



# Scotland needs Radical Land Reform

Land Reform Review Group

Evidence from Andy Wightman

January 2013

Photograph shows residents of Alyth demonstrating to defend their land rights Sunday 24 July 1949

## THE AUTHOR

I am an independent writer and researcher on issues of land tenure, landownership, land reform, community land rights, governance and the hegemonic dimensions of land relations. I have written and published numerous reports and articles on the subject of land reform over the past 20 years and have authored four books dealing with the topic. My most recent book is *The Poor Had No Lawyers* (Birlinn 2010).

During 1997-2001 I was actively involved in the work of the Land Reform Policy Group and advised the Scottish Office, Scottish Executive and the Secretary of State for Scotland as well as numerous private interests on land reform matters. In addition to work in Scotland, I have undertaken work on land rights in South Africa, Norway, Palestine and England.

I run a blog at [www.andywrightman.com](http://www.andywrightman.com) and the most extensive publicly accessible information source on who owns Scotland at [www.whoownsscotland.org.uk](http://www.whoownsscotland.org.uk). I am also the co-ordinator of Land Action Scotland [www.landaction.org.uk](http://www.landaction.org.uk).

## PREAMBLE

In 2007 I attempted to kickstart the land reform process by promoting six topics that could be taken forward in the third session of the Scottish Parliament.<sup>1</sup> This initiative stalled after the Scottish Government decided that “enough had been done on land reform”.<sup>2</sup>

I am pleased therefore to see land reform being taken forward once again although it is tempting to view the current Review Group as just the latest in a series of moves to kick this tricky subject into the long grass. As matters stand there is no indication that any of the group’s recommendations will be acted upon. I trust that I will be proved wrong.

It is vital that the Group appreciates the significance of the task at hand. For centuries male landed elites have made the very laws that today underpin Scotland’s system of landownership. They have fashioned them in a manner designed to suit their own interests. We live with the legacy of much of that law today unlike virtually every other European country where revolutions and democratic reforms empowered the peasantry and democratised the commons.

Do not let anyone persuade you that this is a technical exercise or one to be advanced based upon “evidence-based policy” alone. It has elements of those of course but at heart it is a political project which should lead to the democratisation of landownership and governance in Scotland and the dismantling of a regime that has led to one of the most concentrated patterns of private landownership anywhere in the world. At the same time, Government fiscal and monetary policy has led to hugely inflated land prices which are posing substantial barriers to (for example) young people wishing to buy a house or land for a house or rural business.

What follows is a number of topics that in my view merit priority action if the above is to be achieved. Under each topic I address the requested information set out in your Call for Evidence, namely:

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<sup>1</sup> Land Reform. An agenda for the 2007-2011 Scottish Parliament. Available here [www.andywrightman.com/docs/landreform2007-final.pdf](http://www.andywrightman.com/docs/landreform2007-final.pdf)

<sup>2</sup> Source is a senior Minister in the Scottish Government at the time.

1. Outline your vision of *how* things could be different and explain *why*, in your opinion they *should* be different;
2. Indicate any barriers there may be in the way of attaining your vision;
3. Suggest how these barriers could be removed and progress facilitated – whether by voluntary, legislative, fiscal or other means.

This submission is not a comprehensive account of all of the evidence which I would like to submit and which, if compiled, would take many days of effort that I do not have available. I thus further submit the publications listed on my website at [www.andywightman.com/?page\\_id=1027](http://www.andywightman.com/?page_id=1027) as evidence together with the various relevant blog entries posted at [www.andywightman.com](http://www.andywightman.com).

## INTRODUCTION

Scotland has a historical legacy of tightly framed land tenure laws designed to benefit a property-owning elite. It also has perhaps the most concentrated pattern of private landownership anywhere in the world (due principally to inheritance laws which until 1868 were based upon primogeniture and were only abolished entirely in 1964). This has discriminated hugely against women in particular.

*The Poor Had No Lawyers* outlines how this powerful nexus of power evolved. The task of any self-respecting land reform programme (which I assume this to be) is to break this nexus for good, to redistribute power, to democratise the governance of land and to place land in its proper place - as a resource to be stewarded for the benefit of the people of Scotland.

A centralised United Kingdom government and an unelected House of Lords allowed for almost unfettered political advantage for the landed and propertied class for centuries. The advent of the Scottish Parliament posed a challenge but these vested interests have adapted and are creating a narrative of their inevitability, their centrality and their role in communities - telling stories of co-operation, partnership and provision (of land) for local benefit. This is elegant power - offering “help” and “assistance” to communities which serves the wider hegemonic interests of the landed elite.

The real issue remains as it has always been - that of power - how it is defined, who has it, how it is exercised, how it is transferred and how it is held to account.

I want, for example, to live in a country where a young couple needing a parcel of land for a home can approach their local council (local - as in municipality, kommune) and be able to secure (through the exercise of appropriate local political power) this most basic of needs at minimal cost. I want to live in a country where, as one travels across it, one finds a well populated land full of energy and optimism.

I want to live in a land where class distinctions are no longer legitimised by the recognition of aristocratic titles and where the principle of equality underpins access to land rights. I want to live in a country where the ownership of land is contingent on paying a proper rent to the community and where speculation and unearned increments are ended. I want to live in a country where land cannot legally be held in private trusts immune from inheritance tax or in offshore tax havens beyond the reach of the tax authorities.

I want to live in a country that finally puts an end to the centuries of landed power and returns the land to the people of Scotland - both men and women.

## CHALLENGE FOR THE LAND REFORM REVIEW GROUP



In order to rejuvenate the land reform agenda it is important to be clear what is meant by the term. To date, the term has been used to cover two categories of policy reform, namely land law reform and reform of *some* land-related rural property matters such as access, community right to buy and agricultural holdings legislation.

Consequently, the land reform process is often regarded as being about the technicalities of property law (abolition of feudal tenure, title conditions, etc.) or about essentially rural matters such as crofting, access and rural development. It is also, in some quarters, almost exclusively associated with public access to the countryside.<sup>3</sup>

This has contributed to the popular view that land reform is about rural areas, mainly in the Highlands and Islands, and thus has limited relevance for most communities and individuals.

