

Lifeleasehold in the Western Counties of England 1650–1750

By CHRISTOPHER CLAY

I
IT is well known to historians of English rural society in this period that the form of lease by which landlords in the western part of the kingdom let their estates differed markedly from that which was normal elsewhere. In the east and the Midlands, if landlords granted leases at all (and many preferred annual tenancies), they almost invariably conveyed to the tenant the right to occupy the land for a fixed number of years which in normal circumstances did not exceed twenty-one. Also they almost invariably charged a rack rent, that is a sum equivalent to the full annual value of the land. West of the Pennines, however, and of a swathe of country extending south from the Peak District, through the middle Thames valley to the Solent, estate owners tended to eschew both annual tenancies and leases for terms of years in favour of lifeleasehold. Under this system tenants were expected to purchase their tenancies by payment of lump sums known as fines. Thereafter they rendered only a small annual rent representing a mere fraction of what their land was worth, and described variously as a reserved rent, lord's rent, chief rent, head rent, old rent, or conventional rent, according to district. In some limited areas, for instance in parts of Lancashire and Cheshire, and on most of the estates belonging to the Church, leases were for the lives of three named individuals, but in most of the region it was normal for leases to be granted for 99 years (or occasionally some shorter terms such as 60 years) determinable upon three lives. These two forms of leasehold were different in some technical respects which lawyers regarded as important, but for the purposes of this article they may

be regarded as identical. Together with copyhold for lives they were often known by the generic name of 'lifeholds'.¹

II
So much may be familiar enough, but should an enquirer be curious to know more about the lifehold system he will find that little enough has been written about it, least of all with reference to the period now under discussion.

Typically the lives named in western copyhold grants or leases were those of the tenant himself, his wife, and his eldest son, or of himself and of two children, and the system provided a means whereby the countryman could buy a life time's security for himself and his immediate dependants. At an earlier period leases for three lives were reckoned to be equivalent to leases for 21 years, and it is possible that in practice they were. However, as a result of improvements in life expectancy, there is no doubt that by the second half of the seventeenth century, if allowed to run their full length three life leases lasted considerably longer. Contemporaries were well aware of this. A manual published in 1663 argued that they were, on average, equivalent to leases of 33 years, or at the very lowest reckoning 27. And in the same year a Lancashire landlord, whose predecessor had granted fresh three life leases to 49 tenants in 1632–33, consulted his records and discovered that only one had yet fallen in and that in five cases all three lives were still in

¹For some discussion of lifeleasehold in the century or so before 1640 see L Stone, *The Crisis of the Aristocracy 1558–1641*, Oxford, 1965, pp 307–22; also E Kerridge, *Agrarian Problems in the Sixteenth Century and After*, 1969, esp ch 2.

being.² Not only did life leases last longer than those for years which prevailed in the east, but in practice they established hereditary tenancies since it was customary for landlords to allow automatic renewals. Indeed, in most districts where they prevailed, the final expiry of leases for lives or 99 years determinable upon lives was somewhat unusual. The normal practice was for each life to be 'renewed' upon payment of the appropriate fine when, or soon after, it had 'dropped', and only if a leaseholder was utterly unable to afford the fine, or had no heirs to succeed him, would he fail to keep his lease 'filled up'. Landlords were generally anxious that they should do this, for it kept their income from fines as steady as possible. Some of them actually inserted a clause into their leases obliging the lessees to renew as each life dropped: in the case of the Mostyn estate at Beeston and Peckfarton (Cheshire) they were to do so within twelve months if the landlord required it (1746).³ If a tenant was unwilling or unable to renew, or to do so on the landlord's terms, then the latter could secure a fine nevertheless by selling a reversionary lease to someone else. In practice, therefore, most of the fines owners received were for renewals of one or two lives rather than for the grant of fresh leases. Of course it was always open to them to refuse renewals so that their grants would eventually expire and the holdings fall back into hand, enabling them to reorganize their farms unhampered by any tenant right, or to re-let them on different terms. In practice, during most of the period, this was most commonly done by landlords who wished to convert copyhold tenure for lives into leasehold for 99 years determinable upon lives, but otherwise (as we shall see) was relatively unusual.⁴

Along the broad frontier separating the area of tenancies for years and rack rents from that

of lives and fines there were inevitably districts, for instance in the west Midlands and the central south, where the two forms of tenancy were found side by side, different estates or even different manors on the same estate adhering to different systems. Nor was the division of the country into two zones of tenancy of very long standing in the later seventeenth century, for it had only come into existence as a result of changes which were still in progress in the middle of the century. Rack rents and relatively short lettings had always been commoner in the east than the west, but in the mid-sixteenth century leases for lives and for long terms of years (30, 40, or even 60) had still been quite usual and the practice of taking fines was widespread. Lease terms had tended to get shorter as the century wore on, and by the end of Elizabeth's reign rarely exceeded 21 years, but the shift to rack rents came later and may not have got fully underway until the generation before the Civil War.⁵ Landlords who took fines were obtaining an advance payment of rent, or to look at it in another way were selling their tenants annuities, in the form of the income that their farms could be expected to yield, for the terms of their leases. Either way the calculation of the fine had to take account of the interest that would otherwise have accrued to the tenant on his capital, the advantage of which was to pass to the landlord, and at compound rates this inevitably cost the latter dear. How much he sacrificed, and how much the tenant gained from a transaction of this type, an example will make clear.

Let us compare the gross yield to the landowner from two farms, both worth £50 a year, one leased for two successive terms of 21 years, the other leased for 99 years determinable upon lives. We shall assume for the sake of simplicity that land values remained stable, and that the lives named in the lease 'dropped' at nine-year intervals. At the end of the first

²H Phillippes, *The Purchaser's Pattern*, 1663, pp 21-3; T E Gibson (ed), *A Cavalier's Note Book*, 1880, pp 144-5.

³Univ College N Wales Library, Mostyn 6088, 6090: particulars of Beeston and Peckfarton, 1746.

⁴See below pp 85-7, 90-1.

⁵*The Agrarian History of England and Wales IV*, Cambridge, 1967, pp 686-7. Stone, *Crisis of the Aristocracy*, pp 320-1.

