ANDREW JAMESON AND THE ORIGINS OF THE CRIMINAL CODE OF MALTA

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The small island of Malta and its dependencies were ruled by a succession of Mediterranean powers until 1530 when they were ceded by the Emperor Charles V to the Order of Knights of St John of Jerusalem. They controlled the island from that date until 1798 when Napoleon Bonaparte captured it *en route* for his military expedition to Egypt. The French established an administration that was an improvement on that of the Order but, when their new rulers began to seize church property and close convents, the Maltese rose against them and, with help from a British force, expelled the French. Since the people were prepared to acknowledge the British monarch as their sovereign, they accepted the decision of the Congress of Vienna (1815) that their island should become a British Crown Colony.

As early as 1812, a Royal Commission had been sent out to look at the existing administrative arrangements and to advise the British government what form of constitution might be appropriate for the island. This was just the first of many such attempts and the Royal Commissioners of 1931 wrote:

"It would be almost possible to plot a graph of the constitutional history of Malta during the last hundred years showing the rise and fall of constitutions modelled alternately on the principle of benevolent autocracy and that of representative government."

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Author's Note: Sources used in this paper that are quoted without attribution are all from documentation held in the Jameson Archives currently in the care of Mr J.N. St. C. Jameson, W.S., the great-grandson of Andrew Jameson.

During the quarter century from 1815, there was ceaseless argument over the form of administration appropriate for the island. Whereas the British saw the concentration of power in the hands of the Governor as necessary for stability, the Maltese argued that for centuries they had enjoyed certain rights and privileges under the consiglio popolare, a form of Parliament whose influence the Order had vainly sought to nullify. Moreover, it was they who had risen against the French occupation and they asserted that their invitation to the British to assist them was a compact between two nations. Indeed, as early as 1802, their leaders had drawn up the Declaration of Rights of the Inhabitants of the Islands of Malta and Gozo to which the British occupying force had entered no objection.

The demand for participation by the Maltese in the government of their island came to a head during the years 1832-1836. Their principal leaders had formed the Comitato Generale Maltese, which argued that the absence of any popular assembly was an injustice and they found a champion in William Ewart, MP (1798-1869). An active social reformer, he wrote to Lord Glenelg, Secretary of State for the Colonies, asking him to enquire into the affairs of Malta. By a royal decree of April 1835 instructions were issued for the constitution in Malta of a Council ‘to advise and assist in the administration of the government thereof’ but the membership and powers of this Council, established in 1836, came very far short of what the Maltese leaders had sought. Some slight acknowledgment of this dissatisfaction came when the Council was reconstituted in November 1838 but it still failed to satisfy the aspirations of the Maltese. It consisted of six members, only two of whom were Maltese and these were to be selected by the Governor.

The constitution having been settled to the satisfaction of the British if not to the Maltese, the Council now turned its attention to the question of the island’s administration of justice, a matter that had been of concern to Maltese lawyers from the mid-1820s. There were codes for both criminal and civil law but they were an amalgam of conventions and procedures that had been introduced by successive rulers of the island and this was further complicated by the power of the Roman Catholic clergy and their private ecclesiastical courts. There was, therefore, a great need to reform the legal system.

2. He was a friend of the Gladstones of Liverpool and the future British prime minister, W. E. Gladstone, was named after him.
3. The other four were the Commander in Chief, the Chief Secretary, the Auditor General and a British merchant appointed by the Governor.
Some attempts had been made to convert these laws into more systematic and coherent codes that reflected the theory and practice of law as practised in Britain and her other colonies together with respect for the traditions of the Maltese people. The report of the Royal Commission of 1812 had never been published and Sir Thomas Maitland, Governor from 1815 to 1824, ruled Malta as a satrapy of the British crown and saw no reason to concern himself with the operation of the indigenous legal system despite its obvious imperfections. However, when an English High Court judge, Sir John Richardson, came to Malta in 1823 for health reasons, Ignazio Bonavita, a prominent Maltese lawyer, seized the opportunity to send him a memorandum pointing out the urgent need for a reform of the criminal law. In 1824, Richardson wrote privately to the Colonial Secretary who commissioned him to investigate the administration of justice on the island and to suggest remedies where he found serious defects. Richardson made a start at redrafting the criminal code but his health gave up the following year and his part-report, although sent to the Colonial Office in 1826, was never published.

From 1826 to 1841 discussions concerning the provision of a criminal code relevant to the culture of the island were conducted in an atmosphere of misunderstanding and hostility. The person principally responsible for this was Sir John Stoddart who, in 1826, had been appointed Chief Justice of the Maltese Courts. Over the next thirteen years, his views on the reform of Malta's legal system brought him into conflict at various times with the Governor, the Maltese judges and the Colonial Office. One example was when he persuaded the Colonial Secretary to appoint a Commission to revise the code consisting of himself, a judge from Gibraltar and John Kirkpatrick, Chief Judge of the Ionian Islands. The Governor, Sir Frederick Ponsonby, had reservations about the exclusion of any Maltese judges and Kirkpatrick refused to serve unless there was Maltese representation. The Commission was formally set up in November 1831 with the addition of two Maltese judges, Claudio Bonnici and Ignazio Bonavita. Within a few months Kirkpatrick had to return to the Ionian Islands and his successor on the Commission was Robert Langslow, Attorney-General of Malta, who spoke no Italian, the language in which the discussions were taking place. The Commission continued to meet but,

"from the very beginning Stoddart was bent on sabotaging the Commission's work."

