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Essay 15

1812 ROYAL COMMISSION

Congresso

One of the intriguing questions relating to the revolutionary uprising of 1798-1800 was how the Maltese Congress came to be set up. The version disseminated by Maltese activists of the post-1800 period was that this was a spontaneous reversion to traditional forms of political expression, and in particular to the forms of the Consiglio Popolare of old. Alexander Ball, on the other hand, states quite positively that the Congresso was his idea, conceived in response to the particular circumstances of the time¹:

"The fact is, Lord Nelson gave me the command of a squadron to blockade the French at La Valetta, and to assist the Maltese in the country who were in arms. On my arrival I found the inhabitants split into parties - the farmers refusing to pay rent; the lower class going in bodies at night to commit every kind of devastation and plunder. In this state the chiefs were continually applying to me for advice and assistance; and after five months of experience they found themselves under the necessity of requesting me to land and direct the civil and military departments. At this period the Maltese had never thought of convening an Assembly. I perceived the advantages to be derived from having a Congress, and I drew up a plan of one, which was immediately formed, and at which I was President; and I can positively declare this, it was entirely a suggestion of my own, and done with the view of making the Assembly bear the odium of the necessary regulations for restoring order."

The fact that Congress was convened after Ball's assumption of leadership of the Maltese insurgents, lends support to his version of events. This version has at no time been authoritatively contradicted.

¹ Ball to Miles 2/8/1807 (Correspondence of William Augustus Miles on the French Revolution 1789-1817). (Vol II. 353-4 Ed.C. P. Miles. London 1890 University of Malta Melitensia Library).

In any event it is difficult to believe that there was some sort of instinctive return to the historical roots of the Consiglio Popolare when one takes account both of the designation of this body as Congress, and of the fact that, at the start of the uprising on September 2 1798 the political leadership came from a hastily convened body of leading citizens who formed what was termed the *Assemblea Nazionale* or National Assembly.

Consiglio Popolare

The prospect of returning to the Order of St John, as decreed by Article IV of the Preliminary Treaty of Peace of October 1801 came as a complete shock to the Maltese people, and drew an immediate political response. Whether this was an autonomous political reaction, or something stirred up by people like William Eton (and Alexander Ball) is immaterial here. Eton will have given coherence and resolve to the Maltese leadership, but there can be no doubting the determination of the people to oppose the return of the Order, and to try as they could to persuade Britain to stay on in Malta.

The Memorial to Cameron of 19 October 1801², and the Petition to the British Crown of 22 October³ were expressions of deep disillusionment with the turn of events, of anxiety to remain within the British fold, and of a firm determination to resist any notion of going back to the Order, which had led the nation down so badly. Moreover it seemed painfully obvious to the Maltese petitioners that the almost inevitable consequence of a return of the Order would be the unthinkable - a return of the French.

These Petitions, together with the correspondence exchanged between the London Deputation and Lord Hobart⁴, addressed the immediate issues posed by the terms of the peace settlement. One option proposed by the Maltese deputation was independence, under guarantee of the major powers. This was not a negotiating ploy, but seriously meant, and one sees this in the terms of the Mission brief entrusted to the Deputation by their colleagues⁵ prior to their departure:

"Premesse tali considerazioni (che sarà ufficio dei Deputati di mettere nel miglior lume per accrescerne la forza) cercheranno essi d'insinuare al Ministro Britannico che il miglior espediente, ed il piu adattato a mettere in salvo tutte le convenienze politiche dei Sovrani, sarebbe il ridurre Malta ad una piccola Repubblica, sotto la protezione di tutte le

² Public Record Office London - CO 158/1. Hardman 406-409. Azzopardi (Raccolta) 218 et seq.

³ Public Record Office London - CO 158/1. Hardman 410-415. Valletta National Library Ms 532.

⁴ See Essay 04: The Cameron Administration.

⁵ Istruzione pei Signori Deputati alla Real Corte di Londra dalla Nazione Maltese. Azzopardi - Raccolta di varie cose.

Potenze riunite, o dell'Inghilterra, Francia, e dell' altra Potenza da determinarsi. Una tale idea non deve sembrare assurda, quando vediamo non recente esempio della nuova repubblica di Corfu ed isole adjacenti, e mentre esistono da secoli piccolissimi stati, come sono Ragusa, Lucca, etc, sotto la protezione e tutela delle grandi Potenze."

The case for independence was not actually argued in any depth, if it was argued at all, judging by the written exchanges, and by the Testaferata report on the Deputation's return to Malta. There was ultimately a sense of resignation at the inevitability of abiding by the terms of the Treaty of Amiens. It is however noteworthy that, though Article X of the Amiens Treaty went into great detail in enshrining the rights of the Maltese following a return to the rule of the Order of St John, there was nothing there about a possible role for the Consiglio Popolare. Which must have meant that the Maltese Deputation in London, who had made their views known to Lord Hobart, directly and through their various submissions, made no great issue of it, and could not have had a representative forum on the traditional model much on their minds. This is significant in the light of subsequent events.

If one were to put a date on it, one can say that the Popular Council came alive, as an issue, after May 1802, during the latter stages of the Charles Cameron administration⁶. Curiously though, Britain herself introduced the Popular Council into the equation at one stage of its efforts, prior to the final abandonment of the Amiens peace negotiations in 1803, in an endeavour to secure Russian support for it⁷. And it was done in terms which had a strangely Etonesque flavour. However extraordinary this may seem, it looks as if Eton (then in London) was influencing British policy at this point. The confident assertion by Hawkesbury (later Lord Liverpool) as to what the Council had been about (when virtually nothing was then known in London about the Consiglio), and its alleged continuation in existence through to the late stages of the rule of the Order, were straight out of Eton's handbook, as later expounded in his 'Authentic Materials', subsequently published in 1807. That Eton was in communication with Hawkesbury seems evident from the fact that there is at least one Eton document among the Liverpool (Hawkesbury) Papers of 1803 at the British Library⁸.

Thus we get Lord Hawkesbury (Foreign Secretary) putting it to Sir John Warren (Ambassador St Petersburg)⁹ that it was

⁶ See Essay 04: The Cameron Administration.

⁷ See Essay 05: Second Ball Administration.

⁸ British Library (Manuscripts Department) - Liverpool Papers (Vol CLXVIII), Add Ms 38357. The document is a copy of an estimate of the revenue and expenditure of Malta, on Eton's reckoning of what they could amount to (reproduced in Authentic Materials). It is entitled "Calculation of the Revenues the Maltese would have were the island erected into a Republic".

⁹ Hawkesbury to Warren 29/1/1803. Hardman 459-60.

``.... reasonable (therefore) that some further stipulations should be made in favour of the inhabitants of Malta, and that it may be proposed to revive, under such regulations and modifications as may be judged expedient, the National Council which formerly existed in that island, which should form no part of the Order, but which should have a share in the government of the island, and a deliberative voice in all its internal concerns. A body of this description could not be considered as in any respect derogatory to the ancient institution of the Order, and would be conformable to what existed within the island till within a very few years.''

Whatever the response from St Petersburg may have been - the fact that this suggestion was made at all is of some interest in view of what was subsequently stated, on the subject of the Consiglio and its historical provenance, by the Royal Commission in 1812.

Status Quo Ante

The early years of the British administration were characterised by a policy of status quo as far as systems of government were concerned. Ball's initial decision to reconstruct the civil apparatus, in the mould of what it had been prior to the French invasion, was a matter of necessity rather than political intuition, given the immediacy of what needed to be done. Though doubtless it was a step according perfectly with the wishes of the Maltese leadership. Secretary Dundas confirmed this approach when he instructed General Pigot to respect the laws, customs and usages of the island as they had been, and to refrain from doing anything which would be unacceptable to the sensitivities of the Maltese people¹⁰.

Hobart subsequently enshrined it as official policy when he instructed Cameron that "the leading principle by which....the Government of Malta should for the present be regulated is that, in substance at least, and as far as circumstances will admit in form also, no alterations should be made in the modes, laws and regulations according to which the civil affairs...have been heretofore managed".

The comprehensive return to these old "modes, forms and regulations" did not imply a moral or qualitative approbation of them. It was simply that they were the ways of governance to which the Maltese had been long accustomed. There was no point in changing these ways when there seemed to be no great demand for change, when the outlook for the future was so uncertain, and when there was indeed a distinct likelihood, even as Hobart wrote, that a peace settlement would be reached which would entail handing Malta back to the Order of St John. The Preliminary Treaty of Peace of October 1801 did in fact so provide, and the Treaty of Amiens which followed of April 1802 expressed the resolve of both France and Britain that, in the interests of peace, Malta should return to the rule of the Knights.

¹⁰ Dundas to Pigot 17/11/1800. (Public Record Office London WO 1/291).

Initially Britain was prepared to honour its commitment to withdraw from Malta, and Alexander Ball returned to Malta in July 1802 as caretaker Civil Commissioner and Minister designate to the Order of St John. Ball came with instructions relating to how he should proceed with the disengagement of Britain from Malta, in terms of the Treaty of Amiens, and he was also given reiterated instructions that no alteration was to be made in the manner of conducting the civil administration of the island¹¹. Malta did not return to the Knights, and war was resumed in May 1803.

The Hobart guidelines, when initially drawn up, had clearly been designed for short term application. With the likelihood of a return of the Order, after 1803, now entirely distant, and with the ever increasing prospect that Britain would retain a permanent foothold in the island, it was other circumstances, principally the war situation and the complications of international relationships, which determined that a formal revision of them should remain in abeyance until Britain was able to stake a definite claim for the retention of Malta. In practical terms this meant that the 1801 guidelines continued to govern the modes of civil administration right through to the time of the Royal Commission of 1812, and the Bathurst instructions of 28 July 1813. The guidelines were inflexible, with the ways of government set in terms of a bygone era. The Civil Commissioner ruled, though accountable to London, with the absolute authority and discretion formerly exercised by the Grand Masters. The 'carry on as before' also meant that the law of the land remained, as it had been, basically that existing in 1798, grounded on the Code de Rohan, which contained provisions in some respects alien to most thinking people's notions of how justice should be dispensed.

