



Legislative Entrenchment and Enforcement of Medical and Surgical Practice in Malta, 1801–1901

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Abstract. The late Maltese medical historian Dr Paul Cassar published his magnum opus on Malta’s Medical History first in 1964, and is now well over 50 years old but still very valid for elaborations and re-evaluations on the subject-matter. This article is meant to re-visit Dr Cassar’s research on medical and surgical practice in Malta (or the Maltese Islands, including Gozo) under the first century of British rule by way of an amplification of the relevant legal sources and literature, and by focusing on the role and function which legislation played as a means of entrenchment and enforcement of the system. It is intended to show that legislation as a social science is more than a document that enjoins principles and concepts, and has been an instrument of application and coercion in relation to vital human interest. This contribution will cover the first 100 years of British rule because in their course the foundations of the present-day medical and surgical system were prepared and laid.¹

Keywords: legislation, codification, instrument vs. concept, entrenchment, enforcement, medical licence

1 Introduction

“Social science” is a major category of academic disciplines. It is concerned with the scientific and systematic study of the structure and functions of society, and the interplay among persons, individuals or groups (or bodies), within a community, either as a whole or in part. It ramifies into branches such as politics, economics, demography, geography and the rest. It widely comprises the humanistic fields of history and law, and certainly, a

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combination of both disciplines.²

History of law is divided into sub-divisions including history of legislation.³ History confirms that since at least Aristotle, law including legislation, has two modes of operation: direction and coercion.⁴ Both the historian and the lawyer - and the historian of law at that - must deal, characterise and classify legislation, as a type and category of law, according to a number of criteria but particularly pursuant to the level of entrenchment⁵ and enforcement.⁶ They are bound to deal with the success or failure of legislation (or better legal enactments by an individual or group or body), by tackling it in different contexts not only as a concept but as an instrument of observance and fulfilment.⁷

The late Dr Paul Cassar published Malta’s medical history in 1964⁸ at the peak of his career as medical historian and his masterpiece always topped his list of scholarly works that run into over 400 entries of his bib-

²[1785] Thomas Adams, Letters, 10 September in *Works* (1854) IX, 450, used the term for the first time when he said “The social science will never be much improved, until the people unanimously know and consider themselves as the fountain of power.”

³Another principal sub-division of legal history that complements legislative history is judicial history or the history of court judgements.

⁴Aristotle *Nicomachean Ethics*. X, 9: 1180a21–22, on the dual operation of law and as means of direction and coercion.

⁵“Entrenchment” in this article means the position at which a clause or provision is fortified or safeguarded against repeal or change in legislation, generally by subjection to sanction in the form of punishment or payment of damages.

⁶“Enforcement” in this article means the process of compelling observance or fulfilment of the law.

⁷See also John Finnis. *Natural Law, Natural Rights* (Oxford University Press, Oxford), X, 260–264, on the two modes of operation of law.

⁸See Paul Cassar. *Medical History of Malta* (Wellcome Historical Medical Library, London, 1963) 586pp. Chapter 47 is 465–496.

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liography.⁹ He devotes chapter 47 to ‘The Practice of Medicine & Surgery (in Malta)’ which he opens with reference to the legal provisions that governed the subject matter from the advent of the Knights Hospitallers (or the Order of Saint John, or “Order”, in Malta) in 1530 when they brought with them the “*pragmatiche*” (pragmatic or basic institutes of laws) of Rhodes to Malta.¹⁰ This article utilizes Dr Cassar’s retrieval of historical data on health legislation in the course of the first century of the British governance in Malta in order to better stress the extent to which the Maltese legislature or parliament applied entrenchment and enforcement to such a vital area of the legal system of Malta.¹¹

2 British Rule

The British became rulers of Malta, *de facto* in 1800, *de jure* in 1814.¹² Governors as one-man sovereigns introduced and promulgated the first system of legislative enactments immediately after the British takeover of the islands in 1800 and some time before they established the first legislature in the form of a Council of Government in 1835.¹³ The Knights Hospitallers (1530–1798) had published twice a form of organised collections of “*pragmatiche*” in 1724 (Granmaster De Vilhena’s “Code”) and 1784 (*Dritto Municipale* or [Grandmaster] De Rohan’s “Code”).¹⁴ They left an unlimited corpus of edicts or proclamations called ‘*bandi*’ which town-criers announced publicly on the village square but the Order left them in manuscript form until the Knights Hospitaller capitulated to the French troops of Napoleon Bonaparte in 1798.¹⁵

⁹See Mary Samut-Tagliaferro and Charles Savona-Ventura. *Dr Paul Cassar (1914–2006) A Biography* (University of Malta Library, 2008) 76pp, for a meticulously researched compilation of Dr Paul Cassar’s works.

