

Tenure, Tenant Right, and Agricultural Progress in Lindsey, 1780-1850

By J. A. PERKINS

I

IT is a commonplace of contemporary accounts of farming in Britain during the Agricultural Revolution of the later eighteenth and nineteenth centuries, and until quite recently of historical studies of that transformation, "that one of the major instruments of agrarian change was the long lease."¹ In describing one particularly badly cultivated part of Lindsey in the late 1790's, Arthur Young went so far as to state that "here are no leases, and therefore can be few or no effective improvements."² Another East Anglian writer who surveyed the state of farming in Lincolnshire in the 1790's for the Board of Agriculture similarly concluded that: "The only means of exciting a general spirit for improvement, would be, by granting leases."³ The coincidence of long leases and progressive agricultural regions such as Norfolk and East Lothian did much to impress upon the minds of contemporaries the necessity of the former for the existence of the latter.⁴ More germane to the subject of this essay, it has recently been stated that the absence of leases in southern Lincolnshire in the later eighteenth and early nineteenth centuries "was an important factor in explaining the backwardness of South Lincolnshire, particularly in comparison with the neighbouring county of Norfolk."⁵

Leases, of course, varied considerably in the length of their duration and, consequently, in their assumed efficacy as an instrument of agricultural progress. The period of time for a lease that was most favoured by agricultural writers and farmers was twenty-one years. As a Scottish professor of agriculture commented in the 1860's:

It seems to be generally admitted, that twenty-one years is the proper duration for an agricultural lease. Such a term suffices to give confidence to the tenant in embarking his capital, and secures to the landlord his legitimate control over his property, and due participation in its varying value.⁶

However, even leases of shorter duration, such as the common periods of seven and fourteen years, provided the tenant with a certainty of tenure and a fixed rental that

¹ R. A. C. Parker, 'Coke of Norfolk and the Agrarian Revolution', *Econ. Hist. Rev.*, 2nd ser., viii, no. 2, 1955, p. 159; Lord Ernle, *English Farming: Past and Present*, 6th edn, 1961, pp. 200, 275, 325.

² A. Young, *General View of the Agriculture of the County of Lincoln*, 2nd edn, 1808, p. 13.

³ T. Stone, *General View of the Agriculture of the County of Lincoln*, 1794, p. 96.

⁴ The French agronomist L. de Lavergne was an early critic of this supposed correlation—Cf. *The Rural Economy of England, Scotland, and Ireland*, 1855, p. 110.

⁵ D. B. Grigg, *The Agricultural Revolution in South Lincolnshire*, Cambridge, 1966, p. 62.

⁶ J. Wilson, *British Farming*, Edinburgh, 1862, p. 542.

was at least superficially lacking in the widespread system of holding land from year to year.

In contrast to the long lease and at the other extreme of duration of tenure was tenancy-at-will, or the occupation of a farm on a year-to-year basis with usually six months' notice to quit given by either side to the tenancy agreement. This was generally considered to be "a mode of occupancy. . . most insecure for the protection of a spirited agriculturalist, and unfavourable to the promotion of extensive improvements."¹ As William Thornton observed in 1846, a tenant-at-will was "seldom silly enough, by expensive improvements to run the risk of having his rent raised, or of being ousted to make way for a higher bidder."² Sir James Caird, the doyen of Victorian writers on agriculture, was similarly of the opinion that "It is in the nature of yearly tenancy that there should be insecurity," and "it is vain to look for enterprise and progress where there is no real security." "How," Caird asked, "can a man subject to a year's notice be expected to improve?"³

In the later eighteenth century, at a time of rising prices for cereals to near-famine levels on occasions, long leases were seen as being pre-eminently necessary to encourage tenants to undertake the long-term investments required to bring poor grazing lands permanently under the plough.

Upon soils so rich that there is nothing to do, the want of them cannot be material; but upon all others, where liming, marling, draining, fencing, &c. are demanded, the want of a lease will often be the want of improvement.⁴

In the recent survey of British agriculture between 1750 and 1880 by the late Professor Chambers and Professor Mingay, although comparatively little importance is attached to the long lease as a stimulus to agricultural progress in general,⁵ it is accorded a tentative role "in encouraging farmers to undertake the risks of cultivating newly enclosed waste lands by guaranteeing them low rents in the early years of tenancy."⁶ In the 1840's this view was put forward most emphatically by John Grey when surveying the improvement of agriculture on the poor light soils of his native Northumberland over the previous hundred years. In his opinion, "Without the security and inducement to expend capital, which leases afford to tenants, such a rapid change . . . could never have been effected."⁷ To which he added his belief that to "the custom of letting land on long leases, more than to any other cause . . . this county is indebted for its rapid improvement and high state of cultivation."⁸

¹ *British Husbandry; exhibiting the Farming Practice of Various Parts of the United Kingdom*, 3 vols., 1834-40, III, p. 130.

² W. T. Thornton, *Over-Population and its Remedy*, 1846, p. 293.

³ J. Caird, 'General View of British Agriculture', *J.R.A.S.E.*, 2nd ser., XIV, 1878, p. 318.

⁴ *Hull Advertiser*, 16 Feb. 1799.

⁵ J. D. Chambers and G. E. Mingay, *The Agricultural Revolution 1750-1880*, 1966, pp. 46, 165-6.

⁶ *Ibid.*, p. 48.

⁷ J. Grey, 'A View of the past and present State of Agriculture in Northumberland', *J.R.A.S.E.*, II, 1841, p. 158.

⁸ *Ibid.*, p. 157.

Contrary to the opinion of advocates of leases, the thesis of a cause-effect relationship between the long lease and agricultural progress does not appear to accord with the facts of agricultural history during the later eighteenth and nineteenth centuries. From the end of the eighteenth century onwards, when the pace of advance in agriculture generally, and the rate of conversion of waste lands to permanent tillage in particular, were perhaps more rapid than during any previous period of history, the lease was increasingly replaced by tenancy-at-will to the extent that by 1850 the former was "the exception throughout England."¹ Some observers explained this contradiction of their tenets in terms of factors extraneous to the development of farming techniques. Thus, to G. C. Brodrick the initial reason for the decline of leasehold during the war period was

The extraordinary rise of agricultural prices during the Great War [with France, which] rendered most landlords unwilling to part with the immediate control of their properties, except at an exorbitant rent. On the other hand, the extraordinary fluctuation of these prices may well have deterred prudent tenants from "hanging a lease round their necks," as the saying is, and undertaking to pay an exorbitant rent for a long term of years.²

As regards the reason given by Brodrick for a decline in the popularity of leases amongst tenants, it may be true that the wholesale prices of foodstuffs fluctuated to a greater extent during the war period than before or subsequently. However, such fluctuations were about a distinctly rising trend of prices that tended to erode the real value of the fixed money rents derived from long leases.

Many leaseholders were undoubtedly badly hit by the catastrophic fall of agricultural prices in the middle of the second decade of the nineteenth century. In "an evil hour" shortly before the collapse, for instance, the lawyer father of Anthony Trollope took a farm "on a long lease from Lord Northwick."³ According to the novelist, "That farm was the grave of my father's hopes, ambitions, and prosperity, the cause of my mother's sufferings, and those of her children, and perhaps the director of her destiny and ours."⁴ Such an experience, which was comparatively widespread, may have made farmers more wary of long leases. But the main effect was to remove from farming those amateurs who had been attracted into the industry by the high prices and profits of war time.

