

## **LAND, DEMOCRACY AND CULTURE IN SCOTLAND**

*David McCrone*

That is the Land out there, under the sleet, churned and pelted there in the dark, the long rigs upturning their clayey faces to the spear-onset of the sleet. That is the Land, a dim vision this night of laggard fences and long stretching rigs. And the voice of it - the true and unforgettable voice - you can hear even such a night as this as the dark comes down, the immemorial plaint of the peewit, flying lost. That is the Land - though not quite all. Those folk in the byre whose lattern light is a glimmer through the sleet as they muck and bed and tend the kye, and milk the milk into tin pails, in curling froth - they are The Land in as great a measure. (Lewis Grassic Gibbon, 'The Land', reprinted in **The Speak of the Mearns**, 1994, p.152)

### **INTRODUCTION**

'That is the Land - though not quite all', wrote Lewis Grassic Gibbon. The folk, he thought, were 'The Land in as great a measure'. Gibbon was of course writing about the peasant folk of the North East kyauving to scratch a living from the soil. His words have much wider significance than that, because in Scotland we stand at the threshold of a new parliament in a new millennium. The Land of Scotland is what we are dealing with here, not simply its rural parts. John McEwen, in whose memory these lectures are being held, understood how inextricably linked are the land and The Land, the folk and the Country.

In this lecture I will explore why it is that land, democracy and culture in Scotland are intimately related, that 'land reform' is actually about a more

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general process of democratising Scotland. It is no coincidence that the 'land' issue is on the political agenda just at the point at which a Scottish parliament is in the making. Similarly, our visions of who we are, our identity and culture, are bound up with the land. I am using the term 'culture' in this lecture in an anthropological sense, to refer to the shared meanings, norms and understandings which people in Scotland use to make sense of themselves and others, as well as the world around them (Cohen 1993). Embedded in these notions is an attachment to the territory or land which constitutes Scotland in such a way that its iconography is easily recognised and mobilised.

I am indebted to the three previous lecturers in this series for building such a formidable and progressive platform from which to examine land, democracy and culture in Scotland. This year's lecture particularly benefits from the events of 1997 in the political realm. Our Land has changed. The Conservative government of the last 18 years in office has been driven from office - not only defeated but their representation in Scotland abruptly ended in the London parliament; and above all, we have the promise of a Scottish parliament in Edinburgh.

The 'land' issue, narrowly defined, is also on the agenda: the Scottish Law Commission is proceeding with its work on ending the feudal system; the new government has let it be known that it is particularly committed to land reform, reflected in the presence of the Minister today, and Lord Sewel's interest and expertise in the subject. The government has inherited the policy of selling off state-owned crofting land begun by its predecessor; and the people of Eigg have bought their island. Land and land matters.

Let me lay out some of my assumptions, so that you know where I am coming from. First, my trade. I am a sociologist, not a geographer, not an economist, not a lawyer, and not a politician. Your prejudices may tell you that you will be getting jargon or numbers, or, if you are particularly unfortunate, both. I can assure you that I will keep these to a minimum. I am interested in what one might call the sociological meaning of land. The tenure of land - who legally owns it - is important, but not the whole story. Second, I want to sort out the legacies of the past which shape so powerfully how we 'see' land. It seems to me that we are often much better at fighting old battles than engaging in new ones. Thirdly, I want to focus on the cultural meanings of land and sovereignty, rather than their strict legal(istic) definition.

The first stage in my argument will be to explore the cultural meanings which are inextricably attached to land in Scotland. I will then suggest to you that two key perspectives or discourses have dominated our debates about land:

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one which derives from its legal ownership status as an economic commodity, as 'property', and another which we might call the scientific/environmental discourse which views land as a manipulable system. My argument will be that a third - a political or democratic - discourse is entering the debate about land, most obviously in the context of setting up a Scottish parliament. Before exploring the implications, I will examine the relationship between land and sovereignty in Scotland to suggest that while 'feudalism' has little to recommend it as a way of governing land, there is a legacy of treating land and relationships pertaining to it as essentially social and communal rather than individual and absolute. In what is clearly an ambitious programme, let me then start with a basic question.

### **WHAT IS THE LAND?**

We have grown very used to 'land' being equated with rural affairs, and 'landownership' being a problem of Highland estates well away from where most Scots live. This is not of course to say most Scots care little about the 'land' question conventionally defined, because there is something fundamental about that question, which connects directly and urgently with political change in our country. Using that word 'country' is part of the clue, for we equate it with 'land' in a very significant way. The Welsh writer, the late Raymond Williams, remarked that 'country' is both a nation and part of a 'land'; the 'country' can be the whole society as well as its rural area. It is 'Country' as well as 'country' (Williams 1973). Our 'land' then is nicely ambiguous. It refers to the rural parts, but it is also the essence of the 'Country'. One of the reasons, then, why people in Scotland care about the 'land question' is that it touches on these central issues.

