

## The constitutional status of Sark

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**ABSTRACT:** Sark is a very small sub-national island jurisdiction held by a feudal property right from the British Monarch; Sark is mostly self-governing, although responsibility for its defence and external affairs lies with the British government. This article takes a legal-historical document-based approach to exploring whether Sark can be correctly described as a Crown Dependency in its own right, using criteria relating to its governance, geopolitical status, and international and domestic relationships.

**Keywords:** Bailiwick of Guernsey, Channel Islands, Crown Dependency, Queen Elizabeth II, Sark, sub-national island jurisdiction

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### Introduction

On the 29<sup>th</sup> of July 1957, Queen Elizabeth II did something that no other British King or Queen had ever done. On that date, she became the first reigning British Monarch to visit the island of Sark since it had been enfeoffed by her predecessor Queen Elizabeth I to Helier de Carteret of Jersey in 1565. The holder of the fief, the Dame of Sark, performed the traditional ceremony of paying homage to her feudal lord. La Dame knelt before Her Majesty and declared “Ma Souveraine Dame, je vous rends homage lige, et vous sera foyale and loyale contra tous”. The Queen replied: “Nous Vous acceptons Advouant tous vos légitimes droits et possessions relevant de cette tenue de Nous, sauf pareillement à tous Nos Droits de Régalité” (Ewen and de Carteret, 1962, p. 111).

Despite the personal relationship with the British monarch being central to the identity and status of the Channel Islands, little is written about their constitutional status as Crown Dependencies (with the exception of Mut Bosque, 2020; 2022). What there is tends to repeat the view that there are four Channel Islands (Jersey, Guernsey, Alderney, and Sark) which constitute two Bailiwicks (Jersey and other islands and Guernsey and other islands), and so it follows that there are two Crown Dependencies: Jersey and Guernsey.

In the 1837 Privy Council case of *Martyn v M’Culloch*, Sark is referred to by the court as one of the “smaller dependencies of Guernsey”. This claim was repeated in a leading text on the British Home Office (Troup, 1925, p. 231), and more recently, Reardon and Pich (2021, p. 138) state, “The Bailiwick of Guernsey is, alongside Jersey and the Isle of Man, one of three British Crown dependencies”. Bell et al. (2021, p. 254) also refer to “all three Crown Dependencies”. This perception persists at the highest levels of the State. The official website of the United Kingdom Royal Family notes, “There are three island territories within the British Isles that are known as Crown Dependencies; these are the Bailiwicks of Jersey and Guernsey which make up the Channel Islands, and the Isle of Man” (Royal Family, n.d.). Parliament appears to hold two contradictory positions at once: in 2017 the House of Lords European Union (EU) Committee opined that “The Crown Dependencies are the Bailiwick of Jersey, the

Bailiwick of Guernsey and the Isle of Man” and in the same paragraph also said “Each of the three jurisdictions [Guernsey, Alderney, and Sark] within the Bailiwick of Guernsey is a self-governing Dependency of the Crown (House of Lords, 2017, p. 8).

In this article, I challenge the prevailing understanding of Crown Dependencies, arguing that notwithstanding its inclusion in the Bailiwick of Guernsey, the island of Sark is a dependency of the British Crown in its own right. By examining the political and legal history of Sark through three criteria, I conclude that since the earliest periods of organised settlement, the island of Sark has had its own individual link to the British Crown and its own distinct, and distinctive, systems of government. In this respect, it is on a par with the other Channel Islands and the Isle of Man. Its rights and obligations in respect of the British Crown and the British government are no more and no less than the other Channel Islands. Size of jurisdiction is not a determinant of status.

Given the legal-constitutional focus of this article, I employ a methodology central to law as a discipline, that of doctrinal analysis. “Developed intuitively within the common law,” doctrinal analysis has been characterised as “so implicit” to legal reasoning that it is rarely articulated in works of legal scholarship (Duncan and Hutchinson, 2012, p. 99). To answer the question of whether Sark is a Crown Dependency itself or merely a dependency of one, I unpick the language, concepts and practices emerging from or embedded within legal documentation and instruments and primary legal sources such as statute law and case law to see whether there is a coherent narrative regarding Sark’s peculiar status. Where does Sark sit in relation to the acknowledged Crown Dependencies and the British Crown? Is this position clear or contested still? I also consider quasi-legal materials such as government reports and legal-historical treatises. Before I begin this assessment, I set out some background to Sark and the particular terminology used when talking about the Channel Islands.

