

RESEARCH ARTICLES

Islandness and Appreciating the Importance of the Rule of Law in a 21st Century Island Context: The Case of the Isle of Man

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Despite the vibrant and growing island studies scholarship exploring the unique characteristics of Islands and Islandness, which is both multidisciplinary and interdisciplinary, there has been little research into the unique characteristics associated with the appreciation of the Rule of Law and island identity in an island context. Similarly, although within legal scholarship there has been much exploration at international, European, and national levels of the importance of appreciation of the Rule of Law and its role in helping to reduce the risk of arbitrariness, there has been little consideration in an island context of why the importance of the appreciation of the Rule of Law matters. Building upon both fields of scholarship, the present article uses the Isle of Man as a lens to explore, firstly, why the importance of the appreciation of the Rule of Law in an Island context matters from a legal perspective. Secondly, how exploring the unique characteristics associated with the appreciation of the Rule of Law in an island context provides a greater understanding of the uniqueness of island identity and islandness. The present article is therefore a novel contribution to legal scholarly literature and a timely addition to island study literature.

Introduction - Why an appreciation of the Rule of Law matters in an island context

The emergence of island studies literature, which is both multidisciplinary and interdisciplinary in nature (Grydehøj, 2017), has recognised not only how “islands are different” (Ronström, 2009, p. 171) but that “islands have an exceptional ability to instil a sense of local or regional identity in their inhabitants” (Edquist & Holman, 2015, p. 17). Island studies literature too has emphasised how islands frequently have unique characteristics which help to underpin both a strong and palpable sense of island identity amongst islanders (Conkling, 2007). Furthermore, the notion of island identity itself has been identified within island study literature as one of the core components of islandness, (e.g. Hepburn, 2012, p. 127) a term one author has defined as “a metaphysical sensation that derives from the heightened experience that accompanies physical isolation. Islandness is reinforced by

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boundaries of often frightening and occasionally impassable bodies of water that amplify a sense of a place” (Conkling, 2007, p. 191). However, whilst acknowledging that there are many other valuable conceptual debates on the meaning of islandness, (e.g. Baldacchino, 2008; Grydehøj, 2017; Nicolini & Perrin, 2021), this article relies on a broader definition of islandness which “refers to qualities of islands that distinguish them from the continent,” (Tsampi, 2023, p. 249) in addition to literature which has explained how islands frequently have unique characteristics which help to underpin both a strong and palpable sense of island identity amongst islanders (Conkling, 2007).

It is also worthy of note that each individual island sometimes has its own unique language. For where an island has its own language this is both important in promoting down the ages a strong sense of community and island identity as well as contributing to the uniqueness of a particular island. So, for example, even where an island has a language which is not widely spoken, research has highlighted the importance of having visible and public signs of the language in the island and how “the presence of the minoritized language (Gaelic, for example) in the linguistic landscape can contribute most directly to the positive social identity of ethnolinguistic groups” (Landry & Bourhis, 1997, p. 27).

On the other hand, despite the above literature and the increase in island studies scholarship, there has been little research into whether there are any unique aspects of the Rule of Law in an island context which help to promote island identity, although there has been some interdisciplinary empirical research which has explored whether island states have better institutions (Fors, 2014). There has also been other island studies research which focuses more specifically on island law and islandness and how island law “may trigger forms of insular remoteness,” (Nicolini & Perrin, 2021, p. 4).

Within legal scholarship too, although there been much exploration of the importance of appreciation of the Rule of Law at international and European levels and a widespread recognition that the “rule of law constitutes a fundamental and common European standard to guide and constrain the exercise of democratic power,” (Venice Commission of the Council of Europe, 2009, p. 69) there has been little consideration of why the importance of the appreciation of the Rule of Law matters in an island context. The present article therefore seeks to address the latter lacuna by using the Isle of Man as a lens to explore why an appreciation of the Rule of Law in an island context matters from a legal perspective. Further on, the present contribution also considers how in the Isle of Man there remains in the 21st century a unique, symbolic and time in memoriam characteristic of the Manx Rule of Law namely the ancient practice of promulgation which today involves reading out the summaries of the new laws in both English and Manx Gaelic to the Manx people at an annual open-air ceremony each year (*Legislation Act*, 2015). At the heart of this analysis is a paradox. For such

an ancient practice continues to have significance in the twenty-first century through demonstrating publicly the island's appreciation of the importance of the Rule of Law at international and island levels as well as forming a unique characteristic of the Manx legal system and Manx islander identity. Such research is important firstly from a legal perspective as it explores the uniqueness of one island's appreciation of the Rule of Law and why an appreciation of the Rule of Law in an island context matters. Secondly, from an island studies perspective, such research is timely as it uses the Isle of Man as a lens to explore various unique characteristics related to the appreciation of the Rule of Law in an island context.

