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THE ORIGINS, RISE AND DECLINE OF FREE MINING CUSTOMS IN ENGLAND AND NORTH WALES: A LEGAL STANDPOINT

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By

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ABBREVIATIONS

AHR	Agricultural History Review
BL	British Library
BM	British Mining series
Cal	Calendar
DNB	Dictionary of National Biography
Enc Brit	Encyclopedia Britannica
ILS	Inscriptiones Latinae Selectae
PDMHS	Peak District Mines Historical Society
PRO	Public Record Office
SP	State Papers
Trans. C & WA & A Soc.	Transactions of the Cumberland and Westmorland Antiquarian and Archaeological Society
VCH	Victoria County History
YAS	Yorkshire Archaeological Society

ABSTRACT

Free mining or customary mining laws were known in certain lead mining areas of England and Wales, in the Stannaries (Devon and Cornwall), in the iron-ore and coal mines of the Forest of Dean, and in the quarries of Dean and Purbeck. They give the miner, essentially, the right to enter upon another's land without permission and extract the mineral ore, paying no rent to the landowner but a royalty to the mineral lord, normally the Crown. It is suggested that these customs originated in Romano-British times as they resemble in some ways the Hadrianic Aljustrel Laws of Spain.

They were already in force when confirmed by Royal charter in the Stannaries and by a Quo Waranto enquiry in Derbyshire in the thirteenth century. The customs in Dean may have originated from a lost Royal grant in the early fourteenth century. In Alston they are known from the reign of Henry II, and in Mendip the four Lords Royal seem to have derived rights from royal grant about the same time. In Flintshire, Denbighshire and the Yorkshire Dales the customs are similar to Derbyshire.

In the Middle Ages the Crown favoured free mining customs as they protected part-time miners from their manorial lords while actually mining, and helped to provide a source of skilled men for military purposes.

Free mining areas developed a legal structure of courts and legislative bodies based on a specialist jury. The Stannary

Parliament even obtained a right to review Westminster statutes.

After Tudor times the Crown lost interest in protecting customary mining, and the institution declined. Legislative bodies in the Stannaries, Dean and the Mendips closed in the eighteenth century, though free mining itself continued in the Stannaries, Derbyshire and Dean. Today a few free miners are active in Dean, though in theory the customs are still in force in Derbyshire, and tin 'bounding' is still possible in Cornwall.

INTRODUCTION

The customary law of free mining is not of enormous importance in the general picture of mining law, as it only affects a few of the mining fields in England and Wales and then only for certain minerals.

Nevertheless, it has great legal interest because its basic principles appear to have been established in times immemorial, exhibiting features which cut across the rights of property as they are understood at the present time. How this may have come about, and how it interacts with the principles of common law, will form the subject of this enquiry.

Free miners can broadly be defined as those self-employed miners, working in certain areas of England and Wales, who have or have had from time immemorial the right to conduct mining operations for specified minerals on land belonging to others, paying no rent to the landowner but a royalty to the mineral lord (usually the Crown or Crown lessee). Free miners are not, like freemasons, organised in lodges, nor are they members of guilds, nor is there any evidence of this ever having been the case. The only possible exception to this is in the Forest of Dean, where miners were organised in 'verns' of four (with the King's nominee as a fifth member), and a vern might be considered to be an equivalent of a 'lodge'.[1]

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1 C E Hart, *The Free Miners of the Forest of Dean and Hundred of St Briavels*, Gloucester, 1953, p. 8

Free mining is also referred to as 'customary mining', a term which reflects the customary basis of the laws or rules under which free mining has been carried on. In the eighteenth century, and indeed long before then, it was recognised that free miners were 'master men' and could employ 'servants, agents or workmen'.[2]

The reason for the terms 'free mining' and 'free miner' needs investigation, and it must be considered whether 'free' in this context refers to the miner's freedom to dig wherever he wished - within limits - or to the personal status of the miner. It may be that the free miner was in early times under the special protection of the Crown and exempt from any claim by a manorial lord *while actually engaged in mining*, and such mining need not be a full time occupation and may be, for example, carried on at a time when agricultural work was slack.

The customs of free mining have attracted some attention in academic circles, but there has been no exhaustive general survey of the subject. As to the individual areas concerned, the best general work on the Stannaries of Devon and Cornwall is by G R Lewis, *The Stannaries*[3], published as long ago as 1908, which includes a brief summary of other area customs. There is a valuable general introduction to tin bounding customs in J A Buckley *Tudor Tin Bounds West Penwith*, Truro 1987[4]. A reliable sixteenth century work on the operation of stannary customs written by an experienced

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2 C E Hart, *ibid*, p. 140

3 G R Lewis, *The Stannaries*, London 1908

4 J A Buckley, *Tudor Tin Bounds, West Penwith*, Truro, 1987

official and recently re-edited is: Thomas Beare, *The Bailiff of Blackmoor*, ed. J A Buckley, Truro, 1994. The Appendices to E Smirke, *Case of Vice v. Thomas*, London 1843[5] contain many valuable documents. For the Forest of Dean, there is the work by C E Hart, *The Free Miners of the Forest of Dean and the Hundred of St Briavels*, Gloucester 1953. Dr Hart is one of the Forest Verderers with an unequalled knowledge of the Forest. There are many books on Derbyshire, including general accounts in the *Victoria County History* and by A H Stokes[6] (a pioneer survey of the subject but has to be used with caution), Nellie Kirkham[7], who had a vast knowledge of the area, and two recent well-researched works by D Kiernan[8], and A Raistrick and B Jennings[9]. The last mentioned covers all the Pennine mining areas in addition to Derbyshire. For the Mendips, there is J W Gough, *Mines of Mendip*, revised ed. Newton Abbot 1967. The mining customs in Flintshire and Denbighshire have recently been covered by an article by C J Williams[10] which covers the subject comprehensively. For Alston, there is an older work, A W Wallace, *Alston Moor*, 1890[11], rpr. Newcastle upon Tyne, but this is of little assistance. For the Purbeck quarries, there seems to be only an anecdotal work by E Benfield, *Purbeck Shop*, Cambridge 1940; articles in a recent

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5 E Smirke, *Case of Vice v. Thomas*, London 1843

6 A H Stokes, *Lead and Lead Mining in Derbyshire*, Chesterfield, 1881-3, reprinted Matlock 1964 and 1973

7 N Kirkham, *Derbyshire Lead Mining through the Centuries*, Matlock 1973

8 D Kiernan, *The Derbyshire Lead Industry in the 16th Century*, Chesterfield, 1989

9 A Raistrick and B Jennings, *History of Lead Mining in the Pennines*, Newcastle upon Tyne 1983

10 C J Williams, 'Mining Laws of Flintshire and Denbighshire', in *Mining before Powder*, ed. T D Ford and L Willies, *PDMHS Bulletin* Vol 12 No. 3, 1994

11 A W Wallace, *Alston Moor*, 1890, rpr. Newcastle upon Tyne 1980

collection of papers[12] hardly cover the customs.

In the periodical literature, there are a number of good articles for Alston in *Trans. C & W A & A Soc.*, Volumes 42 and 45, for North Wales in the *Denbighshire Historical Society Transactions*, Volumes 11 and 25, including a copy of the Laws of Minera district. For Derbyshire, there are numerous articles on the local mining customs in the *Peak District Mines Historical Society Bulletins* (now *Mining History*), some of uneven quality, but those in Volumes 10, 11 and 12 are indispensable. For the Pennines, *British Mining*, particularly Nos. 38 and 46, contains valuable information, though some volumes concentrate almost entirely on the physical aspects of the mines rather than their legal or customary basis. For the Forest of Dean, the *Transactions of the Bristol & Gloucestershire Archaeological Society* I found disappointing.

For editions of the various codes of laws, there are printed editions of the Stannary laws[13], the Mendip laws[14], the Derbyshire laws[15] [16], North Wales[17], Forest of Dean[18] and Grassington and

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12 P Stanier, 'The Quarried Face' and J Phillips, 'Quarr Houses in the Isle of Purbeck' in *Archaeology of Mining and Metallurgy in South-West Britain*, ed. P Newman, *Mining History (Bulletin PDMHS)* Vol 13 No. 2 1996 1-9 and 155-162

13 *Laws of the Stannaries of Cornwall*, Penzance 1974 and T Beare, *The Bailiff of Blackmoor*, 1586 new ed. Truro 1994

14 J W Gough, *Mendip Mining laws and Forest Bounds*, Taunton 1931 with a supplement *Mendip Mining Orders 1683-1749*, published Taunton 1973

15 E Manlove, 'Liberties & Customs of the Lead Miners within the Wapentake of Wirksworth', London 1653, reprinted in J G Rieuwerts *History of the laws and Customs of the Derbyshire Lead Miners*, Sheffield 1988

16 There are also editions of the Derbyshire laws in 'R A' *Liberties & Customs of the Miners* 1645, G Steer. *Compleat Mineral Laws of Derbyshire*, Sheffield 1734, Anon. *The Miners Guide*, Wirksworth 1810 and J Mander *Derbyshire Lead Miners' Glossary*, Bakewell 1824 (pp. 83-131)

17 C J Williams, 'Mining Laws of Flintshire & Denbighshire', *Mining before Powder* (see Note 10)

Marrick[19]. It is interesting that the earliest of these printed editions were produced in the seventeenth century when the free mining customs began to come under pressure mainly from Court circles; but this may also reflect an increase in literacy among the miners themselves, producing a demand for evidence of their customary rights. Manuscript sources of information are in the British Library (particularly for the Stannaries and Derbyshire), the Public Record Office (particularly for the Forest of Dean and the Duchy of Lancaster papers for Derbyshire) and the Duchy of Cornwall archives for the Stannaries. The records of three of the four mineries in the Mendips are now held in the Somerset Record Office, records of the fourth minery have not yet come to light. There are papers relating to the Derbyshire mines in the Derbyshire Record Office, the Duke of Devonshire's archives at Chatsworth, and those of the Duke of Rutland at Belvoir. Papers relating to the North Wales mines are in the Clwyd Record Office and in the PRO and the British Library. Other collections of papers are in the County Record Offices for Gloucestershire, North Riding of Yorkshire, and Cornwall, and in the public libraries in Manchester, Sheffield and Leeds (the Brotherton Library).

However, of all of these sources, the only ones which can be said to address the subject in a comparative way, seeking to explain the development of the customs in general, are Lewis' work in the Stannaries and the series of papers on the Derbyshire Quo Waranto

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18 C E Hart, *Free Miners of the Forest of Dean*, (Note 1) contains the surviving laws of the Mine Law Court. For the statutes see J G Wood, *Laws of the Dean Forest and Hundred of St Briavels*, London 1878, with its supplement by C E Hart, *Laws of Dean*, London 1952. The early customary laws were printed in *The Laws and Customs of the Miners in the Forest of Dean*, London 1657

19 Marrick in L O Tyson, *History of the Manor & Lead Mines of Marrick*, 1989 British Mining No. 38 pp. 15-16

enquiry of 1288, contained in the *PDMHS Bulletin* Vol. 10. It is the purpose of this thesis to remedy this deficiency.

To start this enquiry one must first ask, what customs were essential to enable one to say that free mining was certainly practised in a given area. After reading all the available printed codes of customs from the various localities, one concludes that they must include:

1. The right to enter on land belonging to another, to search for and mine a specified mineral or minerals, without requiring permission of the landowner or tenant of the land.

2. The existence of a legal framework for registering one's claim with the representative of the mineral lord (usually the Crown).

3. The right to make a roadway from the nearest highway to the mine.

4. The right to be supplied by the mineral lord with timber for mining purposes.

5. The right of access to water for ore-treatment purposes.

6. Definition of the area in which mining can be carried on, i.e. the size of an individual claim, and types of land under which mining is prohibited.

7. Establishment of a special court for settling mining disputes.

8. The existence of a legislative body to make laws regulating the mining community.

9. Freedom to sell ore for processing to any party, subject to a small payment to the mineral lord.[20]

10. Payment of a royalty to the mineral lord.

11. Sometimes, payment of tithe to the Church on ore raised.

While the above conditions were generally applicable to any person wishing to carry on mining for the appropriate mineral, there were restrictions on membership in certain areas. Firstly (and exceptionally), in the Forest of Dean a free miner had to be born in the Hundred of St Briavels (which is not the same area as the Forest itself), and have served a year and a day in a mine, and be over 21 years of age. It was held by some miners that a miner must also be a son of a free miner to qualify, but this was not accepted by the Dean Forest Mining Commission which regulated the Forest mines in the 1840s. Secondly, in Purbeck, a quarrier must have been apprenticed to a member of the Company of Marblers, and admitted a member of the Company. This seems to have been hereditary. Thirdly, in the Mendips, a person must be registered by the Lead Reeve as a miner, but registration could not be refused. Fourthly, in the Stannaries, the privileges of a 'tinner' were restricted to

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20 In the Mendip lordships freedom to sell ore was restricted

those who were 'tinners' or 'stannators', but the definition of such persons proved a matter to be decided by the highest legal authorities, and in practice there was no barrier to working as an operative miner: the debate was on whether such persons as 'adventurers' who merely put up money were privileged. Derbyshire was perhaps exceptional in allowing any person to register a claim with the Barmaster and present a freeing dish of ore.

One must start by examining the possible date of origin of the customs, given that the one thing they have in common is an origin before the date of legal memory and written records. For example, one may ask whether they exhibit any signs of originating in Roman Imperial times (especially those rules laid down in the Aljustrel Laws) and whether they have features in common with Anglo-Saxon customs or early continental mining laws, customs and privileges, so far as these are known.

Had the customs all radiated from one area one would have expected that the names of the Royal or local officials appointed to oversee the local free miners would be similar, but the officials' titles do vary considerably. In the more northerly mining areas the title is usually 'barmaster' or 'berghmaster' (but 'King's Sergeant' in Alston); in the Mendips the title is 'lead-reeve'; in the Stannaries 'bailiff'; and in the Forest of Dean 'Gaveller'. The possible reasons for these variations will bear investigation. The legal officials in charge of the mining courts were usually 'stewards' with over them in the Stannaries a 'warden' and 'vice warden'. It will be argued that these variations, among other things, must suggest a very early date for the separate development of the various customary mining

areas.

The connection between the mining customs and the Crown is emphasised by the existence in some areas of a power on the part of the Crown of 'pre-emption' of metal produced, usually to be exercised at the open market value of the metal. In the Stannaries this power was exercised as late as the reign of Queen Anne, in this case at a price negotiated between the Crown and miners' representatives. This power certainly goes back as far as Norman times in the case of the 'mine of Carlisle' (Alston Moor) on account of the high silver content of the lead ore in that area, but it will be argued that the mines in the Bere Alston and Combe Martin districts of Devonshire, developed in the reign of Edward I, were purposely not made subject to customary mining laws presumably to ensure that the Crown received the full value of the produce of these mines without haggling over its value with the miners. Later the Stuart sovereigns' attempts to enforce a right of pre-emption in Derbyshire provoked strenuous opposition.

The customs were confined to certain minerals, those which were of interest to the Crown on account of their value either for use in buildings, in monetary use, or in international trade: lead or silver/lead in most areas, but tin in the Stannaries, iron and coal in the Forest of Dean, and the quarrying of stone in Dean and Purbeck. While the Crown did not extend the customs to cover other minerals, it is of interest that the Lords Royal of the Mendips did extend the customs on their own authority to cover calamine (zinc ore) towards the end of the mining in the Mendips.

It is vital to investigate the connection between the Crown (or its emanations or offshoots) and free mining customs, for it seems clear that this connection lies at the very base of the whole system of free mining, reflecting the value to the Crown of tin, silver and lead (but not, strangely enough, copper). The Crown also prized the services of miners in time of war, or when new mining areas were to be developed. This last may be a vital clue to the reason for the development of the whole system, since the Crown in effect protected the miner in exchange for his accepting the obligation of service in war. One will note that this connection with the Crown proved not a strength but a weakness in early Stuart times, when courtiers took advantage of the Crown's financial difficulties to seek advantage for themselves. Strangely enough, the Commonwealth period appears to have saved customary miners from some very powerful assaults on their rights.

One curious feature of customary mining law is its geographical layout: certain areas were not affected where one would logically expect the customs to be found. Examples which can be mentioned are (for lead) the Shropshire mining field round Snailbeach, and (for iron ore) the Wealden area which was as important as the Forest of Dean in Roman times. In neither of these areas is there any trace of the customs ever having been in force. While it is not difficult to explain the non-development of the customs in silver/lead mines in the Bere Alston and Combe Martin areas of Devon, which were developed with the aid of miners from Derbyshire in Edward I's reign, the absence of the customs from Shropshire is surprising. A possible, but not altogether convincing, explanation of the absence of the customs from the Weald can also be given.

Then the deficiencies of the free mining system must be considered, together with other reasons for its eventual decline, a decline rapid in some areas but slow in Derbyshire, the area where the customs may be said to have been most active and of the greatest utility. This system is well suited to an early stage of mining, when relatively rich and outcropping seams of ore were being exploited; but as workings grew deeper and wetter, the organisational defects of the system became obvious. It was difficult, though by no means impossible, for free miners to deploy enough capital to acquire the necessary plant to reach the deeper seams of ore: in the Forest of Dean this proved very difficult[21], but in Derbyshire alliances with the local landowners provided a solution. Furthermore, steam pumping machinery and winding gear did not fit easily into the rules of the ancient system; both the Crown authorities in the Forest of Dean and landowners in Derbyshire claimed that steam engines required a special licence[22]. In the Grassington area the mineral agent for the Duke of Devonshire, the landowner and mineral lord, devised a system of centrally planned watercourses to provide water for dressing ore, and swept away the ancient system in favour of mineral leases[23]. In Devon and Cornwall the system of 'bounding' land was appropriate for working alluvial deposits, but once deeper mining became necessary and outside finance almost essential, bounding was replaced by mineral leases[24].

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21 C E Hart, *Free Miners*, (Note 1) Chapters VI and VII, passim

22 C E Hart, *ibid*, p. 262. J Mander, *Derbyshire Lead Miners' Glossary*, p. 57

23 A Raistrick, 'Mechanisation of the Grassington Moor Mines' in *Transactions of Newcomen Society*, Vol. XXIX, pp. 179-193

24 J A Buckley, *Tudor Tin Bounds West Penwith*, (Note 4), 9-11

Another aspect of free mining which requires attention is what degree of prosperity the system was capable of bringing to those operating it. As has been demonstrated, the living conditions and finances of many of the Forest of Dean miners can only be described as deplorable in the early nineteenth century[25]. On the other hand, there are good reasons to think that in Derbyshire part-time mining provided means for the miners concerned to pay the rent for their agricultural holdings, by working at their mines at times of year when farming was slack[26]. One may however ask whether the apparent role of the free miner as a master-man concealed his subservience to the local magnates, the smelters, the merchants and the mineral lord[27].

There are two other questions raised by the system of free mining which require investigation. Firstly, how did the courts and parliaments originate? Were they also emanations of the Crown's interest in mining, or possibly the product of local magnates' desire to provide a forum for the disputes peculiar to miners and, of course, generate additional profits from justice? Secondly, why did the mining courts rely so heavily on juries of miners? These were surely formed at an early date in the development of courts, when juries were chosen because of their knowledge of matters and not (as at the present day) because they are assumed to be unversed in the matters to be laid before them.

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25 C Fisher, 'Free Miners and Colliers', Ph.D Thesis, Warwick University 1948, and C Fisher, 'The Free Miners of the Forest of Dean' in *Independent Collier*, Ed. R Harrison, London 1948. 4-42

26 J Hatcher, 'Myths, Miners and the Agricultural Community in Late Medieval England' in *AHR*, Vol. 20, pt 2, 1972, pp. 93-103

27 Cal SPD Charles I 1648-9 p. 419 quoted in J G Gough, *Mines of Mendip*, Newton Abbot 1967, 107-9

These matters will be dealt with in the following way: first an enquiry into the possibility of a Roman Imperial origin of the customs, followed by an explanation of what is known of the customs in Anglo-Saxon times. The customs in each free mining area, and their relationship to customs in other areas, are dealt with at length. Then the common features of the customs are set out, followed by an examination of the local and occupational status of the free miner. The decline of the customs from their zenith in the sixteenth and early seventeenth centuries is then explained, and the enquiry is concluded by a statement of the conclusions which can be reached.

CHAPTER ONE:

"FROM TIME IMMEMORIAL" - POSSIBLE ORIGINS OF THE FREE MINING CUSTOMS

Part 1. Romano-British times

There are reasons for thinking that lead mining in Derbyshire may originate as far back as the seventh century BC[1]. Certainly recent investigations into old workings on the Great Orme in North Wales have demonstrated that copper mining was being carried out there in a comparatively sophisticated way about 1400-1300 BC[2]. But archaeology can scarcely tell us about the legal basis for mining, and in the absence of written records the history of customary mining cannot be carried back before Roman times at the earliest. Also, so far no copper mining has been traced archaeologically nearer to customary mining areas than Ecton in Staffordshire.

To pass on to Romano-British times, the existence of pigs of lead stamped with Roman inscriptions and dated soon after the arrival of the Roman legions[3] would certainly suggest that the Mendip lead mining industry was in existence before the Claudian invasion, but its legal basis is unknown. References to mining in Britain in Classical authors are disappointing. Caesar remarked, "tin is produced in the interior, iron in the coastal district but in no

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1 G Guilbert, 'The Oldest Artifact of Lead in the Peak. New Evidence from Man Tor' in *Mining History* Vol. 13, No. 1 1996, pp 12-17

2 A Lewis, 'Bronze Age Mines of the Great Orme' in *Mining before Powder, Peak District Mines Historical Society Bulletin*, Vol. 12, No. 3 (1994), pp. 32-37

3 A C Whittick, 'Earliest Lead Mining in the Mendips' in *Britannia*, 13 (1982) pp. 113-123

great quantity - they use imported copper"[4] (the reference to imported copper seems surprising in view of recent finds). Cicero wrote in BC 54[5] that he heard that there was no gold or silver in Britain. Strabo, writing about AD 20, included gold, silver and iron among British exports[6].

After the Roman occupation, Tacitus[7] refers to "gold, silver and other metals, rewards of conquest", while Pliny the Elder[8], writing about AD 72, only refers to British lead. "Black lead is made into pipes and thin sheets - it is mined with some difficulty in Spain and Gaul, but in Britain it is present to such an extent near the surface that there is a law limiting its exploitation". All the same, Appian, writing about AD 150[9] wrote: "Even the half of [the Britannic isle] which they do occupy is not profitable to [the Romans]". The Romans in fact used lead for many purposes, among them being piping, roofing, household vessels (apparently not realising the dangers of lead poisoning), and lead coffins.

There is some solid evidence about the organisation of the lead industry in Roman Britain, in the inscribed pigs of lead which have

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4 Caesar, *Gallic War V*, 12 ff. Loeb edition 1917

5 Cicero, *Letter to Atticus*, iv. 16 Loeb edition 1920

6 Strabo, *Geographica* IV 5, 199 Loeb edition 1949

7 Tacitus, *Agricola* ch. 13 Loeb edition 1914

8 Pliny, *Natural History*, book 34 - 164 Loeb edition 1938-62. Dr Michael Lewis suggests to me that Pliny confused 'black lead' and 'white lead' [tin]. An embargo on Cornish tin seems more likely before the mid third century, when the Spanish tin industry was in decline

9 Appian, *Romaica*, praef. V Loeb edition 1912-13

been found over the years in various parts of England and Wales[10]. According to Webster[11] those Emperors whose names appear on pigs are:-

The Mendips	-	Claudius, Nero, Vespasian, Antoninus Pius, Marcus Aurelius and Verus;
Shropshire	-	Hadrian;
Yorkshire	-	Domitian, Trajan and Hadrian;
Flintshire	-	Vespasian and Domitian;
Derbyshire	-	Hadrian.

Chronologically, the latest pigs so far found are two found in France but which emanate from Britain, marked with Septimus Severus' name (195-211 AD).

In addition to the Imperial title, a number of these pigs have a reference to individuals (possibly the Imperial procurators in charge of the lead mines), whose names suggest that they were freedmen. There is one case in which the name of a company, or more probably a place-name, appears together with an Emperor's name. In addition, there are a number of pigs which bear merely the name of an individual or a company. With the exception of one pig, probably from Flintshire, all these are attributed to the

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10 Lists of these are in G Webster, 'Lead Mining Industry in North Wales', in *Trans. Flintshire Hist. Soc.* CIII (1952-3) pp. 20-31 (a list covering all finds in England and Wales to that date) and R E Tylecote, *Prehistory of Metallurgy in the British Isles*, Tables 38 & 39. An up to date list of Mendip pigs is in M Todd, 'Ancient Mining on Mendip, Somerset' in *The Archaeology of Mining and Metallurgy in South-West Britain*, ed. P Newman, *Mining History* Vol. 13 No. 2 (1996) 47051. Todd assigns the law limiting exploitation in Britain to Vespasian. The best guide is S S Frere et al (eds) *Roman Inscriptions in Britain*, Vol ii fasc. i (1990)

11 Webster, *ibid*, p. 7

Derbyshire mines. Tylecote[12] considers that those pigs (other than one from Flintshire which bears the name of C Nipius Ascanius whose name also appears on a Neronic pig from the Mendips) are likely to date from the second or third centuries. An alternative date will be suggested below.

In Roman times the lead from the Spanish mines proved much richer in silver than that from British mines, with the possible exception of the Mendip mines, and this may have influenced the Imperial authorities in ceasing operations after Antonine times if one may judge from the evidence of surviving pigs. The problem of the meaning of the inscription 'ex arg' is not discussed here as it is not relevant to mining organisation. In Roman times, silver was recovered from lead by the process known as cupellation. This process was only of use where the untreated lead had more than a certain proportion of silver content. While Mendip lead was relatively rich in silver, Derbyshire lead ores in general do not contain sufficient silver to be worth the trouble of extraction by cupellation[13]. Silver was of great importance to the Roman economy, both for domestic and monetary use.

What is of great relevance to an investigation of a possible connection between Roman lead mining and free mining customs is the survival of metal tables found near Aljustrel on the Spanish-Portuguese border. One, 'Lex Territorio Metalli Vipascensis Dicta', which deals largely with the internal organisation of the mining

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12 Tylecote, *Prehistory of Metallurgy*, (Note 10) tables 38 & 39

13 Dr J A Smythe, 'Roman Pigs of Lead from Brough', in *Transactions of the Newcomen Society*, Vol. XX (1939-40) pp. 139-45

camps, was found in 1876, and the other, 'Lex Metallis Dicta', in 1906. The latter appears to have some similarity to free mining customs. Although the tablet with the latter laws inscribed has not been wholly preserved, much survives, and a translation of relevant passages is as follows:-[14]

> ... he who shall prove that the colonus has smelted ore before he has paid the price for *the half share belonging to the fiscus* [my italics] shall receive the fourth part.
>
> Mines of silver shall be exploited in conformity with the regulation which is contained in this law. The price of these mines shall be maintained in accordance with the will of the ... Imperator Hadrianus Augustus, namely that the usufruct of that portion which belongs to the fiscus shall belong to him who first shall put up the price for the mine and who shall present to the fiscus 4000 sesterces.
>
> ... he who shall have reached ore in only one of five shafts shall continue work on the others without intermission. If he shall not do this the right shall pass to another.
>
> If anyone after the 25 days granted for the collection of working capital shall commence at once but shall

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14 For the text, see Riccobono, *Fontes iuris Romani ante iustiniani*, I pp. 104 et seq. Florence 1940-43

afterwards cease working for ten consecutive days the right of occupancy shall pass to another.

If a mine sold by the fiscus shall lie unworked for six consecutive months, the right of occupying it shall be open to anyone, provided that when the ore is extracted therefrom one half shall be reserved to the fiscus, *according to custom* [my italics].

It is permitted that the occupier of mines shall have such partners as he wishes, provided that each one shall undertake expense in proportion to the amount of his share. If a partner shall not do this, then he who has undertaken the expense, shall make out a statement of the expenses undertaken by himself, shall place this statement for three consecutive days in the more frequented spot of the forum, and shall announce through the public crier that each partner must bear his share. The partner who shall not contribute, or who shall wilfully do anything to avoid his share or who shall deceive one or more of his partners, that man shall not retain his share in the mine, and his share shall belong to the partner or partners in proportion to their payment of the expenses.

And to those coloni who have undertaken an expense in a mine in which many partners are interested there shall be the right in law of regaining from their partners that which shall appear to have been asked for

> in good faith. The coloni may sell among themselves at as great a price as possible, those shares on mines which they have bought from the fiscus and for which they have paid the full price. He who wishes to sell his share, or who wishes to purchase, shall make a declaration before the procurator who is in charge of the mine. In no other way may any purchase and sale be effective. It is not permitted him who is indebted to the fiscus to give away his share.
>
> ... he who shall be convicted of having injured, weakened, ... or having done anything wilfully which shall render the mine unsafe, if he is a slave, shall be beaten with rods at the discretion of the procurator and sold from his master under the condition that he shall not reside in any mining district. The procurator shall seize the property of a freeman for the fiscus and banish him forever from the mining district ....

From the above, it is apparent that a royalty of one half of the produce of the mines was due to the *fiscus* (the Imperial Treasury) under the provisions of the first paragraph quoted above. The second paragraph might be interpreted to mean that a prospector should have the right to develop a mine on registering the claim with the authorities and paying a fee of 4000 sesterces to the fiscus as a composition, to buy out the fisc's interest[15]. There is no indication in the surviving text of what rights to enter upon

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15 Dr Michael Lewis informs me that this was not an enormous sum, in tune with the picture of the lessees as small men

land for prospecting for ore are conferred, but it is of interest that there are provisions for the continuous working of claims. Attention has been drawn to the similarities between the provisions of certain paragraphs quoted above and arrangements under the cost-book system of accounting practised in Cornish and some Derbyshire mines until recent times.[16] [17]

The provisions in the *Lex Metallis* regarding the division of the produce of the mine between the proprietor or proprietors of a mine and the Imperial *fiscus* raises a possibility which does not seem to have been previously noticed. This is, do the lead pigs inscribed solely with the name of a local producer, or a societas, in fact represent the half share not belonging to the *fiscus*? In the present state of knowledge there does not seem to be any compelling reason why the surviving pigs which do not bear an Imperial inscription should necessarily be from a later period of working than those which do bear an Imperial inscription. In the case of the pig from Flintshire with the name of C Nipius Ascanius, it seems likely that this man is the same individual whose name is on a Neronian pig from Mendip. He was presumably either the Imperial procurator in charge of the mines, or possibly a lessee; his name suggests that he was an Imperial freedman[18]. Other pigs with non-Imperial inscriptions only are almost certainly from the Derbyshire mines. This raises a question: were these Derbyshire mines worked on a different basis from other lead mines in Roman Britain? Were they

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16 Prof. H Louis, 'On the origin of the cost-book system,' in *Reports of the Royal Cornwall Polytechnic Society* NS IV (1920) PP 232-237

17 N Kirkham, *Derbyshire Lead Mining through the Centuries*, (Matlock 1968), p 119

18 Webster, 'Lead Mining Industry', (Note 10)

worked on a system similar to that envisaged in the *Lex Metallis*, where independent miners paid a royalty to the *fiscus* of 50%? There does not seem to be any evidence which would render this unlikely, but as will be seen the view that the *Lex Metallis* applied in Britain as well as in Spain is difficult to establish. In any case, there are no doubt further buried pigs to be discovered, and their inscriptions may cast fresh light on the whole matter.

The pigs so far unearthed do suggest a tailing off of lead production in Britain after Antonine times; this may be due not so much to the restriction on British production referred to by Pliny as to difficulty with flooding in the workings. In Spain, which had silver-rich lead ores[19], it may have been worth employing expensive waterwheels for pumping, or more slaves for bailing, but in Britain such measures might not be deemed economic.

What evidence is there that the provisions of the *Lex Metallis* might apply not only in Spain but in Britain as well and elsewhere in the Empire? Such evidence is not readily available; as far as Britain is concerned there does not seem to be any positive written evidence - one can only rely on inference from other areas of the Empire, and from archaeological evidence. *Lex Metallis* refers to decisions of Hadrian, Emperor from 117 to 138, and, of course, extremely active in Britain. An inscription from Hadrian's Wall[20] does show that 1000 legionaries were sent as reinforcements from

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19 Webster, *ibid.* p.6

20 ILS 2726, 2735 - Berolini: apud Weidmannos 1892-1916

Spain to Britain, possibly as early as 118 but more likely 130[21]. This seems to be the only recorded transfer of troops from Spain, but it does indicate some contact between the countries in Hadrianic times. As has been seen, legions did get involved in lead mining activities. Tablets have been found in the Dacian mines at Verespatak which have been dated between 138 and 167[22] which lay down the terms for the employment of free contracting labourers - not slaves - in Dacia, which chime in with the *Lex Metallis*.

