

## Scottish Land Reform and Upper Deeside

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Following the 2014 referendum on Scottish Independence, political attention has been able to focus on what can be done with the present and future powers devolved to the Scottish Government. High on the agenda of the ruling Scottish National Party is land reform in Scotland, an issue which has resonated over the centuries, from the establishment of feudalism, through the “Forty-Five”, to the Clearances. However, for most of the last two centuries, the long process of rural depopulation left little appetite for change, except during the period of land settlement for soldiers returning after the First World War – an exercise of “*some dreadful inefficiency and mismanagement in the early years*” but with generally successful though mixed results (Leneman, 1989) in limited areas.

After the Second World War, the demographic tide began to turn, and has recently speeded up. A returning wave of population to at least some rural areas was due to a number of factors: increasing incomes and wealth, ever-improving national and international communications (now including electronic media), policy efforts at rural economic development, and in some places the post-1970s expansion of the oil and gas sector. Not all the in-migrants have wanted land to own or use – some merely look for a retirement or holiday home – but the arrival of all sorts of new residents and visitors, many with money and voices, was bound to put pressure on the established pattern of large estates, ever-enlarging farms, forests both old and newly established, and various services, from planners to the providers of water, toilets and parking places.

This article describes the evolution of the land reform debate in Scotland since about the year 2000, in particular as it affects mountain areas and Upper Deeside estates. The issue has many ramifications, including legal, economic and social and environmental ones, and not all can be covered here. The aspects which seem most likely to affect the environment and use of mountain and other “wild” areas include the purchase of extensive areas by rural communities, public access rights, the management of

such land, e.g. in relation to deer, hill tracks, etc., and land ownership limitations and taxation.

### *Land Reform Proposals*

As well as questions of ownership, the term “*land reform*” encompasses a wide range of policy actions, including public access, designations such as National Parks and “wild land”, farmland tenure, “community planning”, the abolition of feudal tenure, and “community right to buy”. In the late 1990s, a high-level Land Reform Policy Group, chaired by Lord Sewel (an Aberdeen University academic and a leading Scottish politician), made a series of recommendations to the Labour/Liberal Democrat coalition government. Subsequently, the following Acts have been passed, along with a number of others concerning land registration, fisheries, and crofting:

- The National Parks (Scotland) Act 2000, under which Parks were later established for the Cairngorms and the Loch Lomond and the Trossachs areas
- The Abolition of Feudal Tenure etc. Act 2000
- The Land Reform (Scotland) Act 2003, which established community rights to buy land both in crofting and non-crofting areas, a non-motorised “right to roam” responsibly over land (and inland water), and the planning of a network of “core paths” for public access
- The Agricultural Holdings (Scotland) Acts 2003 and 2012, which established more flexible farm tenancy arrangements but strengthened farm tenant security
- The Nature Conservation (Scotland) Act 2004, which tried to re-establish conditions of trust between landowners and the Scottish Natural Heritage (SNH) agency e.g. in the management of Sites of Special Scientific Interest (SSSIs)
- The Wildlife & Natural Environment (WANE) Act 2011, which strengthened a number of measures in relation to nature conservation, e.g. for deer management, and the duties of public bodies.

The general consensus seems to be that these Acts have had a generally beneficial effect, limited in some cases by a number of factors including legal and administrative bureaucracy, and

constrained public funding. One area of particular disappointment has been the scale of community land purchase, which by 2014 had reached a total area of about 200 thousand hectares (ha), mostly in 17 estates in the Highlands and Islands, out of the Scottish total of some 7.9 million ha. However, only 21 thousand ha (mostly the Assynt Estate) had actually been bought under the Act.

