

Peasant Families and Inheritance Customs in Medieval England¹

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I

TO the medieval peasant his family and his land must have been of supreme importance. Attitudes to these two constants in rural society are vividly reflected in the varied and changing customs governing the descent of villein holdings. Evidence on the subject is plentiful in the form of legal doctrine, manorial customs, and above all in the thousands of cases relating to the inheritance of peasants' land in the manorial court rolls, but it has not often been interpreted in terms of the social attitudes it embodies. There have been excellent regional studies showing something of the distribution of various inheritance customs, how they worked in practice, and how they made their mark on local field systems. There have been two analyses of Anglo-Saxon attitudes to kinship, both by anthropologists, not historians. The only general work on the subject drawing on the rich supply of medieval evidence, again not by a historian, but by a sociologist, appeared twenty-five years ago, and few of the lines of enquiry it initiated were followed up.² Homans' *English Villagers of the Thirteenth Century*, whatever its deficiencies, was an important book in two respects. Homans assembled a mass of information illustrating the thirteenth century peasantry as a whole culture, not merely an economic class, and he interpreted this information in a way which shed a good deal of light on medieval social structure: on the interrelation of field systems, village types and sizes, family organization, and social attitudes, in a period for which historians have mostly concentrated on economic factors and tenurial relationships. Methodologically, his book is also interesting, for Homans' technique in the central, and most important, section, was to use a chronologically and geographically scattered collection of evidence—customals, surveys, and court rolls—to build up a model, in the sociological sense, of what he considered to be the two main types of peasant family organization in thirteenth-century England and their

¹ Based on a paper read at the Conference of the British Agricultural History Society, April 1965.

² L. Lancaster, 'Kinship in Anglo-Saxon Society', *British Journal of Sociology*, no. 9, 1958; B. S. Phillpotts, *Kindred and Clan in the Middle Ages and After*, Cambridge, 1913; G. C. Homans, *English Villagers of the Thirteenth Century*, New York, 1960; A. R. H. Baker, 'Open Fields and Partible Inheritance on a Kent Manor', *Econ. Hist. Rev.*, no. 1, xvii, 1964.

geographical distribution. He has summarized this argument as follows:

"Central England is marked by large and compact villages whose fields are managed by customary rules binding on all the villagers—one or another variation of the so-called open-field system or champion husbandry. In these fields the villager's holding lies in strips. . . The holdings tend to be equal, class by class. . . A holding in villeinage or socage is commonly held by one man, and descends to one of his sons. . .

"Arrangements in Kent and East Anglia differ at almost every point from those just described. . . Kent is marked by settlements smaller than open-field villages. . . The holding does not originally consist of scattered strips. The earlier the date, the more often does it appear as a compact body of land. The holding is managed as an independent farming unit, not subject to many communal rules, . . . [and] tends to be in the hands of a body of men often called *participes*, sometimes called *heredes*, and it is often clear that these men are patrilineal kinsmen. Land descends to a number of heirs jointly. . . It looks as though we had to do with joint-family communities. . . The customs of East Anglia . . . are mixed, but in many places identical with Kent. The fact of gavelkind inheritance is certainly common, though not the name."¹ Under the 'Kentish' system, Homans concludes, the joint-family, in which all a man's sons inherited his land jointly and farmed it together, was the typical unit; and in the open-field system, the 'stem' or nuclear family.

Homans himself was concerned by the problems of origin raised by the existence of two such radically different social systems side by side in medieval England. Jutish origins could explain gavelkind in Kent and in outlying patches such as the rape of Hastings and southern Hampshire, but would not account for its existence in East Anglia and scattered villages in Cambridgeshire and Essex. He solved the problem by concluding that "England was invaded by two sorts of Germans—Anglo-Saxons and Friso-Jutes—whose areas of settlement were not quite those assigned to them at present. In short, East Anglia and Kent were invaded by the same kinds of people."

This argument firmly puts the origins of the two different systems back to the time of the Anglo-Saxon conquest. Now, although it may very well be true to say that East Anglia and Kent were invaded by the same kinds of people—Frisian influence in East Anglia is well established²—this explanation leaves us with another problem. As far as one can make out from Anglo-Saxon sources and the extremely sparse references to the subject by Anglo-

¹ G. C. Homans, 'The Rural Sociology of Medieval England', *Past and Present*, no. 4, 1953.

² G. C. Homans, 'The Frisians in East Anglia', *Econ. Hist. Rev.*, 2nd ser., x, 1957-8.

Saxon scholars, partible inheritance was very probably the general peasant practice *throughout* Anglo-Saxon England, and not merely in the Kentish-East Anglian area. Although very little has been written about the subject since, this was apparently a common assumption among nineteenth-century historians. Elton, in his *Tenures of Kent*, published in 1867, speaks of "a remark commonly made" that "all lands were gavelkind before the conquest" and quotes Blackstone to the effect that gavelkind was "the old Saxon tenure." (It would be interesting to know whether this view of the Anglo-Saxons formed part of the theory of the 'Norman Yoke'.) Stenton, one of the few modern historians of the period to mention the subject at all, concluded that "medieval practice suggests very strongly that the holding of the pre-Conquest ceorl had been partible among his sons, or among his daughters if he had no sons."¹

It does not seem very satisfactory to argue back from medieval practice to Anglo-Saxon practice, nor to take those Domesday holdings '*in paragio*' as a parallel to peasant family arrangement. But other evidence on the subject is sparse indeed, and none of it is direct. The primary difficulty is that the only clear references to inheritance customs in the surviving Anglo-Saxon laws are concerned with 'bookland'—land conveyed by charter. It is unlikely that very much land held by peasants came into this category. Nevertheless, a few of these references do enable us to find out something about the essential characteristics of the inheritance of bookland, and thence to argue back to what the essential characteristics of 'un-booked' land may have been.