Ponsonby, with the agreement of the Colonial Secretary, dissolved the Commission in 1834 and replaced it with a new one consisting of five Maltese judges. They worked with commendable diligence and submitted their first draft in 1835. Stoddard, however, continued to use his position – at times in a constitutionally illegal manner – to oppose the implementation of the proposals. Eventually, the British government recalled him when a Parliamentary Commission, sent out in 1836 to report on the affairs of Malta, recommended the abolition of his office. However,

"The disappearance of Stoddard brought no immediate enactment of the revised codes. They were referred backwards and forwards from the Colonial Office to three successive governors, to the Parliamentary Commissioners, to an eminent Scottish jurist, again to Bonavita, to Micallef, the Crown Advocate of Malta and eventually to the Legislative Council."

Nineteen years were to pass from the first submission of the draft code in 1835 before the proposals contained therein were accepted as a replacement for the antiquated and, in some instances unnecessarily harsh, system that had existed for so long. That this goal was eventually reached was due primarily to Sir Henry Bouverie, Governor from 1836 to 1843 and to Andrew Jameson, the "eminent Scottish jurist" referred to immediately above. Bouverie had been informed in 1841 that the government (which was becoming weary of the whole matter) was proposing to introduce, as a temporary measure, a legal system based on that prevailing in the Kingdom of the Two Sicilies. Considering it totally inappropriate for Malta, Bouverie strongly advised that the solution was to be found in the draft code originally submitted in 1835 but only once it had been examined and revised by Andrew Jameson.

While Andrew Jameson certainly became "an eminent jurist", in 1841 he was not known outside a small coterie of legal friends and acquaintances in Edinburgh. How he came to be involved at so young an age with the responsibility of advising the government on the introduction of a new penal code to one of its colonies is a remarkable story. The reasons behind his

6. The two members of this Parliamentary Commission were George Comwell-Lewis and John Austin.
8. This had been the suggestion of the two members of the Parliamentary Commission of 1836 in their report of 1838.

4. Later knighted as Sir Ignazio Gavino Bonavita.
appointment and the manner in which he exercised his duties in that respect have never been known until the present author was permitted access to the Jameson Archives. These contain all the papers of a Scottish family, every generation of which, since the early eighteenth century, has been in the legal profession.

In December 1840, Andrew Jameson arrived at Malta. Although only 28 years of age, he had already established a flourishing practice as an advocate in Edinburgh but a serious throat complaint
dentment to any such application, it will afford me the greatest pleasure to avail myself of your invitation & come to Malta in the course of six weeks or two months at the farthest.'

After thanking Sir Henry for the confidence that he had shown in his abilities to help with the revision of the draft criminal code, he concluded his letter with this paragraph:

'Your Supreme Court meets on the first of November. Before that time it is likely that I will be able to see more clearly what is likely to occur in any of the Judicial vacancies I have referred to. If agreeable to you I will write to you as soon as I am in possession of any definite information. In the meantime I do not apprehend that there will be anything to prevent me being in Malta before the end of November and in good time for the object you propose.'

Wisely, Andrew Jameson had not committed himself irrevocably to revisiting Malta because, on 24 November, he had to write to Sir Henry telling him that a return was now out of the question:

'I would have made every exertion to have come to Malta this month, in order to have assisted you in the object proposed, but having made serious applications for permanent appointments here in which vacancies are likely to occur my absence would incur great risk of disappointment as I experienced last session. My circumstances unfortunately do not allow me to run any risk of this kind, and I have not been so fortunate as to secure any employment prospectively in such a way as would permit me to absent myself during the winter. It is therefore with great regret that I must give up all hope of visiting your Command at present and using my humble endeavours to be of service in the preparation of the New Code.'
Nevertheless, as shown by the conclusion of this letter, he did not withdraw himself completely from the possibility of having some involvement with the project:

'I fear it is unnecessary for me to offer my services at such a distance but could I be of any use in considering any part of the projected Code or in facilitating its preparation, I would gladly exert myself in that way, under your written direction.'

With this in mind, Sir Hector Greig wrote to Andrew Jameson on 25 May 1842 from Gibraltar, when he was on his way to London with a manuscript copy of the proposed new Criminal Code for consideration by the Colonial Office:

'It will give me very great pleasure to hear that you are perfectly restored to health and which pleasing event both Sir Henry Bouverie and myself trust has taken place, as we did not hear of you having been abroad this last winter, and indeed, if you had done so, Sir Henry expected that you would have paid him a visit at Malta.

