The first Council of Government to be constituted in Malta under British rule was established in 1835. Until that date Malta had been governed by a Governor alone (before 1813 by a Civil Commissioner) without even the assistance of an advisory Council. Indeed the formation of such a Council had already been suggested by the Commissioners of 1812, (1) and when Sir Thomas Maitland was appointed first “Governor” of Malta in 1813, he was in fact empowered to call such a body at his discretion; (2) but he preferred to rule unaided, and until 1835 all power, executive and legislative, was concentrated solely in the hands of the Head of the Government. It so happened that the acquisition of Malta coincided with the commencement of a new phase in British colonial policy, the transition from the old representative system to the new Crown colony system, for the Anglo-French War of 1793-1815 produced not only the new Empire but also the new Crown colony system, and in the case of Malta special strategic reasons, no doubt, suggested a strong autocratic government.

On 1 April 1835 William IV gave Instructions (3) for the constitution in Malta of a Council “to advise and assist in the administration of the government thereof”, such a Council to consist of seven members exclusive of the Head of the Government. Four of these were to be official members (the Senior Officer in command of the Land Forces not being in the administration of the government, the Chief Justice, the Bishop of Malta and the Chief Secretary to Government) and the rest were to be unofficial members, to be selected by the Head of the Government, two from amongst the chief landed proprietors and merchants of Malta, being His Majesty’s “native born subjects”, and the remaining member from amongst the British born “principal merchants of the Island”, who had resided in the Island for not less than two years. This Council was intended to be a legislative one, and thenceforth enactments were preceded by the legislative formula “Be it enacted by the Governor, by and with the advice and consent of the Council of Government and by the authority thereof”. But the Head of the Government retained an overriding power inasmuch as he could act contrary to the advice of the majority or even the whole of the Council, though he could do so only “in special cases” and on his own responsibility. Indeed the Council of 1835 was a product of its times and bore on its face its own transitional character.

The importance of this body politic was at the time of its creation both overrated and underrated. Sir Frederick Ponsonby, the Lieutenant Governor, announced it “with feelings of high satisfaction,” (4) but he himself had previously suggested a larger unofficial representation. (5) On the other hand, Maltese politicians deprecated this Council to the extreme; but surely it tempered to some extent the hitherto overwhelming power of the Head of the Government, at the same time enabling the latter better to gauge public feeling.

There were, therefore, two conflicting views at the time about this Council. The Government considered it a boon for which the Maltese ought to have been grateful. (6) “The

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(1) Report of His Majesty’s Commissioners in the affairs of Malta (1812) in C.O.158/19. This Report, which has never been wholly published, is now accessible to the public in the P.R.O., London, where the Colonial Office papers hereafter mentioned have been preserved.


(3) The Instructions are in C.O.159/12 and C.O.161/2, pp. 48-64. Cf. also dispatch of 1 April 1835 in C.O.159/12.


(5) Ponsonby to Stanley, 11 February 1834, C.O. 159/79.

creation latterly of a Council of Government," wrote Lieutenant Colonel George Cardew when he was administering the Government in Ponsonby's absence, "has affected a complete change in the Constitution of the Government of Malta; such a Council seems adequate for the maintenance and defence of the rights of the people and for all purposes of legislation in so small a community." (7) The inhabitants, however, appear to have thought otherwise. George Mitrovich, who was then championing "the Cause of the People of Malta" in England, fulminated against it from London, (8) and there came further additions to an already long sequence of petitions and memorials. A petition dated 1 November 1835 prayed once more for a representative popular Council, (9) and on June 1836, William Ewart, one of the members for Liverpool, rose in the House of Commons to present "a petition from the clergy, nobility and other inhabitants of Malta." As the subject was one of importance, he felt it his duty to state as briefly as he could the grievances of which the petitioners complained, one such grievance being the inadequacy of the Council recently established. In the petitioners' view, he added, "this was a mere mockery of the assembly that they had sought for,

Good Hope, made to the Colonial Office for Representative Government, together with copies of the Answers thereto; Also copies of all Applications of a similar import from other British Colonies within the last ten years," dated Colonial Office, 12 June 1846, and ordered by the House of Commons to be printed on 17 June 1846.