Eton takes control

The Maltese political caucus which was hastily convened in October 1801 from among the old Congress membership, to respond to the terms of the Preliminary Treaty of Peace, had the appropriate credentials. As in the circumstances of war, however, it required leadership and direction. Eton was at hand (and Ball apparently) to provide counsel and impetus, and it was probably on their advice and at their instigation that the various steps were taken to protest the peace arrangements¹².

When the Deputation went to London early in 1802, the retention of Malta by Britain was very much their preferred course - and it seems fair to say that there was then no evident preoccupation in Maltese minds about the quality of British government in Malta, though it was based, however benignly, on the absolute forms which had prevailed in former times. It is therefore extraordinary that Eton should have

¹¹ Hobart to Ball 16/5/1803. (Vol 1. London Despatches. Malta National Archives).

¹² See Essay 04: The Cameron Administration; and Essay 06: William Eton.

chosen to speak out on the subject at this point in time (June 1802), when he intimated to Charles Cameron that the prevailing form of government (its despotic character) was a disgrace to the British nation, and that the Maltese were increasingly sensing the absence of regard for their historic rights.¹³

The Deputation to London had been under Ball's guidance, while there. After their return however, and especially after Eton's desired appointment of British Minister in Malta failed to come through, Eton pursued and acquired virtual dominance over the Maltese political movement, so that he could well boast, long before he left in October 1802 that he had the Maltese activists under his effective control¹⁴. Largely through Vincenzo Borg, Eton developed this dominance still further, after his departure from Malta, to the point where he came to control both the movement's political agenda and its political actions, which agenda and actions he contrived to form and shape with considerable ingenuity to coincide with his own purposes.

He set himself up as the foremost authority on the Consiglio Popolare and related matters, and from his seat in England, on his return from Russia early in 1805, orchestrated petitions and brought every influence to bear in bringing Maltese complaints, as he represented them, to the attention of Ministers. Eton contrived to whip up discord on two issues especially. One was the quality of government (its absolute character), which he flavoured with tales of gross mismanagement and worse on the part of Alexander Ball¹⁵. The other was the deep rooted demand which he said existed in Malta for a return to traditional forms of government, and in particular for a reconstitution of the old Popular Council, which on his presentation of the case, would have given Maltese representatives a meaningful voice in the management of their country. These two issues would become the unrelenting stuff of political controversy.

Memorial - 1805¹⁶

This Memorial seems to mark the first overt political initiative, after the restart of the war, relating to the situation in Malta, and

¹³ Eton to Cameron 2 June 02. Enclosure I with Eton to Windham 13/3/1806. Private. (Public Record Office London, CO 158/12).

¹⁴ Eton to Sullivan 17/5/1802. Hardman 438-9.

He vaunts in this letter that he has established a close rapport with the leading elements of the island, and has gained their confidence and attachment "so completely that I have information of every step they take and every resolution they form".

¹⁵ See Essay 06: William Eton.

¹⁶ This Petition is unsigned, does not have a date, and is written in English, possibly though not very probably a translation. It is headed "Memorial by the Maltese to the British Government". It is filed among the Colonial Office papers at the Public Record Office, London, also Essay 06: William Eton.

it is noteworthy that the focus of the action now shifts away from concern about Malta's destiny in the international sphere, to complaints relating to Malta's domestic circumstances. Complaints basically stemming from the fact that Malta remained after 1803 under authoritarian rule. It also marks the commencement of a campaign to undermine Ball's position as Commissioner in Malta¹⁷. A campaign which would make it increasingly difficult, in subsequent phases of political action, to distinguish between genuinely argued constitutional grievances and trumped up charges of maladministration, aimed primarily at discrediting Ball while in office, and his memory even posthumously.

Eton had applied for the post of Minister Plenipotentiary to the Order of St John, early in 1802, and to his extreme mortification saw the post go to Ball. This must explain why he so lost his composure that he acted with diminished discretion in June and July 1802. Among his indiscretions was a letter he wrote to Charles Cameron on the 2nd of June where, quite needlessly, he penned some critical comments on the nature of civil government in Malta; and in ascribing shameful action to Cameron's predecessors in office, effectively criticised as well Ministers in London, under whose instructions both Ball and Pigot had acted. Thus in this letter¹⁸ he wrote:

"The whole system of government has been unlimited despotism. Governor Captain Ball found no limits set to the power of those who had governed before him: he and General Pigot continued, to their shame, to govern by a system already established. You succeeded to it but the people, who in the beginning only thought of freeing themselves from their enemies, now begin to think they have a claim to their ancient rights as free men; and examining their history find that their ancestors did enjoy privileges, and they have determined to claim them....."

It is ironic that he chose to make these points while he was himself still a leading figure of the despotic system he deplored.¹⁹ But, more importantly, this letter serves as a good pointer to where Eton's thoughts were leading him. It was hardly a coincidence therefore that we find these thoughts again expressed as the primary shafts of the 1805 Memorial, with which he was undoubtedly connected.

The Memorial, having deplored the despotism of the system, and claimed the restitution of former rights, proceeds to list a number of grievances, which, though hardly former rights, were calculated to strike a chord among Ministers steeped in the constitutional and human rights culture of the United Kingdom:

¹⁷ See Essay 06: William Eton.

¹⁸ Eton to Cameron 2 June 02. Enclosure I with Eton to Windham 13/3/1806. Private. (Public Record Office London, CO 158/12).

¹⁹ Note by Eton - also with Enclosure I with Eton to Windham 13/3/1806. Private. (Public Record Office London, CO 158/12). Mr Cameron, said Eton, "found himself invested with uncontrollable sovereign power, which he thought it his duty to maintain. His Counsellors 'ex officio' were his worst advisers, and it is not therefore to be wondered at that he should sometimes have been misled..... Acting as his Assistant the details of the whole business of Government lay upon me..."

(a) liberty of establishing private printing presses, restrained only by known laws.

(b) torture in any form to be abolished²⁰.

(c) "that no one may be punished without a trial, and that a mode of trial be established which leaves the Judge without any other control than that of the law. That sentences may be mitigated, but not augmented, by the Civil Commissioner. That those sentences may be pronounced in open court, and not first submitted to the Civil Commissioner."

(d) "that some means may be devised to prevent the captious removal from office of old, faithful, servants without breach or neglect of duty, or want of respect to superiors."²¹

(e) "that the Lieutenant Governors of the Casals ... may not be imprisoned, or otherwise molested, to force them to sign papers and attestations, alike repugnant to both truth and justice."²²

Complaints (a), (c) and (d) were inherent in the 'status quo' policy of the time, and on that account must have failed to make much impact. As for (b) and (e)- they would have been deserving of enquiry and censure had they been true. It was Eton's particular skill, demonstrated so often in his political actions and in his writing, that he contrived to mix the true with the untrue, when it served his purpose. The purpose of this Memorial was evidently to fault the system, but to do so in terms which would also call in question the integrity of the man running the system.

Anonymous letter to the British Prime Minister 30/1/1806²³

The targeting of Ball here goes a step further. It is a remarkable document, with the stated emphasis not on advancing Malta's constitutional status by some determinate political action, but simply on getting Ball removed with a view to having him replaced by Eton.

²⁰ This was presumably put in to make it seem as if torture (permissible under the Code de Rohan) was still practised. In fact Hobart had long instructed that torture should be done away with. And the Royal Commission in 1812 commented on torture in the following terms: "The laws which sanction the punishment of torture have been considered as virtually, though not formally abolished since the occupation of the island by the British. Justice and good policy require that these should be publicly repealed".

²¹ This was permissible under the customary annual 'scrutinio' but was seldom used either by Cameron or by Ball. It was Eton in fact who urged Ball to make more use of it. See Eton to Ball 22/8/1802 (Public Record Office London.CO 158/13).

²² This was an allegation made on various occasions by Eton in reference to the Vincenzo Borg enquiry. And invariably denied by Ball. Eton was never able to produce proof either that Borg was imprisoned (he was put under house arrest and movement restrictions) or that anybody was forced to 'sign papers and attestations' of any sort. Vincenzo Borg's removal in 1804, and his subsequent running battle, through William Eton, with Commissioner Ball is one of the features of Maltese history during these early transition years.

²³ Valletta National Library. Ms 532.

One notes here the start of a subtle process, in which Ball's replacement by Eton gets represented increasingly not just as the replacement of an unworthy person by a more worthy one, but as a political objective in itself. The removal of Ball (it was alleged) had become necessary to root out manifold abuses of authority. Eton, on the other hand, was trusted by the Maltese, knew their traditions and ambitions, and was trusted by them to bring the desired changes about. Eton's appointment and constitutional advancement/suppression of abuses were thus equated as complementary courses.

One can discern the purport of this Petition from the following extract:

".....it is most undoubtedly true that, instead of being satisfied with the present administration of the Government of this island, there is such a general malcontent that nothing less than the continual hope of its being known in England, and redressed, enables them to support it; and to obtain it the Maltese chiefly look up to Mr Eton, whose arrival here is anxiously looked for, as they know no man is better informed of the intrigues that are carried on here, nor any person better calculated to counteract them; on which account the Maltese have in general the greatest confidence in him."

Eton - Windham

Eton had a great stroke of luck when William Windham was appointed Secretary of State for War and Colonial Affairs early in 1806. He apparently knew Windham well, and Eton was not one to miss the opportunities of easy access which this presented. Thus we get him writing to Windham in March 1806²⁴, not only telling Windham to dismiss Ball, but even presuming to suggest how it should be done. Eton, writing under his own name here, did not presume to suggest himself as Ball's successor. The trick of course lay in the concluding part of his letter, where he proposed the issue of a proclamation which would have committed Windham to agreeing in principle to initiate the process of establishing a new form of government "more agreeable to their ancient rights and privileges". And to having it done on the basis of consultation, which Eton no doubt envisaged would lead to his own involvement, and eventual selection as 'Governor General' of Malta. A prize of the first order if he could have achieved it, along with Ball's dismissal.

