

The transformation of customary tenures in southern England, c.1350 to c.1500

by Mark Bailey

Abstract

Between the fourteenth and sixteenth centuries the terms on which customary land was held in England were transformed from hereditary villein tenure into copyholds and leaseholds. Historians have been uncertain about the precise nature, pace and geography of this transformation, and, indeed, the variety and fluidity of tenurial forms has caused some bewilderment. This article argues that the original villein tenure was displaced by one of four broad categories of customary tenure, a process which began immediately after the Black Death of 1348–49, i.e. much earlier than previously assumed. These rapidly emerging tenures were more dignified and attractive than villein tenure, due to the removal of servile language from their conveyances, the growing practice of issuing of a ‘copy’ of the land transfer as proof of title, and the development of monetarized rent packages. The preference for life tenures in western and central England, and for heritable tenures in the south east and east, is already clearly identifiable by c.1400, and the reasons for these emerging regional patterns are analysed.

The development of agrarian capitalism and the emergence of commercial farmers is a major theme in British agricultural history. Within this vast subject, a key topic of debate is the extent to which regional differences in the nature of property rights explain different pathways of development. Attention has focused particularly upon the security of customary tenures in England.¹ Customary (also known as ‘villein’ and ‘unfree’) land was a significant component of the peasant land market in medieval England, comprising nearly one half of all peasant-held land.² Yet, according to historians such as Brenner, during the course of the fifteenth century landlords were able to add a growing proportion of this land to their own demesnes, because it was held on relatively insecure tenures, which in turn enabled their successors in the sixteenth century to repackage it into large farms on commercial rents.³

¹ A good recent survey is H. R. French and R. W. Hoyle, *The character of English rural society. Earls Colne, 1550–1750* (2007), pp. 2–42. See also J. Whittle, *The development of agrarian capitalism. Land and labour in Norfolk, 1440–1580* (2000), pp. 5–27. An early version of this article benefited from the comments of participants at the legal History seminar at the University of Cambridge. I am also grateful to Richard Hoyle for his comments on this article and for discussing late medieval tenures with me on various occasions.

² J. Whittle, ‘Leasehold tenure in England, c.1300 to c.1600’, in B. J. P. van Bavel and P. R. Schofield (eds), *The development of leasehold in northwestern Europe, c.1200–1600* (2008), p. 140.

³ R. H. Tawney, *The agrarian problem in the sixteenth century* (sec. edn, 1967), pp. 287–310; E. Kerridge, *Agrarian problems in the sixteenth century and after* (1969), pp. 65–93; R. Brenner, ‘Agrarian class structure’, pp. 10–63; and ‘The agrarian roots of European capitalism’, pp. 213–327, both in T. H. Aston and

Thus customary tenures lie at the heart of the debate on the emergence of agrarian capitalism in England. In the sixteenth century these comprised leasehold and various forms of copyhold: copyholds of inheritance, copyholds for a life or (usually three) lives, and tenant right (a variant found in parts of northern England). Perhaps two-thirds of the rural population were copyholders, many of them for lives.⁴ The latter were found mainly in 'the west country and southern England, running over towards Hampshire and Oxfordshire and through the west Midlands': in contrast, copyholds by inheritance dominated in the east Midlands, the Home Counties and East Anglia.⁵ It is widely assumed that these regional differences in tenures contributed to differing trajectories of regional economic development in the sixteenth and seventeenth centuries: tenures offering rights of inheritance and fixed low rents favoured the tenant, whereas insecure leases and life tenancies with variable rents and fines favoured the landlord. As French and Hoyle observed, the 'variegated patterns of tenancy [in early modern England] imply very different structures of power within the countryside', which in turn 'imply very different experiences' from place to place.⁶

Early modern lawyers recognized that copyholds and leases of customary land had emerged in the fairly recent past from the detritus of villein tenure. Writing in the early seventeenth century, Sir Edward Coke commented that 'tenants by copy is but a new-found name, for in ancient times they were called tenants in villeinage'.⁷ Whittle has stated that these new 'forms of land tenure were the most significant legacy of the [medieval] manorial system to the sixteenth century and beyond', while Allen argued that the creation of copyhold 'amounted to a democratization of property ownership. The redefinition of land ownership laid the basis for yeoman agriculture in the later sixteenth and seventeenth centuries'.⁸

