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The trouble with accessing the countryside in Northern Ireland: a comparison with Great Britain

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Submission to Environmental Law Review

Abstract

The 21st century has seen a shift in emphasis from enabling local authorities to provide opportunities for recreation on private land to the conferment of a general right to access certain types of land in Great Britain. Similar liberalisation has not occurred in Northern Ireland. This article examines features of the Northern Ireland context that might explain why landowners' rights continue to trump those of recreational users, drawing on stakeholder interviews and a rural geography conceptual framework. Following historic struggles for land in Ireland, any erosion of owner control is perceived to undermine hard-won rights; in a relatively rural society and agrarian economy, farmers are readily accepted as having the 'right' to determine the function of rural land; and recent conflict has depressed outdoor leisure and tourism. Consequently, productive uses of land remain central to rural policy and a countryside movement able to overcome objections to liberalisation has not emerged. Conflict and instability have also left a legacy of social problems and 'legislative lag' in higher priority areas that must be addressed before countryside access can move up the political agenda. The paper reveals how, in stakeholders' eyes, these factors combine to limit the prospects of reform.

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1. Introduction

An outdoor enthusiast visiting Northern Ireland might be surprised to find that, unlike in Great Britain, until recently it had no statutory right of public access to the countryside and that recent limited reform only applies to publicly owned forests: otherwise access to the countryside remains dependent on a limited number of public rights of way, exercise of discretionary powers by local government and tolerance by landowners. This matters, firstly, as Northern Ireland has been largely ignored in UK literature on countryside recreation and access. As part of the UK this lack of parity with Great Britain demands exploration. Secondly, as tourism becomes increasingly important to economic development, the contrast between the aspiration to exploit Northern Ireland's natural beauty and the relative lack of opportunity to legally explore its wild places is brought into relief.

Statutory provision for outdoor recreation in the various UK regions tended to converge throughout the 20th century, but has diverged again in the 21st century as England, Wales and particularly Scotland have liberalised their access regimes to a much greater extent than Northern Ireland. An explanation for this divergence is sought through an empirical, socio-legal study involving expert participants from outdoor recreation stakeholders. Findings suggest the persistence of an illiberal access regime is intimately linked with the region's distinctive rural geography and Ireland's long history of territorial conflict, each of which impacts on the political feasibility of reform. The Northern Ireland 'troubles' of the late 20th century,¹ and Ireland's longer history of political conflict, emerge as important factors in this continued resistance to liberalisation. After a period of relative isolation and little call for tourism infrastructure, tourism has in recent decades been identified as a significant potential contributor to the regional economy² as one aspect of a 'peace dividend', or wider

¹ P. Dixon and E. O'Kane, *Northern Ireland since 1969* (Longman: Harlow, 2011); A. Edwards, *The Northern Ireland troubles: Operation Banner 1969-2007* (Osprey: Oxford, 2011)

² Department for Regional Development, *Regional development strategy 2035: building a better future* (DRD: Belfast, 2010); Department of Enterprise, Trade and Investment, *A Draft Tourism Strategy for Northern Ireland to 2020* (DETI:Belfast, 2010) <<http://www.detni.gov.uk/northern-ireland-tourism-strategy-2>> accessed 26/10/10; R. McAreavey and J. McDonagh, 'Sustainable rural tourism: lessons for rural development' (2012) 51(2) *Sociologia Ruralis* 175; Northern Ireland Tourist Board, *NI2012: our time, our place – an incredible year of opportunity* (NITB: Belfast, 2012); Northern Ireland Executive, *Building a better future: programme for government 2011-2015* (OFMDFM: Belfast, 2012)

economic improvement linked to reduced violence and relative political stability.³ Outdoor recreation has been core to three of five 'signature projects' central to marketing the region as a tourist destination since 2008 and the Ulster countryside is gaining international exposure as a major location for film and television production.⁴ While Northern Ireland is hardly unique in seeking to economically exploit its natural beauty,⁵ this aggressive marketing contrasts sharply with the relative lack of opportunity for recreational access to rural land, other than as a trespasser.

The article first examines the development of statutory provision for recreational access to private land in the various UK regions, highlighting the previously mentioned process of convergence followed by divergence. The empirical study is then introduced and its key findings highlighted and contextualised with reference to a rural geography conceptual framework centred on competing visions of the countryside. The productivist perspective views rural land as an economic resource, principally 'for' exploitation by the agri-food and extractive industries. Post-productivist or multi-functional perspectives afford equal or higher priority to other uses, particularly nature conservation, recreation and aesthetic appreciation. As shall be demonstrated, competition between these two visions is hardly unique to Northern Ireland, with 21st century authors challenging earlier assertions that rural land use the developed world has moved away from the productivist paradigm.⁶ Nonetheless, the findings indicate that there are region-specific factors that, in the view of participants, go some way to explaining Northern Ireland's less liberal approach to accommodating outdoor recreation, with closer adherence to a productivist conception underpinning differentials in access rights. Attitudes to the primacy of landowners to

³ D. O'Hearn, 'Peace dividend, foreign investment and economic regeneration: the Northern Irish case' (2000) 47(2) *Social Problems* 180; C. Muckley, 'Terrorism, tourism and FDI: Estimating a lower bound on the peace dividend in Northern Ireland' (2010/2011) 40 *Journal of the Statistical and Social Inquiry Society of Ireland* 116

⁴ Comptroller and Auditor General, *Northern Ireland Tourist Board – review of the Signature Projects* (Northern Ireland Audit Office: Belfast, 2011); Discover Northern Ireland, 'Game of Thrones filming locations' (NITB: Belfast, 2015) <<https://www.discovernorthernireland.com/gameofthrones/>> accessed 22 March 2016

⁵ See, for example, P. Midmore, *The economic value of walking in rural Wales* (Ramblers' Association: Wrexham, 2000); Welsh Government, *Improving opportunities to access the outdoors for responsible recreation* (Welsh Government: Cardiff, 2015)

⁶ See, for example, G. Wilson, 'From productivism to post-productivism ... and back again? Exploring the (un)changed natural and mental landscapes of European agriculture' (2001) 26 *Transactions of the Institute of British Geographers* 77

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control their land, a weak tradition of countryside recreation and ongoing impacts of conflict shape the debate and become embedded in policy approaches. This hinders the emergence of post-productivist interpretations of the countryside as a place for enjoyment as well as agriculture and the limits the scope for the kind of statutory reform seen in Great Britain.

2. Statutory provision for recreational use of land

2.1 Gradual convergence in the 20th century

The extent to which the wider community – not merely the landowner – should gain some benefit from privately owned land has long been contested in Great Britain. Struggles around land can be traced back to a fundamental contestation of the right of private individuals to enclose and own lands previously regarded as a resource to be held in common by the community. A linear line of objections can be traced here from the enclosure of common land in the sixteenth century to the 19th and 20th century demands for increased opportunities for peaceful enjoyment of the countryside, finally producing a critical mass in favour of reform, in England at least.⁷ These movements were often associated with a left-wing ideology challenging, if not private control of land itself, then certainly the notion that ownership confers a 'sole and despotic dominion' over the land owned 'in total exclusion of the right of any other individual'.⁸ A desire to escape the 'dark satanic mills' of growing industrial cities for restorative recreation and an urbanising society's romantic yearning for an agrarian Golden Age, expressed in literary and visual culture, lent further impetus to the emergence of a strong countryside movement.⁹ The 1932 mass trespass of Kinder Scout in the Peak District is an iconic episode in this campaign

⁷ J. Wordie, 'The Chronology of English Enclosure, 1500-1914' (1983) 36(4) *The Economic History Review*, New Series 483; A. Cox, *Adversary Politics and the Land* (Cambridge University Press: Cambridge, 1984); E.P. Thompson, *Customs in Common* (Penguin: Harmondsworth, 1993); C.J. Griffin, 'Becoming private property: custom, law, and the geographies of ownership in 18th-and 19th-century England' (2010) 42 *Environment and Planning A* 747

