

## **Community Based Land Reform: Lessons from Scotland**

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**Abstract:** *In recent years, the Scottish Highlands have become the epicenter of a land reform significant for its strong embrace of culture and community. Close inspection of the Scottish land reform—wherein communities are granted the right to purchase lands to which they historically enjoyed only conditional access—leads to a series of questions about the relationship between land reform and community. We argue that most land reforms have paid insufficient attention to community strengthening as an end in itself and are the weaker for it. Drawing on insights from community-based natural resource management, we offer qualified evidence suggesting that, as in the current Scottish case, community-centric land reform has a promising future. We trace the pre-reform history of community buy-outs in Scotland and pose various issues that must be addressed if Scotland's community-centric land reform legislation is to succeed.*

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**Introduction:**

Interest in land reform appears to be rekindling. Land reform promises many things, most of which are technical, legal, and economic in nature. Doving's (1987:394) description of land reform offers textbook language: "Land reform is one of the classical instances of attempts to correct market failures by institutional reform enacted by or induced by the public powers. Land reform means systematic change in property distribution, farm size, and land tenure conditions." What is missing here is the community component of land reform. Relatively self-sufficient, secure, and sustainable communities, so essential to enduring social infrastructure, are typically taken for granted or not an explicit goal of land reform. This may be explained by the ideological aversion of many western land reformers to the various "communal" formulations socialist land reforms (Sobhan, 1993), by the influence of Hardin's "tragedy of the commons" wherein "community" lands were the inexorable victims of utility maximizing, free-riding individuals (Brox, 1990), or by the replacement of community-based economies in Europe and elsewhere by individual entrepreneurs and freehold proprietors (Polanyi, 1944). In this paper, we explore certain overlooked connections between community and land reform in an attempt to diversify land reform blueprints for the future.

The neglect of community in land reform planning is of much interest, given the widespread rush to incorporate "community" in natural resource decision making by government and non-government managers who, in *de facto* ways, qualify as land reformers. This drive to decentralize and localize control of resources of every description stems in part from reactions to globalization (Griffin, 1996; Dorner, 1999), from generic normative views that "local is better" (Pimbert and Pretty, 1997; Western and Western, 1998; Brown and Mitchell, 2000), and from a range of interests who see political advantage in identifying with "local" (Barrett et al. 2003; Wittman and Geisler, 2004). Yet this florescence of interest in local has not pervaded the core thinking of land reformers. Here the tendency is to narrowly view land reform as a set of agricultural land tenure problems. And, with some notable exceptions (e.g., Li, 1996; Agrawal and Gibson, 1999), authors attentive to community in natural resource management relegate land reform to the family of entrenched, state-driven policies.<sup>1</sup>

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<sup>1</sup> Land reform is occasionally conflated with government resettlement programs which governments are prone to call "reform" but are typically poorly planned, lacking in essential infrastructure, and indifferent to the rehabilitation of community (Michael Redfield, 1993?)

Our interest in the present paper is in community-based land reform, a melding of land reform and community-based natural resource management. This interest is constrained by the difficulty to which we just alluded: for much land reform, community strengthening is at best a rhetorical objective. Among contemporary land reformers, community becomes an externality, a victim of other more pressing objectives. It remains to be seen whether new interest in land reform will rehabilitate community as a land use priority. Our interest arises from an unlikely quarter—the peripheral zones of Scotland where in recent years momentum has gathered for a land reform that recently became a reality in The Land Reform (Scotland) Act 2003 (Reid, 2003). Central to this statute is a “community right to buy” provision which puts communities in the foreground of Scotland’s land reform. If, as we suggest, the precedents for a tight coupling between land reform and community are problematic, what might we expect in the Scottish case where communities are empowered to purchase the land and resources to which they have had historically had neither ownership nor full control?

Before examining the Scottish case, we offer a fuller argument for why community matters to successful land reform and vice versa. In the course of this clarification, we expand upon reasons for why the neglect has repeatedly occurred. In the second section we ground the case for close coupling in actual community-based land reform experiences, past and present. Here we will dwell on the importance of “seeing” the counterfactual. That is, with little difficulty land reform can be viewed as a community tool for managing land and resources and not confined to state interventions for attaining greater outputs, placating rural unrest, resettling citizens in the path of public works, and the like. We then turn our attention to Scotland’s recent land reform. We suggest that its explicit approval of community appropriations of land with state assistance has far-reaching implications for standard land reform thinking. The community’s right to buy is fundamentally a right “to be” as a secure, place-based arena of common identity and interests, protected by title.

