

Landowners and English Tenant Right, 1845-1852

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A COMMON theme found in the literature on nineteenth-century rural history is that of the economic and social damage perpetrated by a landowning class intent on preserving its political power base. Failure to gain statutory protection for tenant-farmer investment until the late nineteenth century has been adduced as one example of this theme. Briefly, it is argued that tenant right, in the form of compensation payments to outgoing tenants for the unexhausted value of their improvements, was a necessary prerequisite to the growth of investment and therefore productivity in English agriculture. Many landowners recognized the justice of this case and, indeed, that it could prove economically beneficial to themselves. However, as a class they opposed statutory recognition of the principle because of the adverse implications for their predominant role in tenurial relationships.

The thesis can be found in the work of D C Moore¹ and, most completely and dogmatically, in that of O R McGregor. 'As the history of the game laws demonstrates only too brutally, landlords never hesitated to coerce their tenantry to accept practices which increased the amenities of their estates; among these, good farming did not figure importantly.'² Mr McGregor's stress on a 'conflict . . . between the good producing and political functions of the land' is the implicit basis of J R McQuiston's survey of the campaign for statutory tenant right in England, the only account which deals with

the latter in any detail.³ Agricultural historians have been less sure, certainly as to the impact on agricultural progress. Most would agree that 'lack of security did not make for good farming, nor did it encourage a farmer to adventure his own capital in improvements'.⁴ However, as is emphasized in the standard account of 'The Agricultural Revolution', 'many other factors also influenced the tenants' investments',⁵ while F M L Thompson has demonstrated that legal insecurity and an increase in the utilization of off-farm inputs were certainly not incompatible.⁶ Finally, in the most important study of English tenant right which has appeared up to the present, J A Perkins has outlined the positive role of landowners in the development of the Lincolnshire Custom.⁷

The Lincolnshire Custom of tenant right evolved in close association with market agricultural progress in parts of the county from the late eighteenth century. Older established county customs made varied provision for tenant changeover although the essential provision was that the outgoer should be allowed 'to reap where he had sown'. Under the Lincolnshire Custom he

¹ J R McQuiston, 'Tenant-Right: Farmer against Landlord in Victorian England 1847-1883', *Agricultural History*, 47, 1973, pp 95-113.

² C S Orwin and E H Whetham, *History of British Agriculture 1846-1914*, 1964, p 177.

³ J D Chambers and G E Mingay, *The Agricultural Revolution 1750-1880*, 1966, p 165. See also G E Mingay's review of McGregor's Introduction in *Agricultural History Review*, X, 1962, pp 58-61.

⁴ F M L Thompson, 'The Second Agricultural Revolution 1815-1880', *Economic History Review* 2nd Ser, XXI, April, 1968, pp 62-77.

⁵ J A Perkins, 'Tenure, Tenant-Right and Agricultural Progress in Lindsey, 1780-1850', *Agricultural History Review*, XXIII, 1975, pp 1-22. This supersedes earlier accounts such as D Grigg, *The Agricultural Revolution in South Lincolnshire*, Cambridge, 1966, pp 132-6.

¹ D C Moore, *The Politics of Deference*, 1976, pp 346-8, 361-2.

² O R McGregor, introduction to sixth edition of Lord Ernle, *English Farming Past and Present*, 1961, p cxxxi.

was also entitled to compensation for specified improvements made in the course of cultivation and which remained unexhausted. Arbitration was a necessary feature of all such customs; in itself this casts some doubt on D C Moore's assertion that landowners were unwilling to allow any third party intervention in tenurial arrangements.⁸ Certainly, however, when legislation essentially based on the Lincolnshire Custom was proposed, as both J A Perkins and J R McQuiston note,⁹ local landowners were to the fore in opposition. The obvious explanation, provided by McQuiston, was the fear of the (possibly long term) implications of statutory interference. The present study is designed to demonstrate that much more was involved.

The context for this is provided by the campaign for statutory tenant right between 1845 and 1852. In view of the inaccuracies and misunderstandings which limit the usefulness of McQuiston's account, the causes and nature are examined more fully than might otherwise be thought necessary. The focus, however, is on the nature of opposition to a tenant right measure. While an element of distaste for legislative interference was not absent, there is sufficient evidence to demonstrate that stereotypes of a landed class intent on preserving political privilege at any cost hardly provide a sufficient explanation of such opposition.

I

It was the 1840s which saw the beginning of a movement for tenant right. The background, in possibly the most momentous decade of nineteenth-century agricultural history, is not too difficult to trace. Within an overall context of the contemporary preoccupation with the potential of domestic

agriculture to feed the rapidly growing population of Britain, two major elements were involved. The first was the perception of momentous change in the prevailing practice and structure of agriculture. The second lay in the discovery of the Lincolnshire Custom.

