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**Malta: The use of ambiguity for corruption and (mis)rule of law.**

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**Abstract**

The strategic use of ambiguity is a well-known instrument used by those in power to the detriment of citizens. Malta is no exception. This paper explores the strategic use of ambiguity illustrating how in Malta, laws, regulations, and international conventions are frequently misinterpreted by those in power. It finds that concepts of ambiguity are commonplace on the island, similar to that used by the Sicilian Mafia organisation, the Cosa Nostra. Strategic ambiguity is used by those in power for their benefit to keep the corrupt status quo. The article concludes that such deception is intertwined in legal, criminal, and political systems. These findings contribute to the lack of criminological research on the island, aiming to increase the criminological landscape and studies, since it is only through research and education that positive changes in society occur.

**Keywords:** Malta; Corruption; misuse of law; ambiguity

**1. Introduction and context**

“There are crooks everywhere you look now. The situation is desperate”.

Caruana Galizia Daphne (2017)

Malta, located in the middle of the Mediterranean Sea, is a small archipelagic island-state. A member of the European Union (EU), it is made up of three principal islands: Malta, Gozo, and Comino. Although Malta has been invaded and controlled by many foreign rulers due to its strategic location, in 1964 it became a sovereign and independent state (Castillo, 2006). Today, Malta has a strictly dual and polarised political system, which although based on the Single Transferable Voting electoral voting system, since 1966 two political parties dominated: the Malta Labour Party (leaning to the socialist left) and the Nationalist Party (leaning to the right), though both within the broad parameters of the Christian Democrat tradition (Harwood, 2014).

The Criminal Justice System in Malta is deeply intertwined in politics, with populist punitiveness (Bottoms, 1995) a common phenomenon. There does not seem to be an urgency for research into criminological global good practice, whether in terms of the courts, police, or prison, which is reflected in archaic policies and practices. . This lack of good practice has led to outdated and inefficient practice and such concepts shed light on how laws, regulations and international conventions are (mis)interpreted and (not) acted upon on the island, with strategic ambiguity being the methodology of choice by politicians in Malta.

### 1.1. Ambiguity, and its strategic use

“The question is” said Alice “whether you can make words mean different things.”

“The question is” said Humpty Dumpty “which is to be the master – that’s all.”

Lewis Carroll (1871/2015), *Through the Looking Glass*

Ambiguity here is the master. Ambiguity is not a linguistic accident; it is a communication strategy employed to overcome an anticipated resistance to a goal (Bauer & Zirker, 2024), ‘*to make things mean different things*’ It is a co-existence of multiple meanings within the same

phrase, which are distinct but not necessarily mutually exclusive (Bauer & Zirker, 2024). For this reason, ambiguity is considered a ‘weak point’ in semiotic systems due to the potential misunderstandings and processing efforts made to determine the meaning intended that it brings to the listener (Winter-Froemel & Zirker, 2013)

Ambiguity as a concept comprises of different forms of deception: the use of a lack of clarity around a phenomenon or situation (Feldman, 1991) as well as taking advantage of the fact that there may be several ways of interpreting a situation, and therefore making use of multiple and conflicting interpretations (Daft & Weick, 1984). Research on ambiguity and the challenges it poses to society are not new, for example Denis and colleagues (2011) have shown how it leads to immobility and resistance to change, and Fombrun and Rindova (2000) argue that it provokes a loss of reputation. Importantly, strategic use of ambiguity also plays a protective role towards organisations, for example shielding them from outside scrutiny and negative evaluations (Cappalaro, et al., 2021), as well as concealing stigmatized and controversial activities (Vergne, 2012) or downright criminal ones like clandestine organisations and hate groups (Vaccaro & Palazzo, 2015). All these elements are evident when evaluating the case of Malta.

Ambiguity in Malta can take several forms, and this paper will discuss them in terms of the following frameworks: i) through ambiguous legislations and policy papers; and ii) through ambiguous politician rhetoric. Both aspects are intertwined in power structures. Legislation and policy are often bloated and convoluted with unnecessary, and sometimes redundant, words and phrases, leading to documents which lack straightforwardness and simplicity (Nowak, 2016). Such extravagant yet meaningless phrases allow for intentional ambiguity to be used as a law-regulation gap, where leaders knowingly allow for changes between the policy

and implementation sections of the law, by virtue of their power to oversee both stages. The ambiguity here lies in what the rights and responsibilities of the state should be and as Frost, (2024, p.5 ) states, intentional ambiguity is a “key law-regulation gap” since “with intentional ambiguity, executive leaders (e.g., presidents, prime ministers, ministers, top executive advisors, etc.) knowingly allow the provisions in the law governing a right to diverge from those in the implementation orders governing that right. This is done through various layering of legislation where the leaders are drafting such ambiguity within the legislation which policymakers strategically ignore. Frost (2024, p. 5) discusses four different types of intentionally ambiguous policies, where state officials create deflections through: “(1) introducing a new law and new regulations (signaling), (2) only issuing new regulations that contrast with an existing law (hidden), (3) only adopting a new law that contrasts with existing regulations (performative), or (4) deciding not to change a preexisting disconnect between a law and its regulations (persistent).” This illustrates the creative options those in power have to deceive, options which have been utilised by politicians in Malta. This paper will discuss these forms of deception and intentional ambiguity throughout.

Ambiguous legislation is often combined with ambiguous rhetoric, where politicians discuss issues without taking a clear standing (Simas et al., 2021). This deliberate vagueness gives room to interpretation, where citizens project their own ideologies onto the ambiguous political talk, therefore allowing them to interpret discourse in the way which seems ‘safest’ and most in line with their personal beliefs (Somer-Topcu, 2015). Milita et al., (2014) look at three ways ambiguous statements are utilised, which will be applied to the Maltese context within this paper: i) statements where an endgame is agreed upon, but without any discussion on how these aims will be achieved; ii) a statements which sits on the fence of both sides of an issue; and iii) an attack on opponent’s discussions without offering an alternate policy apply. Such ambiguous

statements, both verbal and written, form the core of how Malta is governed, allowing those in power free reign to pick and choose which policies, legislation, moral and ethical issues, and most harrowingly the law, to apply.

Ambiguity often leads to corruption, since as described by Hansen (2010, p.456), “more than anything, much institutionalized corruption is about grey zones and ambiguity, taboos and a mismatch between what is said and actually done”. Harrison (2007, p.673) describes corruption as “the nuances between bribery, nepotism, graft, extortion and so on, and reflects on the relationships between people and bureaucracies.” Transparency International (2022) defines corruption as “the abuse of entrusted power for private gain”, for example through public servant bribes, misuse of public money, and favours. However, this definition is rather simplistic, relying on a fairly clean-cut distinction between the public and private sphere, leaving *corruption* as a concept in a slippery slope with no actively agreed universal definition. This is because various practices, all falling under the ‘corruption’ umbrella, are much more complex than this, with varying moral boundaries (Harrison, 2007). For example, Myint (2000) lists bribery, extortion, fraud, embezzlement, nepotism, cronyism, appropriation of public assets and property for private use, and influence peddling as examples of corrupt behaviours. Whatever the kind of behaviour, corruption undermines democracy, slows economic development, and contributes to government instability, perverting the rule of law along the way (United Nations Office on Drugs and Crime, 2004). When citizens become aware of the level of corruption in a country, they swiftly lose confidence in their leaders, becoming cynical about policies and practices. This cynicism leads to attitudes which are self-motivated rather than attempt to integrate and act for the benefit of society, further negatively effecting democracy (Warren, 2004).

