

## CHANNEL ISLANDS INSTITUTIONS—PAST AND FUTURE <sup>1</sup>

THIS paper, though its argument is historical, is primarily concerned with the future. It may seem strange that an historical argument can have anything to do with the future. If I had the space at my disposal, I should like nothing better than to demonstrate that historians have every reason to be interested in the present as well as in the future; indeed, that it is their business to try to understand the present, which they do by studying how and why it has come to be what it is, in order that we may be able to prepare for and in some degree to control the future. You cannot prepare for the future unless you really understand the present; you cannot understand the present unless you know something of its past.

In order, therefore, to study profitably such a problem as the future of Channel Islands institutions, you must first understand their present condition. At once you come up against a serious difficulty. Since the islands are at present under German occupation, it is not possible to know precisely how the island governments are functioning. This is, however, largely a theoretical difficulty, for when we think of "the future of Channel Island institutions," we naturally think of them as they were in normal times. It is therefore the future of those institutions as they were in 1939 that really concerns us; and the questions that we shall be asking are such as these: Will their evolution continue after the war in the same path as it was following before? Are the war and the occupation and the process of reconstruction likely to produce such a dislocation that they can never be the same again? Or will the circumstances of the world at large and of Britain in particular be so changed after the war that there could be no place for the Channel Islands as they were in 1939? In the discussion of any of these questions the starting-point must be the nature and condition of these institutions as they were then, and this, I must observe, is already a matter of history.

In 1939 the Channel Islands formed two distinct governmental units, the Bailiwick of Jersey and the Bailiwick of Guernsey.

<sup>1</sup> This is a somewhat revised version of a paper read to "The Jersey Society in London" on 27 March 1943.

The Bailiwick of Guernsey included Alderney and Sark, each of which possessed subordinate governments. Now, although the two bailiwicks might from time to time find interests in common, and join forces *ad hoc*, the two governments were in fact as distinct the one from the other as the governments of Australia and New Zealand; and, although their governments were very similar in general outline, there were striking differences in detail between them. Their position in the British Commonwealth was always difficult to describe. They were considered to be a part of the British Isles, though they were not included in the United Kingdom. Their situation was, indeed, peculiar to themselves, and there is no way of describing it save by describing all their institutions.

This peculiar situation was due to their having their own legal systems, their own judicial systems, legislative assemblies of their own, and administrations directed by and responsible to these legislative assemblies. As there is neither space nor need to describe these institutions in detail, I shall only give the essential outline which my argument requires.

Both Jersey and Guernsey had their own legal systems, each distinct from the other and from those of Britain and France. The foundation of both was the customary law of Normandy as it was before the Revolution, or, to be more accurate, as it was before the reforms of the sixteenth century; but the superstructure differed considerably from island to island. In Jersey a code was drawn up in 1771; and, speaking generally, the law of Jersey may be said to consist at present of the code together with subsequent statutes and judicial decisions. Guernsey has no code; thus the law of Guernsey may shortly be stated to be the law of pre-Revolutionary Normandy as developed by statutes and the judgments of the island's courts. In recent times the influence of English statute law upon the legislation of the islands has been very marked; it would be scarcely too much to say that the islands have followed English legislation step by step where appropriate, and always adapting it to their special needs. But this did not in any way prejudice the sovereignty of Guernsey law or Jersey law in their respective islands.

The islands, I have said, had their own judicial systems. In Jersey there was a Royal Court consisting essentially of a bailiff, twelve jurats, two law officers of the crown and a vicomte.

The bailiff, who was appointed by the crown, was the president. The jurats were elected for life by the people of the island; they were not professional lawyers, but they were judges both of fact and law. The law officers performed duties analogous to those of the attorney-general and solicitor-general in England and, in English speech, were usually known by those titles in Jersey. The vicomte was the executive officer of the court. The Royal Court of Guernsey was very similar, save that the executive officer was called the *prévôt*, *anglicé* "sheriff," and, unlike the vicomte of Jersey who was appointed by the crown, was elected indirectly by the people of Guernsey. There was also a Royal Court of similar pattern in Alderney, and a seignorial court of a more strictly feudal type in Sark, both subordinate to the Royal Court of Guernsey. In principle the Royal Courts of Jersey and Guernsey, since their authority was derived from the royal (or "ducal") prerogative, were competent to hear all cases arising in their respective islands with one or two unimportant exceptions. In civil cases an appeal would lie to the Judicial Committee of the Privy Council; in criminal cases there was no appeal as of right. The organisation of these courts seems extraordinarily complex to anyone who has not, as it were, lived and worked in them over a long period; but that is a matter which there is no need to go into here.