To be sure, this equation of nation with land is not unique to us. The idealisation of most countries is with the land: think of England's green and pleasant land, of 'greenwood freedom', of 'Welsh Wales', the Gaeltachd of both Ireland and Scotland - seen in both cases as the heartland of the culture. In other words, and in common with other places, Scotland as 'country' is a landscape of the mind, a place of the imagination, and firmly associated with the 'land' however invented and fabricated that association actually is. Representing the 'nation' is as much a matter of geography as it is of history. We recognise Scotland in its landscape. We make use of the mystique of our particular landscape tradition, 'its topography mapped, elaborated and enriched as homeland' (Schama 1996).

Scotland, for purposes of tourism, is often presented as a 'land out of time', as an 'enchanted fortress in a disenchanted world' (Rojek 1993, p.181). Scotland

has one major feature which allows this presentation, its association with the 'wilderness'. After all, the claim is that Scotland is the last great European wilderness. And wilderness is presented as the antithesis of culture, as the quintessential escape area in modern society.

The key to the 'wilderness' tag is that it is a social construction. By the end of the 18th century the Highlands were discovered as a scenic game park replete with 'nature' - and its game - salmon, deer and grouse. Such has been the reconstruction of the Highlands in particular that we find it impossible to 'see' them in any other way. They have, in Womack's words, been 'colonised by an empire of signs' (1989, p.1). He points out that whereas 'botanically no doubt 'calluna vulgaris' [heather] is exactly as it was in the 1730s, semiotically it has been irrevocably hybridised' (ibid., p.2), namely that it has been given a social meaning evoking Highland and, through it, Scottish culture.

From even a cursory reading of Scottish and Highland history it is clear that the cultural construction of the land was the result of political and commercial forces, often acting together. What had been a distinctive region in geographical, linguistic and economic terms before and after the Union of 1707 was invested with new cultural qualities and meanings. These meanings were not generated randomly but were the result of double defeats - first from a lowland-dominated Scottish state, and, after 1745 and Culloden, by a wider British political system. The distinction between the Lowlands and the Highlands has always been a shifting and contentious one in practice, given that the linguistic, economic and geographical boundaries do not coincide with each other. There is, however, little doubting the cultural divide in the sense that the Highlands were invested with symbolism of being 'foreign' and exotic. The irony is that by the end of the 18th century Scotland as a whole was being colonised by this powerful sign.

By the end of the 18th century the elements were in place for the construction of modern tourist icons. From then on, and especially in their literary exploitation by Walter Scott in the early decades of the 19th century, the Highlands in particular became the focus for 're-discovery' of the wilderness. Mairi MacArthur observes that visitors in 1883 remarked that 'the farther we went the more we were reminded that to travel in Scotland is to travel through the Waverley novels' (1993, p.23). Guidebooks and travel memoirs highlighted three themes: the wild grandeur of the landscape, remoteness and peace, with a dash of romantic (preferably tragic) history.

We are dealing here with what the geographer Denis Cosgrove (1994) has called 'terrains of power'. He observes: 'Nature, landscape and environment are semiotic signifiers, deeply embedded in the cultural constitution of

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individual European nations and integral to the distinctive identities of Europe's peoples'. The point he is making is that these 'constitutions' relate to systems of power, not in any predetermined way, but as ideological constructs which reflect, often in attenuated ways, its operation. The 'imagined geography' of England focuses on 'woods of downland pastures of SE England's "home counties", "Constable" country in Suffolk and Wiltshire water meadows, and the hawthorn-squared ploughlands of the Midland counties'. On the other hand, 'Welsh and Scottish nationalisms have constructed their own meaning from mountain landscapes, valleys and glens, drawing as heavily on the natural world as upon their separate language to construct differences from England'.

The iconography of the Highlands or of Scotland do not simply carry a unique message which speaks only to the powerful who might use it as a holiday playground. The iconography 'leaks' in such a way that it can lend itself to radical uses, in respective nationalist and oppositional discourses. 'The wee bit hill and glen' of the anthem 'Flower of Scotland' may make weak poetry but strong politics. The ability of different political forces to 'read' into the landscape a suitable message is the key here. It is not that only one message can be read off the heritage signs. The signification is not 'depthless'. Rather, as Cosgrove comments, the imaginative bonds between 'nature' and 'nation' are deep across Europe.

So let us conceive of 'land' in a much wider way than the narrowly 'rural'. Certainly, people living in Scotland have a much wider conception of 'land'. That is in part because it stands for the nation, for 'Scotland'. It is also because in Scotland the 'land question' has never been quite settled. Again, it was Raymond Williams who pointed out that in Scotland, as in Wales and Ireland, the 'land' question somehow had never lost its cutting edge in politics. Who can doubt that one of the reasons why the Conservatives were wiped out in Scotland and Wales in 1997 is that they have never been able to shake off the association with landed privilege and power, giving all of the other parties the opportunity to capture oppositional votes. An Edinburgh parliament will be drawn to the 'land' question in large part because it carries a political charge in defining what Scotland is. Calling for the democratisation of Scotland concerns itself with 'land' which is so fundamentally part of our national identity.

