

3rd Dec 09

Sark Speech

What you are about to hear from me tonight is a complete reprise of a speech which I gave in Guernsey in October. It was given at a meeting which I had convened as a consequence of my alarm at over-interference by Westminster with our affairs and by my abiding hatred of the federalism of the European Commission and its malign effect on Westminster. What I had to say no doubt had resonances with people of like mind in Jersey and the Isle of Man and, I hope, in Sark, but essentially I was speaking about Guernsey.

Tonight, I am happy to take any questions afterwards about Guernsey. I am not sufficiently immured in the business of Sark or its politics to come up with any sensible or considered view about Sark. Furthermore, and this is a most important point, although I retire in three weeks' time, I am still a partner in Ozannes – a firm of advocates which acts for the Barclay Brothers. I am of course aware of the developments in Sark so far as concerns the Barclay Brothers, but it would be professionally very wrong of me to make a comment in any public discussions about those matters, even where they are entirely in the public domain. Please, therefore, do not try to put me on the spot in this respect.

In October, I said this...

A good question for me to ask myself is: why am I doing this? I am a monarchist. I fully support the concept of constitutional monarchy. I am glad that we have the

English monarch as our head of state. I love the singularity and the historical quirkiness of the connection between the Channel Islands and the English monarch. I have had comfort from knowing that the Crown took responsibility for our defence, for our international representation and for our good governance. I am inherently conservative by nature. I think that ancient institutions and relationships are best not trifled with at all, and if they are altered in any way it ought to be with a very light touch. I believe that politicians are at their safest when they are doing nothing. Culturally, we have a much greater affinity with the U.K. now than with France. Our French heritage is increasingly something trotted out for the marketing purposes of tourism rather than as a reflection of the present Island's culture. Why then do I bang on about looking into a changed arrangement between the Islands and the Crown? After all, nothing dreadful has happened so far. We have prospered since the war and, anyway, there doesn't appear to be interference by Westminster with such autonomy as we have – at least, not superficially. Why on earth am I doing this? I hope that the remainder of what I have to say makes that clear.

Our critics – particularly those who look for a cheap headline – call us tax havens. They use that word pejoratively. The more accurate description is that we are low tax areas, and we're low tax areas because, at least until recently, we only paid for what we could afford and we treated taxpayers with respect and consideration. We didn't use tax for social engineering purposes. What we could afford was extensive, because of the fortunate arrival in the late sixties of what we now call the finance industry. Some criticise the finance industry as bringing too many immigrants into Guernsey and, in some way, eroding our heritage as evidenced by over-building, motor

pollution and anglicisation. Some of this may well be true, but it needs to be seen in context. After the war, the Island relied upon tourism and horticulture, and for the working man it was really very hard indeed to make a living. Parents such as mine would have a number of jobs and very hard work was the norm. Life could be very tough. Whenever I look back to those days I have a clear recollection of my mother crying from fatigue as she bunched flowers in our kitchen in the early hours of the morning, not knowing whether it would even be worth sending the flowers to England: and that was after a full day's work in greenhouses. Hard work wasn't a system whereby a large effort brought large rewards. Rather, it was necessary for the purchase of essentials, which we now take for granted. Being poor was not great for the soul.

The horticultural industry was brought to its knees, anyway, in the mid 1970's as a consequence of actions by OPEC and unlawful subsidies by EEC countries to their own various industries. Tourism took somewhat longer to decay, but its attrition was, and is, there for all to see. The advent of the finance industry not only took up the slack but produced marvellous opportunities of employment for locals and others alike, in civilised conditions and for a proper wage. I am proud that these islands have produced finance industries which have strength and breadth and depth and have given the dignity of good incomes to working people. We know that we have to have a broader economic base in Guernsey, but if those finance industries go, there is nothing to replace them which would remotely meet present expectations.

Of course, the success of these jurisdictions has attracted the baleful attention of countries wed to deficit financing. Socialists in the United Kingdom and elsewhere

have been beside themselves with rage when they have seen jurisdictions such as ours balancing the books. They object to the support given to us by the U.K. in respect of international representation. They choose to misunderstand us; or, and much more frequently, they misrepresent us in the media.

