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# **Self-determination, sovereignty disputes and dependent territories: An analysis of the 2013 referendum in the Falkland Islands.**

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The Falkland Islands (Islas Malvinas) are a small archipelago in the South Atlantic. Under British administration since 1833, with the exception of a short period of Argentine military rule in 1982 at the time of the war, the islands are the subject of a sovereignty dispute between Argentina and the United Kingdom. As a British overseas territory, they take part in some programmes of the European Union<sup>1</sup>. Assessing the merits of the conflicting claims is an arduous task that goes well beyond the ambit of this paper. The Argentine claim is based on the notion of continuity between the former Spanish empire and the states that were born following its demise in the early 19<sup>th</sup> century. In this vision the British presence on the islands is viewed as a clear infringement of the territorial integrity inherited from the former colonial power. The United Kingdom's position was initially based on an early claim to the islands, before the end of Spanish colonial rule in South America and the peaceful occupation of the disputed territory for a long period. More recently, self-determination has clearly become the single most important weapon in the British armoury, with successive Prime Ministers reasserting the now well-known position that any change in the constitutional status of the territory requires the consent of the inhabitants.

The referendum held on 10 March 2013 returned very clear results with only 3 voters<sup>2</sup> answering “no » to the maintaining of the current status. This came as no surprise and the referendum was widely dismissed in Argentina as just a public relations exercise that had no legal value. For the representatives of the islanders and indeed for the British government on the other hand the referendum was an exercise in self-determination.

This paper will address the background to the referendum and the implications for the future of the dispute. Central to the analysis is the assumption that the referendum has to be seen as part of an effort to convince the world that the Falkland Islanders are a people. The analysis is based on the typology of ethno-national referendums developed by Matt Qvortrup. However, the Falklands referendum does not fit easily into the categories defined by Qvortrup which suggests that the

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<sup>1</sup> The islands receive about 4.5 m € from the European Development Fund (European Commission, 2013a)

<sup>2</sup> Out of 1,518 votes cast.

exercise had a purpose which went beyond simply asking voters about the future status of the islands.

### **A background to the dispute**

While a comprehensive analysis of the background to quarrel goes far beyond the scope of this paper, some information on the sovereignty dispute between the United Kingdom and Argentina is necessary to appreciate the recent developments.

One of the most striking aspects of the dispute is the way it has remained alive and, to some extent, gained in intensity since the beginning of what one might call the "modern" period, when the British established a permanent settlement on the islands in 1833. The dispute culminated in the 1982 war which saw the Argentine military junta plan a military occupation of the disputed territory, allegedly to give Argentina a stronger bargaining position in future negotiations (Arcadio Zarza, 2010: 15). Another characteristic of the dispute is the lack of consensus on many historical facts and, less surprisingly, on the interpretation attached to facts. The history of the islands is therefore embedded in the narratives that each side tends to favour. Memories tend to take precedence over history. This is compounded by the lack of unequivocal written sources which might have provided a common ground on which to build confidence and a shared vision.

Prior to the 1833 British landing, the islands had seen several settlements from various countries. All parties agree on the absence of human presence on the islands before the French established a colony in 1764, which they subsequently sold to Spain in 1767, thus forfeiting their rights to the archipelago. A British settlement was established in 1765 and there seems to be evidence that the two colonies were unaware of the other's existence for some time. Later, Spain and Britain came to the brink of war over who was the legitimate power. In 1774 the British government decided to abandon the existing settlement, without dropping its claim to sovereignty as a plaque was left (and subsequently removed by the Spanish) which reaffirmed that the islands belonged to His Majesty King George III. Subsequently, Spain was in full control of the Falklands. The Spaniards maintained a token presence until 1811 when they withdrew their forces. 1816 saw the independence of a large chunk of the Spanish colonial empire, the former Vice-royalty of the River Plate which became known as the United Provinces of Buenos Aires or Argentina. The new government in Buenos Aires took steps to take control of the islands by appointing a governor in 1829. A small presence is established. It included a token garrison which later mutinied against its commander and a number of gauchos. In 1832, the British government dispatched ships to the

islands for the purpose of exercising the right of sovereignty. This marked the beginning of Britain's continuous occupation of the archipelago.<sup>3</sup>

### **The present situation**

The Falklands issue is a combination of a colonial or post-colonial situation and a territorial dispute. While this is not unique, as the case of Gibraltar suggests, albeit with a different historical background<sup>4</sup>, the Falklands sovereignty dispute started a bloody conflict between two Western countries.

