'Decommonising the Mind': Historical impacts of British imperialism on indigenous tenure systems and self-understanding in the Highlands and Islands of Scotland

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Abstract: Common pool resource theory appears to assume that external authorities are responsible for initiating attempts to 'decommonise' common property regimes. An unusual decommonisation proposal put forward in the Highlands and Islands of Scotland in the 1960s questions this assumption; in this instance the decommonisation proposal was initiated by rightsholders in the common property regime. The proposal would have enabled rightsholders to purchase their arable fields, thus privatising them and removing them from the hybrid tenure system called crofting. A critical historical and contemporary survey of the political contexts surrounding this proposal discloses that the particular hybridity of the 'crofting commons' is a result of a historical process of 'domestic colonization' within Britain, and that this tenure system exists within a deeply-sedimented structure of domination whose normative assumptions may have influenced the decision of the rightsholders to propose decommonisation in the first place.

1. Introduction

This article outlines a long historical process of 'decommonisation', the process by which a joint governance regime for a common pool resource loses its defining

characteristics of resource system excludability and resource unit subtractability (Ostrom 1990; Nayak and Berkes 2011, 132). In doing so, it draws attention to an apparently unusual moment in this historical process at which rightsholders in the common pool resource themselves appear to have initiated a call for its privatisation. Specifically, it outlines a proposal initiated in 1967 by rightsholders in land which had been made subject to the Crofting Acts created by the British Parliament in the late 19th century. These Acts established crofting tenure as the legal landholding system for a largely agriculturally based common pool resource in the Highlands and Islands of Scotland, although significant aspects of crofting tenure – including the name – were themselves 19th century impositions on an older indigenous landholding system. The rightsholders' proposal in 1967 would have removed their land from the regulated crofting tenure system and given them private property rights over land.

In describing this proposal the article brings into question an assumption in common pool resource theory that decommonisation processes are externally sourced. It suggests that specific historical, political and cultural factors contributed to the particular internal 'privatisation' proposal in Scotland. The article therefore aims to contribute to a body of literature that augments new institutional theory's insights on the design and governance of common pool resources by disclosing how contextual factors can influence developments within a common pool resource system (Johnston 2004; Haller 2010; Forsyth and Johnston 2014). Drawing on work from political theory on the nature and power of the state it argues that common property regimes for common pool resources may exist within deeply sedimented structures of domination which not only influence the development and integrity of common property regimes and the viability of common pool resources, but also have the capability to impact on the self-understanding and worldviews of common pool resource members. In doing so it also raises questions about where the boundary lines of authority for common pool resources are situated between the claims of private rights, state sovereignty and common property regimes.

The article's methodology draws on the approach of the Canadian political philosopher James Tully (Tully 2008a, 25–36) to make critical contemporary and historical surveys of the issue being investigated, in this case contestation over how land is used, occupied and governed in a part of Scotland that has been undergoing cultural change within an imperial context. This approach is employed in order to situate particular contestations over how commons are governed within the broader system of political relations existing at the time of contestation; and also to consider them diachronically, as a contest whose form in its own historical moment may already have been deeply influenced by a series of preceding historical interactions over the same issue. A genealogical approach of this sort can help to trace the power of previous political interventions to act on a particular contested governance situation.

The article begins with a discussion of decommonisation. It then outlines the hybrid land governance structure established by the creation of crofting tenure in

the Highlands and Islands of Scotland in the late 19th century, before introducing the decommonisation proposal initiated by crofters in the 1960s. Next, the article places this proposal into a historical and political context of 200 years of interventions in the indigenous tenure systems aimed at decommonisation. It draws attention to the fact that in the context of British imperialism the decommonisation of collectively used and managed land in the Highlands and Islands was considered a necessary 'domestic colonisation' inside the imperial 'mother country'. On the basis of this historical account the article goes on to argue that the request by members of the crofting common property regime to deregulate themselves and take on private property rights was occurring within, and partially in response to, a long-standing structure of domination which over generations had limited the ability of rightsholders to think within and act upon the conceptual structure and cosmology by which indigenous governance regimes for common land had been maintained before the application of 'domestic colonization'.

2. Decommonisation

Ostrom (1990) dubbed the two contradictory ideological prescriptions recommended by critics of common property systems to resolve so-called 'tragedies of the commons' as 'privatisation' and 'Leviathan'. 'Privatisation' is the belief that dividing a commons into a private property regime will bring order, stability and sustainability; 'Leviathan' the belief that order can be established only by making people – in Garrett Hardin's words – 'responsible to a coercive force outside their individual psyches'.[1] Usually this external coercive force takes the shape of the state. Ostrom observed that the state is, in fact, the key external agent for both 'Leviathan' and 'privatisation' prescriptions as it is said to authorise reforms of the latter type. Her theory of the state in relation to common pool resources considers it 'an "external" leader' and a fundamentally coercive power under the rule of those who have gained 'a monopoly on the use of force'. This commits her to the view that in 'Leviathan' and 'privatisation' reforms 'institutional change must come from the outside and be imposed on the individuals affected' (ibid., 8–15, 41, 222 [n.15]).

The view that reforms to privatise common pool resources or to put them under the control of the state are initiated by external agents appears to be generally accepted in commons' scholarship and reforms of these kinds have recently been analysed as processes of 'decommonisation' by Nayak and Berkes (2011).

> Here 'commonisation' is understood as a process through which a resource gets converted into a jointly used resource under commons institutions that deal with excludability and subtractability, and 'decommonisation' refers to a process through which a jointly used resource under commons institutions loses these essential characteristics (ibid., 133).

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[1] It is arguable that the institutions of a common property regime constitute precisely such a force.

