State and Church in Malta

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I. Social Facts

In 2018, the population of the Maltese Islands was estimated at 475,700. With an area of 316 square kilometres, the islands have the highest population density in Europe: 1,457 persons per square kilometre. The age-child ratio in 2002 was 68 old persons to one hundred children, whereas the total dependency ratio was 46.09. The crude birth rate was 9.86 in 2002 (compared with 17.6 in 1970), births outside marriage 14.95. The crude death rate was 7.85; the life expectancy rates were 75.78 years for males and 80.48 years for females. The crude marriage rate was 5.80. Out of the 2,240 marriages registered in 2002, 575 were civil marriages whilst the rest were celebrated according to a religious (mainly Roman Catholic) rite. Marriages with a non-Maltese partner totalled 500. The total fertility rate for 2002 was 1.46.

The genetic mix is derived from mainly Mediterranean, predominantly southern European, stock with some British genes imported through inter-marriage during the last two centuries. Though their physical features can be diverse, the population is very homogeneous in culture and outlook. The last Census returns (1995) show that though a high proportion have a second language (English) and other languages (Italian, French, German), almost all Maltese know the Maltese language, which is widely used in social life, in the Courts of Law, in the churches, and in Parliament; English is also a second official Language, used for administration. Maltese is a complex language with a Semitic base, a large and predominant Romance element in its lexicon and sentence structure, and with a good sprinkling of English terms.

Traditionally, the Census Questionnaire has no question concerning religious faith, but almost all Maltese are baptised Roman Catholics, and the attendance at Sunday Mass varies in percentage terms from a low of 48% in some towns and villages in the South East to a high of 79% in parts of Gozo, with an average of 61%.

A recent Catholic Church pastoral research sounding has revealed that whilst more than eighty percent of Maltese nationals declare themselves
Catholic, Sunday Mass attendance is down to forty percent, with, however seventy percent declaring that they had attended Church at least once in the last preceding month.

There is a number of Protestant Churches: Anglican, Presbyterian, and Baptist, which cater for foreign residents; and nuclei of Jehovah's Witnesses and Unification Church followers, mainly composed of repatriated Maltese emigrants from the United States and Australia. There is a mosque, attended mostly by foreign Muslims and a small number of Maltese wives of Moslem husbands.

The social life of the country shows evidence of a Catholic tradition, with Sundays, feasts of patron saints, and the liturgical calendar providing the rhythm of the Maltese week and year. However life-styles are moving towards more of a Mid-European way of life as the statistics amply demonstrate by the fall of birth and marriage rates.\(^1\)

II. Historical Background

The reconquista of Malta and Gozo from Arab domination by Roger the Norman in 1090 established a very close relationship between the civil and religious authorities. Count Roger and his successors, the Norman Kings, saw themselves as the patrons and benefactors of the Church, and subsequently were given by the Papacy the right of nomination to the bishoprics within their realm. Even today, the Cathedral in the old capital of Mdina recalls the endowment supposedly received from the Norman liberator. During the Middle Ages the Maltese Università\(^2\) ran the Island under the privileges received from Kings and Emperors, be they Norman, Angevin, Suabian, Aragonese or Spanish, under the shadow of the Cathedral which was administered by the Chapter in the absence of the mostly foreign-born bishops. The priests never formed part of this body, but occupied themselves in running the grammar school or the hospital with financial contributions from both Università and Cathedral (and occasionally from the absent bishop's rents).

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1 Sources: Period Demographic Indicators issued by the National Statistics Office of Malta, and the Demographic Review of 2002 as well as Malta’s Demography within a European Perspective 2002, both published by the National Statistics Office of Malta.
2 The Commonwealth or Municipal Authority which was the permanent government of the country.
When the Emperor Charles V granted Malta on fief to the Order of St. John in 1530, the civil and religious affairs of these islands became further entwined. The Hospitallers were a religious order responsible directly to the Pope, but they were put in charge of the defence of the country, and became de facto the government of Malta even though they were supposedly bound to respect the franchigie of the Università. Thereafter the Grand Master of the Order ruled and the Order provided all the services of Government except for some judicial functions retained by the Università's civil and criminal courts at Mdina. The Grand Master's absolute rule was at times compromised by the presence of the Bishop and later by the Roman Inquisition: that is, there were three religious authorities holding sway over the country. Over the centuries, the Church, collegiate chapters, and convents received bequests and pious foundations from knights, from the nobility and from all classes of what was a pious population, so that by the end of the eighteenth century a significant proportion of the immovable property in both islands was in ecclesiastical hands.

When General Napoleon Bonaparte, commanding an army of the French Republic bound for Egypt, landed in June 1798, the position changed: the Order of St. John was disbanded and all its property (including its thirty-eight churches and chapels together with their treasures) became State property. The other religious Orders had to restrict their presence to only one of their convents in Malta and Gozo. The sale, by public auction, of the sacred vestments and silver of the Carmelite Church and convent at Imdina, one intended for suppression, triggered the Maltese counter-revolution and the ensuing liberation of the Islands from French Republican troops with the help of the British Forces and those of their allies, the Portuguese.