In July 2012, Scottish Government Ministers appointed the Land Reform Review Group (LRRG) *“to identify how land reform will:*

- enable more people in rural and urban Scotland to have a stake in the ownership, governance, management and use of land, which will lead to a greater diversity of land ownership, and ownership types, in Scotland;*
- assist with the acquisition and management of land (and also land assets) by communities, to make stronger, more resilient, and independent communities which have an even greater stake in their development;*
- generate, support, promote, and deliver new relationships between land, people, economy and environment in Scotland”.*

The original Group comprised Dr Alison Elliot, once a lecturer in psychology and a Church of Scotland Moderator, Professor Jim Hunter, a well-known writer on highland matters, and Dr Sarah Skerratt, a social geographer. In April 2013, the latter two were replaced by Dr John Watt OBE, Ian Cooke and Pip Tabor. A group of advisors included Robin Callander (of Birse, an expert on common and community land) and Bob Reid, an Aberdeen-based planner and one-time President of the Mountaineering Council of Scotland. Over autumn/winter 2012/13, nearly 500 submissions were made, and 5 public meetings were held (though none in the North-East). In May 2013, an Interim Report focussed attention on extending community land ownership beyond the North-West, a possible Land Agency, and public access. It also identified as “outstanding issues” the Crown Estate (which owns Glen Livet and 3 other estates, plus about half the Scottish foreshore), “common good land” owned by local authorities, land taxation, and ownership succession. The final report, *The Land of Scotland and the Common Good*, published in May 2014, did not follow up the Interim Report pointers with equal enthusiasm, partly on the basis of further evidence received, and partly – presumably – because other matters

attracted more interest. However, the LRRG did make some 60 recommendations.

### *Community Purchase*

The main difficulties in extending community ownership of land seem to be landowner unwillingness to sell, lack of finance, and the complexities of the 2003 Act procedures. There are also problems in defining a “community” and ensuring its effectiveness as a potential buyer of land. The LRRG recommended that the Government should be more “flexible” in terms of legal structures for “*appropriate community bodies*” eligible for support, and that Ministers should approve ‘actual’ ability to purchase at any time rather than having to wait ‘pre-emptively’ for a potential sale. The Community Empowerment (Scotland) Bill now going through the Scottish Parliament reflects some of this by defining “*community planning partnerships*” and other bodies which may be Scottish Charitable Incorporated Organisations (SCIOs), and might include a mountaineering club with a hut in the area. Rather than a “*substantial connection*” with the relevant land as now, only a “*connection*” would be necessary. It also specifies that a “community” can be based on “*geographical boundaries, common interests, or shared characteristics of its members*”.

Finance (which was not in the LRRG’s remit) seems likely to remain a major hurdle to community purchase of land: the Scottish Land Fund (see below) disburses about £2 million each year, but a single estate is likely to cost more than that, as with the recent £11 million (from an unknown buyer) paid for 12,000 ha at Auch near Bridge of Orchy. By comparison, Scottish farmers received on average over £500 million each year during 2007-13 under the Common Agricultural Policy, and there are substantial tax concessions to property ownership.

### *Public Access*

The Group had rather little to say on this subject; it pointed to the 17,000 km of core paths created in Scotland since the 2003 Land Reform Act, compared to less than 100 km of formally asserted public rights of way. It considered that its evidence, though “*significant*” in number of submissions, showed “*little appetite for legislative change*”. Concerns – which included blocked access,

damage by mountain bikes, and wild camping – could, it thought, mostly “*be resolved by better implementation of the Access Code*”. It therefore simply recommended that Ministerial guidance (rather than the Code itself) should be “*updated*”, and some improvement in dispute resolution. The Group also proposed that “archaic” common-law rights over public access to foreshore, inland water and seabed should be replaced by rights “integrated” with those of the 2003 Act: this might assist access to sea-cliff climbing, and canoeing.

### *Land Management*

The Group was “*struck ... by the limited progress in addressing some of the issues over the management of wild deer in Scotland, particularly red deer, despite many years of debate over these issues*”. The great increase in forested area (in lowland as well as mountain areas) has led to both more deer of all species, and increased pressures to cull – mostly in woodlands, and much of it by Forestry Commission Scotland. Its Final Report did not mention conflicts between deer stalking (or other hill sports such as grouse shooting) and hillwalkers or mountaineers, but rather focussed on “*environmental damage to habitats, economic damage to crops and the social costs which can result from deer-vehicle collisions*”.

The Group proposed that “*improvements should be made to the current statutory framework governing the hunting of deer in Scotland to ensure [that] appropriate culls are carried out to adequately safeguard public interests*”, e.g. by requiring owners to apply for consent to cull (with SNH taking over if a landowner “*chooses not to meet the standards required for sustainable deer management in the public interest*”), and setting clearer public-interest standards while culling. This might include issues of access to the hills.

