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Parliamentary representation of overseas territories in the metropolis: a comparative analysis

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ABSTRACT

The consequences of 'Brexit' are many, and one that is little discussed is the reigniting of the debate as to whether Britain's Overseas Territories (BOTs) should have direct representation within the United Kingdom Houses of Parliament; presently they do not. Proponents suggest that this would strengthen the territories' voice in, and links with, Britain. The article considers this debate by drawing on some of the extant literature on what constitutes a demos, as well as descriptive representation, and the experiences of the Faroe Islands, Greenland, Åland, and Puerto Rico, which do have direct representation in their respective metropolitan parliaments. The article suggests that although there are strong normative arguments for such representation, the mixed record of the territories featured does not offer compelling evidence that a change for the BOTs would bring about significant improvements in how their interests are represented and defended.

KEYWORDS Parliamentary representation; Faroe Islands; Greenland; Åland; Puerto Rico; British Overseas Territories

Introduction

In a post-Brexit world, at a time when the United Kingdom (UK) and its constituent parts (including related entities, such as the British Overseas Territories and Crown Dependencies) are grappling with the issue of identity politics and questions over their political status, the time is ripe for revisiting British territorial governance and metropolitan representation. This article is concerned with the position of the British Overseas Territories (BOTs) and if representation in the Houses of Parliament would be a positive development for them. To help consider the issue we draw on a comparative perspective

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incorporating the Faroe Islands, Greenland, Åland, and Puerto Rico, all of which have direct representation in their metropolitan parliaments. The article uses the perspectives from these territories to consider the question of whether metropolitan representation in London for the BOTs would be beneficial and should be enacted.

Since the 2016 referendum on the UK's membership of the European Union (EU), which of course led to Brexit, there have been discussions both in the BOTs and in the UK about the future of the relationship between them now that an important component of their political and economic systems has been removed, i.e. the EU. This loss has resurrected a debate about how the territories' interests can best be heard and defended. At the same time, concerns have been raised about the fact that the territories (with the exception of Gibraltar) were unable to vote in the referendum. As Mut Bosque suggests, 'Brexit has made it necessary for these territories to reflect deeply upon their current statuses' (2020, p. 164). (It is important to note, however, that for the BOTs, the Faroe Islands, Greenland, and Åland the EU has never impacted directly on the question of political representation.) But there is a wider point here that Mut Bosque identifies:

... it is reasonable to assume that Brexit is not an exceptional situation. In the future there will be more and more relevant issues for these territories which will remain outside of their direct control but will have a direct impact on them. (2020, p. 152)

More broadly, as Yusuf and Chowdhury note, there are aspects of 'colonial governance' that still enables the UK to 'intervene in the domestic and external affairs of its overseas territories' (2019, p. 171), which has created a 'democratic deficit' (2019, p. 189). Therefore, there is a sense of exclusion that is framing the debate about whether the territories should have a more direct voice – in the Westminster Parliament, and how this might affect existing avenues of access and representation in Westminster and Whitehall.

To strengthen the analysis of these issues, it is important to place the BOTs/UK into a broader comparative context. This is why the Faroe Islands, Greenland, Åland, and Puerto Rico are chosen along with the BOTs because they offer a continuum of direct democratic representation in the metropole. The Faroes and Greenland have two representatives each in the Danish parliament; Åland has a single representative in the Finnish parliament; and Puerto Rico has a non-voting representative in the US House of Representatives. Our primary concern is not to evaluate which model is best, although we do critique them, nor to specify the ideal form of representation. Rather, the key focus of the article is to consider the structure and effectiveness of the territories' representation in their respective metropolitan parliaments, with the intention of comparing and contrasting the experiences of the territories, and what lessons should shape the ongoing debate as to

whether the BOTs should have representation in Westminster or not. The article evaluates several related questions, including: How does direct parliamentary representation work? What are the other forms of access for the territories in the metropolitan government and parliament? And whom do the parliamentarians represent? These questions are answered in the middle part of the article and are top and tailed by several other sections. Prior to that, and in order to set some parameters for the analysis that follows, we engage with some of the extant literature on what constitutes a demos, as well as on descriptive representation. We also provide a brief overview of the history and status of the featured territories. Later, we consider the BOTs and their relationship with Westminster and Whitehall, within the context of the experiences of the Faroes, Greenland, Åland, and Puerto Rico.

Defining and discussing democratic representation

The literature on what forms a demos, as well as on descriptive representation, considers the position of nation-states. However, there are important arguments and principles established by the literature that can be applied to the non-independent territories and their democratic relations with the metropolitan powers. This section considers the role of demos and the concept of 'genuine link' (Bauböck, 2018, p. 44), and how legitimacy as well as the quality of parliamentary deliberation could be strengthened via an effective presence for the territories in the political process. Let us start by assessing who should make up the demos.

Debates around who should form the demos often relate to the *all affected interests* principle and the *all subject to coercion* principle. As Bauböck sets out, *all affected interests* means 'All whose interests are actually affected by a decision on the agenda of a democratic legislator have a claim to representation of their interests in the decision-making process'. While *all subject to coercion* means 'All who are subject to the jurisdiction of a government have a claim to equal protection of their rights and freedoms by that government and a right to contest its decisions' (2018, p. 49). Bauböck says that these principles '... complement each other because they serve distinct purposes of democratic inclusion' (2018, p. 6), and in this article, we also view them as complementary.

Many authors have argued for a broad definition of the demos using the *all affected interests* and *all subject to coercion* principles. For example, in relation to the former, Beckman suggests the term 'implies that voting rights should be recognized not only among members of the community but to anyone "affected" by the government's actions' (2006, p. 154). A view backed by Miller, who notes:

Something has gone wrong if a democratic institution ... takes decisions that may inflict serious harms on people who are not represented in the body

that decides. We cannot just assume that good procedures will always take proper account of the interests of those who have no say in the process itself. (2018, p. 128)

As Bauböck puts it succinctly, '... actually affected interests have a claim to voice' (2018, p. 24). These ideas certainly have resonance for the overseas territories featured in this article, which are often 'affected' by decisions from the metropole, for example Brexit.

