

**THE CHANNEL ISLANDS:
NORMAN LAWS AND
MODERN PRACTICE**

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The Channel Islands: Norman laws and modern practice by David Urquhart

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DAVID URQUHART

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CHANNEL ISLANDS.

NORMAN LAWS AND MODERN PRACTICE.

"This very facility of introducing changes, should make us more scrupulous in adopting innovations, since they often bring permanent evil in their train, and compensate us only by accidental and temporary good."—*Story*.

"The silence of the law is the token of a deep and sacred sense of justice within the hearts of the people. The greatness of England was coeval with tradition. It dates not from statutes."—*Anstey*.

From the Portfolio for August, 1844.

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1844.

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THE CHANNEL ISLANDS.

NORMAN LAWS AND MODERN PRACTICE.

It is no small matter for England to be in possession of islands, lying on, and almost touching the coast of France. It is no small matter for England, they being of French race and origin, to hold them on the tenure of the attachment of their inhabitants.

Notwithstanding their incorporation with the one, and their proximity to the other of the two great empires that have shaken the world by their efforts, and recast the spirit of man by their thoughts, these islands have remained undisturbed and unchanged, amidst the shock of arms and the conflict of opinion; they stand as fragments of soil, amid the channel of a torrent which has swept away all that once grew and flourished around; they appear as the eddies revolving on themselves in the midst of a rapid stream that passes away. They have not undergone the laws of England, they have not coveted the freedom of France. They present the anomaly in Europe of a people without political faction, and a society without paupers. And while in a neighbouring island, incorporated with ourselves, the laws we esteem good, and determine to maintain, are the objects of mistrust and abhorrence, these islanders exhibit

the remarkable spectacle of attachment to existing institutions, and meet our innovations with defiance.

England has a double legal parentage in the Anglo-Saxons and the Normans. Alfred, Ethelbert, and Edward the Confessor are our parents on one side, Rollo on the other. The very type of the last of these originals is preserved to-day in the Channel Islands, together with reverence, transmitted from father to son through thirty generations, for the founder and the legislator of the Norman race. That reverence is not an idle treasure, it is of common use. The name of that great man is still amongst them of talismanic power; and while no more curious specimen of legal antiquity is presented in Europe, it is an evidence of the preservation to our times of the original characters and institutions, which in us have undergone so many changes, giving to them an interest of the very highest order, and imposing upon us a dutiful respect in judging of what we were, and in innovating on what exists.

The origin of the "*Clameur de Haro*" is thus explained in the "*Chroniques de Normandie*:"—

"Pour la bonne paix et justice qu'il maintint en sa Duché, ses subjects prindrent une coustume, tant de son vivant, comme aprez sa mort, que quand on leur faisoit force ou violence ils crioient,—Aa-Rou!"

Rou or Ro is the abbreviation of Rollo, added to the exclamation, ah! Any one engaged in any act or process, not desisting on the thrice repeated appeal, "*Haro! Haro! Haro!*" is liable to a severe fine, and he cannot proceed until the matter in dispute is decided by a court of law.

A singular instance of the power of this simple process, occurred at the funeral of William the Conqueror. The owner of the ground where the grave was opened, not having received satisfactory compensation, he stopped the funeral, his words are thus reported—

“ He who oppressed kingdoms has been my oppressor ; since I have outlived him, I mean not to acquit him dead. This ground is mine, and none can justly bury their dead in the ground that belongs to another. Aa Rou ! Aa Rou ! Aa Rou ! the founder and father of our race, though dead, lives in his laws.”

It was not, however, in the lifetime of Rollo that the Norman Institutions were carried to these islands. They were a part of his sovereignty, but scarcely tenanted, and subsequently ravaged, they were abandoned to the plundering of the Danes, or to the precarious protection of monkish establishments, until Robert the Third, in an expedition against Canute, had his fleet scattered by a storm, and was himself cast away on Guernsey. He was received by the Monks of St. Michael, and his fleet and force rescued and restored by the inhabitants. The importance of the islands as places of refuge and defence being thus established, the Norman Government applied itself to their settlement, cultivation, and fortification, and they were rendered strong by military works, and every liberty and franchise accorded to the inhabitants, most of the land being distributed in franc feoffs.

The feudal tenure and laws were not here subject to vicissitudes and disturbances, and did not pass through that disorganization and perversion which in the rest of Europe have been taken for their original character. Here their vivifying spirit is indeed extinct, but at least is it clear from what still exists, that serfage (as we understand it) was no portion of the feudal system.

