CORNWALL

"A CATEGORY OF ITS OWN?"

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Introduction

This paper argues that Cornwall is in a category of its own similar to but different from other legal entities which have come into existence from time to time. Next it is intended to explore the distinctive constitutional position occupied by Cornwall today. Too often there is a rehashing of material which is very familiar to those who have a particular interest and leaves those who don't cold. I think some believe that one more piece of evidence or the repetition of familiar testimony will make the English Establishment pause, have a miraculous change of heart, acknowledge the error of their ways and grant Cornwall some form of autonomy. That is not going to happen. Change will only happen when enough people within Cornwall agitate and demonstrate for it as did the people in Wales and Scotland. It was, in relative terms, not so long ago Plaid Cymru and the SNP were regarded as a joke. I hope if more people understand the fact that Cornwall is already in a category of its own the demand that that difference is recognised would seem not the eccentric ravings of a few on the fringe but a rational response that the distinction be accommodated.

Queen Elizabeth II is the monarch of sixteen Commonwealth Realms[1], three Crown Dependencies[2], fourteen British Overseas Territories[3] and various Australian and New Zealand Overseas Territories[4]. None of those Realms, Dependencies or

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[1] England and Wales, Northern Ireland, Scotland, Antigua and Barbuda, Australia, Bahamas, Barbados (for the time being) Belize, Canada, Grenada, Jamaica, New Zealand, Papua New Guinea, Solomon Islands, St Kitts and Nevis, St Lucia, St Vincent and Grenadines and Tuvalu.

[2] Bailiwick of Jersey, Bailiwick of Guernsey which includes Alderney and Sark and the Isle of Man.

[3] Anguilla, British Antarctic Territory, British Indian Ocean Territory, Falkland Islands, Gibraltar, Montserrat, Pitcairn Group of Islands, South Georgia and South Sandwich, Bermuda, British Virgin Islands, Cayman Islands, St Helena, Ascension and Tristan da Cuhna, Turks and Cacos Islands, Sovereign Base Area on Cyprus and South Shetland Islands and South Orkney Islands.

[4] Australian Antarctic Territories, Christmas Islands, Cocos (Keeling Islands), Heard and McDonald Islands, Ashmore and Cartier Islands and Coral Sea Islands. *New Zealand* Associated States – Cook Islands and Niue and Ross Dependency/Tokelau

Territories has a relationship with the Crown which is as ambiguous as that of Cornwall and in none of them does the same situation with regard to the ownership of land apply. The land of Cornwall is owned by the Duke of Cornwall. There is no other province, county, shire, call it what you will, in which the ultimate owner of the land is other than the monarch or the State. This is an issue which I shall explore in more detail shortly. Already it is clear Cornwall is different.

Many writers have sought to bolster the unique status of Cornwall by making comparisons with other entities which, I must confess, I find frustrating. They say Cornwall is like a Palatine County. Well in so far there is a clear idea on the nature of Palatine Counties, and there isn't, - yes and no. Others suggest Cornwall is similar to a Crown Dependency without specifying to which they a referring. For example Jersey and the Isle of Man are very different from the constitutional situation of Sark.

There are also the inflated claims surrounding the Convocation of the Tinners of Cornwall (the Stannary Parliament) which was an extraordinary institution but it was not a Parliament for Cornwall. The force of argument for Cornwall's difference is diminished by exaggerated claims.

This paper is not a work of history although, inevitably, there is some history. I am not a historian and I would refer readers to many excellent books already written which examine Cornwall's[5] past. Neither is this a work of law. I have deliberately made a choice not to pepper this paper with references to endless Acts of Parliament, Charters and Court Cases. I am content to justify the assertions I shall be making but I shall try very hard to avoid making this read like an article being prepared for an academic law journal.

The Duke of Cornwall owns Cornwall!

Yes, really, the Duke of Cornwall owns Cornwall and indeed claims to own the Isles of Scilly although, in my view, that latter claim is arguable. That of itself makes Cornwall unique. I could quote all sorts of court cases to justify that statement[6] and

[5] See for example the works L. E. Elliott-Binns, F.E. Halliday, Philip Payton, Bernard Deacon, John Angarrack and Craig Weatherhill.
[6] For example *Chasyn v Lord Stourton (1553)* (1 Dyer 94a) (73 E.R. 205) and *The Solicitor to the Duchy of Cornwall v Canning (1880)* (5 P.D. 114 Probate)

refer to correspondence with the Land Registry but it is indisputable the Duke of Cornwall owns Cornwall.

I must offer some explanation to put my statement in context. The land law of England and Wales is complex. Legal theory states that no one apart from the monarch owns lands, called allodial land, everyone else has an interest in land typically a freehold or a leasehold interest. The Land Registry asserts that the Duke of Cornwall owns the freehold of the whole of Cornwall, a view shared by Cornwall Council. In other words if I own a property in Devon I hold that as a freehold interest from the Monarch. If I own a house in Cornwall I would own the freehold interest from the Duke of Cornwall. The problem with the Land Registry claim is that it conflicts with an Act of Parliament, still on the Statute Book, entitled *Quia Emptores* 1290 which provided a freehold cannot be created out of a freehold. When this anomaly as queried the Land Registry explained they really did not have an answer.

Because of this contradiction there are those, most notably John Angarrack, who argue, persuasively and powerfully, that the Duke of Cornwall owns the land of Cornwall allodially. That is the Duke's relationship to the land of Cornwall is the same as the Sovereign's relationship to the land of Devon, Somerset, Lancashire etc.

Next it must be understood that despite the fact that the Duke of Cornwall, by definition is heir to the throne, he is categorized in legal text books[7] as a private citizen and a subject of the Crown[8]. In theory he is in no different situation than the writer of this paper or its readers. Whatever the legal niceties there is no Realm, Dependency or Territory in which a similar situation applies with the possible exception of the Isle of Sark about which more later. That is a "private citizen" and a "subject of the Crown" has had ownership granted to them by the sovereign of a substantial territory or, if you prefer, an administrative area. Furthermore that ownership is based on a hereditary principle. The heir to the throne being Duke of Cornwall owns Cornwall. Cornwall's unique situation is obvious.

[7] See Halsbury's Law Chapter 12
[8] *Attorney General to H.R.H. Prince of Wales, Duke of Cornwall v The Mayor and Commonalty of the Borough of Plymouth (1754)* (Wight 134)

The Rights of the Duke of Cornwall

By virtue of the fact the Duke of Cornwall "owns" Cornwall, and the Isles of Scilly, he has certain other rights within Cornwall and the Isles of Scilly. These rights are unique in that in that no other territory, realm etc, as far as I am aware, are similar rights granted to a "private citizen" and a "subject of the crown".

Right to the foreshore of Cornwall, fundus and mines and minerals under the foreshore and fundus of the riverbed

It is generally well known, as a result of the Cornwall Foreshore Case[9] and the subsequent Cornwall Submarine Act 1858, the Duke of Cornwall has the right to the foreshore except when they are owned by a subject. Specifically the Duke of Cornwall, in right of the Duchy of Cornwall, has the right of all mines minerals lying under the seashore between high and lower water marks within Cornwall and under estuaries and tidal rivers and other places being part of Cornwall[10].

The Duke of Cornwall, in right of his Duchy of Cornwall, also owns the fundus or navigable river bed and foreshore of the Tamar, Camel, Helford, Fal and Fowey. This means that part of the toll on the Tamar Bridge, Torpoint and King Harry Ferries goes to the Duchy.

Right to *Bona Vacantia/Escheat*

Escheat is the capacity of the chief lord to resume land granted by him or a predecessor in title on determination of the estate granted. It applies only when a freehold is determined and in Cornwall passes to the Duke of Cornwall. Typically it arises on bankruptcy or when a company is dissolved.

Bona Vacantia arises on the estate of persons dying wholly or partially intestate and without "legal heirs".