In regard to *all subject to coercion* Beckman argues, 'What determines a person's political rights is simply that of being subjected to the legal authority of the state' (2006, p. 161). Similarly, Carens asserts, 'people should not be subject to a political rule in which they have no say' (1989, p. 37). And Honohan provides a supportive and more nuanced view, suggesting that '... the demos is composed of those who share a wide range of multiply reiterated interdependencies, which have been significantly shaped by their subjection to a common authority' (2018, p. 150). Further, as Barry argues, 'whose fate [is] inextricably bound up with the functioning of the country's institutions' should be considered as a political equal (2000, p. 77). Once again, such arguments related to the configuration of the demos would seem to apply to Faroes, Greenland, Åland, Puerto Rico, and the BOTs. As the article shows, all are ultimately subservient to their respective metropolitan states, are subject to 'coercion' and regularly struggle to be recognised as political equals.

However, there of course have to be limits on who should make up the demos. As Goodin argues, 'there turn out to be all sorts of people who are legally and morally obligated to obey our laws but who are not (and rightly not) entitled to membership of our demos' (2007, p. 42). For instance, short-term tourists and visitors (Kymlicka & Donaldson, 2018, p. 164). Despite such caveats, and as Owen says, there is a 'just principle of reciprocity between the governed and the governing ...' (2010, p. 73). This view is supported also by Beckman who writes in reference to resident aliens, 'Failure to recognise [...] equal political rights ... is from that standpoint inconsistent with the democratic criterion of inclusion' (2006, p. 154). But the overseas territories actually reach a higher standard in that a majority of their residents are citizens of the associated metropolitan power, which means they would still likely be seen as part of the demos even by those authors who argue for a more limited definition of the term.

If we accept a broad conceptualisation of the demos, what factors can help underpin and support it? Bauböck's third principle of democratic inclusion, *all citizenship stakeholders*, is helpful here. He defines this principle as: '[T]hose who have an interest in protection of their individual freedom and well-being by a particular polity thereby share with each other an interest in the collective freedom and flourishing of that polity' (2018, p. 41). This then

leads onto the idea of a 'genuine link ... a critical standard for assessing the strength of ties between an individual and a particular polity' (2018, p. 44). That means a 'genuine link' can exist even if citizenship (in its strictest legal sense) is not present; a view shared by Beckman (2006) who suggests that individuals should be able to vote even if they lack formal citizenship. Based on our discussions below, one could argue there is a 'genuine link' between the overseas territories and the metropolises, irrespective of citizenship, although as we have already seen that is present too. Indeed, in the existing literature Owen (2010) discusses the voting rights of Commonwealth citizens in the UK and Shaw (2009) highlights how former colonial links can influence franchise arrangements; both examples have some synergies with the position of the overseas territories, particularly Puerto Rico and the BOTs. Goodin develops the argument:

The reason we think that territorial or historical or national groups ought to make decisions together is that, typically ... the interests of individuals within those groups are affected by the actions and choices of others in that group. Those common reciprocal interests in one another's actions and choices are what makes those groups appropriate units for collective decision making ... (2007, p. 48)

Finally, perspectives offered in the literature concerning descriptive group representation may also inform our normative deliberations on who should be directly represented in the metropolitan parliament. Within this literature, descriptive representation refers to whether a representee resembles the person he or she represents? Such resemblance may be thought of as 'situated knowledge' (Young, 2000, p. 114 on Haraway, 1991), shared experience (Mansbridge, 1999, p. 641), or in the form of more 'outward manifestations' such as similar gender, ethnicity, or age (Pitkin, 1967, pp. 11, 60–61; Mansbridge, 1999, p. 628). In addition, arguments for descriptive group representation may be divided into those, which stress the way such representation improves the quality of the parliamentary debate on the one hand, and those, which focus on the symbolic effects of this representation on the other (Mansbridge, 1999).

Mansbridge lists four contexts in which society at large will benefit from the direct descriptive representation of (prior) disadvantaged groups. The first concerns a situation in which a group has historically dominated another. As pointed out by Mansbridge, 'such history typically breeds inattention, even arrogance, on the part of the dominant group and distrust on the part of the subordinate'. Therefore, in such situations, descriptive representation is needed for accurate and respectful dialogue between the representee and the represented to occur (Mansbridge, 1999, p. 641). The second context is when so-called uncrystallised political issues are being deliberated. Here, descriptive representation of all is needed to guarantee that every

perspective is recognised. Thus, in both contexts, Mansbridge argues, proper descriptive group representation will raise the quality of either vertical or horizontal deliberation (Mansbridge, 1999, pp. 641–648). The third situation is when groups have previously been regarded as unfit to rule (as in the case of women). In this circumstance, proper descriptive representation is necessary to reconstruct the view of the group as fit to govern (Mansbridge, 1999, pp. 648–651). The fourth context is a situation in which descriptive representation of a (prior) disadvantaged group is necessary to make the political unit legitimate in the eyes of this group (Mansbridge, 1999, pp. 649–652).

In a similar vein, Young (2000) argues that special measures should be applied to enlarge the descriptive representation of social groups, which have historically been marginalised. The reasons for this are first that such representation will raise the legitimacy of the representative system in the eyes of these groups, thus providing them with faith in the system. Secondly, such representation, she argues, will facilitate a situation in which the ‘situated knowledge’ of these groups become part of the political debate in society – an inclusion which will in turn reveal the ‘the partiality and specificity of the perspectives already politically present’ (Young, 2000, p. 144). Generally, the idea that descriptive group representation is important to either members of a particular (prior) disadvantaged group or society at large for reasons relating to either the quality of the political decisions taken, or the symbolic signals of this representation are fundamental to most writers of theoretical and empirical representation theory (see Bobo & Gilliam, 1990; Phillips, 1995; Banducci et al., 2004). Indeed, as pointed out by Childs and Cowley (2011, p. 1),

The case for greater descriptive representation – and the political presence of previously under-represented groups – has become widely, though not wholly, accepted both in the academic literature and in the ‘real world’ of politics in most advanced democracies and more widely across the globe.

Although the featured authors focus on nation-states and their constitutional and political relationships with, amongst others, resident aliens, migrants, expatriates and (historically) disadvantaged social, ethnic, or gendered groups, important issues are raised in relation to the nature of the demos and related principles, such as *all affected interests* and *all subject to coercion*, which can assist us when we consider the democratic political representation of the non-independent territories with their metropolises. Though the formal constitutional links may be stronger, the questions that need to be addressed are similar. The ideas discussed above help frame the arguments and observations to come.

