



Government in Parliament

An assessment of the Westminster model and the development of an effective accountable governance operating system.

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*Cover page photo:
A photo depicting the facade of Parliament Building and the Office of the Prime Minister. [Sources: Wikipedia & OPM.gov.mt]*

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Abstract

“Key to understanding how the Constitution works [...] lies in the relationship between the government and the House [...] as the representative body”¹. The latter seeks “to hold government to account and to scrutinise its activities [...]”². In point of fact, such is vital in sustaining democracy in our country and to preserve the political liberty of each individual.

This research explains how the above is one of the main principles of our Constitution. It also highlights the development of such principle in practice. Such principle plays an important part in guaranteeing the existence of the rule of law, the cornerstone of our Constitution, and guides amendments and enactments of Constitutional law. It also illustrates generalisations on corresponding Constitutional issues and particular opinions, which aid in highlighting the effectiveness feature in Malta’s Constitutional accountable governance operating system.

TO GOVERN IS TO SERVE.

Edward Heath, First Speech as Prime Minister (Downing Street, London, 1970)

¹ Barry K. Winetrobe, ‘The autonomy of Parliament’ in Dawn Oliver and Gavin Drewry (ed), *The Law and Parliament* (Butterworths 1998) 14

² *ibid* 20

Introduction

'The English Constitution' is a particular constitutional model which has been admired throughout the centuries as a creator and maintainer of a comprehensive and complex system of authority³. Though critics consider the 'Westminster model', as it is so called, as a form of an 'elective dictatorship'⁴, it has provided numerous countries⁵ with the concretisation of democracy⁶. Furthermore, it may be argued that a Government in Parliament for Malta was established via the coming into force of the Amery-Miller Constitution in 1921⁷. As illustrated, Constitutional developments occurred throughout the years⁸, yet modern views and practices⁹ demand the establishment of other institutions which would be able to scrutinize the exercise of power more intensively. Proper examination is in fact needed and independent bodies recommend measures on how government behaviour should be improved¹⁰. Nevertheless, if the same government ignores the conclusions derived from such examinations and does not implement such recommendation, the very existence of these institutions would be distorted as the aim behind their establishment would not have been actualised¹¹.

The aim behind my research is to evaluate current legislation and practices as well as propose the development of others which would enhance the Maltese form of Parliamentary Government. More accurately, in the first part of this research, I will explain the Westminster model and the Maltese adaptation of such. The second part will focus more on the development of this adaptation. Chiefly, we should seek to have an accountable governance operating system which is, above all, effective.

³ William A. Dunning, 'European Theories of Constitutional Government after the Congress of Vienna' [1919] Vol. 34 No. 1 Political Science Quarterly 1

⁴ Nat le Roux, 'Elective dictatorship? The democratic mandate concept has become dangerously over-extended' (2014) British Politics and Policy at LSE <blogs.lse.ac.uk/politicsandpolicy/elective-dictatorship-democratic-mandate> accessed 1 August 2019

⁵ David Hamer, *Can Responsible Government Survive In Australia?* (rev. ed., The Department of the Senate 2004) 21

⁶ Mark Bervin, 'The Westminster Model, Governance and Judicial Reform' [2008] Vol. 61 No. 4 Parliamentary Affairs 559

⁷ J. J. Cremona, *The Maltese Constitution and Constitutional History Since 1813* (2nd ed., PEG 1997) 23

⁸ *ibid* 23-116

⁹ Tom Bingham, *The Rule of Law* (Penguin 2011) 48

¹⁰ Auditor General, *Report by the Auditor General – Public Accounts 2017* (NAO Office Malta 2018) 7

¹¹ Office of the Principal Permanent Secretary, *Governance Action on the NAO's Annual Report 2014 – Public Accounts* (PPS Office Malta 2016) 5

The essence and practicability of the Westminster Model

LITERATURE REVIEW

In reviewing Walter Bagehot's *The English Constitution*, Michel Chevalier commended this constitutional model as "amongst the most beautiful products of civilisation"¹². Many argue that what essentially attracts admirers to the Westminster Model is the nature of the Constitution of England, that is the creation of balanced institutions appropriately arranged to achieve the end of this same constitution: political liberty¹³. Montesquieu insisted that only constitutional guarantees could assure the existence of liberty¹⁴. He argued that by creating restricted institutions of authority, liberty could be attained and preserved¹⁵. In fact, the identified key characteristics of the Westminster system¹⁶, especially popular participation and sovereignty¹⁷, illustrate that such aim is achievable.

Moreover, in promoting his doctrine of the separation of powers, Montesquieu suggested the creation of three branches: the judiciary, the executive and the legislative; Benjamin Constant demonstrated that such is actualised in the Westminster system and underlined such as a paramount strength of this same system¹⁸. Nonetheless, as Vile outlined, to have an effective guarantee of liberty, the separation of powers, as a theory of government, must be amalgamated with the concept of checks and balances¹⁹. The individual subjection to such branches of authority indeed comes at a price: collectively, the people expect to exercise their sovereignty through the pronouncement of judgements²⁰, open and transparent government²¹, public deliberation and voting in Parliament²² whilst these same institutions of authority are accountable to each other²³. This is the balance which is so admired around the globe: political liberty of each individual, through judicial independence²⁴, free and fair elections, a non-absolute executive and representatives' scrutiny on the one hand, and the operation of these institutions under the rule of law on the other²⁵. The size, culture and realities of each state forge a particular institutional arrangement; the following review is based on the Maltese adaptation of this constitutional model. As a demonstration, the keystone of

¹² Jeremy Jennings, *Revolution and the Republic* (Oxford 2011) 190

¹³ J. R. Jennings, 'Conceptions of England and its Constitution in Nineteenth-Century French Political Thought' [1986] Vol. 29 No. 1 *The Historical Journal* 65

