

When Is a Colony Not a Colony? England and The Isle of Man

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Abstract Manx emancipation from English tutelage still falls short of independence. Island courts' and constitutionalists' efforts to reconcile the continuing role of Crown and Parliament with insular aspirations are typified by *dicta* of the Staff of Government Division in *Crookall v Isle of Man Harbour Board* and *Re CB Radio Distributors*.

These cases suggest the Queen legislates for the Island as Lord of Man, successor to its former rulers; whether with Parliament or with Tynwald is secondary, so an Act of either body can repeal inconsistent Acts of the other. This article contests the claim of continuity between former rulers and the Kings of England, also the assumption that there can be no hierarchy between different legislative acts of the one ruler.

This article argues that the law considers Man conquered by English arms in 1399, a continuity breach which gave King and Parliament unfettered law-making power as explained in *Calvin's Case* and *Campbell v Hall*. Centuries of government by royal tenants-in-chief do not affect the position after the surrender of their estate. Royal continuance of the former Lords' concessions to Tynwald, and Man's exclusion from the Colonial Laws Validity Act 1865, are both explicable on policy rather than constitutional grounds.

I. The Limits to Manx Emancipation

The past 150 years have seen a steady emancipation of the Isle of Man from English tutelage. But there remain significant areas in which that emancipation falls short of independence.

The United Kingdom Parliament remains (in succession to the Parliament of England) the Island's supreme legislature. The English¹

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¹ This article is concerned with developments both before and after the union of England and Scotland into one Kingdom with one Parliament. The present position is largely explicable by reference to events, before the union, that concerned specifically the relations between the Isle of Man and England. It is only as inheritor of the English Parliament's authority that the Union Parliament at Westminster is now sovereign over Man. To avoid frequent use of two alternative terminologies, therefore, 'England' and cognate expressions will be used throughout.

sovereign must still assent to legislation passed on the Island, appoints its Governor,² Bishop, senior judiciary and Attorney-General, exercises in her Privy Council a final appellate jurisdiction and also retains certain executive functions, most significantly the concluding of treaties. In so far as she discharges this role in person, rather than by the Governor, she is advised by Ministers responsible to the Westminster Parliament.

Manx constitutional experts (not by any means all lawyers, since it has become traditional for insular politicians, at special moments like anniversaries, retirements, royal visits or the arrival of a new Governor, to enliven their speeches with potted constitutional histories) resort to a number of devices to reconcile this dependent relationship with the dignity of their Island and its people.

This article examines two such devices for the preservation of Manx national pride. One has a long history: the insular designation of the sovereign as 'Lord of Man'. The other is, at least in judicial and administrative practice, relatively novel: the treatment of Tynwald as a legislature coordinate with Parliament. The two devices were, however, brought together, the former justifying the latter, in the reasoning of two decisions of the Staff of Government (appellate) Division of the Manx High Court in the early 1980s: *Crookall v Isle of Man Harbour Board*³ and *Re CB Radio Distributors Ltd.*⁴

In effect, the Staff of Government has held that when the English monarch and Parliament legislate for the Island, the involvement of the Lords and Commons of England is merely incidental. The important factor is the expression of the monarch's legislative will,⁵ which in turn matters not because she is successor to the Kings of England, but because she stands in the shoes of earlier rulers of the Island. Since she makes law in precisely the same right when she acts on the advice of Tynwald, neither form of statute can be considered superior to the other. Nothing but chronology—the doctrine of implied repeal—can therefore determine precedence between conflicting provisions in insular and Westminster statutes.⁶

2 In the mid eighteenth century there was a brief period during which the Crown appointed both a Governor and Lieutenant Governor for the Island, the latter deputizing in the former's absence. The former post became increasingly a sinecure, to which ultimately no further appointments were made. The seeming illogic of appointing a deputy to a non-existent post-holder was explained by the fact that titles of royal representatives (Governor-General, Governor, Lieutenant Governor) were coming instead to signify the importance and level of self-government of the territory concerned. On the Isle of Man today it is common to use 'Governor' as a shorthand way of referring to the Lieutenant Governor, a practice that will be emulated in this article.

3 [1981–83] Manx LR 266 (1982).

4 [1981–83] Manx LR 381 (1983).

5 In *Crookall*, above n. 3 at 276, Acts of the Westminster Parliament were described as 'the King as Lord of Man . . . exercising by delegation his prerogative powers'.

6 *Re CB Radio*, above n. 4 at 396–7.

It is here contended that there is in fact longstanding authority for a hierarchy of supreme and subordinate legislation, both involving the King of England, and a reason (albeit one with no very modern ring) why Acts of Tynwald should fall—and were, prior to the decisions of the 1980s, considered to fall—into the latter category. This paper also disputes the logic that sees the monarch as succeeding to (rather than supplanting) any of the lines of Island rulers of whom the designation King or Lord of Man was formerly used.

II. An Outline of Constitutional History

To understand the significance of the designation ‘Lord of Man’, and also the reliance that this article places upon the notion of the Island as an English-conquered territory, it is necessary to have at least a skeleton idea of the main historical phases in the development of Manx government. An outline follows, although certain aspects will require more detailed scrutiny hereafter.

i. The House of Godred

Godred Crovan, an effective Norse warrior leader who had earlier supported the unsuccessful Norwegian campaign against Harold II of England, established autonomous rule over Man and the southern Hebrides in 1079. Though later losing their Hebridean territories, his descendants governed the island Kingdom until the male line’s extinction in the mid thirteenth century.

Man remained at the meeting point of Norse, Scots and English spheres of influence and it was often prudent to accept the protection and nominal overlordship of a larger neighbour; but this period saw no significant control of Island affairs from either side of the Irish Sea.⁷

Following a Norse naval defeat shortly after the death of Magnus of Man in 1265, the Norwegian suzerain ceded his position to the King of Scots,⁸ who took a higher profile in the Island in the absence of a local ruler. But the longer-term effect of this was to make the Island a pawn in the greater struggle for supremacy over Scotland waged between the Houses of Plantagenet and Bruce.

ii. The Montacutes and Scrope

William de Montacute took possession of the Island in 1333. He was an English magnate (later Earl of Salisbury), but could also claim the government of Man by right of matrilinear descent from the House of Godred. Edward III of England, by renouncing any claim to the Island

⁷ In *Re CB Radio*, above n. 4 at 395 the Island is described as an ancient kingdom, whose Kings’ independence was fettered only by an acknowledgement of the feudal suzerainty of various neighbours.

⁸ J.R. Oliver (ed.), *Monumenta de Insula Manniae*, vol. III (Manx Society: Douglas, 1862), Appendix, 210.

himself,⁹ effectively recognized Montacute as *de jure* an independent monarch; perhaps a politic move, since it kept Man *de facto* within the English camp.

This tenuous extension of the line of Godred lasted, through a second Montacute, to William le Scrope, who appears to have stepped into the Montacutes' shoes by purchase. Scrope, later Earl of Wiltshire, was, however, fatally embroiled in the contention between Richard II of England and Henry Bolingbroke. In July 1399 he was beheaded by Bolingbroke supporters; his officers on the Island were dispossessed by others loyal to the incoming English regime.

iii. Henry IV as Conqueror

At the end of September, Richard resigned the English Crown, and Henry (though claiming England itself on a somewhat shaky basis of inheritance) made it clear that he regarded the lands of 'those who had been against the common profit of the realm' as his (and thus the Crown's) by conquest.¹⁰

iv. The Percy, Stanley and Murray Lords

To provide for the long-term government of the Island, Henry resorted to the close association between land tenure and jurisdiction that had come naturally to his own Norman forebears, although in England itself the growth of central government and the ban on subinfeudation had since given rise to an opposing trend. On 19 October 1399, reiterating his claim to the Isle of Man by conquest, he granted it in fee to Henry Percy, Earl of Northumberland, together with a generous package of governmental powers and prerogatives ('regalities') such as few other royal tenants-in-chief then enjoyed.¹¹

The Percys' attainder a few years later was followed by a fresh grant of the Island on very similar terms to John Stanley,¹² whose male descendants (in most cases Earls of Derby) held it and governed by their officers for 330 years, using initially the title *Rex*, later modified to *Dominus*. There was a brief hiatus around the turn of the seventeenth century, when three daughters claimed as co-parceners and the Island was held in royal hands pending settlement of the dispute. Following such settlement, the succession and other doubts were resolved by a royal re-grant of 1609, confirmed by a Parliamentary Act of 1610.¹³ When male descendants of the 1609 re-grantee

9 Renunciation dated 9 August 1333, in favour of Montacute, of '*totum jus et clamium quod habemus, habuimus vel aliquo modo habere poterimus, in Insula de Man cum suis pertinentiis quibuscumque; ita quod nec Nos, nec haeredes nostri, seu quivis alius nostro nomine, aliquid juris vel clamii in Insula praedicta de caetero exigere poterimus vel vindicare*': Oliver, above n. 8, vol. II at 183.

10 Declaration quoted in James Gell (ed.), *An Abstract of the Laws, Customs and Ordinances of the Isle of Man, compiled by John Parr, Esq.* (Manx Society: Douglas 1867) 25–6; Tomlin's *Statutes at Large* I, 519; 2 Bl Com 242.

11 The grant appears in Gell, above n. 10 at 23.

12 Grant of 6.4.1406 in Oliver, above n. 8, vol. II at 232.

13 Patent of 7 July 1609 and Private Act 8 Jac. I c. 5.

failed in 1736, the Lordship of the Island passed to the collateral Murray Dukes of Atholl.

v. Tynwald

At the beginning of the Stanley era, Man already possessed a 'law-speaking' assembly of great antiquity: Tynwald, at which two officers learned in the Island's customary law (Deemsters) expounded and applied that law in the presence—and, where necessary, with the help—of twenty-four respected men selected from all corners of the Island. The advent of a feudal structure from the mainland gave Tynwald an additional function, as an opportunity for the Lord's principal tenants (the 'barons' of the Island) to attend upon him and pay fealty for their lands.

