

How Autonomous are the Crown Dependencies?

Written by Peter Clegg

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PETER CLEGG, FEB 6 2025

This article considers the nature, attributes and limitations of the contemporary constitutional and political relationship between the Crown Dependencies (CDs) – Bailiwick of Jersey, Bailiwick of Guernsey, and Isle of Man – and the UK. Relations have undoubtedly been buffeted during and after the UK's withdrawal from the European Union (EU) and by discussions on the CDs' offshore financial services industry. The article considers the important conventions that still shape CD-UK relations, how robust they are and if push came to shove to what extent could the UK intervene in the CDs' autonomy, which they strongly defend. There is a common view, certainly in the CDs and parts of the UK Parliament, that the UK has a limited right to intervene, and certainly not without consent. The article interrogates this position and suggests that even though public clashes are rare there are tensions behind the scenes, despite efforts to mitigate them. In short, the article attempts to shine a light on current relations, the extent to which the UK can and should intervene and what changes might be seen in the medium-term.

Many people think that the Crown Dependencies are integral to the UK. It is true that the UK is ultimately responsible for the CDs, residents have free movement in the UK (as part of the common travel area) and most have UK citizenship, and trade and financial transactions can be freely conducted with the UK. However, the reality is much more complicated and nuanced. The CDs are in fact not part of the UK and never have been. Rather they are distinct constitutional and political entities, with significant autonomy, with the exception of defence and international relations, but even with the latter the CDs expect to have a strong voice. As a result, the CDs are not represented in the UK Parliament at Westminster but have their own long-standing parliamentary and political systems. Indeed, the parliament in the Isle of Man—the Tynwald—is considered to be the oldest continuous parliament in the world, dating back to the 9th century (Torrance, 2023). Of course, fully democratic systems in the CDs were not seen until the second half of the 20th century; nevertheless, they take pride in their well-established political structures and strongly defend them. Whenever the UK threatens to weaken their quasi-independence, the push-back from the CDs is significant, though there is a recognition underneath it all that the CDs and UK are closely aligned and any significant fissures would be detrimental to both sides.

The origins of the relationship between Jersey, Guernsey, and England (the UK did not exist at the time) can be traced back to the 13th century. Prior, the so-called Channel Islands were part of the Duchy of Normandy, which controlled the north-western part of France, and because of the Norman Conquest, most of the dukes of Normandy were also the kings of England. Later, the Duchy of Normandy became contested and for a while the English took control but then lost it to the French—and during this period (the early 1200s) Jersey and Guernsey aligned to England. And from this moment on the Channel Islands have remained associated with England, “annexed to the Crown” (Loveridge, 1975, p. 1). Though importantly they were never constitutionally incorporated. Indeed, still today, none of the CDs have written constitutions, nor are there constitutional documents setting out the relationship between the CDs and the UK. As we will see later on, this provides for flexibility, but also uncertainty, in relations. Regarding the Isle of Man, preceding England's involvement, it was ruled by various kings of Norway and Scotland. Then at the end of the 14th century the English took control and established a feudal lordship under the Crown, but as with Jersey and Guernsey, the island was never formally incorporated into England. But all three were under the authority of the Crown, and thus the nomenclature ‘Crown Dependencies’. Although today, as Le Rendu argued, “The Crown has, de facto, derogated its powers to Parliament which includes its powers over Crown Dependencies ...” (2004, p. 108).

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Therefore, due to history and circumstance the CDs have had a long-standing but semi-detached relationship with the UK. Arguably, there were two defining aspects to the CDs until after the Second World War. First, and primarily in relation to Jersey and Guernsey, English monarchs awarded “privileges and immunities”, which gave them freedoms over key areas of administration and policy, including the legal system, taxation and trade (Dawes, 2003, p. 18). For the Isle of Man, political and economic autonomy from the UK took longer to achieve, but in the mid-19th century legislation was passed that gave it more financial power and by the 20th century it too gained almost complete autonomy in domestic matters (Kermode, 2001; Torrance, 2023). The second defining aspect was the tight control over the local populations. In Jersey and Guernsey, it was by a small local elite, while in the Isle of Man, the Tynwald was dominated by the Crown’s representative, the Lieutenant-Governor, and Legislative Council (Kermode, 2002). The countervailing forces of internal autonomy and a black box of local decision-making deeply entrenched the ideas of self-sufficiency and exceptionalism, which are key features of contemporary relations with the UK and explain why from time-to-time tensions come to the fore when certain issues are considered.

