SCOTTISH LAND REFORM AND THE IDEA OF ‘OUTDOORS’

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**Abstract:**

This paper explores political and phenomenological aspects of landscape through an ethnographic study of new access rights in Scotland. Drawing on a Nordic tradition of common access rights, the recent legislation in Scotland takes a radical approach to landscape by providing access to Scotland’s outdoors in its entirety. Olwig’s descriptions of ‘customary’ and ‘natural’ landscape law provide a basis for identifying the intentions of those involved in the access agenda in inculcating a national sense of an accessible landscape. But ethnographic evidence, beginning with the premise of moving subjects rather than static viewers of landscape, shows that the continuing divisions between higher ground and lower ground access issues are based on the qualities of walking that combine gesture, confidence, and features in the landscape. The political landscape thus comes into being through the progression of footsteps of those on the ground as much as through discourse in legislative centres.

**Key words**: Landscape, Scotland, walking, politics, gesture.

## Introduction

In recent years researchers in the social sciences have become interested in walking and human movement, and one way into this has been through the phenomenology of landscape. If it seems insufficient to understand landscape as merely a cultural representation, walking can exemplify instead the engaged, close-at-hand (and foot) perceptual aspects of human relations with landscape (Lee and Ingold 2006, Ingold and Vergunst 2008, Wylie 2005). At the same time, understanding the contested and often conflictual nature of places (e.g. Bender and Winer 2001) requires attention to relationships which are as fully social as they are material. This paper builds on recent approaches to walking and human movement to consider the relations between the landscape, politics and human experience. The argument is that the ‘political’ aspects of landscape do not form the context for a supposedly individual phenomenological experience of walking. Rather, the way the steps are made and the journey progresses itself constitutes the social and hence the political relations of the landscape.

The ethnographic data in this paper come from Scotland. There, landscape has been intimately associated with views: the picturesque Highland mountain scenery that simultaneously embodies both nature and the nation and is looked upon in order to assert their reality. The tradition of Romantic appreciation of the landscape can be traced first in the writings of the Reverend Gilpin in the 1770s, a cleric-traveller who used the language of art to describe the scenes, views, compositions and ornamentations of nature and wilderness in the Highlands (Smout 2000:22-24). Walter Scott brought these sensibilities to the mass market in poetry and prose, while 19th century artists such as Horatio McCulloch and Edwin Landseer celebrated the sublime aesthetic in landscape. Here nature was understood to be beyond the ordinary and was, as Murdo Macdonald writes, ‘part of the process of distancing the relationship of people to land in the Highlands’ (Macdonald 2000:104). It was a very different aesthetic sense to the agricultural, industrial and social ‘improvers’ of the Enlightenment tradition, archetypally Lowland, who were grounding beauty in practical purpose and the pursuit of profit.

Partly through these means, landscape in Scotland has in many ways become associated with the Highlands, and is often thought of as ‘away from here’, or ‘out there’, apart from everyday human habitation. It is the source of beauty and sublimity that can be briefly attained in visions, or even in actuality given enough physical effort to get there, but not dwelt in. This disjuncture of Highland and Lowland in Scottish landscape has continued to structure many different kinds of discourse and, as Nadel-Klein (1997) has argued, even ethnographic representation in Scotland. Eric Hirsch’s identification of ‘background potentiality’ in landscape, in which landscape can be a representation of an otherness, a difference from the ordinary, or perhaps an ideal way we would like things to be, resonates strongly here (Hirsch 1995). In a painterly analogy, Hirsch contrasts the ‘out there’ landscape to a foreground of ‘here-and-now’ and the actuality of the immediate. But what would happen if a static viewer of sublime landscape were to be substituted with a walker? The landscape ‘out there’ would be contrasted not with a close-by or enclosed ‘here’, but with that which is all around us and readily attainable. A person travelling, and particularly travelling on foot rather than simply gazing on or being transported across the landscape, constantly re-makes their geographic and bodily ‘here’. As Merleau-Ponty (1962: 115) put it: ‘The word “here” applied to my body does not refer to a determinate position in relation to other positions or to external co-ordinates, but the laying down of the first co-ordinates, the anchoring of the active body in an object, the situation of the body in face of its tasks.’ ‘Here’ is a starting position to be expanded out from. In a walk, the ‘here’ extends along the path, whether up a hillside or along a street, through time as well as space.

I want to avoid any easy assumptions concerning the relationship between a person and a stable, bounded place, such as that invoked in a gaze out over the landscape but also that sought in a phenomenological moment of intimacy with landscape. In the former, rather than a clear-cut separation between subject and object, and between viewer and vision, a mobile subject is assumed from the start. Put simply, being-in-the-world must involve being-on-the-move. Inquiry can then centre on the specific activities that allow the journey to continue: the techniques and gestures of movement, and the tasks that form the purpose of the journey and the basis of the dwelt-in landscape (Vergunst 2008, Ingold 2000).

In the latter, as John Wylie has argued, there has been a tendency for phenomenological approaches to landscape to over-emphasise the immediate and present, carrying the risk of slipping into ‘both myths of primitivism and baleful notions of authentic or proper dwelling – a coincidence of people with both the land and themselves’ (Wylie 2009: 282). Within the phenomenology developed here there should be no sense of disjuncture from the social and political world in favour of an ‘individual’ or pure and authentic experience of landscape. As Zigon has pointed out, Heidegger’s phenomenology was based on a capacity for intersubjectivity in an already-social world (Zigon, 2009: 286), not an individual discrete experience. Centring the anthropology of landscape in how people move around means focusing not only on the construction of images and views, and neither on a narrow phenomenology of individualism and presence. Instead I seek the corporeal, social and political forms that are brought into being in relation to the environment, and gathered together through the gestures of walking. For Henri Lefebvre for example, it is bodily gesture that makes social space – ‘Bodies themselves generate spaces, which are produced by and for their gestures’ (Lefebvre 1991:216, see also Farnell and Varela 2008).

