



By Cassar, R., 2012

Exploring Institutional Evolution in the Development Planning System of a Small Island State: Malta

Kerli Kirsimaa

Exploring Institutional Evolution in the Development Planning System of a Small Island State: Malta

Supervision:

Dr. Arnold van der Valk; Land Use Planning Group, Wageningen University

Dr. Paul Gauci; University of Malta: Department of Spatial Planning and Infrastructure, Faculty for the Built Environment

Second reviewer:

Dr. ir. Gerrit-Jan Carsjens

Land Use Planning Group

Wageningen University

Author:

Kerli Kirsimaa

Reg. No. 890217436030

kerlikirsimaa@hotmail.com

Study Program: Urban Environmental Management, Land Use Planning Group

Course code: LUP-80436 (36 ECTS)

Wageningen, October, 2013



Abstract

Malta is a small densely populated island state in the middle of the Mediterranean Sea. Similarly to other small (island) states, Malta has to take into consideration the many challenges that its smallness brings to the country. The history of having been a British colony for 150 years has made Malta adopt most of its administrative and parliamentary system from the United Kingdom. As the Maltese Public Law was at the time already based on British model, the adoption of British planning legislation does not appear to have been questioned. What took place followed the concept of institutional transplanted, the transfer of institutions from one setting to another. Since the economic, political, cultural and spatial characteristics of the countries vary, the theory, developed by De Jong and Lalenis, that questions whether a transferred land use planning model is appropriate for the host society, can be applied.

In Malta the first serious planning system was set up as late as in 1992 through the establishment of the Planning Authority which, to some extent, was based on British planning practices. However, delay in the implementation of a proper planning system had already left its mark on the Maltese Islands, which now are often described as overdeveloped. This has mainly been caused by unfavourable government practices and lack of a coherent system in general. Today, the Planning Authority no longer exists under the same name, but is referred to as the Malta Environment and Planning Authority, formed through the amalgamation between the Planning Authority and the Environmental Protection Department in 2002. Despite the rapid improvements which have occurred over the past 21 years, the planning system in Malta still has some handicaps, the most prominent of these being argued to be the high political influence on the system.

In the light of two centuries of British colonial rule, this thesis questions whether the described problems can be attributed to an alleged transplanted of parts of the British planning system. It seems to be the implementation of the system itself which causes defects. Clientelism and power abuse is always just around the corner in a small country. Mechanisms to redress these flaws seem to be absent from the planning system - thus causing a lot of problems in development, land use and environmental planning. The inquiry in the emergence and performance of the Maltese system in this paper serves to test the analytical models developed by De Jong c.s. about the pros and cons of transplanted institutions in small states, and whether these can be used to explain the particularities and flaws of the Maltese planning practice and the underlying institutional principles.

This paper consists of seven chapters, the first two of which give an introduction and a theoretical framework. As follows, the three subsequent parts discuss the empirical findings. The next chapter includes the overall conclusion and analysis, followed by an epilogue. In the chapter covering the conclusions and the analysis, the empirical findings, such as the general relevant development of Malta (political, economic, legal, etc.) and the empirical findings of the English and Maltese development planning systems (Chapters IV and V) are bounded together as to form the answer to the research problem. Whilst doing so, the chapter also summarizes the thesis. The last chapter (Epilogue) links the theoretical concepts to the practical case.

Keywords: Malta, land use planning, institutional transplanted, small island states, institutions

Contents

- Abstract2
- List of Schemes, Figures and Tables5
- Abbreviations6
- Preface7
- Acknowledgements8
- Chapter I10
- Introduction10
 - 1.1 Explaining the research background13
 - 1.2 Problem description.....14
 - 1.3 Research specification: research objective and questions17
 - 1.4 Research design and methodology19
 - 1.4.1 Case study19
 - 1.4.2 Working methods.....19
 - 1.5 Outline report23
- Chapter II.....25
- Theoretical framework25
 - 2.1 Elaborating planning systems: the concept of families of nations25
 - 2.2 Institutional transplanted theory.....27
 - 2.3 Small states theory31
 - 2.4 Concluding remarks35
- Chapter III38
- Development and characteristics of Malta38
 - 3.1 Historical and geographical development of society and economy38
 - 3.2 Maltese Constitutional and political development41
 - 3.3 Maltese legal system43
 - 3.4 Maltese local government44
- Chapter IV48
- Development and characteristics of land use planning system in England48
 - 4.1 The themes of analysis49
 - 4.1.1 The planning policy framework50
 - 4.1.2. The roles and structure of planning agencies53
 - 4.1.3 Control over development.....54
 - 4.2 Concluding remarks56
- Chapter V59

| | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| Development planning in Malta | 59 |
| Chapter V Part I..... | 60 |
| 5.1 Progress in Planning Legislation in Malta 1814-2002 | 60 |
| 5.1.1 The 19th Century –first modern planning law and Maltese nationalism | 62 |
| 5.1.2 Developments before World War II..... | 62 |
| 5.1.3 Developments after World War II – overdevelopment? | 64 |
| 5.1.4 Developments after World War II – a list of missed opportunities in better controlling developments and setting up the planning system earlier? | 65 |
| 5.1.5 Revolutionary years in Maltese Planning – establishment of the Planning Authority...70 | |
| 5.1.6 Remarks about the research carried out regarding the period from the 19 th century to year 2002..... | 72 |
| Chapter V Part II | 73 |
| 5.2 Development planning since and after the establishment of MEPA | 73 |
| 5.2.1 The themes of analysis | 74 |
| 5.2.2 The future of MEPA – its opportunities and challenges | 84 |
| 5.2.3 Concluding remarks | 85 |
| Chapter VI | 87 |
| Conclusion and Analysis | 87 |
| 6.1 Small island state characteristics..... | 88 |
| 6.2 The institutional evolution of Maltese development planning system..... | 89 |
| Chapter VII Epilogue | 95 |
| 7.1 Discussing institutional transplantation theory | 95 |
| 7.2 Discussing small states theory..... | 96 |
| 7.3 Reflection on research methods | 97 |
| 7.4 Recommendations for future research..... | 98 |
| Bibliography..... | 99 |
| Annexes | 103 |
| Annex 1. List of Interviewees | 103 |
| Annex 2. Operational functions of MEPA | 104 |
| Annex 3. Boards and Committees of MEPA..... | 105 |
| Annex 4. Interview Questions | 106 |
| Annex 5. Maltese and English land use planning systems on timeline | 108 |

List of Schemes, Figures and Tables

Schemes

- Scheme 1: Major difference by which MEPA differs from the previous system and the evolvement of MEPA in general
- Scheme 2: Interpretation of the hypothesis
- Scheme 3: Research specification
- Scheme 4: Key focus areas for the comparison between the Maltese and UK planning systems
- Scheme 5: Research storyline
- Scheme 6: Categorisation of interviewees
- Scheme 7: Families of nations and their relation to land use planning
- Scheme 8: Overview of the evolvement of the present land use planning system in England
- Scheme 9: Call-in procedure in England
- Scheme 10: The division of the first part of Chapter V, historical events in the Maltese land use planning until the establishment of the Planning Authority in 1992
- Scheme 11: Organisational Structure of MEPA
- Scheme 12: Illustration of the Prime Ministers control over MEPA
- Scheme 13: Call-in procedure in the Maltese planning system

Figures

- Figure 1: Map and location of Malta
- Figure 2: An artist's impression of an aerial view of built-up Malta
- Figure 3: Population density in Malta by Local Councils

Tables

- Table 1: Characteristics of present English development planning system
- Table 2: Characteristics of present Maltese development planning system
- Table 3: The main differences and similarities between the English and the Maltese development planning systems today

Abbreviations

The following list includes abbreviations that are used in this paper as they are widely known and used in public policy and other documents.

DPD – Development Plan Document
EU – European Union
SA – Sustainability Appraisal
SEA – Strategic Environmental Assessment
UN – United Nations

Malta

A&CE – (Malta) Chamber of Architects and Civil Engineers
BCB – Building Control Board
DPA – Development Planning Act
EDPA – Environment and Development Planning Act
MEPA – Malta Environment and Planning Authority
PA – Planning Authority
SDA – Special Development Areas
SPED – Strategic Plan for the Environment and Development

United Kingdom

UK – United Kingdom
DCLG – Department for Communities and Local Government
LDF – Local Development Frameworks
LDS – Local Development Schemes
RPG – Regional Planning Guidance
RSS – Regional Spatial Strategy
RTPI – Royal Town Planning Institute
SCI – Statements of Community Involvement

Preface

January 15th, Sappers Street 4, Valletta, Malta. Having just survived heavy rainfall I found myself sitting in an architecture office, warmly welcomed by Jacques Borg and Alberto Miceli-Farrugia, where I was confronted with a question:

“Hmm...interesting. A person who is from Estonia, studying in the Netherlands, and doing her master thesis in Malta. Why?”

Indeed, another day in Malta had started up with an interview for my graduation paper. Another person asking the same question – a question that deserves a thorough answer.

It was back in September 2012 when I was in an equal situation with fellow students, keenly looking for a research topic, going through several options over and over again. However, as I have always had the view that life is a collection of events followed by each other through several coincidences, or as Albert Einstein has been known to have put it once *“It is God’s way of remaining anonymous”*. This approach did not let me down this time either. I found my track by having coincidentally found the theory of institutional transplantation which later led me to this small beautiful piece of land right in the middle of the Mediterranean Sea – the Maltese Islands.

Theory or practice, which comes first? This time it was theory which was put into practice, I had the theory and I needed a case. However, I also had a few criterions – to stay within Europe and get the chance as to familiarize myself with the British land use planning system as one of the oldest classics in Europe. Malta was a coincidence. It had the perfect characteristics which I needed according to my criterions and two selected theories (institutional transplantation and small states) – characteristics of a small island state and a land use planning system which, after some research, I surely knew that had been adopted from the UK. The more so, being a small island state fraught with handicaps in its planning system, such as weak environmental performance and a rather intensive political interference in it, made an excellent excuse for me as to test an analytical model of institutional transplantation, seeking for truth whether these flaws may stem from misinterpretation or abuse of vestiges of the British administrative and planning system introduced by the colonising power.

This is where I started off my research journey – or the ‘flight with severely delayed arrival’, as I use to call it.

It did not disappoint me.

I hope you enjoy reading this thesis.

Kerli Kirsimaa

Acknowledgements

I would first of all like to thank both my supervisors, Dr. Arnold van der Valk and Dr. Paul Gauci for the considerable time and effort they put into guiding and supporting me during this research. I am thankful to Dr. Gauci, who was my second supervisor and who spent his valuable time for undertaking this task. But just as important was the motivation he gave me throughout the study from our very first e-mail conversations onward. Without him it would not have been possible to concentrate specifically on Malta in this final thesis. I am explicitly grateful to Dr. van der Valk for helping me to improve my academic writing skills and keeping me on the right track during this research. His suggestions and comments throughout the study have helped me to learn how to deal with complexity and be more precise.

I would also like to thank all my interviewees whose answers contributed to the results of this research. I really appreciate the time they spend on the issue for me either through e-mails, Skype or face-to-face. Also, I am grateful for the warm welcome which I was received with in Malta.

Moreover, I really appreciate EFL Stichting for the research grant, which made my study visit to Malta possible.

Additionally, but not less importantly, I would like to thank my friend Piret Jõgis the effort of editing and improving the English language of this thesis.

My sincere thanks to You all.

Kerli Kirsimaa

I

Chapter I

Introduction

The Republic of Malta is considered a small state (territory: 316 km²; population: approx. 417,000), and it is located in the middle of the Mediterranean Sea, south of Sicily (Malta, 2012). It is an archipelago – in addition to the Island of Malta there are seven other islands – Ghawdex (Gozo), Kemmuna (Comino) and 5 uninhabited islands. Because of its location, Malta has been occupied by various nations, such as the Phoenicians, the Romans, the Arabs, the Normans, the Aragonese, the Order of St John, the French, and finally the Brits (Malta, 1966). From 1814 to 1964, Malta was a British Colony. It has widely been considered to have played an important role within the Empire due to its strategic location, its harbour facilities and dockyards. Despite the many epidemics that occurred in the 19th century, the Islands also experienced a significant rise in population (from circa 100,000 to 300,000¹) at that time and the result can now be seen as an extensively urbanized small state. Malta is said to be one of the world's smallest and most densely populated states, having a population density of 1160 people per square kilometre, making the issue of land use planning explicitly important. (Malta, 2012; Borg, *et al*, 2011)

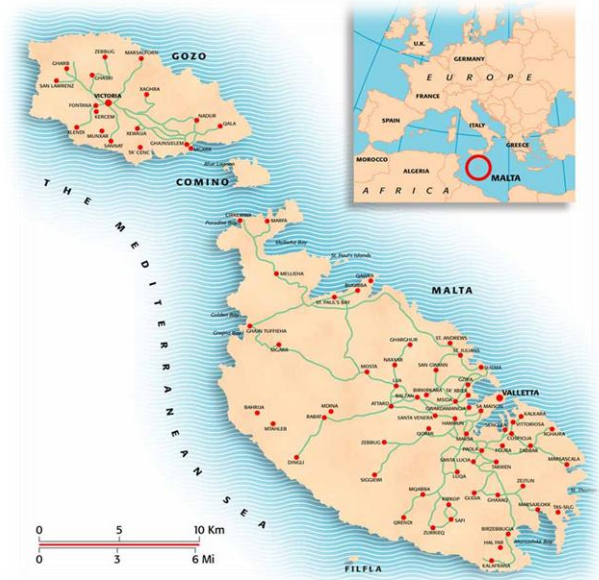


Figure 1: Map and location of Malta
Derived from: <http://www.tangmerpilots.co.uk>

This thesis examines the issue of imported planning structures. In many former colonial countries these have remained in place until today, and as often claimed, do not often fit into local circumstances (De Jong, *et al*, 2002). In Malta, the current development planning system is very young. The biggest change came in 1992 following the setting up of the Planning Authority, and the coming into force of the Development Planning Act. Malta belonging to the British Empire had also a huge influence on the development of the country's legal and administrative system, making Malta to absorb English Common Law into its Civil Law system, which it had started with, more and more, becoming thereby a hybrid system (Aquilina, 2010). In the system, the named two are the most dominant ones (*ibid.*). Hence, as the Maltese Public law was already coined from the British, the Maltese saw it easier as to adopt the British planning legislation, on which the Development Planning Act was based on in some extent (Farrugia, 2011).

However, in case of Malta it is questionable whether the problems faced can be attributed to foreign planning structures because in Malta it seems to be more the implementation of the system itself throughout its evolution, the way how the Maltese have interpreted the English system, that seem to have caused difficulties. This can be explained through the past government practices which caused a delay in setting up the Planning Authority, which, if set earlier than 1992, would have prevented the overdevelopment that has taken place in Malta

¹ Source - Blouet, B., (1993), *The story of Malta*: Malta.

(Gauci, 2002, Vol1). The land use planning in Malta has always been a centralised government task, whilst in England² the system is decentralised and local authorities have been given their own powers. In Malta it is therefore often claimed that the planning system has too much political interference and that is considered to be the main source of problems. (Xuereb, 2013) With this reference, the author of this paper was curious about the status of the Maltese planning system that has been reached today in comparison to present English system, and to what extent the Maltese system today can be considered to follow the English system³. The importance of such a study lies in underlining the flaws in the Maltese planning in relation to the English characteristics in it and the way it has grown apart.

The study consists of seven chapters, which are explained more in detail in section 1.6 – Research Outline. In general, as to fulfil the objectives set in this paper, small states and institutional transplantation theories are elaborated in Chapter II. The theoretical concepts which are explained therein are used as tools to analyse the empirical findings, the latter of which are described in chapters III, IV and V, and bounded together in Chapter VI – Conclusion and Analysis, which also summarises the paper as a whole. In the last chapter – Epilogue, the theoretical concepts discussed in Chapter II, are elaborated in line with the empirical findings.

Planning systems: development planning

Whilst in many European countries the term ‘spatial planning’ has been adopted, this is not the case for Malta or the UK. Therefore, when talking about Maltese and the UK planning system in this paper, the term ‘development planning’ or ‘land use planning’ is used, as it is recognized in the planning legislations of both countries. However, both of the concepts are explained here in the view of the core of this paper.

Nadin et al (2008, p.35) have stated, that “the concept of spatial planning system has been used as a generic term to describe the ensemble of territorial governance arrangements that seek to shape patterns of spatial development in particular places”. Within spatial development, the primary role of the concept is to seek for integration between such sectors as energy, industry, transport, and housing, whilst taking into account environmental considerations. Spatial planning is therefore important for the promotion of sustainable development and for improving quality of life. In fact, the definition of spatial planning varies in different countries, “spatial planning is concerned with identifying long- or medium-term objectives and strategies for territories, dealing with land use and physical development as a distinct sector of government activity, and coordinating sectoral policies such as transport,

² The author of this thesis focused on comparing the Maltese planning system with England only. For the explanation of the comparative country, see page 48. In this thesis, Maltese planning system was not compared to other countries within UK. One of the interviewees offered insights though, that the appeals procedures in Malta are similar to Ireland.

³ Researching the imposition of British planning in Malta during the British colonial era (1814-1964) and after that until the establishment of the Planning Authority (1992) is still under-researched and going to primary sources (i.e. archives) was considered to exceed the scope of this research. Therefore, the historical explanation to the Maltese planning system during that period is described at the first part of chapter V in this thesis, based on the findings of other researchers. However, this does not yet explain why the analysis between the English system is focused on the present MEPA based planning system (since 2002), not on the era of Planning Authority before that (1992) when the original adoption was made to Maltese first considerable planning system. The reason for that is the preliminary research, which showed that the 1992 based planning system in Malta differs mainly from the present system by the fact that planning and environment issues were placed under one Authority (see Scheme 1). The major system features which were adopted from the British into the Maltese Development Planning Act have therefore not made any drastic change in the new Environment and Development Planning Act. The more so, in Malta abuse of power has always been an issue and the mechanism to redress it seems to be absent from its planning system – thus causing many problems in development, land use and environmental planning. The Maltese planning system has always been a centralised activity, whilst the planning system in the UK has always been decentralised (see Chapter IV), giving the local authorities their own powers of decision-making as long as it is in line with relevant national planning policies. Therefore, such a present-versus-present comparison of the two systems would either way surface the extent to which the Maltese planning system was adopted in 1992. All-in-all the importance is on the Maltese implementation of the system rather than its adoption, which is the main cause of problems.

agriculture, and environment” (Nadin, et al, 2008, p.1). However, perhaps it is most reliable to refer to the definition of spatial planning that is most widely used in Europe. That is the one given by the European Conference of Ministers responsible for Regional Planning (CEMAT): "Regional/spatial planning gives geographical expression to the economic, social, cultural and ecological policies of society. It is at the same time a scientific discipline, an administrative technique and a policy developed as an interdisciplinary and comprehensive approach directed towards a balanced regional development and the physical organisation of space according to an overall strategy" (1983).

However, as mentioned, the concept of spatial planning, as described above, has not been adopted in Malta⁴. In Malta the practice of economic and social planners is to dictate to the development planners the needs with little concern for long term strategic planning. Similarly, the term ‘spatial planning’ is not recognized in the UK legislation, but leans towards a term coined by the Royal Town Planning Institute. It is more widely known as the spatial consequence of policy decisions, illustrated by the Map for England project. Within this project a pilot website for the Map of England was created. This website would ensure a joined approach to planning infrastructure and services whilst bringing all relevant data sources together. This kind of interactive Map is made useful for many planning related issues, for example *“policy makers could make better judgments about how individual policy proposals interact with and affect development of the country as a whole. It would also increase consistency in appraisal, improve security and resilience, and provide a better understanding of sectoral issues that might complement or conflict with each other”* (Royal Town Planning Institute, last accessed in 2013).

Furthermore, it is important to keep in mind that planning occurs on different levels (national, regional, local) and that the way how the issues of planning problems are solved within those different administrative units can vary. However, in most countries the national level sets the wider framework with its development planning policies and frameworks to be followed on lower levels. As Gerhard Larsson (2006) has put it *“the main activities concerning planning at national level is as mentioned a framework of laws, decrees and guidelines which may be supplemented by more detailed regulations at a lower level.”* (p.24) Since the focus of this paper will be on institutional transplantation, which in theory occurs mostly on higher levels of actions, the author wants to address that even though the main focus is on the state agencies of the UK and Malta, there is still a degree to which the lower levels in both countries are touched upon. These are the similarities and differences between the way how the planning system has been built up on the national level and its impact on the lower levels.

⁴ The Government was advised to adopt the use of term ‘spatial planning’ in 2010 but it refused. The concept was introduced in the Environment and Development Planning Act 2010 together with the preparation of Strategic Plan for Environment and Development (SPED). During the Parliamentary Debates regarding the Environment and Development Planning Act, it was argued that the Bill for the Act required Structure Plan (Labour Opposition). The Opposition argued that this was not acceptable because it was then thought that Malta should have a spatial plan (i.e. a plan presenting an integrated economic development, social, cultural, environmental, transport, and spatial development vision and strategy). The Government responded by amending the provision regarding the structure plan and introduced the title ‘SPED’. (see: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=21134&l=1>, last accessed: 4.04.2013)

1.1 Explaining the research background

An introductory literature study was carried out to ascertain the exact stages of the evolution of the development planning system in Malta. Based on that the exploration of the Maltese development planning system in this thesis is divided as follows:

1. Development planning in Malta from the start of the British occupation period and until the establishment of MEPA, 1814–2002
2. Development planning in Malta after the named period, 2002–2013

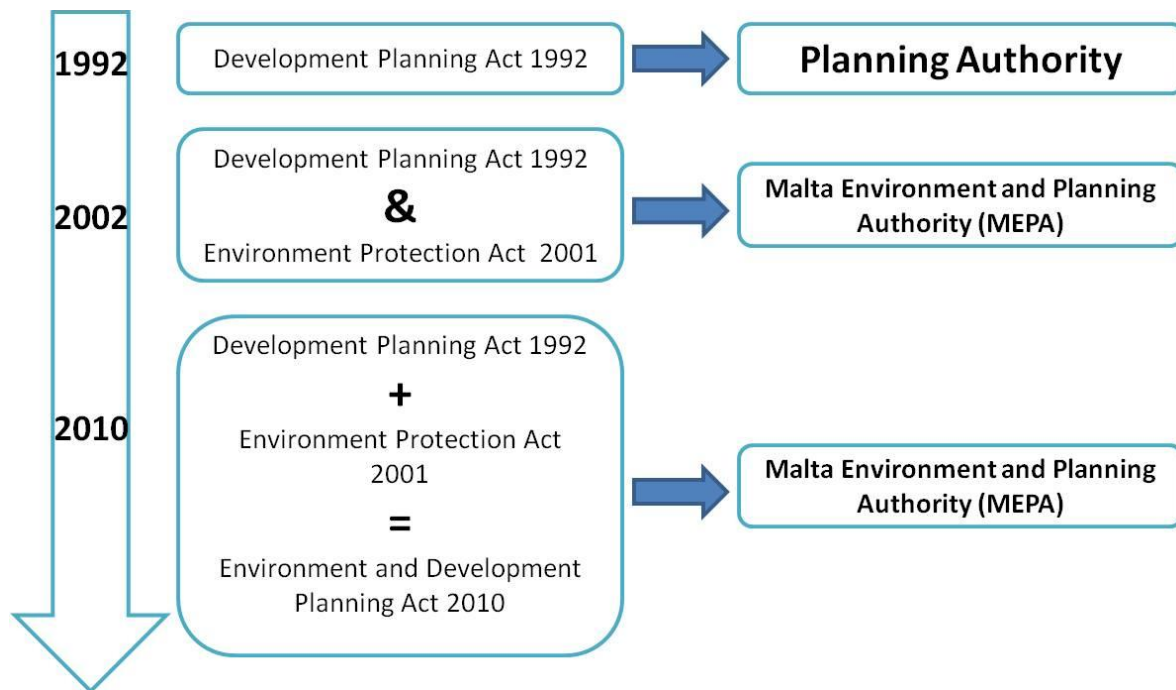
However, someone who is familiar with the Maltese planning system may question, why the approach does not refer to the 1992 developments as a milestone, when the Development Planning Act allowed the setting up of the Planning Authority, marking the real birth of the first serious development planning system in Malta (Cassar, 2009, Borg, *et al*, 2011). First of all, as the focus of this thesis is to explore the English influence in the Maltese development planning system, the study starts from 1814, which marks the official start of Malta as a British colony. As presented, the next division starts from 2002 because of importance to focus the thesis on the present Maltese planning system and its comparison to the current UK planning system, with the view of investigating to what extent the two resemble today.

The current Malta Environment and Planning Authority (MEPA) has one major difference to the 1992 Planning Authority. This is the issue that environment protection and planning were placed under the competence of one authority. In other words, MEPA⁵ was established through the merger of the Planning Authority and the Department of Environment Protection in 2002, having two separate directorates in it – The Environment Protection Directorate and the Planning Directorate⁶. In 2010, the two legislative acts on which these were based – Development Planning Act 1992 and Environment Protection Act 2001 were merged and formed a new act, the Environment and Development Planning Act. (MEPA, last accessed in 2013) (see Scheme 1).

Furthermore, as the planning systems are constantly changing and the planning policies topics for improvements, it is necessary to point out that this exploration of the Maltese planning system extends to year 2012 and not beyond. In that regard, it must be noted that this study does not cover the possible changed deriving from the governmental elections held in March 2013, in which connection the end of MEPA era has actually already been announced. The new Government manifesto plans to disassemble the MEPA back into two entities, where environmental issues are separated and placed under the responsibility of the new Ministry for Sustainable Development, the Environment and Climate, while the land use dimension will remain to be controlled by the Office of the Prime Minister (Sansone, 2013).

⁵ The other institution of planning importance in Malta, which is collaborating with MEPA, is the Malta Resources Authority (MRA), functioning today under the Ministry for Energy and the Conservation of Water. (Gov., Malta, last accessed 2013) This is a public body, established under the Malta Resources Authority Act of 2000, and is responsible for regulating water and energy utilities, industrial enterprises exploiting resources such as oil exploration, retailers, quarry operators and private abstractors of groundwater, operators and tradesmen in the regulated sector. (Malta Resources Authority, <http://mra.org.mt/>, last accessed in 2012)

⁶ The former Planning Authority was answerable to the Minister of Home Affairs and the Department of Environment Protection was under the Minister for the Environment, who was also responsible for Resources and Infrastructure. Following the merger, the Ministry of Home Affairs became the Ministry for Home Affairs and the Environment (of which MEPA was part of) and the Ministry for the Environment became the Ministry for Resources and Infrastructure. Later MEPA was directed under the Ministry of Rural Affairs and the Environment (2003-2008); then the Office of the Prime Minister (2008-2012); then the Ministry for Tourism, the Environment and Culture (2012-2013), whilst today MEPA is back under the Office of the Prime Minister (2013-...). (Gov., Malta, MEPA, last accessed in 2013)



Scheme 1: Major difference by which MEPA differs from the previous system and the evolution of MEPA in general

1.2 Problem description

Many *small islands*⁷ in Europe as well as in other continents have been under discussion as landscapes under tight constraints, such as scarcity of natural resources and limited land area. Chapman (2011), Professor of Planning and Development from the Birmingham City University, has elaborated more in detail upon the global challenges and spatial interconnectedness that small islands have in common. The critical key planning issues include, for example, their urban development, land-use pressures/conflicts, climate change impacts, waste, water and traffic management and many others (Chapman, 2011).

Since it is largely the task of development planning policies and relevant acts to deal with such problems, it is hard to solve these if a country has adopted the same from another country. Especially in case these turn out to be unsuccessful. As will be further explained in Chapter II, De Jong, *et al* (2002) have given a detailed theoretical description to the concept of institutional transplantation. They refer to the action where institutions from a donor country are transferred to another country with the main aim of bringing improvements to the host society (*ibid.*). However, it might not always be the case that transplantation of institutions turns out to be successful. This is due to the fact that the procedures and consequences of institutional transplantation depend on so many different aspects, such as the historical and cultural background of the host countries, and hence the outcomes can differ significantly. For example, in case of former colonial countries, such as a former Dutch colony of Suriname, as Merel van Boxtel (2010) explored in her Master's thesis, transplantation may also occur because it is 'the easiest way to go'. It can be much faster, cheaper and easily applicable than developing a new model or search for another option beyond the one of the country in power. Also, the lack of knowledge on how to execute certain implementation together with the so called 'messy and hasty' periods after gaining independence, have 'forced' most of the former colonial countries to adopt something quickly. So in their naivety and blindness, the already proven planning models (such as the UK's and the Dutch) were voluntarily transplanted and trusted, but which in this specific case

⁷ The definition and other characteristics of small islands are elaborated in Chapter II of this thesis.

of Suriname unfortunately did not translate well into the local culture and environment (Boxtel, 2010; De Jong, *et al*, 2002).

Building the hypothesis within the research problem

This is where the problem description for this study enrolls. As in many other former colonial countries, also in Malta colonisation influenced its development planning system. As the Maltese Administrative and Civil Service had already been influenced by British practices, the Development Planning Act of 1992 was based on English law, being the first serious set of regulations to control land use in Malta (Farrugia, 2010). Nevertheless, it has been claimed that the overdevelopment had occurred in Malta already before this Act was put into force, and it is only recently when the Maltese had started to give the environment any importance (Times of Malta, 2010). The Malta National Report (2002) states that due to the high population density, the land of the Maltese Islands is suffering under high building density (Figure 2), industrial development, recreation, tourism, and transport. One of the reasons behind such a heavy land use has been indicated to be the failure of the government policies in force from 1960s onwards. These, by setting the property development as a way out to cover up the economic development, have been the source of problems in terms of the quality of urban environments in Malta. In the past, the land use planning in Malta was therefore often being recognized as being corrupt, Prime Minister having the extensive powers over the land use issues⁸ (Gauci, 2002, Vol1)



Figure 2: An artist's impression of an aerial view of built-up Malta

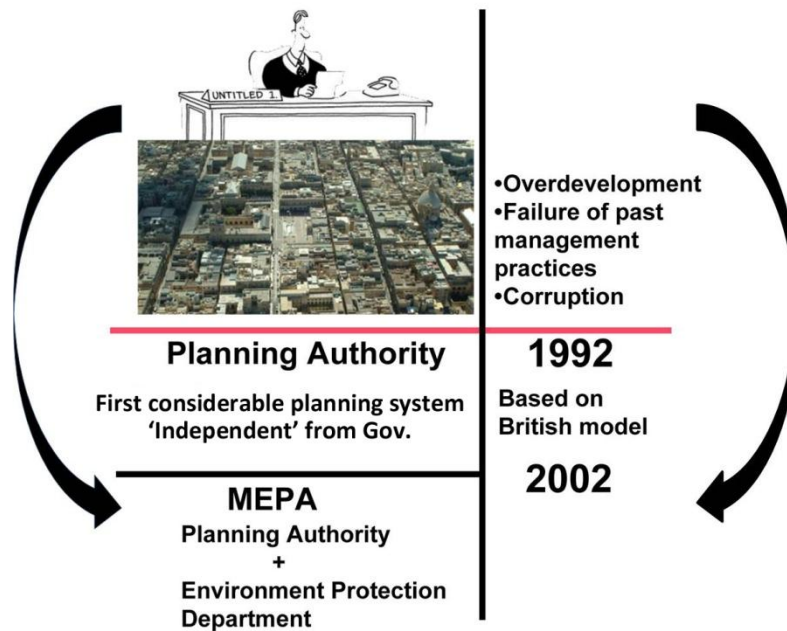
Source: Times of Malta, Sunday, February 24, 2013, derived from:

<http://www.timesofmalta.com/articles/view/20130224/local/Environment-is-being-used-as-political-bait-by-parties.458987>

In line with the institutional transplanted theory, it thus yet needs to be researched to what extent the Maltese land use problems were, and are, caused by the unsuitability of the adopted foreign planning models, namely the English. The more so, as land use planning is a centralised task of one of the national planning authorities in Malta and is often still being

⁸ Insights to this are further given in the first section of chapter V in this thesis.

criticised has having a lot of political interference⁹ (Xuereb, 2013). Therefore, this thesis builds on the hypothesis that the problems in the Maltese land use planning rely on the implementation of the system itself rather than the English system. Even though the development planning system was to be an ‘independent’ body of the government from 1992 onwards, this was not so long ago and hence the ‘old style of political interference’ still seems to mirror in the present system (see Scheme 2). One cannot expect change to come overnight. The land use planning in Malta has therefore a lot to do with the political development of the Islands itself, which in turn is all somewhat connected to the other developments and characteristics (such as economic) of Malta which have impeded the same and form a ‘full package of reasons’ as to explain the development of land use planning in the country.



Scheme 2: Interpretation of the hypothesis

The arrows describe the past Maltese performance in their planning system which then reflects in the present development planning system.

In general, Malta makes a very interesting case study since its development planning system has emerged quite recently and therefore not much has been written down about it, especially not about its most recent evolution. However, one of the relevant documents covering the issue is a doctoral thesis written by Dr Paul Gauci, named *Structure planning in the Maltese islands: an assessment of contemporary endeavours in the establishment of a policy-led planning system in Malta*. Another relevant document has been written by Dr. Godwin Cassar, the first Director of Planning of the 1992 Planning Authority, *Planning Matters: a Collection of Essays & Other Writings 1985-2008*. These essays as well as the named doctoral thesis provide an overview of the historical development of the Maltese development planning system. However, the present planning system has not yet been analysed as explicitly, especially not in comparison to the UK development planning system.

