

## Principles of Public Finance

'The rules which regulate the manner in which land can be owned, and used, and disposed of, must always be of the greatest importance to the state. The stability of the state and the well-being of its citizens at all times depend, to no small extent, on its land law.'<sup>1</sup>

THE SCOTTISH Office paper *Identifying the Problems* states that the Scottish Parliament will be able to abolish the feudal system and replace it with a system of outright ownership of land. However in paragraph 7. 3 an alternative is suggested, viz.: "a radical updating of the Crown's role, for example for the Crown to hold all land in trust for the public, and on behalf of the overall public interest, no matter who owns it".

This latter alternative is the correct approach. To allow land to be held in private hands free of any obligation to the rest of the community is morally wrong, is condemned by scripture, and has been shown by history to lead to disastrous fiscal and environmental consequences. It led to the belief that the bounty of the planet is a commodity to be exploited. Public opinion today, by contrast, calls for the earth's resources to be nurtured, cared for, and shared.

Any policy for land reform must look very closely at the history of land tenure. Under the feudal system which arose out of the collapse of the Roman Empire, all land was held in return for an obligation, sometimes of service, sometimes of payment, whether in kind or in money. As a result land paid virtually all the costs of government. In the later Middle Ages the step by step growth of trade, industry, banking, and finance, immensely increased the value of urban land in towns and cities. Land began to be bought and sold free of its obligations. The cities flourished. The countryside decayed, until relieved in modern times by subsidies at the taxpayer's expense.

Feudalism is now a term which carries connotations of privilege and oppression. It was indeed a system of unequal hereditary status. Yet its system of land tenure stood for a kind of justice, because no one was so high that his privileges were not conditional upon the discharge of obligations, and no one was so low that he was without certain rights. Although in practice it often fell short of this ideal, it was only when feudalism began to disintegrate that privilege became wholly divorced from obligation. Those holding immediately under the Crown had shrugged off their obligations, while feuars lower down the scale remained bound by their dues. The increasing treatment of land (whether in town or country) as *de facto* absolute private property free from obligation deprived the Crown of its land revenue, and compelled it to resort to taxation on anything other than land to meet the expenses of government. The history of English taxation is set out in *Stealing our Land*.<sup>2</sup>

With few exceptions (e.g. Udal tenure in Shetland and Orkney, and certain allodial church lands), England and Scotland differ from the continental European systems based on Roman law under which a landowner has *dominium*. In Scotland the Crown as Paramount Superior is the ultimate owner of the land. Under English law the Crown is the sole owner of land, the subject having freehold tenure (Lat. *tenere*) from the Crown. This is indeed sketched out in paragraph 7. 2 of the Scottish Office paper.

This is not a vestigial remnant of the early Teutonic and Celtic systems in which ultimate ownership of all land was vested in the chief or king, not as his private property, but in his capacity as trustee for the tribe or nation. Title to English land derives from William I's conquest, and probably took this form because of William's need to establish an armed guard over his conquered Saxon subjects, whilst also rewarding his followers. In Scotland the paramountcy of Edward I was acknowledged in 1291 by the 13 competitors for the throne.

NEVERTHELESS in Scotland the old grouping of society by family and kindred inherent in the clan system had an influence on the feudal system which replaced it. Behind both systems lay the basic understanding that Mankind has to have land, and cannot survive without it. People need land to live on, and to live from. It provides their food, their drink, the materials available for their work, and all their other needs. It follows as a matter of *Natural Law* that throughout life they must get their living from the resources of Nature which are available from the position they occupy on 'land' in its geographical sense. Deprived of free access to land, they are unable to support themselves.

The feudal system placed the ownership of land in the Crown, just as the clan system had done in the chief, who was parent, ruler, and landowner on behalf of the clan. Both systems implied a trust that all would be provided for. But as stated in paragraph 7. 2 of the paper, "in time the system became commercialised, and superiorities were frequently sold as investments. . . ."

This "commercialising" of the feudal system and of the clan system resulted in the problems which gave rise to the need for land reform and the setting up of the Scottish Office's Land Reform Policy Group in 1997. Large numbers of good honest clansmen lost their land in the clearances of the eighteenth and nineteenth centuries, when the superiors or their

factors breached custom and trust in the pursuit of commercial gain. Similarly many Scots were turned out to find refuge in city slums by the greed of the unscrupulous. It is fair to point out that in many cases this was done in blind ignorance of the inevitable consequences. Nevertheless the nation's wealth was reduced by what they would have been contributing had they not been evicted, and was later further reduced by taxation to provide the survivors with Poor Relief, now called 'social security' or 'welfare'.

To interfere with the Paramount Superior role (ownership) of the Crown would be a great mistake. Enlightened policy would allow the Crown to retain this role and through it to resume direct control of land use and development as a trust for the people. Paragraph 7. 2 notes: "the [feudal] system was also used as a form of development control, so that the grant of land by a superior would typically contain many building conditions and restrictions on the use of land. . . The ability of the superior to demand significant sums of money in return for granting consents will [in the projected reforms] disappear".

