

Crown Dependencies in an era of continuity and change

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ABSTRACT: Crown Dependencies (the Bailiwicks of Jersey and Guernsey and the Isle of Man) are sub-national island jurisdictions in the British Isles whose autonomy and sovereignty over internal matters is guaranteed by their long-standing relationship with the British Crown. This article examines the evolution of the Crown Dependencies during the reign of Queen Elizabeth II, a time of considerable political and economic change that was largely driven by insular actors rather than imposed from the outside. It focuses on developments in the late Elizabethan period that were precipitated by Britain's decision to leave the European Union, more commonly known as Brexit. In the immediate aftermath of Brexit, it appears that the Crown Dependencies will seek to preserve their existing relationship with the Crown and, by extension, the UK, with perhaps some minor reforms that enhance their autonomy in the international sphere. This approach, however, may have to change in the longer term as they grapple with exogenous forces and developments beyond their control.

Keywords: Crown Dependencies, federacy, insular autonomy, sub-national island jurisdictions, United Kingdom

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Introduction

The seventy-year reign of Queen Elizabeth II (1952-2022) witnessed a number of profound developments that transformed the United Kingdom's (UK) internal and external relationships. Among the most important were: the decolonization of much of Britain's vast overseas empire and the establishment of the Commonwealth; the UK's decision to join and then, four decades later, leave the European Union (EU) (Brexit); and the devolution of political authority to elected legislatures in Scotland, Wales, and Northern Ireland. While the Elizabethan era was generally seen as one of continuity and stability in terms of the relationship between the UK and the Crown, some political commentators have noted that devolution and Brexit could potentially lead to the dissolution of one of the world's most longstanding and successful political unions (Ascherson, 2019; Geoghegan, 2021).

Largely hidden from view in the grand political drama that constitutes post-war British politics are the Crown Dependencies, unique territorial entities in the British Isles and remnants of a feudal era that still maintain a constitutional relationship with the British Crown. The three Crown Dependencies, the Isle of Man and the Channel Island Bailiwicks of Jersey and Guernsey, are autonomous small island jurisdictions that are neither part of the UK nor full members of the Commonwealth, but that share a constitutional connection with the UK through the reigning British Sovereign who serves as their Head of State. While they have their own democratically elected legislatures and have jurisdiction over domestic matters – a right they were granted four decades before Scotland, Wales, and Northern Ireland – they rely on the UK for their external representation and defence. They also have strong ties to the institutions of the British state, a relationship that is facilitated by their connection to the British Crown as well as longstanding cultural and demographic associations to the UK.

This article examines the history of the relationship between the Crown Dependencies and the British Crown, with a focus on the important political and economic developments that occurred during the reign of Queen Elizabeth II. Although this relationship is a guarantor of their unique jurisdictional status and insular autonomy, it is also clear that these island jurisdictions have been constantly buffeted by exogenous forces and developments that are largely beyond their control, the most recent example being Brexit. As the Crown Dependencies continue to navigate the choppy waters of post-Brexit Britain, they will likely seek to maintain the political and constitutional status quo, a set of political arrangements based on principles of loyalty and autonomy, with some incremental reforms designed to enhance their autonomy over international matters. It remains to be seen, however, whether the long-term repercussions of Brexit, including the possible disintegration of the UK and the reassessment of the UK's constitutional relationship with the Crown in the post-Elizabethan period, will force them to abandon this governance model and reconsider their political and constitutional status, an outcome that could include closer integration with the UK or full independence.

The article is divided into three parts. Part one situates the Crown Dependencies in the broader literatures on federalism and island studies as a means of demonstrating the unique nature of their jurisdictional status. Part two explores their historical development, with a focus on the political and economic changes that occurred during the reign of Elizabeth II. Part three considers developments in the late Elizabethan period, paying particular attention to the impacts of Brexit and the longer-term political, economic and social effects of this critical juncture on the future relationship of the Crown Dependencies to the UK and the EU.

Crown Dependencies: A conceptual overview

For many centuries, the Crown Dependencies were the jurisdictional fiefs of the British Monarch, administered either directly or indirectly through aristocratic families connected with the Crown. The involvement of the Crown in the affairs of the Crown Dependencies continued well into the 20th century, mainly through the offices of Crown appointed officials who played a dominant role in their domestic political structures. During the reign of Elizabeth II, however, the Crown Dependencies underwent a significant internal transformation, both politically and economically. Politically, they moved away from a system of government in which the Crown, and by extension the British government, exercised a considerable degree of control over island affairs to a system that is democratic and accountable to and controlled by the residents of these small island jurisdictions. Economically, they have transitioned away from traditional industries

such as tourism, farming and fishing, and towards the provision of financial services. The two transformations are intimately linked and would not have been possible if the Crown Dependencies had been formally part of the UK. For example, greater control over domestic affairs has given the Crown Dependencies the authority to set favourable tax rates that have attracted companies involved in financial services (Rawcliffe, 2009; Trummel, 2021).

