

Land Reform: Pragmatism and Diversity

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Background to the current Land Reform Proposals

Scotland's land conjures powerful imagery. You've seen it on biscuit tins and jigsaw puzzles, advertising weekend breaks and fine smoked salmon. Heathery braes, peaks in the mist and shimmering lochs are pressed into service for the most improbable causes. But behind the romance, people live and work on Scotland's land. And people – different people, usually – own it.

Land provokes strong emotions, and debates on land in Scotland now focus on reform. For historical and economic reasons – which together mean a majority of Scottish land is in very few hands – reform has long been a more significant issue in Scotland than elsewhere in Britain or Europe. A sense of injustice still smoulders, and some wounds from the Clearances in the nineteenth century have yet to heal. The Gaelic diaspora of that same century – much of it voluntary, but some of it forced – brings an annual reminder of historic wrongs, as descendants of emigrants return to their roots. There are more kilts to be seen at North Carolina's Grandfather Mountain Highland Games than in Fort William, Pitlochry, Wick or Inverness.

It is more significant too because land-based employment is higher in Scotland than the rest of the country. Average UK farm employment is less than three percent, but in the Highlands it is more than twice that level, and in the Borders higher still. Add other jobs in forestry and field sports, and land-based industries are revealed as major employers.

One other characteristic distinguishes the politics of Scottish land, and adds to the sense of an outdated order: Scots land law is substantially unchanged from its thousand-year-old origins. It remains a feudal system. While it's important to avoid

eliding the legal meaning of the term with connotations of an archaic social hierarchy, in some parts of Scotland arguably the latter also still holds.

Under feudalism, all land titles are derived from the Crown – or in the quaint technical vernacular, the Paramount Superior. However exalted our position, the rest of us are vassals – though naturally some vassals are superior to others. The practical implication is that when land is sold, the vendor can impose conditions on future use – and then demand payment for the conditions to be relaxed. Through historical sales most Scottish land is encumbered, creating a system accurately described as *‘lucrative legalised blackmail’*.

Millennial Change?

Though land reform is a Millennial issue and now centre stage, through the earlier 1990s there were already strands in the wind. The crofters of Assynt bought out their land lord, and put the croft land under community trust control. Calum MacDonald, now Scottish Office Minister, steered a Private Member’s Bill through the Commons to allow trees on rented croft land to be owned by the crofters. Michael Forsyth, as the then Scottish Secretary (and therefore the largest crofting landlord there is), offered to transfer these estates to community ownership. And despite ministers manoeuvring to prevent a conservation consortium from buying the flagship Mar Lodge estate, in other cases the Government helped land purchase by voluntary sector owners like the Royal Society for the Protection of Birds (RSPB) and the John Muir Trust.

Since May 1997 the pace of change has quickened. All the major political parties at the general election were pledged to reform Scottish land law; and Labour promised *“an immediate study into the system of land ownership and management as a basis for future land reform under a Scottish Parliament”*. Since land reform is a process, and not an event, along with that study much has happened besides.

One of the new government’s first acts was to establish a unit in the development agency Highlands and Islands Enterprise (HIE) – as part of the industry portfolio then under Brian Wilson MP – to help increase community control over land. The unit can help to fund land purchase. It played an important role in the successful bid by the islanders for the Isle of Eigg, now owned and managed by a community trust. It is similarly involved in Knoydart another privately-owned west coast estate. One of HIEs subsidiaries bought Orbost on Skye, again with help from the parent body.

The moving spirit behind that purchase was Dr James Hunter, the Highlands’ most eloquent champion of land reform, who at the time chaired the HIE subsidiary covering Skye. The most recent – and boldest – move was the appointment of Dr Hunter as Chairman of HIE. His increased influence will alarm some landowners, in whose circles he is regarded as a dangerous firebrand. While he might enjoy this reputation, it is misleading: he is a cultured man, a distinguished Scottish historian – and a pragmatist.

James Hunter has long advocated the establishment of *“a Community Land Purchase Fund to which prospective community purchasers could apply for grant and low-interest loans or for a mix of the two”* – perhaps funded by the Lottery. In October 1998, the Secretary of State, Donald Dewar, announced the third significant change,

with the establishment of just such a fund. Community buy-outs had until then been partly funded by voluntary public contribution – useful to the first few to try it, but not renewable, as the novelty of an experiment in land-ownership wears off. The Scottish Land Fund will do it instead.

A Consultative and Consensus Building Process

The “*study into the system of land ownership and management*” promised by the Labour Party has produced two Government consultation papers, and some clear pointers to future initiatives. Some are already underway, such as consultation on the pledge to increase access to open countryside, and on designating Loch Lomond and the Trossachs as a national park. The abolition of feudalism retains all-party support though it will not be implemented until the Scottish Parliament is sitting.

More controversial is the Labour Party’s plans to “*provide a legal right for communities to bid for the land on which they live and work when it is for sale*”. The vision is for a process analogous to some art sales: where works of national importance are sold to an overseas buyer, the Government can intervene to allow domestic bidders to match the price. If no matching bid is received within a given period, the overseas sale goes ahead. Similarly with land: the vendor could be required to disclose the successful bid, and the local community given a period to match the price.

