Scottish and reform: a lost opportunity for community landownership?

Land reform in Scotland raises huge opportunities for remote areas of the Highlands and Islands to improve the local environment and gain associated livelihoods. This article assesses the scale of the challenge in harnessing the legislation.

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The establishment of the crofting community

The pattern of Scottish land ownership has undergone enormous change in the last 300 years. Prior to the union of Scotland and England in 1707, the Highlanders were left largely to their own devices and were organised by clans. The vision of the Gaelic society was the Clan owned the land and the Laird was the Clan leader. By the mid-eighteenth century the Highlanders began to follow the example set by their southern neighbours and the Clan Chiefs began to conform.[1] James Hunter describes the "bonds of kinship and mutual obligation on which clans were based effectively precluded the introduction of the impersonal money relationships". Thus monetary relationships were established in the Highlands and Islands, and the title Laird shifted from leader to landowner and the crofting system emerged. This was a time of great instability in Scotland. No sooner than the crofting system was established, the infamous Highland Clearances began. Landowners became driven by profit and quickly realised sheep farming to generate wool and kelping on the shore would be more profitable than tenanting land to crofters. Vast interiors of land were cleared and hundreds of townships across the crofting counties became a 'redundant' population[2] and were moved, not just to other parts of the estate, to less fertile ground (as seen on Harris, Lewis and parts of Skye), but off the estate altogether.[3] The Clearances continued for a century and the introduction of intensive sheep farming has had severe social and ecological implications in the Highlands and Islands.

Scottish land reform

The large-scale clearances during the 18th & 19th centuries put community rights (particularly those of crofting communities) firmly on the national political map. The historical episodes of struggle, dislocation and resilience have become a fundamental part of Scotland's cultural identity and an important source of contemporary imagery today. However, the remaining local residents were soon to face another challenge. By the late 1850s almost two-thirds of Highland properties were sold to wealthy lowland and English interests[3] and landownership in the Highlands and Islands was revolutionised. McIntosh[4] describes this transition: "…cheap fleece imports

from Australia, and constantly improving breeds from agricultural innovation had devastated the wool market. A new use had to be found for the land. That was sport. So it was that all over the Highlands in the 1880s sporting estates were set up and castles built to provide the Industrial Revolution's nouveau riche with trappings just like those of the old-moneyed landed power."

For the first time land was owned by people outwith Scotland; not just in England but worldwide. Scottish land became a commodity and was subject to fads and fashion; undergoing an Arab period, a Dutch period, an on going Danish period, even a rock group period on the landowning scene.[5] Over time this underlying inequality of ownership contributed to a simmering unrest[6], the landowners' higher status and position in law established a class-like model of 'the people' versus 'the landowners'. By the 1990s a quiet revolution had began. We were witness to a number of community buy-outs including the North Lochinver Estate by the Assynt Crofters, Isle of Eigg and Knoydart. Chenevix-Trench and Philip[7] explained that the perceived economic constraints of the landownership system, combined with emotions of social injustice created a powerful movement for reform. The Scottish Government published the Land Reform (Scotland) Act (LR(S)A 2003). At this time it was seen as a 'historic bill' aiming to establish statutory access rights for ramblers and create opportunities for community land ownership. The LR(S)A 2003 contains three distinct parts: Part I, Access Rights; Part II, The community right to buy; and Part III, The crofting community right to buy.

Political perspectives on land reform

The right to buy fundamentally gives communities the *right to be*, a secure place-based arena of common identity and interests, protected by legal title.[8] By allowing communities first refusal to purchase local land when it comes on the market and by offering crofting communities the right to force a sale, this was a big step forward in attempting to diversify Scottish landownership, promote better land management, and reconnect communities to the land, usually for the first time in centuries. Indicating the political polarisation, Roseanna Cunningham, Scottish National Party, agreed the new law would mark: "...the beginning of a significant change in the pattern of land ownership in Scotland" whilst Tory MSP Bill Aitken said: "...this type of legislation has no place in modern Scotland. It will have a dreadful effect not only on those living in rural areas, but on city-dwellers whose hard-earned tax will be used to pay for this Mugabe-style land grab".[9] When the bill entered statutory law expectations were high. In the first year 20 applications were submitted by communities registering an interest in local land and this number steadily grew to a total of 131 by 2011. However, these communities were not just registering to purchase large estates (like some predicted) but more often communities wanted to buy small areas of communal land or buildings, such as disused churches, pubs, even an old Scottish Water Chisholm Tank. Nine years on a staggering 163 community bodies had been formed under the Act, but only 10 purchases had been made by 8 different communities, 4 of which are located in the Highlands and Islands.

The implications of defining 'community'

The legislation gives the community the right to buy, rather than just an individual. It relies heavily on creative community planning and learning and is

Small-scale wind turbines installed by the Isle of Eigg Trust.

Photo: Maggie Fyffe

thus simultaneously a top-down and bottom-up approach to reform. Whilst this creates a number of opportunities it can also create a number of difficulties. The Act accepts, fairly uncritically, the notion of community. The term itself is woven into texts with minor attention to the complexity; and it is fraught with definitional and operational problems. Brown[10] explains that "legally speaking there is no such thing as a crofting community – there are only individually registered crofts and common grazing committees." In the Highlands and Islands, particularly crofting areas, populations are in decline and there are serious problems associated with absenteeism. One area was found to have 70% of its crofts vacant. The Crofters Commission has been trying to resolve this issue for a number of years because it has a severe impact on communities, reducing social cohesion, impacting on the condition of housing stock, creating areas of neglect and affecting practical community crofting.

