

**The Offices of
the President and the Prime Minister
of Malta:
A Way Forward**

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ABSTRACT

The state-of-play of the role and function of the Office of the President and the Prime Minister are intricately embedded in the conceptual framework of the Constitution of Malta 1964 as amended in 1974.

The first chapter expounds an overview of the relative literature synthesizing the most important historical happenings in Maltese Constitutional law. These events gradually changed the role and function of the Office of the President and the Prime Minister into what they are today. These state roles have come a long way from what they were originally and it is Maltese political history that shaped the true essence of how they both function in accordance with Maltese law.

The literature reviewed formed the basis for the secondary research of this study on which were formulated the hypotheses to be investigated by the primary research methods applied and described in Chapter 2. The method deemed most fit for purpose, where the objectives of this study were concerned, was the qualitative method and the research instruments opted for were semi-structured interviews, informal interviews and informal discussions, thereby satisfying the exigencies of triangulation.

The qualitative data gathered was then collated and analysed. The research findings of the Offices of the Prime Minister and the President are presented in Chapters 3 and 4, respectively. The results derived from the different research tools employed corroborate, deny, complement and/or supplement one another and offer a great deal of significant material on which to articulate the discussion and recommendations outlined in Chapter 4 as well as the final conclusions which are then brought together in Chapter 5.

This research study has delved deeply into the role and function of the Offices of the President and Prime Minister, their evolution over time, the developments to date and the controversies surrounding their continuity. Accordingly, this thesis has recommended a number of proposals, based on the feedback obtained from those participating in this study, including the presidential appointment by: two-thirds majority and subsequent election; an absolute majority of the House and local council representatives; and, election, apart from various other ancillary changes. Adoption of one or more of these proposed recommendations in the form of amendments to the Constitution of Malta 1964, where the Office of the President and Prime Minister are concerned, will kick-start the process of change setting the course for the way forward.

Key words: Constitutional Law, President of Malta, Prime Minister of Malta, Theory (Constitutional, legal) v. Practice (political, real), Amendments

DEDICATION

I am dedicating this work and all the hours, days, weeks and months I put into it, to the three most deserving people I know and love, my mother, Helena, my father, Patrick and my grandmother, Connie.

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LIST OF STATUTES

Maltese

The Constitution of Malta

Chapter 369 of the Laws of Malta, *Commission for the Administration of Justice Act*

Chapter 350 of the Laws of Malta, *Broadcasting Act*

Chapter 452 of the Laws of Malta, *Employment and Industrial Relations Act*

Chapter 354 of the Laws of Malta, *General Elections Act*

Chapter 497 of the Laws of Malta, *Public Administration Act*

House of Representatives (Privileges and Powers) Ordinance – Chapter 113

Subsidiary Legislation Const. 04 (Commission for the Administration of Justice)

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LIST OF ACRONYMS

Arch – Architect
Art – Article
Col – Constitution of Italy
CoM – Constitution of Malta
DOI – Department of Information
Dr – Doctor
EU – European Union
Ibid. – <i>ibidem</i> (the same place)
LL.D – Doctor of Laws
MLP – Malta Labour Party
PN – Partit Nazzjonalista
Prof – Professor
SC – Select Committee
SCR – Select Committee Report
UK – United Kingdom
vs. – versus

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It is true that “a journey of a thousand miles starts with the first step”; and here I am, at the end of the 6 years of the law course giving in the most important document of my life – my LL.D thesis. I still remember the first day of University; one of my lecturers said something which struck me and it still echoes in my mind today. I take the liberty of quoting him here: *“Look to your left! Look to your right! Most probably those sitting next to you will not make it till the end.”* Fortunately, I am one of those who made it to the 6th year and, for this, I have to thank many people.

First and foremost, I cannot, but start with my supportive and patient parents, who throughout these long years were there for me in good times and in bad. With hand on heart, I humbly state that if it were not for their support and help I would have never made it to this point. They have managed to keep me sane in the darkest parts of the course. For this, I will be forever grateful.

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I started these acknowledgements with a quote and I will end with another one. John Donne once said that "no man is an island", so I thank all the people who I mentioned above and others who helped me get to where I am today.

Grazzi mill-qalb!

Luke

***“Perseverance,
secret of all triumphs.”***

Victor Hugo (1802 – 1885)

OVERVIEW

0.1 INTRODUCTION

The state-of-play of the role and function of the Office of the President and the Prime Minister are intricately embedded in the conceptual framework of the Constitution of Malta 1964 as amended in 1974. This introduction describes the setting which intrigued the researcher, enabled the problem to be specified and justified the need for research in this field as well as the necessity to study and propose all possible ways forward.

0.2 THE CONSTITUTION OF MALTA

The Constitution of Malta was embraced as an order in Council on the 21st September 1964. It replaced the Constitution of 1961. It has been amended twenty-four (24) times to date. Malta became a “parliamentary democracy” within the British Commonwealth, with Queen Elizabeth II acknowledged as the Sovereign of Malta and, politically, the Governor General¹ as the person who exercises the executive authority in her name on the island². Prior to the 1974 Constitution, the Governor was the representative of the British monarch. Following the 1974 historical events with Malta becoming a Republic, Sir Anthony Mamo, as the incumbent Governor General, was appointed the first President of Malta. In other words, prior to the 1974 amendments to the Constitution, the role of the President did not exist, but the relative functions were carried out by the Governor prior to the 1964 Constitution and then by the Governor General following the 1964 Constitution³.

¹ Med Library website < http://medlibrary.org/Constitution_of_Malta > accessed 20 January 2013

² J J Cremona, *The Maltese Constitution and Constitutional History since 1813* (Publishers Enterprises Group Ltd, 1994)

³ The Independence Constitution

0.2.1 Historical Evolution

During the years 1964 to 1974, the actual direction and control of the country was in the hands of the Cabinet of Ministers under the leadership of the Prime Minister of Malta⁴. The Independence Constitution declared Malta to be “a liberal democracy safeguarding the fundamental human rights of the Maltese citizens” and clearly demarcated a separation between the executive, the judicial and the legislative organs of the state⁵.

0.2.2 Birth of the Government of Malta

Historians and jurists state that the 1961 Constitution, also known as the “Blood Constitution”, provided a sturdy backbone for the formulation and completion of the Independence Constitution of 1964. One of the essential and central features of the 1964 Constitution was the replacement of the diarchic system; no longer considered a practical structure for the island’s governance. In 1961, a single Government system was created leading to the birth of the Government of Malta that consisted of complete legislative and executive powers. However, Malta was still a colony and responsibility for external affairs and for defence was still re-directed to the British Government⁶.

The Constitution of 1961 gave birth to a legislature that was acknowledged as a Parliament in the Constitution of 1964, but under which, textually, the Cabinet of Ministers had the political role of managing and directing the Government of Malta. In 1961, the Office of the Prime Minister was, in practice, the Office that presided over the Government and, therefore, over the Cabinet. The Legislative Assembly was constituted of seven ministers or less, and they were collectively responsible to it. When exercising his powers, the Governor was bound to act on the advice and on behalf of his Cabinet, excluding situations where he was

⁴ Med Library website (n 1).

⁵ Cremona (n 2).

⁶ Ibid.

permitted to act at his own discretion or on the recommendation of someone outside his Cabinet⁷.

Thus, the 1961 Constitution was instrumental in instituting the first Cabinet in the Maltese political scenario building on the unicameral legislature instituted in 1947. The Legislative Assembly had a life span of four years and the number of members which composed it was fifty (50)⁸; elected by universal suffrage from ten electoral districts, on the basis of the system of proportional representation by the single transferable vote⁹.

0.2.3 Constitutions and Continuity

The 1961 Constitution laid a firm basis for the prospective attainment of Independence¹⁰. When Malta attained independence in the year 1964, legal continuity of the legislation was, nonetheless, assured as the Maltese, through their politicians, did not want to sever all ties with the United Kingdom. Thus, Parliament outlived the transition from being a colony to an independent state. Continuity was thus engendered as the development of the Malta Independence Order was the subject of entrenchment to the Malta Independence Act 1964. Declared in Article 50 of the Order, this affirmed its evolution as an addition to the 1961 Constitution, thereby reinforcing the fact that, although Malta attained independence, the sense of continuity was perceived as reigning untouched¹¹.

The Malta Independence Order of 1964 was subject to the Malta Independence Act 1964; a document containing the principal regulations in control of the Constitution of the State and, therefore, of paramount importance. It is supreme over any other document, relegating any other legislation to a secondary role. In retrospect, it may possibly be held that the Independence Constitution was

⁷ Med Library website (n 1).

⁸ Cremona (n 2).

⁹ *ibid.*

¹⁰ Med Library website (n 1).

¹¹ Cremona (n 2).

composed of principles that arose from previous Constitutions, dating back to 1921, when the first legislature was officially initiated. It is safe to infer that the Independence Constitution evolved from the versions that preceded it¹². Conversely, it has been argued that the 1964 Constitution is not just a replica of the 1961 Constitution with the add-on of a sovereignty clause. Instead of calling it an improvement, there is a preference for the term *stepping stone*, as it was the final step in a long series of Constitutions¹³.

The Independence Constitution was not agreed upon by everyone involved in the Maltese political spectrum. The Malta Labour Party, at the time occupying the seats in the opposition, disagreed on three points: first, in the case of religion, the Constitution was not as liberal as it should have been; secondly, the concept of independence was being contradicted by the defence agreement; and, thirdly, the financial agreement was not supportive enough of the new political reality that Independence would bring about in the country¹⁴.

The Nationalist Party governing at the time¹⁵ brought forward the same Constitutional document as part of the mechanism. After the issue was discussed and passed through the British and the Maltese Parliaments, the Maltese electorate was called to the country in a Referendum, held between 2nd and 4th May 1964, to decide on whether, or not, they agreed with the Independence Constitution. The outcome of the referendum was a vote in favour¹⁶ and, hence, on the 21st September 1964, after almost 164 years of British rule, Malta attained political independence and became a sovereign state¹⁷.

¹² Herrera C P, 'Historical Development of Constitutional law in Malta 1921 – 1988' (LL.D thesis, Faculty of Laws, University of Malta 1988)

¹³ Med Library website (n 1).

¹⁴ Ibid.

¹⁵ Nationalist Party led by Dr Giorgio Borg Olivier in Government from 1962-1966

¹⁶ Referendum results: 65,714 votes in favour (54.5%), 54,919 votes against (45.5%)

¹⁷ Med Library website (n 1).

0.2.4 Political Milestones of the 1970s

In 1971, the Maltese population was, once again, asked to vote in a general election. This time, it was the Malta Labour Party, the MLP, under the leadership of Architect Dominic Mintoff that won this election marginally and was to govern the country for the following 16 years. As one of the first actions, during and within the legislature, the new Government resumed discussions with the British Government on the Defence Agreement of 1964. The drafting of a new Agreement was penned in 1972, in which it was covenanted that the British forces were only allowed to make use of Malta as one of their military bases until the year 1979¹⁸.

On 13th December 1974, Parliament revised the Constitution to render Malta a Republic and made major changes to the roles and functions of the President (Head of State, absolute monarch) and the Prime Minister (Head of the Executive Government, elected monarch). Malta also became a Republic, still within the Commonwealth Group of Nations, and the President was assigned with the exclusive authority over the Maltese state. With the amendments to the 1964 Constitution, the authority of the British monarchy in Malta was removed. Consequently, the President of Malta, who was appointed by Parliament, was, in turn, vested with the power to appoint the Prime Minister (i.e., the member of the House of Representatives who, in his judgement, is best able to command the support of the majority of the members of that House¹⁹) to lead the Government and rule the country during the next Legislature. This democratic amendment gave the citizens the right to elect their representatives to rule them for the forthcoming five-year period, until the expiration of the constitutional term laid down by law²⁰.

The President, upon recommendation of the Prime Minister, became also constitutionally bound to appoint a selected number of Ministers from those individuals elected in the preceding general election to head different

¹⁸ Cremona (n 2).

¹⁹ Constitution of Malta, Chapter VII, Article 80 (CoM).

²⁰ Cremona (n 2).

Government Ministries/Parliamentary Secretariats within the Government of Malta²¹. These Ministers, together with the Prime Minister, were to form the Cabinet of Ministers. The Constitution also provided that, in Malta, general elections must be held, at least, once every five years²². Maltese political history had shown that due to instability in the political scenario or a state of non-governability, past Prime Ministers had chosen to hold general elections prior to the expiration of the five-year term, many a time before half the Legislature had expired. This scenario was, once again, enacted by the Government of Dr. Alfred Sant which was elected in 1996 but was forced to the polls twenty-two (22) months later due to instability on the Government benches.

Where the running of elections was concerned, the Constitution of Malta, 1964, provided that the system to be used to elect representatives was the single transferrable vote system, in terms of which the country would be divided into thirteen electoral districts, and, from which five Members of Parliament were to be elected from every district totalling sixty-five (65) Members of Parliament at the end of each electoral exercise²³.

On 31st March 1979 following the amendment of the Maltese Constitution and the establishing of Malta as a Republic (thereby, involving the removal of the monarchy), the Defence Agreement of 1972 came to a close and the last Royal Navy ship left the shores of Malta. This day was declared by the Government a national feast and referred to thereafter as Jum il-Helsien (Freedom Day). Following the 1981 election, Architect Dom Mintoff was once again elected Prime Minister and, owing to the electoral workings in place at the time, he gained a three-seat majority in parliament and was, therefore, given the mandate to rule the country for another 5 years²⁴.

²¹ CoM, art 80.

²² CoM, art 76 (2).

²³ Malta Electoral Commission website: <<http://www.electoral.gov.mt/>> accessed 3 April 2013.

²⁴ Cremona (n 2).

Apart from these instances (up to 1974), the Constitution of Malta was neither changed nor amended where the role and function of the Offices of the Prime Minister and the President were concerned²⁵.

0.3 CONCLUSION

This identified lack of evolution of these Offices gave rise to a broad opening for an in-depth discussion on whether the President, instead of merely fulfilling duties and obligations as a rubberstamp figurehead, should be given further constitutional responsibilities, together with the Prime Minister, in the governance of the country; or whether this would add extra political confusion to the actual decision-making process.

²⁵ Med Library website (n 1).

CHAPTER 1

LITERATURE REVIEW

1.1 INTRODUCTION

Building on the foregoing section, this first chapter expounds the relative literature synthesizing the most important historical happenings in Maltese Constitutional law. These events gradually changed the role and function of the Offices of the President and the Prime Minister into what they are today. These state roles have come a long way from what they were originally and it is Maltese political history that shaped the true essence of how they both function within the Maltese legal framework.

1.2 THE PRESIDENT IN MALTA'S CONSTITUTIONAL SCENARIO

The President in Malta, in line with the Constitution, formally occupies the position of main representative of the State (as Head of State) and Government (as Head of the Executive)²⁶, through which all state work and governmental actions are carried out, either, personally, by the President, or, in his name. Unfortunately, the former course of action is quite limited in frequency and most of the work is carried out in his name. The position of President may be considered as weakened on comparing the little he actually carries out in his personal capacity to what he constitutionally delegates to other statesmen like the Prime Minister, the Ministers and the Attorney General.

1.2.1 British Influence

To better understand the role the President plays in Malta, a comparison may be made with the Queen's role in the United Kingdom (UK). Governmental powers are legally vested in the Queen. In practice, however, they are exercised by the Prime Minister and Ministers in her name. The Queen in the UK enjoys certain powers known as "prerogative powers"; a residue of exceptional powers which the Crown had over advisors. However, Sir Ivor

²⁶ CoM, art 78(1).

Jennings suggested that, consistent with the so-called constitutional conventions, there was ‘transference of Royal prerogative to the Cabinet’²⁷ (i.e., a politically binding and enforceable rule of practice). He continued by citing Dicey on the “constitutional conventions” as being ‘rules for determining the mode in which the discretionary powers of the Crown ought to be exercised’²⁸.

As a former British colony²⁹, it was inevitable that Malta adopt a similar constitutional framework with respect to this prerogative. This was the case when, between 1964 and 1974, the Constitution of Malta was upheld by the Governor General on behalf of the Queen. Subsequently, when in 1974 the country celebrated its new status as a Republic, the President of Malta inherited these residual prerogative powers³⁰. To date, constitutionally speaking, the President is Malta’s Head of State, but has only retained a figurative and symbolic function rather than the more active role.

1.2.2 International Cyclorama

In spite of the fact that the dual role of Malta’s Head of State and Head of the Executive is vested in the President, the Maltese governmental system is not a presidential one as found in the United States of America and France. Rather, the Maltese system can be compared with the Italian, Spanish, as well as the British system; with the last two having a King or a Queen as monarchs. Unlike the President of the United States, who exercises real political power as Head of State and Head of the Executive, the Maltese President does not actually govern. The governance of the country is carried out by the Prime Minister and the Cabinet of Ministers, who hold the political reality with a mandate to conduct and direct the general strategic plans of the government³¹.

²⁷ Ivor Jennings, *The Law and the Constitution* (University of London Press Limited, 1938).

²⁸ Cremona (n 2).

²⁹ Malta was a British Colony for 164 years (1800-1964).

³⁰ When the Maltese President took over the role from the Governor General.

³¹ CoM, art 79(2).

1.2.3 Constitutional Regulation

A better overview of the workings of the Office of the President of Malta may, primarily, be gained when discerned in the light of the Constitution. These workings, as stipulated within the Constitution, mainly revolve round three principles; namely, the appointment, removal and performance of the presidential functions and duties within the Office during the presidential term³².

1.2.3.1 Current and Proposed Appointing Process

The President is appointed to Office by a resolution of the House of Representatives for a five (5) year term³³. At the expiration of the period, the President's Office becomes vacant and the House of Representatives must proceed to indirectly elect the next President to fill the Office clearly defining that the Office of the President is not a directly elected Office but an indirectly elected one; the appointment to which is not effected by universal suffrage but, as stated, by a resolution of the House of Representatives. An example of an elective Office would be that of the United States of America or France (which Offices are elected directly by the citizens as a matter of constitutional conventions)³⁴.

Malta's current Constitution is modelled on the political realities of 1921 to 1964 (when a multi-party system predominated) giving rise to the possibility of having more than two parties in government. Despite this backdrop, the past decades have witnessed the Maltese population consistently voting for a bi-partite House of Representatives; a scenario which lends itself to the heavy politicisation of most issues addressed by Parliament. In turn, the appointment of the President is highly dependent on whom the Prime Minister (the person leading the

³² Ragonesi R, 'Powers of the President: A Comparative Study' (LL.D thesis, University of Malta 1988).

³³ CoM, art 48(1).

³⁴ Ian Refalo, 'The President' - Lecture Notes (Faculty of Laws, University of Malta 2006).

majority in the House of Representatives³⁵) and his party deem fit for the role. Therefore, the President is chosen on the dictates of a Prime Minister, enjoying a majority in a system retaining a bi-party type of legislature, who can decree whom to choose and bring forward, and, subsequently, persuade the Members of Parliament to vote in favour of the candidate deemed fit to fill the highest seat in the land. For this reason, many describe the President as being merely a figurehead as the constitutional way of selecting the President does not render the role truly representative of the country's preference.

The Maltese situation, in this respect, may be contrasted with that of Italy. The 'Presidente della Repubblica Italiana', as per Article 83 of the Italian Constitution, is chosen by a vote in Parliament; a system that gives a more widespread representativeness than the Maltese vote in parliament. Despite such variations from the Maltese constitutional parliamentary system, the Italian constitutional parliamentary system is similar to that of Malta, the only difference being in the mentality of the voting population that elects a multi-party Italian Parliament³⁶. Apart from the Members of Parliament, a number of delegates, proportionate to the size of the Italian region they hail from, are eligible to vote for the President³⁷. These provide a larger sample and ensure that the appointment is more representative of the country's beliefs and the citizens' preference where their president is concerned.

1.2.3.2 Removal Process

With respect to the removal of the President, although the term in Office prescribed by the Constitution is five years³⁸, the President, in the circumstances listed below, may also be removed from Office prior to the expiration of this term. (Maltese law also stipulates that on the expiration of this term, the same person cannot be re-appointed by the House to hold Office for

³⁵ CoM, art 80.

³⁶ Raymond Mangion, Tutorial, Faculty of Laws, University of Malta.

³⁷ Constitution of Italy, Title II, Article 83.

³⁸ CoM, art 48 (3)(a).

another term.) The Constitution provides for the possibility of such removal on two grounds: one, on grounds of inability to perform the functions of the Office; and, two, on the grounds of misbehaviour³⁹. Removal is effective following the House's passage of a Resolution by a simple majority.

It is remarkable that the removal of one of the highest Offices of the State, such as that of the President, should merely require a resolution of the House of Representatives to be effected and only by a simple majority at that. In addition, to further highlight the insubstantial nature of this role with the power play of Mat's topmost posts, the Constitution states that the two grounds for removal above-mentioned need not be proven but merely "alleged"⁴⁰. By contrast, the removal of the President of Malta is entirely different from the procedure that is followed in the removal of the Attorney General, a judge of the Superior Courts and magistrates of the Inferior Courts. Moreover, the individuals holding the posts of Attorney General, judge and magistrate, have greater security of tenure⁴¹ since, primarily, a two-thirds majority, not merely a simple majority, of the House of Representatives is needed and, secondly, the grounds for removal (misbehaviour and inability to perform the functions of Office) must be proved⁴².

In sum, the threshold for the removal of the President under the Constitution of 1964 is much lower than equivalent public Offices on the island. Additionally, it clearly transpires that the Office of the Prime Minister in Malta is far more powerful than that of the President allowing for a rather petty scenario for removal: the premise that should the Prime Minister come into disagreement with the President, the former can proceed to remove the latter by a simple majority vote taken on a Resolution in the House of Representatives.

The Queen of England seems to enjoy a stronger constitutional position than the President of Malta by way of comparison. This constitutional difference is mainly embedded in the manner of appointment and removal. The monarch is

³⁹ CoM, art 48 (3)(b).

⁴⁰ Strictly speaking, the Constitution has not textually applied the term.

⁴¹ Sant M., 'Proposals for a Constitutional Reform Agenda in Malta' (LLD thesis, Faculty of Laws, University of Malta 2008).

⁴² CoM, art 97(2).

not appointed but follows a system of succession and can only be terminated from the Office following death or by abdication. There is no procedure by which the Prime Minister can remove the monarch from Office. The situation of the monarch in the UK contrasts strongly with that of the President of Malta; particularly when dealing with a Prime Minister who enjoys a strong political position over the President⁴³.

The President may, essentially, be considered elective nominee of the House of Representatives, whilst the Prime Minister elective leader of the citizens; owing to developments over the past years where the citizens voted for a bi-party Parliament rather than electing more than two parties to Parliament. The Constitution of Malta does not stipulate the adoption of this system of Parliament, but allows leeway for three or more parties to be elected to Parliament. It was, consistently, the will of the popular vote that made this political reality possible. If the appointment of the President were orchestrated by the people, it would require an entrenchment of the provision for his removal because the individual occupying the post would be the people's choice and, therefore, cannot be removed by a simple majority of the House of Representatives. Malta's parliamentary system does not endorse a system whereby the President is politically powerful, but opts for a more politically powerful elected House of Representatives and a very powerful Prime Minister⁴⁴.