Chapter 70 of Cnut's laws seems to indicate a partible system in the case of a man dying intestate: "Let the property be distributed very justly to his wife and children and relations, to everyone according to the proportion that is his due." Chapter 41 of Alfred's code states that "the man who has bookland left to him by his family must not let it go out of the family if the original owners made express provision against this"—the kind of express provision that Alfred himself made in his own will.²

Both these laws seem to show that only in special circumstances could the family exercise any effective claims over the disposition of bookland: in cases of intestacy, or as the result of a particular kind of bequest. So one of the attractions of bookland in normal circumstances may have been precisely that it avoided these family claims: the holder of bookland could use his testamentary powers to circumvent the joint claims of his family in favour

¹ C. I. Elton, *The Tenures of Kent*, London, 1867, p. 57; F. M. Stenton, *Anglo-Saxon England*, 2nd edn, Oxford, 1947, pp. 313-14.

² II Cnut. 70 & 70.1.—*English Historical Documents*, I, ed. D. Whitelock, London, 1955, p. 428; Alfred 41.—*E.H.D.*, I, p. 379.

of a chosen heir, which might be the church or might be one of his children.

Eric John, in his recent book on *Land Tenure in Early England*, has disputed this interpretation on the grounds that bookland cannot have conveyed this testamentary freedom, this "virtual dispensation from folk custom," to its holders. If it had done so, they would have used it to establish primogeniture and keep the family holding together. This would have meant "a revolution in English landowning" and no such revolution took place. King Alfred's will shows that even "the West Saxon royal family finds it difficult to avoid the division of family property even when such avoidance is a matter of prudence and public interest."¹

But it is not at all certain that primogeniture was as important and desirable a concept to Anglo-Saxon landowners—or to the West Saxon royal house—as it was later to become to the English aristocracy. Nor was primogeniture the only way of keeping the family holding together as the history of many tenements in gavelkind shows. It is true that if a holding is physically divided partible inheritance has a built-in tendency to fragment it, but it also has built-in checks and balances, some of them demographic, which counteract this tendency.

King Alfred's will² shows that the heritability of bookland, even on royal estates, could be used not to take land out of the family, nor to establish primogeniture, but to ensure that land descended within the family but still according to the wishes of the donor. The complicated transactions which Alfred's will records show two distinct tendencies at work. There is division—when Ethelwulf bequeathed his kingdom to his three sons, and when Alfred himself divided his property among eight of his kinsmen. Then there is an equally pronounced tendency towards consolidation in the arrangements which Alfred made with his brothers, which eventually resulted in all the royal estates coming together in his hands. At this point there is no sign that Alfred "found it difficult to avoid the division of family property" because there is no sign that he wanted to avoid such a division. His councillors advised him that he could dispose of his estates as he wished, so he divided them up among chosen kinsmen and made careful provision that the land should remain in the family and descend in the male line.

If this was the attitude of the most powerful landowner in Wessex, it enables us to go a little further in answering the question of why the ordinary layman wanted bookright. Surely he wanted it because he wanted the power to bequeath such-and-such an estate to such-and-such a man, or to the church, and to know that his will would stand. To say that he must

¹ E. John, *Land Tenure in Early England*, Leicester University Press, 1960.

² Printed in *E.H.D.*, I, p. 492.

have wanted it in order to establish primogeniture, or in order to bequeath his land out of the family altogether, is to import anachronisms into an Anglo-Saxon context. What he wanted to avoid were precisely those "very just" distributions of his land among the family, according to time-honoured rules, which Cnut's law describes. This family-dominated equitable division—one form or another of partible inheritance—remained as the principle governing the descent of the great bulk of land, whose holders had not managed to acquire testamentary freedom through the book.

If the normal inheritance practice on such land, which must have included the bulk of land held by peasants, was partible inheritance, it still remains to be explained why it survived in one region and gave way to primogeniture, or to ultimogeniture, in another. But before considering why partibility survived, it may be as well to consider a little more closely where it survived. The mapping and recording of inheritance customs is still at a very rudimentary stage as far as England is concerned. Much of the following evidence is drawn, not from medieval sources, but from legal works of the seventeenth, eighteenth, and nineteenth centuries—a period when legal and antiquarian interest was often focused on manorial custom and its local variations. Such evidence has of course many deficiencies: we obviously cannot assume that a manor whose tenants practised primogeniture at these late dates had had the same custom in the Middle Ages, but it is a fairly safe assumption to make about manors where the custom was partibility or Borough English. There are a great many examples of manorial custom evolving towards primogeniture, but extremely few of custom changing from primogeniture into another form.

