

1974: From Constitutional Monarchy to Republic

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The way in which Independence was achieved for Malta in 1964 was the result of a masterpiece of political manoeuvre. Prime Minister Borg Olivier was in earnest, but had to be engaged in political contests on at least three fronts: that with the British Government, that with the Labour Opposition and that with the Opposition offered by the three other non-Labour parties represented in Parliament. On the content and structure of the Independence constitution he had to produce a draft document acceptable to the United Kingdom Government, because the Independence Act would have to emanate from there, and acceptable also to the three minor parties, who would be expected to add their votes for the approval of the Statute by our Parliament. The Labour Opposition had to be utilised as the component of the Maltese electorate that could seal the question as to whether Independence should happen immediately, but if the famous six points which contained their objections were to be received, that would lose the consent of the three other parties, and a

substantial part of the Nationalist Electorate.

The vote in the Maltese Parliament, the response of the electorate in the Referendum, the United Kingdom's Independence Act and Order in Council, were secured, notwithstanding the reservations of the Labour Party and their vote in the negative. But only just. One remembers that the vote in the Parliament at Westminster was secured at the last possible moment before dissolution and through the benevolence of Labour politician, George Brown, on the Opposition benches. One remembers the perilous near margins in the vote within the Maltese Parliament and within the Maltese electorate in the May Referendum.

The constitution itself was a well-crafted instrument from the hand of one of Malta's best jurists ever, John J. Cremona. It must be said however that Cremona was limited by the same parameters of acceptability: that it could be legislated by the United Kingdom, that the three minor parties would prefer it to the Labour proposals and reservations. The lines could and did at times become entangled, but Borg Olivier and his Government as well as Cremona, managed, in the end, to produce a good document, defensible in itself, but also one that could be successful.

That was enough for the achievement of Sovereignty. The following years began to demonstrate its major defect: it had not been accepted by the Labour Opposition, which could and did return to power in 1971. In the following years it was evident that having a perfectly legitimate Government which did not 'own' the constitution was a very abnormal situation. Mintoff in the full flush of electoral victory gave intimations that he would drive to have the constitution, the concomitant Defence Agreement and the Financial Arrangements, changed on many points. He was trying to redress the fact that he had been outmanoeuvred by Borg Olivier in 1964. The first indication of Mintoff's determination was given by his Government's failure to appoint judges to serve on the constitutional Court, a fact which rendered all Maltese citizens unable to invoke its protection of the constitutional guarantees. That provoked a reaction from the Council of Europe prompted by interventions in the Parliamentary Assembly from Dr Censu Tabone and Dr Guido DeMarco. There were some moves at mediation by the Governor General Sir Anthony Mamo,

during the fact finding mission headed by the Italian Christian Democrat Senator Giuseppe Vedovato, then President of the Council's Parliamentary Assembly.

For a number of weeks in 1973 and early 1974, we, the Nationalist opposition in Parliament were defending the constitution and calling upon the Government to abide by it, and not only by its letter, but also by its spirit. The Labour Government was adamant in its stance. It looked like a perilous stalemate, which could well be resolved by a vaguely threatened coup de main from the Labour Government. There were those in the country and outside, who would have wished the Nationalist Opposition to dare the Government into attempting that course so as to bring it into international disrepute. Borg Olivier realised the consequences and was too much of a patriot to provoke such an outcome. He was visibly relieved when Sir Anthony Mamo offered to bring both parties together with a view to finding a compromise solution. We agreed to meet at San Anton. Together with Borg Olivier himself and Eddie Fenech Adami, I was chosen to form the initial negotiating team. When we met, the first time, Eddie and I, as Borg Olivier was unwell, found an almost impossible barrier to a fruitful continuation of the talks: the Labour Government insisted on the premise that the constitution was illegitimate, that, it should be done away with, and the political forces should begin to write a new one from scratch. The Opposition could not accept that basis: the constitution was the law, and there was no constitutional vacuum. Proposing amendments was one thing, annulling the whole basis of our democracy was another. The Government side argued that they could not make known what they would wish to change as otherwise we could reveal unpopular items so as to turn the electorate against them. I had provocatively asked the other side to say whether they would opt for a Republic, which at first they denied. The Labour side only volunteered to say that they would wish to change the matter of burials. Eddie of course informed Wistin Abela, who together with Dr Joseph Cassar and Dr Daniel Micallef, formed the group from the Labour Party, that the Burials Ordinance was not a constitutional matter: it could be changed unilaterally. As such this was just a sop so as to continue the exchanges. I suggested that we should both prepare a