¹⁴ *ibid*

¹⁵ *ibid*

¹⁶ David Richards, 'Sustaining the Westminster Model: A Case Study of the Transition in Power between Political Parties in British Government' [2009] Vol. 62 No. 1 *Parliamentary Affairs* 108

¹⁷ Bervin (n 6)

¹⁸ Jennings (n 13)

¹⁹ M. J. C. Vile, *Constitutionalism and the Separation of Powers* (2nd ed., Liberty Fund 1998) 2

²⁰ Jennings (n 13)

²¹ Cabinet Office, *The Cabinet Manual* (Cabinet Office/Crown 2011) iii

²² Benjamin Constant, Speech: 'De la liberté des anciens comparée à celle des modernes' (Royal Athenaeum, Paris, 1819) <etienne.chouard.free.fr/Europe/Docs/Constant_Benjamin_Liberte_anciens_modernes_1819> accessed 8 August 2019

²³ Cabinet Office (n 21) 26

²⁴ Jennings (n 13)

²⁵ le Roux (n 4)

Maltese Constitutional law is the rule of law, not parliamentary sovereignty. One may argue that this further assures the existence of the balance mentioned above, as, fundamentally, the rule of law is the absence of arbitrary power²⁶.

The judiciary has a general power to interpret law. In the light of this writing, the judiciary has the power to decide whether the political liberty of a person, that is the rights granted to every individual, have been violated or not by a government action²⁷ or by a law passed by Parliament²⁸. It is for this reason that the independence of the judiciary should be preserved and maintained²⁹. As an illustration, article 469A of the Code of Organization and Civil Procedure provides for a judicial review of administrative action³⁰, as also observed in *Demicoli v. the Attorney General et al*³¹. By the same token, the Constitution provides for the judicial review over the validity of legislative acts³² as seen in *Federation of Estate Agents v. the Attorney General et al*³³, though, at times, this is overshadowed by the need of juridical interest³⁴.

Besides, the executive is the complex structure of government, supplied with power for and responsibility of the day-to-day running of the country³⁵. The government is headed by the Prime Minister and Ministers who are elected by the electorate³⁶; this serves as a democratic legitimacy for the policy execution and implementation of measures³⁷. The Prime Minister is appointed by virtue of the individual's ability to command a majority in the House and membership in the same House of Representatives³⁸. Appointment to a ministerial post is also restricted by membership in the House³⁹. Ministers become members of the Cabinet⁴⁰, are allocated specific areas of responsibility⁴¹ and assigned departments to manage the formulation of policy, its adoption and take decisions⁴². Permanent Secretaries were created to perform supervision over the management of departments, subject to Ministerial direction – similar to the Whitehall machinery⁴³. Power and responsibilities handed to civil servants delineates different scenarios: it is the decentralisation of power and engagement of experts on one side, but the transfer of local administration to unelected superiors on

²⁶ *Entick v. Carrington*, Queen's Bench November 2nd, 1765

²⁷ *le Roux* (n 4)

²⁸ A.W. Bradley, K.D. Ewing, C.J.S. Knight, *Constitutional and Administrative Law* (16th ed., Pearson 2015) 55

²⁹ *ibid* 48

³⁰ Laws of Malta, Chapter 12 Code of Organization and Civil Procedure, Article 469A

³¹ *Paul Demicoli v. the Minister and Permanent Secretary for Social Policy and Attorney General*, Court of Appeal July 12th, 2019

³² Constitution of Malta, Article 116

³³ *Federation of Estate Agents v. the Competition Director General, Hon. Prime Minister and Attorney General*, Constitutional Court May 3rd, 2016

³⁴ Tonio Borg, 'Juridical Interest in Constitutional Proceedings' [2017] Gh.S.L. Online Law Journal

³⁵ *le Roux* (n 4)

³⁶ *Cremona* (n 7) 87

³⁷ *le Roux* (n 4)

³⁸ Cabinet Office (n 21) 21

³⁹ Constitution of Malta, Article 80

⁴⁰ *ibid*, Article 79

⁴¹ Cabinet Office (n 21) 26

⁴² Neil McNaughton, *Understanding British and European political issues* (Manchester UP 2003) 181

⁴³ Edward Warrington, 'Permanent Secretaries and Good Government: A Maltese Adaptation of an Imported Governing Instrument' [1995] *Scepsta* 10

the other⁴⁴. Above all, this has led to organisational stability, leadership within the public administration and the attainment of the balance between the elected alongside appointed rulers, hence the practicability of centralised government, and the sovereign citizens, meaning political liberty preservation⁴⁵.

Without doubt such balance is also actualized in the nature of the Cabinet and the function of the legislative branch. Traditionally, in the Westminster model, the heart of government is the Cabinet. The Cabinet brings together all the Ministers in front of the Prime Minister, the 'chief policymaker'⁴⁶, to deliberate policy and other issues the Prime Minister decides to present; the aim is to achieve consensus⁴⁷, therefore collective responsibility⁴⁸. To clarify, this means that once a decision has been made in Cabinet, Ministers are bound by it, irrespective of their opinions or views expressed priorly in the Cabinet discussion⁴⁹. Balance is reached by collegiality⁵⁰, which in turn leads the government to speak one voice⁵¹.

At the same time, the legislative branch has the function to scrutinize the executive continuously⁵². "Cabinet government is parliamentary government"⁵³: the electorate elect representatives in Parliament and, as already implied, government is formed from the majority group of members for it to enjoy enough support to proceed with necessary parliamentary business⁵⁴. In other words, the House of Representatives is composed by the small group of members who form government and part of the majority group or ruling party on one side and the opposition with a minority of members on the other. Undoubtedly, the composition of the House is ideal for the conduction of scrutiny over the government: Cabinet members stand to the questions⁵⁵ from members of both sides in the plenary⁵⁶ and committees⁵⁷ alike, present the taxation plan and expenditure estimates for approval⁵⁸ and participate in the passing⁵⁹ of legislative acts⁶⁰. Such structure also permits representatives to vote on their confidence in both the government and individual ministers⁶¹.