The only estate which enjoys a similar privilege is the Duchy of Lancaster whose head is, of course, the Sovereign.

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[9] *The Tidal Estuaries, Foreshore and Under-Sea Minerals within and around The Coast of the County of Cornwall – Arbitration by Judge Sir John Patteson* (1855 London Shaw & Co.)
[10] Halsbury's Laws of England Volume 12(1) Crown Property 3 Foreshore and Wreck para. 268

I fear I will exhaust the patience of my readers but I know of no other realm, territory dependency, with the possible exception of Sark, in which a similar situation arises. That is property which become ownerless reverts to a private individual albeit one of exalted status.

Right to Royal Fish

This right dates back to a statute *Prærogativa Regis* 1324. The entitlement applies to royal fish[11] taken on the seas forming parcel of the Duchy's dominions. On taking of a whale the head belongs to the Duke while the tail belongs to the Duchess. The right was once valuable. The Duchy has the obligation, which they seek to avoid, to dispose of any Royal Fish washed up on the shore which, since they typically contain all sorts of nasty chemicals, can cost as much as £50,000.

Right to Wrecks

This was once a privilege which, in the 19th Century, the Duchy fought hard to assert. They are less keen now but it is still a right which the Duchy enjoys within its "dominions".

Right to Treasure Trove

The right to Treasure Trove within Cornwall belongs to the Duchy of Cornwall.

Right to summon the Convocation of the Tinners of Cornwall

This right is examined in more detail later but the Duke of Cornwall, through the Lord Warden of the Stannaries has, at least in theory, the right to summon the Convocation of the Tinners of Cornwall and to give assent to acts passed by it.

Right to "Prick" or appoint the High Sheriff of Cornwall

It is the Duke of Cornwall and not the Crown who appoints the High Sheriff for Cornwall. This pre-dates the creation of the Duchy of Cornwall dating back to the 13th Century and the Earls of Cornwall. Now largely ceremonial in times past the Sheriff was an immensely important individual with considerable powers having control of

[11] Whales, porpoises, grampuses and sturgeon

the Duchy government and courts[12]. The opening words of the oath taken by the High Sheriff are:

> "I XXXX do swear that I will well and truly serve as well the Queen's Majesty and High Highness XXXX Duke of Cornwall in the office of Sheriff of the County of Cornwall..."

A private citizen swearing an oath to another private citizen is unusual but that is what happens.

In summary

For fear of trivialising:

The Duke of Bedford does not own Bedfordshire;

The Duke of Rutland does not have the right to *Bona Vacantia/Escheat;*

The Duke of Somerset does not have the right to the foreshore of Somerset or the right to royal fish or the right of wreck; and

The Duke of Northumberland does not choose the High Sheriff of Northumberland.

The Duke of Cornwall a "private citizen" and subject of the Crown has it can be seen, in relation to Cornwall, an extraordinary range of privileges and rights.

The Convocation of the Tinners of Cornwall is Cornwall's Parliament[13].

The Convocation of the Stannaries of Cornwall, from now on the Convocation, was (*and, arguably, remains*) a remarkable institution. It did not make Cornwall unique: Devon Tinners also had a "Parliament" as did the lead miners of Derbyshire and the miners on the Mendip Hills but it did, for reasons that shall now be explained, make Cornwall different.

The Convocation of the Tinners of Cornwall and its equivalent in Devon, the Great Court of the Tinners of Devon, were unusual in that they were representative

[12] See Morris, W. A., *The medieval English Sheriff 1300* (1927 Manchester University Press)
[13] See Kirkhope, J *An Introduction to the laws of the Duchy of Cornwall, The Isles of Scilly and Devon* (2014 Amazon and Evertype Press)

legislatures linked to a single industry[14]. *The Convocations were not assemblies concerned with the people of a particular area like, for example, the Scottish or Westminster Parliaments.* However the Cornish Convocation in particular could claim to be concerned with a significant portion of the population since because the number of people who could claim to be tinners was very wide.

The Convocations were, possibly, an expansion of, and an offshoot from, the grand juries of the Stannary Courts. It is said in some older local histories that until 1305 the tinners of Devon and Cornwall met in one Parliament on Hingston Down near Callington; others suggest Crockern Tor on Dartmoor. After a Charter of 1305 the Parliaments were held separately[15].

The Rev. Richard Polwhele claimed:

> "I have scarcely have any doubt but the Stannary parliaments in this place were a continuation, even to our own times, of the old British courts before the time of Julius Caesar; those Stannary parliaments were similar, in every point of resemblance, to the old British courts."[16]

The records for Devon date back to 1520 while those for Cornwall to 1588[17].

Professor Robert Pennington asserted:

> "The Parliament of the Convocation of the Tinners of Cornwall was a unique institution in that it was not only a body representative of a special industrial and commercial sector of the economy, but was also a legislature with powers parallel to those of the Parliament at Westminster and had power to veto legislation by the central government if it affected tin mining. *No other institution has ever had such wide powers in the history of this country*." (emphasis added)[18]

The remarkable power of veto possessed by the Convocation distinguished Cornwall from other areas, like Devon, who could also claim a "miners' parliament".

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[14] Cruickshanks, E., "The Convocation of the Stannaries of Cornwall" (1986) *Parliaments, Estates and Representation* Vol 6 No 1 p 59
[15] Carew, R., *The Survey of Cornwall* (1602) p 16
[16] Polwhele, Rev Richard, *The History of Cornwall* (1816) p 92
[17] Pennington, R., "Stannary Law" (1988) *Bulletin of the Peak District Mines Historical Society* Vol 10 No 4
[18] Laws of the Stannaries - Trevithick Society (1974) Introduction

The 1508 Charter

The recorded history of the Convocation of Cornwall begins with the Charter of 1508 granted by Henry VII. The background to the granting of the Charter is as follows. In 1497 the Cornish rebelled against Henry VII. This was one of six uprisings which occurred over a one hundred and fifty year period; the others being in 1548, 1549, 1642 and 1648. The immediate causes of dissatisfaction were increases in taxation to finance an unpopular war with Scotland, the suspension of the Stannaries in 1496 and stricter rules being imposed by the then Duke of Cornwall, Prince Arthur, on tin bounding and coinage. There was, initially, an unexpectedly successful march on London led by Michael Angove and Thomas Flamank. However, the rebels were defeated by the King's forces in Blackheath and the leaders executed. Henry VII was surprisingly moderate in the way he dealt with the uprising, presumably not wishing to make a bad situation worse. A number of pardons were issued and property previously confiscated was restored. Equally significant was the Charter of Pardon:

> "....a move clearly designed to win pacification and renewed accommodation of Cornwall not only by restoring the Stannaries (on the payment of a £1000 fine) but also enhancing the constitutional status of the Stannary Parliament. Both the privileges of the tinners and the legislative capacity of the Parliament.....Coming so soon after the crisis of 1497, this must be seen as a deliberate strategy to restore the constitutional accommodation of Cornwall. The Charter of Pardon extended the definition of tinner (and thus the jurisdiction of Stannary Law) to include almost anyone connected in one way or another with the tin trade.."[19]

The Charter provided that the Convocation of the Tinners of Cornwall consisted of:

> "...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.."

The four Stannaries were centred on the principal mining districts of (1) Penwith and Kerrier, which comprised Land's End, the Lizard peninsula and area between Hayle, Redruth and Helston (2) Tywarnhaile which ran from Truro to Penryn in the east and to St. Agnes in the West (3) Blackmore, which corresponded with Hensborrow granite boss and (4) Foyemore which extended over Bodmin moor. Writs would be

[19] Payton, P., *Cornwall - A History* (2004) p 115

issued to the mayors of the four "coinage towns" 1) Launceston for Foyemore 2) Lostwithiel for Blackmore 3) Truro for Tywarnhaile and 4) Helston for Penwith. The electorate consisted of the freeholders of each of the Stannaries who elected six Stannators making twenty four in all. Latterly each Stannator was empowered to nominate an Assistant who acted in a consultative capacity and as a link to the free miners.