Once agricultural prices had established themselves at a lower and more stable level after 1815, a revival in the popularity of the long lease might have been expected to materialize. The fact that this did not occur has been ascribed to non-economic forces. The "Chandos Clause" of the 1832 Reform Act, by giving the vote to tenants paying £50 and above in annual rent for their farms, was commonly supposed to have encouraged the adoption of tenancy-at-will by landowners to ensure

¹ J. Caird, *English Agriculture in 1850-51*, 2nd edn, 1968, p. 481; F. M. L. Thompson, *English Landed Society in the Nineteenth Century*, 1963, pp. 230-1.

² G. C. Brodrick, *English Land and English Landlords*, 1881, p. 205.

³ Anthony Trollope, *An Autobiography*, 2nd edn, 1950, p. 2. ⁴ *Ibid.*

their control over the political allegiance of tenants.¹ To Caird the clause was a mixed blessing to the tenant in that it

strengthened their hold on the consideration of their landlord, but at the same time gave him an unfortunate interest in the continuation of a system [i.e. tenancy-at-will] which kept him dependent on his will.²

The rising predilection of estate owners for the preservation of game also stimulated the spread of tenancy-at-will, at least according to Brodrick, because under that system of tenure the occupier who interfered with the game could be more easily removed than a leaseholder.³

While market forces, and the desire of landlords for political dominion and game preservation may have contributed to the decline of the long lease, it would appear that other more fundamental causes were involved to bring about the replacement of one system of tenure that was supposedly necessary for agricultural improvement by another that was supposedly detrimental to such a purpose. In this respect it is arguable that the long lease was both inapplicable and unnecessary in the conditions of farming that obtained in the later eighteenth and nineteenth centuries. In short, it may be said, firstly, that the long lease was more suited to periods of relative stability in agricultural prices, profitability, and techniques, than to those of fluctuating prices, secularly rising profitability of farming, and rapid agricultural change; and secondly, that the main attributes of the long lease, namely security of tenure and pecuniary reward for improvement, were better provided for under the system of tenancy-at-will by the normal relationship existing between landlord and tenant, and by the development of tenant right systems to compensate the out-going tenant for unexhausted improvements.

II

An important advantage of tenancy-at-will in comparison to long leases arose from the greater degree of control that it gave to the landlord, not only over the level of rent and the political opinions of his tenants but also over the disposal of his land. This was especially important during the late eighteenth and nineteenth centuries when agricultural techniques and farming systems were subject to comparatively rapid change that altered the optimum acreage of farms, generally speaking towards ever larger individual units, and the optimum proportions of pasture and arable land on mixed farms. Whereas a lease system precluded the landlord from rearranging the lands of a farm during the life of a lease, and complicated such a process where the terminal dates of leases overlapped extensively, tenancy-at-will facilitated a constant process of adjustment in the sizes of individual farms and in the balance of types of land on the farms in accordance with changing techniques. The advantage of tenancy-at-will in this respect should not, of course, be exaggerated, for under all systems of tenure the acreage of individual farms remained

¹ Brodrick, *op cit.* ² Caird, 'General View . . . Agriculture', *loc. cit.*, p. 305.

³ Brodrick, *op cit.*, p. 206.

the most fixed of all inputs.¹ However, it would appear that yearly tenure in Lindsey, at least, co-existed with a pace of change in the size of farms that was comparatively rapid.² In 1787, to take one example, the 2,200 acres of land in the parish of Beelsby on the Wolds were divided between four farms of over 300 acres each, four small farms of between 10 and 40 acres each, and eight small holdings of from 3 to 9 acres each, which shared with two other cottages without land in the exploitation of the 70 acres of the "Cottagers Pasture." Thirty years later, the whole parish was divided into two large farms of 1,086 and 1,080 acres respectively.³

During the first half of the nineteenth century, as a consequence of rapidly increasing productivity, the value of much agricultural land (such as that of the uplands of Lindsey) continued to increase despite the decline in the price of agricultural produce after 1815. Therefore, the value of a rental income fixed by a long lease at the current market value tended quickly to deteriorate, both before and after 1815. The 261 acres of Owersby Moor farm on the Lindsey wolds, for example, were leased in 1815 for twenty-one years for the rental of £52 10s. per annum.⁴ By 1836, and to the detriment of the landlord, the annual value of the land was approximately 25s. per acre. Whilst the landlord experienced a loss in such cases, it is possible if not most probable that a rise in the value of a farm in terms of its produce to a certain level above the rental might act to discourage the tenant from further efforts to increase the productiveness of the soil. In the jargon of neo-classical economics, the marginal utility of possible additional income might be sacrificed to the disutility of effort involved in acquiring it. In this connection Young, Caird, and others advocated high rents as a spur to agricultural improvement by tenants. "In no part of England, where rents are low is there good husbandry," Young asserted on one occasion; and he added that "the man who doubles his rental benefits the State more than himself."⁵ However, Young failed to see that in a changing agricultural situation his advocacy of both long leases and high rents was a mutually exclusive policy.

The lease appears most applicable to a farming situation in which the variables of prices, costs, and techniques are unchanging, or one that is unknown in a perfect state beyond the confines of a textbook, but which more closely approximates to the experience of the first half of the eighteenth century than to that of the subsequent period. Only under such stationary conditions would a farmer be in a position to bargain for a farm to be held over a lengthy period of time with any degree of accuracy of knowledge, and the landlord be equitably rewarded for relinquishing control over his property. Otherwise, as in most actual situations, the lease sys-

¹ See G. E. Mingay, 'The Size of Farms in the Eighteenth Century', *Econ. Hist. Rev.*, 2nd ser., xiv, no. 3, 1962, p. 470; *Scale of Enterprise in Farming*, H.M.S.O., 1961, p. 2.

² For evidence of quite dramatic changes in the size of farms in the Lindsey Marshland within a few years of the eighteenth century see M. W. Barley and P. E. Rossell, 'Notes on the Agrarian History of Owersby and Burgh le Marsh', *Lincs. Historian*, 1953.

³ A. C. Sinclair, *A History of Beelsby*, 1947, pp. 58-61.

⁴ *Lincoln, Rutland, and Stamford Mercury* (hereafter *L.R.S.M.*), 16 Nov. 1832.

⁵ A. Young, *A Six Months' Tour Through The North of England*, 2nd edn, 1771, iv, 344-5. See also Caird, *English Agriculture*, p. 477.

tem encouraged speculative farming, which is not to be equated with good farming. The lease system further tends to assume the existence of soils that might be continuously brought back to a peak of fertility after exhaustion in the closing years of each lease. As one nineteenth-century advocate of leases admitted: "The first years of a lease are usually characterized by an energetic performance of various improvements, whereas, towards its close, there is such a withdrawing even of ordinary outlay, as is unfavourable to the interests of either landlord or tenant."¹ Where the tenant was not guaranteed a renewal of the lease on favourable terms, even covenants, unless strictly enforced by a resident land agent, could not eradicate such malpractice. And poor soils that were carefully brought to yield profitable crops of cereals in the later eighteenth and nineteenth centuries, such as those of the wolds of Lindsey and the East Riding, could not withstand this kind of treatment without it resulting in permanent damage to the soil structure.

III

The farming of Lindsey in this period, and particularly that on the uplands of the wolds and the Cliff, offers convincing proof that significant agricultural progress was possible without long leases. The overwhelming majority of Lindsey tenants held their farms on a yearly tenancy, usually terminable upon six months' notice being given by either party. The majority of tenancies were divided between "the house, buildings, and homelands" which were all held by the year from May-day, and the remainder of the farm that was held from Lady-day. The origin of this division appears to have been that while it was necessary for the incoming tenant to have access to the land destined for the cultivation of spring corn before April, it was "inconvenient . . . to move families till the roads are good," or until later in the spring.² Once established, the customary procedure for changes of tenants was continued despite improvements in communications and changes in farming systems.

