

# Pro-Italianism, treason and conspiracy in wartime Malta

A judicial inquiry into deportation and  
capital punishment as imperial deterrents

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In this article, **Andrea Zammit** analyses the use of capital punishment and deportation as consequences of and deterrents against criminal offences, with particular focus on the events that unfolded locally during World War II. The rest of the article can be found in *Id-Dritt XXX*.

**TAGS:** Legal history, Crimes and punishments

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# **1. Pro-Italianism, Internment and Deportation: 1939-1945**

## **1.1 Historical overview and the juridical implications**

‘**W**ithin the course of the last few days the Authorities have found it necessary to restrict the movements of certain persons in these islands as a safeguard against any conscious or unconscious action which might endanger public safety’. So read the editorial commentary of the Malta Daily Chronicle of the 1st of June 1940, a Colonial manoeuvre criticised by internee Dr. Herbert Ganado as mere juridical novelty.<sup>1</sup> The spirit of the Habeas Corpus in barring State arrests, if made within forty-eight hours a subject, was not hauled into Court. It was expediently set aside under the transference of power from the British Parliament to the Governments in interning, on the slightest suspicion, British subjects - without a legal process, an accusation and founded proof – shattering the reassuring degree of liberty nurtured by those incriminated through *sui generis* offences.<sup>2</sup> The 1939 Emergency Powers Regulation Act flagged under the canons of legality, was to be coupled by Ordinance No.1 of 1942 advocating deportation of the internees. Notwithstanding a legal victory of the latter in successfully exposing the illegality of such a measure, the Maltese authorities were impotent in raising juridical objections to the Governor<sup>3</sup> whose delegated mission was that of representing the interests of Britain in Malta as a fortress Colony with the *menace of fascistisation* looming over its seas<sup>4</sup> while *particularised* miscarriage of justice ensued within.

The abnormal circumstances of the Second World War ushered in an internal politico-cultural struggle culminated by the language question and removal of Italian language from the law courts in August 1934.<sup>5</sup> The British were adamant in maintaining new regulations on a rigid press law<sup>6</sup> entailing pre-publication guarantees and sanctions of an accusatory nature levelled against personages like Enrico Mizzi, whereby lamentations followed that mere criticism of Colonial authorities was tantamount to a seditious intent.<sup>7</sup>

Whilst pleas of ‘Constitution worthy of such a name’ by the politically vociferous in 1938 were ‘indecorously’<sup>8</sup> requited with the MacDonal Constitution of 1939, the major proponent, Mizzi, had already been court-

<sup>1</sup> Herbert Ganado, *Rajt Malta Tinbidel*, Vol.II (Interprint Malta 1977) 213.

<sup>2</sup> Ibid 201.

<sup>3</sup> Max Farrugia, *L-Internament u l-Eżilju Matul l-Aħħar Gwerra* (PIN Malta 2007) 3.

<sup>4</sup> Reno Borg, *Malta u l-Faxxiżmu* (SKS Malta 1991) 107.

<sup>5</sup> Carmel J. Farrugia, *Polluted Politics: Background to the Deportation of Maltese Nationals in 1942* (Midsea 1995) 23-24.

<sup>6</sup> Ibid 16.

<sup>7</sup> Carmel J. Farrugia, *Polluted Politics: Background to the Deportation of Maltese Nationals in 1942* (Midsea 1995) 25.

<sup>8</sup> Ibid 26.

martialed in 1918 for seditious articles published in Italy<sup>9</sup> in 1940, interned for his ‘hostile origin and association’, and in 1946 having been accused of fascist subsidisation<sup>10</sup>. The assimilation of Mizzi’s unflinching apology of Malta’s ‘italianità’ with incriminating fascism was an ace in the hole of Strickland’s followers<sup>11</sup> who succeeded, through the incitement of the press<sup>12</sup>, in blacklisting the Maltese as ‘Quislings’ and ‘traitors<sup>13</sup>’ to the knowledge of Security Officer Colonel Ede, as the fire of invasion continued to fuel opportune Colonial actions.<sup>14</sup>