(7) "Report on the Administration of the Government of Malta, etc." in C.O.155/89, pp. 143-144. Cf. also Parl. Pap. H.C. 1846. (in 400) XXIX, p. 121. "Copies of all Applications from the Colonists of the Cape of Good Hope, made to the Colonial Office for Representative Government, together with copies of the Answers thereto; Also copies of all Applications of a similar import from other British Colonies within the last ten years". dated Colonial Office, 12 June 1846, and ordered by the House of Commons to be printed on 17 June 1846.


(9) This petition is in Mitrovich, The cause of the people of Malta, London, 1836, pp. 83-85. A translation of it was also transmitted by Cardew to Glenelg annexed to a despatch ("Confidential") of 4 February 1836, C.O.155/92.

and they now prayed that such a Legislative Assembly, constituted upon the principles of the British Constitution, would be granted to them." (10) Sir George Grey, the Colonial under-secretary, then rose to state that it was the intention of the Government to send out "a Commission to inquire into the grievances of the Maltese and to suggest the remedies that might be deemed advisable for their removal." The Commissioners of 1836, however, brought about no change either in the composition or the powers of the Council; and after 1838 the opinion gradually gained ground that the reforms effected by them were not sufficiently far-reaching and comprehensive, though it is beyond doubt that those enlightened Commissioners were responsible for numerous salutary reforms in the administration of the Island.

From 1835 to 1849 this first Council of Government functioned rather smoothly; but outside the Council rooms political agitation was far from dormant. Two new petitions were drawn up in 1839, both clamouring for a representative Council. (11) Moreover a Comitato Generale Maltese had been earlier formed and eventually tended to assume the role of a popular counterpart of the Council of Government. It became, as it were, a shadow National Assembly. (12) Various religious questions also cropped up, and the relations between Church and Government were at times rather strained. Furthermore, the desire for a representative popular Council was at this time made even more acute by the infiltration, through numerous political refugees, of liberal ideas from the revolutionary Italian peninsula, and as


(11) Two copies of these petitions are to be found annexed to two despatches from Bouvier to Normanby, 19 and 24 June 1839, C.O.155/106. They are also to be found printed in Parl. Pap. H.C. 1846 (in 400) XXIX, pp. 124-127.

(12) Cf. a pamphlet by Dr. Giuseppe Sammut dated 3 September 1849: Il Dr. Giuseppe Sammut deputato del Comitato Maltese ai suoi cari compatriotti, Malta.
Ordinance No. IV of 1839 had established freedom of the press in the Island, a remarkable number of periodicals flourished during this period. Most of them were very loud and virulent in their systematic attacks upon the administration of the government, and Italian political refugees often fanned the flame by contributing to some of these publications. The result was that political agitation in Malta became at this time more reactionary than ever.

Matters came to a head under the governorship of Sir Patrick Stuart. The Maltese newspapers of the time were rather too lavish in their vitriolic attacks on him personally and on his administration, and he eventually felt it his duty to report to the Secretary of State that “the Public Press of Malta had become highly licentious,” mentioning the Portafoglio Maltese as one of the most violent of the local papers. (13) Then came the riot of Carnival Sunday, 22 February 1846. (14) which formed the subject of a lengthy memorial forwarded directly to the Secretary of State by Dr. Francesco Grungo and eight others on 23 April 1846. (15) In that document the signatories took advantage of the events related by them to make a further demand for popular control in the Council of Government. Earl Grey, however, desired Stuart to inform the memorialists “that he was unable to hold out to them any prospect that any such change as they contemplated would be introduced into the present system of government of the Island.” (16).

