

THE parliamentarians who convened to seal the fate of feudalism in Scotland had received this advice from Land Reform Scotland: "There is, deep down, a good heart at the centre of our otherwise rotten land tenure system ... That good heart is the recognition of the public interest in the land – the community of Scotland's natural and rightful interest in the land of Scotland ... The new social paradigm which Scotland is creating for the world, balances established ideas of the private rights of the individual, with the developing idea of corresponding public rights. The retention of the public interest in the land is a major part of that, and Scotland must not throw it away. The hand of history will indeed be on your shoulder this afternoon."

The stage three debate on the Abolition of Feudal Tenure etc. (Scotland) Bill heard the Deputy First Minister and Minister for Justice, Jim Wallace (LibDem), confirm the Executive's concern for the public interest. "The public interest is important, but I suggest there are a number of ways in which the public interest in land ... can be vindicated without having somehow to import the concept of the ultimate superiority of the Crown." He added: "As a parliament, we can take action and pass legislation to vindicate or assert the public interest in relation to land."

The voices from the backbenches were heard. Pauline McNeill (New Labour) stated that "the general populace's perception is that public interest in land is important. The problem is how to retain [it]."

Christine Graham (Scottish National Party) said: "When we abolish feudal superiority, we must ensure that we do not abolish the Crown's ability to intervene on behalf of the public interest."

John McAllion, the left-wing Labour member, was cautious: "I...am interested in the rights of the Parliament. If the Parliament decided to prohibit the sale of the Black Cuillin, or to use compulsory purchase to bring them in to public ownership, could the private owner, free of the feudal restrictions of the Crown, appeal under [the European Convention of Human Rights] on the grounds that the Parliament was acting beyond its powers in trying to stop them selling...? If so, there may be substance to [a public interest] amendment."

Roseanna Cunningham closed the debate on a more sombre note, saying: "Here we have clashing views, which will not be resolved in this debate ... Ultimately, the debate is about where the public interest lies...We may have heard the arguments of one professor versus those of another professor, but where does the concept of the public interest lie if we do away with amendment one? There is no answer to that."

I believe, following this debate, that we now have good reason for optimism about the future of the public interest in the land of Scotland. Our first task is to provide Cunningham's answer, and answers need proofs, and proofs need icons.

THE CUILLIN mountain range, on the Isle of Skye, is one of the defining symbols of Scotland and her natural heritage. The Cuillin ridge is as iconic as land gets.

On March 22 John MacLeod of Macleod (aka Mr John Wolrige-Gordon of elsewhere than Skye) announced to a quite bemused nation (which had somehow assumed the mountains were public property) that



PETER GIBB assesses a historic debate on the land of Scotland

he was the owner of the mountains; that he was putting them up for sale on the international property market, and, moreover; that he would accept "not a penny less" than £10 million – at least five times more than the economic value.

Bemusement quickly turned to anger. The Rev. Prof. Donald Macleod, a Principal of the Free Church College in Edinburgh, wrote of the alienation of what are his own clan lands, in his weekly column in the *Free Press*: "There is one word for the proposed sale of the Cuillins. It is an obscenity. But every obscenity has a silver lining. This one shows the clan chiefs for what they truly are: rapacious, opportunistic feudal barons who walked out on their people three hundred years ago, fawned, bowed and scraped to English courtiers and now prostitute their remote Celtic connections to inflate their egos and their bank balances.

"There is no Clan Macleod. There is no Clan Chief. There is no one in Skye of the name of John Macleod of Macleod. And nowhere in the long dark annals of Europe's aristocracy is there a darker chapter than the post-Culloden antics of pretentious sycophants in tartan."

Such resentment crystallised into an attempt to question the authenticity of MacLeod's title. The *West Highland Free Press* challenged: "Show us your title deeds, Mr MacLeod" Of course, attempts to challenge the privileges of landownership, whether individual or collective, on the basis of title records, are always unlikely to succeed.

As D.C. MacDonald said in 1891, in William Ogilvie's *Birthright in Land*: "The divine right of kings was until yesterday accepted as an article of faith, and we in Britain are still foolish enough to recognise grants of land signed by authority of such 'divine' mandates! We do not now recognise the right of living monarchs to do such things, and yet we con-

firm, acknowledge, and practically homologate the musty parchments of King Tom, King Dick, and King Harry ... Their charters to the landlords, and the sub-charters by these landlords to others, including conveyances for borrowed money, are the only sacred writs recognised in our Courts of Law. Mark the word 'Law'. Justice has to take a back seat whenever one of these sacred writs is produced."

MacLeod went on the defence: "I don't have to prove I own the Cuillins. They [the land reformers] can go and look at the barony title in the records office in Edinburgh. They can go and look at it, and translate it and do whatever they like with

it. As far as I am concerned it has been the land of my ancestors since history began."

This statement begs questions.

- ? Who "owned" the mountains before "history began" (who was the unrecorded loser)?
- ? How did "history" end up "giving" MacLeod's ancestors the land, and was there not another side to the deal?
- ? What was MacLeod's ancestors' role in history?

DONNIE Munro, erstwhile New Labour highland parliamentary candidate and former frontman of the internationally famous gaelic rock band Runrig, hit a nail on its head that his political comrades might well have hung a hat on in their debate: "I just find it ludicrous, the concept that one person can really believe that he has title

Land & Liberty Summer 2000



over something that has been magnificently thrown up by the forces of nature and which seem to go beyond all reasonable sense of what the concept of ownership might be.”

But to question the authenticity of MacLeod's title deeds may be in some sense to authenticate the concept of the 'ownership' of land. Still, the *West Highland Free Press* went on to quote Alasdair Morrison, the Scottish Executive's Highlands and Islands Minister: “The matter raises the wider issue of how some clan chiefs became private landowners. I hope that this episode can shed light on that great mystery.”

But enough light has surely already been provided to answer that question. Professor Cosmo Innes – “a significant 19th century lawyer and specialist in feudal record” – had concluded: “I do not suppose that any cruelty or injustice was premeditated by the legislature or the Government – that there was any intention to favour the rich at the expense of the poor, but there are things in the history of our law that I cannot help censuring – the more because I believe the evil was for the most part attributable to the straining of the law by lawyers”

The “law” has been perverted by lawyers at the behest of the ‘owners’ of the planet earth. The law's roots have been wrenched from the soil of their sustenance; and their purpose has been denied – to guide and enlighten the common people. It must stop.

MacLeod's ancestors were never given the land. Rather, the land was granted to them *on condition*, with the conditions compensating the Crown for its loss. And, as everywhere else in Scotland, the landlords' side of the bargain has long since been argued away. It is time to argue it back, and to reassert the landlord's duty to the public interest.

Scotland is now making new law, and has the will and means to make good law. Our new law must be in the interest of the people of Scotland: law that must protect what is the public's to own, as well as the individual's.

And it must start the process of redefining exactly what those public rights and interests are in the land and our other natural resources. Then we can retrieve all those things annexed by our history, to private interests, in days when our enlightenment in such matters was less than it is today.

Land & Liberty Summer 2000