I do not know what your occupations are at this moment, but I am ordered to ask if you would have leisure to look over our new Criminal Code with the view of pointing out what you may consider defects, and chiefly in those parts wherein from its Neapolitan origin, there may be too great a departure from the liberal spirit of English law.

I am now taking the Code home with me in manuscript, and in the event of the Crown lawyers not having time to revise it, or indeed to look narrowly at it, I should like to have your assistance in drawing up a report upon the general features of the Code, so as to bring the subject, in a tangible state, under Lord Stanley’s consideration.

I am quite certain that from your knowledge of Roman Law, that you could easily accomplish what I have in view — and both Sir Henry Bouverie and myself would have great satisfaction if this business is put into your hands. However, our wishes may not be attainable either by your having other more important occupations, or, by the Colonial Office having assistance of their own for the revision that may be required.

I need not say that this communication must be considered strictly confidential, as I have no right to move in the matter without Lord Stanley’s express sanction and it may be that His Lordship has now assistance in London to answer all the purposes of a general revision.'

His inquiry fell on deaf ears. Despite strenuous efforts, Andrew Jameson’s career was now faltering. He certainly did not have ‘other more important occupations’ and consequently he grasped eagerly at the possibility of a second chance of becoming involved with the revision of the Criminal Code of Malta. As he said in his reply to Sir Hector on 9 June 1842:

'I will regret this (the absence of full-time work) the less if it will be able to make me devote more of my time to the object you propose. I will be very happy to give my best attention to the task of revising your New Criminal Code to the best of my ability and drawing up a report upon its general features & provisions, in the manner which you describe if you should obtain the requisite authority to entrust me with that duty.'

He went on to say that, had he decided to return to Malta the previous winter, the Lord Justice Clerk (Lord Hope) would have recommended him to a relation, Henry Hope, an Under-Secretary at the Colonial Office, as someone whom Lord Stanley, the Colonial Secretary, might find useful. If necessary, he could send certificates from him — and the Crown Counsel — upon a day’s notice. This was something neither Sir Henry Bouverie nor Sir Hector Greig could have known, when they decided to suggest to Lord Stanley that the revision of Malta’s criminal code could be entrusted to a young, and, as far as the Colonial Office was aware, almost unknown young Edinburgh lawyer.

The letter continued:

‘Our Courts sit till the 20th of July next. After that time I might come to London, if it was thought necessary to have any personal communication on the subject of the Code — and indeed I would do so even during the Session, if deemed advisable or convenient.’

10. Lord Stanley was Secretary of State for the Colonies.
He ended with the hope that Sir Hector would pay a visit to Edinburgh, adding the interesting information that Alexander Wood, Dean of the Faculty of Advocates, was a friend of Sir Hector.

Sir Henry’s letter from Gibraltar had been incorrectly addressed and, believing it to have been lost, he sent on 10 June a further communication couched in similar terms. Replying on 11 June, Andrew Jameson informed Sir Hector that he had received the original letter and felt that all that needed to be said had been covered in his reply of 9 June. Nevertheless, he felt it necessary to strengthen his suitability for the task by adding the following paragraph:

‘Although the proposed duty should be confided to some better qualified Jurist, I will not take the less interest in the subject. Our studies and pursuits here, being necessarily more connected with the Roman Law and the foreign codes, which are founded upon that great monument of ancient wisdom as well with general Jurisprudence, dispose us to take a greater interest in such improvements as which you are now engaged in, so that I will be glad to learn what is finally determined in the matter, if you have leisure to write me as well as obtain a copy of the code and relevant documents when printed.

Should you be authorised by Lord Stanley to entrust me with so important a duty, I will gladly devote myself to the work in conformity with the views, which you suggest on the subject.’

On 13 June, Sir Hector acknowledged receipt of Andrew Jameson’s letters of 9 and 11 June and told him that he was now in communication with the Colonial Office. Four days later he was able to write:

‘It is more than probable that Lord Stanley will confide to you the making of a report on the code. In that case I shall come down to Edinburgh with the Code and to communicate the views of the Local Govt of Malta on the subject.’

As Sir Hector had surmised in his letter of 25 May, the Colonial Office did not have ‘assistance of their own for the revision that may be required’

and the tone of this last letter must have encouraged Andrew Jameson to believe that very soon Lord Stanley would approve his appointment. Sir Hector, however, had been somewhat hasty in this assumption because a fortnight later the matter was still under consideration at the Colonial Office. Sir Hector wrote on 25 June that he had received no answer from Henry Hope, the Assistant Under-Secretary:

‘I do not know what course they intend to take but in the mean time weeks are passing away, and my stay in England is so very limited, that in the midst of this uncertainty, I am induced to ask if, in the event of Lord Stanley deciding that the task of making this report for the Malta Govt is to be confided to you – what is the earliest day, that it would be possible for you to be in London to receive the Code & papers & explanations connected with it?

