

**British National Parks for North Americans: What We Can Learn From a More  
Crowded Nation Proud of Its Countryside  
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*England and Wales contain twelve national parks coverings more than 10 percent of their landscape. Although these parks are managed as national resources, the vast majority of the land within their borders is privately owned. Although they are managed to preserve their natural qualities, they contain farms, towns and roughly 300,000 people. They contain nothing North Americans would consider wilderness. Although recognized national assets, nationally funded, they are administered by boards made up largely of local representatives. Since passage of the National Parks and Access to Countryside Act of 1949, the British have managed to develop a national park system that defies almost every North American preconception of what a national is supposed to be, but still manages to do almost everything North Americans require national parks to do. The British National Park model is no substitute for the magnificent public ownership, wilderness-based national parks of North America. Study of the history and management of British National Parks, however, provides us with important lessons for preserving public values in human-influenced, mixed ownership landscapes.*

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## *I. Introduction*

It would be an understatement to say that North Americans rarely ponder the significance of the national parks of England and Wales (“British National Parks”). Indeed, it seems, only the most dedicated North American anglophiles are aware that England and Wales have national parks.<sup>2</sup> Few are aware that 12 national parks cover more than 10 percent of the landscape of England and Wales.<sup>3</sup> Fewer are aware that these British National Parks defy almost every North American presupposition about what a national park is supposed to *be*, but still, somehow, manage to do many things North Americans expect national parks to *do*.<sup>4</sup>

For a broad range of reasons, British National Parks are not what North Americans think of when they think of national parks.

First, the government of the United Kingdom does not own its national parks. Roughly 74 percent of land in the national parks of England and Wales is privately owned, and only about 2 percent is owned by park authorities.<sup>5</sup> The remaining one quarter is owned by various public and quasi-public entities like the Forestry Commission<sup>6</sup> (traditionally concern with timber supply and production) or National

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<sup>2</sup> Scotland has recently established two national parks, Cairngorms National Park (2003), <http://www.cairngorms.co.uk/>, and Loch Lomond and Trossachs National Park (2003), <http://www.lochlomond-trossachs.org/authority/default.asp>. Accordingly, there are now 14 national parks in the United Kingdom. However, because this article concerns itself primarily with the history of national parks in England and Wales, we will not discuss the new Scottish additions.

<sup>3</sup> <http://www.nationalparks.gov.uk/index/learningabout/factsandfigures.htm>.

<sup>4</sup> Alas, I have no polling data regarding North American knowledge of British National Parks. However, the extremely limited nature of the North American literature about British National Parks suggests the level of ignorance I assert. A westlaw search in the journals and law reviews (JLR) data base -- "national parks" /s (england or wales) and not "new south wales" -- will turn up a whopping 12 entries. The closest thing to an article actually addressing the subject is Joseph Sax's *Is Anyone Minding Stonehenge? The Origins of Cultural Property Protection in England*, 78 Cal. L. Rev. 1543 (1990) which is not about British National Parks at all. The only significant study published in the United States on the subject is Warren A. Johnson, *PUBLIC PARKS ON PRIVATE LAND IN ENGLAND AND WALES* (1971).

<sup>5</sup> [http://www.cnp.org.uk/facts\\_&\\_figures.htm](http://www.cnp.org.uk/facts_&_figures.htm)

<sup>6</sup> <http://www.forestry.gov.uk/forestry/hcou-4u4hzt>

Trust<sup>7</sup> (traditionally concerned with historic houses and gardens and industrial monuments) with missions and mandates occasionally in conflict with the mission of the relevant national park authority.

Second, the keepers of national parks in the United Kingdom manage their landscapes of “semi-natural” vegetation without any clear notion of what those landscapes might look like in the absence of human interference. Almost without exception the most recognizable features of the British national parks are artifacts of the relationship between generations of active human use, the land, its vegetation and animal life (domesticated and wild). The image of pre-settlement conditions, so often the guiding orientation for national park managers in North America,<sup>8</sup> is almost completely absent. Even landscapes archetypically associated with “wild England,” for example “moors,” are generally the result of historical deforestation and overgrazing.<sup>9</sup>

Third, British National Parks contain farms, estates, villages and towns in which roughly 300,000 people go about their modern lives.<sup>10</sup> While a significant portion of the populations within the national parks are employed in occupations directly or indirectly connected to the national park and its visitors, many are not.

At the same time, these un-national-park-like national parks manage to provide the two intangible resources – recreational opportunity and conservation of scenery, nature and history– enshrined in the United States National Park Service Organic Act of 1916.<sup>11</sup>

In 1980, Joseph Sax, in his seminal *Mountains Without Handrails* attempted to capture what American national parks were for. Distilled in his final “A Policy Statement: the Meaning of National Parks Today,” Sax said:

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<sup>7</sup> <http://www.nationaltrust.org.uk/main/w-trust/w-thecharity.htm>

<sup>8</sup> See infra notes 173-176 and accompanying text.

<sup>9</sup> Review of Ian G. Simmons, *THE MOORLANDS OF ENGLAND AND WALES: AN ENVIRONMENTAL HISTORY 8000 BC TO AD 2000* (2004), [http://www.historycooperative.org/journals/eh/9.3/br\\_9.html](http://www.historycooperative.org/journals/eh/9.3/br_9.html). See also William Hoskins, *THE MAKING OF THE ENGLISH LANDSCAPE* (1977).

<sup>10</sup> <http://www.nationalparks.gov.uk/index/learningabout/factsandfigures.htm#soc>

<sup>11</sup> The [National Park] service thus established shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified . . . which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations

16 U.S.C. 1. Like Americans, the British understand that these two goals: conservation and the promotion of enjoyment may be in conflict. J.F. Garner and B.L. Jones, *COUNTRYSIDE LAW* 91 (1987).

[National parks] are places where no one else prepares entertainment for the visitor, predetermines his responses, or tells him what to do. In a national park the visitor is on his own, setting an agenda for himself, discovering what is interesting, going at his own pace.

In the national parks the visitor learns that satisfaction is not correlated to the rate at which he expends resources, but that just the opposite is true. The parks promote intensive experience, rather than intensive use.

We look at nature with awe and wonderment . . . [M]arvels intrigue us, but nature is also a model for many things we seek in human communities. We value continuity, stability, and sustenance. And we see in nature attainment of these goals through adaptation, sustained productivity, diversity and evolutionary change.

[T]he national parks demonstrate the continuity of natural history measured over millennia. The less dramatic span of human settlements is an equally essential part of that history, and the national park system is a richly endowed showcase of our history as a people.<sup>12</sup>

British National Parks, without public ownership, without wilderness (or much notion of what wilderness might look like) and with extensive human settlements, manage to provide the things Sax required. Indeed, when one compares the memory of hikes in Dartmoor and hikes in Yellowstone, it is the Dartmoor hikes that seem to most easily conform to Sax's guidelines. The small size of British parks and the relatively hospitable climate of the British countryside encourage the visitor to "set an agenda for himself" or go "at his own pace" while the harsh weather and great distances of North America's national parks encourage many visitors to limit their experience to organized activities and motorized travel. The continuity and adaptability of nature is as clearly understood among Neolithic remains on windswept moorland than in a lodgepole pine forest on the edge of an ancient caldera. It seems British National Parks, with the remains of 5,000 years of human activity at every turn, serve as a decent "showcase of our history as a people."

It is only in the realm of eye-smacking experience, sweeping vistas, breathtaking waterfalls and craggy snow-capped mountains that the parks of North America cannot be matched in Britain. But as Stevens, the English Butler in Kazuo Ishiguro's *Remains of the Day* put it:

[I]t is the very *lack* of obvious drama or spectacle that sets the beauty of our land apart. What is pertinent is the calmness of that beauty, its sense of restraint. It is as though the land knows of its own beauty, of its own greatness, and feels no need to shout it. In comparison, the sorts of sights offered in such places as

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<sup>12</sup> Joseph Sax, MOUNTAINS WITHOUT HANDRAILS: REFLECTIONS ON THE NATIONAL PARKS 111 (1980).

Africa and America, though undoubtedly very exciting, would, I am sure, strike the objective viewer as inferior on account of their unseemly demonstrativeness.<sup>13</sup>

As Ann and Malcolm MacEwan, among the most influential writers about the British National Parks, have put it:

The national parks in England and Wales . . . are . . . landscapes that owe much of their character and interest both to the gifts of nature and to hundreds, even thousands, of years of human occupation. They are farmed and afforested, criss-crossed by roads and power lines, worked for their resources of water, rocks and minerals, and studded by hamlets, villages and even small towns. . . . What the British call ‘national parks’ are intended not so much to conserve uninhabited wilderness as to protect inhabited landscapes where the land should be managed for a multiplicity of purposes – conserving their character, promoting their enjoyment and supporting human life in many diverse ways.<sup>14</sup>

The national parks of Britain and North America are like analogous evolutionary developments -- like the wings of bats and birds - structured for the same purpose in very different ways. Yet both evolutionary paths seem to have lead to viable (if imperfect) results. As such, comparing them offers an extraordinary opportunity to broaden our understanding of what is essential in the national park idea and what is not.

This study is made more complicated and, perhaps, more interesting by the close cultural ties between the founders and users of the two park systems. John Muir, one of the founders of American conservation and supporters of Yosemite National Park in California, was born in Dunbar Scotland and immigrated to the United States at age 11. John Muir’s Library at the University of the Pacific includes his copy of *The Complete Poetical Works of William Wordsworth*.<sup>15</sup> Wordsworth is generally credited as one of the founders of the British National Park tradition.<sup>16</sup>

Certainly, the comparative study of national park institutions is interesting in itself, but do the British National Parks have anything practical to teach us about preserving landscapes in North America? Consider: The United Kingdom, including England, Wales, Scotland and Northern Ireland has a total land area of about 93,000 square miles. It is just under 600 miles from the south coast of England to the extreme north of the Scottish mainland and roughly 300 miles across the widest part of England.<sup>17</sup>

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<sup>13</sup> Kazuo Ishiguro, *THE REMAINS OF THE DAY* 28-29 (1988)

<sup>14</sup> Ann and Malcolm MacEwan, *GREENPRINTS FOR THE COUNTRYSIDE? THE STORY OF BRITAIN’S NATIONAL PARKS* 4-5 (1987)[hereinafter *GREENPRINTS*].

<sup>15</sup> [http://library.uop.edu/ha/Muir/documents/Library\\_Author.doc](http://library.uop.edu/ha/Muir/documents/Library_Author.doc)

<sup>16</sup> Muir apparently first encountered Wordsworth at the University of Wisconsin during his brief stay there. [http://www.sierraclub.org/john\\_muir\\_exhibit/](http://www.sierraclub.org/john_muir_exhibit/)

<sup>17</sup> <http://www.number10.gov.uk/output/Page843.asp>

In comparison, the United States contains more than 3,755,000 square miles (more than 40 times the size of the United Kingdom). The State of Colorado, in the United States, has a surface area of 103,730 square miles, *roughly ten percent larger than the entire United Kingdom*. As of 2001, the United Kingdom contained 58, 789,194 people. As of 2000, Colorado contained 4,301,261.

When I first began research for this article, I invested in a series of \$4.00 United States Bureau of Land Management maps of Colorado, showing surface ownership and management responsibility. I handed them out to a number of British National Park managers in an attempt to give them a sense of his orientation. Once they grasped the scale of the maps, they began to wonder why anyone in such a sparsely populated place would be concerned about conservation. In contrast, Coloradans, with no experience of the United Kingdom, when presented with these land area and population statistics, assume that the United Kingdom must be paved and built on from the Isle of Wight to the Scottish Highlands.

In fact, despite a population density more than 9 times that of the United States and 10 times that of Colorado (one of the American West's more populous states); Britons have preserved a significant quantity and an extraordinary variety of their natural landscapes.<sup>18</sup> They have achieved this without many of the tools Americans consider essential for landscape preservation.

No country in the world, except for city states like Hong Kong or Singapore, is more urban than England, and none has been urban for longer. Ninety percent of Britons live on ten percent of their land.<sup>19</sup> At the same time, there is no nation in the world whose identity is more bound up with an image of the countryside than the English. England was the first nation to experience industrialization and mass migration from rural to urban areas and thus was also the first to develop an intense nostalgia for the countryside.<sup>20</sup> For at least six generations the majority of Britain's population has lived in towns and cities.<sup>21</sup> The countryside ideal emerged and evolved along with industrial society, continuously fed and reinforced by a stream of visual imagery, words and music.<sup>22</sup> Thus, as Kenneth Clarke noted in 1949: 'almost every Englishman if asked what he meant by

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<sup>18</sup> These landscapes are protected through a bewildering variety of administrative designations including Areas of Outstanding Natural Beauty (ANOB), National Nature Preserves (NNP) and Sites of Significant Scientific Interest (SSSI). We will limit our discussion to the designated national parks.

<sup>19</sup> *Finding out who really owns Britain isn't easy*, The Sunday Times Review, January 8, 2006.

<sup>20</sup> Cara Aitchison, Nicola Macleod, and Stephen Shaw, LEISURE AND TOURISM LANDSCAPES 50 (2000) [hereinafter LEISURE AND TOURISM LANDSCAPES].