### **Sark, the Bailiwick of Guernsey, and Crown Dependencies**

The small island of Sark has a population of around 500 in a land area of 5.5km<sup>2</sup>. It is located in the English Channel, off the coast of Brittany, closer to France than it is to Great Britain. It has a reputation for quirkiness, a place where cars are outlawed, and feudal governance lingered well into the 20<sup>th</sup> century and beyond. The main industries on Sark are fishing and tourism (House of Commons Justice Committee, 2017a, p. 29). There is a post office, two banks, a hairdresser, a medical centre (but no dentist or optician), two Protestant churches and two food stores. The police and emergency services are all volunteers. It has a school with about 25 primary-aged students; secondary education has to take place off-island (see generally, Sark Chief Pleas, 2023). The predominant language is English, but a handful of residents still speak the Norman-French patois, Serquiais (Liddicoat, 1994).

Sark is one of the islands comprising the Bailiwick of Guernsey, the others being the main islands of Guernsey and Alderney and the smaller islands of Brecqhou, Herm, Jethou, Lihou, Burhou, Ortac, and Les Casquets. Along with the Bailiwick of Jersey and its islands, Les Ecréhous and Les Minquiers, they constitute the Channel Islands. The Channel Islands, together with the Isle of Man in the Irish Sea, occupy a singular place in British constitutional law and practice known as the Crown Dependencies. This unique status has been the cause of much confusion. A key source of confusion are the terms “Crown Dependency” and “Bailiwick”.

*Crown Dependency*

The Crown Dependencies are in a constitutional category of their own. They are neither part of the United Kingdom of Great Britain and Northern Ireland nor are they British Overseas Territories (i.e., colonies). The Crown Dependencies are island territories within the British Isles, with their own political systems, legislatures, courts, and legal and fiscal systems. They are effectively autonomous and self-governing although they do not enjoy full statehood as a matter of international law under the Montevideo Convention.

As their name suggests, these territories pay direct allegiance to the Crown. On the Isle of Man, the British Monarch is known as the Lord of Mann; in the Channel Islands, he is Notre Duc (of Normandy). This form of address remained the same regardless of whether the monarch was male or female: in the Channel Islands, Queen Elizabeth II was “La Reine, Notre Duc”.

This is a personal relationship, rather than the typical fiction of Westminster governance where the State acts in the name of the Crown. It is my view that it is this direct and personal relationship with the British Monarch which is the defining characteristic of a Crown Dependency. Unlike overseas territories, or colonies, they were not acquired by the British government by the methods permitted by international law i.e., cession, annexation, occupation (peaceful or otherwise) or accretion. Instead, the existence of externalised sovereignty located in the Monarch-as-Crown rather than the State-as-Crown dates back to feudal times and has its origins in the private law of personal property.

The Monarch is represented in each Bailiwick by a Lieutenant-Governor. The British government retains responsibility for the Crown Dependencies in matters of defence and international relations (Royal Commission on the Constitution, 1973, para. 1363; House of Commons Justice Committee, 2017a, p. 1), although it is the Monarch who is ultimately responsible for their good governance. The Crown Dependencies have no representation in the national Parliament of the United Kingdom at Westminster, although it is acknowledged that this Parliament may legislate for the Crown Dependencies. By convention this is only done with their consent (Royal Commission on the Constitution, 1973, para. 1513). No financial support or aid is provided by the British Government to the Crown Dependencies.

The Channel Islands became dependencies of the Crown in 1204. Originally part of the Duchy of Brittany, the islands were annexed by William Longsword in 933 for the Duchy of Normandy (Le Patourel, 1962, p. 198). When in 1066, the Norman William the Conqueror became King of England, the Duchy owed loyalty to the English Crown in the King’s capacity as Duke of Normandy (Bailhache, 2005, pp. 1-2). King John of England surrendered continental Normandy to France in 1204 but retained the Channel Islands by promising them the continuation of their ancient laws and privileges via the Institutes of King John (Dawes, 2015, p. 12). This position was formalised in the Treaty of Paris concluded between England and France in 1259. Although France has continued to make claims to the Channel Islands (most recently in 1953), in simple terms the Channel Islands have been dependencies of the British Crown for approximately 800 years.

### *Bailiwick*

As noted, the Channel Islands are usually described as being constituted as two Bailiwicks. The term “bailiwick” has not been defined in legislation, and its meaning in political science is not entirely settled either. It should therefore not be considered as having any determinative legal or political meaning (Sutton, A., 1999, p. 13). Rather, it is primarily an historical descriptor. Sometimes it is used to designate an administrative grouping.