With these limitations of the evidence in mind, we can look at Homans' argument again and ask: Can England really be divided into impartible, open-field, Central England, and partible, non-open-field Kent and East Anglia? It does not seem to be true that areas of partibility and open-field farming are incompatible, nor that partibility is confined to Kent and East Anglia.¹ True, those are the areas of its greatest concentration. Kent, of course, was almost entirely partible, and partibility was widespread in Norfolk and Suffolk, in several of the great sokes of the Danelaw (the soke of Rothley in Leicestershire, for example), and Oswaldbeck soke in Nottinghamshire. But it is also found in varying degrees of concentration elsewhere: in Middlesex, for instance, there was a cluster of manors in partible inheritance to the north and north-east of London. The custom in Highbury and Islington was described as gavelkind by two seventeenth-century writers. Hornsey and Kentish Town tenements were partible in the nineteenth century, and the

¹ See Appendix I for a list of manors in which some form of partible inheritance was practised.

name of Kentish Town has been attributed to its 'Kentish' tenure. Stepney and Hackney too were partible in the nineteenth century, and at Hackney the custom had been confirmed by private Act of Parliament under James I. Homans found partibility in Essex in the Middle Ages, at Hatfield Broad Oak, at Waltham, and at Stevenage in Hertfordshire. There was partibility in Sussex and in Northamptonshire in the thirteenth century, according to *Bracton's Note Book*. "There is much gavelkind in Shropshire," wrote Robinson in his work on gavelkind, first published in 1822. In the west odd patches of it are found: at Cheltenham, and at Wareham in Dorset in the seventeenth century where "lands are partible between males and females"—an extreme form. Bracton records a claim made in Ash Reigney that land there was partible 'sicut gavelkynde'. Partibility lasted in Exeter until abolished by statute under Elizabeth, and in the north and on the Border in many places until the sixteenth century. Mrs Thirsk, in a recent article, has pointed out that "partible inheritance was still the custom of the manor in the sixteenth century in many of the less densely settled pastoral areas of the north—Furness, Rossendale, highland Northumberland and the west and north Yorkshire Dales."¹ Tawney recorded how the tenants of the Lancashire manor of High Furness modified the partible system there under Elizabeth. Without any doubt there must be many more examples, from both these counties and elsewhere. It is to be hoped that the collation of the known evidence of inheritance customs will soon be undertaken on a systematic basis. The ones I have just quoted are only the result of a preliminary search.

The distribution of manors where the custom was Borough English—inheritance by the youngest child, generally the youngest son—also tends to spill over the boundaries sketched out by Homans.² It is found in greatest concentration in Surrey and Sussex. Twenty-eight Surrey manors are reported to have retained the custom into the nineteenth century. In very many cases it must have given place to primogeniture long before: we know that the tenants of the Surrey manors of Chertsey Abbey petitioned the Abbot to make just such a change in the 1340's. In several Surrey manors just south of London the custom took a slightly unusual form: the line of inheritance extended to females, and in Dorking, Milton, and Westcott descent was to the tenant's youngest brother if he had no sons. In Sussex the custom was even more common: so much so that Bracton seems to imply that it was a regional, rather than a manorial, practice. Of a case in 1225 he notes that the youngest son in the manor in question always has his father's land, as do the

¹ J. Thirsk, 'The Common Fields', *Past and Present*, no. 29, December 1964, p. 13.

² See Appendix II for a list of manors in which some form of the custom of Borough English was practised.

other villeins *de patria*.¹ There were still 134 manors in Sussex practising Borough English in the nineteenth century. It is found in Hampshire, on some of the Hampshire manors of the Bishop of Winchester: at Fareham, Waltham, Droxford, Bitterne, and Crawley. It is of this whole Surrey-Hampshire-Sussex belt that Jolliffe wrote: "Borough English blends imperceptibly into gavelkind towards Kent and to the west into the freer peasant tenures of the southern Hampshire manors . . . a gradual diminuendo in which Jutish tenure loses its primitive qualities as it passes away from Kent and draws towards the earliest sources of Saxon influence: first the partible tenure of the Hastings, which is gavelkind in all but name, then Borough English, with vestiges of gavelkind privilege and terminology, finally, in the west, Borough English in its simplest form."² Much the same distribution is found in Suffolk and Middlesex—both counties with a mixture of partibility, primogeniture, and Borough English.

Whether or not we accept Jolliffe's emphasis on racial factors, this passage concisely describes the way in which Borough English and partibility are related, both in distribution and in character. They seem, at first sight, to be radically different. Borough English looks simply like a rather peculiar form of primogeniture stood on its head. Homans firmly considered it to be that. But if we turn from the purely legal side of the tenure to the way it must actually have worked in practice, it looks rather different. Many youngest sons must have been well under age when their parents died or retired. Who worked the holding until they were old enough to take over? The most likely answer seems to be that their elder brothers did—Homans quotes a case of this happening. This working arrangement, different from the official granting of custody of the heir and his land which the court rolls often record—must have been very like joint, although not partible, tenure in practice.

There is another, much stronger, link between Borough English and partible inheritance, and that is the rule in gavelkind which reserves the central part of the house, the 'covering of the hearth', to the youngest son. The 'Customal of Kent' states "let the messuage be departed between them, but the hearth for the fire shall remain to the youngest son."³ This special provision for the 'fireside child' is even found on two manors where primogeniture was practised. At Cookham and Bray, two ancient demesne manors in Berkshire, "if any tenant has three or four daughters and all of them are married outside their father's tenement save one who remains at the hearth,

¹ *Bracton's Note Book*, III, no. 1062.

² J. E. A. Jolliffe, *Pre-Feudal England: The Jutes*, Oxford, 1933, pp. 79–80.

³ The 'Customal of Kent' is printed in Robinson, *The Common Law of Kent or the Customs of Gavelkind*, 3rd edn, London, 1822, p. 364.

she who remains at the hearth shall have the whole land of her father."¹ Without feeling the necessity to see in this practice, as Maitland did, "the trace of an ancient religion of which the hearth was the centre," we can guess that ancient custom, while sharing land among all a man's sons, may have made special provision for the youngest, the one "most likely to be found in the house at his father's death." In some communities this was the one element which survived the general decline of partible inheritance to be preserved in the 'fossilized' form of Borough English.