In fact, land reform is a process of reforming the relationship between land and people by means of, for example:

- extending property rights beyond a restricted elite
- modernising land tenure laws to provide greater security to owners and tenants
- changes in land policy to increase participation in decision-making
- fiscal and taxation reform to promote specific outcomes.

Land reform is thus a rubric around which a significant number of issues that may at first seem disparate should be given a coherent intellectual framework which fits with existing Government initiatives on, for example, community empowerment.

In relation to land reform in Scotland, a number of topics raised in 1999 remain unresolved. In addition, other topics have emerged that are also part of a land reform agenda. These include: -

- Land information and registration

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<sup>3</sup> Part 1 of the Land Reform (Scotland) Act 2003 is concerned with public access and the Act is frequently cited in access-related writing without noting that only Part 1 relates to access. See [this press release from Ramblers Scotland](#), for example.

- Leasehold reform
- Succession law
- Law of the foreshore and seabed
- Crofting
- Law of prescription and pre-emption
- Governance of the Crown Estate
- Community right to buy
- Agricultural holdings
- Local government finance
- Housing
- Open spaces & allotments
- Community based regeneration
- Common good land
- Common property regimes
- Land use policy
- Community forestry
- Asset transfer
- Public land
- Compulsory purchase
- Access
- Wildlife legislation
- Planning

Land relations is the common theme in these topics and there are numerous linkages.

1. Individuals and families have a need for land to build homes, and yet land is over-valued and communities wishing to promote affordable housing have few effective means of doing so.
2. Tax arrangements are designed to enable many of Scotland's wealthiest landowners to avoid inheritance tax. Such owners also do not pay business rates on their land even though they promote rural estates as businesses.<sup>4</sup> Millions of pounds are lost to the Treasury every year due to land being owned in offshore tax havens and yet at the same time, there is a lack of finance to support community acquisition of land.
3. Communities wishing to pursue marine renewable energy projects have no rights over the seabed adjacent to them and are powerless to have any meaningful say over such developments since the Crown Estate Commissioners administer all the property rights.
4. Contracts are being negotiated with multinational energy companies to develop renewable energy projects on public land when such development would deliver greater value if controlled at least in part by communities.

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<sup>4</sup> They may, of course pay business rates on specific properties such as retail outlets , though frequently it will be the occupier rather than the owner who pays.

5. Farmers, individuals and communities could benefit from and deliver a more diverse and integrated pattern of new forestry in the countryside and yet the Government has no policies in place to stop multinational companies buying land, receiving millions of pounds in public subsidy and profiting as a result.
6. Children have no legal rights to inherit land and thus Scotland continues to have one of the most concentrated patterns of private landownership in the world.
7. Scotland and the UK continue to experience unacceptable levels of social and economic inequality which are being exacerbated by the growing gulf between those who own land and property and those who don't (and perhaps never will). The richest 10% of the UK population own 44% of the wealth; some £4,000 billion of assets out of a total personal wealth in the UK of £9,000 billion.<sup>5</sup>

How society chooses to govern public and private land rights and the economic and social benefits that accrue from these rights is at the heart of these issues.

***Scotland has no coherent policy on land ownership, occupation and governance.***

The Land Reform Policy Group adopted a very specific remit when they set their objective for land reform which was “to remove the land-based barriers to the sustainable development of rural communities”. In its final report in January 1999, the Chair, Lord Sewel, stated that,

*“It is crucial that we regard land reform not as a one-for-all issue but as an ongoing process. The parliament will be able to test how this early legislation works and how its effects change. They will then have the opportunity to revisit and refine their initial achievement.”*

*....These present recommendations are therefore by no means the final word on land reform; they are a platform upon which we can build for the future.”*

Unfortunately, Parliament has since neglected to test, revisit and refine this ongoing process, never mind build for the future.

Now is the opportunity to do so.

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<sup>5</sup> Office for National Statistics, Wealth in GB 2006/08, Figure 2.2.



# WHO OWNS SCOTLAND?



In Scotland it is still difficult for the public to find out with any ease who owns land. In most European countries one can wander into the offices of the local Municipality or Kommune and find out such information with ease. Such information is also increasingly publicly available online (see, for example, [www.cadastre.gouv.fr](http://www.cadastre.gouv.fr) and the English and Welsh Land Registry, where the public can conduct online searches).

Across Scotland there remains widespread ignorance about who owns land, how to find out and how to interpret such information. This results in a climate of ignorance about one's own local community and local power relations and a diminution in the prospects of accountability by those who own land. It is hardly a sufficient response that I personally have attempted to deliver some of this information online ([www.whoownsscotland.org.uk](http://www.whoownsscotland.org.uk)). What is needed is a proper, locally accessible, comprehensive land information system.

Scotland's new statute, the Land Registration (Scotland) Act 2012, modernises much of the legal framework surrounding landownership, but fails to create a modern land information system that is available to the public locally and integrated with other information such as valuation data and land tenure. Scotland needs an open, transparent, free to inspect, online and locally available land information system.