Charges referred to Ball

Eton would later say that Windham had in fact determined to do both - to replace Ball and to introduce constitutional reform - but was held up by some dispute over who Ball's replacement was to be. Possibly the end of Windham's term of office (a short one) also had some bearing.

²⁴ Eton to Windham 13/3/1806. Private. (Public Record Office London. CO 158/12).

One isn't too sure about the constitutional change, for which we only have Eton's word, but certainly there does appear to have been some intention to replace Ball²⁵. Ultimately, however, it would seem that Windham's sense of fairness prevailed, and - much to Eton's displeasure²⁶ - he felt it right that Ball should at least be informed of the allegations made against him, and invited to respond²⁷.

Ball responds - and is exonerated

The accusations referred to Ball (together with the anonymous letter of January 1806) were signed letters from several Maltese persons, the most notable of whom were Marquis Mario Testaferrata, Vincenzo Borg and Matteo Naudi, a former Jurat who had been removed from office for some irregularity. These letters had been forwarded by Eton to Windham, along with some comments of his own.²⁸ Ball could now at least get to grips with specific charges and place them in perspective. He answered copiously and convincingly on 28 February 1807²⁹. There was a change of Ministers about this time. Windham was replaced by Lord Castlereagh, and in due course Castlereagh's Undersecretary assured Ball that his response had fully disposed of the charges³⁰:

"...papers which had been sent from Malta to Mr Eton, and which he communicated to Government with a view to raising suspicions against your conduct. His views, as well as the views of the writers, have been entirely frustrated, and every justice is done to your character which accusations of such a nature can never reach."

Ball's reply was published in Malta a couple of years later, and Eton wrote in to say that it had only then been brought to his notice. He

²⁵ M. Wood - Marquis Wellesley 24/10/1806 (Dropmore Papers. British Library Bar. T1.30. Vol 8/402.) ".....I begged Your Lordship would assure Lord Grenville that I was perfectly satisfied that His Lordship must have had substantial reasons for disappointing my expectations of being immediately appointed to the Government of Malta..." Also Eton to Edward Cooke 27/6/1809 (Public Record Office London. CO 158/14 Valletta National Library Ms BL A.19): "Lord Grenville had offered the Government of Malta to Sir Mark Wood, and afterwards a personage of the highest rank (Duke of Sussex apparently) would have accepted the office..., which certainly I never dreamed of occupying myself...."

²⁶ William Eton to Lord Melville 28/3/1807. Private (Public Record Office London. CO 158/13): "If the Maltese have not another Governor we risk losing the island. Your Lordship will be amazed Mr W. did not immediately recall Sir Alexander Ball, as he at first proposed. The cause of the delay, however, I by accident have learnt: a dispute respecting the patronage with Lord G. who had promised it to a friend of his own."

²⁷ Windham to Ball 6/1/1807. (National Archives Malta. Despatches from Secretary of State Vol 2).

²⁸ The enclosures referred for Ball's response by Windham are also to be found at Valletta National Library Ms 616.

²⁹ Ball to Windham 28/2/1807 (Public Record Office London.CO 158/13. Valletta National Library Ms 1206).

³⁰ Edward Cooke-Ball 5/4/1808 (Most Private) (National Archives Malta. Despatches from SS Vol 2).

sent a rejoinder to Cooke³¹. It was largely irrelevant to the substance of Ball's defence, but the extraordinary part is his conclusion, where he deplores the fact that Ball had 'traduced his character' behind his (Eton's) back. "It is now above two years since Sir A. Ball has thus traduced my character; it was natural that he should vindicate his own, but it is not like an Englishman to stab in the dark." This from Eton!

Garrison principles

Apart from the plenary exoneration of Ball, which Cooke's letter contained, it had two other important messages written into it. One was that, despite the passage of years, the time was not yet ripe to talk about regularising the system of government in Malta. In the prevailing circumstances of war the government would "necessarily (continue to be conducted) on garrison principles, rather than under any regular form of constitution". The system therefore would remain authoritarian as heretofore. The other, more subtle, message was that Eton, despite his wild behaviour, would need to be handled with care. He continued it seems to be regarded in London as something of a protected species. Exactly why is not at all clear.

Realising that he had over-personalised the issue, Eton now sought to imply that he had been misunderstood.³² He was not a principal, he said, in the accusations but merely an intermediary. Moreover, in regard to Ball, he had not made any accusations reflecting on his personal integrity, and if he had recommended Ball's replacement it was simply because he assumed that Ball would transfer painlessly to some other senior naval appointment. Transferring Ball was an expedient, an 'experiment' as Eton elegantly put it, necessary to enable the facts of the situation to be properly ascertained.³³

"I gave advice to Mr Secretary Windham. This may be termed presumption but not crime. Mr Richards fully explained that it was only wished Sir Alexander Ball should have another appointment, and it was the only mode to discover the truth, which considering the momentous importance of the object might be worth trying the experiment."

The discomfiture of Eton was a setback, for himself and for the Maltese political movement, which was thus largely discredited along with Eton. Nevertheless Eton sought to keep the Malta issue alive by tactically shifting the focus back to systems, and away from his obsession with the person of Ball, which had proved counter-productive. He redefined his primary concern as being his conviction that the system of government in force in Malta was being administered

³¹ Eton to Cooke 27/6/1809 (Public Record Office London.CO 158/14. Valletta National Library Ms BL-A-19).

³² William Eton to Edward Cooke 28/4/1807. (Public Record Office London 58/13).

³³ Eton to Cooke 28/4/1807.

in “an unconstitutional form”³⁴. And, presumably unaware that Cooke had already ruled out constitutional change at that juncture, he sought to present his case for change in a treatise on the Maltese situation entitled ‘Authentic materials for a history of the people of Malta’, published in the course of 1807³⁵.

Authentic Materials

Authentic Materials went into considerable detail in describing the autocratic nature of government in the time of the Knights, and the ‘monstrous’ total concentration of authority in all matters legislative, executive and judicial, in the person of the Grand Master. This concentration, said Authentic Materials, had remained, and was no less objectionable, under the prevailing system, in the person of an all-powerful Civil Commissioner. That much was familiar territory. The main interest of the book however is that it seems to be the only document of the time on record which sets out in working detail the sort of government Eton and his associates were intent on having in Malta. Eton presented it as a “form of government uniting the essential parts of the privileges of the islands with the functions of a British governor” – and introduced it as a scheme drawn up by “some of the first lawyers of Malta (unnamed), and some of the nobility (unnamed), and others (also unnamed). It seems a fair assumption that the work was the fruit of his own labour, or at any rate that he put into words ideas, primarily his own, which he may possibly have discussed with his associates in Malta.

The underlying theme of the scheme was the notion of power sharing, in which an elected Consiglio Popolare, representing the people, would participate along with the Civil Commissioner in exercising the functions of government in Malta. The Consiglio would be a sort of bicameral council, with a Consiglio Ecclesiastico woven into the structures of the Consiglio Popolare without however affecting the essential unity of that forum.

The duality of the Council, and yet its unitary composition, is evidence of Eton’s considerable ingenuity in handling the religious dimension of Malta’s church-ridden society at the start of the nineteenth century. The Ecclesiastical Chamber, in Eton’s formula, was to have been an elected body of 21 church representatives, who would concern themselves solely with ecclesiastical matters, but would stop short of taking decisions on any matter at issue. In matters requiring decision the church council “must unite with the (main) Consiglio Popolare.....when the majority of votes (would) determine”.³⁶ The (main) Consiglio Popolare, with a membership of 39, would be entirely lay in

³⁴ Eton to Cooke 28/4/1807.

³⁵ Copy at Valletta National Library.

³⁶ Authentic Materials Part III – Section headed ‘The Following Scheme’.

composition, and church people would not be eligible for election. The provision for decision-taking in the 'united' Consiglio alone, and the exclusion of ecclesiastical people from membership of the main Consiglio, was a neat way of entirely insulating the Consiglio Popolare in its political role from church influence. It is a moot point whether this was a view commonly shared by his Maltese associates.

The basis of power sharing, as conceived in Authentic Materials, is set out in a distribution of functions which the book prospects. This basis is interesting on three counts. It gives an insight as to which areas of government were at that time the most politically sensitive, it highlights the degree of suspicion and dissatisfaction which existed on matters relating to the judiciary, and it provides a useful perspective of the expectations of the Maltese political activists at that point in time.

The salient features of the scheme were:

The Consiglio

(a) Would control what were deemed to be the sensitive civil appointments: It would appoint "the Judges of all denominations, the public advocates for the accused or defendants, the Registrars and Actuaries, the Poor's Advocate and his deputy, the Luogotenenti ... the first Jurat, and all the other Jurats and Magistrates of Citta Notabile, as also the Capitano di Verga".

(b) It would function as a sort of supervisory Judicial authority, and its instructions on matters within its competence would be mandatory. "All votes passed on complaints of delays, injustice, grievances, suspensions of justice, revision of sentences, are not submitted to the approbation of the governor, but must be obeyed by those to whom the order of the vote is directed. They have otherwise no executive power, but have a control over all tribunals, to oblige them to do justice, and in default to remove them from office and bring them to punishment by law."

(c) Would have a right to appeal against any decisions of the Civil Commissioner "to complain of violation of privileges, or other grievances". This right would extend to sending representatives or deputies to England to represent the complaint, which they would expect to be heard by HM's Privy Council. Complaints were to be drawn up in writing, copied to the Civil Commissioner to enable him to offer a statement of his own position, and sent to England without delay.

The Civil Commissioner

(d) Would retain full executive power, but his participation in the judicial process would be limited to the appointments indicated at (e), and to pardoning in criminal cases, or mitigating sentences. He would have no power to augment sentences.

(e) Would continue to appoint - in the judicial field - the President of the Grand Court, the Fiscal and the deputy Fiscal (State prosecutors), the Gran Visconte and his deputy (Police officials), and all officers of the Police and Prisons. In other words, the Commissioner would retain control of the police and crown prosecution functions.