⁸ W. Blackstone, *Blackstone's commentary on the laws of England, book the second: of the rights of things* (Clarendon Press: Oxford, 1765-1796)

⁹ R. Williams, *The country and the city* (Oxford University Press: Oxford, 1973); M. Bunce, *The countryside ideal: Anglo-American images of landscape* (Routledge: London, 1994); C. Swanwick, 'Society's Attitudes to and Preferences for Land and Landscape' (2009) 265 *Land Use Policy* 562

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for the 'human right' to enjoy the fresh air and open spaces of the countryside without being confined to footpaths.¹⁰

The first statutory provision for recreational access to privately owned land in England and Wales can be linked to this sustained campaign and to the appetite for social reform of the Attlee government and post-World War 2 society as a whole.¹¹ In comparison to some of the era's other changes, state intervention in this field was relatively cautious: the National Parks and Countryside Access Act 1949 did not introduce a 'right to roam', as future legislation would in respect of certain types of land, but rather gave planning authorities discretionary powers to put in place access rights in defined areas. So if the National Parks whose creation was also enabled by the Act were envisaged as the 'people's playgrounds',¹² their designation did not actually guarantee that the public would have the opportunity to enjoy the protected areas as they pleased.

Enjoyment of the countryside, then, was not yet a right, but in the gift of the local authority, which gained powers to assert existing public rights of way, to create new linear access routes by order or by agreement with the landowner and to create new open access opportunities by order or by agreement. England now has an estimated 190,000km of public rights of way, with a further 33,000km in Wales, and some 34,000 hectares of open access land were designated under the 1949 Act.¹³ Although this represents much more extensive use of the powers created than occurred in other regions, on the whole the legislation failed to live up to early hopes, with designations tending to decline after 1960.¹⁴ Socialist walking and climbing groups such as *Red Rope* would continue to campaign for an increased 'right' to enjoy the countryside in GB.

¹⁰ B. Rothman, *The 1932 Kinder trespass* (Willow Press: Altrincham, 1982); M. Shoard, *This land is our land* (Paladin Grafton: London, 1987)

¹¹ G. Parker and N. Ravenscroft, N. 'Benevolence, Nationalism and hegemony: fifty years of the 1949 National Parks and Access to the Countryside Act' (1999) 21 *Leisure Studies* 297

¹² J.A. Patmore, *Land and leisure in England and Wales* (David & Charles: Newton Abbot, 1970) 221

¹³ J. Blunden and N. Curry, *A people's charter? 40 years of the National Parks and Access to the Countryside Act 1949* (HMSO: London, 1989); K Orford, 'Countryside access in the UK: a review of associated legislation and policy' (Paper 14/019, National Assembly for Wales: Cardiff, 2014)

¹⁴ H. Hill, *Freedom to roam: the struggle for access to Britain's moors and broadlands* (Moorland: Ashbourne, 1980); J. Blunden and N. Curry, *A people's charter? 40 years of the National Parks and Access to the Countryside Act 1949* (HMSO: London, 1989)

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The 1949 Act did not apply to Scotland and was not imitated by Northern Ireland's devolved government;¹⁵ similar provision would only be made for these regions decades later. The Countryside (Scotland) Act 1967 and Access to the Countryside (Northern Ireland) Order 1983 closely mirrored the countryside access provisions of the English and Welsh legislation. Local authorities made little use of their conferred powers in either region: Northern Ireland has just 245km of asserted public rights of way or designated public paths, and only three of the 26 pre-2015 local authorities ever exercised their discretionary powers in respect of open access land, with a total of just five hectares designated.¹⁶ Scotland has few public rights of way – of the 15,000km 'claimed' at the turn of the 20th century, the legal status of some 80% remained 'uncertain' – and traditional tolerance of recreational users may have contributed to local authorities' lack of enthusiasm for designating open access land.¹⁷ Separate legislation provided for the designation of National Parks in Northern Ireland,¹⁸ but this power was never actually exercised. Despite legislative convergence, then, the creation of opportunities for non-trespassory access to private land was largely limited to England and Wales.

2.2 Renewed divergence in the devolution era

The 21st century has seen reform of countryside access provision in all four parts of the UK. The extent of liberalisation, though, has varied considerably, with Northern Ireland's legislators notably unwilling to confer rights upon recreational users at the expense of private landowners. This is in stark contrast with the progress seen towards a 'right to roam' in England, Wales and particularly Scotland.

¹⁵ In general, Northern Ireland's early Unionist governments did embrace the social policy of even apparently ideologically opposite UK governments on a 'step by step' basis, with the spectacle of 'the Northern Ireland Conservatives following the Socialist Government' a source of amusement for at least one Member of Parliament – J. Lawson, HC deb 5 March 1936 vol 309 col 1686; L. Lundy, 'Parity, parrotry or plagiarism? Legislating for the unemployed poor in Northern Ireland 1838-1995' in N. Dawson, D. Greer and P. Ingram (eds), *One hundred and fifty years of Irish law* (SLS Legal Publications: Belfast, 1996) 7

¹⁶ Minister of the Environment, NIA AQW (2011-2012) 14 October 2011 2692/11-15; Minister of the Environment, NIA AQW (2011-2012) 17 October 2011 2760/11-15; Minister of the Environment, NIA AQW (2011-2012) 17 October 2011 2761/11-15

¹⁷ M. Shoard, *A right to roam: should we open up Britain's countryside?* (Oxford University Press: Oxford, 1999); J.R. Robinson, 'Reform of the law relating to access to the countryside: realising expectations?' (Nov 2003) *Journal of Planning and Environment Law* 1394, 1396

¹⁸ Amenity Lands Act (Northern Ireland) 1965; Nature Conservation and Amenity Lands (Northern Ireland) Order 1985 no 170 (NI 1)

The 1997 Labour government took office amidst an appetite for change, a sense that 'things [could] only get better.'¹⁹ The new administration would quickly turn its attention to reform of the countryside access legislation for England and Wales, putting in place a more liberal model through the Countryside and Rights of Way Act 2000. S2 creates a statutory right to access specified types of privately owned land for non-commercial 'open-air recreation,' often described as a 'right to roam' (schedule 2 places some restrictions on the types of activity permitted). When subsequent legislation²⁰ is taken into account, the right of recreational access applies to 'open country' ('mountain, moor, heath or down'), common land and coastal margin without the need for explicit designation as access land. As a result, there are now up to one million hectares of open access land in England (Natural England, 2008).²¹ Linear as well as open access rights are to be consolidated and improved through the creation by 2026 of a definitive map of public rights of way, periodic publication of local rights of way improvement plans and the gradual completion of paths covering as much of the English and Welsh coastline as is practical.²²

Another key reform of the period was the creation of devolved legislatures for Scotland and Wales and the restoration of legislative devolution in Northern Ireland, providing an opportunity for different parts of the UK to take their own approach to countryside access. The new Scottish Executive also made outdoor recreation an early priority, with part 1 of the Land Reform (Scotland) Act 2003 putting its vision into practice. Although Labour formed the dominant party in the Executive, it opted for a different approach to its Westminster counterpart, putting in place a distinctive right of 'responsible' access for recreational or educational purposes to all uncultivated and undeveloped land (s2). The new Scottish right of access is much more widespread, encompassing some commercially organised activities and extending to the lowlands and improved grassland, whereas improved and semi-improved grassland is specifically excluded from the definition of 'open country' in England and Wales. Further measures seek to enhance linear access through the

¹⁹ A. Jones, 'Looking back on New Labour: what got better?' (2010) 25(5-6) *Local Economy* 357

²⁰ Marine and Coastal Access Act 2009 c23 s296; Government of Wales Act 2006 c32 sch 5

²¹ Natural England, *Natural England open access annual monitoring report 2007* (Natural England: Sheffield, 2008)

