

# **WHOSE LAND IS IT? AN AGENDA FOR THE SCOTTISH PARLIAMENT: ROGER CROFTS**

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## **Introduction**

My title of *Whose Land Is It? An Agenda For The Scottish Parliament* is perhaps pretentious but nevertheless it is very topical from a political point of view, but also from other perspectives: environmental, social and economic. I will address the subject deliberately from an environmental point of view as I do not consider that there has been sufficient attention given to the environmental aspects and that is something which Scottish Natural Heritage is well placed to do.

My proposition is that both land and water are not recognised as fundamental environmental assets in Scotland from which we can, so to speak, take a cash crop, but also need to maintain them as fundamental capital resources. There are a variety of instruments and mechanisms which exist but many of them do not focus on these assets and many of them which do so consider the land resource from a very narrow perspective. I will argue that the Scottish Parliament offers a major opportunity for a radically new approach to sustain and, where possible, enhance the water and land resource.

I will begin my argument by way of illustrating good and bad practice with respect to land and water resources, then set out the overall objective which I would like to see from an environmental perspective and end by suggesting some proposals which we hope might be taken forward as part of a package of measures on land reform. In doing so, I recognise that some of these are in some shape or form already on the political agenda but others are not yet so. Most political parties are convinced of the need for land reform and have indicated that all of the necessary measures cannot be achieved in one single Bill nor in one legislative session of the Parliament. In other words, there is time to argue for changes to thinking as the debates evolve.

## **Why do we need to act?**

First, we need to address the question of why action is required. There are many examples of poor husbandry practice, ignorance of ecological and wider environmental functions and processes, and short-term gains being sought whilst ignoring long-term environmental effects.

There are many native and semi-natural woodlands in Scotland where natural regeneration is being interrupted by grazing. As a result woodland ecosystems are slowly dying and there are no sustainable yields of timber. On the other hand, there are also extremely good examples of far-sighted management where a timber cash crop is taken and opportunities are also taken to maintain the essential natural and man-made resources of the woodlands. Examples are given of bad practice in the past, for instance on Mar Lodge and of good practice elsewhere in the vicinity.

There are also examples of species mono-culture woodlands being planted without any care being taken to think of the impact on the hydrological cycle. It is well known that conifers are very good scavengers of acidity from the atmosphere and it is easy to observe how they are often planted very close to water courses. As a consequence, there are many problems of acidity in the water courses to the detriment of the wildlife and to the detriment of the quality of the water supply.

In wetlands drainage has occurred and, often, trees planted or agricultural practices undertaken. As a result historic records are lost, carbon stores are reduced and internationally important habitats are removed. Often the draining is a result of the availability of public funds to allow damaging practices to occur because the funds had a narrow objective. In other places, wetlands have been retained with management practices which are supportive of the maintenance of the functioning of these systems.

On intensively farmed land, there are not infrequently examples of over-grazing by stock - this is not just a problem of the uplands as many would imagine. Also, on intensively farmed arable new cropping regimes demand that the stubble is ploughed-in in the Autumn and crops sown, leaving the soil exposed at the most vulnerable part of the year. In both circumstances, soil is lost at a rate much greater than the ability to reform naturally and materials included in the soil, especially

fertilisers, are washed into streams. On the other hand, good practice shows that the use of buffer strips at the edge of fields and especially in fields reduces soil loss and nutrient loss.

On intensively farmed land Scotland has also experienced a loss of nearly half of our hedgerows over the post-war period and the process continues. As a result there is loss of farm biodiversity, a loss of microclimatic advantages to crops and to animals, and a loss of important predators which can prey on pests within crops. On the other hand, those areas which have maintained hedges provide all of these benefits and can also provide benefits for access along field margins.

In the uplands, we are all too familiar with the problem of bad muirburn practice: areas which are too large and fires which are too hot, resulting in the total loss of the beneficial cover of heather to the detriment of landscape and wildlife and to the needs of grazing animals. Whereas good muirburn practice benefits all of these aspects and is increasingly seen in the uplands.

There are still plenty examples where access is prohibited or restricted and people are intimidated by signs and the belligerent behaviour by owners and their staff. On the other hand, there have been great strides made through the Concordat on Access to Scotland's Hills and Mountains and in practical measures on the ground, such as the hill phone system and footpaths networks.

All of these examples of bad and good practice can be seen in different parts of Scotland. My conclusion from this limited analysis is that policies, financial instruments and regulatory regime for the land and water do not combine sufficiently to force the poor environmental stewards to change their practices.

### **New approaches are required: the opportunity for the Parliament**

It should be clear from what I have said already that there is a need for reform and that most of the political parties seem to accept this. What is essential is to identify the overall objectives of reform as seen from an environmental, rather than from a

purely community or purely economic, standpoint. I argue that the overall objective from an environmental standpoint is that the resources of land and water should themselves be used and managed sustainably so that they benefit people now and in the future, and - and this is an important addition - ensure that essential ecological and wider environmental functions and processes are maintained.

