

A RIGHT TO ROAM

by Marion Shoard

(Oxford University Press, 1999)

Introduction

After 300 years as one of the world's most urban peoples, the British retain a fierce attachment to their countryside. Indeed the obsession may now be more intense than ever. The country lifestyle long sought after as the prize of achievement is being made accessible by fax and e-mail to people whose work would once have kept them in town. Meanwhile, those not yet able to realise the dream of a country home are presented with an ever wider range of steps towards this goal, ranging from rustic confections and home furnishings to vicarious enjoyment of the gentlefolks' way of life courtesy of the National Trust. Advertisers consider rural associations a reliable way of instilling desire for everything from bread to footwear. Surveys show that four out of five Britons would live in the countryside if they could, and that walking in the countryside is now second in popularity only to gardening among the nation's outdoor pursuits.

For the British, the countryside is a pastoral Eden of peace and spiritual refreshment. Perhaps we should therefore not be surprised that it has become more important to us as the pressures of everyday life have increased in the ever more stress-ridden towns and cities in which most of us still spend most of our time.

British preferences reflect the British idea of the countryside as a repository of tranquillity. The archetypal rural pursuit in Britain is the gentle ramble. Activities associated with the undirected stroll, like bird-watching and picnicking, are also popular. Most of the British seem to want no more from their countryside than to place themselves within it and to roam amongst its treasures.

Ravaged though Britain's countryside has been by building and modern farming, it could still provide very well for this simple need. Seventy-seven per cent of the UK's land is countryside, and this still includes much magnificent scenery. Yet the increasing numbers of people setting off in search of it find their simple quest ends all too often in disappointment and frustration. They can visit the ever more crowded country parks, picnic areas, and other enclaves provided by public and voluntary bodies, but if they try to venture beyond such places and roam freely they soon run up against a harsh reality. Most of Britain's countryside is forbidden to Britain's people. They may look at it through their car windscreens but they may not enter it without somebody else's permission - permission which will be withheld more often than not. The rural heritage they may have loved unthinkingly since childhood turns out to be locked away from them behind fences, walls, and barbed wire. Where they have been expecting relaxation and peace they find instead warnings to keep out and threats of prosecution.

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Our law of trespass holds us in its grim thrall throughout our country. Most of us are vaguely aware that those omnipresent 'Trespassers will be Prosecuted' signs are partly bluff. But all of us also know that trespass is indeed illegal, whether or not our wanderings are likely to put us in the dock. When an owner or his representative confronts us, we do not usually choose to argue the toss with him about our right to walk in our countryside. If we did, we should lose the argument. He has the right to use force to remove us. As a result, more than 90 per cent of woodland in Oxfordshire, for example, is effectively out of bounds to the walker.

This dismal state of affairs flies in the face of a key element of our national self-image. The British have been encouraged to think of their distinctive countryside as part of their collective identity. Second World War propaganda, for example, urged troops to think of themselves as fighting for the fields and woods of home. Yet in Britain, the vast majority of the people have so little stake in that countryside that they are not even allowed to enter most of it. Instead, an elect few control it utterly, choosing, for the most part, to use this control to exclude their fellow citizens from entering their holdings even for so harmless a purpose as to wander about looking at the bluebells or listening to the skylarks. For many of these 'owners' of Britain, this right of exclusion is not merely incidental but one of the principal attractions of landownership itself.

Our parents and grandparents took this situation so much for granted that they would have found it difficult to imagine any alternative. Yet the countryside need not be a fiefdom denied to the many by the few. Things were different once and they are still different in countries that are otherwise similar to Britain. Of course no one challenges today the idea of private property. But other societies hesitate to regard the land itself as something that can be owned as absolutely as a piece of jewellery. Our own laws of compulsory purchase and development control implicitly challenge this idea. Deep down we all know it is wrong.

Throughout human history, the notion of which of the planet's resources might reasonably be held as property by individuals has changed as different peoples at different times have developed different ideas of what is right. Prehistoric man's tools, weapons, and ornaments were so much his own property that they were buried with him. Yet the idea that an individual might 'own' the land through which he hunted would have seemed to him absurd, as it still does to surviving primitive peoples. As societies develop, the strong tend to demand the right to use more and more things as individuals -not just land but slaves or womenfolk. In the West, the civilizing process of the past few centuries has included the removal of some of these things from private property status when it has seemed an affront to society as a whole that they should continue to enjoy it. That the landowner's right to exclude his fellows has survived this process requires explanation.

Our Anglo-Saxon forebears did not bar each other from the countryside. Our current landowners' right to exclude stems directly from the particular experience of the Norman Conquest. Effectively, a band of robber barons keen to seize space to pursue their passion for hunting and contemptuous of the claims of the indigenous population grabbed the land from the people. Other particular features of our history served to buttress the grip of their descendants. Because landownership came to be seen as one of the fruits of success, owners sought not only to reap economic benefits from their holdings but also to make them the means of proclaiming their status through the pursuit of private pleasures. Other developments ranging from the rise of the wool industry to the introduction of coppicing and pheasant shooting served to entrench a habit of exclusion which might otherwise have evaporated.

