



repubbika

A CIVIL SOCIETY MOVEMENT

# REFORMING MALTA'S PARLIAMENT

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“Repubblika considers that the opportunity to reform the Constitution should above all other considerations be an opportunity to reform Malta’s Parliament.”

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The Sette Giugno riots where a seminal event in the lead-up to the foundation of Malta's Parliament a century ago. This electoral propaganda card affirms Ugo Mifsud's role in the events of the time. *Photo: Giovanni Bonello collection.*

This year marks the first 100 years of Malta's Parliament. **Repubblika** considers that this is the right opportunity to take a critical look at this entity and to think about ways we can strengthen it to renew its effectiveness for the democracy of our times.

Parliament is often described as "the highest institution of the land". This is not the case, and perhaps it should not stand alone at the very top. Formally, the function of Parliament is to make laws. In practice, it also serves the ancillary functions of being a locus of scrutiny of government affairs, a forum for political debate and recourse for administrative failings. But all these activities are secondary to the fact that Parliament is a vessel through which the Executive exercises political authority: it is a tool in the arsenal of influence enjoyed by the government and this informal, almost counter-intuitive function, eclipses all others.

Theoretically, a functioning democracy should seek to distinguish the Executive from the Legislature and the Judiciary. Laws should not be written by those who will apply them. And those who judge breaches of the law should come from neither of the other two branches of government. Of course, the three streams are not separate castes. Constitutional designs should seek to find the right balance between the three activities such that one does not dominate the other two, opening up the opportunity for abuse, the erosion of the rule of law and the eventual failure of democracy.



The Executive in Malta all too often holds sway on Parliament in such a way that the will of the Executive authority and the rulings adopted by Parliament become indistinguishable.

This derives partly from the fact that based on the Westminster model, the top level of government has to be recruited from among MPs from the political party that will support the government in Parliament. Partly it derives from the fact that notwithstanding the electoral system, Malta's political culture has, since 1966, invariably returned a single political party with a clear Parliamentary majority and a mandate to govern alone.

And some of this comes from the fact that the Executive has in recent years effectively found ways of recruiting all Members of Parliament elected on its party ticket to some role within the government making the interests of the government and the interests of the Parliamentary majority one and indivisible.

This has been possible because practical vulnerabilities of our Parliamentary system have been exploited by the government to its advantage. Consequently, the function of political oversight over the administration by elected representatives of the people has been suppressed almost entirely.

The Venice Commission<sup>2</sup> spoke at length about these issues in its review report of 2018, but its recommendations have so far been ignored. The final report on follow-up to the Council of Europe Parliamentary Assembly Resolution 2293 (2019) made by Pieter Omtzigt to the Committee on Legal Affairs and Human Rights of the Council<sup>3</sup> complains that "unfortunately... several important Venice Commission recommendations remain outstanding... Certain recommendations from the Venice Commission's 2018 opinion are not addressed in recent laws or pending bills, including... the strengthening of parliament and parliamentary oversight".

It is somewhat ironic that although Parliament is the governing institution chosen by the electorate, fewer Maltese respondents in a Eurobarometer survey<sup>4</sup> (44% in 2019) trust this institution than respondents that say they trust the government it oversees (51%).

*Top:* A sitting of Parliament c1948. Finance Minister Arturo Colombo (MLP) is addressing the House. To his left, Prime Minister Pawlu Boffa and further left Dom Mintoff who would serve as PM in 1955-1958 and 1971-1983. Facing them is Leader of Opposition Nerik Mizzi who served as PM in 1950.

*Bottom:* Sir Anthony Mamo being sworn in as Malta's first President on the day of the foundation of the Republic on 13 December 1974. He was the only President never to have been involved in party politics and one of two never to have served as MP.

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## One Hundred Years of Parliament

What follows is our commentary and analysis that has informed our recommendations in this document and that may provide further background for discussion. This first section of this document is a form of SWOT analysis of our Parliament: a look at what Parliament ought to be and how, as we see it, the institution falls short of its potential. The analysis takes the form of a chronological review of major developments since our Parliament's foundation, followed by a critical appraisal of that heritage.

The reader may, however, wish to skip right to the reform proposals we wish to put forward by skipping to the section 'Policy Objectives' (*See page 21*).

## Frozen Westminster

With interruptions, Malta has been a Parliamentary democracy for a century. Debate on our Parliamentary system has rarely been prominent in the public's awareness. Too often it has been the exclusive preserve of colonial bureaucrats and a political elite, often a small component of the political elite trusted by their comrades to negotiate the best interests for their party colleagues.

Although inspired no doubt by the Westminster tradition, our Parliamentary design is largely frozen in time and mostly extracted from the one-size-fits-all model the British used at independence negotiations with dozens of countries.

Turning Malta into a Republic 10 years later was a logical extension of those independence discussions and in 1974 was indistinguishable from identical processes undergone by new Commonwealth republics where Elizabeth II had been head of state.

Changes were adopted in the 1990s that introduced Parliamentary committees, giving MPs an operational function outside the plenary and, particularly through the design of the Public Accounts Committee, increasing the value of scrutiny and oversight over the conduct of government affairs. These reforms also diverted reporting lines for the Ombudsman and the National Auditor from the Executive to the Legislature, a development recently enhanced by the creation of the Commissioner for Standards in Public Life.

The killing of Daphne Caruana Galizia has exposed the relative weakness of our institutions and their ineffectiveness when they are required to resist Executive encroachment, over-reach and abuse. Parliament is one of those institutions that was found wanting in this respect.

We are under no illusion that institutional design alone can fix the problems that we are facing. Most of the issues come down to personalities and individuals who for whatever reason choose not to use the powers and autonomy given to them by the Constitution as it exists to act in the public interest, particularly when that interest is perceived to be in competition, or contradiction, with interests of the government, party or self.

However, if only because of the passage of time, our Parliamentary system requires examination and the preservation of its primary objectives requires us to seek reform.

President Sir Anthony Mamo inaugurating the new Chamber of the House of Representatives on 13 August 1976. Parliament met in this Chamber, previously the Armoury of the Palace, until the opening of the first purpose-built Parliament House on 4 May 2015.

## Polarisation

No one has been elected to Parliament in Malta since 1966 unless they contested on the ticket of either the Partit Nazzjonalista or the Malta Labour Party/Partit Laburista.

This was not necessarily a result of a Parliamentary or voting system that drove voters towards only two parties. The single transferable vote was intended by its designers to ensure multiple parties are elected to Parliament to avoid the rise of demagogues that may challenge colonial authority. In the only other country that uses the system to elect its principal Parliamentary chamber, Ireland, voting patterns return several parties at each election.

The single transferable vote allows electors to choose candidates rather than parties; citizens are empowered to express a preference for candidates and even vote for candidates contesting on the tickets of different parties. It was only in 1976 that candidates were first shown on the ballot sheet grouped and identified according to a party ticket and the Constitution referred to political parties since 1987.

The political culture in the country has polarised over time concentrating votes on two political parties to the point where the cultural, financial and operational obstacles for anyone outside the two-party system to enter Parliament prevent any possibility of the trend changing.



## Perverse results

As the political culture and voting behaviour reduced the options of electable political parties to two, the possibility emerged of an inconsistency between the popular vote as expressed in the first preference of the single transferable vote and the final result at the last count of the vote when all available seats are filled. The disparity between the first and last counts does not mostly occur because voters exercise their discretion of expressing preferences across party lines. This rarely happens and never in a way that materially affects the result.