To give local context and clearly define the total corruption in a country, the Transparency International's Corruption Perception Index (CPI) values are used. The CPI scores 180 countries and territories on an annual basis by their perceived level of public sector corruption from the views of experts and businesspeople. On their scoreboard, 100 is very clean and 0 is highly corrupt. The average score for Western Europe and the European Union in 2023 is 65/100, ranging from Denmark scoring a 90 to Hungary scoring 42, with an average score of 65. Malta scores 51, going down 3 points since 2021, showing that the level of corruption is both higher and more evident by time (Transparency International, 2023). The score is significantly lower than the European average, indicating that something is amiss with the way the country is being regulated. This could be what the Council of Europe's 2019 GRECO report, which evaluates the effectiveness of frameworks put in place to prevent corruption amongst those with top executive functions, highlighted in relation to Malta: the controversies concerning "allegations of (mis)use of State resources and nepotism/conflicts of interest in relation to privatisations, tenders, energy supply, the sale of land, measures to attract foreign investments (including through the sale of passports), the award of contracts and public positions. The capacity of its criminal justice system and preventive mechanisms to deal with allegations of corruption and money laundering in the above context was largely questioned" (CoEb, 2019, p.4) to name a few. However, like any successful corrupt organisation Malta hides in plain sight having, "on paper an impressive arsenal of public institutions involved in checks and balances" (CoEb, 2019, p. 4), perhaps akin to any mafia state.

With the critical and dangerous role ambiguity, both in policies and practice as well as in rhetoric, and the corruption which ensues, plays, it is crucial to explore how it is applied to the Maltese context, where it aids politicians and those in power to deceive citizens into submission to how the country is governed. Therefore, focusing on the strategic use of ambiguity, this paper will discuss Malta's intertwined legal, criminal, and political systems,

with an emphasis on how those in power have misused such systems for their own advantage. This perspective is different from the one focusing solely on economic crime on the island; through the incorporation of elements of strategic ambiguity, this paper illustrates how perceived norms of corruption are linked to corrupt behaviour. This concept is empirically demonstrated by Kobis, Prooijen and colleagues (2015) who found a strong correlation between descriptive norms and corrupt decision-making and behaviour, and a reduction of corruption when anti-corruption norms were presented. The paper argues that such modelled, and to an extent self-fulfilling, behaviours are part of the national identity of Maltese people.

The first section discusses the relationship between small island states and corruption. Section two argues that Malta can be described as a mafia state. To do so, it looks at recent events in Malta as well as the characteristics and actions of those in power and compares this to the way the Cosa Nostra uses ambiguity for legal immunities. Section three discusses the Venice Commission and the issues brought to light in relation to further misuse of law and ambiguous methodologies. The paper concludes that national identity is a factor to some forms of use of ambiguity for deception as well as to the misuse of law on the island. However, corruption cannot be tackled until a strong working ideology of the post-colonial good governance is understood and actioned.

## **2. Small Island states ambiguity and corruption**

Post membership to the European Union (EU), Malta is recognised as a developed country (Grech, 2020) and a sovereign small state. However, sovereignty does not automatically mean autonomy as small states may still be dependent on other bigger countries, making limited independence a common feature (Maas, 2017). Small states can be perceived

as vulnerable, dependent, and incapable of addressing their own socio-economic and environmental issues due to their location and natural characteristics such as being an island, being small in land and economic size, having a scarcity of resources, and being isolated from economic centres (Campbell, 2003). Due to this, Katzenstein (1985) argues that small states have relatively homogeneous populations, yet must be open to, and create niches in, international economies. This at times opens doors to unethical processes, since elements of competing interests, dependency and vulnerability are often linked to ambiguous practices. Kagan (2007) asserts that such practices “provide an opening for political exploitation”, where ambiguity becomes an enabler to perceived legitimacy, even when the policy is completely at odds with obligations. This is because the narrative provided to the public is based on lenient readings and application of obligations and practices by those in power.

Through this openness to international trade, global influence seeps into local political systems and combined with “a readiness to adopt foreign cultural norms [...] encourages the erosion of values and identity [which] allow for adaptation and innovation” (Henrickson, 2007). Such innovation gives small states like Malta the opportunity to exploit the global market, opening the doors to corruption. Several small state characteristics may explain some of the opportunities for corruption, for example, Larmour and Barcham (2006) state that due to the limited local opportunities for investment, governments turn to offshore banking activities. Such activities bring governments in close contact with criminals, like tax avoiders, money launderers or terrorists (Larmour, 2005), at times welcoming collusion. Furthermore, due to smaller populations and low electoral ratio of parliamentary representatives to citizens, it is much more likely for an elected official to know constituents, leading to corrupt networks, for example patronage, nepotism and clientelism (Larmour, 2005). Scott (1972) theorises that when there is more government interference within the market economy, there is a higher

chance of corruption since there is more internal control, increasing the risk of bribery or payoffs (Sandholtz & Koetzle, 2000).

These corrupt practices are further exuberated by the negative effect on regulatory authorities due to the close relationship between politicians and businesses which often exist in small states, especially when the rule of law is slack and control of corruption weak (Dhaher, 2017). Malta, for example, has the highest percentage, at 8.3%, of limited companies with at least one politically exposed person (PEP) among its owners (Transcrime, 2021). This means that such regulatory authorities will struggle to maintain independence and gain the support from other institutions such as the police and judiciary (Smith & Wellenius, 1999).

Creative policymaking (Cooper & Shaw, 2009) ensues when small states join larger and more militarily and economically secure nations for their own protection (Handel, 1981), often utilising concepts of ambiguity in the process. Due to this, they have been described as “survival artists” (Maas, 2017, p.1). However, this survival depends on exogenous factors and cannot be taken for granted (The World Bank, 2018). A creative political economy stems out of merging creative governing with strategic use of ambiguity with some small states becoming hubs for the sale of stamps, internet domain sites (Prasad, 2004), or passports (like Malta and Cyprus), offshore finance centres (Le Rendu, 2004), prison services (like Devil’s Island), or hosting film productions (like Malta and Rapa Nui). In each example, ambiguous and general language has been used to explain such actions taken by governments, “widening the ambit of permissible interpretations to which it gives rise” (Chayes & Chayes, 1993, p.189). However, for ambiguity and deception to be successful, a “grain of truth” needs to be presented amongst the distortion. This “grain of truth” as dubbed by Janssen and Teteryatnikova (2017), depends upon speakers not blatantly lying, instead introducing the possibilities of being intentionally

vague and imprecise to hide true intentions, in line with Frost's (2024) four types of ambiguity. Therefore, activities and actions taken by states could wander from the legal and clean to the legally and morally debatable, and back again, intentionally keeping the truth open to interpretation.

The case of Malta selling "golden passports" or "citizenship by investment" schemes is an example of ambiguity through both written policy and verbal narration wielded by the government of Malta irrespective of any European-wide laws, regulations and directions. This scheme involved rich non-European individuals 'buying' a Maltese passport in return for *investment*. The language manipulation in these transactions were crucial: for example, even though residing in Malta was a core essential for the passport, undercover journalists found out that 'residing in' could be interpreted to mean renting an expensive property and leaving it empty. As told by executives from Henley & Partners, a firm managing the passports to a journalist posing as an applicant "... there is no regulation that states how much time [you needed to be in the country]" (Goodley & Pegg, 2021). Furthermore, the journalist was told that 'establishing links' with the country could mean joining a gym, having a phone number or donating to charity, because as a spokesperson for the company explained: "there is no legal basis in EU law to determine what 'links' a prospective applicant for citizenship must establish to be considered for citizenship in any member state of the EU; as a matter of EU law, this is entirely up to the individual EU member state" (Goodley & Pegg, 2021). This illustrates how ambiguous legislation, or even everyday language, can be manipulated by the state to serve their own purposes, including legal immunity, what could be seen as Frost's (2024) *persistent* ambiguity since the disconnect between the EU law and the local practices was ignored.