Nayak and Berkes have shown how decommonisation processes in the Chilika Lagoon in India were initiated by the state Government of Odisha. In one instance the Government assumed direct control for an area that had previously been managed in common by fishermen; in others it initiated processes that led to private companies and individuals taking over commonly managed resources. These examples also show the state as an external agent with ultimate responsibility for 'privatisation' reforms, and suggest that 'privatisation' policies may be part of, rather than distinct from, the idea that 'Leviathan' is 'the only way' (ibid., 137–140; Ostrom 1990, 13, 14).

3. Hybridity and decommonisation in crofting tenure

The next section of this paper uses the concepts of 'Leviathan' and 'privatisation' to examine the history of externally-led reforms intended to decommonise common pool resource governance in the Highlands and Islands of Scotland. However, it begins by outlining some features of the governance system established in the late 19th century, and by drawing attention to the internally initiated 'privatisation' proposal of the 1960s.

In 1886 the British Parliament passed the Crofters' Holdings (Scotland) Act. This brought longstanding common property regimes for the management of individually used arable land and commonly used pastoral grazings in the Highlands and Islands of Scotland within the remit of the Scottish legal system. It granted a series of rights to smallholding tenants there who became known in the Act as 'crofters'. Their rights included: the secure right to use and occupy (but not to own) their arable croft land and the right to pass it to a chosen successor within their family; the right to fair rents fixed by an impartial body; and the right to compensation for any improvements if they were removed from the croft. It also affirmed their right to a share in the township's common grazings and to other ancilliary rights such as to seaweed for fertiliser, peat for fuel, heather for making rope, and to a 'noust' – a place on the shoreline to draw up a boat (MacCuish and Flyn 1990, 4–5, 40–43). A crofter was defined in the Act as a resident tenant who held land from year to year on an annual rent of less than £30. The Act offered no protection for 'cottars', a category which covered squatters, and also householders with a garden but without arable or pasture ground and paying an annual rent of £6. The Act also offered no means by which this group could obtain land (Johnstone 1912, 96, 97; Hunter 1976, 163). This was a source of great disquiet and quickly led to a new consciousness of difference between landed and landless (Camshron 1932, 320–323).

The 1886 Act followed civil unrest in the north against land removals, and an 1883 Royal Commission to look into conditions in the Highlands and Islands. The Commission's report had recommended as the basic and primary unit of crofting governance 'recognition of the Highland township as a distinct agricultural area or unit, endowing it at the same time with certain immunities and powers' (Parliamentary Papers XXXVI 1884, 16–32). However, following rancorous

parliamentary debate on the provisions of the Commission's report, the 1886 Act did not mention the term 'township'. Instead, the legislation made individual crofts within a township the basic governance unit and granted rights to individual landholders ['crofters'] on the basis of their croft holdings (Cameron 1996). It was a further 5 years before the common grazing became subject to regulation. Here, the unit of governance was the grazings used collectively by the shareholders of the township of which the grazings was part. Although the system has been subject to many alterations in the intervening 130 or so years, this basic governance division has endured.

Under the 1886 Act the croft – usually of arable or better quality land – in a township is held individually, with the individual crofter given secure rights[2] of access, withdrawal and management, as well as a substantial right of exclusion, over the croft land. Originally, there was no right of alienation while the crofter was alive – they could only bequest the croft to a chosen family member in the event of the crofter's death; however in 1911 they gained a limited right of alienation – to assign their holding to family member as a result of 'being unable to work his (*sic*) holding through illness, old age or infirmity' (Johnston 1912, 134–135). Despite retaining nominal ownership of the land, the landlord's rights over the croft were hugely circumscribed, with only limited rights of access and withdrawal – for instance to extract minerals, and some timber. The state, through a regulatory body called the Crofters Commission, could facilitate a right of alienation for the landlord by having authority to remove the crofter from their holding if the crofter failed to pay rent to the landlord or breached other statutory conditions of tenancy; the Commission could also allow a landlord to 'resume' a holding, or part thereof, and free it from crofting controls if the Commission took the view that the resumption was for good of the holding or the estate (ibid., 70–72, 130–132). Additionally, in relation to property rights on individual crofts, some townships (called 'open townships') have a period of several months over the winter – from the crop harvest until the beginning of the following growing season – in which the township's animals are allowed to graze freely among all the individual crofts, making the individual crofts a common pool resource among the township's crofters for that period of the year – during this period access, withdrawal, management and exclusion rights become effectively collectivised. Access and withdrawal rights from the township's common grazings were held by the township's crofters generally who were entitled to appoint a committee to design a set of regulations to manage the grazings. These regulations required approval by the regulator (ibid., 102–103; Brown 2003). The mix of private rights, common property rights and state control means that, in terms of commons scholarship, crofting tenure can be considered a hybrid property regime (Fennell 2011). The connection of common property with other property institutions, sometimes including local ideas of private property and aspects of feudal

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[2] This section of the article draws on Schlager and Ostrom (1992) for analysing property as 'bundles of rights' in common pool resource situations.

tenures, is also found in other areas such as the Swiss Alps and in African contexts (Netting 1981, 52; Haller 2010).[3]

A key moment in legal revisions to the hybridity of the crofting system took place in the 1960s when the Crofters Commission regulator sought 'the conversion of crofting tenure into owner-occupancy', a proposal which, if enacted, would have replaced the regulated system with private property rights. The Commission argued that crofting's specialised and complex legal system was an impediment to 'the orderly development of the Highlands and Islands economy' and there was an overwhelming case to 'assimilate crofting into the ordinary legal structure of the country'. As is typical in the development of crofting legislation, the proposals were subject to intense contention. Criticism from crofters and their supporters meant that the owner-occupancy proposal was dropped. However, a less radical, but much disliked, proposal which gave each crofter a right to buy their croft if they wished was built into crofting law, further increasing its complexity (Crofters Commission 1969, 27, 28; Hunter 1991, 131–132, 137–148).