I put this hypothetical query so as to save time for my own account when I do receive an answer from Mr Hope.’

There follows a postscript which was surprisingly not included in the main body of the letter:

‘P. S. I shall call at the Col: Office today, & being very anxious to be able to set off for Germany very early in July, I shall press for an answer one way or the other, so that I may be liberated but if they decide that an English Lawyer is to make the report I am certain that the result will not be satisfactory for want of acquaintance with the Roman Law.’

Sir Hector was as good as his word and called at the Colonial Office that day. While there is no record of what passed between Sir Hector and those whom he met there, being able to claim that the appointment of Andrew Jameson would be supported by the Lord Justice Clerk, the most senior legal officer in Scotland after the Lord Justice General, must have been of the greatest assistance to Sir Hector, who was able on 28 June to write to Andrew Jameson:

‘I am now authorised to say that Lord Stanley has sanctioned your being employed on account of the Govt. of Malta to make a report on the proposed Criminal Code, with the understanding, as we are a poor Govt., that you will come to London, and
having seen the nature of the work to be done, that you will arrange with me, as to the remuneration to be paid to you.

As I mentioned in my previous letters, you are aware that the job will be more honourable than lucrative, but it cannot fail to be ultimately of use to you, by bringing you in contact with the Colonial Office.

I expect an answer from you tomorrow saying when you can come up, but write this today, to let me know how matters stand.'

Within a few days Andrew Jameson was in London and, on 4 July, he and Sir Hector met James Stephen, a the Under-Secretary of State, who asked him to consider the Code generally and report back to him within two days stating the time that he would need for the work and the remuneration he would expect.

Two manuscript documents are the source of information on what Andrew Jameson did over the next two days. The first can best be described as an outline in general terms of the background to the task that he had agreed to carry out, the principal areas upon which the report would concentrate, and a calculation of both the time that he would need and the associated remuneration.

This first document begins with a statement of his remit from Lord Stanley:

'To receive & examine the new Criminal Code for Malta with the view of pointing out what you may consider defects, and chiefly in those parts, wherever from its Neapolitan origin there may be too great a departure from the liberal spirit of English Law.

To assist in drawing up a report upon the general features of the Code, so as to bring the subject in a tangible shape, under Lord Stanley's consideration.'

It then continues with his understanding of what the Colonial Office requires of him and his suggested fee. This is divided into two sections:

'I After having done this to the best of his ability it appears to Mr Jameson that it would be necessary in discharging this duty

1. To examine and consider the Code both in its parts and special provisions, and as a whole in reference to the general principles of Penal Law and Procedure.

2. To look on the one hand to the Roman Law & other foreign systems & codes, from which the proposed Code is chiefly derived - and on the other to the principles of English Law & the spirit of the British Constitution in order to see that the provisions and spirit of the Code should be in unison with constitutional principle - or, at least not in collision with their spirit & also that when there was no such collision the regulations of experienced utility, though of foreign origin should be prescribed.

3. To consider at the same time the local ordinances & other laws and the constitution of local government as bearing upon the whole of the proposed Code.

In accomplishing the proposed task of revision and drawing up a report upon the Code and the work of reading and consideration, as sketched above, it seems to Mr Jameson that a period of not less than three months would be necessary.

II It has appeared however to Sir Hector Greig & Mr Jameson that it will be convenient & perhaps indispensable to communicate with the authorities at Malta upon several points, as to which local information is or may be required, especially with regard to the second part of the Code - being the law of Criminal Procedure - and for that purpose that a period of six months might be allowed for the business but upon the understanding that this prolongation is not to be taken into consideration in fixing the remuneration but is only suggested for convenience.

With regard to the remuneration Mr Jameson felt the greatest difficulty and reluctance in making any estimate. But on giving certain data to Sir Hector Greig it was suggested by him, that it should be £200.'

12. James Stephen (1789-1859) was an outstanding Under-Secretary of State at the Colonial Office. A colleague, Sir Henry Taylor, wrote that he 'literally ruled the colonial empire' and, for this reason, was often referred to as "King Stephen".

13. That is, considered the Code generally as Mr Stephen had requested on 4 July.
This was presented as a memorandum to Mr Stephen on 6 June and, in the absence of any documentation to the contrary, Andrew Jameson’s interpretation of Lord Stanley’s remit must have been accepted by the Colonial Office.

The second document, headed ‘Memo Sir H. Greig’, is undated and was obviously composed in great haste. It seems probable that, before leaving London, possibly on the very afternoon of the day when the Colonial Office had appointed him to carry out the remit of Lord Stanley, Andrew Jameson had a discussion with Sir Hector on those points of the Criminal Code of Malta to which he would be required to pay particular attention. The lack of any structure to the document gives the impression that it was written down - scrawled would be a more accurate term - as the discussion took place. Nevertheless, it makes a valuable contribution towards understanding what was being required of Andrew Jameson. The larger proportion of the items listed are connected with domestic life, using that term very loosely, such as prostitution, clandestine marriage, concealment of pregnancy, abortion and infanticide. Falsifying of passports and plundering of wrecks are other crimes that he has been asked to address. In addition, Malta, having little in the way of pastureland, there appears to have been corruption in the issuing of licences to allow goats to graze. There are also occasional references to the earlier attempts at revision by Sir John Richardson and by Cornwell-Lewis and Austin and it is a reasonable assumption that he had been advised to consult these documents.

