

## Manx Law: A Contribution from the Isle of Man\*

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*Her Majesty's Second Deemster, Isle of Man*

This article provides a rare insight into the legal system and jurisprudence of the Isle of Man by the island's Second Deemster.

The author describes, *inter alia*, the judicial structure, sentencing and impact of international jurisprudence on the work of the judiciary of the Isle of Man, before outlining the island's constitutional position with the United Kingdom and with England and Wales.

The author argues against intellectual and judicial insularity: 'Laws should be developed and problems solved by reaching out for knowledge and solutions that may be provided by approaches from jurisdictions beyond our local frontiers'. However, in reaching out to foreign jurisdictions, it is emphasised that account must be taken of local history, traditions, laws and needs.

### Introduction

I am a judge, resident and citizen of an island off the coasts of the United Kingdom called the Isle of Man. My home island would fit in-between Reading to the North of Boston and Randolph to the south of Boston while latitudinally only taking up the space between the coast and Watertown in the west. In total, a whopping 227 square miles of beautiful fertile land.

Undaunted by our compact size the Isle of Man has leveraged its position as a major force in international finance. This has been possible because the Isle of Man is a British crown dependency, but is not part of the UK. We are internally independent.

Before I tell you more about the Isle of Man, let me make a confession. Unfortunately I have very little real practical knowledge of the United States of America. My desire to expand my knowledge and my understanding was a significant factor in my accepting the opportunity to visit Harvard Law, the oldest continually operating law school in the United States. A law school with an excellent reputation worldwide.

My previous visits to the US have been short and sweet. A couple of years ago I entered, and finished, the New York City Marathon. I have yet to experience the delights of that superior running race the Boston Marathon.

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\*\* Deemster David Doyle was sworn in as Her Majesty's Second Deemster in the Isle of Man on 21 March 2003. Deemster Doyle presides over criminal trials in the Court of General Gaol Delivery and civil trials in the High Court on the Island. He also sits in the Appeal Division of the High Court. Deemster Doyle was called to the Bar of England and Wales in 1982 and admitted to the Manx Bar as a Manx advocate in 1984. He has an active interest in the constitution of the Isle of Man and in Manx law, past, present and future. He also has an active interest in the role the Island has in the wider international community.

I was only in New York for a couple of days before the race to get acclimatised to the concrete, because I am just a country boy at heart, and I left a couple of days afterwards. But I did have a most enjoyable time – that is once I got the running out of the way.

In addition to my now extensive knowledge of the streets and bridges of New York, well some 26 miles 385 yards of them to be precise, my inroads to America have included written communication with one of your Supreme Court Justices, but I have not yet physically attended the Supreme Court as an observer.

Initially my interest in your Supreme Court was aroused during my first year at university in England. There are a host of things that can arouse a young man's fancy in his first year of university. I'll bet you would not expect it to be Justice Cardozo's famous judgment in *Ultramares Corporation v Touche*<sup>1</sup> and the references to 'liability in an indeterminate amount for an indeterminate time to an indeterminate class'. However, I can tell you not many English law students forget those words. A Cardozo classic.

More recently, my interest in your Supreme Court was further stimulated by some light holiday reading on a beach in France. This was a book entitled *Becoming Justice Blackmun*,<sup>2</sup> and as if this was not enough I also took Bob Woodward's book on the Supreme Court, *The Brethren*.<sup>3</sup> It is sad the reading that judges take with them on holiday, or at least that's what my wife and three children said.

Though the Isle of Man is a very compact jurisdiction and on the other side of the Atlantic, we still have frequent interaction with the US judicial system.

On the basis of international judicial comity we have endeavoured to assist various American courts and insolvency officers from time to time. To give you an idea of the form this takes here are a couple of examples.

In *Brunning*,<sup>4</sup> I recognised and provided assistance to a trustee appointed by a US bankruptcy court. In *Cambridge Gas*,<sup>5</sup> we assisted a federal bankruptcy court in New York. In another case I gave assistance to the Superior Court of the State of California in respect of the dissolution of a marriage and financial relief. In *Poyiadjis*,<sup>6</sup> our courts in effect gave assistance to your Securities and Exchange Commission and the US Attorney for the Southern District of New York.

