

A rebuttal of Marcelo Kohen’s and Facundo Rodríguez’s article “Malvinas: 200 Years After”

On 6 November 2020 Professor Marcelo Kohen and Facundo Rodríguez posted online an English translation of an article they published in Spanish in the Argentine daily *Clarín* on 5 November. Those articles contain many of the untruths that have been stated for many years by Argentine authors; they have been fully disproved and corrected in an article and a book by Graham Pascoe (details on the website www.falklandshistory.com). This brief article quotes Kohen’s and Rodríguez’s original English text *verbatim* in italics and quotation marks, including its errors, and then refutes each of its contentions underneath.

Kohen and Rodríguez:

“This 6 November 6 is celebrated the 200th anniversary of the Argentine taking of possession of the Malvinas Islands and the first raising of the Argentine flag therein. The vain efforts of certain British authors to try to minimize the importance of this momentous act are not surprising. The facts concerning this act of sovereignty - to use the words of the London Times of August 3, 1821 - were as follows.

On January 15, 1820, David Jewett, in his capacity as commander of the state war frigate “La Heroína”, was appointed Army Colonel in the service of the National Navy by the Supreme Director of the United Provinces. At the end of March of that year, he set sail from the Río de la Plata and, after overcoming many difficulties, arrived near Puerto Soledad on October 27, 1820.”

Correction:

None of the above words come from the *Times* of London. It did report the letter that Jewett had sent to American captain William Orne in the Falklands which was published in the *Salem Gazette* of Salem, Massachusetts. That letter did report Jewett’s claim to have “taken possession” of the Falklands, but the *Times* said nothing about Jewett’s appointment or setting sail.

Kohen and Rodríguez are deliberately distorting the facts. Jewett wasn’t “overcoming many difficulties” while steadily making his way to the Falklands. Jewett was on a privateering voyage, first sailing north beyond the equator in an attempt to capture Spanish ships – he was trying to make money capturing ships. Kohen omits all mention of the fact that Jewett’s ship *Heroína*, although a national warship, was privately owned and financed by shareholders, as a business venture, and carried “letters of marque”, i.e. a licence or commission as a privateer.

Kohen and Rodríguez:

“The famous British captain, James Weddell, who at that time was in Puerto Salvador on Soledad Island, received a notification, on November 2, where Jewett reported that he had been “commissioned by the Supreme Government of the United Provinces of South America to take possession of the islands in the name of the country to which they belong by Natural Law” and to avoid the indiscriminate destruction of the existing supply sources on the islands.”

Correction:

Jewett said nothing about “Natural Law” – that wording comes from several inaccurate Spanish translations of his letter, which was in English and in which he said to Weddell (in Weddell’s transcription; the original does not survive) that he was taking possession of the

Falklands “in the name of the Country to which they naturally appertain” [sic], which means no more than “the country to which they naturally belong”.

The statement “and to avoid the indiscriminate destruction of the existing supply sources on the Islands” was not in the letter given to Captain Orne, which was subsequently published in his home port, Salem, and was repeated in the *Times* of London. Those words are from the account in James Weddell’s book, published five years later in 1825.

Kohen and Rodríguez:

“On November 6, 1820, in the presence of captains of other ships, mainly Americans and British, Jewett and his officers, dressed in full dress uniform, raised the Argentine flag, read the declaration of inauguration and shot a salvo from 21 cannon shots.” [sic!]

Correction:

There was no “declaration of inauguration” – that implies that there was an official form of words, for which there is no evidence whatever. Jewett himself left no account of what he said; the only account of the ceremony is in James Weddell’s book. Weddell was an eye-witness, and if it were not for his book, the world would not know what happened. It is absurd for anyone to claim territory and not leave any record of what they said, and not tell the authorities of the countries on whose behalf they are making a claim that they have done so.

Kohen and Rodríguez:

“Three days later, Jewett made sure that the rest of the ships that were in and around the Malvinas learned of the events of November 6 and issued a circular on the matter.”

Correction:

There was no circular. Jewett wrote two letters, each to a single person. The first, on 2 November” was to James Weddell, in which Jewett invited Weddell to pay him a visit aboard his ship. The second letter, on 9 November, was to William Orne; it was wrongly labelled as a circular by the local American newspaper in Salem that published it.

Kohen and Rodríguez:

“This circular was widely reproduced in the press of the time both in the United States Spain and the United Kingdom. He spent months on the islands before being replaced.”

