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BOOK REVIEWS

THE MALTESE CONSTITUTION AND CONSTITUTIONAL HISTORY SINCE 1813 BY JJ CREMONA [Malta: Publishers Enterprises Group (PEG) Ltd, 1994. 172 pp]

RELATIVELY little is known in the Asian region about Malta (a former British possession in the Mediterranean and an independent country since 1964), and this book fills this gap in knowledge admirably. More importantly, it is written by a person who was himself responsible for drafting the Maltese Independence Constitution; this confers on the work a rare imprimatur indeed. The author was Attorney-General when he drafted the Constitution and was later Vice-President of the Constitutional Court, then Chief Justice of Malta; he was also Vice-President of the European Court of Human Rights. This would, in the ordinary course of events, constitute ample credentials, without more. It should, however, also be noted that the author has four doctoral degrees and was also a university professor; needless to say, this is not his first publication. The present book embodies, in fact (and not surprisingly), a good balance between scholarship and practical appraisal. The structure of the work is straightforward enough: the author traces, as the title of the book itself suggests, the various Maltese Constitutions, commencing from 1813 (and covering, *in toto*, twelve Constitutions). There are also two Appendices: the first comprising a list indicating where the various constitutional documents can be found, the second comprising "a selection of documents of constitutional and historical interest" which, as critical source materials comprising various declarations, despatches and speeches, does make for interesting reading. Of especial interest (to the present reviewer at least) was the following remark by the then British Secretary of State in his Opening Statement at the Independence Conference in London on 16 July 1963 on the draft Indpendence Constitution which (as already mentioned) had been drafted by the author himself in his capacity as the then Attorney-General (at p 171):

> When we come to discuss the constitution, we shall have before us the draft prepared by your Attorney General. If I may say so I think he has done a very admirable job and provided us with a most excellent basis for discussion, running into over 100 pages.

Quite apart from its specific content, the book is also an interesting case-study of how a particular country's Constitution evolved – which, when viewed from a broader perspective, contains very instructive historical lessons. Indeed, it is a strength of the work that it incorporates, wherever relevant, references to other countries as well, thus fulfilling at least two eminently useful (and related) purposes in the comparative context: as a work which utilises a comparative approach and as a work which is, in and of itself, useful to other scholars of comparative (especially

constitutional) law. And constitutional scholars and jurists alike would immediately recognize the author's (albeit brief) references to the work of Hans Kelsen (see pp 105 and 107). It might, at this juncture, be appropriate to note, with interest, that the 1961 Constitution (which immediately preceded the Independence Constitution) was in fact based on the Singapore State Constitution of 1958, although there were of course differences as well: for example, the Governor was not to be appointed after consultation with the Government of Malta. The Singapore Constitution has, of course, evolved in significant ways since, but the fact that it had at least some links with the Maltese Constitution is, as mentioned, interesting, to say the least.

To return to the broader perspective, the general trend is best summarised in the author's own words thus (at p 1):

> Few other British possessions, if any, had such ups and downs in their constitutional history.