This 'privatisation' proposal is of interest for common pool resource theory because it had been developed from a suggestion that came originally from crofters themselves. Therefore, it can be argued that it does not fit the idea that such proposals come from outside. The proposal emerged from an original request in 1967 by the Federation of Crofters Unions – the overarching representative body for crofters at the time – for crofters to have a right to buy their croft in certain circumstances. The request was made in response to land being taken out of crofting tenure in the 1950s and 1960s for use in tourism and industrial development projects associated with the British state's wider post-World War Two productivist industrial agenda in the Highlands and Islands. In such cases the crofter was only entitled to the agricultural value of the land which was usually a pittance. The landlord, on the other hand, was entitled to the development value of the same ground, usually a much greater amount. When the Crofters Commission transformed this request into the proposal for mandatory owner-occupancy, it was initially supported unanimously by the Federation of Crofters Unions, and subsequently caused strong disagreement between different local unions within the Federation (Stornoway Gazette 1967, 1; 1968, 1; Crofters Commission 1968, 8; Hunter 1991, 130–131). Examining the historical and political contexts in which crofting tenure developed may help us to form an understanding of why crofters would initiate and support a proposal which would have brought their resource governance system to an end.

4. 'Domestic colonization' and the beginnings of crofting tenure

Although crofting tenure is today associated with northern Scotland, as a form of land holding it is not indigenous to the area. The forms of tenure that preceded crofting are referred to in the historical record as '*dùthchas*' in the Gaelic

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[3] I am grateful to an IJC reviewer for drawing my attention to these examples.

language indigenous to those parts of the Highlands and Islands known as the Gàidhealtachd.[4] *Dùthchas* was evidently a system of customary law or native title associated with traditional clan society and collective rights. The evidence suggests that this system operated within Gaelic society as a form of heritable trusteeship of land, largely on the basis of communal and familial land rights and management practices with both arable and pastoral land being held in common (Carmichael 1884; Macinnes 1996, 5, 14–24; Cregeen 2014, 123–141). Allan Macinnes has argued that the key figures in decision-making over resources and institutional design in clan society were the *daoine uaisle,* leading members of a clan who were often, but not always, related to the chief. Macinnes argues that by the 17th century the *daoine uaisle* often had the role of *fir–tacsa*. Practically, this meant that they were responsible for managing all aspects of the maintenance of a *baile* – 'township' – on clan territory on behalf of the clan, including 'resource-management, demand-management and man-management (*sic*)'. This entailed managing all natural resources in the township's land, including any forest and shoreline as well as agricultural land. They were also responsible for appropriating and re-alloting land among members of the *baile*, ensuring the land was fertilised and crops protected, organising extractive activities such as for lime, slates and freestone, and directing other major tasks such as fishing and transhumance (Macinnes 1996, 14–19).

Beyond its role in land governance, *dùthchas* is a key concept in Gaelic culture and is used to express a person's sense of identity and belonging in inter-related familial, territorial and historical concerns (MacInnes 2006, 279). The term 'croft' only became widespread in the Gàidhealtachd in the later eighteenth century, largely as a result of its introduction by Lowland surveyors redistributing land along 'improved' lines. However, 'croft' had already been in common use in England and Lowland Scotland in the medieval period (Homans 1975; Markus et al. 1995, 112–116). Moreover, the transition to a crofting system in the Gàidhealtachd was one that was generally opposed by those on whom it was being imposed. Indeed, by the late eighteenth century the area had already been subject to a long process of territorial, political and cultural marginalisation within Scotland that is now being described by historians as 'internal colonization' (Goodare 2004; MacGregor 2006, 2012; MacCoinnich 2008; Cathcart 2010).

Crofting tenure appears to have emerged in the Gàidhealtachd following the Jacobite Rising of 1745 against the Hanoverian British monarchy. This rising

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[4] Although this article focusses on the historical experiences of Gaels belonging to the Gaelic culture of the west Highlands and Western Isles, it is important to note that crofting legislation brought together two culturally distinct sets of land rights; on the one hand of Gaelic society, and on the other, of the Nordic descended society in the north Highlands and Northern Isles of Orkney and Shetland, an area where there had also been complaints about land governance practices under commercial landlordism. For this reason the term 'Gàidhealtachd' is generally preferred to 'Highlands and Islands' when describing the territory occupied by Gaels.

was supported by many of the area's clans. In the rising's aftermath the British Government sought to 'pacify' and 'civilise' the area by introducing forms of agriculture and manufacturing more widely practiced in Lowland Scotland; this process was overseen by the Board for the Annexed Estates. Its work included introducing a new form of individualised relationship with land. One of the Board's key policies was to establish what it called 'colonies' of former soldiers and sailors on annexed estates which the Government had seized from traditional clan leaders who had supported the rising. These soldiers were to be given small individual plots of land from which they could maintain themselves. Recent analyses have argued that the introduction of these colonies marks the beginnings of crofting tenure in the Gàidhealtachd. Although the work of the Board is generally considered to have been a failure, it has been argued that widespread attempts at 'wasteland colonization' made by private landlords in Scotland later in the 18th century took inspiration from the Board's projects. Wasteland colonization involved settling groups of people (who had often been evicted from land elsewhere) onto uncultivated moor, heath or bog and giving them individual rights to 'improve' land that had previously been used in common (MacKillop 2000; Albritton Jonsson 2013).[5]