My key question, in a case where landscape and movement are a political issue, is how the political comes to be part of the flow of gestural experience. Edensor (2010) draws attention to Lefebvre’s concept of ‘dressage’ as a form of everyday bodily regulation and discipline in habitual social interaction, and others have recently discussed the significance of politics in walking as part of a ‘mobilities turn’ in social science (e.g. Cresswell 2010, Pinder 2011). Both Edensor and Pinder (2011) explore how contemporary artists who use walking in their practice provide a comment on and counterpoint to the often implicit regulatory regimes of urban pedestrianism. Also in an urban setting, Elyachar (2011) focuses on characteristic locomotory gestures in walking, driving and using public transport, which are developed as part of a habitus through growing up in Cairo and become implicit in the indigenous *sha ‘abi* political identity. Drawing on Margaret Mead, gesture for Elyachar is important for how it ‘calls forth a response’ from another, be it in bodily terms or the recognition of identity, in contrast to the ‘significant symbols’ of explicit and worked-upon bodily techniques associated with, for example, Islamic practice learned in mosques (ibid. 91). In these cases the body is not, in a Foucauldian mode, just the site of societal discipline and regulation. It is also a means through which a person creates and responds to senses of identity that may be both implicit and explicit.

In this paper I track the gestures of locomotion and identity out from the city and into a rural landscape. We should not assume of course that ways of moving are necessarily any more free in the country, in contexts where land ownership is defined, access is controlled and the state and its regulatory agencies may be just as present as in the city. The material constraints of contemporary rural landscapes for walkers can be considerable, as I will describe. In discursive terms too, forms of appropriate and inappropriate bodily practice have long been recognised in the rural UK, Europe and elsewhere. And yet it is also the case that rural landscape traditions exist that interact with these regimes in ways distinctive to urban patterns of movement. Within the framework of seeking the political within the experiential and gestural, then, questions about the working of specific political dynamics remain. How, for example, does a formal legislative process *about* landscape come to interact with the customary practices that have their own trajectories all around us *in* the landscape? In the following sections I outline my theorisation of the politics of landscape in the context of the access rights in Scotland.

## The Outdoor Access Rights in Scotland

Since February 2005 everyone has had the right to access the outdoors of Scotland, defined as ‘mountains, moorland, farmland, forests, woods, rivers, lochs and reservoirs, beaches and the coastline, and open spaces in towns and cities’ (Scottish Natural Heritage 2005, www.outdooraccess-scotland.com). The only significant restrictions are against motorised transport, profit-making activities, and accessing land associated with buildings, such as gardens. With the inclusion of most farmland, urban and peri-urban land, this is a radical conception of access rights, particularly so in the context of Scotland where there has been a pattern of highly concentrated land ownership (Richards 2000, Sellar 2006, Wightman 1996). The new access rights were introduced alongside equally radical legislation that gives rural communities the ability to collectively purchase land, together introduced by the Scottish Parliament as the Land Reform (Scotland) Act 2003. While the community land ownership side of the legislation has received attention from social scientists (Mackenzie 2006a and 2006b, Bryden and Geisler 2007), the new access rights have been much less attended to. The ideas of landscape that are apparent in the new access rights are a way into investigating what kind of relationships between people and their environments are being hoped for and are actually present as people seek access to the outdoors.

Negotiations around the rights included both recreational and landowning interests. One outcome, once consensus on the overall access rights was achieved between these often conflicting groups, was that a document setting out the meaning and scope of ‘responsible’ access to the outdoors should be produced (interview, Bob Reid, National Access Forum, 2006). Scottish Natural Heritage, the Scottish statutory nature conservation organisation, were then commissioned to produce the Scottish Outdoor Access Code, which has become very much the public face of the access rights. It is in the form of a 100-page booklet, but the public come into contact with it through summary leaflets in tourist information offices and outdoor gear shops and through billboard and television adverts, and a website (www.outdooraccess-scotland.com). In many of the adverts, different kinds of ‘access-takers’ (walkers, horse-riders etc.) give way to each other as if following the gestures of traffic road rules. The code itself sets out the principles upon which access should be based and provides guidance on a range of access issues, from air sports to wildlife watching, for land managers and members of the public.

There are three points I would like to make about the Code in relation to my discussion of landscape, all of which are recognised in broad terms within the Scottish Government and SNH (interview, Robert Garner, Scottish Government, 2006). Firstly, the invocation of ‘outdoors’ puts the Code squarely within a landscape that is all around us, in the immediacy of ‘here’ rather than separated into a viewer and distant view. Access should be enabled anywhere outside the home or the immediate domestic and private space. Far from the standard approach to nature conservation and access in most of Europe, where the land is understood on a piecemeal basis – farm-by-farm and estate-by-estate as land managers enter their land into agri-environment schemes (Lee 2007) – everywhere is now on a level, according to the Code. The same right is exercised when a person accesses farmland on the edge of town as when they attain the summit of a Munro. In theory this goes some way towards discouraging some of the traditional mystifications of Scottish landscape, notably the Lowland/Highland divide and the popular association of the Highlands with remoteness and wilderness (Nadel-Klein 1997). It points towards how such landscape classifications could be challenged and remade.