⁴⁴ Jennings (n 13)

⁴⁵ Warrington (n 43)

⁴⁶ Rand Dyck, *Canadian Politics* (concise 5th ed., Nelson 2012) 325

⁴⁷ *ibid* 325

⁴⁸ Cabinet Office, *Ministerial Code* (Cabinet Office 2010) para. 2.3

⁴⁹ Cabinet Office (n 21) 31

⁵⁰ Ivor Jennings, *Cabinet Government* (3rd ed., Cambridge UP 1969) 277

⁵¹ Andrew Beale, *Essential Constitutional Law* (2nd ed., Cavendish Publishing 1997) 45

⁵² Cabinet Office (n 21) 41

⁵³ Jean Blondel, 'Cabinet Government and Cabinet Ministers' in Jean Blondel and Jean-Louis Thiébault (ed), *The Profession of Government Minister in Western Europe* (Palgrave Macmillan UK 1991) 5

⁵⁴ Cabinet Office (n 21) 14

⁵⁵ Laws of Malta, S. L. Const.02 Standing Orders, Standing Order 26

⁵⁶ Parliament ta' Malta, 'Parliament Practice' *Parliament of Malta* <parlament.mt/en/menues/about-parliament/how-parliament-works/parliament-practice> accessed 16 August 2019

⁵⁷ Lawrence Gonzi, 'Niċċelebraw l-20 sena Anniversarju tas-Sistema tal-Kumitati Parlamentari Tagħna' [2015] No. 10 mill-Parlament 8

⁵⁸ Thomas E. May, *A Treatise Upon the Law, Privileges, Proceedings and Usage of Parliament* (C. Knight and Co. 1844) 39-40

⁵⁹ Henry Frendo, *Il-Parlament Malti: kif beda, x'inhu, x'jaqhmel* (APS 2011) 23

⁶⁰ Constitution of Malta, Article 65

⁶¹ *ibid*, Article 81

This is the essence of the Westminster model: Government in Parliament, as Crossman indicated in his writing⁶². Government basic functions are derived and based on the workings of Parliament. However, Parliament may be seen as restricted to conduct specific analysis over the government. In fact, despite Parliamentary Committees⁶³, specific independent institutions, which fall under and assist Parliament, were created - this being denoted as a milestone reaching constitutional development. Firstly, the National Audit Office is the “guardian of the public purse”⁶⁴. The Auditor General leads the Audit Office which scope is to supervise the Government expenditure and management of public money⁶⁵. An annual report containing audit opinions and recommendations⁶⁶ is published. Secondly, the Ombudsman. People aggravated by a government action can apply to the Ombudsman who can investigate and conclude whether the particular department has lacked in delivering its duty⁶⁷ or not. An overview of the investigations carried out is given in the annual report and identifies shortcomings of departments in relation to such⁶⁸. Thirdly, the Commissioner for Standards in Public Life. This newly created office aims at inquiring into persons of trust, Cabinet and Parliament members’ conduct and if such constitutes a law violation, ethical breach or abuse of power⁶⁹. In each report, the Commissioner makes recommendations on the complaint and the investigation carried out. One may argue that the Government’s reply to such reports demonstrates the challenge to implement and the enhancement of public scrutiny over the public administration⁷⁰. Moreover, it is perceived that the implementation of recommendations, generally illustrated in a report, contributes to both the accountability and effectiveness of the governance operating system⁷¹.

Essentially, this is the outcome of a functioning democratic constitutional model: an operating system composed of power balanced and accountable institutions which aims at the preservation of individuals’ political liberty. Nevertheless, the scrupulous application of the law alone is not enough. It is the practice, for instance, to implement recommendations which makes the system effective, nurtures a culture of transparency and open government as well as inspires confidence and generates motivation in citizens to contribute to the vision for a better society.

⁶² Beale (n 51) 44

⁶³ Gonzi (n 57)

⁶⁴ Charles Deguara, ‘L-Uffiċċju Nazzjonali tal-Verifika – l-ghassies tal-fondi pubblici’ [2016] No. 12 mill-Parlament 10

⁶⁵ Laws of Malta, Chapter 369 Auditor General and National Audit Office Act, First Schedule Article 6

⁶⁶ Auditor General (n 10) 6-7

⁶⁷ Laws of Malta, Chapter 385 Ombudsman Act, Article 13

⁶⁸ Parliamentary Ombudsman, *Annual Report 2017* (Ombudsman Office Malta 2018) 2

⁶⁹ Laws of Malta, Chapter 570 Standards in Public Life Act, Article 13

⁷⁰ Office of the Principal Permanent Secretary, *Governance Action on the NAO’s Annual Report 2016 – Public Accounts* (PPS Office Malta 2018) 4

⁷¹ Ivan Bizjak, Speech: ‘Effectiveness of an Ombudsman Institution’ (Almaty, 1999) <varuh-rs.si/publications-documents-statements/speeches-papers-and-articles/news/detajl/effectiveness-of-an-ombudsmaninstitution/?L=6&cHash=c6576cdb6d3ce51aecd059e587766f91> accessed 11 September 2019

Developing an effective accountable system

METHODOLOGY

The hereunder paragraph will provide a discussion, explanation and justification of the methods used to obtain relative data and information in trying to assess people's knowledge on our Constitutional law on the one hand and the ideas of leading figures at the helm of the executive and the legislative for the strengthening of the governance operating system on the other. Thus, a mixed method approach was applied to combine generalisations together with in-depth exploration on the subject matter of this research.