The impetus behind authoring this article was to better understand the present nature of the relationship between the CDs and the UK. Arguably, with the notable exception of the *Jersey and Guernsey Law Review*, there is limited extant academic literature on contemporary constitutional and political relations. I reference several articles from the *Jersey and Guernsey Law Review*, for example by authors such as Michael Birt (2017), David Dixon (2017), Jeffrey Jowell, Iain Steele and Jason Pobjoy (2017). All cast a detailed eye over constitutional relations, although perhaps understandably, there is a sense they are arguing as strongly as possible that UK power has clear and narrow limitations. The article by Philip Morris (2012) in the *Common Law World Review* was also helpful, as it gave an account of how the UK was more involved in CD affairs than one might first imagine. Further, there were several books such as those by David Kermode (2001) and Luke Le Rendu (2004) that offered important historical and more contemporary (up to date of publication) information on how relations evolved. In addition, the semi-regular reports from the House of Commons Justice Committee provide useful insights into the thinking of political representatives from both the CDs and UK. I also reacquainted myself with authors such as Mut Bosque (2022) who has considered how relations might develop in the future. Finally, I would like to thank those officials and experts from across the CDs who spoke with me as I started to prepare the article.

Developments after the Second World War

Even though the CDs, and particularly Jersey and Guernsey, had long-standing and pretty significant internal autonomy, the end of the Second World War provided a boost to their standing vis-à-vis the UK. Most directly, with Jersey and Guernsey liberated from Nazi occupation in May 1945 after almost five years. The conditions in the Channel Islands were exceedingly difficult, with near starvation, so there was a strong focus on a speedy recovery and being as dynamic and flexible as possible in that process led by the islanders themselves. Also, the fact that UK oversight had been broken for five years, meant that even though the link with the UK was immediately reestablished, relations would not be quite the same as before. The Isle of Man was not occupied but important changes in its governance structures were put in place. Most particularly was the creation of a ‘War Consultative Committee’ and although it did not have any formal standing, it “... played a central role in decision-making ...” (Kermode, 2001, p. 136). As Kermode (2001) said, “It became the driving force behind public policy ...” (p. 136). What was crucial for all the CDs at this time, and which shaped the UK’s changing attitude to its Empire was this: “A war about self-determination and a postwar UK Government committed to decolonisation helped pave the way for the removal of important colonial controls” (Kermode, 2001, p. 133).

So, what were the key changes to the constitutional and political structures of the CDs enacted after 1945? Here are a few examples. In Jersey, in 1945, the Franchise (Jersey) Law was passed, which extended the vote to all people over 21 in readiness for the 1945 deputies election (Le Rendu, 2004). This was a key change that led to Jersey having a fully democratic assembly. In Guernsey, the Reform (Guernsey) Law 1948 was instrumental in modernising, updating and consolidating its political structures and processes (Young, 2001). In the Isle of Man, the UK Parliament’s Isle of Man Act 1958 was a crucial piece of legislation. It gave Tynwald greater legislative freedom, including on “virtually all domestic matters”, including financial ones (Kermode, 2001, p. 184). Indeed, the period from 1958 to 1981 “... was marked by a lengthy but ultimately successful constitutional campaign ...”, which ensured that the previous gains were consolidated (Kermode, 2001, p. 181). Also, in this period, the power of the Lieutenant-

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Governor, which had been significant was slowly transferred to the local legislatures (Le Rendu, 2004; Kermode, 2001). For example, in the Isle of Man, this was largely completed by 1980. In short, even though Jersey and Guernsey had considerable autonomy going back a century or more, the post-Second World War period saw more powers awarded by the UK to the CDs, including to the Isle of Man, which allowed it to close the 'autonomy gap' with the others. The CDs lobbied hard for greater powers and the UK felt confident in giving them. Their political systems were stable, and their economies were growing. So, the post-war period showed a strong move to almost complete internal self-government for the CDs and a growing view that not only was the UK happy with the transfer of power, but it was giving up the right to intervene in the affairs of the CDs. However, this position was never set in stone, and that is why the Kilbrandon Report was so important. The report challenged the prevailing view and that is why it remains controversial to this day.

The Kilbrandon report was published in 1973 and was part of the Royal Commission on the Constitution 1969–1973. Its task was to consider how the UK Parliament and Government operated in relation to the countries, nations and regions of the UK (Report of the Royal Commission on the Constitution 1969–73, 1973). It was felt the CDs should be part of this review. The Kilbrandon report said that the UK Parliament had the power to legislate for the CDs, despite the significant amount of autonomy that had been afforded to them. In particular, the report noted that "... the exercise of this power is not dependent upon the Islands' consent being given" (Report of the Royal Commission on the Constitution 1969–73, 1973, para. 1469). This was a significant finding. Although, the report claimed subsequently that it has "... been the practice not to legislate for the islands without their consent on matters which are of purely domestic concern to them", and that this should be considered as a "constitutional convention" (Report of the Royal Commission on the Constitution 1969–73, 1973: para. 1469), the initial statement was notable. Kilbrandon reinforced this point later by suggesting that because of the growing number of international agreements being applied to the CDs, with consequential implications for the UK, the "... Parliament does have power to legislate for the Islands without their consent ..." (Report of the Royal Commission on the Constitution 1969–73, 1973, para. 1472). What was clear from Kilbrandon was that the UK Parliament had primacy and ultimately could act without the consent of the CDs.

