THE RIVERS OF LAW: A HISTORICAL LEGAL GEOGRAPHY OF THE FISHERIES ON THE SEVERN ESTUARY

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Legal geography is an emerging body of scholarship which proposes that 'in the world of lived social relations and experience, aspects of the social that are analytically identified as either legal or spatial are conjoined and co-constituted'.[1] Thus, as all law is located 'somewhere', it needs to have a spatial frame of reference, and one such vocabulary of techniques can be provided by the discipline of geography. Law does not just 'happen'; it has a space, place and time and is relative to the landscape in which it is played out. However, to say 'that law *has* geography and that geography is *shaped* by law is not to say that law *is* geography'.[2] By examining the ways in which natural landscape features can be shaped by the law as hidden social constructions of place, nature and society, the estuary can be seen as a 'key form of watery agency' shaping 'local topographies, ecologies, cultures, and economies'.[3] As a feature embedded in the local social consciousness, the Severn can become a metaphor for the phenomena of law; a presence which is always in the background, continually flowing, influencing and shaping lives, symbolising the ebb and flow of both legal application and geographical change.

Critical legal geography has been said to 'reveal the way law (as well as sites of power) works in more practical, embodied and mundane ways, enrolling and inscribing itself upon bodies, things and spaces'.[4] The River Severn itself, fixed in space and place, is a landscape which has been the subject of different legal questions historically in terms of whether water is tidal or non-tidal; whether the owner of property on the shore has rights to the centre of the channel; and what the rights or exclusions are for users of the estuary, or for what purpose, whether this be as a resource or as a passage. It is both a boundary and a territory, over which legal 'ownership' as property has been historically disputed. Although the physical attributes of the estuary itself have indeed changed naturally over time (for example, it has changed course, widened or deepened, silted or slowed), some of the drivers of change over its natural state and course have been man made. These changes can be seen in statute. Thus, the terrain of the Severn has been legally negotiated, claimed, controlled and managed. Throughout the ages, law has been present as adjudicator and as a source of power.

This article uses archival documents and historical law in relation to the fish and fisheries of the River Severn to examine the ways in which particular laws were drafted, implemented, and acted out to encourage or inhibit certain types of human behaviour and thus form a fundamental part of the relationship between man and landscape. By the inclusion of the effect of law on non-human inhabitants of the estuary in the form of particular migratory fish species, this study has attended to the instances where law has had unpredictable consequences on the natural landscape. Using the tidal estuary as a focal point has encouraged the examination of the discord that lies within the tidal rhythm patterns 'firstly, between natural and social rhythms; and, secondly, between conflicting uses of tidal ecosystem services which share the same landscape'.[5]

THE SEVERN FISHERIES

The Severn is Britain's longest river at some 220 miles, flowing from its source in Plynlimon, Wales to the Bristol Channel, before reaching the Atlantic. The tidal estuary runs between Bristol and Gloucester and is surrounded on the east side by the hills and valleys of Gloucestershire, and by the Forest of Dean on the west bank. The estuary is a habitat for a number of species of fish, and in terms of law and cultural significance in this geographical area, the eel, the lamprey and the salmon have all been subject to legislation.

Two species of lamprey can be found in the Severn, namely the river and the sea lamprey. The species normally spawns in freshwater but completes part of its life cycle in the sea. During the Middle Ages, lampreys were widely eaten by the upper classes as a delicacy. Since at least the 12th century, Gloucester had a number of lamprey fisheries, and the regular supply of lamprey for the royal table which had started during the reign of King John (1199–1216) continued under his successor, Henry III, and was formalised in the presentation of lamprey pies to the crown. Town officials would show their allegiance to the crown by presenting a lamprey pie to the head of state at the coronation as well as every Christmas,[6] with the bailiffs in Gloucester regularly called upon to provide the king's table with Severn salmon and shad.[7] Gloucester Abbey also claimed fishing rights in stretches of the river touching its lands under a grant of William I, and had two fishing weirs above Westgate Bridge. In 1200, King John fined the men of Gloucester 40 marks for disrespecting

1 I Braverman, N Blomley, D Delaney and A Kedar *The Expanding Spaces of Law: A Timely Legal Geography* (Stanford University Press 2014).

2 N K Blomley, G L Clark 'Law, theory and geography' (1990) 11(5) *Urban Geography* 433.

3 O Jones 'Lunar-solar rhythm patterns: towards the material cultures of tides' (2011) 43 *Environment and Planning* 2285.

4 N Blomley 'Uncritical critical geography?' (2006) 30 *Progress in Human Geography* 87, 91.

5 Jones (n 3) 2296.

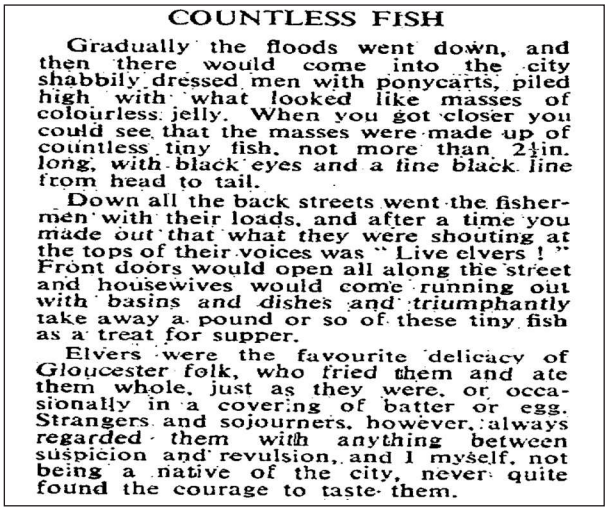
6 Claude B Renaud *Species Catalogue of Lampreys of the World* (Food and Agriculture Organization 2011).

7 H C Maxwell-Lyte (ed) 'Close rolls, Edward III' (HMSO 1910) http://www.british-history.ac.uk/report.aspx?compid=103201&amp.

him in the matter of his lampreys.[8] King Henry III was regularly supplied fish by Gloucester, and the calendar rolls of 1226 record that he ordered the Sherriff of Gloucester to bring 40 salmon and as many lamprey as he could find in time for Christmas.[9] In February of 1240, he banned the sale of lamprey, ordering that all catches were to be sent straight to the palace.[10] A year later, the sheriff was directed not to let anyone buy lamprey during lent and to send all catches direct to wherever he was holding court; in 1243, this amounted to 188 lamprey.[11]

The common or freshwater eel is thought to spawn in the Sargasso Sea. The *leptocephali*, flat transparent larva, unable to swim and measuring between 5–7mm, float more than 3,000 miles from the North Atlantic to the continent. The larva metamorphose into glass eels on the continental shelf before migrating to coastal areas such as the Bristol Channel. From there they begin the journey upstream using the tidal currents. Once upstream, elvers stay and grow into adult eels in fresh water, staying for up to 25 years. When they approach maturity, they start on the journey back to the Sargasso Sea, moving down river in late summer and autumn, mainly by night. The whole journey to the spawning grounds is thought to take up to a year or more. The female can produce as many as 10 million eggs during spawning; it is probable that shortly after spawning, the eels die.[12] The Severn estuary has the second highest tidal range in the world. Where the sea and river meet at Avonmouth, the estuary is over five miles wide; at the equinoxal spring tides, the difference between high and low water is around 14.5m, when 'the sea will rise up the height of three double-decker buses in the space of six hours and then recede again'.[13] During these tides, the spectacular rise and fall of water levels brings elvers upstream, yet also ruling out any other type of fishing.[14] In short, elvers were the only source available from the river during the spring and, as they were free, were eaten in abundance locally. As an article in *The Times* recalls in a memory from the turn of the 20th century (see Figure 1).[15]

The Severn was also famed for its salmon. Adult salmon arrive in the Severn estuary from the North Atlantic during the summer, breeding in the shallows between September and February. Salmon were traditionally fished on the Severn with lave nets, weirs, stop and long nets, and 'fixed engines'. The earliest fish trap found on the Severn estuary is a late Bronze Age fence-like structure and, in recent years, archaeological research and excavation at a number of locations on the Welsh shore of the Severn estuary has produced over 30 medieval wooden fish traps, baskets and post-and-wattle fences.[16] These fisheries were



COUNTLESS FISH

Gradually the floods went down, and then there would come into the city shabbily dressed men with ponycarts, piled high with what looked like masses of colourless jelly. When you got closer you could see that the masses were made up of countless tiny fish, not more than 2½in. long, with black eyes and a fine black line from head to tail.

