

Falkland Islands constitutional development consistent with British imperial history

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The constitutional evolution of the British empire was characterised by a tension between centralisation and devolution. One may trace the evolution of colonies from Crown colonies, in which colonial government owed its authority to imperial masters, through self-government (in various forms), to full independence.

In a similar evolution, the Cook Islands, a British protectorate from 1888 and a New Zealand colony from 1901, achieved self-government in 1965. In accordance with the Cook Islands Constitution Act 1964 (an Act of the New Zealand Parliament), it is a state in free association with New Zealand, with a common head of State and New Zealand citizenship. The Cooks relied upon New Zealand for foreign affairs and defence, for which it retained statutory responsibility, but subject to the wishes of the Cook Islands Government – as governed by an Exchange of Letters. Particularly since the 1990s the Cook Islands has exercised a more independent foreign policy, and relied less upon New Zealand. The Queen's Representative is the representative of the Queen of New Zealand. There is a separate representative of the New Zealand Government, and of the Cook Islands in New Zealand.

Niue has been in a similar position since 1974, though under the Niue Constitution Act 1974 New Zealand retains responsibility for external affairs and defence, and for continuing economic and administrative assistance to the island. This also is subject to an Exchange of Letters, which emphasise that any responsibilities are only exercised at the request of the Niuean Government. Unlike in the Cook Islands, where the Queen of New Zealand has a Queen's Representative, the Governor-General of New Zealand exercises this function for Niue.

The Falkland Islands is currently a classic Crown colony, with Executive Council and Legislative Council, and a Governor representing the Crown as well as channel of communications to London. The Falkland Islands does not yet have a responsible government. Logically there are three possible next steps – responsible government, associated state status, or independence.

Responsible government would see Ministers responsible to the Legislative Council, and the Governor's responsibilities would be limited to foreign affairs and defence. This would provide the islands with true self-government. Constitutional developments, particularly since 1982, suggest that this may be the next step. It is also consistent with the history of imperial development.

Associated statehood was used in the Caribbean, where it was not an unqualified success. The constitutional position of the Cook Islands is of this nature. This is an arrangement which only operates successfully because of the goodwill of both sides, given the potential for conflict. It might best be seen as a transitional stage towards independence, at least in British practice – though some USA and Netherlands associated states in the Caribbean and Pacific retain this status.

Independence is a less likely short-term option for the Falkland Islands, given their small size and population – though Nauru, with a population no larger than that of the Falkland Islands, is independent. More importantly, a continued constitutional association with the United Kingdom would be the Falkland Islands' best guarantee of security. Given the history of Argentine claims to the islands, this guarantee remains vital, however viable independence might be from an economic perspective.