The Isle of Man - In the British Isles but not ruled by Britain: A modern peculiarity from ancient occurrences

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Introduction

In this chapter, I attempt to explore some issues regarding the relationship between the United Kingdom government and Tynwald. This is a preliminary exploration undertaken in a limited time and all that I profess to do is to point to some avenues for further research and debate. There are several views on this conundrum. I contend that, under one such, it can be argued that Westminster is in an even weaker position of supremacy in relation to the Isle of Man legislature than it is in relation to dominion states such as Canada. Any analogy between Tynwald and the newly devolved Assemblies and the Scottish Parliament is erroneously drawn. Further, under the majority of views held, Westminster has no power to coerce compliance either with European Union law (including freedom of movement and employment of member state residents) nor with United Kingdom taxation provisions whether imposed by H. M. government or through compliance with European Union membership.

The Manx Legislative Process

Before considering the origins of the Manx legislature, it might be helpful for those who have no knowledge whatsoever of this jurisdiction for me to give a short overview of law-making in Man. Tynwald consists of the House of Keys (a directly elected chamber of 24 members) and a second chamber, the Legislative Council, (at present consisting of eight members elected by Tynwald, the Bishop of Sodor and Man, the Attorney General and the President of Tynwald). There were proposals in the

Constitution Bill 2000, now withdrawn, to increase the membership of the Keys to 33 and from this directly elected number for eight members to be elected by Keys to the Legislative Council. This Council would also have included the Bishop, the Attorney General and the President, though the former two officers would not have had a vote[1]. An earlier Bill to provide for a popularly elected second chamber also failed[2]. The Island does not have a political party system, the Members of Keys standing overwhelmingly as independents rather than on any party ticket. Legislation passes through both chambers in a way that is not dissimilar to that currently prevailing in the United Kingdom. The two chambers sit separately to consider primary legislation and together for other purposes as Tynwald Court[3]. Both Government and Private Members' Bills and any amendments thereto are usually drafted by draftsmen in the Attorney General's Office. The Home Office (perhaps a constitutionally contentious choice of advisor) frequently had a consultative role in this process. The Lord Chancellor's Department took over this role from the Home Office in June 2001. Legislation passes through four separate stages. The first is a first reading and formal introduction to the Bill. The second is a debate on the substance[4]. The third stage involves the consideration of individual clauses within the Bill. Such consideration may be by the whole House or may be referred to a Committee. Amendments must be effected by the House. The third reading is the final stage. The Bill then moves from the Keys to the Legislative Council and essentially the same stages are gone through by the second chamber although it is usually by means of a less formal and speedier process. If there is disagreement between Keys and the Council which cannot be resolved by a 'conference' between both chambers, under section 10 of the Isle of Man Constitution Act 1961, a Bill may become law under a system analogous to the Parliament Acts procedure in the United Kingdom. An absolute majority of Tynwald Court is necessary before the Royal Assent may be given. Assent (of which more later) is normally[5] given through delegated power to the Lieutenant Governor. There is a final requirement before a Bill can become law. This requirement grounds the previous procedures in their historic origin. An Act must be promulgated on Tynwald Day (5th July) at Tynwald Hill in both English and Manx to those assembled[6].

The Origins and Survival of Tynwald

The early history of Man is shrouded in as many mists as those that regularly envelope the island. The original celtic population was invaded by the Norse from the middle of

[1]The Constitution Bill 2000 fell at the Clauses stage on 23rd January 2001.

[2]The Constitution Bill 1999. See also the Report of the Select Committee on the Constitution Bill (November 2000).

[3]The Constitution Bill 2000 clause 8 would have provided for Council and the Keys to vote 'as one body'. By clause 9, where a Bill was rejected by one chamber, an affirmative vote by an absolute majority of Tynwald (not less than 17 elected members) would have been necessary for it to pass.

[4]There is a little used procedure whereby an individual who has a personal interest that will be adversely affected by a Bill (such interest being over and above that of the general public) he may appear in person or through counsel at this stage. He may also be heard at the 'clauses' stage.

[5]Royal Assent to Legislation (Isle of Man) Order 1981. An Act takes effect when the Royal Assent is announced to Tynwald by the President.

