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Conference Paper

The land reform process in Scotland: conflict resolved or conflict postponed?

39th Congress of the European Regional Science Association: "Regional Cohesion and Competitiveness in 21st Century Europe", August 23 - 27, 1999, Dublin, Ireland

Provided in Cooperation with:

European Regional Science Association (ERSA)

Suggested Citation: Lloyd, Michael Gregory; Danson, Mike W. (1999) : The land reform process in Scotland: conflict resolved or conflict postponed?, 39th Congress of the European Regional Science Association: "Regional Cohesion and Competitiveness in 21st Century Europe", August 23 - 27, 1999, Dublin, Ireland, European Regional Science Association (ERSA), Louvain-la-Neuve

This Version is available at:

<https://hdl.handle.net/10419/114388>

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The land reform process in Scotland.
Conflict resolved or conflict postponed?

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**Paper presented to the 39th Congress of the European Regional Science Association,
Dublin August 23 - 27, 1999**

Introduction

Over the past few years, conflicts over the ownership, use and management of land resources in different localities throughout Scotland - Knoydart, Eigg, Strathconnon and Forsinaird - have illustrated the enduring feature of the land question as a priority item for debate on the political agenda. A mandate to address the land question is particularly important at a time of the establishment of the Scottish Parliament as part of a broader agenda for constitutional reform in the UK (Scottish Office, 1997). The political intention of the Scottish Parliament is to strengthen democratic control and accountability over the processes and institutions of government in Scotland and in this context it will have to pay serious attention to the substantive policy issues of the country - including the land question. The political momentum for this was reflected in the results of the referendum which was held on September 11, 1997. In overall terms, some 74.3% of those voting were in favour of a Scottish Parliament with relatively even results across Scotland.

The Scottish Parliament and Scottish Executive have assumed legislative and administrative responsibility for key strategic functions, including health, education and training, local government and housing, economic development and transport, law and home affairs, environment, agriculture, forestry and fishing, and sports and the arts. The land question falls into this agenda and it is not confined to issues of tenure, ownership and management but extends to the appropriateness of the regulatory and financial provisions for land and it has a wide geographical focus. Thus, land issues are often expressed in rural terms only but concern over the use of land use, ownership and development extends to urban areas with increasing problems associated with, *inter alia*, brownfield site development, the location of out of town retailing centres and the building of new settlements. The land question by necessity courts controversy. It is a key economic resource which confers political power, economic privilege and social status and which forms the bedrock for local economic development in urban and rural communities. It involves complex legal and constitutional matters and raises issues associated with accountability and social obligations - concerns which are rooted in Scotland's economic history and philosophy.

In 1997, the Scottish Office established a Land Reform Policy Group "to identify and assess proposals for land reform in rural Scotland, taking account of their cost, legislative and administrative implications and their likely impact on the social and economic development of rural communities and on the natural heritage" (Land Reform Policy Group, 1998a,1). The rationale for the creation of the Land Reform Policy Group was based on the view that "land ownership, tenure and management arrangements can exert a significant impact on the lives of individual Scots, in terms of the opportunities available to them or conversely in terms of barriers to freedom of action" (Land Reform Policy Group, 1998a, 1). Its main aim was to provide the Scottish Parliament with an agenda for action on land reform. In this context, the Land Reform Policy Group stated that land reform legislation should set out clearly the objectives of land use and land reform; the basis for public sector involvement in land matters; and, bring together a comprehensive range of measures for removing barriers and promoting positive action. This paper examines some of the issues raised by this consultation process.

Land reform in theory and practice

Land reform involves changing established legal and institutional arrangements to create the conditions suitable for national, regional and local economic development (Jacoby and Jacoby, 1971). Within the broad development economics literature, land reform is conventionally focused on addressing the constraints posed by customary land tenure and replacing it with a system based on private property rights (Dorner, 1972). Significantly these broad theoretical propositions offer a general position on the role played by legal and administrative arrangements and tend not to acknowledge what may be considered to be the specificities of place (Healey, 1998). In practice, land reform tends to be uneven in execution and impact, varying in the time and circumstances within which it is implemented and in terms of the outcome on different groups (King, 1977; Mather, 1986). Furthermore, the processes associated with land reform involve broader social and ethical considerations relating to the concept of economic development itself (Montgomery, 1984). It has been argued that land reform "is often viewed as an instrument primarily for the achievement of greater equity and social justice. However, with population often pressing on land resources and with technology opening the way for major advances in the level of living for all people, reform has the

dual purpose of serving as both a redistributive instrument and a vehicle for achieving increased productivity" (Dorner, 1972, 19).