But with every count, non-transferable votes<sup>5</sup> are discarded. In a close race, the difference is enough to create an inconsistency in results awarding more seats to the party gaining less first preference votes.

A more obvious cause of a perverse result is “gerrymandering” or the fraudulent design of electoral boundaries to prevent the concentration of votes likely to support one political party creating a tendency to allow for the votes for that party to fall short of the quota needed to elect more MPs.

The wilful manipulation of electoral boundaries before the 1981 election led to the party with more than 50% of the popular vote being prevented from forming a government.

Qualifying adjustments were made to the election rules to nullify the impact of gerrymandering by changes adopted in two tranches before and after the 1987 election: determining first that when a party acquires more than 50% of valid votes casts, its Parliamentary group is increased to include at least 1 more member than the other parties put together to guarantee the party that wins the popular vote the right to govern. Eventually, the clause was further adjusted to guarantee government to the larger party if only two parties are elected to Parliament, by ensuring that the party that wins the relative majority to have an absolute majority of seats in Parliament by having one more MP than the Opposition

An argument has been put forward that when the guaranteed 1 seat majority is - in terms of votes cast that it should represent - worth less than the advantage gained by the winning party in its first preference results, the result can be termed as ‘perverse’ as well. This has led to the view that the qualifying adjustment should be further adjusted to guarantee political parties a number of seats in Parliament that is proportionate to the first preference votes they have secured in the popular vote.

Political parties started mobilising popular support at the dawn of the 20th century. This photo of a ‘Gran Comizio Popolare’ was taken in the space outside Portes des Bombes in Floriana on 5 May 1901.

*Photo: Giovanni Bonello collection.*



## 1990: Reform proposals shelved

After the 1987 elections, the political parties entered into discussions to consider electoral reform that was however shelved when the Labour Party withdrew its support. The government proposed<sup>6</sup> a stricter application of the proportionality of the national vote on the allocation of seats in Parliament to parties using the d'Hondt method (sometimes known as the Jefferson method).<sup>7</sup>

### The government proposed at the time that:

- a. transfers between candidates belonging to different political parties would not be allowed except when a party does not achieve 5% of the total valid votes;
- b. in the first phase, only four candidates would be elected from each electoral division (instead of five) based on a division quota<sup>8</sup>;
- c. in the second phase, another candidate would be elected from each electoral division (making a total of five from each electoral division) from the pool of non-elected candidates and with a procedure intended to ensure that the number of candidates elected for each political party would equal to the number which has been predetermined through the operation of the D'Hondt system.

The proposal was not taken up by the Labour Party. However, since the party winning the majority of first preference votes was guaranteed the keys to Executive authority, political parties largely lost interest in ensuring strict Parliamentary proportionality.

Significantly this reform would have been an opportunity for more parties to enter Parliament because the minimum threshold of 5% would also, as a result of the d'Hondt method effectively be a guarantee that any party securing 5% of the national vote would be assured access to Parliament.<sup>9</sup>

After 1966, the only time candidates not running for the PN and the PL obtained more than 2% of the vote was 2017 so it can be argued that this would not have made any difference to minor parties. But the counter-argument is that voter behaviour may be different if they are aware that their vote would not be 'wasted' if their party can be secured a seat in Parliament if like-minded voters amount to 5% of the population.



A postcard showing a crowd at St George's Square, Valletta outside the Palace where Malta's self-government Constitution is being proclaimed on 20 April 1921. Insert: 7 June 1919 meeting of the National Assembly that led to the adoption of the Constitution. Photo: Giovanni Bonello collection.

## Lack of consensus for reform

The attempts by the Gonzi Commission<sup>10</sup> chaired by Lawrence Gonzi and including Austin Gatt, Pawlu Lia, Wenzu Mintoff and Joe R. Grima to find agreement on proportional representation failed. The matter was debated between 1994 and 1996 until failure to reach cross-party consensus postponed the issue indefinitely.<sup>11</sup>

## Local and regional democracy

In 1993 Malta introduced municipalities elected directly by universal suffrage. The electorate chooses a Council, effectively a miniature Parliament elected by proportional representation using the single transferable vote. Each Council employs an Executive secretary, effectively the head of the local civil service.

Originally each Council would elect a Mayor, normally, though not always, the leader of the majority group who has a share of Executive authority and effectively heads the government of the municipality.

This was eventually replaced with the automatic choice of a Mayor as the candidate from the majority with the largest number of first preference votes, an adjustment to the STV not dissimilar to the national adjustment guaranteeing government to the party with the largest number of first preference votes. The system does not address situations where no single political party holds a majority of seats in the Council.

Regional Councils were introduced in the 2010s elected by and from among Councillors in municipalities.

A program of devolution of powers from central to local government that started in the early 1990s has been largely frozen since about 2008 and the effectiveness of local government has been hampered as a result.



*Above:* The first local elections held in Malta on 20 November 1993. Photo shows the opening of ballot boxes for counting.  
*Below:* The Mdina Local Council ballot box arrives at the counting centre on 22 January 1994.

## Parliamentary Committees

In 1995 both sides of the House agreed to amend standing orders to set up permanent Parliamentary committees. This was a crucial change that gave MPs the possibility to conduct business outside the strictures of the plenary and to bring around the table experts, public servants and civil society to provide input on issues discussed in the committees. However, many opportunities to bring in outsiders have been missed.

**The changes reflected the ambition for Parliamentary activities outside the narrow scope of budgetary and legislative debates by creating:**

- ▶ A collaborative space of interaction and business planning between all sides of the House;
- ▶ A more inclusive deliberation stage in the preparation of legislation particularly in complex areas where engagement with civil society is deemed by the government to be beneficial;
- ▶ More scrutiny of government conduct particularly through the Public Accounts Committee that is led by a senior opposition figure.

*Above: In contrast with the 1964 Independence Constitution, the 1921 Constitution that founded Malta's Parliament was designed with the significant input of a National Assembly that was in session between February 1919 and August 1920. Photo: Giovanni Bonello collection.*

*Below: Protest by civil society activists held outside the Parliament building on 25 November 2019. The architect of the new Parliament building, Renzo Piano, designed the ground floor of the building as a transparent and accessible space to retain the atmosphere of a square open for public participation. But protesters were held at a considerable distance from the Parliament building by police barriers.*



## EU Membership

Integration in the EU after accession in 2004 brought profound changes to the Constitutional fabric of the country, including our notion of Parliamentary democracy. One of the governing institutions of the EU is the European Parliament where all citizens elect directly representatives in a legislative chamber empowered to make laws and scrutinise the functioning of European governing bodies including the Maltese Executive itself.

Recognising that there are different political cultures and electoral habits in different Member States, elections to the European Parliament are held using different electoral and voting systems as long as they provide for proportional representation.

Malta retains the single transferable vote to elect its MEPs though it has done away with electoral divisions eliminating from the outset the risk of manipulation of electoral boundaries and allowing the system to work through all its counts to return MEPs when the sorting of all the voters' preferences are considered.

The application of a single-district system has the advantage of giving all MEPs nation-wide accountability. It can be argued however that merging Gozo with the rest of Malta dilutes the particular regional status of Gozo which the Constitution recognises as a distinct region and requires it to be kept separate from any electoral district that includes the larger island for national elections.

Another change is that the EP elections are in Malta the first and till now the only electoral processes dedicated to choosing representatives for a purely Parliamentary role.

Voters in local elections seek to choose a Mayor or a Councillor they perceive as having some form of Executive authority or close influence to the Executive in their locality. Voters in national elections may express a preference between candidates of their party to choose who should represent them in Parliament but are principally choosing the next government. Although likely the party leader is not on their ballot sheet, voters are voting for any candidate with the tactical intention of getting another person (the party leader) to be made prime minister.

