

SCOTTISH LAND REFORM:

TIME TO GET LAIRDS A-LEAPING?

CHARLES WARREN

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In this article *Charles Warren* reviews the rapid and significant changes that have taken place during the 1990s in both the shape and content of the public policy environment on land reform in Scotland. He compares these recent shifts with other earlier periods in which land reform has also been a topical and highly charged subject of political debate often resulting in no tangible legislative changes. However with the establishment of the Scottish Parliament all this looks set to change as land reforming legislation begins to top the agenda of the new legislators.

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Introduction

There can be few hotter political potatoes than land reform, the issue which has been at the heart of numerous bloody revolutions around the world. Because Scotland escaped the social upheavals which swept feudalism from the rest of the European map two centuries ago, vestiges of the 12th Century medieval feudal system still exist on the eve of the 21st

Century. But not for long, it seems. Land reform in rural Scotland is something for which political and environmental activists have been campaigning for years. Wholesale nationalisation of land is not on the agenda as it was during the 1970s when John McEwan called for the “stranglehold of powerful, selfish, anti-social landlords [to be] completely smashed”¹, but the fires of reform have been unflaggingly stoked by campaigners such as Alistair McIntosh², Jim Hunter³, Andy Wightman⁴ and Robin Callander⁵. Jim Hunter has promised that “when the sporting estate is dead and buried, I’ll lead the dancing on its grave”⁶, while Alistair McIntosh believes that “buying back land into community ownership is a bit like securing the stolen family silver”⁷. Land reform has become an ever more prominent and talismanic part of the Scottish political agenda during the 1990s, to the extent that a Land Reform Bill will probably be considered very early in the life of the Scottish Parliament.

Why the passion?

Wherever power and rights collide, sparks fly. Roger Scruton argues that the conflict over common land and its enclosure has been “the running sore of British politics for a thousand years”⁸, and certainly in Scotland the public/private debate has been particularly fraught. The first *Access to Mountains (Scotland) Bill* elicited this response in *The Times* of 25th March, 1884:

“Surely the many have rights as well as the few. ... On the other hand, numbers cannot claim utterly to destroy the rights of property, that is, the right to some exclusive use of it. The problem cannot be insoluble.”

In uncannily similar terms, the Land Reform Policy Group recently commented that “*all too often ... the interests of the majority have been damaged by the interests of the few*”⁹.

Though neither a unique nor a new concern, the land issue has become an especially emotive debate in Scotland for two particular reasons. The first is that land reform taps into a deep undercurrent of historical grievances stretching back over centuries¹⁰, incorporating the vicious aftermath of Culloden, the Highland Clearances, and the so-called ‘*Balmoralisation*’ of the Highlands². While many people hold little against today’s landowners as individuals, landowners as a type are widely reviled, both because of what they represent today and because of what they conjure up historically. The land issue thus has enormous cultural importance in Scotland, despite the dominantly urban nature of today’s society, and the term ‘landowner’ (as one word) is highly charged in a way that ‘land owner’ is not in most other

countries. In fact, Robin Callander suggests that the day when 'landowner' becomes 'land owner' will be the day that land reform has succeeded⁵.

The second reason is the fact that land ownership in Scotland is probably the most concentrated in the world⁵ and the least regulated in Europe¹¹. The staggering statistics include the facts that 30 percent of Scotland's private land is held by 103 owners, each with 9000 ha or more, and that just 18 owners hold 10 percent of Scotland⁴. The ancient link between land and power means that power is thus concentrated in the hands of remarkably few. The decisions of those few largely determines both the way that much of Scotland's land is managed and its accessibility, affecting not only the locals but all who visit the countryside. Large landowners have even been described as the effective rural planners¹², although they do not, of course, have unfettered freedom; laws, grants, designations and planning controls have progressively restricted their room for manoeuvre so that the days when lairds were '*lord of all they survey*' are long gone.

