

- 1 Ever since the governments of the Channel Islands were separated from that of Normandy in 1204 their relationships with British people and the institutions of Britain have been uncertain.
- 2 That uncertainty has been exploited during 800 years by governments, merchants, businesses and individuals who have used the Islands in war and peace-time as havens for all manner of nefarious activities such as piracy, smuggling, trading with the enemy, tax or regulation avoidance, money laundering, wealth and asset concealment, or corporate false accounting through complex, artificial financial devices.
- 3 That this has been allowed to persist and develop over the centuries is not so much the fault of decent Channel Islanders themselves but more the neglect of nearby governments – notably that of Britain – for allowing the constitutional, political and economic ambiguities and anomalies to remain unchecked and reformed. Of course, the ruling elites in the Islands have often been complicit too.
- 4 There have been plenty of ideal opportunities since 1204 for London to intervene and initiate reforms or for Channel Islanders to request them – but always the resolve to cure the various problems have been overtaken or usurped by partisan interests, self-doubts, lethargy or international events.
- 5 Meanwhile, whilst the rest of the world has been constantly changing, Channel Islanders have been encouraged to believe that they are locked into an ever-lasting “frozen” relationship with a bogus constitutional order laid down by King John in 1215 – a sort of Islands’ own Magna Carta - and that subsequent British history and the wishes of the British people are in some way irrelevant to them.
- 6 This myth of some substantial constitutional provenance has been compounded in recent years by the practice of referring to the Islands, together with the Isle of Man, as “Crown Dependencies” rather than UK Dependencies - and, thereby reinforcing the mistaken belief that Islanders enjoy a special relationship solely with the British Sovereign - rather than the British people as a whole or the political and governmental or other institutions that have evolved throughout British history.
- 7 Within the Channel Islands this notion of a unique “Royal” relationship is encouraged through the appointments of HM Lieutenant Governors, Bailiffs and other “Crown Officers” as some sort of elevated local royal squirearchy yet it is all the more laughable since Islanders make no financial contribution towards the upkeep of the very same British Royal Family or institutions from which any “royal” accreditation or status derives.
- 8 It is also laughable that Islanders are encouraged to place so much reliance upon ancient “Royal Charters” such as were granted in their thousands by perverse monarchs to gullible people in specific places for all sorts of dubious reasons. In most instances these bits of parchment have been consigned to the museums or the fire where they belong and they are not generally regarded now as everlasting, sacred, or legally enforceable texts.

9 Not everybody has been hoodwinked by the dubious charters either. In 1748 Capt Dow, the long suffering Revenue Officer serving in the Isle of Man pleaded to the Treasury in England;

"I humbly hope that now is the time for my honourable masters, and the good of Gt Britain to enquire into the privileges of this Island."

A similar plea was made in 1770 by Capt James Major, a Channel Islands based Revenue Officer when he repeated the plea to the Treasury Lords;

"To look into the Islands' Charters."

More recently Lord Justice Templeman observed in the UK Court of Appeal in 1982 that;

"It also seems to me to be high time that the government looked at the privileges and immunities of the Channel Islands and the Isle of Man, which can be exploited for use as an umbrella for fraud and extensive tax avoidance and evasion."

Now, in 2009, the call for such examination is a world-wide chorus.

10 The "Royal" branding is just a small part of the subsidy that the people of Britain provide to the often ungrateful Islands' populations through the supply of many services at reduced, little or no cost.

It's not just the financial unfairness either because the Royal and British labels afford the Islands an international status and credibility which implies to the unknowing that these little places are part of a "British Islands entity" where similar and consistent British standards might apply. This was noted in the 1973 Kilbrandon Report on the Constitution whose authors concluded that it was essential for institutions and practices to be similar throughout the British Islands – yet the Islands seem to have been allowed to fall ever further behind an acceptable international standard on such matters as Human Rights compliance and non-discrimination legislation or trading standards.

