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Britain's overseas territories

Post-imperial dilemmas

CONTRIBUTORS

John Christensen · Aaron Donaghy · Federico Merke
Gladys Li · Mercedes Peñalba-Sotorrío · Benedict Rogers

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Contact

mail@britishpoliticsociety.no
www.britishpoliticsociety.no

c/o Ø. Bratberg
ISV, UiO, P.O. Box 1097 Blindern
N-0317 Oslo, Norway

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Editorial Team:

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Editorial

An Anglosphere fit for the 21st century?

The British Empire was always about much more than territorial conquest. A worldwide pursuit of trade and investment motivated imperial expansion. Finance flowed through the veins of the Empire, served by institutions and networks constructed to secure British investors. John Christensen's article illustrates how this legacy is maintained today in the form of tax havens.

In concrete geographical terms, the legacy of the Empire is manifest in Britain's overseas territories, the topic of this issue of British Politics Review. Minuscule in territory and population, they do not feature very frequently in the news headlines. Yet, bones of contention inherited from history are there for anyone to see.

In the context of Brexit, the future of one of these territories, Gibraltar, has come up for debate. What kind of relationship will Gibraltar have with the EU once Brexit – in whatever form it may take – comes about? The Gibraltarians, of course, voted overwhelmingly to remain in the EU, but are also concerned to maintain British supremacy over the territory. As Mercedes Peñalba-Sotorrió stresses in her article, Brexit has reignited an older source of conflict between Britain and Spain. Why should Britain remain in possession of what was essentially an imperial conquest on Spanish shores?

In terms of conflict, there is the one overseas territory over which Britain has fought a war in recent history: the Falkland Islands. Two articles in this edition of the Review address the Falklands. Aaron Donaghy looks at British policy, highlighting how international and domestic and international concerns intersect. Federico Merke analyses the Malvinas question in Argentine politics, neatly illustrating how a fundamental clash of perspectives has allowed the conflict to remain so difficult to reconcile.

An imperial past also suggests there might be important promises to keep, and that is an important concern in debates over Hong Kong, transferred from Britain to the People's Republic of China in 1997. Two articles address the consequences of the handover, touching upon the central question of how an ex-colonial master such as the UK, should relate to former colonies. What exactly are the responsibilities of the UK with respect to these countries – in defence, for example, of civil liberties and democratic institutions?

Renowned lawyer and activist Gladys Li gives a forceful reply to that question. It is supplemented by Benedict Rogers' glimpse into life in Hong Kong after the return of the crown colony to China in 1997, and the dilemmas facing the ex-colonial master, pithily summed up in the statement: "Nor would I have expected Britain to do so completely abandon the people of Hong Kong in their hour of need."

Øivind Bratberg & Atle L. Wold (editors)

Gibraltar: a history of ill will over the Rock

by Mercedes Peñalba-Sotorrío

It's a 6.5 square kilometre lump of rock famed as a home for monkeys on the southern most tip of the Iberian peninsula. Yet Gibraltar has suddenly become a pressure point in the process that will see Britain exit the European Union. The spat in the opening weeks of those negotiations even saw one former leader of the UK Conservative party imply that Britain could go to war over the status of the territory. These are now two Nato allies, but the UK and Spain have been at odds for centuries about what to do with "the Rock".

Spain ceded Gibraltar to the UK in the wake of the War of Spanish Succession in the early 18th century, formally handing it over in 1713 under the Treaty of Utrecht. According to this treaty – still valid today – Spain handed over Gibraltar's fortress town and harbour, but without granting the UK territorial jurisdiction. The treaty also established that Gibraltar would have no direct communication with Spain, "the country round about", and that if the UK were to sell Gibraltar or give it away, it should be offered to Spain first.

But even though the treaty is very precise about what was ceded, it has proven open to two very different interpretations.

To this day, the Spanish government understands that it ceded only what was explicitly mentioned in the treaty, and nothing else. In other words, in its view, the mountain that surrounds the town on Gibraltar was never ceded to the UK, and nor were the waters around the rock or the isthmus – the strip of land that connects it to the mainland.

The British government, meanwhile, argues that because the cession was intended to be permanent, Gibraltar does in fact have territorial waters. The only reason this isn't recorded in the treaty is because waters were never explicitly mentioned or regulated by treaties at the time.

These incompatible interpretations have never been reconciled. When Spain signed and ratified the UN Convention on the Law of the Sea in 1982, it declared that it did not consider Gibraltar to be covered by the convention's provisions. The UK conversely issued a statement of its own, and maintains that Gibraltar is surrounded by three nautical miles of British territorial waters.

Fences and fishermen

As early as 1908-1909, the UK had unilaterally established a border by placing a fence between Gibraltar

and the mainland. In 1964, the UN declared Gibraltar a non-autonomous territory pending decolonisation. Spain and the UK were supposed to negotiate this path together, keeping the interests of the people of Gibraltar at the centre of their talks.

Both countries committed to resolving all their disagreements over Gibraltar in 1984, initiating what became known as the Brussels process. By 2002, these negotiations had ground to a halt. That same year, the government of Gibraltar called for a referendum to ask locals if they would accept shared sovereignty between the UK and Spain. Over 98% of voters said no.

Another point of tension is Gibraltar's airport, which is on the disputed Isthmus. It was built by the British during World War II but in 2006, the two countries agreed to share the facility. Nevertheless, squabbling hasn't ceased. In 2014, the Spanish government managed to exclude Gibraltar from the Single European Sky initiative, through which European countries cooperate on aviation, saying it would not recognise the territory as a partner until the sovereignty question was settled.

In August 2012, Spanish fishermen and the government of Gibraltar reached an agreement that allowed fishermen to fish in the waters surrounding Gibraltar for a while. However, tensions between the UK and Spain escalated when the Gibraltar government decided in July 2013 to throw 72 cement blocks into the waters surrounding the rock to create an artificial reef. This unilateral action provoked the protests of the Spanish fishermen, who argued that the Gibraltar government was simply trying to prevent them from fishing in the waters.

In retaliation, the Spanish government increased controls at the border and began expressing concern about cigarettes being smuggled from the Rock (where they are cheaper) into Spain. There was also talk of tax evasion, with companies operating from Gibraltar but doing business in Spain.

Neither of these matters have been entirely resolved. The less than diplomatic rhetoric coming from Fabian Picardo, the chief minister of Gibraltar, has only added to tensions. During the artificial reef dispute, Picardo said "hell would freeze over" before he would remove the concrete blocks from the water and compared Spain to North Korea. That's not to say that the rhetoric coming from the Spanish government at the time helped much either.