The British Government, which had assisted the Maltese insurgents, was tempted into staying, and the Islanders issued it with an invitation to continue to "protect" them. However, the Declaration of Rights of 1802 made by the Representatives of the Maltese expressly stipulated respect for the status of the Catholic Church. The French experience, together with the British colonial principle of non-interference with the religious beliefs of the inhabitants, meant that throughout the whole period of colonial rule (informally from 1800 and formally between 1814 and 1964) the position of the Catholic Church was in general guaranteed. This did not mean that no changes were made. When the position of Great Britain in these Islands was further assured, a series of Proclamations and Ordinances was issued,
the effect of which was to remove some of the privileges hitherto enjoyed by the Church.³

We now know from the discovery of secret files⁴ that the British Governors were extremely jealous of the position enjoyed by the diocesan bishop and of the revenues due to his *mensa*, but they were more concerned by the fact that the King of the Two Sicilies had exercised the right of presentation of three names to the Holy See when the Bishopric became vacant. Furthermore, this right of presentation, which went back to the Normans, was entertained by the Pope for the vacancy which occurred in 1807 with the death of Bishop Labini. The Vatican was naturally happy to see this anachronistic right discontinued, and when the succeeding bishop, Mattei, died, it resisted an attempt by the British Government to impose Francesco

³ By Proclamation XXIII of 1822 a Law of Mortmain was enacted whereby the position of ownership of immovable property by the Church and its entities was frozen. The Church and its Orders, Chapters, Foundations and other entities could not acquire new property by any transaction inter vivos, except by Government dispensation, and had to sell within one year, on pain of forfeiture, any immovable property bequeathed to them causa mortis. This Mortmain principle, although rendered much more flexible by the Mortmain Law of 1967, in fact remained operative in Maltese legislation until 1992. The British Colonial Authorities through Governor Maitland justified the introduction of Mortmain by invoking the principles of free trade. Property in the hands of Ecclesiastical entities, it was said, in fact became extra commercium. This was however not the only reason. Also curbing the economic relevance of the Church was Proclamation V of 1828, which is still on the Statute Books as Chapter I of the Laws of Malta, and which provided that the decisions of the Ecclesiastical Court would henceforth have no binding effect at Civil Law except where a special Law so provides. The Acts and documents of these Courts, properly authenticated, can be produced in evidence in the Civil Courts only when relevant under the special Law. Proclamation VI of the same year (still in force as Chapter II) abolished the right of sanctuary whereby persons fearing arrest for a crime or a civil debt could take refuge in certain churches. A Law of 1831 (now Chapter III) provided that the Curia Deputation, deciding on the bestowal of Marriage Legacies administered by the Church, had to be appointed in consultation with the Governor. A Law of 1834 (now Chapter V) limits the effects of a promise of marriage to an action for damages in certain cases, solely in the Civil Courts. A Law promulgated through Proclamation VI of 1838 (now Chapter VI) provided for the appointment to Ecclesiastical positions or benefices of persons nominated by a foreign power, in the sense that such an appointment had to be approved by the Government and the appointment of an administrator to a vacant position or benefice when it had, according to custom or inveterate right, to be made by a foreign power, had henceforth to be made by the Archbishop of Malta or if the Archbishop made no such appointment within fifteen days, by the Governor.

⁴ Extant in the National Archives and now open to inspection and study.

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Saverio Caruana as the next Bishop. The ban was finally lifted when the new Pope Pius IX opted for a loose arrangement of "consultation" before every new appointment; this was put in place after Caruana’s death.

Throughout the whole period of British sovereignty, both the British Imperial Government and the Vatican avoided confrontation. Great respect was shown and precedence given by the colonial authorities to the Bishop of Malta and to visiting Cardinals and prelates. The Bishop of Malta and later, when the Bishopric of Gozo was instituted as a separate See, the Bishop of Gozo, were exempt from any criminal action in the ordinary Courts.

With the advent of self-government in 1921, complications of a local political nature found both the Government at Westminster and the Vatican again involved, albeit involuntarily. When the first Self Government Constitution was brought into force by the British Imperial Government in 1921, there was no religious clause in the document, but the first Act