From archaeological evidence, there are features of the workings of the gold mine at Dolaucothi in Wales which "show the most advanced techniques of mining of the Romans"[23]. For example, water wheels were used for drainage at Rio Tinto, Spain, and also at Dolaucothi[24]. There were aqueduct systems at Dolaucothi which may be compared to aqueducts in the Asturian mines in Spain including "an inclined shaft[25] following a vein with crosscuts for drainage, characteristic of Roman work in Spain". There are also remains of pithead baths, which bring to mind the provisions about baths which occur in *Lex Territorio Metalli Vipascensis*. That such features have not been traced in other Roman sites in Britain is not so surprising considering the amount of subsequent mining operations in these areas. The use of multiple shafts mentioned in the *Lex Metallis* is mirrored in the later Saxon mining laws and in the Trepca mines in

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21 S Frere, *Britannia*, London 1978, p. 161

22 O Davies, *Roman Mining*, Oxford 1927, p.16

23 O Davies, *ibid.* p. 155

24 Frere, *Britannia*, (Note 20) p. 323

25 Frere, *ibid*, p. 321. Also see A C Annels and B C Burnham, *Dolaucothi Gold Mines*, 2nd ed. 1986 p. 19

the Balkans[26]. K McElderry considered that the *Lex Metallis* was "probably a general controlling law for all mines"[27].

It is worth remarking that, to judge from a writing tablet recording a property transaction found in a well in the Mendips, Roman property law was in force in Britain. Forms of one of the phrases used are found in Transylvania and Spain[28]. There can be no guarantee that the property referred to in the tablet was actually in Britain, but it would seem probable. The style of writing suggests a third century date.

G R Lewis states[29] that Ulpian stated that in certain places, by customary law, a third party might operate quarries without the consent of the proprietor of the soil, who was however entitled to public indemnification.

Mining was managed by Imperial procurators, who either managed the mines directly through a permanent staff, or let the mines to individuals or companies[30]. It is worth noting the recent discoveries at Ploumanac'h on the Breton coast of a wreck with lead ingots (all apparently from the same source and unlikely therefore to be scrap lead), some of which were stamped with names of

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26 O Davies, *Roman Mining*, (Note 21) p. 19n

27 K McElderry, 'Vespasian's reconstruction of Spain' in *Journal of Roman Studies*, Vol VIII (1918) pp. 95 ff

28 C G Turner, 'A Writing Tablet from Somerset' in *JRS* 46 (1956), pp 115-118

29 G R Lewis, *The Stannaries*, London 1908 p. 66. So far the original reference by Ulpian has not been traced

30 J F Healy, *Mining and Metallurgy in the Greek and Roman World*, pp. 129-131

persons, and some with the tribal names of the Iceni and Brigantes[31]. Dr M Lewis[32] has suggested that these ingots might date from 367, when levies from various tribes were repairing the damage from the barbarian incursions of 365, or possibly from 408-9, when the Britons took over the administration of Britain from the Imperial authorities. Do the personal names on ingots represent individual miners' production? One may also mention the ingot, possibly fourth century, inscribed with a personal name and found at Shepton Mallet near the Mendips[33].

As far as tin mining in the south west is concerned, archaeological evidence suggests that Roman activity here was comparatively late in the Roman occupation. It does seem possible that the *Lex Metallis* applied here. The Roman tin mines in Spain closed about 250[34], and judging from the quantity of late Roman coins found in Cornwall the mines there must have become more active subsequently, so that again there is a possible connection with Spain. Tin mining at that time appears to have been confined to recovery of alluvial deposits; tin was required by the Romans largely for use in the production of pewter or bronze vessels[35].

As has been mentioned above, provisions of the *Lex Metallis* do seem to have something in common with the cost-book accounting

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31 M L'Hour, 'Un site sur la Cote de l'Armorique', in *Revue Archaeologique de l'Ouest* 4 (1987) pp 113-130

32 pers. com.

33 H M C Hassall and R S O Tomlin, 'Roman Britain in 1992', in *Britannia*, 24 (1993) pp 319-230

34 O Davies, *Roman Mining*, (Note 21) p. 147

35 N Beagrie, 'Romano British Pewter Industry' in *Britannia*, Vol 20 (1989) pp 169-188

system. There is an inscription in Dalmatia suggesting a movement out of Devon or Cornwall by Imperial mining officials at the very end of the Roman occupation (a tombstone of a lady born in Dumnonia who died aged 30 in AD 425)[36].

Turning to iron mining, the evidence of any connection between mining customary law and iron mining in Romano-British times seems very poor. The two great centres of iron production in Roman Britain were the Weald and the Forest of Dean; in both areas the enormous quantities of slag and scoria remaining until recent times testify to the enormous production of iron in Romano-British times. It is therefore strange that there is no evidence of any customary mining law in the Weald in post-Roman times. Cleere[37] suggests that the Forest of Dean and the eastern part of the Weald were Imperial estates, while the western part of the Weald may have been worked by individual miners (cf. the inscription found near Chichester referring to a *'collegium fabrorum'*). One might therefore expect some record of customary mining in the western Weald; so far this is totally lacking. As will be seen, the free miners of the Forest of Dean have an oral tradition that their rights date from a grant by a King Edward in medieval times, and the absence of any such custom in the Weald seems to support this belief.

To sum up, there certainly seems to be a similarity between certain of the provisions of the *Lex Metallis* of Hadrianic date and

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36 E Diehl, *Inscriptiones Latinae Christianae Veteris*, Berlin I 1961 p. 46. I am indebted to Dr M Lewis for this information

37 H Cleere and D Crossley, *Iron Industry of the Weald*, 1965 pp. 61 and 69, and also H Cleere, *Organisation of the Iron Industry in the Western Roman Provinces*, pp. 106-108

the medieval free mining customs. There are indications (at Dolaucothi and elsewhere) that mining practices followed in Roman Spain were also followed in Britain, that Imperial mining officials did move from one mining area to another, and that late in the Roman occupation of Britain there was lead production by individuals, as well as by companies, apparently outside the official production. There is also some evidence that Roman property law generally was in force in Britain. All this can hardly be taken as proof that the customs of free mining originated in Romano-British times (or conceivably even earlier) in the areas in Britain in which they appear in medieval times; but cumulatively they suggest that a reasonable case can be made for a Romano-British origin of the free mining customs.

Part 2. Post-Roman and Anglo-Saxon times

It might seem rash to claim that any mining customs and techniques survived from Romano-British times through the upheavals of subsequent centuries, but recent archaeological evidence does suggest that in the south west tin mining continued, though no doubt on a reduced scale. Four tin ingots found at Praa Sands gave a carbon-14 date of 684 +/- 70[38], and wooden shovels from tinworks at Boscarne dated between 710 and 910[39]. This evidence from artifacts makes one more confident of mentioning the strange story of St John the Almsgiver (c. 600)[40]. This saint is reported to have

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38 N Beagrie, 'The early tin ingots ores and slags from western Europe', in *Historical Metallurgy*, 19-2 (1985), p. 165

39 N Beagrie, *ibid.* 165 & his note 24

40 Hamilton Jenkin, *The Cornish Miner*, 1927 3rd ed. rpr. Newton Abbot 1972, p. 29. Also see E Dawes and N H Baynes, *Three Byzantine Saints*, 1948, Oxford: Blackwell

sent an Alexandrian seaman to Britain with a cargo of corn to relieve a famine. The ship returned with a cargo of tin which was miraculously changed to silver on the way! Leaving aside difficult questions, such as how the saint in Alexandria heard of the Cornish famine, and whether there was some misdescription of the cargo - perhaps to mislead pirates - the story does suggest some continuance of the tin or silver trade after the departure of the Roman administration. One may also mention the similarity already referred to between part of the *Lex Metallis* and the cost-book system of accounting. One finds a certain difficulty in accepting the continuance of an accounting system through sub-Roman times. It is worth noting that Cornwall was not conquered by the Kings of Wessex till the ninth century.

Until comparatively recent times the possibility of any institution, in however debased a form, continuing from Roman Britain into Anglo-Saxon times has seemed unlikely, but studies of the details of boundaries given in Anglo-Saxon charters and also investigations by archaeologists have made the persistence of estate boundaries and, by inference, of the institutions within those boundaries, a distinct possibility. The work of Finberg[41] has been followed up by investigations on the ground in the eastern counties which have supported the view that there was some continuity of occupation and of farming methods from early Romano-British times through the Anglo-Saxon era and beyond. Examination of the field boundaries adjoining Roman roads, particularly between Scole and Tivetshall St Mary in Norfolk and near Yaxley in Suffolk suggests

41 H P R Finberg, *Roman and Saxon Withington*, Leicester 1955 *passim*

that earlier field boundaries were cut through when the Romans constructed the 'Pye Road', and the divided portions of fields remained as evidence of this division through subsequent ages and indeed until the nineteenth century Ordnance Survey[42]. It has been pointed out that field boundaries tend to revert to standing trees if not maintained for three or four decades, and the fact that these boundaries can be traced suggests reasonably regular maintenance down the centuries[43]. Further, it has been argued that this suggests the continuance over the years of some of the frameworks or estates within which such field systems were maintained. Attention is also drawn to certain places, e.g. the Eastry area in Kent and the Malpas area in Cheshire, where a Roman road cuts across parish boundaries in a similar way[44].

In Derbyshire, a study of standing stone walls at Roystone Grange Farm near Ballidon between 1978 and 1986 revealed a series of field walls apparently going back as far as neolithic times; the continuity of some fields in the area has been demonstrated[45]. In the Peak District a large part of the leadmining area was included in the 'Ancient Demesne of the Peak'[46]. This comprised the Manors of Bakewell, Ashford and Hope, with their berewicks, in the northern area, and Wirksworth, Darley, Matlock, Parwich and Ashbourne in the southern area. That these were originally all one vast estate is

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42 T Williamson and L Bellamy, *Property and Landscape*, London 1987, pp. 5, 19

43 N Higham, *Rome, Britain and the Anglo-Saxons*, London 1992, p. 129

44 N Higham, *ibid.* pp. 132 and 135

45 M Wildgoose, 'Roystone Grange' in *Current Archaeology* No. 105, pp. 303-307

46 F Stenton, *Types of Manorial Structure in the Northern Danelaw* pp. 73-75 (Oxford Studies in Social & Legal History, 1910 ed. Vinogradoff)

suggested by the Domesday render of honey ($5^1/_2$ sesters in the northern manors and $6^1/_2$ sesters in the southern manors), 12 sesters in all. In addition, the northern group paid five cartloads of lead in Domesday Book. Payments in kind rather than cash suggests a payment set at an early date before the cash economy had become established[47]. In view of all this, one may postulate that the Ancient Demesne was one Imperial estate, created to enable the *fisc* to maximise its returns from the local lead industry. If the administrative structure in the area did in some sort survive through Anglo-Saxon times it would not seem unreasonable to suppose that any legal structure also survived. As yet the possibility of a similar survival of a Roman estate in other lead or tin mining areas does not seem to have been investigated.

There is little evidence of the mining of lead in early Anglo-Saxon times, though the Venerable Bede, writing before 731[48] wrote, "Britain has also many veins of metal, as copper, lead, iron, lead and silver", surely evidence that such veins were being worked. Wilfrid, born in 634, who was Bishop of York, is recorded as having repaired York Minster and roofed it with lead slabs[49]. The Abbess Eadburga of Repton, which was apparently a foundation by the Mercian kings, sent a coffin of lead from her own mines to Crowland for St Guthlac's burial in 714[50]. How did the Abbess come to own lead mines? It seems a reasonable assumption that the mines were

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47 M Daniel, 'The Early Lead Industry and the Ancient Demesne of the Peak' in *PDMHS Bulletin*, Vol. 8 No. 3, pp. 168-9

48 Bede, *Ecclesiastical History of the English Nation*, Everyman ed. 1.1

49 Eddi, *Vita Wilfridi* ed. Raine, *Historians of the Church of York*, Rolls series 1879 Vol. 1

50 Felix, *Memorials of St Guthlac*. ed. Birch, London 1881, p. 50

granted to Repton Abbey as part of the Royal endowment. Later, in 835, the Abbess Cynewara of Repton leased a lead mine at Wirksworth to Ealdorman Humbert, subject to an annual rentcharge of lead worth 300 shillings to be paid to Archbishop Cealnoth of Christ Church, Canterbury[51]. Was this the only lead mine in her possession, or had the Abbey been granted all the Royal lead mines in the area? Evidence on this point is lacking. It does suggest that the Ancient Demesne had passed into the ownership of the kings of Mercia. An English monastery, presumably Repton, supplied lead to European as well as English ecclesiastical centres[52], "Lead was produced and transported not by merchants but by churchmen in this period and it was bartered for goods such as salt rather than being sold"[53]. However, in 873 the Danish Army wintered at Repton and destroyed the Abbey. It is thought that the lead mines were taken over by a puppet King, Ceolwulf (which suggests strongly that they had been originally granted to Repton by the Mercian kings), but before 910[54] Athelstan confirmed to the *fidelis* Uhtred land at Hope and Ashford which Uhtred had bought from 'the Heathen' at the command of King Edward, and Ealdorman Aethelred; and, as Stenton remarks[55], "We may reasonably infer that already before 910 Ashford and Hope were the administrative centres of a group of dependent hamlets, such as are revealed in the Domesday description of these manors". Further, in 949, Bakewell, the remaining High Peak estate, was also

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51 W G Birch, *Cartularium Saxonicum*, 1885-93 I p. 579

52 M Daniel, 'Anglo-Saxon Lead Industry of the Peak', in *PDMHS Bulletin*, Vol 7, No. 6, 339-341

53 F Stenton, '*Manorial Structure*' (Note 45), p. 75

54 Birch, *Cartularium Saxonicum*, (Note 50) I p. 658

55 F Stenton, *Manorial Structure*, (Note 45) pp. 74-76

granted by Eadred to Uhtred.

From these grants it seems reasonable to suppose that after the reconquest of the Danelaw the English kings had resumed direct control of both the northern and southern groups of ancient demesne manors together with the lead mines therein.

It has been suggested[56] that in the reign of Edgar the Peaceable (959-975), English mining institutions may have been influenced by developments at the court of the Emperor Otto the Great, who had married Edgar's aunt. These may have included the doctrine of regalian rights over mines, and the appearance of the barmoot courts in Derbyshire occurred at this time. The use of the terms 'barmaster' and 'barmoot' certainly suggest influence from Germany, but there does not seem to be any solid evidence to support the belief that German miners or mining institutions were imported at this time. That there was considerable lead and silver-lead mining activity in the tenth and eleventh centuries in England is suggested by the large number of coins which originated in England and were paid out as 'Danegeld' during the reign of Aethelred II. According to the Anglo-Saxon Chronicle, the Danes were paid 10,000 in 991, 16,000 in 994, 24,000 in 1002, 36,000 in 1007 and 72,000 in 1012, with a further 10,500 paid by the citizens of London. Between 1012 and 1051 there was a tax called 'heregeld'[57] which was used to pay Scandinavian mercenaries. Of these coins a very considerable number, over 50,000, of which almost all are dated

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56 M Daniel, 'Origin of the Barmote Court System' in *PDMHS Bulletin* Vol No. 3 (1982), pp. 166-7

57 P H Sawyer, 'The Wealth of England in the 11th century' in *Trans. Royal Historical Society*, 1965 p. 145

between 990 and 1050, have been found in Scandinavian hoards. The amount of silver involved must have been considerable, but it is interesting that the output of the mints nearest to Derbyshire was not large[58]. Mints at Bath and Bristol near the Mendip mines were in action, but the considerable output of the Bristol mint seems to have come largely from commercial sources; and while Chester, close to Flintshire, was an important mint, it is considered that this dealt with silver imported from Ireland. In fact, as Sawyer[59] remarks, "The areas where silver could have been produced do not seem to have had the economic or political importance which would surely have been theirs had they been the main source of England's supply of silver." The most likely external source was, it appears, the German mines in the Harz mountains. The principal mints, of which London was by far the largest, were not close to the lead mining areas. Athelstan's Grateley decrees include a provision that one money was to be current in his dominions and, in pursuance of this, foreign coins were melted and recoined, with a few exceptions[60]. The amount of silver required to supply the Danegeld on four occasions has been estimated at 40 tons, which would have required an output from the lead mines of 400,000 tons of lead at a silver content of 0.1%[61]. In view of what has been said above, these mines must have been abroad, though the Derbyshire mines with their relatively low silver content are likely to have been open at this time.

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58 *ibid.* p. 159

59 *ibid.* pp. 159-60

60 Miss Archibald, British Museum, pers. comm.

61 R F Tylecote, 'Roman Lead Working in Britain', in *British Journal for the History of Science*, Vol II, pt 1, No. 5 (1964) pp. 25-43

Evidence regarding lead mining in Domesday is rather disappointing. Seven 'plumbaria' (presumably lead-smelting works rather than mines) are mentioned, all but one in the Ancient Demesne of the Peak, while the southern group of Peak manors rendered 40 lbs of pure silver per annum TRW. The absence of actual payments of lead from the Ancient Demesne suggests that lead royalties were paid direct to the royal treasury from the Ancient Demesne and therefore not recorded separately. This might also apply to the Mendip mines, and explain why there is no mention of lead in that area in Domesday.

In the German mines the earliest body of mining law so far traced is contained in a set of decrees issued by the Archbishop of Trent in 1185 and 1208[62]. He had obtained a grant of mineral rights in his Archdiocese from the Emperor Frederick Barbarossa. The Archbishop claimed to have a right to receive a royalty from mining concession holders, but there does not seem to have been any recognition of the right of a miner to open a mine wherever he pleased, though he received special protection while working a concession. The various rights and franchises granted to the miner in the Archbishop's decrees have many similarities to the English customary laws without, it appears, the basic freedom to sink a mine on another's property.

From the above it will be seen that, while mining activity continued after the Roman withdrawal throughout Anglo-Saxon times, at least in Derbyshire and Cornwall, there does not seem any solid

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62 G Weisgerber, 'First German Mining Laws and the Archaeological Evidence', in *PDMHS Bulletin*, Vol 10, No. 4 (1988) pp. 223-230

evidence as to the legal basis of any mining which took place. One can say that there is some slight evidence that the Derbyshire leadmines were regarded as Royal property, both under the Mercian kings and under the English kings after the reconquest of the Danelaw, while the existence of the manors known as Ancient Demesne of the Peak suggests a continuance of an Imperial Roman estate in the area into and through the Anglo-Saxon period. There is also the possibility of the terms 'barmoot' and 'barmaster' having been introduced by German miners to Derbyshire, perhaps at the time of Otto the Great. In the Mendips, however, the use of the term 'lead-reeve' instead of 'barmaster' suggests Anglo-Saxon activity in the Mendip mines otherwise undocumented.

CHAPTER TWO:

THE ORGANISATION OF FREE MINING

However disappointing the references, or lack of them, to mining in Domesday Book may be, Domesday marks a turning point in any investigation into customs of free mining. Before 1086, any view as to the existence of such customs must be founded on deduction from known circumstances; after that date there is a gradual appearance of records evidencing efforts by the Royal administration to enable the Crown - primarily for fiscal reasons - to crystallise the nature of its rights. Having done this, the Crown officials had to find means of moulding the customs into a shape acceptable to the Crown, bearing in mind that the need for the Crown to obtain the maximum amount possible from the collection or farming of royalties on minerals gave it a direct interest in encouraging the efforts of the miners and, in the first place, ensuring that miners were not impeded in the discovery and production of minerals by feudal claims on their time and activities by local manorial lords. Primarily, the crown was interested in encouraging the production of lead for its building needs and for the possibility of producing silver for use in coinage from the lead, and in the production of tin from Devon and Cornwall for use in pewter and in international trade. Furthermore, the Crown soon realised that skilled miners had a vital part to play in wartime, as their expertise could be usefully employed in siegework. The iron miners in the Forest of Dean provided a particularly useful source of manpower for siege operations situated as they were in a Royal

Forest where conflicting claims on their services from manorial lords would not be expected. Therefore, as will appear below, fiscal and legal records survive in the public records from this time which can be used to chart the development of customary mining in various parts of the country.

Part One - The Stannaries

Up to this point attention has been largely focused on lead mining. However, in the twelfth century the Crown's interest in mining was largely centred on the Stannaries of Devon and Cornwall, which seem to have rapidly acquired a highly developed organisation through which the Crown (or its emanation, the Duchy of Cornwall) tried to ensure satisfactory financial returns. At some period, probably during the twelfth century, the tin mining districts in Devon and Cornwall were each divided (presumably by the Royal administration) into a number of stannary districts for administrative and fiscal purposes. The Crown appointed a Bailiff to oversee each Stannary district and, as will be seen, a hierarchy of officials was created to control tin mining and try to ensure that the Crown received its royalty.

The first actual record of the royal interest in the tin mines is that of the 'coinage' duties in the returns of the Sheriff of Devon and Cornwall in the Pipe Rolls of Henry II[1]. There is no mention of any receipt from tin mining in the surviving Pipe Roll of Henry I, so that the assumption is that the collection of the 'coinage' duty on tin

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1 Pipe Roll 4 & 5 H.II in *Pipe Roll Soc.* Vol 1, p. 41. 'Coinage' was a process whereby the smelted tin was produced for assaying and payment of duty at certain Stannary towns, after which the ingots were stamped and could be sold.

arose after that date[2] unless Henry I had 'farmed out' the proceeds and the receipts were not shown in the Pipe Roll, as happened for a time after 1170 in Henry II's reign. Receipts from the 'coinage' of Cornwall were first shown separately in 1177[3]. In 1194 the Sheriff of Devon accounted for the tin returns for both counties[4].

The next step in royal involvement in the Stannaries came in November 1197 when William de Wrotham was appointed to act in all matters concerning the King in the Stannaries and in the following year he was appointed the first Chief Warden of the Stannaries and took over responsibility for them from the Sheriff. It is significant that his instructions were "to hold the tinners in that freedom which they ought and have been accustomed to have"[5]. Hubert Walter, Archbishop of Canterbury and Justiciar, was then engaged in raising money to finance Richard I's war in Normandy[6]. In accordance with Hubert's instructions, on 19 January 1197, a Jury of 26 'wise and discreet jurors', assembled at Exeter, decided the just duty and weight for coinage in the Devon Stannaries; a week later, a similar jury of 19 jurors, assembled at Launceston, made a similar report for the Cornish Stannaries. De Wrotham then received instructions from the Crown to increase the duty, and he proceeded to lay down new and exact rules for the collection of the coinage duties. These duties were to be collected with little variation in procedure till the

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2 Pipe Roll 31 H.I *Pipe Roll Soc.* (re-issue) 1929

3 Pipe Roll 24 H.II *Pipe Roll Soc.* Vol 27, p.16

4 Pipe Roll 4 R.I *Pipe Roll Soc.* NS Vol 5, p.171

5 Letter from William de Wrotham. Black Book of the Exchequer No. 10. See Lewis G R. *The Stannaries*, London 1908, Appendix A

6 See DNB under Hubert Walter

abolition of the coinage system in 1838 in favour of a small excise duty levied at the smelting houses[7]. Whether de Wrotham's actions provoked any adverse reaction from the tinners is not known - his summoning of the Juries for Devon and Cornwall has been interpreted as the origin of the later 'Convocation of Tinners'[8] - but on 29 October 1201 King John issued a Royal Charter which formed the basis of stannary legislation[9]. This highly important document laid down that all 'stannators' or tinners in Devon and Cornwall should be free of pleas of villeinage while they worked in the Stannaries "because the Stannaries are our demesne". It confirmed "as they had by ancient custom" the privileges of digging tin, and turves for smelting the tin, at all times, freely and peaceably and without hindrance from any man, everywhere in moors and in the fees of bishops, abbots and counts as they were wont to do, and of buying faggots to smelt the tin without waste of forest, and of diverting streams for their works and in the Stannaries. They were not to be under the jurisdiction of anyone except their warden or his bailiffs. It was provided that "the Chief Warden of the Stannaries and his bailiffs ... have over the aforesaid tinners full power to do them justice and to hold them to the law and if it shall happen that one of them be a fugitive or an outlaw then let his chattels be delivered to us through the hands of the Warden of our Stannaries, for the tinners are of our farm and always in our demesne". Tinners were also to be free of aids and tallages.

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7 Act 1 & 2 Vic c. 120

8 R R Pennington, *Stannary Law*, Newton Abbot, 1972, p. 14

9 The original is now missing, but the text is known from an *inspeximus* of Henry III. (Charter Roll 36 H III m. 18)

As Lewis pointed out[10], the liberties granted by John to the tinners affected the status of those who had previously been in the status of villeins. This caused understandable dissatisfaction among the baronial classes: accordingly the charter disafforesting Cornwall in 1215 included a provision that services owed by villeins should not be affected by the Charter of 1201 when they (the villeins) were not working in the Stannaries[11]. Lewis regarded this as a "practical revocation" of the provisions regarding freedom contained in the Charter of 1201; but on the face of it, it merely emphasised that when villeins were not working in the Stannaries they remained subject to the services and customs which otherwise affected them. As will be mentioned below, this suggests a system of part-time mining.

Presumably at this time, the Stannaries of Cornwall were divided into four districts - Penwith and Kerrier, Tywarnhaile, Blackmoor and Foweymoor. The Devon Stannaries were divided originally into three - Chagford, Ashburton and Tavistock, to which Plympton was added in 1328 originally in substitution for Tavistock, but after an outcry by the tinners, as an additional division[12].

After the Charter of 1201, an administrative structure developed to deal with the unique circumstances obtaining in the Stannaries. At the bottom were the stewards of each stannary area, each with his bailiff as executive officer and his court, dealing with

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10 Lewis, *The Stannaries*, (Note 5) p. 37

11 Charter Rolls 16 John m. 2

12 Patent Roll 1328. H P R Finberg, 'The Stannary of Tavistock' in *Reports & Transactions Devon Assoc.* Vol LXXXI (1949) p. 165

suits between tinners and tinners, and tinners and 'foreigners' on matters concerning mining. Appeals were dealt with by courts, one for Devon and one for Cornwall, presided over by the Vice-Warden, from whom again appeals lay to the Warden. In addition, in the time of the Black Prince, his Register records a number of petitions to the Prince on stannary matters[13], e.g. in July 1357 a complaint by the parson of Ladock that tinners were digging in his churchyard. The Prince usually sent the Petition to the Lord Warden with instructions to hear the parties and do them 'droit et raison'[14]. The Steward's Courts heard cases by Common Law rules, but the custom grew up of petitioning the Vice-Chancellor for equitable relief in cases where common law remedies were not adequate; again there was an appeal to the Lord Warden[15].

Above the Stannary Courts were the Stannary Great Courts for Devon and Convocations for Cornwall, which met irregularly to make a declaration of existing stannary customs and enact fresh legislation for the Stannaries. The earliest of these assemblies at present known is the Devon Great Court for 1474[16]. As has been remarked, the origin of these legislative assemblies has been traced to the juries assembled by William de Wrotham to make a declaration of Stannary custom; but it seems tempting to suggest that they may rather originate in a later Royal effort to devolve to local experts what was in effect the making of bye-laws. In Tudor times these

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13 *Black Prince's Register* (PRO Pt 2 51) 1353 fo. 54

14 *Black Prince's Register* (PRO Pt 2 122) 1357 fo. 78

15 Case of *Glanville v. Courtney* (1593)

16 T A P Greeves, 'Great Courts or Parliaments of Devon Tinners, 1474-1786' in *Reports and Trans. of Devon Assoc.* Vol 129 (1987) p. 145-167

Parliaments appear to have been summoned by a mandate from the Crown[17]. It is of the greatest interest that each of the major free mining areas developed such legislative bodies, though records of their proceedings do not exist prior to the late fifteenth century[18]. The Stannary Great Courts or Convocations are of particular importance because of the provisions of the Charter of Pardon issued by Henry VII in 1508[19] and dealt with below.

On 13 February 1225 King Henry III granted to his brother Richard the Earldom of Cornwall[20]. In the same year Richard received the tin mines in Cornwall belonging to his mother Isabella: and in 1239 he was granted the Manor of Lidford and Dartmoor, together presumably with the tin mines in that area[21]. Unfortunately, none of Richard's records survive, but it seems reasonable to suppose that about this time the system of Stannary Courts and Stannary jurisdiction grew up. The provisions of the Charter of 1201 must have involved the Warden and his staff setting up the legal structure outlined above. As early as 1243 profits from the Devonshire Stannary Courts were being paid into the Exchequer[22]. Cases were then decided by a Jury of Tinners under the presidency of a steward appointed by the Warden[23]. The rolls

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17 Greeves, *ibid.* p. 154

18 The Parliaments of the Forest of Dean miners, Derbyshire miners and Mendip miners will be dealt with below

19 Patent Roll, 23 H VII pt 2 mm 29-31

20 Close Roll 9 H III m 7, 9 & 12

21 See DNB

22 See Finberg, Stannary of Tavistock, (Note 12) his note 50

23 *ibid.* p. 165

of the Tavistock Stannary Courts for the years 1374-5, 1396-7 and 1477-8 have survived, showing that the steward held thirteen sessions of his court annually, of which two, in the spring and autumn, were known as Law Courts, and were general assemblies of all the tinners in the district[24]. As will be seen, this arrangement is very similar to the Barmoot and Great Barmoot Courts of Derbyshire. The surviving rolls show the court dealing with cases of debt, trespass, assault and the tin trade. In particular it dealt with complaints from tinners who had been impleaded in other courts over matters alleged to be properly the domain of the steward's court. The grand juries of the Law Court sessions of the court were called on from time to time to declare the customs of the tinworks - here one sees the germ of the later Stannary Great Courts or Convocations[25].

In the absence of any surviving records of administrative orders issued by the Earls of Cornwall during the thirteenth century, the development of the system of stannary jurisdiction is obscure; but in 1305 (following a petition the previous year from the Cornish tinners requesting a charter of their liberties) Edward I issued two charters for the tinners, one for Devon and one for Cornwall[26]. These were issued "for the emendation of the Stannaries and for the tranquillity and benefit of our tinners of the same ..." and went on "we concede ... that all the tinners of the said stannaries which are our demesne" should be free and quit of pleas

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24 *ibid.* his note 51

25 *ibid.* his note 52

26 Charter Roll 33 Ed I ■ 8 Nos 40 & 41

of villeinage and that they should not be liable in courts other than those of the Warden for acts relating to the Stannaries other than pleas of land, life or limb. They were to be quit of all tallages, aids and other taxes levied on towns and markets in the County. Also they might mine for tin and turves "in our moors and wastelands and elsewhere in the county" and divert watercourses for use in mining and use wood for smelting "as they were accustomed to do" without hindrance of any person. The warden and his deputy were to hear pleas arising between tinners and between tinners and others concerning "all trespasses disputes and contracts made in the places where they work if such pleas arise within the stannaries and that the warden should do justice between the parties" as has hitherto been customary in the stannaries. Tinners were only to be imprisoned at Lostwithiel for Cornwall or Lidford for Devon. In any case in which facts were concerned "which did not touch the stannaries" half the jury should be tinners and half 'foreigners' but if facts "touching the stannaries" were concerned, the whole jury should be tinners. Tinners were authorised to sell their tin, once coined, to anyone they pleased, subject to the Royal right of pre-emption. Finally, the Charters declared that tinners should have all their ancient freedoms and rights without hindrance by anyone. These Charters were approved by Parliament in 1305 and in 1343[27].

From the point of view of the present enquiry, the most important feature of the Charters was the confirmation by the Crown of rights already enjoyed by the tinners - freedom from villeinage, freedom from taxation other than the coinage duties, freedom to mine

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27 Parliament Roll Vol I 164 No. 50 and Vol 2 144 No. 50

tin wherever they pleased in moors and unenclosed land and within limits elsewhere. The Charters confirmed the right of tinners to mine for tin and dig turves for smelting "everywhere in the moors and fiefs of bishops abbots and counts" (1201) "everywhere in our lands moors and wastes and in those of all other persons whatsoever in the said county" (1305) "as they had been accustomed to do". These words were surely declaratory of existing rights, rather than granting fresh rights. At this period such mining was almost certainly alluvial ('tin streaming') rather than deep mining, and was bound up with the custom of tin 'bounding', by which each tinner or group of tinners could define their area of operations.

'Pitching' bounds was carried out by defining the four corners of a claim by "holes cut in the turf and the soil turned back upon the turf which is cut, in the form of a molehill and directly facing another of the like kind; these are called the corners of the bounds containing sometimes an acre, sometimes more and often less. By drawing straight lines from the corners the extent of these bounds is determined"[28]. Alternatively, the corners were marked by stones as being more permanent. Later, triangular side bounds were added so that the original quadrilateral bounds became pentagonal or even hexagonal[29]. It seems that originally it was not necessary for the bounder to obtain the consent of the owner of the land being bounded or even to notify him, and this was always the case in Devon. In Cornwall, the Convocation of 1686[30] provided that the

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28 Pryce, *Mineralogia Cornubensis*, rpr. Truro 1972, p. 137

29 Thos. Pearce, *Laws and Customs of the Stannaries*, London 1725 xiv

30 Cornwall, Convocation of 1686 order 1 in *Laws of the Stannaries of Cornwall* (Penzance 1974)

owner of the land must be notified within one year and the notification confirmed when the bounds were registered with the steward of the stannary. By the seventeenth century the power of bounding lay in wastrel lands and in the 17 manors of the Duchy of Cornwall, but not under houses or highways[31]. This was confirmed by the Cornish Convocation of 1752[32] as follows: "By the common usage and custom of the stannaries, any tinner may bound with tin bounds any wastrel lands within the County of Cornwall that are unbounded or void of lawful bounds; and also any several or enclosed lands that may have been anciently bounded and assured for wastrel by payment of the toll tin before the hedges were made upon the same; and also may cut bounds in the Prince's several and enclosed ancient assessionable Duchy manors according to the ancient customs and usage within the said several Duchy manors ... paying the usual toll to the lord of the soil as is generally paid within the stannaries (that is to say) a fifteenth dish or part ... and whereas there are several ancient and laudable customs relating to the cutting renewing and working of tin bounds: be it hereby declared and enacted that all such customs shall remain and be in force, unless they are hereby particularly limited and restrained". One will note here the use of the expression "dish" used for payment to the landowner on cutting bounds in the same way that a dish of ore is paid in Derbyshire on registering a claim.