A widespread recognition of appreciating the importance of the Rule of Law for reducing the risk of arbitrariness

Within legal scholarship there is a widespread recognition of the symbolic importance of the Rule of Law (Venice Commission of the Council of Europe, 2009) with the core of the Rule of Law itself being broadly concerned with “the restriction of the arbitrary exercise of power by subordinating it to well-defined and established laws” (United Nations and the Rule of law, n.d., p. 2). It is also widely recognised as a “principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated” (United Nations and the Rule of law, n.d., p. 2).

On the other hand, there is contestation in legal scholarship as to the exact meaning of the Rule of Law. Pivotal within such contested debates are the formal and substantive views of how the Rule of Law should be defined (Craig, 1997). So, for example, Craig highlights how although the formal view focuses on what the formal and procedural attributes of the Rule of Law should entail, “Formal conceptions of the rule of law do not however seek to pass judgment upon the actual content of the law itself. They are not concerned with whether the law was in that sense a good or a bad law, provided that the formal precepts of the rule of law were themselves met” (Craig, 1997, p. 467).

A competing substantive view, on the other hand:

accept that the rule of law has the formal attributes (...) but they wish to take the doctrine further. Certain substantive rights are said to be based on, or derived from, the rule of law. The concept is used as the foundation for these rights, which are then used to distinguish between ‘good’ laws, which comply with such rights, and ‘bad’ laws which do not. (Craig, 1997, p. 467)

Nevertheless, despite such contested debates as to the exact meaning and content of the Rule of Law, it is widely acknowledged at international level that firstly at the heart of this concept is an ideal that the government and

public institutions of a society as well as its citizens are all governed by the same law and held accountable to the same set of laws with adherence to the latter by public institutions playing a vital role in helping to reduce the risk of arbitrariness. This is evidenced, for example, by the Venice Commission who elaborate further that:

“The rule of law in its proper sense is an inherent part of any democratic society and the notion of the rule of law requires everyone to be treated by all decision-makers with dignity, equality and rationality and in accordance with the law, and to have the opportunity to challenge decisions before independent and impartial courts for their unlawfulness, where they are accorded fair procedures. The rule of law thus addresses the exercise of power and the relationship between the individual and the state.” (Venice Commission of the Council of Europe, 2009, p. 5)

Secondly, that the Rule of Law requires laws to be consistent with international human rights norms and standards. For, and as evidenced in the preamble to the United Nations Declaration on Human Rights (1948), “it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law” (p. 1).

At European level the Rule of Law is enshrined in the Treaty as a Treaty value (Article 2 TEU). Thus, “the EU’s rule of law is a quintessential value of immense symbolic importance for the European Union and its citizens with “adherence to the rule of law symbolis[ing] a legal system where both governing bodies and citizens are bound by the law” (Farrant-Shaw, 2022, p. 51). Furthermore, “the rule of law as a Treaty value also provides a guiding light for those involved in the operation of the EU’s legal system” (Farrant-Shaw, 2022, p. 51), as well as being considered by the European Commission to be “the backbone of modern constitutional democracies” (Pech & Grogan, 2020).

There is also a wealth of academic literature which has highlighted the importance of a core element of the Rule of Law that the government and public institutions of a society as well as its citizens are all governed by the same law and held accountable to the same set of laws. For adherence by governments and public institutions of the latter are really important in helping to reduce the risk of arbitrariness (e.g., Konstadinides, 2017, p. 47). Thus, and as Tamanaha explains, “the rule of law is a major source of legitimation for governments in the world” and thus “a government that abides by the rule of law is worthy of respect” (Tamanaha, 2012, p. 232).

In addition, a recognition by the public institutions of any community to the essential importance of the rule of law is widely acknowledged as being crucial for the:

“foundation for the development of peaceful, equitable and prosperous societies’ and supporting ‘stable economies and economic growth by upholding property rights, facilitating the elimination of corruption, and maintaining a business environment in which contracts are enforced, and international trade and investment can flourish.” (*UCL, The Constitution Unit*, 2022, p. 1)

On the other hand, a common thread running through the above academic literature is that pivotal for the practical application of ensuring that all are governed by the same law are various core requirements. These include, firstly, that there are various procedural and formal Rule of Law requirements with one of the most important being that the law should be clear, publicised, and stable and is applied evenly. This is evidenced, for example, by the World Justice Project who emphasise that a just law is where, “the law is clear, publicised and stable and is applied evenly” (World Justice Project, 2021, p. 14). In addition, there is also widespread appreciation of the importance at international and national level of the symbolic importance of the Rule of Law as well as a recognition at international level that where a government, public institutions, and the citizens of a community all are all governed by the same law, and all adhere to the same law, that this plays an important role in helping to reduce arbitrariness (World Justice Project, 2021).