The cultural significance of land was certainly something which John McEwen was drawn to, especially in his later years. It puzzled him as to why the land system had such 'hegemony'. His path-breaking work on charting patterns of land ownership in Scotland takes our breath away even over 30 years later, and it has been ably followed by Robin Callander (1987), and by

Andy Wightman (1996). Certainly, we know a lot more about who owns Scotland, thanks to painstaking research aided by new technologies, but we have only really scratched the surface. We now have the computer-aided technology and expertise which John could only marvel at (McEwen 1977). For a relatively modest sum of money, The Scottish Office could make a giant leap forward in our knowledge of land ownership in Scotland with the aid of digitised mapping.

John McEwen's feeling that there was more to land than mapping patterns of ownership was surely correct. To put it simply, 'land' is a deeply embedded part of our cultural identity; we need to understand why that is so - why, for example, the Assynt crofters and the folk of Eigg found ready support the length and breadth of Scotland, and people readily put their money where their mouths are. Democratising our country will quickly forefront the land issues, and we desperately need a well-informed debate, for there are no easy answers. That debate has already begun: over abolishing feudal land tenure, giving people rights over where they live, the right of access to roam without trespass, protecting and developing our countryside, and so on. My overall task is to explore the cultural meanings of land, and to connect these to our political debates as we begin our preparations for a Scottish parliament, and we ponder the millennium.

## LAND AND CULTURE

My first task is to explore the cultural significance of land and those who own it. The trouble with 'landownership' is that it comes with such a powerful set of cultural and political expectations. The caricatures are very obvious: tweedy gents with double-barrelled names (and double-barrelled guns) and stately homes, and the mainstays of the Tory party. It is of course not difficult to disprove the stereotype, to show that landowning attracts a variety of people, but it is difficult to escape from the stereotype. In some ways it is the mythology which is more interesting. The centrality of land in the definition of Scotland and its sovereignty forefronts the role played by its owners, not only in material terms but in ideological ones too. Why does talking about land evoke such strong imagery?

A key to understanding this is to remind ourselves that it is the term 'laird' which is crucial here. It can refer to the great landowners like Buccleuch as well as to 'bonnet lairds' or even urban landlords. The term laird is nicely and deliberately ambiguous. The **Scots Dictionary** (1985, p.354) indicates that it is derived from the old Scots word 'laverd', a lord, and can refer to (1) a prince or chief (late 14th century); (2) the landlord of landed property or an

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estate (15th century); (3) applied with the patronymic to the chief of a Highland clan as in the 'laird of McGregor'; (4) 'chiefly of lesser landowners, a landowner holding directly to the Crown, and so entitled to come to parliament (till the 18th century) but not a 'lord of parliament'; (5) or merely, an owner of property in general, but especially a house owner (from 19th century). This definition might seem to cover all and nothing, but that is the point. The umbrella nature of the term serves important ideological purposes binding small landowners to the mighty lord. All claim to be involved in 'stewardship', as keepers of the nation's lands and heritages.

The attack on landed interests has a long pedigree in Scotland, from the 19th century Liberal attack on landed power, to Tom Johnston's assault in **Our Scots Noble Families** published in 1911. In many ways John McEwen's work stands in direct and distinguished descent of this tradition. The omnibus quality of the term 'laird' would have resonated too for the urban working classes for whom it was synonymous with the landlord in the towns and cities of Scotland. In his apologia **Lowland Lairds** written in 1949, James Fergusson sought to present them, large and small, as the keepers of Scotland's heritages:

They should be remembered not as picturesque antiquities, but for what they did. They cared for the land and for their dependents with as much thought as does the modern State and often with more discrimination. To them too, Scotland owes all its finest woodlands, a quantity of noble architecture, and collections great and small, of pictures, books and furniture which have made the Scottish country house a living and harmonious example of our culture at its best.  
(1949, p.23)

Fergusson's use of 'laird' allowed him to present 'landowners' in an attractive and Scottish light. He could elide the social divisions between the great landowners and the 'bonnet lairds', and called up the Scottish myth that we're a' Jock Tamson's bairns (or at least his lairds):

Class distinctions were never strong in Scotland. Earls' families intermarried with knights', the small lairds wedded the daughter of the great, and the great laird himself chose his bride from the daughter of the prosperous burgess - while that burgess himself might be the son or the grandson of some cadet of a noble house.  
(ibid. 14)

These are grand claims to make, and in truth cannot be validated with any ease. What they do, however, is ground the laird firmly in the Scottish

tradition, as part of the fabric of Scottish social structure, almost, but not quite, as the 'lad o' pairts', that powerful icon of social mobility north of the border. This 'kinship of feeling' derived, Fergusson claimed, from the feudal relationship which 'bound the laird's Jock to the laird as it bound Harden to Buccleuch and Buccleuch to the king', and from what he called 'a community of race instead of overlaying society with an alien aristocracy as happened in England' (ibid., p.24).