21-year period the landlord would have received, if the farm were well tenanted, $\pounds 50 \times 21 = \pounds 1050$, from the rack rented holding. The calculation for the other holding is inevitably a little more involved, and we must make some further assumptions. Let us suppose that the reserved rent was $\pounds 1\ 10s\ 0d$; that the lease was sold initially for thirteen times its net value to the lessee, ie the rack rent value of the farm less the reserved rent or $\pounds 48\ 10s\ 0d$; and that fresh lives were inserted into the lease to replace the dead ones at two years' purchase on each occasion.⁶ After 21 years the property would have yielded $\pounds 1\ 10s\ 0d \times 21 = \pounds 31\ 10s\ 0d$, plus $\pounds 48\ 10s\ 0d \times 13 = \pounds 630\ 10s\ 0d$, plus 2 ($\pounds 48\ 10s\ 0d \times 2$) = $\pounds 194$,⁷ altogether $\pounds 856$. Up to this point the difference in the gross return from the two forms of letting was only $\pounds 194$, significant not inordinate and, as we shall see, probably considerably less in net terms. In the second period of 21 years, however, the difference would be very much greater, for the first farm would again produce $\pounds 1050$ whilst the second would yield only $\pounds 1\ 10s\ 0d \times 21 = \pounds 31\ 10s\ 0d$, plus 2 ($\pounds 48\ 10s\ 0d \times 2$) = $\pounds 194$,⁸ which comes to no more than $\pounds 225\ 10s\ 0d$.⁹

A landowner who could afford to allow his outstanding leases to expire without taking any fines for renewing them would, therefore, in the medium term, benefit very largely from a change to rack rents; and the longer his leases had been for, and the larger the proportion of the value he had formerly taken in the form of fines, the more he would gain. A further advantage would be a more regular income, and if his estate had been leased for lives, above all a more predictable one. For if he had depended heavily on fines forthcoming upon the death of his tenants, it was inevitable that his receipts would fluctuate from year to year, and the random

chances of life and death ensured that fluctuations would sometimes be enormous. Thus on the estates of Lord Petre in Devonshire, Somerset and Gloucestershire, which were let almost entirely for 99 years determinable upon lives, receipts averaged $\pounds 2243$ a year between 1689 and 1710, but varied from as little as $\pounds 1189\ 5s\ 9d$ in 1694 to as much as $\pounds 3800\ 3s\ 10\frac{1}{2}d$ three years later.¹⁰ Nevertheless there was a financial penalty to be paid in the short term for getting rid of fines, and the very circumstances in which the long-term benefits were greatest were those in which this penalty would be heaviest. For where a high proportion of the value of leased holdings had been taken in the form of fines, a decision to forego them would, for a period, leave the landowner with only very low reserved rents by way of income from the majority of his farms, and it might be many years before enough of the old leases expired to offset this. This seems to have been one of the reasons why in the north-west, along the Welsh border, and above all in the south-western peninsula, little progress was made in converting beneficial leases to rack rent tenancies in the seventeenth century, or indeed in the first half of the eighteenth either, for the custom in these districts was for almost the whole value of a letting to be taken as fine. On Lord Poulett's manors in Devonshire in 1700 rents varied from as little as one shilling (for a holding with an improved value of $\pounds 3$ per annum) to $\pounds 2\ 19s\ 0d$ (for one worth $\pounds 26$ per annum). One farm worth $\pounds 60$ a year yielded only $10s\ 3d$ in rent. On another estate in the same county consisting of the manors of Potheridge, Dolton, and Cherubere, in 1690 1225 acres of land were valued at $\pounds 585\ 10s\ 0d$ but actually paid a mere $\pounds 33\ 0s\ 10d$ per annum in rent.¹¹ Outside the south-west a higher ratio of rent to fine was not infrequently found, but throughout the western part of the country the balance was

⁶For the assumptions in this calculation, see below p 89.

⁷ie for renewal fines in years 9 and 18.

⁸ie for renewal fines in years 27 and 36.

⁹Technically interest at the legal rate ought to be allowed to the landlord on the money paid to him in fines, but to do this would be unrealistic since fines were almost invariably treated by their recipients as income and not as capital.

¹⁰BL, Add MS 28251, fol 369.

¹¹Somerset RO, DD/PT/box 46: survey of Poulett lands in Devon, 1700. Northants RO, Grafton MSS G 2954: survey of Potheridge, Dolton, and Cherubere, 1690.

invariably heavily tilted towards the latter. By contrast in the east midlands, the south-east, and the eastern counties, fines had commonly represented only a small part of it, and sometimes were little more than a supplement to an almost fully economic rent. Thus on the four remaining farms on his huge Essex estate for which Lord Petre still took fines in the 1650s, the reserved rents amounted to £458 10s 0d per annum and the fines together totalled only £560. In respect of lands at Ashwellthorpe (Norfolk) in 1644 Sir Thomas Knyvett instructed his wife to demand 'a year & halfe valewe' of one tenant, whilst for another he decreed that 'a gentle yeers profit shall satisfy'.¹² On such properties it was correspondingly easier to dispense with fines, and hardly any owners continued to demand them by the last quarter of the seventeenth century. Curiously the depression of agricultural prices in the later seventeenth century, and the resultant fall in land values, which undoubtedly contributed to the preservation of the fining system further west, was probably what finally brought it to an end in the east. For where fines were small in relation to annual rents, if landlords were faced by the needs to reduce the total rent they demanded from their tenants, the first concession they would be inclined to make would be to waive the former.

A second relevant consideration is that where fining was practised only on a minority of holdings, or even where the two systems existed side by side in roughly equal proportions, there would be many owners who had property let on beneficial terms, but who also had other holdings let on rack rents. Such people could much more often afford to allow their beneficial tenancies to expire than those without this alternative form of income, although they did not necessarily avail themselves of their opportunity. Thus, once it had been accepted by the gentry that they would be better off with rack rents, there was

no major obstacle in the way of change. But where the fining system was all but universal, and lettings by landlords at rack rents almost unknown, there would be few of them who did not depend upon the periodic receipt of fines for meeting inescapable financial commitments. Moreover those few would include very large landowners who derived the bulk of their income from outside the region, but whose financial strength was frequently matched by lack of interest in their outlying properties. They would also include moneyed purchasers with sources of income or reserves of capital entirely independent of land ownership, and who could greatly increase the rate of return from their acquisitions if they allowed outstanding beneficial leases to expire. However, in most of the western third of the country, as in other distant parts of the kingdom, the volume of purchases by men of this type seems to have been much lower in the mid and later seventeenth century than it had been earlier.

