Outdoor Recreation and the Environment

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Introduction

In the context of outdoor recreation and the environment, the 'forbidden fruit' has long been equality of access to all rural environments: landscapes have been there for the public to see (from a distance), to read about, and to be preserved, but (largely) not to be touched, far less used for anything as ephemeral as recreation and leisure. While leisure in capitalist Britain may have brought limited rewards for the 'good citizen' (Ravenscroft, 1993), there was never – certainly when *The Devil Makes Work* was written - a question of 'unforbidding' the fruits of rural property for the good of ordinary people (Shoard, 1989; Stephenson, 1989; Ravenscroft, 1996, 1998a; Parker and Ravenscroft, 1999, 2001). Indeed, the rhetoric of the day was largely that rural property required a level of 'stewardship' that made recreational access and use inappropriate in all but the most robust locations (Ravenscroft, 1995). This was widely contrasted with the position elsewhere – especially 'Europe' – where, it was claimed, people could exercise 'citizen rights' of access over private land (see, in particular, Shoard, 1989). However, as Curry (2002) noted in his work on recreational access in New Zealand, inter-country comparisons are notoriously hard to make, even when the countries share similar legal foundations.

Despite the exclusive claims for stewardship, the period between 1997 (when Labour came to power) and 2000 (the enactment of the Countryside and Rights of Way Act 2000) witnessed the elitist superstructure of rural exclusivity seemingly being torn down in favour of a legal 'right to roam' on the uplands, moors, commons and downs of England and Wales. The Land Reform (Scotland) Act of 2003 swept in more fundamental and wide-ranging rights in

Scotland. The upshot of these two Acts, we were told, was that all people would now enjoy the long-denied, unfettered recreational access to the countryside (DETR, 2000). Thus, it would seem, this chapter could very much be about the now 'unforbidden fruit' of post-industrial capitalism, with a new emphasis on environmentalism, health and economic growth replacing tired Marxist debates about rights and duties (see, for example, Land Use Consultants, 2008; Parker, 2007, 2008; Sempik, 2008). Yet, as we argue in this chapter, the construct of the forbidden fruit was, and remains, rather more complex than was initially understood, meaning that - while some fruit may have been rendered 'unforbidden' – the delineation between forbidden and allowed/deviant and good remains as vital as it was when *The Devil Makes Work* was published.

The campaign for access to the 'forbidden' lands

Most histories of the campaign for access to the countryside of England and Wales commence with the original enclosure of land (see Shoard, 1989, for example). As Clarke and Critcher's (1985) reading suggests, such enclosure - and the resulting diminution of opportunities for outdoor recreation - has been constructed as a function of the structural dominance of capitalism. This is particularly in the ways in which it 'captures' space, appropriates it and invests in it, but also restricts unwanted and unregulated public movement over it (Darby, 2000). This interpretation, informed by Locke's labour theory of private property (1690/1988), gives credence to landowning elites and other rural business interests in determining the uses of land and ensuring the interests of the rural economy (however narrowly defined) are not diminished (Haddad, 2003; Woods, 2005). Restrictions to public access for recreational activities have been justified on the basis of the trickle-down economic benefits that their management brings to the economy. The public are called upon to observe property boundaries and periods of exclusion for the conservation and

management of land or risk seeing economic impacts and local infrastructure decline (Hillyard, 2007; Wightman *et al*, 2003; Land Use Consultants, 2008).

The success of this regulatory arrangement is often dependent upon a sustained sense of an organic community. In the context of the countryside depictions of the organic community as part of a 'rural idyll', a space of harmony, social cohesion and continuity (see Halfacree, 1995; Lowenthal, 1991; Little and Austin, 1996) have been used to justify the exclusion of 'outsiders', be they urban working class, youth subcultures, or ethnic minorities (Chakraborti and Garland, 2004; Cloke and Little, 1997; Garland and Chakraborti, 2006; Sibley, 1997), or to warrant resistance to social and political change (Wallwork and Dixon, 2004). It is a vision of a community that is captured by Tonnies' (1957) concept of *gemeinschaft* – a small, stable society sustained through close interactions which are based on kinship ties, local proximity and traditional values.