Secondly that it is widely recognised that the law should not only be publicised but also publicly administered in the courts. For not only should the legislature and government be able to point to some basis for its action that is regarded as valid by the relevant legal system “that all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefits of laws publicly made (...) and publicly administered in the courts” (Bingham, 2011, p. 8). Furthermore, there should be a respect for the principle of open justice which, and as stated by Lady Hale:

“The principle of open justice is one of the most precious in our law. It is there to reassure the public and the parties that our courts are indeed doing justice according to law. In fact, there are two aspects to this principle. The first is that justice should be done in open court, so that the people interested in the case, the wider public and the media can know what is going on. The court should not hear and take into account evidence and arguments that they have not heard or seen. The second is that the names of the people whose cases are being decided, and others involved in the hearing, should be public knowledge.” (*R (on the application of C) (Appellant) v Secretary of State for Justice (Respondent)*, 2016, para 1)

For the purposes of this article, therefore, the Rule of Law requirement that laws should be public involves there being common knowledge within a community of the law and which arises from legislation (Celano, 2013) and “that all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly and prospectively promulgated and publicly administered in the courts” (Bingham, 2006, p. 8).

Relatedly, the judiciary too are perceived as playing a vital role within an established court system not only in respecting the importance of the rule of law but also in ensuring that governmental bodies exercise their powers according to law (Swart, 2019). However:

“the rule of law cannot be achieved or maintained without the presence of an independent, impartial and effective judiciary. This means that courts, judges and judicial staff must be able to do their work without pressure, influence, interference or restriction of any kind or from any source; any impediment to the exercise of their functions would obstruct the application of the law, and the maintenance of a peaceful and just society.” (United Nations, 2020)

Thus, thirdly, it is recognised that the Rule of Law requires judicial independence as judges are perceived as playing a vital role in ensuring that governmental bodies exercise their powers according to law. Judicial independence itself also broadly requires that judges within a particular legal system should be able to carry out their judicial role without interference from the executive or other actors (Swart, 2019). So, for example, there should not be executive or political interference which may interfere or hamper the role of a judge such as threats to judicial security of tenure, the ability of the executive to discipline or remove judges or to affect adversely the remuneration of judges or personal immunity of judges (Swart, 2019). Judicial independence therefore plays a vital role in ensuring that not only are individuals able to litigate in a court and have their dispute resolved according to established and clear public laws which apply equally to all, but also in judicial review cases through ensuring that all public bodies are bound by the Rule of Law.

However, there also needs to be an appearance of judicial independence in respect of the operation of the legal system. For as Lord Justice Hewart stated, “Justice must not only be done, it must be seen to be done” (Hewart, *ex parte McCarthy* 1924, p. 259). In addition, the Bangalore Principles of Judicial Conduct too state that, “the behaviour and conduct of a judge must reaffirm the people’s faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done” (United Nations, 2002, s.3.2). Thus, and as Kelly argues, “The key to fostering and establishing the ‘Rule of Law’ is to ensure that the judiciary is not only independent but appears to be independent” (Kelly, 2002, p. 1). Furthermore, judicial

independence is an important part of a wider system of checks and balances and separation of powers whereby “The judiciary must not have any contact with political parties—especially the party in power—and must limit contact with the executive branch to security, financial and administrative matters” (Kelly, 2002, p. 1).

At International level, judicial independence is also a key concept in the 1948 Declaration of Human Rights where it is inexorably intertwined with various key principles within that Declaration. These key principles are outlined by Kelly as being:

“the principles of equality before the law (Article 7), the presumption of innocence (Article 11) and the right to a fair and public hearing by a competent, independent and impartial tribunal established before the law (Article 10) (...) [and which] were further endorsed by the United Nations (UN) in its adoption in 1985 of the Basic Principles on the Independence of the Judiciary, and of the Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary in 1989”. (Kelly, 2002, p. 1)

Judicial independence is therefore widely recognised at international level as a key element of the Rule of Law. It is also recognised as being closely linked to the importance of appreciation of a core element of the Rule of Law namely that the government and public institutions of a society as well as its citizens are all governed by the same law and held accountable to the same set of laws, the latter playing a key part in helping to reduce arbitrariness. Thus, adherence by governments and public institutions of the latter and the vital role of the judiciary when reviewing whether governmental bodies are exercising their powers according to law are both important in helping to reduce the risk of arbitrariness (Konstadinides, 2017, p. 47).

The importance of appreciation of the Rule of Law in an island context and islandness– the case of the Isle of Man

Introduction

Despite the widespread recognition at international, European, and national levels of the importance of an appreciation of a core tenet of the Rule of Law that no government or public institution is exempt from the law as well as the recognition of how adherence to the Rule of Law plays an important part in helping to reduce the risk of arbitrariness, (Venice Commission of the Council of Europe, 2009, p. 69), there has been little discussion in legal scholarship exploring the appreciation of the importance of the Rule of Law in an island context. For, from a legal perspective, the importance of the Rule of Law and that no government or public institution is exempt from the law also matters such as, for example, for helping to reduce the risk of arbitrary government in an island context. Furthermore, from

an island studies perspective, the exploration of any unique characteristics associated with the appreciation of the Rule of Law in an island context matters in helping to understand further the uniqueness of island identity.