Management of grouse moors was treated by the Group almost entirely in terms of the questionable environmental aspects of muirburn, and the awkward tensions for both private and public sectors between the economics of forestry and those of grouse shooting (which can have a capital value of up to £5,000 per brace). The Group “*anticipate[d]*” that the Government’s emerging Land Use Strategy will have to try to resolve some of these conflicts by reducing landowners’ flexibility in how they use their land, but a

number of issues remain under-explored, for example in terms of the shooting of mountain hares (a study is starting at time of writing), and the erection of electrified fences.

The Group was clearly unhappy with the current position as regards Scotland's water resources, and made a number of recommendations in this area, including the review and reform of riparian rights, and reform of the statutory framework for the sustainable management of Scotland's wild freshwater fish populations, both with the "public interest" as the main consideration.

### *Land Ownership Limitations and Taxation*

Perhaps the most radical of the Group's recommendations related to limiting the area in any one ownership, and to land taxation. As regards the former, the Final Report specifically mentioned Deeside, where about 95% of the land area (of about 155,000 ha, or 2% of Scotland's total area) is owned by 20-odd owners with over 400 ha each. *"The Group considers that concentrated patterns of private land ownership in localities like Deeside inhibit the development of the rural communities in these areas"*. It recommended that *"the Scottish Government should develop proposals to establish ... an upper limit on the total amount of land in Scotland that can be held by a private land owner or single beneficial interest"*. It did not suggest any particular limit (or perhaps limits, or ratios), but considered it important to establish the principle of such a limitation, in pursuit of *"a greater diversity of land ownership"* (see remit), and sustainable development.

The main public-sector rural ownerships – the National Forest (651,000 ha), Government-owned crofts (95,200 ha), SNH (35,700 ha), the Crown Estate (35,500 ha), and Scottish Water (24,300 ha) – would presumably be exempt from any limit imposed for "public interest" reasons, since Ministers have direct control. However, such a limit might affect "third-sector" owners such as the NTS, RSPB and JMT, who own 78,000, 54,100 and 24,461 ha respectively in Scotland. These areas compare with the largest private ownerships (mostly trusts) such as the estates of Buccleuch (106,000 ha), Atholl (59,000 ha), Invercauld (49,000 ha including Torloisk on Mull), Seafield (40,900 ha) and Westminster (38,500 ha) (all 1995

estimates), and so might be caught by an upper limit of say 10,000 ha. However, the problem could be overcome by ensuring that third-sector owners have sufficient “public interest” or “common good” characteristics e.g. as a charity), or agree appropriate management with a Government authority.

The Group suggested that it be “*incompetent for any legal entity not registered in a member state of the European Union to register title to land in the Land Register of Scotland*”. This would not prevent ownership by non-EU interests, but would improve transparency of ownership, which is roundly criticised elsewhere in the report, with several recommendations on improving land registration.

Potentially even more radical – because it would affect a larger number of landowners, and others – is the Group’s proposal that the current exemptions of most land-based businesses from non-domestic rates should be “*reviewed*”, as having “*no clear public interest*”. ‘Sporting rates’ on fisheries and shoots could be “*tailored to each of the species involved*” in ways that would help to deliver the Land Use Strategy, though precisely how is not explained. Finally, Land Value Taxation – a long-standing fiscal ideal, based on the land itself rather than the properties upon it – is proposed as deserving of “*detailed study*”, whose philosophy and evidence would no doubt spark widespread debate.

Following the LRRG report, the Scottish Government has undertaken a number of actions, including:

- *Land registration.* The General Register of Sasines dates from 1617 and is said to be the world’s oldest property register, but it simply contains property deeds, from which ownership has to be deduced in an often complex and costly way. The modern Land Register provides a map-based register of title but covers only around 26% of Scotland’s land mass, since registration generally takes place only on property sale, which of course is rare (or has never occurred) in the case of many large estates. Ministers aim to have all public land registered by 2019, and to have the Register completed by 2024.
- *Community right to buy.* In addition to those defined by postcode, “community bodies” may now be SCIOs and companies limited by guarantee. Ministers aim to have a million acres (about 400,000 ha)

in community ownership by 2020. Further changes are intended under the Community Empowerment Bill.