The recent period of the dispute started in the 1960s following a UN General Assembly resolution (General Assembly Resolution 2065 (XX), *Question of the Falkland Islands (Malvinas)*, 16 December 1965) which established a link between the colonial situation of the islands and the sovereignty dispute.

*Noting* the existence of a dispute between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the said Islands,

1. *Invites* the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland to proceed without delay with the negotiations recommended by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples with a view to finding a peaceful solution to the problem, bearing in mind the provisions and objectives of the Charter of the United Nations and of General Assembly resolution 1514 (XV) and the interests of the population of the Falkland Islands (Malvinas).

The connection is confirmed in other UN documents:

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<sup>3</sup> Analysing the period between the Spanish withdrawal and the British landing is difficult because of the confusion caused by the political instability of the former Spanish colonies and the refusal of Spain to recognize independence. Also, it is difficult to draw the line between private and government interests as many of the individuals involved in the islands were driven by business interests. Louis Vernet, the first Argentine governor, took his first expeditions to hunt wild cattle.

<sup>4</sup> Contrary to the Falklands the legal status of Gibraltar is governed by the 1713 Treaty of Utrecht, which means that there are written documents which may serve as a basis for the resolution of the dispute between Spain and the UK.

*Reiterates* that the way to put an end to the special and particular colonial situation in the question of the Falkland Islands (Malvinas) is the peaceful and negotiated settlement of the dispute over sovereignty between the Governments of the Argentine Republic and the United Kingdom of Great Britain and Northern Ireland (Special Committee on Decolonization, 2012).

Following the passing of Resolution 2065 the United Kingdom entered a period of direct talks which bore fruit in the early 1970s when an agreement on communications and air flights to the islands was reached. Negotiations on sovereignty proved more troublesome as the Falkland Islanders viewed any departure from full British sovereignty and control as little less than treason. The British government wanted to find a long term solution because the islands were increasingly viewed as an expensive liability, especially if they had to be defended, which many people thought was virtually impossible (Woodward, 2012: 95-6).

The Argentine authorities grew impatient over what they termed British obfuscation and procrastination. A beleaguered military junta decided that a military move could carry the day and ordered the forceful occupation of the islands. The British government reacted diplomatically and militarily by despatching a task force which carried out a landing. After six weeks of fighting the British forces finally recovered the islands and British administration was restored.

### **Territorial integrity versus self-determination**

These two concepts underpin the respective claims of both the United Kingdom and the Argentine republic. In a way there may be a built-in contradiction between self-determination and territorial integrity. If a part of an existing country has the right to determine its future, this is likely to have an adverse effect on the territorial integrity of that country. Geography may mitigate this apparent contradiction when there is a clear separation between the parts<sup>5</sup>. In the case of islands, the notion of territorial integrity loses a lot of weight except when an archipelago is dismantled<sup>6</sup>. Also, the principle of territorial integrity is not as simple as it may seem.

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<sup>5</sup> Bangladesh is a case in point and probably was a problem waiting to happen. The end of British colonial rule in India had led to the creation of two separate states along religious lines. Pakistan was divided in two parts (West Pakistan and East Pakistan) separated by India in the middle. The uneasy arrangement came to an end in 1971 when East Pakistan became independent as Bangladesh.

<sup>6</sup> When the Comoros became independent from France in 1975 the island of Mayotte remained a dependent territory. The referendum of 1974 which paved the way for Comorian independence returned a no-vote in Mayotte. A further referendum held in February 1976 in Mayotte only confirmed the previous vote. Prior to the vote the French government had vetoed a draft Security Council resolution (S/11967) based on earlier General Assembly resolutions which reaffirmed the unity and territorial integrity of the state of Comoros.