The Act defines community as "tenants or grazing shareholders of the land and residents of the townships, all provided they are registered electors". This solely takes geographical location as the definition but for many this is not the only way. MacDonald[3] believes "communities have been assumed to 'be traditional', to have 'culture', 'heritage' and 'authenticity', to be 'integrated' and homogenous, and to

be 'meaningful' to their members." This rather romantic insight provides a deeper understanding of what individuals feel creates a community. For some communities this feeling has been lost. The regulated way the legislation goes about creating a community has the potential to stop groups from using the legislation and has lead to disputes.

Whilst any community which fits the above criteria can submit an interest on a local asset, it takes a determined group of people to successfully use the legislation. Not all communities are aware of a potential asset until an opportunity arises, however communities must register in advance of the asset entering the open market but some believe this has the potential to antagonise the current landowner. It takes vision, drive and knowledge to see the value of an asset and to push through the process to secure community ownership. The process can be very difficult and demanding on time, resources, money and even friendships.

For many communities registering an interest will be the only step they make in the process. Large areas of privately owned land may never enter the open market, with landowners unwilling to sell. This is a somewhat tentative step towards land reform[11] as it still creates very little change in the pattern of landownership. When the Scottish Government consulted on the legislation, one crofting community on Loch Eriboll in Sutherland explained that they were having significant problems with an absentee landowner and unless they had a way to force a sale Part II was going to be useless. As a result Part III was prepared and has been called 'radical', giving crofting communities the absolute right to acquire croft land without the consent of the owner. It is meant as a tool of last resort but in many ways this is the only true way to achieve land reform, particularly when landowners are unwilling to sell.

Funding

For communities that do make it through to purchase the next major challenge is funding. A lack of funding accounts for 8 out of 9 unsuccessful applications. At the Orbost Estate on the Isle of Skye the buy-out was meant to be a showcase. Skye and Lochalsh Enterprise purchased the 1,856ha estate in 1997 for £511,000 with the intention of selling it back to the community, but this has still yet to be achieved. A resident at Orbost explained: "…we got together and we did amazingly well to form a trust and produce this wonderful plan and it was a good plan and they pulled the plug the week before. We can't give it to you; we can't transfer it to you because we can't fund ourselves to buy it again. So therefore it is not happening."

Funding is a major problem in connection to community landownership yet this was not always the case. In 2000 the Scottish Land Fund (SLF) was established, capitalising on the UK lottery-funded New Opportunities Fund and was granted £10m (later increased to £15m) to assist rural communities to acquire and develop community land and buildings. The idea at the time was for the LR(S)A 2003 and the SLF to coincide and work together to promote community landownership across Scotland. Unfortunately this did not quite go to plan as the vast majority of the SLF had been spent and delivered before the Scottish Government made it through the legislation process.

This meant that whilst communities have the opportunity to register an interest and gain the right-to-buy it is becoming increasingly difficult to source money to successfully purchase the land or asset. Once a community has raised money to purchase the asset it often requires more investment to manage the project. The issue surrounding funding creates uncertainty for communities. Unless we see a source of money available to work alongside land reform, we will not see a change in direction.

Ecological and environmental Implications

Some of the most critical conservation issues in the UK today relate to the abandonment of traditional agricultural practices[12] and the Clearances are a perfect example of this. The combination of intensive sheep farming and absentee landowners has taken its toll on the environment. Across Europe traditional practices are being abandoned in favour of intensification of farming, but some of Europe's most valued biotopes occur on low-intensity farmland.[12] Crofting is seen to be beneficial to a wide range of flora and fauna but the intensification of farming methods has led to extensive habitat loss and a decline in biodiversity.[13]

As more of the public demand conservation practices and environmental benefits the current form of land management has come under close scrutiny.[7] The Isle of Eigg "fitted the pattern of rural disempowerment elsewhere, not just in Highland Scotland but in much of the world".[4] The island experienced neglect and conflict from a series of landowners but on 12 June 1997 the Eigg Heritage Trust purchased the island. By doing so they were able to combine the aims of the community and conservation interests to create a broader rationale. The Trust now acts as a guardian of the island, working in partnership with residents, Highland Council and the Scottish Wildlife Trust. Since gaining ownership it has been able to achieve virtually full employment and a green energy grid. Another and more recent example was the creation of the Bute Community Land Company which in July 2010 purchased 161 hectares of Rhubodach Forest. Its vision combines community development and conservation of their remote environment. Land reform and community landownership is changing the way Scottish land is managed and is about creating new opportunities for rural communities, without damaging wild environments.[5]

Rights and responsibilities of land ownership

Nine years on there is still a steady flow of communities registering to use the LR(S) A 2003. But there hasn't been the big change in overall land ownership that many were expecting back in 2003. The way the legislation was developed means that the majority of communities are forced to wait for the asset to enter the market and only the owner knows when that will be, if ever. Part III does offer crofting communities the right to force a sale but there is only one example of this, the Pairc Trust which has shown it is not an easy process. Highlands and Islands Enterprise (HIE) has said the threat of the legislation alone is influencing landowners' decisions on selling their land. Glason community applied to use Part III of the Act and following its application to the Scottish Executive to purchase the common grazing on the estate the landowner entered into private negotiations with the Trust and the purchase is now complete.

Back in 2001 Roger Sidaway commented the "real debate is about redefining the rights and responsibilities of ownership, invigorating rural economies and restoring biodiversity while the rhetorical debate is more concerned with righting the wrongs of the Clearances or attacking the conspicuous consumption of the landed gentry." This still stands true today. For the time being I do not think the landed gentry have too much to worry about.

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