The latter is a reference to the myth which steadfastly refuses to die (it has more recently been mobilised by Eurosceptics/phobes against the supposed wiles of French-dominated European Union institutions) that the Normans were an alien imposition on Anglo-Saxon society whereas they were willingly assimilated into Scotland by invitation of the king, notwithstanding our own version of that myth, the Wallace-Bruce controversy, the proletarian versus the aristocrat, given credence again by Hollywood in **Braveheart**. The preference for the 'proletarian' Wallace over the 'aristocratic' Bruce had long figured in arguments about the 'true Scotland' (Ash 1990). Tom Johnston, for example, denounced the Scottish aristocracy on the grounds that three-quarters of them were 'descendants of foreign freebooters who forcibly took possession of our land after the Norman Conquest of 1066.' (1911, p.ix) Again, 'Bruce, a Norman, convinced our forefathers that his fight against the English was for Scottish freedom, and lo, when the invading hosts were driven back, the Bruce handed our common fields to his fellow Normans.' (ibid, p.viii)

What Johnston and Fergusson were involved in was an ideological war of legitimacy. For the former, lairds were a cynical bunch of foreign freebooters, while for the latter the lairds were indigenous creators of Scotland. Truth is less important here than the hegemonic struggle being waged. The late 20th century version of this war is fought over the issue of heritage and stewardship.

Heritage has cultural as well as economic significance, perhaps even more so. The rise and rise of heritage industry has been underpinned by the state in its land and heritage acts (1946, 1980 and 1985) which have been responsible for elevating 'heritage' in national consciousness and mythology. All property which is not forcibly taken by conquest but has been passed on by means of some contract or other is heritage. Strictly speaking, heritage refers to that which has been or may be inherited, anything given or received to be a proper possession, an inherited lot or portion. But heritage has outgrown its strictly legal definition. It has come to refer to a panoply of material and symbolic inheritances, some hardly older than the possessor. We have constructed heritage because we have a cultural need to do so in our modern age.

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The term also conveys 'a person's or nation's native land' (**Concise Scots Dictionary** 1985, p.283), and this sense is best captured by the French term 'patrimoine' which has no easy translation into the English language. What is conveyed is a strong sense of national inheritance closely allied with rural imagery and peasant culture which is of continuing political importance in the French Republic. Heritage, land as well as buildings, provides the means for capturing national culture (Hoyau 1988).

Heritage allows the lairds to insinuate their own histories and that of their families into that of the nation. They can present themselves not simply as the owners of appreciating economic assets, but as the 'keepers of the nation's soul', the phrase used by the National Trust for Scotland which has become an ethereal kind of holding company for the nation (Wright 1985). Scotland's lairds have sought to convert their own histories into that of the nation, so that, by implication, one cannot abolish one without the other.

This 'capture' of Scotland's heritage is an important weapon in class survival. The landowning establishment among Scotland's elite continue to have their links into financial and money-making circles, as well as considerable cultural power. The 'mighty magnates' of 19th century Scotland - the men (rarely women) who headed the great houses - were essentially a rentier rather than an entrepreneurial class, making their money from rents and investments. They were sufficiently astute to invest in the new industrial capitalism which ran Scotland economically and politically for so long, while being strongly represented on the boards of the major banks and finance houses. At the turn of the century, The Marquess of Linlithgow, for example, was a director of the Bank of Scotland, and Standard Life; the Duke of Buccleuch, of the Royal Bank, Standard Life and Scottish Equitable; the Earl of Mansfield, of the National Bank, and Scottish Equitable; and the Marquess of Tweeddale, of the Commercial Bank, Edinburgh Life, and Scottish Widows (Scott and Hughes 1980). Such hegemony has, of course, eroded significantly with the decline of indigeneous Scottish capitalism and its replacement with multinational corporations.

Nevertheless, the banks and finance houses still find it useful to have titled property represented on the board (Cannadine 1990). Economic power in Scotland is an amalgam of old and new wealth, the individual and the corporate, the indigeneous and the foreign, the private and the public. Commenting in the late 1970s, one journalist observed that Scotland's elites 'all know each other - a tight circle of politicians, businessmen, civil servants, lawyers, trade unionists, churchmen, academics, and a nostalgic sprinkling of titled gentry' (C.Baur, **The Scotsman**, 18 September 1978). The Thatcherite revolution of the past twenty years has certainly dislodged some of these

groups, but it is a fair bet that landowners remain significantly represented among this elite.

We can begin to answer John McEwen's puzzle about hegemony by pointing as well to the cultural significance of land, to the importance of heritage and stewardship. Land owning is presented not simply as a form of economic activity, the ownership of an asset to be traded as an economic commodity in a free marketplace, but as synonymous with stewardship, and if this implies that land remains in private hands, so much the better. If we present it in such a stark way, we might ask - why don't more people see through it? How is the link between land, heritage and stewardship maintained? To put it simply, the answer is because it is presented as taken-for-granted reality, but one which contains a discourse of power, a 'regime of truth' and, until now, one which has not had to confront a political alternative.