Governance arrangements with the metropolises

From 1721, Greenland was a Danish trade colony, and it was not until 1953 that its status was changed to a Danish county (amt). The Faroe Islands, on

the other hand, had the status of a Danish county from 1816. However, as with Greenland, its more contemporary status was not established until sometime later. The Faroe Islands acquired home-rule in 1948, after a failed independence attempt, while Greenland obtained home-rule in 1979, and further self-governance in 2009. Today, both the Faroes and Greenland are self-governing. Both have national parliaments and governments, and most political issues are decided in the territories. In addition, both territories have their own taxation systems. But there are areas of policy in which the Faroes and Greenland cannot decide independently. These are foreign, defence and security policy, the constitution, citizenship, and currency, as well as the high courts. Additionally, there are some policy areas in which the Faroes and Greenland have not yet assumed control, most notably the police, judiciary, prison and probation services, aviation, and regulation of the financial sector. Accordingly, legislative initiatives in these areas, as well as those areas that are formally the responsibility of Denmark, are decided by the Danish Folketing, although a process of consultation is in place.

The Åland Islands and Finland were parts of Sweden until 1809 when Sweden ceded them to the Russian Empire. During the Russian Revolution Finland declared independence (1917), while the Åland Islands opted for reunification with Sweden. This provoked a conflict between Finland and Sweden, which was later referred to the League of Nations. The settlement in 1921 implied that the Åland Islands should belong to Finland, but with autonomy that is as extensive as possible (Joenniemi, 2014, p. 84). In 1951, the present status of the islands was established according to an enumeration in the Autonomy Act, a law passed by the Finnish and Åland parliaments. This is based on the idea of division, rather than decentralisation, delegation or devolution. So legislative power is exclusive according to the division (Hepburn, 2014, p. 475). Åland controls a range of issues, such as municipal taxation, education, culture, public order, internal transport, health and medical care, and the environment. However, any law passed by the Åland Parliament is scrutinised and can be rejected if it is felt the parliament has exceeded its legislative powers or it relates to the internal or external security of the State. Finland retains control over foreign affairs, most areas of civil and criminal law, the court system, customs, and more general taxation.

Puerto Rico was a colony of the Spanish Kingdom from 1493 until 1898. The outbreak of the 1898 Spanish-American War and the subsequent US invasion of Puerto Rico on 25 July of that year put an abrupt end to one of Spain's longest colonial entanglements. Puerto Rico was then officially ceded to the US, becoming an unincorporated territory subject to Congress' plenary powers under the US Constitution's Territorial Clause (US Const. Art. IV, Sec. 3, Cl. 2). Unlike the inhabitants of the territories annexed prior to 1898, Puerto Ricans were not immediately naturalised as US citizens, nor did

Congress extend to them a promise of statehood (i.e. of admission to the Union). American citizenship was finally conferred on Puerto Ricans in 1917. However, it was not until 1947 that the US Congress granted Puerto Ricans the right to elect their own governor, and in 1950 the right to draft an internal constitution with a bill of rights subject to Congress' final review and ratification. The new constitution, proclaimed on 25 July 1952, set out a governmental structure that remains in place today, providing a limited degree of autonomy: the US has control over issues such as citizenship, defence, diplomacy, currency, immigration, communications, maritime and air traffic, foreign trade, and federal taxation. Puerto Rico's status provides also for local gubernatorial, legislative, and mayoral elections, but not the right to vote in US presidential elections. Yet, Puerto Ricans living in the US are eligible to vote for the US President. However, as Puerto Rico remains an unincorporated territory, Congress retains overriding powers to undertake unilateral action on a range of issues, including the right to preempt local laws inconsistent with federal law, and to award or rescind regulatory privileges. The US Congress may even annul or modify the Puerto Rico Constitution without the consent of its people.

Finally, the BOTs have a varied set of histories. For example, those in the Caribbean were colonised by the British in the 1600s, while for the Falkland Islands, the British first laid their claim in 1765, and in 1832 a British expedition expelled colonists from Argentina and a Crown Colony government was established the following year. Meanwhile, Gibraltar became a British colony in 1713 by the Treaty of Utrecht, which ended the War of the Spanish Succession, and Pitcairn was first settled in 1790 by some of the HMS *Bounty* mutineers and became a British territory in 1838. Because of their different histories, several different laws underpin relations with the UK. In turn, there are slightly different constitutions across the BOTs, the majority of which have been updated in the last decade and a half. Each constitution allocates responsibilities between the Crown (i.e. the UK government and the Governor) and the territory. Those powers generally reserved for the Crown include defence, external affairs, internal security, including the police, and the public service; while territory governments and their local parliaments have control over all aspects of policy that are not overseen by the Crown, including taxation. No taxes are collected by, or paid to, the UK. However, there are differences in the level of autonomy afforded to each territory, with Bermuda and Gibraltar having more autonomy than the others. Notwithstanding, the UK government has ultimate sovereignty and has broad powers to intervene, which it does use from time-to-time.

So, it is interesting to offer this initial comparison between the Faroe Islands, Greenland, Åland, Puerto Rico, and the BOTs. The nature and length of their histories with the respective metropolitan powers are quite different, which has, in turn, influenced their particular contemporary

constitutional arrangements and political cultures. However, there are also clear similarities, which allow us to make justifiable comparisons when considering the territories' democratic political representation in the metropolitan centres. They include the still important role that the metropolises have in overseeing and sometimes legislating for the territories; the structures of governance that attempt to manage, and where needed, smooth relations between the parties; and with each of the territories having their own local governments and parliaments, the debate about how political representation in the territories and their representation in the metropolises should be managed. Another key common feature, as noted earlier, is the fact that citizens of the territories have citizenship of the metropolises, with associated obligations on both sides. Thus, with these commonalities in mind, we move onto consider the issue that is central to the article: the territories' direct representation in their metropolitan parliaments.