Leases were usually granted in Lindsey for the occupancy of four particular types of property, none of which were noticeably in the forefront of agricultural progress. Firstly, long leases were common on the outlying farms belonging to large landowners whose main estate and residence were located outside the district, and which were therefore incapable of being properly superintended by the owner's agent. An example of this type was the entire parish of Witchall on the Wolds, the property of Lord Willoughby d'Eresby whose family seat and main estate was in Kesteven, which was occupied as a single farm on a long lease. Secondly, the property of institutional landowners, such as "the Charterhouse of London," the dean and chapter of Lincoln Cathedral, and the Oxford and Cambridge colleges, was usually let on leases.³ A farm at Wrawby belonging to Clare Hall, Cambridge, was let on a lease of twenty-two years in 1818, and the lands of the dean and chapter of Lincoln cathedral were commonly leased for the duration of from one to three

¹ Wilson, *op cit.*, p. 541.

² *Essays on Agriculture: occasioned by reading Mr Stone's Report on the Present State of that Science in the County of Lincoln*, 1796, p. 59; Lincolnshire Archives Office (hereafter L.A.O.), Haigh Deposit, 5/1/9.

³ L.A.O., Monson Deposit (Mon.), 25/13/10/3/73.

lives.¹ Thirdly, the single farms of small landowners were usually leased for various terms of years. These properties, such as a farm of 300 acres at Muckton let on a lease of fourteen years in 1829, and one of 111 acres at Ulceby let for a term of sixteen years in 1830, were often advertised in the county press.² The final type of leased farm property in Lindsey consisted of glebe farms or lands allotted in lieu of vicarial tithes. A farm of 194 acres at Horsington, for example, was let in 1840 for a term of seven years, providing that "the present Rector of Horsington shall so long hold the Living."³ A very large proportion of the land on the Lindsey wolds and Cliff, however, was consolidated into estates ranging from 1,000 to over 50,000 acres in size, on which the owners were resident or which warranted the employment of an agent to supervise the farming of the tenantry. On these properties tenancy-at-will was the prevailing mode of occupancy.

The most serious and often repeated objection levelled at tenancy-at-will, that it tended to discourage tenants from investing in the long-term improvement of their farms, obviously did not apply in Lindsey. On the uplands of that county from the later eighteenth century onwards, farmers occupying land on yearly tenure showed themselves willing to invest initial amounts that were the equivalent of twenty or more times the unimproved value of the land, in order to convert the poor soils occupied as rabbit warrens or sheepwalks to permanent tillage. Thereafter, to maintain the fertility of the soil that was expensively created by chalk-marling, at a cost of over £3 per acre on land often worth less than 5s. a year in its unimproved state, the tenants were called upon to expend large amounts annually upon bone dust and upon oilcake for feeding cattle and sheep. The efficacy of these outlays was not exhausted or their cost recovered within the period of tenancy. In many cases, the tenants were also responsible for the labour required to drain land, with tiles that were not always provided by the landlord, and for the construction of farm buildings and fences. One farmer on Lord Monson's estate on the Lindsey Cliff expended over £1,500 on erecting farm buildings and in purchasing drainage tiles for his farm.⁴

Apart from the heavy investment made by yearly tenants in Lindsey in their farms, it is also difficult to conceptualize the possibility of the pace of improvement in Lindsey upland farming being accelerated further by the provision of long leases to tenants. Within a comparatively short period of time, from the 1790's to the 1830's, the Cliff and the wolds were transformed from a "wilderness" of poor grazing land, large tracts of which were occupied by sheepwalks and rabbit warrens, into one of the premier districts of mixed farming in Britain. According to Caird, who was generally unimpressed by the few examples of upland farming that he saw on his brief tour in 1850: "The agricultural reputation of Lincolnshire is due more to the stride it has made in a given time, than to any pre-eminence above the best farmed counties."⁵

That the tenants of farms on the Lindsey wolds and Cliff were willing to invest

¹ L.R.S.M., 25 July 1845.

² L.R.S.M., 20 March 1829, 26 Feb. 1830.

³ L.R.S.M., 18 Sept. 1840.

⁴ L.A.O., Mon., 25/13/10/3/16.

⁵ *English Agriculture*, p. 193.

heavily in raising the long-term fertility of the farms they occupied as tenants-at-will, is essentially to be ascribed to two factors. Firstly, to the tenants' "great confidence" in their landlords permitting them to reap the profits of their outlays, which was backed up by a general shortage of efficient tenant farmers with the capital resources for mixed farming on light soils. And, secondly, to the development of an elaborate system of tenant right, or compensatory payments to outgoing tenants for the unexhausted portion of the improvements made to their farms, which was known as the "Lincolnshire Custom."¹ Together, landlord-tenant relations in Lindsey and the "Lincolnshire Custom" precluded the necessity for leases to give security of tenure and provided a superior form of occupancy for the stimulation of agricultural progress.

In 1840 Philip Pusey ascribed the willingness of tenants-at-will in Lindsey to invest heavily in their farms to the "well-merited confidence in the owner's of estates, such as the Earl of Yarborough." On the Yarborough estate of 55,000 acres in north-eastern Lindsey, in particular, "the farm, though on a yearly tenure, passes, almost as a matter of course, from father to son."² The hereditary nature of tenancy is demonstrated by the surnames of the puppy walkers of the Brocklesby Hunt (which was largely composed of Yarborough tenants under his lordship as M.F.H.), recorded for the first time in 1754, which included the names of many families still occupying farms on the estate in the 1880's.³ Lawson Holmes of Cadney, "a highly respectable farmer under the Earl of Yarborough", who died in 1843 at the age of fifty-four, was "the lineal descendant of the oldest family among his lordship's tenantry. It having been under the House of Brocklesby for nearly 300 years."⁴

On the estate of Lord Monson on the Lindsey Cliff the farms were similarly occupied by virtually hereditary tenants, although in one exceptional case in 1852 his lordship was moved to state that: "The principle we adopt and always shall do so is to select the succeeding Tenant by his own personal merits and by nothing else, if by descent he has been connected with the Farm it will be a point in his favour and nothing more."⁵ However, the usual result of the application of this "principle" was such as to satisfy the Monson tenant who said: "Ever since I have been your Lordship's tenant I have farmed with the impression that I have obtained a home for life, and some part of my family after me."⁶ According to John Parkinson, an agent for property in both Lincolnshire and Nottinghamshire, "for many years" before 1850 the former county was "remarkable" for the frequency with which sons succeeded their fathers as tenants; "and this is the reason why no leases are wanted or expected."⁷

As a result of the comparative backwardness and isolation of Lindsey before the

¹ See D. B. Grigg, 'The Development of Tenant Right in South Lincolnshire', *Lincs. Historian*, 1962; C. S. Orwin, 'The History of Tenant Right', *Agricultural Progress*, xv, 3, 1938.

² P. Pusey, 'On the Agricultural Improvements of Lincolnshire', *J.R.A.S.E.*, iv, 1843, p. 299.

³ G. Collins, *Farming and Fox-Hunting*, n.d., p. 17. ⁴ *L.R.S.M.*, 3 Nov. 1843.

⁵ *L.A.O.*, Mon., 25/13/10/10/34. ⁶ *L.A.O.*, Mon., 25/13/10/3/33.