There is little material Executive consequence in the choice of MEP (though in theory positions in the European Commission are influenced by Parliamentary results, this is only indirect).

Celebration at the Grand Harbour, Valletta, marking Malta's accession to the European Union on 1 May 2004. *Photo: Times of Malta.*

MEPs are elected to a very different Parliament to that of Westminster. The Commission and the Council sit in the Parliamentary chamber but are there to answer MPs' questions and participate in the debates on the agenda set by the Parliament, not to determine that agenda or to vote in the Parliament's deliberations. Political party leaders, large or small, have a significant role to negotiate and seek consensus rather than oppose each other. The President of the Parliament is in their own right a defender of Parliamentary integrity and a representative of it in its relationship with other institutions.

In other words, Malta's democracy is no longer exclusively based on the Westminster model but now participates fully in a Continental model with a hemicycle and an in-chamber interaction between deputies from all political shades with Executive institutions that are distinct from it (the EU Commission and the EU Council).

The manifest intention of the Constitution is for MPs not serving as ministers to remain out of the Executive. The practice was first diluted in the 1990s with a law that invited both sides of the House to nominate MPs to sit on governing boards of public agencies. The practice was abolished during the Alfred Sant administration in 1997.

But the Joseph Muscat administration went the opposite way, firstly by having a disproportionate number of ministers and Parliamentary secretaries and secondly by effectively employing the entire Labour Party Parliamentary group in administrative roles,<sup>12</sup> a practice which the Commissioner for Standards described as "fundamentally wrong".<sup>13</sup> The error, according to the Commissioner, is a breach of the fundamental principle of separation between the Legislature and the Executive: "How can backbench MPs function effectively as members of such committees<sup>14</sup> if they are dependent on the government's pleasure for their livelihood? This is an obvious conflict of interest."



# Where we are now

**In sum, therefore:**

1. Voter behaviour is polarised and almost exclusively dominated by the PL and the PN;
2. Malta retains the symbolic vestiges of the Westminster model;
3. Malta retains the single transferable vote to choose its elected representatives but vitiates the model with tweaks and guarantees to transform Parliamentary votes into clear plebiscites for the Executive.

In the present context (in place since 2013 when almost all government MPs have become members of the Executive) this absorbs the role of a people's deputy into the role of administrator.

Enhancing the power of elected representatives over the government is unlikely to be a priority for most governments. There are exceptions to this with the creation of Local Councils, permanent Parliamentary Committees and accession to the European Union that included the right to participate in European Parliamentary elections.

It is time to seek again the motivation and impetus to help our Legislature make a step up the democratic ladder.



## Why do we need a Parliament?

This document does not aspire to exhaust the academic arguments in the debate about direct versus representative democracy. Suffice it to say that no one argues that it is a good thing that our Parliament is weaker and less relevant in the governance of our country. We will go by the formally undisputed national consensus that Malta is and wishes to remain a Parliamentary democracy which chooses its representatives to take decisions on behalf of the people.

It is insufficient, therefore, to describe Malta as a democracy. Malta is also a republic. That means there are several decisions in the running of the country that are not and cannot and must not be taken by popular will.

There are obvious decisions that fit in this example. Deciding whether a citizen is guilty of charges of murder brought against them is left to a jury of that citizen's peers. But there are procedures in the manner of selecting those peers. Those procedures keep us away from the hysteria of public lynching which can be argued to be more 'democratic' but is no less undesirable for that.

Judges decide who among us has broken the law and how they should be punished or to settle disputes peacefully between citizens treated equally by the law, and when they take such decisions it does not matter what the 'people' or the 'majority' think. Only the law matters.

The notion of electing judges or prosecutors by popular ballot is not unimaginable. It happens in mature democracies though it is a model that may endanger the proper application of the law and the independence of judges.

We do however elect the people who write the laws that judges must use to decide upon. Judges do not have the power to write law though they can direct its interpretation. But judges must submit to the 'intent of the legislator' and are expected, where the text of the law is itself insufficiently clear, to consult the records of the debates where the legislator proposing and adopting that law expressed their intent.

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The tension that is now typical of ballot counting was not always there. These photos from the 1950s show the counting of ballots at the Floriana school (top) while people wait for news outside (bottom).

## The legislator's intent

Although we base ourselves on purely anecdotal evidence, on the experience of our members and advisors, and our discussions with practitioners, it is clear that over time 'the intent of the legislator' is becoming harder to discern. Frankly the record of Parliamentary debates is becoming an ever less useful resource for the dispensation of justice in our country.

### **This happens for several reasons, some of which are:**

1. The bulk of legislation in the country is not adopted by Parliament but promulgated by government ministers using delegated powers given to them by Parliament in enabling laws.

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2. Parliamentary debates are often only indirectly related to the law being discussed. Interminable speeches are often only tangentially relevant and addressed to an audience which is presumed to be indifferent to the agenda being discussed.

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3. Parliamentarians are not supported by expert knowledge which can allow them to usefully contribute to a debate on legislation that often must be understood within a technical context. They do not have the time to research on the matter, to seek comparison with other jurisdictions, to consult stakeholders, to test ideas within a party framework and to otherwise materially prepare themselves for discussion. In this context MPs often end up filibustering themselves out of any substantive argument, filling up the time allocated to them for debate with fluff.

The fact that our judges and prosecutors are not elected directly does not mean it is not the Constitutional expectation that the courts function within a framework required for a democracy to call itself such. Our republican rules provide this safeguard by giving judges and prosecutors laws to work with that are written, scrutinised and revised by people that are elected for the purpose. It is fair to say that this is not in practice happening anymore, not in any meaningful sense.

## Reversed accountability

The original concept in our Constitutional tradition wanted to ensure very close accountability of the Executive towards Parliament.

The Westminster model out of which we grew developed over centuries of negotiation between the monarchy (the Executive) and other stakeholding interests in society, baronial at first and, as enfranchisement grew, the wider population. In that negotiation, the Executive was pulled ever deeper into and within the oversight of Parliament, until the distinction between His Majesty's Government and the most influential Parliamentarian was completely dissolved.

Though the Westminster model is ancient, developed over centuries, resolved by wars and restorations and imbued with fussy, sometimes stuffy, symbolism, it is an admirable example of democratic design. Precisely because it is ancient, developed over centuries and resolved by wars and restorations, the Westminster model would sink if the negotiation that keeps it alive between the Executive and the people's representatives ceases to progress. We must see through the symbolism and look for the reforms that we need to ensure that the Executive government of the Republic is reduced to the service of the people under the scrutiny of their elected representatives.

Whatever we inherited in 1964, failed in recent years to ensure the power of oversight, control, even sovereignty of Parliament. In some respects, Malta's Parliament has become a ceremonial cathedral where the government legitimises its executive discretion in a legal form without the inconvenience of democratic accountability.

## Indirect choice of administrators

In a Parliamentary democracy, the people do not get to choose their administrators (in the same way that we do not get to choose our judges). When a chief justice needs to be chosen, we do not call a national ballot and start campaigning. It is the same as choosing a prime minister. Malta's prime minister is not elected by the people. Although as a vestige of the Westminster system, the prime minister is an MP, the MP is only elected by their constituency which is a small fraction of the voting population of the island.

In a Parliamentary democracy, the administrators are chosen by the people we have elected to choose on our behalf: Parliamentarians. Parliamentarians are accountable to us for the choices they make as only voters can dismiss them (in a subsequent election). The people they appoint as administrators are in turn accountable to them.