- *Scottish Land Fund*. A budget of £9 million has been promised for the period 2016-20, continuing recent awards. The Fund is administered by the Big Lottery Fund and Highlands and Islands Enterprise, and supports the community ownership and management of land in rural Scotland with grants up to £750,000, so far mainly in the West and in Fife.
- *Succession law*. Scots law has traditionally distinguished between “movable” and “immovable” (or “heritable”) property, with the latter being land (and what is attached to it) which on death can be passed entire to (usually) the eldest son rather than having to be divided up amongst close relatives. Removal of this distinction has been discussed for several years, and may have long-term implications for large Scottish estates (and farms), although it would not apply to trusts, which never die.

A further indication of political interest in land reform has been shown in the House of Commons Committee on Scottish Affairs, which is conducting its own inquiry into land reform. An Interim Report published in March 2014 recommended much more, and more open, information “*on such topics as landownership, land values, land occupation and land use*”. It also recommended the gathering of evidence on the effects of tax reliefs on land and property (which, along with agricultural subsidies, seemed to push up land prices and thus make community purchase of land more difficult), and “*on whether the ownership of estates through charitable companies set up by private owners is in the public interest and how governance of such organisations should be best organised*”.

#### *Land Reform Public Consultation Winter 2014-15*

In November 2014, the Scottish Government initiated a public consultation on land reform, with the aim “*that Scotland's land must be an asset that benefits the many, not the few*”, and in anticipation of a Land Reform Bill. It also listed its reactions to the LRRG’s recommendations, in terms of administrative actions being undertaken, ongoing legislation such as the Community Empowerment Bill, consultation items, or matters “under



consideration” (which included an upper limit on single land ownership).

In the consultation, and otherwise, the Government rejected some of the LRRG’s recommendations, including the production of “indicative maps” of the patterns of land ownership, the removal of the universal exemption of agriculture, forestry and other land based businesses from non-domestic rates, and a detailed study of the scope and practicalities of Land Value Taxation, although it plans to study alternatives to the Council Tax system. It did however propose a Land Rights and Responsibilities Policy - actually more a set of principles – as follows:

1. *The ownership and use of land in Scotland should be in the public interest and contribute to the collective benefit of the people of Scotland.*
2. *...clear and detailed information that is publicly available on land in Scotland.*
3. *The framework of land rights and associated public policies ... should contribute to building a fairer society in Scotland and promoting environmental sustainability, economic prosperity and social justice.*
4. *The ownership of land in Scotland should reflect a mix of different types of public and private ownership in an increasingly diverse and widely dispersed pattern ....*
5. *[A] growing number of local communities in Scotland should be given the opportunity to own buildings and land ....*
6. *The holders of land rights in Scotland should exercise these rights in ways that recognise their responsibilities to meet high standards of land ownership and use.*
7. *...wide public engagement in decisions relating to the development and implementation of land rights in Scotland ...”*

The consultation ended in February 2015 and attracted over 1292 responses, 1086 with permission to publish. The following organisations have made their submissions publicly available (all such responses are available on the Scottish Government website, but not in an easily searchable form).

*Scottish Land and Estates* (representing landowners and land-based businesses) “*strongly disagreed*” with the first Principle above,

i.e., that landownership should be "*in the public interest*" and "*contribute to the collective benefit*". They argued that any policy should also respect the rights of property owners, and not involve terms such as "fairness" (Principle 3) that are widely open to ambiguity and controversy, nor involve non-geographical "communities". They were concerned over extending bureaucracy and state powers, but were "*relaxed*" over the proposal to restrict ownership to individuals or EU-registered entities. They pointed out the many non-ownership barriers to rural development identified by various studies, and, as regards deer management, to ongoing changes with a review due in 2016. As regards sporting rates, SLE pointed to the "*low margin*" nature of shooting and stalking, to the voluntary contributions by estates to river and deer management, to the consequent loss of other taxation revenue, and to the high costs of establishing and administering these rates.