In the *Interception of Communications Tribunal* case,<sup>7</sup> I took support from Justice Breyer's liberal approach to statutory interpretation.<sup>8</sup> I was also influenced by Aharon Barak's approach in *Purposive Interpretation in Law*,<sup>9</sup> Justice Kirby's approach in *Palgo Holdings*,<sup>10</sup> Lord Diplock in *Carter v Bradbeer*,<sup>11</sup> the Hong Kong Court of Final Appeal in *Ng Ka Ling v Director of Immigration*,<sup>12</sup> and Lord Denning in *Northam v Barnett Council*,<sup>13</sup> who as long ago as 1978

1 (1931) 255 N.Y. 170

2 Greenhouse, L. (2005) *Becoming Justice Blackmun* (New York: Henry Holt and Company).

3 Woodward, B. and Armstrong, S. (1979) *The Brethren* (New York: Simon & Schuster).

4 2005–07 MLR 220.

5 [2006] UKPC 26.

6 2003–05 MLR 198 and N40.

7 Unreported judgment, 22 September 2006, High Court of the Isle of Man Chancery Division CP2005/146.

8 Breyer, S. (2005) *Active Liberty* (New York: Alfred A. Knopf).

9 Barak, A. (2005) *Purposive Interpretation in Law* (Princeton and Oxford: Princeton University Press).

10 *Palgo Holdings Pty Ltd v Gowans* [2005] HCA 28.

11 [1975] 3 All ER 158 at 161.

12 [1999] HKCFA 13.

13 [1978] 1 WLR 220 at 228.

(nearly 30 years ago now) described the 'literal method' as 'now completely out of date' and replaced by the 'purposive approach'.

To balance my information on that approach, I had read Justice Scalia's book *A Matter of Interpretation*<sup>14</sup> and *Scalia Dissents*<sup>15</sup> and, indeed, many of Justice Scalia's opinions. Justice Scalia's approach appeared to reflect the somewhat restrictive approach of Justice McHugh in the Australian High Court. In *Al-Kateb v Goodwin*,<sup>16</sup> Justice McHugh rejected a 'loose-leaf' approach to the Australian constitution.

Frankly, the learned Justices appeared to take an unduly rigid and restrictive approach that did not appeal to my relatively inexperienced judicial-activist mind. I prefer to regard constitutions, conventions and indeed the common law as living and developing instruments of justice rather than cast in concrete, fossilised forever and causing injustice.

## The Isle of Man

Having outlined my tenuous connections with the United States of America, let me now tell you something about the Isle of Man.

As I indicated in my introduction, the Isle of Man is a compact little island situated in the middle of the Irish Sea, which as you might imagine separates England from the country of Ireland.

I am fortunate enough to be the Island's Second Deemster. Casting undue modesty aside and perhaps displaying some judicial arrogance and pomposity, I can indicate that the Second Deemster is not the second Deemster ever to be appointed in Manx legal history, but is the second most senior High Court Judge on the Island – in effect the Deputy Chief Justice. That said, we only have four permanent High Court judges, so that is no big deal. I do however feel greatly privileged to be the Island's Second Deemster and to be presenting here today on matters Manx – Manx being the term used to cover things that relate to the Isle of Man such as Manx cats, Manx law, Manx men, Manx women and Manx magic.

Though the Isle of Man may not to some appear as beautiful as New England in the fall, the film industry seems to find the Island to be a magical place. Close to a 100 feature films have been made on the Isle of Man over the past 10 years. This may have something to do with the Island being steeped in tradition and ancient precedent. But from a legal point of view it may seem at first glance to be a rather uninteresting place.

However, the size of the Island should not be used as a factor in assessing its potential interest. Our wide ranging international corporate, commercial and trust activity combined with the trials and tribulations of an 80,000 strong Island community means that the judiciary are confronted with a raft of interesting legal issues.

This very broad legal landscape means that the judicial back bone of the Island, 4 permanent Deemsters and a panel of Acting Deemsters, is never given time to calcify.

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14 Scalia, A. (1997) *A Matter of Interpretation* (New Jersey: Princeton University Press).

15 Ring, K. (2004) *Scalia Dissents* (Washington DC: Regnery Publishing Inc).

16 [2004] 78 ALJR.

## The Island's Legal System and Judiciary

On the Island we have a separate legal system to England and Wales and to the United States of America. We also have our own parliament, our own legislature, our own executive government and our own judiciary. Of course, we need these facilities because we are not part of the United Kingdom. As an internally independent jurisdiction we make and enforce our own laws. Inside this legal infrastructure an Isle of Man Deemster is broadly equivalent to a High Court judge in the UK and a District or Circuit Court Judge in the United States, but with some additional judicial and extra-judicial responsibilities.