1.2.3.3 Functions and Powers

Where the functions and powers of the President are concerned, it must be kept in mind that, as laid out by the Constitution in the provisions referred to below, the President's residual prerogative may be exercised, either, personally at the President's own discretion, or, by taking advice from the Prime Minister or a Minister from the Cabinet⁴⁵.

⁴³ Refalo,(n 34).

⁴⁴ Sant, (n 41).

⁴⁵ Ragonesi, (n 32).

1.2.3.3.1 Assent

As stated in Article 51 of the Constitution of Malta, the President, as Head of State, is part and parcel of the composition of Parliament.

51. There shall be a Parliament of Malta which shall consist of the President and a House of Representatives

(Art.51, Constitution of Malta, 1964)

According to the text of the 1964 Constitution, neither the President nor the House of Representatives in their individual capacity constitute Parliament. As laid down in Article 72 of the Constitution of Malta, they need each other to function as a Parliament in a legislature. In practice, the process does not quite follow. Hypothetically, a bill passed through the House does not become law until it has the President's assent⁴⁶. It will not become law before the President signs it but he is obliged to sign it without delay. His signature is a mark of agreement. Therefore, the President is an essential part of the legislative organ.

In practice, the assent is merely a formality; since, should he delay he would be behaving unconstitutionally by omission⁴⁷ because, in a parliamentary system of government, the President does not have any real authority to refuse the assent to a bill passed by the House of Representatives. Assent is, therefore, a constitutional convention and, hence, no judicial action will be taken against the person of the President for refusing to assent. On the political plane, however, the consequences, which would ensue, subsequent to the President withholding assent, are the following:

Either, the President would have to resign or would have to be removed from Office by a Resolution of the House of Representatives and another president would then have to be appointed, which President will then give his assent to the bill; or, an acting President would have to be appointed for a specified

⁴⁶ CoM, art 72(1).

⁴⁷ CoM, art 72(2).

period of time in order to obtain the assent, after which the original President would be able to resume his functions and Office.

The connotation clearly depicted by the foregoing is that of the Office of the President as a mere figurehead; implying that the significance of the post is not vested in the person filling it but in the Office itself. Despite the fact that the highest legislative organ in the State is comprised of two arms, the President and the House of Representatives, and, constitutionally, one cannot function without the other, the House of Representatives is assured of the President pulling the same rope or, in the event of the President expressing dissent, his removal or replacement for the time it takes to see things through. This state of affairs lowers and inhibits the position and proactive contribution of the President.

1.2.3.3.2 Executive Authority

The present Constitution of 1964 also regulates the relationship between the President and the executive organ of the country. In Article 78 (1), it is stated that the Executive Authority of Malta is vested in the President. Article 78(2) amplifies this by stating that:

78. (2) The executive authority of Malta shall be exercised by the President, either directly or through Officers subordinate to him, in accordance with the provisions of this Constitution.

(Art.78 (2), Constitution of Malta, 1964)

In reality, the President in a “parliamentary” system does not have real exercise of political power as in a “presidential” system; in the way that the President of the United States of America has where the Executive is wholly vested in him and his Secretaries of State are answerable to him. According to the Maltese parliamentary system as delineated within the Constitution, the President runs the Government. In reality, the Prime Minister appoints a Cabinet of Ministers

subordinate to him for the purpose of governing⁴⁸. Therefore, Malta adopts a system in which the Prime Minister (as Head of the Cabinet) holds the central political role in the running and governing of the country⁴⁹.

The President rarely exercises the executive function. The exercise of most of the prerogative powers is regulated by constitutional conventions⁵⁰; central to which conventions is the requirement that the President is to act on the advice of the Ministers he appoints. Article 85 (1) of the Constitution of Malta clearly specifies that the President in exercise of his functions shall act in accordance with the advice of the Cabinet of Ministers except in cases when he is required by the Constitution or any other law to act in accordance with the advice of any person or authority other than the Cabinet.

According to Article 93 of the Constitution of Malta, the President has the power to exercise a prerogative of mercy to grant a presidential pardon to a convicted person. Yet, the President, once again, is not acting on his own initiative, but on the whims of the Cabinet of Ministers, since the Cabinet gives the President advice on the particular situations and individuals who are to be pardoned. Time and again, the case in point evidences another tangible case where, on paper, the President is perceived to have a great deal of authority while, in reality, he is simply carrying out a constitutional order⁵¹.

Another noteworthy example of this theory (constitutional, legal) vs. practice (political, real) scenario is again found in Article 85 (1) that refers to the President's proclamation to dissolve Parliament and have recourse to the electorate for the purposes of a general election. In reality, the President's initiative does not give rise to such an action but it is the Prime Minister who determines when an election is to be held prior to the expiration of the five-year duration of Parliament. The President is, generally, expected and required "by convention" to accept the Prime Minister's advice to dissolve Parliament in

⁴⁸ CoM, art 79(1)(2)

⁴⁹ Refalo, (n 34).

⁵⁰ CoM, art 85.

⁵¹ Refalo, (n 34).

anticipation of a general election. However, there may be situations, such as those outlined below, where the Constitution envisages that the President may use his personal discretion to decide.

Such uncommon situations, where the President is given discretionary power and can act on his own initiative when deciding, are addressed by Article 76 (5) (a) of the Constitution which endows the President with the power to dissolve Parliament following a vote of 'no confidence' by the same House of Representatives against the government. If, subsequently, after three days, the Prime Minister has not yet resigned or advised dissolution, the President has the constitutional duty to dissolve Parliament on his own initiative.

Against such a background, the Constitution of Malta places the President in a stronger situation than the "defeated" Prime Minister; and ensures continuity through the functioning of a responsible Government answerable for its actions, conduct and policies to Parliament. The proviso secures the nation's confidence in the ultimate legislative body, Parliament, while it appeals to the electorate to exercise their right to re-elect the Members of Parliament from whom the government is drawn.

Article 76 (5) (c), however, endows the President with the right to refuse dissolution of Parliament if the Prime Minister has recommended such a move. Article 76 is underpinned by the idea that such a decision will not be in the best interest of Malta and its citizens and that this interest will be best served if the present Government will continue governing. In this event, the President has the legal power to refuse to dissolve Parliament. Moreover, he is bound to dismiss the defeated Prime Minister on the premise that the President is to find an alternative individual who enjoys the confidence of the House of Representatives. At face value, there are numerous risks to the exercise of such personal power of the President to refuse a request from the Prime Minister to dissolve Parliament. Circumstances of this ilk give rise to a sensitive

situation as it may be alleged that the President is favouring one political party over another through the exercise of his personal discretion⁵².

Some consider this power to be rather out-dated in a modern democratic system such as the Maltese system. The argument as to whether the exercise of this power may be dangerous is illustrated by the Australian constitutional crisis of 1975 when the Governor General of Australia dismissed the Prime Minister on the basis that the Head of the Executive had refused to recommend the dissolution of both Houses of Parliament for a general election to resolve the deadlock which came about when the Senate blocked necessary financial measures. The Governor General received a guarantee that the Leader of the Opposition would recommend the dissolution of Parliament and went on to invite him to become Prime Minister⁵³.

The presidential personal prerogative may, of course, be the only weapon that checks the exercise of capricious power by a Prime Minister. It can, therefore, be considered as a safeguard of constitutional values. It demonstrates that, at first glance, the President should act and accept the Prime Minister's advice; although, as a proviso, it enables the President to exercise a personal discretionary function. The ultimate objective is to protect the political workings of the Constitution against discrimination and arbitrary decisions⁵⁴.

1.2.3.3.3 Direct Relationship: Office of the President and Prime Minister

A very important function that requires Presidential personal discretion by the President is the appointment and removal of the Prime Minister.

⁵² Refalo, (n 34).

⁵³ Winston McMinn, 'A Constitutional History of Australia' (Oxford University Press 1979)

⁵⁴ Sant, (n 41).

85. (1)(b) in the exercise of the power to appoint the Prime Minister or remove the Prime Minister from Office conferred upon him by article 80 and sub-article (1) of article 81 of this Constitution;

(Art.85 (1) (b), Constitution of Malta, 1964)

The Prime Minister is to be appointed by the President and, thus, he is, constitutionally, the person who, in the President's judgement, is best able to command the majority of the Members of the House⁵⁵. However, in politics, this choice is not a matter of real discretion as the choice of who will become a Prime Minister is almost always obvious and conditioned. In the context of the theory (i.e., text of the Constitution) vs. practice (i.e., text of the Constitution brought to bear politically) argument broached earlier on, in theory, the President is actually choosing an individual from those elected in Parliament to lead the government and fill the Office of the Prime Minister.

However, in practice, there is no decision making; since the person who leads the winning party to victory in a general election has always been the person who is elected Prime Minister of Malta. It is also important to reinforce the fact that the Constitution of Malta does not make reference to multi- or bi-party systems. However, the 1964 Constitution is modelled on the political realities that predominated between 1921 and 1964 where a multi-party system was the norm. Therefore, it is taken as given that the Maltese Parliament may be composed of two or more parties. It is only the voting mentality of the electorate that has restricted the Maltese system to a bi-partisan one. Moreover, there is no mention of political practice as the concept of "the Party" is alien to the Constitution.

When this discretionary Presidential power is applied in a multi-party system, the President is poised to exercise real personal discretion within limits; since, in the event of no party obtaining the required absolute majority, as was the case in Italy in the 2013 elections where no party or coalition had the absolute majority of the 'seggi', then the President may determine which one of the parties will be able to govern. However, as a vital rule, whoever is chosen must

⁵⁵ CoM, art 80.

necessarily be able to command the majority of the House. This is what, *prima facie*, transpires from the Maltese Constitution.

The President can dismiss a Prime Minister if there has been a vote of 'no confidence' in the latter, where an absolute majority of the Members of Parliament have voted against the Government, provided that the Prime Minister has not resigned or advised a dissolution and provided this dismissal occurs subsequent to the passing of three (3) days following the vote.

Other areas in which the Constitution of Malta allows the President to exercise personal discretion include the appointment of an acting Prime Minister regulated by Article 85 (1) (c), the appointment of the Leader of the Opposition as outlined in Article 85 (1) (d) and the appointment of his personal staff as referred to in Article 85 (1) (e).

Nonetheless, when the President appoints other ministers, members of the judiciary, the Attorney General, and other public Offices, he is, in reality, acting on the advice of the Prime Minister or any other competent authority. An important point to also note is that where the President must have acted on the advice of another competent authority, the courts will not enquire into whether such advice has been given, sought or applied, and this emerges in Article 85 (2).

The Constitution envisages situations where the President can act independently. However, the President acts on the advice of others, largely the Prime Minister. In any situation where the President happens to ignore the Prime Minister's advice, if the former is politically weaker than the latter, as in the majority of cases, then he would have to step down from his Office. *Ergo*, such a political situation would bring about the resignation or dismissal of the person who, from amongst the two at the time, turns out to be, politically, the weaker. Generally, the President, so as not to create and to avoid awkward situations, chooses to follow the advice given to him by the Prime Minister and the Ministers.

1.2.4 Conclusion

The President, under the Maltese Constitution, has functions that are, generally, not expressly defined or limited. In reality, the President is the Head of State in Malta; therefore, he is also a Representative of Malta. This role makes it necessary for the President to promote cultural, ethical and social values that reinforce the nation⁵⁶. Whether or not he was an ex-politician and whatever the party to which he belonged, the President cannot be “partisan”. There are values derived from our Constitution that dictate that the President is duty bound to promote issues such as fundamental human rights, the value of work, environmental patrimony, and, above all, democracy that are enshrined in the Constitution and the workings of Constitutional Law⁵⁷.

The President, in a figurative term, may be referred to as the ‘guardian of the Constitution’; the *raison d’etre* of this Office being to ensure that the tenets of such a vital document are observed. The President, as the highest of authorities in the land, is perceived in this light. The Courts of Law also figure as guardians of the Constitution given that they too ensure that the Constitution is being observed. However, although there are some crucial aspects of the presidential role that warrant it as one of the most important guardians of the Constitution of Malta, the President really and truly acts on the advice of the Prime Minister⁵⁸.

It needs to be emphasised that the President has to act carefully to ensure that no constitutional crisis is created should the Government be defeated in the House of Representatives. The President makes sure that what is best for the country is carried out in order to conserve constitutional legitimacy. The President is, at the end of the day, the symbol of unity. The President, so understood within the Constitution, enhances the comprehension that the ultimate law of the land is not just a long list of laws but also a set of symbols expressing the unification of a nation, where the separation of powers prevails over the individuality of a single man.

⁵⁶ Ugo Mifsud Bonnici, *Il-Manwal tal-President tar-Repubblika* (Stamperija tal-Gvern n.d.)

⁵⁷ Mifsud Bonnici, (n 56).

⁵⁸ *Ibid.*

The President in Malta is the Head of State and Head of the Executive, even though, in many circumstances, he does not act on his own personal initiative but on what he is advised, mainly by the Prime Minister and the Cabinet of Ministers. His role and powers, by political convention, reinforced by the electorally brought about bi-party situation in the country are reduced to a minimum. He could be considered more of a figurehead than an actual decision-making body. He is, constitutionally, the “*primus inter pares*” (first amongst equals), *de jure*, but, *de facto*, loses most of his importance in practice with regard to the implementation of his role and powers as enshrined and enjoined in the Constitution.

1.3 THE PRIME MINISTER

The Prime Minister has a central position of authority in the Westminster Model of Government, also known as the Parliamentary system of Government; a model that has been adopted by the Maltese political scenario. The Constitution of Malta lays down the law in concrete terms, in that executive authority is vested in the President of the Republic of Malta as Head of State. However, the expression is only of a nominal headship because, as outlined earlier on, the political backdrop upholds the Office of the Prime Minister as wielding actual executive power in the country⁵⁹.

1.3.1 The Cabinet

Article 79 of the Constitution provides that the Cabinet of Ministers in Malta shall consist of the Prime Minister and a number of other Ministers, and, together, they shall have the general direction and control of the Government of Malta and shall be collectively responsible to Parliament.

⁵⁹ Refalo J, ‘ Comparative analysis of the relationship between the Head of State and the Prime Minister’ (LL.D thesis, University of Malta 1997)

The principle and system in Article 79 is manifest in the most important “charter” of the land. In post-Independence Malta, i.e., following 1964, Prime Ministers have followed an ever increasing tendency to be a super dominant figure holding absolute sway over their Cabinets; assuming the status of *primus inter pares* in political terms but shifting from a Cabinet Government to a Prime Ministerial Government in real terms⁶⁰.

1.3.2 Political Authority

The Cabinet of Ministers has been regarded as the main executive organ of government having the role of governing and administering the state and its affairs when dealing with national policy. However, the Prime Minister, in practical and real terms, has sufficient political authority to dominate the Cabinet. The Prime Minister’s political strength evidently emerges from two major settings: the first stems from the Office of the Prime Minister, in that it is what the holder decides to make of it (personality politics); and, the second, which is amply discussed below, concerns the position of the Prime Minister in relation to the other Cabinet members, as well as his position as party leader⁶¹.

1.3.2.1 Prime Minister’s Position within the Cabinet

The Prime Minister, largely as a matter of convention, holds considerable authority over other ministers within the constitutional framework. The Prime Minister has a number of functions which amply reflect the authority that has evolved over the decades, evolving widely from the said functions’ original status.

When analysing the manner in which the Prime Minister and his Ministers are chosen, a slight difference may be identified between one Office and the other.

⁶⁰ Ian Refalo, ‘The Prime Minister’ - Lecture Notes (Faculty of Laws, University of Malta 2006)

⁶¹ Bonnett C, ‘The Office of the Prime Minister under Maltese Constitutional law: A Comparative Study’ (LL.D thesis, University of Malta 2007)

This difference is indicative of the position of dominance that the Prime Minister has in comparison to and over his Ministers. The Prime Minister of Malta is appointed by the elected members in Parliament and by the President of the Republic. In our system of law, the Prime Minister must be an elected member of the House of Representatives. The Prime Minister in a bicameral system, such as in the United Kingdom, is by convention appointed from the group of elected members of the House of Commons. It would be absurd for a Prime Minister to be a member of the House of Lords, whilst being largely responsible for the House of Commons. Therefore, the Prime Minister needs, necessarily, to sit in the House of Commons to lead the executive organ of the state⁶².

When it come to the selection of a Prime Minister for Malta, the decision is largely conditioned by the necessity that the person appointed must enjoy the confidence of the House of Representatives and command the majority of the same House as laid down in Article 80 of the Constitution. Although it is up to the President to determine who can best fulfil the requirement, under Article 80, namely to enjoy the confidence of the House, it is actually a matter of convention that the Prime Minister is usually the leader of the political party with the majority of representatives in Parliament⁶³. This dichotomy is more clearly portrayed in a stable bi-party system as has transpired, both electorally and politically, in Malta. The President in a multiparty system may have to exercise a real choice and employ personal discretion in the event that no party attains an overall majority. The President must decide which party is able to govern or which coalition may carry a successful government to term. In the case of a formation of a coalition, the President must decide on the most appropriate person, holding the majority support of the house, from the coalition, appoint him as Prime Minister and invite him to form a government.

Conversely, the appointment and composition of the Cabinet of Ministers is in reality determined by the Prime Minister. The Constitution provides that the President appoints the Ministers from the elected members of the House of

⁶² Refalo, (n 60).

⁶³ due to the fact that in the last decades the Maltese citizens have elected just two parties to Parliament and not more.

Representatives, but such a function is assumed on the advice of the Prime Minister⁶⁴; leaving the President with very little discretion, if not none at all, and giving the Prime Minister total *carte blanche* to select whomsoever he chooses in practice.

1.3.2.2 Limitations to Political Authority

In reality, the Prime Minister's will is limited by the overwhelmingly reigning political circumstances. When appointing the Cabinet of Ministers, the Prime Minister may not be able to ignore a very powerful political figure and may even be politically obliged to appoint particular Members of Parliament to specific Ministries.

A case in point is the appointment of Dr. Konrad Mizzi as Minister for Energy and Water Conservation in the 2013 Cabinet. In the run up to the 2013 General Elections, Dr. Mizzi was the main spokesperson for the Labour Party energy plan that was considered to be one of the strongest points in the PL manifesto. He drafted and brought forward a detailed plan to decrease water and electricity bills based on a gas run power station. When Dr. Mizzi was strongly elected on the 4th district, it was a forgone conclusion that the Prime Minister, Dr. Muscat, would entrust Dr. Mizzi with the Ministry responsible for energy on the bases that no one could carry a project to fruition better than the person who conceived it and the nature of the electoral promise that the project had to be implemented within 24 months from appointment. Apart from his technical expertise which endorsed him as a strong candidate experientially and academically, Dr. Mizzi was elected with 5,265 votes on the second count in the 4th district⁶⁵ which rendered him also formidable in the democratic exercise.

Other contestants of the 2013 General Elections, who were considered strong candidates for ministerial positions that were then conferred upon them

⁶⁴ CoM, art 80.

⁶⁵ Department of Information website <www.gov.mt/department-of-information> accessed 4 April 2013 (DOI)

because of the outstanding results they attained by way of votes, were Ms. Marie Louise Coleiro Preca elected on the 6th district with 5,707⁶⁶ first count votes and Mr. Karmenu Vella with 5,231⁶⁷ first count votes on the 5th electoral district.

Where the role of powerful figures within the party elected to Parliament in concerned, Dr. Austin Gatt of the Nationalist Party also portrays a case of the unwritten criteria that most Prime Ministers cannot disregard when choosing their Cabinet. Dr. Gatt was instrumental in the 2008 election campaign that led to the re-election of the Nationalist Party in Government and was naturally assumed within the 2008 Cabinet led by Dr. Lawrence Gonzi. At that time, he was also considered to be one of the heavyweights within the Nationalist Party administration and, therefore, practically impossible for Prime Minister, Dr. Lawrence Gonzi, to omit from his Cabinet.

Owing to their remarkable performance during the General Elections, it would be difficult for any Prime Minister to ignore the hefty contribution, by way of attracting people's votes, which individuals like the fore-mentioned Members of Parliament made to the outcome of the electoral campaign and leave them out of the Cabinet of Ministers.

A contrario sensu, it may also be noted that there are some exceptions to this "unwritten code" that enjoins on the Prime Minister to choose his Cabinet of Ministers. There have been times were, although candidates for a general election attained a large number of first count votes, it did not automatically follow that they were directly chosen as a Minister.

As outlined above, whilst choosing a longstanding, politically powerful figure like Dr. Gatt, Dr. Gonzi then decided to side line quite a controversial figure on the political scene. A newly elected Member of Parliament but, nonetheless, displaying a strong personality in many aspects, Dr. Franco Debono was, in his own words, disregarded completely by Dr. Gonzi's administration when

⁶⁶ *ibid.*

⁶⁷ *ibid.*

appointing the most important governmental Offices for that term. This decision was taken despite Dr Debono being strongly elected in the 2008 election with 2,065 first count votes on a considerably difficult 5th district, where he took the place of historically strong candidates and ex-Ministers Louis Galea⁶⁸ and Helen D'Amato⁶⁹. It seemed that Prime Minister, Dr. Lawrence Gonzi, did not consider Dr. Debono to be a fit candidate to fill one of the ministerial positions or any other top jobs with the Government although he had also played a key role in the re-election of the Nationalist Party to power.

The case of Mr. Robert Arrigo provides an example which also highlights this scenario where despite attaining a stunning 2,965⁷⁰ first count votes on the 10th district, and being elected before Ms. Dolores Cristina (2,058 first count votes) and Architect George Pullicino (2,048 first count votes) during the 2008 General Elections, was not even given a Parliamentary Secretary role whilst the latter two were appointed Ministers when Dr. Lawrence Gonzi, elected Prime Minister at the time, came to form his Cabinet of Ministers⁷¹.

Such a case demonstrates that there are no written rules on the selection of a Cabinet of Ministers and no specific criteria on which a Prime Minister should rely to choose his Ministers; the decision depends on whom the Prime Minister deems fit to fill the role and is highly coloured by his perception of trust and loyalty.

Hence, the foregoing historical facts illustrate the point that an individual may have all the required requisites to fill a ministerial position, but should the Prime Minister not be satisfied with the person and his baggage, the final decision is

⁶⁸ Dr. Louis Galea was a former Minister of Education from 1998 to 2008, former Speaker of the House of Representatives from 2008 to 2010 and former Secretary General of the Nationalist Party from 1977 to 1987. Dr. Galea was first elected to Parliament in 1976, and re-elected in 1981, 1987, 1992, 1996, 1998 and 2003. Following the 1987 election, Dr. Galea was appointed Minister for Social Policy. In 1992, he was appointed Minister for Home Affairs and Social Development.

⁶⁹ Mrs. Helen D'Amato is a former Parliamentary Secretary for Care of the Elderly and Community Care and former Commissioner for Children.

⁷⁰ DOI, (n 65).