The *John Muir Trust* wanted "future generations" to be mentioned in any statement of principles, and were supportive of non-geographical "communities of interest". They wanted 'high standards of ownership' to include the protection and enhancement of the environment and natural resources. They were concerned that the Scottish Government's interpretation of 'sustainable development' would be (and is) narrower than the well-known UN Brundtland definition "*Development that meets the needs of the present without compromising the ability of future generations to meet their own needs*", and would lead to inappropriate development reducing the values of "wild land".

Veteran land campaigner Andy Wightman cited the European Convention on Human Rights: (1) "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. (2) The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties." This makes it clear that land ownership is subject to certain conditions. Wightman welcomed the possibility of re-subjecting sporting estate land to business rates but admitted that

it might not raise much revenue due to reliefs available to all small businesses, and argued that a simple valuation basis would need to be established.

The *Mountaineering Council of Scotland* responded that: “*policy should set out a minimum standard of stewardship that all land owners and managers should be expected to meet and a higher standard to which they should aspire*”. It was “*concerned that the Scottish Government in its thinking privileges local communities over what may sometimes be much more numerous but widely dispersed communities of interest. This is of particular relevance to charities with a conservation aim which represent a substantial community of interest (their members and supporters). We would welcome greater recognition that multiple ‘communities’ may have an interest in an area and not only its current residents.*” It regarded deer numbers as ecologically damaging, but felt it “*reasonable that, should the present voluntary arrangement fail to deliver the reduction in numbers needed, there are alternative measures in place to enable the reduction to be delivered*”.

*Ramblers Scotland* took a rather stronger line on deer management, arguing for a licensing system (presumably to shoot) that would force landowners to agree an annual cull level, with licence suspension and “government-led intervention” (by SNH) to bring numbers down. It also made a number of proposals for wider action in favour of public access, for example as regards level crossings, electrified deer fencing, and compulsory purchase for core path purposes.

At the time of writing (April 2015), these and all other responses are being analysed, but the Government has already announced that it will introduce a Land Reform Bill in the current Parliamentary session (which ends in 2016). This will include powers to act against landowners who pose “barriers to development”, and end rates exemptions for shooting and deer stalking estates, with the revenue used to fund community land ownership. The details of the proposals, and of their effectiveness (e.g. against legal challenge) if passed, remain to be seen.

### *Upper Deeside Estates*

The largest estates in upper Deeside are each briefly described below. Callander (1987) points to three main elements of landownership change during the 20<sup>th</sup> century, in Aberdeenshire as in Scotland as a whole: a reduction in the areas of the largest estates (in more fertile areas, often by sale to farming tenants), an increase in the number of small owners, and a major expansion in land owned by the state and public agencies such as the Forestry Commission. However, “*the longstanding pattern of large-scale estates continues to be clearly recognizable*”, and in Deeside only the creation of Mar Lodge Estate has broken this continuity.

*Mar Lodge Estate*, which covers 29,340 ha is the largest remnant of the ancient Earldom of Mar. It was split from Mar Estate in the early 1960s, after which it was owned by the Swiss Panchaud family and then Mr John Kluge before it was bought in 1995 by the National Trust of Scotland with a substantial donation from a member of the Salvesen family. Containing 15 Munros, over 40% of the estate is covered by national and international nature conservation designations, and a “Concordat” has been signed between the Trust and SNH (its major grant-awarding agency) for the conservation, enhancement and public enjoyment of the estate, within a number of plans and agreements. For deer management purposes, it is split – partly by a newly erected fence – into the eastern woodland regeneration zone containing the Lui Beg, the Derry and the lower part of the Quoich, and the western moorland zone, where a higher density of deer is allowed.

*Mar Estate* is centred on Glen Ey, along with some land along the south bank of the River Dee near the Club’s cottage Muir of Inverey, and covers some 10,000 ha.

*Invercauld Estate* has been in the ownership of the Farquharson family (now via a family trust) for many centuries and extends to approximately 200 square miles (52,000 ha), extending from Glen Shee in the south to the march with Inchrory, Delnadamph and Candacraig Estates in the north. The Estate is managed commercially, with properties by the Dee rented out for self-catering holiday accommodation. The land is mostly rented out in various moors, for grouse shoots, deer stalking and salmon fishing. A number of holiday cottages, shops and other commercial premises

e.g. in Braemar, are rented out on a long-term basis, and Ballater Angling Association leases Loch Vrotachan from the estate, and stocks it with brown trout.