As far back as the 17th century, the Island's Deemsters were described, rightly or wrongly, as officers of great dignity. They were not only the chief judges, but were also the Lord's Privy Counsellors. This meant their influence over the people resembled the civil authority of the ancient Druids. The first written reference to Deemsters appears in the customary laws of the early 1400s.<sup>17</sup>

Historically the Deemsters were the repository of the extensive body of customary law, which because it was thought to reside in their breasts and only divulged to the people on important occasions was popularly known and officially referred to as 'breast law'. A.W. Moore, in the year 1900, described the Deemster as 'a living law book'.<sup>18</sup>

In the 1700s, the proceedings before the Deemster's Court were very informal. There were no lawyers and everyone presented their own cases. Generally, the Deemster would literally hold court in his own house, but Attorney General Busk noted in 1792 that 'the Courts were sometimes held in ale houses amid crowds of fishermen and farmers'.<sup>19</sup> Sadly, Deemsters now spend little judicial time in ale houses amid crowds of fishermen and farmers. But I can assure you that we are still very much in touch with the Isle of Man community.

In the present day, the First Deemster who is President of our High Court – in effect our Chief Justice – deals in the main with civil cases and sits in our Appeal Division. Our final appeal court is the Privy Council in London.

In my role as Second Deemster, I deal with a mixture of criminal and civil work and also occasionally sit in our Appeal Division. I do not of course sit in appeals against my own decisions – of which there are many! This may be why we have a permanent Judge of Appeal who is always kept very busy throughout the year. In addition, we have the equivalent of District Judges, lay magistrates, small claim arbitrators and mediators, all of whom play important roles in the administration of justice on the Island.

The oath I had to take as a Deemster, in addition to an oath of allegiance to Her Majesty the Queen, was as follows:

By this BOOK and by the Holy Contents thereof and by the wonderful Works that GOD hath miraculously wrought in Heaven above and in the Earth beneath in Six Days and Seven Nights; I David Charles Doyle do swear that I will without respect of favour or friendship, love or gain, consanguinity or affinity, envy or malice, execute the Laws of this Isle justly betwixt Our Sovereign LADY THE QUEEN and Her Subjects within this Isle, and betwixt Party and Party as indifferently as the Herring backbone doth lie in the midst of the Fish.

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<sup>17</sup> Statutes of the Isle of Man 1417–1824, vol 1.

<sup>18</sup> Moore A.W. (1900) *A History of the Isle of Man* (London: F. Fisher Unwin).

<sup>19</sup> *Feltham's Tour*, 1798.

From the nature of this it must be clear that our fishing industry and the legal culture in the Isle of Man stretches back a long way. In that time we have had our fair share of bizarre and often draconian laws and punishments on our statute book.

You may have in the past heard of the use of birching on the Island; that is the imposition of whipping on the buttocks with a bundle of thin flexible branches of birch, as a sentence for certain criminal offences. For some time this practice was rather a sore point for both the human rights activists and indeed the criminals on the receiving end of the punishment.

In 1978, the European Court of Human Rights<sup>20</sup> held that birching or whipping was a degrading punishment and therefore contrary to Art 3 of the European Convention on Human Rights which provides that: 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment'. The European Court of Human Rights stressed that the Convention was a living instrument which must be interpreted in light of present day conditions.<sup>21</sup> It added: 'The Isle of Man not only enjoys long-established and highly-developed political, social and cultural traditions but is an up-to-date society'.<sup>22</sup>

The majority of our inhabitants do indeed strive to be 'up-to-date' and it is a particular obsession amongst lawyers and judges. In the Isle of Man we are getting up to date with European jurisprudence and birching no longer remains a sentencing option.

In the context of 'cruel and unusual punishments', which are often thought to be a point of interest for judges, I read the judgments of the members of your Supreme Court in *Roper v Simmons*,<sup>23</sup> and I was particularly impressed with the comments of Justice Kennedy, for the Court at 24: 'The opinion of the world community, while not controlling our outcome, does provide respected and significant confirmation for our own conclusions'.

In *Roper*, Justice Scalia, adopting (if I may say so with respect) a somewhat insular approach, rejected out of hand the basic premise that American law should conform to the laws of the rest of the world. In *Thompson v Oklahoma*,<sup>24</sup> the learned Justice felt that reliance upon Amnesty International's account of civilised standards of decency in other countries was totally inappropriate as a means of establishing the fundamental beliefs of the United States of America. In *Printz*,<sup>25</sup> some felt that a comparative analysis of other countries and the European Union was inappropriate to the task of interpreting a constitution. In *Stanford*,<sup>26</sup> the point was made that in the United States the sentencing practices of other countries were irrelevant.