Indeed – and at a more specific level – the story weaved for us by the author's narrative as well as analysis clearly illustrates the statement just quoted. It is not possible, within the brief compass of a review such as this, to give a detailed summary (let alone description) of the contents of the book; only the very briefest of descriptions of some of the highlights will have to suffice. First, all power was concentrated in the head of Government between 1813 and 1835. Thereafter a Council of Government was set up, but with no elective representation. This was followed, as the reader might have surmised, by the introduction of elected members in the Council of Government. Not unimportant, too, was the issue of language: in schools as well as elsewhere. A yet further significant development pertained to the 1921 Constitution which introduced the concept of self-governance, albeit with two separate governments: the Maltese Government dealing with purely local matters, and the Maltese Imperial Government dealing with "reserved matters", such as defence and public safety as well as the general interests of British subjects not resident in Malta. However, states of emergency hindered the continued development of the Maltese Constitution and, as the author observes (at p 37), "[t]he period between 1928 and 1936 was a period of political confusion and much legal ingenuity". The Constitutions that followed did not, apparently, do much to improve the situation: the author describes the period of the 1936 Constitution as one marked by "constitutional retrogression" (see p 40), while the 1939 Constitution, whilst providing (*inter alia*) for the setting up of a Public Service Commission for the first time, was, insofar as the Council of Government was concerned, "right on the dividing line between representative and non-representative legislatures" (see p 42); interestingly, though, in this latter Constitution, the privileges of the legislature were no longer co-extensive with those of the British House of Commons but were, rather, specifically set out in the Constitution itself. There followed the 1947 Constitution which "closely followed the pattern of that of 1921" (see p 43). There were, however, significant differences – amongst which was the fact that the legislature was no longer bicameral but comprised a single chamber. The establishment of a second chamber (existent under the previous (1921) Constitution) called the Senate never, however, came to pass. In addition, universal suffrage was introduced, and women, amongst others, could now vote. Insofar as the language issue was concerned, English and Maltese became the official languages of Malta; legislative proceedings could be conducted in either language although, insofar as bills and laws were concerned, in a situation of conflict between the English and Maltese texts, the English text was to prevail. It should, however, be noted that there still existed two concurrent governments,

viz, the Maltese Government and the Maltese Imperial Government, thus continuing the diarchical principle first established under the 1921 Constitution. The former comprised the Governor, the Legislative Assembly, the Ministry and the Governor in Council, whilst the latter comprised the Governor and the Nominated Council, and dealt with "reserved matters". And as the author succinctly puts it (at p 52), "[e]ach of these two governments had a defined sphere of action, legislative and administrative, and neither was subject to the control of the other"; he proceeds to observe (*ibid*) thus:

> The concurrent existence of two systems of government in one country is not an innovation; indeed it is a feature of federal constitutions. What is uncommon is to find it in a unitary constitution, but then in a colonial constitution the diarchical system is but the expression (in the Malta Constitutions of 1921 and 1947 formalized to the utmost) of the political dualism which characterizes responsible government within certain limits or, as it is sometimes called, semi-responsible government.

However, the author does perceptively observe that diarchical constitutions are "complicated and delicate mechanisms", with "the main danger [lying] in the smudginess of the diarchical dividing line, the line of demarcation between the Maltese and Imperial spheres, the boundary between reserved and non-reserved matters" (see pp 52-53). For example, the definition of what constituted "defence" posed thorny questions. Further, there was inadequate machinery for consultation between the two governments.

Political developments soon began to gather momentum, with the idea of "Integration" (*ie*, "the gradual incorporation of Malta into the political, financial and social structure of the United Kingdom whilst retaining its local autonomy and legislature" (see p 53)) being endorsed by referendum. Political unrest, unfortunately, led to a state of emergency. The 1959 Constitution was subsequently promulgated, with, *inter alia*, a new procedure for the removal of judges which (interestingly, again, for our local context) "was obviously inspired by recent precedents in Singapore, Nigeria and Malaya" (see p 59); this was, however, but an interim Constitution, and was followed soon after by the 1961 Constitution which (as we have already seen) was broadly based on the Singapore State Constitution of 1958. The unicameral legislature had an elected Legislative Assembly and a Cabinet ("for the first time so designated": see p 65), the Governor (with certain exceptions) acting on the advice of the Cabinet. However, insofar as defence and external affairs were concerned, the British Government might exercise concurrent legislative power through its Commissioner. And we are told that the Governor's veto covered a much wider class of bills compared to the then situation in Singapore. Judges and magistrates were to be appointed by the Governor on the advice of the Prime Minister. More importantly, perhaps, this particular Constitution "was the first one for Malta to embody a judicially enforceable Bill of Rights, largely modelled on that of the Nigerian Constitution of 1960 (which had in turn drawn on the European Convention on Human Rights) and the more recent Sierra Leone Constitution of 1961. No such provisions were to be found in the [1958] Constitution of Singapore, where the matter was left to be regulated by the ordinary law of the land" (see p 69). Most importantly, perhaps, was "the disappearance of the old diarchical concept, even though the demolition of the big dividing wall running right through the whole field in fact gave rise to the appearance of various scattered fences, and defence and external affairs remained precariously undefined" (see p 72). But even the 1961 Constitution was not the final stage in the constitutional de-