In any case the Argentine claim depends on whether Argentina was sovereign when the British landed in 1833. At this point, Argentina contends that it inherited the territory from the former colonial power in accordance with the much-vaunted *uti possidetis* principle, under which the boundaries that existed in colonial times should be kept to prevent an epidemic of territorial disputes:

Under this doctrine, each state in the region was to be recognized as possessing all territories that were presumed to be possessed by its colonial predecessor as of 1810 (for South America) or 1821 (for Central America), reflecting the last periods of unchallenged Spanish rule (and thus the last times that borders could be considered to have been under Spanish authority). Much like the Monroe Doctrine proclaimed by the United States, this doctrine was intended to prevent new claims to Latin American territory by extra-regional states, because the entire continent was already considered to be under the sovereignty of independent states. Furthermore, there should be little or no territorial conflict among the Latin American states themselves because of the clear identification of each border's location based on colonial-era administrative lines (Hensel *et al.*, 2006: 8).

Under this principle, the British landing of 1833 was an act of aggression that did not give the perpetrators any title to the sovereignty. The inhabitants are British settlers, an implanted population that has no right to self-determination, which applies to indigenous people only. The only lasting solution is therefore full Argentine sovereignty, which will bring an end to the disruption of Argentine territorial integrity by eliminating the colonial situation. In this the Argentine governments find additional support in the Declaration 1514 of the General Assembly on the granting of independence to colonial countries and peoples. Article 6 says that "Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations". The islanders are not a third party to the dispute as they are British. Successive Argentine governments have all taken the view that the conflict is purely bilateral (Ministerio de Relaciones Exteriores y Culto, 2013).

The British claim is based on three main arguments. First, they question the validity of the Argentine claim of sovereignty in 1833 in line with some of the historical facts listed above. The

second line of defence is the principle of peaceful occupation for a long period (acquisitive prescription). This was best summarized by a Foreign Office official quoted in Lawrence Freedman's seminal book on the 1982 war:

If there is a doubt to the title, or if a title may have originally been invested in someone else – which I don't concede- then the fact that you have been in continuous, peaceful occupation, and possession, and been administering the territory for a lengthy period of years, will cure any so-called or alleged defects in the title (Freedman, 2005, Vol. I: 5).

The third argument is self-determination. While the principle is clearly attractive and will strike a cord with believers in democracy it remains fraught with uncertainties. General Assembly Resolution 1514 stated that "All peoples have a right to self-determination". One of the major difficulties lies in the definition of a people and what self-determination actually means. In a 1983 article in *International Affairs* Denzel Durnit gave a comprehensive and thorough analysis of the questions arising from the concept of self-determination (Durnit, 1983: 417). He warned against giving it a supreme importance. Remarkably though, it looks as if the British before the war did not consider the wishes of the islanders as paramount. When he visited the islands in 1967, the then minister of State at the Foreign Office, Lord Chalfont said "[he] was not offering any assurances" and that the inhabitants had to face the new realities of international life (Beck, 1985: 657). The war certainly changed the picture by making the wishes of the inhabitants the core of British policy on the issue.

The Argentine position is that the inhabitants are an implanted population that does not have the right to self-determination and only their interests should be taken into account in the negotiations between the United Kingdom and Argentina, as suggested in 2065(XX).

The conclusion therefore must be that although self-determination for the Falklands does not command widespread support internationally, not least because of the weight of a lingering anti-colonial sentiment and successful lobbying by Argentina in international forums, it has now become a cardinal principal of British policy as a consequence of the 1982 war. The 2013 referendum is therefore viewed by the inhabitants and the British government as a logical consequence of the principle.

## **The context of the referendum**

The 2013 referendum was organized amid growing tensions between the United Kingdom and Argentina. These tensions followed a period of *détente* that had started in 1989. For seven years after the war, the deadlock remained and while Argentina was busy recovering from the end of the dictatorship and the “dirty war” Britain was reinforcing its military grip on the territory by building a new base at Mount Pleasant in the “camp”<sup>7</sup>. Its purpose was to deter any future invasion of the islands by concentrating state of the art military equipment manned by personnel stationed on the islands on a rota basis. One remarkable side-effect of the militarization of the islands was to boost economic development and demography as many civilians were flown in or recruited locally to work as contractors on the site. Also, new revenues were derived from the sale of fishing licences after the introduction of the fishing zone in 1987. Direct talks between the United Kingdom and Argentina were resumed in 1989 when a formula was agreed for future contacts. Under the so-called “sovereignty umbrella” virtually all aspects of cooperation could be addressed but sovereignty was specifically excluded. In a way this was a return to the early 1970s when agreements had been reached on air links and communications in general. Good will and confidence building seem to have been on the agenda and diplomatic relations were restored in 1990. Under the umbrella agreement, cooperation developed in fisheries, with the setting up of the South Atlantic Fisheries Commission in 1991, and in hydrocarbon exploration in 1995. War graves and provisions for visiting relatives were also addressed in several agreements.