Under the Conservative Government, the passionate calls for land reform seemed like cries in the wilderness, but with Labour in power in Westminster and devolution to Holyrood, distant dreams have become tangible possibilities with breathtaking speed. The Labour-Liberal Democrat coalition is now promising land reform legislation. In the early 1990s, the focus was on a few high profile *causes célèbres*, such as Assynt and Eigg, but since Labour's victory the debate has broadened to address the issue of how best to achieve a balance between public and private interests that promotes sustainable development throughout rural Scotland.

The key issues

'*Land reform*' is often spoken of as one topic, but it incorporates numerous complex and interrelated issues. Failure to distinguish between them, combined with the extent to which the land reform debate has been shot through with "*the politics of envy and outrage*"⁴, has frequently muddled the waters. The key aspects are as follows:

- **Feudal tenure.** Although most parts of the feudal edifice have long since been dismantled, feudal tenure remains the legal basis on which some 80 percent of all Scottish property, both rural and urban, is owned¹³. Few believe that this situation should persist.

- **Concentration of land ownership.** The extraordinary concentration of ownership, notably in the Highlands, is hard for anyone to justify. It has often been painted as a self-evidently unjust and unhealthy state of affairs, and has been linked with poor environmental stewardship and issues of social justice - abuse of power, and disregard of the aspirations of local people.
- **Absenteeism.** While most farmers, whether owner-occupiers or tenants, live on their farms, many estate owners (and some crofters) spend only a minority of their time in residence. Absenteeism has been put in the spotlight by some highly publicised cases in which the actions or the inactivity of absentee landlords have been perceived as damaging to the land, to their tenants or to the local communities.
- **Overseas ownership.** This has increased about fourfold since 1970 and now totals almost 6 percent of Scotland⁴. Some of the most high-profile cases of irresponsible or poor management have involved foreign owners (some commentators include English owners in this category), leading to calls for restrictions on non-native ownership of land.
- **Land management and access.** Land ownership and land management are closely related but not one and the same. Debate centres round the balance between private rights and public benefits, and how to ensure that owners practise high standards of environmental stewardship. Who should have a say in how land is managed? And who should have the freedom to enjoy it? The access controversy has many fraught issues of its own¹⁴, and has been another facet which has put land ownership under the microscope.
- **Agricultural tenancies and crofting.** The role and future of crofting in Scotland, and the correct balance between the rights of landlords and tenants, are both substantial topics in their own right and are beyond the scope of this article. The issues are fully discussed elsewhere^{9, 15-18}.

There are those who argue that none of these issues are in themselves problematic. Many examples exist of foreign and absentee owners who manage their land well, and, conversely, of mismanagement by local, resident owners. Even the enormous size of some estates is not seen as, in itself, necessarily detrimental. The largest private landowner of them all, the Duke of Buccleuch, whose Scottish estates cover some 124,000 ha⁴, is generally regarded

as an exemplary and imaginative land manager. But taken together, these issues were increasingly seen as deserving urgent attention.

Current land reform proposals

New Labour stood at the 1997 General Election with a manifesto commitment to land reform in Scotland, and lost no time in establishing the *Land Reform Policy Group* (LRPG) in October 1997. This group, chaired by Lord Sewel, Minister for Agriculture, the Environment and Fisheries, consisted primarily of senior Scottish Office staff. In quick succession, the LRPG published two consultation papers in 1998 identifying the problems and proposing possible solutions^{9, 17}, the second of which elicited almost 850 responses. In January 1999 it then issued its recommendations for action by the Scottish Parliament¹⁸.

These are landmark documents. They move the debate on from the longstanding media warfare of caricature and polemic into a detailed consideration of the real issues. The LRPG believes that land reform is needed on grounds of fairness, and to secure the public good - fairness because opportunities for local enterprise can be stifled under present arrangements, and the public good because of the damage to the natural heritage that can result from poor land management. Consequently, in the words of Lord Sewell, its aim was to work out how best to “*utilise the land resource so as to enhance the life chances of people living and working in rural areas*”, and how to achieve this in practicable and cost-effective ways¹⁸.