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5 As an example: At one time a decision was taken to revise the Laws of Malta and a Commission was appointed, composed mainly of judges from the United Kingdom. However it soon became apparent that as the Maltese legal profession including the minority on the Commission had a continental legal culture with its basis in Roman Law, and had practised for centuries in the Italian Language, the only tenable and acceptable way to modernise would be to continue within that cultural environment without trying to impose Common Law. Eventually, a new Commission was formed, composed totally of Maltese Judges, and the Commission adopted the Code Napoleon. However, not only was any reference to divorce expunged, but the undeclared, though very much implied, premise that Canon Law was the only law regulating marriage between Catholics in Malta, meant that there was no provision for any other kind of marriage. British Protestants were married first in the Governor's private chapel at the Palace and thereafter in the newly erected Anglican Cathedral and various Protestant Churches. A problem arose concerning mixed marriages and especially the validity of marriages contracted by ex-Catholic priests in Protestant Churches. These problems gave rise, in time, to protracted negotiations at the Vatican between Cardinal Rampolla, the Secretary of State, and the Governor of Malta, Lintorn Simmons, who represented the British Government. No legislative solution was found, but both parties felt they could rely on the written advice of Sir Hadrian Dingli, ex-Chief Justice of Malta, in the sense that by inveterata consuetudo all marriages contracted in the Churches or places of worship belonging to the various denominations and religions were valid according to the Law of Malta, and the parties were bound as regards questions of validity by the Canon laws of their faith. This was substantially the law prior to the arrival of Napoleon. Jewish and Muslim marriages had always been recognised as valid in Malta from time immemorial. The matter of the validity of a 'mixed' marriage, not celebrated according to the decrees of the Council of Trent, when one party was a Catholic, even a lapsed one, was not legally addressed until 1974.
passed by the Maltese Legislative Assembly proclaimed the Catholic faith as the religion of Malta. For a time matters proceeded smoothly. However in the years 1928-32, the Government of Lord Strickland, formed by a compact between the Constitutional\(^6\) Party and the Labour Party came into collision with the Catholic Hierarchy of Malta and Gozo over a matter of Church discipline.\(^7\)

After the 1939-45 war, self-government was restored in 1947. No church-state difficulties were encountered until 1955, under the first Labour Prime Minister and subsequently with the Nationalist and coalition Governments. A number of crises occurred when the second Labour Prime Minister, Dom Mintoff, acted somewhat highhandedly in clashes with the church hierarchy led by Archbishop Gonzi in 1958\(^8\) and between 1962 and 1967.\(^9\) Mintoff had suspected collusion between the British Government, the Nationalist Party in Government locally, and the Church headed by Gonzi, during the negotiations concerning the framing of the 1964 Independence Constitution. In fact Dom Mintoff had emphasized the need to include six points, which would guarantee a more clear cut division between State and Church. The quarrel was patched up in 1967, after the achievement of Independence, but the six points were to continue

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\(^6\) The most decidedly pro-British Party.

\(^7\) A Maltese Friar too friendly with the Constitutional Club in Valletta was transferred to an Italian Convent by his Provincial who was an Italian national. Whereupon the Compact Government intervened by withdrawing the Maltese Friar’s passport and declaring the Italian Provincial Father Carta, persona non grata. Tempers flared, and following the issue of a Pastoral Letter enjoining the faithful, under the pain of Church sanctions, not to vote for Lord Strickland and his supporters, the 1930 elections were suspended during the actual voting, and the Constitution was partially suspended. Before its restoration, the Vatican sent to Malta a prominent ecclesiastic, Monsignor Robinson, who reported against Lord Strickland, in effect forcing him to ask to be reconciled in time for the 1932 elections, which, nevertheless, he lost. This did not deter him from putting all possible spokes in the wheels when the Bishop of Gozo, Monsignor Gonzi, whom Strickland suspected to be the real instigator of the Pastoral Letter, was mooted as successor to the Bishop of Malta, Monsignor Caruana. Gonzi only became Bishop of Malta in 1943, when Strickland had been dead for three years.

\(^8\) In the matter of the return to St. John’s Co-Cathedral of the Caravaggio masterpiece showing the beheading of that Saint; as well as regarding Gonzi’s allegedly pro-British attitude when the Constitution was suspended.

\(^9\) In the matter of the then Leader of the Opposition, Mintoff’s alleged extreme leftist views and laicist policies and Gonzi’s supposed leanings towards the Nationalist Party.
to trouble Labour Party-Catholic Church relations for a number of years, until the 1974 Constitutional Amendments and beyond.

Mintoff was re-elected Prime Minister in 1971 and set about a course that would ensure a removal of what he deemed was the undue influence of the Catholic Church in Malta's political, social, cultural and even economic life. In 1974, whilst the negotiations with the Nationalist Party Opposition for the amendment of the 1964 Constitution were being conducted, the Labour Government took the opportunity of trying to arrive at an accommodation on certain matters with the Vatican directly. As regards direct political influence, the Labour Party insisted on a clearer description as a "corrupt practice" of the imposition of Church moral sanctions during elections. The Constitution was amended to specify in a more precise way that freedom of conscience had as a corollary the consequence that no adherence to a religious creed should be a requirement for state positions or state examinations. All supposed or real privileges enjoyed by the Bishops were suppressed.

In addition the 1971-76, 1976-81 and 1981-87 Labour Governments took a number of steps to try to diminish the Catholic Church's influence. The Theological Faculty at the University, which had been the senior Faculty, present from its foundation in 1592, was abolished and the Church had to reconstitute it outside the University. Catholic schools which catered for a third of Maltese students were hamstrung by the imposition of "gratuity": to continue the schools' existence, tuition would have to be provided free of charge, and the Church had to fund the schools out of income from Church property. Without some kind of supplementary Government funding this was impossible in practical terms, and the schools were kept forcibly closed, with police stationed outside their doors. Help to Church schools was given, paradoxically in a wider context, but understandably in Catholic Malta, by a teachers' general strike proclaimed and maintained by the teachers of Government schools. To add to all this the Labour Government also sought to divest the Church and its institutions of all immovable property for which it had no written record of acquisition of ownership. Understandably the Courts of Malta declared this law (the so-called Devolution Act) unconstitutional as it concerned property which had been in the hands of the Church in some instances for over nine hundred years, some supposedly having been given as endowment to the Cathedral by Count Roger the Norman in 1090. Church hospitals were forced to close because the Government imposed as a condition for the renewal of their