But my concern – for the present at least – is not about the politics of envy of socialists. Rather, I fear a non-democratic body in the form of the House of Commons acting as a conduit for another, and far more undemocratic, institution, namely the European Union, in the black heart of which is a desire for uniformity of under-achievement. I recognise that there are limits to exaggeration. Overstatement is a good means of ensuring that you don't win the hearts and minds of your audience. Having said that, it is difficult to exaggerate the inefficiency and corruption of the European Union. It is also difficult – well nigh impossible – to find words to express the extent of its malignant disdain for democracy. Our problem is that we have become so used to the excesses and lack of democratic accountability of the EU that we let pass with a raised eyebrow the fact that its accounts haven't been signed off by its Court of Auditors for the last fourteen years (it may now be fifteen). Its Chief Accountant, Marta Andreasen, was sacked for refusing to sign off the 2001 accounts. We express shock, and then forget about it, when an EU country legitimately rejects a proposal, as was the case with Ireland and its referendum on the Lisbon Treaty: the EU simply applies pressure to ensure that a further referendum is held until it obtains the correct result in its own eyes. The government at Westminster seems to be quite unable to resist any legislation coming from Europe, both for itself and for those jurisdictions for which it is internationally responsible. Rather, it acts as a pimp for the Commission so far as the Islands are concerned in requiring the Islands to

conform with European Law, even though we are not members of that body. From time to time we hear from the Conservative Party that the UK is going to assert itself under a Tory government and stop the relentless descent into federation. Frankly, I don't believe that the Tories have the bottle to do that. And those federal wishes will not diminish. The EU wishes its member countries to arrive at political integration by economic means – the so-called Monnet Method - after the founding father Jean Monnet – who realised that people would not accept the imposition of a unified European government. Thus the process is carried out step by step – a ratcheting mechanism known in Europeak as “engrenage”. Europe even wishes non-EU countries such as the Channel Islands to harmonise, even though it is quite clear that we are not bound to, and even though, as we learned from Senator Frank Walker in yesterday's Jersey Post that both the U.K. and ECOFIN gave the go-ahead to 0/10.

I believe that until the 1970's, the U.K. had a truly paternal, benign, attitude to the Islands. The senior people in the Home Office had a deep knowledge about us and ensured that their political masters kept their distances, save where there truly needed to be involvement, such as was the case with the Exchange Control Act. They worked with us in amity. As late as 1989, Lord Rippon, in a speech to the Institute of Directors in Jersey, said “the Home Office and your many friends in both Houses of Parliament ... stand ready to defend your interests, if ever that should prove necessary.”

All of that appears to have changed. We have had the Edwards' investigation and the Foot investigation thrust upon us without our consent. We have seen excessive pressure applied in respect of anti-money-laundering legislation in relation to tax

avoidance and, of course, we have seen the deliberate withholding of Royal Assent to our legislation as a form of pressure imposed by the U.K. on Guernsey to bring Sark onto the straight and narrow (as the U.K. sees it). Earlier this year we also learned of a log-jam in Guernsey legislation as a result of the withholding of Royal Sanction by Mr Straw (a former Secretary of State for the Home Office and now Justice Minister who, incidentally, has never bothered to come to Guernsey in the whole of his time in office, despite frequent invitations). His objection at the time was that Guernsey was reserving too much power for itself under its ordinances. Lord Wallace has also chipped in his tuppence-worth, saying that a loosening of the ties with the U.K. will induce criminality in our politicians. (How extraordinary that he had the effrontery to say that in view of what was emerging from his own parliament in respect of fraudulent expenses' claims.) And Mr Brown has said, repeatedly, that he will close down the tax-havens – meaning us, in part.

All of these examples show, I think, a change in the constitutional dynamics between Guernsey and the U.K. I don't think that they have our interests at heart anymore. More than that, I think that our interests may well often diverge. In scrutinising draft legislation, the Privy Council is supposed to ensure that Guernsey is complying with international law. The reality is that the Privy Council now uses scrutiny to ascertain whether U.K. interests are affected by our proposed legislation, in which case the Privy Council may well delay Royal Sanction, or may require drafting changes or the withdrawal of the draft legislation. The reference to Privy Council sanction being withheld is nothing more than government interference dressed up in the name of the Queen. Just to give an example, the Privy Council delayed Jersey's ability to introduce the "International Business Company" for three years, because it

embarrassed the U.K. with the OECD. The IBC was of considerable importance to Jersey. In a recent speech to the Institute of Directors in Jersey last month, the recently retired Bailiff of Jersey, Sir Philip Bailhache, said this:

“I am a Jerseyman with a passionate attachment to our autonomy. We too have our constitutional rights. So long as we play by the rules of the game, and observe international standards, as we do, I cannot see why we should tolerate quietly the abuse of a dominant position.”

