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MINISTERIAL GOVERNMENT – A BRAVE NEW WORLD?

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Introduction

1 In December 2005 a major change in the governance of Jersey will take place. It is so long since the decision in principle was taken to introduce ministerial government[1] and so much political argument on the substance as well as on some of the technicalities has been engendered, that the larger picture may have faded from view. This note attempts to draw some of the threads together and to analyse the constitutional implications of the changes.

2 The change from government by committee to ministerial government is significant. The process of self-government in Jersey, which took shape towards the end of the fifteenth century, has been consensual and inclusive for a century and more. The States Assembly has been not only a legislature but also a government. The executive business of government has been performed by committees of the legislature which have always been, subject to statutory exceptions,[2] delegates whose decisions could be overturned by the States. The strength of the system was said to be the inclusive and participatory nature of government; every member of a committee of the States could justifiably claim to be a member of the government of Jersey. The weakness of the system was said to be its ponderous and slow-moving nature. Any decision required a meeting of the committee, and even then the decision of the committee might be set aside by a resolution of the States. Critics might also point to a lack of co-ordination between committees, and to the difficulty of pinning political responsibility upon any individual. Even Presidents of committees have been known to hide behind the cloak of a committee decision, hinting or sometimes asserting that they would personally have decided the matter differently.[3]

Ministerial government

3 The States of Jersey Law 2005 ("the Law") sweeps all this aside and introduces a ministerial system of government. All States committees in existence immediately before the coming into force of the Law are abolished.[4] Article 18 of the Law constitutes a Council of Ministers whose members shall be the Chief Minister and nine other Ministers. Each

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[1] States Minutes 28th September 2001. One of the recommendations made by the Review Panel on the Machinery of Government ("the Clothier Panel") in December 2000 was that authority to govern should be vested in an Executive subject to scrutiny by a number of members not holding executive office. See para. 4.15

[2] Where power to take decisions has been delegated by the States by law to a particular committee, that power cannot then be exercised by the States – *e.g.* the power of the Environment and Public Services Committee to grant development permission under the Island Planning (Jersey) Law 1964, and the power of the Housing Committee to grant consent to particular transactions under the Housing (Jersey) Law 1949.

[3] For an analysis of the committee system by an experienced elected member and former Solicitor General, see Vibert, *Parliament without parties* published by States Greffe in 1990.

[4] Art. 42(3)

Minister shall be a corporation sole with perpetual succession[5] save that the States may, by Regulation, establish and abolish Ministers, determine the name and functions of a Minister, and transfer functions between Ministers.[6] These powers are presumably subject to the requirement that the Council of Ministers is to be composed of ten Ministers, including the Chief Minister. The draft Standing Orders of the States of Jersey[7] provide at SO 118 that the ministerial offices are (a) Economic Development, (b) Education, Sport and Culture, (c) Health and Social Services, (d) Home Affairs, (e) Housing, (f) Planning and Environment, (g) Social Security, (h) Transport and Technical Services and (i) Treasury and Resources. In broad terms the functions of States committees are to be transferred to Ministers of these ten offices (including that of the Chief Minister) who will each, in his or her allotted sphere, carry responsibility for decisions taken. They will have the power to enact legislation, *i.e.* Orders.[8] The Chief Minister, and any other Minister subject to the consent of the Chief Minister, may appoint up to two elected members[9] as Assistant Ministers. A Minister may delegate any of his functions to an Assistant Minister except the power to make Orders, the power to decide an appeal, and any function the delegation of which is prohibited.[10] The aggregate number of the Chief Minister, Ministers and Assistant Ministers is not to exceed 23.[11] The number of elected members of the States being 53, it follows that the government, or executive, will always be in a structural minority. Viewed from another perspective, the majority of States members will, for the first time, be outside executive government. What will they do? The Law provides for the establishment of a small number of committees and panels including at least two panels whose function will be to scrutinise the executive. We deal with that below.

