

Essential truths in land reform

Opinion piece on the need for more radical land reform and current Scottish Government proposals.

By Peter Peacock

Peter Peacock is a former Leader of Highland Council, an MSP and Cabinet Secretary. He is a long-standing advocate of greater land reform and was the first Policy Director of Community Land Scotland.

The views contained in this article are those of the author alone.

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Essential truths in land reform

It may be unpalatable in certain quarters, but if there is ever going to be a fairer distribution of land in Scotland, some who currently own a great deal will have to do with less.

This is one essential truth facing Scotland's new land reform Cabinet Secretary Mairi Gougeon in critical early decisions on the content of the next Land Reform Bill due in Parliament later this year.

As she ponders the options, she will be aware the Scottish land question remains unanswered – how can it possibly be just that the equivalent of 0.025% of Scotland's population own 67% of its private rural land? This statistic stands as a shaming symbol of national inequality. An issue that will customarily provoke responses from most in Scotland that this simply 'cannot be right', not disputing the fact, but an allusion to the need for ambitious, radical land reform.

Our highly unusual patterns of landownership hardly alter as the decades pass. The same land stays in the same few hands or passes to another in the rich elite that alone can participate in a land market increasingly beyond the reach of ordinary Scots and its communities. With a growing hunger for Scottish land as the need to sequester carbon increases, new entrants are arriving with ready capital to invest in an ever more secretive dark market in land. There are few more rewarding private investments than in Scotland's unregulated land market with its soaring land values, as recent research evidence from Scotland's Land Commission confirms.

Post-devolution, symbolic of the desire and power to act for change, early land reform measures



offered real promise. Sadly, and despite the highly successful work of new community landowners proving there is a sustainable way to democratise the ownership and management of land and maximise the delivery of public benefits, land ownership patterns are hardly changed. Only around 3% of our land is in community ownership and the many Scots who would love a small bit of land to work and contribute to our local food supplies or manage our climate are denied the opportunity. At the current rate of progress, a century from now probably less than 6% of Scotland's land will have moved away from the established patterns of large-scale private ownership and the power and wealth it bestows on the few.

The Scottish Government land reform proposals consulted on contain some interesting and worthwhile concepts, for example that there should be consideration of the public interest in at least some land sale transactions. However, I don't know anyone who takes a close interest in these matters who believes the current modest proposals will deliver any significant change in landownership patterns. That is why the Cabinet Secretary's forthcoming decisions, the political choices to be made, are so important.

The more ambitious the choices the greater chance of delivering on the agenda of social and economic reform widely supported across parliament: a fairer and more inclusive economy; a just transition to net zero; meeting peoples' economic, social, cultural, and environmental rights; the building of community wealth in a well-being economy. Achieving these laudable and just goals ultimately depend on much more diverse landownership patterns.

Having sat at a Cabinet Minister's desk I know the Cabinet Secretary will be in receipt of much advice on the possibilities of what might, and what maybe shouldn't, be done. The internal legal advice if it is true to form will be extremely cautious. The spectre of the European Convention of Human Rights (ECHR) will be to the fore, with warnings of court challenges and all sorts of dire consequences to be visited upon a government interfering with private property rights. With land being a finite resource the essential truth that those who own most today must own less tomorrow needs to be faced if real progress toward greater economic and social justice is to be achieved.

Serious land reform provided for in legislation that facilitates land redistribution and widens opportunity cannot avoid touching upon ECHR considerations - another essential truth. Parking ambitious change for policy caution to avoid court challenge will not deliver the necessary reform – the legislative reform needed and consequent legal challenge probably go hand in hand.

Of course, ECHR protection of private property rights is not absolute and can be interfered with



when there are strong public interest reasons. Parliament can assist in this by turning public policies on greater social justice into well considered statute. Such statute would codify and bind Ministers in the explicit considerations they must have when considering questions of land ownership and furthering the public interest. Doing this effectively will help provide Ministers with the best means of minimising subsequent legal challenge and a strong defence when court challenge comes.

There is another truth that we all face if the iniquitous land ownership patterns Scotland uniquely endures are to be tackled. The route of reforming law or the alternative will likely be to the cost of the public purse.

This will happen through the compensation necessarily payable to land-owners (seems they never lose!) as consequence of ECHR for the loss of any land when legitimately interfering with their private property rights in the public interest. Whether they should be compensated at market rates is something Parliament could usefully seek to examine. The only real alternative or perhaps complementary route would be for the government or its agencies to actively participate in the land markets. It is no accident Forest and Land Scotland is so titled, they are an obvious vehicle for such purchases and Crown Estate Scotland could also usefully act, as might local authorities. Publicly acquired land, where appropriate transferring to progressive community control and an array of public and climate benefitting uses, to new smallholdings and agricultural tenancies, to traditional and forest crofts. In a welcome if yet modest move the Cabinet Secretary has recently signalled her willingness to explore this approach.