The term “Bailiwick” is of mixed French and English etymology. “Bailie” in old French refers both to a territorial entity and the senior public official responsible for that entity. In the Channel Islands, the Bailie (which became the Bailiff) was ultimately responsible to the English (and then British) monarch for the administration of justice in the islands. “Wick” comes from the Middle English “wich”, itself derived from the Latin “villa”, town. Thus, Bailiwick can be understood to mean the area for which the Bailiff was responsible.

The history of the Channel Islands reveals that various administrative systems were used to govern the islands. In the early era of Channel Islands administration following the loss of continental Normandy, the islands were governed by a resident Warden appointed as the King’s agent. The Warden exercised judicial, administrative, and revenue-gathering powers (Le Patourel, 1937, pp. 38-44). He was also responsible for the defence of the islands (Le Patourel, 1937, pp. 40-41). The Warden had a number of subordinates to assist in these functions, who went by various terms, including sub-warden, bailiff, custodes and sub-custodes (Le Patourel, 1937, p. 47).

The administrative arrangements in this period were somewhat fluid. At some point between 1195 and 1198, Prince John of England became the first Lord of the Islands, although it is not clear whether this included Sark (Le Patourel, 1937, p. 121), which at this point was held either by the de Vernon family or directly by John’s brother, King Richard I. At times, Wardens were appointed for several of the Islands at the same time, and at other times, for individual islands. The first Warden charged with distinct responsibility for Sark was Philip D’Aubigny, who served from 1214-1219. By the 14<sup>th</sup> century, the term Bailiff was being used to describe the public official who presided over the King’s Courts in Jersey and Guernsey. It survives in those islands to the present day. The Bailiff of Jersey is the Presiding Officer and non-voting Speaker of the States (Legislature) and President of the Royal Court. The Bailiff of Guernsey occupies a similar position. Neither Sark nor Alderney used the term Bailiff in such a way. Instead, they employed the term *prévôt* to designate the presiding officer of their courts. This may have reflected a division in the status and jurisdiction of the respective courts.

To understand the current constitutional position of Sark, it is necessary to go back over the centuries. The historical record reveals that Sark’s status has been largely settled for hundreds of years. In the early Middle Ages (5-10<sup>th</sup> centuries), Sark functioned as a sparsely populated monastic centre (Ewen and de Carteret, 1969, pp. 16-17).

### *Sark in the Medieval period*

We begin in the high Middle Ages around 1042 when the Channel Islands were part of the Duchy of Normandy. By that date, it was recorded that Sark had been granted to the Abbey of Mont St Michel. In 1057 Sark was re-granted to the Bishop of Coutances of Normandy. It then reverted to William, Duke of Normandy in 1066. In 1100, William of Normandy, now also King of England, granted Sark to the de Vernon family, Lords of Nehou in Normandy,

near Cherbourg. Richard de Vernon passed various charters relating to Sark in 1174 and 1196 and had installed a public official there. The de Vernon family also endowed a parish church and provided a priest. Sark was at that time within the ecclesiastical jurisdiction of Coutances. Revenue is recorded as being collected from Sark by the de Vernons independently of revenues from the other Channel Islands (de Gruchy, 1919, p. 19).

The historical record differs as to whether Sark was re-seized for the English Crown by Richard I around 1195-6 following the de Vernons' transfer of Sark to the King of France or was forfeited to King John in 1204 for similarly treasonous reasons. The population around this time numbered approximately 400 people who practiced subsistence farming and fishing. By the 1300s, a King's court had been established on Sark, staffed by six jurats, eminent local men who interpreted and declared the customary law of the island (Le Patourel, 1937, pp. 88-91). There was also a "bedel", whose responsibilities roughly corresponded to the management of the court.

The Hundred Years' War saw Sark occupied by the French in 1338. They were expelled in 1340 and Sark reverted to the English Crown. Repeated waves of the plague in the 14<sup>th</sup> century decimated the settler population. France again occupied Sark in 1549 but the occupation came to an end in 1553 when they were expelled by an opportunistic Flemish privateer, hoping for a reward from Queen Mary I of England. With the French gone, the monastery in ruins and the native population ravaged by disease, Sark became a wasteland, albeit one still in the possession of the English Crown (Ewen and de Carteret, 1969, pp. 23-25).

#### *Sark in the Tudor period*

Sark's modern existence is usually traced back to the reign of the Tudor dynasty. In the early years of Elizabeth I's reign (1558–1603), Sark was effectively deserted, and vulnerable to use as a base for piracy. The English were also worried that the French might try to re-occupy Sark (Ewen and de Carteret, 1969, p. 27).