Fifteenth-century Man had no real concept of the making of new law *ex nihilo*, and when the Lord and his officers began to issue ordinances of a legislative character in the 1500s, the essentially declaratory and judicial nature of Tynwald remained unchanged.¹⁴ But in the seventeenth century the twenty-four 'Keys' became a co-optative body,¹⁵ increasingly involved in what we should today recognize as legislation. Their claim to participate as of right hardened, just as the Lord's officers were evolving into a Council with a similar expectation of consenting to new insular law.¹⁶

Though the Keys retained functions reminiscent of their old 'law-speaking' role, most judicial work was now passing to the Deemsters and officers, and Council and Keys' meetings for legislative business began to be considered sessions of 'Branches of Tynwald'. The Tynwald assembly or 'Court', in which the Council now played an equal part, became a deliberative forum and an opportunity for members of both Branches to sign the agreed text of Bills, prior to transmission for the Lord's assent. In 1737 the new Murray Lord approved an Act which, referring to 'the liberties and properties of the people', practically conceded the right of both Branches to participate in legislation.

vi. The Resumption of Direct Royal Government

The increasing importance of customs duties to the English economy made smuggling operations between the Island and the Cumbrian and Lancastrian coasts a matter of serious concern in Whitehall by

14 J.R. Dickinson, *The Lordship of Man under the Stanleys—Government and Economy in the Isle of Man 1580–1704* (Chetham Society: Manchester, 1996) 54f.

15 Charles, Lord of Man, acquiesced at his restoration in 1660 in a change made the previous year whereby, instead of the Deemsters choosing reputable citizens to be Keys, the continuing House would nominate two candidates to fill a vacant seat, one of whom would be selected by the Lord or his Governor.

16 An increase in customs rates by the Governor in Council without the Keys' consent in 1692, though initially acted upon, proved controversial, and in the same year Deemster Parr expressed the view that such consent was essential to the Lord's legislation.

the early eighteenth century. The Crown could not address the problem directly without derogating from its grant to the Stanleys, so in 1726 Parliament authorized the Treasury to negotiate for the surrender of the principal regalities, including the right of legislation, the appointment of officers, and the receipt of customs and harbour dues, in consideration of a monetary payment.¹⁷ Terms were finally agreed by John, Duke of Atholl, in 1765 on behalf of his wife Charlotte Murray;¹⁸ a further Act of Parliament obviated formalities and overcame interests within a complicated set of family settlements.¹⁹

The 1765 surrender detached some (though not all) of the jurisdiction, powers and prerogatives granted to the Stanleys from the tenure of the Island itself, which remained vested in the Murrays as tenants-in-chief. This proved, however, to be merely the first stage in a piecemeal surrender of the whole Murray estate. Further rights were purchased at intervals until in 1828 the family's entire remaining interest was surrendered and merged into the Crown.²⁰

Meanwhile George III had appointed the first royal Governor who, unlike the ruling Lords, would hold office at pleasure, act directly in the King's name and receive instructions from Whitehall. Other Lord's officers were replaced in due course by royal appointees, as were the Deemsters; a royal garrison and naval protection assumed the responsibilities of Murray men-at-arms for the defence and public order of the Island. The patronage of the insular See, a regality initially retained by the Murrays, was surrendered to the Crown in 1827.

vii. King, Tynwald and Parliament

The King made no attempt to issue new local legislation between 1765 and 1776. In the latter year he sanctioned the discussion of legislative business by Keys and Council and signified assent to the resultant Bill, transmitted to Whitehall through the Governor. Following this precedent all subsequent 'Acts of Tynwald' have been enacted by the monarch with the advice and consent of both Branches.

Advice to the Crown on such matters continued to come from a variety of ministerial sources, with a growing awareness of the need for approval by the mainland electorate. The Privy Council's responsibility to advise the monarch concerning his overseas territories became increasingly dependent on preliminary advice from Ministers

17 12 Geo. I c. 28. This also gave the necessary Parliamentary authority for the application of English public funds.

18 As a *feme covert* Charlotte could not, of course, act in her own right, although she rather than her husband was heir to the Lordship.

19 Isle of Man Purchase Act 1765 (AP). The abbreviations 'AP' and 'AT' are used in these references to distinguish Acts of Parliament and of Tynwald when referred to by short title.

20 6 Geo. IV c. 34 (1825) authorized the Treasury's purchase of such rights from Charlotte's successor, John, 4th Duke of Atholl and last Lord of Man. The final surrender was made to the Crown on 2 June 1828; Gell, above n. 10 at 151-2.

aided by specialist departments. The Whitehall administrative reforms of 1782 assigned Home and Foreign Departments to the two Secretaries of State, allocating to the Home Department responsibility for correspondence with the Governors of overseas territories including Man.

In August 1801 an agreement between the Ministers concerned passed responsibility for the remoter colonies to the War Office, leaving Man as a residual responsibility of the Home Secretary.²¹ Even so, the Home Secretary's later role reflected its original description as 'correspondence with the Governor'. If a Manx issue lay outside the Governor's competence, the King might well be advised by some other Minister—the Foreign Secretary on international negotiations affecting the Island, the War Office for the strategic direction of troops and naval units stationed in Man, the Treasury on fiscal issues and its First Lord on post-1827 episcopal appointments.

The legislative supremacy of the Westminster Parliament, exercised only sporadically in the time of the subordinate Lordship, began after 1765 to be invoked on a more regular basis. The initial concern was predictably with customs and the regulation of maritime activity; the Treasury felt entitled to recoup from Island revenues the capital payments made to the Murrays. In consequence Islanders felt themselves exploited and the desire grew for more important decisions to be made by Manxmen, rather than in Westminster, in Whitehall or by Whitehall nominees in the Council. This feeling redoubled after the Keys became a popularly elected chamber in 1866, albeit at first by open hustings on a restricted franchise.²²

viii. The Effects of Emancipation

The following summary may be given of the principal constitutional reforms, won in many cases by unrelenting Manx pressure, from 1866 to the present day.

The Westminster Parliament, though acknowledging no restriction on the spheres in which it can (if it sees reason) legislate for the Island,²³ has in practice adopted a policy of self-restraint over 'internal affairs'. In many cases substantive provisions have been replaced by enabling provisions, under which Ministers can advise the making of

21 Letter from Lord Pelham to Lord Hobart, 12.8.1801. Public Record Office, London (PRO): CO 323/176 f.7.

22 House of Keys Election Act 1866 (AT).

23 There was, for example, no repetition of the guarantee of taxation only for local purposes, offered to the colonies of the Americas (both mainland and island) by 18 Geo. III c. 12 (1778); nor was there any question of Man warranting inclusion in the Statute of Westminster 1931. Informal understandings have been reached with Ministers in London, but are not of a nature of which any court could take cognizance. See also *Review of Financial Regulation in the Crown Dependencies*, Cm 4109 (1998) iv.

Orders in Council relating to the Island.²⁴ This allows a flexibility whereby Orders are generally only made — and can when necessary be swiftly revoked—at the request of Island politicians. Older Westminster legislation—in particular that of the eighteenth and nineteenth centuries which regulated indirect taxation and provided for its expenditure—has been repealed, freeing Tynwald to make its own fiscal provision unhindered.²⁵

Acts of Tynwald are still made by the monarch with the assent of Council and Keys. Both chambers have, however, undergone drastic reform. The Council, shorn of all appointed members save the Bishop, has essentially become an indirectly elected revising chamber. It joins with the Keys in electing a President of Tynwald,²⁶ a Chief Minister²⁷ and a host of lesser officers, but in the chambers' joint policy deliberations and approval of delegated legislation, as well as in its separate consideration of Bills, there are now provisions converting its veto into a delaying power.²⁸ The Keys are currently elected on a universal adult franchise in both single and multi-member constituencies, and by secret ballot.

There has been no change, beyond a loose convention of consultation, as regards the matters on which the Crown receives advice from specialist Whitehall departments, such as defence and international treaty-making.²⁹ Because of the modern tendency for treaties to cover areas that would formerly have been considered wholly 'domestic', this is now productive of more friction than any other aspect of the Anglo-Manx relationship. 'Compliance with international obligations' is the justification most often advanced for Westminster legislation (or the threat of such legislation) to override the Manx popular will.³⁰

24 General powers in this respect were conferred by the Isle of Man (War Legislation) Acts 1914 and 1939 (AP), but the more common practice is for specific Acts to provide for their own extension by Order. See K.F.W. Gumbley, 'Extension of Acts of Parliament to the Isle of Man by Order in Council' (1987) 8 *Manx Law Bulletin* 78.

25 See in particular the Isle of Man Act 1958 (AP).

26 Constitution Act 1990 (AT).

27 Constitution (Executive Council) (Amendment) Act 1986 (AT).

28 The Council's powers of veto and delay were limited by the Isle of Man Constitution Acts 1961 and 1978; its composition was modified by the Isle of Man Constitution Act 1919 and by a series of statutes from the 1961 Act to the Constitution Act 1980 (all Acts in this note AT).

