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THE PROBLEMS OF LAND TENURE IN THE HIGHLANDS OF SCOTLAND

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IN THIS addendum to Mr. Orwin's paper on land tenure, it is necessary for me to divide Scotland roughly into the two parts, which are familiar to all Scotsmen as the Highlands and the Lowlands. The line of demarkation is not very clear. Celtic enthusiasts refuse to consider any part of Scotland as the Highlands unless the native Gaelic language is spoken. For our purpose, however, we may take the division roughly given by the two names. You are all, I presume, roughly familiar with the outline of Scotland and its contours. The real mountains lie to the north and northwest, while there is abundant high country with moorland pasture in the south and southwest that is ranked with the Lowlands, together with the great central plain and the coastal plain right up the east. If we draw a curved line from John o'Groats southwards and passing through Greenock, we have to the north and west of that line, including the islands of the Hebrides, the country known as the Highlands. The rest constitutes the Lowlands. Specifically the counties of Argyll, Caithness, Inverness, Orkney, Ross and Cromarty, Shetland and Sutherland, are administratively known as the Crofting Counties. This distinction is necessary for my purpose because the recent history and the problems of land tenure in the two areas are very different.

In general features, it may be said that the land tenure system of the Scottish Lowlands is the same as that of England; the predominance of landlord-and-tenant farms until before 1914; the principles and practice of the Agricultural Holdings Act; the breaking-up of estates into owner-occupied farms since 1914. There are certain differences in detail both historical, and in legislation and taxation, but in principle, the system and problems of today are the same.

It is, however, with the other part of Scotland that I wish to deal. The Highlands have had a different history from the Lowlands of Scotland in many ways, but one of the greatest problems has been the problem of land tenure, with which has been bound up the whole life of the Highland people. The Crofting Counties

cover an area of roughly nine million acres, with a population of 341,535 (1911)—a density of 24.3 per square mile. The density varies over the area from 9.9 in Sutherland to 68.8 in Orkney but the density over a county is only significant in relation to the geography and altitude. There may be as great congestion of rural population in some localities in Sutherland as in Orkney. There are no industrial areas.

The clan system, with its ties of blood relationships and its fundamental basis in the military leadership of the chief was dominant in the Highlands until the middle of the 18th century, despite the growing commercialization of the Lowlands and of England. Highland trade with the rest of the country was limited to the sale of store cattle brought down once a year to the great fairs at Stirling and the Falkirk Tryst in the South, and to Inverness or the Spey Valley in the East. Otherwise, the agriculture was self-supporting and the standard of living not high. Perhaps, to be intellectually honest, one should add to the items of income, the fact that has often been stated that a good fighting clan from the Highlands could be hired quite cheaply for any war or raid, on condition that a little indiscriminate plunder was not objected to. In fact, it was said to be one of the drawbacks of this class of cheap military force that they were inclined at an early stage in the campaign to take their profits in plunder too quickly and retire, without giving due consideration to the state of the campaign from their employers' point of view.

I might give a brief description of the system of land holding under the clan system.

"The fundamental basis of the land-tenure system under the clans was the value of the tenant as a fighting man; today, when the tenant's value as a fighter is of only very indirect value to the proprietor, it is rather the ability of the tenant to use the land to the best advantage. In the days when the clan system flourished, the chief leased his lands to certain principal men, usually his close blood relations. These tenants-in-chief, called tacksmen, parcelled out their lands amongst their retainers who normally held without lease at the will of the tacksmen. Below these tenants at will came the residue of the people, either landless or sub-tenants. The grazing land was held in common by the community, though the number of cattle allowed to be put on, or 'souming,' was restricted for each individual according to his

standing. The arable land was held in runrig, that is, it was divided into strips and the tenants periodically drew their ridge by lot, the outer ridges generally being reserved to the herdsmen. Rents were paid by services, or in grain, and by casualties, this last term including wool, yarn, blankets, sacking, as well as animals, eggs, butter and cheese."[1]

It was probably inevitable that this system should give way sooner or later to the pressure of modern commercial life, and probably nowhere was the change over from feudal to commercial conditions of society brought about without hardship and without giving rise to grave problems, but in the Highlands the clan system was not abolished by the gradual pressure of economic development. It was broken up by law and by a military occupation after the great rebellion of 1745, when the last armed effort was made to restore the Stuart kings to the throne of Britain.

Among other measures taken, the clans were disarmed, the use of certain clan names was forbidden, and the wearing of the national dress, the tartan kilt, was made a crime. The most vital change, however, was the abolition of heritable jurisdiction. Under the clan system, as under the feudal system, the chiefs of the clans or their representatives held their own courts, made their own laws, or at least interpreted the custom of the clan according to their own judgment, and were prosecutor, jury, and judge all combined. Rightly or wrongly, it was considered that from this source the chiefs derived the fullness of their power over their subjects.

The drastic action of the State in 1748 was successful in its essential purpose of destroying the clan system, but the full effects of the change to a new economy were not immediately apparent for a variety of probable reasons. Chief among these might be placed the fact that the mere taking of legal measures to destroy the clan traditions did not influence the attitude of mind and the consequent bonds of moral obligation of the existing generation. It was in the later generations when the opportunity arose for the clan chiefs to benefit financially by their legal status of independent landowners that the traditional customs, being more remote, became less effective. Two other factors operated for a generation to obscure the effect of an increasing population dependent upon a limited land area. These were a boom in the cattle trade with the Lowlands and with England, and the introduction for the first

[1] Pr. Fn. J. P. Day, "Public Administration in the Highlands and Islands."

time of the potato crop, which became a staple item in the diet of the Highland population.

These two factors, of increased price for one product and the introduction of a new product with a higher food yield per acre, made it possible to intensify the agriculture of the existing farming area. Then also there was the fishing industry which, however, held only a precarious existence, for it was carried on in undecked boats with no facilities for storing or taking off the catch. Later in the 18th century and into the 19th century for the duration of the Napoleonic wars, there was a burst of prosperity on the coast from the kelp industry.