In 1565, Queen Elizabeth I issued Letters Patent to Helier de Carteret of Jersey granting him the Seignory (the Lordship or fiefdom) of Sark. In the terms of the feudal property system applicable at the time, the fief granted to de Carteret was the highest form of fief, a 'fief haubert'. Under a fief haubert, the Siegneur owes homage to the Monarch in person, and is required to supply the Monarch with a "knight's service" when required. This translates to a knight fully equipped with a 'haubert' (a coat of mail), helmet, shield, and complete set of armour (Ewen and de Carteret, 1969, p. 181). In return for paying the Queen "one twentieth of a knight's fee", de Carteret was granted extensive rights to the fruits of the land and sea around Sark, as well as virtually complete legal and political power. He was also charged with keeping the island "free of the Queen's enemies" and making it a place of "safety and tranquillity". In this he would be aided by 40 male tenants, who would keep and farm the land. This was the Elizabethan equivalent to the knight's service. The Letters Patent provided that should de Carteret fail to keep the terms of the grant or fall into arrears with the fee, Sark would revert to the Queen's possessions (Ewen and de Carteret, 1969, p. 34). The enfeoffing of Sark is celebrated annually on Fief Day, the 6<sup>th</sup> of August.

Political institutions were established not long after de Carteret's settlement of Sark. It is known that Chief Pleas had been constituted as an executive body comprised of the 40 tenants and was meeting infrequently to hear Islanders' petitions before 1579. The Island Court was established in 1579 following a meeting of all the tenants and other inhabitants and held its first sitting on the 5<sup>th</sup> of November of that year (Ewen and de Carteret, 1969, p. 49). The creation of an indigenous court was challenged by Guernsey, concerned about both Sark's decision to use Jersey law in its court and Sark's expanding autonomy. The matter was settled by an Order in Council from the British Crown in 1583 which finalised the 'Powers and Privileges of the Sark Court' and granted Sark the right to make its own laws, subject to appeals to the Royal Court in Guernsey, declared that Guernsey law should be applied in the Court and that ecclesiastical jurisdiction would lie with the Bishop of Winchester. Five jurats were to serve on this court (Ewen and de Carteret, 1969, p. 53).

Further developments occurred in 1675, necessitated by the refusal of Sarkees to follow the established Church of England (Ewen and de Carteret, 1969, p. 80) The court was disestablished and replaced by the Court of the Seneschal, which continues in this form up to the present day.

The Seigneur continues to hold Sark as a fief from the British Monarch and to pay the annual fee for the fief. In a curious oversight, the sum of "one twentieth of a knight's fee" was not future-proofed, rendering the current annual fee for the fief £1.70.

### **Determining the Constitutional Status of Sark**

My criteria for assessing the constitutional status of Sark are rooted in political and legal considerations. I examine Sark on its own terms and also in relation to the web of supra-state, state, and non-state relationships in which it is located. I do this by exploring the following questions:

- Has Sark received international recognition, apart from its relationship with the UK? Moreover, is Sark a distinct site of geo-political interest?
- What is Sark's relationship with the UK (and the other Crown Dependencies)?
- To what extent does Sark enjoy governmental autonomy?

#### *Criterion one: Sark in the international arena*

##### *(1) Sark and international relations*

Along with the other Channel Islands, Sark is not a state as a matter of international law. However, it does enjoy some of the features of statehood such as a distinct UN country code (680), and its own flag and coat of arms. Sark also enjoys a 12 nautical mile limit to its territorial waters and control over its airspace. Since 1987 it has competed in the International Island Games in its own right. It has also recently won a long-running battle with the International Organization for Standardization (ISO) over its entitlement to its own code in ISO 3166: the so-called "country code" standard (ISO, 2023).

Like the other Crown Dependencies, Sark was not a member of the European Union. However, it was connected to it via Protocol 3 of the UK's Treaty of Accession 1973. In essence, this provided that the Crown Dependencies would form part of the EU external customs territory, and that for the purposes of trade in industrial, agricultural, and horticultural

products, they would be treated as if they were a member state. In relation to capital and services (including financial services), the Crown Dependencies were to be considered a ‘third party’. While the Crown Dependencies were obliged not to discriminate between nationals of EU member states, there was no freedom of movement of persons applying to the Crown Dependencies. Other EU legislation also did not generally apply to the Crown Dependencies, although jurisdiction over the meaning of Protocol 3 ultimately lay with the European Court of Justice.