<sup>21</sup> LEISURE AND TOURISM LANDSCAPES at 50

<sup>22</sup> *Id.* at 50-65. See Michael Bunce, THE COUNTRYSIDE IDEAL (1994)

‘beauty’, would begin to describe a landscape – perhaps a lake and a mountain, perhaps a cottage garden...’<sup>23</sup>

As the population of the United States and Canada continue to increase and urbanize, we have things to learn from the British. North Americans possessed the incalculable treasure of a vast publicly owned and publicly managed realm. Don’t get me wrong. I would not change that fact for anything. Our North American public domain, whether in federal, state or provincial ownership, gives us options for preservation and management that are simply not available to Europeans. The options are no limited to the public domain itself, but include the larger landscapes of which it is part. The cities of the west, from Tucson to Calgary would not be the same without nearby publicly owned wild land. From my office window in Denver, I can see snow-covered flanks, grey shoulders and summit of Mount Evans in the Congressionally designated Mt. Evans Wilderness – “where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain.”<sup>24</sup> This experience is commonplace in the American west, residents of Seattle can peer out at Mt. Baker, denizens of Albuquerque see the Sandia peaks and citizens of Salt Lake City see Twin Peaks and Lone Peak, all in publicly owned, Congressionally designated wilderness.

But if our public domain is a treasure, it is also a crutch. To date, its existence has prevented us from developing a coherent system for preserving public values (e.g., biodiversity, water purity, aesthetic appeal, historical monuments) when they appear on private land and mixed public and private lands that have been transformed by human use. Our most memorable, most significant national landscapes – San Francisco Bay, Chesapeake Bay, the Everglades, the Great Lakes, and the Louisiana Bayous -- lack the national supported preservation structures we all know they deserve. Through a variety of channels, North Americans are beginning to explore options for protecting significant mixed landscapes.<sup>25</sup> The British have been doing this, on landscapes much more crowded than ours, for more than half a century. Both their successes and their failures are instructive. This brief article will not exhaust so rich a subject. Rather we hope it will act as a resource and starting point for future scholars.

One March not so long ago, I drove from my home in Denver, Colorado to the Platte River country of central Nebraska to watch the migration of thousands of sandhill cranes. The experience was wonderful, but met none of our traditional North American preservation criteria. While sandhill cranes have been migrating through Nebraska for thousands of years, the Platte River in Nebraska now looks nothing like it did when first encountered by European-Americans one hundred and fifty years ago.<sup>26</sup> The magnificent

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<sup>23</sup> Kenneth Clark, *LANDSCAPE INTO ART* 231 (1991)(quoted in *LEISURE AND TOURISM LANDSCAPES* at 73); see also Stuart Laing, *Images of the Rural in Popular Culture* in *THE ENGLISH RURAL COMMUNITY: IMAGE AND ANALYSIS* (ed. Brian Short 1992)

<sup>24</sup> 16 U.S.C. 1131(c).

<sup>25</sup> See Bruce Babbitt, *CITIES IN THE WILDERNESS: A NEW VISION OF LAND USE IN AMERICA* (2005).

<sup>26</sup> <http://www.ngpc.state.ne.us/wildlife/guides/migration/sandhill.asp>

birds now spend much of their time feeding in the stubble of nearby corn and alfalfa fields.<sup>27</sup> The river landscape must be artificially cleared to make it suitable crane habitat.<sup>28</sup> Still what is there now is worth protecting. In North America we have no coherent system for protecting natural values on lands privately owned and transformed beyond recognition by human activities. The British may be of some help.

## *II. The Historical Development of British National Parks*

### A. Cultural Roots

The British National Parks developed later than national parks in the United States. The American idea is generally associated with the legislation designating Yellowstone National Park in 1872, while the British idea is generally associated with passage of the National Parks and Access to Countryside Act of 1949, 77 years later. In fact, the development of national parks, both in the United States and the United Kingdom was a more incremental process.

Like their North American counterparts, the British National Parks grew out of an alliance between shifting interest groups. It is possible to sort roughly the proponents of the British National Parks into three thematic groups espousing different, although at times overlapping, conservation ethics. In the traditional British analysis, more than in its American counterpart, these groups are associated with particular social classes. Simplistically, in Britain, there were : (1) middle class groups concerned with preservation of the aesthetics of the countryside<sup>29</sup> (“The Romantics”), (2) groups of the educated middle class who pushed the cultural, scientific, and ecological values of countryside conservation<sup>30</sup> (“The Naturalists”) and (3) groups, primarily working class, and later the “socialist middle class”, who pressed for recreational access<sup>31</sup> (“The Ramblers”).

#### 1. The Romantics

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<sup>27</sup> <http://www.ngpc.state.ne.us/wildlife/guides/migration/sandhill.asp>

<sup>28</sup> <http://www.rowesanctuary.org/conservation.htm>

<sup>29</sup> E.g., The National Trust for Places of Historic Interest and Natural Beauty (estab. 1895). The founding members of this group included some eminent Victorians, including John Ruskin, William Morris and Thomas Huxley. Another group included in the “aesthetic camp” was The Royal Society for the Protection of Birds (established in 1889), although, as will happen in rough classifications, this group broke class lines and also included a substantial working class constituency. [http://www.nationaltrust.org.uk/main/w-trust/w-thecharity/w-history\\_trust.htm](http://www.nationaltrust.org.uk/main/w-trust/w-thecharity/w-history_trust.htm)

<sup>30</sup> E.g., The Society for the Promotion of Nature Reserves (estab. 1912)(now the Royal Society for Wildlife Trusts, <http://www.wildlifetrusts.org/index.php?section=about:history>) and The British Ecological Society (estab. 1913)( <http://www.britishecologicalsociety.org/articles/about/thebes/>).

<sup>31</sup> E.g., The Commons, Open Spaces and Footpaths Preservation Society (estab. 1865) and The Rambler’s Association (estab. 1935); <http://www.ramblers.org.uk/info/ramblers/history.html>.



The conservation values that underlay this branch of support for the national parks primarily rested on two concepts: that humans have a moral obligation to the countryside environment,<sup>32</sup> and that preservation of countryside landscape should be undertaken because of the landscape's aesthetic value, and its potential "to uplift the human spirit."<sup>33</sup>

This group traces its roots to one of the first prominent proponents of the notion of a national park—the poet William Wordsworth. In 1810, in Wordsworth's first version of his famous *Guide to the Lakes*, he described the Lake District as a "sort of national property in which every man has a right and interest who has an eye to perceive and a heart to enjoy"<sup>34</sup>. Scholars of the British National Parks repeatedly quote Wordsworth and then note that, in the above quote and others like it, he does not espouse a wholly inclusive view: only those with "heart to enjoy" should be given this "right."

Through the subsequent four versions of the *Guide*, published over a twenty-five year period, Wordsworth took an increasingly dim view of his fellow English travelers<sup>35</sup>, excoriating their "rash assault"<sup>36</sup> upon the Lake District, and speaking out against the construction of a branch line of a railway which would bring "with its scarifications, its intersections, its noisy machinery, its smoke, ... swarms of pleasure-hunters, most of them

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<sup>32</sup> John Blunden and Nigel Curry, *A PEOPLE'S CHARTER?: FORTY YEARS OF THE NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT 6-7 (1989)* [hereinafter *A PEOPLE'S CHARTER*].

<sup>33</sup> *LEISURE AND TOURISM LANDSCAPES* at 58.

<sup>34</sup> Originally an introduction and accompaniment to the engravings in Joseph Wilkinson's *SELECT VIEWS IN CUMBERLAND, WESTMORELAND, AND LANCASHIRE* (1810), Wordsworth's *Guide* reappeared in expanded texts in 1820, 1822, 1823, and 1835; the full title in 1835 is *A GUIDE THROUGH THE DISTRICT OF THE LAKES IN THE NORTH OF ENGLAND, WITH A DESCRIPTION OF THE SCENERY, &C. FOR THE USE OF TOURISTS AND RESIDENTS*.

<sup>35</sup> As perhaps we may all empathize -- At the beginning of *The Brothers*, a serious poem included in his second edition of *Lyrical Ballads* published in 1800, Wordsworth opens with one of his characters exclaiming: "These Tourists, heaven preserve us"

<sup>36</sup> Wordsworth, *The Prose Works of William Wordsworth* vol. III, 353 (ed. W.J.B. Owen & Jane Worthington Smyser, Oxford: Clarendon, 1974). This is from an excerpt of a letter-to-the-editor written by Wordsworth and published in *The Morning Post* in 1844. Wordsworth subsequently reprinted this letter and a few others on the same subject together as a pamphlet entitled *Kendal and Windermere Railway* published in 1845. The letters were also included in the last edition of *The Guide to the Lakes* as an appendix. These letters develop and give polemical direction to many of the arguments in the main body of the *Guide*. The first letter protest is a sonnet which has been widely quoted

Is there no nook of English ground secure  
From rash assault? Schemes of retirement sown  
In youth, and 'mid the busy world kept pure  
As when their earliest flowers of hope were blown,  
Must perish; - how can they this blight endure?

*Id.* at 345. This might serve as the anthem for all those whose love of a particular place is threatened by development.

thinking that they do not fly fast enough through the country which they have come to see.”<sup>37</sup> Wordsworth was one of the first to articulate this group’s common attitude towards access: Only the “spiritually worthy” should be allowed. Popular pleasures and the romantic gaze were perceived to be in conflict--a class conflict and one necessarily internal to modern tourism itself—and ultimately to be resolved in favor of limitation of mass access.<sup>38</sup>

Along with Wordsworth and other Romantic poets, the strong visual element of the Romantic Movement played a significant formative role in this group’s conservation values. The eighteenth and nineteenth century vogue for landscape gardening, through which "landscape" gardens (what we often call “English gardens, replaced formal arrays of trees, shrubs, paths, and ornaments in geometrical patterns. Walls and fences were hidden in ditches so as not to obstruct the long view; “old” ruins were created – Disney like -- on the spot, and servants were engaged to pose as farmers, shepherds, and hermits.<sup>39</sup>

The philosophical underpinnings of Romanticism were soon engulfed in the wholesale acceptance of visual Romantic values by the middle-class Victorian consumer of landscape paintings, engravings, watercolors, poetry and tourism, and the fashion for the appreciation and development of ‘taste’ in Romantic scenery became well established.”<sup>40</sup>

The Romantic ideal influenced popular landscape taste, which played a role in the selection of the type of lands chosen to be protected in the parks.

Nothing here should seem unfamiliar to North Americans. Ralph Waldo Emerson and Henry David Thoreau both shared Wordsworth passion for the countryside and distain for less observant countrymen and the railroads that carried them. In 1786, Thomas Jefferson and John Adams, during an awkward diplomatic mission to the

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<sup>37</sup> Wordsworth, *THE PROSE WORKS OF WILLIAM WORDSWORTH VOL. III*, 353 (ed. W.J.B. Owen & Jane Worthington Smyser, Oxford: Clarendon, 1974). on Gutenberg: see [http://www.gutenberg.org/files/16550/16550-h/vol\\_i.htm](http://www.gutenberg.org/files/16550/16550-h/vol_i.htm) However, as Professor John Frow has rightly noted:

The irony is, however, that it is Wordsworth himself who has issued the invitation, who has already educated the vulgar crowd to the beauties of the Lake District, and whose poems have acted as a sort of tourist brochure. This becomes a little clearer in the second letter, where he writes of various manufacturers in Lancashire and Yorkshire who plan to send their workers for holidays to the banks of Windermere. The conception of nature as spiritually restorative that underlies such an initiative is in no small measure derived from Wordsworth's own writings.

John Frow, *Tourism and the Semiotics of Nostalgia* from *TIME AND COMMODITY CULTURE: ESSAYS ON CULTURAL THEORY AND POSTMODERNITY* by John Frow - Social Science - 1998

<sup>38</sup> *Id.*

<sup>39</sup> Simon Schama, *LANDSCAPE AND MEMORY*, 538-45 (1995)

<sup>40</sup> *LEISURE AND TOURISM LANDSCAPES* at 75

recently defeated Britain, took time for an extensive garden tour following Thomas Whately's guide to English gardens, *Observations on Modern Gardening*.<sup>41</sup> The work of American Hudson River School painters like Thomas Birch and Asher B. Durand show a striking resemblance to the romantic landscapes of Britons like John Constable and William Turner. The exclusionist strain in the Romantic credo finds expression in many American writings, but most clearly and boldly in the work of Edward Abbey, particularly in his description of "industrial tourists" in his famous polemic on tourism in the National Parks<sup>42</sup>

## 2. The Naturalists

Starting with Charles Darwin's publication of *On the Origin of Species* in 1859, a new branch of conservationism began to develop, in tandem with newly created science of natural history.<sup>43</sup> "The Naturalists" gained prominence through such luminaries as Thomas Huxley ("Darwin's Bulldog"), his grandson Julian Huxley (who helped develop the science of social ecology and will appear again later in our story),<sup>44</sup> Arthur Tansley (a distinguished plant ecologist) and through the founding of organizations such as British Ecological Society, and the Society for the Preservation of Nature Reserves.<sup>45</sup> As interest in ecology grew, naturalists began to extend their concern for wildlife to systems, rather than just species. This led to the realization that habitats were under threat from human pressures including farming and development.<sup>46</sup> This, in turn, led to the first set of arguments justifying some kind of "nature reserve" or engaging in habitat protection.<sup>47</sup>

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<sup>41</sup> David McCullough, JOHN ADAMS 340 (2001).