'It is evident that we have entered upon a new era in the history of agriculture.'¹⁰ Whatever the precise timing of the beginning of the 'Second Agricultural Revolution', the perception of a radical transformation was first generally voiced in the decade after 1836, parallel with the foundation of numerous agricultural societies, including the Royal Agricultural Society in 1838. Attention focused on two major features: the utilization of off-farm inputs of feeding stuffs and fertilizers, and the potential of drainage, especially with the mass production of cheap pipes, for increasing productivity on heavy soils. Of these it was the new off-farm inputs, with rapidly rising imports of guano catching the agricultural imagination most dramatically,¹¹ which had the most immediate implications for change in tenurial arrangements. In the 1840s their introduction imparted a new urgency to the existing concern over the implications of the prevailing lack of security for tenant investment.

The provision of the new inputs was obviously a function of the farmer and, equally obviously, required an increase in his working capital. Unlike the application of traditional off-farm inputs such as marl and lime, which were relative infrequent operations clearly distinguishable from normal cultivation practice, the use of the new fertilizers and feeding-stuffs were part and parcel of the latter. Artificial cake was fed to cattle and sheep as much if not more for its

⁸D C Moore, *op cit*, p 348. While arbitration under custom was normally concerned with the arrangements made between outgoing and incoming tenants, the owner was directly involved when resuming a holding and, indirectly at least, it necessarily had implications for the rental contract.

⁹McQuiston, *loc cit*, p 101; Perkins, *loc cit*, p 13.

¹⁰*Bell's Weekly Messenger*, 29 July 1844. The Select Committee on Agricultural Distress of 1836 appears to have played a major role in enlightening a wider audience as to the use of artificial feeding-stuffs and fertilizers; see the comments of William Shaw in the *Mark Lane Express*, 11 and 18 April 1836.

¹¹See, for example, *Agricultural Gazette*, 3 January 1846; *Quarterly Journal of Agriculture*, XVIII 1841-51, pp 418-26.

impact on manorial values as for its contribution to directly marketable animal produce. It was thus more difficult to adapt rental contracts (the traditional practice for permanent improvements not made by the owner) to cater for such investment in temporary improvements, although they also became incorporated in the soil and were liable to be appropriated at the end of a tenancy. In any case, in so far as the new inputs were regarded as the key to raising productivity on a national scale, agricultural improvers felt that some kind of universally applicable guarantee for the security of tenant capital was required. In this context even the old panacea of leases was evidently inadequate, their introduction likely to be gradual, dependent as this was on private initiative.

A new approach to the problem was necessary. It came with quite dramatic suddenness. In 1843 when Lord Portman introduced a Bill into the Lords which incorporated the principle of compensation for unexhausted improvements it received virtually no attention from the agricultural community.¹² The real catalyst for a campaign over the same principle was the discovery of the Lincolnshire Custom, until then apparently virtually unknown outside of the county. In 1843 Philip Pusey could pay a glowing tribute to the high level of cultivation to be found in North Lincolnshire without mentioning the Custom.¹³ A year later, he wrote: 'I can see no means so likely to supply this old defect (the absence of capital from land), and to bring England generally into the condition of Lincolnshire, as the adoption of Lincolnshire covenants. The subject of unexhausted improvements seems to me the most important of all agricultural subjects for landlords at present.'

Pusey's comment was a footnote to Barugh Almack's essay on Norfolk agriculture, where the latter had the temerity to suggest that the Custom was superior even to the famous leases of the Holkham estate as a foundation for improvement.¹⁴ Appearing in the *Journal of the Royal Agricultural Society of England*, the latter, with Pusey as editor, was one vehicle for introducing the Custom to an agricultural audience. At the same time it was the favoured subject of a widely reported investigation by members of the Loughborough Agricultural Association into methods of securing tenant investment.¹⁵ William Shaw, the editor of the *Mark Lane Express* and, like Pusey, an enthusiast for improved farming,¹⁶ was impressed with a system 'by which the tenant was secured his proper regard without leases'.¹⁷ With the two most influential publicists in the agricultural world both (and largely independently) taking up the question of tenant right on the lines operated in Lincolnshire it was certain to become a topic of significance. In December 1845 Shaw expounded his views to a crowded meeting of the recently formed Farmers' Club and, early in the next year, Pusey announced his intention of introducing a measure into Parliament which would give the outgoing tenants a legal right to their improvements, the Lincolnshire Custom to be its basis.