This arrangement was negotiated at a late stage of the UK’s accession to the European Economic Community (EEC) (Johnson, P., 2013) when it became apparent that the terms of the accession would apply to the Channel Islands by virtue of their being territories for whose international relations the UK government was responsible (Royal Commission on the Constitution, 1973, para. 1381). In the course of the negotiations for the UK’s entry to the EEC, each Channel Island legislature (Jersey, Guernsey, Alderney, and Sark) voted individually on the terms of the proposed protocol to the Treaty of Accession (Johnson, P., 2013, fn 208). The majority decision of Sark Chief Pleas was to approve the draft protocol. This differed from Guernsey which approved the protocol unanimously. This approach was affirmed in the 1990s, when the Home Office wrote to the Law Officers of Guernsey stating that Guernsey, Alderney, and Sark would be treated as separate jurisdictions in relation to international conventions, treaties, and agreements (Ogier, 2005, p. 101).

Sark has also featured as a site of geo-political interest in its own right. Its first experience of being entangled in modern global politics came through World War II. Along with the islands of Guernsey and Jersey, the people of Sark came under Nazi occupation in July 1940 as part of Hitler’s plan to use the Channel Islands as a staging post in the invasion of Britain (by contrast, the island of Alderney was almost entirely evacuated before German occupation). The British mounted two unsuccessful commando raids on Sark during the occupation, Operation Basalt in October 1942, and Operation Hardtack in December 1943. The events of Operation Basalt in particular were to have significant ramifications for military conduct during the war. Believing that British soldiers had killed German soldiers who had already surrendered, as retaliation Hitler issued the “Commando Order”, ordering the immediate execution of Allied Commanders captured in Europe and Africa (Lee, 2017). Sark’s Liberation Day is celebrated on the 10<sup>th</sup> of May (while Guernsey and Jersey celebrate on the 9<sup>th</sup> and Alderney on the 16<sup>th</sup>).

More recently, in 1990 French physicist Andre Gardes, believing himself to be the rightful Seigneur, declared his intention to take Sark for France. He put this plan into effect by parading in front of the Seigneurie in full army fatigues and armed with a semi-automatic rifle. Quick thinking from the local constabulary saw Gardes disarmed of his rifle and arrested. He served a week in custody but was undeterred. A year later, Gardes attempted to return to Sark to finish the job. This time he was intercepted in Guernsey (Sutton, B., 2013). Similar small-scale and idiosyncratic territorial claims were made to Jersey’s Les Minquiers and Les Ecréhous in the 1990s (Bicudo de Castro, Fleury and Johnson, 2023).

As well as its land, Sark’s waters are also politically contested. Its territorial seas are rich in fish and lobsters, which has attracted the interest of its neighbour France. In 1996, British government officials and the French navy monitored a fleet of over 60 fishing boats which had advanced on Sark as part of a dispute over rights to two fishing areas known as the “Sark Box” and “Haricot”. The planned invasion on 1 December did not take place, and the matter was eventually resolved through diplomatic talks in Paris between the French and British

government (Jeune, 1996). However, the fact of the incident itself, and the high-level involvement of both France and the UK, point towards the importance and political ramifications of Sark's geographical boundaries.

(2) *Sark at international law*

Sark has received some attention at international law, most notably and recently in litigation brought by Frederick and David (who died in 2021) Barclay challenging aspects of Sark's law and governance for not complying with the European Convention on Human Rights. The Barclay brothers held the freehold to the island of Brecqhou, which lies just off the coast of Sark and has a somewhat contested relationship with it (Johnson, H., 2014; Rivett, 1999; 2002). In these challenges, some of which came before the European Court of Human Rights (see Pullam and Titterington, 2015), there was no suggestion that Sark's governance arrangements were the past or future responsibility of Guernsey. Rather, they were for Sark to decide, subject to the determinations of the Court. Extensive democratic reforms did come to Sark in the form of the Reform (Sark) Law 2008 passed by Chief Pleas and given the Royal Assent by the Privy Council. These involved the removal of the automatic right of tenants to sit in Chief Pleas and their replacement with democratic elections as well as the removal of voting rights from the Seneschal and the Seigneur who sit *ex officio*. Further reforms, albeit mostly minor, have been made in the years since, but they still help to reaffirm Sark's particular political identity.