(f) Would remain responsible for other main sectors of civil administration, and for the financing of government business. The appointment of the Valletta Jurats, and all persons engaged in the grain business conducted by the Università of Valletta, would remain his concern "as the funds thereof belong to the British government." The Commissioner would also control the appointment of officers of Customs, of the University of Literature, the Grand Almoner, the Superintendent of Fountains, the Post Office officials, Officers of the Palace and Palace Guards, Officers of the Treasury, the Administrators of Public Property and the Governor of Gozo.

(g) The Commissioner would be entitled to appoint Deputies to each of the Lieutenants (Luogotenenti), whose function it would be not to interfere in the business of the Lieutenants but primarily to keep the Civil Commissioner informed of what was happening in each of the various Lieutenancies.³⁷

.....

It is interesting, and indicative of the authorship of the scheme, that Eton should have introduced a safeguarding clause of no relevance to the Consiglio Popolare, but of interest only to himself. The scheme specifically excludes from the Civil Commissioner's authority the 'Superintendent General' of the Quarantine Department, the post currently held by himself. This function was to be "independent of the civil government". The Commissaries of this department and the Protomedico were to be appointed by the Consiglio Popolare. But "all the other members of the Public Health department³⁸ are appointed by the Superintendent General".

Authentic Materials introduces a novel concept of joint competence in the area of legislation, when it says³⁹:

"All new laws, whether regarding revenues, civil or criminal laws, revision of laws, and formation of a new code of municipal laws (except such regulations as merely regard police as established by law, and which do not infringe on the liberties of the subject) may be proposed by the

³⁷ Authentic Materials Part III - the same.

³⁸ An interesting omission from the two sets of employees was the appointment of the personnel serving the Hospital sector. The Public Health sector in the sense Eton used it, meant the Quarantine department.

³⁹ Authentic Materials Part III - Section headed 'The Following Scheme': The book calls the concept "Mixed Cases".

Consiglio Popolare, or by the governor; but the other party must approve such proposal in writing to become a law. According to its nature, it must receive the sanction of His Majesty's government. It may be acted upon until His Majesty's pleasure is known."

In his proposals relating to the judicial sector Eton was presumably reflecting popular dissatisfaction with the dispensation of justice generally, when he proposed that judicial and related appointments should be reserved to the Consiglio Popolare, and also when he assigned to the Consiglio a controlling function over all judicial processes and actions. However simplistically the proposals may have been expressed, they did certainly reflect a generally held view that substantial justice was not being done in Malta under the Order's old structures. Indeed this was amply confirmed by the Royal Commission a short while later, which also shared Eton's insistence that all judicial processes should be open to full public scrutiny, and be conducted in open court. Eton took another swipe at the judiciary when he said that judicial decision making needed to be greatly speeded up. Eton would have had the Judges deliver sentences almost instantly. "He may be allowed time not exceeding three days to pronounce sentence in difficult cases. In common cases he shall pronounce sentence before he leaves the court". Perhaps this was too much, but he was making a good point.

Authentic Materials also made proposals on two other issues which reflected a desire for change on the British model, but which did not appear at that time to have been a widely felt grievance, outside the narrow circle of political activists. One was the demand that a jury system should be introduced in criminal (and civil) cases, where it would be for the jurors to pronounce on the facts, and for the judge to determine the points of law. The other was the proposal that "Printing offices (should be) allowed to be established - the printer affixing his name, and being, with the author, answerable for the matter printed". Historically, these were milestones which took longer than they should have done to reach the statute book. They were not achieved before 1829 and 1839 respectively.

Renewed Agitation

Authentic Materials was followed by an interval of around three years when political activity on the question of Malta's constitutional status seems to have abated. In 1810 however, with Ball now dead, General Oakes in his place as Civil Commissioner, and Lord Castlereagh⁴⁰ no longer at the Colonial Department in London, Eton judged the time right to resume agitation and to take libelous swipes

⁴⁰ Malta National Archives. Duplicate Copies of Despatches from Malta (Vol I - 1803-1816). Eton to Henry Fisher 28/3/1810: "Mr Richards must write to (Lord Liverpool) that, having never been able to get any satisfaction from Lord Castlereagh "

at Ball's memory. It was back to persons, and the vehicle was a carefully crafted presentation of the case of Vincenzo Borg, aimed no less at fouling Ball's memory than at drawing attention to Borg's case and circumstances. The booklet entitled "The appeals of Vincenzo Borg"⁴¹ did not enhance the case for constitutional change, and historically its main relevance is that it provided, through papers which somehow came to light⁴², indisputable evidence of Eton's very direct hand both in the writing of the text and in the financing of its production⁴³. Which, along with other evidence of his intrigues, led to his being dismissed from office.

Of more immediate relevance to constitutional affairs was the petition to the King in Council dated 10 July 1811⁴⁴. This Petition was mishandled by Oakes, who overreacted to the criticisms in some parts of the Petition, which he described as a "scandalous libel upon the government as hitherto administered, and the vehicle of private malignity"⁴⁵. A considerable furore ensued, and in the prevailing confrontational atmosphere the petition was apparently aborted. Nicolo Testaferata, who was a prime mover of the 1811 petition, now took to London, accompanied by Vincenzo Borg, and submitted from there direct to Lord Liverpool another Petition or Letter (dated January 1812)⁴⁶ to the same purport, though quite different in style and composition.

Testaferata's mission to London took place, coincidentally, at a time when the British Government was finally ready to move on Malta. By early 1812 circumstances in the long drawn out Napoleonic wars had reached a point where the British Government felt it could formally assert its sovereignty over Malta, and take steps to place the government on a permanent footing. It is unlikely that Testaferata's 'ultimatum' would have influenced the outcome, but his presence there was the occasion for a letter from Lord Liverpool, the new Secretary of State, informing Testaferata that a Royal Commission was being appointed "to examine fully into the circumstances of the Civil Government and its laws"⁴⁷, and Testaferata was sufficiently pleased with the outcome to send Liverpool his 'grateful acknowledgements'.

⁴¹ Copy at Valletta National Library.

⁴² Malta National Archives. Duplicate Copies of Despatches from Malta (Vol I - 1803-1816).

⁴³ See Essay 06: William Eton.

⁴⁴ Hardman 509-11.

⁴⁵ Public Notice 23/8/1811 - (Hardman 511).

⁴⁶ Hardman 512-15.

⁴⁷ Hardman - the same.

The expectations of the Maltese activists were now defined in Testaferrata's letter to Liverpool of April 1812⁴⁸. It was a varied and in some respects quite ambitious agenda, in which the Consiglio Popolare figured prominently. The Consiglio's precise function was not gone into, but clearly the assumption must have been that it would be constituted broadly on the lines of Eton's creative constructions, with deliberative, legislative and executive powers.⁴⁹

Civil Commissioners also wanted change

The Maltese activists must have felt that the appointment of a Royal Commission was a major step forward, and certainly there were high expectations premised on such an appointment. They would not have known, of course, that it had also been the desire of both Commissioners Ball and Oakes that some such Commission should be appointed, and had themselves long been expressing their unease about the prevailing forms of government administration. On quite different grounds, neither of them had been comfortable with the absolute authority thrust upon them, and they were as anxious as the activists that the forms of government should be reviewed.

Liverpool Instructions⁵⁰

The terms of reference laid down for the Commission by Liverpool would have satisfied Oakes, but were hardly the framework on which reforms satisfactory to the Maltese activists could have been devised. In fact their prime objective of having something in the way of a representative assembly - Consiglio Popolare - was specifically ruled out *ab initio* as being "inconsistent with the local circumstances and incompatible with the safety and tranquility of the island". Something they were surely not aware of at the time. On the other hand, judicial reforms, a primary area of concern, were included in the agenda for consideration.

After premising that.....

".... the unsettled state of European affairs and the long war in which we have been involved, have heretofore prevented His Majesty from establishing in Malta any permanent form of Civil Government, and from interfering with the laws which were in existence in the island at the

⁴⁸ Hardman - the same.

⁴⁹ See Essay 14: The Oakes Administration.

⁵⁰ Liverpool to Commissioners of Inquiry 1/5/1812 (Public Record Office London.CO 158/18).

time when the expulsion of the French left the whole authority in our hands"; and that

" The superintendence of civil affairs has been entrusted to a Commissioner, whose powers have never been distinctly defined, and his government has been carried on by personal management and by general attention to the interests and feelings of the Maltese people, rather than by any fixed regulations emanating from His Majesty's Government at home",

.....Liverpool got down to the core objects of the enquiry. Of particular note, for our purposes, were the following areas of review:

(1)⁵¹ The Commission was to "examine without delay into all matters touching the actual state of Malta, with the exception of the military and naval departments, and of the Court of Vice Admiralty which has been established in the island".

(2) "In considering the principles upon which the executive authority in civil affairs should be permanently instituted, and the degree of power with which it should be invested, it is necessary that you should always bear in mind the circumstances of Malta as a military post of primary importance..... Indeed it appears desirable that the supreme power both civil and military should be vested, as often as may be practicable, in the same person, in order to ensure the greatest unity, simplicity and efficacy. To this point you will turn your attention, and report, if you discover any serious objections to such an union of authority."

(3) "It is likewise required of you to report fully upon the spirit and bearing of the existing laws In a Paper which has been transmitted to this country by certain of the inhabitants of Malta, the trial by jury is represented as one of the great improvements to which they look forward. You will be pleased to give particular consideration to this subject, and report in what manner and under what modifications it appears to you that this institution might be introduced into Malta."

(4) "The Paper to which I have just alluded also points at the formation of a representative assembly, with rights of discussion and appeal, and with powers of legislation, which appear to the Prince Regent's Government, as at present informed, inconsistent with the local circumstances and incompatible with the safety and tranquility of the island. The leading principles by which the views of the Prince Regent's Government are guided are to give to the Maltese, and to all residents in Malta, as large a share of civil liberty as is consistent with the military circumstances of the island: to ensure to them a pure and impartial administration of justice: to maintain an effectual system of internal police; and to establish such regulations as may protect commerce and encourage domestic industry."