When the European Commission sent a formal notice to Malta asking it to end the investor citizenship scheme as it is a breach of Article 4(3) of the Treaty of the European Union,

the clause of cooperation, the government of Malta replied, attempting to neutralise the discourse, that after consulting “experts in the field”, concluded that only “worthy individuals” can acquire Maltese citizenship, following robust due diligence processes (Independent, 2022). What these processes involved, however was left open for interpretation, as no explanation or process reports were provided. Yet, when considering that investors needed to make a minimum contribution of €600,000 to the national development fund and prove 36 months of residency, or an expedited route requiring €750,000 and 12-months residency, and a further €700,000 into residential real estate, the meaning of “worthy” becomes very much based on financial gain for those holding the power to sell such passports. Ambiguity becomes the master, where the two terms referring to the same sale of citizenship within itself illustrates the strategic use of words to deceive. Another use of such ambiguity is the use of false names and several changes in business ownership to hide the true beneficiaries of a business, or in the case in Malta, Pilatus bank (Aquilina, 2023).

The use of strategic ambiguity and creative policymaking could be seen to help small states stay afloat despite lingering threats, be they international or domestic, and any global economic uncertainty which brings along changes in trade and demand. Yet the price to pay has been some strategies which are deemed ‘pseudo-development[al]’ (Baldacchino, 1993), with exploitations of any niche or small opportunity. This brings Malta into the realm of a rentier state, where the island’s economy and revenue is dependent on external ‘rent’ (in both goods and services) to survive (Schwartz, 2012). However, such strategies leave small states vulnerable to other nations, at times threatened by coercion (Baker Fox, 1959), especially when the rentier state also becomes the ‘allocation’ state, with the task of distributing the wealth accrued (Hvidt, 2011).

Hyper-personalised politics also plays a vital role within small states, where the personality of the dominant force becomes the centre of the state, rather than ideology or policy programmes (Corbett & Veenendaal, 2019). Too many ties of kinship, patronage and friendship between employer and employee and government and citizen reduce the overall efficiency of the state (Burton, 1967). Furthermore, voters and politicians have many opportunities for interaction, and the private and personal life of those in power overlap (Corbett & Veenendaal, 2019), furthering the chances of poor management. Hyper-personalised politics allows for more ambiguous discourse as the power within a political party is centralised in the hands of the individuals in power (Poguntke and Webb, 2005), allowing them to act independently of their party (Rahat & Shaefer, 2015). In this way, individuals can act in self-interest and mould their political discourse to reflect this.

These arguments on poor management and hyper-personalised politics are applicable to the context of Malta, especially when highlighting literature describing small states as globally economical but provincial socially (Clement, 2003, cited in Kolnberger & Koff, 2021), where there is a higher chance of literally knowing your neighbour, and families and friends stick together in “visible and unavoidable” ways (Corbett & Veenendaal, 2019). A case in point is the police gifts register, introduced in 2020, which saw over 240 entries within the first two years of ‘gifts’ offered to officers as tokens of ‘appreciation’ (Borg, 2022), another word which is full of ambiguity. Such gifts add elements of familiarity and a sense of obligation towards the receiver which oftentimes is seen as binding. When the law and justice is at stake, such over-familiarity is dangerous. Perhaps prompted by this familiarity, an ‘us and them’ mentality in Malta thrives, and small states are often seen as being open to social welfare, but very exclusionary in their decisions as to who is privy to it (Burlacu & O’Donoghue, 2013). Katanzenstein (1985) makes another valid point in relation to small states in general which can

be adapted to Malta in particular. He states that small states are depicted as models for mediation and consensus-building, however all of this takes place behind closed doors, therefore lacking in transparency. The 2023 Eurobarometer (European Commission, 2023), a report which analysis public opinion surveys within member states, illustrated that only 10% of Maltese citizens ‘totally agree’ that there is transparency and supervision of the financing of political parties on the island. This was the lowest of the member states, with the highest being Finland with 48%. This belief in transparency in Malta has decreased by 19% from 2022.

This lack of transparency gives vitality to the description of small states as globally economical but provincial socially (Clement, 2003, cited in Kolnberger & Koff, 2021). Such an image is the perfect description of Malta since the Mediterranean island can be seen as “both paradise and prison, both heaven and hell” (Baldacchino, 2007). A paradox between openness and closure: it is open to international assistance, wealth for the rich, the image of the perfect tourist location, however the day-to-day lives of the locals are closed, with limited opportunities due to lack of meritocracy, no access to information and no fair justice system. This closure extends to the ‘culture of no information’ to the workings of the state. Therefore, it comes as no surprise that more micro-sociological research on the innermost workings of the state is still absent, showing a closure to progress yet an openness to ‘innovation’. The island’s borders have oftentimes not exclusively served as physical boundaries, but also as barriers to movement and changes in administrative and political practices, public and private sector actions, as well as procedures of control (Lemaire, 2015).

Therefore, in Malta lines of accountability between the government and the people are blurred which opens the door to corruption, which is driven by the use of strategic ambiguity, directly influencing the way Malta is governed and run. This is felt by the Maltese, where 92% of

respondents on the Eurobarometer survey (European Commission, 2023) felt that corruption is widespread in the country. This is the fifth highest in the member states, with the highest being Greece at 97%. This illustrates that the people are aware of how corrupt the country is however, much in the same way that individuals are desensitised to violence to the extent that they go on to commit violence later on in life (Mrug et al., 2016), people are desensitised to corruption they feel they cannot 'fix', taking on a 'if you can't beat them, join them' attitude. Such corruption leads to more punitive philosophies, ironically using positive aspects of small state justice in a dangerously negative manner. For example, where some small states would benefit from their smallness and familiarities, as when sentencing the accused who is one of them, the extremely polarized community in Malta (Azzopardi, 2011) would mean that this familiarity can be a detrimental fact. Referring to the Eurobarometer (European Commission, 2023), 51% of Maltese respondents think that there is widespread corruption in the courts, illustrating a lack of a fair trial. Harsher sentences if you are not in the in-crowd is not uncommon. The way the rule of law is administered in Malta is not just, and those in power pick and choose how to operate it according to their personal motivations.

### **3. Malta, misuse of law as a (a small island) mafia state**

In 1994, the then president of the European Commission, Barroso, stated that “there is no freedom, and no free trade, if the rules are unclear and their application uncertain or uneven” (Barroso, 2014). By virtue of membership, European Union states are bound by fundamental premises which rely on trust that each member state will cooperate with EU value, respecting the rule of law in the process. Without this rule of law, member states will not be able to protect the rights of citizens as well as deliver justice uniformly and fairly (Lobina, 2023).

Three main areas are vital for a healthy democracy operating within the rule of law: i) judicial independence and other checks and balances ii) media freedom and iii) the fight against high-level corruption and the criminal justice system (European Commission, 2023), all of which are issues within the Maltese context. Aquilina (1997) cites Joseph (1993) who refers to Dicey as the first individual to not only define the rule of law, but to also give it constitutional meaning. Dicey described the rule of law as “characteristic of the English constitution” (Aquilina, 1997, p. 10) which can be explained from three different points of view: i) “the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power”, where individuals are ruled by the law and the law alone; ii) equality before the law; and iii) laws as the consequence of the rights of individuals, as defined and enforced by the courts (Aquilina, 1997, p.11). Therefore, nobody is exempted from the rule of law, including governments. Malta has a clear discrepancy between the drafting of these rules of law into the Constitution on applying them to everyday practice. This means that the rule of law on the island becomes a case of the misuse of law. Aquilina (2017) stresses how this lack of rule of law is taken for granted in Malta, where the misuse of the law lies in the administration process. The lack of impartiality and concern for any rules is evident (Lobina, 2023), especially in a case of *partitocracy*, rule by political party in Malta, where political parties intentionally misapply the Constitution for their own benefit, even though this may be to the detriment of society as a whole (Aquilina, 2017). A clear case in point of this is how members are appointed onto boards and commissions on the island; whilst the Constitution is clear that members should be independent, boards and commissions, whether it is the Broadcasting Authority, Planning Authority or Electoral Commission, are made up of individuals loyal to political parties with a supposedly 50:50 ratio in terms of ruling party and opposition. This illustrates a stronger loyalty to the political parties than to what the Commission calls for where independence and impartiality would require a board made up for the public interest. Moreover,

positions of trust within the government quickly change when the ruling party changes, with political party loyalists given such positions.