In retrospect it is less difficult to see why the merits of the Lincolnshire Custom were so enthusiastically hailed in the mid-1840s than why they were so long unappreciated.

¹² *Hansard*, LXX 25 July 1843, c. 1324. On its reintroduction in 1844, William Shaw noted that, if passed 'the necessity of a lease for the protection of a tenant would in a great measure be removed': *Mark Lane Express*, 1 April 1844.

¹³ P. Pusey, 'On the Agricultural Improvements of Lincolnshire', *JRASE*, IV 1843, pp. 297-9.

¹⁴ Barugh Almack, 'On the Agriculture of Norfolk', *ibid.*, V 1844, pp. 341-9.

¹⁵ *MLE*, 21 October 1844, 3 February 1845; *BWM*, 14 October 1844, 27 January 1845; *AG*, 19 July and 16 August 1845; *Farmers' Magazine*, 2nd Ser., 10, December 1844, pp. 511-16, 12 August 1845, pp. 138-41; and, in response to a request from Pusey, *JRASE*, VI, 1845, pp. 46-8.

¹⁶ The historical attention paid to Pusey matches the high regard he was held in by contemporary agriculturists; besides a number of essays there is an unpublished PhD thesis by R. W. Linker: *Philip Pusey, Esq: Country Gentleman, 1799-1855*, John Hopkins University, Baltimore, 1961. William Shaw (1797-1853), has not received the attention he deserves. Sir Ernest Clarke outlined the bare details of his career in the *Dictionary of National Biography*, XVII, p. 1386-7.

¹⁷ *MLE*, 28 October 1844.

A possible factor was a natural confusion with other county customs, some of which had acquired a degree of ill-repute. The Surrey Custom especially was frequently denounced. William Cobbett described it as 'a good custom, because it ensures good tillage to the landlord', in so far as it was intended to compensate the outgoer 'for whatever he leaves behind him, which if he had staid, would have been of value to him'.¹⁸ To this extent there was little difference in principle between the Customs. What was objected to was, in particular, the nature of valuation. This had become a set procedure which gave ample scope for fraud and saddled the incoming tenant with payments for operations which were often of little value.¹⁹ In consequence the tenant right payment in Surrey had become so high as to be a drain on the working capital of the incomer; even a defender of the system reckoned it at £20 per acre.²⁰ Tenant right payments in Lincolnshire could also be substantial,²¹ but methods of valuation were relatively clearcut and, seemingly, more equitable.

Under the Lincolnshire Custom, valuation was on the basis of a schedule whereby the value of specific items was discounted over a number of years. Although it included traditional payments for labour and cultivation operations immediately before the tenancy change, manorial items were separately specified. The valuation of these was based on original cost, the outgoing tenant being required to provide evidence of his expenditure. It was discounted, not over the number of years during which the input retained its effect, but over the time calculated to provide a reasonable return to the

outgoing tenant. Compensation was assessed by two valuers, one each appointed by the outgoing and incoming tenants; an umpire adjudicated where these two could not agree. The amount finally fixed was paid by the incoming tenant who negotiated his rental contract completely separately. Finally, in stark contrast to other customs, that in Lincolnshire was perfectly acceptable to all parties concerned and was flexible in its operation. New inputs, particularly those feeding-stuffs probably used extensively in North Lincolnshire at an earlier date than in any other English region, were easily accommodated within the Custom. This reflected the relative freedom with which the valuers could operate, introducing new items in specific cases which then became precedents for wider application.²²

It was these latter features which made the Custom so attractive to Pusey and Shaw. The audience of the latter at the Farmers' Club was also enthusiastic. As one speaker remarked: 'In Lincolnshire, good and liberal rights were allowed to the tenantry, and the consequence was that the land was in fine condition. He was quite satisfied that the adoption of such a principle throughout the country would do more for the introduction of good farming than anything else.'²³ The response, from the members at least, seemed to augur well for a campaign on tenant right. Pusey at least was determined to pursue the issue as far as possible; a year later he told the Smithfield Club that 'tenant right was the life or death of practical agriculture'.²⁴ Early in 1847 he introduced the first English Landlord and Tenant Bill into Parliament.

Shaw thought him premature. Much more preparation was necessary, if only to remedy the ignorance of landowners as to what tenant right entailed. Otherwise the Bill would stand little chance in a body dominated by that class.²⁵ The fate of the Bill confirmed his misgivings. Pusey withdrew

¹⁸ William Cobbett, *Rural Rides*, 1912 ed 1, pp 156-7.

