Scottish Independence Convention (SIC)

Transition Paper No. 3

PARTING WAYS

How Scotland and the remaining UK could negotiate the separation of debts and assets[1]

Dr Craig Dalzell

Dividing States

It is imperative that Scotland is fully aware of its own rights and responsibilities and it must take the time now, well before a decision to become independent takes place, to plan and prepare. Otherwise, we may find ourselves repeating the mistakes of Brexit and being forced into a disadvantageous deal due to a lack of understanding of what we already have and what we need and want.

Scotland will obviously not be the first country to become independent (or rather, return to its previous state of independence). But the process will be relatively unprecedented in the sense that the independence of countries is often – in many cases – marked by unplanned and sudden shocks to their political systems, even to the point of outright war.[2] Unlike major societal shifts, such as decolonialisation, the fall of the Soviet Union or the dissolution of Yugoslavia, Scotland's transition to independence is likely to be one of a peaceful and democratic transition. Whilst previous independence examples will serve to inform (or warn against) the Scottish position with regards to the transition of power and of assets, Scotland itself will almost certainly create new precedents for other nascent states, for example Wales – at least within the framework of the United Kingdom's (UK's) (uncodified) Constitution[3] – and Catalonia. Nevertheless, we should still look at historical precedents to see how countries can divide[4] into two or more component states and how this may affect the baseline principles for negotiations between Scotland and the remainder of the UK ("rUK").

Separation

Perhaps the simplest form of state division is known as Separation where one part of the state – usually the largest and most politically dominant – continues to hold the legal and historical identity of the previous state. It may – but does not have to – maintain the previous state's name, flag or other trappings of identity. This state is accepted to be either the "continuing" state (where it continues to exist as it did before separation but with a reduced territory) or it may be the "successor" state which takes on a new name or identity but is considered to be functionally equivalent to the pre-secession state but with reduced territory.

Treaties, membership of international organisations, such as the United Nations (UN), European Union (EU) and International Monetary Fund (IMF), and obligations under international law would tend to be preserved by the "continuing" or "successor" state (although if membership of a treaty is dependent on something owned by the departing territory then this membership may be challenged). The new – often smaller or less politically powerful – state is considered to be a new legal entity and must usually apply in its own right for membership of international partnerships that it wishes to join or re-join.

In the case of Scottish independence, it is almost certain that this "successor" model would be followed, with Scotland being considered a "new state" and rUK – however it chooses to name or fashion itself – being considered the "continuing" or "successor" state to the former UK. There is substantial argument

that even if Wales, Northern Ireland or even substantial parts of England (such as Cornwall) decided to become independent or join another political union, England itself would remain recognisably coherent enough to be considered the successor to the former UK[5] – so long as the transitions were peaceful, democratic and the result of relatively stable transitions of power. And it may be in Scotland's best interest to recognise rUK's claim to succession.

Dissolution

Dissolution is when the former state is dissolved entirely and two or more new states are formed, each with their own distinct break in continuity and with new identities. It is relatively unlikely that Scottish independence would result in the dissolution of the UK – even though a cursory reading of the Treaty of Union (1706 – leading to the Acts of Union in 1707) shows it to only be a union between Scotland and England.

Appraising a Nation

The UK used to produce a National Register of Assets which catalogued and estimated the value of many of the UK's publicly owned assets. This programme began under the 1997 Labour government and was cancelled in 2010 on the grounds of bureaucratic complexity when David Cameron's Coalition government came to power. The 2007 edition of the Register is the most recent publicly available audit (the next scheduled date would have been 2013, less than a year from the first Scottish independence referendum and at a time when such a register would have been both deeply instructive and deeply controversial). The 2007 register is now over a decade out of date. It predates the 2007/08 recession, subsequent bank bailouts and nationalisations, Brexit and the 2020/21 Covid-19 pandemic and associated recession. Since its publication there has been four consecutive Conservative-led governments pushing an "Austerity" agenda based substantially on public asset sell-offs, retractions of public services and outright privatisation of government functions.