It is out of this indirect relationship that no matter how popular a prime minister may be, their right to govern is only extended as far as Parliament is willing to allow and the decisions they can take must be limited within the terms of the law that Parliament adopts. This within the framework of the Constitution.

This chain of accountability is intended to ensure the mob doesn't govern. It is identical to the notion that in a democracy a murder suspect will not be condemned or acquitted by "the people" like the amnesty given to Barabbas by popular acclaim. Instead, we have procedures to regulate the democratic action which says that democratically elected Parliamentarians get to write the laws that judges will then use to decide what to do with the murder suspect.

It is no different in the Executive branch. Opinion polls, large political rallies, direct engagement between ministers and the public appear at face value to be democratic, but if they subvert the Constitutional supremacy of the law as drawn up and overseen by elected Parliamentarians then it is not democratic at all. Tyrannies can also be popular, they can do well in opinion polls, they can rally large crowds and they can use the media and the structures of the state to communicate directly with 'the people'. Tyrannies also have Parliaments. China, North Korea, Venezuela, Azerbaijan: all have Parliaments. But none of them can be called democratic.

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The members of Malta's first ever Parliament (Legislative Assembly and Senate) elected to office in 1921.

## Leaders' charisma

As the influence and authority of prime ministers grew in the second half of the twentieth century, so did the effective role of Parliament in our polity diminish.

The charisma of prime ministers is a deep gravitational force that pulls in its orbit all practical political gaming around their persons. Prime ministers or candidates for the role not only absorb the effective utility of Parliaments (in that they became the true lawgivers of the country). They also absorb their parties and through them all candidates contesting for that party. One votes for Ms X or Mr Y but one is thinking of the party leader when one does that.

This experience is not unique to Malta. The Westminster model more often than not did not produce thriving democracies. Several countries that secured independence from Britain in the second half of the twentieth century proceeded to suffer deep democratic crises, falling into tyranny and despotism. This is by no means a universal pattern but it is sufficient to demonstrate that attachment to the Westminster model alone is hardly in and of itself a guarantee of democratic survival.



## ‘Mice through cheese’

The argument about ‘leaders’ charisma’ referred to above exposes the discussion on institutional design to the cultural and sociological realities within which these institutions must function. As civil society campaigners, we do not expect our mission ends with persuading people of power to change rules to restrain themselves. We must more permanently address issues with our political culture that create the vulnerabilities that politicians with ill intent have exploited in the past with little consequence to themselves.

Our cultural attitude to rules, public office and rights deforms proper political debate, distorts decision-making and the implementation of policies and frustrates mechanisms intended to guarantee accountability. We are not just the products of the British colonial experience or the Westminster Parliamentary tradition. We are veterans of a five-centuries long tradition of largely benevolent autocracy with which many of us are familiar and out of which it is culturally hard to grow.

As the first chairman of the public service commission wrote to the London colonial office about the first PSC regulations, still in force today, “You will have to think carefully about the rules, for the Maltese will go through them like mice through a cheese”.

We must indeed think the rules through. We do not propose to have the answers, but we certainly have the questions.



## Executive restraint

Political leaders in Malta since 1964 exercised varying degrees of restraint limiting their action not only with the circumspection imposed by coded Constitutional law but also by the unwritten aspects of a Constitution that demand decency from those with the authority to rule.

We have however learned that in Malta, as elsewhere, democracy and democratic norms, and the niceties of decency and restraint, are largely eroding. This is not only due to imperfections in Constitutional texts, though the improvements and refinement of these could help prevent occurrences of deterioration. It is also due to a growing political dissatisfaction with the institutional intermediation of Parliamentary democracy and a sense that popular enthusiasm for the charisma of a leader is sufficient for the triumph of the will of the people.

This is disturbingly similar to the rhetoric of failed European democracies from less than 100 years ago. Those tyrannies grew out of democracies, exploited the weaknesses of their institutional design, subverted the utility of the legislative body to the point of destroying it, justified their actions by plebiscite or public enthusiasm, ruled “for the people” and by perverting democracy they supplanted it. There are no reasons to think we can never be in danger of repeating the same experiences.

The core point is that representative Parliamentary democracy is a strong tool to prevent just these circumstances from occurring. A strong tool, but not an unbreakable guarantee, because after all Hitler and Mussolini secured for themselves power by Parliamentary consent before they secured popular support.

The stepped distance between the process of choosing Parliamentarians and Parliamentarians choosing administrators, the double-accountability, the separation between the act of making laws and the act of implementing them are democratic guarantees that are misrepresented by populists as barriers to democracy. They are its best defence.

## The search for solutions

The first objective of Repubblika is to bring the matter of Parliamentary reform on the national agenda.

In the last 7 years, Malta has experienced a moral and political crisis largely due to the failure of its institutions to keep the Executive in check. We have seen failures from the public administration, the police, the prosecution service, the Judiciary, the presidency, public broadcasting, journalists and civil society. Parliament too failed to provide leadership, scrutiny and productive political debate on the events that were and are occurring.

The killing of Daphne Caruana Galizia is both a climax of this failure and what ought to have been the cause of the shock that would have provoked a national effort for reform.

Repubblika was founded to point out these failures and to lobby for improvement in the country's governance. We sincerely fear that if these issues are not addressed,

Malta risks, at a time when we may least expect it, to be overtaken by populists or people with obscure interests that take over our state for their profit or benefit.

It is our duty as citizens to ensure that our institutions are better prepared against the risks of state capture, criminal infiltration, and the normalisation of extremist policies. It is the duty of Parliament, like that of the courts, civil society, the free press and so on, to defend us from them.

Our initiative is intended to deliver two messages. The first is that Parliament is not functioning as it should and that independently of government action, we expect MPs - both government and Opposition, the Speaker, the Opposition, the administration of Parliament, and the officers that report to Parliament, to examine in a public and open effort how the existing Constitutional framework is being under-utilised and how we can maximise the legal and cultural resources already in our possession to refresh and renew our democracy.



Photo: Times of Malta

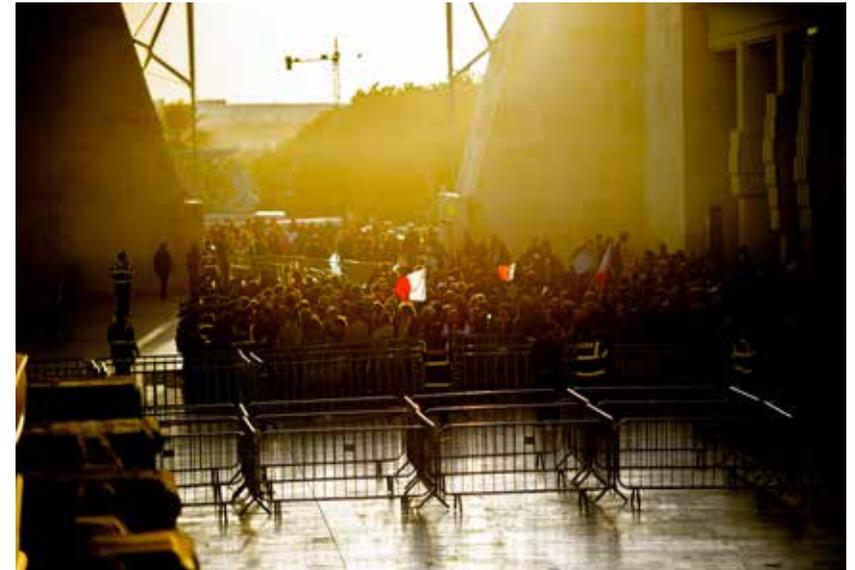


Photo: Jon Borg

This is after all the same message we seek to deliver to all other institutions such as the police, the prosecution service, the Judiciary, the media and to reflect on ourselves as civil society activists as a challenge to do more to help protect and nurture our democracy.