However, around 2005, the Argentines started to grow disillusioned. Contrary to what they probably expected, freezing the sovereignty dispute for a while and making headway on practical issues did not make the resumption of talks on sovereignty likely, quite the contrary. The economic development of the archipelago limited the advantages that the inhabitants might derive from closer contact with the mainland. In other words, the Argentines suspected that the British were reaping all the benefits of the *détente* while refusing to discuss sovereignty.

The issue had not died down in Argentine politics. The claim had been enshrined in a provisional article of the 1994 constitution:

The Argentine Nation ratifies its legitimate and non-prescribing sovereignty over the Malvinas, Georgias del Sur and Sandwich del Sur Islands and over the corresponding maritime and insular zones, as they are an integral part of the National territory. The

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<sup>7</sup> The camp is anywhere in the Falklands that is not Stanley..



recovery of said territories and the full exercise of sovereignty, respectful of the way of life of their inhabitants and according to the principles of international law, are a permanent and unrelinquished goal of the Argentine people<sup>8</sup>.  
).

It also enjoyed widespread popular support. The election of a new president in 2003 was a turning point and brought about a hardening of the Argentine stance which culminated in 2007 when President Nestor Kirchner announced that Argentina would no longer abide by the terms of the 1995 hydrocarbon agreement (*La Nación*, 28 Marzo 2007). The run up to the 30<sup>th</sup> anniversary of the war and also the 150<sup>th</sup> anniversary of what is termed in Argentina the "British usurpation" increased the pent-up tensions which came to a head when the British despatched a brand new warship to the South Atlantic military and Argentine harassment of ships flying the flag of the Falklands became common in some parts of the Southern Cone.

### **Organizing the referendum**

Remarkably, the official announcement of the referendum was made in Stanley in June 2012 as the liberal-democrat Minister of State, Jimmy Browne, was visiting the island to commemorate the end of the 1982 war<sup>9</sup>. The Speaker of the legislative assembly, Gavin Short, expressed in no uncertain terms what the aim was:

We have thought carefully about how to convey a strong message to the outside world that expresses the views of the Falklands people in a clear, democratic and incontestable way... The Argentine government deploys misleading rhetoric that wrongly implies that we have no strong views or even that we are being held hostage by the UK military.

This is simply absurd (*Daily Telegraph*, 12 June 2012).

There is no specific provision in the Falkland Islands constitution regarding the organisation of referendums. In fact, referendums are only mentioned in the section about the two constituencies and their boundaries. However, the opening chapter of the Constitution on fundamental rights

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<sup>8</sup> La Nación Argentina ratifica su legítima e imprescriptible soberanía sobre las islas Malvinas, Georgias del Sur y Sandwich del Sur y los espacios marítimos e insulares correspondientes, por ser parte integrante del territorio nacional. La recuperación de dichos territorios y el ejercicio pleno de la soberanía, respetando el modo de vida de sus habitantes, y conforme a los principios del Derecho Internacional, constituyen un objetivo permanente e irrenunciable del pueblo argentino (*Constitución De La Nación Argentina*, 1994).

<sup>9</sup> The Argentine forces had surrendered on 15 June 1982.

includes two sections on self-determination, which may be viewed as giving the legislature the authority to pass the relevant legislation (*The Referendum (Falkland Islands Political Status) Ordinance 2011*).

