

# Results of status plebiscite can be repealed at any time

The Organic Act, Guam's pseudo-constitution, is a federal statute, an instrument of the U.S. Congress that legislates Guam's form of self-government.

And during the General Election in November, we will be conducting our very own U.S.-sanctioned plebiscite on Guam's political self-determination, which is hoped to finally produce a coherent message,

albeit non-binding, as to what the political aspiration of the people of Guam will be, an exercise of pseudo-sovereignty.

As sanctioned, this is probably appropriate coming from the direction of the



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Guamanians. But how can a sovereign nation, the United States, release a subject, Guam, from subjection?

If a parent tells a child, "You are now completely free of my commands," then there is a sense in which the child owes its liberty to that parental dispensation. If the parental fiat is revocable, then freedom cannot be conferred by another. This type of parent-child problem can become troublesome, as illustrated below.

The United States, India and other of England's former colonies and dominions won their independence by war or negotiation and law (i.e., U.S. Declaration of Independence and the adoption of

the Constitution, and England's 1931 Statute of Westminster).

The Statute of Westminster solemnized its intention never to legislate for former colonies again without their express consent and request. That was direct and thorough. The problem is that the Statute of Westminster can be repealed, which could mean that the independence of the former colonies and dominions is revocable. Courts in the former colonies quickly noticed this. It appeared that one generation of English people had done its best to surrender this right to legislate, but had done so with frustrating incompleteness, since any later generation could restore it.

This brings to mind a cartoon of a child with flypaper on its fingers, trying to shake it off. Nothing that England could do, it seems, could give the colonies full legal independence, for if it were done in law, then it could be undone; and if it were not done in law, it would not be lawful.

One tempting solution was to interpret the Statute of Westminster as irrevocable. That would guarantee that the emancipated countries would stay emancipated. But it would also contradict the independence of the English people, their sovereignty in their own country and deny them the power to change their own laws.

More specifically, the English Parliament for these reasons cannot bind its successors irrevocably. To avoid the problems of revocable independence, many former colonies have deliberately inserted some irregularity or procedural defect

into the ritual of liberation so that they could say they owe their independence to peaceful (and not so peaceful) revolution, not to the Statute of Westminster.

The equivalent problem arises in U.S. law in the Philippine Independence Act of March 24, 1934, in which the United States agreed to give the Philippines independence in exchange for making a constitution for themselves according to U.S. specifications.

In A710(a), the United States promised that, when a suitable Philippine constitution was ratified, "the United States shall by proclamation withdraw and surrender all right of possession, supervision, jurisdiction, control, or sovereignty then existing and exercised by the United States in and over the territory and people of the Philippine Islands..." The Philippine Independence Act, like the Statute of Westminster, is merely a statute; if Congress cannot bind itself irrevocably, then the statute can be repealed at any time. If after a certain time, repeal would have no effect on the independence of the former dependent, which is almost certainly the case, then legal formalism cannot explain it.

In the case of Guam's U.S.-sanctioned plebiscite on its political self-determination, wouldn't the same paradoxes and reflexivities in law be equally applicable? One wonders about the relevance of the self-satisfying exercises those classes of people on Guam pursuing their political self-determination are being subjected to.

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