

The Road to Federalism

Lecture given by Lord Steel on Wednesday 2nd December 2020 for the Scottish Liberal Club.

Lord Steel of Aikwood was MP in the Scottish Borders 1965-97, Leader of the Liberal Party 1976-88, and first Presiding Officer of the Scottish Parliament 1999-2003.

Can I first say how delighted I am to be addressing members of the Scottish Liberal Club, albeit by zoom.

I have the happiest memories when I worked as the Party's assistant secretary in the early 60's, of walking along Princes Street to lunch in the bay window of the Club overlooking the castle, and after it was sold of unveiling the remaining part of the Gladstone library in Debenham's store on the site. With that excuse, I tell you a story of my first re-election as MP in 1966, exactly a year after I won the by-election. On Saturdays we held car cavalcades (which nowadays would rightly be frowned on) and one of the rules was that we did not stop – because Liberals were likely to bump into each other! But in the village of Walkerburn in Peeblesshire my local rep John Gebbie insisted that we go round the housing estate and stop to greet the oldest resident of the village. So with rather bad grace I leapt out of the open car at the back of this gaily poster decorated procession and shook hands with the said lady at her garden gate while her relations clicked cameras. "Mr Steel" she said "I am very pleased to meet you because you are the second MP I have met and the first was Mr Gladstone". Collapse of arrogant candidate.

How come? She had been a girl of 12 during the great man's Midlothian campaign and had presented him with a bouquet. So anyone shaking my hand knows that it has shaken the hand of someone who had shaken William Gladstone's. I think the Club still has the desk on which he wrote his Midlothian speeches.

But my personal guru was my great predecessor as leader, Jo Grimond, who wrote in his book *A Personal Manifesto* that he did not much like the word "devolution": "It implies that power rests at Westminster, from which centre some may be graciously devolved. I would rather begin by assuming that power should rest with the people who entrust it to their representatives to discharge the essential tasks of government. Once we accept that the Scots

and Welsh are nations, then we must accord them parliaments which have all the normal powers of government, except for those which they delegate to the United Kingdom government or the EEC."

Clearly the Scotland Act – in which I was involved first as co-chair of the Scottish Constitutional Convention and later legislating in the House of Lords – does not come anywhere near measuring up to that ambition. But my main thesis tonight is that we have to look to total reform of the House of Lords if we are to argue the genuine case for home rule.

The replacement of the Lords by an elected senate is the keystone to federalism.

We need to bring some cohesion and principle to the developing governance of the United Kingdom. The time has surely come for a written constitution which would set out the major institutions of the state, establish principles of governance and enumerate fundamental rights. For the truth is that all of our recent institutions including the Scottish Parliament have just grown up 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.

We 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 all in one place, and they are invariably written to suit the centre. They are not about the constitutional protection of nations nor indeed their people and their rights. A new Senate would alter this.

I have first to look back at the last attempt to reform the Lords in 2012 by making it a fully elected chamber. I opposed that bill during the coalition government and I must explain why. Nick Clegg had many virtues but two damning vices – overweening ambition from an early age, and a woeful lack of knowledge of history, especially that of his own party. Let me expand on the latter.

Mr Asquith with his Parliament Act of 1911 was the first Prime Minister to advocate change. My late constitutional law professor used to pose the exam question: "The Act of 1911 was just slapping a bucket of whitewash over a structure riddled with dry rot – discuss". In his prelude to the Act Asquith

carefully never used the word "elected" promising instead the creation of a second chamber on a "popular" rather than "hereditary" basis.

He followed that up by appointing a large and influential commission chaired by Viscount Bryce who reported in 1918 recommending a chamber elected on a regional basis mainly by MP's. It contained the clear warning: "It was forcibly argued that a Chamber elected on the same franchise as the House of Commons would inevitably become a rival".

The post-war Labour government of Mr Atlee initiated all-party talks which at least reached tentative agreement that a reformed Upper House "should be complementary to and not a rival to" the lower House.

Despite these three statements the coalition government blithely ignored them and expressed indignation when their inadequate bill, as was wholly foreseeable, hit the buffers in the Commons and Nick Clegg abandoned it. During that time I proceed with my own Lords Bill which had the more limited objective of allowing peers to retire. More than 100 have now done so, including myself, under the Lords Reform Act of 2014 thus reducing the over-blown size of the House.

In my first general election manifesto as Liberal leader in 1979 I called for fundamental reform but with carefully chosen wording: "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 UK Members of the European parliament".

But a lot of water has flowed under bridges since then – notably the creation of the Scottish Parliament, the Welsh Assembly, and powerful regional mayors (especially with the London assembly). So tonight I want to look at more specific possibilities. I think we need also to bear in mind that a referendum on the future of Northern Ireland is coming down the track with the possibility of re-unification bringing into play a slightly more balanced federal structure for the UK if that turned out to be the wish of a united Ireland.

What could a new Upper Chamber look like and what could it do? Let us assume for ease of arithmetic that it might consist of 500 Members – significantly fewer than the 650 Members of the House of Commons, and well below our current over 800 peers. The potential electorate is much wider than that available to the 1918 Commission. It would include not just MP's but Members of the three devolved institutions in Scotland, Wales and

Northern Ireland. 400 out of the 500 could be chosen by them on the usual party political basis.