**1. Whereas—**

(a) all peoples have the right to self-determination and by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development and may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit and international law;

(b) the realisation of the right of self-determination must be promoted and respected in conformity with the provisions of the Charter of the United Nations; (*Falkland Islands Constitution, 2008: chapter 1*)

The practical details of the vote were finalised in the course of the summer and the autumn. The financial arrangements were made in August and the question was officially made public in November. Whereas the question was fairly simple it was preceded by a long explanatory note:

The current political status of the Falkland Islands is that they are an Overseas Territory of the United Kingdom. The Islands are internally self-governing, with the United Kingdom being responsible for matters including defence and foreign affairs. Under the Falkland Islands Constitution the people of the Falkland Islands have the right to self-determination, which they can exercise at any time. Given that Argentina is calling for negotiations over the sovereignty of the Falkland Islands, this referendum is being undertaken to consult the people regarding their views on the political status of the Falkland Islands. Should the majority of votes cast be against the current status, the Falkland Islands Government will undertake necessary consultation and preparatory work in order to conduct a further referendum on alternative options.

*Do you wish the Falkland Islands to retain their current political status as an Overseas Territory of the United Kingdom?*

YES or NO (Falkland Islands Executive Council, 21 November 2012)

The way the question was drafted points to two key aspects of the referendum. First, Argentina is clearly targeted as the "factor" that made the referendum desirable or necessary. Secondly, the promoters of the referendum seem in no doubt about the outcome. What is at stake is the maintenance of the *status quo*. Only in the unlikely victory of the "no" would other options be put

on the table. The drafting of the question had been submitted to the public in a series of meetings held in early November. The dates set for the vote were 10-11 March 2013.

### **International monitoring**

Calling the referendum was officially a domestic decision made by the Falkland Islands Government (FIG) with logistical support from the United Kingdom. The exact role of the British government remains unclear but it is very likely that the decision was a joint one. International involvement was therefore a matter of choice. It is clear that the FIG wanted the vote to look like a UN-sponsored referendum and devoted a lot of effort to having a team of international observers present. Also, the FIG had the technical know-how and capacity to organise on its own the whole process with the required level of fairness and transparency. The predictability of the results (a massive "yes") did not warrant any specific measures to make sure that ballot-rigging did not take place to tip the scale one way or the other. In the course of the autumn, the Falkland Islands Government took steps to have the vote monitored by an international team. The exercise proved rather difficult as the Argentine government worked behind the scenes to convince potential observers and their countries of origin not to take part in the team. Countries in Africa and the Caribbean were targeted by Argentine diplomats with limited success, according to some sources quoted in the Buenos Aires press<sup>10</sup> (*La Nación*: 24 November 2012 and 07 March 2013).

The international observers did monitor the referendum though in accordance with the *Declaration of Principles for International Election Observation and the Code of Conduct for Election Observer* (RIOM Final Report 2013:4) and reported that

It is the conclusion of this independent team of international election observers that the Falkland Islands Referendum process was free and fair, reflecting the democratic will of eligible Falkland Island voters. The international observation mission further concludes that the voting process was executed in accordance with international standards and local laws. The process was technically sound, with a systematic adherence to accepted voting procedures (*RIOM Final Report*, 2013: 1).

### **Eligibility to vote**

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<sup>10</sup> The participation of a Uruguayan deputy sparked off a controversy in both Argentina and Uruguay.

The requirements are listed in the Falkland Islands Constitution which came into force on 1 January 2009. A quite remarkable point is that the Falkland Islanders actually never voted directly to approve the new Constitution which was made using an Order in Council. In other words, the 2008 Constitution falls short of being an exercise of self-determination.

It defines, however, the basic requirements which govern eligibility to vote in legislative assembly elections. The vote is connected with the Falkland Islands Status. While somewhat restrictive in terms of residence, the requirements of the status do not depend entirely on whether people are British or British Overseas Citizens. Foreign nationals who have been living in the islands for at least seven years qualify for Falkland Island status<sup>11</sup> (*Falkland Islands Constitution*, 2009, 22.5 (f)). In short, people who are citizens<sup>12</sup> and have Falkland Island status are qualified to vote. Military personnel do not normally qualify for Falkland Island status.

Logically, there are no specific provisions regarding eligibility to vote in a referendum.

According to the RIOM (Referendum International Observation Mission), talks were held within the FIG to enfranchise more people but it was eventually decided to have the same requirements as for the legislative elections to fend off any accusations of tampering with the electoral process (RIOM, 2013:9).

