

Scotland's Independence Project

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On Tuesday Boris Johnson submitted a letter to Nicola Sturgeon, rejecting outright her request for powers to be transferred to the Scottish parliament to call a second referendum on independence. It read:

"The UK government will continue to uphold the democratic decision of the Scottish people and the promise you made to them. For that reason, I cannot agree to any request for a transfer of power which would lead to future independence referendums."

The promise to which Johnson is referring, of course, is that of Nicola Sturgeon back in 2014 when she commented that the independence referendum was a once in a generation vote. What the Prime Minister fails to recognise, however, is that a comment of that nature is not legally binding, any more than Boris Johnson's comments were that Brexit would take place by October 31st last year 'come what may'. Moreover, the circumstances in which that vote took place were completely different. At that point there was no Brexit on the horizon, let alone a referendum on the subject. And ironically, one of the main points made by the 'No' campaign, was that Scotland's future in the EU could be jeopardised if it didn't vote to remain part of the United Kingdom.

Scottish First Minister Nicola Sturgeon has, for her part, responded to the letter by stating the Prime Minister's position was 'unsustainable and self-defeating' and that it would only boost support for independence. And although indicating that the SNP would put forward its plans for 'next steps' following Johnson's letter, she did not give any detail as to what these might consist of. What is clear however, is that trying to persuade Westminster of the need for another referendum is a fruitless task. Naturally, Sturgeon is keen to pursue independence peacefully (unlike the situation in Catalonia) and most importantly, legally, but we cannot forget the circumstances in which the Union was first formed - Scotland was taken by force, and ever since has not ruled side by side with England, but been ruled over. London will do all it can to prevent Scottish independence.

Indeed, as I write there is a bill currently with the House of Lords which is designed to make a second independence referendum unconstitutional unless a series of unreasonable conditions are met. The bill titled 'Referendums Criteria bill' would stipulate that the following would apply to any future referendum:

- 1) A vote in the House of Lords and House of Commons
- 2) The number of MPs or Lords who vote in favour of a referendum MUST equal two thirds or more in BOTH HOUSES.

3) If a referendum takes place, 55% of the registered electorate must vote in it for it to be valid.

4) 60% must vote for independence for it to be valid.

In order to pursue independence therefore, Scotland has to think outside of the box (Particularly as all it is requesting initially, is another referendum, not outright independence). Instead of operating within the boundaries of UK law, it should be looking instead to international law, and following the example of other break-away republics, like Kosovo for example. When Kosovo seceded from Serbia in 2008 it was done without Belgrade's agreement. And although the [US and UK](#) argued at the time that its secession did not provide a legal precedent due to the unique circumstances of ethnic conflict which Kosovo found itself in, it has triggered a debate ever since about whether other states can follow Serbia's example. It has been [said](#) by Professor Christopher Greenwood, former judge at the International Court of Justice that in fact:

“Everything that States do constitutes a precedent for the future, because the nature of customary international law is that it is derived from State practice and the assertion by States of a legal right or their acknowledgement of a legal obligation”.

And herein lies the point.

The Scottish case differs of course from the Kosovan, but each case of secession would, by default, have its own specific circumstances. Just as the Kosovo case was unique, so is the Scottish. Therefore a new approach is required. Scotland has its own history as an independent country for hundreds of years before the Union, for example. A new way of thinking needs to be applied to carving out Scotland's future. It will be a waste of time to try to establish independence within the parameters of domestic UK law. It's time to understand that if the rules don't fit, they ought to be rewritten.

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