[6]Promulgation Act 1988. The promulgation must be certified by the Lieutenant Governor, the President of Tynwald and the Speaker of the House of Keys.

the 9th century and for four hundred years there was a process of gradual assimilation. Nordic customs became embedded in the legislative and judicial systems. One feature of this system was that a selected body of freemen should be consulted and that no judgement without their consent was valid. This differed from the Celtic practice where the King consulted his Chiefs and merely declared his decision to freemen. Tynwald was a derivative of the Icelandic "folk-moot". Decisions on law would be proclaimed from a hill by a law speaker sitting with the King in court and worthy freemen. The assembly was both judicial and executive in function. Advice on the law was taken from 'deemsters' (those learned in the law). The selected freemen numbered 24 and became known as the Keys[7]. The deemsters became (and still are) the judges in the superior courts of law. They were, until the late 16th century, elected by the people. Though members of the Council, they never acted in an executive capacity. Although the composition of the Keys as an elected body varied over the centuries according to the degree of control exercised by the Kings (later the Lords) of Man, (Moore 1900, Gell 1867)[8] there is a longer continuous history of defined legislative procedure and of democracy in the island than can be said to exist in respect of the United Kingdom.

The Island together with the Hebrides (the southern islands as in 'Sodor and Man') was held by the Kings of Man under allegiance to the King of Norway. It seems that allegiance was then transferred to the English King John, a transfer that, arguably, proved not to be a good long-term move for the people of Man! In the thirteenth century, Harold II, King of Man, was accepted as an absolute monarch by the English Crown. This is evidenced by the issue of a licence to Harold to be given safe conduct to enter England with leave of the Crown, such a document only being issued to a "monarch" or "absolute prince" (Gell 1983). The island continued as a kingdom owing allegiance, but the feudal lord was either England or Scotland, depending on respective fortunes in the power struggle between the two countries. The Kingship of Man passed by inheritance to the first Earl of Salisbury, his grant by Edward III making no reference to homage or service to the Crown (Gell 1983). The Isle of Man was later claimed by the Duke of Lancaster (later Henry IV) although whether this was by conquest has been disputed (Gell 1983)[9]. Henry vested the Kingship of Man in Sir John Stanley for a homage of 'two falcons'. The Stanley family became the dynastic rulers of Man and in 1460 Thomas II took the title 'Lord of Man' in preference to 'King of Man'. Due to the frequent absences of the rulers, their 'substitutes' in the form of Lieutenants (later titled Governors) exercised most of the prerogatives of the Lords. This prerogative power was guided by the advice of the Tynwald Council and the deemsters. In 1765, the Isle of Man Purchase Act revested sovereignty in the Crown. It is important to note, however, that the Crown acquired no greater powers than had belonged to the previous proprietors. The constitution was not changed in any way and any assumption of a right on the part of the Westminster Parliament to legislate for the island must be seen in the political context of the time. The colonies were proving troublesome as witnessed by the American Declaration of Independence in 1776.

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[7]Moore (1900 vol i) states that the word Keys may come from the Scandinavian word 'keise' meaning 'chosen' or from an English pronunciation of the Manx Gaelic for four and twenty. It might also have had a figurative meaning viz. that by which a difficulty is explained.

[8]The Keys was eventually confirmed as an elective body by statute in 1866 and its judicial appellate power was abolished.

[9]It may be that the title was acquired other than by inheritance, but not 'by conquest'.

Revenues extracted from the empire were not as readily forthcoming as before. It is no surprise therefore that the first legislation passed by the imperial Parliament after revestment related to customs duties. The previous Lord, the Duke of Atholl, had possessed no power to impose customs duties or to legislate without the authority of Tynwald (Moore 1900, vol ii)[10]. The requirement of lawmaking, the passing of laws by a Lieutenant or Governor of the Lord on the advice of the Council and the deemsters, continued in a statutorily embodied form. That statute of 1417 was never repealed by Westminster. Indeed, Tynwald only repealed the substance of that Act (though not the Indenture itself) in the Pre-Vestment Written laws (Ascertainment) Act 1978 (Farrant 1990)[11].