written paper listing, on their side, what they wished to change, on our side what parts of the constitution we would consent to amendment so as to encounter their consensus. This was accepted. When the lists were exchanged in the hands of Sir Anthony, we found that the matters for negotiation and compromise could be drawn up. The delegations were now expanded and for the next nine months we met and discussed the various listed points. Mintoff did not like the flag, and the national anthem itself: the flag was 'colonial' because the colours belonged to Roger the Norman and the George Cross was a medal from the British King; the anthem was a prayer. In preserving both, we on the opposition were supported by Anton Buttigieg and others from the Labour camp. Dom Mintoff had misgivings about the declaration of the Religion of Malta. I remember telling him this section was not prescriptive, but descriptive. The real problems concerned the constitutional Court, the Judiciary, and private property. We would agree to the reduction of the judges composing the constitutional Court but in exchange we would suggest an automatic composition; we stood firm on the matter of judicial independence: that was not a subject of compromise. We found a formula for the safeguard of compensation for the expropriation of private property on the basis of the Indian solution found in Basu's famous constitutional treatise. On the matter of the position of the Catholic Church in Malta, the Government side saw fit to consult the Vatican: the formulation found was not perfect but we thought it would be substantially sound. There were other points on which it was easier to agree such as the number of electoral divisions and the number of members returned from each. The last stumbling blocks concerned the referendum requirement and the Monarchy. Borg Olivier was adamant; he had suffered all along the 'nibbling' at his 'own' and John Cremona's constitution, on this he could not give way. Within the group the matter was debated at length. The leeway of article 6 not being entrenched weakened but did not remove Borg Olivier's objection. As a last resort he suggested having a referendum on the Monarchy. Most of us in the Nationalist Executive Council and Parliamentary group knew that would be a political non-starter. Many of us were unhappy with a Governor General remaining in place as supposed guarantor of



The Republic being proclaimed in the Palace, Valletta



Sir Anthony Mamo the first President of the Republic of Malta acknowledging the crowd gathered in front of the Palace in Valletta

~~constitutional propriety at the whim of a Prim Minister, and preferred changing to a Republic headed by an elected President.~~

Mintoff was impatient, and more so were some of his followers who tried to bully us on the opposition into agreeing to their proposals by resorting to acts of violence. This, as a matter of fact, prolonged the process by a few more weeks as we could not bow our knees to violent demonstration. ~~Finally Dr Edgar Mizzi then the principal Government Adviser wrote his opinion as Attorney General in the sense that if Parliament was unanimous or nearly so there should be no qualm about adopting the amendments. A majority of us from the Opposition side agreed to a compromise solution, whereby the trapdoor once open for these amendments would then be sealed with the requirements for changing the constitution being henceforth entrenched.~~ Although the Nationalist Opposition was divided on this final solution, there was an overwhelming majority in Parliament for the changes.

These changes were never challenged in Court. The amendments were explained to the electorate in a number of public and party meetings. When we took our oath of allegiance to the Republic according the new constitution, the whole judicature was present in the Grand Council Chamber. Borg Olivier took his oath and muttered a reservation, all members on both sides likewise expressed their allegiance to the Republic.

~~The negotiations and events of 1974 were excruciatingly long and difficult. There had been in the penultimate phase of the negotiations a painful division within the Nationalist Party Parliamentary group and the Party Executive Committee. It looked as if a majority of the Nationalist members were not following their leader.~~

The end result was, however, that from that date onwards the nation has had a constitution which is owned by both major political parties and revered as a sensible compromise by the great majority of the Maltese people. It is now the supreme law of the land not only because it was so passed by a majority in the 1964 Maltese and British Parliaments, but because it is so accepted by almost the totality of the people of Malta and Gozo.