

Scottish National Party government plays up legal tensions with London

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Following their May 5 election victory, the Scottish National Party (SNP) has set about whipping up tensions with London. Armed with an overall majority in the Scottish parliament, SNP leader and First Minister Alex Salmond and Justice Minister Kenny MacAskill have launched what has been described as a “judicial land grab” targeting the UK Supreme Court.

The SNP administration has only demonstrated its contempt for elementary democratic rights by taking issue with a Supreme Court decision to quash, on human rights grounds, the 2003 murder conviction of Nat Fraser, an Aberdeen businessman. Salmond did not get involved in the specifics of the Fraser case, but insisted rather that “Scotland has, for hundreds of years, been a distinct criminal jurisdiction, and the High Court of Justiciary should be the final arbiter of criminal cases in Scotland, as was always the case.”

The furore over the Fraser case follows last year’s ruling by the Supreme Court in the case of Peter Cadder, a young man arrested for assault and breach of the peace. The Supreme Court ruled that under the European Convention on Human Rights, which is included in UK and Scottish law, Cadder’s right to a fair trial had been violated because he was denied access to a lawyer after his arrest.

The simple requirement that duty solicitors be made available threw the Scottish legal system into turmoil. The SNP was forced to draft “emergency” legislation to allow for legal cover.

MacAskill inflamed matters further. Referring to the Supreme Court, he complained, “We’re undermined routinely by a court that sits in another country and is presided over by a majority of judges who have no knowledge of Scots law, never mind Scotland.”

MacAskill went so far as to threaten to withdraw the Scottish contribution towards funding of the Supreme

Court—some £477,000. “I am not going to pay for ambulance chasing courts”, he said, concluding, “He who pays the piper, as they say, calls the tune.”

The SNP cabinet at Holyrood, the Scottish parliament, subsequently set up a legal advisory group expected to report within weeks. Salmond made clear that the group’s purpose was to “ensure Scotland was allowed to make its own decisions.”

Salmond went on to attack on one of the Supreme Court judges, Lord Hope, the court’s deputy president, on BBC2’s “Newsnight Scotland”. According to Salmond, “It boils down to the potential replacement of Scottish law by Lord Hope’s law. I don’t think that’s a satisfactory situation.”

Salmond and MacAskill’s arguments are absurd.

Numerous commentators pointed out that Lord Hope, David Hope, Baron of Craighead, had been a Scottish lawyer for 24 years, while Lord Rodger, Alan Rodger, Baron of Earlsferry, also on the Supreme Court, was a former Scottish Lord Advocate.

Although Scotland retained its own somewhat distinct legal system in the Act of Union in 1707, it has for over 300 years functioned as an integral part of the legal and judicial structure of capitalist rule in the UK. As with Hope and Rodger, countless leading figures at the top of the British legal and political establishment began their careers in the Scottish courts.

Scots Law can hardly be held up as a beacon of judicial enlightenment in any event. As the Cadder case has brought out, elementary rights granted decades ago in many countries, including England, have been denied in Scotland.

Professor Tony Kelly, from the rights group Justice, which supported the Cadder appeal, warned of the SNP’s stance: “It was an attack on judicial independence which we have never seen the like of in

the UK. We have a politician issuing threats against a court because he does not like its decisions.”

Salmond and MacAskill’s views were rejected by most lawyers. In a poll for *Scottish Legal News*, 70 percent of 597 respondents upheld the Supreme Court in preference to the European Court, which has a backlog of 140,000 cases. The legal magazine the *Firm* published an open letter from a number of solicitors demanding MacAskill resign.

One of the letter’s signatories, former president of the Glasgow Bar Association, Solicitor-Advocate John McGovern, noted the political context of the dispute:

“The belief that the [Supreme Court] should have no jurisdiction in Scotland is not born of a desire to enhance the rights of the Scottish citizen, it is not born of a desire to advance the common ‘good of the people’, but it is born of a desire of this nationalist government, with an unprecedented majority, to reason for its country’s independence.”

The SNP is seeking every opportunity to divert attention from the consequences of its devastating social policy, which will result in £1.3 billion worth of cuts this year alone as part of the overall £81 billion being cut across Britain. Even as they work in tandem with the Conservative-led coalition in Westminster, the SNP has launched a “No to Scotland in Britain” campaign, seeking to win support for an independence referendum to be held around 2015.

By presenting the Supreme Court as an alien “English” institution, the SNP is waving the Scottish flag around the inevitable legal and constitutional battles over the referendum itself and the innumerable complex and explosive disputes that might arise out of it. In the aftermath of the election, the SNP issued a list of demands to the British government for inclusion in the Scotland Bill currently going through Westminster. Any one of these could be the subject of bitter disputes in the near future. These include an immediate increase in borrowing powers, control of the Crown Estates, control of broadcasting and the right to vary corporation tax, a role in the European Council of Ministers, in addition to fiscal measures already in the bill.

For the moment, the UK government has rebuffed most of their demands, but conceded the right to borrow additional sums before the Scotland Bill becomes law in 2013. Liberal Democrat Deputy Prime

Minister Nick Clegg also made clear that, in their assault on the working class, notwithstanding Salmond’s posturing, the coalition government continues to view the SNP as close allies. Clegg overruled the opinion of his own party’s Scottish Secretary Michael Moore that two referenda would be required to establish whether there was majority support for Scottish independence.

Clegg, following friendly talks with Salmond, agreed that only one would be necessary. They agreed that two questions would be put in an independence referendum—for or against Scottish independence, and for or against full fiscal autonomy for Scotland while remaining with the UK.

For the London and Edinburgh governments the independence referendum is a means of sowing divisions, while trampling on the social and democratic rights of the working class both sides of the border.



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