As time went on, additions and exceptions to the custom of bounding developed. The earliest known Great Court of Devon

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31 BL Add Mss 6317 23

32 *Laws of Stannaries.* Convocation of 1686 order 8

apparently provided that any tinner pitching bounds on land formerly bounded must give notice to the earlier bounder, who then had three months to prove that the earlier bounds were still in force[33]. The Devon Great Court of 1510 declared[34] that it was lawful for every man to dig tin in every place in the County of Devonshire where tin was found, but in 1574[35] tinners were forbidden to mine under manured arable land or any other land under grain or crops or within two years after the most recent crop was harvested, or under meadows, orchards, gardens, mansions or houses. Tinners were also forbidden to cut down more than twenty timber trees in any wood or coppice. In 1537 and 1538 a jury of the Stannary of Foweymoor presented that no one might mine in the King's enclosed land in the Duchy Manor of Stoke Climsland without the King's licence[36].

There is no information as to the date of origin of the custom of tin bounding. The wording of the Charter of 1201 makes it plain that tin working was then in progress in Devon and Cornwall under customary rules and it seems reasonable to suppose that such customs included bounding. There are apparently no records of the actual position of bounds prior to the Ordinances of Prince Arthur referred to below. Buckley[37] remarks that "it is certain that the local stannary officials had some record of who held which bounds

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33 Quoted in T A P Greeves, 'Great Courts', (Note 16) p. 148

34 Devon Great Court 1510 s. 3

35 Devon Great Court 1574 s. 17

36 BL Add Mss 6317 123

37 J A Buckley, *Tudor Tin Bounds West Penwith*, Redruth 1987, p. 13

in the areas under their jurisdiction" but none of these records have so far come to light. It does seem obvious that a steward must have had some record of the sites and owners of bounds so as to be able to check whether tin was being put forward for coinage, and to stop evasion of coinage. Tin bounds by custom had to be renewed every year[38], which suggests that the early tin bounders were part time workers, who were farmers or fishermen part of the year and who worked a neighbouring tin bound when their services were not needed elsewhere. By Henry VII's reign, the alluvial tin was becoming scarcer, and lode mining was becoming necessary; bounds would need to be more extensive, and also interlocking, so that some form of registration must have become a necessity to avoid disputes. Prince Arthur's Council issued an ordinance in 1496[39] which ran: "If any tinner shall hereafter pitch any tinwork he shall at the next law court enter the whole bounds of the same tinwork and the name of the tinwork with the names of his fellows ... and the steward or his clerk shall take for all those entering one penny for each name". The Devon Great Court of 1494[40] had made a similar stipulation and had provided that unregistered bounds should be void. In 1532 the Devon Great Court[41] repeated the provision that where new bounds covered former bounds the incomer should notify the owner of the original bounds who then had three months to assert his continuing rights. In Cornwall, by the Convocation of 1686[42] the pitcher of

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38 Cornwall Convocation for 22 James I s. 18

39 BL Add Mss 24746

40 Devon Great Court 1494 s. 4

41 Devon Great Court 1532 s. 1

42 Cornwall Convocation 1686 s. 1

new bounds had to have the bounds proclaimed in three successive Courts, and then if there was no objection a writ of possession would be granted. Bounds had to be renewed annually, not on the exact anniversary of the initial bounding but on the day following that anniversary[43]. Failure to renew the bounds led to their loss, but bounds did not actually have to be worked between renewals.

In Devon, bounds were regarded as a perpetual interest or freehold, subject to termination if not renewed yearly[44]. In Cornwall, they were regarded as a yearly interest, but if the original owner missed the date for renewal but later renewed the bounds before any other person intervened, he retained the right to his bounds[45]. In the same case the Queen's Bench had to apply to bounding the usual rule as to the validity of a custom of uncertain but ancient origin -was it reasonable or not? The decision was that, while the custom of bounding was reasonable in itself, when bounds had been renewed for many years without being worked, they became unreasonable, and therefore invalid. In any case the development of modern mining leases in the nineteenth century rendered bounding unnecessary. No doubt one could bound today, and register and proclaim the bounds in the County Court as successor to the functions of the Stannary Courts[46].

To return to the administration of the Stannaries, in 1508

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43 Beare, *Bailiff of Blackmoor*, ed. J A Buckley, Redruth 1994 p. 28

44 Swirke, *Case of Vice v. Thomas*, London 1843, p. 59

45 Case of *Rogers v. Brenton*, 1847, 10 QB 26, 68

46 Pennington, *Stannary Law*, (Note 8) p. 100

Henry VII claimed that the tinners had disregarded the provisions of the various Ordinances issued by Prince Arthur in 1496, and that accordingly their liberties had been forfeited. This was no doubt one of the steps designed to raise further funds connected with the names of King Henry's unpopular ministers, Empson and Dudley[47]. However, "being a merciful monarch" Henry pardoned the tinners' offences in exchange for a payment of £1,000 by a Charter of Pardon[48], and not only restored the tinners' liberties but made a truly remarkable and quite unparalleled grant as follows: "that no statutes acts ordinances ... or proclamations shall take effect in the said county or elsewhere to the prejudice or in exoneration of the said tinners bounders possessors of tinworks ... or the heirs or successors of any of them unless there has previously been convened twenty four good and lawful men of the four stannaries of the County of Cornwall namely six men from each of the stannaries elected and appointed from time to time as occasion requires ... whenever howsoever and wheresoever such statutes ordinances ... or proclamations are made by us or our successors or by the Prince of Wales or Duke of Cornwall by his council ... so that no statutes or ordinances ... or proclamations to be made in future by us our heirs and successors or by the said Prince and Duke of Cornwall for the time being shall be made except with the consent of the said twenty four men so elected and appointed ...".

The twenty four elected stannators were empowered to veto legislation, not to enact it. The Ordinances of Prince Arthur were

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47 See DNB under Richard Empson and Edmund Dudley

48 Patent Roll, 23 H VII pt 2 m 27-31

in fact repealed by the Charter of Pardon, but this did not prevent the Stannaries from continuing to register bounds as directed by the Ordinances or the Convocations to pass amending or declaratory laws affecting the Stannaries. The provisions of the Charter of Pardon should have been ratified by the Westminster Parliament, but possibly owing to the death of Henry VII this ratification never took place. Nevertheless, the Charter of Pardon, with its power of veto over central legislation appears to have been accepted as valid. In 1588 the Cornish Convocation apparently were advised that the Pardon provided that new legislation could only be passed by a unanimous decision of the Stannators, and expressed a desire for explicit powers to be granted to them to pass legislation by a majority vote[49]. Echoes of the Charter of Pardon were heard as recently as the 1980s, when it was claimed that the Poll Tax legislation of the Thatcher government affected tinners (supposing any still existed) and ought to be approved by a Convocation[50]. But of course the Lord Warden has not summoned a Cornish Convocation since 1752 - he would need a Royal warrant to authorise him to do so - and the chances of such a summons being issued seem remote, to put it mildly.

One wonders whether the advisers of Henry VII had really thought the provisions of the Pardon through. The possibilities for stirring up trouble contained in its provisions seem boundless. Possibly they were anxious to pander to the rebellious nature of the Cornish tinners, bearing in mind the trouble they had caused as

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49 Convocation Act 1588, ss. 4 & 5

50 *Times Newspaper*, 29.8.89 and 5.9.90

recently as 1499 in connection with Perkin Warbeck's imposture[51]. Be that as it may, the Charter of Pardon marked the high water mark of the free mining customs in the Stannaries, and the subsequent gradual decline of customary mining in Devon and Cornwall will be dealt with later.

Part Two - The Forest of Dean and Hundred of St Briavels

The Free Miners of the Forest of Dean are exceptional in a number of ways. Firstly, a free miner must be qualified by having been born in the Hundred of St Briavels (which does not cover quite the same area as the Forest of Dean). Secondly, he must be 21 years of age or over and must have worked for a year and a day in a mine. Thirdly, he must have registered his name with the Gaveller, the Crown Official who oversees the mines of the Forest. These qualifications are laid down in the Dean Forest Mines Act 1838[52], but apart from the registration they represented what had been regarded time without mind as the qualifications of a free miner. Forest of Dean Quarrymen similarly qualified[53] are regarded as free miners "so far as relates to having gales or leases of stone quarries but not otherwise". It was believed by many free miners in 1838 that in addition a free miner must be the son of a free miner but this was not included in the provisions of the Dean Forest Mines Act 1838[54]. Such qualifications are not required in any other free mining district (except possibly Purbeck). Nevertheless, the Dean Forest miners did

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51 DNB under Warbeck, Perkin

52 1 & 2 Vic cap 43, ss 14 and 16

53 1 & 2 Vic cap 43 ss 15 and 16

54 J G Wood, *Laws of the Dean Forest and Hundred of St Briavels*, London 1878 p. 134

not form, and apparently never have formed, any sort of corporation or gild, a circumstance which caused them to be refused a hearing at the Justice Seat in Eyre held by the Crown under its Forest jurisdiction in 1634, "they not being a corporation"[55]. There is indeed no royal charter or similar document granting rights to the Forest of Dean miners before a transcript dated 16 April 1610[56]. Another transcript dated 7 January 1673 starts: "Be it in mind and remembrance what the Customes and franchises hath beene that were granted tyme out of minde and after the tyme of the most excellent and redoubted prince King Edward"[57]. According to Hart[58], "there is a tradition that the Dean Miners were granted confirmation of their customary privileges" by a King Edward for services in connection with the Scottish Wars and in particular with the siege of Berwick. Berwick was besieged by the English on a number of occasions; for example, on 2 August 1310 King Edward II ordered 100 archers and 12 miners to be conducted to Berwick[59]. There were numerous other occasions when the services of Dean miners were required for military purposes by the Crown and it may be that the Crown authorities felt that privileges customarily enjoyed by those miners should be restricted to natives of the area, who might be expected to have exceptional expertise qualifying them to act as miners in time of war. But this must be only speculation.

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55 'Report of the Commission of Enquiry', 5 March 1671, quoted in the '3rd Report of the Commissioners appointed to enquire into the ... Woods and Forests and Land Revenues of the Crown', *House of Commons Journal*, Vol 43 (1788) p. 563

56 PRO Knole-Sackville Mss (Cranfield Papers) No. 1444

57 C E Hart, *The Free Miners of the Forest of Dean*, Gloucester 1953, p. 87

58 *ibid.* p. 19

59 Rot. Scotiae Vol 1, p. 91

It is possible that the status of the free miners of the Forest of Dean has some connection with Dean being a Royal Forest (whose boundaries were once considerably larger than today). While one notes that Devon and Cornwall had at one time been subject to Forest law, as were part of the Mendips and the High Peak in Derbyshire, the Forest of Dean's status as a Royal Forest has survived into modern times, the area being a prime source of timber for the Royal Navy. Evidence of the existence of the free mining customs in the Forest of Dean can be found earlier than the fourteenth century. A mutilated document dated c. 1244[60] refers to "all the men who dig the coal" making payments to the Constable of St Briavels and to various foresters, and similarly "when iron ore is found". In 1282 there are apparent references to the mining customs by the Regarders of the Forest Eyre of that date[61], in particular "the Lord the King has the ore in Great Dean Bailiwick and takes of each worker who seeks pay three seames of ore 1d per week and when at first the ore is found the Lord the King will have one man working with the other workers at the ore and will hire him for 2d per day and will give as pay as much as falls to the worker Item, the Lord the King will have ore weekly six seames of ore which are called 'law ore' and will give for this to the workers 6d per week". But these references do not explain how the 'workers at the ore' came to have the right to do so.

The earliest printed statement of the laws and customs of the Miners in the Forest of Dean is contained in a booklet entitled, *"The*

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60 Forest Proceedings KR bndl 1 No. 25 quoted in Hart *Free Miners*, (Note 57) p. 12

61 Forest Proceedings TR No. 31 *ibid.*

Laws and Customs of the Miners in the Forest of Dean", published in London in 1687[62], which is based on the before-mentioned transcript of 16 April 1610 which is stated to be the record of an 'inquisition' made by a jury of 48 miners at an unspecified date[63]. Hart was unable to ascertain from the names of the miners forming the jury even an approximate date of the inquisition, but he considered that the document of 1610 was plainly a transcript and not the original document. The printed "Laws and Customs" commences by setting out the bounds of the Forest at their greatest extent, included the phrase "as far into the Seassoames as the blast of a horn or the voice of a man may be heard". The word 'Seassoames' has been suggested to mean the River Severn. In s.2 the Laws provide that trespassers must "come by the noise of the horn or the cry". This suggests a very early origin for the laws, being reminiscent of the rule in Anglo-Saxon laws that a stranger must announce his presence by shouting or blowing a horn[64]. To continue, s.4 provides that a miner may mine "in any place that they will, within the bounds or without, without the forebodement of any man". Then follow provisions for recovering debts due to miners in ss. 7-11 including a ceremony of swearing in Court as to a debt while holding a stick of holly (again, obviously a very early custom). By ss. 10 and 11, a miner was entitled to distrain on a debtor's horse and harness to recover a debt. S.12 provided that a miner might mine in Crown or private property without hindrance. By s.13 the Gaveller should provide a 'convenient way' from a mine to the

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62 There is a copy in the Cambridge Univ. Library

63 Hart, *Free Miners*, (Note 57) p. 16

64 *ibid.* p. 38 n.3

nearest King's Highway and also provide a supply of water for the mine. By s.14 the owner of the soil where the mine lay was to be entitled to put in a partner, provided that he bore his share of the expenses. The landowner's man might withdraw at his will and come again if he wished, paying a proportion of the cost incurred in the meantime. S.15 provided that the Crown was also entitled to put a man into the fellowship without cost, as soon as the Gaveller had registered the mine, and was entitled to 1d each week if the mine had raised three 'seames' of mine. By s.16 the Crown was to have 'law ore', a seame of mine each quarter for each partner in the mine, the Gaveller visiting the mine every week on a Tuesday to collect the dues. If on a quarterly visit the miner was not at the mine, the Gaveller was to collect the 'law ore' himself.

Ss.17 and 18 made provision for the miner being unable to pay the Gaveller his dues: in such a case the miner was to be fined two shillings and the Gaveller was to collect such ore as would pay off the debt; or the Gaveller would take an oath from the miner that he would pay, and if he then failed to pay "he shall never be believed then against any man". By s.19 the miners 'beneath the wood', i.e. in Mitcheldean, Littledean and Ruardean, were to pay the Crown 12 'charges' of mine every week if they should have raised that much and the Gaveller was to pay the miner 12d for this. Ss. 20-23 dealt with the Mine Lawcourt. The Constable of St Briavels Castle should hold a Court ('that is called Mine Law') every second Tuesday. Only miners were to plead in the Court and "he that is found guilty ... shall be amerced to the King in two shillings". By s.21 if any person brought a plea against a miner in any other Court the Constable was to require the case to be brought into his Court to be

tried by the Constable and miners. The jury was to consist of 12 miners in the Court, with an appeal to a jury of 24 miners and a final appeal to a jury of 48 miners. By ss. 24 and 25 a miner might bequeath his share to whomsoever he pleased: if he died intestate the mine was to pass to his heir-at-law. Ss. 25 to 28 allowed miners to call for as much timber as they needed for the safety of their mines from the Verderers at the Court of Attachment (which was held at the Speech House every six weeks). If the Constable failed to deliver timber the miner might collect it. By s.34 a miner was also entitled to have enough timber to build a lodge at the mine.

It is evident that at that date the most important mineral mined was not coal but iron ore, for s.29 provided that partners in a sea-coal mine should pay the Crown only 1d a week (instead of the 12 charges of mine mentioned by s.19). S.30 provided that no stranger was to pry into the 'privities of our sovereign Lord the King in his said mine'. S.31 provided that only one type of measure for carters was to be used (under penalty for using any other measure). By s.34 a miner might have enough space round the mine for the miner to stand and 'cast redding' and s.40 provided for the event of mine galleries meeting underground. It seems plain that the code of Laws and Privileges must have been far older than the date (presumably before 1610) when this jury of 48 miners met to set down what they believed to be the customs of the Forest. Certain of these customs must have been very ancient indeed, considering the archaic way in which they are set down. Many of the terms used are peculiar to the Forest and some. e.g. 'smith holder' very difficult to understand, indeed one cannot follow what is meant by s.5 of the Laws. Other terms used such as 'seassoames' were no

doubt intelligible to the jury which set them down, but in the absence of a glossary are now puzzling. Other unusual technical terms are 'forbode' and 'forebodement', meaning a sort of injunction and 'till gree is made', meaning apparently ' until payment is made'. The printed Laws and Privileges have traditionally been known to the miners of the Forest as the Book of Dennis, but no satisfactory explanation of this name has so far been put forward.

Witnesses to legal actions in the seventeenth century spoke of an ancient parchment containing the laws; one witness asserted that "the miners do ground their customs upon a certain writing commonly called an Inquisition which writing he hath heard (*sic*) and begins in these or the like words, viz. 'Be it remembered that these are the Laws and Customs of the mines of the Forest of Dean'"[65]. One presumes that the witness was illiterate and had had the document read to him; but it is well known that illiterate people compensate by developing excellent memories, so one may accept his word as a record.

The date of origin of the Mine Law (the miners' lawcourt) is not known. It seems plain that the Court must have been functioning in the sixteenth century, for in 1625 a witness deposed that the Court was held "at any time there be three actions to be tried and as necessity shall require ... and the Court has continued by the space of 40 years to this deponent's own knowledge and as he has heard from his father and others a long time before"[66]. At

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65 E. 112/83/411 m. 3 quoted in Hart, *Free Miners* (Note 57), p. 66

66 Exch. Deps. by Comm 22 Jac I (1625) Easter 9

that time the Court was held by the Constable of St Briavels Castle in his capacity as Steward of the Mine Law. He received 33s 4d yearly for keeping the Mine Law, the Castle Court of St Briavels and the 'Speech Court'. There are earlier references to a Court held at St Briavels Castle. In about 1433[67] John, Duke of Gloucester, complained of his treatment at a Court held there from three weeks to three weeks, where "he was denied the right to make attorney in no wise, which is against the law", and about fifty years later[68] there is a reference to a similar court "where they daily make new laws at their wills and call them from thenceforth customs", and where no challenge to the jury was permitted. Hart[69] considered that it was doubtful whether the Dean miners had any connection with this Court, but it is a possibility.

The accession of James I in 1603 was followed by trouble in the Forest of Dean. The Earl of Pembroke was appointed Constable of St Briavels in 1608 and on 13 June 1611 a lease of the Forest, the Castle and the minerals was granted to him by the Crown, followed on 17 February 1612 by a lease of the timber[70]. These transactions provoked riots in the Forest and the Crown took out an injunction forbidding miners to dig and carry away ore and cinders. Representatives of the miners then appeared in Court and pleaded their customary rights, saying that they were poor labouring men who relied for their livelihood on mining and digging ore and cinders

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67 Early Chancery Proceedings bdl. 12 No. 41

68 Early Chancery Proceedings bdl. 60 No. 200

69 Hart, *Free Miners*, (Note 57) p. 72

70 E. 112/83/411

and their delivery to the iron forges. The Court therefore agreed on 18 January 1613 that the miners could continue their mining on condition that the ore and cinders were delivered to the Crown forges and ironworks.

There was then a complaint made to the Court by a wiredrawer, William Whitefoot, that the free miners had been selling their iron ore out of the Forest and not to the Crown miners, and a Commission was set up by the Crown to find other persons who would deliver ore etc. to the King's forges. This provoked further litigation in the Exchequer Court, in which the answer of the free miners to the complaint gives a full description of their customs[71]. It is not known what transpired, but the customs of the miners evidently continued. In various lawsuits in the following years the customs of the miners were given in evidence and apparently upheld[72]. But in 1634 Charles I decided to revive the Forest Law by holding a 'Justice Seat in Eyre' for redressing the great abuses which through the discontinuance of the Forest Laws are there grown so high[73].

The Justice Seat opened on 16 July 1634 and parties claiming various rights in the Forest had to appear and put forward their claims. The Free Miners put forward a claim but the Justices refused to hear them as they were not a corporation, so that their claim to customs was not considered - this may have been just as

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71 E. 112/83/411 noted in Hart, *Free Miners*, (Note 57) pp. 168-171

72 Hart, *ibid.* pp. 176-183 passim

73 SP 266, 576

well, as other persons who put forward claims were heavily fined for waste or encroachment[74]. The instructions issued to the Forest officials in 1635 do not specifically mention any restraint on the miners' right to timber[75]. Charles I was anxious to increase his takings from Forests, and in September 1635 the Surveyor General was instructed by the Treasury to find out what profit came from the coal mines in the Forest[76]. In 1637 Edward Tyringham, a Privy Councillor, was granted a lease of all the coal mines and gritstone quarries in the Forest at an annual rent of £30[77]. Tyringham met with resistance from the inhabitants of the Forest generally, and in 1640 he surrendered his lease and was compensated[78].

The King's pressing need for cash then led him to sell 18,000 acres of the Forest, including all the mines of coal and iron ore, to Sir John Winter. What effect this would have had on the free miners is not clear; the outbreak of the Civil War led to much unrest and plundering in the Forest and eventually the Commonwealth Government made efforts to reorganise the Forest administration[79]. In 1652 mining must have been in progress as in that year there was a law-suit[80], by which John Brayne sought to enforce an agreement between the partners in the gale of an iron ore mine for 20 years

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74 C E Hart, *The Verderers and Forest Laws of Dean* (Newton Abbot 1971), p. 100

75 Quoted in Hart, *Free Miners of the Forest of Dean*, (Note 57) pp. 101-2

76 H G Nicholls, *The Forest of Dean*, London 1858, p. 27

77 Hart, *Free Miners*, (Note 57) p. 187

78 *ibid.* p. 194

79 *ibid.* pp. 196-7

80 *Brayne v. Tucker & ors.* quoted in Hart, *ibid.* p. 198

at a rent of £70 per annum - the earliest reference to miners' rights being leased. According to the record the Deputy Gaveller, Christopher Tucker (one of the defendants), had commuted the King's share of the mine for £10 per annum[81]. Shortly after this comes the first surviving record of proceedings in the Mine Law Court, a hearing held at Littledean on 20 May 1656[82]. Held before the Deputy Constable of St Briavels and three Deputy Gavellers (including Christopher Tucker) it heard numerous cases involving miners. Tucker himself brought a number of cases arising out of his duties as Deputy Gaveller. In one case the widow of a free miner claimed against her late husband's partners for a payment due to her 'as long as the pit did last'. One case referred to an order 'which was made of the last 48 men for the hiring and employing foreigners ...'. There is no reference to a jury of 48 at this Court.

The next session of which there is a record was held at Clearwell on 12 March 1668 before the Deputy Constable, the Clerk or Steward of the Court and four Deputy Gavellers[83]. There was a jury of 48 and a number of orders were made. These are collectively referred to by Hart as "Order No. 1" but from the reference quoted above it is obvious that earlier legislative sessions of the Mine Lawcourt must have been held, and how far back in time these stretched is unknown. Order No. 1 contains 12 separate orders: from this date in 1668 till 1777 the Mine Law Court passed many orders. There were seven sessions between 1668 and 1687;

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81 Exch. Decrees, 13 May 1652 E.126 vol v. fol 274

82 Quoted in Hart, *Free Miners*, (Note 57) pp. 77-80

83 *ibid.* pp. 81-3

four between 1693 and 1707; two in 1717 and 1718. Thereafter it met much less frequently, in 1728, 1737, 1741, 1754 and 1775. The last meeting took place on 28 August 1777 which is said to have broken up without any agreement, and shortly after its final meeting it was alleged that the records of the Court were stolen from the Speech House (where they had been kept in a chest). The Deputy Constable and the Deputy Gavellers claimed that in the absence of the records they were unable to hold further sessions. It is surely most significant that many of the missing records were produced to the Commissioners in 1831 by the then Deputy Gaveller[84]. Furthermore, the Rev. Mr Nicholls seems to have been shown a number of other documents produced to him by the then Deputy Gaveller, which cannot now be found[85]. The records of the Court which were formerly in the office of the Deputy Gaveller (those produced in 1831) are now in the PRO[86]. One can only conclude that the existence of the Court had become a danger or inconvenience to the Crown authorities and that, with or without instructions from Whitehall, the Forest administration had decided to end it by force or subterfuge.

The topics dealt with in the surviving orders of the Mine Law Court are not very numerous as the same subjects come up again and again. As might be expected, qualification to be a free miner is frequently debated. In 1668 it was declared that a miner should be apprenticed for six years and then work for a year and a day before

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84 *Fourth Report of the Dean Forest Commissioners of 1831*, p. 445

85 H G Nicholls, *Forest of Dean*, (Note 76) p. 236

86 PRO Class F.16. The various orders are set out verbatim in Hart, *Free Miners*, (Note 57) pp. 91-136

being admitted as a free miner, while a person born as a 'cabinner' (i.e. a squatter in the Forest) was to serve seven years' apprenticeship. In 1680 it was ordered that a youth should be apprenticed for five years and reach the age of 21 before he could keep horses for carrying. In 1737 it was ordered that a 'foreigner's' son, though born within the Hundred of St Briavels, should not be admitted a free miner unless he had served seven years' apprenticeship. At an adjourned Court in 1677[87] before a jury of only 12 men, there was a complaint that Owen Thomas had not been born within the Hundred, but following evidence that his birthplace was eight yards (!) inside the boundary, he was declared to be qualified.

A topic which occurs again and again is the carriage of iron ore and coal. In 1668 no foreigner was to carry from pits but, presumably following complaints, in 1674 foreigners could carry for themselves, but forest natives were to be served first. The following year, after complaints from the gentry (whose views become of increasing importance as time went on) this rule was modified, but in 1687 it was reiterated that forest people were to be served first. In 1719 no foreigner was to be served, except those from certain areas who required coals for their own use.

Repeatedly from 1668 onwards the Court tried to prevent any miner from acquiring a dominant position in the carrying trade. In 1668 no miner was to have more than four horses, and only miners who were also householders were to carry iron from the pits. In

87 Hart, *ibid.* p. 98

1687 those who carried were to have land on which to graze their horses. In 1728 it was repeated that only free miners might carry on haulage (except one named landowner), and in 1737 any miner 'loading foreigners' carts' was to be fined. However, in 1741 the prohibition on foreigners' handling was repealed. In addition, there were frequently rules as to the destination to which miners might carry ore or coals. In 1668 miners 'below the wood' might carry to Mitcheldean, Littledean, Westbury and Newnham 'so that no foreigner might be permitted to be laden by them within the Hundred'. In 1679 there was a temporary embargo on shipping coals below Welsh Bicknor, and in 1719 there was a division; miners above the wood were not to ship coals above Welsh Bicknor, those below the wood were not to ship coals below Welsh Bicknor.

The Court repeatedly tried to regulate prices of iron ore or coal for certain destinations. In 1668 and subsequently six 'bargainers' were to be appointed to agree prices with the customers for iron ore, and it was ordered that miners might deliver iron ore to a destination until the amount bargained for was delivered. In addition, an order fixed prices for 'lime coal' delivered to the lime kilns. In 1680 a whole series of prices for delivery to various furnaces was made, and bonds were to be taken from the ironmasters to ensure prompt payment. In 1682 undercutting prices was forbidden, but in 1687 all the provisions about bargains and prices were repealed, only to be reintroduced in 1693 and 1694. In 1701 bargainers were to be appointed for the Irish export trade and the Constable and Steward were authorised to appoint bargainers without reference to the Court. In 1719 bargainers were to be appointed for lime coals, and prices set for lime coals and smithy coals. In 1741

there were a series of complex rules to govern the shipping of coals on the Wye, and the prices to be charged included those for sales as far up the Wye as Hereford.

There are surprisingly few decisions of the Court regarding the actual work of mining. In 1674 there was an order that where a 'surffe'[88] (i.e. a level or adit for drainage) had been made, no other mine might come within 100 yards of the surffe. In 1693 this distance was increased to 300 yards, in 1728 to 500 yards and in 1754 to 1000 yards. It was also provided that the 'water wheel engine' was to be deemed to be a level. This suggests that the Court was considering revising the rather illogical rule that a 'pit' as distinct from a level had a zone of protection of only 12 yards round it. In 1682, 1697 and 1707 orders were made that disused mines were to be railed off. In 1701 every mine was to keep scales for weighing.

The Court also made orders regulating its own conduct. In 1675-7 fines for disorder in Court were laid down. In 1694 there were orders for "the better regulating the proceedings and trials in this Court for the future". In 1728 rules were made regulating the use of 'forbids' (injunctions). Between 1701 and 1719 rules were made regarding the keeping of Court records. It is particularly interesting that between 1675 and 1717 orders were made for levies on all working miners to support legal costs of defending the rights of free miners in [unspecified] Court actions which were invading "the ancient rights privileges and customs of His Majesty's miners

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88 cf. the word 'sough' in use in Derbyshire

of the ... Forest of Dean". Finally, the Court on numerous occasions declared that persons were to be honorary free miners, presumably authorising them to hold gales. This first occurred in 1674, culminating in 1754 when no less than 21 of the local gentry were given honorary status. This could be seen as an effort to enlist the local gentry - and their capital - as a shield against the incursion of 'foreigners', but if so, it was not effective. In 1835[89] Mr Mushet handed in a 'memorial' on behalf of 'foreigners' which mentions a number of resolutions which Mushet alleged to have been passed by the Mine Court in 1775. These included: that a free miner might give his mine to any person that he wished - if he gave it by Will, the donee should produce the Will in Court[90]; that 'foreigners' having any mine in the Forest should sell it to some free miner by public auction or private sale[91]; if a free miner died and left his mine to a foreigner, the mine was to be sold, or a free miner hired to work it[92]; and finally, if a free miner sold his mine to a foreigner he was to be liable to a penalty of £20[93].

As already mentioned, the Mine Law Court held its final session on 26 August 1777[94], and this was followed by the theft of the Court records, and their absence used as an excuse for not convening the

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89 *4th Report of the Dean Forest Commissioners*, p. 44. Appendix No. 1. As these extracts were presumably designed to further the cause of 'foreigners' it is perhaps unwise to accept Mushet's version of the alleged resolutions as true

90 Mushet's clause 8 in *4th Report of the Dean Forest Commissioners*, Appendix 1

91 Mushet's clause 16 *ibid.*

92 Mushet's clause 17 *ibid.*

93 Mushet's clause 18, *ibid.*

94 Hart, *Free Miners*, (Note 57) p. 137

Court thereafter. It cannot be doubted that the cessation of the Court was a severe -in fact a fatal - blow to Free Miners' rights. The theft of the records was almost certainly at the order, or with the connivance, of the Deputy Gaveller (since his heirs were able to produce the records, or most of them, to the Dean Forest Commissioners). This raises the presumption that the theft was at the instigation of either the Crown authorities or certain of the foreigners. The absence of a public forum for airing the discontents of the local community inevitably led eventually to disturbances in the Forest and the intervention of Parliament by setting up the Dean Forest Commissioners in 1831. Inevitably there followed that reorganisation of the mines and the statutory regulation of free mining by Parliament[95]. The proceedings of the Mine Law Court up to 1777 suggest that, in the absence of *force majeure* the Court might well have been able to regulate the Forest mines and find a way through the difficulties which beset the Forest miners after 1777. But, as will be seen later, forces such as the need for extra capital for steam pumping engines and for the development of the 'deep gales' presented problems of a quite unprecedented nature which the relatively unsophisticated free miners would in any circumstances have found daunting. Particularly interesting are the resolutions to raise money to cover legal expenses - these indicate a degree of corporate action which might have enabled the free miners to act as a united body and defend themselves against the 'foreigners'. But whether they could ever have found sufficient capital for their needs without sacrificing part of their freedom of action seems unlikely. Yet, as will be seen later, there were free

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95 Act, 1 & 2 Vic. cap. 43

mining families who managed to build considerable enterprises: so that the task was not beyond human ability.

Part Three - The Mendips

It may be significant that the lead mining area in the Mendips was partly a Royal Forest. The whole of the unenclosed common area of the Mendip Hills was loosely referred to as the Forest of Mendip, though according to Gough[96] the bounds of the Forest of Mendip laid down by perambulations in the reign of Edward I only include one of the four mining royalties (Charterhouse on Mendip). Active enforcement by the Crown of the Forest laws in the area appears to have ceased in 1345 after the coming into force of a Charter of 1 September 1337 by which the Bishop of Bath and Wells obtained the disafforestation of his Manors of Cheddar and Axbridge[97]. The existence of the Forest of Mendip may well be connected with the ninth century Anglo-Saxon royal palace of Cheddar.

