Trespass: Get Off My Land!

Ross: Welcome to Renegade Inc. Understandably, whenever we hear the words get off my land, it's met with fear, but also incredulity. But that phrase does depict the mindset of many landowners who go to extraordinary lengths to keep people of what they deem to be theirs. However, without proper access to land, we have no ability to have an intimate understanding of nature or ourselves. So is it now time to reclassify trespass as a revolutionary act?

Ross: Nick Hayes, welcome to Renegade Inc..

Nick Hayes: Thanks for having us.

Ross: Lovely to have you and to talk about The Book of Trespass. Within the title there's a criminal act. It's good to start with that kind of muscularity. Why did you write it?

Nick Hayes: Why did I write the book? Because we've got so little access to the nature that we love so much in England. If we're on our English rivers, we're 97 percent chance not allowed to be there. If you go for a walk in the woods or the meadows or along the side of farmlands, there's a 92 percent chance you're not allowed to be there. We've only got rights of access to eight percent of our land and three percent of our rivers. And I guess I wrote the book because I wanted to find out what the historical context of that was, and I guess ultimately find out what the ethical justification for that was.

Ross: At age 10, growing up in the Thames Valley area, you were drawing a lot and you decided that actually jumping over the wall, the view was a bit better. So there we are, we're back to trespass. And that really set off a fundamental bit of thinking, didn't it? Because you thought, well, what is this private land and no right of way? And if the view is better there than on the right of way, then why aren't you as a 10 year old going to go and draw that instead of what you can see here? Just talk us through that sort of moment. Was that the moment where you thought, hang on, this isn't right all this enclosure?

Nick Hayes: I guess that's the moment I first started to learn that there was a difference between what I was allowed to do, or rather a difference between what felt right and what other people said was right or wrong.

Ross: So natural law versus the law?

Nick Hayes: Exactly. And there are laws that by breaking them, you feel like you've committed some kind of moral, you know, sort of crime.

Ross: By jumping a wall?

Nick Hayes: Well, the act of jumping a wall obviously feels, simply because the wall is there, the wall presents itself with this kind of mask of legitimacy. It has an authority to it. But more often than not, when I was just looking for something interesting to draw, you know, if you follow a wall for long enough, it will have crumbled in some places. If you follow a barbed wire for long enough, a tree will have come crashing down on it at some

point. So the actual act of kind of entering a private estate was never that dramatic. But it's the response that you get when the gamekeeper or the land worker or the representative of whoever owns the land comes with such a scale of machismo and aggression that seems entirely disproportionate to, as you say, a 10 year old destroying, you know, quite a crap picture on a bit of paper, but nevertheless, you know, engaging with nature and kind of sitting down to explore your love of it. You know, the more you observe, the more you research, the more you understand, the closer the bond between you and the non-human or the outside world is.

Ross: Talking about that machismo, did you always find it was the gamekeeper, not the landowner, that was a lot harder because a lot of the time they're protecting what they perceive to be their livelihood as well as the landowners? Did you see that that people would come at you very hard because it was the get off my land moment? It's not actually their land.

Nick Hayes: Yeah, it is a bizarre thing because gamekeepers I've got an enormous amount of respect for. They know that particular topography, the, you know, the ecology of that land way better than I do, even though a lot of the times I was living just there because you're not allowed access to it, you don't know where the wild orchids are. You don't know where the rare butterflies are or what lives there. So I've got this enormous respect for gamekeepers because they have that lived experience. What it is is the law that sets my act as an act of aggression against the landowner. That's the law of tort. The law that governs trespass actually defines me swimming in a stretch of river as active harm against, if it's the River Loddon, the Duke of Wellington. It's a preposterous idea. It doesn't bear any kind of relation to the reality of the situation. If I am harming the environment, then I should be done for that because that is a moral crime. But simply, the presence of myself, simply the just being on land that I don't own. If the scale of land ownership is such that I'm basically excluded from all but eight percent of land, most of which is up north in the peaks kind of thing, then really that wall, the real harm of trespass is the wall that prevents me, you know, from gaining my mental health, my physical health, I'm just hemmed into a world where I can't actually interrelate with nature. And to me, that's the crime.

Ross: When you start to talk to people and campaign, it is not the fault of the inner city child who thinks that milk comes from the supermarket because they've never had that exposure to land. They've never had that exposure to country people. How difficult is it from a campaigning point of view? Because I know you wrote the book and now you've gone on to campaign something you said you weren't going to do, but you've ended up doing it because it comes with the territory. How difficult is it to explain to people who haven't been exposed to land, the countryside, that actually they're missing out a huge amount from an educational point of view, but when it comes to a campaigning point of view, it's very, very difficult to explain because they haven't felt those things haven't been in that environment?

Nick Hayes: That's exactly it. Like, in a nutshell, we've forgotten as a nation what we've lost. It happened so long ago and it happened you know, like the frog boiling in the pan, it happened incrementally over hundreds of years, and it's still going on today the enclosure of public spaces in cities, which are called privately owned public spaces. We've become inured to the idea that we don't have rights to connect with nature. We actually launched a petition as part of the campaign. We got ourselves 134,000 signatures to debate the Conservatives

new policing bill, which at the time we were focused on the criminalisation of trespass. And actually on the government website where you set up the debate, it gives you a map of the, you know, the highest and lowest densities of signatures. And that's where we really learnt how deeply we've forgotten what we've lost. Places of inner city like Birmingham were much less interested in the restriction of their rights, signed the petition, much less than people say in Totnes or, you know, Dartmoor people that were connected to nature who really had this kind of visceral bodily sense that to be prevented any further from connecting to nature would just be a crime against public health.

Ross: The aristocracy have done a bang up job on this, haven't they, and their lackeys, if you like, because what they've done is airbrushed history in a sense - back to your boiling frog - just by chipping away on an almost daily basis, they're now probably more powerful than ever, not least because this debate, the debate that you're bringing, isn't being had?

Nick Hayes: Well, everyone's life is linked to our rights to land. Pretty much every right that we have as humans is actually connected to our rights to land. The book specifically looks at gender, class and race to see how they were manipulated by the owners of land just as ways to either divide the working class through issues of gender or race, but also just to limit people's ability to be themselves. You know, it's that sense that if you don't have a space to express yourself as a community, then you don't actually have a community anymore. And this is what's happening to the travelling community. They're being bullied off the road by a by a bigoted law, by this policing bill that is doing its best to pretend it's not completely targeting travellers, really by expanding the law so it also includes kayakers, wild campers. You know, if you turn up to a patch of land that you don't own with one vehicle, either a bike, a kayak or a van, and you intend to stay the night, not only will you be arrested, bunged in jail for three months, fined, but they'll also take your vehicle, which obviously for the travelling community is their home.

Ross: When then you start thinking about the powers that be, the forces behind this, do you think it's a orchestrated, cynical campaign to marginalise the already marginalised? Or do you think that actually, well, no, it's just a bit of policy error here and there's a bit of overstep and actually it'll come back and we'll get on with it?

Nick Hayes: To be honest, I don't think it's either. I think an orthodoxy or a consensus builds over time. I think the compulsion to have complete dominion over an area of land, the idea that because it's mine, that no one else can have access to it, I think, is not specifically against all the marginalised people, but just a very specific sense of what possession means.

Ross: But I mean, philosophically, if you come down to it, it's impossible to own land. You can be a steward of it, but it's a philosophically absurd situation to say, I own this land.

Nick Hayes: Everything about land law is surreal and ridiculous, like especially when we get into the world of rivers. Rivers often mark the border of an estate, but actually no one knows where in the river that actual territorial line is placed. It's called in law, the thalweg. But the thalweg is the deepest part of the river. And actually deepest part of the river will take the racing line so it won't stay to the centre of the river. So if I'm.....

Ross: Applying straight lines to nature?

Nick Hayes: In a nutshell, that's exactly the problem..

Ross: So law is the straight line. That's the wall. You can't get over it. Natural law is the thalweg. Mutually exclusive - totally incompatible.

Nick Hayes: What law calls it, they don't say it's a lie. They don't say it's a total load of codswallop. They call it a legal fiction. And legal fiction which crop up all through law, they're essentially polyfilla in the cracks of logic of law that are actually there to just allow the working of the law to the point where you have to ignore reality. And trespass is a really good example of that. Like, it's not just defined as harm, it's defined as harm to the owner of the land. So trespass falls under tort, where it's all kinds of like common law ways that I can harm you. I can harm your reputation. You know, I can damage your goods or whatever. All of these lumped in the same way. But if I'm walking in 12000 acres of deciduous English oak, then because the law needs to file it under something, it will create this legal fiction to also pretend that I am causing harm to whoever it is that owns this place, as if I've got that person in my mind, as if I'm not just trying to draw, you know, a fallen oak tree or trying to search for mushrooms or or whatever it is that is the kind of activity that actually draws me closer to nature. And those kind of activities have been proven by science to actually make us care more about nature, which in itself is a no kind of scenario because of course it does. The more you know about something or someone, the more entwined you are to its kind of health and upkeep.

Ross: Nick Hayes, welcome back to Renegade Inc. In that first half we've set out all the problems and challenges that we face when we're talking about land ownership. Before we talk about all that, we want to go to the Book of the Week this week. It's your book, The Book of Trespass: Crossing the Lines that Divide Us. Pitch it to us and tell us why we should read it.

Nick Hayes: Well, yeah, thanks for making it Book of the Week. That's nice. It's the subtitle that says it all, I think. Like this is not a book just about, Uh, let's have the right to roam or let's go walking with ski poles over greater areas of England. This is about how land rights has effectively built the partitions between cultures and societies, like crossing the lines that divide us. The book is kind of a historical, political social account of how our rights as English people to not just to connect with the land but also to protect the land, have been removed by this sort of encroachment of the private property principle. But it also looks at how that's affected our idea of possession. That bleeds into gender. That bleeds into race with slavery. That bleeds into class as well, that we can possess people's labour and be able to control them with that power. But fundamentally, what it also seeks to do through referencing folk song or old ghost stories, or the different stories or expressions that we find in old English culture of the lived experience of the land, is set out a case that there is actually a much deeper connection that we can have to the land that has got nothing to do with ownership but to do with belonging.

Ross: The Book of Trespass: Crossing the Lines that Divide Us, it's our Book of the Week this week. Congratulations on it. We highly recommend it. One of the things, not just reading

what you've written, but also listening to you, is how big you are on historical context. So you're not the type of person who, from a campaigning point of view, is to say, 'What do we want - change? When do we want it? Now. What you're actually doing is you're putting, as great writers do, putting it into a context that we understand. So it's not a reaction to what's going on at the moment. If we just rewind to three hundred years thereabouts, is it the case that when the rent seekers had gone and commandeered foreign lands and imperialism was, you know, in its pomp, that those rent seekers eventually have to come home? And what they did was enact the same rent seeking principles on their own population as they were enacting on natives in far flung places.

Nick Hayes: Well, I mean, even more than that, it had happened 400 years before we even started coming out to colonise other nations. Colonisation was practised on the English Commons long before it was practised on the East Indies or the West Indies.

Ross: Right. So it's not chicken and egg in the sense that actually the genesis was here. We took it to far flung places, came back and then enacted it even harder.

Nick Hayes: Absolutely. And I think it's a message that needs to be understood and contextualised historically because actually, I feel like the working class of England have a lot more in common with the migrant diaspora that have more recently arrived in England than any of the newspapers or any of this sort of standard right wing narrative of England will let on.

Ross: Well, not just let on, they actively divide because they don't want those two groups of people knowing that they have more in common with each other because they've been dispossessed than they have difference.

Nick Hayes: Absolutely. And, you know, I guess what the book sets out is a wall is not just a practical method to divide, it sets a divide in society as well. And by manifesting it in terms of a wall, what you've done is trying to give it legitimacy. But the book goes into detail about an MP for South Dorset, Richard Drax. His ancestor having already colonised half the south Dorset or, you know, several thousand acres, they were essentially the Henry Ford of slavery in the Caribbean. They standardised it. They wrote the books, the manuals to tell you how to really save some money. What they did, they came back with the money that they'd earned from the exploitation of West African labour, and they further enclosed more and more of the land that the white working class of England relied upon for sustenance. You could graze your pigs, graze your cows, collect fallen wood, you know, winter fuel allowance kind of thing. The Commons used to be the welfare state without the stigma attached to it. You were able to be autonomous. You could be poor, but you could live. When Richard Drax's ancestors came back and enclosed this, of course, they used the commoners to build the wall. But these people were effectively building themselves out of a livelihood.

Ross: And building themselves out, of what you say, welfare state without the stigma?

Nick Hayes: Absolutely.

Ross: So what you have is a situation where we're privatising rent. You mentioned Henry Ford. Let's come to Henry George in a second.

Nick Hayes: Yeah.

Ross: Henry Ford realised that people to buy his cars needed wages, so he was all for decent wages. Henry George was all for liquidating land monopoly because he realised that the more you privatise the rent, the more inequality goes up, all the social economic indicators, the negative ones, go up. Is it surprising to you that Winston Churchill said in parliament, actually, if we're going to sort inequality and get rid of charity and welfare, we need to liquidate the mother of all monopolies, which is land monopoly?

Nick Hayes: It doesn't surprise me, no, because it's just common sense. And I think Winston Churchill had a brain on him. You know, the real issue is that anyone that looks at it, that looks at the historical context and looks at the implications of liquidating this, you say, it's clear for all to see that it would build a more equitable society. The point is that it has been so smothered and obfuscated by the elite few people in England that benefit in vastly disproportionate terms to us maintaining the status quo...

Ross: So if you have that system, you have to have a welfare system running alongside it on charities and all the rest of it to constantly give concessions to those people who can't enter into fundamental economic norms, right?

Nick Hayes: Yeah.

Ross: Does it surprise you that Winston Churchill also said, 'But if you do try to liquidate land monopoly, it's political suicide'?

Nick Hayes: Yeah, well, that's because who's funding your political career?

Ross: Right? So there we go. There's your wicked problem, right?

Nick Hayes: So therefore, it falls to the people. I don't necessarily see that as a challenge. It makes it harder for us because we've got other stuff to do.

