

## **Crown Officers Review**

### **Submission - part two - Michael Dun**

15 April 2010

In my initial written submission I stated that there were other matters that I would like to refer to if given the opportunity and I have now also had the chance to read many of the other written submissions and to hear witnesses.

So, there are now many things I would like to add, if there is time.

**1** Firstly, it is noticeable that many other submissions refer to the ancient historical pedigree of the Crown Appointments and in a sense I do not disagree with that. But, 800 years or so is not such a long time in the history of the world and no institution's place is guaranteed just because it has been around for a long while.

**2** As Tom Paine would have said, - a long habit of not thinking a thing wrong, gives it a superficial appearance of being right - and I think that his observation applies to the Crown Offices and many others aspects of the Jersey administration today.

I don't start-out with a presumption that they should exist, just because they do or have done so for a long time.

I want to see and hear the evidence that justifies their continued existence.

**3** Nostalgia, romance and a presumption of justification are not enough for me and I am struck by the absence of heroes – and even basic facts - in the submissions of those who support the system as it exists now and has supposedly existed over the past eight centuries.

**4** The current Bailiff says that he is the 87<sup>th</sup> to hold that office but I wonder what the previous 86 have actually done for this Island and their fellow Islanders. If they have done remarkable or good deeds – where is the evidence?

Mere names on a roll-call are not enough.

**5** To explain myself further, - if we look at 800 years of English history we should be overwhelmed with an abundance of political and judicial talent and names that every schoolchild will know like Pitt, Gladstone, Walpole, Disraeli, Peel, Cromwell and many more who had a distinguished political and public life. These people really contributed something to their society and to our's by inheritance.

**6** Some will be familiar with the names of Blackstone, Mansfield, Dicey, Coke, Halsbury, Haldane, Whitelocke and others who made a significant contribution to jurisprudence, legal knowledge and understanding as lawyers, judges and commentators etc.

**7** I am asking – where are such significant people in Jersey’s history?

**8** After all, if we just go back in our heads beyond living memory – in other words, for most people, before the Occupation – who can even name a Bailiff or other Crown Officer - never mind describe what legal or moral or political principles they might have fought for?

**9** So, if the Crown Officers have been such important people in the past and so essential to Jersey’s *way of life* – where is the evidence, either in the record or in folklore?

**10** Sir Philip Bailhache, in his written submission actually claims that the basis of Jersey’s system rests with “*The Constitutions of King John*” and it is one of the very few precise historic claims that are made. But I disagree with that proposition because the constitutional historian Charles Le Quesne surely buried the myth of Jersey’s own Magna Carta in his 1856 volume?

**11** So far as I am aware, King John never did lay down such a constitutional framework and I am surprised to see it rising from the dead, once again to mislead here, as it has so often done in the past.

**12** If I am wrong, I shall be delighted to see the evidence and eat humble pie – but it is important - I suggest - in having only reliable information as a basis for these inquiries and discussions.

**13** Of course, it is true that there has been an ancient system of administration operating in the Channel Islands and this has included Jurats and Bailiffs and other officers since the 13<sup>th</sup> century – but it is a far cry from a having a certain royal document declaring a defined constitution with King John’s name upon it. I object to any presumption of provenance and legitimacy where the historic record does not support it.

**14** Consider the three centuries from 1640 till 1940.  
I don’t know how many Crown Officers have served in Jersey during that time but the period noticeably starts and ends in times of war.  
Significantly I would suggest - the Bailiff in about 1640 (De Carteret) and the one serving in 1940 (Alexander Coutanche) - are probably the best known and celebrated of all Jersey’s Bailiffs. However, their celebrity has probably more to do with the context and circumstances of their times. Neither is remembered now for their judicial acumen or legal commentaries that I am aware of.  
Indeed, De Carteret’s piracy exploits are probably what most Islanders know about him, if they know anything at all.

**15** If these two Bailiffs were notable *Defenders of the Jersey Constitution* or Islanders Rights – then it was only because of the war-time conditions then prevailing. Were they uniquely able to fulfil their roles being Crown Officers rather than any other citizens of their time?

I doubt it.

**16** Since we are considering the period 1640-1940 and the largely forgotten Crown Officers that served for all those years, it is appropriate to recall that the De Carteret family were in fact, virtually hereditary Bailiffs for most of those years and that they were not only appointed automatically and for life – but they were almost always absent Bailiffs and some never even set foot upon Jersey during their life-times.

**17** Even the Reverend Balleine, a more restrained and recent Jersey historian described one of the mid-18<sup>th</sup> century De Carteret absentee Bailiffs as a “drunken nitwit.”

