



Face to Face with

Hon. David Doyle

First Deemster and Clerk of the Rolls, Isle of Man

By Cynthia G. Claytor

The Hon. David Doyle, First Deemster and Clerk of the Rolls of the Isle of Man (the Chief Justice of the island's High Court of Justice), who spent his formative years in Hong Kong, reflects on his career in law and the utility of continued exchanges between the Isle of Man and Hong Kong.

In 1965, together with his parents and three elder sisters, the Hon. David Doyle, First Deemster and Clerk of the Rolls of the Isle of Man, moved to Hong Kong. His parents were from the Isle of Man, a little island of some 572 square kilometers in the middle of the Irish Sea. In the 1960s, the Isle of Man's economy was struggling. With few jobs available, many Manx people left the Island to build their careers abroad.

Deemster Doyle's father moved his family to Hong Kong so he could take a job with the Hong Kong Telephone Company. "On the Isle of Man and in England, he had been climbing up the telephone poles," the Deemster explained. "In Hong Kong, he expeditiously climbed up the career ladder and ultimately became the Chief Engineer of the Hong Kong Telephone Company in 1975."

The Deemster spoke fondly of his childhood in Hong Kong. He lived on Old Peak Road and recalls passing many a day at Big Wave Bay, swimming and attempting to surf, eating ice creams,

drinking 7UP® and Green Spot and trying to stay away from the sea urchins. He remembers boat trips around the islands, walking his dog around Tai Tam reservoir, the Dragon Boat races, Chinese New Year, days off from school during typhoons, having curfews during the riots and playing and watching lots of football. He even met the famous Brazilian footballer, Pelé, at the Hong Kong Hilton and got his autograph.

He also remembers many exciting and safe landings at the old Kai Tak airport, in the early days on BOAC's VC10s, with the approach past Lion Rock and seeing people in their flats brushing their teeth. He was also able to go up around Hong Kong air space in a small aircraft, which encouraged him to take flying lessons in his 20s.

"Hong Kong is special to me and I frequently feel a strong pull to come back. Although my home is in the Isle of Man, I still feel that a part of me belongs in Hong Kong," he said.

Since leaving in the 1980s, the Deemster

has followed the developments in Hong Kong with great interest. When he was a practising Manx advocate (1984–2003), he had numerous clients in Hong Kong. As a Deemster, he has returned to Hong Kong on a number of occasions and at times, he has cited Hong Kong case law as persuasive precedent as a sitting Manx judge. The Deemster spoke to us remotely about his career in law and the benefit of the continued exchanges between the two island jurisdictions.

A Rebellious Streak

When reflecting on his decision to pursue a career in law, the Deemster noted that he had recently found an old yellow programme entitled in blue "The Royal Hong Kong Jockey Club: Saturday 1 April 1978 \$2" when rummaging through a stack of family papers. It seemed to immediately transport him back to that Saturday afternoon in Hong Kong, when his family mingled amongst the likes of Sir Oswald Cheung CBE QC JP and Sir Denys Roberts KBE QC JP, two honorary Race Day Stewards.

As they arrived, Sir Douglas Clague, another Manx family in Hong Kong, warmly greeted them as a Race Meeting Steward, and before the day was out, Sir Douglas and his wife Peggy had signed the now-faded programme with the following message:

*"To David – Why not law in the Island?
Lot of future don't you think?"*

"I'd like to say that such comments inspired me to become a lawyer and then a judge in the Isle of Man, but the truth is that they simply nurtured a seed that had already been planted in my mind a few years earlier by my father," he said.

"I remember my father, when I was a rebellious teenager in Hong Kong, having that awkward but essential fatherly talk which most fathers have with their children at some stage. We were sitting on the balcony admiring the view of Hong Kong and discussing what I was going to do with my life. His parental advice went along the following lines:

'Son, whatever you do with your life be kind to others, don't forget where you came from, try and make a contribution, put more in than you take out, and most importantly do what you do to the best of your limited ability whether you are cleaning the streets or whether you end up as the Prime Minister. Oh, and do not be a lawyer or an accountant. They are simply financial parasites which live off the problems of others.'

I took most of that advice but rebelled against the last bit. I didn't want to enter politics and I didn't have the brains or numerical ability to be an accountant, so I chose to do a law degree," he said.