As studies into transgressive leisure and the carnivalesque have noted, the relatively unchanging form and function of local community relationships is still central to understanding forms of countryside recreation (Presdee, 2000; Ravenscroft and Matteucci, 2003; Gilchrist and Ravenscroft, 2008; Ravenscroft and Gilchrist, 2009). Activities like night time (or boy) racing, raves and dogging, the temporary licencing of 'deviant' leisure, do little to challenge local systems of territorial governance (Ravenscroft, 1995; Ravenscroft and Matteucci, 2003). Further work has also shown how landowners have exerted subtle forms of discipline and governance over unwanted recreational use through extended notions of social responsibility (e.g. through codes of conduct, for example, see Parker, 2007); granting public access on terms of their own choosing which limit wider moral rights of freedom to roam (Parker and Ravenscroft, 2001; Parker, 2006; Ravenscroft, 1995, 1998a).

Nevertheless, as Newby *et al* (1978) noted, rural patronage and the 'benevolent stewardship' of the landowner disguises antagonistic social relations and conflicts of interest between the dominant and subordinate (see Gilchrist, 2007). It would be wrong to suggest these relations are immoveable. In Britain, the history of outdoor recreation reveals processes of contest and conflict that have challenged the rights of landowners to constrain access to rural space, subsequently shaping the nature of public legislation (Darby, 2000). Strict adherence to legal doctrine rather than the exercise of occasional benevolence led to mass trespasses of moorlands in northern England in the 1930s, provoking a change in the law through the National Parks and Access to the Countryside Act (1949) which established some access to the countryside for recreational purposes, although not quite the rhetorical and forward-looking 'right to roam' claimed by the architects of the Act (see Hill, 1980).

Half a century on and organisations such as the Ramblers' Association realised that sustained campaigns still needed to be waged to guard against encroachment by landowner interests. In pressuring for legislative change in the access situation through the 'right to roam' promised but not delivered in 1949, the Ramblers escalated their campaigns in the 1990s by conducting mass trespasses of privatised wilderness and recruiting a voluntary corps of members to keep footpaths clear and report signage that discourages walking (Anderson, 2007a, p.404; Shoard, 1989). In so doing, the Ramblers' Association recognised that small numbers of agitators had no more than a marginal effect and could not secure the political pressure required for reform. Instead, they required a closer identification with sought-after access land and routes, and so they now encouraged forms of settlement through local volunteers constantly passing and re-passing over ancient footpaths and rights of way, thus challenging the legal and moral constraints imposed by landownership. This was part of the tactical innovations witnessed in

environment-based protest movements in the 1990s designed to disrupt landowner hegemony through occupation (Doherty, et al, 2000).

The pressure generated by such tactics led Labour to pass a new piece of legislation that, rhetorically at least, expunged the failure of the 1949 Act by extending rights to enjoy the countryside for recreational purposes (DETR, 2000). Through creating a statutory right of access on foot to 'open country', the Countryside and Rights of Way (CROW) Act of 2000 gave "greater freedom for people to explore open countryside" (DETR, 2000, p.1), opening up all private land classified as "mountain, moor, heath or down", for open-air recreation with no compensation for the landowner. When the Land Reform (Scotland) Act 2003 followed suit some three years later, it seemed very much that the 'forbidden fruit' of access to the countryside in the UK was no more and that, in its place, there was a new 'post-capitalist' equality of access to, and use of, the countryside. This was supported by new policy initiatives, such as the Countryside Agency (2005) diversity review, which was aimed at encouraging more people to visit the countryside for recreation, and by the Marine and Coastal Access Bill 2008 which, if enacted in its current form, will create a new legal right of access on foot to the coast of England (see Defra, 2009).

Forbidding the unforbidden: the maintenance of exclusivity

As Parker and Ravenscroft (2001) highlighted, soon after the enactment of CROW, the rhetoric of unfettered access, of making available what was once forbidden, has remained highly problematic in a number of respects. The principal issue is that the delineation of 'access land' relies on a fixed spatial settlement, through the use of maps, to explain and disseminate where access can be enjoyed. Not only does this continue to deny access to the majority of the land for the population, since they cannot read maps with the expertise