Another rather colourful sentencing option that has slipped from our statute book reflects the high standing of Deemsters and politicians on the Island. Well, if not high standing then certainly their ability to punish those who might oppose them.

The customary laws of 1601<sup>27</sup> provided that anyone who slandered, condemned or accused any politician or Deemster through a scandalous speech or text would be given a punishment in two parts. First, they would be fined £10 for every time they offended. Second, their ears would be cut off. Yes, you heard me right the first time – their ears would be cut off.

20 *Tyler v UK* 1978-80 MLR 13.

21 At 27.

22 At 31.

23 543 U.S. 551 (2005).

24 487 U.S. 815, 868 n4 (1988).

25 *Printz v United States*, 521 U.S. 898, 921 n11 (1997).

26 *Stanford v Kentucky*, 492 U.S. 361 n1 (1989).

27 Statutes of the Isle of Man 1417–1824, vol I at 69–70.

As recently as 1726 (some 47 years before your famous tea-party) a certain Anthony Halsall had the courage to accuse a Deemster (not of taxing people without representation as the Westminster Parliament once did to your ancestors), but of misleading a jury. This dark and despicable crime caused him to be sentenced to a £10 fine. And, as stated at the time, 'his ears to be cut off besides'.<sup>28</sup>

The Island has moved on a little since then. Today such criticism of a Deemster would form good grounds for an appeal. If the law had not been changed the possession of ears by the Island's journalists and court reporters would rightly have been regarded as a badge of shame and a severe lack of journalistic credibility. We now encourage a free, responsible and critical media where journalists are only asked to lend an ear to the judiciary and to report legal proceedings fairly and accurately.

On another positive note, our ability to set our own judicial process and sentencing policies has given us a chance to make our laws match our needs. It has also enabled us to respond quickly and positively to changing local and international social conditions.

Our Appeal Division<sup>29</sup> has set a more severe sentencing regime than prevails in England and Wales in relation to importing and dealing in dangerous drugs such as cocaine, heroin and ecstasy. This was in response to what was felt to be a grave social evil with far reaching negative consequences.

We do however have specific regard to the guideline cases in England and Wales and reference is frequently made to the authorities in Current Sentencing Practice.

We also have regard to decisions on criminal and civil matters in other jurisdictions. On the criminal side, we had regard to the decision of the New Zealand Court of Appeal in *Clotworthy*<sup>30</sup> on reparation issues in the sentencing process. On the civil side, some of our company law is based on New Zealand statutory provisions.

Other elements are English, such as the Companies Act 1931 that was modelled on the 1929 English Act. Some of it was based on Irish statutory provisions, such as s 7 of our Companies Act 1968.

From this you can see that the legislature and the judiciary on the Island have frequently looked further afield than England and Wales in respect of legal matters.

The Isle of Man is still an active member of the British Commonwealth (a group of nations which all acknowledge or have in the past acknowledged the British Monarch as their head). Because of its core association with the UK, this is often the first place that we look to for guidance.

Included in the Commonwealth are Canada, New Zealand and Australia. These three countries have all in turn been influenced by other jurisdictions and represent a rich source of international precedent. We should also consider the jurisprudence of the United States of America. And I am the first to admit we need further education in that respect.

As Canadian Chief Justice Dickson stated in 1987 (*Re Public Service Employee Relations Act (Alberta)*):<sup>31</sup> '...international law provides a fertile source of insight.'

Justice Blackmun, in 1987 (*Societe Nationale Industrielle Aerospatiale v United States District Court*),<sup>32</sup> stated that American courts must look beyond narrow national interests to the

28 Solly, M. (1994) *Government and Law in the Isle of Man* (Castletown, Isle of Man: Parallel Books), p. 205

29 *R v Caldwell-Camp* 2003–05 MLR 505.

30 [1998] 15 CRNZ 651 (CA).

31 [1987] 1 SCR 313 at 348.

32 482 U.S. 522 at 555, 567 (1987).

'mutual interests of all in a smoothly functioning international legal regime'. Justice Blackmun made reference to 'the development of an ordered international system'.