⁷¹ This point was discussed with Professor Kevin Aquilina in an informal discussion on the 17 April 2013.

no one's but his. Notwithstanding that such decision might offend some individuals and damage their reputation within the party, the appointment of the Cabinet of Ministers is entirely at the sole discretion of the Prime Minister of the day. The only legal limitation imposed by the Constitution of Malta is that the Prime Minister must necessarily advise appointments solely from elected Members of the House of Representatives⁷².

1.3.3 The UK Cabinet

Parliament is bicameral in the United Kingdom, the scenario is a different one in contrast to the unicameral Parliament in Malta; therefore, the Prime Minister can choose Ministers from either the House of Lords or the House of Commons⁷³. Nevertheless, it is not considered that a peer would be appointed to one of the more important ministries and, in fact, the minister for finance known as the Chancellor of Exchequer must be a member of the House of Commons. This is the practice because it is within the House of Commons where the executive organ of the state functions and such ministers need to be very responsive to the deliberative situation in this House. The Chancellor of the Exchequer must be chosen from the Commons due to the confidence that the Government must necessarily maintain for its existence in this House⁷⁴.

1.3.4 The Maltese Cabinet

When taking the decision of choosing a Minister, the Prime Minister has to take certain factors into consideration including capabilities, competence and confidence. However, these are not the only political characteristics and criteria

⁷² CoM, art 80.

⁷³ Roger Darlington, 'A Short Guide to the British Political System' <<http://www.rogerdarlington.me.uk/Britishpoliticalsystem.html#Government> > accessed on 10 April 2013.

⁷⁴ Government of UK website < <https://www.gov.uk/government/ministers/chancellor-of-the-exchequer> > accessed on 10 April 2013.

that a Prime Minister considers to choose his team of Ministers. It may be the case where the Prime Minister may include a particular individual in his Cabinet of Ministers to limit any potential harm that may be caused by this same person remaining outside the Cabinet. In this way, the Prime Minister can then avail himself of the collective ministerial responsibility⁷⁵ to keep this Minister from voicing conflicting and divergent ideas that could potentially harm the governance and stability of the Government.

It is the duty of each Minister to support the Government policies, even though they may privately disagree with one or more of them. As Ministers, their allegiance should prohibit them from voicing their conflicting views in public⁷⁶. In the unlikely eventuality of such an action, the minister concerned must tender resignation from their Office. It is, thus, clear that the appointment of a Minister is not merely and solely at the discretion and pleasure of the Prime Minister because there are other external situations that might lead the same Prime Minister to choose certain individuals instead of others.

1.3.5 The Maltese Prime Minister's Position in Cabinet

In Malta, the position of the Prime Minister over his Cabinet is one of substantial power. He presides over the Cabinet and decides what agenda the Cabinet meetings are to follow week after week. He also decides whom to invite, or not to invite, to the Cabinet meetings. Having said that, most of the time, the agenda is set around any memorandums regarding an issue for discussion that the Ministers would like to present to the Cabinet. The Prime Minister will then agree to the agenda that would be followed during the Cabinet meeting. Within the province of the Maltese Cabinet of Ministers, the Prime Minister is the one who decides if a vote is necessary or not. As soon as the vote is taken, the result becomes a collective decision and each Minister, notwithstanding their view on the issue, is bound by collective ministerial responsibility. The Ministers

⁷⁵ CoM, art 79 (2).

⁷⁶ In the interest of better management and running of the country. A united front portrays a strong administration. Even if, internally, this would not, necessarily, be the case.

approach their citizens as a united front on all matters. The topmost levels of the hierarchical structure that constitutes the Maltese Government would show weakness if it does not present this collective and united front⁷⁷.

A Prime Minister in Cabinet must be wise enough in discussion to avoid a vote that would split his Ministers. He would circumvent a situation, in which he agrees with some and disagrees with others, containing the debate and information treated and preventing any dissent from becoming public knowledge. The Cabinet may be split in such a situation; the last thing that a Prime Minister would want. In theory, the Prime Minister may use the casting vote as a lever to sway the Cabinet decision to his way of thinking. However, a prudent Prime Minister would always try to persuade his Ministers to agree with what he thinks is the best way forward on a given topic and he would also try his utmost to establish a consensus without employing too much pressure on his Ministers⁷⁸.

On the one hand, the Prime Minister, as a rule, is very powerful within the Cabinet and he may well impose his will on the Ministers provided he enjoys the support of the majority in Parliament. On the other hand, the Prime Minister, in practice, must use the strength with which he is endowed by virtue of his position in a professionally and politically correct and ethical manner in order to keep most of his Ministers at ease within the group and to continue to enjoy the respect of most of the members, with the final objective of governing smoothly and without resorting to unwieldy and unnecessary pressures⁷⁹.

Therefore, the Prime Minister cannot be considered to be on an equal level with his Ministers but in a sense, every Minister may be considered to be an assistant to the Prime Minister. The Prime Minister in Cabinet is the person who regularly decides what the collective view of Cabinet is to be outside Cabinet on particular issues⁸⁰.

⁷⁷ Refalo, (n 60).

⁷⁸ Refalo, (n 60).

⁷⁹ Dalli H, 'Political Mobilization and Social Change: Dom Mintoff's Role in Post-War Malta' (B.A. University of Malta 1986)

⁸⁰ Refalo, (n 60).

The Prime Minister's enjoyment of considerable powers in Cabinet can be reaffirmed by the fact that no Minister can take a strategically important decision without prior consultation with the Prime Minister. Furthermore, should the Prime Minister like to take a decision on a particular matter involving one of his Ministers, the said Minister would have to either agree or resign. The Prime Minister's relationship with his Ministers in Cabinet is an essential and integral characteristic of the totality of the notion of collective ministerial responsibility. The Prime Minister's constitutional power as depicted in theory, offers the solution to the awkward scenario of who would prevail in a drastic situation between the Prime Minister and one of his Ministers⁸¹.

In practice, the matter would, most of the times, be discussed diplomatically in an attempt to come up with the most sensible conclusion that would, at the end of the day, be for the good of the country as a whole and not simply for any one individual. The Prime Minister's will always prevails on paper, notwithstanding the political and real situations in Cabinet. Therefore, the Prime Minister's power is greater than the totality of his Cabinet's powers, provided that he still enjoys the confidence of the House of Representatives. Moreover, if he is positive that, on a certain matter, his opinion is the correct one and that of the majority of the Cabinet of Ministers is not as enlightened, he may opt to follow his instincts or those of the minority of his Ministers⁸².

1.3.6 Prime Minister's Defeat by Cabinet – Repercussions

Hypothetically, the Prime Minister may be defeated by a united Cabinet. In reality, the Prime Minister's defeat in Cabinet is very difficult because the Cabinet must attain a majority against him. In addition, the Cabinet must agree on a person who will succeed as Prime Minister. In absence of such an agreement, the resulting scenario would be a division in the Cabinet and this could also be reflected by the political party they represent. A Prime Minister

⁸¹ Refalo, (n 60).

⁸² Ibid.

can, in this case, be defeated by his own party; creating a situation that would indicate a Prime Minister lacking absolute control over his Cabinet⁸³.

This happened in Malta in 1949 when Sir Paul Boffa was Prime Minister and Architect Dom Mintoff was Minister for Reconstruction. Architect Mintoff's rise to power was aided by the fact that in post-war Malta there were many deprived and dispossessed families. The task of the Labour Party was not an easy one and Architect Mintoff could create unity within the party and a front against the British Government and the Maltese Catholic Church, its internal enemy, and, eventually, against his own party leader and Prime Minister⁸⁴.

The Labour Party under the leadership of Sir Paul Boffa was elected in 1947 and Architect Dom Mintoff was made Minister for Reconstruction. The year 1948 -1949 was one of hesitation, uncertainty and wavering on the part of the British. It was, thus, becoming clear that the British Government would pursue its policy of ignoring the pleadings of the Maltese (a case in point on the Marshall Aid issue). Architect Mintoff, showing signs that he was opposing the way in which the Prime Minister was handling the situation, wrote:

“Experienced negotiators will detect the failure of the British Government to listen to reasoned arguments and their repeated attempts to evade the issue. Patience has its limits and no self-respecting leader can bear to see his people crushed without taking up the cudgels in their defence.”⁸⁵

A major conflict arose regarding a memorandum to be presented to the British Government by Architect Mintoff. The following is an excerpt from a telegram which Architect Mintoff sent to his Prime Minister Boffa from Britain where he was trying to negotiate with the British Government over the Marshall Aid issue. The contents of the telegram show the restrained relationship between Prime Minister Boffa and Minister Mintoff and that the latter seems to have had authority over the former:

⁸³ Ibid.

⁸⁴ Dom Mintoff, *Malta's Struggle for Survival* (MLP, 1949).

⁸⁵ Ibid.

*“...from constant experience I fear you will spoil everything with weakness and vacillation. Malta is lost if we do not fight ferociously fearing nothing and nobody. If you come here you must take sole charge and I will return to Malta immediately. In any case, you have my resignation whenever you want as impossible to work with you any longer.”*⁸⁶

This impasse between the Prime Minister and one of his Ministers led to the split within the Labour Party. Architect Mintoff took over the Labour Party and became leader whilst Sir Paul Boffa - still Prime Minister - and the majority of the Members of Parliament remained as one group and set up the Malta Workers' Party. The latter party eventually disintegrated and the Members of Parliament on Sir Paul Boffa's side went back to the Malta Labour Party led by Architect Mintoff. As Zammit explains:

*“Mintoff took over the leadership of the party in a typically aggressive manner from the former Prime Minister, Sir Paul Boffa. In so doing, he also managed to split the party as well as return it to power under a new radical image, after a lapse of six years in 1955.”*⁸⁷

A similar, though not exact case was that of the 1996-1998 legislature, again with the involvement of Architect Dom Mintoff, but this time as a backbencher. The Prime Minister Alfred Sant was not defeated by Cabinet but the problems created by Architect Mintoff throughout this short-lived legislature made the Prime Minister's position untenable. Architect Mintoff, at first, disagreed with the budget which the new Labour Government had presented, calling it a budget without a social conscience.

The situation then got to a head on a proposed Vittoriosa marina project (in Architect Mintoff's constituency). He insisted that his constituents were going to be denied access to the foreshore and, had the Government involved him, he would have negotiated better and, thus, he was voting against the project. The Government which had only a one-seat majority lost the vote on the marina project and Prime Minister Sant called an early election (after only twenty-two

⁸⁶ Ibid.

⁸⁷ E L Zammit, *A Colonial Inheritance: Work, Power and Class Structure with Reference to the Maltese Labour Movement* (University Press, 1984).

months in Government) because he had tied this vote to a vote of confidence in the government.

Even though, in theory, the Prime Minister is considered to be *primus inter pares* (first among equals) this does not mean that his powers are not challenged by ministers or members of his own parliamentary group as evidenced in the case of Prime Ministers Boffa and Sant. On analysing the foregoing two cases, where Prime Ministers gave in to pressures from within, the 2008-2013 Legislature paints a different picture. Prime Minister Gonzi stood up to the internal strife within his parliamentary group where he was challenged by his backbench by the likes of Architect Jesmond Mugliett, Dr. Jeffrey Pullicino Orlando, former Minister Mr. John Dalli and, primarily, Dr. Franco Debono. In this instance, however, he was resilient enough and resisted the internal attacks managing to carry the legislature to its full term. This may be considered to be an extraordinary case evidencing the determining effect of the strength of the Prime Minister's personality and character on the outcome.

1.3.6.1 A UK Case Study

A tangible example of a Prime Minister defeated by the Cabinet of Ministers occurred during the Thatcher days in the United Kingdom, considered to be the ultimate Prime Ministerial model of Government. The Prime Minister in 1990, at the time, Ms. Margaret Thatcher, was confronted by the previous members of her Cabinet, mainly, former Defence and Environment Secretary, Mr. Michael Heseltine, with a party leadership election and, subsequently, failed to attain the required majority in the first ballot; she was then persuaded to withdraw from the second round of voting. Such happenings brought about the end of her eleven-year reign as Prime Minister of the UK; she was succeeded in Office by the former Foreign Secretary and Chancellor of the Exchequer, Mr. John Major, who kept Office from 1990 to 1997. When, in this same election, Mr. John Major was elected as the Leader of the Conservative Party, Ms. Thatcher approached the Queen to tender her resignation as Prime Minister and advise that Major

would be best fit to succeed her in Office. Such a case is an example of one way in which a party can defeat its own Prime Minister within the organs of the same party; leaving no way out but for the incumbent Prime Minister to resign from Office too⁸⁸.

1.3.6.2 The Maltese Case Study

Under Maltese law, another way in which a Prime Minister can be defeated is by a vote of no confidence within the House of Representatives. One of the major strengths that a Prime Minister possesses is the confidence of the House. If this is no longer the case, and an absolute majority of 50% +1 of the House votes against the Prime Minister, by convention he must either resign from office or advise the President to dissolve Parliament. In the event that the Prime Minister does not perform any of the two scenarios mentioned above, the President has the constitutional power to dismiss the Prime Minister from office within three days of the vote taken⁸⁹. This is merely a safeguard to ensure that constitutional principles are duly protected and that the parliamentary government is not only a theoretical framework of democratic representation but also a factual reality. In this case, the President is, once again, perceived as the guardian of the Constitution; with his intervention, afforded him by the same Constitution, he ensures that the supreme law of the land of the Archipelago that is Malta is not only acknowledged but, also, upheld⁹⁰.

1.3.7 Removal of Ministers

The Prime Minister's discretion comes again into play whenever the need arises to remove Ministers from office. He may require any Minister to resign and give any plausible reason for this dismissal. If the Minister then refuses to obey this decision, Article 81 (3) (b) regulates this matter accordingly.

⁸⁸ John Campbell, *The Iron Lady*, (Penguin, 2011).

⁸⁹ CoM, art 76 (5)(a)

⁹⁰ Refalo, (n 60).

The Prime Minister determines the permanence of a Minister in that office according to the gist of this article. Any Minister has the responsibility to the House of Representatives for the performance of his ministry as laid down in the “job description”. Therefore, a Minister must be accountable for what is going on in the department; providing detailed information regarding policies and actions of the Ministry when required. This link between each Minister and the House of Representatives is part of the notion of individual responsibility that the Ministers have towards the citizens within society at large⁹¹.

Although, a Minister who is personally at fault or whose department has been found guilty of any grave maladministration must resign as per political convention, today, the question of whether to resign or not resign largely depends on the Prime Minister and whether or not he deems the Minister still fit to carry out the functions of office. Therefore, a Minister stepping down, according to political convention, on the basis of serious maladministration issues may be ignored if the Prime Minister deems it fit to keep the Minister in office. It is in the Prime Minister’s interest to follow this convention when such cases occur, because as mentioned previously, the Prime Minister’s goodwill to remain in office rests on his retaining the confidence of the majority of the House of Representatives and such instances may bring about dissent, not just in the opposition but also on the government benches within his supporters⁹².

One of the occasions when a resignation was accepted was the case of former Justice Minister, Dr. Charles Mangion, as reported by MaltaToday in an article dated 24th February 2002. Prime Minister Alfred Sant’s battle-cry in the run-up to the 1996 election was that of transparency, accountability and good governance. Thus, when presented with the resignation of one of his senior Ministers he had little option but to accept it. The case was about an administrative mistake which Mangion was ready to carry, as, in the end, the final responsibility has to be shouldered by the Minister.

⁹¹ Ibid.

⁹² Ibid.

1.3.8 Dissolution of Parliament

As laid down in Article 77 of the Constitution of Malta, the President has the power to dissolve Parliament on the advice of the Prime Minister in order to call a general election. This power, vested primarily in the Prime Minister, can be considered to be a very strong tool which, when used strategically at particular points in time, may benefit the same Prime Minister as well as the party in Government (i.e., in a bi-party political system). Although, in theory, it may be assumed that the Prime Minister consults with Cabinet to come up with a suitable date for the dissolution of parliament and subsequent general election, he can actually perform this function on his own initiative, without consultation with his Ministers.

1.3.8.1 1992 Scenario

The Prime Minister may, in theory, be assumed to consult with Cabinet to come up with a suitable date for the dissolution of parliament and subsequent general election. He can actually perform this function on his own initiative, without consultation with his Ministers. A scenario in which this actually happened in the political history of the Maltese Islands was in 1992, when Dr. Eddie Fenech Adami, the then Prime Minister of Malta, advised the then President of Malta, Dr. Vincent Tabone, to declare a dissolution of Parliament and call a general election which was held on the 22nd of February 1992. The unusual circumstances surrounding this situation was that Dr. Fenech Adami only communicated this news to his Cabinet of Ministers following his meeting with President Tabone, consequently taking a solo decision without the knowledge or advice of his Ministers. As far as is known, this was a very rare event in the politico-constitutional story of Malta where such a decision was taken without prior consultation with the Cabinet of Ministers⁹³.

⁹³ Ibid.

Hence, Article 77 is clearly a strong weapon endowed by the Constitution on the incumbent Prime Minister. Article 77 is an instrument that can be used as political mileage. Political advantage in this sphere refers to the fact that the Prime Minister may set the date of the election at a time when public opinion is swaying in his favour and that of his party rather than in the opposition's. Thus, the probability that he and his party are re-elected would be greater. If he, personally, were up to taking the lead for a further term, he would be re-appointed as Prime Minister.

1.3.8.2 2008 Scenario

An example, in support of this theory, is the 2008 Government led by Prime Minister, Dr. Lawrence Gonzi. Although very unstable in its last year of the legislature, it almost managed to get through the 5 years without needing to resort to the country via Parliamentary dissolution way before the expiration of the term. This will, undoubtedly, go down in annals of the Maltese Islands as one of the shrewdest strategic feats in Maltese political history; particularly when considering the tactics during the last year of this legislature, 2012, with Dr. Jeffrey Pullicino Orlando and Dr. Franco Debono leading a crusade against Dr. Gonzi's administration. Various political commentators such as The Times of Malta journalist, Mr. Christian Peregín, in his article on the same newspaper of the 7th October, 2012, pointed out that opting for an early election would only produce a negative electoral result for the Nationalist Party. Dr Gonzi, in this journalist's opinion, was prolonging his stay in Government almost until the expiration of the legislative term to try and resolve certain political issues that would be settled in his favour in the following months⁹⁴.

⁹⁴ Christian Peregín, 'Conflicting opinions on timing of election call' *The Sunday Times* (Malta, 7 October 2012)

Peregin's article opened by stating that

*"Top PN strategists are advising the Prime Minister to postpone the election until after the Budget, despite pressure from some quarters to put an end to the uncertainty caused by rebel MPs."*⁹⁵

Peregin continued to amplify on the recommendations made by Dr. Gonzi's advisers that he should let parliamentary procedure take its course "on the motions against Transport Minister Austin Gatt, much in the same way as when MPs Franco Debono and Jeffrey Pullicino Orlando contributed to the unseating of Justice Minister Carm Mifsud Bonnici and EU Ambassador Richard Cachia Caruana earlier this year."⁹⁶

The reasoning behind this advice, as interpreted by the same author, is that "Dr Debono and Dr Pullicino Orlando are more likely to back the Budget with Dr Gatt out of the picture, a scenario which would give Dr Gonzi even more time to call an election."⁹⁷

Peregin also delved into the question of whether or not the budget should have been presented before dissolving parliament, whilst taking into consideration that this might have been a move to attract political advantage.

*"Presenting the Budget and getting it approved would be seen by some PN insiders as a feather in Dr Gonzi's cap, since it would show voters he managed to run the country smoothly till the end of the legislature, despite the crisis in government. Conversely, if Dr Gonzi were to call the election imminently, it would prove he was unable to serve his full term. The absence of a Budget would also instil doubt in people's minds about the real state of the economy. The Budget will show that the economy was managed excellently, despite all this strife, ..."*⁹⁸

Mr. Peregin subsequently clinched his article by concluding that, although it is up to the Prime Minister to decide when to go for an election, many factors act

⁹⁵ *ibid.*

⁹⁶ *ibid.*

⁹⁷ *ibid.*

⁹⁸ *ibid.*

upon this decision and no government situation may be compared to a previous one.

“Going for a November election would also ensure a near-certain landslide defeat for the PN at the polls. But even though postponing the election until late January or February could give the PN more chance to recoup thousands of lost votes, some party members, including certain key Cabinet members, do not think this strategy is sustainable. With Health Minister Joe Cassar also in Dr Debono’s line of fire, pressure is mounting on the Prime Minister to pull the plug now instead of continuing to limp towards the Budget, with ministers potentially falling by the wayside.”⁹⁹

As observed in this Sunday Times article extract, postponing the dissolution of Parliament and the ensuing election would have given Dr. Gonzi more time to sort out some governmental issues of public importance which could have helped him when it came to the run up to the election, such as proposing the budget for the following financial year. Subsequently, he would then have been in a position to focus all his energy and means on the imminent election campaign. However, plans changed radically, when, on the 10th December, 2012, his Government was defeated in a vote on the 2013 Financial Estimates, as Dr. Franco Debono voted against the budget proposal. At that point, Dr. Gonzi could not prolong his stay in Government and, therefore, decided to dissolve Parliament on the 7th of January, 2013, and announce that the general election was to be held on the 9th March, 2013.

The outcome of this democratic exercise was obviously not the one desired by the former Prime Minister, but the delay in dissolving parliament and the subsequent calling of the general election was constitutionally legitimate; the decision being entirely up to the incumbent Prime Minister and no one else.

⁹⁹ Ibid.

1.3.8.3 1998 Scenario

Another example of the Prime Minister having total control over when to dissolve Parliament and call an election is seen in the political happenings of 1998, when Dr. Alfred Sant was Prime Minister. This time, the crisis was similar to Dr. Debono's situation but the main protagonist in 1998 was the erstwhile ex-Prime Minister, Mr. Dom Mintoff, who was at an advanced age at the time and not as politically influential as he used to be twenty or thirty years earlier. Nonetheless, in the summer of 1998 the Malta Labour Party, then in Government, lost a vote on the proposed Cottonera Waterfront project – which the Prime Minister, Dr. Sant, had paired to a vote of confidence and to which Architect Mintoff had voted against in Parliament. Thus, by implication, the government lost a vote of confidence and the Prime Minister, Dr. Sant, moved to dissolve Parliament.

Subsequently, the incumbent President, Dr. Ugo Mifsud Bonnici, advised Dr. Sant against dissolving Parliament and going for a general election. He encouraged the Prime Minister to find a solution for the political crisis instead of going to the country a mere twenty-two months into the Legislature following the previous general election. Notwithstanding such reasoning, Dr. Sant was resolutely determined not to continue with his mandate and on the 3th August, 1998, Parliament was dissolved and the country scheduled for a general election which was held on the 8th September, 1998. In this instance, the ensuing result proved Dr. Sant's decision to be fallible and counter-productive as his Party lost heavily and was sent to the opposition benches after practically two years in power.