He returned to Edinburgh, where he set to work on his commission without delay. Almost the first step that he took was to seek an interview with a Mr Blair, who was a Judge of the Ionian Islands. Since the Ionian Islands, like Malta, had been brought under British protection in 1815 and the existing judicial system revised, it was highly appropriate that Andrew Jameson should seek advice from a senior judicial figure of these islands. He also consulted relevant parts of the Code of Law of the Commonwealth of Massachusetts since several other New England states had drawn on this as the prime source for their own codes.

He found that he needed certain documents on Maltese law and wrote to Sir Hector asking that they be sent to him. Sir Hector, still in London, acknowledged receipt of the letter on 18 July and promised to procure all he wanted but added:

‘it appears that Sir John Richardson’s report is not at the C.O. as it cannot be found and the surmise is that it is lost. Therefore I must get a copy made out and sent from Malta.
I shall also get the proces verbal16 of Kirkpatrick’s time - any assistance from him will be very useful to you, and I apprehend, that the present Code is a very different child from what he intended should be produced.’

Following further correspondence, Sir Hector asked him in future to direct all his inquiries and requests for documents straight to Sir Henry Bouverie ‘now that you are officially appointed under the Secretary of State’s direction.’

After some comments on adultery17 being more appropriately dealt with under the Civil than under the Criminal Code and stating that there had been an excellent article in the July edition of the Edinburgh Review on how the law should deal with duelling, Sir Hector turned to the time-scale that had been suggested:

‘As to the period of 6 months for the giving in of the report – it is really of no consequence whether you take 6 or 9 – & the delay in getting the necessary papers will make 9 months the shortest period in which it can be done.’

Andrew Jameson wrote to Sir Henry on 29 August and fortunately kept a copy letter. After thanking Sir Henry for ‘the kindness and approbation you have shown to me in the matter’, he went on to say:

‘For some weeks I have been working pretty vigorously at the project and find from the extensive system of revision, which I thought necessary, that it will be a work of some time and considerable labour, however inconsiderable the result may be ultimately.’

He informed the Governor that he had received from Sir Hector various commentaries and reports but asked that the following papers be sent to him in order that his work could be satisfactorily carried out:

14. One must assume that Mr Blair was home on summer leave from his post and that Andrew Jameson knew who he was and his position.
15. The Ionian Islands were transferred to Greece in 1864.
16. Written report
17. An inference from the wording of the letter is that adultery was apparently seen in Malta at that time as a crime committed solely by women.
1. The report of Sir John Richardson;
2. The procès verbal of the labours of the Law Commission of which Judge Kirkpatrick was a member;
3. Mr Lewis’s observations on the first project;
4. A copy of the proposed law on adultery;
5. A report on any criminal trial of importance including the sentence;
6. Comments of any progress made on the subject of prison discipline and a copy of the regulations on prisons and penitentiaries if there were any such;
7. The other parts of the Sicilian Code and also that of Corfù

Sir Henry showed no delay in sending the documents and part of his letter is reproduced below. It is in a beautiful copperplate hand, prepared by one of his clerical staff for his signature. There is no date other than ‘September 1842’.

‘I was very glad to hear that you had been able and willing to undertake the Revision of the Criminal Code; I am well aware of the extreme difficulty of the task and it is on that account chiefly that I am glad that it is in such able hands and that it may be the means of serving you in your Profession to which it gives me sincere pleasure to find you are restored by the amendment of your health.

You mention that you had seen memoranda of mine upon the Code; I am not aware that I have anything more to trouble you with, excepting my objection to the proposed ordinance on Adultery, which consists in the difficulty which I find giving the Civil Court a Criminal Jurisdiction. I do not see why Adultery should be treated Criminal at all, the Criminal penalty appearing to me to be a sufficient check, at least as far as there can be a check by Law, and I am very averse to punishing the woman Criminally, unless the accomplice be punished also in the same manner; neither am I in favour of creating a new Prison by Law, for this crime, where the Imprisonment would be bona fide Imprisonment without any obligation of Religious Penance as intended in the old Law; it will be best in my opinion to leave Adultery out of the code altogether but this I give simply as my individual opinion by no means ex Cathedra. I should have no objection to see Dnelling dealt with as suggested in the Edinburgh Review.

Andrew Jameson started on the revision of the Criminal Code about the beginning of September 1842 when he had little other professional work to occupy his time. However, in March 1843, he obtained the appointment of Sheriff-Substitute of Ayrshire. The arrangements for moving to Ayr and easing himself into his new rôle were inevitably time-consuming and at the end of the following month he wrote to his father that he would have to discipline himself to pay the requisite attention to what he referred to as his “Code business” by reducing his social life. His original estimate that “a period of not less than three months would be necessary” was correct but the inference from this was that it would not take a great deal longer than that.