The individualisation of landholding patterns that wasteland colonization entailed was a practical implementation of the wider ideology of 'improvement' that prevailed at this time. One prominent proponent of wasteland colonization was the Scottish Enlightenment philosopher and legal scholar, Lord Kames, who had also been a member of the Board for the Annexed Estates. Kames's student, Adam Smith, was perhaps the foremost theorist of 'improvement' and his book *The Wealth of Nations* published in 1776 outlined the rationale of and for 'improvement' (Devine 2006). In the *The Wealth of Nations* Smith was greatly concerned with the late 18th century relationship between Britain and America and argued that Britain should relinquish its colonial possession across the ocean because the American colonies were a longstanding financial burden on the country (Smith 1904, Vol IV.7.152). However, he acknowledged that Britain would not do this willingly and, emphasising the huge public debt that repeated wars in America had accrued for the nation, he offered other means to reduce the country's debt burden. He argued that this would require either considerable reduction in public expense or 'some very considerable augmentation of the public revenue' (ibid, Vol V.3.67). It was for this reason that Smith recommended that Britain's two main sources of revenue, land and capital stock, should be employed as efficiently as possible in order to service the debt burden. Smith's underlying argument was that agricultural 'improvement' was necessary for the wealth of the nation and, moreover, that undertaking such work successfully would demonstrate the 'skill, dexterity and judgment' of the nation's 'improving' class. Brian Bonnyman has suggested that Smith's view that the 'best way to improve the land was to break up large estates into smaller owner-occupied farms' may have influenced the leasing

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[5] There are interesting parallels between these colonization projects and British imperial land policies in Ireland in the 19th century.

policies of the Duke of Buccleuch, one of Scotland's largest landlords, for whom Smith had been a childhood tutor (Bonnyman 2014, 69). Certainly, Smith's general ideas on 'improvement' profoundly influenced the development of British agriculture at this time (The Agricultural Magazine 1803, 390; Broglio 2010).

One of those influenced by Smith was Sir John Sinclair of Ulbster, a landlord in the northern Highlands. Sinclair was driving force and first chair of The Board of Agriculture and Internal Improvements set up by the British Government in 1793, and is widely considered 'the leading contemporary authority on rural Scotland in the 18th century' (Devine 2006, 42). His massive two volume *General Report of the Agricultural State and Political Circumstances of Scotland* was written, he said, to promote the 'future improvement and prosperity of the country'. The report was a blueprint for agricultural improvement and its second chapter asserted that it sought to achieve internally what Britain had failed to achieve in America. The 'improvement of the more northern parts of the kingdom', stated the report, was 'in other words…to colonize at home' (Sinclair 1814a, 3, 120). Stating a view not dissimilar to Adam Smith's on the best form of landholding for 'improvement', the report extolled private property and excoriated alternatives:

> The best constitution of property in land, to excite and encourage agricultural improvements, would infer, that sole command and control over it, that excludes all obstruction to management, as also that absolute power of disposal, which would secure to the industrious improver the full possession of the fruits of his application of labour and capital (Sinclair 1814b, 252–253).

Sinclair detested common property regimes. In a memoir his son noted: 'It was in Caithness that my father first manifested that antipathy to waste lands, which so long characterised his exertions as President of the Board of Agriculture. Among his favourite toasts was, 'May a common become an uncommon spectacle in Caithness'' (Sinclair 1837, 349). He tried unsuccessfully to get Parliament to pass a General Enclosure Act. Sinclair's sister was married to the second Lord MacDonald who held extensive estates on the islands of Skye and North Uist. The reform of Lord MacDonald's estates at the outset of the nineteenth century gives an indication of how 'improving' ideas were put into practice on the land. The reforms were carried out by a surveyor called John Blackadder who produced two reports. Although Lord MacDonald had no intention of giving anyone else 'sole command and control' over parts of his estate, Blackadder's proposals were in line with the recommendations in Sinclair's *General Report*, proposing enclosure of what had been communally held lands into individual apportionments as far as was practically possible. However, in practice, as I describe in more detail later, what was enclosed was generally only the arable land of each township.

Blackadder recommended that all people who were until that point living on land jointly held 'ought to be removed to allotments of a few Acres, less or more according to the quality of the soil, in the most eligible situations for that purpose, where such small possessions do not interfere with or mar the laying out of a

better farm' (Blackadder 1800, 14). These 'allotments' or 'small possessions' later became generally known as 'crofts'. Blackadder's use of the word 'mar' discloses that profit from the new system was expected to come from the big new single-occupier farms, created out of the old joint holdings, which were to be leased by 'Southern Overseers'. On many estates, including Lord MacDonald's, the small tenants were to be retained on their 'allotments' or 'crofts' as a cheap and convenient labour force for the – at that time – lucrative but highly arduous seaweed harvesting industry (Macinnes 1996, 223).

In 1811 Blackadder's second report elaborated further on his intentions to 'allot out into small possessions the least profitable parts of the estate'. This he said was 'strongly recommended, as by that means it will be more rapidly improven, and a greater number of people retained thereon' (Blackadder 1811, 3). As in 1799, Blackadder operated on the principle that his plans will 'improve' Lord Macdonald's estates. The 'improvements' of which the surveyor writes emerge as three-fold and connected.

- The first of these is improvement of the land – his plans centered around the 'arable and improvable parts of these farms' (ibid., 2).
- Implicit in the improvements to the land is a second improvement: the need to 'improve' Lord MacDonald's finances. This is key to the changes; in 1815 Armadale Castle was built for Lord MacDonald at a cost estimated, in today's prices, at around £13 million. Critically, for the development of the crofting system's pastoral commons, Blackadder concluded the hill grazings should not be enclosed and allotted because of the costs involved: 'It must be understood that it is only the arable part of the farms that can be allotted out into separate possessions for however desirable it might have been to lay the grazings out in the same way, this cannot be done without greatly lessening the value thereof' (ibid., 2).
- Thirdly, the surveyor predicts an influx of 'substantial farmers and graziers so that by a proper adjustment of the Society the improvement and dignity of the whole may go together' (ibid., 3). Thus the third improvement, according to Blackadder, was to the character of the native population, under the influence of settlers from the 'south' (Blackadder 1800, 88).