He was saying this after giving several examples of how Westminster had manipulated matters so as to delay Privy Council sanction to legislation.

We may be reaching the position spoken about in the Kilbrandon Report, which said this:

“The nature and extent of the intervention by the United Kingdom in its own interests in the affairs of the Islands must be a matter of judgement, weighing the potential damage to United Kingdom interests against the invasion of the Islands’ autonomy. In striking this balance, it seems to us that the United Kingdom should be very careful not to confuse its essential interests with its own convenience and preference or the damage to those essential interests with mere irritation or annoyance.”

As to defence, of course Guernsey can’t defend itself. The problem is that Guernsey is indefensible, and that was proved during the last war. One of the good things to

emerge from the European Union is that the possibility of there being further hostilities between western nations has been reduced to the point where the chances are pretty well infinitesimally small. A formal defence capability isn't needed.

I mentioned international representation. At present, we are represented under the banner of the United Kingdom. We could do it ourselves. I see no reason in principle why the cost of representing ourselves would be prohibitive. We don't need to set up an office in every other country. Many similar jurisdictions are represented by friendly agents. Certainly, I accept the argument that we shouldn't be getting anything free from the United Kingdom and that we have done so is, I think, improper. If they are genuinely defending us and representing us, we should pay them. That said, I think that we ought simply to represent ourselves. In practice, that is what is happening more and more, as the Chief Minister will be very happy to confirm – under letters of entrustment issued by the Government. But I don't think it right that the U.K. decides whether or not it is going to give Guernsey a letter of entrustment on a particular issue, as it now does. We ought to give that procedure proper legitimacy. So when and if we have – as we should have – a representative office in Brussels, it ought to be on the basis that what is said is not merely a pious aspiration which, it is hoped, will have the approval of the U.K., but the authentic stamp of a lawful, mature, serious, jurisdiction. Furthermore, there would be ample scope, and much saving of cost, if this were carried out as a joint project with Jersey and, possibly, with the Isle of Man.

Those who have read my articles in the Guernsey Press over the last couple of years will, anyway, know my views. I would like the Island authorities at least to explore

the possibility of a change of status. There are many problems associated with that, among the principal ones being British citizenship, the pegging of our currency, reciprocity of rights and benefits relating to health, education and social security, rights of access by air and sea, terrestrial broadcasting, and our relationship with Europe if we no longer have the benefit of Protocol 3.

That list is a daunting one.

But we are, I think, at a tipping point. Jersey, Guernsey and the Isle of Man over the last few years have all concluded “framework agreements” with Westminster, all of which speak about the international identity of the Islands, and the need to develop that identity. Crucially, though, it says that the U.K. will not act internationally on behalf of Guernsey without consulting the Island. What the agreement does not do is to say that the Island first has to give consent. The framework agreement does not affect the necessity for all prime legislation to have Royal Assent – meaning U.K. government approval. I am saying that we need to take that development a stage further. There needs to be a legal basis for our international authority and for our international identity. No longer should we be in the position of having the helm of Daddy’s boat until such time only as the sea gets a little bit choppy. It is often the case that jurisdictions carve out certain parts of an international treaty, because the treaty is inappropriate for the jurisdiction concerned in its entirety. We need to fight tooth and claw to ensure that there are proper exemptions for us, where relevant. Thus I am not saying that the Island should seek to avoid international pressures and engagement with international bodies. Of course not. Guernsey trades globally, particularly in the offshore financial markets, and so is governed to a large degree by

those international forces. What I do say is that an international treaty must be reasonable in its terms so far as the characteristics or capabilities of our own jurisdiction are concerned. We must resist the inevitable pressure that we must go along with everything contained in a treaty, simply because most other jurisdictions are doing so. Most other jurisdictions are not Guernsey, with Guernsey's economy, Guernsey's population and Guernsey's jobs.