<sup>42</sup> Edward Abbey, Polemic: Industrial Tourist and the National Parks, in Edward Abbey, THE SERPENTS OF PARADISE 110 (ed. John Macrae 1995). The modern version of industrial tourism emerges in the statement of the road crew surveying boss Abbey encounters in Arches National Park half a century later:

"Look", the [surveying] party chief explained, you need this road. He was a pleasant-mannered, soft-spoken civil engineer with an unquestioning dedication to his work. A very dangerous man. . . . "when this road is built you'll get ten, twenty, thirty times as many tourists in here as you get now." His men nodded in solemn agreement, and he stared at me intently, waiting to see what possible answer I could have to that.

"Have some more water," I said. I had an answer all right but I was saving it for later. I knew I was dealing with a madman.

*Id.* at 114.

<sup>43</sup> A PEOPLE'S CHARTER at 16.

<sup>44</sup> *Infra* text accompanying notes 93-108.

<sup>45</sup> A PEOPLE'S CHARTER at 16.

<sup>46</sup> A PEOPLE'S CHARTER at 16.

<sup>47</sup> A PEOPLE'S CHARTER at 16.

Although the Romantics and Naturalists did share many values, including favoring restriction of mass access (although for different reasons: not in the interest of preserving Romantic Solitude, but in the interest of habitat conservation), starting after World War I the relationship between the major naturalist societies and the National Trust deteriorated.<sup>48</sup> Thus, a peculiar split took form between groups that were concerned about the preservation of the countryside for amenity, and those interested in its preservation in the name of human knowledge. As we shall see, this split would manifest itself dramatically in the formulation of the 1949 National Parks and Access to Countryside Act.<sup>49</sup>

Like the Romantics, the Naturalists have their clear American counterparts. George Perkins Marsh's *Man and Nature*<sup>50</sup> published in 1864, stands with Darwin's *On the Origin of Species* among the truly foundational works of the naturalist tradition. Aldo Leopold work, particularly *A Sand County Almanac*, both shaped the naturalist tradition and incorporated much of the Romantic sensibility. The tension between Romantics and Naturalists has remained largely inchoate in the United States. It does, however, flare up from time to time, as it did after the Yellowstone National Park fires of 1988, which provided Naturalists with an unparalleled laboratory to study the regeneration of an ecosystem and Romantics with a scorched landscape.<sup>51</sup>

### 3. The Ramblers

The final major players in the movement leading up to the passage of the 1949 National Parks Act were groups, drawn primarily from the northern working class, motivated by a desire to gain access to the countryside for recreational purposes, often walking. By 1931 "rambling" had become a mass sport. Some have estimated as many as half a million walkers.<sup>52</sup> Nowhere was rambling more popular than in the Derbyshire Peaks district, an area in which some of England most spectacular scenery persists in a demographic island flanked by some of the country's largest and most industrial cities, including Manchester and Sheffield. Like the Romantics, Ramblers wanted conservation of a beautiful countryside. However, they worked for access for everyone and were most concerned with gaining the "right to roam" over land near major population centers, rather than "pursuing the sublime" so dear to the Romantics.<sup>53</sup>

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<sup>48</sup> A PEOPLE'S CHARTER at 16

<sup>49</sup> See discussion *infra*.

<sup>50</sup> Ann and Malcolm MacEwan trace the concept of national park to this American visionary. Ann and Malcolm MacEwan, NATIONAL PARKS: CONSERVATION OR COSMETICS 1 (1977).

<sup>51</sup> Paul Schullery, SEARCHING FOR YELLOWSTONE: ECOLOGY AND WONDER IN THE LAST WILDERNESS 237-240 (2004).

<sup>52</sup> A PEOPLE'S CHARTER at 30.

<sup>53</sup> *The Economist, Hand and Hand Across the Land*: Makes the argument that there was a "socialist aesthetic":

Even today, hereditary aristocrats and “traditional landed gentry” (the sort of people most North Americans only encounter in books) own roughly one-third of Britain’s land.<sup>54</sup> This is an almost unimaginable state of affairs for North Americans. It is as if the Forbes Family owned the National Forests and the Rockefeller family owned the National Parks.

No surprisingly, British groups agitating for the ability to walk over and enjoy privately owned land have a long history. The formation of footpath societies in opposition to large landowners blocking ancient rights-of-way formed as early as 1824.<sup>55</sup> The social and geographic pressures that led to the notion of a “right to roam”, dates back even further and is rooted in the British history of enclosure beginning in the 1500s.

Through the middle ages are into the early modern era, when almost all Britons lived in agricultural villages, the livelihood of many people depended on a complex system of rights and access and use to land at least nominally controlled by the small landowning class. Britain, with rights of land ownership that evolved from the original division of the landscape into feudal territories, has no extensive public domain. As international agricultural trade began to replace subsistence agriculture, large landowners gradually replaced the system of communal exploitation and regulation of farmland, pastures, meadows and wastes (uncultivated land) with a system of unitary land

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The right to roam may not quite be up there with the nationalisation of the railways or nuclear disarmament, but it has always occupied a special place in the theology of British socialism. The battle for access to the countryside has always been at the heart of the class warfare on which the labour movement was founded. Socialism always overlapped easily with those organisations founded to lead the agitation for access to land, including the Ramblers' and Youth Hostels Associations.

The government has pushed all the right buttons with the type of landscape that they intend to designate as “open countryside”, which includes 13% of north-west England. Much of the area is made up of mountains, heaths, downs and moors. This was the landscape of the Fabian reading parties, communist summer camps and famous socialist ramblers such as Hugh Dalton, who exhausted many a young political acolyte with his monumental hikes up and down the Pennine Way. These socialists wanted to exchange the crowded, regimented capitalism of the industrial cities for the freedom of the hills. And the bleaker the landscape, the better.

Socialists eschewed the comfortable, picture-postcard Englishness of Kent or the Cotswolds. To the historian Raphael Samuel, brought up as a communist by his radical, outdoors-loving mum, those landscapes were “prissy”. Only in the wilderness of the moors, or on the fells of the Lake District, could one perceive “nature in the grand.”

*The Economist*, Hand in Hand Across the Land: At Last an Issue That Unites Old and New Labor, Nov. 15th 2001.

<sup>54</sup> *Finding out who really owns Britain isn't easy*, The Sunday Times Review, January 8, 2006.

<sup>55</sup> The Association for the Protection of Ancient Footpaths in the Vicinity of York founded as a direct result of the threat to footpaths. Timeline: A Walking History. <http://www.ramblers.org.uk/news/media/ramblers-history.html>.

management. This resulted in one of the greatest changes in the landscape of rural England. Thomas More described the process vividly as early as 1516 in Book I of *Utopia*:

The increase of pasture . . . by which your sheep, which are naturally mild, and easily kept in order, may be said now to devour men, and unpeople, not only villages, but towns; for wherever it is found that the sheep of any soil yield a softer and richer wool than ordinary, there the nobility and gentry, and even those holy men the abbots, not contented with the old rents which their farms yielded, nor thinking it enough that they, living at their ease, do no good to the public, resolve to do it hurt instead of good. They stop the course of agriculture, destroying houses and towns, reserving only the churches, and enclose grounds that they may lodge their sheep in them. As if forests and parks had swallowed up too little of the land, those worthy countrymen turn the best inhabited places in solitudes, for when an insatiable wretch, who is a plague to his country, resolves to enclose many thousand acres of ground, the owners as well as tenants are turned out of their possessions, by tricks, or by main force, or being wearied out with ill-usage, they are forced to sell them.<sup>56</sup>

Enclosure involved both a legal change and a physical change.<sup>57</sup> The communal element was abolished and individual landowners and tenants took over separate private control of defined areas of land. The community no longer had rights over most of the land and the poorer members of village society were frequently left without the means to make a living. Physically, much of the great open fields, meadows and pastures, and the expanses of fen, moor, common and heath were divided up into hedged, fenced or walled fields, resulting in a concomitant loss of access and use. Changes in hunting fashions also served to reduce access, as “wastelands” were enclosed, specifically for hunting purposes.<sup>58</sup>

Against the backdrop of the enclosures, England also began industrializing. In 1700, 80% of the population of England earned its income from the land. A century later, that figure had dropped to 40%.<sup>59</sup> The mass migration to the cities led to further consolidation of land holding. Graham Peace in his influential book, *The Great Robbery*, published in 1933, determined that some 40,000 persons in Great Britain (one tenth of 1 per cent) owned nearly three-quarters of the country. Another two percent of the people held one-quarter of the land. The rest of the people (97 percent, some 44 million) owned no land whatever. This substantial inequity between the landed rich and landless urban

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<sup>56</sup> Thomas More, *UTOPIA* Book I (1516).

<sup>57</sup> William Hoskins, *THE MAKING OF THE ENGLISH LANDSCAPE 177-210* (1977).

<sup>58</sup> *A PEOPLE’S CHARTER* at 23.

<sup>59</sup> R. Lawton, *Population and Society 1730-1914* in R. A. Dodgshon and R.A. Butlin, *AN HISTORICAL GEOGRAPHY OF ENGLAND AND WALES* (1990), see also *The Economist*, Hand in Hand Across the Land: At Last an Issue That Unites Old and New Labor, Nov. 15th 2001.

populations helped fuel class conflict. By the early 1930s, increasing public interest in the countryside, coupled with the growing and newly mobile urban population, generated increasing friction between those seeking access to the countryside and landowners.

“Rambling” thus became political cause, a way of expressing displeasure with an inequitable system of land ownership.<sup>60</sup> Its battles were fought, on occasion, by direct action—most famously in the mass trespass of the moorland at Kinder Scout in the Derbyshire Peak District. There about 800 people walked on to moorland owned by the Duke of Devonshire in protest of the lack of public access. “At the time it was estimated that over one half the population of England lived within a 50 mile radius of the area [including Kinder Scout]. There were about 62,000 hectares of open moorland, less than 1 percent of which open to access.”<sup>61</sup>

The Ramblers, at least on the national level, have no obvious counterpart in North America. Land ownership plays a far less important part in the stratification of American society than it does in British society. The ubiquity of large government land holdings open to public access, the absence of the history of enclosure and the lack of proximity of industrial cities to magnificent landscapes prevented any similar national movement from developing in the United States. Historically, few Americans with a desire to “ramble” had no place to do it. The extreme concentration of land ownership in a few hands allowed trespassing to become a more political act in the United Kingdom. In the United States, the act of trespass (against anyone except the government) generally lacks political significance.

The United States, however, is not without its local issues that bare striking similarity to the ramblers. Most obvious is the century-long struggle for access and use of both government land and private land carried on by Hispanic residents of the southwest.<sup>62</sup>

## B. Wartime Reports and Post-War Acts

Gradually, cultural and political forces in Britain coalesced around the idea of establishing “national parks.” Post First World War housing construction and reconstruction took place while agricultural prices in Europe and around the world dropped. This led to new building on traditionally rural lands. In 1926, a new private organization, the Council for the Preservation of Rural England (now the Campaign to Protect Rural England<sup>63</sup>) brought together many of the groups seeking protection of the

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<sup>60</sup> For a discussion of the roots of the Ramblers’ cause, see Marion Shoard, *Robbers and Revolutionaries: What the Battle for Access is Really All About* in *RIGHTS OF WAY, POLICY CULTURE AND MANAGEMENT* (ed. Charles Watkins 1996).

<sup>61</sup> A PEOPLE’S CHARTER at 32.

<sup>62</sup> See *Lobato v. Taylor*, 71 P.3d 938 (Colo. 2002); Dick Johnston, *THE TAYLOR RANCH WAR: PROPERTY RIGHTS DIE* (2006).

<sup>63</sup> <http://www.cpre.org.uk/>

countryside.<sup>64</sup> In 1928, in his *England and the Octopus*, Welsh architect Clough Williams-Ellis attacked builders and planners for despoiling the countryside. Gradually efforts evolved from emphasizing outright acquisition of significant landscape (the concept underlying the National Trust, established in 1895<sup>65</sup>) toward designation of privately owned landscapes worthy of preservation.<sup>66</sup> Of course, those working for preservation were aware of national parks designated in North America and Africa. At some point, the phrase “national parks” began to be used in Britain.

In July 1929, the Council for the Preservation of Rural England sent the Prime Minister a memorandum urging study of the national parks issue.<sup>67</sup> In October of that year, the government appointed “The Addison Committee” chaired by a Member of Parliament, Christopher Addison (later Lord Addison). The committee’s terms of reference were:

To consider and report if it is desirable and feasible to establish one or more national parks in Great Britain with a view to the preservation of the natural characteristics, including flora and fauna, and to the improvement of recreational facilities for the people: and to advise generally, and in particular as to the areas, if any, that are most suitable for the purpose.<sup>68</sup>

The term “national park” now had official status. An with it, some North American notions had been imported. However, the lack of the word “acquisition” or any of its synonyms in the committee’s charge suggests a tacit understanding that national parks would not necessarily be nationally owned.

