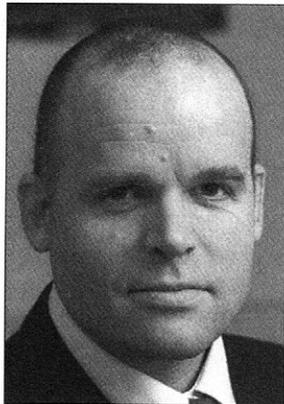


Sovereignty, Democracy, Social Justice and Stewardship

Andy Wightman, Scotland



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This paper addresses the themes of Sovereignty, Democracy, Social Justice and Stewardship in relation to land reform. The themes reflect those that were selected by the Scottish Land Reform Convention to represent the key aspirations which should lie at the heart of a modernising agenda for land reform. This paper aims to:

- ◆ expand slightly on these four themes
- ◆ provide a conceptual framework for reform in property relations
- ◆ discuss how current plans for land reform relates to these themes and this framework.

Sovereignty

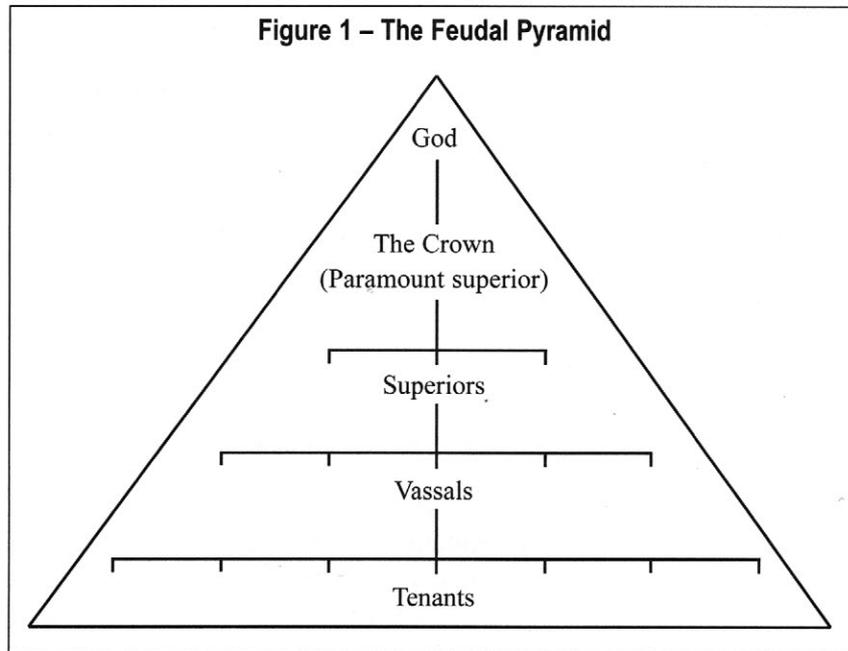
As Robin Callander posited in his account of Scotland's land tenure system *How Scotland is Owned*¹, sovereignty is essentially territorial: it is the supreme or ultimate power or authority over a certain area. Thus the world consists of sovereign states each with their own set of political, legal and economic institutions for exerting control over what happens within that territory. Inherent in this idea is that these sovereign states will sometimes fall out with each other, will argue and will dispute matters which go beyond national boundaries such as environmental management or simple crude political ambitions leading in some cases to war. Sovereignty over the territory of Scotland is the essential underpinning to the democratic control of land by the people through Parliament.

In Scotland, as in many other parts of the world, sovereignty was intimately bound up with land from an early stage. Control over land, exercised by a hierarchical system of political and legal jurisdiction over territory, enabled states to emerge as relatively stable units. Feudal grants were given to the nobility in exchange for military and financial obligations to the Crown. Over time this essentially political relationship transformed itself into the social construct called landownership which today we seek to reform.

Democracy

The idea that the people determine, in a democratic manner, the institutions, laws and regulations concerning the ownership and use of land was to come much later. Critically, in the case of Scotland, by the time of the arrival of democracy (and democracy is today still evolving, as typified by the new Scottish Parliament), the land had already been expropriated by private interests.

A democratic mandate has never been sought or obtained for the way in which Scotland's land is owned. By the time universal suffrage was



introduced in 1928 the basic land laws and the division of land had all been established. Land is power, and the current system of land tenure and division of land is a direct consequence of how that power has been defined and distributed in past centuries.

Indeed the history of landed power in Scotland is a history of a class whose authority and hegemony have never been challenged effectively, whose possession of disproportionate property holdings has never been broken, and whose influence on debates on landownership and use has been conspicuous by its formidable extent and discrete application.

Social Justice

Thus any meaningful land reform must have social justice at its heart.

