

# Emergency ‘constitutional plumbing’ has reached its limits coping with devolution. It’s time for a new institutional architecture

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*The British way of bodged, incremental constitutional reform is patently inadequate for the demands of devolution to Scotland and elsewhere, **James Mitchell** argues. Whatever the outcome of a future referendum in Scotland, much better planned reforms and a new institutional architecture are needed in the UK or rUK – such as replacing the House of Lords with a House of Nations and Regions.*



The recent [House of Lords report on the UK Internal Market Bill](#) joins the list of reports arguing for reform of intergovernmental relations. Numerous reports have been issued over the last two decades calling for greater formalisation and frequency of meetings. Such constitutional tinkering has been the hallmark of our time. A small change here and there but with little consideration of unintended consequences or the overall structure.



We are reminded of problems faced by the Palace of Westminster estate which ‘[go unmended because the pipes are so entwined they cannot safely be dismantled](#)’ and there are ‘huge tangles of protruding wires and pipes, taped up here and there, leaking, hot to the touch’. Plumbers and electricians have responded to problems as they arise. There comes a point when a complete overhaul is needed. The UK constitution is no different from the Palace of Westminster. The limits of constitutional plumbing have been reached.

One of the most obvious examples of piecemeal constitutional ad hocery has been the failure to link Lords reform and devolution. Devolution was conceived as a means of providing a degree of autonomy but ignored the implications for constitution as a whole and, crucially, the need for reform at the centre. Lords reform focused, understandably but unimaginatively, on removing the hereditary element.

Yet, the demand for (further) devolution or independence is based on perceived failings at the centre. A sense of central government neglect led to the creation of the Scottish Office in 1885. But the Scottish Office could not be Scotland’s voice at the centre when appointed by a Prime Minister with little support north of the border. Over the twentieth century, demand shifted from demanding a stronger voice at the centre to demanding democratic control of Scottish affairs in Scotland. Scotland’s voice at the centre only had authority when Scotland’s preferred party coincided with that of the rest of state. Scotland was either inside or outside in the UK’s winner-takes-all system. Devolution has not altered this.

The early years of devolution suggested that a dual state partnership had been created in which devolved and central governments operated independently within their respective spheres. Generous levels of public expenditure lubricated relations between London and the devolved bodies plus Labour dominance across Britain helped. But recent developments highlight an imbalanced interdependence in which devolved administrations can be subverted by the centre.

It is no surprise that demands for *Scottish control of Scottish affairs* are most pronounced when the Conservatives are in power. Eighteen years of Tory rule created demands that secured devolution in 1997. A more emollient Tory Prime Minister with bountiful public funds might have achieved the 'respect agenda' promised by David Cameron but even then the perception would persist that central government policies are impositions.

Devolution is a partial, lopsided reform that failed to address the source of grievance. COVID and Brexit are providing impetus for wholesale change. Manchester's experience resonates strongly with of the devolved polities. English regionalism is awakening. A new architecture is required and now possible, not more plumbing. The precise form that new architecture might take will require considerable attention. Combining devolution and reform at the centre is the way forward. A second powerful chamber representing the UK's nations and regions components is needed.

Alternative routes to this end are conceivable. If Scotland votes for independence, it would need to embark on lengthy negotiations with rUK central government. Constitutional and political power may be ceded but this will leave grossly imbalanced economic power that would undermine an independent Scotland from the start. London-Edinburgh negotiations might lead to a confederal arrangement (which is where the SNP has been heading for many years even while sticking with the language of sovereignty and independence) in which the Lords is transformed into a Confederal Chamber. Interdependence is as inevitable after independence as it is with devolution. But Scotland would have few allies in the rest of the UK. This route would be long, tortuous, and far from certain.

Alternatively, a comprehensive package of reforms could be developed with a House of Nations and Regions at its heart, addressing a fundamental weakness of the current constitution. The composition of the House of Nations and Regions would need to provide a different territorial balance from the Commons and involve more than adding a few territorial representatives. It could address another imbalance in the constitution, the relationship between the executive and the legislature.

Such reforms could be achieved in stages, building towards a fully directly elected chamber but consisting initially of indirectly elected representatives drawn from existing (combinations of) elected authorities where necessary. A staged approach would meet the need for immediate action and avoid the accusation that this only kicks a problem into the long grass in the hope that demand for Scottish independence disappears. But time is short as patience in Scotland is running out.

Rebalancing the relationship between the centre and its component nations and regions and the relationship between the legislature and executive requires more than devolution. Formalising more meetings and increasing contact between devolved and central government in an imbalanced power relationship will make little difference. More frequent formal IGR meetings will simply create more opportunities for adversarial grandstanding. The centre has long been the cause of grievances and any response needs to bring it into the equation.

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### **About the Author**

**James Mitchell** is Professor of Public Policy, Edinburgh University and tweets at [@ProfJMitchell](https://twitter.com/ProfJMitchell). The issues here are discussed at more length in his pamphlet, *'The Scottish Question Revisited'* for the Jimmy Reid Foundation.