To clarify, a survey was conducted. Such is considered to be a quantitative method⁷², derived from the research philosophy of positivism. Positivists target at obtaining data and information through an objective instrument; such collection is said to outline the reality⁷³ as it aims at uncovering the forces which surround the same reality⁷⁴. By contrast, interviews, which were also carried out, are classified as a constructivist method⁷⁵. It is a qualitative method, as though it is conducted amongst fewer people, their choice is influenced by the competence they are endowed with, which in turn gives an added value to the perception illustrated in the information collected⁷⁶. Though, as indicated hereinabove, the role of the people identified for an interview was the decisive factor, the participants of the survey were chosen randomly and will be considered as a rough sample of the electorate. Nonetheless, one must be aware that the latter might not be representative enough, yet such is inevitable. Stratified random sampling was not applied – the intention behind the collection of data was only to draw generalisations. Apart from this, some ethical considerations have been taken⁷⁷. The participants of both the survey and the interviews were given a brief description of this research as well as asked if they were interested to participate (survey participants were only allowed to proceed to answer the questions once they read the brief whilst interviewees were firstly asked whether they were interested to respond to the questions sent). The protection of privacy of the survey participants was assured by the anonymity of each individual, utmost confidentiality during data processing and the collective data presentation and analysis collected. In relation to interviewees, answers were not and are not to be considered as official policy or constitutional direction but as their opinion, even as a form of respect to the role they occupy. In addition, the latter were given a consent form (repeating the request and ethical considerations taken) prior to the

⁷² Shona McCombles, 'How to write a research methodology' (*Scribbr*, 22 August 2019) <[scribbr.com/dissertation/methodology/](https://www.scribbr.com/dissertation/methodology/)> accessed 23 August 2019

⁷³ Adel Alkhalil, 'A Model to Support the Decision Process for Migration to Cloud Computing' (Doctor of Philosophy thesis, Bournemouth University 2016)

⁷⁴ Zina O'Leary, *The Essential Guide to Doing Research* (SAGE 2000) 5

⁷⁵ Alkhalil (n 73)

⁷⁶ *ibid*

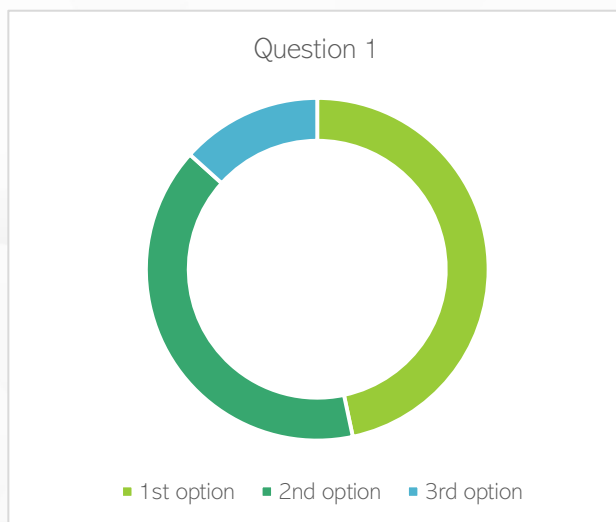
⁷⁷ John Dudovskiy, 'Ethical Considerations' (*Research Methodology*, 2019) <research-methodology.net/research-methodology/ethical-considerations/> accessed 23 August 2019

interview while they were informed that they were entitled to withdraw their participation or refuse to answer questions.

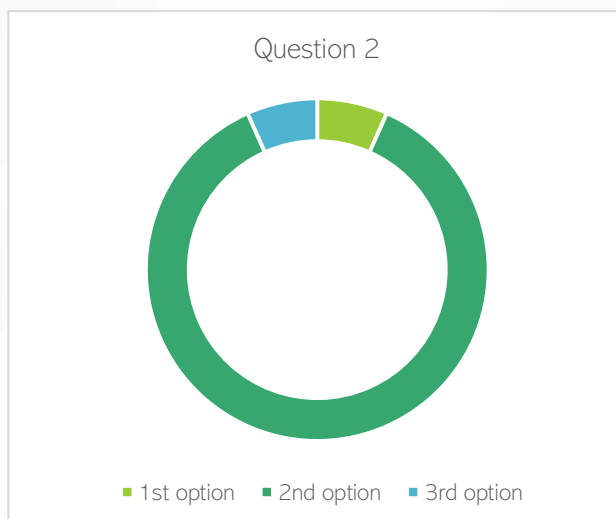
DATA PRESENTATION AND ANALYSIS – SURVEY

The drive behind the conduction of the survey was to roughly outline an assumption of the electorate’s knowledge about Constitutional matters and issues, in particular those which were discussed in the first part of this research. In fact, questions asked were derived from the literature review composed.

To start with, participants were asked to indicate from three different combinations the three branches of state, identified to be the upholders of democracy in our country. As depicted in the graph below, only 46.7% of the respondents chose the correct combination, that is ‘the judiciary, the executive/Government and the legislative/Parliament’ (the first option presented). 13.3% marked ‘the President of the



Republic, the judiciary and the Police’ (the third option) as the correct answer while 40% indicated ‘the President of the Republic, the judiciary and Parliament’ (the second option). In my opinion, such result shows lack of clarity with regards to the foundation of our Constitution. Taking a look at the Constitution itself, though the President of the Republic is a role created by the Constitution⁷⁸ and listed just before the chapters establishing the three branches⁷⁹, it is not a branch of the state and no functions of the President are enlisted. By the same token, the Police are clearly classified as being a disciplined force⁸⁰.



