



From The Dean of Jersey, The Very Revd Robert Key

March 15th 2010

Lord Carswell
Chairman
Review of the Roles of the Crown Officers
Highlands College
JE4 9QA

My Lord,

Thank you for affording me the opportunity of making a submission to your panel as you undertake this review. I was appointed Dean of Jersey and sworn in by direction of Her Majesty's Letters Patent in October 2005. As you know, I serve as a member of and chaplain to the States of Jersey and also attend sittings of the Full Court. My role involves working closely with the Bailiff and Deputy Bailiff on the one hand and also with the Attorney and Solicitor General on the other. With the Bailiff and Deputy Bailiff I have the privilege of leading the great state occasions in the Island including Liberation Day, the annual service which begins the legal year and the start of the parliamentary year as well as less formal but no less important events particularly Holocaust Memorial Day when the Bailiff gives the opening address and the Dean the closing one. I am currently working with the Law officers on the revision of the Canon Law of Jersey, which is different from that of England in important respects, which I hope to take through the States later this year if agreement with all the interested parties can be reached.

If I may deal with the Law Officers first:

There are many others more competent than I who can set out the forensic niceties of the role of the Attorney as head of the honorary police. However, in the real world of everyday Jersey life I am not aware of this presenting a problem. Rather like the role of the Constables as de jure, but not de facto, heads of the honorary police in their parishes, the only difficulties are theoretical ones based on much larger jurisdictions and philosophical presuppositions which are not those of Jersey.

If the AG or SG were not at sittings of the States we would have to send for them, or stop proceedings very frequently to seek legal advice. Members ask the Law Officers for guidance on points of law and human rights at almost every sitting of the States and it would be a very great practical inconvenience, not to mention a needless departure from the traditions of the Island, if they ceased to be non-voting members of the Assembly. We have had ample opportunity to witness the ethical morass into which the United Kingdom has been plunged over the legality of the Iraq war. This centres around the politicization of the Attorney General in that jurisdiction and whether pressure can be brought to bear by political colleagues or the weight of the Prime Minister's office. Jersey's tradition of having a non-political AG and SG seems vastly preferable to me as an ethicist.

As I have experienced the workings of the States in the last four and a half years there is one area of the role of the Law Officers which has puzzled me and which, I think, would benefit from a small but important change. There have been occasions since the start of Ministerial Government and the system of Scrutiny Panels when chairs of panels have wanted to see the legal advice given to the Council of Ministers on the subject that they are dealing with. The current policy, as I understand it, is that the advice is confidential to the minister or ministers to whom it is given. This seems to me to be wrong in principle and expensive in practice: In principle, because the Crown Officers are members of and legal advisors to the States as a whole not the Executive of the day; In Practice because it may mean two sets of legal fees if scrutiny panels get their own advice and both bills are paid by the taxpayers of the Island. I would like to see a policy where legal advice given by the neutral, non-political Crown Officers is available to every component of Jersey's legislature.

It seems to me to be an important fact, indeed governing principle, that Jersey is a small and separate jurisdiction where ideological and artificial separations of roles and tasks that may well be appropriate and give expression to the traditions of other places are neither necessary nor expedient here.

In many different places around the world appointed, rather than directly elected, officers take a much more executive role in government than anything Jersey has. I think of the President's cabinet in the USA or Lord Mandelson's role in the government of the United Kingdom as two examples. The President's Cabinet sets and implements policy while in addition to those roles Lord Mandelson is a voting member of the House of Lords. I have no doubt that both of those traditions are fine, honourable and culturally appropriate but I would contend that the role of the Crown Officers and indeed the Bailiff and Deputy Bailiff are equally fine, honourable and culturally appropriate in Jersey.

The Roles of the Bailiff and Deputy Bailiff

It appears to me that the role of the Bailiff is one. I understand that the term "Dual-role" is often used but it seems to me this is a modern construct of a historic office dating back to the thirteenth century which has developed over time to the benefit of the Island. The role of whoever is appointed may well have different tasks within it but it is, in my view erroneous to imagine that one role is exercised at one end of the States building while another role is exercised along the corridor in the Royal Court. The role is that of Bailiff. The tasks certainly include being the chief citizen, the President of the States and the Chief Justice but they are tasks of one Office.

In Gilbert & Sullivan's Mikado the wonderful character of Pooh-Bah collects titles as an act of self-aggrandisement: First Lord of the Treasury, Lord Chief Justice, Commander-in-Chief, Lord High Admiral... Archbishop of Titipu, Lord Mayor and Lord High Everything Else. He holds all those offices each in addition to the others. The role of the Bailiff is the exact opposite: he *is* the Bailiff of Jersey. Within that office he is tasked with Presidency of the States, being Chief Justice of the Island and all the other duties and privileges belonging to his office.

His role as President of the States is essential, even if he, or the Deputy Bailiff, do not chair every debate, precisely because he is the chief citizen of Jersey. To use a modern phrase "It goes with the territory." I find it fascinating that some want to remove this task from him because it is not the pattern that the Council of Europe would most like. To take as our model the various organs of the European Union which some would regard as dysfunctional and are certainly amazingly expensive seems bizarre.

Debates in the Chamber are chaired by the Bailiff or the DB, or the Greffier or Deputy Greffier. I have discerned no difference in the quality of debate or the way in which things are conducted whoever is in the Chair. The important thing is that they understand Standing Orders, command the respect of the House and can keep order with a lightness of touch and good humour. The States is well served by having four people who can preside with skill and judgement in such a lively assembly.

The States faces huge issues and yet, from time to time, embarks on an exercise of navel-gazing: should the Constables remain in the States, what about super-constituencies etc etc? If I could bring a proposition to the States it would be along the lines of suggesting a five year moratorium on governmental change while we get on with maximising the benefits of Ministerial Government and Scrutiny. In short, that we make work what we already have rather than add other unnecessary changes.

There are worries about aspects of our Jersey system...principally voter apathy. I simply cannot see how the Bailiff presiding over the States is a huge ideological or practical barrier to democracy.

As the singer Joni Mitchell put it so well in her song Big Yellow Taxi "You don't know what you've got till it's gone" who reminds us never to allow our heritage to be chipped away.

I am usually quite a passionate proponent of change in many areas of life, including the Church! However in the case of your lordship's review I submit that some minor tweaks may be in order but that the basic system that has served the Island well and gently evolved over centuries be left in place. As I have come to realise in my ministry here, this is not the people's republic of a small island off the French coast. It is Jersey; fiercely loyal the Crown and fiercely independent in its thinking and practice.

With my best wishes for your deliberations,

Yours sincerely,

Robert F Key

The Very Reverend Robert Key
Dean of Jersey