To situate the jurisdictional status of the Crown Dependencies within a broader academic corpus, we draw on two literatures: federalism and island studies. The literature on federalism has typologized the political status of Crown Dependencies and their relationship with the United Kingdom by using various terms including federacy and suzerainty (Elazar, 1987; Watts, 1999). Watts (1999, p. 8), for example, defines federacies as “political arrangements where a large unit is linked to a smaller unit or units, but the smaller unit retains considerable autonomy and has a minimum role in the government of the larger one, and where the relationship can be dissolved only by mutual agreement”. Stepan (1999, p. 20) notes that a federacy is “a political system in which an otherwise unitary state develops a federal relationship with a territorially, ethnically, or culturally distinct community while all the other parts of the state remain under unitary rule”. Federacies, therefore, are a form of government that can exist in both federal and unitary systems of government. Elazar (1987, p. 226) characterises the Isle of Man as a “feudal arrangement transformed”. Such a characterisation would also apply to the Channel Islands which derive their governance structures from institutions that were established in the late Medieval period when these island jurisdictions were suzerainties of the English Crown. In the case of the Isle of Man, its governance arrangements date back to a succession of feudal overlords, including the Norwegian, Scottish, and English monarchs and English and Scottish aristocratic families.

Many of the characteristics of federacy outlined above apply to the Crown Dependencies; but their jurisdictional arrangements differ in some important respects. While they are indeed linked to the UK political system through the shared institution of the British Crown, they also retain considerable autonomy and have no role or representation in the government or parliament of the UK, beyond regular bilateral relations. Importantly, these island jurisdictions are territorially, ethnically, and culturally distinct. Each has their own governance systems and unique cultures and languages (Wilson, Johnson & Sallabank, 2014). Historically, the UK was a centralised unitary state, but more recently it has undergone a process of devolution to its constituent parts (except England). Interestingly, the Crown Dependencies benefitted from devolution decades earlier than Scotland, Wales, and Northern Ireland and have a greater degree of autonomy over internal matters. However, whereas some constituent units within the UK – notably Scotland – have sought full independence, Watts (2000, pp. 26-7) notes that:

[the Crown Dependencies] have established an asymmetrical federal association with the larger polity [the UK] on the basis of internal autonomy and self-government. This has enabled them to share in the benefits of association with a greater state without being incorporated within it as full-fledged constituent units.

Building on these insights, the island studies literature emphasises several key concepts that help us to better understand the constitutional and jurisdictional status of the Crown Dependencies. These include ‘partially independent territories’ (PITs) (Rezvani, 2014), ‘sub-national island jurisdictions’ (SNIJ) and ‘insular autonomy.’ PITs or SNIJs are (mainly island) territories that possess legislative autonomy but not the rights and powers that come with full international sovereignty (Baldacchino 2010; Baldacchino & Milne, 2006). They are typically

involved in relationships with larger political units, often located on the ‘mainland’, the latter of which are referred to as ‘metropoles’. The SNIJ-metropole relationship is an ongoing process of negotiation, conflict, and compromise. Each individual relationship develops to meet the needs of an island’s historical, political, social, and cultural context. Ackrén and Olausson (2008, p. 228) have defined insular autonomy as “a geographical territory that enjoys a special and unique status including legislative powers, but does not constitute a federal unit or independent state”. The study of ‘insular autonomy’ within island studies, therefore, is the inquiry into the negotiated relationships between SNIJs and larger political units.

Crown Dependencies: Internal political systems and external relations

As noted above, the Crown Dependencies are dependent territories of the UK, similar yet distinct from other dependencies like the British Overseas Territories. They possess autonomous legislative and executive power over internal matters, but the UK is responsible for their defence and international relations. The Bailiwicks of Jersey and Guernsey comprise the Channel Islands, which are located off the northwest coast of France. The Bailiwick of Jersey consists of the main island of Jersey and several nearby uninhabited islands, while the Bailiwick of Guernsey includes several islands falling under three main jurisdictions: the island dependencies of Guernsey, Alderney, and Sark. The Isle of Man is situated in the Irish Sea, equidistant between the UK and Ireland.