Such action has strong historic precedent in the land settlement acts of the early 20th century where the state acted to serve the public interest by buying land to create hundreds of agricultural tenancies, some of which remain in state ownership to this day. There has been state action for decades in acquiring land for forestry.

Some of course will argue widening state involvement in land purchase could not be justified over priority for schools, hospitals, roads, ferries, and many other beneficial public interests uses for finance. There is legitimate debate to be had on this. But we need to start viewing land as the precious and finite resource that any nation requires to utilise in the service of the public interest, something we have not provided for at any scale, except in forestry. Instead, the evidence is we have viewed land for too long as an immutable private commodity held within an unregulated private market.

A decade ago, the Scottish Government's Land Reform Review Group encouraged us to widen our perspective and embrace the idea that land was more strategically significant and important



than to surrender it to market forces. To consider it instead as a finite national asset in which the state has a legitimate concern in the public interest and for the common good. It was depressing nearly a decade on to read the National Strategy for Economic Transformation to find no reference to land as the strategic economic interest it is or demonstrate any understanding of the economic consequences of current ownership patterns. Instead, we get what seems unqualified encouragement of the virtues of the sort of private inward investment that today commodifies our natural capital, will extract national wealth and leave us all the poorer.

If active participation in land markets were seen as an integral part of how we develop national infrastructure and wealth, then public investment in this can be seen in proper context. A lot of hectares can be bought over time alongside the dualling the A9, ferry contracts, widening access to high-speed broadband and other worthwhile public investment. Unlike many of these other important investments land will keep giving, not costing. What price we put on economic, social, cultural, and environmental advance and significantly greater wealth equality should be a regular part of our national discourse for prioritising spending that is fundamental to long-term national success. There could be few better uses for windfall income to government for the sale of seabed leases than to invest for the long-term in land, with no impact on other expenditure programmes.

The forces for the status quo in land will say there is no need for more state involvement as their private land assets are already at the disposal of the state to achieve its objectives. Of course, that also means the state subsidies and market monopolies remain with them, as the wealth from the capital value of their landholdings grows and grows.

Those forces for the status quo inevitably urge caution upon any Cabinet Secretary considering land reform proposals, portraying their private interests as the public interest. In the current land reform debate, they have chosen the ground they are going stand on in a well-co-ordinated influencing strategy to tell Ministers and anyone else who may listen that with more land reform Ministers risk failing to meet their net zero ambitions. They promote the status quo, private ownership at scale, as the answer to that national challenge.

If true, then no part of the vast European continent would meet net zero as they don't have the preponderance of large private estates we do. Such arguments about the vital importance of scale are a convenience to justify the status quo and are improbable to say the least. They fail to acknowledge international practise which sees small scale landholders acting together to deliver landscape scale impacts. They fail to acknowledge Scottish government policy toward achieving more diversified landownership, in the public interest. They further fail to recognise Scotland's strategy is to reach net zero through a 'just transition', with its own Just Transition Commission



pointing to the “extreme asymmetries” in our land ownership patterns acting against that outcome.

The other old argument for the status quo is that how land is used is most important, not how it is owned. How land is used is of course very important but to consider this at the expense of the more fundamental ownership question is to conveniently ignore that ownership is both a significant determinant of land use but also determines where the economic gains flow. In Scotland that is to the few, not the many, and is at the root of huge disparities in wealth and opportunity apparent in our country. Communities who own land believe ownership matters precisely because it gives them agency over land use and the economic benefits that can be retained and shared locally.

No one should underestimate the challenge the Cabinet Secretary faces in her upcoming decisions and the caution that will be being urged upon her. Those of us who favour radical land reform need to not just encourage the most ambitious potential decisions, we need to offer clear insights into workable options, and offer support for making the difficult choices.

To make such decisions the Cabinet Secretary needs to hear the voices of those in favour of land reform as never before. The forces for change need to collaborate, organise, mobilise public opinion, and support the Cabinet Secretary in making truly reforming decisions. Those voices can offer reassurance that such decisions are the ones that will serve greater social and economic justice and reflect the will of the people to have the Scottish land question answered.

It is only a radical change in landowner attitudes to sharing the bounty of the land, for which there is little historical or contemporary evidence or land reform embracing real change; to tax policies, to how land is traded and at what values, to regulating land sales and local land monopolies, and a new role for the state in securing land for community ownership in the public interest and engaging imaginative financing models, that the wealth and opportunity of our land will at last be better shared.

Is Scotland to finally act or eternally air our shared national grievance that so few own so much land?



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