There is no mention of mining in the Mendips in Domesday Book, and the earliest reference thereafter to mining in the area in official documents appears to be in a Charter of Richard I dated 26 November 1189 allowing the Bishop of Bath and Wells and his successors the right of mining lead wherever it could be found on his land in Somerset "freely quietly and honourably and without any contradiction or impediment"[98]. In spite of this Charter the Bishop was heavily fined the following year for a mining encroachment on

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96 J V Gough, *Mendip Mines and Forest Bounds*, Somerset Record Soc. Vol 45 (1931) pp. 169-172

97 *ibid.* pp. 173-4

98 J V Gough, *Mines of Mendip* (revised ed. Newton Abbot 1967) p. 49

the Forest[99]. By two charters in 1235 Henry III permitted the Bishop to mine for iron and other minerals, not only at 'Hidun' [Charterhouse Hydon] but elsewhere on the Hill of Mendip[100].

There is evidence that the Bishop was receiving royalty payments from mining in the late thirteenth and the fourteenth centuries[101]. The Carthusians of Witham (who were granted pasture rights on Mendip by Henry II when their House was founded in 1182) were also granted mineral rights on Mendip in 1292 by Edward I, apparently over the same land as that on which the Bishop had been granted similar rights in 1235[102]. It can hardly be doubted that the miners on Mendip were regarded by the Crown as Royal servants with a similar status to those in Derbyshire, as on occasions in the fourteenth century royal orders were sent to the Sheriff of Somerset to send miners to other mining areas[103]. The existence of the free mining on Mendip first finds written reference in the reign of Edward IV when "the Old Ancient Custom of the occupation of the Mineries in and upon the King's Majesties' Forest of Mendip" was set down in writing, apparently in conjunction with an enquiry made by Sir Richard Chocke, a High Court Judge[104]. By this time the rights of the Crown over the miners had been in some way transferred to four Lords Royal who were entitled to claim the royalty on lead

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99 J V Gough, *ibid*, p. 50

100 Cal. Close Rolls, 1234-7, pp. 86 and 92-3

101 J V Gough, *Mines of Mendip*, (Note 98) pp. 51-2

102 Cal. Pat Rolls, 1281-92, p. 73

103 Gough, *Mines of Mendip*, (Note 98) p. 57

104 *ibid*. pp. 69-70

formerly (presumably) payable to the Crown.

As will appear later, it may not be entirely coincidental that Chocke had been for many years one of the retained Counsel of the Duchy of Lancaster. The judicial enquiry dealt with a dispute about rights of pasture and not about mining: but for some reason which has not so far been explained, the basic mining customs of Mendip are set down on the edge of maps of Mendip following an account of "Lord" Chocke's visit to Mendip. According to this account, the men of Mendip agreed to be bound by the decision of the four Lords Royal of Mendip regarding the rights of pasturage, as had been suggested by Chocke. These Lords Royal were, according to Leland[105], first, The King, whose part had come to the Bishop of Bath and Wells; second, the Abbot of Glastonbury; third, Lord Bonvill, whose part came to the Grey family; and lastly formerly Gurney, then Sir John Newton. Leland made his itinerary between 1535 and 1543. As Gough points out[106], Leland's list presents difficulties. Three of the Lords Royal were certainly the Bishop (Manor of Wells), the Grey family (Manor of Chewton) and Newton (manor of East Harptree or Richmond), but the fourth is doubtful as none of the manorial records are available at present. It is strange that if the Abbot of Glastonbury was a Lord Royal, no record of mining occurs in the surviving records of Glastonbury Abbey, and consequently Gough doubted whether the Abbot had been a Lord Royal. Later however, Gough decided[107] that the Abbot of Glastonbury probably had been

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105 J Leland, *Itinerary* ed. Toulmin Smith (London 1907) v. 85

106 Gough, *Mines of Mendip*, (Note 98) p. 87

107 J V Gough, *Mendip Mining Orders, 1683-1749*. Som. Rec. Soc. 1973, p.8

a Lord Royal, but that the owner of Charterhouse on Mendip later assumed the title, although Charterhouse had been the property of the Carthusians of Witham, and not of Glastonbury. The Lords Royal came to claim 'lot lead', a 10% royalty on all lead mined within their particular jurisdiction; but how this came about cannot at present be ascertained. One can only assume that, like the Bishop of Bath and Wells, the other Lords Royal had at some early time had a grant from the Crown of the right to claim a royalty from mining on Mendip within their particular manor.

The oldest extant version of the customary mining laws in force on the Mendips is bound up with papers of the reign of Elizabeth[108], though the document is believed to date from Mary's reign, being connected with the forfeiture of the Duke of Suffolk's Chewton property after the failure of the attempt to proclaim Lady Jane Grey as Queen. These customs were, briefly:-

1. Anyone wishing to work as a miner must have a licence from the lord of the soil, or his Lead Reeve or Bailiff: but this licence cannot be refused.

2. Once a miner had his licence he could mine freely wherever he wished in unenclosed land.

3. When a miner began a mine he was entitled to stake out his claim by throwing the 'hack' in both directions along the line

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108 SPD Eliz. 287 No. 97 (Cal. Add 1547-65 p. 308)

of the vein[109].

4. A miner might take his ore to any convenient smelting house, provided he paid the tenth to the Lord of the soil where the ore was raised.

5. Once a Lord has given a licence to anyone to build a smelting house, the licensee could sell it or leave it to whom he pleased, provided that he paid the Lord the Lot Lead of a tenth.

6. Any miner stealing lead or lead ore to the value of $13^{1}/_{2}$d was to have his lead and his lead works seized by the Lord or his officers as a forfeit to the Lord. His works and tools were to be burnt and he was to be banished from the hill.

7. If such a man stole again he was to be dealt with by the common law. The Mine Courts should wash their hands of him.

8. Each Lord Royal should keep two Mine Courts annually and a jury of 12 men should be sworn in to redress all misdemeanours and wrongs concerning the mines.

9. A Lord may make arrests for three reasons: first, for disputes regarding underground works; second, to recover lead duty due to him, wherever it may be within the Forest; third, for felon's goods wherever they are found within the hill [is there

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109 Dr Trevor Ford informs me that throwing the hack is said to be the original of meers in Derbyshire

some distinction intended between 'the Forest' and 'the hill'?].

10. If any man has a fatal accident underground, the other miners are bound to fetch the body from underground and give it a Christian burial however deep it may be; and the Coroner is not to interfere with this.

The mining on Mendip is described in this document as "one of the four staples of England", a strange expression which may refer to the 'staple exports' of the country. It has been suggested that there may be a reference here to the "Libelle of Englyshe Polycye"[110].

Fortunately,.the additional Laws laid down over the years for three of the four Lordships are still preserved; only the decisions of the Court of the West Minery (Charterhouse, later May, and later still Gore) are still missing[111]. The Chewton laws commence with 18 laws laid down at a Minery Court on 10 July 1554 and end with law no. 106 made at a Court held on 18 August 1774. The Wells laws commence with 59 laws laid down at a Court held on 25 September 1612 and end with the 95th (*recte 97th*) law made on 27 December 1748 and confirmed on 21 May 1749[112]. The East Harptree or Richmond laws start with 62 laws agreed to on 12 October 1615 and end with the 75th law made on 21 October 1773 and confirmed on 26

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110 G Warner, ed. Oxford 1926. Mr Robert Dunning kindly suggested this to me

111 They are printed in extenso in Gough, *Mendip Mines*, (Note 96) passim. All the original documents are now at the Somerset County Record Office

112 Gough, *Mining Orders*, (Note 107) pp. 16-17

October 1773[113]. There was a further meeting of the East Harptree Mineral Court on 7 November 1777, but this merely fined a member of the jury for non-attendance. The origin of these mining courts is obscure, but they appear to have developed from the Manorial Courts of the various Lords Royal. For example, the Court Roll of the Hundred and Manor of Chewton Mendip has endorsed on it a detailed account of the lead raised on the Manor, and the dues paid to the Lord; the Lot Lead was entered on the Manor Court rolls but 'kept separate on the back of the membrane'. However, the Court rolls for Edward VI, Mary and Elizabeth do not include Lot Lead, the earliest surviving separate lead accounts date from 1602[114]. This suggests that about the time of Edward VI or Mary the Lead Mining Court for that Manor became a separate Court from the general Manorial Court. In the Bishop's royalty, the Cryer's Oath for the Mining Court of the Lordship of Wells appears to refer to the name of the Bishop who succeeded in 1495[115], which suggests that the splitting off of the Mining Court as a separate entity took place in Henry VII's reign. This again leads us back to the events of 'Lord' Chocke's enquiry during Edward IV's reign.

The Lord of Chewton Mendip was entitled to Lot Lead, not only from Chewton Mendip, but also from other manors in the Hundred of Chewton, including Emborough and Ubley. Similarly, the Bishop of Bath and Wells was entitled to Lot Lead from both Wells and Westbury manors. The boundaries of the mining lordships, which are

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113 Gough, *Mines of Mendip* (Note 98) p. 82 says 1633 but this seems to be an oversight, cf. Gough *Mining Orders* p. 154

114 Gough, *Mines of Mendip* (Note 98) p. 66

115 Gough, *Mendip Mines and Forest Bounds*, (Note 96) p. 94

known for Wells, Chewton and Harptree, do not follow the boundaries of the Hundreds, and are evidently of great antiquity. Did the Mining Court of the Wells Liberty separate from the Manorial Court, or at least form a sub-division, before 1500 (as might be deduced from the evidence of the "Cryer's Oath"), the other mining courts following the example of Wells later, after the political upheavals of Henry VII's reign? It is unfortunate that (as mentioned above), the records of the West Minery have not come to light; but the records of the decisions of the other Courts appear to be complete. Where the names of the Jurors who made the decisions is stated, the number of jurors vary surprisingly, as many as 29 are present at Chewton in 1773. This large number suggests that the meetings of the Court were still taken very seriously in the eighteenth century. At the Wells Court, on one occasion there were 16 Jurors, and the Bishop himself signed at the head of the jurors on another occasion[116].

The decisions of the Mendip Mining Courts which survive seem much more parochial (if one may use the expression) than the decisions of the Stannary Parliaments or the Dean Mining Law Court. The three courts vary considerably in the way in which they concentrate on particular subjects, suggesting that despite their proximity, the problems normally confronting each Court were not necessarily similar. Certainly the differences suggest that each Lordship had developed its own particular 'culture'. For instance, decisions regarding Court procedure are most frequent in the Wells Court, and comparatively infrequent in the Harptree Court, where

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116 Gough, *Mendip Mines*, (Note 96) pp. 115 and 132

additional rules relating to the 'hack's throw' occur more frequently than in the other Courts. Were the Bishop's officials most interested in Court procedure (being primarily administrators) whereas in the other Lordships the Stewards and Lead Reeves were more interested in practical mining matters?[117]. One might deduce that the collection of his mining dues by the Bishop's officials was more efficient than in the other liberties: the Wells jury never felt obliged to legislate on the subject, whereas there were a number of decisions about the dues in both Chewton and Harptree. Rules regulating the meeting of 'pitches' underground were fairly evenly divided, as were decisions regarding deaths in the mines, and working on the Sabbath. Only in Chewton was it laid down that work in 'several ground' required the permission of the Lord of the Manor; but it is accepted that the Mendip free mining laws did in fact only cover the common or waste land off the hill. Rules regarding the method of working the claims were laid down by all the Courts; but rules regarding the smelting and buddling of ore were more frequent in the Wells liberty, which suggests that obtaining a supply of water proved more difficult in that area. Chewton liberty found it necessary to lay down more rules than the other courts regarding the conduct of miners between one another. All the courts were anxious to assert their own jurisdiction over mining matters in their own area, attempting to prevent access to the Common Law courts. It is particularly interesting that right at the end of the Court decisions in 1773, the Harptree and Chewton Courts passed identical laws ordering that mining for calamine (zinc ore) should be covered by the same rules as lead mining. Was this extension legally sound?

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117 The following summary of the Court decisions is drawn from an analysis of the laws as recorded in Gough, *Mendip Mines*, (Note 96) passim

Some might well feel that it was *ultra vires*. There can be no doubt that the disciplinary functions of the liberties were carried out when necessary: evidence of this is the list of "burnt and banished men" entered at the back of 'Browne's Book', one of the manuscripts recording the decisions of the Wells Court. These banishments were mainly for theft[118].

It will be seen from the foregoing list of 'basic laws' of the Mendip lordships that the Mendips shared most of the customs of other free mining areas. Registration as a miner was necessary but without the conditions imposed in the Forest of Dean. Definition of a claim (by throwing the 'law hack') was broadly similar to the custom in Derbyshire and parts of Yorkshire. The miner could have his ore smelted where he pleased, provided he paid the fee to the mineral lord (as in Derbyshire). A claim could be sold or left by Will, as in other areas, but there was apparently no rule covering continuous working. The rules as to theft and punishment can be paralleled elsewhere. The mine courts endeavoured to assert their right to control all matters regarding mining and to exclude the common law courts from mining matters, as in other areas. The exclusion of the coroner from investigating fatalities is also paralleled elsewhere. However, there was no custom regarding the supply of timber by the Lord - perhaps reflecting the lack of wood on the Mendip Hills? However, there is little evidence of influence from other areas on the Mendips, while there are at least two well known instances of Mendip mining practice spreading to other areas: the use of explosives spread from Mendip to Cornwall, where the Breage

118 Gough, *ibid.* (Note 96) pp. 137-139

Parish Register records the death of Thomas Epsley of Chilcumpton, Somerset, who brought "that rare invention of shooting the rocks" to Cornwall in June 1689, and died "at the bal" in December 1689[119]. It also appears that the 'ore hearth', which had been introduced in the Mendips in the 1540s and 1550s, was introduced to Derbyshire from Somerset in or about 1571[120].

Part Four - Derbyshire

Since the Norman Conquest Derbyshire has been among the leading producers of lead ore, and its customary mining laws have attracted more attention than those of other lead mining areas. The area in question covers all the liberties of the High Peak and the Wapentake of Wirksworth, with a few exceptions, notably part of Hucklow, part of Ashford including Sheldon side, Aldwark Grange, and the part of Eyam known as the ancient freeholds[121]. According to Stokes[122] King John, when Earl of Mortain, granted these ancient freeholds a charter of exemption from the customs, but this story appears to be apocryphal. The heart of the area in which the customary laws operate comprises the King's Field in the High Peak and in the Wapentake of Wirksworth, which has formed part of the Duchy of Lancaster since the formation in 1351 of this emanation of the Crown[123].

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119 A K Hamilton Jenkin, *The Cornish Miner*, 2nd ed. 1948 pp. 92-3. Dr Trevor Ford tells me that explosives were in use in Derbyshire by 1678

120 D Kiernan, *Derbyshire Lead Mining Industry in the 16th Century*, Matlock 1989, p. 126

121 L Willies, 'Working of the Derbyshire Lead Mining Customs in the 18th and 19th centuries' in *PDMHS Bulletin* Vol 10, No 3, 1988, p. 146

122 A R Stokes, *Lead and Lead Mining in Derbyshire*, Matlock 1973, reprint p. 9

123 Sir R Somerville, *History of the Duchy of Lancaster* Vol 1, London 1953, passim

There were also Duchy of Lancaster liberties outside the King's Field, on the west side of the mineral field (Ashford, Tideswell, Peak Forest and part of Hartington)[124]. There were also a number of private liberties which probably originated from a grant by the Crown at an early date. The Duchy liberties were divided into the High Peak area and the Wirksworth area, each with its own Barmaster and Barmoot Court. The private liberties each had its own Barmaster, and in more recent times were divided into 'open' and 'closed' liberties. In the latter, mining was subject to the permission of the mineral lord[125]. The closed liberties were 'closed' in comparatively recent times by pressure from the mineral lord rather than any legislative change, as will be shown later.

The Crown, and later the Duchy of Lancaster, usually farmed out the right to collect the payments due from the mining operations. As far back as 1130 the 'farm' from the Wapentake of Wirksworth was accounted for on the Pipe Roll of the Exchequer[126].

It does seem strange that King John, who raised money from the Stannaries by the grant of a charter, does not seem to have made any effort to turn the lead mines to profit by a similar charter; either there did not seem sufficient prospect of profit, or possibly the lead miners, unlike the stannators, were not sufficiently organised at that date to enable him to find suitable persons from whom to extract money. The 'coinage' of tin enabled the Crown to

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124 D Kiernan, *Derbyshire Lead Industry in the 16th Century*, Matlock 1989, p. 5

125 L Willies, 'Working of the Derbyshire Lead Mining Customs', (Note 120) p. 146

126 *V C H Derbyshire*, Vol 2, pp. 323-4

identify suitable persons who might pay for a charter, but in Derbyshire and the other lead mining districts there was no such fiscal arrangement. In fact, the first written evidence of the customary laws in Derbyshire occurred in 1288, following instructions issued by Edward I to Reginald de Leye and William de Meynill to hold an enquiry from 'good and law abiding men' about the liberties which the miners of the [High] Peak claimed to have, and previously used to have, of what kind, in what manner, from what time and by what warrant. This enquiry was to be held at a time and place selected by them. This 'Quo Waranto' enquiry was duly held at Ashbourne[127], and the commissioners' report, somewhat damaged by time, is in the Public Record Office[128]. The Jury of 12 men reported that prospectors went to the Bailiff, who was called the Berghmaster, and asked him for two meers for a new field and had one for their handiwork and one according to the custom of the mine. Each meer contained 4 square perches and the opening of the mine was 7 feet. Each perch was to be reckoned as 24 feet. The King was to have a third meer. Remaining meers were to be allotted to miners who asked for them. In an old field, a prospector only got one meer. The King should have the thirteenth dish of ore, called 'lot'. In exchange for 'lot', the King was to find the miner a road to the King's Highway. The king was to have a right to pre-empt ore, provided that he paid the market rate; but if the miner had already contracted to sell his ore to a third party, for a fixed term, his bargain was not to be overturned until the fixed term was

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127 The identification of the place as Ashbourne has been questioned, but not very convincingly

128 PRO C 145/47. A copy, with an illustration and translation is in D Gordon, 'The Quo Waranto, a new Translation' *PDMHS Bulletin*, Vol 10, No 4, 1988 pp. 219-223 and see *PDMHS Bulletin*, Vol 10, No 6, 1989 p. 88

finished, when the pre-emption was to come into effect. A miner was allowed to give, sell or assign his mine to anyone without needing a licence to do so. The jury further reported that these rights had been enjoyed from time immemorial except that in a place called Mandale, for the last four years, the Berghmaster had prevented buyers from buying ore. The jurors say that the pleas of the Berghmoot should be held every three weeks at the time. And if a miner died at the mine, he was to be buried without view of the Coroner, but by view of the miners. Anyone convicted of a small crime should pay 2d for a prompt payment; if not paid, the fine was to be doubled from day to day till it reached 5s 4d. If blood were shed at the mine, the offender should pay 5s 4d the same day; if not paid the fine was to be doubled till it reached 100s. If anyone was convicted of a crime committed underground, he should pay a fine of 5s 4d and make good to his fellow the damages which have been sustained.

There are several aspects of these findings which are surprising. Firstly, there are several basic customs which one would have expected a jury to have mentioned[129] if the inquisition was intended to cover all the peculiar features of the customary system then in use. As will be mentioned below, Edward Manlove produced a versified account of the laws in use in the Wapentake of Wirksworth in the seventeenth century, and there seems to be no good reason for thinking that the laws set down by him were not of similar antiquity to those mentioned in the reply to the Inquisition, for the system would seem to require the following additional

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129 J H Rieuwerts, *A History of the Laws and Customs of the Derbyshire Lead Mines*, Sheffield 1988, p. 21

features to ensure its proper working. The features not mention in the Inquisition include:

1. No mention of 'nicking' a mine not in work.

2. No mention of 'possession stows' or other means of marking a miner's claim.

3. No mention that a claim had to be worked progressively from meer to meer.

4. The 'dish' not specified or standardised in any way.

5. No mention of the Barmaster's obligation to measure all ore before it is sold.

6. No mention of the right to wood and water, though this right was a partial reason for the payment of 'lot'.

Admittedly, some of these features (especially the first and second) might have been introduced as a result of experience; but the right to wood and water was as essential as the right of way to the mine, which does appear in the Inquisition. How could the King be assured of his thirteenth dish if the size of the dish was not specified, nor the Barmaster obliged to measure all ore before it was sold?

Secondly, there is the mention of the embargo on sales at the Mandale mine which seems outside the terms of reference unless, as

has been suggested[130], the Inquisition was in fact connected with a dispute between William de Hamilton and Simon & Nicholas de Cromford, rather than (as one would have expected) being part of the general quo waranto enquiries set on foot by Edward I to check encroachments on Royal justice or (as local tradition has it) as a result of a supposed petition from local miners to have their rights defined. The suggestion is that the Inquisition was a 'follow up' from the decision of a jury - presumably the Barmoot jury - meeting at Over Haddon in 1287 to settle a dispute as to the share due to de Hamilton from the royalty and mine of Taddington Priestcliffe and Over Haddon. The answer to this mentions not only the 'lot' due but also the 'cope' payable for freedom to sell ore wherever the miner wished[131].

Another *lacuna* which has been noted is that there is no clear reference in the Inquisition to the Great Barmoot Court, and therefore it has been thought that this court, with its legislative powers, which met only every six months, grew up after 1288 but before 1415[132]. At the same time it is noticeable that one of the functions of the half yearly courts was to choose a full jury for the following six months, from which jurymen for the lesser barmoot courts were chosen[133]. It would seem possible that this was the original function of the Great Barmoot Court, and that it was only later that it acquired its legislative functions. This court, with 24

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130 Rieuwerts, *ibid.* p. 19

131 *V C H Derbyshire* Vol 2, p. 327 quoting Chan. Misc. Inq. file 46 no. 17

132 Rieuwerts, *History of the Laws and Customs*, p. 2

133 *ibid.* p. 3

jurymen, was presided over by the steward appointed by the Mineral Lord. There were separate Great Barmoot Courts for the High Peak, for Wirksworth and for the private liberties. The High Peak laws were restated by a Great Barmoot Court in Henry VIII's reign[134], and for the Wapentake of Wirksworth in 1549[135], and these were confirmed by an Act of Parliament in 1558[136].

In 1653 Edward Manlove, Steward of the Wirksworth Great Barmoot Court, produced a versification of the laws for the Wapentake of Wirksworth[137]. No doubt he chose this form of setting down the laws to assist illiterate miners to memorise the laws. Printed versions of the laws have also been produced by a number of authors[138]. The Miner's Guide includes codes from the High Peak, Wirksworth, Stony Middleton and Eyam, Ashford in the Water, Litton and Tideswell.

In 1851 and 1852, as will be explained later, court procedure was brought up to date and most of the procedural anomalies between different liberties ironed out by two Acts of Parliament[139].

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134 PRO DL 41/11/47

135 PRO E 101/273/14

136 Acts 5 & 6 P & M cap.20

137 E Manlove, *The Liberties and Customs of the Lead Mines within the Wapentake of Wirksworth*, London 1653

138 G Hopkinson, *The Laws and Customs of the Mines within the Wapentake of Wirksworth*, 1644, reprinted Sheffield 1940. G Hardy, *The Miner's Guide*, 1748. T Houghton, *The Compleat Miner*, 1648 (further editions 1651 and 1737). *The Miners's Guide, or complete miner, containing the articles and customs of the High Peak and Wapentake of Wirksworth*, Wirksworth 1810 [G Steer attrib.] *The Compleat Mineral Laws of Derbyshire*, Sheffield 1734. J Mander, *The Derbyshire Miner's Glossary*, Bakewell 1824

139 The High Peak Mineral Customs and Mineral Courts Act 1851 14 & 15 Vic cap 94) and the Derbyshire Mineral Customs and Mineral Courts Act 1852 (15 & 16 Vic cap clxiii). The latter was a 'local and private' Act - why the distinction?

The High Peak Act provided for revision if necessary by the Great Barmoot Court, and some revisions were made in 1859[140]. Even so, a few of the private liberties (particularly those controlled by the Duke of Rutland) were not included in the Derbyshire Act and still operate, if necessary, under their own rules.

The principal officer of the various liberties from the earliest recorded times has been the Barmaster. In the Wapentake of Wirksworth articles laid down in 1665 state that he is "to be an indifferent person between the Lord of the Field or farmer and the miners, and between the miners and the merchants", and was to be chosen by the merchants and miners. In the High Peak he seems to have been chosen by the Lord of the Field, and in the private liberties he was an officer of the mineral lord. It is known that in earlier times the Barmaster sometimes appears to have been illiterate. The Steward (an office often combined with that of Barmaster) actually held the Great Barmoot and Lesser Barmoot Courts, with the Barmaster or Deputy Barmaster in attendance. From the records of the Duchy of Lancaster[141] it is obvious that from an early date the office of Barmaster came to be filled by a person who plainly cannot have had any practical knowledge of mining. (Thomas, Archbishop of York, Barmaster for the High Peak between 1504 and 1508, for example), and the Deputy Barmasters must have carried out the day to day duties of the post. The earliest Duchy appointment mentioned by Somerville was of John Corbyn for the High Peak in 1390 (dead by 1410). His successor is described as "yeoman of the chamber",

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140 Anon. *New and additional customs ... under the High Peak Mineral Customs and Mineral Courts Act 1851.* Derby 1859

141 R Somerville, *Duchy of Lancaster*, (Note 122) Vol 1, pp. 383, 555

which does not sound as if he was a practical miner.

The customs in Wirksworth were broadly as follows[142]. On finding a vein, the miner (who needed no qualifications or registration as a miner) marked the place with a cross as a holding measure and called the Barmaster, who marked out two meers for the finder within three days. These meers have to be 'freed' by presenting the Barmaster with a "'dish' of ore as his fee". The dish in Wirksworth is a metal measure, the present dish is inscribed as having been presented by Henry VIII. If there was any doubt as to whether the claim was a new discovery or an old mine, the finder would free it with two dishes 'one for new and one for old'. The claim was then marked with 'possession stows' (imitation windlasses) at each end. A third meer was marked out for the mineral lord and thereafter the finder, or any other miner, might take up further meers along the vein, freeing each meer with a dish. A meer once freed could be left by Will, or sold, and could form part of a widow's dower. But nevertheless, unless prevented from working by flooding, the claim must be worked continuously. The Barmaster should visit each claim every three weeks, and if he found it was not being worked he was to nick the stow with a knife. If he nicked it three times in succession, the claim was forfeit and could be allotted to another miner.

Confusingly, the meer varied in length: in Wirksworth it was 29 yards but in the High Peak 32 yards for a Rake or 'pipe-work' but in 'flat-work' 14 yards square. In Wirksworth a miner might

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142 This summary is taken from E Manlove, *Liberties and Customs*. This has been frequently reprinted, e.g. as an Appendix to J H Rieuwerts, *History of the Laws and Customs* (Note 128)

work anywhere except under dwellinghouse, highways, orchards, gardens or churchyards. If a claim was worked under arable or meadow and not proceeded with, the miner must restore the land he had damaged. In addition to the meer or meers a miner was allowed an area on which to erect his 'coe' or shed and deposit spoil from the mine. The miner was entitled to a right of way to the nearest highway, to be laid out by the Barmaster, as wide as the Barmaster and two jurymen walking side by side with arms outstretched. The Barmaster was also responsible for finding a supply of water for dressing the ore. The Mineral Lord was also expected to provide wood for timbering the mine. The miner paid 'lot' and 'cope' to the Mineral Lord, and this was collected at the measuring of the ore before the miner could dispose of it. The Barmaster, or a chief juryman, had to be present at the measuring of the ore, and of course in the Mineral Lord's eyes the Barmaster's most essential duty was the collection of 'lot' and 'cope'. 'Lot' was partly a royalty and partly in recognition of the Mineral Lord's duty to provide wood and water for the mine. 'Cope' was a small payment to permit the miner to sell his ore to whom he wished. In certain liberties 'tithe' was paid, originally to the Church in recognition of its duty to pray for the soul of the miner, and was based on the widespread belief in medieval times that lead ore grew in the veins just as crops grew in the fields. After the Reformation and the dissolution of the monasteries, in many liberties tithe passed to 'lay rectors' as successors to the monasteries; naturally this was resented. However, certain liberties had never paid tithe on lead ore, and the reason for these exceptions is obscure, but must go back to the earliest times, perhaps when areas were extra-parochial.

The miners were disciplined and governed by the Barmoot Courts. The Great Barmoot Court which, as explained, must have been developed in the fourteenth century, met twice yearly, primarily to appoint a jury of 24 persons knowledgeable about mining ('the body of the mine'), who remained in office for six months. The Great Barmoot appears rapidly to have developed, in addition, legislative capabilities, the jury declaring what the customs were, and framing new customs to meet particular difficulties which had arisen. In this way rules were laid down, for example, to try to decide priorities where two veins merged. Members of the jury also formed a jury for the lesser Barmoot Court, which met every three weeks to sort out minor disputes such as trespass; there was an appeal to the Great Barmoot Court and in serious cases a further appeal to the Duchy of Lancaster Chancery Court (in Wirksworth and the High Peak). As Lynn Willies has pointed out[143], it was one of the peculiarities and weaknesses of the customary system that, while the Barmaster's record of ownership formed the legal title to a mine, the Barmoot was not a Court of Record so that its decisions could not be quoted as precedents in court proceedings (that is, until the 1851 and 1852 Acts of Parliament).

The offences disciplined by the Barmoot Court - such as theft, interference with possession stows, carrying weapons at the mine, and so on - were punished by fixed fines, which were increased if not paid promptly. According to Manlove, if a thief offended once or twice, he was fined, but the third offence was punished by the thief's hand being pinned to the stow by a knife, and the thief

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143 L Willies, 'Working of the Derbyshire Lead Mining Customs in the 18th and 19th centuries' in *PDMHS Bulletin* Vol 10, No 3

being left till he cut his hand free or died! As Willies suggests[144], this drastic penalty may have been out of date in the seventeenth century - the 1665 laws mention thieves being put in the stocks, which seems more civilised. There is apparently no traceable record of the severe penalty having been enacted[145]. Further evidence that the mining community was regarded as being self-policing is provided by their exemption from the Coroner's inquest; in the case of a death on the mine, the Barmaster or his deputy were to act in place of the Coroner. This remained in force till the Acts of Parliament in 1851 and 1852. The various codes of customs make it plain that the mining community were anxious to keep their members within their own jurisdiction - for instance at Ashford in the Water,the second law provides: "no miner is to be sued touching the mine except at the Barmoot". Other laws dealt with the procedure to be followed when 'fire-setting', and which miner was to have priority when veins being followed appeared to coalesce. Inevitably this proved a very difficult matter to decide, and even led to bloodshed. The Barmoot Court did have the advantage of providing a relatively speedy and cheap way of settling disputes, often of a technical nature, with a jury formed of persons experienced in mining. On the other hand, where contentious matters were involved, the Barmaster could influence a result by careful selection of a jury. Difficult and contentious cases could eventually find their way on appeal to the House of Lords, as in the case where the Duke of Devonshire, as Crown lessee, felt that he was being defrauded by ore being 'beaten down' into very small ore ('smitham') which was claimed

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144 *ibid.* p. 149. One may note that the seventeenth century Dutch Eastindiamen imposed a similar sanction on a person drawing a knife. E M Jacobs, *In Pursuit of Pepper and Tea*, Amsterdam 1991, p. 41

145 Dr Rieuwerts, pers. comm.

to be exempt from paying 'lot'[146]. This case even led to the dismissal of the Barmaster, whom the Duke suspected to have acted against his interests.

Thus the Derbyshire code of customs exhibits the free mining system at its highest stage of development, providing a clear legislative system whereby the miner could register a claim over almost any land whether in private ownership or not (with a few exceptions), and obtain the exclusive right to develop a specified area adjoining his first find, while the mineral lord obtained a proportion of the area of the find. In addition, other miners had a chance of sharing in the find. In addition to the exclusive right to develop the immediate area of the find, the finder had a right to claim a right of way to the mine from the nearest road, and a supply of wood and water for the mine. In addition, there was provision for temporary right to a claim pending full registration. For these rights the miner paid a royalty to the mineral lord and a further small amount for the right to sell his ore where he would. In consideration of these privileges, the miner must work his mine more or less continuously, but if he did so he had the right to sell his claim or pass it on to his heirs. The mineral lord's right to his royalty was protected by the duties of the Barmaster, while disputes between miners over mining matters (including disputes about money matters) were decided by reference to the Barmoot Court and its jury of persons who should be conversant with mining. The jury was thus similar to the type of jury empanelled to answer the questions put to the Domesday enquiry, rather than the modern jury

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146 Case of *Duke of Devonshire v. Wall & ors.* House of Lords Journals, 5 Feb. 1764

in criminal cases, where every effort is made to ensure that the jury are *not* conversant with the case beforehand. Like all human affairs, the court system was imperfect, depending on who selected the jury in certain contentious cases, but on the whole it gave satisfaction. Weaknesses (which Victorian legislation tried to correct) mainly lay in the differences in procedure between the various liberties.

Part Five - North Wales (Flintshire and Denbighshire)

The occurrence of the customary laws in Flintshire and Denbighshire is almost certainly to be attributed to the presence of Derbyshire miners, migrating or being brought by the Crown, to this area of North Wales. According to C J Williams[147] these counties had mainly formed part of Cheshire in Domesday Book, but were reconquered by the Welsh under Owain Gwynedd, who died in 1169, and again became Welsh in language and population. Judging from the very slight references in Aneurin Owen's *Ancient Laws and Institutes of Wales*[148], the Welsh princes were not greatly interested in mining, other than iron mining. However, after Edward I's invasion of Wales, culminating in the death of Llewellyn ap Gruffydd in 1282, the English Crown re-established itself. By the Statute of Wales in 1284 the King created the county of Flintshire, and until 1536 Flintshire formed part of the Palatinate of Chester.

