

# A LEGAL VIEW FROM THE ISLE OF MAN

His Honour Deemster David Doyle\*

## Introduction

The Isle of Man is steeped in tradition and ancient precedent. From the outside it would seem, from a legal point of view, to be a rather uninteresting place.

The size of the Island, some 80,000 souls contained in 572 square kilometres of land, is deceptive as it hides a raft of interesting legal issues. When it is combined with wide-ranging international corporate, commercial and trust activity and an annual economic growth rate of over 6%, there is a platform for a very broad legal landscape.

This means that the judicial backbone of the Island, three permanent Deemsters, a Judge of Appeal and a panel of Acting Deemsters, is never given time to calcify.

## The Island's Legal System and Judiciary

On the Island we have a separate legal system to England and Wales. We also have our own Parliament, our own legislature and our own government. By this you will realise that we are not part of the United Kingdom. We are an internally independent jurisdiction and we make and enforce our own laws. Inside this legal infrastructure, an Isle of Man Deemster is broadly equivalent to a High Court Judge in England and Wales, with some additional judicial and extra-judicial responsibilities.

As far back as the 17th century, Deemsters were described, rightly or wrongly, as officers of great dignity. They were not only the chief judges, but were also the Lord's Privy Counsellors. Their influence over the people resembled, to some degree, the civil authority of the ancient Druids. The first written reference to Deemsters appears in the customary laws of the early 1400s.<sup>1</sup>

Historically, the Deemsters were the repository of the extensive body of customary law which, because it was thought to reside in their breasts and was only divulged to the people on important occasions, was popularly known and officially referred to as 'breast law'.

In the 1700s, the proceedings before the Deemster's Court were very informal. There were no lawyers and everyone presented their own cases. Generally, the Deemster would literally hold court in his own house, but Attorney General Busk noted in 1792 that "the Courts were sometimes held in petty ale houses amid crowds of fishermen and farmers."<sup>2</sup>

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

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1 Statutes of the Isle of Man 1417-1824 vol 1.

2 *Feltham's Tour 1798*.

Sadly, Deemsters now spend little judicial time in petty ale houses amid crowds of fishermen and farmers; but I can assure you that we are still very much in touch with the Isle of Man community.

In the present day, the First Deemster, who is President of our High Court, deals in the main with civil cases and sits in our Appeal Division. Our final appeal court is the Privy Council in London. In my role as Second Deemster, I deal with a mixture of criminal and civil work, and also sit in our Appeal Division, not of course on appeals against my decisions – of which there are many! Our permanent Deputy Deemster deals with family matters and summary jurisdiction cases. We also have the equivalent of District Judges and lay magistrates, small claim arbitrators and mediators, all of whom play important roles in the administration of justice on the Island.

In addition to the three permanent Deemsters, our panel of Acting Deemsters are, in the main, leading counsel from England who assist us in our judicial workload. I would also like to see more local advocates on the panel. The Acting Deemsters deal with cases at first instance and also, where occasion requires, sit in our Appeal Division.

In the future, some Welsh input on our panel of Acting Deemsters would certainly provide additional insight and experience. With this in mind I must express my hope that there will be closer links between our two jurisdictions in the future.

I say this as a person who, as a young boy, used to visit his auntie in Cardiff at Easter, while my uncle took a break from being the bursar at Cardiff University.

From this you will calculate that my personal link to Wales goes back over 40 years and is founded mainly on a youthful desire to eat Easter eggs! I also remember my interview for a place at Aberystwyth University, after which my parents and I jointly agreed that Aberystwyth on the west coast of the adjacent isle was a little too close to the Isle of Man for comfort and I ended up going to Newcastle-upon-Tyne, where I was exposed to the fresh air and culture of the east coast.

The legal culture in the Isle of Man stretches back a long way. Over time we have had our fare share of bizarre and often draconian laws and punishments on our statute book. Section 15 of Customary Laws of 1577, which was repealed by s 9 of the Criminal Code 1817, provided as follows:

Rape – Alsoe we give for law, that if any Man take a Woman by Constraint, or force her against her will, if she be a Wife, he must suffer the Law for her; if she be a Maid or single woman, the Deemster shall give her a Rope, a Sword, and a Ring, and then [she] shall have her choice to hang him with the Rope, cut off his Head with the Sword, or marry him with the Ring.<sup>3</sup>

You may have in the past heard of the use of birching on the Island. For some time this practice was rather a sore point for both the human rights activists and indeed the criminals on the receiving end of the punishment; but we are getting up to date with European jurisprudence and birching no longer remains as a sentencing option.

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

The customary laws of 1601 provided that anyone who slandered, condemned, or accused any politician or Deemster through a scandalous speech or text would be given a

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3 Statutes of the Isle of Man 1417–1824, vol I at 55.

punishment in two parts. First, they would be fined £10 for every time they offended. Secondly, their ears would be cut off.<sup>4</sup>

As recently as 1726, when a certain Anthony Halsall had the courage to accuse a Deemster of misleading a jury, he was sentenced to a £10 fine and as stated at the time 'his ears to be cut off besides'.<sup>5</sup>

The Island has moved on a little since then. Today such criticism of a Deemster would form good grounds for an appeal.

