

Foreword by Marion Shoard to;
Swimming against the Stream:
Reclaiming Lakes and Rivers for People to Enjoy
by Jean Perraton (Jon Carpenter, 2005)

We human beings may have made our home on land, but it was from water that our parent life forms emerged. Perhaps that has something to do with the enthusiasm with which we plunge into, splash around in and swim through water given half a chance. Even in the face of an unforgiving climate, our children run to the water's edge with eyes shining more brightly than at any other time. And why not? Revelling in the embrace of the element which covers most of our planet is one of life's true joys. Surely it ought to be on hand everywhere so all can delight in it whenever they choose.

We take access to water for granted at the seaside. When we get to the tideline, we assume we can swim in the ocean as of right. In fact, the foreshore has owners, but they dare not try and use their property rights to inhibit our access to the waves. For most people, however, the nearest waterside is not the seashore but the edge of one of our vast range of inland waters – lakes and pools, rivers and streams, reservoirs and canals. Owners of the beds and banks of all of these are entitled to exclude the rest of us from their waters, and they feel few inhibitions about using this power to the full.

Landowners and anglers, to whom the former often sub-let rights, claim exclusive use of about 97 per cent of the rivers of England and Wales, according to a study by the *University of Brighton in 2001 [1]*. This means that, even in the closed season for angling, owners feel legally justified in barring any other water users, whether swimmers, canoeists, people with rowing boats or children who wish to paddle from entering "their" water. Rivers governed by specific legal public rights of navigation, such as the Thames and the Wye, are exceptions. The effect of this situation is that would-be water users are forced to congregate in small areas, while limitless potential opportunities for the enjoyment of waters elsewhere are denied us. We are missing much.

Dive into an upland pool, and the chill would take your breath away, even in June. On the other hand, the thousands of lakes dotted over the countryside of lowland Britain, whether standing in spacious private parklands, filling former gravel, peat or surface coal workings, gracing farmers' fields or edging woodlands, would be more congenial than the sea in early summer because they warm up more quickly. But few of us have any idea what either experience would feel like. We are not allowed to find out.

The towpaths of most of our canals are freely available to walkers because British Waterways has chosen to promote them as a recreation resource. But our canals, lovely as they are, present nothing approaching the variety of our rivers. We know almost nothing of the swift currents and choppy waters which can give way an hour or a hundred yards later to gentle flows and still waters in streams and rivers from Kent to Cumbria and Carmarthenshire to Anglesey. A river in winter can be utterly unlike the same river in summer. Topographical and geological variation is vast. You may come upon a waterfall, swim under a stretch of cliff, or round a bend to find yourself facing a wide, shallow stretch with drifts of pebbles beside which, with luck, a dipper is bobbing or the tail of a grey wagtail dancing up and down.

Wade through our rivers and streams and myriad types of waterweed can wrap around your body just as caressingly - or threateningly - as the water itself. You may encounter anything from tadpoles and water snails tickling your toes to metallic emerald damselflies quivering in their mating embrace over the reeds. Wildlife is closer at hand than in the sea: you can surface from an underwater dive to find yourself eyeball-to-eyeball with a frog sitting on a lily pad. And all this against an ever changing backdrop of bankside vegetation – perhaps a cluster of stately purple loosestrife and yellow flags, then a steep, muddy bank bearing the paw imprints of an otter, then creamy drifts of heavily-scented meadowsweet, overhung by a curtain of weeping willow or presided over by stately aspens, alders or crack willows.

Our exclusion from such delights not only limits opportunities for a wide range of sights, sounds, smells, tactile stimuli and healthy exercise: it also distorts our perception of our country. You could actually put the rivers of Cornwall many, many times around that county's coastline, they are so numerous and long. But how many of us could name them let alone recall their individual characters, even their variety of bridges? How does the Inny differ from the De Lank or the Lynher from the Carey? The vast majority of Cornwall's myriad streams and rivers can legally be glimpsed only at the occasional spot at which a road or a public path happens to abut or cross them. Few of us would even dream of swimming in these waters, when their banks seem so private and out of bounds. The naturalist W.H. Hudson encapsulated something of the lure of Britain's hidden, inland waters on finding himself excluded from the rivers and streams of Devon:

The stream invites us to wander. The impulse is so common that it might be set down as an instinct; and certainly there is no more fascinating pastime than to keep company with a river from its source to the sea. Unfortunately this is not easy in a country where running waters have been enclosed, which should be as free as the rain and sunshine to all, and were once free, when England was England still, before landowners annexed them, even as they annexed or stole the commons and shut up the footpaths and made it an offence for a man to go aside from the road to feel God's grass under his feet [2].

