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THE SCOPE OF GUERNSEY'S AUTONOMY IN LAW AND PRACTICE

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Introduction

The UK Labour Government's radical devolution package, which has already spawned a variety of fledgling legislative and/or executive bodies, risks masking the fact that the concept of provincial autonomy is not an entirely embryonic idea in the British Islands[2]. Guernsey[3], in common with the other Channel Islands and the Isle of Man, has enjoyed virtual autonomy in the executive and legislative spheres since time immemorial. Whilst the UK mainland struggles to come to terms with a constitutional upheaval more akin to the aftermath of a bloody revolution, Guernsey has been quietly governing itself, jealously guarding its professed "inherent right"[4] to do so, with the unquestioning blessing of successive London governments of differing political hues.

The purpose of this paper is to explore, principally in the context of Guernsey[5], the extent of this autonomy. Guernsey does not, and does not pretend to, enjoy a divine right to self-government as it is not an independent sovereign state. Therefore, it will be established how far and in what areas the UK Parliament and Crown maintain a residual power to intervene in the Island's affairs, particularly against its will.

Historical background

An appreciation of Guernsey's history – or, more accurately, that of England and Normandy – is fundamental to understanding the Island's current constitutional status. This status was born not through grand design, as in Scotland, but almost by accident.

Much of history, particularly legal history, begins in 1066 and Guernsey is no exception. The Channel Islands were progressively integrated into the Duchy of Normandy in the tenth and eleventh centuries and, by 1066, it was clear that the Islands were ruled by William, the Duke of Normandy. After the Battle of Hastings of that year, William became King of England and so began Guernsey's connection with England. In 1202 a feud between King John of England (also Duke of Normandy) and King Philip Augustus of France, resulted in a declaration by the former that "the assembled Court of the King of France should be deprived of all the lands which, until then, he and his predecessors had held from the Kings of France"[6]. This declaration theoretically encompassed those Islands, but it was never enforced beyond mainland Normandy. In other words, the Islands continued to be subject to English hegemony and this was to prove enduring.

The Treaties of Paris (1259) and Calais (1360), whilst confirming England's lost sovereignty over Normandy, pointedly omitted to mention the Channel Islands. This provoked Johnson to remark it was "beyond dispute" that from 1204 England was the de facto ruler of the Islands[7]. This was set in concrete in 1254 when King Henry III felt confident enough to

grant the Islands to his successors on the basis that those Islands "may never be separated from the Crown … and should remain to the Kings of England in their entirety forever"[8]. Over the subsequent centuries, the Crown administered the Islands at arm's length. The Islands enjoyed – and continue to enjoy – considerable local autonomy and discretion. This autonomy has hardly been threatened since, only temporarily being punctured by the abortive "*La Surprise de Jersey*" invasion by France (1781) and the German occupation during the Second World War (1940-1945).

In law the Islands had become "annexed to the Crown"[9]. This is important because the UK's authority over the Islands exists by virtue of that annexation alone, meaning that whomsoever is English Monarch is lawful ruler of the islands by that fact alone. To this day, Guernsey's relationship with – and allegiance to – the Crown is through the Monarch as successor of the Duke of Normandy.

Guernsey's constitutional status and constitution[10]

Guernsey is not part of the United Kingdom of Great Britain and Northern Ireland[11], nor is it a colony[12]. The Island forms part of the British Islands[13] and its citizens are British citizens, notwithstanding the fact that Guernsey is not part of Great Britain[14]. Guernsey itself is a Crown Dependency and differs from other possessions of Her Majesty owing to its lack of absolute sovereignty, its proximity and economic ties to the UK mainland, and the "antiquated" nature of its enduring links with the Crown[15].

Guernsey has been accurately likened to a "miniature state with wide powers of self-government"[16]. This virtual autonomy is exercised through the Island's insular executive and legislative institutions. Guernsey's government is known as "the States"; confusingly, so is the Island's legislature. Paradoxically, however, this confusion is instructive: government and legislature are a great deal more mutually inclusive than their UK counterparts. The absence of organised political parties and a ministerial system mean that government, in theory *and* practice, operates through the legislature. As a consequence, the latter is a powerful force, not a glorified rubber stamp, which is more receptive to public influence[17]. It is ironic that, given the French origins of Guernsey, the Island's system of government so disregards the doctrine of the separation of powers, an article of faith to France, when the pastiche of French tradition is so heavily engraved on Guernsey's way of life[18].