Secondly, the Code explicitly ‘establishes’ the new right of access. It is widely recognised that over the decades the access situation in Scotland has been confused, to the extent that even the existence of a law of trespass is a point of discussion (Lambert 2001). Formal ‘Rights of Way’ can be instigated where the use of a route can be demonstrated during a period of twenty years, and these have been an important mechanism for keeping many paths open over the years (Hill 1980; Lambert 2001). But instead of clarifying these situations, the legislation and the Code sidestep them and simply state that rights relating to existing public rights of way are to continue. This was done intentionally in order to make a ‘clean start’ on access (interview, Robert Garner), and not get bogged down in the technicalities of the old debates again. The new access agenda was intended to link to other policy issues including health and rural development, as well as land reform in a newly devolved and politically able Scotland. While there is as yet no widespread connection between outdoor access and the latest developments in nationalist politics in Scotland (which are leading to a referendum soon on full independence from the UK), the land reform agenda as a whole does stand for a sense of addressing historical injustices in which the UK state is seen as at least complicit, including the concentration of outright land ownership in the hands of very few (Sellar 2006).

In the same way that the rights produce a kind of geographical neutrality in the landscape, then, they also produce an historical neutrality in which past debates on access can be circumvented. The ambition here seems to echo that in other situations of modern state-craft noted by James Scott (1998), and yet, while in the legislation the Scottish landscape is clearly set up as a single arena for intervention, the access rights are not an authoritarian or simple centralised project of planning. Local Outdoor Access Forums, mostly co-inciding with the 32 local authority areas in Scotland, made up of access and land manager stakeholders now function to advise and occasionally adjudicate on outdoor access. The question instead becomes about the interaction between a project of developing Scottish nationhood and, as mentioned earlier, a localism in keeping with the ‘Big Society’ agenda of reduced state activity in favour of ‘the community’, recently instigated south of the border by the Conservative Party but with roots in New Labour’s embrace of ‘Third Way’ politics (Giddens 1998).

Thirdly, the Code has evidential rather than legal status, and so it can be drawn on in court cases but does not provide a statement of law in itself. It attempts to influence custom and landscape through changing the habitual manner with which access is conceived in Scotland. What is at stake is the confidence with which people in Scotland take up their new rights, or in other words whether the access rights become embedded within the ordinary ways of moving around the land. The cultivation of confidence in accessing the outdoors is balanced by the assertion that all parts of the access community, including the public and land managers, also have responsibilities, which links to the political rhetoric of ‘rights and responsibilities’ common in the UK since the Blair era. The Code tells access-takers that they have to respect the interests of others, care for the environment, and take responsibility for their own actions. In England and Wales, the Country Code has served as an instrument of governmentality and self-disciplining for rural walkers through defining the responsible behaviour of keeping gates closed and dogs under control – establishing a sense of productivity under threat from encroaching urban visitors – even though it has only ever been advisory (Merriman 2005). The Scottish code concerns itself less with the regulation of fine details than the overall principles of access. In broader terms, the Scottish code could be connected with the rise of neoliberal policy discourse that seeks to distance the state from its citizens. As Shucksmith describes, this trend in rural policy involves a shift from ‘government’ to a more dispersed ‘governance’ of rural-dwelling and rural-accessing citizens through international (e.g. EU) as well as national policy processes (Shucksmith 2008).

**Landscape, Law and the Outdoor Access Rights**

In a range of work, Kenneth Olwig has outlined a concept of landscape as based in the body politic, as the site of dwelling of a group of people in custom and common law (Olwig 2002; 2003; 2005; 2006). Originating in Germany and Scandinavia prior to the 16th century, the *Landschaft* was the place associated with a particular polity who provided the customary law that governed it. Setten (2006) draws on this history in describing landscape in the Germanic-Nordic tradition as an ‘amalgam of polity and place’. The distinction is with the naturalistic or pictorial meanings that have come to be associated with the term in English, as a result of the influence of southern European perspectival art and the influence of Roman law through the feudal systems that took over the *Landschaften*. Landscape as the place of the body politic ‘is neither the intangible pictures within our heads nor the material thing outside the mind, but the social and political realm of discourse – public opinion – that informs both’ (Olwig 2003:875). In Europe and the USA, Olwig identifies the historical development of two systems of landscape law, customary and natural, that continue to stand for on the one hand localised landscape practices based in habit and custom, and on the other a rational and geometric reckoning of landscape as a set of universal principles (Olwig 2005). These socio-legal dimensions of landscape are relevant to the Scottish situation in both a general and a specific sense.

In general terms, the Scottish access legislation aims to inculcate a change in customary law in the broad sense of how the body politic interacts with landscape. Robert Garner, the official in the Scottish Government previously quoted here, described to me the influence of the access agenda as long-term, ‘over generations’ – not a simple change in the law that produces a direct effect. Instead, the effect is intended to be on the landscape of Scotland through something similar to Olwig’s conception of customary law, in changing how the triumvirate of the public, land managers and the access authorities (local government and other agencies) ultimately understand their relationships to land and each other. The Scottish Outdoor Access Code in the end trades in the language of guidance, consultation and negotiation much more than in rights and obligations. We can find, for example: ‘The detailed guidance in the Code should help to ensure that few problems arise’ (Scottish Natural Heritage 2005: 2); or ‘Consult the relevant land manager(s) to let them know of your intentions’ (ibid: 116). Outside of the Code, in the real world of social activity, there are even more numerous organisational partnerships, forums, sources of advice and debates related to access.

In all these social and landscape relations the development of customary law can be traced. Olwig, drawing on Bourdieu, describes customary law in the landscape as follows: ‘a habitus, in which habit, custom and law are inextricably linked through the practice of habitation and accustomation’ (Olwig 2002:18). I want to emphasise in particular the intent to cultivate a customary landscape: the public and managers of the land are being encouraged to learn new ways and new habits in dealing with the landscape, and each other, without constant recourse to the ‘natural’ law of formal legislation and the courts. But although the courts are meant to lie in the background, in 2007 the outdoor access process in Scotland almost ground to a halt when one landowner used the courts to prevent a group of ramblers taking access through a certain wood, successfully arguing that it was land associated with her home. In the days following the Scottish Government hurriedly assured the country that the principles of outdoor access were not affected by the victory of the landowner: the new habits of landscape would still prevail over a single court judgement. The essence of this changed landscape is that almost everywhere in Scotland is now a potential ‘here’, available to be journeyed through and at least temporarily dwelt in. It is notable, though, that in the legislation the access rights are post-scripted with a reference to going into, passing over and remaining on land or inland water ‘and then leaving it’ (Scottish Natural Heritage 2005:10). If they are rights of dwelling, it is a mobile coming-and-going rather than a continual presence.