By or soon after the Restoration fining and beneficial leases had virtually disappeared in eastern England, and had given a good deal of ground in the Midlands and central south, but in the later seventeenth and early eighteenth centuries the change-over to rack rents seems to have lost force. The ending of the great inflation, and the succession of agricultural depressions which characterized this period, made very long lease terms appear more attractive to landlords than they had done in the early seventeenth century. Likewise the balance of financial advantage between fines and rack rents was less clear cut once receipts from the latter began to fall in the wake of mounting arrears, bankrupt tenants, empty farms, and irresistible pressure from tenants for rebates and reductions. In difficult times the purchasers of beneficial leases might sometimes be unable to pay the fines they had bargained for, at least by the agreed date, but usually they would manage, by borrowing if necessary, and thereafter the landlord would have no further financial anxieties on account of the farms in question for a long time to

¹² Essex RO, D/DP E26, ff 55, 59, 63, 67v. B Schofield (ed), *The Knyvett Letters (1620-1649)*, 1949, p 142.

come. His reserved rents were unlikely to fall into arrears, however bad conditions became, save perhaps on large and inefficiently run estates belonging to absentees whose agents simply did not bother to collect them for years at a time. This was because the tenants would lose the holdings for which they had fined if they did not pay, and anyway the amounts involved were not large in relation to the earning capacity of their farms. If a tenant wished to give up his farm or went bankrupt it need be of no great concern to the landlord, for the lease would be sold and the purchaser would assume responsibility for the annual rent. In the late seventeenth century there may, therefore, have been some revival of fining on some estates in districts where it had not yet become extinct. Acute agricultural depression in the 1680s, and the consequent difficulties he encountered in maintaining the level of remittances from the property under his care, made Sir Stephen Fox's agent at Redlynch (Somerset) advise his master to convert rack rent tenancies to beneficial leases. 'I wish', he wrote, 'your estate here was every foot sett, which would be both easy and profitable for you.' Fox did little in that respect in Somerset, but on his large Wiltshire estate which was already largely out on lives he changed the form of tenancy on four out of the nine rack rented holdings between 1682 and 1685.¹³

Two other features of beneficial leases made them relatively attractive at this time compared to other forms of tenure: they invariably imposed upon the tenant full responsibility for repairs and maintenance, and they freed the landlord from liability to pay parliamentary taxes which in the case of rack rent tenancies was almost inescapably his. The issue of repairs always provided an argument for leaving small farms out on lives, for the cost was disproportionately heavy on these, but it must have assumed greater importance in the eyes of landlords than it had

had formerly when the generally upward movement of landed incomes finally came to an end with the Civil War. And there is no doubt whatsoever that the matter of taxes acquired a significance it had never had before, first in the 1640s and 1650s, and then again with the advent of the land tax at four shillings in the pound in 1692. In 1710 the chief agent to the Duke of Newcastle wrote to inform his employer that he had leased out some farms on beneficial terms which had formerly been let on rack rents, and explained that 'This method will excuse your Grace from what you abhor, I mean Taxes and repairs, and will ensure the succeeding rent beyond all fadventure.'¹⁴ Land tax was levied at less than the full four shilling rate for almost the whole of the period from 1713 to 1739, and indeed was often at only one or two shillings. The 1740s, however, saw the return of wartime taxation, and this coinciding with yet another bout of severe agricultural depression in many areas, apparently once again made beneficial leases appear more attractive than rack rents to some landowners. In 1740 the prospect of the Russell estate having to assume responsibility for taxes and repairs was enough for one of the Duke of Bedford's stewards to advise against proceeding with a scheme for getting rid of beneficial leases on group of farms near Bridport in Dorset. And on the Duke of Kingston's estate some tenancies which had formerly been on lives but had been converted to rack rent lettings, were once again leased for lives at this time. At Bradford-on-Avon (Wilts) it was not until 1765 that the duke resumed the policy of getting rid of leases for lives.¹⁵

III

The fines paid by tenants upon the grant or renewal of lifeholds were arrived at by nego-

¹³Dorset RO, D 124. Estate. Somerset (box 173): Thomas Allen to Sir S Fox, last July 1682. C Clay, *Public Finance and Private Wealth*, Oxford, 1978, pp 204-5.

¹⁴Nottingham Univ Library, PW 2/279: P Walter to Duke of Newcastle, 4 Oct 1710.

¹⁵Beds RO, Russell MSS R3/15: Andrew Way to Robert Butcher, 12 April 1740. G E Mingay, 'The Agricultural Depression, 1730-1750', *Econ Hist Rev*, 2nd Ser VIII, 1955-56, pp 329-30.

tiation between them and their landlord, and the first and most important step in the process was an agreement between the two parties on what the holding in question was really worth. On a small estate in the hands of a resident landowner the truth of the matter would be well known to the proprietor, or it would be relatively easy for him to ascertain it. However on large estates, or on estates owned by absentees who took little interest in them, it was quite otherwise, especially in districts where several holdings held by distinct leases (and perhaps from more than one owner) were cultivated as a single unit. A survey, or even a proper inspection, of each holding every time it came up for renewal was generally out of the question on grounds of expense, and in practice, at least in the south-west, owners and their agents arrived at valuations 'by book'. In other words they turned to their estate records, to their manorial 'surveys' which set out the name of each holding, the lives by which it was held, the quit rent and other dues its tenant owed, and a note of renewal fines paid in the past, but usually no more economic information than a rough estimate of its acreage and a value in round figures. Compilation of these surveys was an immense task, and though on well run estates they might be revised once every twenty or thirty years, on others (and probably more commonly) this was neglected. The Lords Petre, for instance, had left their property in Devonshire and Somerset largely unattended for generations until in 1714 the agent there wrote in desperation 'there has been no general survey or valuation taken of the Western Estate for above 100 years last past, and . . . the old survey books themselves are very imperfect in several essential particulars, there being no value at all upon many estates, and others are found to have two values, and those so different that no useful judgement can be made of them'. As a result, he continued, 'there is no foundation or grounds at present for a steward to go upon to sell any one estate so that he can answer it either to himself or his