Earlier generations of landowners did not escape protest. One of the causes of the Peasants' Revolt of 1381 was the harsh penalties inflicted on those who broke the cruel game laws protecting exclusive hunting forests. Riots against enclosure for sheep farming occurred throughout the seventeenth, eighteenth, and nineteenth centuries. The Diggers of the seventeenth century used direct action against the pre-emption of land for game while people were going hungry. They attacked not just exclusion but its philosophical basis. Their arguments against the absolute ownership of land provided an unwelcome reminder for an elite drunk on property ownership of the distinctions addressed by the ancients between what individuals could own, what the community should own, what no one could own, and what only God could own. As access to the countryside became as important for recreation as it had once been for subsistence, challenges to the landowners continued. The 1930s saw pitched battles between ramblers and gamekeepers over access to Derbyshire's moorlands. Little wonder then, that in our own time public access to the countryside should become an issue of real political importance.

In recent years we have seen the rise of environmentalism create a far more widespread sense than ever before that the land is something in which all have a stake and which owners cannot be trusted to rule as they see fit. At the same time the collapse of deference and the growing clamour for the people to shape their own destiny has made landowners' pleas to act as 'custodians' of the countryside for the rest of us increasingly unpersuasive, particularly as people have become aware of the appalling destruction that has been wrought on Britain's landscape, wildlife, and archaeological heritage by the farming and forestry practices over which these 'custodians' have presided during the last half-century.

Thus it is that we have seen growing resistance to the idea that we should continue to be shut out of what we increasingly see as our own countryside. When the Ramblers' Association began their 'Forbidden Britain' days of protest in 1988, few could have anticipated the extent to which the idea enshrined in their protest would gather force. By the time George Monbiot's 'The Land is Ours' movement was conducting mass occupations of rural sites in the early 1990s it was, however, beginning to be apparent that temperatures were rising. What was to be done in response?

As landowners saw the scale of the potential threat to their own position which was taking shape, they developed an answer of their own. If people were to require access to the countryside, perhaps they had better be given it while it could still be granted on terms which landowners could dictate. Owners who had argued that any extension of public access would make agriculture impossible and devastate wildlife began to change their tune. Instead, they began to suggest that of course access should be improved. However, the most satisfactory way in which this could be done was by voluntary agreement with landowners. Ideally, many of them also thought, they should receive cash payments in return for any access they chose to grant, which might in time prove a significant new form of income for them.

Policy-makers were not inclined to dismiss conciliatory proposals from a group which might be tiny in numbers but which had always been immensely powerful as a lobby, partly because it controlled so much of the land surface. During the 1980s the Conservative government launched schemes which encouraged landowners to open up their holdings voluntarily in return for payments from the public purse. As a solution to the problem, however, this approach could not get very far. Not only were landowners unwilling to open up enough of the land which actually matched public needs; the sums which would be necessary to open up the countryside based on a cash-for-access approach would be far beyond the scope of the cash-strapped public bodies which would be trying to do the deals.

These bodies, mainly local authorities, therefore looked afresh at the machinery already available to them to open up the countryside. Many turned to the public footpath system to see if they could remove the obstructions which were making so much of it useless, or perhaps create some more routes. Desirable though these efforts proved, they too were of limited effect. In a sense they served only to highlight the real problem. Why should elected authorities have to struggle to negotiate access for their citizens along a network of tracks which had grown up at random with no regard to real needs? Why shouldn't people be able to go where they wanted to go?

Thus it was that the idea of general rights of access to the countryside began to swim its way up the public agenda. Alarming though it undoubtedly was to the landowning classes, it was far from a new concept. The people of Sweden, Finland, and Norway have exercised such a right throughout their countryside for hundreds of years. General rights of access to particular kinds of countryside are well established in other European countries including Germany, Denmark, Switzerland, Austria, and Spain. The idea was hardly new to Britain either. As long ago as 1884 the Scottish MP James Bryce introduced into Parliament a bill to provide a right of public access to Scotland's mountains. It was taken extremely seriously, and successor bills might have succeeded had the First World War not swept the issue away along with so much else. By the 1990s the idea had come to fit into the political culture far more naturally than it did in Bryce's day. Talk of a new set of rights and duties for a post-millennial nation seemed to chime well with the idea of a right for the citizenry to walk through their homeland and a duty on landowners to respect this right in return for the many privileges which they enjoy.

Not perhaps as awesome as our rights to life and liberty, a right to roam wherever we want through Britain's countryside would nevertheless provide a substantial addition to the attributes of citizenship. No longer would Britons be confined to the margins of their homeland by a feudal law of trespass. Instead they would be liberated from a long-standing indignity, to take their place among grown-up peoples at one with their lands. At the same time, inroads would be made on the practical problem of providing rural recreation opportunities without draining the public purse.