29 There was great enthusiasm on the Island in 1998 when the 'Belfast Agreement' and consequential establishment of a 'British-Irish Council' (Cm. 4292 and 4296) provided for Manx ministerial membership of the new body. The participation of the Irish Republic brought insular and foreign politicians into direct official contact for the first time. These ministerial agreements, however, while in practice facilitating an Irish-Manx meeting of minds on proposals which Manx institutions may then realize, do not themselves have legislative force. Any action required on the international plane following such a 'meeting of minds' would still have to be the subject of Foreign Office advice given in Whitehall.

30 Examples prior to the current issue (financial regulation) were the extension of the Marine etc. Broadcasting (Offences) Act 1967, inspired by the activities of the 'pirate' station Radio Caroline, to the Island by Order in Council; the pressure on the Island's judiciary to desist from passing sentences of corporal punishment

However, the role of the Home Office³¹ has diminished (of course by its own acquiescence) as a result of change in three main fields. First, Manx legislation has transferred many of the Governor's functions to insular government Departments (statutory corporate entities acting through a Minister, himself appointed by the Chief Minister chosen by Tynwald), others to the Council of Ministers collectively (the Chief Minister at its head), and yet others to 'the Governor in Council' (that is, the Governor acting by and with the Council of Ministers' advice and consent).³²

Secondly, the monarch's role in signifying the royal assent to Tynwald Bills has been delegated in most cases to the Governor, which allows—as Whitehall convention would not—the influence of Island politicians to be brought to bear at this final stage.³³ Thirdly, most public property is now held by Manx Departments or local authorities rather than by the Crown.³⁴

The area of least radical change has been the judicial field, always that in which the Crown's role was seen as least political. Though royal appointment of Deemsters took place after 1765 on Whitehall advice, Manxmen continued to be appointed, first because of the need

following the European Court of Human Rights' finding in *Tyrer v United Kingdom* (1978) 2 EHRR 1; and the pressure on Tynwald to decriminalize gay sexual activity between consenting adults following *Dudgeon v United Kingdom* (1981) 4 EHRR 149.

- 31 In 2001 the Manx functions of the Home Office were transferred to the Lord Chancellor's Department. Since so much of this article relates to developments before this change, the reference will continue to be to the department previously concerned.
- 32 This process began with the nineteenth-century creation of Boards for executive purposes, which became accountable to Tynwald by the Isle of Man Constitution (Amendment) Act 1919 (AT). Their activities were co-ordinated by an 'executive council', originally advisory; but a succession of statutes gradually whittled away much gubernatorial power, transferring functions to the Boards and the executive in their own right. The Boards are now 'Departments' in whose name 'Ministers' act. A 'Chief Minister' presides over the executive, itself renamed by the Council of Ministers Act 1990 (AT).
- 33 Royal Assent to Legislation (Isle of Man) Order in Council 1981. The Governor still receives legal, as well as political, advice, and before giving assent knows the result of informal contacts between the Manx authorities and Whitehall. He has discretion to reserve any Bill for the older procedure and is bound to do so in certain instances. He does not, however, have the power in his own person to refuse assent, even on advice.
- 34 The Murray surrenders left the Crown in immediate seisin of all untenanted parts of the Island. As Tynwald gained increasing fiscal control, it was able to allocate revenue to the acquisition of land for new public purposes (police stations being an early example), which would be vested in trustees. The Government Property Trustees were incorporated by statute in 1891. In 1929 the Crown gave the Island's most historic sites—Tynwald Hill, St Patrick's Island Peel and Castle Rushen—to the Government Property Trustees, and in 1949 Tynwald authorized a payment to the Treasury in return for the assignment to the Trustees of prerogative rights in the foreshore, royal minerals, *bona vacantia* and the like. The Government Departments Act 1987 (AT) allowed for Orders allocating the Trustees' lands between the Departments most closely responsible.

for bilingualism and later out of respect for the Island's distinct customary law. Additional judicial openings for Islanders were provided by the creation of the High Bailiffs' jurisdiction in 1777.³⁵

In 1867 the role of the Keys as 'supreme jury' of the Island ended, and with it, almost the last reminder of Tynwald's original task.³⁶ The 'Staff of Government', which had originally consisted of the Lord's officers exercising a judicial function, was reconstituted as an appellate body, subsequently united with the main first instance jurisdictions to become original and appellate divisions of a new Manx High Court.³⁷ The century progressed, and as other officers lost their judicial functions, the Governor's position as a judge without legal training became increasingly anomalous. It finally ended in 1921.³⁸ Three years before, the appointment of an English King's Counsel to sit as Judge of Appeal (alongside the Deemster not responsible for an appealed judgment) had strengthened the authority of the Staff of Government Division.³⁹

Ministers in London continue to tender the final advice on the appointment of Deemsters and the Judge of Appeal. The fact that, despite consultation, these officers are neither appointed nor removed on insular political advice is resented less than other features of decision-making from 'across', it being recognized that this gives them at least a measure of the security that English judges derive from their freehold tenure.⁴⁰ The appointment of High Bailiffs (now reduced to one with a permanent Deputy) lies by statute with the Governor, but is not among the discretions on whose exercise he is expected to follow insular ministerial advice.

Aside from the appointment of judges, the monarch's Manx judicial role is seen in the final appellate jurisdiction exercised in her Privy Council. Since 1833 this has been assigned to a Judicial Committee,⁴¹ which despite its lack of Manx judges has gained an enviable reputation for adaptability in applying a host of contrasting legal systems.

35 High Bailiffs Act 1777 (AT).

36 Appellate Jurisdiction Act 1867 (AT). The very last reminder is to be seen in the promulgation of new law to the people, now reduced to a bare reading of the titles of Acts of Tynwald, but still an essential to their permanent validity: Promulgation Act 1988 (AT).

37 Isle of Man Judicature Act 1883 (AT).

38 Isle of Man Judicature (Amendment) Act 1921 (AT).

39 Isle of Man Judicature (Amendment) Act 1918 (AT). The Staff of Government decisions which largely inspired this article were all delivered with the active involvement of Hytner JA, a Mancunian who held this part-time Manx office for 17 years.

40 Since the Manx High Court may still need to rule on disputes between Manx institutions and the Crown, it is arguable that its judges' tenure is still not sufficiently secure.

41 Judicial Committee Act 1833 (AP).

III. 'The Queen, Lord of Man'

The Loyal Toast as commonly drunk on the Isle of Man combines the English title of Queen with an insular style (invariable in gender) suggesting continuity between the monarch's position today and that enjoyed by the Percy, Stanley and Murray rulers. Behind this practice—commonly echoed in public prayers for the royal family, as well as in the Staff of Government decisions mentioned in the Introduction—lies more than historical nostalgia. For if the monarch can be presented as the heir of Godred, there is a sense in which Islanders can feel that their independence has never been lost; likewise an heir of the Murrays would be in a weak position to escape the constitutional limitations on monarchy that the Murrays conceded as binding.

Much as one may sympathize with Manx wishes in these respects, the writer would argue that, in legal terms, neither claim to continuity can be substantiated. Elizabeth II is, rather, the heiress of Henry IV of England, with whose 'conquest' the independence enjoyed under the House of Godred ended and the current era of Manx government began. The subordinate Lordship of the Percys, Stanleys and Murrays must be seen as a red herring, whose relevance to the story of Manx government ceased upon the surrender of the regalities in the late eighteenth and early nineteenth centuries.

i. Continuity with Man's Independent Rulers—the Effects of 1399

The distinction between the effects of conquest and inheritance is made in *Calvin's Case*.⁴² It can be briefly expressed as follows: when a foreign monarch inherits a second throne, the laws and Constitution of the second country remain unaltered, and the monarch must rule it in accordance with them. But if the foreign monarch *conquers* the second country, then although its general laws initially remain in force, its Constitution is superseded by one that gives him a wide personal legislative power.

Calvin's Case concerned the implications for subjects' rights of the King of Scots' inheritance of the English Crown. The judges of the King's Bench considered it important to make clear at the first opportunity that Scots law would not apply to England simply because of James I's peaceful accession. If James wanted to change the laws of England, he was bound to seek Parliament's agreement in the usual way. But Sir Edward Coke contrasted the position where England had made conquests: instancing those of Ireland ascribed to the reign of Henry II, of Wales to Edward I, of Berwick and Calais to Edward III.

If a king come to a Christian kingdom by conquest, seeing that he hath *vita et necis potestatem*, he may at his pleasure alter and change the

42 (1608) 7 Co Rep 1a, 17b.

laws of that kingdom: but until he doth make an alteration of those laws the ancient laws of that kingdom remain. . . .

In other words, since the greater included the less, the King's theoretical right to exterminate the defeated inhabitants altogether had to imply his right to change their laws without their consent.

As the foregoing historical summary will have indicated, there are some difficulties for historians in considering the events of 1399 to amount to an English conquest of Man. On this basis it might be contended that the principle of *Calvin's Case* was inapplicable. Man, one might say, had lain within the English sphere of influence since the first William Montacute. What happened in 1399 was more easily to be seen as an internal matter—a forfeiture, or the by-product of a *coup d'état*. Added to which was a chronological difficulty: Scrope had been killed and his lands seized not by the King of England, but by a nobleman in rebellion against Richard II who was, at that time, still King.