10 Such as immunity from criminal action in State Courts.
licence that they should offer to the Government half their beds free of charge, without receiving any supplementary subvention. The Marriage Law of 1974 turned the wheel full circle: canon law was declared no longer of any effect at civil law, and all declarations by the Roman Rota as to the nullity of a Catholic marriage were not to be recognised. Foreign sentences pronouncing divorce were, on the contrary, to be given recognition. The conditions for the declaration of nullity by the civil courts of Malta were not aligned with those of canon law. This was partially rectified in 1981. Marriage according to the Tridentine Rite was not deemed to be a valid marriage if unaccompanied by registration by a government official in the church. In effect not only was a form of civil marriage provided for, a measure which was unanimously agreed upon in Parliament, but all marriages had to be "civil" marriages.

As a result of the crisis provoked by the schools and devolution issue, but not before a demonstration by Labour sympathizers had stormed into the Law Courts and the Curia, in the aftermath of the Court judgment declaring the Devolution Law unconstitutional, negotiations were initiated at the Vatican for some kind of settlement of the then current issues. Church schools had to be non-fee-paying, a desideratum for the Church, but the Government agreed to provide a partial subvention. The number and size of Church Schools had to be frozen. The Government repealed the Devolution Law. Church Hospitals never reopened as hospitals though some Religious Orders converted them into Old People's homes.

The Vatican sent to Malta as Nuncio a diplomat of the circle of Cardinal Casaroli, Monsignor Luigi Celata, and some compromise solutions were negotiated, such as the gradual introduction of Government subventions. With a change of Government in May 1987, church-state relations improved considerably and the contentieux were tackled systematically and radically. Thus it was agreed that all immovable property held by the Church which was not required for pastoral, educational or social welfare purposes, was transferred to the State at an equitable "social" price. The property which had been targeted under the Devolution Law was also transferred, and the appeal lodged against the Court judgment which had declared that law unconstitutional was abandoned. The Mortmain Law dating back to 1822, as amended in 1967, was repealed so as to remove any obstacle to the acquisition of property which could be deemed discriminatory in the context of the European Human Rights Convention. The Nationalist Government took the step, immediately on its return to office in 1987, of rendering the Convention directly enforceable. Special Accords were agreed with regard to the subvention to be given by the State so that Church Schools could continue to be free of charge, as well as concerning
the teaching of Catholic religious principles in State Schools. The Theological Faculty returned to the University. Agreement was also reached on the appointment by the Bishops in consultation with government of religious "Animators", as spiritual directors in the State schools.\(^{11}\) Some of the difficulties in the Marriage Law of 1974 as amended in 1980 were rendered more acceptable.

### III. The Present Position at Law

#### 1. In the Constitution

I. Article 2 of the Constitution deals specifically with and is entitled in its marginal note 'Religion'. The text runs as follows:

1. The Religion of Malta is the Roman Catholic Apostolic Religion.
2. The authorities of the Roman Catholic Church have the duty and the right to teach which principles are right and which are wrong.
3. Religious teaching of the Roman Catholic Apostolic Faith shall be provided in all State Schools as part of compulsory education.

This is not the original text of the 1964 Constitution. It is the text negotiated with the Vatican in 1974 to which the Nationalist Opposition in Parliament gave its assent, even though it criticised the text as not clear and not precisely worded in its second sub-article. The substitution was effected by Act LVIII of 1974.

It was explained that sub-article (1) should not be deemed prescriptive but only descriptive. In fact sub-articles (1) and (3) were not entrenched by Article 66, which establishes the special conditions for the amendment of certain articles of the Constitution, whilst sub-article (2) recognising the Church's right to teach was so entrenched. It was argued that the right to teach should be recognised even if or when the Church was no longer the church of the majority.

Notwithstanding the partial non-entrenchment, Article 2 is of great importance in that it provides the legal foundation for the practice of having the crucifix displayed in Parliament, in the courts of Law, in State schools and hospitals, and in public buildings and offices. The prayer which is re-

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\(^{11}\) The author of this contribution was then the Minister of Education delegated by the Nationalist Government to negotiate and arrive at a conclusion of these agreements and accords.
cited by the Clerk of the House before every parliamentary sitting is a Catholic prayer and every session of Parliament begins with a Mass of the Holy Spirit in St. John’s Co-Cathedral, considered as State co-owned at least. The form of oath administered to holders of office is assumed to be in the usual Catholic form, but the law provides for a solemn affirmation without any religious connotation. Under the umbrella of this provision the State pays for chaplains in hospitals, schools, prisons and the Police and Armed Forces.

Sub-article (3) was drafted when the Constitution mentioned, as it still does in Article 10, that Primary education had to be free and compulsory, but as from 1974 the age of compulsory education was raised to sixteen, and therefore as a matter of fact religious instruction in the Catholic Faith is provided in all State Primary and Secondary Schools. This does not mean that it is compulsory for students to receive it. The obligation is on the State to provide it, and to pay for it.