The Register itself is not a perfect guide to the value of assets due to how it was created. Individual government departments were left to estimate the value of their assets according to their own methodologies. This led to some inconsistencies where one department (for example, a civil service building) would assign a monetary value to certain moveable assets (such as art displayed within it) but another (say, a museum) would assign a low or even zero value to the comparable assets held within it. Part of this could be explained by the definition of "value" being based on the ability and willingness (or lack thereof) to sell assets to the private sector rather than on the basis of share of ownership of public works.

If the Scottish Government is serious about holding and winning a second independence referendum it should immediately commission a Register of Scottish Assets along with a full review of what a newly independent Scotland would find desirable but is currently lacking (such as a Central Bank[6] or foreign embassy infrastructure[7]).

An agreement should be signed by both the Scottish and UK governments that ensures that neither side will act during or after the independence campaign to compromise Scotland's infrastructure by transferring or selling off critical assets. They should also agree that splits should be based on the state of assets at a defined date so as to prevent one or both parties moving geographically dividable mobile assets (such as military equipment) out of Scotland before negotiations are concluded.

Dividing Assets

Once Scotland and the rUK determine how they will be parting politically (either by separation or by dissolution) then negotiations should commence around how various assets and debts may be divided. This process will likely set its own precedents to some degree but it can also be guided by recent historical events and procedures. Dividing assets will inherently be as much of a political issue as a diplomatic or legal one and different types of assets and debts will be split according to different criteria.

Fixed or Immovable Assets

Fixed or immovable assets are some of the most visible government assets and, generally speaking, some of the easiest to split. These assets include government buildings, military bases within the separating territory (assuming a separation rather than a dissolution), buildings belonging to nationally owned or public companies, mineral assets such as metals, land or oil as well as any technically movable assets that are fundamentally linked to and essential to the running of a fixed asset (vehicles and plants required to run a nationally-owned factory would fall into this category). Fixed assets are almost always divided on geographic principles unless a compelling and mutually agreed case can be made to the contrary.

The modern world has somewhat complicated and blurred the edges of what may be considered immovable. The Scottish and UK governments have increasingly relied on public-private partnerships to deliver essential government services. One of the consequences of this is that some government buildings are leased from private companies (such as the Queen Elizabeth House, the new UK Government hub in Scotland).[8] It is not a simple given that this building would revert to Scottish Government control on independence but instead may remain as a UK Government liability (potentially to be used as the rUK embassy to Scotland). Or it may be subject to a more complex transfer involving the owners and a transfer of the lease to the Scottish Government should such a transfer be desirable. Other fixed assets with the potential to be transferred from one government to another should be similarly assessed in this light.

Movable Assets

Moveable assets usually consist of those assets which can be moved from one territory to another and generally includes items like military equipment, foreign currency or gold reserves or similar. Sometimes an “efficiency” principle can be applied if a moveable asset is fundamentally linked to, and essential for, the running of a fixed asset.

Some moveable assets can be exempt from transfer if they are declared to be “national” or “territorial” assets. This could also apply if they hold particular cultural or historical meaning to one of the states or – in the case of a dissolving political union – it can be shown that they belonged to one of the states prior to the political union’s formation.

Moveable assets are also fairly visible and important but can end up having a much higher profile in the separation negotiations. It will inevitably involve “picking and choosing” which particular assets the various countries either want to have or do not want the other to have. The moveable military assets that an independent Scotland may want from the rUK may well depend on the military stance that Scotland wishes to adopt post-independence as well as on the age and condition of UK military assets at the point of independence. This exact scenario played out when Slovakia turned down its one-third “share” of Czechoslovakian MiG-23 jets in exchange for half of the fleet of the newer MiG-29s.[9]

Intangible Assets

Intangible assets are an increasingly important aspect of separation negotiations in this digital age. They can include citizens' data and the IT systems that are used to manipulate this data (assuming the new state wishes to copy existing systems rather than create bespoke new ones). This type of asset would usually be split, but on a more ad hoc basis than moveable assets. The assets may also include access to or copies of National Archives, licenses for commercial software and Intellectual Property Rights held by the state. Data laws, such as the General Data Protection Regulation 2018 (GDPR), becomes important in this area of negotiations (under GDPR, a citizen owns their data, not the state).[10] It is not inconceivable that Scotland declares the rUK's data laws (assuming the rUK becomes a country) to be incompatible with its own data protection regulations. In that scenario, Scotland may decide it would no longer be acceptable for the rUK to hold data on Scottish citizens.

