

‘Private property is a public asset too’

by Marion Shoard
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The current debate over public access to the countryside is usually presented as the struggle between two interest groups: big-booted ramblers versus Barbourjacketed landowners. In fact it raises an ancient and thorny question: what is land?

Our law of trespass implies a simple answer. Land is property like an armchair for private owners to do with as they wish. Yet land, unlike furniture, is also part of the environment of us all, like the sea or the air. So isn't the community entitled to a claim?

Prehistoric man was so intent on ownership that his tools, weapons and jewellery were buried with him. Yet the idea that the land through which he hunted could be owned in the same way would have astounded him.

Aristotle argued that only the control of individuals could provide sufficient incentive for effective husbandry. Events, not least the record of collective farming in our own age, suggest that he had a point. Yet Aristotle did not go on to advocate the absolute ownership of land. He suggested that those owning title must share rights to use their property with others.

This principle has long been entrenched in societies very similar to our own. In Sweden, for example, private landowners readily accept *Allemansratt*, the ancient right which entitles Swedes to walk anywhere in the countryside where their presence will not conflict with other needs, like privacy around the home or the protection of crops.

Our different tradition in Britain has its roots in the Norman Conquest. Barons eager for space to pursue their passion for hunting turned the land of a defeated people and even the wild animals they found on it into private property. This attitude found its way into the agrarian capitalism which replaced feudalism in the late middle ages. Land became simply an economic input. Thus the enclosure movement was allowed to deprive ordinary people not only of land to farm but of ancient rights to gather nuts, berries, mushrooms, timber and peat.

As land ownership became more and more closely associated with social status, high walls shut people out of secluded parklands and the exclusive pursuit of game tightened the owner's grip. Yet Britain's landowners' absolute claim on their holdings has never been altogether accepted. The people's claims have been continually asserted in events like the Peasants' Revolt of 1381, the Diggers' land occupations of the 17th century and the "Blacking" attacks of the 18th century, in which gangs of men with their faces blackened to avoid detection raided game preserves.

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Landowners have been gradually forced to accept a growing range of constraints on their ownership rights, in the form of public footpaths, planning controls, pollution restrictions and so on. Successive waves of new thinking have further eroded the idea that the countryside should be treated as private property.

First, the Romantic Movement turned the landscape into a theatre of selfrealisation for the educated classes. In the 20th century, rural recreation became a general aspiration. Today, walking in the countryside is our second most popular outdoor activity, after gardening.

Environmentalism has encouraged people to see their surroundings as too important to be controlled by privileged individuals. Growing democratic assertiveness and questioning of the established order have turned this view into a direct challenge to the legitimacy of a tiny minority's hold on a vital public asset.

These forces are working not just through "ramblers", but all who claim a stake in the rural environment: birdwatchers, picnickers, archaeologists, children, and people who may rarely actually visit the countryside yet in whose imaginations it nonetheless lives as part of the collective identity of the nation. It is the remorseless logic behind these forces which seems destined sooner or later to overwhelm our anomalous and archaic law of trespass.

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