Stuart resigned the governorship of Malta in 1847. Admittedly he had his faults, but he was perhaps also unfortunate in that he necessarily suffered by comparison with his immediate predecessor, one of the most popular Governors of Malta, Sir Henry Frederick Bouverie. However, the choice of Stuart’s successor was both judicious and fortunate. Sir Richard More O’Ferrall, the new Governor, was welcomed with considerable rejoicing and warm enthusiasm as it was then hoped that the appointment of a civil Governor “would lead to the long-claimed right to a share in the Government through Representatives elected by the people.” (17) Queen Victoria’s Commission of 27 October 1847 appointing this very able Irishman Governor and Commander in Chief was read at the Palace, Valletta, on 18 December 1847, before he was sworn in, and on 27 December 1847, in an address to the Council of Government, the new Governor communicated to that body the Secretary of State’s Instructions of 26 November 1847. (18) Thereupon, a letter, signed by twenty of the principal inhabitants of the Island and dated 2 January 1848, prayed for the publication of the Instructions for the benefit of the public, (19) and a memorial, signed by one hundred persons and dated 10 January 1848, likewise prayed for the publication of the Governor’s Commission in the Government Gazette. (20) Both requests were eventually complied with, and although, as O’Ferrall remarked, the Instructions were received with some disappointment inasmuch as they brought about none of the expected reforms, still “they did not call forth any angry expression or diminish the loyalty and confidence which they (the Maltese) had so long reposed in the Justice of the Sovereign and Her Government.” (21)

The Instructions (22) are of particular interest inasmuch as they expound the motives which prompted the British Government to appoint a Governor who was both a civilian and a Catholic. Earl Grey stated therein that as the results of the Commission of Enquiry of 1836 had not proved so

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(15) A copy of this memorial is to be found annexed to a despatch from Stuart to Gladstone, 11 June 1846. C.O. 158/134.
(17) O’Ferrall to Grey, 1 February 1849, C.O.158/145.
(18) Malta Government Gazette, 31 December 1847.
(20) Ibid., pp. 58-60.
(22) Grey to O’Ferrall, 26 November 1847, C.O.159/21.
satisfactory as had been generally anticipated, a very general feeling had been expressed in Malta in favour of no longer placing in the same hands the Civil Government of the Island and the Military Command of the Garrison, in order that the Governor might be enabled to devote a larger share of time and attention to the civil affairs of the Island. As Her Majesty had been graciously pleased to accede to the prayers of the Maltese for a civil Governor, the advisers of the Crown, in recommending O’Ferrall for the appointment, desired to afford to the Maltese people a practical proof that religious opinions were no disqualification from offices of great trust and importance under the Crown. “Her Majesty,” added Earl Grey in the Instructions, “is deeply sensible of the noble confidence reposed by the Maltese People in the honour and good faith of Great Britain at the period when having nearly achieved their independence by their own gallant efforts, they placed their dearest interests almost unconditionally at the disposal of Her Royal Predecessor. Her Majesty responds to that confidence and desires that all the Institutions, Civil and Religious, to which the Maltese are attached, and which they have so long enjoyed, may be fostered and preserved, subject to such amendments and improvements as time and altered circumstances may render necessary, in concurrence with the feelings and opinions of the People for whose benefit they are intended. You will bear in mind that an additional responsibility attaches to the Government of an unrepresented People, and renders it more incumbent on those who administer their affairs to supply, so far as possible, the advantages to be derived from direct representation by an attentive observation of Public Opinion.”

O’Ferrall’s governorship is a landmark in Maltese history. Although political agitators did not fail to make trouble for him as well, he was one of the best Governors of Malta and one that earnestly endeavoured to better the conditions of the Island in every respect. He was not only a remarkable administrator, but also a prudent reformer and a fine gentleman indeed. Immediately he assumed the administration of the civil Government, he set his heart on a constitutional reform, and the sincere enthusiasm with which he set out to secure it cannot fail to command admiration. Throughout the year 1848 he addressed various confidential communications to the Home Government on the matter, with the result that, on 19 May 1848, Earl Grey transmitted to him the draft of an Instrument on the subject of constitutional changes in Malta, at the same time stating that he proposed not to proceed any further with the matter until he was acquainted with O’Ferrall’s own views and wishes on the subject. (23) Thereupon, on 1 February 1849, the Governor transmitted to Earl Grey a lengthy and considered report, (24) setting forth in detail his proposals for the constitutional reform which he contemplated. He premised that he approached the subject with diffidence and anxiety as he had had to consider that important matter not only with reference to the internal government of the Island, but also with regard to its position and intimate intercourse with other states where great changes were in progress, and to endeavour to frame a system of government for Malta consistent with its character as a fortress and yet in harmony with the institutions recently established in neighbouring states. The course which he recommended differed from that adopted in other colonies, but the circumstances of Malta (the small extent of its territory, its dense population, its limited and precarious revenue and the complications of its laws and customs so dissimilar to those of Great Britain) appeared to him to justify that difference. He was aware of the effects recently produced by a sudden excess of popular power in other countries, and opined that “a modified and restricted application of the principle of self-government was equally