Each Crown Dependency has its own distinct culture, language and history. The Channel Islands were part of the Duchy of Normandy when its Duke, William the Bastard, conquered England in 1066. The islands remained possessions of the English Crown when, in 1204, King John of England ceded the Duchy of Normandy to the French King (Birt, 2017, p. 153). Although the title was officially surrendered, the British Sovereign is still addressed as the Duke of Normandy (*Lé Rouai, Nouot’ Duc*) in the Bailiwicks of Jersey and Guernsey. The Isle of Man formed part of the Norse Kingdom of Man and the Isles, before falling under the suzerainty of Scotland and then England. It was ruled by English and then Scottish aristocrats in the name of the British Crown until the Lordship of Mann reverted to the British Crown, after the passage of the Isle of Man Purchase Act 1765. The British Sovereign has remained the Lord of Mann ever since (Edge, 2020, p. 24) and is represented on the island by the Lieutenant-Governor.

Significant changes in the relationship between the Crown and the Crown Dependencies occurred in the post-Second World War period. The Bailiwicks of Jersey and Guernsey achieved significant powers of legislative and fiscal autonomy far before the Isle of Man; but constitutional reforms after 1945 strengthened the independence of their legislatures by replacing the jurats (lay members of the judiciary who were elected for life) with other elected members, further separating the appointed judiciary and the elected legislatures in both island jurisdictions. This legislative-judicial separation reduced the political power of the Crown-appointed Bailiffs in the Channel Islands. Over time, Jersey and Guernsey centralised their governments to different extents: Jersey approximating the UK’s system of ministerial government and Guernsey choosing to retain considerable independence among its various committees, with a central coordinating committee ruling by consensus. The biggest contributors to the Channel Islands’ economies in the early post-war period, as they had been for centuries, were agriculture and fisheries. Over the course of the post-war period, this began to change with the growing importance of the financial services industry.

In the case of the Isle of Man, the Isle of Man Act, 1958, an Act of the British Parliament, devolved considerable autonomy to Tynwald, the island's legislature. This marked the beginning of a process of political devolution and democratisation which would shift power away from appointed officials like the Lieutenant-Governor to the elected members of Tynwald over the next 25 years (Kermode, 2001). The expansion of insular autonomy and accountability in the Isle of Man paved the way for some ground-breaking economic changes, most notable of which was the establishment of the financial services sector in the 1970s and 1980s (Rawcliffe, 2009). With the decline of traditional industries such as fishing, farming and tourism, new industries such as banking and insurance provided a boost to the island's economy and government coffers.

While the initial impetus for devolution initially came from the UK government, which in the immediate post-war period was focused on self-determination and decolonisation across the British Empire, efforts to modernise and democratise the political systems of the Crown Dependencies were led by islanders (Kermode, 2001; see also Hansard, 1947). There is no evidence to suggest that Queen Elizabeth II played a direct role in these changes, although as the Lord of Mann and Sovereign of the Channel Islands, we can speculate that she supported the aspirations of her subjects in the Crown Dependencies to govern their own internal affairs. Following her death in September 2022, island politicians used words like continuity, stability and dependability to describe her relationship with the Crown Dependencies (Bailiwick Express, 2022; BBC, 2022c). The Queen, therefore, played a figurehead role and maintained a sense of continuity in the midst of changes that were managed by the institutions of the UK government and the island governments. Prior to, and during her reign, she visited the Crown Dependencies on multiple occasions and, according to media reports, held them in high regard (BBC, 2022a; 2022b). Over the course of the Elizabethan period, the relationship between the Crown and the UK, on the one hand, and the Crown Dependencies, on the other, became less unilateral and more bilateral as the Crown Dependencies exercised greater self-government. Although the power imbalance remained and the Crown Dependencies were still heavily influenced by policy developments in the UK, an example being the development of the Welfare State following the Second World War, their status did afford them considerable autonomy and authority over domestic matters, thereby paving the way for innovation in areas such as economic policy. As Kermode (2001, p. 5) has neatly summarized in the case of the Isle of Man, "Tynwald has been free to emulate the UK and benefit from the teething troubles experienced by the UK, to decide when to follow the UK, to adapt UK measures to meet circumstances and to support bilateral agreements with the UK in such areas as social security and indirect taxation and international agreements where joint action with the UK is deemed appropriate."

Internal governance of the Crown Dependencies

Despite their general categorisation as Crown Dependencies, each island jurisdiction possesses its own unique system of governance and distinct legal-constitutional relationship with the UK. The Bailiwick of Jersey is governed by a unicameral Parliament, the States Assembly, which is composed of two separate types of members: Deputies and Constables. Thirty-seven Deputies are elected by the island's population across nine multi-member districts, while twelve Constables are each elected within their parish to serve as both members of the States Assembly and heads of the parish (local) councils (Torrance, 2023, p. 9). The States Assembly elects one among their number to serve as Chief Minister of Jersey. The Chief Minister, with the approval of the States Assembly, appoints a Council of Ministers to serve as Jersey's executive. Prior to the States of Jersey Law 2005, Jersey was governed through a committee-based system, but this

was transformed into a ministerial government akin to the UK's (Torrance, 2023, p. 6). The impetus for this reform came from within and, as was the case in the Isle of Man, was part of an effort to modernise the political system. The reform has been beneficial because it provides a clear distinction between the executive and legislative branches of government and allows more certainty in developing policy (Bailhache, 2005).