18. Corfù is the largest of the Ionian Islands.
In early March, Sir Henry Bouverie wrote: ‘We are beginning to look out for your report on the Code’ but in this the Governor was to be disappointed. On 30 March Andrew Jameson sent to Sir Hector Greig an interim report together with a request for further information on certain points. This was sent and, in an interesting letter of 8 July 1843, Sir Hector informed Andrew Jameson that:

‘on one point Sir Henry Bouverie and myself were entirely of accord, that no greater protection should or could be afforded to the culture of the Roman Catholic Religion than it is to be afforded to the Church of England - & we think also that the Church of Scotland should be included. It would, we think, be an anomaly, that in a British Colony we should legislate for greater protection to the Roman Catholick (sic) Religion than to the two established forms of worship of the Mother Country – and there is nothing in Malta, either by law or treaty to call for, or, sanction such a distinction.’

By September 1843, he had completed his work on the revision of the Criminal Code of Malta and took it in person to the Colonial Office. He tried to see Lord Stanley but the Secretary of State told him that he had ‘requested Mr Stephen to go through it before forwarding it to me.’ On 7 November, G. W. Hope, another Hope who was an Under-Secretary at the Colonial Office, was instructed by Lord Stanley to write that the Colonial Secretary was:

‘impressed with a deep sense of the ability and learning which you have brought to bear on the subject and would convey to you his grateful acknowledgment of the diligence with which that important task has been carried to it’s (sic) close. So many however and so considerable are the topics over which the report ranges and the enquiries it suggests that Lord Stanley thinks it due to the great Public interests at stake to afford to the Authors of the Project, and to the local Legislature a full opportunity of revising the Code with the aid of your suggestions before he forms any judgment as to the wisdom of adopting them either wholly or in part. His Lordship however anticipates that in many aspects the local authorities will concur with you, and he is convinced that they will bestow upon your Report the mature and respectful attention to which it is so well entitled.’

19. The term “Authors” must refer to the five Maltese judges, who wrote the original drafts of the amended code. Refer supra, p.113.

The Colonial Secretary’s remittance of the Report for its consideration by those in authority on Malta was probably appropriate in view of the political situation but this certainly did not meet with the approval of Sir Henry Bouverie. Now in retirement, Sir Henry wrote to Andrew Jameson on 30 November 1843 saying:

‘I congratulate you upon the very satisfactory approval of your labours by Lord Stanley. I much fear however that the conceits and policies of the Maltese Code Commission will throw such obstacles in the way as will cause nothing but disappointment. I would have wished that Lord Stanley had taken a more decided part and had sent out your suggestions to be prepared and passed into law without referring them to the original framers but we will see what will come of it. I fear not much.’

Sir Hector Greig sent two letters to him on 26 January 1844. One was a stiffly formal one written by a clerk thanking him for his work on the Criminal Code and enclosing a bill on the Lords Commissioners of Her Majesty’s Treasury for £265 in payment for his work on the report and associated expenses. The other was a personal one in his own hand:

‘I can only say that I am astonished at the extent of your labours, and delighted with the vast amount of information that you have brought to bear on the subject, which cannot fail to be of great utility in correcting the errors of the Code.

It would ill become me to offer my tribute of praise of what you have done – but even as a philosophical essay on Legislation to an enlightened mind, your report is more instructive and interesting.

We are printing the Code & your report and Lord Stanley has directed that the Council of Govt give an opinion whether they approve of the original text or of your alterations. I shall be happy to send you half a dozen copies of the Code & Report if you will let me know how to forward them.’

Sir Henry had been prescient in his criticism of Lord Stanley’s decision to allow the Report to be considered first by the Maltese authorities. He had been Governor of the island from 1836 to 1843 and had experienced the frustrations of opposition to sound administrative proposals from local officials and, to judge from his critical comments on their influence, the
Roman Catholic clergy. Of the Commissioners who had drafted the code, Ignazio Bonavita

"...declined entering into a consideration of its details on the ground that Jameson's proposed alteration and amendment, would, if adopted, change the whole spirit and basis of the Code." 20

But Micallef, the Crown Advocate, recommended that the greater part of the Report be accepted. The consultations about the proposed Criminal Code lasted more than two years and there was no further official communication on the matter until 22 January 1846. On that date the new Governor, Sir Patrick Stuart, wrote to Lord Stanley's successor at the Colonial Office, W. E. Gladstone, giving an account of what had been happening.

After referring briefly to the receipt of Lord Stanley's dispatch No 30 of 9 November 1843 enclosing the Report of Andrew Jameson, he continued:

"His Lordship was at the same time pleased to intimate to me that valuable as Mr Jameson's services has proved & extensive as was his acquaintance with the whole subject on which he had written, it was impossible that His Lordship should so far defer to his authority or to his arguments as to adopt his conclusions without being first apprised in what light they may be regarded by the Framers of the Code and by the Legislative Council of Malta.