Correction:

Press coverage was very limited. Jewett stayed in the Falklands hoping for Spanish ships to arrive which he could capture as prizes, but there were none. His crew were exasperated by this – they were making no money, and when he captured another neutral ship he again made them into pirates and thus into criminals. Jewett did not act as if he were in Argentine territory; he acted as if he were a privateer, and made no move against the British ships that were in the islands. Kohen and Rodríguez suppress the fact that Jewett lost his original status as a privateer and became a pirate by seizing neutral ships. That is a serious distortion of the facts.

Kohen and Rodríguez:

“The importance of this fact lies not only in Argentine actions but also in British inaction. The presence of Weddell and other British captains, and the publication of the London Times article, leave no doubt about the British government's knowledge of the Argentine taking of possession of the Islands.”

Correction:

There was no “article” as such in the *Times*; the paper merely reprinted (on 3 August 1821) a repeat of the letter to Captain Orne, which appeared underneath an article on the Russian economy in column 5 on page 2 of the paper. Weddell was present at Jewett’s ceremony, but it is not known whether there were any other British captains present – Weddell only refers to “several vessels which had arrived bound to New Shetland”, so there were clearly not many. And Jewett, in his 13-page account of his voyage which ends with his resignation, written on 1 February 1821, says not a word about taking possession of the Falklands! So the Argentine government did not know about it until November that year. The report in the *Times* was picked up by a Gibraltar paper, then by the *Redactor de Cadiz*, and this report finally reached Argentina and was published in the magazine *Argos* on 10 November, just over a year after the event. Only then did Argentina discover what Jewett had done.

There was no requirement for the British government to react to Jewett’s purported “taking of possession”. There was a mere letter reproduced in the *Times* in August 1821 – nine months after it was written – and in the intervening time there had been no official announcement from Buenos Aires nor from any other source, which might have led to an official answer from Britain. As it was, there was a letter passed on by an American sealing captain, but then silence. Governments do not react to mere letters reproduced in newspapers.

Argentina itself made no mention of Jewett’s “taking of possession” when it listed its arguments for sovereignty in its long diplomatic protest on 17 June 1833 against Britain’s actions in the Falklands in January that year. That protest is very well known to Argentine historians as Argentina did not ask for the “return” of the Falklands, but only asked for compensation for their “loss”, thus indicating a wish to waive its claim in exchange for money.

Kohen and Rodríguez:

“If a foreign State, even an unrecognized State, or an individual, exercises an act of authority in a territory that another State considers its own, a reaction can be expected.”

Correction:

Britain knew nothing about Jewett’s act until months later in August 1821, by which time he was long gone from the Falklands and there was no Argentine presence in the islands. Even if Jewett had remained a legal privateer, and had not become a pirate by capturing neutral ships, his claim would not have affected the much better claims to the islands by Britain and Spain; he would only have added a third, much weaker claim. But since he was by then a pirate, he did not in fact even make a claim at all – all acts by pirates were illegal.

Kohen and Rodríguez:

“None of this happened and five years later the United Kingdom entered into a treaty by which it formally recognised Argentina as an independent State, without making any protest or act related to Malvinas.”

Correction:

Before according diplomatic recognition to Argentina (by the Treaty of Amity in 1825), Britain asked Argentina to provide a description of its territory. Argentina did so, in a 300-page book published in Spanish, English and French which gave a detailed description of the territories of each Argentine state – but did not mention the Falklands. The Argentine government clearly did not regard the Falklands as Argentine territory.

Kohen and Rodríguez:

“This is just one of many examples of British inaction inconsistent with a claim to sovereignty. The reason is very simple: at the time, Great Britain did not claim the Falkland Islands.

It is eloquent and paradoxical that the British side tries to undermine the importance of the actions carried out by Jewett. He is accused of being a "pirate" because he would have captured ships that were neutral.

The argument has no basis: even if it were so, such prease [sic!] would all the more be considered illegal, but it did not transform its author into a “pirate”. Furthermore, it completely contradicts British behaviour itself.”

Correction:

Jewett captured two neutral ships – the Portuguese *Carlota* in the Atlantic and the American *Rampart* in the Falklands. On the first occasion his men mutinied against him, saying they “had not come to wage war on the Portuguese flag”. Privateers were not criminals; they existed only in war, and were only entitled to capture ships of the enemy – in the international law of that day, capturing neutral ships made a privateer into a pirate. The vital difference between privateers and pirates was well known at that time, but has largely been forgotten since privateering was abolished in 1856. It was not possible to be a privateer and a pirate at the same time, and Jewett himself (in absentia), his successor as captain, William Mason, and the ship *Heroína*, were condemned for piracy by a Portuguese court in 1822. The *Heroína* was confiscated and sold, and the crew, including William Mason, were imprisoned in Lisbon.