However, it is submitted that for the lawyer other arguments must prevail. In the light of Edward III's disclaimer, the Montacute kingdom of Man had to be regarded in law as independent.⁴³ 1399 saw a definite breach in legal continuity comparable to that of 1688 in England, since there was no basis in existing Manx law for Henry to replace Scrope. Neither Henry himself, nor Percy nor Stanley, made any pretence to 'inherit' from Scrope, from the Montacutes or from the House of Godred. Henry used in the September Parliament the language of conquest, appropriating to himself in his new role as King what had earlier been done in his name for England's good. And Parliament, ultimately the supreme arbiter of English law, confirmed this, as the Percy grant recited:

We have given and granted . . . to the said Earl of Northumberland the Island, Castle, Peel and Lordship of Man, and all the islands and lordships appertaining to the said Isle of Man, which belonged to Sir William le Scrope deceased, whom in his life We lately conquered, and so have decreed him conquered, and which by reason of that conquest, as having been conquered, We seized into Our hands; which decree and conquest as touching the person of the said William and all his lands and tenements, goods and chattels, as well within as without Our Kingdom, in Our Parliament by the assent of the Lords temporal . . . at the petition of the Commons of Our said Kingdom, are confirmed . . .⁴⁴

This contemporary understanding may be supplemented by evidence drawn from later English practice. If Henry had merely inherited

43 This is the major difficulty about the claim that the Island was 'anciently governed by its own King who was subject to the King of England' (Com Dig 'Navigation' f. 2), which was relied upon by Lord Cockburn CJ for his judgment in *R v Gaoler of Castle Rushen*, *ex p. Brown* (1864) 5 B & S 280, a decision better supportable upon narrower grounds.

44 Grant of 19 October 1399, in Gell, above n. 10 at 23.

Man, the English Parliament would have had no better right to legislate for it than had the Scottish Estates over England. Yet in 1541—to take the least ambiguous case—the English Parliament claimed to alter the Island's arrangements for metropolitan oversight.⁴⁵

If Henry had merely inherited Man, he would have stood in no better position to change its ancient laws than the House of Godred had been. Yet the grants to Percy and Stanley, with their associated regalities, themselves amounted to such a change: introducing at the apex of society a feudal tenure foreign to the Celto-Norse tradition and descendible by English rules of inheritance,⁴⁶ linking this to constitutional powers including civil and criminal jurisdiction and presidency at the Tynwald assembly, and installing by means of such tenure a dynasty with no former connection to the Island.

It is true that the wording of the Percy and Stanley grants referred to the prerogatives of the Island's former rulers; the Island, its Lordship, and the smaller dependent islands were granted in fee:

together with the royalties, regalities, franchises, . . . to the said Islands . . . and Lordship in any wise appertaining or belonging . . . as freely fully and entirely as the said William [le Scrope] or any other Lord of the said Island . . . was ever accustomed to have or hold [the same] in times past . . .⁴⁷

But this, it is suggested, was no more than a convenient Chancery shorthand. The later Lords cannot have enjoyed the regalities of the Island quite as fully as Godred or Montacute had done, because their status was genuinely subordinate, in a way that neither Godred's nor (by the terms of Edward III's disclaimer) Montacute's had been. It was not simply that the Lords rendered homage and service at every coronation; there were more significant marks of subordination, such as the judicial supremacy manifested in a general appeal to the Crown and in the quasi-appellate *habeas corpus* jurisdiction.⁴⁸ They also

45 Bishopsrics of Chester and Man Act 1541.

46 As to the descent of the Lordship see the *Derby Dower Case* (1523) Kelway, Mich 14 Hen VIII; *Earl of Derby's Case* (1607) 4 Co Inst 201, Scots State Papers 27/38. This partial feudalization of the Island, without which there could have been no services due from the subordinate Lords to the Crown, nor 'barons' bound to pay fealty and suit of court, was explained by Hytner JA in *Crookall* as evidence of a royal draftsman 'ignorant' of Manx land tenure: [1981–83] Manx LR 266, 270. Whether aware of former custom or not, however, a conqueror was free to allocate the land that was his by conquest as he chose, as William of Normandy had done in England. The free alienability, further down the tenurial pyramid, of Manx quarterlands and intack simply showed the continuation in force of local law in matters where it was not the conqueror's will to make changes.

47 Oliver, above n. 8, vol. II at 235.

48 The general appellate jurisdiction lies with the King in Council: *Christian v Corren* (1716) 1 P Will 329. It is hard to distinguish any principle behind the responsibility of the English King's Bench for the *habeas corpus* jurisdiction over conquered territories and Normandy, when the King's Bench did not administer any other aspect of the law in such territories; but the monarch is ultimately free to decide who shall act anywhere in his or her name, and the universality of *habeas corpus* rules may have been taken to justify the allocation of this task to the tribunal with the greatest expertise. See *R v Cowle* (1759) 2 Burr 834, 856; *Re Crawford* (1849) 13

lacked what would later be called international personality. On the European stage they did not rank as crowned heads; they sent no ambassadors to foreign courts; and if any treaty on, say, trade or shipping had needed to encompass the Island, one can hardly doubt that the King, and not the Lord, would have made it.

Rather than being read literally, therefore, the Henrician reference to Scrope and his predecessors should be compared to the grant of American proprietorial colonies:

with as ample royalty and jurisdiction as any Bishop of Durham ever had within the Bishopric or County Palatine of Durham in England.⁴⁹

This indicated the scope of the rights that the Crown wished its tenant-in-chief to enjoy, but did not place him in any direct relationship to the other named magnate, who was referred to simply to illustrate the rights in question.

Insular pride may have been salved in the seventeenth century by the assertion in Blundell's *History of the Isle of Man* that the Lord's authority derived 'from the prerogative belonging to the Island' and was not dependent on the will of the English King.⁵⁰ But Blundell was writing during the time of Charles II's exile, when House of Commons troops controlled the Island and it was fashionable—indeed essential to any justification of the *status quo*—to acknowledge an authority quite independent of monarchy. Blundell's theory cannot surmount the absence of any purely Manx explanation that would account for Stanley rule.

The court in *Re CB Radio* made the point that 'the Manx Kingdom was never absorbed by conquest into the English or later British realm'.⁵¹ While this is perfectly correct, the important words are not 'by conquest' but 'never absorbed'. Wales, Berwick-on-Tweed and Calais were all once in the position of the Isle of Man, conquered *but not absorbed*. They stood outside the English county system, governed by their pre-conquest laws (Scots law in Berwick's case), and yet were subject to the supremacy of the Crown. In each case effective absorption at the monarch's will, which saw sheriffs and justices appointed on the English pattern, the territories' law replaced by the common law of England, and seats at Westminster for their knights,

QB 613. Relief similar to that offered by the King's Bench jurisdiction was in fact concurrently available through the purely Manx procedure of the 'petition of doléance'; see the 1959 observations of Deemster Kneale following *Re M (an infant)* [1952-60] Manx LR 390, 401.

49 Quoted from the grant of Carloli in the West Indies to the Earl of Carlisle; Sir Alan Burns, *History of the British West Indies*, 2nd edn. (Allen & Unwin: London, 1965) 262.

50 W. Blundell, *A History of the Isle of Man, 1648-56*; cited from the 1877 edition, vol. II at 38, by Dickinson, above n. 14.

51 [1981-83] Manx LR 381, 395.

burgesses and bishops, followed some time later.⁵² Man was the exception; and even in that context, in the highly-charged atmosphere of the early twentieth-century home rule campaign, a harassed Home Office minute noted that:

the logical outcome would be to give the Isle of Man a County Council and a Lord Lieutenant.⁵³

Perhaps the clearest indication that English jurisprudence regarded the Isle of Man as a conquered territory can be found in a document that seems to have mystified later commentators. Less than two years after *Calvin's Case*, which can hardly have faded from the minds of the King's advisers, James I issued letters patent in the following terms:

Whereas by Our royal prerogative and the laws and customs of Our Kingdom of England, it wholly belongs to Us from the fulness of Our power, at Our will and pleasure from time to time to grant decree concede declare and ordain in lands, regions and places acquired or conquered by the force of Our arms, such ordinances and laws which all Our subjects residing in those parts and having lands of inheritance or goods or chattels there may use, enjoy, hold and be obliged to observe. Know ye therefore, that We by the force of Our royal authority . . . have ordained, constituted, established as a firm and perpetual law, granted and conceded [the substantive provisions followed, confirming, *inter alia*, the free alienability of insular lands by grant without livery of seisin] . . . any law, custom, statute or ordinance of Our Kingdom of England or any law or custom of the said Isle of Man aforesaid to the contrary notwithstanding.⁵⁴

This decree of 1609/10 created serious difficulties in 1867 for the strongly nationalist Attorney-General and constitutional writer Sir James Gell, in his attempt to maintain the received Manx view of Tynwald as an ancient assembly whose concurrence was indispensable to law-making. At one point⁵⁵ he criticized its 'conquest' language, remarking that King James held as heir of Elizabeth I, who had simply taken the Island under temporary direct rule during an inheritance dispute over the Lordship. Elsewhere he argued that 'conquest' must be understood in a sense used by Blackstone ('acquisition gained otherwise than by inheritance').⁵⁶

Gell's argument was presumably that escheat, wardship, or whatever he considered the basis of Elizabeth's possession to have been, was in this sense a species of 'conquest'. It seems more likely though

52 Only Wales, of course, had bishops; and the integration of Calais had not proceeded far—though the town had already obtained a member at Westminster—before its occupation by the French put an end to further constitutional development.

53 Memorandum of Sir M. Chalmers, Permanent Secretary, dated 24.1.1909 – PRO: HO45/10492/113941.

54 Oliver, above n. 8, vol. III at 121.

55 See for example Gell's 1876 Opinion on the competence of Tynwald to legislate regarding episcopal endowments, now appended to the judgment in *Re CB Radio* [1981–83] Manx LR 381, 405–6.

56 2 Bl Com 242.

that Blackstone, writing considerably later, was concerned only to make the basic distinction between conquest and inheritance that *Calvin's Case* itself sets out. And in any event, however Elizabeth had acquired rights, the only basis upon which James I could have claimed them was by inheriting from her. This would not therefore have made *him* a conqueror.