Aharon Barak (the former President of the Supreme Court of Israel), in his informative book *The Judge in a Democracy* (2006) at page 203,<sup>33</sup> stated:

Regrettably, until very recently, the United States Supreme Court has made little use of comparative law... some Justices of the United States Supreme Court do not cite foreign case law in their judgments. They fail to make use of an important source of inspiration, one that enriches legal thinking, makes law more creative, and strengthens the democratic ties and foundations of different legal systems.

The law on the Island is, without doubt, heavily and quite properly influenced by judicial developments in jurisdictions around the world. Our common law reflects domestic and global issues. To assist in this cross-fertilisation we have judges, lawyers and academics coming from around the globe to talk to the legal community on the Island. At home on the Isle of Man we monitor the international judicial pulse and keep a careful eye on the judicial and regulatory developments in other reputable jurisdictions worldwide. We continue to have a lot to learn from them and, dare I say it, they from us. In the spirit of this global approach we would welcome some American legal visitors to our shores to educate us on American legal matters.

I do not believe that progressive American judges and lawyers would wish to develop their laws in 'splendid isolation' (to adopt a phrase from another era). I do not believe that any legal system in the world should be developed without regard to developments in other jurisdictions worldwide.

On a day to day level there is a local and international flavour to the work of the judiciary on the Isle of Man. In any one month my work might involve dealing with weighty trust, commercial and corporate cases. These may well involve such far flung places as Hong Kong, Pakistan, Australia, Kyrgyzstan, Israel, the United States of America and other jurisdictions worldwide. With the emergence of the Isle of Man space market, it is likely that issues beyond the planet may also find their way into judicial thought processes. Closer to home there are local property disputes, personal injury cases, asset freezing and disclosure orders, along with criminal jury trials and sentencing convicted defendants.

I also sit in our Appeal Division as and when required and read our laws out in Manx in the open air on the top of Tynwald Hill on our national day in July every year – a day when we reflect on our past, and where we have come from; a day when we celebrate our existence and where we are at, and a day when we contemplate our future and where we are going to.

The nature of our judicial work is both local and international and the variety keeps us fresh and legally well-nourished. The air that the Deemsters breathe in the Isle of Man is the same air that judges breathe worldwide and the hearts of our litigants beat in the same way as the hearts of litigants all around the world.

A wide range of issues crossing many jurisdictions are heard in our courts. Our purpose-built court complex in Douglas, which was opened in 1997, has seven separate courts. The judiciary are supported by a well-resourced and keen court administration team. The breadth and depth of our activities ensures that we maintain perspective, legal agility and most of all an open mind when resolving the legal issues of the day.

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33 Barak, A. (2006) *The Judge in a Democracy* (Princeton and Oxford: Princeton University Press).

Our situation is not unique, but it does clearly highlight the ongoing requirement for the law to reflect the reality of life and the interdependence of local, regional and global communities.

## The Island's Constitutional Position

While talking about the rest of the world, I think it is important for me to explain briefly our constitutional position with the United Kingdom and with England and Wales.

Professor St. J Bates, a former Clerk of Tynwald, our parliament, in a lecture delivered in November 1992 referred to the fact that the authorities in England should be more aware of the constitutional position of the Island. He did not think this should be an onerous task as there had been little fundamental change over a long period of time. He stated:

As a former academic I feel reasonably confident that given the same period and a sufficient supply of bananas I could elicit a positive response from a chimpanzee to the essentials of the relationship.

I have no bananas and you are no chimpanzees. In the limited time available however, I will do my best to briefly outline the essentials of our constitutional relationship with the United Kingdom.

The current situation is that the Island is an internally self-governing dependency of the British Crown. We are not a part of the United Kingdom and we are not a member of the European Union. The British Crown retains responsibility for the Island's defence and for the ultimate good government of the Island.

We have our own parliament. We have our own legislature. We have our own executive government. We have our own judiciary and we have our own laws.

It has been said that the parliament in England can, in academic and constitutional theory, legislate for the Island, but by constitutional convention would not do so without consulting with the Island and obtaining its consent.

The constitutional relationship between the UK and the Isle of Man is not enshrined in a formal constitutional document. It is instead the outcome of historical processes and accepted practice and conventions.

In May 2007, a framework of principles agreed by the governments of the United Kingdom and the Isle of Man reinforced the Island's special status within the context of its constitutional relationship with the UK. It also provided for the Island's separate international identity. The Island and the UK agreed to work jointly to promote the legitimate status of the Isle of Man as a responsible, stable and mature democracy with its own broad policy interests and that is willing to engage positively with the international community across a wide range of issues.