### The results and their reception

<b>Ballot papers issued</b>	<b>1,522</b>
Votes cast at the referendum	1,518
Rejected ballot papers	1
Votes validly cast at the referendum	1,517
Turnout at the referendum	92%
“Yes” votes cast	1,513 (99.8%)
“No” votes cast	3 (0.2%)

Source : Falkland Island Government

<sup>11</sup> "a person who has been granted Falkland Islands status under an Ordinance providing for the grant of that status to persons who have been ordinarily resident in the Falkland Islands for a period of at least seven years, or such period not exceeding seven years as the Ordinance may prescribe, and has not, in accordance with that Ordinance, lost or been deprived of such status".

<sup>12</sup> "Citizen means a British citizen or a British overseas territories citizen".

### **Table 1. 2013 Falkland Islands Referendum Results**

The results came as no surprise. The Argentine government reacted swiftly and dismissed the referendum as a mere attempt to "manipulate the issue" and reaffirmed its traditional stance that the islanders are a "transplanted population" (Ministerio de Relaciones Exteriores y Culto, 14 March 2013).

Not unexpectedly the reaction in London had a different ring. William Hague, the Foreign Secretary delivered a strongly worded statement to Parliament:

On 10th and 11th March 2013, the Falkland Islanders voted overwhelmingly to maintain their current constitutional arrangements with the United Kingdom. The result is a clear democratic expression of the Islanders' wishes and was conducted in a free, fair and transparent way.

We believe that the result should be recognised by the whole international community as a definitive act of self determination. It has sent the clearest possible message to the Argentine Government that its demands to control the Falkland Islands against the wishes of the people who live there are fundamentally incompatible with modern democratic values. Attempts to intimidate the Islanders must cease (Written Statement to Parliament by the Foreign Secretary, 13 March 2013).

The Prime minister said the results were "fantastic news". (*Penguin News*, 15 March 2013).

The international impact of the referendum was limited and has not yet brought about any change in the official positions of major countries like the United States.<sup>13</sup> In a press briefing on 13 March 2013 the EC spokesperson said "We have no particular comments to make on the result of the referendum" as it is "a development in one of the member states"<sup>14</sup>.

#### **A strange political object**

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<sup>13</sup> Most official positions recognize British administration but accept that there is a sovereignty dispute.

<sup>14</sup> Live EC Midday press briefing, 13 March 2013.

<http://ec.europa.eu/avservices/video/player.cfm?ref=I076701>.

The legal value of the referendum is rather limited and will ultimately depend on whether third countries depart from the traditional position that there is a British administration and a sovereignty dispute to endorse the British position that the referendum was in fact an act of self-determination<sup>15</sup>. Some commentators in Argentina and indeed other Latin-American countries have gone as far as to say that, by showing that the islanders are British, the referendum vindicates the official Argentine position that they are an implanted population and do not qualify for self-determination (*La Nación*, 13 Marzo 2013). A vote which can justify two diametrically opposed interpretations is a strange political object indeed.

Matt Qvortrup (2012) in his analysis of ethno-national referendums defines a typology, based on previous work by Brendan O’Leary and John McGerry, who distinguish between "difference managing policies" and "difference eliminating policies" (Qvortrup, 2012: 129) While he gives no clear definition of what actually constitutes a ethno-national referendum the numerous examples given by Matt Qvortrup tend to justify the inclusion of the Falklands referendum in that category.

<p><b>International Homogenizing:</b></p> <p>Secession Referendums</p> <p>Example: Eritrea 1993</p>	<p><b>International Heterogenizing:</b></p> <p>Right-sizing Referendums</p> <p>Example: Schleswig Referendum 1920</p>
<p><b>National Homogenizing:</b></p> <p>Difference Eliminating Referendums</p> <p>Example: Egypt and Syria 1958</p>	<p><b>National Heterogenizing:</b></p> <p>Difference Managing Referendums</p> <p>Example: Wales 2011</p>

**FIGURE 1** Typology of ethno-national referendums.

Source : M. Qvortrup, 2012: 131

However difficulties arise when it comes to putting the Falklands referendum into one of the boxes of the model. If the referendum had been called to approve the 2009 Constitution it could easily be

<sup>15</sup> From this point of view the legal value of the referendum is probably similar to that of the provisions of the Argentine constitution which reaffirms Argentine sovereignty.

a referendum as the sovereignty dispute is not a border dispute. In the same way, it is not a national homogenizing difference as its only consequence is a *status quo*. It is obviously not a secession referendum aimed at severing the constitutional link between the colonial power and the colonized territory, although on close analysis it might be possible to view it as a virtual or pre-emptive secession referendum, secession from Argentina that is<sup>16</sup>. The difficulty in classifying the referendum is probably evidence that its purpose goes beyond mere decision-making and other elements suggest that its role is also to help create a sense of national identity. By voting on self-determination, the Falkland Islanders expect to be seen to acquire nationhood. In this way, it is not the people that make the referendum; it's the referendum that contributes to the making of a people. Further evidence suggests that it was only one piece in a bigger jigsaw puzzle.