## REFORM

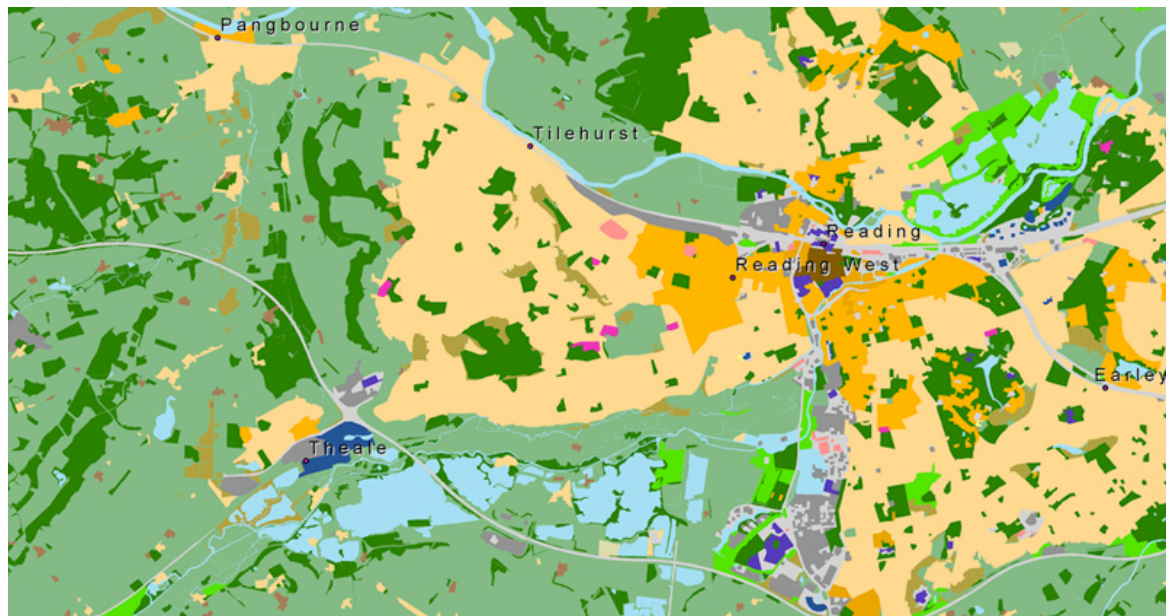
1. Network the data held by the Registers of Scotland (RoS) to all local authority offices and public libraries to be accessed at no cost to the public.<sup>6</sup>
2. Reform the Land Registration (Scotland) Act 2012 to deal with the issues (*a non domino*, commons and offshore titles) that I raised in my evidence on the Bill but which Scottish Ministers rejected.<sup>7</sup>
3. Integrate the RoS information with other information about land in a localised, publicly accessible Scottish Land Information System.<sup>8</sup>

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<sup>6</sup> The income of Registers of Scotland from public searches is 5.3% of its operating income. The loss of this income can be compensated by raising fees and other charges on the remaining 94.7% of its income. See brief discussion here [www.andyweightman.com/?p=733](http://www.andyweightman.com/?p=733) and written evidence on the Bill here [www.andyweightman.com/docs/aw\\_20120113.pdf](http://www.andyweightman.com/docs/aw_20120113.pdf)

<sup>7</sup> See my evidence at [www.andyweightman.com/docs/aw\\_20120113.pdf](http://www.andyweightman.com/docs/aw_20120113.pdf) and commentary from Brian Wilson here [www.brianwilsonwrites.com/docs/WHFP\\_20120323.pdf](http://www.brianwilsonwrites.com/docs/WHFP_20120323.pdf)

<sup>8</sup> Work is underway in England to produce land use maps but little progress has been made in Scotland. See figures on next page including comprehensive survey achieved by Lloyd George's Government over 100 years ago. See Chapter 11 of *The Poor Had No Lawyers* for further background.





## LAND VALUES & PROPERTY TAXES



Fire at 120-130 Morrison Street, Glasgow 28 November 2011. The owners paid no business rates and have thus saved around £750,000 and yet still expected Strathclyde Fire and Rescue to put the fire out.<sup>9</sup>

Any programme of land reform must address the relationship between land, fiscal policy, finance and taxation.

Historically, land was the source of all taxation through feu duties, tithes, hearth taxes and land taxes. Over time, however, the influential landowners of Britain conspired to pass the burden of taxation to labour and business. At the beginning of the 20th century, death duties and estate tax operated very effectively as a means of breaking up large landholdings and diversifying landownership, allowing more people to own farms and smallholdings. Today, such taxes are long gone and even the minimal sporting rates were abolished in 1995.

Inflated land values lay at the heart of the recent financial crisis in the USA and across Europe. The land bubble had particularly devastating consequences in Ireland. In the UK, household borrowing during the 1990s and 2000s led to spiralling house (in reality land) prices and growing levels of private debt. The UK economy now has £ trillions locked away in land values which are completely unproductive in the economy and are having to service large debts. At the same time, those who want to buy houses or land for enterprises find it increasingly difficult to do so. In rural Scotland land is often beyond the reach of local people, with farms, estates and plots of land selling for exorbitant sums of money.

It would be far better for the Scottish economy if land values were to be reduced to around 20-30% of their current values. Not only would this reduce indebtedness and the costs to households of servicing debts but it would liberate substantial amounts of capital that could be invested in the real economy.

The wider system of existing property taxation also needs examined. Although the Scottish Government is reforming Stamp Duty Land Tax and proposing changes in business rates, the reforms are cosmetic.<sup>10</sup> In 2011, the Mirrlees Review published the results of the most thorough analysis of the UK tax system for over 30 years. It concluded that the UK tax system is poorly designed and contributes to (among other things) an inefficient housing market and distorted savings and investment decisions. In relation to land and property