Convocations of the Tinners of Cornwall were held to enact legislation met in 1588, 1624, 1636, 1686 to 1688, 1704, 1750 and 1752 to 1753. There was an attempt to arrange a meeting of the Convocation in 1835 and there was some lobbying again in 1865. Neither was successful.

Henry VII stated that he would ask Parliament to ratify the Charter but he died before he had the chance so to do. This does not mean, as is sometimes suggested, that because the Charter was not ratified by Parliament it is not legally enforceable. At this time the most typical means of creating new law was by Royal Charter.[20]

The Procedures of the Convocation

The Convocation of the Tinners of Cornwall would be summoned by the Duke of Cornwall, or if no Duke, by the monarch, whereupon the Lord Warden of the Stannaries issued precepts to the four "coinage towns", to hold elections for Stannators. The Stannators latterly appointed twenty four assistants, who formed a lower house to assist them and advise on legislation.

The Lord Warden gave a speech to the Stannators who then elected a Speaker, who having been approved by the Lord Warden, appointed the necessary officials and then opened the session. The Lord Warden and Vice Warden of the Stannaries were excluded. Eventually sixteen Stannators formed a binding majority. The Convocation had the right to initiate legislation concerning the Stannaries, as well as to ratify proposals by the Lord Warden.

John Thomas, Vice Warden of the Stannaries from 1783 until 1812, stated in a report of 1785 that the Convocation:

[20] As a contemporary example see the suggestion that the recommendations of the Leveson enquiry into the Press be implemented by means of a Royal Charter.

> "..is like unto the British in this respect that it consists of three branches viz The Lord Warden, representing the King; 24 Stannators representing the Lords and twenty four assistants chosen by the Stannators, the Commons."[21]

G R Lewis stated the Convocation operated in manner:

> "..scarcely different from Westminster." [22]

The right of veto

The 1508 Charter provides:

> "....no statutes, acts, ordinances..or proclamations *(statute, actus, ordinaciones, provisiones, restrictions sive proclamaciones)* made at any time hereafter shall be put into force in the said county (Cornwall) to prejudice or burdening of the said tinners bounders, possessors of tin works..proprietors of blowing houses..buyers of black or white tin or dealers in white tin or the heirs and successors of any them" unless a Convocation..had been convened and given its consent."

The right of veto applied to enactments of the monarch in Privy Council, the Duke of Cornwall in the Prince's Council as well as Acts of the Westminster Parliament. The position, arguably, was and remains, that the consent of the Convocation is required before enactments of the Westminster Parliament are passed affecting tin mining, and latterly all mining, in Cornwall.[23]

Was the right of veto exercised?

It was exercised on at least three occasions. In 1674 there was a dispute between the Convocation and the King because the Convocation refused to delegate its contracting powers to a House of Commons Select Committee. In 1687 the Convocation refused to ratify a Royal Contract for pre-emption. The most notable occasion occurred during the reign of James II in 1686 when Letters Patent issued by Charles II appointing Penzance as a coinage town was nullified. The Cornish Convocation of Tinners declared they had taken "no Notice" of the order [24].

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[21] Thomas, John, Vice Warden of the Stannaries – *Report to the Princes Council 21st February 1785*
[22] Lewis, G R., *The Stannaries: A Study of the Medieval Tin Miners of Cornwall and Devon* (1908) p 128
[23] Professor Robert Pennington Letter to Daily Telegraph 15th June 1974
[24] Pearce, T., *The Laws and Customs of the Stannaries of the Counties of Devon and Cornwall* (1725)

Does the Convocation still exist as a legal institution?

The answer, debatably, is yes for the following reasons. The English legal system, unlike that of Scotland, does not generally recognise the principle of "desuetude" by which statutes, legislation or legal principles lapse and become unenforceable by long habit of non-enforcement. There are a number of cases which demonstrate this point:

Rex v The Mayor and Jurats of Hasting (1822)[25]

Despite the fact that a Court had not been held since 1790 the Mayor was obliged to hold a Court.

Rex v The Steward and Suitors of the Manor of Havering Atte Bower (1822)[26]

It was decided the fact that there was non-user for fifty years had not deprived them of the power of holding a Court for the recovery of debts.

The side note of the report of the case says:

> "Held, that this Court, being for the public benefit, the words of permission in the charter were obligatory; and that the right of determining suits was not lost by non-user."

Rex v The Mayor and Corporation of Wells (1836)[27]

The particular Court in question had not been held for two hundred years. There were no funds for holding the Court and no one knew the procedures. The judge, Patteson J, said:

> "I do not think I have any discretion on the subject. The power to hold this Court being granted by the charter, I do not think that the corporation can lay it aside merely on the grounds of want of funds; as to length of time, I cannot distinguish between fifty-two years in the case cited and two hundred."

[25] *Rex v Mayor and Jurats of Hastings* (1822) (1 Dowl & Ry. 148)
[26] *Rex v Steward of Havering* (1822) (2 Dowl. & Ry 176n)
[27] *Rex v Wells Corporation* (1836) (4 Dowl. 562)

Attorney General of the Isle of Man v Cowley and Kinrade (1859)[28]

It was stated:

> "Were any Court lawfully possesses a jurisdiction for the benefit of the subject in the administration of justice, it is settled that mere non user does not take it away."

Manchester Corporation v Manchester Palace of Varieties (1955)[29]

This case involved the use or misuse of a coat of arms. It was heard in front of the High Court of Chivalry which has absolute jurisdiction in such matters. The fact the Court had not sat for two hundred years was no bar to its sitting. It is clear should a similar case arise in the future the Court could again sit.

Attorney General v H.R.H. Prince Ernest Augustus of Hanover (1957)[30]

This is a case of the sort which is thrown up from time to time and gives immense pleasure to the legal theorist. The matter arose from the Princess Sophia Naturalization Act 1705 which provided:

> "..the said Princess and the issue of her body, and all persons lineally descending from her, born or hereafter to be born, be and shall be..deemed..natural born subjects of this kingdom."

Prince Ernest Augustus sought a declaration he was a British subject by virtue of the legislation. Initially the High Court held that the statute though perhaps not obsolete, was entirely spent. The Court of Appeal held the enacting words were plain and unambiguous;

> "..that the fact by virtue of the passage of time since the statute was enacted the enacting words on their plain construction might lead to absurd and inconvenient results was no reason why the court should depart from the ordinary canons of construction."

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[28] *Attorney General of Isle of Man v Cowley and Kinrade* (1859) (12 Moore PCC)
[29] *Manchester Corporation v Manchester Palace of Varieties Ltd* (1955) (2 WLR 440 1955) (1 All ER 387)
[30] *Attorney General v HRH Prince Ernest Augustus of Hanover* (1957) (AC 436) ((2 WLR 1 1957)

Prince Ernest Augustus got his declaration. He was a British subject. The decision of the Court of Appeal was upheld by the House of Lords.

Summary

There are, based on the precedents quoted above, convincing arguments that the Convocation of the Tinners of Cornwall and by extension the Great Court of the Devon Tinners still exist as legal institutions and could be summoned.

Has the right of veto been withdrawn?

Dafydd Wigley M.P. on 3 May 1977 asked the Attorney-General the following question:

> "..on what date and by what enactment the provisions of the Charter of Pardon of the twenty-third year of the reign of Henry VII was rescinded or amended in relation to the Stannaries of Cornwall."

The Attorney General replied:

> "My noble friend is making enquiries into this matter and will be writing to the Hon. Member."[31]

Mr Wigley received a reply from the Lord Chancellor, Lord Elwyn Jones, dated 14th May 1977 which did not directly answer the questions raised. The Lord Chancellor quoted from Professor Robert Pennington's Book "Stannary Law"[32] in which Pennington pointed out that Henry VII promised to have the Charter ratified by Act of Parliament but died before he could do so. Pennington suggested in his book that the question is in abeyance as to whether the Convocation could veto a Westminster Act of Parliament. It was also noted by the Lord Chancellor no doubt had ever been expressed about Parliament's power to enact legislation for the Stannaries without consent of the Convocation of the Tinners of Cornwall.