Building therefore on both existing Rule of Law literature on the importance of appreciation of the Rule of Law whereby no government or public institution is exempt from the law and island study literature which explains how islands frequently have unique characteristics which help to underpin both a strong and palpable sense of island identity amongst islanders, (Conkling, 2007) the present article uses the Isle of Man as a lens. Firstly, to explore some examples of the appreciation of the importance of the Rule of Law in the Isle of Man. Secondly, how a unique characteristic of the Rule of Law in the Isle of Man matters for increasing understanding of Manxness. Such consideration, it is hoped, will encourage future discussion of why the importance of the appreciation of the Rule of Law in an island context matters not only from a legal perspective but also how exploring the unique characteristics associated with the appreciation of the Rule of Law in an island context can also be a valuable part of the growing island studies scholarship.

The Isle of Man – an island with a unique identity and good evidence of an appreciation of the importance of the Rule of Law

The Isle of Man is a small, mystical island in the Irish Sea with a current population estimated in 2023 by the United Nations at 84,710 (United Nations, 2023). Situated between the United Kingdom on the one side and the Republic of Ireland on the other it has its own distinctive and unique history (Belchem, 2000; Moore, 1900) as well as a rich tradition of Manx folklore and legends (Rhys, 1901). Furthermore, despite being “an almost entirely self-governing Crown Dependency whose principal constitutional institution is the Tynwald”, (Edge, 2016), “the Isle of Man is [also] an ancient Kingdom. It has its own Constitution, its own Legislature, its own court and Judiciary” (R. D. Farrant, 1945, p. 17). For uniquely, and as Deemster Cain explains, “the Manx Constitution is not, and never has been, an anomaly, but is the produce of the rational decisions of the rules of the Isle of Man over many centuries, based on the island’s geography and history” (Cain, 2018). A further unique aspect to note is also that in the island judges are called Deemsters who “in their legal capacity, hold a position analogous to that of a justice of the Supreme Court of Judicature in England. In Man this Court is called the ‘High Court of justice of the Isle of Man’” (R. D. Farrant, 1937, p. 67). Regarding the island’s courts, even though the Isle of Man is a Crown dependency “it is accepted by the Manx and English courts that the Isle of Man has never been part of England” (Edge, 1997, p. 124). Consequently, the existence of its own constitution, own legislature, courts, and judiciary in the Isle of Man have all helped to give the island its own unique and separate identity from the UK. This is also highlighted in literature which acknowledges how the ‘essence’ of the Isle of Man’s separate identity can be

found in Tynwald, the Isle of Man's legislative body which the island claims as the world's oldest continuous parliament. Festivities during the annual Tynwald Day holiday celebrate the island's ancient Viking and Celtic roots and heritage as well as its distinct political status (D. G. Kermode, 2001).

Other literature too notes how notions of a separate and unique identity in the Isle of Man is coined Manxness and how, "the Island's more common way of expressing its 'Manxness' as a shared culture [is] through the celebration of traditions that emphasize its uniqueness and cultural difference from the United Kingdom" (Catte, 2015, p. 4). Furthermore, the island has many unique characteristics which are closely connected to Manxness. These are wide ranging but in addition to its own Parliament and legal system also include, for example, its own history, enchanting Manx traditional folklore (Morrison, 1929) as well as some unique and historic public offices such as, for example, the Captain of the Parish (Radcliffe, 1997) and the office of Vicar General (P. W. S. Farrant, 1995).

However, one of the most unique and historic features of the Isle of Man is Manx Gaelic. (Stowell & O'Breaslain, 1996) "which is a very visible marker of Island identity" (The Scotsman, 2023). In addition, prior to the nineteenth century, Manx Gaelic was historically the language of everyday life and even though official documentation and the law was in either English or Latin (*Manx Manorial Roll*, n.d.), within the earliest official court records in the Manx Manorial roll there are some personal names as well as place names recorded in Manx Gaelic (*Manx Manorial Roll*, n.d.).

It is also worth noting that although there was a demise during the early nineteenth century in the prevalence of Manx Gaelic being spoken, the latter language has more recently undergone a revival, the latter revival being noteworthy and described by Gawne as "a linguistic and cultural phoenix" (Gawne, 2002, p. 182). So Manx Gaelic continues to remain closely linked with notions of Manxness (Catte, 2015) and Manx identity with Manx Gaelic also bringing "a deep sense of identity' as well as 'build[ing] networks and communities'" (Isle of Man Manx Language Strategy, 2022, p. 3). Manx Gaelic therefore remains important in the 21st century in helping to promote down the ages a strong sense of community as well as contributing to the uniqueness of a particular island and is an example of how "language matters—spiritually, culturally, emotionally. Written and spoken words are an art form, a way for values and traditions to be passed down for generations" (N. Rodgers, 2020).