The real change for the worse in the land tenure conditions came with the discovery by some southern sheep-farmers, towards the end of the 18th century, that two Lowland breeds of sheep could thrive upon the roughest mountain grazing and could withstand, without any special attention, the severe winter conditions. The date given for the first movement of sheep to the Highlands is 1762. Up to that time, a poor type of native sheep held a very insignificant place in the crofting economy. Towards the end of the 18th century, the prosperity in the wool trade of England was such that the invasion of sheep farmers into the Highlands once begun, underwent rapid expansion.

It was under the strain of this unprecedented demand for the land of the Highlands that the security to the tenant of the clan tenure, abolished by law but persisting in practice, cracked. The demand for sheep land did not at first directly affect the tillage land of the crofts, but its effect was felt in the restriction of the common grazing for the young cattle, without which the output of the croft was seriously diminished. There was also, however, a desire on the part of the new sheep farmers for low land for some corn acreage and for steadings; and the rents offered, being higher than the old customary rent of the crofts, caused the beginning of the evictions.

I think I had better pass quickly over that page of Scottish history which is associated with the evictions, the Highland Clearances as they are called—clearances of men to make way for sheep. The new landlord money-economy triumphed, for better or worse, but the records of the triumph are more tragic than any glory of war. Household goods were thrown out and the houses burned to the ground to prevent the return of the tenants; roofs

were lifted off the houses to drive away the occupants. Many crept back into corners of their ruined cottages. There were riots and the inevitable military. Thousands were shipped without resources and against their will to the shores of America, less hospitable than now. Hundreds died of fevers and disease. Try as one would like, to see all the cold economics of the Highland Clearances, and to give due place to the evictions which some landowners endeavored to carry out without hardship to their people, the tragic pages stand out all too clearly. Scotland is not proud of its Highland Clearances.

But the problem of a growing population, on a poor and limited area of cultivatable land was there and would have become acute even without the sheep. And, in spite of the evictions, the problem remained and is not solved to this day, though the condition of most parts of the Highlands is not to be compared with a century ago. The evictions were not a single event. They present a series of episodes in different parts of the Highlands and Islands covering a period of about half a century. Distress was prevalent throughout the Highlands from 1815 onwards, with the acute period of the hungry forties standing out too clearly in its misery, when the potato crops so frequently failed.

During the whole of this difficult century from, say, the withdrawal of the virtual military occupation of the Highlands in 1784 until the year 1883, the attitude of the State was one of masterly *laissez-faire.* Apart from the normal activities of taxation and some policing and the supply of a few soldiers to quell riots, no attempt was made to grapple with the very real problems of Highland agriculture.

The new era began about 1880, with the land agitation, and the more important land raids came about in this way. The crofters, but especially the cottars of a township, crushed into small subdivided crofts with no room to expand, would set jealous eyes on a neighboring large farm and proceed to deposit their cattle on a part of it, cultivate their potato patches and erect huts and houses for themselves. Naturally, the tenant of the farm and the landowner would be annoyed, but the law of trespass in Scotland did not help them much. It was costly to take civil proceedings against the raiders and any subsequent repressive measures by the criminal authorities were by no means easy since the popular opinion was on the side of the raiders. These land raids broke out like a fever

around about 1880, and they have happened at intervals since and even during the last few years. There have been interdicts and prosecutions, fines and imprisonments, but generally the raiding policy has been more effective and successful than responsible officials and respectable citizens of the Lowlands care to admit.

The first five years of the land agitation are summed up by a Government Commission as follows:

"From 1882 down to 1887 the Highlands and Islands were in a state of unrest—in many places there was open lawlessness. Rents were withheld, lands were seized and a reign of terror prevailed. To cope with the situation the Police Force was largely augmented—in some cases doubled. Troopships with Marines cruised about the Hebrides in order to support the Civil Authorities in their endeavor to maintain law and order."

The first State recognition of the real existence of a Highland problem was the appointment in 1883 of the Napier Commission "to inquire into the conditions of the crofters and cottars of the Highlands and Islands of Scotland." The commission made a very comprehensive study of crofting conditions and made certain far-reaching recommendations which served as a basis for much of the legislation which has followed. Some of the earliest legislation, however, was not entirely in accordance with the report and subsequent experience has rather shown the Napier Commission to have been wiser than the legislators of the same period. I will not, however, go into their recommendations.

Out of the Napier Commission, came the Crofters Holdings (Scotland) Act, of 1886, which has been called the Magna Charta of the Highlands, because it gave to the crofters security of tenure, a fixed fair rent, compensation for improvements and facilities for enlargement of holdings. The act established a permanent body of three commissioners, called the Crofters Commission, to carry out the provisions of the act.

The act and the work of the Crofters Commission applied only to crofting parishes (defined as parishes in which there were at the commencement of the act, or had been within eighty years prior thereto, holdings consisting of arable land held with a right of pasturage in common with others and in which there still were resident tenants of holdings, the annual rent of which did not exceed £30 in money). It was left to the Crofters Commission to decide which of the 163 civil parishes of the crofting counties

answered this definition. Twelve parishes were left out, eight of them in South Argyllshire.

The effect of this act upon land tenure in these parishes was to give a perpetual tenure to the crofter—renounceable by him upon one year's notice—subject to the fulfilment of certain statutory conditions. He must not:

1. Get more than one year's rent in arrear.
2. Attempt to assign his tenancy, except with the landlord's permission.
3. Persistently injure the holding by dilapidation of buildings or deterioration of soil.
4. Subdivide or sub-let his holding or erect an additional dwelling-house without the landlord's consent.
5. Persistently violate any reasonable written agreement applicable to the holding.
6. Obstruct the landlord in the exercise of any of the proprietary rights reserved by the act.
7. Without the landlord's consent, open any house for the sale of intoxicating liquors on his holding.