¹⁰Alfredo Mifsud. ‘I Nostri Consoli e Le Arti e I Mestieri’ in *Archivium Melitense, Bollettino della Società Storico-Scientifica Maltese*, III, October 1917, N.1, 40.

¹¹See John Selden, *Laws England*, III. i. (1739) who stated “Against this danger he entrenches himself in an Act of Parliament”, and John Locke, *An Essay concerning Humane Understanding*, II. xxxi. (1695) 150, who stated that “The Rewards and Punishments... which the Almighty has established as the enforcements of his Law”.

¹²Patrick Staines. *Essays on Governing Malta (1800–1813)* (Publishers Enterprises Ltd, Malta 2008) 636pp, that thoroughly covers the period 1800–1813.

¹³Raymond Mangion. Minutes of the Council of Government of Malta 29 December 1835 to 13 August 1849, in *Documentary Sources of Maltese History, Part VI, Constitutional and Legislative Documents* (Malta University Press, Malta, 2009) xvii–xxv *passim*.

¹⁴Paolo Debono. *Sommario della Storia della Legislazione in Malta* (Tipografia del Malta, Malta, 1897) Capitolo XIV, 194–199, capo xv, 203–210.

¹⁵Eventually, a selection of ‘*Bandi*’ from 1784 till the advent of formal British rule in 1813 was published in *Collezione di Bandi, Prammatiche ed altri Avvisi Ufficiali pubblicati dal Governo dell’Isola di Malta e Sue Dipendenze, Dal 17 Luglio 1784 al 4 Ottobre 1813* (Stamperia del Governo, Malta, 1840) 186pp.

Remarkably, the Order in general and Grandmasters individually, regulated stringently, and enforced severely, the practice of medicine and surgery, so much so that they did so at a time when the greater part of the laws and legal systems were customary and unwritten and Roman Law - the *jus comune*¹⁶ - was still performing the important function of a supplementary law.¹⁷ The Knights Hospitallers embodied the relevant health provisions in “codifications” considered as statutes invested with a sort of “legal sanctity” that secured them against sudden and sweeping changes.¹⁸ They lived in an era and context within which quacks and charlatans were notorious on the nearby European continent.¹⁹

The Knights Hospitallers as Heads of State in Malta, with zeal and careful observation obliged doctors to abide by the requirement that they, as practitioners had to report forthwith cases of bodily harm which they committed in the course of their profession, and as absolute one-man rulers-cum-legislators laid down the necessary prerequisites as fundamental criteria in the Code De Vilhena (1724), the supreme legislative framework of Malta at the time.²⁰

Sir Alexander Ball, the first Civil Commissioner, at the very outset of British *de facto* rule (1800–1813) in Malta, enjoined surgeons to make strict observance of the current law, namely the “De Rohan Code” as it was already called,²¹ which was set to remain in force for many years after the expulsion of the Order of Saint John and the concomitant establishment of British *de*

¹⁶Giovanni Francesco Abela. *Della Descrittione di Malta Isola nel Mare Siciliano con le sue Antichità ed altre Notitie* (Paolo Bonacorta, Malta, 1647), Libro Quarto, Notitia I, 429. He refers to the *capitolo* or petition of 1458 which the Maltese submitted to the Viceroy of Sicily so that the private law of matrimony in Malta would be governed *secundu jura comuni* and the local custom would be invalid if it were in *contrarium jura comuni*. This is the oldest documented reference to the application of the *jus comune* in Malta.