336 would be elected for England by their MP's regionally possibly using the Euro-constituencies as building blocks (though Winston Churchill toyed with the idea of creating seven regions in England, and with the sporadic development I mentioned earlier of regional mayors that should be worth re-visiting); 32 would be elected by MSP's and Scottish MP's, 20 similarly by the Welsh and 12 from Northern Ireland – all by proportional representation.

The German upper house, the Bundesrat, is composed of representatives of the lander governments, sent in proportion to the parties in each of their coalitions. I see no reason why we could not arrange a similar proportional principle for each unit of the proposed electorate.

A further 100 could be chosen by the same electorate but excluding anyone who was or had recently been a member or known supporter of any political party. These would replace the existing valuable wide range of independent expertise at present on the cross benches in the Lords. The fact that the cross-benchers as they are called are a 20% bloc in that Chamber prevents any government from having a built-in majority in the Lords, and having such a second non-party election would continue to bring in distinguished figures from each part of the UK.

A convention could be created where in a reformed Upper House each section did not vote on matters which did not apply to their territory, thus partly answering the unanswerable West Lothian question.

Its powers would remain the same as at present – in other words no veto, only delay, and the right to ask the Commons to think again, and no power over finance.

The Scottish Parliament might like to consider whether the Scottish 32 plus 8 independents in such a reformed House could not also act as a long-stop for them, meeting in Edinburgh. Post-legislative scrutiny does not exist at Holyrood and here the 40 senators could be a useful and inexpensive way of providing it.

It would be important to change the name from House of Lords to the widely understood "Senate" and abolish peerages altogether except as honours having nothing to do with a seat in parliament. In the 21st century the notion of "Lords" as part of our legislature is simply ridiculous. I have always found

the title an awkward encumbrance which is why I never used it in the Scottish Parliament.

Indeed in 1997 when I was a brand new peer I found myself in transit at Buenos Aires airport with a long wait for the over-night connection back to London. I went to the British Airways desk to ask if they had a lounge where I could wait. The man behind the desk looked at my ticket and exclaimed: "Are you a lord?" Embarrassed, I explained that I was not a real lord – just an appointed member of our Upper House of Parliament. "But you are a lord – it says so on your ticket – can I shake your hand? I've never met a lord before – and now I'll upgrade you to first class". So it has its uses! That I suppose is why so many people are prepared to pay for it.

And therein lies a real scandal – the process of appointments (apart from a few crossbenchers) by the patronage of the Prime Minister and the other party leaders. That means that not surprisingly many party leaders find that those who do nothing for the party except writing large cheques somehow manage to catch their eye. I spent a week last year helping to train new MP's in Kenya. How on earth are we supposed to hold our heads high as the "mother of parliaments" when we allow to continue the practice of almost openly buying a seat in it?

What are the prospects for federalism? Not I'm afraid very high unless we grasp the need to create a democratic federal Chamber for the UK. Alex Massie in a perceptive observation recently wrote in *The Times* that while both Margaret Thatcher and Boris Johnson were unpopular in Scotland, she was respected and he is not. There is a real problem as we approach next May's election for the Scottish Parliament, with agitation for another referendum on home rule running high. The sensible response takes us back to my Grimond quote.

Boris Johnson last month opined that devolution to Scotland was a "disaster". Scottish Tories were quick to say that what he meant was that the SNP government was a disaster, but that will not wash, as he also said it was "Tony Blair's biggest mistake". Yet there is no appetite in Scotland to return to remote unitary government from Westminster.

In a magisterial essay in the "New Statesman" recently the former Prime Minister Gordon Brown set out a demand for a fresh look at our constitution citing mainly sound economic arguments confounding our existing disparities. "The inequalities between our regions are now wider and deeper

than in any major advanced economy" he wrote. He went on to call for a written constitution including a senate of the nations.

Professor James Mitchell of Edinburgh University has pointed out that "interdependence is as inevitable after independence as it is with devolution". That is a truth which the more respected thinkers in the SNP fully recognize. That is why they have never been able to come up with workable proposals for a separate currency. It just makes no sense. A fully federal system would leave that intact along with our complex social security schemes, the Crown, foreign affairs, and defence. These are all matters which a sensible home rule parliament would choose in Grimond's words to "delegate to the UK parliament".

I recognize of course that my recipe in this lecture does not deal with the precise arrangements in England. Would they wish the English regions to have more than just devolution? – That is for them to decide. The Commons would become much more like an English Parliament with those from Scotland, Wales and Northern Ireland debarred from participation on purely English legislation. Nor have I unveiled a crystal ball to consider whether a new united Ireland would actually wish to rejoin a fully federal UK.

(In 1967 although totally independent they had to devalue along with Britain).

But the main imperative in Scotland remains to foster public debate on whether there is a more acceptable way forward than separation from the UK, which is why federalism has to come back on to the agenda. Nationalism and patriotism are not the same thing, and we need to distinguish carefully between the two.

In his book "The Dignity of Difference" former chief rabbi Jonathan Sacks (whose recent death robbed us of one of our greatest contemporary philosophers whom I was privileged to know and respect) wrote about the operations of the market as being "no substitute for the sense of overarching moral commonality that binds individuals to shared fate and leads them to think and act for the common good". That I believe should apply to the process of government.

Lord David Steel, December 2, 2020.