In the next question, participants were asked to mark which of the definitions provided represents the legal definition of a Constitution. 86.7% correctly indicated the second option: ‘the most supreme law in the land which defines the functions of the branches of

state’. The other options, which were ‘a collection of the most important laws in the land’

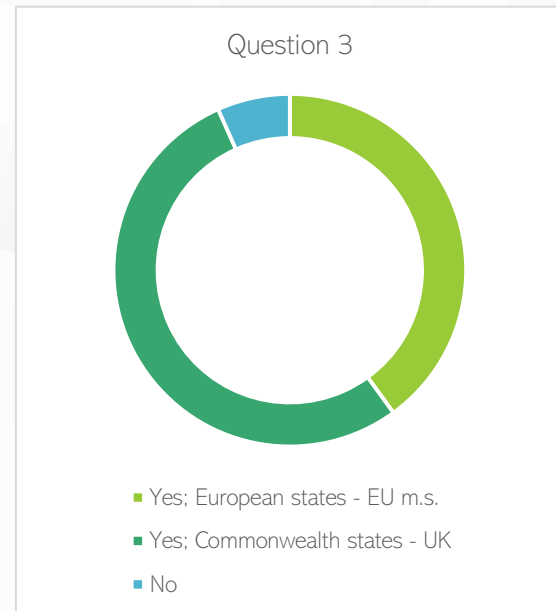
⁷⁸ Constitution of Malta, Article 48

⁷⁹ *ibid*, Chapter V

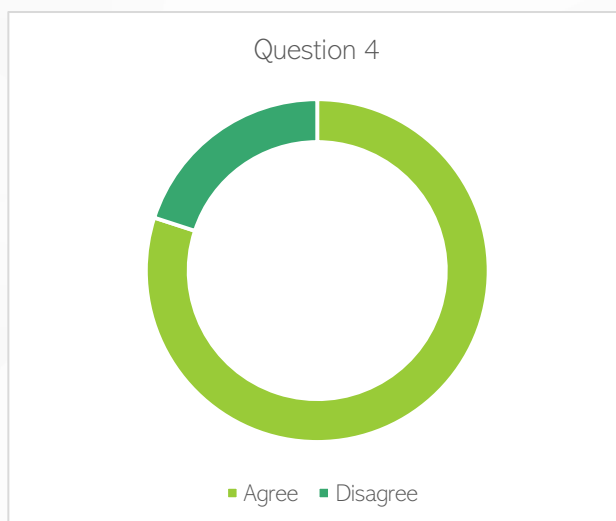
⁸⁰ *ibid*, Article 47

and ‘the law which regulates the operation of government’, were both identified as the best definition by 6.7% each. The former is false while the latter is of course half true; only one chapter of the Constitution contains such⁸¹. Awareness on the 1974 Republican constitutional change may serve as an explanation for such a result. The epicentre of the crisis that surrounded such a historical and political shifting event was the suspension of the supremacy of the Constitution⁸² which was then re-enacted and entrenched by two-thirds majority⁸³.

In the third question, participants were asked whether they observe similarities between the operation of branches of state of Malta with those of other countries. Although 6.6% indicated that they do not see similarities, 40% responded yes and indicated that they see such similarities with European countries, especially European Union member states. Parallely, 53.3% also answered yes, yet notice similarities with Commonwealth countries, especially the United Kingdom.



Notwithstanding our full membership of the European Union, no significant Constitutional change occurred except for the amending of article 65⁸⁴. In fact, no change to the constitutional model was needed. Similarities with the workings of the state branches of the United Kingdom is inevitable as “main features of the British Constitution”⁸⁵ were incorporated into the Maltese Constitution. However, the insertion



of other important features not imported from the British context⁸⁶ may lead one to think that the Constitution was also inspired by the various adaptations of the Continental constitutional model.

Subsequently, participants were asked whether they agree or not with the constitutional observation that the requirement to be appointed Prime Minister or Minister, that is being a member of Parliament, is an asset to the

⁸¹ Constitution of Malta, Chapter VII

⁸² Act LVII of 1974, Article 2

⁸³ Cremona (n 7) 106

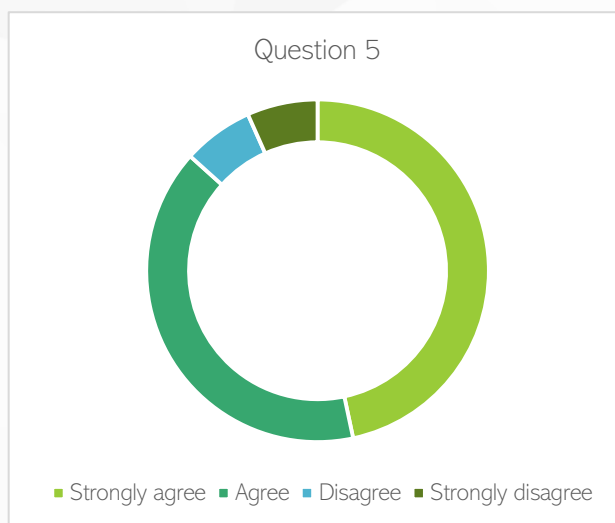
⁸⁴ Act V of 2003, Article 7

⁸⁵ Cremona (n 7) 76

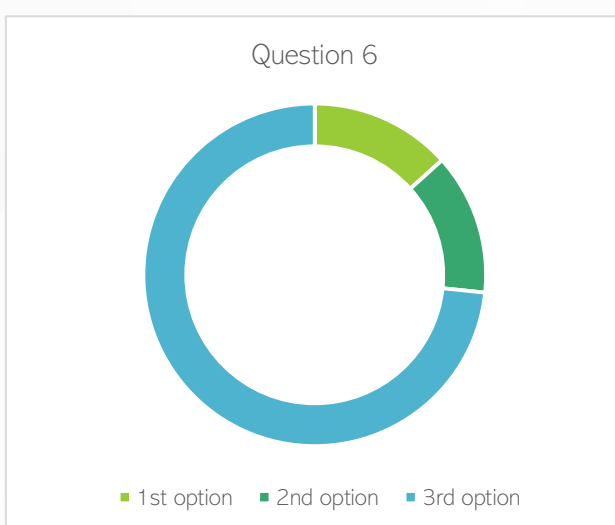
⁸⁶ *ibid* 76

efforts to have an accountable government. With an overwhelming majority in agreement, the result illustrated in the graph above may be interpreted to be a signal of trust in the Westminster model as the basis of our Constitution. Nonetheless, one must not ignore the 20% who are in disagreement; such opinion has been infrequently, yet still, voiced. Such would open a new constitutional scenario, having government-chosen technocrats to have ministerial discretion. I think the latter would then indirectly push to adapt a Continental structures for our Constitution.