I want us to arrive at a place in our history where our own people are responsible for our own future, and I want them to make the final decision in respect of our law in all its forms, both domestically and in respect of our international liabilities through treaties. Furthermore, I don't think it right that our law officers are appointed, in practice, by a U.K. Government minister, and I don't think it right that they should have a conflict of interest between the Crown and Guernsey.

A number of our politicians may well give the excuse that we have already been looking at this, as a consequence of the creation of the Constitutional Advisory Panel. The Constitutional Advisory Panel has looked at matters thus far from the point of view of sovereign independence from the United Kingdom. The Panel conclusions flow from the premise that Guernsey makes a decision to become independent and then has to cope with the consequences. What I am proposing is that Guernsey takes a pragmatic approach with the United Kingdom and negotiates whatever it can to achieve whatever it can, and the consequent result may be something which is rather different from the historical view which we have of an independent country. Politically, now is the time to start the process: what now passes for government in the U.K. will be gone by next year.

And we must deal with Europe: of course we must. But that does not mean becoming a member of the EU or of accepting without demur all of Europe's policies – most particularly those designed to advance its hegemony.

I have used the word “independence”. I generally try to avoid doing that, because independence so often is tied into a doctrinaire approach. It's not simply because the word is emotive. Rather, I'm not entirely sure that that is truly what I am seeking. At present, Guernsey is a Crown dependency. What I am after is rather less dependency and more of association. The term “Crown associated island” is something of a mouthful, and might not convey much meaning, but that is the sort of concept with which I am struggling. Perhaps what I'm really thinking of is something akin to dominion status, which arose during the first half of the 20th century, when the Statute of Westminster applied the term to Australia, New Zealand, South Africa, Newfoundland and the Irish Free State. This followed the Imperial Conference held in London in 1926 when the autonomous State of Australia etc was confirmed, whilst stressing that those countries remained united by a common allegiance to the Crown.

My critics – and there are many – will say that I am at best hopelessly confused and at worst an old slapper who wishes to pretend that she'd never had sex – I want independence, but I don't wish to shed the connection with the Crown.

What I do want is this:

- 1) I wish Guernsey to be treated as a mature jurisdiction by the UK, with freedom to make its own laws.
- 2) Internationally, I wish Guernsey to be likewise recognised as a mature jurisdiction with its own unfettered ability to conclude international treaties as it pleases and to negotiate them to its best advantage.
- 3) I wish the Queen of England to be our Head of State.
- 4) I wish our Head of State to have only such powers as we vest in her, and I wish those powers to be exercised through a Governor General.
- 5) I wish our law officers to be just that: ours.

Events in Guernsey in the last couple of years have been alarming, particularly with the release of the report of the Welsh Audit Office. The question can legitimately be asked: are our politicians up to looking after us without the benign presence of Westminster mandarins and politicians looking over their shoulders? That would be a good question and one which of course is very difficult to answer. Some years ago we made a truly terrible decision when we agreed to pay our politicians a wage. I don't know the present States sufficiently well to come up with a view about them, but in the past this payment of a wage seems to have encouraged the emergence of a number of people who, quite frankly, couldn't hold down a job in the real world. In order to get elected, and subsequently re-elected, they have engaged in pure populism. They make decisions, not on the basis of their consciences and core beliefs, but on how well the electorate will receive them. This hasn't been the case with all of them by any manner of means, but it has applied to too many. That said, we still have some people of stature, and I dare say that on a percentage basis we have no greater number of dunderheads and grandstanders in the States than the United Kingdom has in the

House of Commons. What I do say is that our people, taken as a whole, would care more about the Island and its future and, indeed, its history, than would representatives of the Government of the United Kingdom, and infinitely more than representatives of the European Commission. All people make mistakes. However, I would rather have our people fighting our own corner, and maybe making mistakes, than some mandarin or politician at Westminster having to deal with us in international matters as an irritating little add-on piece of work which they would rather not know about. Domestically and internationally, it is for our people to make our own laws. It is not for the likes of Mr Straw to halt or delay legislation by the withholding of Royal Sanction.