The second and subordinate message we wish to communicate is that renewing the design of our institutions, and particularly our Parliament can enable us, as a people, to secure democratic supervision of the institutions that rule over us and that this matter is not the exclusive purview of politicians.

People who are in Parliament today are comfortable with the status quo because the status quo has given them the power and authority they currently enjoy. Naturally,



*Photo: Times of Malta*

people who are in government have more reason to see the benefit in the way the system allows them to win.

The two political parties in Parliament are the only entities with the effective power to adopt the changes we may argue for, but they are also the two entities with the least motivation to do so, as any changes risk compromising the almost unhindered political power they take turns to wield.

However, Malta's political history has not always been a tradition of people in the Executive grasping power for themselves. The introduction of local and regional authorities, the process of devolving competence to them and, on a much greater scale, the accession to the EU which implied the transfer of competence of several matters of governance from the national government to European institutions, were radical experiences in the history of our democracy where the people manning the Auberge de Castille asked Parliament to take power away from them.

Still, it may be argued that local democracy has been frustrated and largely suffocated by the central (as opposed to locality-based) and tribal interests of political parties, whilst EU membership has created new opportunities for patronage for political parties in office or the promise of the same for parties in waiting.

None of these processes of transformation was easy or without major, divisive political controversy. And yet we outgrew those divisions, developing cross-party consensus after the fact when debate before the fact proved unproductive.

Republika's initiative is intended to deliver the message to political parties, particularly the only two that have had their candidates elected as MPs since 1966, that whilst appreciating their value and indeed their necessity for our democracy to function, the rules of our democratic game are a matter of interest to all citizens. And citizens have good reason to express dissatisfaction with the way things are now.

We do not think that minor tweaks are what we need at this point. Tweaks tend to twist and vitiate a model taking the outcome far from what the model intended to achieve when it was designed but nowhere near anything meaningfully desirable or coherent.

We argue for a radical rethink of our Parliamentary democracy intended to bring Parliament back to the centre of our democratic mechanisms and ensuring government is accountable to Parliament rather than the other way round.

## Ours is not the only possible formula

We do not claim to have found the only alternative possible to the existing reality. There are many lessons from other countries but one is universal: there is no perfect system that can alone bring about a perfect Republic or a perfect Union. In truth, some systems are more likely to lead to the erosion and collapse of democracy but no system is in and of itself a better guarantee for the success of democracy.

In this spirit, we underline that we are not bound to the detail of the proposals we are putting forward. Perhaps indeed what we are hoping to achieve by putting these specific proposals forward, apart from our confidence that they are ideas we can defend, is to make it understood that a fresh look at our Parliamentary democracy is indeed possible, that workable alternatives do exist and that the inertia that forced us to cling to the basic template we received in 1921 for a hundred years may not be the only way we can live our democracy in the next hundred.

It is in this spirit that we wish to provoke debate through an examination of the possibilities we present and a discussion of alternatives. We wish to engage with the President, Parliament, and political parties in and out of Parliament in the sincere hope that these entities that should exist independently of the Executive, enter into this discussion without seeking to serve the Executive's interest.

We know this is next to impossible in practical terms. We know that the President and the Speaker are themselves choices of the Executive. We know the two political parties either follow the orders of the Executive or want to replace the Executive. And we know that any political organisation outside Parliament faces such dim prospects of election that they will themselves be sceptical of the utility of this discussion.

But the opportunity of the long-promised Constitutional Convention and the engagement of a wider civil society in this debate can perhaps provide us with the one occasion in a 100 years that gives us the right to hope for real change.

This is what Repubblika is for. We aim for a new Republic, a renewed democracy, a revived engagement of Malta's civil society in the workings of the country's government. If we don't ask these questions, who will? If we don't propose possible answers to them, who will? If we don't do this now, when?

By no means does Repubblika feel that there is a single model that can be adopted that is without defect, or that is necessarily better than other alternatives that may be considered. Nor are we naive enough to imagine that any design can alone rule out incompetence, corruption or populism when holders of public office are afflicted by one or more of these vices.

We do however think that it is time to look at improving our Parliamentary model, learn from the experiences of other democracies and our own, and consider new solutions.

We aspire to a broad consensus. We understand that it is wiser to build on what we have than to renounce our democratic legacy, that reasonableness and moderation are likelier paths to consensus and that the sustainable growth of democracies is achieved through evolutionary steps.

We aspire to an effective Parliament and an adjustment of the balance of authority that currently exists with the government. While mindful of the need and desirability of effective government, the Executive needs sufficient restraint to ensure that the excesses of the last years may be reversed and prevented from re-emerging.

In this spirit, some of the following proposals take the shape of alternative models for a mature debate to choose from and to develop into solutions, sustained by consensus.

## Policy Objectives

**Repubblika considers that the opportunity to reform the Constitution, should above all other considerations be an opportunity to reform Malta's Parliament. Our policy objectives are:**

# 1.

To improve and protect the function of Parliament as the law-making entity in the nation;

# 2.

To increase the ability of Parliament to participate in the design and adoption of Maltese and European law;

# 3.

To provide the right forum for the effective representation of the concern of constituencies, ensuring proportional representation;

# 4.

To provide clarity and define the distinction between the Executive and the Legislature;

# 5.

To enhance scrutiny of the financial oversight of the administration; and

# 6.

To empower oversight of strategic engagement to the public service.

## 'King in Parliament'

Our Constitution says that Parliament is composed of the President and a single chamber of deputies. This formula is one of the vestiges of the Westminster model, itself a centuries-long evolution of finding a balance between democratic reform and a tradition of baronial institutions.

The notion that the President is a component of Parliament has more than a symbolic effect. It signifies the restriction of all discretion of the head of state within the express wishes of Parliament. The President replaces the King, gives their assent to laws adopted by Parliament without any realistic possibility of influencing the making of those laws and swears in appointees of the Executive, which is essentially identical to the intent of the majority in the House.

Malta's European experience is detaching us from our colonial experience and we have already adopted constitutional amendments (in the case of appointing members of the Judiciary) that are starting to give our head of state an extent of discretion that would have been unimaginable in the English constitutional monarchy as traditionally perceived.

This argues for the Presidency to be constitutionally detached and distinguished from Parliament to ensure that whatever discretion is granted to the Presidency is accountable to the other branches of government or, if it is intended to rise above them, accountable directly to the electorate.

We do not propose the exclusion of the President from the prorogation of laws. As head of state, the President embodies the three-fold powers of governance giving unity to the apparatus of the state.



The mass parties that have dominated Malta's politics since, took their definitive form in the 1950s. Images show 1950 and 1955 mass gatherings of the PN (top) and the MLP (bottom) respectively in the Siggiewi main square.

### The Venice Commission had argued that:

- ▶ "While the President may act as a moral authority, s/he does not have sufficient powers to act as an effective actor in the system of checks and balances. Strengthening the Presidency and increasing its independence of the Government could be a way of improving checks and balances;

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- ▶ "From the viewpoint of constitutional checks and balances, it would be preferable for the President to be more remote from the majority of the day. The President can be an important check on the wide powers of the Executive. Strengthening the President could be achieved for example by electing the President with a qualified majority in Parliament, combined with an anti-deadlock mechanism. Even more important for the independent exercise of the powers of the President is that s/he can be removed by a qualified majority only.

