

Institution: University of Huddersfield		
Unit of Assessment: 28 History		
Title of case study: Informing the Historical Underpinnings to the Constitutional Identity of Jersey and Guernsey		
Period when the underpinning research was undertaken: 2004-2017		
Details of staff conducting the underpinning research from the submitting unit:		
Name: Tim Thornton	Role: Professor and Deputy Vice-Chancellor	Period employed by submitting HEI: September 1994 – present
Period when the claimed impact occurred: January 2013 – December 2020		
Is this case study continued from a case study submitted in 2014? No		
<p>1. Summary of the impact</p> <p>Before 2004, there was no reliable text of the charters of liberties, which form the foundation of the laws governing the distinctive autonomous status of the Channel Islands of Jersey and Guernsey. This made it difficult for the islands' authorities to secure and enhance their unique constitutional position, in relation to the UK and Europe, particularly their jurisdictional, financial and fiscal distinctiveness. Thornton's authoritative texts, and accompanying studies, provided this necessary foundation for the first time. Making the charters accessible in this way has provided a basis for legal judgments in the UK's Supreme Court and in the Judicial Committee of the Privy Council; informed legislative drafting of fiscal policy; influenced the work of lawyers regarding issues of taxation and customs; and developed educational provision for law trainees in Guernsey and Jersey.</p>		
<p>2. Underpinning research</p> <p>Jersey and Guernsey are two of the world's major financial centres, with historically-based constitutional privileges regarding arrangements such as taxation and customs, and it is on these constitutional privileges that Thornton's research has unique impact. Since the 1960s, when the finance industry began to develop in earnest, there have been challenges to the right of island governments to determine local tax and regulations. Debate, political activity and judicial intervention over their fiscal and financial arrangements is growing, as evidenced by the 2015 'Panama Papers' controversy, the leak of over 11.5 million documents detailing financial and attorney-client information for more than 214,000 offshore organisations. The islands, which are not EU members or associates, are also subject to the pressure of changing relationships with the EU, particularly since the UK's decision to leave the EU in 2016 (Brexit).</p> <p>In the face of such challenges, Thornton's research has fully established the centrality of the royal charters of liberties in underpinning the islands' distinct constitutional position. Since the early 1990s, Thornton has explored the historical background of small jurisdictions, especially those with a historical basis for distinctive constitutional, legal, and fiscal status, such as the Isle of Man and the Durham palatinate. The relevance for Jersey and Guernsey of this work was identified by the island authorities in 2002, and Thornton was funded by the States of Guernsey and through the <i>Jersey and Guernsey Law Review</i> to work on the islands' constitutional history, and in particular their royal charters. There had been no substantial work on the late medieval Channel Islands since 1937 or on the politics of the early modern period since 1949.</p> <p>The distinctiveness of Jersey and Guernsey depends heavily on historical understandings of the medieval and early modern origins of their privileges in the relationship with the English crown. Thornton's research resulted in the 2004 publication [3.1] of the text, translation and analysis of Guernsey's royal charters of liberties for the first time. Through this research he was able to establish the central coherent thread of privileges related to the rights of the islanders to be governed by their own laws and courts, a principle first established in 1341, and to exemption from all English taxes, customs and other charges while trading, first established in 1394. [3.1]. The aspects of this charter tradition which are specific to Jersey were then identified and analysed in an article in the <i>Jersey and Guernsey Law Review</i> [3.4].</p> <p>Specific consequences of these findings were further developed in Thornton's subsequent work. For example, the relationship between the islands and the English courts at Westminster in the</p>		

fourteenth century was an issue which had been left ultimately unresolved in historical work on the islands, for example the most important previous studies, by Professor John Le Patourel. This left open the possibility that English courts had had some continuing claim over the islands in the later part of the fourteenth century, meaning the basis for their exclusion in the twenty-first might be the less clear. Thornton demonstrated clearly in his major monograph of 2010 [3.5] and further in his 2016 Joan Stevens lecture, published in 2017 [3.6], that the English courts were excluded immediately and completely from 1341 as a result of the charter grant of that year, with lasting effect.

Thornton's monograph and other more specific work such as that on nationhood at the margin [3.3] and the distinctiveness and continuity of Norman legal culture in the islands, and the respect in which it was held [3.2] developed other aspects of this approach, and established important elements of the continuity of the legal and constitutional position of Jersey and Guernsey.

Thornton's body of research therefore speaks directly to the historical roots to the two key issues in the islands' current situation: their right to be governed by their own laws, resolving issues before their own courts and not those of Westminster/England, and their exemption from all English/UK taxes and customs duties, and potentially from other related charges.