*Balmoral Estate* was purchased by Prince Albert in 1852, and is now run by trustees. It extends to some 20,000 ha, including the 3000 ha *Delnadamph Lodge* estate in upper Donside, bought by the Queen in 1978 for Prince Charles and Princess Diana. Approximately 3200 ha of the estate are covered by trees, including Ballochbuie Forest, one of the largest remaining areas of old Caledonian pine growth in Scotland, with almost 1200 ha used for forestry that yields nearly 10,000 tonnes of wood per year. Approximately 50 full-time and 50–100 part-time staff are employed to maintain the working estate. *Glendoll and Bachnagairn* are recorded as covering some 5025 ha in 2010. The Ballater Angling Association is allowed to fish Loch Muick, mostly for brown trout.

*Abergeldie Estate* covers some 4730 ha, and is owned by the Gordon family. In 2010, it was recorded as being leased to the Balmoral Estate trustees, as often over the previous century and more. *Glenmuick Estate*, belonging to Sir Ian Okeover-Walker Bt. (Okeover is in Derbyshire; the Walkers once owned Slains), is a traditional sporting estate of some 5665 ha, with its own stalking, salmon fishing and grouse shooting. The House of Glenmuick is available for parties up to 20 people, and the Ballater Angling Association stocks (with rainbow trout) the small Chapel and Gasworks lochans. *Birkhall Estate*, south-west of Ballater, covers some 21,000 ha, and belongs to Prince Charles.

*Glentinar Estate*, of 11,800 ha, extending from the Dee southwest of Dinnet up to the summit of Mount Keen, was created in the nineteenth century by Sir William Cunliffe Brooks MP, who built or created many of its current features. In 1905 it was bought by George Coats (of cotton fame, later Lord Glentinar) and now belongs to his descendant Michael Bruce. The estate is highly diversified, and includes several visitor facilities, from holiday cottages and horse-riding to biking and fishing. It has strong nature conservation attractions such as wildlife photography on its grouse moors and in its semi-natural pinewoods, and has won many awards, including the Green Butterfly Award and certification by the Forestry Stewardship Council.

To the east of Glentinar estate lies the *Forest of Birse* estate 6141 ha, part of the extensive Dunecht Estates (over 21,500 ha) owned by the Cowdray or Pearson family in Aberdeenshire and Kincardineshire, along with the home Estate, Raemoir and Campfield, Dunnottar Castle, Edinglassie, West Durris and Bucharn. Run from Dunecht, the Forest of Birse has grouse shooting and salmon fishing. The *Dinnet and Wester Coull Estate* covered nearly 10,000 ha in 2010, and belongs to the Humphrey family. Other large estates near Deeside include *Abernethy* (10,000 ha), *Rothiemurchus* (nearly 10,000 ha), *Glenfeshie* (17,000 ha), Invermark (17,500 ha), and Gannochy (6500 ha).

The impact on Upper Deeside Estates of land reform depends of course on the extent and degree of such changes, whether those recommended by the Land Reform Review Group, or the more modest ideas of the present Government – or indeed more radical suggestions. Landowning community trusts are rare on Deeside, the Birse Community Trust – established to safeguard an ancient “commonty” – being the main exception, and there seem to have been no major attempts to extend the network in the region. Public access has been largely problem-free, with most estates accepting the Land Reform Act regime although occasional instances of obstruction do occur.

Land management for sport shooting of grouse and deer on Deeside and neighbouring glens continues to conflict with hillwalking at various times and places, particularly as regards the proliferation of hill tracks – bulldozed or eroded – on some estates. It may or may not be helpful that the Scottish Government is instituting a form of “prior notification” by which planning authorities can – but need not – require such tracks to be approved before they are established. Electrified fencing, and the shooting of mountain hares, are other issues disliked by many hillwalkers.

