

## Scotland's commonweal

Andy Wightman (2004)  
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*In this short introductory article published in Drouth magazine Andy Wightman reviews Scotland's rich history of common land. He summarises the processes whereby common lands were lost through weak democratic institutions, manipulation of the legal and justice systems, corrupt officials and the lack of proper electoral oversight and accountability. The article concludes by proposing that a campaign of restitution of common land would be an appropriate way of bring back into common ownership assets which the current land reform legislation shamefully dictates we must pay for.*

Tom Johnston, wartime Secretary of State for Scotland, and author of that splendid philippic, *Our Scots Noble Families*, concluded the introduction to that work (which he titled *A General Indictment*) with a powerful invitation to social reformers to rally to the cause of land reform.

“Show the people that our Old Nobility is not noble, that its lands are stolen lands - stolen either by force or fraud; show people that the title-deeds are rapine, murder, massacre, cheating, or court harlotry; dissolve the halo of divinity that surrounds the hereditary title; let the people clearly understand that our present House of Lords is composed largely of descendants of successful pirates and rogues; do these things and you shatter the Romance that keeps the nation numb and spellbound while privilege picks its pockets.”

*Our Scots Noble Families*, published in 1909, was a sensation, selling over 120,000 copies and going through 9 editions. Such success may seem surprising in comparison to likely sales of such a work today but this was the year of Lloyd George's People's Budget and a plan to levy a tax on all land in the British Isles. Land was a hot topic at the time and there was a real sense that radical change could happen.

Johnston later eschewed his forceful political views and sought to dissociate himself from the trenchant manner in which he had expressed them in his youth (he was 28 years old when *Noble Families* was published). Such views aside, however, his work was equally significant because of the authority of his underlying research. In 1920 he published *A History of the Working Classes in Scotland*. Again here was a book written in an engaging and determined style with a strong campaigning edge. But at its heart was a work of history that documented with remarkable attention to source and detail the social development of Scotland. His chapter on the theft of Scotland's common lands is a tour de force of political writing, one which inspired me personally, and which represents the only serious historical analysis of the topic. Why, one wonders, has this rich history been ignored by historians ever since?

In the 1970s, when land reform was again on the political agenda it was notable that much of the rhetoric had changed little from Johnston's day. Campaigners such as John McEwen, author of *Who Owns Scotland*, made no pretence of the antipathy they felt towards Scotland's landed classes. Any notion, however, that anything was going to change as a consequence, died in the aftermath of the 1979 devolution referendum and the ascendancy of the Thatcher government. It also died, it might be argued because McEwen's own prescription - to nationalise all land - never got any support within the Labour Party.

In recent years, however, the land question has re-emerged and is now firmly back on the mainstream political agenda. The election of the Labour Government in 1997 and the establishment of a Scottish Parliament have led to a flurry of laws and initiatives designed to begin the process of doing something about the way in which land in Scotland is owned. Foremost among these and in many ways the flagship of the current land reform programme, is the Land Reform (Scotland) Act 2003 and in particular Part II of that Act, the Community Right to Buy. This provides communities with a right to register an interest in any land outside of Scotland's largest towns and cities (those with a population of over 10,000) and to have the opportunity to buy that land if and when it comes up for sale. Although this may not lead to the dramatic transformation in the pattern of landownership that the authors of this policy argued that it would lead to (half of Scotland has not been on the market for over 100 years), it is an effective way of giving a modest amount of real power to communities.

Might we then be about to witness an acceleration of community buyouts made so fashionable by the headline grabbing Eigg, Knoydart, Assynt, North Harris and Gigha? Perhaps so - the Scottish Land Fund has to date financed over 80 projects to the tune of over £8 million thus demonstrating that, even in the absence of the legislation (which only came into force on June 14th 2004) there is plenty of enthusiasm and demand among communities for taking ownership of land and property.

But is the idea of the community owning land some post modern fashion promoted by politically-correct politicians with an eye for a headline or a silly experiment (as its critics would argue) whose virtues are at best unproven and at worst ill-conceived? In fact it is neither or at least it's no more of a fashion or experiment than private ownership of land. At least common ownership has never been imposed upon private owners against their will in the way that the commons were grabbed by the lairdocracy of Scotland.