¹⁷Hugh Harding, ‘Law’, in Henry Frenco and Oliver Friggieri (eds), *Malta, Culture and Identity* (Grima Publishing Ltd, Malta, 1994) 211. Roman Law was not the pure Roman Law of Justinian (527–565 A.D.) but Roman Law as modified by the treatises and comments of influential writers as well as by judgments delivered by various continental courts, particularly the Rota Romana.

¹⁸Albert Venn Dicey. *Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century* (MacMillan and Co. Ltd, London, 1926) 7, Lecture 1, on the “sanctity” of codifications.

¹⁹The Library Manuscripts section of the National Library, Valletta, holds several unpaginated manuscripts like Ms. 251–252, 756, 1173 and others that have put on record cases of quacks and charlatans in Malta in the course of the eighteenth century.

²⁰*Leggi e Costituzioni Prammatiche, Rinuovate, Riformate ed Ampiate* (Giovanni Andrea Benvenuto, Malta 1724) Titolo 15 - Del Protomedico, 73–76.

²¹*Del Dritto Municipale di Malta, Nuova Compilazione con diverse altre Costituzioni Publicati dal Governo dell’Isola di Malta e Sue Dipendenze Dal 17 Luglio 1784 al 4 Ottobre 1813* (Government Printing Press, Malta 1784), Titolo VI, para ii.

jure rule (1814–1964).²² In point of fact, the British superseded the Grandmaster’s municipal legal tome soon after they laid the foundations of the Police and Criminal Codes in the middle of the nineteenth century.²³ Sir Alexander immediately took steps to ensure the cautious and methodical enforcement of the contemporary written and unwritten laws in the course of the period of transition from the previous rule.²⁴ He proclaimed that persons engaged in medical (and surgical) practice without a licence were to be severely fined.²⁵

In 1813, the British ushered in the printing of the ‘Malta Government Gazette’ that would contain the texts of legislative enactments.²⁶ The average person was since then presumed to know the law soon after it was promulgated.²⁷ London sent Royal Commissioners under the aegis of Civil Commissioner Hildebrand Oakes to enquire into the state of affairs of Malta and they did speak in the sense that they adhered to the compilation of laws such as the Code De Rohan, which they deemed to be more or less a replication of the Code De Vilhena, by which the greater part of the European mainland continued to be governed.²⁸

The British rulers certainly evidenced that they were not only well aware but felt constrained to proceed with giving legal profile, by way of codified and primary legis-

lation, to the practice of medicine and surgery.²⁹ They did not limit themselves to policy, praxis or custom, to ensure that the profession was seriously carried out but in the footsteps of the Knights Hospitallers resorted to stringent enforcement by virtue of legislation to secure legal obedience.³⁰

The first Governor, Sir Thomas Maitland, opted for an gubernatorial type of rule and, thus, defied the constitutional “Instructions” to set up an Advisory Council by issuing forthwith instead a Government Notice to clarify that during his “autocratic” reign, a surgeon, physician, apothecary as well as a midwife had to apply for a licence to exercise their profession directly to him, and had to endorse such a submission by a certificate bearing the signature of the Physician-in-Chief.³¹ Appreciably, “King Tom” in his capacity of Head of State personally issued, if not crafted, a Government Notice which meant that he exploited, out of his own freewill, the highest legislative action at the time given that he never constituted and composed an Advisory Council, let alone a Legislature.³²

Sir Thomas did not stop arrogating to himself the ultimate decisions relevant to medical and surgical practice, because he carried on by brushing aside the Physician-in-Chief while granting a Medical Board, which he himself had appointed, the authority to issue warrants to practitioners.³³ He manifested that the best enforcement of health was possible only by subjecting its administration ultimately to himself as the highest political and legislative power, although he did so responsibly through the technical monitoring and recommendation of the most qualified group of experts in the field.³⁴

In other words, the rulers and experts, who were connected with the political and technical decision-taking processes as far as medicine and surgery were concerned, followed suit in the first half century of British rule in Malta, whether the Governor constituted a one-man suzerain or sat in the Council of Government along with

²² *Proclamazione* 18.7.1797 in *Collezione di Bandi, Prammatiche ed altri Avvizi Ufficiali* (Stamperia del Governo, Malta 1840) 41–43.