1.3.8.4 Dissolution Scenario Analysis

These examples have served to further highlight the fact that it is in the Prime Minister's discretion to dissolve Parliament and call an election. It is not the President's decision, as is evident from Dr. Sant's situation where the Prime

Minister disregarded the advice of the President. Nor is it in the Ministers' hands; as was apparent in Dr. Fenech Adami's scenario where, as described above, he did not even consult with his Cabinet before dissolving Parliament. Dissolution is a decision that must be taken by the Prime Minister on his personal account. Otherwise, the only situations where dissolution happens *ex lege* is either due to the loss of a money bill in Parliament resulting in a defeat in the House of Representatives as seen in the Dr. Lawrence Gonzi scenario of 2013, or as in the Dr. Alfred Sant scenario, due to a loss of a formal vote of confidence. In these cases, the Constitution empowers the President to act on his own initiative and dissolve Parliament as stated by Dr. Austin Bencini in a comment given to Patrick Cooke for his article in the Times of Malta of the 28th July, 2012.

"Matters would have been different had the Prime Minister lost a formal vote of confidence in Parliament because, in that case, the Constitution empowers the President to act on his own initiative and, in all probability, to dissolve Parliament"¹⁰⁰.

As is apparent from the foregoing case studies taken from Maltese political history, although the Prime Minister has sole discretion to choose an election date, that, in his opinion, would favour him and his party, the electorate is, invariably, to say the least, very unpredictable. Usually, political parties settle upon an election date by wisely basing their choice on an informed decision; availing themselves of opinion surveys and polls based on vast samples that more or less gauge the people's measure and give an overview of what the electorate is feeling in that particular period. Should the situation not be inclined to be positive at any particular point, Prime Ministers tend to prolong their legislature to a more auspicious moment for the Government and the political party in power.

¹⁰⁰ Patrick Cooke, 'President can't intervene in current political situation' The Times of Malta (Malta, 28 July 2012)

1.4 COMPARATIVE ANALYSIS – DISSOLUTION

Article 77 of the Constitution of Malta is a tool which may be compared favourably when linking it to what happens in the United States of America. The American President does not have such an advantage. In Article 11, sub-article 1 of the Constitution of the United States, it is stipulated that

“The executive power shall be vested in a President of the United States of America. He shall hold his Office during the term of four years”¹⁰¹.

Thus, the United States’ President is elected for a fixed term of 4 years, and has to wait and depend on the extent of his popularity at the end of the term, whichever way public opinion happens to be swaying at the time of the election, to be re-elected into Office. The difference between the Maltese and American systems can be clearly determined in that according to the Constitution of Malta, discretion is vested in the Prime Minister, whilst in the American structure of law the choice is established by the Constitution that stipulates a fixed term of four years. However, it may be said that the Presidential system adopted in the US, and, also, in France, is a more stable structure since the executive organ does not depend on the legislative organ to survive. In simpler terms, the Cabinet of Ministers (executive organ) need Parliament (legislative organ) to survive in Malta.

In America, the executive branch is vested in the President of the United States, who also acts as Head of State and Commander-in-Chief of the Armed Forces¹⁰². He is directly responsible to the people and requires no support of the majority in Congress (legislative organ) to retain his Office. The only rare case when the President of the United States can be removed before the completion of the four-year term is when he is impeached on allegations that he has committed an action contrary to the rules of his Office. The cases of impeachment against a President of the United States are very rare and the

¹⁰¹ Constitution of the United States Article 11 subarticle 1

¹⁰² The Whitehouse Website < http://www.whitehouse.gov/our_government/executive-branch > accessed on 18 March 2013.

only two Presidents in the history of America, who were impeached but then subsequently acquitted in the trial, were Andrew Johnson in 1868 and Bill Clinton in 1999¹⁰³.

It, therefore, follows that the Maltese Prime Minister in comparison to the American President is much more vulnerable to losing his position; especially if he does not enjoy a strong majority in the House of Representatives. Examples of a government with a mere one seat majority in Maltese political history are various; amongst which are the 1971 Mintoff Government with 28 seats against 27 of the Opposition¹⁰⁴, the Fenech Adami Government of 1987 with 35 seats against the 34 gained by the Labour Party¹⁰⁵, the Sant Government of 1996 with, once more, a one seat majority of 35 against 34¹⁰⁶, as well as the Gonzi Government of 2008 with a one seat majority of 35 against 34¹⁰⁷. A vote of no confidence in the Government by the majority of all the members of the House of Representatives means that, *ex lege*, the Prime Minister must within 3 days dissolve parliament and prepare the citizens of the country for an election¹⁰⁸. As previously intimated, if he fails to do so, the President is constitutionally empowered to dissolve Parliament in the Prime Minister's place. The fact that the Prime Minister may be removed from office by a no-confidence vote in Parliament¹⁰⁹ is a means of checks and balances on the way he is fulfilling his role and in the way he is serving and leading the country. This is the Constitution's way of limiting the extent of his power and position, thereby ensuring that he does not become a dictator¹¹⁰.

Nevertheless, although the Prime Minister has the power to attempt to dissolve Parliament at any given time during the 5-year legislative period, the Constitution gives the President a personal prerogative to refuse the dissolution

¹⁰³ United States Senate website <http://www.senate.gov/artandhistory/history/common/briefing/Senate_Impeachment_Role.htm> accessed on 18 March 2013.

¹⁰⁴ < <http://electionresources.org/mt/house.php?election=1971> > accessed on 18 March 2013.

¹⁰⁵ < <http://electionresources.org/mt/house.php?election=1987> > accessed on 18 March 2013.

¹⁰⁶ < <http://electionresources.org/mt/house.php?election=1996> > accessed on 18 March 2013.

¹⁰⁷ < <http://electionresources.org/mt/house.php?election=2008> > accessed on 18 March 2013.

¹⁰⁸ CoM, art 76 (5) (a).

¹⁰⁹ CoM, art 81(1).

¹¹⁰ Refalo, (n 60).

of Parliament if he feels that Government can carry on without dissolution or that it would not be in the best interest of the country to dissolve Parliament as laid down in Article 76 (5) (c)¹¹¹. A tangible example of a situation where the President might not accept dissolution is if the Prime Minister were to find himself in a minority in his own Cabinet and would be seeking to appeal to the electorate against his colleagues, instead of resigning, as a sign of defeat of his work. The President, in such cases, must refuse the dissolution on the basis of Article 76 (5) (c) and make certain that there is an alternative individual or coalition who can hold the confidence of the House and be appointed as Prime Minister. If there is no one who can enjoy the confidence of the House, the President has no alternative other than to dissolve Parliament and go for a general election. This is one of the instances where the President is regarded as the guardian of the Constitution, and one of the few cases where he may surpass the Prime Minister in political power¹¹².

1.5 CONCLUSION

The literature reviewed above proffered the foundation for the main arguments and discussions which formed the basis for the secondary research of this study. In turn, the foregoing review established the grounds on which were formulated the hypotheses outlined in the following chapter. These hypotheses were investigated by the primary research methods as also applied and described in Chapter 2.

¹¹¹ CoM, art 76(5)(c).

¹¹² Refalo, (n 60).

CHAPTER 2

METHODOLOGY

2.1 INTRODUCTION

Methodology is the science of method and when applied for the sake of research it establishes rules and principles which govern the effective use of the various sources of information that, in legal spheres, include treatises, treaties, judgements, periodical literature, newspapers, official and unofficial records and documentation where secondary research is concerned and research tools such as interviews and discussions for the generation of primary research.

Prior to embarking on the research journey for the purposes of this study, the basic rules and principles referred to above were established so as to ensure a systematic exposition of the fruit of this research. These included the following. Primarily, a proper definition of the research subject was outlined. The research topic was then limited according to the time span at the disposal of such research and the space available within which to carry out the research. Related material was read, particularly that of other researchers and commentators, synthesised systematically, critically examined and reflected upon so as to draw recommendations and conclusions in an attempt to making a real contribution to the knowledge base of this research area.

These rules were strictly adhered to, provoking a considerable degree of thinking and re-thinking. Initial drafts were revisited and rewritten; a process essential to proper analysis and originality ensuring successful research and justifying the science of methodology as an essential key to effective research¹¹³.

¹¹³ Guidelines for LLD Thesis, Faculty of Laws, University of Malta, Updated February 2013.

2.2 RESEARCH QUESTIONS/HYPOTHESES

This study aimed to research the past and present state-of-play of the role and function of the Office of the President and the Prime Minister of Malta in light of the Constitution as well as to propose various alternate recommendations for future changes to the ever developing status of these roles. Where the Office of the Prime Minister was concerned, the author had access to actual primary sources in the shape of real-life experiences of two Prime Ministers, past and present, as well as approached others who, owing to various circumstances, were not available. In the case of the Office of the President, this study relies heavily on informal discussions with scholars involved, rendering this part of the study more prone to input from secondary research sources. Thus, this study is a blend of personal involvements and documented evidence.

The literature reviewed the most important historical happenings in Maltese Constitutional Law, which gradually changed the role and function of the Office of the President and the Prime Minister into their present status. On the basis of this secondary research which included comparative studies of the systems applied in other countries, namely, the United Kingdom, France and the United States of America, the hypotheses to be investigated by the primary research methods described in this chapter were formulated as outlined below.

1. What is the reality check on the current constitutional role and function of the Offices of the President and the Prime Minister with particular reference to their democratic representativeness?
2. What are the controversies surrounding the effectiveness of these Offices? How can they be resolved for the benefit of the nation?

Owing to the sensitive nature of the information to be requested and examined, the method deemed most fit to research the above was the qualitative method and the research instruments opted for were semi-structured interviews,

informal interviews and informal discussions, thereby satisfying the exigencies of triangulation.

2.2.1 Statement of the Research Questions/Hypotheses

The 'scientific method' of research identified by Kerlinger¹¹⁴ in 1972 and reinforced by Leedy and Ormond¹¹⁵ in 2001 is illustrated by the following definition.

*“Research is a cyclical process of steps that typically begins with identifying a research problem or issue of study. It then involves reviewing the literature, specifying a purpose for the study, collecting and analysing data, and forming an interpretation of the information.”*¹¹⁶

This cyclical process is depicted in Figure 1, with Step 1 having been addressed by Chapter 1 of this thesis, Step 2 being the opening subject of this chapter, identifying the purpose statement and narrowing it to research questions, i.e., Step 3. While Steps 4 and 5 are covered in Chapter 3 and 4, Chapter 5 fulfils Step 6 in that the research has been reported and evaluated with a synopsis of the proposed recommendations concluding the whole.

¹¹⁴ Fred N Kerlinger, *Behavioral research: A conceptual approach* (New York: Holt, Rinehart and Winston, 1972).

¹¹⁵ Paul D Leedy, and Jeanne E Ormond, *Practical research: Planning and design* (7th ed, Upper Saddle River, NJ: Prentice-Hall, 2001).

¹¹⁶ John W Cresswell, *Educational research: planning, conducting, and evaluating quantitative and qualitative research* (Pearson Education, Inc., Upper Saddle River, NJ:Prentice Hall, 2002).

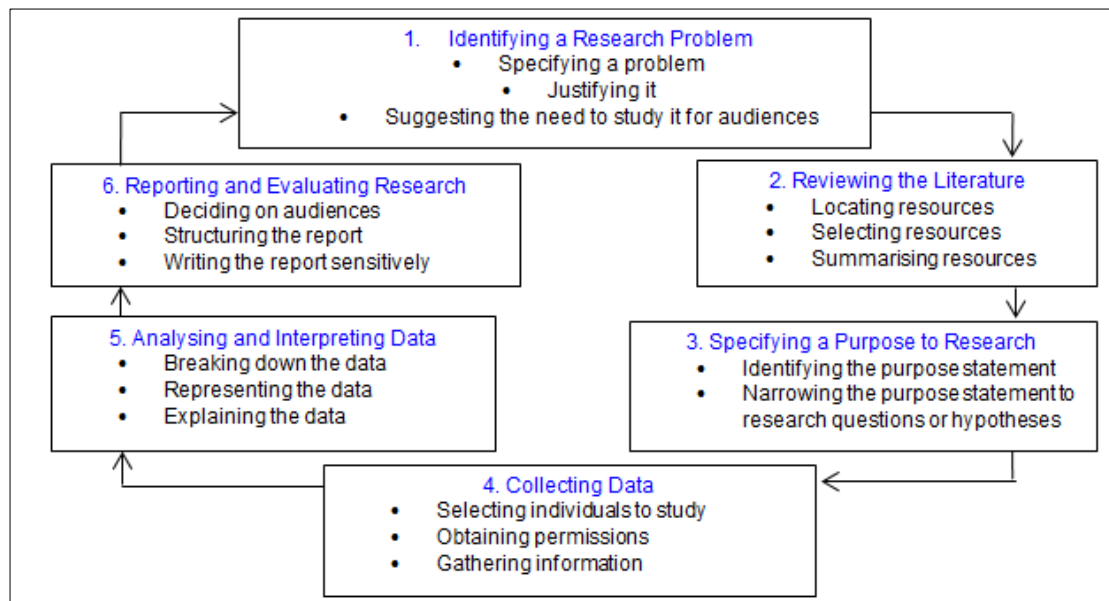


Figure 1: The Research Process Cycle¹¹⁷

Creswell’s cycle may, perhaps, be tentatively criticised on one point. There is a crucial phase between Steps 3 and 4 which has no mention within this process. This phase is encountered by every researcher and involves the study of the latest developments in research design and methodology; an exercise which should facilitate the decision as to which design to use, quantitative, qualitative or a mixed research design and the research instruments to be applied thereon. This phase will be explained in the following section.

2.3 RESEARCH DESIGN AND METHODOLOGY

This section expounds upon the research methods available, their advantages and disadvantages and their contribution to the investigations at hand. Starting off with the cogitations underlying the rationale which led to the decision as to which methods to use, this section then goes on to describe the research instruments opted for, their development and the way in which data was garnered, the grounded theory observed, the research parameters, the ethical

¹¹⁷ Ibid.

considerations involved in data collecting and, finally, the expectations, limitations and biases.

2.3.1 Rationale

The two most popularly dominant approaches are the quantitative and qualitative research designs with the quantitative method leading to hypothesis-testing research and the qualitative method leading to hypotheses-generating research.

Quantitative, hypotheses-testing, research includes experiments, correlational studies and descriptive surveys which investigate a phenomenon and result in 'hard' data derived from a numerically measurable relationship¹¹⁸.

Qualitative hypothesis-generating research, on the other hand, collects data from participants concerning a phenomenon of interest through qualitative inquiry resulting in 'soft' data, which is obtained from joining "*the researcher and the researched in an ongoing moral dialogue*"¹¹⁹.

The question whether research is 'purely' quantitative or 'purely' qualitative is answered by studies which may include characteristics of both approaches indicating that rarely is it a 'pure' case of one or the other as it may fall somewhere on a continuum¹²⁰. These characteristics, displayed in the table below, differentiate between quantitative and qualitative research underpinning Cresswell's process of research outlined in the previous section¹²¹.

¹¹⁸ Carl F Auerbach and Louise B Silverstein, *Qualitative Data. An Introduction to Coding and Analysis* (New York University Press: New York and London, 2003).

¹¹⁹ Norman K Denzin, and Yvonna S Lincoln, (Eds.) *Handbook of qualitative research* (2nd ed, Thousand Oaks, CA: Sage, 2000).

¹²⁰ Charles S Reichardt and Thomas D Cook, *Beyond qualitative versus quantitative methods*. In T D Cook and C S Reichardt (Eds.) *Qualitative and quantitative methods in evaluation research* (pp 7-32, Beverly Hills, CA: Sage, 1979).

¹²¹ Cresswell, (n 116).

Quantitative Research	Qualitative Research
<p>Quantitative research is an inquiry approach useful for describing trends and explaining the relationship among variables found in the literature. To conduct this inquiry, the investigator specifies narrow questions, locates or develops instruments to gather data to answer the questions, and analyses numbers from the instruments using statistics. From results of these analyses, the researcher interprets the data using prior predictions and research studies. The final report, presented in a standard format, displays researcher objectivity and lack of bias.</p>	<p>Qualitative research is an inquiry approach useful for exploring and understanding a central phenomenon. To learn about this phenomenon, the inquirer asks participants broad, general questions, collects the detailed views of participants in the form of words/images, and analyses the information for description and themes. From this data, the researcher interprets the meaning of the information, drawing on personal reflections and past research. The ultimate structure of the final report is flexible, and it displays the researcher's biases and thoughts.</p>

Table 1: Quantitative vs. Qualitative Research¹²²

2.3.2 Research Design

On analysing and evaluating the above with the research hypotheses and purpose in mind, the exigencies of this study were considered to be better satisfied by a qualitative approach, which lends itself to “*discovery that leads to new insight*”. It was essential to the successful outcome of this sensitive study that the research fulfils its purpose “*of understanding experience as nearly as possible as its participants feel it or live it*”¹²³.

¹²² Ibid.

¹²³ Robert Sherman, and Rodman B Webb *Qualitative Research in Education: Focus and methods* (Falmer Press: London, 1990).

2.4 QUALITATIVE ANALYSIS

Qualitative methods of analysis allow the researcher to gain a greater insight of the interviewees' experiences by allowing them to give more in-depth answers and to describe their experiences in their own words. The one-on-one semi-structured and informal interviews as well as the informal discussion opted for in this case also control the possibility of manipulation by the interviewee, ensuring that data collection is grounded and immediate.

2.4.1 Grounded Theory

Systematic, qualitative procedures used by researchers to generate a theory explaining the process, action or interaction about a substantive topic form the basis of grounded theory designs which, primarily, include the collecting of interview data, developing and relating categories of information and creating a figure or visual that portrays the theory which is, thus, 'grounded' in the data derived from participants; in this case, the incidences and opinions surrounding the role and function of the Office of the President and the Prime Minister. Based on this data, the researcher constructs hypotheses and predictions, which could reflect the positive or negative acceptance of or resistance to the introduction and implementation of changes in the conceptual framework of the Constitution and its rigidity; recommending strategies which would enhance the effectiveness of these Offices¹²⁴.

2.4.2 One-on-One Interviews/Discussions

Since the primary feature of grounded theory is the collecting of interview data, one of the main objectives in the research methodology for this study was to

¹²⁴ Albert V Dicey, *Introduction to the Study of the Law of the Constitution* (Oxford, 1914) & Giovanni Bognetti, David Fellman, Matthew F. Shugart, C. Neal Tate, 'Constitutional Law' <<http://www.academicroom.com/topics/what-is-Constitutional-law>> accessed March 2013.

consider the form of interviewing that will best contribute to the body of knowledge and information and best help to understand the research problem and answer the questions posed by this study. According to Kvale, an interview is “*an interchange of views between two or more people on a topic of mutual interest, sees the centrality of human interaction for knowledge production, and emphasises the social situatedness of research data*”¹²⁵.

Most interviews fall between two extremes: structured and unstructured interviews. Where, on the one hand, in structured interviews no deviation from the questions listed is allowed, on the other hand, in unstructured interviews the conversation between interviewer and interviewee flows freely without the restrictions of predetermined questions. Most interviews fall somewhere between the two, i.e., semi-structured interviews. This strategy underpins the type of interview selected for the purposes of this research, as it helped both the interviewer and the interviewees feel more at ease and gave rise to the possibility of using quotations which can “*illuminate and relate to the general text whilst maintaining a balance with the main text*”¹²⁶.

One-on-one semi-structured interviews with two Prime Ministers, informal interviews with two parliamentarians and an informal discussion with the Dean of the Faculty of Laws within the University of Malta were the approaches selected for the purpose of this study.

2.4.3 Development of the Interview Questions

The development of the interview questions, duly pilot tested, were inspired by the secondary research, which culminated in the literature review presented in Chapter 1. Close-ended questions were, in the main, avoided. As Cohen *et al.* (2000) state, open-ended questions are flexible; they allow the interviewer to go

¹²⁵ Louis Cohen, Lawrence Manion, and Keith Morrison, *Research Methods in Education* (Fifth Edition, Routledge Falmer, London, 2000).

¹²⁶ Ibid.

into more depth “or to clear up any misunderstandings; they enable the interviewer to test the limits of the respondent’s knowledge; they encourage cooperation and help establish rapport; and they allow the interviewer to make a truer assessment of what the respondent really believes”¹²⁷.

2.4.4 Conducting the Interviews

Prior to any collection of data and involvement of human subjects in the study, ethics approval should be obtained from the Faculty of Laws’ Research Ethics Committee and the University of Malta’s Research Ethics Committee when the intended participants are not established professionals in the field. This was not required in this instance as all participants enjoyed professional status. Informed consent was sought from each prospective subject and all were made aware of the purpose of the study, the time the interview will take place, the plans for using the results of the interview and the availability of the study on completion. Adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data at all times, if so requested, were also made.

Semi-structured and informal interview/discussion guides were prepared for both types of interviews and discussion (Appendices 1 – 3), with flexibility being the order of the day as the key to good interviewing is to be a good listener. Probes and prompts were used to elicit more information, to clarify points or to have the participants expand on ideas or elaborate on statements. All inquiry methods were terminated with courtesy and professionalism.

2.4.5 Data Analysis

When analysing the data collected through the interviews a decision had to be made whether to maintain “a sense of holism of the interview” data or “to

¹²⁷ Ibid.

atomise and fragment the data". According to Cohen *et al.*, fragmentation leads to "losing the synergy of the whole, and in interviews often the whole is greater than the sum of the parts"¹²⁸.

It is difficult to read through a series of transcripts and immediately identify patterns within them. In order to overcome this limitation, the coding procedure was used to organise the text of the transcripts and discover patterns within that organizational structure¹²⁹. The central idea of coding is to move from raw text to research concerns in small steps, each step building on the previous one. The steps in grounded theory coding are, usually: i) Research Concerns; ii) Theoretical Narrative; iii) Theoretical Constructs; iv) Themes; v) Repeating Ideas; vi) Relevant Text; vii) Raw Text¹³⁰.

Auerbach and Silverstein explain the mechanics of coding in a step-by-step process, which transforms the raw text of transcripts into a theoretical narrative. Their coding procedure has six steps organized into three phases (Table 2). All coding of transcripts in this study was carried out based on these steps¹³¹.

<p>PHASE 1: Making the Text Manageable Step 1. Explicitly state your research concerns and theoretical framework. Step 2. Select the relevant text for further analysis. Do this by reading through your raw text with Step 1 in mind, and highlighting relevant text.</p>
<p>PHASE 2: Hearing What Was Said Step 3. Record repeating ideas by grouping together related passages of relevant text. Step 4. Organize themes by grouping repeating ideas into coherent categories.</p>
<p>PHASE 3: Developing Theory Step 5. Develop theoretical constructs by grouping themes into more abstract concepts consistent with your theoretical framework. Step 6. Create a theoretical narrative by retelling the participant's story in terms of the theoretical constructs¹³².</p>

Table 2: Six steps to construct theoretical narrative from text¹³³.

¹²⁸ Ibid.

¹²⁹ Auerbach, (n 118).

¹³⁰ Ibid.

¹³¹ Ibid.

¹³² Ibid.

¹³³ Ibid.