Then came Brexit

Yet another issue has been the independence referendum held in Scotland in 2014. For Spain, the decision to allow part of the UK to vote on whether it should secede raised awkward questions about Catalonia, a region that has long called for the right to do the same. Mariano Rajoy, the Spanish prime minister, began warning that if it did break away from the UK, Scotland could not automatically assume it could remain a member of the EU. It would, he said, have to reapply as an independent nation.

Brexit has added a new chapter to this history. There are particular tensions about whether Gibraltar should be allowed access to the single market during the transition period before Brexit.

Right after the Brexit referendum, José Manuel García Margallo and Fabian Picardo exchanged heated and not very diplomatic remarks about the future of the Rock. More recently, Alfonso Dastis, Spanish minister for foreign affairs, has declared that Spain would not veto an independent Scotland from entering the EU, which has naturally not gone down well in London – although he made it clear that it would still have to apply for membership.

And while Spain would prefer a soft to a hard Brexit, the matter of migration between Spain and the UK lingers in the air. The Spanish government is keen to protect the rights of Spanish citizens currently working

in the UK but must itself work out what to do about the hundreds of thousands of Britons living within its own borders. Unfortunately, and not for the first time, inflammatory declarations are clouding the real questions that need to be answered about the Rock.

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Mercedes Peñalba-Sotorrió

is a Lecturer at the Department of History, Politics & Philosophy, Manchester Metropolitan University. Her current research aims to enhance our understanding of the effects of Nazi propaganda on Spain's foreign and domestic policy during World War II. More broadly she is interested in the impact of war on neutral countries and the history of authoritarian and fascist regimes.



The British Government's relations with its tax haven dependencies

by John Christensen

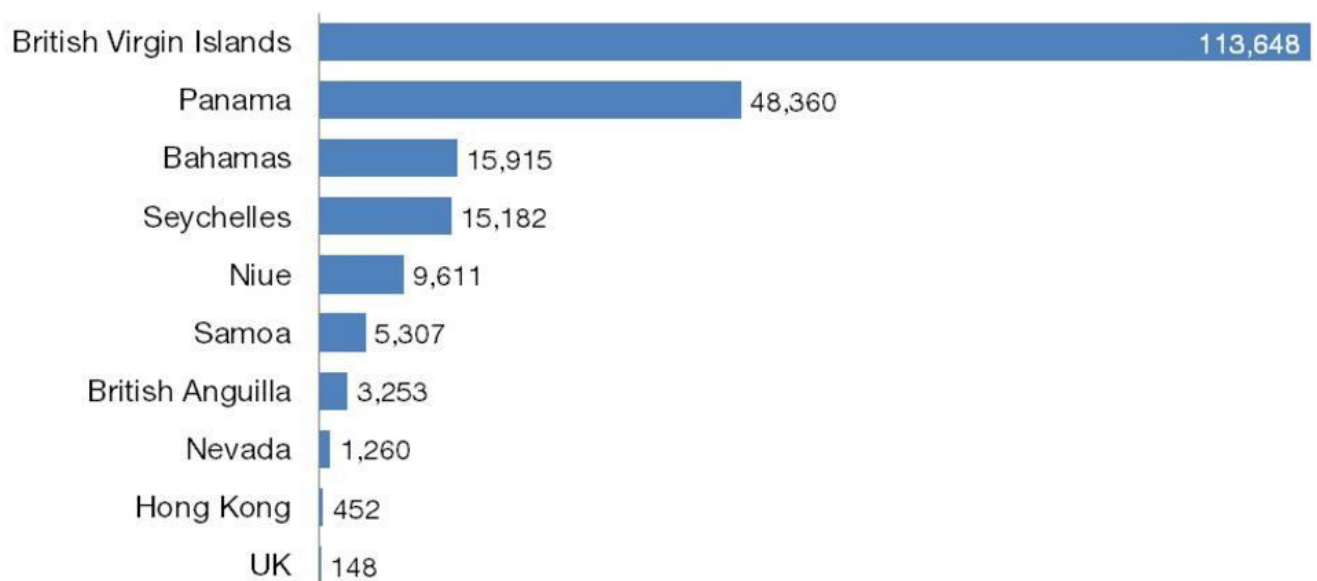
In conjunction with the British Overseas Territories (OTs) and Crown Dependencies (CDs), the UK controls approximately 23 percent of the global market for offshore financial services. British OTs and CDs rank among the world's most opaque tax havens: in the Tax Justice Network's 2018 Financial Secrecy Index, for instance, Antigua, Gibraltar and the Turks and Caicos were assigned secrecy scores of 87, 71 and 77 respectively; placing them among the worst scoring jurisdictions in the world. The Cayman Islands, with a secrecy score of 72, is one of the world's largest offshore banking centres; while the British Virgin Islands (69) is the world's biggest supplier of secretive offshore companies and was by the far largest supplier of shell companies to the clients of the law firm at the centre of the Panama Papers scandal. Taken as a whole these British tax havens provide a secretive ecosystem which enables tax evasion on an industrial scale and for the laundering of huge volumes of illicit financial flows from across the world heading in the direction of London. All the above territories are the responsibility of the British Crown. Why is this so?

Several factors explain the growth of Britain's tax haven empire since the 1960s. Firstly, Britain's pre-eminent imperial power during the 19th century involved a large global trade in services, including banking, insurance and shipping, centred on the City of London but operating via geographically dispersed satellites, including the Bahamas, Bermuda, the Channel Islands, Hong Kong and Singapore. Second, the extension of English

Common Law practices to colonial territories provided a fertile legal milieu for developing tax haven activity, particularly for creating offshore trusts and non-resident companies. Third, during the period of imperial expansion Britain colonised many islands and microstates where financial and commercial elites could hold local polities captive to their interests, moulding local law and regulation to suit offshore financial services. Fourth, the emergence of the unregulated market in offshore dollar deposits in London, known as the Euromarket, in the mid-1950s helped to reverse the flagging fortunes of the City banking sector, which was more than happy to exploit the lax regulation and low tax environment provided by what Tom Nairn has labelled "the flotsam and jetsam" of Britain's former empire. Finally, anxious to avoid the possibility of needing to subsidise a collection of far from self-sufficient small island economies, from the 1960s onwards the British state seemed content that colonial outposts which opted for continued dependent status were used as conduits for illicit financial flows from outside the Sterling Area headed towards the City.

