

The Clearest Expression of the Will of the People – Referendum or General Election?

I INTRODUCTION:

Whenever the issue of Independence or self-determination has arisen in the context of Bermuda, and particularly with respect to which vehicle, a Referendum or a General Election, should Bermuda travel to Independence or Self-determination, the U.K. Government, in mantra fashion, has given the same response since the early 1960's:

“The United Kingdom Government policy is not to delay independence for those dependencies who wanted it or to force it upon those who did not. The U.K. Government had no intention of pressing Bermuda to independence against the wishes of the people of Bermuda.”

As recent as the Overseas Territories Consultative Committee 2003, Mr. Bill Rammell, the Parliamentary Under- Secretary of State for the Foreign and Commonwealth Office, amplified the above policy by adding that the U.K. will respond when it “receives the clearest expression of the will of a significant majority of the people of Bermuda”. The focus and purpose of this paper, therefore, is to ascertain and to discuss which vehicle, the Referendum or a General Election, “gives the CLEAR(est) expression of the Will of the people of Bermuda for or against Independence.” Without such a clear view it is implied, and even arguable, that the U.K. Government will do nothing to disturb the STATUS QUO. Will not move to put its decolonization machinery, process and procedure in motion on the basis that it has not received a clear enough indication, gauge or measurement by which they can assess the Will of ‘a substantial or significant majority of the people of Bermuda.’ Unless the Bermuda Government is prepared to act in the bold fashion of an Ian Smith of ‘Southern Rhodesian infamy’ by making an Unilateral Declaration of Independence, the U.K. has the last word on Bermuda’s move to sovereignty or Independence (even after an affirmative vote for) as firmly established constitutionally, amongst other colonial legislation, in the Bermuda Constitution Act 1967 (an Act of Westminster Parliament) and the Bermuda Constitution Order 1968 and its Amendments, Bermuda’s present constitution.

II THE VEHICLES:

A. The Referendum:

Put simply, a referendum (or plebiscite) is the principle or practice of submitting an issue to a popular vote (the electorate) for determination with a view to achieving a specified outcome expressing the will of a majority of those participating in the vote.

Although many things can be said, and are said, both for and against referendums, for example, whether it is rejective, abrogative or ad hoc and optional etc.; what is clear as a populist interpretation of democracy, is that the general population participating in the referendum must have a reasonable and practical understanding of the issue it is being asked to VOTE in favour of or against. Otherwise, the level of responsiveness overall will be quite low and unrepresentative of the will of the majority of those affected by the outcome of the referendum. Education is key.

Those who advocate for the referendum as the vehicle for determining the issue say that a referendum is democratic, clear and decisive in its outcome and easily measured. They also argue that the Government of the day is not jeopardized by the outcome from the point of view that it will continue to govern no matter what the outcome. In fact, the Government may hold several referenda on the same issue over the 'life' of its term, depending on its political assessment of the results of these referenda. For these advocates, an outcome (or outcomes) of a referendum would adequately meet both the United Nations and the U.K. Government's position that "any decision should be the clearly and constitutionally expressed wish of the people." Attempting to ascertain the 'clear and constitutionally expressed wish of the people' by a General Election, these advocates say, is confusing since the issue of Independence is mixed up with all the other political and emotional issues of the day laid out in a Party Platform, social agenda or choice of candidate. For them the question arises, "How will the U.K. decipher whether a majority of the people voted for or against Independence or for or against a social agenda, Party platform or particular candidate?" How will the U.K. make the determination under these circumstances as to whether or not there was 'a clear and constitutionally expressed WILL or WISH of the people' one way or the other

on the singular issue of Independence? Would this 'expression' be muted or even thwarted altogether?

B. The General Election:

A General Election is described as an election held at regular intervals in which candidates are elected in all or most constituencies of a nation or state.

These candidates, of course, may be persons running as Independent Candidates advocating single or multiple issues or persons who are running as candidates advocating a Party (minority or majority) platform or social or political agenda. For the exercise at hand, Independence may be one of those issues of domestic policy on a given Party platform or manifesto.