II. Article 32, which is an original 1964 provision, deals with the Fundamental Rights and Freedoms of the Individual, and is the first of a series of articles grouped under Chapter IV with the same description. The text reads:

Whereas every person in Malta is entitled to the Fundamental Rights and Freedoms of the individual that is to say the right, whatever his race, place of origin, political opinions, colour, creed, or sex, but subject to the respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely:

(a) life, liberty and security of the person, the enjoyment of property and the protection of the law;
(b) freedom of conscience, of expression and of peaceful assembly and association; and
(c) respect for his private and family life,

the subsequent provisions of this Chapter shall have effect for the purpose of affording protection for the aforesaid rights and freedoms, subject to such limitations of that protection as are contained in these provisions, being limitations designed to ensure that the enjoyment of said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

Malta has a long tradition of being hospitable to people of a variety of races and creeds. With the British colonial presence the number of Protestants of all denominations occupying high positions in the State was a frequent occurrence, and the islands have had a small Jewish community as well as a small number of Moslem traders for centuries. In fact in the
1860s a number of cemeteries to cater for the burial of non-Catholics were built at Government expense concurrently with the building of a Roman Catholic cemetery. The practice of non-discrimination continued during self-government, after Independence, and continues to date.

Within the same Chapter, Article 40 expressly provides for the protection of the freedom of conscience and worship in these terms:

(1) All persons in Malta shall have full freedom of conscience and enjoy the full exercise of their respective mode of religious worship.

(2) No person shall be required to receive instruction in religion or to show knowledge or proficiency in religion, if, in the case of a person who has not attained the age of sixteen years, objection to such requirement is made by the person who according to law has authority over him and, in any other case, if the person so required objects there-to;

Provided that no such requirement shall be held to be inconsistent with or in contravention of this section to the extent that the knowledge of, or the proficiency or instruction in, religion is required for the teaching of such religion, or for admission to the priesthood or to a religious order or for other religious purposes, and except so far as that requirement is shown not to be justifiable in a democratic society.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) to the extent that the law in question makes provision that is reasonably required in the interest of public safety, public order, public morality or decency, public health, or the protection of the rights and freedoms of others, and except in so far as that provision or, as the case may be, the thing done under the authority thereof is shown to be not reasonably justifiable in a democratic society.

This was not the original text in the 1964 Constitution, nor can it be said to have been very elegantly phrased and drafted. It seems to have been the result of compromise not only between the Maltese Government's position and that of the Vatican, but also of considerable cobbling of the words. However it satisfied at the lowest technical mean the compromise needs of that moment and has not caused any difficulty of interpretation since then, as it is sufficiently clear notwithstanding the abundant verbiage.

Article 45, within the same Chapter IV, provides for the remedies and the means of redress in the case of discrimination on various grounds. As a further note of clarification, sub-article (9) provides expressly:
A requirement, however made, that the Roman Catholic Religion be taught by a person professing that Religion shall not be held to be inconsistent with or in contravention of this section.

2. *In the Education Act (Act XXIV of 1988, Chap. 327 of the Laws of Malta)*

The Act was conceived when the problems which had arisen between the Church and the Labour Government in the 1970s and early 1980s were still very vivid memories. Article 3 safeguards the right of every citizen to education, and the following articles recognise the rights and duties of the parents (Articles 5 and 6), the State (Articles 4 and 7), and other entities (Article 8) amongst which the Roman Catholic Church is specifically mentioned. Sub-article (2) of that Article provides that when the Church [specifically mentioned but in common with other moral entities which do not have a profit motive] applies for a licence to open a school [provided that such application is signed by the Bishop in Ordinary] the Minister of Education [provided also that the proposed school abides by the Minimum Conditions] cannot refuse the application. In effect the Act recognises the right of every citizen, and his or her parents or guardians when still a minor, to choose the schools to attend. It also obliges the State to give proper space to schools with different cultures, charismae and characteristics, so that a proper choice is available.

There is a Scholastic Tribunal to which recourse may be made in the case of an institution deeming itself aggrieved were the Minister to refuse a licence on the basis of alleged non-conformity with the National Minimum Conditions.

3. *In the Criminal Code (Chap. 9 of the Laws of Malta)*

Under Title IV, Articles 163-165 of the Criminal Code provide for sanctions against crimes which offend the religious sentiment of others. Articles 163 and 164 deal with publicly "vilifying" by means of words, gestures, written matter, whether printed or not, or pictures or by other visible means, the Roman Catholic religion (163) or any other religion [the words used are "cult tolerated by the State", which are a leftover from previous times] (164). There is a differentiation between punishments, which was justified by the fact that public vilification of the Catholic Church could
and did produce civil commotion when, though rarely, such incidents occurred.

Article 165 punishes "whosoever impedes or disturbs the performance of any function, ceremony, or religious service of the Roman Catholic Apostolic Religion or of any other Religion" with a term not exceeding one year's imprisonment, which was to be deemed aggravated if the act amounted to threats or violence against the person, and the punishment raised to two years. Article 165 does not discriminate in any way between religions.