¹⁹ L Kennedy and T B Grainger, *The Present State of the Tenancy of Land*, 1828, pp 16, 250; J R McCulloch, *A Statistical Account of the British Empire*, Vol 1, 1838, pp 459-60; PP VII, 1847-48, SC on *Agricultural Customs*, Evidence, Qs 7843-79; J Caird, *English Agriculture in 1850 and 1851*, 1852, pp 119-20.

²⁰ FM, 19 January 1849, p 32.

²¹ An example of payments covering 10 farms totalling 5000 acres in 1874 gave an average of just under £2 per acre. It is interesting to note that only about a quarter of this was for feeds and fertilizers; *Transactions of the Surveyors' Institution*, 7, 1874-75, p 127.

²² This brief description is based on Perkins, loc cit, pp 11-17.

²³ FM, 13 January 1846, p 58.

²⁴ Ibid, 15 January 1847, p 58.

²⁵ MLE, 8 and 15 February 1847.

it at Peel's request; it was then considered by a Select Committee which made extensive alterations. Pusey did not consider the amended version worth re-introduction. In 1848 he chaired the Select Committee on Agricultural Customs which, while recognizing the validity of the principle of compensation for unexhausted improvements, did not feel that legislation, even of the permissive variety advocated by Pusey, was necessary. In succeeding years Pusey introduced further Bills bearing the same title but designed only to allow entailed owners the right to enter into contracts which made provision for compensation and which would be valid after their death. These passed the Commons twice but were thrown out by the Lords. The episode appears to provide confirmation of the thesis that landlord power was used to maintain and to frustrate even minor infringement of their privileged position in the face of the evident economic benefits of tenurial change.

It was, however, not quite as simple as this. In the various debates on Pusey's Bills there was no challenge to the basic principle of compensation for unexhausted improvements. The only explicit opposition to the idea of legislation as such came from Colonel Sibthorp, a name synonymous with obscurantism, who objected to any interference at all with the relations of landlord and tenant.²⁶ Otherwise, objections concerned the specific provisions of the Bills, in particular the manner in which compensation for the unexhausted value of the new inputs would be assessed. The objections could of course have been a cover for more selfish reservations but two points, by way of commentary, can be made, the second of which requires expanding in some detail. Firstly, one Landlord and Tenant Bill was passed at the time. Introduced in 1851 (not by Pusey), it reversed the existing common law presumption on agricultural fixtures,²⁷ as the

1848 Select Committee had agreed in recommending. This was a definite intrusion on tenurial relations but, apart from the obligatory comment from Sibthorp, it passed with little comment and no opposition from either House. Secondly, the practical objections were real. They were also expressed from quarters where, if tenant right had been as crucial to progress as was often maintained, it would have been expected to have been accorded a rather more sympathetic consideration.

II

One such group, already alluded to, consisted of the landowners of North Lincolnshire. Although Pusey's 1847 Bill was based explicitly on the principle and machinery of the Custom whose operation they favoured on their own estates, they strenuously opposed its legislative implementation. R A Christopher, MP for North Lincolnshire, was a persistent critic in the Commons, and a petition from 144 owners and occupiers in the county set out their objections. The central thesis was that legislative tenant right would involve the landlord, to his detriment, more explicitly in tenancy changes and the provision of compensation. Thus they objected to the onus of compensation payments falling on the landlord rather than the tenant and, more important, to the inflexibility of the Bill's schedules for valuation. Many of their points seemed specious and tendentious but they amounted to a fear that legislative tenant right could prove an open-ended commitment in a process which would 'produce much uncertainty, litigation and dispute'.²⁸ Lincolnshire agents and owners were later to stress to the Select Committee on Agricultural Customs that their Custom worked because it treated both outgoer and incomer equitably. A legislative system would preclude the operation of the sort of informal mechanisms which gave effective protection against

²⁶ *Hansard*, XC, 22 February 1847, c 384; CIII, 14 March 1849, cc 688-9; CX, 1 May 1850, c 1061-2.

²⁷ *Ibid*, CXVI, 14 May 1851, c 947.

²⁸ *MLE*, 19 April 1847.

excessive payments by incoming tenants and landlords.²⁹

This raised another fear which must have occurred to owners, although not raised explicitly in the petition. This was that heavy compensation payments would have an adverse impact on both land values and rents. J A Perkins has noted that the operation of the Lincolnshire Custom restricted the supply of potential tenants to those with adequate capital, and argues that this was one cause of a relatively low level of market rents.³⁰ But compensation payments had another effect. Prospective tenants calculated on a certain level of profits over and above the interest on their invested capital and the rent. Given the appropriate level of competition and knowledge, the amount of rent they were willing to pay would not be higher than would allow them a perceived fair return for their enterprise, interest on the capitalized value of their own live and dead stock plus that on the compensation they had paid to the outgoing tenant. High compensation payments could thus mean lower rents. This had happened, it was argued, in Nottinghamshire where the practice was to discount the value of inputs over the time they were supposed to have effect.³¹