(5) (The Commission was to go into the whole question of the Judicial system, to recommend improvements in the regulation of commerce, and to suggest measures for stimulating local industries. They were to explore the possibility of turning Lampedusa and neighbouring islands (Linosa and Pantelleria) into 'farms' for the supply of grain to Malta).

⁵¹ The numbering here is not as set out in Liverpool's letter.

(6) "Finally you will give the fullest attention to all matters relating to the commerce of Malta...."

Royal Commission Report⁵²

The Report of the Royal Commission, with its copious appendices and connected documents, provides a comprehensive picture of the situation prevailing in Malta at that point in time. Not all of it is of relevance here. Of particular interest, however, were the comments and recommendations it ventured on the constitutional question, and in relation to judicial arrangements and proceedings. No less interesting, were the comments made in respect of the "principles upon which the executive authority in civil affairs should be established in Malta".

Consiglio Popolare

The reiterated theme in all the submissions made by Eton and his associates, regarding the Consiglio Popolare, had been its historical roots, and its continued existence as a deliberative and legislative forum over the centuries. A Council of sorts undoubtedly did exist prior to the coming of the Knights, its functions had been rather primitive, and it had virtually lost all these functions, such as they might have been, when the Order of St John held sway. Eton's creative thinking stretched the known facts inordinately, and in so doing set the basis by which the Maltese claims would now be judged. The exaggerations did the Maltese cause no service. Indeed they almost certainly induced Liverpool to rule out right away any such Council, with deliberative and judicial powers, as "inconsistent with the local circumstances and incompatible with the safety and tranquility of the island."

The Royal Commission nevertheless was charged with determining the facts relating to the Consiglio Popolare. The Commission set such facts, as they were able to ascertain, against the 'exaggerations' advanced by Eton and his associates, and reported themselves quite unconvinced that any Consiglio as described did ever exist. "The result of our inquiries has been the most firm conviction that these claims, so loudly urged by turbulent and interested individuals, are totally without foundation; and that at no period of their history did the Maltese ever possess the slightest pretension or right to a deliberative and legislative Assembly."

This conclusion was largely based on the Dolci memorandum (enclosed with the Royal Commission report)⁵³. Presumably drawing on Dolci, the Commission went on:

⁵² Public Record Office London CO 158/19. Valletta National Library. B0/4/43.

"The Consiglio Popolare in fact never did, and never pretended to, possess any deliberative or legislative authority. It was simply an assembly of the people, summoned by order of the Crown for the nomination of certain Jurats of the Università, which nomination was afterwards submitted to the Sovereign for his approbation. The Università of Citta Vecchia was a Municipal body, charged with the superintendency (sic) of the markets, the supply of provisions, the weights and measures, the roads and the public edifices. From this body members were indeed occasionally sent to Palermo, in order to lay before the Sovereign or his Viceroy any complaints or representations respecting the affairs within its immediate jurisdiction: but never upon any occasion did it arrogate to itself the right of legislation, nor in any way presume to interfere with the uncontrolled exercise of the Executive power from the period of its occupation by the Knights..... it is admitted, even by the most strenuous supporters of its ancient privileges and authority, to have been nothing more than an assembly for the purpose of electing four candidates, from amongst whom the Grand Master selected one to go to Sicily in order to treat for the purchase of corn; and four others from whom he also selected one to be the Depositary of the monies of the Università It met every year, and had no other powers whatsoever than the election of these candidates, from whom however the Grand Master did not always select the persons to be employed. In the later periods of the existence of the Order of St John these assemblies were discontinued."

"Some stress has been laid upon an Assembly of the different Heads of Casals, convened by Sir Alexander Ball at the time of the Blockade, for the purpose of giving more ready effect to the orders which he found it necessary to issue. This has been ingeniously construed into an acknowledgement of the former existence of a deliberative body. Nothing can be more gratuitous than such a deduction. The meeting was convened for the sole purpose before mentioned, and was a representative rather than an electoral body, such as we know the Consiglio Popolare to have been. Indeed so little attention was paid at that time to the existence of any former Assembly that it met under the simple title of Congresso."

Apart from the absence of proven historical provenance the Commission dismissed the grand notion of an all-purpose Consiglio on grounds of its wooliness and lack of definition:

"The nature and functions of this Assembly are still however to be ascertained. Even the few discontented persons who are the most loud in their cries for its appointment, the most zealous in their assertions of its former existence as a deliberative body, are unable to give any definition of its duties, its prerogatives or its jurisdiction. Whether its powers supersede those of the existing Government, whether the Chief Magistrate (Civil Commissioner) has any check upon its deliberations, whether its decrees have at once the validity of laws: these are questions which no one is prepared to answer, and this inability.... argues clearly that there are no precedents by which we can be guided, no experience of former transactions to which any reference can be made."

⁵³ Unfortunately this memorandum is not to be found enclosed with the report in CO 158/19 (or anywhere else as far as can be ascertained) at the Public Record Office in London.

The comments thus far advanced, if unhelpful to the Maltese cause, were at any rate, or purported to be, objective. The conclusion however turned highly subjective in its use of unrestrained language:

"Should this concession be made, we will not say to the wishes of the Maltese but to those of an insignificant and turbulent party, the consequences are obvious but unavoidable. Every chimerical project that folly, ignorance or ambition can frame will be brought forward and agitated. The fury of superstition and the influence of priesthood will be set in motion. The leaders of the Assembly must either be bought at the price that vanity may attach to its own importance, or they will oppose Government in every measure. The elections will be the source of continual tumult and intrigue in the Casals, and the Assembly itself productive of every species of disorder in the Capital. In a word it will be the focus of sedition, radiating from the centre to the extremities, and paralysing all the efforts of Government."

"So firmly are we persuaded of the mischievous effects that would result from entrusting any portion of the political power to a people so singularly unfitted to enjoy it that, with a view to the real happiness of the Maltese, we have no hesitation in saying that, were the pretensions to the former existence of a deliberative and legislative Assembly as clear and incontestable as they really are obscure and groundless, we should still feel it our duty to recommend most earnestly a positive refusal of its re-establishment, as a measure fraught with the greatest danger and involving the most ruinous consequences."

Civil Commissioner

Though the Commission dismissed the notion of a Consiglio Popolare (in the form claimed by its proponents) as a figment of history, the Commission nevertheless fully appreciated that civil government could not continue to be administered on the basis of open ended authority patterned on that of the Grand Masters:

"...The Grand Masters were practically if not legally despotic. They made and unmade laws, reversed the decrees of the tribunals, prevented the entertainment of causes, placed and displaced the Magistrates, nominated to every office, and dealt out punishments and rewards without lett or hindrance whatsoever.In every point of view, for the welfare of HM's subjects, for the satisfaction of the Commissioner himself, it is necessary that these powers should be distinctly and properly defined. He should feel that he has a duty prescribed to him from whence he cannot deviate without injustice. He should know to what extent his responsibility extends. The execution of the laws, as well as the more beneficent acts of administration, should be equally obligatory upon him; in a word the spirit, if not the very march (sic) of his conduct, should be so clearly and unquestionably prescribed that he should be able to feel that satisfaction which must always result from the certainty of being supported in the due execution of his duty."⁵⁴

The Commission recommended definition. It also recommended that the powers and functions of the head of the administration (styled Civil

⁵⁴ Report of Royal Commission 1812 - Section headed 'Civil Government of Malta'.

Commissioner or Governor) should combine as in Pigot's time, or indeed as in Oakes' current tenure, both civil and military authority:

"In considering the principles upon which the executive authority in civil affairs should be established in Malta it is impossible to lose sight of the local situation of the island, and of its great importance as a military post. The distance from Great Britain, and the necessity of providing for every exigency as it arises from its own internal resources, and of guarding against the possibility of surprise from active and hostile neighbours, are circumstances not to be overlooked. They point obviously against any subdivision of authority, which ought to be kept in as close and compact a form as possible. We express it as our opinion that the civil and military powers should always be lodged in one and the same person.By their consolidation the wheels of Government will always move with greater celerity as well as with greater force."

But the difficulty remained that this concentration of authority, governed though it would be by specific instructions and guidelines provided by Ministers in London, would need to be qualified:

"The most objectionable feature in the present system is the total dependence of the nation upon the personal character of the Commissioner. Hitherto it has had no reason but to be satisfied with the choice of HM's Government, yet it may not for ever be so fortunate; it may someday witness the exertion of despotic power for purposes widely different from those of beneficence and justice. The peculiar situation of Malta requires that the hands of the Executive should be unshackled with unnecessary forms, but at the same time prudence demands that they should not be entirely unrestrained."

New Council to replace Segnatura

Under the existing regime the Segnatura came closest to 'participating' in the Civil Commissioner's function through its role as a consultative body. It was a Council of four Maltese lawyers (known as Auditors) who were the Grand Master's, and later the Civil Commissioner's, legal advisers and referees in cases relating to the laws and their execution. The Segnatura, by the time the Royal Commission came out to Malta, seems to have extended its area of review beyond the strictly legal, to matters of other major consequence, with the participation on such non-legal issues of the Public Secretary and the Treasurer. The Royal Commission considered giving the Segnatura some sort of executive or restraining role, for the future, but dismissed it on the grounds that this might lead to power coming to reside in the hands of the Maltese members of the Segnatura!

"The cavils and objections that would be raised by a Council so composed, were it to be rendered fixed and independent, and to be trusted with political influence, would tend to embarrass and impede the operations of the Executive rather than impose any salutary restraint upon its prerogatives. The qualification of unlimited despotism is undoubtedly necessary; but it cannot be advisable, by the overwhelming preponderance

of a majority so constituted, to vest in the hands of the Maltese the real authority of the State."