⁷ Select Committee on Agricultural Customs, B.P.P. 1847-8, vii, p. 409.

later eighteenth century, a relationship between landlord and tenant that was more feudal than akin to the contractual relationship of a purely capitalist agriculture was prolonged into the subsequent period of improvement and close integration into the national economy. Of landlord-tenant relations generally in Britain, it could be said as late as the 1830's that: "So much of the feudal system yet remains among the higher ranks of society . . . that it would be considered discreditable to turn off an old tenant from an estate, unless misconduct, or absolute necessity, compelled a change."¹ In Lindsey, particularly, such "feudal" relationships were stronger and lingered longer than in most other parts of England and tenants were, or so it was claimed, "never changed unless they die, or become unfortunate in business, or without there is gross neglect."²

The coming of age of the owners of estates in Lindsey continued in the nineteenth century to be occasions for extended celebrations in which the hierarchical nature of traditional rural society was reflected, and in which the special position of the relatively new class of large tenant farmers was emphasized. The tenantry of Lord Monson celebrated his coming of age on 3 February 1830, when the occupiers of the larger farms dined at Burton Hall while, "in one of the kitchens a considerable body of cottagers, and the inferior tenantry, labourers, &c., enjoyed themselves with equal ardour, if not equal refinement."³ A similar feast, in which the large occupiers dined separately from the "inferior tenantry," was held at Wragby in the April of the same year to mark the coming of age of Christopher Turner, the owner of another extensive estate in southern Lindsey.⁴

On the estate of the Earl of Yarborough, and on others in the county, the tenantry in the nineteenth century continued to dine together once a year in honour of the owner's birthday. On 8 August 1829, for instance, "the anniversary of the Right Hon. Lord Yarborough was celebrated with the usual public dinner at Limber."⁵ From the 1820's onwards there appears to have been but one departure from tradition on such occasions, with the extension of the assembly to include a number of his lordship's political supporters who were not at the same time his tenants. During the hunting season the tenantry formed the field of the Brocklesby Hunt that was maintained by Lord Yarborough. "The hunting field" in the nineteenth century was "a sort of thermometer of the wealth of the Brocklesby district; every farm turned out one or more horseman chiefly in scarlet, well mounted, well appointed, so that when all assembled there was probably represented, £30,000 or £40,000 a year of farmer's rent."⁶ On other occasions, both ceremonial and in times of unrest, such as the labourers' revolt of the winter of 1830-1, the same horsemen formed the other ranks of the local volunteer cavalry corps that was officered by the gentry.

¹ *British Husbandry*, III, p. 130. ² B.P.P. 1847-8, VII, p. 36.

³ L.R.S.M., 5 Feb. 1830. A similar division was applied by his lordship during the agricultural depression of the late 1840's, when an abatement of 10 per cent of the rental was granted to the larger tenants, who were "really farmers," while the "humbler tenants" were satisfied with "a mere meat dinner."—L.A.O., Mon., 25/13/10/2/12 and 25/13/10/1/42.

⁴ L.R.S.M., 9 April, 1830. ⁵ L.R.S.M., 14 Aug. 1829.

⁶ S. Sidney, *Railways and Agriculture in North Lincolnshire*, 1848, p. 78.

On some of the estates in Lindsey belonging to landowners residing in the county, many of the tenants appointed to farms during the later eighteenth and early nineteenth centuries appear to have been drawn from amongst the owners' household retainers. When applying for a farm on Lord Monson's estate in the 1850's John Ross of Lincoln stressed:

the long, and I think I can say, the faithful domestic servitude of both my parents, in the household of your respected uncle and predecessor, John Third Lord Monson, my father having entered the family shortly after the marriage of that nobleman, and not having quitted it till within a short period previous to his Lordship's death.

Ross's father left the Monson household in 1803 to become "the tenant of a small farm, since somewhat enlarged."¹ In 1852 the departing tenant of a large farm on the Monson estate wrote to his lordship, "to enquire the cause of my dismissal from a Farm which myself & Family have occupied for a period of upwards of 80 years and in which my family were first placed after long and faithful servitude with your Lordship's ancestors."²

The power of custom in Lindsey in providing security of tenure was reinforced by more practical considerations on the part of landlords, such as the general shortage of good tenant farmers with capital in an age of agricultural expansion. The landlord whose farms were occupied by able tenants was loath to part with any of them. The diversity of soil types and therefore of farming systems tended to limit the circle of potential applicants for farms; and the comparative uniqueness of each farm tended to make the son of the occupier, who was brought up on the farm and well acquainted with its peculiarities, the person best fitted to succeed to the tenancy. Landlords also preferred to retain sitting tenants, because a change of tenancy was usually the occasion for hard bargaining with the incoming tenant for new buildings and repairs etc. to be provided out of the landlord's capital. Sitting tenants, on the other hand, were "less free to bargain than new bidders since they have something to lose by quitting."³ In a wider context, in a period in which the power of the landed classes was increasingly threatened by the growth of an opposing manufacturing interest, the former were loath to provide the tribunes of the latter with apparent instances of harsh treatment of tenants, and, more important, to threaten the cohesion of the rural hierarchy whose existence was increasingly dependent upon the sanction and well-being of its middle ranks.

Occupying their land from custom on a basis that was almost hereditary, and securely on their merits as farmers, the tenants of Lindsey appear to have preferred tenancy-at-will to leasehold. At the very least, there is no evidence to support the view expressed by the late Professor T. S. Ashton, that "tenancies at will, or from year to year, were generally disliked by the farmers."⁴ In part this was due to the lower rents that generally prevailed with more customary attitudes to landowner-

¹ L.A.O., Mon., 25/13/10/10/122.

² L.A.O., Mon., 25/13/10/4/12.

³ L.A.O., Mon., 25/13/10/3/55.

⁴ T. S. Ashton, *An Economic History of England: The 18th Century*, 1955, p. 37.

ship, particularly in comparison to regions in which the practice of auctioning leases to the highest bidder predominated.¹ More important, perhaps, the lease of a farm for a fixed term of years was seen to have the tendency to limit the individual tenant's occupation of the farm to the period of the lease. As one Lincolnshire farmer put it: "if we took a farm for 14 or 21 years we should expect at the end of that term that there would be . . . a change of tenant."² Under the system of tenancy-at-will operating in Lindsey, on the other hand, the normal course was for the tenant to hand over his farm to a son after an active lifetime of occupancy, which was a course that even the most commercially-minded farmer deemed preferable. Where the tenant was forced to relinquish his farm through unforeseen circumstances, however, compensation for the unexhausted portion of his investment was provided for by the Lincolnshire Custom of tenant right that evolved as an adjunct of tenancy-at-will in a period of rising tenant outlays on the land.

IV

The Lincolnshire Custom of tenant right emerged during the years after 1815 and gained such widespread acceptance that it subsequently formed the basis of the Agricultural Holdings Acts of 1875 and 1883.³ In essence the custom amounted to a partial compromise of the principle of *quidquid solo plantatur, solo credit* (whatever is put into the soil passes into the soil),⁴ which benefited the landlord at the expense of the departing tenant. Instead, a limited tenant right was granted to ownership and compensation for inputs that increased the fertility of the soil, but which were not exhausted during the period of tenure. In calculating the compensation to be paid to an outgoing tenant time-periods were established over which the cost of the tenant's inputs was progressively discounted by a certain proportion each year until the fertilizing value was assumed to be exhausted for the purposes of tenant right. Thus the cost of an application of bone dust to the turnip crop on a Lindsey farm was usually discounted by one-third for each year of a three-year period until the right to compensation was exhausted.⁵ On quitting his farm a tenant was entitled to reimbursement for the remaining proportion of his outlays on fertilizing inputs according to the time-periods established under the custom for each particular input.