²³ See also: Albert Ganado. ‘Storja tal-Legislazzjoni ta’ Malta’ in Toni Cortis (ed.) *Oqsma tal-Kultura Maltija* (Gutenberg Press, Malta, 1991) 254

²⁴ *Proclamazione* 15.7.1800 in *Collezione di Bandi, Prammatiche ed altri Avvizi Ufficiali* (Stamperia del Governo, Malta 1840) 56 (*Del Dritto Municipale*, Articolo 28, Libro 7, Capitolo 6).

²⁵ *Proclamazione* 1.11.1799 in *Collezione di Bandi, Prammatiche ed altri Avvizi Ufficiali* (Stamperia del Governo, Malta 1840) 53.

²⁶ The “*Giornale di Malta*” was issued between 7th January, 1812, and 20th October, 1813, then the “*Gazzetta del Governo di Malta*” (GGM) from 27th October, 1813 to 31st July, 1816, and finally the “*Malta Government Gazette*” (MGG) as from 7th August, 1816.

²⁷ *Parliamentary Debates, Legislative Assembly, Session, 1924–27* (G.P.O, Malta, 1928), Volumes 12 and 13, Tuesday, 9th March, 1926, 5273–5274. Dr Giuseppe Micallef LL.D., as a member of the Maltese Legislature, made an interesting reference during a debate in the Legislative Assembly when a one-article bill was introduced to impose a short but general moratorium on the effects of future enactments. He explained that “*ignorantia juris neminem excusat*” (“no excuse for ignorance of the law”) was a true legal maxim, but he reminded that Maltese laws of yore used to be called “*bandi*”, because the town or village-crier would announce them three times on the main public squares in the presence of the town or country-folk as soon as they were decreed.

²⁸ The Royal Commissioners’ findings are in Hildebrand Oakes, William A’Court and John Burrows, *Report of His Majesty’s Commissioners For enquiring into the affairs of Malta, Malta 30 August 1812*, 259pp.

²⁹ N(ational) A(rchives) R(abat) M(alta), Despatches (Duplicates) 1/2/14, 226r–227r. Sir Frederick Hankey, Chief Secretary to Governor, explained in a Memorandum annexed to a Report dated 26th January 1836 on the state of the laws in Malta that it was expected that the promulgation of the “new Codes of Law” would bring about beneficial results in perspective, certainty and lasting character of the law on the lines of the then European Codes.

³⁰ See also Hugh Harding. *Maltese Legal History under British Rule (1901–1836)* (Progress Press Ltd, Malta, 1968) 61 *passim*.

³¹ GGM 36, Mercoledì 29.6.1814, *Notificazione* 18.6.1814, 143

³² John Joseph Cremona. *The Maltese Constitutions and Constitutional History Since 1813* (PEG Ltd, Malta) 2. He states that the Advisory Council turned out to be a still-born.

³³ MGG 387, Wednesday 28.3.1821, Minute, 3.1821, 2567.

³⁴ John Joseph Cremona. *Malta and Britain, The Early Constitutions* (Publishers Enterprises Group Ltd, Malta, 1996) 35. Indeed, Maitland remained the sole legislature in Malta but it was at times unclear which of the official notifications issued by him were of a legislative nature.

official and elected councillors. Remarkably, those at the behest of law and policy all assumed a tight and adamant method towards strict and efficacious legislative enforcement as with the practice of medicine and surgery, as their period coincided with a rational and philosophical approach to disease and a cumulus of landmark achievements in the fields of cure and therapy.³⁵

Local scientists and doctors in line with advances overseas, registered significant progress in various areas of medicine and surgery as well as in the use of clinical instruments and plastic appliances,³⁶ operating theatres,³⁷ and laboratory work such as microscopic and bacteriological analyses.³⁸ Over and above, the British rulers embarked on the building of the General Central Hospital at Floriana, the Lunatic Asylum (later the Mental Diseases Hospital, now the Mount Carmel Hospital) at H'Attard, and the Saint Vincent De Paule Hospital at Hal Luqa-Hal Qormi.³⁹