required to use – with confidence – 'access land', but it also does not specify adequately the forms of recreation that can be enjoyed, nor the nature of the 'exploration' that people can undertake. In addition, the Act retains several discretionary rights to exclude the public in the interests of safety and to protect economic (predominantly agricultural) activity (see Parker, 2008). This is a significant issue, and one that separates CROW from other apparently similar forms of access in other countries. Unlike access rights in much of Scandinavia, for example, where there is an assumption that all land is open to public access unless there is good reason to think otherwise (see Mortazavi, 1997), CROW rests on the opposite assumption: that land remains exclusive unless mapped to the contrary. The difference in the gestures of the access codes is unmistakable; in terms of CROW it is very much about keeping out of property unless it is absolutely clear that it is access land. For those who lack confidence in making such judgements (most of us), this construct underlines not only the continuing hegemony of private property rights, but also the subject/other dichotomy between those who 'belong' and those (at whom the Act was rhetorically aimed) who do not.

It is hard, therefore, to claim that the CROW Act signals the post-capitalist reversal of the enclosure of the commons and the (re)introduction of a universal right to roam. Rather, and in common with the 1949 Act, it retains hegemonic interests through a balance of public and private rights to enjoyment of rural space (Parker and Ravenscroft, 2001; Ravenscroft, 1998b). Such hegemony has been exercised through subtle forms of control that frame who can and cannot enter rural space. This in effect marks a shift from bureaucratic determinations of access through rights, to forms of moral governance which designate permitted forms of 'countryside citizenship', allied to moral guidance in the form of the Country Code (Parker, 2007).

Yet this fails to capture both the subtlety of the construct of 'forbidden' and the delicacy with which the CROW Act has helped sculpt a new exclusionary landscape. Other than the Rambler's Association claims about the lack of access to the countryside, there was very little evidence, prior to the Act, that more access was actually required, certainly to open countryside in the sparsely populated uplands of England and Wales (in this respect also being redolent of the 1949 Act). For example, the House of Commons Environment Committee (1995) concluded that there was no robust evidence that the demand for outdoor recreation had increased beyond the capacity of existing access opportunities. Similarly, the Country Landowners' Association claimed that its members already provided access to much of the land to be covered by the Act, and that the 'quasi-market' in which much of this access was granted was better suited to determining access requirements than a statutory and bureaucratic process (see Curry, 1998). Moreover, there has actually been a decline in the number of people visiting the countryside in the years since the new access land became available, although Natural England, the government body set up in 2006 to conserve and enhance the country's natural environment, is unwilling to speculate why this should be (see Countryside Agency, 2004; Natural England, 2006, 2008).

The point here is that, quite simply, the deeper rural landscapes of England and Wales never were forbidden fruit for all people, despite claims to the contrary. Rather, access was highly differentiated, between those with the cultural capital to use open land in a way that did not contravene local (owner) sensitivities, and those who were constructed as 'other' and were thus made unwelcome (see Ravenscroft, 1998a). Prior to the CROW Act, the former group were able to gain access to specific areas of land over which there were no formal rights; they simply chose spaces that were unknown to the mass, or were hard to access, and which did not have any major agricultural or commercial uses. In contrast, those without sufficient

cultural capital to adopt such a strategy were 'denied' the access that they sought (although, as Curry and Ravenscroft, 2001, have suggested, there was never any evidence that there was demand from this section of the population, let alone 'denial').

Of course, it suited all those who wished to maintain the exclusivity of the land (as opposed to the forbidden fruit of access to the land) to construct the problem as one of legal rights of access, such that legislation could be enacted that would, in effect, make unforbidden a class of access (open, unmarked and unguided) that none of those at whom it was rhetorically aimed wanted anyway. Thus, the CROW Act came about, heralded as a major breakthrough in securing citizen rights to formerly forbidden lands, but in actuality offering very little that was not already available, *de facto*, to those who wanted it – hence the failure to generate increased access to the countryside since 2005, when the new access maps became available. But the really clever manoeuvre was in constructing the CROW Act as a major concession to the Ramblers' Association and the citizens of England and Wales, won at great cost to the thousands of land owners and farmers who had given up some of their rights, privacy and ability to make a living on already marginal land, as set out by the President of the Country Landowners' Association, Mark Hudson, on its web home page (accessed 25th September 2008):

> "The challenge is to ensure that those exercising their access rights are responsible too. We urge people to remember that this is not a general right to roam: it is access to mapped areas of land which may be temporarily closed for safety and land management reasons. Visitors can help care for the countryside by respecting the Countryside Code and by supporting local shops and businesses. But the most important thing that people can do is to check the Countryside Access website, check the new maps and check the local information points to see where they can go." (http://www.cla.org.uk/Policy_Work/Access_-_CRoW/Access_to_the_Countryside//25.htm/)