⁹ “Senior staff recruitment at the Malta Environment and Planning Authority without any public calls show clearly that the government is interfering in the affairs of the Mepa, which is supposed to be an independent body. Labour MP Roderick Galdes, party spokesman for planning said. Public calls and transparent processes are what the law lays down but after the appointment of a director for the environment, without a public call and after direct recruitment by the Office of the Prime Minister and the Mepa chairman in what was called a head hunting exercise, the appointment of a chief executive officer for Mepa has now followed. Mr Galdes said the authority is constituted as an autonomous body to work independently of the government but the way senior staff are being employed shows clearly that the government is interfering. Under good governance rules, the appointment of such staff should be made in a transparent and just manner, Mr Galdes said.” (see: <http://www.independent.com.mt/articles/2011-03-23/news/interference-at-mepa-289609/>, last accessed in 2013)

With this paper, which explores the institutional evolution of the Maltese development planning system, the author contributes with a new regime. The Royal Town Planning Institute Small Islands Working Group has stated that “*planners in small islands [...]can feel isolated from mainstream planning practice.*” (RTPI, last accessed in 2013). Therefore, this study aims to get to know the challenges which small islands, particularly Malta, come to face. This knowledge would increase the opportunities for the World archipelago to compete for the global challenges more collectively and allow further steps towards more integrated spatial analysis, governance and planning between them (Chapmann, 2011). Or, as it has been stated, “*No state, group or individual can meet these challenges in isolation; only collective responses will be sufficient*” (Ministry of Defence, 2010, p.10).

1.3 Research specification: research objective and questions

As already touched upon, this paper explores the institutional evolution of the Maltese development planning system focusing on the English influence throughout its development. The central aim is to draw conclusion for the main research problem – to what extent the British and their adopted planning practices can be said to have been altering the Maltese development planning system.

The overall objective within such a problem statement is to find out what the role of the British was in the past system before the first considerable planning system was set up in 1992, and how much the two planning systems actually resemble each-other today. This allows realizing how land use in Malta has been implemented throughout times, what has been the general development speed, and which are the directions the two systems have taken today. In other words, it helps to see in what degree the Maltese land use planning system has been modified compared to present UK system.

Furthermore, as the implementation of the planning system heavily depends on the political, economic and legal development of the country, the paper includes a separate chapter concerning these issues in Malta. Those issues are important to take into account when formulating the final answer to the set research problem.

The study has been divided between two timeframes. Each of which has a separate objective, which in the end will be brought together into one complete analysis:

| Timeframe | Objective |
|-------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|
| Development planning in Malta from the start of the British occupation until the establishment of MEPA, 1814-2002 | Historical development of the land use planning system in Malta. The involvement of British experts and their planning models. |
| Development planning in Malta since and after that, from 2002 to 2013 | The implementation of the Malta Environment and Planning Authority. System feature similarities with the present UK system. |

Within this division, the first part of the Maltese case study is more an explorative historical study, whilst the second part of the exploration makes a comparison between the present UK land use planning system. This will be done in parallel to the selected three focus themes – planning policy framework, roles and structure of the planning agencies, control over development – yet to be discussed under the research methodology section of this chapter.

Overall, in order to reach the aim of the explained research objectives, the main research question is as follows: **What is the institutional evolution of the Maltese planning system and to what extent can its present form be recognized as transplanted from the British in comparison to present English development planning system?**

Within the main research question, several sub questions must be answered. These are divided between the two timeframes:

I Planning before the establishment of Malta Environment and Planning Authority (MEPA):

What was land use planning system in Malta like before the establishment of the current system based on Malta Environment and Planning Authority (MEPA)?

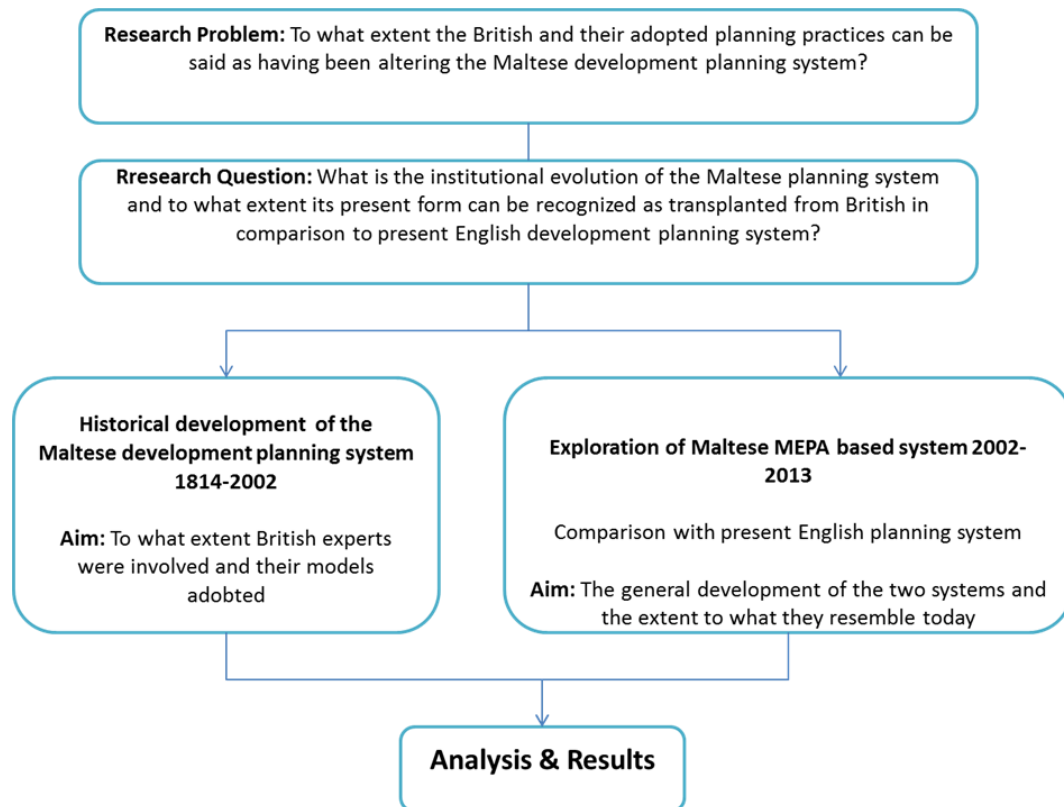
1. Which tools were used for regulating Maltese land use before MEPA was established – which acts, regulations or ordinances?
2. To what extent were the British experts involved and their models adopted?
3. What is a small state?
4. With regards to the characteristics of Malta as a small state, to what extent was the evolution of its planning system influenced by the development of its economic, political and legal systems?
5. Which were the faced challenges? Why was there a need to establish a new MEPA-based system?

II Planning after the establishment of Malta Environment and Planning Authority to 2013:

What is the shift of the two planning systems? To what extent does MEPA have similar system features compared to the present UK land use planning system?

1. What is the institutional and organizational context of MEPA?
2. What are its similarities and differences compared to the current UK land use planning system, according to the three selected focus groups: 1) the planning policy framework, 2) the roles and structure of the planning agencies, and 3) control over development?
3. What is the Maltese mixed law system about and how does it make a difference in the Maltese development planning system compared to the UK?
4. Regarding the recognized UK style of system features in the Maltese development planning (explored under question b), what have been/are its opportunities and challenges for Malta?
5. What are the opportunities and challenges of MEPA in general?

In order to get a better overview of the research specification, the following scheme concludes the same:



Scheme 3: Research specification

1.4 Research design and methodology

1.4.1 Case study

Case study, as explained by Robert K. Yin (2008), is one of the several ways of doing social-scientific research. The overall aim of any case study is to solve a problem in a specific context (Flyvbjerg, 2004). The focus of this particular case study is to untangle the institutional evolution of the Maltese land use planning system in relation to the political, legal and economic development of Malta, and to some extent in comparison with the development and characteristics of the English land use planning system.

1.4.2 Working methods

Exploratory research & Grounded theory

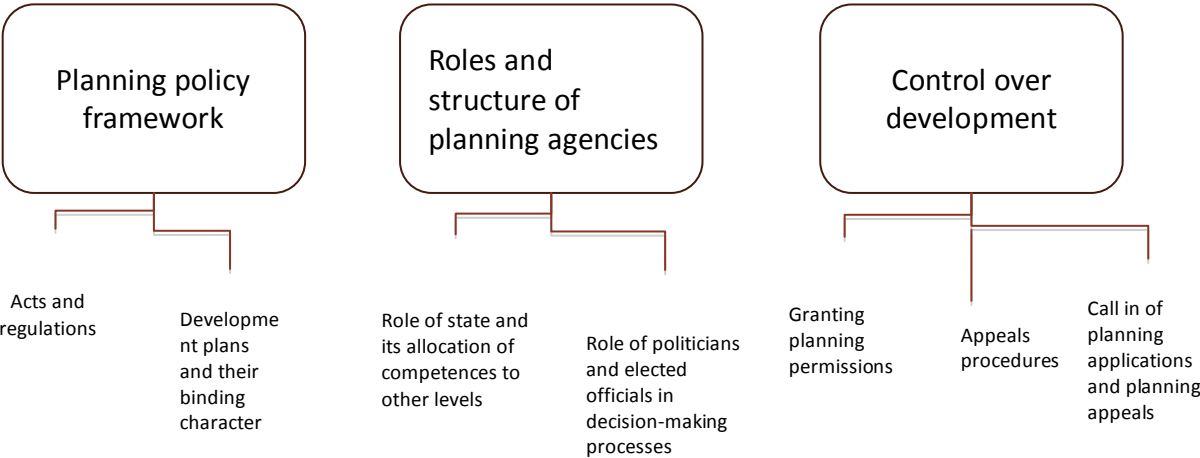
Exploratory research methodology allows much flexibility in what a precise investigation starts from a formulation of the research problem. (Kothari, 2009) The main emphasis in this thesis is put on discovering the Maltese development planning system through the preliminary research problem which was made more precise throughout the investigation. In this way, different aspects of a problem which enrolled throughout the study were taken into account.

This links with the grounded theory¹⁰ approach, according to which constant comparisons through the continuous data-collection and exploration (interviews and literature review) are simultaneous processes throughout the whole study, as more theories emerge and the data extends (Strauss, *et al*, 1997). In order to not get lost in information, the grounded theory method suggests systematic procedures of data collection and analysis (Charmaz, 2006; Creswell, 2009). In this paper, core-categories were defined for the comparative look between the two planning systems, presented on Scheme 4 below. Organizing this information evolved whilst defining the planning systems, following the preliminary hypothesis, as well as following the interview results. Additionally, institutional transplanted and small states theories were studied in order to provide the overall orientation of the study.

Comparative research

Comparative research methodology is typical in social sciences where comparisons between different countries have been drawn. The value of this kind of research is that it provides better understanding of different cultures. On the other hand, there are also a number of difficulties which may arise whilst carrying out such type of studies. The main one, as written down by Hantrais, *et al* (1996), is accessing comparable data, as well as the lack of common understanding of central concepts and the societal contexts within which researched phenomena is located. It is therefore suggested that there must be a clear scheme for a study where the specific comparable organisational or structural fields are presented which allow to better replicate the research design and use the same concepts and parameters concurrently between different countries (Hantrais, *et al*, 1956). However, as to not ignore the cultural interferences, the findings must be studied at a wider societal context and the limitations of the original research constraints must be taken into account (*ibid.*).

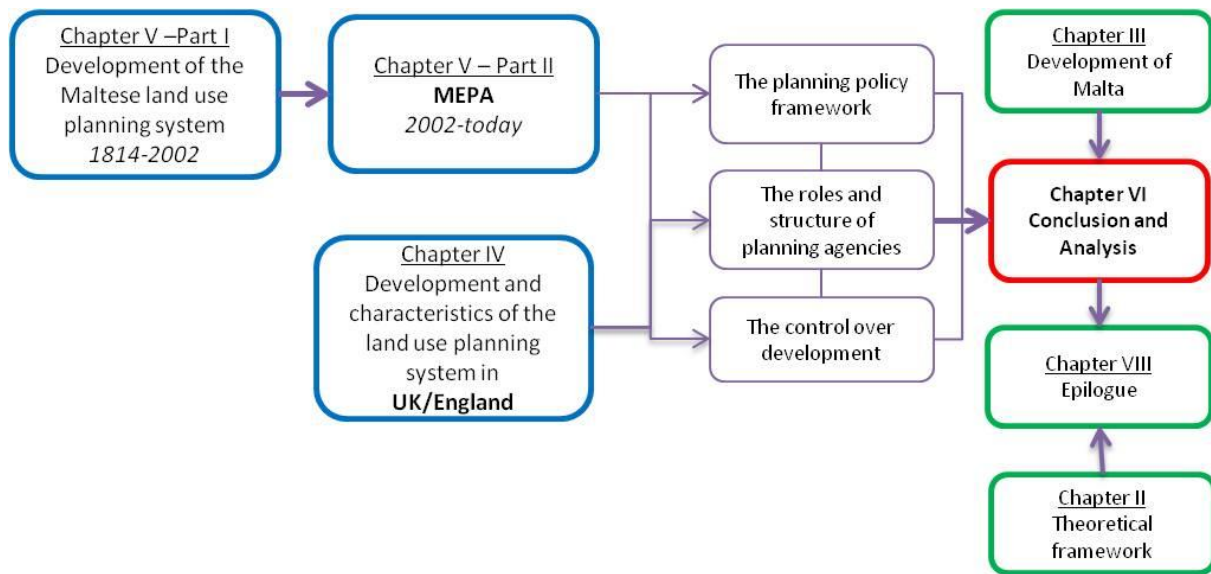
The second part of the exploration of the present Maltese development planning system will be drawn together into comparative analyses with the present UK planning system. For this, a comparative research design was made by selecting three relevant focus groups related to planning systems. The selection procedure evolved through data collection (in order to understand which themes could be suitable for bringing out most considerable differences) and the final categories were fixed after fieldwork in Malta was completed. As shown on Scheme 4, each of the selected categories consists of two-to-three sub-themes. These are analysed in parallel on both the UK and the Maltese planning systems.



Scheme 4: Key focus areas for the comparison between the Maltese and UK planning systems

¹⁰ First introduced by Strauss and Glaser in 1967.

Moreover, in order to clarify how the comparative research part links with the other parts of this case study, the following scheme explains also the overall storyline of this paper:



Scheme 5: Research storyline

Literature

In order to build up the theoretical framework, many relevant scientific books and articles were used. However, an effort was made to sequestrate the literature regarding institutional transplantation theory from other relevant fields of science in order to concentrate on what is more appropriate for land use planning. Also, since documents where small states theories would be linked with planning systems were hardly encountered, other publications related to the same were used, such as literature describing the characteristics of small island states in terms of their economy, policy and government in general. Additionally, whereas the concept of small states applies both to islands and main lands, another sequestration was made to sort out information applicable for islands.

More specific literature was used for investigating the development of the Maltese Islands, such as its geographical characteristics, economic, political and legal developments. Additional category of scientific literature (articles, books, PhD theses) focused on land use planning systems in general; their theoretical background as well its explicit concentration of the same in the UK and in Malta. Due to the case study location, the author had difficulties in accessing some data sources, explicitly about the present planning system in the UK, but also concerning the development planning in Malta, which had its main data sources available only in Malta. Therefore, the study was somewhat restricted before the field visit to Malta was undertaken. However, Skype interviewing and e-mailing were used as alternatives to receive additional information. Literature on Maltese planning practice was limited with the main contributions having been made by Dr. Godwin Cassar¹¹, Dr. Paul Gauci¹² and Professor Kevin Aquilina¹³.

¹¹ Dr. Godwin Cassar was the first Director of Planning when the Planning Authority was set up in 1992. He retired in 2007 when he was Director General of the MEPA. He is considered by many the founding father of the 'new' planning system.

¹² Dr. Gauci was a lecturer tutor in planning at the University of Malta. He was a member of the Planning Authority, and the coordinator/author of several planning studies (mainly impact statement). He is currently the Head of the recently set up (2013) Department of Spatial Planning and Infrastructure.

¹³ Professor Aquilina was the first President of the Planning Appeals Board when the 'new' system was set up. He is a highly respected expert on Public and Administrative Law and the Dean of the Faculty of Law.

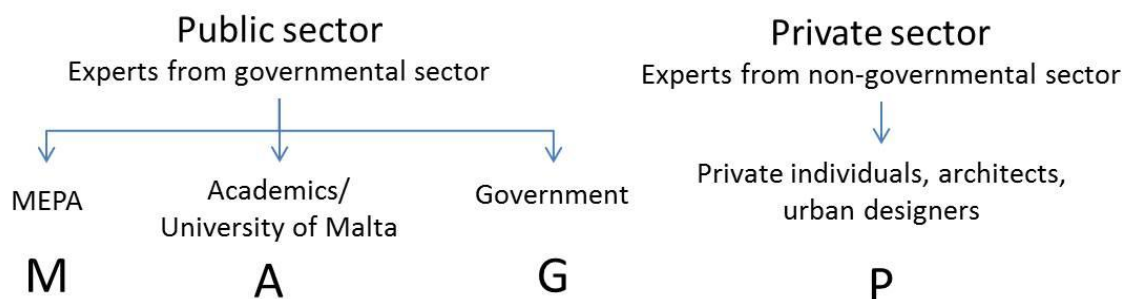
Fieldwork/Interviews

Fieldwork in Malta was undertaken from 5th to 29th of January 2013 with the aim to interview the local planning experts. Due to the restricted availability of data about the Maltese planning system to the author, preparation for interviewing was challenging before fieldwork. However, as an alternative, a Skype interview with one of the interviewees from Malta was carried out to help and get a general idea about the Maltese development planning system. After the first interviews and further access to local publications, the interview questions were further improved at the site.

The types of interviews included semi-structured expert interviews about the development planning system in Malta. This is a type of interview according to which the set of questions is not rigorous, but has an open structure where new questions can be raised as a result of what the interviewee says (Drever, 1997). The interviews were held in the form of meetings, except in case of two of the experts, who were questioned via Skype and e-mail. A total of 16 experts were interviewed. The list of questions asked, and the list of experts interviewed, can be found from the Annexes. Furthermore, the author was also in contact with a few UK planning experts, who were contacted via e-mail in order to enquire some clarification about the latest improvements in the UK development planning system which was difficult to find from literature. The contacted persons were Bristol Planning Inspectorate and the Network Manager from the Royal Town Planning Institute. Herein these two persons are referred to as: (England, 2013, personal conversation).

Categorising Maltese interviewees

In order to provide the desired anonymity of the interviewees, the interviewed experts are divided according to the institution they worked for at the moment of conducting this research. This is done as follows:



Scheme 6: Categorisation of interviewees

In this paper, are referred to according to the letter marking their category, e.g.: M, 2013, personal conversation. The category marking refers to the expert's professional belonging in line with the above formulated category.

Reflection on Maltese interviews

Many of the interviewees happened to have closer professional relations with MEPA before than it was by the time of interviewing them (Annex 1). In each of the divided groups – MEPA (public sector); Government (public sector); Academics (public sector); and Private Sector, there was at least one such person who served MEPA before their current position. This means that the persons interviewed were highly qualified for being considered to be experts in the light of this research. The people were able to provide insights based on their experience. However, the author feels that the persons in position at the Government or MEPA at the time of conducting the research (referred to as G and M), were more careful

formulating their thoughts than the persons working in a less related position (referred to as A and P). Nevertheless, it was concluded that despite their professional belonging or whether the interviewee was a former or present MEPA/Planning Authority employee, their answers and overall opinions about MEPA and the problems which the development planning system faces, did not differ considerably.

1.5 Outline report

Following introduction, the paper consists of the following chapters:

Chapter II – Theoretical framework

In this chapter the relevant theoretical framework for this research is presented. The chapter elaborates on planning systems and explains the theories of institutional transplantation and small states.

Chapter III – Development and characteristics of Malta

In order to give a fundamental underground for the comprehensive understanding of the development of land use planning in Malta, the general historical development and characteristics of the Islands are explained in this chapter. The description includes the geographical, societal, economic, parliamentary and political development and characteristics of Malta.

Chapter IV – Development and characteristics of the land use planning system in the UK

In order to compare the chronicle evolution of the Maltese planning system and its present characteristics, this chapter gives a comprehensive overview of the overall development and present characteristics of the land use planning system in the UK. The chapter is built up according to three selected key themes: planning policy framework; roles and structure of planning agencies, and control over development.

Chapter V – Development planning in Malta

This chapter covers the main case study for this thesis. The exploration of the Maltese development planning system is divided between two timeframes. The first \section of it is a more historical explorative research, whilst the second part of the study explores the present system in line with the same three key themes as the overview of the UK planning system as described in the previous chapter.

Chapter VI – Conclusion and Analysis

This chapter concludes the research and provides analysis in order to formulate the answer to the set research question.

Chapter VIII – Epilogue

The final chapter makes the verification of the theories used for this paper. Furthermore, critical reflection is given to the perceptions on the used methods. The chapter ends with recommendations for further research.

II

Chapter II

Theoretical framework

In order to be able to answer the set research questions in a more coherent manner, a relevant theoretical framework is presented. For this, the theories about land use planning¹⁴ systems, institutional transplantation and small states are elaborated herein. Whilst answering the research questions, formulated above, the notions and philosophies which each of those theories include are hence taken into account.

2.1 Elaborating planning systems: the concept of families of nations

Families of nations

The concept of *families of nations* has been first developed by Newman & Thornley (1996), referring to the countries which have something in common, and who have same philosophical and structural roots, for example, related to political, legal, cultural, religious and administrative history. Depending on the origin, they have distinguished four types of families of nations – *lineage type* - held together by descent of common origin, *separated siblings* – nations kept apart by state boundaries (non-state bound social units with significant similarities between them), *elective affinity groups* - connected by process of diffusion, imitation or avoidance (negative affinity), and lastly *partnerships* - unions of deliberate co-ordination (such as EU) (ibid.).

Related to spatial planning (development planning), the different *spatial planning families* can also be clustered according to this approach. However, in order to make this classification, Lalenis, *et al.*, (2010) have studied that it is first of all needed to look into legal and administrative families of nations. This is the lineal type of grouping of families of nations, as the classic categories of legal and administrative families have evolved through the different Empires which conquered in the past (a common origin) (ibid.). This is so because the operation and form of spatial planning systems in different countries is largely depending on the political, cultural and socio-economic patterns that have given rise to particular forms of law and government (Nadine *et al.* 2008). However, it is important to underline that there is a distinction between legal and administrative families. On the other hand, from the analysis of Lalenis, *et al.*, (2010) it has been made clear that administrative families are closely related to legal families, and can therefore be clustered together into families such as - *Anglo Saxon* (British), *Napoleonic* (Roman, Latin), *Germanic* and *Scandinavian*. According to more detailed elaboration, De Jong (1999) in his classification has identified the Scandinavian family as a sub-category of Germanic. It has been researched that the countries which fall under the same administrative and legal system show equal degree of similarity concerning appearances in their planning systems, e.g. planning families are derived from administrative and legal families of nations (Scheme 7) (Lalenis, *et al.*, 2010). Accordingly, four types of so called *traditional spatial planning systems* have been categorised in Europe¹⁵. According to EU Compendium of Spatial planning and Policies (1997), these include:

¹⁴ Whilst for England and Malta the term development planning is more suitable, the meaning of spatial planning was still elaborated in Chapter I. In this chapter, spatial planning refers to planning systems in general.

¹⁵ This paper only explains the traditional spatial planning families of Europe as relevant for this thesis in order to give an idea how spatial planning families can be clustered according to the approach of families of nations. It gives the reader an idea what the UK type of planning model is about in comparison to other planning families in Europe.

1. Comprehensive integrated approach (German model/Scandinavian legal family)

Within this approach, ‘plans are more concerned with the coordination of spatial than economic developments’ (EU Commission, 1997). Such an approach requires coordination between different sectors and levels; responsive planning institutions and significant political commitment across sectors and jurisdiction (corresponds to the legal family). (Nadin, *et al*, 2008; Lalenis, *et al*, 2010) One of the most elaborate examples of such a planning approach is the Dutch planning system, where the policies of higher levels of government are integrated into the plans and policies of the lower levels of government through an intensive consultation processes between different actors. (Lalenis, *et al*, 2010)

2. Land use management (British model/ British legal family)

This approach corresponds to the British administrative and legal family (Nadin, *et al*, 2008). However, compared to the comprehensive integrated approach, this style of planning system has been described to have a narrower scope of regulating land-use change than the comprehensive integrated approach allows. (Lalenis, *et al*, 2010) Even though central administration has retained a certain degree of power (setting strategic policy objectives), land use plans are usually undertaken by the local authorities whilst plans on a higher scale are not common (*ibis.*). This approach has been criticised as seeing planning too much through the lens of the local level and hence as lacking integration between other levels of government (*ibis.*).

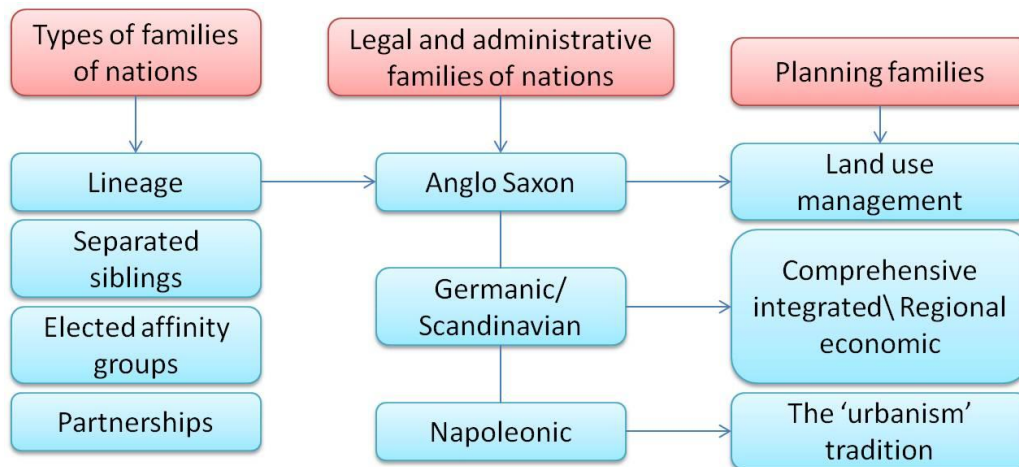
3. Regional economic planning approach (French model/ Napoleonic and Germanic legal family)

Within the regional economic approach, central government is the main decision-maker in national and regional development. (Lalenis, *et al*, 2010) In a broader scope, their aim is to pursue wide social and economic objectives across the different regions of a country; achieve balanced spatial development in all fields (*ibid.*). This is to be achieved through the national plans which have regional focus, regional plans and local plans that implement regional plans (*ibid.*). This kind of planning approach has been criticised to have coordination problems between different levels of plans and institutions. (Nadin, *et al*, 2008; Lalenis, *et al*, 2010)

4. The ‘urbanism’ tradition (Mediterranean model/ Napoleonic (southern Europe))

The focus within this Mediterranean style of planning approach is on the local level and the higher national plans have usually less importance (Lalenis, *et al*, 2010). The central focus is on urban design and townscape and it has a strong architectural flavour (*ibid.*). There are a range of building regulations through which the mentioned issues are to be secured, but it is a completely opposite approach to the comprehensive integrated approach as it lacks an elaborated process to attain overall political support (*ibid.*). It has therefore been criticised as being less effective in controlling development as the space is being managed too much through the physical structures themselves (*ibid.*).

Traditional spatial planning systems can be summarized with the following illustrative scheme:



Scheme 7: Families of nations and their relation to land use planning

Furthermore, besides those traditional European planning families, the new emerging type of spatial planning family today is the European Union. The European Spatial Development Perspective (ESDP) was set in 1999 towards a balanced and sustainable EU¹⁶. This document has no binding status and only underlines policy options for all administrative agencies with a planning responsibility (ESDP, 1999). It has an influence on the spatial planning policies in European regions and member states¹⁷ (ibid.). However, more serious requirements for the EU member states are set by various EU Directives, most powerful ones for land use planning being the Strategic Environmental Assessment (SEA)¹⁸ Directive (set in 2001) and Environmental Impact Assessment (EIA) Directive (first introduced in 1985¹⁹), in which SEA is actually rooted. The difference between the named two is that SEA works with processes and strategies, whilst EIA applies to concrete areas or objects, SEA applies to plans and programmes and the concrete objects are not yet available for assessing. (Maria, *et al*, 2011) Hence, whilst SEA provides a good strategy, EIA supports good design. Also, SEA can be considered to be broader and more focused on impacts rather than effects (ibid.).

2.2 Institutional transplantation theory

De Jong, *et al* (2002) describes institutional transplantation as a policy transfer from one setting to another. Although policy transfer is not a new phenomenon, the named authors have been the first to write it down as a concrete concept together with detailed descriptions and examples. In the referred book, which has been completely dedicated to this topic, institutional transplantation has been described through many fields of knowledge and different empirical examples. According to their typology, transplants can include business fashions, management practices, policies and political institutions. Within the objective of this

¹⁶ In line with ESDP 1999(3), the three fundamental goals of European policy in all the regions of EU are:

- Economic and social cohesion
- Conservation and management of natural resources and the cultural heritage
- More balanced competitiveness of the European territory

¹⁷ ESDP has also an impact on new Member States and in the neighbouring countries which participate in the European Spatial Planning Observation Network programme (ESPON). (see: http://www.irl.ethz.ch/plus/research/closed_lep/espon_231/index, last accessed in 2013)

¹⁸ In UK though, SEA is expected to be carried out as part of Sustainability Appraisal (SA) which was a requirement before SEA Directive and besides environmental factors, includes also social and economic issues. (see: <http://www.pas.gov.uk/pas/core/page.do?pageId=152497>, last accessed in 2013)

¹⁹ Amended in 1997, 2003 and 2009. (see: <http://ec.europa.eu/environment/eia/eia-legalcontext.htm>, last accessed in 2013)

research, focus will be on the elaboration of the institutional transplantation procedure in terms of the two last typologies mentioned.

Definition to institutions and transplantation

In order to be able to fully understand what institutional transplantation means, it is first of all necessary to explain the sub-concepts which it includes, such as *institutions* and *transplantation*. The term ‘institution’ has been explained as a container concept, which can include policies, programmes, procedures, ideologies, justifications, attitudes and ideas. In more detail, De Jong, *et al*, (2002) have classified institutions into formal (legal rules, e.g. obligations) and informal ones (social practices and rituals), explaining that these two together form the whole set of the institutional complex (the container), or as it has been written ‘*the rules of the game with the practices around them*’ (p.22). The two are highly interlinked with each other: cultural practices are tied up with formal rules. Or has Barley, *et al*, (1997) has defined, institutions:

“...shared rules and typifications that identify categories of social actors and their appropriate activities or relationships.”(p.4)

According to the institutional transplantation theory, institutions are not static and can be transplanted from one country to another. Transplantation can be expressed as borrowing, copying, transferring, adopting or imitating. De Jong, *et al*, (2002) compare that with the metaphor drawn in line with the donation of organs from one human being to another. Similarly to the donation of organs, where “[...] *the operation may fail if the receiving body rejects the transplant in some ways as an organ alien or inimical to the wider bodily environment.*” (p.23) The success of institutional transplantation in a host country depends on so many different aspects surrounding this process. However, the general aim why institutions are transplanted is to bring improvements to the host society (ibid.). The transplants (policies, programmes, ideologies, justifications, ideas) are generally seen as proven themselves since these have been developed and used elsewhere for way ahead, and it seems therefore reasonable and easy for the host countries to adopt such institutions (ibid.). The more so, the other benefits normally also include lower costs and faster procedures compared to the development of a new structure (ibid.).

Historical perceptions

Institutional transplantation in fact it is not a new phenomenon, the languages, religion, policies, ideologies and many other institutions have been in a constant spread and exchange throughout the history of humankind (De Jong, *et al*, 2002). For example, it is well known that Romans adopted much of their philosophy and language from the Greeks (ibid.). However, it is important to address that the meaning of institutional transplantation has changed (ibid.). Whilst in the past this concept was imposed on conquered territories, in today’s democratisation countries adopt policies from each other in a more *ad hoc*²⁰ manner as they see the need of a model, e.g. the institutional borrowing is set in the motion by the people in the host society (ibid.).

There have been various reasons in the past behind institutional transplantation. De Jong, *et al* (2002) have written that “*...the notion of families of nations largely relies on past institutional borrowing between members of the same family...*” (p.45). For example, the Common Law system from the British to various countries across the world (Australia, Southern Africa) (ibid.). Similarly the Roman Empire used to transfer its law system to the provinces it

²⁰ Latin phrase which means ‘for this’- solution designed for a specific problem or task

conquered (ibid.). This left no choice for the host society to decide on its own but the adoption was 'forced' by the ruling country (ibid.). Besides the empirical adventures (e.g., British and Roman Empire), another reasons behind the transplantation in the past conclude also political and economic innovations (ibid.). For this an English political geographer, Taylor (1996), has examined the concept of hegemony which was used to define the dominant ruling class, or in other words, the class whose ideas in a certain period have been ruling (ibid.). As to illustrate that, three periods in the world's economy have been used as examples, where each time the change of economy was led by a new 'driving force' (ibid.). These were 17th century capitalist trade (United Provinces e.g. the Netherlands); 19th century industrial production (United Kingdom) and 20th century mass consumption (United States) (ibid.). Throughout those periods, many countries tried to catch up with each other in order to achieve or retain their desired powers (ibid.). Similar hegemony can also be found from the political context, where there have been two main donor countries: the UK, with its parliamentary system, and France, famous for its revolutionary institutions and administration (ibid.).

In today's increasingly globalising world, policy transfer around the globe has been intensified even more enthusiastically, and differently from the past, it is mainly driven on voluntary bases. Hence the concept of families of nations in spatial planning has become relatively loose since there is much hybridisation taking place. In today's world, with all the success of new communication and information technologies, the global information change is 'mixing up' the families of nations even more (De Jong, *et al*, 2002). What works out well in one country can be adopted by another, the exchange of good practices and successful policies is worldwide and hence under strong international influence (ibid.). In Europe a good example of that is the European Union where much harmonization takes place between its member countries, illustrated also by its common institutional design processes (ibid.). Hence it is claimed that the historical genealogy patterns of families of nations are flagging and the partnerships type of families of nations are increasing (ibid.). During the evolution of planning systems in different countries, these are to be more and more influenced by the ideas coming from other countries and this makes it difficult to place these into the above described planning categories (Nadin, *et al*, 2008). For example, it is argued that UK, France and Belgium have recently taken up elements from the comprehensive integrated approach, and that Germany and Sweden are moving towards regional economic style of planning (ibid.).