In its 1931 report, the Addison Committee observed that “Great Britain's smallness and density of population militate against the establishment of National Parks on the scale and pattern of American and continental models”<sup>69</sup> and suggested instead that land use planning be used “to achieve the objects of National Parks which are set out in the terms of reference.”<sup>70</sup>

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<sup>64</sup> GREENPRINTS at 5.

<sup>65</sup> [http://www.nationaltrust.org.uk/main/w-trust/w-thecharity/w-history\\_trust.htm](http://www.nationaltrust.org.uk/main/w-trust/w-thecharity/w-history_trust.htm)

<sup>66</sup> A PEOPLES’ CHARTER? at 17-18.

<sup>67</sup> Report of the National Parks Committee, 1947 Cmd.7121, at 6 [hereinafter HOBHOUSE REPORT].

<sup>68</sup> Hobhouse Report at 6; A PEOPLE’S CHARTER at 38.

<sup>69</sup> REPORT OF THE NATIONAL PARKS COMMITTEE, 1931, Cmd.3851  
<http://www.bopcris.ac.uk/bopall/ref8654.html>

<sup>70</sup> *Id.*



The Addison Committee's terms of reference reflect the tension between conservation and recreation which had been embodied in the United States National Park Service Organic Act 13 years before. However, the Addison Committee's suggestion was not to bundle these two sorts of purposes as Americans had, but rather to establish two kinds of parks: "national reserves" devoted primarily to preservation and "regional reserves" located near areas of population and devoted primarily to public access.<sup>71</sup> The Addison Committee also recommended establishment of a National Park Authority. In 1936, in lieu of any other action, Parliament formed the Standing Committee on National Parks. The committee included able representatives from the various constituencies supporting landscape preservation.<sup>72</sup>

The relationship between the Second World War and the establishment of the British National Parks is wonderful and mysterious to North Americans. It seems odd to us that a war which battered and impoverished Britain should also have transformed the movement for national parks from a largely private political campaign into government policy and given it urgency through the 1940s and early 1950s that it lacked in the 1920s and 1930s. As Anne and Malcolm MacEwen put it:

World War II was the decisive factor that made the politically unattainable politically possible. The demand for a 'better Britain' to replace the Britain of dole queues, means-tests and massive unemployment, exerted pressure on the coalition wartime government to demonstrate it contemplated some decisive changes when the war was over.<sup>73</sup>

As Lord Portal, Minister of Works and Planning, put it in the House of Lords in April 1942 (as Germany bombed England's cathedral cities and the first American troops began arriving in the United Kingdom): "It is clear that no national planning of the use of land would satisfy the country if it did not provide for the preservation of extensive areas of great natural beauty."<sup>74</sup>

The impulse that inspired what would eventually become the British National Parks was broad in its scope. Wartime sentiment and study would lead to a suite of legislation that transformed the government's role in the British Countryside. This broad push for change in a short historical period is one of the things that distinguishes the British experience from the American. Between 1872 and 1964 (from the passage of the Yellowstone National Park Act to passage of the Wilderness Act), the United States developed land use institutions roughly analogous to those developed in Britain between 1949 and 2000.

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<sup>71</sup> A PEOPLE'S CHARTER at 38.

<sup>72</sup> A PEOPLE'S CHARTER at 18-19.

<sup>73</sup> GREENPRINTS at 6.

<sup>74</sup> NATIONAL PARKS IN ENGLAND AND WALES, 1945, Cmd.6628 at 5 [hereinafter Dower Report].

In 1940, as part of Winston Churchill's coalition government, Sir John Reith (later Lord Reith), one of the founding figure of the BBC, became First Commissioner of Works. He set about preparing a national plan for the optimum use of land and a comprehensive planning system to implement it.<sup>75</sup> There followed a series of government reports about the advisability of comprehensive planning and national parks for the British Countryside.

First came the *Report of the Royal Commission on the Geographic Distribution of the Industrial Population*, prepared by a committee chaired by Sir Montague Barlow (the Barlow Report) published in 1940. The committee inquired into "the causes which have influenced the present geographical distribution of the industrial population of Great Britain" and pondered "social, economic or strategical disadvantages aris[ing] from the concentration of industries or of the industrial population in large towns or in particular areas of the country . . ."<sup>76</sup> The report recommended a planning process for the location of towns and cities: "[a] National Authority . . . to investigate and regulate the distribution of industry, to promote decentralisation and a dispersal from congested . . ."<sup>77</sup> The dispersal of industry seemed a reasonable national goal as bombs dropped on England's industrialized southeast. Despite its wartime focus on strategic dispersal of industry, the Barlow Report also advocated the concept that "town and country should be seen as opposites – the former a place for development and the later a place to be conserved."<sup>78</sup> This assumption that town and countryside are different sorts of places to be managed in different ways did not originate with the Barlow Report. It has a long and diffuse cultural history. It is difficult to overemphasize its significant in comparing European landscapes, on which towns and villages form in compact clumps, and American landscapes, on which towns spill over into the surrounding countryside.

Second came the *Report of the Committee on Land Utilization in Rural Areas*, prepared by a committee chaired by Lord Scott (the Scott Report) published in July 1942. The report considered "the conditions which should govern building and other constructional development in country areas consistently with the maintenance of agriculture, and . . . the location of industry, having regard to economic operation, part-time and seasonal employment, the well-being of rural communities and the preservation of rural amenities."<sup>79</sup> The Scott Report also suggested "a national delimitation of land areas, e.g. National Forest Zones, National Parks" and agricultural lands.<sup>80</sup> The Committee declared that "the Establishment of National Parks in Britain is long

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<sup>75</sup> A PEOPLE'S CHARTER at 41.

<sup>76</sup> <http://www.bopcris.ac.uk/bopall/ref9099.html>

<sup>77</sup> <http://www.bopcris.ac.uk/bopall/ref9099.html>

<sup>78</sup> A PEOPLE'S CHARTER at 41.

<sup>79</sup> <http://www.bopcris.ac.uk/bopall/ref9577.html>

<sup>80</sup> *Id.*

overdue.”<sup>81</sup> The Scott Report declared that “within the first year” of the peace that “the demarcation of National Parks and nature reserves be completed, and a National Parks Authority be set up.”<sup>82</sup> The Scott Committee, under some pressure from Ramblers’ groups, also advocated public access to the countryside including public access to open lands, creation of a number of long distance footpaths and a proposal that local planning authorities maintain maps of the numerous historically established public footpaths across private and public land all over Britain.<sup>83</sup>

Third came *The Report of the Expert Committee on Compensation and Betterment* prepared by a committee chaired by A. Andrews Uthwatt (the Uthwatt Report) published in 1942.<sup>84</sup> The Report dealt with what Americans would call compensation for regulatory takings. “Betterment” refers to the increase in value of land when development is permitted. The business of how to avoid paying enormous sums of public money to landowners whose rural land could not be developed under the planning regimes being contemplated would become one of the underlying themes in the development of British planning legislation in the late 1940s.

Fourth, and most significant for our purposes, came the *Report on National Parks in England and Wales* prepared by a single person, architect and park visionary John Dower. Dower had been a member of the 1936 Standing Committee on National Parks. The “Dower Report” prepared during the war, was published in May 1945, the month Germany surrendered. The Report both articulated the underlying concept for national parks in Britain and identified a series of issues that would be debated in the development of planning legislation and reasserted during various reforms of the British National Parks during the late twentieth century.

The Dower Report promptly admitted that the term “National Park” was “somewhat misleading:”

“Park” has an obvious flavour either of the town park with its railings and shrubberies . . . or of the tree-dotted pasture land surrounding a large country house; while the “National” may well suggest a comprehensive public acquisition, or other state action more drastic than the true purpose justifies or requires.<sup>85</sup>

The Report went on to differential the prospective British effort from antecedents overseas:

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<sup>81</sup> Dower Report at 5.

<sup>82</sup> Dower Report at 5.

<sup>83</sup> A PEOPLE’S CHARTER at 43.

<sup>84</sup> <http://www.bopcris.ac.uk/bopall/ref9576.html>

<sup>85</sup> Dower Report at 6.

[T]he many “National Parks” which already exist in the United States . . . , Canada, South Africa and other countries, though they give a fair notion of the scale and purpose, do not sufficiently indicate the nature of a National Park in application to this island. Most of the American and African Parks are continuously “virgin” country, whether of high mountains, forest or jungle. We have no such country here. Our remotest areas have long supported some settled population and even in the most mountainous and infertile districts, there are no considerable stretches . . . whose landscape has not been to a significant degree modified by farming or other human use.<sup>86</sup>

This, however, did not make the idea of British National Parks impossible, only different. According to Dower:

A National Park may be defined, in application to Great Britain, as an extensive area of beautiful and relatively wild country in which, for the nation’s benefit and by appropriate national decision and action, (a) the characteristic landscape beauty is strictly preserved, (b) access and facilities for public open-air enjoyment are amply provided, (c) wild life and buildings and places of architectural and historic interest are suitably protected, while (d) established farming use is effectively maintained.<sup>87</sup>

This rich bit of text has become one of the touchstones of the British National Park tradition. Certain phrases jar American sensibilities: first, the unabashed use of the word “beautiful” and “beauty” (Americans are not inclined to admit to protecting landscapes simply because they are pretty.); second, the phrase “relatively wild” (with the lack of any standard to determine how wild); third the juxtaposition of the words “wild life” and “buildings” with its implication of equivalence between natural and historic values. On the other hand, the implicit tension between strict preservation and the ample provision of “access and facilities” for outdoor enjoyment is as familiar to Americans as it could be.

Dower made it clear that the nation did not need to own its national parks:

I do not regard the public acquisition of all or any great part of the land in National Parks as in any way *essential*. . . . [Requiring acquisition would] entail in practice a crippling limitation on the number and size of parks to be secured. . . . For the broad purposes of planning and agriculture, public ownership is no more and no less desirable in National Parks than it is in the rest of the country.<sup>88</sup>

Dower also established the now familiar proposition that if National Parks were to be provided for the nation, they should be paid for by the nation.<sup>89</sup> Although Dower

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<sup>86</sup> *Id.*

<sup>87</sup> Dower Report at 6.

<sup>88</sup> Dower Report at 45.

<sup>89</sup> Dower Report at 14, A PEOPLE’S CHARTER at 47.

emphasized that the parks should be national, this did not mean that park decisions would necessarily be made in an office in Whitehall. The designation of parks should be a national process<sup>90</sup> and parks should be maintained for the benefit of all Britons.<sup>91</sup> However:

It is not suggested that the National Parks authority should take full responsibility for all these many things that need to be done. A small portion they will probably wish to, or have to execute themselves; a further and larger portion they will have to get done by finding, encouraging, organizing and helping suitable entrepreneurs, including the local authorities; the remaining and perhaps largest portion they may reasonably expect normal private or public enterprise to provide without specific stimulation or assistance.<sup>92</sup>

From the beginning, the British National Parks were to be a cooperative venture, less about telling people what they could and could not do in a government owned preserve and more about coordinating diverse efforts in the interest of national goals. Dower recognized that preserving the National Parks would require a certain amount of “saying no” to potentially lucrative land uses and understood that an answer to the question of whether to compensate landowners for potential development value, raised in the Uthwatt Report needed to be resolved.<sup>93</sup>

Finally, Dower understood that the Second World War had not changed the underlying land ownership patterns in rural England. The large landholders who controlled the countryside in 1930 still did. Absent some new approach, park users would be trespassers in many of the most spectacular parts of the British countryside. For national parks to work, people had to have a right to use them:

It will be, to a large extent, be by the success or failure in securing ample provision of rambling access that the National Parks authority will be judged by most of the younger generation, and by no small part of the older generation, of “country-holiday-minded” visitors.<sup>94</sup>

Dower suggested that much of this access could be achieved by identifying and maintaining existing footpaths. Britons generally recognize that their nation is criss-crossed with an extraordinary network of nominally public footpaths established and used since feudal times. However, until recently, the existence and location of many specific

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<sup>90</sup> Dower Report at 13.

<sup>91</sup> *Id.*

<sup>92</sup> Dower Report at 20.

<sup>93</sup> Dower Report 15-16.

<sup>94</sup> Dower Report at 34.

footpaths was a matter of opinion. The Dower Committee recommended “a thorough recasting of footpath law and administration, followed by a systematic nation-wide campaign to provide, record, equip and maintain an ample extent of footpaths in all districts.”<sup>95</sup>

The Dower Report was initially not well received by Churchill’s Coalition Government which still ran Britain when it was published in May 1945. The Ministry of Agricultural and Forestry Commission both perceived that Dower’s proposed national parks would diminish their authority.<sup>96</sup> However, the incumbent government had little time to react. History intervened. In July 1945, in one of the greatest political surprises of the century, Winston Churchill’s government was swept out of office in a general election and replaced by a Labour government under Clement Atlee. Atlee’s cabinet contained members closely associated with the Rambler’s movement, most significantly Lewis Silkin, Minister of Town and Country Planning.<sup>97</sup> Within days of taking office, Silkin decided that Dower’s proposals required further development. The government appointed a National Parks Committee in July 1945. The new committee was charged with considering what areas should be selected as national parks and “to make recommendations in regard to the special requirements and appropriate boundaries of those areas,” and to consider “measures necessary to secure the objects of National Parks.”

