Who Owns the Land Matters.

An analysis of land reform in Scotland by Bonnie VandeSteeg.

There has long been a groundswell of opinion in Scotland favouring land reform, due to the history of English colonialism. Wealthy aristocrats and industrialists, with collusion from Scottish clan leaders, instigated the Highland Clearances, taking over large tracts of land for sheep and for sport, pushing the indigenous people out to the coasts and beyond to the Americas and Australia. As a result Scotland has one of the most concentrated patterns of ownership in the world. Four hundred and thirty-two people own 50 percent of Scotland's rural land. This process has been well-documented by land reform campaigners such as Andy Wightman, in books such as *The Poor Have No Lawyers* and *Who Owns Scotland?*.

Devolution in 1999 provided the opportunity for the new Scottish Parliament to pass a number of land reform acts. The aim of land reform, in theory, is to address this historic inequality, regenerating and repopulating the rural areas of Scotland. It is also being used to address inequality in urban areas. The Scottish National Party has taken the lead, in keeping with their nationalist ideology and anti-English rhetoric, since many of the large landowners are not Scottish. It is also a way to establish their radical credentials. However, in practice, though important reforms have been made, they have not addressed the fundamental inequalities.

Three Acts

There have so far been three Acts relating to land reform, dating from 2003, 2015 and 2016. The 2003 Act gave the right of access to Scotland's land and inland waters, even without an owner's prior consent, provided such access is taken responsibly and subject to certain exclusions relating to the character of land, such as deer stalking and grouse shooting seasons. It also introduced a Community Right to Buy, which applied to communities up to 10,000 people and was taken up primarily by small communities in the north and west of the country.

Next came the 2015 Community Empowerment Act. This gave more power to communities to be involved in local decision-making, and extended the Right to Buy to communities of any size, including in urban areas. It also gave communities the right to buy land which is abandoned, neglected or causing harm to the environmental wellbeing of the community, even if the seller is not willing. Scottish ministers may compel a landowner to sell to communities with a registered interest, if they deem the sale likely to contribute to sustainable local development.

Further provisions granted community bodies the right to request to purchase, lease, manage or use land and buildings held by local authorities, Scottish ministers and other Scottish public bodies, of which relevant authorities are required to create and maintain a publicly available register. The Act reformed the category of Common Good Property,

Says one midge to the other: "we'd only have to pay 10p each".

requiring local authorities to establish and maintain registers of all common good property held by them, and to inform and consult local community bodies before any change of use or disposal of common good property. It also introduced important new protections for allotments, and required local authorities to develop food growing strategies, including the identification of land that may be used as allotment sites or for community cultivation.

The Land Reform (Scotland) Act of 2016 included a statement of Land Rights and Responsibilities, underpinned by principles of human rights, equal opportunities, reducing socio-economic advantage, diversity of land ownership and sustainability. It established a Land Commission, charged with keeping momentum going and maintaining an overview of policy, and a Register of Controlling Interests in Land, to boost transparency, which is meant to be completed in 2024.

The 2016 Act expanded the Community Right to Buy, making this easier to use. It also, for the first time, allows communities to purchase land even where there is no willing seller, if the land can be used more sustainably or in the public interest, or if not consenting to the transfer is likely to result in "significant harm" to the community. In determining what constitutes significant benefit or significant harm, Ministers must consider the likely effect of granting or refusing consent on the lives of persons in the community, with reference to economic development, regeneration, public health, social wellbeing and environmental wellbeing.

Land Reform Bill 2024

This latest bill was introduced into the Scottish Parliament in March. It may yet be amended, or impacted by the fact that the Greens are no longer in the government. Though it largely addresses agricultural tenancies, around a quarter of it does relate to land reform. It does not include urban Scotland, as other legislation did. Land reform campaigners are very disappointed with the 2024 Bill. As Andy Wightman put it:

> Given the scope of coverage of the proposals, the nature of the land market in Scotland, the complexities of the Right to Buy and the absence of a Public Interest test, the Bill is unlikely to have any meaningful impact on the pattern of landownership in Scotland.[1]

Community Land Scotland (CLS) is the organisation representing community land owners, now covering almost three percent of Scottish land. They have been closely following the Bill's development and offered comments during the consultation. Like Wightman, they have found the Bill severely lacking in any substance.

Land Management Plan

Owners of landholdings larger than 3,000 hectares will need to deliver a land management plan every five years which includes community consultation. Failure to do so will incur a single fine of £5,000. However, CLS argue that responsible landowners are already doing this, and that the fine is far too small to deter landowners who don't want to comply.