The Faroe Islands and Greenland

As noted in the introduction both the Faroe Islands and Greenland are each directly represented by two members of the Folketing, and this complements the inter-government relations between the Faroese and Greenlandic governments on the one hand and the Danish government on the other. The four MPs are full members of the parliament and enjoy the same formal rights as the other 175. Quite clearly four out of 179 mandates are most often not enough to influence decision-making in the parliament. Nevertheless, as we demonstrate below, in times of less firmly constituted parliamentary majorities, one or two of the North Atlantic members may play a key role in determining the political majority in the parliament. However, though Denmark has a strong tradition for minority coalition governments, the most common parliamentary situation is one in which none of these four members is important for the building of a parliamentary majority, and the subsequent making of policy. This way, although there have been times in which the Faroese and Greenlandic members become politically important and though they may be invited to participate in negotiations of special interest to their constituency, their general importance is probably best understood in terms of their symbolic presence and in their ability to articulate viewpoints and pass on knowledge of the northern parts of the Realm within the epicentre of Danish politics. Further, the MPs participate in the political life of the parliament, through questioning Danish ministers, thus taking on the task of publicly scrutinising the Danish government. This way, through the North Atlantic members' participation in debates and through their questions the parliament becomes a more vibrant and important arena for ongoing political debate among the metropole and the peripheries. However, the fact that parliamentary business unlike the results of diplomatic

negotiations between governments are visible to the public and may be very direct and at times even bellicose does also mean that the political arena of the Realm as provided by the parliament may be compared to a hot pot of water, which may, at times, overheat. Yet, ultimately, the fact that this representation, in an otherwise complicated relationship between a metropole and its peripheries, is only seldom placed into question could be viewed as a positive evaluation of this type of representation as it is carried out in the Danish context.

Apart from government meetings, and the consultation procedures through which the Faroe Islands and Greenland are consulted in legislative matters that fall under Danish jurisdiction, the four MPs are the only formal element through which North Atlantic interests are officially represented in the Danish political system. Thus, moving to the question of whom these members represent, there is no question that they represent the people living in their geographical constituency, their home countries. However, a question of some disagreement among the current Greenlandic parliamentary members, in particular, is whether they are also expected to represent Greenlanders who live in Denmark. While Greenlandic and Faroese members have previously acted on behalf of their fellow citizens living in Denmark (e.g. via the asking of parliamentary questions), the current member of the Greenlandic Social Democratic Party believes that their representation should only be the concern of those MPs who represent the Danish district in which they live (interview with MP, Aki-Matilda Høegh-Dam, October 30, 2019).

Moving onto the political issues with which the North Atlantic members have been most concerned, it is custom in Danish legislative studies to use parliamentarians' membership of legislative committees as an indicator of their political activities (Harder, 2021). An analysis of the North Atlantic members' committee assignments in the period 1971–2019 indicates that at all points in time, the North Atlantic MPs have generally been members of committees that have dealt with the policy areas that are under Danish jurisdiction. Hence, Greenlandic and Faroes members have been members of the Committee on Greenland and the Committee on the Faroe Islands, respectively. Further, from the beginning of the 1970s when the committee systems were established in the Folketing and until the 1980s, the North Atlantic members were often members of the committees in which questions regarding fish quotas and whaling were handled. Likewise, until the end of the 1980s, MPs of the rather religious Faroe Islands were often members of the committee on the church. Lastly, since the 1980s Greenlandic members have been members of either the Committee on Foreign Affairs, or more importantly, the Foreign Policy Committee, with which the Danish government, according to the Constitution, is to consult on matters of major importance. In turn, within the past decade, the Faroese members have also joined

the committees on foreign affairs – a move which corresponds to the increasing focus on foreign policy in the Faroe Islands (West, 2019). The fact that the North Atlantic MPs have often been granted a place on the highly prestigious Foreign Policy Committee may be viewed as a symbolic gesture which signals that these members (and the islands they represent) are thought of as important and respected.

An issue that has occasionally caused political debate is the question of whether the Greenlandic and Faroese MPs are only to concern themselves with questions related to their territories, and therefore staying out of mainland Danish political debates. According to the Danish Constitution, there is no doubt that these members may engage in any issue they wish. When governments have clear majorities North Atlantic members can vote on mainland Danish issues with no political consequence and attracting little notice, but when the parliament is more evenly split their votes can cause controversy. For example, in 2007, two Greenlandic members announced that they would vote with the opposition to allow asylum seekers with children not to be placed in detention centres, and this threatened the government's majority. Hence, although Greenlandic members had previously voted on such issues without causing any concern, their vote at this point became an issue of much-heated debate. The spokesperson of one government party characterised their threat as 'two Greenlandic politicians have suddenly decided to come down from the ice and interfere in Danish politics' (Sjølie, 2008), while the vice-chairman of the Danish People's Party announced that such behaviour would not go unpunished in the forthcoming negotiations on the future independence of Greenland (Henriksen, 2008). Not surprisingly, the post-colonial remarks, as well as the threat of sanctions, were interpreted in wider, symbolic ways, and heightened tensions between Greenland and the metropole. Eventually, a political majority behind the government was established and so the Greenlandic vote did not turn out to be decisive. In turn, the threat made by the Danish People's Party concerning the forthcoming negotiations on the future independence of Greenland was never activated. However, the example highlights Danish sensitivities if MPs from the territories threaten to challenge mainland policy. But, in general, neither parliamentary representation as it is undertaken, nor the North Atlantic countries membership of the Danish parliament more generally, are associated with questions concerning any future change in the political status of the Faroes or Greenland.

Åland

As highlighted earlier in the article, Åland has one representative in the Finnish Parliament, and this is the territory's main political representation in Finland. Because Åland has only one representative, the person when

elected normally detaches himself or herself from being affiliated to one of the local political parties. As Hepburn argues, 'Åland's MP is required to represent the interests of the Ålandic people in all Finnish affairs; however, they also informally act as an "ambassador for Åland in all fields"' (2014, p. 472). So, there is a great deal resting on the shoulders of the MP, and their role is undoubtedly a challenging one. A key concern is how to maximise their role and influence in the Finnish Parliament, and to aid this the MP sits with the Swedish People's Party (SPP), and together they constitute the Swedish Parliamentary Group (SPG). The choice is due to Åland parties having no direct equivalents in Finland, the SPP's focus on protecting the Swedish language, which is the native language in Åland, and the fact that the SPP is a moderate, middle of the road party and so accommodates a broad range of political views.