### **Theorizing Community-Centric Land Reform**

Interest in community ebbs and flows in the social sciences. Despite certain limitations, recent writing on social capital leaves us with one seemingly irrefutable conclusion: places lacking in solidarity, trust, and association are likely to have lower levels of well-being and general welfare than those endowed with these qualities (Pretty, 1999). The same qualities can be

frustratingly subjective, illusive, or normative, but they can neither be dismissed nor taken for granted. Readers of the recent literature on community know, however, that the task of finding community—let alone ‘bringing it back in’ to land reform—is fraught with definitional and operational problems. Many have noted that communities are dynamic and internally diverse (Bell and Newby, 1974; Bryden and Hart 2004) and that place-based community has been widely eclipsed by other non-community forms of organization (for a summary, see Barton, 2002; Barrow and Murphree, 2001). Thus, scholars devoted to expressions of social capital face a perennial challenges attempting to root it in a physical community. The World Bank’s support for social capital notwithstanding, Bank researchers use “devolution” not to foretell of community recovery but to salute the shift to private ownership (e.g., Deininger, 2002:169-71).

Conservationists, aware to a greater or lesser degree of these warnings, have nonetheless countered populist challenges to conservation with a different sensibility about devolution. Beginning in the 1980s, they turned to local communities for solutions. According to Hulme and Murphree (2001:2), this approach became so popular in the 1990s that at times it appeared to be a new orthodoxy, seeking to displace the conventional wisdom of state-enforced environmental protection. The new paradigm came to be known as “community conservation”, integrated conservation and development projects, or community-based natural resource management (IIED, 1994; Wilshusen et al, 2003). Its motivations were multiple. Some embraced community conservation for humanitarian and environmental justice reasons (Zerner, 2000; Brechin et al., 2003). Others, reviewing the common property record (Ostrom, 1990 and Bromley, 1991)<sup>2</sup> and accounts of sustainable resource management among indigenous and settler communities, advocated co-management or full transfer of management to local communities (Western and Western, 1994; Borrini-Feyerabend, 1996; Echenter, 2002; Buck et al., 2002; Steelman, 2003). Perhaps the newest argument for educating and empowering communities to take responsibility for local conservation comes from the realization that vast amounts of biodiversity and ecological services lie outside rather than within protected areas, that is, in someone’s community (O’Riordan and Stoll -Kleemann, 2002; McNeeley and Scherr, 2003). These communities are place-based as well as functional or interest-based; to write them off is to invite conservation disaster.

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<sup>2</sup> Common property is not necessarily property held by a community (see Barrow and Murphree, 2001).

The community conservation paradigm has not gone uncontested. There are implacable adherents of the state-based model who remain skeptical about the capacities of “parochial” local citizens (Terborgh, 1999), and there are social scientists who assert that devolution to local communities is based on unproven assumptions about local people (Wells, 1994-95, Eghenter and Sellato, 1999) and about community development (Brandon, Redford, and Sanderson, 1998). Hard questions have come to the fore regarding issues of “community for whom?” and which local community (Belsky 2003). For purposes of the present paper, however, the most trenchant concern lies elsewhere. It has to do with the hollowness of community participation if devoid of property rights, a key form of empowerment. Barrow and Murphrees (2001:31) raise these concerns in the African case, stating:

“Tenure,... [is] a key variable in determining the performance of community conservation initiatives... As inhabitants of what is technically state land, the residents of most communal lands in Africa do not have strong property rights. Their tenure is uncertain and their decisions on the use of resources subject to a plethora of conditionalities. As in colonial times, communal lands continue to be in various degrees the fiefdoms of state bureaucracies, political elites and their private sector partners. The persistence of this condition in the modern post-colonial state is an indication that the devolution of strong property rights to the peoples of communal land is a fundamental allocative and political issue and that power structures at the political and economic center are unlikely to surrender their present position easily.”

There are, then, various lessons to be learned from the community-centric logic circulating among conservation practitioners. First, communities are a cornerstone of social existence and time-honored arenas of cultural reproduction and collective action. To mobilize reform affecting place and bypass community is to forget about primary social structure and identity. Second, the logic used by community conservationists applies as much to land as a productive resource as it does to land as a consumptive resource. If land and resources targeted for conservation are fit for community devolution and people-centered management, the same shoe fits land reformers charged with a broad array of social objectives. Third, devolution of responsibility and stewardship without entitlement is a contradiction. It is symbolic devolution at best, and likely to be dysfunctional when the political cache of land redistribution recedes. And, as we propose below, the devolution of entitlement without responsibility to community is similarly

ill-conceived. As Whiteman (1996:205) states with reference to land reform in Scotland, it needs to go beyond property rights to tackle other social, economic and institutional issues—laws on taxation and inheritance, services, community development, and the like. Is there empirical evidence that this can happen?

