

Divergent perceptions of new MPs: legal consciousness in the Isles of Scilly and the Isle of Barra, UK.

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Outline

1. Conservation conflicts
2. Isles of Scilly and Isle of Barra
3. Analysing the case studies through the lenses of legal consciousness

Conservation Conflicts

- The legal establishment of protected areas is often associated with a situation of conflicts between conservation and other human uses in particular spaces*
- Solutions to minimise conflicts range from strengthening participation, to increasing strategic planning, financial supports and balancing responsibilities between top down and bottom up management**
- The literature tends to describe situations in which PA regulation requires changes in the behaviour of local resource users.
- **But what of cases in which PA regulation serves to officialise existing sustainable practices and may contain an element of future proofing? Does the establishment of this type of protected areas still generate practices of resistance and conflicts? If so, why?**

*See, for example Peluso 1993, West et al. 2006, Igoe and Brockington 2007, Brokington 2008, Vaccato et al. 2013

**See for example Jentoft et al. 2007, Leader-Williams et al. 2010, Redpath et al. 2013, Ma et al. 2013, Jones 2014

ISLES OF SCILLY

CF.

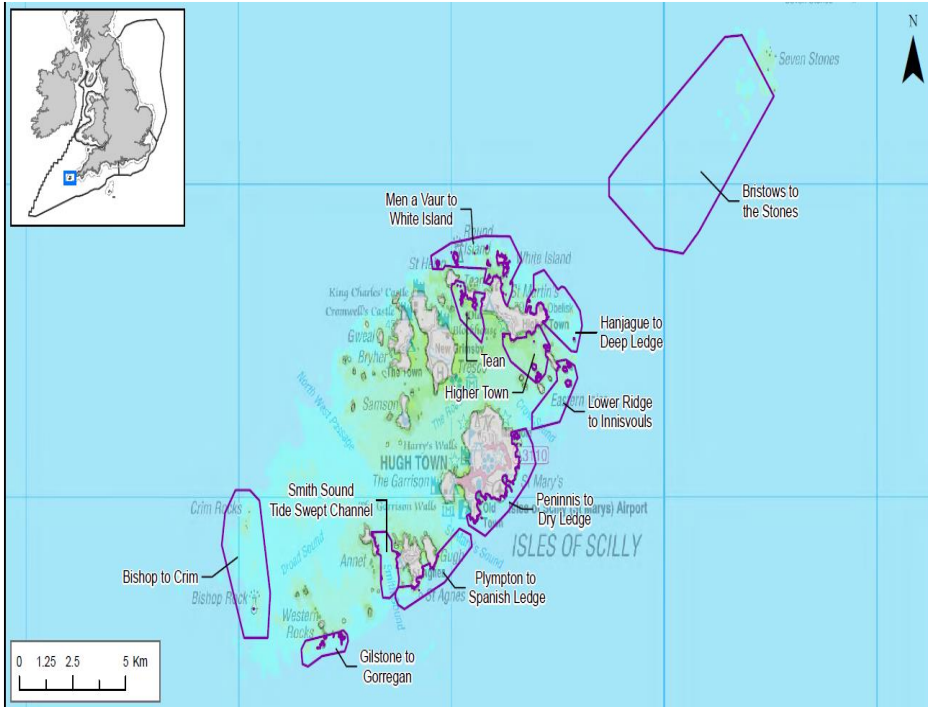
BARRA



Scilly and Barra: Similarities

- Small, remote islands (Population: Scilly 2,200; Barra: 1,000)
- Both economies are primarily relying on tourism today
- Existing fishing practices are small-scale and sustainable (small static gear vessels, many operating part time and in the summer months)
- Locals hold multiple working identities and cross into many different fields of employment

New Conservation designations



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11 New MCZs designated under the Marine and Coastal Act 2009. All fall within a SAC, except 1



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c Special Area of Conservation since 2013 under the Habitats Directive

Divergent Perceptions of new MPAs

In both locations, the new MPAs will have minimal managerial impacts on existing activities for local sea-users. They will officialise existing sustainable practices and contain an element of future proofing.

However, while in Scilly the new Marine Conservation Zones have been perceived as a positive addition to the seascape, the new Special Area of Conservation in Barra has been fiercely opposed by locals.

WHY?

Legal Consciousness

Legal consciousness studies focus on everyday experiences of ordinary people of law and legality* → de-centring law by looking beyond formal institutions and officials

Legality is defined as

*“an emergent structure of social life that manifests itself in diverse places, including but not limited to formal institutional settings. Legality operates, then, as both an interpretive framework and a set of resources with which and through which the social world (including that part known as law) is constituted”***

Consciousness is both a deliberative, intentional action and a habitual practice developed by living within a legally pregnant social landscape.

Attitudes towards the law are not constant but develop through experience and positioning within particular contexts.

*See for example Mezey 2001, Cowan 2004 and Sibery 2005.

**Ewick and Silbery 1998:23.

Legal Consciousness

Key question: how is law and legality made and re-made in everyday life?