In Scotland it is argued that land reform is necessary on the grounds of fairness and in order to secure the public good. An initial review of the evidence has suggested that "present systems of land ownership and management in rural Scotland still serve to inhibit opportunities for local enterprise. Current arrangements have also resulted in serious degradation of the natural heritage in some parts of rural Scotland through poor land management. And the way landholdings are owned and managed can have a critical impact upon the land's ability to sustain rural populations" (Land Reform Policy Group, 1998a, 3). The land question is intimately bound up with a wider debate about the relationship between town and country, urban and rural, conservation and development and conservation and control over change (Monbiot, 1998). It is argued that "all over the world, the leaders of undemocratic states argue that good decision making can take place only when the common mass of the population are excluded. With embarrassing regularity, the opposite proves to be the case. The same applies to land use policies in Britain. The wider is public involvement in decision-making the better and longer lasting the emerging decisions are likely to be. Without a role in determining the future of our most fundamental resource, we will continue to suffer from the justifiable impression that full citizenship is the preserve of the fortunate few" (Monbiot, 1998, 98).

The land question is clearly linked to the constitutional reform process. The creation of a Scottish Parliament addresses in part the problems of a stateless nation (McCrone, 1992). Image is all important for an emerging state eager to establish its own identity. Heritage is a condition of the late C20th with its origins in the C19th. It presents an outdated image in which feudal ideas play an important part. McCrone, Morris and Kiely (1995, 205) note that "land out of time chimes with its political status as a stateless nation". It has been argued that it "is no coincidence that Scotland should be the last outpost of feudal land law and the country with the most concentrated patterns of private landownership in Europe. For the last 300 years it has had little effective say in its own domestic affairs, being virtually the only country in the world with its own legal system but with no legislature to enact and amend such laws" (Wightman, 1996, 216).

The Land Question and Debates

In Scotland, the context to the land question has changed quite dramatically over the past decade. On the one hand, the deliberations and policy impetus associated with sustainable development have focused attention on the relationship between economic change and environmental quality and on the appropriateness of management regimes to secure a feasible balance of interests (Blowers, 1997). On the other hand, the attention paid to rural development through local partnerships has highlighted the importance of land to community stability and economic opportunity. As Watt and Purcell (1997) argue, considerable progress has been achieved in certain areas in addressing the issues associated with rural development. Against this context, there have been emerging debates about the importance of the land resource in Scotland. The pioneering work of McEwen (1977) focused critical attention on the concentrated characteristic of land ownership in Scotland. It drew attention to the political, economic and social power associated with the landed estates in Scotland and triggered a number of lines of enquiry. At the risk of over-simplification there have been three elements to this debate and practical action. These form the immediate context to the Land Policy Reform Group.

Firstly, following the death of John McEwen an annual memorial lecture series was established to commemorate his work. These have provided a powerful philosophical focus for examining the various aspects of the land question in Scotland. MacGregor (1993) for example considered the balance of individual and social rights in land ownership; Hunter (1995) proposed the abolition of feudal land tenure and called on a Scottish Parliament as the appropriate body to secure regulation of land ownership; Bryden (1996) set out the historical elements of the land question; and, McCrone (1997) called for a new law of land ownership which was experimental with respect to private and community interests. The Memorial lectures captured the diversity of issues and questions concerning land tenure, ownership, its use and development. Further, they have created a focus for debate in considering the role a Scottish Parliament might play in the stewardship of the land resource. Secondly, an intellectual line of inquiry began to investigate aspects of land tenure (Callander, 1998) and land ownership (Wightman, 1996; Cramb, 1996).

Attention has been paid also to the rural dimensions of land ownership, including the management

and control of sporting estates (Jarvie, Jackson and Higgins, 1997). Running alongside these studies is an investigation by the Scottish Law Commission into the nature of the feudal legal arrangements. These have combined to keep the land question on the political agenda. Finally, there have been practical responses to the land question in certain localities, including Assynt and Eigg. Here community led responses challenged the prevailing private landed estate for community reasons of empowerment, stability and sustainability. Elsewhere, instances such as the Mar Lodge Estate in the Cairngorms highlighted the range of interests associated with a private estate in an area of outstanding natural beauty (Cobbing and Slee, 1993).

Land Reform Policy Group

In 1997, the Scottish Office established a Land Reform Policy Group "to identify and assess proposals for land reform in rural Scotland, taking account of their cost, legislative and administrative implications and their likely impact on the social and economic development of rural communities and on the natural heritage" (Land Reform Policy Group, 1998a,1). The rationale for the creation of the Land Reform Policy Group was based on the view that "land ownership, tenure and management arrangements can exert a significant impact on the lives of individual Scots, in terms of the opportunities available to them or conversely in terms of barriers to freedom of action" (Land Reform Policy Group, 1998a, 1). Its main aim was to provide the Scottish Parliament with an agenda for action on land reform. In this context, the Land Reform Policy Group states that land reform legislation should set out clearly the objectives of land use and land reform; the basis for public sector involvement in land matters; and, bring together a comprehensive range of measures for removing barriers and promoting positive action.