### **“Seeing” Community-Based Land Reform**

We have, to this point made the case that land reform has a partial blind spot when it comes to community. We have suggested assorted reasons why this has occurred and is not easy to overcome. Hirtz’s (1998) work on Philippine land reform goes so far as to suggest that land reform not only neglects community but at times is hostile to it. Our digression into community-based conservation suggested that community concerns, as opposed to those of individual reform beneficiaries, need not be eclipsed forever. Policy architects who until recently saw local communities as their adversaries have for various reasons reconsidered and redefined locals as “natural allies.” That initial effort at theorizing a positive community role is a first step in “seeing” community -based land reform. For those who acknowledge little or no connection between community-based management of natural resources and community-based land (reform) management, we direct our attention to brief capsules of actual land reform experiences, both past present.<sup>3</sup>

Historically, property questions were deeply embedded in questions of community and the social relations therein. The annals of pre-feudal and feudal society attest to this. Max Weber (1953) saw the spread of quasi freehold society arise on the frontiers of the late Roman Empire, a policy intended to enlist loyalty among subdued tribal communities. Ferdinand Toennies’ (1963) widely read treatise on Gemeinschaft and Gesellschaft (community and society), took pains to identify *gemeinschaft* with feudal property arrangements; his treatment of the gradual shift to *gesellschaft* contributed to the view by some that common property is antiquated and that communities of place would atrophy. Yet the mutually constituted nature of property and community has outlived feudalism, as we shall see, and forces us to ask how land reform might take community more fully into account.

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<sup>3</sup> A useful exposition on “seeing” property where we don’t expect or recognize it is offered by Rose (1994). Our intent here is to extend Rose’s insight to “seeing” the community component of property, particularly property subject to land reform.

In pursuit of this question, let us call upon a series of land reform examples from assorted times and places, some *de facto* and some *de jure*. Colonial settlements were often experimental sites for proprietary models infused with community rights and obligations. In colonial Massachusetts, Rhode Island, and Connecticut, quasi corporations (“town proprietors”) were established and given land allotments by the Crown (Woodward, 1936; Sakolski, 1953; Clark, 1983). Share-holders served as town fathers and elders. They drew lots, divided the Crown allotment lands among themselves, and enjoyed franchise rights not accorded to those without land. So land title and political entitlement went hand in hand, but decentralized to the level of towns. Any freeholders wishing to sell land was compelled to offer it first to the town—an early form of “community right-to-buy”—so that it could be sold to families with whom the town proprietors shared basic (usually religious) values. Though antithetical in some ways to current “land reform,” these settler experiments were significant departures from the unreformed feudal tenures still practiced in seventeenth century Europe.

A more recognizable “land reform” with continental dimensions came to North America in the form of the Homestead Act of 1862. This legislation culminated a vision set forth by Jefferson early in the nineteenth century upon his return to the United States from his ambassadorship in France (1784-87). Jefferson was enthralled with readings he had done on the earlier Roman colonization of its European frontiers (Kennedy, 2003). He presented Congress with a survey system that would produce the township structure of his agrarian republic—a matrix incorporated in the Northwest Ordinance and later the Homestead Act of 1862 (Dovring, 1987). Land allocations east of the 100<sup>th</sup>. Meridian allocations would be equal size (160 acres per household); to the west, accommodations were eventually made offsetting climate constraints. Within each township one or more sections were set aside as school lands (Souder and Fairfax, 2000). Though the Homestead Act suffered setbacks and perversions (Gates, 1946; Kennedy, 2003), it expressed Jefferson’s vision of an agrarian republic of small proprietors with voting powers enhanced by a purposefully decentralized system of public rural education.

Land reform with bold community content was not unknown to English land reformers (Bronstein, 1999). At the same time free soilers and homestead act proponents were agitating in the United States, Chartists and other land reformers were calling for parish-based land reform in rural England. Between 1710 and 1850, 7 million acres of commonly land were legally enclosed by landlords and perhaps an equal acreage was illegally

appropriated (Spowers, 2002). More enclosures were to follow in 1845 with the General Enclosure Act, threatening the lifeblood of whatever rural communities remained (Tate, 1967). A popular refrain captured public indignation (The Ecologist, 1992:XX):

They hang the man and flog the woman  
That steal the goose from off the common,  
But let the greater villain loose,  
That steals the common from the goose.