4. **In Fiscal Law**

The Church as such enjoys no sort of exemption from Income Tax, from Value Added Tax, from Customs Duty or from any other tax. There are exemptions from which the Church and church entities benefit in the same way as other philanthropic or charitable organisations, and there are goods, such as those which are educational or related to an educational purpose, which do not attract any tax. There are cases where the Minister of Finance can, in his discretion, recognise an institution or an initiative as philanthropic or charitable, and in the great majority of cases Church institutions and initiatives are so classified.

Malta does not have any means by which a citizen can devolve part of his or her tax payments to the Church. The Church is financed principally from the income deriving from the Government Bonds transferred in payment of its former immovable property, contributions by the faithful, and other monies and bequests.

5. **According to the Marriage Act (Act XXXVII of 1975 as subsequently amended, Chap. 255 of the Laws of Malta)**

The Marriage Act of 1975 sought first of all to provide a form of civil marriage, as before that date only marriages performed according to some religious rite were considered to be legally valid, and a marriage between Maltese Roman Catholics or in which one of the parties was a Maltese Roman Catholic was deemed valid only if it conformed to Canon Law and the norms of the Council of Trent. Prior to 1975, Canon Law was regarded as part of the *jus comune*, applied in Malta from time immemorial in matters of marriage, in the absence of any municipal legislation. It was assumed
that all Maltese were Catholics and that for Catholics there could be no marriage which was not, of itself, a sacrament. The 1975 Act specifically declared (Article 35) that Canon Law would no longer be a part of the law of Malta.

That Act as originally enacted changed completely the way in which marriage was deemed to exist in Maltese law. Thereafter all marriages had to be registered in the same way and subject to the same procedures in the Public Registry. If the parties chose to marry in Church, as most did, they had to pay a fee to an official appointed to be present and then register their marriage in the sacristy or on a side table. Without this registration the marriage would have no civil effect.

The Act moreover legislated for the essential ingredients for validity, and for the required formalities as well as the grounds for nullity. The decisions of the Ecclesiastical Courts on the existence or non-existence of a marriage were no longer recognised. On the other hand, though divorce was not introduced, the decisions of foreign courts declaring a marriage dissolved, when the foreign Court was deemed to have had jurisdiction to pronounce on the marriage bond, were henceforth to be recognised, and if registered with the proper procedure, be taken as proof of the status of liberty to marry.

The grounds for nullity were not perfectly aligned with those of Canon Law. After 1975 a state of affairs came into being whereby persons who sought to have their marriage declared null and void had not only to sue before the civil courts for the annulment to have its civil effects but, if they wished to remarry in Church, as many would for obvious reasons in a predominantly Catholic community, had also to seek a similar declaration from the Church Tribunal. Sometimes these parallel procedures produced dissimilar results. As the civil courts were now competent to examine the validity of Catholic marriages contracted before 1975, the civil judges found themselves analysing purely canon law points. In addition to the variations in the grounds for annulment, there was considerable dissimilarity in the nature of the court procedures. One advantage, amongst a number of disadvantages, of this duality was the fact that as it was possible to produce in the ecclesiastical Tribunal the evidence collected in the civil courts, a number of cases in which the respondent in a case before the Tribunal refused to appear (and could not be compelled to appear) could be resolved, as that side of the story was obtained in subizione.

In 1981 the then Labour Minister of Justice, Joseph Brincat, took into law some amendments which narrowed the gap between the grounds for annulment at Canon Law and those in the Marriage Act. However the Church continued to nurse misgivings concerning the Act inasmuch as it
did not recognise the validity of the judgments of the ecclesiastical Tribunals and in fact subjected the marriage of Catholics in church to a purely civil law registration. The Church, which had always asserted an exclusive jurisdiction over the marriage bond of Catholics, considering that for Catholics the sacrament and the marriage were one and indivisible, could not countenance a situation in which it was denied recognition of its decision on matters of Canon Law.

After the change of Government in 1987, protracted negotiations finally led to a settlement on the matter by means of two agreements entered into on the 3rd February 1993 and 6th January 1995, which later were attached to the Marriage Law Amendment Act (Act I of 1995). Canon Law marriage was given recognition at civil law and the exclusive jurisdiction of ecclesiastical Tribunals with regard to Catholic marriages was restored, however with the proviso that should neither of the parties seize the Tribunal, or if having begun a case before the Tribunal a party were to discontinue it, the civil court would exercise jurisdiction. Although this amendment resolved the dispute, it had the undesirable effect of making a purely civil marriage more attractive as, when the marriage was celebrated in church, the Tribunals had a prior claim to jurisdiction, and it was known that procedures in the church Tribunals were lengthier and the judges more reluctant to declare the nullity of a marriage. A purely civil law marriage presented no such complications and the more lukewarm of the faithful opted for this. Whilst for many years civil marriages were few in number, since 1996 there has been a dramatic increase.

