

## The Falkland's Dispute

**A letter by David Barker in response to the article "[Libertarianism and the Falklands' War](#)"**

*by Stephen Berry, David McDonagh*

**With a reply by Stephen Berry**

Dear FREE LIFE

**T**he war over the Falkland Islands was a good example of the kind of foolishness we can expect from politicians. Two thugs, General Galtieri and Margaret Thatcher, gambled their political futures on the outcome of a fight for the little-known islands. Galtieri lost everything, Thatcher won a political fortune.

Would a libertarian society engage in such a conflict? It seems unlikely. Residents of dangerous areas would arrange their own protection and insurance. Falklanders could no doubt obtain sonic protection from those in Britain who profit from trade with them, but few would be willing to spend billions of pounds or die on the battlefield to ensure a supply of wool or postage stamps. Of course, a libertarian Argentina and a libertarian Britain would have fewer problems. British and Argentinean settlers might both buy property on the Falklands without worrying about the colour of the flag flying over Port Stanley.

This is the point which libertarian propagandists should stress. A war purchased on the market is no better than one waged by states, but war is an unattractive commodity and is unlikely to be purchased. Stephen Berry and David McDonagh choose instead to defend Britain in 'Libertarianism and the Falklands' War'.

I have no quarrel with Berry and McDonagh's indignant defence of the Falklands' way of life. It is unlikely, however, that private individuals would be willing to pay the same price for it as Margaret Thatcher was.

I will take on Berry and McDonagh's legal justification of Britain's claim to the islands.

This is not to say that Britain's actions would have been justified if history or international law showed them to be legal. It is interesting, however, that this military adventure happened to be illegal.

Margaret Thatcher has often claimed that international law was on her side in the conflict. This has convinced many that there was something legitimate about her actions. Berry and McDonagh are among them, saying that: "Perhaps the critical issue for libertarians in the Falklands dispute was of course the question of property rights". As if international law settles property rights in ways consistent with libertarianism, the article then reviews the legal history of the Falklands.

A massive book written in 1927 by Julius Goeble Jr., a professor of law at Columbia University, makes the case for Argentina. The first settlement on the Falklands was made by the French. On January 31, 1764, Antoine Louis de Bougainville made land and established a colony on Berkeley Sound. Several months later he left a group there to brave the winter with a fort and several huts. In January of 1765 de Bougainville returned with supplies and more colonists.

In June of 1764, Commodore John Byron set sail for the Falklands from Britain. He finally found them and "took possession" on January 23, 1765. Other than planting some vegetables, Byron made no attempt to establish a colony until January of 1766, two years after the French.

The French and British exchanged nasty messages until the French sold their claim to Spain. Spain claimed sovereignty over the islands from the 1713 treaty of Utrecht. If this treaty did not give Spain sovereignty, as was claimed by Britain, then France was within its rights to transfer its claim to Spain. The British remained, however, until 1770 when Spain sailed four frigates with 1,400 troops to kick them off the islands.

Britain found it politically difficult to give up, so a treaty was concluded which stated that the legal situation was the same as before the 1770 conflict. Both sides continued to publicly claim sovereignty, but there was a confidential agreement that Britain would abandon the islands.

Britain carried out the agreement in 1774. According to Goeble, 'abandonment strips the British claim to the island of all legal quality'. Under these circumstances the plaque left behind by the British had no legal value.

The British recognised the legal occupation of the islands by Spain at the Nootka Sound Convention of 1790. It did allow the construction of huts by British fishermen on the islands surrounding Tierra del Fuego and South Georgia, but not on the Falklands, as they were already occupied by Spain. According to Goeble, "Even if we could assume that the British had up to this time kept alive their claim to the group, it was extinguished by this instrument".

The Spanish claim was inherited by Argentina by well established principles of international law, since the Falklands were in the same administrative division as Argentina. Argentina took steps to ensure sovereignty, including the colonisation of the islands and the appointment of a governor. In 1833 Britain seized the islands in an act of naked aggression and has held them ever since.

Britain continues to claim sovereignty based on Commodore Byron's discovery and the treaties of the 18th century. It would no doubt be embarrassing to admit the facts and claim sovereignty based on length of occupation. This occupation has been constantly protested by Argentina.

The "doctrine of prescription" seems to say that Argentina has no claim because it chose to keep its protests peaceful for 150 years. Britain demonstrated its regard for the "doctrine of self determination" by forcibly removing the inhabitants of Diego Garcia in the Indian Ocean to make way for an American military base. The legal occupants of the Falklands were more useful politically

and so were given the benefit of this doctrine.

