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A crook-proof Constitution

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Malta's current political situation confirms that our institutions are not well-equipped to curtail excesses by governments. Institutional checks and balances are too weak to prevent the country from having another Joseph Muscat at Castille.

To make matters worse, the murder of Daphne Caruana Galizia shows that certain interests – including criminal and corrupt ones – may have excessive influence over government and state open tions. Thus Malta's state relations and regulations can facilitate a perfect storm wherein

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One may argue that a Prime Minister has a democratic mandate, so it is only logical that he has so much power. In reply, one can point out the difference between liberal and illiberal democracies. Both grant government to election winners. But liberal democracies are equipped with checks and balances, individual rights, balanced institutional arrangements and various levels of governance. This makes it very difficult for the Prime Minister or President to monopolise power. In illiberal democracies, on the other hand, the winner takes all and has carte blanche to act like a despot during the electoral term. This may also include cynical changes to institutions to give even more power and impunity to the ruling force.

During these difficult times in Malta, we should reflect on what type of democracy we want. If our country really wants to be a liberal democracy, the least it should do is to adapt its institutional infrastructure accordingly. Constitutional reform is crying for this.

The Constitution of Malta covers various aspects of social life such as language, employment, culture, environment, education, minorities, citizenship, parliament, governance and rights. Despite reforms which took place throughout the years, we can say that this document is incapable of protecting its citizens from excesses and tragedies such as those being witnessed in Malta.

These include the murder of Daphne Caruana Galizia; the lack of autonomy and decisive action of the Police force; the lack of power of the President; the incumbency which renders the civil service into a partisan network of patronage; the lack of evidence-based policy making; the excessive power of the Prime Minister and the unaccountable links between big business and politics.

open | the European Commission for Democracy through Law (known as the Venice Commission) to report on Malta's constitutional arrangements, separation of powers and judiciary.

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Consequently, the Venice Commission made several recommendations to the Government of Malta which were principally intended to check the extensive powers of the Prime Minister. These cover judicial vacancies and dismissals; separation of powers; the need to strengthen the role of President, and the need to strengthen parliament by making it more professional, accountable and evidence based. The Venice Commission also mentioned the need to limit the Prime Minister's appointing powers and the need to limit appointments to positions of trust in the public service.

It is interesting to note that the Venice Commission recognised the challenges of having governance models in a small state like Malta. It emphasised that there is no uniform constitutional model for good governance.

Hence, there may be different variants of liberal democracy. Small states like Malta have characteristics which must be taken into account in scholarly, grounded analyses and policy recommendations. These include the proximity of politicians to electors, and the personalisation of politics.

In the meantime, the Constitutional Reform Committee was established in November 2018, and in 2019 new President George Vella announced that it would be meeting regularly and a number of meetings with social representatives took place.

It is imperative that the methodology of the consultative process facilitates meaningful dialogue and deliberation. Qualified experts from respective fields should have proper space, time and ambience to deliberate alongside citizens, civil society, constituted bodies, minorities and political party representatives.

Some areas which I believe should be on the agenda of constitutional reform include accountable governance, institutional autonomy, financing of political parties and candidates, professionalization of parliament, individual rights, checks and balances, press freedom, political education, structured and evidence-based policy making and the role of civil society.

I also recommend that the Constitutional Reform Committee carries out an expert review of possible models of consultation. It should ensure transparency about its methods of analysis of public feedback. Peer review can assist this process: Here, the consultation process and committee recommendations will be further subjected to evaluation by qualified reviewers. Besides, impact assessments should be carried out on proposals that are followed through.

The consultation process should have proper time frames, but it should not act as a speedy springboard for quick-fix solutions which can have unintended consequences. For it is easy to be a self-appointed headline-grabbing constitutional expert on social media: What is needed is a holistic process which ensures that Malta has the best constitution possible, one that spares the country from another Joseph Muscat.

At the same time, I wish to emphasise that in a liberal democracy, a governing formation can only be replaced by another one. This gives rights, but also responsibilities, to political parties, politicians, activists and voters.

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