

Scottish land reform to date: By European standards, a pretty dismal record

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Introduction

Scotland has Europe's most concentrated pattern of land ownership. The point is well made by St Andrews University academic Charles Warren in the most recent edition of his book, *Managing Scotland's Environment*. 'Half of the entire country,' Warren writes, 'is held by just 608 owners and a mere 18 owners hold 10 per cent of Scotland. Of Scotland's private land, 30 per cent is held by 103 owners, each with 9,000 hectares [22,250 acres] or more, and 50 per cent by 343 owners. A minuscule 0.025 per cent of the population owns 67 per cent of the privately owned rural land. Thirty owners have more than 25,000 hectares [61,750 acres] each.'

Scotland thus differs markedly from other European countries where, typically, the bulk of a country's land is owned by very large numbers of people and where extensive estates of the Scottish sort are few or non-existent.

This contrast does not go back indefinitely in time. In the eighteenth century, Scotland's land ownership pattern (as concentrated then as now) was replicated in most European countries. In the course of the last 200 or more years, however, other countries have experienced land reforms which were intended to – and did – break up ownership patterns of the kind that Scotland alone continues to be stuck with.

In some countries, such as France, reform took place during periods of political and social revolution – with large estates being broken up and transferred to a plethora of new owners by means involving confiscation and (sometimes extreme) violence.

In other countries, however, land reform was brought about by constitutional and legal processes. Two such countries – roughly comparable to Scotland in size and population – are Denmark and Ireland.

Denmark

In eighteenth-century Denmark as in eighteenth-century Scotland, the greater part of the land area was owned by just a few hundred families. In the 1780s, however, this pattern began to be altered radically. By the early nineteenth century, as a result, Danish farmland, instead of being owned by a tiny number of aristocratic landlords, was in the hands of many tens of thousands of owner-occupying farmers.

This reform, much of it presided over by an organisation known as the Great Land Commission, took place well in advance of the establishment of Danish democracy – being the work of Denmark’s monarchs and their close advisers.

Those advisers – inspired, incidentally, by the free market thinking of Scots economists like Adam Smith – aimed both to destroy the political power of Denmark’s aristocrats and to inject enterprise and initiative into a then languishing countryside.

By enabling and encouraging former tenants to become owner-occupiers, as well as by eliminating fragmented modes of landholding dating from medieval times, those objectives were achieved. The Danish aristocracy, deprived of its estates, ceased to be a major force politically. For their part, the working family farmers who took the aristocracy’s place provided Denmark, from the early nineteenth century into modern times, with a highly efficient, competitive and export-oriented agricultural economy.

Ireland

Nineteenth-century Ireland, like nineteenth-century Scotland, was a country where large estates predominated and where virtually every working farmer or smallholder was a tenant. In Ireland as in Denmark, but a hundred or so years later, that situation was changed by land reforms which eliminated large estates and converted tenants into owner-occupiers.

Those reforms, it should be noted, were promoted and largely carried through by British governments when all of Ireland, prior to the emergence of the Irish Free State (now the Irish Republic) in 1921, was an integral part of the United Kingdom.

Institutionally, Irish land reform was primarily in the hands of the Irish Land Commission, a public body.

Established by a Land Act of 1881, the Commission was, to begin with, a rent-fixing tribunal – the 1881 Act being less concerned with altering ownership patterns than with granting security of tenure and judicially-determined rents to tenant farmers. Later UK legislation, however, transformed the Commission (which survived Irish independence) into a land purchase agency – empowered to advance to tenants the cash it took to enable an overwhelming majority of them to buy their farms.

In the West of Ireland, meanwhile, another public body, the Congested Districts Board, acquired entire estates with a view to restructuring them (by, for example, subdividing in-hand land) and selling the resulting farms and smallholdings to their (often newly settled) occupants.

The overall cost of those measures to UK taxpayers (during the decades prior to much of Ireland leaving the UK) amounted to something like £4 billion at present-day values. In principle, though not always in practice, this outlay was recouped by the Congested Districts Board selling land on a 50-year purchase basis and by Land Commission advances being repayable over as many as 68 years – the length of the repayment period being necessary to ensure that annual repayments were no greater than the annual rents due previously to landlords.