The result of these collective actions is “a collapse of the rule of law” within the Maltese “culture of impunity” (Mallia et al., 2021). When this happens, democracy starts to fail, separation of powers becomes a concentration of powers, governments become too powerful with little to no opposition and corruption becomes a standard way to run the country. Those in power hide behind secrecy, ambiguity, and confidentiality provisions to cover up inefficiency and outright maladministration and corruption (Aquilina, 1997).

The European Commission’s 2023 Rule of Law Report (European Commission, 2023a) looks at 27 Member Countries’ developments, both positive and negative, in for key areas which are essential for the upholding of the rule of law. According to the report focusing on country profiles (European Commission, 2023b), Malta did not adopt the recommendations given by the European Commission in 2022 adequately. Out of the six recommendations given, the Commission concluded that Malta has made “no progress” on three recommendations, and “some progress” on the other three. The latter includes some progress on “challenges related to the length of investigations of high-level corruption cases” however this came with the addendum of a “no progress on establishing a robust track record of final judgments” (European Commission, 2023b, p.40). As a result, a further 7 recommendations were given to the Maltese state, in an attempt to strengthen the failing rule of law on the island. One of the recommendations given stated that Malta needed to “step up measures to address challenges related to the length of investigations of high-level corruption cases, including by establishing a robust track record of final judgments”. This is interesting considering that the National Anti-Fraud and Corruption Strategy a year earlier was tasked with doing exactly this. The

discrepancy between theory and practice is evident here, where any strategies and plans on paper are not acted upon in practice, for example not being clear on how corruption cases were being investigated.

### 3.2 Culture as misuse of law.

Cultural heritage is oftentimes seen as a springboard to deeper understanding and attitudes towards corruption and the rule (and misrule) of law (Barcham, 2007). When looking into Malta's social and cultural character, it has been described by Azzopardi (2011) as having:

an inefficient and unaccountable public sector, a complacent population able to accept such a situation, a system which does not provide recourse to whistle-blowers to reveal corrupt practices, abuse of the social security system, subsidised services even for people who can afford the service [...], and a negligible gap between social security benefits and the minimum wage.

Therefore, as the GRECO report (CoEb, 2019) highlighted, the social network often found in small island states takes a negative turn in Malta, where such connection is reaped for individual benefits. Boissevain (1965; 1974), for example, documented how, through patronage, the Maltese are socially manipulative to both friends and networks with the aim of personal gain. Boissevain (2006) also speaks of “amoral familism”, an undying loyalty to the family. This attitude regards the self and the family as the only priority to strive for, which ultimately means that anyone else is disregarded, be they neighbours, strangers, or the general public. In recent years, this amoral familism can be seen to be extended to political parties too, where individuals will do whatever they can to benefit themselves and their circle. Boissavain (2006, p. 106) states that this amoral familism “obstructs loyalty to the nation state”, which can explain the modern tendency to go to any lengths, not excluding morally and legally corrupt ways, for personal greed. Findlay (1997) too comments on this social relationship and argues that it leads to the formation of corrupt relationships. A more political perspective is provided

when analysing government actions and police reactions to society: the view of governments held in the earlier parts of the 1900s as a “helping hand” in economic and social development seems to be shifting, and it is not uncommon for the government to be described as a “grabbing hand” in pursuit of its own agendas and benefits (Hopkins & Rodriques-Pose, 2007). In Malta, these “grabbing hands” seem to be shaking those of global criminals, in a manner which resembles that of shadow states which prevail in many post-colonial settings. In shadow states, political elites often form partnerships with individuals in extra-legal economies, “outside and beyond the legal framework”, like organized crime groups (Strazzi & Kamphuis, 2002). In such a relationship, the local elite form a mutualism relationship with foreign investors, like that of a remora which attaches itself to a shark for protection, scraps of food, and free travel. However, the remora has the task of cleaning the parasites out of the shark’s mouth, which is what the local elite are tasked with. For example, Malta being sacrificed as a possible gateway into the EU through illicit economic flows, like the citizen-by-investment scheme, the gaming industry, smuggling of fuel from Libya and the Pilatus bank case (Ranieri, 2019).<sup>1</sup> In all cases, ambiguous language between the government in terms of their true intentions and foreign organisations and citizens, provides a strategy for persuasion, where those in power transmit incorrect or unproven notions to the public as if they were facts, which, with regular repetition become fully believed (Ozyumenko & Larina, 2018). Signalling (Frost, 2024), is not uncommon, as is issuing contrasting policies and legislation to suit the current ambitions (Frost, 2024).

In relation to the fuel smuggling, for example, Malta set up a network to trade illicit fuel within Europe, with smugglers being Libyans and Maltese, who have always had a close (and scrutinous) relationship, and the buyers Italians in Catania. However, the Maltese and

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<sup>1</sup> The discussion of all aspects will require a manuscript which will defy the allocated word count of this paper; therefore this paper will not discuss them all in full.

Libyans did not have national authorisation to trade, and therefore, as revealed through an investigation by the Guardia di Finanza, forged documentations instead (Bagnoli, 2022). The ambiguity allowing this criminal activity, came in the form of the guise under the Maltese-Libyan Chamber of Commerce, which sold the trade as promoting business between the two countries. With the help of the Maltese Ministry of Foreign Affairs, the export license system was deceived, and the oil was illegally sold, using forged certificates, at a higher cost due to an alleged higher quality. This deception to the public clearly illustrates the ‘compliance gaps’ which ambiguity between what is legal and illegal, real or forged, reflecting a disparity between Malta’s commitment to international law and its domestic actions (Akram, 2021). For example, the then-prime minister Joseph Muscat was fully aware of this oil smuggling and in 2013 went public with a zero-tolerance showcase towards oil smuggling in Maltese territory. This led to the seizure of an oil tanker in July 2013 and the owners were arrested. They were never prosecuted. The phrase ‘in Maltese waters’ was fundamental in this case, as when the Libyan oil smuggling case came to public light Muscat’s “secret policy” to the Maltese smugglers was thus: buying and selling of contraband oil in Maltese waters and the local economy was not going to be permitted, however the government would not intervene with any operations away from this. Furthermore, black proceeds made outside of Malta and then laundered into the local economy would not be investigated (Camilleri, 2021). A clear case of persistent and hidden ambiguity (Frost, 2024).

