasury, the Purveyor of Charities and the Superintendent of Quarantine. British officials invariably occupied the first five posts, while the other five were held by Maltese officials. The other eight seats were reserved to local representatives elected on a five-year mandate, in such a way as to have a permanent majority for the Government though the majority of members were Maltese. All laws 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. The quorum was established at half the total number of members of the Council, and a majority of votes of members present was required for the approval of a law. The Letters Patent and the Instructions regarding the establishment of the Council of Government were issued on 11 May 1849 and made public on the island on 23 June 1849. Elections were held the following August.

As already mentioned, elections were to be held every five years. Candidates were to be chosen by an electorate consisting of all males of good reputation aged 21 and over who had a good knowledge of English or Italian. Electors had to have a yearly income of 100 scudi or more, live in a property with a yearly value or rent of the same amount, or be partners in a firm with an individual satisfying any of the two requirements. Voters in Malta were required to list up to four preferences, and the seven candidates who received most votes after reaching a 100-vote threshold were to be elected. In Gozo, the voting system was simpler, as voters were asked for a single preference and the candidate who obtained most votes was deemed elected. The 3,015 votes cast returned the election of three priests, namely Rev. Filippo Amato, Rev. Leopoldo Fiteni and Monsignor Annetto Casolani,

as well as Giuseppe Pulis Montebello, Michelangelo Scerri, Arcangelo Pullicino, Giovan Battista Vella and the Gozitan representative Adriano Dingli, who was later to become Crown Advocate. The Governor convened the first session of the Council for 8 January 1850.

The reaction of public opinion to the new constitution was not what More O'Ferrall expected. The reform of the Council of Government kept the Governor in total control of public administration and elected representatives were confined to the minority bench. Moreover, public officials were allowed to stand for election to the Council, thus having an unfair advantage on their rivals due to the influence they could exert through their public roles. If elected, they would also have been faced with a clear conflict of interest, as understandably they would have found it very difficult to vote against the wishes of the Government. Another objection was the 100-scudi threshold established for eligible voters, which was deemed too high and excluded employees and other individuals who were perfectly capable of performing voting duties.

These issues were hotly debated in the press, which suddenly acquired a fundamental political role that it had previously lacked. The infamous financial threshold for voters meant that the eligible electors were those who were generally literate and could afford to buy newspapers, which were not widely affordable at the time. Consequently, the electorate formed part of the local newspaper readership and was therefore subject to the influence of political propaganda. Interest groups immediately sensed the potential of the press in the new Maltese political situation and took the opportunity to make their position known. The first electoral campaign in the history of Malta was under way, and the press was in the heart of the action.

The pro-Mazzinian mouthpiece *Il Mediterraneo* expressed the disappointment of the former *Comitato Generale* faction for the shortcomings of the new constitution, especially for the permanent minority status of the people's representatives and the limitations of the franchise. However, this did not prevent the faction from taking part in the electoral campaign. Nicola Fabrizi and his Maltese allies formed the *Circolo Maltese*, a cultural association that soon became a political

*Different factions*

faction known as *Associazione Patriottica Maltese* under the leadership of Gio Carlo Grech Delicata. The new organization founded its official organ *L'Avvenire* in 1849 under the editorship of Grech Delicata himself. In this way, the *Mediterraneo* could keep to its primary role as observer of the events occurring in Italy.

The pro-Jesuit faction, which rivalled that of the *Circolo Maltese*, rallied around a new newspaper named *L'Ordine*, founded by the Italian Jesuit Angelo Zuliani in 1849 and compiled by the fiery satirist Giuseppe Zammit, popularly known as *Brighella*. This political group was supportive of the Governor, whose close friendship with the Jesuits was a well-known fact. Another supporter of More O'Ferrall was *Il Portafoglio* of the Sciortino family, although it was not clearly linked to any faction.

