

Is Whitehall right to be afraid of Scotland?

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Dominic Raab's comments on Scotland on the Andrew Marr programme yesterday gave a real insight into his thinking. As [Politics Home reported](#) about comments Raab made on Donald Tusk's comments that Scotland would be heard empathically by Europe if it ever wished to join:

That provoked outrage from Foreign Secretary Dominic Raab - who branded the intervention as "un-European".

"I think it was frankly un-European and rather irresponsible given the succession of separatist tendencies in Spain, in France, in Italy," the senior Tory told the programme.

I will ignore the rest of what Raab said as it was the usual Tory blather about the SNP. This comment was, instead new. What it did was two things.

First, it showed a willingness to tell the EU what it should think.

Second, it tried to play a game of saying the EU must not view Scotland as having a claim to be a nation, when in many arenas that is already recognised to be the case, including (not least) within the UK itself.

With regard to the first of these issues, I rather suspect the EU will be somewhat indifferent to the UK's views right now. Their willingness to side with Spain over Gibraltar is some indication of that. The second issue is, though, much more interesting. I am relying on the work of Craig Murray when making comment. [As he has noted](#):

In its judgement on Kosovo, the International Court of Justice (ICJ) specifically confirmed that the agreement of the state being seceded from was not necessary for Independence. That is the position in law, whatever any UK court may say. Indeed it was the UK government itself that put this argument most clearly to the ICJ in the Kosovo case.

5.5 Consistent with this general approach, international law has not treated the legality of the act of secession under the internal law of the predecessor State as determining

the effect of that act on the international plane. In most cases of secession, of course, the predecessor State's law will not have been complied with: that is true almost as a matter of definition.

5.6 Nor is compliance with the law of the predecessor State a condition for the declaration of independence to be recognised by third States, if other conditions for recognition are fulfilled. The conditions do not include compliance with the internal legal requirements of the predecessor State. Otherwise the international legality of a secession would be predetermined by the very system of internal law called in question by the circumstances in which the secession is occurring.

5.7 For the same reason, the constitutional authority of the seceding entity to proclaim independence within the predecessor State is not determinative as a matter of international law. In most if not all cases, provincial or regional authorities will lack the constitutional authority to secede. The act of secession is not thereby excluded. Moreover, representative institutions may legitimately act, and seek to reflect the views of their constituents, beyond the scope of already conferred power.

That is a commendably concise and accurate description of the legal position. It is the **legal opinion of the Government of the United Kingdom, as submitted to the International Court of Justice in the Kosovo case. The International Court of Justice endorsed this view, so it is both established law and the opinion of the British Government that a state has the right to declare Independence without the agreement or permission of the original state and its political or legal authorities.**

I have read the Kosovo judgement. That interpretation seems correct to me.

Now put that in the context of today's comments from Raab. What he is saying in the first instance is that the UK, at least whilst this government is in charge, will never agree to a claim from the SNP for another referendum: he says instead that they have to honour the commitment he claims the SNP gave (although of course, it did not) not to hold another for a generation.

But more than that, he is saying to other states that they should not comment even though in fact it is their absolute right to do so, and indeed their absolute right to recognise the nationhood of Scotland whether or not the rest of the UK wishes them to do so, or not. What is more, it is their recognition of Scotland, and not the rest of the UK's decision to agree to its departure, that determines whether that departure is legitimate or not given that international law recognises that the state from which another secedes is never likely to agree to it doing so.

In the Scottish context this is critical. It means that for those who think that Scotland must wait for the UK to permit another referendum of the type held in 2014 the wait is going to be very long indeed. There is, I suggest, no real prospect of that. In other

words, there is no real chance of a referendum being held under UK law.

And second, what the Kosovo decision says is that this does not matter: if Scotland decides to secede - and that might be as a result of the agreement of a national convention on the issue, or an indicative referendum, for example - then secede it may, and there is nothing in international law the UK can do about it. Nor would Scotland owe the rest of the UK any compensation when doing so.

I very strongly suspect the UK government knows this. The Kosovo opinion, declared by the UK government, cannot have passed it by. No wonder [**Whitehall thinks that this is one of the issues that has greatest potential to upset the Johnson government. And for precisely that reason I think Craig Murray is right to say that:**](#)

There will never again be a route to Scottish Independence deemed legal by Westminster. 2014 will never be repeated. The UK will never willingly give up a third of its land, most of its fisheries, most of its mineral resources, its most marketable beef, soft fruit and whisky, most of its renewable energy potential, a vital part of its military including its primary nuclear base, its best universities in a number of key fields including life sciences, its ready pool of intellectual and professional talent. Johnson is for once honest when he says keeping the Union together is his top priority. It is the top priority of the entire British establishment.

That was what Raab was saying yesterday. In effect, negotiation on this point is, as far as this government is concerned, a non-issue. It is not going to happen.

And yet, the issue will not go away. I do not think that solely because of Brexit, although it is clearly a factor. Instead, I think it's because Scotland is increasingly aware that culturally it is simply nothing like the rest of the UK. Most of England does not know that. But then, most of it has never given Scotland a thought, let alone gone there. And for Whitehall, Scotland is just territory. But, like Northern Ireland, and as I suspect Wales will also make clear in time, being treated like that is unacceptable. The only thing that Brexit does is make that difference much more apparent.

So, is Whitehall right to be afraid of Scotland? I think so; very much.

But Scotland has to rise to the challenge.