There is no single solution for this as was recognised in the Government's recent proposals on land reform. There are many elements which I would argue need to come together as an overall package if we are going to achieve the overall objective as I have described it.

First, **the basis for holding of land** needs to be substantially changed. There needs to be a balance between private benefit and public good, recognising that land and water are assets of the nation rather than solely of the private individuals who own them. The reform of the feudal system might help this, provided that it does not enshrine absolute ownership in such a way that the public good element is lost. Such a fundamental change provides an opportunity, and also perhaps a threat, for providing a major step forward from an environmental point of view. It can and should result in a change in the basis of the responsibility of owners of land and water to take into account the wider public good. If that could be achieved it would be far more beneficial than a lot of additional elements of regulation and financial incentives.

Second, we need to devise a clear concept and definition of the **stewardship of land and water**. This should, and can, be quite simple in terms of stewardship of these assets as key natural capital where a cash crop can be taken but the capital itself is at least left unimpaired. Relating this to the overall concept and philosophy of sustainable development is perhaps a way forward. Whilst precise definitions have not been laid down, important preliminary thinking has been done. Unfortunately, this approach has not yet found favour with the political parties and is not on the political agenda. And yet without it, land reform would have a significant missing dimension.

Complimentary to the second element is a third, relating to **land being of benefit for people**, both local people and the wider population. It is clear that the attachment of people with their land has been progressively eroded over the last few centuries, exacerbated by the shift from the people to the sheep economy and the sporting estate economy, especially in the uplands of Scotland and more recently exacerbated by the production livestock support systems which pertain in those areas. The environmental assets of land and water, wildlife and landscape are not entirely natural in most parts of Scotland. Rather, they have resulted from an interaction between natural processes and human activity over many millennia. It is for this reason that creating a new bond between the land and the people, particularly those who earn their livelihood from the land and who are its stewards, is a vital ingredient in achieving the overall objective.

How this is done is a matter of some considerable political debate. The current political rhetoric is clearly for community ownership of land and there are some very welcome recent examples: Assynt, Orbost, Eigg and, in the last few days, Valtos and Knoydart. However, there has been a long history of rural communities not wishing to purchase land which was made available to them by the state, particularly the Department of Agricultural lands in the Highlands and Islands. There are many and varied reasons for this, much of them to do with the culture of these areas born of many centuries. Community ownership is hopefully an important component of achieving environmental stewardship but on its own will not deliver the goods. There are a variety of other arrangements which are equally legitimate. Securing a community role in the management of land which surrounds their community is equally important. Often communities will not be in a position financially to afford to purchase land but could negotiate a role in management. The Laggan experience is a classic example where the community was not able to raise the market price of £1.6m but was able, having readjusted its sights, to negotiate arrangements with the owner - The Forestry Commission - to take an active role in management. Equally, Government has made it clear that public owners of land, such as Scottish Natural Heritage with its 80,000 acres, should engage local communities in management of this land. I applaud and welcome that approach: all I would say is that I hope that communities in the vicinity of our NNRs will respond positively.

There will be continuing transfer of land from the more traditional sporting estate to ownership by environmental charitable trusts. These bodies, such as RSPB, NTS, JMT, SWT and the Woodland Trust, are frequently criticised as absentee landowners, and yet they do have a legitimacy as owners because they are owned, in effect, by charities with very large memberships. The fact that most of the members live in urban areas, often furth of Scotland, does of course create some degree of incredulity, as does the fact that they are perceived by many to be non-democratic. However they are and, I consider, will remain an important part of the fabric of ownership and its beneficial management from an environmental point of view. The challenge which Government has set these bodies of involving local communities is an interesting one and it is for consideration whether and how that can be achieved in practice. Certainly experience with some of the bodies of employing non-local people and then switching to employing local people shows the dramatic transformation in local communities' attitudes from negative to, should we say, mildly positive.

I have dwelt at some length on this ownership issue as I continue to consider that it is not who owns the land but how that land is managed and, more particularly, the basis on which the land is owned, hence the reference back to my very first point.

The fourth element of the package is the need to develop **clear codes of good environmental practice**. These need to cover many aspects. Codes are required for good soil management as a practical element in the proposed national soil strategy and take forward the soil management codes which exist but to give a much stronger environmental component to them. Codes of practice for protecting the biodiversity of land and water would also be appropriate as would codes of practice for access as recommended by SNH to Government. The latter would seek to ensure that the fundamental human freedom of access taken responsibly, as a basic statutory requirement, is spelt out in terms of the responsibilities for safeguarding privacy, safeguarding essential land management operations, such as timber felling and crops harvesting, and also safeguarding wildlife.