11 At the same time the Islands have been encouraged to tart up the image of their ever expanding "finance centres" as respectable and well regulated to satisfy OECD and IMF inspectors. Yet, whenever shortcomings are made evident (as they frequently are when an Icelandic Bank goes bust or yet another despot's slush fund is found salted away or a British arms manufacturer's bribes cache exposed), the defence "that it couldn't happen now" or "the business will go abroad" is offered (and apparently accepted) to ward off criticism.

William Le Marchant, a convicted smuggler and HM Bailiff of Guernsey for much of the later 18th century made similar claims then. He was a great defender of the supposed "Rights and Immunities" of the Channel Islands – including King John's bogus Charter.

12 Until the great economic crash of last year, the Islands seem to have been immune to effective scrutiny from Britain (although Britain is ultimately responsible for their good government) or any other external body or organisation. Whether public scrutiny might yet initiate effective governmental action has yet to be seen.

13 It is especially significant that whenever UK examinations have been initiated into the affairs of the Islands that they have traditionally been incompetently managed or left unfinished. Thus the handing of "Revestment" in the Isle of Man in the 18th century to combat that Island's huge smuggling business was bungled and negotiations dragged on for several decades with the Lords Atholl before they were finally bought out with astronomical sums of British peoples' money in the 1820's. Yet, that Island has been allowed to revert to its old fashioned ways with a perverse "tax haven economy" that has been used by crooked financiers world-wide to defeat the proper policies of governments on a global scale since the 1960's.

14 Other instances like the Jersey Prison Board Case or UK Treasury Inquiries into the Legal systems of Jersey and Guernsey in the 19th century remained inconclusive or uncompleted..

More recent examinations such as the Royal Commission on the Constitution c1973 and the 1998 Edwards Inquiry and Report on the Islands' Financial Services were similarly defective. In 1973 Lord Crowther Hunt and Prof Peacock's dissenting minority Report revealed that there never was a proper *examination of the economic effects of the finance industry on the Islands*, as the terms of reference required. Similarly Mr Edwards failed to consider *the economic and social well-being of the Islands themselves* as he was charged and he claimed to have been "*prevailed upon not to dwell upon that part of his terms of reference*" when I asked him.

15 All the Islands are very keen to claim ancient histories and long pedigrees for whatever constitutional arrangements that currently prevail. But, the historical record that has been presented has traditionally been defective and distorted and tailored to support a doubtful and misleading provenance. The records of the battles of the English Customs Service to be established in all the Islands from 1660 till 1805 are especially revealing because they expose the falsehoods and deceit that have underwritten the very same dubious constitutional arguments that are presented to this day. They are substantial looking edifices but largely without foundations.

16 The conclusions of Mr Michael Foot's recent enquiries into aspects of the "off-shore" Finance Services business in British territories including The Channel Islands and the IOM are not yet published but it is significant that he appears to have made no effort to communicate with people in these places (or the overseas territories) who were not actually serving in government or the finance business itself. As is so often the case, he did not attempt to meet with the general public and to receive their observations and certainly his office showed no enthusiasm to communicate with me.

Nb Michael Foot's Report has now been published. It is the usual whitewash job.

17 The basis of the Channel Islands relationships with the British people or with the peoples of the EU or the Commonwealth and organisations such as the UN and Council of Europe are, at every level uncertain or obscure. For example, the Islands are "deemed" to be members of the Commonwealth by virtue of their "dependency status" on the UK. Why aren't the Islands members in their own right?

18 The existing Islands' administrations are very keen to stress their "independent status" but they are not, so it would seem, very keen to contribute to organisations like the UN as others do. And, why should the UK government have to retain liability as "High Contracting Party" for the Islands before international tribunals when the Islands are such unwilling supporters of so many international aims and objectives?

Neither the UK Department of Justice nor the Jersey government can even produce a list of international obligations that currently apply to the Island.