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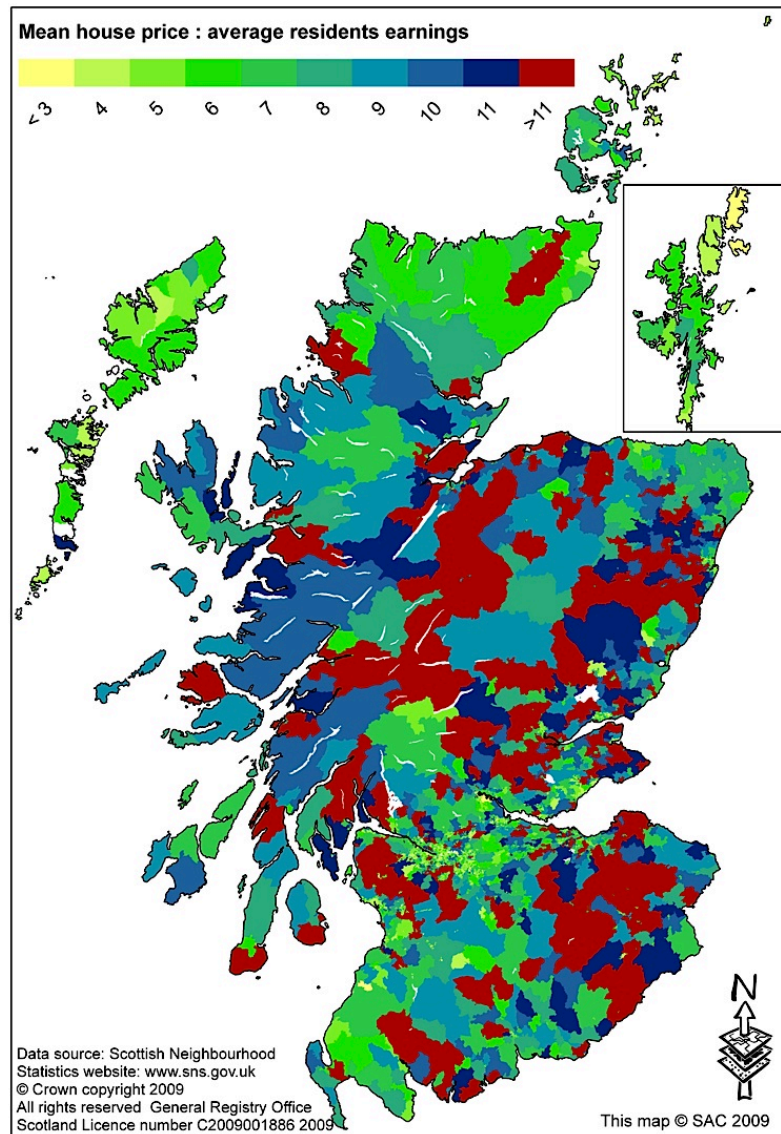
<sup>9</sup> See [www.andywightman.com/?p=355](http://www.andywightman.com/?p=355)

<sup>10</sup> See the blog, Dukes, Sheiks, Fire Brigades and Property Taxes for further discussion at [www.andywightman.com/?p=1410](http://www.andywightman.com/?p=1410)

taxation, the Review recommends the abolition of stamp duty land tax, council tax and business rates and the replacement of business rates with land value tax.<sup>11</sup>

## REFORMS

1. Reform the existing property tax regime by extending business rates to all non-domestic property including agricultural, hunting and forestry businesses.
2. Develop and introduce a system of Land Value Taxation to replace (initially) the Council Tax and Non-Domestic Rates.<sup>12</sup>



Graph showing average house prices as multiple of average earnings. This gross house price inflation is a consequence of land value inflation since the costs of building materials and labour has remained virtually static. Source: Rural Scotland in Focus 2010, SAC.

<sup>11</sup> See [www.ifs.org.uk/mirrleesReview](http://www.ifs.org.uk/mirrleesReview) and, in particular, Chapter 16 in Tax by Design. See also my blog on Stamp Duty Land Tax at [www.andywightman.com/?p=1525](http://www.andywightman.com/?p=1525)

<sup>12</sup> An outline of how this could be done can be together with further background information can be obtained at [www.andywightman.com/?page\\_id=1050](http://www.andywightman.com/?page_id=1050)

## SUCCESSION



The Earl of Hopetoun, Prince Michael of Kent, The Countess of Hopetoun and Princess Michael of Kent

Scotland stands almost alone of all European countries in not providing legal rights for children to inherit land and property. Despite many calls for reform (the latest being published by the Scottish Law Commission in 2009), Scots law still privileges single heirs, and thus the mechanism that is responsible in greatest measure for the perpetuation of both a landed elite and a large-scale pattern of landownership continues.<sup>13</sup> This tradition was made explicit in an interview with the Earl of Hopetoun in 2012 as the following extract illustrates.

*Together with his wife, Skye Bovill, whom he married in 1993, the daughter of an army general, he has four children Olivia, 15, Georgina, 13, and twins Charles and Victor, ten.*

*Despite his two oldest children being daughters, it is his oldest son who will inherit. When asked whether that posed potential difficulties in choosing his successor, as they are twins, he says: "One is older and one is younger." He does not want to dwell on the subject but reveals he has had conversations with his own younger brother about who was the lucky one.<sup>14</sup>*

## REFORMS

1. Reform the law of succession to allow all children of whatever age to inherit in equal measure all heritable and moveable property.

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<sup>13</sup> See Chapter 28 of *The Poor Had No Lawyers*. The Scottish Law Commission report is available at [www.scotlawcom.gov.uk/law-reform-projects/completed-projects/succession](http://www.scotlawcom.gov.uk/law-reform-projects/completed-projects/succession)

<sup>14</sup> Scotsman 19 July 2012



## FORESTS



Unlike most other European countries (which not only consider the ownership of forests to matter a great deal but collect and publish data on the subject), the Scottish Government and the Forestry Commission collect minimal information on forest holdings and publish nothing. The evidence presented here is derived from a study carried out for the Forest Policy Group in 2012.<sup>15</sup>

Preliminary research reveals that of the 67% of Scotland's forest area that is privately-owned:

- 91% is owned either by landed estates or by investment owners
- 55% is owned by absentees
- 32% is owned by people who live outside Scotland.

Scotland's forest resource is thus dominated by the state, landed estates and forestry investors. This contrasts with other European countries where a significant proportion is owned by individual resident owners, farmers, co-operatives and municipalities.

In comparison to the rest of Europe, Scotland has by far the most concentrated pattern of private forest ownership, occupying the extreme end of the spectrum of forest landholding size classes, with large holdings dominating the picture, and by far the lowest proportion of the population involved in owning forests. A detailed comparison with eight European

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<sup>15</sup> See *Forest Ownership in Scotland - a scoping study* Copy available for download here [www.andywrightman.com/?page\\_id=1053](http://www.andywrightman.com/?page_id=1053). And see, for comparison the Swedish forestry statistics at [www.skogsstyrelsen.se/statistics](http://www.skogsstyrelsen.se/statistics)



countries (Austria, Belgium, France, Hungary, Latvia, Lithuania, Norway, Poland and Slovakia) shows the following.

