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The Tenure, Taxation and Rating of Land in Scotland

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The Celtic Era

Among the Celtic tribes in Scotland there was originally no private property in land. The tribe as a whole possessed the tribal area and each tribesman had his right to land adequately recognised. But war among the tribes engendered the idea of private ownership of land, for the successful leader began to reserve for himself and his associates the most desirable parts of the conquered tribes' territory.

The leader of the *tuath* or tribe was the *Toschach,* whose position was personal. Later, when tribes were being welded into nations, it was found necessary to organise them into larger units called *mor-tuaths,* which were placed by the King under *Mormaers* or Great Stewards. The King's own title was that of Judge (*Ri*); all the leaders were essentially administrators, and not landowners. In time, however, the right of the leaders to own land was recognised; to them, as the strongest and ablest, deference was paid and the transition from paying deference to paying tribute was easy.

All land was held subject to burdens, these being a fixed payment in kind (*cain*) to the tribal and national leaders; the duty of providing maintenance (*conveth*) on their passing through the tuath; and the obligation of fighting foes at home and abroad.

Establishment of Feudalism

The establishment of the Feudal System in Scotland was primarily due to David I (1124-53), himself a vassal of the English king for lands in England. It was a tidy system (everyone in his place, whether he liked it or not) and David is entitled to be regarded as one of our earliest "planners." Its establishment was a slow process at first, especially in the Highlands, where Celtic customs long obtained. It was well founded, however, by the time of Alexander III (1249-86).

David's procedure was simple and direct; he called upon all Celtic and Scoto-English landholders to show that their ancestors had held the land for at least four generations. When they failed—as they usually did—he declared the land royal demesne and granted it by charter on feudal tenure to his Norman friends. Thus Scotland had imposed upon it an alien aristocracy with a divided allegiance. The rights of the former holders were extinguished. Rebellions broke out; more forfeitures followed and the feudal system of land-holding was thus further extended.

At the end of the thirteenth and the beginning of the fourteenth centuries, Wallace and Bruce fought their memorable Wars of Independence. The confusion of the times had important effects. Bruce was not likely to permit those who had opposed him to retain their estates, and consequently many of those forfeited lands were granted to loyal supporters, all on feudal tenure. After Bruce's time began the series of struggles between barons and kings, and among factions of nobles for the possession of the persons of sovereigns during minority. The successful party usually availed itself of the opportunity of despoiling its rival. (When James I, one of the stronger kings, once asked by what authority certain barons held their lands, they—with grim humour—produced old, rusty swords!). One important result of this frequent change of masters was that bondmen were presented with the opportunity of gaining their personal freedom. This they eagerly seized and thus it is that Scotland was one of the first European countries to witness the passing of serfdom.

The organisation of Scotland from the fourteenth century may be said to have been completely feudal. Under this system, the King was regarded as the source of all honour and property. The landholder or baron was primarily an official who governed an area, and whose obligation was to provide from among his vassals an army for the King's service; to give advice in Parliament, and to make money grants to his overlord on special occasions. The barons often made such grants on conditions and thus strengthened their powers against the King; and, incidentally, created a Parliament. They acted also (among other things) as judges, though much of their local work was done by deputies.

Feudalism Modified

But the process of modification had begun by the fifteenth century. In 1449 it was enacted that where an alienation of an estate took place, leases held from the alienating superior were to remain valid with his successor—a recognition of the tenant's right to some measure of security. Eight years later, it was made legal to grant land free from military tenure. In 1503, it was further made lawful for the King to let all his land in feu-farm, that is, for a rent in money or kind, with or without obligation on the lessee's part to perform "services." Since certain lands now began to be held free of military obligation and full feudal casualties, rents rose; but to the cultivator of the soil, there was the advantage of freedom from the liability to be called to war when sowing or reaping was due.

