

REVIEW: THE POOR HAD NO LAWYERS

Rob Gibson

Andy Wightman, **The Poor Had No Lawyers: Who Owns Scotland (And How They Got It)**, Edinburgh: Birlinn, 2010, 339 + xii pp, hb, £20, ISBN 9 781841 589077.

Andy Wightman has a sustained and reasoned record of campaigning for Scottish land reform. He has expanded and updated many of his lines of enquiry through which he has trawled over many years in this book, **The Poor Had No Lawyers**.

The reader cannot help but sympathise with his impatience and polemic thrust, which is understandable given his view that movement towards comprehensive land reform measures seems to take far too long. Yet the pace has been accelerated thanks to the creation of the Scottish Parliament which over its more than ten years' life has, at his time of writing, set a pattern of feudal abolition, community rights to buy and agricultural tenancy reform.

This book's immediacy is constrained by being written three quarters of the way through the tenure of the first SNP government of Scotland. The author is well used to the sweep of centuries of Scottish land woes, and a decade of change since 1999 is only just bedding in. That makes assessment of the Land Reform laws of 2000 to 2003 an incomplete snapshot, as experience suggests strongly that the complexity of their construction makes community right to buy a mine field for amateur land right campaigners and a honey pot for lawyers.

Wightman's frustration is directed at well-chosen quotes from ministerial answers. However, his understanding of processes inside government is scanty, and quotes off the record comment to back his case. It is too easy to say the SNP Government is doing nothing. Indeed to suggest, as Wightman does, that Roseanna Cunningham 'ruled out any review of the Land Reform Act 2003' is a travesty of wilful misinterpretation as anyone reading the detailed and reasoned Parliamentary Answer he cites can see.¹

We are used to Highland commentators blaming Edinburgh civil servants; Wightman just wants to blame the SNP from whom he expected an instant response. Does he grasp that making the new laws work is a prolonged governmental responsibility? The picture is more complex and will require the involvement of the committee system in Parliament to make post legislative scrutiny the spur to further reform. A fresh example of this was published in September 2010 by Calum MacLeod et al for the Rural Affairs and Environment Committee.² This will form a legacy document for the next session of Parliament from May 2011 to take action.

Wightman's impatience has been sparked up by the tone of Tom Johnston's book **Our Noble Families** which was serialised in the newspaper **Forward** before 1918. Johnston took a racy and populist tone. Wightman readily adopts that approach to line

up land history as a series of 'land grabs' which led to the concentration of so much of Scotland in such few hands. His agenda requires baddies to be painted black.

Describing Robert the Bruce as a 'murdering medieval warlord' sets the tone for Wightman's land grab chapters. What a pity that he failed to read Geoffrey Barrow's 1965 book **Robert Bruce and the Community of the Realm of Scotland**. Barrow sought to explode myths about adventurers gaining from old aristocratic families after Bruce's Bannockburn victory. As he writes. 'by over-simplifying it seriously distorts the truth.' Bruce patiently restored and maintained the conservative nature of feudalism but, again, Barrow says: 'For the first time since the eleventh century men and women of this [hereditary land owning] class must choose to be Scots or English: they could not be both.'³

Wightman thankfully consults another medieval history expert, Dr Alexander Grant, whose map of the early fifteenth century parishes, baronies, earldoms and lordships he reproduces to show lands from Cape Wrath to Berwick in a complex 'ownership' pattern. Yet Grant also hinted at greater complexity in the much more blurred edges to the Highland and Lowland feudal patterns. He comments that 'Highland society was based on kinship modified by feudalism. Lowland society was based on feudalism tempered by kinship.'⁴

Returning to the present day, Andy Wightman has done admirable research in exposing the loss of common good land and the profits gained by councils at the citizen's expense. The fate of Waverley Market in Edinburgh is a lesson in lost revenue for Edinburgh, and these examples need appropriate action too.

He is very perceptive over the effects of the community right to buy. In some cases this has led to community owners being as unwilling to sell small parcels of land to would be home builders. These attitudes do hinder wider and more diverse land ownership and need parliamentary scrutiny.

The slow process of map-based land registration is a frustration for all who wish to know what parcels of land are owned by whom. He rails at the secrecy built into the system that fails to reveal beneficial owners. Wightman chooses the Buccleuch Estates, the largest private land owners in Scotland as a prime example.

Tenancy issues in farming have been stalled by the landlords, both in the first Scottish Parliamentary session and in the Tenant Farming Forum during recent years. Let us not forget that tenants had little capital to buy land in hard times and landlords no incentive to sell. Part of the reason for this is the sale of Single Farm Payment entitlements by auction at our livestock marts, and the capacity of armchair farmers to claim payments for doing little with the land they own. The tendency of the lairds to hoard land is centuries old. At a time of deep recession, land values have not slumped and have recently reached new highs as the limited lots for sale reach record prices.

This neatly leads into one of Wightman's strongest sections, concerning the argument that house and land prices at inflated rates allow private gain when the community and the location of property contribute hugely to its saleable value. He lays out a scheme for Land Value Tax to regulate land prices and promote better land use. It includes practical worked-out examples and deserves wide study, understanding and

action. Yet, with the history of difficulties in applying local income tax, such a change would require cross-party support to succeed as would many of the measures he proposes in ‘the way forward for land reform’.

Wightman has a clear view of his land reform aims. His work is stimulating, but the timing of his publication did not gain from the debate over calls to devolve powers of the Crown Estate Commission to Scotland under the terms of the Scotland Bill. He also makes judgements about progress without reference to protracted crofting Bills in 2006 and 2010 which diverted the attention of the Rural Affairs and Environment committee at Holyrood from land reform review. Another take in five years could show whether the land reform laws of the first Scots Parliament of 1999 were thorough or just wishful thinking.

March 2011

References

¹ S3W-24965. Scottish Parliamentary Written Answer, June 2009.

² Calum Macleod, Tim Brauholtz-Spreight, Issie Macphail, Derek Flyn, Sarah Allen and Davie Macleod, **Post Legislative Scrutiny of the Land Reform [Scotland] Act 2003**, Rural Analysis Associates, Centre for Mountain Studies and Centre for Remote and Rural Studies at the UHI.

³ Geoffrey Barrow, **Robert Bruce and the Community of the Realm of Scotland**, London: Eyre & Spottiswoode, 1965, p.381.

⁴ Alexander Grant, **Independence and Nationhood – Scotland 1306–1469**, London: Edward Arnold, 1984.