None of these provisions appear to be any more drastic than the statutory relations of landlord and tenant which have grown up in the agricultural holdings acts. In the course of its long life, however, from 1886 to 1911, the outstanding features of the Crofters Commission under the powers given to it by the Act of 1886 were the machinery for official rent fixing and the powers for the enlargement of holdings. The Crofters Commission became a constituted land court in everything but name. From 1886 onwards, the rents of crofts in the crofting parishes have been fixed either in the ordinary way by agreement between owner and tenant, or, if either were dissatisfied, he could make application to the Crofters Commission to fix a fair rent. Once the rent was officially fixed, it could not be revised for seven years. Where arrears of rent were oustanding at the time of application, the Crofters Commission had powers to cancel these arrears.

The number of applications to the Crofters Commission to fix rents together with the reduction in rents, and arrears cancelled, are shown in table 1.

The reduction was about one-quarter, on an average, of old rents, not taking account of the arrears cancelled.

The other major work of the commissioners was the enlarge-

Table 1. Reduction in Rents and Arrears Cancelled by the Crofters Commission, 1886-1911

Number of applications to fix rents	*Amount to nearest pound sterling*			
	Old rent	*Fair rent*	*Reduction*	*Arrears cancelled*
22,111	£89,503	£67,496	£22,206	£124,826

ment of existing holdings. Any five or more neighboring crofters could, on being refused land by the landlord which they were prepared to take on reasonable terms, apply to the Commission. The Commission, after satisfying themselves that (1) the land was available, (2) that the landlord had refused reasonable terms, and (3) that the applicants were willing and able to pay a fair rent and to adequately stock and to properly cultivate the land, could order the compulsory lease of the land at a fair rent. There were one or two disabilities which limited the operation of these clauses. The land had to be contiguous; an existing lease on the land could not be broken and no farm with a rental of less than 100 pounds sterling could be broken up for the purpose. Further, no enlargements were allowed which would bring the rent of a croft to over 15 pounds.

Summarizing twenty-six years work of the Commission on the enlargement of the holdings, they upheld 4,344 applications for enlargement comprising an area of 72,341 acres.

Both of these provisions, I think you will admit, give evidence of a very complete change in political outlook of statesmen, from that which allowed them to stand calmly by during the whole period of the evictions and wholesale clearances. You can also readily imagine that the Crofters Commission was not a popular body with the Highland landlords.

There were two other main problems of the Highland tenure, which were dealt with either not at all or inadequately by the Act of 1886. These were, first, the problem of the common grazings and, second, the problem of the provision of new holdings. Both of these became the subjects of later legislation.

In 1891, the first Crofters Common Grazings Regulation Act was passed. I omitted to comment in my early pages on the passing of the runrig system and the substitution of the enclosed croft. The change began about 1776 on the Argyll estates but as in all

agricultural development the change was spread over many years, and I believe it is possible that a small amount of runrig still survives. But, the passing of runrig and the creation of the enclosed crofts applied mainly to the tilled land and not to the common grazings, so that grazings have been held in common to the present day in most crofting parishes. The common grazing is, I believe, the exception in most parts of Argyll, the mainland of Inverness, and in the east of Ross and Cromarty, where the crofts are more or less self-contained farms.

The basis of administration of the grazings was and is the township (the small isolated cluster of cottages and crofts with its area of grazing land encircling it). The common grazings were managed and supervised mainly by the landowners and by an official called the township constable, but they were subject to all the well known weaknesses of common land. There was no care for maintenance of the condition of the grass and in spite of the fact that each crofter was stented, or to use the Highland word, had an authorized "souming," the grazings were constantly overstocked. In some cases the "souming" was excessive, but in more cases it was not strictly adhered to. Other minor evils were the neglect of drainage, and the practice of "scalping" the land, that is, careless stripping of turf for peat, roofing or bedding.

In spite of the recommendations of the Napier Commission, the Crofters Act of 1886 made no provision for regulation. The Act of 1891 gave powers for the election in each township of a committee of 3 to 5 members elected from the crofters themselves for the control of the grazings. They were to make regulations subject to the approval of the Crofters Commission for the management of the grazings. Failing the appointment of a committee, the Crofters Commission might make regulations themselves, but only on the request of two crofters or the landlord. The whole system rather implied a common desire among the crofters for a better regulation with powers over individual offenders. But the offences against the progressive ideas of grazing management seem to have been common to all crofters, and therefore there was no common desire to take any remedial steps. As a result, the act failed almost completely in its object.

The Thirteenth Annual Report of the Crofters Commission in 1910, gives important reasons for the failure of the act. First, the Crofters Commission had no powers to interfere unless on an

appeal from two crofters or the landowner. And, if a committee was legally appointed, the Commission could not force them to make any regulations at all. Second, the regulations when made were binding only on the statutory crofter, namely those under 30 acres who complied with the conditions of the Act of 1886. All others could do what they liked on the common grazings. Now, for the statutory crofters to stint themselves while the others benefited was not to be expected. Third, there were the cottars without any rights at all to common grazings, but who did keep stock on the commons. Legal measures to restrain the practice were practically impossible. Fourth, there were numerous cases where a large common grazing was shared by two or three or more townships, so that some might have no representation on the committees and did not feel bound by regulations of the committee.

A second Crofters Common Grazings Regulation Act was passed in 1908. The Crofters Commission was given power to appoint committees and make regulations without request and powers to fine offenders. Grazing officers could also be appointed to supervise the work of the committees. The act appears to have effected some improvements but only very slowly, and when the Crofters Commission demitted office in 1912, the admission was made that the greatest source of trouble in the Highlands was still the management of the common grazings.