One could easily be led to believe that this pattern followed in the wake of Empire, as a way of exploiting opportunities that arose with its dismantling. However, the development of British-linked tax havens preceded decolonisation. In the 1930s Canadian and U.S. citizens started to use Bahamian offshore companies and private trusts for tax evasion purposes. Jersey was also attracting wealthy tax exiles as early as the 1920s, to the extent that in 1927, during Winston Churchill's period

Panama Papers: The 10 most popular tax havens



Source: ICIJ, h/t Quartz

as Chancellor of the Exchequer, UK Treasury officials and Channel Island authorities convened in London to negotiate an agreement, the so-called Bailiff's Clause, preventing Channel Island incorporated companies from being used to hold assets of UK residents wishing to escape UK estate duties. The 1920s also saw the emergence of transnational companies using offshore captive insurance companies for aggressive tax avoidance, with Bermuda becoming a market leader in this sector.

The spectacular rise of London's offshore Euromarket activity quickly spread to the City's offshore satellites. During the 1960s and early 1970s many US banks established branches in the Caribbean to act as offshore booking centres. Likewise, London banks started relocating their private client banking activities and Euromarket booking offices to the Channel Islands. In Jersey, as in the Bahamas, the driving force behind the early development of tax haven activity consisted largely of a local financial and legal elite who spotted opportunities to attract foreign portfolio capital, much of it illicit in either its origins, its manner of transfer, or its final use.

The local governments of British CDs and OTs were assisted in their tax haven-based development strategies by the extraordinary nature of their relationship with Britain. Despite being largely autonomous in key respects, including their ability to decide domestic tax rates, they are closely tied in others, for example, being in monetary union with Sterling and having strong laws to protect property rights backed by the British judicial system as the final court of appeal. More importantly, behind the façade of local democracy, senior officials appointed by the British state exerted powerful controls over domestic politics, discreetly protecting British and City interests. Banks, accounting and law firms were attracted to these islands by the shared bedrock of Common law and the English language, the availability of a low cost (relative to London or Wall Street) labour force capable of doing the back-office clerical tasks required of an offshore booking centre, and by the apparent respectability and stability of being connected to the British Crown and law courts.

These perceptions of legal and political stability were reinforced by other attractions, such as generally weak or non-existent regulation, minimal or non-existent direct taxes, and strict laws protecting client data from external investigation. It was not surprising, therefore, that financial and business elites in British colonies saw opportunities for attracting offshore financial services. It is also unsurprising that British colonial officials were occasionally alarmed by some of the characters coming ashore in the Caribbean. On 3rd November 1961, for example, W.G. Hulland of the Colonial Office, stationed in the Bahamas, wrote a memorandum to B.E. Bennett at the Bank of England noting:

We feel that this (lack of provision of an effective regulatory system) might be a grave omission, since it is notorious that this particular territory, in common with Bermuda, attracts all sorts of financial wizards, some of whose activities we can well believe should be controlled in the public interest.

My research at British government archives in London did not reveal a response to Mr Hulland's memorandum. Nor was I able to trace clear evidence that during the period of decolonisation and beyond successive British governments actually had a coherent policy regarding the development of Crown Dependencies and former colonies as tax havens. Perhaps this is not surprising since more pressing events, including the Suez Crisis, the Cold War, Malayan and Kenyan insurgencies, and Sterling's inexorable decline took precedence around the Cabinet table. But this does not necessarily mean that the development of Britain's tax haven empire occurred spontaneously in a political environment of benign neglect. Other explanations can be posited. The Foreign and Commonwealth Office – and particularly its Ministry for Overseas Development (ODM) – at times encouraged tax havenry on certain Caribbean territories in order to reduce potential future aid liabilities. On the other hand, as we saw above, British officials were alarmed by corrupt and criminal activities happening under their noses, and Britain's Inland Revenue was increasingly agitated by revenue loss arising from British residents using offshore structures to evade estate duties, capital gains and income taxes.

Despite the reigning monarch being the head of state of all the CDs and OTs, Westminster has tended to deflect attention away from Britain's tax haven empire by inferring that it does not interfere in the internal affairs of its dependencies, despite, as Mr Churchill illustrates, there being many examples of direct intervention. While it is true that the OTs and CDs have local governments which carry responsibility for internal affairs, in practice all laws created by these local legislatures must be approved by the Queen's Privy Council in London prior to being enacted. Furthermore, the UK parliament has the power to legislate for the islands while the Crown has responsibility for their good governance. When former Prime Minister Harold Wilson asked the Royal Commission on the Constitution, commonly known as the Kilbrandon Commission, to clarify the constitutional relationship between the UK and its dependent territories, in 1972 the Commission reported as follows:

"the United Kingdom Government are responsible for defence and international relations of the islands, and the Crown is ultimately responsible for their good government. It falls to the Home Secretary to advise the Crown on the exercise of those duties and responsibilities. The United Kingdom Parliament has the power to legislate for the islands, but it would exercise that power without their



agreement in relation to domestic matters only in most exceptional circumstances.”

More recently, in 2014, Britain’s Supreme Court confirmed that in respect of its Crown Dependencies (Guernsey, Jersey and the Isle of Man):

The United Kingdom Parliament has power to legislate for the Islands, but Acts of Parliament do not extend to the Islands automatically, but only by express mention or necessary implication. The more common practice is for an Act of Parliament to give power to extend its application to the Islands by Order in Council. It is the practice to consult the Islands before any UK legislation is extended to them.”

At the time of joining the European Economic Community in 1973, Britain negotiated a special provision of its accession treaty which kept the CDs outside the EEC, and subsequently the European Community, while at the same time allowing for free movement of goods within the Customs Union. This unusual arrangement served the CDs well since the UK’s presence in Brussels enabled successive UK governments to largely resist pressure to reform its offshore tax havens. Brexit confronts Britain with the political challenge of trying to retain market access for traded services while no longer being able to act as a blocker of regulatory or tax reform at the European Commission. No longer protected by Britain’s presence in Brussels, the CDs and OTs may well face existential threats to the offshore secrecy that

underpins their role as tax havens adjacent to Europe.

To further complicate matters, with the British economy and the economies of all the CDs and OTs trapped by decades of underinvestment in research, infrastructure, training and industrial diversification, over-reliance on tax haven activity has created a form of path dependence, linked to the political economic phenomenon known as the Finance Curse, which will require a sustained political effort to overcome.