Given the relevance and close proximity of *Calvin's Case* to the Jacobean decree, it is submitted that our explanation above is more convincing than Gell's. The 'conquest' wording referred not to any recent development but to the seizure by Henry IV two centuries back, 'Our arms' being a not uncommon shorthand meaning 'the arms of Us or Our royal Predecessors'.

ii. Continuity with the Subordinate Lordship— the Effects of 1765–1828

If the present monarch cannot be seen as successor by inheritance to the independent rulers of Man, can she at least be considered a successor to the Stanleys and Murrays? It was the view of several Manx officers, and most emphatically of the contemporary House of Keys, that the events of 1765 had changed nothing in the Island's Constitution bar the identity of the immediate ruler; that George III, in other words, had simply stepped into the shoes of Charlotte Murray.⁵⁷

What this overlooks is some basic rules of feudal tenure. It attributes too great weight to the Isle of Man Purchase Act, and too little to the agreement between the Murrays and the Crown that preceded it. What the Stanleys and Murrays had was an estate in land, coupled with certain incidents. Some of these incidents were quite usual for a great landowner, others—the regalities—anything but usual; but these did not alter the fact that the Lords held land of the King in exchange for homage and services (the presentation of a falcon at every coronation). The application of English rules of descent⁵⁸ rules out any argument that their tenure was a specifically Manx legal institution, to which rules understood in England might not apply.

Like any other tenants, therefore, it was in principle open to them to surrender their estate to their lord, in whole or in part.⁵⁹ Whether they did so voluntarily or for monetary consideration made no difference to the legal effect of surrender.

57 Compare Letter of Attorney-General Wadsworth Busk dated 13.10.1791 to the Commissioners of Inquiry into the insular Constitution; see *Report of the Commissioners of Inquiry for the Isle of Man, 1792*, reprinted with editorial comment by Richard Sherwood (Manx Society: Douglas, 1882) 25.

58 See above n. 46.

59 The best-known instance of the surrender of feudal estates to the lord is probably the staged 'surrender and admittance' by which a nineteenth-century copyhold tenant alienated his land. But there is no reason why surrender should not be possible for free, as well as unfree, tenants.

It is true that the natural freedom to surrender, or otherwise deal with their estate, had been fettered by the provisions of the confirmatory Act of 1610 following the re-grant of the Island. But so far as a possible surrender to the Crown was concerned, this impediment had been lifted by the Act of 1726 which authorized not only the Treasury to negotiate, but all parties to carry any negotiated settlement into effect.

There are several reasons why the 1765 Act was helpful. It protected the Treasury against any suggestion that the negotiated terms fell outside the authority given in 1726—it was in truth a ‘purchase act’ more than an ‘act of revestment’. It cut through the tangle of family settlements by which the Stanley and Murray properties were entwined. It eliminated any doubt as to how the already existing contract should be completed—by a form of re-livery of seisin, by charter, indenture or whatever. (This would have been clear if the whole estate were being surrendered at once; but there were few precedents for a partial surrender of regalities.)

Had these complications not existed, though, the 1765 Act would not have been necessary. The Murrays could have surrendered their estate without the aid of Parliament, just as Henry IV and James I had granted it without such aid. The common law would have sufficed to give effect to the transactions; and at common law, the result of a surrender is merger.

Following a surrender—and whether or not this holds good for the partial surrender of 1765, it must certainly apply to the position after the surrender process was completed 63 years on—the superior lord cannot be said to ‘hold his vassal’s [subordinate] estate’. What he holds is *his own* estate, as before, simply freed from an encumbrance. If there are no tenants further down the feudal tree, he holds in demesne. If there are such tenants, they move up a level and become his tenants (so after 1828 the ‘Bishop’s barony’ on the Isle of Man was held directly of the King).

George III’s Manx regalities, and George IV’s right to the Bishop’s homage for Manx lands, were thus not inherited from Charlotte or John Murray. They were inherited from George II, who would have enjoyed both directly, had there been no Murray Lord in the way. The Lordship of Man, in the sense of the position held by the Murrays, has not therefore passed to the Kings of England, who do not need it to support their own insular role. Rather, it has been extinguished; and however harmless the continued use of the title may be, it is misleading to ascribe to it any legal or constitutional significance.

There is one line of argument that may perhaps be advanced against this conclusion. If 1765 drew a line under the era of government by tenants-in-chief, placing George III back in the position in which Henry IV had stood in the first half of October 1399, why did not only the Manx but also Whitehall apparently behave as if the claim of continuity were correct? Why did the King now cooperate with

Tynwald in his law-making for the Island? Why were commissioners sent to learn how exactly Man had been governed in the recent past?

The writer would suggest that the answer lay not in constitutional obligation, but in policy. As James I, heir to the conqueror of Man, had issued his decree on land alienation with no reference to Tynwald, so could George III have done. The Stanleys and Murrays had made concessions to their officers and the Keys, but these were not concessions of the Crown and could easily have been repudiated.⁶⁰ However, there were both good practical reasons and precedents for restraint.

By 1765 150 years of colonial experience had shown the merits of the Governor-Council-Assembly pattern, which Tynwald by this date closely resembled. In the short-lived 'proprietary colonies' of North America, mostly surrendered to the Crown before the sixteenth century was out, representative organs had come into being by the Lords' concession and had been retained, as a matter of policy, into the succeeding 'royal colony' era.⁶¹

While the royal prerogative was jealously maintained in Whitehall, and control over the appointment of Governor and Council offered a means to achieve this, a popular consenting element placated local inhabitants and was a facet of government considered to be particularly English. The 'liberties of Englishmen' were contrasted with the despotic government of the Continent, and it would have been a pity to give sceptical foreigners a propaganda weapon so close to home by withdrawing very similar liberties and discarding Manx historic institutions.

Before the decisive step of summoning Tynwald for legislative business was taken, another historic judgment was delivered in the King's Bench. Arguably second only to *Calvin's Case* in its importance for the 'meta-law' of England's Empire,⁶² *Campbell v Hall* spelt out both the rights and limitations of the legislatures of conquered territories.

Grenada had been conquered from the French in February 1763 and granted a representative Assembly in October. In July 1764 the King purported to impose new export duties on Grenadian sugar. Ten

60 A 1776 letter from the then Bishop confirmed that, since 1765, the Manx had been uncertain whether future laws would be made for them in Westminster or in Castletown.

61 Charles Andrews, 'The Government of the Empire 1660-1763' in *Cambridge History of the British Empire*, vol. I (CUP: Cambridge, 1929) 409, 425. Andrews suggests that the implications of continuing representative institutions were not seriously considered at first, but that after 1689 it was considered essential for an Assembly to exist. Grants to tenants-in-chief with 'regalities', whose indebtedness to the Manx precedent would bear further investigation, include those of Sark to Hélier de Carteret in 1572, of Alderney to John Chamberlain in 1584, of Avalon (Newfoundland) to Sir George Calvert in 1623, of Carliola (West Indies) to the Earl of Carlisle in 1627, of Maryland to Calvert in 1632, and of Pennsylvania to William Penn in 1681.

62 Other candidates are the leading cases on the law of the 'settled' colonies or plantations, *Blankard v Galdy* (1693) 2 Salk 411 and *R v Vaughan* (1769) 4 Burr 2494; but these have no relevance to the Isle of Man.

years later, in *Campbell v Hall*,⁶³ Lord Mansfield declared this imposition void. The royal patent had received the assent of neither the Grenadian Assembly nor of Parliament. Once the King had irrevocably⁶⁴ granted to a territory the right for its representatives to concur in his law-making, he could no longer legislate by decree without them. However, even then, territorial legislation would not be supreme: this distinction belonged only to the King in Parliament.

A closer examination of the implications of *Campbell v Hall* for the relationship between Parliament and Tynwald belongs in the final part of this article. It is mentioned here only because of its relevance to the policy issues facing Whitehall following surrender of the Manx regalties. After such a recent and important judgment, royal advisers would have realized that, by once allowing Council and Keys to be convened by a royal Governor and to join with the King in legislation, they would entrench the position of Tynwald on the Island for ever. But equally they would have been reassured that England's interests could not thereby suffer, since any veto by the Keys on government proposals could ultimately be overridden in Westminster.

Accordingly in 1776, two years after *Campbell v Hall*, an Act for highway repairs recited that:

His Majesty has been most graciously pleased to grant his royal leave and permission for the re-enacting of certain temporary Acts of Tynwald heretofore made by the Lord Proprietor, the Governor, Council and Keys, for the interior government and police of the said Isle.

This first enactment by the King in Tynwald, to replace expiring Acts of the feudal regime, set a precedent for insular legislation that has been followed loyally to the present day.

The exact converse of these arguments has been put by some other writers on Manx public law; namely that after 1765 it was Tynwald legislation that was justified by constitutional principle, while insular acceptance of Westminster legislation was a mere matter of political realities. Sybil Sharpe argues that:

the claim of Westminster to legislate for the Isle of Man is based upon the absence of evidence of any positive objection to the enforcement of such legislation rather than to any positive authority granting this power.

The roots of Parliament's insular role must be found simply in the needs of the British Treasury and the ability of British troops in the last resort to subdue any serious challenge.⁶⁵

63 (1774) 1 Cowp 204.

64 *Sammut v Strickland* [1938] AC 678 deals with the possibility of a revocable grant of self-government; but this also is not in question here.