This use of strategic ambiguity, and therefore lack of corporate transparency and illegitimate partnerships are also observed through using legal entities for money laundering, organised crime, and corruption in Malta. Europol (2021) reveal that 80% of criminal organisations misuse legal business structures for their own benefit. This is especially the case when anonymity can be guaranteed (OECD, 2021), oftentimes through shady schemes and opaque instruments, like trusts, foundations, and shell companies (Aziani, et al. 2021). The

Financial Action Task Force (FATF) (2021) suggest adequate, accurate and up-to-date beneficial ownership information to limit the corruption due to corporate opacity and anomalous ownership structures. However, Malta still has a high level of jurisdiction secrecy, scoring a 54 (fourth among EU member states) in the 2022 Secrecy Score (FSS), a component of the Financial Secrecy Index issues by the Tax Justice Network (n.d). A score of zero indicates no secrecy, and a score of 100 indicates full secrecy. Malta scored 100 in the subsections on wealth ownership, and avoidance of tax promotion, illustrating that those in power do their utmost to hide their intentions. Interestingly a positive correlation was found with a high level of secrecy and a higher percentage of foreign shareholders. In Malta, 10.3% of shareholders are foreign, at 21 out of 46 countries ranging from 0.9% in Norway and 94.3% in San Marino (Transcrime, 2018).

### 3.3 Malta as a 'Mafia state'

Unsurprisingly, Malta has, on many occasions, been described as criminal – a Mafia state - in terms of its corruption and state of play, from institutions such as the UK's National Crime Agency (Benton, 2017), to the Organized Crime and Corruption Reporting Project (OCCRP) (Kaplan, 2021). As described by McCarthy-Jones and Turner (202) a mafia state is “run as a criminal organization in which the country's political leader presides over a network of family and friends who make private gains from state action.” A further discussion of mafia states is outside the scope of this paper, and would require a study of its own, however it is worth noting that mafia states run on ambiguity and corruption, where senior state officials are involved in criminality, where human rights are not adhered to, and where a high level of corruption is present (McCarthy-Jones & Turner, 2021). Malta ticks all these boxes, as will be evidenced throughout the rest of this article. This is also perceived by the locals who have

greeted the then Prime Minister Joseph Muscat and his MPs with placards and chants simply stating ‘Mafia Mafia’ whilst throwing eggs in front of Castille, the Office of the PM, demanding his resignation (Independent, 2019). This illustrates some of the public’s rancour towards perceived criminal practices, even though their voice is silenced, or worse engulfed in the flames of corruption

Carlo Bonini, an Italian Mafia expert, went further and described Malta as the ‘dystopian state [...] Sicily would have turned out if Cosa Nostra was put in charge’ (Kington, 2019). In an interview with Max Heywood, a member of Transparency International’s grand corruption and anti-laundering team, he too pointed out key aspects of concern which highlights similarities between the operation of the Maltese systems and that of the mafia, for example, evidence of conflict of interests in government, political appointments, and contracts made with family members (Wallis, 2017). Although there are no identifiable mafia or mafia-style groups resident and originating in Malta<sup>2</sup>, global mafia groups are active on the island, using it as a money-laundering hub (United States Government & ENACT, 2021), and Maltese authorities have not faltered to form business relationships with such groups. For example, under the guise of the legal gaming industry, Malta has become, what Investigative Reporting Project Italy (IRPI) called, an “ATM for the Italian Mafia” (Civillini & Anesi, 2018). Through online gaming companies, the mafia have infiltrated the local scene, aided by a lack of oversight by the Malta Gaming Authority, who should be regulating the industry. Anti-mafia prosecutors in Palermo have concluded that in 2013-2014, the Cosa Nostra started to take an active interest in online gaming and Malta provided a fertile spot for the criminal organisation to make cash deals with owners of websites in Malta because of the favourable tax rates. The accounts the better’s money was stored in was a case of ambiguity, since companies would have one account

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<sup>2</sup> Other than, perhaps, the politicians

for all the funds making money laundering a simpler feat, rather than separate ones for all betters, an action which was kept hidden from both the betters and authority figures. Furthermore, even after licenses have been suspended, companies were still found to be operating in Malta (Civillini & Anesi, 2018).

However, such authorities seem to function well in keeping themselves safe from public scrutiny and criminal proceedings. This could perhaps be due to the use of ambiguity in communication with the public, in terms of action and regulation, and the larger global community.

To illustrate this, Cappellaro et al., (2021) study on the strategic use of ambiguity by the Cosa Nostra as a form of protection from public scrutiny will be applied to the Maltese context. Cappellaro and colleagues (2021) assert that three different types of strategic ambiguity are resorted to in the struggle between the Cosa Nostra and the state: opacity, equivocality, and absurdity. The elements in this study are uncannily similar to the way the system operates in Malta. The only difference is that in Malta the struggle is between the State and the people, where the former operationalises strategic ambiguity as a criminal organisation. Where the Mafia exhibited opacity in its lack of formal definition; as stated by the Commission on the Mafia (1976, cited by Cappallero et al., 2021), “it is impossible to have a clear and univocal interpretation of the Mafia and its evolution”; the Maltese government show no transparency for the public to understand their workings, leaving an interpretation of the state and its affairs elusive. No official crime and criminal reports are published, magisterial inquiries are not shared, and no official statistics are found. Government has also been criticised for the lack of transparency over contracts given to various high-ranking officials including one given to Sai Mizzi (Camilleri, 2014). In 2014, Sai Mizzi, the then-wife of then energy minister Konrad Mizzi was given a contract for the post of a trade envoy to Asia, and later consul-general in Shanghai, on an annual salary of €160,000, plus benefits. It is still not known

what her actual job role and responsibilities were (Vella, 2015). With no information and transparency, the public cannot understand how the system works and thus will not contradict it. The added code of *omerta* (silence) is also strong on the island: in the same way that the mafia would threaten and intimidate anyone who reported on the organisation or its members, government officials, at times using the media to their advantage, would do the same, as in the case of Pilatus bank whistle-blower Maria Effimova who feared for her life after exposing corruption between Malta's government and organised criminal groups (Martin, 2020). The assassination of investigative journalist Daphne Caruana Galizia in 2017 is another example, this time as a "targeted silencing" (Cappellaro et al., 2021) in the form of a pure execution.

Furthermore, where the Mafia display equivocality in their paradoxical interpretations, Malta has conflicting information from politicians, also displaying "one-sided disclosing", a case in point being the background to the formal inquiry set up to evaluate prison procedures, especially in terms of the mental and physical wellbeing of those in prison, where the only information given out was that the board members were chosen based on their 'expertise'. This assertion is debatable since there was a clear conflict of interest when one member of the inquiry board was inquiring about her own policies and practices set as member of the prison board of governors (Galea, 2021). The government seems to give several such explanations that are meant to confuse, leaving a very dubious aura. Such ambiguity and lack of information adds a confusing mix of illegitimate but legal practices and illegal yet legitimate ones (Mackenzie & Yates, 2017), especially when citizens only have one source of information, making it impossible to exert decision making capabilities (Cachia, 2023). The minister and the relevant authorities have asserted that their decisions are always "based on facts" and inquiries, implying that nothing is unclear, however their reply to uncomfortable questions is standard: ministers are not involved in all processes and there have been unjust criticisms in

the past (Schembri Orland, 2021). Similarly, current prime minister Abela seems to use the term ‘institutions’ ambiguously, giving it meaning depending on the message he wants to get across. He asserts that the public should “let the institutions work” when being questioned by the press about a current corruption scandal going on since 2019, stating that “now is the time to let the judges evaluate the evidence. These halls behind me rely on evidence and this is what they will be examining” (Times of Malta, 2024). However, he quickly changed his stance, accusing the judiciary and these institutions of “political terrorism” when the conclusions to their investigations did not tally with his intentions of shielding himself and former prime minister of corruption. Ironically, he also states that he is sure that the Maltese people are intelligent enough to “come to their own conclusions” about the case (Farrugia, 2024). However, even mafia boss Michele Greco, who died in prison serving multiple life sentences, on numerous occasions boasted that his conscience is clean (Merlino, 2014).