I venture, that we should not make easy assumptions about the character and competence of Jersey’s past Crown Officers or indeed any of the supportive institutions like the Jurats or the Honorary Parish Police system or the management of the States of Jersey.

**18** The historical provenance for these officers and institutions looks considerably less certain when we view the facts rather than just nostalgic myths or wishful thinking.

**19** The more so if we realise that in their places - the “hereditary” Bailiffs appointed Lieutenant-Bailiffs and other Crown Officers to administer and govern Jersey in their absence (as did the Governors and so we only have a Lieutenant-Governor to this day). These delegated officials were often corrupt individuals who exploited and abused the Islanders in all sorts of ways.

As one 18<sup>th</sup> century commentator observed, the public *gnawed their chains in silence* while *the Bailiffs cut them to the quick and the Jurats sheared them alive*.

**20** The historical commentator referred to is Dr. John Shebbeare (a medical doctor, not a lawyer) and he wrote and published a history of Jersey in 1771 “*An authentic narrative of the Oppressions of the Islanders of Jersey*” etc and in 1772 another on the “*Tyranny of the Magistrates*” etc.

**21** In the introduction to his 1771 book Shebbeare wrote;

“*Whatever may prove to be the popular opinion of giving to the world the history of so small a state, I shall make no apology for the publication of the Narrative. To be of service to two and twenty thousand human beings, is an opportunity that seldom happens to a private man among the millions that live and die.*”

Cont’d

Shebbeare Cont'd

*“The most pernicious and detestable of human beings are iniquitous magistrates. To offer an excuse for bringing their mischiefs and malversations to public view, and themselves to answer for their actions, is an insult on common sense...it expresses a diffidence of the rectitude of discharging that duty of a good citizen, which every man, from the nature of being a part of the community, and on the principles of gregarious union, is bound to perform. In fact, it would be an apology for killing vipers.”...*

*....“Whilst I remained in the Island, every day, and almost every hour, afforded fresh relations of detestable oppression; and dispensations of unrighteous judgment by the magistrates.....”*

**22** Several contributors to this current inquiry - including the serving Bailiff – have referred to the year 1771 and how important it is in the history of Jersey and to the developing role of the Crown Officers etc.

**23** None has referred to the 28 September 1769.

This was of course the most important date because that was when Jersey had its own Revolution. It was Jersey's own July 4<sup>th</sup> – the day when the Jersey population finally stormed the rotten Royal Court and expelled the Lieutenant Bailiff (Charles Lempriere) and his family of rogues.

It was this uprising that led to the reforms of 1771 and the birth of a political States of Jersey **separated** from the Royal Court etc.

1769 marks the practical start of the process that we are (hopefully) continuing with to this day.

**24** It was also that same uprising of ordinary people which encouraged the Attorney General (Philip Lempriere) to depart the Island and inspired the attempt to draw up the *1771 Code of Jersey Laws* etc. Those reforms were not initiated by the Crown Officers of the day - they were resisted by them - just as the Crown Officers and their supporters continue to resist change, two centuries later.

**25** Then as now, the ordinary people showed themselves perfectly capable of expressing their discontent and drawing-up petitions for legislative reform and that it is not necessary for paternalistic lawyers to hold or restrain their reforming hands.

**26** Ten years later, the rotten Bailiff went too - after the brief French invasion of 1781 - even though he was replaced by his almost equally dismal son as Lieutenant-Bailiff with some more family cronies too.

I do not imply that everything in the judicial or political garden was rosy then or even soon thereafter.

**27** Jersey's administration of government and justice remained embalmed in a smothering layer of feudal oppression for another two centuries. The process of reform and modernisation continues today. It is essential for this inquiry to consider how the role of the Crown Officers, over the past 800 years, has not been one of continuous benign governance, as some PR spinners would suggest.

**28** On the contrary, the record of Jersey's Crown Officers for much of that time has been of despotism, nepotism, corruption and neglect and at the root of the malaise was always the lack of an effective legal and judicial system operating in the general public interest rather than for the promotion of just a privileged minority.

**29** This absence was always coupled too with the lack of an effective and independent political restraint or moderation and a tradition of sending complaints "off island" to the Privy Council or anyone else who would listen.

**30** The process of separation is still not complete. Conflicts, prejudices and inhibitions persist. Complaints are still being sent outside of the island seeking justice.

**31** In spite of apparent claims to the contrary, any vacancy for the position of Bailiff is not yet advertised in accordance with Nolan principals for senior public appointments. Why should this be?