As evidenced by the area figures given above, the introduction of a limit on the amount of land that can be in single ownership might affect several Deeside estates, depending on the maximum area defined. A figure of 4,000 ha would affect nearly all of those named above, but the impact would be reduced if the limit did not apply to existing land holdings, but only to those acquired in future land transactions. Some large estates, such as those of the NTS, or

Balmoral, might be considered (by Ministers, by SNH, or perhaps by a future Scottish Land Commission) to be managed sufficiently "in the public interest" as to exempt them from being divided up. Moreover, should such a limit become a realistic prospect, private landowners may be expected to take pre-emptive action, such as the artificial division of large estates amongst family members, or an appeal to the European Convention on Human Rights.

The perhaps more likely prospect of a more stringent tax regime being imposed on estates – either as part of higher rates of general taxation in a "Devo Max" Scotland, or via measures targeted at such land holdings – might have limited effects, but is more likely to affect estate values, whether for the purposes of taxation or sale, than on their physical extent.

### *Closing Comments*

Land reform is being pursued in Scotland under the belief that greater diversity of landownership will improve the stake of communities and individuals in local development, and will "*deliver new relationships between land, people, economy and environment in Scotland*", for the "*common good*". As the Land Reform Review Group recognised: "*common good describes a comprehensive and complex concept which brings into its embrace questions of social justice, human rights, democracy, citizenship, stewardship and economic development*". It also accepted that "*public interest*" is "*politically identified at any one point in time*" rather than being a fixed legal concept.

The concept of the "common good" is clearly a basic political/philosophical one, concerned with the balance of private rights and state powers. In Scotland this question nowadays tends to revolve around questions of "fairness", between those with "too much" (land, wealth, income), and those with "too little" (income, housing, education, etc.). The issue cannot be resolved by appeals to efficiency or historical accident; much evidence goes to show that human beings (and some animals) are instinctively averse to perceived unfairness, and will choose not to co-operate, even to their own disadvantage, if imbalances of treatment are seen as excessive.

Nevertheless, the argument of economic efficiency cannot be ignored: would greater ownership diversity lead, in fact, to greater

economic prosperity, in terms of jobs and incomes, in relatively remote rural areas? That would depend on the resources, organisational skills and entrepreneurship of the new owners, and on demand for whatever they might try to supply. The demand for elite sports such as deer and grouse shooting, and salmon fishing, is being met by the existing estates. Community owners might continue these pursuits, but they seem unlikely to provide year-round steady employment at satisfactory incomes, and alternatives in terms of mass-interest and specialist tourism are more often cited. Although many existing estates cater for these demands, with e.g. visitor centres, guided trips and holiday chalets, new and smaller owners might do more in these respects. However, the constraints of the Scottish weather need to be acknowledged, and the possibility of overloading a limited market – as may have been shown in the case of hostels in Scotland.

More insidious threat may be the prospect that new and smaller-scale individual owners will seek to ‘privatise’ the countryside in ways that some larger estates, perhaps as more obvious targets for resentment, do not. In many places, retirement and second-home owners are the ones most likely to erect discouraging signs, and to attempt to divert footpaths or prevent roadside car-parking, precisely because they have acquired their properties with peace and privacy in mind. Landowner-sponsored and -supported surveys (e.g. Woolvin, 2013) suggest significant current streams of local income and employment which are dependent on “unprofitable” estates.

Community owners are more likely to try to attract visitors, but the problems of securing, and maintaining over time, consensus and drive amongst a mixture of land managers, working families and retirees in a local area should not be under-estimated, and has been the subject of a number of studies (Scottish Government, 2002).

Finally there is the inevitable conflict – though sometimes denied or underplayed, and certainly not addressed in the Land Reform Review Group’s report, nor, arguably, in the Scottish Government’s current proposals – between economic development and environmental conservation, especially in remote and “wild” areas such as the hills. Under Scottish legislation, even National Parks must “*promote sustainable economic and social development*” as well as natural and cultural heritage, and in these and all other areas



the Scottish Government's overriding "purpose" is "increasing sustainable economic growth".

These problems are not much linked to the Referendum outcome, since Independence would have little legal impact on the Government's ability to act, because the relevant powers are already devolved, often for many years (and more are on the way), or are constrained by European legislation. The current Scottish Government is moving cautiously, possibly for fear of upsetting powerful land-opening interests, or possibly aware of the major legal and conflictual problems of land reform.

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*Invercauld Bridge.*