John Christensen is Director and Chair of the Board in the Tax Justice Network. Trained as a forensic auditor and economist, he has worked in offshore financial services and for 11 years he was economic adviser to the government of the British Channel Island of Jersey. In 2003 he became what the Guardian has described as “the unlikely figurehead of a worldwide campaign against tax avoidance.” His research on offshore finance has been widely published in books and academic journals, and John has taken part in many films, television documentaries and radio programmes.

What if? The unanswered and unanswerable questions

Gladys Li

December last year saw the establishment of “Hong Kong Watch”, a London-based NGO to monitor and speak out in defence of Hong Kong’s freedoms, autonomy and rule of law and to urge the co-signatories to the Sino-British Joint Declaration to fulfil their respective obligations under that instrument. It was followed by a debate held in the House of Commons on 23 January 2018 on democracy in Hong Kong. These are signs that on the British political scene, there is still some limited interest in seeing that the UK Government honours its “commitments” to the people of Hong Kong. Welcome though these developments may be, the UK Government has yet to demonstrate what, in concrete terms as opposed to flowery rhetoric, these commitments are and how they will be honoured.

British Prime Minister, Theresa May, returned from her recent visit to China with little to show for it except the humiliation of being commended by the Chinese media for not having pressed President Xi or Premier Li Keqiang on the erosion of “one country, two systems” and the increasing threats to basic freedoms in Hong Kong as urged upon her by Lord Patten and Lord Ashdown. Even if she had mentioned them, is there any reason to believe that an “oh by the way” approach in the course of what was obviously a visit to promote British trade interests would be taken seriously by the Chinese leadership? Have the British ever demonstrated by action and not just words that they were prepared to put the interests of the people of Hong Kong above money?

What if?

From the 1960s onwards up to 1982 when the negotiations over Hong Kong’s future commenced, the British Government passed successive legislative measures relating to immigration and nationality which made it plain that there would be no special provision made for the people of Hong Kong. From the 1960s onwards, majority public opinion in the UK was strongly in favour of restrictions on the number of immigrants entering the UK and Hong Kong was no exception.

From 1947 to 1972, the UK Government made regular reports to the UN Decolonization Committee on the process of decolonisation in all its colonies or dependent territories, and this included reports on constitutional developments in Hong Kong. It ceased to do so, however, after Hong Kong was removed from the list of territories which were intended for independence at the request of the People’s Republic of China’s ambassador to the UN. The UK Government did not object to Hong Kong’s removal from the list nor did they object to the statement accompanying the request that the UN had no right to discuss the question of Hong Kong.

From then on, nothing was done to enable HK people to elect leaders who could speak with authority on their

behalf or to replace unofficial members of the Legislative and Executive Council, appointed by the Governor, with elected members. Instead, in 1976, when the UK Government ratified the International Covenant on Civil and Political Rights and extended the Covenant to 10 British dependent territories including Hong Kong, they entered reservations in respect of Hong Kong including the right not to apply Article 25(b) insofar as it may require the establishment of an elected Executive or Legislative Council in Hong Kong.

These acts signalled to the Chinese Government that the opinions of Hong Kong people did not matter and that the British Government was prepared to concede not just the territories comprised in the colony of Hong Kong but the return of people from Hong Kong to China, including many who had fled the Communist regime.

The “what if?” scenario has already been written about much more elegantly and vividly by the last Governor, now Lord Patten, than this author could attempt. But what if the process of democratisation had started much earlier?

On her return from Beijing, in late September 1982, Mrs. Thatcher held a number of meetings with various groups in Hong Kong including one with the “Ex Officio” Members of the Executive Council which of course contained no-one at risk of being returned to the PRC against his will. She asked a question of those present about the likely reaction to a referendum on reverting to Chinese rule. The Foreign Office had already in July 1982 provided the Prime Minister’s Office with their assessment which was that the 98% Chinese population in Hong Kong did not wish to live under the Communist system.

What if that referendum had been held? Would that have strengthened or weakened the position of the British in negotiating with the PRC Government?

On immigration control, what if the British Government had stated clearly to the British public, particularly during the madness of the Cultural Revolution and after the Red Guards had stormed the Office of the British Charge d’affaires in Beijing in September 1967, setting it on fire and beating the occupants including Sir Percy Cradock as they evacuated the building, that it was unthinkable and dishonourable not to provide an immigration safety net to the people of Hong Kong? What if the British Government had pointed out to the British public the obligations under the Refugee Convention not to refoule (in effect to repatriate) those who had a well-founded fear of persecution and that the British Government considered the obligation would in any event apply to the people of Hong Kong?

In 1989, China insisted in drafting the Basic Law that legislative interpretation by the Standing Committee of the National People's Congress would be binding on the HKSAR judiciary. What if the British Government had rejected it on the basis that this would undermine the promise to vest the HKSAR with independent judicial power including that of final adjudication? What if at least the British Government had accepted the recommendations of the Foreign Affairs Committee for the establishment of a Joint Constitutional Court?

The Joint Declaration

Last year as China celebrated 20 years of the establishment of the HKSAR, the Chinese Foreign Ministry declared the instrument an historical document that no longer has any historical meaning without any binding power on how China administers Hong Kong nor did the British have any supervising power over Hong Kong. The British Foreign Secretary countered with the statement that it was a legally binding treaty registered with the UN and that as a co-signatory, the UK Government was committed to monitoring its implementation closely.

After all, the handover in 1997 was conducted under a formal international agreement, legally binding in all its parts constituting the highest form of commitment between two sovereign states. This was what Hong Kong people were told in the 1984 White Paper as an assurance to them that the Joint Declaration was legally enforceable. No doubt, the impression sought to be conveyed was that any legal dispute between the two Governments could be subject to the jurisdiction of the International Court of Justice. But no mention was made of the fact that the PRC had not made any declaration recognizing the jurisdiction of the Court as compulsory.

So what if the British Government had insisted on a specific enforcement mechanism for the Joint Declaration in the instrument itself?

Nor is there any mechanism whereby people in Hong Kong could raise the matter of a breach after 1 July 1997. The Exchange of Memoranda between the two Governments though not part of the Joint Declaration make clear the Chinese position that even those who were formerly BDTCs will enjoy no consular protection in the HKSAR or other parts of China after 1 July 1997. As Nancy Jackson has noted in her article *The Legal Regime after 1997: An Examination of the Joint Declaration of the United Kingdom and the People's Republic of China*,

"...Hong Kong citizens, who have been promised that their way of life will not be disturbed for 50 years, have no effective way of enforcing that promise should the PRC, after 1997, begin implementing a socialist system in the Special Administrative Region."