The Chief Minister

4 On the face of it, therefore, a fundamental change is in prospect. Yet ministerial government in Jersey will be a very different animal from ministerial government in most other democratic countries. The powers available to the Chief Minister are also worthy of close analysis. First, as mentioned above, the government will always be a minority of States members. On every occasion when the approval of the Assembly is required, the government will need to persuade at least four others (assuming the full complement of Assistant Ministers is appointed) that the proposition is worthy of support. Secondly, much heated debate has been generated on the subject of collective responsibility, *i.e.* the constitutional convention by which all members of the government will toe the government line. It seems (although the matter is by no means free from doubt)[12] that the States have broadly accepted the principle of collective responsibility, but such principles are significant only to the extent that they can be enforced. An Assistant Minister can indeed

[5] Art. 25(1)
[6] Art. 28(2)
[7] Lodged *au Greffe* by the Privileges and Procedures Committee on 9th August 2005.
[8] These Orders will of course be subject to annulment by the States in the same way as Orders made by a committee in accordance with the Subordinate Legislation (Jersey) Law 1960.
[9] Art. 1(1) defines an "elected member" as a senator, *connétable* or deputy.
[10] Art. 27(2)
[11] Art. 24(3). Art. 24(5) empowers the States by regulations to increase or decrease the number 23.
[12] In 2002 the Policy and Resources Committee lodged, but subsequently withdrew, a proposition relating to collective responsibility, indicating that the issue would be for a future Council of Ministers to determine.

be called to account in that he or she is liable to dismissal by the Minister with the prior consent of the Chief Minister.[13] It seems however that the Chief Minister cannot dismiss an Assistant Minister. But what if a Minister himself[14] refuses to vote with the government on a matter of importance to the Council of Ministers? Article 20(4) provides that only the States may dismiss a Minister. The Chief Minister is powerless to impose the ultimate sanction upon a recalcitrant member of his government off his own bat.

5 Indeed the Chief Minister of Jersey is in a very different position from that of a Prime Minister. A Prime Minister may re-shuffle his cabinet at will, the only real inhibition being the need to ensure that he retains the support of a majority of his parliamentary party. The Chief Minister cannot dismiss a Minister nor move a Minister from one post to another without the consent of the States.[15] He cannot even be sure that his chosen candidate will be appointed to any particular ministerial office.[16] When the Law was adopted on 16th November 2004, only the Chief Minister was empowered to propose candidates for ministerial office. The rationale was that the Chief Minister should be allowed to choose the political team with which he would be working to deliver the policies approved by the States. All that the States could do was to accept or to reject the Chief Minister's team. In order to prevent a stalemate, provision was made that a failure to secure the approval of the States on a prescribed number of occasions (three had been the suggested number) would involve the Chief Minister having to step down. An amendment adopted by the States on 7th June 2005 replaced that process with one by which any elected member might propose another for ministerial office. In theory, therefore, the Chief Minister might find himself or herself with a team of ministers none of whom was his or her preferred choice. This is an outcome far removed from the blueprint recommended by the Clothier Panel in 2000.[17] That is not of course to suggest that the current structure is unworkable. Much will depend, as it does under the committee system of government, on the personality, political adroitness, and powers of persuasion of the prospective Chief Minister.

The Council of Ministers

6 Even in the Council of Ministers the Chief Minister will have no legal or statutory power to enforce his writ. The very wording of article 18 of the Law constituting the Council of Ministers carries the stamp of consensus. Paragraph (2) provides –

> "(2) The functions of the Council of Ministers shall be –

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[13] Art. 24(2)
[14] The author confesses to sacrificing gender neutrality occasionally to the interests of literary fluency. He hopes that he will not be regarded as politically incorrect.
[15] Art. 28
[16] Art. 19
[17] If one looks around the Commonwealth this state of affairs is however by no means unique. The Northwest Territories of Canada (population c. 40,000), by way of example, has a legislative assembly of 19 elected members. Those members elect their Premier, Speaker, and six Ministers from amongst their number. The Premier has no choice as to the Ministers in his cabinet. He does have the authority to allocate portfolios among the Ministers, but has no power to dismiss them. The Premier can however withdraw a portfolio from a Minister so that he or she is deprived of any ministerial responsibility. Admittedly this example relates to a provincial legislature with less autonomy than the States of Jersey.

(a) co-ordinating the policy and administration for which they are responsible as Ministers;

(b) discussing and agreeing policy which affects 2 or more of them;

(c) discussing and agreeing their common policy regarding external relations;

(d) prioritising executive and legislative proposals;

(e) agreeing and, within 4 months of their appointment under Article 19(7), lodging for referral to one or more Scrutiny Panels established under standing orders and approval by the States, a statement of their common strategic policy; and

(f) such other matters as the Council of Ministers may determine."