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the establishment of that principle and... the only safe course both for the true interests of the Maltese and the continued peace of the Island." O’Ferrall gave various reasons for the proposed constitutional reform. In the event of changes in the existing system of taxation he said, the responsibility therefor would not rest with the Government alone or a Council like the one then existing. Other changes of importance, moreover, such as the enactment of the Criminal Code (so long in preparation) involving the lives and liberties of the people, could never be satisfactory emanating from a Council of seven, whereof only two were Maltese and neither of them acquainted with the law. Furthermore, the servants of the Crown charged with the administration of the government laboured under great disadvantages from not having the opportunity of making known, through representatives possessing the confidence of the people, the reasons that guided them in the administration, with the result that many measures were deprived of half their benefit while others were misunderstood or misrepresented. But, added O’Ferrall, the most cogent reason of all for the proposed constitutional reform was “the confidence inspired by the loyal, peaceful and confiding demeanour of the Maltese during a period of universal excitement.”

O’Ferrall discounted a proposal submitted for his consideration by the Home Government concerning the establishment of Municipal Councils in different parts of the Island because, apart from its inherent difficulties, the establishment of such Councils would effect little good and would be liable to more objections than a legislative body partly elected. He then proceeded to set forth his scheme for the constitution of “a Legislative and Municipal Council composed in part of Members sitting in virtue of their offices and in part of Members elected by a Constituency.” In fact, he recommended a Council of not more than eighteen members, whereof eight were to be elected members (seven for Malta and one for Gozo) and the remain-

ing (five English and five Maltese) were to be official members. The following persons were proposed as official members: the Governor (presiding), the General commanding the Troops, the Chief Secretary to Government, the Auditor of Accounts, the Collector of Customs (all British), and the Crown Advocate, the Collector of Land Revenue, the Cashier of the Treasury, the Purveyor of Charities and the Superintend-ent of Quarantine (all Maltese). “There would thus be,” O’Ferrall pointed out, “a majority of thirteen Maltese members, sufficient to secure all the guarantees under which the Maltese invited the British to occupy their Island.” He further proposed the establishment of three Committees, namely a Committee of Public Charities and Sanitary Police to be composed of five members, a Committee of the University and primary instruction to be composed likewise of five members, and a Committee of Public Works, Lighting, Paving and Cleansing, to be composed of three members. Each of these Committees, nominated for one year, would exercise its functions during the prorogation as well as during the sitting of the Council, with power to investigate accounts, to enforce the rules and regulations of public establishments, to investigate complaints, report abuses and recommend improvements to the executive authority, and to report annually to the Council as to the state and efficiency of the departments under its supervision. Each of these Committees would be composed of members of the Council, the elected members forming always a majority.

Another proposal was, as he put it, the fixing of a “Civil List” (comprising all permanent charges upon the Consolidated Fund) equal to the establishment of the year 1849 (£52,273), such Civil List not to be subject to the control of the Council and to include the Civil, Judicial and Police Establishments, the Pensions, the Military Contribution and a sum available for Civil Contingencies. Thus O’Ferrall contemplated restricting the power of the proposed Council as far as the Civil List was concerned, but also, he pointed out, placing under the control of the proposed
Council a far larger portion of the revenue than had been previously at the disposal of the then existing Council, such portion including all the expenditure that could in any way be regarded as altogether or in part partaking of the Municipal character.

Other proposals were: that of empowering the Governor to assemble, prorogue and dissolve the Council on his own authority as well as to suspend its functions in time of war, that of limiting the duration of that body to not more than five years, that of empowering it to require the aid of any one or more of the Judges in the discussion in Committee of any law affecting the life and liberty of the subject, (25) and that of empowering any member of the Council to initiate legislation not involving a grant of public money. (26).