Building on the land reform writings of Paine, Godwin and Spense,<sup>4</sup> the Chartists proposed an agricultural utopia for commoners-turned-laborers caught in urban squalor and unemployment. Spense's early notion of parish-based communities was resurrected throughout England. In the master plan, parishes would be subdivided into 4 acre farms, with parishes themselves as the 'landlord.' A "commonwealth" of parishes was foreseen, similar to Jefferson's new republic but for the quasi-public ownership of the parish. At its height, the Chartist plan had 70,000 subscribers, organized 600 branches in England, and was known as the Chartist Co-operative Land Society (later, the National Land Company). The Chartists advocated subdividing all lands, including parks and public lands, for the ultimate benefits of small cultivators communities.

Chartist and other land reform manifestos echoed across England for many years, aided by the second (1872 Domesday Book revelation of persistent land concentration in England (Bateman 1883-73).<sup>5</sup> Distinguished intellectuals wrote passionately in favor of land nationalization and reform, including Alfred Wallace, Herbert Spencer, Joseph Chamberlain, J.S. Mill (senior and junior), H.M. Hyndmann, and Alfred Marshall, and Ebenezer Howard. In 1892, during economic crisis, the Liberal government empowered county councils to buy large farms and divide them into smaller units of 1-50 acres for lease to individuals or cooperatives. Soon afterwards, Ebenezer Howard (who had homesteaded under the Homestead Act in

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<sup>4</sup> Britain has had a wide spectrum of land reformers old and new (e.g., the Land Tenure Reform Association and the bioregionalists). Some, like Wm Ogilvie (see his RIGHTS OF PROPERTY, 1781), were critical of existing land tenure and advocated 40 acres for all citizens (use rather than ownership rights), with fixed rents and services. Others have advocated a market-driven "private" reform (Bright, Fawcett, Arnold, Thornton, Kinnear, Brodrick and Kay--see Wallace:184) and others outright nationalization or state ownership of the fee [Astor and Rountree, 1938].

<sup>5</sup> The Survey, which included landownership in Scotland, was conducted in 1872-73, and revealed that half of Scotland was owned by a mere 118 people (Whiteman, 1996).

Nebraska in 1871) unveiled his garden cities concept to relieve urban overcrowding. The core concept was marriage between town and countryside, to which some 2 million people responded (Hall, Hardy, and Ward, 2003). In 1913 England passed land reform legislation (Roundree, 1913), and by 1914 some 15,000 smallholdings were situated on 200,000 acres often owned by local authorities. After the First World War and during the Great Depression, additional smallholdings were created for ex-servicemen and unemployed factory workers.<sup>6</sup> In the 1940s the Garden Cities Movement gained new momentum and set the stage for both the Town and Country Planning Act of 1947 and the Community Land Act of 1975. The latter, along with the Development Land Tax Act of 1976, was a self-conscious effort to empower communities to capture socially created land value (Huntsman, 1976/77).

Other land reforms have made innovating connections between tenure and community. As in Japan and Taiwan, land reform was an urgent priority in post-World War II Italy. Feudal land tenure traditions there originated with Norman colonization a millennium before. Due to success of the fee communes in Lombardy and elsewhere (Medici, 1952), Italy's feudal estates prevailed in the South and bore the brunt of the ten-year (1950-1960) reform following the war. (Lopreato, 1967). In that decade, some 673,000 hectares were expropriated and another 94,000 hectares purchased, leading to the creation of 44,000 new farms and the distribution of 70,000 parcels to supplement existing smallholdings. Perhaps most interesting, some 900 new cooperatives were created, as were 180 rural service centers to serve as surrogate communities ( McEntire, 1970).

More recently, Brazil's Movimento dos Trabalhadores Rurais Sem-Terra (MST) has distinguished itself as a major land reform movement dedicated to broad based ownership encased in new rural communities. MST has attracted landless people from all regions of the country, urban and rural, often with little prior contact or familiarity, and sought to settle them together in sustainable fashion (Wright and Wolford, 2003). MST boasts between 1 and 2 million members (making it the largest social movement in

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<sup>6</sup> In 1934 the Land Settlements Association was established with Government sponsorship so that, by 1947, nearly 30,000 smallholders were cultivating over 450,000 acres of agricultural land owned by local authorities and other government bodies. In that same year, new laws encouraged cooperatives (the recommendation of the Scott Committee on Land Utilization in the Rural Areas (1942), but industrial boom drew farmers to cities and the 30,000 fell to 22,000 (Girardet, 1976:108-9). Nevertheless, there has been a strong demand for home-production allotments in recent years; Pretty (1998) and Bryden (2002) estimate that there are some 300,000 such units in the UK – more than the number of 'significant' farms.