For those who argue that the issue of Independence ought to be determined by a General Election and not a Referendum, do so, primarily, on the basis or principle that 'by electing a given party to power, which has included on its platform the issue of Independence, the people of a given nation simultaneously give their support or mandate to that party's programme as a whole, including their permission or licence, without more, to take them through the transition to Independence. Antagonists to this view, however, argue that this viewpoint is arrogant and jaundiced and in any event takes people's 'permission' for granted. Particularly so, if Independence has been down-played, placed on the back-burner, abstained against or entirely absent from recent Party platforms or Throne Speeches. These antagonists argue further that General Elections are not designed to determine voters' views on single issues and by definition are designed to deal with the electorate's views on issues of a general nature over time, not as a 'one-off' event. And to utilize a General Election to determine a single and definitive outcome on a given issue rather than utilizing a referendum, is rather like 'shooting a man in a crowd by spraying the crowd with a shotgun rather than a sniper's rifle'. You may indeed hit your target but with great cost and loss to everyone else in the vicinity in the process.

Despite the observations above, many former dependencies have proceeded to independence by way of General Elections as opposed to Referendums. However, almost without fail, the Parties which carried these

dependencies or former colonies to Independence in this manner did so after colonial or revolutionary wars OR relentless canvassing and campaigning, sometimes for years without let, for Independence and generally educating their supporters in respect of the benefits etc. of breaking their dependence on the colonial metropolis. Those who choose the option of a General Election must take a long and sobering look at their country's polemics and history, its political culture, to discern if they can engender the confidence and trust of a sufficient enough number of their supporters to both 'vote them into power' and entrust the given Party with the ennobling task of leading them to Independence. A failure at either one of those two issues could result in a failure at both. Particularly so, if the Party calling the General Election has lost its popular support or the support of its traditional base during its current tenure. Indeed, proponents of the Referendum option argue that a governing Party will chose the option of a General Election to lead its country (and not necessarily the majority of its people) to Independence precisely because it does not believe it would win an affirmative vote for Independence on a Referendum. They argue that a Referendum is a transparent, fairer, more honest and democratic process than achieving Independence by 'stealth' through the back door of a General Election. In either case, they argue, the governing Party would have 'to get out and earn the confidence and support of those they wish to persuade and not take their support for Independence for granted.' Bermuda today, has a very articulate and educated electorate who will not follow blindly anymore. This electorate, expects at a minimum, that the leadership of this country is more educated than it(the electorate) is on the direction it wishes to take Bermudians. And, of course, by what means and for what reasons it has chosen that mode of vehicle of transition or transportation. For them, the journey is equally as important as the arrival at the destination.

III CONCLUSION:

It would appear, then, that whatever the choice of vehicle utilized for determining 'the clear and constitutional expression of a significant majority of Bermudians for or against Independence,' that choice will be, rightly or wrongly, driven and determined by political expediency whether that is the more democratic method or not. It would be a shame and a tragedy, however, if once again "the baby is thrown out with the bath

water,” as happened on August 16, 1995. The destination of Independence (the main goal, one would think) is lost or not reached simply because of an unwillingness or stubbornness of the opposing Parties to agree on the ‘vehicle’ to carry us to the stated destination. Boycotts and abstention campaigns either for or against General Elections or Referenda would be politically immature and retrograde steps today, one would think. Such activities are distortions of the true WILL of the people. Perhaps if all else fails, the opposing Parties etc. may seek and indeed effect a COMPROMISE by holding a Referendum on Independence AT a General Election whereby the Party who wishes to include Independence on its Party platform or manifesto may do so (or not do so) and the Party (ies) who advocate that the issue ought to be resolved at a Referendum only, will have an opportunity and large turnout to demonstrate and determine its viewpoint. This way, at least the people, instead of the politicians, will have their ‘will’ expressed on the issue of Independence regardless of the outcome of the General Election as far as Party fortunes go. An affirmative vote for Independence will bind the Party that wins the General Election. Whether that Party is for Independence or against matters not, which clearly establishes the long-held view that Independence is above, and should be above, and not be beholden to nor fettered by, the ‘mire’ of pedestrian Party politics. Independence will have achieved its rightful place and lofty stature, at the top, of Bermuda’s polity.