Finally, where the Mafia uses absurdity as ambiguity by resorting to unreasonable and paradoxical statements to disorient the public (Cappallaro et al., 2021), authorities in Malta resort to much of the same. This is illustrated by the controversies surrounding the ‘punishment chair’ used by the ex-prison director to humiliate and degrade several individuals as an abhorrent use of punishment. Minister Camilleri staunchly denied the presence of this chair yet spoke of *a chair* where a prisoner was tied upon the recommendation of a doctor (Times of Malta, 2020), even though prison personnel denied this. Authorities still stood their ground when photos of this punishment chair were revealed by Newsbook (2021) reporting that “it wasn’t used for a month”, with ambiguity over how long for, when, and how, contradicting the previous assertions of it never being used. When the public is constantly fed ambiguous and contradictory information, cognitive dissonance will ensue since this information cannot be comprehended in line with their current schemata (Piaget, 1976). Therefore, as a form of comprehension, a new schema is made up by embracing the most plausible, and perhaps safest,

option. In this case, that the system works and is just. And the recipe of populist punitiveness, with a dash of corruption starts again.

#### 4. Case in point: The Murder of Daphne Caruana Galizia

On the afternoon of the 16<sup>th</sup> of October 2017, a car bomb was detonated in the quiet village of Bidnija, Malta. For many advocates of human rights and justice, this attack signified the collapse of free press and investigative inquiries into the local corrupt scene. The victim in this attack was Daphne Caruana Galizia, an investigative journalist, who for decades “fought like a tiger” (Bonini et al., 2019) against the erosion of democracy and the misrule of law in Malta, posting daily blogs on her *Running Commentary* so that the people of her country could understand the deviant practices going on around them, instigated by their own government.

Caruana Galizia was killed when the car bomb put under the driver’s seat outside her house was remotely detonated, a clear example of how ‘omerta’ is practised on the island. At the time of her death, she was facing 48 libel suits which, she wrote, were meant to be “an intimidation strategy as they retreat under siege” (Daphne Caruana Galizia Foundation, n.d.). Within a few days of her death, the United Nations issued a statement pushing the government to commission “a prompt, independent investigation”, since her death raised concern about the misrule of law in Malta, especially the high rates of corruption and the severe risk of freedom of expression for members of the press (Daphne Caruana Galizia Foundation, n.d.). Caruana Galizia has been exposing corrupt practices by those in power for decades, and had the system been working properly she would have had the necessary protection to do her job, however in Malta, the ‘rule of law’ has become the ‘rule of the party’ (Pace, 2017) and the ruling Labour party did what they had to do to save their own. So, following inaction into the investigation, a study in opacity as the government stressed action, two years later, in June 2019, the Council

of Europe issued a resolution for the establishment of a public inquiry within three months. Five days before this deadline, the Labour government announces the establishment of this inquiry, yet the board members appointed by the government did not ‘meet the Assembly’s expectations’ (CoE, 2019). Issues of impartiality, independence, and justice, as well as adherence to Article 2 of the ECHR, everyone’s right to be protected by law, were brought to light by the victim’s family since two out of three appointed members had financial and political links to the current political administration. This was absurd as the state was very much aware of the state of affairs with the members chosen, and each had their own conflict of interest. One of the members represented individuals Caruana Galizia investigated for money laundering and the other depended on the PM for his livelihood. Such a carefully chosen board membership is common in Malta, even though such boards could never provide impartial and just reports. This illustrates concepts from the Mafia state, where control is kept to the authorities and no incriminating conclusions are established.

The board membership was amended in November 2019, yet international press freedom NGOs still had “grave concern” into the “apparent interference with the activities of the independent public inquiry” which they issued through an open letter to the PM (Article 19, 2020), clearly illustrating the lack of global trust in the rule of law in Malta. The NGOs noted that many state entities actively withheld information in court, as well as the PM’s desperate attempts to end the inquiry prematurely. This grave concern was therefore well-founded, and Aquilina (2022) looks at the chaos of this case as reflecting the “culture of impunity” in Malta, since those in power feel that they could commit crimes with great immunity and not be held accountable since there is no safeguarding of the rule of law.

When the report into the enquiry was published in 2021, it was written solely in Maltese even though both Maltese and English are official languages on the island. Such a decision made by the government was intended to limit access to the international audience who were following the case, as well as the broader use of law in Malta. No regard to transparency or public accountability was held, with opacity again playing a strong role, which was one of the conclusions made by the Board of Inquiry within this same report. The Board asserted that “there was a holistic plan to turn a blind eye to the misgivings and the misrule of law [...] and those implicated were given a blessing to continue their tasks<sup>3</sup>”, a plan which was “centrally organised from the Office of the Prime Minister<sup>4</sup>.” It concluded that the state is responsible for the murder, singling out former PM Joseph Muscat for enabling the affairs, and the full cabinet as collectable responsibly through their inaction (Mallia, et al., 2021). It brings to light several key issues with the criminal system on the island: a culture of impunity and power; a leadership style enabling impunity; and the exercise of power. The inquiry recommended, among others, that the law should tackle financial crime including bribery and corruption; obstruction of justice by those with a public post should become a specific crime; the protection of journalists should be the task of a special police force; and abuse of office should also become a crime. However, as harrowingly stated by Aquilina (2022), the one anniversary of the report “also marks one whole year of inaction on the part of government to take concrete and effective steps to implement the main recommendations”, since abuse of power, nepotism, and government-controlled media is still commonplace in Malta, showing a total disregard to recommendations given. Ironically, one of the main recommendations of this report was to tackle the inaction which seems to be the government’s go-to response, especially when events threaten to rock its corrupt status-quo.

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<sup>3</sup> English translation (pg. 408)

<sup>4</sup> English translation (pg. 409)

This case highlights all that is unjust and deeply disquieting with the (mis)rule of law on the island, starting from the inaction and the ‘if we ignore it, it will go away’ attitude, right down to the corruption, nepotism and sheer clientelism, where government have absolute power over its citizens, and their lives. The inquiry report could have been a report on the local system holistically on the island, rather than of just one case. The small details might vary, but the general landscape and inaction where it matters are identical.

#### 4.1 Car bombs and the Mafia in Malta

Car bombs are not a new *modus operandi* for mafia organisations. Perhaps the most well-known car bomb was the 1992 Sicily assassination of anti-Mafia prosecutor Judge Giovanni Falcone, and a similar attack on Falcone’s associate, Paolo Borsellino, two months later. Falcone and Borsellino’s assassinations, like Caruana Galizia’s, was a silence killing. Falcone and Borsellino led charges against the Sicilian Cosa Nostra during the 1980s and early 1990s, including the Maxi Trial held between 1986 and 1987. Their investigations unearthed the inner workings of the Cosa Nostra and how its tentacles penetrated so many societal layers, including politics, business, and law enforcement (Scaturro, 2023).