One alternative plan for the management of the common grazings is worth noting. The plan was the formation of a "club farm" as it was called. The stock of the common grazings was bought over by the club, which consisted of the crofters themselves. The club stock was then managed as one unit, by one or two tenants elected annually with responsibility for purchases and sales, and usually a regular shepherd was appointed to attend the stock. The club farm idea has a number of drawbacks. It is an adventure into the realm of cooperative farming, but it has a number of advantages over the common grazing committee. There is not the danger of overstocking; an experienced shepherd sees to it that all the operations of lambing, clipping and dipping are done economically and expeditiously; good tups can be secured, and all township dues are retained from the profits, thereby obviating all the onerous burden of collecting small sums from unwilling people.

There is a further advantage which would not have been readily apparent to the outsider, namely, that the sheep are less harrassed

by dogs. When every crofter is his own shepherd for a few sheep, there is an excess of dogs, and every time one shepherd goes among the flock, the whole of the sheep are disturbed. In 1912, the Congested Districts Board opposed the granting of special sheep dog licenses to no less than 1,596 crofters, but they were only successful in 142 cases. The rest were allowed to keep their dogs and the Congested Districts Board had to pay the crofters costs to the amount of £5.10s. 0d. each, a total sum of over £8,500, not including their own costs. It is little wonder that that method of preventing the undue supply of sheep dogs was not made much use of.

The second commission from the 1886 Crofters Act was the provision of new holdings. The Crofters Commission had powers to enlarge existing holdings from contiguous land, but no powers to acquire land and establish new holdings. The swarm of cottars without land burdening every township and the lack of contiguous land for enlargement meant that a large problem remained untackled.

The question was asked: Was there any land available for the purpose? The Deer Forests Commission of 1892 were set to inquire into the land under deer and game which might be made available. They scheduled certain areas, for three purposes, (1) land for fishermen's holdings (for a house, garden, potato patch and grazing for a cow), (2) land for enlargement of crofters holdings, particularly grazing, and (3) land suitable for new holdings—about two million acres all told.

The next step was to establish an authority to deal with the matter. The Crofters Commission had no powers and the county councils, while they already had limited powers, were unwilling to put any burden on the rates. The Government decided to establish a new authority, and the Congested Districts Board was set up in 1897. They were given powers to purchase land and equip holdings for resale to crofters. They were left to schedule the parishes which should come under the designation "congested." The work of the Board might be divided under four heads:

1. The purchase of land and resale in small holdings.
2. Cooperation with proprietors willing to subdivide farms.
3. Aiding migration.
4. The formation of fishermen's holdings and the erection of fishermen's dwellings.

The Board achieved a small measure of success in cooperating with proprietors willing to subdivide farms, but in all other respects, the scheme was a complete failure for the whole of the life of the Board, namely, up to 1911. The reasons which they themselves gave in their report were first, that there was no power of borrowing and their annual income which was only £35,000 was quite insufficient for any large scale purchases of land and equipment of buildings. Second, comparatively few of the people whom the Board was intended to help had sufficient capital to enter successfully on these new holdings and the Board had no power to give loans for tenant's capital, and with the Highland system of sheep stock acclimatisation valuation, this initial stocking of crofts might be quite costly. Third, the people were unwilling for various reasons to migrate to new areas, and only in a few cases was there land available in the vicinity of the congested areas. Fourth, the scheme only provided for the sale of the new holdings and not for tenancy. The terms of purchase, it is true, were very favourable, but the system of owner's rates in Scotland made the crofters reluctant to undertake the burden of ownership. Some of the schemes set on foot were actually after a time converted, at the request of the holders, into tenancies.

I will not go into any details of the difficulties which beset even the actual schemes put into operation. There were some successes but in the main the Congested Districts Board did not do any more than touch the fringe of the problem of satisfying the demand for more crofts in the Highlands.

I have now brought you up to the year 1911, and I have shown you how the Crofters Act of 1886, and the Common Grazings Regulation Acts of 1891 and 1908, all administered by the Crofters Commission, endeavored to deal with the problems of security of tenure, conditions of tenure, fair rents and the enlargement of holdings, and with the problems of the common grazings. I have also mentioned the rather disappointing work of the Congested Districts Boards from 1897 to 1911, in the creation of new crofts to relieve the congestion of population on the land in certain areas.

The year 1911, or rather 1912, marks the end of the period, not because the problems were solved or because there was any complete change in policy, but mainly because of the administrative changes effected by the all important Act of 1911, the Small Land-

holders Act. I propose to deal only very briefly with this act, because I have already covered too much space and because I have already, I hope, made clear the essential problems of land tenure in the Highlands, which remain unchanged by the Act of 1911 and subsequent legislation.

The main changes of the act were administrative. The Crofters Commission and the Congested Districts Board were abolished. These were bodies, both of them, localized in their purpose and activity to the crofting parishes of Scotland. By the 1911 Act, there were set up the Board of Agriculture for Scotland and the Scottish Land Court. The Board of Agriculture was given many functions, such as fostering agriculture and agricultural education, collecting the annual statistics and so on, which up to that date were performed for Scotland by the English Board of Agriculture. But, as regards our special subject, the important issue is that the Board took over the duties of the Congested Districts Board in the creation of new holdings. Their powers, however, were not confined to the congested districts nor even to the crofting counties but were extended to the creation of small holdings in any part of Scotland, a duty which in England is given to the local county councils. The Land Court, as its name implies, took over the functions of the Crofters Commission of fixing rents and arbitrating between landlords and small tenants. Their powers also were extended beyond the crofting counties. Small holders in all parts of Scotland now come within the benefits of the Land Court, and its unpopularity has been extended to all landowners and not confined to the Highland landowners. The definition of a small holding in the terms of the act also raised the limit of size to 50 acres or £50 rental, from the former 30 acres or £30 rental.