The fact that lead had to be brought from the Peak for the Royal castles of Dyserth and Deganwy in 1245-6[149] suggests that the

147 C J Williams, 'Mining laws of Flintshire & Denbighshire', in *Mining before Powder*, ed. T D Ford and L Willies Matlock, 1994, pp. 62-68

148 Record Commission 1841, pp. 632 & 639

149 C J Williams, Mining Laws, (Note 146) p. 62

lead mines in North Wales were then not operational, but after Edward's conquest Derbyshire miners must either have migrated or been brought to the area. These miners were evidently full-time workers, as in 1295 instructions were sent to Chester for miners to be sent to the silver-lead mines in Devon[150], and the return showed that the vast majority were Derbyshire men, judging from their names[151]. In 1312 the King made a gift to his son Edward of all the county of Flint and the Cantred of Englefield (except Overton, Maelor Saesneg and the Manor of Hope) with the mines[152]. In 1347-8 the mines in Englefield, then in the hands of the Black Prince as Prince of Wales, were reported to be producing little or no income as the miners 'were old or had fled'[153].

This was followed by the outbreak of the Black Death in 1349, which caused a crisis in the mining industry here, as elsewhere. In 1351 the Register of the Black Prince records that mines in the wastes of Hopedale had been worked without permission, and in 1352 the Prince's Council in London were informed by the officials in Chester that certain miners had come before them and offered to make a great profit for the Prince on a lead mine within the Lordship of Hope, claiming to have certain articles of franchise. These were read to the Council and assented to by the Black Prince. The Council ordered them to be put in force as slightly amended[154].

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150 Cal Close Rolls 1288-96 p. 504

151 T Claughton, 'Medieval Silver-lead Miner' in *PDMHS Bulletin* Vol 12, No 2 (1993). 29 quoting PRO E101 260/17

152 Cal Charter Rolls, 1300-1326, p. 202

153 D L Evans, 'Some notes on the History of the Principality of Wales in the time of the Black Prince' in *Transactions of the Hon. Society of Cymmrodorion* Session 1925-6, pp. 19, 45

154 Register of Edward the Black Prince, HMSO Part III 1351-65 pp. 67-8

But it seems that no output from the mines is recorded subsequently[155]. The articles are of great interest: for one thing, apart from the Quo Waranto of 1288 in Derbyshire they are the earliest known tabulation of customary mining law. They may be summarised as follows[156]:

1. When a new mine is found, the miners and merchants shall choose a Barmaster, who shall deliver two finder meers to the finder. The Lord of the field shall have a half-meer on either side of the finder meers, and other meers are to go to miners requesting them.

2. Each meer to be 67 feet long, and the breadth shall be the whole width of the ore body. Meers were to be held in perpetuity unless forfeited for good reason.

3. Widows of miners to have reasonable dower of their husband's meers.

4. Meers shall be worked systematically unless prevented by water.

5. If the Barmaster finds a meer not being worked, he shall mark it in three successive weeks, and if it is not being worked on the second day after the third marking it is to be forfeited.

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155 C J Williams, Mining Laws, (Note 146) p. 63

156 They appear in full in the Appendix to C J Williams, *ibid.* p. 68

6. After the field has been marked out into meers, the Lord of the field is to ordain a suitable measure for measuring his 'lot', and the miners' share.

7. The Barmaster is to allot each miner a plot for his lodge and curtilage. The miners are to have 'housebote' and 'haibote'[157] and timber for the 'groves' [mines] from the Lord or his forester. If they cannot get timber the Lord is to take his lot and the miners are free to sell their ore where they please.

8. The mines and merchants are to be quit of local customary dues, and may pasture their beasts on most pastures in the Lordship.

9. The Lord and his steward are to hold courts at the mine where necessary, and hold two great 'tourns' each year.

10. The Barmaster is to bail any person accused of a matter 'touching the Crown' to appear at the next Court, and if a person is attained of felony he is to be hanged on the 'stow' of his mine.

11. A tariff of fines for bloodshed and other trespass within the franchise of the mine is set out.

12. The miners and merchants were to have their lead weighed, and ore measured, whenever they pleased, on giving notice.

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157 *housebote* - right to have timber for repair of a house; *haibote* - right to have timber for fencing

13. Regulations are laid down for inspection of mines by the Barmaster and "the Prince's merchant and two other prudent men chosen by the Prince".

14. If the four men mentioned above find a default in a mine, a jury of six miners and merchants shall be called, and if they find a default the offender shall be fined in full court.

While these rules are plainly derived from the Derbyshire customs, there are significant differences which suggest (as was presumably the case) that they were put forward by those at work in the field without considering the interests of the mineral lord. The Barmaster is to be chosen by the 'miners and merchants' rather than the mineral lord, as was usually the case in Derbyshire. The provisions regarding freedom from customary dues, and pasturing beasts suggest rather different local conditions from those in Derbyshire. The provision for the Lord to hold two great 'tourns' each year surely mirror the Great Barmoot Courts in Derbyshire and suggest that in 1352 the Great Barmoots were a recognised feature of the Derbyshire customary law. The rule that after the field had been marked out in meers, the mineral lord was to fix a suitable measure for measuring his 'lot' suggests that this measure might vary between one mine and another. The reference to the Barmaster, "the Prince's merchant, and two other prudent men chosen by the Prince" laying down regulations for the inspection of mines raises the question, who the official was who could be called 'the Prince's merchant'. No explanation of this is forthcoming. The entire code is much closer to the fully developed Derbyshire customs than the Quo Waranto report. Finally, the provision that anyone convicted of

felony was to be hanged on the 'stow' of his mine is reminiscent of the archaic reference in Manlove's metrical version to a thief being pinned to his stow by a knife.

In the same year the miners of Holywell complained[158] that since the Conquest "they had certain franchises, viz. to choose their own steward or 'meaire' before whom all manner of pleas and other things shall be determined" but that the Prince's bailiff of Englefield had wronged them. The Prince's officials were ordered to look into the matter and do the miners right. These miners paid 20s annually for their privileges from at least 1302 throughout the century, according to C J Williams[159]. Further[160], in the Lordship of Bromfield and Yale, there is Minera, a township within the parish of Wrexham. Mining on a small scale was being carried on within six years of the conquest of 1282 but was halted by the Black Death in 1349[161]. It is worth noting that while Bromfield and Yale were held by the Warenne family in the early fourteenth century, for a short time after January 1319 it was in the hands of the Duchy of Lancaster before being returned to the Warennes[162]. Mining in Minera is again mentioned in 1388[163], and in 1391 a survey of the

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158 Black Prince's Register HMSO Vol III pp. 66-7, 80-1

159 C J Williams, Mining Laws (Note 146)

160 D Pratt, 'The Leadmining Community of Minera in the 14th century', in *Denbighshire Historical Society Trans.* 1962 Vol 11 pp. 28-35 and D Pratt, 'Minera, Township of the Mines' in *Denbighshire Historical Society Trans.* 1976 Vol 25, pp. 114-154

161 Pratt, Minera, Township of the Mines, (Note 159) p.118

162 Cal Pat Rolls 1317-21 p. 264

163 D Pratt, Minera, Township of the Mines, (Note 159) p. 120-1

whole Lordship was carried out for the Earl of Arundel[164]. In the extent of the Lordship of Minera in this survey it is mentioned that underground lead mines there "ought to be worked according to this form of law and custom below written". The customs then set out are virtually the same as those set out in the Black Prince's Register, changing references from 'the Prince' to 'the Lord' and adding a provision about the grazing of animals after clause 11 in the 1352 code.

It appears that mining was declining in 1391 and according to Williams[165] between 1400 and 1405 the rising of Owain Glyndwr caused a cessation of mining. The Holywell miners ceased to pay their 20s in 1403, and the English tenants withdrew from Minera. No more is heard of customary mining law in the area till the end of the sixteenth century; the Grosvenor family's suppression of an attempted revival of the customs will be dealt with below.

Despite the occurrence of the names of certain miners being Welsh in surviving records, it is impossible not to conclude that the appearance of the customary mining laws in North Wales must have been due to the migration of miners from the Derbyshire area after the English conquest of 1282.

The similarities between the Derbyshire laws and those summarised above are so close that they must have been brought from Derbyshire. For instance, the Barmaster has to deliver two

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164 B L Add. Mss. 10, 103

165 C J Williams, Mining Laws (Note 146)

meers to the first finder and a half meer on each side to the mineral lord; meers were to be held in perpetuity (unless forfeited) and subject to widow's dower; the Barmaster was to 'nick' meers not being worked and a meer forfeited if nicked three successive times: a miner was to be allotted land for a 'coe'; the miner was to have a right to timber; courts similar to the small and great Barmoot were to be held; and the courts were to have power to fine for bloodshed, trespass and so on. There does not seem to be the same similarity between the Flintshire rules and those of the Mendip mines, the nomenclature being different, so that incoming miners apparently did not come from the Mendips.

Part Six - Alston

To turn to the mines in the North of England, we come to the Alston area. There is evidence that the Alston mines were exploited in Roman times[166], and there must have been prospecting there under the Norman kings, as the surviving Pipe Roll for Henry I's reign[167] records the 'mine of Carlisle'. The burgesses of Carlisle paid 100s rent for the silver mine, and William son of Hildert, the Sheriff, also accounted for 60 marks rent of the silver mine. This 'mine of Carlisle' must have been in the Alston area, and continued to appear in subsequent Pipe Rolls under Henry II. The unfortunate lessee of the mine of Carlisle ran into enormous arrears and the rent was plainly quite unrealistic[168]. In 1172 incursions by the Scots

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166 A Raistrick & B Jennings, *History of Lead Mining in the Pennines*, Newcastle upon Tyne 1983, p. 10

167 Pipe Roll 31 H I

168 Pipe Roll 12 H II

destroyed the English mining complex[169].

The area of Tynedale in which Alston lies was at this time, though part of England, held in feudal tenure by the King of Scotland[170], but evidently the mineral rights were still held by the English Crown. In 1152 the Archbishop of York had complained to the King of Scots at Carlisle that his miners had ravaged the Archbishop's forests[171], but one feels he complained to the wrong King. By 1211 the Sheriff of Carlisle rendered only 10 marks for the rent of the mine[172] and this continued under Henry III. In 1222 a half-year's rent of the mine was remitted as no one was at work there[173], but in the same year and the following year Letters of Protection were issued to the miners until the King came of age[174]. These letters were directed to the King's miners of Yorkshire and Northumberland belonging to the mines of the County of Cumberland. These Letters of Protection evidently resulted in action against Ivo de Vieuxpont in the following year[175] for trespass against the miners of our Lord the King "whom he took in the mine of Alston [this is the first specific mention of Alston] ill-treated and imprisoned them and compelled them to give ransom for which they gave hostages, and concerning damages and injuries inflicted on

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169 Ian Blanchard, 'Lead Mining and Smelting in Medieval England and Wales' in *Medieval Industry* ed. D W Crossley (London 1981), p.73

170 Sir M Powicke, *The Thirteenth Century, 1216-1307*, Oxford, p. 587

171 John of Hexham, *History of the Church of Hexham*, Surtees Soc. Vol. 44 (1864) p. 166

172 Pipe Roll 13 John

173 Pipe Roll 7 H III

174 Cal Pat Roll 1216-25 pp. 339, 366

175 Rot Lit Claus Vol ii 8a

them". In 1230 John de Balliol's bailiff was ordered to allow Cumberland miners to have free passage through all de Balliol's land, forest as well as other land, to buy victuals[176]. In 1234 and again in 1237 the King ordered that the miners of Alston should have all their past privileges and be allowed to dig and mine unmolested[177]. In 1235 a mandate addressed "to all the King's miners of the County of Cumberland" ordered them to work in his mine of Alston and granted to those who came the liberties and free customs which his miners of those parts had been accustomed to have in the times of his predecessors. The Sheriff was also ordered to "cause all the said miners to come to work in the mines as they used to do in the times of the King's predecessors and also to cause merchants of the bailiwick to come there with victuals for the maintenance of the miners as they used to do"[178]. In the same year the miners paid a fine of 20s for the privilege of going unmolested[179]. In 1246 the miners claimed that the King's Justices should "go to Armesholme in Alston during their circuit to hold all pleas and all cases of dispute which had arisen and which had *according to the miners' immemorial privilege* [my italics] to be tried outside the civil courts"[180].

When a further Assize was held in 1278 it was discovered that the last Assize had been held in 1247. It appeared that the

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176 Memoranda Rolls L T R 14 H III m3 and m6d, quoted in J Walton, 'The Medieval Mines of Alston', *Trans Cumberland & Westmorland Antiquarian & Archaeological Soc.* new series 45 (1945)

177 Cal Pat Rolls 1232-47 pp. 65, 174

178 Cal Pat Rolls 1232-47 p. 132

179 P. Roll 119 H III 79 m 14

180 F J Monkhouse, 'Pre-Elizabethan Mining Laws with special reference to Alston Moor' in *Trans C & W A & A S* n.s. Vol 42 (1942) p. 51

Vieuxponts had allowed the 'coroners' of the Scottish King to discharge various duties at the mines, although these duties belonged to the 'sergeant of the mine' on behalf of the King of England. It was found that the miners had lost their privilege of trial by a special miners' court and were being tried by Robert de Vieuxpont at another place, that he had levied fines on miners who were outside his jurisdiction, that they had been prevented from hunting over the moors and that a useful road had been obstructed to the detriment of the mines[181]. Further, it was found that the King should receive each ninth 'disc' ['dish' in Derbyshire] of ore dug by the miners, each disc to contain as much as a man could lift from the ground. As to the remaining eight discs, the King should have the fifteenth penny of all the ore sold in consideration of his finding a 'drivere' who knew how to separate the silver from the lead. The jury said that the value of the mine depended upon the nature of the ore but that there was enough ore of one kind and another to last till the end of time[182]. In 1282 Edward I granted the Manor of Alston to Nicholas de Vieuxpont but reserved the mines, the miners and the liberty thereof[183].

In 1290 there was a dispute regarding the miners' right to take wood, Henry of Whitby and his wife, lessees of part of the Manor of Alston, accusing certain miners of cutting down trees in Alston and taking them away[184]. The miners claimed that they held

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181 F J Monkhouse, *ibid.* pp. 51-2

182 Cal of Docs. relating to Scotland, HMSO Vol. ii p. 41, from Assize Roll of 6-20 Ed I

183 Cal. Fine Rolls I p. 165

184 Cal Pat Rolls, 1281-92

the mines at farm from the King and that the liberty of the mine allowed the miners to take wood *wheresoever it was* [my italics] where they found it suitable for the silver vein, and that they might take the wood for building, burning and enclosing, and might give it to employees for their pay, and also give it to poor miners for their support. They justified their cutting down the wood in question because it was convenient to a certain silver vein. The miners went so far as to claim that lords of the woods from which wood for the mines had begun to be taken might not sell or give away any of it but only take their reasonable needs. This they claimed had been their liberty from beyond the memory of man. The Whitbys admitted the miners' rights but said that the miners had taken far more than was necessary or convenient for the King's mine[185]. In 1292 there was an enquiry as to by what warrant the miners claimed that the itinerant justices should come to Alston to hold pleas of the Crown without the King's licence; the miners' claim was disallowed[186].

In 1356 the Bailiff of the liberty of Tynedale (then in the hands of Queen Philippa) was ordered not to charge the miners for the right of working the mine, apart from the annual payment of 10 marks payable since the reign of Henry II for the farm of the mine of Carlisle[187]. In the same year there was an Inquisition made by Commissioners into customs, liberties and immunities of the miners of

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185 E Coke, *Institutes of Laws of England*, 1642, p. 578

186 Plac. de Quo Waranto, record comm. p. 117

187 Cal Close Rolls 1354-60 pp. 262 & 281-2

Aldenaston in Cumberland [*sic*].[188] This jury found that the miners mostly dwelt in 'shelis' (rough huts made of turf walls, roofed with poles and turf or thatch). They had the liberty of choosing from among themselves a Coroner, and an official known as the King's Sergeant. The Coroner had to consider all felonies, trespasses, debts and other disputes and the King's Sergeant was the executive officer. The miners were subject to no other law; these liberties were exercisable only by the miners living together and not by those *'in diversis locis'*. There was a further inquest held in 1416[189] when the following liberties were confirmed. The miners were entitled to elect from themselves and the residents within the "moor called Aldenstone a coroner and a bailiff called the King's Sergeant and were to have cognition of all pleas of felonies trespasses and injuries, misprisions and all other delinquencies and evil deeds and debts detentions and other contracts and actions personal by them and their servants and others within the said moor, before the said coroner, and the miners before the coroner had power of oyez and terminer of the above delinquencies" etc. The coroners had power to hear and determine all quarrels of debts, accounts, ... contracts and actions personal, and other matters including "chattels called waif and stray and chattels of felons outlaws and fugitives on the moor". In 1475 a grant stated that the grantee should have power to appoint a steward to hold a court within the mines to determine all pleas except those of land, life and members[190]. This confirmed that lord of the soil's right to a ninth and to the curate of the place

188 Cal Pat Rolls 1351-58 pp. 159-60 and Cal Inq Misc 3 (1937) p. 222

189 Cal Close Rolls 1416-22 pp. 57-8

190 Cal Pat Rolls 1467-77 pp. 505-6

the right to a tenth of the ore.

In 1414 a grant of the lease of mines with all the liberties etc.. by the annual payment of 10 marks recited that for fifty years the mines had been unprofitable[191], and according to William Wallace even after this grant little mining was done on the moor till the end of the seventeenth century[192], by which time the customs relating to mining on the Alston moors had been forgotten. Conditions on Alston Moor must have been inhospitable, which suggests that the customs in this area were designed by the Crown to encourage miners to come and work the mines. The lack of similarity between the customs in Alston and those of Derbyshire or the Mendips suggest that any incoming miners were not from Derbyshire, as the miners in North Wales appear to have been, or from the Mendips. Possibly they were from Cumberland, in view of the Royal mandate of 1236 mentioned above.

Part Seven - The Yorkshire Dales

Free mining customs were also found in several other places in the North Pennines and the Yorkshire Dales. While the areas to the east of Alston, in the Derwent, Weardale and Teesdale areas, mainly under control of the Bishops of Durham never appear to have operated under the customary laws[193], to the south, in Swaledale, Wensleydale, Nidderdale and Wharfedale, there were several areas

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191 Cal Pat Rolls 1413-16 pp. 250-1

192 William Wallace, *Alston Moor*, 1890 reprinted Newcastle upon Tyne 1986 pp. 110-111

193 A Blackburn, 'Mining without Laws, Weardale under the Moormasters' in *Mining before Powder* ed. T D Ford and L Willies 1994 pp. 69-75. Also G T Lapsley, *County Palatine of Durham*, pp. 59 and 282-285 and also see J L Drury, 'Medieval Smelting in Co. Durham' in *Boles & Smeltmills* ed. L Willies and J D Cranstone (Matlock 1992) pp. 22-27

where the customary laws were in force. It would be tempting to regard these as areas to which, like Flintshire and Denbighshire, Derbyshire miners had migrated and brought their laws with them; but the facts do not seem to support this entirely[194]. In some areas the surviving records of the mineral codes in force are similar to the Derbyshire laws, but in Swaledale and Arkengarthdale, as will be seen, the evidence is not sufficient to justify an assertion that the miners were definitely working under laws similar to the Derbyshire laws. Further, the alternative use of the term 'moormaster' in the Marrick code of laws suggests use of terminology from further north [Co. Durham].

In 1219, under Henry III, the miners of Swaledale were confirmed in the rights as they had them under Henry II and Richard I - presumably similar to those enjoyed by the miners in Alston[195]. In Arkengarthdale there is some evidence that certain miners regarded themselves as operating under customary law, as in 1631 Antony Peacock and others complained to the Court of Star Chamber that William Conyers had prevented them from exercising their customary rights of lead mining, paying the Crown a ninth share of the profits of the lead mines[196]. The result of this petition is not recorded. Arkengarthdale was a Crown Manor, but there is no evidence of there being a Barmaster or Barmoot in the area[197]. Mining had been in progress earlier - in 1250 the Sheriff

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194 L Willies, 'Diffusion and Determinism' in *PDMHS Bulletin* Vol. 11 No 1 (1990) pp. 20-22

195 Rot. Lit. Claus Record Commission, I, 409

196 ed. H B McCall, *Yorkshire Star Chamber Proceedings*, Vol 2, Yorkshire Archaeological Soc. Record series Vol 45 (1910), pp. 178-180

197 H B N C Gill, 'Yorkshire Lead Mining before 1700', in *British Mining* No. 37, 1988, pp. 42-47

of Yorkshire had been ordered to enquire whether there were mines and forges in the royal forests and elsewhere, and what customs they enjoyed[198].

In Marrick the nuns of the Priory of Marrick held rights to a tithe on the lead mines (presumably under a grant of the founder, Roger Aske, a tenant of the Honour of Richmond), and after the Dissolution the Bulmer family as Lords of the Manor of Marrick received 'lot' of one ninth from the local leadmines[199]. There is no doubt that customary laws were in force in Marrick, as in 1574 these laws were set out in the papers relating to a law suit[200]. These can be summarised as follows:

1. When a new mine was found, the merchants and miners chose a Barmaster *otherwise called a moormaster* [my italics] to deliver to the finder two meers under a stake, and one meer to the mineral lord.

2. Afterwards the Barmaster was to deliver meers to other miners prepared to work the same.

3. The lord of the field and the miners were to 'ordain' a dish by which the lord should receive his 'lot', and the miners their right of the mine.

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198 Cal Close Rolls, 1247-51, pp. 353-4

199 L O Tyson, *The Manor and Lead Mines of Marrick, Swaledale* (British Mining No. 38) 1989 p. 13

200 *ibid.* pp. 14-15

4. The miner was to have eight dishes, the lord the ninth, and the Church the tenth.

5. The miners were to have enough timber for 'housebote' and 'hedgebote' and for the mine, if there be enough timber in the lordship.

6. If there be no timber in the lordship and the miners had to find their own, then they did not pay 'lot', the 'lot' being for timber.

7. The lord and the miners had the right to a meer as often as a new lode was found.

8. It was noted that before the Dissolution the Prioress of Marrick had a meer delivered to her by the moormaster as often as a new mine or field was found, which meers were still known to that day, in addition to the tithe of every meer. It would appear from this that the Priory was regarded as mineral lord, before the Dissolution. However, in the Priory accounts for 1415-16, one notes that there is no reference to tithe of lead or any other income from lead; perhaps the mines were not working in that year[201]. Regarding timber, there is evidence that coppice management was established by 1542, and that the woodland was not decimated in the dale[202]. The use of the term moormaster as an alternative to Barmaster is

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201 J H Tillotson, *Marrick Priory: a nunnery in late medieval Yorkshire*, York 1989, pp. 27-35

202 T Gledhill, 'Smelting and Woodland in Swaledale' in *Boles and Smeltmills*, ed. Willies & Cranstone, Matlock 1992, pp. 62-3

interesting, as this term was applied to the mineral lord's representative in Weardale.

The laws at Marrick were not as comprehensive as those in use in Wharfedale or Derbyshire: for instance, there is no reference to a right of way to a mine, nor inheritance of a claim, nor a penalty for not working a claim continuously.

In Wensleydale and Nidderdale the mineral lords were largely monastic up to the Dissolution. Count Alan of Brittany, who held the Honour of Richmond from the Crown, granted mineral rights in the Forest of Wensleydale to Jervaulx Abbey in 1145; Roger de Mowbray made similar grants before 1179 regarding Upper Nidderdale to Fountains and Bylands Abbeys in the Greenhow Hill area[203].

In an agreement between the two Abbeys in 1225 to settle boundary disputes it was mentioned that the King had his share of the lead. Bolton Abbey also had lead mining rights in Appletreewick, Wharfedale. These mining areas do not appear to have enjoyed customary rights prior to the Dissolution, although there are references to 'long established customs of the field' in the Grinton and Greenhow areas[204]. After the Dissolution there was a barmaster appointed for Appletreewick and a Barmoot was held in 1670[205]. Presumably this development had been influenced by the codification of the customary laws in the liberties owned by the Earls of

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203 A Raistrick and B Jennings, *History of Lead Mining in the Pennines*, Newcastle upon Tyne 1953, pp. 31-2

204 M C Gill, 'History of Customary Mining Laws at Grassington' in *PDMHS Bulletin*, Vol 10 No. 4 (1988), p. 206

205 M C Gill, 'Yorkshire Lead Mining before 1700' in *British Mining No. 37*, 1988 quoting B Jennings, *History of Nidderdale*, 1967

Cumberland and then by the Earls of Burlington. Neither Appletreewick nor Grassington was a King's field, indeed in Yorkshire there were only three King's Fields: Grinton and Forest Moor; Nidderdale including Greenhow Hill; and the part of the Honour of Richmond not in monastic hands[206].

Mining in the Earl of Cumberland's estates, particularly at Grassington, is alleged to have commenced in James I's reign[207]. The emergence of a code of customary laws at a Barmoot in Grassington in 1642 (evidently not the first Barmoot held) is generally thought to indicate an influx of miners from Derbyshire, though it has been pointed out that the surnames of local miners in the seventeenth century suggest that most of them were in fact from Wharfedale rather than Derbyshire[208].

The Grassington laws, set out by a jury of 15 men on 19 May 1642 and mentioning the names of the Barmaster and Deputy Barmaster, may be summarised as follows:[209]

1. The meer was 21 yards long. The first finder of a lode was to have two meers on presentation of a dish of ore to the Barmaster.

2. The work was to go forward "according to right and custom".

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206 A Raistrick and B Jennings, *Lead Mining in the Pennines*, (Note 201) pp. 31-2

207 T D Whittaker, *History of Craven and Antiquities of the Deanery*, 2nd ed. 1812. p. 568

208 Gill, Yorkshire Lead Mining, (Note 203) pp. 46-7

209 The full text is in M C Gill, *The Grassington Mines*, BM No. 46 Keighley 1993, Appendix A

3. No miner was to sue another, either for debt or trespass, except in the Barmoot Court.

4. Any miner might sell his meer to another, notifying the Barmaster of the sale.

5. The fine for concealing lead or wood in order to wrong the Lord or fellow miners was to be 20s.

6. The Barmaster was to keep lawful weights at the mine and not alter them.

7. No miner to take another man's tools from the mine - penalty 3s 3d.

8. No miner to leave his claim so as to hinder his partners, but to return within three weeks or forfeit his claim.

9. No man *or woman* to purchase any man's grounds without permission of the owner - penalty 10s and to be put out of the liberty.

10. No man or woman to take away timber from works - penalty 10s.

11. No man to conceal ore or prevent neighbours from entering his works - forfeit 3s 4d.

12. If any man wrong his neighbour 'within the ground' he is to

be punished.

13. No man is to stop water or to set water upon his neighbour or let his dam go provided for buddling or washing - penalty 6s 8d.

14. Miners were to have a grant of timber from the mineral lord - 4d per dozen being at cost.

15. Miners to have timber from the lord for coe timber etc., paying for working it themselves.

16. The lord to provide a washing vat at every mine.

17. Every man to have his own wastes to 'dris' up at his own pleasure.

18. When a new workstone is laid down, the lord to fill the pan at the lord's expense.

19. Smelters are to be chosen, one by the Barmaster, the other by the jury.

20. Any juryman who 'reviles' this agreement to be fined 10s.

From this code there are several omissions which seem surprising if, as one might think, it was drawn up by miners familiar with the Derbyshire laws, with the intention of introducing the latter to Wharfedale (a relatively new field if Whittaker's chronology is

correct). There is no reference to a right of way, nor of a right to go on any land with certain exceptions, nor of a duty to work a mine continuously. Indeed, Gill has suggested[210] that miners in Grassington "were not free to mine where they pleased. Their freedom was in the sense of being self employed".

There is evidence in the Chatsworth papers that about 1680 the meer was extended to 30 yards, and the first finder of a lode was to get two meers with the next meer being allocated to the mineral lord, and the duty decreased from one third to one fifth[211]. It appears that there was a Barmoot in 1719 which may have settled a dispute over a mine at Starbotton, and in 1719 the calling of a Barmoot was suggested but not carried out. In the 1730s there was a revival of mining activity following a discovery at Grassington Out Moor, and in 1735 a new Barmaster, Solomon Bean, was appointed[212]. He favoured the customary laws, and a revised code of 33 laws was drawn up by a jury of 24 men at a Barmoot on 2 May 1737, and printed under the title 'Rara Avis in Terris' in the same year[213]. This code was considerably expanded from that of 1642, by providing administrative details of the Barmoot Court, and other differences were that the Barmaster was to be appointed by the Lord of the Field "to be an indifferent person between the Lord of the Field and the miners, and between the miners and the merchants". The Barmaster might give liberty to any person to try to get lead ore,

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210 M C Gill, *Grassington Mines* (Note 207) p. 16

211 *ibid.* p. 16

212 *ibid.* pp. 17-18

213 This is reproduced by M C Gill, *ibid.* Appendix B. A full analysis is in A Raistrick, 'Rara Avis in Terris' in *Proc. Univ. Durham Phil. Soc.* Vol ix pt 4 (1936) pp. 180-90

and upon that person finding any lead 'rake' or vein, "to measure and deliver to the first finder two meers of ground, each meer in Grassington to be 30 yards in length and $7^{1}/_{2}$ yards in width, and in Langstrothdale and Littondale 32 yards in length and 8 yards in width", for which the miner was to pay 1s 6d to the Barmaster for each meer. The rest of the field in that vein was to belong to the lord of the field, and might be granted to any person as he pleased. The Barmaster was to walk the field every week and forfeit any claim not worked for 28 days (unless working was prevented by water or lack of wind). Ten days notice of intending forfeit was to be given. All ore ws to be smelted at the Lord's mill, and 'lot' was to be one fifth. Fines were specified for taking timbering, hindering a neighbour's access to his work, underground theft, neglect of dams and waterways for washing the ore, and interfering with a neighbour's dam.

A claim to any meer must be made by 'arrest', and the defendant should answer the claim at the next Barmoot Court, which the Barmaster ought to call within ten days of an 'arrest'. There were to be two Great Barmoot Courts every year. The jurors ought to be "honest and able men, who understand well the custom of the mine". Any appeal from a Barmoot Court ought to be made within fourteen days. The final (but not the least important) law was, "if any vein or rake go cross through another vein or rake, he that comes to the Pee first shall have it, and may work through as far as his quarter end". One may particularly note that under this code the Barmaster had liberty to grant the right to prospect but there was no provision that an application might not be refused (unlike the rule in the Mendips). This marked the zenith of the customary law

in the Grassington area, as will be seen later.

In other areas of Wharfedale which were not included in the Earl of Cumberland's liberties, minerals came to be owned by the freeholders as Trust Lords. In Hebden in the sixteenth century the freeholders were sold the mineral rights and appointed two Barmasters to regulate the mine[214]. In Conistone, in 1584, the freeholders also acquired the mineral rights[215] and in 1687 their Byelawman (who was appointed to carry out the duties of the Lord of the Manor) appointed a Barmaster. He had, in 1670, obtained a copy of the customary laws of Wirksworth. The Barmaster and his four assistants drew up a set of laws modelled on the Derbyshire laws: the Barmaster "was to grant meers of 32 yards to all applicants, with a quarter cord of 8 yards on either side of the vein", and the first finder was to have two meers. A duty of $4^1/_2$d per dish of "wine measure, three gallons and a half" was charged. Alternatively, the miner could have his ore smelted and then pay the thirteenth pig as duty.

Part Eight - Purbeck

Finally, it is also possible that there were free mining customs in the stone quarries of Purbeck in Dorset. Purbeck was a 'Royal Warren'. It had been a Royal Forest but in 1401 King Henry IV disafforested it and ordered the destruction of all wild animals except hares and rabbits[216].

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214 A Raistrick, *Lead Mining in the Mid Pennines*, Truro 1973, p. 80

215 *ibid.* p. 120

216 Cat Pat. Rolls, 1399-1401, p. 476, quoted by I Pritchard, 'Evolution of Rural Settlement in Dorset', unpublished University of Wales MSc Thesis, 1954, p. 32

It is claimed by the Company of Marblers or Stone Cutters of the Isle of Purbeck, who meet annually on Shrove Tuesday at Corfe Town Hall to elect a Warden and admit apprentices, that the Company received a Charter, probably from Queen Elizabeth I[217]. According to C H Vellacott[218], "A claim has ... occasionally been asserted by the quarriers of Purbeck to enter any uncultivated land in search of stone, on the authority of a traditional but non-existent Charter, but such a right has never been legally established". In 1277 the Constable of Corfe Castle declared that his predecessors had been wont to cut trees and make quarries for the repair of the Castle when necessity required[219 220]. The early records of the Company of Marblers may have been lost in a fire about 1680, but the whole question of an alleged charter is very vague. Was there ever a Charter, or was it thought up to buttress an alleged right of entry onto land? At the same time, Purbeck marble has been found in the Roman cities of Verulamium and Silchester[221], so it is just possible that the alleged rights of the Company go back into remote times. It may be noted that membership of the Company is not restricted to descendants of former members, though they have priority.