The implications of either uncertainty or lower rents for landlord investment were obvious. It was this theme which led many of the most ardent adherents of 'high farming' to view tenant right with hostility — particularly those who equated advanced with Scottish (or East Lothian) agriculture. Scottish writers, including Caird, were inclined to dismiss tenant right as an inferior substitute for leases,³² and this may also have been a factor in the attitude of the *Agricultural*

Gazette, accepted from its foundation in 1844 as the English advocate of progressive farming on the Scottish model. Its leading authorities, John Chalmers Morton and Chandos Wren Hoskyns, felt tenant right was an encroachment on 'the *commercial principle*' of freedom of contract, the true basis of all economic progress. It also had overtones of a concept of 'rights' anathema to all supporters of *laissez-faire*. 'No rights can exist but those founded on the understanding of landlord and tenant at the commencement of their relationship, which was either implicit in the "custom of the county" or explicit in a written contract.'³³ Their suspicions of the implications of statutory tenant right were finally given concrete focus in 1848 by a report from a committee of the Law Amendment Society.

The findings of the committee, reflecting its composition but not impugning the validity of its case, tended to vindicate the traditional legal approach to the vexed question of the clear delineation and demarcation of property rights in land. Although readily upholding the justice of the principle of compensation for unexhausted improvements, the committee was confronted with grave problems in dealing with 'improvements which are so embodied with the land as to be incapable of separation from it'. In fact it had to concede that 'no way has yet been devised of valuing improvements for compensation ensuring justice to both parties'. Its great contribution to the debate on tenant-right, before coming to the lame, if logical, conclusion that it would be in the interest of all parties if no legislative change was attempted at present, was to state explicitly the practical difficulties facing any attempt to specify the nature and extent of compensation.

The committee found two grave problems to be involved. In the first place, there were the deficiencies associated with compensation and valuation on the basis of prime

²⁹ SC on *Agricultural Customs*, Evidence, Qs 6976, 7187-97, 7251-5, 7357-62, 7736-40.

³⁰ J A Perkins, 'The Prosperity of Farming on the Lindsey Uplands, 1813-37', *Ag Hist Rev*, 24, 1976, pp 138-40.

³¹ See the Rev C Neville, *The Justice and Expediency of Tenant-Right Legislation, Considered in a Letter to Philip Pusey Esquire*, 1847, and also his remarks to the SC on *Agricultural Customs*, Evidence Qs 7249-76.

³² Review of Shaw's and Corbett's *Digest of Agricultural Customs*, 1851, in *Quarterly Journal of Agriculture*, XVIII, 1849-51, pp 384-91; J Caird, op cit, pp 503-08.

³³ AG, 25 April, 28 November, 26 December 1846, 2 and 9 January, 10 April 1847.

cost; this did not necessarily bear any relationship to the future value of improvements and could represent a grave injustice to the landowner and incoming tenant. Secondly, they pointed out the impossibility of establishing the precise value of temporary inputs over any length of time in the context of a wide variety of physical conditions and types of farm practice. As Hoskyns had already argued, it was impossible to lay down any 'cut and dried scale of compensation' to fit all exigencies of agricultural tenancies; the committee emphasized how widespread these could be, and, further, how they could change over time. Tentatively, it proposed that the problems might be met by setting limits on compensation payments and by establishing a public body to review existing customs and bring them into line with modern conditions.³⁴ However, it also recognized that such solutions were a potential source of litigation and uncertainty; it was probably best to leave things as they were.³⁵

That the committee had performed a valuable service in clarifying the problems involved in establishing a system of tenant right was recognized both proponents and adversaries, by Shaw at the *Mark Lane Express* as much as Morton at the *Gazette*. The benefit, however, was mainly to adversaries, as was demonstrated in the course of the evidence given to the Select Committee on Agricultural Customs in 1848. On its establishment, Pusey asked the Farmers' Club to supply a list of names of those willing to come forward as witnesses. A number of prominent agriculturalists who favoured tenant right were accordingly called upon to give evidence and Shaw was optimistic as to the outcome. They were questioned sympathetically by Pusey but received a rough handling from other Committee members. Pressed closely on such issues as the principle

of compensation, the nature of valuation, and the consequences for permanent investment by landowners, most were forced to take refuge in vague generalizations on the justice of the claim and the stimulus it would give to improvement. Some even argued that all that was needed was a specific clause or statement on principle conceding a legal right of compensation to tenants. None were able to explain how this would overcome the practical difficulties which would arise.³⁶