The islands, further, had a complete legislative system of their own. In this there was a much greater diversity between them. But in principle, in Jersey, Guernsey, and Alderney, the legislative assembly, called "The States," consisted of the members of the Royal Court, as given above, together with a sufficient number of representatives to outvote these permanent members. The most important difference between the islands was that the Royal Court of Guernsey had certain legislative powers—one of the most curious medieval survivals in any part of the governmental organisation of the islands—while in Jersey the States were the sole legislative authority. Neither in Guernsey nor in Jersey, however, were the States sovereign legislatures. The States of Jersey and the Royal Court of Guernsey might, on their own authority, make ordinances which were of limited scope and limited duration; but all permanent legislation and all legislation requiring the expenditure of public money must first be brought before the States of Guernsey or the States of Jersey, as the case

might be, then submitted to the King in Council, who, if the proposed act were acceptable, returned it to the appropriate island in the form of an Order in Council, and it became law after registration. The extent of the powers of the Imperial Parliament or of the Privy Council over the insular legislatures was, in constitutional theory, a matter of great perplexity, though in practice few difficulties arose. The financial independence of the islands, if not undisputed, seemed, in 1939, to have been settled to the satisfaction of the islanders.

Although it has not attracted the interest of writers on the Channel Islands so much as the picturesque Courts and States, the administrative independence of the islands was quite as remarkable as their judicial or legislative independence. In the colonies and in the dominions the governor is the head of the executive, whether he is constitutionally bound to accept the advice of ministers enjoying the support of the legislature or not. But the lieutenant-governors of Jersey and Guernsey (the office of governor, having become a sinecure, lapsed in the nineteenth century) had long lost all their civil and executive powers, and their functions had become purely military and mediatory—that is, they were in command of all troops in the islands and they served as the channel of communication between the insular governments and Whitehall. The civil administration in both islands was carried on by a permanent civil service directed and controlled by committees of the States, and was thus completely responsible to the legislatures. Moreover, whatever the King in Council might be pleased to ordain for the islands—whether giving effect to an Act of Parliament or not—could only be executed legally in the islands by the local administration. It would be interesting to discover whether it has been this form of administration, drawing its authority directly from the legislature rather than from the king through his responsible ministers, that has prevented the growth of political parties in the States, or whether we must look elsewhere for an explanation.

Finally, one must add that, within the islands, a great deal of administrative work of a local sort was in the hands of parish assemblies and parochial officers, whose work was very largely voluntary and unpaid. The parishes also formed the characteristic unit of representation in the States.

Now, putting all this together, what does it amount to? I

think that I should put it this way : Guernsey and Jersey certainly, the lesser islands less certainly, each formed a distinct community, a social and political entity with a communal life and personality. Thus they should be regarded as quasi-dominions rather than as colonies, as countries in miniature rather than as municipalities. There is no doubt that the islanders thought in these terms. In their occasional relations with one another Guernsey and Jersey might rely upon the rules of international law. This sense of quasi-nationality, and the civic sense and self-reliance which have so long characterised these small communities, not only justified their rights of self-government, but made the system workable. In other words, the Channel Islands were self-governing because they had shown that they could govern themselves.

Our problem is the future of these institutions of self-government. One part of the problem, to wit the way in which they may have stood up to war and the German occupation, we cannot profitably study at present for lack of satisfactory evidence. But if our concern is with the future of Channel Island institutions as they were in 1939, we shall need to know something, not only of their nature, but of their "condition" or their "case history." Were they of recent creation, or had they grown up over a long period? Were they developed within the islands out of their own necessities, or had they been imposed from without? These are essentially historical questions. Did they work well or badly? Only an historical inquiry into performance over a number of years in relation to the needs of the islands as they may be best diagnosed, will provide the information necessary to answer this question.

In part these questions, particularly the first, which concerns the foundations of Channel Island institutions, may be answered by studying their origin. How did they come into existence in the first place? This is tolerably well known, and I need not spend much time upon it. In the eleventh century the Channel Islands formed an integral part of the Duchy of Normandy, a principality which was already showing a precocious development in law and government. In 1066 the duke of Normandy conquered England and made himself king of England, and from then until 1204, with one or two short intervals, Normandy and England were united in the person of their common prince.

But there was no common administration—or very little, and it grew less as time went on—and thus Norman law, though temporarily brought into contact with English law, diverged progressively from it. When the two countries fell apart in 1204, the islands remained in the hands of the king of England, while the rest of Normandy was incorporated in the kingdom of France. In theory it might have been possible to incorporate the islands then and there into the kingdom of England, but their Norman law proved an obstacle—insurmountable according to the ideas of the time—to any such proceeding. And because their law was, and remained, different from the law of England, they were given a separate administration; and out of that separate administration their modern governments have gradually and logically developed.