When discussing data transfers (such as the personal data of citizens or historical archives relevant to the new states) there would also need to be a discussion around whether the data in question is copied – so that both states have access to that data – or whether the data is transferred from one state to the other without the former keeping a copy. If this includes military data or data with national security implications, there may also be the need for some kind of independent validation process to ensure that no unauthorised copies of data are hidden or kept clandestinely or that data is being destroyed to stop one or the other party from obtaining it.

Art and Cultural Objects

Art and cultural objects may appear to be a class of assets that take lower priority than the others. However, the cultural and historical value of these objects may transcend their monetary value many times over. One need only to ask any nation whose historical and cultural objects currently sit without their permission as exhibits in the British Museum or the National Museum of Scotland. Objects can range from archaeological and ethnographic artefacts (from other countries), public art, art held by public buildings as well as cultural and historical artefacts important to the history and cultural identity of one or more of the states being formed after the separation. Transfer and ownership of these objects will often be negotiated.

Calculating Scotland's "Share"

Once the types and value of assets have been established it will be important to negotiate a method for "sharing" any assets (including debts) that are agreed should be split on a proportional basis. The precise calculation of the "share" can be quite simple (a population or GDP share) or more complex (such as the "IMF Key"[11] used in the aftermath of the dissolution of Yugoslavia or the "Belanger-Campeau formula"[12] suggested during the Quebec independence campaign of the 1990s).

If one of new states has received "more" from the Union over the course of its membership than it "contributed" then there is a case that this imbalance should be "paid back". This is extremely contentious, highly politically charged and, more practically, extremely difficult to calculate. Adequate records of relative Scotland versus rUK financial data do not exist in a publicly available and contiguous form back to the Treaty of Union. Calculating whether or not Scotland has been a net beneficiary or net contributor over this entire period is not possible. If, instead, a baseline date is set from which adequate data does exist, some kind of historical calculation could be made. However, the selection of that baseline date would in itself be highly politically motivated. Potential dates that have been suggested include 1945 (the end of World War II and the beginning of something akin to the contemporary political era), 1975 (the year that the first North Sea oil pipeline to Scotland began operations), 1992 (the first publication of the annual GERS report) and 1999 (the start of Scottish devolution). Each of these dates

are ultimately arbitrary and will result in very different calculations of Scotland's "net benefit/contribution" to the Union.

The idea that Scotland could be a net contributor to the Union at the point of its departure – and therefore the agreed fiscal settlement could flow from the rUK to Scotland – is likely to be viewed with outright hostility by the rUK negotiators in a way that they would not treat a similarly sized settlement in the opposite direction. The political pressure on any rUK government which agreed to such a settlement is likely to be high and if it is paid that government's chances of remaining in office would be low.

Ultimately, if a proportional financial settlement is agreed then it is more likely that a simpler calculation would be used. If we consider Scotland being allocated a "share" of the UK's total net debt, then the "proportion" of the UK's £1.3 trillion net debt could be calculated at anywhere between £103 billion and £119 billion. The likelihood that Scotland would actually take on anything like this full amount of debt is very low.

Debts and Liabilities

Debts and Liabilities are the most political aspect of any independence negotiations and particularly for Scotland where the country's relative financial position with regard to the UK is hotly debated annually in reports such as GERS (Government Expenditure and Revenue Scotland).

"Territorial" debts can be linked to a particular fixed asset that may be located in one or another of the new post-separation states. If the UK has debts specifically for a fixed asset in Scotland (perhaps a "green energy bond" specifically issued for the construction of a renewable energy project) then the debt could be expected to be transferred to an independent Scotland under the territorial principle.

Scotland may agree to take on a "share" of liabilities that were either not readily identifiable or were covered by government spending that "benefits" the whole of the old state proportionately (such as debt covering regular government deficit spending). For such proportional debt allocations, even a small percentage difference in the ratio used to calculate the proportion (for rUK and Scotland) could translate into many millions of pounds worth of interest payments stretching over decades.