The Scottish access legislation was modelled on the customary access rights of the Nordic countries, themselves based on the traditions of landscape described by Olwig and other historical geographers (Setten 2003). This is the custom of ‘everyman’s right’ – *allemansrätten* in Sweden, *allemannsrett* in Norway, and *jokamiehenoikeus* in Finland – which allows open access to uncultivated land for recreation, camping and berry and mushroom picking. In Norway in particular, from the 19th century *allemansrett* became associated with a strongly moral and nationalistic discourse of personal improvement through contact with nature, as part of the *friluftsliv* (open-air living) movement and mass-recreation public policy which was enshrined in Norwegian legislation in 1957 (Kaltenborn 2001:419). But it also has much deeper roots in medieval Nordic landscapes as a customary right to cross and gather foodstuffs from the uncultivated commons within a system of udal land tenure (Colby 1988). The transient dwelling envisaged in the Scottish rights has its counterpart in such landscapes, and yet an important difference is that there is formally no common land in Scotland in the way there is in the Nordic countries. While in the recent Scottish legislation land ownership rights are made to no longer include an absolute right to control access to the land, land ownership itself is not altered.

The Nordic rights are today still widely held and largely unreflected upon, except in cases where they are perceived to be under threat. Examples here include newly mobile urbanites gathering berries in rural areas above and beyond a level deemed fair by local inhabitants (Pouta et al. 2006), and issues around the commodification of access for economic development(Vergunst et al. 2009: 165). The pressure to find new forms of non-agricultural rural development is such that the tension between commodification and access rights is emerging as an important issue in the Nordic countries, particularly in relation to tourism (Mortazavi 1997). As I have described there are differences between the Scottish and Nordic cases, including the fact that Scotland has less uncultivated open land as close to major conurbations as the Nordic countries. Nonetheless it is interesting that as Scotland develops a law partly based on and even exceeding the Nordic everyman’s rights, there are worries about the decline of that very set of rights in the Nordic countries themselves.

I now want to trace the situation on the ground through the practices of walking itself. My ethnographic argument turns on the difficulties of finding a geographic and historical neutrality in outdoor access while customary landscape practices continue to vary.

**Current Events: In The Mountains**

Figure 1: Hillwalking with the Cairngorm Club at Braeriach.

I started fieldwork in north-east Scotland in the period leading up to the official commencement of Scottish access rights on 9th February 2005. The region includes the Cairngorm Mountains, which has had its share of access disputes from the mid-19th century onwards partly because of the extensive privately-owned grouse moors and deer forest and a significant urban population keen to access the hills from nearby Aberdeen. Lambert (2001) describes how the Rothiemurchus estate in the northern Cairngorms was the subject of a long conflict between the landowners on one side and the Scottish Rights of Way Society and the Cairngorm Club, an Aberdeen-based association of hillwalkers, on the other. In 1949 a large part of the northern Cairngorms were designated as a National Nature Reserve, and in 2003 the Cairngorms became one of the first national parks in Scotland.

The aims of the Scottish national parks do not follow the classic American ‘wilderness’ park model and instead include both use for recreation and sustainable economic and social development (Vergunst et al. 2012). A range of developments in the Cairngorms have improved access over recent years. The mountains have a very wide range of land management groups, illustrating the rich social context for high ground access issues in Scotland and Britain. In 1995 the National Trust for Scotland purchased Mar Lodge, another of the large Cairngorm estates, and has implemented many access improvements. Another charitable organisation, the Upper Deeside Access Trust, co-ordinates efforts to improve access through a further large part of the Cairngorms. In 2003 the Cairngorms as a whole became Scotland’s second National Park, fronted by the Park Authority which has responsibility for local planning, including issues of access.

One strand of my fieldwork involved joining a number of clubs and other social groups for their recreational hikes in the Cairngorm mountains. Aberdeen has a very rich associational life in terms of walking clubs, with at least 50 clubs in and around the city (according to my estimates and those of informants). They also provide an excellent opportunity for the fieldworker to meet and socialise with walkers. Many weekend walkers are aware of the new access rights, and some are also interested in the debates leading up to it. But the most frequent comment from walkers on access issues was along the lines of ‘well, we’ve always walked here anyway.’ Through their regular journeys and their familiarity with the hills, many walkers have already taken on a kind of ownership of the hills, enacting what could be described as a customary right to move through the hills. Part of the rationale in introducing the access rights in the same legislation as the community right-to-buy was to make a statement that the access rights were also affecting land ownership: the right to own land would no longer include the right to control access to it (interview, Rob Garner). For the many regular walkers in the mountains this battle is in many ways already won insofar as they already exercise what they see as their rights each time they walk out on the hills.

This is not to say, though, that there is no awareness of the history of conflict over land use and outdoor access. Again, while walking along, this is most often brought to the level of the specific and personal through memories of previous walks and family histories. One woman told me of her grandfather and a more recent event:

My grandfather was a socialist in his time, which was a long time ago. And he used to say ‘the hills are ours!’ He strongly objected to all this landed gentry and closing off the estate. He used to go walking still though… And he didn’t touch his forelock either.

Touching one’s forelock, a small salute, is an old-fashioned gesture of deference. She continued:

I remember we met the Queen’s factor [the estate manager]. That’s another good walk, you might come again with us. All the houses, all the monuments she built for her children. At the back of Balmoral. And we met, was it Peter Ord? And he was quite a… he was very pleasant you know, but obviously… very much of the landed gentry.