The LRPG makes a range of detailed proposals addressing the issues identified above, but the two key recommendations concerning the way that land is owned and used are: *increased diversity* and *increased community involvement*. The latter aims to give local people an input into decisions which affect their lives, and to make private landowners more accountable. Both of these would give further impetus to well established and accelerating trends. In addition to the traditional categories of public and private ownership, conservation bodies (such as the National Trust for Scotland (NTS), the RSPB and the John Muir Trust) and private trusts own some 18 percent of Scotland's land between them⁴. Since the Assynt crofters led the way in 1992, increasing numbers of communities have been raising the funds to buy their land. Recent examples include the 7,080 ha Knoydart Estate and the 314 ha Bhaltois peninsula in Lewis, bought in 1999 by community trusts for £750,000 and £110,000 respectively.

The LRPG advocates a rolling programme of wide-ranging legislation, starting with the abolition of feudal tenure and the above recommendations, but also incorporating related issues such as reform of crofting and agricultural tenure, action on access and national parks, and reform of nature conservation, especially Site of Special Scientific Interest (SSSI). (This last has recently been the subject of a separate consultation^{19, 20}). As and when properties come on the market, local communities would have the right to buy the land, and when so-called '*major properties*' come up for sale, time would be allowed to assess the public interest and to allow communities to raise purchase funds if they wanted to bid. Compulsory purchase powers would back this up as a last resort.

However, the LRPG also recognises that some tightening up of the existing machinery could rapidly and substantially improve matters, without the need for legislation. For example, both public and private landowners could be required to be more accessible and accountable locally, and a [Code of Good Practice](#) for rural landownership could be developed. This should adopt an integrated - or '*joined-up*' - approach to rural land use, and adherence to such a code could be a condition for receipt of public money. Public landowners should develop land management plans in consultation with the local community. Given that funds for rural development are already spread thinly, a Scottish Land Fund (resourced from the National Lottery) is recommended in order to enable communities to become more involved in land management and ownership. Also recommended is a new database on rural landholdings.

Finally, a range of other topics are raised by the LRPG for further examination. Many of these are suggestions that were floated in the consultation but which failed to gain widespread support and/or were vigorously opposed in certain quarters, together with some complex issues which are broadly welcomed but which will take considerable thought. At the top of this last category is the tricky challenge of streamlining the ways in which public funding is given to support land management, and making the system more user-friendly. Other topics for further study include various taxation issues (of sporting land, agriculture and forestry, and the concept of land value taxation), the need for stronger controls on deer numbers, and the streamlining of compulsory purchase powers.

Reactions to the proposals

As would be expected from the inherently charged nature of the topic, responses to the LRPG's proposals range over a very broad spectrum, from those who feel that the

recommendations do not go far enough, to those who see the proposals for a community right to buy and the concept of compulsory purchase as steps towards a Stalinist state. Headlines such as *“crackdown on the lairds”* and *“land reform revolution”* have done nothing to calm such fears. Many respondents felt that their particular interest had not been properly addressed. For example, conservation bodies such as the Worldwide Fund for Nature and the National Trust for Scotland wanted to see more emphasis on the natural heritage and on the quality of natural resource management, not just on the social and equity issues. Certainly the LRPG seems to give a higher priority to sustaining and enlarging rural communities than to environmental protection *per se*.

Media reaction has also been mixed. *The Times* believes that the *“rashly inflammatory”* proposals show that *“the winning of party political advantage in this emotive issue has become as covetous and expedient as the Clearances ever were”*²¹, itself a somewhat inflammatory view. However, the *Scotsman* commented that the government had *“clearly and sensibly accepted that the vast majority of landowners are responsible stewards of the countryside”*²² and felt that there was much to be welcomed in the proposals, despite the lack of cutting edge.

The Scottish Landowners Federation (SLF) has of course been actively involved in all stages of the consultation. While some individual owners are adamantly opposed to change, the SLF has positively welcomed many of the LRPG’s suggestions, and has been proactive in several areas. For example, in January 1999 it published a draft [Code of Practice for Responsible Land Management](#), and it is the only group to have grasped the nettle of trying to define what ‘community’ could mean in the context of land reform. In common with many respondents, it is also keen to ensure that land reform does not result in the baby being thrown out with the bathwater, particularly in connection with reform of the feudal system which is acknowledged to have had some beneficial results in protecting parts of rural Scotland from inappropriate developments²³.