3 Entrenchment and Enforcement by Codification

In the middle of the nineteenth century, the authorities were still bringing the law to bear very effectively in terms of the De Rohan Code until the end of its operation especially with reference to foreigners who tinkered with medicine and surgery without a licence, did not report cases of negligence in the course of the exercise of their profession, and came in for censure. The Council of Government evidently assured that a fine would be imposed on any physician or surgeon who disclosed any secret obtained in confidence by him – yes, no woman was a doctor at the time.⁴⁰ It gave full recognition to the notion of the inviolate nature of professional secrecy among medical and surgical practitioners by attributing enforcement to it by way of penal sanction.⁴¹

In 1854, the Governor promulgated the Code of Police Laws (or Police Code), along with the (substantive, penal and procedural) Criminal Code (or the “Penal

Code”), as the first in a series of massive codifications and quasi-codifications.⁴² He brought into effect two major enactments of the Council of Government of the first elected minority which meant that he sealed the whole legislature’s decision to substitute the sections of the De Rohan Code, or last digest of laws under the Order, by engrafting the germane dispositions into the Police Code (Chapter XIV).⁴³

The Council of Government, thus, drew on primary legislation, or written law fashioned by the most qualified technical advisors and approved by the highest legislature or legislative process, but enshrined the mechanisms of enforcement within the highest consolidated systems of laws of general and binding character, or more specifically, endorsed them as collections of laws arranged by way of chapterisation, and substantively compartmentalised them according to distinct themes subject to penalties or payment of damages in case of infringement or non-observance.⁴⁴

No doubt, the British gave a humane character to the application of punishment with regard to medical and surgical persons who caused the death of a patient. They were influenced by the humanitarianism that prevailed throughout the continent and Europe in general throughout the nineteenth century to the extent of limiting the death penalty only to the most wilfully perpetrated crimes under the Criminal Code (1854).⁴⁵ They left the penalty of suspension from the exercise of the profession solely to apply to situations where medical and surgical interventions procured abortion.⁴⁶ However, they extended the liability of a practitioner to damages for negligence and imprudence in the treatment of his patients to the Civil Code.⁴⁷

At the same time, the Governor through the Legislature or Council of Government continued to tighten up the process leading to medical and surgical practice in Malta by amending the Code of Police Laws.⁴⁸ In 1894, the Government adopted legislative measures with retroactive effect as from 1886 so that physicians and

³⁵Dr Tommaso Chetcuti, *Discorso Inaugurale Pronunciato nella Tornata Pubblica Del 16 Ottobre All'Apertura Dell'Anno Accademico 1846–47 Nella Società Medica D'Incoraggiamento* (Tipografia di Filippo Izzo, Malta, 1846) 3–25.

³⁶*Storia della Società Medica d'Incoraggiamento* (Tipografia di F.Izzo, Malta 1845) xiv–xli.

³⁷Dr Ludovico Bernard. *Sull'Utilità e Necessità della Chirurgia, Discorso Pronunziato Nella Tornata Pubblica De' 28 April 1865* (Tipografia Anglo-Maltese, Malta 1866) 18.

³⁸See, for instance, Salvatore L.Pisani, *Report on the Cholera Epidemic in the year 1887* (Malta 1888) 6–18.

³⁹Richard Micallef. *Origin and Progress of the Government Charitable Institutions in Malta and Gozo* (Malta, Malta 1901) 18–24.

⁴⁰Albert E. Abela. *Grace and Glory. Malta: People, Places and Events* (Progress Press, Valletta, 1997) 94–95. Blanche Huber was the first woman to graduate doctor of medicine from the University of Malta in 1925.

⁴¹*Leggi Criminali per L'Isola di Malta e Sue Dipendenze* (Tipografia di Paolo Cumbo, Malta 1854), Capitolo X, Articolo 245.

⁴²Originally, the Criminal Code and the Code of Police Laws were meant to be one Codex but they were separated as two independent codifications before their promulgation.

⁴³*Leggi e Regolamenti Di Polizia per L'Isola di Malta e Sue Dipendenze* (Tipografia di Paolo Cumbo, Malta 1854) 13–14.

⁴⁴NARM, C(hief) S(ecretary) (to) G(overnor) (Files), 3561/1853.