Instead they proposed the formation of another Council, differently composed so as to give it an inbuilt English majority. The Segnatura, in its traditional form and role, would be abolished⁵⁵, and in its stead they envisaged a Council which would

"consist of four English and four Maltese subjects, the Governor or Civil Commissioner having two votes, which will give that preponderance to the side of the English so absolutely necessary to be maintained. The English members might consist of the Commissioner, the Public Secretary, the Treasurer, and another member of whom mention will be made hereafter. The Maltese to consist of two of the present Auditors, a member named by Government from the class of the Nobility, and another from the class of Citizens. To this Council might be submitted all the petitions and memorials which are at present examined in the Segnatura; all intended changes either in the laws or their execution; all charges whether of corruption or incapacity alleged against the judges; and all other matters relating to the civil administration of the island."

Along with the introduction of this Council - with its broadly framed terms of reference, presumably advisory - the Commission proposed other rules of procedure, some of which involving the Council, which they envisaged as restraints to be placed on the Governor's freedom of action. As the report put it: "with a view to providing a wholesome check upon the authority of the Governor or Civil Commissioner":

1st. "That only in the event of the actual appearance of an enemy, or in cases of insurrection, should he be empowered to proclaim Martial Law, or to relieve himself from the limits prescribed to his authority".

2ndly. "That the nomination of the Maltese members of Council should rest solely with him, but that being once appointed they should be considered as holding their offices for life. In cases of extreme necessity he should have the power of suspending them from their functions, but none of absolute removal without a written authority to that effect from His Majesty's Secretary of State for the Colonial Department".

3rdly. "That he should be divested of the power of setting aside the decisions of the tribunals, whether by a reversal of the sentence or by an order of revision. But this restriction should not interfere with the power of dispensing mercy in criminal cases by pardon or by mitigation of punishment".

4thly. "That he should not be permitted to displace the Judges without the consent of the majority of his Council, or without an order to that effect from His Majesty's Secretary of State".

⁵⁵ The report envisaged that, with the reforms being introduced in the Judicial structures, the traditional role of the Segnatura would be superseded: "The advice of the present Counsellors or Auditors being restricted to legal questions, and the natural effect of the proposed independence of the tribunals being to render such questions rare and of small importance "

5thly. "That he should have no power of changing the established laws without a reference to Government at home, except in trifling matters of police, where with the consent of the Council he might be allowed to make any change that circumstances may render necessary".

6thly. "That for the safety and tranquility of the public he should still be permitted to send any person from the island by a simple warrant to that effect. In this however he should be supported by a majority in the Council. The power should be strictly confined to cases in which the safety and tranquility of the State are essentially concerned".

7thly. "It should be permitted to all or any of His Majesty's Maltese subjects to transmit their petitions to England through the medium of the proposed Council. But as this permission might have the effect of overwhelming Government with a variety of memorials, upon the most trifling subjects, the Commissioner might be authorised to set aside those which may appear to the majority of the Council to be of a trivial and unimportant nature. But in this case due notice should be given to the petitioner, and he should be informed of the reason for which his memorial is rejected."

The Commission saw this Council as a compromise between too much power in the hands of the Civil Commissioner, and depriving the Commissioner of the authority he necessarily would need to govern effectively. The form they were proposing would also have the merit of introducing a Maltese presence and voice in the inner counsels of state, which they imagined, rather too naively, would satisfy all those who had long been pressing for a forum with deliberative functions:

"In framing the materials for this new Council we have endeavoured to steer between the unlimited authority exercised by the Grand Masters, and the too great diminution of power which some have thought it advisable should be prescribed to the authority of the Civil Commissioner. It has been our object to take away from him every privilege which might hereafter be exerted to injure or oppress, but to leave him in the undisturbed possession of those which may be necessary to give force to his Government, and to insure the welfare of the State. Nor have we lost sight of the wishes and expectations of the Maltese. Instead of being obliged to rely, for the support of their privileges, upon the doubtful interference of four lawyers, entirely at the disposal of the Commissioner, they will have the satisfaction of seeing that their interests are confided to persons independent of the Executive Authority, and that the nation is entrusted with a voice in the councils by which it is governed. All pretence for the clamour which has been raised for the institution of a deliberative assembly will be at once annihilated (sic)....."

English Lawyer

The Commission remarked on the fact that, with the function of the Segnatura now being wound up, and the King's Advocate serving the Vice Admiralty Court being fully taken up in that sphere of legal business, there was nobody - no English lawyer - on which the Civil Commissioner could call to give him qualified advice on legal matters. As they put it:

"..... the natural assistant of the Chief Executive Authority, to whom many legal questions are referred, is nowhere to be found in the present establishment. We mean an English lawyer of ability and experience, capable of assisting the Commissioner with his advice in all matters of a legal description, and at the same time sufficiently removed from occupations of a professional nature to be enabled to dedicate his time and his attention to so important an office. Whether under the name of member of the Council, Law Officer or Attorney General, such a man would be eminently useful; and in carrying into execution the alterations proposed in the Code, as well as in the tribunals, the assistance of his professional abilities would not fail to be productive of considerable relief to the Civil Commissioner, and of great advantage to the country."

Laws of Malta

Eton, in his memorials, had pointed to the laws of Malta as one great source of discontent and oppression, arising out of the Civil Commissioner's absolute authority under the prevailing Code de Rohan. A 'monstrous despotism' he had called it. The Commission agreed that the Code as it stood placed the Civil Commissioner above the law, and that this was potentially a source of oppression and abuse. It did not however agree that there had in fact been abuse, and indeed that the law as it stood was causing any great anxiety or disquiet among the populace:

"..... it cannot be denied that this Code savours much of arbitrary and despotic principles. We may hold its leading maxim to be 'quod Principi placuit, placuit legis, habet vigorem'. The formal recognition of this arbitrary power is not perhaps explicitly advanced, but it is most certain that it practically exists, and that throughout the Code no definition is attempted to be given of the authority of the Grand Master, nor is any bound or limit prescribed to it. To this omission we may trace the practice of appealing from the final decrees of the Supreme Tribunal to the Chief of the Government in person, which in fact sets him above the law, and virtually annihilates the powers of the Courts of Justice. The countenance given to such a prerogative by any Code of laws, whether by enactment or sufferance, must obviously be attended with danger. It may be rarely exercised, and then only with the best of motives, but it may at any time be converted into an engine of oppression and abuse".

The Commission added that the law, such as it was, was tempered by a tendency to leniency in the Maltese courts which somehow rounded its sharp edges:

"As far as we have been able to examine its provisions it is bottomed on principles of natural and universal justice. The chief objections advanced against it are founded upon its deficiencies rather than upon its stipulations. Some laws bordering on severity might undoubtedly be pointed out; but even these cannot be approached with too careful a hand, nor with too great an attention to the local circumstances which gave rise to their enactment. It must be remembered that, whatever the letter of the law may be, its practice is lenient in the extreme. Capital cases very seldom occur; and the punishment awarded by the tribunals is very rarely in proportion to the enormity of the offence."

There were things, in this Code, which needed changing - yes - but by and large the Commission was not prepared to state that the existence of arbitrary power was concerning the Maltese unduly. Indeed the occasional interference of the Civil Commissioner in the judicial process was not viewed with disfavour by the populace, which (the Commission implied) saw these interventions as protective rather than oppressive.

What the Commission found especially inadequate in the system was its provisions relating to commercial affairs:

"We apprehend that the whole of that part of the Code of Rohan which relates to Commercial matters must undergo a complete revision. These laws, which were enacted at a period when the commerce of Malta was in a state of absolute insignificance, might perhaps have been fully equal to meet the simple and easy questions which were then likely to occur. But Malta (has) become the Emporium of the Levant, and the receptacle of the navies and merchandise of the first trading country in the world. Malta, thus situated, requires that her Commercial Code should keep pace with her commercial prosperity. But here we find an assemblage of laws enacted in the very infancy of trade, which although sufficiently minute in some particulars are, upon all great questions of commercial interest, defective, obscure and sometimes totally silent. On the subjects of assurance and bankruptcy much of this obscurity and uncertainty might be removed, and many obvious improvements introduced. In the proceedings on Bills of Exchange great fraud and delay might be prevented. The law of Bail, positively requiring that the security shall be possessed of landed property in these islands, is wholly inapplicable to British merchants. The law of Sequestration, as now administered, which by a sweeping clause ties up the whole property of the debtor for a comparatively small amount, is glaringly oppressive and unjust. These are a small part only of the deficiencies and imperfections of the Code."

There were other changes in the law obviously needed - "as for instance all those (provisions) relating to slaves, infidels, etc" - but the Commission advised against any wholesale abrogation of the existing basic law:

"However plausible the substitution of another Code may appear in theory, we are convinced that in practice it would be found productive of no essential good It is no light matter to eradicate the deep rooted notions of right and wrong, of crime and punishment, which have been implanted in a people from the cradle. In the present instance we think it will be found more expedient to adapt the remedies to the growth which the tree has taken, than to apply the hatchet to the root."

Courts of Judicature

This aspect of the report is copiously treated at Cap 5 of Harding's "Maltese Legal History under British Rule (1801-1836)" and it would be pointless to go through it all again here. Some interesting conclusions of the Commission, which shed light on the state of the judicial sector at the time, may nevertheless be referred to:

(1) There appeared to be a general consensus, the Commission said, that the problem in the judicial area, was not so much with the laws themselves as with the practice and administration of them : " the practice and administration of the laws is infinitely more objectionable than the laws themselves. These are indeed in some instances defective and obscure (particularly in everything relating to commercial matters where they require a total revision) but, generally speaking, they appear to be founded upon just and equitable principles".

(2) "In the administration of the laws the case is widely different. The power assumed by the judges of bringing forward or of retarding cases at pleasure, the number of concurrent decrees necessary for the confirmation of a sentence, the vexatious nature of appeals, where each in succession subjects the parties to delaysand lastly the very objectionable manner in which the incomes (of the judges) are made to depend almost entirely upon fees, form great and serious evils in a system which, however remote in many respects from English ideas of a perfect scheme of jurisprudence, is otherwise not ill-adapted to the habits and disposition of the Maltese.....".