We have, then, a fairly solid block of seven or eight counties: Kent, Norfolk, Suffolk, Surrey, Sussex, Hampshire, and probably Essex and Middlesex, where Borough English and partible inheritance were particularly important, with scattered examples of both these customs in the Midlands, the West, and the Highland zone. But these scattered examples, however few, are important, for they show that we cannot relate differences in inheritance custom at all reliably to racial origins. Kent and East Anglia may indeed have been settled, as Homans argued, by much the same kind of people practising the same kind of inheritance custom, but I do not think it has ever been argued that these Friso-Jutes reached Devon or Gloucestershire, Lincolnshire, Shropshire, or Herefordshire. However, although it seems that we cannot really accept Homans' tidy correlation of inheritance customs and field systems, there clearly is some connection between inheritance and other factors: notably density of population and the degree of manorialization. Professor Hallam has shown how partible inheritance kept men on the land and in the village, while Arensberg's study of *The Irish Countryman* showed how primogeniture, by excluding from inheritance all sons but the eldest, led to a drift from the land.² What we know from the poll tax returns of medieval population densities confirms that areas of partible inheritance and high population density *do* coincide, in, for instance, Norfolk and Kent. But this correlation, although interesting, is not an explanation of origins.

Partibility and primogeniture are also, of course, associated with a different degree of manorialization. As Homans demonstrated, primogeniture is *roughly* associated with large demesnes, heavy labour services, and an approximate equation of manor and vill, partibility with the opposite. Homans considered that this association could be traced back to a time when lordship was imposed on established free peasant communities, already practising different inheritance customs. "Let us assume that a man-of-war sometime in the Dark Ages wanted to secure from a body of husbandmen material

¹ Pollock & Maitland, *History of English Law*, I, p. 281.

² H. E. Hallam, 'Some Thirteenth Century Censuses', *Econ. Hist. Rev.*, 2nd ser., x; C. M. Arensberg, *The Irish Countryman*, London, 1937.

sustenance for himself and his retainers." Such lords, he argued, found it easy to impose their authority on villages where primogeniture was the rule, family organization was weak, and communal organization strong: in such cases they simply stepped into the shoes of the "village chieftain." But in areas of partibility, with their strong families and weak communal organization, they found no such ready-made basis for their power: "the manor could be strong only where the village community was strong."¹ Without going into the question of the origin of the manor, I think we can say briefly that this account of it fits none of the place-name or legal evidence.² Nor is it at all clear who Homans' 'man-of-war' is, Norman, Dane, or Saxon: he has a mythical ring.

Still, there obviously is a connection between strong lordship and weak kinship, and vice versa. We find many examples of partibility in the weakly manorialized areas of the Danelaw. In Bracton socage and partibility are closely associated. We also find it in Kent and in the areas of primary Anglo-Saxon settlement. We might say that the Anglo-Saxon invaders, ethnically mixed before the Conquest, established much the same kind of inheritance system—some form of partibility—wherever they settled. It is, after all, a system very suitable for a period of conquest and settlement, offering as it does incentives to all the able-bodied males in the family. Primogeniture, the system most favourable to seigneurial interests, developed, probably under seigneurial pressure, where lordship was strong and when demesne farming became important. This development was arrested in the Danelaw where lordship was weakened by the fragmentation caused by the Danish settlement, and where, too, the Danes had no incentive to alter a system so akin to that of their homeland. This would fit in with Lennard's conclusion that "Danish influence . . . checked manorialization . . . and preserved . . . the social conditions of an earlier age from such transformations as appeared elsewhere."³ The trend towards primogeniture made little headway, for some reason, in Kent and Sussex, and in the West and North where in so many other ways "the social conditions of an earlier age" were preserved.

Of course, it would be wrong to draw too hard and fast a line between the two systems. Miss Dodwell, in a recent paper to the British Agricultural History Society demonstrated how on partible holdings in Norfolk elder sons often bought out their younger brothers' shares and thus became the sole heirs. Fathers in areas of primogeniture very commonly provided for

¹ Homans, 'The Rural Sociology of Medieval England', *Past and Present*, no. 4, pp. 40-1.

² See T. H. Aston, 'The Origins of the Manor in England', *Trans. Roy. Hist. Soc.*, 5th ser., VIII, 1958.

³ R. G. Lennard, *Rural England, 1086-1135*, App. III, p. 395.

children or relatives other than their eldest sons, sometimes by settling land on them before death but very often by use of the will. Many peasant wills are concerned precisely with this motive of providing for those members of the family who were not to inherit the holding, as are the St Albans wills printed by Miss Levett in her *Studies in Manorial History*.¹ A custom which operated on some of Crowland Abbey's Cambridgeshire manors, described by Miss Page, shows another link between the two systems. Here the eldest son inherited by right, but was obliged to set aside a certain amount of land for each of his brothers.² This custom, which combined the legal doctrine of primogeniture with the practice of partibility, may well represent one stage in the evolution from one system to another in that particular area—an evolution which was completed on these manors during the latter part of the fourteenth century.

II

However much peasant inheritance customs varied by the thirteenth century they shared one basic principle. They placed great importance on the concept of "keeping the name on the land." "... An established holding ought to descend in the blood of the men who had held it of old." And despite the freedom of alienation which was one of the distinctive features of gavelkind, the emphasis on family landholding is as strong in areas of partibility as elsewhere. When a tenant died, in gavelkind Kent or primogeniture Oxfordshire, the first consideration was the same: to keep his land in the family. Whether it went to the eldest son or the youngest, or was shared, is less important than the fact that the claims of "strangers to the land" were not even considered. (This is not to say that peasant land was not bought and sold. On the contrary, there is ample evidence of an active peasant land market in the thirteenth century and it was no doubt endemic in peasant society. But the court roll evidence for this period shows that these peasant land transactions were preponderantly small-scale, involving odd acres and plots, a process which only marginally affected the ownership and structure of the basic family holdings.)