Of the work of these new authorities in the old direction I need not say much. The new Land Court made rather severer reductions in rent than the old. But the change in the Board of Agriculture's powers for the creation of new holdings is important. The Congested Districts Board had powers either to cooperate with willing landowners to subdivide farms or to purchase land for subdivision and resale to the holders. The new authority, was, however, given compulsory powers for the breaking up of large farms into crofts. Where the Board failed to come to terms with a landowner for land required for new holdings, they might, through the Land Court, make an order for the compulsory crea-

tion of the new holdings. The landowner might, of course, obtain compensation for any loss he might incur with this new form of tenancy on his estate.

There will, I think, always be dispute as to the wisdom of this compulsory subdivision and as to the success of the type of farming established by it. But that there is a large demand for the new holdings, in the Highlands mainly, is shown by the number of applications received in the very first year of the Board of Agriculture, 1912. There were 3,370 applications for new holdings of which over 80 per cent were from the crofting counties. But the progress in subdividing, equipping and selecting tenants is slow work and up to the outbreak of war in 1914, only 434 of the 3,370 applicants had had their wishes gratified, 300 in the crofting counties and 134 outside. It was a small proportion of the applicants but a quite large number in itself for two years' work.

The war suspended operation but it created a new situation in which sentiment played an important part. The Government was anxious to provide every facility for ex-service men to settle on the land in their own holdings after demobilization. Small Holdings Colonies Acts were passed in 1916 and 1918, but the main act was the Land Settlement (Scotland) Act of 1919 by which ex-service men were to be given priority of claim. The Board was empowered not only to acquire land, erect buildings and so forth, but also to make loans for tenant's capital up to a sum equal to the individual's own capital but not exceeding £500 in any case. Also the schemes were to be pressed forward with the utmost expedition so that men might be settled as soon as possible after demobilization. Up to December, 1921, the last date of application for ex-service men, the number of applications made for new holdings was 12,759, of whom 6,114 were ex-service men, and 6,645 were civilians. The applications were again mainly from the crofting counties but not in so large a proportion as pre-war—about two-thirds as compared with 80 per cent.

The hurry and sentiment of this act led to serious difficulties. Land was acquired in large amount (300,000 acres) and the work of equipment began in the period of soaring prices and high interest rates, which crippled the resources of the Board when the lean years of economy set in. The same enthusiasm prevailed among applicants and when the time came to award holdings it was found that the enthusiasm of many had waned. In one

case in Caithness in 1921, when the holdings were ready, the 144 chosen applicants were written to; 50 per cent did not reply; 17 per cent refused to consider holdings except in districts where none were planned; 25 per cent would not accept any holdings, and only 8 per cent took holdings.

Altogether from 1919 to 1923 inclusive 1,679 new holdings were made available, making a total from 1912 of 2,275. That was but a fraction of the applications, but what proportion of those were genuinely eager, it is impossible to say.

In 1922, a rough stock was taken of the intentions of the applicants whose names were on the lists. Of the ex-service group of 6,211 applicants, 2,243 withdrew or were untraceable; 55 were reported upon unfavourably; 1,202 had been settled in new holdings, leaving 2,711 genuine applicants awaiting settlement (not including new applicants). Of the civilian group of 6,461 applicants, 2,710 withdrew or were untraceable; 90 refused; 57 were reported on unfavourably; 751 had been settled in new holdings, leaving 2,853 still to be settled.

Progress has continued, but more slowly, in the creation of small holdings and in the Highland areas there have been numerous displays of a natural impatience by the old, well-tried and often successful method of land raids. Even in the past year, the Board and the Law Courts have had to deal with awkward situations, but much popular sympathy has been with the raiders and the power to deal with these raids in face of public sympathy is not great.

I am afraid I have given you a very long but still inadequate sketch of the Highland problem of land tenure. The problem has been essentially one of a large population depending upon the resources of the land, with small outlet for hiring their labor for wages, and an intense love of the life of a tiller of the soil. As you see from my sketch, a great deal has been attempted on their behalf since 1883. One can hold contrary views of the Highland crofters. They have been castigated for being indolent, barbarous and unprogressive, and for being obsessed with an insane pride in their independence. They have been called criminal for being so prolific in breeding; they have been called lawless for withholding rents and squatting on unauthorized land and defying and obstructing the law, but with it all they are essentially independent peasants who command a great deal of respect of those

who know them and as a class they have given a great many famous men to the world.

Dr. W. R. Scott, the Adam Smith Professor of Economics in Glasgow University, who has travelled among them as an investigator for the Board of Agriculture, says of them in his "Rural Scotland During the War":

"The Highlander in the somewhat rigid view of the first half of the nineteenth century was setting economic laws at defiance and was being slowly broken in the process, but he still held tenaciously to his native mountains. His passionate feeling was outside the calculus of the economist. He refused to become an 'economic man,' and remained essentially human, if sometimes a little perverse. The owner of a sheep farm or a deer forest looked upon him as a merely troublesome person who wanted land at less than its market value and in addition tended to depreciate adjoining property. The farmer held very similar views, especially if the creation of more holdings meant that there was any chance of his land being required for the purpose. Lastly, though this came later, when agricultural labour became self-conscious, it was opposed to the crofter, or small-holder. It held that the small-holder occupied an anomalous position. He made less than the farm servant and worked harder. This, however, was to forget that the former preserved his independence and his individuality, and there will always be some to whom these apparently intangible gains will outweigh material advantages. The material earnings of the crofter may be less than those of the farm hand, but to men of a certain temperament the total advantages, both material and immaterial were vastly greater."

