

THE DAVID HUME INSTITUTE



A New Union for Today's World

Presidential Address 2013

21 March 2013

The Rt Hon Lord Steel of Aikwood KT KBE

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Foreword

It has been a great privilege for the David Hume Institute to have Lord David Steel as our Honorary President for the past three years. It was also a pleasure and privilege to chair his Presidential Address on the 21st March 2013.

This was, as all expected a fascinating talk, which captured the attention of all in the audience and led to a remarkable question and answer session. That was remarkable both because of the number of questions raised, but also for the diversity and perceptiveness of those questions. The questioning and discussion continued most actively at the post seminar reception! It was truly a pleasure to be there – and for those who missed the evening there is now this paper and also a recording of the presentation and the Q&A on our web site – www.davidhumeinstitute.com.

In addition to thanking Lord Steel I must also thank the Royal Bank of Scotland for once more being the sponsor for this lecture and for hosting a post event dinner with our Honorary President and other friends. Ken Barclay was a most gracious host, and I know that he too was fascinated by David Steel's ideas.

We must all now hope that these ideas from David Steel feed through in a constructive manner into the debate that will proceed right up to the referendum date in September 2014. We also hope that by publishing this lecture we will be making the ideas more widely available – and therefore more open to informed consideration.

Nevertheless I must note, as I do in the foreword to all of our publications, that whilst we are delighted to make Lord Steel's thoughts and ideas more widely available, the Institute being a charity has no views on this matter. All views expressed are those of the author and not of the Institute.

Jeremy Peat
Director

A New Union for Today's World

I should like to begin by paying tribute to my predecessor Professor Sir Neil MacCormick whose untimely death robbed Scottish public life of one of our most valued and creative personalities. I had three especially close links with him. In the 1959 general election in the Borders – the one before I first contested – his father Dr John MacCormick was my predecessor as Liberal candidate, and Neil was active in his campaign. Despite poor health the elderly “King John” as he was known because of his lifelong fight for Scottish home rule, fended off (in what was then a safe Conservative seat) a strong challenge for second place from a young and highly active Labour candidate called Tam Dalyell. That crucial second place provided the launch pad for my eventual election to parliament. My second link was when in 1969 he edited a book of essays under the title “The Scottish Debate”, two of which were by young MP’s giving their views on possible devolution – Donald Dewar and David Steel.

The third was when I was standing for election as Rector of Edinburgh University. Neil as the popular Dean of the Faculty of Law was one of my most prominent supporters in a successful campaign. He is greatly missed.

Neil was of course a key figure in the Scottish National Party – his father having hovered between two parties at different times – and with his experience in the European Parliament I am sure he would approve of much – though perhaps not all - of what I am saying tonight.

I recently heard a former government minister say in a discussion that a written constitution was something too difficult for any government to contemplate, and whilst I suspect that is true it should not be too difficult for the august members of this Institute to contemplate. The fact is that we are faced with the prospect of two constitutional referenda (I am sorry but my Edinburgh classical education rebels against “referendums”) in neither of which in my view is the status quo a satisfactory alternative to the break-away options being presented, nor that is my starting point.

I think it is important to reject one line of argument which is used both by those against Scottish independence and those against the UK leaving the European Union – namely that it cannot be done, or would be disastrous if we did. That is simply untrue. Both are perfectly possible – the question we need to address is whether such eventualities are desirable and I consider both to be highly undesirable.

Let me say why, starting with Scottish independence. I must just add in passing that I agree with Tom Farmer's remark about the danger of public boredom with two years of discussion on this subject. I take the word "independence" to mean precisely that, without any fudging. So Scots living and working in England would in future be doing so in a foreign country, just as English men and women here in Scotland would become foreigners. There is no beating about the bush – that is what independence means. The SNP used to argue that an independent Scotland would join the Euro as our currency but that has strangely disappeared from their rhetoric. Then it is suggested we might retain the British pound which would put us in the hands of the Bank of England – some independence that!