The pact with the SPP means that the Åland MP has usually been part of the coalition behind the Finnish government, as the SPG is more often than not part of the governing coalition. This makes work somewhat easier for the Åland MP than if they were part of the opposition, as the arrangement gives them a good platform for the direct flow of information and direct access to the daily work of the government. On the few instances when the SPP has been in opposition the Åland MP has voted with the government. It is important for the Åland MP not to be in opposition as the Finnish Government is the key negotiator with Åland across a range of issues. In short, the Åland MP must be a help rather than a hindrance when it comes to decision-making between Finland and Åland. Hepburn calls this 'informal congruence' (2014, p. 481). In other words, there should be a high degree of synergy, and that has mostly been the case.

However, there are limitations to the role. The SPG has usually a relatively small voice within Finnish governments to set the policy agenda, and this applies even more so to the Åland MP; a single voice within a large coalition. As Hepburn notes this 'link has limited effectiveness in augmenting cooperation between the Åland and Finnish governments' (2014, p. 481). But the extent of effectiveness does depend on the particular responsibility of the minister that belongs to the SPG. Åland autonomy is very legalistic, so when the Minister of Justice comes from the Group, his or her influence can be sizeable in shaping Finland's approach to the territory.

The situation in the Finnish Parliament is often similar to the government, in that Åland-specific concerns are infrequently raised and there is a lack of awareness and understanding of Åland, its issues, and indeed its particular relationship with Finland. In addition, Åland's representation in the Parliament's committees is somewhat variable, as it is often based on the personal background, interests, and capacity of the individual MP. The issue of language compounds these problems. Although according to the Finnish Constitution the country is bilingual, Swedish is the *de facto* minority

language, and is being spoken less in Finland. On the other hand, Ålanders are required to speak with the Finnish authorities (ministers, civil servants, President, Supreme Court, Parliament etc.) in Swedish. So, at the official level communication channels still operate generally well, but there is a growing linguistic disconnect between Åland and the Finnish population at large, which of course influences how issues relating to Åland are considered politically. Thus, there are clear deficits in the model of representation that exists for Åland in the Finnish executive and legislature, but there are other avenues that can be used for representation and dialogue between the two.

First, there is membership of the Constitutional Law Committee, on which it is crucial for the Åland MP to belong. Finland has no Constitutional Court, so proposed laws in the Finnish Parliament must, if there is a possible constitutional problem, be referred to the Constitutional Law Committee. It also deals with any issues related to Åland autonomy, so for many years it has been the first goal of the Åland MP to have a seat on the committee; not always easy, but more often than not accommodated by the SPG. One of the most important tasks has been to make sure that the reports of the committee cannot be interpreted as limiting Åland autonomy with reference to the Finnish Constitution. In essence, the MP is a watchdog on the committee. Second, Åland is able to defend its interests on the international stage via a special opt-out/veto when international treaties are considered for signature by the Finnish government if it is within the legal competence of the Åland Parliament. Third, the Åland MP is a member of the so-called Grand Committee, which deals with EU matters. Fourth, high-level politicians from both Åland and Finland meet on a regular basis. Fifth, Finland has representation in Åland through the Governor. His role is to represent 'the Finnish Government and the President of the Republic on the islands and is responsible for coordinating activities of the Finnish State on the Åland Islands' (Hepburn, 2014, p. 473).

Despite these various avenues of influence and engagement, again there are deficiencies. Åland has no representation in any ministries; there are Finnish civil servants in different ministries with a special responsibility for Åland questions, but no one full-time. As noted previously, the Minister of Justice has the main responsibility for Åland due to the legal construction of the autonomy but is not named formally 'Åland Minister'. In short, there is no minister across government with 'Åland' in their title. The Finnish Prime Minister and President visit Åland infrequently and there is limited congruence between the political parties of Åland and Finland. Therefore, there is a 'paucity of informal relations' and 'little warmth between the two sides' (Hepburn, 2014, p. 474). In addition, autonomy has been steadily restricted. There has been 'autonomy leakage' from Åland to both Finland and the EU in recent years, in areas including agriculture and the environment. So, although Åland has an MP there are gaps in representation and dialogue,

which can provoke intense arguments between Åland and Finland. Yet, there are few demands for greater Åland representation in the Finnish Parliament and no desire to become independent. The broader constitutional safeguards and rights to influence Finnish policy-making have been sufficient to overcome the reservations about the role of the single Åland MP, and as Joenniemi argues, the basis of the relationship 'has proved quite flexible. It has been able to adapt to shifting conditions, internal and international alike' (2014, p. 93).

Puerto Rico

One resident commissioner, who is elected every four years by the direct vote of the Puerto Rican electorate, represents Puerto Rico in the US House of Representatives. The origins of the office of resident commissioner are found, not in the US Constitution, but rather in federal legislation. The 1900 Foraker Act, as amended by the 1950 Puerto Rican Federal Relations Act, establishes that the resident commissioner is 'entitled to receive official recognition as such [...] by all of the departments of the Government of the United States'. Puerto Rico's resident commissioner is also the island's emissary to the federal executive branch. However, unlike the Faroese, Greenlandic and Åland MPs, the Puerto Rican resident commissioner is not a full member of the parliament and does not have the right to vote. This is because the US Constitution explicitly establishes that the House shall only be composed of members chosen 'by the People of the several States' (US Const., Art. 1, Sec. 2). His or her role is simply limited to pleading Puerto Rico's case. Consequently, the resident commissioner plays an insignificant political role in the US House of Representatives and is considerably constrained in advancing the territory's diverse and complex interests in Washington. The weakness of the resident commissioner's position is compounded by the fact that federal statutes, along with the treaties of the US, are fully binding on Puerto Rico even in the face of the island's opposition. The territorial relationship between Puerto Rico and Congress, unlike the situation for Greenland, the Faroes and Åland, does not provide for a formal consultation, or opt-out/veto, mechanism for determining whether a specific federal statute or treaty should or should not apply. As Lin notes, Puerto Rico is '... frequently subjected to legislation, executive action, and regulation that damage their interests without their consent or input' (2019, p. 1266). A view shared by Fuentes-Rohwer who argues that 'This disenfranchisement places citizens of Puerto Rico in an unenviable and indefensible position' and is one of the 'black holes of US-style democracy' (2008, pp. 1553, 1554).