⁴⁵Andrew Jameson. *Report on the Proposed Code of Criminal Laws for the Island of Malta and its Dependencies* (Government Press, Malta, 1844) 1–21 (Introduction) where he explicates in detail to what extent the proposed (Substantive, Penal and Procedural) Criminal Laws were given a ‘humane’ treatment.

⁴⁶*Leggi Criminali per L'Isola di Malta e Sue Dipendenze* (Tipografia di Paolo Cumbo, Malta, 1854), Capitolo XII, Articolo 257.

⁴⁷*Leggi Criminali per L'Isola di Malta e Sue Dipendenze* (Tipografia di Paolo Cumbo, Malta, 1854), Capitolo XII, Articolo 239.

⁴⁸*Leggi di Polizia per L'Isola di Malta e Sue Dipendenze* (Government Printing Office, Malta, 1872) Capitolo XIV, 41.

surgeons would not be licensed to practise their profession unless they had trained in medicine and surgery for at least a year after passing the final examinations for obtaining the necessary degree (M.D.).⁴⁹

4 The “Sanitary” Ordinances

At the turn of the twentieth century, the political-cum-legislative powers-that-be proceeded with regulating scrupulously the system by giving a legislative character to its machineries of application. Rather, the Council of Government enacted a series of so-called “Sanitary Ordinances”, four in all, to give a statutory character of the primary level to the system in general, and mark a period during which the foundations of future medical and surgical legislation were laid.⁵⁰ The highest legislative process composed of the Head of State and a mixture of elected and official representatives of the people, discussed and approved legislative enactments that placed the medical and surgical profession as well as the relevant Government departments on a more solid organisation.⁵¹

In 1901, the Council of Government enacted Ordinances VII⁵² and XVII⁵³ to lay down that any person who wished to obtain a warrant to practise as medical doctor or surgeon had to satisfy the Medical Board that he was a British subject, had attained the age of 21 years, was of a good character and possessed the degree of Doctor of Medicine and Surgery of the Royal University of Malta.⁵⁴ Other applicants who held a qualification from another academic institution had to be interrogated by the Medical Board. Those who were provided with a warrant from the Malta Government were eligible for registration under the Medical Register of the United Kingdom.⁵⁵ In 1901, the Council of Government approved an enactment to extend effectively the UK Medical Act of 1886⁵⁶ and, thus, establish reciprocity between Britain and Malta concerning the most vital profession in the world.⁵⁷

The Governor was empowered on the advice of the Medical Board, by virtue of the Ordinances of 1901,

⁴⁹ *Leggi di Polizia per L’Isola di Malta e Sue Dipendenze* (Government Printing Office, Malta, 1894) Capitolo XIV, 40.

⁵⁰ See also Raymond Mangion, *Constitutions and Legislation in Malta* (Russell Square Publishing, London 2016).

⁵¹ See University of Malta, Faculty of Laws, Adrian Cutajar, *The Four Sanitary Ordinances 1900–1908, A History 1900–2000*, LL.D. thesis 2003, 146pp.

⁵² D(ebates) (of the) C(ouncil) (of) G(overnment), Session 1899–1900, Sitting 23, Wednesday 14.3.1900, Volume XXIV, 1011.

⁵³ DCG, Session 1899–1900, Sitting 36, Wednesday 19.6.1901, Volume XXV, 1190–1191.

⁵⁴ MGG 4363, Thursday 30.5.1901, Supplement, i–xi; MGG 4376, Tuesday 2.7.1901, i–xii.

⁵⁵ See also MGG 10326, Wednesday 3.6.1953, Supplement 3.6.1953, 709. ACT VIII of 1953.

⁵⁶ 49 & 50 Victoria, Chapter 48.

⁵⁷ MGG 4405, Monday 7.10.1901, 850–851.

to issue a temporary licence to a foreign physician or surgeon. The Council of Government debated such a provision that was meant to afford the necessary facilities to the local public to consult specialists from overseas. The Government sought not only politically but certainly legally to bind itself with respect to the enforcement of such a measure subject to technical consultation on the strength of primary legislation. The Government reiterated and confirmed its predisposition and commitment to resort to the highest statutory and legal instrument other than mere policy for the purpose of honouring its obligation towards entrenchment and coercion of the most qualitative medical and surgical practice.