3. References to the research

Evidence of the quality of the research: The work has been subject to rigorous peer review before publication in journals, collected essays, and as a monograph (e.g. through the established mechanisms of the *Jersey and Guernsey Law Review* [3.4], Cambridge University Press [3.3], and Boydell [3.5]), and has received very positive reviews in leading academic journals after publication. For example, the collection *Power and the Nation* [3.3] was reviewed by Rhys Jones in *Journal of Historical Geography* (32, 2006, p. 676-7) who called it an 'important volume that makes a significant contribution...The editors and the various contributors should be applauded for producing a book that will have a widespread and long-lasting impact on studies of the nation.' The monograph *The Channel Islands 1370-1640* [3.5] was described by *Speculum: A Journal of Medieval Studies* reviewer (91, 1, 2006, p. 263-4) as 'exemplary and admirable primary research', and in particular for the present purposes she stated 'There is an excellent analysis of the charters of liberties from the fourteenth to the seventeenth centuries and their significance. Professor Thornton has discovered rare and unpublished archives, some privately held, and drawn them together in a magisterial work.'

[3.1] Thornton, T. (2004), *The Charters of Guernsey*, Bognor Regis: Woodfield. Publication commissioned and funded by the States of Guernsey and the *Jersey and Guernsey Law Review*. ISBN 978-1903953655 <https://www.woodfieldpublishing.co.uk/contents/en-uk/p285.html> [can be supplied on request]

[3.2] Thornton, T. (2005a), 'British/English Attitudes to the Norman Law of the Channel Islands in the Early Modern Period', in Dawes, G. (ed.), *Commise 1204: Studies in the History and Law of Continental and Insular Normandy*, Guernsey: Guernsey Bar, pp. 123-132. ISBN 978-0955039508 [can be supplied on request]

[3.3] Thornton, T. (2005b), 'Nationhood at the Margin: Identity, Regionality and the English Crown in the Seventeenth Century', in Scales, L. & Zimmer, O. (eds.), *Power and the Nation in European History*, Cambridge University Press, pp. 232-247. ISBN 978-0521845809. <https://doi.org/10.1017/CBO9780511614538.011> [can be supplied on request]

[3.4] Thornton, T. (2009), 'Jersey's Royal Charters of Liberties', *Jersey and Guernsey Law Review*, vol. 13, no. 2, pp. 186-197. https://www.jerseylaw.je/publications/jglr/Pages/JLR0906_Thornton.aspx

[3.5] Thornton, T. (2010), *The Channel Islands, 1370-1640: Between England and Normandy*, Boydell and Brewer Ltd. ISBN 978-1843837114.
<https://boydellandbrewer.com/9781843837114/the-channel-islands-1370-1640/> [can be supplied on request]

[3.6] Thornton, T. (2017), *The Channel Islands and the Courts of Westminster from the Fourteenth to the Sixteenth Centuries*, St Helier: Société Jersiaise. https://shop.societe-jersiaise.org/index.php?route=product/product&product_id=664&search=westminster [can be supplied on request]

4. Details of the impact

In the context of global challenges to Jersey and Guernsey's rights to determine local tax and regulatory regimes since the 1960s, intensifying in the 2010s, Thornton's work has impacted on how they are viewed in the highest courts in the UK, shaped policy in the islands, impacted the legal culture there, and informed legal decision making and training, becoming a standard work of reference for lawyers and a key part of the syllabus for trainee Jersey and Guernsey Advocates.

Informing legislative change

Thornton's work underpins legal pleading and thereby judgements relating to the islands in the UK's Supreme Court and in the judicial committee of the Privy Council (the appeal court for the islands). In the Supreme Court in 2014, Lady Hale (subsequently its President) in giving judgement quoted directly from Thornton's book [3.1]. As Lady Hale indicated in the opening paragraph of her judgement, that case addressed 'fundamental questions about the constitutional relationship between the United Kingdom and the Bailiwicks of Guernsey and Jersey. It also raises questions about the constitutional relationship between the courts and a representative or democratically elected legislature' [5.1]. In a 2017 Privy Council judgement, Thornton's book is quoted again in a case related to child protection [5.2]. While these are two individual cases, the role played by Thornton's material in these judgements is fundamental to the entire understanding of the constitution of the islands and their rights of self-government. As a Partner and Advocate of Mourant Ozannes in Guernsey, a leading legal authority notes, the charters are referred to repeatedly in cases through to the recent past (2018) and that 'Professor Thornton's work has made the charters accessible in a way in which they were not before' [5.3].