They suggest we would have our own defence and foreign policy at goodness knows what expense. Do we really wish to break up the British army, the Royal Navy and the Royal Air Force? I, and indeed and the Liberals as a whole, have always been opposed to the Trident missile programme which is a tenable position whether you agree with it or not, but the SNP policy appears to be that Trident is OK so long as it is moved to Portsmouth or Barrow in Furness, not a credible stance. Equally incredible is the argument over an independent Scotland joining the European Union when neither the SNP nor anybody else has the faintest idea how that would be done, how long this would take and under what conditions. It is not surprising that in the two years we have been discussing independence support for it has been sliding away as the practical questions fail to be answered.

It is often forgotten that following the human and financial disaster of the Darien Scheme, opinion in Scotland at the turn of the eighteenth century was strongly in favour of a Union with England.

Just as “King John” MacCormick, himself a founder of the SNP, transferred to the more acceptable version of home rule offered by the Liberal Party, so the famous and much quoted Scottish patriot Andrew Fletcher of Saltoun was a supporter of union when it was initially proposed, but turned against it at the same time as the rioters in the streets of Edinburgh protested against the “parcel of rogues” who were voting to abolish the Scottish Parliament. Although these words were not in use at the time, he was advocating a federal type union and against an incorporating one.

Indeed the protections that were provided in the Act of Union of 1707, for Scotland’s distinct legal system, education system, church, and culture including rights of the burghs, made our union rare in world. There have been very few peaceful comings together of nations that allowed very significant differences to remain between the nations which were coming together.

The other union of which we are part has different origins. On the European Union, whilst arguing for reforms we need to remember the basic purpose, which was not the familiar one of being part of a successful large market - important though that is. In 1979 when the first elections for the European Parliament took place the late and great Sir Alistair Burnet was presenting the lengthy ITV results programme, at the end of which he addressed the remaining viewers with these words: “35 years ago the people of Europe from Shetland to Sicily were at war. Tonight the people of Europe from Shetland to Sicily have elected a parliament. Goodnight.” We need to remind ourselves that while twice in the 20th century we engaged in destructive wars, that is unthinkable surely with our Union in the 21st.

But at the more mundane and necessary level of economic considerations it is fascinating that David (now Lord) Hannay who was Ted Heath’s chief negotiator at the time we joined the then Common Market has argued in his recent book that the terms of entry were defective especially on fisheries and agriculture precisely because we did not have the foresight to take part in the initial Coal and Steel Community and the talks leading to the Treaty of Rome in the early fifties.

The truth is however, that all of our recent institutions including the Scottish and European Parliaments have just grown higgledy-piggledy along with other legislation dealing with the rights of our citizens such as the European Convention on Human Rights and Freedom of Information.

While I can understand how this happened, we should consider whether constitutional reform should always be done on such an ad hoc basis. It is one of the features of recent debate that constitutional policy is being made to suit political purposes and the political class.

I would like to suggest that we need to start from fundamentals and look back over a century to Mr Gladstone's concept of "home rule all round" which caught the popular imagination and gained much public support.

When Gladstone toured part of my former constituency in his famous Midlothian campaign, he addressed a crowd of 4,000 people gathering in the village of Stow. Special trains were put into service to bring people to the community whose population was just 300. He addressed the issue of Home Rule, and while impressing the massive crowd of the good people of Midlothian and the Borders he failed to impress the New York Times correspondent who described his speech as "dangerous".

It is interesting to speculate as to what might have happened if he had got his way with a devolved united Ireland within the imperial unit of the British Isles. Given the desire of the Unionist population in the north to remain within the ambit of a union of the British Isles, and given the desire of the republican population of the south to see a united Ireland is it too fanciful to imagine a rational solution which could have satisfied both - the idea of a federal parliament at Westminster?

It has to be recalled that the authors of the 1921 settlement in Ireland hoped that the all-Ireland Council would develop whilst Stormont and the Dail would disappear. The opposite of course happened. But perhaps the words "rational" and "Ireland" don't fit well together in the same sentence!