The government promptly appointed Arthur Hobhouse chair of the new National Parks Committee. Hobhouse was also chairman of the County Council’s Association, a national organization for local government.<sup>98</sup> The committee also included Julian Huxley of the Zoological Society, Lord Chorley of the Fell and Rock Climbing Club, Clough Williams-Ellis, author of *England and the Octopus* and John Dower.

Among the Hobhouse Committee’s first acts was to spawn another committee. “It was apparent from the beginning of our enquiry that the conservation of wild life within National Parks could best be studied as part of a wider scheme of Nature Conservation for the country as a whole.”<sup>99</sup> Accordingly, the Hobhouse Committee set up a “Wild Life Conservation Special Committee chaired by Julian Huxley and including experts “in various branches of Natural Science.”<sup>100</sup> Predictably, this new committee is generally known as the “Huxley Committee.”

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<sup>95</sup> Dower Report at 37.

<sup>96</sup> A PEOPLE’S CHARTER at 47.

<sup>97</sup> *Id.*

<sup>98</sup> A PEOPLE’S CHARTER at 48.

<sup>99</sup> Hobhouse Report at 2.

<sup>100</sup> *Id.*

In two years, the Hobhouse Committee produced its Report. The “Hobhouse Report” adopted and supported the findings and recommendations of its member John Dower. In addition, the Hobhouse Report set the tone for the British National Parks in two significant ways: by emphasizing local control of “national parks” and by making it clear that the parks (at least initially) would be an exercise in planning rather than acquisition.

The Hobhouse Report begins with a lengthy account of national parks in other countries. After admitting that almost all involved land acquired or appropriated by the central government and managed by the central government, the report identifies some exceptions:

In some countries local management authorities have been established; many of the Australian Parks, for instance, are controlled by Committees of Management, including representatives of State Departments, local municipal councils and private persons; and in New Zealand local “National Park Boards” and “Domain Boards” are responsible . . . <sup>101</sup>

Emphasizing (again) the difference between British Parks and the unrestrained landscapes of American and Africa<sup>102</sup> the Report asserted that land use planning and regulation would be sufficient to “ensure that some at least of the extensive areas of beautiful and wild country and Wales be specially protected as part of the national heritage.”<sup>103</sup> Accepting Dower’s definition of what national parks should be, the Hobhouse Report declared:

Good planning will ensure that any new building which is permitted within the boundaries of a national park, whether for holiday or residential purposes, or for agriculture or rural industry, attains the high standards in siting design and appearance which are appropriate to the natural beauty and architectural traditions of its setting. But national parks must not be sterilized as museum pieces. Farming and essential rural industries must flourish, unhampered by unnecessary controls or restrictions . . . .<sup>104</sup>

In case there could be any mistake, the Hobhouse Report makes clear that “planning” under the new 1947 Town and Country Planning Act (then under

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<sup>101</sup> Hobhouse Report at 5.

<sup>102</sup> Hobhouse Report 7-8.

<sup>103</sup> *Id.* at 8. The Hobhouse Report did expect that roughly one-tenth of the land within national parks would be purchased for public use. *Id.* at 68. See Warren Johnson, PUBLIC PARKS OF PRIVATE LAND IN ENGLAND AND WALES 23 (1971).

<sup>104</sup> Hobhouse Report at 8.

consideration in Parliament) was a primarily local function.<sup>105</sup> The Report recommended that each national park be run by a “Park Committee” with a chairman appointed by the National Parks Commission, half its member appointed by local government (e.g., County Councils) and half appointed by the National Parks Commission.<sup>106</sup> The Report recommended that the “Park Committee” be the “statutory local planning authority for the area of the national park” as well as being responsible for the “management” of the parks.

At the same time the report indicated “[w]e wish our proposals for the planning of National Parks to depart as little as possible from the system of town and country planning in operation over the whole of England and Wales.”<sup>107</sup>

While recognizing the potential of agricultural practices to disrupt landscapes through conversion of moorland to pasture, the eradication of hedgerows and banks and their replacement with wire fence, the felling of hedgerows and timber the Report declined to recommend that changes in the land for agricultural purposes be brought under planning control.<sup>108</sup>

While the Dower Report provides much of the vision for the British National Parks, it is the Hobhouse Report that conceptualizes much of their particular structure. The parks were to be run by local park committees, nationally mandated and funded, but balanced in their membership between local and national interests. Their primary coercive tools in the preservation of Britain's most treasured landscapes were to be the yet untried power created by the 1947 Town and Country Planning Act. Although largely independent of any central National Park Commission, they would be incorporated in the nascent national land use planning regime. Although charged with preserving the landscape's beauty, they would have no coercive power over the landscape's most prominent use: agriculture.<sup>109</sup>

On the issue of access to the countryside, the Hobhouse Committee recommended: “There must be an ample provision of footpaths to take walkers through the valley farmlands or young plantations [trees] without risk of trespass or damage; there must be free access for ramblers on the mountains and moorlands . . . .”<sup>110</sup>

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<sup>105</sup> “Local planning authorities for England and Wales will normally be the County Councils and County Borough Councils . . . .” *Id.* at 15.

<sup>106</sup> *Id.* at 18-19.

<sup>107</sup> *Id.* at 21.

<sup>108</sup> *Id.* at 29.

<sup>109</sup> The transformation of British agriculture and agricultural policy after the Second World War is beyond the scope of the article. See John Martin, *THE DEVELOPMENT OF MODERN AGRICULTURE: BRITISH FARMING SINCE 1931* 67-202 (2000).

<sup>110</sup> Hobhouse Report at 9.



Ann and Malcolm MacEwan observe:

Anybody who goes back today to the Dower and Hobhouse reports should be struck by the fact neither of them examined the case for their concept of national parks, nor considered whether the aims of preservation and public enjoyment could be achieved by other means. . . . [Dower's] was the report not of a civil servant weighing pros and cons, but of an articulate and perceptive partisan.<sup>111</sup>

Partisans they may have been, but radicals they were not. Their concept embraced compromise after compromise in an attempt to gather support.

Meanwhile, the “Huxley Committee”, set apart by the Hobhouse Committee in August 1945, had not been idle. In July 1947 it also published a report. The “Huxley Report” set forth a dramatically different approach to “preservation” in the British countryside. It approached the preservation of British wild life from an emphatically scientific point of view. As a result, its perspective was almost entirely different:

Most changes in nature are slow, insidious and not readily detectable; and they are often irreversible. A slowly dropping water-table; a change in the balance of power between small organisms the very existence of which is unknown except to a few; these are potent factors in the destruction of a countryside. An action which in itself appears sensible and desirable may have far-reaching and unpleasant consequences, not foreseen and possibly not appreciated for fifty years.<sup>112</sup>

It was self-evident that the local park planning authorities recommended by Hobhouse, with their limited powers, lacked the expertise to identify (much less combat) the kinds of dangers the Huxley report was concerned with. Accordingly, the Huxley Report suggested that national parks and nature reserves be separately established and separately administered. While no one denied the connection between beautiful landscapes worth preserving and the biological systems that supported them the strategies being contemplated to protect the two where, at least for now, irreconcilable. Nature reserves would be acquired by the government.<sup>113</sup> Public access would be limited.<sup>114</sup> The “Naturalists” would go their own way.

Considered as a single system, the reserves should comprise as large a sample as possible of all the many groups of living organisms, indigenous or established in this country as part of its natural flora and fauna; and within them the serious

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<sup>111</sup> Ann and Malcolm MacEwan, NATIONAL PARKS: CONSERVATION OR COSMETICS 9 (1977).

<sup>112</sup> Huxley Report at 2.

<sup>113</sup> Huxley Report at 20.

<sup>114</sup> Huxley Report at 19.

student, whatever his bent and whether he be professional or amateur, should be able to find a wealth of material and unfailing interest.”<sup>115</sup>

The various forms of nature reserves (e.g., National Nature Reserves and Sites of Significant Scientific Interest) do not concern us here. What is significant for our inquiry is that this separation the “Naturalist” tradition from other pro-preservation forces allowed the national parks contemplated by Hobhouse to be concerned primarily, if not entirely, with “amenities” and recreation.

This seems a strange approach to North Americans because no corresponding split ever took place in public land preservation in the United States. It is not, however, irrational. As the Huxley Report makes clear, nature reserves could act as “reservoirs” for the ecological communities that give life to the British countryside. Protected nature reserves would ensure that the more prominent members of these communities would be sufficiently numerous to venture beyond the boundaries of the reserve to be enjoyed by vacationing Britons. This would be particularly true for nature reserves within national parks. In the United States, in the late twentieth century, as use of national parks and other protected landscapes has become more intense. Agency-level land use planning has involved designating more protected areas to maintain ecological integrity and less protected areas to facilitate access and enjoyment. Since 1964, the Wilderness Act, although different in character has fulfilled some of the functions the Huxley Report contemplates for National Nature Reserves.<sup>116</sup>

National parks and land use planning in the United States developed in almost entirely separate realms. National parks grew out of the need to find some way to protect the most spectacular parts of the vast federally owned public domain. The seeds were sown with the designation of Yellowstone National Park in 1872, but the concept did not emerge fully formed until at least passage of the national Park Service Organic Act in 1916. On the other hand, land use planning in the United States grew up in an almost purely urban context dominated by diverse private ownership as a way of promoting health, commerce and racial segregation in the nations most crowded areas. The developments were so separate that it comes as a surprise to most Americans that they happened at roughly the same time. New York’s 1916 Zoning Resolution “forever changed how cities would be built; governmental regulation of development”<sup>117</sup> in the same year Congress passed the National Park Service Organic Act. The same broad

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<sup>115</sup> Huxley Report at 17.

<sup>116</sup> Sandra Zellmer, A Preservation Paradox: Political Prestidigitation and the Enduring Resource of Wilderness, 34 *Envtl. L.* 1015, 1041 (2004) (“Although the criteria specified in the Wilderness Act promote the inclusion of lands ‘untrammeled’ by long-lasting human intrusions such as roads, they fail to ensure that lands with the most biodiversity potential are included within the system. The elevation of recreational and aesthetic concerns over biodiversity objectives comes at a cost.”)

<sup>117</sup> Max Page, *THE CREATIVE DESTRUCTION OF MANHATTAN 1900-1940* 61 (1999).

Progressive political agenda inspired both developments, but, even among proponents, there appeared to be no understanding that they had much to do with each other.

In Britain, national parks and comprehensive land use planning emerged on the post-war scene almost simultaneously. In a landscape as small and densely populated as Britain's, the idea that national parks and land use planning would affect each other was self-evident. After the Second World War, the Atlee government transformed land use planning and regulation in the United Kingdom. The Distribution of Industry Act of 1945 provided controls for the location of industry along the lines contemplated in the Barlow Report. The 1946 New Towns Act required the designation of sites for "new towns" and for development plans and controls once such towns were designated. The concept of "new towns" baffles many Americans, but makes perfect sense if one assumes that towns and countryside are different and that the countryside is supposed to remain the countryside absent an act of government. Finally, the Town and Country Planning Act of 1947 sketched out a comprehensive national land use planning regime.

Britain's 1947 Town and Country Planning Act is best known in the United States for having "nationalized"<sup>118</sup> or "expropriated" development rights for all but existing uses of land.<sup>119</sup> American land use planners, after a beer or two, will confess how much easier their lives would be if, during a hypothetical bout of socialist government in the United States, we had done the same thing. While it is debatable how much real difference the specter of private development rights really makes for land use planning in the United States, there is no question that the absence of such rights in Britain made a planning based national parks system seem much more feasible.

The National Parks and Access to Countryside Act was introduced in the House of Commons on March 17, 1949. Lewis Silkin called it: "A people's charter – a people's charter for the open air, for the hikers and the ramblers, for everyone who loves to get out into the open air and enjoy the countryside."<sup>120</sup>

The law finally enacted in December 1949 authorized creation of both national parks, roughly along the lines recommended by the Hobhouse Committee, and nature reserves along the lines recommended by the Huxley Committee. The Act established a

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<sup>118</sup> J.F. Garner and B.L. Jones, COUNTRYSIDE LAW 19-20 (1987).

<sup>119</sup> For a succinct explication see, James E. Holloway and Donald Guy, The Utility and Validity of TDRs Under the Takings Clause and the Role of TDRs In the Takings Equation Under Legal Theory, 11 Penn St. Envtl. L. Rev. 45, 54 n. 47 (2002) ("The Uthwatt Report recommended a system to "recoup the betterment" that was to increase in land value due to public investment on nearby lands. The Uthwatt Committee believed that this could be done by separating the right to develop from other rights. The Town and Country Planning Act of 1947 "gave all development rights on undeveloped land to the government. . . . When an owner wanted to develop his land, he had to purchase the development rights from the government and pay a development charge. Id. The immediate result was to halt almost all development. . . . The law was modified several times but the government was unable to create an effective system for the separation of development rights.").

<sup>120</sup> A PEOPLE'S CHARTER at 63.