### **The 2012 census**

In a revised edition of his stimulating work *Imagined Communities*, Benedict Anderson listed the census among three institutions of power<sup>17</sup> which "profoundly shaped the way in which the colonial state imagined its dominion – the nature of the human beings it ruled, the geography of its domain and the legitimacy of its ancestry" (Anderson, 1991: 164). Whether the Falklands are still "colonial" is subject to debate but the census is not a tool only in the hands of colonial states.

A census was conducted on the islands in April 2012. The previous survey dated back to 2006 and censuses are normally carried out every five years. The 6 month delay was caused by financial constraints (Census, 2012:1). Preliminary findings were published in September 2012 and the full report was released in April 2013. The figures show a stability of the population, with a slight decline due to civilian staff cuts at Mount Pleasant Airbase.

A census usually provides a picture of a population at a given date. However, it cannot be seen as neutral. For instance, the inclusion of a question on ethnicity in the 1991 British census was seen as reflecting changing attitudes to race relations. Another interesting characteristic of the census is that citizenship, place of birth, length of residence and status are extensively covered by other questions. This clearly shows that the census is also designed to show that the Islanders have a legitimate claim to the island. Several criteria are given remarkable prominence in the report.

### *National identity*

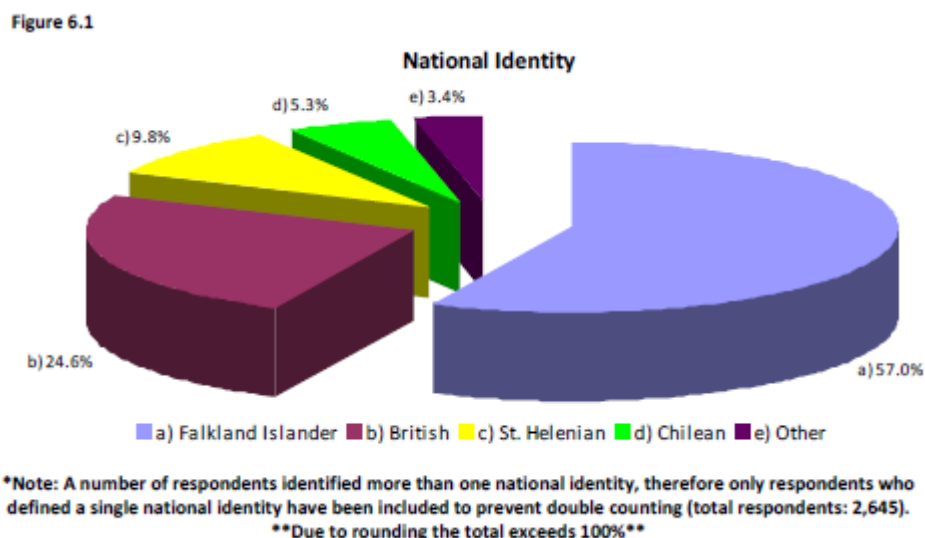
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<sup>16</sup> That the referendum was called as a consequence of Argentine activism is made abundantly clear by the declarations of the Falkland Islands Government officials and the drafting of the question.

<sup>17</sup> In addition to the museum and the map.

In the case of the Falklands census, a new question on national identity was included. It is defined as "the cultural group that people most closely identify with".

For the first time the 2012 Census asked people to state their national identity. This was included to ascertain the cultural group that people most closely identify with (and need not be related to the person's place of birth or citizenship). The results show that 59% of residents consider their national identity to be 'Falkland Islander'. 29% consider themselves British; 9.8% St Helenian, and 5.4% Chilean. Comparison with data on place of birth reveals that some 16% of persons with Chilean nationality consider their national identity to be Falkland Islander, as do 6% of persons with St. Helenian nationality. This is indicative of long-term settlement of persons from these locations in the Islands (Census, 2012:6).