The Lord Chancellor then went on to say that: "no record would be noted against the original of any subsequent rescission or amendment."

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[31] HC Deb 3 May 1977 vol. 931 cc 114-5W
[32] Pennington, Prof. R., *Stannary Law* (1973)

Vetoing a Bill of the Westminster Parliament

It is a principle of English Law that the Courts do not hold an Act of Parliament ineffective once it had been passed[33]. The view of the Courts is they are not competent to question the regularity or propriety of an Act of Parliament once it is on the Statute Roll. So once an Act of Parliament had been passed it is possible that the Cornish tin interests have no legal redress before a Court despite a breach by the Crown of its obligations embodied in the 1508 Charter. However if a Bill were to be introduced into Parliament which affected the Cornish tin mining industry the Convocation of the Tinners of Cornwall could, arguably, be summoned to exercise its veto.

The opinion of Professor Pennington, expressed in a letter to the Daily Telegraph in 1974 was that:

> "..it will undoubtedly be possible for interested Cornishmen to obtain a Court order directing the Duke of Cornwall and the Lord Warden to hold a Convocation to discover whether Cornwall consents.."[34]

to a Bill which would affect the tin mining interests.

The Ministry of Justice in a letter to the writer asserted as follows:

> "Notwithstanding any ancient prerogative instruments such as medieval Royal Charters, the United Kingdom Parliament is sovereign and in our view may legislate for the Stannaries without the assent of the former Stannary Parliament."[35]

The Ministry also said:

> "Although the Stannary Parliament has not been "abolished" by a formal set of legislation consideration of relevant cases by District Judge Duncan Adams some years ago suggest any rights of the Stannary Parliament had been superseded by all modern laws. The United Kingdom Parliament is the supreme legislative authority and has the power to repeal or modify any earlier statute or legislative instrument."

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[33] Subject to the proviso contained in the Human Rights Act 1998
[34] Professor Robert Pennington letter to Daily Telegraph 24th May 1974.
[35] Letter to writer from Ministry of Justice 28th August 2008

When a request was made to see the papers relating to the consideration of District Judge Adams the Ministry replied it did not have them. Enquiries suggest the Ministry of Justice is referring to a case in 2001 in Truro County Court whose records are not available.

Conclusion

There are many who misunderstand the application of the Convocation of the Tinners of Cornwall. It was a body which represented an *industry* not *a population* within a territory although the number of people who were engaged in that industry was significant. It extended, unlike the Great Court of the Tinners of Devon, over the whole of Cornwall. It also had the extraordinary right of veto which does differentiate Cornwall's Tinner's Parliament from similar bodies. Its methods of election by the standards of today are hardly democratic. However, it continues to have a resonance for some within Cornwall. An argument can be constructed that it still exists as a "legal institution" although that will become more and more difficult to sustain as time passes. If a case can be maintained that the Convocation of the Tinners of Cornwall exists then exactly the same logic would apply to the Great Court of the Tinners of Devon. However the question is not one of law it is one of politics. It is difficult to imagine a situation in which the Duke of Cornwall would summon either body. It is equally unlikely that an individual will seek an order from the Courts obliging the Duke to summon the Convocation and the Court would grant such an order. Although if such a case were mounted it would be a fascinating hearing. However, for the purpose of this paper it is worth emphasising the words of Professor Pennington the Convocation of the Tinners of Cornwall "..no other institution has had such wide powers within the history of this country." Cornwall really is in a category of its own.

Bounding

The purpose of this paper is to focus on that which makes Cornwall different. Thus with regard to Bounding I would refer readers to my book "An Introduction to the Laws of the Duchy of Cornwall, The Isles of Scilly and Devon" in which this matter is discussed. However, since it is also possible to Bound in Devon the right which still exists is not unique to Cornwall and I will not expand further in this paper.

Cornwall and Palatine Counties

"Cornwall called a county palatine..Not in truth one...because it wanted the principal part viz an exclusive jurisdiction."[36]

Introduction

It is not uncommon to see comparisons made between Cornwall and Palatine Counties. Indeed Deacon described the Duchy of Cornwall as: "an attenuated rump of palatine status"[37]. In the dispute with the Crown regarding the right to the foreshore of Cornwall the Duchy, while acknowledging Cornwall was not a Palatine County, was anxious to demonstrate it enjoyed many of the same rights. Reference is made to the granting of Charters by the Duchy of Cornwall and the fact the procedure was similar to those granted by Palatine Earls. Furthermore, the Duchy pointed out, Cornwall was classed with counties undoubtedly palatine in the Escheators Act 1509. It was claimed on behalf of the Duchy that Cornwall:

> "...was held by the Earls of Cornwall with the rights and prerogatives of a County Palatine as far as regards Seignory or territorial dominion."[38]

The Crown vigorously disputed the claims of the Duchy to which the Duchy responded:

> "It is not contended that Cornwall was a County Palatine but that it was held with several rights similar to those enjoyed by a Palatine Lord."[39]

The questions which arise are what are Palatine Counties? What special rights did they enjoy? In what way was Cornwall similar or different from Palatine Counties? What extra weight was added to the claims of the Duchy in comparing the Duchy with Palatine Counties?

A remarkable number of counties have claimed or have had claimed on their behalf the status of a Palatine County including Kent, Lancaster, Chester, Durham, Pembroke, the Isle of Ely and Hexham and Hexhamshire (a county which probably originated as one of the districts of the Kingdom of Northumbria then being the seat

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[36] Hale, Sir Matthew, *The Prerogatives of the King* (1976) p221
[37] Deacon, B., *Cornwall- A Concise History* (2007) p38
[38] Tidal Estuaries, Foreshore and Under-Sea Minerals within and around the Coast of the County of Cornwall 1854-1856. Arbitration by Sir John Patteson (1855) Duchy Preliminary Statement p 7
[39] *Ibid* Duchy Preliminary Statement p 10

of a bishopric. It later lost its privileges, and became considered part of County Durham)[40]. The three best known and most significant are Durham, Chester and Lancaster. The focus of this paper will be on Chester and Lancaster. The reasons being, firstly, the Earldom of Chester, like the Principality of Wales, became and is now one of the titles traditionally granted to male heirs to the throne including the present one. Secondly, because the Palatine County of Lancaster, which is part of but is not the same as the Duchy of Lancaster, still exists and shares many of the characteristics of the Duchy of Cornwall. It is a substantial organisation which is not surrendered with the other "Hereditary Revenues" of the Crown. Like the Duchy of Cornwall it is also called a "private estate" both by the Crown and Government. The Duchy of Lancaster was brought into being by that remarkable innovator Edward III in 1351.

The Origin of Palatine Counties

There is much controversy over the origin, definition and status of Palatine Counties during the Norman and Angevin periods[41]. It was once argued that Palatine Counties were created during the reign of the Conqueror. It is true that the Conqueror:

> "...with newly won territory to hold, which was under recurrent threat of invasion, had every reason to place wide emergency powers and ample resources in the hands of lieutenants who guarded his frontiers. But such positions were not so exceptional as once thought. They are found not merely on the Welsh border and in the north, but also in East Anglia and along the coastline of southern England from Kent and Sussex through Hampshire and the Isle of Wight to Cornwall..."[42]

But the idea that Palatinates came into being during that period has now been rejected[43]. There is, it is argued, confusion between the personal power of the individual Earls and their legal-constitutional status.. It is now largely accepted it is: "futile to use the term palatinate before the reign of Henry II (1154 – 1189)"[44].