Pitfalls

Difficulties may arise in terms of the suitability of the model as relatively often the host and donor country have different legal, cultural or economic traditions (De Jong, *et al*, 2002). The institutional structures, e.g. ensembles of rules (formal institutions), are correlated with their historical background, legal, cultural and political traditions (informal institutions), and this is where the main tensions between the two categories arise when institutions from one country to another are to be transferred (ibid.). As De Jong *et al*, (2002) have described: "*In most cases, constitution writers or policy makers intend to change a dominant complex of legal, policy or wider social practices in their country and desire to adopt the practice as they see it in another country. It is virtually impossible to transplant the whole gamut of formal and informal institutions at once. However, by adopting at least the formal institutions (the legal framework) of the donor country in their own soil, they often implicitly hope the concomitant cultural practices will follow*" (p.22). On the other hand, transplanting procedures (formal institutions) are said to be easier than transplanting value orientations (informal institutions), and once the formal institutions have been adopted, it is more likely that the cultural practices would follow, rather than if the transplantation would occur the other way around (ibid.).

However, it makes it very difficult for policy actors to tackle with such tensions (ibid.). It is always the same case that actors have to get involved into a struggle with different stakeholders within the adoption procedure, find compromises in order to make their final decision to adopt or adapt the original for their own country (ibid.). In some cases, the institutional systems might be quite unchangeable, or the differences between the host and donor country might turn out to be so enormous, that the policy borrowing is an inefficient effort (ibid.).

Additionally, as to address the complexity of the transplantation processes even more, De Jong *et al* (2002) use the ‘actors pulling in’ argument, stating that domestic actors play a large role in this process as they are the ones ‘pulling it in’, reviewing and adapting the process in a manner in which they think is suitable for solving their problems. It depends in what way the adoption has been implemented by them, do they make an exact copy, make mixtures of various foreign examples, emulate these, or take over the foreign elements in a loose manner (e.g. give them their own form) (ibid.). Also, the interaction networks, power relations, perceptions and intensions between the actors themselves can cause extra problems in the transplantation process (ibid.). Hence, since transplantation highly depends on the policy actors, it is hardly possible to develop a general theory on policy transfer on these lines (ibid.). There are simply too many constraints and precepts needed to be taken into account (policy complexity, past policies, feasibility in terms of technology, economy, ideology etc.) as well as the fact that transplantation is an actor-centred view, which makes it even more elusive (ibid.).

Opportunities

De Jong, *et al*, (2002) uses the ‘goodness of fit’ concept, referring to the argument that individual nations which share the same institutional features (members of the same families of nations) could transplant from each other more successfully than the countries from different families of nations. However, nor this or the ‘actors pulling in’ argument should be taken as ‘anything goes’. Instead, these are presented as warnings against inconsiderate transplantation attempts, acting as tools which allow evaluating the success of transplantation in the empirical world (ibid.). As it is almost impossible to transplant a precise copy, the general aim of the concepts is to underline that it is important to leave room for manoeuvring and adjustment in order to better facilitate the transplantation processes (ibid.). The suitability and success of the transplant depends considerably on its own path in the context of its new institutional environment (ibid.). On the other hand, as already touched upon, it is easier to adopt formal institutions than informal ones. Nevertheless, since the informal institutions are highly interlinked with the formal ones, the challenges are still likely to occur. De Jong, *et al*, (2002) have listed three levels where the informal practices (culture) are closely tied up with the formal relations (legal and administrative structure) and where the process of institutional transplantation would therefore occur most successfully, or in other words, can be taken as ‘the most perfect environments’ where transplantation could occur successfully. These are the constitutional level, the operational level and the level of policy areas (ibid.).²¹

²¹ (1)The constitutional level: the whole set of legal and socio-cultural conditions, rules, norms and values that provide the context in which decision making processes and relations take place. Formal relations here are legal systems and informal practices are value orientations.

(2) The level of policy areas: the system of legal, financial, political and organisational relations between various government units within a state structure.

(3) The operational level: The whole set of exploratory activities, procedures, techniques and administrative forms used by individuals within the constitutional and institutional framework. Formal relations here are distinguished as procedures and informal practices are roles. (De Jong, *et al*, 2002)

Additionally, three necessary steps have been identified for the higher possibilities of successful implementation (ibid.). Firstly, the explicit model needed for the transaction must be made clear (ibid.). Secondly, the legal framework of that model must be identified and the actors have to help it function, and lastly, the elites have to make it possible to approximate the foreign models through certain mechanisms (e.g. remoulding indigenous institutions) (ibid.). In general, as to conclude all the mentioned opportunities, in order to achieve them, a *flexible state strategy* is required in order to make the adopted policies more acceptable and meaningful in their new institutional environment (ibid.).

2.3 Small states theory

As the small states theory applies also to countries on main lands, literature was extracted so that only islands could be concentrated upon, making more relevance for Malta. However, fortunate to this thesis, many of the small states in literature are mostly considered and restricted to islands. Additionally, since it was hard to find specific literature where small island states would be combined with spatial planning, other related issues were researched, such as the economic, legal and political characteristics and challenges which apply to small island states. However, in order to make it more suitable for spatial planning, the political and social aspects have been elaborated more than the economical ones.

What is a small state?

According to the literature review, many authors admit that it remains unclear what are the explicit circumstances a country should have in order to be considered a small state. The definition to smallness remains vague since the factors which decide if a state is small or not are negotiable. However, it is clear that smallness has to be looked in relation to other countries, comparing it according to the same characteristic. Hence a country's size can be defined by its area, number of population or by its gross national product. A small state can be seen as a state when the measures of the mentioned characteristics are lower in comparison. Paul Streeten (1993) has stated that the simplest way of measuring is by population. However, he also argues that according to this criterion, the meaning of small country can change through time since a country's population could increase or decline. Furthermore, he suggests that a country with the population size of less than 10 million inhabitants can be called as a small country and a country with less than five million can be considered as a very small country (Streeten, 1993). In line with that, according to the Commonwealth Secretariat and the World Bank, the classification of small states goes as follows: small (population up to 1.5 million), medium (up to 10 million) and large (more than 10 million) (The Commonwealth, last accessed in 2013). Hence, according to all of the described criteria, three types of small states can be distinguished: states with small population and small territory, states with small population and large territory, and states with large population and small territory.

Furthermore, in publications about small states, it is noticeable that many of the states have been described as isolated, i.e. landlocked and hard to access over land due to limited international infrastructure. Additionally, Leonard, *et al* (2001) has listed the common challenges of small islands. As can be seen, many of these are mainly related to spatial issues. These include (Leonard, 2001):

- Limited physical size
- Limited natural resources
- High susceptibility to natural hazards (storms, tsunamis, droughts)
- Relatively thin water lenses that are highly sensitive to sea-level changes
- Many of them face the isolation, great distance to major markets

- High sensitivity to external market shocks and extreme openness of small economies
- Limited human resources and funds
- Most commonly, poorly developed infrastructure

The economy of small states

Streeten (1993) has listed the main handicaps that small states face in their economies. These include: (1) the inability of small countries to take full advantage of large-scale production; (2) a proportionately greater defence burden; (3) more limited opportunities of importing, in spite of greater reliance on international specialization; and (4) less scope for independent macro policies (ibid.). Following those characteristics, it is more than obvious then that international trade plays a much more important role in smaller countries than in larger ones; this is because of their limited diversity in the production structure which would make self-supplying economy in those countries simply unaffordable (ibid.). Hence, it has been argued that international trade is the only chance for such countries to obtain the benefits of larger economies and increase their economic development (ibid.). In extreme cases, the relation between a small and large country can become a satellite, such as between some Central American countries and Canada (ibid.).

On the other hand, despite the listed weaknesses, small states also have many opportunities and advantages. For example, as the proportion of foreign trade to national income is larger in small countries, these countries could create jobs by concentrating on labour-intensive exports (Streeten, 1993). Other benefits also include a larger national solidarity and so the harm in terms of progressive change, such the external shocks and uncertainties which may come up with international trade, would be more acceptable due to their greater administrative flexibility (ibid.).

The issues of government and policies

Due to all of the above described challenges that small states have, the importance of governance in those countries is explicitly important (Curmi, 2009). The economic development of countries is largely dependent on their governments and hence the countries with good governance also tend to have a good economy (ibid.). The definition to *good governance* has been often associated with four different terms. These are: transparency, efficiency, accountability and participation (ibid.). Transparency refers to the clarity and accessibility of the government related information granted to the general public (ibid.). Efficiency, on the other hand, is the government's ability to create certainty in the policy environment and fulfil the desires of the public, whilst accountability stands for the evaluation of the performance of public servants and institutions (ibid.). Finally participation is related to the public contribution to decision-making (ibid.).

However, it has been argued that many small states are governed weakly, facing the lack of accountability, transparency and political stability (ibid.). The specific handicaps that mainly occur within the governments and management of small countries have been found to be the failure of the management processes: little steering capacity, viscosity and prevailing of self-interest, swoon of management and politics of small states compared to international affairs (Curmi, 2009; Sutton, 1987). Sutton (1987) has elaborated more upon the many challenges that small states have in their governmental systems. He claims that many of the small former colonial states have undertaken their larger colonial governmental structures, but which however have often remained excessively large; quite often there are too many people in public service and they face the lack of expertise (Sutton, 1987). This in turn leads to problems in policy making and implementing (ibid.). The more so, Pirotta (1997) argues that the political parties tend to take up duties which could be actually left to the hands of other

people, making the public service too large. In turn, as the public sector heavily relies on the government, the votes of the political parties often tend to be secured by that sector no matter what they propose. Pirotta (1997) argues that in fact the largest voting constituency in small states comes from public service. This gives the political parties wide range of powers, being often a source of corruption (ibid.).

On the other hand, although the scale of a country brings along specific characteristics, size does not play a role on whether the country's government is well-performed or not (Curmi, 2009). In fact there are many well-governed small states that have better governance scores than large ones²², especially in terms of their political stability (ibid.). The more so, the case of badly governed small states applies mostly to the developing countries, such as Equatorial Guinea, Comoros or Djibouti (ibid.). Therefore, it is reasonable to measure the performance of the governments²³ of small states individually, rather than judging according to common challenges (ibid.).

The opportunities which small states have regarding their governance are as follows (Curmi, 2009):

- small size allows for better administration and management of different stakeholders inside the government
- small states are more likely to be socially cohesive, which in turn may facilitate *good* governance
- small states have better possibilities to use discretionary approaches rather than rigid rules, in this sense they are more flexible in terms of crisis (for example, government reaction would be quicker)

Additionally, the Institute of Development Studies at the University of Sussex has explained how the isolation of small island states can be used as a key advantage to tackle their challenges. In their view 'island power' can be generated through their unique isolated environments with the local history, identity and traditions (Kelman, 2007). Such characteristics like strong sense of identity could create closely-knit communities where challenges can be better fostered (ibid.).

Small islands information network

The challenges that small states face are not unknown to the world. Within this research a long list and diversity of Small (Island) States research associations around the world were encountered. These associations tackle a range of environmental, economic, cultural and other issues of small states face. One of the oldest of these associations, although mainly focused on its own region, has been established in 1985 by Prince Edward Island and is named the Institute of Island Studies.²⁴ Additionally there is a rapid increase and growing interest on small states through international conferences and workshops where experts share their knowledge and ideas in order to learn from each other and bring benefits to the policy makers. Hence, collaboration on small state issues is made accessible through a number of specialized networks, such as island universities, island specialists and research centres.

²² This doesn't mean that the non-small states are not well-governed. Actually many of them, for instance USA, Japan and Germany have very good governance. (Curmi, 2009)

²³ There are many indicators according to which the performance of governance could be evaluated. One of such is the governance index created by Kaufmann, *et al* (2004), consisting of 6 components, such as voice and accountability, government effectiveness, regulatory quality, rule of law and control of corruption.

²⁴ Other examples include: Centre for Pacific Asian Studies, Banaban newsgroup, Bank of Valletta Review, Island Resource Foundation, Scottish Centre for Island Studies, The Global Islands network, World islands Network and many others.

Additionally, 32 of the 54 Commonwealth of Nation member countries are considered to be small states²⁵. (The Commonwealth, last accessed in 2013) This is an intergovernmental organization of countries that used to be part of the British Empire (except Rwanda, Mozambique and Cameroon) (ibid.). The main aim and objectives of the organisation were first outlined in 1971 in the Singapore Declaration (ibid.). These include the promotion of individual liberty, democracy and free trade, as well as tackling against poverty, racism, ignorance and diseases (ibid.). As a considerable number of those countries are small states, the disputes, prospects and other issues common to the countries have become one of the main concerns and are therefore discussed explicitly at the several meetings of these countries in order to meet the challenges together (ibid.).

Link to land use planning

One of the few studies where land use planning has been linked with small states is written by David Chapman (2011) from the Birmingham City University. In his research of *Inside Outside: Spatial Planning and Small Islands*, he has identified the key planning issues confronting islands as follows (p.7):

Environmental protection
Coastal zone management
Marine spatial planning
Climate change impacts
Land-use pressures/ conflicts
Urban development
Urban containment
Heritage conservation
Transport/ traffic (internal)
Economic development
Water resource management
Waste management
Disaster planning

As spatial planning is largely the task of governments, many of the mentioned problems are caused by lack of competence and/or other previously described challenges related to small islands governing (Chapman, 2011). In a research paper by Chapman (2011), more specific limitations which small islands encounter in their spatial planning were recognized:

- Limitations in strategic level planning – such as no defined National Planning Framework, slow procedures regarding development applications and outdated policies.
- Limitations in local level planning – no statutory local level planning, absence of detailed action plans that would reflect the real needs of local communities (closely related to the previous point).
- Limitations in development control and management – high population density and emphasis on the economic development; planning is too open to political and individual influence through inadequate guidelines and plans, weak participation of affected third parties.
- Limited approaches for the implementation of the planning initiatives – implementation mainly pursued by development control.

²⁵ The definition to Commonwealth small states is formulated as states with a population size of 1.5 million people or less, or other bigger countries with some other characteristics of small states (such as Botswana, Jamaica, The Gambia, Lesotha, Namibia and Papua New Guinea). (see:<http://www.thecommonwealth.org/files/246687/FileName/SmallStatesDigestIssue12012.pdf>, last accessed in 2013)

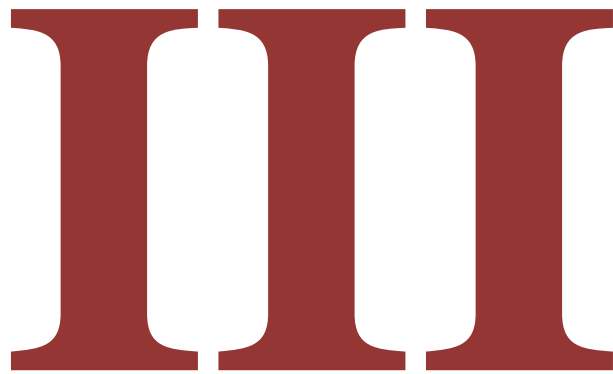
- Failings of institutional structures – national governments do not delegate their powers to local authorities, planning is seen more as a central activity where public policy is implemented, planning is controlled by the political pressures.

However, the described limitations should not be taken to be fully applicable since the development of each country differs and the listed problems might not necessarily apply to every small state. Chapman (2011) has also identified a number of opportunities from which small states can benefit and what makes a difference is how each country has grasped these. For instance, smaller communities have, in theory, higher opportunities for faster procedures and quicker consensus building in all planning related decisions and other issues than bigger countries with more complex social networks and environments (ibid.). Other benefits also include higher experimenting opportunities as the risks which would lead to more distributed catastrophes between other countries would be lower or almost absent in their small communities and ‘isolation’ – small states can be more creative, develop new forms of governance, explore innovative approaches and adopt or adapt them to their local planning systems (ibid.).

2.4 Concluding remarks

- Institutions consist of formal institutions (legal rules, e.g. obligations) and informal institutions (social practices and rituals) and together they form a complex container.
- Institutional transplantation means the transferring (borrowing, copying, adopting or imitating) of institutions (policies, programmes, ideologies, justifications, ideas) from one setting to another (one country to another), with the aim to bring improvements to the host society.
- Whilst in the past the notion of institutional transplantation relied on borrowing between members of the same family of states, today its meaning is much more hybrid.
- Since informal and formal institutions are highly interlinked with each other and cannot be considered to be apart, the institutional transplantation procedure is made more complicated and tensions are created in the host society because it is hard to transfer a whole container.
- The change of institutions would lead to a breakdown if adopted formal institutions do not match with the spatial goals of the country. However, normally formal institutions are adopted first with the hope that informal ones will follow naturally.
- ‘Goodness of fit’ argument – countries under the same legal and administrative families normally have similar planning systems and the institutional transplantation between those countries is more likely to occur successfully.
- ‘Actors pulling in’ argument – transplantation is an actor-centred view, it is influenced by the interaction network of actors, their intentions and perceptions and the ways how the transplantation is to be done – whether an exact copy is made or if the transplants are emulated.
- A flexible state strategy is required for successful transplantation, room for adjustments and manoeuvring is needed and transplants must be given time to find their own path and develop individually in a host environment.
- It is hard to define a small state, however three different types were indicated: states with small population and small territory, states with small population and large territory and states with large population and small territory. In addition, most of the World island countries are generally considered as small states.

- Most of the common challenges that small states face are related to the issues of land use.
- It is important for small states to have good governance. Nevertheless, many small states are governed weakly and this is also reflected in land use planning.
- Land use planning in small states is often too centralised and policy guided; politics is personalised and this prompts corruption.
- Despite of the negative characteristics, there are also a number of opportunities that small states can benefit from, such as their ability to experiment within their 'isolation.'



Chapter III

Development and characteristics of Malta

In order to give a fundamental understanding of the development of land use planning in Malta, the general historical development and characteristics of the Islands are given in this chapter. The description includes the geographical, societal, economic, parliamentary and political development and characteristics of Malta, especially the cons of being a small island state which make the matter of land use planning in Malta very important. Those obstacles have played a high role in shaping the Maltese land use planning system and understanding them help to better untangle its development and implementation of English models in the light of the research aim of this thesis.

3.1 Historical and geographical development of society and economy

Throughout its history, Malta has been occupied by various powers²⁶. The fact sheets on the Commonwealth (1966) conclude the most important events, including the arrival of the Arabs in 870, liberation by Count Roger the Norman in 1091, establishment of rule by the Aragonese in 1283, new rule in 1412 by the Castilians, and 1530 when the Emperor Charles V of Spain gave the island to the Order of St. John of Jerusalem. Subsequently, in 1798, the Maltese Islands were occupied by the French, after dispersing the Knights of John (Malta, 1966). Because the Maltese rebels could not oust the French on their own, they asked the British for their help, which the latter provided (ibid.). The British presence in Malta commenced in 1800 and was formalised with the Bathurst Constitution in 1813 and consolidated under the Treaty of Paris in 1814 (ibid.).²⁷ The treaty was in force until 1964 when Malta became independent and a member of the United Nations (UN) (ibid.). Ten years later, in 1974, Malta received the rights of a republic with its own president (ibid.).

Within Europe, Malta and Cyprus are the small states of the Commonwealth (Commonwealth Secretariat, 2010). In fact, Malta serves as the Chair of the Commonwealth and is at the front position of promoting small state issues in academic circles (ibid.). Furthermore, in collaboration with the Commonwealth, the Islands and Small States Institute has been established in the University of Malta in 1993, with its principal aim to provide research and training on small states aspects, such as cultural, ecological, social and geographical (ibid.).

Geography

The Maltese Islands, with the total area of 316 square kilometres, are located in the narrowest part of the Mediterranean Sea (Malta, 2002). Around Malta there are several small islands. The most important ones of them are the isle of Gozo²⁸ (area approx. 62 square kilometres and 31,000 local residents) and a small Comino²⁹ (area approx. 3 square kilometres and inhabited by a small farming community), which lies between the two larger islands (Malta,

²⁶ The reason why Malta has gone through this relatively rich occupation history has mainly to do with its strategic geographical position, lying at a very important cross-road between Suez Canal and Strait of Gibraltar, connecting Africa and Europe. (Sage, 1914)

²⁷ The British did not know what to do with Malta after they had won the French and therefore with the Treaty of Amiens (1802) it was determined that the Islands would be returned to the Order. However, the Maltese were not satisfied with that decision and requested the British stay. (Sage, W., 1914)

²⁸ Compared to Malta, Gozo is more rural and hillier.

²⁹ Comino is the most isolated out of the three biggest Maltese islands and is known of its tranquillity; administratively it is part of the south-eastern Gozo.

2002). The largest island is Malta with an area of about 247 square kilometres and population of about 350,000 inhabitants (ibid.). The rest of the tiny islands surrounding Malta are merely uninhabited rocks (ibid.).

The main part of the island consists of a compact plateau sloping from south-west to north-east with the precipitous to the sea, except the inner shores of the eastern bays (ibid.). There are no hills higher than 300 metres and no rivers (ibid.). The gentle slopes are almost unknown in Malta, being mostly steep and rocky cliff-like edges are very common (Sage, W., 1914). This also represents a remarkable fact that none of the high roads in Malta reach the coast (ibid.). In general, the landscape of Malta shares somewhat similar physical conditions to other Mediterranean countries, being often dry and rocky (ibid.). Connected with that, the best-known difficulties which Malta faces is the dryness of the soil, the absence of permanent surface water, the steepness of the slopes from where the soil is often washed away, and the increasing threat from a wide range of human activities (ibid.). However, thanks to the walled terraces and fields, which are typical to be seen in Malta, the soils there are still rather productive. (ibid.) As stated in the Oxford Survey of the British Empire (1914): “*The insoluble residue of the limestone rock forms, under denudation, a clayey marl made very fertile by the large proportion of carbonate of lime, and though it furnishes only a thin covering it yields two to three crops a year and more under irrigation*” (p.521). Cultivable land in this highly populated small island is therefore very valuable and makes the matter of land use planning especially important.

Villages and towns are mainly situated on the plateau region of the island. The south of Malta is populated more densely than the north; the size of the towns has grown enormously since the British occupation (Malta, 2002). Malta has been ranked as one of the most densely populated countries in the World, having the population density of 1,317 persons per km² (Malta, 2012). (Figure 3)

Malta is very vulnerable in terms of its environment. The main concerns relate to air quality, marine environment, liquid and solid waste, biological diversity, freshwater and land use (Malta, 2002). In line with Malta National Report (2002), the reasons behind that are several:

- Large coastal zone which gives a high susceptibility to erosion
- High population density, leading to problems connected to waste management, water storage and other factors associated with small territorial size
- Small size of the islands gives a high impact on the environment through its economic development
- The local ecosystem is highly vulnerable to outside influences (especially endangering endemic species of flora and fauna, alien species)

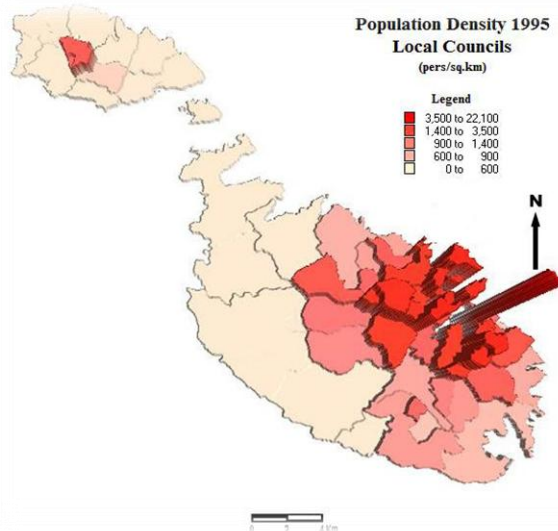


Figure 3: Population density in Malta by Local Councils
Source: Sensus of Malta 1995 Web-Mapping. Project:
www.mepa.org.mt/census/

Economy

During the 19th and 20th century when the Islands were under the British rule, their economy depended heavily on the British services, and this was to be a norm until the early 1960-s. (Sage, 1914) This also explains why the economists use the term ‘fortress economy’ in order to refer to the dependency of islands on military expenditure (ibid.). At this time their defence services were the largest single employer in the country (ibid.). Already in 1836, exports were nearly half of imports, which at this time consisted mainly of heavy equipment for the naval base, making ten times the value of exports (ibid.). The high rate of British defence spending enabled Malta to enjoy a relatively high living standard, especially during the first years under the British rule (ibid.). Moreover, with the opening of the Suez Canal in 1869, the Mediterranean Sea gained strategic importance in world trade (ibid.). For Malta this brought about considerable increase in shipping to enter the ports of the island state (ibid.).

However, at the end of World War II the importance of military base declined and the naval establishment had to be withdrawn (Malta, 1966). Hence, the overall Maltese economy had to be maintained in such a way that would prevent a substantial rate of unemployment (ibid.). Accordingly, the main aims of the Maltese economy have ever since been to create more diversity as to increase competitiveness (ibid.). This was done via expanding agriculture, tourism and industry towards export markets (Boissevain, 2001). Furthermore, due to the rapid increase in the Island’s population rate, which was hard to handle, another objective was also to maintain the high rate of emigration in order to decrease population (Malta, 1966). Therefore from 1959 to 1964, the Maltese Government came up with a five-year development plan towards these goals, including the agreements and announcements from the British and Australian Governments to promote emigration to other Commonwealth countries (ibid.). The development plan was largely based on the grants provided by Britain (£ 29.1 million) (ibid.). This included an exchequer loan, war damage funds, colonial service vote funds, local loans and a provision by the International Bank for Reconstruction and Development for a new power station and distillation plant (ibid.). Additionally, the second five-year plan, from 1964 to 1969, was also financed by the British financial agreement; the so called British aid (£ 50 million), to help Malta maintain its economy (ibid.).

In order to satisfy the needs of the island’s food-supply, Malta similarly to many other small states, largely depends on foreign trade, especially from UK, Italy and Germany (Curmi, 2009). Due to its poor physical resources, most of Malta’s raw materials and industrial supplies must be imported, particularly energy which is oft-quoted as having highest costs in Europe (EU Commission, 2011; Malta, 2002). This dependence on strategic imports makes Malta very vulnerable, the more so because the range of exports is rather limited. On the other hand, whilst the domestic market in Malta is small, the increasing exports of merchandise (electronic and electrical equipment), goods (potatoes) and services (tourism, transportation and finance), must not be underestimated (Malta, 2002). Malta can benefit from its productive labour force, geographical location and limestone. In general, whilst the Maltese economy is one of the smallest in the World, yet in comparisons of the GDP per capita with other EU member countries, it is still located in the middle (EU Commission, 2012).

3.2 Maltese Constitutional and political development

Due to often changing power occupations in Malta, the country has faced many administrative challenges (Sage, 1914). One of the reasons has been the mixture of languages spoken in the country; the language before the occupation by the British was Maltese and the written one Italian (ibid.). This together with the question of religion, which no long was under priestly government, added another difficulty for the matter of the Maltese constitutional development (ibid.). Hence the task to combine the military administration of the fortress with a form of constitutional government has claimed good effort (ibid.).

During the early years when Malta was colonised, the colonial administrators saw the Maltese as incapable of taking initiative. (Cremona, 1997) Thus the island was governed by a centralised colonial administration³⁰ and the Maltese political leaders did not have much voice concerning the administrative issues of their Islands. (Sage, 1914; Cremona, 1997) During the second half of the 1880s, Maltese activists started to become more pronounced and appealed for their equal participation because they were concerned that the colonial rule will be legitimised. (Cremona, 1997) Therefore there was a certain tension between those activists, who opposed any reform promoted by the colonial administration (called anti-riformisti), and the pro-British activists, who were supportive of the aforesaid reforms (called as riformisti) (ibid.).

Within the new Constitution in 1835, which allowed the setting up of a Council of Government, the Maltese achieved a higher degree of liberty. (Cremona, 1997) However, this consisted of seven members who had merely only the duty to advise the Governor, and therefore the Maltese were still not completely satisfied with the council as it did not bring any real powers (ibid.). Nevertheless, due to the intensified nationalist movement, new changes were already on its way (ibid.). With several petitions from Dr. Sciberras, who was one of the main leaders of the Maltese nationalist movement, asking for legislative council in 1845, he tried to form another *Comito di Petizione*³¹(ibid.). Since the British Governor was relatively sensitive to the Maltese aspirations, as a reaction to that a new council was created in 1849 (ibid.). The difference to the old one was that it 'consisted of 18 members, whereas ten of them were to be officials and eight elected members (ibid.). Since five out of the ten members were to be Maltese, their majority in the council was better secured this time (ibid.). Additionally, the new Government was now also able to make laws, not just be a governor advisor (ibid.). However, their actual powers were still weak and hence the Maltese were still not satisfied (ibid.). As follows, supplementary steps were taken in the following years, 1864, 1887 and 1903, when each year a new, further improved constitution was established towards higher degree of liberty (ibid.).

Finally, from 1921 onwards, Malta started to have self-government. (Cremona, 1997) It consisted of legislative assembly composed of 32 elected members and an upper house of 16

³⁰ Malta, during its British occupation period, is often referred to as 'Crown colony', meaning colony not possessing responsible government. In fact the meaning of being a Crown colony has differed throughout the colonies; some are of the nature of military outposts (Malta, Bermuda), whilst the others had absolute governor (Gibraltar). Although they all have had soldier governors, Malta has been the scene of repeated constitutional changes since it became a colony under a free will. So Malta didn't have a complete self-government, it was administered by a governor (usually soldier), but who was assisted by an executive and a legislative council, which was partly nominated and partly elected. (Sage, 1914)

³¹ With regards to growing nationalism, a petition formed and sent to the British House of Commons (Parliament). It had the following demands: the Governor had too much power, set up a Consiglio di Nativi with 30 members as a local Council of Government, reform the Criminal Code which was outdated, reduce custom duties on wheat and other food items, increase the salaries of maltese employed by the Government, give incentives to merchants and farmers. (See: http://www.stbenedictcollege.org/stlucija/files/Sandro%20Sciberras/Form%204%20Option%20Maltese%20History/H_1-H_4%20Political%20Developments%20to%201800-1903_11p.pdf, last accessed in 2013)

members (ibid.). From this moment on, Britain only retained its responsibility for foreign defence and affairs and the internal domestic affairs were to be in the hands of the Maltese (ibid.). Nevertheless, it was a form of self-government, since it was based on a diarchical system – ‘Maltese Government’ and ‘Maltese Imperial Government’ (ibid.). Furthermore, within those new constitutional amendments, new political groupings were formed which were to develop into two Italianite and two Anglophile parties (ibid.). The former Constitutional Party was categorically pro-British, whilst the newly formed Labour Party considered it bias in favour of Anglicisation as a facilitator (ibid.). The Partito Nazionalista Democratico therefore was ideologically pro-Italian and anti-British, whilst the Unione Politica Maltese was of a more moderate disposition vis-à-vis the British. (Cremona, 1997; Pirotta, 2006) In 1926, the two joined together and formed *Partitio Nazionalista*, i.e. the Nationalist Party. (Cremona, 1997) Additionally, in 1934 also the language question was finally settled – Maltese was enacted as the language of the courts and English as the language of administration. (Cremona, 1997; Pirotta, 2006)

In the difficult times of 1933, Malta was forced to turn back to the status of a Crown Colony. (Cremona, 1997) This made its path towards independence a slow and uncertain process, until 1947 when the self-government was finally restored (ibid.). New arrangements provided a framework in which Nationalist and Labour Party were to be the two dominant forces in the Maltese post-colonial politics (ibid.). During the first years after World War II, the main difference between the two parties was based on the Nationalist Party’s anti-British and the Labour Party’s Anglophile tendencies (ibid.). Later on these ideas declined and in 1950s the main distinction between the parties was the manner how each of them believed to terminate Malta’s colonial status. (Cremona, 1997; Koster 1984) On the other hand, the pitfall of the new self-government was that it led to a serious wave of unemployment, as the defence spending from Britain, to which they so much relied on, started to decline (Malta, 1966). Despite that, both of the parties still believed that Malta’s colonial status could be terminated and they continued to promote independence. (Malta, 1966; Sage, 1914)

Ultimately, with the new constitution in 1961, the British recognised Malta as a state (Malta, 1966). This constitution gave birth to Malta’s Independence Constitution which in turn established Malta as a parliamentary state under the British Commonwealth. (Cremona, 1997) Queen Elizabeth II was placed as a sovereign of Malta, whilst the actual governmental control belonged to the Maltese Prime Minister (ibid.). The new government was formed by the Nationalist Party after their victory in the elections of 1962, and in 1964 an independence status for Malta was demanded by the Prime Minister, Dr. Borg Olivier (ibid.). However, this Constitution has been amended twenty-four times, most importantly in 1974 when the country was recognized to be a republic, with Sir Anthony as the first President of Malta, elected by the House of Representatives for a five-year term (ibid.). The President in turn has the task to appoint the Prime Minister from among the members of the House of Representatives (ibid.). Today Malta is a liberal parliamentary democracy, with its executive power belonging to regularly elected Prime Minister and the Cabinet of Ministers (Malta, 2002). It is guaranteed that there is a separation between the executive, juridical and legislative powers, and that the fundamental rights of the citizens are safe. (Malta, 2002; Pirotta, 2006) Malta can now make decisions on its own, without the interference of any foreign power (Pirotta, 2006).

Public service

Pirotta (1997), a Senior lecturer in Government and Policy Studies at the University of Malta has elaborated on Maltese public service. He argues that the small size of Malta brings some dysfunctional characteristics to its administration and politics. Differently to larger states, the government in Malta has taken up duties which could be left to the hands of other bodies. The

rival political parties (Nationalist and Labour) tend to arrogate themselves as the sole defenders of the welfare state and attract votes through promises which are often not fulfilled. He argues that throughout the times, the government in Malta has taken an increasing control over private sector activities.³² Considering the large size of the Maltese public service sector (offices and personnel), both of the parties in Malta have secured their votes to get elected, as the public service heavily relies on them. The more so because in Malta the political participation³³ among the public is relatively high. (Pirota, 1997) All this in turn increases the risk of corruption, waste, inefficiency and the abuse of administrative discretion, which is still widespread in Malta³⁴ (Pirota, 1997; Malta, Eurobarometer 71, 2009).