I believe we should be devolving as much power and responsibility as is possible and sensible to the component parliaments of Scotland, Wales and Northern Ireland to bring government as close as possible to the people. However, a federal constitution does not necessarily imply uniformity of its component parts. Spain, for example, has in its constitution greater powers for Catalonia, Navarre and the Basque country than for other states, and indeed autonomy of a wholly different kind came after decades of strife between France and Spain to the tiny state of Andorra when the two countries agreed to form a de-militarised democratic nation with two heads of state – the President of France and the regional bishop in Spain. This has never been repeated elsewhere but could it have lessons for other larger disputed lands such as Kashmir or for the Kurds – and are there not lessons to be learned from the semi-autonomous status of Hong Kong within China?

The received wisdom that federal countries need uniform size among the constituent parts or equal powers among them is not the case. Nor would it be the case for a federal united kingdom.

During my half century of public life I have been fortunate to be able to travel the world, and on reflection there seem only a relatively small handful of countries that I have not visited. Since the mid 1960s I have seen strife and the consequences of territorial dispute in different parts of the globe. When I became Presiding Officer in the first Scottish parliament in 1999 a rewarding part of my role was to meet visiting delegations from around the world keen to learn how we established a new fully functioning legislature taking into consideration many generations of cultural distinction within the UK. I shall not labour the point that this was a more enjoyable part of my role than presiding over the construction of the new Parliament building.

Scotland has given many gifts to the world. One constitutional gift in recent years has been to show how the peaceful devolution of power within a centralised state can be carried out in a peaceful and stable way.

That said we are far from completing the job, and my argument tonight is that post referendum we need a more satisfying settlement.

The fundamental conclusion of the Steel Commission, in its 2006 final report, was that the Scottish Parliament should raise as much as practical of its own spending. Indeed, as far back as 2003 I said in my Donald Dewar memorial lecture that:

“Frankly no self respecting parliament should expect to exist permanently on 100% handouts determined by another parliament, nor should it be responsible for massive public expenditure without any responsibility for raising revenue in a manner accountable to its electorate.”

This was a view I held during the Constitutional Convention, which I co –chaired, which I held during my term as Presiding Officer of the Scottish Parliament, and which I still hold now.

The Scottish Parliament is a unique institution in the world. For its procedures and quality of its work it is now one of the strongest democratic institutions anywhere. Rightly, Scotland can be proud. But in respect of powers to raise the revenue it has authority of spending, it is one of the weakest. This now is the biggest question to address for those of us seeking a stable, long term, mature relationship between Holyrood and Westminster within the UK. It’s a question about having the Parliament properly answerable to the people of Scotland for the choices that are made, over legislation, and also budgets.

So let me turn to what I favour for the future. I like what has been described as a New Union within the UK. It is my view that we should take the opportunity of the debate ahead of us to seek the widest agreement on the clearest of terms for our governance in Scotland. Within this we need clear arguments but also positive ones.

We could also borrow from some of David Hume’s ‘Well Temper’d Eloquence’ in the referendum debate.

I favour a Holyrood with appropriate powers to raise the majority of its revenue, a permanence of our institutions so that they exist in a union created in a written constitution, not in a tenancy agreement with the Westminster landlord, and that Westminster should itself reform to bring it directly into the 21st century.

Let me take a few moments then to establish what I believe should be the common purpose of political unions, how they should operate and how we can use these principles to improve upon the institutions we have within the United Kingdom.

During my first decade as an MP, from the mid 1960s to mid 1970s, we were still engaged in the process of de-colonisation. Burgeoning national identity, the creation and sustaining of new institutions became a priority for new nations. Greater focus in many of these countries was given to economic and geopolitical policy rather than constitutional processes and democratic capacity however. While this was understandable, we still see in some areas almost a half century later a lack of stable and trusted governance structures. Good governance based upon transparent and democratic processes has too long been considered a kind of nice optional add on to economic development rather than a core component of how states function.

Over my time in public life the Commonwealth has become an overwhelmingly positive force for good in dissemination of good governance. Where there have been success stories (such as India or Botswana) it is because stable, trusted, transparent institutions have been formed with participation of civic society and wide public support.