At this point let's pause to reflect. Words like grab, seize and appropriate are all too familiar in the lexicon of landownership and land reform. Johnston used them with a passion and yet we have been made to feel that they are inappropriate and inflammatory, that they betray a politics of oppositionalist envy, a rubric that is outdated, juvenile, puerile and archaic - the very sentiments perhaps that Johnston himself felt in his later life. But Johnston's great contribution was not only to entertain and arouse with his invective. He revealed, through meticulous research, that the theft and grabbing alluded to by him and his reforming colleagues was not simply a handy way of advancing his political convictions but was in fact the only correct way to describe how

Scotland came to lose around half of her entire land to the private estates of the nobility.

An apocryphal tale is told of a Fife miner walking home one evening with a brace of pheasants in his pockets. He meets the landowner unexpectedly who informs him that this is his land and he had better hand over the pheasants.

“Your land eh”, asks the miner.  
“Yes”, replies the laird, “and my pheasants.”  
“And who did you get this land from?”  
“Well, I inherited it from my father.”  
“And who did he get it from?” the miner insists.  
“His father of course. The land has been in my family for over 400 years,” the laird spluttered.  
“OK, so how did your family come to own this land 400 years ago?” the miner asks.  
“Well...well.... they fought for it!”  
“Fine,” replies the miner. “Take your jacket off and I’ll fight you for it now.”

What such a story suggests is not that all land is illegally held or that there should be any justification for seizing land by force but that historically, legal and political systems have acknowledged rights to land on the basis that the ownership is already properly established. Historically, such claims can be relatively easily disputed and it is only the existence of an agreed code of law that prevents rival claims being entertained. Laws are social constructs as sociologists would say. Rights in land have no absolute sanctity and are entirely dependent for their legitimacy on the wider agreement of the society upon whose legal system such rights rest.

Johnston’s skill as a historian was to be able to demonstrate that the rapine, murder, massacre, cheating and court harlotry that led to the accumulation of land in the hands of Scotland’s feudal barons was rooted in historical fact. In particular, Johnston exposed how one of the greatest land grabs was engineered - that of Scotland’s extensive Burgh Commons.

The vast territories granted to Scotland’s Royal Burghs were designed to act as a bulwark against noble power. According to Johnston, such acreages, together with other common lands, extended in the latter part of the sixteenth century to fully one half of the entire area of Scotland. But this valuable patrimony was not to last long.

As Johnston argued, “Until the Burgh Reform Act of 1833 the landowners and the commercial bourgeois class controlled all burghal administration of the common lands, and controlled it in such a way that vast areas of common lands were quietly appropriated, trust funds wholly disappeared, and to such a length did the plunder and the corruption develop, that some ancient burghs with valuable patrimonies went bankrupt, some disappeared altogether from the map of Scotland, some had their charters confiscated, and those which survived to the middle of the nineteenth century were left mere miserable starved caricatures of their former greatness, their Common Good funds gone, their lands fenced in private ownership, and their treasurers faced often with crushing debts.

As late as 1800 there were great common properties extant; many burghs, towns and villages owned lands and mosses; Forres engaged in municipal timbergrowing; Fortrose owned claypits; Glasgow owned quarries and coalfields; Hamilton owned a coal pit; Irvine had mills, farms and a loom shop .....

By the time the Royal Commission on Municipal Corporations in Scotland reported in 1835,

“Wick had lost in the law courts its limited right of commonry over the hill of Wick, and owned no property; Abernethy owned nothing, nor did Alloa. Bathgate was the proud possessor of the site of a fountain and a right of servitude over four and a half acres of moorland. Beith had no local government of any kind; Bo’ness owned nothing; Castle-Douglas owned only a shop; Coldstream was stripped bare, not even possessing “rights in its street dung”; Crieff had two fields; Dalkeith nothing; Dunkeld nothing; and Dunoon, nothing.

Such overt municipal corruption was one thing but the ease with which other forms of common land came to be annexed to the private estates of Scotland demonstrated a more subtle but equally corrupt determination on the part of Scotland’s lawyers. Nowhere is this better demonstrated than in the case of the Cuillin of Skye which were put up for sale in March 2000. Much of the outcry which followed centred on whether or not MacLeod actually owned the Cuillin in the first place. Extensive research culminated in the Crown Estate commissioning a QC’s opinion which concluded in essence that MacLeod owned the Cuillin since his 1611 Crown charter was “capable of including the Cuillin” and he had enjoyed “possession” for an uninterrupted period of at least 20 years.