Transfer Test

When land over 1,000 ha goes up for sale the government will be able to assess whether the sale will support 'community sustainability', backed by a power to split up landholdings. However, 'community sustainability' is a narrow measure of how good or bad landownership is. There may not be an identifiable community near the estate, there is no oversight of who the landowner is and what the plans are for the land, and the test only occurs at the point of transfer. CLS argue that it should be possible to assess whether landownership is working at any point during transfer. Also since the test only applies to landholdings over 1,000 ha (of which there are about eight a year) most sales will not be included: and the test will not apply to land which is passed on through inheritance, or sold to a partner company of the existing owner.

Prior Notification of Sale

Scottish Ministers must be informed of any sales over 1,000 ha. Ministers will then alert any community bodies in the area so they can do a 'late application' for Community Right to Buy if they want. CLS supports this proposal as the majority of sales and transfers of estates happen off market and in secret, making it difficult for communities to buy the land. However, this still won't give communities enough time to register interest and submit an application, and the size of the holding is still so large that it will not make much of a difference.

Overall, CLS's main critique of the bill is that it fails to address the central issue:

> As it stands, the drafted Bill focuses on land management rather than land ownership, although as it stands it risks making no meaningful difference to either. Ownership is the most important factor in deciding how land is used.

CLS argued for a much more robust bill. Some of their suggestions include:

• A public interest test rather than a transfer test. The landowner could be assessed at any stage of ownership on whether that are working in the overall interest of the public.

• Compulsory purchase where landowners who fail a public interest test and/or fail to complete a land management plan with the community.

• Include urban Scotland, so that communities can address the issues of vacant and derelict land, and the housing crisis.

• A limit to land ownership: no company, organisation or individual should be able to own more than 500 ha of land unless they can show it is in the public interest.[2]

Has Land Reform Stalled?

It seems this Bill does not meet interested parties' expectations for the continuation of the process of land reform. Many question whether any of the legislation has had a significant impact on inequality of land ownership. All land reform legislation depends on the political will to implement it. It all looks good on paper, appearing to challenge the concentration of private ownership, but very little has happened.

According to Josh Doble of CLS:

> Scotland's experience of land reform is often described as a journey. If that is the case then our journey is stalling and all but ground to a halt. Community ownership of land has flat-lined since 2016/17 when the last piece of Land Reform legislation was introduced – only 16 hectares of land went into community ownership in 2021/22. Less than three percent of Scotland's land is in community ownership and patterns of private landownership remain highly concentrated. Progress has slowed dramatically because the existing legislation is not working and soaring land prices make ownership the preserve of a privileged elite.

Land as Natural Capital

Recent years have seen a 'land grab' in Scotland as corporations and wealthy individuals rush to take advantage of the money-making potential of selling carbon credits based on rural land into offset markets. The resulting huge increase in land prices is making it even more difficult for communities to buy land.

With landowners, both traditional and 'green', falling over themselves to be seen as acting on climate change and biodiversity loss, it might appear that environmental objectives can be met without addressing land inequality and ownership. The government seems to be promoting the idea that the community can influence decision-making within the current land owning system. But without government intervention in the property market, the issue of inequality of land ownership cannot be effectively addressed.

Recent climate summits have continued to promote the idea of achieving 'net zero' without actually reducing emissions. Rather than reducing their emissions, companies are encouraged to offset these emissions by investing in projects that either take carbon out of the atmosphere and store it, or stop release of carbon in the first place.

> In order to scale up investment in 'nature-based solutions' many governments are embracing the so-called 'natural

> capital' approach to conservation, which involves assigning monetary valuations to natural assets such as forests and then enabling investors to extract financial returns for managing these assets sustainably.[4]

As with mining, green energy, and other extractivist industries, natural resources are being used by capitalism to make profits, despite the green rhetoric. It may sometimes be true in narrow terms that certain environments get restored and enhanced, benefiting both the climate and certain ecosystems, but this way of viewing land is highly problematic.