As Mr Hudson makes clear, while the Government and the Ramblers' Association may construct the CROW Act as the harbinger of a new era of freedom to roam, and the removal of the forbidden fruit of access, the landowners see it in an entirely different light: as a responsibility to exercise access rights, where they are allowed, within the codes set down and within a framework of service to the local economy. How many people who have never experienced open access are really going to feel that they have a right to experience it now? Rather, the warning – backed by the Act itself – is stark: you dare to taste the forbidden fruit and we – those who belong here – will ensure that you abide by every element of the Act and the codes of conduct that it endorses. Thus, some of the fruit of access may have been unlocked by the CROW Act, but they are not the ripest or sweetest fruit; indeed, they are a bitter reminder that the exclusion and demarcation so eloquently observed in *The Devil Makes Work* are still alive and well in the English and Welsh countryside.

The new forbidden fruits

As if the central deception of the CROW Act were not enough, it is now emerging that, in legalising a small class of access that was already happening, the architects of the Act and subsequent legislation have demonised other forms of recreational use of the countryside that have at least an equal claim to legal protection. In particular: paddlers (a generic term for canoeists and kayakers) have found that their claims for access to all inland waters have been marginalised by the 'demands' of walkers; climbers have found that some of their favourite climbs are now 'land-locked' because there is no right of way or access land to enable them to reach the climb (and they are implored by the landowners to adhere to the CROW Act); and off-road drivers and trail riders are increasingly blamed for the poor state of the routes that they share with walkers (and local authorities are using highways legislation to close these routes because of their poor state). Furthermore, the Natural Environment and Rural

Communities (NERC) Act of 2006, which created Natural England, has also ushered in legislation that has effectively closed, without appeal, many of the remaining non-metalled routes used by off-road vehicles and motorbikes.

Paddlers and forbidden water

If the distrust between landowners and walkers had run deep prior to the enactment of CROW, it was nothing to the enmity that was often experienced between paddlers and anglers – with many of the angling clubs owning property interests in the waters that they were fishing. While there have undoubtedly been many paddlers who have carried out their sport away from the eyes of the anglers and landowners, there have been numerous high-profile incidents in which there has been outright conflict between paddlers and anglers. Actions on the Rivers Dee and Seiont in North Wales, for example, are highlighted in much paddler folklore (see Gilchrist and Ravenscroft, 2008), and there was clear pressure prior to CROW to ensure that no new rights of navigation were created. This pressure remains, with the Country Landowners' Association continuing to press for a voluntary approach to canoe access (http://www.cla.org.uk/Policy_Work/River_Access_for_Canoeists/, accessed 25th September 2008) and the Angling Trust – the new representative body for all forms of angling - seeking to restrict the number of rivers on which voluntary agreements are appropriate (Angling Trust, 2009).

In an attempt to address the issue of how to treat water-related activities within the proposed CROW Act, the Government asked the Countryside Agency, the Environment Agency, the Forestry Commission and English Nature – prior to the publication of the CROW Bill - to consider whether, amongst other things, access to inland waters and watersides should be included with the CROW legislation (Roberts and Johnson, 1999). They concluded

(Countryside Agency, et al, 2000) that the evidence available about the legal position with regard to access to inland water was both complex and incomplete, and thus inappropriate for inclusion in CROW. As a result, the CROW legislation did not extend to the use of inland waters for water-based recreation (although it allowed access on foot to waters that were within access areas, for fording purposes). Interestingly, the Rivers Access Campaign, which is funded by Canoe England, claims that provisions extending the public right of access to inland waters were 'pulled at the eleventh hour' from the CROW Bill, prior to enactment (http://riveraccess.org, accessed 25th September 2008).