Down all the back streets went the fishermen with their loads, and after a time you made out that what they were shouting at the tops of their voices was "Live elvers!" Front doors would open all along the street and housewives would come running out with basins and dishes and triumphantly take away a pound or so of these tiny fish as a treat for supper.

Elvers were the favourite delicacy of Gloucester folk, who fried them and ate them whole, just as they were, or occasionally in a covering of batter or egg. Strangers and sojourners, however, always regarded them with anything between suspicion and revulsion, and I myself, not being a native of the city, never quite found the courage to taste them.

Figure 1.

highly distinctive, and seemingly unique to the Severn estuary. In the early middle Ages, documentary references in local Saxon charters refer to *cytweras* ('basket weirs') and *haecweras* ('hackle weirs', possibly hedge weirs or fences of brushwood.[17] Long nets of up to 200 yards were used on the ebb tide and cast from boats by the crew. 'Putts' involved the use of large, wide-mouthed, closely woven baskets between 12 and 14 feet long that were arranged in rows above the mudflats to harvest virtually all fish from the ebbing tide (see Figure 2).

During the 18th century, smaller 'putchers' were used to catch salmon. Cone-shaped willow baskets were grouped together in 'putcher ranks' on a rectangular framework across the main tidal flow of the river to trap the fish.

LAW AND THE FISHERIES

Reference to the fisheries in law appears in the legislature in the form of both action against the use of certain fishing devices to aid navigation, as well as in the form of regulating and monitoring the fisheries in terms of fish stocks. Large quantities of fish were part of the diet in Northern Europe from around 1,000 AD, possibly linked to the widespread adoption of Christian dietary habits, but also owing to the expanding population and better fishing technology.[19] It is not surprising then that fish as a species and related activity appears in early written legal records. The importance of the fishing economy on the Severn can be seen in the records of manorial or private fisheries mapped in 1086 for the Domesday count, recording 15 fisheries situated in Gloucestershire on the estuary (see Figure 3).

As the section between Tewkesbury and the Bristol Channel is both navigable and tidal, it is by law a 'public fishery'. In law, fisheries benefit from the soil over which the water flows; therefore, title to a fishery arises from the right to the soil on the river bed. When not part of the bed, the fishery becomes an 'incorporeal fishery', usually given as a leasehold or freehold connected to a manor, and the right is to take fish in a defined stretch of water only. A 'corporeal fishery' (or a 'several' fishery in tidal waters) includes the use of the soil under the water. If manors

8 J N Taylor *Fishing on the Lower Severn* (Glevum Press 1974) 16.

9 Maxwell-Lyte (n 7).

10 ibid.

11 B H Blacker (ed) *Gloucestershire Notes and Queries Volume III* (Kent & Co 1887).

12 E M White, B Knights ' Dynamics of upstream migration of the European Eel (Anguilla Anguilla) in the Rivers Severn and Avon, England, with special reference to the effects of man-made barriers' (1997) 4 *Fisheries Management and Ecology* 311.

13 Jones (n 3) 2293.

14 W Hunt *The Victorian Elver Wars: Time of Trial* (Reardon Publishing 2007) 5.

15 'West Country scene: housewives running with basins when "live elvers" were hawked' *The Times* (1962) 14.

16 A O'Sullivan 'Place, memory and identity among estuarine fishing communities: interpreting the archaeology of early medieval fish weirs' (2004) 35(3) *World Archaeology* 449.

17 ibid.

18 C M Woolgar 'Food and the middle ages' (2010) 36(1) *Journal of Medieval History* 1, 7.

Figure 2. Putts on the Severn in the 1970s.[19]

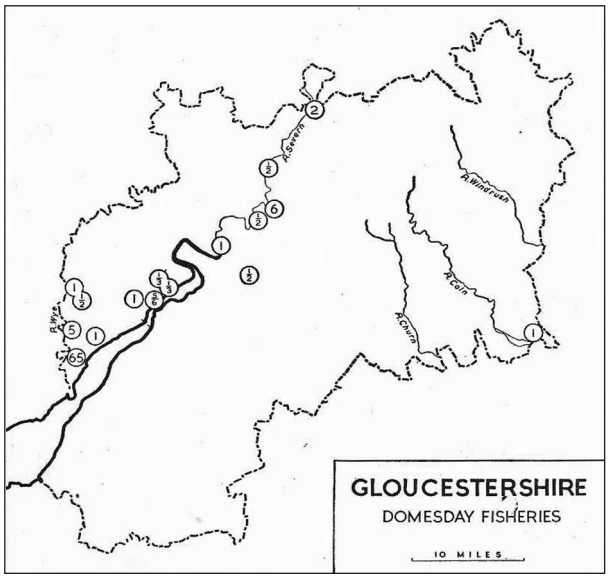


Figure 3. Domesday fisheries in Gloucestershire.[20]

were granted the rights to the foreshore by the crown, the lord of the manor could also be granted fishing or sporting rights. In these circumstances, he owned half of the riverbed and had jurisdiction over mills and weirs.[21] Several manors held rights to the fisheries on the Severn, including the Berkeley estate, which had a boundary bordering the estuary for 18 miles.

During this period, eels were considered the 'choice fish' and, throughout the Domesday Book, the rent of fisheries is continually found as paid in eels.[22] Gloucester's local trade was fish, both from fishing weirs adjoining the town and from villagers fishing downstream. Local fisheries at this time included royal weirs within the castle, as well as those owned by the religious houses, including Cokeyn weir and Castle weir owned by Llanthony Priory.[23]

THE MAGNA CARTA LEGACY IN FISHERIES LAW

The Magna Carta of 1215 at Chapter 33 stated that 'all fish-weirs shall be removed from the Thames, the Medway, and throughout the whole of England, except on the sea coast'.[24] The clause was designed to prevent the owners of river banks from appropriating, defending or barring others 'to have passage or fish there'.[25] The great rivers of the realm at the time were the avenues of transport and commerce; therefore, the clause was intended to remove obstacles to navigation[26] allowing merchants to trade freely on the water without obstruction. A revision to the Charter in 1217 added that: 'No embankments shall from henceforth be defended, but such as were in defence in the time of King Henry our grandfather; by the same places, and the same bounds as they were accustomed to be in his time'.[27] The time limit refers to Henry II, or post 1189. Defences were installed by the king, and this was probably not so much the exercise of any prerogative right 'but rather an act of dominion exercised by the owner of the soil over which the water flowed'.[28] Prior to the Charter, it was common for the king to put rivers *in defenso* in the form of a writ to bar others from fishing or fowling whilst he went hunting. However, as there is 'grave doubt as to whether the King reserved or exercised any right of fishing', others submit that the primary object of the section was to release the country from the burden of building and repairing the bridges that had to be 'attended to' whenever the king exercised his sporting rights.[29]

The County of Gloucestershire received a copy of the 1217 Charter in Latin text on parchment. Knowledge of

19 A O'Sullivan (n 16).
20 H C Darby and I B Terrett (eds) *The Domesday Geography of Midland England* (2nd edn Cambridge University Press 1971) 37.
21 C Jessel *The Law of the Manor* (Barry Rose Law Publishers 1998) 111.
22 S A Moore and H S Moore *The History and Law of Fisheries* (Stevens & Haynes 1903) 1.
23 N Herbert (ed) *A History of the County of Gloucester: Volume 4: The City of Gloucester* (Victoria County History Series 1988) http://www.british-history.ac.uk/source.aspx?pubid=281.
24 British Library '1215 Magna Carta' (English translation) http://www.bl.uk/treasures/magnacarta/translation/mc_trans.html.
25 J Chitty *A Treatise on the Game Laws and on the Fisheries* (2nd edn Samuel Brooke 1826) 243.
26 W S McKechnie *Magna Carta: A Commentary on the Great Charter of King John with an Historical Introduction* (2nd edn John Maclehose & Sons 1914) 343.
27 Charter of Liberties 1217 c.17: 'No embankments shall from henceforth be defended, but such as were in defence in the time of King Henry our grandfather; by the same places, and the same bounds as they were accustomed to be in his time'.
28 Moore and Moore (n 22) 6.
29 ibid 10.

the charter would be realised as it was 'simultaneously assimilated through its steady application in the courts and through the lawyer's working knowledge of its terms'.[30] However, such laws could be misinterpreted. Chapter 17 was often misconstrued in law as intended to preserve the public right to fish, but this was an error; in the middle ages, fish was for food and not for sport.[31] The rule that Magna Carta prohibited crown grants of several fisheries in tidal waters unless the particular fishery had been the subject of a grant or appropriation prior to its order was 'a master stroke of judicial legislation. Nothing is said in Magna Carta about rights in fisheries'.[32] One of the provisions of the Charter relied upon to sustain such an interpretation over the following centuries was Chapter 33, which stated that: 'all kydells for the future shall be removed altogether from Thames and Medway, and throughout all England, except upon the sea shore', again presumably to prevent the obstruction of vessels, as 'kydells' were staked nets set into the river bed, often surrounded by dams to funnel the fish into the nets. Whether the charter was aimed at removing the public nuisance of weirs in navigable waters or to assist the migratory fish is open to debate, although the statute had an effect on both. The clause was maintained in the Magna Carta of 1225 at Chapter 23.

Customs were the precursor to the English common law and, as such, created a narrative 'weaving together the common stories recounted in countless cases of who was doing what when', setting a precedent for later behaviour.[33] This is evident during the early 16th century, when 'interjurisdictional' jostling between rival legal structures (such as manorial, customary and civil laws) occurred, which was instrumental in the 'renegotiation of the geography of legal relations' and the systemisation of the common law during that period.[34] If adjudicated by law, a custom must satisfy four conditions: that it is ancient, certain, reasonable and continuous. A customary right is not exercisable by the public at large, but by the residents of a particular place.[35]

In early legal claims, many cases pivoted on the rights of the public to fish in what they saw as public water. In 1768, in *Carter v Murcot*,[36] the defendant claimed that the Severn was a navigable river and an arm of the sea. As such, there was a presumptive right that every person had a right to fish in the waters. The presumption maintained that when the tide was in, the water could not belong to a manor, as the crown owned the water to the high tide mark. The plaintiff argued that it was in fact part of a manor, 'and a place may be parcel of a manor, if between the high and low water marks; though the sea flows and reflows upon it'. Therefore, although Magna Carta prevented the crown from making fresh grants affecting public privileges, where the crown had previously excluded the public it can lawfully grant out this right if appurtenant to a manor. In his judgment, Lord Mansfield stated that: '[t]he rule of law is uniform … in navigable rivers, the proprietors of the land on each side has it not; the fishery is common: it is prima facie, in the King, and is public'. However, plain as this was, it was overruled. Although no earlier reported case has been found in which it was claimed that there could be a tidal creek over which there was no public right 'Lord Mansfield was willing to accept that the absence of a claim that the water was public was enough to establish that it was private'.[37]

In *Holford v George*,[38] an 1868 case, the owner of a fishery in the Severn had claimed the right to use 480 putchers and three stop-nets for salmon between the high and low water marks at Arlingham. In the Salmon Fishery Act 1861,[39] it was enacted that no fixed engine of any description should be placed or used for catching salmon in any inland or tidal water, with the proviso that 'this section shall not affect any ancient right or mode of fishing, as lawfully exercised at the time of the passing of this act, by any person by virtue of any grant, or charter, or immemorial usage'. The owner claimed that the putchers and stop-nets had been in use for 45 years up to 1862, and a witness (who was 60 years old) said that he remembered the fishery since he was 10 years old. Further proof of the legality of the putchers and stop-nets was shown in evidence of a feoffment (a complete transfer of property) dated 1610, by which the then owner of the manor of Berkeley conveyed the manor of Arlingham to another, and then by intermediate conveyances to the current fishery owner. There was no specific mention in any of the documents of title of putchers or stop-nets, or other fixed engines in connection with such fishery, but it was expressly stated that 'all the free fishing and several fishing in the River Severn' was included.

The commissioners were of opinion that inasmuch as Magna Carta had prohibited a several fishery being created since its inception, and that subsequent statutes repeatedly prohibited weirs or kydells being made or enhanced in navigable rivers, the only ground on which the fixed engines could be legal was on the presumption that the crown had granted the right, or that the engines had been in use before Magna Carta. That putchers were used in other places on the manor of Berkeley was clear, although there was no evidence that they had existed at the spot where they were fixed in 1868. Mellish QC decided that the commissioners were bound to presume, as a matter of law, that the engines had existed from time immemorial. Yet the judgment was for the respondent, with Mellor J stating that unless the commissioners had found a title by grant, charter or immemorial usage, it was their duty to declare every mode of fishing with a fixed engine illegal. Although it was a matter of discretion for the commissioners to decide, there may be a great body of evidence of user; but if it was confined only to a period of 45 or 20 years, the commissioners had a right to ask themselves whether there is enough evidence as is necessary to

30 J R Maddicott 'Magna Carta and the local community 1215–1259' (1984) 102 *Past & Present* 25, 31.

31 McKechnie (n 26) 303.

32 J Schauer 'The effect of Magna Carta on the power of the crown to grant a several fishery' (1940) 28(4) *California Law Review* 524.

33 K R Olwig 'The landscape of "customary" law versus that of "natural" law' (2005) 30(3) *Landscape Research* 299, 307.

34 N K Blomley *Law, Space, and the Geographies of Power* (Guilford Press 1994) 80.

35 K Gray and S F *Gray Elements of Land Law* (4th edn Oxford University Press 2005) 335.

36 *Carter v Murcot* (1768) 4 Burr 2162, 98 ER 127 (KB).

37 D J M Caffyn *River Transport 1189–1600* (PhD Thesis, University of Sussex 2010).

38 *Holford v George* (1867–68) LR 3 QB 639 (QBD).

39 Salmon Fisheries Act 1861 s 11.

support a claim of immemorial usage. The claim failed, and the engines were removed.

Under these types of claims to ancient fishing rights, that is, customary grant of immemorial usage prior to 1215, gaining the evidence required by the defendant to prove such a right would have been extremely difficult. Records of over 600 years old would have to be produced by the layman. Only those with access to (or in possession of) written records would have been capable of making such a claim, and this is illustrated in the following case. In 1908, the case of *Lord Fitzhardinge v Purcell*[40] saw the Lord of the Manor of Berkeley take action against Purcell for trespass upon his estate. Under grants alleged to have been made to Lord Fitzhardinge's ancestors by Henry I (and therefore prior to Magna Carta), the boundary of the manor was said to be the middle of the deepest channel of the Severn and included the soil of the foreshore. Lord Fitzhardinge claimed entitlement and filed for an injunction to prevent Purcell from trespassing both on foot and by boat, which he had done for shooting wild fowl. Purcell's defence claimed that he had the right to go upon the foreshore and shoot wild duck as a member of the public, thus exercising the right of all the king's subjects in and over the foreshore of a tidal navigable river. He claimed that the River Severn, bed and foreshore were the property of the crown, with the boundary of the manor being the high-water mark, so that the fishing in the deepest channel remained public. He also claimed the right, as an inhabitant of the manor, and being a wild-fowler by occupation, by virtue of custom (particularly the custom of the gale) that this was a right enjoyed by him and his ancestors.

Justice Parker assessed the matter stating that, in order to succeed, the plaintiff must show possession of the land, and the title must be derived by grant from the crown. The judge noted that the evidence in the form of charters dating from 1153, reeve accounts, *halmotes* (Saxon Court records) and rent rolls were not easy to decipher. Without maps or definitive boundaries, it seemed unclear throughout as to the extent of the manor holdings in this period. However, he found it proven that the king had vested the foreshore and bed of the river in the lord of the manor. The decision, then, is made based not on the vague and indefinite evidence of inherited rights to the land but on a form of customary usage. In comparison, however, the defendant's various claims to customary use were dismissed. Purcell claimed that as the shooting had been carried on for 'many years', and had never been interfered with and that the fishing had always been assumed locally to be public. His defence stated that the manor owned at most a free fishery, with no right to the soil. He used the custom of the gale as evidence for this contention; however, this was dismissed, with the judge stating that in light of the evidence supplied by the claimant he would not have to consider 'whether such custom or practice, if proved to have been enjoyed as a right, would be a valid or legal custom'.

Further research into this custom can be found in Smyth of Nibley's records of the Berkeley family, a comprehensive history of the Manor between 1066 and 1618. Smyth records that the Berkeley estate held the land 'to the deepest part of the channel'[41] and lists 53 species of sea fish prevalent to the area, including swordfish, shrimp and conger eel. In this part of the river, anyone could fish with *becknet* or *ladenet* (but not with any other device) for any fish except for royal fish. These were listed as the sturgeon, seal, porpoise and thornpole (despite attempts to identify this fish with the help of the Angling Trust, searches have proved unfruitful, and one can only assume that this was a type of dolphin). Fish listed as 'galeable' were the salmon, gillinge, shad and lamprey. Smyth writes that: 'the fisherman sets the price of such his fish; the Lord chooseth whether he will take the fish and pay halfe that price to the fisherman; or refuse the fish and require halfe the price of the fisherman soe set by him; The price or miety taken is called the Gale'.[42]

The lord's dues from the fisheries were collected by a 'galeor' in each manor, a term used only in Gloucestershire to denote the collector of the manorial duty on fish. This particular custom also held that, should the fisherman land the fish past the sea mark and put grass in its mouth, then he would not have to pay the fee; if a sturgeon was caught, it was to be taken to the castle, where the lord was to pay half a mark, and a long bow and two arrows for it. All fish taken from the Severn were to be taken to the market cross in Berkeley and be offered for sale there for an hour there before the fisherman could carry it out of the hundred to sell. Where customs such as that of the gale have long fallen out of use (and as such would fail in a court of law to satisfy the requirements to be upheld), they are an example of legal geography in action, of boundaries and conflicts between the public and the private, played out in a particular place. Such cases represent the legal shift from the public to the private; however, the realisation of such divisions only occurs where one type of person (the public) is excluded from carrying out activities which affect another (the private owner).

The cases under Magna Carta reveal that where law ignores its own part in the construction of space, geography can also underestimate the role of law, which plays 'a significant role in transforming the way local people use local resources, in allowing new users to proliferate, and in repressing or in destroying alternative knowledge about the impact of all of the above'.[43] The Severn estuary can be seen as a locale, a place where legal structuring and interpretation has forged values and changed behaviours[44] by legally endorsing where certain activities may or may not take place. The cases also reveal the attempts by legal means to enforce and reinforce boundaries that are physically in perpetual motion; in addition to the river itself, the fish and birds are also transboundary, yet this has not prevented law interpreting

40 *Lord Fitzhardinge v Purcell* [1908] 2 Ch 139 (Ch D, 13 April 1908).

41 J Maclean (ed) *The Berkeley MSS: the Lives of the Berkeleys, lords of the honour, castle and manor of Berkeley in the county of Gloucester from 1066 to 1618, with a description of the hundred of Berkeley and its inhabitants by John Smyth of Nibley* (Vol III John Bellows 1885) 321.

42 ibid 321.

43 M G Wiber 'The spatial and temporal role of law in natural resource management: the impact of state regulation of fishing spaces' in F von Benda-Beckmann, K von Benda-Beckmann and A Griffiths (eds) *Spatializing Law: An Anthropological Geography of Law in Society* (Ashgate 2009) 83.

44 J A Agnew 'Space and place' in J A Agnew and D N Livingstone (eds) *The Sage Handbook of Geographical Knowledge* (Sage Publications 2011) 316–31.

'watery' boundaries. Wild animals (whilst alive) cannot be 'owned' in English law, and thus the treatment of both relies on the entitlement to the land over which they pass.[45]

THE DEVELOPMENT OF FISHERIES LAW

By 1285, the Salmon Preservation Act within the Statute of Westminster[46] created a closed season on salmon in all rivers where they were found between September and November and on young salmon between mid-April and mid-June. Penalties for those caught by the wardens were severe. However, in 1291, local landowners between Bristol and Shrewsbury held an enquiry by jury of land-owners who had taken small salmon in the Severn with nets and other engines contrary to that same statute.[47] In an Act of 1346,[48] the same 'impediments' which had been made unlawful by Magna Carta were reiterated, ordering the removal of fish weirs and other obstructions. In 1377, however, the king heard a petition regarding the Severn between Worcester and Bristol which reported that 'the gorces (weirs) in the said water are so firmly fastened that the watercourse cannot pass properly', which caused surrounding meadows to flood and prevented navigation so that 'every year various people and boats perish'.[49] In 1389,[50] a further Confirmation Statute reiterated the Statute of Westminster of 1285, stating that the law was to be 'firmly holden and kept' with those caught to be punished 'without any favour thereof to be shewed'. Just four years later, in 1393, an Act[51] made local justices of the peace responsible for upholding the law regarding salmon.

In 1533, an 'Act against Killing of young Spawn or Fry of Eels or Salmon' banned such activity throughout the country for 10 years. This seemed to have little effect as, in 1558, an Act for the Preservation of Spawn and Fry of Fish was passed, owing to the fact that (as noted in the preamble) the population had been decimated. People had been known to 'feed swine and dogs with the fry and spawn of fish and otherwise (lamentable and horrible to be reported) destroy the same to the great hindrance and decay of the commonwealth'.[52] A lengthy enactment with 13 provisions, it specifically gave measurements for those fish banned from capture (ie no pike under 10 inches or salmon under 16 inches), and specified net sizes to allow the younger and smaller fish to escape. It banned the taking of the fry of eels between 1 February and 31 July, and that of salmon between 1 May and 1 September for a period of 10 years, with a fine of £5 for anyone caught doing so. It also included a ban on the use of any type of fishery 'engine' (any device that is fixed to the soil, such as a weir, putcher or a stopping boat) unless provided by law or customary grant.

The 1605 Act for the Preservation of Sea Fish[53] referred to those that moved into estuarine waters to breed or grow (such as eel and salmon). An Act for Preservation of Fishing in the River Severn[54] passed in 1678 aimed specifically to preserve the fry on this stretch of water. Fishing with any net, device, engine, weir or spear for salmon, trout, pike, or barbel under the length specified in the 1558 Act was now illegal. In addition, the nets for salmon, pike, carp, trout, barbell, chubb or grayling was to be two and a half inch mesh. The season was closed at spawning time (1 March to 1 May). Justices of the peace were to be the named conservators, with the power to employ under-conservators, with the authority to sign warrants for searching suspects' houses for illegal nets, which if found, would be burnt, and engines destroyed. Suspects were to be tried by the Assize courts with a penalty of £5.

By 1714, another preservation Act[55] included a clause for the 'Better Preservation of Salmon within several Rivers' and noted that previous Acts to preserve fishing in various rivers of the realm (including the Severn) had been ineffectual owing to the London fishmongers contracting with local fishermen, which encouraged the taking of unsizeable salmon at unseasonable times. Therefore, it enacted that no salmon sent to London should weigh less than six pounds. It also included clauses, which created a blanket ban on the catching of salmon under 18 inches and on the hindering of spawning salmon between the last day of July and 12 November. It made the mesh size on trawl or drag nets now three and a half inches from knot to knot, with use of any technique to bypass the mesh size was subject to a £20 fine or 12 months' imprisonment. Any persons bringing to shore to sell any undersized fish (with specific sizes listed) were to give the illegal fish to the poor of the parish where they were found, and to forfeit 20 shillings. In default of payment, the offender was to be taken to the local gaol, where he would be severely whipped and put to hard labour for between six and 14 days. A further Act of 1760 'for the better preservation of the spawn, brood and fry of fish'[56] legislated that anyone selling or in possession of 'unsizeable fish' or fish out of season would be prosecuted and either fined or committed to three months' hard labour.

The 1777 Act for the better preservation of fish, and regulating the fisheries, in the Rivers Severn and Verniew[57] took into consideration that the elvers 'which come up the River Severn at a certain season in immense quantities' were of such 'great support' for the inhabitants

45 Gray and Gray (n 35) 60.

46 Salmon Preservation Act within the 1275 Statute of Westminster (3 Edward 1, c4).

47 G R Boynton *Calendar of Patent Rolls* (University of Iowa Libraries 2003) http://sdrc.lib.uiowa.edu/patentrolls at 19 Edw.

48 An Act Remedying Annoyances in the Four Great Rivers of England, Thames, Severn, Ouse, and Trent 1346 (21 Edw III cap 34).

49 C Given-Wilson (ed) *The Parliament Rolls of Medieval England* (National Archives 2005) http://sd- editions.com.ezproxye.bham.ac.uk/PROME/home.html.

50 A Confirmation of the Statute of 13 Edw I c47 touching the taking of Salmons 1389 (13 Rich II Stat 1 c19).

51 Justices of the Peace shall be Conservators of the Statutes made touching Salmons'1393 (17 Richard II c9).

52 An Act for the Preservation of Spawn and Fry of Fish 1558 (1 Eliz c17).

53 An Act for the Better Preservation of Sea Fish 1605(3 James I c12).

54 An Act for Preservation of Fishing in the River Severn 1678 (30 Car II Cap 9).

55 An Act for the better preventing fresh Fish taken by Foreigners being imported into this Kingdom; and for the Preservation of the Fry of Fish; and for the giving Leave to import Lobsters and Turbets in Foreign Bottoms; and for the better Preservation of Salmon within several Rivers in that part of this Kingdom called England 1714 (1 George I St 2 c18).

56 An Act for the Better preservation of the spawn , brood and fry of fish and for preventing the sale of small and unsizeable fish and fish out of season 1760 (33 Geo II c27 XIII).

57 An Act for the better preservation of fish, and regulating the fisheries, in the Rivers Severn and Verniew 1777 (18 George III c33).

of the adjacent parishes that it repealed the Act of 1678. Hence, for the first time in 100 years, the taking of elvers for personal consumption was once again permitted on the Severn (although it was noted by the Severn Commissioners in 1876 that the former Act had never been obeyed anyway).[58]

An association formed in Gloucester in 1801 as a result of the short supply of salmon included an attorney from Gloucester, who noted that fish of an unsound quality were 'perpetually taken' and that it was difficult to persuade the fishermen to return the older fish to the water. In particular, the use of 'puts' (putchers) inadvertently caught salmon fry, which were fed to pigs after the more desirable shrimp had been sorted.[59] This behaviour had been reported in the statute of 1558, but was still the practice of fishermen. The depletion of fish stocks was not improving, and the law, it seems, had not been able to relieve the situation. Even the Act for preventing the Destruction of the Breed of Salmon, and Fish of Salmon Kind 1818[60] had done little to strengthen the laws that were already in force. This Act had banned spearing, yet poachers continued to use the method illegally.[61] All legislation to date had, it seems, been unenforced and was therefore ineffectual.

Following some 800 years of legislation attending to British fish stocks, Cornish had reviewed the salmon fisheries in 1824, and submitted that: 'the Salmon is one of the most valuable fish we have; yet the law … is lamentably defective for its preservation: and, wonderful to say, mankind seem more bent on destroying the whole race of them than that of any other animal'.[62] For Cornish, the answer was simple. Salmon were not scarce because their spawn were being destroyed or obstructed. In fact, 'the scarcity proceeds from other causes. It is not because the *fry* are destroyed, but because they have *never existed*; because the parent stock is *obstructed* in going to the beds of the rivers with the freedom and facility they require'.[63] In addition, rivers were put in defence (closed up) too late, trapping the older fish, where they died in fresh water. The younger salmon attempting to return from the sea, apart from being caught, were also being trapped in fenders and gratings on mill races. Something needed to be done to increase fish stocks, and to stop the decline of the British fisheries. A Select Committee also reported that the fisheries had rapidly declined, and agreed that still more effectual legislative measures were urgently needed to preserve them. The reports included minutes of evidence from Severn fishermen. One extract records an interview with a Mr Provert from Worcester regarding the rivers Severn and Wye (Figure 4).[64]

The committee made a number of recommendations, including that close seasons should be extended, and that there should also be a close time between sunsets on Saturdays until sunrise on Mondays. They advocated the removal or adaptation of gratings, fenders and blockages to allow the free passage of fish. However, by 1828, there was still 'mounting evidence that the national salmon catch was dwindling'[65] and it would be another 30 years before the law would address the situation.

A great number of salmon are destroyed by spearing during the spawning time?—Immense quantities.

That is the case in all the rivers of which you have been speaking?—Yes.

Is there a great quantity of fry destroyed in descending the river?—Yes.

How is it destroyed?—With small mesh nets.

Are those nets fixed or moveable?—Moveable, they drag them along; some are fixed I am told.

Are there any fixed nets or machinery of any sort used for destroying the fry in their descent?—Yes, there are fixed machinery in weirs, puts or wheels, across the river Severn.

Is that fixed machinery very destructive to the fry?—Uncommonly; that has been a great source of destruction, they take millions in a night.

Are those nets set for the express purpose of taking the fry?—Exactly.

Are there weirs in those rivers?—Yes, a great many.

Is there a considerable number of salmon caught in the weirs?—It cannot be otherwise; they cannot pass the weirs.

Do you know that the weirs are there?—They were there lately.

When did you see them there?—I saw them two years ago last August.

Was there a considerable number of salmon caught in them?—Prodigious quantities.

Figure 4.

58 House of Commons Parliamentary Papers *Report by the inspectors of salmon fisheries, on the provisions of the 15th section of the Salmon Fishery Act 1873, relating to elver fishing on the Severn [c.1533]* (Eyre & Spottiswode, MM Stationery Office 1876).

59 T F Kennedy 'Report from the Select Committee on the Salmon Fisheries of the United Kingdom' Parliamentary Papers (173) (1825) 9 http://gateway.proquest.com/openurl?url_ver=Z39.88-2004&res_dat=xri:hcpp&rft_dat=xri:hcpp:fulltext:1825-009411.

60 An Act for preventing the Destruction of the Breed of Salmon, and Fish of Salmon Kind, in the Rivers of England 1818 (58 George III c43).

61 J Cornish 'Of Channel fisheries and of the Statute Laws by which they are regulated; showing that it is to the defects of the latter that the present scarcity of the fish is to be attributed' (Longman, Hurst, Rees, Orme and Brown 1824).

62 ibid 5.

63 ibid 205.

64 Kennedy (n 59).

65 R M MacLeod 'Government and resource conservation: the Salmon Acts administration, 1860–1886' (1968) 7(2) *Journal of British Studies* 114, 116.

THE SALMON ACTS

In 1861, *The Times* had reported of salmon that 'not another instance could be found in which an article of food has been lost to the public, or converted by the course of events from a common treat into an expensive luxury'.[66] The reasons given were the diminished supply, with almost all salmon being sourced from Ireland and Scotland, where legislation had been put in place to preserve the fish. The article demanded the same remedial government action in other waters. That same year, the first Salmon Fisheries Act (1861),[67] lauded as an Act for the 'public at large', was confidently promoted by then Royal Commission.[68] Under 'judicious management', the Commission believed that this large-scale endeavour, with the use of science, technology and professional knowledge, could be used 'administratively by the state to conserve and protect the wealth of the nation'.[69] However, there were some objectors to the legislation. In the Commons, Mr Henley objected strenuously to the payment out of the public funds of an unlimited number of inspectors, who would be 'always putting their noses into everybody's face and their hands in everybody's pocket'.[70] Those who relied on the rivers for discharging their manufacturing waste argued that the issue was 'whether the people of the country were to live by their industry, or whether industry was to be suppressed that salmon might flourish'.[71] Arguments from the opposition concentrated on the idea that declining fish stock was a matter of opinion as opposed to verifiable fact, and referred to the fallibility of supposed evidence from fishermen.[72]

The Act contained 39 clauses. It placed the superintendence of the fisheries with the Home Office, and included the prevention of pollution, banned fishing by use of lights, spears and other instruments, or the use of roe as bait. Nets were regulated to 2" knot-to-knot, fixed engines were banned, and there was a new penalty for the taking of unclean fish and young salmon. It compelled those with artificial channels (ie canal companies and fisheries) to put up and maintain gratings to stop the salmon descending into locked waters. In addition, any licensed fishery was to attach to every dam a 'fish pass' so that no injury be done to the salmon. The closed season was between 1 September and 1 February (except with rod and line) and between noon Saturday and 6am on Monday morning.

This universal closed season was 'adopted to combat the fraud and poaching that flourished under the umbrella of a complex web of overlapping seasons set by local authorities'.[73] Under this particular section of the Act, in the case of *Ruther v Harris*[74] it was heard that the respondents were found fishing for salmon with a net before 6 am on Monday 10 May 1875, at Lydney, Gloucestershire. Although Harris had not actually caught any salmon, he was fishing by means other than a rod and line during the weekly close time, contrary to section 21 of the Salmon Fishery Act 1861 in the River Severn. The appellant demanded one of the nets from Harris, but Harris refused to give it up. In their defence, it was contended that a water bailiff had no authority under the Salmon Fishery Acts to seize any net or movable instrument used in fishing for salmon during the weekly close time, *unless salmon had actually been caught*. The question therefore was whether the net was an instrument forfeited under the Salmon Fishery Acts 1861 to 1873. The justices found that it was, and the defence failed.

It soon became clear that some amendments were needed. Although the Act of 1861 had prohibited the sale of salmon in close seasons, 'there was nothing to prevent fishermen from catching salmon and exporting them for sale to France'.[75] The amended Salmon Act of 1863 prohibited export during closed seasons, and also ordered the sluices on mill dams to be closed when the mill was not in operation. The 1865 Salmon Fishery Act (incorporating much of what had been excluded from the 1861 Act) appointed local conservators over new fishery districts, and empowered these conservators to impose and administer licences for every person wishing to fish for trout or salmon. It also enabled water bailiffs to inspect all weirs, dams and fixed engines. In 1865, *The Times* reported on a case recorded in Worcester regarding the use of a fixed engine on the Severn (Figure 5).[76]

The Severn Fisheries Board formed in 1867 and took responsibility for the Upper Severn from the Bristol Channel to the whole of the catchment and tributaries. The board has been described as a 'roll call of upper crust English society of the day, comprising of peers of the

IMPORTANT SALMON FISHERY CONVICTION.—At Worcester Petty Sessions yesterday, before the Rev. J. Pearson, Mr. Padmore, M.P., Mr. J. G. Watkins, Mr. T. R. Hill, and General Colville, Herbert Webb was charged with using a certain fixed engine for catching salmon in the river Severn, near Worcester, on the 27th ult. The prosecution was instituted at the instance of the United Association for the Protection of the Fisheries of the Severn and its Tributaries, and the case was an unusual one and one of some importance. It appeared that since the erection of the navigation weirs on the river Severn it had become a practice with the fishermen to place putcheons or wheels—a wicker contrivance—for taking lamperns on the weirs at the angles where the salmon commonly pass up. In this way it is believed that salmon have been frequently taken. On the 27th of October the defendant placed two such wheels on the south-east corner of Diglis weir, near Worcester, which were fixed to a pole fastened to the bank of the river. Three hours afterwards Mr. Bradley, the head lock-keeper at Diglis, observed that a salmon was caught in the wheel. It was found to have become so jammed in the wheel that it could only be taken out when dead by the exercise of great force. The wheels had been latterly made much larger than was necessary for taking lamperns, so that salmon could be caught in them. The facts having been proved, and the secretary of the association having proved that the diameter of the first "inshin," as it is called, of the wheel (where the fish became fixed) was 3½in., whereas in the wheels used at Tewkesbury they were only 1½in. in diameter, the magistrates decided on convicting, but as this was the first case of the kind brought before them they fined the defendant in a nominal penalty (1s.) and costs. At the same time they expressed their opinion that the placing of these wheels on the weirs was illegal, and that for the future they should deem them so, whether they were proved to have taken salmon or not.

Figure 5.

66 'Fifty years ago salmon was sold at three-halfpence' *The Times* (28 March 1861) 6, col D.

67 Salmon Fisheries Act 1861.

68 Report of the Commissioners appointed to inquire into Salmon Fisheries (England and Wales) (1861) xxxv http://gateway.proquest.com/openurl?url_ver=Z39.88-2004&res_dat=xri:hcpp&rft_dat=xri:hcpp:fulltext:1861-037198:37.

69 MacLeod (n 65) 114.

70 Hansard (1861) Vol 163, 3rd series, 20 June 1861, cc1374-6.

71 Hansard (1861) Vol 164, 3rd Series, 11 July 1861, cc769-72.

72 P Bartrip 'Food for the body and food for the mind: the regulation of freshwater fisheries in the 1970s' (1985) 28(2) *Victorian Studies* 285, 293.

73 D R Montgomery *King of Fish: The Thousand-Year Run of Salmon* (Westview Press 2003) 76.

74 *Ruther (Appellant) v Harris and Anor* (1876) 1 Ex D 97.

75 MacLeod (n 65) 122.

76 *The Times* (Wednesday, 8 November 1865) 7, col G http://infotrac.galegroup.com.

realm, landed gentry and civic dignitaries',[77] with only a few representative fishermen and fishmongers. A low representation of commercial fisherman during this period may reflect such a shift from economic activity towards the leisure pursuit of 'angling', although in Gloucester, eel and elver fishing was still of both commercial value and a regular food source. The population of Gloucester had more than doubled between 1801 and 1871 to some 16,000 inhabitants,[78] whilst the rural population had remained the same. Those living along the banks of the Severn would have continued to avail themselves of the elver harvest, and selling the surplus would have been a good way for the poorer inhabitants to make a little extra money. However, for the elvermen of the Severn, a new problem was about to arise.

The 1873 Salmon Fishery Act[79] gave inspectors greater powers of enforcement. Designed to prevent interference with salmon descending the rivers that they inhabited during the first six months of the year, it banned the use of salmon baskets or traps between 1 January and 24 June. Although traditional putcheons could still be used (these did not interfere with the salmon as long as they were no larger than 10 inches in diameter, and were baited and lay on the river bed), the Act banned the use of any other device for catching more specifically the fry of eels during this time. Eels descend the river during the autumn, but the elver arrives during the spring. It was announced in the spring of 1874 that elvering was effectively banned. This was to lead to a number of problems on the lower Severn.

THE ELVER BAN AND THE SEVERN

Gloucestershire Magistrates' Court heard its first case on the matter in April 1874, and two men were fined for using elver nets.[80] The second case involved seven men charged under the Act, but the case failed as the 'justices were not satisfied that it had been shown that elvers were the fry of eels'.[81] A few days later, another three men appeared before the Whitminster magistrates and were fined 10s each for elvering (approximately a week's wages for a labourer). The following month, another six persons were charged with the same offence in Gloucester; this time, Frank Buckland gave 'literally a lecture' on the lifecycle of the eel for the benefit of the justices.[82] Although the issue of the elver being the fry of eel had been cleared up, and the accused found guilty, it was said that they had 'erred in ignorance' and a nominal fine of 1s with costs was imposed (which came to around 15s in all).

The following year, there was only one conviction under the Act, and it was possible that 'the reality of the ban had sunk in, and compliance now accorded with this changed state of affairs'.[83] However, the following season, during April 1876, a large number of men in boats were seen elvering on the Severn. A crackdown on the participants led to a number of cautions being issued, with one of the men recorded as saying: '[y]ou have got my name, now I'll go on and catch some more to pay my rent'.[84] Four men were prosecuted in Whitminster, and 10 men were fined 10s plus costs.[85] A further 10 men were prosecuted and fined on that occasion in Gloucester for elvering. At the end of the month, Whitminster magistrates prosecuted four men who it seems were corn porters, seasonal employees at the docks, who were laid off every spring. In 'time honoured tradition', once out of work, they had turned to the elver harvest for income and food.[86] Unable to pay the fines which were to be paid immediately, three of the men were placed in Gloucester prison to serve 14 days' hard labour on the treadmill. There was a backlash within the elvering community against the harshness of the punishment, with inspectors reporting 'an agitation in the district amongst the elver takers' at attempts to enforce the law. At public inquiries in Gloucester and Worcester, the inspectors reported that the fishermen had said that there were such a number of elvers running up the river that it was impossible to take more than a tenth of them in any case.[87] The Act had led to a decrease in the supply of elvers, and so to an increase in the price of eels. The inspectors clearly highlight the importance of elvers to the population of Gloucester in their conclusion (see Figure 6).

They recommended that the close season for salmon on the Severn should begin on 26 April, as elver fishing would be over by then. They also noted that no legislation for elvers was actually required on the Severn; despite recent instances, no legislation respecting elvers on the Severn had been enforced during the past 200 years. Thus, they recommended that any legislation regarding the practice should be kept separate, and expunged from, the Salmon Acts. As a result, the Elver Fishing Act[88] amended section 15 of the Salmon Fisheries Act and revised the close season for elvers in the River Severn fishery district from 1 January to the last day of February, and from 26 April to 24 June. Any person caught fishing during these periods was liable on summary conviction to a penalty not exceeding 20 shillings. It also stated that any person who, during either of the close periods, sold, or had in his possession for sale, elvers or the fry of eels within the hundreds of Kiftsgate, Deerhurst, Dudstone and Kings Barton, Berkeley, Duchy of Lancaster, Westbury,

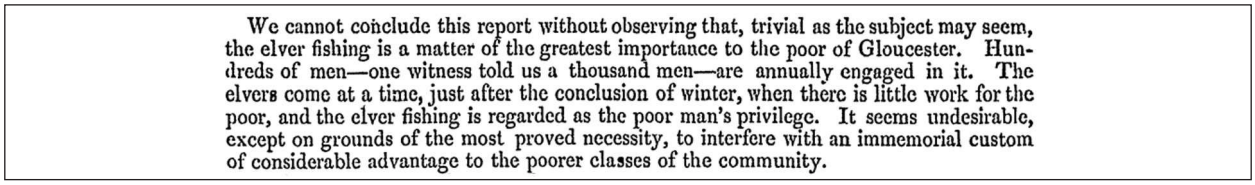

We cannot conclude this report without observing that, trivial as the subject may seem, the elver fishing is a matter of the greatest importance to the poor of Gloucester. Hundreds of men—one witness told us a thousand men—are annually engaged in it. The elvers come at a time, just after the conclusion of winter, when there is little work for the poor, and the elver fishing is regarded as the poor man's privilege. It seems undesirable, except on grounds of the most proved necessity, to interfere with an immemorial custom of considerable advantage to the poorer classes of the community.

Figure 6.

77 Hunt (n 14) 6.
78 ibid 10.
79 The Salmon Fishery Act 1873.
80 Hunt (n 14) 14.
81 *The Bristol Mercury* (30 May 1874).
82 ibid.
83 Hunt (n 14) 21.
84 ibid 23.
85 Ibid.
86 ibid 36.
87 House of Commons Parliamentary Papers (n 58) 4.
88 Elver Fishing Act 1876.