Trust for what he does'. Not knowing the proper values he 'is lyable to be Imposed upon in every bargain he makes, and the tenants who do know to be sure will not deal unless they can make their market' [*ie* strike a highly favourable bargain], for if there were the slightest grounds upon which to base a claim for a reduction in value they would press it to the utmost, whilst they would ensure that any increases in value were concealed from the steward's knowledge. The administration of the Petre estate may have been untypically inefficient, although John Richards writing in 1730, did not regard the use of surveys a century old as anything out of the ordinary, and there can be no doubt that a significant proportion of western lifeholders paid fines calculated on the basis of an unrealistically low valuation.¹⁶

Once lessor and lessee had agreed upon the gross value of the holding, this was converted to a net figure by deducting the reserved rent and possibly certain other out-goings, and the approximate fine arrived at by multiplying this by the number of years' purchase appropriate to the length of term to be granted. This might then be rounded up or down to allow for special factors, like the cost of particular repairs or improvements to be borne by one party or the other, or as part of the normal process of bargaining. During periods of agricultural depression the sheer inability (or unwillingness) of tenants to pay the full amount demanded was inevitably an important consideration, for if any lives remained in being the landlord could not simply accept a higher bid, and if he failed to agree with the tenant in possession he might get no fine at all until the last life had dropped. In theory he could sell a reversionary lease to a third party to take effect when the outstanding one expired, but in such circumstances it was unlikely that he would be able to strike a markedly better bargain, and in any event to sell a man's holdings over his head

¹⁶BL, Add, MSS 28251, fol 372. J Richards, *The Gentleman's Steward*, 1730, p xxix.

gained a landlord a bad name. Once the amount of the fine had finally been agreed upon the sum was discharged by the tenant in two or three instalments. In practice the number of years' purchase charged for fresh lifehold grants, and for renewals to leases and copies in being, varied somewhat at any given time from district to district, and even within quite a limited district. This might reflect the traditional usage of a particular estate. Alternatively it might be the corollary of changes over time in the relative values of different types of land. Likewise a higher or lower multiple could be used to off-set glaring discrepancies between the book value and the real value of a holding which had developed for any other reason. It might also reflect the strength or weakness of the bargaining positions of either landlord or tenant, or the existence of competition for a particular holding. Thus in 1717 Sir Stephen Fox's agent in Wiltshire informed his dead master's executors that one John Thring wished to add a third life to his copyhold in Codford Manor, and that although the usual fine was two years' purchase 'he seems to be very Desireous to have it so I hope to make him pay 2 years & $\frac{1}{2}$ if you please to Suffer me so to Doe'.¹⁷

Most of the available evidence about fining rates derives from the south-west, and fragmentary though it is, it consistently points to the conclusion that there at least they remained remarkably stable for most of the period. In Dorset in the 1650s, and indeed as far back as the 1610s, and in Wiltshire, Somerset and Cornwall in the 1670s, the going rates were from 12 to 14 years'

purchase for a new lease of 99 years determinable upon three lives, six to seven years' purchase for adding two lives to one in being, and two years' purchase for adding one to two in being.¹⁸ Half a century later the same range of rates apparently continued to prevail, and although by then 12 years' purchase for a fresh grant was probably unusually low it was reported to be the custom on the Duke of Bedford's manor of Milton Abbot (Devon) in 1726. However, by the 1720s at the latest a definite upward movement was underway, so that in following decades the normal range was between 14 and 16 years' purchase for 99 years determinable upon three lives and, in practice the most important rate, about two and a half years' purchase for the renewal of a single life.¹⁹ Finally in the last third of the century there was another upswing in the price of leases which carried the normal rate in the south-west up to 18 years' purchase.²⁰ For other parts of the country one can speak with less assurance, but for Shropshire, Cheshire and Lancashire evidence for the mid-seventeenth century suggests a going rate of 10 years' purchase for a lease of 99 years determinable upon three lives. Although the significance of this apparent difference is not altogether clear, it is likely to reflect a different procedure for calculating the fines,

¹⁷Dorset RO, D 124 Estate. Wiltshire (box 178): J Pavey to 'Sir', 2 Feb 1716/17.

¹⁸J H Bettey, 'Agriculture and Rural Society in Dorset 1570-1670', unpublished PhD thesis, University of Bristol, 1977, pp 215, 219-20. I am also indebted to Dr Bettey for several conversations in connection with the preparation of this article. Dorset RO, D 14 Manorial. Wiltshire (box 19): surveys of Allington; and Family (box 236): surveys of Maddington, Farley, and Plaitford. Somerset RO, DD/SG. 32. Cornwall RO, DD/EN 971/1 and 2.

¹⁹Wilts RO, 383/255: survey of Stourton, 1704; 298, documents relating to W Knoyle, 1730s; 175, survey of Charnage 1743; and 193, survey of Holwell, pre 1760. Dorset RO, D 124 Estate. General (box 170): particular of Somerset estate, 1712; Family (box 236): 'A particular of leases . . . signed . . . Janry ye 2 1713'. Devon RO, Bedford MSS. T 1258 M/E 48b: survey of Milton Abbot, etc, 1726. E Laurence. *A Dissertation on Estates upon Lives and Years*, 1730, pp 5-6. Richards, op cit, pp 12-13. Anon, *The Reasonableness of Church and Colleges Fines Asserted*, 1731, p 11. Wilts RO, 727/ particulars of Fifield, 1739; Enford, 1755. Savernake MSS correspondence: 'Observations on the particular of Pewsey', c1765. Longleat MSS: particulars of Godwell and Chapmanslade, c1733. BL, Add MSS 51409, fol 10, 51410, fols 1-2: surveys of Charlton and Singleton, and Winterbourne Bassett.