As the second point, above, notes, in principle Blackadder wished to individualise all of the Clan Donald estate. However, due to economic considerations only the arable areas were individualised while the pasture remained common. Thus, the changes represented only a 'quasi-privatisation' of the indigenous system; in doing so it set a foundation for the hybridity of crofting tenure. The kind of redistribution I have described on Clan Donald land took place on estates throughout the Gàidhealtachd during this period (Macinnes 1996; Hunter 2000; Cregeen 2014). For instance, Sir John Sinclair carried out similar reforms on his own estates, describing the new settlement pattern of large farms and smallholding townships

as 'new colonies', part of a larger grand project of the 'domestic colonization' of Scotland (MacKinnon 2017, 31–32). These changes were predicated on a shift in the perceptions of the clan elite as to their relationships with traditional lands and people. According to historian Allan Macinnes, 'they abandoned traditional concepts of heritable trusteeship, their *dùthchas*, in favour of the legalistic concept of heritable title, their *oighreachd*, to enhance their assimilation into the Anglo-Scottish landed classes' (Macinnes 1996, 233).

The land redistributions required as part of the new order were often carried out on Gaels by non-Gaels and accompanied by attitudes of cultural and racial superiority typical of colonial relations – the natives were said to be 'lazy', 'filthy' or 'savages' (Osterhammel 2005, 108–110; MacKinnon 2017, 33–38). These redistributions included their removal from land, their relocation on marginal land, their migration (often forced) away from their traditional areas to new lands in Britain or overseas. Although historians argue over the costs and benefits of the new arrangements, they were associated in popular consciousness with material and cultural impoverishment. Native resistance – in particular to the removal of common grazings' rights – occurred sporadically throughout the 19th century. However, the unrest came to a peak in the 1880s when techniques of resistance included rent strikes, destruction of landlord property and violent confrontations with a range of law officers. This resistance received widespread press coverage and provoked the repeated deployment of Royal Marines in the north west to try to suppress the unrest. The situation led the British Government to establish the aforementioned Royal Commission of 1883, and subsequently to the Crofters Holdings (Scotland) Act of 1886 (MacPhail 1989; Meek 1995).

In summary, the British imperial state gradually increased its political control over the Gàidhealtachd during the course of the 18th and 19th centuries. As a result of and in response to this increased control three significant and related movements can be identified in the transition of land governance away from the variety of communal indigenous *dùthchas* systems towards crofting as a single hybrid system of tenure:

- Firstly, the imperial state's efforts to 'pacify' and 'civilise' the area following the uprising in 1745; this process of 'Leviathan' included establishing 'colonies' of retired soldiers with small 'privatised' holdings on lands previously held collectively;
- Secondly, the gradual imposition of commercialisation and individualism inherent in improvement ideologies of late 18th and 19th century Lowland Scottish society onto *dùthchas* systems, and subsequent indigenous resistance to the 'privatisation' of their traditional lands;
- Thirdly, the Crofters Act of 1886, a late 19th century breaching of the 'Leviathan' of the British state into the disordered governance of land and natural resources in the Gàidhealtachd – a disorder substantially created by the externally led reforms and indigenous resistance to them.

5. The political context of the internal decommonisation proposal

Derek Flyn, a crofting lawyer and former chair of the current crofting representative body, recently described the law that underpins crofting tenure as 'the law of a different land' (Flyn 2012, 418). The scale of the difference can be discerned in attempts to bring crofting tenure further into line with wider landholding norms in British society occurred throughout the 20th century. An attitude common to the authorities responsible for these attempts can be discerned in the report of a 1928 UK Parliamentary Committee on land resettlement in the Highlands and Islands:

> The problem in the Highlands involves historical, racial, economic and social considerations entirely different from those in other parts of Great Britain. We are dealing with a community which has never been industrialised and resists any attempt at industrialisation. Land is the basis of its existence and determines the forms of its social life. It has refused to acquiesce in any of the attempts to change the method of holding or using land which have been made in the last 150 years, and the legislature has been compelled to meet the claims it has made to be allowed to live its life in its own way (RCLSS 1928, 25).

Externally initiated attempts to change the methods of holding and using land in the Gàidhealtachd based on principles of 'privatisation' and 'Leviathan' continued throughout the second half of the 20th century.[6] Following the Second World War, food scarcities in Europe encouraged politicians in many countries, including the UK, to create policies encouraging agricultural modernisation – intensifying and specialising agricultural production and concentrating agricultural resources in fewer hands – in order to maximise the production of food and fibre (van Leeuwen 2010, 18). When productivist policies began to be implemented in UK agriculture in the immediate post-war years, senior Scottish political figures highlighted 'the failure of the crofting localities to contribute properly to the national food production effort'. The Government set up a new Committee of Inquiry whose remit included special reference to 'the secure establishment of a smallholding population making full use of agricultural resources and deriving the maximum benefit therefrom'. The Committee of Inquiry report in 1954 proposed creating a new Crofters Commission to regulate and develop crofting. Subsequent Government policy briefings made clear this meant a focus on agricultural development (Hunter 1991, 78–79, 91).