In litigation before the International Court of Justice (ICJ) in the 1950s, the UK and France were in dispute over the ownership of two sets of islands off the coast of Jersey. In the *Minquiers and Ecréhous case*, the ICJ set out the constitutional and other documents relevant to the sovereignty question. Although the case did not touch on Sark's status *per se*, in the course of judgment the Court made the significant observation that “[e]ven some of the more important Islands, such as Sark and Herm, were only occasionally mentioned in documents of that period, though they were held by the English King just as were the three largest Islands [i.e., Jersey, Guernsey and Alderney]” (ICJ, 1954, p. 55). This statement affirms, at the very highest level of international law, the historical evidence outlined above, that Sark has its own individual relationship with the British Crown, rather than being subsumed into one of the larger Crown Dependencies.

*Criterion Two: Sark, the British Government, and the Bailiwick of Guernsey*

The Kilbrandon Commission, which was primarily established to consider the UK's constitutional position prior to its accession to the then EEC, devoted a chapter of its report to the Crown Dependencies. Most of its focus was on the larger islands of Jersey, Guernsey, and the Isle of Man. Nonetheless, it considered each island individually and on its own terms.

The Commissioners visited Sark (Kilbrandon, 1973, para. 1343), and noted that “it has an independent relationship with the government of the United Kingdom” (Kilbrandon, 1973, para. 1355). Significantly, the Report observed that “Chief Pleas of Sark stated that the constitutional relationships between the Islands and the United Kingdom were, broadly speaking, the same as those between Guernsey and the United Kingdom, as set out in the evidence of the States of Guernsey; and this was accepted by the States of Guernsey and by the Home Office” (Kilbrandon, 1973, para. 1448). The Commissioners concluded the section on Sark by saying “Sark had managed its own affairs for over 400 years and had always remained



solvent. It had at no time received grants from any outside source, not even by way of compensation for war damage” (Kilbrandon, 1973; para. 1454).

The approach taken by the Kilbrandon Commission has strongly influenced the practices of the British government in dealing with the Channel Islands. As noted above, each of the Channel Islands was consulted separately and voted individually on the implications of the UK joining the then EEC. In the negotiations to withdraw from the now EU, it was agreed that each of the Islands would have a ‘seat at the table’ with the British government and be able to put forward its own individual concerns (House of Commons Justice Committee, 2017b, para. 19). Guernsey did not speak for Sark or Alderney unless this had been mutually agreed. In 2020 the British government prefaced its actions with the statement that “the Government will act in these negotiations on behalf of all the territories for whose international relations the UK is responsible. In negotiating the future relationship between these territories and the EU, the UK Government will seek outcomes which support the territories’ security and economic interests, and which reflect their unique characteristics” (Bell, 2021, p. 257).

In addition, there is clear evidence that those British government departments which liaise with the Channel Islands engage with each island on its own terms. For example, the governance arrangements of Sark came in for particular comment in the 2014 Report of the Justice Committee: *Crown Dependencies: Developments since 2010*. There it was noted that the UK Ministry of Justice has been providing support and encouragement to the Sark Chief Pleas on these issues (House of Commons Justice Committee, 2014, para. 62-63). The Ministry of Justice (MOJ) also organised workshops on economic development for Sark (MOJ, 2014, para. 65). The British government has noted that in these endeavours the MOJ “have received welcome assistance from other Crown Dependencies”, as well as commenting that “the conseillers in the Chief Pleas who have worked hard to strengthen governance on the Island, without administrative support” thus indicating that Sark itself is seen as a Crown Dependency in its own right, rather than a dependency of Guernsey which would have been expected to provide administrative support in these circumstances (House of Commons Justice Committee, 2014, para. 67).

The Westminster Parliament also engages with each of the Channel Islands separately. For example, in the 2014 report the Justice Committee took evidence from Sark Chief Pleas generally and on matters of particular relevance to Sark (House of Commons Justice Committee, 2014, para. 26). Particular attention was also paid to Sark’s special concerns by the Justice Committee in the 2017 report on Brexit and the Crown Dependencies, with Committee members hearing the views of the Chief Pleas. It was noted that Sark’s interests differ from that of Guernsey in some respects, such as the particular importance of tourism (particularly from Germany), and French fishing rights in Sark waters (House of Commons Justice Committee, 2017a, Annex).

### *Criterion Three: Sark’s governmental autonomy*

As noted, Sark maintains its own legislative and executive body (Sark Chief Pleas) and operates its own fiscal system.

#### *(1) Fiscal autonomy*

Sark receives no financial assistance from the other Channel Islands of Jersey, Guernsey, or Alderney nor the British government. It raises its own tax revenues. There is no income tax

on Sark, unlike Guernsey which taxes personal income at 20%. Nor is there capital gains tax, inheritance tax or sales tax. It does have some property taxes, and a per capita resident tax. Tax is also raised through customs duties. The tax return is one page long. Most people on Sark pay somewhere between £1500 and £5,500 in tax. The government's annual income is approximately £1.3 million (Parry, 2023).