In sum, what if the British had given to the people of Hong Kong the largest possible measure of self-determination and had acted upon a principled basis? These are unanswered and unanswerable questions.

Conclusion

The most important question which requires an answer from the British Government is "What now?" given the abject failure to secure for Hong Kong people the protection of an enforceable agreement. What are the obligations the British Government recognises that it owes to the people of Hong Kong and what specific measures does it propose beyond the 6-monthly report to Parliament to fulfil those obligations? It should also address the issue of whether Article 41 of the ICCPR can be invoked and whether it proposes to do so. The failure to address these concerns will mean that Britain's commitments made up to 1 July 1997 were mere words without substance and which have serious repercussions for the future of Hong Kong.

Acknowledgement: I am grateful for the assistance rendered by the "Decoding Hong Kong's History Project" in providing access to their copies of material in the National Archives.



Gladys Veronica Li is a Senior Counsel at the Hong Kong Bar specialising in constitutional law and human rights, and a founding member of the Hong Kong Civic Party. She began to take an interest in public affairs on her return to Hong Kong in 1982, after 10 years' practice as a barrister in England. She became a member of the lobby group which sought to inform British MPs in the late 1980s about lack of democracy, absence of human rights protections and the importance of the rule of law in Hong Kong.

Mild-mannered but forthright in her convictions, Ms Li has also been a member of the Article 23 Concern Group and the Article 45 Concern Group. In the last 12 months, she has represented one of the first disqualified elected legislators in the Court of Final Appeal and a potential candidate who was excluded from running in the 2016 Legislative Council election on his election petition in the Court of First Instance.

Twenty years on from leaving Hong Kong, Britain risks selling its honour

by Benedict Rogers

2017 marked the twentieth anniversary of Britain's relinquishment of the sovereignty of Hong Kong. As the last governor, Chris Patten, and the Prince of Wales prepared to sail out on the Royal Yacht Britannia, Chinese troops arrived. And as the clock struck midnight on 1 July 1997, Hong Kong became part of China.

And yet although some feared the future, many believed that "one country, two systems", agreed on by China and Britain, would protect Hong Kong's way of life. Hong Kong's constitution, the Basic Law, provides a high degree of autonomy, and the Sino-British Joint Declaration gives the United Kingdom a legal, and moral, responsibility to defend Hong Kong's freedoms for fifty years.

Two months after the handover, I moved to Hong Kong to begin my first job after university. I lived there for five years, working as a journalist. I did see some early warning signs of the erosion of freedom, but they were more through self-censorship than by the Communist Party's direct interference. My first job was as editor of an obscure, though respected, management journal, *China Staff*, published by *Euromoney*. I managed to get one edition banned in the mainland, by running an interview with Han Dongfang, the former Tiananmen dissident and labour rights activist, as a cover story. I then moved to a new English-language newspaper – a relaunch of the old *Hong Kong Standard*, as leader writer. The new publication, *Hong Kong iMail*, positioned itself as a defender of freedom. I wrote editorials critical of Beijing and the Hong Kong government, and for two years got away with it – but, in the end, the paper was bought by a tobacco tycoon keen to expand his interests in the mainland, and I was told I could no longer write anti-Beijing articles. I left.

To say that I saw the writing on the wall, though, is to put it too strongly. At the time of the handover, the founder of Hong Kong's Democratic Party, the barrister Martin Lee, predicted not an immediate crackdown but a slow erosion of freedoms – "salami tactics", as he put it. I could see some of the slicing even in the first five years, but I would never have predicted Hong Kong would be in the perilous predicament it is in today. Nor would I have expected Britain to so completely abandon the people of Hong Kong in their hour of need.

Yet that is what has occurred. A year ago, the Conservative Party Human Rights Commission held an inquiry on human rights in China, and released a report – *The Darkest Moment: The Crackdown on Human Rights in China 2013-2016* – which includes a chapter on Hong Kong. The former head of Hong Kong's civil service, Anson Chan, together with Martin Lee, told the Commission that the concept of "one country, two systems" is being "progressively undermined". Basic rights and freedoms, including freedom of the press, publication, academic thought, are, they said, "being chipped away, while our local government seems to turn a blind eye".

The erosion has accelerated in the past four years. China's decision to abandon its promise to allow genuine multi-party democracy and universal suffrage in elections for Chief Executive sparked the 'Umbrella Movement', which saw thousands of peaceful protesters take to the streets for 79 days in 2014. Some of the leaders of that movement, including the inspiring student activist Joshua Wong, now face criminal charges and potential prison sentences.



Towards the end of 2015, five Hong Kong booksellers who published books critical of China's leaders disappeared, one of whom – Lee Po, a British national – was believed to have been abducted by Chinese agents from Hong Kong. Another, Gui Minhui, was kidnapped in Thailand and taken into mainland China. Gui, a Swedish national, is still in detention in China, and his daughter Angela continues to campaign for his release. The local government showed that it does not only turn not just a blind eye to such horrific crimes, but a bended knee to Beijing, as we saw last week when the Communist Party's newly chosen Chief Executive, Carrie Lam, said it was not appropriate to challenge the central government over these abductions.

Last September, the pro-democracy camp in Hong Kong won 30 seats in Hong Kong's 70-seat legislative council. Several activists from the Umbrella Movement were elected, including the youngest ever legislator in Hong Kong, 23 year-old Nathan Law. A breath of oxygen was given to Hong Kong's democracy movement.

Yet, tragically, Beijing and their allies in Hong Kong found ways to snatch hope away within weeks. Two of the newly elected legislators, overcome with a sense of radicalism, failed to take their oaths properly and were stripped of their seats. Four others took their oaths in ways considered to be valid according to existing practices, but which were rendered invalid by the latest interpretation of the Basic Law by the National People's Congress, which effectively and retrospectively amended a local ordinance, thus criminalising acts which were legal when they were carried out. The case against them is pending the court's judgment. If the outrageous interpretation is affirmed by the courts, then every freedom or human right guaranteed by the Basic Law is threatened. Beijing is looking for any excuse to deny the pro-democracy movement any space.