The Land Reform Policy Group (1998a) set out a catalogue of problems and issues associated with the land question in Scotland. These included:

- (a) land ownership, particularly its concentrated pattern and the implications of this for rural community stability through population retention and employment opportunities. The issues associated with landownership include the behaviour of private estates, absentee landlords and the impact of public sector land holdings.
- (b) agricultural landlord and tenancy arrangements, with particular emphasis on the implications for rural housing. The issues associated with these arrangements include access to farms, resolution of conflicts, forestry, sporting and minerals rights.
- (c) crofting, particularly with respect to issues of community and economic stability in the remoter areas of the Highlands and Islands. An issue of relevance in this respect is that of the potential of community ownership.
- (d) land use, in particular improving the use of land to achieve sustainable rural development together with the concomitant aim to discourage poor land use.
- (e) law reform, in order to address the issues associated with feudal land tenure and its replacement with a system of outright ownership of land.
- (f) land registration, in order to secure a more consistent information base about land holding in Scotland.

In a subsequent Consultation Paper, the Land Reform Policy Group (1998b) published its deliberations based in part of the representations received to its initial agenda for action. The Policy Group (1998b) noted that its broad objective for land reform was endorsed and this was set out in greater detail to reflect the representations involved. Land reform was to be extended in order to accommodate increased diversity in land ownership and use and increased community involvement in the decisions by which land is owned and used. In particular, the principle of social inclusion was to apply directly to decision-making about land which affected individuals and communities.

To achieve this broad vision for the Scottish land resource, the Land Reform Policy Group (1998b) advocated the following principles:

- (i) more local involvement, greater commitment and accountability by private landowners in Scotland;
- (ii) more scope for community ownership and local land where this can be sustainable;
- (iii) more scope for releasing land for housing and local development where this is sustainable and secures the retention and if possible the expansion of fragile rural communities;
- (iv) more scope for smallholders supporting a wide range of land-based and other economic activity where this is sustainable and secures the retention and if possible the expansion of fragile rural communities;
- (v) about the same level of ownership by public bodies, but with more local involvement and accountability and more employment of local people;
- (vi) more local involvement and accountability and employment of local people by non-Governmental organisations who own land in rural Scotland;
- (vii) outdated and unfair feudal arrangements swept away;
- (viii) conditionality of land ownership where appropriate to reflect modern circumstances;
- (ix) a more constructive approach to problem cases, including those relating to the foreshore and the seabed;
- (x) more definitive information readily available about land ownership;
- (xi) more broad brush information readily available about landownership;
- (xii) more information readily available about beneficial owners;
- (xiii) more information readily available about public support relating to land;
- (xiv) better integration of policy for rural land use at national level;
- (xv) more integrated planning of rural land use at a local level;
- (xvi) more community involvement in decisions about rural land use;
- (xvii) more public access on a responsible basis;
- (xviii) more scope for diversity of agricultural tenancy arrangements;
- (xix) simpler and cheaper arrangements for resolution of disputes between agricultural tenants and their landlords;
- (xx) wider opportunities for tenant farmers to diversify;
- (xxi) greater protection for those who own property built on leased land;
- (xxii) more sustainable crofting communities;
- (xxiii) more local involvement in and accountability for crofting administration;
- (xxiv) much simplified crofting legislation and administration;
- (xxv) more (or at least not fewer) crofters;
- (xxvi) undertaking a wider range of land-based and other economic activity rather than predominantly agriculture.

This list of ideas and driving principles for land reform illustrates the complexity and diversity of the Scottish land question. This is reflected in the recommendations for action advocated by the Land Reform Policy Group (1999) which asserts that reform is not a one-off exercise but is a process of ongoing change. The agenda for action that it proposes goes forward for consideration by the Scottish Parliament. The Land Reform Policy Group (1999) advocates the abolition of feudal land tenure; measures to secure the public interest and increase community involvement in land matters; better access to land; leasehold casualty reform;

Social construction of land reform

Firstly, the new constitutional context to the land question in Scotland is important, as is stressed by the brief overview of the legitimisation of the issues associated with land use, ownership, management and development. The creation of the Scottish Parliament and the associated processes of democratic openness represent in effect what may be interpreted as the social construction of the land question. In other words, although there have been issues associated with the land problem - ownership and land use conflicts, locational issues over proposed developments, economic growth versus the environment in sensitive areas - it is only relatively recently that the land question has been placed firmly on the political agenda. This is shown by the emerging land debate and the stages through which the arguments were articulated and broadly accepted, most significantly in the new political arena of the Parliament. In the related context of environmental conflicts and problems of resolution, it is argued that there are a number of factors which are necessary for the successful construction of a social or environmental problem (Hannigan, 1995). These factors may be set out as follows:

- (i) scientific authority for and validation of claims;
- (ii) existence of popularisers which can help create a pro-active claim;
- (iii) media attention in which the problem is framed as novel and important;
- (iv) dramatisation of the problem in symbolic and visual terms;
- (v) economic incentives for taking action; and,
- (vi) emergence of an institutional sponsor who can ensure both legitimacy and continuity (Hannigan, 1995, 55).