Although the 1881 Land Act – and the consequent introduction of security of tenure – was a Liberal measure, the subsequent policy initiatives which removed large estates from the Irish scene were in essence the work of the UK Conservative Party. By turning all of Ireland (on both sides of today's border between Northern Ireland and the Republic) into a country of owner-occupied family farms, the Conservative Party, then, is responsible for much the most far-reaching land reforms ever carried through in the British Isles – reforms so sweeping as to make those achieved by the post-1999 Scottish Parliament seem wholly insignificant.

Denmark, Ireland, the Highlands and the rest of Scotland to 1945

Danish land reforms did not impact on Scotland. Irish land reforms did – but their impact was confined largely to the Highlands and Islands.

There, by means of the Crofters Act of 1886, crofters (who had campaigned strenuously and sometimes violently for exactly this) were given security of tenure of the type granted to Irish farmers and smallholders by the Irish Land Act of 1881. In addition, and as had happened more widely in Ireland, crofting rents now ceased to be a matter of private bargain and became subject to a judicial tribunal.

This was the Crofters Commission established by the 1886 Act. Prior to its croft rent-fixing powers being transferred in 1912 to the then newly formed Scottish Land Court, which still exercises those powers, the Commission's tribunal functions made it, in this respect, the precise equivalent of the Irish Land Commission of 1881.

The 1886 Crofters Act, like the Irish Land Act of 1881, was a Liberal measure. As in Ireland, however, the introduction of security of tenure was followed by Conservative legislation which, by providing the Highlands and Islands in 1897 with their own Congested Districts Board (CDB), resulted in the state taking ownership of entire estates with a view to dividing those estates into crofts and selling such crofts on (by means of 50-year purchase arrangements) to their (often) newly-installed crofting occupants.

Because Highlands and Islands crofters, unlike Irish farmers and smallholders, were reluctant to become owner-occupiers, for reasons having to do with owner-occupiers being taxed in Scotland more highly than tenants, owner-occupation (other than on the CDB's Glendale Estate in Skye) did not take off in the early twentieth-century Highlands and Islands in the way it did in Ireland – crofters on the growing number of state-owned properties opting instead to remain secure tenants of government.

Purchase of Highlands and Islands estates by public bodies continued, however – the CDB's role in this regard being taken over by the newly-established Board (later Department) of Agriculture for Scotland (BoAS) in 1912. Such purchases were greatly facilitated by a Land Settlement Act of 1919. Passed by a Conservative-dominated Tory-Liberal coalition, this was the most radical land reform legislation ever enacted in Scotland – the 1919 Act adding substantially to the land-purchase cash at BoAS's disposal and, in addition, equipping the Board with compulsory purchase powers.

One enduring effect of CDB and BoAS activity during the twentieth century's first four decades has been to make the present-day Scottish Government – which currently owns 58 crofting properties totalling some 240,000 acres – much the largest of Scotland's crofting landlords.

Crofter-type security of tenure was extended to Scottish smallholders outside the Highlands and Islands in 1911. And during the 1920s and 1930s the Board of Agriculture bought land for smallholding creation in a number of non-Highland localities. Generally speaking, however, land reform of the type undertaken in Ireland remained confined, in a Scottish context, to the Highlands and Islands. Even there, moreover, reform remained limited to land that was already in crofting tenure in 1886 or land brought into such tenure by the CDB and BoAS – tenant farmers in the Highlands and Islands (like tenant farmers elsewhere in Scotland) being refused security of tenure (let alone any kind of state-financed move into owner-occupation).

Non-government-arranged expansion of the owner-occupied farming sector in Scotland

At the start of the twentieth century, almost all agricultural land in Scotland was tenanted. Now some three-quarters of this land is owner-occupied.

Other than in crofting areas (see below), the state has not been involved in this development – which does not amount, therefore, to land reform in the conventional sense.

Nevertheless, the huge growth of owner-occupancy, and the consequent shrinkage of the area in tenancy, represents much the most significant ‘reform’ of tenure and ownership to have taken place in Scotland during modern times.

In part, the dramatic expansion of Scotland’s owner-occupied farming sector results from large landowners taking all, or a proportion of, their estates in-hand – a process which has accelerated in recent times.

Over several decades from the 1920s onwards, however, much the biggest contributory factor to the growth of owner-occupation was the sale of tenanted farms to their tenants – a process akin to that brought about by Danish and Irish land reforms (see above) but one that occurred without the benefit of state aids or state intervention (other than that occurring indirectly as a result of early twentieth-century British governments imposing land taxes and death duties on landowners of the traditional type).