(3) Judges, the Commission advised, should be put on fixed salaries appropriate to their station, and should have their appointments secured against arbitrary removal. While raising the status of the Judges was important, it was no less important that the Judges should not be placed in a position where their material interests were in conflict with the speedy administration of justice⁵⁶.

(4) The Commission urged that all court proceedings should take place in open court. The Commission was shocked to learn that this was not the case in Malta. Judges could be approached and submissions made to them in their private homes. Accordingly they proposed that the process of the trial shall be conducted wholly in the Court, and that ".....from henceforward all depositions, examinations, etc, shall be taken in Court, and.....upon no account shall it be permitted to the parties to have access to the Judge, for the purpose of stating privately any circumstances connected with the suit.....".

(5) The Commission was surprised to learn that there was no fixed order in which cases were tackled by Judges in their respective Courts. In this connection there were reports of widespread discrimination and abuse: "As it is evident that many abuses have arisen from the power assumed by the Judges of selecting such causes as they please for immediate hearing, and deferring others, without the assignment of any reason whatsoever, we propose that this practice should be abolished, and that for the future it shall be a fixed and

⁵⁶ The Report gives average income of the Judges as £300 per annum, derived from fees. It was the fact that the Judges had a direct interest in enhancing their fees, through prolonging the process of litigation, which the Commission considered as particularly objectionable.

invariable rule in every Court that each cause shall be regularly and duly filed, and a list kept by the Public Notary, by which each shall be secured a hearing in its proper turn."

(6) The Commission was astonished to discover that, in criminal cases, current practice did not require that the accused and his counsel should be present when his case was under consideration, and indeed the accused was not made aware of the precise charges against him until relatively late in the proceedings. They proposed that henceforth the prisoner with his advocate should know what the charges against him were, and should have the right to be present at all stages of the proceedings. At all events no proceedings should take place in the absence of the accused party and his counsel.

(7) No capital judgements, or sentences of banishment, the Commission advised, should be put into execution without the express approval of the Civil Commissioner, after having personally reviewed the case. It would be the Civil Commissioner's prerogative, and his alone, to dispense mercy, either by way of pardon or mitigation of punishment. On the other hand the Civil Commissioner should not at any time, ever, possess the power of augmenting the severity of a sentence.⁵⁷ Subject to this the Courts should be entirely independent of any interference on the part of the executive authority.

Consolato del Mare

The Consolato del Mare was one Court to which the Commission gave very particular attention. This was the Court which dealt with disputes relating to bankruptcies, bills of exchange, insurances, and generally with everything coming under the head of trade and commerce. The Commission's remit had included a duty "to recommend improvements in the regulation of commerce", and this was a time when commerce at and through Malta was at its peak. It was important that this state of affairs should not be impeded by judicial bottlenecks. The British merchant community in Malta had been especially vocal about this Court, and had claimed that the Court was a major obstacle to the free flow of commerce.

The Commission agreed with this view. The Consolato's proceedings were lengthy and convoluted, much as in the other Courts, and it was moreover a fertile source of abuse on the part of debtors who found ways of exploiting its procedures to evade as long as possible their responsibilities towards their creditors. Which was the antithesis of what a commercial court should be about - the speedy settlement of disputes. The Commission offered their thoughts on where a solution might lie.

"In the creation of such a judicature, despatch in the form, and certainly in the execution, must be the great object to which we must attend. Time

⁵⁷ It is interesting to recall that this was one of Eton's proposals in Authentic Materials.

is of incalculable value to the merchant, and justice should be brought home as near as possible to his very door. With this view we recommend in the first instance a kind of 'Forum Domesticum'. Five merchants (two British and three Maltese, or three British and two Maltese, as may hereafter be determined) might meet daily to judge and determine disputes as they arise....."

"If the parties should be dissatisfied with the decision of this Domestic Tribunal, an appeal might lie to a Judge nominated by the Civil Commissioner, assisted by two merchants (the one British the other Maltese) whose decision should be final and conclusive....The process should be conducted orally, without any kind of 'Scrittura', and the witnesses examined in open Court. No proceedings in any part of the trial should be allowed to take place out of Court, and there alone should the sentence be pronounced....."

"Commercial questions would be tried by men most competent to try them, and who have a personal interest in the speedy attainment of justice. The costs attending such a trial would be comparatively trifling, and such regulations might be introduced as will ensure a prompt and effective execution of the sentence awarded."

"This is but the outline of a plan which may require modification and improvement. It resembles the Commercial Tribunals of Leghorn and Barcelona; and was suggested to us by a deputation of the Maltese merchants. As its arrangements coincide in many respects with the ideas expressed by the British merchants..... we have judged it proper to present such a scheme of judicature in Commercial matters to the consideration of HM's Government."

Trial by Jury

The Commission advised against, on grounds entirely subjective and based on an unflattering evaluation of Maltese society and the Maltese character. The system would be "found inapplicable to the modes and manners of the inhabitants", they considered. The Maltese were in "total ignorance.....with respect to the nature and functions of a jury" and would have great difficulty understanding the basic distinction between "the fact and the law". Selection of juries would prove difficult and challenges would be the order of the day, especially in civil cases. "The links by which society is here bound together are so widely spread, and so universally acknowledged, that from the beggar in the street to the noble in his palace, the connection is immediate and unbroken": and they added (gratuitously) that "if we add to this the laxity of moral feeling, and the facilities afforded to corruption and bribery, some adequate idea may be formed of the difficulties which would attend the introduction of(the system)".

The adoption of the jury system in criminal cases was even harder to envisage, they argued, again resting their case on character evaluation:

“.....the same people whose ebullitions of passion are marked by the most savage and atrocious cruelty, shrink with detestation from the wholesome severity of the law, and the necessary executions of justice. No people are more alive to the power and persuasion of eloquence, nor more exposed to be misled by a pathetic address to their feelings, even in justification of the most horrible of crimes. This false species of compassion, this mistaken notion of charity, is fostered by the blind superstition of their priests, and there can be little doubt but that the same feelings which lead to the support and protection of the murderer in the sanctuary, would also ensure to him the favourable verdict of a Jury upon his trial. The system of auricular confession, by insuring the interference of the priesthood, and the constant fear of private vengeance, which pervades every class of the inhabitants, offer additional obstacles to those which we have already enumerated.”

The Jury system was eventually introduced in 1829, in adjudication of major criminal cases, in a form adapted to the circumstances of the Maltese situation, and it appears to have worked reasonably well in spite of the ‘innate emotional tendencies’ of the Maltese population. The system was not then, or at any time later, extended to the adjudication of civil cases.

Decisions on the recommendations of the Commission

Early in 1813 Lord Bathurst, who had succeeded Liverpool in the latter part of 1812, referred the report to the Solicitor General in London for his comments on “those parts which treat on the constitution and practice of the Courts of Law, and of the spirit of the laws themselves”⁵⁸. While these comments were awaited there was some internal discussion on other aspects of the report⁵⁹, and eventually Bathurst was able to communicate some first decisions to Oakes⁶⁰.

Bathurst’s despatch of 15 May informed Oakes that, while the Royal Commission’s report was still under consideration, and without going into much detail, he was able to tell him that various changes were being contemplated in the legal and judicial systems of Malta. He particularly singled out the Consolato del Mare for special mention, and said that an English lawyer would be proceeding to Malta to undertake the framing of a new Commercial Code, as a matter of priority. This lawyer would need the support of a Maltese Judge, and of English and Maltese merchants who could give Mr Wright the benefit of their local knowledge and experience. Mr Wright would be coming out in the capacity of King’s Assessor, on permanent appointment to the

⁵⁸ Bathurst to Solicitor General 21/1/1813 (Public Record Office London. WO 6/178).

⁵⁹ Undated and unsigned memorandum, clearly in Bunbury’s hand (Public Record Office London. CO 158/24).

⁶⁰ Bathurst to Oakes 15/5/1813. (Public Record Office London. CO 159/3. Also National Archives Malta. Despatches from Secretary of State Vol 4).

civil establishment in Malta, to be at the Governor's disposal for legal assistance as required.

The more important bit of news in this letter, however, was the intimation that a decision had finally been taken that Malta was to be "incorporated within the dominions of the British Crown". A decision which would be endorsed by the provisions of the Treaty of Paris the following year. Of equal interest was the news that Oakes was being offered the post of Governor of Malta if he felt fully up to it. The extraordinary thing about this offer is that it was made at all. A'Court had been busy telling everybody that Oakes did not have a firm grip on his Malta job, and Bunbury too had come to the conclusion that Oakes was "not equal to his situation", and he had told Bathurst as much in October 1812⁶¹. Moreover, after years of complaints about his health from Oakes, Bathurst himself had already conceded that Oakes should not consider himself bound to stay on, and could leave any time he chose⁶². Given these circumstances the offer of the Governorship, with the implication that he would have to lead Malta through the oncoming reforms, could only have been cosmetic. Made presumably in the confident knowledge that he would decline. Which he did, thus clearing the way for the appointment of a much more suitable man - the dynamic Sir Thomas Maitland. A selection which Bathurst was certainly more than happy to make.

Consultations with Maitland⁶³

Maitland was shown the Royal Commission report, and the papers relating to the reforms being envisaged. His reaction reflected the sharpness of his intellect. He was particularly focused in his comments on the judicial measures being proposed, despite his lack of personal acquaintance with the Maltese situation, and he was no less forthright in his comments on the proposed Council of Advisors which the Royal Commissioners had suggested. His comments on this latter issue are worth reproducing:

"I am.....in principle no friend to any Council, but should it appear, in consequence of the expectations, whether of the trial by jury, or other popular assembly, that any considerable degree of discontent is likely to be generated, I am not aware that any great degree of inconvenience would arise from a Council constituted on the following basis:

1st, that it should be a mere Council of advice;

2nd, that the members of Council in no instance should vote;

⁶¹ Bunbury to Bathurst 7/10/1812 (British Library Ms Dept Loan 57 (Vol 6) Bathurst Papers 217).

⁶² Bunbury to Oakes 13/2/1813 Private. (Public Record Office London. CO 159/4).