The 1999 report also concluded that there was no overwhelming case for including woodland in the CROW Act, despite the fact that a lot of woodland is already publicly owned – by the Forestry Commission – and the legal issues are no different to those relating to open land. Rather, the Government sought to include a provision (section 16) within the CROW Act that would allow owners (presumably the Forestry Commission) to 'dedicate' their woods in perpetuity as access land, if they so wished. Section 16 dedications were also made available to the owners of rivers and lakes, together with other provisions that allowed owners to relax the restrictions that limited CROW to access on foot. These provisions could thus allow owners to dedicate land and water that would otherwise not be access land, and to widen the use of that land or water to include, for example, horse riding, cycling and, in the case of water, canoeing, rowing or other water-based sports. Perhaps not surprisingly, there was no rush of private owners seeking to use the powers of dedication, particularly for water.

In the aftermath of the CROW legislation, therefore, paddling (and other uses of inland waters) had effectively been dropped from the political agenda in England, with Government making it clear that no new legislation would be forthcoming. In responding to a petition to

the Prime Minister calling for legislation on a free right to navigate all rivers and canals in England and Wales, the Government responded:

> … demand for access would more effectively be met by a targeted approach, which involves identifying where access is needed, and then creating access agreements with the landowner and other interested parties. Creating access via agreements will undoubtedly require goodwill and hard work on all sides and nothing will be achieved overnight. But we firmly believe that this is the right approach. Given the commitment of all interested parties, particularly water users and landowners, this managed and targeted approach should, over time, result in a significant increase in the amount of inland water accessible to all water users" (http://www.number10.gov.uk/Page14435. Accessed 2nd October 2008).

Interestingly, the Secretary of State for the Environment (2009) subsequently wrote to the Chairs of all Local Access Forums, pointing out that their remit for improving access to the countryside did not extend to water-based recreation. Thus, while championing negotiated access improvements on the one hand, the Government has simultaneously denied the potential parties to those agreements the strategic overview and advice that is available to similar parties considering public access to land.

Whereas prior to the CROW Act the British Canoe Union had been able to claim political parity with the Ramblers' Association, at least insofar as both were seeking more access to resources over which they felt that they had a reasonable claim, after the Act it was isolated. And isolation meant moving out of the policy arena, into confrontation with Government, and – if access was to be achieved - into direct negotiation with landowners over specific voluntary, contractual agreements for access to water – just as they had done prior to the Act – with recognition that dedication, although an option made available to landowners, was not one that was going to be taken up (Church, et al, 2007). Indeed, the only known dedications

of water for recreation have been on the River Mersey, where a number of golf clubs dedicated their waters as a contribution to a wider scheme to negotiate a long distance canoe route, from Stockport to the river's confluence with the Manchester Ship Canal, at Carrington (see University of Brighton, 2005; Environment Agency, 2006). The canoe lobby has now been divided internally by the decision of the Petitions Committee of the National Assembly for Wales (2009) to consider a case made by the Welsh Canoeing Association for creating a public right of access along rivers in Wales, in the process further isolating paddlers in England and their association, Canoe England.

There is no public evidence to suggest that the decision not to include a public right of navigation within CROW was related to actions or 'deals' made by other parties. However, it is interesting to observe that, at the moment that the - largely irrelevant – withdrawal of the 'forbidden fruit' of public access on foot was overturned, the forbidden fruit of access to inland waters (which would have made a significant difference to a great many paddlers, wild swimmers and many others) was ever more tightly defined. Not only is this evidence of the asymmetry of power relations between landowners and paddlers described by Church *et al* (2007), but it is also an indicator that the post-industrial 'leisure landscape' has yet to permeate property relations such as those involving the control of the recreational use of inland water.

Climbing and forbidden hills

Alongside the Ramblers' Association, the British Mountaineering Council (BMC) has been a long-time advocate of 'freedom to roam'. However, given the much more specific access needs of climbers (access on foot to the base of crags that are suitable for climbing), the BMC has also been active in negotiating access agreements that allow climbers to reach the crags

from public rights of way. It has also been active in developing management agreements that address the environmental impacts of climbing, particularly with respect to nesting birds (Anderson, 2007a, 2007b). Thus, when Labour came to power in 1997, the BMC had to make a choice about whether or not to join the negotiations over CROW. It did so, and claims to have won important concessions on night-time access and occupier liability (CROW – the BMC viewpoint, http://www.thebmc.co.uk/Pages.aspx?page=112, accessed 25th September 2008). In supporting the introduction of CROW, the BMC Access & Conservation Committee recognised that there was an element of 'emptiness' about it, because climbers had traditionally had 'free access' to crags (in many cases negotiated by BMC), meaning that the Act added very little new access. However, it was felt that legal backing would improve the situation, while also clarifying other issues such as landowner liabilities for accidents and injuries incurred by climbers.

