

Letter to the Editor

EXTRA-LATERAL RIGHTS AND THE DERBYSHIRE DIFFUSIONISTS

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Lynn Willies' remarks on the papers contributed by Don Sherwood and myself to the Mining Law History Conference raise many points which are germane to the study of mining history. One of these is our understanding of the application of customary mining law. It is generally accepted that the written laws were only part of a corpus of mainly verbal custom which was used to administer them, yet this aspect has been largely ignored.

With that in mind, let's examine the respective arguments of Sherwood and Willies on extra-lateral rights. The US system operated in land owned by the state, or sold by it after 1866, and that of England applied to King's Fields or customary private liberties. Both agree that the miners had rights to one vein only and that they were not allowed to pursue it beyond the ends of their grants. They also agree that miners in Derbyshire and America followed their veins in depth, regardless of the way in which the hade took them out from under the sides of their surface grant. Sherwood, however, notes that the extra-lateral right to do this, found in American mining law, was absent in Derbyshire, where possession of "the vein is the thing". Willies questions Sherwood's determinist explanation for the development of the extra-lateral right and argues that it was a legalistic concept, which replaced a "previously implicit or axiomatic acceptance" of Derbyshire practice.

The crux of the issue is, therefore, the function of the quarter cord. If it was a vertical boundary, to work beyond it required an extra-lateral right, as was the case in parts of the United States. Jim Rieuwerts asserts that the quarter cord only delineated an area for dumps etc (Rieuwerts 1988 p194) but the Mendip laws, in the seventeenth century, allowed the miners to work all the veins within vertical boundaries: "within the plumb of his eighteen foot" (Gough 1967 p116). My experience at Grassington, however, supports Willies' example of the Ash Cross Vein miners working the Hading Vein at depth, where the jury was asked to determine whether or not it was the vein that was originally freed. Paradoxically, however, at Grassington, outliers could only be worked as far as the quarter cord. We do not know if the latter was vertical or sloped with the main vein, like the gestrecktfeld (Sherwood 1988 p249) of the German mines.

I can find no mention of extra-lateral rights (or anything which may be interpreted as such) at Grassington but, when leases were adopted there, in the 1770's, the size of the grant was made significantly larger. The lessees were allowed to work all veins within their grant but the boundaries were strictly vertical. Wherever space permitted it, however, provision was made to "tack on" a strip of new ground into which a hading vein could be followed.

Thus it appears that some English miners in customary liberties had a de facto right to follow the vein they had freed downwards. This was based on the premiss that "the vein was the thing" and in no sense can this be claimed as

an extra-lateral right. In America, where lawyers/legislators introduced the vertical boundaries applicable to building and farm plots, the extra-lateral right arose as a device to permit what was otherwise a trespass.

Consideration of extra-lateral rights is interesting but the nexus of Willies' letter is fundamental to our approach to mining history. I have long held that the subject has atrophied because of its failure to question what Willies calls "the accepted viewpoint". Indeed Burt has written of Economic History's contribution to the understanding of early mining that "there can be no other area of historical study that has seen such devout continuity" (Burt 1989 p4). Slowly, the works which have provided the traditional view of the early mining industry are being re-interpreted and that view's basic precepts found wanting. The evidence for this comes principally from the same sources, which have been misquoted and taken out of context. This serves to illustrate what a misplaced caricature "the accepted viewpoint" often is.

My paper reviewed customary mining law at Grassington and reassessed its early history. I started with "the accepted viewpoint" that the laws were introduced to Grassington by Derbyshire miners and tried to define the supposed links. When writing my paper, however, it was obvious that the diffusionist case was weak and I said so. The links with Derbyshire came from capital during the last half of the eighteenth century, when the customs were nearly dead. Hence my closing statement that "a new, as yet untested, model is emerging, which sees the early lead mining industry of Yorkshire as much more independent than as hitherto been imagined".

As a response to discussion at the seminar, and in an effort to move things along, I developed my views in a second paper (Gill 1988 pp46-62). This used published material to demonstrate that customary law had been widespread in the Yorkshire dales until the early seventeenth century. My opinion on this has been vindicated by Les Tyson, who discovered a set of laws which were used by the miners of Marrick until the mid-sixteenth century (Tyson 1989 p14f). It also became clear, from the same sources, that there had been at least three Yorkshire mining areas which were once King's Fields; one in Teesdale, one in Grinton/Arkengarthdale and another at Greenhow, in Nidderdale (Gill 1989).

Willies found the start of the above process "a difficult

concept to swallow whole" preferring instead to rely on a pre-Copernicus universe, which had Derbyshire at its centre. He is not alone in proposing the spread of knowledge by diffusion. Many others have done it, but on what evidence? The Hoovers were not mining historians but they are regularly cited on this and that. They found similarities between mining regions and used a contemporary model to explain it. This saw knowledge/civilisation radiating from emanative centres and diffusing, often at measureable rates, across Europe. It was eminently suited to archaeology or history and was the basis of what most of us learnt of those subjects at school. The advent of C14 dating, however, has made possible chronologies which have often inverted the model.

The part played by diffusion is, therefore, often over-estimated and this highlights the need for mining historians to adopt new methodological tools if the subject is not to languish in dull antiquarianism. As I have shown, it is possible to re-examine available data using a deductive approach and to propose hypothetical models against which to test new data. One success of this hypothetico-deductive technique is a radical, if dispeptic, explanation of Yorkshire's early mining industry.

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