In 1901, the Government revised and modified the laws governing the medical and surgical professions to ensure that they suited modern requirements. It rendered definite and explicit the principle of the correlation of medicine and surgery but of their independence from pharmacy.⁵⁸ However, it did not stop there. It amended the Criminal Code such that the law would contemplate other crimes in relation to medical persons who were attended by the disqualification to practise, and the relevant penalties involved capital punishment or hard labour.⁵⁹

The then Crown Advocate Sir Giuseppe Carbone insisted that the provision concerned had to be inserted notwithstanding the fact that no case had ever occurred which vindicated the inclusion of the clause in the Criminal Code, or otherwise the “Penal Code”. The Crown Advocate argued that it was the duty of the legislator to foresee that he did not only lay down the law but codified it to render it enforceable as best he could even before any such instances actually took place.⁶⁰ The Government through the Legislature incorporated the mechanisms of enforcement by way of the most stringent punitive sanctions.

5 Conclusion

In 1901, the Government and the Legislature enacted and promulgated the “Sanitary Ordinances” to lay the foundations of a future well-structured legislation and system governing medical and surgical practice in Malta. However, the British rulers in line with their predecessors, the Order of Saint John, had already tried their utmost to subject the profession of the “*Magnificus et Excellens Doctor*”, who had always enjoyed a position

⁵⁸ See also NARM, CSG, 726/1900, on the restructuring of the medical profession and the grant of power to the Medical Board to decide on the issue of warrants to practise according to set criteria.

⁵⁹ *Leggi Criminali per L’Isola di Malta e Sue Dipendenze* (Tipografia di Paolo Cumbo, Malta, 1854), Capitolo XII, Articolo 239.

⁶⁰ DCG, Session 1899–1900, Sitting 14, Wednesday 10.1.1900, Volume XXIV, 527–566.

of trust and respect in the country as elsewhere, to the highest levels of entrenchment and enforcement by virtue of the Police and Criminal Codes that the British had promulgated as part of the massive legislative codifications of the nineteenth and twentieth century.

The British rulers, whether of their sole disposition and personal management in an autocratic role or jointly with a legislative body, all-nominated or partly elected, in the course of the first 100 years from their takeover of Malta's sovereignty, showed the extent to which they intimately comprehended the ropes of legislative entrenchment and enforcement as far as medical and surgical practice was concerned. They did so by ensuring that they conferred the necessary licence to the properly qualified persons.

The British were legislatively so strict in safeguarding medical and surgical practice from all kinds of unlawfulness that they drew the attention of Malta's judicature. Legal and medical historians have often cited the case *La Polizia v. Giovanni Salunto* per judge Luigi Camilleri (Preziosi) of 8th April 1922, as a leading judicial pronouncement to the effect that a person does not need to make use habitually of the unlawful exercise of medical or surgical practice and no purpose of gain is necessary

for him because the medical and surgical profession and the laws that govern it have the "noble and elevated aim" to protect from harm every single individual as well as public health in general.⁶¹

This article has looked, from the perspective of law, at a chapter of Dr Paul Cassar's book on medical history of Malta where he deals with the development of legislation governing the issue of medical and surgical licence in the first century of British rule in Malta, 1801–1901. It was written with the aim to render more explicit and emphatic Dr Cassar's reference to the status and quality of legislative enactments as legal instruments of entrenchment (or level of protection against change or repeal) and enforcement (or extant of application by way of force) under this first part of British rule in Malta.

⁶¹ *Collezione di Decisioni delle Corti Superiori dell'Isola di Malta* (Stamperia del Governo, Malta, 193–), Vol. xxv, Parte Quarta, Appello Criminale, 914–917. See also the *Police v. Lorenzo Mifsud* determined by judge William Harding (2.12.1939) in William Harding, *Recent Criminal Cases Annotated* (Malta, Lux Press, 1943) 176–178. "...non solo per il fatto che la azione curativa direttamente esercitata sul paziente può apportargli nocimento, ma ancora perchè l'empirico guadagnando la fiducia dei malati alle sue strane operazione fa loro trascurare qualsivasi elementare principio di cura razionale...".