The Island's Chief Minister stated in his annual report for 2006 that the international reputation of the Isle of Man had been enhanced by our positive engagement with the European Union and Organization for Economic Cooperation and Development (OECD) taxation initiatives, by our profile within the British-Irish Council, by a 'clean bill of health' on finance-sector regulation from the International Monetary Fund and by our continuing triple-A international credit rating. The Island has a lot to be proud of.

The Island is very conscious of its international reputation and its international obligations.



## The Future

There is an aspect of our global position that is less legal and more inter-personal.

For hundreds of years the pragmatic mindset of the people of the Isle of Man, has been one of practical internal independence rather than complete state independence. From this mindset there have been developments that have in turn moulded the constitutional relationship that gives us an enormous amount of autonomy and the flexibility to govern our own affairs. Over and above any legal considerations this leads to a conclusion that independence is first and foremost a state of mind. I am certain that it is this independent state of mind that has been instrumental in enabling the Isle of Man to have such international influence and, frankly, punch well above its geographical size.

Government policy is to continue to focus on promoting and defending vigorously the Island's autonomy in relation to its internal affairs, while seeking to extend the Island's influence over external issues affecting the Island. A major aspect of this activity is through maintaining and extending the Island's direct representation at international bodies.

Although the Island is proud of its internal independence and its ability to make and enforce its own laws, it is also proud of the fact that it is now a responsible member of the international community. We in the Isle of Man have a desire to further mature as an independent jurisdiction and to learn from others. We also have a desire to play an appropriate role within the international community.

Intellectual and judicial insularity will not help us to develop the law in our respective jurisdictions in the best interests of the international community as a whole. Laws should be developed and problems solved by reaching out for knowledge and solutions that may be provided by approaches from jurisdictions beyond our local frontiers. The United States of America and the Isle of Man do not have the monopoly on wisdom. There is no local monopoly on wisdom. A blinkered, insular and local approach encourages ignorance and encourages conflict. We ignore developments in other jurisdictions at our peril.

Of course, we should take account of our respective histories, traditions, local laws and local needs. We should also take into account the wider international dimension and the roles we all have to play in the wider international community.

It is no exaggeration to state that if American judicial isolationism is allowed to continue it could threaten the future security of the world and all its inhabitants. We must all have regard to developments in other jurisdictions and endeavour to understand issues from an international perspective. We all live in a global community with a global economy and instant global communications. In the final analysis we all depend on each other for our existence and for our future.

The judiciary, wherever possible and appropriate, should take a global approach to the international issues that fall upon our benches for determination, whether those benches are in Douglas, Isle of Man, Washington, United States of America, or other physical locations throughout the world or on virtual benches on the internet.

One day, perhaps not in my lifetime or my children's lifetime, the word foreign may not even appear in legal dictionaries and that great work Dicey and Morris on *The Conflict of Laws* and indeed the US equivalent, *The Conflict of Laws* by Currie, Kay, Kramer and Roosevelt, may simply be retained as ancient, historical reference books.

As the influential and well-respected Australian judge Justice Kirby said in the year 2000: 'Once we saw issues and problems through the prism of a village or nation-state,

especially if we were lawyers. Now we see the challenges of our time through the world's eye'.<sup>34</sup>

Let the Isle of Man and the United States of America see the challenges of our time together through the world's eye. In that way we will both grow together as separate and independent jurisdictions and at the same time acknowledge the responsibilities that we have to the international community as a whole.

Justice Kirby again put it very well in a lecture to the American Society of International Law in Washington in 2005. He said:

To survive, humanity must globalise and diversify. But we must do so... building on the jurisprudence of the past and adapting it to the world in which we now find ourselves.

All countries must work together to survive. Independence will inevitably be replaced by interdependence. Judges, lawyers and politicians should all appreciate that we are part of a global community. Whether a compact island, such as the Isle of Man, or a superpower, such as the United States of America, we are all part of (to use Justice Kennedy's words) a 'wider civilisation',<sup>35</sup> and we all have something to learn from each other.

We will both thrive in our internal independence and we will both increasingly thrive through the contributions we can make to the wider international community.

Greater cooperation and communication will generate greater knowledge and understanding. In turn, this will give us all the strength, wisdom and an extended reach that comes from working together. In that way we can all be part of a 'smoothly functioning international law regime'.

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34 Kirby, M. (2000) *Through the World's Eye* (Sydney: Federation Press), p. xxv

35 *Lawrence v Texas* 539 U.S. 558 at 576 (2003).