- 55% of forest holdings in Scotland are over 50ha (Europe = 1.6%).
- 60% of European forest holdings are less than 1ha in extent (Scotland = 6.3%).
- Over 93% of Scotland's privately owned forest area is held in holdings of over 100ha.

The graphs on page 14 show the comparison in holding size between these eight countries and Scotland. The contrast between the pattern in continental Europe and in Scotland is a reflection of a number of historical and political factors:

1. Feudal tenure
2. The wider pattern of landownership generally
3. The widespread rights of children to inherit land in most European countries
4. The historic prohibition on tenant farmers having rights to forests in Scotland
5. UK Government taxation policy and financial incentives
6. The fact that European revolutions which transformed aristocratic and ecclesiastical power never took place in Scotland

and, more generally, in recent times in Scotland:

7. Lack of any national policy on ownership
8. Poor integration of land use.

A good example of how the forest economy is currently at the service of large-scale industry is the building of a £3 million pier on Mull to export timber.<sup>16</sup>

*“Whilst this may boost the timber harvesting business, it does nothing for the forestry economy and even less for the development of Mull’s economy. It is good news for the state forest service, for Mull’s mainly absentee investment forestry owners, and for the multinational companies which own the large sawmills in the south of Scotland and north of England. But it weakens the Mull economy by making it easier to extract and export the island’s natural resources.”*

By way of comparison, I would point to Sjak kommune in Norway which has a population of 2280 people and 9500ha of forest. Mull has a population of 2667 and around 10,000ha of forest. Sjak kommune has two sawmills, and a timber house factory. All these industries are community-owned. Mull has no sawmills. The nearest one is in Morvern – Sound Wood.<sup>17</sup>

For the forest economy in all its facets to thrive and provide full benefit to rural Scotland, the ownership, governance and use of the nation's forests must be in the hands of local people and businesses. The governance of the public forest estate must also be reformed so as to reflect local and regional priorities rather than the demands of the large-scale timber-processing industry.

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<sup>16</sup> See News Report [www.bbc.co.uk/news/uk-scotland-glasgow-west-20665415](http://www.bbc.co.uk/news/uk-scotland-glasgow-west-20665415) and critique at [www.andywrightman.com/?p=1971](http://www.andywrightman.com/?p=1971)

<sup>17</sup> [www.sound-wood.co.uk](http://www.sound-wood.co.uk)



Timber house prefabricated in community owned factory in Sjak Kommune, Norway.

## REFORMS

1. Instigate a full survey and audit of forest ownership in Scotland.
2. End all financial support by Scottish Government for absentee financial investors in new afforestation, and target resources instead at community groups, working farmers and resident landowners.
3. The Forestry Commission in Scotland should be reformed. The state forest service should be made more locally accountable through regionally elected Forest Boards responsible for developing strategic plans for forestry in each region of Scotland. Management of the national forest estate should be opened up to a wider range of bodies than the Forestry Commission. Currently, the estate, which is owned by Scottish Ministers, is put in its entirety at the disposal of the Forestry Commission under the terms of Section 3 of the Forestry Act 1967.<sup>18</sup>

## FURTHER READING

Rural Development Forestry in Scotland: the struggle to bring international principles and best practices to the last bastion of British colonial forestry.

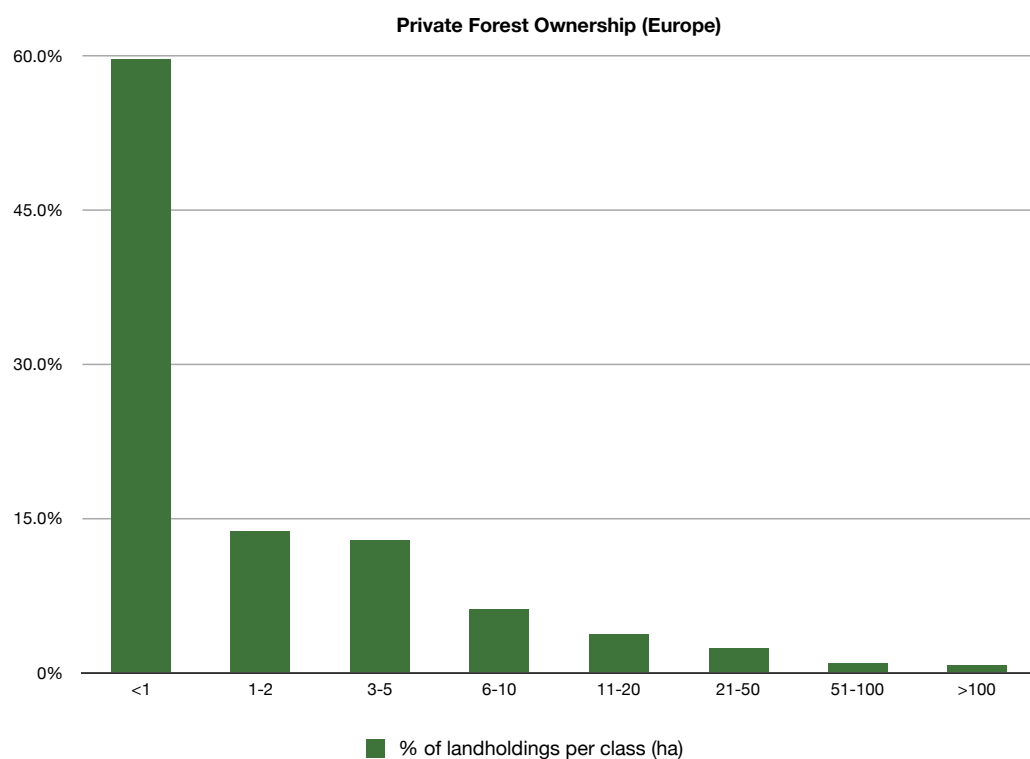
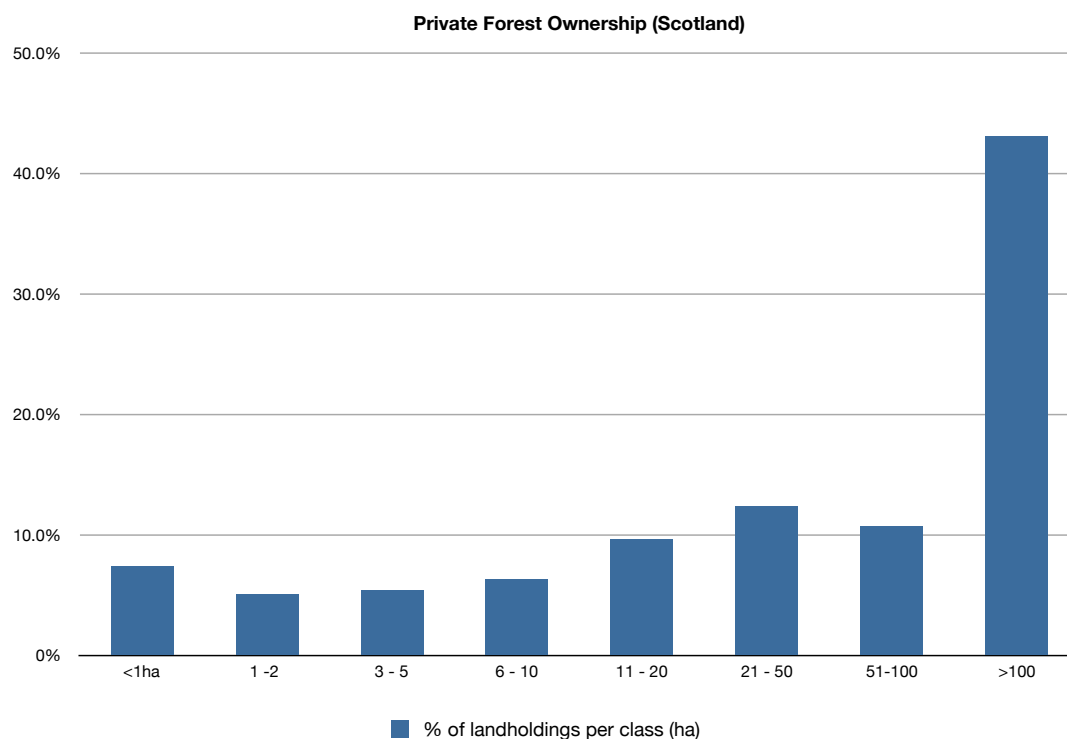
[www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/1134.pdf](http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/1134.pdf)

