

BRECQHOUS AUTONOMY

A Response to Henry Johnson's 'Sark and Brecqhou: Space, Politics and Power' (2014)

GORDON DAWES

Mourant Ozanes <gordon.dawes@mourantozannes.com>

Key Words:

Brecqhou, Sark, Barclay Brothers

As detailed below, Henry Johnson's article 'Sark and Brecqhou, Space Politics and Power' (2014) published in *Shima* v8 n1: 9-33 contains a number of factual errors and erroneous interpretations of the issues concerned. There is also a significant problem with the comparators used to refer to matters concerning Sark and Brecqhou since the micronations selected are bogus, recent conceits, as opposed to islands with ancient histories and real status, such as Sark and, separately, Brecqhou. The crucial distinction is that there is no external challenge to the status of either Sark or Brecqhou. The principal shortcomings of Johnson's characterisations and argument are as follows:

Page 10 – Johnson states that Sark and Brecqhou form one jurisdiction. This is too simplistic a statement. Brecqhou is certainly not a part of Sark, and I return to this issue later. Sark's parliament and court claim jurisdiction over Brecqhou. However, that jurisdiction is itself contentious and the concession made in a statement to the Royal Court of Guernsey in private law proceedings in 2000 referred to by Johnson was itself wrongly made and/or not binding as a matter of public law. In practice the jurisdiction is rarely exercised and, when it is, dispute generally follows. Whatever legislative jurisdiction is claimed is itself limited by convention as to how it is exercised and when.

Page 12 – Johnson states that Sir Frederick and Sir David Barclay are tenants of La Moinerie de Haut, one of the original Sark tenements, and repeats a claim that Brecqhou became a tenement of Sark in 1929 when Dame Sybil Hathaway sold Brecqhou to one Angelo Clarke. Both statements are incorrect. The conveyance of Brecqhou is set out in Rivett (2002: 287), Dame Sybil purported to include in the sale "the right to vote in the Chief Pleas of the said Island of Sark"; this right was attached to the seat in Chief Pleas previously enjoyed by the owner of the Moinerie. There is no reference of any kind to Brecqhou ever becoming a tenement of Sark. Historically it was never a tenement of Sark, being in the separate ownership of the Le Marchant family at the time of the grant of the Letters Patent of 1565; nor is the Island, itself substantial and with its own name and identity, mentioned in the Letters Patent, as it surely would have been under the drafting practises of the day. Indeed the very fact that Dame Sibyl purported to include a seat in Chief Pleas in the sale of Brecqhou is consistent only with Brecqhou *never* having formed part of any tenement of Sark, because otherwise it would already have had representation in Chief Pleas. The erroneous claim of Brecqhou being a tenement of Sark is mentioned repeatedly and fundamentally undermines the premise of Johnson's article.

Dawes: Brecqhou's Autonomy

Page 12 – Johnson states that Brecqhou has a historical interdependence with Sark, but this is not accepted either. Matters are blurred by the fact that Brecqhou and Sark were in the same ownership for an extended period of time but since the sale of Brecqhou in 1929 Brecqhou has existed to all intents and purposes independently of Sark. Brecqhou does not depend on Sark for any services of any kind, let alone utilities or supplies. It generates its own electricity, has its own water sources, deals with its own waste, provides its own street lighting and imports all of its needs from Guernsey. It takes nothing from Sark at all. While geographically close to Sark it might just as well be separated by hundreds of miles.

Page 13 - The list on this page is inaccurate. The reference to Brecqhou becoming a tenement of Sark is wrong, as noted. The reference to "numerous petitions" challenging various Sark laws and systems of government is also an exaggeration. I have not counted the number but the actual figure would be less than ten petitions in total, each of which was fully justified. It should be noted in particular that an early draft of the Reform (Sark) 2008 Law was returned by London to Sark because it was not compliant with the European Convention on Human Rights. The petition objecting, inter alia, to the undivided role of the Seneschal should also have been allowed, as the later judgment of the English Court of Appeal *proved* (see Barclay et al, 2008).

Page 14 - The table is again inaccurate for the reasons stated above. I note the citation from websites claiming that Brecqhou is a part of Sark. These are incorrect and I will be writing to the administrators of the sites. Johnson refers to the Seigneur losing many powers in 2008, this is again an over-statement. The Seigneur retained his unelected seat. In fact he sits alongside the (now-elected) President of Chief Pleas sitting on a large wooden throne on a dais with the elected members facing him. He appoints and chairs the committee that selects the Island judiciary, He appoints other senior officials (Prévôt and Greffier). He has the right to speak politically and bring propositions to the assembly. He has a temporary right of veto over certain legislation. He must give his approval for the assembly to be summoned in certain circumstances. The Guernsey Police (there being no professional police force on the Island) require his permission to come to Sark, He is a trustee of all Sark's publicly owned assets. He owns the Island of Sark itself and, through the Letters Patent, its very constitutional basis, which he has threatened in the past. This is not democracy as the world understands it, and matters are made worse by the fact that Sark is a single constituency operating a single first-past-the-post electoral system making it very easy for the establishment grouped around the Seigneur to fill every seat in the Assembly. Mourant Ozannes' analysis shows that just 45% of the vote is sufficient to control every seat. In the circumstances it is strongly disputed that the 2008 Law led to the Seigneur losing many of his powers, indeed he lost very few.