Currently, Manx Gaelic is also important as a symbolic public language which further helps to affirm Manx identity. So, for example, in 1984 an Isle of Man Select Committee Report on Manx Gaelic (Isle of Man Government, 1984) and which was presented to Tynwald on the 10th July 1985 approved without further debate that "The Ceremonial Oaths entered in the Liber Juramentorum should be capable of being taken in Manx Gaelic provided certain conditions are fulfilled and appropriate legislation introduced where necessary" (p. 11). Uniquely, too the Tynwald ceremony has a reader or Yn

Lhahder who repeats formal public declarations at the outdoor sitting of parliament in Manx the latter role a President of Tynwald, Clare Christian, has described as “central to reaffirming the Manx identity of the formal proceedings of our national day” (*Manx Radio News*, 4.7.13, n.d.).

However, perhaps the most symbolically important use of Manx Gaelic, and which remains of relevance in the 21st century in respect of a unique aspect of the Manx Rule of Law, is the practice of promulgation. The latter practice currently involves a reading out of a memorandum in both Manx Gaelic and English of an Act’s short title and a concise statement of the effect of the new Act at an annual Tynwald ceremony each year (*Legislation Act*, 2015, [An Act of Tynwald], sections 13 and 14). This latter ceremony is also an immensely historic and symbolically important annual ceremony for the Manx people and their sense of Manx identity. For as Kermode explains, “the ‘essence’ of the Isle of Man’s separate identity can be found in Tynwald, the Isle of Man’s legislative body which the Island claims as the world’s oldest continuous parliament. Festivities during the annual Tynwald Day holiday celebrate the Island’s ancient Viking and Celtic roots and heritage as well as its distinct political status” (P. M. C. Kermode, 1879–1882, p. 1).

Thus, the Isle of Man is an excellent example of an island which has a variety of unique characteristics including its own Parliament, Manx legal system, unique offices, and unique Manx Gaelic language all of which help to underpin a strong sense of the uniqueness of the Isle of Man and a truly distinctive Manx identity. In view of the above and more widely the paucity of consideration of the importance of the Rule of Law in an island context in either Rule of Law or island studies literature, the Isle of Man has therefore been chosen as a lens to explore from a legal perspective one island’s appreciation of the importance of the rule of law as well as to explore a unique and symbolic characteristic linked to an appreciation of the Rule of Law and how this characteristic matters for increasing understanding of Manxness.

Examples illustrating the Isle of Man’s appreciation of the Rule of Law

There are many examples which evidence, for the most part, a strong appreciation of the importance of the Rule of Law in the Isle of Man (*Reill y leigh ayns Ellan Vannin*) and which is consistent with existing Rule of Law literature considered above on the importance of appreciation of the Rule of Law whereby no government or public institution is exempt from the law. So, for example, firstly in the Isle of Man all persons and authorities within the state, whether public or private, are bound by Manx law as well as being entitled to rely upon these laws in Manx courts. From a Rule of Law perspective, the latter matters immensely in an island context and is consistent with the widely accepted view that “all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly and prospectively promulgated and publicly

administered in the courts,” (Bingham, 2006, p. 8) the latter playing an important part in helping to reduce the risk of arbitrariness (Venice Commission of the Council of Europe, 2009).

Secondly, Manx law is also widely accessible to all by being available online. So, for example, all Manx legislation is recorded online (Isle of Man Government, 2023) and freely accessible to all albeit there has been some literature which has highlighted how during the recent unprecedented Covid 19 public health emergency there were difficulties relating to the availability of the law in the Isle of Man both in relation to laws being published after they came into effect, and informal law making (Edge, 2021).

Thirdly, the Manx legal system is a common law based legal system where all persons and authorities, whether public or private, within the Isle of Man are entitled to rely upon Manx laws in Manx courts (Corrin, 2019) and that the island’s Deemsters play an important role not only in the latter context but also in respect of reviewing the lawfulness of governmental actions or decisions through judicial review of administrative actions by a Petition of Doleance. For, as outlined by Rodgers:

“The petition of doleance is the Manx system of judicial review. It has developed to be a means for the “ordinary citizen” of the island to obtain redress for perceived injustice done him at the hands of those exercising judicial or quasi-judicial functions, i.e., administrative functions delegated by Tynwald.” (P. Rodgers, 2009, p. 4)

Although a detailed account of the history and development of Manx case law as well as the endurance of old customary Manx laws (Corrin, 2019) and the development of the Manx system of judicial review (Petition of Doleance) is beyond the scope of this article, it is worthy of note that all Manx cases are recorded and available to purchase in a series of the Manx Law Reports which provide an unbroken sequence of case law from 1522 to the present day. This series of books contain judicial opinions from a selection of case law decided by the Isle of Man Courts together with headnotes and indices to help users” (Isle of Man Courts of Justice, 2023, p. 1) There are also online case databases which make the law even more accessible to the population (de Feu & Lambert, n.d.).