The Difference between Tynwald, the Devolved Parliaments and the Parliaments of the Dominions

It can be seen that, since its inception, Tynwald has at no time been abolished and that it owes its legitimacy not to Westminster, but to an earlier tradition. Any analogy that may be made between it and the parliaments of other jurisdictions that were once within the Empire is, arguably, misplaced. Australia and Canada, for example, are of course independent members of the Commonwealth, though still, at present, owing allegiance to the British Monarch. Both jurisdictions have a constitution originating in statute; the Commonwealth of Australia Constitution Act 1900 and the British North America Act 1867 (amended by the Constitution Act 1982) respectively. The legislative authority in these nations, therefore, originates from Westminster and the federal Parliaments that now function on the two-chamber paradigm are its progeny. Somewhat incongruously, section 4 of the Statute of Westminster 1931 effectively gave legislative autonomy to the 'Dominions'.[12] Section 4 states that no Act of Parliament of the United Kingdom

'shall be deemed to extend to a Dominion as part of the law of that Dominion, unless it is expressly declared in the Act that the Dominion requested, and consented to the enactment thereof.'

Despite academic debate as to whether section 4 is in any way legally entrenched, or whether it effectively is so by reason of political reality[13], there is no doubt that it has allowed those jurisdictions to develop as independent nations. Further, not only did

[10]Even James I confirmed the continuance of customary laws by letters patent dated 1609. See also the transcript of a lecture delivered by the Clerk of Tynwald (Professor Bates) to the Friends of Peel Cathedral on 30/10/1998. Starting with the Isle of Man Customs, Harbours and Public Purposes Act 1866, the Isle of Man regained, on an incremental basis, control over taxation, internal expenditure and all other insular matters.

[11]The statute provided for a written compact (indenture) between the Commissioners for the King and the Keys and deemsters.

[12]The preamble to the Act and sect. 1 which applied it to the Dominions of Canada, Australia, New Zealand, South Africa, the Irish Free State and Newfoundland.

[13]See British Coal Corporation v R [1935] AC 500. The British Courts would enforce such legislation, but undoubtedly the Dominion courts would not. See also R v Ndblovu 1968(4) SA 515 where the Rhodesian High Court endorsed UDI in the face of the Southern Rhodesia Act 1965. It has also been pointed out that the literal wording of sect.4 does not require actual assent, merely a declaration to that effect, see Manuel v A-G [1983] Ch 107.

section 4 prevent Westminster from passing unwanted legislation in respect of the named Dominions, section 3 of the Act gave 'full power' to each of the Dominion Parliaments to make laws having extra territorial provision. It therefore enabled valid non-domestic legislation to be enacted. There is, of course, a political rather then a legal reason why such autonomy was accorded by this statute. The government of the United Kingdom was divesting itself of its imperial commitments. The Isle of Man did not benefit from the releasing of these commitments since it was never a colony, but a separate Kingdom. The paradox is that, whilst the Dominions have clear authority to pursue a policy of legislative autonomy, the Isle of Man is in a more complex position because no legislation has ever been enacted governing the limits of the powers between the two governments (Horner 1987).

The recent trend to rank Tynwald with the newly devolved United Kingdom Assemblies or the Scottish Parliament in any analysis of its situation is clearly wide of the mark. The Assemblies and the Scottish Parliament are governed by separate Acts and have different and distinct limitations on their powers[14]. The history of all three United Kingdom constituents is one of either conquest, absorption or an Act of Union resulting in the merging of their legislative identities with Westminster. The limitations imposed on the powers of the three reflects this history. The Welsh Assembly, generally, has no more than subordinate power viz. that conferred upon the Secretary of State. The Northern Ireland Assembly has a legislative competence limited by 'excepted' matters and by requirements to uphold European Union Law and the Human Rights Act 1998. Legislation must not discriminate against any person or class of persons. The excepted matters include international relations, nationality and immigration and taxes. Reserved matters (requiring the consent of the Secretary of State) include criminal law and the penal system and the maintaining of order. The Scotland Act 1998 again gives legislative competence subject to a list of 'reserved' matters and to a requirement that European Union law and the Human Rights Act are not infringed. Schedule 5 sets out the 'reserved' matters which include taxes, monetary policy and financial services, immigration and nationality, transport (whether by road, rail or air) the transmission and distribution of oil, gas and electricity and employment and industrial relations. Thus, even the Scottish Parliament has constraints upon its powers in respect of matters that Tynwald would regard as its domestic preserve. Further, and very importantly, the Isle of Man is not within the European Union and is therefore only bound by such regulations as apply to it in respect of the special trade and customs relationship that results from Protocol 3 to the Act of Accession. There is no requirement to observe E.U. treaties on the free movement of persons and services. The island receives no E.U. funding and makes no contribution thereto. The autonomy of Man is supported by a national coinage and by the recognition of its territorial waters.

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[14]The Government of Wales Act 1998, the Northern Ireland Act 1998 and the Scotland Act 1998.

