MISCELLANY

"The Jersey way"

1 Followers of Jersey's media outlets will have noticed how the phrase "the Jersey way" seems to have become topical of late. The genesis of its appearance is the Report of the Independent Jersey Care Inquiry (ICJI) published in July 2017[1] which purports to make it a term of precision—

> "Throughout the course of our work we heard the term the 'Jersey Way'. While this was, on occasions, used with pride, to describe a strong culture of community and voluntary involvement, it was more often used to describe a perceived system whereby serious issues are swept under the carpet and people avoid being held to account for abuses that have been perpetrated."[2]

Thus defined, the term is then deployed to explain what occurred over the decades in Jersey public childcare and found the following conclusion:

> "We consider that an inappropriate regard for the 'Jersey Way' is likely to have inhibited the prompt development of policy and legislation concerning children."[3]

2 Accordingly, it finds, that steps must be taken to alter "the Jersey way" and its negative impressions, including, somewhat peculiarly, constitutional changes recommended in the Clothier Report on the Machinery of Government[4] and the Carswell Review of the role of the Crown Officers.[5]

3 The phrase has been picked up and deployed, expressly and indirectly, in a number of fora (including the BBC Radio 4's programme "From Our Own Correspondent") to depict an Island

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[1] http://www.jerseycareinquiry.org/Pages/Final-Report.aspx.
[2] Executive Summary, para 13.18.
[3] Para 2.59.
[4] https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/ID%20ClothierReport%20100331%20CC.pdf
[5] https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20Crown%20Offices%20Review%20Report%20101202%20WM.pdf

which few informed, objective observers would recognise. To suggest there is an inherent aspect of Jersey which sweeps crimes under the carpet is not only misleading but apt to do the Island a great disservice. As a term, "the Jersey way" is undefined and unsubstantiated, but provides a convenient label for those unwilling or unable to be more precise in their criticism of the Island. It thus becomes an explanation to justify any opposition to anything. Thus, the Bailiff's recent letter to the Chief Minister explaining why, in his view, the findings of the IJCI formed no proper basis for a discussion (let alone a decision) on the role of the Bailiff in the States Assembly, met with the response that his stance simply reflected "the Jersey way".

4 It is a terrible shame that such usage has been endorsed by an official inquiry such as the IJCI. All distinct communities are to some degree different from each other. But in the main, the core values and defining parameters of the communities in the Channel Islands would be recognised by and reflected in most other communities in Western Europe. Jersey is not differentiated by some special psychological attribute which inclines it to avoid investigating crime or wrongdoing or which declines to ensure justice is done where it needs to be done. Indeed, in a small community like Jersey where wrongdoing is difficult to hide, the opposite is true. The sadness, of course, is that once such a disparaging phrase becomes common currency, few will pause to consider its meaning, let alone to reflect on its potentially damaging effect on all who live in the Island.

The Channel Islands and the courts of Westminster

5 Professor Tim Thornton is a friend to this journal, particularly so given his contributions to the Channel Islands' legal history. These range from articles such as "Jersey's Royal Charters of Liberties" (2009)[1] to the books *The Charters of Guernsey* (2004)[2] and *The Channel Islands 1370–1640* (2012).[3]

6 In 2016, Thornton joined the number of distinguished scholars who have presented the Société Jersiaise's Joan Stevens Memorial Lecture. His subject was "The Channel Islands and the Courts of Westminster

[1] (2009) 13 JGLR 186.

[2] *The Charters of Guernsey* (Bognor Regis, 2004). Reviewed at (2005) 9 *Jersey Law Review* 278.

[3] *The Channel Islands 1370–1640: between England and Normandy* (Woodbridge, 2012). Reviewed at (2012) 16 JGLR 325.

from the Fourteenth to the Sixteenth Centuries". The Société has now published the lecture under the same title.[4]

7 Coke long ago quoted an act in the rolls of the English Court of King's Bench of 1368 which rejected a Jersey case broadly on the grounds that Island cases should be heard in the Islands. This, John le Patourel argued, set the rule.[5] Thornton has for the first time identified the case in question, finding the complaint to have been addressed to Edward III and his French Council and hence an "outlier" exceptional even by the date at which it was brought. The action was brought by one des Augrès against the King's officers in Jersey, which perhaps accounts for the plaintiff's choice of forum.

8 He convincingly argues that the Westminster Courts in fact offered little threat to the local resolution of disputes after the granting of the Royal Charter of Liberties of 1341. At least as regards original jurisdiction, Westminster had effectively been rebuffed under the Charter dating a generation before the action before King's Bench of 1368.

9 Thornton concludes—

> "in any consideration of these islands and their relationship with Westminster, it is 1341, it is the affirmation of island and Norman custom that was so fundamentally made in that year, and it is the remarkable practical effectiveness and coherence of insular legal cultures which have been built around that affirmation and have been respected from without, which must take centre stage."

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[4] Jersey, 2017, 28 pages, ISBN 978-0-902897-02-2.

[5] Le Patourel, *The Medieval Administration of the Channel Islands 1199–1399* (London, 1937), at 127–128; "The Origins of the Channel Islands Legal System", *The Solicitor Quarterly* I (1962), at 198–210.