

## WRITTEN SUBMISSION / CROWN OFFICERS

Whilst I do not recall the States debate in February 2009 that led to this independent review, I suspect that, for some States members the broad principles of the desirability of the separation of powers within government (executive, legislative and judiciary) were being explored. In the end, the focus of the review has been exclusively on the four Crown appointees. In my view, in *practice* in Jersey, the separation of powers largely exists albeit that, specifically, all four Crown Officers provide a service to the legislature (whether as speaker or as legal adviser). I see no evidence of impartiality or absence of independence from the Crown Officers in exercising their functions.

In a small jurisdiction such as Jersey I cannot see a justification or catalyst for a full blown separation of powers. Indeed, if that route were chosen for Jersey, then a more developed system of "checks and balances" would also be needed to prevent one branch exceeding its powers or becoming "supreme". The imposition of such checks and balances would involve significant change and, potentially, significant cost and with no guarantee, in my view, of an "improved" system.

The opposite of governance where there is a *separation* of powers is for there to be a degree of *fusion* of powers which is typical, I think, of many parliamentary democracies. Systems where there is a fusion of powers or even mixed systems (such as Jersey's) often carry a *perception* of a conflicts of roles. I think the most frequently quoted example is the Lord Chancellor in the United Kingdom who, until very recently, participated in all three branches (Cabinet, Parliament, Courts). Many democracies function perfectly satisfactorily with a fused or mixed system. If anything, in my view, Jersey is more towards a "separated" system than many larger jurisdictions. Countries with a complete separation of powers will often have a president as a head of state (or similar leading function). It does not appear to me that that is appropriate or desirable for Jersey.

*It is many years since I had to study Montesquieu's separation of powers theory and so, from an academic perspective, I am in very deep water and should stop here. That said I rather suspect that some of those who promoted this review had this theory of governance in mind.*

However, it may be that the debate in February 2009 was addressing less lofty ideals and was (yet another) criticism of what is often loosely described as "the establishment". If that is the case (whilst an occasional examination of the way in which our small jurisdiction functions is not, of itself, a bad thing) I would submit that there is no reason to change a system unless there is clear evidence that it does not function or operates improperly. I have seen no credible evidence. If there is evidence it should be heard. In particular, there does not appear to be any credible evidence of political interference, or political pressure being exerted or claimed, by Crown Officers in the past forty years (and probably longer) in the course of fulfilling their role.

Bearing in mind the different types of modern democracies that exist, I do not see that the roles of the Bailiff, Deputy Bailiff, Attorney General and Solicitor General offend principles of modern and accountable governance or prevent the upholding of human rights. They are not political appointees but Crown appointees: again in a small jurisdiction like ours I believe this to be a good thing. Whilst tradition and heritage should not prevent desirable changes being made, there is also no purpose in making "changes for changes' sake". If no change is required and consequently that preserves our customs, heritage and tradition, then that is not a bad thing.

The States are a single body notwithstanding the governmental reforms of recent years. Therefore I see no reason why different States members (or groups of States members) require separate legal advice and/or different legal advisers.

I am not in a position to comment on whether there is a perceived or actual conflict in the role of the Attorney General/Solicitor General as head of the Honorary Police, but feel sure that both those Crown Officers have views on that role which should be heard. I believe they will express those views without partiality and, if there is a better alternative, then of course it can be considered but none springs immediately to mind assuming that there will continue to be a clear differentiation between the States Police and the Honorary Police. For so long as there is an Honorary Police system then having a politically independent, legally trained head (such as the AG) has much to commend it.

The title "President of the States" is exactly that: a title. It does not connote political power and it should be noted that the "President" does not have a casting vote. In effect, the person in the role of Bailiff/Deputy Bailiff is the "speaker" of the States. A change in the title is, on the face of it, cosmetic and probably unnecessary although I seem to recall that this was explored in the Harwood report in Guernsey. If there is a real concern that the title "President" is perceived as misleading, and if another word can be found to describe the role, ultimately there is no harm in considering this, but my suspicion is that no change is needed. There is also a clear benefit of political independence and continuity in the Bailiff/Deputy Bailiff fulfilling the role of the chair of the States Assembly (and indeed the judicial wisdom that Bailiffs and Deputy Bailiffs hold by virtue of their legal training and judicial role is, I suspect, a helpful quality in chairing more heated States debates).

In summary, I would not change the present system.



Tim Herbert  
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