Daphne Caruana Galizia’s investigations too exposed the criminal workings of the Maltese ‘mafia’; the politicians in charge of the island and their workings with mafia criminal organisations, not least the same Cosa Nostra that assassinated the Judge and his family. Interesting, Toto’ Riina, the mastermind of the Falcone assassination, honeymooned in Gozo, a Maltese Island, in 1974, and even owned a house and had his own lawyer in Malta. The ties between Riina’s family and Malta are still strong and in February 2024, Antonino Ciavarello, Riina’s son-in-law was arrested on the basis of a European Arrest Warrant in Mosta, Malta

(Balzan, 2024). Daphne blogged about this and about how politician and law enforcement were bought by criminal organisations (Bonini et al., 2019). Her only drawback was that, unlike Falcone and Borsellino, she had no prosecuting powers. No anti-mafia and anti-corruptions judges and prosecutors exist on the island, making her mission as a journalist very difficult and dangerous. Furthermore, whereas after Falcone's and Borsellino's assassination members of the Italian state took action - "It was war and we all felt called up. No-one could afford to look away any longer," as stated by Marizia Sabella, a Palermo prosecutor (The Local it, 2022), six years after Caruana Galizia's assassination, corruption is still "a top issue" in Malta (Borg, 2024). This comes in the form of the government, where current prime minister Robert Abela throws attacks at a magistrate prosecuting a high-profile corruption case, exposing the corrupt health service in Malta, calling on the judiciary that "justice should not be political terrorism" when the judiciary concluded that the government was involved in corrupt deals and that the inquiry would be finalised weeks before a general election. He went further by leaking photos of the magistrate, giving confidential information about the inquiry, indicating that whatever the conclusions of the inquiry are, he will not accept them (Cassar, 2024).

Following this, the Chamber of Advocates issued a statement to this accusing the prime minister of unleashing a direct attack on the judiciary, "undermining the judiciary and its work" which means that the law and justice is undermined (Times of Malta, 2024). Harrowingly, in the case of Falcone's work, never did the Italian state try and stop him or discredit him. The mafia and the criminals hiding in the shadows were the ones to assassinate. In Malta, it is the government and the state who assassinated Daphne Caruana Galizia in a "terroristic Mafia-like act" (Mallia et al., 2021) and are now trying to discredit and threaten the judiciary.

#### **4 (Mis)rule of law: The Venice Commission and National Identity**

##### **4.1 The Venice Commission**

The Council of Europe has focused on the shortcomings of the rule of law in Malta several times, Caruana Galizia's case not being the first or last time. In 2018, during the 117th Plenary Session of the Venice Commission (VC), Opinion No. 940/2018 was adopted, which focused on the Constitutional Arrangements and Separation of Powers and the Independence of the Judiciary and Law Enforcement. These recommendations focused on the lack of transparency and separation of powers, the appointment of members into positions of power and the detrimental effect this has on independence. In other terms, the VC report highlighted the use of strategic ambiguity in various areas of local governance which, using "grain of truth[s]" (Janssen & Teteryatnikova, 2017), allowed the government immunity from practices which were immoral and at times downright criminal and corrupt.

A key point was Article 96(4) of the Constitution of Malta, which pre-2016 gave absolute power to the PM to appoint members of the judiciary. The 2016 amendments to the Constitution and the introduction of Article 96A, established the Judicial Appointments Committee. This Committee had the powers to vet judicial candidates and to advise the PM on the suitability for such appointments; however, it was still not in line with any European standards (CoE, 2010) due to the concentration of power, "fall[ing] short of judicial independence" (VC Opinion (n1) 10). Aspects akin to the Mafia's rhetoric to keep complete control can be seen in the reply given to the VC by the Maltese authorities when they counterargued that this discretionary power was there to rule out discrimination and to ensure a gender balance in any appointments made. Furthermore, they reasoned that since the judiciary is not made up of many members, procedures of checks and balances are not necessary as no one member has complete control. Use of absurd ambiguity can be seen here, when the government gave an explanation which sounds true and noble – gender balance - but on further

scrutiny is a direct deflection to the true reason for direct appointments of the judiciary – saturation of power.

In 2019, too, Malta was under global scrutiny through the assessment by Council of Europe’s anti-corruption body, GRECO. The report revealed how Malta had not updated its anti-fraud and anti-corruption policies as required (CoEb, 2019). The report stated that:

Malta clearly needs to put in place a dedicated strategy or policy for the prevention of corruption and promotion of integrity, and for the continuous development of a framework that would allow to implement background checks, post-employment restrictions, ongoing education, and to evaluate and manage risks of corruption in relation to PTEFs, or persons appointed to aid in decision-making, such as political advisors and experts (CoEb, 2019, p. 13).

As a reply, the Office of the Prime Minister (2021) came up with the National Anti-Fraud and Corruption Strategy. This document, however, lacks the required depth in its application, where the action plan for the strategy named in the title only comes into force on page 41 out of a 46-page document. The rest of the document gives an overview of the policies and practices allegedly already in place, as well as working definitions. Ironically, the definition to ‘corruption’ on this Strategy is misrepresented. The Strategy states that “*United Nations Global Programme against Corruption defines corruption as the ‘...the abuse of power for private gain’*” (Office of the Prime Minister, pg. 26), however the UN Global Programme against Corruption (United Nations Office for Drug Control and Crime Prevention (UNODCCP), 2002) clearly states that there is no universal definition of corruption and using such a definition explicitly “raises issues about whether definitions of corruption should be limited to abuses of “public” power or harm to “public” interests, and if not, what sorts of private elements should also be included” (UNODCCP, pg. 2). This is an interesting observation as it illustrates how official documents cherry pick parts of international documents to suit their narrative and agenda, without being loyal to the intended message and meaning in the original text. Intriguingly, the Strategy does not provide

the full citation or reference to the full text for readers to cross-reference this definition, in a very opaque manner. This is a typical strategy used by those in power to distort the true meaning on concepts, fitting in with ambiguous policy and narration due to the lack of background information on sources. Only the last two pages are active in tasks, listing 23 tasks which need to be implemented within the following 36 months.

Added to the misrepresentation, the document is vague throughout with terms like “key people in key areas” (pg. 4), without giving more details in terms of *who* such players and areas are. For example, it states that: “The fight against irregularities, fraud, and corruption can only be effective and efficient if all the necessary skills and tools are available to national partners” (pg. 3), however other than stating that a “central information system” is needed and that training will be provided (pg. 36), no other insight on what skills and tools will be provided is given. The same can be said for the tasks to implemented, with tasks phrased as “implementation of changes to the Public Internal Financial Control mechanisms”. This gives room for improvisation through a lack of direct and specific tasks, where the ambiguous strategies allow for anything which can be classed or interpreted vaguely to be seen as ticking the ‘task box’ and timeframe. However, boxes were not even ticked, and in 2023, the European Commission (2023b, p.39) concluded that despite this document “challenges related to high-level corruption cases, including the lack of a robust track record of final judgments remain.” Following this, Malta has also been scrutinised in terms of financial crime, and in 2021 was added to the Financial Action Task Force’s (FATF) grey list for its high-level corruption and money laundering (FATF, 2021). When this happened, the then Minister of Finance claimed this was because Malta attempted to open a cryptocurrency industry (Camilleri, 2021). This blatant lie can hardly even be given red herring status, much less ambiguity at this stage. There were several more serious,

corruption and money laundering related, reasons for the greylisting. One of them involved the fact that, over a year later, there were still no prosecutions over the Panama Papers scandal, even though other countries were holding thorough investigations on the accusations (Camilleri, 2021). Malta was removed from the grey list a year later after allegedly agreeing to deal with three main points: i) showing accurate company ownership information if based in Malta; ii) enhancing the use of financial intelligence; and iii) focuses analysis on criminal tax offences (IFC Review, 2024). However, the issues which were highlighted still linger, for example concealing true owners of businesses (The Financial Intelligence Analysis Unit, 2021). Furthermore, following the removal from the grey list, money laundering and other financial crime cases dropped from 154 charges in 2021 to 49 in 2023, which authorities called a ‘rigorous enforcement drive’ (Balzan, 2024). This enforcement drive was, however, directed at lower-level players with a lax-oversight to major corporations and politicians (Balzan, 2024). Further information on who was charged was not given to the public, leaving the small print open to interpretation, a clear example of ambiguity through legislation and policy as well as through ambiguous political rhetoric.