²² Countryside and Rights of Way Act 2000 c37 s53, s60, sch 5

creation and mapping of a network of core paths. New legislation providing for the designation of national parks was also put in place, again with some differences to the English and Welsh model,²³ with designation of the first two parks following quickly. Although Wales is covered by the 2000 Act, a recent consultation raises the possibility of the future adoption there of the Scottish model.²⁴

Northern Ireland's approach, however, has been largely characterised by inertia, at least where privately owned land is concerned. Although a consultation on a similar set of reforms to those in England and Wales was carried out,²⁵ the much less liberal 1983 Order remains in place, with no indication that local authorities are likely to become more eager to exercise their discretionary powers to make an access agreement or order. Where access opportunities have been created by local government, they have often taken the form of contractual, normally time-limited permissive path agreements with landowners, within the general duty in article 10 of the Education and Youth Service (NI) Order 1986 to provide 'adequate facilities for recreational, social, physical and cultural activities.' Limited reform has occurred in respect of publicly owned land, notably the creation of a right of pedestrian access to public forests through s31 of the Forestry Act (NI) 2010. While conferring no *right* of access as such, the Water and Sewerage Services (NI) Order 2006 requires water undertakers (that is, the publicly owned Northern Ireland Water) to accommodate recreational use of their lands to the extent compatible with their primary function. Proposals for new enabling legislation for national parks, closely modelled on the Scottish approach, were brought forward in tandem with the proposed designation of one or more national parks in Northern Ireland.²⁶ However, no Bill was ever laid before the Assembly and it is clear that any aspirations to create a national park have been abandoned for the foreseeable future.²⁷ Opposition to national park status in the areas put forward was to a

²³ National Parks (Scotland) Act 2000

²⁴ Welsh Government, *Improving opportunities to access the outdoors for responsible recreation* (Welsh Government: Cardiff, 2015)

²⁵ Environmental Policy Division, *Providing for access to the Northern Ireland countryside: key issues and questions for consultation* (DOE: Belfast, 1999)

²⁶ Department of the Environment, *Consultation document on enabling legislation for national parks: synopsis of responses received* (DOE: Belfast, 2011)

²⁷ See J.P.W. Bell and A. Stockdale, 'Examining participatory governance in a developing UK: insights from national parks policy development in Northern Ireland' (2016) 34(8) *Environment and Planning C: Government and Policy* 1516

large extent driven by the perception (and fear) that this would result in a surge in recreational visitors and/or liberalisation of the access regime.²⁸ So while there has been some tinkering at the edges, with opportunities to access (some) publicly owned land placed on a firmer statutory footing, willingness to interfere with private property rights as in Great Britain has been absent.

Geographical proximity and a largely shared history and culture mean there is merit in highlighting the position in the Republic of Ireland, whose access regime is at least as illiberal as that in Northern Ireland. The statutory framework in the Republic of Ireland is essentially restricted to a power to create new public rights of way in the Planning and Development Act, 2000 and the provision of financial incentives for voluntary path creation.²⁹ Comparable schemes to incentivise the creation of access opportunities through payment have existed in the UK, but that in England was dismissed as ineffective in 1997 and the Northern Irish equivalent reportedly only received a single application.³⁰ Two private member's bills to give Irish county councils discretionary powers to designate access land comparable to those available to their counterparts in Northern Ireland have failed to make it onto the statute books.³¹ As the limited reforms in Northern Ireland have focused on public forests, south of the border too there is greater willingness to facilitate recreation on publicly owned land: a relatively formalised permissive access regime exists in respect of public forests and national parks, which (in contrast to Great Britain) are wholly state-

²⁸ Countryside Access and Activities Network, *Mourne Area of Outstanding Natural Beauty access study* (CAAN: Belfast, 2007)

²⁹ C. Buckley, S. Hynes, T. Van Rensburg, 'Comparisons between Ireland and other developed nations on the provision of public access to the countryside for walking – are there lessons to be learned?' (08-WP-RE-03m, Rural Economy Research Centre: Galway, 2008); Minister for the Environment, Community and Local Government, *Dáil Éireann deb (2012-13) vol 763 no 2: other questions – departmental schemes 21027/12*

³⁰ Agriculture Committee, *Environmentally sensitive areas and other schemes under the agri-environment regulation* (session 1996-97 first report, TSO: London, 1996); N. Hamilton, 'The development of access to the countryside in Northern Ireland: policy, law and the role of local government' (MBA dissertation, University of Ulster, 1998); the Northern Ireland scheme had its legislative basis in the Countryside Access Regulations (NI) 1996 no 213

³¹ R. Quinn, 'Labour's access to the countryside bill 2007' (Labour Party: Dublin, 2007)

<http://www.labour.ie/download/pdf/accesstothecountryside_bill2007.pdf> accessed 11 May 2012; *Dáil Éireann deb 14 June 2013 Access to the Countryside Bill 2013: Second Stage [Private Members]*

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owned.³² Across Ireland as a whole, then, the premise of private landowners having the power to control 'what' happens on their land and 'who' accesses it is largely retained.

3. Methodological approach

The contrasting approaches of a liberalising Great Britain and conservative Northern Ireland demand explanation. The dominance of the European Union in other fields of environmental law has been a strong driver of convergence, but in this area – fully under the control of the devolved legislature – landowner control trumps competing interests. Previous studies on outdoor recreation in Northern Ireland have focused on the extent and use of formal and informal access opportunities in areas of high demand,³³ participation³⁴ and the ill-fated proposal for the designation of the region's first National Park(s).³⁵ However, while the region's less liberal approach to facilitating access to private land is noted in these publications, and access-related concerns emerge as one driver of landowner opposition to National Park status, reasons for Northern Ireland's unwillingness to date to follow England, Wales and Scotland in reforming its statutory regime have not been academically explored.

The authors set out to fill this gap in the literature through a qualitative study involving stakeholders with an interest in rural land in Northern Ireland, from various perspectives. Interviewees were purposively sampled³⁶ on the basis of their knowledge of policy and so as to take in a range of interested sectors. These included government (local and devolved), outdoor recreation, landowning (mainly agricultural), tourism and environment/conservation. It was anticipated, correctly, that a range of perspectives on the

³² Coillte, *Coillte recreation policy* (Coillte: Newtownmountkennedy, 2005); R. Quinn, 'Labour's access to the countryside bill 2007' (Labour Party: Dublin, 2007)

http://www.labour.ie/download/pdf/accesstothecountryside_bill2007.pdf accessed 11 May 2012

³³ Countryside Access and Activities Network, *Mourne Area of Outstanding Natural Beauty access study* (CAAN: Belfast, 2007)

³⁴ Countryside Access and Activities Network, *Barriers to participation* (CAAN: Belfast, 2008)

³⁵ R. McAreevey, 'Towards a Mourne National Park? Emergent prospects and pitfalls from articulating needs in a local context' (WP2, Institute of Spatial and Environmental Planning: Belfast, 2010); J.P.W. Bell, 'Designating national parks in contested landscapes: governance challenges and the evolving national park concept in Northern Ireland, with lessons from Scotland' (PhD thesis, Queen's University Belfast, 2013); J.P.W. Bell and A. Stockdale, 'Examining participatory governance in a developing UK: insights from national parks policy development in Northern Ireland' (2016) 34(8) *Environment and Planning C: Government and Policy* 1516

³⁶ T. Palys, 2008. 'Purposive sampling' in *The Sage encyclopedia of qualitative research methods* (Sage: Thousand Oaks, 2008)

desirability of opening up private land to recreational users would be represented. Views were sought on three overarching themes: (i) awareness of policy differences, (ii) attitudes to the countryside in Northern Ireland comparison to Great Britain and their connection to the limited nature of access rights and (iii) the prospects for increased alignment of access legislation in Northern Ireland to that in Great Britain. As the findings demonstrate, land, ownership, control and access remain sensitive issues in NI thus ethical care, particularly around issues of trust and anonymity, was required and assured. Interviewees are referred to by the ordering of their interview and sector they represented as indicated in figure one. As the 'further information' column indicates, given the small geographical scale of NI, some have interests in sectors other than their primary affiliation.