Since the Reform (Guernsey) Law 1948 (as amended) – which can be regarded as Guernsey's "basic constitution"[19] – the government has comprised of the States of Deliberation, the Island's legislature[20]. The States of Deliberation is constituted by the Bailiff, as President, and his deputy, who is appointed by the Crown but is the standard bearer of the Island's autonomy charged with "guarding and protecting" the same, as *baille* means. Further members include the law officers with speaking rights only; ten Douzaine (Parish Council) representatives elected for one-year terms; two Alderney representatives[21] and forty-five People's Deputies elected for four years. At an Island-wide level, day-to-day government is conducted through States Committees, much the same way as UK local government operates[22]. The Monarch's resident representative is the Lieutenant-Governor who, as the Island's Commander-in-Chief (defence being a matter governed by London), serves as a reminder that the Island's autonomy is not unfettered.

Guernsey boasts a flourishing tier of local government crafted on ten parishes each served by an elected committee (Douzaine) charged with the delivery of local services and amenities

paid for by local taxes collected by elected Constables. Social Security is administered at grass roots level by elected Procureurs of the Poor, providing outdoor assistance to the needy. The vitality of Guernsey's solid local government base, spared the interference of its UK counterpart, is a powerful indicator of the Island's entrenched autonomy.

Guernsey law

Ironically, an important source of Guernsey law and one which serves to galvanise the Island's autonomy, was formulated in England. Royal Charters dating from the twelfth century carry the force of law and confirm, *inter alia*, Guernsey's independent judiciary and freedom from English tolls, taxes and customs. These charters represent a recognition on the part of the Crown of Guernsey's much cherished autonomy and a corresponding recognition on the part of Guernsey that ultimately it is a Crown possession and does not have an unimpeachable competence to legislate in all areas.

In many areas, though, Guernsey does enjoy what is tantamount to a roving licence to legislate at will. It does so through the enactment of Laws and Ordinances, both instruments of primary legislation. Once the States pass a *Projet de Loi* (Bill), usually proposed by the relevant committee, it must be communicated to the Queen-in-Council (i.e. the Privy Council) via the Lieutenant-Governor. Once sanctioned by Order-in-Council and registered in the Royal Court of Guernsey, the Bill becomes a valid Law. Ordinances, by contrast, are of limited scope as, for example, they cannot levy taxation nor alter the common law[23]. A residuary common law power exercised before the 1947 reforms by the Royal Court, Ordinances are a relic of a bygone era. The States Legislation Committee can enact draft Ordinances, subject to a power of annulment by States resolution. Ordinances do not require Royal sanction.

Application of English Law

The Crown is responsible for the "good government" of Guernsey. However, as the Island is not represented in the House of Commons[24], no Act of Parliament automatically encompasses Guernsey in its ambit, unless an express provision or necessary implication dictates otherwise[25]. Should it be decided that an Act will so apply – which is rare – it is normal practice to extend it by Order-in-Council, modifying the Act's provisions as appropriate. The Kilbrandon Commission stated that "By convention Parliament does not legislate for [Guernsey] without [its] consent in matters of taxation or purely domestic concern".[26]

The terms of reference of the Royal Commission on the Constitution (1969-1973) chaired by Lord Kilbrandon, required the commissioners to, *inter alia*, "consider … whether any changes are desirable in the constitutional and economic relationships between the United Kingdom and the Channel Islands and the Isle of Man"[27]. Whilst recognising "blurred edges"[28] to the constitutional relationship between the UK and Guernsey, the Kilbrandon Commission acknowledged that these arose primarily as a consequence of uncertainty, generated between the Island and the UK over the scope of the Crown and Parliament's competence to intervene in Guernsey's affairs in circumstances which could conceivably arise in the future, as opposed to specific difficulties in the past, of which there were none of any magnitude in relation to the Channel Islands[29].