In the event, it appears that the enthusiasm that the BMC Access & Conservation Committee displayed for CROW may well have been misplaced. This is because, in replacing person-to-person negotiation with legislated access, some landowners have felt able to take advantage of the provisions in the CROW Act for closures to access land, as described by Rick Gibbon, the BMC's Peak Park Access Officer:

> "Some aspects of CRoW, such as land dedication, have never approached their full potential for benefiting both the outdoor community and landowners alike. And other aspects need constant attention to make sure that our hard-won rights don't slip away from us. There are disturbing reports of agreed access points being stopped up, open access signs masked by Beware of the Dog notices, and fences popping up on open moorland, replete with barbed wire. All these barriers aim to deny by stealth the access we have won by statute. No doubt each one will have been justified by "land management", but surely there should be some distinction between that and an apparent right to erect feudal barricades. Cumulatively their impact is draconian …" Article prepared by Henry Folkard (http://www.thebmc.co.uk/Feature.aspx?id=2591, accessed 25th Sept 2008)

A specific case in point is Vixen Tor, in the Dartmoor National Park, but not in an area designated as access land under CROW. Access to and use of the Tor – which is in private ownership - by walkers and climbers has been allowed, without charge, for the last 30 years. However, a new owner has seen fit to prevent access, and the combined weight of the BMC, Ramblers' Association and the National Park Authority cannot, at present (September 2008) find a solution. And this is despite the Tor being in a National Park and despite all the assurances that came with the CROW Act, about improving access to important sites such as the Tor. This is an example of the issue that concerns the BMC, that land outside CROW, to which climbers have traditionally had free access, will be closed to them, on the grounds that the public now have ample land and rights under CROW and should not expect to continue voluntary arrangements outside of CROW. In addition, the BMC claims that some hostility towards climbers is now experienced on CROW land, with landowners seeking to find reasons for closing CROW land, whether on nature conservation or other grounds (http://www.thebmc.co.uk/Pages.aspx?page=121, accessed 26th September 2008).

The case of climbers is, arguably, of more concern than that of paddlers, because it seems that, unlike paddlers, climbers are losing access that they had established legally – mainly through contract – and that the provisions of CROW are unsuitable for helping them. While evidence is scarce – there are relatively few climbing sites in England and Wales, compared to the areas of access land under CROW – it does seem quite possible that, in accepting the implementation of CROW, some landowners determined that they would no longer support voluntary access arrangements on land that is not designated as access land. In addition to crags, of course, this also includes many areas of land close to urban populations.

Thus, rather than use the dedication provisions included in the Act to create specific access areas according to demand, it would seem that the opposite is happening: that the Act itself has, in effect, created a new category of forbidden fruit: often small areas of land, or routes to crags and monuments, that have traditionally been available free of charge, but which are now closed, in 'recognition' of the much greater (and presumably more valuable) access rights that the public has gained through CROW. The fact that most of the public have no desire – nor ability – to use most CROW land is irrelevant; the principle is that the forbidden fruit of access on foot to open country has been made available to consume, in part return for which people should not expect to consume fruit from areas that are not designated for access, even if these are more highly valued by some members of society.

The position in which the climbers find themselves, therefore, is very much a part of an elaborate 'gift relationship' between landowners and government. As Mauss (1980) has suggested, non-mercantile barter is often based on reciprocation: a gift given for a gift received, with the giver under a moral/customary obligation to give more than they received. In this case, as the earlier quote from the President of the Country Landowners' Association suggests, the 'gift' of recreational access has been given by landowners to the state (let us here gloss over the legislative aspect, because it seems apparent that there was at least an element of voluntarism on the part of the landowners when negotiating the detail of the CROW Act). In return, not only has the state had to accept a limited and bureaucratic approach to public access, but it has also had to accept the de-legitimation of access arrangements that have been negotiated by those wanting access and that, prior to CROW, were considered to be the core of access policy (see Feist, 1978, for example). This is very much a case of exchanging the forbidden fruit of access that few people want for previously unforbidden fruit that individuals and groups had actually arranged to suit their requirements.

As Mauss (1980) candidly observes, the gift relationship suits only the party with the deepest pockets, with the other party (or parties) standing to lose all.