In another question related to Parliament, participants were asked whether they agree with the enactment of a fixed term of Parliament act⁸⁷. The effects of such are various but principally Parliament would be dissolved automatically after the lapse of 5 years from the last election and the Prime Minister would have a restricted Ministerial discretion on such matter, thus would have to seek the approval of members of Parliament in calling an early election⁸⁸. As depicted, almost half of the participants marked that they are in strong agreement with such. 40% are in agreement. 6.7% indicated that they disagree while the same number of participants strongly disagree. In my opinion, this result implies that the will of the people is to have a strong government, vested with the necessary power to deliver its functions, and a strong Parliament, vested with equal power to function properly. This may also be interpreted to be a vote in favour of the Westminster model.



Turning on independent institutions which keep Government in check, participants were asked to mark which of the options included three of such institutions. 73.3% correctly marked the third option enlisted, hence 'the Auditor General, the Ombudsman and the Standards in Public Life Commissioner'. Half of the rest indicated the first option and the other half the second option presented, therefore 'the Police, the Auditor General and the State Advocate'

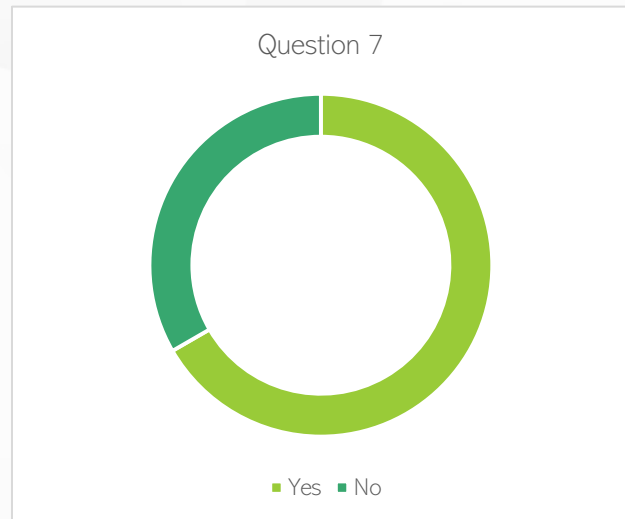


⁸⁷ United Kingdom Legislation, Fixed-term Parliaments Act 2011, Article 2

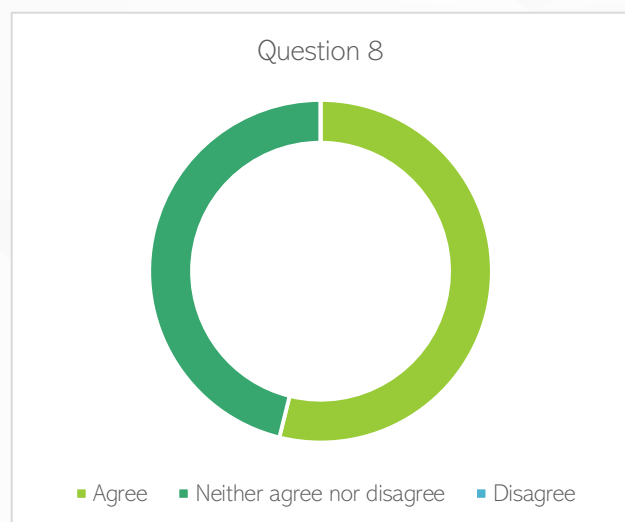
⁸⁸ Matt Dathan, 'Tony Blair to plead with Jeremy Corbyn to vote down General Election motion, keeping Boris Johnson in power' *The Sun* (London, 1 September 2019) <thesun.co.uk/news/brexit/9843408/tony-blair-jeremy-corbyn-general-election> accessed 2 August 2019

and 'the Ombudsman, the Attorney General and Parliament'. Such results explain that despite the recurrent demand on media platforms for the strengthening of the rule of law, people still lack knowledge on such matter and do not acknowledge the existence of certain institutions. Furthermore, this also exposes the fact that there exists lack of information amongst the people on Constitutional law, but, most importantly, on their own rights which arise from such law.

Additionally, participants were to specify whether they know that such independent institutions publish reports explaining their work and some recommendations which would improve the governance operating system. 66.7% indicated that they are aware of the publishing of such reports. With the rest indicating the contrary, one might detect some factors which justify such result. Firstly, media coverage; such publication must be presented as an exercise of the rule of law, constitutional law and, above all, government accountability. Secondly, the technicality of the reports might also push away the public.



Last but not least, participants were asked whether they consider if the Government's reply to the reports mentioned above enhances government accountability or not. With almost every one in two respondents not taking a position on such statement, I think that some circumstances might have a bigger influence than one might calculate. The publication of such replies is an exercise which the government is not obliged to conduct. However, such exercise aids in having civil servants demonstrating how the recommendations of independent institutions were implemented and, chiefly, how the governance operating system is being improved. To build up any serious discussion, one must first see if the proper structure is in place and if the players within such structure are achieving their aim, that is, in this case, government accountability. Moreover, what I think has led for such a result is the pro-active stance the organisation under scrutiny has taken to display its efforts to make the governance operating system more effective.