When, in the aftermath of the First World War and in a period of acute economic contraction and agricultural depression, many landed estates got into financial difficulties, their owners’ only recourse – in the general absence of prospective buyers for such estates – was to sell (whether entirely or in part) to sitting tenants.

In some parts of Scotland, Orkney being an especially striking example, such sales were so extensive as to lead to large estates disappearing in much the same way as they had done in Denmark or Ireland – Orkney ever since having had (a nowadays very successful) agricultural economy operated almost entirely by owner-occupying family farmers.

Few other Scottish localities experienced all-embracing change on the Orkney model. But many areas were affected to a greater or lesser extent – many of today’s owner-occupying farmers, as a result, being the beneficiaries of their grandfathers’ or great-grandfathers’ brave (many at the time said foolhardy) decision to opt for ownership in an era when financial returns from farming were poor and getting poorer.

Post-1945 but pre-1999 land reforms in Scotland

State purchase of land by the Department of Agriculture (post-1927 successor to BoAS) ceased for most practical purposes in the 1930s.

However, another state body, the Forestry Commission, established in 1919 by the UK government that also passed that year's Land Settlement Act, continued to be active – indeed very active – in the Scottish land market during the 30 or so years following the end of the Second World War. A great deal of (mostly hill) land was consequently transferred from the private to the public sector during this period – a period also characterised by the beginnings of a continuing tendency to impose (usually for nature conservation purposes) a variety of restrictions on rural landowners' freedom of manoeuvre.

In the farming sector, meanwhile, much the most important reform of the immediate post-war period was the Agricultural Holdings (Scotland) Act of 1949 which gave security of tenure to farm tenants.

Although this made farm tenancies heritable (meaning that a tenancy could be passed from one generation to the next) in much the same way as croft tenancies had been since 1886, the security thus obtained by tenant farmers was and remains – even when extended in some respects by the Scottish Parliament's Agricultural Holdings Act of 2003 – less complete than that enjoyed by crofters.

Thus secure farm tenancies (known today as '1991 tenancies' because they are governed by consolidating agricultural legislation enacted that year) can pass from one tenant to another only within a defined set of family relationships. A croft tenancy, in contrast, can be assigned (subject to Crofters Commission approval) to anyone of a tenant crofter's choice. This has created a market in croft tenancies – which can be, and are, bought and sold for large sums. There is no corresponding market in secure farm tenancies.

After 1949 and prior to the re-establishment of the Scottish Parliament in 1999, land reform was confined mostly to the crofting sector.

In 1968 the Crofters Commission – not the body established in 1886 (which ceased to exist in 1912) but a new Commission set up in 1955 – recommended that all croft tenants be converted into owner-occupiers. This was to be accomplished by means of state purchase of all privately-owned land (such purchase to take place compulsorily on a pre-announced single day) in crofting tenure – ownership of this land (on the same day) then to be transferred from government to its crofting occupants.

This was akin to what had happened earlier in Ireland – to which the Commission referred explicitly. For better or worse, however, the Commission's 1968 recommendation was not accepted. Instead, by means of a Crofting Reform Act of 1976, croft tenants (rather than being compelled to become owner-occupiers in the way the Commission had suggested) were given the right to buy their crofts (whether or not landlords wished to sell) for 15 times the annual 'fair' rent as determined, if necessary, by the Scottish Land Court (and often little more than nominal in cash terms).

The conversion (faster and more complete in some areas than others) of croft tenants to owner-occupiers has proceeded on a piecemeal basis ever since – thus adding one more layer

of complexity to an already complicated tenurial situation which has, if anything, been further muddled by the Scottish Parliament's Crofting Reform Acts of 2007 and 2010 (essentially regulatory measures that are, thankfully, outside this paper's scope).

Land reform in the devolved Scottish Parliament since 1999

Although the Scottish Parliament has passed other land-related legislation, its most significant reform measures are the Land Reform Act of 2003 and the Agricultural Holdings Act of the same year. Both Acts (more so in the case of the latter than the former) build on earlier measures touched on above.

Thus the Land Reform Act was intended (leaving aside its access provisions which are outwith this paper's scope) to promote community ownership of a type that began to expand in the Highlands and Islands during the 1990s as a result of developments which, initially, were rooted in prior crofting reforms.