7 What will happen if the Council cannot agree, for example, upon the relative priority to be accorded to different legislative proposals? Presumably the Council will decide by majority vote. It is particularly surprising that, in regard to external relations which are the political responsibility of the Chief Minister, the Council is expressly empowered to settle the "common policy". What does this mean? Suppose that the European Union plans a concordat on personal taxation and that the UK seeks to involve once more the Crown Dependencies notwithstanding their constitutional status. The response to such a suggestion would presumably be a matter upon which the Council must formulate and agree a position. One might be forgiven for thinking that this is not very far removed from the current state of affairs under the committee system. One suspects that the Chief Minister of Jersey will not have the option, as appears to be happening in another ministerial system, of bypassing the cabinet/council and effectively ruling by decree. The Council of Ministers will be the place in which the Chief Minister must, by argument and persuasion, assert his primacy over other Ministers and ensure a collective approach to the formulation of policy.

The Secretariat

8 Before leaving the Council of Ministers it is worth noting the sub-structure of officials upon which remarkably little public debate has taken place. The Clothier Panel recommended that there should be a Chief Minister's Secretariat headed by a Chief Secretary.[18] At paragraph 6.4 of the report the Panel stated –

"The Secretariat should be headed by a Chief Secretary. He or she should be appointed by the States, which would give this position an important degree of

[18] To the author's regret the nomenclature suggested by the Clothier Panel was not adopted by the States. The principal official is to be known as "the Chief Executive to the Council of Ministers and Head of the Civil Service" the first part of which has a rather unfortunate redolence of local government in the UK. The Heads of States departments are to be called "the chief officer of the administration of the States relating to [education etc.]" which seems rather a mouthful.

authority and independence. The Chief Secretary should be the Head of the Civil Service and able to call other Chief Executives to account for their carrying out of corporate and strategic policies. This officer would also be head of a management team composed of all the departmental chief officers and empowered to require their attendance at meetings of the team. Disciplinary and appraisal procedures, together with career development, should also be part of the officer's duties. Additionally, the Chief Secretary would have the concomitant power to deploy senior officers as he deemed necessary for providing a efficient service."

9 Although the Law itself says little about the bureaucracy which will support ministerial government, there is a lonely provision in article 25 (inserted as the result of the adoption of an amendment) stating that –

> "(6) The senior officer in any administration of the States for which a Minister is assigned responsibility shall be accountable to that Minister in respect of policy direction."

10 Apart from policy direction, however, the senior officer will be accountable to the Chief Executive of the Council of Ministers. The theory is that the overall policy is set by the Council of Ministers, and the responsible Minister then mandates policy direction. The execution of the policy is the responsibility of the senior/ chief officer. In that respect the senior/chief officer will be accountable to the Chief Executive who will co-ordinate the administration through an officer group, presumably without micro-managing the different departments. There should be no tension in this bipolar accountability. Policy will be determined by the Council of Ministers and its execution overseen by the Chief Executive. That presupposes however that Ministers do in fact direct policy in accordance with the broad overall policy mandated by the Council of Ministers – *i.e.* that they observe collective responsibility. Senior/ chief officers could find themselves in invidious positions if the Chief Executive instructed that a policy determined by the Council of Ministers were implemented in a particular way, while their Minister, purporting to direct policy, instructed that a different direction be followed. Ministers will have to demonstrate political maturity in order to avoid straining the system and dividing the loyalties of their officials. Equally the Chief Executive will have to be sensitive to the evolving relationships.

Scrutiny

11 As noted in paragraph 3 above, the majority of States members will not hold any ministerial post. What will they do? In a system with political parties those not in government will either support the government (if of the same party) or oppose it. In a system without political parties[19] some function must be found for members outside executive government. The Clothier Panel recommended the introduction of a system of scrutiny whereby Scrutiny Panels scrutinized the actions of ministers. That

[19] This may of course change in 2006 and beyond. At least one political party has been formed, and others may follow.

recommendation is reflected in article 47 of the Law which provides for the enactment of Standing Orders which shall establish –

(1) a Privileges and Procedure Committee ("PPC"),

(2) a Public Accounts Committee ("PAC"), and

(3) two or more Scrutiny Panels.