Latin America) in a country where 3 percent of the population owns two-thirds of the arable land and communities are routinely displaced by public works, land grabs, and failed public-sector land reforms. Wolford (2003) makes much of the community challenge to MST; when the dangers associated with land invasion have subsided, the exigencies of living together on an internal frontier with high potential for anarchy are paramount. Where MST has failed it is not for lack of resources, courage, or numbers of militant followers, but because of the post-invasion challenges of civil society and functional communities. Community education and capacity building thus become the issues that will make or break MST--issues in which its original leaders—schooled in political tactics, land rights, and Brazil's new constitution—must learn to excel (Wittman, 2005).

This short overview of selected community-centric land reforms is of course incomplete. To it might be added land reforms from China, Tanzania, Ethiopia and the Balkan states where community is often equated with collectivization (e.g., Lapping, 1993). Mexico's 80-year experiment with *ejidos* and Israel's evolving *moshavim* instantiate community and land reform in cultural attentive ways. And there are myriad cases in which the community nexus is conscious but indirect. Widespread tenancy reforms in West Bengal in the 1970s and 1980s led to a dramatic increase in agricultural output that increased local incomes, land values, and tax potential for community infrastructure and services (World Bank, 2002/01). Less conventional definitions of land reform might extend to Ian McHarg's proposals for communities to cluster housing developments and create new commons and set-asides for nature (Arendt, 1994), community land trust experiments (Williamson, Imbroscio, and Alperovitz, 2002), and modern proprietary towns (Nelson, 2004). Walter Goldschmidt's (1978) famous research on landownership concentration and absenteeism in California was, at base, a detailed account of the consequences of different landownership patterns on community life in the mid-twentieth century.

### **Scotland's Community-Centric Land Reform**

Scotland's land ownership concentration had been the focus of research for several generations (e.g., Bateman, 1883; Millman, 1970; Bryden and Houston, 1976; McEwen, 1977; and Whiteman, 1996), along with testimonials on the need for land reform. Just over 1200 landowners hold two-thirds of Scotland's land, a level of concentration unrivaled anywhere else in Europe (Bryden, 1996; Whiteman, 1999). The consequences of such

concentration and the feudal “burdens” to which tenure has been subject in Scotland are far-ranging; absentee landlords can counteract proposals for community and regional development through active opposition or mere indifference (MacGregor, 1988; Bird, 1982; Mather, 1988-89). A sea change was triggered in 1997, however, by the election of the New Labour Party and its commitment to community planning in all sectors (Ritchie and Haggith, 2004).

In 1997 the new government fulfilled another campaign pledge and established a Land Reform Policy Group (LRPG) under the chairmanship of the then Scottish Office Minister of State, Lord Sewel. Sewel was responsible for steering legislation for Scottish Devolution from England through the House of Lords. The LRPG developed a set of proposals with extensive public consultation and published its final report early in 1999, the same year Scotland elected its own Parliament (for the first time in nearly 300 years). The prospects for land reform advanced swiftly in 2000 when Scottish Feudal Laws originating in the 11th. Century were officially repealed. In February of 2001, the new Scottish Executive in Edinburgh issued the Consultation Paper on Land Reform that led to a Draft Land Reform Bill. Two years later, the new Parliament passed land reform legislation with important community components. For the first time in centuries, it was possible for Scottish communities to attain tenure and livelihood options experienced by the rest of Europe.

At the heart of the 2003 land reform statute was a provision granting communities a first option to purchase the feudal estates of which they were a part—and the basis for viewing the land reform as community-centric. Community interests historically restricted to tenancy were now empowered to become full co-owners of the land. In fact, this empowerment was the final phase in an ownership shift dating back more than a century and having three recognizable periods. The first came on the heels of the official ownership survey of 1872-73 referred to above and the infamous clearances in northwest Scotland of the same period. The clearances were largely the result of expanding sheep farming and deer parks by landed elites and accomplished through rack rents and crofter evictions (Bryden and Houghton, 1976; Geisler, 2003).<sup>7</sup> The Crofters Holdings (Scotland) Act of

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<sup>7</sup> Crofting tenancies were (and are) organized into “townships” throughout much of the Highlands and Islands region. Most crofters held a legal interest in a commons (“common grazing”) managed by elected committees of crofters. Today, some 17,000 crofting tenancies occupy 800,000 ha or 20 percent of the Highlands and Islands (Ritchie

1886 curtailed landlord prerogatives to a degree. Crofters were guaranteed fair rents, the right to assign their crofts, and other measures of tenure security. In 1892 a Royal Commission targeted over 300,000 ha of private hunting land for redistribution to new crofts and another 225,000 ha for enlarging existing crofts (Mather, 1988). Though not implemented, the Commission's work and later legislation (e.g., an 1897 act, which established new croft townships) made strong connections between land insecurity and economic destitution in the northern half of Scotland.