Nonetheless, the Kilbrandon Commission remained concerned that such theoretical eventualities risked being put to the test, principally for two reasons[30]. First, the dividing line between domestic matters and international issues was, like the constitutional relationship between the UK and Guernsey, becoming increasingly blurred and indeterminable, mainly because international agreements invariably trespassed on domestic territory. Secondly, international opinion was rapidly cooling on the concept of optional territorial clauses in agreements, meaning that the UK was generally expected to enter agreement for the entire area for which it had responsibility for international affairs. Such difficulties could give rise to a situation in which Guernsey is obliged to pass legislation to comply with international covenants to which it might have objected; were it not to do so Parliament would have to exercise its residual default power and pass legislation and extend it to Guernsey against that Island's wishes and possibly in breach of the convention that Parliament does not legislate for the Island on purely domestic matters.

In view of these theoretical difficulties, and the continuing uncertainty as to the extent of the UK's general responsibility for the "good government" of Guernsey, the scope of the residual authority on the part of the UK to intervene in the affairs of Guernsey will be examined, first from a domestic angle and, secondly, from an international perspective.

Basis of UK intervention

At the outset, however, it is important to be clear what form this intervention may take. Applicable Acts of Parliament must be communicated by the Privy Council to the Royal Court of Guernsey for registration. As registration is a matter for Guernsey alone, the question arises as to whether, in failing to register an Act of Parliament extending to Guernsey, the Island has an effective veto over such legislation. The balance of authority weighs against such a possibility, a possibility usually precluded by the words of the Order-in-Council, used to extend Acts to the Island which invariably include the proviso that registration is "not essential to its operation"[31]. It is submitted that the registration requirement is not a pre-requisite for the applicability of an Act of Parliament in Guernsey, but simply a mechanism to publicise that applicability[32]. Promulgation of law, though highly desirable and necessary, does not affect the validity of law, at least at a positivist level. Acts tend only to be enforced in Guernsey from the date of registration[33], so will often be brought into force after enactment in the UK. The UK has, however, by implication legitimised such delayed implementation by its normal recourse to Order-in-Council when implementing UK statutory provisions in Guernsey, which may only apply after the UK legislation is in force. This is because the *raison d'etre* of the Order-in-Council procedure is to facilitate consultation between UK and insular authorities as to whether such legislation should be extended and, if so, what, if any, modifications are desirable[34].

The Royal Prerogative to legislate for Guernsey by Order-in-Council stems directly from the Sovereign's position as latter-day successor of the Duke of Normandy. This power is most notably exercised to extend the scope of Acts of Parliament to Guernsey. Like an Act purporting to apply directly to the Islands, Orders-in-Council are communicated to the Island for registration in a similar manner as for a fully-fledged Act of Parliament. There is a greater theoretical possibility that an unregistered Order-in-Council, as distinct from an Act of Parliament, may prove successful in blocking its insular application. Although there has been some court drama on the point[35], fundamental disagreement has tended to be avoided through consultation, and there is a lack of firm authority on the question[36].

Finally, as regards the applicability of secondary legislation, the formulation of Statutory Instruments and Regulations by Ministers acting under the authority of statute, it has been said that it would be "unconstitutional" for such measures to apply automatically to Guernsey[37]. The heady concept of unconstitutionality is alien to the British Islands, but its spectre has been nipped in the bud in the case of secondary legislation, as such provisions tend to be extended to Guernsey only when necessary and then through the Order-in-Council mechanism, providing for consultation and amendment.

Domestic law

The starting point for any consideration of the scope of Guernsey's competence to legislate, is to identify those areas where the UK continues to assert its authority over the Island. These areas are relatively uncontroversial and, indeed, Parliament's supremacy in these areas is arguably a great benefit to Guernsey, particularly in the case of defence, nationality, citizenship, Succession to the Throne, extradition and broadcasting[38]. This list is indicative, not exhaustive; indeed in view of Parliament's virtually limitless sovereignty coupled with the wide basis upon which Parliament and the Crown's residual authority to intervene rests (the maintenance of good government), the list cannot be conclusive, a logical impossibility.