²⁰Wilts RO, 727/ particular of Manningford Bruce, 1770; 490/940, particular of Lavington Rector, 1772; 383/133, particular of Bonham, 1785. Marshall, *Rural Economy of the West*, I, p 72.

probably one based upon real rather than 'book' values.²¹

Throughout the period textbooks were available which provided tables of the appropriate rates at which to sell beneficial leases, given various assumptions about the age of the lives upon which they were to depend and the rate of interest to be allowed to the purchaser.²² However, it is doubtful how much influence these in fact had upon the rates that actually prevailed. Laurence and Richards, both writing in 1730, made it clear that proper rules were seldom adhered to by those selling leases, and the latter felt it necessary to deal at some length with the argument that 'the custom of leasing in particular places is the only rule for valuation, at least the only one which will be follow'd.'²³ Why rates of fining increased when they did, seemingly between 1720 and 1740, and again from the 1760s onwards, can only be a matter for conjecture. As far as the first of these periods is concerned, it coincided with a sustained upward movement in the price of freehold land,²⁴ which must have made many owners conscious of the high return their tenants were getting through the purchase of leases at the traditional rates. It was also a time of unprecedentedly low rates of interest on borrowed money. Moreover the 1710s and 1720s, though not the 1730s, saw higher agricultural profits and greater tenant

competition for land, which must have brought about a marked improvement in the bargaining position of landlords. At any rate it must have been some such combination of factors which enabled the latter to break through the barrier which tradition, reinforced by the effect of successive periods of agricultural depression upon the ability of farmers to pay higher fines, had for so long imposed upon any alteration in the basis of calculation.

IV

Precedent usage inevitably had a powerful effect upon the fining rates landlords charged for grants or renewals of leases for 99 years determinable upon lives, because in practice, although not in law, this form of tenure was a quasi-customary one. This was exemplified by the fact that on some west-country manors both life leaseholders and copyholders were known collectively as 'conventional tenants'. Nevertheless there were important differences between customary land proper and non-customary land, for the customs of some manors were highly favourable to the tenants and everywhere imposed at least some limitations upon the landlord's freedom of action in respect of his tenants and their holdings. Thus since the sixteenth century, if not before, there had been a tendency for the amount of land held under customary tenures proper to diminish as a growing proportion of it was converted to freehold and leasehold. In the east, where copyhold of inheritance was the most common form of customary tenure, this took the form either of landlords buying out their tenants' hereditary interests, or of copyholders enfranchising their tenancies by buying the freehold from the lord of the manor. In either case the copyhold was merged with the freehold, and the land either farmed as demesne by its owner or let out at a rack rent. In the west where copyhold was usually for lives, the landlords were in some senses in a stronger position: they did not need to buy

²¹E Hopkins, 'The Re-leasing of the Ellesmere Estates, 1637-42', *Ag Hist Rev*, X, 1962, pp 22-3. Gibson (ed), *A Cavalier's Note Book*, p 254. Bridgeman and Bridgeman, 'The sequestration papers of Sir Orlando Bridgeman', p 36. See also, although it relates to the period c1610, 'The Memoranda Book of James Bankes' in J Bankes and E Kerridge (eds), *The Early Records of the Bankes Family at Winstanley*, Chetham Society, 1973, pp 21-33.

²²The first of these seems to have been Thomas Clay's *Briefe and Necessary Tables for the Valuation of Leases, Annuities etc.*, 1622. Others published in the early part of the period included H Phillipps, *The Purchasers Pattern*, successive editions from 1654; and S Primatt, *The City and Country Purchaser and Builder*, 1667.

²³Laurence, *Dissertation on Estates*, pp 1-10. Richards, *Gentleman's Steward*, pp xvii-xviii.

²⁴C Clay, 'The price of freehold land in the later seventeenth and eighteenth centuries', *Econ Hist Rev*, 2nd ser, XXVII, 1974.

their tenants out (although they sometimes did so in order to secure immediate control of their land) for they were not obliged to renew lives as they dropped, and they could eventually acquire unencumbered possession simply by waiting. On the other hand, as we have already seen, this meant doing without income from fines for a considerable time before the holding fell into hand.²⁵ In practice, therefore, if they wished to be rid of customary tenures they usually took advantage of applications for the renewal of a dropped life to oblige their tenants to surrender the unexpired portion of their copyhold grant, and in return gave them a lease on almost, but not quite, identical terms. This involved the landlords in no interruption in the flow of renewal fines, but achieved the end of removing his relationship with the tenant from the ambit of manorial custom, and making it the subject of a private contract. As for the copyholders, the fact that manorial lords were under no obligation to renew their grants once the last lives had expired meant that they could not resist a change to leasehold if the latter were determined on it. Moreover by surrendering the outstanding portion of a copyhold term and accepting a fresh lease for 99 years determinable upon three lives in exchange, they must usually have secured a renewal for a lower fine than they would otherwise have had to pay, partly because they will have received some consideration for having agreed to the surrender, and partly because in many districts leasehold fining rates were slightly lower than copyhold rates anyway.²⁶ Nor, as we shall see, did the acceptance of a lease make much practical difference to the tenant, even if it did open the way to changes which might affect his descendants or successors.

This conversion of copyhold into leasehold for 99 years determinable upon three lives was

a phenomenon that was particularly marked in the south west, and indeed in Devonshire copyhold was already virtually extinct on manors in private hands by the end of the period. In other parts of the region, seemingly those where more land was held in large estates owned by absentees, change proceeded more slowly: in Dorset, for instance, it had not gone far by 1700 although the pace quickened markedly in the eighteenth century.²⁷ Elsewhere in the western part of the country the conversion of customary tenures into leasehold was less marked in this period. Particularly in the far north-west they remained vigorous, and there is no sign that their extent diminished before 1750. This was partly because custom gave the landlords certain advantages which were absent further south, notably the right to levy a fine upon the tenantry upon their own succession to the estate, and partly because a custom of inheritance put the latter in a strong position. Nor was there much buying them out, whether by indigenous gentry interested in consolidating their inherited properties or by moneyed outsiders building up new ones. The former were generally too poorly off to afford it, and the latter, in that remote region, were very few in number.²⁸

V

A large proportion of the land held by lease in the western half of the country in this period had thus been copyhold in the recent past. Indeed essentially western leasehold *was* copyhold, deprived of the features which the landlords found obnoxious by the breaking of the legal dependance upon manorial custom. In very many practical respects the two types of tenure were virtually identical, and the terms of the leases continued to reflect what custom, in a non-technical sense, prescribed.

