

Jersey, Guernsey and the Isle of Man really need to res...

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I was a little surprised to find that [my arguments on this blog](#) as to why the UK has the right to intervene in the affairs of the Crown Dependencies at present switched from here to the [pages of FT Alphaville](#) almost seamlessly yesterday. Finding myself quoted at length there for the second time recently made it seem like all those quotes I have borrowed from the FT over the years can be justified.

It also just turned up the heat from those who argue that I do not understand that the UK has no right at all to intervene, all of whom appear to come from the Crown Dependencies in general and most likely Jersey in particular. So, let me stress that this is not the place for me to argue the legal rights and wrongs of this at length, because I simply have not got time to do so. Instead let me make a few major points.

The first is that I think we can ignore all history before the [Kilbrandon Report of 1973](#) (see [here](#) for a summary of that history, although I should add that much of which may well be wrong in my opinion). The Kilbrandon Report reviewed that history at the point that the UK was joining the EU to determine just what the legal relationship with the CDs was at a time when that had to be reviewed and determined (and I summarise). It suggested that whilst the CDs are self-governing, that is by consent and that in the event of a dispute as to who has the final say on an issue, power always rests with the UK (again, I summarise, but I think correctly). I suggest that is the baseline and that all prior argument (much of it based on fanciful reference to the Constitution of King John, which suffers the problem of not existing, rendering it irrelevant) can be ignored. In essence, Kilbrandon makes clear that ultimately London rules but the CDs are allowed much local discretion so long as they act within the boundaries of good governance.

So the only question now needing to be answered is whether or not the boundaries of good governance have been breached, so justifying an intervention.

My answer is that this is determined equitably, in the fashion of common law, with precedent and context being considered in determining whether intervention is required in the situation being considered. That is how all our constitutional law works in the UK as a whole, including in this area.

As to precedent, it is clear that this has been developed greatly since Kilbrandon reported as a consequence of dealing with the Overseas Territories over the intervening years. These may not have identical legal status to the CDs but the situations are so similar in many cases that decisions made effectively create precedent for the relationship with Jersey et al. And it is important to note that Parliament has set new precedent on this issue by intervening on the issue of beneficial ownership registers in these places, very recently. Since no real differentiation between the CDs and OTs is possible on this issue because the matter being decided upon is the desirability of these registers, and is effectively identical in both cases with identical consequences for the UK, then precedent for intervention in the CDs now exists and can be relied upon.

Second, the issue that justifies intervention is one of good governance and as a matter of fact it is now understood in the UK that the lack of a public register of beneficial ownership in the CDs does threaten moves to uphold the law in countries other than the CDs to whom the UK has responsibility. This may not have been considered the case in the past, but changing law, practice and events in this area suggest that it is now. The UK is, then, entitled to intervene because the CDs are, in unison, threatening the principles of good governance by refusing to create these registers.

And third, Parliament can determine this. Kilbrandon makes clear that the decision on whether there has been a break down in good governance in the CDs cannot be made by the CDs themselves: it has to be made in London, and there is no greater power than parliament to decide on this. As such Parliament is acting wholly within its legal rights to determine this issue, and the CDs are then bound to comply. That is the law. Otherwise we would have law determined by the party guilty of poor governance, and that cannot be right.

So, Parliament can intervene.

And for the record, the government's decision to back off is not an indication that it does not agree with that right to intervene. Instead it is indication that it accepts that it is true and the withdrawal is simply evidence that it has sided, against the better judgement of Parliament, with the perpetuation of tax haven malpractice. Parliament is also sovereign on this issue, for the record: it can rule what the government of the day is doing is wrong as well. In this case that is what it wishes to do. And it has that right, just as it has the right to intervene in the CDs.

So what is the CD protest really about then? It is simply noise in defence of what is now indefensible: there is no justification left for the secrecy that these places wish to promote that facilitates illicit financial flows in all their forms. But the CDs wish to support those still profiting from those flows. If evidence was ever required of the breakdown of good governance, then the protests made by the CDs in support of the corrupt practices of those who use secrecy to facilitate their illicit activities is the clearest evidence of it. In fact, the CDs are making my case for me. They must be over-ruled precisely because their overt desire to perpetuate a now unacceptable

practice makes it necessary that they very publicly be over-ruled.

And, I would suggest, any appeal from them will only undermine their position still further. It really is time for them to pipe down and realise that if they want the protection of the UK, which is critical to their financial services sectors, then they have to comply with the UK's laws. Of course, they can leave if they wish, but so too in that case would finance. They should not protest too much then: if they do the outcome could be much worse for them. The rule of British (actually, English) law applies to these places, and is precisely that which attracts peoples' money to them in the first place. They really should comply with that law as a result or the money will leave. They should muse on that. And smell the coffee.