The nature of the separation will prove critical in how the debt transfer will take place. It is to the mutual benefit of Scotland and the rUK that independence is negotiated amicably to ensure a peaceful separation and one where the rUK is accepted as the continuing or successor state to the former UK. In a separation, the continuing/successor state almost always takes on full ownership of the old state's debt – a fact acknowledged by the UK during the 2014 independence campaign.[13]

The alternative would be to enter complex negotiations with individual bond holders to determine who would wish to have their debt transferred from one state to another (an action that may or may not come with the prospect of the debt being redenominated into a different currency). This option is usually only reserved for a Dissolution scenario where the old state ceases to exist and the alternative is to see the debt bonds default and the investor simply loses their investment. Such negotiations can be incredibly complicated and may take years or decades to fully resolve.

If negotiations result in both Scotland and the rUK taking on responsibility for at least part of the UK's debt – or if some kind of monetary settlement between the two states is negotiated – then it should not take the form of an actual transfer of bonds from one state to another. It should merely involve some kind of agreed monetary transfer and time period.

Scotland – especially if it creates its own currency – may offer citizens and companies resident in Scotland the opportunity to redenominate any UK bonds that they hold into equivalent bonds denominated in the new Scottish currency in an arrangement separate to the debt and asset

negotiations. Such a deal would result in rUK interest payments being made to the Scottish Government/Scottish Central Bank and would serve to effectively offset the size of any payments made in the opposite direction until those bonds matured.

Pension Liabilities

One important subset of the state liabilities argument will almost certainly be issues surrounding pensions – especially state pensions. Broadly speaking, there will be three areas of pensions that may be affected by a state separation – private pensions, public sector worker pensions and state pensions.

Private pensions – Essentially private contracts between the pension provider and the client. There may be significant considerations to take into account, such as whether or not to redenominate the contracts into a potential new currency (such a choice is likely to be offered on a “No Compulsion, No Prohibition” basis and the choice left to the individual clients) or whether the companies involved have to adjust based on legal and regulatory changes (such as Scotland maintaining close ties to EU financial regulations whilst the rUK diverges). These changes, though potentially significant, will take place in the private sector and thus are unlikely to play a role in debt and asset negotiations.

Public sector worker pensions – Many will be linked to devolved departments (such as Scottish NHS, Police Scotland and within the Scottish education sector) and their liabilities are already part of the Scottish Government budget. Those that are not (such as UK Government civil servants working in Scotland) will likely continue to receive their pension from their former department according to their accrued entitlement. This arrangement is not without precedent, even for the UK with former public sector workers within pre-independence Ireland and former British colonies receiving their pension entitlements without challenge. Questions over currency will remain. These pensions will likely be paid in the currency of the rUK and thus be subject to relative exchange rates, but this is already the case for retired UK public sector workers who live outside the UK.

State pensions – Under the current UK setup, a state pension entitlement is accrued to anyone who pays National Insurance up to a maximum of 35 years (exceptions and caveats apply in some cases). This state pension entitlement is payable regardless of the citizenship of the person paying the tax and it is not dependent on the person remaining in the UK upon retirement (although some factors, such as the pension being uprated by inflation annually, are subject to bilateral agreements between the UK and other countries and may or may not apply depending on where the person in question lives).

Assuming there are no changes to this system and assuming that the rUK takes on "continuing" state status then it logically follows that people who have paid UK National Insurance will be entitled to a state pension paid by the rUK Government upon their retirement regardless of their citizenship or where they live post-retirement. This would logically extend to qualifying people who live in an independent Scotland post-retirement, which is especially clear in the case of those people who have retired before independence.

Equally clear is the case of the generations of people who live entirely beyond independence. Assuming for simplicity that Scotland retains a similar form of state pension arrangement (based on years of payments into an equivalent National Insurance) then those who only start paying National Insurance in Scotland after independence will clearly look to the Scottish Government for the handling of their state pension.

The more complicated area will be those people who are living and working in Scotland at the point of independence. In many ways, their situation will remain analogous to the case of someone working for part of their life in the UK and part of their life in another country (in a sense, this is precisely what they will do but without changing their geographical location). They would stop paying UK National Insurance and start paying the Scottish equivalent and would therefore accrue a Scottish pension entitlement in

addition to their UK entitlement. For example, someone who has paid 20 years of UK National Insurance and a further 15 years of Scottish National Insurance would be entitled to 20/35ths of an rUK state pension at the legislated rate and a further 15/35ths of a Scottish state pension at its rate (again, assuming that both rUK and Scotland maintained a similar state pension scheme to the current UK one).