This is the first prerequisite for wider co-operation among states, and unions between them. In other words, we cannot see cross country co-operation and union without the strength of their institutions. If you are tempted to think that this is mere history, or indeed solely a developing world issue, then we need to remind ourselves of the failure in recent years on our doorstep, in the Balkans.

The nations within the UK obviously have such longstanding traditions that lead me to another prerequisite of union. This is the support of the populace for the institutions that govern over them.

The mature negotiations between the Scottish and UK Governments last year that led to the agreement on the conduct of the referendum showed how we recognise that it is the will of the people that is supreme. Ultimately it will be the people who will decide if we maintain our membership of the European Union also. When I joined with colleagues from Labour and Conservative parties in the 1975 referendum campaign on Europe I stated repeatedly that while governance in our country would change, the sovereignty of the people would not. This is as true today as it was then.

We also need a clear understanding of why and where powers lie. Federal countries have the benefit of written and codified arrangements. We have written arrangements but they are of varying standards and clarity. They are not in one place, and they invariably are written arrangements to suit the centre. They are not about the constitutional protection of the nations or indeed their peoples and their rights.

Again we do not need to cast too far back in time for examples of where we can see this to have been more satisfactorily achieved. In 1979 the Canadian government under Pierre Trudeau announced its intention to repatriate the Canadian Constitution from the Privy Council in London to the federal institutions in Ottawa. Some provinces saw this as a centralisation of power to the federal centre while others saw it as right and proper that the Canadian constitution should not be policed by a foreign body. I was a guest at the signing of the Canadian Constitution Act by the Queen in Ottawa in 1982. Part 1 of that constitution contains the Charter of Fundamental Rights and Freedoms and further includes an amending formula for when changes in the relationship between the provinces and federal government are necessary.

We can learn, not only from this process of reform but also how a country with a strong parliamentary tradition can nevertheless move towards a more codified relationship between the centre and nations or provinces.

I recall on the several occasions when I met with the Canadian PM Pierre Elliot Trudeau that he, as a Quebecois himself, understood the balance needed for the concept of Canadianism and the popular affinity that comes with provincial identity. Few could ever doubt his Canadianism, but no one would mistake his Quebec identity either. He asked Quebecois in the 1980 referendum to be the master of their own house, but to make that house the whole of Canada including Quebec.

Perhaps coming from Quebec he was also very sensitive to the relationships when small nations exist alongside larger ones. He summed up the relationship between Canada and the United States thus: “Living next to you is in some ways like sleeping with an elephant. No matter how friendly and even-tempered is the beast, if I can call it that, one is affected by every twitch and grunt.”

Within Canada this could have been used to describe the Quebec Ottawa relationship, and do I stretch it too far to say this may sum up the relationship between Scotland and England? The new Steel Doctrine is not to describe England as an Elephant (though my friend and constituent Ludovic Kennedy purloined that quote for the title of a book) but I trust you get my point about our much larger neighbour, and how we are inevitably affected by decisions made there, regardless of the formal constitutional relationship between us.

This is one of the great attractions of a more federal type relationship within the UK as it appreciates that you do not need to have identically sized nations but you do need institutions within the UK to exist in their own right. It is often said that it would be a very unbalanced UK if it was more federal in nature. Well the province of Prince Edward Island has a population of 140,000 and sends just 4 MPs to the Canadian Federal House of Commons. Ontario has a population of 12.8 million and sends 108.

The clarity of the Canadian approach where popular support provides for strong protections for provincial government and identity perhaps shows us how we could see progress for Scotland.

I mentioned my Donald Dewar lecture - that no self respecting parliament should rely on handouts from another parliament. This evening I can also add that no self respecting parliament should have to rely upon the goodwill of another parliament for its very existence.

The Holyrood parliament is a creature of statute by the Westminster Parliament. Its existence should instead, in future be a permanent feature of the New Union's constitution. It should not be liable to be abolished unless it also agrees, and Westminster should no longer have the capacity to legislate over areas devolved to it.