The British Sovereign is represented by two appointed officials: the Lieutenant Governor and the Bailiff. As in many other Commonwealth countries, the Lieutenant Governor serves primarily to represent the Sovereign in a largely ceremonial role. The Bailiff of Jersey, on the other hand, holds a unique role whose only direct equivalent is the Bailiff of Guernsey. The Bailiff, appointed by the Crown, serves as both the Chief Justice of Jersey's judiciary and the presiding officer of the States Assembly (Massey, 2004, p. 428). Additionally, the Crown also appoints the Dean of Jersey (who is the head of the Church of England in the Bailiwick) and the Attorney General and Solicitor General, the principal legal advisors to the States. As R. B. Haldane remarked in 1900, "in Jersey, no less than in Great Britain, the [British Sovereign] reigns without governing" (Haldane, 1900, p. 5).

In Guernsey, the Lieutenant Governor holds a primarily ceremonial office, representing the Sovereign and their interests. Similarly, the Bailiff is the head of Guernsey's judiciary and the presiding officer of the Bailiwick's legislative assembly, the States of Deliberation (Massey, 2004, p. 430). Unlike Jersey and the Isle of Man, however, the Bailiwick of Guernsey exists as a quasi-federal jurisdiction, as Guernsey's government provides external representation to, and holds some internal legislative power over, two additional Dependencies of the British Crown: Alderney and Sark. There are several smaller islands which do not have their own legislatures, but that fall within the jurisdiction of one of the Dependencies, including Brecqhou (a tenement governed by the Chief Pleas of Sark) and Herm and Jethou (islands under the direct administration of the States of Deliberation). Each jurisdiction has its own legislature, but Guernsey may enact 'Bailiwick-wide legislation' that applies to Alderney and Sark, with those jurisdictions' permission.

The States of Deliberation consists of 40 members: 38 People's Deputies (directly elected by the island of Guernsey's adult population) and two Alderney Representatives (appointed by the States of Alderney) (Reardon & Pich, 2021). Among themselves, the States of Deliberation appoint members to the Policy and Resources Committee, which serves as the rough equivalent to Jersey's Council of Ministers. Whereas Jersey has worked to establish a ministerial system of government, however, Guernsey has opted to retain a non-political-party-based governance model based on committees and consensus. Nonetheless, the Policy and Resources Committee is the senior committee of government, working to coordinate the other committees in a leadership capacity, and its President is known as the Chief Minister of Guernsey. Overall, Jersey's system has a stronger executive with a more streamlined decision-making power, whereas Guernsey's system offers a weaker executive balanced with more consensus-based decision-making.

The Isle of Man is governed by a unique tricameral Parliament: the House of Keys and the Legislative Council (which meet separately) and the High Court of Tynwald, which is comprised of both chambers. The House of Keys, the lower house of Tynwald, is composed of twenty-four members directly elected by the residents of the Isle of Man in twelve constituencies (Edge, 2020, p. 23). The Legislative Council, Tynwald's upper house, is composed of eight members indirectly elected by the House of Keys and three *ex officio* members. The three *ex officio*

members are the President of Tynwald, who serves as the presiding officer of the Legislative Council and holds a casting vote in the event of a tie, the voting Bishop of Sodor and Man, and the non-voting Attorney General (Edge, 2020, p. 27). The third house in this tricameral system is formed when the House of Keys and Legislative Council sit together, forming Tynwald Court. Tynwald sits jointly once a year on Tynwald Day for largely ceremonial purposes, and usually once a month to deal with certain financial and policy issues (Torrance, 2023, p. 9).

In the Isle of Man, the British Sovereign is represented by the Lieutenant Governor. As in Jersey and Guernsey, the Lieutenant Governor of the Isle of Man is responsible for communicating the Lord of Mann's wishes to the island; but, unlike the Channel Islands, the Lieutenant Governor has been delegated the powers of granting Royal Assent for insular legislation (Torrance, 2023, p. 10). Royal Assent is typically granted, as the Ministry of Justice and governments of the Crown Dependencies work together in a 'partnership' to ensure that legislation being considered by the Crown Dependencies is 'fit' for approval, but there have been rare exceptions where it has not been granted (Torrance, 2023). Apart from this, however, the Lieutenant Governor serves a largely ceremonial purpose, as most of the communication between the Isle of Man (and other Crown Dependencies) and the UK is through the Chief Minister and the UK's Ministry of Justice (Torrance, 2023, pp. 12-13).