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217 An interesting discussion of the alleged rights of the marblers is in Eric Benfield, *Purbeck Shop*, Cambridge 1940, chapter 2, passim. See also C E Robinson, *A Royal Warren, or Picturesque Rambles in the Isle of Purbeck* (1852), pp. 86-88

218 *VCH Dorset*, Vol 2, 1908, p. 331

219 *VCH Dorset*, Vol 2, 1908, pp. 332-6

220 Assize Roll, 1 Ed I, quoted in VCH Dorset, p. 333

221 *VCH Dorset*, p. 331

CHAPTER THREE:

COMMON FEATURES IN CODES OF FREE MINING CUSTOMS

That there is some connection between the various codes of free mining and that they have some things in common, goes without saying. There are however a great variety of customs in the various areas, and it seems desirable to examine this variety in order to form some view as to whether the customs are ultimately derived from one source.

One must first turn to the areas where customary laws were in force, Derbyshire, Yorkshire, Flintshire, the Mendips, the Stannaries, the Forest of Dean and Alston Moor. In summarising the principal similarities and differences between these areas, one may proceed as follows[1]:

First - Nomenclature of officials

1. In Derbyshire, Flintshire and the Yorkshire Dales, the executive officers who were responsible for granting claims and regulating the conduct of the miners were known as Barmasters. The similarity of this term (and of the official's functions) to the German Harz Mountain mines' *Bergmeister*[2] has led to the belief that at some unknown date (but certainly before the Quo Waranto Inquisition in 1288) miners from Germany brought the term to Derbyshire; this may have been

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1 The following summaries are drawn from the accounts of the customs given in Chapter Two above

2 G Agricola, *De Re Metallica* ed. Hoover, New York 1950 Book IV *passim*

as early as the reign of Athelstan[3]. The Quo Waranto terms the executive officer 'steward or barmaster', but (as will be seen) the steward is at the present day the legal officer responsible for holding the Barmoot Court, whereas the Barmaster remains the executive officer.

2. In the Mendip mines the executive officers were the Store Bailiff and the Lead Reeve. Bailiff comes from the Norman-French *baillif*, while the term Reeve derives from the Old English *geraefa*[4].

3. In the Stannaries the executive officer who operated in each of the stannary districts was also termed bailiff[5]. The use of this Norman-French word suggests that the officer was named when the royal officials organised the Stannaries for largely fiscal purposes, as has been explained above.

4. In the mines of Alston the executive officer was the King's Sergeant, a term which must reflect the interest of the Crown in the silver-rich lead mines of the area.

5. In the Forest of Dean, the executive officers were termed the Gaveller and Deputy Gaveller. In common with many other features of the Forest, these names are obscure in origin[6].

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3 See DNB under Athelstan

4 Derivations from the Oxford English Dictionary

5 T Beare, *The Bailiff of Blackmoor* 1586, ed. J A Buckley, Truro 1994

6 C R Hart, *The Free Miners of the Forest of Dean*, Gloucester 1953 p. 49 note 3 discusses the matter

Hart suggests that they are derived from the word 'gale' meaning tribute or service. They may be connected with the Anglo-Saxon word *gafol* (a rent or tribute) and the obsolete inheritance custom known as *gavelkind*.

As the system of courts connected with free mining developed, the officer in charge of the courts came to be known in most areas (Derbyshire, the Yorkshire Dales and the Mendips) as the Steward. In the Stannaries the Steward was in charge of the lowest tier of courts, those for each stannary district, while the officers in charge of the superior courts were the Warden and Vice-Warden of the Stannaries. It seems most probable that the term Steward was derived by analogy with manorial courts. In the royal Forest of Dean, the mine law courts were held by the Constable of St Briavels Castle or his deputy. The Constable was sometimes described as the Warden. The legal officer at the Mine Law Court was described as the Clerk of the Court[7]. The mines of Alston, however, which were also apparently organised by the royal administration, were in charge of a Coroner.

This great variety of titles, drawn from various sources, must surely suggest that the customs developed largely independently: some (Derbyshire etc.) from early German influence; some out of Manorial legal structures (the Mendips); some from Royal attempts to develop mines for primarily fiscal purposes (the Stannaries and Alston); and some from the royal Forest administration (the Forest of Dean). As will appear below, these divisions tend to be repeated

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7 Mine Law Court, Order No 1, 10 March 1668

when other aspects of the customary areas and their separate laws are examined.

Second - Divisions of the mining field

Divisions of the Fields were: in Derbyshire (the High Peak and the Wapentake of Wirksworth), divided into Liberties; in the Mendips, the four lordships of the Lords Royal; in the Stannaries of Devonshire and of Cornwall stannary districts (originally three districts in Devonshire, with a fourth added later, and four in Cornwall); Dean was a Royal Forest divided into walks; Alston (known as 'the Mines of Carlisle') was apparently a single unit administratively.

The divisions in Mendip, the Stannaries and the Forest of Dean apparently originated as Royal administrative areas. The origin of the Liberties as divisions of Derbyshire is obscure but perhaps they represent early sub-divisions of the Ancient Demesne of the Peak referred to above.

Third - Courts and Parliaments

The Courts dealing with mining matters were; in Derbyshire, the Barmoot Court, which met usually every three weeks, and the Great Barmoot Court which met twice a year, with appeals to the Duchy of Lancaster Chancery Court; in the Mendips, each Lordship had a Minery Court meeting twice a year; in the Stannaries, each district had a Steward's Court meeting thirteen times a year, two of the sessions being 'great' or 'law' sessions, each Stannary had above the Steward's Courts the Court of the Vice-Warden with an appeal to the Lord Warden; in Dean, the Hundred Court of St Briavels and the

Mining Court meeting every three weeks with occasional legislative sessions; in Alston, there was the Coroner's Court with occasional Assizes. Except in Alston, the lower courts developed on similar lines, and it seems that the three or four week interval was found in practice to be most effective in dealing with normal problems, while the two major sessions each year provided the times to select jurors for the coming year and decide on any necessary legislation affecting the particular field.

One feature common to the mining courts - with the possible exception of Alston - is their reliance on the Jury as the source of decisions. These Jurors were selected as being persons having special knowledge of mining problems (and not, as with modern juries, lacking previous knowledge of the matter to be decided). The mining courts surely grew out of (or by analogy with) manorial courts, where the jurors were specifically chosen as having local knowledge.

In addition, the Stannaries developed Stannary Parliaments which met irregularly to pass new laws and confirm existing laws; in the other areas the twice-yearly sessions passed new laws as necessary. The duties of enquiring into deaths carried out normally by County Coroners were taken over when dealing with deaths in the mining field in Derbyshire and the Mendips, and presumably also in Alston.

Fourth - Mine areas

The areas covered by a miner's claim were in most districts termed a '*meer*' and given a conventional length which varied from

field to field; but in the Mendips the miner's '*groove*' was measured by the '*hack's throw*', while in the Stannaries the process of staking a claim was termed '*pitching bounds*'. The term '*groove*' was almost universally used for a mine, while the term '*rake*' was used in Derbyshire and the Mendips for a vein of ore. In the Forest of Dean a claim was known as a '*gale*', emphasising the difference between the lead and tin mining areas and the Forest of Dean, where only iron ore and coal were found, and the Royal Forest administration persisted.

Fifth - Method of working

In Derbyshire and the Mendips claims had to be worked continuously (unless interrupted by flooding), similarly in Wharfedale and Flintshire; in the Stannaries 'bounds' had to be renewed annually; it is suggested that this annual renewal may have been connected with the seasonal nature of work on alluvial deposits ('streamworks') which were worked during dry periods of the year or when farming was slack. In Derbyshire a miner might prospect in any land except under dwellinghouses, gardens, orchards and churchyards; in the Stannaries in all unenclosed land of any owner, and in enclosed land (except churchyards) forming part of the Duchy of Cornwall's lands. This exception for Duchy lands must represent an unrecorded concession by the Duchy designed to encourage mining and increase the takings from the 'coinage' of tin. In the Forest of Dean gales might be taken up in unenclosed areas within the bounds of the Forest. In Alston and the Yorkshire Dales and the Mendips customary mining was limited to unenclosed moor or common land; in North Wales the expression is used 'in the field' - presumably meaning unenclosed land.

Sixth - Tolls, charges and tithe

By custom free miners were exempt from tolls and local imposts in many of the areas, though not apparently in the Mendips nor in Dean. The Marrick code of laws, also, does not mention exemption from tolls. One reason for this exemption may have been the interest of the Crown as mineral lord in encouraging men to work in mines in areas such as Alston Moor which were inhospitable, or to encourage them to leave alternative occupations such as fishing or husbandry in the mining areas. Freedom from other tolls and taxes would also compensate the miners for their paying the royalty on the produce of the mines to the Crown or other mineral lord. It may be suggested that the absence of this exemption in the Mendips was due to the status of the four Lords Royal as local manorial lords; they may have felt that the privileges of customary mining were sufficient without reducing their market tolls. There is of course no evidence of what the position of Mendip miners regarding tolls was prior to the emergence of the Lords Royal. It is surprising that the Forest of Dean miners also did not enjoy any exemption from tolls etc., but they would in general have also been entitled to commoners' rights in the Forest.

This freedom from tolls and market dues was also granted to the miners at the royal silver/lead mines in the Bere Alston area in spite of the free mining customs not applying to them - as many of them were directed to work there from Derbyshire, as has already been mentioned, the freedom from tolls was perhaps granted to compensate for the loss of customary rights.

The payment of tithe to the Church was made in some but not

all of the Derbyshire liberties and in Marrick, but not in Alston, Wharfedale or Dean. As has been explained, tithe was payable in consideration of the prayers of the Church for the souls of the miners. The Stannaries had been freed from tithe by reason of the Duchy of Cornwall paying a surprisingly small composition in lieu of tithe to the Diocese of Exeter. Alston and the Forest of Dean were extra-parochial, but why tithe was not payable in some parts of Derbyshire and Wharfedale is puzzling.

Seventh - Methods of working claims and settling disputes

A 'dish' of ore was required by the Barmaster on opening a mine in Derbyshire, Marrick and North Wales and by the King's Sergeant in Alston, but not in the Forest of Dean (where iron ore and coal were involved), the Mendips or the Stannaries. This emphasises a division between customs in the Northern and North Midland mines and those in the South West. But on the other hand there were special rules regarding the marking of claims by windlasses ('stows' or 'stoces') in Derbyshire and in the Mendips ('stillings'), so that in this respect the customs in the two areas were similar though the terminology differed. Except in the Mendips and the Stannaries, miners had a right to timber from the Mineral Lord for mining purposes or for building a hut on the claim. It is hard to explain why this right was absent from the South West, unless it was due to the relative lack of trees on the Mendips and the unenclosed areas of Cornwall and Devon. Theft must have been a constant fear for the miner; in Derbyshire and in North Wales there was said to be the brutal sanction of pinning a man's hand by

his knife to the windlass for a third offence of theft[8], and in the Mendips a man found guilty of theft to a value exceeding $13^1/_2$d was to be put in his shed with his mining tools, the shed set on fire, and he was then to be banished from the hill for ever.

The custom of most areas provided that disputes between miners and infringements of the customs were to be dealt with by the miners' courts for the area (though in the Mendips a person offending again after having been banished from the hill was to be dealt with at Common Law). Presumably, as they had developed out of the system of manorial courts, the mining courts did not necessarily follow the same Common Law procedures as had been built up in the Royal Courts by recorded judicial decisions. Both Stannaries even had their own prisons for offenders, including debtors.

Eighth - Common seals

The Stannaries had Common Seals, but the other areas do not seem to have had any such formal means of authenticating documents. This is perhaps due to the exceptional arrangement made by the Crown in Devon and Cornwall for collecting royal dues from the tin miners ('coinage'). In other areas the loose organisation of the free miners, the absence of any 'gild' organisation, and the fact that the mine courts, other than the Vice-Warden's Court, were not 'courts of record' (whose decisions could be quoted in arguing subsequent cases) is sufficient to explain the absence of a common seal.

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8 Though I understand from Dr Rieuwerts that no record of such a penalty being inflicted in Derbyshire has been traced

Ninth - Conclusions regarding the diffusion of customary law

It is not easy from the above summary to see clear evidence of diffusion of customs from one area to another, except in the case of Derbyshire customs, which seem to have influenced the North Wales and Yorkshire mines. There can be little doubt that the sets of customs recorded for Flintshire and Denbighshire in the Black Prince's Register and the Anglo-Norman extent of Minera[9] were directly derived from the customs in force in the Wirksworth and High Peak areas in the fourteenth century. The similarities are remarkable: the miners and merchants were to choose a Barmaster; the Barmaster to deliver 'finder meres' to the finder of a vein; the lord to have the next mere; meres to be heritable and dowable, unless forfeited for non-working; miners to be quit of tolls; ferocious penalties for theft; great and ordinary court sessions; and so on.

It would seem reasonable to suppose that most of the miners in the area immediately after the Edwardian invasion of Wales in the late thirteenth century were from England, as the Welsh princes had little use for lead. This is confirmed by the list of miners called up for service in the King's mines in Devon in 1296, many of whom had Derbyshire names[10]. It is possible that only English speakers were called for, but some of the miners do have Welsh names (e.g. ap Dobyn). Mining in the Hopedale area seems to have declined before the Black Death in 1349, but from entries in the Black Prince's Register quoted by Williams it appears that shortly after 1349 certain miners offered to work the mines on the terms mentioned above and

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9 C J Williams, 'Mining Laws of Flintshire and Denbighshire' in *Mining before Powder* ed. T D Ford and L Willies, 1994 pp. 62-68

10 P Claughton, 'The Medieval Silver-lead miner' in *PDMHS Bulletin*, Vol 12, No 2, (1993) pp. 28-29

set out in the Black Prince's Register[11]. It seems surprising that so soon after the Black Death miners should have apparently migrated from Derbyshire, where the impact of plague must have been equally severe, but the similarity in customs is quite striking. It is interesting also to note that the unsuccessful attempt to claim that customary laws were in force in the Halkyn area in 1622-3 was apparently triggered off by 'strangers out of Derbyshire'[12]. As late as 1747 William Hooson, a Derbyshire miner, published his 'Miners' Dictionary' at Wrexham.

The question now arises, why miners going to North Wales should wish to take their customs with them. After all, miners from Derbyshire were sent by the Crown to develop the silver-lead mines in Bere Alston in Devon in Edward I's reign, as has been explained, but the customs were not brought into force there. The explanation must lie in the circumstances of the movement of miners from Derbyshire: in other words, if the miners were moving because they were conscripted, the Crown decided the terms under which they worked, and in the case of the Devonshire mines, it was decided that the customs should not apply; but where the emigration was voluntary (as it appears to have been in the case of the North Wales or North Yorkshire mines), then the miners were free to decide the terms on which they were to serve, and they chose to serve as free miners. This must clearly show that Derbyshire miners were attached to their customs, and felt that they were beneficial to them.

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11 Cal Black Prince's Register, HMSO Vol III, pp. 71-3

12 Williams, Mining Laws (Note 9)

It has been remarked that the customs in use in various parts of the North Pennines have similarities with Derbyshire customs. At Marrick in Swaledale there were customs[13] set down in 1574. These are similar to those in the Quo Waranto of 1288, providing for the allocation of finder meers by the Barmaster (or moormaster in Marrick); the lord to have a third meer; other miners to have further meers; a 'dish' to be provided; the lord to receive 'lot'. No right of way is mentioned, but rights of timber were granted in exchange for 'lot'. There was probably a Barmoot Court held in Marrick in 1704, but there is no other reference to such a Court there. Only the right to timber is not included in the Quo Waranto rights. This suggests that a version of the Derbyshire rights reached Swaledale before, or about, 1288, and the most likely date for this would be when the Alston mines were being developed, but after 1154 when King Stephen gave the mineral rights in Weardale, where the mineral customary laws were not known, to Bishop Hugh Puiset[14]. The use in Marrick of the term 'moormaster' is interesting. The earliest moormaster in Weardale was appointed in 1566 according to Blackburn, who felt that the term had been imported from the south of England; but the word 'moor' was used as a synonym for 'mine' in 1502 in Swaledale[15]. These customs in Marrick certainly suggest that any connection with Derbyshire had ceased long before 1574.

The lead mines in Nidderdale and Wharfedale which belonged to Fountains and Bylands Abbeys and Bolton Priory were certainly

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13 L O Tyson, *The Manor and Lead Mines of Marrick*. BM No. 38 pp. 14-16, where the text is given in facsimile

14 A Blackburn, 'Mining without Laws - Weardale under the Moormasters' in *Mining before Powder*, T D Ford & L Willies pp. 69-75

15 A Raistrick & B Jennings, *History of Lead Mining in the Pennines*, Newcastle upon Tyne 1983, p. 56

worked before the Dissolution[16], presumably by local men; but in 1603 miners from Derbyshire were brought in by the Earl of Cumberland to open mines in Grassington Low Moor[17], and in 1642 a statement of customary laws in use in the Lordship of Grassington was drawn up which has much in common with Derbyshire. These laws were expanded at a Barmoot in 1737 and printed by the Barmaster Solomon Bean[18]. After 1770, when the Mineral Lord was the Duke of Devonshire, the customary laws in the Grassington area were replaced by a system of leases. This contrasts with the position in the Derbyshire areas where the Dukes were Lessees of the mineral rights under the Crown; here the customary laws continued in force until the cessation of mining.

As has been explained, in each of the main areas connected with free mining, there was a system of mining courts meeting every three or four weeks, with a Great Court twice a year which had some legislative powers. The legislative courts seem to have developed after the lesser courts, as there is no mention of the Great Barmoots in the 1288 Quo Waranto. The minor courts first appear in the thirteenth century and the frequently of their sessions suggests that they developed to meet the need for quick settlement of practical disputes in the mining field. They seem to have grown up by analogy with manorial courts or in the case of the Forest of Dean, the Verderers' Court of the Forest administration. In view of the interest of the Crown in minerals, it is possible that their apparently

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16 A Raistrick and B Jennings, *History of Lead Mining in the Pennines* Newcastle upon Tyne 1983, p. 57

17 T D Whittaker, *History & Antiquities of the Deanery of Craven*, 2nd ed. 1812 p. 178

18 S Bean, *Rara Avis in Terris*, Leeds 1737

parallel evolution was by discussion among the officials in the service of the Crown or the Duchy of Cornwall, who must surely have been known to one another.

A possible example of transfer of expertise is provided by two figures prominent in the Mendips who were also concerned with the Duchy of Lancaster. Richard Chocke was retained as Counsel for the Duchy between 1446 and 1451[19]. In that year he became a Justice of the Common Pleas, and later headed the enquiry into common rights on Mendip. Did Chocke suggest then to the four Lords Royal that they set up a system in their Lordships similar to that in Derbyshire? This might explain the apparently illogical conjunction of his enquiry into common rights, and the basic mining laws in Mendip, remarked on by Gough and Vellacott[20]. Further, Sir Edward Waldegrave was Chancellor of the Duchy of Lancaster in 1558-9. Although he died in the Tower in 1561, he had acquired Chewton Lordship after the fall of the Grey family, as mentioned above, and his family still own it[21].

There were developments in the mining field in the South West during the reign of Edward IV, when the first recorded Stannary Parliament or Great Court of Tinners was held in Devonshire[22]. These Parliaments were inserted above the twice yearly great sessions of the Stewards' Courts presumably by order of the Duchy

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19 Somerville, *Duchy of Lancaster*, London 1953, Vol 1, pp. 451 and 454

20 J W Gough, *Mines of Mendip*, Newton Abbot, 2nd ed. 1967, p. 74

21 Somerville, *Duchy of Lancaster*, (Note 18) Vol 1 p. 395, and see DNB

22 S Rowe, *Perambulation of the Ancient and Royal Forest of Dartmoor*, 3rd ed. 1896 pp. 309-311

of Cornwall. Edward IV was close to his sister Margaret, Duchess of Burgundy, and the Burgundian Court might well have provided a conduit for German mining expertise and law to find its way to the English royal mining administration, and inspired the appointment of 'King's Commissioners of his mines in England and Wales', which included a summary set of customs for the mines brought into effect immediately after Henry VII's seizure of the throne[23]. The appointment of these commissioners does not seem to have had much practical effect on the areas where customary law was in effect[24].

Far from customs having been introduced in early medieval times from Germany, as has been suggested, it seems more likely (in view of the many differences between the areas where customary mining took place detailed above, that the customs originated at some date still obscure, and spread through the tin and lead mining areas in Roman and Anglo-Saxon times.

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23 Cal. PR. 1485-94 pp. 69-70

24 G Agricola, *De Re Metallica*, (Note 2) Book IV passim

CHAPTER FOUR:

THE LEGAL AND OCCUPATIONAL STATUS OF FREE MINERS

The legal status of free miners in the early Middle Ages is not clear. It may be surmised that the reason for the persistence of free mining customs was that the royal authorities wished to ensure that persons qualified by experience to conduct mining operations were not constantly harried by local manorial lords insisting that they carried out burdensome and time-consuming duties under the regulations of their manor, so diverting them from searching out and winning minerals of value to the Crown. These minerals in particular would be tin (where England had a valuable source of international trade) and silver-lead and lead (required for coinage and constructional reasons). That there was some special relationship between the Crown and the free miner is certainly indicated by the action of the Crown when new silver-lead deposits were found in Devonshire in the late thirteenth century, when miners were specially sent to Bere Alston by the Justiciar of Chester[1]. From their names, many of these miners were in fact Derbyshire men; whether they had migrated voluntarily to Flintshire or had been despatched there by the Crown is not yet clear. However, as mentioned above, they were operating in Flintshire under customary laws. Nevertheless, these were plainly full-time miners and this may explain why, when they reached South Devon, the Crown ceased to permit them to operate under customary laws though they did have some special privileges such as freedom from market dues. But in the areas where

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1 P Claughton, 'The Medieval Silver-Lead Miner' in *PDMHS Bulletin*, Vol 12 No 2 (1993), pp. 28-30 and Cal. Pat. Rolls 24 Ed I, 179

customary mining was in use, such as Derbyshire, there were numerous part-time miners[2] who supplemented meagre returns from farming by part-time mining whose returns helped to pay the rent.

This does not answer the question of what the legal status of the part-time miner was at an earlier date before the small tenant farmer (as distinct from the villein) became common. In this connection, one may note the exceptional position of men in manors which were 'ancient demesne of the Crown'[3] and the existence of a large area of ancient demesne in the Peak District, as mentioned above.

If full-time miners in the customary mining districts had a special status, as seems probable, they also had special liabilities, particularly the liability to military service and of being despatched to open up new mining areas, as mentioned above. This even extended to direction to work in a new mining area being opened up in South Wales by Edward II's royal favourites, the Despensers[4].

It is noteworthy that the areas where free mining customs flourished tended to be areas where rough grazing of stock was a major occupation for farmers. Those who pastured stock on manorial waste or common land might well be able to be involved part-time in mining. The apparent connection between Richard Chocke's enquiry

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2 See I Blanchard, 'Miners and the Agricultural Community in Late Medieval England' in *Agricultural History Review*, Vol 20 pt. 2 (1972) pp. 93-103 and also J Hatcher, 'Myths Miners and Agricultural Communities', in *AHR*, Vol 22 (1974) pp. 62-73

3 See Paul Vinogradoff, *Villeinage in England*, 1892 pp. 112, 119 & 121

4 Cal. Pat Rolls Edward II

into common rights on Mendip mentioned above with the mining customs on Mendip suggests a connection between pasturage and part-time mining[5]. The suggestion is that the head of the family mined, while the rest of the family saw to the farming and pasturage.

The only mining areas where there was a determined effort to define the legal status of the free miner were the Stannaries of Devon and Cornwall, where the question of whether a person had access to the Stannary Courts or not was important. De Wrotham's letter "includes among those classes whose customs are to be respected all diggers of tin, all buyers of black tin, first smelters of tin and merchants of tin of the first smelting"[6]. King John's Charter of 1201 was addressed to "all tinners as long as they are in work", and the Charter of 1305 added a qualification apparently confining the scope of the definition of tinner to the ancient demesne of the Crown[7]. The petitions to Parliament of the Commons of Devon and Cornwall[8] complained that not only labouring tinners but also their employers claimed Stannary privileges and complained, *inter alia*, "that the Warden of the Stannaries received in the Stannary jails villeins whom their masters were about to imprison for arrears of accounts, and treated them so well that they refused to return to their lords"[9]. Here, then is plain evidence that 'tinners', at least while engaged in their occupation, were regarded by the Stannary

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5 J Thirsk, 'Industries in the Countryside', in F J Fisher (ed) *Essays in the Economic and Social History of Tudor and Stuart England*, 1951 p. 73

6 G R Lewis, *The Stannaries*, London 1908 p. 96

7 *ibid.* pp. 96-7

8 *ibid.* Appendix F

9 *ibid.* p. 97. Complaints of good treatment in medieval jails are unusual

officials as having a special status (*vis-à-vis* the Crown) which overrode their obligations to their manorial lord.

The Ordinances of Prince Arthur implicitly extended the definition of tinners or stannators, including amongst them owners of blowing houses and merchants[10], while the Pardon of 1507 included gentleman bounders, owners of tin works, possessors of blowing houses, and buyers of black or white tin among the definition of tinners. Doubts about the true definition of tinners led to a Commission 'to settle doubtful questions connected with the Stannaries' which decided that no man was to be taken for a tinner, and thus be authorised to sue or be sued in the Stannary Courts, "save such as had some portion in the works or employed some charge in making things requisite to the getting of tin"[11]. G R Lewis considered that this definition would include 'artisans such as carpenters, smiths, colliers and blowers'. In 1608 the Judges passed a resolution that blowers as well as labourers during the time that they do work there were 'privileged tinners'[12] who were only to be impleaded in the Stannary Courts. Actions between tinner and tinner or worker and worker (when the case does not refer to the Stannaries) may be heard in the Stannary Courts or at the Common Law at the plaintiff's discretion.

In 1627[13] the Judges made a further attempt to clarify the

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10 BL. Add Mss 24746

11 G R Lewis, *The Stannaries* (Note 6) p. 98

12 *ibid.* Appendix G

13 *ibid.* Appendix H

status of tinners after the question had been referred to the full bench of judges by the Lord Warden. The Judges again declared that blowers as well as labourers and workers 'in or about the Stannaries' were to be taken to have tinners' privileges to sue or to be sued in the Stannary Courts 'during the time they work there and no longer'. Other persons could be styled tinners, for example, jurates of the Stannary Courts, owners, adventurers, undertakers in the mines. But to have the privilege of suing and being sued in the Stannary Courts *and not elsewhere* such tinners were the blowers and labourers and workers of the said works whose personal attendance is necessary to be employed in the tinworks during the time they attend there *and no longer.*

It is therefore plain that tinners, while actually working in the Stannaries, had a special legal status, and this extended to having legislative powers over their industry unparalleled elsewhere in England and Wales, as will be seen later. Tinners in fact by Stuart times had acquired a special legal status entitling them, while working in the Stannaries, to access to the Stannary Courts where they might expect a more sympathetic understanding of their problems and a freedom from the rigid rules of the Common Law courts. This status had been recognised by the Pardon of Henry VII described above, even though the Pardon was never actually ratified by the Westminster Parliament as had been intended. How far this treatment of the Cornishmen was influenced by their unruly behaviour and a desire on the part of the Crown to prevent any further civil unrest is a matter for speculation, but one would think that a desire to avoid such unrest must have been in the minds of Henry's advisers.

CHAPTER FIVE:

ZENITH AND DECLINE OF FREE MINING CUSTOMS

One - The Crown begins to withdraw

As has been indicated, the free miner appears to have been under the protection of the Crown when actually engaged in mining to protect him from the claims of manorial lords. In consideration of this protection, he was liable on occasions to receive Royal orders to proceed to a new workplace or military service. To encourage mining, the miner had a great measure of freedom while engaged in mining, and rights of self-government. These rights were of such early origin that no precise record of such origin can be found.

However, there was a sign of change in the Crown attitude to the free miner as early as the reign of Edward I in 1292 (just after the Quo Waranto enquiry in Derbyshire), after a great find of lead ore particularly rich in silver content was made in Devonshire in the neighbourhood of Bere Alston. Here, miners were ordered to come from Derbyshire and from North Wales[1] [2], and a complete hierarchy of officials was set up to oversee the new operations[3]. These miners were paid by the Crown, they were privileged employees since they had certain exemptions from market dues[4], but in general the customary laws did not operate. In a sense this is surprising, since

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1 See Cal Pat Rolls 24 Ed I p. 179

2 PRO E 101 260/17

3 P Claughton, 'The Medieval Silver-Lead Miner', in *PDMHS Bulletin*, vol 12 No 2 (1993), pp. 28-30

4 Cal Pat Rolls 24 Ed I p. 398

these miners, or at least a number of them, had come from free mining areas. The differences between the customary mining in Derbyshire and Flintshire, and the arrangements made at Bere Alston, suggest a definite administrative decision made by Crown officials, that the customary laws should not be extended to Bere Alston. However, this decision was not followed up elsewhere since, as has been seen, customary law was officially recognised in Flintshire and Denbighshire in the fourteenth century, plainly at the request of the miners themselves.

From the fifteenth century a number of factors led to the customary laws coming under increasing pressure from alternative systems of mining laws and procedures, under codes of law derived from the Roman law and not from the common law[5]. From time immemorial, under the Holy Roman Empire, the Emperor was regarded as possessor of all mining rights especially rights in the noble metals, gold, silver and copper. In the mining districts of the Trentino, the Archbishop of Trent acquired the Imperial rights of mining and in turn granted certain rights to miners, not unlike the customary rights in England, in 1185[6]. However, these rights were surely *ex gratia*[7] rather than immemorial rights as in England. In England and Wales, the Crown claimed rights to gold and silver, as in the rules relating to 'treasure trove', where the Crown claims any gold and silver objects deliberately concealed in the ground and not

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5 T D Ford, 'Thoughts on Mining Law History', in *PDMHS Bulletin*, Vol 10 No 4 (1988) pp. 195-6

6 O Weisgerber, 'The First German Mining Law', in *PDMHS Bulletin*, Vol 10 No 4 (1988) pp. 224-230

7 But Dr Michael Lewis has suggested to me that the Archbishop may have been putting into writing existing customs

reclaimed by the person who concealed them[8]. Legislation regarding this claim by the Crown is contained in the Statute de Officio Coronatoris[9], but presumably the Crown's claim long predated this Statute. This claim to silver involved lead mining, as many lead ores have a high silver content. In general, the Alston, Flintshire and South Devon lead ores are rich in silver, those in the Mendips and Derbyshire were not generally sufficiently rich in silver to be capable of extraction by medieval methods, though there were exceptions.

Two - Chartered Companies

Under Henry VII Commissioners were appointed for the King's mines in England and Wales, of tin, copper, gold and silver[10]. As this was so soon after Henry's acquisition of the throne, one wonders whether the appointment was prompted by some Yorkist initiative, possibly by Richard III when exercising power in the North during Edward IV's reign. These Commissioners seem to have exercised power only over mines on Crown property. During the Tudor period the Crown lost interest in conscripting long-bowmen in view of the development of bronze or brass cannon, for which copper was required. In Queen Elizabeth's reign, in the *Case of Mines*[11], it was decided that 'if gold or silver was contained in base metal in the land of a subject, not merely the gold or silver, but also the base

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8 *Enc. Brit.* 13th ed. 1925 Vol 27 p. 228. This has been modified by recent legislation.