There is a political dimension to all of this. The rUK will, in all likelihood, approach the independence negotiations with a view to minimising its liabilities towards Scotland. Part of this may include attempting to minimise state pension payments to former UK residents. Additionally, there is an argument that the respective pension systems can be simplified by handing the Scottish Government the pension liabilities of people in Scotland who fall into that third category (working across the point of independence). Such an agreement would certainly simplify arrangements for the workers in question (particularly if it means collecting a single pension in a single currency) and would have democratic advantages for retirees in Scotland who may be more able to petition the Scottish Government on issues about their pension rights than they could the rUK Government (this concern already exists for UK emigrants who do not have the right to vote in UK elections). In this case it would be prudent to use population statistics to calculate how much the rUK would be foregoing in pension payments by transferring liabilities in this manner. As the National Insurance payments have already been made by the people in question and the UK has already enjoyed the opportunity to invest or spend that tax revenue (the UK state pension is "unfunded" and no "pot" of pension money exists for future payments) then it may be reasonable for the rUK to make a lump sum payment to Scotland as an "equivalent" for taking on these pension liabilities.

Social Security

Finally, there is a social security dimension to these negotiations. If negotiations are fraught or break down and result in social security payments being missed then this could result in significant financial hardship for thousands. Even if the rUK retains the liability to pay pension entitlements accrued to the UK, Scotland may choose to take on the responsibility for paying an inflation uplift (should the rUK refuse to do so) or to pay a top-up if the UK pension rate is significantly lower than the Scottish state pension (by policy or as a result of currency exchange rate divergences). Further complications may arise if Scotland chooses to adopt a radically different approach to state pensions, such as by introducing a Universal Basic Income (which may or may not be reduced to compensate for state pension entitlements – a discussion outside the scope of independence negotiations and therefore not covered here).

Scotland's Negotiating Stances

As both Scotland and the rUK are likely to approach independence negotiations with the aim of maximising asset gains and minimising debt share, it is important to understand both country's positions so that a coherent negotiating strategy can be constructed.

Scotland's Current "Share"

Even under the expanded devolution settlement of 2017, the Scottish Government has very limited ability to borrow money on its own account – only £600 million per year on the current 2021 budget and £450 million per year on the capital budget with total outstanding deficit and debt caps of £1.75 billion and £3 billion respectively.[14] These combined deficit and debt caps are equivalent to 0.7 percent and 3.0 percent of GDP. Scottish Local Authorities are similarly limited in the way they can borrow, with borrowing under several (though not all) spending categories requiring approval by Scottish Government ministers and restricted under the overall Scottish borrowing cap.

Whilst the UK Government does not readily publish an audit of debts split on a contribution or territorial basis, the Scottish annual accounts, GERS, allocates Scotland's “share” of the UK's debt and debt interest on a straight population basis (8.18 percent in 2019-20, with £4.53 billion allocated as Scotland's “share” of interest paid in 2019-20).[15]

On this population basis Scotland has been allocated a share of the UK's gross national debt (approximately £2 trillion) amounting to around £163 billion. This can be reduced to a net amount of around £1.3 billion once debt owned by the Bank of England is taken into account – effectively debt that the UK Government essentially owes to itself. However, without any detailed territorial audit of debt spent on a territorial basis then Scotland's actual contribution towards the total UK debt becomes difficult and highly contentious to estimate.

One study by the Scottish Government, published in 2013,[16] claimed that since 1980 Scotland had, in fact, proportionately overpaid into the UK national accounts an accumulated “comparative surplus” of £222 billion. If these figures are accepted then the difference between population and the contribution share of the UK's debt could be the difference between an independent Scotland paying money to rUK and the reverse transfer taking place. Therefore, the initial finances of a newly independent Scotland will be highly dependent on the separation agreement reached.

A Subtractive Share of Assets

A "Subtractive Share of Assets" strategy closely mirrors the strategy laid out in Scotland’s Future White Paper (2014), which states that Scotland would accept a population share of liabilities from the UK if it was also granted a population share of assets. The UK Government countered by claiming that Scotland should take the population share of debts but would not be entitled to any assets at all.