The Chief Minister is elected by the House of Keys from among their number, although they are formally appointed by the Lieutenant Governor. The Lieutenant Governor then appoints, on the nomination of the Chief Minister, the members of the Council of Ministers, which is the principal executive organ of the Isle of Man Government. The Chief Minister was originally appointed based on the nomination of Tynwald as a whole, but this responsibility was limited to the House of Keys as it is the directly elected chamber (Edge, 2020, p. 34). As in the Channel Islands, a ministerial system was introduced in the 1980s as a way to rationalise and modernise government on the Island. Some felt that this new system of executive power would pave the way for other changes, such as the introduction of political parties, and compromise the independence of individual representatives, including the ministers, but this has not happened (Kermode, 2001). The ministerial system was an appropriate and necessary response to the challenges facing the Isle of Man at the time and in the future.

'Privileges, protocols and Royal Charters': UK-Crown Dependency relationships

Although all three Crown Dependencies participate in similar dependent relationships with the UK, there are several differences in those constitutional relationships. Following the transfer of the Duchy of Normandy to France in 1204, King John of England proclaimed a set of Royal Charters for the Channel Islands, particularly Jersey and Guernsey (Dawes, 2015, p. 14). These Royal Charters established the legislative autonomy of the Channel Islands from the Kingdom of England but ensured that they remained possessions of the Crown. Their autonomy was protected, alongside their tax sovereignty and the right to export goods that are produced in the Channel Islands to England, and later the United Kingdom (Bailhache, 2019, p. 69; Bell, Berry, Burke & Hodgett, 2021, p. 254). The rights of access guaranteed by the Royal Charters would continue to be respected by the UK, being further enshrined through the common law and later treaties and agreements (Dawes, 2015, pp. 31-32).

The Isle of Man has a different historical-constitutional relationship to the UK. Tynwald, the Manx Parliament, has continually existed in one form or another for over a thousand years, but the Isle of Man has been controlled by foreign rulers for almost as long (Birt, 2017, pp. 162-

163). As noted above, from the 15th until the 18th centuries, the Island was governed as a feudal fief on behalf of the English and then British Crown by various aristocratic families. However, in 1765, to deal with issues of piracy and smuggling on the Island, the Lordship of Mann reverted to a direct possession of the British Crown when the British Parliament passed the Isle of Man Purchase Act (Edge, 2020, p. 24). From then on, the British Sovereign was the Lord of Mann, but the Isle of Man never became a part of the UK. Like the Channel Islands, its legislative autonomy was recognised by the British Crown. However, this autonomy was guaranteed not by a Royal Charter, but through a series of Acts of the UK's Parliament (Torrance, 2023, p. 8).

The Ministry of Justice is the UK Government department responsible for maintaining the constitutional relationship with the Crown Dependencies. This department reviews principal legislation passed by the insular legislatures to ensure they are fit to receive Royal Assent, although the process differs between the Crown Dependencies. In the Isle of Man, as noted earlier, the Lieutenant Governor has received the delegated power to bestow Royal Assent on the island's legislation; while in the Channel Islands, Royal Assent is received through the Privy Council of the UK, serving as Crown representative (Dixon, 2017, p. 75; Massey, 2004, p. 427). The Privy Council considers Channel Island legislation through its Committee for the Affairs of Jersey and Guernsey, whereas there is no equivalent committee for the Isle of Man (Torrance, 2023, p. 10). In addition to reviewing legislation before the granting of Royal Assent, the Ministry of Justice is involved in Crown Appointments, such as the Isle of Man's Lieutenant Governor and Jersey and Guernsey's Lieutenant Governors and Bailiffs, and issuing Letters of Entrustment. Letters of Entrustment allow the Crown Dependencies to sign up to international instruments (agreements or organisations), which they are normally not allowed to do since they are not legally sovereign states (Torrance, 2023, p. 28). The Crown Dependencies may also have the UK's ratification of such instruments extended to them, but this requires prior consultation and consent and the UK is responsible for the Crown Dependencies' compliance (Bell et al., 2021, p. 260; Jowell, Steele & Pobjoy, 2017, p. 41). The Crown Dependencies are generally satisfied with the current relationship and they have rarely directly criticised by the Crown; but they have at times complained about the inefficiency of their relationship with the Crown and occasional 'overreach' into their affairs by UK officials.