## **DISCOURSING ON LAND**

The debate which is generated around land can be thought of as a form of 'discourse'. Normally we think of discourse as a coherent or rational body of speech, a way of representing and making open what we mean. There is a more specialised meaning of the term which we can make use of here, namely, the production of knowledge through language, so that we construct a topic in a particular way, and hence limit the other ways in which the topic can be discussed. The idea of discourse conveys the notion that what we may seek to present as 'real', as a one-to-one representation of how and what things are, is merely one way of representing 'reality' and actually carries an implicit set of power relations within it. This is not the place to rehearse the arguments about the sociology of scientific knowledge; merely to signpost the idea that any form of knowledge cannot be simply true or false. Statements about the world - natural, social or political - are rarely ever true or false. 'Facts' can be construed in different ways, and do not enable us to determine a priori whether something is true or false. I am indebted to my former student and fellow sociologist Andrew Samuel for his insights into the analysis of science as practice with regard to Scotland's natural heritage. (See his article elsewhere in this issue of **Scottish Affairs**.)

The French writer Michael Foucault put it this way:

We should admit that power produces knowledge ... that power and knowledge directly imply one another; that there is no power relation without the corrective constitution of a field of knowledge, nor any

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knowledge that does not presuppose and constitute ... power relations.  
(Foucault 1980, p.27)

The implication of this is that knowledge influences social practices, and has real consequences and effects, so that when it operates effectively according to social interests it becomes a 'regime of truth'. This is not to imply that there is some sort of conspiracy going on to capture and amplify systems of power through knowledge. Rather, there will be different systems or discourses in operation which compete with each other, usually through social agents associated with them.

Let us apply these ideas to the debate about land in Scotland. To simplify, we might argue that two discourses have dominated the debate about land: the 'economic/legal', and 'scientific/environmental'. The first refers to the view that land is an economic commodity grounded in and protected by the legal system which allows land to be traded. The second takes a more 'technical' view of land, and applies the rules of science to its management. By and large, it is the economic/legal discourse which has determined the debate about land: is private ownership a good thing or a bad thing? - why has the pattern of land ownership and land use in Scotland been determined in the way it has? - is absentee ownership harmful, or does it depend on management rather than ownership per se? This is a right and proper debate to have, for we cannot ignore the implications of ownership, but it does constrain the 'discourse', and steer our understandings of these matters. This discourse has developed its own knowledge dimension in the form of the legal system which carefully documents ownership and handles its disputes (such as the Scottish Land Court).

In more recent years and coming to dominate in the second half of this century, the 'scientific/environmental' discourse has grown apace. The quotation marks do not to imply that it is not 'scientific', or 'objective' in common-sense parlance, but to indicate that it too is a system of knowledge, a discourse which sets the agenda for understanding. The scientific discourse about land and the environment needs little explicating. We talk the language of Sites of Special Scientific Interest, of ecological sustainability, of conservation backed up with a vast and growing apparatus of knowledge. Opponents of current practices of land use and tenure have grown increasingly sophisticated and will swap technical jargon with proponents at will in an attempt to knock down key assumptions. Environmental groups have developed their own counter-science to discredit conventional wisdoms which they deem to prop up vested interests.

To handle the growing knowledge systems and the disputes about what is best for the land (and sometimes its people), the state has set up its own agencies - Scottish Natural Heritage being one of the most recent of these. Environmental politics has turned into a vast alphabet soup of acronyms: SEPA, CCS, SNH, NHA, SLF, NFUS, SSSI, WWFS, NTS, SOAEFD, APRS and so on. These agents handle how knowledge is produced, its power and resources. 'Land' is turned into a technical matter, it is 'naturalised'. Indeed, the term 'natural' environment implies a juxtaposition with the humanly constructed ('unnatural?') which we know is a false dichotomy. The 'natural' environment has been well and truly shaped by human action.

In sum, there is a discourse deriving from ownership (if it's yours, then you can do what you like with it, within a few limits), and there is a discourse of management (mobilising expertise, applying technical knowledge and so on). Applying science to land defines it as a space in which scientific knowledge is deemed to have a monopoly of understanding which is both disinterested and dispassionate vis-a-vis ownership interests. What are juxtaposed are the 'landowning lobby' on the one hand, and 'environmental interests' on the other, and in the space between them takes place the process of negotiation. Both sets of interests rest upon the primacy of what Max Weber (1978) called legal-rational authority (as opposed to 'traditional' or 'charismatic' forms of authority which are in essence deemed to be pre-modern).

In recent years, landowners have adapted their claim to authority not only based on their legal claim, but on the view that they are the proper managers - stewards - of Scotland's natural heritage. It helps this claim that purchasers of land often view land as a means of consumption rather than production, that they have bought land for reasons of status conferment and consumption, rather than or as well as for its economic potential as a tradable commodity. In other words, they are making use of forms of what Bourdieu (1984) called cultural capital (rather than material/financial capital) to position themselves in the field. When they are most successful in doing this, management science conservationists have to work around and through them. They are involved in 'objectifying' Scotland's natural heritage in such a way that assumes the rightness of the social order. Again, we can see the similarities in the built environment in which 'heritage' is defined as that which the rich and powerful own, and we sweep it and them away at our collective peril. What matters here is that the agents involved help to define what the problems are (and, of course, factor out what is most problematic). Hence, bodies like SNH, NTS, Historic Scotland and so on define the parameters - set the discourse - for land in which there is a monopoly of scientific authority for the actions of conservation agents (as 'experts').