Scotland has the most concentrated pattern of private land ownership in Europe – a pattern more concentrated even than countries such as Brazil. This pattern of ownership stands in stark contrast to other West European countries where, typically, the pattern is around 1000 times less concentrated and where communal forms of ownership are commonplace.

Such a pattern as Scotland's is remarkable in itself, but what is even more astonishing is the way in which the landowning establishment itself is not merely a collection of random individuals but a tightly knit

network of power and influence extending into the fields of politics and finance.

In order to deliver and sustain this situation, Scotland's property laws have been devised and manipulated to cement and sustain this hegemonic power. Given that title to so much land was originally obtained by corruption and theft, such legitimacy was desperately needed. Property laws are thus social constructs which have historically been formulated to legitimise the exercise of naked aggression, larceny and corruption, as Tom Johnston, erstwhile Secretary of State for Scotland, so eloquently argued,

Show the people that our Old Nobility is not noble, that its lands are stolen lands – stolen either by force or fraud; show people that the title-deeds are rapine, murder, massacre, cheating, or Court harlotry; dissolve the halo of divinity that surrounds the hereditary title; let the people clearly understand that our present House of Lords is composed largely of descendants of successful pirates and rogues; do these things and you shatter the Romance that keeps the nation numb and spellbound while privilege picks its pocket.²

The laws of prescription, pre-emption, redemption, appraisal, game rights, entail, hypothec, trusts (at least *one fifth of all private land* in Scotland is now held in private trusts) and inheritance (children still do not have any legal rights to inherit land in Scotland) have been instrumental in creating the institution of private landownership which exists in Scotland today. Such laws were, of course, made by landowners since for all of the 18th and 19th centuries the members of the House of Lords and the House of Commons have been dominated by landed interests.

Not content with drawing rent and capital receipts, shielding them from creditors and securing their inheritance, landed interests throughout Britain have consistently exploited and promoted measures designed to limit the exposure of their wealth to taxation. Moreover, with the abolition of sporting rates in 1995, land in Scotland now attracts no annual tax burden for the first time in nearly a millennium.

Surreptitiously the overall tax burden has shifted from landowners to waged labour, investments and savings. This, as many economists point out, is the root cause of much economic misery as rising public expenditure demands an increased slice of the earned wealth in the economy as opposed to the unearned wealth of which land values are a substantial component.

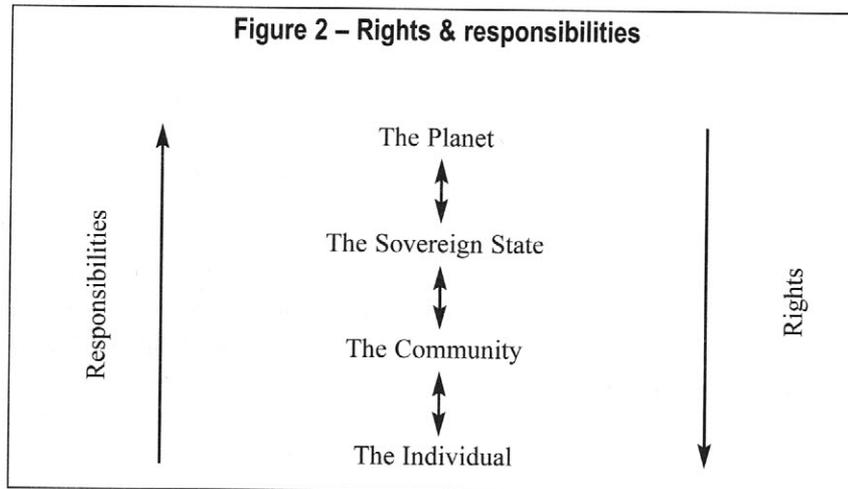
Social justice demands that landed hegemony in urban and rural Scotland is dismantled to make way for a new landowning democracy in which everyone has their fair share of the wealth and opportunity generated by the control of land and its use.

Stewardship

Stewardship implies a contract between landowners and society. It implies the notion that those who have title to land are not owners but custodians. Interestingly this idea has found favour with Scotland's landowning classes, since it enshrines notions of responsibility and duty rather than ownership and control. But despite this useful rhetoric, landed interests have been curiously reluctant to enshrine in law the idea that they owe any legal or statutory duty to the rest of society, perhaps since such a relationship raises questions about how stewards of our land should be "appointed" or "selected" in a so-called free market in land, or what exactly the obligations of landholding should be.

Land Reform in Scotland Today

These four themes are useful concepts then, in thinking about how a system of land tenure should be framed to deliver benefits to the whole of society. To link them together, however, requires a more conceptual framework which might look something like this



Property rights traditionally were defined as a set of laws developed by a state conferring rights on citizens. This model, however, adds new layers to this and adds the balancing notion of responsibilities to that of rights.