Arguably, these factors have been falling into place as a jigsaw of events or circumstances which has led to the outcome that the land question is now taken (relatively) seriously within a broader land reform debate in Scotland. Thus, the scientific authority for and validation of claims was provided by the emerging evidence that the land question was not only multi-faceted but was not being addressed in terms of its locality impacts. The recent work of Wightman (1996), Callander (1998) and McCrone (1997) helped put the convoluted philosophical, historical, ideological and practical aspects of the land ownership and land tenurial problem on the map. Similarly these researchers together with the contributors to the series of annual McEwan lectures effectively represented an existence of popularisers which can help create a pro-active claim to the land question. This helped sustain a debate about the land reform issue and helped maintain political pressure at a time when the early moves to a Scottish Parliament was being initiated. Taking place by way of context at this time, and indeed continuing to the present was the sustained media attention in which the land reform problem was and is framed as novel and important. Attention on causes such as Eigg, Assynt, Mar and Lodge helped maintain this political pressure. It also contributed, with the coming of the Scottish Parliament to contribute to the dramatisation of the land reform problem in symbolic and visual terms but also in suggesting an approach which would rely on economic incentives for taking action. In practical terms the work of the HIDB and now HIE in drawing attention to the rural sustainable development helped maintain the pressure for action. Probably, however, the most significant part of the chain of action was the emergence of an institutional sponsor who can ensure both legitimacy and continuity - the Land Policy Reform Group.

Secondly, the context to change is now very dynamic and is beginning to provide a viable context to the execution of effective policy action. Thus, a consequence of the creation of the Scottish Parliament

and the Scottish Executive is the need to adjust the balance of power between central and local government (Alexander, 1997). This is particularly important in view of the fact that Scottish local government has undergone extensive change in recent years following its reorganisation into unitary authorities in 1996. In this context, the concept of community planning has emerged as a means of re-asserting the community leadership role of local authorities. Community planning is seen as a process by which Councils and other organisations come together to agree and develop a common vision for their area in order to improve the lives of local people. In order to assist in the development of community plans, Pathfinders were identified and the local authorities in these areas were given the task of preparing draft community plans based on the process of community planning, a framework which builds and extends the experience of partnership working in many areas (Community Planning Working Group, 1998). However, it is clear that the detailed community plan for each area will be unique as it evolves to reflect the needs of each specific local community thereby providing an opportunity for issues relating to land reform to be highlighted.

The approach in the Highland Council area is illustrative. The approach builds on existing joint partnership working experience. The Highland community plan has a distinctive content reflecting the issues and challenges which are unique to the Highlands, such as a growing but ageing population, rural depopulation, peripherality and environmental conflict. The plan's vision is of a prosperous and dynamic future for the Highlands as the natural place to be. A place: which has the people, organisations and infrastructure for a growing, inclusive economy; which is healthy, safe and provides high quality services for all of its people; known for its wonderful, productive natural environment and high standards of stewardship; which has a strong sense of identity; where confident, sustainable communities are engaged in the democratic process; and which makes a unique and valuable contribution within Scotland, the UK and Europe. To achieve this vision, the community plan develops a series of strategic themes: learning communities; prosperous communities; capable and confident communities; safe and healthy communities; and sustainable communities. Shared priorities and current partnership projects are identified for each theme. Community planning is clearly a very new initiative in Scotland and the first community plans have been prepared by the local authorities and their various partners in an exceptionally short timescale. Despite this, it is possible to identify some emerging characteristics of the community planning process.

Conclusions

The land debate in Scotland is nothing but pragmatic from years of experience. The panacea to all aspects of the land question will not materialise effortlessly nor costlessly. It has been acknowledged that land reform "will not be addressed by the passing of a single Act. A distinction is already emerging between issues to take forward now and those that need to form part of a wider and on-going land reform debate" (Callander, 1998, 13). The process of democratisation associated with the Scottish Parliament may yet engender a more fundamental re-appraisal of land matters in Scotland. Furthermore, land reform is not an easy process. Experience from the development economics literature suggests that, for example, "the economic and political power associated with landed interest is one of the key obstacles to land reform which inevitably involves tough political decisions and confrontations" (Dorner, 1972, 29). Time will now tell.

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