

## **Right to Roam or Licence to Trespass?**

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The ‘right to roam’ open and uncultivated countryside is a campaign that is gaining pace and that seems set to become legislation sooner or later. This would be immoral folly. I have no objection to roaming, or rambling, as such—as long as it is not compulsory either to roam or to suffer roamers. As the health fascists are slightly less influential than the egalitarians, the arguments in favour of making it compulsory to suffer roamers are making greater headway.

### **A brief outline of the case for a ‘right to roam’**

Arguments for the ‘right to roam’ the countryside certainly have a great deal of common sense on their side. They are not thereby mistaken, of course, though that fact should alert the sceptical intellect. Let me first outline the general case for the ‘right to roam’, as put across by advocates in the mass media, the Ramblers’ Association, politicians, and one government department.

The great landowners of England did not create the land that they own. These landowners are often personally rich and merely being selfish killjoys by denying others access to such natural beauty (“Access to this part of our common heritage is something which should be enjoyed by the many, not the few”<sup>[1]</sup>). They have often inherited their land from ancestors who themselves had a dubious claim to it. If they bought land with this as a background, then that does not make much difference. In any case, “individuals may hold the legal title, but really the land is owned by us all.”<sup>[2]</sup> So we should be able to roam all over any uncultivated parts, even away from any traditional public footpaths. Ramblers should not have to pay the landowners and neither should the landowners normally be compensated for this in any way (such as by tax relief). There should also be facilities for the disabled as far as this is practical. The overall result will be that “access to the open countryside will make a significant contribution to improving public health and reducing social divisions ....”<sup>[3]</sup>

### **Why these arguments are wrong**

In all this there is little substantial argument, mainly mere presumption and whimsy. It is a combination of egalitarian bigotry and irrelevant pro-health waffle. But, if only for the enlightenment of the elected oligarchs who might impose this ‘right’ on us, let us now consider this ‘roamish’ propaganda in a little more detail.

There are oft-repeated arguments putting forward the health virtues of rambling. But all these are irrelevant unless there is no other way for people to be healthy and no way that land access could be voluntary. These two possibilities are patently not the case. So these health arguments can simply be put aside immediately. The great landowners of England often did and do, to varying extents, create what is worth enjoying about the land that they own. The land is not always in a natural state, but is often well developed and maintained. Without the owners there would often be no easy movement across the land or views to see. That the landowners are often personally rich cannot itself be a reason for imposing on them. Or if it is, then there needs to be some independent argument concerning this rather than just an appeal to envious Procrusteanism.

### **Ramblers should not expect their leisure activity to be free**

Neither is there any reason to think that the landowners exclude people from their land for no good reason. There is no way that having indefinite numbers of people walking across their land cannot impose costs on the owners in terms of physical damage and loss of privacy (owners regularly attest

to both). Perhaps it is not usually as bad from a privacy viewpoint as having people walk around your back garden without your permission, but the general principle is the same and the financial losses through damage can certainly be far higher.

Once this elementary point is grasped, one can see that if people are not prepared to pay the landowners the price that those owners would set for access to their land, then that is good evidence that the would-be roamers are simply imposing a cost in excess of any value that they will receive from their roaming. The only way to be fairly sure we are avoiding this is for the roamers freely to negotiate to buy or rent any right of way or general access that they choose. Instead, the roamers want to enjoy their pursuits at other people's imposed expense. This is likely to have a negative-sum result, in broadly utilitarian terms. Hence it is anti-social. Roamers think they can get away with this because the owners are generally an unpopular minority—the 'rich'—whose interests it is politically safe to discount. Like anti-fox hunting, the 'right to roam' has no serious case. The anti-fox hunters do not offer a more humane alternative to hunting the pest (shooting and poisoning it would clearly be worse), and they usually turn a blind eye to the suffering the fox itself inflicts on other small mammals. They also often perceive members of the hunt as being from despised 'privileged' (really, advantaged) backgrounds. The 'right to roam' similarly includes some combination of superficial sentiment about 'nature' and malicious political classism (which seems no more defensible than political racism or sexism—as opposed to private discrimination or freedom of association).

If an existing owner's claims to the land are in any way dubious, then that is a good reason to present a detailed case on an individual basis and to challenge the property claims in the courts. If successful, the property should then be returned to the legitimate owners. The existence of a few dubious property claims is not a good reason to introduce an indiscriminate licence to trespass.

### **What the 'roamers' are demanding is a licence to trespass, not a 'right to roam'**

Why do I call this 'licence'? Because there is a crucial distinction between liberty and licence. In the social sense, 'liberty' means, roughly, not being interfered with by others in your person and property. 'Licence' means, roughly, interfering with the person or property of others—such as walking across someone's land against his wishes. But how, it might be asked, can it be 'trespass' if the state allows it? For two reasons. First, assuming that the land is legitimately owned, the interference is objective whether it is allowed by the state or not. Secondly, state legislation allowing such roaming would only be lawful if the command (or 'big stick') theory of law were correct. And if that theory were correct then everything that the Nazis did, for instance, must be held to be perfectly lawful. But I don't see that the 'law' is simply whatever rules people with power can impose on others. Laws are primarily spontaneous social rules that have evolved for the common good; state legislation is conceptually dependent on, and corrupting of, these laws. However, these philosophical waters are too deep to enter into seriously here.