The resident commissioner of Puerto Rico first served on House committees in 1904, more prominently on the Committee on Insular Affairs (now

falling under the aegis of the Committee on Resources) with jurisdiction over Puerto Rico and the remaining territories (Guam, American Samoa, US Virgin Islands, and Northern Mariana Islands). Besides the Committee on Resources, the resident commissioner sits on several others, including the Committee on Transportation and Infrastructure, and the Committee on the Judiciary. The congressional record shows that Puerto Rico's resident commissioners have historically (and unsuccessfully) sponsored federal legislation aimed at disentangling Puerto Rico's colonial condition and jumpstarting its economy. In addition, achieving equality for Puerto Rico (on an equal footing with the 50 states) in Medicare, Medicaid, and other social programmes has become a crucial aspect of the resident commissioner's Washington agenda. Furthermore, decolonising Puerto Rico and putting an end to its colonial relationship with the US (which some have euphemistically characterised as the 'democratic deficit') has also become part of the resident commissioner's unfinished agenda.

The inadequacy of the resident commissioner position, and its sheer lack of political authority, is perhaps the most eloquent reminder of Puerto Rico's colonial condition. Lin argues that this powerlessness renders the territory like a colony of a bygone era, 'without a meaningful voice or vote' (2019, pp. 1265, 1302). Similarly, Torruella suggests that 'this is a classic colonial relationship' (2013, p. 82). As a result, the resident commissioner is a marginal interlocutor and the position is consistently questioned. It certainly does not have the same standing as the MPs representing the Faroes, Greenland and Åland. Further, it is well settled that as soon as Puerto Rico accedes either to independence, free association, or statehood (as another state of the Union) the resident commissioner position will be abolished – as happened in the context of the Filipino resident commissioners in 1946 when the South-eastern Asian archipelago declared its independence from the US. The question of Puerto Rico's decolonisation, in the final analysis, is a matter for the people of Puerto Rico and Congress to settle. The resident commissioner is but a subsidiary (and lonely) figure within a wider and far more complex jigsaw puzzle.

The Westminster question for the British Overseas Territories

As noted in the introduction the UK's Brexit vote has precipitated a greater consideration of whether the BOTs should have formal representation in the Houses of Parliament. The most vocal calls for this to happen have been articulated in the right-wing British media, particularly *The Telegraph* and *Daily Express*. For example, in two reports in the *Express Online* the headlines were clear in their message: 'Gibraltar needs its own MP NOW, says Tory MP as he bids to fast-track Rock representation', and 'Gibraltar, Falklands and other overseas territories MUST get own MPs, say campaigner' (*Express Online*,

2020a, 2020b). The first article featured the views of Andrew Rosindell MP, a long-term advocate of the territories, who argued that the territories, particularly Gibraltar, should get their own MP. He suggested that Gibraltar's population (of around 23,000) is 'big enough to warrant its own MP – comparable with that of the Western Isles in Scotland'. Rosindell admitted that for the other territories 'the situation was less clear cut and more complex discussions were needed' (*Express Online*, 2020a). Whilst the second article included plans by Anthony Webber, a former member of the States of Guernsey, the island's Parliament, to establish nine parliamentary constituencies for the territories and the Crown Dependencies. He also suggested some immediate appointments to the House of Lords (*Express Online*, 2020b). Similar ideas were floated by John Penrose, a Conservative MP and former minister, in *The House Magazine*; the Houses of Parliament's own publication, although he called for a greater level of integration (*The House Magazine*, 2020). Penrose has since returned to the theme arguing the BOTs could become full UK nations (like Scotland, Wales and Northern Ireland) with Westminster MPs (Penrose, 2021).

However, it is important to note that these discussions are not new. Over several decades, the issue of parliamentary representation for the territories has raised its head, but there has been little action. For example, the UK House of Commons Foreign Affairs Committee (FAC) considered the issue in 1998. In its Second Report, the Committee recognised a 'democratic deficit' in the UK's relationship with the territories and noted that one option to improve the situation was 'direct representation'. However, the Committee stated that it 'raises a number of substantial constitutional questions on which we have taken little evidence. We do not therefore propose to offer an opinion ... at this stage' (FAC, 1998a, paragraph 62). However, later in the year the Committee did proffer an opinion. In its Third Special Report, the Committee noted:

It would not be practicable or equitable in democratic terms for each overseas territory however small to have its own representative at Westminster; equally, the FCO [Foreign and Commonwealth Office] foresee considerable difficulty over the OTs reaching consensus on which single representative might collectively represent their interests at Westminster. The representatives of those Territories which have offices in the UK in London have made clear to the FCO that their preference is to work through their existing arrangements which is to rely on their supporters and advocates at Westminster to raise their concerns. The FCO have also often seen, most recently from the case of Montserrat [the eruption of the Soufrière Hills volcano], that Overseas Territories find no shortage of champions both in Westminster and outside in times of need and crisis. (FAC, 1998b, paragraph 19)

The FAC returned to the issue the following year, and was a little more positive towards parliamentary representation, particularly in relation to

Gibraltar (FAC, 1999). However, the UK Labour Government at the time did not support the idea. In its 1999 White Paper, the government argued that greater integration into the UK did not offer a better alternative to the present situation (Foreign & Commonwealth Office, 1999, p. 13). Consequently, the FAC looked to the work of the Royal Commission considering the future of the House of Lords. However, when the Royal Commission of the Reform of the House of Lords reported it argued:

All the Overseas Territories have their own governments: none is represented in the House of Commons ... We therefore see no case at present for any of the Overseas Territories to be formally represented or given a voice in the second chamber. (Royal Commission of the Reform of the House of Lords, 2000, p. 66)

After this quite intense, but ultimately unproductive, set of discussions the issue remained on the agenda, but more as an afterthought. It was highlighted briefly by the FAC in its 2008 report on the Overseas Territories, with it stating, 'Territory government leaders had mixed views'. For example, the Falkland Islands representative was 'satisfied with the Falkland Islands All Party Parliamentary Group as its link with Parliament'. Meanwhile, the Chief Minister of Gibraltar said that he would 'love to have some sort of representation for Gibraltar in Parliament' but that this would have to be done 'in a way that did not undermine Gibraltar's ability to be economically and jurisdictionally separate and distinct from the UK' (FAC, 2008, p. 50). Due to the lack of clarity from the territories, the FAC recommended rather blandly that interested parties should consider 'whether improvements can be made in the ways in which the views of those resident in the Overseas Territories can be made known in the UK Parliament' (FAC, 2008, p. 51).