Since the Kilbrandon report, successive UK Governments—both Conservative and Labour—have accepted its main conclusions but have been careful not to be too interventionist in the affairs of the CDs, certainly legislatively. Yet, there have been occasions when the UK has put the CDs under pressure behind the scenes to make certain legislative changes – for example, the abolition of corporal punishment and the decriminalisation of private homosexual practice between consenting adults (Kermode, 2002). Bailhache (2009) has also noted that the CDs "... have accepted the extension of conventions relating to drug-trafficking, money laundering, terrorism, and other serious crime and legislated accordingly" (p. 14). This is often done through CD legislatures passing their own laws but closely mirroring what has been agreed in Westminster (Ogier, 2005). As Morris (2012) said, "... Whitehall exerts a covert and significant influence via advice, negotiation and even on occasions pressure, shading at times into coercion, which places limits on the real scope of the Islands' constitutional autonomy" (p. 15). On the part of the CDs—through their politicians and legal experts, including via the *Jersey and Guernsey Law Review*—there has been criticism of the Kilbrandon conclusions, arguing that they lack legal rigour, they are now outdated, and they ignore concerns about the democratic deficit of intervening without consulting the will of the people through the local parliament. A range of authors, such as Jowell (2001; 2005)—arguably the leading anti-Kilbrandon voice—and Birt (2017) have articulated these views, and they are certainly not without merit. However, the criticisms are somewhat academic, as they have never been tested in court. But perhaps it is not about readying legal arguments for a future court case; rather they are efforts to keep pushing the narrative of limited UK involvement and reminding the UK government and parliament of the day of that perspective. Indeed, this tactic has been effective as many UK politicians and the UK media hold the view that it is wrong and 'unconstitutional' for the UK government to intervene.

The next section considers the nature of contemporary relations and how the legacy of greater autonomy, the Kilbrandon report etc. affect how the UK deals with the CDs and vice-versa.

Evaluating contemporary relations

Though there are some limitations to the House of Commons Justice Committee reports into the CDs, they are a

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good place to start when evaluating contemporary relations. The most recent report published in March 2024 gave the relationship a generally good bill of health (Justice Committee, 2024a). It called it "... very positive, with good levels of engagement and communication". It also noted that the Ministry of Justice (MoJ), the lead Whitehall department supporting the CDs, was "... very effective at supporting relationships which have developed between the Crown Dependencies and other UK Government departments" (Justice Committee, 2024a, p. 3). In recent years, the MoJ has made a concerted effort to improve its day-to-day working relations with the CDs and is seen as a helpful interlocutor for the CDs across Whitehall. Interestingly links have strengthened because of the need to work more closely together as a result of Brexit and covid-19. In terms of contact at Ministerial level, the Committee reported that the CDs were "broadly satisfied" (Justice Committee, 2024a, p. 8).

Despite the hard work of the MoJ across a wide portfolio, the Crown Dependency team is small—at around nine officials—in a department which is itself relatively small, and certainly not one of the blue riband departments in Whitehall. Also, there is quite a regular turnover of civil servants and Ministers, which means the CDs are required to take some time to get new personnel up-to-speed. So, the CDs sometimes feel their interests are not as well represented or defended as they could be. However, saying that, the CDs do punch above their weight, considering their total population is only about 250,000. Further, other government departments, such as the Department of Health and Social Care and the Department for Environment, Food and Rural Affairs (DEFRA) have become more responsive to the needs and requests of the CDs. For example, ensuring CD students at English universities have the same fee status as UK students and a new reciprocal health arrangement.

It should be noted here that the Justice Committee itself has been an influential actor in driving improvements in the relationship between the CDs and UK. If you read its 2010 report, the committee is much more critical of the UK's approach, using phrases/words such as "lack of consultation", "failing", and "fault"—all directed at Whitehall (Justice Committee, 2010, p. 15). The Committee has arguably helped to make Whitehall less risk adverse when engaging with the CDs. In its 2010 report concerns were raised about legislation from the CDs being delayed by the MoJ on policy grounds (Justice Committee, 2010, p. 20). This now hardly ever happens. On balance when gathering evidence, the Committee has been more sympathetic to the CDs' position than that of UK departments. The CDs also use other avenues to influence UK thinking, including the Jersey government having an office in London to engage with Ministers, civil servants ("a footprint into Whitehall"), parliamentarians, and other stakeholders; Guernsey's government may follow suit, and at present has a desk in the Jersey office. The CDs also have a way into Westminster via two All-Party Parliamentary Groups—the Channel Islands All-Party Parliamentary Group and the All-Party Parliamentary Group on the Crown Dependencies and British Overseas Territories. Because of these multiple avenues into Whitehall and Westminster there is little appetite for direct representation in the UK Parliament, despite some UK MPs calling for this to happen. If it did, then the particularities of the CDs would start to be undermined.