In addition, it is also worth noting that there has been some academic and newspaper literature which specifically focuses on Manx law. The latter are a useful aid both to appreciating both the uniqueness of Manx law and Manx legal history as well as to understanding Manx law. So, for example, some early literature has been written by Manx Deemsters such as Deemster Moore who wrote about the Manx Common Law in “The Romance of the Manx Common law” and Deemster Farrant who wrote a book on the Manx Constitution and land tenure (R. D. Farrant, 1937). There have also been some more recent academic articles on specific areas of Manx law and legislation in the Isle of Man, for example, one on Church Legislation in the

Isle of Man, (Gumbley, 1994) as well as a comprehensive constitutional Manx law text by Professor Edge where he sets out “to detail those legal principles, often referred to as constitutional, essential for a good understanding of law in the Manx jurisdiction[and] to detail the principles and sources of criminal law within the Manx jurisdiction” (Edge, 1997, p. 3).

Thus, the Isle of Man not only has a unique system of Manx law reports/databases which helps to ensure the accessibility of Manx law but also has a range of literature which also illustrates the uniqueness of Manx law.

Fourthly, there is also a strong and explicit appreciation of the importance of the Rule of Law in the Isle of Man and as highlighted recently by one of the island’s Deemsters, Deemster Doyle particularly in relation to the importance of transparency and accessibility, the latter widely acknowledged as being a core component of the rule of law (World Justice Project, 2021). So, for example, the latter alongside a more general appreciation of the vital importance of the Rule of Law were stressed by Deemster Doyle who emphasised,

“Lest you forget, the rule of law must deliver just laws which:

- Apply to everyone equally (except where different treatment is objectively justified);
- Are enforced openly;
- Provide for fundamental human rights and responsibilities;
- Provide timely and cost-effective access to justice;
- Ensure that countries comply with their international obligations;
- Are clear, certain, predictable and most importantly accessible to all”. (Doyle, 2018, p. 1)

Various Manx Deemsters in Manx case law over time too have emphasised not only “how justice must not only be done but must be seen to be done” (Deemster Farrant, *Myers*, 1947, p. 337) but also how “the general rule is that all hearings ought to be in public” (Deemster Kerruish, *Byrne*, 2006, 14) and that “The principle of open justice is an important principle in this jurisdiction and indeed in other jurisdictions within Europe and further afield. It is a principle that should be acknowledged and recognised by advocates and by other court users” (Deemster Doyle, “Taylor and Neale,” 2011, p. 25).

In addition to the importance of open justice the operation of the procedural aspects of the Rule of Law must also “exist alongside an independent, adequately resourced, trustworthy and incorruptible judiciary” (Doyle, 2018, p. 2). It is also worth noting that there is an explicit recognition of the importance of judicial impartiality in the judicial oath for the

Deemsters in the Isle of Man and which is uniquely described as, "the need to execute the laws of the land as indifferently (as impartially) as "the herring backbone doth lie in the midst of the fish" (Doyle, 2018, p. 19).

Thus, the above examples provide evidence not only of some examples of a good level of appreciation of the importance of judicial independence and the Rule of Law on the Isle of Man by various Manx Deemsters but also how Manx law is widely accessible to all by being available online. This not only ensures the law is accessible to the public but also contributes to demonstrating to the wider world the efficacy and transparency of Manx public institutions and their administration of justice (de Feu and Lambert, 2011).

A key historic and symbolic characteristic of the Manx Rule of Law in the twenty-first century– Promulgation

Introduction

One of the most unique features of the current Manx constitutional and legal system, and which is also a well-known unique aspect of Manx history and identity, is the High Court of Tynwald which "is the Parliament of the Isle of Man and [which] has an unlimited, but not necessarily exclusive, legislative competence" (*Tynwald, Parliament of the Isle of Man*, 2024, p. 1). Furthermore, Tynwald is also reputed to be "of Norse origin and over 1,000 years old and is thus the oldest parliament in the world with an unbroken existence" (*Tynwald, Parliament of the Isle of Man*, 2024, p. 1). Although it is beyond the scope of this analysis to describe the history, composition, and function of this ancient and unique Parliament in depth, it is worthy of note that the latter have all extensively been considered by Professor Edge and who explains how, "Within the Manx constitution, the legislature is the Tynwald, sometimes referred to as Tynwald Court" (Edge, 1997, p. 135) and that "Tynwald and its constituent parts have at different times acted as national legislature, national executive, court and reviewer of juries" (Edge, 1994, p. 124). Furthermore, it is also worthy of note that there is a Tynwald ceremony and although the latter is understood to be an ancient ceremony, (Broderick, 2003) in the twenty-first century it is held annually and in a public open-air space on Tynwald Hill in St John's in the Isle of Man (Thing Sites International Networking Group, 2011–2024-2024). The current ceremony is accompanied by a fair, Manx music and Manx traditional dancing all of which help to engender a sense of an island community coming together in celebration as well as forming a unique part of island custom and tradition (Broderick, 2003) It is a powerful illustration in practice of how "An island offers a stage: everything that happens on it is practically forced to turn into a story, into a chamber piece in the middle of nowhere, into the stuff of literature" (Schalansky, 2010, pp. 19–20).