From the Bar to the Bench

Deemster Doyle was called to the English Bar in 1982. Afterwards, he worked in the litigation department of Slaughter and May in London, and then, in 1984, returned to the Isle of Man to become a Manx advocate, as he had always intended.

Subsequently, he became a partner at Dickinson, Cruickshank & Co. and later was appointed head of the firm's Commercial Department. In September 2002, he was appointed part-time Deputy High Bailiff (similar functions to an English District Judge) and Coroner of Inquests. He remained with Dickinson, Cruickshank & Co. (now known as Appleby) until March 2003 when he retired from private practice to take up the position, following an open competition, of Second Deemster. In December 2010, Deemster Doyle was appointed by Her Majesty Queen Elizabeth II as the First Deemster and Clerk of the Rolls, again by open competition. In January 2015, he was appointed a part-time Judge of Appeal of the Courts of Appeal of Jersey and Guernsey by Her Majesty the Queen.

"I thoroughly enjoyed my time in private practice and I miss the comradery and relative freedom, and I suspect that my family misses the long summer holidays! But life on the judicial bench, although somewhat lonely and isolated on occasions, has provided me with a great sense of personal satisfaction. I nearly always drive to work early in the morning looking forward to the challenges of the day ahead and I never drive home at night thinking 'that was a dull day'. Judicial life is never boring.

It is frequently packed with surprises, challenges and new legal issues to determine. It is sometimes stressful, and it is right to acknowledge that and to take steps to deal with it, but it is always worthwhile. I know I am extremely fortunate to love my life, my family, my work and the island I live on," the Deemster said.

Not So Different

Hong Kong and the Isle of Man are both internally self-governing island communities which are heavily influenced by those close to them – in the Isle of Man's case the United Kingdom and Ireland, and in Hong Kong's case China, the Deemster explained. "Our constitutional structures are however a little different. The Isle of Man is in effect an internally self-governing dependency of the British Crown. We are not, and never have been, a part of the UK. We enjoy our internal independence. We are not a member of the European Union but, as we do a lot of trade within the British Isles and Europe, Brexit will inevitably have an impact on us and indeed the rest of the world, including Hong Kong. The British Crown retains responsibility for the Isle of Man's defence and for ensuring the good government of the Island. We have our own Parliament (Tynwald which



is the oldest continuous parliament in the world dating back to 979 AD). We have our own legislature and our own executive government which respect the rule of law and the separation of powers. We have our own judiciary and we have our own laws. Our High Court judges are known as Deemsters. The first written reference to Deemsters can be traced back to the early 1400s but the office of Deemster is probably much older dating back to the Norse Kingdom and the origins of Tynwald in the 10th century," he said.

Continuing, he explained that there are very many similarities between Hong Kong and the Isle of Man, with the most important being a mutually strong work ethic and a desire to uphold the rule of law.

However, in terms of population density and number of lawyers, the Deemster noted that Hong Kong far exceeds the Isle of Man. The population of the Isle of Man is around 85,000 and its fused legal profession comprises 240 practising advocates. He also noted that in special circumstances, English counsel can be temporarily licensed to deal with cases before the courts of the Isle of Man. By contrast, Hong Kong has a lot more lawyers, with over 10,000 practising solicitors.

Challenges Ahead

Both the Isle of Man and Hong Kong face similar challenges in many areas, Deemster Doyle explained, but for present purposes, he commented on just two: young people and the rule of law.

"We both must ensure that our respective jurisdictions remain attractive places for young people to live and work. It is trite, but the future of a jurisdiction largely depends on its young people. Hong Kong and the Isle of Man must continue to ensure that the reasonable aspirations of their young people can be fulfilled. It is only in that way that our economies and communities will remain fresh and vibrant."

"Hong Kong and the Isle of Man also face a challenge in ensuring that our communities are not complacent and that they appreciate the value of the rule of law to the fair and just existence and progression of a community. I do not speak of the value in solely economic terms. Yes, the rule of law is the vital backbone of economic growth but it is much, much more than that. It directly impacts on the quality of all our lives. It goes to the core of a fair and civilised existence.