Impacting the development of new legislation and shaping international policy

Thornton's work has become the authoritative source on the topic in legal and policy circles as it addresses challenges arising from questions posed about present-day issues with negotiation of financial and fiscal relationships with the UK. In the context of the shifting relationships consequent on Brexit, Thornton's work impacts on legislative drafting in Guernsey, through the team led by the Crown Advocate and Director, who states, 'The precise protections offered by the Charters with respect to free trade and taxation were of practical relevance in assessing various draft legislative provisions relating to customs controls and cross-border trade...they have also informed discussion with our colleagues in Jersey on the same issues' [5.4]. [Text removed for publication]. In terms of legal drafting, the equivalent Jersey department is led by the Senior Legal Advisor of the Law Officers' Department, who states 'it is of vital practical importance to be able to clearly, succinctly and accessibly present the legal foundations of Jersey's extant constitutional and trading rights to others. The work that [Thornton has] done previously has been valuable to that end and the work that we are presently commissioning from you will, in my estimation, be still more valuable into the future as we continue to assert and defend our constitutional rights, privileges and freedoms in negotiations with our closest trading partners' [5.6]. The Bailiff of Jersey 1995-2009, one of the most influential voices in the law and politics of Jersey, comments that the 'research and analysis undertaken by Professor Thornton has been of significant value, not only for ministers and officials in Jersey and the UK, but also for lawyers and other professionals whose functions include the giving of constitutional advice' [5.7]. He draws attention to an important ministerial letter, of 15 November 2018, written by Lord Keen of Elie QC, PC which emphasised the intention of the UK government to continue its relationship with the islands in the context of the historic relationship 'as evidenced by the Royal Charters' [5.7].

Shaping the work of lawyers

Thornton's work is referred to in standard legal texts and discussions. Partner and Advocate of Mourant Ozannes in Guernsey, author of the standard legal work on Guernsey law, writes, 'I have cited Professor Thornton's work in my own writing' and states that 'Professor Thornton's work is cited by Dr Darryl Ogier in his important text, *The Government and Law of Guernsey* [2012]' [5.3]. Thornton's work provides the islands' legal community with the basis for claims as to the islands' status as communities which are governed by their own customs and which are exempt from English taxation and customs [5.1, 5.2].

The Bailiff of Jersey 1995-2009 wrote in the *Jersey and Guernsey Law Review (JGLR)* in 2016, 'Guernsey has the remarkable good fortune to have a publication in one volume all the Royal Charters of Liberties affecting the Bailiwick. *The Charters of Guernsey* by Professor Tim Thornton' [5.7]. Thornton's work prompted his sponsorship of a new edition and translation of the Elizabeth I charter to Jersey described there [5.7], a project which has now been extended to all Jersey's charters of liberties, undertaken by Thornton himself, making them accessible to lawyers and wider community [5.6, 5.7].

Changing educational practices for law trainees in Jersey

Thornton's book on the Charters of Guernsey is now widely used in the professional education of lawyers (advocates), impacting the development of all trainees. The President of the Law Society of Jersey states 'a knowledge of [the charters'] content and effect forms a part of the Syllabus for the Sources and Constitutional examination of the Jersey Advocates exam. This is illustrated by reference to the charters in the study notes of The Jersey Law Institute which trains lawyers for the Jersey Bar. Professor Thornton's published works on the Charters are the only accessible source for the Charters for law students and, indeed, local lawyers' [5.8].

5. Sources to corroborate the impact

[5.1] Law Report, Supreme Court (2014): <https://www.supremecourt.uk/cases/docs/uksc-2013-0155-judgment.pdf> (p. 5).

[5.2] Law Report, Judicial Committee of the Privy Council, AvR (2017): <https://www.jcpc.uk/cases/docs/jcpc-2017-0064-judgment.pdf> (p. 6).

[5.3] Testimonial Letter, Partner and Advocate at Mourant Ozannes and author of *Laws of Guernsey* (Oxford, Portland OR: Hart, 2003).

[5.4] Testimonial Letter, Crown Advocate and Director, Legislative Drafting, Guernsey.

[5.5] [Text removed for publication].

[5.6] Testimonial Letter, Senior Legal Advisor, Law Officers' Department, Jersey.

[5.7] Comments in article in *Jersey and Guernsey Law Review* 2016, and Testimonial Letter - Bailiff and Chief Justice of Jersey (1995-2009), Senator (2011-).

[5.8] Testimonial Letter, President of the Law Society of Jersey, and partner Carey Olsen.