If this stance was adopted and maintained by both parties then it would be reasonable for Scotland to subtract the value of any assets that it was denied from the sum of accepted debt. This strategy could also be used when it comes to the negotiations around assets that Scotland has no need of (such as Scotland’s “population share” of the UK’s nuclear arsenal). In this case the “cash value” of such assets could be deducted from the debt – or transferred to a proportional share of assets that are more critical to Scotland (such as conventional military equipment or a share of the UK’s foreign currency reserves).

The significant downside of this strategy is that, lacking a full Register of Assets, Scotland is currently unaware of the assets that it has or would lack upon independence. It is very possible that the sum total of all negotiable assets is far less than the proportional share of debt in question. Even if the rUK denied Scotland possession of all of those assets, the sum of liabilities apportioned to Scotland would still be considerable even after subtracting the asset value from the debt.

Once Scotland and the rUK have determined how much debt Scotland would take on, a financing plan should be negotiated – including what currency the debts should be paid in. It is important for Scotland to avoid the transfer of actual bonds and other debt instruments as this would require negotiations with the debt holders. Instead, Scotland should “refinance” itself by creating and issuing its own bonds to the sum equivalent to the liability accepted.

As of early 2020 – just prior to the outbreak of the Covid-19 pandemic – the UK could reliably issue long-term bonds with an interest rate of less than 1 percent. If we assume that Scotland would be “charged” a premium on its bonds and could borrow at 1.5 percent (rates substantially higher than this might risk capital flight from rUK to Scotland seeking the higher rates in a country that, whilst new, was still substantially economically sound). If we further assume that the "subtractive" negotiations are a complete failure and Scotland takes on its full “share” of UK debt with no deductions for withheld assets, then Scotland could be expected to pay around £2.45 billion per year in debt interest payments on its

£163 billion debt. This represents a saving of just under £2.1 billion per year compared to the current GERS figures.

An Additive Share of Assets

Based on historical precedents an "Additive Share of Assets" is far more likely than the Subtractive case. The UK Government has stated that rUK should be considered the continuing state to the UK.[17] and that it would keep full ownership of all of the debts (in other words it would not transfer contracts to Scotland).[18] Scotland should accept and endorse these claims as well as recognise the rUK's claim to institutions such as the UK's permanent seat on the UN Security Council and membership of recent trade deals (such as post-Brexit settlements). But it would do so in exchange for recognition of its own nationhood, sponsorship in the United Nations and for an "Additive" approach to assets and liabilities.

In this strategy, Scotland would seek to negotiate the transfer of critical assets and would effectively "mortgage" their value against an equivalent sum of UK debt. It is very difficult to calculate the value of such assets without a full National Audit and Asset Register but previous work by Common Weal has tentatively identified around £20 billion worth of required assets.[19] Even if the eventual sum is increased to an entirely speculative illustration of £50 billion then this sum could be "refinanced" in a manner similar to the subtractive case. This would result in annual public debt interest payments for an independent Scotland of around £750 million per year (compared to the more than £4.5 billion it is currently assigned).

Annual Solidarity Payment

An "Annual Solidarity Payment" strategy was outlined by the 2018 Sustainable Growth Commission.[20] In this strategy, the deal to mutually recognise Scotland and the rUK's status is similar to the Additive case and the Commission accepts that the rUK shall maintain ownership of the entire sum of the UK's debt. However, this report proposes that a "proportional share" of assets shall be transferred to Scotland and, in return, Scotland shall pay an Annual Solidarity Payment to the UK amounting to £5.3 billion per year. Of this sum, £3 billion per year is earmarked as an annual public debt interest payment, £1 billion is payment for "sharing" the UK's public services, and £1.3 billion is the transfer of Scotland's entire foreign aid budget per year to the UK's foreign aid departments. This debt interest payment would continue for an "indefinite" time period and would only reduce as a relative percentage of Scotland's overall GDP as inflation eroded the buying power of the amount and as the Scottish economy grew with time. As no fixed amount of debt would be accepted by Scotland there would never be a time when it could be said to have been "paid off". Any attempt to end or modify the annual payments would only be possible by mutual agreement or by a potentially diplomatically damaging unilateral cancellation on the part of Scotland.