3.3 Maltese legal system

Aquilina (2010), classifies the historical evolution of Maltese Law into nine distinct phases: (1) Roman Malta (218 B.C.-870); (2) Arab Malta (870-1090); (3) Norman Malta (1090-1530); (4) Hospitallers Malta (1530-1798); (5) French Malta (1798-1800); (6) British Malta (1800-1964); (7) Independent Malta (1964-2004); (8) European Unionised Malta (since 2004); (9) and the period towards a revival of codification³⁵ (since 2009). Maltese Law is often referred to as a hybrid of Roman (mainly in the case of Civil Law) and English Law (mainly in the case of Administrative Law), given the close connections between the two legal systems during the colonial era (ibid.). Contemporary Maltese Law is gradually going through a process which is seeing the Europeanising of Maltese Law among other things, through the transposition of EU directives (ibid.).³⁶

When Malta was administered by the Order of the Knights Hospitallers of St. John of Jerusalem, it was the Civil Law that purely dominated the Maltese legal system (Aquilina, 2010). Nevertheless during the British period, Common Law took the main lead (ibid.). In general, although there are also influences taken from Australia, United States of America and New Zealand, it has been concluded that Maltese Law was and remains as European Law, be it Civil Law, Canon Law, or Common Law (ibid.).

Roman Law has always had an influence on the Maltese legal system; the codification system being the most powerful one from the Civil Law, according to which the five Maltese codes have been influenced by (Aquilina, 2010). These are the Criminal Code, the Code of Police Laws, the Code of Organizations and Civil Procedure, the Commercial Code and the Civil Code (ibid.). However, during the British occupation in Malta, the Civil Law origins were

³² He has supported this statement with some alibis: *“There is a large number of truth to this statement for in the period 1971-1987, a period of Labour administration, in a determined effort to speed up economic development, government activity invaded every sector of Maltese economic life. Indeed, over the years more and more activities came under the control of government to such degree that private sector activity became stifled or deprived of any real incentive...by this time also, for one reason or another, all the banks active in Malta came under government control.”* (Pirota, 1997, p. 202)

³³ *“In Malta up to 96% of the electorate voted in the last three elections despite the fact that there is, in Malta, no legal obligation to vote.”* (see footnote nr. 4 in: Pirota, 1997, p.199)

³⁴ A national survey of the Standard Eurobarometer (2009), found that 71 % of the Maltese consider corruption as a major problem in the country.

³⁵ This period in Maltese law system according to Aquilina (2010) remarks the re-codification and consolidation of the Statute Book which was started by the presentation of the Hon. Dr. Tonio Borg, Deputy Prime Minister and Affairs. The House of Representatives was requested to appoint two Select Committees, one of which concerned the Re-Codification and Consolidation of Laws in view of the fact that these were not seen as in their logical order but spread all over the Statute Book. The laws also needed simplification. (Aquilina, 2010, p.281)

³⁶ Nevertheless there are some non-European influences, such as the doctrine of judicial review of legislative acts contained in the Constitution of Malta which is taken from the US, the Obsidian Act which is modelled on New Zealand Law or article 637 of the Code of Organisation and Civil Procedure which has its source in the Australian Freedom of Information Act, the predominant feature of Maltese Law was and remains European Law. (Aquilina, 2010) *“...the common denominator and undoubtedly the most predominant feature in Maltese Law, both before and after Independence and European Union accession, was and remains European Law in the widest sense of the term in all its diversity and richness.”* (Aquilina, 2011, p. 264-265) Aquilina have supported it with the statement of V.V. Palmer: *“All the great legal systems of the world originate in Europe and within the European Union”* (Two Rival Theories of Mixed Legal Systems, 2.1 Electronic J.Comp. L.4 (2008) in Aquilina, 2011, p.265)

enriched by English Statutory Law (ibid.). The more so when Malta gained independence and its highest law, Constitution, was granted, this was a Westminster Constitution (British Public Law) (ibid.). Common Law started to dominate over Civil law more and more, and in order to preserve legal colonialism, the minority of laws legislated during this time had English roots (ibid.). Only the Civil Code survived the ‘attack’ of Common Law and has remained its Civil Law influence on the Maltese Law (ibid.).

Therefore, even though the Maltese Government chose to break all ties with the UK and became independent, the legal continuity of the British legislation continued to exist in some extent (Farrugia, 2011). The influence of British Law is mainly found in public law, some areas in criminal law, merchant shipping law, constitutional law and administrative law, of which planning law is constituent, being the main reason why the Development Planning Act was based on English Planning law and practice (ibid.).

However, today the system has moved from hybrid to mixture, since besides the Civil and Common Law influences, there are also continuous impacts to the Maltese law system coming in from Public International Law as well as from European Union Law (Aquilina, 2010). The latter started to seep into the Maltese legal system on 1 May 2004 when Malta joined the European Union³⁷. After a complex and lengthy process, all the Laws of Malta were revisited in a manner as to unison those with European Union Law (Aquilina, 2010). Ever since, quite a substantial portion of Maltese Law is EU Law (only very little rewording or adaptation is made whilst transposing a EU directive)³⁸, whilst still continuing to be inspired by English Law (ibid.).³⁹

3.4 Maltese local government

Unlike in many European countries, Local Councils in Malta were set up relatively recently⁴⁰, in 1993, through the Local Councils Act⁴¹ (Chapter 363 of the Laws of Malta), with the priority of EU membership in mind (Moreno, 2012). Ever since the role, competencies and importance of local councils (elected by the residents) have grown, ensuring the wellbeing of citizens. With the Constitution of Malta (Amendment Act) of 2001⁴², local councils were recognised by the Maltese Constitution, through Article 115A: *“The State shall adopt a system of local government whereby the territory of Malta shall be divided into such number of localities as may by law be from time to time determined, each locality to be administered by a Local Council elected by the residents of the locality and established and operating in terms of such law as may from time to time be in force.”* (Moreno, 2012, p.440).

³⁷ This was done by Act V of 2003 (EU Act). (EU Commission, last accessed in 2013)

³⁸ “Regulations and Council Decisions apply to Malta without the need of actual transposition into Maltese Law: they are directly applicable and automatically received into Maltese Law” (Aquilina, 2010, p. 280)

³⁹ “The European Union Act, is an adaptation of English European Communities Act 1972 to the case of Malta”. (Aquilina, 2010, p.280) European Communities Act 1972 (c. 68), is an “Act to make provision in connection with the enlargement of the European Communities to include the United Kingdom, together with (for certain purposes) the Channel Islands, the Isle of Man and Gibraltar.” (see: <http://www.legislation.gov.uk/ukpga/1972/68/introduction>, last accessed in 2013)

⁴⁰ Only the Island of Gozo had a statutory Local Government before 1993 – Gozo Civic Council, conceded by the British Colonial authorities in 1961 (suppressed in 1973). As follows, the Ministry of Gozo was founded in 1987 by the Nationalist Government. (see: Bezzina, J., 2005. *Gozo's Government: The Autonomy of an Island Through History*: Gaultitana.)

⁴¹ The Local Councils Act was modelled on the European Charter on Local Self-Government (Council of Europe), which the Maltese Government signed and ratified. (see: <https://gov.mt/en/Government>, last accessed in 2013) “Article 4, paragraph 5 of the Charter allows the delegation of powers by central government to local government whilst permitting the latter to adapt the exercise of these powers to local conditions.” (Moreno, 2012, p. 440) It has been revised by the Local Councils (Amendment) Act 1999 (Act No. XXI of 1999) and Act No. XVI of 2009 as part of the Local Government Reform 2009.

⁴² Act No. XIII of 2001, April 24 2001

The local councils are divided⁴³ into 68 administrative units (14 in Gozo and Comino⁴⁴; 54 on the main island, Malta), within which the number of councillors depended on the size of the population (in terms of Article 4 of the Local Councils Act of 1993). Those 68 units fall under five Regional Committees, consisting of the mayors of each local council which belongs under the same region. Namely: Gozo Region (14 localities); the Northern Region (12 localities); the Central Region (13 localities); the South Eastern Region (14 localities); and the Southern Region (15 localities). The Regional Committees work parallel with the Joint Committees⁴⁵, which is a group of Local Councils who join together in order to discharge themselves jointly.

In order to let local councils establish their own internal administrative structures, as required⁴⁶ by the European Charter on Local Self-Government, which the Local Councils Act is based on, article 49 of the Act empowers Local Councils to decide their Executive Secretary with the approval of the Minister responsible for local government. Moreover, the political head of the Council is the Mayor, who in line with the enactment of Act No. XVI of 2009 (article 25(1)) is elected from such Councillors who at the last local election obtained the highest number of votes in the first count amongst the candidates of the political party which at such elections obtained the absolute majority of Councillors in such Council (Moreno, 2012, p. 443).⁴⁷ In line with Local Councils Act, the Councillor's main role is to be the representative of the Council, to preside all meetings of the Council and to supervise municipal activities. (26)(1)

The full enumeration of functions of the local authorities is listed in article 33 of the 1993 Local Councils Act. For reasons of exhaustive information, these are shortened by the author of this thesis, and only some of them are listed as to give a general idea:

- (1) to provide for the upkeep and maintenance of, or improvements in, any street or footpath [...]*
- (2) the upkeep and maintenance of all public conveniences [...]*
- (3) the establishment, upkeep and maintenance of children's playgrounds, public gardens and sport, cultural or other leisure centres [...]*
- (4) to provide and maintain proper road signs and road markings, in conformity with national and international standards [...]*
- (5) to propose to and, where applicable, be consulted by any competent authority prior to the competent authority making any changes in traffic schemes directly affecting the locality [...]*
- (6) make recommendations to any competent authority for or in relation to any planning or building scheme and to be a full participant in any decision on the naming or renaming of streets [...]*
- (7) within the parameters of any national plan, to issue guidelines to be followed in the upkeep, restoration, design or alteration of the facade of any buildings [...]*
- (8) to enter into agreements with any public body or government department for the delegation to the Council of any of the functions of that public body or department [...]*

⁴³ Local Councils Act 1993 set up Local Councils in 67 localities, later the number increased to 68.

⁴⁴ Comino is an administrative unit of Gozo

⁴⁵ The *Local Council Reform of 2009* also introduced a concept of *administrative committee*. These are basically seen as sub-committees of local councils which are given to the localities who are either distant from the centre or have particular needs. The number of members in each of those amounts often to the same number of councillors on the local council. In total there are 16 administrative committees. (Moreno, 2012)

⁴⁶ European Charter of Local Self-Government (ECLSG) is concerned with the right for local authorities "to be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management"(6)(1) (Moreno, 2012)

⁴⁷ The enactment of Deputy Mayor is similar. He presides in the absence of the Mayor. (Moreno, 2012)

Furthermore, local councils as public corporations who have a distinct legal personality, have all rights to own land (Moreno, 2012). A number of them have signed the relative Agreement with the Government Property Department for the devolution of property in their locality (ibid.). This property may consist of open public spaces, heritage sites, sport facilities or land for development that is mainly used to either build the local councils' office or a community centre (ibid.).

On the other hand, although they have a variety of powers allowed them by law, mainly due to their relatively recent enactment Malta has still no effective local government system in terms of planning matters. (Moreno, 2012) For instance, they are not authorised to expropriate private property not to levy taxes, or process and/or approve development permission applications (ibid.). The latter vests in the Malta Environment and Planning Authority (ibid.). More specific limitations include: (1) the limited law making powers applied by central government; (2) the lack of sufficient resources put to the disposition of local government by central government; (3) the limited delegation of powers by central government to local government; (4) the limited powers which local government has over its own affairs; (5) the fact that local government has no taxing powers (ibid.). With the last one mentioned, it is interesting to note that Malta, according to the Eurostat data (2007), was the EU member state where more than 70% of the local authorities funding was received from central government. This covers the landscaping and maintenance of parks and gardens, roads maintenance and roads fixture, waste management, and administration (Moreno, 2012). The certain amount of money is allocated⁴⁸ to local councils on the basis of three year plan⁴⁹, within which the council can then decide on its own how to spend that (ibid.). Additionally, some of the funding is also last accessed through the EU funds, although the application procedure is complicated and the region who has benefitted the most is Gozo (ibid.).

Differently from Malta, the concept of local governments in England dates back to Anglo-Saxon period (c.700-1066), following the most sweeping change in 1972 through the enactment of the Local Government Act which introduced districts and counties. (Gov., UK, last accessed in 2013) Further reforms have introduced even more decentralised systems, making the land use planning in England very local and therefore slightly different to what is introduced in Malta (ibid.). Supplementary insights to the development and characteristics of English land use planning system are given in the next chapter.

⁴⁸ *"Copies of business and financial plans and revisions thereof, shall be forwarded by the Executive Secretary to the Minister and to the Minister responsible for finance within two weeks of their approval by the Council"* (Local Councils Act, 1993(59)(3))

⁴⁹ If a locality of localities need funding for some special needs, payments *"shall only be made exceptionally and after a resolution to that effect has been carried by the House of Representatives"* (Local Councils Act, 1993(58))

IV

Chapter IV

Development and characteristics of land use planning system in England

In order to enable the aimed comparison between the English and the Maltese system, the importance of this chapter is to introduce the English planning system whilst focusing on its present characteristics. These characteristics are opened throughout the three themes that were introduced in the methodology section of this paper. Such a wider perspective makes it possible to comprehend the differences to the Maltese planning system also in correlation with time variations and the general development speed of the two systems.

It is first of all necessary to clarify that with the United Kingdom (UK), four countries come together to form a unitary state – England, Wales, Scotland and Northern Ireland. Although the land use planning system is uniform across the UK, there are some differences between the named countries, whereas the *Town and Country Planning Act of 1947* creates the general framework for the whole system (Nadin, *et al*, 2002). Only England and Wales share the same legal system and each country has its own Secretary of State⁵⁰ (Larsson, 2006). Therefore, it is important to address that in order to simplify the study, this study compares the Maltese system to the one applicable in England only (and not the UK in general), where English law applies in its strictest sense and where the deepest roots of the UK planning system lay. In that regard it is relevant to identify what the word *development* means for England. In the *Town and Country Planning Act of 1990* (c.8), the term has been defined as follows: “‘development’ means the carrying out of building, engineering, mining, or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.”(s55)

To give a brief introduction to the English planning system, from 2006 to date the main Government Department responsible for planning issues in England with its considerable discretionary and supervisory powers is the *Department for Communities and Local Government* (Gov., UK, DCLG, last accessed in 2013). Before that time the issue had been divided between several other departments which all have developed from one to another.⁵¹ The other department of planning importance is the *Department for Culture, Media and Sport*, which is responsible for heritage issues (Gov., UK). The responsibilities of land use planning are recognized as existing under four different administrative levels – national, regional, county and local. These are divided as – 33 London Boroughs, 34 County Councils, 238 District Councils, 46 Unitary Authorities (single areas that have responsibility for county and district functions) and 36 Unitary Metropolitan District Councils (internationalplanninglaw.com, last accessed in 2012). Concerning the legacy of actions in relation to development planning, courts have mainly only a supervisory function, although decisions can be challenged and judicial review can be sought in the High Court (Larsson, 2006).

⁵⁰ Cabinet position which is the head of the State Department. The cabinet consists of several ministers who are appointed by the Queen on the Advice of Prime Minister (Gov.UK, last accessed in 2013).

⁵¹ From 1997 onwards the main governmental body used to be the *Department of Environment, Transport and the Regions* (DoE), which in June 2001 was renamed as the *Department for Transport, Local Government and the Regions* (DTLR), whereas the Environment part of it was subscribed into the Department of Environment, Food and Rural Affairs. All the departments were also given their own Secretaries of State. In turn, in May 2002, the transportation part from the Department for Transport, Local Government and the Regions was separated from it and the rest was named as it is called today - DCLG. ((Gov.UK, Planning Portal, last accessed in 2013)

4.1 The themes of analysis

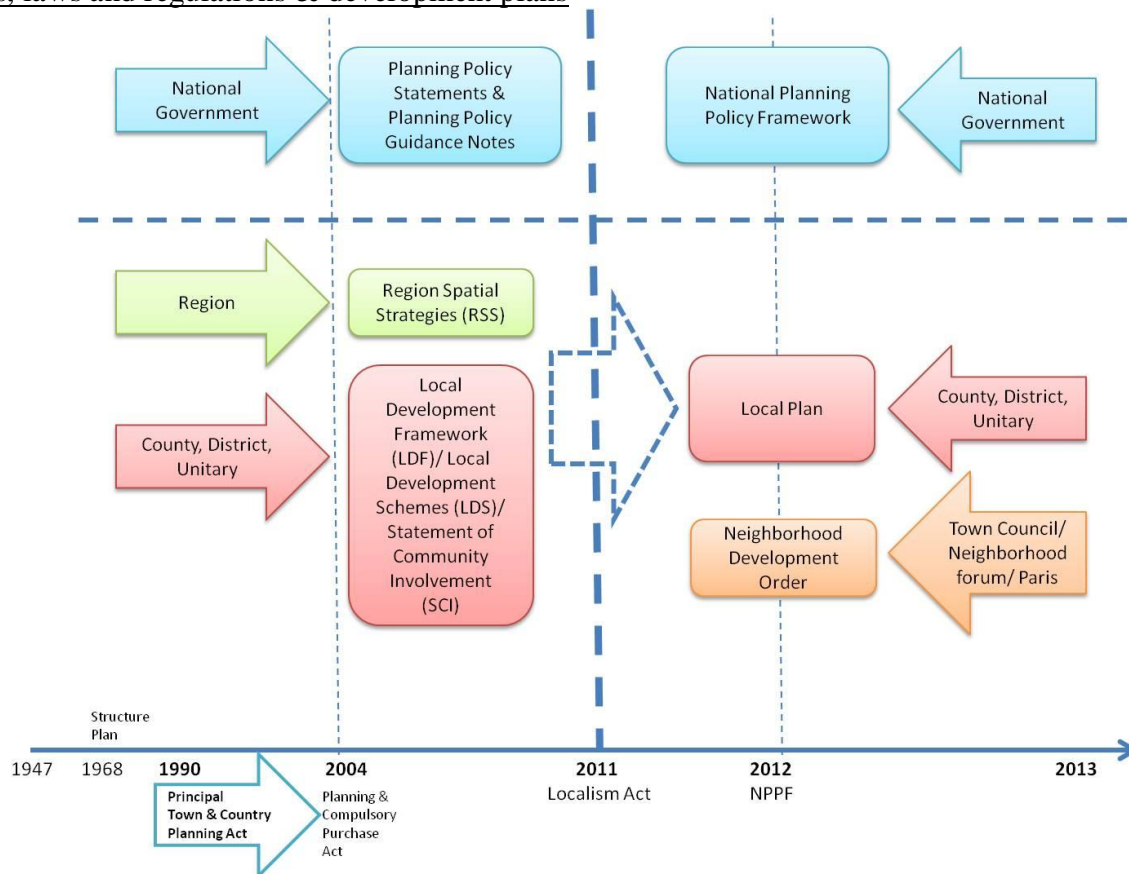
The following table concludes the main characteristics of the present English planning system into a concise overview to give basic knowledge and better understanding of the more detailed analysis that is to continue in this chapter:

| System features | England (2013) |
|----------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Role of Government | Decentralised. Local councils in England have their own powers within the frames of national policies which they are required to follow. |
| Planning permissions | Separate permissions required for planning and building regulations approval. Given by local authorities. |
| Binding character of development plans both in terms of appeals and development permissions | Not directly legally binding, but taken into consideration together with other material considerations (such as previous appeal decisions, national policy, etc). |
| The role of politicians and elected officials in decision making processes | Councillors elected by citizens. New system applied in 2000 introduced directly elected Mayors (however not all mayors are already directly elected). The Secretary of State overlooks the system. Political interference in the planning system relatively invisible. |
| Appeals' procedures | Responsibility of the Planning Inspectorate. It is possible to appeal even if the proposal does not conform to development plans. |
| Call in procedure of planning permissions and appeals | The Secretary of State has the power to call in any application before the proposal has been adopted by the local planning authority. The Secretary of State has also powers to turn over an appeal decision made by the Planning Inspectorate, mostly done in cases of national importance. |

Table 1: Characteristics of present English development planning system

4.1.1 The planning policy framework

Acts, laws and regulations & development plans



Scheme 8: Overview of the evolvement of the present land use planning system in England⁵²

The 1990 Town and Country Planning Act is still applicable today as the Principal Act, whilst major material amendments were made in 2004 with the enactment of the Planning & Compulsory Purchase Act and furthermore in 2011 with the Localism Act. In addition, National Planning Policy Framework was created in 2012 to simplify the planning system and summarize all the previously issued Planning Policy Statements and Planning Policy Guidance Notes.

In England the first principles for land use planning were laid down in the Town and Country Planning Act 1947, where the rights to develop land were nationalised. National guidance for land use planning did not arrive until 1988. Namely, according to Larsson (2006), the first principal legislations⁵³ in England include:

- The Town and Country Planning Act 1990
- The Planning (Listed Buildings and Conservation Areas) Act 1990
- The Planning (Hazardous Substances) Act 1990
- The Planning and Compensation Act 1991

Structure Plans were introduced by the 1968 Town and Country Planning Act (c.72), and used as broad policy frameworks which the local planners had to take into consideration in drawing up more detailed policies (Gov.UK, Planning Portal, last accessed in 2013). Structure Plans were prepared by County Councils (ibid.). However, these had been criticised to be too time consuming and too abstract, with the new amendments in 2004 by the Planning and

⁵² The scheme is a modification of the scheme which was found at: http://www.mlit.go.jp/kokudokeikaku/international/spw/general/uk/index_e.html (last accessed in 2013)

⁵³Secondary legislations also include *Town and Country Planning (General Development Procedure) Order 1995* and *The Town and Country Planning (General Permitted Development) Order 1995*. (Larsson, 2006)

Compulsory Purchase Act (PIPA), these were abolished and replaced by Local Development Frameworks (LDFs), and Regional Spatial Strategies (RSS), the latter of which were previously known as Regional Planning Guidance (RPG) (ibid.). Regional Spatial Strategies brought considerable changes compared to RPGs, including: a wider range of activities to take into account in land use; policies more integrated with other activities which affect land use (health, economic development, climate change); greater focus on implementation and delivery, such as adding implementation plans for major infrastructure proposals (ibid.). RSS has been drawn up for every English region except London, where the spatial strategy is covered by the London Plan (ibid.). Furthermore, with the amendments of 2004, Local Councils were also required to produce Local Development Schemes (LDS) and Statements of Community Involvement (SCI), in order to outline how the local community would be involved by the Council (ibid.). Moreover, also Strategic Environmental Assessment (SEA) and Sustainability Appraisal (SA) were now required⁵⁴ (ibid.).

Subsequently, in 2011, the announcement to abolish RSS (since these were seen as unnecessary bureaucracy) was made through the Localism Act (Gov.UK, Planning Portal, last accessed in 2013). The abolishment meant getting rid of regional targets and giving Local Authorities more flexibility as well as to make them to co-operate more with each other and give more powers to the hands of local people (see Scheme 7) (Commons, H.o. and L.G. Committee, 2011). Additional changes included allowing for Neighbourhood Development Orders⁵⁵ (Gov.UK, Planning Portal, last accessed in 2013).

The most recent amendments made in 2012 introduced the National Planning Policy Framework (NPPF) which was to merge all the previously issued national documents, called Planning Policy Statements (PPS) and Planning Policy Guidance notes (PPGs), in order to make the planning system more accessible and less complex (Gov.UK, Planning Portal, last accessed in 2013). The provisions set out in this document⁵⁶ must be taken into account whilst preparing Local and Neighbourhood Plans and acts as material consideration⁵⁷ in planning decisions (ibid.). Additionally, LDFs were renamed as Local Plans (this was formalised in the Town and Country Planning (Local Planning) (England) Regulations 2012) (ibid.). These are planning policies prepared by each local authority and are very important when deciding planning applications (ibid.). At the time of writing this paper, many old-style (i.e. pre 2004 Act) unitary development plans and local plans remain in force in England, pending the production and adoption of new-style (i.e. post 2004 Act) Local Plans (UK, G.o., Hillingdon, last accessed in 2013). In addition, minerals and waste plans are prepared by the county, national park or some unitary authorities (Gov.UK, Planning Portal, last accessed in 2013).

⁵⁴ Sustainability Appraisal (SA) is a compulsory requirement within UK, required under the Planning and Compulsory Purchase Act of 2004 and the 2001\42\EEC European Directive. In addition to environment, SA includes also social and economic factors. (the reader is directed to reference nr 17 of this thesis)

⁵⁵ A Neighborhood Development Order allows communities to grant planning permission for all or certain uses within their neighborhood area. An order could be used for a development on a specific site or for particular classes of a development such as homes or offices. Essentially it removes the need for developers to apply separately for planning permission to the council for the types of development set out in the order. There are certain types of development that cannot be covered by a Neighborhood Development Order. (last accessed from: http://www.rtpi.org.uk/media/1621636/what_is_a_neighbourhood_development_order.pdf, last accessed in 2013)

⁵⁶ The Framework does not however contain specific policies for nationally significant infrastructure projects for which particular considerations apply. These are determined in the Planning Act 2008 and relevant national policy statements for major infrastructure, as well as any other matters that are considered both important and relevant. (NPPF,2013(3)) The Framework does also not contain specific waste policies, since national waste planning policy will be published as part of the National Waste Management Plan for England. (NPPF, 2013 (5))

⁵⁷ *Sections 19 (2)(a) and 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990. In relation to neighbourhood plans, under section 38B and C and paragraph 8(2) of new Schedule 4B to the 2004 Act (inserted by the Localism Act 2011 section 116 and Schedules 9 and 10) the independent examiner will consider whether having regard to national policy it is appropriate to make the plan. (NPPF, 2012(2))*

In general, as to conclude the rapid developments which have occurred within the last 23 years in England (scheme 8), the Town and Country Planning Act of 1990 still remains in force as the principal act. However, amendments have been made in the form of various acts, such as the Planning and Compensation Act 1991⁵⁸, Town and Country Planning (General permitted Development) Order 1995⁵⁹, Planning and Compulsory Purchase Act 2004, and Localism Act 2011 (Gov.UK, Planning Portal). The latter two contributed to major material amendments in the overall planning system.

Binding character of development plans

What is meant by the binding character of development plans is the extent to which these are taken into consideration when permitting development (Nadin, *et al*, 2002). In general, land use planning system in England is different to the same in other European countries as it is more open to market forces (*ibid.*). The rights to develop or change the use of property are given in the light of policy guidance, in the development control process (*ibid.*). However, a characteristic of such a system is the discretion which allows decision-makers to consider any relevant issues when deciding about development proposals (*ibid.*). This means that development rights in England are not given solely by plans, but other ‘material considerations’ are taken into account (*ibid.*). To give more specific examples, the list of material considerations (in addition to national planning policies), may also include issues such as: pre-application planning consultation, previous appeal decisions and planning inquiry reports, principles of case law held through the courts, loss of sunlight, overshadowing/loss of outlook to the detriment of residential amenity, highway issues: traffic generation, highway safety, smells and fumes, noise or disturbance resulting from use, local financial considerations offered as a contribution or grant, and many other aspects (Gov., UK, DCLG, last accessed in 2013).

The National Planning Policy Framework 2012 states that “...*applications for planning permission must be determined in accordance with the development plan, unless material considerations⁶⁰ indicate otherwise.* The National Planning Policy Framework thereof acts as one of the material considerations in planning decisions and it must be taken into account in the preparation of local and neighbourhood plans (*ibid.*). The same is written in section 70 (c.8, (2)) of the 1990 TCPA which considers development control to be a plan-led system, explaining that unless material considerations indicate otherwise, the relevant policies of the development plans must be taken into account when giving out development permissions.

In 1968 Davies, *et al*, concluded in their research about how the Local Authorities actually decide planning applications, that “...*from a major review of decisions development plans were used in development control, but that many considerations were not covered by the plans*” (in Nadin, *et al*. 2002, p.130). Therefore, the plans in England have a relatively indicative force and the specific constraints for development will be achieved through

⁵⁸ ‘An Act to amend the law relating to town and country planning; to extend the powers to acquire by agreement land which may be affected by carrying out public works; to amend the law relating to compulsory acquisition of land and to compensation where persons are displaced from land or the value of land or its enjoyment may be affected by public works; to provide, in the case of compensation payable in respect of things done in the exercise of statutory powers, for advance payments and payments in interest; and to repeal Part X of the Highways Act 1980.’ (derived from: <http://www.legislation.gov.uk/ukpga/1991/34/introduction>, last accessed in 2013)

⁵⁹ ‘The Order sets out classes of development for which a grant of planning permission is automatically given, provided that no restrictive condition is attached or that the development is exempt from the permitted development rights’ (derived from: <http://www.planningportal.gov.uk/permission/responsibilities/planningpermission/permitted>, last accessed in 2013) The Law has been a subject of several amendments.

⁶⁰ The East Riding of Yorkshire Council has described material considerations as ‘any consideration which relates to the use and development of land is capable of being a planning consideration...All the fundamental factors involved in land-use planning are included, such as the number, size, layout, siting, design and external appearance of buildings and the proposed means of access, together with landscaping, impact on the neighbourhood and the availability of infrastructure. The courts have also held that the Government’s statements of planning policy are material considerations which must be taken into account, where relevant, in decisions on planning applications.’ (Gov., UK, last accessed in 2013)

planning permissions each derived case by case (Booth, *et al*, 2007). However, as the author of this thesis was also in contact with a couple of planning experts in England, it was found that since the newly published National Planning Policy Framework of 2012 adds a ‘presumption in favour of sustainable development’ and requires Local Plans to be prepared on this basis “...it can be argued that recently local plans have become more critical to decisions since it is suggested that these can help to speed up the planning approvals process” (England, 2013, personal conversation).

4.1.2. The roles and structure of planning agencies

The role of the state and its allocation of competences to other levels

Within the dominative feudality in the English royal institutional evolution, the central government has played a large key role in its land use planning (Nadin, *et al*, 2002). Although development plans are not made at the national level, in order to guard its sovereignty, the central government has the power to direct the system through national policy (Booth, *et al*, 2007; Nadin, *et al*, 2002). The Secretary of State produced authoritative planning guidance e.g. *Planning Policy Statements (PPSs)* and *Planning Policy Guidance Notes (PPGs)*, which in 2012 were replaced by one comprehensive National Planning Policy Framework (NPPF). In order to ensure that government policy is followed, Local Plans are carefully scrutinised by the national government (Booth, *et al*, 2007; Nadin, *et al*, 2002). On the other hand, before the Secretary of State decides on the final text, local authorities and other interested parties (e.g. the RTPI) are consulted and may give their views about the content of the national policies, after which the final version is published (Larsson, 2006).

Nevertheless, land use planning system in England is decentralised as the County and District Councils (i.e. local planning authorities) have main responsibility for land use planning (Nadin, *et al*, 2002). They have power to grant planning permissions in their area and they are responsible for drawing up the local plans (*ibid.*). Since 2004, with the enactment of the Planning and Compulsory Purchase Act, District Councils must prepare Local Development Frameworks (later renamed as Local Plans by NPPF of 2012) (which replaced the old-style development plans: Local Plans and Structure Plans) (Gov., UK, Planning Portal, last accessed in 2013). In general, this level has an important role to play in plan making at the local level, but does not produce any national policy guidance or laws and regulations. The prepared development plans reflect national and regional policies and provide bases for decisions regarding planning permissions (Nadin, *et al*, 2002). Additionally, people in England have a control over the development of their local areas through community involvement and participation (Gov., UK, last accessed in 2013). The authority must comply with their statement of community involvements (Local Authorities explain to the public how they will be involved), established as part of the Planning and Compulsory Purchase Act 2004 (18) (*ibid.*). Moreover, although this power is rarely used, the Secretary of State is still able to further intervene and modify all development plans, and if a plan does not comply with regulations, the Courts may also intervene (Nadin, *et al*, 2002).

The role of politicians and elected officials in decision-making processes

In England, the office of Mayor or Lord Mayor has long been a ceremonial post (Fenwick, *et al*, 2010). However, the named is the highest officer in the Municipal Government of a town or a large urban area (*ibid.*). Following the implementation of the Local Government Act 2000 (c.22), Local Authorities were given a new system where they have to offer local electors a referendum on establishing a directly elected mayor (Gov., UK, last accessed in 2013). Before that, the Mayor was elected annually by the Council itself from among the Councillors (Fenwick, *et al*, 2010). The aim within the Local Government Act 2000 was to

promote local democracy, strengthen community leadership, change the impact of party politics, and to achieve national prominence for local political leaders (Gov., UK, last accessed in 2013). However, not all Mayors in England are already directly elected (Fenwick, *et al*, 2010).

Moreover, all the Local Authorities in England are overseen by elected Councillors who are to be elected by citizens and form the cabinet of the Local Councils (Nadin, *et al*, 2002). These are often voted for as members of political parties, but can also be independents (*ibid.*). Once elected, they are expected to carry out different roles assigned to them, for example executive decision making, political leadership, policy overview and determination of planning applications (*ibid.*). On the other hand, Councillors are not able to do all the work themselves, thus they appoint officers who are delegated to perform most tasks (*ibid.*).

Regarding planning at national level, DCLG is the current ministerial department of the UK government (Gov., UK, last accessed in 2013). This has a number of different directorates which all answer to the Secretary of State for Communities and Local Government (*ibid.*). Some decisions on planning and enforcement appeals are made by the Secretary of State, although most are taken on his behalf by the Planning Inspectorate (Nadin, *et al*, 2002). Public examinations of local plans are also carried out by the Planning Inspectorate, which is an executive agency of DCLG, meaning that it is part of the department, but is treated as separate in that it is “at arm’s length” from direct ministerial control (Gov., UK; Nadin, *et al*, 2002). Also, knowing that the Secretary of State has always the right to “call in” any applications, Nadin *et al*, (2002) have claimed that in cases where this is done, it is the senior civil servants rather than minister itself who make most decisions. Moreover, Booth, *et al*, (2007) have written that national and local politics in England are relatively distinct – once the local politician has been elected to Parliament, it is more a traditional act of them to resign from being local councillors, since there is no legal obligation.

4.1.3 Control over development

Granting planning permissions

In England, separate permissions (processes) are required for the Planning and Building Regulations approval. Hereby, it is important to clarify that under this section, the granting of planning permissions is seen to “*include the use of land and buildings, landscaping considerations, the appearance of buildings, highway access and the impact that the development will have on the general environment, whilst the building regulations have to ensure the safety and health in or about those buildings and set standards for the design and construction of buildings*” (Gov., UK, Planning Portal, last accessed in 2013). As explained in section 4.1.1 Binding character of development plans, Local Plans in England do not have direct binding status. This means that in order to reach binding development rights, it is not taken by the authorities but needs a special permission, where material considerations are taken into account (Nadin, *et al*, 2002). The permission is in most cases obtained from a relevant Local Planning Authority, though there are certain forms of development which require secondary legislation (*ibid.*). These are cases when local planning authority has decided to remove⁶¹ the permitted development⁶² rights from their area by notifying the Secretary of State, who then in turn has the power either to cancel or modify such actions (Smith, 2013).