Three days following Strickland’s decisive proclamation in the Council of Government on the 7th of May 1940, fifty-four internees were informed of their arrest by virtue of Section 18(1c) of the Malta Defence Regulations of 1939 between the 11th and 31st May 1940<sup>15</sup>. Two years later, on the 31st of January 1942, Enrico Mizzi and other forty-eight Maltese from St. Agatha internment camp were officially informed by the Governor of their immediate deportation as a justification of the public safety and defence of Malta. With no formal accusation hinging on their forced exile and denied of their right to institute judicial proceedings, the hostile climate had been spurred by the fear-mongering of the press and the island’s defencelessness: all these did not bode well for the observance of the Rule of Law and speediness of justice. This was evidenced by the Court of Appeal’s pronouncement on the inoperability of the Deportation Ordinance No.1 of 1942, which proved to be futile as repatriation was delayed until the 8th of March 1945.<sup>16</sup>

## 1.2 Colonial *Ratio decidendi* challenged by the principle of legality

Sir Ugo Mifsud’s address to the Council of Government on the 9th February 1942 chiefly encapsulates the essence of the principle of legality, *no punishment without crime* – directed towards the British pursuance of Ordinance No.1 which advocated deportation of Maltese nationals. The memoirs of the deportees attempt to unofficially surmise the *ratio decidendi* of the British in interning a person as per 18(1c) of the Malta Defence Regulations, 1939 for ‘*the public safety and defence or in view of [his] hostile origin or association*’ and deporting insofar ‘*[his] continued detention in Malta [was] inexpedient.*’

Constitutionally, the internment of prominent figures and divestment from high tenure, as seen in the case of Chief Justice Sir Arturo Mercieca, was not legally

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<sup>9</sup> Austin Sammut, *The Court Martial Of Enrico Mizzi*, 1917 (Midsea Books 2005) 59.

<sup>10</sup> Joseph M Pirotta, *Enrico Mizzi’s Political Integrity: Fact or Fiction?*, (Malta Historical Society 1986) Enrico Mizzi’s Political Integrity: Fact or Fiction 93-94.

<sup>11</sup> Ibid 96.

<sup>12</sup> Ray Bondin, *Deportation, 1942: The Internment and Deportation of Maltese Nationalists* (Rama Publications 1980) 28-34.

<sup>13</sup> Carmel J. Farrugia, *Polluted Politics: Background to the Deportation of Maltese Nationals in 1942* (Midsea 1995) 65: ‘On 22 May the editor of The Times of Malta instigated the Special constabulary to: ‘organize themselves quietly and without fuss into anti-Quisling specials... and help to wipe out those who by their subversive activities are traitorously helping the enemy to strike at our homes.’

<sup>14</sup> Ibid 26.

<sup>15</sup> Ibid (n 12) 40.

<sup>16</sup> Ibid (n 10) 92.

permissible unless proof of judicial misconduct was presented based on the principle of *'quamdiu se bene gesserint'*<sup>17</sup>, a criterion which was inadequately qualified by the accusation of 'pro-Italian sympathies'<sup>18</sup>. While the British government acted in 'a spirit of self-preservation' 'to remove not as penalty but for safety',<sup>19</sup> the 'good reasons' divulged by Sir Harry Luke were never judicially intimated to the internees in a statutorily clear manner other than in axioms product of a common *expediency* rhetoric. The internees' petition on February 1942 emphasising that the Malta Defence Regulations had never contemplated deportation but only internal internment '*in such place...as the Governor may, from time to time determine*' was met with disapproval as he is was '*unable to vary his decision*'.<sup>20</sup>

Internally, Malta had witnessed a constitutional regression throughout the climatic phase of the 1930s. Concurrent legislation by Order in Council, had bestowed upon the Governor the new reserved power of unfettered discretion in validating any motion as if it were passed by the Council if held expedient in the interests of public order<sup>21</sup>, thereby restraining the liberties of a given sector in Maltese society. The ultimate victory against the principal foe can arguably be remembered in history as a pyrrhic one for Great Britain, for the Island Fortress had succeeded in remaining impregnable but inside its own walls, the fortitude of the principles crystallised in the 1802 Declaration of Rights were shackled.