Notwithstanding these commissions and legislative acts, little changed in the structure of landownership in Scotland's Crofting Counties or beyond until well into the twentieth century (Whiteman, 1996). This second period of community impoverishment was fueled by an awareness that land tenure was an issue everywhere in Scotland, not just in the northwest, and by the land resettlement predicament posed by World War I. The discourse on public sector intervention and acquisition broadened. To encourage enlistment in the army, the British Government promised homesteads to soldiers upon their return from the war. The appeal was immense, given Scotland's land concentration and the vivid memory of the Victorian-era clearances. Giving it teeth, the Land Settlement (Scotland) Act of 1919 contained powers of compulsory purchase of private estates (Mather, 1988). When returning soldiers found such commitments to be largely rhetorical, however, the inevitable happened. Protests and land invasions spread, peaking in 1922. These were dramatized in the media because, unlike the crofters' "war" of the past, these "raids" were by war veterans trained in the use of arms. Against this backdrop, Lord Leverhulme gave his sizeable estate on the Isle of Lewis to the local community, and the historical Stornoway Trust was born in 1923 (Boyd, 1999).

Between World War One and Two roughly 2000 new holdings were created in the Highlands and Islands, resettlement spreading to lower Scotland to relieve the traumas of the interwar depression and rural blight after World War Two (Mather, 1988).<sup>8</sup> Another significant development after the war was a series of planning acts that further legitimated the nationalization of development rights and public ownership. Private ownership in Scotland in fact decreased as lands were purchased by the Forestry Commission, the Agricultural Department, the National Coal Board, and the Ministry of

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and Haggith, 2004). For commentary on the complexity of "commons" in Scotland, see Callander, 1987).

<sup>8</sup> Mather (1988) states that this was part of a larger resettlement impulse across Europe intended, at least in part, to head off Bolshevism.

Defense (Whiteman, 1996). So the second period was marked by expanding public ownership across Scotland, increasing set-asides of conservation lands by nonprofit groups (Cramb, 1996), and a growing sentiment that small, privately owned farms were a problematic goal (and in any case had little support in the House of Lords in London).<sup>9</sup> Scotland's feudal land law continued to protect the sanctity of large holdings, and would not expire without Devolution.

The third phase in Scotland's community centric land reform dates from roughly 1970. Two years previously, the Crofters Commission proposed state acquisition and transfer of croft land to crofting communities. In 1969 the White Paper on Land Tenure in Scotland appeared and called for the abolition of feudal land law. Five years later, the Land Tenure Reform (Scotland) Act passed, prohibiting new feu duties to feudal superiors and allowing the redemption of others (Whiteman, 1996). In 1977 John McEwan reminded the public that ownership concentration was a chronic blight on Scotland, an indictment echoed by many. By the 1990s few Scots dismissed these criticisms as irrelevant. In February of 1990, the government offered its own crofting estates to local communities, and the Arkleton Trust report on the Future of the DAFS Estates in Skye and Raasay appeared. It stated that the best option was transfer of the land and related assets to local crofting trusts set up as nonprofit companies ("limited by guarantee") with democratic constitutions (Bryden, Fraser, Houston and Robertson, 1990).<sup>10</sup>

The Assynt Crofters Trust, a large scale community buy-out, was accomplished in 1993 (MacKenzie, 1998; 1999), followed by the Borge and Melness Crofting Trusts (Chenevix-Trench & Philip, 2003). Country-wide momentum was now implacable. The Highlands and Islands Forum (HIF) sponsored an important conference in 1994 under the banner "The People and the Land" which in turn spawned country-wide workshops on community-based forestry and culminated in full community ownership of forest lands in Treslaig purchased from the Forestry Commission (Ritchie and Haggith, 2004). In 1995 Secretary of State Michael Forsyth proposed that the Scottish Office transfer ownership of 250,000 acres of crofting land to community trusts. In 1996, three other communities (Cairhead, Culag,

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<sup>9</sup> In 1964 the Highlands and Islands Development Act was passed. In 1970, according to Mather (1988), the Highlands and Islands Development Board rejected the idea of creating new small holdings as noviable.