It is important to note that the Crown never examined the question of whether MacLeod’s ancestors had actually been *granted* the Cuillin in 1611. It is clear that the land put up for sale had never been granted to MacLeod and to this day remains a Crown Common. But the laws of landownership in Scotland are constructed in such a way that render such questions irrelevant. Land which was never granted to MacLeod has become, by default and by neglect by the guardians of the public realm, part of the private possession of one man. It is hardly surprising that the Crown Estate never sought to dig deeper.

Not all legal authorities have conspired to sanction the ease with which lawyers were able to annex land in the course of conveyances - annexations which by subsequent occupation and further clever drafting became part of their estates by stealth. Professor Cosmo Innes (1798-1874), the famous advocate and Professor of Constitutional Law and History in this Department wrote in his *Scotch Legal Antiquities*,

“Looking over our country, the land held in common was of vast extent. In truth, the arable - the cultivated land of Scotland, the land early appropriated and held by charter - is a narrow strip on the river bank or beside the sea. The

inland, the upland, the moor, the mountain were really not occupied at all for agricultural purposes, or served only to keep the poor and their cattle from starving. They were not thought of when charters were made and lands feudalised. Now as cultivation increased, the tendency in the agricultural mind was to occupy these wide commons, and our lawyers lent themselves to appropriate the poor man's grazing to the neighbouring baron. They pointed to his charter with its clause of parts and pertinents, with its general clause of mosses and moors - clauses taken from the style book, not with any reference to the territory conveyed in that charter; and although the charter was hundreds of years old, and the lord had never possessed any of the common, when it came to be divided, the lord got the whole that was allocated to the estate, and the poor cottar none. The poor had no lawyers."

Not only did the poor have no lawyers. They spoke no Latin either and were not in the habit of traveling to Edinburgh on a regular basis to examine the title deeds of the Nobility.

Such is the ignominious background to contemporary landownership in Scotland that rather than provide new rights for communities to buy land there is a strong argument for a legal programme of restitution. Such programmes are now being developed with some success in places as far apart as South Africa, Australia, Canada and Eastern Europe.

Contemporary interest in community ownership is thus nothing new - it's a reawakening of a notion that's been around for a very long time. The legacy of Scotland's Burgh Commons is still present across Scotland in the North and South Inches of Perth, the racecourse at Musselburgh, the mussel beds at Tain, the links at Dornoch, the 1700 acres of Lauder Common and the other commons of the Borders which form the basis for the Common Riding ceremonies each summer.

This legacy also includes remnants of Scotland's commonties - vast tracts of undivided land held by parish heritors. Callander, in his masterful *Pattern of Landownership in Scotland* argues that many areas of such land must still exist and in fact the new process of Land Registration has already yielded evidence of a commonty in the parish of Carluke in Lanarkshire. Importantly, rights to such land will be more widely held since, with the expansion of property ownership in the 20th century, the number of parish heritors vastly exceeds the handful who, in the past centuries managed to divide such areas among themselves.

Scotland has a rich history of common land. Although they are nowhere near as extensive as in England and Wales, they represent part of Scotland's commonweal. A campaign of restitution seems appropriate to bring back into common ownership that which current land reform legislation shamefully dictates we must pay for.

## Further Reading

Robin Callander, 1987. *A Pattern of Landownership in Scotland*. Haughend Publications, Finzean.

Thomas Johnston, 1909. *Our Scots Noble Families*. Forward Publishing, Glasgow. Reprinted by Argyll Publishing in 1999.

Thomas Johnston, 1920. *A History of the Working Classes of Scotland*. Forward Publishing, Glasgow.

Andy Wightman, 1996. *Who Owns Scotland* Canongate, Edinburgh.

Andy Wightman, 1999. *Scotland: Land and Power. the agenda for land reform*. Luath Press, Edinburgh.

Andy Wightman, Robin Callander and Graham Boyd, 2004. *Common Land in Scotland. A Brief Overview*. IIED & CCSD, London and Inverness.

Johnston's Chapter 7 *The Reiving of the Common Lands* which appears in *Working Classes* is available online at [www.caledonia.org.uk/commonweal](http://www.caledonia.org.uk/commonweal). Wightman, Callander and Boyd's paper can also be found there.

For wider reading on the topic see: -

[www.andywightman.com](http://www.andywightman.com)

[www.caledonia.org.uk/land](http://www.caledonia.org.uk/land)

[www.caledonia.org.uk/socialland](http://www.caledonia.org.uk/socialland)

[www.whoownsscotland.org.uk](http://www.whoownsscotland.org.uk)