19 The time is long overdue, in the interests of fairness to all parties for all these matters and more to be subjected to proper examination, discussion and reform so that clarity and certainty might be achieved

20 The most recent examination of Guernsey's form of government, undertaken at the modest cost of just £60,000 by the Welsh Audit Office, has revealed a deplorable level of incompetence and a failure to achieve any of the 6 principles of corporate governance. If such an audit was carried out in Jersey the defects would probably reveal a level of incompetence similar to or worse than that in the Turks & Caicos Islands. And it is significant of course that these far away Caribbean islands are supposedly supervised by the same London government and it is becoming ever more apparent that long term neglect runs throughout the over-seeing of the small British territories world-wide.

21 That Scotland, Wales and Northern Ireland have all achieved substantially reformed government systems since 1973 whilst the Channel Islands remain preserved in historical aspic is a great cause for concern. All the more so since positive proposals for change - like that for a "Council of the Islands" - have been ignored as have such suggestions as the "Jersey Bill" (both revealed in the 1973 Kilbrandon Report on the Constitution).

22 This also is nothing new because the Channel Islands were invited to send representatives to serve in the London Parliament in the 16th and 17th centuries and these instructions were also ignored. The issue could well have been settled following the 2nd World War by Home Secretary Mr Chuter Ede's reforming Committee, but as usual, the task was left only superficially considered.

23 The question whether the Islands should now elect representatives to Westminster and the EU deserve to be considered afresh - especially since the people of Gibraltar do participate in European elections (following the ECHR case of Matthews v UK) and the residents of other far more remote territories of other countries can participate fully in both their national and EU elections and assemblies.

24 The example of French Mayotte shows that reformed constitutional arrangements can still be made and that there is virtually no limit to the special terms and conditions that might be negotiated to suit all parties.

25 On the other hand, the unseemly recent efforts of (now retired) Jersey's Bailiff Sir Philip Bailhache, to promote Jersey's independence from the UK, is another cause for concern. Not least because his political interference as the Island's senior judge must be viewed as undesirable.

26 Of course, the conflicts inherent in the ancient office of HM Bailiff in both Guernsey and Jersey have been subject to much critical examination in recent years and that for Guernsey was considered by the European Court of Human whilst the States of Jersey is currently charged to look at the rôles of several of the Royal

appointees. And, even tiny Sark has been obliged to initiate democratic reforms in line with ECHR and UK decisions after a little prompting from the Barclay Brothers.

27 Without attempting to describe the many defects in the system of HM appointments made outside of the Islands and of their various conflicting rôles within them, the question of independence from the UK is without doubt one that needs to be considered properly. As does the Islands relationship with the EU, which has changed and grown so much since Protocol 3 under the Treaty of Rome was negotiated.

28 It is of course no coincidence that all the Islands are truly dependencies of the "Finance Industry" and that their exclusive and tiny legal professions are more or less mesmerised by it. It is significant that HM Bailiffs in the Channel Islands dominate the provision of legal services and the effective supervision and control of lawyers and the conduct of the courts. Yet, at the same time such Crown Officers are never shy of expressing their supportive views on the finance industry or on other matters of public interest or controversy needing inappropriate "royal" guidance.

29 In Guernsey it is still obligatory for lawyers to study at Caen University (Normandy) to learn about laws that have ceased to be used in France since before the French Revolution. In both Bailiwicks there has been no means of studying Islands' law within them except from ancient, often hand written texts in French, handed down within lawyers' offices. Modern text books on Channel Islands law (unless related to property or tax) are virtually non existent. Commentaries on Channel Islands laws are usually antiquarian French volumes of great rarity and value and their contents more akin to rules for an obscure cult than comprehensible legal information. The Islands' lawyers have an exclusive monopoly in the provision of legal services in their respective Islands and legal aid is vaguely dispensed on a charitable basis, by the least experienced practitioners in Jersey. Jersey's CAB is prescribed by law from offering legal advice since this is reserved to Jersey lawyers.

In Guernsey a very basic Green Form legal aid system currently exists but is due to be replaced by a more regulated and certain Statutory system soon.

This autumn a course of study in Jersey law is being offered for the first time in the Islands' known history. It is open to anybody able to pay the fees but does not include a paper on Human Rights etc.