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[40] Hale, Sir Matthew, *The Prerogatives of the King* (1976) p 214
[41] Alexander, J., "New Evidence on the Palatinate of Chester" (Oct 1970) *The English Historical Review* Vol. 85 No 337p 716
[42] Barraclough, Geoffrey, "The Earldom and County Palatine of Chester" (1951) *Transactions of the Historical Society of Lancashire and Cheshire* Vol CIII p 28
[43] Alexander, op. cit. p 717
[44] Painter, Sidney, *Studies in the History of the English Feudal Barony*. (1943) p15.

Dr. Somerville says:

> "A county palatine was one in which the king transferred most of his royal powers to the subject who possessed the county. This measure of devolution was of particular advantage in the border counties, which might at any time be involved in raids, if nothing more, from warlike and predatory peoples on the other side of the line. Thus Chester faced the Welsh, and in the North Durham, and, for a time Hexhamshire, the Scots."[45]

Others are less certain, for example Jean Scammell states:

> "... (Lancaster) (Durham) and (Chester) had no common principle, no identity of origin or particular privilege to create or justify a peculiar status."[46]

She went on to say that "an English palatinate was indeed in its beginning a term of pretension and not of definition"[47]. She argued that the term "palatinate" had no specific meaning as late as 1377 when John of Gaunt asked for an explanation for his Palatine County of Lancaster. Others, however, take a different view suggesting in the late fourteenth century palatinates had a clearly understood meaning[48].

Possibly the best summary of the way in which Palatine Counties came into being was set out in Barraclough's article of 1951 in which he says:

> "From Henry II's time onward honour after honour disintegrated, and all that remained was a "shadowy collection of feudal superiorities". But the few that "contrived to weather the storm" adapted themselves, almost of necessity, to the new situation, changing their character and feeding "upon the new process of government"; for against a monarchy conscious of new powers and striding ahead, to mark time was to go under. It was in these circumstances, in Chester as in Durham, that what was later called "palatinate" came into being. As the supremacy of the crown was defined and asserted, so the earl (of Chester) applied to himself "the new principles of sovereignty", until eventually his rights might be defined as a regality equivalent to but under the king."[49]

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[45] Somerville, R., "The Duchy and County Palatine of Lancaster" (1952) *Transactions of the Historical Society of Lancashire and Cheshire* Vol 103 p 59
[46] Scammell, Jean, "The Origin and Limitations of the Liberty of Durham" (1966) *The English Historical Review* Vol 81 part 320 p 450
[47] *Ibid* p 451
[48] Alexander, J., "The English Palatinates and Edward I" (1983) *Journal of British Studies* Vol 22 pt. 2 p2
[49] Barraclough, op. cit. p 35

Lapsley in his definitive work on the County Palatine of Durham regards the word "Palatine" as entirely exotic until the thirteenth century[50]. The term "Palatine County" was used by Matthew Paris and later Bracton[51] in the middle of the thirteenth century. Its first appearance in a quasi-legal record is Bracton's notes on proceedings concerning the divisibility of the earldom of Chester in 1238. Official sources do not denominate Chester as palatine until 1297[52]. The term was first used in connection with Durham, four years before in 1293[53]. It is also used in a Cheshire Plea Roll for 1310 in connection with a common right of liberties. It is probable that the *Quo Warranto* proceedings following the passing of the *Quo Warranto* Act 1290, which required a person to demonstrate by what authority they exercised some right or power, provided a powerful stimulus for franchise holders to review their positions hence the references which began to appear at this time[54]. The lawyers of Edward I attacked and reduced franchises and franchise holders were forced to redefine and reformulate their rights and privileges and put them on a broad foundation[55].

Unlike the County Palatine of Lancaster there is no express grant of palatine status to Chester, Durham or Pembrokeshire. Their title rested on "royal acquiescence in steadily advancing prescription."[56] By contrast Bracton maintained that since "Time does not run against the King"[57] prescription could not give rise to a liberty only a written grant is a good warrant in his eyes[58].

It is clear that the claims that palatinates originated with the Conqueror cannot be sustained and they emerged only much later. From the twelfth century came to be accepted as having a distinct legal personality though their precise characteristics are still debated. It also became apparent that palatinates differed one from another.

<u>The Characteristics and Definitions of Counties Palatine</u>

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[50] Lapsley, G T., *The County Palatine of Durham* (1900) as quoted by Tout, Margaret *Comitatus Pallacii* (1920) The English Historical Review Vol 35, No 139 pp 418-419
[51] Tout, Margaret, "Comitatus Pallacii" (1920) *The English Historical Review* Vol 35, No 139 pp 418-419 who quotes from Bracton's *De Legibus ii 290* and Matthew Paris' *Chronica Maiora iii pp 337-338*
[52] Record Commission *Placita de Quo Warranto* (1818) p 714
[53] Clayton, Dorothy, *The Administration of the County Palatine of Chester 1442 – 1485* (1990) p 48 See also Tout, Margaret "Comitatus Pallacii" (1920) *The English Historical Review* Vol 35, No 139 pp 418-419 who quotes from Bracton's Note-book no 1273 p 282
[54] Scammell, op. cit. page 451
[55] Barraclough, op. cit. p 38
[56] Cam, Helen, "The Evolution of the Mediaeval English Franchise" (1957) *Speculum* Vol 32 pt. 3 p 435
[57] *Nullum tempus occurrit regi*
[58] Quoted in Cam:*Ibid* p 440

Somerville says: “A county palatine was one in which the king transferred most of his royal powers to the subject who possessed the county”[59]. This clearly leaves a lot of questions unanswered. What royal powers exactly? Could they be exercised autonomously or did the king exercise oversight? Others have defined palatine counties as those: “exempt or almost so from royal jurisdiction”[60] a description which does not takes us much further forward. They have also been described as: “...the exercise of regality by one who was not king”[61]. Holdsworth described palatinates as: “independent principalities of the continental type within which the king’s writ did not run – small models, as Bacon said, of the great governments of kingdoms”[62]. Later Holdsworth somewhat modified his view. He says: “The essence of a palatine earldom was that in the county concerned the earl wielded all the king’s powers as his deputy.” He also said: “..they are bound both by acts of parliament and by the common law”. Bishop Stubbs said they were: “earldoms in which the earls were endowed with the superiority of whole counties” and “regalia or royal rights of jurisdiction were exercised by the earls”[63].

Lord Coke, in his 4th Institute published in 1644[64] describes a County Palatine in the following terms:

> “It is called a *comitatus palatinus*, a county palatine....because the owner thereof, be he duke or earl etc hath in that county *jura regalia*[65] as fully as the King had in his palace...The power and authority of those that had counties palatine was kinglike, for they might pardon treasons, murders, felonies and outlawries thereupon. They might also make justices of eire, justices of assize, of gaol delivery, and of peace; and all original and judicial writs, and all manner of indictments of treason and felony, and the process thereupon, were made in the name of the persons having such county palatine; and in every writ and indictment within any county palatine it was supposed to be *contra pacem*[66] of him that had county palatine.”

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[59] Somerville, R., “The Duchy and County Palatine of Lancaster” (1952) *Transactions of the Historical Society of Lancashire and Cheshire* Vol 103 p 59
[60] Plucknett, T F.T., *A Concise History of the Common Law (5th Edition)* (1940) pp 99, 160
[61] Alexander, J., “The English Palatinates and Edward I” op. cit. p 2
[62] Holdsworth, Sir William S., *A History of English Law* (7th Edition revised 1956 by A L Goodhart) 1.109
[63] Stubbs, William, *The Constitutional History of England* (3rd edition) (1880) 1.271, 392
[64] Lord Coke *Fourth Institute* (1644) p 204
[65] Rights which belong to the Crown
[66] Against the peace

Lord Coke's description, even though written in the seventeenth century, did not correspond with reality. The County Palatine of Lancaster specifically did not have the right to pardon treasons and murderers.