A useful "rule of thumb", advanced by the Isle of Man in evidence to the Kilbrandon Commission to determine issues "reserved" for London, involves identifying those issues which "transcend the frontiers of the Island"[39], a test which dovetails with the fact that Guernsey, in common with other Crown Dependencies, is positive and pragmatic about relinquishing insular competence where local needs are more beneficially met at a higher level. However, the transcending frontiers test is not determinative of the constitutional legitimacy of UK intervention in the affairs of Guernsey, for two reasons.

Firstly, issues which "transcend the frontiers of the Island" are not always clear. For example, the Marine etc. Broadcasting (Offences) Act 1967 was designed to crack down on sea-faring pirate radio stations, action which formed part of a wider effort orchestrated by the Council of Europe. When the Bill, including a provision extending it to the Isle of Man, was introduced, Douglas objected, insisting that the subject matter of the Act fell within its exclusive competence. The measure was seen primarily as a criminal law, not broadcasting, matter, the former being the preserve of Tynwald. London relented and a Bill was introduced in Tynwald but defeated on its Second Reading in the House of Keys. Accordingly, the UK extended its own Act to the Isle of Man as originally envisaged, notwithstanding the fact that it effected a change to Manx criminal law, an area where Parliament had only previously legislated with the consent of Douglas.

The second reason why the transcending frontiers test is of limited application, is because it may not always be referable to the fundamental, and itself transcending, basis upon which the UK stakes its claim to intervene in the affairs of Guernsey, namely its responsibility for the "good government" of the Island. Clearly, the need to maintain good government can have an impact beyond the limited scope of those matters reserved for London – mainly for reasons of economies of scale, convenience and the need for uniformity. This was the subject of a recent written exchange in the House of Lords. In response to a Written Question by Baroness Strange enquiring as to the meaning and scope of the Crown's responsibility for the good government of the Crown Dependencies, Lord Bach, for the Government, replied "The Crown is ultimately responsible for the good government of the Crown Dependencies. This means that, in the circumstances of a grave breakdown or failure in the administration of

justice or civil order, the residual prerogative power of the Crown could be used to intervene in the internal affairs of the Channel Islands and the Isle of Man. It is unhelpful to the relationship between Her Majesty's Government and the Islands to speculate about the hypothetical and highly unlikely circumstances in which such intervention might take place"[40].

Therefore, the UK continues to assert and defend its residual competence to intervene in Guernsey's affairs to ensure its good government even if this involves meddling in areas where it would not usually do so. As Lord Bach accurately stated, it is an idle and futile exercise to speculate as to the likely circumstances in which the Crown or Parliament could intervene in Guernsey's affairs against its wishes and in an area generally governed locally, but it is clear that little less than an emergency of some magnitude will suffice. The question thus arises as to how far the convention – recognised by London[41] - that the Crown or Parliament does not interfere with Guernsey's purely domestic and taxation concerns rings true in practice, given the UK's over-arching responsibility for the Island's good government. Clearly, the convention must limit London not insignificantly because otherwise the UK would have "responsibility without power"[42]; that the UK has responsibility is not in doubt, the issue is the extent of the UK's residual power.

The Kilbrandon Commission, whilst appreciating the "pride"[43] which Guernsey attaches to its virtual autonomy, was firmly of the view that "despite the existence of the convention, Parliament does have power to legislate for the Islands without their consent on any matter in order to give effect to an international agreement" (which is far from narrow because it could necessitate changes to domestic law, in breach of the convention; Parliament's competence to legislate to enact international agreements – as distinct from changing domestic law – is best thought of as an exception to the convention)[44]. The Kilbrandon Commission went on to make the point that, if Parliament can legislate for Guernsey at all, about which there was "no doubt"[45], then surely this power knows no bounds. If Parliament can legislate, it can legislate in whatever area it chooses; this is, after all, implicit in the notion of the sovereignty of Parliament.