30 Channel Islands lawyers do not devote much time or energy in pursuing social causes or cases that do not lead to a substantial fee note.

31 Sufficient here to state that the entire legal and judicial system in all the Islands needs to be subjected to a thorough and critical examination by an appropriate outside body but the most certain single reform that needs to be made is an end to the monopoly status enjoyed by Islands' lawyers in the provision of legal services and advice.

32 Other offices, notably those of HM Lt Governors in all the Islands should also be consigned to the history books. There is no useful rôle for pensioned – off, exclusively male, military chiefs in the government or administration of these Islands and their purpose in the 21st century is yet another anachronism.

If a communication route between islanders and London is needed (and it most definitely is) then this can be achieved by much more certain, democratic and

accessible means. Ideally, properly elected Westminster and EU Members of Parliament could use the buildings and staff numbers that now serve the arbitrarily appointed Lt Governors.

33 Or, the offices could be re-structured with suitable staff as a proper conduit for information to be transmitted between islanders and the governments at Westminster and Brussels, overseas organisation such as the UN and Council of Europe and somewhere where UK Ministers and others might consult with local residents directly and regularly.

34 In the continuing absence of elected MPs at Westminster, specifically designated Ministers need to be appointed with defined duties and responsibilities for all the Islands, and islanders should be enabled and encouraged to communicate with them. Such Ministers should not be hidden away in the House of Lords – as is the absurd tradition - but fully answerable to questions before the Commons or directly from islanders.

35 The smallness of the Islands is traditionally offered as a defence of their outdated or quaint practices and it is true that the task of complying with so much EU legislation or international human rights or other standards is burdensome. Yet, islanders do not want to be left behind larger territories so far as wealth and consumerism is concerned and they can hardly expect to be leading international finance centres whilst providing social and governmental services to residents only appropriate for primitive fishing and farming communities.

36 So, the administrations and governments in the Islands must achieve appropriate standards at local, national and international levels and this they clearly fail to do now. It would seem sensible to share the bureaucratic burden through closer alliances with Westminster and/or Brussels but if Islanders choose otherwise, then they cannot expect dispensations from international obligations that apply elsewhere.

37 The enjoyment of military defence, representation abroad, further education, access to specialist health services and skilled or scientific help have all been provided traditionally at subsidised rates to the Islands by UK taxpayers and there are many more financial imbalances too that need to be examined and addressed.

38 The recent re-adjustment of the reciprocal health service arrangements between the Islands and the UK has revealed the most selfish and unappreciative attitudes of Channel Islanders and their governments towards the benevolent UK taxpayers.

39 Similarly, the massive £multi-billions bail-out of British banking by British taxpayers received no contribution from Islanders. Yet, if the rescue had not been achieved the entire banking and finance system in the Islands would have collapsed. The substantial “Northern Rock” business based in Guernsey would certainly have ceased trading with resultant immense financial implications for that Island.

40 Even the provision of national BBC services is not a realistic reflection of licence fees collected on a per capita basis at rates determined in London. Yet, at the same time, the Corporation fails to provide adequate broadcasting services for 3 entirely separate jurisdictions with their own distinct systems of law and languages that should

be offered. The fact that the Islands only enjoy the status of local regions within England – rather than nation status like Wales or Scotland – shows that the unfairnesses arising from the current constitutional arrangements are not all entirely one-sided.

41 Although the peoples of the UK have contributed an unfairly large financial subsidy to all the Islands for centuries and also provided less obvious support through National Trades Unions and registration, supervision and discipline facilities for many Professional people, all the Islands apply discriminatory housing and employment laws against people from the UK and the rest of the EU.

Such policies are not temporary short term expediencies to deal with unforeseen circumstances but are rather deliberate and long term strategies to treat many thousands of working people as second class residents (the Guernsey and Jersey Housing laws have been imposed since 1949) and have served only to make social conditions worse. They are a disgrace and are not just domestic islands' issues.

42 The lack of anti-discriminatory legislation in the Islands together with an official contemptuous disregard for international human rights standards is a long term scandal and is the direct result of the failure of the UK Government to ensure otherwise.