Page 20 - The references to the role of the Seigneur at the top of the page are now historic, at least when making any claim that he personally must oversee the smooth running of the island's administration. An important distinction also arises between Brecqhou and Sark as to the nature of the ownership of Brecqhou. Brecqhou is indeed freehold land and was sold as such by Dame Sybil in 1929. The repeal of the requirement to obtain the Seigneur's permission to buy and sell realty (permission was not required for leases of any length) and pay fully 7.69% of the sale price to the Seigneur personally came in June 2008 with the commencement of the relevant provision of the Real Property (Transfer Tax, Charging and Related Provisions) (Sark) Law (2007).

Dawes: Brecqhou's Autonomy

Page 22 - Again it is not accepted that Brecqhou ever formed a part of Sark. It would have been sold along with Sark in 1852 because ownership was remained undivided on this occasion. The paragraph commencing "The year 1929 was especially significant..." is seriously in error as noted. Indeed it was significant for quite the opposite reasons to those Johnson states because it emphasised the independence of Brecqhou from Sark and not the contrary. Likewise Johnson draws the wrong inference from Dame Sibyl's autobiography and/or Dame Sibyl is herself being misleading. At the time Dame Sibyl was short of money and was contemplating mortgaging Sark. A letter from the then Lt Governor of Guernsey, Major-General Charles John Sackville, to the Home Office dated 14th August 1928 includes the clear statement that: "Mrs Beaumont claims that certain portions of Sark such as ... the Island of Brecou (sic) do not form part of the original manor of Sark". This is, of course, consistent with the events of 1929 and the purported inclusion of a seat in the assembly as part of the sale - but this did not make Brecqhou a part of Sark. It was entirely beyond the powers of Dame Sibyl to make any change to Brecqhou's legal status in any event.

Page 22/24 - It is correct that a number of laws are expressly disapplied from Brecqhou. Even more striking is that very few Sark laws of any kind make reference to Brecqhou, only a tiny minority. The claim made by Lt Col Reg Guille, former Seneschal and now President of Chief Pleas, at page 24 of the article is strongly disputed and not accepted. Lt Col Guille has no legal qualification of any kind and is hostile to the owners of Brecqhou.

Page 23 - The chronology is misleading. The entries concerning a case all relate to the same case. The reference to "incompliant" should be a reference to the dual role of the Seneschal being non-compliant with the European Convention on Human Rights. I have already mentioned the inaccuracy concerning "numerous" petitions.

Page 25 - There are frequent errors relating to Brecqhou being a "tenement" of Sark that are then relied upon as the basis for the applicability of Sark law to the Island. The error is significant for providing the false premise that the article proceeds upon. Sir David Barclay was named as the individual with the right to take the seat of the Moinerie tenement in Chief Pleas, that is all.

Page 26 - *The Sark Newsletter* (now *The Sark Newspaper*) is owned and edited by Kevin Delaney, the Chief Executive Officer of Sark Estate Management, a Barclay-owned company. Delaney is alone responsible for the content of the publication. The whole account of the events of 2008 is extremely contentious and indeed I wrote at length to the House of Commons Justice Committee complaining about the Committee's one-sided description of events. The citation at the bottom of the page is also misleading. The commentator is the writer of the article. He is reporting criticisms made by "detractors" of "financial feudalism"; it is not his own comment.

Page 27 - Johnson acknowledges that there is a Brecqhou counter-opinion but there is very little evidence of it in the article as a whole. Sark's Seigneur has no obligation of any kind to look after the interests of Brecqhou because, as Dame Sibyl herself conceded, Brecqhou was never a part of the 1565 grant. The jurisdiction of Chief Pleas is itself contested in nature and extent.

Dawes: Brecqhou's Autonomy

Bibliography

Barclay, R et al v Secretary of State for Justice & Ors (2008) England and Wales Court of Civil Appeal

Johnson, H (2014) 'Sark and Brecqhou, Space Politics and Power', *Shima: The International Journal of Research into Island Cultures* v8 n1: 9-33

Rivett, P (2002) *Brecqhou: A Very Private Island*, Saint Helier: Planetesimal