Overall, though, despite the criticisms, the LRPG believes that its vision has been broadly endorsed, and that a clear consensus now exists as to what land reform should achieve¹⁸. In particular, all agree that the Byzantine, antiquated complexities of the feudal system, with its unhelpful terms ‘superior’ and ‘vassal’, has no place in 21st Century Scotland. Though symbolically important, this specific issue is largely legal and technical, and is already well advanced. The Scottish Law Commission unveiled a draft bill in February 1999 which would abolish remaining feu duties and the notion of superiors.

Some key debates

The place of private ownership

There is no doubt that the current system has delivered a variable quality of environmental management, ranging from the enlightened to the oft-rehearsed examples of environmental abuse. How to retain the valuable elements of the present while closing up the loopholes that allow abuse of power is the challenge facing Holyrood's legislators. Very few now advocate sweeping away the current system and starting *de novo*, even if that were possible. Donald Dewar believes that, despite the excesses of the minority, landowners are part of the solution, not part of the problem²⁴.

What, then, are the particular strengths of private landownership at its best? Perhaps two stand out:

- **Long-term stewardship.** Land management is a long-term business for which continuity of purpose is vital, especially when it comes to lengthy projects like re-establishing the native pinewoods. Family ownership demonstrably has the potential to deliver that long-term security, many estates having been owned by the same family for several centuries. Roger Scruton argues that this is the greatest argument in favour of private landownership - the fact that it entails "*personal responsibility and a duty of care that reaches across the generations*"⁸. It is the antidote to the so-called '*tragedy of the commons*'. Stewardship - an earlier generation's word for sustainability - sums up the sense of responsibility that has long been regarded as part and parcel of owning land in Scotland⁵, a responsibility which encompasses both people and nature, present and future.
- **Inward investment.** Many private landowners provide a significant, voluntary source of inward investment to rural Scotland. Each year Letterewe Estate costs Paul van Vlissingen around £120,000, and the Duke of Buccleuch spends £200,000 a year on public access alone. Until Mar Lodge was bought by the NTS in 1995, John Kluge was losing £250,000 per annum in running it. Such sums end up in the local area. Absenteeism, though regrettable, reflects the marginal economics of landholdings in many parts of Scotland, and the pay packets of many rural workers are secured through their employers' business interests' elsewhere²⁵. Placing limits on absenteeism and foreign ownership would limit opportunities for investment in land, thereby restricting the '*life*

chances of rural people and running counter to the avowed aim of the LRPG. On this basis, Michael Wigan accuses the reformers of being more concerned with historical symbolism than real livelihoods²⁵. It seems, then, that there is a strong argument for a partnership approach, in which the Government, its agencies and the private sector all have a role to play in providing the financial input necessary to sustain rural Scotland. In fact, once the option of compulsory nationalisation of land with minimal compensation to existing owners is discarded, diversity of land ownership is the only financially realistic route to take.

It is primarily for these reasons that commentators such as Robin Callander conclude that it is in the public interest to have a vibrant system of private landownership, but that it should be one element in a diverse pattern of ownership and management, not the dominant partner as at present⁵.

The environmental impact

Integral to much writing on land reform is the view that the environment suffers under the current system and would flourish if the planned reforms were enacted^{3, 26}. Certainly there are celebrated cases of private landowners managing the land in negative ways, either through neglect, through insensitivity, or through damaging projects, and any reforms must deal with these excesses. But equally, there are many owners - arguably the low-profile majority - who strive to manage their land in an enlightened fashion. Affluent, absentee owners are much criticised, often justifiably, but they do at least have the financial freedom to manage philanthropically in a low-impact, loss-making fashion, subsidising their estates from earnings elsewhere. A danger of tying land management too closely to those living and working there is that the land has to be made to yield a living, raising the spectre of over-grazing and exploitation.