In the seventeenth century Sir Matthew Hale stated that:

> "The jurisdiction of a county included almost all other royal jurisdictions and liberties, and therefore is called *regale* (a prerogative of royalty) and *regalis potestas* (royal power). And indeed a county palatine hath a confluence of all other liberties and regalities under whose subordination before expressed to the supreme royal power."[67]

Blackstone writing in the nineteenth century found "earl's palatine held *jura regalia* as fully as the king"[68].

While considering the claims about the nature of the powers of the palatinates it should be understood that kings were always jealous of their power. In connection with the palatinate of Durham, for example, Edward I was perfectly prepared to sequester the palatinate whenever it so pleased the royal will[69]. He stated:

> "...For the royal authority extends through the whole realm, both within the liberties and without"

Sir Matthew Hale emphasised: "..the king doth not grant franchise against himself"[70]. Post Gaines in 1964 wrote in connection with Chester:

> "..it was a delegation of the royal jurisdiction for the administration of justice in part of the realm, and the earl remained subject ultimately to the king's power and the right to do justice and maintain peace"[71].

The Statute of Westminster of 1275 stated:

> "..even where the king's writ does not run, the king is sovereign lord over all and will do right to any who complain to him if the lord of the liberty be remiss."[72]

In simple terms at the local and practical level what distinguished palatinates from other counties within England and Wales?

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[67] Hale, op. cit. p 210 - 212
[68] Blackstone, Sir William, *Commentaries on the Laws of England* (9th Ed 1976) p 113
[69] Alexander, J., "The English Palatinates and Edward I" op. cit. p 10
[70] Hale, op. cit. p 204
[71] Post, Gaines, *Studies in Medieval Legal Thought* (1964) p 280
[72] Rothwell, Harry, *English Historical Documents 1189-1327* (1975) pp 401-402

By a Charter dated 28th February 1377 the county of Lancaster, as part of the Duchy of Lancaster, was made a County Palatine "as freely as the Earl of Chester enjoyed in his county of Chester"[73]. It therefore seems sensible to start by considering the Palatine County of Chester since supposedly it provided the exemplar for Lancaster.

The palatinate of Chester arose by "prescription" - there is no founding Charter as with the palatinate of Lancashire. Cheshire was not represented in the Westminster Parliament until 1543 and as a consequence claimed exemption from taxation imposed by Parliament. As far back as the reign of Edward I the king appeared to "request" rather than "demand" the payment of taxes voted by the national parliament[74]. Cheshire also enjoyed its own exchequer and chancery and register of writs and the privilege of return of writs. It should be noted, however, "..even a liberty with return of writs is nevertheless a place where the king's writ runs"[75]. More specifically Cheshire would seem to have been fiscally independent since it does not appear on the Pipe Rolls save when the Earl was a minor in the king's wardship. This absence, however, was not limited to palatinates, Cornwall was also absent from the Pipe Rolls[76]. It would appear the Cheshire barons were free from obligation to serve outside their county[77] though this was not unique to Cheshire: the Barons of Durham and the Marches enjoyed a similar privilege[78]. This benefit had become meaningless, in any event, by the end of Edward I's reign when armies were no longer raised by calling on the service of tenants by knights-service[79]. It is the case the Barons in Cheshire held of the earl and not of the king.

The Earl of Chester declared he had "pleas of the sword" in his court.[80] For Lucian the monk writing about 1195:

> "Chester was a province...with privileges which it distinguished from the rest of England...it attends rather to the sword of its prince than to the royal crown.."[81]

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[73] Hardy, Sir William, *The Charters of the Duchy of Lancaster* (1845) p 32
[74] Clayton, op. cit. p 47
[75] Plucknett, T. F.T., *The Legislation of Edward I* (1949) p 30
[76] Painter, Sidney, *Studies in the History of the English Feudal Barony* (1943) p 112
[77] Barraclough, op. cit. p 36
[78] Alexander, J., "New evidence on the Palatinate of Chester" op. cit. p 723
[79] Booth, P. H. W., *The financial administration of the lordship and county of Chester 1272 – 1377* (1981) p 6
[80] Cam, op. cit. p 435
[81] Taylor, M. V., (Ed) "Liber Luciani de laude Cestrie" (1912) *Record Society Lancashire and Chester* Vol LXIV pp 9, 77

It is suggested "pleas of the sword" indicated that the Earl's rights had been acquired by conquest and could not be removed by any king[82].

Royal authority in Cheshire was exercised through the mediacy of the earl. Most significantly the earl or his officials presided over the county courts; itinerant justices were excluded, writs ran in the earl's name; and the Sheriff was appointed by the earl and was not a royal official. Again these features were not unique to Cheshire they were also true of the marches[83]. The law they enforced, however, was statute and common law. Because Cheshire was not represented in Westminster did not mean they were not bound by the laws passed by that body.

A Charter of 1351 created Henry de Grosmont Duke of Lancaster of the palatinate of Lancaster. The gift bestowed on Henry his own writs, chancellor, chancery and seal. He was granted his own justices to try pleas of the Crown as well as other pleas under common law. At the same time it reserved certain taxes and subsidies to the crown. Most importantly, in contrast to Durham and Cheshire, it retained for the crown the right to pardon life and limb (that such judgement was taken by Bracton and Blackstone to be the benchmark of a palatinate[84]) and the right to correct errors in the palatinate court. Unlike Cheshire and Durham Lancashire was required to send representatives to Parliament. Taxes were collected by the ducal officials but they remained royal taxes. The 1351 Charter was granted to Henry for life and not to his heirs.

<u>The Earldom and Palatine County of Chester</u>

The Earldom of Chester dates from 1070 or perhaps 1071, four or five years after the Conquest, when the title was granted to the nephew of the William I, Hugh Lupus. Until 1237 the title was in the possession of a succession of Norman lords[85]. The penultimate earl was Ranulph de Blundeville, who died in 1232. Ranulph died without issue so the title *escheated* to the Crown. However, he was succeeded by Earl John of Scotland, the male heir of the eldest sister of Ranulph after confirmation by the king of his entitlement. John died in 1237 and the earldom was annexed to the Crown. In 1254 Henry III granted the county to his son. In 1301 Edward of Caernarfon (later Edward II) was made earl of Chester. Henceforth Cheshire was to

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[82] Lyon, Ann, *Constitutional History of the United Kingdom* (2002) p 68
[83] Alexander, J., "New evidence on the Palatinate of Chester" op. cit. p 723
[84] Bracton *De Legibus* (Ed Woodbine (1915) ii 346 Blackstone *Commentaries* (1st edn 1765) I 113 - 114
[85] Clayton, op. cit. p 51

be in the hands of the crown or the heir apparent. For example, during the 105 years from 1272 until 1377 for about forty years the Earldom was in the hands of the crown and for half the period 1442 – 1485 there was no earl. It should be noted when there was no earl the king never used the title Earl of Chester.

It is important to understand that the County Palatinate of Chester formed part of a greater unit: the "honour" of the earldom of Chester. An "honour" was created when the lordship of a manor existed over a number of manors[86]. The "honour" of the earldom of Chester stretched into twenty or more counties of England and across the Channel into Normandy[87]. The earldom of Chester included the Palatine County of Chester but was not the same as the palatinate.

It was under Ranulph that the palatinate of Chester came into being. He claimed: "pleas of the sword", first mentioned in his great Charter of Liberties of 1215 or 1216. He also provided a register of original writs. He created an exchequer and advanced his powers of taxation[88]. A number of other privileges enjoyed by Cheshire have been noted above. It is the case, however, the precise origins and purpose of its creation as a county palatine "remain obscure"[89]. Barraclough claimed:

> "If Cheshire survived as a unity, and was subsequently transformed into a palatinate and held together by a palatinate administration, it was because the crown in its own interest decided it would survive....the Charter of Liberties of 1215 or 1216 soon became to be treated as a constitutional guarantee..."[90]

In 1300 when Edward I confirmed and amplified Magna Carta he issued a confirmation of the liberties granted in the Charter of 1215 or 1216.