²⁵ See above p 85.

²⁶ For the difference in value between copyholds and leaseholds see references cited in nn 19 and 20 above. The reason for the higher fining rates upon copyholds was the widespread existence of the custom of widowhoods: see below pp 93-4.

²⁷ W G Hoskins, 'The Occupation of Land in Devonshire 1650-1800', *Devon and Cornwall Notes and Queries*, XXI, 1940-41, pp 2-3. Bettey, 'Agriculture and Rural Society in Dorset', pp 183, 212.

²⁸ J V Beckett, 'Landownership in Cumbria, c 1680-c 1750', unpublished PhD thesis, Univ of Lancaster, 1975, pp 140-2, 144-7.

Certainly Edward Laurence, writing in 1730, considered that the change from one to the other would be in no way disadvantageous to 'an honest tenant', by which he meant one who did not try to exploit custom 'unfairly' to his landlord's prejudice.²⁹ Lessees paid the same diminutive quit rents to which copyholders were liable. They generally had to pay small rents in kind (such as a capon or two) in addition, and not infrequently were obliged to render a few days' labour every year, carting, ploughing, reaping, or threshing. It was also very common, though again not universal, for them to be liable to the ancient death-duty of the heriot, which had formerly been one of the hallmarks of serfdom. This gave the landlord the right to take the best and most valuable item (the choice being his) from amongst the lessee's moveable goods each time a life dropped, and although payment of a sum of money instead was often specified, whether or not to accept the monetary alternative seems as often as not to have been left to the owner's election. Especially in the south-west it was common for lessees to be obliged to do suit of court, and in some instances (for instance the mid-seventeenth-century leases granted by Ralph Sadleir of properties in Henbury, Gloucestershire), were specifically covenanted to obey manorial bye-laws. And both in the south-west and elsewhere, as on the Bridgewater estate in Shropshire, suit of mill, that is an obligation to have their corn ground at the manorial mill, was imposed on them. In Sadleir's leases the virtual identity of the conditions of tenure between copyhold and leasehold was made quite unambiguous by the wording of a covenant which required the rendering of 'A harriott in kinde as copyholders of the Manor of Henbury are accustomed to doe and doing suit of court at the Manor of Henbury as copyholders of the said Manor have done and are used to doe'.³⁰

²⁹ Laurence, *Dissertation on Estates*, p 24.

³⁰ Bristol City RO, AC/WO/12 (31, 32); AS/22/2, 28/2, 32/2, 39/1, 49/1. D Hey, *Myddle*, Leicester, 1974, pp 80-1.

Beyond these matters beneficial leases usually went no further than to set out a very few conditions of tenure. The tenant was to keep the premises in good repair. He was not to cut timber for sale, though he might take what he needed for the maintenance of his buildings, fences, gates, and equipment, besides 'lops and tops' or 'underwood' for domestic fuel. He was not to plough up old pasture or meadow without obtaining permission, and he was not to assign his lease or sub-let without permission either. It was also common for tenants to be required to plant a certain number of trees, usually oak, ash or elm, in their hedgerows every year, a provision which was essential if there was to be a constant succession of timber available for repairs in the future: Lord Petre in Devon, Lord Gower in Staffordshire, and the Earl of Bridgewater in Shropshire all demanded this in the mid- or later seventeenth century. So did Earl Poulett in Somerset in the mid-eighteenth century, for instance at Chaffcombe. Some landlords, including Gower and Bridgewater, also demanded that their tenants use on the premises all the farm manure produced there, but this requirement was by no means universal and neither Lord Petre nor Lord Stourton (on his Wiltshire estate) wrote it into their leases. It seems to have been less common in the south-west and it may have been impossible to insist on it where units of cultivation did not coincide with the units of tenure, and farms often consisted of land held from more than one lessor, or were part lifehold and part the lessees' own freehold.³¹

The conditions attached to leases for years determinable upon lives were thus frequently no more than the minimum the common law took for granted that the holder of any lease would be subjected to.³² In practice they probably very often represented the landlord's

³¹ Devon RO, 123 M/L, passim. Wilts RO, 383/passim, for instance 720, 721, 726. Somerset RO, DD/PT box 20. Wordie, 'A Great Landed Estate in the Eighteenth Century', unpublished PhD thesis, University of Reading, 1967, pp 361-2. Hey, loc cit.

³² G Jacob, *A New Law Dictionary*, 1729 ed, sub 'lease'.

interpretation of the usages which had formerly regulated customary tenancies in the manor in question. Under customary tenure the landlord had to rely primarily upon action in the manor court to defend his rights against tenants who were encroaching upon them, for instance by abusing the custom which allowed them to take wood for repairs. But quite apart from the fact that custom might permit the tenants to go further in some directions than the landlord would have wished, manorial juries could not necessarily be relied upon to uphold presentments brought before them, and the 'ameracements' they imposed for breaches of custom or local bye-laws were often totally inadequate deterrents. With the grant of leases, however, the landlord placed his tenants under covenants to restrain them from prejudicial practices and to enjoin them to beneficial ones. A penalty for breach of covenants could be written into the leases, for instance an increase of rent of £2 or £5 for every acre of pasture ploughed up, or a payment of £1 for every timber tree illegally lopped. But even if no such penalties were laid down landlords could always threaten immediate legal proceedings for damages or to secure ejectment, against a tenant who refused to toe the line. The change from customary tenure to leasehold thus meant little change in traditional conditions of tenure, but involved the careful spelling out of exactly what those conditions were, and the provision of a much more effective means of enforcing them. Probably the landlord-tenant relationship was not greatly altered in practice on the majority of estates, at least before the middle of the eighteenth century. Of course once the legal basis of the relationship had been changed from manorial custom to written contract there was no obstacle in the way of a landlord who wished to modify it, however radically, by the insertion into his leases of covenants completely unknown to custom. But few if any landlords seem to have taken advantage of this before 1750.