I have heard a number of similar stories of meetings with royalty or with people connected to the royal household at Balmoral estate in the Cairngorms, where the Queen and members of her family stay during the summer. The tone of the meetings, as they are re-told, is of politeness and a kind of mutual respect. During walks themselves, walkers assert an equality based on their co-presence in the landscape with whoever they come across. Becoming aware of another walker coming the other way, looking up at them, making space for passing and a spoken ‘hello’ or ‘hi’ are a series of gestures that call forth a similar response, regardless of any perception of status. Variations can include stopping to let faster walkers pass from behind, calling one’s dog to heel when passing others, or a small comment on the weather. These are enacted in unison in a small choreography of sociability and equality. *Not*  touching one’s forelock – the ‘significant symbol’ of deference, in Elyachar’s terms (2011), is important here. The hills allow for the levelling of social status based in being on the same paths at the same time, even if the landowner or their party might be driving a Land Rover up them – though a wave from the steering wheel will replace the spoken greeting. There is a confidence that the continued presence of walkers in the hills itself promulgates the right to walk there. In the high ground a customary right of access is apparent in the actual carrying out of the walk, as if each journey was a beating of the bounds. The gestures of the body that mark out equal presence are enacted in sociable contexts along the way of the path.

Walkers nonetheless vary in the confidence with which they carry out their hillwalking, with some only going out with an organised group. They may cite reasons for this of not knowing where to go, or the fear of getting lost. Many walkers, however, typically build up an expanding repertoire of favoured routes and walking areas through a combination of visits in the company of others and their own exploration with maps, guidebooks and simply ‘following your nose’. Hillwalkers often suggested to me that they felt access in the high ground in Scotland is ‘not too bad’, and other words to that effect, despite the awareness of access ‘blackspots’ (e.g. Anon. 2003). Confidence becomes enfolded in the very walking itself as the sure stepping of a person on their route, in contrast to the insecure ‘groundlessness’ of being lost or in the wrong place that again will quickly produce a response from one’s companions (Vergunst 2008). It is these kinds of explicit and implicit confidence, enacted through the gestural practices I have described, that have led to what is effectively a customary right of access to high and mountain ground in Scotland. Taken together with the ownership and institutional developments outlined above, it could be argued that access to Scottish mountains even before the 2003 Land Reform Act was better than it had been at any time since at least the rise of the sporting estates in the mid-19th century.

And yet, what is radical about the new access legislation is that it makes no distinction in principle between mountain, lowland or indeed urban environments, including them all within the same legal landscape. The debate up to now has largely focused on the Highland environments that the urban middle classes wished to access – the massed working classes in Scotland never being in such close contact with problem areas as were the Sheffield and Manchester ramblers who organised mass trespasses in the Peak District of Derbyshire in northern England in the 1920s and 30s (Hill 1980).

The politics of access are certainly broader than just recreational or leisure interests, and walkers of all social classes rarely talk about ‘recreation’ in simplistic terms. Instead, they describe the importance of overall well-being, contact with their local environments and the distinctive forms of socialising that walking in all kinds of places offers – terms which are often not so far from those invoked by the trespassers in the Peak District in the 1920s (Hill 1980:69). One common trope is an assertion of familiarity or even ‘home’ in the hills. Peter, a local resident and keen walker, told me: ‘I know that if I can see Lochnagar and Mount Keen and Morven in a single view, I’m home.’ This is not just a geometric triangulation from three prominent hills, and still less is it a powerful gaze over the landscape. It is an inclusion of them within the immediate lifeworld, regardless of their actual distance away. As a practice of looking it reverses the usual mountaineer’s gaze that spreads outwards, panopticon-like, from the summit (Lorimer and Lund 2008). It references instead the use of mountain peaks as landmarks, common both amongst traditional seafaring in this coastal region, as described further north in Shetland by Cohen (1987), and in much ordinary discourse when out and about. The hills’ phenomenal presence is an important part of the dwelt-in landscape of home (Gray 2000). They resonate with the journeys made through them and within sight of them.

I would suggest that one yardstick by which progress on practical issues in access in low ground places could be measured is the extent to which they eventually result in similar kinds of confidence amongst walkers compared to the mountains. It is ironic that walkers may sometimes be more ‘at home’ amongst the mountains than in the low ground areas closer to where they live. A levelling of the social and legal landscape means that the lowlands need to incorporate some of the things that have gone well in the mountains.

**Current Events: The Low Ground**

My starting point here is fieldwork in two rural lowland areas of northern Scotland, the Orkney Islands and Aberdeenshire. Two landscape features that dominate in both cases are fields and roads. There is very little open countryside of the type found higher up, through which paths can be traced. Intensive farming in both regions means that walking across the land involves dealing with barbed wire and a variety of field gates that are variably easy to open or climb over. This is partly a matter of skill and familiarity, of course. Whilst walking with farmers through their fields I tried to learn ‘fence-hopping’ but was rarely able to emulate the single movement of holding down the top line of barbed wire while jumping over in a pirouette without at least snags on my trousers. Large metal gates usually only require strength to yank open, once the mechanism is determined, but are often tied or locked shut and walkers often end up precariously climbing over them with their rucksacks. More generally, there is a sense that walking on farmland is not usually done: not necessarily not allowed, but outside the normal realms of acceptable walking both from the point of view of the land manager and the walker.

One walking club outing I attended in Orkney in 2007 is illustrative of the different kinds of walking here. Once we paused to look at the map when we realised the planned route took us through a small harvested barley field. The walk leaders were uncertain as to how we should proceed. We eventually clambered over a gate and made our way carefully – without confidence – around the stubble field, with the injunction to keep to the side so as not to upset the farmer. The group relaxed somewhat when we found that the steadings on the other side were empty of people and animals. Where fields are used by walkers, it is most often explained as being in order to ‘cut across’ to another path or destination. Walkers in my study areas habitually look for paths in whatever environment they are in – ‘by instinct’, as one described it – and the fenced field, as an internally uniform and bounded area, usually precludes this sense of progression. A landscape of geometric fields appears to be full of boundaries, even though farmers are able to progress easily between them.