Under the Agricultural Holdings Act of 1883 compensation to outgoing tenants for unexhausted improvements was "based entirely . . . upon the value to the incoming tenant" of the improvements.⁶ This principle favoured the landlords and incoming tenants at a time when the rate of turnover of tenants was unusually high, and when agricultural prices, the value of tenant investments, and land values were all declining over time. During the "Great Depression", which was very real for

¹ Wilson, *op cit.*, p. 540; Caird, *English Agriculture*, p. 508. ² B.P.P. 1847-8, vii, p. 36.

³ B.P.P. 1894, xvi, pt iii, p. 79; C. S. Orwin, *The Reclamation of Exmoor Forest*, 1929, p. 53.

⁴ Orwin, *Reclamation Exmoor*, p. 147.

⁵ Cf. G. M. Williams, 'On the Tenant's Rights to unexhausted Improvements, according to the Custom of North Lincolnshire', *J.R.A.S.E.*, vi, 1846, p. 44.

⁶ B.P.P. 1847-8, vii, pp. 401, 409.

the mixed farmers on the light soils of eastern England, the major difficulties in occupancy were to induce new tenants to take up the farms and to enable their predecessors to meet some of their obligations to creditors. By contrast, when the Lincolnshire Custom was established in the years after 1815, the rate of turnover of tenants on the light soils of Lincolnshire was low, and the value of tenant improvements and land values were increasing over time despite falling prices for agricultural produce. In this situation, where the problems in tenancy were essentially to provide the tenant with a degree of security of tenure and a reward for improvement, compensation for unexhausted improvements was "based upon the actual outlay made by the tenant" rather than the value of the improvements to the incoming tenant.

In some districts the principle of compensating outgoing tenants for unexhausted improvements upon the basis of "the actual outlay made by the tenant" created a barrier to agricultural progress. According to a land agent, who resided in Nottinghamshire but also managed estates in Lincolnshire, "heavy tenant right retards improvement", for "when there is a heavy tenant right upon a farm, the tenant cares less about giving up than when he was not got a great tenant right."¹ The problem of tenant right discouraging effort on the part of tenants, or obviating the threat of dismissal as a stimulus to improvements in farming, appears to have applied particularly to Nottinghamshire, where the amount per acre paid for tenant right was far higher than in Lincolnshire. In the latter county the difficulty was avoided in the method of calculating the time-periods over which the tenant's right to compensation for each input was discounted. Instead of being based upon the length of time required to exhaust the contribution of the input to the fertility of the soil, the guideline adopted in the establishment of the time-periods was the number of years required to recompense the occupier for his outlay. Under this principle, for example, the "marling" of the wold hills with chalk was discounted as a tenant right over a period of seven years, although the process only required repetition every twenty to twenty-five years. By maintaining a substantial margin between the value of tenant inputs to the soil and their value as a tenant right the farmers were motivated to seek a return from the produce of the soil rather than from their successors.

Instances of malpractice, to which tenant right was claimed by some agricultural writers to lend itself, were extremely rare in Lincolnshire. According to Caird tenant right generally "led to much fraud and chicanery", but he conceded that the "Lincolnshire system . . . has not led to the frauds practised in Surrey and Sussex."² The allowance for oilcake during the early years of its introduction might be deemed a partial exception to this rule. When the allowance was first applied on the Yarborough estate on the Lindsey wolds in the form of reimbursement for half the tenant's expenditure upon oil-cake during the final year of the tenancy, the agent discovered "people spending more the last year of the tenancy than ever before."³ However, this practice quickly disappeared after the custom was modified

¹ B.P.P. 1847-8, VII, p. 393.

² *English Agriculture*, pp. 195, 506.

³ B.P.P. 1847-8, VII, p. 372.

to take the average of the last two or three years of the tenancy as the basis for calculating the allowance.¹

When a tenant quitted his farm the tenant right was calculated by valuers, who were normally selected from among the most experienced farmers of the locality. One valuer was appointed by the sitting tenant and the other by the incoming tenant. When the valuers failed to agree on the amount of compensation they in turn appointed an umpire to arbitrate between them. Apart from its apparent fairness, this method of establishing compensation within the guideline set down by custom possessed the added advantage of removing the necessity for contact between the landlord and the outgoing and incoming tenant in a matter over which relations might be subject to strain. As Lord Yarborough's agent commented in the late 1840's upon a Bill before Parliament to legalize tenant right:²

Under our present system the outgoing tenant and the incoming tenant do not come at all in contact; they probably do not know each other; the outgoing tenant appoints his valuer, and the incoming tenant appoints his, and if there is any doubt they call in another party; the sum awarded is paid, and there is an end of the matter; whereas if you bring the landlord and tenant together, as it is proposed in this Bill, in most cases there is on a tenant quitting some little ill-feeling between the landlord and the tenant; the landlord probably is not satisfied with the tenant's management, or the tenant may not be satisfied with his landlord, in either of which cases there is not a very friendly feeling, and if you bring them into immediate collision I should fear it would produce a great deal of mischief.

V

Dr D. B. Grigg has suggested of Lincolnshire that

Tenant right probably grew out of the system of entry to a farm. In Lincolnshire farms were vacated on April 5th. Clearly the outgoing tenant had either to let the incoming tenant onto the farm prior to this date, or carry out the cultivation for him. In the latter case the incoming tenant could then pay a mutually agreed sum for labour and seed. Tenant right for a wider variety of services could naturally grow out of this.³

In Lindsey, however, it would appear that the problems associated with tenancy changes were only responsible for the procedure of arbitration later adopted for tenant-right purposes and not for the custom of tenant right itself. In the later eighteenth century, both in cases where the incoming tenant was permitted to enter upon the land to sow crops before his predecessor's tenancy expired, and in cases where the outgoing tenant was compensated for the growing crops at the end of his tenure, the procedure of determining compensation by means of two valuers with a right of appeal to an umpire was commonly adopted. A tenancy agreement signed in 1795 stipulated that the outgoing tenant was to be compensated for all

¹ *Ibid.*, pp. 18, 372.

² *Ibid.*, p. 390.

³ Grigg, 'Development . . . Lincolnshire', *loc. cit.*, p. 46.

loss and damage occasioned by the entry of the incoming tenant to sow spring corn according to the amount established "by two disinterested persons one to be chosen by each of the said parties."¹ Alternatively, the tenancy agreement for a farm on the Yarborough estate dating from 1781 states that

Whereas it is thought reasonable that the offgoing tenant ought to have some Allowance for the Grass Seeds he may sow in the Spring twelve months before he quits the said farm . . . , it is hereby agreed that the Allowance for such Seeds shall at a proper time be referred to Two judicious persons indifferently chosen, and if they cannot agree, for them to chuse [*sic*] a third person who shall determine the Difference between them.²

On some estates the arbitration procedure adopted under the Lincolnshire Custom of tenant right was subsequently extended to cover the settlement of disputes between landlords and tenants over destruction to crops caused by game. In the tenancy agreement for a farm at Scawby, close to Sir John Nelthorpe's residence, it was "agreed that if any excessive damage is done by the Game, the same shall be valued by two indifferent Persons, one to be chosen by the tenant and the other by the Landlord, as umpire a third Person shall be chosen by them."³ On the same estate, in the agreement signed by a Hull merchant in 1853 for the lease of a cottage and "the exclusive right of shooting, coursing and otherwise killing all game and rabbits in . . . the lands of Sir John Nelthorpe . . . in the Parish of South Ferriby," the rabbits were "not to be allowed to increase to the injury of the occupiers of the farms." If the number of rabbits was deemed to be excessive Sir John's agents or the farmers were permitted to shoot them.⁴

The procedure of arbitration adopted under the Lincolnshire Custom, and perhaps the notion that outgoing tenants were entitled to compensatory allowances, may have grown out of the procedures necessitated by changes of tenancy. However, there is every reason to doubt that the custom of tenant right itself originated in such procedures. In the first place, the problems associated with changes of tenancy were common to farming throughout England, and in Lindsey before 1815, but tenant-right customs did not develop in all areas or in Lindsey before 1815. Secondly, the spread of the Lincolnshire Custom and the improved methods of farming adopted on the light soils of the Lindsey uplands from the later eighteenth century onwards appear to have made the old procedures adopted for changes of tenancy increasingly unworkable.