National Park Commission for “the preservation and enhancement of natural beauty in England, both in the areas designated under this Act as National Parks as areas of outstanding natural beauty and elsewhere” and “encouraging the provision or improvement, for persons resorting to National Parks, of facilities for the enjoyment thereof and for the enjoyment of the opportunities for open-air recreation and the study of nature afforded thereby.”<sup>121</sup> It authorized the Commission in conjunction with the appropriate minister to establishment of National Parks<sup>122</sup> for the purpose of preserving and enhancing the natural beauty of the areas” and “promoting their enjoyment by the public.”<sup>123</sup>

Beyond recommending the designation of parks, the Act generally relegated the role of the National Park Commission to giving advice to local planning agencies on land use regulation and planning within the parks.<sup>124</sup>

Under the Act, national park authorities would be established and each such authority “in pursuing in relation to the National Park the purposes specified . . . shall seek to foster the economic and social well-being of local communities within the National Park, but without incurring significant expenditure in doing so, and shall for that purpose co-operate with local authorities and public bodies whose functions include the promotion of economic or social development within the area of the National Park.”<sup>125</sup>

The relevant minister was authorized by acquire land within designated national parks for national park purposes if satisfied “that it is expedient so to do, he may with the consent of the Treasury.”<sup>126</sup>

Section V of the Act wrestled with the issue of access to the countryside. The provisions encouraged “local planning authorities” to obtain “access agreements” with landowners to facilitate national park access.

As part of the campaign for passage of the bill, Town and Country Planning Minister Leonard Silkin made it clear that local planning authorities would dominate

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<sup>121</sup> UK ST 1949 c 97 Pt I § 1.

<sup>122</sup> UK ST 1949 c 97 Pt II § 5.

<sup>123</sup> UK ST 1949 c 97 Pt II § 5.

<sup>124</sup> UK ST 1949 c 97 Pt II § 6 and 9. Warren Johnson suggests that the 1949 legislation subordinated the National Park Commission and its managers to the agencies of the 1947 Town and Country Planning Act because “the newly constituted planning authorities established by the 1947 . . . Act were just getting underway and the government did not want to suggest that they were not capable of carrying out their responsibility.” Warren Johnson, PUBLIC PARKS OF PRIVATE LAND IN ENGLAND AND WALES 26-27 (1971).

<sup>125</sup> UK ST 1949 c 97 Pt II § 11a.

<sup>126</sup> UK ST 1949 c 97 Pt II § 14.

planning in the national parks.<sup>127</sup> This included an agreement that that parks committees or joint boards should be made up of a majority of members from local government with the Minister nominating only up to one-quarter of the members.<sup>128</sup>

At the end of 1949, the British National Parks had a “charter.” The legislation, however, was much more remarkable for what did not include (e.g., national ownership, national control or unified management) than what it did. The national government would designate national landscape treasures and then hand them over to local authorities for safe keeping. As one Conservative member of Parliament put it “I really cannot understand how a progressive government could hand over to reactionary local authorities the administration of the measures passed by this house.”<sup>129</sup> Ownership-based parks, like those in the United States, can thrive in the absence of specific legislative authority because ownership itself entails a universally accepted (if not universally understood) bundle of rights. The absence of explicit authority for planning and regulation-based parks, like the British National Parks, was a much more significant problem, but not, it turned out, an insurmountable one.

### C. Reform

In their early years, the national parks of England and Wales lacked money, lacked administration and lacked authority to stand up to the local governments and property owners that controlled the land within their designated boundaries. Consistent with the Hobhouse Committee recommendations, both farming and forestry were exempt from the development control system set up by the 1947 Town and Country Planning Act.<sup>130</sup>

The so called ‘authorities’ that were put in charge of the national parks could acquire land by agreement either to protect landscapes or to promote recreation, but they could only do so compulsorily for the purpose of securing public access to ‘open country.’ They had no last resort powers . . . to make orders to prevent damaging farming or forestry operations . . . .<sup>131</sup>

The effectiveness of park authorities’ authorization to buy land was significantly limited by the absence of any money to buy it with.<sup>132</sup>

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<sup>127</sup> A PEOPLE’S CHARTER 66-67, 71.

<sup>128</sup> *Id.* at 75.

<sup>129</sup> A PEOPLE’S CHARTER at 81.

<sup>130</sup> GREENPRINTS at 7.

<sup>131</sup> GREENPRINTS at 12.

<sup>132</sup> *Id.*

Any authority or money that might have been vested in the national parks to protect areas of particular scientific interest was now vested in the agency charged with acquiring and managing the Huxley Committee's nature reserves, the newly established "Nature Conservancy."

On the bright side, the fact that the creation of British National Parks threatened no burdens on land owners or users, probably made those national parks easier to designate. In 1951, The Peak District and Lake District became the first British National Parks. The parks crossed county lines they were administered by joint boards made up two-thirds of county government representatives and one-third ministry representatives. Dartmoor and Snowdonia were also designated in 1951. The Pembrokeshire Coast and North York Moors National Parks followed in 1952. The Yorkshire Dales and Exmoor followed in 1954. Northumberland National Park followed in 1956. Brecon Beacons followed in 1957. National parks contained within a single county (i.e. Dartmoor, Pembrokeshire, Northumberland) were administered by committees subordinate to the county council.<sup>133</sup> The remaining multi-country parks (i.e., Snowdonia, North York Moors, Yorkshire Dales, Exmoor, and Brecon Beacons) were administered by different councils in their different parts.<sup>134</sup> Parliament created the Broads Authority through special legislation (The Norfolk and Suffolk Broads Act) in 1988, rounding out the pre-2005 list of English and Welsh national parks.

Americans, offended by the ineffectual nature of early British National Parks, should consider the scandalously haphazard management of United States National Park during their early years. Although the government of the United States always possessed all the authority that ownership and sovereignty could confer in Yellowstone, this almost unlimited power did not save the first national park from rampant exploitation by private interests.<sup>135</sup> It was only with the arrival of Troop M of the United States Cavalry in 1886, 14 years after the designation of the park, that the government of the United States even began to assert systematic authority. Still, if one imagines a Yellowstone National Park in which most of the land belonged to the landed aristocracy and the rest to ranchers, in which management authority was exercised by committees made up largely for officials from the governments of rural Idaho and Wyoming counties and for which no significant federal money or personnel was available, one begins to grasp the daunting prospect of early British National Parks.

During the late 1950s and early 1960s, the British National Parks, seem to have been protected, to the degree that they were protected, largely through persuasion and moral leadership. There were spectacular failures. In 1958, the national government approved construction of an oil refinery at Milford Haven in Pembrokeshire Coast Park

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<sup>133</sup> GREENPRINTS at 13.

<sup>134</sup> For a description of the compromise in Snowdonia in 1951, see A PEOPLE'S CHARTER at 100.

<sup>135</sup> Paul Schullery, SEARCHING FOR YELLOWSTONE: ECOLOGY AND WONDER IN THE LAST WILDERNESS 68-112 (2004).

and a nuclear power plant in Snowdonia, Trawsfynydd Power Station.<sup>136</sup> There were also modest successes. A high tension powerline through the Peaks was not approved.<sup>137</sup>

On a smaller scale, the situation, if anything, was even more dire. The absence of any control over agricultural practices led to radical transformation of the landscape. The absence of any control of forestry led to the planting of thousands of acres of exotic (largely North American) conifers in dense stands for timber production (afforestation). The 1949 acts grant of authority for access agreements had borne disappointingly little fruit. As of the last review in 1973, showed that in England and Wales only 86,000 acres had been opened to public access, 80 percent in national parks.<sup>138</sup>

In 1968, the Countryside Act transformed the National Parks Commission into something called the Countryside Commission. While the new commission had more power and resources, its mission was diffuse. The fact, that there was no longer a national agency devoted to the national parks was a blow to many of the national park pioneers.<sup>139</sup> The act admonished every government agency “[i]n the exercise of their functions relating to land under any enactment . . . shall have regard to the desirability of conserving the natural beauty and amenity of the countryside.”<sup>140</sup> But, at the same time, admonished them “to have due regard to the needs of agriculture and forestry and to the economic and social interests of rural areas.”<sup>141</sup> This provided the kind of perfect legislative mixed message familiar to American lawyers.

The administrative situation began to improve with the Local Government Act of 1972. The act authorized unified administration of every park. A single board, still dominated by local officials on at least a 2:1 basis, would now prepare a management plan for each park. There would also be a statutory “national park officer” for every park. This essentially extended the management model originally established in the Peak and Lake District to all national parks and transformed management structure in multi-country parks.<sup>142</sup>

The national park officer was the only statutory appointment, but he became the leader of a professional team whose exclusive concern was the planning and management of the national park. The unified authority, whether board or committee, was able to think of the park as a whole, regardless of political

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<sup>136</sup> A PEOPLE’S CHARTER at 103.

<sup>137</sup> *Id.*

<sup>138</sup> GREEN PRINTS at 16.

<sup>139</sup> A PEOPLE’S CHARTER at 106.

<sup>140</sup> UK ST 1968 c 41 § 11.

<sup>141</sup> UK ST 1968 c 41 § 37.

<sup>142</sup> GREEN PRINTS at 17.

boundaries. The requirement to prepare a national park management plan created an indispensable instrument for building up information, developing ideas and translating them into practical programmes.<sup>143</sup>

In 1974, another report by a committee chaired by Lord Sandford *National Park Policies*<sup>144</sup> recommended further toughening development controls in national parks, but refrained from recommending coercive controls on agricultural practices, prefer to continue relying on management agreements.<sup>145</sup>

The 1981 Wildlife and Countryside Act specifically authorized agreements with private landowners “for the purpose of conserving or enhancing the natural beauty or amenity of any land which is both in the countryside and within their area or promoting its enjoyment by the public.”<sup>146</sup> The statute also authorized the government “if satisfied that it is expedient to do so” to protect any land identified as Moor or Heath within a national park by making unlawful to “plough[] or otherwise convert into agricultural land any land . . . which has not been agricultural land at any time within the preceding 20 years” or “carry out on any such land any other agricultural operation or any forestry operation which . . . appears . . . to be likely to affect its character or appearance . . . .”<sup>147</sup>

Environment Act 1995 amended the management mission of the national parks. The new law indicated that national parks be managed for the purpose:

- (a) of conserving and enhancing the natural beauty, wildlife and cultural heritage of the areas. . . ; and
- (b) of promoting opportunities for the understanding and enjoyment of the special qualities of those areas by the public.<sup>148</sup>

The new Act also more clearly and categorically indicated that national park authorities were the unified land use planning authorities within national park borders.<sup>149</sup>

Countryside and Rights of Way Act 2000 is an extraordinary transformative piece of legislation. It challenges deeply held notion of the very nature of property, particularly for North Americans. It is, however, a fairly natural evolution from the observation

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<sup>143</sup> GREEN PRINTS at 19.

<sup>144</sup> <http://www.bopcris.ac.uk/bopall/ref18787.html>

<sup>145</sup> GREENPRINTS at 19.

<sup>146</sup> UK ST 1981 c 69 Pt II s 39.

<sup>147</sup> UK ST 1981 c 69 Pt II s 42.

<sup>148</sup> Environment Act of 1995, Section 61.

<sup>149</sup> Environment Act of 1995, Section 63-70.



about the necessity of access made by John Dower in 1945. Part I of the act grants a general right of access “for the purposes of open-air recreation”<sup>150</sup> to almost all open lands and registered common lands in Britain. Section 13 protects landowners from most tort liability associated with having ramblers wandering across their mountains, moors, forest, heath, and downs.<sup>151</sup> The Act provides a variety of limited exclusions from the general right of access.<sup>152</sup> Three general exceptions from the right of access give a sense of how broad the right of access is.

1. Land on which the soil is being, or has at any time during the previous twelve months been, disturbed by any plowing or drilling undertaken for the purposes of planting or sowing crops or trees.
2. Land covered by buildings or the curtilage of such land
3. Land within twenty meters of a dwelling
4. Land used as a park or garden
5. Land uses for the getting of minerals by surface working (including quarrying)
6. Land uses for the purpose of a railway (including a light railway) or tramway
7. Land used for the purposes of a golf course, racecourse or aerodrome
8. Land . . . covered by works used for a statutory undertaking . . . electronic communications code network . . .
9. Land as respects which development which will result in the land becoming land falling within any of paragraphs 2 to 8 in the course of being carried out.
10. Land within 20 meters of a building housing livestock, not being a temporary or moveable structure.
11. Lands Covered by pens in use for the temporary reception or detention of livestock
12. Land habitually used for the training of racehorses
13. Lands the use of which is regulated by byelaws under section 14 of the Military lands Act 1892 and section 2 of the Military Lands Act of 1900.

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<sup>150</sup> Countryside and Rights of Way Act 2000, Section 2

<sup>151</sup> Countryside and Rights of Way Act 2000, Section 13.

<sup>152</sup> Countryside and Rights of Way Act 2000 Sections 21-33.

Pop star Madonna discovered the extent of the “right to roam” created by the 2000 Act when the public began to invade her 1,200 acre estate in Wiltshire.<sup>153</sup> The Countryside Agency and Countryside Council of Wales are charged with preparing maps of the country indicating what lands are open and what lands are not.<sup>154</sup> Section III of the 200 Act renames the Nature Conservancy for England (originally recommended by the Huxley Committee) as “English Nature”<sup>155</sup> and refocuses its efforts toward the preservation of biological diversity as described in the International Biodiversity Convention of 1992.