The Kilbrandon Commission cited, in passing, the judgment of Lord Reid in the Privy Council case of *Madzimbamuto v Lardner-Burke*[46] in which he stated that the convention that Parliament would not legislate for South Rhodesia without its consent was "a very important convention", breach of which would be regarded by many as "highly improper", but that, ultimately, "it had no legal effect in limiting the legal power of Parliament". The Kilbrandon Commission concluded that "in the eyes of the courts" Parliament has a "paramount power" to legislate for Guernsey in any circumstances[47]. Thus, the courts only recognise the moral, not legal, force of conventions.

Dicey distinguished conventions from what he dubbed "strict law" (i.e. statute and common law) which was enforced by the courts by defining the former as "understandings, habits and practices which are not enforced by the courts but which regulate the conduct of members of the sovereign power"[48]. Dicey's non-enforcement formulation is of merit in that it echoes current judicial practice whereby, as noted, conventions are recognised but not enforced[49]. Although it is highly doubtful whether conventions can "crystallise" into hard law of their own accord[50], they can be set in stone through statutory enactment, an example being the former convention (now law) that the UK does not legislate for former dependent territories[51]. Courts shy away from enforcing conventions because, raising issues of political importance, they are arguably non-justiciable[52]. Moreover, conventions are said to

be better policed by Parliament and not the courts, as democracy and accountability are able to prevent unwarranted deviation from established practices[53].

As Guernsey is not represented in Parliament, this might be seen as an argument for "stepping-up" the status of the convention that Parliament does not legislate for Guernsey on taxation or purely domestic matters by hardening it into strict law, the obvious precedent being the Statute of Westminster Act 1931, alluded to above. An Act specifying Parliament and Guernsey's responsibilities for subject areas was proposed by Jersey and the Isle of Man in evidence to the Kilbrandon Commission. Rejecting the idea, the Commission, doubtless swayed by the UK's strong opposition, based its reasoning on the "awesome" drafting difficulties associated with allocating subject areas to the respective authorities. The Commission also highlighted the impossibility of Parliament binding its successors to maintain such an Act on the statute books (although devolution to Scotland, Wales and Northern Ireland, confirmed by referenda, certainly enjoys a powerful measure of moral and political entrenchment). From a purely legal standpoint, such a reform would be constitutionally toothless owing to the legal impossibility of entrenchment. Interestingly, Guernsey opposed such a reform. It cited the flexibility of the existing unwritten, informal and largely consensual arrangements based – and in a sense entrenched – on mutual respect which were held to work well in practice. In an age of rapid, yet piecemeal and directionless, constitutional upheaval in the UK, there is much to be said for this pragmatic approach to the issue of constitutional change which resoundingly rejects change for the sake of change.

International law

Nowhere is the potential for the UK to exercise its paramount powers over Guernsey more acute than in the context of giving effect to international agreements binding on the Island, particularly those requiring changes to domestic law. The UK is responsible for Guernsey's international relations and the Island cannot enter treaties in its own name[54].

Until 1950, it was the practice of the UK to assume that provisions of international treaties which it entered applied automatically to Guernsey, unless the treaty provided, or the Government stated, otherwise. However, in that year the Foreign Office issued a circular[55], which had the effect of reversing what had hitherto been the norm in practice. Thereafter, any treaty or international agreement signed by the UK would not be regarded as applying to Guernsey simply by virtue of the fact that it applied to the UK, unless the Treaty, or government, stipulates otherwise. A rebuttable presumption that international agreements did not extend automatically to Guernsey was thus born. This victory for insular autonomy – which was increasingly viewed internationally as a victory for insular isolation – did not stand the test of time. The 1950 declaration was to all intents and purposes reversed by a letter dated February 3rd, 1961 from the Home Office to the Lieutenant-Governor of Guernsey[56]. This stated that the question of the territorial application of treaties was to be determined by each individual treaty itself, either expressly or by implication. If silent, the treaty would be presumed to extend to all those territories for which the UK is responsible in international matters, which would clearly encompass Guernsey. This declaration was a reaction to a growing colonial distaste for "colonial application clauses" whereby treaties only applied to the principal metropolitan territory (mainland UK) and pre-empted the judgment in *Commission v UK*[57] which, in the case of the Isle of Man, held a rebuttable prescription to exist whereby international agreements extended to the whole territory[58]. The possibility of a territorially-limited application of an international agreement remains a real one, however.