12 We deal more fully with the PPC and PAC below. As to the scrutiny panels they will comprise elected members not holding ministerial office.[20]

13 The process of scrutiny has been "shadowed" during the period following the decision to move to ministerial government. Even its most ardent supporters would be unlikely to hail the experience as an unqualified success. On the other hand, the reports published by the different shadow panels have demonstrated a willingness to challenge the reasoning and conclusions of States committees.[21] These are of course early days but if the system is to work effectively, members must approach it with an independent frame of mind, eschew political point scoring, and apply a detached and reasoned critical eye. This is not easy when the whole process is conducted in public under the (sometimes critical) gaze of the media.[22]

14 Much assistance has been obtained by members of the shadow scrutiny panels from the Scottish Parliament which is another unicameral legislature relying upon a scrutiny process as well, of course, as the criticism to be expected from opposition parties. There are now eight committees established by the Parliament.[23]One scrutiny committee is concerned with subordinate legislation, but some doubt has been expressed as to whether that is working as effectively as it might.[24] The nature of business to be considered by the scrutiny panels in Jersey has yet to be finally determined.[25] But it not difficult to envisage that, if draft subordinate legislation is one such area, similar problems might arise. Effective scrutiny of draft legislation requires at least some legal input. Yet, perhaps for the first time in the history of the States, there is no qualified lawyer amongst the elected members.

15 In Scotland there have been calls for a different approach to the process of scrutiny. Duncan Hamilton MSP (of the Scottish National Party) wrote in The Scotsman newspaper

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[20] Article 47(4)

[21]The Clothier Panel predicted that scrutiny would "lead to vigorous and constructive political debate."

[22] Lord Hope of Craighead has written of the Scottish Parliament that "[t]he main concern of politicians in that environment is with their public image. Nice points about the precise wording of legislation have little appeal. " Sir William Dale lecture published by *Amicus Curiae* January/February 2004 issue.

[23] They cover areas including education, health, justice and home affairs, culture and enterprise, rural development, social inclusion and housing, and transport and the environment.

[24] See Colin Reid, *Who makes Scotland's law? Delegated legislation under the devolution arrangements* (2002) 6 Edinburgh Law Review 356

[25] As this issue of the Review was going to press, the States had yet to consider their draft Standing Orders. The current proposal is for four scrutiny panels, the first dealing with corporate services and policies and external relations, the second dealing with economic affairs and development, the third dealing with social, education and home affairs, and the fourth dealing with the environment and technical services.

on 31st March 2002 under the heading "The choice facing Holyrood: reform or stagnate", complaining that the scrutiny system for the new parliament was not proving either as inclusive or as transparent as its promoters had expected. He did not consider that the system contained the necessary checks and balances to ensure effective scrutiny of new legislation. Sir David Steel, the first Presiding Officer of the Scottish Parliament, echoed the theme. Sir David suggested that a small, part-time, appointed second chamber would be a better means of ensuring proper scrutiny of proposed legislation after it had passed through the first chamber. The proposal has received support from Lord Hope of Craighead and other distinguished academic lawyers,[26] but was not well received by members of the Scottish Parliament.

16 The notion of a second chamber in Jersey might seem *de trop* in the context of a legislature that has already been criticised as being too large.[27] But if the establishment of a second chamber of (say) twelve persons were linked to a reduction in the number of elected members to at least that extent, the suggestion would be neither unduly expensive nor extravagant. Unicameral legislatures are unusual in English speaking parliamentary democracies, even small ones.[28] There may be something to be said for the opportunity to examine controversial or specialised legislation in a reflective atmosphere away from the heat generated by political debate, particularly if the second chamber contained legal and other technical expertise. Such a chamber would have no powers other than to recommend revisions to legislation or to effect limited delay while the States Assembly reconsidered the matter.

The PPC and the PAC

17 The chairman of the PPC must be an elected member who is not a Minister or an Assistant Minister. In addition to the chairman it will comprise two elected members holding ministerial office and four who do not hold such office.[29] The PAC must also be chaired by a non-Minister and will comprise at least four other members of whom 50% shall be elected members not holding ministerial office and 50% shall be non-members of the States.[30]

18 The PPC will no longer be concerned with the scrutiny process. Oversight of the scrutiny process will be the responsibility of a Chairmen's Committee made up of the chairmen of the PAC and each Scrutiny Panel and two elected members appointed by the States neither of whom must hold ministerial office. The PPC will have an obligation, *inter alia*, to "keep under review the composition, the practices and procedures of the States as

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[26] See, *e.g.*, Professor Hector MacQueen of Edinburgh University, *What future for Scotland? Policy options for devolution*, The Scotsman, 11th March 2003.
[27] Falle, *Jersey and the United Kingdom: a choice of destiny (1)* (2004) 8 JL Review 321 at 322. The Clothier Panel, at paragraph 3.9.3 of its report, recommended a reduction from 53 to 42 or 44 members.
[28] *E.g.* Belize (population c. 280,000) has a House of Representatives composed of 29 elected members and a speaker, and a Senate composed of 12 appointed members and a president. Both chambers together constitute the National Assembly of Belize. The Senate can send draft legislation back to the House of Representatives subject to amendment, but may not amend a money bill. For further information see the website of the Belize Government. Other small jurisdictions with bicameral legislatures include Bermuda, Bahamas, Barbados, Trinidad and Tobago and, of course, the Isle of Man.
[29] Article 47(2)
[30] Article 47(3)

Jersey's legislature",[31] and the electoral process. It will be responsible for the provision of accommodation, services and facilities for members of the States.