The Countryside and Rights of Way Act 2000 resolves a fundamental issue for British National Parks. After its passage, most of the land in the parks and almost all of the land suitable for park purposes is open to the public. That this freedom to roam is almost unimaginable to North Americans suggests that we still have some thinking to do about facilitating public enjoyment of nationally significant landscapes in private ownership.

Every five years the Department for Environment, Food and Rural Affairs (DEFRA) of the British Government undertakes a review of each of the “non-departmental public bodies” it sponsors. In 2002, it undertook a review of the English National Park Authorities. The report derived a few “guiding principles” from its inquiry:

- evolution not revolution: recognising that there is a long history to National Parks and their management;
- one size may not fit all: parks have different characteristics, cultures and challenges;
- National Park Authorities are not large, or all purpose: their activities and decision-making structures should reflect this;
- clear Government priorities for Park Authorities: they will never be able to do all that some people might want; and
- outward looking Authorities: acting as exemplars in tackling the challenges facing rural areas generally.<sup>156</sup>

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<sup>153</sup> <http://news.bbc.co.uk/1/hi/england/wiltshire/3686299.stm>

<sup>154</sup> Countryside and Rights of Way Act 2000, Section 4

<sup>155</sup> Countryside and Rights of Way Act 2000, Section 73

<sup>156</sup> Martha Grekos, DEFRA'S REVIEW OF ENGLISH NATIONAL PARK AUTHORITIES, JULY 2002, J.P.L. 2002, NOV, 1334-1340.

These principles express some of the wisdom gained from 50 years of national parks in England and Wales. The gradualism expressed in the first point has turned out to be the only option when one endeavors to protect public values on largely private land.

Parks are different and should be allowed to function differently. North Americans have learned the first lesson but not the second. While North American parks embrace an extraordinary diversity of landscape, we are still include (to the degree possible) to manage them under uniform standards. The British have embraced heterogeneity to a degree Americans would find unnerving. The management structure of each British National Park appears to be unique: a product of the landscape, human settlement patterns, local political subdivisions and history.

Perhaps most surprising to North Americans is the notion that what goes on inside the parks should be an example for what goes on in rural areas outside the parks. We are accustomed to think of national parks as island of public value on publicly owned land in a sea of private property. We tend to suppress our observation of the obvious similarity of the landscape within the park and the landscape outside. This is a luxury the British cannot afford. But here they have turned a necessity into a virtue. Rather than concerning themselves entirely with negative influences flowing from nearby lands into the parks (as North Americans are inclined to do) they concern themselves with positive influences following from the parks onto nearby private lands. As the Association of National Park Authorities (umbrella organization for the national parks) puts it: “National Parks as test beds for rural revival” and National Parks show “that it is possible to manage living landscapes in [a] wholly sustainable way.”<sup>157</sup>

#### D. Evolution

Over time, Parliament has begun giving British national park authorities meaningful tools to protect the landscapes in their charge. Now national park authorities are unified. They have planning authority. They have resources, employees and management plans. Most of the private land within their borders is open for public recreational access. Still the legacy of decades of relative powerlessness shapes much of how they think and what they do. This is a surprisingly good thing.

By American standards, New Forest raises almost impossible challenges for park management. New Forest covers a total of only 220 square miles<sup>158</sup> in one of the most densely populated parts of England. For comparison Yellowstone National Park covers 3,472 square miles. 34,000 people live within the borders of New Forest National Park.<sup>159</sup> The eastern park boundary is within sight of the bustling port city of Southampton. A large oil refinery can be seen from much of the eastern forest. New

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<sup>157</sup> [http://www.nationalparks.gov.uk/index/anpa\\_core/work\\_of\\_the\\_parks.htm](http://www.nationalparks.gov.uk/index/anpa_core/work_of_the_parks.htm)

<sup>158</sup> <http://www.newforestnpa.gov.uk/index/visiting/vi-maps.htm>

<sup>159</sup> <http://www.newforestnpa.gov.uk/index/visiting/vi-maps.htm>

Forest is unlike most British National Parks because it has a nucleus of government owned land, descended from the Norman royal hunting reserve that gave the forest its name. Today, the Forestry Commission controls a little less than half the park, largely for timber production.<sup>160</sup> Less than half the park is actually woodland and that woodland includes both impressive native oaks, centuries old, and towering Douglas Fir trees imported from North America for wood fiber. Sixty-six percent of New Forest is subject to various kinds of commoners rights, most often grazing.<sup>161</sup> Sixty-three percent of the privately owned land in New Forest is farmed.<sup>162</sup> In 1992, over 7 million people visited New Forest.<sup>163</sup> In that year, roughly 3 million visited Yellowstone.<sup>164</sup>

To a North American this seems like a recipe for disaster: housing tracts, parking lots, overgrazed meadows and wandering tourists in vegetable gardens. But, the landscape actually presents a surprisingly coherent and pleasing aspect: a mosaic of forest, farmland, heath and village, peopled by walkers, absurdly picturesque grazing ponies and five species of deer (three of which have been introduced).<sup>165</sup> One is never far from the sound of a road or a pub lunch, but Joseph Sax's national park criteria are often (if not always) satisfied.

New Forest did not become a national park until March 2005, the first national park designated in almost twenty years. In 2000, when I interviewed park official Maddy Jago, the New Forest Committee lacked much of the planning authority associated with modern national parks. In a sense, it was more like the British National Parks of the 1950s and 1960s. However, the New Forest Committee engaged in much of the coordinating work associated with park managers across Britain.

Jago described what appeared to be a largely consensus-based process through which all of the various groups with management authority over parts of New Forest played a role in putting together a management strategy and then implementing portions of that strategy largely with their own resources. She spoke about the process of building trust among various stakeholders from the relatively vast and rich Forestry Commission to small landowners and "commoners," individuals or families with rights to use parts of New Forest for specific purposes, often the grazing of ponies.

Like Jago, British National Park officials across the country emphasize their coordination role. Many appeared to see themselves as catalysts in on-going multi-party

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<sup>160</sup> A Strategy for the New Forest: Full Working Document 40 (1996).

<sup>161</sup> <http://www.newforestnpa.gov.uk/index/visiting/vi-maps.htm>, See also Mike Turner, New Forest Voices, Tempus Oral History Series (1999).

<sup>162</sup> A Strategy for the New Forest: Full Working Document 39 (1996).

<sup>163</sup> A Strategy for the New Forest: Full Working Document 49 (1996).

<sup>164</sup> <http://www.nps.gov/yell/stats/historical.htm>

<sup>165</sup> [http://www.forestry.gov.uk/pdf/deer.pdf/\\$FILE/deer.pdf](http://www.forestry.gov.uk/pdf/deer.pdf/$FILE/deer.pdf)

planning process in which the main players were the public and private landholders within the boundaries of the park. As Declan Keilley, Countryside Officer for the Broads Authority spoke of his job in terms of “putting things together.”

The press releases associated with the designation of New Forest as a national park in 2005 emphasized that “20 of the 22 members [of the new National Park Authority board] were local and already had a role and profile within Forest organizations.”<sup>166</sup> Mel Kendal, Deputy Chairman of the National Park Authority, said: ‘I am particularly pleased that the National Park Authority has established such strong relationships so quickly with key partners such as the Forestry Commission, the Verderers<sup>[167]</sup> and New Forest District Council. This will be crucial to its future success.’<sup>168</sup>

North Americans are comfortable with the idea that land owners, absent outside economic pressure, have an interest in maintaining the quality of their own land. Almost equally self-evident – but rarely discussed -- is the idea that land owners have an interest in maintaining the larger landscapes of which their lands are part. North American regularly consider the negative NIMBY (not in my back yard) phenomenon, but rarely consider its potential positive attributes. British national Park managers exploit the positive aspects of landowners’ interests in larger landscapes by coordinating efforts and hammering out shared landscape management goals.

People with interest in a parcel of the land subject to the New Forest management strategy have an interest in seeing the whole strategy work, if they agree with the strategy’s goal. Ms. Jago described a painstaking process of identifying shared objectives, drafting a shared strategy, maintaining communication among the various parties and ensuring that the tasks each group had undertaken were carried out. In fact, the coordinating activity carried on by British National Park managers is a service to landowners within the park as well as the people of the nation. Their legacy of limited power allows British National Park managers to grasp this more easily than North American park managers can.

### *III. Parks Without Ownership*

#### *A. The Stark Facts*

Pembrokeshire Coast National Park in western Wales is one of the “wilder” of Britain’s national parks. It skirts the spectacular rocky coastline from Tenby to Cardigan, rarely extending more than a few miles into the interior. The park includes roughly 243

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<sup>166</sup> [http://www.newforestnpa.gov.uk/news\\_250406](http://www.newforestnpa.gov.uk/news_250406)

<sup>167</sup> Although of ancient lineage, the New Forest Verderers are a modern statutory body sharing the management of the New Forest with the Forestry Commission. They operate under the New Forest Acts 1877 - 1970. Their regulatory authority appears to be largely coextensive with that of the new National Park Authority. <http://www.verderers.org.uk/home.htm>

<sup>168</sup> [http://www.newforestnpa.gov.uk/news\\_250406](http://www.newforestnpa.gov.uk/news_250406)

square miles (629 square km).<sup>169</sup> Despite its wildness, Pembrokeshire is 95 percent privately owned.<sup>170</sup> Roughly 70 percent of its land area is farmed.<sup>171</sup> 24,000 people live in the park all year (it was generally considered the most populous national park until New Forest became a National Park in 2005). Many thousands more visit in the summer. The park's roughly 130 employees work to maintain biodiversity, visual character, archeology and historic buildings on this landscape. How do they do it?

## B. Parks and Land Use Control

Land use management plans – in North American or Europe -- rarely emphasize the coercive tools available to the land use management agency. Universally they emphasize the goals of the agency and the public benefits that will flow from their achievement. Still, by North American standards, the land management plans for the British National Parks are striking for the breadth of their identified aspirations and areas of concern when compared to the very limited coercive powers at the national park authorities' disposal.

*The Pembrokeshire Coast National Park Authority National Park Management Plan 2003-2007* examines a sweeping range of issues from “sustainability”<sup>172</sup> to “tranquility,”<sup>173</sup> “biodiversity”<sup>174</sup> “tidal energy” production,<sup>175</sup> “organic farming”<sup>176</sup> “ecosystem based fishing”<sup>177</sup> “geodiversity”<sup>178</sup> “air quality”<sup>179</sup> “water quality”<sup>180</sup> and “archeological resources.”<sup>181</sup> In order to improve the quality of life, the National Park Authority wields traditional planning power: “The National Park Authority is a single purpose authority in that it’s responsible for all the planning functions within its

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<sup>169</sup> Pembrokeshire Coast National Park Authority, National Park Management Plan 2003-2007 page 10

<sup>170</sup> <http://www.pcnpa.org.uk/website/default.asp?SID=120&SkinID=5>

<sup>171</sup> <http://www.pcnpa.org.uk/website/default.asp?SID=555&SkinID=4>

<sup>172</sup> Pembrokeshire Coast National Park Authority, National Park Management Plan 2003-2007 page 6

<sup>173</sup> Id at 12.

<sup>174</sup> Id. at 15.

<sup>175</sup> Id at 16.

<sup>176</sup> Id at 18.

<sup>177</sup> Id at 20.

<sup>178</sup> Id at 22.

<sup>179</sup> Id. at 23.

<sup>180</sup> Id at 25.

<sup>181</sup> Id at 26.

boundaries.”<sup>182</sup> Generally this means that the authority has the power to regulate the erection, modification and demolition of buildings and other man made structures. It also has the power to enforce the terms of public access – that’s all.

The Pembrokeshire plan is not a management plan in the North American sense. It is not a document to constrain a public agency with the almost unlimited power associated with public ownership. Rather, it is a coordination document which attempts to articulate a shared vision for a landscape subject to a mosaic of authority – derived for ownership and regulation – and to make some suggestions about how the national park agency might help make that vision become a reality. It is much more like the vision documents regularly prepared by the planning authorities in major North American cities. However, rather than beginning with the built environment like most urban planning documents, the Pembrokeshire plan begins with the natural environment. Like urban plans, its function is much more vision and coordination than regulation.

While in Pembrokeshire, I spent an afternoon with Charles Mathieson, then Recreation Management Officer, for Pembrokeshire Coast National Park. The problems Mr. Mathieson shared were striking similar to those of national park managers in North America, but his approach was more persuasive than regulatory. The chough (pronounced “chuff”) is an uninspiring looking red-footed member of the crow family. It is the national bird of Cornwall, but has become extremely rare along the western coast of Britain. In the late 1990s, Pembrokeshire Coast National Park had a problem with cliff climbers along the coast disturbing Chough nests. The park rangers approached the problem by doing “orientation” for the climb leaders, which resulted in cooperative designation of areas off limits to climbing to avoid nesting birds. According to Mathieson, some of the climbers became interested in the birds and began helping locate chough nesting sites high in the cliffs and caves in order to protect them. Still, as Matheieston observed, “the best thing of all, if that there are some nesting sites that not even the best climbers can reach.”<sup>183</sup>

### C. How Much Difference Does Ownership Make?

Private ownership seems an irreducible fact, particularly for North American lawyers. Professor Eric Freyfogle has recently questioned the utility of this distinction.<sup>184</sup> The experience of the British National Parks suggests that the distinction between public and private ownership may be neither irreducible nor particularly useful. Parks like Pembrokeshire contain a great deal of open space, largely open to public access and set with established paths. Hiking requires occasional passage through a stile dividing fields, but (with few exceptions) the existence of the fields and the animals in them do not inconvenience the visitor. Had the British government purchased (or confiscated) all the

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<sup>182</sup> Id. at 13.