The environmental impacts of land reform are likely to be mixed. Reforming the legal framework will probably have less impact on the future wellbeing of the environment than the proposed '*codes of good practice*' and future changes in agricultural, forestry and conservation policies. These, of course, are not the exclusive preserve of the Scottish Parliament but will be partly driven by European and global forces over which Scottish and UK politicians have little control.

Community ownership

Relative to the inherently long timescales of land management, community ownership in its current form is a very recent and untried form of tenure. Before we rush to multiply it across Scotland, it would seem sensible to give it time to prove itself, and an opportunity to iron out the wrinkles. Perhaps surprisingly, even the leader of the Assynt crofters questions the sustainability of community ownership as a long-term policy. He recommends measures that would change the feudal relationship between lairds and crofters, obliging owners to take locals' interests into account so that they no longer feel the need to buy out their landowners²⁷. As Andy Wightman says, in many cases "*communities would far rather have a good landlord ... than take over the whole thing themselves*"²². Ownership brings opportunities, but also considerable responsibilities, risks and challenges, not to mention financial liability. At present, much of the local antipathy towards sporting estates in particular springs from their exclusive image, and it can be argued that reforms which transformed the sporting estate package of "*tweeds, drams and ponies*" from an elitist to an inclusive rural culture would go a long way to ending this antagonism²⁸.

In its response to the LRPG consultation, the NTS commented that community ownership has yet to prove that it will generally result in improved standards of stewardship. The harsh reality is that much of Scotland consists of land with only modest potential for productive diversification, yet high risk of environmental damage. The opposite extreme of today's situation - namely, the sub-division of the big estates into small holdings - would not necessarily deliver either a prosperous society or a flourishing environment. While increasing diversity of ownership and land use is certainly desirable, it is vital that the management units that are created are viable, and that they are no more (and ideally less) dependent on public support than today's structures²³. It will be to no one's benefit if the government is sucked into subsidising loss-making properties in perpetuity.

Seeing past the stereotypes

Just as the varied issues of land reform have tended to be lumped together and debated in an undiscerning fashion, so the various key players in the game tend to be stereotyped and treated in an undifferentiated way. Thus the landowners are cast as the evil, rich, absentee English grinding the faces of the dispossessed Highlanders into the ecologically devastated hillsides, while the locals are seen as the environmental saviours waiting in the wings. Yet tremendous variety is concealed in the terms '*landowner*' and '*local community*'. '*Landowners*' are discussed as if they were one breed with similar values, views and practices, whereas a more polyglot group would be hard to imagine; landowners' responses to the LRPG's consultation contrasted strongly. Similarly diverse are '*local communities*',

which often contain almost as many opinions as individuals, and are rarely organised into a single unit. Some are actively interested in land management, have the necessary skills, and are keen to be involved, whereas others are not. Some have passionately held views on land issues, others care little. Finally, of course, some resident landowners see themselves as part of the local community, not separate from it.

So it is not only unhelpful but inaccurate to employ the well-worn '*sinners v. saints*' stereotyping in the debate. Sinners and saints exist in all parts of society. The traditional media sport of laird-bashing makes entertaining copy but contributes little that is constructive. The shift away from class warfare and towards an examination of the real issues by the LRPG is thus a positive development. Despite the historical rhetoric, it is widely recognised that two injustices do not make a right - that visiting "*the sins of the fathers*" on this generation is self-evidently unjust³. "*New legislation should look forward to the needs of the 21st Century rather than backwards to punish the sins of the 18th and 19th centuries*"²⁴.

Criteria for success

The overarching aims of the LRPG, quoted above, are couched in unexceptionable terms. Sustainable development has joined democracy and free speech as a concept above public criticism. But how will the success or otherwise of the planned reforms be measured? By what criteria will they be judged - economic, environmental, social, or some mix of all three? The LRPG avoids the issue by appealing to all three under the umbrella of sustainable development, yet many practical decisions will continue to involve hard choices between mutually exclusive good options. To take an obvious example, the repopulation of rural areas following the break-up of large estates might be regarded as good, both in terms of today's communities and historical social justice, but might involve unacceptable costs both financially and environmentally. Unless the aims of reform are made more explicit, it will be impossible to judge whether reform is '*delivering the goods*' or not, and thus in what direction they should evolve.