65 'The Isle of Man – In the British Isles but not Ruled by Britain', in *Mannin Revisited – Twelve Essays on Manx Culture and Environment* (Douglas, 2002). Sharpe builds upon earlier work such as Simon A. Horner, 'The Isle of Man and the Channel Islands – A Study of their Status under Constitutional, International and European Law' in Albert P. Blaustein and Phyllis M. Blaustein (eds.), *Constitutions of*

Admittedly much constitutional scholarship does depend on observing how government has operated unchallenged over substantial periods, rather than on tracking down documentary authority for each separate rule. More than most branches of law, public law knows the retroactivity inseparable from custom. Without more, therefore, one would not know whether the absence of challenge to Parliamentary legislation was a triumph of might over right, or a tacit recognition of the legitimacy of the Imperial claim. But the 'positive authority' that Sharpe seeks can be found in the meta-legal principles set out in *Calvin's Case* and *Campbell v Hall*, which are quite sufficient to swing the balance of probability from the former interpretation to the latter.

iii. *The Concept of Separate 'Governments'*

The principal conclusion reached above—that the King of England, as *such* by virtue of Henry IV's conquest, has been the sovereign of the Isle of Man from 1399 to the present day—does not rule out recognition that the King of England, like any other sovereign, may constitute different 'governments' (that is, different agencies through which his executive authority is exercised) in the different territories subject to his rule. Those who act in his name in relation to one territory may not be an appropriate or convenient channel for the administration of another.

Occasionally, however, language is used which unwarrantably reflects this distinction of governments back upon the monarch whom they represent. Logically the King's acquisition of a prerogative of government must precede its delegation to any agency, whether local or Imperial. Assume that the King of England constitutes a government in one of his conquered territories, 'Utopia'. It is fair to say that when organs of that government exercise an aspect of the royal prerogative entrusted to them, this is in law the act of the monarch. Yet it is sometimes said to be an act of the King 'in right of the government of Utopia'; a dangerous expression which becomes misleading if shortened to 'in right of Utopia' and positively inaccurate if the act is ascribed to 'the King of Utopia'.⁶⁶

The fact of a separate 'government' does not by itself affect the character in which the monarch enjoys her powers. In 1968, when

Dependencies and Special Sovereignties (Oceana: Dobbs Ferry NY, 1987) and Peter W. Edge, *Manx Public Law* (Isle of Man Law Society: Douglas, 1997), but goes further than Edge in arguing not merely for a coordinate but for an exclusive legislative authority in Tynwald, to the exclusion of the Westminster Parliament altogether.

⁶⁶ In the case of Commonwealth territories to which legislation like the Statute of Westminster 1931 (AP) applies, such terminology has received official sanction in the adoption of styles such as 'Queen of Australia'. We express here no view on whether this is justified in such territories, whose independence of England is now scarcely less than the lands of foreign princes. But the Isle of Man is covered by no such emancipatory statute, and is far from being in a comparable position.

distinguishing quite rightly between passports issued by 'the Government of Mauritius' (the Governor, acting within his commission) and 'the Government of the United Kingdom' (a British Minister, likewise duly authorized), both in Her Majesty's name, Lord Denning MR remarked that 'In Mauritius the Queen is the Queen of Mauritius.'⁶⁷ This neither followed inexorably from his Lordship's other reasoning, nor was it necessary for his judgment. Yet it was followed a year later in the Manx summary criminal jurisdiction by High Bailiff Eason, who was concerned with land vested in various executive bodies each forming part, in a similar sense, of the 'Government of the Isle of Man'. Where the Queen's name had been used in the earlier conveyancing of the land concerned, this was, he considered, 'used as *Queen or Lord of the Isle of Man . . .* so as effectively to vest the assets therein referred to in the Queen's Government in the Isle of Man'.⁶⁸ But the fact that control of the lands in question would rest with bodies that were creatures of insular legislation would fully have sufficed for the High Bailiff to ascribe the interest in them to the Manx 'Government' and to hold (the point of his judgment) that they no longer benefited, in the hands of the Government Property Trustees, from any Crown immunities they might once have enjoyed.

IV. The Relationship of Tynwald to Parliament

i. Former Practical Hindrances to a Clash

For most of the period considered in the previous section, there was no serious prospect of a clash between Tynwald and Parliament. Tynwald did not become a legislature in anything like the modern sense until the seventeenth century;⁶⁹ while, whatever its rights might be, Parliament had scant interest in the Isle of Man until English money was invested in its purchase. Acts like that of 1541 were rare (and even in that Act, the Island's inclusion was probably an afterthought).⁷⁰

Most Acts of Parliament were not made with the Isle of Man in contemplation. The fact that Parliament *could* legislate for the Island

67 *R v Home Secretary, ex p. Bhurosah* [1968] 1 QB 266, 284.

68 *Local Government Board v Billown Lime Quarries Ltd* [1961-71] Manx LR 218, 226 (italics supplied).

69 This fact removes much of the force from the comment in *Re CB Radio* that English courts had recognized Parliament's right to legislate for Man 'notwithstanding the existence on the Island of a legislature prior to [the grants to royal tenants-in-chief]': [1981-83] Manx LR 381, 395.

70 See the writer's article 'The Independence of the Manx Church' in *Studeyr's Manninagh* (online Journal of the Centre for Manx Studies) (Douglas, 2002) <http://www.manxstudies.ac.im>. The legislators' motives do not, however, in any way lessen the Act's significance to our argument. If, as sometimes contended, Acts of the English Parliament before 1765 could not bind the Island then its Bishop would to this day be a suffragan of the Norwegian see of Trondheim; a relationship that would have imparted a Lutheran, rather than an English Prayer Book, character to Manx public religion.

did not mean that it would always intend to do so. The two Houses at Westminster, after all, contained no representatives of the Island and were unfamiliar with its conditions; it would have been unreasonable and impractical for every Act they passed to extend there. In the *Earl of Derby's Case* in 1607, the English Chief Justices had recognized this, observing that many Acts passed long after the conquest, such as the Statute of Wills 1540, did not bind the Island; 'yet by special name it may be bound'.⁷¹

For long it remained unclear whether mention 'by special name' was the only way in which Parliament could express an intention to alter Manx law, and Sir James Gell did indeed espouse this very restrictive view. The leading authority is now, however, *Attorney-General v Harris & Mylrea*, in which the Staff of Government Division held it sufficient for Parliament's intention to bind the Island to appear by any words making that intention unmistakable.⁷²

The unlikelihood of any clash persisted, for a different reason, through the late eighteenth and the nineteenth century. The royal assent to any Tynwald Bill was given in London on Privy Council advice, after considering a report from the Secretary of State. The responsible civil servants considered not only policy issues, but the compatibility of the Bill with applicable Imperial legislation, before recommending royal assent.⁷³

ii. *The Principle of Campbell v Hall*

These practical considerations should not, however, distract us from the constitutional principle which—as here contended—made it impossible for any Act of the King in Tynwald to prevail over an applicable Imperial Act. That principle was expressed in *Campbell v Hall* in the following terms:

A good deal has been said . . . relative to propositions . . . too clear to be controverted . . . and the first is this: A country conquered by the British arms becomes a dominion of the King in the right of his Crown, and therefore necessarily subject to the legislature, the Parliament, of Great Britain.

. . . If the King (and when I say the King, I always mean the King without the concurrence of Parliament) has a power to alter the old and to introduce new laws in a conquered country, this legislation being subordinate, that is subordinate to his own power in Parliament. He cannot make any new change contrary to fundamental principles: he cannot exempt one inhabitant from that particular dominion, as for instance from the laws of trade, or from the power of Parliament . . .⁷⁴

It will be answered that *Campbell v Hall* does not address the situation in the Isle of Man, but only in 'the colonies'. But this begs the question

71 (1607) 4 Co Inst 201, Scots State Papers 27/38.

72 *Isle of Man Examiner* (13 October 1894).

73 An example is the fate of the 1924 Church Assembly Bill: see (iv) below.

74 (1774) 1 Cowp 204, 208–9 (italics supplied).

as to what, in general terms, should be considered a 'colony'—in fact statutes and judgments have used the word in several different senses over the years—and it overlooks the fact that the passages quoted do not refer to 'colonies' at all, but to 'conquered countries'.

There could also be a question whether Acts of Tynwald can be equated with alteration of old (or introduction of new) laws by 'the King without the concurrence of Parliament'. But it is submitted that this is exactly what an Act of Tynwald is. The enacting power is the King's—so far at least, the writer accords with the reasoning in *Re CB Radio*. In an Act of Tynwald the King acts constitutionally with the assent of the territory's representatives (which was exactly the situation Lord Mansfield had in contemplation, as the correct way for George III to have legislated in Grenada). But those representatives are still not the same as the Imperial Parliament; and for *Campbell v Hall* this makes a difference.

It may be questioned why Westminster, in particular, should be the superior body. George III was not only King of England—why should not the Estates of Hanover have made law for Man? One might equally ask why the first Nova Scotian colony had been subject to the Parliament of Scotland, or the conquered province of New York to that of England. Their sovereigns were after all Kings of both countries. It is suggested that the answer lies in the words italicized above in Lord Mansfield's judgment: conquered 'by the British arms' (an expression applicable to the date of Grenada's conquest, but for which, in the Manx context, we may substitute 'English').

The King can inherit a throne, or acquire territory by marriage, with no assistance from his subjects. But he cannot conquer it without help. In the military campaign, one group of subjects will always be predominant; and it is only fair that their labours should be rewarded. If the predominant group consists of Englishmen, then Englishmen through their representatives in Parliament will always have an interest, alongside that of the King, in the conquered territory. The Bolingbroke supporters who ejected the officers of William Scrope in 1399 were Englishmen; even had Henry IV possessed a second throne (which he did not), this would have sufficed to identify the Parliament of England as the body that would henceforth act with Henry's successors to control the destiny of the Isle of Man.

iii. The Colonial Laws Validity Act

Sceptics may go on to ask why, if the application of *Campbell v Hall* to the relationship of territorial to Imperial legislation was so clear, it was necessary for Parliament to pass the Colonial Laws Validity Act 1865; and why, in that case, the Isle of Man should have been excluded from its scope.