Where an incoming tenant was permitted to enter upon the land before the termination of the sitting tenant's agreement the adoption of the Lincolnshire Custom became a cause of conflict between the two parties. Many sitting tenants were unwilling to permit their successors on to the land while the account for tenant right remained unsettled, and while their successors' ability to pay remained an unknown quantity. In at least one instance this conflict of interests ended in a pitched

¹ L.A.O., Haigh Deposit, 6/1/9. ² L.A.O., Yarborough Deposit (Yar.), 5.

³ L.A.O., Nelthorpe Deposit (Nel.), viii/12/59. ⁴ *Ibid.*, viii/12/58.

battle between the two farmers and their respective labourers. A farmer at Waltham near Grimsby, a declared bankrupt, had given notice of his intention to quit his farm on May-day 1835. At the beginning of February in that year the incoming tenant requested permission to sow a crop of spring corn, but as the amount of compensation for unexhausted improvements remained to be settled the sitting tenant declined to grant the request. A few days later the incoming tenant and his labourers forced an entry to the farm and commenced ploughing. And, whilst they left the premises when ordered to do so by the sitting tenant, they returned two days later "armed with fork-shafts and such like weapons." In the ensuing struggle the brother of the outgoing tenant received a broken arm, for which he later claimed substantial damages.¹

As an alternative to the procedure whereby the incoming tenant was permitted access to the land to sow spring crops before the occupier's tenancy expired, the method of compensating the outgoing tenant for undertaking such work was considered unreliable. Most tenants who left farms did so with some degree of antipathy towards their landlords, and were therefore unlikely to cultivate the land willingly or properly for their successors. This applied to the sowing of artificial grasses on the barley during the spring before the notice to quit expired. To guard against the latter omission some tenancy agreements of the later eighteenth century stipulated that, before the expiration of the notice to quit, the owner, "his Servants, or the oncoming tenant shall have Liberty to sow among any part of the following Crop such Quantity of Clover or Other Seeds as they or any of them may adjudge proper and necessary."² However, this stipulation was likely to be a source of conflict and litigation over damage occasioned to the barley in the ground.

In the main, the method of compensating outgoing tenants for "waygoing crops" appears to have been considered incompatible with the rotations adopted on the light soils of the Lindsey uplands from the later eighteenth century onwards. The traditional rotation of the lowland clays (of winter wheat, spring corn, and fallows), and the old cropping pattern on the uplands (of successive cereal crops being taken before the land was allowed to fall to grass), facilitated the calculation of compensation for waygoing crops. The crops involved were traditional cash crops for which the labour costs and likely market price were relatively easy to estimate, and they were cultivated with a minimum of tenant outlays upon fertilizers. However, under the alternating cereal and fodder crop rotations, which rapidly came to predominate on the uplands towards the end of the eighteenth century, the estimation of the value of waygoing crops was considerably more difficult.

Until well into the nineteenth century there was no established or customary rotation that was universally adhered to on the Lindsey uplands. Each farmer adopted a variant of the cycle of fodder and cereal crops, according to the nature of the soil, the wishes of his landlord, and his own notions of what was good or merely the most profitable farming practice. Therefore, there was likely to be disagreement between incoming and outgoing tenants as to the proper waygoing crops to

¹ L.R.S.M., 13 March 1835. ² L.A.O., Yar., 5.

be cultivated. The common denominator of all the rotations adopted on the uplands was a high degree of integration of different crops, with each contributing to the success of the following crop and with each being difficult to separate for the purposes of valuation.¹ And the value of the crops gained from the poor light soils of the uplands was heavily dependent upon the quantity and quality of the fertilizing inputs applied by the occupiers. In particular, the fertilizers applied to the turnip crop initiating the rotation contributed significantly to the value of the wheat crop harvested four or five years later.

In southern Lincolnshire, the area upon which Grigg's findings are based, the problems associated with changes of tenant on a farm operated under alternating cereal and fodder crop rotations were overcome by the outgoing tenant being compensated for waygoing crops. On the uplands of Lindsey, on the other hand, it appears to have been the common practice for the outgoing tenant to withdraw gradually from the land as each crop was cleared. Most tenants therefore retained the ownership of the crops of winter and spring corn and of the "keeping" of artificial grasses sown the previous year, after the expiration of their notices to quit. In many cases, if not most, the outgoing tenant sold the waygoing crops, but he did so to the highest bidder rather than the incoming tenant. When quitting his farm in 1840, for example, Francis Scarman of Tetford offered for sale the usufruct of his land containing "Over-eaten Eddish," "second year seeds," and "one year and young seeds."²

Both tenants and landlords appeared to have preferred the Lindsey method of gradual withdrawal from the land by the outgoing tenant. To the sitting tenant the practice minimized the possibility of conflict with his successor. And, if he desired to sell the waygoing crops, he was likely to receive a price that was higher and a closer approximation to the market price where the sale was not restricted to his successor. To the landlord the method may have been preferred because it allowed for a longer period of time in which to find a successor for the farm. Where the incoming tenant entered upon the lands to sow spring corn the landlord had only three months from 10 October in which to find a new tenant. Where the outgoing tenant withdrew gradually from the land, on the other hand, the position of the landlord did not become desperate until late in the spring when the turnip crop, which received the bulk of the fertilizing inputs, had to be sown.

It was extremely rare for a tenant on the Cliff and wolds of Lindsey to sow crops for his successor in return for compensation, unless the successor happened to be a close relative. Under the common system adopted for a change of tenancy, the insignificant scale of turnover of tenants on the Lindsey uplands tended to preclude the necessity for a formal and widespread procedure covering the rights and responsibilities of incoming and outgoing tenants. The last thing any incoming tenant in Lindsey and his landlord appear to have considered was the possibility of

¹ See E. L. Jones, 'English Farming before and during the Nineteenth Century', *Econ. Hist. Rev.*, 2nd ser., xv, no. 1, 1962, p. 146.