<sup>183</sup> Interview with Charles Mathieson, May 15, 2000.

<sup>184</sup> Eric T. Freyfogle, Goodbye to the Public Private Divide, 36 *Envtl. L.* 7 (2006).

land with the boundaries of its national parks, it would have leased most of the land back to farmers to maintain the landscape character they wished to preserved at the time most of the parks were designated in the 1950s. It is hard to image how the landscape would look different than it does today. As Freyfogel puts it:

The biggest difference between private and public land has to do with management power over the land. Who gets to decide land uses? Decisions about public lands are mostly made by public decisionmakers, but not completely so. Public decisionmakers are often influenced by private parties who want to use the lands. . . . When we turn to private lands, the equation is flipped but again is not one-sided. Private owners have greater say in land-use decisions but lawmakers commonly play important roles . . . In both cases, then, public and private influences intermingle. So varied is this intermingling that we do not really have two categories of lands. We have a continuum with some lands more subject to public control and some lands more subject to private control. Yet control of either type is always a matter of degree.<sup>185</sup>

On the continuum between purely public control and purely private control, much of the private land in the British national parks falls fairly close to the middle. The indicators which we generally rely on to tell public from private can be mixed. While in Pembrokeshire in 2000, I spent some time with a local farmer, John Owen proprietor of The East Nolton Riding Stable. Although almost a chance encounter, talking with Owen was illuminating. He presented himself as a crusty Welsh farmer with a distrust for government generally associated with landowners and farmers everywhere. He declared bluntly that most people who come to Pembrokeshire Coast National Park think the Park's lands are in public ownership. One of his assistants ruefully admitted that she had thought that when she first came to Pembrokeshire. The impression is not very surprising.

## *V. Parks Without Wilderness*

### A. The Absence of Pre-Settlement Baseline

The idea of the land undisturbed by humans is an essential orientation point for many North American park managers. As James Pritchard observed in the introduction to his *Preserving Yellowstone's Natural Conditions: Science and the Perception of Nature*:

It is a remarkable fact that Yellowstone's policies provide one of the few American landscapes where nature proceeds for the most part unhindered, largely free of the conscious (as well as unintentional) manipulation of flora and fauna our culture practices on a vast scale. Because nature is the primary agent at work,

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<sup>185</sup> *Id.* at 15.



the Yellowstone landscape can reveal important lessons about the natural world.<sup>186</sup>

In 1980, the National Park Service prepared a radical new management plan for the Yosemite National Park including dramatic changes for the management of the spectacular, but often crowded Yosemite Valley. The plan stated: "The result will be that visitors can step into Yosemite and find nature uncluttered by piecemeal stumbling blocks of commercialism, machines, and fragments of suburbia."<sup>187</sup> Both of these quotations use the word nature in a particular way. "Nature" it seems is the geological, biological and hydrological landscape free from human interference.

Under the Canada National Parks Act, national parks are managed applying the principle of "ecological integrity" -- that is "a condition that is determined to be characteristic of its natural region and likely to persist, including abiotic components and the composition and abundance of native species and biological communities, rates of change and supporting processes." According to the Park Canada Agency:

[E]cosystems have integrity when they have their native components intact, including: abiotic components (the physical elements, e.g. water, rocks), biodiversity (the composition and abundance of species and communities in an ecosystem, e.g. tundra, rainforest and grasslands represent landscape diversity; black bears, brook trout and black spruce represent species diversity) and ecosystem processes (the engines that makes ecosystem work; e.g. fire, flooding, predation).<sup>188</sup>

The use of the words natural and native again evokes a landscape largely free of human interference. The notion of wilderness is, of course, deeply embedded in North American culture.<sup>189</sup> Despite recent attempts by Native American scholars to point out that the North American landscape is, at least partly, an artifact of Native American land use, the idea of a "pre-settlement baseline" still plays a central role in the management of protected landscapes in North American.

## B. The Ubiquity of Human Influence

In contrast, Britain is without wilderness. "Ecological integrity" in the Canadian sense, is extremely rare and perhaps non-existent. Even "nature" as imagined by United States National Park managers is almost entirely absent. Still, in the absence, of this all important measure of the success of preservation efforts, the British find ways to manage their natural landscapes for the public good.

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<sup>186</sup> <http://www.nps.gov/yell/nature/pritchard/intro.htm>

<sup>187</sup> <http://www.nps.gov/yose/planning/gmp/intro80.html>

<sup>188</sup> [http://www.pc.gc.ca/progs/np-pn/eco\\_integ/index\\_E.asp](http://www.pc.gc.ca/progs/np-pn/eco_integ/index_E.asp)

<sup>189</sup> See Roderick Nash, *WILDERNESS AND THE AMERICAN MIND* (1967).

As Declan Keilly, countryside officer for the Broads Authority said while taking me around the Broads: “Ninety-nine percent of landscape preservation is agricultural practices from one hundred years ago.”<sup>190</sup> To understand what Keilly meant, it helps to understand something about where he works: The Broads.

On the far eastern end of the East Anglia bulge, The Broads is a series of shallow inland waterways – lakes and channels – set in a landscape of low lying meadows, forest and low hills on the border between Norfolk and Suffolk counties. The area extends over the lower valleys of the Rivers Waveney, Yare, Bure, Ant, Chet and Thurne. Covering only 116 square miles (301 square kilometers), the maze of wetland, water and land is a haven for a broad range of wildlife and has been a Mecca for recreational boating for more than a century.

The “broads” themselves – the feature that give the area its name – more than fifty shallow lakes – were thought to be natural formations until the 1960s when research established they were “the flooded sites of former great peat pits, made in the natural fenland in medieval times.”<sup>191</sup> Peat had been an important fuel during the middle ages. The peat diggings were apparently abandoned when they began to fill with water in the fourteenth century. The Broads meet John Dower’s definition of a national park – “an extensive area of beautiful and relatively wild country” -- because short-sighted medieval peat diggers failed to anticipate the effects the river and sea would have on their excavations. The broads themselves are not the only example of human influence on the landscape. The channels that run through The Broads are dredged and maintained. The dry land between them consists largely of fields leveled, drained and protected by dikes for various agricultural purposes. By the standards of North American national parks, there may be nothing “natural” about the Broads.

But despite the absence of “nature” by North American standards, nature is what people value about the Broads:

[A]t the 2002 Annual General Meeting [of the Broads Authority] people were asked to identify the special qualities or features of the Broads that they most valued. . . . Common responses included: the wide, open living landscape of the Broads with its winding waterways and big skies; the abundance and diversity of nature, some of which is unique to this wetland . . . and the sense of space, tranquility and wildness.<sup>192</sup>

Ann and Malcolm MacEwan address this conundrum in their *Greenprints for the Countryside* and formulate a broader definition of natural that will work for the British

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<sup>190</sup> Interview with Declan Keiley, Countryside Officer, April 7, 2000.

<sup>191</sup> J.M. Lambert, J.N. Jennings and C.T. Smith in *The Broads* by E.A. Ellis (1965) quoted in *Broads Plan 1997* at 9.

<sup>192</sup> *Broads Plan 2004* at 15.

National Parks. They begin with a quote from a 1976 Report from the Nature Conservancy Council:

The natural scenic beauty and amenity of the [British] countryside depends to a large extent upon the maintenance of physical features with their cover of soil, vegetation and animals, these in turn being an expression of patterns of land use evolved by man over centuries.<sup>193</sup>

The McEwans go on to recognize what the Broads Plan suggests, that people value British National Parks for their wildness.

They are not wild, in the sense that they have never been used or exploited by man, but within them natural features and processes are dominant and it is still possible to experience the natural world face-to-face with its qualities of wildness and renewal intact.<sup>194</sup>

The MacEwans are right. Which is the more “natural” experience? Sitting on the bank watching a swan glide across a lake in the Broads or sitting on a bus seeing Denali in Alaska’s Denali National Park out of the window?<sup>195</sup> The “natural” we crave has something to do with *how* we see something as well as *what* we see.

### C. A Shared Vision Rather Than a Cultural Myth

If nature is really about the preservation of natural processes, which take place on landscapes altered by humans as well as on unaltered landscapes, and if experiencing nature is about being “face-to-face with its qualities of wildness and renewal,” why do most North Americans cling to the narrower notion that “natural” must be an approximation of pre-settlement conditions? Why do we insist on nature in the guise of cultural myth: a world without “us”, rather than a shared vision of what is beautiful, sustainable and worth preserving? We have two traditional reasons. First, we can. North America contains a sufficient range of landscapes which show little obvious effect from human influence that park advocates can (and have) build magnificent park systems without dealing with the more debatable natural value of obviously altered landscapes. Second, cleaving to pre-settlement baseline appears to allow North Americans to avoid a horrible set of choices: If altered landscapes have natural value, which deserve to be preserved and which do not? For better or worse, neither of these reasons stands up to close examination.

North American Park advocates cannot afford to ignore altered landscapes. Significant parts of the North American continent from San Francisco Bay (teeming with exotic species) to Chesapeake Bay (threatened by pollution and development), from the

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<sup>193</sup> GREENPRINTS at 38.

<sup>194</sup> Id.

<sup>195</sup> <http://www.nps.gov/dena/home/visitorinfo/bus/index.html>

bayous of Louisiana to the Great Lakes, require levels of coherent protection that they are not currently receiving. They are obviously altered landscapes, but they are also the most important natural landscapes we have.

The designation of any park is an act of choice. Parks are not randomly distributed across the North American landscape. Many largely unaltered landscapes go unprotected. The creation of each national park – in Britain or North America – is a statement by the elected representatives of the people – that the particular landscape has national value and should be managed to preserve that value. Whether that value arises from the landscape as it existed before civilization arrived or from the interaction of people and nature does not matter very much. The North American fixation on unaltered landscapes blinds us to the choices we do make. We fool ourselves into thinking we protect landscapes because they are natural when, in fact, we protect them because we find them appealing.

## VI. Conclusion – A Mature View of Landscape Conservation

In 2005, former Secretary of the United States Department of Interior Bruce Babbitt published a book *Cities in the Wilderness: A New Vision of Land Use in America*. The book purports to show “how we can prevent the loss of natural and cultural landscapes and watersheds through stronger federal leadership in land use planning.”<sup>196</sup> The case studies that follow: the Florida Everglades, Coastal California, Iowa Farm Country, the Chesapeake Bay, and the Upper Missouri River involve mixed public and privately owned landscapes, transformed by human use but still valued for their natural quality.

The landscapes Secretary Babbitt chooses are like the landscapes protected by British National Park designations, but on a vastly larger scale. Babbitt established that the United States, through trial and error, has already adopted two of the tenets of the British National Park system: protecting landscapes of national value requires funding from the national government and that protecting mix landscapes requires meaningful local involvement and local control. In his final chapter Babbitt extols the virtues of the New Jersey Pinelands Commission a regulation based preservation scheme for the New Jersey pine barrens with striking similarity to British National Parks.<sup>197</sup>

On May 24 2000, I attended a meeting of the National Parks Authority Board for Northumberland National Park. The meeting was held in the modest conference room in national park headquarters. Members of the board, predominately representatives of

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<sup>196</sup> Bruce Babbitt, *CITIES IN THE WILDERNESS: A NEW VISION OF LAND USE IN AMERICA* 5 (2005).

<sup>197</sup> Babbitt at 175-177; See New Jersey Pinelands Commission, Comprehensive Management Plan; <http://www.state.nj.us/pinelands/cmp/summary/#table>. The mission of the Pinelands Commission is to “preserve, protect, and enhance the natural and *cultural* resources of the Pinelands National Reserve, and to encourage compatible economic and other human activities consistent with that purpose.” <http://www.state.nj.us/pinelands/about/> (emphasis added); The Pinelands Commission has 15 members - 7 appointed by the Governor of New Jersey; one appointed by each of the seven Pinelands counties; and one appointed by the U.S. Secretary of the Interior. <http://www.state.nj.us/pinelands/about/memb/>

local government with the strong accents of northern England, listened to detailed presentations by park staff, dedicated and plainly passionate about the issues they discussed – from new legislation in Parliament, to preservation of Iron Age archeological sites to farm building reconstruction. The board members listened and asked questions. On almost every issue, they examined the conflict between national and local concerns. Both sides were represented, and a balance struck. The national vs. local abstractions that often divide North Americans had no chance to emerge through the series of specific “what do we do about this” questions.

When the members of the Council for the Preservation of Rural England, The Addison Committee, Standing Committee on National Parks, John Dower and the Hobhouse Committee borrowed the concept of National Parks for North America, they transformed it into a tool for preserving a type of landscape that North Americans, at the time, had never thought of preserving. Now, perhaps, it is our turn to preserve such landscapes. , but, by necessity, on a scale much larger than England and Wales have ever had to deal with. We can borrow the concept of National Park back from the British and transform it again.