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To summarise the argument so far: land carries with it a set of cultural, economic/legal, and scientific/environmental meanings. These meanings or discourses do not reside somehow 'naturally' in land, but are read into it in its different manifestations by different users and interest groups. Neither are they necessarily discrete from each other. We might simplify for effect by saying that usually those who own land as a commodity, an ownership sanctioned in law, are often able to mobilise scientific/environmental management knowledge in their favour, as well as having preferential access to the sets of cultural significations which attach to it (as 'stewards', for example, and keepers of heritage and the nation's history). On the other hand, aligning the economic/legal, scientific/environmental and cultural arguments is possibly an increasingly difficult trick to carry off. For example, owners of land have grown used to attacks on their 'ecologically unfriendly' practices (intensive agriculture, over-grazing by deer and sheep, and so on), while questions like 'whose culture is it anyway?' break into the debate more frequently. Now, at the end of the millennium, as a Scottish parliament looms, a new or revised - political - discourse emerges, set within a broader debate about the 'sovereignty' of land and of Scotland.

### **LAND AND SOVEREIGNTY**

Land and sovereignty in Scotland are intimately connected. This connection is made through the survival of the feudal system of tenure although by no means everywhere, which theoretically places all rights to land ownership in the Crown, the 'Paramount Superior' (Callander 1997, p.8). All rights of land ownership are deemed to derive from the Crown which is the ultimate owner in Scotland. My predecessor James Hunter put this well in his 1995 John McEwen lecture:

At the centre of our current land law is the concept that all ownership rights are derived, in the end, from the Crown which, as our feudal system's paramount superior, not only exercises dominion over the entire landmass of Scotland but also exercises equal dominion over everything below the Scottish landmass, above the Scottish landmass and - for some miles out to sea - around the Scottish landmass.  
(1995, p.2)

It seems anomalous in the late 20th century to retain a system of superiors and vassals which was created almost a millennium before. How can one justify such a system in a country about to regain a parliament after almost 300 years? Financial scandals about payments to feu superiors ('Raiders of the Lost Titles') have brought the system into further disrepute, and it appears

ripe to be swept away. For those not acquainted with this legalised form of servitude, it involves the purchase of ancient estate titles which give the feudal superior the legal entitlement to extract further payment from vassals. Reacting to the latest of such scandals, **The Herald** commented: 'These hierarchical relationships have no place in a Scotland on the brink of the millennium which the Government wants to be characterised by a more fair, more open society' (12 August 1997). Putting two-and-two together, it observed: 'new Scotland, new land laws'.

What, asked the leader-writer, could be more just than replacing the feudal system with one of absolute ownership? Before we rush into this, we might wish to pause and take stock. If land ownership in Scotland theoretically derives from the Crown, where does the Crown reside? The orthodoxy is that the Union of Crowns in 1603 embedded sovereignty at the British level, which was then transferred to the Crown in Parliament in the further Union of 1707. The problem with this interpretation is that the doctrine of the Crown in Parliament (Parliament as a 17th century king, in Neal Ascherson's phrase) conflicts with an alternative view in Scotland that the Crown had to earn loyalty to it, that sovereignty resided in the Community of the Realm.

If, on the other hand, we view sovereignty as territorial, as signifying the ultimate jurisdiction over a territory, then, through its legal system, Scotland has continued to maintain its sovereignty following the Treaty of Union. As Robin Callander has put it: 'The Crown's identity in Scotland is dependent on the sovereignty of the people and the Crown's status is as the representative of the people or, traditionally, identified, of the Community of the Realm' (ibid, p.30). After all, he (or she) was referred to as King (or Queen) of Scots rather than monarch of Scotland. There is also an early representation of this in the Declaration of Arbroath of 1320 which seemed to give circumspect but limited allegiance to the monarch only on condition that he/she carried out the will of the people. The historian Christopher Smout has observed that in a country as fissiparous as medieval Scotland the monarchy provided an important political centre of unity. Its jurisdiction ran to all corners of the territory of the kingdom:

If coherent government was to survive in the medieval and early modern past, it had, in a country that comprised Gaelic-speaking Highlanders and Scots-speaking Lowlanders, already linguistically and ethnically diverse, to appeal beyond kin and ethnicity - to loyalty to the person of the monarch, then to the integrity of the territory over which the monarch ruled.  
(1994, p.107)

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The point he is making is that the monarch was one of the few symbols of state and territorial integrity, and that allegiance was a matter of realpolitik rather than romance. In like manner, that other stateless nation, Catalunya, adopted similar circumspection about its historic relationship to monarchical power. The oath of allegiance to the kings of Catalunya and Aragon which Catalans like to quote says: 'We, who are as good as you are, swear to you, who are no better than us, to accept you as our king and sovereign lord, provided you observe all our liberties and laws - but if not, not'. There is something essentially Scottish about such sentiments.