Promulgation - a key historic and symbolic characteristic of the Manx Rule of Law in the 21st century

Pivotal within the current Tynwald ceremony is promulgation. Currently this involves the practice of reading out of a memorandum of new laws in English and Manx Gaelic at Tynwald. (*Legislation Act*, 2015). This practice is also historic although, as Edge highlights, “originally the Act became law only after being read in full, in both English and Manx, from Tynwald Hill upon Tynwald Day” (Boyd, 1987, pp. 62–66; Edge, 1994, p. 111). In respect of the precise origins of the earliest practice of promulgation post 1000 AD these lie in the mists of time in an era of sea kings (McDonald, 2019) and during a time when laws were not written down but rather “developed from customs which had been passed on orally from one generation to the next” (Higgins, 2011, p. 2), such as the Brehon law in Ireland where the laws were not written down until the 7th century (Higgins, 2011, p. 1).

Nevertheless, even though the origins of the earliest practices of promulgation were not formally recorded or outlined in the few primary source records of the earliest Tynwald ceremonies that remain, they are acknowledged in literature as being part of early Manx tradition (Caine, 1891).

Furthermore, despite the paucity and obscurity of records of accounts of early Tynwald ceremonies and promulgation, Deemster Farrant has argued that the Tynwald ceremony retains the early Scandinavian features when he writes

The description is obscure in parts, [but] certain outstanding features may be noted as agreeable to the unbroken practice followed to this day. And first we note that it was an assembly of all the Commons of Mann. Next that it was held in the open air and that certain officials and ‘the worthiest of the land’ occupied positions upon a mound ringed for seats. And thirdly, that its purpose was to proclaim the laws to the people. (R. D. Farrant, 1909, p. 259)

In respect of the latter, it remains worthy of note firstly that earliest custom of proclaiming the laws in a public open-air ceremony to the people at the Tynwald ceremony has similarities with the historic Icelandic practice of law speakers proclaiming the laws at the old Icelandic “thing” (R. D. Farrant, 1909, p. 264). For in respect of the latter Icelandic ‘thing’ in the translation of the *Book of Settlement* by Ellwood, this is said to mean either, “1st. An assembly or muting; a general term for any public meeting, especially for the purpose of legislation, also the place where such assembly was held. 2nd. A district; county; shire; a thing community; a political division of a county” (Ellwood, 1898, p.xxvi). The law speaker at such an assembly is also included in the translation of the *Book of Settlements* by Ellwood as “the logma[^]Sr or logsogu-ma[^]Sr, law Speaker, or Speaker-at-Law, and his office was to preside

at the assembly, and as in heathen times the law was not written he had to say from memory on the Lodgberg, or law hill, before the assembled people what was the law of the land” (Ellwood, 1898, p. xxvi; Pirie, 2021, p. 185).

Secondly, it is also worth noting that historically in the Isle of Man the formal writing down of the use of proclamation of laws at Tynwald did not take place until the fifteenth century on 24th June 1417 when Sir John Stanley presided. Here, as Kermode explains, “abstracts of the Laws newly enacted are proclaimed by the Deemster, and, given in Manx as well as English.” (P. M. C. Kermode, 1879–1882).

With regard to the current promulgation procedure in the twenty-first century, this is now enshrined in Manx legislation (e.g., *Legislation Act*, 2015) albeit in the last couple of hundred years promulgation has been subject to some significant changes to the statutory requirements as to exactly what the promulgation procedure should involve. So, for example, Edge has outlined how some of the most notable legislation amending the statutory requirements in respect of the promulgation procedure include the Acts of Tynwald (Promulgation) Act 1865 (Statutes of the Isle of Man, vol III, p. 176) which reduced the information required to the reading of the title and summary of each Act in both Manx Gaelic and English and in 1895, a further Act amending the mode of promulgation for Acts of Tynwald to include the title and a memorandum of the object and purport of the Act (Acts of Tynwald Statutes of the Isle of Man, vol VII, 1; Edge, 1997).