But suppose we had a legal right not only to walk alongside but also to plunge into inland waters? In this fascinating book, Jean Perraton explores the reasons why we should, as well as how some of the real conflicts which might arise with other interests, such as nature conservation, angling and public safety, could be resolved.

The book appears at a particularly interesting moment in the struggle about rights over the environment in Britain and over water in particular. Limited rights of access to land are just being established in England and Wales, while Scots now enjoy more extended rights of access to both land and water. A book published in 2004 questions the legitimacy of the right of exclusion currently exercised by owners of rivers in England: it can be traced, apparently, to errors in a legal textbook published in 1830. According to the Reverend Douglas Caffyn in *The Right of Navigation on Non-tidal Rivers and the Common Law* [3], there has always been a common law right to move freely up and down all rivers and streams which are physically navigable. So except where local statutes have specifically removed this right, it still exists. As I write, the Reverend Caffyn's arguments are being examined closely by counsel appointed by the British Canoe Union. If his analysis prevails, the private 'keep out' notices which deface so many glorious English rivers could soon be deemed illegal.

We shall see. But even if the Reverend Caffyn is upheld, access to rivers in England is unlikely to improve overnight. In any event, his arguments would not apply to lakes such as those resulting from mineral extraction or those created in Capability-Brown-type country parklands. However, Scotland is already showing how very different things might be. In 2005, one of the first pieces of legislation enacted by the Scottish Parliament, the Land Reform Act 2003, comes into effect. Amongst other things, this law asserts a public right to be present in and to move freely not just over land but also over bodies of inland water, whether flowing or still, at any time of the day or night. This marks a milestone in the long and often turbulent history of struggle over environmental rights in the United Kingdom.

To exercise their new right, Scots must behave responsibly – that is, they must respect the privacy of others, help land managers to work safely and effectively, care for the environment, take responsibility for their actions, keep their dogs under control and take extra care if they are organising an event or running a business. But if they do these things, they can walk along bridges and banks, enter the water whether to wade or swim, and take non-powered craft like rowing boats and canoes in all lochs and rivers, canals and reservoirs, streams, estuaries as well as along the coast: the right applies under water as well as on the surface. *A Scottish Outdoor Access Code* [4], published in 2004 by Scottish Natural Heritage, the main conservation and outdoor recreation government agency north of the border, has set out the framework within which local authorities should assert the public's access rights and sort out any conflicts which may arise. Thus the Code reminds Scots that swimming in open water can be dangerous and enjoins them to minimize problems by avoiding nets or other fishing tackle, not disturbing anglers and other water users, not polluting water and not swimming close to water abstraction points.

For their part, land managers must not interfere unreasonably with people exercising or seeking to exercise their access rights, perhaps through placing a barrier across a river without reasonable cause or without leaving a gap for passage, removing an access point to a loch without providing an alternative nearby, or erecting a sign which deters or intimidates people. The Act empowers local authorities to remove prohibition signs, obstructions and dangerous impediments and to recover the cost from the land manager responsible.

The right to roam legislation enacted in 2000 for England and Wales [5] is very different. Essentially, water is excluded and the new right applies only to land, and even then less than 10 per cent of the land surface. Only areas marked on maps because they consist wholly or predominantly of a particular type of terrain (moor, heath, down or mountain) or are registered common land are covered. Occasionally a piece of water's edge may be included if it is part and parcel of such a type of land, but, if it is, the right will not extend to a right to enter the water: it will stop at the water's edge. Yet Scotland's example is stirring demands in England and Wales for better access rights. Already there is talk of the possibility of the existing right being extended to the coasts.

So this book comes at a time when everyone in England and Wales should be thinking about what access to our environment ought to entail. There is still a long way to go before we can all look forward to dipping our toes into our almost unimaginable range of inland waters in the long, hot summers which apparently lie ahead. Reading this book should be an essential step towards that worthiest of goals.

References;

1. Water-based Sport and Recreation: the Facts. Report prepared for the Department of Environment, Food and Rural Affairs (Countryside Division) by the University of Brighton, (2001), 30
2. Hudson, W. H. (1909) Afoot in England J. M. Dent and Sons, xx
3. Caffyn, the Reverend Douglas (2004) The Right of Navigation on Non-tidal Rivers and the Common Law published by the author at 255 Kings Drive, Eastbourne, East Sussex, BN21 2UR
4. Scottish Natural Heritage Scottish Outdoor Access Code, Approved by the Scottish Parliament on 1 July 2004, Edinburgh: SNH
5. Through the Countryside and Rights of Way Act 2000.