Off- road drivers and forbidden lanes

It was never the intention that the CROW Act should create immutable public rights of access to private land for 4x4s and trail bikes. Equally, it was an apparent cornerstone of CROW that no current activity, commercial or not, would necessarily be displaced by the Act (Defra, 2001). That did seem to be the initial stance, with off-roader groups working with local and National Park authorities to find acceptable ways of managing vehicular access. This included, for example, continued co-operation between off-roaders and park authorities in the Lake District, through the Lake District Hierarchy of Trail Routes initiative (LARA and LDNPA, 1997), as well as elsewhere. Within the Lake District it seems clear that there was an understanding that off-roaders had a legitimate right to use some of the unmetalled tracks in the park, but that there needed to be management over which ones, and when. The first report on the management system (LARA and LDNPA, 1997) confirms this approach.

Yet, just six years after CROW was enacted, off-road drivers and riders found that changes to the law regarding the use of certain types of highway (within the Natural Environment and Rural Communities (NERC) Act 2006), particularly the reclassification of all Roads Used as Public Paths (RUPPs) to Restricted Byways, had reduced significantly the number of unmetalled (i.e. unsurfaced) routes available to them. The Green Lane Association (2006) has claimed, in this respect, that 62% of unmetalled routes available to off-roaders are no longer available, and that there is pressure to close many of the remainder. What has compounded the inequity of this, in the eyes of off-roaders, is that all RUPPs should already have been reclassified by local highways authorities (and many of those that have been reclassified have

retained rights of vehicular use), meaning that those authorities which had failed to carry out their duties were suddenly relieved of them, and not in favour of off-roaders. In addition to the reclassification of routes under the NERC Act, many local authorities have also imposed – or are in the process of imposing – Traffic Regulation Orders (TROs) to further restrict off-road use due to issues such as poor maintenance of the routes.

The result of this 'double whammy' is that off-road drivers and riders, having been assured throughout the passage of the CROW Act that their interests would be safeguarded (Defra, 2001), have now been demonised to the extent that the majority of the routes formerly open to them are no longer legally available. This is particularly acute in the Lake District, where off-roaders feel that they have worked hard to co-operate with the authorities, only to find themselves isolated by interest groups such as the Friends of the Lake District (FLD) and the Ramblers' Association. In a programme for the BBC, Brian Jones of the FLD claimed that a single motorbike can 'destroy' the 'luxury' of a large number of people, and thus should be banned (http://www.bbc.co.uk/go/insideout/northwest/series4.html, accessed 26th Sept 2008). While accepting that motorised access can cause erosion, the argument is made by the off-roaders that walking similarly causes erosion (Helvellyn, in the Lake District, is widely cited in this respect), but this does not lead to a ban on access. For the Green Lane Association, the action taken against off-roaders is part of a broader attempt to define who can and cannot enjoy access land:

> Since the NERC bill was introduced in 2006 many of the lanes that were open to us are now closed. Slowly but surely the National Parks are closing some of the nicest lanes we have left. The powerful Ramblers Association lobby will not stop until all lanes are closed (what ever happened to live and let live?). We need to stand united with one voice, one forum, and one place to discuss our hobby and what we can do to stop the rot (http://glag.co.uk/information--downloads/green-lanes-access-group.html, accessed 26th Sept, 2008)

For others, such as those with disabilities who rely on motor vehicles to get into the countryside, the action against off-road vehicles is another sign of the reductionist exclusivity embraced by CROW and it successor legislation and statutory instruments (see Manuel Bernardez in a response to the BBC Inside Out programme on the Lake District, http://www.bbc.co.uk/go/insideout/northwest/series4.html, accessed 26th Sept 2008).

In many ways, the actions of central and local government, with respect to off-roaders under NERC and the highways legislation, has been some of the most blatant repositioning of good and deviant access that has been witnessed in England and Wales. While the paddlers may complain that they have been frozen out of the policy community, they were never really in it. In contrast, the off-roaders were, and they seem to have been quite unceremoniously dumped out of it, and for no apparent reason. The idea that such a ban will prevent off-road access – or the equivalent for paddling – is naïve; those who wish to continue will do so, safe in the knowledge that the chances of getting caught are relatively low. Rather, in both cases it is the loyal citizen – the person who abides by the rules - who is demonised. And demonization of off-roaders is a clear signal that, just as the once forbidden fruit of access on foot is made less forbidden, activities that were previously accepted have assumed the mantle of forbidden fruit.