Following a consultation process which many regard as exemplary, a consensus of sorts exists for other changes too. It covers three main principles. Whichever Political party wins the Scottish general elections, they are likely to be a priority, with statutory backing where required. They reflect a common approach between Labour and the SNP, which has been explicitly welcomed by Donald Dewar.

Better Information about Land Ownership

Firstly there is a need for better information about land ownership. Despite the level of public interest in land, and its salience as a political issue, there is no comprehensive – nor even comprehensible – official source of information on who owns what. This gap has been largely filled by for the dilettante observer by Andy Wightman’s *Who Owns Scotland?* (now allegedly required reading among the landowning classes). But for a more detailed picture, availability of information depends on happenstance – so in some areas ownership is easily discovered, while in others it is positively oracular.

Various piecemeal projects are under way to rectify this, which the Government will assist, Scottish Parliament permitting. A related point is information about public subsidy. The UK’s historical obsession with secrecy means that details of farm subsidy payments – for some landowners, worth over £1 million per annum – are considered “*commercially confidential*”. They have a different attitude in France, where such information is pinned to the parish notice-board. The Government apparently intends that Scotland should move in that direction.

More and better information is generally advocated by the supporters of reform, and, resisted by some landowners. But it would help explode some of the myths peddled

by reformers too. Scotland has “*a system and pattern of private ownership without parallel anywhere in the world*” we are told, with scant evidence, in the leading text on the subject. Landowners are answering back: “*It has been repeated that Scotland is the only country in Europe where foreigners can buy large tracts of land*”, says Paul van Viissengen, a Dutchman with a vast estate in Ross-shire. “*I have seen it printed over and over again. It is total rubbish.*”

Greater Accountability of Landowners

The second principle is greater accountability of landowners. If the idea sounds simple, the implications are not. More use of compulsory purchase would be straightforward enough, and should be uncontroversial if applied only in cases of flagrant abuse. A code of practice on local community liaison is another favoured option, which could be made to bite by being a condition of public funding. The SNP favour new elected local Land Councils with land use planning powers. While the principle behind it – more planning powers over land use – enjoys bipartisan support, Labour advocates strengthening existing planning authorities, to extend their remit to farming, forestry, conservation and field sports developments. The uniting theme is greater community involvement, to ensure local people are not excluded from decisions affecting their lives and locality.

More Diversity in the way in which Land is Owned

The third general principle is support for diversity – which in practice means a wider spread of ownership. Since the dominant model is the private estate, an increase in diversity will see its hegemony decline. Increased community ownership is the most favoured alternative, and the means to achieve it is covered above. Uses for such land would include new small-holdings and crofts, and community management of forests and grazings.

The public sector, in various guises, is a very large landowner, and the butt of much criticism in recent years. While reformers advocate transfers of state land to local communities, Treasury rules on asset sales prevent public agencies from selling at less than full value. The Government has set its face against further large-scale disposals, and favours “*about the same level of ownership by public bodies*”. But they too should be more accountable, by “*setting up local liaison committees and maximising employment of local people*”. Those public landowners with reputations for being particularly remote – such as the curious anomaly, the Crown Estate Commission – should be required to report directly to the Scottish Parliament.

A newer class of landowner is the voluntary sector, with extensive estates covering some of Scotland’s most celebrated land. Voluntary bodies require public support and most have charitable objectives, so are at pains to adopt best management practice and provide local jobs. The Government suggests non-governmental organisations (NGOs) should adopt the same principles as public landowners, to bring them “*into line with public bodies as exemplars of best practice*”. Few commentators would recognise that many public bodies currently provide positive examples; but the implication for the future is that where public money is used to help NGOs with land purchase, it will be conditional on them adopting the same management practice.

There are other proposals for more flexible landlord and tenant relations; for resolving some of the anomalies affecting crofting tenure; and for encouraging more diversity in the use of croft land. But landowners' fears of red-blooded reforms have proved groundless, not least as they are protected by the European Convention on Human Rights. This gives rights to "*natural and legal persons to the peaceful enjoyment of their possessions*", and prevents expropriation or unreasonable restrictions of property rights.

So this is not a revolution. The Secretary of State for Scotland has gone out of his way to reassure the "*many private landowners*" who are the "*mainstays of local communities*". Almost no one denies that reform is now required – and that the mixed economy self-evidently works best. As Donald Dewar said in his 1998 John McEwen Lecture on land reform:

“Much of the land reform debate is suggestive of a holy grail of land ownership, an optimal model of tenure which should be replicated as widely as possible in the public interest. Such a model does not exist. A diversity of tenurial options is desirable, including community, voluntary, private and public. Only a pluralistic solution can engage the interest and benefit from the talents of the maximum number of people.”

Gratifyingly, he was quoting this author.

Source: *Essential Scotland: 70 Perspectives on the New Scotland from leaders in their fields*, edited by M. Fraser, November 1998, pp70-73.