   The Government accepted the Committee of Inquiry's proposal and a new Commission was set up as part of new crofting legislation in 1955. It immediately advocated a productivist agenda, calling on 'crofters to increase their agricultural output by 5% annually between 1956 and 1959'. A key development policy was township reorganisation with a central tenet being to enlarge and amalgamate holdings in order to make more crofters into full-time agricultural specialists. After

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[6] The following analysis is indebted to James Hunter's valuable history of 20th century crofting (Hunter 1991).

initial attempts to this end failed, the Commission called for draconian additional powers for the 'compulsory reorganisation' of townships so that it could forcibly amalgamate or impose sub-tenants upon crofts it considered underused or unused. Crofters expressed alarm at the Commission's view that crofting tenure was 'outdated' and at its proposal to undertake 'a drastic reduction in the number of crofter houses'. A leader of the crofting union for the Western Isles, one of the strongest crofting localities, complained that the Commission was seeking a narrow bureaucratic solution to a much more complex economic problem, as part of which the young men of many crofting townships had to leave their communities to find work. The Commission was condemned in parliament for attempting to 'humiliate and discipline' crofters trying to make a living in very difficult circumstances (Macleod [No date given]; Hunter 1991, 82, 103, 106–118, 122). Thus, the direct 'Leviathan' approach was largely repelled with the more draconian proposals dropped from legislation passed in 1961 but with a residue built into crofting law, further increasing its complexity. The response of the head of the Commission to the impasse was to describe crofting legislation as 'a ghastly error' (*Scotsman* 1960).

Therefore we can see that the proposal made by some crofters in 1967 to establish private property rights in the regulated tenure system took place in a political context where crofters were being criticised by productivist improvers for a lack of economic activity (what previous generations of improvers had called 'laziness') and being urged into a productivist agenda by agricultural and land tenure policy; equally, crofters were having to come to terms with the arrival of mass tourism and of large-scale industrial projects new to the area, such as the pulp mill in Lochaber and the experimental nuclear energy facility in Caithness – both now defunct – which were, at one and the same time, being extolled in socio-economic terms while, directly or indirectly, taking land away from crofting.

In response to this situation the Federation of Crofters Unions proposed that in certain circumstances a crofter should be entitled to buy their land as a way of dealing with the perceived inequality between crofter and landlord when both were being compensated for land removed from crofting tenure. The Government then turned this proposal into a far more complete and final measure to bring crofting tenure to an end. Although in one sense it could be argued that there was an external 'Leviathan' leading the process, this argument does not deal with the fact that the initial proposal for 'privatisation' – albeit a modest and partial one – came from the rightsholders themselves. The internal origin of this reform proposal appears to challenge the assumption that 'privatisation' or 'Leviathan' reforms of common pool resources come from external sources and therefore originate outside of the rightsholders (Ostrom 1990, 13–14).

Moreover, the coercive land redistribution proposals and socio-economic disparagement of the 1950s and 1960s must also be understood in the context of at least 200 years (and arguably far longer) of 'Leviathan' and 'privatisation' policies for land tenure change in the Gàidhealtachd. These policies were accompanied by discriminatory attitudes from those imposing the policies towards those on whom the policies were being imposed. This historical process not only

created the identity of 'crofter' for members of the indigenous population, it may also have had other consequences for Gaels' self-understanding. The next section argues that the internally led 'privatisation' request may have been influenced by a deeply-sedimented structure of domination which over generations had changed the conceptual structures and cultural norms within which members of the common property regime had maintained their common pool resources before the imposition of 'domestic colonization'.[7]

The theory of the state employed by Ostrom describes it as a fundamentally coercive power with the authority to initiate 'Leviathan' and 'privatisation' policies for common pool resources. This depiction accords with Max Weber's classic description of the state as 'a compulsory association' which 'has been successful in seeking to monopolise the legitimate use of force as a means of domination within a territory' (Weber 2005, 82–83). Drawing on Weber's work, Michel Foucault described a structure of domination as 'a strategic situation more or less taken for granted and consolidated by means of a long-term confrontation between adversaries' (Foucault 1983, 226). Foucault's perspective can draw attention to the fact that the imposing power of the state is often an underlying and more or less taken for granted *a-priori* in particular political conflicts within the state. This is because while 'the state is only one source of authority within society' (Johnson and Forsyth 2002, 1592), its claim to authority within society

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[7] I am grateful to an IJC reviewer who suggested that an analysis drawn from economic and political new institutionalism in social anthropology and anthropological ecology (Ensminger 1992; Haller 2013) can be used to emphasise the agency of crofters and the ways in which they seek to maximise their 'bargaining power' in this sort of resource dilemma. An institutional ecology analysis can draw out questions of when and how 'counter-discourses and narratives are used (efficiency and modernity vs highland way of subsistence driven life and tradition)' by different actors, and can also seek to understand the behaviour of elites and others in terms of a strategic hybridity – elites can be construed as seeking 'to be modern or traditional at the same time to fit the needs of the political discourse'. Using this perspective, the reviewer pointed out that it may be possible to conceive of crofters as acting strategically in their context and within the range of options at hand, 'making use of dominant institutional settings – privatisation – and ideologies' in ways that are logical and selective in order to achieve the strategic goal of securing land and avoiding the worst case scenario of losing the land. Notwithstanding the fact that an institutional ecology approach may help to elucidate the reasoning adopted by those crofters who initiated and supported the 'privatisation' proposal, the argument proposed in this article is that the very act of making such a proposal may demonstrate a strategic ability of elite organisations to achieve ontological change in non-dominant actors. The argument is that the authoritative statements of elite organisations may have a cumulative discursive power to constrain and even alter the conceptual norms, and the forms of reasoning and argument, employed by those non-dominant groups, even when those groups are opposing elite organisation policies. Indeed, the adoption by some crofters of the dominant forms of reasoning and argument may be considered a form of 'elite capture' which draws those non-dominant antagonists into the ambit of the ideological conventions of the dominant institutional setting, thus making possible the articulation of 'privatisation' proposals by members of the non-dominant group. In the context being examined, the sense that some form of normative conceptual change is occurring gains strength from the fact that, as will be shown, simultaneous to the non-dominant group's adoption of a 'privatisation' strategy, it also appeared to be losing its ability to articulate one key normative concept, that of *dùthchas*, by which its institutional difference had been maintained.