The outcome of the election showed that the rival factions garnered roughly the same support. The most popular candidate, Giuseppe Pulis Montebello, was however an independent businessman and philanthropist. Some quarters, most notably *Il Mediterraneo* (29 August 1849) and *Il Portafoglio* (23 August 1849), expressed their concern that the election of three priests to the Council could lead to an excessive influence by the Church on the elective bench. However, events in Italy soon turned the attention of public opinion to the downfall of the Roman Republic and its aftermath, which also proved to be the downfall of More O'Ferrall. The Governor refused to allow a shipload of refugees from Civitavecchia to enter port, thus attracting widespread condemnation both locally and in Britain. His hard-line stance provoked strong reactions from his enemies, notably the local supporters of the anti-Jesuit Italian liberal exiles and the British military circles whose local mouthpiece, the *Malta Mail*, was particularly vociferous in its condemnation of the civil Governor. More O'Ferrall tried to rebut the accusations levelled against him but eventually resigned his post in 1851.

Despite the controversial nature of his governorship, More O'Ferrall must be credited with having succeeded in persuading the Imperial government of the need of some form of popular elective representation in the Council of Government, which had only been

previously conceded to New South Wales among the colonies of the British Empire. Given Malta's strategic importance for Great Britain as a fortress colony in the Mediterranean, it is certainly not surprising that at that point in time self-government was not even considered as a viable option. However, the Maltese persevered in their struggle to obtain further rights and a say in the administration of civil affairs, and used minority representation according to their needs. Electoral campaigns brought about a new vigour in public political debate, with candidates vying against each other for the electorate's support. Elections brought about rivalries and alliances, followers and opponents, creating a new exciting atmosphere in towns and villages. Political issues were discussed at lower levels of society as literacy spread and people had increasing access to the heavily politicized press. Journalists became political figures and used their papers to garner support for themselves and for their allies. In the early 1870s, the editor of the *Corriere Mercantile Maltese*, Ramiro Barbaro, was the most popular Maltese political figure and was considered the leader of the minority bench.

On their part, the elected representatives in Council seldom presented a united front. Factional rivalries, personal piques and individual interests created divisions that often undermined the effectiveness of their role as representatives of public opinion. In other cases, the Governor himself put obstacles to constructive co-operation between the official majority and the elected minority. In the early 1860s, Governor Gaspard Le Marchant, who was also the Commander of the Troops, made it obligatory for the official members of the Council to vote according to his wishes, in order to adopt measures that effectively saw the interests of the garrison prevail over those of the population. In 1875, the Secretary of State for the Colonies, Lord Carnarvon, formally instructed that the official majority in the Council was to push through any legislation proposed by the Governor, irrespective of the views of the elected members.

Some elected representatives, especially those from the merchant class, sometimes sided with the majority as they were eager to keep

*Merchant class sometimes sided with the majority to keep*

good relations with the Government, especially when the latter issued tenders for the supply of provisions to the troops. Moreover, each time an elected member resigned his seat, an election was held to fill the vacancy. This was not a rare occurrence, and meant that the local political scene was kept in election campaign mode for long stretches, to the satisfaction of the press that fed on the ensuing rivalries. Businessmen such as Francesco Saverio Decesare founded newspapers in order to promote their political ambitions and their commercial interests, usually by accusing their opponents of betraying the Maltese



GENERALE NICOLA FABRIZI.

*Generale Nicola Fabrizio*

people. In 1883, the Secretary of State for the Colonies, Lord Derby, took advantage of the lack of unity among the elected Councillors by issuing an Instruction whereby the opinion of the minority was to be taken into account only if unanimous, and only if not contrary to the interests of Her Majesty's Government.

The 1849 constitution was a disappointment for the Maltese who sought self-determination in internal affairs within an Imperial context. However, with hindsight, it must be considered a very important first step on the long road towards democracy and Independence. The introduction of elective representation brought with it political debate, popular political involvement, and eventually democracy, which must always remain the most treasured value of our society.