Interviewee	Sector	Further information
1	Policy	Devolved government
2	Outdoor recreation	Outdoor recreation charity
3	Outdoor recreation	Public body
4	Policy	Local government
5	Policy	Local government
6	Environmental	Conservation charity with landholdings
7	Tourism	Public body

8	Environmental	Involved in multi-agency management of a specific area
9	Landowning	Agricultural
10	Landowning	Landholdings managed for conservation, recreation and agriculture
11	Tourism	Charity, also involved in environmental management
12	Landowning	Agricultural
13	Outdoor recreation	Participants' representative group
14	Outdoor recreation	Participants' representative group
15	Outdoor recreation	Participants' representative group

Table One: Research Participants

An outline interview schedule of themes for discussion was prepared that incorporated the research's overarching themes. Interviews took place at a location of the participant's choosing i.e. home, place of work or neutral location and were recorded with permission, typically lasting one to two hours. Although participants were selected on the basis of their roles within relevant organisations, the views expressed are not necessarily representative of the organisations concerned. The interviews were analysed manually in the manner of grounded theory, with themes emerging from participants' words and subsequent

interviews informed by the emerging findings (Charmaz, 2006; 2012).³⁷ The empirical research was complemented by a review of rural geography literature and of literature on the microgeography of Northern Ireland's social divisions that further explains some of the key findings from the interviews.

4. Findings

The research sought to explore and understand the apparent resistance to liberalisation of the access regime in Northern Ireland from the perspective of stakeholders. Three overarching explanations emerged and are discussed by drawing on the participants' words. A key challenge in interpreting the data was to separate views on the merits of and problems associated with recreational access to private land *per se*, which remain current even in liberal Scotland,³⁸ from factors explaining the uniquely (within the UK) illiberal policy in Northern Ireland. Participants diverged significantly in their views as to the positive and negative impacts of countryside recreation, the suitability of the current regime in Northern Ireland and the merits of a more liberal approach. However, striking similarities of views emerged as to *why* Northern Ireland has such different attitudes to countryside access compared to Great Britain and why this is unlikely to change in the foreseeable future.

Liberalisation of policy in 21st century Great Britain can be associated with greater acceptance of the desirability of accommodating non-productive uses of rural land as productivist attitudes to the countryside give way to post-productivist and multi-functional conceptions, albeit that the extent to which such a process is occurring has been questioned within recent neo-productivist debates.³⁹ A headline finding is that, in comparison to Great Britain, perceptions of the Northern Ireland countryside remain predominantly productivist,

³⁷ The research was not undertaken from a positivist standpoint, therefore Charmaz's constructivist approach to developing grounded theory was preferred – see K. Charmaz, *Constructing grounded theory: a practical guide through qualitative analysis* (Sage: London, 2006); K. Charmaz, 'The power and potential of grounded theory' (2012) 6(3) *Medical Sociology Online* 2

³⁸ M.M. Combe, 'Get off that land – non-owner regulation of access to land' (2014) 4 *Juridical Review* 287; P Smith, 'Loch Lomond's wild camping ban is a backwards and short-sighted step' (*Guardian*, 2 March 2017) <<https://www.theguardian.com/travel/2017/mar/02/lomond-wild-camping-ban-start-slippery-slope>>

³⁹ G. Wilson, 'From productivism to post-productivism ... and back again? Exploring the (un)changed natural and mental landscapes of European agriculture' (2001) 26 *Transactions of the Institute of British Geographers* 77; G. Wilson, 'From "weak" to "strong" multifunctionality: conceptualizing farm-level multi-functional transitional pathways' (2008) 24(3) *Journal of Rural Studies* 367; N. Evans, 'Strawberry fields forever? Conflict over neo-productivist Spanish polytunnel technology in British agriculture' (2013) 35 *Land Use Policy* 61

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with a less advanced evolution towards a post-productivist or multifunctional ideology that recognises aesthetic, recreational and conservational functions as having equal legitimacy to the agri-food and extractive industries. This provides at least a partial explanation for the limited extent of change (and of demand for change) and for the confinement of access rights to publicly owned land. While it has become a cliché to describe Northern Ireland as 'a place apart,'⁴⁰ strong indications emerge from both the literature and the empirical findings that, where attitudes to land ownership and use are concerned, it is not unreasonable to highlight its 'otherness' to Great Britain. In particular, a relatively agrarian economy does not in itself explain the continued influence over policy of the productivist perspective. Reluctance to challenge landowner hegemony in the rural environment can only be fully understood in the context of Northern Ireland's – and the island of Ireland's – troubled history, the central role of land and territory in that history and the continued dominance of contemporary politics by ethno-religious division and the unfinished business of conflict.

4.1 Primacy of private ownership rights

The wide variety of interests that can exist in a single plot of land are not necessarily held by a single 'owner'.⁴¹ Stakeholders felt that, from the perspective of Northern Irish landowners, the reforms in Great Britain represent the triumph of a largely urban majority's interest in a notional 'right to enjoy' the countryside at the expense of farm businesses.⁴² In Northern Ireland, a more Blackstonian view of land ownership as conferring near-absolute control was perceived to prevail, thus any limitation of a landowner's right to do as they wish with their property would be objected to. Private landowners' (usually farmers') right to exclude 'trespassers', as those claiming 'rights to roam' are largely perceived, is therefore more readily accepted.⁴³ This different perception of the countryside was felt to present an obstacle to the embedding of multiple interests in policy. Whereas the lobbying power of agriculture is widely felt to have diminished in Great Britain, the continued strength of

⁴⁰ S. French and C. Regan, *Northern Ireland: a place apart? Exploring conflict, peace and reconciliation in these islands* (80:20: Bray, 2000)

⁴¹ J. Wylie, *Irish Land Law*. (Butterworth: Dublin, 1997)

⁴² M. Woods (ed) *New Labour's countryside: rural policy in Britain since 1997* (Policy Press: Bristol, 2008)

⁴³ G. Ó Tuathaigh, 'Ireland's land questions: a historical perspective' in J. Davies (ed.), *Rural change in Ireland* (Institute of Irish Studies: Belfast, 1999)

landowning and farming lobbies in Northern Ireland was not lost on the participants – with the possible exception of those from an agricultural background, who were quick to downplay their industry's political influence.⁴⁴ Thus a relatively powerful lobby can be mobilised against not only any imposition of access by order or statute, but a range of controls on land use, not least planning policy:⁴⁵ 'people,' it was explained, 'like to have their own bit of land and do what they want with it' (interview five).

Explanations for this adherence to the primacy of landowner rights were situated within the historiography of historical claims to land: since 'land ownership was hard won... people are very protective of their rights and privacy' (interview four). Struggles for land form part of the history of both Great Britain and Ireland, but while elites' appropriation of territory in the early modern period was economically significant on both sides of the Irish Sea, in Ireland this process was intimately linked with displacement of the indigenous population, the 'plantation' of tenants from Great Britain and hence with the centuries-long national struggle.⁴⁶ Thus, the issue of land control is tied up with recent, still-raw struggles over land ownership culminating in the 'troubles'. For example, participants felt that within still-conflicted space it was only natural that descendants of farmers who had often struggled, literally, for the right to buy their land would be reluctant to cede any control over it. As was noted, 'maybe in GB there's more confidence and they feel they can be a bit more relaxed about letting other people come onto their land' (interview 7).

⁴⁴ H. Newby, C. Bell, D. Rose and P. Saunders, *Property, paternalism and power: class and control in rural England* (Hutchinson: London, 1978); M. Woods, 'Deconstructing rural protest: the emergence of a new social movement' (2003) 19(3) *Journal of Rural Studies* 209; J. Manley, 'Ulster farmers and the strange silence of our once fearless and bellicose politicians...' (Sluggie O'Toole, 27 August 2012) (originally published in Irish News). <<http://sluggerotoole.com/2012/08/27/ulster-farmers-and-the-strange-silence-of-our-once-fearless-and-bellicose-politicians/>> [accessed 29 May 2013]

⁴⁵ O. Bowcott, 'Planning for the worst' (Guardian, 4 October 2006) <<https://www.theguardian.com/environment/2006/oct/04/communities.society>> accessed 25 February 2017; J. Barry, 'It ain't easy being green: sustainable development between environment and economy in Northern Ireland' (2009) 24(1) *Irish Political Studies* 45

⁴⁶ D. Lowenthal, 'Age and artefact, dilemmas of appreciation' in D. Meinig (ed), *The interpretations of ordinary landscapes* (Oxford University Press: Oxford, 1979); A. Kane, 'Narratives of nationalism: constructing Irish national identity during the Land War, 1879-82'. (2000) 2(3) *National Identities* 245

In contrast, the historical struggle for land in Ireland north and south remains an open wound.⁴⁷ Whereas the close connection between land and *family* identity has been noted internationally,⁴⁸ in Northern Ireland, where control of territory has been and continues to be violently contested, keeping land in the family can also mean maintaining the control of a particular *group* identity.⁴⁹ Ownership and occupation of land at the micro level become inseparable from issues of control of, belonging to or being 'planted' in territory at macro level by either side of a divided community.⁵⁰ Even away from visibly segregated urban working-class housing estates, where ethno-religious segregation is demarcated by flags and street art,⁵¹ there is resistance to 'land transfer across the religious divide,'⁵² with farmers reportedly prepared to accept lower prices for land in order to preserve community control of territory.⁵³ Reluctance to sell to the other 'side' of a divided community was identified by interviewees as an obstacle to the consolidation of small landholdings created by the break-up of the former tenanted estates across Ireland. If the struggle for land partly explained reluctance to cede any of the *rights* of ownership, the resulting fragmented *pattern* of

⁴⁷ G. Ó Tuathaigh, 'Ireland's land questions: a historical perspective' in J. Davies (ed.), *Rural change in Ireland* (Institute of Irish Studies: Belfast, 1999)

⁴⁸ E. Ramirez-Ferrero, *Troubled fields: men, emotions and the crisis in American farming* (Columbia University Press: New York, 2005); L. Price and R. Conn, "'Keeping the name on the land": patrilineal succession in Northern Irish family farming' in M. Loble and J. Baker (eds), *International perspectives on succession and retirement on family farms* (Ashgate: Farnham, 2012); B. Garnham and L. Bryant, 'Problematising the suicides of older male farmers: subjective, social and cultural considerations' (2014) 54(2) *Sociologia Ruralis* 227

⁴⁹ B. Murtagh, 'Community, conflict and rural planning in Northern Ireland' (1998) 14(2) *Journal of Rural Studies* 221

⁵⁰ P.J. Duffy, 'Writing Ireland' in B. Graham (ed), *In search of Ireland: a cultural geography* (Routledge: London, 1997); M. Carolan, 'More-than-representational knowledge/s of the countryside: how we think as bodies', (2008) 48(4) *Sociologia Ruralis* 408; O. Jones, (2013) "'Who milks the cows at Maesgwyn?" The animality of UK rural landscapes in affective registers' (2013) 38(4) *Landscape Research* 421

⁵¹ A. Murphy and B. Murtagh, *Children, policy and the built environment* (Institute of Spatial and Environmental Planning: Belfast, 2010); B. Rolston, "'Trying to reach the future through the past": murals and commemoration in Northern Ireland' (2010) 6(3) *Crime Media Culture* 285; D. Bryan, 'Parades, flags, carnivals, and riots: public space, contestation, and transformation in Northern Ireland' (2015) 21(4) *Peace and Conflict* 565

⁵² T Kirk, 'The polarisation of Protestants and Roman Catholics in rural Northern Ireland: a case study of the Glenravel ward, Co. Antrim, 1956-1988 (PhD thesis, Queen's University Belfast, 1993) 334; see also O.T Muldoon, K. Trew, J. Todd, N. Rougier and K. McLaughlin, 'Religious and national identity after the Belfast Good Friday Agreement' (2007) 28(1) *Political Psychology* 89; Spotlight (2015) [TV programme] BBC, BBC1 NI, 17 February 2015

⁵³ P. Drudy (ed), *Irish Studies 2: Ireland: land, politics and people* (Cambridge University Press: Cambridge, 1982); B. Murtagh, 'Community, conflict and rural planning in Northern Ireland' (1998) 14(2) *Journal of Rural Studies* 221; A. Kane, 'Narratives of nationalism: constructing Irish national identity during the Land War, 1879-82'. (2000) 2(3) *National Identities* 245

ownership was noted by seven participants to both reinforce this position and present practical obstacles to securing recreational access under the current legislation.

Several respondents suggested owners of smaller holdings may be more inclined to fear the impact of access on their farming business⁵⁴ because 'in GB you sometimes have thousands of acres - whereas in the Mourne we are told it is only 15 hectares' (interview 9).

Therefore, it was felt, footpaths may remove a larger proportion of land from productive use, or the impact of damage caused by recreational users could be greater. It is likely that the perception that holdings in Great Britain are so large is something of a misconception.⁵⁵ Nonetheless, the perception (accurate or not) that Northern Ireland is a region of small farmers, not vast estates, was seen by participants from the outdoor recreation sector as an important obstacle to public willingness to 'take on' landowner lobbies. One argued that the ownership of much of the Scottish Highlands by large, often absentee landlords had allowed questions of 'whose land is it anyway and should we not have a right to our land?' (interview 3) to shape policy in the early years of devolution. Thus local ownership of small farms in Northern Ireland was seen to bolster support for a connection between farming, land, ownership and control over it which increased access rights would be seen to threaten.

With much formalised access under the current Northern Ireland regime reliant on agreement with land owners, the fact that in a patchwork of ownership 'every 300 or 400 yards you might have to deal with a different land owner... whereas in England you would get one big estate' could make the negotiation of a permissive path, public path or access agreement 'very complicated' (interview 12). Thus one reluctant landowner might have the power to derail a proposed route to which several neighbours were open. Reasons for this reluctance were noted as sometimes emerging from ethno-religious divisions within rural communities. A policy sector participant noted, for example, that in some cases 'farmers from different communities' are reluctant to have a path connect their land (interview 1). Ownership and control of land in Northern Ireland retains political, territorial connotations

⁵⁴ As in J.T. Coppock and B.S. Duffield, *Recreation in the countryside: a spatial analysis* (Macmillan: London, 1975)

⁵⁵ See B. Ilbery, *The geography of rural change* (Longman: Harlow, 1998)

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that have diminished elsewhere in a world of global mobility,⁵⁶ contributing to the limited extent of public rights of countryside access compared to Great Britain. None of the participants envisaged this situation changing in the near future.

4.2 Demand for outdoor recreation opportunities in Northern Ireland

Reform of countryside access in Great Britain – whether in 1949 or 2000/2003 – has been associated with the contribution of a persistent countryside movement to changing attitudes regarding recreational access on private land in tandem with evolving perceptions of the countryside as post-productivist.⁵⁷ Few such campaigns and no mass movement have emerged in Northern Ireland;⁵⁸ correspondingly new opportunities to legally access private land have been scarce and there has been no movement towards a rights-based approach to countryside access. If the primacy of landowners' rights was seen as a potential supply-side obstacle to outdoor recreation, participants also suggested that on the demand side Northern Ireland lacks a custom of thinking about the countryside as an idealised recreational space, at least to the same extent as Great Britain. The terms 'post-productivist' or 'multifunctional' countryside (unsurprisingly) were not used. Nonetheless, with the persistence of 'a much more agrarian economy' further reinforcing the view that 'the countryside is about agricultural production' (interview ten),⁵⁹ the clear implication was that such an evolution in constructions of the rural environment is currently unlikely. In the absence of such a shift of public mood, landowner resistance to access under the 1983 Order, or liberalisation of the statutory regime, would be difficult to overcome.

⁵⁶ J. Anderson, 'Territorial sovereignty and political identity: national problems, transnational solutions?' in B. Graham (ed), *In search of Ireland: a cultural geography* (Routledge: London, 1997); J. Anderson, 'Partition, consociation, border-crossing: some lessons from the national conflict in Ireland/Northern Ireland'. (2008) 14(1) *Nations and nationalism* 85; S. Elden, 'Land, terrain, territory' (2010) 34(6) *Progress in Human Geography* 799

⁵⁷ H. Hill, *Freedom to roam: the struggle for access to Britain's moors and broadlands* (Moorland: Ashbourne, 1980); G. Parker, 'Countryside access and the "right to roam" under New Labour: nothing to CRoW about?' in M. Woods (ed) *New Labour's countryside: rural policy in Britain since 1997* (Policy Press: Bristol, 2008)

⁵⁸ For a rare example of strident advocacy of radical reform in Ireland, albeit with a primary focus on the ROI, see Keep Ireland Open, 'KIO policy access to the countryside: the problem' (Keep Ireland Open: 2013) <<http://keepirelandopen.org>> accessed 27 February 2017

⁵⁹ In 2015, the agri-food sector accounted for 3.5% of GVA and 5.5% of total employment in Northern Ireland, compared to 2.3% of GVA and 2.4% of employment in the UK as a whole – RaISe/Tithe an Oireachtas, 'Agri-food and Brexit' (Paper 89/16, North-South Interparliamentary Association: Belfast/Dublin, 2016)

With the Northern Ireland population seen as more agrarian, with greater connection to and ownership of small parcels of land, no strong distinction between country and city was felt to have emerged. So while nine respondents believed Great Britain has a stronger tradition of countryside recreation, this was closely associated with historical industrialization and the need to escape (if only for a weekend) 'cities where you couldn't see the countryside, they were polluted, people were dying' (interview 13). In England in particular, the growth of 'the massive conurbations' produced on one hand a certain 'alienat[ion] from the countryside,' on the other 'phenomenal pressure to get out' and enjoy it (interview 9), stimulating the emergence of 'tradition of people coming from urban settings and then going out into the countryside on their time off' (interview 9). In comparison, as noted, Northern Ireland has a much smaller geographical scale, fewer cities, and less physical and emotional distinction between urban and rural.

The legacy of industrialisation in Great Britain was seen to linger in that the public 'view of the countryside is an idyllic one and for recreation' and even in 'the way government's constituted' with (in contrast to Northern Ireland) no government department with specific responsibility for agriculture in its title (interview twelve).⁶⁰ Consequently, English people 'view the countryside more about them getting out and about and walking' (interview 13), whereas 'in Northern Ireland you think of farms and fields' (interview three) and 'a relatively small proportion of locals would actually use the mountains to walk' (interview 11).

Interviewee six agreed, 'here there's a more utilitarian view of the countryside, that it's here to grow your crops on' whereas 'in England from Victorian times there's more of a[n] artistic appreciation'.

As the previous passage indicates, when making comparisons the participants drew on a comparative mental image of the British countryside idealised as stereotypically 'English'⁶¹ rural idyll exemplified by the fictional community of 'Greendale' in the *Postman Pat series*.⁶²

⁶⁰ Agricultural policy in England falls within the remit of the Department for Environment, Food and Rural Affairs, while Northern Ireland continues to have a Department of Agriculture, Environment and Rural Affairs; Scotland and Wales have non-departmental governments.

⁶¹ J. Short, *Imagined country* (Routledge: London, 1991); C. Matless, *Landscape and Englishness* (Reaktion: London, 1998)

⁶² J. Horton, 'Producing Postman Pat: The Popular Cultural Construction of Idyllic Rurality' (2008) 24(4) *Journal of Rural Studies* 389

The absence from Northern Ireland of this post-productivist narrative of urban-based populations 'escaping to the county' with accompanying imaginations of an idyllic countryside is a key difference in the cultural geography of the UK.⁶³ This lack of 'idealisation' can be partly explained by comparatively limited nineteenth century industrialisation, a key driver of the early English outdoor recreation movement. Understood in its historic, political and economic context,⁶⁴ there are further reasons why rural Northern Ireland might not have evolved into a post-productivist, 'armchair' countryside as found in idyllic English rural visions such as Beatrix Potter.⁶⁵ With rootedness in and ownership of land a key concern for both major sections of the community in NI,⁶⁶ and ownership boundaries a crucial element of localised senses of belonging, imaginings of possibilities for change and political interventions to increase countryside access have simply been more limited.⁶⁷ Decades of conflict from the 1960s onward are likely to have further held down demand for outdoor recreation.⁶⁸ Consequently, 'kids from Whiterock [a working class area of Belfast] don't look to the Belfast Hills and say "that's mine"... yet people in Edinburgh will look at Arthur's Seat and say "that belongs to me"' (interview 15). A post-productivist sense of entitlement to quiet and peaceful enjoyment of the countryside, therefore, had not taken root to the same extent.

Northern Ireland has also progressed more slowly in the more contemporary commodification of the 'rural idyll' in the housing market with accompanying trends of counter-urbanization and gentrification⁶⁹ (although second home ownership in areas of high

⁶³ BBC (British Broadcasting Corporation), (2016), *Escape to the Country*, <http://www.bbc.co.uk/programmes/b006vb2f>, (accessed 16/3/16)

⁶⁴ For the argument that postmodern approaches too readily disregard this context, see D. Harvey, *The condition of postmodernity* (Blackwell: Oxford, 1989)

⁶⁵ P.J. Cloke, *Country visions* (Pearson Education: Harlow, 2003)

⁶⁶ B. Reid, 'Labouring towards the space to belong: place and identity in Northern Ireland' (2004) 37(1) *Irish Geography* 103

⁶⁷ N. Allen, and A. Kelly, 'Introduction' in N. Allen and A. Kelly (Eds.), *The cities of Belfast*, (Four Courts Press: Dublin, 2003)

⁶⁸ Although the majority of conflict-related deaths in Northern Ireland occurred in urban areas, violent episodes also occurred in rural areas, notably south Armagh – see T. Harnden, *Bandit country: the IRA and south Armagh* (Hodder: London, 2000)

⁶⁹ D. Bell, 'Variations on the rural idyll' in P. Cloke, T. Marsden and P.H. Mooney, *Handbook of rural studies* (Sage: London, 2006); M. Phillips, (2010) 'Counterurbanisation and rural gentrification: an exploration of the terms' (2010) 16(6) *Population, Space and Place* 539; A. Stockdale, 'The diverse geographies of rural gentrification in Scotland' (2010) 26(1) *Journal of Rural Studies* 31

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amenity value has begun to increase following the 'peace process').⁷⁰ Urban areas are smaller, physically within reach of the countryside, with closer family ties to farming in the present or very recent generations. Hence conditions are less favourable for an idealisation of the countryside as a multi-functional arena of peace, beauty and refuge from urbanisation.⁷¹ Interviewee 11 summed up the responses in that 'so many of us grow up in the countryside, it's all around us and maybe for that reason we take it a bit more for granted than GB, being more urban.' For a small number of participants, proximity to the countryside and a relatively lax rural planning regime means those wishing to 'escape' the city in Northern Ireland can aspire to do so permanently.⁷² With ownership of rural land more widespread, a sense of physical and psychological connection *with* and of having a stake *in* the countryside⁷³ was seen as more closely bound up with possession of the deeds to, hence control over, a piece of it than with participation in walking, climbing or other outdoor activities.

The dominance of landowners – primarily farmers – in framing the debate regarding what rural land is ultimately *for* is thus reinforced. The continued political influence of a relatively coherent farming lobby Northern Ireland was noted to contrast with a small, weak and timid outdoor recreation movement. Reduced numbers of elected representatives from agricultural backgrounds in Great Britain since the 1970s is seen as indicative of a general decline in the political influence of agriculture.⁷⁴ In Northern Ireland, however, it was noted that in the 1999 'consultation... about changing the access...⁷⁵ let's say there were 500 responses, 450 of them were the same letter from the farmers'; no draft legislation was

⁷⁰ C. Parris, *Second homes in Northern Ireland: growth, impact and policy implications* (NIHE: Belfast, 2008)

⁷¹ For discussion of the productivist, post-productivist, multi-functional, neo-productivist countryside debates, see G. Wilson, 'From productivism to post-productivism ... and back again? Exploring the (un)changed natural and mental landscapes of European agriculture' (2001) 26 *Transactions of the Institute of British Geographers* 77; N. Evans, 'Adjustment strategies revisited: agriculture change in the Welsh marches' (2009) 25(2) *Journal of Rural Studies* 217; R. Burton and G. Wilson, 'The rejuvenation of productivist agriculture: the case for "cooperative neo-productivism"' (2012) 18 *Research in Rural Sociology and Development* 51

⁷² J. Barry, 'It ain't easy being green: sustainable development between environment and economy in Northern Ireland' (2009) 24(1) *Irish Political Studies* 45

⁷³ P. Harrison, (2000) 'Making sense: embodiment and the sensibilities of the everyday' (2000) 18 *Environment and Planning D: Society and Space* 497

⁷⁴ H. Newby, C. Bell, D. Rose and P. Saunders, *Property, paternalism and power: class and control in rural England* (Hutchinson: London, 1978)

⁷⁵ Environmental Policy Division, *Providing for access to the Northern Ireland countryside: key issues and questions for consultation* (DOE: Belfast, 1999)

ever brought forward. A similar united front from farmers concerned about the impact of increased recreational use and new planning controls was widely seen to have derailed proposals for the region's first national park.⁷⁶ It can be suggested, therefore, that only when the strength of opinion is strong enough to campaign for greater countryside access will it become a lived reality as in Great Britain. Following a period of relative isolation because of geographical location and its political situation, increasing tourism, as noted in the introduction, was seen by some as a potential challenge to Northern Ireland's agrarian mindset; only time will tell whether this belief is well founded.

4.3 Impact of the 'troubles'

The third overarching explanation given by the participants for the unlikelihood of alignment of rights with Great Britain in the foreseeable future relates to the impact of conflict and associated political instability, flowing from Northern Ireland's disputed territorial and constitutional status.⁷⁷ Specifically, it was noted that a phenomenon termed 'legislative lag' has resulted in developments in Northern Ireland across environmental policy generally falling behind Great Britain, often with the result that the primacy of private control of land is protected. This was largely felt to be due to a focus on security and privacy to the detriment of other policy areas and the absence of stable institutions of government.⁷⁸ As interviewee 11 stated, 'it just wasn't something that was really given a lot of attention' (interview 11). Whether a more stable situation would have resulted in greater political attention being paid to outdoor recreation is uncertain, although there is some evidence that steps towards a distinctive regional approach to linear access were being taken prior to the suspension of the first power sharing Assembly in 1974.⁷⁹ Thus a more

⁷⁶ J.P.W. Bell, 'Designating national parks in contested landscapes: governance challenges and the evolving national park concept in Northern Ireland, with lessons from Scotland' (PhD thesis, Queen's University Belfast, 2013)

⁷⁷ See A. Murphy and B. Murtagh, *Children, policy and the built environment* (Institute of Spatial and Environmental Planning: Belfast, 2010)

⁷⁸ S. Turner, 'Transforming environmental governance in Northern Ireland. Part one: the process of policy renewal' (2006) 18(1) *Journal of Environmental Law* 55; S. Turner, 'Laying the foundations for a sustainable Northern Ireland: the Review of Environmental Governance' (2007) 58(4) *Northern Ireland Legal Quarterly* 422

⁷⁹ J. Forsyth and D.E.K. Boyd, 'Conservation in the development of Northern Ireland: report of the conference at the Queen's University of Belfast on Saturday 12 September 1970' (Department of Extra-Mural Studies: Belfast, 1970); N. Hamilton, 'The development of access to the countryside in Northern Ireland: policy, law and the role of local government' (MBA dissertation, University of Ulster, 1998)

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post-productivist ethos might have naturally evolved in a more benign environment, as would ultimately occur in Great Britain.

Participants from the policy, outdoor recreation and tourism sectors *were* clear that the legacy of direct rule-era 'legislative lag' continues to affect the prospects of change. First, transposition and implementation of important elements of EU environmental law have been delayed. As Northern Ireland undergoes a process of 'catch-up', policy development resources were seen to be prioritised on putting in place the legislation required to avoid infraction proceedings bringing possible fines. This is a real and ongoing risk as illustrated by legal action regarding the protection of sensitive marine environments,⁸⁰ albeit one that may disappear when the UK leaves the EU. Consequently, the former Department of the Environment 'clearly [had] its priorities on conservation because of European directives' (interview 13) but was seen to be less concerned with public enjoyment of the areas being protected. Legislative lag was also felt to have resulted in landowners being accustomed to freedom 'to do more or less what they wanted' with their land (interview four), entrenching resistance to environmental regulation in general, including statutory access rights. This point generated some disagreement however. Interviewees involved in agriculture considered that the rural environment is already 'swimming with management' (interview nine) to the detriment of farm businesses and land value, whereas an interviewee from the tourism sector felt that existing regulations 'actually don't make a significant difference to [farmers'] daily lives... there just seems to be a sense that the next designation will be the one that really does tie you down' (interview 13).

The second key impact of 'the troubles' was articulated by the participants as pertaining to ongoing issues of security and privacy on rural land. In an arena with a fragile peace the participants noted that this situation contributed to distrust of people being in open country on the part of rural dwellers. They also noted reluctance by Northern Ireland residents to visit unfamiliar, isolated areas and thus to view them as recreational spaces contributing to the lack of countryside idealisation. For example, interviewee four recalled, 'we were doing

⁸⁰ K. Yates, A. Payo and S. Shoeman, 'International, regional and national commitments meet local implementation: a case study of marine conservation in Northern Ireland' (2013) 38 *Marine Policy* 140

work on the path and getting followed by helicopters – [the security forces] are so suspicious'. Interviewee 13 felt that concerns about security and privacy during the period of the 'troubles' were 'hard to argue against.' In contrast to cultural constructions of the countryside as 'idyllic' and as providing opportunities for escapism and reflection,⁸¹ 'in the past areas have been seen as places you would never, ever go up to' (interview eight). The countryside as oppressive backdrop to acts of violence is documented in factual accounts of the 'troubles'⁸² and represented in crime novels set in Northern Ireland.⁸³ Thus issues of territorial and personal security were felt to have reduced participation in outdoor activities and hence the potential constituency in favour of access liberalisation. Although more than half the participants identified tourism as one of the most likely drivers of reform, it was felt this could not have been possible prior to the 1994 paramilitary ceasefires.

Despite the greatly reduced level of violence, the wider political agenda was still felt to be preoccupied with maintaining peace and security and developing government structures; interviewee three observes, 'compared to everything else, with education, riots, troubles... it's low on the agenda.' In an evolving and still volatile political situation,⁸⁴ the participants reinforced that there is no one remedy for overcoming the difficulties of achieving greater countryside access under current societal and legislative conditions. Rather, they suggest that it is necessary for all groups with an interest in a particular area of countryside to work together to address issues and to discuss how competing uses can be reconciled or negative impacts minimised. Being able and willing to work together remains the challenge, however, in what is still referred to as a 'divided society'.⁸⁵ The need for collaborative rural planning has not seen a prominent academic spotlight with the predominant focus being on

⁸¹ T. Edensor, 'Walking in the British countryside: reflexivity, embodied practices and ways to escape' (2000) 6 *Body and Society* 81

⁸² T. Harnden, *Bandit country: the IRA and south Armagh* (Hodder: London, 2000)

⁸³ C. Bateman, *Cycle of violence* (HarperCollins: Glasgow, 1995); A. Quinn, *Disappeared* (Head of Zeus: London, 2014)

⁸⁴ M. Leonard, 'What's recreational about "recreational rioting"? Children on the streets in Belfast' (2010) 24(1) *Children and Society* 38; D. Bryan, 'Parades, flags, carnivals, and riots: public space, contestation, and transformation in Northern Ireland' (2015) 21(4) *Peace and Conflict* 565

⁸⁵ S. McKeown, 'Perceptions of a superordinate identity in Northern Ireland' (2014) 20(4) *Peace and Conflict* 505

the urban context.⁸⁶ While the 1983 Order does contain the necessary provisions to force access upon landowners (see section 2), as interviewee eight noted:

'once we solve the access issue and we wake up the next morning, we've still got other issues, we're all living and working together... I see the relationships as almost being more important than winning battles... if something is forced we'll be left to deal with the consequences'.