Justice Tang, Permanent Judge of the CFA, in a speech to law graduates on 19 March 2016 captured the importance of young people and the rule of law to the future of a jurisdiction when he stated:

'I hope that you, who are the future guardians of our system, will be vigilant. Do not think that small encroachments on the rule of law or on human rights do not matter. Or that because they do not concern you directly, you should not be bothered. Just as, if the air is polluted, we all suffer, if the rule of law is undermined we all suffer too. The future belongs to you ... Stand up for genuine rule of law and effective protection of our fundamental human rights[.]'

Hong Kong is very fortunate to have independent judges who promote and protect the rule of law in its best interests. The big challenge for the legal professions and the public in the Isle of Man and Hong Kong will be to support the judiciary in upholding the rule of law."

Role of Comparative Law

As the conversation switched to more general topics of importance, Deemster Doyle reflected on the utility of comparative law. He noted a lecture that he delivered at Harvard Law School in 2007, where he stressed the value of countries looking to developments in foreign jurisdictions to assist them in developing their own domestic law.

However, he acknowledged that it is not



always easy to stay on top of everything that is happening worldwide, which is why he finds judicial conferences so useful. "Firstly, all judges in common law jurisdictions deal with similar issues on a daily basis, and we have a lot to learn from each other. Secondly, it is important to raise the Island's profile and enhance its reputation as a good place to do business and as a respecter of the rule of law. Thirdly, it recharges the judicial batteries and is, frankly and somewhat selfishly, a refreshing break away from the immediate and seemingly constant pressures of the day job. Fourthly, it helps in putting issues within their proper perspectives. Fifthly, in a job which is frequently lonely and isolated, there is comfort and support to be obtained in discussing issues with other judges from other jurisdictions. There is a lot of mutual respect between judges and we can all assist each other in being effective and energised judges," he said.

Giving Lectures

Deemster Doyle is also a firm believer in judges giving talks to others interested in the law and judges promoting and protecting the rule of law locally and internationally. In addition to hosting visits to the Isle of Man Courts of Justice, the Deemster also gives lectures to trainee advocates, as well as secondary students and others on the island.

Additionally, he visits judges and others interested in the law in jurisdictions overseas, as well as hosting visits of foreign judges and others at the Isle of Man Courts of Justice. "I believe that meeting with other judges, travel and the international exchange of ideas are very important. Travel increases knowledge and understanding and is vital particularly for judges in compact island jurisdictions who might otherwise be confined to a local and sometimes somewhat insular court room. International connectivity is extremely useful for me because the vast majority of the cases I deal with at first instance and appellate level have an international element, and visiting judges in other jurisdictions is just part of building up better international understanding and judicial cooperation. The role of judges today must include interaction with other judges, lawyers and the public and stepping beyond their national boundaries to learn from, and collaborate with, the rest of the world," he said.

Essential Features of Judicial Role

Elaborating on his statement about the role of judges, the Deemster highlighted what he believes to be the essential features of the judicial role, which he previously outlined in a 2017 lecture at

Oxford. Succinctly, he explained:

- Judges decide the legal issues of the day in accordance with the law and the judicial oath. Judges must be impartial and independent and cases should be determined fairly and justly within a reasonable time. This involves active case management beginning as soon as the claim or application is filed with the court.
- Judges develop the common law, but any judicial development of the law must be in conformity with justice, common sense, the spirit of the law, principle and policy. It must also take into account the competing needs for certainty and flexibility and the avoidance of illegitimate legislating from the bench. Judges should develop the law in a way which is considered most appropriate for the needs, requirements and interests of their home country and the wider international community of which that home country is a part.
- Judges must embrace change and new technology.
- Judges may highlight the benefits of the judge's home country.
- Judges give guidance on local law and procedural issues.
- Judges develop local jurisprudence in the best interests of their home country taking into account its responsible place within the world.
- Judges promote the rule of law both locally and internationally.
- Judges, where appropriate, refer to issues of policy relevant to the judge's home country.
- Judges get involved in legal education and, where appropriate, law reform.
- Last, but not least, judges should be continually focused on the needs of all court users.