Scottish uplands are increasingly viewed as a key source of natural capital. Ninety-eight percent of the country is classified as rural. Peatland, covering 20 percent of the country, is in particular demand as a major carbon sink. Carbon markets have created a huge increase in the demand for land that before was bought mainly for the status of owning a sporting estate. Specialist land agents have noticed a big increase in interest, and some now have special departments devoted to those seeking to offset carbon. Interviews from back in 2021 with enthusiastic representatives of Savills and Knight Frank show what is going on:

> We are perhaps on the cusp of [grouse shooting estates] being repurposed for more climate-efficient purposes.
>
> Enthusiasm for buying wild upland land is high. One reason is that you can plant trees, but there's also the peatland and the carbon. There's a new demand for these types of assets, which underwrite the asset value, and which gives more confidence to owners that there is an asset value without the sport. There are new revenue streams.
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> We went to the market at £650,000 for 2,700 acres of moorland in the south-west. It's in an Area of Outstanding Natural Beauty and contains a Site of Special Scientific Interest. We had a huge amount of interest, both locally and from the green investment funds and multinational companies looking to offset their carbon footprint. It's a whole new side of the market, especially with the Environmental Land Management scheme coming down the line, and carbon sequestration through tree planting and peat. Offers we have received are well above the guide price.[5]

There are several advantages to companies of this new land grab. One is as a marketing tool, making the company look good to shareholders and the public. They can carry on their normal activities and still claim to be carbon-neutral. One example is Brewdog, who have come under scrutiny recently because of their employment practices and sexist culture. As the CEOs of Brewdog have always said, "Everything is marketing". Their recent purchase of the 3,767 hectare Kinrara Estate near Aviemore in the Cairngorm National Park is a great marketing ploy, with talk of planting a "Lost Forest" on the traditional sporting estate, helps raise their profile as a 'green' company, which they will capitalise on in their marketing campaigns, thus indirectly generating profits. They are also going to be able to attract grants from the Scottish government, and have been accused of overstating what they are doing.[6]

Another company that has bought land in the Cairngorms is Standard Life Investments, who are apparently

> backing moves to reforest part of Scotland's Cairngorm national park in a bid to become a 'net zero' emitter of greenhouse gases. In a marked departure from its normal holdings in industrial properties, offices and warehouses, the generalist UK real estate investment trust (Reit) has spent £7.5m on 1,447 hectares of upland rough grazing and moorland in the heart of the Scottish Highlands.[7]

Subsidising Profit

Much environmental work on such land is then paid for by the government, land rights campaigner Peter Peacock points out:

> Wealthy institutions can afford to spend millions buying up bits of Scotland and are then expecting the taxpayer to pay for the planting of the trees they plant, all enhancing

> their existing wealth. ... This is likely to see, once again, the Highlands being sold from under the feet of local people to external forces who can out-compete other interests for land, forcing up land prices, and undermine communities in their ability to take a lead in tacking the climate emergency while also promoting wider social and economic benefit under local democratic control.[8]

Wightman is concerned that this "gold rush" for land in Scotland will push land prices up and make it even more difficult for communities or other public interest owners such as the John Muir Trust to purchase land. The Langholm Initiative in southern Scotland had to raise millions of pounds to buy land from the Duke of Buccleuch who insisted on selling part of his large landholdings at market prices. The community managed to raise the money to purchase part of the land they wanted with the help of the John Muir Trust but it was very difficult. If land prices go up even more such community buy-out initiatives would be impossible.[9]

For The Public Good?

The organisation representing Scotland's private land owners pays lip service to compliance with the spirit of the reforms. On its website Scottish Land and Estates set out a Landowners' Commitment, setting out

> ... good practice for landowners on how they can continue to operate their businesses, while contributing to the public good. It is flexible according to the nature and scale of individual situations, and can be used for all types and sizes of landholding.[10]

Landowners are united in their self-promotion as good landowners, working to benefit both communities and the environment. For example, Seafield and Strathspey Estates, a 35,000 ha (86,000 acres) enterprise which includes salmon beats on the River Spey, managed on behalf of the family of the Earl of Seafield, argues that land concentration is not a bad thing, as it may lead to more efficient management. It claims landowners are being blamed for the inefficiencies of local and central government.

> There is a myth presented by individuals sponsoring land reform in Scotland that 'too many acres are owned by too few individuals.' It may be true that 'many acres are owned by few individuals' but there is very little evidence presented to show that this is a bad thing.

The Scottish National Party

Land reform campaigners such as Andy Wightman and CLS have been scathing in their critique of the latest bill and question whether the government has ever been willing to effectively challenge unequal land ownership. The SNP have often been called 'Tartan Tories' with a strong conservative element in their ranks, and this could explain why their reforms, though significant in many ways, have not touched the heart of the problem of land ownership. Even before losing most of its seats at Westminster, the party was already in crisis after ending its alliance with the Greens at Holyrood, which may further weaken its commitment to land reform.