19 Most significantly, perhaps, it will have responsibility, in accordance with article 10 of the Public Finances (Jersey) Law 2005, for the budget of the States (*qua* legislature), and will not be subject in that respect to the Treasury and Resources Minister. It will be the duty of the PPC to bring forward estimates of income and expenditure for the States and their services. Some tension may be expected between the PPC and the Treasury Minister in this respect, but the responsibility for the budget of the States is regarded as an important element in maintaining the independence of the legislature from executive government. The PPC will also be responsible for issues relating to the conduct of States members.

20 The PAC will receive reports from the Comptroller and Auditor General on the annual financial statement of the States (*i.e* the government of Jersey) and on the efficiency and effectiveness of States funded bodies. It must assess whether public funds have been applied for the purposes intended by the States and whether sound financial practices are being applied throughout the States administration.[32]

Parliamentary privilege

21 Parliamentary privilege has been described as denoting "the legal exemption from some duty, burden attendance or liability to which others are subject. It has long been accepted that in order to perform their functions, legislative bodies require certain privileges relating to the conduct of their business. It has also long been accepted that these privileges must be held absolutely and constitutionally if they are to be effective; the legislative branch of our government must enjoy a certain autonomy which even the Crown and the courts cannot touch." [33] In the same case, Lamer CJC stated (at page 224) that –

"Parliamentary privilege, and immunity with respect to the exercise of that privilege, are founded upon necessity. Parliamentary privilege and the breadth of individual privileges encompassed by that term are accorded to members of the Houses of Parliament and the legislative assemblies because they are judged necessary to the discharge of their legislative function. In *Stockdale v Hansard* (1839) 9 Ad. & E 1 at p. 232, 112 ER 1112 at p. 1199 (K.B.) Coleridge J, as he then was, made the following statement to this effect: " … that the House should have exclusive jurisdiction to regulate the course of its own proceedings, and animadvert upon any conduct there in violation of its rules, or derogation from its dignity, stands upon the clearest grounds of necessity." The content and extent of parliamentary privileges have evolved with reference to their necessity."

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[31] Draft SO 127
[32] Draft SO 131
[33] McLachlin J (as she then was) in *New Brunswick Broadcasting Co v Speaker of House of Assembly, Nova Scotia* (1993) 100 DLR (4th) 212 at 265; [1993] I SCR 319. Beloff, Commissioner cited the case with approval in *Syvret v Bailhache and Hamon* 1998 JLR 128, in respect of which the author must declare an interest as being the first defendant.

22 The States Assembly evolved from the mists of time in much the same way as the House of Commons. It was not created by any statute. The Privy Council has accepted that the States enjoy privileges like any other representative assembly. In *Ex parte Nicolle*[34] the Privy Council dismissed the petition against a motion of censure passed by the States upon Mr Nicolle, a member of the States, for intemperate and offensive language against another member. The Privy Council may be taken to have accepted the claim of the States for " privilege which they had ever exercised of maintaining order in the Assembly and a decorous deportment of the members towards each other during the debates, a privilege which appertained to every representative assembly in the world and without which no such assembly of that kind could subsist."[35]

23 It is rather unusual therefore that the States have chosen to limit their privilege to regulate the course of their own proceedings by providing that " Any member or person subject to any disciplinary action in respect of this Law or standing orders shall have the right to a fair trial or hearing as defined in Article 6 of the European Convention of Human Rights."[36] On the face of it this provision will prevent the States from passing any motion of censure or condemnation of the conduct of any member. As Article 6 protects the right of an individual to a fair and public trial it is clear that the States cannot be judge in its own cause and punish a member for his or her misconduct. It is understood however that there may be moves afoot to repeal article 51 on the understanding that some fair disciplinary process for members is put in place.[37]

Crown privileges

24 The Law repeals the ancient rights of veto and dissent vested in the Lieutenant Governor and Bailiff[38] respectively. The States of Jersey Law 1966 had preserved the right of the Lieutenant Governor to veto resolutions of the States "in respect of matters as may concern the special interest of Her Majesty".[39] Similarly the Bailiff had possessed a right of dissent "to any resolution of the States susceptible of implementation if he is of the opinion that the States are not competent to pass the resolution…".[40] These rights have not been re-enacted and Part 3 to Schedule 3 of the Law makes the appropriate amendments to a number of eighteenth century Orders in Council. The rights had not been exercised for a very long time and their abolition will not cause any material change. Nonetheless their passing, when viewed in the context of the first preamble to the Law, might be said to be recognition that the Crown has abandoned any claim to interfere in the domestic affairs of the Bailiwick. The first preamble provides "Whereas it is recognised that Jersey has autonomous capacity in domestic affairs".