Discussion and Conclusions

As we have argued, the rallying cry of 'freedom to roam' as the cornerstone of a new social contract covering leisure uses of the countryside is not in the least new. The National Parks and Access to the Countryside Act 1949 was duplicitously labelled thus (see Hill, 1980) in an attempt to convince ordinary people that the private uplands of England were no longer so

legally inhospitable. Forty years later, the Countryside and Rights of Way Act 2000 was heralded in a similar fashion, this time in recognition of the new democratising forces at the heart of 'New Labour'. But, while both Acts were passed by idealistic Labour regimes and both shared a similar strap-line, neither delivered – by design – what had rhetorically been claimed. The 1949 Act was certainly more blatant in the disparity between the claims made for it and the actuality, in that not even walkers achieved unfettered access. Yet, the more breathtaking sleight belongs to the CROW Act, with its central purpose apparently being to inscribe on rural land a new relationship between people and property in which even basic 'rights' have been reconstructed as responsibilities that few can aspire to fulfil.

Central to this deception has been the ownership and control of rights in property. Using revisionist homilies about guardianship and custodianship, rights owners have been able – successfully – to argue that none other than they are capable of managing a fragile resource of such importance to the state, even if there are public access 'rights' over it. And, of course, such homilies play well in post-war Britain, where everyone either is, or aspires to be, an owner of property rights. Thus, linking the rhetorical un-forbidding of access to highly prescribed responsibilities that are really only suited to those who appreciate what it is to own property, completes a circle of deceit in which the public is all too ready to believe that they have been rewarded for their good citizenship. The fact that few of them actively want what they have been given is of no matter (neither, it seems, is the fact that they have paid massively – through taxes - for what they have been 'given'); it is the sign that is important: the giving of access clearly means that landowners recognise the gains that they – the public – have made in achieving equal, property-owning, status. And the fact that many fellow citizens (paddlers, climbers, drivers, riders….) have lost out in this rather sordid deal seems equally to be of little concern.

Clarke and Critcher concluded *The Devil Makes Work* with an intellectual and political agenda. Of the former, an analysis of leisure, they argued, should be historically attentive and driven by connecting individual experience to public issues with a critical eye cast toward the complex relationship between the individual and social structure. Further, the analysis needs to be attentive to the ways in which capital disguises (class-based) forms of disadvantage, but subtle enough to capture individual and collective meanings attributed to leisure as an aspect of cultural power. We have shown these aspects within the consumption of outdoor space as a continued historic working of this dynamic. The outdoors may figure as a cornerstone of the national psyche, reaching new markets through the diversification of leisure pursuits and tastes for the extreme, but the essential and emancipatory promise of unfettered outdoor recreation remains utopian; caught within still-functioning power asymmetries that have done further damage to the interests of the weak and marginalised. In pursuit of leisure experience, especially where market solutions cannot be found, the tactics for consumption of the outdoors appear more feudal than post-capitalist: evade the surveillance of the dominant, take by stealth, or seek enjoyment from beneficent landowners when the moral curtain is lifted (Ravenscroft and Gilchrist, 2009). Not quite the festive, participatory and solidaristic leisure Clarke and Critcher longed for.

Where a political agenda is concerned, there is still a need for theorisations of leisure and critical policy interventions that engage with the classic concerns of socialism (the nexus of state, market and civil society in leisure provision; economic injustice; property relations; social disadvantage; and, the nature of work and family life), even if it remains more uncertain as to how such concerns can be delivered. This may not be a socialism of sophisticated (perhaps tangential) theoretical abstraction, or with a powerful labour

movement to pursue its agenda, but one that perhaps has succeeded in providing a series of intellectual and critical coordinates for an empirically-based cultural politics rooted in the realities of contemporary leisure. As this chapter has shown, and in the spirit of Clarke and Critcher, we must continue to be mindful of new legislation that on the surface extends consumer choice, promises freedom and suggest social progress. If countryside leisure in capitalist Britain was about exclusion from enjoying the fruits of access, leisure in post-capitalist Britain is precious little different, even if the rhetoric of CROW suggests otherwise.

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