The Prime Minister and Mr Speaker were identified as the individuals whose answers would enable me to demonstrate a perspective of two persons at the helm of two of the state branches on certain issues relevant to this research and refine certain ideas I will be presenting in the conclusion of this research. Of course, the comments of both the Prime Minister and Mr Speaker carry weight, on one side due to the Constitutional role they presently occupy and their experience with the workings of our Constitution on the other. Both were asked the same set of questions. Such was done with the intention to evaluate divergence and convergence within their answers.

In the first question the interviewees were asked whether there should be the strengthening of the Westminster model or a complete shift to a Continental or an autochthonous structure.

The Prime Minister's answer

Dr Muscat said that at the end of the day it is the actualization of the principle of checks and balances that counts. Shaping our Constitutional basis on one model or another is almost insignificant because all provide for such actualization. Nevertheless, he mentioned that while traditionally we are inclined to further develop our adapted Westminster structure, especially with regards to conventions, such is not acknowledged by European watchdogs. Due to different constitutional contexts, institutions like the Venice Commission insist with Malta to put down such conventions, especially to ensure their enforceability in a court of law.

Mr Speaker's answer

Dr Farrugia explained that the basis of our Constitution is inspired by the Westminster model. Though our system uses the British adaptation of the Westminster model as a guidance⁸⁹, he insisted that our system has developed in an independent manner, as even illustrated in various rulings issued during his tenure in the office of Speaker. Therefore, he implied that the Westminster model has been shaped to our particular needs and established itself as the basis of our Constitution.

These answers, even taken together with the result of question 4 of the survey, expose the fact that the Westminster model has, as a matter of fact, provided us with a functioning democratic institutional framework.

⁸⁹ Laws of Malta, S. L. Const.02 Standing Orders, Standing Order 197

The next question related to government accountability. The Prime Minister was asked how Government is trying to strengthen its accountability. On the same lines, the Speaker was asked how Parliament is increasing Government accountability.

The Prime Minister's answer	Mr Speaker's answer
Dr Muscat stated that such has materialized in the autonomous operation, thus the day-to-day running, of Parliament. He added that the foundational principle of our Constitution, hence Government in Parliament, was employed to have Government accountability in relation to certain appointments. In fact, the Public Appointments Parliamentary Committee was established ⁹⁰ to evaluate in a pre-appointment hearing the person nominated. Needless to say, this is scrutiny over government action.	Mr Speaker indicated that the materialisation of the foundational principle of our Constitution may be seen, for instance, in creating the Committee for Standards in Public Life ⁹¹ . Having the functions to oversee the Commissioner's work, discuss reports and even the implementation of recommendations, he displayed how such has intensified government accountability through Parliament. Dr Farrugia's comment hints at the milestone reaching constitutional development which has been already pointed at in this research. In addition, he also mentioned the fact that code of ethics are enshrined in the law, as another measure enhancing government accountability.

Apart from demonstrating the development of an effective accountable governance operating system structured on the principle 'Government in Parliament', these responses indirectly convey the importance of law.

During the interview, it was remarked that a strong centre, that is to say a governance operating system which has a strong centralised executive, is needed. Consequently, the interviewees were asked if they observe certain effects derived from such on the functions of Parliament.

The Prime Minister's answer	Mr Speaker's answer
Implying in his answer that this statement is not contradictory to the doctrine of the separation of powers, the Prime Minister said that decisions must be taken. Breaking the decision-	Because Parliament has become totally autonomous, Dr Farrugia underlined that despite any attitude the government adopts, Parliament is neither dominated nor conditioned by a

⁹⁰ Laws of Malta, Chapter 595 Public Administration Act, Article 37(1)

⁹¹ Laws of Malta, Chapter 570 Standards in Public Life Act, Article 26

taking process, for example, by introducing evaluation at the various stages, is useless. That is why there exists a branch of the state responsible for taking decisions and another to overview those same decisions. One must not forget that the composition of Parliament plays a vital part in it delivering its duties.

member of the executive. Above all, this is the doctrine of the separation of powers in practice.

I subscribe myself to the idea that the separation of powers is not just a feature of the Westminster model, but also one of the components which makes such model functional.

Having the assumption that a decentralised government is a way by which a government is more accountable of itself, both were asked whether they consider if government is getting more centralised or not.

The Prime Minister's answer

The Prime Minister insisted that decentralisation is materialising through the creation of agencies and legislation that devolves power from Ministers to the lowest possible level of government.

Mr Speaker's answer

Also mentioning the creation of agencies as an example, Mr Speaker noted that these do not reduce government accountability. Indeed, apart from having their funds and any reform debated and voted on in the House, agencies are bound by law to

prepare a statement of their accounts audited at the end of each financial year; this annual report is then laid on the table of the House by the responsible Minister and may be debated.

Dr Muscat mentioned the devolution of ministerial power as an example of decentralisation; except for deepening the use of subsidiarity (a European Union general principle⁹²), such process further guarantees the existence of the rule of law. Besides, with regards to what the Speaker mentioned, provisions in acts establishing agencies create an obligation on these same agencies to present an audited annual report within a specific period after the end of each financial year (similar obligation exists on agencies in other countries⁹³).

⁹² Treaty on European Union, Article 5(3) and Protocol No 2

⁹³ Mauritius Legislation, The Statutory Bodies (Accounts and Audit) Act

Back in 1974, the number of provisions in the Constitution entrenched by two-thirds and a referendum was reduced to one⁹⁴. Asking for their personal opinion on whether there should be more provisions entrenched in this way, indirectly restricting the government's ability to change the Constitution - hence having a qualified Parliamentary majority backing such action and perhaps even a majority of the electorate - the following views were expressed:

The Prime Minister's answer

While not excluding such an idea, Dr Muscat highlighted that such must be seen against a context which includes the role played by conventions and the protection of minorities. Firstly, there occurred the development of certain conventions which have introduced the two-thirds majority where it is not required. By contrast, a referendum is a form of majoritarian rule.