The caution over entering fields relates to the customary divide between cultivated and uncultivated land that is the basis for the Nordic everyman’s right, in which only the *utmark* (in Norwegian), the uncultivated land, can be accessed, and not the *innmark*. The English equivalent terms are outbye and inbye. The inbye, being obviously farmed and removed from the state of Nature – and thus, according to John Locke, forming private property – can itself form a clear landscape boundary as a block, especially when viewed from afar. But in Orkney at least, these words have a relative character in addition to their objective description of the land cover. The traditional Orkney dwelling was a Norse longhouse in which one end, the inbye, was for people and the other end, the outbye, was for animals. Nowadays on a farm, a person outside the farmhouse but within the steadings can be described as being outbye, and in the same conversation reference might be made to the outbye land of the entire black hill compared to the inbye of the green fields. Inbye is that which is closer in but is not necessarily the private domestic space of the farm family – uninvited movement within which certainly would be trespass. The terms get their meaning from their relative rather than absolute position, so there is no need to characterise inbye as domestic or private in an absolute spatial reckoning. The access rights therefore challenge the equation of inbye with private and in doing so play into to these historically-embedded habits of understanding farm landscapes. The continuing reluctance to walk over farmland is partly to do with the lack of paths, and partly to the understanding that farmers have authority over their inbye land and the activities that take place on it. In Orkney this plays into a history of often strained relations between farmers and environmentalists over recent decades (Lee 2007), to which I will return shortly.

The second landscape feature that bears heavily on low-ground access is the roads. The road network makes almost no allowance for travel other than in vehicles. Prior to the tarmacking of roads and the rise of the car, we can imagine a huge variety of tracks, paths and unmade roads used as footpaths, bridleways, cattle drove roads, smuggling routes and for a host of other purposes (Haldane 1952). Historically, the networks of routes joining villages and towns and places of work, living and leisure are often presented in the history books as treacherous and dangerous – because of poor surfaces, the possibility of attack, even the weather – as part of a narrative of progress towards a supposedly clean, safe and modern road system (Copeland 1968). But they did allow for a range of users, including walkers. Referring primarily to England, Anne Wallace argues that up to at least the start of the 19th century walkers would often have been seen as being poor, apparently unable to afford horse or coach travel. But with improvements in transportation walking became a positive choice, and was embedded in a Romantic aesthetic appreciation of the environment and the ‘cultivating labour’ of positive aspects of the self (Wallace 1993:11,65). This is where walking is seen to provide a closeness to nature and the basis for a leisure activity. But it is also clear that rich traditional walking cultures existed. They can be seen through, for example, the variety of domestic baskets, creels, sleds and harnesses used for wheel-less transportation in northern Scotland until relatively recent times (Fenton 1997). A recent overview of the history of walking in Scotland further identifies migrant labour, cattle herding (both legal and illegal) and pilgrimage as being amongst the activities that particularly involved walking (Mitchell 2001). Or in Robert Louis Stevenson’s novel *Kidnapped* (1886, set in 1751), the foot-weary protagonists may be on the margins of Scottish society but the rural roads are often busy with a whole variety of walkers.

A person attempting to walk on countryside roads today is liable to feel distinctly out of place in relation to other road users. This is true both when trying to make an ordinary route on foot through a rural area and on official long distance walking routes. On one day I was with walkers on the Speyside Way long distance route at Bridge of Avon in Moray, one section of which involves picking one’s way along a narrow grass verge next to busy A95 trunk road while trying not to fall into either the bushes or the road. On smaller roads there is an accepted practice for pedestrians, formally summarised in the official UK Highway Code: walkers must walk by the side of the road facing the oncoming traffic (on the right hand side in the UK), in single file, and the person at the front should call out ‘car!’ when necessary. Doing so will produce a certain level of alarm and evasive action amongst the other walkers. Here, then, is another set of regularised gestural practices amongst walkers that are enacted during journeys. But along the roads, the walker’s first gesture of alarm calls forth only a response from other walkers, not the vehicular source of the action. In relation to the vehicle the practices are only a gesture of deference, not far short of a touch of the forelock. No assertion of equality is possible because there is no parity – no contest – between walkers and cars on a busy road. The walkers instead can only choreograph their own movements out of the way.

More localised practices can also be found. In Orkney and occasionally in Aberdeenshire, I have observed much more regular walking on rural roads. Around the main town of Kirkwall in Orkney there are two well-used circuits that involve walking on roads. The eastern route takes a very small road that passes some farms and ends two kilometres out of town at a car park next to a beach. I have observed walkers going this way staying much more to the middle of the road, confident that the infrequent cars heading for the farms or the beach will be careful for them. The southern road is about the same length as the eastern but is much busier with traffic, being on a through-route to other parts of the island and subject also to the recreational driving of ‘boy-racers’. Pedestrians wishing to walk to the southern beach have a much more difficult time in hopping off and onto the grass verge as the traffic passes (figure 2). On this route they tend to walk simply *to get to* the beach, where the ‘real’ walk then takes place. More often than not, people in fact drive the short distance out of town to get to the beach. But to get to the eastern beach, the stroll along the small road is part of the meaningful walk. The journey and the destination are not so separate, and the landscape, we could argue, is not split into ‘here’ and ‘there’. I also recognise that vehicles and their drivers are part of the rural landscape, and a range of recent work explores drivers’ own subjectivities (e.g. Featherstone et al. 2005, Árnason et al. 2009). Indeed, most hill walkers gain access to the hills in the first instance by car, bus or coach. Nonetheless, during the walk itself the divides between these forms of locomotion are usually stark – occasionally overcome by gestures of sociability, but more often they situated in a dominant-deferent relation.