Chester, like Lancaster, had its own autonomous courts and officers of justice with chief justices. It is not clear when Cheshire first acquired its court of common pleas. Certainly by the late medieval period the Cheshire county court possessed a common law jurisdiction and had competence over all civil and criminal actions in the County and was able to review decisions of lesser courts[91]. The King's Bench could and did examine cases of error in the Cheshire Courts

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[86] Halsbury's Laws of England Volume 39(2) Land and Interests in land section 75
[87] Barraclough, op. cit. p 34
[88] Barraclough, op. cit. p 36
[89] Driver, J.T., *Cheshire in the Later Middle Ages* (1971) p 5
[90] Barraclough, op. cit. p 41
[91] Holdsworth, op. cit. p 119

Chester had its barons of exchequer whose duties included levying debts, securing payment of arrears and eliciting profits from *escheated* land, as well as from pleas, fines, amercements, redemptions, recognizances and all other profits of justice[92]. They had, in addition a number of other officials including *escheators* and most significantly the Sheriff "probably the most important officers in the protection of royal interest at local level"[93].

The Tudor period saw the Palatinate of Cheshire brought into "belated conformity with the rest of England"[94]. Henry VII had revived the *quo warranto*[95] proceedings much more vigorously than his predecessors. The Justice of the Peace (Chester and Wales) Act had been passed in 1535 (repealed by the Justices of the Peace Act 1968 and Courts Act 1971) by which the appointment of justices was taken out of local hands. More significantly perhaps the Act secured the control of the Star Chamber over Cheshire as over any other county. The Jurisdiction of Liberties Act also of 1535 provided that the only writs to run throughout the realm were those of the king. By Chester and Cheshire (Constituencies) Act 1542 both the county and city were granted representation in Parliament. All that remained of the palatine status were the palatine courts expressly retained under the 1535 Act. But they no longer spelt immunity from but were simply an alternative form of application of the law common to the whole country[96]. The courts were eventually abolished by the Law Terms Act 1830.

<u>The Duchy and County Palatine of Lancaster</u>

On 6 March 1351 Edward III erected Lancashire into a County Palatine in favour of Henry[97] fourth earl of Lancaster. On the same date Henry was created Duke of Lancaster. The Duchy of Lancaster was only the second English Dukedom to be created. The title and palatinate were just for Henry's lifetime and lapsed on his death in March 1361. John of Gaunt, son in law of Henry and son of Edward III was created Duke of Lancaster in November 1362 but palatine rights were not granted to

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[92] Worthington, P., *Royal Government in the Counties Palatine of Lancashire and Cheshire 1460 – 1509* (1990) Thesis (Ph. D.) University College Swansea
[93] *Ibid*
[94] Stewart-Brown, R., "The Cheshire writs of Quo Warranto in 1499" (1934) *English Historical Review* Vol XLIX p 679
[95] "By what warrant" – A prerogative writ obliging a person to show by what authority they hold some right power or franchise
[96] Barraclough, op. cit. p 45
[97] The grandson of Edmund, the first earl of Lancaster to whom the county had been given by Henry III in 1267

him until 28th February 1377. Again the grant was for his lifetime only until it was converted on 16th February 1390 to a grant to include "heirs' male"[98]. In this way the Duchy and palatinate came to John of Gaunt's son Henry of Bolingbroke who came to the throne as Henry IV in October 1399. Henry IV:

> "...caused a charter to be passed, sanctioned by Parliament, ordaining that the Duchy of Lancaster...should remain to him and his heirs forever; and should remain, descend, be administered, and governed in like manner as if he never attained the regal dignity."[99]

There has been much debate about whether that County Palatine and Duchy of Lancaster should vest in the "natural" heirs to Henry IV as opposed to the "political" heirs as monarchs[100]. Fascinating though the discussion is it is outside the scope of this work. It is now generally agreed, and recognised by Acts of Parliament, for example Taxation Act 1702, that there is a union of the Duchy and the Crown in the same person but it is an inheritance separate from the Crown[101]. The Duchy became and remains part of the Crown's landed possessions.

For the avoidance of doubt, it should be understood the Duchy of Lancaster is an "honour" or complex of estates and owns 18,800 hectares of land in England and Wales[102], which includes the County Palatine of Lancaster. Although the Duchy of Lancaster incorporates the County Palatine of Lancaster the two are distinct[103].

As already noted the Palatine County of Lancaster was based on the Chester model but with significant differences. The Charter of 1351 reserved to the king the right to correct errors in the Duke's court, to pardon life and limb and the right of direct taxation. Lancashire, unlike Chester, also had to find "knights of the shire and burgesses for parliament"[104]. The main consequence of the Charter was that writs within the County Palatine of Lancaster ran in the Duke's name which meant the administration of justice was in the Duke's hands. Lancaster, like Chester, was outside the usual system of legal procedures and jurisdiction operative in the other

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[98] Somerville, op. cit. p 59
[99] Hardy, op. cit. p x. See also *A. G. of the Duchy of Lancaster v Duke of Devonshire* (1884) 13 QBD 195 at 197) (4 Co Inst 205)
[100] The matter was discussed in *Duchy of Lancaster Case* (1561) (1 Plowd 212) (75 ER 325) (All ER Rep 146) and *Alcock v Cooke* (1829) (5 Bing 340 at 352, 354)
[101] Hardy, op. cit. p xii
[102] Duchy of Lancaster Accounts 2009/10
[103] Halsbury's Laws of England Vol 12(1) 302 *Extent of the Duchy of Lancaster*
[104] Somerville, op. cit. p 60

shires of England having, for example, their own chief justice. The Chancellor of the Duchy of Lancaster was also Chancellor for the County Palatine of Lancaster.

Like Cheshire, Lancaster had its Barons of Exchequer whose functions were similar to those already outlined. The High Sheriffs for the County Palatine, which today includes Lancashire, Greater Manchester and Merseyside, were and are appointed by the monarch in right of the Duchy of Lancaster[105].

As with Cheshire the Duke appointed his own *escheator*, bailiffs, stewards, master forester, deputy master foresters and coroners[106]. The Duchy of Lancaster also has its own Attorney General whose rights, in the nineteenth century were not as extensive as those of the Attorney General of the Duchy of Cornwall. In *The Attorney General of the Duchy of Lancaster v The Duke of Devonshire* (1884-85)[107] it was decided:

> "It is not competent to the Attorney General of the Duchy of Lancaster to exhibit an information in the High Court of Justice, and the court will order an information exhibited by him to be taken off the file on the application of the defendant even after answer put in by the defendant."

By the Judicature Act 1873 the Lancashire Court of Common Pleas was absorbed into the Supreme Court. The Lancashire Chancery Court continued to operate. By the Courts Act 1971 the Chancery Court of the County Palatine of Lancashire was merged with the High Court.

The position of the Duchy of Lancaster in relation to the crown was summarised in *Alcock v Cooke* (1829)[108] as follows:

> "Although the King holds lands as Duke of Lancaster, he holds them as King also; and the prerogatives and privileges of the King belong to him with reference to those lands, as they do with respect to those which belong to him immediately in right of his Crown; therefore, a grant under the Duchy seal is subject to all the incidents of a grant from the Crown."

Halsbury's Laws of England[109] explains it thus:

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[105] Halsbury's Laws of England Volume 42 The Office of Sheriff para 1105
[106] *Jewison v Dyson* (1842) (9 Meeson and Welsby 540) (152 E R 228)
[107] *The Attorney General of the Duchy of Lancaster v The Duke of Devonshire* (1884-85) (L.R. Q.B.D. 195)
[108] *Alocock v Cooke* (1829) (5 Bing 340) (130 ER 1092) (All ER Rep 497)
[109] Halsbury's Laws of England Volume 12(1) 7 Crown Private Estates 354 Application of the prerogative

> "At common law the general rule appears to be that the prerogatives of the Crown applicable to estates vested in the Crown as a body politic in right of the Crown extend to private estates vested in the monarch in her natural capacity;[110] and that since the law attributes to the body natural of the monarch all the qualities of her body politic, the latter estates can only be dealt with subject to the same incidents and formalities in general as the former."