It would of course be foolish to read too much into these descriptions because we know that, in L.P.Hartley's words, 'the past is a foreign country, they do things differently there', and if we re-heat history it is for modern, political, purposes to give legitimacy to our current actions and programmes. In this regard we are similar to other peoples who evoke limited kingship to justify modern concerns. The point here is not that we can easily recover the past in its entire and contextualised meanings of their time. Clearly we cannot. What we do is evoke the traditions, including the legal and the constitutional, which are to hand in order to legitimate our new struggles, to locate them within the repertoires which have been handed down to us. That, after all, was the point of the 1988 self-styled Scottish Claim of Right which was signed by all Scottish Labour (minus one) and Liberal-Democrat MPs in order to affirm the sovereignty of the people; it was always meant to draw in the two previous Claims as historical justification, but only in a general and loose way. After all, the first Claim of Right in 1688 sought to ban Catholics from public office, and saw Episcopalianism as 'an insupportable grievance and trouble to this nation' (Lynch 1992, p.302). The second Claim of Right in 1842 was a complicated prelude to the Disruption of the Old Kirk a year later. The 1988 version had, thankfully, nothing to say about religion, and drew only loosely on these earlier - unreconstructed - practices in Scottish life.

This is the point at which to remind ourselves that 'tradition', after all, is not inert; it is not the surviving past. Rather, it is, in Raymond Williams' words: 'a selective tradition - an intentionally selective version of a shaping past and a pre-shaped present, which is then powerfully operative in the process of social and cultural definition and identification. It is a version of the past which is intended to connect with and ratify the present. What it offers in practice is a sense of a predisposed continuity' (1977, p.115). What we are doing here is drawing down those selected passages of our history, myth and experience which connect with and symbolically charge our present.

This is a perfectly legitimate thing to do, as long as we do not mistake history for fact, for we are dealing with 'myth' here, not in the common-sense usage

of something untrue and illegitimate, but as 'truths we hold to be self-evident', which are crucial identity markers of who we are and want to be. These are legitimate devices to have, and are not in juxtaposition to 'fact' or 'law'. The law, after all, is the embodiment of sets of social and cultural norms and expectations. How we view 'land', then, is as much a question of what we think it means, how it underpins our cultural and political identity, how it connects with other aspects of who we want to be and become, as it is with the narrow corpus of law. If we invoke the Community of the Realm as the sociological basis of land arrangements in Scotland, we are seeking to connect it with a wider set of political and cultural traditions which stress the social dimension of property relations, indeed to the claim that all property rights are fundamentally social rather than individual.

Let us return to the debate about land and sovereignty. The legacy of the Crown in Scotland does not, it seems to me, commit us to a kind of royal prerogative as if Scots were enthusiastic royalists (which surveys tell us we are not, at least in comparison to our southern neighbours). In other words, if we get rid of feudal and proprietorial roles, we are still left with the issue of sovereignty over the territory of Scotland. The point is that the Crown in these contexts is the distillation of difference, the claim that legitimacy rests with 'the people' (to use a post-Enlightenment concept in preference to the Crown which is a pre-Enlightenment one) even though only Ireland has had a republican revolution. It is the equivalent of what most continental European countries would call 'the state', the outcome of the processes of modernity which swept away the anciens regimes in the 18th and 19th centuries (MacCormick 1995). The term 'the Crown' might seem to some too awkward and too redolent of the divine right of kings, of absolut(ist) power, to do much work for us in the late 20th century. We will perhaps have to find another which distills the public interest in a more relevant way. The Community of the Realm seems to offer some possibilities, but some may judge that the 'realm' (a corruption of 'royaume') is still too close to monarchical roots to be entirely satisfactory.

## **LAND AND PROPERTY**

These general points are important in the context of understanding changing property law, and especially with regard to abolishing feudal land tenure. The arguments are often made that feudalism is thoroughly old-fashioned, and it is doubly strange that the Scots seem to hold on to an ancient deferential and monarchical system which seems so at odds with current cultural and political conceptions of ourselves. The key to this puzzle possibly lies in what 'reform' might mean - the 'alienation' of property. The 'modern' (capitalist)

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understanding of property is that it is an absolute good to be bought, sold and traded as the owner so desires. This also implies that owners have absolute rights over their land and property, not only to buy and sell at will, but to restrict access and use. What the 'feudal' tradition has bequeathed to us, in the midst of its reactionary rag-bag of ideas and notions, is the sense of conditionality, that there are shared property interests in any piece of land (use values as well as exchange values), so that public interests are prior and paramount, and have rights over private ones (Callander 1997, pp.44-6).

If we were to bring feudal land and property ownership simply and strictly into line with a more absolute and 'privatised' sense of these things ('the Englishman's home is his castle', after all), then we would not simply be abandoning an important aspect of our heritage, but the sovereignty on which the legal system is based. We would, perhaps, be importing into social and property relations a new set of problems and constraints. One could imagine Scotland's land held, as it is, in relatively few hands, but over which virtually everyone has no social access rights to speak of. And lest we think this is some kind of rural problem, it would also have implications for all property owners, including urban, upon whom conditional responsibilities lie.