The idea that land "ought to descend in the blood of the men who had held it of old" is of course common in many peasant societies. One would guess that it was common, although tacitly so, in English rural districts at least until the time of the enclosure movement. But there does seem to have been a period in English history—roughly that of the fourteenth and fif-

¹ A. E. Levett, 'Wills of Villeins and Copyholders', *Studies in Manorial History*, 2nd edn, London, 1963, pp. 208-34.

² F. Page, 'The Customary Poor Law of Three Cambridgeshire Manors', *Cambridge Historical Journal*, III, 1930.

teenth centuries—when in many rural communities this fundamental idea was in practice abandoned. Family claims to land were disregarded, or seldom pressed, and in place of the strict and elaborate arrangements which had previously governed the descent of land, there came to be no laws but those of supply and demand. It is this period which I should like to turn to now.

The evidence I have used is geographically limited, being drawn mostly from the south-east, and it is mostly confined to manors in which primogeniture was the custom. The main source is the court rolls and court books, some from manors belonging to the great ecclesiastical estates of Ramsey, Battle, St Albans, Chertsey, and St Swithuns, Winchester, some from manors in lay hands. We may start with St Albans, as Homans drew on the thirteenth-century material from St Albans, and a comparison with later conditions on the same manors is possible.¹

If we open the St Albans court book for the Hertfordshire manor of Croxley at the beginning, at the court proceedings for the reign of Henry III, we see family inheritance, and the attitudes that accompanied it, still firmly established. Hugh Bailly comes and pays for seisin of land he has just inherited; Ellen de la Forde pays for licence to marry off her daughter and places herself and her land in her son-in-law's custody until her son and heir is old enough to inherit; the widow of John Crobbe demands her "reasonable dower;" Roger son of Eustace gets seisin of his dead brother's land; Richard Culedonne marries a rich widow; Richard Kete pays relief for his brother's land, Richard atte Forde for his father's, and Geoffrey atte Fuller's widow for her husband's; Henry atte Hulle's daughter comes into her inheritance and is promptly married. In all these transactions the claims of the family predominate. Land does not always descend from father to son, it is true, but it always goes from one member of the family to another, and the two marriages just quoted were doubtless made with this fact in mind. There are exceptions: a few short-term leases, an exchange of holdings, a surrender of land; once a tenant is brought in from "outside" when no heir can be found; but in general by far the majority of permanent transfers of peasant holdings are between members of the same family. These court roll entries show too how closely inheritance was linked with marriage: entries of "X came and paid for his father's land and for licence to marry" are very common. The rights of heirs who are minors are carefully protected, the dead tenant's widow, or occasionally another tenant, being given the wardship with careful provision against "wasting" the holding.

Another St Albans manor, Park, shows much the same situation in the

¹ B.M. Add. MS. 6057 (St Albans: Croxley Court Book); B.M. Add. MS. 40625 (Park Court Book).

thirteenth century. In spite of a brisk land market in odd acres and single messuages, family inheritance, and the expectation of it, dominated the transfer of holdings. Land did not always descend by strict primogeniture: in two cases a sister seems to have had a better right than her brother, and in a few cases the holding went to a collateral before the son. Fathers frequently passed on their land on retirement rather than on death. In 1248 for instance a father surrendered his holding to his son and placed himself in his care. The son agreed to provide him with food and drink, a tunic worth 2s. 6d. each year, and 6d. a year for shoe-repairs. It was not apparently expected that they would share a house, as was often the arrangement in such cases, for a clause in the agreement states that if the father did not wish to stay with his son he was entitled to a grain allowance as well as the tunic and money.

The same attitudes can be found in the thirteenth-century court rolls of many estates, not simply as isolated examples but dominating the transfer of land. It would be impossible to give the evidence for this in detail here, but I have attempted a very rough-and-ready summary of it by dividing the land transactions in the court rolls into 'family' transactions—those which involved two tenants belonging to the same family or related by marriage—and 'non-family' transactions.

To take three manors on the Battle Abbey estates:¹ 60 out of the first 69 permanent land transfers recorded at Battle were family transactions; at Brightwaltham, on the Berkshire Downs, these comprised 56 per cent of the total number of transactions between 1280 and 1300; at Bromham, in Wiltshire, the rolls for the reign of Edward I seem to show family inheritance firmly established.

On three manors belonging to St Swithun's, Winchester:² at Chilbolton between 1267 and 1371, only 29 out of 70 land-fines were paid by tenants taking up family land, but by far the majority of the non-family fines were paid during the last half of the period. At Houghton between 1267 and 1325, 29 out of 45 land-fines were for family land. At Woolstone, also on the Berkshire Downs, *all* the customary tenants whose deaths are recorded in the court rolls between 1308 and 1348 were succeeded by an heir from their immediate family, and two out of three of the recorded land sales during the same period were between related tenants.

¹ Transcript of Battle Court Book, Huntington Library, California, kindly lent by T. H. Aston; P.R.O., SC2, 153/67-73 (Brightwaltham Court Rolls); E315, vol. 57, ff. 37-41 (printed in Scargill-Bird, ed., *Customs of Battle Abbey*, Camden Soc., 1887); E315, vol. 56, ff. 89-90; SC2, 208/15 (Bromham Court Rolls).