Such examples illustrate how major international players are aware of the ambiguity and clear-cut corruption on the island. Following Milita et al. (2014) concepts of ambiguity, the Venice Commission has recognised the three ambiguous concepts utilised by the government of Malta – i) an endgame without a plan; ii) sitting on the fence; iii) an attack without a solution – in several high-profile cases and events, so the extent that action was taken against the island. The results, however, have not always made a difference to how the country is governed and run.

#### **4.2 National Identity as a way out?**

This brings to the fore the question of national identity in relation to how the country is run. Malta has two aspects to its national past each bringing their own version of Maltese

culture: the Italian heritage which is roundabout European, and the Mediterranean heritage which is Mediterranean with traces of Semitic and Arabic culture. Mitchel (2009) argues that there is a third regional concept – the Latin-ness which stresses the Southern-ness and therefore the Non-Northern-ness of Maltese identity. This makes Malta part of the Latin countries and therefore a part of Europe, but also separate from Northern Europe. However, embracing a mixed identity is also a strategic move: affirming European identity meant that Malta could play a stronger role in the Mediterranean (Cachia, 2023). Its location stresses this aspect and whereas in the past this was strategically important, in the present this makes it vulnerable to corruption since it is in between the two powerful clusters, and therefore incorporating aspects and procedures from both sides which clash and collide with respective regulations. Furthermore, Abela (2005) has noted how even though the Maltese have a strong sense of national identity, the collective consciousness is endlessly being changed to fit the needs of the global situation. Despite EU membership, the island ‘drifts’. Therefore, the Maltese combine old and new values creating a post-traditional identity. This perhaps explains the innovation techniques and ambiguity used by those in power when their modus operandi does not tally with the norm: aspects of European recommendations, normalities and practices are moulded with that of the Semitic culture, cherry picking points which suit their end goals. The reply to the VC is one such illustration of this: the neutralisation of corruption.

An uncertain and constantly-changing identity leaves a nation open to a Faustian Pact – just like Faust bargains with Mephistopheles for magical power in return for his soul, Maltese politicians are gradually selling the island’s soul to foreign powers in return for personal favours and wealth. These ‘grabbing hands’ are not uncommon for governments in small states, where foreign investments seem to be the economically viable route to take. However, in Malta this turns to corrupt global cooperation, practices that have become so ingrained to the country

that in 2022, the European Public Prosecutor's Office concluded that they could not identify the institution that is responsible for detecting corruption and crime. The European Chief Prosecutor stated that for each organisation she visited, "all of them said that 'it's not me. It's them.' And when I visited them, they said 'it's not us'" (Nielsen, 2022), in a clear attempt at blame-shifting, and ambiguity leading to complete vagueness and darkness. Malta is the only participating member of the office not to have opened any investigation into local fraud and corruption. This does not mean that Malta is clean – in 2022, Malta's shadow economy stood at 23.4% of the official GDP of the country. The European average stood at 17.3% (European Parliament, 2022).

Various dishonest and legally debatable transactions have contributed to this high shadow percentage, not least tax avoidance, irregular fraud regulation, and unemployment. Several recent scandals in Malta – the Panama Papers and the selling of golden passports<sup>5</sup>- have contributed to severe run-ins with the EU, headlining misuse of law and corrupt practices.

## **5 Conclusions and Implications**

The Maltese have a very particular way with which values are promoted and shared: people look for their respective political parties for guidance. Both parties, however, are selective in terms of which values to promote, leading to a lack of awareness of values such as fairness, truth, and justice (Pace, 2022). Instead, money and power take precedence, perhaps stemming from the colonial past when both elements were lacking. Since its colonisation by the British, ethnic nationalism, which is a collective identity based on the "myth of common

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<sup>5</sup> A discussion of both (and perhaps more) scandals will need a new article - I cannot do the harm done to citizens and to the country's reputation justice without the space to discuss in depth the lies, half-truths, denials and murder which were commissioned by the Labour government in Malta.

biological descent” (Roshwald, 2002) and therefore based on cultural characteristics like language, religion, and folklore, has dominated. Such nationalism is rife in intolerance, chauvinism, and authoritarianism (Roshwald, 2002), and although Malta gained its independence from Britain, such characteristics are still visible within the ruling elite who mould truths for financial rewards. When the elite in Malta harnessed economic discontent and directed it towards anything British, a divide in society based on political and cultural lines was formed (Marovich-Old, 2018), a divide which is still evident today when considering the political elite, and the rest of the population. This divide, added to the yearning for power and money, leads to corruption through innovative use of ambiguous reasoning and action as those in power will go to great lengths to ensure that they have both, with the assumption that money and power lead to legitimacy. However, extra-legal activities have now become part of the Maltese socio-political fabric (Ranieri, 2019) - whereby lack of transparency, regulation, and willingness to change the comfortability of the state’s propensity to ‘turn a blind eye’. This paper acknowledges the parallels between Malta’s governance and a ‘well-oiled’ criminal organisation - such as the Mafia - in which political elites establish and maintain a network of allies for their own private self-interests and polluting civil society in the process. It has shown how those in power use various forms of ambiguity, from the use of rhetoric to blatantly introducing new laws in order to hide current actions.

Identity anchors people to their core beliefs, and therefore has the power to enforce narratives. However, this is not static but is based on multidimensional elements which change over time (Frendo, 2002). Malta is still a young democracy, so any reforms and implementation of strong positive values will take time, yet through the European Union, other independent entities can interject with decision-making policies as well as through inspections of practices, all of which challenge the status quo (Pace, 2023), for example following the assassination of

Daphne Caruana Galizia. It is difficult to envisage reform and a shift in beliefs, values, and attitudes in the general population until such injustices have been acknowledged and the rule of law is upheld in practice.

Before corruption can be tackled, a post-colonial understanding of good governance needs to be understood. Crucially, if the Maltese people and the ruling political elites have no concept of good governance, and hide behind strategic ambiguity, then corruption will continue to be accepted as the norm. The corporate veil needs to be lifted leaving those who are committing crimes open to a fair trial; whistle-blowers and witnesses should be protected rather than targeted and clear separation of powers should be put into place in all areas. Before such elements, at the very least, are tackled, the island will suffer. Becker's (1997, p. 203) recommendation makes the perfect conclusion for this article. He states that "if you want to cut corruption, cut government." Or at least, cut government power. Becker's bold suggestion is rooted in the belief that economic freedom is intrinsically connected to how much state power and activity is present in the economy - therefore, arguing the fewer resources a government controls (both in terms of assets and regulatory power), the less opportunities there are for corruption and extra-legal activities. Malta requires a shift away from the overwhelming power of the state (stabilised by corruption and greed), and towards a fairer, transparent, and susceptible nation to positive change in their norms and values of society - whilst disconnecting political practices with criminal and/or extra-legal activities.

However, there is a long way for research and empirical policy making in Malta to be sufficient for the smooth and transparent running of the country. Further research on numerous aspects is still weak for a comprehensive conclusion to be made on the rule and misrule of law on the island. This article only provides the pinnacle of the work that urgently needs to be done

to draw a clear understanding on the island, the mentality and how to combat corruption. For example, more work on how the parallels between the Maltese state and Mafia would provide better ways of tackling such organised criminality through the ‘what works’ mantra on mafias. Furthermore, a better understanding on the perceptions of the public in relation to justice and corruption will provide insight on how to use transformative education to instil more pro-social and anti-corruption attitudes within the Maltese public. Since removing the government and starting *tabula rasa* is not a viable option, then thoughts, attitudes and behaviours need to be formed and changed using a bottom-up approach. After all, the state and governing bodies should be formed by members of the public, as per the Constitution of Malta.

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### Declaration of interests

The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.

The authors declare the following financial interests/personal relationships which may be considered as potential competing interests: