

Scotland Europa St Andrew's Day Lectures

A Partnership Approach

Winter 2003

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ST. ANDREW'S DAY LECTURES

INTRODUCTION

Saint Andrew is the Patron Saint of Scotland. St. Andrew's Day, our National day, is celebrated on the 30th November each year by Scots around the world.

Saint Andrew is thought to have been the younger brother of Simon Peter and both became apostles of Jesus Christ. He went through life leading people to Jesus, both before and after the Crucifixion. Martyred on a saltire cross, he is said to have preached for two days from it. There are different explanations as to how Saint Andrew came to be patron saint of Scotland, but legend has it that in 345, Emperor Constantine the Great decided to transport Andrew's bones from Patras to Constantinople. A Greek Monk, Saint Regulus, was instructed by an angel in a dream to take many of these relics to the far northwest. He was eventually told to stop on the Fife coast of Scotland, where he founded the settlement of Saint Andrew's. In the 7th century, Saint Wilfrid brought some of the saint's relics with him after a pilgrimage to Rome. The Scots king, Angus MacFergus, installed them at Saint Andrew's Cathedral. When the Pictish King Angus faced a large invading army, he prayed for guidance. A white cloud in the form of a saltire cross floated across the blue sky above him. This image was the inspiration for what later became Scotland's national flag. Angus won a decisive victory, and decreed that Andrew would be the patron saint of his country. Following Robert Bruce's victory at the Battle of Bannockburn in 1314, the Declaration of Arbroath officially named Saint Andrew the patron saint of Scotland.

Scotland Europa marks St. Andrews Day by hosting an annual St Andrews Day lecture, given by a prominent Scot on a topical issue of their choice. To date we have been delighted to welcome Professor Gavin McCrone, the late Donald Dewar, Lord Robertson of Port Ellen, Judge David Edward and Professor Sir Neil MacCormick.

Scotland Europa would like to thank our St. Andrews Day lecturers for kindly agreeing to give the lecture, and for allowing a synthesis of, and excerpts from, their speeches to be reproduced in this paper. We look forward to this year's lecture, and to many more to come.

This paper will be updated in the future to include our 2003 lecture, to be given by Baroness Helena Kennedy QC, Chair of the British Council, and also that of Judge David Edward, which was unfortunately unavailable at the time of production of this edition.

EUROPEAN CHALLENGES: A SCOTTISH PERSPECTIVE**Gavin McCrone****28 November 1996**

For the inaugural St. Andrew's Day lecture Professor Gavin McCrone launched his paper on 'European Challenges for Scotland', and examined the economic situation in Scotland, looking to the future, and focusing on the impact of membership of the EU. He examined the economic challenges for Scotland as part of the EU, and, six months before the 1997 General Election, also considered how these economic prospects would be affected by changing Constitutional arrangements, and the prospect of devolution. The debate over the UK joining the single currency and the impact this decision would have on Scottish business was also tackled; a debate which remains important and relevant seven years later.

Unlike some of the other countries and regions on the periphery of the European Union, Scotland industrialised early. The primary sectors - agriculture, forestry and fishing - employed only 7 per cent of the working population in 1950; and, although this had reduced to less than half by 1990, the scale of the exodus from this sector was modest in comparison to most other European countries. Abundant coal at very low prices provided the power for industrial growth in the 19th century and this continued to form the main source of energy until the end of the 1950s. Heavy industries, particularly steel, shipbuilding and associated heavy engineering, were originally based largely on local raw materials and resources. Only in the Scottish Highlands and Islands was there a problem of under-development, comparable to Ireland or the peripheral regions in Southern Europe.

The change in Scotland's economic structure over the last half century has been immense. In the late 1940s there were 113 coal pits in production, half a dozen or more steelworks producing a wide range of products, 25 shipyards and associated engineering works on the Clyde and others on the Forth, Tay, and at Aberdeen. Today there are only two coal pits, although there is a substantial opencast coal operation; the steel industry has virtually gone; the shipbuilding industry is reduced to four yards on the Clyde (one of which is exclusively a naval yard and another builds only oil rigs and modules), the Rosyth naval repair dockyard, now threatened with run down, and some small boat-building yards for the fishing industry. The manufacturing sector peaked at 685,000 employees in 1956 and returned to this level in 1966. Since then it has declined with the fall becoming especially rapid in the 1980s and 1990s.

Because of the greater dependence of her economy on exports, Scotland's prosperity, even more than that of the United Kingdom as a whole, is heavily dependent on continued and unrestricted access to the European market. And the dependence of the economy on inward investment makes this even more essential. If Britain's position in Europe were seriously in question, the effects in Scotland would be extremely damaging. Not only would the flow of new international investment drop sharply, but firms presently operating in Scotland could be expected to take steps to move their operation elsewhere. Many have plants in several European countries and Scotland would immediately begin to lose out to other locations in investment planning, if not from actual closures. The last decade has seen several hard fought battles in which a Scottish plant or location has been in direct competition for investment with a subsidiary of the same multinational in another EU country. The present posturing of the so called Eurosceptics therefore carries considerable dangers for Scotland, if it were to lead potential investors to expect that Britain might at some stage become less than a full member of the Union, and particularly if that created a threat of possible imposition of barriers to trade.

"The future prospects for the Scottish economy will be affected by a wide variety of factors, some particular to Scotland, but many the consequence of the policies of the European Union, and Britain's relationship with the Union."

The issues that have done most in recent years to provoke disagreement about Britain's position in Europe have been the forced exit of sterling from the exchange rate mechanism (ERM) in 1992 and the debate over the proposals in the Maastricht treaty for monetary union (EMU). The strongest

“Although, ironically, Britain is better placed than many countries to meet the required convergence criteria for EMU by 1999, if a core group of countries then move towards implementation of a single currency, the issue has become so politically divisive, that participation is unlikely, certainly under a Conservative Government and probably under any alternative administration.”

economic case for a single currency is that, without it, it may be difficult to make a reality of the Single Market. When currency values are a reflection less of the underlying economic strength of individual countries than of speculative pressures and Government manipulation, strong resistance to the dismantling of non-tariff trade barriers can be expected. From Scotland's point of view, the essential point is that firms operating from a Scottish base should be able to maintain their competitive position in relation to the rest of Europe and that restrictions on trade should be removed as provided for in the Single Market legislation. This could best be achieved if Britain both met the

convergence criteria in full and joined the single currency. Assuming that the single currency were stable and well managed, so that it commanded more confidence than most of the present national currencies, interest rates would be likely to be lower; and for those participating a fully integrated market would not be in question.

But, if the convergence conditions are not met, or if low inflation compatible with them could only be met at the cost of a prolonged deflationary fiscal policy, the Scottish economy would lose its attraction for inward investors and domestic investment would remain weak. In these circumstances retention of a separate currency with an exchange rate that can be adjusted, at least until the convergence criteria can be more comfortably met, would be a less bad option and would better meet Scotland's need to ensure that its export industries operated from a base that was fully competitive. If that is the course that a British government chooses, it will be essential to ensure that it is not interpreted as the first move in a deliberate distancing of Britain from Europe.

No consideration of Scotland's economic prospects would be complete without some comment on the implications of the current proposals for parliamentary devolution. The Conservative Party is now the only party in Scotland that argues for the constitutional status quo. The Scottish National Party stand for outright independence within the European Union. The implications of such a change would, of course, be far reaching and in many respects unpredictable; much would depend on the terms agreed for separation, on whether such agreement could be reached amicably and on what the relationship would actually be with the European Union. The risks would be high and the potential for economic damage substantial, if these matters were not satisfactorily and smoothly resolved. But it seems unlikely that there would be sufficient political support to make such a major constitutional change a reality in the foreseeable future. Both the Labour Party and the Liberal Democrats, however, are firmly pledged to implement some form of parliamentary devolution to Scotland within the United Kingdom. In view of the Government's present standing in the opinion polls and the pledge by the Labour party to legislate within one year of taking office, there must therefore be a high expectation that it will be implemented after the next general election.

In contrast to independence, devolution is unlikely to make a major difference to the environment in which business has to operate in Scotland. Devolution should be seen as a move towards a federal constitution, but it is not properly federalism because the Westminster parliament would retain ultimate sovereignty. It would merely delegate certain legislative powers to a Scottish parliament and administration, which theoretically, however unlikely in practice, could be revoked.

“For most firms any uncertainty over Britain's relationship with Europe is likely to be much more damaging than the prospect of parliamentary devolution to Scotland.”

There are nevertheless several ways in which devolution could have both a positive and a negative effect on Scotland's economic prospects. On the positive side, by making a Scottish Government responsible for many of the decisions which affect Scotland, it can be argued that policy would have more regard to local conditions and circumstances and would in consequence be more effective. In addition it is claimed that responsibility would itself engender commitment and enthusiasm in Scotland, which could spill over to the economy, increasing confidence and providing dynamism. It is hard to know how to evaluate these arguments. They should not be under-rated, but their force depends greatly on the scheme of constitutional change being judged to be a success.

The potentially adverse consequences are more tangible, since they concern the level of public expenditure; but they might do little more in the longer run than reinforce a trend that is already taking place. As one would expect in a unitary state, no attempt is made to balance public revenue and expenditure by region: some regions contribute less per head in revenue than others, depending mainly on their level of income, and some receive higher levels of public expenditure, the intention being that it should be distributed mainly in accordance with need. Satisfactory figures on these interregional revenue and expenditure transfers are hard to obtain, but recent research has shown that the region that benefits most is, as might be expected, Northern Ireland, but Scotland, Wales, the Northern Region of England and the South West are also beneficiaries, while the South East, East Anglia and the East Midlands are the main net contributors.

Devolution would make this issue central to the annual public expenditure and revenue negotiations between the Scottish and United Kingdom Governments, instead of, as now, being an internal negotiation between two Ministers in the same Government. It will therefore be exposed to public scrutiny in both England and Scotland in a way that it is not at present. If the result of this difficult situation was a more rapid reduction in Scotland's public expenditure advantage, this would, of course, affect the economy. The public sector is a large employer and many of those in the private sector also depend on public contracts. Reducing Scotland's present public expenditure advantage over England of 21 per cent to, say, 16 per cent, if a fresh needs assessment confirmed the results of the one in 1979, would involve a cut of some £890 million. Even spread over several years and assuming a gradually rising trend in expenditure for the rest of the United Kingdom, this would be a painful adjustment to make. A reduction in service provision, particularly in the major expenditure areas of health and education, would seem to be unavoidable with consequent loss of jobs.

Scotland has made a difficult transition over the last 40 years from an economy that was dependent for much of its income and employment on heavy capital goods industries and on textiles to one in which modern high technology industry plays a substantial part. Services have developed and expanded to replace most of the employment lost in manufacturing. Labour productivity in manufacturing rose more rapidly in the decade 1980-1990 than in other European countries and is above the UK average. But problems remain: even with an outstanding record in attracting industry from abroad, the level of investment has been insufficient to bring about economic expansion on a scale sufficient to employ Scotland's labour resources; and the continuing high unemployment levels and net emigration are the consequence.

For the future, Scotland's prospects are in some respects much more promising than in earlier decades. The traditional industries have largely gone and can no longer drag down the economy's overall performance. Those that have taken their place have brighter prospects. North Sea oil and gas will remain an important element in the economy well into the next century. Expanding demand for electronics, health care products, pharmaceuticals and important parts of the service sector can be expected to continue. But a means must be found of raising the level of investment in the economy from domestic sources to match the success of inward investment, and of achieving more growth from new and small firms. Furthermore, as a major export location, Scotland's economy depends on its access to markets. Since Britain joined the European Community in 1973, the European market's importance has become dominant. Scotland's prosperity in the years ahead will therefore be greatly influenced by Britain's relationship with the rest of the European Union and by a satisfactory resolution of Scotland's constitutional position within the United Kingdom.

Professor R G L McCrone CB, FRSE

Gavin McCrone is a Vice-President of the Royal Society of Edinburgh. He has been a visiting professor at the University of Edinburgh Management School since 1994 and is an honorary fellow of the University's Europa Institute. A graduate of Cambridge, he was a lecturer at Glasgow University from 1960 to 1965 and a fellow of Brasenose College, Oxford, from 1965 to 1970 when he joined the Civil Service. He was successively head of two Government Departments, the Industry Department for Scotland from 1980 to 1987, and the Environment Department from 1987 to 1992, combining these positions with being Chief Economic Adviser to successive Secretaries of State for Scotland from 1970 to 1992. He left the Civil Service in 1992 to take up a professorship first at Glasgow University and then at Edinburgh. He has published books on various aspects of economic policy, including a book sponsored by the Rowntree Foundation on *Housing Policy in Britain and Europe* and a study undertaken for the Bank of Scotland on *European Monetary Union and Regional Development*.

He was a member of the Parliamentary Boundary Commission for Scotland and a member of the Advisory Committee for the Nuffield/Rowntree Independent Inquiry into Constitutional Reform 1994-97. In 1999 Professor Gavin McCrone led an Independent Committee of Inquiry into Professional Conditions of Service of Teachers which set out to investigate teachers' pay, conditions of service and promotion structures, and looked at ways they could be improved to ensure professional, committed and flexible teachers for all children in Scotland into the new millennium. The findings of the report helped reshape the Scottish Education System.

In 2001 Professor McCrone was chairman of the subcommittee of Economic Impact of the Royal Society of Edinburgh's Foot and Mouth Inquiry.

SCOTLAND CAN HELP SHAPE A NEW EUROPE
The late Donald Dewar**1 December 1997**

In 1997, less than three months after the referendum on how Scotland should be governed, and just weeks before he unveiled the bill giving Scotland its own Parliament, the late Donald Dewar gave a St. Andrew's day lecture which looked forward towards devolution, and the prospects for a devolved Scotland in Europe. He believed that Scotland could look forward to shaping the new Europe as part of a large and influential Member State.

Governments have increasingly seen the advantage of devolving powers to regional and local governments. Experience in European neighbours shows that countries which have decentralised systems of Government can be economically successful, influential on the foreign stage, and a constructive member of the European Union.

The role of the Member State can be complemented by the role of strong regions. European experience shows that influence within the EU begins well before the process of formal negotiations between Member States; and operates through many more channels than the formal Community and inter-governmental processes. The message is that decentralised governments engage at different levels with the EU; and Scotland will be able to play its part in the less formal discussions with the institutions of the EU and interests within the other Member States. Discussions have already taken place between Scottish ministers and representatives in several of the German länder and in the Spanish regions such as Catalonia, to understand better how they see their future role. These direct links at regional government level can make a useful contribution to the development of policy. Scotland can learn much from the experiences and knowledge of the German länder and Spanish autonomous regions. It may be of interest if I summarise the key messages which we take from our contacts with the German lander and Spanish autonomous regions.

"Indeed I believe the experience of our European neighbours shows that countries which have decentralised systems of Government can be economically successful, influential on the foreign stage, and a constructive member of the European Union."

The relationships with their federal governments work well and harmoniously in relation to EU matters. The relationships work because they have to work. The only alternative is for the interests of both the federal and regional governments to suffer. Therefore they find a set of arrangements that work for both levels of government. Those arrangements evolve over time. They are not overly formalised and they are not hedged round with sanctions. The imperative provided by common interest is all the underpinning they need.

Good working relationships require regional government to be very professional in their handling of EU matters. It is in the interests of both the federal government and the regional government that officials of the regional government are sufficiently well informed about EU issues to be able to participate effectively in internal discussion. Far from resenting the capacity of regional governments, as developed for example through representative offices here in Brussels, federal governments have come to appreciate their value in improving regional governments' ability to engage in internal discussion.

The impact of regional governments is greatest at the beginning of consideration of EU business rather than the end. In other words, the influence of regional governments is greatest in relation to the Member State's position rather than in the final negotiations to balance the positions of the 15 member states. This underlines the importance of the White Paper commitment that "the Scottish Executive will be involved as closely as possible in UK decision making on Europe".

That is not to say that the German länder did not congratulate the United Kingdom government on its wisdom in making clear that in appropriate cases ministers of the Scottish Executive could speak

for the UK. They pointed out that it had been a key objective for them, which it had taken them considerable effort to achieve.

The key to delivering the benefits of the close relationship between the different levels is a good early information flow to officials of regional governments about proposals on which Member States will have to take positions. We received excellent advice about what this means in practice. It involves complementary roles for national permanent representations and regional government representative offices. National permanent representations have a vital role to play in ensuring that regional governments get the same flow of information as departments of national governments. But that is a huge volume of material. As one German representative said, the cat could die from too much cream. The role of regional government's representative offices is to select key information and get it straight to the desk of the right colleague based back in the region. Although representative offices have many functions it is in no doubt that this was the most important. All our contacts made clear to us that, for this and several other reasons, they viewed effective regional government and an effective representative office in Brussels as two sides of a single coin.

All of our contacts recognised that it is inevitable that, from time to time, regional and national governments will disagree, and sometimes regional and national governments are under different political control. I think it is fair to say that they found the tendency in the UK for some people to be preoccupied with that scenario as an indication that we are only just starting out on the path to regional government. From the standpoint of their experience they regard it as a healthy plurality. Disagreements benefit from political debate. Again they emphasised that national and regional governments have a shared interest in resolving those disagreements, whether on EU matters or domestic policy.

“the essential strength comes from a successful role as a devolved government within a larger Member State. This is not a step to separation. Secession has not proved attractive in any other EU member state. As a part of a large and influential member state, Scotland can look forward to shaping the new Europe at a number of levels.”

Since the Government came to office last May, we have taken positive steps to reassert the United Kingdom's place at the centre of European affairs. After devolution, relations with the European Union will remain the responsibility of the UK Government. However, it is the Government's intention that Scottish Ministers will be involved as closely as possible in UK decision-making on Europe. With the strong voice of a large Member State, we can influence the debate and direction of the EU. The Government is already pressing for the completion of the Single

Market, which allows us to compete more effectively in Europe. It is a mark of our confidence in our ability to compete on equal terms. We are seeking to improve our competitiveness to enable us to compete with the other major economies in what is an increasingly global market.

Rt Hon Donald Campbell Dewar (1937 – 2000)

In May 1999 The Rt. Hon. Donald Campbell Dewar became the First Minister of the first Scottish Parliament in almost 300 years. It secured for him a place in history and represented a true high point in his long political career. Born in 1937 in Glasgow, he attended Glasgow Academy before studying at the University of Glasgow, where he gained both LLB and MA degrees. A member of the Labour Party at both Scottish and national levels, Donald Dewar worked as a Solicitor in Glasgow before being elected to Parliament to represent the constituency of Aberdeen South (1966-1970).

Donald Dewar returned to Westminster as the Member of Parliament for Glasgow Garscadden in 1978. He rose quickly through the ranks, becoming the chairman of the Select Committee on Scottish Affairs 1979-81, Shadow Scottish Secretary in 1983-1992, and member of the Shadow Cabinet in 1984. He became the Shadow Social Security Secretary in 1992, a post he held until 1995. In 1996 Donald became the Chief Whip for the Labour Party, and was sworn into the Privy Council. Following the Labour Party's victory in the general election of May 1997 he was appointed Secretary of State for Scotland, a post which he held until May 1999. He oversaw the passage of the Scotland Bill through the House of Commons in 1998, which when ratified led to the creation of the new Scottish Parliament.

At the Scottish Parliament election on 6 May 1999, Donald Dewar was elected as the MSP for the constituency of Glasgow Anniesland, and a week later the Scottish Parliament elected him First Minister of Scotland. The following day, he signed a "Partnership for Scotland", establishing a coalition between the Labour and the Liberal Democrat Parties.

Tragically and unexpectedly on 11 October 2000, Donald Dewar passed away. His commitment to and work for the Scottish Parliament has led him to be called the 'Father of the Nation'. Since his untimely death much has been said about his life and his immense contribution to Scottish and UK politics. Many of these tributes agree that Donald Dewar's greatest strength was his understated but unshakable sense of integrity.

SCOTLAND....SMALL COUNTRY – BIG PICTURE**The Rt. Hon. Lord Robertson of Port Ellen, Secretary General of Nato****30 November 2000**

In 2000 Lord Robertson examined the mark Scots have left on the rest of the world, and the impression visitors are left with after a visit to Scotland. He then debated why, despite this, there is something in the psyche of Scots which stops us being proud and celebrating Scotland.

Here in Brussels, where you can listen each day to the Today Programme, buy British newspapers every morning and fly home to Edinburgh in 1 1/2 hours, you don't or should not, feel unduly sentimental for granny's- heilan hame. Yet here we are, still at a distance, at a point connected to Scotland by all of the institutions in this city and yet far enough away to get a sense of that perspective strangely absent if you are in Union St. in Aberdeen or the Seagate in Dundee, or in Frederick Crescent in Port Ellen, Isle of Islay.

Over the year and a bit when I have been based here and lands beyond I have seen my native country through new, fresh eyes. Earlier this year when I was visiting Stockholm as part of my rounds of the 46 nations in the Partnership for Peace, the Swedish Minister of Defence, Bjorn Von Sydow, said to me, 'We are so happy that you, George, are the new Secretary General of NATO you understand the point of view of the small countries'. That says a lot. I became Secretary General of NATO because of my work in the big and influential United Kingdom but I am still seen to have, and certainly do have, the unique and special perspective of a citizen of a small proud, outwardly-looking nation as well.

Few nations have sent so many people to so many countries, to make such a marked impression on both countries and peoples. The group is varied, including doctors, engineers, scientists, missionaries, lawyers, soldiers, sailors, not to mention battalions of businessmen and women, as well as a legion representing all of the arts. To give one example, ships built on the Clyde in Glasgow have played the elegant league on the world's seas for years and were widely regarded as triumphs of hard work and innovation. And in the sporting arena we have delivered well beyond our borders some of the best known professionals to have graced their respective sports.

“Scots have made a permanent, indelible mark on the fabric of the world.”

The fact is that Scots have made a permanent, indelible mark on the fabric of the world and, arguably, through John Logie-Baird and Alexander Graham-Bell, laid the foundations of the new e-society we now live in. The key thing to note is that people know and remember them as Scots. In Russia, Admiral Keith of Inverkeithing shaped the Navy of Catherine the Great. In the United States, John-Paul Jones of Kirkcudbright founded the United States navy. These are just two examples in a long line of distinguished and talented Scots in the military, and practically every other field, who left a mark to this day in the lands where they went to live and work.

Today there is a real fascination for what is happening in modern Scotland and there is a remarkable knowledge about us. Vast numbers of the most amazing people have been to Scotland in their youth and lifetime memories are engraved on them.

For example, the President of France, Jacques Chirac, told me with great pride of his youthful cycling journey round Scottish youth hostels. He vividly recalled his stay at the Loch Lomond Hostel. Politicians in Germany, Scandinavia, the USA and many countries speak with affection of the friendliness of the Scots at home and how it eclipsed the experiences of rain, mist and midges and early closing pubs.

Scotland makes its mark - and leaves it - all over the world. We may be a small country but we were never constrained by our geographic borders. Lines on a map never stopped a Scot from using the world as his front yard. You just need to look at the apparent domination of that British Cabinet which I left last October and its most senior positions. Why does Scotland with 8% of the British

population provide the Speaker of the House of Commons, the Prime Minister, the Chancellor of the Exchequer, the Lord Chancellor, the Foreign Secretary, the Social Security Secretary and the Chief Whip? Why does it hold several of the key positions in the opposition and in the House of Lords? It is no accident, but a remarkable fact, that as the curtain is raised on the new devolved structures in the United Kingdom, Scotland's influence in decision-making right across the United Kingdom has rarely been stronger.

With the tragic and still deeply felt death of Donald Dewar and before him the passing of John Smith, a certain era did end but they left a new generation with a legacy of progress and of hope. There are very encouraging signs that the foundation their generation created is solid enough to build on to establishing an even stronger Scottish presence in the UK and the world for many years to come.

Scotland has many positives. We have a good and much-valued education system which is looked on still as a model, not only south of the border, but in many places beyond the British Isles. Our justice system, founded on the basic and continental principles, including fairness and equality, is still admired for both its integrity and its efficiency. In many ways the success of our distinctive and different legal system is down to many Scots lawyers of a previous age so many of whom left Scotland to teach, and also to learn, from across the world.

These are simply a couple of examples out of many of how Scotland has, over the years, shaped successful and trusted institutions which make a real difference to real people.

One of the areas where there is a huge fascination with contemporary things Scottish, is in the modernisation of our constitution. In a world where ancient grudges are now being bloodily settled, where vast forced mega-nations are splintering and where the successful inclusion of distinct minorities and out of scale majorities is a rare phenomena indeed, people are drawn to what has happened in the last 3 years in Britain. After 300 years of centralised government, a radical transformation has taken place in our United Kingdom. A Parliament in Edinburgh, and Assemblies in Cardiff and Belfast - and a quiet revolution in decentralisation which has attracted attention and admiration from far and wide.

"A small nation maybe but we have strength in depth which has made us, over the years, punch well above our weight."

At last the old rubric, "the Scots are better at running other people's countries than they are at running their own", has a chance to become history, but will we let it?

The raw, native spirit of innovation of Scotland's great pioneers, all too many of whom took their skills abroad, should now be coming home. In one of the world's most successful constitutions, we now have a tailor-made devolved structure. A strong and powerful Parliament sitting in Edinburgh and listening and acting on behalf of the people of Scotland - from John O'Groats to Jedburgh. And it is making real differences to real people.

But now to the important question. Do we feel good about what we do well and if not, why not? Am I alone in detecting, at a time of such remarkable transition, a tangible lack of confidence in the land that is delivering such change? A lack of confidence born out of a culture of criticism which starts with overblown so-called 'news' stories, feeds on blanket opposition to all that is done by the new Scottish Executive but spills over into attacks on the very idea of devolved government, devolved law-making, and even the Parliament itself. When the world looks on with such interest - and even a little jealousy - at Scotland's striking sense of identity, its rich history, its proud heritage and its new, modern way of government, why is there still such an obsession locally on what's not going right? On occasions you get the feeling that Scotland is in the throes of a midlife personality crisis. We were once regarded as an intelligent people with good practical common-sense, a sense of history, a tough streak of self-confidence and blessed with a sense of both humour and proportion. Those were our stock in trade - so where have we quarried so deeply to find self-doubt and this endless capacity to overanalyse and over-criticise?

Last year we celebrated the opening of the new Parliament on the Mound in Edinburgh. A bit more than a year later the commentators and the chattering classes have decided that it hasn't come up to the standard of the 400-year-old model in London and their sense of disillusionment is in danger of becoming infectious. Where on earth has it come from? Does it derive only from the need to fill newspapers? Is the criticism and over-criticism valid? Have the Scots really elected a monster - or a mouse?

I personally think that Scotland has done rather well. I can be dispassionate now, although I will always be proud of the contribution I made in earlier days. So I think the new institution is growing up with every day. It is after all Scotland's first Parliament in nearly 300 years of the union, and it is still one of the youngest legislatures in the world, and I think it is a success. Does it make any sense - inside or outside Scotland - to make a final judgement for or against its success and its contribution in just over one year of its life? Do we fully appreciate how many people outside of Scotland's border simply cannot comprehend how a country so rich with talent, imagination and innovation, and who moved with such skill and patience to modernise and improve their governance, don't show a real pride in what they have created?

"I think sometimes we Scots take self-deprecation to world class levels."

As I look out at my native country on this, its national day, I passionately believe that we need to lift our vision above the kailyard and let Scottish ambition and self-confidence flower again. Things Scottish are going well, and I believe that it is time that we said so and we believed so.

Last weekend's Economist magazine, genuinely world-wide news medium, had an article datelined Edinburgh with the title "Tartan attack - Once Scottish Companies were targets for take-overs. These days they are more likely to be predators". The characteristically anonymous writer made a hard point. "The take-overs of the 1980's taught younger Scottish business people that they could no longer hide behind a tartan curtain: they had to get out there, and eat or be eaten." There is a hidden message here for others who need to look beyond the borders of their minds.

There is a new culture about, and it needs to speak its name and needs to embrace the ideas and the imagination and the dreams of those who want to expand Scotland's horizon and the contribution that Scotland can still make to the 300 year old Union which has given Scotland an international vehicle to sell its skills and build its industry. The Union that is the United Kingdom, has been remarkably successful over the years not least for the way that it has allowed the Scots to play their part both at home and on the British scene, But the Union has also provided the integration and internal strength to deliver the goods inside and outside territorial United Kingdom. That's a hell of a bonus for us Scots - and not only to those figuring in the Economist's take-over profiles.

For a couple of decades in Britain, the word "consensus" got to be a dirty word. It was, however, always more fashionable in Scotland - and we benefited from it. I am now in charge of an Organisation, the North Atlantic Treaty Organisation, 51 years old, 19 nations and 9 more in the queue to join, which lives every day on the rule of consensus. When it comes to the potential life and death world of defence there is no other way to deliver defensive force without agreement among those who supply the troops.

But achieving consensus is not easy. It takes times and effort and endless reservoirs of energy and patience. It requires compromise and it demands an ability to see the range of views which go into establishing any worthwhile public policy. So seeking consensus in NATO - to stop the violent killing and destruction in Bosnia five years ago, or to halt and reverse the pre-organised ethnic cleansing in Kosovo of last year, has a real and important objective. It's hard and painful to get here but once consensus is achieved it sticks and it was the rock on which NATO's forces were so decisive in both Bosnia and Kosovo.

I believe consensus can also be the rock to build other policies - closer to home. But when I have to dig deep to get the patience I thought I'd lost in 20 years on the House of Commons front bench,

"We Scots tend to be tough ball players - in sport or in politics. We are what we are and we expect to be taken as we are. What you see is what you get - there was no such thing as a Scottish Machiavelli.

But we care about causes, and about each other, we fight each other to the death for what we believe in, but when we - if we can - agree, we can move mountains."

and when I dig deeper to find the tolerance and understanding which I thought had evaporated in years of opposition, one lifetime experience in particular comes to my aid. The Scottish Constitutional Convention was unique in Scottish history. It was the widest, broadest group of Scots ever to agree on a plan for Scottish self-government. It was a first too, in that never before had any detailed plan for Scottish legislature been adopted by two UK political parties, and never before had it become the basis, the very foundation stone, for a new Parliament in Scotland's capital city. It was a remarkable, frustrating, and bitterly testing time - but

the rewards of success in getting consensus and agreement were sweet indeed.

I mention this double personal experience of consensus building, not just for nostalgia's sake, but to prove that the best Scottish institution building, like the most effective military plan, needs to be built on the broadest possible consensus - the widest coalition of stakeholders. That was true for delivering the Scottish Parliament, for delivering success against Milosevic, and it is still Scotland's secret weapon. We can self-destruct with elegance and real professionalism - but we can construct too, if the trouble is taken to build agreement and common ground, and if we want to feel proud of what we build, and why we build it.

So tonight, St Andrews night, here in the home of so many institutions which touch the life, every day, of every Scot, I simply say this. Let us be proud of our past and learn from it. Let's recognise the benefits and the success of the present, and take every opportunity it provides. And let's relish the future, because a new Scotland is awakening - its senses alive, its potential enormous and its people waiting.

It is St Andrews Day - our national day. We come from Scotland; a small country indeed, but always part of the big picture.

The R. Hon. Lord Robertson of Port Ellen

George Robertson has been the tenth Secretary General of NATO and Chairman of the North Atlantic Council since October 1999. He was Defence Secretary of the United Kingdom from 1997-1999 and Member of Parliament for Hamilton and Hamilton South from 1978-1999.

Born in 1946 in Port Ellen, Isle of Islay, he was educated at Dunoon Grammar School, and the University of Dundee, from where he graduated with an MA (Honours) in Economics in 1968. From 1968 to 1978 he was a full time official of the General, Municipal and Boilmakers' Union. In 1978 he was first elected to the House of Commons, and re-elected five times.

He was appointed Parliamentary Private Secretary to the Secretary of State for Social Services in 1979, and after the General Election of the same year, he was appointed Opposition Spokesman, first on Scottish Affairs, then on Defence, and on Foreign Affairs from 1982 to 1993. He also became Chief Spokesman on Europe in 1983. He served as the principal Opposition Spokesman on Scotland in the Shadow Cabinet from 1993-1997. After the General Election of 1997, he took up the post of Defence Secretary of the United Kingdom, which he filled until his departure to NATO in 1999. On the 24 August of the same year he received a life peerage and took the title of Lord Robertson of Port Ellen.

Lord Robertson is a former Chairman of the Scottish Labour Party, was Vice-Chairman of the Westminster Foundation for Democracy, and served as Vice-Chairman of the British Council for nine years. For seven years he was on the Council of the Royal Institute of International Affairs (Chatham House), where he now serves as Joint President. Moreover, he is a Governor of the Ditchley Foundation and a Trustee of the 21st Century Trust.

In 1991 he was awarded the Grand Cross of the German Order of Merit by the Federal German President, and was named joint Parliamentarian of the Year in 1993 for his role during the Maastricht Bill Ratification. He has been awarded Honorary Doctorates by several Universities, among others, Dundee, Bradford and Baku State University, Azerbaijan. He is an Honorary Fellow of the Royal Society of Edinburgh (honFRSE), a Fellow of the Royal Society of Arts (FRSA) and an Elder Brother of Trinity House, and was appointed a member of Her Majesty's Privy Council in May 1997.

On the 12 November 2003, Lord Robertson received the United States' highest civilian honour, the Presidential Medal of Freedom, from President George Bush in recognition of his achievements during his time at NATO.

The Hon. Judge David A.O. Edward CMG, QC, FRSE

29 November 2001

In 2001 Judge David Edward gave a lecture which pondered the question "“To produce Utopian theories of government is especially the part of a Frenchman; to disbelieve in them is especially the part of an Englishman” (Anthony Trollope). What about the Scots?”

David Edward has been Judge at the European Court of Justice since 1992, and was Judge at the European Court of First Instance from 1989 to 1992. Prior to his appointment to Luxembourg, Judge Edward was Salvesen Professor of European Institutions and Director of the Europa Institute at the University of Edinburgh, 1985-89 (Honorary Professor 1990-). He has also served as Special Adviser to the House of Lords Select Committee on the European Communities.

David Edward, born in 1934, joined the Scottish Bar in 1962 and was an Advocate in Scotland until his appointment to Luxembourg. He was Clerk and subsequently Treasurer of the Faculty of Advocates (1967 to 1977). In 1974 he was made Queen's Council (QC). From 1978 to 1980 he was President of the Consultative Committee of the Bars and Law Societies of the European Community.

Judge Edward was a trustee of the National Library of Scotland 1966-95, and is a trustee of the Industry and Parliament Trust, the Carnegie Trust for the Universities of Scotland, the Trier Academy of European Law and the Hopetoun Foundation. He was a member of the Law Advisory Committee of the British Council, 1976-88; a member of the Panel of Arbitrators of the International Centre for Settlement of Investment Disputes 1979-89. Judge Edward was President of the Scottish Council for International Arbitration; a director of Adam & Company Group plc from 1983 to 1989, and a director of The Harris Tweed Association Ltd from 1984 to 1989. He was chairman of Continental Assets Trust plc, 1985-89; President of the Johnson Society of Lichfield, 1995 and has been President of the Franco-Scottish Society since 1996.

Judge Edward became an honorary bencher of Gray's Inn, London in 1992 and was made an honorary fellow of University College, Oxford in 1995. In 1993 he received an Honorary LLD from the University of Edinburgh, from the University of Aberdeen in 1997, and from Napier University in 1998. In 2001 he has been awarded the degree of Doctor honoris causa by the Universities of the Saarland and Münster in Germany. Judge Edward has been a Fellow of the Royal Society of Edinburgh since 1990, and was awarded the CMG in 1981.

EUROPE'S FUTURE, SCOTLAND'S FUTURE: REFLECTIONS FROM AND ON THE CONVENTION ON THE FUTURE OF EUROPE

Professor Sir Neil MacCormick MEP

27 November 2002

In 2002 Neil MacCormick MEP shared his views on the Convention on the Future of Europe. The Convention had had its inaugural meeting eight months earlier, in February 2002, and was then halfway through its mandate for drafting a Constitutional Treaty for the European Union.

When I was reflecting how to commence the lecture it occurred to me to remark that the time of my own birth was 1941, May 1941, and although I don't remember it myself, my mother on several occasions told me that, after she took me home from the hospital, she one evening took me out to the front garden in Stepps, just to the east of Glasgow where my family then resided. She held me up so that she and I could see the scarlet glow to the west of Clydebank in flames after the dreadful blitz there. That is clearly the world into which I was born, a world of catastrophic war. This is the world which we Europeans have spent the last half-century and more, escaping, burying and putting behind us. That in itself expresses to me the profound truth that Scotland doesn't have a future that isn't also Europe's future, in the sense that we, together with all other Europeans, have been engaged, and are engaged, in this project of building a continental confederation, such that the old hatreds and enmities are behind us forever and they transmute themselves into the healthy rivalries of competition in a Single Market, and the healthy rivalries of the sports field, and all the rest of it. This is so important - that Europe's future in that sense *is* Scotland's future, the future of a Scotland at peace with all our European neighbours and hopefully with our neighbours in the wider world. Again, I think a Europe dedicated also to peace and to the universal recognition of Human Rights can be a beacon for those who hope for the goal of a durable and permanent peace among humankind.

*"Europe's future...is
Scotland's future"*

What we have is not just a Europe of *peace*, it's a Europe of interactive cultures, interactive intellectuals, interactive trade unions, interactive civil society in all its multiple manifestations and that also is important. In this context, I am not asking just the simple question "What's in it for Scotland?" The kind of Scotland I want, and probably the kind that everyone in this room wants, is a Scotland that's at ease with itself as one of the ancient lands of Europe in full and generous interaction with others in the great European project. That is the attitude with which I wish to come at this address.

Let us come back to the Convention itself. I had the huge good fortune, a great good fortune for someone with my particular career background and interests, to get elected by my own Parliamentary Group to be one of our two members. What can I say about the deliberations of the Convention? What is it like to be there?

As I said to a gathering in London yesterday, it is interestingly coincidental that this week have appeared in the papers the obituaries of one of the greatest philosophers of the twentieth century, John Rawls of Harvard. Rawls's book *A Theory of Justice* in 1972 re-ignited debate about social justice and the conditions of a fair society among the philosophical community, and its influence leaked over also into the political world. In later writing Rawls became much taken up with the idea of what he called 'public discourse' or 'discourse in the public space'. What he meant by this was: If you live in a genuinely liberal society, what are the kind of arguments that people can exchange with each other in order to give a legitimate justification of proceeding with some socio-political project or another, some piece of legislation or another?

According to Rawls, not every kind of argument will do. If I say, "I am voting for this Directive because I've received a very large cheque from the tobacco companies", clearly this would be a way not of justifying my activities, but of de-legitimizing them. But also if I say "I'm voting for or against this Directive because the dictates of true religion require people to conduct themselves in

such and such a way,” that is outside of public discourse in his judgement. Public discourse is about the things that we can as sharers of a collective social and political space address to each other, acknowledging that we all have our own religions, our own faith background or lack of it, our own set of personal values and commitments, but nevertheless that we seek to make a society and a community together. This is an interesting idea.

As a member of the Convention, I must say that with all its faults, and there are many, when it gathers to discuss the Future of Europe, it does succeed in achieving something of the discursive character that Rawls, and, in a not dissimilar way, Jürgen Habermas depicted as an ideal. It is a good thing that the Convention’s proceedings do in some respects happily resemble the ideal of public discourse that Rawls put before us. For example, interestingly, unlike any other parliamentary gathering I have observed or attended, or taken part in, this is a meeting at which people make their speech and then stay and listen to other people’s speeches, one in which people engage in real debate. There’s a very good device, invented I think probably by Sir John Kerr, but certainly exploited by Mr. Giscard D’Estaing, called *‘le carton bleu’*. The *‘carton bleu’* is a piece of blue paper, and if somebody is making a speech about some point or other about the future of Europe and you feel moved to contradict or qualify it, you take your *carton bleu* and wave it to attract the attention of the President or a member of the secretariat. That does actually confer a flavour of immediacy on the debate, especially since there are also *cartons verts* that signal a wish to reply to a *carton bleu*, so you can hold your green card up as well. Anyway, the main point I make is that there is real debate going on.

However that may be, back at home, and I’m sure in the minds of members of our gathering here

“The Convention is charged with the task of creating what its President, Giscard D’Estaing has called a ‘Constitution Treaty’.....the question still lurks in the back of people’s minds: ‘A Constitution? That sounds a bit dodgy.’”

tonight, the question still lurks in the back of people’s minds: “A constitution? That sounds a bit dodgy.” Certainly in the northern countries, including the United Kingdom in all its parts, there is a rooted aversion to the idea of Europe becoming what is conveniently summarised as a ‘super-state’. We do not want a super-state. And for those who think that Constitutions and States are identical terms, the idea of a constitution is itself a dangerous proposition. To which one reply is, I think, very reasonable – it is not only States that have

constitutions. Golf Clubs and Tennis Clubs, political parties, all sorts of things have constitutions.

The idea of having a constitution is the idea that if you have powers of government, especially those involving coercion of one kind or another, exercised among people, then they ought to be exercised according to a regular and pre-announced framework of competences. Further, they should be exercised under limits which restrict, or impose conditions on, what those who exercise power can do. That’s what a constitution is. Indeed, I have to say that in a book I published in 1999 called *Questioning Sovereignty* I argued that it’s true that, in a certain sense of the term, the European Union already has a constitution, so it is difficult to see what all the fuss is about.

The European Union has a constitution in what sense of the term? For this gathering, this is easy to say. It has a constitution in exactly the same term as the United Kingdom has. That is to say an entirely *informal* constitution, a constitution whose elements are gathered from different legislative Acts, from different precedents of the Court, from different conventions and, indeed, in the case of the United Kingdom also, historically and significantly, from an international treaty, the Treaty of Union between the kingdom of Scotland and the kingdom of England in 1706. That was critical to there being a United Kingdom of Great Britain and then in due course a Treaty of Union with the Kingdom of Ireland in 1801, and subsequent legislation constituting the whole into the United Kingdom of Great Britain and Ireland, now Great Britain and Northern Ireland.

Now, let us call that a constitution in the *informal* or substantial sense. What we don’t, of course, have in the United Kingdom, and don’t yet have in the European Union, is a constitution like that of the United States, or France, or Germany, or Italy, or of most other countries, who for historical

reasons found it essential to record the terms of their political union in an explicit compact. We do not, either in the UK or in the EU, have, as these countries do, a *formal* constitution.

Now if I think, as I do, that the European Union already has a constitution, why should I think that the Constitutional Convention is engaged in worthy and noble work? Well, I think so partly because the Union is about to enlarge, partly because we are broadening and deepening at the same time.

“The Union is about to enlarge....it was once held that broadening was an alternative to deepening and vice versa, we are now having to broaden and deepen at the same time.”

With many new friends joining the organisation, it's a good idea to make its constitutional rules articulate and explicit. Secondly, I think so because there are, notoriously, a number of gaps in the rules we have, the gaps which popular wisdom sums up in the phrase 'democratic deficit'. Tied up with this is a widespread sense of public ignorance or indifference. If we do have a constitution in the informal sense, all too few people are aware of this, and still fewer

could confidently summarise even its main points. There will be virtue in reforming this, so that there are fewer democratic gaps, and so that citizens all over Europe will have a decent chance to understand how this Union of theirs is supposed to work. That requires a *formal* constitution.

It is also probably true that the 'super-state' fear is better addressed to a Union without a formal constitution whose powers simply grow imperceptibly from Treaty to Treaty. To state the constitution in straightforward terms is to give a safeguard against the creeping extension of executive power in the Member States and at all-union level. Indeed, it seems to me highly desirable to find ways of sustaining this union, this association, that really do protect its character as what the Court of Justice has called a Union '*sui generis*', a Union of its own kind. It is a Union of a special and new kind, a Union which does not exactly replicate any previous form of State, Federation or even Confederation, like the States of America under the Articles of Confederation before the Union of 1787. It's a new kind of thing and it faces new challenges and it's as well to try and make the terms of its empowerment explicit. Mind you, there's a third point which I think should be made here.

Another of the most profound political thinkers of the last century was in my judgement Friedrich Hayek. Above all, Hayek was wont to warn against what he called 'constructivist rationalism'. 'Do not think,' said he in effect, 'that you can sit down and make a blueprint for a perfect world, and then put it into effect, and make everybody happy according to a pre-set plan'. All attempts at Utopian blueprints, he said, have failed, and they've often been huge disasters. You try to do things in a certain way in a certain society, but it turns out that in all sorts of other ways unplanned consequences spill out and cause damage. The moral of the story is that it is better to trust to a kind of critical rationalism. When you make change, you should make change incrementally. When you make change, you should make change through what Hayek calls an "immanent critique" of the institutions and practices you already have. If you have working institutions of whose defects you are aware, study to see what the defects are, and if they are defects they will typically be elements in the working scheme that don't square with the essential governing principles of what you are already doing, and trying to do better. On that view, constitution-building should also be constitutional adjustment, constitutional tinkering.

From this point of view, however, the Convention is entitled to a clean bill of health. The task in which it is engaged is that of taking the constitutional foundations implicit in the whole set of Treaties, making them clearer, and making institutional adjustments in the light of widely recognised principles

Another element of this process of making more explicit what is already implicit concerns fundamental rights. All the states of the Union acknowledge the authority of the European Convention for the Protection of Human Rights and Fundamental Freedoms and are subject to the jurisdiction of the Human Rights Court in Strasbourg. The Union by Articles VI and VII of the Treaty is committed to protecting these rights and will only receive into membership or retain in membership states who do protect these rights. Yet at the moment, curiously, the Union and its

institutions are not themselves bound, either by the Convention or by an internal instrument of like effect.

One of the propositions which is emerging from the Convention, a proposition around which there is now very broad consensus, is that this rights-deficit internal to the Union must be remedied. Two years ago a Convention similar to the present one was charged with the task of producing a Charter that would declare the Rights which are enjoyed by citizens of the Union in virtue of their being such. That Convention produced a Charter of Fundamental Rights of the European Union, which in turn was adopted at the Nice Council. But it was adopted only as a political declaration, not one having binding legal force. Now, the Charter seems almost certain to be adopted as a legally binding instrument, and, indeed, an integral part of the Constitution Treaty. This is highly desirable, because with that we will create internally to the Union a set of limits which operates to bind the institutions of the Union, but the Member States only when they are implementing union law. That is of crucial importance. It's not a general all-purpose catalogue of rights, it is a document that sets a specific limit on the powers of the institutions of the Union.

At the same time it has come to be widely agreed also that in a technical sense the Union should acquire 'legal personality'. If that is done, the Union can, and surely it should, accede to the European Convention on Human Rights, thereby becoming subject to the same external protection for its citizens as all the states already themselves are. That is, they have the external protection of the Strasbourg Human Rights Court, as well as the internal protection afforded by their own judicial tribunals. These important developments may seem to be textually quite small, involving a few changes of words, but they have great significance. They illustrate the possibility of doing the two important things – creating an effective formal constitution which is fit for an enlarged Union, and yet also preserving the so-called *sui generis*, "its own kind", character of the European Union.

So with that in mind we can turn to the other question of the lecture. If you will grant that these developments are for the good of Europe, you may wish me to test my other claim that what is good for Europe is good for Scotland. Let us therefore proceed to test out that issue. Last May I was sitting in my office and a Fax came bleeping out of the Fax machine from Shetland, via my Edinburgh office, which it had reached by snail mail. I quote roughly, and from memory:

<p><i>"What is good for Europe is good for Scotland."</i></p>

'Dear Neil

I'm looking out at the Sound before me, and there's a fine brisk breeze, I suspect it's about Force 6, but the water looks perfectly calm and good for sailing because it happens to be an ebb tide at the moment. Do these fools in Brussels not know that the tide matters more than wind speed, and that the safety of humans and animals at sea depends on the good judgement of a ship's master?'

I read this without the penny immediately dropping. It sounded reasonable, but I was not aware that the European Commission needed informed of it.

Then the phone rang and it was my friend Councillor Ian Gillies, councillor for Tiree. And it all became clear to me. He said words to this effect

'Neil, I've just seen this report for The Commission's Scientific Committee about animal welfare, and they say that animals cannot be put to sea in Ro-Ro vessels if the wind speed is more than Force 5. I think they should be brought to know that the wind in Tiree is never below Force 5. Tidal conditions are at least as significant as wind speed when it comes to matters of safety at sea.' (This is quite correct for all practical purposes. Your chances of getting from Tiree to Oban without hitting a more than Force 5 wind must be more or less zero, especially at the times of year when typically cattle and sheep are being sent to market on the mainland to be sold on for fattening on lowland pastures prior to final sale for butchering).

The matter seemed of some urgency for my constituents, so I wrote immediately to Commissioner David Byrne. In fact, when I pursued the point, I found that the report was based on a study done

in the Western Approaches to the English Channel, where I've no doubt the tide and wind conditions create different sea conditions. So I'm not saying that the scientists were necessary wrong but just a bit bold in their generalisations.

The point I'm making out of this story is that, first of all, there are complicated areas in which MEPs can actually be useful to their constituents, and in which the kind of early warning that Scotland House has been so effectively building up is beginning to work. These are cases where proposals are in the early stages of formulation, pre-legislatively. It is at this time that it is vitally important for them to be looked at hard and critically, by ensuring that the objections and difficulties from a local point of view are expounded and heard early and clearly. For what happens then is that the proposal is revised. Secondly, I mention this because you might wish to know that the members of the Convention have also been exhilarated by this tale. At one session, I drew attention to it at the Convention to make vivid a point about subsidiarity, about the issue of subsidiarity and who should have a say when laws are being prepared. Those who are most affected and who actually know what will be the local effects of proposed legislation they will have to apply must have their say.

As we all know, it is now the case that about 80% both of the laws that the Scottish Parliament may make, and of the domains of administration for which Ministers in the Executive are responsible, are in domains also covered by European law. Critical to the working of government in Scotland, and all the other countries like Scotland in Europe – and many they are – is, therefore, the possibility of influencing the law-making process and being consulted in that process. Subsidiarity doesn't stop at the gap between the Union and the Member States; it goes all the way down to Community Councils in some few cases and certainly to Unitary Authorities in more or less all cases, and to the Scottish Environment Protection Agency and to Scottish Water and to all the rest of them. It's a kind of iterative principle.

It seems to be of crucial importance, and I know the Scottish Executive and the Scottish Parliament have taken a similar line, that these aspects of subsidiarity should be fully taken into account in the developing Constitution of the Union. While it is a vitally important principle that the Union leaves Member States' constitutional arrangements entirely to the determination of Member States, nevertheless, it is vital that the Constitution of the Union should acknowledge that authorities established under these constitutions have a European role to play. All the large Member States and some of the smaller are themselves internally federated, or quasi-federal, or enjoy very substantial devolutions of power. Thus what it is fashionable to call 'Regions' have powers of a significant kind which have to be taken into account in the Constitution of the Union.

You will certainly expect me to say that I'm not entirely happy with the use of the term 'Regions', since St Andrew's Night seems to be a date on which one could acknowledge unhappiness on this point of terminology. It is worth noting there tends to be a dominant view that the Union is after all a union of citizens and of Member States. Thus only Member States count in the collective deliberations of the Union, except via the Committee of the Regions, which seems to be, for all the great work its members do, a rather flawed institution, flawed in conception and in design. Thus it remains an open issue among us whether the burden of proof is in favour of devolution and working to get the European Constitution changed to make it better, or whether Independence in Europe, the programme with which my own political party is identified, bears that burden

On an occasion of this kind I want not to take these issues to the point of confrontation and disagreement. I want finally to reflect again on the things that we have in common and the things that matter to us in common.

I am wearing tonight a tie labelled "1320 The Declaration of Arbroath". You can read these famous words on it

'For as long as but a hundred of us remain alive never will we on any condition be brought under English rule. It is not for glory, nor for riches, nor for honour that we are fighting but for Freedom alone which no good man lays down but with life itself.'

Now, of course, in the whole context of the European Union, and of what I was saying about the Charter of Rights, we are engaged in that struggle for the freedom of human beings, for the freedom of the human spirit, for the autonomy of people as individuals. We do so, acknowledging that the individuality of individuals includes their sense of collective belonging. Your having a sense of individuality depends upon community- belonging, so that the freedom of individuals is about also the freedom, and about the willing interaction, of communities.

In the Declaration of Arbroath there's another part which you may remember in which the "good men" (in those days it was only good men) of Scotland got together and wrote to the Pope -it's a bit like writing to the United Nations in those days – to say, 'We want to be left alone by King Edward. We are and have always been an independent country. We make no claim upon anybody else's land. We just want to be left alone with our own little country and get on with running it among ourselves under kings of our own choosing, and if the kings let us down we depose them. In the introductory passage the Scottish nobles say that they have long been protected

...by the first of His Apostles -- by calling, though second or third in rank -- the most gentle Saint Andrew, the Blessed Peter's brother, and desired him to keep them under his protection as their patron forever.

At one time, the Archbishop of York was trying to establish himself as the Metropolitan of the whole of the north of the island of Great Britain, rather as Edward I and his son were trying from 1286 onwards to establish political dominion. Thus it was vitally important to the Scottish church to establish that they could not legitimately be taken over by York. They made arguments to the Pope that St Andrew was their patron saint, while only St George, a class three saint, was the patron of England, and therefore it could not possibly be the case that the church in England had dominion over the church in Scotland. And that was actually a part of the diplomacy of Independence at that time.

It is not inappropriate to reflect upon that tale at the time when we are reflecting upon Europe's future, Scotland's future. There are arguments that we were putting in the Parliament today, the arguments that Jack McConnell has put forward, Jim Wallace has put forward, John Swinney has put forward, I put forward, many of us have put forward. We are saying something like this: 'We really must ensure that if this is going to be a viable durable union of its own kind over the long run, it must look to the real political entities that there are in Europe, in whatever constitutional forms they may be clothed'. This is truly a commonplace among us, whatever arguments we may have among ourselves about the best constitutional form for Scotland now and in the future.

If Europe isn't a Europe that is hospitable to all these entities, it will be a Europe that fails. I do not think it is going to fail.

Professor Sir Neil MacCormick MEP

Since 1999, Professor Sir Neil MacCormick has been a Member of the European Parliament (Scotland, Scottish National Party/European Free Alliance). A distinguished academic lawyer and graduate of Glasgow, Oxford and Edinburgh Universities, he has been Regius Professor of Public Law at Edinburgh University since 1972 (leave of absence, 1999-2004). He is an acknowledged legal expert on the European Union with many published works and has a working knowledge of several European languages. Professor MacCormick is currently a Member of European Parliament Committees on Legal Affairs and the Single Market (co-ordinator for the Greens/European Free Alliance Group); Constitutional Affairs Committee; Vice-President of the Temporary Committee (2000-01) on the Echelon Interception System, and was an alternate member on the Convention on the Future of Europe.

Professor Sir MacCormick joined the SNP in 1967 and has since then occupied various functions within the party; he was a Member of the National Executive Committee (1978-1981); and a Member of the National Council from 1978 to 1997 and its Vice-President from 1999 to 2002. He has been the party's Vice-President 1999 and is currently the SNP's Shadow Minister for Europe.

Professor Sir MacCormick holds honorary Doctorate of Laws from universities in several countries (Uppsala, Sweden; Saarland, Germany; Macerata, Italy; Queen's, Kingston, Ontario; Glasgow, Scotland), and is a regular TV and radio broadcaster. Among his many other honours he is a Fellow of the British Academy and the Royal Society of Edinburgh, a Member of the Academia Europaea, and an honorary QC. He is also a former member of the Finnish Academy. Moreover, he was an Executive Council Member of the European Science Foundation from 1997 to 2000, Vice-President of the International Association for Philosophy of Law and Social Philosophy (1991-1995), President of the Society of Public Teachers of Law (1983-1984), and a member of both the Broadcasting Council for Scotland (1984-1989) and the Economic and Social Research Council (1995-1999)

An Author of many books and articles, his main writing has been on legal reasoning, the institutional theory of law, and theories of law and justice, law and the state. His most recent work being *A Special Conception of Juvenile Justice: Kilbrandon's Legacy (2002)*.

On 6th June 2001, Professor MacCormick was knighted in the Queen's Birthday Honours List "for services to scholarship in law".

Baroness Helena Kennedy, QC**27 November 2003**

This year Baroness Helena Kennedy is to give the St. Andrew's Day lecture, which will be entitled 'Cultural Conundrums in the Brave New World'.

Baroness Helena Kennedy QC joined the British Council Board in June 1998 and was appointed Chair with effect from 1 August 1998. She was a member of the British Council Law Advisory Committee from 1995 until 1998.

Baroness Kennedy was called to the Bar in 1972. She became a Queen's Counsel in 1991 and received a life peerage in 1997. She practises predominantly in the criminal law, but also undertakes judicial review, public inquiries and sex discrimination work. She has acted in many of the leading British cases of the last decade including the Brighton Bombing Trial and the Guildford Four Appeal. She is a Bencher at Gray's Inn.

Baroness Kennedy is also Chair of the Human Genetics Commission. She has fifteen honorary doctorates in law and is Vice-President of the Haldane Society and a Patron of Liberty. She is an honorary fellow of the Institute for Advanced Legal Studies and a Council Member for the Howard League for Penal Reform, for whom she chaired the Commission of Inquiry into Violence in Penal Institutions for Young People.

She is Chair of the London International Festival of Theatre, President of the National Children's Bureau, and a Fellow of the Royal Society of Arts and of the City and Guilds London Institute. In 1999 she was elected as a Member of the Paris-based *Academie Universelle des Cultures*. She was a commissioner on the National Commission for Education, and, in 1997, she published a seminal report on further education, *Learning Works*.

A frequent broadcaster and journalist on law and women's rights, she created the BBC television series *Blind Justice* in 1987. She was the first female moderator of the BBC's *Hypotheticals* and continues to present them. Her award winning book on women in the British criminal justice system, *Eve was Framed*, was published in 1992.

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