Forest Ownership in Scotland. A scoping study & other articles

[www.andywrightman.com/?page\\_id=1053](http://www.andywrightman.com/?page_id=1053)

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<sup>18</sup> See [www.legislation.gov.uk/ukpga/1967/10/section/3](http://www.legislation.gov.uk/ukpga/1967/10/section/3)



Size distribution of privately-owned forest holdings in Scotland and Europe.<sup>19</sup>

<sup>19</sup> See *Forest Ownership in Scotland - a scoping study* for further details.



## COMMON GOOD



Across Scotland's 198 burghs lies common property which belongs to the citizens of Scotland's burghs as their common good.<sup>20</sup> In recent decades since the abolition of local government in Scotland on 15 May 1975, the records and stewardship of these assets has declined significantly and millions of pounds of assets have gone missing.

I grew up in Kinross, a Burgh and County town of Kinross-shire. Many of the town's activities took place in the Town Hall (pictured above) and we were served with a very fine Carnegie Library (pictured above to the left).

In 1975 the Town Council was abolished. Local services were delivered from Perth. Local Councillors had other priorities and responsibilities. No one was on hand to provide political leadership. Critical fora for debate and discussion in the town disappeared. The community became disempowered. Today the Kinross Town Hall and Kinross Carnegie Free Library lie empty, abandoned and riddled with dry rot.

## REFORMS

1. Introduce a new statute to provide a statutory definition of common good, a statutory register of common good assets, a legal right for communities to manages common good assets and a statutory right to take back title to common good land and assets.<sup>21</sup>

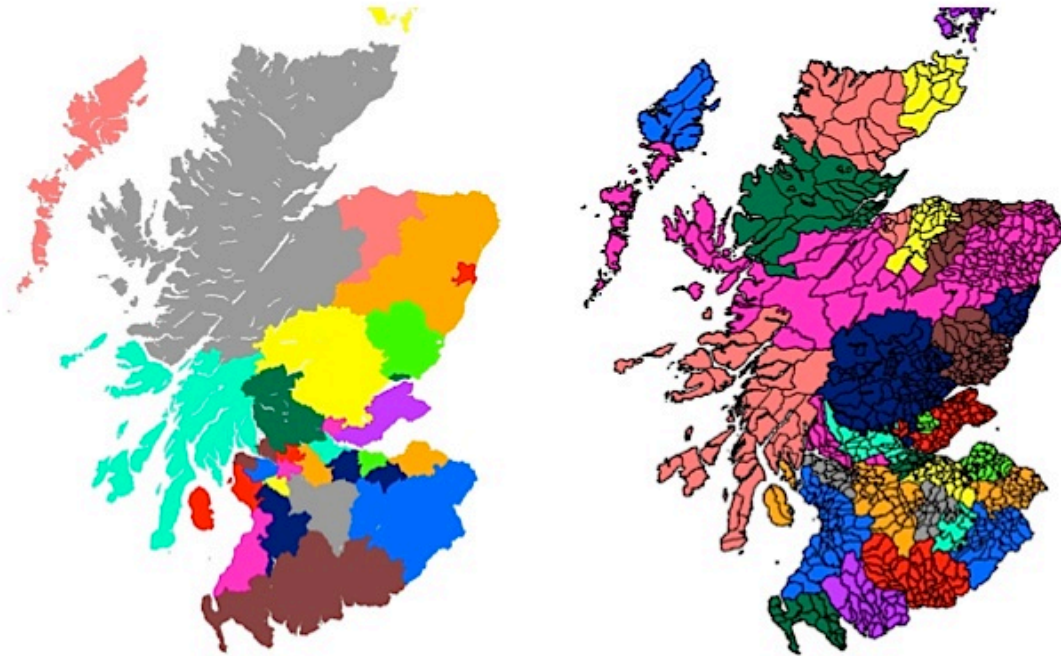
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<sup>20</sup> For a full discussion of this topic see Common Good Land in Scotland. A review and critique (2005) and Common Good. A Quick Guide. Both can be downloaded here [www.andywrightman.com/?page\\_id=1554](http://www.andywrightman.com/?page_id=1554)

<sup>21</sup> I am currently preparing a review of common good 2009/2012 and drafting such a statute.