But the remote origins of a situation do not by themselves provide a full explanation of it. The position of the islands in 1939 was vastly different from their position in the thirteenth century. It is still necessary to explain how the earlier state developed into the later. Besides, even if my theory that the historical origin of self-government in the Channel Islands lies in their possessing a law that was different from English law at a critical moment in the thirteenth century is accepted, it is well known that many, if not most of the more important of their institutions are not nearly so old as that (*e.g.*, the States); and, conversely, institutions which were all-important in the thirteenth century, such as the office of warden, find their twentieth-century representatives, the lieutenant-governors, in a very different position. In short, in order to provide the information we are seeking, it would be necessary to describe the whole process whereby the institutions of the Channel Islands evolved—and much more besides; for the Channel Islands were not sovereign communities; a part of their constitution was common to them and to Great Britain and to the British Commonwealth. Therefore the constitutional evolution of Great Britain and of the British Commonwealth concerns the islands quite as much as their own internal evolution—a consideration which has not received the attention it deserves from local historians.

It is obviously impossible for me even to attempt to expound this long, complicated and multiple process in a short paper. What I can do, and it is all that I can do, is to offer

one or two "principles" which (I am afraid that this must be taken on trust) emerge from a study of the history of the islands undertaken in the comprehensive spirit I have just described.

There is, first of all, the principle of the strategic significance of the Channel Islands. Generally speaking, from early in the thirteenth century until early in the twentieth, the islands were of such strategic importance to England—controlling the western end of the English Channel, blocking French ports, and well placed to hinder French coastwise shipping—that England was prepared at almost any time to go to considerable expense and trouble to retain possession of them. Thus, in addition to the local militias, when they came into existence, England maintained and paid for a garrison in the islands and the two major fortresses which it held. Yet only naval power could hold the islands, placed as they were between two rival countries; and England's early development of her power on the sea both enabled her to defend them and made them worth while to defend. Now, there can be no doubt that, from the first, the islanders understood the position and all its implications perfectly well, and that they used this knowledge to bargain for concessions. Until recent times it would have been difficult and expensive to hold the islands against the will of their inhabitants; and, in the Middle Ages at any rate, when the ties of language, trade and even kinship between the islanders and the people of the neighbouring coast of Normandy were very close, there was often an implied threat behind their protestations of loyalty to the king, their duke. This one principle explains very largely how it was that the islanders were given the opportunity to develop self-governing institutions.

The second principle might be labelled "the sanctity of property." Very early in their history the customary law of Jersey and the customary law of Guernsey came to be looked upon as liberties, in the medieval sense of the term—that is, as the property of their respective inhabitants considered as communities. As such, it was in a very real sense sacred, for, speaking generally, property has shown itself remarkably resistant to governmental control. At no time, therefore, would it have been easy for the English government to do away with, or even seriously to modify, the institutions of the Channel Islands, in its own interest, without destroying the principles upon which it based its own authority.

Added to this, the common law of England has enjoyed a remarkably steady development, undisturbed by violent change. If England had ever suffered a convulsion comparable with the French or the Russian revolutions, or, indeed, if she had ever undergone so thorough a process of royal centralisation as occurred in France, it is hard to believe that the institutions of the Channel Islands could have survived. Instead, the steady development of the English constitution and English law has not only permitted the institutions of the Channel Islands to follow an equally undisturbed course, but has provided a model which, albeit in their French idiom, the islands have endeavoured faithfully to follow.

But these two "principles" simply show that the Channel Islands were given the opportunity to develop into the remarkable little communities they had become in 1939. They do not by themselves explain the internal development of the islands, though they made that development possible. This causal relationship may be clearly seen when we consider their economic development. In 1939 the population of the islands was many times greater than could be supported by their produce alone, and, speaking generally, the people were highly prosperous. This prosperity was based upon market-gardening (chiefly potatoes and tomatoes) and summer visitors, and these "industries" were largely based upon the privileged position which the islands held in the English markets. Why should the islands have been so privileged? Ultimately—and it goes back to the Middle Ages—because they had once been of strategic and commercial value to England, who was prepared to pay for their loyalty and co-operation in this way. But privileges do not by themselves wholly explain economic development, and other natural and political advantages are so often transitory. The only general explanation that is apparent to me at present is that it was the energy, the acumen, and above all the adaptability of the islanders that had brought them prosperity. Communities have so often lost their prosperity through a failure to adapt themselves to changing circumstances. But Channel Islanders have at different times seen their prosperity based upon the export of conger, upon the production of knitted goods, on privateering, on the Newfoundland fisheries, on stone-quarrying, and now on market-gardening and summer visitors. This very selective



catalogue is sufficient to prove an adaptability which has secured economic and financial independence.