² For Chilbolton and Houghton see J. S. Drew, Typescript of materials relating to manors of St Swithun's Winchester, Institute of Historical Research, London University; for Woolstone, see P.R.O., SC2, 154/77-83.

When we turn to the court rolls of the fourteenth and fifteenth centuries we see a radically different situation in these villages. The figures suggest that the old patterns of inheritance had been abandoned. To go back to the St Albans' manor of Croxley, for instance: when a Croxley man died in the fifteenth century he was still almost as likely to be succeeded by an heir from his immediate family as he had been in the thirteenth. But the land which his son or daughter or widow inherited was no longer likely to be the traditional family holding, but land which had passed through the hands of several different families quite recently. The language of the court rolls emphasizes this, and shows how unstable the tenurial situation had become. In the thirteenth century the court rolls had simply spoken of a man taking "his father's land"; now they find it necessary to describe it in terms of its previous tenants, and these men generally turn out to be quite unconnected by blood. The entry will run as follows: "Roger Whytman came and took a holding once Simon Brokeman's, lately John Harpeden's." When one William Spycer died in 1427, for instance, he left his widow some land which had been William Besouthe's, which before had been Alexander Osemunde's, some land from the demesne and "various other lands and tenements." William Spycer had himself inherited the land from his mother some six years before this, but the Spycer family had acquired the whole lot comparatively recently, and by purchase not by inheritance.

This illustrates a kind of half-way stage between the strict observance of inheritance customs and their complete abandonment. Peasants still apparently want to pass on land to their children, but it no longer matters that it should be traditionally "family land." Professor W. M. Williams, in a study of a present-day West Country village found exactly the same attitude. There "family farming has probably persisted from one generation to another, but in conditions where families die out, split up, move from one farm to another" . . . the land "is of great emotional and social importance to farmers, but it represents to them a generalized relationship, rather than a profound attachment to a single holding."¹ Williams found "very little continuity" of ownership in his village: since 1900 about 50 per cent of the holdings had changed hands two or three times, about 27 per cent four or five times, and about 10 per cent seven or more times. But what seems to a modern observer "very little continuity" might have looked like comparative stability by the standards of some fifteenth-century villages.

On some of the manors that I have already mentioned, for instance, inheritance had declined much further than it had at Croxley. At Bright-

¹ W. M. Williams, *Ashworthy: A West Country Village*, Dartington Hall Studies in Rural Sociology, London, 1963.

waltham family transactions dropped from 56 per cent of the total in 1300 to around 35 per cent throughout most of the fourteenth century and fell very sharply to 13 per cent after 1400. The history of individual peasant families shows this in detail. Of the 49 peasant families whose names appear in the custumal of 1284, many can be traced as landowners through part of the fourteenth century, but only three can be found in an early fifteenth-century Brightwaltham rental. Some changes of tenancy can be accounted for by the remarriage of widows, whose second husbands then took over their land. But in those cases where male tenants held, other factors, of which the failure of male heirs is one, must have accounted for the disappearance of so many family names. For example, one family, named in 1284, disappears from the court rolls after 1297, one after 1294, one after 1334, one after losing its land in a law suit in 1331, one after 1384, one after 1399, one after 1303, one after 1301, one after the tenant left the manor in 1387, another after a similar emigration in 1402. Moreover, several of the late thirteenth-century tenants do not appear in the court rolls at all. It is noteworthy that quite a few holdings followed the same pattern: they descended regularly by inheritance within one family until sometime in the fourteenth century and were then 'lost' to another family. For instance, Ralph Faber's land descended within his family until 1340 when John Faber, "being poor," surrendered most of it to two other tenants; the de Cruce land passed twice by inheritance in the fourteenth century after which some was lost by forfeiture, some by alienation; some of the land of the Bisothewode family went out of their hands in the 1290's, the rest descended by inheritance within the family until 1367. Then some was lost by the marriage of a Bisothewode widow and the rest was sold or surrendered early in the fifteenth century.

Such cases—and there are many more like them—lie behind the figures for the decline of inheritance at Brightwaltham which I have already quoted. The cumulative effect was that by 1426 by far the greater part of the villein land there was held by new men. Very much the same kinds of family histories—and the same effect—were found by Miss Davenport on the Norfolk manor of Forncett.¹

On the Saint Swithun's manor of Woolstone, the Black Death seems to have produced a sudden decline of inheritance. Here there were practically no 'non-family' transfers between 1308 and 1349, and practically no family ones after 1349. At Coleshill, another Berkshire manor, owned by Edington Priory, the court rolls from 1377 to 1520 record only five cases of family inheritance altogether. On other Berkshire manors we find a similar situation.

¹ F. G. Davenport, *The Economic Development of a Norfolk Manor, 1086-1565*, Cambridge, 1906.

At South Moreton, for instance, between 1322 and 1456 there were 4 'family' to 18 'non-family' transactions recorded. At Sotwell Stonor, between 1322 and 1434 the ratio was 3 to 15, at Englefield 4 to 12.¹

Although I have not yet compared it with earlier Ramsey material, the fourteenth century Ramsey Court Book shows much the same situation on the Ramsey manors. In 1400, 87 per cent of the total recorded land transactions were 'non-family', in 1414, over 70 per cent, and in 1456, 83 per cent.²