Regarding the franchise, O’Ferrall proposed the adoption of the general qualifications for jurors under existing Maltese law as the qualifications for candidates and voters, without taking into account the statutory disqualifications by age and profession, (27) thus enfranchising all male persons not under twenty one years of age and competently versed in either English or Italian, who had at least one hundred scudi of Malta (£3. 6. 8) a year in lands, tenements or rent, or occupied, as at least yearly tenants, a dwelling of the yearly value of fifty scudi of Malta (£4. 3. 4), or were partners in a mercantile establishment with a person possessing either of these qualifications.

Such was O’Ferrall’s scheme for “a transition from a form of government which may be termed absolute to one better suited to a British Dependency and more congenial to the times.” It was only slightly modified by the Home Government, and this was done chiefly at the suggestion of Sir James Stephen (1789-1859), whose personal influence in the framing of colonial policy was perhaps unsurpassed. (28) “The modifications,” wrote Earl Grey, “are, in reality, slight, and none of them, I trust, is calculated, in any way, to abridge or impede the great object of the measure — the conveying to Her Majesty’s Maltese subjects a substantial share of power, through their representatives, in the preparation and enactment of those laws by which they are to be governed.” (29) Thus it was decided that, considering the nature of the functions of the Council, the title Council of Government was better than that of Legislative Council. The clause providing that in time of war the functions of the Council could be suspended on the Governor’s responsibility was deemed unnecessary inasmuch as the Governor was given power at any time to dissolve the Council, while if still more stringent measures were required, power was reserved to the Crown to repeal, alter or amend the Letters Patent constituting that body. Another power expressly reserved to the Crown was that of disallowance. Thus also the provision concerning the power of the Council to call upon the Judges for their assistance was made more comprehensive, and not only was the Governor made a member of the Council as well as its president, but it was also expressly provided that his assent was essential for the validity of all Ordinances, which, incidentally, were thence-

(25) Under the 1835 constitution, the Chief Justice was originally one of the official members of the Council of Government; but probably in view of the trouble which about that time had been generally caused by other Chief Justices on other colonial Councils (e.g. the Cape, New South Wales, Trinidad, Ceylon, etc.), and perhaps especially in view of Sir John Stoddart’s particularly turbulent character, his attendance at Council sittings was restricted only to those occasions when the business to be transacted consisted “in the consideration of the enactment of any Legislative Act.” Cf. the Instructions and the covering despatch already quoted.

(26) This power did not exist under the 1835 constitution.

(27) Cf. article 7 of Proclamation No. VI of 29 October 1829; the disqualifications which O’Ferrall proposed to set aside were those laid down in article 8 of that law; those laid down in article 9 were, however, to be adopted.

(28) This appears from a minute in red ink on the first page of Grey’s draft reply to O’Ferrall’s despatch of 1 February 1849 immediately following this despatch in C.O.158/145.

(29) Grey to O’Ferrall, 22 May 1849, C.O.159/22.
forth to be styled “Ordinances enacted by the Governor of Malta, with the advice and consent of the Council of Government thereof.” Moreover, the Governor was given not only an original vote but also a casting vote, which was very important in view of the narrow gap between the official and the unofficial members. (30).

Only two important departures were made from O’Ferrall’s mature scheme. One was the omission of the particulars concerning the time and the manner of the elections. In fact, it was thought unadvisable to incorporate such particulars in “an Instrument necessarily of so general a nature as a Charter,” and, on the other hand, their insertion in the Instructions would not have been “according to precedence or convenience.” Thus power was conferred on the Governor to provide therefor by Proclamation. But a far more important departure from O’Ferrall’s scheme was the non-adoption of the suggestion concerning the establishment of Committees. “While I concur with you,” wrote Earl Grey to O’Ferrall, “in regarding some such arrangement as likely to prove of service to the Island, it has not appeared to me to be either necessary or advisable to create Institutions, so novel in character, by positive clauses in the Royal Charter. When the Council is constituted with full legislative powers, you will have no real difficulty in creating, by enactments or otherwise, any such Bodies, whether Com-

mittees or Commissions, as public expediency may require, for the purposes which you have enumerated.” (31) It is doubtlessly interesting to note here that the idea of committee government was taken up again—though, of course, in a much more complex form—in the framing of the Ceylon constitution of 1931. (32).