## GOVERNANCE



Scotland's people are disengaged from decisions about the governance of land in substantial part because they have lost what vestige of democratic institutions they once had to provide local autonomous political power. Parish Councils (map above right) were abolished in 1930 by the Local Government (Scotland) Act 1929 and Scotland's Town Councils were wound up at midnight on 15 May 1975 by the Local Government (Scotland) Act 1973.

In comparison with the rest of Europe (including the rest of the UK), Scotland is the least democratic country in the entire continent. The recent report by the Jimmy Reid Foundation – *The Silent Crisis: Failure and Revival in Local Democracy in Scotland* – examines in considerable detail the impact this disparity has had on Scottish democracy.<sup>22</sup> A summary of local government structures across Europe is provided by the Council of European Municipalities and Regions.<sup>23</sup> An illustration from Fife shows the general trend:

| Years         | Councils  | Total No. Councils |
|---------------|---|--------------------|
| to 1894       | 26 Town Councils                                  | 26                 |
| 1894 – 1930   | 1 County, 56 Parishes & 25 Town Councils          | 82                 |
| 1930 – 1975   | 1 County, 7 Landward Districts & 25 Town Councils | 33                 |
| 1975 – 1996   | 1 Regional Council & 3 District Councils          | 4                  |
| 1996 to today | 1 Unitary Authority                               | 1                  |
| Future        | 0 ?   |                    |

<sup>22</sup> <http://reidfoundation.org/portfolio/the-silent-crisis-failure-and-revival-in-local-democracy-in-scotland/>

<sup>23</sup> See [www.andywightman.com/docs/CCRE\\_CEMR\\_localgov\\_2012.pdf](http://www.andywightman.com/docs/CCRE_CEMR_localgov_2012.pdf)

Across the rest of Europe, local communes and municipalities exercise considerable political power. As the Christie Commission noted:

*“If we look at other European countries with comparable populations (Sweden, Finland, Denmark, Norway, etc.), they have at least 3 times the number of councils we have, and in some cases more than 6 times. As importantly, these small councils are running a complex array of services (community health, social care, schools, local policing) and often raising the bulk of their income through local taxation.”*

| Country     | Number of municipalities | Population | Mean Municipality population | Municipality average sq km |
|-------------|--------------------------|------------|------------------------------|----------------------------|
| France      | 36700                    | 6,3983,000 | 1743                         | 15                         |
| Switzerland | 2551                     | 7,593,490  | 2977                         | 16                         |
| Austria     | 2357                     | 8,318,590  | 3529                         | 35                         |
| Spain       | 8186                     | 45,283,260 | 5543                         | 62                         |
| Estonia     | 226                      | 1,340,940  | 5933                         | 200                        |
| Malta       | 68                       | 410,290    | 6034                         | 5                          |
| Germany     | 11481                    | 82,217,840 | 7161                         | 30                         |
| Italy       | 8094                     | 56,619,290 | 7366                         | 37                         |
| Norway      | 430                      | 4,737,170  | 11017                        | 721                        |
| Finland     | 336                      | 5,300,480  | 15775                        | 1001                       |
| Belgium     | 589                      | 10,666,870 | 18110                        | 51                         |
| Latvia      | 119                      | 2,270,890  | 19083                        | 543                        |
| Sweden      | 290                      | 9,182,930  | 31665                        | 1453                       |
| Netherlands | 418                      | 16,405,400 | 39247                        | 97                         |
| Denmark     | 98                       | 5,472,090  | 55838                        | 418                        |
| Lithuania   | 60                       | 3,366,360  | 56106                        | 1088                       |
| England     | 353                      | 56,100,000 | 158924                       | 381                        |
| Scotland    | 32                       | 5,254,800  | 164213                       | 2450                       |

## REFORMS

1. Conduct a review of local government with a view to re-establishing local government in Scotland with a wide range of competencies and fiscal powers below the level of Scotland's existing 32 Councils.
2. Integrate this level with new Local Natural Resource Agencies accountable to this new level of governance and responsible for the range of functions now administered by centralised agencies such as the Forestry Commission, Crofting Commission and Scottish Natural Heritage. Locate land information functions at this level as outlined in the Who Owns Scotland section above.

## HUNTING



Picture of the author

Hunting in Scotland is focussed on around 340 Sporting Estates mainly in the Highlands and Islands covering around 2 million acres of land.<sup>24</sup> The hunting economy in Scotland is worth around £200 million per year but the control exercised by these estates means that the potential of this economy is constrained. In other European countries such as Norway, hunting is available to the public on common and state-owned land as well as private land and is subject to a licensing regime.

It is worth remembering in this regard that wild animals such as Red Deer belong to no one and thus represent a public resource which is currently controlled by the landowners who have the right to exclude people from hunting on their land. Scotland would be better served if hunting was subject to a public licensing scheme administered by Local Natural Resource Agencies mentioned previously. Landowners would still be entitled to obtain licences for their own use.

## REFORMS

1. Introduce a licensing scheme for hunting a range of wild animals so that this public resource can be managed in a democratically accountable manner in the public interest.
2. Administer this scheme through locally accountable Local Natural Resource Agencies.