⁶³ Maitland to Bunbury 20/6/1813. (Public Record Office London. CO 158/24).

3rd, that their power in the event of dissent should be limited to transmitting within twenty four hours the causes of their dissent to the Secretary of the Council;

4th, that all questions brought before the Council should originate in the Governor".

"With these instructions I do not think a Council could do any harm, and it might possibly be, wherever a difference of opinion existed, the best form in which such difference could be sent home to HM's Government."

"If the Maltese too are really anxious to have any of their body apparently connected with the executive authority, by admitting two or three of them into Council⁶⁴, it would give them the same extent of connection in that authority granted to HM's native (British) subjects But undoubtedly, if we can carry all the measures proposed by HM's Government into full effect palatably to the people, without such Council, I should think it better, and I merely state it as an arrangement which might take place were it found necessary to adopt it, with a view to render the other measures more popular....."

The weakened Council arrangement Maitland favoured (if he had to have one at all) would hardly have been enthusiastically welcomed by the Maltese activists. It was premised on the same sort of concentration of authority, in the executive and legislative spheres, as had obtained previously under Hobart, and allowed virtually no scope for meaningful participation in the decision making of government. On the other hand Maitland was being true to himself. His own feeling was that in a Crown Colony setting the best guarantee of good government was a good governor, working within the bounds of instructions given to him by Ministers in London. As he put it " the best security the Crown can have for the prudent and advantageous administration of any Government abroad rests upon the free and unfettered power of the Governor acting on his own responsibility and under HM's instructions."

Bathurst took Maitland's aversion to Councils into account when he sent Maitland his empowering despatch of the 28th July 1813. He included a provision for a Council, on the lines Maitland had indicated would be acceptable to him, but left it entirely to Maitland's discretion whether or not to have one.

Bathurst to Maitland 28/7/1813

The Bathurst instructions of July 1813, sometimes referred to as Malta's 'first constitution', adopted most of the recommendations of the Royal Commission. The Università was to be turned over right away to a new Board of three, only one of whom was to be Maltese, with particular care to be taken to ensure that he was not given charge of

⁶⁴ Maitland here seemed to be thinking of a smaller Council than that envisaged by the Commission.

financial matters. The Public Property Board was likewise to be suppressed. The instructions here did not actually suggest absorption into the Treasury but left it to the Governor's discretion to reorganise as he saw fit. The system of financial control however was to be centralised, much as the Treasurer had suggested. "...you will issue peremptory orders that whatever monies are received on account of the civil government, by whatever person or department, shall be paid immediately and without deduction in the Treasury ... and ... no monies shall be issued from the Treasury except under the authority of a warrant signed by the Governor."

Two provisions in Bathurst's despatch were of particular note. One was the fact that, as Malta was now being brought formally under the British Crown, the island was being integrated into the British Crown Colony system. The constraints formerly placed on the Civil Commissioners, requiring them to adhere to the old ways of conducting business, were off, but the Governor would be retaining total discretion, at a local level, on how to conduct the legislative and executive business of government. In judicial matters however the system would leave no place for his participation except within a structured system of Courts of Law, and by way of the prerogatives which he would continue to exercise:

"The Governor shall not possess any power to increase the severity of a sentence; but he shall have authority to lessen the punishment, or to pardon the offender, except in cases of high treason or wilful murder. He shall also be empowered (in cases where he shall consider it necessary) to suspend the execution of a sentence until he shall have reported the circumstances to the King, and have received HM's orders thereupon."

The other basic provision was the definition of the Governor's position. Chief authority was vested in the Governor, uniting in his person all civil and military command. His authority would be "limited only by the orders of the King; he is responsible to His Majesty and to his country for his conduct, but his discretion is not to be shackled by any person, or by any body of persons, resident in Malta". This spelt the nature of the new governorship in full meaning.

Having premised that his authority was not to be shackled, in any event, by any person or body of persons resident in Malta - not in other words by any sort of Council that might be set up in the country - the instructions then went on to envisage the possibility of a Council such as Maitland had indicated might be acceptable to him:

"If however you shall see fit (either for the better transaction of public business or for other sufficient reasons) to form a Council for the investigation and discussion of such matters relating to the civil interests of the island as you may think proper to lay before it, you are authorised to do so; observing that the number of members shall not exceed six, exclusive of the Governor, and that the Bishop of Malta, the President of the High Court of Appeal, the Public Secretary and the Treasurer of the Island shall sit in this Council. The other members to be named at your discretion. No business shall be discussed in this Council but what shall

be brought before them by the Governor himself. The members shall not vote but merely deliver their opinions and advice, and in case any member shall after the discussion disapprove of the course which the Governor may pursue, he shall be at liberty to transmit in writing, within twenty four hours, a statement of his reasons for dissenting, and if the member requires it the Governor shall be obliged to send home this protest to the Secretary of State."

If this Council was not to shackle the Governor's discretion, but was merely to serve as a sounding board for opinions, as and when the Governor saw fit to ask, it is difficult to see what useful purpose would have been served by having one formally established. Maitland was in a position to access opinions and advice in less formal ways. He evidently saw this and decided against having a Council.

Other recommendations of the Royal Commission were apparent in Bathurst's orders: especially in regard to the judiciary and judicial process.

Judges were to be rendered 'independent in point of fortune' and to be given respectability in their situations. They were to be placed on fixed salaries reflecting their station, with no entitlement to fees whatever, they would enjoy security of tenure in their posts, and could look forward to the prospect of eventual retirement on a liberal pension. They were no longer to be subject to the traditional scrutinio, and although liable to suspension of office for good reason by the Governor, were to be removable, in the last resort, only by order of the King, acting through the Secretary of State.

An interesting point is that, while Bathurst's despatch makes it quite clear that Judges were to have fixity of tenure, the Instructions which accompanied the despatch seem to imply that the appointment of Judges, like all other appointments to public offices in Malta, were to be held "during pleasure". Instruction 9 says: "It is Our further will and pleasure that all Commissions to be granted by you to any person or persons, for exercising any office or duty relating to the administration of Justice or the preservation of the Public Peace, the Civil Service of Government or other necessary Offices, be granted during pleasure only."⁶⁵ Nevertheless in the Maitland reforms of 1814 Judges were in fact placed on a "quamdiu se bene gesserint" basis.

Interestingly, too, and presumably reassured by the Royal Commission report that there was nothing fundamentally wrong with the law, Bathurst ruled that the Code de Rohan should remain the basis of Maltese law, until opportunity should present itself for a general review of the legal system:

"I come now to the Laws of Malta and, defective and inadequate as they may be in many respects, it still appears inadvisable to make any sudden or

⁶⁵ Public Record Office London. CO 159/3. National Archives Malta Despatches from SS Vol 5.

radical alteration in the Code. A correction of the vices which are but too manifest in the constitution and practice of the Courts is more immediately requisite, and will be productive of more practical benefit to the people under their present circumstances. The removal of these abuses, and the gradual progress of information, may prepare the way for the future introduction of a more liberal and refined system of law."

The quality of the judicial process however was immeasurably enhanced by the following basic principles, which Bathurst instructed should be adopted:

All causes were to be tried in an open court.

No private access to the Judges would be permitted.

Both sides in a law suit or criminal action were entitled to employ Advocates, and have the power of cross-examining witnesses.

The pleadings were to be drawn up, and judgements delivered, in the Italian language.

All causes would be filed, and be brought forward for trial, according to the order of date, at the next sitting of the Court.

In criminal cases the person accused would be entitled to have due notice of the charge upon which he was to be tried.

The witnesses, in a criminal case, were to be examined in the presence of the person accused.

The power of inflicting torture, though no longer in use, was to be formally and publicly abolished.

No accused person was to be detained in prison without trial or sentence beyond the space of time which may intervene between one Assize and another.

Tailpiece

The Maitland reforms, the sheer breadth and depth of the change of systems that he brought about, and the firm sense of personalised central direction that came with Maitland's governorship, take us beyond the scope of this Essay – indeed beyond the scope of this book. Some final remarks may nevertheless be of interest.

The Bathurst instructions were Maitland's terms of reference. He conditioned them however to his own judgement on the spot, and shaped his decisions very much according to his own sense of what was the proper thing to do in any given set of circumstances. His handling of the Università, for instance, was cautious. Initially he kept the old structures, maintained the Board of Jurats, and ensured that effective

control was in English hands answerable directly to himself. Later, in 1819, he did proceed to scrap the *Universita* altogether, replacing it in the grain business by a Board of Supply composed of three English officials. The fact that he did not do it sooner was a concession to the public temper, which was suffering from a surfeit of change at that time and would not have taken kindly to yet another, highly sensitive, departure from tradition. Maitland was of decisive disposition, but not insensitive to the public temper, and he knew how and when to heed public opinion.

The Public Property reform, also, did not go through as the Commission had envisaged. Oddly enough, given his expressly stated intention of separating the works and revenue collecting functions of the erstwhile Board, Maitland kept the two together and turned it into a department of government, restyled the Land Revenue Department, headed by an Englishman. The Treasury alternative (for the revenue collection side of the business at any rate) did not appeal to him, possibly because he had persuaded himself that the Treasurer of the time was empire building and needed to be restrained. He would have none of that, conceiving that this would have been a challenge to his own position and authority as Governor.

Indeed a series of instructions given to departments in 1814 seems to have been expressly designed to put the Treasury in its place. In one of these circulars Maitland directed: "In future all orders of whatever kind will be given to every department by Government alone ... such orders will be issued as occasion may require, either by the Governor himself or through the office of the Chief Secretary to Government ... no other office whatsoever has any power or authority to issue orders of any kind."⁶⁶ In other words: powers of superintendence were vested in the Governor alone. The Secretariat was to be the sole agency through which the Governor's authority would be brought to bear on the other departments, and likewise the sole agency through which heads of departments were to approach the Governor on official business. Maitland's rules formed the basis on which the Secretariat was thereafter, and throughout the rest of the 19th century, to function as the central coordinating agency of Government.

⁶⁶ Minute by HE 8/2/1814. (Government Gazettes 1814)