The second decade of the twenty first century has seen Malta move away from its former substantially Canon Law basis, in its Laws regarding marriage and the family. In parallel with a slide in Religious practice, public opinion also moved towards an acceptance of significant changes. Possibly, symbiosis with the ideas and living style prevalent in the Northern countries of the European Union, which Malta had joined in 2003, may have accelerated the rhythm of these changes.

The first major change, in October 2011, was to allow divorce. A member of the then Government side, Dr. Jeffreyy Pullicino Orland introduced a private member’s motion in Parliament, but the Prime Minister, then Dr. Lawrence Gonzi, thought it wise to submit the matter to a referendum. In May the electorate pronounced itself in favour by 53% of the votes cast. On 25 July 2011 Parliament passed the law legalising divorce. Under this law, the demand can be brought jointly by both spouses or by one spouse only, but the Court has to be satisfied that the spouses have lived apart for a cumulative period of four years out of the immediately preceding five years; that there is no hope of reconciliation and most importantly, that
maintenance payments to the spouse and children shall continue as agreed before in the contract of separation or by law as provided for under its article 66B, which concerns maintenance obligations.

A Civil Unions Act was enacted in 2014 which recognised in these civil unions the same rights, responsibilities and obligations as marriage, including the right to joint adoption. Though contested as to the method of provision, Parliament adopted the law by a vote of 37 in favour and 30 abstentions. It was signed by the President and published in the Gazette on 17 April 2014, with the first such union being joined in June of that year.

On 12 July 2017 the Maltese Parliament passed a law legalising same-sex marriage, which law was promulgated by the President of the Republic on 1 August 2017. The Minister for Equality issued a legal notice to fix the commencement of the law on 1 September 2017.

A Cohabitation Law was passed in 2017 which granted certain limited rights (such as medical decisions for a partner) for those cohabiting for more than two years, as well as for a contractual arrangement between the de facto cohabiting partners. The Law also provided for a unilateral declaration by a cohabitee, in order to secure certain rights (including those under the Rent Laws). Couples who are living together and who are in a cohabitation agreement can declare spousal privilege.

The Marriage Act (amendment) Act of 2017 (Act XXIII of that year) whilst declaring that Canon Law ceased to be the Law of Marriage in Malta, nevertheless made an Agreement concerning Catholic Marriages, concluded with the Holy See, part of the Marriage Law of Malta. The Agreement [Agreement between the Holy See and Malta on the Recognition of Civil Effects to Canonical Marriages and to Decisions of Ecclesiastical Authorities and Tribunals about the same Marriages (as amended by the Terzo Protocollo Addizionale)] had as a preamble:

“The Holy See and the Republic of Malta, considering, on the part of the Holy See, Catholic doctrine on marriage, as also expressed in the Code of Canon Law, as well as the teaching of the Second Vatican Ecumenical Council on relations between the Church and the State, and, on the part of the Republic of Malta, the principles enforced by the Constitution of Malta;
- wanting to ensure, in line with fundamental human rights and the values of the family based on marriage, a free choice in matters of marriage; have recognized that it is opportune to reach an agreement on the recognition of civil effects to canonical marriages and to the decisions of the ecclesiastical Authorities and tribunals about the same marriages”.

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This amendment, in fact, retained, in the case of marriages celebrated in the Catholic Church, the provisions of Canon Law, and gave recognition at Civil Law to the decisions of Church Tribunals with regard to the validity of such marriages.

The present Government is currently proposing a draft amendment to the Embryo Protection Act which, very controversially, contemplates the possibility of anonymous gamete donation and surrogacy. The Opposition has spoken against this amendment. The Bishops have also attended a street demonstration against the amendment, which is still currently being debated, but which the Government side seems determined to pass. In a quite novel development, the President of the Republic has urged more consultation with the public and civil society on this controversial amendment.

Throughout the whole series of changes, the Catholic Hierarchy, though commenting critically, has not mounted any kind of sustained crusade. Although the Labour Party, in Government since 2013 has been in favour of the changes, the Nationalist Party when in Government before that year, and thereafter in opposition, has not been united in its stand, occasionally in part, agreeing to the changes.

6. Under the Cultural Heritage Act (Act VI of 2002)

As in the previous Act of 1925, a special position at law was granted by the 2002 Act to cultural property belonging to the Catholic Church and to Catholic religious orders and "destined or used" for religious purposes, in that they were deemed to fall (Article 52) under the exclusive regulation and superintendence of the Catholic Cultural Heritage Commission. A similar exemption was given to cultural property belonging to other Churches or religious communities.

However, should no such Commissions be appointed, the regulation and superintendence falls to the Superintendence of Cultural Heritage constituted under Article 7 of the Act.

When Napoleon Bonaparte conquered Malta and expelled the Order of Saint John, all the property belonging to the Order was declared Government property, including not only the palaces and auberges, but also the churches and chapels. Foremost amongst these churches was the Conventual Church which contained perhaps some of the most important cultural treasures of Malta, including paintings by Caravaggio and Mattia Preti. Napoleon gave permission to the Bishop to use the church as co-cathedral by a note from his own hand, which is still extant. The Catholic Church
has always contended that St. John's Co-Cathedral and all the other churches and chapels which belonged to the Order – which was a religious order owing direct allegiance to the Pope – could not be taken over by Government. Every year since 1798 has seen St. John's used by the Cathedral Chapter and the Bishop, and also serving the State as the "Official" Church for public thanksgiving services. The expenses of its upkeep were defrayed by the Government but at one time problems arose as to its being visited as a tourist attraction and for its proper safeguard. A Foundation was set up to administer this important monument through a Board on which both the Government and the Church appointed Trustees.