⁶¹ This is allowed under Article 4 of the *Town and Country Planning (General Permitted Development) Order 1995*

⁶² “Permitted development” means development in relation to which planning permission is granted by article 3 of the *Town and Country Planning (General Permitted Development) Order 1995*” (Planning Act, 2002, (25)(7))

The eight weeks' time period is given to a local planning authority to make a decision, though if the case requires an environmental assessment, sixteen weeks are allowed (Gov., UK, Planning Portal, last accessed in 2013). In order to receive representations, there are three ways of publicity: site notices, press notices and letters to owners/occupiers or adjoining properties (ibid.). In a number of circumstances, the views of specialist bodies can also alter a local planning authority in such a way that direction of a particular planning application will be changed (ibid.).

In addition to applying for the planning permission, a separate application must be made in case the building activities may affect the character of the special architectural or historical buildings. In cases like this, both a *listed building consent* and planning permission are required (Nadin, *et al*, 2002). Buildings like this have been listed by the Department of National Heritage for statutory protection (ibid.). Similarly to that, depending on the case, there are also other consents, namely *conservation area consent* and *scheduled monument consent* (ibid.). It is also possible for the local planning authority to control the felling, uprooting, topping and damage or destruction of trees by a *tree preservation order* (ibid.).

Appeals' procedures

Until 1969, appeals were dealt by the ministry responsible for planning, however, due to increasing delays in decision making, Planning Act 1968 introduced planning Inspectors as more suitable for this task (Nadin, *et al*, 2008). The Planning Inspectorate for England and Wales⁶³ is an administrative agency of the Department for Communities and Local Government of the United Kingdom Government (Gov., UK, Planning Portal, last accessed in 2013). With a number of difficulties faced throughout the application procedure, there is always a basic right for the applicant to appeal to the Inspectorate (Nadin, *et al*, 2008). The Planning Inspector is appointed by the Secretary of State and they have the powers to determine the appeals (whilst considering the evidence⁶⁴ and taking into account the rules of natural justice) which are usually against refusals of Local Planning Authorities to grant planning permission (ibid.). On the other hand, appeals can also be made in cases where the Planning Authority has failed to give permission within an allowed time period, on enforcement notices, against conditions attached to permission, and on some other matters (ibid.). The decisions of the Inspectorate are final, however, anyone who has made a representation on a planning application, can further on, on grounds of legal bases⁶⁵, challenge a planning or appeal decision in the Higher Court (ibid.).

Even if the proposals for development do not conform to development plans, there is always the right to appeal to central government (Enemark, 2006)⁶⁶. This means widespread opportunities for objections and consultations to policies and development projects (ibid.). More than 26,000 of those appeals are made each year in England and interestingly about one third of these turn out to be successful (ibid.). This is opposite to the Dutch planning system where Local Plans are legally binding, meaning that objects that are not in accordance with the local land-use plans cannot be developed⁶⁷ (Nadin, *et al*, 2008).

⁶³ Within UK there are three Planning Inspectorates in total: one for England and Wales, one for Scotland and one for Northern Ireland. The Republic of Ireland has its own Planning Inspectorate as well. (Nadin, *et al*, 2002)

⁶⁴ Most appeals in the UK are considered by written representation. (Nadin, *et al*, 2002)

⁶⁵ This means that it is only possible when the applicant is able to prove the misinterpretation of the law or there were some other relevant principles which had not been met. (Gov., UK, Planning Portal, last accessed in 2013)

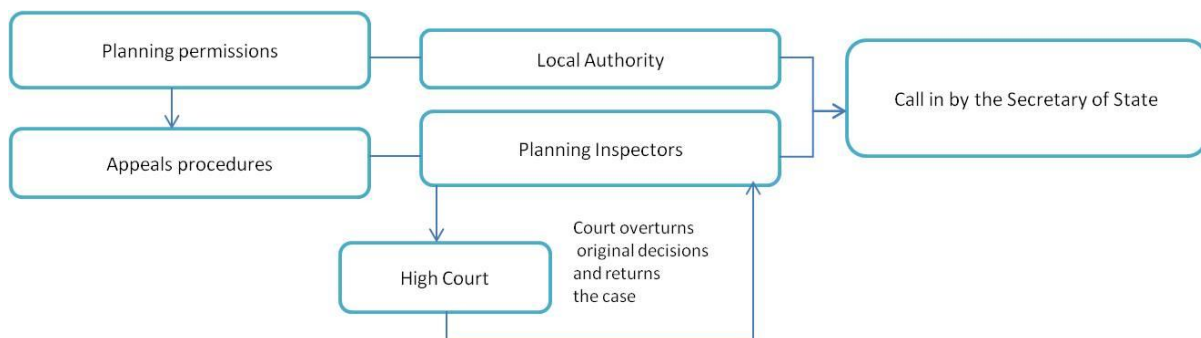
⁶⁶ This is in contrast for instance with a Danish system where there is no opportunity to appeal since the system is plan led. (Enemark, 2006)

⁶⁷ In England and Wales, having no planning permission whilst carrying out the development is not a criminal offence, however a breach of planning control will be constituted. If the Local Planning Authority is unsatisfied with the planning merits in a particular case, an *enforcement notice* may be issued, containing a time limit for complying with its requirements. On the other hand, there is the right of appeal. "A *stop notice* can be served with the enforcement notice. The local planning authority may also serve a *breach of condition notice* in respect of this type of breach of planning control." (Larsson, 2006, p. 263)"

Call-in of planning applications and planning appeals

‘Call in’ refers to the power of the Secretary of State to take over *any* application, instead of letting the Local Authority decide (Nadin, *et al*, 2002). According to Section 44 of TPA 1900 (c.8), the Secretary of State may overtake the application to his approval “*before the proposals have been adopted by the local planning authority.*” (1) These are cases where there might be a need to call in a local planning authority for accepting a planning proposal which does not accord with the development plan (*ibid.*). This is normally done if the application conflicts with the national policy in some important way, or is nationally significant (*ibid.*). If it is decided the planning application is to be called in by the Secretary of State, an inspector is appointed to carry out an inquiry into the proposal (*ibid.*). Furthermore, the findings of the inspectorates have to be taken into account by the Secretary of State (*ibid.*). In an extreme case, the Secretary of State may even go to the extent of refusing the application altogether by deciding that the Local Authority should not have granted the planning permission in the first place (*ibid.*).

The same applies to the planning appeals. If an Inspector writes a report on how the appeal should be determined and then passes that report to the Secretary of State, who in line with the Inspectorates recommendations will make a decision instead, it is called a ‘recovered’ appeal’ (Gov., UK, Planning Portal). The jurisdiction is usually recovered for the Secretary of State, if the development has a strategic importance, raises novel issues, or has important implications for national policy (*ibid.*).⁶⁸



Scheme 9: Call in procedure in England

4.2 Concluding remarks

- As an outcome of the changes that the English land use planning system has undergone (especially in the last 10 years), plans and policies are now simpler and the decision-making powers are now more in the hands of the local people.
- It can also be concluded, that compared to the past, planning decisions are now much more clearly separated from ministerial control (for instance, planning appeals are not dealt by the ministry anymore), the impact of party politics has decreased, and in general the individual interests of politicians in the national and the local governments are relatively disconnected.
- The implementation of the local plan is carried out by the same local authority that implements it, so there is no separation of powers in that regard.
- Development planning in England is recognized as being a discretionary plan-led system. Development rights are not directly given by plans, but the decisions are

⁶⁸ Planning appeals are recovered in accordance with the published recovery policy. (Nadin, *et al*, 2002)

derived case by case by the planning departments of the local authorities. Plans and policies have more of an indicative power and the decisions are based on a wide range of material considerations.

- Despite of the extensive powers given to local authorities, the National Government has still relatively influential control mechanisms over them, such as the power to call in any locally made decision and either modify or cancel them if required.

V

Chapter V

Development planning in Malta

Dr. Cassar and Dr. Gauci have discussed in their papers the very early laws and regulations before the British rule⁶⁹. They point out that before the British, the very early projects in Maltese planning were already initiated by the Order of St. John of Jerusalem, who being a seafaring power, decided to settle in Birgu (Gauci, 2002, Vol1; Cassar, 2009).⁷⁰ This area was to be their location of administrative functions as well as the residential quarters of its knights and their 5,000 followers (ibid.). Here, in 1531, they initiated an ordinance *Ordinationes Domorum*, which in turn provided the setting up of the *Officium Commissariorum Domorum* (ibid.). These ordinances were to regulate the housing within and around Birgu in order to control rapid increase in population (ibid.). Another initiative by the Order was the city of Valletta, built from 1566 onwards (ibid.). It was built on a location which was suitable for the security of the Grand Harbour (ibid.). There were certain regulations which covered public health, site planning, aesthetics and other urban design matters, and new economic opportunities were created within and around the city which led to the growth in its population (ibid.).

Within the goal and scope of this thesis, this chapter starts with the exploration of the Maltese development planning system from the start of the British occupation period onward (1814). In fact, not much was done in the field of physical planning during periods of occupation by other nations; most of the laws to regulate planning matters were enacted during the British colonial era, especially in 1880-1950 (Gauci, 2002, Vol1). As Dr. Cassar (2009) has put it “*There was no significant new planning legislation until the 19th Century, when measures parallel to the development in Britain were enacted*” (p.11). This section explores which land use control mechanisms existed at the time and whether there were any models adopted from the British and to what extent the British were involved in general.

In the second part of the study, the MEPA based planning system is analysed more in detail. The analysis is provided through similar structure as the English planning system that was described in Chapter IV. Namely, the focus is on items such as planning policy framework, roles and structure of planning agencies, and control over development. The results obtained will be further compared with the characteristics of the present English planning system with the main aim to find out to what extent the two planning systems have similar system features today, or in other words, what is the degree of modification in the current Maltese planning system compared to the present English land use planning system.

⁶⁹ It should be noted that the most important source of pre-British planning is Professor Denis DeLuca who contributed to the history chapter of the Valletta Management Plan. This publication has not yet been published. (A, 2013, personal conversation)

⁷⁰ An ancient city on the east side of the Island of Malta

Chapter V Part I

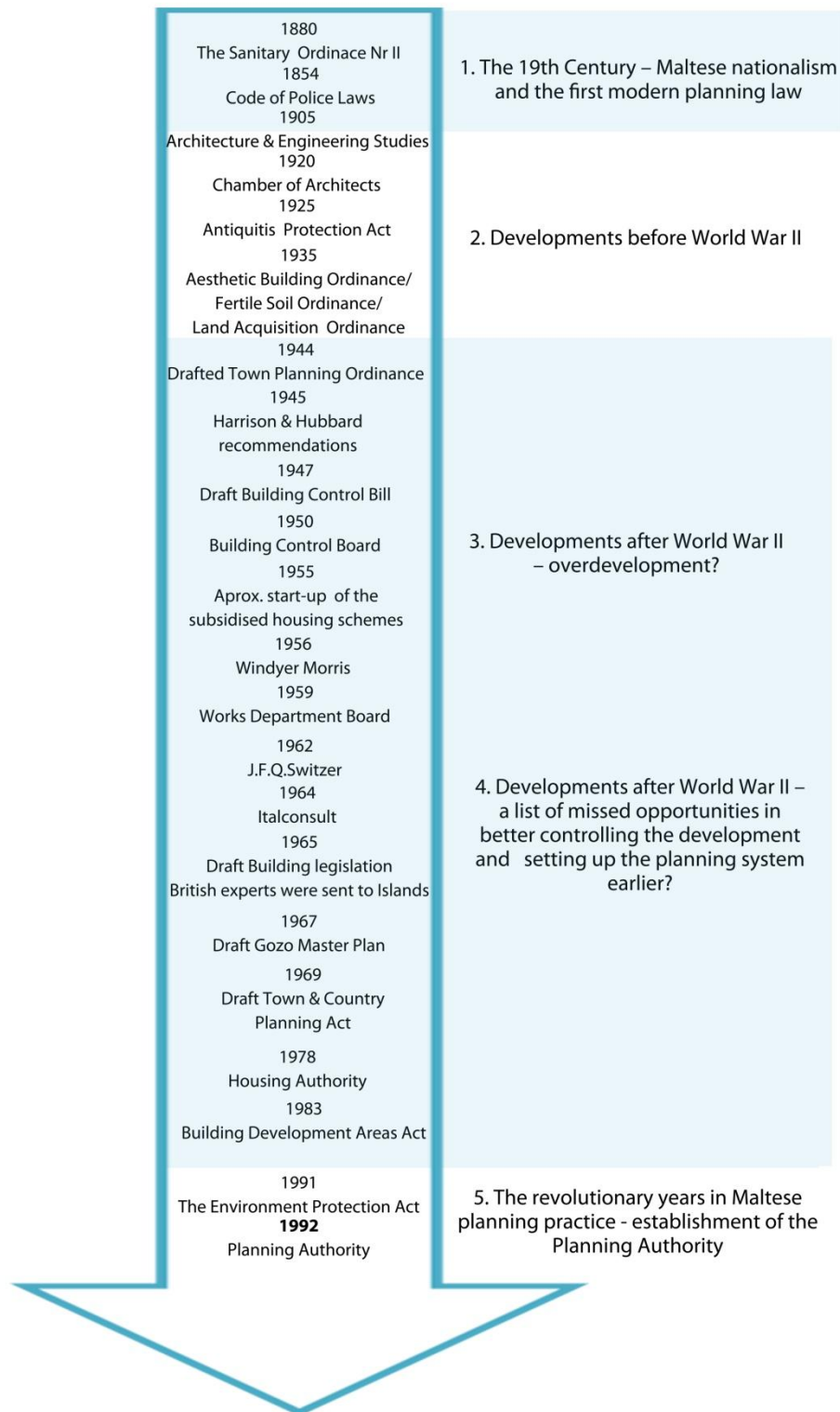
5.1 Progress in Planning Legislation in Malta 1814-2002

This part of chapter V gives a general overview of the history of development planning in Malta before the establishment of the current authority. It investigates the path to the setting up of the first considerable planning system in 1992 and explores to what extent the British were involved and their models adopted at those times. Whilst doing so, the chapter is concerned with the issue of overdevelopment and questions why the British-based planning system within their occupation in Malta, was set up relatively late compared to the planning system in England during that time.

The chapter is structured according to the chronological findings which help to explain the overall evolution and implementation of the Maltese planning system with the respect of the problem statement of this thesis (Scheme 10). The discussed order is:

- the 19th Century – Maltese nationalism and the first modern planning law
- developments before World War II
- developments after World War II – overdevelopment?
- developments after World War II – a list of missed opportunities in better controlling development and setting up the planning system earlier?
- revolutionary years in the Maltese planning practice – establishment of the Planning Authority

The discussed developments are important to the this thesis, helping to understand the character of the present planning system and the roots of the difficulty which it faces, the Maltese mentality and their implementation of the system, which as discussed below was often being associated with corruption. The section ends with remarks, underlying the most important obtained results.



Scheme 10: The division of the first part of Chapter V, historical events in the Maltese land use planning until the establishment of the Planning Authority in 1992

5.1.1 The 19th Century –first modern planning law and Maltese nationalism

The main act regulating town planning (through Chapter 13) until the enactment of the 1992 Development Planning Act, was the Code of Police Laws of 1854 (Aquilina, 1999; Gauci, 2002, Vol1). This act regulated buildings, extensions of buildings, streets, inhabited areas, houses and other tenements in detail (Gauci, 2002, Vol1). Principally, it set regulations for certain type of activities that required an official license and which were therefore subject to checks and inspections (ibid.). Additionally, the Code also set out sanitary laws and regulations that had to be operated by the sanitary engineering officer who had internal powers to regulate the development of buildings (MDI, Malta, 1988). The Sanitary Ordinance No. II of 1880⁷¹ was meant to introduce new provisions mainly to do with public hygiene and spatial organisation (ibid.). Since the public health issue was the concern to the colonial administrations due to the references to the Epidemic Cholera coming from the sewage disposal system in 1813, The Sanitary Ordinance relied somewhat on the English model (Gauci, 2002, Vol1). For example, through this ordinance, the traditional narrow streets and central court-yard dwellings in Malta were to be replaced by English-style row-house blocks, having also a lasting impact on urban forms (Aquilina, 1999; Gauci, 2002, Vol1).

5.1.2 Developments before World War II

Following the requirements established by the provisions of the Sanitary Ordinance, the Royal University of Malta set up a course in 1905 leading to the degree of Bachelor of Engineering and Architecture (BE&A) (Gauci, 2002, Vol1). Other developments included the enactment of the Architects Ordinance by the Council of Government through which architectural and engineering professions could be regulated (ibid.). Through this ordinance the colonial administration established the certification of Land Surveyor and Architects (LS&A) in 1919 (ibid.). A year later, a Chamber of Architects was founded (ibid.). In 1928 LS&A was replaced by the Architect and Civil Engineer (A&CE) professional qualification for *periti*⁷² practising in Malta (ktpmalta.com, last accessed in 2013). An important development was also the Architects Act of 1996 under which the Maltese architects-engineers were to use title of Perit⁷³ in place of the Kamra tal-Periti⁷⁴ (Chamber of Architects and Civil Engineers) designation (ibid.).

⁷¹ The enactment of the 1880 ordinance was carried out during the period identified by the intensification of the tensions between colonial administration and the Maltese *anti-riformisti* (opposed the reforms, designed to Anglicise Maltese institutions, which were designed by the British to consolidate their control over islands) movement, e.g. during the times when Maltese were in search for a higher nationalism (Gauci, 2002, Vol1). In connection to that, Gauci (2002) has found an interesting fact concerning the arguments that the Maltese members of the Council were not involved in the formulation of the draft of the ordinance (ibid.). Instead they were simply opposing it because in their view it was to lead to considerable increase in maintenance and construction costs. "...it was only the anti-British activists who tended to adopt a position that considered public health reform and the regulation of property development to form part of the disciplinary apparatus of the colonial administration." (Gauci, 2002, p.28, Vol1)

⁷² "DeLucca (1975) connects the modern Maltese notion of the 'architect-engineer', i.e. *il-perit*, to the Italianite concept of *il perito*. It originally meant skilled Maltese builder who were involved in the design of buildings commissioned by the Order of St. John, and were given responsibilities for less demanding tasks. Later a number of them were given the opportunity to study in Italy and participate in ambitious projects like church building and fortifications." (Gauci, 2002, p.37-38)

⁷³ "Maltese perit is required to take responsibilities for various activities ranging from structural calculations, architectural design, quantity surveying and valuations. It has been a subject of argument in Island, where for example one believes that Malta is too small to afford specializations like 'pure' architecture, planning, engineering or surveying; whilst the other argue for instance that the increasing complexity of the Maltese property development and construction sectors has created a demand for more specialized personnel. The first planning course which was not 'architectural' in its orientation was launched in 1994 in the University of Malta and also the Malta Chamber of Planners (responsible for regulating the planning practice in Malta) has been formed." (Gauci, 2002, p. 38-39)

⁷⁴ "The Kamra tal Periti (Chamber of Architects and Civil Engineers) is intended for the advancement and regulation of the profession, the defence of its rights and for keeping high its prestige. It is established and governed by Chapter 390 of the Laws of Malta (Act XIV of 1996 – The Periti Act)." (Kamra tal Periti, ktpmalta.com, last accessed in 2013)

1910 Protection of Antiquities Ordinance and the 1925 Antiquities (Protection) Act

The Protection of Antiquities Ordinance was enacted in 1910 as to empower the authorities “...(i) to regulate the transfer, demolition, or alteration of, and (ii) to excavate for, expropriate, maintain, or restore, objects, buildings, and monuments of local antiquarian or archaeological importance.” (Gauci, 2002, p. 39) Five years later, this act was updated by the 1925 Antiquities Protection Act which intended to extend and consolidate the provisions of the previous one (Gauci, 2002, Vol1). The renewed act was more concerned with the conservation of the islands’ heritage and provided for the expansion of the list of artefacts requiring protection or preservation (ibid.). An interesting fact according to Aquilina (1999) is that the powers which the act used to give to the minister responsible for the islands’ heritage to schedule protected entities was, however, rarely used, and hence some of the updates at that time were never published. Another issue according to Gauci (2002, Vol1) was that just before the new government elections in 1996, the Nationalist Government (1987-1996) prepared a bill which would have reorganised the manner in which the islands’ heritage would have been conserved and managed, but the newly elected Labour Administration (1996-1998) was not interested in adhering to that and neither was the Nationalist Administration itself when they got re-elected in 1998, showing no attention in respect of this legislation anymore. In 2002, the Antiquities Act was replaced by the Cultural Heritage Act (c.445), under which the Superintendence for Cultural Heritage was set up (ibid.).⁷⁵

1935 Ordinances

The next three ordinances of 1935 were the result of the political crises of the early-1930s, which triggered the colonial administration to initiate improvement programmes in the fields of health, education, agriculture, defence and physical infrastructure (Gauci, 2002, Vol1). Hence, with the Aesthetic Building Ordinance of 1935, an Aesthetics Board was set up (ibid.). The functions of the board included having the responsibility of regulating the external appearance of buildings and, according to amendments made in 1934, to control advertising boards and hoardings (Aquilina, 1999; Gauci, 2002, Vol1). Aesthetics Board was abolished in 1992 and its functions were then taken over by the Planning Authority (Gauci, 2002, Vol1). Furthermore, within the requirements of the 1935 Fertile Soil Ordinance, no building development could take place before fertile soil was removed and deposited on a site provided by the Government for agricultural purposes (Gauci, 2002, Vol1).⁷⁶ The changes in the act made in 1973 intended to prevent physical development from covering fertile soil and from taking place on irrigated land (ibid.). About the efficacy of that act, Gauci (2002, Vol1) writes that its provisions have often been disregarded⁷⁷.

However, the most important ordinance in 1935 was the Land Acquisition (Public Purposes) Ordinance. This set out the procedure which had to be followed in the expropriation of any land in the Maltese islands for *public purposes*⁷⁸ (Aquilina, 1999). The compensation depended on whether the piece of land in question was considered to be a building site, ‘waste land’ or rural land; whereas market value was ascertained according to the same (ibid.). Again, although no systematic research has been carried out, Gauci (2002, Vol1) claims that this legislation has been abused by both governments as well as individual politicians. In

⁷⁵ From article 7 of Cultural Heritage Act 2002 “*There shall be a Superintendence of Cultural Heritage under the responsibility and management of the Superintendent of Cultural Heritage. The mission of the Superintendence is to fulfill the duties of the State to ensure the protection and accessibility of cultural heritage as defined in this Act*” (1)

⁷⁶ The costs of the exercise were to be borne by the owner of the property (Gauci, 2002, Vol1)

⁷⁷ Dr. Gauci (2002) in his Phd does not indicate any exact cases regarding this specific legislation, but states “it is a well known fact within the Maltese construction industry that the provisions of this legislation have been and are frequently disregarded.” (p. 42, Vol1)

⁷⁸ The expression ‘public purpose’ is defined in section 2 of the Ordinance, as: any purpose connected with exclusive government use or general public use, or connected with or ancillary to the public interest or utility (whether the land is for use by the Government or otherwise) or with or to town-planning or reconstruction or any purpose connected with the defence of Malta or connected with or ancillary to naval, military or air operations; and includes any other purpose specified as public by any enactment. (Aquilina, 1999, p. 4)

order to prove that claim he has brought an example of one case, “*wherein a person who requested the inclusion of a tract of his family’s land in a planning scheme was asked to pay a substantial sum in return for the ‘favour’, to what the person either refused or offered less than asked for. In the end, still a large part of the land was expropriated and the person was punished for being ‘hard headed’*” (Gauci, 2002, p. 43, Vol1).

5.1.3 Developments after World War II – overdevelopment?

In the 1950s physical development was controlled through a Building Control Board (BCB), which was established through the *Building (Control) Regulations of 1945* (Gauci, 2002, Vol1). BCB, chaired by the Director of Public Works, was made up by not less than four appointees of the Governor and it kept extensive discretionary powers whilst evaluating applications for permits since it was not bound to justify its decisions (ibid.). Moreover, all the government projects were exempted from the provisions of its regulations (ibid.). In 1962 the functions of this board were taken over by the Planning Areas Permits Board (PAPB) (Gauci, 2002, Vol1: Aquilina, 1999). In the 1950s the principal subject of debate was the status of the Malta with respect to the UK, and the economic problems related to its dependence on British military spending (Gauci, 2002, Vol1). This debate led to the formation of an economic restructuring programme in the late 1950s, which was to prepare the way for gaining independence in 1964 (ibid.). The programme was to be made public through an economic development plan, which was to be complemented by a national physical plan (ibid.).

During the immediate post-World War II years, the main issue which worried the government was the reconstruction of what had been destroyed and the provisions of housing (Gauci, 2002, Vol1). Later the concern shifted to quality of housing stock and the provision of housing for a growing population (ibid.). Hence, the main focus in the country’s physical planning sector in the mid-1950s was directed towards the quality of the available housing stock (ibid.). In order to address the issues of housing shortage and quality, the government initiated a series of schemes, which were to subsidise the upgrading, renting and dwelling ownerships (ibid.).

In 1944, the wartime Council of Government had also enacted the *Rent Restriction (Dwelling House) Ordinance* in order to provide for the fixing of rents of existing buildings to 1939 levels (Gauci, 2002, Vol1). This law was however not repealed as planned⁷⁹, since the landlords were unwilling to maintain rented properties properly, and developers did not want to invest in rental dwellings (ibid.). Therefore, the authorities instead encouraged the Housing Ordinance in order to exempt constructed dwellings (ibid.). During the next years there were more limiting regulations issued, and hence by the 1980s the Maltese citizens had practically no access to rental dwellings – Maltese landlords literally refused to rent their properties to Maltese citizens (ibid.).

This in turn led to a high value being attached to home ownership – the proportion of owner occupied dwellings of the stock of occupied dwellings rose from the 26% recorded in 1957 to the 54% registered in the 1985 census, 68% of 1995, and 75% in 2005 (Gauci, 2002, Vol1; Borg, *et al*, 2012). One could argue that the trend towards this state of affairs has been consolidated through a series of home ownership schemes, the first of which was offered in the early-1960s (Gauci, 2002, Vol1). By the 1980s, after a relatively weak start, such schemes

⁷⁹ This Ordinance was intended to be functional for one year following the expiry of the wartime orders. (Gauci, 2002, p. 47)

became very popular following the setting up of the Housing Authority in 1976 (Borg, *et al*, 2012).

The first modern social housing strategy in Malta was formulated in the mid-1950s on the basis of advice given by G.A. Atkinson, a planner who was sent to Malta by the Colonial Office (Gauci, 2002, Vol1). The goal of this strategy was to have 10,000 new dwellings constructed within a short time period (*ibid.*). In 1956 the Government initiated a Five Year Housing Programme with the aim to upgrade the existing dwellings⁸⁰ and provide subsidised rental housing (*ibid.*).⁸¹

Throughout the interviews conducted for this study, the majority of the interviewees argued that both the social housing strategy as well as the home ownership schemes, led to the overdevelopment of the Maltese Islands (G; A; P; M, 2013, personal conversation). Or as Gauci (2002, Vol1) has agreed „*The combination of developments (i) in the Islands’ property markets and (ii) in social housing initiatives, have contributed to the substantial and haphazard increase in urban spread which characterises the contemporary Maltese physical landscape.*” (p.47) The same has been explained in a recent research paper by Gauci, *et al*, (2012) named “Improving the Quality of Suburban Building Stock”, which describes the oversupply of residential properties, or in other words, the increase of built-up areas in Malta from 1957 (4.5 % of the territory of Malta) to 2005 (26.5 % of the territory of Malta) as the result of Home Ownership Schemes and Building Development Areas Act. However, the experts who were interviewed for this study, mostly claimed that both of the initiatives were in their origins actually good since people were living in bad conditions. They suggested that the problem was caused by the ‘wrong implementation’ of this system by the people who were in charge, “*large amount of social houses and the schemes of the home ownerships were given out in an uncontrolled manner in order to let the government to retain their power and influence*” (P; A, 2013, personal conversation).

5.1.4 Developments after World War II – a list of missed opportunities in better controlling developments and setting up the planning system earlier?

Before the building boom of the mid-1960s, which had to do with the new post-colonial economic focus upon tourism⁸², there were actually a number of reports and ordinances prepared, which could have better controlled the issue of overdevelopment; nevertheless only a few of these were actually implemented. Or as Gauci (2002, p.52, Vol1) has stated, “*the energies of the Government of the day appear to have been focused on the state of the economy and on the political crises connected with the split of the Malta Labour Party*”⁸³. It can be presumed that the Government was busy with other issues and not with land use planning. For example, in 1944 the authorities drafted a Town Planning Ordinance which was made in line with similar developments in the UK and which was a regulation proposing to establish the Town Planning Commission with its own administrative set-up in order to better regulate the Maltese land use planning (Gauci, 2002, Vol1). However, there were doubts

⁸⁰ The national average density was three persons per habitable room (i.e. three times the acceptable limit) (Gauci, 2002)

⁸¹ Additionally, there were a number of growth zones associated with those government housing initiatives; an interesting one is a small town named Santa Lucia which was built according to the British urban design philosophies (Gauci, 2002, Vol1)

⁸² Explained more in Chapter III

⁸³ The split of the Labour Party occurred in 1950, ending the era of the first Labour Government which was led by Dr. (later, Sir) Paul Boffa. It was instigated by his deputy and Minister for Public works and Reconstruction, Dom Mintoff, who took over the Party. The reason being Boffa’s weak negotiation skills when confronting the British. Mintoff projected himself as tougher and not afraid of being antagonistic to the British interests. Following the split of the Labour Party, Dr. Boffa founded the Independent Labour Party, later known as Malta Workers’ Party which between 1950 and 1954 took part in the minority Governments led by Dr. Borg Olivier. (Pirota, J., 1991 in Gauci, Vol1, 2002)

about its applicability because it was virtually a copy of planning law written for Palestine (ibid.). The proposed ordinance was not enacted (ibid.).

In the late 1940s and 1950s, there were also a number of English architects and planners who came to Malta in order to make recommendations for changes in planning legislation and in the planning processes in general, but who did not always find the desired level of cooperation by Maltese politicians (Gauci, 2002, Vol1).

1945 Harrison and Hubbard

Architects Austen Harrison and Pearce Hubbard prepared reconstruction plans for Valletta, Floriana (a suburb of Valletta) and the cities of Vittoriosa, Senglea and Cospicua, which had suffered heavy bombing due to their location near to a dockyard of the British Navy (Aquilina, 1999; Gauci, 2002, Vol1; Cassar, 2009). The architects criticised the poorly managed planning system of the day and hence saw a need to set up a comprehensive Town Planning Ordinance and Town Planning Commission (ibid.).

1947 Draft Building Control Bill and Building Regulations published as white paper

This is a set of proposed building control laws and regulations, which took into account the recommendations of the 1944 Town Planning Ordinance (Gauci (2002, Vol1). The law required for putting these regulations into force was never enacted (ibid.). It has therefore been argued as a document, which more seemed to be drafted for the discussion purposes within the pending elections (ibid.). Or as another explanation for the reason it was never enacted, Gauci (2002, Vol1) has drawn attention towards the funds allocated for reconstruction purpose, claiming that this could have been an opportunity for architects and engineers to make abusive gains in favour of the construction sector – building regulations would have stood in the way.

1955 Works Department Board

By the mid-1950s the Director of Public Works was already concerned with urban sprawl even if at the time only 4.5% of the Maltese territory was built up (which should be compared to the current 25%) (Gauci & Borg, 2012; Gauci, 2002, Vol1). He informed the prime minister, Mintoff⁸⁴, about an article which described Malta as ‘an endless ugly suburb with no gardens’ (Gauci, 2002, Vol1). However, the minister was mainly concerned with the potential costs of compensation which would have to have been paid to people who were not given building permits⁸⁵, and he was of the opinion that the areas on which the development was to be frozen were to be tracts which were not ‘ripe for development’⁸⁶ (ibid.). In response to this state-of-affairs, a board was set up, who contrary to that, was concerned that if the regulations controlling development were to be enacted, it would only be fair if owners are compensated for *injurious affections*, and compensation would be restricted to dead-ripe or near-ripe lands (ibid.). This in turn led to the drafting of a bill for the *Restriction (Temporary) of Ribbon Development Act*, which combined the issues of compensation and the so called ‘ribbon development’⁸⁷ which took place on the perimeters of the existing urban areas (Aquilina, 1999; Gauci, 2002, Vol1; MDI, Malta, 1988). However, the act was not implemented entirely,

⁸⁴ Duminku Mintoff was a Prime Minister of Malta from 1955-1958, as well as between 1971 to 1984.

⁸⁵ In Malta development rights were nationalised in 1962: the whole Malta and Gozo were declared as planning area (see: Structure Plan Brief (1988): A1.31). In other words, it was assumed that people had the right to development anywhere, and anyone who was disallowed had to be compensated. (A, 2013, personal conversation)

⁸⁶ ‘Ripe for development’ refers to land which was not subject to pressure for development. (Gauci, 2002, Vol1)

⁸⁷ The term ‘ribbon’ development refers to buildings being erected on the sides of roads linking villages and towns. (Gauci, 2002, Vol1) “This gave the impression to people walking/ driving along these roads that the islands were overdeveloped. For instance, when one may look to the layouts of the villages of Nadur and Xaghra of the Island of Gozo (such as from Google Earth), it can be noted that these look like star fish. The development along the ‘fingers’ of the ‘star-fish’ would be the ‘ribbon development’ which worried the Director.” (A, 2013, personal conversation)

yet an important suggestion was incorporated in the Land Acquisition (Public Purposes) Ordinance of 1935, defining a *building site*⁸⁸ for which a higher rate of compensation was to be paid when such land was being attained for a public purpose (Gauci, 2002, Vol1). Additionally, in 1956 the Government decided to address the outlined problems; the difference was that another act was preferred which was considered more suitable for the identified purposes (ibid.). That act was the *Special Development Areas Act of 1968*, which empowered to declare the so called ‘special development areas’ (SDAs), “ *which was in effect of declaration for an intention to acquire such property for a public purpose with a view to its development for a public purpose other than that merely of town planning*”(MDI, Malta, 1988, (A1.22)). The declaration was valid for five years during which the acquisition value was frozen (the Government was not obliged to finalise the purchase) and no building operations could take place (Gauci, 2002, Vol1). On the other hand, there was still some flexibility in the set regulations, since the Director of Public Works was authorised to release tracts of land or individual buildings from the provisions of the Act (ibid.). This was for example done in cases where the affected land owners complained that the SDA was not appropriate within a year of the above-mentioned declaration (ibid.).

