

A case of using property rights to manage natural resources

Land reform in the Godzone

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ABSTRACT This article presents a case of using property rights to govern land use in the high country of New Zealand's South Island. It tells the story of a land reform policy and its implementation over two decades, through changes in rules and governing parties. It observes land reform outcomes that are surprisingly favourable to pastoral leaseholders, and surprisingly unfavourable to the Crown. It then explores several possible explanations, including the logic of collective action, bargaining dynamics, principal-agent problems, and ideas of ownership. It concludes that John Locke's labour theory of property holds sway in New Zealand's land reform, despite what the law prescribes. This raises questions about whether using property rights to manage land use meets the '3Es' of good policy: effectiveness, efficiency, and equity.

LEARNING OUTCOMES

Students will gain insight into the power, promises, and perils of using a property rights approach to manage land and natural resources.

CLASSROOM TESTED? YES

INTRODUCTION

When Mark Twain [1] visited New Zealand, he wrote: 'The people are Scotch. They stopped here on their way from home to heaven—thinking they had arrived.' For a century, New Zealanders have called their treasured landscapes 'God's own country', or 'Godzone' for short.

This article presents a contemporary case study of the reform of land ownership in the beautiful South Island high country. Patterns in land sales prices suggest that the on-the-ground results of land reform are driven more by John Locke's ideas about ownership than by the raw economic value of the natural resources at stake. The case, and its outcomes, raises questions about using property rights as a policy tool to change land use. Many policies aim to achieve the '3Es' of effectiveness, efficiency, and equity. This case study examines the 3Es of using property rights to change land use.

Since the 1850s, about 10% of New Zealand's landmass has been owned by the Crown (now the New Zealand

government), and leased to sheep farmers 'for pastoral purposes only'. One hundred fifty years of successive land acts have offered pastoral leaseholders property use rights that are long in duration (33 years and perpetually renewable), exclusive in nature, and compensable if revoked. But the pastoral use rights are also narrow—limited to extensive pastoral farming, with even fertilising, ploughing, or irrigating requiring special Crown consent. In explicitly prohibiting leaseholders from gaining freehold (private property ownership, known as fee-simple in many countries, including the United States and the United Kingdom), or engaging in industrial or non-pastoral uses, the Crown retained rights to the soil and to the freehold. Pastoral rents are capped, at similar rates to what university students in Dunedin or Christchurch pay for a room in a student flat. Australia has nearly identical pastoral lease arrangements [2, p.42].

By the 1980s, nearly everyone involved in the high country wanted change. The leaseholders wanted to purchase freehold title to the land they had leased, sometimes for generations. Various boards of enquiry through the 1980s and 1990s concluded that the restrictive terms of pastoral leases, prohibiting all land uses but extensive pastoralism, were inefficient. Recreation groups wanted more secure recreational access to high-elevation land, and conservationists wanted to get the sheep off this high-altitude land [2, pp.31–35].

In 1991, the Minister of Lands initiated a process called tenure review, in which a pastoral leaseholder could enter talks with the Crown to divide the lease land. The more productive land was privatised, in freehold title, while the land with conservation, recreation, and landscape values shifted into public conservation land, added to the one-third of New Zealand managed by Department of Conservation. Parliament authorised tenure review in 1998, passing the Crown Pastoral Land Act (1998) [2, pp.34–35]. Almost everyone who was monitoring this issue supported tenure review because all parties got something: farmers got freehold title; conservationists got sheep removed from hilltops and new parkland; and recreationists got back-country access. Yet so few were paying any attention that one of New Zealand's leading current affairs magazines described it as 'tenure review – chances are you've got no idea what that phrase means' [3].

CASE STUDY EXAMINATION

Tenure review divides 2.4 million hectares, or 10% of the country, on the eastern slope of the Southern Alps. The high country is similar in size to Israel and Belgium.

As an example, Alphaburn Station was on the outskirts of the bustling lakeside tourist town of Wanaka. Until 2002, all 4,579 ha of Alphaburn Station were leased for 'pastoral purposes only'. Under tenure review, the Crown sold freehold title to the more productive land, and bought leasehold rights (to retire) to land with conservation and recreation values. The leaseholder was the only one allowed to buy the freehold; there was no auction.