velopment of Malta. The demand for independence was made and preparations were made for an independence conference in London; the author was entrusted by the government with the task of drafting what now forms the present Maltese Constitution, *viz*, the Independence Constitution (although there have, of course, been amendments over the years, which are also noted in the book). This proposed Constitution was duly discussed at the said conference, and was subsequently approved by Parliament and endorsed, finally, *via* a referendum. This brought to a close well over a century of constitutional instability; as the author aptly puts it (at p 76):

> The old, sad constitutional "snakes and ladders" board thus finally went by the board for good. On the 21st September 1964 Malta became a sovereign State in international law, and in fact shortly afterwards joined both the United Nations and the Council of Europe. By choice, it continued to be a member of the Commonwealth.

The Independence Constitution was "in effect the constitution of a parliamentary democracy", following "the idea of constitutionalism, or limited government" which provides for "built-in limitations on government power and safeguards against its possible abuse, with protection for the fundamental rights and freedoms of the individual *vis-à-vis* the State and independent courts to secure that protection" (see, generally, pp 76-77; in addition, since 19 August 1987, the substantive provisions of the European Convention on Human Rights and its First Protocol were incorporated, *via* Act of Parliament, into Maltese law). The legislature remained unicameral (and is termed "the House of Representatives"), comprising, at present, 65 members. It is interesting to note that the electoral system is one of proportional representation by the single transferable (and secret) vote. Executive power is reposed in the President who, however, must generally act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet (thus resulting in the author's pronouncement that "[i]n effect the real wielder of power is the Cabinet": see p 87). Judges are appointed by the President acting on the Prime Minister's advice, and a new Court, the Constitutional Court, was established which lies at the apex of the superior court structure; appeals to the Judicial Committee of the Privy Council were abolished in 1972. The national language as well as the language of the courts is now Maltese, although English (together, of course, with Maltese) is also an official language (legislative provision could, and was, also made for the use of English in the courts under certain stipulated circumstances); and, save as otherwise provided by Parliament, every law is now enacted in Maltese and English, with the former prevailing in cases of conflict. It should also be noted that Malta became a Republic in 1974 and a neutralized State in 1981. There are, of course, a great number of other significant points, and the reader is referred to the succinct discussion in the final two Chapters (IX and X) of the book. And the author appropriately ends the substantive part of the book with an awareness of the need to take into account the wider context and reality thus (see p 116):

> In effect [the Independence Constitution] has laid the foundation for stable and orderly democratic government in Malta. But it is well to remember that no constitution operates in a vacuum. It is ultimately for the people, for whom it exists, to make it work effectively for the common weal. What essentially secures the good working of a constitution in a democratic society is a proper sense of responsibility, allegiance to the rule of law and sensitiveness to the just demands of liberty on the part of those who govern coupled with constant, full and unrelenting vigilance on the part of the governed.

I have already mentioned the substantive merits of the book – from the perspectives of content, comparative law, and historical instruction. It is a succinct case-study that balances both academic detail with practical awareness. This is not surprising, given the blend of academic as well as practical experience residing in a single author: a combination of experience that, one might add, is very rare today and, indeed, at any given historical moment for that matter. I should also mention that the present work is very well-written: it refrains from unnecessary rhetoric, especially when dealing with intricate details, but, nevertheless, also possesses, on appropriate occasions, an almost lyrical quality which enhances the already high quality of the book itself.

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