While the Ministry of Justice is the principal department in the UK concerned with the Crown Dependencies, that does not mean that other UK ministries do not have obligations towards them. One of the Ministry of Justice's responsibilities, therefore, is to remind other ministries and departments of their obligations to the Crown Dependencies (Morris, 2012, p. 14). The Ministry of Justice informs the Crown Dependencies about any UK laws or treaties that might affect them, as well as representing the Crown Dependencies on the international stage, where appropriate, and considering matters of defence and advising the British Sovereign if there are any threats to the 'good government' of a Crown Dependency that could justify direct intervention in their internal affairs, such as a breakdown in the rule of law or public order, or endemic corruption in the government or judiciary (Morris, 2012, p. 19; Torrance, 2023, p. 22). The UK has utilised this 'good government' power to legislate for its other dependent territories, like the British Overseas Territory of the Turks and Caicos Islands, which succumbed to massive corruption, and so it could conceivably be used in the Crown Dependencies (Morris, 2012, p. 11). Notably, the UK's restraint on legislating on insular matters is a constitutional convention rather than a matter of law, so the UK may retain a paramount power to legislate for the Crown Dependencies under any circumstances (Birt, 2017, p. 155; Dawes, 2015, p. 23). Regardless, this

convention is respected, and it is common practice for the UK to consult the Crown Dependencies before any legislation is extended to them (Morris, 2012, p. 8).

The Crown Dependencies do not receive grants from or pay taxes to the UK, nor do their inhabitants pay any UK taxes (Torrance, 2023, p. 16). The Isle of Man negotiated a Revenue Sharing Arrangement with the UK in 1979, which removed the need for a customs barrier between the Isle of Man, the UK, and the EU. This agreement also made the Isle of Man a part of the EU's Customs Union and Value Added Tax (VAT) territory. The Bailiwicks of Jersey and Guernsey, on the other hand, made no such agreements with the UK and were never subject to EU VAT and excise tax directives (Torrance, 2023, p. 16).

In order to maintain their constitutional and commercial relationship with the UK following the UK's decision to leave the EU, the Crown Dependencies each negotiated customs arrangements with the UK. This new customs union took effect on January 1, 2021, the day after the end of the Brexit transition period and the formal separation of the UK from the EU (Bell et al., 2021, p. 254). Additionally, the UK's membership in the World Trade Organisation was territorially extended to include the Channel Islands, while the Isle of Man has been covered since 1997 (Bell et al., 2021, pp. 255-256). Ian Gorst, Jersey's Minister for External Relations expressed that "coming into Brexit and signing the new customs arrangement was critically important, because up until then we had this 800-year history built on privileges, protocols and royal charters" (House of Commons Justice Committee, 2021, p. 4). While the Crown Dependencies have sought to maintain their relationships with the UK in recognisable forms that are consistent with the political, economic and constitutional status quo, as will be outlined in the next section, their relationship with the EU has seen a shift in the wake of Brexit.

The Crown Dependencies in the late Elizabethan Period and beyond

The UK's decision to leave the EU represented one of the most significant political events to occur during the reign of Queen Elizabeth II. Brexit had a seismic effect on the UK's external relations, especially with its closest neighbours in Europe and it also aggravated the internal divisions between the country's constituent parts. Depending on outcomes that are outside the control of the Crown Dependencies, these changes could have a profound effect on their status, their relationship with the Crown, and their external relations.

Note that the Crown Dependencies were never formally part of the EU or its predecessors, the European Community (EC) and the European Economic Community (EEC); their relationship with the EU was mediated through a special protocol that was negotiated when the UK joined the EEC in 1973. Protocol 3 permitted the Crown Dependencies to enjoy some, but not all, of the benefits of membership in the then Common Market through their relationship with the UK. The UK, however, remained the primary trade and economic partner of the Crown Dependencies and the relationship between the EU and the Crown Dependencies focused much more heavily on issues relating to their compliance with EU and international standards in the area of financial services and tax and investment transparency, especially in the wake of the 2007-8 global financial crisis (Sutton, 2018, p. 12). Ian Gorst, former Chief Minister of Jersey, explained that the Crown Dependencies employed a 'good neighbour' policy regarding their relationship with the EU concerning financial services, as they were not bound to align on financial matters by EU law (House of Lords Select Committee, 2016, Q2).

Despite allowing the Crown Dependencies to exercise considerable autonomy over internal matters, their unique relationship with the UK has had its drawbacks; for example, because they are not formally part of the UK, their residents were not allowed to vote in the Brexit referendum, a decision that was met with both opposition and disappointment (Mut Bosque, 2022). Nor did the governments of the Crown Dependencies have a direct role in the negotiations concerning Britain's separation from the EU. Instead, they had to articulate their interests indirectly through various UK government bodies, including the Ministry of Justice and regular channels between the Chief Minister of each jurisdiction and the Office of the Prime Minister. Needless to say, although the UK Government kept the governments of the Crown Dependencies informed as much as possible, the complicated and protracted nature of the negotiations made this difficult in practice (Bell et al., 2021; Bishop & Clegg, 2018). Indeed, various documents produced by the Crown Dependencies in readiness for the UK's withdrawal from the EU expressed a sense of frustration with both the Brexit decision and with the difficult and, at times, disorganised nature of the withdrawal (Isle of Man Government, 2020; States of Jersey, 2019)

The impacts of Brexit

The immediate impacts of Brexit on the Crown Dependencies have ranged from various legal and political readjustments, such as the onerous process of modifying existing legislation to reflect the change in their relationship to the EU, to dealing with the immediate economic affects and trade, service, and immigration disruptions caused by the UK's withdrawal (Isle of Man Government, 2020; States of Jersey, 2019). After the conclusion of the Brexit negotiations, the Crown Dependencies were included in the new EU-UK Trade and Co-operation Agreement. As noted above, they also negotiated a new Customs Union agreement with the UK to secure and maintain their access to the UK market.