These are standards to which he hopes all judges will aspire when administering justice in their respective jurisdictions. ■



專訪

Hon. David Doyle

人島首席法官及司法機構首長

作者 Cynthia G. Claytor



法官David Doyle在香港長大，是現任人島(Isle of Man)首席法官及司法機構首長。他接受本刊專訪，分享自己的法律生涯，回想不斷穿梭於人島和香港之間的好處。

法官David Doyle，人島(Isle of Man)首席法官及司法機構首長，1965年與三位家姐隨父母移居香港。他父母來自人島，人島是個小島，位於愛爾蘭海中央，面積572平方公里左右。上世紀60年代，人島經濟不振，工作機會少之又少，島上人很多都離開，遠赴海外建立事業。

法官Doyle的爸爸帶同家人移居香港，在香港電話公司找到一份工作。「在人島和英國，他爬的是電話線杆，」法官Doyle說，「在香港爬的是事業階梯。他爬得很快，1975年爬到最高位置，成為香港電話公司總工程師。」

法官Doyle細細回味在香港的童年時光。他住在舊山頂道，常去大浪灣游水、滑浪、食雪糕、飲七喜、飲綠寶，……，見到灘上有海膽要兜路走。他還記得試過坐船環島遊，繞行大潭水塘遛狗，觀看很多場足球賽，還有，香港有龍舟競賽、農曆新年，懸掛颱風時學校會停課，暴動會戒嚴。他甚至在香港希爾頓遇見過巴西著名足球員比利，向他索取了親筆簽名。

他亦記得，很多次乘搭英國海外航空公司的VC 10s早機返港，飛機飛越獅子山不久，就見到大廈單位內有人在擦牙，經歷一番驚險刺激的場面之後，才平安

降落舊啟德機場。他也坐過小型飛機翱翔香港上空，從此得了鼓勵，在20多歲時上飛行駕駛課程。

「對我來說，香港是個特別的地方，我經常覺得有一股很強的吸力拉我回到這裏來。雖然人島是我的家，但我始終覺得自己有一部分是屬於香港的。」

自從80年代離開之後，法官Doyle很有興趣知道香港的發展情況。他在人島執業做辯護律師的時候(1984—2003)，有很多香港客戶。他做人島法官之後，偶爾有幾次返回香港，審理案件的時候，試過援引香港案例法，以香港案例作為具有說服力的判例。法官Doyle分享他的法

律生涯，回想幾十年前的點點滴滴，以及不斷穿梭於兩個司法管轄區之間的好處。

生性反叛

回想自己決定在法律領域發展事業的時候，法官Doyle提到最近在家翻找東西時，從一大疊文件找到一份黃色的日程表，上面印有藍色的標題：「英皇御准香港賽馬會：1978年4月1日(星期六)\$2」(The Royal Hong Kong Jockey Club: Saturday 1 April 1978 \$2)。日程表仿佛帶他重返香港那一天星期六的下午。當天，他一家與馬會董事，包括張奧偉爵士CBE QC JP和羅弼時爵士KBE QC JP，會聚一堂，有講有笑。他們到場時，另一位同樣舉家從人島來港居住的祈德尊爵士，以競賽董事的身分，親切地上前歡迎。活動結束之前，祈德尊爵士和太太Peggy在現在已經褪色的日程表上留言簽名：

大衛：為何不在人島讀法律呢？你不覺得在那裏前途一片光明嗎？

法官Doyle說：「我會說，這句話激勵我要成為律師，有朝一日做人島的法官，但實情是，我爸爸早在幾年前已在我心底埋下種子，激發我立志成為律師，這句留言是再次激勵我而已。」

「我記得在香港，當我是反叛青年的時候，爸爸像大多數人的爸爸一樣，到了某個時候，諄諄告誡兒子，言辭有點笨拙，但滿有慈父心腸。我們坐在露台，一邊欣賞香港的景色，一邊傾談我的人生計劃。他一臉慈容，語重深長地對我說：

『不論你要在將來的日子做些甚麼，要友善待人，不要忘記你從哪裏來，總要努力貢獻，付出的要比收取的多，最重要的是，你將來掃街也好，做首相也好，都要盡己所能去完成要做的事。還有，不要做律師或會計師。他們只不過是金子銀子的寄生蟲，依靠人家的問題過日子。』」