If the law had not been changed, the possession of ears by the Island's journalists and court reporters would have been regarded as a badge of shame and a severe lack of journalistic credibility.

We now encourage a free, responsible and critical media where journalists are only asked to lend an ear to the judiciary and to report legal proceedings fairly and accurately.

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

Recently, in the *Caldwell-Camp* appeal (2003–05 MLR 505), our Appeal Division was able to set a more severe sentencing regime than prevails in England and Wales in relation to importing and dealing in Class A drugs – a grave social evil with far-reaching negative consequences.

We do however have specific regard to the guideline cases in England and Wales, and reference is frequently made to the authorities in Current Sentencing Practice. Indeed, David Thomas, the English and Welsh sentencing guru, relatively recently came to the Isle of Man to give us a talk on sentencing matters.

We also have regard to decisions on criminal and civil matters in other jurisdictions; for example, the decision of the New Zealand Court of Appeal, in *Clotworthy*, on reparation issues in the sentencing process.<sup>6</sup>

Some of our company law is based on New Zealand statutory provisions, such as s 2 of our Companies Act 1986, which provides that a company has the capacity and, subject to the Act, the rights, powers and privileges of an individual. Other elements are English and Welsh, such as the Companies Act 1931 that was modelled on the 1929 Act of England and Wales. Some of our company law is based on Irish statutory provisions, such as s 7 of our Companies Act 1968 (remedies for shareholders in cases of oppression).

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

The Isle of Man is an active member of the Commonwealth and this is often the first place that we look to for guidance. Canada, New Zealand and Australia have all in turn been influenced by other jurisdictions and represent a rich source of international precedent.

We are, without doubt, heavily and quite properly influenced by judicial developments in jurisdictions around the world. Our common law reflects domestic and global issues.

To assist in this cross-fertilisation we have judges, lawyers and academics from around the globe coming to the Island to speak. I am hopeful that Justice Kirby from the Australian High Court (their final court of appeal) will visit us in the future. I also hope to welcome to

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4 Statutes of the Isle of Man 1417–1824, vol 1 at 69-70.

5 Solly, M, *Government and Law in the Isle of Man*, 1994, Castletown, Isle of Man: Parallel Books, at 205.

6 [1998] 15 CRNZ 651 (CA).

the Island Helen Bowen, a leading New Zealand lawyer specialising in reparation matters, and Mario Paparozzi, who in the past has served as Chairman of the New Jersey State Parole Board. I hope that they will be able to speak at an international criminal justice conference we will be hosting in the Isle of Man. I hope that some of you will join us also.

As we are aware that we must stay in step internationally and keep a tender finger on the developing international judicial pulse, we also keep a careful eye on the judicial and regulatory developments in other jurisdictions.

We continue to have a lot to learn from developments in other jurisdictions and, dare I say it, they from us. In the spirit of this global approach we would welcome some Welsh legal visitors to our shores to educate us on Welsh legal matters.

On a day to day level, there is a local and international flavour to the work of the judiciary on the Isle of Man. In any one week I could be dealing with a local boundary dispute or a personal injuries case, a contested bail application, together with weighty trust, commercial and corporate cases involving Hong Kong, Pakistan, Australia, the United States and other jurisdictions worldwide. The flavour of our work is both local and international and the variety keeps us fresh and well nourished. The air that the Deemsters breathe in the Isle of Man is the same air that judges breathe worldwide and the hearts of our litigants beat in the same way as the hearts of litigants worldwide.

A wide range of issues crossing many jurisdictions are heard in our courts. Our relatively new, purpose-built, court complex in Douglas, which was opened in 1997, has seven separate courts. The judiciary are supported by a well resourced and keen court administration team. We were proud to be able to show off our courts to the Lord Chancellor when he paid us a visit at the end of September 2005.

The breadth and depth of our activities ensures that we maintain perspective, legal agility and, most of all, an open mind when resolving the legal issues of the day.

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

It is said that there is no greater statement of a region's independence than language. Every year on 5 July we have an open air sitting of Tynwald (our Parliament) to celebrate our national day. Visitors from all over the world join us. It takes place on a hill at St Johns said to be made up of soil taken from all the Island's parishes.

I have the privilege, as Second Deemster, of reading from the hill in the Manx language a summary of the laws passed in the previous 18 months. The First Deemster reads them in English. The Acts are promulgated in ancient form. If they are not duly promulgated they cease to have effect.<sup>7</sup>

It is an important and significant day for the people of the Island. It is a time to reflect upon our national identity and our place in the world. It is a time to consider our history – our past. Where we have come from. Our present – where we are at and our future – where we are going to. It is a time above all to celebrate our existence.