Decay and Abolition of Feudalism

The decay of the Feudal System was, however, a slow process. During the fifteenth century most of the land of Scotland was still held by barons on military tenure. (The army of Flodden, 1513, was completely feudal.) The second half of the sixteenth century saw a considerable extension and strengthening of land ownership, for many barons enriched themselves by appropriating Church lands, which had covered at one time one-third of Scotland, and in ex-

change for which the Church had provided, more or less efficiently, the equivalent of our "social services." Many of the purposes, to which the sincerest Reformers had hoped to see the Church's revenues devoted, were thus never realised.

Cromwell formally abolished the Feudal System in Scotland in 1655, but, as all his enactments were declared null and void on the Restoration, the form, if not the substance, was restored. Landholders again claimed to exercise the heritable jurisdictions which remained to them; some, for example, were hereditary sheriffs of their districts. These jurisdictions were originally legal and judicial duties accompanying land ownership, but they had come to be regarded as sources of profit—a significant commentary on how the duties had been performed! The jurisdictions were finally abolished in the middle of the eighteenth century.

The year 1748 (following the Jacobite Rebellion) is probably the most important in the history of Scottish landholding, for it saw the end of the military tenure; abolition of the marriage casualty and wardship of minors. For practical purposes, the feudal organisation of society was abandoned and the existing order—still feudal in form and nomenclature—substituted. A further stage was reached in 1874, when all feudal casualties were abolished and it was enacted that all *fiefs* liable to them might be relieved by a redemptive payment. Since 1874, all feu-charters must state the specific payments to be made by the vassal (*feuar*) to the superior; contingent payments are illegal.

Celtic Patriarchism

The roots of Feudalism never struck deep in the Highlands of Scotland. The inaccessibility of those parts and the comparative powerlessness of the central government in part explains this. Furthermore, the traditions of the tribal society of Celtic times were still powerful; and the fact that the Gaelic language was still the vehicle of expression tended to harden those traditions. Kings had allocated earldoms to their friends (including some who were the successors of

the Mormaers); but to the clansman the more important person was his immediate superior, the chief of the clan, who was feudal lord, patriarchal chief and officer of the clan—children of the soil—and to the chief, the clan was devoted. He held the land in trust for the clan which regarded itself as the real owner. The control by the Government of its Highland subjects was loose. At the end of the sixteenth century, the rents and services due to the superiors (barons) were not being paid and the inhabitants of the Highlands and Islands were called upon to produce charters showing their right of possession. Few could, not even those to whom or to whose predecessors such charters had been granted. The Gael did not consider that his right to occupy land came by charter.

The tie between the chief and the clan was largely personal, though the chief had definite claims upon his tribesmen. The claims were the equivalent of the old Celtic cain and conveth. There were the more feudal fines, also; for example, on the succession of a minor heir, the latter was under necessity of handing over to his chief his best cow or horse. This type of payment ceased in 1617, by the abolition of *Calps*—the name given to this tribute. Personal services were also due; assistance at seed-time and harvest; cutting and carting peats to his residence; and similar odd duties, as required.

Each family had the right to a portion of the tribal land. For this it paid rent, as stated, in services. Sometimes a money payment was made, but money was of little use in an isolated Highland valley, however essential in a capital city. There was in those times little purpose in a chief's exacting high rents, for he himself dwelt among the people and had no reason for ostentatious display; nevertheless, he had a customary entourage and was expected to provide hospitality for any of his clansmen suffering misfortune.

Changes in the Highlands

The Jacobite rising of 1745 and the subsequent extinction of feudal tenure were fraught with serious consequences for the Highlands. The Highland chiefs—those not in exile—

were declared proprietors; and the tenants and vassals, tenants in the modern sense of the term. Rents began to be paid entirely in money and the old services commuted. The clansmen who remained on the forfeited estates had now to pay their rents to Royal Commissioners, appointed to administer them. The frequent attacks upon such commissioners and their agents reveal how much their presence was resented. It was common for tenants to pay two rents, one to the administrative commissioner and one to the chief in exile. The attachment of the clansmen to the chief was still strong. (See R. L. Stevenson's *Kidnapped*.)