One of the most tangible benefits which accrued to landlords in the south-west when

they converted copyhold tenure into leasehold was that they rid themselves of the custom of 'widow's free bench' which was widespread in the region. This allowed the relicts of the male lives upon which copyhold tenancies depended to retain possession of the holdings for life, subject only to the proviso that they did not re-marry and (on some manors) remained chaste as well. As a result copyhold grants which were nominally for three lives were in effect for four or more. In normal circumstances the value of grants was not greatly increased by the additional lives, especially as they were female ones, and anyway the difference was taken account of by the somewhat higher level of fines paid for copyholds. For instance on the Somerset manor of Shapwick cum Moorlinch, a set of 'rules for selling' drawn up in 1677 laid down a rate of 14 years' purchase for a fresh lease of 99 years determinable upon three lives, and 15 years' purchase for a copyhold grant for three lives.³³ However, the landlord's calculations could be upset when a holding depended on a single elderly male life, and that life chose to marry a young girl who survived him for a long period. This was a device sometimes resorted to by widowers who had neglected to renew or had been unable to do so, as a means of providing for children by an earlier marriage. How common it was is impossible to say, for details only come to light when a subsequent inter-family dispute caused a breakdown in arrangements and a lawsuit, but one early eighteenth-century observer thought it 'no unusual thing' in Devonshire, and several authorities agreed that it was relatively common in Dorset at the end of the century.³⁴ The custom was not a new one, but it may have caught the attention of landowners more frequently at this time because people were living longer, and abuse may

³³Somerset RO, DD/SG 32.

³⁴J H Bettey, 'Marriages of Convenience by Copyholders in Dorset During the Seventeenth Century', *Proc Dorset Arch Soc*, XCVIII, 1976. D A Heaton, 'A Study of the Structure of Corporate Estate Management of the Lands of the Dean and Chapter of Canterbury', unpubl MA thesis, Univ of Kent, 1971, pp 138-9.

have become more common as fining rates rose towards the end of our period. Certainly the increase in the latter meant that the landlord experienced a greater financial loss when a long-lived widow prevented him selling a fresh three-life term to a new tenant.³⁵

VI

The covenants in leases for lives were somewhat more numerous and more detailed in districts, such as parts of Shropshire and Staffordshire, where both they and leases for years were common, and tended to be fewest and briefest in the south-west. Taking the region as a whole, however, there is no doubt that western lifehold imposed far fewer detailed restrictions upon the tenants than the average eastern lease for years, and in general tenants were subject to much less close supervision by their landlords. They enjoyed what was in effect hereditary tenure, and they therefore had as good a reason as the latter for wanting to maintain their premises in good order by undertaking the necessary repairs. Likewise they could in general be relied upon to themselves eschew, or prohibit their subtenants from indulging in, farming practices like growing straw crops many years in succession on the same land which might bring an immediate gain but which would be detrimental to the soil in the longer run. And, since they would themselves reap most of the benefits, the terms of their tenure provided every incentive for them to make such improvements to their farms as their resources would permit. In 1679 Sir Robert Southwell congratulated a correspondent for being 'so intent upon the method of taking fines' on the grounds that it would not only 'tie the tenant fast' but also 'encourage him to all improvements of advancing and beautifying the estate'.³⁶ A marked contrast in the treat-

ment meted out by one Devonshire farmer to land held by different tenures was reported by the Duke of Bedford's agent in the west in 1743. The agent had been to visit the man and found him to be 'a very bad husband on the land he rents (although a very good one on his own which he holds for three lives) . . .'. He was ruthlessly exploiting the former for a quick gain, but the agent had no doubt that he would manage it very differently if he had that too for lives.³⁷ Late eighteenth century authorities like Marshall argued in a quite different sense, for they asserted that lifehold and the fining system invariably produced bad farming since it deprived the tenant of the capital he might otherwise have used to improve his farm or increase his stocking ratio.³⁸ However, it should be noted that whether or not their strictures were justified at the time they were written, they are inapplicable to most if not all of the period we are concerned with, partly because fining rates were much lower, and partly because less capital was required to operate a farm in what contemporaries regarded as an 'improved' fashion.

The coincidence of interests between landlord and tenant where life leases prevailed meant that lessors were less concerned with *who* their lessees were than when they depended for their income upon rack rents paid half yearly by men whose more limited interest in their holdings provided a greater incentive to exploit for short-term gains. In such cases the choice of competent and honest tenants, adequately provided with capital to stock their farms, was of the greatest importance, and on a large estate was a major and continuing pre-occupation for the agent, since a wrong choice would cause heavy loss, not only in rent arrears but also in damage done to the value of the land. When lifeholds were granted 'out of hand', for fresh terms to unknown tenants, no doubt candidates were

³⁵A landlord could always sell a reversionary lease to commence after the death of the widow, but the rate for this would be considerably lower than for a fresh grant 'out of hand'.

³⁶HMC Egmont, II, p 84.

³⁷Devon RO, Bedford MSS, W 1258M/LP 5/6: J Wynne to ?, 27 Sept 1743.

³⁸Marshall, *Rural Economy of the West*, I, pp 43-8.

vetted with some care, but the necessity for this did not often arise since the normal procedure was for terms to be renewed whilst one or more lives were still in being. And with renewals landlords in general showed little interest in the identity of the tenant, provided that they were willing and able to pay their fines. In general, moreover, lifeholders could be left very much to their own devices, and the regular personal contact between the owner or his agent and the tenants, which occurred on properly run rack-rented estates, was much less common on those let for lives. The owner or agent needed to keep track of the lives by which farms were held, but the only direct dealings they had with the lifeholders might well be on audit days, and at the dropping of a life, when a hurried visit to secure the best beast or chattel by way of a heriot was followed by negotiations for a renewal fine. Once the fine had been paid the landlord, unlike the owner of rack-rented property, did not have a pressing interest in trying to ensure that his tenant's farming operations were yielding a profit. Nor, if he were losing money, did he have to worry about the security of rent arrears.