The Conundrum – Whether Tynwald or Westminster is Ultimately Supreme in Respect of Legislation Affecting the Isle of Man?

In the foregoing sections, I have given a very brief outline of the historical and contextual constitutional position of the Isle of Man legislature. This leads us to the heart of the problem. This problem is the relative authority of the two legislatures. The issue is not merely an academic one because although frequently the interests of the two jurisdictions coincide there are occasions when they do not. Two illustrations of possible future 'irreconcilable differences' (taxation and the right of residence) are mentioned in the following section. There are two parts to the puzzle. The first is whether Westminster can legislate for Man. The second is whether Tynwald can legislate without the approval of Westminster.

It is clear that the claim of Westminster to legislate for the Isle of Man is based upon the absence of evidence of any positive objection to the enforcement of such legislation rather than to any positive authority granting this power. Certainly, there is a body of Manx judicial opinion that before revestment an English statute did not bind the island (Gell 1983). English jurists conceded that a statute did not extend to the Isle of Man unless 'it is specifically so named'[15]. Coke referred to the 'peculiar laws and customs of the island'[16]. He cites, as an example of the non application of English law, Calvin's Case determined in 1608. This case is said to hold that the widow of the Second Earl was unable to claim dower on the island because the Statutes *de donis* of Uses and Wills was a general Act and had no enforceability in Man. It has been argued by Gell (1983) that even this analysis is, strictly, an *obiter* one, there never having been, at that time, an Act of Parliament that professed to extend to the island. However, the view that English legislation could bind the island if it was so intended (regardless of whether that intent was expressly declared on the face of the statute or was inferred from its content) has been advanced by Edge[17]. He considers that even before revestment this was the situation. There appears to be little authority to support this contention, however, and what there is may well be ambiguous[18]. What is certainly more clear is that after 1765, there was an assumption made by the English legislature that it could bind the Isle of Man in respect of customs revenue and that this assumption was made for blatantly self-serving purposes. As Blackstone stated [19]

'The distinct jurisdiction of this little subordinate royalty being found inconvenient for the purposes of public justice, and for the revenue, (it afforded commodious asylum for debtors, outlaws and smugglers) authority was given to the Treasury by Statute – to purchase the interest of the then proprietors for the use of the Crown.'

The enforceability of legislation that was for the benefit of the United Kingdom was conveniently assumed on other matters as well, such as service in the Imperial Militia

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[15]Wood's Institutes of the Laws of England 1772 and Blackstone Commentaries vol.i.

[16]Coke's Institutes the 1st and 4th parts.

[17]'David Goliath and Supremacy: The Isle of Man and the Sovereignty of the United Kingdom Parliament' [1995] *Anglo-American Law Review* 1.

[18]The Petition for Redress brought by the heirs of William Christian is, arguably, unclear authority in this matter because of the wording of the Act of Indemnity. The Act refers to 'the dominions'.

[19]Blackstone Commentaries vol i.

(Edge 1997). What seems to have occurred is a less than subtle change in the relationship between the Island and the English Crown. Horner (1987) points out that after 1688, the British Monarchy had, *de facto*, been subordinated to the Westminster Parliament and that the Isle of Man metamorphosed from a territory owing allegiance into a dependent territory. In the context of a burgeoning colonial empire, this meant that those statutes deemed to be 'imperial' in nature were applied to the Isle of Man. The regaining of autonomy occurred from the mid 19th century onwards and coincided with the collapse of the Empire. The political climate, rather than legal legitimacy, had allowed the British government to assume legislative competence for Man. According to the Home Office[20], views expressed in the Stonham Report in 1969 and *obiter dicta* case law [21], the United Kingdom by convention will refrain from legislating in respect of insular matters without consent.