In 2002, the Crown sold the freehold to 3,365 ha for \$265,500 (\$79.50/ha). At the same time, the Crown bought pastoral rights to 1,214 ha for \$202,500 (\$166.83/ha), retired them from grazing, and created a conservation reserve.

A few years later, the former Alphaburn leaseholder subdivided his freehold land and sold 193 ha for \$10.1 million. At over \$52,000/ha, this is 658 times the Crown's selling price.

Alphaburn is just 1 of 110 leases that have undergone tenure review; there are about 200 still to go through. Since 1992, the Crown has sold freehold rights to 370,981 ha. The Crown Pastoral Land Act 1998 (section 24(a)(2)) directs the Crown to freehold the land most 'capable of economic use', usually at lower elevation and often on lake-shores or along roadways. Former leaseholders paid the

Crown \$65.2 million for freehold title (average \$176/ha; median \$77/ha).

At the same time, the Crown bought pastoral leasehold rights to 330,854 ha of land with recognised conservation and recreation values for conservation reserves. This is usually less productive and more remote plots of land. The Crown paid former leaseholders \$116.8 million (average \$353/ha; median \$278/ha).

Crown land sales and purchase during land reform

Although the freehold rights the Crown sold appear more valuable than the leasehold rights it bought, the Crown paid leaseholders \$52 million more than it received on net. This is illustrated in Table 1. After the freeholding, all the previously prohibited land uses become possible (subject to New Zealand's Resource Management Act 1991 and the relevant district plan).

When tenure review began, the New Zealand Treasury compared the value of what the Crown was selling to what it was buying. Treasury estimated the pastoral rights were worth about 72% of the freehold private property rights sold by the Crown. Thus the ratio of per hectare prices (price paid by the Crown for pastoral rights/price paid by leaseholder for freehold) should vary around a median of 0.72 [4, citing Treasury documents]. Rural land prices in New Zealand suggest the ratio should be lower [5]. Yet thus far, the median ratio is 3.4. The ratio at Alphaburn was 2.1, and it ranges as high as 940, at Shirimar. Of 110 deals, only 19 have a ratio of less than 1.0.

Freehold land after land reform

As of mid-2015, what was once 110 pastoral leases had become over 3,000 freehold parcels. Almost a third of the new freeholders had subdivided and sold some land. In all, 74,000 ha (about 20% of what the Crown sold for \$65 million) has on-sold for \$275 million. On average, on-selling prices are 693 times the Crown's selling price. This is illustrated in Table 2. In other words, at 65,700% of the purchase price, the capital gains realised at Alphaburn are below the median of 69,200%.

Using economic and political theories to understand land reform outcomes

It seems baffling that the Crown would privatise Crown pastoral land and lose money in the process. One explanation could be corruption. But Transparency International surveys describe New Zealand as consistently having the

TABLE 1. The largest 10 Crown payouts to former pastoral leaseholders in 110 tenure reviews from 1992 to 2015.

Name of lease	Area to conservation (ha)	Area to freehold (ha)	\$ paid by Crown for conservation land	\$ paid by lessee for freehold	Year tenure review completed	Net to lessee (\$)
Dingleburn	17,722	7,016	6,192,500	615,000	2004	5,577,500
Mesopotamia	20,728	4,973	4,742,000	142,000	2009	4,600,000
Braemar	13,386	1,753	2,718,381	81,381	2012	2,637,000
Kyeburn	4,703	1,852	2,875,000	375,000	2009	2,500,000
Lake Hawea	4,855	6,470	2,200,000	0	2011	2,200,000
Allandale	4,421	124	1,890,000	10,000	2012	1,880,000
Mt. Cook	1,546	1,005	1,956,000	156,000	2009	1,800,000
Mt. Potts	8,670	1,022	1,820,000	130,000	2009	1,690,000
Mt. Aspiring	8,017	2,309	2,047,500	437,500	2012	1,610,000
Lauder	3,020	1,205	4,000,000	2,560,000	2013	1,440,000

Source: Successive Official Information Act requests.