## (2) Legal autonomy

Sark has an 18-member legislature, all unpaid, known as Chief Pleas. The members of Chief Pleas also form the government. Sark makes its own laws and also has its own customary law. Sark's Ordinances (laws) may be invalidated by the Royal Court of Guernsey solely on the basis that they are *ultra vires* (i.e., beyond the competence of Chief Pleas to make: s 39, Sark (Reform) Law 2008). However, Chief Pleas retains the right to appeal to the Privy Council should the Royal Court of Guernsey do this.

Sark has a single judicial officer, known as the Seneschal, who presides over the Court of the Seneschal. The Bailiff of Guernsey is the President of Guernsey's Court of Appeal and has the power to sit on a case involving Sark in the Guernsey Royal Court. However, the Bailiff has no political influence or executive power over Sark.

Sark's law-making capacity has resulted in some distinctive differences when compared to the other Channel Islands. For example, due to the particular nature of property law on Sark, based on its settlement through 40 indivisible tenements, it was not possible to buy a property with the assistance of a mortgage on Sark until 2021. Those born outside marriage could not inherit personal property until 2007; although it should be noted that Sark was ahead of the other Channel Islands on this reform. In Jersey it was 1973 for the mother's estate and 2010 for the father's, in Guernsey 2008, and Alderney 2015. The doctrine of *couverture* applying to married women was not abolished until 1975. Divorce was not legal on Sark until 2003 (and even now, the proceedings must be initiated through the Royal Court in Guernsey rather than in Sark). Same-sex marriage was legalised on Sark in 2020, the last of the British Isles to do so; in Alderney and Guernsey it was 2018 and in Jersey 2017. Sark has no company law, and for many years, this loophole was exploited by thousands of overseas companies through the renting out of residents' names as company directors in return for the privacy and tax benefits (Piggott, 1999). From 2022, Sark residents have been eligible to vote in a Chief Pleas election from the age of 16; in Alderney the voting age is 18, while Jersey and Guernsey both lowered the voting age to 16 in 2007.

It should be noted that the three jurisdictions of the Bailiwick share a common criminal law. The Sark Court was expected to apply Guernsey law under the Order of 1583 but since crime on Sark was "extremely rare" (Royal Commission, 1848, p. xlv), there were few opportunities to apply *any* criminal law, let alone develop a distinctly Sarkese criminal law.

Civil law, comprising statutory and customary law, is within their own hands. Sark's distinct customary Norman-rooted law (which has been traced back as a distinct body of law to the 12<sup>th</sup> century (Le Patourel, 1937, p. 109)) as well as its enjoyment of unlimited civil jurisdiction dating back to the Tudor era was recognised by the UK's Judicial Committee of the Privy Council as recently as 2018 (*A v R* [2018] UKPC 4, para. 24). Sark has its own variant of the ancient Norman "Clameur de Haro", a cry of justice in the face of a wrongful interference with property. The raising of the Clameur immediately creates an injunction against the purported wrong doer. In Jersey and Guernsey, the Criant must declare before two witnesses

*“Haro! Haro! Haro! A l'aide mon Prince! On me fait tort!”*, (“Hear Ye! Hear Ye! Hear Ye! Help me, my Prince! A wrong is done to me!”) followed by the recitation of the Lord’s Prayer in French; on Sark, the prefatory phrase is *“Haro, haro, haro! Au nom de Dieu et de la Reine, laissez ce travail!”* (“Hear Ye, Hear Ye, Hear Ye! In the name of God and the Queen, stop this work!”). Sarkese Criants must also be bareheaded for the Clameur to be valid (Ewen and de Carteret, 1969, p. 181). The last recorded use of the Clameur in Sark was in 2021.

Guernsey may also legislate in general terms for Alderney without its consent. This arrangement, begun in 1948, persists to this day. While Guernsey may legislate for Sark, it can only do so with Sark’s consent, granting Sark more extensive control over its non-criminal statutory law than Alderney. All three jurisdictions are equally legislatively subordinate to the Westminster Parliament.

(3) *Administrative and political autonomy*

In terms of Crown administration, the Lieutenant-Governor of Guernsey, who is the Monarch’s representative, acts in that capacity for Sark and Alderney as well. Sark has a Senior Administrator, who performs various civil service functions. There is a small supporting civil service of around four people.