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- ▶ "The President should be strengthened by attributing him/her more powers of appointment without the intervention of the Prime Minister, notably as concerns judicial appointments. Besides, the election of the President with a qualified majority could be considered and it should be possible to remove the President by a qualified majority only."

### Repubblika proposes for discussion that:

1. The President is no longer considered a part of Parliament, retaining however the function of signing Acts of Parliament into law. We propose to make this function more meaningful by empowering the President to refer legislation to the Constitutional Court to ensure the constitutionality of legislation or to push back for reconsideration a law that has been approved by Parliament. A second Parliamentary approval of law would be final.

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2. The President is equipped with a support infrastructure that is under the President's control and accountable directly to them rather than to the Executive or Parliament.

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3. The President is directly elected by the electorate for terms that do not coincide with terms of Parliament. This proposal is not without risks. Candidates to the Presidency will, in most cases, be nominated by political parties and campaigning will quite possibly make it harder for an elected President to eventually enjoy cross-party respect and become a symbol of national unity. Effectively this creates the risk of a 'shadow chief executive', a 'second prime minister' as it were, which is undesirable.
 

Direct elections, however, provide democratic legitimacy for the office especially as it is given greater powers when engaging with Parliament and the government. There is no dogmatic argument for this approach but a glance at European parliamentary democracies that directly elect their presidents to serve as symbols of national unity shows that direct popular legitimacy and consensus-building are not mutually exclusive.<sup>15</sup>

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4. The single-term limit for the Presidency should be retained.



## Separation of Powers

The Constitutional restriction that ensures that only MPs are recruited to ministerial rank has several advantages. It ensures immediate accountability of people granted political power to voters and it ensures that the terms of office of ministers are reviewed directly by the electorate at the expiry of the term of every Parliament.

These are advantages that can be retained in the right reforms that address the disadvantages of the current system. Government ministers work for the entire country but as MPs, they only represent their constituencies from which they will seek re-election. Therefore the success of a government minister is not measured by their performance in the national interest but their performance in the interest of their constituents. This gives rise to rampant clientelism where favours are auctioned or even offered for free.

'Clientelism' does not have to take a personal form. The disproportionate number of projects carried out by ministers within their constituency is another indicator of a malaise that perverts rational prioritisation.

The current blurring of the lines between the Executive and the Legislature is of great advantage to the Executive because it reduces to irrelevance the function of scrutiny of the conduct of ministers. The support of a Parliamentary majority is needed for a government to function smoothly. But while governability and sustainability are desirable, if the majority of MPs do not ask ministers tough questions, challenge their decisions and oversee their functions, Parliament would not be doing its job.

**The Venice Commission  
remarked that:**

- ▶ “While the UK House of Commons has 650 MPs, the House of Representatives of Malta has one-tenth of the number of MPs. This size is, of course, explained by the size of the population. As all Members of Government have to be MPs, the percentage of MPs, who also have government positions or work in government-appointed commissions, is disproportionately higher. This is an issue of separation of powers. In a larger parliament, not only the opposition but also backbenchers from the governing party, act as a check to the powers of the Government and the Prime Minister. A smaller Parliament needs even more guarantees to be able to fulfil its role of controlling the Executive.

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- ▶ This is exacerbated by the fact that Members of the House of Representatives act as ‘part-time’ MPs. The salaries they obtain from Parliament are too low for a living. This means that the MPs have other professions and can spend less time on their parliamentary work, and notably on controlling the work of the Government. However, as required by the Constitution, not only are there 15 Ministers who are MPs,<sup>64</sup> nearly a quarter of the number of MPs, many MPs also hold office in other Officially Appointed Bodies.<sup>65</sup> The salaries in these bodies (committees, commissions etc.) are often substantially higher than those of Parliament. Given that it is often the Prime Minister who appoints MPs to these bodies, the possibilities of backbenchers controlling Government are seriously reduced if MPs have a financial incentive to seek offices at the disposal of the administration that they are supposed to control. The authorities pointed out that part-time MPs, despite receiving part-time salaries, are not necessarily less independent than full-time ones, since MPs who have sufficient revenue from another profession are more independent and less dependent on their political party. Nonetheless, the Prime Minister appointing MPs to paid positions coupled with their part-time salary as MPs compromises their independence as legislators.

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- ▶ In discussions with the delegation of the Commission, the authorities advanced the argument that forcing MPs to give up their other profession would change the nature of Parliament and, for instance, highly qualified advocates would no longer be available to stand for election because they would have to give up on the work in their Cabinet.”

**Repubblika proposes  
for discussion that:**

1. The President appoints as Prime Minister the person they believe would be best able to form a government that would enjoy the confidence of Parliament. The President's first preference should be to seek to fill the position of Prime Minister with a Member of Parliament. However, it should be possible for Parliamentary majorities to recommend to the President the appointment of an individual from outside Parliament to the position of Prime Minister.
2. The Prime Minister chooses for his cabinet ministers any citizen of Malta and, before the government is sworn in, the Prime Minister must secure a vote of confidence from Parliament.
3. Any MP that is appointed Prime Minister or Minister, is replaced in Parliament by the next candidate eligible for election by "casual election" according to the existing procedure for such elections.
4. The Prime Minister and Ministers will be expected to attend Parliamentary debates, particularly where these concern their Ministries, to participate in the debates, to reply to Parliamentary questions and to engage very much as Ministers do now. Except that they would not be entitled to vote in Parliamentary decisions.
5. Members of Parliament who are not Ministers should not work for the government, whether as employees, appointees, ambassadors, consultants, contractors or others.
6. Government or public sector employees who are elected to Parliament are to be put on unpaid leave until the end of their term.



## Adequate resourcing

Even if not quite "the highest institution of the land", Parliament should be at least comparable with the Cabinet of Ministers and the Judiciary. It cannot in this day and age remain a part-time activity.

The functions that Parliament should be undertaking are far greater than MPs could fulfil by being present in the Chamber or its offices for a handful of hours a week. Also, inadequate compensation for Parliamentary duties attracts conflicts of interest, ethical compromise and detracts quality public-spirited citizens who simply cannot afford to hurt their careers to such an extent while serving as MPs.

The debate on how to compensate Parliamentarians and on what terms has raged for years and an effort is needed to reach some form of resolution both to get greater benefit from the institution than we currently enjoy and also in the hope of attracting more people of merit to Parliamentary service.

MPs should be adequately paid to be able to live decently on their honoraria and to have sufficient time and energy to live up to the public's reasonable expectation of the performance of their duties. This is a far cry from what is being paid today. It can be argued that subject to clear and appropriate rules over conflicts of interest, MPs need not necessarily be forbidden from doing other work. After all, if their performance suffers, their employer - the public - can and would dismiss them at a subsequent election.

It can also be argued that forcing MPs to abandon their professions or other economic activities would make it even harder for political parties to persuade suitable candidates from entering public life.

We are expressing the preferred view that full-time Parliamentarians should not combine their Parliamentary duties with any other economic activity. However, we do so in the understanding that a more gradual approach to the professionalisation of MPs may be desirable.

Parliament should also be empowered to vote for itself the funding it requires to operate autonomously in the fulfilment of its duties. This needs to include research, legal and advisory resources that are separate from and distinct to the resources utilised by the government and – in the model described here – the Presidency.

**The Venice Commission  
 remarked that:**

- ▶ “While it is true that in a country with a small population it may be hard to fill all public positions with appropriate candidates, a solution would be to substantially increase the salaries of the Members of Parliament so that they have a real choice on concentrating on their parliamentary work.