Ross: Living and stuff?

Nick Hayes: Yeah. Earn a wage. You don't earn a wage through campaigning, you just lose a lot of sleep and send a lot of emails.

Ross: And sit on a lot of Zoom calls.

Nick Hayes: Yeah.

Ross: But the problem with poverty - because as Henry George wrote in Progress and Poverty, 'The problem with poverty, is it takes all your time.'.

Nick Hayes: In some ways that explains why protest is the preserve and the privilege of the middle class. It shouldn't be, and not always is it when things are, you know, desperate. But something like XR, for example....

Ross: That's Extinction Rebellion.

Nick Hayes: Extinction Rebellion - this vast abstract concern. People have the means and the, I guess, the, uh, the resources to rely upon to effectively give up their lives to dedicate to, not just the protests themselves, the rebellions that happen, but the vast amount of organisation and discussion that comes with it. So it shouldn't be how it is, but actually, maybe you should look at it, as you know, because the middle class have that kind of cushy sort of privilege to it, then therefore it's incumbent upon them. It's their duty to do that.

Ross: I'm going to get rid of all the admin, all the campaigning that you've got to do. I'm going to overnight, tomorrow, you're in charge of the statute book. No opposition. What are you going to do? What are you going to enshrine in law to make the reforms necessary to give people access to what is their fundamental birthright?

Nick Hayes: Well, first of all, I'm going to declare that trees and rivers have inherent human rights. I'm going to follow the theory of Lawyers for Nature and to follow the, you know, the indigenous Maori population with the Wanganui River. I'm going to say that if you pollute our rivers, you will be sued as if you were poisoning a child. What will come from that is a different sense of our relationship to protecting our natural resources.

Ross: Sold. First bit out of the way. Statute book. That was quite easy wasn't it?. No Zoom calls either. Second bit?

Nick Hayes: Second bit: Land value tax. We need to tax the value of land rather than taxing people's labour or the passing of goods. This is another thing that no one looks at. The value of land roughly, on average, is 30 percent whatever it is that you've built on it and 70 percent the value of the land itself. Now where does the value of land come from? It's not about the soil or...

Ross: It comes from the community that improves that land.

Nick Hayes: It comes from infrastructure. Like if you're if your house is smack bang in the centre of Shoreditch, you've got White Chapel Hospital over there. You've got culture. But who are the people providing that value?

Ross: The community that comes together and create that value?

Nick Hayes: Yeah.

Ross: So you're going to capture that value and redistribute it?

Nick Hayes: To the local communities. I think it should be based around the local focus, basically.

Ross: So land value tax? You're going to capture the community value, redistribute it and fund vital public services?

Nick Hayes: Absolutely.

Ross: Sold.

Nick Hayes: Thank you very much.

Ross: So, what have we got so far? We've given nature human rights. We've got LVT, land value tax. Last one?

Nick Hayes: Well, for the first one, I was following Lawyers for Nature, a brilliant organisation. For the third one, I'll follow Land In Our Names, another excellent organisation.

Ross: What is the third one?

Nick Hayes: Well, they're seeking community ownership and access to land for people and communities of colour in England as reparations for the unimaginable horror done to their ancestors. So reparations is crucial as part of this.

Ross: Why?

Nick Hayes: Well, for two reasons. One, because it really sets in stone the apology, the fact that we acknowledge that this was a barbaric act, that in some ways it's abhorrent to even try and pretend that England gifted India the railways when what it really did was give them a quick way of extracting supplies. But also reparations work on a practical level. Like people of colour need access to land, not just for walking and swimming, but for digging and growing because of the mental health benefits, the physical health benefits that they are disproportionately at the sharp end of, you know that they are suffering from. So option number three would be reparations in terms of access for land, but also finance.

Ross: Sold.

Nick Hayes: We've got a better society.

Ross: Gosh. It's not easy. They make a hell of a lot of noise about it these protesters. Just let them get on with it.

Nick Hayes: Just have to chat to you.

Ross: Nick, absolute pleasure. It's also really lovely to talk about this subject because to keep it in the public eye, if you like, is really important. And your work and your book is doing that and we really thank you for it.

Nick Hayes: Thanks very much. Could I just add like because it's not just me and Guy Shrubsole that wrote Who Owns England? There's loads of people behind the scenes. But really what we want is for people to go to righttoroam.org.uk and just sign up and join us. Next year is the 90th anniversary of the Kinder trespass, the largest, most famous, I should say, trespass in English history. So it's incumbent upon us at Right to Roam to encourage people to go out and turn each trespass into a direct action for wider change. And that's what 2022 is all about.

Ross: You've just done it.

Nick Hayes: Thank you very much.

Ross: Ok, thank you very much for your time.

Nick Hayes: Cheers.