Defining the indefinable?

A final, related issue which stands out is definition. Many have queried how the key terms '*community*', '*sustainability*' and '*rural*' are to be defined in practice, and point out that several of the central recommendations lack clear definition. For example, the proposed statutory delay to land sales to allow assessment of the public interest would only apply to "*major properties*" within "*areas where it would have most effect*" such as places consisting "*predominantly of remote fragile communities in need of special help and protection*". How

are these generalities going to be turned into specifics? Within areas deemed to qualify, the delay would apply to all land “*above a chosen threshold*”¹⁸, but the threshold is not defined. Is size really the most important criterion anyway? The LRPG states that “*maximising desirable land use*” is at the centre of its agenda and tries to define what that might be in terms of sustainable rural development, better quality of life and environmental enhancement⁹. No one would quibble with such laudable aims, yet all of them can be interpreted in very different ways. Pinning down all these important terms and concepts will be a critical yet challenging task.

With respect to ‘*local communities*’, even a moment’s thought reveals how difficult it would be to arrive at an acceptable, applicable definition. A common sense definition would, perhaps, include adults who live either on or very close to the property in question, and whose lives and/or livelihoods are directly affected by the activities on that land. But, in turn, almost all those terms demand definition and could be controversial. How close is ‘*close*’? Given the long term nature of land use decisions, should not children have a say in their own future? What does it mean to be ‘*directly affected*’? What about those who have moved elsewhere - even overseas - but who nevertheless ‘*belong*’ to a place? A universal, workable definition might prove almost impossible, and yet working on a case-by-case basis would surely be a recipe for resentment. Thinking in terms of stakeholders rather than communities might make things more tractable, but would introduce new problems.

Conclusions

It is often argued that who owns the land, or how much land is owned by an individual, doesn’t matter because it is how the land is managed that counts. Andy Wightman⁴ branded this a ‘*myth*’, but the LRPG leans towards this view, believing that ownership in itself is less important than creating the conditions in which land is managed to a high standard and in ways that benefit locals⁹. Equally, of course, management styles and objectives depend crucially on who owns the land. The two are inseparably linked, and the political consensus now is that both sides of the equation need attention - that there needs to be greater diversity of ownership, and tighter controls on management.

Power is still the issue. Yet power - like money or the gift of speech - is ambivalent. It can be used for good or ill. Enlightened land management requires power and effective decision-making if anything is to be achieved. Community participation in management commands widespread support and is in line with the trend towards participatory democracy²⁹, but it is

challenging to operate and cannot solve everything³⁰. Decision-making is hard enough for an individual; the more voices involved, the harder it becomes and the longer it takes to achieve consensus or (more likely) compromise. In that sense, there is something to be said for the '*enlightened despot*' model, as long as safeguards are in place to restrain the '*dyed-in-the-tweed*' minority. The Duke of Buccleuch (himself, perhaps, an enlightened despot?) argues that larger landholdings are more likely to be able to deliver the LRPG's visions than numerous smaller holdings²². Is there any guarantee that community ownership will deliver those environmental goods that the public wants any more effectively than the current system would if it was brought under effectively policed '*codes of good practice*'?

Given the paucity of evidence available and the complexity of the task, there is a strong case for an evolutionary approach to land reform⁵, rather than a '*big bang*' Act of symbolism. Recognising this, the LRPG advocates an on-going reform process, and surely this is what is needed: progressive evolution towards a more demonstrably equitable system which retains the strengths of the present while curbing the worst excesses of the past. The worry is the danger that short-term political gain will produce long-term environmental and social damage. The temptation of immediate political dividends could prove too much for newly-elected MSPs so that too much reforming legislation is pushed through too soon. While it must be hoped that this fear proves groundless, there is no doubt that dealing with the land issue alone is going to keep the Scottish Parliament busy for some time to come. The genie of land reform is now well and truly out of the bottle.

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