Although much is known about villein tenure in c.1300, and about copyholds from c.1550, less is known about the transformation from one to the other. Part of the uncertainty stems from the tenures themselves, whose terms could be vague (some court rolls provide very few details) or fluid: Paul Harvey concluded that they constituted 'a bewildering variety of forms

Note 3 continued

C. H. E. Philpin (eds), *The Brenner Debate. Agrarian class structure and economic development in pre-industrial Europe* (1985); J. E. Martin, *Feudalism to capitalism. Peasant and landlord in English agrarian development* (1986), pp. 119–20. For more recent assessments of the historical validity of Brenner's claims, see R. W. Hoyle, 'Tenure and the land market in early modern England: or a late contribution to the Brenner debate', *EcHR* 43 (1990), pp. 1–20; M. E. Mate, 'The east Sussex land market and agrarian class structure in the later Middle Ages', *Past & Present* 139 (1993), pp. 46–65; S. H. Rigby, *English society in the late Middle Ages. Class, status and gender* (1995), pp. 127–42; Whittle, *Agrarian capitalism*, pp. 302–15; J. Hatcher and M. Bailey, *Modelling the Middle Ages. The theory and practice of England's economic development* (2000), pp. 106–20.

⁴ C. G. A. Clay, *Economic expansion and social*

change: England, 1500–1700, I, *People, land and towns* (1984), pp. 87–92.

⁵ See the summary in, and the quote from, Hoyle, 'Tenure and the land market', pp. 6–7; R. M. Smith, 'The English peasantry, 1250–1600', in T. Scott (ed.), *The peasantries of Europe from the fourteenth to the eighteenth centuries* (1998), pp. 341–7, and 367–9; and R. W. Hoyle, 'An ancient and laudable custom'. The definition and development of tenant right in north-west England in the sixteenth century', *Past & Present* 116 (1987), pp. 25–8, 51–5.

⁶ French and Hoyle, *English rural society*, pp. 8, 30, 32.

⁷ Kerridge, *Agrarian problems*, p. 141.

⁸ Whittle, *Agrarian capitalism*, p. 64; R. C. Allen, *Enclosure and the yeoman. The agricultural development of the south Midlands 1450–1850* (1992), p. 73.

and inconsistency of nomenclature'.⁹ But another reason is a lack of research. Hoyle, writing a quarter of a century ago, observed that 'it is shocking that so little attention has been paid to the matter ... despite the importance which many commentators have attached to this process, there is, to the best of my knowledge, not a single study of the means and chronology of the change'.¹⁰ Consequently, we are incapable of answering with confidence two fundamental questions: how did different forms of copyhold emerge, and what is the explanation for their distinctive regional distribution in the sixteenth century?¹¹

Hoyle's response to this incapacity was to write an article to provoke further research. This article is a response to his provocation, which in turn hopes to provoke others into addressing these questions. It surveys the existing state of knowledge, and then outlines the conclusions of recent research, to offer a new explanatory framework for the transformation of villein tenure into copyholds and leaseholds in England south of the river Trent. In particular, it adopts a comparative approach to address some of the major unresolved questions about the process and the outcome of change. When and how did the rent package of villein tenure change, and how did this create the varied rent packages attached to later copyholds? When and why did the practice spread of issuing 'copies' of the court roll entry of land transfers to tenants, which is the origin of copyhold tenure? Why were some copyholds heritable and others fixed-term, and what explains their regional distribution in the sixteenth century?

I

In c.1300 the overwhelming majority of customary land was held in villein tenure, whose rent package comprised a mixture of cash, payments in kind, servile incidents and labour services. The title to customary land was defensible only in the lord's manorial court, not in the royal courts of common law. All transfers had to be recorded in the court roll, and this written record of the grant was the ultimate proof of its title. In legal theory customary land was held 'at the will of the lord', implying that it was inalienable without express prior seigneurial consent and also vulnerable to seizure upon a seigneurial whim.¹² In practice the operation of custom meant that the tenant's title to customary land was much more secure than its theoretical vulnerability under the common law would imply. Landlords did not confiscate customary land arbitrarily.¹³ The vast majority of tenants in villeinage possessed customary rights of inheritance, and could buy and sell their land, subject to certain standard procedures.¹⁴

⁹ P. D. A. Harvey, 'Tenant farming and farmers: the Home Counties', in E. Miller (ed.), *The agrarian history of England and Wales*, III, 1350–1500 (1991), p. 670.