TABLE 2. The largest 10 gross revenues from subdivision and on-selling of land from former Crown pastoral leases

Lease	Year tenure review completed	Gross on-selling revenue (\$)	Land area later on-sold (ha)	Price per hectare paid to Crown by runholder for freehold (\$)	Average price per hectare paid by new buyers (\$)
Hillend	1998	26,200,000	2,671	126	9,800
Queensberry Hills	1998	15,148,000	1,950	66	7,800
Wyuna	2004	14,185,000	8.8	543	1,611,900
Closeburn	1998	14,182,000	7.7	215	1,841,800
Glenariffe	2004	12,074,000	1,664	157	7,300
Waiorau	1998	10,350,000	2,561	72	4,000
Avalon	1998	10,200,000	1,351	99	7,600
Alphaburn	2002	10,100,000	193	80	52,300
Cattle Flat (Otago)	2005	8,480,000	1,780	132	4,800
Shirlmar	2003	8,350,000	3,498	2	2,400

Note: It is worth noting that there are some sales missing from the software. As such, these data might underestimate but will not overestimate the on-selling revenues.

Source: QuickMap-SalesView software.

lowest levels of perceived corruption, rendering this explanation unlikely. Economics and political science offer several more credible explanations, which might suggest recommendations for improving outcomes.

Olson's [6] logic of collective action predicts that those with a vested, or financial, interest in resource conflicts will mobilise more readily than public interest groups. This tilts the tenure review playing field in the leaseholders' favour from the start. Further the devolution of the process means that tenure review outcomes are decided case by case, which narrows the scope of debate, and makes national media coverage unlikely [7, p.29]. This favours the status quo of Olson's [8] victory of the few with the vested interest over the many with the public interest.

The devolved implementation also privileges local needs over national goals [7, pp.207–209]. Though seemingly personal and amicable, case-by-case decision-making renders scrutiny and challenge prohibitively expensive for dispersed national conservation interest groups. Hence, most sail through unnoticed.

Further still, the Crown employs contractors to negotiate the deals, then instructs them to be neutral, to avoid taking sides, and not to advocate for the Crown's interest [4]. The Crown appears to embrace the concept of neutrality for two reasons.

First, in New Zealand's 1980s neoliberal reforms, public sector reformers adhered to the policy-operations split in which public service operatives should be entirely separate

from, and untainted by, political and policy decisions [9, pp.258–259]. Proponents of the split assumed that a politically neutral and autonomous administrative bureaucracy would deliver unbiased outcomes [2, pp.50–58].

Second, the contractors are instructed to consult with interested parties, not negotiate, and not advocate for the Crown. The Crown agency in charge interprets consultation as prohibiting the statement of a desired outcome for the Crown and the public [2, pp.52, 56].

However, the Crown holds the residual ownership interest in the land it is selling, and thus is itself an interested party. Hence, the Crown's avoidance of advocacy cedes both its property interest in the land and its power from the outset. It also devalues its own financial interest and sells the public short. The financial outcomes of tenure review suggest apolitical administration facilitated farmer dominance instead of avoiding agency capture as neoliberal reformers hoped.

Finally, any time a government contracts out a job, a principal-agent problem can arise [10]. This occurs when the contractor agent ignores or subverts the Crown principal's goals, because their motivations are different. Three features of tenure review's contractual arrangements suggest a principal-agent problem:

1. The Crown hires contractors hired/employed by property management, development, and valuation firms (including, but not limited to, DTZ, Opus, and Quotable Value).
2. Contractors are not paid on commission, but by prearranged contractual sums for administrative progress towards the ultimate goal (a signed deal). The Crown neither rewards cheap deals nor penalises expensive ones. More tellingly, the Crown does not set a reserve price from which the contractors negotiate.
3. Until August 2006, tenure review outcomes were confidential, meaning only bureaucrats and individual contractors knew how much money changed hands.

Agency theory predicts that when principals instruct agents to do A, but pay them when they do B, they often do B [10]. This is especially true when the principals don't know whether agents are doing A or B. In tenure review, the minister (principal) directs the contractors (agents) to

- A. get a 'fair financial return for the Crown' [11, 12]; and
- B. complete tenure review deals.

Until August 2006, not even the minister knew if they were doing both A and B, or just B. In short, land reform had serious structural problems.

2007 Reforms and thereafter

In 2007, an optimistic centre-left government changed the rules [13, paras 22, 23]. No land within 5 km of a lake could be freeholded, unless 'demonstrably' in the Crown's interest. Financial transactions became obtainable under the Official Information Act. And all deals had to be signed by the minister, instead of just the contractors. In July 2009, the newly elected centre-right government rescinded outright the lakeside rule, but left the others intact [14, paras 15–20].