Census, 2012: 13

2645 out of 2823 chose a single identity only and the chart shows that 57 percent of the people consider their national identity to be "Falkland Islander". The wording of the question did not allow people to have two identities at the same time which means that the British and Falkland Islander categories are mutually exclusive. A more refined approach could have included categories such as "British and Falkland Islander". The respondents might have given different answers if multiple identities had been catered for in the questionnaire.

### *Citizenship*



Citizenship is not mentioned in the commentaries of the major findings but a table is included in the appendices which amalgamates British and Overseas Territories Citizenships<sup>18</sup>. The vast majority of the population is British (91.8 per cent), which means that its relation to the South American continent is distant to say the least. This criterion is a double-edged weapon as it proves beyond doubt that the population is British, which is precisely one of the arguments highlighted by the Argentine government to dismiss the self-determination case. This may explain why citizenship is consigned to the appendices.

### *Status*

The census provides information on the population by its immigration status. Immigration status is complex with several categories that reflect how sensitive immigration may be in a small community which feels under threat from a big neighbour. The Constitution defines Falkland Islands Status which may be acquired by birth or by association with a person already holding the status. It may also be granted by an ordinance to a non-citizen with a certain length of residence. British citizens are not automatically granted Falkland Island Status.

### *Place of Birth*

This item provides interesting details on where the inhabitants of the islands were born. Figures suggest that less than half the population (47 per cent) were actually born on the islands, with a significant minority born in the United Kingdom. This is disturbing as it provides an argument in favour of the "implanted population" vision which is the cornerstone of the Argentine discourse. Arguably, it is difficult to say that a population is implanted below a certain percentage of people born on a territory or native above the same percentage. However, the figures include personnel employed at Mount Pleasant Airbase (MPA) which comprises a significant proportion of workers from Saint Helena. Excluding MPA, 53 per cent of the inhabitants were born on the islands. Also the census provides additional details on the number of people born outside the Falklands for medical reasons, probably to strengthen the message that the majority of the population belongs on the islands.

### *Length of residence*

Length of residence is another criterion which may be used to show that the population is not implanted. 62 per cent of the inhabitants have lived on the islands for over 10 years.

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<sup>18</sup> As defined in the British Overseas Territories Act 2002.

The "legitimacy criteria" listed above seem to have been carefully chosen to legitimize the Falkland Islanders' claim to the islands and their right to self-determination.

<b>Legitimacy criteria</b>	<b>Percentage of respondents</b>
Citizenship (British of British Overseas Territories Citizens)	91,8
National Identity (Falkland Islander)	57
Status (Falkland Islander of Falkland Status Holder)	69.9
Place of birth (Falklands)	47.1*
Length of residence (more than 10 years)	62

\*53 per cent excluding Mount Pleasant Airbase. The census also provides data on people who were born outside the Falkland Islands for medical reasons.

**Table 2. Legitimacy criteria**

Source: Falkland Islands Government - Census 2012: Statistics & Data Tables.

## **Conclusion**

On the surface the Falkland Islands referendum seems to have been a rather futile exercise that has no significant legal impact at an international level and could easily be dismissed as just a public relations exercise. This is clearly the approach chosen by Argentina and several countries in South America. The referendum did not offer one of the three options for the end of a colonial situation (independence, full inclusion in an existing state, association with a state). Also, the referendum

did not address the key issue of the constitutional status of the archipelago. The Constitution was not approved directly by the Islanders and leaves certain powers in the hands of the Governor<sup>19</sup>.

In the short term the referendum will in effect strengthen the status quo and will probably entrench the positions of hardliners in Argentina. However, it seems that its value is best assessed as one element in an effort to promote a sense of identity and prove that the Falkland Islanders are a people and have a right to self-determination. Whether this will be enough to tip the scale in their favour in international forums remains an open question. In any case, economic development, which is likely to depend on oil, will probably command another less conflictual approach and a departure from traditional notions of sovereignty (Willetts, 2012). When this will take place remains an open question.

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<sup>19</sup> Arguably, these powers have been considerably reduced and are probably theoretical except in times of crisis.

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