

The First International Mining Law History Conference
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THOUGHTS ON MINING LAW HISTORY

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The occasion of the 700th anniversary of the Quo Warranto - the first known setting down in writing of the Derbyshire lead mining laws and customs - provided the reason for this gathering, which addressed several problems relating to the growth of mining law. The written versions of the papers presented, together with the verbal discussions, are presented herein to provide a record and to form a basis for future gatherings along the same lines.

The problems may be summarised as;

1. How did mining law originate in the various mining fields of the world?
2. In what ways did it become distinguishable from Common Law in those areas?
3. How did the basic principles differ from one mining area to another?
4. What factors lay behind the differences?
5. What economic impact did the law have?

Taking the Derbyshire lead mining laws as a starting point, in 1288 they were said to be older than the memory of man, and Martin Daniel (1982) has argued a case for their origin in the importation of concepts from Saxony by virtue of royal marriages and allegiances in the 10th century. There is no direct evidence known for such a basis, but it probably confirms their existence at that time. Alternatively, it has been suggested, again without evidence, and in opposition to the migratory flows, that the transferral of the laws may have been in the other direction, from Derbyshire to Saxony. It is also possible that some of the law is a hangover from the earlier Danelaw, when there was considerable monastic influence on lead mining, eg. Repton Abbey in the 8th and 9th centuries had extensive rights to Derbyshire lead. It is however far from clear whether a separate legal system existed, and the Abbey's need for lead may have preceeded the establishment of the Barmoot Courts, whilst the transfer of those rights from monastic interests to lay (Crown or aristocratic) owners may possibly have been the occasion of the establishment of new courts. Much of our knowledge of early laws and customs comes from the survey of early historical documents done for the Victoria County History by J.H. Lander and C.H. Vellacott (1907), and surely, after more than eighty years have passed, other documents await examination in detail. Even the various published versions of the Quo Warranto of 1288 differ, and a new translation by David Gordon is presented herein.

Whatever the origins of the Saxon and Derbyshire Laws, it seems they have little in common with Roman laws which seem to have largely under military control for the benefit of Roman Empire's economy. The 16th century laws of central Europe as described by Agricola in his *De Re Metallica* of 1556 have much in common with Derbyshire, though we should not be misled into thinking there is greater similarity than there is by virtue of the Hoovers' translation into English (1912), utilising Derbyshire terminology as the nearest they could find to medieval Latin and German.

There seemed to be little doubt that the Derbyshire laws and those of other parts of Britain evolved firstly for the protection and benefit of the lord of the mineral rights, be he the Crown or one of his landowning vassals. In short, the lord permitted mining as long as he got a substantial share of the profits. But secondly the law evolved to help the miner himself, and this was encouraged by the lord in order to maintain production - preferably continuously - so that both his income and that of the miners was protected. The privileged status of miners may also have come about because of their value to military operations as sappers of enemies' fortifications.

In Central Europe the Church, either as part of the Holy Roman Empire or as individual bishops seem to have continued the function of landlords in Britain in encouraging mining, under church rules, in order to maintain income, and a supply of lead for medieval roofing and plumbing.

The progressive exhaustion of small scale deposits encouraged the development of mining companies, and the necessity for the development of large scale drainage schemes required the looking into the future and realistic assessment of ore reserves - would the capital investment of a sough ever be repaid? There seems to have been little formal attempt to amend the Derbyshire laws to cope with company structures, and the consolidation of mineral rights. Indeed the 1851 and 1852 Acts "fossilised" the ancient customs of the

small miner, though in practice under the pretext of contiguity companies did acquire rights to lead minerals in large tracts of ground even where smaller veins went unworked. Again, so long as the mineral lord got his income, nobody seemed worried that the letter of the law was not exactly followed. There is a ripe field for research into the development of company operations in relation to the ancient laws here, as Lynn Willies has already pointed out to some extent (1988).

Some aspects of mining developed after the laws were established, and were successfully resisted by landowners, so that agreements were and are necessary. For instance the driving of soughs was under common law, and at least one major sough, to avoid disputes, required an Act of Parliament. The change in company law to allow the limited company with many shareholders came rather late to make much difference in Derbyshire, but an assessment of the effect of statutory limited liability has yet to be done.

The exploration and settlement of western North America in the mid 19th century brought miners into a new situation - there was no established law and there was no established lord of the mineral field, except for the limited Spanish influences in the extreme southwest. The Spanish customs seem to have had their roots in Roman Law, modified for the purposes of the Spanish empire where procedures for acquiring, maintaining and forfeiting rights were grafted onto Roman laws, probably as a result of Celtic and Saxon influences. See for instance David Elkington's contribution on the contents of the Aljustrel Tablets. However "free" miners investigating the newly available Rocky Mountains in the early 19th century were beyond the reach of any legal system. They soon found the need to regulate themselves, if only to secure their own ownership of individual veins and to discourage stealing from one another. As many of the pioneer miners came from Britain, laws set up had many parallels with British Law, either from Cornwall or Derbyshire. Both State and Federal Governments soon saw the possibility of getting a cash return for taking a hand in mining regulation, and effectively set themselves up as lords of the mineral field by introducing a comprehensive legal system. However both topographic and geological conditions were different from the simplistic models originally adopted, so that laws had to evolve to cover this. Mineral veins were often inclined, much more frequently so than in Derbyshire, and a complex apex law involving extra-lateral rights grew to cope with these conditions, possibly creating more difficulties than it solved. During the conference some controversy arose following Don Sherwood's paper, over the source of such law, but it is clear that a limited form of apex law was incorporated in the Derbyshire customs (see also Willies 1988 p150). Alluvial mining also required adaption of the law, and in modern times strip-mining of coal and the exploitation of oil fields has required the setting up of more or less separate legal systems.

One outcome of the conference, as J.H. Rieuwerts emphasised at the celebration dinner, is that we now have a greater understanding of how little is actually known about the origins and development of mining law. There is a vast field of study waiting, in dusty archives and law books, but each area will need to be looked at carefully in the light of the local history of the aristocracy, and of society in general, as well as changing economic circumstances, available technology, and differing geological structures.

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