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- ▶ Another important factor for checks and balances is the support that MPs can obtain for their work, notably for research. As is the case in other countries, Malta faces very complex challenges in society and when legislating, the Members of Parliament need to be sufficiently informed to make important choices for their country. Under the authority of the Clerk of the House of Representatives (Article 64 of the Constitution), the MPs benefit from the work of some ten staff who can research for them. Also, the parties represented in Parliament receive funds from the State for such research. However, these funds remain under the control of the parties. To be able to control the Executive, the MPs need assistance from Parliament. The Venice Commission, therefore, recommends increasing the parliamentary staff that can assist the MPs in their work.

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- ▶ Currently, the role of advisor in matters of law and legal opinion, to the Government (and Parliament when appropriate) is that of the State Advocate. The role of Parliament as a critical controller of Government policy could be reinforced by considering the establishment of a senior consultative body, which advises the Government and Parliament on (draft) legislation and governance. When providing its independent advice, this body (resembling a Council of State) could focus on issues such as:
  - ▶ whether the bill is compatible with the Constitution, with European law, and with treaties (such as the human rights conventions);

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  - ▶ whether the bill is following the principles of democracy and the rule of law;

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  - ▶ whether the bill is compatible with the principles of good legislation, such as equality before the law, legal certainty, proper legal protection and proportionality;

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  - ▶ whether the bill can be easily incorporated into the existing legal system;

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  - ▶ whether the budgetary impact of the bill is sustainable.

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- ▶ If such a body were established, a substantial amount of information would be available to Members of Parliament when starting to debate a draft bill. Parliament would then be able to request additional information from the Government in a more focused manner. If established, such a council should have a constitutional basis.”

**Repubblika proposes  
for discussion that:**

1. The function of MP becomes full-time and compensated adequately at a salary scale which would be appropriate for professional services in the market.

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2. Apart from their honoraria, MPs should be compensated for expenses they make in the fulfilment of their duties including inter alia expenses in research, administration, travel, insurance, transportation and similar. Expense claims are to be appropriately monitored and audited for compliance with objective rules.

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3. Parliamentary parties should be provided with financial resources dedicated to the proper functioning of the parliamentary group.

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4. MPs are required to relinquish any private work in employment, consultancy, directorship or other during their term of office. Any shareholdings or partnerships must be either disposed of or transparently transferred to trustees.<sup>16</sup>

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5. At the end of their term of office, MPs should be entitled to a transitional allowance, equivalent to their salary, for one month per year they were in office. The maximum duration of this allowance should be two years. Where a former MP takes up a mandate in another parliament or a public office, the salary which is received from this new function is offset against the transitional allowance. If the MP is simultaneously entitled to an old-age or invalidity pension, they should not receive both, but must choose one or the other.

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6. Each MP should have a budget for up to two suitably qualified Parliamentary assistants to conduct research and provide advice to their MP. Engagements of relatives or unqualified staffers would be forbidden.

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7. Parliament should have an in-house counsel with the function of reviewing legal texts, control quality of drafting and translation and answer questions of a legal nature from the Speaker, the Clerk of the House or MPs.

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8. Special and select committees of Parliamentarians should have the resources to recruit specialist advisors in preparation for their inquiries and reports.

## Size

Malta's Parliament has 65 members, 5 each from 13 electoral districts, which are sometimes increased to ensure that if only two parties are elected to Parliament, the party with the larger number of first preference votes is assured a Parliamentary majority.

An argument can be made that considering the expected increase in cost as a result of a full-time and better-equipped Parliament, a Parliament this size would be out of scale for Malta's needs.

However, a smaller Parliament would make it harder for representatives of minority views or minority interests to secure election which is an undesirable trade-off.

Every MP in Malta represents around 4,000 voters. All other Parliamentarians of EU member states represent larger constituencies, the next smallest is Luxembourg with around double the ratio of MP to constituents. But they all come from larger countries and it can be argued that Malta's Parliament is no less busy than, say Luxembourg's, Slovenia's or Latvia's so it can't afford to be much smaller. Luxembourg elects 60 MPs, Slovenia 130 and Latvia elects a 100.

We do not see urgent reasons to increase the size of Parliament, nor to decrease it.

## Term of office

**The following considerations are made.**

Under stable conditions, the term of the Parliamentary chamber that has the power to grant or withdraw their confidence in the government is equivalent to the term of office of a government before its mandate is renewed after an election.

The current 'winner takes all' system weakens the ability of Parliament to influence the conduct of the government in between terms. The same applies to other democratically elected institutions such as local government and (under this model) the President.

**To this end the following terms of office are proposed for discussion on a fixed-term basis:**

1. President: 6 years
2. Parliament: 5 years
3. Mayors (and Local Councils): 4 years with elections held every 2 years on a rotation basis.

**The following recommendations are also put forward for discussion:**

1. The prime minister will be forced to resign if a no-confidence motion is approved by Parliament.
2. The president should seek a replacement prime minister that can enjoy a majority in the house.
3. The president is forced to resign if a two-thirds majority in Parliament adopts a non-confidence motion.
4. This system also abolishes the discretion in the hands of the government on the timing of the dissolution of Parliament which would now be pre-determined and foreseeable at law.
5. Early elections are only called after the president is satisfied that they are unable to find a prime minister that can enjoy Parliament's confidence.

## Political parties

Political parties are to be enshrined in the Constitution protected and regulated effectively at law.

The electoral system and the rules on the funding of political parties, as well as other ramifications such as the regulation of broadcasting and the role of parties in the media landscape, require distinct and separate analyses.

We are making proposals that may arguably be considered tangential to the matter of securing Parliamentary reform. At this stage, we are seeking to place on the agenda these matters alongside the discussion on Parliamentary reform.

**The Venice Commission referred to recommendations made by the Office for Democratic Institutions and Human Rights of the OSCE following the 2017 general elections<sup>17</sup>, which said:**

- ▶ "To foster greater transparency and make the reporting system more effective, donations to parties and the entities they own should be subject to similar reporting and public disclosure requirements.
- ▶ To enhance transparency and enable voters to make informed choices, authorities could consider introducing a requirement that all election-related campaign materials contain imprint data with information about the entity that ordered and paid for their production and display.
- ▶ The electoral legal framework should be reviewed to address OSCE/ODIHR recommendations as well as to consolidate and harmonize the legislation and to address any ambiguities. Reform should be undertaken well in advance of the next elections and involve open consultation with all relevant stakeholders.
- ▶ Consideration should be given to amending the legal framework to explicitly provide full access to the electoral process for international and citizen observers.
- ▶ To enhance transparency and facilitate oversight, consideration could be given to a requirement that donations above a certain amount only be made through a designated bank account. Moreover, authorities could consider requiring parties to record all donations and lowering the disclosure threshold.
- ▶ To assure equality among candidates and foster legal certainty, the ministerial power to change candidates' spending ceiling could be reconsidered. Consideration could be given to adjusting the spending limit based on a form of indexation rather than an absolute amount.
- ▶ To enhance transparency, parties' elections-related income and expenditure should be made public shortly after the elections. Consideration could also be given to introducing a disclosure requirement on income and expenditure before election day.
- ▶ To improve the effectiveness of the sanctioning procedures, authorities could consider reviewing the legislation to allow anyone to initiate campaign finance violation proceedings without the necessary recourse to the Attorney General or the EC."