In these circumstances the most sustained and coherent defence of the case for a legislative measure came from William Shaw. In a series of papers to the Farmers' Club he sought to demonstrate that tenant right would benefit landowners, that it was not to be confused with the traditional county customs, and that the technical problems involved in its statutory implementation could be solved. Aware, as all farmers' spokesmen were, of the importance of landlord investment, Shaw stressed the 'primary rule, that the general improvement of the farm belongs to the landlord: that compensation to the tenant for unexhausted improvements should never be measured by a reference to the rental paid as compared with the value of the farm to let when the tenant is quitting'.³⁷ However he also conceded, implicitly, that there was a connection when arguing against arbitrary limits on compensation payments: 'the lower the rent the greater would be the sum required to be expended' by the tenant. Ultimately, farmers would have to depend as much on the practice of valuation as on any set of general principles.

His views on valuation were set out at length in a paper to the Farmers' Club in 1850. Stressing the general acceptance of the Lincolnshire Custom, he argued that compensation should be limited to specific items

³⁴ Pusey's Resolutions, as Chairman of the Select Committee on Agricultural Customs, contained a similar recommendation (*Report*, p vii). It was not adopted.

³⁵ A full account of the Report and Recommendations of the committee appeared in *MLE*, 15, 22, 29 November 1847.

³⁶ *SC on Agricultural Customs*, 1848, Evidence, Qs 536-9, 705, 1809-19, 2035-41, 2739-41, 3425-35, 4605-19, 4313 and 5454-9.

³⁷ William Shaw, 'The Principles which should regulate the valuation between the landlord and the in-coming and out-going tenant under an equitable system of Tenant-right', paper to the Farmers' Club, in *FM*, 21 May 1850, p 397.

and assessed on its principle. However, valuation schemes would have reflected the admitted diversity of regional practice. In each area, these would specify items and the mode of discounting value over time, providing the valuer with 'the least possible amount of discretion' in dealing with the concrete evidence of each case. He would, however, still have to use his discretion. 'The arbitrators should not be wholly governed by the outlay, insomuch as by an injudicious mode of expenditure an unnecessary cost may have been incurred.' But this should cause no real problems. 'The cream of the agricultural class, men who stand high in their class, are generally selected to fill the office of valuers; and if I had to rely solely on the integrity and character of the men whom I find constituting the class of valuers, I should feel considerably at ease as to misconduct on their part.'³⁸

In hindsight it is clear that Shaw's faith, whether in the equity of the principle of evaluation, or in the possibility of acceptable schedules, or even, possibly, in the credibility of valuers, was misplaced. The principle of valuation was suitable only in certain circumstances, the authority and expertise of valuers was questionable, and, most important of all, there was no possible satisfactory method of calculating the value of manurial residuals. The latter was the crucial difficulty; from it, directly and indirectly, stemmed the other difficulties.

The valuation of manurial residuals is a complex question, even given the fullest knowledge of the agricultural and chemical principles involved. Variation in soil, climate and even farm condition must be taken into account while, in the mid-nineteenth century, given the wide prevalence of adulteration (and the varying nature of such inputs as guano), there were also problems in deciding on the original composition of artificial manures. Further, developments in agricultural chemistry during the course of the tenant right campaign, were a setback to

any hopes that science could provide a simple practical guide to the use of manures and their valuation. By 1850, the excitement which had followed the publication of Leibig's *Organic Chemistry and its application to Agriculture and Physiology*, had evaporated with the collapse of his mineral theory. In that year, Pusey's emphasis on how little the agricultural chemists had done to assist practical farmers³⁹ led to considerable acrimony; Leibig was to have his faithful adherents for many years.⁴⁰ However, his ideas hardly accorded with practical experience, and it is possibly significant that Pusey's enthusiasm for a major legislative measure of tenant right seemed to fade at precisely the time he realized the uselessness of the mineral theory.

As J B Laws wrote in one of the articles describing experiments which led to the challenge to Leibig: 'the great problem to be solved with regard to manures', that is, 'what substances is it necessary to supply to the soil in order to maintain a remunerative fertility, . . . can only be entirely overcome by a long series of careful and costly experiments'.⁴¹ The implications for valuation were obvious to Lawes. Although the Rothamsted experiments had a much wider scientific and agricultural purpose, he never lost sight of those aspects bearing on the valuation of unexhausted improvements. From the 1860s onwards he published a series of tables which were intended to provide a guide to valuers.⁴² However, these were so often, as he admitted, at variance with practical experience as to be little used. It was not until the early twentieth century that the scientific calculation of the value of manurial residuals was sufficiently well advanced to

³⁹ P Pusey, 'On the Progress of Agricultural Knowledge during the last Eight Years', *JRASE*, XI, 1850, pp 381-92.