This apparent breakdown in family inheritance customs was not of course total. There was one class of tenant in particular whose family rights over land do not seem to have been affected: widows. Widows' rights seem to have been by far the most durable and firmly established of all inheritance customs. Custom of course varied in the amount of land it allowed to the widow as 'free bench'; she might hold all, half, or a third of her late husband's land, generally, but not always, without payment of fine for it. She might hold it until she remarried and then forfeit it, or retain it on payment of a fine. She might have custody of her late husband's land for life, for a term of years, or until the heir was of age. She might be dispossessed by the heir who then supported her or provided for her. Whatever the particular local custom was, it does not seem to have been subject to the same erosion that affected the rest of family inheritance practices: widows' rights seem to have been as strong in the late Middle Ages as they had been in the thirteenth century. Local variations in custom or widows' rights must have had considerable social effects—particularly in influencing the age of marriage of expectant heirs. Clearly the details of local custom must have affected this. The motive for marriage with widows must have been much stronger in places where widows were full heirs to their late husband's land and could transmit rights of inheritance than in places where they held it only conditionally, or where the heirs of their second husbands were barred from inheriting their land, as happened on some of the Winchester manors. Incidentally, the material I have looked at bears out Dr Titow's conclusion in a recent article that the rate of marriage with widows was high where the supply of land was low:³ widow-marriages seem to have decreased when pressure on land slackened off in the fourteenth and fifteenth centuries.

The case of widows is not the only exception to the general decline of family inheritance customs that has been sketched. There seems to have

¹ P.R.O., SC2, 154/1-4; SC2, 208/40, 41, 43 (Coleshill Court Rolls); SC2, 154/43-46 (South Moreton); SC2, 154/61-65 (Sotwell Stonor); SC2, 154/23-26 (Englefield).

² B.M. Harl. MS. 445 (Ramsey 'Court Book').

³ J. Z. Titow, 'Some Differences between manors and their effects on the condition of the Peasant in the Thirteenth Century', *Agric. Hist. Rev.*, x, 1962.

been a tendency among tenants of some manors to try and reinforce by other means some of the family rights which these customs had embodied. Such an attempt lies behind the many cases in which customary villein tenures 'at will' were exchanged, often at a high price, for tenures for two or three lives. These tenures were intended to secure the succession for the tenant's wife and child, generally a particular child who is named in the agreement. Such agreements, which gave the tenant's wife an equal 'estate' in the holding with her husband may lie behind the continuation of inheritance by widows. They are certainly a good illustration of just how weak traditional inheritance customs had become: they show that the peasantry had passed from a period when family inheritance was the rule to a period when it had become an exception, and an expensive one at that.

It is not, perhaps, difficult to account for this change: the economic factors underlying it are fairly clear. Most important is the greater availability of land to the smaller rural population of the fourteenth and fifteenth centuries, and the decline in demesne farming. During the comparative land hunger of the thirteenth century, villeins assiduously preserved inheritance customs, for the family holding was generally the only land available to them. The lord, too, in a period of 'high farming' was interested in the preservation of tenements and in a constant and self-supporting labour supply. So custom was carefully recorded—the thirteenth century was a great age of custumal-making—and traditional inheritance patterns were adhered to. Again, in the sixteenth century, when land once more became scarce we find another period of great attention to family rights, of litigation, and again, of custumal-making. But between the two periods there was a time when much more land was available to the peasantry. Sons no longer had to wait to step into their father's shoes: there were vacant tenements or odd pieces of demesne land available to them. As Professor Postan has pointed out, this was the time when cottagers could move up into the ranks of the virgaters and half-virgaters.¹ The elaborate provisions for the support of landless members of the family, such as those on the Crowland manors, fell into disuse, for they were no longer needed. Land changed hands rapidly and on a large scale, with considerable repercussions on the class structure of the countryside. The chief function of the manorial court began to be that of land-registry for the virtually free market in peasant holdings that had come into being. The idea of "keeping the name on the land" may still have been important, as an idea—perhaps an aspiration—but it no longer reflected what was happening in the village.

¹ M. M. Postan, 'Some Economic Evidence of Declining Population in the Later Middle Ages', *Econ. Hist. Rev.*, 2nd ser., II, no. 3, 1950.

APPENDIX I

PLACES FOR WHICH THERE IS EVIDENCE FOR THE PRACTICE OF
SOME FORM OF PARTIBLE INHERITANCE

<i>Cambridgeshire</i>	
Tydd	G. C. Homans, <i>English Villagers of the Thirteenth Century</i> , New York, 1960.
Wisbech	<i>Ibid.</i>
<i>Devon</i>	
Ash Reigney	<i>Bracton's Note Book</i> , ed. F. W. Maitland, 1887, III, no. 1779.
Exeter	T. Robinson, <i>The Common Law of Kent or the Customs of Gavelkind</i> , 3rd edn, London, 1822, p. 174.
<i>Dorset</i>	
Wareham	T. Blount, <i>Tenures of Land and Customs of Manors</i> , ed. W. Hazlitt, London, 1874, p. 355. (Originally published in 1679 as <i>Fragmenta Antiquitatis, Ancient Tenures of Land and Jocular Customs of some Manors . . .</i>)
<i>Essex</i>	
Hatfield Broad Oak	Homans, <i>op. cit.</i> , p. 428.
Waltham	<i>Ibid.</i>
Thorpe-le-Soken	Robinson, <i>op. cit.</i> , p. 46.
<i>Herefordshire</i>	
Irchenfield (Hundred)	Blount, <i>op. cit.</i> , p. 174.
<i>Hertfordshire</i>	
Stevenage	Homans, <i>loc. cit.</i>
<i>Kent</i>	Robinson, <i>op. cit.</i> , <i>passim</i> .
<i>Lancashire</i>	
High Furness	R. H. Tawney, <i>The Agrarian Problem in the Sixteenth Century</i> , London, 1912, p. 101.
<i>Leicestershire</i>	
Soke of Rothley	G. T. Clark, 'The Customary of the Manor and Soke of Rothley, in the County of Leicester,' <i>Archaeologia</i> , XLVII, pp. 89-130.
<i>Middlesex</i>	
Hackney	C. I. Elton, <i>Tenures of Kent</i> , London, 1867, p. 54. (The custom was confirmed by private Act of Parliament, 21 Jas. I.)
Highbury	Blount, <i>op. cit.</i> , p. 159.
Hornsey	Robinson, <i>op. cit.</i> , p. 44.
Islington	J. Kitchin, <i>Jurisdictions</i> , London, 1675, p. 203.
Kentish Town	Robinson, <i>op. cit.</i> , p. 43.
Stepney	Sir F. Pollock & F. W. Maitland, <i>History of English Law</i> , 2nd edn, II, p. 280.
<i>Norfolk</i>	Pollock & Maitland, <i>op. cit.</i> ; Homans, <i>op. cit.</i> , chapter VIII; 'Partible inheritance of Villagers' Holdings', <i>Econ. Hist. Rev.</i> , VIII, 1937; B. Dodwell, ed., <i>Feet of Fines for the County of Norfolk, 1198-1202</i> , Pipe Roll Soc., N.S., XXVII.
<i>Northamptonshire</i>	
Ilpen	<i>Bracton's Note Book</i> , III, no. 1565.