I was therefore directed to move the Council to enter on a revision of the draft of the code with an especial reference to Mr Jameson's remarks upon it & to narrow the discussion within its proper limits by an enumeration & a statement of the successive questions demanding an authoritative decision."

The Governor then had copies made both of the projected Code and of the Report. Copies were sent to:

"the 2 surviving learned framers of the Code 21 with a view of my obtaining their opinion whether it would be expedient to adopt in part or in whole the alterations and amendments suggested by Mr Jameson, in order that I might submit that opinion to the Council."

21. These were Sir Ignazio Gavino Bonavita and a Judge Francesco Chapellie.

These men declined the opportunity to comment and so the Governor, with the agreement of the Council, referred the projected Code and the Report to Dr Antonio Micallef, the Crown Advocate, for his opinion. He sent his comments to the Governor in September 1844:

"This learned gentleman came to the conclusion that the greater part of Mr Jameson's amendments might be freely adopted & approved & that such alterations far from having the effect of destroying the spirit & the basis of the project 22 would render the new Criminal Law useful and salutary & leading as he thought to that improved state of society at large, which a new Code must always be intended to accomplish."

The Report was then submitted to the Council. As the Governor continued in his letter:

"After a very patient, attentive and minute examination of the narrow details adduced to justice, which through adjournments lasted from November 1844 to June 1845, the Council concluded with the adoption of Mr Jameson's alterations and amendments in their full spirit & with but few & slight qualifications in their letter and detail."

This had now to be translated into Italian and the greatest care had to be taken to ensure that the Italian and English versions were compatible with each other. Translating had occupied many months and it was only now, in January 1846, that the Governor was able to send copies to the Colonial Secretary, Sir Patrick then went on to compliment Andrew Jameson for his endeavours:

"I am bound to say with all deference to the opinion of the learned Commissioners I consider a very great advance has been made towards the improvement of the Maltese Criminal law and procedure by the adoptions of the suggestions of Mr Jameson, who has undoubtedly exhibited in his report a most extensive knowledge of the provisions of the continental Codes as well as an intimate acquaintances with the general principles of Criminal Legislation."

22. These were the reasons given by Bonavita for declining to comment on Andrew Jameson's Report.
On 24 February Lord Lyttelton, Under-Secretary of State for War and the Colonies, wrote to Andrew Jameson enclosing a copy of Sir Patrick Stuart’s letter of 22 January together with a copy in Italian of the proposed Criminal Code and its English translation. The letter continued as follows:

‘Mr Gladstone is reluctant, after the great labour which you have already bestowed on the revision of the Code, to give you any additional trouble on the subject, but he considers it so highly important that your suggestions should be rightly understood & properly adapted to the Code by the local authorities, that he desires me to express a hope that you will allow the Code in its present shape to be referred to you with a view of ascertaining whether the revisions suggested by you have been made so as to meet your approval.’

To this request Andrew Jameson agreed and from Downing Street, on 6 March, Lyttelton sent ‘the revised Code of the Criminal Laws of Malta with a translation of the same & a printed copy of Mr Jameson’s Report thereon.’ In acknowledging this letter and its enclosures, Jameson said he would ‘acquaint his Lordship with the result as soon as his public duties permit.’

In two letters to his father of 7 and 18 March 1846, Andrew Jameson mentioned his work on the Criminal Code. That of 7 March merely commented that:

‘the Malta papers arrived with my report printed in English. It makes a small pamphlet—not good paper or print—but reads fairly enough.’

On 18 March, he tells him:

‘I am very busy with the Malta Code. It is gratifying to find the provision so much ameliorated. They have followed my suggestions to a far greater extent than I could have expected.’

From a letter in late June, we learn that he was still at work on the Code but it must have been soon afterwards that he submitted his comments to the Colonial Office. Sir Hector Greig, who was in London and seeking to find a successor to his post, wrote to Andrew Jameson on 26 October 1846:

‘As I had something to do even with this second reference of the Code, I shall be glad to know from you, privately, if anything has been done or said, about a fee, on the occasion, as these things are sometimes forgotten and as you are not the man to talk for yourself on such occasions, I can mention the subject to Sir P. Stuart, as the Govt of Malta quite intended that you should not give valuable labour for nothing.’

Replied to Sir Hector on 28 October, Andrew Jameson said that there had been no mention of any remuneration for the further work on the revision of the Criminal Code that had been requested by William Gladstone:

‘In regard to the last reference of the Code as revised, I had little trouble beyond the mere work of going over the whole draft, article by article, & the amendments suggested by me and noting some points worthy of reconstruction, which I embodied in the short report to Mr Gladstone and in regard to which I have had no communication since.’

On the other hand, in reference to his original work on the Code, he added:

‘I thought the remuneration fixed upon by us at the request of Mr Stephen on the idea of a revision costing 3 months work was inadequate, when it turned out that the time & labour required even more than double our hasty estimate.’