Within Britain's Labour Party, rights of access to the countryside were far from a new idea. Working-class activists had looked to the party for support after the mass trespasses of the 1930s, and the 1945-51 Attlee government had been expected to introduce an access right, but opted instead for other access measures which were to prove ineffective. So it was not surprising that the idea of access to the countryside became a significant theme of the Labour opposition in the 1980s and 1990s. And it was rights of access, rather than other measures, to which the party became committed. In 1994 the party made the creation of a right of access to the countryside party policy at its annual conference. The Daily Telegraph called the proposal the most radical of all the party's policies. The idea of a general right of access to mountain, moor, and common land was advanced by successive Labour spokesmen, and the party's manifesto promised that access would be addressed. After the election, in May 1997, the new Labour government confirmed that it would indeed create a right of access to five kinds of countryside, mountain, moorland, heath, down, and common. Michael Meacher, a junior Environment Minister who assumed responsibility for access, promised a consultation paper. Landowning interests threw all they had into a lobbying operation designed to block access rights, staging two highly successful 'countryside' marches on London which bracketed opposition to access rights with other objectives of the rural establishment. Rattled, No. 10 held up the publication of Mr Meacher's paper by more than six months. The landowning organizations argued that legal rights were unnecessary: landowners could provide sufficient access on a voluntary basis.

In February 1998, the government responded by calling the landowners' bluff: the consultation paper appeared, offering landowners the opportunity to demonstrate that they could create access benefits on a voluntary basis equivalent to those which would be provided by a statutory right of access to the five kinds of countryside the government had specified, which would involve between 3 and 4 million acres in all, covering somewhere in the region of 10 per cent of England and Wales. After a three-month consultation period, the government would decide whether to create a statutory right or to allow landowners to create voluntary access opportunities instead. If it chose the latter route, it would review the actual arrangements that emerged, with the clear implication that if these were unsatisfactory it would create a statutory right at some point in the future. If landowners were to escape statutory access rights they would have to show that the voluntary measures they advanced covered as much ground and enjoyed the same permanency as those which a statutory right would create. It is a demand which it is hard to see landowners meeting, since landowners as a group have no means of coercing unwilling individual owners to co-operate, and a mechanism ensuring permanency of access is difficult to envisage.

So a right of access is now a real prospect for at least part of the countryside of Britain. If it is indeed enacted it will mark one of the most fundamental changes ever in our rural regime.

Meanwhile, a separate debate is under way in Scotland. The government has made no commitment on the form new rights of access might take there, having done no more than initiate a debate by asking Scottish Natural Heritage, the government countryside agency, to consult relevant bodies and advise on appropriate changes to the law relating to access in Scotland. SNH has in turn asked not only organizations but also members of the public for their views. The government has not committed itself to any particular approach but has said that it wishes to see access improved in Scotland. Concern about countryside access in Scotland has intensified over the last three decades. Walkers certainly have considerable freedom of movement in the hills but this rests on no more than custom and landowners turning a blind eye to what is in effect trespass, while in the farmed and wooded region of lowland Scotland access is extremely restricted. This situation has produced a debate north of the border concentrating on the idea of a general or universal right to all types of countryside rather than access rights over specific types of countryside of the kind originally proposed by the Labour government for England and Wales. In Northern Ireland there is growing awareness of how greater freedom of movement in the countryside could not only improve recreation opportunities for the Province's own citizens but also enhance the country's important tourism industry. Fundamental questions are being asked about the way in which Northern Ireland's rudimentary access system could be overhauled.

So throughout the kingdom the possibility of new access rights tantalizes walkers and alarms landowners. For both sides in this ancient struggle, this is a matter of enormous moment.

For their part, landowners point out that the creation of a right of access constitutes the expropriation of what up till now has been legally part of their property, namely the right to exclude, without even an offer of compensation. They suggest, however, that they would not be the only losers from the creation of such a right: farmers and foresters would suffer from the damage walkers would cause, and everyone would come to regret the damage done to wildlife by disturbance and to the landscape by litter and vandalism. These arguments need to be faced. Would a right of access enable people to steal crops from farmers' fields? Would walkers on moorland frighten ground-nesting birds off their nests? Would New Age travellers be enabled to set up squatter camps wherever they chose? Would privacy be destroyed? Would landowners cease to care for their holdings if they were opened to everyone else? What good would it do to inherit our countryside at last if we were to destroy it in the process?

Do we really need a right to roam? Are we entitled to one? What are the dangers that would accompany it, and can they be circumvented? What form should such a right take? How could walkers be required to respect any duties which might accompany their new right? How could we accommodate the exceptions and exemptions which legitimate interests might require without emasculating the concept? What can we learn from experience overseas? Is it really ever going to happen? Such are the questions which this book tries to address.

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