Perhaps of most concern is the attack on the rule of law. In April 2016, Kemal Bokhary, a retired judge, said that his warning, made four years previously, of "a storm of unprecedented ferocity" facing the judiciary has now come about. "The things which were second nature to you and I may recede to the back row where judicial independence is eroded," he added.

Journalists now face physical threats. Hong Kong has fallen to 73rd place in Reporters without Borders' 2015 world press freedom index, from 18th in 2002. Edward Chin, a hedge fund manager and pro-democracy activist, claims the media is "under heavy attack" from Beijing. Academic freedom is curtailed too.

In all of this, where is Britain? As Patten says, the Joint Declaration gives the United Kingdom a specific responsibility to ensure that China's promises are upheld. Britain has, he adds says, "a right and a moral obligation to

continue to check on whether China is keeping its side of the bargain". Yet apart from a six-monthly report to Parliament by the Foreign and Commonwealth Office – "a fairly neutral and ... rather anodyne document," in Lord Patten's words – there is little sign of action, or even interest. The Foreign Office can't even summon up the courage to meet Angela Gui, a student at Warwick University, to discuss her father Gui Minhui's abduction. Patten was right when he told the BBC in January that Britain "risks selling its honour" on Hong Kong. We have already sold out the people of Hong Kong; now we're in the process of selling our soul too.

The Joint Declaration was meant to guarantee that, in Anson Chan and Martin Lee's words, "no Hong Kong resident would have to fear a midnight knock on the door". With the abductions that have happened, they now conclude that "none of us is safe". The time for Britain to defend Hong Kong is long overdue. "We need the UK to speak up forcefully in defence of the rights and freedoms that distinguish Hong Kong so sharply from the rest of China," Chan and Lee say. "If it does not lead, then the future of 'one country, two systems' is at best troubled and at worst doomed." Will Britain take a stand, belatedly, or will 'betrayal' once again be our legacy?

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Benedict Rogers works for the human rights advocacy organisation Christian Solidarity Worldwide, and is a former Conservative parliamentary candidate. He is co-founder and Deputy Chairman of the Conservative Party Human Rights Commission and has recently founded Hong Kong Watch, an advocacy organisation, which he chairs and which seeks to monitor the status of human rights, freedoms and rule of law in Hong Kong.

Brexit, the Falklands, and intermestic politics

by Aaron Donaghy

For more than 180 years, the Falkland Islands have been subject to competing sovereignty claims from Great Britain and Argentina. The South Atlantic archipelago, situated 300 miles from Patagonia, has been under British control since 1833, save for a 74-day occupation by Argentina in 1982. It remains a curious anomaly in the British colonial experience. The 3,000 islanders, almost all of Anglo-Saxon stock, wish to retain ties to the motherland and remain fiercely proud of their British roots (it is often said that “Kelpers feel ‘more British than Britain’”). Conversely, Argentina claims the Falklands (Islas Malvinas) as an inseparable part of its national territory, and thus rejects the islanders’ insistence on the right to self-determination. The Falklands form one of many small British overseas territories, and are today self-governing except for defence and foreign affairs. Since the 1982 war, successive British governments have supported the islanders’ right to determine their own future – backing the result of the 2013 sovereignty referendum, in which 99.8 percent voted to remain a British territory. However, Britain’s impending exit from the European Union has spurred new discussions over their future, in Westminster, Buenos Aires, and Stanley, the islands’ tiny capital.

Brexit has not been welcomed on the Falkland Islands for economic and security reasons. The local economy has long relied on exports to Europe and access to the single market, with fish, meat, wool and other agricultural products totalling £180 million – representing over 70 percent of the Falklands GDP. The potential loss of this tariff-free access to the EU would be ‘catastrophic’ to the local economy and its future development, according to the Falkland Islands Government. In February 2017, representatives from British overseas territories held a two-day meeting in London to address the potential implications of Brexit. There, they met with Robin Walker, Minister for Exiting the European Union. The Falklands representative, Michael Poole, argued that the islands’ export of fish, mutton, and lamb could continue to be exported to the EU on a quota-free, tariff-free basis. The British government, however, has issued only vague, symbolic statements of support. “When the UK leaves the European Union, the strong relationship we have with the Overseas Territories and the important mutual trade and business links we share will continue”, Walker declared. Theresa May’s 2017 Christmas message to the Falkland Islands, couched in similarly unspecific terms, made little mention of Britain’s departure from the EU or

the potential aftereffects. Against a backdrop of complex talks with Brussels, a Scottish independence movement, and the lingering problem of Northern Ireland, the Falklands are not a priority for May’s government. Moreover, the status of another disputed British territory much closer to home is ongoing. In April 2017, the EU stated that Gibraltar would be outside any future trade deal with the UK unless an agreement was reached in advance with Spain over its future status.

The uncertainty surrounding Brexit has also provoked fresh debate about the islands’ defence. Britain’s capacity to contribute to the physical security of the Falklands has diminished in recent years following large overseas retrenchment, including aircraft carriers and cuts in the strength of the regular British army. Nevertheless, there are 1,300 British service personnel stationed on the Falklands (a little more than one soldier for every two islanders), along with four Typhoon jets. Additionally, an RAF base remains on Ascension Island, which has been used as a South Atlantic staging post. The financial ramifications of Brexit are likely to raise more questions about whether the British government can sustain this level of defence costs, which are placed at more than £60 million per year.

Ironically, the Brexit vote of 2016 coincided with an improvement in Anglo-Argentine relations, following the arrival of Mauricio Macri as Argentine president. His administration has adopted a notably more conciliatory approach than that of Cristina Fernández de Kirchner. In September 2016, Sir Alan Duncan became the first FCO minister to visit Argentina in seven years, for a meeting with foreign minister Susana Malcorra. Buenos Aires and London subsequently agreed to extend flights between the Falklands



and Argentina, and to explore the possibility of joint hydrocarbon exploration in South Atlantic waters. Malcorra has thus far been diplomatic on the potential effects of a Brexit: "It could be that things change there. But I think it is still quite early. Brexit is just starting and there are many issues. We are following it carefully."