**32** Lieutenant-Bailiff Charles Lempriere dismissed the reformers of 1769 as "*some factions of jealous persons of a spirit of disrespect in some of the lower classes towards their superiors.*"

Former Bailiff Sir Philip Bailhache wrote in his March 2010 submission; "*The head of the Grand Duke of Luxembourg is the Grand Duke. The head of the principality of Liechtenstein is the Prince. The head of the Bailiwick of Jersey is the Bailiff.*"

Evidently, 18<sup>th</sup> century class divisions and pretensions might still not been entirely removed in some Jersey quarters and there is reforming work yet to be completed in other small European territories.

**33** It is argued that Jersey needs an official dinner-eater or Civic Head to meet and greet visiting dignitaries etc and that a Bailiff is most suitable for this role. Of course, Jersey already has a Lieutenant-Governor, a Chief Minister, a dozen each of Jurats and Parish Constables and a Dean and many more who are more than happy to don a bright robe for a special occasion. Communities of much larger size in other places do not need such a galaxy of talent.

**34** There are several reasons why the creation of a distinct *Department of Justice* for Jersey is proposed to secure ownership of the legal system for the public benefit. It is quite clear from the historic record that Jersey's tiny legal profession, led by the Crown Officers, will never willingly rise to the challenge of reform and that political intervention is necessary and long overdue.

**35** Unfortunately, the self-interest and commercial obsessions of the tiny Jersey profession will never be restrained so long as its members exert such a disproportionate level of influence throughout the *Jersey way of life*.

**36** **Some** Jurats have explained how they initially served as vingteniers or centeniers in their Parish Honorary Police. Subsequently, they might have been elected as a Deputy in the States, and then Constable and now as a Jurat – and it all sounds very nice and friendly and to some extent quaint. Others might have served as States Greffier or in some other senior administrative or business role and many have memberships from a multitude of organisations, associations, clubs and societies etc. Yet, the intermingling of policing, political, administrative, judicial and social functions over a period of time might be considered akin to the wearing of several different hats. Is this desirable or acceptable in the 21<sup>st</sup> century?

**37** Conflict of interest is a practical problem in such a small community as Jersey, but the overt cosiness of so many overlapping relationships must surely demand extra - not lesser - standards of diligence and propriety?

**38** As has been said in another place, people cannot be expected to live as Trappist Monks if they undertake public or quasi-public employment but the intermixing of so many potentially conflicting roles needs to be better restricted and regulated. The House of Lords, the Appeal Judges and the office of the Lord Chancellor have at last grappled with necessary reforms and separation in England. The Crown Officers should lead the way by example in Jersey.

**39** It is claimed that long service in various capacities is knowledge-building but conflicts and prejudices are just as likely to be collected too. One Jurat witness explained how it was simple to discover about a person's suitability for service in the Honorary Police or some other posting by making a few discreet phone calls to known contacts. It was the *Jersey way* he suggested. Yet at a recent Scrutiny Panel meeting a despairing Constable complained that he had funds to distribute to needy Parishioners but that Data Protection regulations precluded him from discovering who they might be. Different and inconsistent standards would seem to apply throughout the obscure depths and workings of the *Jersey way*.

**40** So far as the Crown Officers are concerned, once the hereditary system lapsed at the beginning of the 20<sup>th</sup> century, it was determined (though by what authority is not certain) that Bailiffs must, henceforth be qualified (Jersey) lawyers.

**41** This relatively recent discriminatory and elitist innovation has now been enshrined in law even though it clearly should have no bearing upon the non-judicial duties of this office.

Whether it can be justified, bearing in mind that many non-Jersey qualified lawyers serve as judge Commissioners or Lieutenant-Bailiffs, needs to be considered critically.

**42** Since the Liberation, it had become practice for potential Bailiffs to be sent up a legal ladder of promotion from the office of Solicitor-General etc and several submissions or witnesses referred to this.

However, another part of the post-war tradition, that of probationary political service as an elected States Deputy or Senator or both, has hardly been referred to at all. Why should this be?

**43** Post-war Bailiffs such as Cecil Harrison, Peter Crill and Philip Bailhache served as elected States Deputies before embarking upon their careers as Crown Officers.

Vernon Tomes served as a States Deputy before he was appointed as Solicitor-General and as a Senator after his career as a Crown Officer was terminated.

Is such political/judicial intermixing no longer acceptable and is the Solicitor General's office no longer the first rung on the way up to the Bailiff's job?

**44** If these are "official" policy changes then they should be put into the public domain for clarification and approval because they are particularly relevant to any discussions on separation of powers, conflict of interest or the impartiality of appointments.