**Repubblika proposes for discussion that:**

1. Seats to be filled by election are allocated to political parties in proportion to the votes given to candidates contesting on the ticket for that party nationwide (or in that portion of the nation where elections are being held). "Votes" for this purpose are the first preference votes cast in a single transferable vote system. That means that if a political party in an election to Parliament gains 55% of the national vote, 55% of the seats in the chamber will be allocated to that party. The seats allocated will be filled by candidates according to their voting performance within their constituencies.
2. A political party must secure a minimum nationwide threshold of 5% of the national vote to be elected to Parliament.
3. Any political party that acquires nationwide votes equivalent to a minimum of 5% of the national vote will be guaranteed a number of Parliamentary seats that is proportional to their national vote share. This means that even if no candidate for the hypothetical pink party secures on their own enough votes to be elected from a single constituency, if all the votes secured by candidates in the pink party nationwide put together amount to a number sufficient to elect a Member of Parliament, the system will ensure that one candidate of the pink party is elected.
4. Political parties are to be funded by the state to fulfil their function. Funding is to be allocated according to a formula which takes into account the number of elected officials belonging to that party that are in office at the time. However, funding is to be provided to a more limited extent to political parties that do not have any members in elected office provided these parties meet objective criteria (such as the number of registered members) designed to prevent abuse.
5. In a single year, donations from any single individual to any political party that amount in the aggregate to a number greater than 4 months of salary at the national minimum wage will be forbidden. The total value of donations received by any political party from non-natural legal persons cannot exceed 40% of the funding provided by the state.
6. Transparency recommendations made by the OSCE are to be adopted.
7. It can be argued that political parties should not own TV stations and other media. However, there is little doubt that the media are a huge drain on the resources of political parties and an opportunity to work around financing rules through advertising or contracting of government work. Quite apart from any legislative initiative, political parties should renounce ownership of TV stations and other media, perhaps in exchange for regulated airtime on public broadcasting services. Any such reform must be accompanied by a thorough reform of the regulation of public broadcasting.
8. The statutes regulating the operation, internal elections, selection of candidates, discipline and procedures of a political party must conform with legally-established standards ensuring transparency, democracy, fairness and natural justice.

## Things we do not propose to change

**Our electoral and political system is not without strengths that we would hope are preserved through a process of reform.**

1. The single transferable vote empowers voters rather than political parties to rank individual candidates to be elected as people's representatives.
2. The distinction of Gozo as a region, and therefore a contiguous electoral division, is fundamental to ensure adequate representation of its distinctiveness.
3. Despite the addition of very limited discretionary powers and an election process that will be competitive and that will require winners and losers, we would continue to expect the President to take a cross-party mediating role, easing divisions and guaranteeing the supremacy of the Constitution.

## Other matters

This document focuses on Constitutional reforms that may bring back to the centre of our decision-making process our legislative branch of government. It is not a complete review of reforms that are necessary to ensure Parliament is effective, efficient and working at its full potential. Nor do these proposals touch upon several other issues in our institutional design that require their focus and attention and consideration for possible reforms.

After the discussion proposed by this document, Repubblika plans to put forward other proposals for discussion on reforms in several areas including, but not limited to:

- ▶ Parliament's standing orders;
- ▶ The regulation of public broadcasting;
- ▶ Active citizenship in formal education;
- ▶ Empowerment of municipalities;
- ▶ Standards in public life;
- ▶ Funding for independent media.



**Repubblika** is a civil society organisation registered as a legal person with the Registrar for Legal Persons and as a non-governmental organisation with the Commissioner for Voluntary Organisations. It was founded on 25 January 2019 to promote civil rights, democratic life, the rule of law, free speech, personal freedoms, social inclusion, environmental conservation, economic sustainability and equality of access, through active participation in the national discourse and related educational, social and charitable initiatives.<sup>1</sup>

- 1 <https://repubblika.org/statute/>
- 2 European Commission for Democracy Through Law (2018) Opinion on Constitutional Arrangements and Separation of Powers and the Independence of the Judiciary and Law Enforcement, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2018\)028-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)028-e)
- 3 [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2018\)028-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)028-e)
- 4 [https://ec.europa.eu/malta/sites/malta/files/st92\\_report-repmt\\_v2.pdf](https://ec.europa.eu/malta/sites/malta/files/st92_report-repmt_v2.pdf)
- 5 Where voters do not express enough preferences to continue to make their vote useful or a point down their voting preferences where the ballot becomes invalid.
- 6 [https://www.um.edu.mt/\\_data/assets/pdf\\_file/0008/207782/white1990.pdf](https://www.um.edu.mt/_data/assets/pdf_file/0008/207782/white1990.pdf)
- 7 Legislatures using this system include those of Albania, Angola, Argentina, Armenia, Aruba, Austria, Belgium, Bolivia, Brazil, Burundi, Cambodia, Cape Verde, Chile, Colombia, Croatia, the Czech Republic, Denmark, the Dominican Republic, East Timor, Ecuador, El Salvador, Estonia, Fiji, Finland, Guatemala, Hungary, Iceland, Israel, Japan, Luxembourg, Moldova, Monaco, Montenegro, Mozambique, Netherlands, Nicaragua, North Macedonia, Paraguay, Peru, Poland, Portugal, Romania, San Marino, Serbia, Slovenia, Spain, Switzerland, Turkey, Uruguay, and Venezuela. The system has also been used for the "top-up" seats in the Scottish Parliament, the Welsh Parliament and the London Assembly; in some countries for elections to the European Parliament; and during the 1997 Constitution era to allocate party-list Parliamentary seats in Thailand.
- 8 'Quota' means the number of valid votes cast divided by the number of seats that need to be filled plus 1.
- 9 The d'Hondt or Jefferson method is a mathematical formula used in systems using proportional representation. Malta's Single Transferable Vote (STV) System is a hybrid system that promotes a culture of 'the winner takes all' (see [https://www.sgi-network.org/2020/Malta/Key\\_Challenges](https://www.sgi-network.org/2020/Malta/Key_Challenges))
- 10 [https://www.um.edu.mt/\\_data/assets/pdf\\_file/0003/207786/gonzi01.pdf](https://www.um.edu.mt/_data/assets/pdf_file/0003/207786/gonzi01.pdf)
- 11 <https://www.um.edu.mt/projects/maltaelections/stvsystem/problems>
- 12 [https://www.maltatoday.com.mt/news/national/45479/the\\_high\\_cost\\_of\\_keeping\\_government\\_mps\\_happy#.X7DpXVko-qA](https://www.maltatoday.com.mt/news/national/45479/the_high_cost_of_keeping_government_mps_happy#.X7DpXVko-qA)
- 13 <https://standardscommissioner.com/commissioner-reiterates-that-it-is-wrong-to-give-government-jobs-to-backbench-mps/>
- 14 The Commissioner here refers to permanent Parliamentary committees overseeing Executive functions such as the Public Accounts Committee and the Standing Committee on Public Appointments.
- 15 EU states that directly elect their non-Executive head of state: Austria, Bulgaria, Croatia, Czech Republic, Finland, Ireland, Lithuania, Romania, Slovakia and Slovenia. Cyprus elects an Executive President. France, Poland and Portugal have a Premier-Presidential system. Non-Executive heads of state are indirectly elected in Estonia, Germany, Greece, Hungary, Italy, Latvia and Malta while the heads of state of Belgium, Denmark, Luxembourg, the Netherlands, Spain and Sweden are chosen on the hereditary principle.
- 16 The requirement should not apply to shares held in publicly listed companies where shares amount to less than 5% of the total shareholding value.
- 17 OSCE/ODIHR Election Assessment Mission Final Report (2017). <https://www.osce.org/files/f/documents/3/4/348671.pdf>

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