1959 Windyer Morris

Although building development had increased significantly, not much seemed to have been done to control that (Aquilina, 1999; Gauci, 2002, Vol1). Therefore the authorities requested Windyer Morris, the Director of Planning and Housing of Cyprus, to consult how to set up a more comprehensive planning system, which would be capable of fulfilling the foreseen requirements (ibid.). In his report, Morris discouraged the hoarding of urban land by proposing a set of several objectives which had to be made in order to stop urban sprawl (ibid.). The most important contribution he made was a suggestion that a national physical plan was to be formulated alongside the economic development plan, the latter of which was to be published in 1959 (ibid.).

1962 Jeffrey Francis Quarry Switzer

J. F. Q. Switzer was a lecturer in land economy at the University of Cambridge (Gauci, 2002, Vol1). He was sent to Malta to advise the colonial administration with respect to the formulation of the national physical plan for the Maltese Islands which had been thought of when W. Morris came to Malta (MDI, Malta, 1988; Aquilina, 1999). As a result of his visit, chapter 13 of the Code of Police Laws was edited by the Ordinance XV of 1962 (ibid.). In three years following his recommendations, a comprehensive national plan for a more rational and better land use was drawn up (instead of the previous fragmented key plans) (MDI, Malta, 1988). Hence, the most important aspect of Switzer’s contribution was the declaration that all of Malta and Gozo was to be a ‘planning area’ (Gauci, 2002, Vol1; MDI, Malta, 1988). In addition, a Planning Area Permits Board (PAPB) was set up, replacing the functions previously performed by the Building Control Board (BCB) with an important difference that an applicant for a permit could now appeal to the Minister (ibid.). Before that the BCB could refuse a building permit at its absolute direction, without any right for appeal (Gauci, 2002, Vol1).

⁸⁸ Building site was defined as “*land having a frontage on an existing street and is situated within a built-up area or within a distance of not more than 91.44m of a built-up area, measured along the axis of the street*” within a built up area is defined as an area which for a continuous stretch of 137.16m of its frontage on either side of the street if the street is developable on both sides or 274.32m if the street is developable on one side only, is at least fifty per centum occupied by buildings. The same definition was incorporated in the development law referred to as the Building Development Areas Act 1983. (Gauci, 2002, Vol1)

1963 – 1964 Committee and Itaconsult

In response to the recommendations made by Switzer, a board under the chairmanship of Joseph Huntingford was formed in March 1963 (Gauci, 2002, Vol1). The board prepared a draft *Town and Country Planning Law*, largely based on the 1947 British Town and Country Planning Act (Cassar, 2009; Gauci, 2002, Vol1). Closely following this draft, a Rome-based consulting firm Itaconsult was entrusted in 1964 for the preparation of a National Physical Plan for Malta (ibid.). Besides that, they also proposed to establish a central physical Planning Authority and prepared a Master Plan for Tourism covering the period of 1964-1970 (MDI, Malta, 1988) (ibid.). However, the Itaconsult plans were ignored (ibid.). Hence there was still a large impact on the environment by hotels, holiday flats for self-catering tourist, villas for the rich and by the ‘villegatura’, houses of middle class citizens (ibid.). This all had to do with the Government’s new economical focus upon tourism, manufacturing industry and horticulture, followed by the rundown of the British military spending (MDI, Malta, 1988).

1965 Draft Building legislation and W.P. Paterson

In 1965 draft building legislation was prepared to merge all the existing laws relating to building development, with the main aim to ensure better control and co-ordination within one unified act (Cassar, 2009). During the same year, the United Nations also assigned an international consultant, W. P. Paterson with the tasks of evacuating the building permits procedures, review the work of Itaconsult in relation to the National Physical Plan, and to prepare a framework for the completion of that plan (MDI, Malta, 1988; Gauci, 2002, Vol1)

1967 Draft Gozo Master Plan

A group of postgraduate students from the Department of Civic Design of the University of Liverpool carried out a study visit to Gozo and prepared a Master Plan under the guidance of F. Masser (MDI, Malta, 1988). Special reference was made to cultural landscapes, demographic and social change, village structure, employment, tourism and services (ibid.).

1969 Town and Country Planning Act and 1969 Sieczkowski’s Plan

The Town and Country Planning Act of 1969, which had been talked about since 1959, had been debated in Parliament for two years before its enactment. The bill for this was composed by a well-known planning law expert, Sir Desmond Heap⁸⁹ (Heap, 1978). The bill was to be prepared concurrently with a national physical plan by another UN planning adviser T.E. Sieczkowski (MDI, Malta, 1988).

This Act was never put into force and it was removed from the Statue Book in 1981 (Aquilina, 1999, Cassar, 2009). In principle, it was an Act almost identical to the British Town and Country Planning Act of 1947 and it was prepared to merge all previously obtaining planning laws into one single enactment (ibid.). Only twenty-three years later a similar law was enacted, but it can be considered that it was then already too late – the Maltese Islands had already been harmed due to haphazard planning (ibid.). The physical plan for Malta⁹⁰ was also prepared at the same time and was, similarly, never put into practice (ibid.). Cassar (2009, p.18) has written, that *“if this would have happened, [it] would have ameliorated the situation where urban areas sometimes take from eight to ten years to be fully developed, in the interim period retaining a building site character. A phased development would have kept pace with the extension of essential services and road works.”*

⁸⁹ Author of the planning law reference book: ‘An Outline of Planning Law’ (1978)

⁹⁰ Based on planning surveys, consultations with various departments and the existing detailed planning schemes for the existing settlements, this plan showed in broad outline the overall planning proposals for development of Malta until 1985. (MDI, Malta, 1988; (A1.52))

1983 Building Development Areas Act

According to the Building Development Areas Act 1983 (BDA)⁹¹, land which was designated as a BDA had to be surrounded with a 100 metre green belt with no buildings on it (Gauci, 2002, Vol1, Cassar, 2009). The Government was empowered to expropriate the land within such Areas and sell them at a cost which covered administrative expenses, to people who were selected through lotteries (Gauci, 2002, Vol1). According to more detailed provisions under this act, buildings that were outside those building development areas could be allowed to be erected in case these fulfilled specific requirements (ibid.).

However, the primary effect of the bill was to revoke all existing building schemes and offered land for development into terraced houses and, in some cases, villas, at a relatively low price (Gauci, 2002, Vol1). There was no reference to national framework of an overall development policy, resulting to an extensive waste of land and resources. (Cassar, 2009; A, 2013, personal conversation) Therefore, the bill gained a lot of criticism from environmental activists, developers who experienced a decrease in demand for their properties, people who did not win the lotteries, and so on (Lockhart, 1987). Indeed, the BDA Act contributed to the consolidation of what, up to the mid-1980s, was a fledging environmental movement (Lockhart, 1987). The Chamber of Architects (currently, Kamra tal-Periti) expressed concern with respect to both the absence of proper planning and the poor quality of urban design (ibid.).

Furthermore, one of the interviewees contacted for this paper offered insights into the issue and explained that, *“the BDA Act was promoted by the then Prime Minister, who was concerned at the strong allegations that were made with respect to the manner in which members of his cabinet and their ‘business partners/associates’ were making money out of the buying at low prices undevelopable land, and then extend existing development schemes to include their newly acquired land. This was stated by the member of Parliament who piloted the bill for the BDA Act, when he introduced it for debate. It so happened that the BDA Act was ill-conceived and caused as much damage, if not more, than the Home Ownership Schemes, the scheme extensions of the 1960s (under the nationalist Administration) and of the 1970s and early-1980s (under the Malta Labour Party administration), and the poorly designed and maintained housing estates. The damage mainly consisted of apparently ‘uncontrolled’ urban sprawl (built up areas increased from 6% in the mid-1960s to close to 16% by 1985) and the low quality of urban design in the newly developed areas”* (A, 2013, personal conversation).

With this explanation in mind, the interviewee then concluded that *“urban sprawl was actually controlled by corrupt politicians. It was therefore the demand to establish the Planning Authority (that happened in 1992) to be run by non-politicians under the understanding that ‘planning is too important for this activity to be entrusted to politicians’. Yet, it is naive to think like non-politicians would not take any bad decisions, they are as much corruptible as politicians.”* (A, 2013, personal conversation)

⁹¹ *“The Building Development Areas Act 1983 (BDA) was enacted in March 1983. This bill was to make provision for the establishment of building development areas, for the acquisition and disposal of land contained therein and for the further regulation of building development”* (MDI, Malta, 1988; (A1.75))

5.1.5 Revolutionary years in Maltese Planning – establishment of the Planning Authority

Following the 1987 elections, the new administration set out to fulfil the promise to rationalise the Maltese planning system through the adoption of a ‘structure plan’ which was promoted prior to the elections by the Chamber of Architects and Civil Engineers (Gauci, 2002, Vol2). The background for change came by the enactment of the town planning section of the Works Department, as the Town Planning Division within the Ministry for the Development of the Infrastructure, which was later renamed as the Planning Services Division (ibid.). The Primary concern of the Division was the preparation of the Structure Plan for the Maltese Islands which was to provide a strategic framework for detailed subsidiary plans and the development control system (ibid.).

It was therefore evident that the Government intended to adopt a planning system that was to be structured along the lines that prevailed in England at that time, mainly because the Maltese Administrative Law was strongly influenced by its British counterpart and the Civil Service was at the time still run along the lines that had been established by the British (ibid.). Moreover, there seemed to be a tendency at the time for many to assume that the British model of planning was effective, corruption-free, efficient and effective (ibid.). While working on his PhD thesis, Gauci (2002, Vol1) did not come across any documentation which advised Maltese legislators to consider the adoption of a planning system other than the British.

In order to be able to formulate a Structure Plan, the Government submitted an application for the European Community funds, while the Chamber of Architects and Civil Engineers used the Commonwealth Foundation to invite Jeffrey Switzer, who had already been to Malta in the early-1960s, and John Wells-Thorpe⁹², in order to give advice to the colonial administration on how to proceed in the preparation of the national physical development plan which had been talked about in the late-1950s (Gauci, 2002; MDI, Malta, 1988).

Differently to the Minister of the Development and Infrastructure, who had set a two-year period for drawing up the structure plan, Switzer and Well-Thorpe had a more urgent view and proposed its completion within one year (Gauci, 2002, Vol2). Following a competitive call for bids by the European Community, which was based on a brief prepared by the Town Planning Division, a team made up of the British planning firm Colin Buchanan and partners and Italian firm Genral Progetti spa were chosen to work with the division towards the formulation of a planning act and the structure plan (Gauci, 2002, Vol2; MDI, Malta, 1988). Eventually, the Italian component left and Colin Buchanan and Partners completed the task by themselves (ibid.).

In November 1990, the first draft of the written statement of the Structure Plan for the Maltese islands was completed after series of public consultation exercises (MDI, Malta, 1988). The final draft was approved by the Cabinet of Ministers in the following December (ibid.). In late-1991 the Government, through the Minister for the Development of the Infrastructure, issued a bill for a Development Planning Act, which was enacted and put into force in the following year (Gauci, 2002, Vol1). This was an enactment which was largely based on English law and was only modified very little (ibid.). It codified all the laws which existed prior to 1992 on planning and which were scattered in diverse laws (Farrugia, 2010). The Structure Plan was then approved in Parliament, as was required in the Development Planning

⁹² A well-known architect who was active in the Royal Institute of British Architects. (Gauci, 2002, Vol1)

Act, in July 1992 (Gauci, 2002, Vol2). The Planning Authority (PA) was constituted in November 1992 (ibid.).

The PA was to be made up of 15 persons, eight of whom were to be selected by the Prime Minister, five were to be public officers, and two members of parliament representing the Government and the Opposition (Borg, *et al*, 2011). The eight members appointed by the prime minister were expected to be ‘independent’ (ibid.). The PA was to be supported by technical advisers employed within a Planning Directorate (ibid.).

The Maltese land use planning made enormous changes towards first more comprehensive system; it was the first planning agency in Malta, which was to be separated from the Government (Cassar, 2009). Hence, the achievements of the Planning Authority have been considerable and the whole planning system changed radically. *“Perhaps the most fundamental departure is in the transparency, openness and accountability of the plan preparation and decision making processes, and in the extensive range of responsibilities, which are now tackled in a comprehensive, holistic and integrated manner.”* (Cassar, 2009, p.199) However, as was pointed out by some of the interviewees, Planning Authority was in fact never independent. While the new system was much more transparent than the previous one, it was not, and could never be free of the Government, and it can be argued that it should not be as Government interference is essential to certain extent in every country. Taking into account this, one of the interviewees claimed that, *“the idea that one can have an independent planning agency is both undesirable and the product of naive thinking, and thus one can never eliminate corruption.”* (A, 2013, personal conversation)

The Development Planning Act had been preceded by the Environment Protection Act which was enacted in 1991 and which addressed such issues as toxic substances, noise, energy, waste management, discharges into the sea, protection of flora and fauna, and environmental impact assessments (Aquilina, 1999). In 2001, the act was repealed and a second Environment Protection Act was enacted (Borg, *et al*, 2011). This had to be done in order to make possible the transposition of the environmental directives of the European Union into Maltese Law (Borg, *et al*, 2011; A, 2013, personal conversation). Rather than just having its objectives towards environmental protection, the new act set sustainable development as its main aim (Borg, *et al*, 2011). In general, it included wider enabling powers in order to better monitor the state of the environment, e.g. issue regulations relating to sustainable development, transpose international obligations arising from multilateral environmental agreements, issuing of integrated permits, and provided for the setting up of a National Commission for Sustainable Development (Borg, *et al*, 2011; Gauci, 2002, Vol1). The competent authority under the two environment protection acts was the Department of Environment Protection, which in 2001 was under the responsibility of the Minister for the Environment (Gauci, 2002, Vol1). The Planning Authority, on the other hand, was answerable to the Minister for Home Affairs (ibid.).

In March 2002, the Planning Authority (1992) and the Environment Protection Department were merged⁹³ and the Ministry of Home Affairs was renamed as Ministry of Home Affairs and the Environment (Gov., Malta, last accessed in 2013). The new agency was named Malta Environment and Planning Authority (MEPA, last accessed in 2013). MEPA was to have two technical directorates; one responsible for land use planning and the other for environment

⁹³ The official reason for the amalgamation was ‘the better protection of the environment’. The real reason was that the European Commission was unhappy with the state of the Environment Protection Department (which was heavily under-resourced). Since the PA was well-resourced, the quickest way through which the Commission could be appeased was through the amalgamation. (A, 2013, personal conversation)

protection (ibid.). A Director General was appointed in order to coordinate these two directorates and prepare the way for Malta's commitments once it joined the European Union – which was to take place in May 2004 (ibid.).

5.1.6 Remarks about the research carried out regarding the period from the 19th century to year 2002

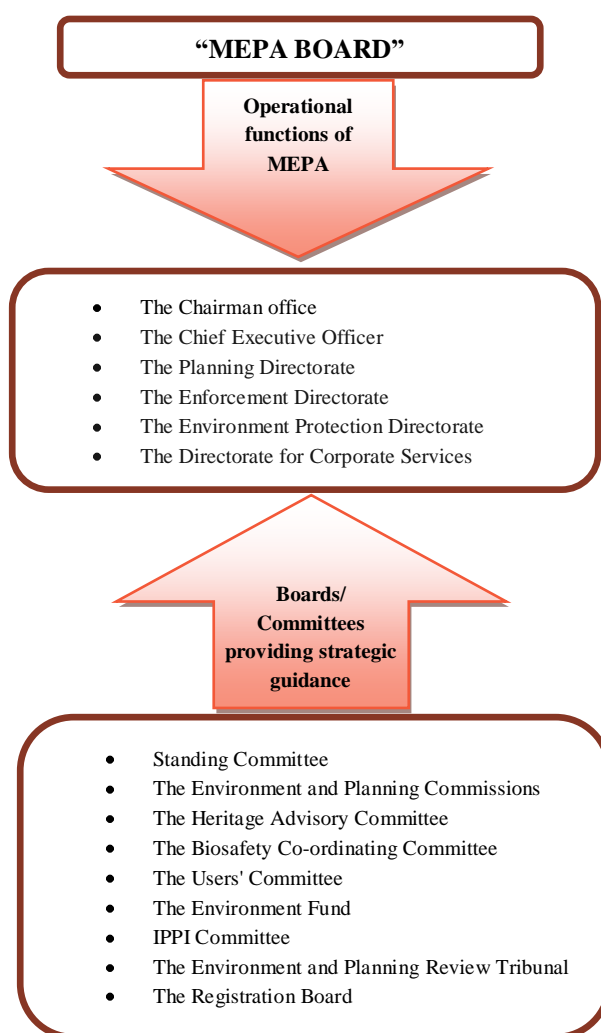
- The literature review and interviews indicated that in many cases there was political purpose behind the formulation of the planning acts and ordinances, and also that once these were enacted, many of the requirements which were put forward, were often either abused or disregarded.
- It has been argued that Malta became overdeveloped during the years after World War II, mainly from the mid-1960s onwards due to bad planning practices, wasteful social housing policy and corruption. However, whilst the Home Ownership Schemes were good in its origin, its implementation did not work out well for Malta and resulted to overdevelopment.
- The years between the mid-1960s and the late 1980s are considered as a period during which the urban sprawl was allowed to take place without any serious attempt to set up an effective planning system. Research showed that there were in fact a number of reports and other suggestions made for change in the planning process and legislation in general, especially by the Brits, but which, due to bad decisions made by the Government, had either been delayed in putting into force or were never put into force at all.
- From 1987 onwards, land use planning in Malta changed radically, though not necessarily in the direction that its promoters desired. With the creation of the Planning Services Division within the Ministry for Development of the Infrastructure, there was enough political strength to finally take into account the recommendations made from 1945 to 1969.

Chapter V Part II

5.2 Development planning since and after the establishment of MEPA

The following organisational structure of the MEPA is presented in order to create a fundamental understanding about the present Maltese planning system in the frame of the three focus groups discussed after that: planning policy framework, roles and structure of the planning agencies; and control over development.

The organisational structure of MEPA



Scheme 11: Organisational Structure of MEPA

The Malta Environment and Planning Authority (MEPA) employs more than 420 people from a variety of backgrounds (MEPA, last accessed in 2013). It is also involved in international endeavours through a number of multilateral agreements, international environmental conventions, public participation in decision making and the access to justice in environmental matters (ibid.).

The organogram shown on Scheme 11 is created to summarise the structure of MEPA's organisation as presented on its website in early 2013.

First of all, it should be pointed out that the term "MEPA Board" does not appear in the Environment and Development Planning Act 2010 (EDPA). According to this act, MEPA is made up of maximum 15 members whose responsibility is to provide strategic guidance and ensure that the Authority works in line with legal obligations (ibid.). Furthermore, the term "Authority" is defined as "*Malta Environment and Planning Authority established under article 6 and includes anybody or other person acting on its behalf under powers delegated by the Authority under this Act, and the Minister*⁹⁴ may, by

order in the Gazette, designate different bodies or persons as a competent authority for different provisions and different purposes of this Act or any regulations made there under" (EDPA, 2010 (2)) Hence, the term "MEPA Board" on the above presented scheme has been made up only for illustrative purposes within this paper, in order to highlight "the leaders",

⁹⁴ According to EDPA, 'the Minister' means the minister responsible for the environment. Whenever the term the Minister has been used from this moment on, this is meant as such.

e.g. those 15 members of the so called ‘real Authority’ from other bodies (boards and committees) that have been appointed under article 10 of the EDPA. Elsewhere in this paper the term “MEPA Board” is used to refer to the Authority (in line with EDPA) or to the Malta Environment and Planning Authority (MEPA).

The operational functions of MEPA are divided between six of its offices (see Annex 2). In addition to the listed directorates, there are also a number of boards and committees whose function is to support the directorates, and give these strategic guidance to better ensure that the organisation fulfils its functions and responsibilities effectively and efficiently in line with its legal obligations (see Annex 3).

5.2.1 The themes of analysis

The following table concludes the main characteristics of the present Maltese planning system.

| System features | MEPA |
|----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Role of Government | Centralised. Everything is done by one national authority – MEPA. Local Authorities have only a small part in the planning decisions. |
| Environmental Protection | Integrated under one authority (though at the moment plans of changes underway). |
| Binding character of development plans both in terms of appeals and development permissions | Not legally binding, although taken into consideration as material considerations when making planning decisions. |
| The role of politicians and elected officials in decision making processes | „MEPA Board” is appointed mainly by the Prime Minister (except one member who is appointed by the House of Representatives) and many decisions which they make require an approval from the Minister responsible for the environment (appointment of Advisory Board and Committees, approval of subsidiary plans). MEPA is still criticised today as being overruled by the Government. |
| Appeals procedures | Responsibility of the Environment and Planning Review Tribunal, this is a body independent from MEPA. Appeal can be made both by applicants and third parties. On points of law, appeal can be further challenged in the Court of Appeal. |
| Call-in procedure of planning permissions and appeals | Done by the Minister responsible for the environment. Call-in can only occur after appeal is being announced. |

Table 2: Characteristics of present Maltese development planning system

5.2.1.1 The planning policy framework

Acts and legislations

In general, the roots of MEPA can be traced to two Maltese Laws. These are the Development Planning Act 1992 (Chapter 356 of the Laws of Malta) and the Environment Protection Act 2001 (Chapter 435 of the Laws of Malta). The laws were merged in 2010 through the Environment and Development Planning Act (Chapter 504 of the Laws of Malta).

Whilst the Development Planning Act of 1992 provided for the approval of the Structure Plan for the Maltese Islands, the plan itself was drawn up (under the Building Permits (Temporary Provisions) Act of 1988⁹⁵) by a British planning consultancy firm with the assistance of the staff of the Planning Services Division. Interviews carried out for this paper indicated that environmentalists felt that their objections were not taken seriously enough, and hence the implementation of the plan had contributed to the further overdevelopment of the islands (A; P, 2013, personal conversation). However, there are some changes taking place in Malta. Taking into account the modifications which have occurred during the last decade, the Structure Plan is no longer found to be effective. Since Malta is one of the most densely populated countries in the world, it has been argued that there is the need for a *Strategic Plan* which above all secures the sustainable use of land (MEPA). Therefore, the new 2010 Environment and Development Planning Act (EDPA) was set up in order to provide more integrated policy guidelines and prepare a Strategic Plan for the Environment and Development (SPED). Regarding that the Bill for the EDPA (c.113) provided for the Structure Plan (51), an interesting aspect was disclosed by one of the interviewees conducted for this research. *“During the Parliamentary debates regarding EDPA, the Labour Opposition argued that the bill for EDPA had provided for a Structure Plan⁹⁶. This however was not acceptable in their view because it was then thought that Malta should have a spatial plan (i.e. a plan presenting an integrated economic development, social, cultural, environmental, transport, and spatial development vision and strategy). Hence, the Government responded by amending the provision regarding the Structure Plan and introduced the title ‘SPED’. It could not appear to be in full agreement with the Opposition as this could be interpreted a sign of weakness. However, to what I have heard SPED does not appear to be an integrated plan.”* (A, 2013, personal conversation)

The new EDPA stands for Malta’s development and its environmental challenges in an integrated manner, ensuring incorporation between socio-economic development and environmental protection (MEPA, last accessed in 2013). At the moment of writing this thesis, the Strategic Plan is being prepared by the Authority, in such a manner that besides the current situation, it would also take into account the future (ibid.). Therefore, there are a number of specific key issues which will be re-considered, as well as strategic growth scenarios and new policies which will be identified for the plan (ibid.).

Environmental Protection

During the MEPA era, environmental protection and planning were to be functioning under one authority (MEPA, last accessed 2013). Throughout the interviews, many argued that environment should be separated from MEPA since quite often the issues of planning overweights it and the environmental considerations are left to the background. *“The Directorate of the Environment Protection is within MEPA, but it is the Planning Directorate*

⁹⁵ As stated in the Structure Plan 1990 *“The Building Permits (Temporary Provisions) Act, 1988 is the Act which requires the preparation and use of a structure plan and other more detailed plans.”* (5)

⁹⁶ The same can be seen from: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=21134&l=1>, last accessed in 2013

which leads the way. The reason is historical; originally MEPA was just Planning Authority. As a result of Malta's accession to the EU the department of the environment was incorporated in it. So the planning just took over. And there was a crossing over planning trained employees from the planning to the environment. A number of sections in the environment are in reality for planning. The leading function remains land use planning. That is why we would like to have the other functions within the same planning authority, to take over planning into more environmental perspective." (G, 2013, personal conversation)

On the other hand, many of the interviewees also supported the integration between planning and environment, arguing that it works out actually better than if it would be separated:

"Although there is only one Authority, these two functions still remain distinct into two separate Directorates within it – i.e. the Planning Directorate and the Environment Protection Directorate. The Directorates today have a better understanding of each other's functions and the challenges in fulfilling their day-to-day responsibilities. In the end of the day it should not make much difference because planners have to take environmental considerations into account, there is a strong impact of Environmental Directives on planning policies and decisions on individual projects, particularly those linked to EU Directives. You don't separate those issues in the end of the day." (M, 2013, personal conversation)

There were also those among the interviewees who thought that the integration of functions in theory is a good thing, but in case of Malta things need to be improved since the system appears to be too fragmented. The interviewees complained that there is too much diffusion between MEPA and Malta Resource Authority (MRA), which is a separate authority functioning under the Ministry for Resources and Rural Affairs. *"Those two should be under one authority with separated functions and with an overall coordination, but which is not political, but technical. Nowadays these are different authorities, whilst MRA overlaps MEPAs duties, and their coordination is political."* (G, 2013, personal conversation) In general it can be concluded that there are both pros and cons between the two scenarios and there is no real criteria to prefer one to another.

However, it is important to mention that between the fieldwork and the moment of writing this thesis, the Labour Party, who won the last Governmental elections in Malta has already made a manifesto to separate environmental issues from planning, and place these under the new Ministry for Sustainable Development, the Environment and Climate, whilst planning remains under the office of the Prime Minister (Malta Independent, 2013).

Development plans and their binding character

Structure Plan

As described, the Structure Plan for the Maltese Islands is a national strategy which was formulated in 1990 – its implantation formally commenced in 1992 after its approval. This is a type of document which was adopted from the British system and it is the only development plan in Malta which requires the approval of the House of the Representatives, the rest of the subsidiary plans (including subjects plans, local plans, action plans or management plans) are approved by the Minister (EDPA (2010), (58)(2)). According to EDPA (2), "the minister" means the Minister responsible for environmental issues.⁹⁷

The Structure Plan provides guidance for land use, environmental protection, and transport, it contains 320 policies on housing, the built environment, tourism, social and community

⁹⁷ According to DPA (1992) "the minister" was defined as minister responsible for development planning (2)

facilities, industry and commerce, agriculture, recreation, urban and rural conservation, public utilities and agriculture (MEPA, last accessed 2013). Furthermore, as explained before, at the moment, the Strategic Plan for the Environment and Development is being drawn up for more sustainable development (ibid.). However, since the Structure Plan is not site-specific, the Development Planning Act of 1992 provided for the preparation\ issue of detailed subsidiary plans for the more effective and proper management of development (DPA (1992), (23)). Hence, subject plans, local plans, action plans and development briefs could be issued in addition to the strategic Structure Plan (ibid.). All of these are prepared by MEPA and approved by the Minister responsible for the environment (EDPA, 2010, (57)(3)). An interesting fact is that because six local plans were approved by the Minister, a new procedure was introduced in the Development Planning Act in 2001 (Development Planning (Amendment) Act), following recommendations made by the Chamber of Planners in 1999, to inform the public in cases where the empowered Minister has decided to overrule MEPA (A, 2013, personal conversation). In line with that, an insight was given by an interviewee who was concerned that, *“In all cases were the local plans were approved, there was not a single disagreement between the MEPA and the Minister. MEPA planners were ordered to write what the Government wanted in order for the ‘power of the latter to over-rule the former’ not to be used in public. So much for the transparency and freedom of expression.”* (A, 2013, personal conversation)

Local Plans

Local plans in Malta are implemented by the Authority (MEPA) and are made for the areas *“where the Authority considers that the rate of development or re-development cannot be satisfactorily managed, or where special factors cannot be taken into account solely on the basis of the Structure Plan”*⁹⁸. (DPA, 1992, Chapter 356) In total there are seven such local areas – Central Malta, Gozo and Comino, North Harbour, North West, South Malta, Gran Harbour and Marsaxlokk Bay (MEPA, last accessed in 2013). The main purpose of each plan is to provide a land use strategy that balances social, economic and environmental issues (ibid.). Most of them were approved quite recently, in 2006 (ibid.). One of the interviewees provided insights into the approval process of the local plans, arguing that the government postponed the approval of the local plans in order to by-pass the requirements of the Strategic Environmental Assessment (SEA) Directive. *“The local plans were adopted on the last possible day which the strategic environmental directive allowed for such plans not to be subject to SEA. If they would have been adopted 1 week later they would have need to go through the SEA, and if this would have happened there would have been a large number of differences in the local plans. And the reason to why it was postponed is because the local plan carotenes the authorities powers to decide when there are no specific policies which forces them to decide on one direction or another.”* (G, 2013, personal conversation)

According to the SEA, Malta was obliged to submit plans to it which were commenced before 2004 but not completed before 21 July 2006 (Micallef, 2006). Under this directive, the proposed extensions of the development boundaries in the local plans would have required an environmental impact assessment (ibid.). However, plans were approved by the Parliament just five days after the deadline, on July 26 (ibid.). In line with that, the EU Commission started investigations in Malta, suspecting a breach of the Strategic Environmental Assessment (SEA) and the Environmental Impact Assessment (EIA) directives (ibid.).

⁹⁸ Or *“...on the bases of the Strategic Plan for the Environment and Development.”* (EDPA, 2010, Chapter 504) However SPED is not in force yet at the moment of writing this thesis.

Furthermore, with the recent Governmental elections in Malta, in March 2013, the Labour Party, besides other amendments, has announced to revise the local plans by the end of 2014, as these were claimed to be outdated and not reflecting the current situation (Xuereb, 2013).

Action plan

An action plan is made by the Authority for the areas where the Authority considers that it has to pay particular attention in order to better manage it or where special factors have to be taken into account (EDPA, (56)(1)).

Environment and Development brief

This document sets out detailed planning guidance for the development of a specific site or small area in order to secure proper and orderly environmental management or development of that site or area, or to implement a policy in a plan (EDPA, (65)(1)).

Subject plan

Whilst the Local Plan, the Action Plan and the Environment and Development Brief refer to a specific spatial context, subject plans refer to sectors, such as waste, transport, water, minerals and so on (EDPA, 2010, (54)). Hence, a subject plan deals with a specific environmental or development planning policy or matter setting out detailed specifications intended for its implementation (ibid.). Despite whether the area is already covered by local plans, action plans or a development brief, subject plan can apply to all areas (ibid.). A subject plan together with a written statement should also be supported by necessary maps and diagrams (ibid.).

Binding character

In general there was much confusion among the interviewees regarding the legal status of the development plans in Malta. The general impression is that local plans are legally binding, whilst on the other hand ensuring a certain degree of flexibility, but then MEPA has to explain why the decision was taken not in accordance with the plans and policies. This is also stated in the Environment and Development Planning Act, “...upon a refusal or the imposition of particular conditions, the Authority shall give specific reasons based on existing plans, policies and regulations or for any particular conditions that may have been imposed” (69)(3). As formulated in EDPA: “In its determination upon an application the Authority shall: (a) with respect to an application for a development permission apply the following: (i) plans;... (ii) policies;...shall also have regard to (a) any other material considerations; (b) representations made in response to the publication of the development proposal” (EDPA (69)(1)). Majority of the interviewees claimed that in practice the policies and plans are taken as legally binding since it is the source of decision makers who are regulated through the policies. The more so, there is also an enforcement⁹⁹ system, so in general the developments today are being better controlled (MEPA, last accessed in 2013). The difficulty just seems to arise as “...some decision makers, not all though, are incapable of making decisions. So they prefer to make a bad decision as long as it is in line with the plan rather than try to make a best possible decision ”¹⁰⁰ (A, 2013, personal conversation). Another problem seems to occur because the local plans were just approved too recently, “Local plans are legally binding, of course, but in fact MEPA is still working on them, making the planning decisions to become very fluent and elastic.” (A, 2013, personal conversation)

⁹⁹ According to EDPA “The Authority shall monitor all activities falling within scope of this Act, including all development operations to ensure that all such activities and development is carried out only in accordance with the requirements of this Act and in compliance with the decisions lawfully taken under this Act” (EDPA, 84 (1))

¹⁰⁰ In fact this is not a new phenomenon in decision taking. Andreas Faludi have written about it in his book ‘A Decision- centered view to Environmental Planning’ (1987)

Furthermore, whilst asking about the differences between the binding status of the development plans in England and in Malta, one of the interviewees claimed that *“One of the basic difference of the British system is that you have a distinction, who draws policy and who implements it. In the UK you have a distinction of a Secretary of State who oversees the system and the local authorities who implement it. In Malta they are too close. Over here there are so called independent people deciding but they are appointed by politicians. In the UK the politicians decide, but there they show their responsibility because the local authorities are elected, but then they show their political responsibility for their decisions. And so they are inclined to take a decision which is in line with what local community believes, because they have to face the community with the decisions. Over here there is no directed decision between the decision-taker and government”* (G, 2013, personal conversation).