Kohen and Rodríguez:

“If we talk about pirates and that their behaviour did not produce sovereignty effects, it is worth remembering that John Strong, the supposed British "discoverer" of the Falklands, was one of them.”

Correction:

Britain has never claimed that John Strong discovered the Falklands. The record of his voyage is well known to all serious historians of the Falklands. In his logbook Strong calls the islands “Hawkinsland”, which makes it clear that in 1690 he knew he was visiting islands that were already known – they had been described by Richard Hawkins in 1594 as “Hawkins Maidenland”.

In contrast to Jewett, Strong was not a pirate; he remained a legal privateer entitled to capture French ships (he in fact captured two French ships). That has been pointed out to Kohen before, but he has ignored the truth.

Kohen and Rodríguez:

“Jewett is said to have acted on his own account and without instructions. Even if this were true, nothing would change from the legal point of view: it was a public act carried out by a state official on a territory for which the government of Buenos Aires had already taken official measures.”

Correction:

In international law there was no act by a state official – a pirate made a statement that was devoid of validity. And even if it had been valid, it would have been inferior to the two longstanding claims by Britain and Spain. Britain’s claim to the Falklands dated back to

1765, and British ships had been coming and going to the islands for over half a century, but Buenos Aires had had no presence in the Falklands whatsoever from the time Spain left in 1811 until Jewett arrived.

Kohen and Rodríguez:

“In short, the unsuccessful British attempts to rewrite history fail to hide the fact that through an official and public act, of which the main powers of the time took note without any reaction, Argentina exercised its titl [sic] of sovereignty inherited from Spain by taking effective possession.”

Correction:

If history is written incorrectly, it has to be rewritten and the record has to be put straight. The Argentine version of the history of the Falklands is full of serious errors. Correcting them is simply a matter of getting it right.

It is not true that “*the main powers of the time took note*” of Jewett’s act – they showed no reaction whatever. For them to “take note” of anything, they would have had to state as much – doing nothing does not count as doing something.

As regards Argentina’s sovereignty inherited from Spain, that sovereignty was not absolute – it was overlain or “encumbered” by Britain’s claim. Spain had been forced by threat of war to tolerate Britain’s presence in the islands and the rival British claim to the whole archipelago in 1771. And in 1790 Spain had been forced to accept a limitation of its claim to sovereignty and make major concessions to Britain in the Falklands. And Jewett did not take “effective possession” of the islands; he remained at Port Louis and did nothing – indeed one of his officers complained that they were “vegetating”.

Kohen and Rodríguez:

“The acts of government before and after 1820 demonstrate an absolute continuity of Argentine sovereignty before and after Jewett's inauguration.”

Correction:

That is nonsense. There was no “continuity of Argentine sovereignty” at all, but there was a continuous British presence – British ships came and went all the time. And there had been no Argentine presence in the Falklands between Spain’s departure in 1811 and Jewett’s visit. After Jewett left, it was not until 1824 that the next expedition arrived from Argentina; it collapsed after five months and its last members had to be rescued by a British ship.

Kohen and Rodríguez:

“In the year of the bicentennial of the formal inauguration of Argentine possession of the Malvinas, we find ourselves before an historic opportunity to begin a new comprehensive and positive strategy, framed in a State policy underpinned by the participation of all sectors of Argentine society, that will allow us to reach the settlement of the sovereignty dispute, as established by the constitutional mandate.”

Correction:

The “State policy” referred to by Kohen and Rodríguez is merely the establishment of an Argentine committee to promote Argentina’s claim to the Falklands. That claim is nonexistent – the Convention of Peace, ratified in 1850, settled all disputes between Britain and Argentina and thus ended the Falklands dispute.

The “constitutional mandate” they refer to is an addition to the new Argentine constitution of 1994 (the Falklands were not mentioned in any previous Argentine constitution), obliging Argentina to seek to obtain 100% sovereignty over the islands. That is likely to be an obstacle

to Argentina's ambitions – it commits Argentina to accept nothing but a complete surrender by Britain. So if there were ever to be any negotiations over the Falklands, Argentina would be negotiating in bad faith, not being open to any solution except total victory. And international law makes Falkland Islanders the arbiters over what happens to their country, the Falklands.

Under modern international law including United Nations Resolution 2625 (which allows the inhabitants of all non-self-governing territories to choose any political status “freely determined by a people”), Falkland Islanders are the holders of territorial sovereignty over their country – they possess the full right of self-determination. For Argentina to attempt to take the islands over against the will of the Islanders is a breach of international law.

Graham Pascoe
November 2020