¹⁰ Hoyle, 'Tenure and the land market', p. 8

¹¹ *Ibid.*, p. 18

¹² Smith, 'English peasantry', pp. 341–54; M. Tompkins, '"Let's kill all the lawyers": did fifteenth-century peasants employ lawyers when they conveyed customary land?', in L. Clark (ed.), *The fifteenth century*, VI (2006), pp. 73–87; Whittle, *Agrarian capitalism*, p. 67.

¹³ Whittle, *Agrarian capitalism*, pp. 76–7; J. Whittle

and M. Yates, '"Pays réel ou pays légal?": contrasting patterns of land tenure and social structure in eastern Norfolk and western Berkshire, 1450–1600', *AgHR* 48 (2000), p. 8.

¹⁴ G. C. Homans, *English villagers of the thirteenth century* (1941), pp. 109–43; R. J. Faith, 'Peasant families and inheritance customs in medieval England', *AgHR* 14 (1966), pp. 77–95; E. Miller and J. Hatcher, *Medieval England: rural society and economic change, 1086–1348* (1978), pp. 138–9; J. Whittle, 'Individualism and the family-land bond: a reassessment of land transfer patterns among the English peasantry, c.1270–1580',

Sixteenth-century copyholds and leaseholds differed from fourteenth-century villein tenure in three principal ways. First, they had acquired greater legal protection under the common law, such that by the mid-sixteenth century the courts of common law were defending their title. Second, their appearance and dignity had been improved by the disappearance of the old servile incidents, leaving an annual monetary rent, an entry fine, and perhaps a heriot. Finally, they bore greater resemblance to contractual tenancies, because the tenant acquired the land through choice rather than compulsion and, in some cases, for a limited period or specified time.¹⁵

Customary tenures in the late fourteenth and fifteenth centuries were an intermediate form, no longer villein tenure but not yet recognizable as the copyholds of the sixteenth century. As Bolton remarks, 'the variety of terms is bewildering and in some ways it is a mistake to look for patterns'.¹⁶ Yet, for all their fluidity, and for all Bolton's caution, enough is now known to identify with confidence four general patterns.¹⁷ The first is the decay and then final disappearance of many of the characteristic elements of the original rent package, such as tallage, merchet, millsuit and labour services. It is widely argued that these mainly disappeared between c.1390 and c.1420.¹⁸ Entry fines and heriot were often the only survivals from the old package, probably because the payment of admission charges and death duties was not exclusive to unfree land. The second development is the spread of the practice of issuing the tenant with a copy of the court roll entry of the transfer of customary land, which was known as early as 1300 and widespread after the mid-fifteenth century. Little research has been undertaken on the pace with which, and extent to which the copy spread between these two dates: it is widely assumed to have been a fifteenth-century development, although Faith suggested that it may have become commonplace in the late fourteenth century.¹⁹ Unfortunately, their pitifully low survival rate presents an insurmountable obstacle to reconstructing an accurate chronology of their spread. Peasant-held archives have simply not survived, and it is not clear why landlords would bother with making copies of copies when the entry in their court roll constituted their formal record.²⁰

Note 14 continued

Past & Present 160 (1998), pp. 30–1. The customary right to inherit is enshrined in phrases in conveyances such as 'to hold to him and his' (*teneo sibi et suis*) or 'him and his heirs' (*sibi et heredibus suis*).

¹⁵ Hoyle, 'Tenure and the land market', pp. 6–7; E. B. Fryde, *Peasants and landlords in later medieval England, c.1380 to c.1525* (1996), pp. 238–41; Whittle, 'Leasehold tenure', pp. 139–40.

¹⁶ J. L. Bolton, *The medieval English economy, c.1150–1500* (1981), p. 238.

¹⁷ The following summary draws upon P. D. A. Harvey, 'Aspects of the peasant land market in medieval England', in P. D. A. Harvey (ed.), *The peasant land market in England* (1984), pp. 338–51; Fryde, *Peasants and landlords*, pp. 227–41; J. Whittle, 'Tenure and landholding in England 1440–1580. A crucial period for the development of agrarian capitalism?', in B. J. P. van Bavel and P. Hoppenbrouwers

(eds), *Landholding and land transfer in the North Sea area (late Middle Ages–19th century)* (2004), pp. 238–42; and M. Bailey, *The decline of serfdom in late medieval England. From bondage to freedom* (2014), pp. 16–61.