On line of principle, if the *sanctity* of such principles permeating from binding instruments is to be shrouded absolutely, then it should follow that such 'absoluteness'<sup>22</sup> of rights cannot fall secondary to the expeditious measures of the maintenance of safety and good order, without fulfilling due requirements consonant with the declared rules authoritatively laid down by the Courts of Justice.<sup>23</sup>

Sir Anthony Mamo gives a learned elucidation on the principle of legality and limitations by territory; both of which relate to the question so far discussed. To wit, 'no act or omission can be considered as a criminal offence unless it has been so declared by the law of the State and no punishment can be inflicted which is not prescribed by the law'<sup>24</sup>, reiterated by Sir Ugo Mifsud<sup>25</sup> as well as Cesare

<sup>17</sup> Translation of Security of Tenure principle: 'As long as he shall behave himself well'.

<sup>18</sup> Arturo Mercieca, *Le Mie Vicende. Note Autobiografiche*. (1st edn, Tip Lux Press 1984) 306.

<sup>19</sup> Carmel J. Farrugia, *Polluted Politics: Background to the Deportation of Maltese Nationals in 1942* (Midsea 1995) (n 5) 74.

<sup>20</sup> Bondin (n 12) 83.

<sup>21</sup> J. J Cremona, *The Maltese Constitution And Constitutional History Since 1813* (Publishers Enterprises Group 1997). 39-41.

<sup>22</sup> William Blackstone, Wilfrid Prest and Ruth Paley, *Commentaries On The Laws Of England* (Oxford University Press 2016). 130-135: '*the personal liberty of individuals... without imprisonment or restraint, unless by due course of law...to refuse or delay to bail any person bailable, is an offence against the liberty of the subject by the common law: as well as by statute and the habeas corpus act.*'

<sup>23</sup> Sir Anthony Mamo, *Mamo Notes on Criminal Law* (GhSL) 18.

<sup>24</sup> *Ibid.*

<sup>25</sup> Debates of the Council of Government, 9th February 1942: '*deportation is a very grave penalty, and it means, therefore, the consequence of a crime.*'

Beccaria's assertion that 'the place of punishment should be the place of the commission of the offence and no other'.<sup>26</sup>

An understanding of Sir William Blackstone's analysis in his 'Commentaries on the Laws of England' puts the British government in Malta's policy into perspective. *'To bereave a man of life, or by violence to confiscate his estate, without accusation or trial, would be so gross and notorious an act of despotism, as must at once convey the alarm of tyranny throughout the whole kingdom; but confinement of the person, by secretly hurrying him to jail, where his sufferings are unknown or forgotten, is a less public, a less striking, and therefore a more dangerous engine of arbitrary government. And yet sometimes, when the state is in real danger, even this may be a necessary measure. But the happiness of our constitution is, that it is not left to the executive power to determine when the danger of the state is so great as to render this measure expedient'*.<sup>27</sup> Recourse to the 'bulwark' of human liberties, the Habeas Corpus Act, is therefore a litmus test determining the legality of detention, a contestation reproduced in 1942 Debate in the Maltese Council of Government. The latter does not settle the *rapprochement* between expediency and legality; rather it demarcates the fundamental differences rendering the task of identifying the substantive reasons for the underlined deprivation of liberty as an uphill struggle.<sup>28</sup>

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<sup>26</sup> Ibid.

<sup>27</sup> Blackstone (n 22) 135.

<sup>28</sup> David D. Cole, 'In Aid Of Removal: Due Process Limits On Immigration Detention', SSRN Electronic Journal <<http://scholarship.law.georgetown.edu/facpub/68>> accessed 17 April 2017. 1099

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