Following the steps outlined above, the text was initially made manageable through a filtering process in which parts of the text to be included in the analysis and parts to be discarded were selected. Relevant text was chosen based on the research concerns. The text was read through paragraph by paragraph, and words or phrases that signalled relevant text were highlighted and annotated with the reason why they were found to be relevant. This process was continued with all of the text in all responses obtained through the different inquiry methods used¹³⁴.

In the next phase, the relevant text was organized into repeating ideas, which, in turn, were organized further into more general themes. Repeating ideas were recorded by grouping together related passages of relevant text. The themes were then organized by grouping repeating ideas into coherent categories¹³⁵. In this study, the repeating ideas occurred both *within* as well as *across* research participants. This is important because if ideas are expressed more than once and by different individuals through diverse methods of inquiry, thereby satisfying the exigencies of triangulation, the validity and reliability of the data generated is strengthened¹³⁶.

In the third phase, the themes were then grouped into more general concepts, known as theoretical constructs, and these theoretical constructs were then used to create a theoretical narrative. Theoretical constructs were developed by grouping themes into units that were consistent with the theoretical framework. Finally, the theoretical constructs were organised into a theoretical narrative, which summarised what had been learned about the research concerns. The narrative is the culminating step that provides the bridge between the researchers' concerns and the participants' subjective experience. It tells the story of the participants' subjective experience, using their own words as much as possible¹³⁷. However, it also includes the researchers' theoretical framework by including the theoretical constructs and themes in parentheses throughout

¹³⁴ Micallef Grimaud J, 'The 'Assurance' of Quality in Education: Attitudes and Perceptions' (Faculty of Education, University of Malta 2008).

¹³⁵ Auerbach, (n 118).

¹³⁶ Micallef Grimaud, (n 134).

¹³⁷ Auerbach, (n 118).

the narrative. Combining the subjective experience and abstract concepts brings together the two very different worlds of researcher and participant¹³⁸.

2.5 LIMITATIONS AND THEIR MITIGATION

During the course of this research study, some difficulties were encountered and, although, certain problems were solved easily, other limitations, though mitigated by the researcher's actions, are still worthy of note.

The primary research carried out may be considered as suffering from some imbalance as a few of the personages representing the current Government Opposition party invited to participate in an interview were in a position to comply or did not accept the invitation. Measures were taken to circumvent any issues of bias or leanings through the undertaking of further secondary research.

Leading questions, although avoided in their drafting, could have still featured whilst probing on striking concepts that arose during the inquiries. However, the pilot-tested inquiry instruments were useful in containing this eventuality. Also, it may very well have been the case that participants were influenced by their own biases and agendas. This may have marred the analysis; however, it should have been overcome by the researcher's preliminary groundwork. Moreover, despite the fact that great care was taken to ensure that participants were well prepared, information may have been inadvertently omitted. Data collected was reviewed and any identified gaps clarified with the participant concerned.

The subject was widely read and great attention was paid to document all relevant literature. Owing to the word count constraint, however, the researcher could not elaborate on all the material consulted but concentrated on referring to the highly relevant sources and referencing them accordingly, placing

¹³⁸ Micallef Grimaud, (n 134).

ancillary readings in the Bibliography. Furthermore, it may be argued that the primary data, derived through qualitative research methods, could be considered as fluid and lacking structure as the conduct of each inquiry method varied, thereby presenting the researcher with problems where data analysis, validity and reliability are concerned. Theming open-ended questions and coding the information falling within overcame this challenge, facilitating the analysis of information and, eventually, the comparison of data obtained through the different inquiry methods.

2.6 CONCLUSION

The results derived from the different research tools employed, as presented in Chapters 3 and 4, supported, complemented and/or supplemented one another and offered a great deal of significant material which gave rise to in-depth discussion and analysis on which to articulate the recommendations and conclusions outlined in Chapter 5.

CHAPTER 3

THE PRIME MINISTER

THE POWERS OF OFFICE:

CHOOSING THE CABINET

AND

APPEASING THE PARLIAMENTARY GROUP

3.1 INTRODUCTION

This chapter presents the analysed results of the qualitative research method carried out via various research instruments including informal discussions as well as formal and informal interviews conducted with political actors who have contributed to, and still form part of, Malta's political history. It will also incorporate observations and interpretations which emerged from such analysis.

3.2 INQUIRY BASIS

The general observation on the data gathered from those approached in the interests of this study were that the rigidity of the Constitution¹³⁹ required revising in line with the developments of the times and the needs of the nation as a whole¹⁴⁰. Legislative changes, would, in the main, affect the roles and functions of the Offices of the President and the Prime Minister through the introduction of new concepts to the present Constitution¹⁴¹. The feedback obtained from those interviewed was particularly discursive on the powers of the Prime Minister, his choice of Cabinet Ministers and his appeasement of the parliamentary group.

3.3 INTERVIEW RESPONSE – PRIME MINISTERS

As observed in Chapter 1, in theory, there are no written rules that must be followed by a Prime Minister when choosing his ministers. In practice though, Prime Ministers have laid down their own rules as to who, in their opinion, is

¹³⁹ Universalium Academic website <http://universalium.academic.ru/263751/Constitutional_Law> accessed 25 April 2013.

¹⁴⁰ "Bit-Tieni Repubblika nifhem Kostituzzjoni ġdida għal Malta miktuba mill-Maltin għall-Maltin u approvata mill-poplu Malti" - Prof. Kevin Aquilina, President's Forum 25/04/2013.

¹⁴¹ "Għax tant hemm bżonn tibdil fil-Kostituzzjoni li ma jagħmilx sens li toqgħod tibdel artiklu artiklu tal-Kostituzzjoni eżistenti. Jagħmel aktar sens li wieħed iħares lejn tibdil leġiżlattiv b'mod aktar ħolistiku u billi jintroduci kuncetti godda li sal-lum għadhom ma jeżistux fil-Kostituzzjoni" – Prof. Kevin Aquilina, President's Forum 25/04/2013.

best-suited for a ministerial post. So as to investigate past and present practices in this sphere, it was deemed necessary to interview both a former and current Prime Minister. The interviewees were Dr. Alfred Sant and Dr. Joseph Muscat respectively. They were both asked questions as to the criteria they sought when choosing their Cabinet of Ministers.

The questions revolving around the selection and evaluation criteria they considered when choosing their Ministers included the following elements as determining factors for eligibility, among others: competence, the number of votes garnered in the general election; by reason of seniority; and, any other relevant requisites.

On being elected to government and instated as Prime Minister, the selection of the Cabinet of Ministers is one of the Prime Minister's first major decisions. Both Prime Ministers applied specific criteria, as outlined below, to the process of the selection of Ministers for their Cabinets. The following primary data was elicited from the information solicited during the interviews with the former and current prime ministers.

3.3.1 Interview Response – Dr. Joseph Muscat

Dr. Joseph Muscat, in his typical telegraphic manner, applied concise but astute criteria to his selection process. In his own words, “The decision was taken on the basis of merit, competence, experience, energy and teamwork.” On the basis of these characteristics, the current Prime Minister founded his Cabinet of Ministers and identified his Parliamentary Secretaries. These are listed in the table which follows (Table 3).

Minister	Ministry
Dr. Joseph Muscat	Prime Minister
Mr. Louis Grech	EU Affairs
Dr George Vella	Foreign Affairs
Mr. Karmenu Vella	Tourism
Mr. Evarist Bartolo	Education & Employment
Mr. Joseph Mizzi	Transport & Infrastructure
Mr. Leo Brincat	Sustainable Development, Environment & Climate Change
Dr. Anton Refalo	Gozo
Dr. Helena Dalli	Social Dialogue, Consumer Affairs & Civil Rights
Dr. Christian Cardona	Economy, Investments & Small Business
Ms. Marie Louise Coleiro Preca	Family Affairs & Social Policy
Dr. Emanuel Mallia	Home Affairs & National Security
Prof. Edward Scicluna	Finance
Dr Konrad Mizzi	Energy & Water Conservation
Dr Godfrey Farrugia	Health
Parliamentary Secretary	Portfolio
Dr. Michael Farrugia	Planning & Administrative Simplification (OPM)
Dr. Ian Borg	EU Funds & EU Presidency 2017 (EU Affairs)
Dr. Jose' Herrera	Local Government & Culture (Tourism)
Dr. Stefan Buontempo	Research & Innovation, Youth & Sport (Education)
Mr. Roderick Galdes	Agriculture, Fishing & Animal Rights
Dr. Owen Bonnici	Justice
Dr. Edward Zammit Lewis	Competitiveness and Economic Growth.
Dr. Franco Mercieca	Active ageing and disability rights

Table 3: Cabinet 2013-2018 (Prime Minister, Dr. Joseph Muscat¹⁴²)

¹⁴² Vassallo History website <<http://vassallohistory.wordpress.com/prime-minsters-of-malta/dr-joseph-muscat/>> accessed on 25 April 2013.

3.3.2 Interview Response – Dr. Alfred Sant

During the interview, Dr Sant elaborated on the process he applied to select his Cabinet of Ministers in that he followed criteria which he “*thought were reasonable and appropriate in the sense that the composition of the Cabinet needed to reflect a balance between a number of requirements.*” These criteria, intended to establish such a balance, covered the following points:

- as widespread a geographical distribution of ministers chosen, as possible;
- popularity of appointees in terms of the outcome of the elections;
- contribution in the previous years to political action by way of work in Parliament; work within party structures; work at constituency level; policy development within the party and outside of the party;
- ideological positioning over the years by ministers being appointed – the aim being to have a full voice for a wide spectrum of political beliefs within the Labour Party;
- technical and professional competences (it did not make sense to have a Cabinet dominated by legal or medical professionals);
- need to also have working class politicians, not middle class professionals only, in Cabinet;
- gender balance (in 1996, this could only be done incrementally and by preparing the way for future changes);
- leeway to allow for junior appointees to acquire experience in government and eventually progress to more demanding Cabinet posts, targeted for the third year of the legislature (which never materialized)

On the basis of the criteria listed above, the former Prime Minister was of the opinion that he had managed to establish a happy balance of all the characteristics necessary to govern the country and announced his Cabinet of Ministers as outlined in Table 4 overleaf.

Minister	Ministry
Dr. Alfred Sant	Prime Minister, Home Affairs & Gozo
Dr. George Vella	Foreign Affairs & Environment
Mr. Evarist Bartolo	Education & National Culture
Dr. Edwin Grech	Social Security
Dr. John Attard Montalto	Industry
Mr. Charles Buhagiar	Public Works & Construction
Dr. Michael Farrugia	Health Care for the Elderly & Family Affairs
Mr. Leo Brincat	Commerce
Mr. Lino Spiteri	Finance & Economic Affairs
Dr. Charles Mangion	Justice & Local Government
Mr. Karmenu Vella	Tourism
Mr. Freddie Portelli	Housing
Mr. Noel Farrugia	Agriculture & Fisheries
Mr. Joseph Mizzi	Without portfolio at OPM
Parliamentary Secretary	Portfolio
Dr. Gavin Gulia	Self employed
Mr. Joseph Cilia	Youth, Sport & Arts
Dr. Anton Refalo	OPM – Gozo
Dr. Helena Dalli	OPM – Women's Rights
Prof. Louis Buhagiar	Care for Elderly

Table 4: Cabinet 1996-1998 (Prime Minister, Dr. Alfred Sant¹⁴³)

¹⁴³ Vassallo History website <<http://vassallohistory.wordpress.com/prime-ministers-of-malta/dr-alfred-sant/>> accessed 25 April 2013.

3.4 INTERVIEW ANALYSIS – PRIME MINISTERS

On analysing the above data, one immediately comes across the difference in structure on the one hand and a certain similarity in substance on the other. Dr. Muscat was more concise in his answer, whilst Dr. Sant went into more detail to explain his reasoning behind the criteria. By and large, the elemental criteria were common to both. For instance, both Dr. Muscat and Dr. Sant mention competence as a fundamental requirement, considering it as one of the top priorities. Another characteristic they both mention is experience but, then, to balance out this point, Dr. Sant also mentions the appointment of junior Members of Parliament. This aspect was not mentioned by Dr. Muscat as one of his requisites but, in actual fact, he implemented it with the appointment of Dr. Ian Borg, a 27-year-old Member of Parliament as the Parliamentary Secretary for the EU Presidency 2017 and EU funds. This goes to show that what Dr. Sant said about appointing young politicians to important roles in order to acquire experience in government and eventually progress to more demanding roles, was taken on board by Dr. Muscat.

This strategy may be perceived to be more akin to Dr. Muscat's makeup in that he is one of the youngest Prime Ministers to ever hold Office in western political history. In this context, he would probably be more likely to approach and have an affinity to younger Members of Parliament, having faith in their energy, efficiency and allegiance as he would in his own. Moreover, his own youth and inexperience as Prime Minister is thereby dissipated by means of the attributes of even younger and less experienced members of his Cabinet.

3.5 FURTHER ANALYSIS

Further points for discussion were highlighted during the interviews and gave rise to the possibility of further analysis.

3.5.1 Size of Cabinet

Another act of dissipation was reflected in the distribution of powers in the appointment of the various Ministers and Parliamentary Secretaries within the 2013 Cabinet. This Cabinet is by far larger than that of Dr. Sant, as well as that of Dr. Gonzi, as may be noted by a comparison of the tables above. Dr. Muscat's strategy, in this respect, could be perceived as a tactic to appease his parliamentary group as much as possible, thereby anticipating and preventing dissent even though his government was elected on the strongest majority ever to be recorded in the Maltese political scenario. As earlier indicated, both Dr. Sant and Dr. Gonzi governed with a one-seat majority and, thus, their position was less tenable. This state of affairs effectively led to Dr. Sant having to go to the country after only twenty-two months, whilst Dr. Gonzi had to go through a very tumultuous legislature, replete with threats to his position as Prime Minister.

3.5.2 Merit

Another common point is that of merit as laid down by Dr. Muscat, with Dr. Sant giving a wider definition of this criterion, which ultimately led to the same conclusion. Dr. Sant referred to the parliamentary members' contribution to political action in the years prior to election. This could be correlated to merit; the merit which accrues from the carrying out of intense work and commitment in the past that renders an individual a plausible candidate to fill an important Office in Government.

3.5.3 Energy and Teamwork

In his answer, Muscat also mentions energy and team work; two qualities which are of the essence to a Cabinet of Ministers. Muscat elaborated on the fact that the lack of energy and motivation coupled with fragmentation in any group, let

alone a Cabinet of Ministers, are main causes of failure. Therefore, the innate presence of these characteristics in any of his appointees was paramount to his decisions in this regard.

One can go further on the concept of teamwork, in that this is not only necessary in the Cabinet but in the entire parliamentary group of the party in government. No matter how cohesive the members of the Cabinet and how well the Cabinet is working as a whole, if there is dissent from the parliamentary group, all the teamwork of the Cabinet will come to naught. As described in detail earlier on, such a situation occurred within the 1996 Labour government, when dissent from the backbench eventually led to the Prime Minister cutting the legislature short after only twenty-two months and going to the country for general elections.

3.5.3.1 The Gonzi Debacle

The 2008 Nationalist Government, led by Premier Dr. Lawrence Gonzi, was also affected by the disgruntlement of the parliamentary backbench. Even though, unlike in the previous Labour incident, it was not a belligerent former Prime Minister who was putting the pressure on the incumbent Prime Minister, Dr. Gonzi's premiership was plagued by strong resistance from some members on his back bench. Dr Gonzi managed to see the legislature through to the end, but received a humiliating thrashing at the polls at the end of the five years.

3.5.3.2 The Lesson Learnt

Therefore, when speaking of teamwork, it is of the essence to take into account the whole parliamentary group and not just the Cabinet of Ministers. This demonstrates that the Prime Minister ought to be careful and sensitive in his dealings where the inclusivity of all the elected representatives is concerned. Dr. Muscat must have learnt this lesson well, since, after he appointed his

Cabinet, he immediately held one-to-one meetings with all the newly-elected Members of Parliament in order to identify the ways in which they may contribute to government. His management of this delicate and complex phase in the creation of a governing body was reported by The Times of Malta on the 15th March, 2013.

“Dr Muscat also said he did not like how the role of Parliamentary Assistants was used in the last legislature. Instead of linking backbenchers to the ministries, Dr Muscat said he would hand out specific tasks and would also be willing to assign certain “executive” roles to members of the Opposition.”¹⁴⁴

3.6 INTERVIEW ANALYSIS – INFORMAL INTERVIEWS WITH PARLIAMENTARIANS

Two informal interviews held separately with two parliamentarians were also conducted for the purposes of this study. The informal nature of this research tool allowed the interviewer to create a relaxed atmosphere, in the ambience of which both interviewees felt at ease to reminisce and wax lyrical, delving into the past, supported by notes and records, while relating this to the present as lessons learnt and applied, producing a rich lode of research nuggets which the researcher could tool to formulate recommendations for the future.

3.6.1 Informal Interview Response – Dr. Helena Dalli

In sharp contrast to the current Prime Minister’s inclusive and proactive management strategy outlined above, during an informal interview held with a parliamentarian of the 1996 legislature, Dr. Helena Dalli, it was indicated that it was a known reality for those within the Labour parliamentary group that, at one point, Dr. Sant and Architect Mintoff were not even on speaking terms. Moreover, Dr. Sant outrightly denied Architect Mintoff’s claim that Dr. Sant asked him to contest the election. Architect Mintoff often publicly declared that,

¹⁴⁴ Times of Malta website <<http://www.timesofmalta.com/articles/view/20130315/local/muscat.461620>> accessed 20 April 2013.

given his old age, he was reluctant to contest the 1996 election and it was because the party leader (Dr. Sant) put pressure on him that he did so. Architect Mintoff also declared that he had his own electoral programme which was not in line with the action Dr. Sant's government was taking. Dr. Sant dispelled what Architect Mintoff was saying as a myth.

This hardened Architect Mintoff's stance even more and his criticism got harsher; so much so that he criticised a Labour Government budget as lacking a social conscience. Architect Mintoff also had qualms about a project the Labour Government had embarked on at the Vittoriosa waterfront. He kept insisting that the government was not making a good deal and that the project would translate into a lower quality of life for the residents in the area, who were, mainly, Labour supporters. He kept insisting that his constituents were going to be denied access to the foreshore and, had the government involved him, he would have negotiated better. Thus, he was voting against the project even though the Prime Minister was tying it to a vote of confidence in the Government.

The catalyst which heralded a change in the political scenario of the country came to pass at a press conference called by the Prime Minister at the Vittoriosa Waterfront to explain to journalists what was happening, Dr. Sant called Architect Mintoff a traitor for destabilising the government. Architect Mintoff's reaction was very harsh as may be evidenced from his speech in Parliament:

*".... I ask the prime minister, what is he in the party? A dictator? Why did he make use of the party's facilities to go and hold a mass meeting... He did not use those facilities only for a mass meeting but he used them to call me a 'traitor'. It's no use saying 'hail Malta' and in the same breath insult your colleague by calling him Malta's traitor and telling people that I should resign ... this is proof that this is no longer the workers' party and that its soul is dead."*¹⁴⁵

¹⁴⁵ 8th legislature, sitting 239

3.6.2 Informal Interview Response – Dr. Franco Debono

The experience of the 2008 Gonzi government portrays a different picture. Prime Minister Gonzi tried to appease his disgruntled backbench. He even created the role of Parliamentary Assistant, who would be placed in ministries to help ministers, and doled out other roles such as those of chairpersons. Evidently, this was to no avail as the public criticism by some government Members of Parliament continued to erode the Prime Minister's authority with the concomitant consequences.

It shows that, unlike Sant, Gonzi involved his backbench as a reaction to the criticism he was getting from the disgruntled Members of Parliament. It was a case of crisis management and damage limitation. On the other hand, Muscat, with the knowledge of hindsight, from what he learnt from the experience of his predecessors, tried to take control of the situation at the outset by speaking to the rest of the parliamentary group just after he appointed his Cabinet.

3.7 INFORMAL INTERVIEW ANALYSIS – PARLIAMENTARIANS

In essence, all these experiences show that, although it is imperative that the Prime Minister is very careful on who he or she appoints to the Cabinet, it is equally important that much care should be taken on who to leave out and how to deal with the rest of the parliamentary group which remains on the back bench as this will have an effect on the work to be carried out during the legislature.

This demonstrates that no matter how much power the Prime Minister wields, one parliamentarian is enough to upset the apple-cart. As explained earlier, in the case of Dr. Sant, the government had only a one-seat majority. In fact, in his winding up speech on the Vittoriosa, Cottonera, yacht marina land resolution he pointed out that had the amendments to the electoral law proposed in February 1996 come into effect instead of being discarded, it would have resulted in the

1996 election result giving the Labour Party a two seat majority in the most transparent and serious manner. He spoke of the importance of stressing this point because he attributed what was happening in Parliament at the time to be the responsibility of the Leader of the Opposition, who, when he was Prime Minister, did not see these amendments through and, thus, by his actions had managed to destabilize the political system¹⁴⁶.

In the case of the 2008 legislature, the Prime Minister, Dr. Gonzi, had only a one-seat majority since the election was won by a majority of a mere 1,580 votes¹⁴⁷. On the one hand, in his bid for inclusivity, Dr. Gonzi selected the most popular Members of Parliament to form part of his Cabinet of Ministers, created the posts of Parliamentary Assistants and set up various Boards with the necessary chairpersons and members. On the other hand, he erred by omission, in that he set aside influential Members of Parliament. An omission which led to his downfall and that of his party in government but, in spite of which, he maintained the country's stability by retaining the government in power, practically, to the full term of its legislature with the 2013 General Elections being held five years to the day of the previous elections.

Following the 2013 election result, the majority was of nine seats for the Labour Party, thus the Prime Minister's position is very strong. Nevertheless, from the lessons learnt, the new Prime Minister was careful to nip the disgruntlement - of Members of Parliament not chosen for Cabinet - in the bud and, at the outset, held one-on-one meetings with them to see where they could contribute in the service of their country.

3.8 FURTHER POINTS FOR ANALYSIS

On a different level, in the list of qualities, Dr. Sant mentions another three criteria. These are, (a) widespread geographical distribution; the Cabinet being

¹⁴⁶ Informal interview conducted by the author with Dr. Helena Dalli (February, 2013).

¹⁴⁷ Department of Information website < www.gov.mt/departments-of-information > accessed 20 March 2013.

constituted of individuals who come from as many different localities and districts as possible; (b) the inclusion of working class politicians, not just middle class professionals, so as to have a better representation of society in general; and, (c) gender balance.

When discussing these criteria Dr. Sant made it clear that the last three were very important in making his decision because when choosing it was of utmost importance that the Cabinet of Ministers ultimately mirrors society at large. He stressed the fact that by having a Cabinet composed by, for instance, only lawyers and doctors, the spectrum of discussion would be rather narrow. The same applies if the Cabinet were to be composed solely of men. Dr. Sant wanted wide representation in his Cabinet and, in this way, he sought to lead the country in the most equitable manner possible.