Then in 2012, Rosindell asked for a Backbench debate on the issue, arguing that the territories 'have no voice in this Parliament, they elect no representatives and have no representation', creating a 'democratic hole'. He continued, 'In a range of areas, although ... the overseas territories are not part of the UK they are substantially influenced and ultimately governed by this Parliament, so it is wrong for them to have no voice at all' (House of Commons, 2012, pp. 7–8). These arguments of course reflect the *all affected interests* principle and the *all subject to coercion* principle. In the same year, the issue returned to the FAC. Under questioning by members of the Committee the then Minister for the Overseas Territories, Mark Simmonds, stated,

I do not think there is any ambition within the Territories to gain direct representation in the UK Parliament. If there is a driving force for that agenda, in my experience that has come from the UK Parliament, not the other way

round. We need to respect the wishes of those who are living in the Overseas Territories. (FAC, 2012, Ev 5)

Later the Minister provided more details of his thinking:

The fear has several elements. The first is the taxation point – it is not that they would necessarily be sending taxation to the UK, but that the taxation rates in the UK would be applied to them. Secondly, they fear that the autonomy that they have across a range of very important policy areas would be subsumed into the UK national policy development and policy architecture, over which they would have little, if any control at all because, of course, our party political structure does not necessarily match theirs in-territory. The third thing that they would be concerned about is the imposition, as they would see it, of unhelpful legislative structures that would have a detrimental and negative impact on some of their business sectors. (FAC, 2012, Ev 6)

This then brings us to the contemporary debate. In 2018, the FAC undertook a detailed investigation of the territories and their relationship with the UK, in the context of Brexit and the controversial decision of the UK Parliament in 2018 to pass the Sanctions and Anti-Money Laundering Act, which required the territories to publish registers of beneficial ownership for their financial services sectors. The issue of parliamentary representation was again discussed. The Prime Minister of Montserrat Donaldson Romeo said, it was a ‘commonly held view’ on the island that ‘there ought to be some direct representation for the Territories either collectively or individually in the UK parliament’ (FAC, 2019a, p. 16); a view shared by Anguilla’s Chief Minister Victor Banks: ‘we need to have a voice in the House of Commons so that we can be represented by a person or persons who understands us’ (FAC, 2019a, p. 17). However, others disagreed. Turks and Caicos Islands Prime Minister Sharlene Cartwright-Robinson said: ‘there is no appetite in Turks and Caicos for it’ (FAC, 2019a, p. 17), while Teslyn Barkman, Member of the Falkland Islands Legislative Assembly explained: ‘Currently we can appeal to 650 Members of Parliament, whereas we would be funnelling and bottlenecking our issues from a vast number of [OTs], or even a singular territory, through one’ (FAC, 2019a, p. 17). Other witnesses did not have a strong view, so the FAC’s conclusion was that ‘There is little appetite in the OTs for major change’ (FAC, 2019a, p. 3).

The view of Teslyn Barkman that parliamentary representation would actually limit the voice and influence of the BOTs is an important one, as at present there are different ways in which the territories can gain access to UK policy-makers. First, they are able to engage with a range of government departments, including the Foreign, Commonwealth, and Development Office (FCDO), which is the lead government department for the BOTs. There is also a designated UK Minister for the BOTs within the FCDO. Second, as highlighted earlier there are a committed group of UK parliamentarians that take an interest in, and lobby for, the territories. They do this

individually, but also in parliamentary groups such as the British Overseas Territories All-Party Parliamentary Group. There are also several parliamentary committees such as the FAC that consider territory matters on a regular basis. Third, there are the UK-appointed Governors, and part of their remit is to relay the interests and concerns of the BOTs back to Whitehall. Fourth, there are regular formal high-level meetings between Ministers from both the UK and the BOTs; most particularly the UK-Overseas Territories Joint Ministerial Council. This is not to say, however, that these points of access are not without their difficulties. For example, there are concerns that the FCDO is not best placed to deal with the territories, as they are not foreign nor part of the Commonwealth. The high turnover of UK ministers and civil servants in Whitehall resulting in a lack of continuity and loss of institutional memory is a frustration. And some have called for a designated parliamentary committee in Westminster for the territories. However, these criticisms are relatively muted.

Conclusion

So where does this leave us in terms of the possibility of parliamentary representation for the BOTs? There are two strands of argument to consider: one normative and one practical. Let us look at the normative strand first, and in particular the utility of the extant literature on what constitutes the demos, underpinned by the principles of *all affected interests* and *all subject to coercion*, and the idea of descriptive representation. Although, as noted above, this literature is not specifically focused on the BOTs there is a case to be made that it can be applied to them and provides several arguments to support the idea that the territories should have direct parliamentary representation in the Houses of Parliament. For example, the territories are clearly affected by the actions of the UK Government and Parliament, and the British State has ultimate legal authority and coercive political power over them (see the arguments of Beckman, 2006; Bauböck, 2018). As the UK Government itself notes: 'The UK, the Overseas Territories and the Crown Dependencies form one undivided Realm, which is distinct from the other States of which Her Majesty The Queen is monarch' (FAC, 2019b, p. 3). Yusuf and Chowdhury use somewhat stronger language, arguing that the territories '... still operate within the structure of colonial governance', and are '... subject to laws over which they have no constitutionally recognised role in' (2019, pp. 189–190).

And in turn one can argue that the suggestion of Carens that 'people should not be subject to a political rule in which they have no say' (1999, p. 37) and Bauböck's idea of a 'genuine link' (2018, p. 44) have merit. The arguments in favour of parliamentary representation are perhaps strengthened further by the fact that (1) many territory residents have British

Citizenship or are eligible for it; (2) there are strong and long-standing shared histories between the territories and the UK; (3) on several occasions the UK has not always been responsive to, or aware of, the interests and concerns of the territories and so a local voice might be beneficial (see the arguments of Bobo & Gilliam, 1990; Mansbridge, 1999; Goodin, 2007; Miller, 2018), and (4) since citizens of the BOTs have been historically disadvantaged in their relationship with the UK, direct parliamentary representation in Westminster may be thought of as one of the remedies needed to re-establish its legitimacy (Mansbridge, 1999; Young, 2000). Thus, parliamentary representation could well enhance political equality, improve the quality and appropriateness of decision-making, and reinforce the legitimacy of constitutional and political relations between the BOTs and the UK.