After further comment on the nature of the work that he had undertaken, he continued:

‘I state these things with some hesitation and only on account of your kind reference to the subject.’

Sir Hector took up the question of further remuneration for Andrew

23 Sir Henry Bouverie had been on leave in East Lothian in August 1846 and had been empowered to offer the post of Chief Secretary of Malta to Andrew Jameson. After consulting his family, Andrew Jameson declined the offer.
Jameson, but, as appeared to be always the case with Malta, time was certainly not of the essence. It was not until 14 April 1847 that Sir Hector next wrote to Andrew Jameson:

'Your Code is not born yet owing to the dilatoriness of the local Govt in passing it through the Council, nor from what I see, do I expect that it will come to light for 6 months or more.

The governor has promised me that at the next meeting of Council, that the sum of £100 will be voted to you for your extra trouble. This is far below what you ought to have, but it will at least show the opinion that the Local Govt entertains of your labours. You are quite aware that this proposition was made by me, before I left office, and I am not sure, however, if I ever mentioned it to you. I trust that you will soon hear from Sir P. Stuart on the subject.

I understand that the Crown Advocate coincides in opinion with you, in all your late suggestions, therefore they will be adopted.'

One would have thought that, since the Council of the Government of Malta had terminated their discussions on the proposed Code of Criminal Laws for Malta in June 1847, there would have been few if any further impediments to the implementation of the provisions of the Code. This was to be far from the case, as Sir Henry Bouverie had forecast. The Roman Catholic clergy were uncertain at best about some of the provisions and the Maltese remained dissatisfied with the 1838 Constitution that had been imposed on them. There was sufficient agitation among the populace to persuade the Government to consider and then grant in 1849 a new Constitution, whereby the Council of Government would consist of 18 members, ten of whom would be nominated and eight elected.

On the agenda for the first meeting of the Council on 8 January 1850 was a proposal to implement the Criminal Code as revised by Andrew Jameson. Three clergymen had been returned in the election and they immediately sought to introduce a clause stating that, although other religions were tolerated in Malta, Roman Catholicism was dominant and that, consequently, the penalties against those who offended that religion should be greater than those relating to other religions. This naturally caused uproar among the Protestant adherents. The Anglican Bishop of Gibraltar and Malta was outraged and the issue was even discussed in the House of Commons.

There seemed no solution to this problem since the British Government was not prepared to allow penalties to be varied in accordance with the religion of persons convicted of a crime and the Roman Catholic authorities were adamant in their refusal to withdraw from their position. Accordingly, the implementation of the proposed Criminal Code was put on hold and the administration of criminal justice on the island continued under the archaic system that had been in force when Andrew Jameson had come to Malta in 1840. By late 1853, the British authorities decided that this could no longer be tolerated and that the Criminal Code of Malta must be introduced irrespective of the wishes of the Roman Catholic Church. This it did through an Order in Council and the new Code became effective from 30 January 1854. The question of differential penalties for offences against religion was settled by simply omitting all reference to them. 24

Thus, more than ten years had passed from the time Andrew Jameson had first submitted a revised Criminal Code for Malta and its incorporation into Maltese law.

In 1913, John Buchan wrote a life of Andrew Jameson's elder son, Lord Ardwall. 25 In the preface to his book, Buchan provides a very brief account of Andrew Jameson's career and comments thus on his contribution to the law of Malta:

'He made an excellent job of it, and although eminent jurists like John Austin and Sir George Cornwallis were Lewis had tried their hands on it, it is the recension of Andrew Jameson, which is in force today.'

Malta's legal system still owes much to the young Scottish lawyer who was responsible for translating a chaotic amalgam of ancient customs and practices into a coherent code of justice relevant to the age and in keeping with the traditions of the island. At the conclusion of the second part of his 'Homage in Venice to the Maltese Criminal Code of 1854', 26 Dr Albert Ganado, a prominent authority on Maltese law, wrote as follows:

24. In an attempt by the British Government to prevent what it saw as inappropriate use by ecclesiastics of their position on the Council, the Governor issued in 1857 Letters Patent excluding them from participating in elections for the Council. As would be expected, this was rescinded by the majority of the Maltese and the Letters Patent were withdrawn in 1870.


26. This is a misprint for "Cornwallis".

27. A legal term for "revised version".

'It is not easy to find another code of laws which underwent so many vicissitudes. The end result, however, was highly satisfactory. The Code of 1854 combined the advanced philosophical thought of European legislation with the best liberal principles British law could offer, both applied in keeping with Maltese customs and traditions. It is important to note that the accusatorial system was adopted for the institution of proceedings. Basically, it has stood the test of 150 years, being brought up to date from time to time with substantial important amendments. Thanks are due to all those who contributed to make it as perfect a model as possible, foremost among whom were Dr (later Sir) Ignazio Gavino Bonavita, Andrew Jameson and Dr (later Sir) Antonio Micallef.'