I should make it plain what I am saying and not saying here. I am not implying that who actually owns land is an irrelevance secondary to who uses it. The distribution of land ownership in Scotland is, as John McEwen pointed out, a scandal, and serious attention needs to be given to its redistribution, whether on an individual or on a communal basis. Perhaps in that regard Assynt and Eigg are crucial straws in the wind, for unlike many of our northern European neighbours (notably Denmark and Norway) we have a very undeveloped sense of community ownership. That, however, is to stray off my point. Doing something about land ownership patterns in Scotland is one important side of the equation, but so is attention to matters of social use and the public interest. Reforming land ownership in Scotland to bring it into line with English and American theories of absolute property rights might actually make the former more difficult to achieve, and we might have the worst of both worlds: high concentrations of land ownership, coupled with virtually no rights of public interest to speak of. In other words, doing something about these issues is not a question of 'either/or', but 'both/and'.

A further danger is that we think that sweeping away feu superiorities is tantamount to abolishing feudalism. To do the first does of course have strong symbolic significance, but it is no substitute. Neither is simply replacing feudal land tenure arrangements with 'modern' ones imported from England or the United States which embed the absolute rights of ownership. 'The Scotsman's home is his castle' has too many contradictions to be very

meaningful, and is, anyway, deeply ironic, given our political traditions. To put it simply, our task is not to throw the social baby (and public interest) out with the feudal bath-water.

## **ENTER THE POLITICAL**

The door is open. In his introduction to the White Paper **Scotland's Parliament**, the Secretary of State for Scotland, Donald Dewar, chose to highlight the key anomaly: 'Scotland will no longer be the only democratic country with its own legal system but no legislature of its own' (1997, p.vii). In other words, enter accountable democracy into the process of law-making.

I have argued in this lecture that the 'land' issue has, to date, been dominated by two discourses: legal/economic interests on the one hand, and technical/scientific interests on the other. We are envisaging a new and revised role for the political dimension. To be sure, the political has never been absent. It has long been actively involved in the land question in Scotland, notably in the crofting lands, and the political dimension has manifestly been growing in the last twenty years. The political also underpins the legal system of land ownership, and settles its disputes. It is also largely responsible for the state and quasi-state agencies which provide the scientific expertise and management systems. It is also a major land owner in its own right through its holding, for example, of forestry land and crofting estates. It is interesting to note in passing that the transfer of crofting land to crofters as 'owner occupiers' fitted the ideological predispositions of a government keen to privatise state resources, in the only way it approved of, namely by treating people as absolute owners. The political defeat of that particular government is very unlikely to usher in a programme of nationalisation of land in the traditional socialist manner. Nevertheless, the setting up of a Scottish parliament will, for reasons we have already outlined, be drawn to the land question in the widest sense: abolishing feu superiorities, encouraging community ownership of estates following the Assynt and Eigg examples, reforming the whole system of land ownership and management in Scotland.

The redrawing of political responsibilities and the resetting of the political discourse will have consequences for the economic and scientific interests which have largely had the 'field' to themselves. Traditionally, 'people' were insinuated into the land discourse in a few and well-ordered ways: as they sought to make a living, used it for recreation, and so on. They were deemed to be either legal subjects or technical subjects. As 'democratic' subjects, they will take on new responsibilities and expectations as these are redrawn by a Scottish parliament. The somewhat restricted technical and legal culture

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relating to land will be inevitably broadened into a more popular culture, one in which people feel they have a right to 'their country' in all its dimensions. They may not 'own' it directly, but undoubtedly they will feel that Scotland 'belongs' to them.

What is likely to emerge is a three-way dialogue between economic interests, scientific knowledge and democratic accountability. The tensions between these three discourses will be important and inevitable. To take an optimistic view, it will lead to a newly negotiated order between owners, managers and people, and will help to sweep away the obsolete half-remembered battles which have dominated the 'land' issue for too long. Scotland in 1997 is emphatically not the same place as it was in 1746 or in 1886.

If we are to create a new 'property democracy' in Scotland it is unlikely that this can be done satisfactorily either by mass public ownership of land, or by treating it as an alienable product over which owners have absolute rights. Somehow we have to escape from these two traditional and dominating political discourses which still haunt our conceptions of ourselves and our country. The past will provide very little guidance to what the future will hold in a more democratic and accountable Scotland. If we adopt 'empowerment' as our motif, as John Bryden (1996) was urging us to do last year, then we will have to take chances as well as responsibilities. This is unlikely to involve a simple game-plan in which we can impose a template for land in all its manifestations, urban as well as rural. We will need to establish a new legal basis which allows us to experiment with new forms of land ownership, private as well as communal. We will have to be imaginative in dealing with problems of access and use, while recognising the rights of ownership, and where possible using resources to create a more sustainable and vibrant system. If this involves escaping from old demons and venerable saints, then good and well. We must deal with matters as we find them, not as we think they ought to have been in the 18th century before the economic and political upheavals of that departed age. Above all, we must enter a debate about what kind of Scotland we want to see in the next millennium, one in which we will be building a new democracy on this land of ours.

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