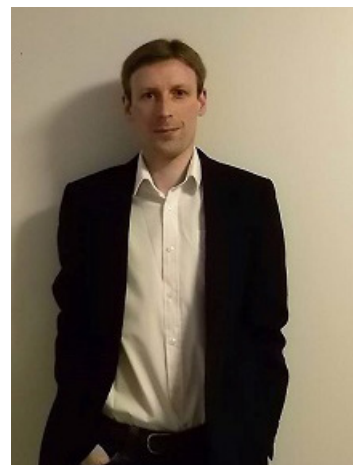
Amid the fluid political climate, it has been suggested that British support for the Falklands could be jeopardized. Yet this remains unlikely. To understand why, it helps to remember that the dispute is not simply a peripheral international affair. In Britain, as in Argentina, it is one which is intimately bound up in domestic politics. The Falklands is very much an "intermestic" issue. The islands continue to boast one of the most powerful lobby groups in post-war British politics, with cross-party representation (though it has always forged closest links with the Conservatives).

The London-based Falkland Islands Association is its modern incarnation, with Lord Douglas Hurd, a former British foreign secretary, serving as president. In June 2015, seven Members of Parliament were elected to the long-running Falkland Islands All-Party Parliamentary Group. UK delegations regularly make the 8,000 mile journey for official visits. The latest was in February 2017, when two Labour and two Conservative MPs met with the Falkland Islands Government in Stanley. Both parties continue to treat the islanders' right to remain British as sacrosanct, despite pressure from Argentina and at the United Nations. Perhaps the single exception is Jeremy Corbyn. The Labour Party leader sparked controversy in January 2016, when he declared on television that he wanted discussions on "some reasonable accommodation" with Argentina. Corbyn reportedly told Argentine diplomats that he favoured a Northern Ireland-style power sharing deal for the Falkland Islands. However, the Labour Party quickly distanced itself from the remarks, stating that it remains committed to upholding the Islanders' right to self-determination.

The cross-party consensus on the sovereignty issue today contrasts with the pre-1982 policies pursued by British governments. After the UN passed resolution 2065 in December 1965 (obliging Argentina and Britain to "proceed without delay" in the negotiations), Labour and Tory governments actively sought ways to divest themselves from the islands. The Foreign Office, charged with the everyday conduct of affairs for the Falklands, represented the broad, "establishment" view – incorporating the collective interests of banks, business, services, and government departments. Efforts were made to bring Argentina and the Falklands closer together, with diplomats advising ministers to accentuate to islanders the economic and logistical benefits of an accommodation with their neighbours. Amid international pressure to adhere to the process of decolonisation, the islanders' wishes became subordinated to the wider British need for increased political and trade relations with Latin America.

In 1968, during Harold Wilson's first Labour government, Lord Chalfont became the first British minister ever to visit the Falkland Islands. His mission: to inform the (then 1,900) islanders that their "interests" – as opposed to "wishes" – would form the basis of British policy. The Foreign Office endlessly debated potential sovereignty arrangements between the Falklands and Argentina – even after the arrival of a military dictatorship in Buenos Aires. A landmark communications agreement between the Falklands and Argentina was signed in 1971 by Ted Heath's Conservative government (part of an Argentine quest to win the hearts and minds of islanders); Wilson's second government discussed with Argentina a possible condominium formula for the Falklands in 1974. When that proved unavailing, it appointed Lord Edward Shackleton (son of the Antarctic explorer, Sir Ernest) to lead an economic mission of the South Atlantic, with the purpose of reminding the islanders that their prosperity rested on closer cooperation with Argentina. And in 1980, Margaret Thatcher dispatched Nicholas Ridley (FCO minister of state) to the Falklands to sell the concept of a leaseback arrangement with Argentina to the local community.

But with the Falklands lobby mobilising behind the scenes (in London and Stanley), these efforts ended in either failure or humiliation, or both. Chalfont was jeered and told to "go home" by islanders in 1968. In Westminster, foreign secretary Michael Stewart was howled down by Members of Parliament from all parties. Ridley would endure a similarly withering experience in 1980. Such were the domestic-political consequences of being seen to be "selling out" a fellow British community, that imposing a settlement against islanders' wishes became nigh impossible. Political attitudes hardened dramatically as a result of the Argentine invasion in 1982. Despite international pressure, British governments have since refused to discuss the sovereignty issue, much less devise ways of transferring control of the Falklands to Argentina. The close links forged by islanders with Parliament should not be over-estimated, but nor should they be downplayed. In an era of diminished British influence across the globe, and the prospect of further retrenchment, such ties may represent their best hope of emerging from Brexit unscathed.



Aaron Donaghy is an EU Marie Skłodowska Curie Global Fellow at Harvard University and the University of Nottingham. His research interests include U.S. foreign relations, British foreign policy, and the history of international relations. He is the author of *The British Government and the Falkland Islands, 1974-79* (2014).

The Malvinas conundrum

by Federico Merke

Las Malvinas son argentinas. This is the mantra we learn early in school and we repeat it as an axiom of faith. We Argentines are convinced that some islands located 250 miles from our shores cannot belong to another country located 8000 miles away. Thus, the juridical principle of territorial contiguity between the islands and the continent is the cornerstone of our diplomatic position. The second observation consists in the historical evidence that the islands were inherited from Spain and therefore administered by the Argentine government until 1833, the year in which the British Empire took control of the Malvinas/Falklands by force and transformed them into its southernmost colony.

And yet once we recite these geographical and historical axioms, the problems begin. The Argentine Constitution establishes as a state policy the peaceful recovery of our sovereignty over the Islands. But the sad truth is that we simply do not have a state policy. We are convinced that the Islands belong to Argentina, but we are not convinced of the best way to recover them. We constantly push London to sit down at the negotiation table, but any negotiation is an exercise of compromise. To negotiate is to give something up in order to get something else and we would not know what to give, because we simply do not want to give in. This is where our political elites are stuck. They need to produce evidence of support for the 'Malvinas cause' and thus every concession is considered treason.

There are two predominant stories to tell about the Islands. One is the tale of territorial integrity in which nationalists see Argentine territory as incomplete as long as the Islands remain in the hands of the British Empire. For Argentine nationalism, our identity is closely linked to our territory. And the story of our

territory, says nationalists, is a story of territorial losses. In this narrative, Argentina is depicted as an amputated, dismembered country that still needs to recover its lost territory. And while that remains the case, Argentine identity will also remain fragmented. It is interesting to note that this reasoning considers the islanders themselves to be preys, rather than instigators, of British imperialism in the South Atlantic. It also considers the Islands as a pawn in the world chess of geopolitics, including the future struggle for natural resources.