<sup>10</sup> The Solicitor of the Team, Simon Fraser, subsequently became the principle legal advisor to many community land purchases from assynt to Gigha and North Harris, thereby having a major effect on land reform thinking in this period.

and Abriachan) bought or leased forest lands from the government to expand their economic base. Recapping this period, Ritchie and Haggith (2204:10) state:

“Throughout this process, grassroots gatherings such as HIF and Community Woodlands conferences helped the community movement to develop a shared vision, spreading ideas and building confidence. Grassroots networks such as the Scottish Crofters Union, Reforesting Scotland, the Scottish Community Woodland Association..and the former Rural Forum helped by sharing information and lobbying.”

### **The Scottish Land Fund**

The land reform challenge of the late 1990's in Scotland came down to abating feudal land law and funding the community buy-outs. As noted above, 1997 led to the establishment of the Land Reform Policy Group in Scotland. As the the LRPG's work ensued, local communities continued their acquisition efforts. Eigg (an estate coterminous with the Island of Eigg) was purchased by its residents with assistance from a nongovernmental organization (The Scottish Wildlife Trust) and a private donor. On the day of the purchase, Highlands and Islands Enterprise was asked by the Scottish Office to set up a Community Land Unit to assist communities in the purchase and management of land, a sign of active promotion and financial assistance for acquisition (Chenevix-Trench & Philip, 2003). The Land Reform Policy Group issued its report in 1999, recommending a fund to support community land purchases and the community right to buy.

The following year, the Scottish Land Fund (SLF) was established and capitalized by UK Lottery money through the New Opportunities Fund 'green spaces and sustainable communities' programme. This created an initial fund of £10m, later increased to £15m, to assist rural communities acquire and develop land and buildings on a voluntary basis. Up to June 2003, the SLF had assisted 103 communities and committed some £8.5 million for a wide range of eligible projects, including community purchase of two large estates – the island of Gigha and the North Harris estate, both in the Scottish Highlands and Islands. In fact, two thirds of SLF grants have been in the Highlands and Islands, reflecting the fact that people of this region led the land reform campaign.

SLF funded community purchases have been vital tools for community empowerment and enterprise in fragile rural areas of Scotland – for example, since acquisition about 13 new enterprises have started on Gigha, the number of families and children on the island have increased significantly. A small local housing enterprise has started, and housing improvements in the existing housing stock are under way. In Eigg, the installation of new water driven turbines serving small communities there has been part of a sustainable energy drive in the hands of the community. Elsewhere, wind turbines are being evaluated for their economic potential. SLF funding is currently only available to communities of 3000 or less (this may be brought in line with the somewhat larger population threshold under Land Reform legislation); all funded projects must demonstrate economic, social and environmental benefits. In addition, communities have to have, and typically do establish, a democratic and locally controlled body (commonly a company limited by guarantee) to acquire the land, as well as majority support for the acquisition from community residents. There have already been a significant number of new enquiries for assistance to purchase whole estates and common grazings. A general evaluation of the land fund investments has been commissioned and the results are expected soon.

## **Discussion**

To this point our narrative has established several points relevant to land reform's future. Land reform is returning to the center stage of rural policy but in a context quite different from that of the Cold War. This context is community-centric, inspired in part by community-based natural resource management as well as land use planning more generally wherein rule-making and enforcement are often sub-state. Scotland is of particular interest because land reform is of abiding interest, because land reform has been enabled by a unique kind of devolution, and finally because there is explicit articulation of plans to facilitate community-based acquisition of the land.

We make no claim that the Scottish case is anything but unique. In addition to the above factors, it is one of the few strongholds of feudal land tenure. Though feudalism was formally abolished in 2000, it has remained relatively stable for hundreds of years and its imprint is likely to fade slowly due to its cultural embeddedness. Perhaps equally unique, Scotland's land reform is not a recipe for wholesale privatization. Indeed feudal tenure might be thought of as a singularly privileged private ownership system with a strong

admixture of rental agreements and hierarchical encumbrances which change slowly if at all. In an era when land reform is equated with decollectivization and de-communalizing, the vision in Scotland is about community purchase, ownership, and use.