On the settlement of the Crown of England on William of Normandy, the islands became united to England by their being subject to its Monarch, and have remained so up to the present time, rather a dependence of the Crown, than an integral portion of the Empire.

When Normandy was lost to the British Crown, the Islands, instead of following its example, strongly defended themselves. The union of Normandy and England, under the same crown, having deprived them of importance as stations of refuge, or as points available for attack or for defence, the fortifications had been suffered to fall into decay. Nevertheless, their zeal supplied defence, and on two occasions they repulsed an army sent by Philip already in possession of Normandy. The islands had formed part of the appanage of John settled by his father, and they had been again granted to him by his brother Richard, with the earldom of Mortain. John had supinely suffered province after province to be wrested from him, but was at length roused by the danger of his special appanage, and by their courageous defence, and after making every effort to preserve them, he repaired thither in person. In token of his gratitude he granted to them a new code of laws called the "Constitutions of King John."

These "Constitutions," the Magna Charta of the Islands, were granted prior to the field of Runymede, they were of free will, a recompense for past loyalty, and an earnest of future service. Thus, while alone, throughout the wide domains of Britain possessed by the descendants of Rollo, these islands revere his name, so also do they alone hold in respect the second establisher of our liberties.

The preamble of these Constitutions rehearsing, that "Inquisition having been made into the services, customs, and liberties of the Island" shews, as in the case of Magna Charta, that it was no new grant that was made, but ancient liberties and customs, sanctioned and confirmed. These Constitutions eighteen in number, are provisions against interference, civil, or municipal, with the Laws, Authorities, Prescriptions, and Elections of the Island. The Royal Courts are invested with the

power of trying all cases, except treason, false coining, or laying violent hands on their own officers in the exercise of their functions, and of executing sentence of death without appeal.*

A still more formal settlement was made, under the title of *Précepte d'Assize*, under Edward III. beginning as follows:—"Here follow part of the Usages, Liberties, and Ancient Customs, used, held, and kept, in the Island, &c. of all the time whereof the memory of man is not to the contrary." It then rehearses, that inquest is made parish by parish into these Customs, and by each parish into the inquest of the other, and it then proceeds: "Our said Lord the King, does establish and ordain for his bailiff in the said Island, a notable and sufficient and discreet man, dwelling in the said Island," here follows three long paragraphs establishing the Courts of Law. Then it is said, that "the King shall commit, and ordain whom he pleases to the care, government, and tuition of the said island, and of his Castle and Fortresses there;" but they are in no ways to interfere with the Civil Government, and if "anyways through ignorance or otherwise they or any of them, should do or act out of error to the contrary, that by the aforesaid Bailiff and Jurats it should be redressed and repaired whenever they should be warned thereof."

"The inhabitants and *dwellers* of the said Islands, do appoint and elect amongst themselves, a Serjeant, called

* It is recorded that Judges had at one time gone from Westminster to hold the Assizes. One of the reasons for the discontinuance of them, was the difficulty of navigation and the exposure to enemies. Another reason assigned in the *Précepte d'Assize*, is the desire of granting a favour to those Islands so exposed to danger from enemies, and so faithful.

the King's Provost, to make the arrests, impeachments, deliveries, &c. They are in the like manner to elect their own Tax-gatherers.—They “cannot be constrained or compelled by any writ of the King, or otherwise for any cause whatsoever, to go out of the said island, but with their own consent.”

These grants were subsequently confirmed, more especially by Queen Elizabeth, Charles the Second, James the Second; which last was, of course, subsequent to the passing of Habeas Corpus.*

The remarkable feature of the political position of these islands is, that they should not be represented in parliament, and should protest against being bound by its laws. Parliamentary government is, in these times, considered synonymous with political freedom, and yet these islanders maintain a struggle for independence against parliament. The great principle of representation is supposed to be the peculiar character and produce of the ancient Gothic institutions; and here a people preserving more than any other in Europe the personal character of those institutions, signalize themselves by a contempt as audacious as incomprehensible of this great principle of Gothic freedom, and of modern strength. These are indeed enigmas that are not solved because weak dependencies may be overawed, or some hundred soldiers easily transported thither in steam-boats. The time was, however, when that which these Islanders now think was thought by all England—

* In the year 1832, a Writ of Habeas Corpus was issued from the Court of King's Bench to bring before it a prisoner detained in the gaol of the Island of Guernsey. No return was made to the Writ, and a deputation from the Islands of Guernsey and Jersey came over to England and pleaded the royal Charters and Constitution of John, that “No inhabitants shall be cited or summoned by any Writ or Process issued by any of the Courts in England.”