At the turn of the eighteenth century there commenced the great change in productive methods, known as the Industrial and Agricultural Revolutions. Among others, there arose an increased demand for wool and the Highlands of Scotland began to be invaded by sheep-farmers. Those men were willing to pay much higher rents than were the native cultivators of the soil and the latter had perforce to make way for the former. This is the beginning of the historic Highland Clearances. Those chiefs who had been the custodians of the rights of the clans now regarded their lands as a source of income, and the sheep-farmers, frequently natives of England, had often to bear the resentment of the displaced clansmen.

The first clearance of 1780 was not the brutal proceeding that later clearances became. The rights of tenants were recognised; the displaced were allowed a solatium and provided with alternative allotments. Such consideration for the Highland crofter did not last long. Soon the expelled cultivator was forced to settle upon exposed and unsuitable areas which were unable to provide a full sustenance. During those times the poor inevitably suffered most. Many of them gradually drifted south to provide cheap labour for the industrialist—and were held cheap because no alternative means of livelihood was available to them. The more favourably placed emigrated and carried their language, their traditions and their bitter memories over all the Commonwealth.

Land Taxation

During the Celtic era, all land was liable to a national tax. During the feudal period the King's income was mainly derived from rents of Crown land ("The King should live of his own") and from the usual feudal casualties; on succession, on transfer, on reversion from tenants-in-chief without heirs, on forfeitures and during wardship. On special occasions aids were granted; these were raised by taxes on rents. This valuation was known as "the old extent" and remained the basis of all land taxation until the Restoration. Cess or Land Tax was a well authenticated source of royal income.

A new valuation was made in 1660; and again in 1670 —"the valued rent"—and was the basis of land tax from that time. Needless to say, it is of little monetary significance to-day.

The existence of the present system of land ownership is easy of explanation. Up to 1748 all land in Scotland was held by tenants-in-chief (including Royal Burghs) upon condition of supplying military assistance to the King and of paying such feudal dues as were still exacted. After 1748, all land so held became private property; it passed into the complete ownership of the possessor so far as the forms of feudalism permitted.

Land-holding To-day

Ownership to-day, however, is not quite absolute. If any statutory corporation requires land, it may acquire it compulsorily at the assessor's valuation. Many built-up areas adjacent to our towns have been so acquired, and their purchase price has added to our municipal housing debt.

But the vassals of those privileged superiors—tenants-in-chief—were not similarly vested with *their* holdings. They remained mere lease- or feu-holders and had still to pay their superiors for the use of the land they occupied. We must remember, however, that in those days, the qualification of Member of Parliament and elector alike was the possession of landed property.

"Capitalism"

It is very remarkable that most historians of the Industrial Revolution and exponents of the origins of "capitalism," do not seem to notice any connection between the acquisition of complete rights in land by the politically powerful few (and the loss of rights in land by the politically impotent many) and the unhappy social and economic conditions which followed and which appear to so many superficial observers to have been inevitable in the transition to an industrial economy.

Feu-duty

In Scotland to-day, when land for building purposes is not bought outright, the annual payment to the superior is known as a feu-duty. The payment of the feu-duty gives the feuar the perpetual use of the land upon such conditions as are stated in the feu-charter. Only on failure by the feuar to pay duty can the land revert to the superior.

Two points should be noted in this connection. The feu-duty does not alter however much the value of money may change. And, if the land rises in value (as it usually does), it is not the superior who gains the advantage, but the occupier (feuar). Hence under a scheme of site-value rating, many vassals will find themselves treated as owners, as, of course, they are (except to the extent of their feu-duty). The superior's interest in a site-value may be trifling.

Local Income and Services

Most of our older burghs were built upon King's or Baron's land and received their rights and privileges (mainly, self-government) by charter from their superiors, at a price, of course! Their methods of raising revenue were therefore individual and various, though most towns levied market-dues and imposed customs. (The burghers in those days were thorough-going Protectionists, though they did not know the name.) When such resources were insufficient it became customary to levy "stents" (In my own town of Falkirk, the "Town Council" were actually called "The Stent-masters") usually according to the value of the burgher's

heritable property. After 1833, however, uniformity became the rule in royal burghs, burghs of barony and parliamentary burghs alike, and occupiers and owners of property were in due course called upon to share the burden.