Those developments stemmed in part from the privatisation of state-owned corporations and other assets by the Conservative government which took office in 1979.

That government's privatisation agenda included a commitment to reduce the amount of land in state ownership by, for example, instructing the Forestry Commission to launch a dispersal programme which continues and which has had the effect of returning a growing proportion of state-owned and state-afforested land to the private sector.

The same approach was applied to agricultural land owned (since the CDB and BoAS bought it in the early twentieth century) by what had become by the 1980s the Department of Agriculture and Fisheries for Scotland (DAFS). The non-Highland smallholdings created by BoAS half a century previously were duly sold to their occupiers. But when crofters on DAFS crofting estates showed no great interest in becoming owner-occupiers, because (like their early twentieth-century predecessors) they saw no great advantage in so doing, Conservative Ministers experimented instead with offering entire government-owned estates to their crofting tenants on a community ownership basis – the model for such ownership being the Stornoway Trust estate in Lewis which had been gifted to its residents by Lewis's then landlord in 1923.

This experiment, launched on government-owned estates in Skye and Raasay in 1990, failed – the offer of community ownership being rejected (in a postal ballot) by a majority of affected crofters.

However, the community ownership model devised in connection with the Skye and Raasay initiative was adopted by Assynt crofters when in 1992 they bid successfully on the open market for the North Lochinver Estate of which they were crofting estates.

Subsequent to this and in the closing years of the 1979-97 Conservative government, the then Secretary of State for Scotland, Michael Forsyth, capitalising on developments (which he backed) in Assynt, floated again the notion that the government's crofting estates might go into community ownership of the Assynt/Stornoway Trust variety.

The result was a Transfer of Crofting Estates Act, passed just before the Conservative government fell in May 1997, which gave crofting communities on state-owned land a right

to acquire community ownership of this land – a right exercised recently by crofters in West Harris.

In 2003, by means of Section 3 of that year's Land Reform Act, the Scottish government (at the time a Labour-Liberal Democrat coalition) extended this right – as had been recommended by the Land Reform Policy Group established in 1997 by Donald Dewar in his capacity as the then incoming UK Labour government's Secretary of State for Scotland – to crofting communities on privately-owned estates.

This (in principle though not in practice because the Land Reform Act's Section 3 has proved next to impossible to operate) was much the most radical aspect of the 2003 legislation – in that it entitled crofting communities to opt for community ownership irrespective of whether or not their landlords wished to sell.

The Act's Section 2, which applied to non-crofting communities across Scotland, was less radical in that it confined itself to giving such communities a right to register an interest in acquiring particular pieces of land – this right to be exercised (provided the requisite purchase price can be raised) only if or when the land in question is put on the market.

Irrespective of how much land has so far changed hands (in fact very little) as a result of the 2003 Land Reform Act, that legislation signalled the emergence of a peculiarly Scottish variant of land reform – one that gives pride of place to fostering community ownership rather than to promoting owner-occupancy in the way that such owner-occupancy has been promoted by land reforming programmes both historically (as in Denmark or Ireland) and currently (as in post-Communist Eastern European countries dealing with the legacy of state-imposed collectivisation of agriculture).

This new emphasis on community ownership has not entirely subsumed earlier concerns, however. This is demonstrated by the Scottish Parliament's Agricultural Holdings Act of 2003 which, though overshadowed undeservedly by the same year's Land Reform Act, is an important measure intended both to enhance the position of secure or '1991' farming tenants and to introduce new variants of tenancy.

So why, after all of this, does land ownership in Scotland remain so uniquely concentrated?

Starting with the Crofters Act of 1886, there has been, as outlined above, a long series of land reforming measures in Scotland.

As noted in this paper's introduction, however, those measures have left largely untouched an ownership pattern so concentrated as to be unique in Europe.

That is because reform has so far been, by European standards, piecemeal, hesitant and inadequate. This results, in turn, from Scotland having always lacked a government with the courage to take on vested interests of a sort most other countries were prepared to confront successfully long ago. Whether or not we now have such a government remains to be seen. But the omens are not good. Although our SNP government – now six years in power – proclaims over and over again its commitment to social justice, it has so far done absolutely nothing legislatively about the fact that Scotland continues to be burdened with the most

unjust, most inequitable and most undemocratic land ownership system in the entire developed world.