「我聽從他大部分忠告，只是最後一句聽不入耳。我不想涉足政治，沒有做會

計師的頭腦，對數字也沒有天份，因此選擇了考取法律學位。」他說。

由大律師轉做大法官

法官Doyle在1982年獲認許為英國大律師。後來，他在倫敦司力達律師樓訴訟部工作，1984年返回人島做辯護律師，按照自己的計劃，完成一直想要做的事。

接著，他成為Dickinson Cruickshank & Co的合夥人，之後再獲委任為商業部門的總管。2002年9月，他獲委任為非全職副司法長官(Deputy High Bailiff，職能與英國地方法院法官的相近)兼死因裁判官(Coroner of Inquests)。他一直到2003年才離開Dickinson Cruickshank & Co(現稱為Appleby)，結束私人執業生涯，在公開招聘中脫穎而出，擔任人島次席法官。2010年12月，他再次通過公開招聘，獲英女皇伊利沙伯二世委任為首席法官及司法機構首長。2015年1月獲英女皇委任為澤西島及格恩西島非全職上訴法庭法官。

「我完全享受私人執業的日子，念念不忘昔日的同儕情誼和相對的自由，我想，我的家人也懷念漫長的暑假！法官的日子可不一樣，雖然有點兒寂寞，偶爾覺得孤單，但給我很大的個人滿足感。我差不多每次清早返工，都是一邊駕車，一邊期待那天有挑戰臨到，晚上駕車回家，從未試過覺得『今天真悶』。法官的日子一點都不沉悶，經常是驚喜一籬籬，富有挑戰，有一大堆新的法律問題等待決定。偶爾會感到壓力(先承認，後處理，是消除壓力的正確方法)，不過這總是值得的。我知道，可以愛生命，愛家庭，愛我的工作，愛我住的那個島，實在是我三生之幸。」

大同小異

他說：「香港和人島都是內部自治的，深受鄰近國家的影響——影響人島的是英國和愛爾蘭，影響香港的是中國。不過，我們的憲法架構有些不同。人島實際上是內部自治的英國皇室屬地，不是英國的一部分，由始至終都不是。我們享受內部獨立。我們不是歐盟成員，

但是，因為我們與不列顛群島和歐洲交易頻繁，脫歐無疑對我們有無可避免的影響，事實上，全球其他地方，包括香港在內，也是無可避免地受到影響。英國皇室保留負責管理人島的防務，並有責任確保島上管治良好。我們有自己的議會(Tynwald，全球現存最古老的議會，其起源追溯至979年)，也有自己的立法機關，政府也有執法部門，並且尊重法治和權力分立。我們有自己的司法機構，也有自己的法律。我們稱三名高等法院法官為Deemsters。最早記有Deemsters的文字可追溯至15世紀初葉，不過Deemster一職更為久遠，大概可追溯至10世紀斯堪的納維亞王朝(Norse Kingdom)及人島議會(Tynwald)的起源。」

法官Doyle接續說，香港和人島有很多相似之處，最重要的一點是同樣有敬業的精神，渴望維護法治。

但他指出，香港的人口密度和律師數目遠遠超過人島。人島人口85,000左右，不分設大律師和事務律師的法律專業有240名執業辯護律師。他亦指出，在特殊情況中，英國大律師可獲暫准在人島執業，處理法庭案件。香港有10,000名執業事務律師，數目遠比人島的多。

未來的挑戰

法官Doyle解釋，人島和香港有很多領域所面對的挑戰都是相類似的，不過，他今次只就兩點給予意見：年青人和法治。

「香港和人島都要確保各自的司法管轄區仍然對年青人具有吸引力，是他們願意居住和工作的地方。這已是陳腔濫調，不過，司法管轄區的未來相當依靠年青人。香港和人島必須繼續確保年青人合理的志向可以實現。只有這樣，我們的經濟和社會才能繼續呈現朝氣和活力。」

「香港和人島亦面對一項挑戰，就是確保社會不苟且偷安，也要確保他們明白社會的存在和進步之所以公平公正，全賴法治的價值。我所講的，不純粹是經濟的價值。不錯，法治是經濟增長的重