In international negotiations, it is London that occupies the UK cockpit, although participation by the Crown Dependencies and others is not unknown at the negotiation stage[59] and is likely to grow as the UK grapples with devolution. Where this is not the case, Guernsey is not left without influence, but its influence enters the equation at the pre-negotiation stage. The 1961 letter provides that the UK will "endeavour" to discuss the implications of forthcoming international agreements with Guernsey. Plender, highlighting the "settled practice" of such consultations, believes that it has evolved into a convention. In support of the existence of such a convention he cites the 1993 Memorandum sponsored by several Whitehall departments concerning the application of treaties to the Crown Dependencies. This Memorandum notes the pan-Whitehall "standard operating procedures" for early consultation on forthcoming treaties likely to have an impact on Guernsey[60].

In requesting an opt-out from, or the adoption of special terms, in relation to international obligations which have a domestic impact, Guernsey must frame such a request so that it is "reasonable in all the circumstances"[61]. Should the UK refuse, because the request is unreasonable or because it would frustrate or undermine the effectiveness of the whole agreement, or should the UK fail to secure acceptance of the request in negotiations, it would be for Guernsey to legislate if the legislation required is of a type ordinarily enacted by the Island (i.e. domestic law)[62]. Were such legislation not forthcoming, the Kilbrandon Commission was adamant that the UK could then legislate itself[63].

The Kilbrandon Commission rejected the proposal sponsored by Jersey and the Isle of Man for a new declaration affording the Islands what amounted to an unimpeachable right to decide whether international agreements impacting on domestic concerns would apply; a restoration in other words of the 1950 declaration. The Kilbrandon Commission noted[64] the deep international unease with affording territorial recognition to dependencies within states as it frustrates the attainment of objectives and standards at an international level, the *raison d'etre* of international law. The Commission also noted the "limited value"[65] of such a declaration as international agreement to exclude islands such as Guernsey from the terms of a treaty would not necessarily be forthcoming.

Arguments in the UK over the real scope of Parliament's sovereignty and the independence of the UK nation state have become acute since our accession to the European Community in 1973, the law of which takes precedence over conflicting national provisions. It should come as no surprise, therefore, that Guernsey viewed this accession with alarm. Ironically this was more for economic that constitutional reasons, although the two are closely linked[66]. This alarm formed a powerful undercurrent in the evidence taken by the Kilbrandon Commission between 1969 and 1973 at the height of such concerns[67]. In the event, special terms were negotiated for the Channel Islands[68] whereby they subscribe to the free movement of industrial and agricultural goods and must apply the Common Customs Tariff. Other provisions such as the free movement of persons, services and capital and taxation and social policy harmonisation, do not apply. Before these measures were agreed, the Islands reluctantly, but realistically and rationally, gave serious consideration to the possibility of seeking full independence.

Conclusion

The UK's uncodified constitution is viewed by many as simply "what happens". In many areas, this flexibility is a strength, not a weakness; the constitutional relationship between the UK and Guernsey is a case in point. The consensual and accommodating relationship stems

from the "centuries of mutual trust and respect"[69] between the UK and insular authorities. The product of this non-confrontational approach has been that few disagreements have arisen and those that have tend not to reach boiling point, but are resolved through early consultation. Therefore, Guernsey's choice - and it is a choice - to remain part of the British Islands has never been revoked; this possibility of independence is not wielded threateningly as a sword, but is simply a recognition that, although Guernsey's ties with the English Crown are strong, ultimately the Island's interests take precedence. Guernsey's position in the British Islands is, therefore, determined by pragmatic considerations and not by separatist thinking; indeed, nationalist sentiment is stronger in Cornwall.