⁴⁰ Notably J J Mechi; see his *Profitable Farming*, 1872, pp 130-6.

⁴¹ J B Lawes, 'On Agricultural Chemistry — especially in relation to the Mineral Theory of Baron Liebig', *JRASE*, 8, 1847, p 226.

⁴² For example J B Lawes, 'Exhaustion of Soil in relation to Landlord Covenants and the Valuation of Unexhausted Improvements', *FM*, XXXVII, June 1879, pp 422-32, and 'On the Valuation of Unexhausted Manures', *JRASE*, 2nd Ser XII, 1875, pp 1-37.

³⁸ *Ibid*, p 398.

provide a guide to determining compensation payments. Even then, in a tradition which has continued, the authors placed great emphasis on the need for discretion in particular cases and circumstances.⁴³

The lack of any objective basis to the assessment of unexhausted improvements made it difficult for valuers to adopt the more equitable principle that compensation should be on the basis of their value to an incoming tenant (or the landlord if taking a farm in hand). Even when in 1883 the latter principle was given legislative force, valuers still calculated payments by discounting on prime cost; it has been claimed that some were doing this as late as the 1930s.⁴⁴ That this could be grossly unfair to the incomer was most apparent in periods when agricultural margins were squeezed. Thus J A Perkins notes that the Lincolnshire Custom ran into problems in the 1830s: 'the most difficult years of upland farming between the late 1790s and the late 1840s . . . (when) many landlords themselves faced a very real possibility of having to take farms in hand and reimburse the outgoing tenants for unexhausted improvements . . . initiated in a more prosperous period'.⁴⁵ Similar problems also occurred in the late nineteenth century in Lincolnshire (although the Custom was generally preferred to the 1883 Agricultural Holdings Act),⁴⁶ and there was friction elsewhere.

It seems clear that the Custom worked so well in Lincolnshire, despite its principle and the rough and ready form of valuation, because the return on improvement was so high as to allow all parties to be easily satisfied. When the returns were good the outgoing tenant got reasonable compensation, the incomer value for money and the

landlord saw rents and land values rise steadily over time. The same circumstances also provided the appropriate context for valuers to introduce new items, as they arose, without serious opposition. This flexibility was one of the key points in favour of the Custom, but there were dangers of such freedom. Certainly there were witnesses to the 1848 Select Committee who thought it was abused. Their greatest complaint concerned the 'ambiguity with which the valuations are got up'. All that was publicly announced was the sum due with no specification of items or their individual valuation. There was a suspicion that compensation was assessed very liberally on traditional items while new ones were introduced in a manner injurious to the incoming tenant. John Parkinson had often had occasion to open up valuation awards: never 'but I found more or less of very significant mistakes'. William Smith thought most valuers 'incompetent to form any general rule; you will have as many different opinions as different districts'. Even worse, it was usually well-known that some valuers acted very differently when they were representing either outgoing or incoming tenants; accordingly the latter selected 'the valuer who will give him the most'.⁴⁷

Such practices hardly accorded with Shaw's enthusiastic recommendation of valuers as a group. Indeed they were probably only true of a minority, while some of the acerbity of the comments may have reflected the interests of those giving evidence. Valuers generally acquired their position through informal mechanisms; they were farmers who acquired confidence and respect from local communities through their own successful practice. However, and it was immaterial as to whether they were employed under the Lincolnshire, Surrey or any other custom, there was a disturbing side to their operations, especially given the

⁴³ See J A Voelcker and A D Hall, 'Compensation for the unexhausted manorial values of feeding-stuffs and fertilizers', *ibid.* 74, 1913, pp 104-18.

⁴⁴ D R Denman, *Tenant-Right Valuation in History and Modern Practice*, Cambridge, 1942, pp 60-2.

⁴⁵ Perkins, 'Tenure . . . in Lindsey', p 20.

⁴⁶ J H Brown, 'Agriculture in Lincolnshire during the Great Depression 1873-1896', Unpub PhD thesis, Manchester, 1978, pp 239-42, 247-50; R J Olney, *Lincolnshire Politics 1832-1885*, Oxford, 1973, pp 223-6.