5.2.1.2 The roles and structure of planning agencies

The role of state and its allocation of competences to other levels

As can be concluded from the previous, the national government of Malta plays a key role in its planning system. Development planning has been the responsibility of many ministries, first of the Ministry for the Development of the Infrastructure (1992-1994), then of the Ministry for the Environment (1994-1996), Ministry of Foreign Affairs and the Environment (1996-1998), and so on¹⁰¹, whilst MEPA has now moved directly under the responsibility of the office of the Prime Minister. In Malta, all the planning decisions are taken on the national level by MEPA, controlled by the Prime Minister (MEPA, last accessed in 2013; Farrugia, *et al*, 2010).

Local Councils in Malta were set up rather recently, in 1994, by the Local Councils Act of 1993 (Chapter 363 of the Laws of Malta). The functions of Local Councils are granted under Article 33 of the act¹⁰². In general it can be concluded that these listed functions can be seen as the administrative arm of the central government on central bases, responsible mainly for the maintenance of streets, public gardens, children’s playgrounds, and collection of waste. Within the many competences which are given to them, they are also allowed *“to enter into agreements with any public body or government department for the delegation to the Council of any of the functions of that public body or department: Provided that any such delegation shall only come into effect after the Minister has made the relevant order in the Gazette”* (33)(1)(m). However, whilst those functions have been delegated to Local Councils, many of the interviewees expressed the opinion that in Malta, local governments are just notified about the plans, and they can object and appeal against them. They are consulted in terms of the drawing up plans and policies. For example, one interviewee specified: *“Unfortunately we are still on the level of consultation, not participation. I would like to see local authorities more involved in the drawing up of the local plans”* (G&A, 2013, personal conversation). On the other hand, the same interviewees also indicated, that whilst the participation should be closer, that does not mean that it would make sense for Malta to give powers to Local Councils to draw up the plans as this is done in England. As has already been explained in Chapter III, Malta is a small country with limited financial resources. Therefore, it might not be reasonable to create unnecessary complexity to the planning system by shifting the powers according to the English model.

¹⁰¹ Ministry of Home Affairs (1998 – 2002), Ministry of Home Affairs and the Environment (2002 to 2003), Ministry for Rural Affairs and the Environment (2003 to 2008), the Office of the Prime Minister (2008 to 2012), Ministry for Tourism, the Environment and Culture (2012 – 2013), and Office of the Prime Minister (2013 -). However, with the new modifications, the environment division of MEPA will soon be going to the Ministry for Sustainable Development, Environment and Climate Change. (Gov., Malta, last accessed in 2013)

¹⁰² Discussed in Chapter III

It is important to address, though, that within the new Government amendments, the Labour Party has promised to invite Local Councils to occupy a seat on the Board and therefore have one vote during meetings which determine applications for development permissions on sites located within the territories under their jurisdiction. (Muscat, last accessed in 2013)

The role of politicians and elected officials within them

In line with the Environment and Development Planning Act of 2010, the MEPA Board shall be appointed by the Prime Minister and shall not consist of less than 13 and more than 15 members (6)(1):

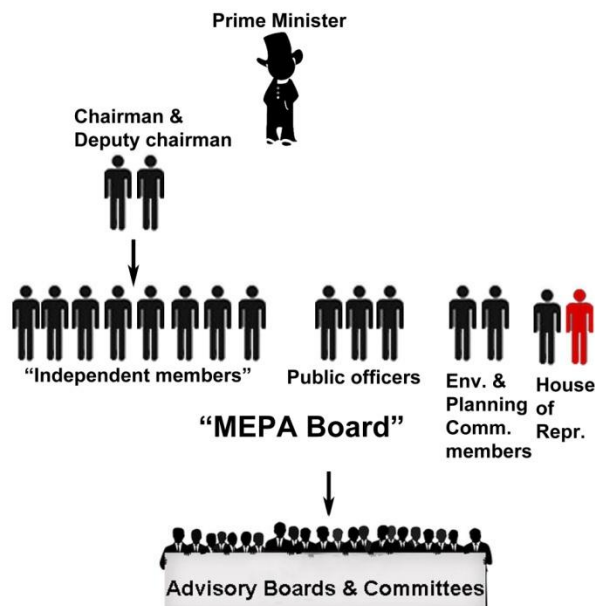
- Not more than 3 public officers representing the Government, being persons who have experience or qualifications on matters relevant to planning, infrastructure, the environment, social policy in so far as it relates to land use, economic affairs, agriculture, tourism and transport;
- Not more than 8 “independent members” who shall be chosen from amongst the persons of know integrity and with knowledge and experience in cultural heritage, the Environmental Voluntary Organisations (or civil society), commerce, economy, industry, environment, development, social and community affairs. Out of those 8 members, a chairman of the Authority is to be chosen by the Prime Minister;
- 2 members who shall be chosen from amongst the chairperson of the Environment and Planning Commission;
- 2 members who shall be members of the House of Representatives and one of whom shall be appointed by the Prime Minister and the other by the Leader of the Opposition.

Whilst there is no more than 3 public officers in the board, no more than 8 “independent members”, 2 members who shall be chosen from amongst the chairperson of the Environment and Planning Commission, and 2 members of the House of Representatives, it is important to note that all of them are appointed by the Prime Minister, except one member from the House of Representatives who is appointed by the Leader of the Opposition¹⁰³ (EDPA, 2010 (1)(6)(2)). Moreover, the chairman and a deputy chairman of MEPA are also appointed by the Prime Minister from amongst the independent members of the Authority (EDPA, 2010 (1)(6)(3)).

The advisory Committees presented above have been appointed by the Authority itself, but only with the approval of the Minister responsible for the environment who has also control over their functions (EDPA, 2010 (1)(8)(10)). An interesting fact here is the Users’ Committee, which as stated in the Environment and Development Planning Act 2010, is to be autonomous from the Authority and is responsible to and selected by the Minister to whom the committee shall report to at least every six months ((36)(1)).

In general, in line with the Environment and Development Planning Act of 2010, all the officers and employees of the Authority are appointed after having consulted the office of the Prime Minister. MEPA was criticised a lot among the interviewees for this and it was considered to be too Government directed and politically influenced in its decision-making procedures:

¹⁰³ The leader of the most powerful party which is not in the government



Scheme 12: Illustration of the Prime Ministers control over MEPA. The red member of the ‘Board’ is the only one who is not appointed by the Prime Minister. Advisory Boards and Committees are appointed by the ‘MEPA Board’ with the approval of the Minister responsible for the environment. The Chairman and the Deputy Chairman are selected by the Prime Minister amongst the ‘Independent members’, and the Advisory Boards and Committees are appointed by the ‘MEPA Board’

“MEPA is the main topic in Maltese political agenda, both parties focus upon it. In a small country where there is not much going on, NIMBYism¹⁰⁴ and arrogance of large developers and building contractors take extensive proportions in view of the limited size of the Maltese Islands. Those planning issues become a hot topic for politicians” (M&A, 2013, personal conversation).

“Ideal, it should be given a direction of policy, ensuring that those appointed are carrying out their duties in line with those policies. Obviously the difficulties are who appoints the Board and also the manner in which Government oversees. At this point of time Prime Minister appoints employees to MEPA Board. And it is not only the matter of appointing, but in this way the Government can participate in the decision. And that is not the way I believe Government should oversee MEPA, I believe that Government should not sit in

the Board to take part of the decisions, but they should regularly talk with the officials, analyse policies, analyse decisions, receive feedback of reports to see what is going on and then give feedback whether it is going well” (G,2013, personal conversation).

5.2.1.3 Control over development

Granting development permissions

In line with the Environment and Development Planning Act 2010, “development permission” is defined as “a permission to carry out development granted by the Authority either on an application in that behalf or in a development order” (2). In article 67 of the same Act and in Article 30 of the Development Planning Act, development refers to (1) the change of land use[s] and (2) the construction of structures required to house the new land use[s]. The issue of development permissions and environmental (i.e. operations) licences is one of the main functions of the MEPA. No development, as defined in the EDPA, can be carried out without their permission. Though there are certain types of developments, for instance works of a relatively minor or temporary nature, which are “automatically permissible” through the Development Orders issued by MEPA, specified under the Article 63 of EDPA. These kinds of developments are called ‘exempt work’ or ‘exempt activity.’(63)(2)

Furthermore, in line with article 68 of the EDPA, any person, including a corporate body established by law or a department of government, wishing to carry out development, can

¹⁰⁴ “Not in my back-yard” attitude

apply for development permission at the Authority¹⁰⁵. For this, the applicants first need to certify that they are the owner of the site or, if not, present a copy of a registered letter proving that the real owner has been notified about the intention to apply for the rights (EDPA (68)(1)). In addition, Article 69 (1) of EDPA specifies what MEPA shall apply in its determination upon an application. In general, these are existing development plans; planning policies or regulations; or other material considerations or representations made in response to the publication of development proposals. Moreover, in Article 69(3) of the EDPA, besides granting development permissions, MEPA has also powers to refuse these through specific reasons, which it is required to give based on the same plans, policies and other conditions as development permission is determined. The specific unit responsible for that within MEPA organisation is the Environment and Planning Commission, whose decisions are only binding if they are supported by the votes of not less than three of its members, and are published as soon as practicable after the decision has been taken (EDPA, (35)(5)).

Appeals procedures

If an applicant or a third party¹⁰⁶ is unhappy with a decision made by MEPA (or the Environment and Planning Commission), they have the right to appeal under Article 41 of EDPA. A third party can be a local council in whose locality the development is intended to carry out (41)(iii), or the Government and any department, agency, authority or other body corporate wholly owned by the Government (41)(iv). An appeal can be made against any decision, that is, not only in case of a refusal of development permission, but also on matters related to enforcement control, environment protection (including environment assessments), access to environmental information, and the prevention and remedying of environmental damage (41)(1)(a). The task to deal with appeals procedures falls under the Environment and Planning Review Tribunal, previously known as the Planning Appeals Board (PAB), established under the provisions of Article 40 of EDPA. The Tribunal is made up of three persons who hear all appeals with the exception of legal matters which are decided by the court (EDPA, (40)). It consists of “*a person versed in environment or development planning, who shall preside, and a lawyer and an architect, each of whom shall be appointed by the President acting on the advice of the Minister*”(EDPA, 2010 (40)(1)). In line with EDPA, the members of the Tribunal are not to be subject to the control or direction of any other person or authority (40)(5); and the Tribunal has an administrative secretariat independent from the Authority (40)(6).¹⁰⁷ Furthermore, the decisions of the Tribunal shall be final, apart from cases which can be further, on points of law decided by the Tribunal, challenged in the Court of Appeal (EDPA(41)(6)).

Additionally, regarding the planning act, in the respect of appeals board, Maltese planning system is influenced not only by English, but also for instance by the Irish planning law, which also established planning appeals board (so called *Bord Pleanála*) (Farrugia, 2010). One of the differences from the English development planning system is that in England case law has to be referred to during judicial processes; whilst this is not the case in Malta as MEPA is in favour of not applying case law in its decision making procedures. This was claimed by one of the interviewees to be a positive side for the Maltese as it was argued that

¹⁰⁵The MEPA may issue Development Orders in which it would be assumed that certain types of development are automatically permissible. There are for example Use Classes Orders, through which a change from a specific use to another which is closely related (e.g. boys' school to be changed into a girls' school) would be permissible without the need of a formal application for a development permission. (See Article 63 of the EDPA)

¹⁰⁶The rights to appeal for third parties was given in 1996. Before that it was assumed that only applicants were the 'aggrieved parties' who could submit an appeal to the then Planning Appeals Board. In 1996, the Court of Appeal found that third parties who would be directly affected by a MEPA decision were entitled to appeal. This change was subsequently enshrined in the DPA in the amendments of 1997. (see: <http://www.mepa.org.mt/home?!=1>, last accessed in 2013)

¹⁰⁷ However one may consider, that besides determining the appeals, the Tribunal has also the responsibility to exercise a number of other functions, such as vested in terms of Articles 48, 49, 57, 58, 63 and 77 of EDPA (41)(1)(b).

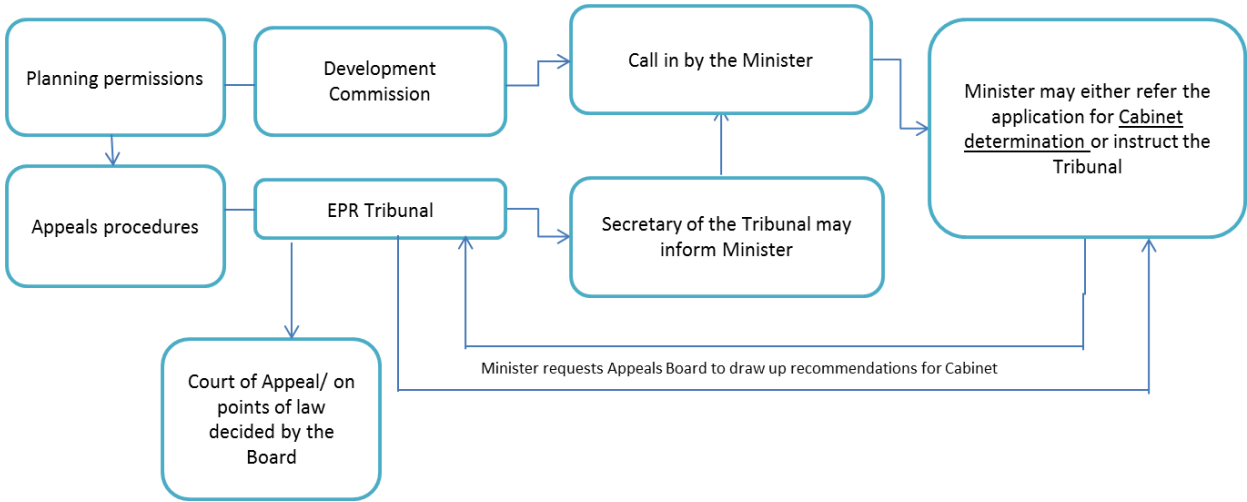
case law should not apply to planning, “If there was a bad decision that would not justify another similar bad decision. People from the opposite side tend to compare in terms of approval with what their neighbour has given in terms of approval and it is therefore very hard to convince these people that case law should not apply” (A,2013, personal conversation). However, in the English system, ‘previous appeal decision’ is listed as one of the material considerations; the inspectors seek to be consistent in making decisions about similar appeals¹⁰⁸ together with any other material considerations as well as the site specific factors that become apparent from the site visit (Nadin, *et al*, 2006).

Call-in procedures

‘Call-in’ procedures in Malta refer to cases where an appeal has been lodged by an applicant or any other interested third party against any decision of the Authority, referred to in Article 75 (2) of EDPA. In line with Chapter IV of this thesis, the main difference to the English system is that in Malta an application can only be called in after an appeal is lodged (EDPA (75)(1)), whereas in England this can happen although it is still on its way to being determined by the Planning Committee.

As follows, the Secretary of the Tribunal shall inform the Minister of such an appeal within 15 days from its receipt, after which the Minister has 15 days to decide whether to instruct the Tribunal to proceed with the determination or refer to the Cabinet of Ministers (EDPA (75)(2)).

In Article 75 (1) of the EDPA (2010), there are certain types of applications listed which the Minister may normally refer to Cabinet determination. In general these are referred as applications which have national importance or are significantly important in some other way. Furthermore, when the Minister decides to refer to the Cabinet an application which has been called in by him, the Appeals Board shall be requested to draw up recommendations on that application. Those recommendations shall be in turn referred to the Cabinet by the Minister.



Scheme 13: Call-in procedure in the Maltese planning system

¹⁰⁸ “Parties will sometimes suggest that there are precedents (either a local planning authority’s decision or an appeal decision) elsewhere in the locality which either justify the local planning authority’s refusal of the application or lend support to the appellant’s case that approval should be granted. In reality the precedent argument is very rarely persuasive or conclusive as each case will differ in its circumstances from others and must be considered on its merits. We encourage the main parties to consider very carefully whether to include a reference to precedents in their cases.” (Gov., UK, last accessed in 2013)

5.2.2 The future of MEPA – its opportunities and challenges

In addition to the three themes discussed above, some views about the future of MEPA were asked from the interviews. Two different aspects were looked into whilst analysing the opportunities and challenges for the future of MEPA – the opportunities and challenges which MEPA faces as an independent body on its own, and the opportunities and challenges regarding the British influence.

MEPA

It was first of all concluded by many of the interviewed persons that the biggest challenge for MEPA as an organisation in general is that it still lacks transparency and accountability. As a single body responsible for both regulation and implementation, the authority seems to be under pressure; it seems not to work out. *“Before MEPA there use to be BDA where ministry could come in the morning, draw a line on the map and say, listen this is what we build today. And nobody could oppose it without being in a risk of danger. Nowadays all the information related to plans, policies and planning applications are available online and there is a lot of information available on the websites. However, regardless to the fact that it is much more public today, it is treated more as a government department now than the previous Planning Authority use to be. I would like to see it more independent”* (A, 2013, personal conversation).

“Nowadays all the information related to plans, policies and planning applications are available on line, and there is a lot of information in the website. There are always risks in every country for corruption. MEPA is all the time improving and this is one of the main objectives, The MEPA website is locally one of the websites which is the most heavily last accessed.” (G, 2013, personal conversation)

On the other hand, as was underlined by one of the interviewees, whilst there is nothing wrong with the fact that politicians participate in the planning system, the main problems in case of Malta is *(1) their participation by stealth – that is by hiding behind the backs of planners (who value their jobs), contacts within the MEPA, and so on (2) the use of the MEPA for the benefit of the political parties and friends of politicians rather than for the benefit of the community at large, and (3) the strength of the political parties, which enables certain politicians to abuse their powers and still get elected by their parties’ hardliners* (A, 2013, personal conversation).

Furthermore, as there is argument over whether planning and environmental issues should be separated or not, in the current situation, it was summarised that MEPA lacks coherence and it is therefore required to re-think the whole system of its governance. It was not clear for many of the interviewees, how the other departments outside MEPA interact with environmental protection and planning. It seemed that since planning issues and environmental protection are strongly interlinked they are too easily affected by sectorial decisions made by other organisations within the Government (M&A, 2013, personal conversation). On the other hand, the overall opportunity for MEPA is the continuous improvement which is taking place, and as the research also clarified, it is already happening today. It was claimed that the system in general is more organised and controlled and it was believed by the majority of the interviewees that it is possible to further improve and build on that (P, G, M, A, 2013, personal conversation).

British influence in the planning system

Malta was a British colony for many years and adopting the same development planning system was a logical move for the Maltese. In general the interviewees agreed upon the positive influence of British system to Malta, claiming that the problems in Maltese planning cannot be attributed to British but it is the interpretation of their system by Maltese itself: *“I think if Malta would not have been influenced by the British planning system, our problems would be much worse. The influence has been positive, the problem is it has just not influenced enough.”* (G,2013, personal conversation).

Regarding the role of British institutions in the current Maltese planning system and its opportunities and challenges, it seemed logical for all the interviewees that since the Maltese system is based on the British system, it is hard to look away from the English system today as well. The more so since English is a common language for both countries in question and it is easy for Maltese to look into their laws and policies. However, Malta is now going in a direction of its own and the general understanding is that today MEPA seems adapting rather than adopting. The more so, as addressed by one of the interviewees: *“it would be a mistake not to look at what other countries are doing. In fact not only do we follow the English planning system, but we try to learn from the mistakes and achievements also from other countries.”* (G,2013, personal conversation).

5.2.3 Concluding remarks

- The main land use planning institutions of MEPA have been drawn up in accordance with the British legislations and policies.
- The local councils in Malta do not have any decision-making powers and their participation in the plans and in policy making is rather weak.
- Whilst the Government has a major influence over MEPA and politicians participate in the decision-making, the main problem is not their participation, but the way they do so – abusing their powers through MEPA in order to stay in office or be re-elected.
- The merger between environmental protection and planning issues into one Authority has brought about a major matter of dispute in whether these two work together in a way that enables to take the requirements of each and relevant provisions into account in a sufficient manner. This issue deserves to be analysed further.
- Local plans are taken into consideration when giving out development permissions, but are not legally binding in a rigid way.
- The ‘call-in’ procedure in Malta refers to appeals made against any decision of the Authority. The Secretary of Planning Review Tribunal shall inform the Minister about such appeals, whereas the Minister can then in turn either decide to call it in for Cabinet determination or instructs the Board on further procedure.
- In majority of cases, the decisions of the Environment and Planning Review Tribunal are final, except on points of law decided by the Board that may be challenged in the Court of Appeal.

VI

Chapter VI

Conclusion and Analysis

This chapter analyses the findings of the study and concludes the thesis. However, conclusions made here should be further examined with the aid of the theoretical findings. It is therefore important to read the Epilogue at the end of the paper which further elaborates over the statements made here.

The overall purpose and order of the thesis

The objective of this thesis was to explore the institutional evolution of the Maltese development planning system as to investigate the following problem statement:

To what extent the British and their adopted planning practices can be said as having been altering the Maltese development planning system?

In order to be able to give an answer, the main research question was worded:

What is the institutional evolution of the Maltese planning system and to what extent can its present form be recognized as transplanted from the British in comparison to the present English development planning system?

Within the main research question, several sub-research questions were formulated. These were divided between two timeframes that the Maltese land use planning system has gone through. These were:

1. Development planning in Malta from the start of the British occupation until the establishment of MEPA, 1814-2002; and
2. Planning since and after the establishment of MEPA, 2002-2013.

The first part of the study explored the historical evolution of the Maltese planning system, aiming to find out what was happening in Maltese development planning before the first more considerable planning system in Malta was established, to what extent the British were involved and their models adopted. Research was then directed to the description of the present Maltese planning authority – MEPA. This was done in line with three selected key themes: (1) the planning policy framework; (2) the roles and structure of planning agencies; and (3) control over development. A separate chapter explored the development and characteristics of the English land use planning system following the same key themes. Such a cross-national look allowed investigating the extent the present systems are alike in the light of the problem statement of this paper. Research data was collected through semi-structured expert interviews and literature review.

6.1 Small island state characteristics

Small states can be defined as countries with small population and with relatively small territory. According to the classification of the Commonwealth Secretariat and the World Bank, the countries with population of up to 1.5 million people are small states. Many small states are islands. Malta, being considered a small island state, has around 419,000 inhabitants and surface area of 316 km². Malta is one of the leading countries in Small Island studies; the country is relatively well developed compared to other small states and therefore the small state characteristics are not so extreme. Nevertheless, smallness is still one of the main factors that shape Malta's economy, building development, governmental role over the islands, and thus development planning system and land use planning in general.

Economy

Malta being a small island state with limited resources for production and a high population density relies a lot on foreign trade, especially with countries such as the United Kingdom, Germany and Italy. However, the benefit for Malta is that it is not completely isolated. Instead, it is located at important cross-roads, acting as a bridge between Africa and Europe. Hence, the international market capacity is not so limited compared to some other small island states. Additionally, although Malta has a narrow range of exports, its domestic market is still relatively successful as those few things they can export account for a lot for the economy and helps Malta to compete with other European economies. These export items are products such as potatoes, electronic equipment and services, e.g. tourism and finance. On the other hand, despite these advantages, Malta's economy compared to some non-small states is still highly vulnerable because the production of those domestic products in turn relies on some very important strategic products, for instance, industrial supplies and energy. And that makes Malta very sensitive to external market changes.

However, as one of the main incomes for Malta is tourism, the Government's strategy to focus upon it gave land use planning second importance and that has a negative impact on the Maltese environment. Building large hotels, villas and other holiday houses on the limited physical size of the islands has resulted to overdevelopment. The more so, because the number of inhabitants itself is already high, with the increasing number of tourists, a higher pressure is put on the island's air quality, waste management and issues of water storage. The latter being especially important because water is already a sacred resource for Malta.

Governance

Because of the many challenges that small states face, the functioning of the government and politics in general in those countries is explicitly important. However, most of these countries are facing problems such as prevailing self-interest, failure of management processes and corruption in their governance. On the other hand, developing small states tend to face those handicaps in their governance more often than developed small states. In case of Malta, its governance compared to some developing countries is relatively well developed. Having been a British colony for 150, the Maltese started to look for their own Council of Government already at the beginning of the colonial period, making step by step Constitutional changes towards higher level of liberty. Hence, there was enough time for the Maltese to make a gradual shift from the colonial council of government to independent self-government, or as it is seen today – a parliamentary democratic republic, dominated by the Nationalist and the Labour Party. So, the fact that achieving self-governance did not happen too suddenly in Malta is perhaps the reason why the Maltese governmental structure is relatively well organized and not too large, as it tends to be in some other small states, discussed in Chapter

II. According to Curmi (2009) good governance performance is normally also the reason why countries' economies perform well. In Malta, whilst its economy is doing relatively well, it seems like the importance of land use planning is left to the background and the Governments' focus is more economical only – how to keep it running.

The more so, the Maltese administration is still much centralised, local councils established as recent as 1993, having only limited powers and a rather weak accountability in decision-making procedures of all the planning related issues. It can be argued that the whole planning system, controlled by one national body, is therefore still under too much political influence and government control, contributing to problems in the Maltese land use planning connected to power control and political interference.

6.2 The institutional evolution of Maltese development planning system

Whilst the planning system in Malta started to develop more considerably during the period of British occupation, which had its official start in 1814, research showed that the very first developments in Maltese land use planning were actually initiated during other occupation periods, such as the Order of St. John and their construction of Valletta and Birgu.

In general, the main tool for regulating Maltese town planning, until the establishment of the Development Planning Act in 1992, was The Code of Police Laws which dates back to 1854, whereas the rest of the planning legislation was enacted over the years with different aims. One of the most important ones of these being the 1925 Antiquities Protection Act, responsible for the Islands heritage protection, but also the three Ordinances enacted in 1935 that regulate the aesthetic appearance of buildings, fertile soil removal and the expropriation of land.

The years from 1945 until the establishment of the Planning Authority by the Nationalist Party in 1992 have been described as a grey setback in Maltese planning. A number of legislations suggested by British planners were drafted at that time, but never enforced. Instead, the Maltese Government enacted its own acts, which can be described as having been unsuccessful as the result which can be seen today is overdevelopment. On the other hand, it is important to not forget that at this time there were a number of political and economic challenges which were impeding all the made decisions. The research showed that due to the growing demand for nationalism in Malta (tensions between the *riformisti* and *anti-riformisti*) and the increasing number of Maltese members in the Council, there seemed to be a certain fear that the colonial rule might be legitimised if British laws were put into force in Malta. Additional impediments were caused by World War II, the declining Maltese economy and the lack of available housing stock which followed directly after the war. As a response to that situation, the Maltese Government initiated the so-called subsidized housing schemes, which, due to the loss of living spaces after World War II, were very much needed, but on the other hand, were used by politicians for 'a purpose of their own'. Meaning, as a tool for retaining their power position through plot allocation. Hence, it was 'feared' that such laws as drafted by the British, would have set restrictions to such actions.

Nevertheless, even when Malta gained independence, its political and economic struggles still continued, further delaying the setting up of a proper land use planning system. After becoming independent, both of the parties – the Nationalist and the Labour Party, were focused on ways of how to give up Maltese colonialism and keep the economy stable at the

same time (without having to continue to rely on British military spending), leaving the issue of development planning to the background. The new economical focus was directed towards tourism, which can be claimed to have resulted in overdevelopment. The more so, since home ownership schemes and the newly established Building Development Areas Act also contributed to such development because land was offered at relatively low prices, which, as argued, was used by politicians to hold on to their powers.

Furthermore, the question of whether there was any difference between the Nationalist and Labour Party in offering that land under the created schemes, it can be argued that the Nationalist were less engaged in such activities. The history shows that most of the important events were held under their regime (setting up of the Planning Authority and MEPA), whilst most of the practices that proved to have been bad were initiated by the Labour Party, such as Home Ownership Schemes and Building Development Areas Act (see timeline in Annex 5). After 16 years of Labour government, the results in land use were poor and the study showed that there were considerable allegations of ministerial corruption. Hence, the Nationalists, who were more concerned with environmental issues, set up their agenda for the elections with promising to stop urban sprawl and make the planning system as independent as possible and free from ministerial control. However, today such a distinction between the two parties remains rather vague (G, 2013, personal conversation).

The Planning Authority was formed in 1992 by the enactment of the Development Planning Act and it was to be the first planning body 'independent' from the Government. The land use planning system was better integrated, more comprehensive and holistic than it used to be. Nevertheless, new changes came relatively fast and in 2002 the Environment Protection Act (2001) and Development Planning Act (1992) were placed together under a newly formed Authority –Malta Environment and Planning Authority – MEPA. Whilst a higher degree of political independence was achieved by setting up the Planning Authority under Rural Affairs and Environment, MEPA was again allocated directly under the office of the Prime Minister. MEPA, similarly to Planning Authority, has therefore still been criticised as having too much political interference in it.

Institutional transplantation

Development planning in Malta from the start of the British occupation until the establishment of MEPA 1814-2002

According to theoretical framework, institutions were described as container concepts, consisting of informal rules such as rituals and social practices; and formal institutions, for instance, legal rules and obligations. Together these make a complex and highly interlinked container. It was thus stated that it is easier to adopt formal institutions than informal ones, as it is hard to change the values of society directly, but transplanting the formal institutions would normally lead to a natural change of the informal institutions.

In Malta, the first more considerable developments in land use planning were started in times when the country was part of the Commonwealth. Due to such foreign power interference there was doubtable relationship between Malta and the UK and hence the British planning instruments were logical and easy to transfer to construct the Maltese administration and legislation, which can be named *institutional transplantation*. As Malta was a British colony for 150 years, it is more than logical that the British style of planning system was adopted. The legal and administrative system was already British, making it therefore easier to adopt than something from a country which had similar system features. The more so because Malta

was actually not yet independent when the first acts and ordinances to regulate land use were adopted from the British. Later when the British left, the Maltese started to further develop their planning system in line with the British models. This does not necessarily mean that the planning system would have not been introduced in Malta if the country would have remained as a colony. It is obvious that the meaning of physical planning and the need to control land use was starting to develop everywhere in Europe¹⁰⁹ at those times, and in Malta it happened to be evolving when it was ruled by the British.

On the other hand, whilst comparing the setting up of the Maltese and the British planning systems, in Malta the first considerable system was implemented in 1992, whereas in England the setting up of a proper planning system started already in 1947 with the first Town and Country Planning Act (TCPA). Therefore, considering that the first Planning Authority in Malta was set up in 1992, whilst the British occupation started already in 1814 (before the first TCPA), the British could have set up a planning system in Malta earlier. Nevertheless, it happened too late, when the Islands were already suffering under overdevelopment. It might seem as if the British 'did not care' until the first self-government (based on a diarchal system) was established in Malta, after which there was a rapid increase of acts and ordinances drafted and established by the British rulers. It seems that on the backdrop of increasing Maltese nationalism, the British were in a situation where helping Malta establish its land use planning system could be seen to help retain the British power over the Islands (see Annex 5: Timeline).

However, the research determined that the British did their best to develop the Maltese planning system in line with the developments in England. Regarding the rapid changes and constant re-structuring of the planning system in England and the fact that the English system was not completely developed itself, it is understandable that it was difficult to adopt the system in Malta. An important fact to support that statement is that the Structure plan in England was introduced in 1968 and before it happened, there were a number of British experts sent to Malta to help formulate the planning policies. So perhaps the planning system would have started earlier if the British would not have found resistance which had to do with the political and economic developments in the Islands. The more so because the increasing number of ordinances, which were drafted by the British between 1945 and 1992, were not fully taken into consideration.

Planning after the establishment of MEPA, 2002-2013

The study continued exploring the present Maltese and the English planning systems in parallel according to three key themes: (1) the planning policy framework; (2) the roles and structure of planning agencies; and (3) control over development. As a result a table is drawn to conclude the main differences and similarities of the two systems, allowing the understanding of the extent to which these two systems resemble each-other today:

¹⁰⁹ As to remind, the first Town and Country Planning Act in the UK was put into force in 1947

| System features | England | Malta |
|-----------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The role of state | Decentralised: plans and development control decisions are the responsibility of local councils. The Secretary of State oversees the system by setting the national policies which must be followed. | Centralised: plans and development control decisions are made by one central authority – MEPA. This is not completely free from government interference, being therefore often criticised as power-abused. |
| Environmental protection | Separate departments. | Integrated under one authority (though at the moment of writing, is planned to be changed). |
| Binding character of development plans | Discretionary character, not legally binding directly, but taken into consideration together with other material considerations (such as previous appeal decisions, national policy, etc). | Discretionary character. Not legally binding, although taken into consideration as material considerations when making planning decisions. Differently from England, previous decisions (case law) not applied. The main difference to England is the implementation. |
| Development plans | No Structure Plan > Local Development Documents | Structure Plan still in force > preparations of Strategic Plan |
| The role of politicians and elected officials in decision making processes | Local democracy, councillors and Mayors (although not all) elected by citizens. The Secretary of State overlooks the system. Political interference relatively invisible. | Elected officials mainly appointed by the Prime Minister. Politicians and officials have close relationships. |
| Development permissions | Separate permissions required – building permission, planning permission. Given by local councils. | One development permission given by MEPA. |
| Appeals procedures | The responsibility of the Planning Inspectorate/ further right to appeal on points of law /appeal can only be made by the applicants/ it is possible to appeal even if the proposal does not conform to development plans (non-binding status). | Under the responsibility of the Environment and Planning Review Tribunal/ Tribunal decides cases which may be challenged in the Court of Appeal/ appeal can be made both by applicants and third parties (government bodies). |
| Call-in procedure of planning permissions and appeals | Can be done by the Secretary of State (which consists of more than one person)/ call-in can occur whilst appeal is still being decided upon. | Controlled by Minister responsible for environment/ call-in can occur after appeal has been announced. |

Table 3: The main differences and similarities between the English and the Maltese development planning systems today

As can be seen from the table above, the main difference with the English planning system comes from the fact that in Malta the system is centralised, whilst in England it is decentralised. Land use planning system in Malta can be seen as a simplified version of the English system, everything is done on one level, even environment and planning issues are merged under one national planning authority.¹¹⁰ Deriving from that it can be summarised that the main distinction is in who draws a policy and who implements it. In England there is the

¹¹⁰ Additional argumentation also evolved around the question whether the environment and planning should be kept together or not, as quite often it is complaint that planning overweight's the environmental issues. However, the new Labour Government is already making plans to re-separate those functions.