If the normative position is prioritised the BOTs' current lack of representation would indeed be seen as problematic through the lens of the *all affected interests* and *all subject to coercion* principles, but there are pragmatic considerations other than democratic ones that are important to acknowledge. In other words, where decisions regarding representation based on the former could be incompatible with those based on the latter. That is why the article also considered the actual experiences of the Faroe Islands, Greenland, Åland and Puerto Rico. Although the constitutional arrangements differ, all four territories offer a useful insight into the extent to which their experience of metropolitan parliamentary representation enhances the decision-making process. For the Faroes, Greenland, and Åland if their MPs act strategically, e.g. by focusing on certain issues or joining particular committees, then they can affect some decisions that have direct impacts on them, such as fishing quotas, constitutional issues, or foreign affairs. Also, by aligning their support to the metropolitan government it can enhance relations more generally, as the case of Åland shows in particular. In addition, MPs are often able to strengthen the vibrancy of political debate between the metropole and the territory.

However, there are clear limits and pitfalls to metropolitan parliamentary representation. First, MPs have a fine line to walk in their contact with national governments and parliaments. There are examples, particularly in relation to Greenland, when relations have soured if the MPs indicate a different view or set of interests to the metropolitan consensus and this certainly has the potential to harm relations. Second, and related to the first, there is a risk that the MPs' role becomes overly 'political' by associating too closely with one metropolitan party or another. Third, the presence of MPs can mean that other mechanisms to manage territory-metropolitan relations are either not developed or deteriorate; this is seen most clearly with Åland. In Puerto Rico too, it can be argued that the resident commissioner is an ineffective sticking plaster for the fundamental constitutional problems that exist. Fourth, there is the issue of who the MPs represent and

concerns that they struggle to articulate the plurality of views present in the territories. Most notably, we see this in the case of Åland, where only one MP is elected. And fifth, there are concerns if the MPs are enough of a critical mass to be truly effective or if they are largely present in parliaments for 'symbolic' reasons. This is particularly the case for Puerto Rico's resident commissioner who does not have a vote in the House of Representatives. So, it is clearly a mixed picture for each of the territories and there seems to be a sliding scale of effectiveness from the Faroe Islands and Greenland through to Puerto Rico, but there are common strengths and weaknesses for all.

In sum, does the normative and practical evidence identified provide a compelling case for the BOTs to have representation at Westminster. The short answer is no, and this is reflected in the lack of consensus on the part of the territories regarding the issue. The recent efforts by UK politicians to design detailed proposals have certainly sparked a wider debate, but without territory buy-in they will have limited traction in UK Government circles. It is also unfortunate that many of the UK proponents of change have a rather paternalistic attitude. For example, Anthony Webber argued: 'This is not something which is supposed to be decided by local areas or dependent (sic) territories, it is something decided by the UK national parliament. It is the UK Parliament's responsibility, no one else's, to bring this about' (*Express Online*, 2020b). Although legally true, this view rather goes against the rationale of giving territories representation within Parliament – to strengthen their voice and make policy-making more responsive. Another weakness in several proponents' arguments is that representation would not alter the balance in relations between the UK and the territories. Although Penrose acknowledges that some changes might be required, others suggest not. The *Express Online* (2020b) noted: 'Mr Rosindell stressed that none of the territories would lose any autonomy as a result of being granted representation at Westminster'.

However, there would be a significant risk that a more formal connection between the territories and the UK Parliament would over time strengthen policy activism by the latter in the former, as has been seen in Åland and Puerto Rico. The territories, despite the sporadic tensions with the UK, do have significant autonomy over a wide range of policy areas and they are protective of them. As Chief Minister Picardo argued: 'Gibraltar was not seeking an MP because the territory did not want to lose its existing levels of devolution' (*The Telegraph*, 2019). One area is taxation. Many territories have no income, property, inheritance, or capital gains taxes. For the Cayman Islands, for instance, it was argued that the introduction of direct taxes would be 'extremely deleterious' to the country's key financial services industry (Ioannides & Tymowski, 2017, p. 172). If the links became stronger then it is likely that changes to taxation policy would be required; certainly Åland and Puerto Rico have much less freedom over taxation than the BOTs. As Martin

argues, '... a device designed to capture Parliament's attention might also encourage Parliament's intervention' (2022, p. 136).

And indeed there is no certainty that Parliament's attention would be captured. Martin suggests: 'What would be gained? Politicians are busy people. Everybody knows there are problems with St Helena's costly airport. They will not be solved by the Honourable Member for the Mid-Atlantic haranguing empty green benches' (2022, p. 136). Further, for arguments of consistency, it would be difficult for some territories to have representation and not others, and to operationalise a system whereby all territories are effectively represented by a very small number of MPs or members of the House of Lords. In addition, as has happened with the MPs from Greenland, there are risks of being sucked into metropolitan party politics. If BOT MPs were faced with the dilemma of either supporting or opposing the UK government of the day there would be significant peril whichever position they took. So, that is why many territories favour the status quo, or some moderate change in the status quo. There are many existing avenues for the territories to influence UK policy and thinking: via individual Members of Parliament (in the Commons and Lords), parliamentary committees, backbench all-party groups, and the FCDO. Over the years, the structure underpinning the territories' relationship with the UK has undergone reform, and the FCDO has said it is 'open to ideas of how this structure could evolve to support the modern, twenty-first century relationship to which both the OT and the UK Governments aspire' (FAC, 2019b, p. 1).

Despite normative arguments favouring direct BOT representation at Westminster, the practical examples of the Faroes, Greenland, Åland, and Puerto Rico do not offer compelling evidence that a change would make a significant positive impact. Indeed, this equivocalness is reflected in the BOTs and UK themselves. Therefore, it seems that for the foreseeable future the existing structures and approaches that shape debate, decision-making and policy will be maintained and parliamentary representation for the BOTs will not be introduced.

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