This is a shift in the constitutional balance within the Union but I believe it is now a necessary one. It means that union is based upon the principles I outlined but also means that it exists with what the Germans call kompetenz kompetenz, competence over its own competences. Incidentally that reminds me that it was largely British genius which designed the post-war constitution of Germany and their foreign minister Hans Deitrich Genscher once joked to me: "You were so generous you British – you gave us a decentralised federal structure and a proportional system of election so that never again could we concentrate power at the centre but you took neither of these for yourselves".

It remains a puzzle to me that the electoral system and creation of Scottish Parliament boundaries are not within its own competence but that of Westminster. The majority of the revenue that it expends on services for which it is responsible should also be within its competence.

This is one area where the European project has had difficulty I will be the first to admit. Indeed much of my frustration at the European Union has been the weakness of the directly elected component within the EU.

The fact that the popularly elected European Parliament that I referred to earlier in my comments this evening now has power over the EU budget, to balance that of the member governments, is a positive step that I had favoured from the earliest days when it was directly elected. I hope it brings focus to the elections in 2014 and that the MEPs Scotland elects will accordingly have a significant role.

Now let me return back home, and suggest areas where we can improve our institutions in the UK. I have suggested the principles upon which relationships between nations should be based. In applying these principles to Westminster we find it wanting.

I use the word Westminster “institution” deliberately, because here is an obvious role for a reformed democratic House of Lords. It is not often realised that after the Liberal government’s Parliament Act of 1911 the Prime Minister established under Viscount Bryce a huge commission of over thirty of the great and good to examine a new composition and role for the House of Lords. It included two former Prime Ministers and the Archbishop of Canterbury. It reported in 1918 recommending a second chamber largely elected by the House of Commons. Today we could have a much extended electorate for an upper House from not just the Commons but the other parliaments – Scotland, Wales, Northern Ireland and Europe - rather as is done in the federal republic of Germany.

This would avoid the pitfalls of the coalition government’s Lords Reform Bill which foundered in the Commons. If you read the debates there, it deserved to founder because it failed to recognize the danger of competition between two popularly elected Houses and therefore threatened the supremacy of the Commons; it also saddled MP’s with superior regional senators trampling over their constituencies saying “I am elected for 15 years” – and some accountability that would have been since they were not subject to re-election! But a new Senate along the lines I suggest could have not just a scrutiny role in legislation but a specifically federal role representing and balancing the needs of the component parts and including some cross-benchers - non-politicians who would have been swept away by the coalition government’s bill.

In such a chamber could not the elected Scottish Members also provide convenient and inexpensive post-legislative scrutiny for acts of the Scottish Parliament?

In my first general election as Liberal leader our 1979 manifesto included this sentence: “The House of Lords should be replaced by a new, democratically chosen, second chamber which includes representatives of the nations and regions of the United Kingdom, and the UK members of the European Parliament.”

Even further back there is some precedent. The Lords of Parliament from Scotland at the time of Union were an illustration of how one part of the union can contribute specific representation to the Upper House.

From reform of the Upper House we can progress to the reforms of the executive to make it much clearer when UK ministers are carrying out functions that affect all parts of the UK and when they are acting as English ministers only. Does this require an English Parliament? That of course is up to the people England but it makes complete sense to me that if we are to have a constitutional relationship that stands the test of time and is permanent then we must reform the House of Commons to reflect the more federal arrangements. Perhaps we need an English Grand Committee. Does this mean that on some issues a UK Government could have a majority on UK wide issues but not on English only issues or vice-versa? The answer is yes, and that in my view would actually strengthen the legislature over the executive. During my thirty two years in there I saw it gradually lose authority to an increasingly centralised executive.

I would also like to see in a reformed senate a representative from each of the Crown Dependencies who currently enjoy a wholly anomalous status. I tread warily here because they are not even uniform – the Isle of Man for example levies VAT while Jersey and Guernsey do not, but their presence would add to the diversity and plurality of the Westminster institution.

Following the failure of the Lords Reform Bill all three political parties are considering what to do and what to say in their next election manifestos on the subject. I shall certainly offer these thoughts to my own party – but more in hope than in expectation.