It is true that the central provision of the 1865 Act did restate what is here suggested to be the effect of Lord Mansfield's judgment:

Any Colonial Law which is or shall be in any respect repugnant to the Provisions of any Act of Parliament extending to the Colony to which such Law may relate, . . . shall be read subject to such Act . . . and shall, to the Extent of such Repugnancy, but not otherwise, be and remain absolutely void and inoperative.

But it was not in this, so much as in peripheral areas, that doubts needed to be resolved. It was not clear from *Campbell v Hall* alone that Imperial *delegated* legislation enjoyed a superiority similar to Imperial statute, since in Lord Mansfield's time enabling provisions for such legislation had been virtually unknown. On the other hand, the 1865 Act could clarify, to territorial legislatures' advantage, that where Imperial law was silent there was no reason why their own Acts might not amend customary law, or reform the local Constitution and court system.

Why then was the Isle of Man excluded? The fact that a definition section to exclude Man from the Act's scope was held necessary at all does, in fact, tend to support the case we are making. It suggests that there were some who, reading the Act, would otherwise have assumed that Acts of Tynwald were 'colonial laws', and would have found it natural to apply the Act's principles in the Manx context. But we must consider how the 1865 Act came to Parliament, and in what company the Manx exclusion appears.

It has already been noted⁷⁵ how, in 1801, correspondence with most colonial Governors was transferred from the Home Office to the new Secretary of State for War. In fact the Home Secretary passed to his colleague a list of the Governors concerned, which must be considered a critical document for the Island's history, in its omission of the Governor of the Isle of Man. It also excluded his counterparts in Jersey and Guernsey.⁷⁶ By 1865, a new Colonial Office had relieved the War Office of its not precisely military burden, while a separate India Office was cultivating the specialist skills required to balance colonies with client princes in the volatile sub-continent.

Like any other government Bill of the modern era, the 1865 Act was promoted by a government department. The need for the Bill had arisen in territories administered by the Colonial Office, and in seeking to clarify doubts it would be natural for the civil servants there to

⁷⁵ See above n. 21.

⁷⁶ See D.M. Young, *The Colonial Office in the Early Nineteenth Century* (Longmans: London, 1961). The historian R.B. Pugh has commented: 'The reasons for this redistribution of functions, for which there was no public demand, are unknown. Perhaps the strategic aspect of the colonies seemed pre-eminent. Perhaps the prospects of prolonged peace and union with Ireland indicated the Home Secretary would henceforth have more to do than the Secretary of State for War. Perhaps a fairer distribution of patronage lay at the bottom of it.' ('The Colonial Office 1801-1925' in *The Cambridge History of the British Empire*, vol. III (CUP: Cambridge, 1959) 711f.) Such considerations could equally explain the omission of Man, whose strategic situation was closer to that of Ireland than to the remoter territories; but this is an area in which further research might prove enlightening.

avoid trespassing within the spheres of their Home and India Office colleagues. It is suggested that the definition of ‘colony’ for the purposes of the Act was designed to avoid such trespass, and had no deeper significance.⁷⁷

The Colonial Laws Validity Act, of course, covered legislatures with several different origins. In some, a representative assembly had been summoned by the Crown and gained its authority through the bare fact of the Crown cooperating with it in legislation (the situation in *Campbell v Hall* and, as argued here, in the Isle of Man). But there were others in which the legislative power was more clearly a delegated one: a more formal Constitution being set out by Order in Council, or even by Imperial statute. This last practice became particularly common for unions of colonies, such as that effected by the British North America Act 1867 (AP).

Where a local legislature was actually created by Westminster, the argument for its subordination to Westminster’s own Acts was particularly compelling. Yet not all colonial legislatures were so created, and it is a false distinction to suggest that the subordination of conquered territories’ legislation to the Imperial Parliament depended generally upon a delegation of Westminster authority not characteristic of the Isle of Man.

iv. Modern Application of the Campbell v Hall Principle

Despite its exclusion from the 1865 Act, it is suggested that judges and administrators continued to act on the understanding that the principle of *Campbell v Hall*, including its 1865 refinements, did apply to the Isle of Man. An example of territorial legislation whose legitimacy, in a remoter colony, would have been confirmed by the 1865 Act could be seen the very next year, when Tynwald legislated to reform the composition of its own lower chamber.⁷⁸

For an example of the invalidity of Manx legislation on account of incompatibility with provisions carrying the indirect authority of Parliament, we may turn to the story of Tynwald’s 1924 Church Assembly Bill.

The need for this Bill arose after Parliament conferred upon the National Assembly of the Church of England a role in framing religious legislation for it (Parliament) to consider and approve by a special streamlined process (a simple resolution in each House instead of three readings) before submission for the royal assent.⁷⁹ The new Assembly’s Constitution, including rules on how lay representatives

77 It is not suggested, though, that this is the sole reason why the Act’s scope excluded the Channel Islands; see further n. 95 below.

78 House of Keys Election Act 1866 (AT).

79 Church of England Assembly (Powers) Act 1919 (AP).

would be chosen, had been drawn up by authority of the provincial clerical convocations. It was established law that the convocations could not, by any resolution of theirs, bind lay people;⁸⁰ but in giving a role to the Assembly thus constituted, Parliament was considered to have impliedly approved its Constitution and the rules for representation of the laity.

The Bill passed by both Branches of Tynwald and transmitted to the Home Office in 1924 was chiefly concerned to set up parallel structures on the Isle of Man, so that religious legislation of purely local significance could be expedited. That aim was uncontroversial, and was later to be given effect by an Act of the following year.⁸¹ But in setting up the structures, the 1924 Bill purported to establish rules for choosing lay representatives *different* from those Parliament had approved five years previously for the entire provinces of Canterbury and York.

The Home Office had no strong feelings about how lay representatives should be chosen. There were to that extent no policy, as opposed to legal, objections to the Bill. But the conflict between the authority of Tynwald as expressed in its provisions, and that of the convocations' provision approved by Parliament, was seen as an insuperable obstacle to the Bill's progress. The King could not be advised to assent to insular legislation which might later be held void. As one of the very few such cases in the twentieth century, submission of the 1924 Bill for royal assent was refused.⁸²

The fate of the Church Assembly Bill was, of course, a decision by administrators rather than a court's ruling. It was, however, followed by a 1936 judicial utterance supporting the *Campbell v Hall* principle in relation to Man, albeit *obiter* and not wholly without ambiguity.

Re Robinson deceased was also, as it happened, concerned with the application of Imperial ecclesiastical legislation to the Island. The legislation was the Parochial Church Councils (Powers) Measure 1921, which required parish incumbents to cause church electoral rolls to be prepared and elections held, and conferred perpetual succession on the councils so elected. Referring to Tynwald's Church Assembly Act 1925—the successful one—which did not itself make any such provision, Deemster Farrant observed:

It is, however, not contended, if as a fact Imperial Acts and Measures do apply to the Island either in whole or in part, that the insular Legislature could affect any limitation or alteration of that application. In my

80 *Middleton v Crofts* (1736) 2 Atk 650 approved *Bishop of Exeter v Marshall* (1867) LR 3 HL 17.

81 Church Assembly Act 1925 (AT).

82 Home Office internal memorandum, 19.6.1924; letters to Bishop and Governor, 30.9.1924; PRO: HO 45/16537.

opinion the insular Act is only important in considering the practicability of applying any provision of the Imperial Act or Measure to the local circumstances of the Island.⁸³

The ambiguity of this passage lay in the word 'contended'. If the Deemster was merely stating what counsel before him had not argued, the observation tells us nothing of importance. In context, however, it seems more likely that he was stating that the following proposition was *generally* not contended, in other words not capable of contention. Though still only a *dictum*, the passage would then support the application of *Campbell v Hall* principles to the Isle of Man.

v. *The Assertion of a Coordinate Authority*

The emancipation process described early in this article accelerated in the second half of the twentieth century, particularly after 1958. It was not, however, without friction, and there was no lack of Manx politicians willing to refer to 'colonial shackles' and to encourage local organs of government to join in throwing them off. The view of the Queen as 'Lord of Man', already criticized, was prayed in aid, it being frequently suggested that while her role in the Island's government was welcome, that of her English advisers and Parliament was not.

It appeared that a similar mood had infected the judiciary when, in the early 1980s, the Staff of Government Division gave the two judgments mentioned in the introduction. In *Re CB Radio*⁸⁴ the actual issue for decision was whether it was competent for Tynwald to supplement the provisions of an Imperial Act, which had provided for its own extension to Man by Order in Council, by empowering a Manx Board to effect such an extension by regulations. Delivering the court's affirmative decision on this point, Hytner JA digressed to remark that, even supposing a Manx Act contradicted, rather than supplemented, an Imperial one, its provisions would still be obeyed, provided it was the later of the two statutes.

As Staff of Government decisions, *Crookall* and *Re CB Radio* appear more weighty authorities than the Chancery Division case of *Robinson*; although, all the relevant remarks being *obiter dicta*, one cannot regard either line of reasoning as binding for the future. Certainly, since *Re CB Radio*, the draftsmen of Tynwald Bills have felt free to take a more cavalier attitude to Imperial legislation than was formerly the case.⁸⁵ The Manx statutes that now purport to contradict the literal provisions of Imperial ones do not, admittedly, challenge Parliament on major policy issues. Rather they adapt provisions which,

83 [1921–51] Manx LR 154, 162.