At present the state has limited success in controlling land use and development through Town and Country Planning legislation. To retain ownership in the Crown with power to enforce public rights of this kind upon its vassals would cut down the immense complication and expense of present Town Planning law, and make it more effective.

The "ability. . . to demand significant sums of money in return for granting consents" (see above) is a *natural* phenomenon deriving from the very substantial value of planning consents, which may sometimes be worth millions of pounds. But great or small, the current planning legislation has no means of collecting their value. The reforms primarily envisaged in the Paper will not put an end to the *availability* of these "significant sums of money". They will simply go into different private pockets. In the hands of a superior who has done nothing to produce the rise in value, they constitute unjust enrichment; which is why they are impliedly condemned in paragraph 7. 2 of the Paper. If consent for change of use or development were required from the Crown as Paramount Superior, these sums would come to the Crown, in whose hands they would constitute a natural source of public revenue, to be used for the benefit of the community who created their value. The remark at the end of paragraph 7. 3 that it "would be a . . . costly development" is simply not true. It would be a source of revenue, allowing relief from some of the taxes which inhibit production.

THE COURSE here suggested is hallowed by history. It is also enjoined by the Judaeo-Christian Scriptures. After the promised land of Canaan was given to the chosen race to conquer and divide by lot between the families of each tribe,<sup>3</sup> the Torah had to ensure that families would never lose their inheritance. It had to prevent the land falling into the hands of those who could thereby enrich themselves, and oppress the poor, with the result that the rich man faring sumptuously has Lazarus laid at his gate full of sores.<sup>4</sup> The Lord had warned Moses in Mount Sinai: "The land shall not be sold for ever: for the land is mine; for ye are strangers and sojourners with me".<sup>5</sup> In a note on the Hebrew text of this verse Chief Rabbi J.H. Hertz writes:

This verse enunciates the basic principle upon which all these enactments [of the Torah] rest. "The earth is the Lord's" (Ps. 24: 1), and His people hold their lands in fee from Him. The ground itself, then, was not a proper object of sale, but only the result of man's labour on the ground.<sup>6</sup>

To ensure that the land is held on trust for all is the proper function of the law of property. Mosaic law established this by the Jubilee,<sup>7</sup> which Christ preached in the New Testament.<sup>8</sup> He also described the kingdom of heaven, where beggars rejoice, and the oppressed inherit the land.<sup>9</sup> The physical division of land is, of course, impossible in a developed economy. But there is no difficulty in sharing the rent it increasingly yields.<sup>10</sup>

### Land Registration

Unfortunately, the word "land" brings to mind for many people only rural acres. The oblivion into which land disappeared when built upon contributed to the disintegration of the feudal system, because it left the towns generally paying much less, and the country much more, than their fair share in taxes. "Holdings over 1,000 acres" (paragraph 8. 5) are likely to be holdings of country land valued at so much an acre, whereas a few square feet of City land are frequently worth more than several hundred acres of some types of country land. Priority in registration should be given to unused or under-used urban land, which restricts the expansion of business, while increasing urban sprawl.

The natural source of the Crown's revenue is the land it owns and should continue to own. When the Crown lost its feudal land rents and dues, it began to tax everything imaginable other than land, with disastrous results. Penal taxation upon production and trade restricted enterprise. Direct taxes on incomes were avoided and evaded - no new phenomenon this - and smuggling to cheat the customs and excise was rife. *Plus ça change, plus c'est la même chose*. Worst of all the poor were made to pay taxes. Today the poor (including those in receipt of welfare) are being subjected to indirect taxation on the necessities of life. Much of this is hidden. For example, whilst everybody knows about taxes on whisky, beer, and tobacco, few appreciate that a substantial part of the price of bread covers tax in the form of PAYE on all wages paid during its production - at the farm, at the mill, at the bakery, and at the shop. The price has also to cover fuel and other taxes on transport between these stages, and VAT on machinery used at each of them. If land is to pay its proper contribution to the expense of government, a public computerised map-based land register is essential. Only then can the Scottish Parliament make the best use of its tax raising powers, based on an overall assessment of the wealth of the nation.

### Notes

<sup>1</sup> Holdsworth, *Historical Introduction to the Land Law*, Oxford: 1927 p. 3.

<sup>2</sup> Kenneth Jupp, *Stealing our Land: Law, Rent, and Taxation*, London: Othila Press Ltd, 1997.

<sup>3</sup> Num. 26, 55-6; 33, 53-4; Jos. 13, 6.

<sup>4</sup> Lk. 16: 19 - 20.

<sup>5</sup> Lev. 25: 23.

<sup>6</sup> J. H. Hertz, *The Pentateuch and*

*Haftorahs*, London: Soncino Press, 1970, 2nd edit. p. 534 (n).

<sup>7</sup> Lev. 25, 10.

<sup>8</sup> Lk. 4:16 ff. citing Is. 61: 1-2.

<sup>9</sup> Mt. 5: 3 ff.

<sup>10</sup> *Jubilee 2000* (20 pp.) by the present writer explains the Hebrew and Greek scriptural texts on this subject.