Figure 2: Walking on the road south of Kirkwall, Orkney

The question is whether the outdoor access reforms can begin to help find solutions to some of these long standing problems. I followed a case in another part of Orkney over a number of years that concerned access to a part of the coastline. During my fieldwork residents spoke to me of times they spent there picnicking with their families, going fishing, and walking along the coast. Unlike most of the rest of that particular island, the area was never subject to intensive cultivation and allowed people to reach a series of small bays, grassland and dramatic cliffs. But partly because of the very lack of intensive farming the land was bought in the 1980s by a nature conservation organisation and was run as a habitat development project with very limited public access. Through 2005 the situation changed however. The land manager had been unable to secure further funding for his habitat development and grazing schemes, and was approaching retirement, and so arranged for the management of the land to be transferred to a neighbouring farmer. This farmer, while sympathetic to the environmentalist perspective, had very different ideas about access. The local council access officers were also well aware of the situation, one describing to me how an older resident of the island had told them that while he would no longer be able to walk out to the coastline, he wanted his grand-daughter to be able to do so. It coincided with the introduction of a new agricultural subsidy system (Land Management Contracts) in which farmers can plan new paths and receive money for maintaining them. Now, there is a gate for walkers with an access sign where before a fence-hop had been needed, and a path flanked in true Orkney style by barbed wire but nonetheless leading out to the open coastline. The farmer who put the new path in was genuinely happy to be able to contribute to island life in this way, seeing it as an old injustice finally righted.

This shows how the outdoor access agenda is, in certain places at least, implicated in how the landscape and the relations people have with it are changing. Inevitably, such policy changes are caught up with the biographies of land owners and those attempting to gain access and there can be no straightforward reading-off from policy documents to actual landscape situations. Governance processes instead interweave with the landscape in complex ways, and emerge from long histories of social relations in particular locales amongst farmers, environmentalists and others (Lee, 2007). As rural land use shifts from a productivist ethos to a broader agenda (Árnason et al 2009) it is not yet clear how more environmentally or socially beneficial landscapes will be formed.

Importantly, these relations and debates are coalesced in the actual making of paths and the formation of routes. The case described above shows how new paths can connect with older and habitual ways of moving around. In some respects, paths and fences reflect the state of social relations amongst whom they are laid out, joining some people and places while preventing access amongst others. The role of paths in this respect has been noted elsewhere: Harrison shows in Papua New Guinea how allowing paths to grow over can constitute an ‘active forgetting’ of social ties between villages, whereas regular path cutting and maintenance keeps those ties alive (Harrison 2004). In the case of rural roads too, we might similarly hope for a return to different (less car-oriented) habits of moving around the countryside. If the bodily gestures of walkers can be assertive or deferential in regard to the form of co-presence that they evoke, all too often in the low ground they comprise the latter: they defer to the boundaries of the landscape and the speed of the traffic.

**Old Ways and New Ways of Landscape**

In following Olwig’s focus on landscape as site of dwelling for a body politic my analysis has shifted between the political process and its working out within the nation, region and locality. But landscape, as Ingold (2000) and Olwig have both argued, is a subject of quality rather than quantity, and so a geographic idea of scale is not always the most useful way of approaching the lifeworld of landscape. Rather, the positioning of a gate in a fence, or how a route is found through a field or grass verge, has its context in how landscape is understood in a combination of legal and customary senses. Conversely, what are often understood as ‘wider’ political processes happening far away in centres of legislative power exist equally in how steps are made through ordinary environments, steps that constantly adjust the sense of ‘here’ for their subjects as the journey continues. The ‘here’ of the body turns out not to be situated merely at coordinates in physical space, but along routes that both afford and hinder certain ways of moving (Ingold 2007). This is different from just following the effects *of* policy *on* a people or place, conceiving of a relationship through policy between a geographic local and faraway (Shore and Wright 1997). In the Scottish outdoor access rights, policy is made real through the way footsteps are made in the landscape, and so to understand the policy and the rights we need to understand the landscape.

My reference to the Germanic and Nordic *Landschaft* tradition here is more than just a theoretical aid. In the contemporary politics of landscape in Scotland the Nordic countries are often brought up and a historical awareness should lead to more precise comparisons. However the broader value in Olwig’s formulations lies in the expansion of an ethnography of walking into a sense of landscape that does not fall into scenic or painterly appreciation, but instead gives weight to systems of governance and social organisation while maintaining a materialist orientation. It fits well into a phenomenology of landscape intended to gather together bodily gestures and political relations.

There are of course alternative approaches that could be used. Karl Benediktsson (2007), for example, notes the continuing relevance of aesthetic views of landscape and wonders whether the scholarly deconstruction of ideas of nature has produced only a relativism from where critical interventions about landscape cannot be made. The landscape gaze that appears somehow less ‘substantive’ in the Germanic tradition may yet be a basis from which to engage with action on the ground, as Benediktsson seeks to do in regard to the massive hydropower project around Kárahnjúkar in north east Iceland. In that case, photographs energised people who themselves had not visited the landscape, highlighting ‘the power of a story of landscape told with visual means to bring about deep emotional feeling (...) and to activate moral sentiments of care’ (Benediktsson, 2007:213). This links also to Milton’s exploration of the emotion of landscape as a way of ‘loving nature’ (Milton 2002). Although not wishing to circumvent the emotional and aesthetic, I have instead tried to unravel the political and gestural aspects of human relations with landscape, suggesting that emotional connection can be found through these means also.