One of the more controversial and visible issues that arose involved access to the European market for fisheries and aquaculture products. This was a particular problem for Jersey, given its proximity to France and the fact that the majority of its fisheries products were exported to France (States of Jersey, 2019, p. 11); but it was also identified as an issue in the Isle of Man (Isle of Man Government, 2020, p. 22). The UK's withdrawal from the EU's Common Fisheries Policy complicated the status of French fishing vessels that were operating in the waters around the Channel Islands, leading to the intervention of British naval patrol boats and a diplomatic spat between the UK and France (Boffey, 2021).

In 2017, the House of Lords' European Union Committee (2017, p. 31) identified "three intertwined, and potentially conflicting priorities for the Crown Dependencies in the context of the Brexit negotiations". These priorities included the maintenance of their centuries-old constitutional relationship with the UK; the retention so far as possible of the benefits of the existing relationship between the Crown Dependencies and the EU; and the evolution of the Crown Dependencies' international identities, while respecting the UK's constitutional obligation to represent the Crown Dependencies in matters of defence and international relations (House of Lords European Union Committee, 2017, p. 31). The remainder of this paper examines each of these issues.

Constitutional relationship with the UK

Depending on the ongoing economic and political consequences of Brexit, in the longer term, the UK's departure from the EU could precipitate or serve as a catalyst for a change in the

political status of the Crown Dependencies and their relationship with the UK (Mut Bosque, 2022, p. 57). Mut Bosque (2022, p. 61) outlines several potential future paths including: greater integration with the UK, keeping the same status but with greater autonomy (presumably in areas that they do not currently control like international relations); and “agreeing free association with the UK to achieve almost complete independence”. Greater integration with the UK would bring some benefits, including direct representation in the UK parliament. Indeed, it would have allowed Crown Dependency residents to participate in the Brexit referendum. However, this would most likely be resisted as the autonomy that these islands currently enjoy was hard won and is deeply cherished by islanders. Depending on the form this integration took, it could also jeopardise their status as financial services centres; so, it would likely only occur if this status had already been lost and the Crown Dependencies were facing an existential economic crisis.

The other extreme – complete independence – is not widely supported. But: this could change, especially in the wake of exogenous forces and developments beyond the control of the Crown Dependencies. For example, it has been speculated that the fallout from Brexit may eventually lead to the breakup of the UK. Should that happen, would the Crown Dependencies maintain a connection with the rump UK (in whatever form it took) or declare independence? Perhaps more likely is an attempt by the Crown Dependencies to maintain their current status and enhance their international profile, seeking greater autonomy in areas that the UK has historically controlled, namely international relations. As noted earlier, the Crown Dependencies must seek permission from the UK government through a letter of entrustment to sign international agreements or join international organisations. Such ‘paradiplomacy’ could potentially be an area where they would seek to expand their autonomy in the wake of Brexit.

For some time, the Crown Dependencies have been tentatively exploring the expansion of their international identity and occupying parts of a policy space that has been previously the sole domain of the UK. In 2007 and 2008, the Secretary of State for Constitutional Affairs and the Chief Ministers of the Crown Dependencies negotiated framework agreements for the development of their individual international identities (Ministry of Justice 2007a; Ministry of Justice 2007b; Ministry of Justice 2008). These agreements were designed to recognise and affirm the existing constitutional relationship between the Crown Dependencies and the UK, one of autonomous dependency, but also to allow the Crown Dependencies to further develop their interests distinctly from the UK within that relationship. For example, the UK agreed not to act internationally on behalf of the Crown Dependencies without prior consultation. When they do, the UK must represent any differing interests from their own.

In many respects, the desire to enhance their international presence is driven by a number of factors. As their political institutions and economies evolved over the course of the post-war period, the need to secure their own interests in an increasingly competitive global environment became apparent. While their ability to do so has been constrained by their legal status and their relationship with the UK, the idea that the Crown Dependencies need to defend their international interests was reinforced: first by international threats against their status as offshore financial service centres; and, more recently, by their experience with Brexit, a process over which they had little, if any, control (Benwell et al., 2022).