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<sup>24</sup> For a full history and analysis of their contemporary status see *Hunting and Hegemony in the Highlands of Scotland*. A study in the ideology of landscapes and landownership by Andy Wightman published by Agricultural University of Norway and available here [www.andywightman.com/docs/noragric-wp-36.pdf](http://www.andywightman.com/docs/noragric-wp-36.pdf)

## COMMUNITY LAND

Much attention has been focussed on community landownership in Scotland. I am an advocate of much wider community ownership of land as I think should be evident from my evidence so far. However, it is important to stress that increased community landownership does not in itself address the deep-seated inequities in landed hegemony in Scotland. Nevertheless there are many opportunities to expand the opportunities for communities to acquire and manage land. Some are outlined above (common good, etc.).

Principle among these is an imperative to review the right-to-buy provisions of the Land Reform (Scotland) Act 2003. In 2006, I reviewed the first two years-operation of Part Two of the Act and would request that the Land Reform Review Group read this as it forms my substantive response to the question of what to do with the Act.<sup>25</sup> This review was not included in the sources of information collated by the Scottish Government in their 2012 *Overview of Evidence on Land Reform in Scotland*.

My overall view on Part 2 of the Act is that it is now proven to be so unwieldy and bureaucratic that it might be best to repeal it and start again.

Beyond a review of the Act, the Group should explore other mechanisms (pre-emption, compulsory purchase, etc.) that could be useful in expanding community ownership.

## REFORMS

1. Review the Act to make it simpler and less bureaucratic. In particular, remove the discretionary powers of Scottish Ministers which have been abused in the past (see section *Administration* in my Two Year Review).
2. Extend the scope of the Act to cover all land in Scotland including the foreshore and seabed.
3. Make the formation of community bodies far more flexible and less prescriptive.
4. Transfer the administration of the Act to Scotland's existing 32 Local Authorities and remove Scottish Ministers from any role.
5. Create an additional straightforward power for communities to register a right of pre-emption over any land.
6. Examine new mechanisms for communities to obtain land they need including compulsory purchase powers and community land auctions.<sup>26</sup>

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<sup>25</sup> See [www.andywrightman.com/briefings/docs/briefing\\_6.pdf](http://www.andywrightman.com/briefings/docs/briefing_6.pdf)

<sup>26</sup> See [www.centreforum.org/index.php/mainpublications/279-community-land-auctions](http://www.centreforum.org/index.php/mainpublications/279-community-land-auctions)



## HUTS



In many European countries such as Germany, Finland, Norway and France, hutting is well established as a way of life. It is the norm for many urban people to head to the countryside for the weekend to their hytte or dacha. In Norway, for example, hut or “hytte” culture is particularly highly developed and it is instructive to examine its characteristics in the context of promoting something similar in Scotland.<sup>27</sup> Huts in Norway (and there are over 400,000 of them or 1 to every 10 people) may be used by owner occupiers for anything between once or twice a year to every day or every weekend. In addition there are tens of thousands of hytte specifically for holiday rental.

Scotland, by contrast has a very modest historic tradition of hutting. It is predominantly associated with a working class movement that developed early in the 20th century when small holiday huts began to be built on land close to Scotland’s main industrial cities. The best known of these sites is at Carbeth in Stirlingshire which came to widespread attention in 1999 as a result of a dispute between the hutters and their landlord. This led to an early petition to the Parliament (PE014), to debates in the Scottish Parliament and a to a research report, *Huts and Hutters in Scotland*, by the Scottish Executive Central Research Unit. The Carbeth hutters are now raising money to buy the land on which their huts sit.

Hutting has the potential to provide significant benefits to urban and rural communities including many of the most disadvantaged groups in society by providing a renewed culture of healthy, rewarding and meaningful experience of simple living in Scotland’s countryside.

## REFORMS

1. Provide political support for the expansion of hutting.
2. Seek the revision of planning law to provide a definition of a hut as a small simple structure designed for recreational occupation.
3. Reform planning law and/or policy together with the building standards regime to develop a simple process for obtaining consent to construct huts.

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<sup>27</sup> There is even a magazine devoted to the hytte <http://www.hyttemag.no>

## MISCELLANEOUS

There are a number of areas of law reform that should be looked at by the Group. These include the following.

Implementation of law reform already proposed but yet to be implemented such as the Scottish Law Commission's report on the Law of the Foreshore and Sea Bed.<sup>28</sup>

Repeal of the Commonties Act 1695.<sup>29</sup>

Introduction of a residency obligation on landowners.

Introduction of a right to buy for agricultural tenants.<sup>30</sup>

Abolition of all aristocratic titles and honours.

See also the proposals made in my response to the Community Empowerment and Renewal Bill.<sup>31</sup>

## CONCLUSIONS

This response does not cover all of the evidence I would choose to present to the Group. Much else is contained in other publications and I would direct the Committee's attention to these at my website [www.andywightman.com](http://www.andywightman.com). In particular I would submit the following as part of this evidence available from [www.andywightman.com/?page\\_id=1027](http://www.andywightman.com/?page_id=1027)

- The Poor Had No Lawyers
- Forest Ownership in Scotland
- Land Reform - the way ahead
- A Land Value Tax for Scotland
- Community Land Rights. A citizen's guide
- Common Good Land - a review and critique
- Hunting and Hegemony in the Highlands of Scotland

In addition, I would highlight the Two Year Review of the Land Reform Act (footnote 25, page 18).

I wish the group well in its endeavours and am happy to clarify any of the points made in this paper.

Andy Wightman  
11 January 2013

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<sup>28</sup> Available here [www.andywightman.com/docs/SLC190\\_Foreshore.pdf](http://www.andywightman.com/docs/SLC190_Foreshore.pdf)

<sup>29</sup> This was a recommendation of the Committee scrutinising the Land Registration Bill in 2012 but the opportunity for repeal was rejected by Ministers as they felt that such an Act devised to legitimise land grabbing in the 17th century still had legitimacy today. See here for brief discussion. [www.andywightman.com/?p=928](http://www.andywightman.com/?p=928)

<sup>30</sup> See discussion of human rights implications [www.andywightman.com/docs/tenant\\_humanrights.pdf](http://www.andywightman.com/docs/tenant_humanrights.pdf)

<sup>31</sup> See [www.andywightman.com/docs/cerb\\_andywightman\\_response.pdf](http://www.andywightman.com/docs/cerb_andywightman_response.pdf)