Leading business leaders and traditional landowners are already welcoming the break-up of the coalition, hoping that the SNP on its own will water down measures to fight climate change and enhance biodiversity, and be more amenable to protecting 'rural interests' (read 'landowners' interests'). Though many are concerned about the consequences for the environment, there is bound to be an impact on the land reform agenda as the more right-wing elements inside the SNP come to the fore. The current Scottish government already seems happy to believe the landowners, trusting them to do the right thing by the public. This can be seen in the watered down proposals in the 2024 Bill as well as the luke-warm implementation of the reforms so far. It may be that the Scottish Labour Party's more radical land reform policies will gain support: MSP Mercedes Villalba launched her own campaign for land justice last year, calling the SNP's proposals "timid" .

Who Owns The Land Matters

The Scottish Land Commission has found through extensive research that having a system dominated by large land holdings has a negative impact on local communities as well as society as a whole. Large landowners have both economic and political power. Many have a direct line to key figures in government, some of whom will be in the House of Lords, and also have a number of lobbying bodies such as the Scottish Landowners Federation. Local government is also heavily influenced by large landowners in the area, seen as major sources of income and employment.

> Perhaps most worrying however, was the fear of repercussions from "going against the landowner" expressed by some people. This fear was rooted firmly in the concentration of power in some communities and the perceived ability of landowners to inflict consequences such as eviction or blacklisting for employment/contracts on residents should they so wish.[11]

In my book *Land for What? Land for Whom?* I found a similar situation in the Cairngorms of Scotland.[12] Local landowners dominated consultations on key issues during the formation of the National Park. They, or their representatives, sit on key boards and make sure they are a major 'stakeholder' whenever an important decision has to be made. Meanwhile, ordinary people's voices are not heard. Local residents told me that they were often afraid to speak out. It will be interesting to see what role the new local landowners in the Cairngorms, Brewdog, play. They have already been criticised for not taking the local community into consideration, and made members of staff redundant when they took over the Kinrara estate.

Community Land Scotland have no time for the rhetoric of landowners who claim to be operating in the public interest when in fact profit is their main motive and everything they do is a PR exercise. Who owns the land matters! It is not just a question of tackling environmental issues. Even if landowners were having a positive environmental impact, questions of community empowerment and social justice remain. Only community ownership will ensure that land is managed for the public good – both the community and the environment.

Concentrated land ownership has huge impacts on how we tackle climate change and biodiversity crises, how food is produced, the supply of affordable housing, and how just our society is. It is no coincidence that Scotland's land is

Glenbanchor

I visited the Glenbanchor Estate in the Cairngorms National Park as part of a University of the Highlands and Islands student conference on land management. The conference was excellent and offered a range of visits so students could hear from land managers on the ground. Glenbanchor, along with the neighbouring Pitmain Estate, is owned by Abdul Majid Jafar from the United Arab Emirates, CEO of the largest private oil and gas company in the world. The estate is not far from the town of Kingussie where the conference was held, yet seemed very remote. We drove only a few miles to reach the last place to leave normal vehicles, with the glen and the River Calder stretching for miles, the gateway to hills of 2000 and 3000 feet. This massive area of land is owned by just one person.

We were met by the land agent, from Savills, who are managing the estate for the often absent landowner and well as by a river ecologist. We were told how much the estate is doing for the environment and how this has no impact on the work of the rest of the estate which is managed for sport, meaning deer stalking and grouse shooting. We were told this is a "win-win situation". I struggled with this concept. Yes, conservationists are able to pursue their aims on the estate and the estate can carry on with their main priorities of running a sporting estate. However, given that the conservation projects are financed by the public, and they are located in areas where shooting doesn't take place, it seems that the landowner, and Savills making money from their land management role, are the main winners.

Most people working in land management, including the teachers and students at the conference, would argue that keeping large numbers of deer and continuing with heather-burning and other practices associated with grouse moors are not considered compatible with meeting climate change and biodiversity objectives. The estate's practices are an example of poor land management, yet they are still able to meet government criteria for the public interest, largely paid for by the taxpayer, and at the same time carry on business as usual.

For more info on the area see: https://www.elsewhere-journal.com/blog/2020/2/4/glen-banchor. On land management in the Cairngorms see https://parkswatchscotland.co.uk/

exhausted, depopulated and lacking in biodiversity. When land is used primarily for profit and decision-making is in the hands of a few, land use is not treated with the sustainability and well-being of the majority in mind.[2]

To finish on a positive note, although there are serious weaknesses in Scotland's land legislation, an active and lively land reform movement does exist. In England, land reform is just not on the political agenda. Despite initiatives such as the right to roam campaigns, there is no real movement, and without this movement none of the political parties will address the issue. Other UK nations can look to Scotland for inspiration, in particular Community Land Scotland, with its focus on land ownership rather than just land management, based on grass-roots activity and the empowering of local communities, both urban and rural.

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