Secretary of State who oversees the system and the local authorities who implement it, whereas in Malta policies are drawn and implemented by the same Authority. The decision-makers in English local councils have been elected by the citizens, whilst in Malta they are appointed by politicians. In England, the decision-makers are also politicians, but the difference is that they are in closer contact with their local community than the politicians in Malta, and this is reflected in the planning decisions. Consequently, the decisions are not only directed by the government, like in England, but influenced directly. The more so, whilst having adopted the English discretionary system, a lot of room for negotiation and flexibility in terms of the approval of development permissions is allowed by the decision-makers. In England the system is also discretionary, but again the difference between Malta goes back to policy making and implementation – in Malta both are done by one Authority, which to a relatively high degree is controlled by the Government.

On the other hand, considering the surface area of Malta, it would not be reasonable to let each local council to draw up their development plans like it is done in England. The administration of that would be needlessly complex. However, regarding the fact that MEPA was established relatively recently (2002), it was still based on a similar Development Planning Act, which was adopted without any amendments that would make the act more collaborative or whereby the public voice could be considered more. Instead, whereas the Planning Authority used to be under the Ministry of Rural Affairs and the Environment, MEPA was shifted back directly under the office of the Prime Minister. Malta could have taken that into consideration and decreased the role of the Government and politicians in its planning system. The more so, because local councils do not participate in the process, but are consulted. Although with the latest governmental elections, the Labour Party has promised to invite Local Councils to occupy a seat on the Board. Differently from England, the Local Government Act of 2011 introduced an even more decentralised planning system than the previous one.

Overall it can be concluded that the Maltese development planning system is indeed based on the British planning model. The main similarity of the two systems is the discretion which allows much flexibility in decision making. This however, whilst taking into account the size of Malta and the fact that policy making and implementing are under the control of the same people/authority, might not necessarily be a good thing for Malta. Land use planning issues have become a hot topic for politicians in Malta – the planning authority is used for the benefit of political parties, who due to historical reasons have their ties in the local community and therefore still get elected no matter what the context of their proposed political agendas.

The answer to the research problem in short is that the Maltese land use problems cannot be attributed to the British planning models, but rather to the way how the system has ‘grown up’ and has been implemented in Malta. The system is not so much adopted, but rather has adapted. But because the windows for power abuse were opened during the process of adaptation, the Maltese system can be seen as a ‘misinterpreted form’ of the English system.

However, ambitious new goals for improvements have already been announced after the new Government elections in March 2013. How successfully these will be implemented remains to be seen. In the following chapter, the findings of this study are elaborated according to the institutional transplantation theory and small states theory, which are used as tools to analyse the situation and make relevant suggestions.

VII

Chapter VII Epilogue

This final Chapter of the paper gives more speculative thought to the Maltese development planning system in relation to the theoretical concepts explained in Chapter II. The results obtained throughout the case study are elaborated through the perspective of the presented theories, at the same time reflecting upon them in a critical manner. The chapter ends with the critical reaction on the chosen research methods and gives suggestions for future research.

7.1 Discussing institutional transplantation theory

Malta became a British colony voluntarily for 150 years. Obviously, as its legal and administrative system could not have been left behind, the British systems were adopted, including the land use planning system. As a result, Malta was British in many ways. Furthermore, the British institutions itself seemed to be more desired and better established than the Italian ones and it must have therefore seemed more logical and easier for the Maltese to adopt the British planning approach. According to the 'goodness of fit' concept, this was also the best possible option for Malta. Through that the country became part of the English legal and administrative family, i.e. the same family of nations. So the risk that something could go wrong was assessed to be lower.

On the other hand, in line with institutional transplantation theory, "*...the operation may fail if the receiving body rejects the transplant in some ways as an organ alien or inimical to the wider bodily environment.*" (De Jong, *et al*, 2002, p.23)

As spatial conditions vary in countries, the adopted procedural rationale might not match with the expectations of a host society. Whilst De Jong, *et al*, (2002) have underlined the importance of the flexibility of a state for the success of transplantation, it is interesting to think that the flexibility would come itself anyway as the adoption of foreign institutions is an actor-centred view. It would be naive to think that the adopted institutions would be left 'untouched'. The actors in a host society are the ones responsible for this process. It is their flexibility and freedom to adapt institutions (give them their own form), and to do that in the best possible way in order to solve their problems and achieve their desired goals. Therefore, it would be wrong to say that problems in the land use planning of the host society are always necessarily caused when a planning model is adopted from a foreign country. It is purely in the hands of the actors themselves and the admired transplants seem to be quite often taken more as frameworks, rather than something which is adopted directly in its purest sense (De Jong, *et al*, 2002).

The case study confirms this theory; it is true that the suitability of the model depends much on the context of its host society. Throughout the interviews it was agreed that adopting the British institutions was the best Malta could have done and the problems attributed to Maltese system is just the way it has been adapted for the benefit of the government not for the community. Hence, in case of Malta, the problems in the planning system are not because of having taken over the British institutions, but in the 'too intense and wrong adaption' which have impeded proper adoption. It is therefore interesting to consider if there would be fewer problems with land use in Malta if the British influence was stronger.

7.2 Discussing small states theory

The theory about small island states was used in this research in order to understand the handicaps in Maltese land use planning which are often associated to its smallness. In general, Malta is facing the same challenges as many other small countries, although it does not suffer from many problems that other small countries might, such as being landlocked or having severe economic problems.

A few studies where small state theory is linked with planning were found from David Chapman. The limitations which he has discussed in the planning systems of those countries, were almost all recognised in the case of Malta. According to him, the main underlying problem where all the other planning related small island state problems tend to occur, come from their governance and political pressures with those countries. In this thesis, planning in Malta is a central activity and the public sector is relatively large, the party politics have secured their strength as the public relies on them too much. Hence, no matter what the parties oppose or what they have unfaithfully promised in the past, they still get a enough votes to stay in power. It is like a tradition; people are used to voting for a particular party for many years and tend not to change their views.

In general, more specific limitations which were found in the Maltese development planning system in relation to the theory of small states include:

- Much bureaucracy, slow procedures regarding development applications. This is probably connected with the influence of the British administration system which seems to be too complicated for Malta.
- Low transparency – although all the meetings and decisions are made public and can be easily accessed through the internet nowadays, the availability of planning information to the public needs to be further improved.
- Weak accountability – the performance of local councils is still weak, they are consulted rather than involved in decision-making.
- Weak participation – public participation in decision-making needs to be increased.
- Weak efficiency – after being elected, the actions to fulfil the opposed promises needs to be proved.
- Lack of coherence – it is not clear how other departments outside MEPA interact with each other, such as Malta Resources Authority whose functions are somewhat overlapping with MEPA's (A, M, 2013, personal conversation).

Since Malta has a new Government from March 2013, there are already many ambitious improvements proposed through a MEPA reform. Within that, the local plans are already subject to change, planning and environment issues are to be separated, bureaucracy is being reduced, accountability and transparency are to be upgraded, local councils are given a seat on the Board and environmental organisations will be ensured with an effective voice. It can be seen that a road to a better planning system promises to be on its way. However, Malta could still better use the opportunities of being a small island state – e.g., make its procedures faster through quicker consensus building in all planning-related decisions and also in other issues, as well as adopt new forms of innovative approaches. In larger countries such issues tend to be more complex.

7.3 Reflection on research methods

This research was purely qualitative and it was based on a combination of theoretical concepts and empirical information. The information was collected through literature study and expert interviews. A pre-literature investigation was essential for developing the structure of this paper, realise the issues which could be compared in the English and the Maltese planning systems, and to prepare for the expert interviews. An important aspect was also formulating a theoretical framework which was used for guiding the whole study and to organise the collected empirical data.

A grounded theory-based working method was used. This means that the collection of new information continued throughout the whole study, whereas simultaneous corrections and improvements were made to the research questions and the three key focus themes according to the findings. The research design was a mixture of both explorative and comparative research models. The developments of the two planning systems were compared on the timeline whilst a deeper exploration and comparison was made between the present systems.

During the research, the author was faced with lack of literature in the Netherlands regarding the Maltese development planning system. Hence, much of the work had to wait until the field visit where the second part of research was planned to take place. Also, as planning systems are in constant changes, the accessibility of recent information was limited and hence the author had to constantly find alternative ways how to access data. One successful method proved to be e-mail communication with planning experts from England. Since the Maltese land use planning system is already going through some improvements, which were announced after the latest elections, the whole study was relatively shrinking in terms of new information. Additionally, within the scope of this thesis, the main focus was put on the Maltese planning system, and the aim of exploring the English land use planning system was to serve as a comparison, which is why its present characteristics were merely underlined. Therefore the exploration of the English planning system is based more on the literature review and only a few planning professionals were contacted. Although the plentiful relevant rules and regulations applicable in England deserve further discussion, the opportunity for that was limited within this research.

The interviewees who were visited during fieldwork in Malta were all asked the same list of questions. As many of the questions were factual, the answers were repetitive. However, there were also questions that required more subjective or analytical answers. Overall, the fact that the same questions were asked, was actually positive, as it allowed understanding the different perspectives of the interviewees in relation to their professional affiliation (explained in Chapter IV). Because the questions were specific, not all of the interviewees were capable of answering them fully. Especially questions regarding land use planning in England. So in cases where one interviewee knew something that another did not, the same set of questions helped to better organise the answers and put the full collection of answers together.

The answers of the interviewees were taken as subjective, the more so as the author of this thesis was not familiar with the English or the Maltese planning systems before research. For the paper, the interviewees were codified according to their professional affiliation and their answers, which are incorporated in the literature study in Chapter V. The answers are presented anonymously, referring only to the interviewees' professional belonging.

Overall, the following issues should be taken into consideration:

- The results of this research should not be interpreted as an overall scientifically proven theory as these are only relevant for the specific studied case – development planning in Malta.
- Although Maltese land use planning system was analysed in relation to other developments of the Islands (economic, political, etc), that was not the case for England. In order to gain more comparable cross-national results, it is necessary to analyse the English planning system in more detail, taking into consideration its economic, legal and political system.
- New parliamentary elections were held in Malta whilst this research was in process. As a result of the elections, many ambitious forthcoming changes in relation to land use have already been announced to take place. If those promises will be fulfilled, the issues elaborated in this thesis will take a completely different form. Hence the results of this thesis must be considered with the political condition as it was before the March 2013 elections and some months after that.
- Whilst the research discovered many challenges in the Maltese land use planning system, it is unable to propose any real solutions. This did not fit with the aim of this research.

7.4 Recommendations for future research

Within the goal and scope of this thesis, as well as the time limitations, not everything could be researched. As the objective set through the research questions was fulfilled, the thesis is a subject for several further research topics which derived from this case study:

- First of all, as this study focused on comparing the Maltese land use planning to the English planning system, that the roots of the English-style of planning rely on, it remains vague to what extent the Maltese planning system is based on other countries within the UK, whose planning systems have some differences to the one in England. Future research could be made to explore Malta in comparison with Ireland, Scotland and Wales.
- In order to be able to propose models for practical improvements, more detailed analysis must be made on how the different governmental sectors interact with each other and the performance of the government must be evaluated in more detail.

Bibliography

Web sources:

- Cassar, R. (2012). "First land now sea," from: Communities and Local Government, Statutory and Policy Context for Sustainability Appraisal, <http://www.pas.gov.uk/pas/core/page.do?pageId=152497>, last accessed: 27.04.2013
- Council of Europe, European Conference of Ministers responsible for Regional\ Spatial Planning (CEMAT), 1970-2003, from http://www.coe.int/t/dg4/cultureheritage/heritage/cemat/leaflet_en.pdf, last accessed: 17.04.2013
- ESPON, European Spatial Planning Observations Network, Application and Effects of the ESDP in Member States, http://www.irl.ethz.ch/plus/research/closed_lep/espon_231/index, last accessed: 24.04.2013
- European Commission, Eurostat: Statistics database, http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database, last accessed: 17.04.2013
- European Union Commission, from: <http://ec.europa.eu/>, last accessed: 17.04.2013
- Gov., UK. .Royal Town Planning Institute, from: <http://www.rtpi.org.uk/>, last accessed: 17.04.2013
- Gov., UK., Planning Portal, from <http://www.planningportal.gov.uk/>, last accessed: 17.04.2013
- Government of Malta, <https://gov.mt/en/Government>, last accessed: 18.04.2013
- Government of the United Kingdom, from: www.gov.uk, last accessed: 17.04.2013
- <http://www.alternattiva.org/first-the-land-now-the-sea-ralph-cassar/>, last accessed: 19.04.2013
- Kamra tal-Periti, from: <http://www.ktpmalta.com/>, last accessed: 10.04.2013
- Malta Environment and Planning Authority (MEPA), from: <http://www.mepa.org.mt/>, last accessed: 18.04.2013
- Malta Independent, "Labour will separate planning from environment.", January 30, from: <http://www.independent.com.mt/articles/2013-01-30/news/labour-will-divide-planning-from-environment-774504454/>, last accessed: 14.04.2013
- Malta Independent, "Interference at MEPA", March 2011, from: <http://www.independent.com.mt/articles/2011-03-23/news/interference-at-mepa-289609/>, last accessed: 20.04.2013
- Malta Resources Authority, from: <http://mra.org.mt/>, last accessed: 17.04.2013
- Maltese History, H. Political and Constitutional Developments (1800 to 1903), from: http://www.stbenedictcollege.org/stlucija/files/Sandro%20Sciberras/Form%204%20Option%20Maltese%20History/H_1-H_4%20Political%20Developments%20to%201800-1903_11p.pdf, last accessed: 12.03.2013
- Micallef, M. (2006). "Move may breach directive - EU." Times of Malta, July 26. From: <http://www.timesofmalta.com/articles/view/20060726/local/move-may-breach-directive-eu.46551>, last accessed: 20.03.2013
- Muscat, J., "A new government will implement a real MEPA reform.", from: <http://election.josephmuscat.com/a-new-government-will-implement-a-real-mepa-reform/>, last accessed: 20.04.2013
- Platform of Experts in Planning Law, from <http://internationalplanninglaw.com/>, last accessed: 25.03.2013

- The Commonwealth, (2013). from <http://www.thecommonwealth.org/>, last accessed: 17.04.2013
- Times of Malta, (2013), "Environment is being used as 'political bait' by parties," February 24, from: <http://www.timesofmalta.com/articles/view/20130224/local/Environment-is-being-used-as-political-bait-by-parties.458987>, last accessed: 19.04.2013
- Xuereb, M. (2013). "Local plans to be revised by end 2014." Times of Malta, April 2. From: <http://www.timesofmalta.com/articles/view/20130402/local/Local-plans-to-be-revised-by-end-2014.463828>, last accessed: 15.04.2013

Scientific literature, reports and journals:

- Aquilina, K. (1999). Development Planning Legislation: The Maltese Experience, Mireva Publications.
- Aquilina, K. (2011). "Rethinking Maltese Legal Hybridity: A Chimeric Illusion or a Healthy Grafted European Law Mixture." Journal of Civil Law Studies Volume 4(No. 2).
- Barley, S. R. and P. S. Tolbert (1997). "Institutionalization and structuration: Studying the links between action and institution." Articles & Chapters: 130.
- Bezzina, J. (2005). Gozo's Government: The Autonomy of an Island Through History, Gaultitana.
- Blouet, B. (1993). The story of Malta, Progress Press Malta.
- Boissevain, J. (2001). Changing Maltese Landscape: From Utilitarian Space to Heritage?, Journal of Mediterranean Studies, Vol11, No, 2; 277-296, ISSN: 1016-3476, Universities of Amsterdam and Malta
- Boxtel, M. v. (2010). The Road to Planning, Setting a Course: an institutional analysis of spatial planning in Suriname. Landscape Architecture and Planning. Wageningen, Wageningen University. Msc.
- Cassar, G. (2009). A collection of essays & other writings 1985-2008.
- Castillo, D. A. (2006). The Maltese cross: a strategic history of Malta, Greenwood Publishing Group.
- Chapman, D. (2011). Inside outside: spatial planning and small islands. Working Paper series no. 7, Birmingham City University, Centre for Environment and Society Research, Faculty of Technology, Engineering and the Environment.
- Charmaz, K. (2006). Constructing grounded theory: A practical guide through qualitative analysis, Sage Publications Limited.
- Commons, H. o. and L. G. Committee (2011). Abolition of Regional Spatial Strategies: A Planning Vacuum, Second Report of Session 2010–11, London: HMSO.
- Cremona, J.J., (1997). The Maltese Constitution and Constitutional History Since 1813, Publishers Enterprises Group.
- Creswell, J.W., (2006). Qualitative Inquiry And Research Design: Choosing Among Five Approaches Author: John W. Creswell, Publisher: Sage Publica. Cullingworth, J. B. and V.
- Curmi, L. (2009). "Governance and Small States." Bank of Valletta Review 40.
- de Jong, M., K. Lalenis, et al, (2002). The theory and practice of institutional transplantation: experiences with the transfer of policy institutions, Springer.
- Drever, E., (1997). Using Semi-Structured Interviews in Small-Scale Research. A Teacher's Guide1995: ERIC.European Commission, The EU Compendium of Spatial Planning Systems and Policies, regional development studies.
- Eurobarometer 71, (2009). Public opinion in the European Union, European Commission, September 2009

- Farrugia, L. and Borg, S. (2011). *Environmental Law in Malta*, Kluwer Law International
- Flyvbjerg, B. (2004). "Phronetic planning research: theoretical and methodological reflections." *Planning Theory & Practice* 5(3): 283-306.
- Gauci, P. (2002). *Structure Planning in the Maltese Islands: An Assessment of Contemporary Endeavours in the Establishment of a Policy-led Planning System in Malta, Volume I & II*. *School of Architecture, Planning and Landscape*. England, University of Newcastle upon Tyne.
- Government of Malta, (2002). *Malta National Report. Submitted by the Government of Malta to the World Summit on Sustainable Development*.
- Hantrais, L. and M. Steen (1996). *Cross National Research Methods*, Continuum.
- Heap, D. (1978). *An Outline of Planning Law* London: Sweet and Maxwell Limited (first edition: 1948).
- Kothari, C., (2006). *Research methodology: methods and techniques* 2009: New Age International.
- Larsson, G. *Spatial planning systems in western europe: an overview*, Delft University Press.
- Lockhart, D. G. (1987). "Public housing initiatives in Malta since 1955." *The Scottish Geographical Magazine* 103(1): 33-43.
- Malta, (1966). *Fact sheets on the commonwealth*, London
- Mercer, J., D. Dominey-Howes, et al, (2007). "The potential for combining indigenous and western knowledge in reducing vulnerability to environmental hazards in small island developing states." *Environmental Hazards* 7(4): 245-256.
- Ministry of Defence, (2010). *Strategic trends programme, Global Strategic Trends – Out to 2040, Fourth Edition*.
- Moreno, A.-M. (2012). *Local Government in the Member States of the European Union: A Comparative Legal Perspective* Spain, National Institute of Public Administration.
- Nadin (2002). *Town and Country Planning in the UK*, Psychology Press.
- Nadin, V. and D. Stead (2008). "European spatial planning systems, social models and learning." *disP-The Planning Review* 44(172): 35-47.
- National Statistic Office Malta, (2012), *Malta in Figures 2012*, Valletta, Malta.
- Newman, P. and A. Thornley (1996). *Urban planning in Europe: international competition, national systems and planning projects*, Routledge.
- Nurse, L., G. Sem, et al, (2001). "Small island states." *Climate change*: 843-875.
- Pirotta, G. A. (1997). "Politics and public service reform in small states: Malta." *Public Administration and Development* 17(1): 197-207.
- Ruben, P. B. and Gauci, P., (2012). *Improving the Quality of Suburban Building Stock, Volume 2*. Malta.
- Sage, H. (1914). *The Oxford Survey of the British Empire, British Isles*. Cornell University Library.
- Sansone, K. (2013). "Labour to separate Mepa planning and environment functions, Local councils to get planning vote." *The Times of Malta*.
- Strauss, A. and J. M. Corbin (1997). *Grounded theory in practice*, SAGE Publications, Incorporated.
- Streeten, P. (1993). "The special problems of small countries." *World Development* 21(2): 197-202.
- Sutton, P. (1987). "Political aspects." *Politics, security and development in small states*: 3-25.
- Tosics, I., H. Szemző, et al. (2010). "National spatial planning policies and governance typology." *PLUREL deliverable report* 2(1).
- Yin, R. K. (2008). *Case study research: Design and methods*, SAGE Publications, Incorporated.

Legal documents:

- Council of Europe , (1985). European Charter of Local Self-Government:
And Explanatory Report.
- ESDP, (1999). European Spatial Development Perspective, Towards Balanced and Sustainable Development of the Territory of the European Union, Agreed at the Informal Council of Ministers responsible for Spatial Planning in Potsdam, May 1999, Published by the European Commission, Prepared by the Committee on Spatial Development
- Gov., UK, (1990). Town and Country Planning Act 1990, Chapter 8.
- Gov., UK., (1968). Town and Country Planning Act 1968, Chapter 72.
- Gov., UK., (2004). Planning and Compulsory Purchase Act 2004, Chapter 5.
- Gov., UK., (2012). National Planning Policy Framework 2012,
Communities and Local Government
- Government of Malta, (1935), Land Acquisition (Public Purposes) Ordinance 1935,
Chapter 88 of the Laws of Malta.
- Government of Malta, (1988). Structure Plan Brief, Ministry for
Development of Infrastructure Malta, Town Planning Division, Beltissebh.
- Government of Malta, (1990). Structure Plan for the Maltese Islands, draft
final written statement and key diagram, Ministry for Development and
Infrastructure, Planning Services Division.
- Government of Malta, (1992)., Development Planning Act 1992.
Chapter 356 of the Laws of Malta.
- Government of Malta, (2001). The Environment Protection Act 2001,
Chapter 435 of the Laws of Malta.
- Government of Malta, (2009). A Bill, Environment and Development Planning Act
- Government of Malta, (2002). Cultural Heritage Act 2002. Chapter 445 of the Laws of Malta.
- Government of Malta, (2010). Environment and Development Planning Act 2010,
Chapter 504 of the Laws of Malta.
- The Republic of Malta, (1964). The Constitution of Malta

Annexes

Annex 1. List of Interviewees

| Date of interview | Profession (present) | Institution (based on present position) | | |
|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------|----------|--------------------------------------|
| 14.01.2013 | The present director of development planning and his assistant | MEPA | M | MEPA/ Public sector |
| 11.01.2013 | Senior environment officer | MEPA | | |
| 17.01.2013 | Student of planning who oversaw the reforms of the Planning System in 2001 | Ministry for Resources and Rural affairs/ Government | G | Government/ Public sector |
| 24.01.2013 | Member of the Malta Chamber of Architects | Ministry for Infrastructure, Transport and Communications | | |
| 21.01.2013 | Former MEPA Assistant Auditor and harsh critic of MEPA/ Green politician | member of the Green Party | | |
| 21.01.2013 | A former member of the Board of Directors of the MEPA/ currently professor at the university of Malta - Division of Environmental Management and Planning | University of Malta | A | Academics/ Public sector |
| 16.01.2013 | Currently the Chair of the committee responsible for SEA in Malta. Member of the Faculty of the Built Environment responsible for water and waste. | University of Malta | | |
| 09.01.2013 | The Dean of the Faculty of Law in Malta who was the first president of the <u>Planning Appeals Board</u> | University of Malta | | |
| 10.01.2013 | A lecturer in the University of Malta on public policy | University of Malta | | |
| | Was a lecturer tutor in planning at the University of Malta. <u>Former member of the Planning Authority.</u> | University of Malta | | |
| 30.11.2012 | Freshly graduated PhD student on the Maltese Planning System and aesthetics, member of the Kamra tal-Periti | University of Malta | | |
| 19.01.2013 | Former director of planning at MEPA/ Currently private architect | Private sector | P | Private sector |
| 09.01.2013 | Urban designers | Architecture project Ltd. | | |
| 05.01.2013 | The first, but former Director General of the <u>MEPA</u> (now retired) | Private individual | | |

Annex 2. Operational functions of MEPA

The following table is a conclusion made out of Environment and Development Planning Act 2010:

| | |
|----------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The Chairman's office | This office provides the framework, leadership and direction within which the organisation together with the MEPA Board, the Environment and Planning Commissions and Advisory Committees, operate. It is also responsible for the communication, promotion and the image of the Authority in general. It consists of Development Control Commission Secretariat, Communication Office, Complaints Office, Legal Office |
| The Chief Executive Officer | This office is responsible for the implementation of the objectives of the Authority and for the overall supervision and control of the Directorates. |
| The Planning Directorate | The planning directorate is responsible for the development applications, enforcement, policy development and plan making, transport planning and research. This consists of two divisions – Forward Planning Division and Development Services Division. In the Forward Planning Division there are four different units – Plan Making and Policy Development, Heritage Planning, Transport Planning and the Minerals Unit. The Development Services Division in turn consists of the Development Control Unit and the Enforcement Unit. |
| The Enforcement Directorate | This Directorate is responsible for Development Control and Environmental Protection and has the task to support the Authority in ensuring sustainable environmental improvement. |
| The Environment Protection Directorate | The main task of this Directorate is to advise the Government on environmental standards and policies, to draw up plans and provide a licensing regime to safeguard and monitor the environment, and to control activities that have environmental impact. Furthermore, it consists of the following units: the Industrial Permitting and Industry Unit, the Environmental Assessment Unit, the Ecosystems Management Unit, the Waste, Air, Radiation and Noise Unit |
| The Directorate for Corporate Services | This directorate is responsible for Human Resources, Information Technology, Mapping and Land-surveying, Support Services and Finance. It consists of the following units: the Information and Communication Technology Unit, the Information Resources Unit, the Financial Control Unit, Mapping and Land Surveying Unit. |

Annex 3. Boards and Committees of MEPA

The following table is a conclusion made based on the Environment and Development Planning Act of 2010:

| | |
|------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Standing Committee | This is the Standing Committee of Environment and Development Planning which consists of five members appointed by the House of Representatives, one appointed as chairman and three representing the Government. In general, its task is to review any plan referred to the House of Representatives in terms of the Environment and Development Planning Act (2010), or discuss any plan or policy referred to it by the Minister and report thereon to Parliament. |
| The Environment and Planning Commission | Responsible for environment and development planning control, including enforcement. |
| Heritage Advisory Committee | Providing advice to the Authority on matters related to the conservation of natural and cultural heritage, including advice on the development application processes related to it. |
| The Biosafety Co-ordinating Committee | Gives advice about environmental implications of Genetically Modified Organisms (GMOs) to the Authority and Minister responsible for Rural Affairs. (MEPA) |
| Users' Committee | This is another autonomous Committee of the Authority, composed of representatives from each of the interested national constituted bodies recognised by the minister. Its main task is to ensure the transparency and uniformity of the Authority's decisions and act in respect of the interest of the general public, and, if necessary, proposes appropriate changes to administrative processes and practices. |
| The Environment Fund | In general, the Environmental Fund is administered and used by the Authority to finance no other costs than different from the stated purposes in EDPA (2010). The fund may be collected through any sums appropriated by Parliament for the purpose, any donation made by individuals, or other sums which are received by the Authority for the purpose of being placed in the Environment Fund. |
| IPPI Committee | This Committee operates within the frame of the Integrated Pollution Preservation and Control Directive (IPPI Directive). (EU Commission) Its task is to oversee the definitive establishment of relevant control installations and ensure that the necessary guidance in laws and regulations is carried out. |
| Environment and Planning Review Tribunal | The Environment and Planning Review Tribunal is responsible for the appeals procedures. The tribunal consists of three members, one being a person versed in development planning or environment, and the other a lawyer and architect, each of whom is appointed by the President, acting on the advice of the Minister. |
| The Registration Board | The board's function is to evaluate applications for registration in the Register of Consultants eligible to carry out environmental and other assessments. |

Annex 4. Interview Questions

1814–2002

I Planning before the establishment of Malta Environment and Planning Authority:

The early development planning institutions before MEPA was established (policies/legislations) and the British roots in the early Maltese land use planning.

1. As known, the first real moves towards Maltese development planning started during the times when Malta was under British rule. Also, there have been many British consultants throughout the development to help Malta establish its planning system. Can it be said that development planning in Malta started thanks to the British?
2. Regarding the first question, to what extent were the British in general interested in Malta having the same land use planning system?
3. Which were the development planning acts and policies that were adopted from the British?
4. Which role did the differences in the Maltese governmental systems (socialist and nationalist) play in the development of its land use planning system throughout the different periods?
5. Would you say that the Social Housing Strategy and Home Ownership Schemes lead to overdevelopment?
6. How politically, socio-economically and culturally similar were Malta and the UK at the time of the adoption and were the differences taken into account?
7. Did similar policies produce the same results in practice in Malta and in England?
8. As known, there were signs of corruption. Can you explain what was going on?
9. What were the challenges that were faced? Why was there a need to establish a new planning system (Planning Authority)?

2002 – Today

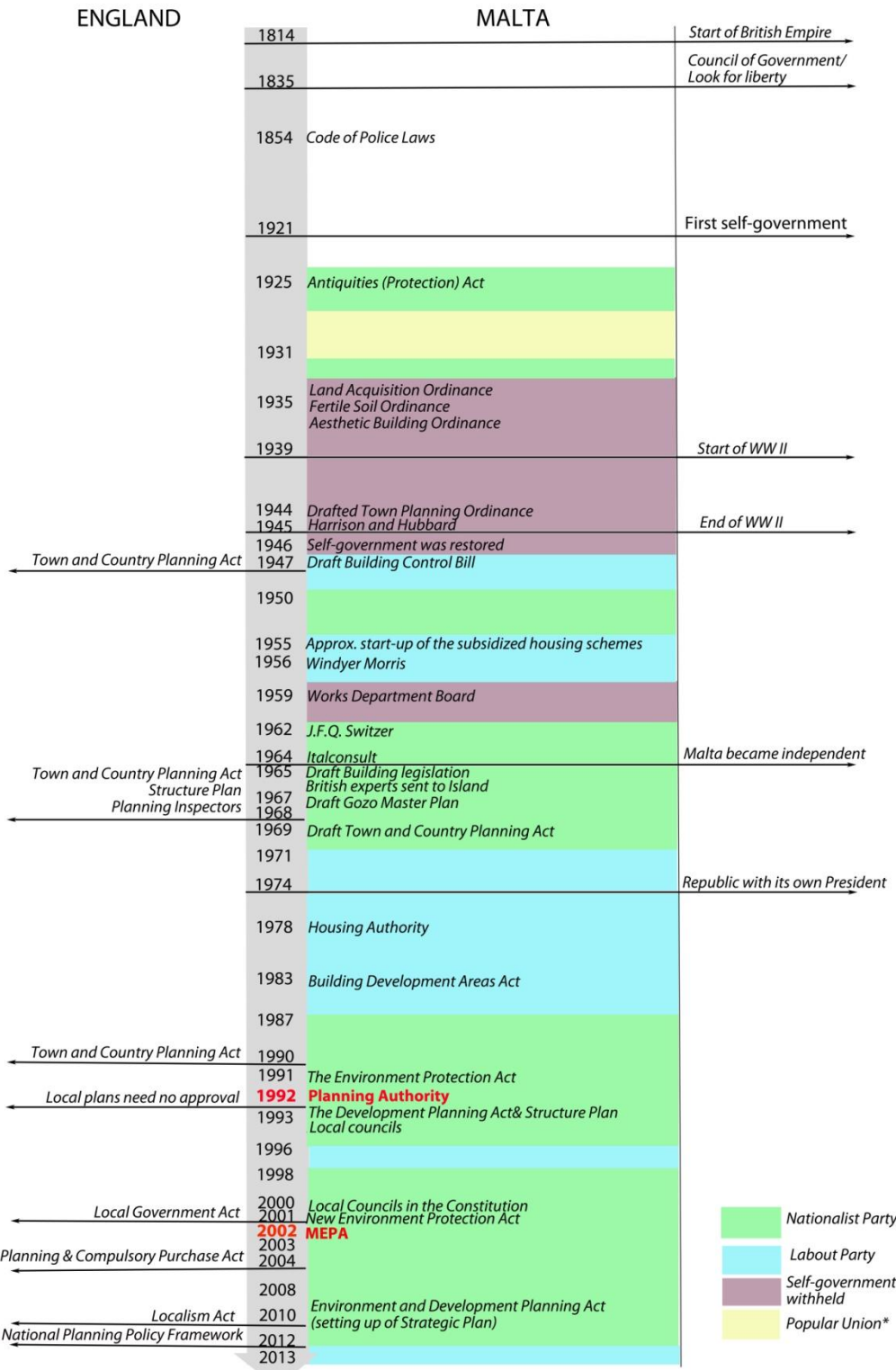
II Planning since and after the establishment of Malta Environment and Planning Authority:

To what extent is MEPA based on the British planning system and what are its consequences?

1. What is the organisational and institutional context of the current Maltese planning system and to what extent has it (MEPA) changed compared to the previous system/acts/policies?
2. What is still left from the British?
3. Compared to England, what are the similarities and differences regarding the development plans in both countries (areas of competence, establishment procedure)?
4. In England development plans are not legally binding. Are they in Malta?
5. In England there is Common Law, in Malta there is a mixture of Civil and Common Law. To what extent has MEPA been based on Civil and to what extent on Common Law? In other words, how are those differences in the legal system reflected in the Maltese planning system? What is different from England?
6. What are the tasks and competencies of the central and the local governments? What is different or similar compared to England?

7. Regarding the role of the British institutions in the current Maltese planning system, what are its opportunities and challenges?
8. Are the Maltese authorities still following the British land use planning system, for example, trying to take into consideration the changes which take place in England now? Or is their direction more their own?
9. What is the role of elected officials and politicians in the decision-making processes?
10. How the control over development is organised (planning permissions, appeals procedures, calling in of planning applications and appeals)? What is different compared to England?
11. What are the problems that MEPA faces today? What about corruption now, are there any signs of it?
12. Please conclude, what have been the opportunities to the Maltese that they have got by adopting the British system and what have been its challenges in general?

Annex 5. Maltese and English land use planning systems on timeline



The following timeline is the author’s interpretation based on the description provided in Chapters IV and V and a book by Malta’s Parliament: Official history by Godfrey A. Pirota in 2006

*Popular Union – The Maltese political union which formed the Maltese Government between 1921 and 1923 (not discussed in this paper)