is special as it claims to be the force that constellates a society within a particular territory[8] by virtue of its sovereign status and enduring nature. Quentin Skinner describes the state as 'a fictional or moral person distinct from both rulers and ruled…While sovereigns come and go…the person of the state endures, incurring obligations and enforcing rights far beyond the lifetime of any of its subjects' (Skinner 2009, 37, 45).

As in the contention between different societal factions over whether the 'township' should be the primary unit of land governance in the run-up to the 1886 Crofters Act, power struggles within society are mediated through institutions of the state and decided there too. In countries where the state is weak the power of the state might be drawn on ideologically – invoked by political actors as a discursive or rhetorical strategy – rather than through the state's practical ability to enforce policies through means of its systems of law (Chabwela and Haller 2010, 631). Johnson and Forsyth (2002, 1594) argue that any 'intervention by the state, then, can be seen as an attempt to align the informal institutions of society with the formal institutions of a particular government goal or policy'. However even these government goals and policies exist within and have been created out of a set of historically rooted societal norms that have made these goals and policies possible. In this sense the state cannot be considered so much the primary actor of political struggle, as instead, the site and shaping context in which political struggle proceeds; this requires a distinction between the 'state' and the 'government' which rules that state at any particular moment.

The role of the state in maintaining a domination structure is called into question by James Tully and Neil Walker's work considering some of the general features common to ways in which domination has been structured during both the formal colonial period of imperialism, and also during what they call contemporary informal imperialism. The formal period of European colonial empires overseas was brought to an end by the United Nations' legislation on decolonization in the late 1950s. However, it has been widely observed that the structural inequalities typical of formal imperial rule have not passed with decolonization. Indeed, Tully has gone so far as to claim that the typical forms of state based representative democracy are the means by which informal imperialism operates in the post-colonial world today (Tully 2008b, 158). The governance of crofting tenure suggests that this argument may be extended beyond those countries that were subject to the UN-led decolonization processes of the 1950s.

Of the general features of domination laid out by Tully and Walker, the first is that the structure of domination maintains 'cumulative inequality' by operating in a mutually reinforcing fashion over various sectors and through the use of a range of mechanisms of control and persuasion, including education and culture. Walker argues that the imperial framework is 'a system whose operation is optimised to the extent that all social relations are subsumed within its logic

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[8] The successful enforcement of this claim is perhaps also implicated in the idea that we can think of a one-to-one relation between 'state and society'.

and is threatened to the extent that certain social relations may escape its logic', adding that it 'purports to embrace everything within its own horizon' (Walker 2008). From this perspective, imperial interventions in culture and education can be seen as means of creating, legitimising and channeling the norms and terms by which discourse unfolds, and in doing so seeking to subsume or maintain social relations within the logic and practice of the structure of domination. This makes the structure of domination more than simply a means of constraining legitimate political *action*. To the extent that it achieves control of discourse, the structure is also a pervasive and unseen constraint on the ability to think – channeling flows of discourse in ways that generate and maintain a socio-cognitive environment in which certain thoughts become or remain unthinkable (Tully 2008a, 31–36).

My argument is that if the state is considered in these deeply coercive terms as the means by which forms of domination are structured within a territory, then to the extent that the state has control over the legislative – and therefore 'legitimate' – forms by which political struggles unfold within that territory it also has the ability to dictate the normative terms and concepts by which political struggles proceed. Under the constant pressure of this aspect of domination the terms and conceptual space in which those subjected to domination are able to think and express themselves may be infiltrated and reformed along the lines of the structural norm. Because, therefore, the social and self-understandings – the subjectivity – of those subject to this cognitive domination have been infiltrated, it is possible that in some cases even their resistances to domination will reflect the interference.[9] It is for this reason, I think, that Walker describes this aspect of domination as 'mutually reinforcing'.

This perspective on the role and function of the state as an important component in structures for organising and maintaining forms of domination affords us a critical purchase on struggles for the commons. We are able to see that any common pool resource system which exists within the territory of a state, and whose rightsholders are subject to the authority of that state, is already locked into a deeply sedimented system for domination that seeks to govern, not only the political responses of those who participate in common pool resource systems under the state's jurisdiction, but also the socio-cognitive environment containing the historically shaped and limited concepts by which rights and obligations are enabled – contextual norms which extend beyond the lifetime of any of its

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[9] The argument put forward here on the ability of a dominant political agency within a structure of domination to infiltrate the normative belief systems of non-dominant groups is much indebted to Ngũgĩ Wa Thiong'o's 'Decolonizing the Mind' (1986) which described the effects of British imperialism on indigenous cultures in colonial Kenya. The argument is also not unrelated to the one proposed in Argrawal (2005) although there are questions about the historical basis of Agrawal's analysis. Agrawal's argument has been usefully critiqued by Acciaioli (2008), Cepek (2011), and Forsyth and Walker (2014). However, the assumption in some criticism that Foucauldian models leave 'little room for the exercise of agency' among those subject to unequal power relations is called into question by, for instance, James Tully's use of Foucault's work in service of a socially engaged form of public philosophy (Tully 2008a, 71–131).

subjects, and which make it possible for the subjugated rightsholders to respond in a political way in the first place.