Mr Speaker's answer

Mr Speaker took a cautious position, saying that all the circumstances must be assessed in executing this change. As an additional note, he rather highlighted that no action exists for an individual to rebut a vote taken by the House.

Challenged on whether they agree to the enactment of a fixed term of Parliament act or not, by which the prerogative of the Prime Minister to end the life of Parliament and call for an early election is given to members of Parliament, the following responses were given:

The Prime Minister's answer

The Prime Minister stressed that such shift would lead to instability, something which contrasts to an effective accountable governance operating system. An early election would also end the life of the government and Dr Muscat stated that he disagrees with the enactment of such a law.

Mr Speaker's answer

Dr Farrugia disagreed with such change, arguing that the calling of an early election should be kept as a prerogative of the Prime Minister. Furthermore, he said that the executive has a better understanding of the factors which trigger such an election and the common good.

One may observe a sharp contrast between these answers and the result for a similar survey question. A key feature of a good governance operating system is stability. The doctrine of the separation of powers offers such in setting up the three branches of state;

⁹⁴ Act LVIII of 1974, Article 26

the contrast may be interpreted as a misunderstanding to which branch of the state such power belongs.

With the assumption that government accountability would be enhanced by the strengthening of the Standing Orders, the creation of the Father of the House (a title given to the longest serving member of Parliament, referring to him in seeking advice on Parliamentary business) and the expansion of the role of the Leader of the House, both interviewees were asked if they agree to such statement or not.

The Prime Minister's answer	Mr Speaker's answer
Dr Muscat said that he does not exclude such, mentioning a consideration he had taken to have a Minister who would have been focus on his role as Leader of the House.	Mr Speaker assumed that a Minister serving as a Leader of the House more focused on his Parliamentary role might lead to more efficiency. Moreover, though he agreed with a reform to the Standing Orders, he remarked that motions of procedure are passed to regulate Parliament <i>ad hoc</i> .

The two opinions expressed display a conceptual consensus.

The last question focused on the effectiveness of independent institutions mentioned in this research. In fact, both the Prime Minister and Mr Speaker were asked if they consider such institutions of accountability to be effective, that is in improving the governance operating system.

The Prime Minister's answer	Mr Speaker's answer
Firstly, the Prime Minister highlighted that by the creation of Standards in Public Life Commission the 'game became fairer' in the sense that today government power has been balance by the workings of an independent body. This freely expresses its views if standards derived from the law or	Dr Farrugia agreed with the statement put in the question, saying that even Parliament oversees the workings of such institutions and repeated his publicised suggestion for the reports of such to be placed in the agenda of the House.

expected to be upheld by the people were so upheld or not. Secondly, with regards to the operation of the Ombudsman Office and National Audit Office, Dr Muscat stated that they are effective by their own activity. As commonly understood, "effectiveness can be estimated by establishing the following indicators [...] proportion of recommendations followed"⁹⁵. When questioned on the reply to the reports of such institutions, the Prime Minister replied that such has given the government an opportunity to express its own views, steps taken to implement the recommendations and be transparent in relation to the latter.

Though these are positive answers, it is understood from the result obtained via the last question of the survey that generally, the public does not share this same clear outlook on the functioning of this same section of our Constitutional law.

⁹⁵ Bizjak (n 71)

Conclusion

“People rightly expect modern services that work well, meet real needs and use public money fairly and efficiently”⁹⁶. Indeed, as demonstrated hereinabove, the adaptation of the Westminster model and the development of Constitutional law has provided our country with a functioning democracy. Democracy is not just about the right to vote; it is about the constant preservation of the political liberty of each and every one of us. Such is actualized in a governance operating system which is composed of accountable institutions created by the law. Yet, the application of the law alone is not enough; the development of certain practices and customs is necessary to secure the effectiveness and practicality of the mentioned system.

In gearing up for the next legal transformation, that is the Constitutional reform – which should not limit itself to just amending the Constitution, we should seek to sustain the people’s confidence in the foundational principle of our Constitution, hence Government in Parliament. I subscribe myself to the idea that such is achievable in two ways: the enhancement of current good practices and taking on the challenge of self-assessment. Firstly, the reactive stance of the government is salient because it is a stage in practices derived from the workings of the law. Replying to reports of independent institutions gives the Government an opportunity to detect shortcomings and highlight efforts made in order to improve governance. Secondly, the proactive stance is equally important as it symbolises the Government’s commitment for itself to be accountable; the most democratic form of action would be to legally strengthen Parliament and the institutions which fall under it. The execution of action plans should be improved and the foundational constitutional principle should be utilised in leading amendments and enactments of laws in order to have an effective accountable governance operating system.

To conclude, this research has exposed an overview of Constitutional law and its practicality. It has also illustrated generalisations and particular opinions on related issues. What I realised from this research is that “no matter how [accurate] and innovative the law is [...], at the end of the day,”⁹⁷ it is the context of its application, thus the implementation of the intended effects that further embrace the rule of law, reshape our international image and truly affects the life of ordinary people and serves as part of the motivation for their ambitions by which they contribute to help build a better society.

⁹⁶ Chief Secretary to the Treasury, *Public Services for the Future: Modernisation, Reform, Accountability* (The Stationery Office 1998) Foreword by the Prime Minister

⁹⁷ Paul Borg, ‘An Analysis of the Public Administration Act’ (Doctor of Laws thesis, University of Malta 2010)

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Government in Parliament

An assessment of the Westminster model and
the development of an effective accountable governance operating system.

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