84 [1981–3] Manx LR 381.

85 See Peter W. Edge, 'David, Goliath and Supremacy: The Isle of Man and the Sovereignty of the United Kingdom Parliament' (1995) 24 *Anglo-American Law Review* 16–19.

probably by oversight in Whitehall, fail to take account of the Island's different legal framework and therefore make little sense locally.⁸⁶

It is suggested that this policy convergence is one reason why the *dictum* of Hytner JA and actions taken in reliance upon it have not so far undergone any judicial challenge. A second reason may be the change in the ethos of the Imperial civil service since the reforms associated with former premier Margaret Thatcher. Today's senior administrators see themselves less as servants of the public (and hence of the existing law), bound where necessary to advise politicians that certain goals are unachievable without primary legislation. Rather they act as servants of the politicians themselves, bound to achieve the ruling party's goals if this can be done without serious risk of judicial challenge.

In a 1985 decision also prepared by Hytner JA, the Staff of Government had to consider whether a provision of the Bankruptcy Act 1914 (AP) providing for 'British courts' to assist each other in (*inter alia*) the unearthing and administration of a bankrupt's assets⁸⁷ was mandatory upon the courts of the Island. Since Manx courts had already invoked the same provision to gain the aid of the English High Court in relation to an insular bankrupt, it would have been difficult to give a negative answer, and the 1914 Act was held to bind, prevailing over any rule of Manx custom against enforcement of 'foreign' revenue law (the principal creditor being the British Inland Revenue). The judgment described the 1914 statute as 'an Imperial Act which applied without express provision to all "British", that is British Empire, courts'.⁸⁸ The Bankruptcy Act 1914 was certainly an Act of the Imperial Parliament. But whether it was intended to bind the courts of the Crown's overseas territories was surely a matter of construing Parliament's intention according to the usual rules—in this case, ascribing a meaning consistent with the statute's purpose to the otherwise undefined expression 'British courts'. English and Privy Council authority on predecessor statutes already suggested the outcome for which the Manx court decided in *Re Tucker*.⁸⁹ Hytner JA saw no conflict between this outcome and his view of Man as a 'sovereign independent state', since he considered that in 1914 the Westminster Parliament had been an accepted source of Manx law; no doubt, on the reasoning of his earlier judgments, by delegation from the 'Lord'.

86 An example might be the Statute Law Revision Measure (Isle of Man) 1994, s. 1, which purports to modify the Ecumenical Relations Measure 1988 (an Imperial Measure extending directly to the Island) by substituting a notice published at the General Registry in Douglas for the Imperial Measure's requirement of *London Gazette* publication.

87 Section 122. The Act is now repealed but continued to apply in the Island at the date of the relevant official request.

88 *Re Tucker* [2000] BPIR 859, 863.

89 *Ellis v McHenry* (1871) LR 6 CP 228; *Callender Sykes & Co v Colonial Secretary of Lagos* [1891] AC 460 (Bankruptcy Acts 1861 and 1869, AP).

It is hard, however, to follow a distinction he went on to imply between 1914 and the present day on the basis that:

such [Imperial] Acts ceased in 1918 and the application of Acts of Parliament to territories outside the United Kingdom has since been made by Order in Council.

So far as Man is concerned, while the practice since the start of the First World War has increasingly been to prefer the flexibility given by a delegated authority to extend,⁹⁰ the facts belie the suggestion that no subsequent Westminster legislation has been given direct application to the Island. One need again look no further than the religious sphere to find recent Measures—which, whatever the earlier stages in their gestation, remain enactments by the monarch with the consent of the Lords and Commons of the United Kingdom—applied to Man by their own extent provisions without any reference to subordinate instruments or the involvement of Tynwald.⁹¹

The increasing rarity of directly extended Imperial Acts may nonetheless be a further factor preventing the *dictum* of *Re CB Radio* being rapidly put to the test; frequently the same insular politicians influence both the content of Acts of Tynwald and any decision on extension of Westminster provisions by Order in Council. But it is of course possible for Manx government views to change; one administration may secure the extension of a Westminster Act, and another seek to steer inconsistent legislation through Tynwald. Even when extended by Order in Council, the Westminster Act will still carry Imperial authority.

The day will almost certainly come, therefore, when Manx legislation contradicting an applicable Imperial Act affects some material interest sufficiently to warrant challenge at the highest level. The Judicial Committee of the Privy Council has not yet considered the alleged coordinate authority of Tynwald and Parliament. When it does, it may well be pointed out that, contrary to the Staff of Government's view, *Campbell v Hall* does provide a basis on which to distinguish supreme from inferior legislative acts of the monarch. The contention of this article is that the principle of *Campbell v Hall* covers the Manx situation and supports the older rather than the modern legal approach as correct.

A brief final comment may be in order on the suggestion by Peter Edge, who otherwise follows the *Re CB Radio* line on coordinate authority, that Tynwald may have no power to place the Crown in breach of international obligations.⁹² To this one may respond that whereas *politically* such obligations may indeed be a principal reason

90 See above n. 24.

91 E.g. the Priests (Ordination of Women) Measure 1993.

92 Edge, above n. 65 at 19.

for policy made in Westminster to override Manx wishes, *constitutionally* these are altogether less weighty than decisions taken (even in the domestic field) by the Lords and Commons at Westminster.

Treaties are commitments given by England's monarch to her brother princes or their republican substitutes. She is free to give them without consulting her subjects through the legislature, but this leaves her subjects free to decide whether or not they will enable her to honour them. It is for the Ministers who, by convention, advise her on international relations to persuade Parliament of the wisdom of a treaty, after it is signed if not before. Hence the rule that a treaty is not directly enforceable, in the courts of either England or Man, save in so far as its provisions are given statutory effect.⁹³

Westminster Ministers, since it is they who advise on treaties affecting the Island, must therefore persuade one or other of the bodies with power to change the Island's laws to do so in conformity with a treaty they have negotiated. If they, through Manx Ministers, can persuade Tynwald, there is no difficulty. Should they find it easier to persuade the Imperial Parliament, then Tynwald will be disabled from contrary legislation on the general principles here discussed. But if they fail to persuade either body then Manx law, even if made by Tynwald, will prevail over the treaty commitment.

V. Conclusion

When is a colony not a colony? The Isle of Man, we are frequently told, is not a colony.⁹⁴ It has, indeed, been extremely rare for it to be referred to by that term, and the 1865 Act definition supports those who argue that the Island is, like the Bailiwicks of Jersey and Guernsey, a territory *sui generis*.⁹⁵

93 *McWhirter v Attorney-General* [1972] CMLR 882. Edge suggests his qualification on the basis of the allegiance which Man owes to the monarch; but since 1776 this allegiance has not been taken to warrant any other form of law-making by the Crown alone, which is what a treaty directly applicable without statutory backing would be. The closest the courts come to acknowledging a subject's duty not to leave their monarch forsworn is in the (rebuttable) presumption that legislation is not intended to conflict with international undertakings: *The Zamora* [1916] AC 77.

94 Blackburn J's statement in *ex p. Brown* (above n. 43 at 295) that the Island is 'not a colony but a dominion of the Crown of England' prayed in aid words of Lord Hardwicke LC in *Bishop of Sodor and Man v Earl of Derby* (1751) 2 Ves Sen 337, 350. Lord Hardwicke in fact only called the Island 'parcel of the King's crown of England, a distinct dominion now under the King's grants', which would not be inconsistent with the view that, having become a royal colony by conquest, the subsequent arrangements for its government made Man *also* a feudatory dominion, whereas other colonies might have different arrangements. It is stated at para. 1347 of the *Report of the Royal Commission on the Constitution 1969-73* (1973) Cmnd. 5460 that the Island is 'a dependency of the Crown and not a colony'. In Imperial statutes passed since the Interpretation Act 1889 (AP) the term 'colony' has excluded the Island unless contrary intention appears.

95 Perhaps ironically, the writer would support reasoning very similar to that of *Crookall* and *Re CB Radio* to explain Westminster legislation extended to the Channel Islands; since there the conquest logic works the other way. Jersey and Guernsey are the sole remnants (free from foreign occupation) of Normandy, of

Yet, as this article has sought to show, many of the constitutional features commonly associated with colonial status are more properly seen as features of territories conquered by the Crown with the aid of English arms. Man is in law such a territory, and the surrender of the subordinate Lordship means that its long (and admittedly fascinating) history may not provide a conclusive basis for distinguishing it from other territories in the same category.

Those other territories have now, however, in very many cases achieved a level of emancipation from English rule well beyond that presently conceded to the Isle of Man. That is why the suggestion that the Island is, in fact, a colony in all but name may not be so adverse to Manx interests as it is a blow to insular pride. Although doomed on the domestic plane (if the reasoning of this article is found convincing) to accept certain features of subordination as a fact of life, Man would no longer feature on the international plane as a unique phenomenon, which other countries do not understand and with which they consequently prefer not to meddle. Rather Man would be entitled, no less than the better-known colonies of past and present, to call to its aid the worldwide pressure for decolonization, should it choose to do so.⁹⁶

which England is itself a conquered territory (albeit with total self-government, since Normandy had in 1066 no Parliament which could assume the Imperial role envisaged in *Campbell v Hall*). The sovereign power remains in Normandy's Duke (another gender-invariant title), whose action in the Islands on the advice of Anglo-Scottish organs should be considered purely a political and practical convenience. A ducal Order in Council, giving effect to a law of the insular States, would therefore have a good claim to prevail over an earlier inconsistent Act of Parliament.

⁹⁶ As classically expressed in the United Nations' 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples.