

There is Something Fishy about Magna Carta

Clause 16 of Magna Carta (1225) has been relied upon as the basis for an absolute freedom to fish in tidal waters. Clause 23 demands the removal of all fish weirs from the rivers of England, and by implication sets tight controls on the fishing of rivers. This paper will consider the history of property in relation to property in fish. Three specific examples of legal history of fish will be considered.

The first fish example comes from the Reports of Sir John Spelman, wherein his notes from a reading at Gray's Inn, from around 1511, describe the difficulties found in deciding who owned the fish in a pond. The second example comes from Hugo Grotius' text *Mare Liberum* which contains arguments about owning the fish in the sea. The third example is the Erne fisheries case, which involved arguments about fishing rights drawn from Magna Carta and Brehon and Roman law. First, their importance in relation to our understanding of property will be evaluated and then their importance in relation to the Magna Carta will be analysed.

Fish in water are something of a theory machine for law. They offer a very good example of different interests in the same thing: who owns the body of water, who owns the benefit of that water. It also demonstrates the conflict between different interests and different uses of the same thing. The fish repeatedly appears as a symbol of the tension between different rights. Throughout the history of property law, there is something fishy going on.

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