Even if the United Kingdom government accepts that this is the case and no longer argues that it refrains from such legislation by reason of 'good practice' only, a convention is not a very safe basis upon which to escape imposed legislation. Despite statements to the contrary made by academic writers such as Jennings[22] and Mitchell[23], there is a strong body of opinion that holds that there is a distinction of importance between laws and conventions. Munro[24] backs Dicey in this debate and points out that no analogy can be made between customary laws and conventions. Customary law has become part of the common law or has been incorporated into statute. A convention, however, does not become law simply by reason of long observance. Thus, judges have refused to enforce conventions in the courts. The most pertinent example of judicial refusal to enforce convention is seen in Canadian case law. In the well known authority of *In Reference re Resolution to Amend the Constitution*[25] it was said that, unless a convention had been adopted into statute, it could not become law regardless of the importance of its subject matter. It is true, of course that the more significant the convention which it is sought to breach, the less likely it is that it will be *politically* possible to do so. The more recent case of *Osborne v Canada (Treasury Board)*[26] confirmed that conventions form part of the constitution in 'the broader political sense' but are legally unenforceable and, further, that a statute is not exempt from scrutiny under the Charter of Fundamental Rights and Freedoms merely because it upholds a constitutional convention. Of course, political expediency dictates that the United Kingdom government would not readily defy any supposed convention not to legislate for the island on insular matters without consent. However, there may well be future conflicts ahead where the international obligations of the United Kingdom 'overflow' into the domestic arena in the Isle of Man. Pressures placed on the British government to comply with the obligations under the Maastricht Treaty and the Treaty Of Amsterdam will probably mean that matters such as crime, justice and the movement of persons within the EU area are increasingly determined by a central body of

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[20]Review of Financial Regulation in the Crown Dependencies Home Office (1998) Cm 4109-iv.
[21]Re Tucker (A Bankrupt) (1985) 11 Manx Law Bulletin 33.
[22]The Law and the Constitution (1959).
[23]Constitutional Law (1968).
[24]Studies in Constitutional Law 2nd ed. (1999).
[25][1981] 1 SCR 753.
[26][1991] 2 SCR.

Ministers rather than by national parliaments (Colvin and Noorlander 1998). Taxation is already rearing its head as a contentious issue between Tynwald and Westminster. It is likely that pressures toward a homogenised European taxation system will grow. There is a slight difference of opinion regarding the status of international treaties. Edge (1997) considers that international treaties extend to the Island by virtue of the sovereignty exercised by the British Crown unless a reservation is made. On the other hand Professor Bates, the previous Clerk of Tynwald, believes that a treaty must be expressly extended to the Island on ratification. However, as stated above, Man is not a member of the EU and, so far, has escaped the implementation of Union law [27]. Whether this will continue to be the case could depend upon whether political pressure is placed upon the British government to enact legislation that brings Manx law in line with that prevailing in the United Kingdom which itself is subject to the primacy of Community law [28].

Should such a scenario ever arise, it would, I submit, be preferable to argue that the legislation is unenforceable because any assumption by the British government of the right to pass laws without the consent of Tynwald is erroneous and without historical foundation. Acquiescence in a mistaken exercise of power over many years does not legitimate that power. The current arrangement, whereby Tynwald enacts its own domestic legislation in parallel to the United Kingdom [29] rather than consenting to the extended application of Westminster statutes, is less than satisfactory. An arrangement that depends upon some alleged 'concession' by an imperial parliament is not a secure one. This has been demonstrated by the few occasions when a certain amount of compulsion was placed upon Tynwald to legislate in line with the sexual and penal norms prevailing in the United Kingdom and mandated under the European Convention on Human Rights.[30] The question of whether the individual statutes thereby enacted should have existed in any civilised democracy is not the issue here. The issue is the possibility of future conflict and legislative capacity. An argument can be put forward that the right claimed by Westminster to pass legislation on behalf of the Island, even legislation affecting international obligations, is actually without legal foundation. There is a need to reopen the statement made in *In the Matter of CB Radio Distributors* (Gell 1983) that it was 'now too late' to question that right 'at any rate in this court'.

The second part of the conundrum is whether Tynwald may legislate unconstrained by the wider interests of the United Kingdom. To this question there is clearer answer, but even this answer is complicated by the requirement of Royal Assent. Edge is of the

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[27]DHSS v Barr and Montrose Ltd. (1990-2) Manx Law Reports 243. Manx law, which requires non-nationals to obtain a work permit, is not void as a discriminatory practice since EU law does not apply. The Residence Bill 2000 is likely to become law later this year. This Act will limit the right of residence on Man. Once the population reaches what is regarded as a critical level, existing residents, those who have established a home on the Island, those born in Man and spouses, divorcees, widows and children of residents or those born here will be entitled to unconditional registration. Others will have to apply for conditional registration and such registration will be granted on terms and only when a sufficient connection with or benefit to the Island is demonstrated.

[28]Van Gend en Loos Case 26/62 [1963] ECR 1; Costa v ENEL. Case 6/64 1964] ECR 585 and R v Secretary of State for Transport ex p. Factorame (no.2) [1991] AC 603.