Such codes need to be based on the most up to date knowledge of the functions and processes of the environment. Equally they must be drawn up in such a way that they are intelligible and can be used in practice by land managers on a day to day basis. Trialling and testing such codes is therefore an essential component as we have done ourselves with our codes of practice for upland management.

The key issue with codes is whether they should be statutory or voluntary. In the past there has never been any political support for statutory codes but I detect that perhaps the climate is changing a little. Nevertheless, in the current Government's land reform proposals there is no suggestion that codes of practice in relation to stewardship should be other than voluntary. My argument is that if they are only voluntary how can they be brought into wide practice. Can we use incentives, and, if so, what types of incentive, or do we have to resort to a stick approach or a combination of the stick and the carrot? Overall our preference is for codes to be set down in legislation. However, there is a legitimate fallback position. It is possible to link voluntary codes through cross compliance formulae to access to public subsidies. In this model, owners would not receive public support for agriculture, forestry, fisheries or other land-based activities unless they achieve certain minimum standards which can be set down in codes of practice.

Fifth, therefore, and clearly complimentary to codes of practice, is the implementation of the **cross-compliance approach**. At present, this rarely occurs, although there are some elements of livestock support as part of the Common Agricultural Policy where this has now been introduced. The basic argument is that access to public funds for the use and management of land should not be available except to those landholders whose operations achieve certain basic standards.

Sixth, I would argue that we need a **new suite of financial incentives** which have a broader range of objectives than those currently in existence. Many people have argued for a long time that agricultural payments which focus very largely on production of fruit, vegetables, grain and meat do not meet society's requirements and have failed throughout most of the European Union to stem the loss of labour on land and also brought about a very substantial loss of biological and landscape

diversity. Agriculture is the classic case in point with the majority of the £450m support to Scottish farmers being in the form of support for production and a very minor element, slightly less than £20m, being available in support of agri-environmental measures. The proposals of the UK Government for the reform of the CAP in the longer term would result in multi-objective agricultural support more akin to the type of multi-objective support which is now available from The Forestry Commission under WGS schemes. However, there is a long way to go on agriculture because of the need to get agreement from EU partners, although Agenda 2000 does offer opportunities for more local approaches under the national envelope arrangements.

Another issue which produces, to my mind, quite the wrong perspective on good environmental stewardship is the way that land is valued. So my seventh element is **to change the basis of land valuation**. All too often agricultural land is valued on the basis of the subsidies which are available under the CAP and other schemes, such as agri-environment. Given the structure of these subsidies, such an approach does not stimulate good husbandry nor does it recognise the key environmental attributes and values of agricultural land. The same argument also applies to sporting estates where standard valuation techniques are based on the number of salmon netted, the number of red deer stags shot and the number of brace of grouse shot. Many of these areas have wildlife and landscape designations which recognise the quality of the environmental assets, yet valuers do not take this into account. A new approach which sought to do this, but without inflating the value of land from an environmental perspective, would also be a useful element in any package. I recognise that this is unlikely to figure as a basis for legislation. Rather it is the practice which land surveyors use and, therefore their training, which needs to be moved on. Hence the importance of work being led by RICS Scotland on land use practices.

Finally, it has been a tradition that there should be **last resort powers** on the statute book and I think this should be very much the case in respect of land and water resources. The expectation would be that such last resort powers would act as a deterrent rather than necessarily being used at all or at least not used on any regular

basis. Certainly our own experience of the compulsory purchase powers available to us is that they are very cumbersome and require approval by the Secretary of State. We have found other mechanisms to be most useful, although there have been occasions in the past where it has proved necessary to use this type of approach. Perhaps more important in practice is the ability of Government and its agencies to force compulsory action where the levels of environmental stewardship are inadequate. There is already a precedent for this from an environmental point of view in the powers now available to the Deer Commission for Scotland through the Deer Scotland Act 1996. Whilst the Commission has not so far used those powers, I have confidence that the newly appointed Chairman and Commissioners will consider it appropriate in certain circumstances where action is required but not forthcoming to use such powers. Similar powers available to other bodies should also be considered by Government. Indeed, I take the announcement by the Secretary of State for Scotland recently that the Government would strengthen SNH's powers to force better management of SSSIs to be a step in this direction.

## **Conclusion**

In conclusion, therefore, there is already a growing recognition of the importance of the land and water resources. However, this has not been translated into firm suggestions for legislation, policy and financial reform from an environmental standpoint. There is also apparent willingness for the Scottish Parliament to make a number of legislative steps to improve the situation over a number of years. We, therefore, have the opportunity to influence the situation and to ensure that the fundamental reforms about land in Scotland will be well founded from an environmental point of view and create a new contract between landholder and people. What is required is the use of a variety of instruments and mechanisms, not separately but in a co-ordinated and integrated fashion. There is no one approach which on its own can be successful.