A few aspects of this are worth highlighting.

- ◆ The role of property in contributing to governance at a global level.
- ◆ The interests of the community
- ◆ The *idea* of responsibilities – which may be political, legal, moral, fiscal etc.

This model embodies the four main themes of Sovereignty, Democracy, Social Justice and Stewardship that have been discussed. The whole model is predicated on the idea that sovereignty is ultimately shared and not exclusive to any state. Democracy is enshrined in the idea that society defines the nature of rights and responsibilities in land. Social justice and stewardship are implied in the idea that landholders have responsibilities to the rest of society.

How that responsibility is discharged, of course, is a key question. Fiscal reform – land value taxation if you will – is one valid and important way in which it could be. There are others as well. Before developing such responses, however, a clearer idea of the moral and political economy of land is vital. Such an understanding is, however, still lacking in the contemporary land reform debate in Scotland.

As yet, both Government and opposition proposals for land reform, whilst of some utility, are based largely on flawed analyses, shallow and short-term politics and a timidity and poverty of imagination.

Land reform in Scotland is about modernising the current system of land tenure, challenging the division of land, overthrowing the powerful élites who dominate landownership, redistributing power over land, and reforming the legal and financial instruments which have been deployed to sustain and protect landed hegemony. It is about improving accountability, about adjusting the balance between public and private interests, about creating economic opportunities for people, and about sound stewardship of the environment.

Yet the political process has yet to engage at this level. Land reform is a highly political venture because in order to promote social, economic and environmental advancement, it needs to challenge and reform existing power structures, social relationships, and modes of production. Land reform has certain core values of equity, social justice, democracy and environmental stewardship. There is a public interest in all land and there are choices to be made; choices between the free market and a social market, between land accumulation and land redistribution, between paternalism and empowerment, between Scotland for the people and Scotland for everyone but the people.

Which is where the idea of redistributing power comes in. Sensitive to charges of seeking to promote land nationalisation, politicians who

believe in land reform have been careful not to use the term “land redistribution”. But the redistribution of power is not the same as the redistribution of land, even though it may, in the end, lead to similar outcomes.

Redistributing land suggests a centralised process of expropriation and redistribution, an idea whose time has gone. But redistributing power over land is about checking the stranglehold of landed power, and about allowing many more people in society to enjoy a responsible say in how land is owned, how it is divided, who owns it, how much they own and how it is used and managed, and to enjoy a share of the benefits which flow from the ownership and use of land.

Conclusion

It is easy to be impressed by the heady rhetoric of politicians spouting forth on the land question and how they are going to solve it. This is particularly so in Scotland since land reform has been so bleak a prospect for so long. It is not to doubt the sincerity with which politicians from the progressive end of politics have embraced land reform, to question whether, indeed, land reform, as currently conceived, is going to have any impact beyond perhaps, at most, reigning in the worst cases of abuse, empowering crofters, and promoting a rather more co-operative disposition among the landed classes.

The role of the Scottish Parliament is to provide a framework of land law which satisfies basic human needs, protects and enhances the environment, is socially just, equitable and fair, and which provides opportunities for individuals and communities to develop – economically, socially and culturally.

But who is going to do this? Contemporary politics is constrained by its loss of faith in political ideology and principle. For over 150 years, government in Scotland has failed to support civil society’s efforts to wrest control of land. For much of this century, civic groups, whether crofters, tenants’ groups, community groups,



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conservationists or recreationalists, have had to fight to assert and promote their interests. The State has stood idly by.

Instead of advancing notions of democracy, social justice or environmental stewardship as the underpinning of land reform, government has fallen for the fashionable concept of community. In the hands of politicians this has been articulated as a rather unsophisticated idea which conceals the simple fact that it is the unequal distribution of power which lies at the root of the problems arising from the division and use of land in Scotland.

Such monumental failure highlights the historic inability to see the land problem for what it is – an issue of power relations governed by Scotland's land laws. At long last we are now in the fortunate position of being able to join a growing international land reform movement. It is time to rise the challenge presented by land reform, and to understand and analyse the current landed hegemony in a way which allows civic Scotland to develop a new understanding of its relationship with the land of Scotland – an understanding based upon sovereignty, democracy, social justice and stewardship.

Notes

- 1 Robin Callander, *How Scotland is Owned*, Edinburgh: Canongate Books Ltd., 1998.
- 2 Tom Johnston, *Our Scots Noble Families*, Glasgow: Forward Publishing Company, 1909. p.x, reprinted by Glendearoul: Argyle Publishing, 1999.