Westminster, and Tewkesbury (all in Gloucestershire) would be 'liable to a penalty not exceeding 20 shillings, unless he satisfies the court before whom he is charged that such elvers or the fry of eels were not taken within the Severn Fishery District'.

The Gloucester elver trials are an example of the way in which law operates both in space and place simultaneously, regardless of geographical differences. The section on closed seasons in the 1873 Salmon Act had particular *meaning* on the Severn, owing to its reliance on the elver catch. When it was enforced nationally, it had a particular effect on the places occupied by both the eel population and the urban poor in Gloucester.

Advocates of closed seasons on fishing believed that overfishing during breeding seasons was the cause of the decline in fish. The 1878 Freshwater Fisheries Act[89] extended the close season on salmon, trout, char and all other freshwater fish, and further amendments to the Freshwater Fisheries Act in 1884 and 1886 led to the consolidated Salmon and Freshwater Fisheries Acts 1886. However, even approaching the 20th century there was still no firm scientific evidence either on the extent of the decline of fish stocks or the reason for such a perceived demise, despite some anglers blaming other factors, such as canalisation, loss of habitat, steam launches and the use of 'unsporting methods'.[90] The three fundamental principles of the Salmon Acts of 1861–86 (preservation, the free ascent of salmon, and the prevention of pollution) were still widely disregarded; to implement the three cardinal principles of the 1861 act 'required more knowledge of natural history and fishery technology than the Victorian scientific community possessed'.[91]

The Salmon and Freshwater Fisheries Acts were the first concerted attempt by Parliament actively to manage, control, protect and regulate private property in the 'public interest',[92] sanctioning the expenditure of public money to achieve this goal by appointing permanent staff and inspectors. Despite being heralded as a turning point for the British fisheries industry, the long-term results were not so convincing. The Acts had blamed previously poor legal intervention for the low salmon stocks across the nation, and it was believed that judicious action to prevent over fishing would remedy the situation. However, there had been an increase in both industrial pollution and structural changes to the natural waterways, which were not taken into consideration. It is easy to speculate that the cause of a nationwide decline in fish stock followed an intense overhaul of the inland waterways. This is particularly relevant to studies on migratory barriers to fish, particularly eels, on the Severn.[93] Loss of habitat, such as wetlands, owing to human changes to landscape have had a considerable impact on fish stocks, which was perhaps not recognised during the Salmon Acts' inception.

This period of specific legislative activity surrounding the fisheries had started to make a brief improvement, but then had 'lapsed into a pathetic history of indifferent half measures'.[94] In 1887, the chairman of the Severn Board of Conservators stated that, of all the rivers in England, not one exceeded the Severn in importance. However, the erection of navigation weirs above Gloucester had 'turned the river into a modified canal' and almost extinguished shad, twaite and flounder from the upper waters; in the lower Severn, salmon and lamprey were 'almost extinct'.[95] Migratory patterns were blocked by the creation of the artificial waterways which had adversely affected the natural fish population, along with the number of fisheries related occupations in Gloucestershire; a Cheltenham fishmonger interviewed at that time stated that 'the art of cleaning lamprey' was being lost in the area, whereas in previous decades 'certain persons used to devote their time to this occupation'.[96] Industry had already caused the destruction of fish in many of the rivers, and 'even now many English rivers poisoned by pollution during the industrial revolution still have no salmon'.[97]

By 1923, the Salmon and Freshwater Fisheries Act[98] had consolidated all earlier legislation to give fishery boards the power to carry out improvement work, although 'the resources of these boards in terms of finance, manpower and scientific expertise was minimal, so they were able to achieve very little in terms of positive protection or improvement of the fisheries in their areas'.[99] The repeal and replacement of the 1923 Salmon and Freshwater Fisheries Act with the Salmon and Freshwater Fisheries Act 1975 was the foundation for a majority of the legislation still in force today. However, the Salmon Acts and all related legislation did little to prevent or remedy the damage that had already been done over previous centuries, or to renew faith in the English fisheries. By 1970, the annual catch of English and Welsh rivers had fallen to just a quarter of the 1870 catch.[100] The decline in both salmon and eel on the Severn has continued to the present day.

CONCLUSION

Within academic legal geography literature, the concept of 'space' as both a relational and dynamic process which is performed[101] is linked to law as both legal thought and practice, containing many representations of 'the multiple spaces of political, social and economic life'.[102] I have investigated some of these representations using the laws relating to the fisheries on the Severn estuary as a frame of reference. This particular space or place has been investigated in terms of how law became both a part of and a driver of a 'spatial consciousness' by taking a chronological historical overview of the development and use of law, particularly on the Severn. The Magna Carta itself can be seen as an early example of the ways in which law can create changes to the landscape by law,

89 Freshwater Fisheries Act 1878.
90 Bartrip (n 72) 293.
91 MacLeod (n 65) 150.
92 Macleod (n 65) 114.
93 White and Knights (n 12).
94 MacLeod (n 65) 147.
95 F Day 'Notes on the Severn Fisheries' *Journal of the National Fish Culture Association* in J Phillimore (ed) *Gloucestershire Notes and Queries* (Vol IV 1887) 48, 51.
96 ibid 52.
97 Montgomery (n 73) 72.
98 Salmon and Freshwater Fisheries Act 1923.
99 M James *Fisheries Consultative Associations* (2012) http://www.martinjamesfishing.co.uk.
100 Montgomery (n 73).
101 G Rose 'Performing space' in D Massey, J Allen and P Sarre (eds) *Human Geography Today* (Polity Press 1999) 247-259, 258.
102 N K Blomley, J C Bakan 'Spacing out: towards a critical geography of law' (1992) 30 *Osgoode Hall Law Journal* 661, 669.

not only in a physical way (by removing features along the estuary) but also through its use as a legal document. The cases discussed here were examples of the ways in which the law can be interpreted and reinterpreted over time, and can be used to establish property rights over both waterways and their inhabitants. Thus, the geographical landscape is not just the setting for legal and social interaction, but is 'an objective, external and material assembly of facts and things which is realised through direct encounter and observation'.[103] The law can have a direct effect on the evolution of a landscape in the way in which it is utilised.

The Magna Carta was the starting point for a legislative chronology of the laws which followed regarding the fishing industry, the nation's fish stocks and a decline in both, culminating in the Salmon Acts which began in 1861. This article has suggested that the social dynamics between law, geography and landscape create sites of cultural production. However, 'the social is never simply the social in terms of networks and spaces, but also in terms of ecologies of time, of the hybrid mixtures of rhythms and tempos and durations where nonhuman elements play active parts'.[104] Law has had long-term consequences for the fisheries; thus, both law and geography have historically played reciprocal roles in the formation of contemporary landscapes. This also broaches the issue of the long-term effects of human intervention upon the natural world; alongside legislation on closed seasons, separate legislation regarding navigation and industry enabled the instalment of weirs and canals, introducing another dynamic to the issue of 'space' for migratory fish. Space, as a human concept, is created, used by and adapted for human behaviour. The complex interplay between space, place and time can be investigated by using historical legal documents, which can illuminate the ways in which both spatial and social changes can be influenced by law. To view law as separate from geography in terms of space, place and time is to underestimate the powerful interrelationship that exists between them.

103 J Wylie *Landscape* (Routledge 2007) 33.

104 Jones (n 3) 2301.