This strategy has no historical precedents and would very clearly result in significant ongoing costs to Scotland compared to other options. It would also leave both parties vulnerable to diplomatic strife if one or other state decided to use the payment as political/economic leverage at a future date.

Zero Option Separation

If negotiations stall, become acrimonious or the rUK is simply unwilling to transfer or even sell assets to Scotland then Scotland may wish to enact what is known as a Zero Option Separation. Scotland would cede all rights to transferable UK assets and liabilities to the rUK and would instead build or buy the assets it requires through other channels. In monetary terms, this scenario would be similar to the "Additive" case though with the potential advantage of Scotland having more control over being able to unilaterally change the management of the debt at a future date – particularly if it was denominated in Scottish currency.

One aspect of this scenario that would be particularly attractive to Scotland is the control and flexibility Scotland would gain over the types of assets it procured. It would be able to tailor them specifically to its needs rather than having to "make do" with whatever assets rUK had and was willing to give up.

"Historical Contribution" Calculation

It is possible that Scotland and the rUK could try to calculate the "historical contribution" that each state has made to the Union over its nearly 300-year history. The ability to do this, however, is critically impaired by the lack of reliable historical records – at least based on the data that is in the public domain.

If a "historical" claim is pursued then it is imperative that records are open for scrutiny by both sides and possibly overseen by an independent arbitrator such as the United Nations or IMF. If reports of Scotland's "net historical contribution" to the Union are indeed borne out, it is unlikely that this will result in the rUK paying a restitution fee to Scotland (as would almost certainly be demanded by the rUK if the situation was reversed on the grounds that Scotland is choosing to leave a continuing state).

Conclusion

The issue of debt and asset splits in the event of Scottish Independence is a sensitive and important topic but it is also one that has been successfully navigated by other countries. Previous attempts to lay out a negotiating strategy for Scotland (such as Scotland's Future White Paper 2014 and the Sustainable Growth Commission Report 2018) have not fully considered historical precedents and thus a new strategy for future independence negotiations should be considered.

However, the lack of a Scottish Register of Assets is a severe shortcoming. It is currently almost impossible to determine what an independent Scotland would need but currently lacks – which fixed government assets are actually owned by the public and are thus easily transferable compared to government-used buildings leased from private companies which may be subject to complex transfer negotiations.

Issues where the debt and asset separation may impact payments to residents in Scotland (particularly pensions and social security) must be handled with care to ensure continuity of service, even if liabilities are transferred (as even a single missed or delayed payment could result in severe financial hardship for many). Amidst the political rhetoric and gamesmanship inherent in high level negotiations it is important for all parties to reflect on how their words and actions affect the population in general. Behaviour such as threatening pensioners with destitution should they vote a certain way in an independence referendum is unbecoming of a civilised debate in a democratic state.

All of the plausible negotiating strategies presented here represent clear advantages for an independent Scotland over the current devolved constitution. Even the least advantageous (the Annual Solidarity Payment) presents a scenario where Scotland would save around £1.5 billion per year in debt interest payments compared to that currently assigned to Scotland in GERS.

The most generous scenarios for Scotland – the Additive and Zero-Option scenarios – are also the most considerate of the needs of the rUK. These would permit rUK to only transfer assets mutually agreed by both states (rather than an arbitrary amount based on a crude population share). Perhaps more critically, they would ensure that Scotland will accept and endorse the rUK's claim to state continuity and thus mitigate Scottish independence becoming more disruptive to the rUK's economy, national pride and geopolitical standing than is absolutely necessary.

References

1 This paper is based on an updated version of Dr Craig Dalzell's Claiming Scotland's Assets (Common Weal, September 2016) and focuses on one aspect of independence negotiations – the division of debts and assets between separating states.

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17 Foreign and Commonwealth Office. Submission (SCO 8) to the House of Commons Foreign Affairs Committee. The foreign policy implications of and for a separate Scotland (paragraph 9, page 36) states: "The overwhelming weight of international precedent suggests that, in the event of Scottish independence, the remainder of the UK would continue to exercise the existing UK's international rights and obligations, and that an independent Scotland would be a new state. The UK Government judges that this situation would be recognised by the wider international community." Available here: https://publications.parliament.uk/pa/cm201213/cmselect/cmfaff/writev/643/643.pdf

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