Lost Church Lands and Improved Property Rated

Until well into the 16th century, the Church was rich in lands and out of its rents provided, among other services, relief for the poor and certain educational facilities. As the Church's lands were largely seized by unscrupulous barons, the parishes had to make themselves responsible for those services. Acts of Parliament were accordingly passed, permitting the parishes to provide relief by an assessment on owners and occupiers of property. Many parishes did not administer the Acts; though their Kirk Sessions gave poor-assistance on a voluntary basis. Similarly, schools were made a charge on the parishes, which raised money by a rate on owners and occupiers of real property. (In burghs, many schools were built and endowed by pious prosperous men whose names are still attached to their foundations.)

As time went on, more and more "social services" were undertaken by towns and parishes alike, and soon a very elaborate system of raising funds by rates, *i.e.*, local taxes, on real (improved) property (shared by owners and occupiers) developed. Simplification became essential and to-day the only rating authorities are the Town and County Councils. These latter are a comparatively new institution and now (along with the Town Councils) provide social services, with very substantial aid from the national Exchequer.

Land and Improvements Valued

The valuation upon which rates are levied to-day is the annual income from land and heritages in their existing condition; heritages—elaborately defined in the Act of 1854—being the equivalent of the economic term, improvements. Thus totally unused land—though never so valuable—provides no income and accordingly escapes all local taxation. This is the arrangement which permits the practice of one

type of speculation in land. On the other hand, if improvements are placed on or in the land, the income therefrom is increased, and so, in due course, are the rates. Thus our local rating system is essentially a penal one—punishing the improver and condoning the inaction of the unenterprising simultaneously.

Agriculture and Industry De-rated

Our whole system is condemned in that governments have instituted, extended, retained and defended a scheme of de-rating "productive" industry—manufacturing and agriculture—conferring "benefits" on it for which ordinary citizens must pay and which, of course, in the long run increase the value of that land from which come its raw materials.

Failure of the Present Rating System

So serious has the rating position become in Scotland (with fixed house-rents for the occupier and ever increasing rates for the owner and consequent inability to maintain property in repair) that the Government set up a committee to inquire into the whole position, under the condition that "de-rating" must remain. This was the Scottish Valuation and Rating Committee, with Lord Sorn as chairman. Its Report (Cmd. 9244), issued last year*, listed five methods of raising local revenue: By Poll-tax, by Income-tax, by Site-value rating, by rating hypothetical net annual (improved) value as in England (where the occupier pays all), and by rating actual (paid) annual rental as in Scotland (where occupier and owner share the burden in a ratio of approximately two-thirds to one-third).

Retrogression or Reform?

Poll-tax, Income-tax and Site-value rating were dismissed—Income-tax because it had been condemned by the Dunedin Committee in 1922 and Site-value rating because it had been rejected in 1952 by the majority of the Committee of Enquiry on Site-Value Rating, presided over by Mr. Erskine Simes.

* See review in *Land & Liberty*, September, 1954.

Not observed was the fact that the Simes Committee had been obliged to "have regard to" the provisions of the Town and Country Planning Act, and no mention was made of the Minority Report in favour of Site-value rating which, now that the Development Charge under the Planning Act has been abolished, stands for acceptance in place of the Majority Report.

The Sorn Committee declared for the system of levying rates on heritable (improved) property, all to be paid by the occupier—this not on the merits of the system, but because of what they considered to be the demerits of the other systems.

The present Government has declared its intention to amend the existing rating system in Scotland in accordance with the general recommendations of the Sorn Committee. This means that there is to be no fundamental reform of the rating system. Accordingly, the case for the rating of site values and for the exemption from rating of buildings and improvements must be stressed more vigorously than ever.

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