Recent events testify as to the enduring stability and success of the UK-Guernsey relationship. For example, Guernsey's membership of the British-Irish Council[70] – established under the Good Friday Agreement, and designed to cement the Union which was neglected under the Anglo-Irish Agreement with its emphasis of North-South co-operation – is hardly controversial; indeed a not wholly dissimilar idea was proposed by the Kilbrandon Commission as a dispute resolution forum[71]. The friendly settlement in *Faulkner v UK*[72], in satisfaction of which the absence of *Legal Aid* for certain civil proceedings in Guernsey was corrected swiftly through UK and Guernsey co-operation to establish such a scheme, again highlights the non-confrontational relationship geared to dismantling difficulties at the earliest possible stage. It remains to be seen whether the Government's plans – in conjunction with an international effort – to lessen the perceived unfair advantages enjoyed by "tax-havens" will threaten this relationship; although the signs are that Guernsey will co-operate, the Island is fiercely protective of its thriving financial service sector.

In the final analysis, Parliament is sovereign and, therefore, enjoys paramount powers to intervene in the affairs of Guernsey notwithstanding the conventions that police the exercise of these powers. However, as Bois has argued persuasively[73], in reality the UK only intervenes with Guernsey's consent so as not to jeopardise the continuing relationship. The relationship is governed by "common sense rather than by law … rigidity would be fatal" [74]; as Holmes J observed, the life of the law has been about experience, not logic – the constitutional relationship between the UK and Guernsey endures on this basis alone.

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[2] The more familiar "British Isles" is primarily a geographical, not legal concept and, unlike "British Islands", includes the whole of Ireland

[3] References to Guernsey in this paper are invariably applicable to the Channel Islands as a whole

[4] *Minutes of Evidence of the Royal Commission on the Constitution* 1973, page 249

[5] By "Guernsey" it is meant the Island, as opposed to the Bailiwick of Guernsey. The latter comprises Guernsey itself, Sark and Alderney (both of which enjoy considerable autonomy themselves), Herm, Lihou and Jethou, dependencies of Guernsey subject to Guernsey law: *Martin v McCullock*(1837) 1 Moo PC 308. The Channel Islands comprise the Bailiwicks of Guernsey and Jersey (the Island of Jersey and the Islets of *Les Minquiers* and *Les Ecréhous*)

[6] Johnson, "*The Minquiers and Ecréhos case*" [1954] 3 ICLQ 189, at 195

[7] *Ibid*

[8] Loveridge, *The Constitution and Law of Guernsey* 1975, La Société Guernsiaise, page 1

[9] *Ibid*

[10] See Halsbury's *Laws of England* vol 6, 4th edn, 1991, Butterworths, London, pages 381-387

[11] *Navigators and General Insurance Co. Ltd. v Ringrose* [1962] QB 73; *Rover International Ltd. v Cannon Film Sales Ltd. (No. 2)* [1987] 3 All ER 986; cf. *Stoneham v Ocean Railway and General Accident Insurance Co.* (1887) 19 QBD 237, 239; *Re a Debtor ex p Viscount of the Royal Court of Jersey* [1981] Ch 384

[12] Although Guernsey is a member of the Commonwealth Parliamentary Association

[13] s 5 and sch 1 Interpretation Act 1978

[14] ss 1, 11, 50(1) British Nationality Act 1981

[15] *Report of the Royal Commission on the Constitution*, 1973, page 408, para 1347

[16] *Ibid* page 410, para 1360

[17] Ehmann and Marshall *The Constitution of Guernsey* 1976, Toucan Press, St. Peter Port, page 18

[18] Although separation of power issues have troubled Guernsey in the courts: in *McGonnell v UK* [2000] *The Times* February 2nd - the European Court of Human Rights held that an applicant was denied the right to a fair trial because his planning appeal to the Royal Court of Guernsey, the highest insular appeal court, was heard and dismissed by a court presided over by the Bailiff, a member of the legislature, and sole judge of law in the case complained of. Although the Bailiff had taken no directing part in the passing of the relevant planning regulations, and notwithstanding the "absence of prejudice or bias" on his part, it was nonetheless held that his colliding legislative and judicial roles were "capable of casting doubt on his impartiality," and, to this extent, the impartiality of the court had been "vitiated". See also Bailhache, "*The cry for constitutional reform – a perspective from the office of bailiff*" [1999] 3 J L Review 253, 268-272 and Cornes, "*McGonnell v UK, the Lord Chancellor and the Law Lords*" [2000] PL 166