The Duchy of Cornwall, the Palatine County of Chester and the Duchy and Palatine County of Lancaster – Similarities and Differences

Similarities between the Duchy of Cornwall and the Earldom of Chester include the fact, for example, both titles associated with the male heir to the throne. The difference is that the Duke of Cornwall becomes automatically Duke upon birth providing he is the eldest living son of the reigning monarch or upon his parent become sovereign. The Earldom of Chester is a new creation on each occasion. The Duchy of Cornwall, like Earldom of Chester once was and the Duchy of Lancaster is still, a great honour with lands in many counties in England and Wales. Like the Duchy of Lancaster with its special position in relation to the County Palatine of Lancaster the Duchy of Cornwall has a special relationship with Cornwall.

Cheshire's fiscal independence was indicated by its absence from the Pipe Rolls from which Cornwall was also absent. Like Lancaster and Chester the High Sheriff for Cornwall was a comital appointment rather than a regnal one. Cornwall also had its *escheators*, havenors, bailiffs and so on. Cornwall enjoyed return of writs. Like Lancaster, but unlike Chester, it returned M. P.s to Parliament and was subject to royal taxation.

The differences are, of course, that writs in Chester and Lancaster were issued in the name of the Earl and the Duke respectively. This was not the case in Cornwall. In addition the Palatine County of Lancaster and Cheshire had their own courts, abolished in 1830 and 1971 respectively. The Duchy of Cornwall may have controlled the Courts but they were always the king's courts and it was the king's writs they enforced. In practice there was very little difference, the same common and statute law applied whether in Cornwall, Chester or Lancaster.

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[110] *Duchy of Lancaster Case* (1561) (1 Plowd 212 at 213, 222)

The Duchy of Cornwall was responsible for the Stannaries. Chester and Lancaster had nothing comparable. The Stannaries extended over the whole of Cornwall and the Stannary towns of Devon. They included the Great Court of the Tinners of Devon and the Convocation of the Tinners of Cornwall. The latter body having, by a Charter of 1508, the power to veto Westminster Laws detriment to its interest. The Stannaries of Cornwall included a system of taxation called "coinage". There was also a system of Stannary Courts, in which the common law did not run and from which there was no appeal to the "courts of England". These courts continued until 1896, sixty six years after the Chester Courts were abolished and twenty three years after the Lancaster Court of Common Pleas was merged with the Supreme Court. The Lord Warden of the Stannaries had the right, indeed obligation, like the Lords Lieutenant of counties, to summon a militia of tinners if that was necessary.

With the abolition of the Lancaster Chancery Courts it is difficult to identify any significant differences between the Duchy of Lancaster's relationship with the County Palatine of Lancaster and the Duchy of Cornwall's relationship with Cornwall. The Royal Duchies are each administered by Councils to whom various officers are appointed including, for example, an Attorney General. In both cases the Duchies appoint the Sheriff; they both enjoy the right of royal fish and right of wreck. The entitlement to *bona vacantia* and escheat is common to both as is Crown Immunity, an advantageous tax position, and the right to be consulted on legislation affecting their interest. The Royal Duchies are not, like the other Hereditary Revenues of the Crown, surrendered to the Crown Estates. Both are described by the Crown, themselves and government as "private estates".

The substantial difference is the Duke of Lancaster is always the monarch while the Duchy of Cornwall is sometimes in the hands of a Duke and sometimes in the hands of the Crown.

Conclusion

The Duchy of Cornwall in the nineteenth century and beyond tried to enhance the status of the Duchy of Cornwall and Cornwall itself by making comparisons with palatinates. They were based on the perception of Palatine Counties which followed from the definition of Lord Coke and others. It is clear that in one crucial respect Lord Coke was wrong. A number of franchises emerged in medieval England some survived and most did not.

It is true Cornwall was only once called a Palatine County wrongly according to Matthew Hale[111] because it lacked "an exclusive jurisdiction". It did not, for example, possess its own courts, its writs were issued in the King's name and there was no central register of writs. Balanced against this the Duchy of Cornwall controlled the Stannary system. It also, while asserting it is part of the Crown, vigorously worked to maintain it was distinct from the Crown whose interests did not always coincide with those of the Duchy.

It is understandable why the position of Cornwall should be compared with Palatine Counties. There are similarities but equally significant differences. So while it is possible to compare the Palatine Counties of Lancaster, Durham and Cheshire Cornwall stands alone.

Cornwall and Crown Dependencies

There is one of the Crown Dependencies which has, in my view, significant similarities with Cornwall and that is Sark. Sark has belonged to the Crown since the time of William the Conqueror as was the Earldom of Cornwall. In 1565 Queen Elizabeth I granted a fief, an estate held on condition of feudal service, to Helier de Carteret setting out its constitution by way of Letters Patent. The holder of the fief is the Seigneur (or Lord of Sark) who holds the fief of Sark from the Crown in perpetuity and is the civic head and representative of the Island. In other words the ownership of the land of Sark is similar to that of the ownership of Cornwall and the Lord of Sark occupies a position, some argue, similar to that occupied by the Duke of Cornwall.

Equally while the Duchy of Cornwall and its rights were established by a Charter of 1337 the rights and obligations of Sark were established by way of Letters Patent in 1565. In both cases the rights are granted in perpetuity[112]. The position of Lord of Sark is, like that of the Duchy of Cornwall, hereditary.

Sark is not part of the United Kingdom nor is it a sovereign state. It has never been represented in the United Kingdom Parliament which does not legislate on behalf of Sark without first obtaining the consent of Sark's administration. Her Majesty is Queen of Sark. Sark is part of the Bailiwick of Guernsey and, except in matters of

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[111] Hale, op. cit. p 221 *Vide Rot. Parl. 38 H. 6, n.29*

[112] Crowe, Belinda *Administrative and Executive Support Arrangements for the Government of Sark* (2012) *www.gov.sark.gg/downloads/Reports/Belinda_Crowe_Report.pdf*

criminal law; Guernsey can only legislate for Sark with its consent. In effect Sark has a right of veto over legislation similar to that of the Convocation of the Tinners of Cornwall. As an independent self-governing territory Sark has its own legislature, judicial system and administration. The Sovereign acts on behalf of Sark through the Privy Council. The Judicial Committee of the Privy Council is Sark's final appellate court. The Stannaries of Cornwall had its own legislature, judicial system and administration which, ultimately, were also answerable to the Privy Council.

The Lord of Sark does have the power to temporarily veto Ordinances of the Chief Pleas (the Sark Parliament) in the same way the Duke of Cornwall can refuse to assent to Acts of the Convocation of the Tinners of Cornwall.

Cornish Language/Cornish Identity

I have nothing to add to that which has already been written. Suffice to say the Cornish Language was recognised officially in 2003 under the European Charter for Regional or Minority Languages. In addition the Cornish have been recognised under the European Framework Convention for the Protection of National Minorities as are the United Kingdom's other Celtic people, the Scots, the Welsh and the Irish. It is difficult to identify any other part of England in which similar recognition applies.

The Flag of St Piran

Finally on a personal note I once conducted a seminar in which I asked my audience if they could recognise the flags of England Wales and Scotland. I also asked if they could recognise the Flag of St Piran. The overwhelming majority of my English audience could. I then asked how many could recognise their county flag and they could not by and large. In no part of England do you find the County Flag displayed so prominently as you do in Cornwall. No other "county" flag achieves such recognition.

Cornwall really is in a Category of its own.

Dr John Kirkhope June 2015