DISCUSSION OF PAPERS ON LAND TENURE

Mr. Bridges—Mr. Orwin has stated in his paper that legislative enactments have curtailed the powers of landlords in regard to the relations with their tenants. It is this section of the history of landlord and tenant that is the most outstanding recent feature of land tenure in England and Wales, and it might be advantageous to our visitors if I were to draw attention to some of the salient features of this legislation. Prior to the passing of the Agricultural Holdings Act of 1875 a tenant, when leaving a farm, had no claim at common law for improvements, either of a permanent or temporary nature, effected by him on his farm. Over a long period of years tenants had secured some recognition of their right to compensation for improvements by what was known as "custom of the

country." These customary rights might be peculiar to particular estates or to certain districts. They might be present in some districts and absent in others. Customary rights only applied to a very limited number of improvements and they varied considerably in extent. Moreover, it rested with the tenant when making a claim, to prove that the custom existed, and it might even be excluded by contract. On progressive estates leases and agreements between landlord and tenants specified improvements for which claims could be made, but the practice was not widespread. The absence of payment for improvements meant that there was no incentive to improved farming. At the end of leases farms were run out, and when a new tenant came in, several years might elapse before the farm could be brought into condition. If farming was to make progress, reform of some kind was necessary. In 1875 was passed the first of a series of acts regulating the position of the relation of landlords and tenants. The 1875 Act recognized the right of the tenant's claim to improvements carried out by him on the holding, and classified these in three groups. In the first were those improvements such as buildings, in regard to which the consent of the landlord to the making of such improvements was necessary, before compensation could be claimed. In the second, notice had to be given to the landlord prior to making the improvement before a claim could be sustained. This group included land drainage, liming, marling and so on. In the third group were those improvements which come under the head of cultivations and manuring, for which no consent or notice was necessary. The basis of valuation for compensation was to be the value to the incoming tenant. Unfortunately the act was only permissive, that is, its operation could be excluded in writing. Landlords were not ready for the act. They considered it to be a breach of the principle of freedom of contract and accordingly they took advantage of the permissive clause in the act and contracted out. The act was, therefore, virtually a dead letter. It was not until the Agricultural Holdings Act of 1883 that the right to compensation was made compulsory. The other main alteration made by this act was the removal to the third group of improvements of all those in the second group, except that of land drainage.

Having gained recognition of the right to compensation for improvements, other matters of equal importance were brought into prominence. For generations it had been customary to insert in tenancy agreements provisions for the proper cultivation of the farm. Such covenants, for example, prevented the removal from the farm of hay, straw, and roots grown on the farm, and often laid down certain courses of cropping which were to be followed. Undoubtedly these provisions were in the interests of good farming and for the purpose of preventing deterioration of the soil. They were not always consistent with the most profitable farming, and it was held that these covenants did not permit of a reasonable development of farming practice and were an unwarrantable interference with the right of the tenant to farm to the best advantage. The depression of the latter part of the 19th century gave added weight to the argu-

ment for more freedom of cropping and disposal of produce. The use of purchased feeding stuffs and fertilizers was becoming a common practice. As a result of education, the initiative of farming progress was passing into the hands of the tenants. It was not, however, until the beginning of the 20th century that freedom of cropping and conditional freedom in the disposal of produce was granted to the tenant by law. The Agricultural Holdings Act of 1906, afterwards, with other acts consolidated in the Act of 1908, made this further step in the activity of the State for the benefit of the tenants.

The Act of 1906 also extended to the tenant privileges which he had not hitherto enjoyed. This act introduced the principle of compensation to the tenant on termination of his tenancy if such termination was of an unreasonable nature. It would take too long to give you the various reasons which led up to the provision. It will suffice to say that under the system of yearly tenancies, which had superseded leases for a period of years, it was possible for an improving tenant at short notice to have the rent raised on his own improvements or on the sale of the estate, be forced to leave or buy out his farm on the basis of his own improvements. Improvement in farming was not favoured by such circumstances —hence the legislative enactments of 1906. Claims for compensation under the Act of 1906 were difficult to sustain and its provisions were strengthened and made more effective by the Agricultural Act of 1920.[1] It is now almost impossible to remove a tenant from his farm unless on the grounds of bad farming. The amount of the compensation to be paid for disturbance was laid down in the 1920 Act. It was not to be less than one year's rent nor more than 2 years' rent of the holding.

The question of fixing fair rents had an intimate connection with the security of tenure and had long been a subject of discussion among land reformers in this country, but Parliament did not see fit to take an effective step towards the establishment of a land court or other judicial body for the fixing of rents, as had been done in Ireland and Scotland. The Agricultural Act of 1920, however, introduced a section by which, in the case of dispute between landlord and tenant as to the amount of rent, either had the right to demand an arbitration.

As the result of 50 years of legislation the landlord's position, and freedom of contract, has been profoundly modified. Ownership of land has assumed a dual capacity with the State taking a more active and increasing part. Through State action, the tenant's grievances have been largely removed. He has been given the right to compensation for improvements, he has freedom of cropping, and reasonable security of tenure.

Mr. Enfield—While I believe that state ownership of land will ultimately come about, I find it difficult to agree with the argument put forward in Mr. Orwin's paper based on three periods of agricultural history—the eighties and nineties, the war boom, and the post-war depression.

[1] In 1923 the Agricultural Holdings (Consolidation) Act was passed. This Act consolidated the provisions of the 1908 and 1920 acts.

I believe that the economic consequence to agriculture of falling prices, which characterised the first and third of these periods could not have been remedied by a change in the system of land tenure. It is hardly fair to judge the economic efficiency of the landlord-tenant system in periods when falling prices inevitably make it difficult for landlords to function properly.

I think that if nationalization is to be advocated on economic grounds, it must be for the reason that the State can more efficiently manage agricultural land than private owners. That is a matter which will have to be proved.

Sir Thomas Middleton—We have listened to three most interesting papers. As I come from Mr. Maxton's country, I should perhaps refer to it in some detail; but I do not propose to do so and will make one comment only. Mr. Maxton has told us a good deal about the Sutherlandshire clearances, where crofters were turned out of their holdings to make room for sheep. However, sheep were not the only cause of emigration to Canada and the United States in the 19th century from the Highland Counties. The potato famine to which Mr. Harkness alluded extended to the Western Isles of Scotland and was responsible for much emigration.