Despite what has been said in the preceding paragraphs, relations are not always plane sailing, and from time to time they can become strained. There have been recent examples, three of which are highlighted here, which also show how CDs prized autonomy can be compromised or at least threatened. First was the issue of beneficial ownership registers, a mechanism to improve transparency and information sharing in relation to the CDs' offshore financial sectors. In 2019, a cross-party group of MPs proposed an amendment to the Financial Services Bill 2017-19, which would have required the CDs to introduce public registers. Despite the CDs' strong objections there was a good chance it would have passed, but to head-off the possibility the Conservative Government pulled the bill (BBC News Online, 2019). However, the issue has recently resurfaced (Hodge & Mitchell, 2024). Second, was the Fisheries Act 2020 that provides the framework for the UK's management of fisheries in accordance with international fisheries law outside of the EU Common Fisheries Policy. Despite the CDs saying they could pass their own legislation; a so-called Permissive Extent Clause (PEC) was inserted into the legislation by the UK without the CDs' consent. This gave the UK the ability to extend the legislation to any of the CDs. Although the PEC has not so far been activated, criticism was strong from both the CDs and some MPs at Westminster, with comments such as "a surprise, a disappointment and a serious concern", and "truly unprecedented" and "a provocative step" (Justice Committee, 2024a, p. 26). However, in the subsequent (Labour) Government response it was argued that a PEC was necessary "... to ensure the Crown Dependencies comply with the international obligations binding on them and on the UK" (Justice Committee, 2024b, p. 15). Third, Guernsey in particular was upset that it was not properly consulted on the UK's Illegal Immigration Bill, which became law in 2023. A key aspect of the legislation was to 'stop the boats', which had

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direct implications for the Channel Islands and how they should deal with such crossings and the people on them.

It is the case that relations between the CDs and UK are now generally strong, with mutual respect on both sides. Via the regular prodding of the Justice Committee and the efforts of both the CDs and the MoJ, relations are smoother than 10 to 15 years ago and in Whitehall there is more of an appreciation of CD interests, although the CDs do not always get their way. Indeed, despite long-standing conventions there have been notable recent examples of when either Whitehall or Westminster have attempted to legislate, or indeed have legislated, for the CDs – including without their consent. Interestingly, to guard against such eventualities, the CDs have implemented legislation in an effort to safeguard their autonomy. For example, in 2005 Jersey passed Article 31, States of Jersey Law, which means that the Royal Court (Jersey's principal court) cannot register a UK Act unless the local legislature approves. However, there are significant doubts that if tested, Article 31 would actually prevent a UK Act of Parliament being implemented because of the ultimate primacy of Westminster. Notwithstanding, it does reflect the CDs' hypersensitivity on this issue.

Conclusion

So, how much autonomy do the CDs have? At present, I would say a significant amount. The particular histories of the CDs, their evolutionary and rather ill-defined relationships with the UK, or "in-betweenity" (Baldacchino, 2010), the centrality of constitutional convention, their generally good record of political and economic management, their close ties to Westminster and Whitehall, all support a high-level of autonomy. Occasionally, the guardrails protecting this autonomy are breached, but often the reaction is strong and proves to be a clear reminder to the UK not to overstep the mark. Notwithstanding, when one scratches beneath the surface, the answer to the question is a little less certain, for example, when the CDs often pass legislation that is remarkably similar to the UK's to avoid more direct action. Also, at a time when we have seen constitutional conventions discarded in the UK, US and elsewhere, there remains the concern that if push came to shove the UK Government and/or Parliament could, without limit, impose its will. But there is a strong belief on both sides that the CDs and UK are 'good neighbours' and any sizeable breach in relations would be detrimental, which might result in a messy and inconclusive legal and political stand-off. So, despite some sporadic chatter, for example, on independence or a change in nomenclature to 'Crown Territory' or 'Crown Kingdom', and some scholars such as Mut Bosque (2022) proposing a change to the CDs' status, there is little appetite to open the constitutional Pandora's box. Thus, the present high level of autonomy and the structures that support it are likely to be around for some time to come.

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