² *L.R.S.M.*, 15 Nov. 1839.

the former's departure. In most cases agreements between landlords and tenants in Lindsey, like those on the Yarborough estate, were made upon "the 'simple principle' . . . i.e. they merely express the amount of following crops (if any), and that the tenant is to pay so much money for such land, to be cultivated in a good and husbandlike manner."¹

VI

The emergence of the Lincolnshire Custom of tenant right would appear to have been very closely linked to the remarkable progress made in farming in that county, particularly in the upland regions of light soils, during the later eighteenth and early nineteenth centuries. To many local farmers in the 1840's the custom of tenant right was considered to be the cause of agricultural improvement. However, while such a connection might be established for the years after 1815, it does not apply to the initiation of agricultural progress on the uplands in the later eighteenth century, when the custom did not exist. The instrument of improvements in farming on the Lindsey uplands from the 1780's was a coincidence of the declining profitability of existing forms of land usage for sheepwalks and rabbit warrens and a marked upward trend in cereal prices from the 1790's to 1815. Combined with the rapid growth of a large urban-industrial market for foodstuffs in the nearby West Riding, these economic stimuli encouraged the farmers of the Lindsey uplands to adopt fodder and cereal crop rotations as the basis of a farming system characterized by large and comparatively long-lasting tenant capital outlays upon fertilizers and animal feedstuffs. Such inputs were essential to bring the innately poor soils of the wolds and the Cliff to a peak of productivity and their value could not be exhausted within the span of a yearly tenancy.

In the years before 1815 the necessity for large-scale and long-term capital outlays by tenants, with which they virtually created the soils of the uplands, coexisted with tenancy-at-will without causing friction between landowners and tenants. The carryover of traditional attitudes amongst the landowners encouraged the tenants in a feeling of security, and the lag of rents behind agricultural prices generated a level of profits that considerably reduced the time-lag between investment and reimbursement, and almost entirely removed the risk of tenants failing. From the closing years of the war, however, the situation altered drastically. Rents were gradually raised on the uplands between 1803 and 1812 to a level more commensurate with the high level of food prices and land values. On the Monson estate, according to the tenants who petitioned in 1816 for a reduction in their rents, "a very considerable Addition" was made to the rents in 1803, and a further increase occurred in 1809.² Then, from 1813, prices of agricultural produce began to fall.

"In good times," as one authority on Lincolnshire agrarian history has stated, tenancy-at-will "worked because Lincolnshire landowners had a reputation for being reasonable and trustworthy landlords."³ In the "bad times" after 1813 it continued to "work" in the majority of cases, but tenants also began to look for

¹ L.R.S.M., 26 Feb. 1847.

² L.A.O., Mon., 19/8/1.

³ J. Thirsk, *English Peasant Farming*, 1957, p. 265.

other and additional means of securing their heavy capital outlays upon the land. Because the tenants' concern after 1813 was less with security of tenure and more with security for their investment, and because the likely trend of future prices for agricultural produce appeared highly uncertain, the tenants continued to prefer tenancy-at-will to long leases and sought a solution in a system of tenant right to unexhausted improvements. For their part, the landlords were motivated to acquiesce in the tenants' demands for tenant right as this was a charge upon incoming tenants rather than themselves, and as it was a means of maintaining rents at the levels achieved during the war period with only occasional abatements and without permanent reductions.

It is a contention of this essay, therefore, that the Lincolnshire Custom emerged as a response on the part of the tenants of the Lindsey uplands to the more difficult times for farming after 1813, particularly for a farming system that required heavy capital outlays by tenants. In turn, the custom enabled tenancy-at-will to continue and facilitated further rapid progress in agriculture along the lines established during the prosperous war years. After 1813 the custom of tenant right and the continued momentum of agricultural improvement by the tenants on the uplands "acted and reacted on one another" to create one of the most advanced farming regions in England by the 1840's.¹

The system of tenant right that became operative in Lincolnshire balanced the need for the tenant to be secure in the knowledge that he would be adequately reimbursed for unexhausted improvements in order for farming to progress, with the opportunity for landlords to remove tenants who failed to manage their farms "in a good and husbandlike manner". The custom also provided farmers of ability with a high degree of security of tenure, within reasonable limits, because the more capital that the tenant invested in raising the fertility of the soil the larger the capital required by any potential successor to purchase the tenant right. Therefore, by placing the burden of tenant-right compensation upon the incoming tenant, with only a possibility that the landlord might have to raise the sum and take the farm in hand for a period, capable sitting tenants obtained effective security of tenure and the tenancy of farms was limited to a comparatively small group of experienced farmers with large capital resources.

As was to be expected of a system of tenant right that evolved "from below" to suit the requirements of local farming, there was some degree of variation in the provisions of the custom in different parts of the county. The custom in Kesteven differed from that in Lindsey,² and, before the 1850's at least, it also varied from estate to estate within the administrative division of Lindsey.³ Even on a single farm certain allowances were not uniformly applied to the whole of the lands of the farm. In the lease of a farm belonging to Sir John Nelthorpe the time-periods over which the cost of claying poor sandy soils were discounted for tenant-right purposes

¹ B.P.P. 1847-8, vii, p. 400.

² Grigg, 'Development . . . Lincolnshire', *loc. cit.*, p. 42; B.P.P. 1847-8, vii, p. 34.

³ B.P.P. 1847-8, vii, p. 413.

varied from six to twelve years, according partly to the distance of the fields from the clay and partly to the amount of claying required. According to the lease:¹

In claying the lands in Twigmoor West of Middle Carr Drain, It is specially agreed that ten years allowance shall be made instead of six as on other lands. And it is further agreed that for the claying of the lands in Holme in the parish of Bottesford an allowance of twelve years shall be made.

It was only from the 1840's, when a degree of uniformity in the productivity of the upland soils had been achieved, and the system of tenant right was adopted throughout the county, that the custom in turn became increasingly uniform over the whole county.

The flexibility of allowances upon individual farms, that the custom as a mere custom permitted, also applied to the adoption of allowances for new and more advanced farming techniques that emerged with time. Once the efficacy of a new fertilizer was recognized it could be quickly incorporated into the custom. The introduction of guano to the upland farms of Lindsey in the early 1840's was in this way soon followed by the establishment of a scale of allowances to compensate tenants using the new fertilizer who were forced to leave their farms. As a consequence of the custom, therefore, tenants became more willing to adopt new and improved methods of farming and their rate of diffusion throughout the locality was considerably increased.

For the landlord the Lincolnshire Custom provided a preferable means of securing the rent of a farm to the law of distraint. The latter favoured the landlord in that it gave him the first claim upon the proceeds of the sale of an outgoing tenant's live and dead stock for the payment of rent arrears. However, the exercise of this privilege was troublesome, and it often attracted adverse and unwanted publicity to the actions of landowners. Sometimes outgoing tenants attempted quietly to dispose of their assets "with a view of getting the Sale over without . . . there [being] time to secure the Rent."² If the landlord was resident or employed an agent, word of the sale might leak out in time to obtain a warrant of distress for the rent due and to arrange for a bailiff to be at the sale to execute the warrant. Where the sale or removal of the outgoing tenant's assets was completed without the landlord's knowledge the latter was forced to take court action against the defaulter. And, according to law,

the landlords have not merely a right to take the goods of their tenants within 30 days after a fraudulent removal of them to prevent their being distrained for rent, and to dispose of them in liquidation of it, but are entitled to double the value of such goods, as a penalty for the fraudulent removal or concealment of them; and that, where the value of such goods does not exceed 50£., two Justices are empowered to levy the penalty by distress on the goods of the offenders, and for want of such distress to commit them for six months to hard labour.³

¹ L.A.O., Nel., viii 12/55.

² L.A.O., Mon., 25/13/10/4/4.

³ L.R.S.M., 2 Oct. 1829.