9 Act 14 Ed I c.2

10 Cal Pat Rolls, 1485-94 pp. 69-70 and see G R Lewis, *The Stannaries*, London 1908, p. 75

11 Case of Mines, Plowden Commentaries, London 1571

metal belonged to the Crown by prescription'[12]. The Crown had approached German mining experts to help with exploiting copper mines in the Lake District (where customary mining laws were not in force). The copper ore was alleged to contain copper and also some gold and silver. For this reason the mine was claimed by the Crown as a Mine Royal. The Earl of Cumberland, having been granted the site of the mine during the reign of Philip and Mary, prevented the ore which had been dug from being moved. The Earl's legal advisers, during the pleadings, conceded that the mine contained gold, which apparently was not the case. There was a long history of claims by the Crown that silver and gold mines were Mines Royal, so that the Courts had no difficulty in deciding that the Earl's claim was ill founded, once the concession had been made by his lawyers. To develop copper mines the Crown turned to German experts from the Harz mountains, who would, to Elizabethan minds, more appropriately be given authority to mine by Letters Patent from the Crown, and the setting up of Chartered Companies; for the search for copper required a more organised method of search with disciplined workers, rather than the more haphazard free mining methods. Relying on the *Case of Mines*, the Crown proceeded to authorise mining companies with considerable capital, and monopoly rights. The Company of Mines Royal was given a monopoly of gold, silver, copper and quicksilver mines in Yorkshire, Lancashire, Cumberland, Westmorland, Cornwall, Devon, Gloucestershire, Worcestershire and Wales[13], while the Society of Mineral and Battery

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12 *McSwinney on Mines*, 3rd ed. London 1907 p. 52 and see M B Donald, *Elizabethan Keswick*, Whitehaven 1987, pp. 137-145

13 Patent Rolls, 6 Eliz Pt iii and 10 Eliz Pt v

Works[14] was given a monopoly of calamine (zinc ore) in England, Wales and part of Ireland, and its rights were extended by James I to cover 'ores simple and mixed' of gold, silver, copper and quicksilver in all counties not covered by the Mines Royal patent. This caused considerable trouble to free mines, as the Patentees took legal action to enforce what they regarded as their rights. The Mineral and Battery Works Company brought a series of actions against persons in Derbyshire, though these were connected with the processing, rather than the actual mining, of ore[15]. The claims by the Chartered Companies caused consternation not only to miners (whether operating under customary laws or not) but also to many landowners who found their rights to develop minerals under their own lands threatened. This is not the place to consider the history of the Companies *in extenso* but it may be said that they proved themselves incapable of developing mines on their own account, and resorted to granting their rights to licensees[16]. Eventually, after a Welsh landowner, Sir Carbery Price, felt himself frustrated in his desire to develop mines on his property, two Acts of Parliament were passed, one in 1688 declaring that "no mine of copper tin iron or lead shall hereafter be adjudged to be a Royal Mine altho gold or silver may be extracted out of the mine"[17]; this was followed up by a declaratory Act in 1693[18] which restated the rights of pre-emption

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14 Patent Rolls, 10 Eliz Pt ix and 1 Jac I Pt vii

15 M B Donald, *Elizabethan Monopolies*, London 1961 pp. 146-177

16 See W R Scott, *Constitution and Finance of English, Scottish and Irish Joint-Stock Companies to 1720*, London 1912 and also H Hamilton, *English Brass and Copper Industries to 1800*, 2nd ed. London 1967; M B Donald, *Elizabethan Copper*, Whitehaven 1987 and M B Donald, *Elizabethan Monopolies*, Edinburgh 1961 and A Raistrick, *Two Centuries of Industrial Welfare*, 2nd ed. Hartington 1977

17 Act 1 Wm & Mary c.30

18 Act 5 Wm & Mary c.7

of the Crown and also provided that nothing in this Act "shall alter determine or make void the Charters granted to the Tinners of Devon and Cornwall by any of the Kings & Queens of this realm or any of the liberties privileges or franchises of the said Tinners or to alter determine or make void the Laws Customs or Constitutions of the Stannaries ...".

Despite the powers conferred on the Company of Mines Royal, the Crown granted away the mineral rights of the Lordships of Bromfield and Yale in Denbighshire and of Coleshill and Rhuddlan in 1589 to private persons, whose rights were eventually acquired by Richard Grosvenor, ancestor of the Dukes of Westminster[19]. His son, Sir Richard Grosvenor, Bart., was involved in a lawsuit about 1622 with certain miners who were supported by Grosvenor's partner Thomas Jones. Jones had a book containing free mining laws - presumably an Ms. copy of the Derbyshire laws. The miners claimed that Grosvenor had prevented them from working the mines. The case reached the Exchequer Court where the miners claimed that it was the ancient custom of Coleshill and Rhuddlan that any miners might lawfully work the mines and smelt the ore on payment of a royalty of a tenth to Grosvenor. Finally they admitted they could not prove such a custom. They must have been unaware of the entries in the Black Prince's Register referred to above. Grosvenor was successful both in the Exchequer Court and in the Star Chamber in 1623. It seems that most of the miners had come to Flintshire from Derbyshire about 1620. However, it is worth noting that in the nineteenth century, up to about 1850, the Grosvenor estate was

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19 C J Williams, 'Mining Laws of Denbighshire & Flintshire' in *Mining before Powder*, ed. T D Ford & L Willies (1994) pp. 66-7 and see *Handlist of Grosvenor (Halkyn) Mss.* Clwyd Record Office 1988, Introduction

accustomed to grant yearly leases for mining which had a certain resemblance to customary mining, the area of grant in such leases was measured in 'meers' of 20 yards. The rules and conditions dated 25 January 1837[20] include "every person making a discovery of a new vein or string of ore shall have the privilege of having his ground fresh marked out in each direction from the shaft in which the ore was first discovered, as he shall desire".

The Company of the Mines Royal and the Company of the Mineral and Battery Works amalgamated in 1688, and were acquired for their valuable rights as a Company by the Royal Exchange Assurance in 1717[21]. There was an incident at Conistone in Wharfedale in October 1721. Here, the local miners had appointed a Barmaster in 1687 and adopted a set of laws and customs modelled on the Derbyshire laws. Certain miners appeared and proceeded to sink a shaft and dig for calamine ore, but were prevented from proceeding with their work by the Conistone men. These intruders claimed to be working under the charters of the amalgamated Societies of Mines Royal and Mineral and Battery Works whose rights had been leased to William Wood and his partners. However, their attempt to mine in Conistone was frustrated[22].

Another Company known as the Company of Copper Miners in England was authorised in 1688[23]. In 1752 they attempted to open

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20 Clwyd Record Office, D (GR) 304

21 W R Scott, *Constitution and Finance of English Scottish and Irish Joint Stock Companies to 1720*, Vol I, p. 408

22 A Raistrick, *Lead Mining in the Mid-Pennines*, Truro 1973 pp. 121-2

23 Patent Rolls 3 Wm. & Mary Pt v.

a mine in the Forest of Dean. The Forest miners prevented them from proceeding and the interlopers brought a case in the King's Bench in March 1752[24]. According to Smirke, who had seen the original documents, the Court decided the case in favour of the Dean Forest free miners.

This seems to have been the last attempt by a chartered Company to attack the free mining customs, but pressure from landowners and from capitalists proved more effective in attacking the customs, as will be seen. It is noteworthy that the London Lead Company, which took over the charter of the Royal Mines Copper Company (a subsidiary of the Mines Royal Company) in 1692 and mined extensively in Northumberland, Durham and North Wales, did open mines in Derbyshire in 1720, but took meers and entered them in the Barmaster's book in accordance with the customary laws[25]. The London Lead Company did clash with the customary laws in Derbyshire in 1753, when at the Mill Close Mine they erected a 'fire engine' for pumping and various buildings including a manager's house. The landowners, Sir Henry Harpur's Trustees, objected that this was exceeding their customary rights, and were upheld by the Court. Since that decision, such additions as 'fire engines' were the subject of payment to the landowner. It is interesting that this case was decided not by the Barmoot Court, but at Derby Assizes[26].

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24 *Company of Copper Miners v. Phillips* quoted in E Smirke, *Case of Vice v. Thomas*, London 1843, Appx. p. 120

25 *Report to London Lead Co.*, 23 Sept 1720, quoted in A Raistrick and B Jennings, *Lead Mining in the Pennines*, (London 1965) p. 120

26 J Mander, *Derbyshire Miners' Glossary*, Bakewell 1824, p. 57

Three - The Stannaries

Turning to the Stannaries, as has been explained, the Pardon of Henry VII marked the zenith of the freedom of action of the tinners. Placing the Convocation or Great Court on an official basis and laying down the method of choosing delegates ('jurates' or 'stannators') enabled the Devon 'Great Court' to flourish during the sixteenth century. The earliest Great Court whose records have survived was held in 1474 at Crockerntor[27], though there is a possibility that the Stannaries of Devon and Cornwall had earlier held joint assemblies at Hingston Down near Callington prior to 1305[28]. One of the Devon Statutes passed in 1474 dealt with the notification of pitching of bounds. Thereafter there were Great Courts in 1494[29], 1510, possibly 1514, 1532, 1533, 1552, 1567, 1574 (in this Court it was provided that a book recording bounds was to be kept), 1600, 1687, 1703, 1749 and 1786[30]. The falling off in frequency of meeting partly reflects the decline of the Devon Stannaries, but also the taking over of the Great Courts by the gentry[31]. The gentry concentrated on the down-stream (smelting) side of the industry which enabled them to squeeze the actual producers of the tin ore (tin streamers and bounders) financially.

The Cornish Convocations were less active in the sixteenth century; the first Convocation after the Pardon of Henry VII was in

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27 T A P Greeves, 'Great Courts or Parliaments of Tinners, 1474-1786' in *Report and Transactions of the Devonshire Association*, Vol 119 (1987) p. 145 quoting PRO se2/168/13

28 H de la Beche, *Report on Geology of Cornwall, Devon & West Somerset*, London 1839, p. 527

29 S Rowe, *Perambulation of the Ancient & Royal Forest of Dartmoor*, 3rd ed. 1896 pp. 309-311

30 T A P Greeves, 'Devon Tin Industry 1450-1750', Univ. of Exeter Ph.D. Thesis, 1981 pp. 391-4

31 R B Pennington, *Stannary Law*, Newton Abbot, 1973, pp. 22-23

1588. This made a determined attempt to define persons who were entitled to sue and be sued in the Stannary Courts[32], which followed up the report by a Royal Commission in 1525, which declared that no man was to be taken for a tinner privileged to sue or be sued in the Stannary Courts, other than miners or artisans employed in tin working, carpenters, smiths, colliers and blowers[33]. But in 1588 there were declared to be two sorts of tinners: firstly the 'spaliers' or 'pioneers' who were not to be sued or sue out of the Stannary Courts and who enjoyed freedom from tolls; and secondly persons who were partners in owning tinworks and employers of labour. This Convocation also excluded violent crime from the Stannary Courts[34].

This division of those employed in the industry represented an attack on the powers of the Stannary Courts, and an attempt to effect the transfer of the Courts' functions to the Star Chamber, the Chancery and the King's Bench[35]. In 1603 the tinners complained that they were threatened with imprisonment for using Stannary Courts, owing to the term 'tinner' being confined to working tinners; the eventual result was a declaration by Chief Justices Fleming and Coke that workers in blowing houses as well as in tinworks enjoyed the protection of the Stannary Courts. Thus, all matters regarding mining, smelting and the Coinage operations were within the purview of the Stannary Courts. Personal actions between tinners and

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32 Convocation of Cornwall, 1588, ss 7-9 in *Laws of the Stannaries of Cornwall*, Penzance 1974

33 G R Lewis, *The Stannaries*, London 1908, (Note 9) p. 98

34 *Convocation, 1588 ibid.* s. 10

35 G R Lewis, *The Stannaries*, (Note 9) p. 98

tinners and between tinners and 'foreigners' regarding matters not exclusively concerned with tin could be heard in Stannary or Royal Courts at the plaintiff's option, but the defendant could refuse a hearing in the Stannary Courts if the action was not a Stannary matter. Rules were made which covered most eventualities. The justices again defined 'tinners' as including working tinners and workers in blowing houses. Following this, the Convocation of 1624 widened the definition of 'tinners' to include adventurers and ancillary workers. In 1627 the Common Law bench again confirmed the opinion given in 1608 but in 1632 the Privy Council settled the matter by defining 'tinners' as including "tinners that do no handwork, landowners, owners of bounds and blowing houses, and merchants"[36]. The dispute over the Stannary Courts' jurisdiction was finally decided by the Stannaries Act 1641[37]. This declared that persons had claimed to be tinners by acquiring 'decayed tinworks' so as to be able to 'vex and sue their neighbours' in the Stannary Courts. The Act restricted the Stannary Courts' jurisdiction over disputes between tinners and 'foreigners' to those cases where the contract was made or the cause of action arose in a place "where some tinwork in work is situate". A non-tinner defendant was allowed to testify on oath that he was not a tinner, but the plaintiff could then swear that the defendant was a tinner, leaving the jury to decide the matter. There was an appeal to a Common Law Court. However, according to Pennington[38] the Stannary Courts disregarded this Act and continued to operate as if the Act had not been passed

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36 R B Pennington, *Stannary Law*, (Note 30) pp. 37-40

37 Act 16 C.I c.15

38 R B Pennington, *Stannary Law*, (Note 30) pp. 40-42

and the 1624 Convocation Act about tinners[39] still applied. Was this an instance of the Acts of Convocation being deemed by Cornishmen to override subsequent unpalatable Acts of Westminster? If so, it is of the greatest constitutional interest, as an example of the provisions of Henry VII's Pardon being used by the Cornish tinners for their advantage.

Thus the struggle over the continuance of effective Stannary Courts, and the definition of the term 'tinner' ended with a victory for the wider definition favouring the 'down-stream' tinners, the landowners, smelters and adventurers. The Stannary Courts consisted of Steward's Courts in each Stannary district, and Vice-Warden's Courts, as has already been mentioned. These both met every three weeks, the Steward's Court with a Jury, whereas the Vice-Warden was the sole judge. He gradually took over actions for debt from the Steward's Court on account of offering superior cheapness and speed[40]. Up to 1836 it was the practice for the Vice-Warden to send petitions for the recovery of tin and tinstuff to the Steward's Court for trial by a jury. However, the Steward's Court decayed during the latter part of the eighteenth century - in 1809 a former Steward of Foweymoor declared that he had not heard a case between his appointment in 1780 and his resignation in 1799. In 1800 a single Steward was appointed to all the districts in an effort to revive the Courts, but this measure proved fruitless and the Steward Courts were abolished in 1836 by the Stannaries Courts

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39 Convocation of Cornwall 1624 ss. 12 & 13 in *Laws of the Stannaries*

40 R B Pennington, *Stannary Law*, (Note 30) pp. 47-8

Act[41].

The Vice-Warden's Courts had been rejuvenated by Sir Joseph Tredenham, Vice-Warden 1681-1689. He made careful notes of his decisions and "left the substantive rules of equity ... as an organised and coherent, though not a complete body of principles"[42]. The Vice-Warden's Courts were active throughout the eighteenth century, but after a successful attack on the equity jurisdiction of the Court in the case of Hall v. Vivian[43], the Stannaries Courts Act 1836 reversed this and established that the Vice-Warden's Courts could try equity and common law cases and tried to define the limits of their jurisdiction. Under enlightened Vice-Wardens, Dampier & Smirke, the Court became very active, particularly in dealing with cost-book companies, but by 1892 the Court was deemed uneconomic by the Treasury and its functions were transferred to the County Court by the Stannary Courts (Abolition) Act 1896[44].

In 1677 the Westminster Parliament had attempted to 'settle' the Stannary laws, encourage adventurers and 'protect' the Crown revenues by improving the arrangements for election of Stannators for the Stannary Convocations[45]. This Bill never received the Royal Assent. It would have given voting rights to those actually concerned with tin mining. Soon after this, in 1717, the Crown last

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41 Act 6 & 7 W.IV c.106

42 R B Pennington, *Stannary Law*, (Note 30) pp. 42-45

43 Sir G Harrison, *Report on the Law and Jurisdiction of the Stannaries in Cornwall* 1829 pp. 8-16 and Appx. C

44 Act 59 & 60 Vic. c. 45. See R B Pennington, *Stannary Law*, pp. 57-70

45 Stannaries Bill, 1677. *H of C Journals*, Vol 9 pp. 418, 421, 437, 496 and 501

exercised its right to pre-empt smelting tin[46] and thereafter the Crown lost interest in regulating the Stannaries. Finally the antiquated system of 'coinage' was abolished in 1838[47].

Meanwhile the parallel legislative system still continued. The Cornish Convocation of 1752 passed a number of resolutions regulating bounding and streaming and blowing houses, but after this it fell into disuse, though the Devon Convocation did meet in 1786 to define the boundaries of the Devon stannary districts[48]. The cessation of Convocations must have had several causes: the Duchy's loss of enthusiasm for the coinage system; the rise of the 'cost-book' companies; the arrival of outside investors; and the increasing influence of the smelters and merchants, to whom the convocations were a nuisance. One weakness of the Convocations was that they were summoned by a warrant from the Duchy office authorising the Lord Warden to issue a warrant for an election of Stannators[49]. Therefore the Duchy controlled meetings of the legislative body. It may be noted that this was the difficulty faced in recent years by those who claimed that the Poll Tax legislation was offensive to 'tinners'[50]. One may contrast this with the position in Derbyshire, where the Great Barmoot Court as a legislative body should still meet twice a year, summoned by the Steward[51].

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46 G R Lewis, *The Stannaries*, (Note 9) pp. 221-2

47 Act 2 & 3 Vic c. 58

48 T A P Greeves, Devon Tin Industry, ibid. (Note 29) pp. 391-4

49 See Charter of Pardon, R Swirke, *Case of Vice v. Thomas* p. 31 and also SPDom Eliz. clxxxxv p. 45

50 *'The Times' Newspaper*, 29.8.1989, 'Poll Tax Challenge'

51 Dr Trevor Ford tells me that the Wirksworth court meets once a year since 1995

The rules made by Prince Arthur in 1496 regarding the registration of bounds[52] were being operated by pitchers of bounds by 1498[53] and despite their apparent repeal by the Pardon of Henry VII continued to be observed. Thomas Beare considered registration to be founded on custom 'time out of mind'[54]. The 1558 Convocation laid down rules regarding bounds[55]: and even the last Convocation of 1752 regulated bounds[56]. It made rules strengthening the position of the freeholder, who had to have three months' notice of the pitching of bounds so that he could pitch bounds himself if he so wished.

Parallel rules for bounding were laid down in the form of 'presentments of customs' by juries in the Steward's Courts of the four Stannaries between 1604 and 1616[57]. In 1847 it was declared by the Queen's Bench[58] that bounds preserved by renewal without being worked were 'unreasonable' and that a custom such as bounding had to be 'reasonable' to form part of the law of England. Today it is possible to pitch bounds - registration would have to be in the County Court - but it is believed that in 1996 no bounds were registered, nor were any stream-works in operation[59].

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52 BL Add. Mss. 6317/104

53 J A Buckley, *Tudor Tin Bounds, West Penwith*, Redruth, 1987

54 T Beare, *The Bailiff of Blackmoor*, 1586 ed. J A Buckley, Redruth 1994

55 E Smirke, *Case of Vice v. Thomas*, (Note 48) p. 32

56 *Laws of Stannaries*, Penzance 1974, p. 95

57 E Smirke, *Vice v. Thomas*, (Note 48) pp. 58-62

58 *Rogers v. Brenton*, 1847, 10 QB 26

59 J Brooke, pers. com.

Four - Derbyshire

In the Derbyshire mining area, an attack by the Duchy and by persons acting under lease from the Duchy on the customary procedures began under James I, an additional tax being introduced on every fodder of lead smelted[60]. This seems of dubious legality. At that date the lessee of the mineral duties of 'lot' and 'cope' was Robert Parker, succeeded on his death by his son Thomas Parker. Parker had a daughter Jennett who was married to the Vicar of Wirksworth, Richard Carrier[61]. Carrier, acting as Barmaster, demanded payment of tithe on all lead, and also required a payment called 'gifter ore' claimed as a fee belonging to the office of Barmaster. Carrier was in a strong position to exact these payments as he refused to 'measure' ore raised by miners unless payment was made, and the ore could not legally be sold until measured by the Barmaster.

The unfortunate miners were also confronted with an attack by Sir Robert Heath (1575-1649) who, in his capacity of Attorney General, attempted to enforce a Royal pre-emption of all ore 'at a rate certain' in 1627[62]. The miners managed to establish that the Crown ought to pay the market rate for ore when pre-empting, as provided by the Quo Waranto. They petitioned the Duchy Court to confirm their customs, which it did despite Heath's opposition. In 1627 Heath supported a petition from miners complaining of Carrier's exactions, but then he himself launched a dangerous attack on the

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60 PRO E. 101/280/18

61 R Slack, 'The Dovegang Plot' in *Mining before Powder*, ed. T D Ford and L Willies, *PDMHS Bulletin* Vol 12 No 3 (1994) p. 103

62 For Heath, see DNB. This account is based on R Slack, *ibid.*

customary rights over the rich Dovegang mines in the Cromford Moor area. These mines had been flooded in spite of efforts by the Earl of Dover's syndicate to dewater them. Owners of mines by custom could not have their mines 'nicked' when they were prevented by flooding from working the mines; but in 1630 Heath 'packed' a mining jury which dispossessed all but four of the Dovegang owners. He then obtained a Crown lease of the mines and appointed a new Barmaster in place of Carrier. The dispossessed owners complained to the Duchy Court in 1637 unsuccessfully. In the same year Parker, the original lessee, sold his lease to Thomas Coke, who then granted a lease of the Dovegang area to Cornelius Vermuyden, the Dutch engineer and ally of Heath. Vermuyden then started to drive a sough to drain the Dovegang area. Following the outbreak of the Civil War, Heath fled to the Continent and his estates were sequestrated by Parliament. Eventually, in 1651, Vermuyden's sough was successful and an arrangement was made whereby the profits from the dewatered mines were divided as to one-third to the mine owners and two-thirds to the sougher, Vermuyden. This solution to devising a fair division of profits between miners and soughers in fact dated back to an earlier agreement of 1615 in the Dovegang area which had not come into effect, the drainage attempt being unsuccessful. It was of the greatest importance to the future of the customary laws in Derbyshire, as it enabled the customary mines to surmount the difficulty of finding capital for drainage without too great a sacrifice of their rights. Heath's attempt to seize the Dovegang mines, though partially successful in the short run, was so strongly resisted that it established that the customary miners were too powerful to be swept out of the way by persons influential at court. It is noteworthy that the opposition to Heath and his

courtier allies always included some of the local gentry interested in mining: in particular the Gell family, who originally had supported Heath, favoured the Parliamentary side in the Civil War and so came out in support of the miners against Heath.

According to Hooson[63] in 1743 the farmer of the mining dues under the Crown in the High Peak attempted to overthrow the customs at a Great Barmoot with support from some "base and degenerate miners", but "one particular gentleman, being a good miner and maintainer in mines" prevented this attempt at a coup. From then on danger to the customs came from the landowners rather than the Crown.

In 1766 the Duke of Rutland as the landowner gave all unworked minerals under Harthill and Stanton Moor to finance Hillcarr Sough, thus rendering the two Lordships 'closed liberties'; and he attempted to do the same in Bakewell in 1780[64]. It is interesting to note that a later Duke's agent, James Mander, wrote 'The Derbyshire Miners' Glossary', with copies of the customary laws, in 1824. Mander's father had also been Agent to the Duke, so perhaps the son did not agree with his father's actions.

Earlier in the eighteenth century the Crown lessee had conceded that very fine ore, difficult to smelt, did not pay 'lot', but by the 1730s improvements in smelting techniques encouraged miners to 'beat down' large ore, so avoiding 'lot'. This became so

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63 W Hooson, *The Miners' Dictionary*, Wrexham 1747 (reprinted London 1979) note under 'Farmers'

64 L Willies, 'Working of the Lead Mining Customs in the 17th and 18th Centuries', *PDMHS Bulletin*, Vol 10 No 3 (1988) pp. 146-159

widespread that the High Peak lessee, the Duke of Devonshire, brought an action in the High Court to establish his right to claim 'lot' on small ore, known as 'billand' and 'smitham'. The case found its way to the House of Lords, who decided in favour of the Duke[65]. One casualty of these proceedings was the Barmaster, dismissed by the Duke for conniving at the deception.

So vigorous were the Customary Laws and the Barmoot Courts that in the 1850s the Westminster Parliament felt it desirable to simplify and codify the procedure in the Barmoot Courts, so avoiding confusion due to minor differences in procedure between various liberties. First, the High Peak Mineral Customs and Mineral Courts Act 1851[66] by its preamble recited that "in the High Peak, in addition to the King's Field, there were seven smaller liberties ...", that "all the subjects of this realm" had or claimed to have a right to mine in the king's Field subject to ancient customary laws upon paying dues to the Crown or the Crown lessee; that the Great and Small Barmoot Courts existed to regulate mining; that doubts had arisen whether the Barmoot's Court's jurisdiction extended beyond the King's Field although the mineral customs were exercised there.

The Act authorised the Duchy of Lancaster to appoint a Steward to act as Judge and Registrar of the Barmoot Court. The Great Barmoot Court was to be held twice yearly at Monyash and the Small Barmoot Court as required. The Court's business was defined and its seal authorised; the Courts were to be Courts of Record.

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65 *Duke of Devonshire v. Wall & ors.* House of Lords, 5 February 1760

66 Act 14 & 15 Vic c. 94

The Barmaster and his assistants' mode of appointment and duties were defined. The area of the Courts' jurisdiction was stated, its procedure laid down, and the juries reduced from 24 to 12. Appeals from the Small Barmoot Court were to be to the Queen's Bench, not the Duchy Court. The remainder of the Act regulated procedure in the Court and enforcement of judgments. The High Peak Act alone laid down procedure for the Steward and Grand Jury to make additional rules "for the better regulation of the working and carrying on of the mines in the High Peak". This last provision was strangely omitted from the subsequent Derbyshire Mining Customs and Mineral Courts Act of 1852[67]. This was a local and private Act, whereas the previous Act was a public Act; the reason for the difference in treatment is not known. The 1852 Act regulated the majority of the liberties in the Low Peak but some (notably the Duke of Rutland's liberties) were not included.

By these two Acts the procedures in the Great and Small Barmoot Courts were standardised and brought up to date, and in particular the courts were declared Courts of Record so that, like the Vice-Warden's Court, their decisions could be quoted as authoritative in the High Court. They were sufficiently important to have special commentaries on them published[68]. The High Peak Court was so active that in 1859 a number of fresh customs were passed and published. However, the mining industry was already in decline by the 1850s, and declined steadily till the last great mine, the Mill Close, closed after an inrush of water in 1939. In 1996, for

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67 Acts L & P 15 & 16 Vic c. 163 CLXIII

68 T Tapping, *A Treatise on the High Peak Mineral Customs and Mineral Courts Act 1851*, and (same author) *A Treatise on the Derbyshire Mineral Customs and Mineral Courts Act 1853*

the first time, the Steward failed to summon the Great Barmoot Court at Wirksworth[69].

Why the Derbyshire customs survived so much more successfully than the customs in other areas is interesting. Undoubtedly, one factor was the general benevolent attitude of the lessees of the Crown royalties, particularly the Dukes of Devonshire, who were prepared to work with the system[70]. Further, the problem of the expense of mine drainage was largely solved by the system of agreements between miners and soughers, which enabled soughs to be financed from the profits of the mines they drained, while leaving enough with the miners to make their work profitable. Then, the 'open entry' to the industry enabled syndicates to work the mines; and similar financial arrangements to the cost-books in the Stannaries were apparently in force in Derbyshire[71]. But as Lynn Willies has pointed out[72], the system was thoroughly understood locally, was popular, and provided (generally speaking) a simple and speedy forum for disputes. Over a large part of the lead mining area, the chief landowner was also the lessee of the Crown mining revenues; and many of the other local landowners had interests in the mining undertakings and so had no interest in discouraging customary mining. Derbyshire never acquired the additional legislative 'layer' of a 'parliament' as the Stannaries did, but the Small and Great Barmoot system proved sufficient. Given that the

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69 *PDMHS Newsletter, 1996*

70 L Willies, Working of the Lead Mining Customs, (Note 62) passim

71 *McSwinney on Mines*, 3rd ed. London 1907 pp. 573-4

72 L Willies, Working of the Lead Mining Customs, (Note 62)

Stannary Parliaments came to be controlled by the local gentry rather than practical miners, its absence from Derbyshire was better for the survival of the customary system.

Five - The Forest of Dean

Turning to the Forest of Dean, here the interest of the Crown in supporting the free miner waned after the need for miners for military service ceased. In 1522 Henry VIII had ordered 200 miners from Dean to report at Dover[73] and in 1577 12 men were required to accompany Frobisher on his search for the North-West Passage[74]. In the Civil Wars, however, there is little evidence of miners being called on - the activities of the Courtiers such as Winter in the early part of the century referred to below must have alienated the majority of the miners from the Royal cause. In 1611, James I granted the minerals and timber in Dean to the Earl of Pembroke; the miners objected strongly to the Earl's activities but he obtained an Injunction from the Exchequer Court restraining them from obstructing him[75]. The Exchequer Court allowed 'the poor miners of the Forest' to continue their activities 'of favour and grace but not of right' until a final hearing of the case. However, they continued to protest and seem to have established their position[76]. In 1622 the 'stone cutters' were allowed to continue their activities, despite the protests of the 'farmer' of the Crown Dues, and in 1625 the customs of the Forest were set out in evidence in a lawsuit over

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73 Cal L & P H VIII pt. 1 p. 1005, No 2374

74 Acts of P C 1575-7, p. 335

75 PRO. E. 126/1 fol 270

76 C E Hart, *Free Miners of the Forest of Dean*, Gloucester 1953 pp. 168-175

the rights of miners over privately owned land within the Forest bounds[77]. In 1635 all mines in the Forest were granted to a courtier, Edward Tyringham[78].

The violent opposition to this grant was so effective that Tyringham surrendered his grant in 1640, but the whole Forest was then granted to Sir John Winter. His timber-cutting and other activities were carried on against violent opposition and eventually after the Restoration he abandoned his claims in the Forest, and the forestry side of the area was put on a proper footing by the Dean Forest (Re-afforestation) Act 1668 which recognised the miners' rights while authorising enclosures for timber in which miners' rights were restricted.

During the eighteenth century the economic and legal position of the miners gradually deteriorated, though the decisions of the Mine Law Court might have assisted them had not the records been stolen, almost certainly by the Crown officials as has already been explained. The Deputy Gaveller gave the loss of the Court records as sufficient reason for not calling a further meeting of the Mining Court; this could surely have been overcome if desired.

There were several weaknesses which contributed to the crisis in the Forest. Firstly, in 1788 the Commissioners of Woods and Forests, created by Parliament to replace the medieval forest administration, issued their third report, which covered the Forest

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77 Case of *Throckmorton v. A-G*, see Hart, *ibid.* pp. 176-182

78 C E Hart, *Free Miners of the Forest of Dean*, (Note 74) p. 187 et seq.

of Dean[79]. This reported that the right to 'mine timber' for which the miners had once paid, had become a right to free timber more or less on demand and was threatening the whole future of the Forest as a source of revenue for the Crown. Naturally the miners resisted attempts to correct this. The matter was only settled in a roundabout way by the Lydney & Lidbrook Railway Act[80] (the company later became the Severn & Wye Railway & Canal Co), which provided that miners using the tramroads were to forfeit their right to free timber. As the Company's tramways (later converted to railways) provided the most economical way of getting coal to the market, miners had a great incentive to use them, thereby forfeiting their right to free timber. But one wonders whether a certain amount of timber continued to be 'liberated' when the Forest authorities were not looking!

Secondly, whereas in Derbyshire mining undertakings usually came to terms with 'soughers' so that mines benefiting from soughs drainage paid a proportion of their profits for the privilege, this proved impossible in the Forest[81], largely due to the geological formation of the coalfield as a basin, leaving no practical alternative to pumping if the deep gales were to be exploited.

Thirdly, the Forest administration had originally opposed the improvement of means of transport of coal from the Forest, apparently because, as they alleged, private tramways (not

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79 *H of C Jnl.* Vol 43 (1788) p. 569 et seq. See also A L Cross, *Documents relating to Royal Forests*, New York 1925, pp. 103-9

80 Act 49 G III

81 First Report of Dean Forest Mining Commissioners 1839 p. 3

authorised by Act of Parliament) enabled timber to be surreptitiously removed from the Forest. James Teague, who built three small tramways in the Forest in the 1790s, was forced to remove them[82]. The original attempts to organise the Severn & Wye Railway were obstructed by the Forest administration[83] until the clause in the Company's Act linking the use of the Company's lines with the surrender of the right to timber was devised. Inspection of the Company's books would enable the Forest authorities to check who had given up the right to timber by using the Company's tramways.

Fourthly, the use of steam pumping machinery to drain pits, in some way which is not clear, became subject to licensing by the Forest administration, who were thus able to obstruct improvements in mining.

Fifthly, free miners were traditionally organised in 'verns' of four men (the Crown being entitled to nominate a fifth man). Even if 'verns' employed 'servants' in addition to the partners, this custom hampered the formation of proper partnerships for developing mines. It was certainly not impossible for a free miner to develop a large and profitable undertaking as the success of the Teague family demonstrates[84], but financial backing from 'foreigners' was almost essential in developing what became known as the 'deep gales'. The seams of coal in the Forest form a basin and the deeper seams could only be worked with the aid of powerful pumping

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82 R Anstis, *The Industrial Teagues and the Forest of Dean*, Gloucester 1990 pp. 27-30

83 H W Paar, *The Severn & Wye Railway*, Dawlish 1963 pp. 13-19

84 R Anstis, *The Industrial Teagues*, (Note 80) passim

machinery. As early as 1766 the Gaveller granted a 'gale' comprising the Arling Green Water Engine, the Major Suff and Churchway Fire Engine for a company of persons not free miners. "The said persons, not being free miners, continued to work the same for ten years, allowing a free miner that galed the same a share for his management, when the greater number sold out their interest ... to free miners by direct conveyance in 1776"[85]. Despite opposition from the free miners it became common for galees to sell their rights to 'foreigners'. The Deputy Gaveller, Thomas Tovey, said that "he would not enter the name of any foreigner purchasing a gale as the owner of the gale", but when once a foreigner had paid him gale money he considered him tenant of the gale[86]. Thus the rights of the free miners, while nominally preserved, were gradually eroded by the introduction of foreigners with the capital which was needed for developing the deeper mines. The whole matter was brought to a head in 1831 by circumstances which did not really affect the miners but the commoners in the Forest, many of whom were of course also miners. In 1808 the Surveyor General of Woods and Forests, Lord Glenbervie, who was understandably concerned about the supply of timber for the Royal Navy, obtained an Act[87] which amended the Act of 1668 and authorised the enclosure of 10,000 acres for timber. Enclosure was necessary to enable the timber to grow without interference from commoners' stock etc. This enclosure was done promptly, but by 1830 many of the commoners felt that they were entitled to have the enclosures thrown open, the timber having

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85 *Fourth Report* of the Dean Forest Commissioners, 1835, p. 49

86 *Fourth Report* of the Dean Forest Commissioners, 1835, pp. 18-20

87 Dean Forest (Timber) Act 1808

reached a reasonable height. Further, a Dean Forest Enclosure Bill had been put before Parliament proposing a Commission to report on the Mine Law Court, on free miners' qualifications, and other matters concerning the Forest. This was seen as a threat to the free miners' rights, and the authorities were in fact anxious to improve the financial returns to the Crown from the Forest. However, the Bill did not become law before there had been a very serious disturbance in the Forest, only concerned with miners' rights to a lesser degree. The Foresters were led by Warren James, a free miner who proved to have remarkable powers of organisation. He claimed to have powerful political support in high places. This never materialised, but the truth behind his claims has never been discovered. The riots were put down and Warren James transported to Van Dieman's Land. Mysteriously, he received a free pardon in 1836, but he never returned to the Forest[88].