7. The Public Meetings Ordinance (Chapter 68)

Under Section 7 of this Law, the Commissioner of Police may order that a public (including a political) meeting be not held on any day, in any town or village where the meeting was intended to be held, on which a public solemnity or festival is to be celebrated. Sub-section (2) states that for the purpose of that Section "public solemnity" includes solemn functions held inside any church building, which it is reasonable to think might be interfered with by speeches delivered at, or the commotion caused by, a public meeting held in the vicinity of that church.

IV. The Present Position in the Cultural, Social, Political and Economic Life of Malta

The Church has a Radio Station (Radju ta' kulħadd [RTK] literally Everybody's Radio) which is one of the most popular and which enjoys considerable prestige because of its unbiased reporting of political events. Two weekly newspapers (Lehen is-Sewwa, [literally the Voice of Truth] founded in the late twenties, and Il-Gens [literally the old Latin meaning the people]), and a good number of other publications mostly devotional or sectarian, provide ample space for disseminating a broad mixture of Catholic opinion. In addition, most of the other secular dailies [three privately owned English language and two in Maltese, one owned by the Nationalist Party and one by the General Workers' Union] or weeklies have pages allotted to church news or opinion.

The religious feasts of the country, national or local, are very closely followed by the general public. Church attendance on Sundays is high by
most standards. There has not been a generalised apostasy of the working class or of the bourgeoisie. The Church also takes part in the cultural life of the country especially through its patronage of the arts, mostly painting and music in the churches.

There are sixty church schools across the whole range from kindergarten to sixth form, and about a quarter of all Maltese students of the relevant age groups attend these schools. These schools are free of charge and are heavily subsidised by Government. Admission to the boys' secondary schools is mostly through passing a common entrance examination.

The Church runs a crèche, a number of orphanages, as well as a home for the disabled which is in fact the only one catering for this need in Malta. In addition there are various old people’s homes run by religious orders and by Catholic Action. The Emigrants' Commission runs welfare services for Maltese migrants, and as these have become progressively less in need of help it has taken on the care of refugees coming to Malta from the Third World, often in very difficult circumstances. There is also a Jesuits' Justice Commission championing the cause of dignified treatment of illegal immigrants.

The Church hierarchy generally tries to maintain a strictly neutral stance in matters of political controversy, even in the case of major national choices such as the Independence Referendum in 1964 and the very recent 2003 Referendum concerning the European Union Accession Treaty. Nevertheless the Church's teachings influence public opinion and have an indirect, and sometimes a very direct, influence on the country's political choices.

The Church owns a bank, the APS Bank, formerly bearing the full name of Apostleship of Prayer Savings Bank, which is no longer merely a savings bank but performs a number of banking services, and is the third in importance, albeit a distant third, in Malta. It also has other investments, but conducts its activities in the economic field with the greatest possible discretion. When the bulk of church immovable property, that which was not in use or intended for pastoral or social work, was transferred to Government, by agreement and under the terms of Act IV of 1992, the price, amounting to 29,000,000 Maltese pounds was paid in Government Bonds which provide a substantial yield. The Dioceses of Malta and Gozo publish yearly statements of account concerning the administration of Church finances.

The State pays for Catholic chaplaincy services in public hospitals and old people's homes, in the prisons, in the public cemetery, as well as in the armed forces and police.
The Anglican Church has a beautiful cathedral at Valletta and another church in Sliema, there are also churches of other Protestant denominations (Church of Scotland, Baptist, etc) mostly serving the expatriate community. There are some Maltese Jehovah's Witnesses and members of the Unification Church, though the numbers are small. There is a mosque attended mostly by foreign residents or workers from Moslem countries and some Maltese wives and the offspring of mixed marriages.

V. Concluding Note

Relations between the Holy See and the Government of Malta have returned to normal after a period of some tension in the 1970s and early 1980s. There has been no confrontation between the Catholic Hierarchy and political leaders for quite some time. Though the Labour Leader Dr. Alfred Sant has occasionally thrown a ballon d'essai concerning the introduction of divorce which the Church opposes, the issue has not been presented to the electorate for an expression of opinion. There is a general consensus in both major parties that abortion should continue to be considered a crime. Neither the introduction of gay marriages nor the decriminalisation of euthanasia has been formally proposed by any political party, not even by the small Green Party which is not represented in Parliament.

Though social mores have been influenced by more liberal life styles, the general ethical tone of Maltese society can be seen to be firmly rooted in the Catholic tradition. This notwithstanding, there is a general feeling that the State should guarantee non-discrimination against people for their faith or lack of it. It is a generally held view that the State should be strictly lay and that the Catholic Church should continue to enjoy the utmost liberty but that there should be no trace of imposition through social censure or in any other way of any religious faith.

VI. Bibliography

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