[29]As in the case of the United Kingdom Human Rights Act 1998.

[30]The Criminal Justice (Penalties etc.) Act 1993 finally removed birching as a penalty, although since the case of Tyrer v UK it had never been implemented as a sentence by the judiciary. The Sexual Offences Act 1992 decriminalised consensual adult homosexual activity.

view that Tynwald may legislate to abrogate or to make any insular and/or international law even if this is contrary to the Imperial law of Great Britain. The only limitation (since Man owes allegiance to the English Sovereign) is that Tynwald may have no power to place the Crown in breach of international obligations (Edge 1997). Whilst, prior to the Bill of Rights of 1688, Manx interests might have conflicted with the international obligations of the Crown in person, the position is now more complicated. Any residual Crown prerogative that exists in respect of making treaties or deploying armed forces is exercised on the advice of government ministers. It is increasingly difficult to distinguish the impact of foreign policy (which is effectively now a matter for the British government) from the impact of domestic policy in a society that is rapidly becoming a global one. Ultimately therefore, the ability of Tynwald to exercise unconstrained legislative power must depend upon the grant of royal assent, such assent, currently, being a necessary step before the promulgation of any statute. There has been much debate as to how and when this assent should be given and, I submit, some of this debate is not crucial to the instant issue. However, without wishing to 'lose the plot', I consider it necessary to make some further comment on this and to discuss a precedent from another jurisdiction to suggest that, *in extremis,* even the lack of royal assent might not invalidate a Manx statute so far as the judiciary of the Island is concerned.

The Royal Assent

Historically, consent to Tynwald Bills was given by the King and, later, the renamed Lord of Man. It was only after revestment that the Sovereign attained this power (Cain 1992). From 1813 onwards, assent was exercised on the advice of the Privy Council and the practice of submitting Bills to the Privy Council continued until 1981. As a consequence of expressed desire for greater self-determination, the Royal Assent to Legislation Isle of Man Order (1981) was passed[31]. This Order, in Article 2, delegated to the Lieutenant-Governor the powers exercisable by Queen in Council. The power is not limited by subject matter, but it does not apply when the Lieutenant-Governor considers consent must be reserved under Article 3 [32], or when he is so directed by the Secretary of State under Article 4. However, the crucial issue must inevitably be when such assent might be refused, by whomsoever it is exercised. Professor Bates has argued that the need for assent, if not completely abolished, should be restricted to defence and external relations [33]. This would bring the need for assent in line with the reserved powers under the 1981 Order, the only other significant matters currently requiring reservation being nationality and the constitutional relationship between the two countries. Professor Bates views the current process of bargaining in respect of the content of legislation as a questionable exercise of prerogative power. Horner (1987) considers that there is no convention (parallel to that in the United Kingdom) requiring that assent will not be refused. The lack of any clear authority for the situations that

[31]Made by prerogative order of the P.C. 23rd September 1981.

[32]Article 3 refers to matters 'which in the opinion of the Lieutenant Governor deal wholly or partly with defence, international relations, nationality and citizenship and the constitutional relationship between the United Kingdom and the Isle of Man'. It also covers matters affecting the Royal prerogative or HM Queen in her private capacity.

[33]Lecture to The Friends of Peel Cathedral (1998).

might lead to the refusal of assent has led to speculation, based on past instances and future predictions, as to when this crisis might arise. In evidence to the Stonham Report, the Home Office referred to the possibility of a statute having 'unacceptable repercussions' outside the Island as one such situation. This is a pretty vague and subjective criterion. What is 'unacceptable' and to whom must it be so? One suspects that the answer is that 'unacceptable' means politically uncomfortable for the United Kingdom government's international image. One example might be any legislation that would clearly infringe the International Covenant on Civil and Political Rights 1966. This would certainly be a breach of the international obligations of the Crown since the United Nations requires periodic reports in respect of compliance by dependent jurisdictions[34]. However, such obvious treaty violations apart, it is hard to see the legal justification for refusing assent simply because a statute might embarrass the United Kingdom or prove inconvenient to its external policy objectives. The remaining examples then given by the Home Office included the deleterious effect of proposed legislation on the Island. This is, arguably, of no relevance whatsoever to the question of assent. Once Tynwald has debated and passed a Bill, it is a paternalistic and unwarranted interference with autonomy for a foreign government to advise what is and what is not in the national interest. It is also now accepted that the fact that Manx law and domestic English law would be in conflict is no necessary reason for assent to be refused (Edge 1997).