These are matters that I have complained of to Lord Bach and his predecessors and other office holders in the UK government over decades and in submissions and responses to the Treasury and FCO Human Rights Annual Reports – but I might as well not have bothered.

43 It is made evident time and time again that examination by external bodies is the only reliable means to assess institutions and practices within the Islands.

Interventions by such as the UK Police and Prisons Inspectorates are invaluable and could not be achieved locally but are not guaranteed to protect and maintain the standards of services provided. Substantial defects including potential major human rights violations have been revealed by 2 recent Prison Service inspections in Jersey and the Chief Officer of the States of Jersey Police is currently suspended from office for reasons that have not been made public. Other important public employees such as the Senior Magistrate designate and Hospital Consultants are also currently suspended from their duties. There are substantial complaints against many aspects of Jersey's government that are too many and too complex to describe in this Memorandum but the scandal of the long term child abuse allegations at Haut De La Garenne and other Jersey care homes needs to be at least referred to as does the planned NSPCC role.

44 The government and administration of Jersey needs a critical root and branch examination by an appropriate external body as a matter of urgency. The longest serving member of the States of Jersey aka "Father of the House - Senator Stuart Syvret – has described the Assembly as composed of "gangsters and half-wits."

45 For many people the Channel Islands and the Isle of Man are known mostly for their pretty cows, "Royal" potatoes, tomatoes, cats without tails and kippers. But rather as Switzerland is no longer best known for cuckoo clocks, the Islands should be looked at critically and as part of a wholesale review of all the small British territories around the world as soon as possible.

46 In this Memorandum I have alluded to the need for much improved facilities for dialogue between the government in London and other British territories around the world, including the so called "Crown Dependencies."

In fact, research through historic records indicates that the dialogue was much better in Colonial times when all communications were carried by sailing ship. Then the London administration was kept much more fully aware of the management of the small territories and now with all the technological wonders that are available, this is not an acceptable regression. There is no reason at all why the residents of the furthest flung islands could not be in direct contact, on a regular basis, with relevant government departments or Ministers or elected representatives in London or Brussels and vice versa – at very minimal cost.

47 There are already many UK All Party Parliamentary Groups that include the Channel Islands, the Isle of Man and other British territories within their remit but apart from providing an opportunity for some MPs to enjoy "overseas" jollies, their useful purpose is not at all clear. They certainly have very little useful purpose so far as I can determine in promoting the needs of residents of Jersey or Guernsey. There are also organisations at Westminster and Brussels which claim to provide forums for the residents of overseas territories to communicate with one another through their European offices. But it all seems very low key and politically ineffective.

48 It would seem to be wholly desirable to establish, at least a UK Select Committee with specific responsibilities for the Channel Islands and the IOM or a larger Committee with responsibility for all of the Dependencies and Overseas territories together. Since staff are already employed in London to deal with matters arising in the small territories and elected representatives could easily replace imposed island "governors" then any increased costs should be minimal.

49 It is noted that Jersey Finance Ltd has already been encouraged to open overseas "Jersey offices" in such places as Hong Kong and to develop an "international identity". Since the promotion of the finance industry is inseparable from the political and economic ideology of the current Jersey government this is a part of a very worrying trend which has implications for the relationship with the UK and the declared policies and wishes of British people as a whole. If Jersey is to have its own "foreign policy" – as is now being discussed – then a clear separation from the UK must be inevitable.

Urgent clarification of this matter is essential - especially since other small British territories might also seek to promote their own and diverse "foreign" policies in the near future.

50 The final court of appeal for certain matters arising in the small British territories historically lies to the Privy Council or the Court of the Privy Council. This is an obscure and uncertain process, often cumbersome and likely to be too expensive for many litigants. There is very little published information on this area of specialist law and reforms have recently been introduced which may affect the residents of the small territories.

If an appeal system remote from the small territories is to be continued then it needs to be made much more accessible and understandable, using modern technology and when necessary, travelling judges. END

revised March 2010