Both the Letters Patent constituting “a Body Politic to be called and known by the name of The Council of Government of Malta” and the accompanying Instructions were issued on 11 May 1849. (33) In Malta they were made public by the Governor on 23 June 1849, and on the same day a Proclamation was issued enacting “a Law to regulate and appoint the Election of Members to serve in the Council of Government of Malta.” (34) Exactly a month later a Commission under the Seal of Government was issued to five Maltese advocates for revising the lists of persons deemed qualified to vote. (35) Such lists had been previously compiled, in and for Malta, by the Registrar and Marshal of the Court of Special Commission together with two Senior Magistrates and the Inspector of Police, and in and for Gozo, by the two Senior Magistrates together with the Inspector of Police. (36) Voting tickets were distributed by members of the Police to the electors on 10 August 1849, (37) and the elections started six days later. The method of voting was as follows: each voter in Malta was to insert on his ticket not more than four names, and the seven persons receiving

(30) The 1833 constitution made no express mention of the Governor’s vote, and in view of the silence of the Letters Patent and the Instructions on the subject, it was at first resolved that the Governor should not vote. The Secretary of State, however, decided, though not on very strong grounds, that the Governor should vote. (Minutes of the Council of Government, C.O.161/1, pp. 21-23; Cardew to Glenelg, 6 February 1836, C.O. 158/88 and Glenelg to Cardew, 16 March 1836, C.O.159/12). The Governor had both an original vote and a casting vote also in the New South Wales constitution of 1828 (Melbourne, Early Constitutional Development in Australia, New South Wales, 1788-1856, 1984, p. 150), the Ceylon Constitution of 1833 (Mills, Ceylon under British Rule, 1765-1833, 1922, p. 106), the Cape constitution of 1834 (Kilpin, The Parliament of the Cape, 1828, p. 57) and several other colonial constitutions of the time (Cf. Wrong, Government of the West Indies, 1923, p. 73, note 2).

(31) Grey to O’Ferrall, 22 May 1849, C.O.159/22.

(32) Ceylon State Council Order in Council, 1931; Constitution of Ceylon, Cmd. 3862 (1931).

(33)Both are in Ordinances and other Official Acts published by the Government of Malta and its Dependencies, Malta, 1853, Vol. X, pp. 70-72 (Letters Patent) and pp. 73-77 (Instructions).

(34) Proclamation No. I of 23 June 1849, in Ordinances, etc., pp. 4-9.

(35) Ordinances, etc., pp. 77-78. The Commissioners were: Dr. Antonio Maria Debono, Dr. Giovanni Paolo Camilleri, Dr. Alessandro Augusto Tortelli, Dr. Giuseppe Randone, Dr. Lorenzo Xuereb and Dr. Nicoló Balzan.

(36) Articles I and 2 of Proclamation No. I of 1849.

(37) Ordinances, etc., pp. 78-79.
the largest number of votes (but not less than one hundred votes) were to be deemed duly elected; in Gozo each voter was to insert one name only on his ticket, and the person receiving the largest number of votes was to be deemed duly elected. Each ticket bore on its back both the name of the voter and that of one of the Commissioners. (38) After the elections, the sealed boxes containing the votes were deposited with the Registrar of the Court of Appeal, and an open court was held by the Commissioners in Valletta for the purpose of verifying and counting the votes. (39) A document drawn up by the Commissioners and declaring the candidates returned was then deposited with the Registrar of the Court of Appeal on 22 August 1849. Eventually the number of electors who had cast their vote was 3056 for Malta and 259 for Gozo. The following were returned; Giuseppe Pulis Montebello, Dr. Don Filippo Amato, Michelangelo Serrin, Monsignor Dr. Don Annetto Casolani, Monsignor Dr. Don Leopoldo Fiteini, Dr. Arcangelo Pullicino, Giovanni Battista Vella, for Malta and Dr. (later Sir) Adriano Dingli for Gozo. (40) Then, nearly four months later, the Governor announced by Proclamation (41) that a session of the new Council was to be held at the Palace, Valletta, on 8 January 1850.