⁴⁷ *SC on Agricultural Customs*, 1848, Evidence Qs 7401, 7535, 7538 and 7927-36.

crucial importance of their role. *The Economist* accused valuers of not being 'capable of judging of improvements; they can only judge and decide concerning old practices, and they affix a value on them more according to custom than to the utility of their worth in the market of their produce'.⁴⁸ Even sympathetic commentators could focus on faults. Henry Corbet complained that 'so long as those who employ land-valuers shall be content to be informed only of results, and to have processes concealed from them, no progress will be made in reducing the art of valuation to something like a system'.⁴⁹ His call for a professional body, for training and registration of practitioners, applied equally to tenant right valuers. So too did his references to the ignorance and sense of inadequacy which lay behind the 'mystification' employed by valuers. As an agricultural economist, E P Weller, was to complain, some eighty years later when a professional body of sorts had been established, its ranks 'include men who, while doubtless well versed in local farming, have neither the opportunity nor the mentality to grasp the wider aspects of their subject'.⁵⁰ Such reservations had been expressed for as long as valuers had had the scope to determine substantial payments; they were fundamental to the near universal condemnation of the Surrey system and experience was to show that no system of tenant right, until well into the age of scientific evaluation, could avoid giving rise to them.

It is not surprising, then, that landowners (and others) hardly favoured legislation which could only give the traditional powers of valuers in some areas a new and more universal degree of authority. The problem lay both in their personal shortcomings and in the impossibility of their task. Further, any attempt to counter such weaknesses in a

legislative measure would also constrain the more acceptable aspect of the Lincolnshire Custom: its flexibility. Although the explicit specification of items and their valuation might have eliminated the worst of dubious practices it would also have limited the scope for innovation, as the later Acts were indeed to demonstrate.⁵¹

The technical case, then, against a statutory measure of tenant right was almost overwhelming. If the absence of legal provision for compensation to outgoing tenants for their unexhausted improvements might have adverse implications for investment, so too could its arbitrary provision on the basis of unsound principles. The potential for increasing uncertainty and costs for incoming tenants and landowners was evident.

In any case, uncertainty over the legal security of capital tied up in improvements was probably but a subordinate aspect of the uncertainty attendant on all agricultural investment in an age of technical change and fluctuating market circumstances. Indeed the technical problems which made valuation such an uncertain art were in themselves probably more important constraints on investment. As Lawes put it, farmers 'will not freely embark their money on the improvement of their farms for want of that knowledge which would enable them to calculate their returns with any degree of certainty'.

That statutory tenant right was essentially irrelevant to agricultural progress is not to deny that the opposition of landowners was based on more than technical factors. Nor does it mean that the campaign led by Pusey and Shaw was totally without significance. It is perhaps best seen as a symbol of the beginnings of the radical shift in tenurial relations which the 'Second Agricultural Revolution' entailed. The rising importance

⁴⁸ *The Economist*, 3 February 1852.

⁴⁹ *MLE*, 18 July 1853.

⁵⁰ E P Weller, 'The connection between tenant-right valuation and farming efficiency', *Journal of the proceedings of the Agricultural Economics Society*, 3, 1934, p 54.

⁵¹ For the deficiencies of the 1883 Act, see J R Fisher, 'The Farmers' Alliance: an Agricultural Protest Movement of the 1880s', *Ag Hist Rev*, 26, 1978, pp 24-5.

of off-farm inputs was part of a capital-deepening process which entailed the increased importance of tenant investment relative to that of the owner. The progress of legislation establishing English tenant right from the mid-nineteenth century is best approached as a response to, or a result of, this change, rather than as a prerequisite. Indeed, the earlier legal framework probably provided a more appropriate basis for investment in the existing circumstances.

It was the common law ruling of 1803, in *Elwes v. Maw*, which firmly established the precept, 'quicquid solo plantatur, solo cedit' (whatever is put into the soil, passes into the soil). A theoretical injustice at first sight, it was an attempt to deal with the problem, at law, of property rights which were not discrete. The form of judgement took at least accorded, however crudely, with the accepted division of responsibility for agricultural capital investment and with the need to maintain continuity of production over time. In attempting to specify the nature of

property rights it possessed the great virtue of providing a clear basis for the negotiation of contracts between landlord and tenant. Further, it did not preclude any deviation in such contracts where the parties saw fit to make explicit alternative arrangements.

By implication then, despite their theoretical deficiencies, the common law precepts which governed English tenurial arrangements provided a more appropriate basis for agricultural investment than either custom or legislation. The crucial advantage was flexibility in the face of change over time and spatial contrasts in farm systems. The further implication would be that it is in these factors, changes in agricultural technology, market circumstances, and differential resource endowment, that the explanation of rates of agricultural progress and the regional differences which occurred must be found. This has the advantage of according substantially with the traditional historiography of English agriculture in the nineteenth century.

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