Some of the more recent significant legislative amendments to the promulgation procedure have also been the subject of academic discussion. So, for example, Edge has pointed out, “since 1916 an Act has become law upon receiving assent, although it may lapse if not later promulgated” (Edge, 1994, p. 111) Thus, he surmises, “It would seem logical that an Act of Tynwald that had not been properly promulgated, like a Bill that had failed any other stage of the legislative process, could not be relied upon in any civil or criminal matter. This writer is not aware of any case where the matter has arisen” (Edge, 1994, p. 111).

On the other hand, despite the examples of these various legislative changes to the promulgation procedure, promulgation in the twenty-first century remains an important and symbolic characteristic of the Manx Rule of Law with the current promulgation procedure set out in the *Legislation Act*, 2015 [An Act of Tynwald], in conjunction with the Interpretation Act 2015, and involving the reading out in Manx Gaelic and English summaries of Acts of Tynwald at the Tynwald ceremony.

The *Legislation Act*, 2015 too includes provision both in respect of the pre-promulgation procedure as well as the promulgation procedure at the Tynwald ceremony on Tynwald hill itself. So, for example, s.13 of the *Legislation Act*, 2015 sets out a pre-promulgation procedure whereby the Attorney General must prepare a memorandum in Manx Gaelic and English containing the Act’s short title and a concise statement of the effect of the Act.

Section 14 of the *Legislation Act*, 2015 also sets out the procedure for promulgation at the Tynwald ceremony on Tynwald Hill with s.14(1) providing that “(1) The promulgation of the Act takes place by the reading of the memorandum on Tynwald Hill by or under the authority of the Deemsters. (2) The reading has the same effect as if the entire Act had been read on Tynwald Hill,” although it is worth noting that, pursuant to s.17(1) of the *Legislation Act*, 2015, an Act comes into effect upon its announcement to Tynwald rather than its promulgation.

However, despite the changes that there have been over time to the promulgation procedure, promulgation in the twenty-first century continues to remain a pivotal part of a historic public open-air ceremony to the people at the Tynwald ceremony. The promulgation procedure too is enshrined in legislation as a formalised, important, and uniquely symbolic characteristic of the Manx rule of law, the latter standing in sharp contrast to Jersey, for example, where “the formalities of promulgating legislation have gradually ceased to be part of Jersey’s legislative tapestry” (Pallot, 2019).

Furthermore, the importance of promulgation as a unique characteristic of the Manx rule of law and the centrality of promulgation at the annual Tynwald ceremony involving the reading out in Manx Gaelic and English summaries of Acts of Tynwald has continued to contribute to keeping the Manx Gaelic language alive and of huge symbolic relevance in relation to the important Manx Tynwald ceremony in the Isle of Man.

Conclusion – A Rule of Law and island approach

Building upon both existing legal and island studies scholarship this article has used the Isle of Man as lens to explore the appreciation of the rule of law in one island context and why this matters from a legal perspective, particularly in respect of appreciation of the importance of requiring that the law is followed by all in an island context. For adherence to the latter plays an important part in helping to reduce the risk of arbitrariness (Venice Commission of the Council of Europe, 2009).

Various examples of evidence have also been considered which provide evidence for the most part not only of a good level of appreciation of the importance of the Rule of Law on the Isle of Man but also how Manx law is widely accessible to all by being available online. This not only makes the law is accessible to the population but also contributes to demonstrating to the wider world the efficacy and transparency of Manx public institutions and their administration of justice (de Feu and Lambert, 2011).

On the other hand, behind every characteristic or event associated with the Rule of Law is a historical and cultural story. The continuation over time of such characteristics and events helps to cultivate amongst the inhabitants of an island a sense of their own unique legal history and islander identity. In the Isle of Man arguably one of the most well-known legal traditions in the Isle of Man and which continues to have relevance today is promulgation at the annual Tynwald ceremony. For firstly, it helps to demonstrate in public an appreciation of the importance of the rule of law at the Tynwald ceremony

to both the island community as well as to international bodies. The latter in conjunction with judicial recognition of the importance of the rule of law (Doyle, 1997) all play an important part in helping to make the Isle of Man an attractive place for international business as well as local businesses (Legal UK, 2021).

Secondly, the retention of promulgation also helps to promote and preserve amongst the Manx people a unique and time in memoriam characteristic of Tynwald. Thus paradoxically, despite being an ancient practice the continuation of promulgation at an open-air Tynwald ceremony in the Isle of Man continues to have legal relevance at both international and island level in the twenty-first century through demonstrating publicly at Tynwald to islanders as well as the international community the island's appreciation of the importance of the rule of law in a unique Manx Gaelic way, the latter also helping to promote a strong sense of an island community and unique Manx identity. Such research is therefore a novel contribution to legal scholarly literature as well as a timely addition to island study literature, the latter which focuses on gaining a greater understanding of islandness and the unique characteristics which help to promote a unique island identity and palpable sense of community amongst islanders.

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