The Dean Forest Commissioners, in their Fourth Report, 25 August 1835, summarised the legal status of the free miners and pointed out, quite correctly, that "the customary mode of working [had] become altogether inapplicable to the present state of things". They declared that "the [free miners'] right is rather under than against the Crown, being merely a mode of working under a customary sort of tenure". They recommended that Parliament should appoint a Commission to regulate the mines and quarries in the Forest[89]. This was done by the Dean Forest Mines Act of 1838[90]

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88 R Anstis, *Warren James and the Dean Forest Riots*, Coalway, Forest of Dean, 1989, esp. pp. 96-99

89 *Fourth Report* of the Dean Forest Commissioners, p. 10

90 Act 1 & 2 Vic c. 43

which for the first time gave statutory force to the Dean Forest miners' rights by defining who should be free miners and quarrymen[91]: "Male persons born in the Hundred of St Briavels, aged 21 years and upwards, who had worked for a year and a day in a coal or iron mine or quarry in the Hundred". A register of free miners was set up. Free miners retained the exclusive rights to gales but they could lawfully lease, sell or transfer their rights to each other *or any other person* [author's italics]. Mining Commissioners were to make an Award of all mines and quarries, with a map attached. The Commissioners of Woods and Forests were empowered to grant leases of small pieces of land in connection with mines.

The Dean Forest Mining Commissioners did their work most thoroughly[92], and by 1841 a list of all gales was drawn up and marked on a map. For the first time it was possible to be certain where the boundaries of gales lay. The work of the Mining Commissioners did not solve the problem of access to the Deep Gales, where expensive pumping was essential, the coal lying as it did in a deep basin[93]. It took many years to decide how to deal with the Deep Gales. In 1871 the Dean Forest (Mines) Act[94] extended the Gaveller's powers to appoint Commissioners to interpret parts of the 1841 Award. In 1874 a Parliamentary Select Committee considered conditions in the mines, and the possibility of buying out the free

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91 Dean Forest Mines Act, 1838, s.19

92 *First Report* of the Dean Forest Mining Commissioners, 1839

93 For a diagram, see endpapers to W R Anstis, *The Industrial Teagues* (Note 80)

94 Act 34 & 35 Vic c. 85

miners' rights - the opposition to this idea was intense. At this time Mr W Brain, part owner of the Trafalgar Colliery, who employed about 1,000 men in the Forest, was a free miner; but he was exceptional in this respect[95].

In 1884 a Bill was introduced into Parliament to sanction the working of 45 deep gales; the free miners were to be compensated with a payment of £500. This was dropped owing to the intense opposition, and in 1886 a fresh approach was tried. Four gales were declared forfeit for non-working and a United Deep Gale was granted to Trustees for 800 free miners. These Trustees never managed to find a lessee for the gale, and in 1904 the rights were sold for £1,500. Finally, in the same year the Gaveller was given power to amalgamate gales[96]. Six of the deep mines were galed to Trustees for the free miners at a royalty of $^{1}/_{2}$d per ton. Throughout these long negotiations the free miners never presented a united front, which was perhaps, given their rather turbulent history, hardly surprising. All the Deep Gales were nationalised in 1946, but by the Coal Industry Nationalisation Act 1946[97] clause 63(2) it was provided that "the working of coal by *an individual* [my italics] by virtue of the grant of a gale ... shall not be deemed for the purpose of this Act to constitute him a colliery concern". Thus, individual free miners were the only persons specifically excepted from coal nationalisation. But most gales still working are worked by partnerships and for these the Coal Board gives a licence to mine,

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95 C Hart, *Free Miners*, (Note 74) ibid. p. 377

96 Dean Forest Mines Act 1904

97 Act 9 & 10 G VI c.59 clause 63(2)

as they do for undertakings employing less than 30 persons. The present activities of the free miners in Dean are limited to taking out 'pockets' of coal from relatively shallow depths.

Nevertheless, after all these difficulties and hardships, the Dean free miners and quarriers are the only free miners currently operating, but under two novel threats: firstly, there is a threat that the maternity hospital in the Forest is to be closed, so that future free miners will have to be born at home if they are to retain their rights!; secondly, the planning authority threatens to enforce planning law, from which it had been assumed the miners were exempt. This is likely to have drastic effects: a new mine, inevitably a messy affair visually, will almost certainly meet with opposition on environmental grounds - (damage to tourism!)[98]. Yet an individual formerly working in an open-cast mine has successfully claimed registration as a free miner at a Court hearing[99]. Obviously, registration as a free miner is still prized, and will have a value as long as there remain pockets of coal in the Forest to be worked, and only the experienced free miners know where these pockets are likely to be.

Six - Geological Factors

One very important reason for the decline of free mining which has not generally been dealt with above is the gradual depletion of easily worked seams of ore in all the free mining areas. In the Stannaries, the working out of the alluvial deposits led to a change

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98 *'Independent' Newspaper*, 30 January 1996

99 *'Independent' Newspaper*, 26 March 1996

of emphasis from 'streamworks' to the mining of the veins of ore themselves at ever increasing depths. The bounding customs could hardly be applied to deep mining, which required heavy investment in plant and machinery, secured by the grant of proper mining leases rather than the evanescent claims of bounding which required regular renewal. So the free miner, often a part-timer working a streamwork when fishing or farming were slack, was gradually squeezed out and replaced by the professional deep miner whose practical ability and knowhow enabled Cornishmen to obtain work in mines all over the world when Cornish mining declined in the later nineteenth century[100]. An additional factor was that the gradual spread of enclosed land into the former moors and waste reduced the area available for the operation of the customary law. In the Mendips, too, it is plain from the decisions of the mining courts in the eighteenth century that more and more difficulty was being found in mining seams as they got deeper - and apparently less productive. But as the customs in Mendip only applied on unenclosed land, the enclosure by Parliamentary Acts of the Mendip parishes, commencing in 1769[101], gradually rendered the customs inoperative.

The impact of the working out of the shallower veins was not felt so strongly in Derbyshire, where customary mining was not confined to unenclosed land largely because (as has been mentioned) the miners took advantage of the activity of the 'soughers' in draining areas of land by agreeing that the proprietors of the

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100 Hamilton Jenkin, *The Cornish Miner*, 3rd ed. rpr. Newton Abbot 1972, passim

101 B Green, *Bibliotheca Somersetensis*, 1902 lists all these Enclosure Acts

soughs could share in the mining profits. Had all the soughers followed the example of the Duke of Rutland and declined to co-operate with free miners, the soughs could have been used to 'close' many of the liberties. Eventually, the combined impact of lower lead prices, the cost of installing pumping plant and the working out of the higher veins has gradually led to the cessation of lead mining in the area, but lead is still produced as a by-product of fluorspar and baryte mining, and the lead laws still apply here[102].

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102 Dr Trevor Ford, pers. com.

CHAPTER SIX:

CONCLUSION

So, as has been explained, there are signs that the Crown had decided that to support the free mining customs was not the most satisfactory way of obtaining good returns from silver/lead mining as early as the reign of Edward I[1]. Nevertheless, in early Tudor times the attitude of Prince Arthur and King Henry VII in the Stannaries show that the Crown still felt at that time that free mining had a role to play in developing mineral resources and benefiting the Crown finances. It may be significant that very early in Henry VII's reign (as has been mentioned above) the King appointed 'King's Commissioners of his mines in England and Wales', which included a summary set of customs for the mines[2]. This appointment does not seem to have had much practical effect on the areas where customary mining law was operative.

Shortly after this time, in the reign of Elizabeth, German mining experts came to England to work in copper mines in the Lake District. This has caused some to connect the origins of English customary laws with the German view of princely mining law set out in Agricola's great work[3]; might this German law not prove to have been the original source of the English customary mining laws?

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1 In the case of the Bere Alston mines

2 Cal. Patent Rolls 1485-94, pp. 69-70

3 G Agricola, *De Re Metallica*, trans. H C and L H Hoover, London 1912 rpr. New York 1950. Book IV passim

Agricola's account starts:

> "The miner, if he has uncovered a vein to his liking, first of all goes to the *Bergmeister* to request the grant of the right to mine ... to the first person to have discovered a vein the *Bergmeister* awards the *area capitis fodinarum* (in German, *fundgrube* or in English, *founder meer*) and to other miners the remaining *area fodinarum* (in German, *masse* or in English *meers*)."

According to Agricola, the finder of a new vein got seven measures, the Prince and various dignitaries two measures each, the *Bergmeister* two measures. It should be noted that apart from the term *bergmeister* no other mining expression seems to be common to both the English and German mining fields.

The similarity between the procedure on finding a new vein between the English and German mining fields is noteworthy, but when any interaction between the two fields first took place is not easy to determine. There is very little real evidence to suggest that English medieval lead miners needed to learn from German or Continental practice. The earliest Continental codes of mining law appear to have been those issued by the authorities in Trent in 1185 and 1208[4], but customary mining laws must have been in force in the Stannaries and other free mining areas before these dates, as stated above, though as has been said, it is possible (but unproved) that German miners came to England in Athelstan's reign (925-940). In

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4 G R Lewis, *The Stannaries*, London 1908 pp. 69-70 and G Weisgerber, 'The First German Mining Law', *PDMHS Bulletin* Vol 10 No 4 (1988) pp. 224-230

1260 German miners were brought by the Crown to North Devon[5]. The first great influx of German mining specialists came in Elizabeth's reign, as already mentioned, but they did not bring their customary mining rules with them, nor did they do serious work in areas where customary mining flourished.

This leads inevitably to the conclusion that with the exceptions mentioned above, free mining customs must have originated at some period and place still uncertain - possibly in the Imperial Roman mining areas - and have been reproduced with variations in areas in Britain which were primarily those where the Crown had an interest in the success of tin and lead mines. The only exception to tin and lead connected with free mining is in the Forest of Dean, where iron and coal were involved; and here there is the possibility that the customs were introduced by the Crown at a later date. It is surely significant that even in the Forest of Dean (where a qualification by birth exists) free miners never formed a corporation or gild, as one might have expected if the customs had been introduced, or had grown up, after Anglo-Saxon times. The Stannaries had a Common Seal, but the use of this was surely connected, not with any organisation as a gild, but with the peculiar system of collection of the Crown royalty by the 'coinage' procedure. Though 'tinners' had great privileges, they did not form a gild in any sense, since legal arguments as to what classes of person were included in the term 'tinners' continued down to Stuart times, as explained above. This absence of a gild organisation may well be connected to the part-time nature of much of the mining.

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5 P Claughton, 'The Medieval Silver-Lead Miner' in *PDMHS Bulletin*, Vol 12 No 2 (1993) pp. 28-30

So, far from the free mining customs having been introduced in early medieval times from Germany, it seems more attractive to reverse the chronology and suggest that, starting with the account (derived apparently from Pytheas in the fourth century BC[6]) of what appears to be tin streaming in Cornwall, and continuing by the introduction from Spain of laws broadly similar to the Aljustrel laws, the free mining customs spread through the tin and lead mining areas in Roman and Anglo-Saxon times. The important feature of this suggested chronology is that it predicates a continuation (however slender) of lead and tin mining under customary rules through post-Roman and early Anglo-Saxon times. The evidence for this continuation is admittedly not extensive: one may put forward the probable persistence of Romano-British estate boundaries, with a continued existence of administrative customs within these estates; the curious story connected with St John the Almsgiver; and, in the Mercian Kingdom, the appearance of the Abbess of Repton in the early ninth century as mineral lord (lady?) of the Wirksworth area. It is by no means impossible that archaeology may yet assist in strengthening the belief in a survival of mining through the Dark Ages. So, could one reverse the conventional view, and even suggest the taking of the mining customs from Anglo-Saxon England to Germany in the early tenth century by miners, probably from Derbyshire, where mining seems to have been most active, connected with Athelstan's court. This would explain the appearance of customs in Trent at a date after they were known in England, but this does not explain the appearance of the term 'barmaster' in England.

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6 Diodorus Siculus *Romaica* V 21 & 22, Bibliothike Historike, 1933-67

However, in later Tudor and Stuart times the (mistaken) decision of the Courts in the Case of Mines[7] and the creation of chartered companies claiming monopoly powers in mining heralded a rapid decline in the support given by the Crown to free mining. In particular the courtiers of James I and Charles I saw their opportunity in the financial difficulties of the Crown, and by offering cash obtained leases and grants of mineral rights (particularly in the Forest of Dean) which inevitably led to conflict between the Crown grantees and the free miners. As has been explained, at that time the free miners were still strong enough to have considerable success in defending their customary rights; but from then on the free miner could no longer rely on the Crown for protection.

In the outlying free mining areas of Alston and North Wales, the existence of the free mining customs was forgotten; in Alston the Greenwich Hospital Commissioners as grantees of the forfeited estates of the Earls of Derwentwater commenced to mine, or grant mining leases, without reference to the earlier customary laws; while in the Halkyn area in Flintshire no effort was made to draw attention to the decisions of the Black Prince when the Grosvenors as successors to the Crown denied the existence of customary rights of mining.

This attitude was not confined to the Crown or its lessees; in the Dales of Yorkshire, where in general the Crown had not claimed mineral rights from early times, the customary laws seem to have gradually died out in the eighteenth century, or been over-ridden by mineral lords. Particularly in Grassington, where the Barmaster

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7 *R v. Earl of Cumberland*, Plowden's Commentaries, London 1571, 310-338

had favoured the customary procedures[8], in order to encourage improved mining procedures the mineral agent to the Duke of Devonshire (successor to the Burlington estates) carried out expensive works to lead water to mines for ore washing, and in consideration of this granted fresh mining leases which cut out the customary laws[9]. Thus, even where the Crown had not been the mineral lord, the customary laws were squeezed out or fell into disuse. Only where the customs had been most strongly followed, and mining most advantageous, did the customs survive into modern times. Free miners still persist in the Forest of Dean, while in Cornwall and Derbyshire the customs are still theoretically viable; but elsewhere they have ceased to exist.

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8 A Raistrick & B Jennings, *A History of Lead Mining in the Pennines*, London 1965, p. 114

9 A Raistrick, 'Mechanisation of the Grassington Moor Mines' in *Trans. Newcomen Society* Vol 29 (1955) pp. 179-183

BIBLIOGRAPHY

1. PRIMARY SOURCES

- ***Public Record Office:***

- Black Book of the Exchequer
- Calendar Charter Rolls
- Calendar Close Rolls
- Calendar Fine Rolls
- Register of Edward the Black Prince
- SP Dom Ed VI, Mary, Elizabeth
- Cal. SP Dom Charles I
- Pipe Rolls (Pipe Roll Society)

- ***Record Commissioners' Publications - PRO:***

-	T D Hardy, ed. Rot. Lit. Claus Vol 1-2	1833-4
-	Macpherson D & ors. ed. Rot. Scotiae Vol 1	1814
-	A Owen ed. Ancient Laws and Institutes of Wales	1841

- ***Scottish Record Office:***

-	Calendar of Documents relating to Scotland, 4 Vols	1881-9

- ***Parliamentary Papers: (IUP ed.)***

-	Acts of Parliament	
-	Houses of Commons Journals	
-	House of Lords Journals (House of Lords Record Office)	
-	3rd Report of Commissioners of Woods Forests and Land Revenues	1788
-	Reports of Dean Forest Commissioners	

- Reports of Dean Forest Mining Commissioners

- The Law Reports

• ***Published Editions of Documents***

- Anon. *The Compleat Mineral Laws of Derbyshire*, 1734

- Anon. *Laws and Customs of the Miners in the Forest of Dean*, 1657

- Anon. *Laws of the Stannaries of Cornwall*, reprinted Penzance, 1974

- Anon. *New and additional customs ... under the High Peak Mineral Customs and Mineral Courts Act 1851*, Derby, 1859

- Anon. *The Miners' Guide*, 1810

- 'R A' *Liberties and Customs of the Miners*, 1645

- Bean S. *Rara Avis in Terris, or the laws and customs of the lead mines*, 1734 reprinted in M C Gill, *Grassington Mines* BM No 46 (1993) Appx. B (Appx. A contains earlier Grassington Laws)

- Dessau. *Inscriptiones Latinae Selectae* - Berolini: apud Weidmannos 1892-1916

- Diehl E. *Inscriptiones Latinae Christianae Veteris*, Berlin 1961 Vol 1

- Hopkinson G. *The Laws and Customs of the Mines within the Wapentake of Wirksworth*, 1644 rpr. Sheffield 1940

- Manlove E. *Liberties and Customs of the Lead Miners within the Wapentake of Wirksworth*, London 1653 reprinted in J G Rieuwerts, *History of the Laws and Customs of the Derbyshire Lead Miners*, Sheffield 1988

- Steer G. *Compleat Mineral Laws of Derbyshire*, 1734

• ***Contemporary Published Sources***

- Agricola G. *De Re Metallica* 1556, trans. L & H Hoover, London 1912, rpr. New York 1950

- Appian. *Romaica*, Loeb Library ed. 1912-13

- Beare T. *The Bailiff of Blackmoor* 1586 ed. J A Buckley, Truro 1994

- Bede. *Ecclesiastical History of the English Nation*, Everyman ed.

- Birch W G. *Cartularium Saxonicum* 1885-93

- Caesar. *Gallic War.* Loeb Library ed. 1917

- Cicero. *Letter to Atticus.* Loeb Library ed. 1920

- *Codex Theodosianus*

- Cross A L. *Documents relating to Royal Forests*, New York 1925

- Diodorus Siculus. *Romaica.* Bibliothike Historike, Loeb Library ed. 1933-67

- Eddi. *Vita Wilfridi* ed. Raine *Historians of the Church of York*, Rolls series 1879 Vol 1

- Felix. *Memorials of St Guthlac* ed. Birch, London 1881

- Hart C E. *Free Miners of the Forest of Dean and Hundred of St Briavels*, Gloucester 1953 (for surviving laws of Mine Law Court)

- Hamilton Sir G. *Report on the Law and Jurisdiction of the Stannaries in Cornwall*, London 1829

- Hardy G. *The Miner's Guide* 1748

- Hooson W. *The Miners' Dictionary*, Wrexham 1747 (reprinted London 1979)

- Houghton, Thomas. *The Compleat Miner* 1688, 1699, 1737

- Leland J. *Itinerary* ed. Toulmin Smith, London 1907

- Mander J. *Derbyshire Lead Miners' Glossary*, Bakewell 1824

- McCall H B. *Yorkshire Star Chamber Proceedings* Vol 2, York 1910

- Nicholls H G. *The Forest of Dean*, London 1858

- Pliny. *Natural History*, Loeb Library ed. 1938-62

- Pryce W. *Mineralogia Cornubiensis*, rpr. Truro 1972

- Riccobono. *Fontes iuris Romani ante Iustiniani*, Vol 1, Florence 1940-43

- Rowe S. *Perambulation of the Ancient and Royal Forest of Dartmoor*, 3rd ed. 1896

- Smirke E. *Case of Vice v. Thomas*, London 1843

- Steer G. *Compleat Mineral Laws of Derbyshire*, 1734

- Strabo. *Geographica*, Loeb Library ed. 1949

- Tacitus. *Agricola*, Loeb Library ed. 1914

2. SECONDARY SOURCES

• ***Books***

- Annels A C & Burnham B C. *Dolaucothi Gold Mines*, 2nd ed. 1986

- Anstis R. *Warren James and the Forest of Dean Riots*, Coalway, Forest of Dean 1989

- Anstis R. *The Industrial Teagues and the Forest of Dean*, Gloucester 1990

- Benfield E. *Purbeck Shop*, Cambridge 1940

- Buckley J A. *Tudor Tin Bounds West Penwith*, Redruth 1987

- Cleare H & Crossley D. *Iron Industry of the Weald*, Leicester 1965

- Cleare H. *Organisation of the Iron Industry in the Western Roman Provinces*

- Coke Sir Ed. *Institutes of the Laws of England*, 1642

- Collingwood W G. *Elizabethan Keswick*, 1912 rpr. Whitehaven 1986

- E Dawes & M I Baines. *Three Byzantine Saints*, 1948, Oxford: Blackwell

- Davies O. *Roman Mining*, Oxford 1927

- de la Beche H. *Report on Geology of Cornwall, Devon and West Somerset*, London 1839

- Dictionary of National Biography

- Donald M B. *Elizabethan Copper*, Oxford 1955

- Donald M B. *Elizabethan Monopolies*, Edinburgh 1961

- Donald M B. *Elizabethan Keswick*, Whitehaven 1987

- *Encyclopedia Britannica*, 13th ed. 1925

- Finberg H P R. *Roman and Saxon Withington*, Leicester 1955

- Frere S. *Britannia*, London 1978 ed.

- Gill M C. *The Grassington Mines*, BM No. 37 Keighley 1993

- Gough J W. *Mendip Mining Laws and Forest Bounds*, Taunton 1931

- Gough J W. *Mendip Mining Orders, 1683-1749*, Taunton 1973

- Gough J W. *The Mines of Mendip*, revised ed. Newton Abbot 1967

- Green E. *Bibliotheca Somersetensis*, 1902

- Hamilton H. *English Brass & Copper Industries to 1800*, London 1967

- *Handlist of Grosvenor (Halkyn) Mss.* Clwyd Record Office 1988

- Hart C E. *The Verderers and Forest Laws of Dean*, Newton Abbot 1971

- Healy J F. *Mining and Metallurgy in the Greek and Roman World*, London 1978

- Higham N. *Rome, Britain and the Anglo-Saxons*, London 1992

- Jenkin H. *The Cornish Miner*, 3rd ed. rpr. Newton Abbot 1972

- Jennings B. *History of Nidderdale*, 1967

- John of Hexham. *History of the Church of Hexham*, Surtees Society Vol 44, 1864

- Kiernan D. *The Derbyshire Lead Industry in the 16th Century*, Chesterfield 1989

- Kirkham N. *Derbyshire Lead Mining through the Centuries*, Matlock 1973

- Lapsley G T. *County Palatine of Durham*

- Lewis G R. *The Stannaries*, London 1908

- *McSwinney on Mines*, 3rd ed. London 1907

- Powick Sir M. *The Thirteenth Century, 1216-1307*, Oxford

- Raistrick A. *Lead Mining in the Mid-Pennines*, Truro 1973

- Raistrick A. *Two Centuries of Industrial Welfare*, 2nd ed. Hartington 1977

- Raistrick A & Jennings B. *History of Lead Mining in the Pennines*, Newcastle upon Tyne 1983

- Robinson C E. *A Royal Warren, or Picturesque Rambles in the Isle of Purbeck*, 1852

- Scott W R. *Constitution and Finance of English, Scottish and Irish Joint Stock Companies to 1720*, London 1912

- Somerville Sir R. *History of the Duchy of Lancaster Vol 1*, London 1953

- Stenton F. *Types of Manorial Structure in the Northern Danelaw*, Oxford 1910

- Stokes A H. *Lead and Lead Mining in Derbyshire*, Chesterfield 1880-3. PDMHS Special Publication No 2, Matlock 1973 and 1997

- Tapping H. *A Treatise on the High Peak Mineral Customs and Mineral Courts Act 1851*, London 1852

- Tapping T. *A Treatise on the Derbyshire Mineral Customs and Mineral Courts Act 1852*, London 1853

- Tillotson J H. *Marrick Priory: A nunnery in late medieval Yorkshire*, York 1989

- Tylecote R E. *Prehistory of Mining in the British Isles*, London 1986

- Tyson L O. *A History of the Manor and Lead Mines of Marrick*, BM No 38, 1989

- *Victoria County History, Derbyshire*

- *Victoria County History, Dorset*

- *Victoria County History, Somerset*

- Vinogradoff P. *Villeinage in England*, London 1892

- Warner G. ed. *Libelle of Englyshe Polycye*, Oxford 1926

- Wallace A W. *Alston Moor*, 1890 rpr. Newcastle upon Tyne 1986

- Whittaker T D. *History and Antiquities of the Deanery of Craven*, 2nd ed. 1812

- Williamson T & Bellamy L. *Property and Landscape*, London 1987

- Wood J G. *Laws of the Dean Forest and Hundred of St Briavels*, London 1878 (supplement by C E Hart, *Laws of Dean*, 1952)

• ***Articles***

- Beagrie N. 'The early tin ingots ores and slags from Western Europe' in *Historical Metallurgy* 191-2 (1985) 165

- Beagrie N. 'Romano-British Pewter Industry' in *Britannia* 20 (1989) 169-188

- Blackburn A. 'Mining without Laws - Weardale under the Moormasters' in *Mining before Powder* ed. T D Ford & L Willies (PDMHS Bulletin Vol 12 No 3) pp. 69-75

- Blanchard I. 'Miners and the Agricultural Community in late Medieval England' in *Agricultural History Review*, Vol 20 pt 2 (1972) 93-103

- Blanchard I. 'Rejoinder - Stannator Fabulosus' in *AHR* Vol 22 (1974) 62-73

- Blanchard I. 'Lead Mining and Smelting in Medieval England and Wales' in ed. D W Crossley, *Medieval Industry*, London 1981

- Claughton T. 'Medieval Silver Lead Miner' in *PDMHS Bulletin* Vol 12 No 2 (1993) 28-29

- Daniel M. 'The Early Lead Industry and the Ancient Demesne of the Peak' in *PDMHS Bulletin* Vol 8 No 3 (1982) 168-9

- Daniel M. 'Anglo-Saxon Lead Industry of the Peak' in *PDMHS Bulletin* Vol 7 No 6 (1980) 339-341

- Daniel M. 'Origin of the Barmote Court System' in *PDMHS Bulletin* Vol 6 No 3 (1980) 166-167

- Evans D L. 'Some notes on the history of the Principality of Wales in the time of the Black Prince' in *Trans. of the Hon. Society of Cymmrodorion* Session 1925-1926 19-43

- Finberg H P R. 'The Stannary of Tavistock' in *Rep. & Trans. Devon Association* Vol LXXXI (1949) 165

- Fisher C. 'The Free Miners of the Forest of Dean' in *Independent Collier*, ed. R Harrison, London 1948

- Ford T D. 'Thoughts on Mining Law History' in *PDMHS Bulletin* Vol 10 No 4 (1988) 224-230

- Gill M C. 'History of Customary Mining Laws at Grassington' in *PDMHS Bulletin* Vol 10 No 4 (1988) 206-212

- Gill M C. 'Yorkshire Lead Mining before 1700' in *British Mining No. 37* (1988) pp. 42-47

- Gledhill T. 'Smelting and Woodland in Swaledale' in *Boles and Smeltmills* ed. L Willies & D Cranstone, Matlock (1992) 62-4

- Gordon D. 'The Quo Waranto - a new Translation' in *PDMHS Bulletin* Vol 10 No 4 (1988) 219-223 and *PDMHS Bulletin* Vol 10 No 6 (1989) 88

- Greeves T A P. 'Great Courts or Parliaments of Devon Tinners 1474-1786' in *Rep. and Trans. Devon Association* Vol 129 (1987) 148-178

- Guilbert G. 'The Oldest Artifact of Lead in the Peak: new evidence from Mam Tor' in *Mining History*, Vol 13 No 1 (1996) 12-17

- Hassall H M C and Tomlin R S O. 'Roman Britain in 1992' in *Britannia* 24 (1993) 319-320

- Hatcher J. 'Myths, Miners and the Agricultural Community in Late Medieval England' in *AHR* Vol 20 pt 2 (1972) 93-103

- Lewis A. 'Bronze Age Mines of the Great Orme' in *Mining before Powder, PDMHS Bulletin* Vol 12 No 4 (1994) 32-37

- L'Hour M. 'Un site sur la Cote d'Armorique' in *Revue Archaeologique de l'Ouest* 4 (1987) 113-130

- Louis Prof H. 'On the Origin of the cost-book system' in *Reports of the Royal Cornwall Polytechnic Society*, NS 4 (1920) 232-237

- McElderry. 'Vespasian's Reconstruction of Spain' in *Journal of Roman Studies* VIII (1918) 93 ff.

- Monkhouse F J. 'Pre-Elizabethan Mining Laws with special reference to Alston Moor' in *Trans. C & W A & A Soc.* n.s. 45 (1945) 43-55

- Phillips J. 'Quarr Houses in the Isle of Purbeck, Dorset' in ed. P Newman. *Mining and Metallurgy in South-West Britain*, Mining History Vol 13 No 2 (1996) 155-162

- Pratt D. 'The Leadmining Community of Minera in the 14th Century' in *Denbighshire Historical Soc. Trans.* Vol 11 (1962) 28-35

- Pratt D. 'Minera, Township of the Mines' in *Denbighshire Historical Society Trans.* Vol 25 (1976) 114-154

- Raistrick A. 'Rara Avis in Terris' in *Proc. Univ. Durham Philosophical Society* Vol ix pt 4 (1936) 180-190

- Raistrick A. 'Mechanisation of the Grassington Moor Mines' in *Transactions of the Newcomen Society*, Vol XXIX (1953-54) 179-193

- Sawyer P H. 'The Wealth of England in the 11th Century' in *Trans. Royal Historical Society* (1965) 145-160

- Slack R. 'The Dovegang Plot' in *Mining before Powder* ed. T D Ford & L Willies, PDMHS Bulletin Vol 12 No 3 (1994) 102-107

- Smythe Dr J A. 'Roman Pigs of Lead from Brough' in *TNS* Vol XX (1939-40) 139-145

- Stanier P. 'The Quarried Face: Evidence from Dorset's Cliff-top Quarries' in ed. P Newman, *Mining and Metallurgy in South-West Britain*, Mining History Vol 13 No 2 (1996) 1-9

- Thirsk J. 'Industries in the Countryside' in F J Fisher ed. *Essays in the Economic and Social History of Tudor & Stuart England'* (1951) 70-88

- Todd M. 'Ancient Mining in Mendip, Somerset' in ed. P Newman, *Mining and Metallurgy in South-West Britain*, Mining History Vol 13 No 2, (1996) 47-51

- Turner C G. 'A Writing Tablet from Somerset' in *Journal of Roman Studies*, 46 (1956) 115-118

- Tylecote R F. 'Roman Lead Working in Britain' in *British Journal for the History of Science* Vol 11 pt 1 No 5 (1964) 25-43

- Walton J. 'The Medieval Mines of Alston' in *Trans. C & W A & A Soc.* n.s. Vol 42 (1945) 22-33

- Webster G. 'Lead Mining Industry in North Wales' in *Trans. Flintshire Hist. Soc.* CIII (1952-3) 20-31

- Weisgerber G. 'First German Mining Laws and the Archaeological Evidence' in *PDMHS Bulletin* Vol 10 No 4 (1988) 223-230

- Whittick A C. 'Earliest Lead Mining in the Mendips' in *Britannia* 13 (1982) 113-123

- Wildgoose M. 'Roystone Grange' in *Current Archaeology* No 105 303-123

- Williams C J. 'Mining Laws of Flintshire and Denbighshire' in *Mining before Powder* ed. T D Ford and L Willies *PDMHS Bulletin* Vol 12 No 3 (1994) 62-68

- Willies L. 'Working of the Derbyshire Lead Mining Customs in the 18th and 19th Centuries' in *PDMHS Bulletin* Vol 10 No 3 (1988) 146-159

- Willies L. 'Diffusion and Determinism' in *PDMHS Bulletin* Vol 11 No 1 (1990) p.20

- ***Theses***

- Blanchard I S W. 'Economic Change in Derbyshire in the late Middle Ages, 1272-1540'. University of London PhD Thesis 1967

- Burt R. 'The Lead Industry of England and Wales, 1700-1880'. University of London PhD Thesis 1981

- Fisher C. 'Free Miners and Colliers: Custom, the Crown, and Trade Unionism in the Forest of Dean, 1788-1886'. University of Warwick PhD Thesis 1978

- Greaves T A P. 'The Devon Tin Industry, 1450-1750: an Archaeological and Historical Survey'. University of Exeter PhD Thesis 1981

- Pritchard I. 'Evolution of Rural Settlement in Dorset'. University of Wales MSc Thesis 1954

- Reynolds B. 'Late Medieval Dorset: Three Essays in Historical Geography'. University of London MA Thesis 1958

- Willies L. 'Technical and Organisational Development of the Derbyshire Lead Mining Industry in the Eighteenth and Nineteenth Centuries'. University of Leicester PhD Thesis 1980