**45** The desirability of the creation of a properly structured *Department of Justice* where public-spirited and talented persons might be recruited and trained-up for all the Crown Officers' appointments as well as others (like Law Draftsmen, prosecutors, conveyancers) within a defined and predictable career structure, should be obvious.

**46** Some years ago, the Senior Magistrate complained that he was frustrated because of the lack of onward promotion to Deputy Bailiff. There was no career structure. He was placated by appointment as Solicitor-General but his career did not progress any further. Non-Jersey qualified lawyers can be appointed as Jersey Magistrate and can prosecute in criminal cases there too. Such reforms are beneficial – but why have they not been extended to other law related activities?

**47** Why cannot members of the public instruct non-Jersey lawyer to plead in Jersey courts on their behalf? Why cannot applications be invited for all the Crown Appointments from lawyers who are not Jersey qualified?

**48** The monopoly enjoyed by “Jersey” lawyers is a very convenient device to exploit their special privileged status.

Keeping the mysteries of Jersey law known only to those who toe the party line has been a very successful ploy over the centuries and the profession was limited to just six advocates in the 18<sup>th</sup> century.

Sir Godfray Le Quesne suggested in his 1992 Report on the Provision of Jersey Legal Services that Jersey Law might usefully be scrapped altogether in the interests of better public clarity and comprehension and in the face of expanding foreign legal systems.

To my immense lack of surprise, the Crown Officers and the 250 or so other Jersey lawyers have not promoted the idea subsequently.

**49** Some contributors to this inquiry have concentrated on those aspects which seem to praise the status quo. This is hardly the impartial seeking of the truth that might be expected of inquisitive and expert minds – especially legally trained ones.

**50** In this particular context, the circumstances of the appointment and subsequent dismissal of Deputy- Bailiff Vernon Tomes should be thoroughly examined.

After all, this current inquiry is hopefully looking for defects in the system with a view to considering reform as much as it is seeking to praise and preserve.

**51** How was it possible for “the system” to fail whereas Vernon Tomes had ticked all the boxes with his many years of public service, in line with the supposed merits of *the Jersey way*?

Have any defects in the selection process been learned as a result and how might the current system prevent it happening again? What has been changed and reformed?

**52** There has been much discussion about the role of the Attorney-General regarding the Honorary Police. Some of the concerns expressed against change are difficult to comprehend.

Why should volunteer police officers be treated differently and apart from paid force officers so far as discipline and accountability are concerned?

It is the public interest that is paramount, not the special status of these officers.

**53** There are many thousands of people who undertake voluntary work in Jersey, as in other places but they do not expect to be constantly applauded or told how wonderful they are.

Like many other old Jersey “institutions” the honorary system is struggling to survive in a cosmopolitan society with rapidly changing and divergent aspirations.



**54** The suggestion that nobody except the Attorney General might be their “titular head” and that they could not be subject to restraint by a Police Authority or some other similar body is just absurd.

The problems as presented are largely imaginary.

They are certainly not reasons for limiting reform of the office of Attorney-General.

**55** The Jersey public is subjected to a high level of law enforcement by paid and honorary police, traffic controllers, customs and immigration officers and the personnel of a multitude of government departments, and private security companies - besides the ever increasing and intrusive CCTV presence plus other forms of electronic scrutiny and supervision.

All this activity should be much better disciplined and regulated.

**56** The suggestion that honorary police officers might have access to sensitive and personal information without being fully trained in its application and legally accountable in its use is at least worrying.

It is time that the honorary police shook off their legacy of historical stubbornness and entered the real world of the 21<sup>st</sup> century.

**57** I have not joined the discussion on the Human Rights merits of separation and related matters.

It seems a pity that a more detached and general over-view from an impartial human rights specialist has not already been obtained and published. This would be of great benefit to public understanding.

Jonathan Cooper’s published 2007 Opinion on the Dual Functions of the Jersey Magistrate has already revealed many probable Human Rights contraventions concerning the procedures of the Court, the Magistrate and the Centeniers.

**58** It is also a pity that so much like-minded attention has been paid to the two decisions made re *McConnell* (ECHR) and in the *Barclay Brothers* case regarding the Bailiwick of Guernsey.

Some more challenging opinions from Jersey lawyers would have been helpful.

Is there really not a single dissenting voice among the 250 local practitioners?

**59** It is a pity too that more attention has not been afforded to the legal process that allowed the *Barclay Brothers* to present their complaint before the English Courts. This precedent seems to have the potential to challenge the authority of Channel Islands’ institutions and the legitimacy of Jersey and Guernsey practices.

**60** Inevitably, more cases will follow and different aspects will be tested in accordance with ever-changing international standards. The Jersey Crown Officers will be led towards reform in time - ready and willing or not.

END