While the law of distraint placed the landowners in a privileged position amongst creditors, both the privilege and the severity of the penalties under the law appear to have made landowners averse to exercising it. Objection might be made to the law because it gave a prior claim to a class of creditors who were best able to bear the loss occasioned by the default of a debtor. The application of the law to a tenant who had failed after struggling to make his farm pay was akin to an arbitrary exercise of power and privilege, which might have increased the insecurity of remaining tenants, and have lessened their confidence in the landlord. Moreover, cases involving defaulting tenants being committed to prison would have attracted adverse publicity in the urban-liberal press; and this might have stimulated a campaign for the repeal of a law that provided the landlord with an ultimate sanction against defaulting tenants which was preferably not to be utilized. Here, the Lincolnshire Custom offered an alternative method to the law of distraint for obtaining arrears of rent, which enabled the landlord to separate his claims upon the outgoing tenant from those of other creditors. Either the landowner might withhold the payment of compensation for unexhausted improvements to which the outgoing tenant was entitled, where the landlord was forced to take the farm in hand, or he might order the incoming tenant to pay the compensation to his agent in lieu of the outgoing tenant's arrears of rent. In 1832, for instance,

A person named Kelham, a tenant of the Duke [of St Albans], was about to quit his farm: by the custom of the country, he was entitled to allowances for cropping, &c.; but being very considerably in arrears of rent, it was agreed that the tenant who was to succeed him, named Cox, should be indebted to the Duke in 389£., and deduct that sum from what he as an incoming tenant would have to pay Kelham.¹

Although the Lincolnshire Custom of tenant right was unrecognized by law, the instances are rare of landlords refusing to accept its provisions as binding upon them. A few such exceptions occurred during the early 1830's, the most difficult years of upland farming between the late 1790's and the late 1840's, when the turnover of tenancies reached a peak. At that time many landlords themselves faced a very real possibility of having to take farms in hand and reimburse the outgoing tenants for unexhausted improvements, and potential tenants were discouraged from taking farms by demands on their capital to pay for unexhausted improvements initiated in a more prosperous period for agriculture. The *cause célèbre* in this reaction on the part of landowners occurred in 1832, although it is notable that the landowner concerned was not a resident of Lincolnshire.

The case in question concerned Francis Taylor, a tenant on the Lindsey estate of Lady Gordon of Green Park Lodge, Piccadilly. Taylor and his father before him had been tenants on the Gordon estate "for upwards of 40 years," and by 1830 Francis Taylor was "a farmer on a large scale," paying nearly £1,000 a year for a farm at Linwood near Market Rasen on which he maintained 26 working horses,

¹ L.R.S.M., 27 June 1832.

50 head of cattle, and over 800 sheep. Landlord-tenant relations on the Gordon estate were amicable up to 1829, and "the tenants prospered, and all went well." In that year, however, a new land agent was appointed, "and the tenants were soon made to know the change." The new agent "began by giving notices, in order to raise the rents." Then, after Taylor had accepted new terms for his tenancy, he was subjected to "such a series of annoyances and injuries," that he was forced to give notice of his intention to quit the farm. According to Taylor, labourers acting on the orders of the agent had felled over 300 trees growing in the hedgerows on his farm, "although no right to do so was reserved in the agreement for occupation," and had "then destroyed the fences, without doing any repairs, and damaged corn and eddish crops by dragging heavy timber across them and tearing up the very soil."¹

On quitting the farm Taylor was forced to take legal action against his former landlady, for the repayment of rent and taxes on "land fallowed the year previous to his quitting," and for compensation "for the numerous Tenant Rights . . . to which he was entitled . . . according to the custom of the country." The necessity to take court action against the landowner to recover compensation for unexhausted improvements was a matter of some surprise to local agriculturalists, in that tenant right was normally a matter arranged between the incoming and the outgoing tenant. But, as a local newspaper reported, "the usual *amicable* and proper mode of adjusting claims of this description by a reference, to experienced Farmers and Valuers, having been *objected to on the part of the landlady*," Taylor was left with no alternative but to seek "his remedy by law" and from the landlady. The "Special Jury" appointed to consider the case found in favour of the existence of a legally binding "custom" only in respect of Taylor's claim for the reimbursement of a year's rent and taxes on "his summer fallowed land," and "for fold-yard fences and buildings five or six inches only in the ground." All other claims for tenant right to compensation for unexhausted improvements, which were not sanctioned by law, were rejected by the jury.²

Fortunately for the occupiers of Lindsey farms the Taylor case, which "excited so much interest in the neighbourhood where it arose, more particularly amongst Agricultural Tenants," proved to be almost unique.³ One other case involving tenant right was adjudicated upon at the same time, but it failed to arouse the same degree of concern amongst tenants as the Taylor case. A farmer on the Heneage estate in central Lindsey had held back £40 of his last rent payment for some bone-manure and marl that he had laid upon the land the year previous to quitting the farm, "under the idea that he was entitled to an allowance according to the *custom of the country*." The court, however, supported the landlord's contention that the compensation was a matter to be settled between the incoming and outgoing tenants. In this particular case also, the amount of bone-manure was of "a less quantity" than the tenant had agreed to apply according to his tenancy agreement, and the marl, was "not at all mentioned in the agreement." And, as "Mr Heneage

¹ L.R.S.M., 22 July 1831, 23 March 1832. ² *Ibid.* ³ *Ibid.*

was too rich and too generous to take any costs," the farmers were not disturbed by the outcome of this case.¹

After the difficulties of the early 1830's the overwhelming majority of landowners in Lindsey accepted the existence of the Lincolnshire Custom to an extent that could have been but little improved upon by giving legal sanction to the custom. Such acceptance originated, at least in part, in the fact that after 1832 the threat of landlords having to take farms in hand for a period never materialized on any significant scale. Therefore, tenant right became almost exclusively a matter of concern to incoming and outgoing tenants. At the same time the utility of the custom to the landlords was widely recognized, as a preferable alternative to the exercise of landlord rights under the law of distraint and as a method of raising the value of the land.

VII

The foregoing outline of a complex question suggests that leasehold tenure was neither the stimulus nor the necessary accompaniment of agricultural progress in the eighteenth and nineteenth centuries that many writers have stated it to have been. That progress was more the consequence of a certain constellation of economic forces external to agriculture itself, which brought forward the apposite response from farmers and landlords in the form of improved techniques and a higher level of capital investment in farming. Both the conditions of fluctuating prices for agricultural produce and the new farming system that emerged in the period accorded better with tenancy-at-will as a form of tenure than with leasehold, when it was combined with a tenant right to compensation for unexhausted improvements. As the example of Lindsey indicates, the local custom of tenant right performed the function of providing security of tenure, without the disadvantages of leases, in an agricultural situation in which the future trend in markets was impossible to prophesy with confidence. And, in particular, the custom yielded certain additional benefits for tenants, landlords, and the cause of agricultural improvement in the difficult years for agriculture after 1813.

It may be that the results of an analysis of the historically specific instance of Lindsey during the first half of the nineteenth century defy its wider application to British agriculture. Land usage on the uplands before improvement, for sheep-walks and rabbit warrens, established a framework of large farms that exactly suited the requirements of the system of mixed farming which subsequently developed. The very rapidity of the development of agricultural techniques in Lindsey, from a position of backwardness in the later eighteenth century, created a situation in which an older style of landlord-tenant relations was carried over into the following century, that minimized friction effectively. However, as far as the leadership in agricultural progress is concerned, it was between 1815 and 1850 that the farming of Norfolk, a county noted for long leases, lost ground to that of the county of Lincoln which was based upon tenancy-at-will, with the addition of a system of compensation for unexhausted improvements.

¹ L.R.S.M., 16 March 1832.