One may criticize that, although both the Prime Ministers interviewed made gender balance a priority in their electoral speeches and manifestos, both Cabinets lacked female representation in their respective parliamentary groups. In Dr. Sant's case, in a Cabinet of fourteen ministers and five parliamentary secretaries, only one was a woman; and this was Dr. Helena Dalli who occupied the role of Parliamentary Secretary in the Office of the Prime Minister.

Seventeen years later in the Muscat Cabinet - out of 15 Ministers and 8 parliamentary secretaries - only two are female; and these are Dr. Helena Dalli, this time Minister for Social Dialogue, Consumer Affairs and Civil Rights and Ms. Marie Louise Coleiro Preca as Minister for Family Affairs and Social Policy. Some might consider this a step forward but when viewing the situation from a statistical standpoint, the percentage change goes from a mere 5% in 1996 to 9% in 2013 which is too small an increase if one were to consider the need for the female perspective at the highest decision-making level, particularly in line with the European Union's recommendations in this respect. In both cases, it is not the Prime Ministers who are at fault. Principally, the problem lies in the dearth of women who contest the general elections and, thus, the subsequent election of few women to Parliament.

Furthermore, an area which was not expanded upon by either Prime Minister concerned the question of seniority and whether this played any part when choosing the Cabinet of Ministers. For instance, taking the 2013 Cabinet as an example, it would have been highly unlikely that Mr. Karmenu Vella, Mr. Evarist Bartolo and Dr. George Vella would not be made Ministers; since they have served as such under the previous Labour government. Nevertheless, appointment by seniority was not a top priority for Prime Minister, Dr. Muscat, as strong longstanding figures like former ministers Architect Charles Buhagiar and Dr. Michael Farrugia were not re-appointed as ministers, with Architect Buhagiar remaining merely a Member of Parliament and Dr. Farrugia being downgraded from Minister to Parliamentary Secretary. This is the situation as it stands at the time of the writing of this thesis, but could, in theory, change at any point as the Prime Minister may appoint or remove a minister whenever he pleases during his legislature.

3.9 REINFORCEMENT BY TRIANGULATION

Another interesting point worth mentioning, referred to in a previous chapter as having come up during an informal discussion with Prof. Kevin Aquilina on this subject, was the fact that when a new party is elected to Government and a new Cabinet of Ministers is to be chosen, the Prime Minister usually abides by certain unwritten criteria he lays down himself when making his choices. As already mentioned and as has clearly been highlighted by the interviews conducted with the two Prime Ministers, Dr Alfred Sant and Dr. Joseph Muscat, thereby consolidating these findings, there is no hard and fast rule and the whole caboodle is within the Prime Minister's discretion.

3.10 CONCLUSION

It is this wide discretion enjoyed by the Office of the Prime Minister of Malta, which lends itself to further analysis and forms the basis for the

recommendations to the Offices of the President of Malta as outlined in the following chapter. Based on what was gathered at this research stage from the feedback obtained from those participating, this study recommended a number of suggestions. The results derived from the different research tools employed corroborated, supported, complemented and/or supplemented one another and offered a great deal of significant material on which to articulate the discussion, recommendations and conclusions outlined in Chapter 5.

CHAPTER 4

THE PRESIDENT

THE POWERS OF OFFICE:

DISCUSSION AND RECOMMENDATIONS

4.1 INTRODUCTION

The data collected from the interviews and informal discussions conducted was analysed in depth in order to derive the wealth of experiences and informed opinions of those interviewed. Astute criticisms and useful insights that could be essential in developing proposals for the future within this line of study were noted.

4.2 PROPOSED CHANGES TO THE CONSTITUTION OF MALTA, 1964

As already discussed in previous Chapters, the present Constitution of Malta dates back to the year 1964, when on the 21st September of the same year it was embraced as the supreme law of the Maltese islands. This means that, in 2014, the Maltese nation will be celebrating the 50-year anniversary of when the Constitution was first adopted. Over the past 50-year span, times have changed, society has developed and, above all, the outlook of the citizens has evolved drastically bringing about a culture change which, according to the qualitative data engendered by this research study, deserves to be reflected within the highest law of the land.

These sentiments were likewise expressed by Prof. Kevin Aquilina, who proposed that the Constitution should be written afresh and not merely revised. However, this study is not concerned with whether the changes to be made are best served by legislating on the existing law or by the writing of a new law from scratch, but, rather, with the constitutional changes which are to be effected to the functions and roles of the Offices of the President and the Prime Minister; that is, to those aspects of the Constitution which will affect these two Offices.

Vital in this process is the aspect of continuity from what there was in the past to what the new provisions will be. The Offices of the President and the Prime Minister cannot change drastically overnight, expecting the population to adapt quickly to these radical vicissitudes. It has to be a cautious and well planned

transition, a strategic inculcation, incorporating a consultation stage that will guarantee that the changes made will, when the exercise is over, benefit and be owned by Maltese society at large and not merely the elect few who are legislating.

When discussing the changes that might apply to the Offices of the President and the Prime Minister, it must be kept in mind that, the more power is given to the President, the less power the Prime Minister retains, and vice-versa. In most areas of their vast remit, giving a certain power to one Office means that it has been detracted from the other with all the concomitant consequences and repercussions of such an action; ripple effects which, more often than not, are felt by the nether offices of the public sector and, therefore, are to be taken carefully into consideration before any move is contemplated.

However, as mentioned earlier, Malta has a parliamentary system of government wherein the Prime Minister has large powers when it comes to the actual running of the country, both legislatively and administratively. This situation leaves the President with quite a ceremonial figurehead role, which, in theory, may appear authoritative, but, in practice, is very, weak politically speaking. The starting point in this discussion must be whether it would be best to keep or modify the Maltese system of government. Would it be better to keep the parliamentary way of government or move towards the other end of the spectrum towards a presidential system like that adopted in France and in the United States of America?

The choices mentioned by Prof. Aquilina (2013) in his paper are three:

1. keep everything as it is today and leave the President with his present very limited political power;
2. ascribe him more real powers but not move towards a presidential system. This is a half-way measure lending itself to gradual change;
3. give most of the political powers to the President and drastically move towards a Presidential system which would necessitate huge changes in the way our Government functions. In the latter system, the President

would have to be appointed directly by the citizens in an election and would not be elected by Parliament (Aquilina, 2013).

This brings the argument to a crucial point in the discussion: that the President's powers are determined by his mode of appointment and removal. At the present point in time, appointing and removing the President of Malta is a relatively easy motion; as a result of which his powers are negligible. The more difficult a process it is to appoint and remove a President the more are the powers which can be vested in his Office.

4.2.1 Comparing the Maltese and French Presidential Election

The matter outlined in the previous paragraph may be substantiated by highlighting the relevant situation in two European countries, Malta and France.

4.2.1.1 Maltese Presidential Election

According to Article 48 of the Constitution of Malta, the President shall be appointed by a mere Resolution of the House of Representatives¹⁴⁸. This means that the appointment does not take place by election or by a two-thirds majority of the House of Representatives. The prerogative on whom to choose to fill the Office remains in the hands of the party commanding the majority of seats in Parliament. The nomination is then put to a vote in the House that requires only a simple majority for the motion to pass. Thus, the appointment of the President may be effected without a *quorum* in the House of Representatives. This was pointed out by Dr. Franco Debono in his speech in Parliament on the 27th January, 2010¹⁴⁹.

¹⁴⁸ CoM, art 48. (1).

¹⁴⁹ "Il-mod tal-ħatra tal-President issir b'rizoluzzjoni li għaliha lanqas għandek bżonn *quorum*. Allura jien nistaqsi jekk huwiex għaqli, jekk huwiex ġust, jekk jirriflettix l-importanza tal-kariga dan ir-rekwiżit daqshekk baxx rikjest mill-Kostituzzjoni." (sitting 186, 11th legislature).

This is also the situation when it comes to the removal of the President. Article 48 (3) (b) states that with another simple majority in Parliament the members of the House of Representatives may, on grounds of “*inability to perform the functions of his Office (whether arising from infirmity of body or mind or any other cause) or misbehaviour*” remove the President from his appointment¹⁵⁰. It is nowhere stated in the Constitution what the terms “misbehaviour” or “inability to perform functions of his Office” actually entail, and, therefore, since there is no clear definition, it is up to the Members of Parliament to construe the connotations of misbehaviour and inability and their implications when bringing the matter to the attention of the House for a decision that may be reached by the simple majority referred to above.

Therefore, as a result of the mode of his appointment and removal, the President has few effective powers and if he attempts to make a constitutional decision, he would end up at the mercy of the party that enjoys the majority in the House. For this reason, he would not be able to perform his duty as guardian of the Constitution, becoming merely a titular Office for ceremonies and formalities.

4.2.1.2 French Presidential Election

The French Presidential election must be examined in light of the fact that France uses a semi-presidential system of government. This system warrants that the French President’s Office, his function and role, are the embodiment of vast powers as a direct result of his mode of appointment. The French President, today, is elected by the nation; by universal suffrage. Therefore, since he has been democratically chosen by the majority of the citizens in the country he deserves to have the wide powers he possesses; bequeathed unto him by the very system which permitted his election. Although it is the Prime Minister that oversees most of the country’s actual everyday affairs, the French

¹⁵⁰ Art 48 (3)(b) if the holder of the Office is removed from Office by Resolution of the House of Representatives on the ground of inability to perform the functions of his Office (whether arising from infirmity of body or mind or any other cause) or misbehaviour.

President exercises significant influence and authority, particularly in the fields of foreign policy and national security. These powers are conferred on the President by the constitutional attributions defined in Title II, Articles 5-19 of the Constitution of France, which, in turn, endow the President with the nation's most senior Office and, thereby, the holding of a position which outranks all other politicians¹⁵¹.

4.3 NEED TO REVISE THE MALTESE PRESIDENTIAL ELECTION

When compared to the negligible powers that the Maltese President enjoys, the French President, undoubtedly, outstrips him by far. It cannot be more emphasised that this is a direct result of the system and process by which the holder of the Office is elected and dismissed. For the Maltese President to really be able to perform his duty of guardian to the Constitution, and enjoy a real position of strength, the constitutional change must be twofold, as proposed by Marc Sant:

“ i) the President must be given more discretion in an apolitical ambit in order to act as a check on the strong government that has been created by the lack of effective separation of the State's legislative and executive powers.

ii) the President's method of election and tenure of Office should make him a symbol of national unity and enable him to perform the functions of his Office in an independent manner.”¹⁵²

Hence, the starting point towards the revision of the President's role in Malta must necessarily be a constitutional change to the mode of appointment and that of removal. When discussing the mode of appointment, clearly, the more powers allocated to the President, the more formal should be the mode of appointment, since the powers that are to devolve on the President are intricately linked with the elected person's method of appointment¹⁵³.

¹⁵¹ Constitution of France Title II, Articles 5-19.

¹⁵² *ibid.*

¹⁵³ *ibid.*

To this end, the following sections will go on to explore alternative methods by which the President of Malta can be appointed in a more formally representative way using also the methods of appointment applied in foreign countries as models to guide the formulated theories proposed below.

4.3.1 Appointment by Two-thirds Majority and Subsequent Election

In line with previous argumentation by Sant (2008) and Aquilina (2013) the first alternative method of appointment that may be adopted by the Maltese constitutional framework is the appointment through a two-thirds majority of the House of Representatives. This method would, nonetheless, rest on the decision of the Members of Parliament but in a different manner to the simple majority appointment currently in place.

Thus, the House must reach a consensus for the vote to pass. This method of selection would ensure that the appointment is effected with the agreement of both parties in Parliament and not solely based on a decision of the party that enjoys the majority in the House and, therefore, is in Government¹⁵⁴. Agreement might be reached on someone who is not even part of any political party, or, as in the case of the present President, Dr. Abela, the parties agree on the appointment of someone who does not come from the Government benches but from the ranks of the Opposition. A person of this ilk would have to sport certain characteristics: an individual who, in the opinion of both the Government and the Opposition, would be effective in uniting the country and not a divisive political figure who would alienate the segment of the population who voted for the Opposition and would, therefore, perceive the incumbent with the mind-set that they are not represented by such a person.

This was, regrettably, the situation in 2004, when, after serving for 26 years as the Leader of the Nationalist Party and 15 years as Prime Minister of Malta, Dr. Eddie Fenech Adami was appointed President of Malta. With the appointment

¹⁵⁴ always considering the fact that the situation of a bi-party Parliament persists

method set to the three-thirds majority and not to a mere simple majority, Dr. Fenech Adami might have never been appointed President owing to his divisive political role which could never be erased from the minds of the citizens. This appointment was opposed by the Labour Party and the Alternative Demokratika as outlined by MaltaMedia News in April 2004 and “publicly criticised by PN-friendly columnists like Marisa Micallef Leyson and Lou Bondi”, referred to in a Malta Today article in March 2005. He, therefore, could never be seriously considered to represent a good portion of the population which, for 26 years, he battled against politically.

Thus, a positive aspect to this method of appointment is that for an individual to be appointed President of Malta there must be consensus between the parties in Parliament giving the figure a more unifying role, which characteristic would enhance the status of the Presidency. As a result of this method, the President would be afforded more powers, since the threshold to be elected is higher than the present one and appointment, or dismissal, is more difficult to implement. On the other hand, a downside to this method of appointment is the fact that a stalemate may be created between parties on the decision as to the selection of a particular individual, as they may fail to agree on a suitable person for the role.

There are two ways to avoid this potential stalemate in the choice of a President. One was suggested in 1987 by the Select Committee set up to propose changes to the Constitution¹⁵⁵ and the other was recommended in 2013 by Prof. Kevin Aquilina in his speech at the President’s Forum of the same year with the name – a Second Republic for Malta. In the former report the select committee gave a lot of importance to the method with which the President is elected and recommended that it changes to a two-thirds majority of the Members of the House of Representatives. The committee went a step further and laid down the procedure to be followed in the event that no agreement is reached: the responsibility for the decision must then be passed

¹⁵⁵ Select Committee Report: *Kumitat Maghzul tal-Kamra tad-Deputati biex jaghmel Rakkomandazzjonijiet ghat-titjeb fil-Kostituzzjoni ta’ Malta* (Rizoluzzjoni tal-Kamra Nru. 25 mghoddija fis-Seduta tat-13 ta’ Awissu 1987).

on to the electorate, the choice of the people by the voice of the people (*“allura wiehed ghandu jirrikorri ghal elezzjoni diretta tal-poplu”*). If, following this exercise, no candidate obtains the absolute majority of the votes cast, then it would have to go to a second round of votes with the contestants this time being those two candidates with the highest amount of votes. The candidate who, this time round, achieves the largest amount of votes will be the new President of the Republic. In this way, the choice of President would be the electorate’s decision.

Another practical method that could be adopted by the Constitution of Malta when the appointment of the President by means of the two-thirds majority of the House reaches a deadlock is laid down by Prof. Aquilina in his speech at the 2013 President’s Forum ¹⁵⁶. In his paper, he states that

“Should the House not agree on a person to occupy that Office within a week from the day that the Office of President becomes vacant, the proposed Council of State should appoint an Acting President from amongst past Presidents or one of its members should there be no past President willing to take up the Presidency. Once the House agrees on the appointment of a President of Malta, the Acting President will vacate Office. If the House takes more than three months to make such appointment, then it will forfeit its authority to make such appointment and the Acting President will take over the Office of President until the term of Office in terms of the Constitution comes to an automatic end, thereby ensuring an uninterrupted period of time in Office.”

Therefore, the stalemate created by the non-decision of the House of Representatives does not lead to a further election where the electorate decides on an incumbent for the post. In the event of this occurring, the Council of State (another constitutional amendment proposed by Prof. Aquilina which will be tackled at a later stage in this thesis) will appoint an Acting President, from amongst the members of the same Council of State, who will be willing to take on the Office of the President for a limited period of time until Parliament overcomes the deadlock. Should extraordinary circumstances prevail, the

¹⁵⁶ Kevin Aquilina, ‘A Second Republic for Malta’ (Dean, Faculty of Laws, University of Malta - 25th April 2013).

expiration of three months with no agreement being reached, the Acting President from amongst the members of the Council of State will become the new President of Malta for the following term. Such a system is less costly to the nation as it does not consider the eventuality of delegating the decision to the citizens by means of an election, as in the proposal made by the Select Committee of 1987, and has, in fact, done away with the necessity of resorting to the electorate since it covered every contingency.

It can, therefore, be determined that both the Select Committee of 1987 and Prof. Kevin Aquilina in 2013 agree on the fact that the appointment of the President should be amended to a two-thirds majority of the House of Representatives. The point where they differ is the scenario when no agreement is reached between the two parties in Parliament and a political deadlock is created. Nonetheless, in both instances, there are two logical ways forward to facilitate the successful culmination of the process and elect a President as a result of it all.

4.3.2 Appointment by Absolute Majority of the House and Local Council Representatives

Another alternative and more representative method of appointing the President than the one used presently could be by an absolute majority reached in a vote taken by the 69 Members of Parliament and the Mayor of each Local Council in Malta which in total form another group of 68 votes.

This system of appointment very closely resembles the process by which the Italian President is elected. In fact, the Constitution of Italy (Title 2, Article 83) states that the appointment of the President is effected by an election in Parliament, where the Members of Parliament and three delegates from each region of the country vote for their favourite candidate. The Italian Constitution continues to stipulate that the election should take place by secret vote and the candidate who reaches the two-thirds majority in the first two attempts will be

elected President. If a happy outcome is not achieved and the amount of votes indicated is not reached, the bar will go down at the third attempt and whoever of the contenders reaches an absolute majority in the successive voting sessions will be the President of Italy¹⁵⁷.

In Malta, this system would have to be adopted differently; still keeping in mind that the main aim, which is to give geographical representation to the whole of Malta, is retained when the system is applied. Through this procedure, those eligible to vote would be the Members of Parliament at the time of the election and another 68 representatives, one from each and every Local Council in Malta. In this case, the representative will be the Mayor of every Local Council, since he would have been the person who achieved the most votes in the town or village in the previous Local Council Elections and, therefore, the most fit to represent the citizens of that locality.

The system of voting would entail that the election be held in Parliament and each person eligible to cast his vote will be able to do so in the form of a secret ballot. The candidates for the first round of elections may be unlimited as long as their nomination is seconded by two Members of Parliament from the government benches and two from the Opposition's benches. In this way, the risk of having another general election in the form of a presidential election is diminished. However, it can never be totally removed as parties may agree to nominate two individuals and battle it out as if it were a general election all over again. Nevertheless, at this point, political maturity should be a priority for both Government and Opposition, instigating them to take a responsible decision and make a wise choice for the good of the nation and not allow such a momentous situation to turn into a political tennis match to the detriment of the country.

Consequently, following the stage where nominations close, and the list of candidates is known, the process moves to the voting stage. If the case is so that there are more than two candidates for the role, the voting will take two

¹⁵⁷ Col, 37 art 83.

stages. In the first stage, a vote will be taken by all those eligible to vote and the two candidates, who achieve the greatest number of votes from those cast, will proceed to the final stage of voting which would mark the second stage. In this second stage, these same two candidates will battle it out in another secret vote and, this time, the candidate who obtains an absolute majority¹⁵⁸ will be appointed President of Malta for the following term. The two stages of voting will only be avoided if, in the first session, a candidate obtains an absolute two-thirds majority of the votes cast. In this case, the successful candidate will be directly appointed President.

This method of appointment enhances the principle of a more geographical representation in the election of the President of Malta. An example of this would be manifested if there is no Member of Parliament elected from a particular town or village in Malta; this system would, nonetheless, ensure that the locality would be represented. Although this process may be nowhere close to a direct election in which all citizens may cast their vote, it, however, closely resembles the procedure that the Maltese political parties adopt when choosing their leaders. Hence, it may be said that this method is a fusion between what happens in Italy where the appointment of the President is concerned with what happens in the Maltese leading political parties during the election of a new leader. Also with this mode of appointment the President would be chosen in a more representative manner and, therefore, could also be afforded more political powers within the state of Malta.

In recommending the appointment by absolute majority of the house and local council representatives, it is envisaged that the country would move towards the Italian system and, by means of an election, the 69 Members of Parliament, together with the 68 Mayors from each Local Council, (increasing the number of eligible voters to 137) would, by means of a secret vote, elect a new President; thereby endowing the following two new characteristics to the presidential appointee.

¹⁵⁸ That is a result of 50% + 1 of the votes cast.

- The Office of the President would, hence, enjoy the role of an elective Office and no longer a nominative one.
- Consequently, the Office of the President would be more reflective of a widespread and democratic selection than it currently is.

4.3.3 Appointment by Election

This method of appointment is by far the one that most enhances the principle of direct democracy; which principle is starkly absent in the current political scenario when it comes to appointing the President of Malta¹⁵⁹. There is an upside to this method as it would decrease the isolation of the population from their politicians and the decision-making process. As a result of a direct election, where all the country is party to the democratic exercise, the decision will be, without any doubt, more transparent and accountable than when it is taken solely by politicians.

As was discussed previously, having a popularly elected Office holder would imply that the Office must be afforded more powers than the ones it currently carries, which are, in their majority, ceremonial ones. The mode of appointment by an election means that the electorate has spoken and has chosen. Thus, this same method of appointment gives the Office holder more representativeness and, therefore, more leeway to be given higher powers. If the President is appointed by election and not solely by a simple majority, as is the current situation, it cannot be possible that his powers remain untouched and equal to what they are today.

One of the only, if not the only, political party in Maltese political history to propose such a method of appointment in their electoral manifesto was Azzjoni Nazzjonali in the 2008 election. They were completely in favour of this system and, in fact, their leader at the time, Dr. Josie Muscat, was interviewed by the

¹⁵⁹ Propounded by Azzjoni Nazzjonali party, 'L-emendi fil-Kostituzzjoni: hlieqa ohra?' *Illum* (Malta, Sunday 30 September 2007).

newspaper *Maltatoday* regarding the future of the Office of the President of Malta and he was quoted to say that

*“The President should be elected by universal franchise. He should not owe his position to anybody except the people whom he represents.”*¹⁶⁰

Owing to its directly democratic system, this method of appointment may present the many theoretical advantages already mentioned. In practice, however, it may create many complications; mainly the repetition of another general election between the party in government and that in the opposition. This situation will come to pass if one party nominates one candidate and the other nominates another candidate; the choice will take the form of another general election defeating the purpose of choosing the right person for the job and the electorate voting in a partisan manner; since, owing to the electorate’s inclination to vote according to loyalties, a significant majority of the voting population will not be casting their vote in the name of policies, qualities and experience but voting for one party or another¹⁶¹.

This brings the argument back to the point that such an appointment as that of the President should unite the country and not divide it yet again. Though it is accepted that in a general election Malta is divided into two major factions; due to the fact that two major parties are up for one spot in government, it would be better if the appointment of the President were not to take this divisive format as this would defeat the purpose of having a President that unites the population as a whole. Therefore, on the one hand, the premise that an election is the fairest way of appointing someone to the post of President is valid because, as described above, election by direct democracy would ensure that the post-holder is representative of the people’s choice. On the other hand, in a country like Malta, where politics is such a strong influence in people’s lives and where the political sphere is dominated by two major big parties with a negligible third party influence, the choice of a President by direct democracy would mean that such an important issue would be politicized.