I will illustrate this claim using as an example the transition from thinking in terms of *dùthchas* to thinking in terms of 'crofting' as a change in the orienting forces of Gaelic consciousness during the land struggle. Following the Crofting Act of 1886 the relevant UK legal and political authorities described the Act as an effort to protect what they called the old 'clannish tenure' of *dùthchas*; indeed, *dùthchas* had been invoked as the basis for a rights claim during the unrest that preceded the Act (Crofters Commission 1902, lxxxvii, lxxxviii; Newton 2009, 306–308, 353–356). But any such restoration was, at best, partial because, while it recognised (under the terms of the subsequent 1891 legislation) collective rights of use and withdrawal, it neither recollectivised the arable land which had been at least semi-privatised as part of the early 19th century reforms of the 'improvers', nor recognised the traditional claim of the people's collective rights over land and its governance. As communities of Gaelic speaking crofters continued, in the early 20th century, to agitate for more land to be returned to them, the 'restoration of *dùthchas*' narrative in state discourse quickly disappeared, to be replaced by the notion – as we have seen – that crofting was a still unresolved 'problem'.

The proposal by the Federation of Crofters Unions to create a right to fully 'privatise' croft land was therefore not taking place in a political vacuum but in response and as a contribution to a deeply sedimented structure of domination – involving, as the UK Parliamentary Committee on land settlement put it, 'histori-cal, racial, economic and social considerations' – under which had been buried indigenous understandings of the rights and authority of the people in relation to the land. The infiltration of the terminology, concepts and attitudes of the domina-tion structure into the self-understanding of Gaelic society can be demonstrated by the general self-definition of rightsholders in the 1960s as 'crofters', to a far greater degree than had been the case in the years before the Crofting Act of 1886. Relatedly, while some historians have speculated that the concept of *dùthchas* was important in land actions into the 20th century, there is little evidence that crofters invoked a right of *dùthchas* to support their political actions in relation to land in the 1950s and 1960s[10] (Robertson 2013; Houston 2014). Unlike the risings in the 1880s, there does not appear to have been a great deal of poetry produced in regard to land raiding in the mid-20th century, or in response to other land issues. Although the word *dùthchas* is used by some poets of the period, it is used in a more subjective sense of ancestral belonging or identity rather than in a political

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[10] However, it is important to note that when the last recorded land raid in Scotland was carried out, on North Uist in 1952, the editor of *The Clarion,* the local newspaper on Skye, Alexander Nicolson, a native Gaelic speaker, published a telegram he had sent to the raiders proclaiming: 'NO MORE CLEARANCES. CLAIM YOUR HERITAGE. MEN OF UIST, THE CLARION OF SKYE IS AT YOUR COMMAND. HOLD FAST. EDITOR'. It is possible that 'heritage' here carried a meaning for Nicolson that was close or equivalent to that of '*dùthchas*' as 'heritable trusteeship' (No Author Given 1952, 14; Macinnes 1996, 5; Macdonald and Maclean 2014, 443).

sense as a rights claim (Maclean 1999, 252, 292; MacDhòmhnaill 1998, 198, 222; Black 2012). The foregoing emphasises that *dùthchas* continued to be invoked in Gaelic poetic discourse on identity throughout the 20th century, and claims for land were still being made on the basis of what could be considered the people's inalienable right to land – what appears to have changed between 1880 and 1960 is that it became impossible for Gaels to invoke the term *dùthchas* in a political way as a basis for land claims.[11]

6. Conclusion

This article has suggested that to assume decommonisation is an externally derived process may cause commons' scholars to overlook aspects of historical and political context which can influence institutional change in common property regimes. It has argued that many common property regimes for common pool resources exist within a deeply-sedimented structure of domination which has influenced the development and integrity of common property regimes and the viability of common pool resources. A historical survey of the enduring conflict over how commons in the Gàidhealtachd should be governed discloses that underlying the unusual internal 'privatisation' proposal of 1967 there is an archaeology. The proposal must be understood in relation to earlier political struggles against external intervention. This perspective makes it possible to understand why rightsholders – whose own social understanding and self-understanding had been subjected to socialisation in the wider norms of the domination system – might come to propose a modest 'privatisation' reform which was then transformed by 'Leviathan' into an attempt to bring the tenure system to an end.

Ostrom (2009) noted that 'The colonial powers in Africa, Asia, and Latin America, for example, did not recognise local resource institutions that had been developed over centuries and imposed their own rules, which frequently led to overuse if not destruction', a conclusion which has been developed by Haller (2010) in their case study of colonial and post-colonial Zambia. A constant thread in the historical manifestations of 'privatisation' and 'Leviathan' reforms in the Gàidhealtachd has been the efforts of external agencies to impose innovative forms of governance and control on an unwilling indigenous majority. This majority population, in response, has organised itself to employ a variety of means of resistance as part of an on-going struggle for the freedom to be able to think and act differently (Tully 2008a, 144). It seems reasonable to suppose that Scottish domestic colonization and informal imperialism – both before and since the creation of specific crofting legislation in 1886 – may be implicated in the ways in which historical contestations over the governance of common land have unfolded in the Gàidhealtachd of Scotland. Indeed, some contemporary crofting commentators have drawn attention to what they feel are 'colonial' aspects of

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[11] McQuillan (2003, 51) has observed a similar trend towards subjectivity in the meaning of *dúthchas* in the closely related Irish Gaelic language.

tenure governance today (WHFP 2008, 2010; Wilson 2007, 2012; Hunter 2010), and so one potential line for future research could be to investigate the present-day politics of crofting by way of political theories on informal imperialism and neocolonialism.

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