There is much the same relationship between the causes of their political development. Their strategic importance gave them the opportunity, but it was their own energy and political awareness which enabled them to take it. If they had not been prepared to fight for their "laws and customs" in the fourteenth century, and later, and if they had not produced men who could fight and argue for the separation of the civil from the military authority in the seventeenth century, their courts, their representative institutions and their own peculiar form of responsible government could never have developed. One essential principle, therefore, in the development of self-government in the Channel Islands, is that there have never been lacking Jersey men and Guernsey men of ability and awareness, and full of an intense zeal for their rights and for what they believed to be the interests of the communities they served, to fill the many offices that made up the insular scheme of government.

Now, taken together, these "principles," which are simply a token of the historical exposition which cannot be given here, amount to this: that the institutions of the Channel Islands have foundations deep in the life of these island communities, and that the islanders have hitherto shown great energy and determination in defending them. But it will be noticed, no doubt, that these institutions are related in some degree to conditions which may not obtain in the future. Take the first principle, the strategic importance of the islands. Have they any strategic importance today? I think not. And that, it seems to me, is the deeper significance of certain incidents which many will remember, the demand for an "Imperial Contribution" after the last war, the withdrawal of the Treasury subvention from the local militias—all symptoms of a general situation which led straight to the evacuation of 1940. You may yet find that there is a direct relationship between the evolution of tanks and bombers and the fortunes of the Jersey States. Will Great Britain be prepared in future to pay the costs to her of Channel Island self-government—free defence services, for example—when she will no longer get a return in the form of strategic advantages? Was her refusal to attempt a defence of the islands in 1940 a symptom? Much the same applies to the

commercial privileges which the islands have hitherto enjoyed. In the Middle Ages, and long after, the English merchant was amply compensated for anything he may have lost through the privileges of the Channel Islands by the strength which those privileges gave to an English outpost across the Channel. In recent times they have become a vested interest, for the size and prosperity of the insular communities was to some extent a function of them. This may well be deemed to impose a moral obligation upon Great Britain to take care of the islands, but we must not forget that their condition is no longer a matter of urgent strategical necessity to her. What will be the cost of reconstruction after the war, and how will it react upon the islands' economic and financial independence? Or take the other principles and their implications. Will ancient tenure continue to provide a title for privileges and immunities, or will they in future be required to justify themselves on some utilitarian principle? Shall we see a continuation of the orderly development of English politics, or are we likely to see violent change? Finally, will the island governments continue to attract a sufficient proportion of their abler men and women into their service, or shall we see a drift to the big British cities such as afflicts most areas on the periphery of the British Isles?

This token historical inquiry has not provided any firm conclusions—perhaps that was too much to expect from a short paper—but it has disentangled the problem somewhat, and it has, I hope, shown how closely the study of history is related to planning and reconstruction. For it has shown that Channel Island institutions grew up under certain conditions: if those conditions are not likely to obtain in the future, then adjustments will have to be made to meet the new conditions. Further inquiry can isolate and identify these conditions; it can suggest how far the institutions of the islands may already have moved away from their supports; and it can give warning that it is of no use to try to maintain institutions in a spirit of pure antiquarianism, as though they were an end in themselves. It can, in short, supply the “case history” upon which the treatment must be based.

But for those who, though prepared for change, yet wish to see that change effected without a violent break with the tradition of Channel Island self-government—a form of government that

has served the islands very well—there is one final consideration which may offer some reassurance. It is now generally agreed that the future of this country depends in no small degree on the ability of her statesmen to work out a genuinely new order for Europe; and already some slight glimpses of the shape that such an order might take have been given us. It seems that we are working towards a solution which will give a high degree of freedom, both cultural and political, to countries and communities of all sizes, while restraining the excesses to which absolute national sovereignty has given rise. At the same time, the tendency within the British Commonwealth is constantly to give greater powers of self-government to the various units of which it is made up, just when considerations of defence make it perfectly clear that the colonies and dominions must hang together or they will hang separately. In such a Europe and in such an Empire it is not difficult to fit the Channel Islands with their self-governing institutions much as they were in 1939, for they would come into that category of small communities for whose rights and integrity the United Nations profess to stand; provided—and the proviso is not peculiar to the Channel Islands—that the post-war financial and economic problems, which lower over all our utopias, can be happily settled.

JOHN LE PATOUREL.