Coming now to Mr. Orwin's paper, in part historical, in part dealing with the outlook. His survey of British land tenure was limited to the period from 1760 onwards. He has referred to its merits and stressed its defects, and the conclusion is that it must pass away. But the system Mr. Orwin refers to has served the country well, and before we exchange it for another it seems to me that caution is wanted. Few people realize that the prosperity of Britain in the 19th century was largely made possible by our system of land tenure, and the efforts made by landowners and farmers to increase the output of British soil from 1760 onwards. Without the increased supply of food which they provided, a rapid expansion in the industrial population could not have taken place. Under the conditions of the time no other large source of food for the industrial population than the soils of the country existed. Porter in his "Progress of the Nation," published about 1836, remarks that even if the food existed in other parts of the world there were not then ships enough to carry any large supplies to Britain. At that period the soils of the United Kingdom were supporting some 23 million people, as compared with 15½ million at the outbreak of war. It should be noted, however, that of this number 7 or 8 million were depending (dangerously) on the potato. I question whether nationalization would give us as satisfactory a system of land tenure as our present system, with all its defects, has done.

Mr. Orwin has pointed out that the new landowner is not shouldering his responsibilities as the old landowner did. This may be true of the new landowner in the post-war period. But may we not hope that some among them will be attracted by their opportunities and will become improvers of agriculture as so many of their predecessors were. If we carry back our survey to a period before 1760, we find that the shortcomings

of the new landowner is a well worn theme in the history of British agriculture. At least as early as the time of Henry VIII there were those who bemoaned his delinquencies. The land is a great reformer and possession of land brings responsibilities and new interests; we may hope that those "amenity" landowners of whom we now hear so much will amend their ways, and that a substantial percentage of landowners in the future, as in the past, will take an honourable place in promoting agriculture.

While Mr. Orwin believes that the nationalization of agricultural land is desirable, I myself think it likely that the economic disadvantages would outweigh the advantages which the nation would derive from the change in land system. It would certainly add to the burdens of the tax-payer.

Professor Jutila—It is strange to hear this question of nationalization of land discussed in England. Perhaps land in England has more value for other purposes than for agriculture. However, I cannot believe that nationalization would be better than private ownership for the English countryside from the point of view of agriculture.

Dr. Taylor—Listening to the papers and discussions today reminds me of the many problems of land tenure I discovered existed here, when I visited the country 30 years ago. I was told the large landlord was much to be preferred to the small—having an income from other sources he was able to undertake more in the way of improvements. During the process of democratization of Britain many amenities of the landlord have been subtracted. Is it now possible for one to acquire a seat in the House of Lords through the acquiring of a landed estate? Does its acquisition bring social standing? Are there as many new rich? Is a higher social standard the result of spending money on the accumulation of estates? It appears that many amenities of the landlord have diminished. Does this account for the failure of landlord-and-tenant system?

English agriculture demonstrates that land ownership on the part of farmers is not essential to good farming. A certain number of land owning farmers are perhaps not interested in nationalization. Many smaller farmers might wish to own land if it could be bought at a fair price. If the only people in the market were those who wanted to use the land for agriculture, the price of land might fall to its true value. It is impossible for a farmer to buy land if he cannot realize a return upon his investment. If under land nationalization, in times of depression, the rents paid by farmers were reduced, could they be raised in times of prosperity? The Irish experience with adjudicated rents suggests difficulty in advancing rents even though an advance is justifiable.

Mr. A. Jones—In answer to the questions Dr. Taylor raised, there are other and easier ways of getting a seat in the House of Lords than through owning landed estates, and the social and political prestige attached to the ownership of land is not as great today as was the case in the past.

The papers read on land tenure problems by Mr. Orwin, Mr. Harkness and Mr. Maxton confined themselves chiefly to England, Ireland and Scotland, and although I do not at the moment live in Wales, something should be said of this problem as it has affected that country. Gen-

erally speaking, Wales has followed the same course as England in its system of land tenure with the important exception that it has suffered far more from the evils of the absentee landlord than has been the case in England. The result was that until the latter half of the last century the whole economic, social, and political structure of Welsh rural life was formed round that doubtful trinity of parson, schoolmaster and steward (land agent) who were either English or Anglicized Welshmen and entirely out of sympathy with Welsh traditions and aspirations. Probably there have been more evictions of tenants in Wales because they did not vote the same as the three mentioned persons than through any other single cause. At present, of course, the order of things has changed and it is no longer possible for the tenant to be evicted from his farm because of political and religious beliefs. With regard to the future of tenure in Wales, it is probable that nationalization would not be as easy of operation in a country of small farms as would be the case in countries where larger holdings obtain. Further, I should say that there is a greater number of men moving from the ranks of workers to that of farmers in Wales than in England, and the general desire I would say at present, is that facilities should be given to enable the present farmers to own their farms and the workers to have a better access to the land. As regards England, it appears to me that Mr. Orwin's arguments are conclusive.

Mr. Thomas—I agree with what Mr. Jones has just said. The history of land tenure in Wales differs so much from the English story, that it merits separate treatment. The situation in Wales emphasizes the importance of the social and political aspects of the question of land tenure. The English system of land tenure which was also introduced into Wales was essentially an alien system. A large percentage of the landlords in Wales were English in speech and sympathy, as well as in their political and social outlook. It followed that landlordism in Wales became associated with the anglicizing movement, which again was associated with politics and religion. It is a fact that many a landlord in Wales took advantage of his economic status to thrust on his tenants his social, his political, and even his religious views. This state of affairs culminated in the political evictions of tenants which occurred particularly in 1859 and in 1868. The landlord-and-tenant system depends essentially on the personal relations of the two parties. The experience of Wales shows that, in the absence of adequate safeguards, such a relation is subject to grave injustices when the stronger party to the contract can use his economic position for furthering objects which bear no relation to the terms of that contract.