Interviewee eleven agreed, 'if you were to legislate more widely and make it less consensual then you're into problems'. This underlines a key message from the interviews. Greater countryside access may be viewed as desirable by most participants, but in comparison to other issues in Northern Ireland it is currently seen to be less important.

5: Conclusions and Research Implications

There is no right or wrong way of conceptualising rural land, no inevitable teleology from feudalism to capitalist productivism to postmodern multifunctionality. Indeed, some of the authors cited argue that rumours of productivism's demise in Great Britain and elsewhere have been greatly exaggerated. Nor is there an objectively right or wrong balance between agriculture, extractive industries, conservation, recreation, housing and other uses of rural land. What is not in doubt is that the statutory balance in Northern Ireland is tilted further towards landowners who might wish to exclude others from their property than in Great Britain (reinforced by apparent timidity of local authorities in the use of their discretionary powers in respect of access), and consequently further away from potential recreational users. There is also an incongruity between the Executive's emphasis on rural tourism as a tool for economic development and its reluctance to legislate to open up the countryside to visitors, even though this could reduce the liability of landowners for injuries sustained by participants in outdoor activities compared to the blind-eye approach that prevails in many areas.⁸⁷ Through exploration of the conceptual literature and the empirical findings of this

⁸⁶ R. Brand and F. Gaffikin, 'Collaborative planning in an uncollaborative world' (2007) 6(3) Planning Theory 282

⁸⁷ A landowner's duty of care to a recreational user exercising a right of access is no greater than that to a trespasser (Occupier's Liability (NI) Order 1987 no 1280 (NI 15) art 3), but may be greater in respect of a user deemed to be present with consent; it might be argued that tacit consent exists given the absence of any attempt to dissuade the widespread recreational use that occurs in some areas of Northern Ireland

study it is possible to identify some likely explanations for divergence within the UK since 2000, along with some future research directions.

The headline finding is that the perceived proper use of rural land in Northern Ireland is more likely to agriculture than in Great Britain, to the exclusion of other functions; the right to control land to reside with its owners. Digging deeper into the interview data it is possible to identify several main reasons why, in participants' eyes, this productivist/agrarian ethos has been maintained and progress towards a post-productivist/multifunctional view of the countryside has proceeded at a slower pace than across the Irish Sea. First, historic struggles for land ownership in Ireland as a whole were perceived to have left their mark on landowners determined not to cede control of hard-won property, policymakers reluctant to intrude on ownership rights, particularly those of the economically important agricultural sector, and the prospects of securing access by agreement to widespread areas. Second, the region's rurality was felt to reinforce a productivist mindset that it is farmers who have the 'right' to decide what happens on rural land, further shoring up the political influence of agriculture in contrast to a relatively weak outdoor recreation lobby. Third, despite 20 years of relative peace, the conflict of the late 20th century and continued social division were felt to have an ongoing impact on prospects of reform.

Consequently, while there was general acceptance that the accommodation of recreation within the rural environment is desirable and an appetite for liberalisation among many participants, there was a general sense of caution about pushing for reforms currently unlikely to gain support among political elites. It is noteworthy that only those participants – the farmers – who feared reform most perceived any significant support within government for an expansion of access opportunities. However, they were not alone in advocating caution: while other interviewees' hearts undoubtedly favoured the Scottish model of a right to responsible access, their heads often suggested that it was better to get landowners on board with a voluntary approach than to engage in a campaign for imposed access that would be likely to fail and risked a backlash that might jeopardise tolerance of trespassers.

Exploration of what elite policymakers in fact think about the merits of more liberal statutory provision for outdoor recreation, then, forms one priority for future research.

However, in the Brexit era, the thesis that key factors in shaping approaches to one aspect of rural policy, countryside access, include the dominance of agricultural and landowning interests in Northern Ireland and a desire to retain control of territory in a divided society may gain a wider significance.⁸⁸ Notably, if productivism and the primacy of ownership truly remain a stronger force than in Great Britain, this may come to be reflected in nature conservation and agriculture law as the devolved institutions gain greater freedom to pursue their own policy agendas in fields previously dominated by the EU. While there is concern that post-Brexit 'more flexibility... could weaken the conservation effort' across the UK,⁸⁹ it would be anticipated that a genuinely closer adherence to productivism in Northern Ireland might be reflected in more extensive dismantling of the regulatory burden on agriculture.

What the findings do not make clear is whether Northern Ireland is simply at an earlier stage of a journey to post-productivism that is more advanced in Great Britain, or so fundamentally different that the agrarian mindset must remain entrenched for the foreseeable future. Emphasis on tourism as an economic driver holds out some possibility of a shift, particularly if visiting outdoor enthusiasts from Great Britain and further afield go home disappointed with the relative lack of access opportunities. A further research direction might investigate tourists' experiences of the Northern Ireland countryside and whether these might be enhanced by access reform – findings from which might in turn help inform policymakers' future positions. This process might also necessitate some 'rebranding' of rural Northern Ireland, with an association with conflict making way for one with (for

⁸⁸ Nationalist politicians' vocally expressed concerns about a 'hard border' with the Republic of Ireland and related calls for a referendum on Irish unity are an early sign that the territorial and nationalistic connotations of withdrawal from the EU are particularly keenly felt in Northern Ireland – see N McAdam, 'Unionists anger at Sinn Féin's call for Irish border poll in wake of SNP Scotland referendum move' (Belfast Telegraph, 14 March 2017) <<http://www.belfasttelegraph.co.uk/news/northern-ireland/unionists-anger-at-sinn-feins-call-for-irish-border-poll-in-wake-of-snp-scotland-referendum-move-35528241.html>>

⁸⁹ D. Baldock, A. Buckwell, A. Colsa-Perez, A. Farmer, M. Nesbit and M. Pantzar, *The potential policy and environmental consequences for the UK of a departure from the European Union* (Institute for European Environmental Policy: London, 2016)

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example) *Game of Thrones* in the same way that Suffolk exploits its links with Constable, Ayrshire with Burns.⁹⁰

A final point is that the Northern Ireland-specific issues highlighted in the article sit alongside more general anti-access arguments familiar in Great Britain, such as fears of disruption of farming practices, damage to property, personal injury claims and consequently reduced profits. Given that England, Wales and Scotland are now more than a decade into their liberalised regimes, the time is ripe for a comparative study involving landowners and other users of the countryside to examine whether such negative impacts are more prevalent in Great Britain than in Northern Ireland, or have become more prevalent following liberalisation. Given the observed strength of Northern Ireland's agricultural lobby, assuaging landowners' fears must be as crucial to any hopes of reform as establishing demand for outdoor recreation and the associated access rights. There is potential to explore opportunities for a 'win-win' solution through funding to help landowners develop the necessary infrastructure and mitigate any negative impacts. For now, however, access to the countryside of NI compared to GB is limited and for many 'troubling'.

⁹⁰ M. Kneafsey, 'Tourism, place identities and social relations in the European rural periphery' (2000) 7(1) European Urban and Regional Studies 35