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[34] (1827) 5 *Ordres du Conseil* 334
[35] *Ibid* at page 351
[36] Article 51 (1) of the Law. Article 6 (1) of the Convention provides, so far as relevant, that "In the determination of his civil rights and obligations… everyone is entitled to a fair and public hearing… by an independent and impartial tribunal".
[37] A Law repealing article 51 was indeed adopted by the States on 14th September 2005.
[38] The casting vote of the Bailiff has also been abolished, perhaps following the decision of the European Court of Human Rights in *McGonnell v United Kingdom* (2000) 30 EHRR 289
[39] Article 23 of States of Jersey Law 1966
[40] Article 22 of States of Jersey Law 1966

25 The second and third preambles are also worthy of note. The second preamble provides – "And whereas it is further recognised that there is an increasing need for Jersey to participate in matters of international affairs". The acceptance by the Crown of this assertion is interesting in the context of the expressed desire by senior politicians for an enhanced international personality. The difficulties faced by the United Kingdom in reconciling its obligation to defend Jersey's international position with its own interests have been the subject of several comments in this Review.[41] The extent to which it is possible to enable Jersey to protect its own international interests without taking the ultimate step of seeking full independence is a moot point.

26 The third preamble provides – " And whereas Jersey wishes to enhance and promote democratic, accountable and responsive governance in the island (sic)[42] and implement fair, effective and efficient policies, in accordance with the international principles of human rights". No one would disagree with these aspirations. But the interest lies in the acceptance by the Crown of the premise that democratic and accountable government is being provided by the States Assembly. It is difficult to reconcile such autonomy with any notion of a broad power vested in the United Kingdom parliament to legislate for Jersey.[43]

Conclusion

27 The Clothier Panel's recommendation was for a much clearer distinction between "executive" and "parliamentary" responsibility. The Panel recognised the fears expressed to it that an "elective dictatorship", as cabinet government in the UK was characterised by Lord Hailsham, should not be replicated in Jersey. The Panel took the view that ministers should "enable and encourage "back-benchers" and the public not merely to scrutinise and if necessary criticise policy and executive action after the event, but also to be partners with Jersey's Ministers in developing policies serving the best interests of the Island and commanding the confidence of its citizens."[44] The hope was expressed that members of the States who were not in government should not become or be regarded as "the opposition".[45]

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[41] See, *e.g. A harmful delay* (2001) 5 JL Review 120; Falle, *Jersey and the United Kingdom: a choice of destiny (1)* (2004) 8 JL Review 321; Kelleher, *Jersey and the United Kingdom: a choice of destiny (2)* (2004) 8 JL Review 337.
[42] Jersey is not just an island; it is the Island.
[43] This extent of the power asserted by the UK government was considered by Professor Jowell in *The scope of Guernsey's autonomy – a rejoinder* (2001) 5 JL Review 271; *c.f.* Young, *The scope of Guernsey's autonomy in law and practice* (2001) 5 JL Review 123.
[44] Paragraph 10.1
[45] It this was intended to mean that such members should not be regarded as an alternative government, one can understand the point. Yet the suggested process of scrutiny will, or should, fulfil many of the functions ordinarily attributable to an Opposition, *e.g.* holding the Executive to account, and presenting alternative policies for consideration. The role of the Opposition in Westminster-style legislatures was examined in a report of a Workshop organised by the Commonwealth Secretariat and the Commonwealth Parliamentary Association published in 1998 and available from those organisations.

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28 It remains to be seen whether these hopes will be realised. The distinction between the executive and the legislature is, however, one that appears resistant to change. The refusal by the States to allow the Chief Minister to form a government with ministers of his or her own choosing may further blur the distinction. There is a reluctance to characterise the Ministers collectively as “the government of Jersey”. Ministerial government is evolving slowly and organically. Perhaps that is as it should be.

Sir Philip Bailhache has been the Bailiff of Jersey since 1995.

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