The management of estates let for lives, therefore, set much less of a premium on expertise in husbandry, and ability to deal with tenants on their own level, than did that of rack-rented estates. It was a much more strictly administrative task, in which the most important functions were the compilation of a set of records and keeping them up to date; receiving rents which were only likely to fall into arrears through the receiver's own inefficiency; organizing the collection of heriots; holding manor courts; drawing up the documents for the renewal of leases; and above all negotiating an endless succession of renewal fines. All these were matters which were perfectly adequately handled by attorneys, and the majority of estates let entirely for lives were probably administered by them, and with few of the inefficiencies which some late eighteenth-century

authorities considered inevitable when they were employed in this way.

There were, however, two sets of circumstances in which a landlord could not rely upon parallelism of interest between himself and his tenants to ensure that his estate was properly farmed. One of these was when he was not prepared to renew a lifehold, or when a tenant had himself decided to allow his lease to run out. Particularly likely to suffer abuse in such cases were holdings where two of the three lives had already dropped. As Lord Petre's steward observed in 1714, 'When an estate comes to hang upon one life and that life is not able to fill up, it's grave odds if that Estate be not Rack'd out & ruined', and he recommended that a special list of such holdings should be kept so that the local bailiffs would know whom to watch.³⁹ The other circumstance in which an estate out on lives might suffer was where sub-letting had become very extensive. Even then, as long as the lessees were local gentry and other members of the rural community, the landlord could usually rely on them to keep a close eye upon the actual occupiers. But it could be quite otherwise where the leases had passed into the hands of persons who live outside the district (professional men, traders or gentlewomen from some large town, for instance), who had acquired them purely as investments, and neither knew nor cared how their sub-tenants behaved provided they paid their rent. One of the subsidiary motives behind the conversion from customary tenure to leasehold in the south-west seems to have been a desire to exercise some control over sub-letting by copyholders, for manorial custom was often in practice a totally, ineffective instrument for achieving this. Certainly leases for 99 years determinable upon lives invariably included a covenant binding the lessee to seek licence to sub-let, and the penalty for unlicensed sub-letting was commonly forfeiture of the unexpired portion of the term, although if the landlord did not bother to enforce his

³⁹BL, Add MSS 28251, fol 372.

covenants matters could get equally far out of hand on a leased estate. This is well illustrated by the case of the Dunkenhagh estate in Lancashire, which for nearly three-quarters of a century after 1713 was in the hands of the heiress Catharine Walmsley, later lady and dowager Lady Stourton, an absentee who totally neglected her property. By 1787 the result of many decades of unrestricted subletting in a region of rapid commercial development was 'that the subtenants . . . through high and excessive rack Rents have commonly been reduced and under Necessity of being sold up, and obliged to quit their farms quite ruin'd . . . by which means the Buildings of the different estates have been much neglected, and are now in a most

ruinous state, and that also thro' the Hay & Fodder being continually sold off the premises, and other ill Treatments by poor and abusive occupiers, the Estates are (according to a late Calculation) made rendered worth nearly one half their real & true value, as if they had been occupied in a fair and Husbandlike manner . . .'.⁴⁰ It was thus not invariably the case that estates let for lives could be safely left to the casual oversight of an attorney preoccupied with many other affairs, but it was much less often attended with bad results than has often been asserted.

⁴⁰Lancs RO, D/DPt 23: printed circular to tenants, dated 22 Oct 1787.

Notes and Comments

ANNUAL CONFERENCE AND AGM, 1980

The twenty-ninth Conference of the Society was held at Horncastle Residential College, Horncastle, Lincolnshire, 6–8 April 1981. Papers were presented by Ms Marie Stinson, 'What Profits? Rent and Surplus in the Feudal Economy'; Dr John Beckett, 'The English Peasant: a Case of Terminological Confusion?'; Professor Maurice Barley, 'Rural Building, 1640–1750'; Dr Steve Haresign, 'The Lincolnshire Fenlands, 1870–1914'; and Mr Brian Wood, 'Open Field Farming at Laxton'. Mr Rex Russell provided an introductory lecture to the landscape history of rural Lindsey and led a splendid excursion into the landscape around Horncastle. After the conclusion of the formal part of the conference, Mr Brian Wood led an afternoon excursion to Laxton, and around fifteen of the sixty who attended the conference took advantage of excellent conditions overhead and underfoot to walk over South Field. Particular thanks were due to Mr Russell and Mr Wood for leading two excellent field trips.

The twenty-ninth AGM was held on 7 April 1981. Professor Chaloner, Professor Mingay, Dr Collins, and Dr Chartres were re-elected as the officers of the Society. Five vacancies on the Executive Committee were filled by the re-election of Dr Baker, Mr Havinden, Dr Overton, and Dr Phillips, and by the election of Dr Raine Morgan. The Society extended its good wishes and thanks to Mr George Ordish who had retired from membership of the committee after serving from the beginning of the Society in 1954. Mr Ordish had two years off the committee, enforced by

the pre-1966 provisions of the constitution, and served two terms as its Chairman, from 1957–59 and 1971–73.

In presenting the report of the Executive Committee, the Chairman, Professor Thompson commented on an active year for the Society. Compared with the equivalent point in 1980, there appeared to have been a slight fall in membership, from 828 to 818, but this was due in part to a stricter treatment of arrears by the Treasurer. Some losses had also occurred through institutions closing down. The committee had been active in its attempt to prevent the sale of Laxton, but no certain information was available on the sale or the possible purchasers. Another successful winter conference had been held jointly with the Institute of British Geographers on 6 December 1980 on the theme 'The Dissemination of Agricultural Knowledge'. The conference had attracted a record attendance of over 100, and thanks were expressed to the organizers, Drs Baker and Phillips. The next Winter Conference would again be held jointly with the IBG on 5 December 1981. The next Spring Conference was announced for April 1981 at St Andrews. The Society had also had an active year with its publications, Methuen & Co being pleased with the sales of Abel, and some sales made of Thomas Munck's book through the Society. Copies of Brewer's bibliography, *Enclosures and the Open Fields*, published by the Society in 1972 were now available free of charge to those who could make good use of them.

(continued on page 110)