Although we read the laws out in Manx on Tynwald Day, we do not yet benefit from a Manx equivalent to Dr Robyn Lewis' fine publication *New Legal Dictionary: English-Welsh*. Your battle over language has been hard won and you have come a long way since 1866 when that well-known English language newspaper, *The Times*, declared:

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7 Promulgation Act 1988, s 3.

The Welsh language is the curse of Wales. Their antiquated and semi-barbarous language, in short, shrouds them in darkness. If Wales and the Welsh are ever thoroughly to share in the material prosperity, and ... we will add, the culture and morality of England, they must forget their isolated language and learn to speak English and nothing else ... For all purposes, Welsh is a dead language.

*The Times* must have sold well in Cardiff on that day in 1866! How things have changed. As regards our Manx language, the people of the Isle of Man have a long way to go to catch up with you in Wales; but our language, like the Welsh language, is far from dead and we are all too aware that it is an important component in defining a nation in a global environment. Other important components are the constitutional position of the nation and the recognition of global responsibility.

## The Island's Constitutional Position

We are not a separate independent state; so what then is our constitutional position with the United Kingdom and with England and Wales?

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

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

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

The current situation is that the Island is an internally self-governing dependency of the Crown. We are not a part of the United Kingdom and we are not a member of the European Union. Our position within Europe is in the main governed by Protocol 3 to the Act of Accession.

The Crown retains responsibility for the Island's defence and for the ultimate good government of the Island. We have our own Parliament. We have our own government. We have our own judiciary and we have our own laws.

It is said that the Parliament in England can, in academic and constitutional theory, legislate for the Island, but by constitutional convention would not do so without consulting with the Island and obtaining its consent. In February 1998, the late Lord Williams in the House of Lords stated:

The Crown is ultimately – and I stress the word ultimately – responsible for the good government of the Island. We have full power in principle to legislate for the Island but it is a fact that it would be contrary to constitutional conventions to which all governments of whatever political complexion have adhered, for the power to be used in the ordinary course of events without the agreement of the Island governments.

Judge of Appeal Htynner, in the case of *Re Tucker*, stated:

There has been for many years a convention that whilst Parliament legislates for the Island in matters relating to defence and foreign affairs ..., it leaves to Tynwald control over all domestic

matters ... Whilst I can envisage an interesting argument relating to ultra vires by an astute Manx constitutional lawyer in, say, 1780, it is now far too late – at any rate in this court – to deny the right of Parliament to legislate in accordance with accepted convention.<sup>8</sup>

The constitutional relationship is not enshrined in a formal constitutional document. It is instead the outcome of historical processes and accepted practice and conventions. There are without doubt areas of uncertainty in the existing relationship.

## The Future

There is one aspect of this that is less legal and more inter-personal. For hundreds of years the pragmatic Manx mindset has been one of practical internal independence rather than complete state independence. From this mindset there have been developments that have in turn moulded the constitutional relationship that gives us an enormous amount of autonomy and the flexibility to govern our own affairs. Over and above any legal considerations, this leads to a conclusion that independence is first and foremost a state of mind.

The Island's Council of Ministers currently agree that there is insufficient advantage for the Isle of Man to seek complete independence, but that it should be reconsidered if circumstances change. Government policy is to continue to focus on promoting and defending vigorously the Island's autonomy in relation to its internal affairs, while seeking to extend the Island's influence over external issues affecting the Island. A major aspect of this activity is the maintaining and extending of the Island's direct representation in international bodies.

Although the Island is proud of its internal independence and its ability to make and enforce its own laws, it is also proud of the fact that it is now a responsible member of the international community. In *Impex Services Worldwide Limited*, I stated that:

Here on the Isle of Man, we are all citizens of the Island but we are also citizens of the global community in which we live, work and contribute. We need to recognise our international as well as our local responsibilities.<sup>9</sup>

We have a desire to further mature as an independent jurisdiction and to learn from others. We also have a desire to play our proper role within the international community. As the influential and well-respected Australian judge, Justice Kirby, said in 2000:

Once we saw issues and problems through the prism of a village or nation-state, especially if we were lawyers. Now we see the challenges of our time through the world's eye.<sup>10</sup>

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

We must all work together. Independence will inevitably be replaced by interdependence. Judges, lawyers and politicians should all appreciate that we are part of what Justice Kennedy in the United States described as a 'wider civilisation'.<sup>11</sup> The Isle of Man and Wales are both part of that wider civilisation.

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8 1987–89 MLR 220 at 228.

9 2003–05 MLR 115 at 133.

10 Kirby, M, *Through the World's Eye*, 2000, Sydney: Federation Press.

11 *Lawrence v Texas* 539 US 558 at 576 (2003).

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

However, let us not forget the strength, knowledge and extended reach that we can all enjoy through the co-operation and communication that comes from working together. Let the Isle of Man and Wales work together.