¹⁶⁰ Saviour Balzan, ‘What is the future of the presidency?’ *maltatoday* (Malta, 5 April 2009).

¹⁶¹ Sant, (n 41).

4.4 REMOVAL OF THE PRESIDENT FROM OFFICE

After discussing the possible constitutional changes to the appointment of the President of the Republic in Malta, the removal from Office must also be considered and catered for. It is not deemed rational that, in the case of judges and magistrates – who are theoretically appointed by the President of Malta – there exists a security of tenure till the age of 65 if not impeached¹⁶², but then the same President may be removed by a simple majority in Parliament on the premise of inability to perform his functions and misbehaviour as stated in Article 48(3)(b) of the Constitution. These disabilities or maladministration are not listed or described in any way by the Constitution, thereby giving leeway to the Members of Parliament to impeach the holder of the Office on various pretexts. Consequently, an amendment regarding the President's security of tenure may be complementary to the rules that regulate the method of appointment and the delegated powers to the Office of the President.

A process that could accomplish the scope of securing the President's tenure in office and make his position in the role more stable and permanent would be the following: the removal must be effected as a result of an impeachment procedure followed by a two-thirds majority vote of the House after a declaration of guilt is issued by the Constitutional Court on the same grounds of removal. In this way, the process is a more formal one and the President's Office would be safeguarded against any partisanship by the Members of Parliament, whilst the trial for impeachment in the Constitutional Court would re-affirm the Court's role as the final arbiter of any constitutional infringement.¹⁶³ Parliament is supreme, but only within the framework of the Constitution. A constitutional matter like that of removal of the President must be reviewed and determined by the main guardian of the Constitution, and that is the Constitutional Court. Hence, in this way the matter would be examined in a meticulous and legal manner in an

¹⁶² Government of Malta website <<https://gov.mt/en/Services-And-Information/BusinessAreas/Justice/Pages/Legal-Professions-in-Malta.aspx>> accessed 20 April 2013.

¹⁶³ Sant, (n 41).

actual trial concluding with a more concrete, profound and equitable decision based on the supreme law of the land.

4.5 FURTHER RECOMMENDATIONS FOR AMENDMENTS

Most of the issues tackled in this thesis have remained untouched since the amendments that were made to the Constitution of Malta in 1974. The need for a strong revision has been a subject for discussion since 1987 and, till today, many of the proposed amendments were put aside and never really brought forward for subsequent implementation. The need for a renewal exercise to be applied to the supreme law of the land is necessitated by the change in the socio-political reality of the day in contrast to what it was fifty (50) years ago.

What was applicable in those days might not be suitable today. This was already a topic for discussion back in 1987, when it was addressed by the Select Committee of the House of Representatives; clearly highlighting the fact that the need for constitutional amendments is not something that has been trumped up at the present time but a reality that has been on the agenda for many years and that was never really been acted upon by the competent authorities. Apart from the aforementioned Select Committee, other authoritative personalities have given their opinion on the subject. One of these has been the former Minister for Justice and Home Affairs, Dr. Carmelo Mifsud Bonnici, who in an article in the newspaper 'Illum' of the 21st October, 2007, stated his belief that the time had come to revise this fundamental document in a forward-looking manner taking into account Malta's democratic exigencies for the 21st century. He continued to affirm that Malta's legal system was still shrouded in colonial heritage and that the time had come to allow for the structures required by modern society.

"...nemmen li wasalna sabiex nergghu nduru dan id-dokument baziku u nharsu 'l quddiem lejn l- esigenzi demokratici taghna, lejn is-seklu li dhalna fih. Ghad ghandna sistema legali li fiha tifikriet ta' zmien il-

*kolonjalizmu li wasal il-mument li jaghmlu spazju ghall-istrutturi li socjeta moderna trid.”*¹⁶⁴

This is one of the reasons why the Maltese Constitution may, in some Articles, be out dated. The fact that some parts still echo principles that were applicable when Malta was still a colony reflects a clear guideline as to where changes are needed. In its report presented to Parliament on the 18th February, 1988, the Select Committee of 1987, chaired by the President Emeritus, Professor Guido de Marco, attempted an effort to reform the Constitution¹⁶⁵. The report discussed major issues like the electoral process, state security, parliament, neutrality, employment commission, broadcasting, law courts and above all the reform of the Office of the President in detail. The main aim of this report was to propose changes in order to strengthen the democratic principles contained in the supreme law and, at the same time, endeavour to turn the figure of the President of Malta into a true symbol of national unity by recommending a new method of appointment and by suggesting an increase in his discretionary powers.

On the basis of the research carried out for this study, what this report lacked was the fact that it only proposed amendments to make the President more of a guardian of the Constitution than he was and is today without granting him more actual executive powers. In the opinion of this researcher as well as that of other authoritative figures in the field such as Professor Aquilina¹⁶⁶, the amendments must be effected in a way that should the present Cabinet government system be retained, the President – in conformity with the doctrine of the separation of powers – is to be associated with only one organ of the state, the Executive¹⁶⁷. As the leading figure of this organ, the President should be afforded more powers; which powers he should be able to use on his own initiative. In this way, the Office of the President would no longer be part of multiple organs of the state, guaranteeing that the doctrine of the separation of

¹⁶⁴ Carmelo Mifsud Bonnici, 'Avanzi Kostituzzjonali', *Illum* (Malta 21 October 2007).

¹⁶⁵ Together with Dr Ugo Mifsud Bonnici then Minister for Education, Culture, Sport and the Environment, Dr Vincent Tabone then Minister for Foreign Affairs, Architect. Dom Mintoff, former Prime Minister and Dr Joseph Cassar, a former Justice Minister.

¹⁶⁶ In his Second Republic speech.

¹⁶⁷ Aquilina, (n 156).

powers is adhered to and ensuring that a system of better checks and balances would be developed in the name of transparency and accountability.

4.6 THE INTRODUCTION OF A COUNCIL OF STATE IN MALTA

One of the major constitutional changes that have been raised time and time again by authoritative figures in the realm of Constitutional Law is the institution of a Council of State as a consultative and advisory organ to the President. In both the report drafted by the Select Committee of 1987 and the Second Republic document by Professor Aquilina, there seems to be an agreement on the setting up of such a Council. Unfortunately, such proposals have been rejected when put forward by the Select Committee of the House of Representatives in the past and the issue was raised once again by the current President of Malta himself, His Excellency, The President of Malta, Dr. George Abela LLD, during his Republic Day speech on the 13th of December 2009.

*“I also believe that it is time for the political forces in our country to consider the proposal of the setting up of a Council of State which would include, among others, the President of the Republic in Office, the Prime Minister, the Leader of the Opposition and former Presidents who, even though no longer in Office, may offer their long experience for the common good of Maltese society. The Council of State, whose role is consultative, may be of assistance in the discussion of various matters that arise from time to time.”*¹⁶⁸

Regrettably, the suggestion was not acted upon by the Government as there was no evidence of a bill that would amend the Constitution to allow the formation of a Council of State. It is till today, unknown if this inactivity was a direct refusal to the setting up of such an advisory organ to the state or if the proposal was simply set aside for future implementation. It would, hence, be a useful exercise to analyse what the role of such Council of State would be and if it would be beneficial to the country to include it as part of its constitutional

¹⁶⁸ Address by H.E. Dr. George Abela, President of Malta, on the occasion of Republic Day – Grand Council hall, The Palace, Valletta, 13/12/2009 (DOI PR 2154).

mechanism or if it would just add to the bureaucracy of the decision-making process.

In the format proposed by Professor Aquilina, the Council of State would be a consultative organ of the State, advising the President of Malta when faced with decisions he needs to take at his own discretion. Although these types of decisions are very rare owing to the limited powers that the President is allowed under Maltese Constitutional Law, this handful of decisions is vitally important when it comes to the governance of the state.

In Article 85 (1) of the Constitution of Malta¹⁶⁹, there are a number of occasions laid down where the President must act on his own personal initiative. Such powers include dissolving Parliament, appointing and removing the Prime Minister, appointing an Acting Prime Minister, revoking the authority of a Cabinet Minister to act as a Prime Minister and appointing and revoking the appointment of the Leader of the Opposition and the President's personal staff. If the dissolution of the House of Representatives is taken as a tangible example, it can be argued that these powers involve decisions that are not easy to take at all, especially when the burden is carried solely by one person. The present Constitution, which dates back to 1964, places the responsibility for this decision on the shoulders of the President alone, a measure which might not give the most propitious result every time. Therefore, it will be of benefit to the President and also to society at large, if the Head of State could seek advice from an external body that is above partisan politics and which will use its expertise and experience to counsel the President. This external body could be the aforementioned Council of State¹⁷⁰.

¹⁶⁹ CoM, art 85 (1).

¹⁷⁰ Kevin Aquilina 'Reforming the Constitution: Establishing a Council of State', *The Times of Malta* (Malta Friday November 16, 2012).

4.6.1 Composition and Appointment of the Council of State

The composition of such a Council of State has raised various questions as to who should constitute this consultative organ of the state. Taking these chronologically, the Select Committee of 1987, chaired by Professor Guido De Marco, in its final report published in 1988¹⁷¹, laid down that the Council of State should be presided over by the President, with the Prime Minister and the Leader of the Opposition as members on the Council. In addition, there should also be, as part of this Council, a number of individuals who have given their contribution to the political history of the country from either side of the spectrum, hailing from one political party or another. These members should be given the title of Councillors of the State and this title should be considered a national token of appreciation for their services towards their country.

Moving on to a more recent date, in the year 2009, the current President of Malta, Dr Abela, expressed his opinion as to who should have formed the Council of State that he would be presiding. As mentioned above, in his speech on Republic Day, 2009, His Excellency, The President of Malta, Dr. George Abela LLD was quoted to say that the Council of State should be constituted by the President of Malta, the Prime Minister of the day, the Leader of the Opposition and a number of former Presidents who could give a valuable input owing to their experience for the common good of Maltese society¹⁷². This was very similar to what was proposed by the 1987 Select Committee with the difference that, in this case, the other members constituting the Council should be former Presidents and not simply anyone who gave a service to Maltese politics.

¹⁷¹ Kumitat Maghzul tal-Kamra tad-Deputati biex jaghmel Rakkomandazzjonijiet ghat-titjeb fil-Kostituzzjoni ta' Malta (Rizoluzzjoni tal-Kamra Nru. 25 mghoddija fis-Seduta tat-13 ta' Awissu 1987).

¹⁷² DOI PR 2154, (n 168).

4.6.2 Professor Kevin Aquilina's Contribution to the Debate

Finally, the most recent contribution to the debate is that recommended by Professor Aquilina in 2013¹⁷³. His suggestion is that the Council of State is composed of past Presidents of Malta, Prime Ministers and Leaders of the Opposition. Other representatives from society at large may also be asked to give their input, not as full members but as advisors. He also mentions the fact that he would exclude the incumbent Prime Minister and Leader of the Opposition from the Council of State membership as there would be an, obviously, apparent conflict of interest that might easily arise rendering their contribution and presence on such a Council unethical and counterproductive to its brief and *raison d'être*. Another very interesting point Aquilina mentions is the exclusion of former and actual members of the judiciary from the Council of State, in order to keep the judicial organ separate and distinct from the executive organ in compliance with the doctrine of the separation of powers within the organs of the state.

4.6.3 Functions of the Council of State

When dealing with the functions of this prospective Council of State, as in the case of its appointment, both the Select Committee and Professor Aquilina agree on the fact that it is a consultative and advisory organ to the President and the Republic of Malta. The point where they differ is in the actual distribution of functions and the mechanism with which the Council will be implementing its duties.

In its report, the Select Committee proposed that the Council's functions would include decisions about the choice of certain high posts like that of the Chief Electoral Commissioner, the Broadcasting Authority members, the choice of the Employment Commission and, in particular, on the nominations of the chairmen

¹⁷³ Aquilina, (n 170).

of these same institutions¹⁷⁴; which nominations would be a determinant on the result when it comes down to the actual choices. The committee in its report goes on to say that the Council members are to submit their advice to the President every time they are called upon to do so¹⁷⁵.

In his proposals, as part of his paper, Professor Aquilina also mentions the fact that the Council would be consulted by the President or by the Government on the appointments and removals of a number of high-level Offices. Aquilina's list is far more exhaustive than that given by the Select Committee, giving this Council of State more of a status and larger discretionary powers in the high posts of the state. Such appointments laid down include those of the President of Malta, Judges, Magistrates, Permanent Secretaries, Ambassadors, Attorney General, Commissioner of Police, Commander of the Armed Forces, Ombudsman, Auditor General, constitutional commissions such as the Public Service Commission, the Employment Commission, the Electoral Commission and the Commission for Administration of Justice, as well as the Broadcasting Authority together with chairpersons and members of bodies corporate established by law. Aquilina also mentions the appointments of other state Offices such as the Data Protection Commissioner, the Commissioner for Children and the Commission for Administrative Investigations, amongst others¹⁷⁶.

He continues to postulate that the Council of State must act as a think tank for the Government by proposing certain needed amendments to the Constitution, as well as changes to other laws and Government policies. It can be also asked to carry out inquiries under the Inquires Act and to forward its comments on Bills presented to the House at the request of the House of Representatives¹⁷⁷. The Council of State is, hence, given very ample but defined functions which would ultimately help the President and the Prime Minister in their work, ultimately giving a superior service to the community and the state.

¹⁷⁴ Select Committee report (1988), Page 5 paragraphs 2 and 3. (SCR)

¹⁷⁵ *ibid* page 4 paragraph 4.

¹⁷⁶ Aquilina, (n 170).

¹⁷⁷ *ibid*.

4.6.4 Dr. Joseph Muscat's Opinion

When asked about the validity of having a Council of State in today's present political and government reality, the present Prime Minister Dr. Joseph Muscat was very positive about the idea, and believes that even within our present system such an advisory organ would benefit society at large. In an interview with the author he stated that:

"I think a Council of State is a good idea even with the present balance of powers. It brings in the advice of persons who have the unique vantage point of having been in top decision-making activities."

Therefore, it seems that the idea of having a Council of State, which has the function of being an advisory organ both to the President and to the Government, is favoured by all the stakeholders.

4.6.5 Dr. Franco Debono's Opinion

In an interview with the author, Dr. Franco Debono, presently the Law Commissioner, spoke about the setting up of a Council of State in the country. In his opinion, the idea of a Council of State can never be considered as wrong conceptually. It is the way it is set up, formed and the functions it is given in the political scenario that should be discussed. The role of the Council of State must be conceptualised as a consultative one, very similar to the setup of the House of Lords in the United Kingdom but without any vote or binding opinion.

According to Dr. Debono the President of Malta should be the Chairman and the Council members should be appointed by a two-thirds majority in Parliament for a term of six years to ensure continuity from one legislative term to the other. He stresses the point that this Council should only be a consultative organ, whereby decisions taken are not legally binding but morally, highly authoritative in the political realm. For instance, it could intervene during the discussion stage

in Parliament about a certain law which is being proposed for approval by the House.

The Council of State could draft their ideas into a report which would be then tabled in Parliament. This report could be of significant assistance to the legislative organ as it would enhance the discussion process. This hypothetical report will not bind the legislators in any way, but will only serve as an aid to the discussions. Dr Debono also mentions that this Council of State will have a constitutional role at law, which role will be in no way binding. Moreover, it will not have any right to veto any laws proposed. The only indirect say that this Council would have over the legislative organ would be when the legislators completely disregard what the Council of State proposes. This decision might have political consequences as the community at large will be given the impression that their Government is not heeding external advice, thereby appearing uninterested in other views or perspectives. This may, in turn, be perceived as arrogance. Once again, the consequences will be political and not legal¹⁷⁸.

4.6.6 Effects of the Council of State on Prime Minister and President

It can be argued that the position of the Prime Minister and the President will remain untouched with the introduction of a Council of State. Based on the data collected and analysed for this study, this statement may be perceived as true when considering their legal position; however, from a practical point of view, it may give rise to a number of differences.

First of all the President will have an advisory organ which will help him to tackle sensitive decisions. If such decisions were previously taken solely by him, after the institution of a Council of State it can be said that the decisions will be better informed and taken following consultation with a number of people who have

¹⁷⁸ Informal interview conducted by the author with Dr. Franco Debono – (March 2013).

the expertise and experience to give good advice. Politically, this will render the decisions of the President stronger in the eyes of the general public.

Secondly, if, in the functions of the Council of State, it is laid down that it has to appoint certain leading posts as proposed by Professor Aquilina¹⁷⁹ and also the Select Committee of 1987¹⁸⁰, these same appointments will be regarded less politically biased and more based on meritocracy for the good of the country.

Thirdly, the introduction of a Council of State would be of help when the Prime Minister is in need of a further opinion on a certain issue; which opinion would be greatly regarded given that the members of the Council of State are past political Office holders with vast experience in governmental issues. However, since the role of a Council of State is merely one of consultation, and not legally binding, a Prime Minister might choose not to seek their opinion or even disregard their proposals completely.

In the context of the bigger picture, apart from acting as an added screen or filter for policymaking at the highest level of the country, a Council of State might be an excellent tool for a more informed decision-making process. It proves that the government is listening to everyone and basing its decision on the information which has been gathered about the matter. This way, there is a very high probability that the Government will be more transparent and accountable since the proposed Council members are not seeking election and, therefore, do not depend on the electorate for votes; hence, being more prone to express their opinions freely; a facet that may be lacking in today's political reality.

Finally, for all this to come about, and for the Council of State to enjoy the respect of society at large, it must be composed of highly experienced and qualified individuals who gave a strong contribution to the Maltese political scene, but, most importantly, they must come from different walks of life and, even more importantly, from diverse political backgrounds. In this way, the

¹⁷⁹ Aquilina, (n 170).

¹⁸⁰ SCR, (n 174).

majority of the Maltese citizens will feel an affinity towards this Council, in the sense that they feel represented by one or more of its members.

4.7 FURTHER CHANGES TO THE OFFICES OF THE PRIME MINISTER AND PRESIDENT

If the legislative organ in Malta had to decide to change the modes of appointment and removal of the President of Malta, one would expect that the more difficult and representative the appointment and removal, then the powers of his Office should increase proportionately. This is especially so in matters that concern public interest such as the appointment of the Auditor General, the Broadcasting Authority and the Commissioner of Police. As pointed out by Sant, the responsibility for the holding of a referendum and the obligations to provide the general public with information, whilst always keeping himself informed on what is happening within the government must also fall under his responsibility¹⁸¹.

In his comments during an interview with the author, Dr. Franco Debono proposed that after determining the mode of appointment and removal of the President, it can be decided to either increase or decrease his powers. Since the President will enjoy the trust of a larger number of people when appointed democratically then, it is only logical and expected that, his powers must increase proportionally as a result of this new system of appointment and removal. At the same time, one has to keep in mind that the President must remain a figurehead and therefore the increase in powers must be realised in a proportionately sensible manner not to make him too powerful when compared to the Prime Minister and the House of Representatives. The difference lies between having an active figurehead or a passive one. If the system of appointment were to change to a popular election by the citizens as a whole, the country would be moving towards a Presidential system of Government as found in France and the USA; and, for Dr. Debono such a drastic change in the way of doing politics in Malta is very far-fetched or almost impossible in

¹⁸¹ Sant, (n 41).

practice. In his opinion, he would retain the figurehead position that the President enjoys today but inflate his powers with “*circumspect and caution*”¹⁸².

4.8 THE BROADCASTING AUTHORITY

A power, which, according to today’s constitutional framework, is, theoretically, in the hands of the President of Malta but, in practice, he has no real say in, is the appointment of the Broadcasting Authority. The Authority plays a very big role in the Maltese political scene given Malta’s size and close-knit society. According to the Constitution¹⁸³, the Broadcasting Authority shall be composed of five members or more¹⁸⁴, one of them being the Chairman. This board shall be appointed by the President of Malta on the advice of the Prime Minister, following the latter’s consultation with the Leader of the Opposition¹⁸⁵.

4.8.1 Composition and Appointment of the Board

As a matter of practice, when it comes to the composition of this board, the Prime Minister chooses two representatives, the Leader of the Opposition chooses another two and together they must find a common accord on who would be best suitable as Chairman. As stated by Professor Aquilina in his ‘Second Republic’ document, the role of the Chairman on this board is vital; since, many a times, when there is disagreement on a certain issue it is he who has the final say in the form of the casting vote. This affords the Chairman wide powers accompanied, in reality, by a great burden of responsibility.

If the leaders do not agree on a suitable candidate, the Prime Minister may decide to give his advice to the President, with the latter having to make the appointment, notwithstanding the fact that no arrangement has been reached. It

¹⁸² Informal interview conducted by the author with Dr. Franco Debono – (March 2013).

¹⁸³ CoM, art 118.

¹⁸⁴ CoM, art 118 (1).

¹⁸⁵ CoM, art 118 (2).

is abundantly clear that, in this situation, the final decision is taken by the Prime Minister, leaving the President with not much say on the matter as, constitutionally delineated, he is bound to take the Prime Minister's advice¹⁸⁶.

Professor Aquilina states that, in the case where a President might have reservations about the appointment of a certain individual as Chairman or as a member of the Authority, he may discuss this with the Prime Minister. However, if the latter decides to forge ahead with the appointment, he is fully empowered to do so by the Constitution and, in this case, the President must either comply with the decision and appoint the said person to Office or resign from his post. Not much of a choice. If ever there was a stark example of Hobson's choice, this is it; rendering the President's role in the process insignificant and trivial. Many a times in previous years, members were chosen according to their political belief and if the Prime Minister were to be magnanimous enough to negotiate the appointment of the Chairman he will do so with the Opposition Leader in the spirit of transparency and good governance. However, this is not required of him by law as, ultimately, it depends entirely on what he decides on the matter¹⁸⁷.

Currently, the method of appointment of the members of the Broadcasting Authority is made with little regard to the public interest but mostly effected in the interest of the political parties in Government and in the Opposition. Such behaviour is not acceptable in a democratic society like Malta's which is based on the separation of powers and should comply with the doctrine of the separation of powers¹⁸⁸. Like other constitutional organs of the state (Employment Commission, Commission for Administration of Justice, Public Service Commission, Electoral Commission) the Broadcasting Authority is not a subset of one of the political parties and it is totally independent from Parliament and the Government. Nevertheless, due to the method of appointment, the public interest function of this Authority, and others like it, has been decreased, if not removed completely.

¹⁸⁶ Aquilina, (n 156).

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

Therefore, an effective solution must be found to give the Broadcasting Authority this vital function back; and, the answer is quite straightforward. The Prime Minister together with the Leader of the Opposition should not have the final say in the appointment procedure. They must be obviously consulted, but, ultimately, the final say must be that of the President of Malta; not only where the Broadcasting Authority is concerned but also the other constitutional organs of the state cited above. In the opinion of Professor Aquilina, the final decision should be that of the President following a widespread consultation process with the political parties, civil society and all stakeholders involved.