By way of a brief example of Sark’s unique administration, Sark has its own, very basic, form of social security, quite apart from the other islands of the Bailiwick. There is no form of universal social security provided on Sark. There is no universal healthcare provision, no maternity benefit, no child benefit or tax relief, no provision for long-term elder care, no disability or sickness benefit, no workplace injury benefits, no survivor benefits, no unemployment benefit or state pension. Individuals have to make their own arrangements. Funds to pay for the cost of prescription medicines are raised through the sales of Sark’s charity shop and fundraising events such as the annual Sark sheep races. In cases of urgent need, there is a loose system for assistance in place. The Procureur is responsible for financial assistance for those in need. Assistance is discretionary and no criteria for eligibility are publicly available.

Alderney, the middle-sized island of the Bailiwick, has close ties to Guernsey, much more so than Sark. As a consequence of Alderney’s devastation following the German occupation in World War II, arrangements were made in 1948 for Guernsey to assume responsibility for major services and some legislative powers in Alderney in return for an annual remittance from Alderney. Two Members of the Alderney States are also entitled to sit and vote in the Guernsey States of Deliberation. No such political, legal, or administrative arrangement exists between Guernsey and Sark. Sark made reforms to its own government in 1951 via the Reform (Sark) Law, which repealed and replaced the Island of Sark Constitution Order of 1922 (this introduced elected Deputies to Chief Pleas alongside the owners of the 40 tenements).

It is also worth noting that when Guernsey undertook extensive reforms to its constitution in the early 2000s, the considerations and the subsequent constitutional changes did not involve or affect Sark. Consequential reform was required however on Alderney, reflecting the interconnectedness of their governments (Government of Alderney Law 2004). Sark’s own constitutional change was undertaken separately with a quite different catalyst and was completed later in the decade.

## Conclusion: Not three, but five

Sark's relationship with Guernsey has been frequently misunderstood and mischaracterised. But the Bailiwick of Guernsey is not a constitutional or legal construct, and it does not consist of one dominant jurisdiction (Guernsey) and two lesser, dependent jurisdictions (Alderney and Sark). Indeed, this conclusion was explicitly rejected by the Kilbrandon Commission, still regarded as the foremost authority on Britain's constitution and its relationships with the Channel Islands.

Sark's position with the Bailiwick of Guernsey is an administrative mechanism rather than an indication of legal status. Sark is a Crown Dependency in its own right, not a part of or dependency of Guernsey. Furthermore, at no point in its history has Sark been subject to the rule of Guernsey or supported financially by Guernsey. Sark does share in the resources of Guernsey to some extent. For example, appeals from Sark's Court are to the Guernsey Royal Court. Sark divorces must be initiated in the Royal Court as well, but this is clearly for capacity reasons, and not uncommon in small jurisdictions, as the Eastern Caribbean Supreme Court (serving six independent states and three British Overseas Territories) or the locating and staffing of the Pitcairn Court of Appeals in New Zealand demonstrates.

Notably, the Kilbrandon Commission considered that the arrangement between Guernsey and Alderney for the larger island to provide services and political representation in return for a proportion of the smaller island's tax revenues, was:

not considered to have affected Alderney's general constitutional position as a largely autonomous dependency of the Crown. They are regarded in Alderney as temporary ones, made for the convenience of the Island, with the intention that Alderney should one day regain a measure of independence similar to that which existed before the War (Royal Commission on the Constitution, 1973, para. 1451).

It must follow that this conclusion applies *a fortiori* to Sark and the arrangements it makes with Guernsey for the use of its judicial resources.

Present day practice of the British Government acknowledges and continues this approach to Sark. For example, Sark has been consulted individually for its views on the joining and the exiting of the EU both by the UK government and the UK parliament. Sark's distinct laws have been recognised by the UK's highest court. Within international law, Sark has been recognised as a self-governing entity responsible for its own governance and development.

In conclusion, there is a clear line of autonomy that can be traced from the settlement of Sark in the high Middle Ages through to the present day. Sark, for all intents and purposes, is a self-governing autonomous jurisdiction, responsible for its own fiscal system, administration, political governance, and legal system, just as Jersey, Guernsey, and Alderney are. Sark, like the other Channel Islands, is a Crown Dependency, with a direct relationship to the British Crown in the person of the Monarch. In Sark's case, this is no better illustrated by the fee of £1.70 paid each year by the Seigneur to the Duke of Normandy and King of the United Kingdom, King Charles III, for the continued possession and enjoyment of Sark. Sark is not, as the Privy Council has said "a dependency of Guernsey". There are not three Crown Dependencies (as others have said), but five. We would better reflect Sark's history and current reality in saying so.

## Disclaimer

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