If tenure review were only a principal-agent problem, we would expect a right-leaning government in a recession to produce cheaper outcomes than a left-leaning government running a budget surplus. But the Crown has lost more money, not less. Since 2007, the Crown purchase price to retire leasehold rights has trebled, while the leaseholders' purchase price for freehold has only doubled. These prices suggest there is more to tenure review than a principal-agent problem.

Looking deeper: John Locke's ideas about land ownership

The image of the 'Southern Man', making something out of nothing in the unforgiving but hauntingly beautiful Southern Alps, is a popular cultural image in New Zealand. The image and its political implications bear marked resemblance to the American cowboy and the Australian 'Man from Snowy River' [15]. In all three countries, this iconography has become associated with the idea of establishing land ownership on the frontiers by way of hard work and gritty determination.

This work-to-own idea of ownership originates in John Locke's [16] labour theory of property. It is a colonial and nation-building idea of property, which served the interests of young nations and colonies by motivating development of land and natural resources [17, p.20]. The American Homestead and General Mining Acts (1862 and 1872, respectively) exhibited Lockean ideas by promising freehold title as a reward for making economic use of a piece of the West. By contrast, New Zealand's successive Land Acts

(1948, section 66) expressly forbid freeholding the fragile and erosive high country [18, pp.409–411].

In politics, interest groups often promote a worldview that serves their goals. In tenure review, the leaseholders promoted an idea of ownership that conforms more to Locke's work-to-own idea than to today's laws. Leaseholders have often implied that the land they farm is theirs, that leasehold is as valuable as freehold. New Zealand newspapers describe pastoral leases as 'their land', 'their properties', 'their pastoral lands', 'our properties', and 'their high country land in perpetuity, signed by the Crown in 1948' [2, p.72].

Although the leaseholders do have an ownership interest in the land under lease, it is much narrower than freehold. Like the American Homestead and General Mining Acts, the Land Act 1948 encouraged leaseholders to make economic use out of the harsh high country landscapes. It also granted leaseholders ownership rights to those uses and improvements they created. In 1948, the something the leaseholders created was more valuable than the nothing of the land itself. In 2017, freehold land itself is worth on average 693 times the value of pastoral use rights. Yet prices suggest that, regardless of the structure of the contracts and incentives operating on Crown negotiators, Lockean ideas of property prevail.

Herein lies the irony of the tenure review case study. Adhering to the Southern Man image is transforming the landscapes that created the image. The dominance of the antiquated model of granting freehold title to reward hard work is destroying the geographical substrate of the Southern Man. Clinging to the romance attached to the landscape is subsidising the destruction of the landscape itself [2, p.164].

CONCLUSION

In tenure review, the high country leaseholders succeeded in describing high country leases with a Lockean work-to-own image, and the Crown seems to have accepted it. If all parties agree to subscribe to the same meaning of ownership, seemingly absurd financial outcomes almost make sense [2, pp.19–25, 37–74]. The only problem is that the public is not a party to the negotiations because their negotiator remains neutral.

Redistributing property rights is a prominent policy tool for managing natural resources. The New Zealand case study has important implications for property rights and land uses in other nations, especially former British colonies

with large estates of state-owned land. Using property rights to divide ownership, as tenure review has, can achieve several goals: clarity of tenure, neat separation of resource uses, diversification of land use, and clear conservation mandate on conservation land. This article asked how the process is faring in New Zealand. Redistribution of property rights is certainly changing land uses. Who profits from the changing land use is a different question entirely.

CASE STUDY QUESTIONS

- 1) If we consider property as a bundle of sticks, how was the bundle divided between the Crown and the leaseholder before land reform? How is it divided after reform?
- 2) How would you compare the value of the Crown's property rights before reform to the leaseholder's rights?
- 3) In the case study of land reform in the Godzone, is redistributing the sticks in the property bundle an effective way to change patterns of land use across a large landscape?
- 4) Is it equitable? To whom?
- 5) Is it efficient? How should we define efficiency in this case?
- 6) Is the '3Es' a useful way to think about a case study of land policy implementation?
- 7) How does this case study change or inform your thinking about land use and property rights in your country, state, or province?

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