Returning to Scotland, I agree that the term a New Union can provide a good basis for gaining popular awareness of what should happen after a No vote in the referendum, namely a new federal Westminster institution in which Scotland ceases to be a dependency of it.

It can also be the best basis upon which we can debate what role our New Union in the United Kingdom should play with our European neighbours. Earlier I observed that the European project was born more from a desire for peace than purely economic growth. My election to Parliament pre dated our entry into the European Community. There are many MPs and MSPs that were born after our accession.

I can add in passing that I actually stood as a candidate for election to the European parliament, in 1989. It wasn't in a UK constituency, but an Italian one. I confess I demanded guarantees that there was no danger of winning, and thus was not disappointed. As with my views on how to best secure a long term settlement within the UK, I see no difficulty in Scotland being an active partner within the New Union as a member of the EU.

Many of my former constituents would quite comfortably consider themselves a Borderer first and then a Scotsman. And the same incidentally applies for Borderers born south of the Tweed in Northumberland in relation to Englishness. Politicians at their peril dictate identity and culture. People can quite comfortably consider themselves Scots, British and European. Indeed for the citizen is it empowering to have ownership of their own identity? A more federal New Union means that this is recognized but is one where we have the real distribution of power, not simply its devolution.

As I begin to draw my remarks to a close this evening the question remains as to why we should bother to distribute this power. For me improved governance is about better government, for all our people.

Whatever the constitutional future of Scotland the problems we face will be the same. As far back as the early nineteenth century Sir Walter Scott referred to “the history of my native country, the peculiar feature of whose manners and character are daily melting and dissolving into those of her sister and ally”. ‘Twas ever thus, and his monument in Princes Street is the largest to any writer anywhere in the world.

One of the distressing features of our everyday life with which successive governments have sought to grapple is the existence of many areas of extreme poverty where unemployment – sometimes generational – crime, drug abuse and broken families reside en masse. The forces of law and order and social work do their best amid what my late friend and colleague Ralph Dharendorf called the underclass.

Here I think we have to admit two failings as a society. First, in the post-war years every government and local council – to general approbation – built extensive housing schemes which were laudable in intent but badly thought out. Many are today’s sink estates. I recall Billy Connelly describing his childhood move from a city centre slum to “a desert with windows – and we had grass!” But the problem created was in my opinion greater than the lack of every-day facilities. We unwittingly separated whole populations from each other.

Contrast that with the eighteenth and nineteenth century development of Edinburgh’s New Town. Here too, where we meet today, was an attempt to move people from the insanitary and decaying old town; but the difference was that everybody moved. The gentry and the professional and business classes lived cheek by jowl with what they no doubt rudely considered the lower orders but on whose assistance for the provisions of every-day life they were dependent.

They knew each other’s families; they went to the same schools and kirks, and if they were able to the Tounis College, later to become the University of Edinburgh.

Even as late as in my day as a student in the early sixties it had a half-term break called “meal Monday” so that in David Hume’s time there the poorer students from outside the city could go home to collect another bag of meal for their daily porridge for the second half of the term.

What a contrast that life was to the isolation of acres of municipal homes and high rise towers – human filing cabinets. Are we willing to learn from our mistakes in future planning?

I once attended a lecture in America by the wonderfully outspoken economist JK Galbraith who derided his opponents as “avoiding the pain of thought”. He was arguing that we need to get away from rigid economic doctrines and return to an ethically driven mode of public policy.

We live in an age of insecurity – financial, physical and political in which fear breeds all too easily: fear of decline, fear of change, fear of strangers in an uncertain world. That fear is corrosive of the mutual trust and interdependence on which all civilized societies must be based.

I am grateful to you for attending to hear my thoughts this evening. A New Union; one based on distributing power, then the wise use of that power is the most appropriate for today’s world.

David Hume was quoted by Alexander Carlyle as saying: “Though I throw out my speculations to entertain the learned and metaphysical world, yet in other things I do not think so differently from the rest of the world as you imagine”. May I hope that has been true of this lecture.

The David Hume Institute

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