The importance of the Broadcasting Authority's role in Maltese society is laid down in its main functions, which are to:

- Ensure the preservation of due impartiality in respect of matters of political or industrial controversy or relating to current public policy
- Fairly apportion broadcasting facilities and time between persons belonging to different political parties
- Apportion radio and television station licensees and contractors
- Monitor these stations and regulate their performance in terms of their legal and licence obligations
- Ensure that the system consists of public, private and community elements that offer varied and comprehensive programming to cater for all interests and tastes
- Ultimately, the authority's aim is to help the Maltese public better understand how its values and diversities shape its unique personality. It does so by regulating the broadcasting services in open flexible ways to foster creative and better programming¹⁸⁹.

The functions which are of interest in the context of this study are basically those of monitoring what is aired, ensuring impartiality on the national communication media, mainly television and radio, and that of following rules of broadcasting on the media.

¹⁸⁹ Broadcasting Authority website < <http://www.ba-malta.org/objectives> > accessed on 2 May 2013.

Thus, with regard to the mode of appointment of the Broadcasting Authority, it is very important that when the selection process is underway, there must be a wider consultation exercise where the President of Malta must seek advice from a wide spectrum of individuals including past Presidents, retired Members of Parliament, the present and past Speakers of the House and past Chief Justices amongst others. Obviously since the choice relates to broadcasting, it would be very useful to also consult with the various broadcasting stations on the island, advertising agencies and knowledgeable people in the area who might have given their contribution to broadcasting in the past. Additionally, should a Council of State, as discussed previously, be introduced in the Maltese political realm, the President could also use this organ as a consultative and advisory body on this matter. In this way, the responsibility for the decision does not fall on one person alone but would be the result of an in-depth process of consultation reducing the risk of having politically biased appointments which would not benefit the common good but only the ulterior interests of a minority group.

Taking the Broadcasting Authority as a case study highlights the situation that the President is just a functionary in the hand of a powerful Prime Minister when it comes to appointing this board and also in the many other circumstances mentioned previously. The appointment of the Broadcasting Authority is just one of the instances where the law lays down that the President acts on the advice of the Prime Minister. Only to mask the fact that it is the Prime Minister who takes all the decisions, leaving very little decision making in the hands of the President.

By the proposed changes to the mode of appointment, this power is stripped off the Prime Minister to pass on to the President in practice rather than merely in theory. In this way, the President will be able to initiate a detailed consultation process with a number of stakeholders and knowledgeable individuals in an attempt to, finally, come up with the best possible decision for the common good of society. Without being politically biased and focused on the ultimate scope of the Authority, the President will be able to decide on individuals who will perform their duties in the name of impartiality and good faith. This, in no

way, reflects on, or removes, any merits from the past and present members of this Authority, but simply proposes a system which would rest on equity and unbiased results.

4.9 OTHER COMMISSIONS

The same arguments used above in discussing the changes needed to the appointment process of the members on the Broadcasting Authority may be adopted in the case of other constitutionally regulated Commissions such as the Employment Commission¹⁹⁰, the Electoral Commission¹⁹¹ and the Public Service Commission¹⁹². These three instances portray a replica of what happens in the appointment of the Broadcasting Authority. That is, in all these cases it is the President who theoretically appoints the members of these commissions on the advice of the Prime Minister and, at times, following consultation with the Leader of the Opposition. So, in substance, the President again has a negligible say on who is appointed, giving him no actual powers and no alternative but to abide by the Prime Minister's bidding. Lack of compliance would leave him no option but to resign which, as previously stated, is, in actual fact, not much of choice. This brings the discussion full circle to the reality that, in all these cases, the Prime Minister is constitutionally granted enormous discretion and power whilst the President is left with the ceremonial part of the deal.

In the three instances¹⁹³, the Constitution lays down that the appointments are to be made in an identical manner:

60. (1) There shall be an *Electoral Commission* for Malta.

(3) The members of the Electoral Commission shall be appointed by the President, acting in accordance with the advice of the Prime Minister, given after he has consulted the Leader of the Opposition

¹⁹⁰ CoM, art 120.

¹⁹¹ CoM, art 60.

¹⁹² CoM, art109.

¹⁹³ Employment Commission, electoral Commission and Public Service Commission

109. (1) There shall be a **Public Service Commission** for Malta which shall consist of a chairman, a deputy chairman and from one to three other members.

(2) The members of the Public Service Commission shall be appointed by the President, acting in accordance with the advice of the Prime Minister given after he has consulted the Leader of the Opposition.

120. (1) There shall be an **Employment Commission** for Malta which shall consist of a chairman and four other members.

(2) The members of the Employment Commission shall be appointed by the President who, in appointing the chairman shall act in accordance with the advice of the Prime Minister given after he has consulted the Leader of the Opposition, in appointing two of the four other members shall act in accordance with the advice of the Prime Minister, and in appointing the other two members shall act in accordance with the advice of the Leader of the Opposition.

On analysing these three articles, it is clear that they are *quasi* identical. The difference between the three entities is found in that referring to the Employment Commission where, whilst in the other two it is laid down that all the members are selected by the President in accordance with the advice of the Prime Minister following consultation with the Leader of the Opposition, in the case of the Employment Commission the procedure is slightly different where the selection of the different members is involved¹⁹⁴, but, ultimately, the result is the same. That is, the President is at the whim of the Leader of the Opposition but, more so, in the hands of the Prime Minister who has almost *carte blanche* on whom to appoint.

The Offices mentioned above are all of national importance and require individuals that possess national respect and competence in the particular field to which they are appointed. With the system currently in place, where the Prime Minister¹⁹⁵ has almost total discretion over whom to appoint in what post,

¹⁹⁴ where the chairman is appointed in the same way as the members in the public service commission and the electoral commission (i.e. appointed by the President on advice of the Prime Minister after consultation with the Leader of the Opposition) but when choosing the four members, two may be chosen by the Prime Minister and the other two by the Leader of the Opposition, for balance.

¹⁹⁵ and the Leader of the Opposition when consulted by the Prime Minister.

not generally speaking, but, many a times, these appointments are influenced by partisan politics instead of being impelled by the national interest which would dictate the choice of the most competent and unifying individual for the job. Such appointments need vast consultation processes prior to their announcements and as, in the case of the Broadcasting Authority, this job could, very easily, be bestowed on to the President. He would be the appropriate political figure to manage the consultation procedure with the experts in the particular areas and, if mooted, use the Council of State to assist him in these decisions. Thus, slowly and steadily the figure of the President of Malta would morph from a merely ceremonial role to a more proactive and relevant one which, obviously, will not, in any way, surpass the Prime Minister in political importance but, nonetheless, would effectively be taking an active role in some decision making processes within the Constitution.

4.10 THE SEPARATION OF POWERS OR FOCUS OF POWERS

Every democratic country which separates the exercise of powers must also conform in one way or another to the Doctrine of the Separation of Powers. Different countries have different ways of splitting powers within the organs of the state but at the root of all these different mechanisms lies the maxim that '*power tends to corrupt and absolute power corrupts absolutely*'¹⁹⁶. It is very difficult or, in Malta's case, almost impossible to clearly separate the three organs of the state from one another completely. The size of the country works against this exercise. However, there are certain instances where the Constitution may be amended in certain areas to better conform to the doctrine of the separation of powers.

The current state of play establishes the President of Malta as omnipresent in all three organs of the state. He is the Head of the Executive (executive organ), chairs the Commission for the Administration of Justice (judicial organ) and

¹⁹⁶ Letter to Bishop Mandell Creighton, published in *Historical Essays and Studies*, edited by J. N. Figgis and R. V. Laurence (London, Macmillan 1907).

assents to bills passed by the House of Representatives (legislative organ)¹⁹⁷. As stipulated in Professor Aquilina's paper¹⁹⁸, the President should, in conformity with the doctrine of the separation of powers only be part of one organ of the state – and that is the Executive. Hence, he should not sign bills into law but leave this legislative function in the hands of the Speaker of the House of Representatives. Today the power to give his assent to a particular bill for it to become law is merely a formality due to the way in which the Constitution is drafted. Non-assent would be unconstitutional¹⁹⁹ since Article 72(2) specifies that the President shall give his assent without delay²⁰⁰. Therefore, if, constitutionally, the formality of giving assent is passed on to the Speaker of the House, the President would not have much say in the legislative organ any longer.

4.10.1 The President and the Judiciary

Another change, which would be carried out in conformity with the doctrine of the separation of powers, is to remove the President from his role as Chairman on the Commission for the Administration of Justice. This Commission has many functions²⁰¹ but, amongst others, it may be called upon by the Government to give its advice on an appointment of a member of the judiciary who eventually ends up being appointed by the President on the advice of the Prime Minister. As the Chair of this Commission, the President may be called upon by the House of Representatives to remove from Office a particular member of the judiciary²⁰². Therefore, the President may be considered to be part of the judicial organ of the state in a clear breach of the separation of

¹⁹⁷ Kevin Aquilina, 'unhealthy focus of powers' the *times of Malta* (Malta 31 August 2012).

¹⁹⁸ Aquilina, (n 156).

¹⁹⁹ CoM, art 72 (1) (2).

²⁰⁰ In the case of a non assent the possible options for such situation are mainly 2:

1) The President must either resign from Office or be removed from Office by a resolution of the House. Another President would then have to be appointed who will give his assent to their Bill.

2) To allow for an 'acting President' to be appointed for a certain period of time in order to obtain the assent, after which the President can resume his functions and Office.

²⁰¹ CoM, art 101A (11) (a-h)

²⁰² Aquilina, (n 156).

powers. Hence, based on this study, this role could be transferred on to the Chief Justice of Malta, who is also the Deputy Chairman in this Commission, leaving the President, mainly, in charge of the executive organ.

This would leave the President of Malta with one organ of the state under his jurisdiction and that is the Executive (the Government). As it stands today, leaving the President with just the executive organ to deal with makes little sense due to the limited powers he possesses in accordance with the constitutional mechanism. On the other hand, if the changes proposed previously were to be implemented, the President would have more discretionary powers and, therefore, it would make sense for him to mainly form part of the executive organ rather than be present in all the three organs of the state without truly having any real powers in any of them. In this way, the powers would be distributed in a better manner between the Prime Minister and the President, giving the latter more recognition and decision making power by removing a small load from the former's portfolio.

4.10.2 President's Directives

Finally, in line with what Professor Aquilina laid down in his Second Republic document, the President does not have the necessary powers to carry out his role of guardian of the Constitution except by attempting to persuade the parties involved. He should, therefore, be empowered to issue directives that help him make sure that everyone is complying with the provisions of the Constitution in those situations where it is not possible for the Constitutional Court, or any other body or person, to provide a solution in terms of the Constitution itself²⁰³. These directives may be obviously directed to anybody who is in breach of this supreme law, be it the Prime Minister, a Minister, a public officer, or any other person or body (public and private).

²⁰³ Aquilina, (n 156).

A perfect example of how the President of Malta may use these directives to safeguard the Constitution was in the case of the corruption allegations against Mr. Justice Farrugia Sacco and the late Judge Ray Pace. The then Prime Minister Gonzi wanted to reconvene a dissolved Parliament to impeach Farrugia Sacco. However, according to the Constitution of Malta, the Prime Minister can only summon a dissolved Parliament in the case of war, subversion of democratic institutions and in a public emergency as laid down by Article 47(2) (a), (b), and (c). Being an exhaustive list, it might be interpreted that the Prime Minister advising the President to summon Parliament on an issue which is not listed in the three mentioned above would be in breach of the Constitution.

Therefore, as the guardian of the Constitution, the President was bound to take steps to ensure that, in this case, the Prime Minister refrained from taking such unconstitutional action. As things stand today, the President does not have any power to stop such an action from happening. With the above proposals conferring powers on the President to issue directives against any unconstitutional behaviour, the system would be reinforcing the role of the President as a guardian of the Constitution, whilst introducing another check to safeguard the supremacy of the Constitution.

4.11 SPEECH FROM THE THRONE

Another tradition that has been adopted from British parliamentary practice and which is still followed today is the inaugural speech from the throne on the opening of a new parliamentary legislature. In the United Kingdom, it is the Queen who delivers this speech as the Head of State on the opening day of parliament. It is custom that the Prime Minister hands the monarch the speech to read in the House of Lords, which speech he would have prepared to highlight the guidelines on which the next Government will be working. In Malta, the speech is read on the opening day of Parliament by the President of Malta as the Head of State, which speech would be written for him by the newly

elected Prime Minister. The speech contains an outline of the plan of action that the new government is about to embark upon.

As happens in many cases, once more, the President is an instrument in the hands of the Prime Minister. The pinnacle of the controversy against this customary speech was reached in the year 2013 when the Labour Party was elected to Government and Dr. Joseph Muscat was elected Prime Minister. On the 4th April 2013, His Excellency, the President, Dr. George Abela, delivered the traditional speech from the throne prepared for him by Dr. Muscat. However, following the delivery of the speech, which, in the opinion of some was way too partisan and not unifying as a government speech should be, negative comments surfaced opposing the correctness of this custom. The main argument was that when reading this speech the President did not retain the status of Head of State but was more of a voice to the Prime Minister Muscat's last speech of the electoral campaign. In this same speech, campaign slogans were used, the jargon of which was considered unsuitable to the person of President.

4.11.1 Three Speeches

A suitable way forward was already proposed by the President himself when he suggested two amendments to the delivery of this customary speech. These are that the actual speech of the President be retained, however, it must be non-partisan and it must lay down the reasons for the opening of Parliament; the major change being that this speech must be written by the President himself. The second proposed amendment is that the Prime Minister also delivers a speech outlining the Government's plans for the coming legislature on the same day, which speech will obviously be written by the Prime Minister. In this way, the President will not be part of any political controversy and, at the same time, the speech outlining the Government's plans would be, nonetheless, delivered. In the interests of true democratic representation, a final recommendation of this study is the introduction of a third speech by the Leader of the Opposition. In

this speech the Leader of the Opposition would present the way forward for the Opposition in that legislature and also the prospective work that the Opposition members will commit themselves to carrying out.

4.12 CONCLUSION

The recommendations described above reflect the spirit of the law, breathing new life into the Constitution of Malta with the more equitable distribution of powers between the highest offices in the country. The changes proposed establish a better balance of powers between the Offices of the Prime Minister and the President, with the latter taking on more discretionary powers transferred to his Office from that of the former. These amendments ought to contribute to an improved system of checks and balances advocated in the interest of transparency and accountability.

CHAPTER 5

CONCLUSIONS

5.1 INTRODUCTION

This research study has delved into the role and function of the Offices of the President and Prime Minister, their evolution over time, the developments to date and the controversies surrounding their continuity. At various stages of the study, it was pointed out that the Office of the President as per the Constitution is, today, theoretically, powerful but, in reality, it is afforded very few discretionary powers where the incumbent acts on his own initiative as opposed to acting on the advice of others.

It was also discussed that the Prime Minister in Malta is, in practice, the one who has the most powerful role in the political scenario, especially where the decision-making process is concerned. Following focused research on both Offices and their separate roles and functions, it was clear that the Maltese Constitution is in need of an overhaul, whereby some of the powers are logically, wisely and sensibly adjusted from one to the other in the interest of the country and its citizens.

5.2 OVERALL PERSPECTIVE

This 'cry' for amendment to the supreme law of the country is not novel but has been a subject for discussion as from the late 1980s. However, it has always been side-lined by the various governments with the consequence that the country and its citizens are still regulated by a code drafted almost 50 years ago, inspired by the circumstances of totally different political, economic and social realities. For this reason, a number of interviews and informal discussions with authoritative individuals from political and academic strata were conducted to amplify and support the secondary research previously carried out.

In these past years, a discussion about the changes that should be made to the present Constitution, or, taking it a step further, to the codification of a new Constitution in its totality, was raised in various *fora*. The codification of a

Second Republic was a topic of discussion put forward by Prof. Kevin Aquilina during the third President's Forum.

It was observed that the Constitution, undoubtedly due to its rigidity²⁰⁴ brought about by its three-tier entrenchment basis, needed a strong revision to keep up with the times and, possibly, do away with out-dated articles and sections, or, at the very least, fill the loopholes that have characterised this supreme law of Malta for these past 50 years. Others, like Prof. Aquilina and those following this school of thought, believe that there is too much to do and it would be futile to legislate on what there is already. In their opinion, the outcome would be better achieved if the old law was just put aside and a new law written from scratch. This exercise was clearly delineated in Prof. Aquilina's Second Republic discussion document, which he delivered to all those who attended on the day of the President's Forum. He was quoted as saying that, by the Second Republic, he was referring to the proposal that the new Constitution for Malta would be written by the Maltese for the Maltese and approved by its citizens²⁰⁵.

Prof. Aquilina also stresses that there is a need for an entirely new Constitution; not just simply amending the present law because this would involve too much work which would entail amending each and every article, an impractical exercise. He propounds that it would be more appropriate to look at this legislative change in a more holistic manner by also introducing new concepts to the present Constitution²⁰⁶.

5.3 CONTRIBUTION TO THE KNOWLEDGE BASE

The combination of the secondary and primary research engendered a strong basis on which to develop a number of tangible recommendations. In view of the Constitutional Convention, as announced by Prime Minister Muscat, these

²⁰⁴ Universalium Academic website (n 139).

²⁰⁵ President's Forum 25/04/2013 (n 140).

²⁰⁶ President's Forum 25/04/2013 (n 141).

proposals should enhance the ongoing national discourse on this matter. Constitutional amendments, such as those recommended, would not change the way the Maltese political system works but would only involve the adjustment of powers in the best interest of transparency and accountability.

This humble contribution to the debate by means of this study sits at the feet of giants of Maltese politics such as Professor Guido de Marco, Dr. Ugo Mifsud Bonnici, Dr. Guze Cassar, Dr. Vincent Tabone and Architect Dominic Mintoff as members of the Select Committee of 1987 and, more recently, Prof. Kevin Aquilina for his input by means of his Second Republic document. The objective of this thesis was, primarily, to compile the ideas of others on this matter in one document and, secondly, to add the author's personal and innovative recommendations evolving from the research carried out. These were then developed to present a more complete and, hopefully, effective proposal if the measures outlined were to be implemented.

5.4 RECOMMENDATIONS' SYNOPSIS

In this respect, this thesis has recommended a number of suggestions based on the feedback obtained from those participating in this study and from what was gathered in the research stage including: alternative methods to appoint and remove the President by; the adoption in the political system of a consultative Council of State; the adoption of a new system to appoint the Broadcasting Authority together with other important commissions in Malta; the proposal of three speeches – one by the President, a second by the Prime Minister and a third by the Leader of the Opposition during the opening of a new Legislature; and, the enactment of changes to the Offices of the Prime Minister and the President in the spirit of the doctrine of the separation of powers.

The spirit of the law will thus be realised as most of the changes proposed will affect the Offices of the Prime Minister and the President equally though not similarly so that a true balance of powers is attained and the President's role is transformed from a less ceremonial one to a more discretionary one. In this

sense, what is taken away from the Prime Minister's portfolio is added to that of the President's, instigating a systemic procedure of dynamic checks and balances which will propagate transparency and accountability as a matter of course.

5.5 CONCLUSION

In a country dominated by a focus of powers in the top administrative posts, the law should be reviewed to form the basis for a tangible constitutional revision of the two most important Offices in the Government and State of Malta. Adoption of these proposed recommendations, where the Offices of the President and Prime Minister are concerned, will set the process of change on its way forward.

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Dr. Joseph Muscat

Dr. Alfred Sant

Informal Interviews:

Dr. Helena Dalli

Dr. Franco Debono

Informal Discussions:

Prof. Kevin Aquilina

APPENDICES

APPENDIX 1

POST-PILOT STUDY SEMI-STRUCTURED INTERVIEW GUIDE: PRIME MINISTERS

Questions: *Dr Alfred Sant*

1. When elected Prime Minister of Malta, the first major decision you had to take was the choice of your Cabinet of Ministers.
 - a) Did you follow any particular guidelines when you came to choosing certain individuals from others?
 - b) Was it solely a decision based on who performed best in the general elections?
2. If the Office of the President was actually more politically powerful in Malta, and not merely a figurehead, do you think that the political happenings of 1998 would have been different?
3. Do you think that the role of the President in Malta should be revised?
 - a) Should he have more actual powers than he does today?
 - b) Would it be better to balance powers out between the Prime Minister and the President, or would it be a case of 'too many cooks spoil the broth'?
4. If the President was to be given more powers, would a Council of State be a good add-on to our system?
 - a) If yes, would it be best for this council to be a consultative organ, or would it be better to give it legislative and political power too?
5. How would Malta fare with a Presidential system of government?
 - a) How well do you think the country would absorb and benefit from it?

Questions: *Dr. Joseph Muscat*

1. When elected Prime Minister of Malta, the first major decision you had to take was the choice of your Cabinet of Ministers.
 - c) Did you follow any particular guidelines when you came to choosing certain individuals from others?
 - d) Was it solely a decision based on who performed best in the general elections?
2. Do you think that the role of the President in Malta should be revised?
 - a) Should he have more actual powers than he does today?
 - b) Would it be better to balance powers out between the Prime Minister and the President, or would it be a case of 'too many cooks spoil the broth'?
3. If the President was to be given more powers, would a Council of State benefit or disadvantage our system?
 - a) If yes would it be best for this council to be a consultative organ, or should incorporate legislative and political power too?

APPENDIX 2

POST-PILOT STUDY INFORMAL INTERVIEW GUIDE: PARLIAMENTARIANS

Questions/Pointers: *Dr. Franco Debono*

- In the light of the Maltese Constitutional system, how do you see the roles and functions of the Prime Minister and the President in relationship to each other?
- What would the scenario be in a multi-party system?
- As laid down in Article 80 of the Constitution, the power of the Prime Minister lies in the majority he enjoys in the House of Representatives. In the light of what happened to the Gonzi administration in the 11th legislature which managed to pull through till the end of the term, is the Prime Minister, in practice, above Parliament?
- What are your views on the appointment and removal of the President of the Republic today?
- Is the increasing of power of the President inversely proportional to the reduction of the Prime Minister's power?
- Would a Council of State benefit a President in his decision-making?
- Would this Council of State be a consultative organ or a decision-making one?

Questions/Pointers: *Dr. Helena Dalli*

- What was the relationship between Prime Minister Sant and Arch Mintoff like?
- What was Mr. Mintoff's main bone of contention?
- What was the sequence of events leading to the fall of the Sant Government?
- How does all this feature when measuring the extent of the Prime Minister's powers?
- Have these events created a precedent or did this scenario materialise in the past?

APPENDIX 3

POST-PILOT STUDY INFORMAL DISCUSSION GUIDE: DEAN OF THE FACULTY OF LAWS

Topics discussed during individual session:

1. Relationship between Prime Minister and the President in Maltese Constitutional law
2. The Council of State – as a consultative organ to the President
3. The Broadcasting Authority – Chairman appointed from the Judiciary
4. Assent of the President of Bills carried by Parliament and Chairing Commission for the Administration of Justice – in the light of the the separation of powers
5. The role of the Prime Minister in Cabinet
6. The different modes proposed for the appointment of the President
7. The Presidential Directives – a tangible example

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