[19] *Op cit* n.16, page 7

[20] The States of Election, the sister body of the States of Deliberation, is essentially an electoral college composed mainly of members of the States of Deliberation. Its main role today is the election of 12 Jurats of the Royal Court, judges of fact – there is no jury system in Guernsey (see s.6 (2) (a) Royal Court of Guernsey (Miscellaneous Reform Provisions) Law 1950)

[21] Both Alderney – but less so since World War II – and Sark enjoy considerable autonomy within the Bailiwick and both have legislatures: the States of Alderney and the Chief Pleas of Sark respectively. Presumably, Sark does not qualify for representation in the Guernsey States because it has wider autonomy than Guernsey

[22] *Op cit* n.14, page 10, para 1360

[23] This originates from the customary law of Normandy, but the English common law, a persuasive authority only, is increasingly displacing the old customary law of Normandy, except in real property and inheritance matters

[24] In the case of Jersey, an application that this breached Protocol One of the European Convention of Human Rights (which applies to the Islands: *Vaudin v Harnon* [1974] AC 569) was declared manifestly ill-founded: Application 8873*1*80 *X v UK* (1982) 28 Decisions and Reports 99 Ect HR

[25] *Op cit* n.14, page 410

[26] *Op cit* n.14 page 411, para 1362

[27] *Op cit* n.25, page 5, para 11

[28] *Op cit* n.14, page 412, para 1370

[29] Bois, – "*Parliamentary supremacy in the Channel Islands*" [1983] PL 385, 387

[30] *Op cit* n.14, page 413, para 1374

[31] *Op cit* n.7, page 3

[32] Smith and Sheridan, *The United Kingdom: the Development of its Laws and Constitutions* 1955, Stevens, London, page 1145

[33] *Ibid*

[34] *Op cit* n.7, page 3

[35] *Re Petition of the States of Guernsey* (1861) 14 Moo PC 368

[36] *Op cit* n.32, page 1146

[37] *Op cit* n.7, page 4

[38] *Op cit* n.7, page 5 and n.14, pages 453-5, paras 1499-1506

[39] *Op cit* n.14, page 411, para 1362

[40] HL *Official Report* 3rd May 2000, col. 180 WA

[41] *Op cit* n.3, page 229

[42] *Op cit* n.14, page 433, para 1433

[43] *Ibid* page 443, para 1464

[44] *Ibid* page 445, para 1472

[45] *Ibid*

[46] [1969] 1 AC 722-3

[47] *Op cit* n.14, page 445, para 1473

[48] Dicey, *Law of the Constitution*, 1885, page 24

[49] *AG v Jonathan Cape Ltd* [1976] QB 752; *Reference Re Amendment of the Constitution of Canada* (1982) 125 DLR (3d) 1

[50] See *Canada* case, *ibid*

[51] Preamble and s.4 Statute of Westminster Act 1931

[52] Marshall, *Constitutional Conventions* 1984, Clarendon Press, Oxford, pages 212-4

[53] See Lord Diplock in *ex p National Federation of Self-employed and Small Businesses Ltd* [1982] AC 617, 636-644

[54] *Chloride Industrial Batteries Ltd v F and W Freight Ltd* [1989] 3 All ER 86

[55] Circular No. 0018, October 16th, 1950

[56] Plender "*The Channel Islands' position in international law*" [1999] 3 JL Review 136, at 140

[57] [1980] ECR 2403

[58] *Op cit* n.56, page 141

[59] *Ibid* page 142

[60] *Ibid* page 145

[61] *Op cit* n.14, page 454, para 1503

[62] *Ibid* page 455, para 1504

[63] *Ibid*

[64] *Ibid* page 447, para 1478

[65] *ibid* page 446, para 1476

[66] *Ibid* pages 462-3, paras 1530-1532

[67] *Ibid* page 441, para 1461

[68] Arts 25-27, Protocol 3 Treaty of Accession 1972

[69] *Op cit* n.14, page 427, para 1410

[70] s.52 Northern Ireland Act 1998

[71] *Op cit* n.14, pages 458-61, paras 1518-1524

[72] Application No. 30308/96, judgment November 30th, 1999, European Court of Human Rights

[73] *Op cit* n.29, 385

[74] *Ibid* 393