Key aim: documenting how law and legality are perceived and constructed in everyday life by ordinary people and how they inform thoughts and actions. (constitutive vs instrumental understanding of law)

Using empirical case studies and ethnographic methods, legal consciousness scholars have considered the ways in which lived experiences relate to the law through time.

Legal Consciousness in Scilly and Barra

	BARRA	SCILLY
HISTORY	Historical conservation conflicts (crofting vs PAs)	Pre-existing PAs had no negative effects on local practices
EMPOWERMENT	Habitats Directive perceived as imposing the SAC from above (technocratic decision-making)	Marine and Coastal Access Act 2009 allows for procedural openings exploited for local participation and empowerment
RISK	Uncertain regulation → SAC as risk	Management measures of MPAs discussed at the time of designation → regulatory risk minimised

History

SCILLY

I think nothing really had to change particularly because, you know, a lot of what they wanted was already in place anyway.
Scilly local regulator

BARRA

So I think because of that when it comes to marine designation they tend to think is similar to the terrestrial one. So there was an element of that and fishermen were also crofters, so they had that background.

I was married to a hill farmer and my father was a crofter and my father's entire croft was engulfed in a SSSI and SPA and a Ramsar site, and SNH had just been created. And my fundamental view was that there was something very wrong about the system that took people's rights away..the same will happen with the SAC.
Barra local

Empowerment

SCILLY

“We want bottom up management, not from the top, not like the European Marine Site.”

Scilly Local regulator

The MCZ process has given them a lot of local pride, they are proud of the work put into getting them designated
Scilly Conservation body.

BARRA

Removing the power from the very people that have been responsible for [conservation], I find particularly offensive.

Barra Councillor

Risk

SCILLY

“I don’t think [the fishermen] would have agreed to these areas if they were unsure of what it might mean.”

Scilly Environmental NGO

BARRA

“Because it only takes a person to suggest that a specific activity is damaging the environment, and it’s up to the person that is being accused of doing the damage to prove they are not. So how can one individual fisherman or a group or a community continue to do this time after time? So, this was another great fear. With the Habitats Directive, it’s so restrictive.

Barra sea-user

Ewick and Silbey, The Common Place of Law (1998)

E&S present a key framework to define different types of legal consciousness:

BEFORE THE LAW: formal understanding of the law as an objective, detached, impartial, fair and authoritative sphere of control.

AGAINST THE LAW: law as a powerful and arbitrary system that does not represent them or it is inaccessible to them and therefore they violate conventional laws using subterfuges or exploiting cracks in the system. The law is no longer seen as an external, detached form of authority but as a colonizing force of the everyday.

WITH THE LAW: the law is described and played as a game by ordinary people. In this game, which is morally neutral, individuals are expected to strategically deploy their resources in order to use the law to their own advantages.

New Literature on LC

- Silbey (2005) questions the continued validity of LC consciousness studies arguing that some LC work had forgotten the social and became a study of 'individual psychology and its accommodation to pre-defined policy goals'
- Rescuing LC by looking at collective orientations towards legality.
- Halliday and Morgan (2013) study on the orientations to legality of dissident environmental activists
 - They put the emphasis on the ability of collective agency to alter the structure of power in law
 - The environmental activists described as employing a gaming approach with the law and as driven by 'a sense of higher transcendental law above the state'.
 - They are not 'against the law' but they resist to the law when it does not coincide with the moral and substantive principles of the collectivity.

Scilly : With the Law

In Scilly, islanders are with the law as they are able to exploit the official law to their advantages, taking the process of designation and management in their own hands.

Are Barra islanders against the law? No as they do not question the objective of the law (nature conservation) but they do contest, using legal language, the way it applies to their own lives.

Barra: A Case of Dissenting Collectivism

Barra islanders approximate to dissenting collectivities of Halliday and Morgan as they dissent against a particular application of law (the establishment of the SAC)

They are not against the law in Ewick and Silbey sense as theirs is not a subversive move refuting the legitimacy of conservation law. All they contest is the way that particular instance of law applies to their own lives.

Indeed they articulate their claims using legal terms, call upon legal frameworks to support their collective interests and they are interested in mobilising the law in a way that can foster their aims.

Conclusions

- 1. EMERGENCE OF ENVIRONMENTAL CONFLICTS :** Conflicts do not only arise in situations in which the law regulates *stricto sensu* (imposes change on users' behavior) but may arise also in situations where the law validates existing practices.
- 2. LEGAL CONSCIOUSNESS AS A MEANS TO UNDERSTAND ENVIRONMENTAL CONFLICTS:** Legal consciousness is a useful tool to understand how ordinary people relate to law and legality. It put the accent on everyday experiences of the law, on contextual issues.
- 3. POLICY DIRECTIONS:** Historical and everyday engagements with conservation law of communities affected are to be taken into account by policy-makers because they shape people's perceptions of current legal measures. A blanket approach to establishing protected areas is not the best means.