The new constitution did not receive the general acclamation which both O’Ferrall and Earl Grey had probably anticipated. The greater disappointment must certainly have been O’Ferrall’s for he had indeed pressed for it with sincerity, energy and enthusiasm. In fact, some politicians lost no time in discrediting it, and their views were also reflected in the local press. (42) They were very loud in advocating abstentionism in the elections, though the number of votes eventually cast could not have altogether gratified them. There were, however, also other politicians and writers who hailed instead O’Ferrall’s constitutional reform as an important milestone in the constitutional progress of the Maltese people. (43)

The constitution of 1849 does not appear to have been as yet contemplated in 1846; on the contrary, Earl Grey, as has already been stated, expressly declared in that year that he could not hold out to the Maltese any prospect of changes in their system of government. It was probably conceived only in 1848, and it would appear reasonable to link it with political events on the Continent during that same year. It may not perhaps have come up to the expectations of the more “liberal” Maltese politicians, but it was certainly an important concession. Its importance lies not in the fact, emphasized by O’Ferrall, that the Maltese element was preponderant on the Council, for it was not the racial majority that mattered in practice, but, as in all other colonial Councils, the official majority, which has been called the very kernel and essence of Crown colony government. (44) The true importance of the 1849 constitution lies rather in its incorporation of the elective principle. It is true that New South Wales was granted an elected majority on its Council in 1842; but of all the other colonies, Malta was the first to witness the introduction of elective representation in its constitution, — even before other colonies that have since attained Dominion status. Malta was the first colony to have an elected minority on its Council as a preliminary stage in the advance towards representative government. (New South Wales was given a two-thirds elective majority straightaway). Little wonder then that Earl Grey looked upon the

(38) Articles 13 and 15 of Proclamation No. 1 of 1849.
(39) Articles 16, 17, 18 and 20 of Proclamation No. 1 of 1849.
(40) Ordinances, etc., p. 79.
(41) Proclamation No. VI of 13 December 1849 in Ordinances, etc., pp. 81-82.
(42) Cf., for instance, the Malta Mail of 27 July and 3 August 1849.
(43) Cf. a rare anonymous pamphlet, published in Malta and dated November 1849, entitled Il Primo Periodo dell’Amministrazione dello Onorabilissimo Signor R. More O’Ferrall in Malta.
Malta constitution of 1849 as an important experiment. (45) But the early blossoming tree was not the first to yield the ripe fruit, for the new representative system appeared in Malta only in 1887, sixteen years later than in the Leeward Islands and five years later than in Cyprus, and then only to disappear again in 1903 with a reversion to the 1849 situation.


ADVOCATES UNDER THE CODE DE ROHAN AND THE PRESENT LAWS
By Hugh W. HARDING, B.A., LL.D.

In the same way as under the present legal system there is a special title (Title VII) of the Code of Organization and Civil Procedure dealing with the subject of Advocates, so also in the Code de Rohan there was a special chapter (Capo XL, Libro 1) on the subject. Indeed, it would seem that the Code de Rohan dealt with the institute of Advocates, their rights and duties, even more fully than the present laws do. The reason probably lies in the fact that the legislator, in the case of the Code de Rohan, unlike the comparatively modern legislator, did not find the tradition of the Maltese bar already established on a firm basis and guaranteed by high standards of professional rectitude. However, even a cursory view of the two Codes will show that, in the main, the basic principles have remained the same.

This fact appears clearly at the very outset. Just as the present law starts by saying that no person may exercise the profession of Advocate without the authority of the Governor granted by warrant under the Public Seal of Malta (S.77, Ch.15), so also the first provision of the Code de Rohan states that no person may exercise the profession of Advocate without previously obtaining the necessary licence from the Grand Master.

On obtaining the warrant, in terms of the Code of Organization and Civil Procedure, the person concerned is to take the oath of allegiance and the oath of office before the Court of Appeal in a public sitting of the same Court (S.78). So also under the Code de Rohan, after obtaining the licence from the Grand Master, the person concerned was required to take the oath before the Castellano of the Gran Corte della Castellania (§ IV Capo XL and § 13 Capo 11, Libro 1).