Such an emphasis cannot avoid searching questions about the definition and meaning of community. There are obvious operational issues which must be resolved—whether the right to buy permits targeted purchases (as opposed to whole estates), whether non-community buyers can participate in the land market (or will exert their influence indirectly and surreptitiously), whether community deeds will have resale restrictions or conservation covenants that run with the title indefinitely, and whether the community must meet certain democrat standards of governance (e.g., Whiteman, 1999b). If and when these questions are answered, there will remain other issues which community-centric land reform in Scotland and elsewhere can not take for granted. These include:

- *Geographic versus functional community:* This distinction is familiar to most social scientists researching community topics, including community-based natural resource management (Belsky, 2001). Scotland's land reform law seems adheres to the former (place-based) tradition. It requires that a majority of the community—those eligible for SLF assistance—consist of those who live and/or work the land to be purchased [still true?]. This refers to estate tenants and employes. Important as these interests are, there are diverse community interests such as villagers, seasonal residents, family members who live and work elsewhere, and conservation land trusts and their constitutents. These and other members of the functional communities of rural Scotland may have legitimate claims and aspirations to estate lands, in partnership or apart from those of place-based community members. This said, a difficult extension of this logic is that estate owners themselves, whether families or corporate interests within Scotland or beyond, may assert functional interest in their estate lands.
- *Social capital:* Perhaps the foremost community topic in the past 15 years of scholarly research has to do with social capital, without which community-centric land reform may languish (World Bank, 2002). Of note is the widely debated conclusion of Robert Putnam (2000) that social capital is in serious decline, raising questions as

to the timing and logic of land reform predicated on strong community engagement. If, as just noted, “community” is narrowly defined and *bona fide* community members are few, dwindling, or sharply set apart from interested members of the functional community, social capital will indeed be problematic (e.g., see Duncan’s 1992 work on insider/outsider factionalism).

- *Community context:* Communities exist in socially and legally complex contexts and have multiple agendas beyond land reform. So to situate communities at the heart of land reform raises a long list of issues under the heading of state-community relationships, power sharing and sovereignty issues. For that matter, as Giddens (1990) and others have proposed, the “space” within which community “place” survives is more global than state-based, a point quickly confirmed in Scotland by the presence of significant off-shore estate owners. Even if community buy-outs proceed aggressively according to the new land reform law, local owners in the future will contend with a slow-changing, patchy ownership structure in the surrounding countryside. As in the pre-reform era, due to exemptions, loopholes, and enforcement problems, the true identity of neighboring estates may remain unknown and prove disruptive in organizing coalitions of communities.

This list is open-ended. For community-centric land reform to succeed the community insights of practitioners and scholars will need frequent airing, a process that appears to be unfolding in various government and non-government for a. Suffice it to say that adequate funding for community buy-outs, is a necessary but not sufficient condition for the success of Scotland’s new land reform.

### **Conclusion:**

Some will assert that Scotland’s land reform and its willing-seller underpinnings are radically conservative. They will view “buys out” as tame response to an antiquated and unjust landownership system with funds which might better serve other public ends. The powers of the state to condemn properties that are inefficiently used, absently owned, and badly distributed are hardly contemplated. Moreover, the community right to buy is compromised by exemptions for offshore owners, heirship transfers, beneficial ownerships, and other legal complexities. Others will counter that

Scotland's new Parliament was astute in finding a nonconfiscatory tool for transferring title, one that requires willing sellers and buyers and a commitment to fair compensation. It is a model with appeal in other societies and at the World Bank.<sup>11</sup> Scotland is the home of great land reformers but also the cradle of classical, market-based economics.

This paper draws particular attention to an attribute of Scotland's land reform which has both conservative and progressive qualities—the forestaging of community. It would seem that Scotland's land reform is simultaneously top down (state authorized and assisted) and bottom-up (privileging communities). ‘Community’ is both place-based, as in the resulting right-to-purchase section of the law, and functional. That is, if the current law is seen as the result of the multi-stage historical process spoken to above, vast numbers of communities and community advocates across the country have moved the legislation in its conceptualization and completion. There is every reason to believe that this process will continue and that Scotland's land reform law will be amended and improved as community rights and responsibilities are better understood in practice.

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<sup>11</sup> Proterman (1988) maintains that when the Shah of Iran came to power he owned some 2000 villages in that country; villages and individuals were allowed to buy back their land titles, a source of considerable revenue for the Shah. Of late, Indian villages in Highland Guatemala have raised funds among international NGOs to buy out the holders of their village titles, including wealthy foreigners (author's personal observations). Bangladesh's largest NGO is currently using its resources to acquire land for low income and landless families, with the potential for communities to acquire it as well. The World Bank is currently promoting a Land Fund intended to help individual and organizations buy land essential to their livelihood (see World Bank, XXXX).

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