要支柱，但它的價值遠不止於此。法治直接影響我們所有人的生活質素。它觸及社會存在公平、文明的核心。」

終審法院常任法官鄧楨(鄧國楨)2016年3月19日向法律畢業生發表的演說中，正正提到年青人和法治對未來司法管轄區的重要性：

「我希望你們，香港制度未來的守護者，打醒精神。不要以為輕微侵犯法治或人權無傷大雅。又或者事不關己，就己不勞心。就像天空污染了一樣，我們全部都是受害者。要是法治被削弱，我們全部身受其害。未來是屬於你們的……為真正的法治站起來，為有效保護我們的基本人權站起來。」

香港很幸運，有獨立的法官推進並保護法治，為香港謀求最大利益。支持司法機構維護法治是人島和香港的法律專業和社會大眾的一大挑戰。

比較法的角色

當傾談一些更常見的重要話題時，法官Doyle想到比較法的重要性。他提及自己2007年在哈佛法律學院講課，在課堂上強調，國家值得借鏡外地司法管轄區的發展，以幫助發展自己本國的法律。

不過他承認，我們總不能輕易地掌握天下萬事，而這正是他認為法官會議之所以大有用處的原因。他說：「一、所有普通法司法管轄區的法官，每天處理相近的問題，我們有很多可以彼此學習的地方。二、人島必須提升形象，增加知名度，讓人知道人島是做生意的好地方，也是尊重法治的地方。三、它給司法人員充充電，坦白說，或許是有點兒自私地說，法官會議給我們透氣的機會，離開一下每天似乎不斷積累的工作壓力。四、它有助於在恰當的觀點範圍內提出問題。五、從事經常叫人感到寂寞，孤伶伶的工作，當與其他司法管轄區的法官討論爭議的時候，就可以得到安慰和支持。法官各有所長，互相敬重，我們大家可以彼此幫助成為效能高，有活力的法官。」



教學培訓

法官Doyle亦有一套堅定的信念，確信法官要向其他法律愛好者講學，也要在自己所在地和國際間推進並保護法治。除了招待訪客參觀人島法庭之外，他亦向辯護律師實習生，以及島上中學生等授課。

此外，他前往海外司法管轄區，探訪當地法官及其他法律愛好者，以及招待外國法官等參觀人島法庭。他說：「我相信，與其他法官會面、出國、在國際間交流理念，都是非常重要的。出國可以增長知識，加深了解，小島司法管轄區的法官尤其需要出國走一走，因為島上法庭的工作空間有限，有時甚至有點兒與世隔絕的感覺。我處理的原審案件及上訴案件之中，絕大部分包含了國際元素，所以對我來說，保持國際聯繫是萬分重要的，而探訪其他司法管轄區的法官只是增進國際了解，促進司法合作的其中一環。法官今天的職責，必定包括與其他法官、律師、社會大眾互動交流，跨越國家界限，學習全球各地之長處，大家彼此合作。」

法官職責非常重要的特色

法官Doyle詳談他關於法官職責的說法，特別提到他認為法官職責所絕對必要的特色——他2017年在牛津講授法官職責絕對必要的特色時，已概述過一遍，現簡要說明如下：

- 法官按照法例及司法誓言，就眼前的法律爭議點作裁定。法官必須公正獨立，

案件應當在合理時間內得到公平公正的裁定。這需要在當事人一提交申索或申請，就開始積極處理案件。

- 法官發展普通法，但司法機關或人員發展的法律，必須符合公義、常理，以及法律、原則、政策的精神。但亦必須考慮到法官所需要的，既要確定無疑，但又要靈活可變，還需要廢止不合理的法例。法官發展法律的方式，應當是被認為最適合祖國的需要、規定及利益的方式，也是最適合祖國所處更遼闊國際社會的需要、規定及利益的方式。
- 法官必須樂意接受改變和新技術。
- 法官能夠突顯自己祖國的好處。
- 法官就本地法律和程序問題給予指引。
- 法官顧及祖國的全球責任，發展符合祖國最大利益的本國法理。
- 法官在本地和國際間推動法治。
- 在適當情況下，法官參考與自己祖國有關的政策爭議。
- 法官參與法律教育，並在合適情況下，參與法律改革。
- 最後，法官應當不住地以所有法庭使用者的需要為關注重點。

他希望這些是所有法官在各自司法管轄區秉行公義時所渴望達到的標準。■