There is one aspect of the evolution of the large estates, both in England and Wales, which I think should be stressed. In the formative period in the evolution of these estates, that is, in the 18th century, the primary concern of the landlords was the accumulation of as large an area of land as possible. There was little conscious effort to make these estates economic units, so that on many of them the application of scientific

"estate management" has never been possible. It seems to me, that if this system of large estates is to continue, a redistribution on this basis must be a first essential for its efficient organization.

It is also necessary to remember that the English system of large estates is not necessarily synonymous with a system of large farms. Over many areas of England, and in Wales in particular, large estates are found associated with small and medium sized farms. It may be that in the solution of the problem of land tenure in this country, a different policy will have to be pursued for the large farm areas, as against the small farm areas.

Mr. Maxton—We have had a very active discussion of these papers on land tenure, but I feel that our visitors from abroad have felt themselves in the position of spectators of a domestic feud. They look at this problem from quite a different point of view from us. They have been hearing that we in this country view with alarm the sinister change-over of our land tenure system from the old landlord-tenant basis to a basis of owner-occupiers. They cannot help wondering why we should be apprehensive of the advancement of a system which to them is the ideal system of land tenure, and why we should be alarmed at the decay of a system for which they themselves have never had any use.

I would like to try briefly to analyze our position, by drawing the distinction between *farm* management and *land* management. Under a system of farm ownership, these two functions are merged into one and are performed by the same individual, but in this country these two functions have long been differentiated. The farmer has been enabled under the landlord-tenant system to concentrate upon farm management while the problems of land administration have been, or should have been, the work of someone else. It is a higher degree of specialization than exists where the two functions are undertaken by the farmer. There are two jobs involved. Their problems are different and the mental attitude towards them is different. In the main, the difference is due to far-sighted policy necessary in the case of land management in the administration of the capital invested in buildings and permanent improvements. This is a form of capital in which one year does not bring appreciable decay or urgent need for minor repairs. A second year passes, and still the buildings, and so forth, do not show the wear and tear of time. But if the annual minor repairs are neglected, there comes a time when a large outlay is required for replacement. Too often the farmer-owner neglects the minor annual attention to his permanent capital because the need is not urgent. When the dilapidation is becoming apparent, the cost involved is so large a part of his income that he puts it off a year or two more, until necessity drives him to do something by which time the cost has become ruinous to him. That is only one instance of the differences in the nature of the capital involved and in the attitude of mind necessary for the successful administration of the capital.

It is obvious, of course, that no single farm of ordinary size could afford to maintain a specialist land-manager and a specialist farm-man-

ager. But that is where we turn to the conception of the landed estate. The unit of farm management is the farm as we understand it, but the unit of land management has to be a large contiguous area consisting of many farms, what we call in this country, an estate. Thereby the overhead cost of the specialist management of land is spread over many farms and many acres. It also admits of a long programme of continuous development with a fairly constant annual outlay. If the owner-farmer is to make an improvement he must take a proportionately large sum from his reserve of capital or else mortgage his income for a long term of years. In estate management, the outlays can be met out of income, where a far-seeing programme of administration is planned.

That is the kernel of the belief in the landed-estate-and-tenant system as it has been worked in this country for many decades. It is a belief in the value of the specialization involved in separating these two jobs. No one would pretend that the system was purposely devised on these lines, nor that it has been operated successfully in every estate in the country. There has never been any study of the size of the most economic unit of estate management. It is certain that many estates have been too small to make an economic distribution of the overhead, and owners have expected to get an income out of estates which were too small. But in the main Mr. Orwin and others look back to this degree of specialization as being the strength of the landlord-and-tenant system.

Now that the differentiation of function is in danger of being lost, and the old system of private landowning is unlikely to revive, minds have been turned to the consideration of a way in which the advantages of specialization may be maintained in the future. Mr. Orwin's scheme has been devised to this end and the State has been put forward as the most suitable, and indeed the inevitable authority, to take over the functions of the private landowners. The point of view has been put forward in this discussion that it will be a losing proposition for the State since private landowners are admittedly abandoning their estates because as an investment they have not been profitable, and that State ownership would inevitably mean an increased burden of taxation. That is not impossible, but the alternative is that this bad investment should be thrown on the individual farmers who are already complaining of the stress of their own business and who would lose all the advantages of the large scale administration of land and all the advantages of specialized land management. If land management is an unavoidably bad investment and someone has to undertake it, what authority or body other than the State can be expected to face the difficulties of a problem so vital to a nation?

But it does not follow that in the hands of the State, land will be a bad investment. I have referred to the economics of large scale management of this class of capital and also to the wide spread existence of uneconomic sized estates. The State may quite reasonably be expected to get the fullest value from the large scale economy, while the wiping out of the small units of management would probably mean a huge economy in overhead expenses presumably now borne in part by the tenant farmer.

I think our visitors should know that the Government of Great Britain in various ways is already a very large landowner, probably one of the largest.

One final point I might make which will help to emphasize the other points that I have been making. This proposal of land nationalization which has struck our visitors as a revolutionary proposal is from the point of view of the farmers of this country a much less revolutionary step than the system of farm ownership. British farmers have been accustomed to being tenants and giving the whole of their capital and their ability to farm management. Under a system of farm management they are being asked to invest in a new and unfamiliar thing, real estate, and to give their divided attention to land management. Compare that with the comparatively simple change over for them to a new landlord who happens to be the State instead of a private individual, and they go on giving their capital and ability to farm management as before. The degree of specialization, which it is claimed has worked well for British agriculture, would continue to operate.

Dr. Allen—During changes and transitions someone is always bound to suffer. The difficulties here have resulted in the opportunities for development in Canada. There we have not yet had to face the landlord and tenant problem—we shall have problems of our own in the future.

All speakers are agreed on the short-comings of the present landlord-and-tenant system here and look to land nationalization as a possibility. Difficulties in Canada have rather been in getting rid of the land. Nationalization is about the last thing we want.