Whether consent is given is, therefore, very much an exercise of discretion governed by political factors rather than by legal circumscription. As the 21st century functions at an increasingly global level, the pressure for centralisation of control among nations vies with the liberal tradition of supporting the autonomy and identity of smaller countries. It seems that the European Union itself embodies an aspect of this conflict. The greater autonomy granted to the British regions through devolved parliaments must be seen in the context of their overall subjugation to European Directives and the impact upon them of European Union Treaties. The Isle of Man, however, has no legal obligation to conform to such a system and legally (as well as morally) the United Kingdom should allow the Island to legislate in ways that further the interests, both national and international, of its residents. The United Nations Declaration On The Granting Of Independence To Colonial Countries And Peoples 1960 stated that territories should become self-governing and that all powers should be transferred to their peoples 'without conditions or reservations, in accordance with their freely expressed will and desire'. It seems there is an argument founded in international law, that, regardless of the reservation concerning the constitutional relationship of Man and the United Kingdom, the Crown should assent to any future Tynwald statute seeking a release from the dependency status of Man.

It would take a crisis in political relations for such a situation to arise and, of course, there would have to be a situation where the advantages of dependency were outweighed by the disadvantages, but it is not an entirely fanciful possibility. The recent arguments over fiscal policy are but one area of tension. I submit that there might be others, such as freedom of movement, arising in the future. It is stated government policy to promote and defend the Island's internal autonomy and to work towards greater autonomy in international affairs.

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[34]See the Fifth Report by the Crown Dependencies of the United Kingdom Under Article 40 of the ICPR (August 1999).

Should the Island declare unilateral independence and should Royal Assent, on the advice of Ministers, be refused what would be the legal consequence? It is possible that the immediate response from Westminster might be to pass an Act permitting it to legislate directly for the Island, even though this would be a new statutory assertion of power rather than a reassertion of a pre-existing statutory right. There is a precedent of sorts because, in 1965, the Southern Rhodesia Act was passed in a situation of unilateral independence declared by Mr. Smith. The Privy Council recognised the validity of that statute and stated that it had full effect in Southern Rhodesia[35]. However, the theory of parliamentary supremacy and the actuality are rather different. The Rhodesian courts refused to recognise the Westminster Act and continued to apply the law of the illegal regime[36]. This may have been a country that was geographically much further removed from Great Britain than is the Isle of Man. Nonetheless, if Manx deemsters proceeded to enforce Manx made law and ignored Westminster legislation, it seems unlikely that a military invasion would be mounted. Despite the flouting of the Royal prerogative that would inevitably have occurred, political reality might well suggest that the model of independence adopted by the Commonwealth Monarchies owing allegiance to the Queen would be finally accepted by the United Kingdom. I submit that if and when this should occur is a matter of political feasibility rather than of legal incapacity.

Conclusion

In this overview I have attempted to demonstrate that there is a basis for an argument that the United Kingdom has erroneously assumed legislative competence in respect of the Isle of Man and that there may be an historical basis for contending that Westminster cannot validly legislate for Tynwald even by express extension. Further research is needed to establish that the acquiescence of deemsters in applying any such legislation after revestment was borne of political duress rather than based on legal enforceability. In respect of Tynwald's own legislative powers, there is clearly no restriction on such exercise other than the obtaining of the consent of the Lord of Man; such assent powers now being transferred to the Crown and forming part of the Royal Prerogative. Whilst the Isle of Man is still a dependency, Tynwald cannot legislate to place the United Kingdom in breach of its obligations under international law. However, refusal of assent should not be used as a means to promote imperial interests in opposition to those of the Island, since this would be a breach of the United Nations Declaration on rights of self-determination. Further research analysing the differences between the emergence of the Commonwealth countries as independent states and the current situation of Man might be useful. Such an analysis would show that, historically, Man has a greater claim to autonomy than the Dominions, such claim being as of right and not as the result of a Westminster statute. Due to its geographical proximity to the United Kingdom, Man never received recognition as an international power and it may now be timely to re-examine the place of the Island within the global community.

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[35]Madzimbamuto v Lardner-Burke [1969] AC 654.

[36]Dhlamini v Carter (1968)(2) SA 464 and R v Nadlovu (1968)(4) SA515.

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