Nottinghamshire

Askham

Robinson, *op. cit.*, p. 44.

Laneham

Ibid.

Oswaldbeck Soke

Blount, *op. cit.*, p. 236.

Sutton-cum-Lound

Robinson, *op. cit.*, p. 44.*Suffolk*Pollock & Maitland, *op. cit.*; Homans, *op. cit.**Sussex*

Rye

Robinson, *op. cit.*, p. 43.

APPENDIX II

PLACES FOR WHICH THERE IS EVIDENCE FOR THE PRACTICE OF
SOME FORM OF INHERITANCE BY THE CUSTOM OF BOROUGH ENGLISH*Berkshire*

Garford

Bracton's Note Book, II, no. 609.*Essex*

Boxted Hall

Robinson, *op. cit.*, p. 392.*Gloucestershire*

Cheltenham

Pollock & Maitland, *op. cit.*, p. 28.*Hampshire*

Bitterne (some lands)

Crawley

Droxford

Fareham

Waltham (some lands)

Hants. R.O., MS. 415,808. ("Book of Customs" of the estates of the Bishop of Winchester, 1617.) I owe this reference to Dr J. Z. Titow.

Hertfordshire

Much Hadham

Robinson, *op. cit.*, p. 394.*Huntingdonshire*

Alconbury with Weston

Robinson, *op. cit.*, p. 392.

Somersham (copyhold lands)

*Ibid.**Leicestershire*

Borough of Leicester

Pollock & Maitland, *op. cit.*, p. 282.*Middlesex*

Acton

Robinson, *op. cit.*, p. 393.

Ealing

Ibid.

Edmonton

Ibid.

Fulham

Ibid.

Isleworth

Blount, *op. cit.*, p. 176.

Islington (manors of

Robinson, *op. cit.*, p. 391.

St John of Jerusalem)

Syon

Ibid., p. 393.

Sutton Court

Ibid., p. 391.

Tottenham

Blount, *op. cit.*, p. 324.*Northamptonshire*

Brigstock

Blount, *op. cit.*, p. 39.

*Nottinghamshire*Borough of Nottingham Pollock & Maitland, *op. cit.*, II, p. 279.Southwell Blount, *op. cit.*, p. 289.*See also* Felix Oswald, 'Borough English in Nottinghamshire', *Trans. Thoroton Soc.*, XLVIII, 1944.*Staffordshire*Sedgley Blount, *op. cit.*, p. 272.*Suffolk* *See* G. R. Corner, 'On the Custom of Borough English', *Suffolk Inst. Arch.*, II.*Surrey*Manors of Chertsey Abbey *Chertsey Abbey Court Rolls Abstracts*, ed. E. Toms, Surrey Record Society, XXXVIII, 1937.Abinger Robinson, *op. cit.*, p. 391-2.Battersea Blount, *op. cit.*, p. 17.Brockham Robinson, *loc. cit.*Bookham, Little *Ibid.*Cranleigh *Ibid.*Compton Westbury *Ibid.*Dunsfold *Ibid.*Gomshall Towerhill *Ibid.*Gomshall Netley *Ibid.*Kennington Blount, *op. cit.*, p. 177.Paddington Robinson, *loc. cit.*Paddington Pembroke *Ibid.*Shere Vachery *Ibid.*Vauxhall Blount, *op. cit.*, p. 350.Weston Gomshall Robinson, *loc. cit.*Wimbledon Blount, *op. cit.*, p. 372.Wotton Robinson, *loc. cit.*

Variations of the custom (e.g. descent to younger brothers, to females as well as males) are found at:

Barnes Robinson, *op. cit.*, p. 393.Battersea *Ibid.*Dorking *Ibid.*Downe *Ibid.*Milton *Ibid.*Richmond *Ibid.*Westcote *Ibid.*Wimbledon *Ibid.**See also* G. R. Corner, 'On the Custom of Borough English', *Sussex Archaeolog. Coll.*, VI.*Sussex*Framfield Pollock & Maitland, *op. cit.*, p. 280.

Mayfield

Robertsbridge Robinson, *op. cit.*, p. 392.Wadhurst Blount, *op. cit.*, p. 350.*See also* G. R. Corner, *art. cit.**Warwickshire*Balsall Blount, *op. cit.*, p. 14.