A thornier issue connected to questions around the future status of the UK is the Crown Dependencies’ relationship with the Crown, a relationship that lies at the very core of their autonomous political identity but one that could be threatened if the constitutional position of the

Crown changes in relation to the UK. There is no evidence that the Crown Dependencies are considering abandoning the monarchy in the post-Elizabethan period. But: if Brexit serves as an example, they often have no choice when it comes to decisions that are made by their larger neighbour. The breakup of the UK and/or rising republican sentiments in the UK or in the Commonwealth could lead to a reassessment of the Crown's constitutional position and would certainly raise difficult questions about the status of the Crown Dependencies in relation to the Crown. For instance, if Scotland ever gains independence, it is unclear whether it would retain the British Monarch as its Head of State. Should Scotland's departure trigger an unravelling of the union, the constituent parts of the UK may decide to reevaluate their relationship with the Crown, putting the Crown Dependencies in a difficult position with regards to their own constitutional relationship. All of this, of course, is speculative and probably a much longer-term consideration than it was in the immediate aftermath of Brexit. And yet, it is an example of the type of significant exogenous change that could force the Crown Dependencies to abandon the status quo, or a modified version of it, in favour of more radical options.

Although often removed from islanders' everyday lives, the Crown's unique relationships with each of the Crown Dependencies are integral to their historical and cultural identities. Ian Gorst, former Chief Minister of Jersey, remarked that "two fundamental principles have governed Jersey's relationship with the United Kingdom: loyalty and autonomy" (House of Lords Select Committee, 2016, Q1). This observation seems to be broadly applicable to the attitudes of all three Crown Dependencies with regards to their relationships with the UK. While they may seek greater autonomy from the UK in areas such as external relations, their loyalty lies to the British Crown.

Relationship with the European Union

Post-Brexit, the Crown Dependencies' relationship with the EU is governed through the UK/EU Trade and Co-operation Agreement (TCA). The TCA is relevant to the Crown Dependencies for the purposes of trade in goods and access to fisheries in the territorial waters of the Crown Dependencies and EU (States of Jersey Brexit Review Panel, 2021, p. 11). As the TCA does not cover financial matters, the Crown Dependencies continue in their status as 'third countries', although they are now joined by the UK in this condition (States of Jersey Brexit Review Panel, 2021, p. 23).

In the longer term, the Crown Dependencies face various potential external economic threats. Apart from the financial impacts that could result from changes to the UK economy, their main trading partner, the most notable threat involves their status as offshore financial services centres. The UK's departure from the EU could mean that the Crown Dependencies will lose a valuable ally and protector. However, as Sutton (2018, p. 21) has observed:

it is interesting ... that the UK has used its sovereign responsibility under international (and EU) law ... to require them to align with international and EU standards, both on tax and international economic crime, notably money laundering.

In the past, UK dependent territories, including the Crown Dependencies, "have been identified by the EU as 'problematic' in terms of their tax and related policies" (Sutton, 2018, p. 9). Nevertheless, the ability of the UK to defend the Crown Dependencies from criticism has been diminished now that it is also, for all intents and purposes, a third country.

Conclusion

The Crown Dependencies are unique sub-national island jurisdictions that, for many centuries, have existed on the margins of the British political system, occupying the space between full independence and integration into the UK (Wilson, 2005). During the long reign of Queen Elizabeth II, their insular autonomy expanded and evolved significantly as they sought to modernise and democratise their respective political structures in the wake of profound economic changes. Despite these changes, their relationship with the Crown and with Queen Elizabeth II remained steadfast, based on loyalty and autonomy: principles, as Ian Gorst, former Chief Minister of Jersey maintained, governed their relationship with the Crown, and by extension, the UK. Her Majesty held a great deal of affection for these small island dependencies, but did not interfere directly in their politics, even if she had significant (and unused) prerogative powers. In return, the Crown Dependencies valued their relationship with the Queen and the Crown more generally, as it guaranteed (then and now) their autonomy and sovereignty over internal matters.

As small island jurisdictions, the Crown Dependencies have little if any leverage in a world dominated by states and international organisations. And while they are protected by their relationship with the British Crown, they remain subject to events and initiatives over which they have no control, as evidenced by the recent withdrawal of the UK from the EU. At present, the Crown Dependencies seek to maintain the status quo, an arrangement that has served them well and has allowed them to gradually reform their political systems and transform their economies in ways that were not anticipated at the start of the Elizabethan period. They will continue to pursue this middle way between integration into the UK and full independence, as it best represents their desire to have autonomy over internal matters and maintain their cultural and historical connections to the UK. Anticipating changes to come, however, they are seeking to enhance their international presence, an area traditionally controlled by the UK, in an effort to protect themselves in a competitive, changing and, at times, hostile global environment.

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