What, then, does it mean to locate in landscape the political processes I am concerned with here? It is about taking governance, as evidenced in legislative procedures and their resulting documentary and social forms, to be as much material as discursive. It is in part through materials that discursive policy is transformed into discernible ‘rights’ and emplaced in landscapes. The outdoor access rights are generated through all kinds of material means, including leaflets of code, posters, maps and signposts, which become noticed or taken into account during the same perceptual processes that the walkers use to follow the paths through the landscape (Hull 2008). In the access rights, material and discursive dimensions of governance are combined, distributed through the media, and emplaced in the landscape.

Yet it is also about understanding how the political can be constituted through practiced gesture, in establishing an equality based in co-presence and confidence in moving through particular places. Governance can be as much concerned with grounded, everyday landscapes as with distanced and powerful visions of a political or social elite (Berger 1972, Daniels 1994, Olwig 2002). Olwig’s notion of habitus in landscape law is useful because it centres on the development of habit and custom in conjunction with the law. Although Olwig has in some writings espoused a primarily discursive account of landscape (‘the social and political realm of discourse’), this discourse can be traced in how walks happen along paths or across hilltops, rather than just in the stable or reflective gazes that have often been so prominent in Scotland. And while I recognise with Benediktsson the continuing significance that views of landscape can have, mobile observational skills (such the triangulation of dwelling described above) are also extremely relevant to people’s ordinary experience of landscape.

There is, moreover, no neat continuity of the *Landschaft* tradition into contemporary politics and landscape. Technologies of modern governance have of course been much shaped by the rise of the nation state and although Local Outdoor Access Forums may enable local polities to engage with the governance of landscape once again, entanglements with nature conservation, farming, transport and many other regimes of governance preclude any easy readings of the situation. Indeed, one trick that nation states carry out is to naturalise their own instigation of governance, as Olwig points out (2002). We might go on to ask whether the show of ‘anti-politics’ (Ferguson 1994) in Scotland – the smoothing-out of conflict at a local level and the encouragement of consensus in the management of landscapes – is actually part of such a technology. I find this a more convincing approach in this situation than tracking resistance to the centralised planning procedures of the state (Scott 1998), while recognising that recent discussions locate the nation and the political in still more subtle processes of aesthetic production and performance (Mookherjee 2011). In Scotland, despite the encouragement towards localised access solutions, the hand of the state is present in the careful circumscribing of the rights – for example, the powerful injunction to leave at the end of a visit, and the developing case law about what ‘curtilage’ is. The performance of walking meanwhile is open to politicisation as part of a new national ‘right’, in a representations of a new open landscape of Scotland, whether the walkers feel that way or not.

Perhaps the most radical aspect of the outdoor rights is thus their refusal to follow the customary distinction between the generally ‘open’ Highland and the more fragmentary and fenced Lowland landscapes, a refusal manifested by the universal applicability of the rights throughout the country. But such landscapes cannot easily be undone. My ethnography has described different kinds of access issues in high and low ground areas, which reflect what will surely be continuing distinctions. In the high ground, the principle that owning land no longer entails complete control over access to it is certainly significant and plays into the long conflict over concentrated landownership in Scotland. The access legislation, unlike the accompanying ownership reforms in the Land Reform (Scotland) Act, is quiet on this. Or rather, responsibility for making a difference is transferred to the walkers who make themselves present in the landscape. The gestures of polite greeting amongst them enforce a kind of equality – albeit transient – that speaks to access rights in a surprisingly powerful way. The mundane qualities of walking allow for these very specific political gestures. The tensions that are still present, between different kinds of access-takers, land managers, land uses and other kinds of movement, will play out according to the histories of social relations across rural Scotland as well as in the changing patterns of governance.

**Conclusion**

Doreen Massey writes that we should not ‘still’ landscape as easily as representational approaches are wont to do: space reduced to stasis takes the real politics out of it, she argues (Massey 2005:30). Locating the political not in administrative centres or even social structure but in landscape and bodily gesture continues trends in anthropology towards the integration of the cultural and political (Spencer 2007). Politics does not stand as a discrete sphere of human action that takes place solely through discursive or symbolic means. Here I have explored how a formal legislative and policy process interacts with mundane bodily practice, and while it does so unevenly, there is an important sense in which all the gestures described here are in a broader sense within the realm of the political. In Schutz’s phenomenological terms, they assert co-presence among contemporaries (Schutz 1972[1932]) and create and reflect power relations in forms of mobility, as well as forming new subjectivities amongst walkers gradually becoming more confident and more skilled in moving through what become ‘their’ landscapes.

Equally, the focus on landscape calls attention to the emplaced nature of the political and cultural, in which politics and culture are more than just a set of shared symbolic representations or interpretations. Tropes of ‘performance’ are relevant here (Performing nature at world’s ends?), and yet where performance often implies some kind of audience it is also the case that walking, and especially walking in rural landscapes can be a very solitary activity, though punctuated by small but significant moments of sociability. Yet such walking is no less ‘social’ for that, in contributing to the developing subjectivity and biography of the walker, and perhaps even pressing down a footpath that makes it easier for another to follow. But it is important to realise that not all walker is an explicit site of ‘resistance’ to a centralised or authoritarian ‘politics’. David Pinder, in discussing the ambiguous and multi-valent urban walking art of Francis Alÿs, writes ‘I want to insist that they [Alÿs’s walks] should not be assimilated into undifferentiated notions of resistance or oppositional practice of the kind that academics and commentators too often rush to deploy in an urge to find political significance in even the most seemingly mundane of spatial practices’ (Pinder 2011, 688). I agree we should not over-simplify the oppositions here, yet I would claim that the political in the everyday can be understood as more than just a form of resistance. A contribution to this task might be made through an anthropology of landscape that gathers together political power and other forms of value within the phenomenological experience of moving subjects.

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Figure 1. Hillwalking with the Cairngorm Club at Braeriach.



Figure 2. Walking on the road south of Kirkwall, Orkney