Reasonable libertarian rights of movement must require that there be some pathways through some properties where the owner would otherwise be being a mere obstacle to the free movement of other people. A very clear case of this would be if someone were to buy a thin strip of land with no other intention than to start charging a toll without adding any service. But such necessary rights of movement are few and far between in the cases under consideration. They are not what the 'roamers' are normally claiming.

### **If landowners charged for access, 'roamers' would also benefit**

Once we understand the great general social value of exclusive property rights, we should be very reluctant to ride roughshod over such rights in any particular case without very strong reason (David Hume's *Enquiry Concerning the Principles of Morals*, 1751, is a good exposition of the social utility of private property). We should be especially reluctant when there is a clearly efficient voluntary alternative, as there is here: simply allowing the landowners to charge for and regulate access to their property. The landowners are unlikely to be able to charge very much, given that the service is hardly essential. They are unlikely to refuse altogether provided that people are prepared to pay a price that covers their costs. The landowners might even improve the facilities (maps, guides, toilets, cafes, ...)

and advertise. Thus no one will be imposed on and both sides to the trade will gain (as is normal with all trade).

### **Contrary to activists' claims, the disabled are not a special case**

As they are often mentioned—such as in the DETR consultation paper *Access to the Open Countryside in England and Wales*—what about the disabled? Those who are truly disabled are rightly objects of our compassion and, sometimes, charity. But to allow them to impose claims against innocent people is to turn them into social parasites who will eventually risk becoming despised—if they are not already becoming so. There is usually no amount of money that can compensate people for severe disabilities. Does this mean that they must be given rights to ever more of what others possess? Taken to its extreme, there is no stopping point short of the enslavement of the able by the disabled (even this might not be enough compensation to achieve equality of welfare). And every step on the way towards this is both immoral and inefficient. With the ‘right to roam’, as elsewhere, the seriously disabled should only be helped charitably—where the market will not suffice—if we are to avoid this additional egalitarian disaster. That the recipients often resent charity is a social boon and a spur to maintain independence; the ‘welfare rights’ the state gives foster both arrogance and dependence.

### **The problem is not lack of access, but excess of publicly owned land**

In fact, we can go much further in our rejection of this bogus ‘right to roam’. Far from allowing a ‘right to roam’ on private properties, we should do the exact opposite of what these ‘rambler communists’ are advocating. We should positively add to private property wherever this is possible. All those state-owned properties that currently allow unrestricted access should be sold off so that these resources can also be properly husbanded: maintained and developed, instead of being stuck in a ‘tragedy of the commons’ (where all have only an incentive to overuse). What of all the existing heaths and parks that are neglectfully owned by the state, or local authorities, for the reckless use of all? These should be sold or given away forthwith to private individuals, charitable trusts, or businesses, so that they can be added to the social efficiency that only private property and the market can generate. But much so-called private property is, in any case, so hedged about with state regulations that the putative owners’ property claims are severely compromised. So these regulations must also be abolished.

It might be suggested that at least some public right to access, such as public footpaths, would seem to come traditionally and legitimately with the ownership of some land. However, that also seems to be an argument for some form of common ownership (though imposing worst on the landowner), which, similarly, cannot really improve liberty or welfare. It would be better if some people were allowed to own these rights privately, though that could always be through a charitable trust.

### **Activists fail to grasp basic economic concepts**

Like most political problems, the main source of error here is a lack of understanding of basic economics and property concepts. This lack, though, is often shared by professors of economics, who reject the implications of free-market economics just because they are ‘too extreme’—that is to say, counter to common sense. The solution will only be found in educating people about the economics and about the philosophical inadequacy of some common sense. Any discussion of ‘rights’ that does not have economic and philosophical clarification as a background, is likely to generate more heat than light.

Under no circumstances should the absurd ‘right to roam’ be incorporated into the legislation of this country. In reality, it is clearly a mere licence to trespass. Armed with the appropriate economic and philosophical arguments, we should eventually be able to offer an effective counter-attack with a movement for the ‘right to own’ privately every last one of the state-controlled commons, heaths, hills, mountains, downs, woodlands, rivers, beaches, and footpaths. As a result, there will be no imposition on legitimate landowners and more access to better resources for ramblers.

## Notes

[1] Dept of the Environment, Transport & the Regions (Welsh Office), *Access to the Open Countryside in England & Wales*, a consultation paper, p. 28.

[2] *Hansard*, 30 January 1998, col. 696.

[3] Dept of Environment, op. cit., p22.

## General References

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*Freedom to Roam Factsheet*, Ramblers Association, 1997.

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