Libertarians should take care to avoid the traps of lies set by politicians to restrain criticism of their actions. The Falklands' War appears ridiculous to anyone with common sense. It still does after close examination of Britain's legal claims.

**DAVID BARKER**

## **The Falkland's Dispute: A Reply**

By Stephen Berry

(i) Would dangerous areas (the Falklands) obtain support from defence agencies some distance away (in Britain)? David Barker then blurs the issue by stating that which no one disputes, "A war purchased on the market is no better than one waged by states, but war is an unattractive commodity and is unlikely to be purchased". But people purchase defence, not war. Moreover, they expect to be defended and they expect their defenders to act the part. Successive British governments have pursued a decolonisation policy since the Second World War. The fact that the inhabitants of the Falklands and the inhabitants of Kenya had quite different ideas about Britain and their relationship to her has seemingly carried little weight. A defence agency which acted like the British government towards the Falkland Islands during this period would find it difficult to gain any business at all. "Falklanders could no doubt obtain some protection from those in Britain who profit from trade with them, but few would be willing to spend billions of pounds or die on the battlefield to ensure a supply of wool or postage stamps." Correct, but the implication is that they would not get support for other reasons. It would also be correct to say that few would be willing to spend billions of dollars or die on the battlefield to ensure a supply of virtuoso violinists and orange juice from Israel. Israel does, however, get billions of dollars of donations and some volunteers and her position has for decades been more precarious than that of the Falklands.

(ii) "I have no quarrel with Berry and

McDonagh's indignant defence of the Falklands' way of life". We also do not wish to start quarrels unnecessarily, but it should be pointed out that our defence was only a response to Rothbard's initial *ad hominem* attack. Rothbard made much of the idea that

the Falklanders' lifestyle was curious, not to say a little masochistic. One of the principles of the L.A. is: 'Each individual's liberty to pursue his or her chosen lifestyle and to promote it by peaceful persuasion but not to impose it forcibly on anyone else'. We only wished to point out that the Falklanders' lifestyle was irrelevant to the dispute and the highlighting of it trivial.

(iii) David Barker maintains that we argued "as if international law settles property rights in ways consistent with libertarianism . . .". On the contrary, we wrote: "International law is, of course, not libertarian law . . ." (Free Life, Vol 3, No 2, P.29). International law is in fact an amorphous and rather nebulous body of conventions and principles which nation states on occasions find useful. Parts of international law have principles relating to libertarianism, parts are most definitely not libertarian. The very 'best' libertarian solution to the Falklands' dispute is hinted at in Roderick Moore's letter. This would involve the restoration of individual settlers' rights and other just claims on the Falkland Islands. In this way the property rights issue would be seen as a matter between individuals and not between nation states such as Great Britain and Argentina. In this strict sense then, nation states have no rights and all their claims in any international law are illegal. Such a position is not quite without its problems. Because all actions by nation states are illegal, defensive actions can no more escape this charge than can aggressive ones. How much the Russians would have appreciated this filigree truth on 22nd June 1941 remains an unanswered question!

(iv) Stephen Peters feels that the killing of hundreds of Argentinean conscripts might have been too high a price to pay for the recapture of the Falklands. Libertarians believe in an individual's right of self-defence. If an individual is attacked by a soldier who enlisted of his own free will, that individual has the right to resist. Why should

this right be modified if that soldier had been conscripted? Conscripted is an evil, but it should be the duty of the conscripted or about to be conscripted that they resist the people who wish to conscript them. If the moral onus is shifted to the people who face conscripts, it is taken away from those people who are most able to effectively combat state coercion, namely the coerced.

(v) Interestingly, David Barker raises the issue of Diego Garcia in the Indian Ocean to show that the British only support national self-determination' when it suits them. Agreed! Ironically, it now turns out that British servicemen have nicknamed the Falklands the 'Diego Garcia of the South Atlantic'. It seems that the British armed forces are supplying the Falklands with equipment which enables the islands to play the role of an airbase controlling the sea lanes of the South Atlantic. In this way the Falklands will regain their old strategic significance as part of a worldwide chain of bases to defend the 'Free World'. It is not difficult to invent reasons why the Americans should want to create such a chain. Why the British state aids and abets them remains a puzzle.

### **Free Life**