From this standpoint, the key to understand the British position is not the islanders' right to determine their own future, but the need to keep up a strategic location down in the South Atlantic which strengthens the UK claim on Antarctica and the vast mineral wealth that we all know exists over there. Upon this reasoning, the position of Argentine nationalism consisted typically in denying the preferences of the islanders and raising the costs of occupation. This resulted in a decrease in communications between the continent and the islands and a reduction in every sense of cooperation with the islanders. The overall strategy was, then, not to cooperate on anything until the issue of sovereignty was put on the table.

The other tale is the liberal narrative of cooperation and pragmatism. While Argentine nationalism always had a fundamentally antihegemonic impulse, liberalism traditionally exhibited an admiration or partiality to all things English. In this sense, the Argentine liberals rarely thought of the Islands as being an identity problem or a geopolitical conundrum. Instead, they sought to encapsulate the problem and reconstruct the relationship with London on economic and political grounds, under the idea that the coincidences with Westminster were much broader than the divergen-



ces. The liberal strategy was, then, the extreme opposite to the nationalist one: to cooperate on as many topics as possible to create trust and, eventually, to find a solution to the problem based on interests, not identities.

Since 1983, when democracy returned to Argentina, these two orientations have taken place in the manner of a pendulum, alternating inconsistently in the policies of different presidents. The last governments of Peronism, of Néstor Kirchner first and Cristina Fernández later, operated more or less under the nationalist standpoint. Carlos Menem's presidency (1989-1999) and the current government of Mauricio Macri have been closer to the liberal perspective. In this light, we are not sure yet if the best strategy is to raise the costs of the occupation or seek dialogue and cooperation. Nor are we sure if it is better to include the islanders in the negotiations or not. And we are not clear on whether the best strategy is bilateral or multilateral.

Like all collective trauma, we Argentines do not much like to discuss the Islands. In different opinion polls at national level conducted in 1998, 2002, 2008 and 2010, an average of just 3 percent of the population said that regaining sovereignty in the Islands should be "a priority" for our foreign policy. A 2012 survey by the Universidad de Belgrano showed that 50 percent of the population believes the conflict will never be resolved. Despite this lack of interest, a 2015 survey by Universidad de San Andrés and Universidad Torcuato Di Tella revealed that 62 per cent of population is opposed to a shared sovereignty, and that just 20 per cent agreed or somewhat agreed to a compromise solution.

In short, regaining the Malvinas do not seem to hold a very central place in popular views of foreign policy, but nevertheless occupies a place of great symbolic importance in society. Moreover, the debate over the Islands is rarely on the cover of newspapers. Certainly, there are always news related to the British manoeuvres of its submarines, the cemetery on the Island, or the sanctions against foreign companies exploring in disputed waters. But there is no open, public and democratic debate about what to do with the Islands. Seen in this light, our consensus on the Islands is the closest thing to an empty consensus: we all agree that the Islands belong to Argentina but we do not know what to do with that.

A majority of Argentine citizens associate the Malvinas with the 1982 war, with the military Junta (1976-1982) and with the return to democracy. This is, and will continue to be, profoundly problematic. How should the 1982 war be remembered? Each year on April 2nd we commemorate the Day of the War Vete-

rans and the Fallen in the Malvinas islands. On that date, Argentine troops, guided by a waning dictatorship, invaded the islands, starting a futile war against a naval superpower. For all the stories on heroes and battles, Argentina fought a war in highly inferior conditions with thousands of young, under-trained conscripts. This poses a dilemma. We want to remember our soldiers while pointing out the futility of war. We want to remember the fallen, yet we do not forget that the military Junta systematically violated human rights. For some, the war was a desperate act carried out by generals ignorant of world geopolitics, who misperceived the short-term effects of moving troops down to the Islands. For others, the fundamental problem was not having gone to war but rather having lost it. Yet how to commemorate an event produced by a government that deserves the strongest of our repudiation? The Malvinas cause can unite us as Argentines, but its problematisation on how to move forward is a profound cause of discussion and deep divisions.

The Malvinas are loaded with multiple meanings and thus they mean different things for different people. They may represent our frustrated national ambitions or the land of our heroes who fought a war that should not have happened. For some they are worthless pieces of land that we should stop craving to concentrate on our most immediate problems, namely unequal development and arrested institutions. For others, the Malvinas is the foremost symbol of the fight against colonialism, and therefore an issue we cannot abandon. And still for others, they are the future of our natural resources that we must protect. No matter what position we take there will always be detractors accusing us of being traitors, or of being idealists, or of being simply ignorant of global geopolitics.

The Islands are thus a mirror where we all see ourselves reflected, although we look at different things. More than 30 years on, wounds from the Malvinas war are fresh and passions still run high. We are sadly caught between a past that we cannot forget and a future we cannot imagine.



Federico Merke is Professor of international relations at San Andrés University, Argentina. He is also a researcher for the National Council for Scientific Research, a member of the Carnegie Rising Democracies Network, and teaches at the Foreign Service Institute of the Argentine Ministry of Foreign Affairs. His main research interests include human rights, international security, and Latin American foreign policy.



British Politics Society seminar Brexit- causes and effects with Professor Matthew J. Goodwin

Monday 7 March 2017 at 14:00.

Venue: University of Oslo - Eilert Sundt's building (Social Science Fac.), auditorium 6

In June 2016, the United Kingdom shocked the world by voting to leave the European Union. In this talk, Professor Matthew J. Goodwin will set out the key findings of his book, *Brexit: Why Britain Voted to Leave the European Union*, published by Cambridge University Press. Drawing on a wealth of survey evidence collected over more than ten years, he will explain why most people decided to ignore much of the national and international community and vote for Brexit, and also where this leaves British politics today.

Matthew J. Goodwin is an academic, writer and speaker known mainly for his work on British and European politics, volatility, populism, Brexit and elections. He is Professor of Politics at Rutherford College, University of Kent, and Senior Visiting Fellow at the Royal Institute of International Affairs, Chatham House. He's the author of five books, numerous peer-reviewed studies, research reports and briefings.

The event is co-organised by British Politics Society, Dept of Political Science, Center for Research on Extremism and HUMAN International Documentary Film Festival.

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Forthcoming issue of British Politics Review

2018 marks the centenary of the end of World War 1 in 1918. One of the arguably most important effects of the war in Britain, was the introduction of a female franchise through the Representation of the People Act of 1918. "Votes for Women" had now finally become a reality – if not yet fully on par with the male franchise, or without qualifications – and in the forthcoming edition of British Politics Review we wish to celebrate this crucial breakthrough towards modern democracy by focusing on the rights for women in Britain, then and now.

The spring edition of British Politics Review is due to arrive in May 2018.