¹⁸ E. B. Fryde, 'Peasant rebellion and peasant discontents', in Miller (ed.), *Agrarian history, III, 1350–1500*, p. 745; Whittle, *Agrarian capitalism*, p. 37.

¹⁹ R. J. Faith, 'Berkshire: the fourteenth and fifteenth centuries', in Harvey (ed.), *The peasant land market in England*, pp. 130, 138, 140, 151; Harvey, 'Home Counties', pp. 671–2; C. C. Dyer, *Lords and peasants in a changing society. The estates of the Bishopric of Worcester, 680 to 1540* (1980), p. 294; H. S. A. Fox and O. J. Padel (eds), *The Cornish lands of the Arundells of Lanherne, fourteenth to sixteenth centuries* (Devon and Cornwall Rec. Soc. 41, 2000), p. lvii.

²⁰ It is possible that the tenant copy was indented and the second copy retained by the landlord, but unequivocal examples of this practice are hard to find.

The third development of significance is that the record of the grant of customary land in manorial court rolls (what we would term the conveyance) gradually dropped the demeaning phrases specific to villeinage, and used more dignified language instead. In c.1300 conveyances of customary land in villeinage usually contained the phrases 'held in villeinage' or 'held in bondage for customs and services'. Grants of customary land on fixed-term tenures after 1350 did not contain such phrases: they were 'leased at farm' or 'held for the term of his life according to the custom of the manor'. Conveyances of hereditary tenure retained the use of 'in villeinage/bondage' for longer, although they too began to drop the phrase during the early fifteenth century.²¹ Historians have tended to be cautious about admitting an earlier chronology of change to hereditary villein tenure, and about attributing much significance to any other changes in the wording of its conveyances.²² However, two recent studies have demonstrated that subtle alterations to their vocabulary could carry real significance, and that there is evidence for such change on some manors during the third quarter of the fourteenth century.²³ This area merits further research.

The fourth and final development, and perhaps most important of all, is that the proportion of customary land held on fixed-term tenures of various kinds increased. After 1350, increasing quantities were formally converted to, and re-granted as, tenures for a finite period of time, after which the land reverted to the lord. Crucially, fixed-term tenures tended to be held for a cash rent, rather than burdened with rents in kind and servile incidents. Three main types of fixed-term tenure can be identified. The least common yet most insecure was a tenure at will without any stipulated timeframe, i.e. held literally held at the lord's will, usually for a straight cash rent and no entry fine.²⁴ It was liable to be recovered by the lord at any time, and was usually employed to attract tenants for abandoned holdings as an emergency measure.²⁵ The second form was life tenancies, held for the term of the life of the tenant, or for a stipulated term of lives (usually three). This form of tenancy had been known since Anglo-Saxon times, although before 1350 it was not a common form of holding customary land.²⁶ Many life

Note 20 continued

Individual copies do survive among seigneurial archives, and some landlords are known to have kept registers with tenorial information: Fryde, *Peasants and landlords*, p. 227; Bailey, *Decline of serfdom*, pp. 122, 221. These may have been acquired through the lord's later purchase of copyhold land, although the consistent and fine condition of many such copies is hard to reconcile with the notion that they had spent varying periods in peasant hands. Perhaps these were the steward's – not the landlord's copies – whose responsibility it was to ensure the issue of a copy to the tenant.

²¹ B. Harvey, *Westminster abbey and its estates in the Middle Ages* (1977), p. 275; Fryde, 'Peasant rebellion', pp. 814–6; P. R. Schofield, 'Extranei and the market for customary land on a Westminster abbey manor', *AgHR* 49 (2001), p. 16.

²² Harvey, 'Aspects of the peasant land market', pp. 329–30; J. Mullan and R. H. Britnell, *Land and*

family. Trends and local variations in the peasant land market on the Winchester bishopric estates, 1263–1415 (2010), pp. 63–4.

²³ The two recent studies are Tompkins, "Let's kill all the lawyers", pp. 75–9, and Bailey, *Decline of serfdom*, pp. 290–2.

²⁴ Harvey, *Westminster Abbey*, pp. 246–8; Harvey, 'Aspects of the peasant land market', pp. 332–3; P. Larson, *Conflict and compromise in the late medieval countryside. Lords and peasants in Durham, 1349–1400* (2006), pp. 163–4.

²⁵ These were also known as *de exitu* payments, see M. Bailey, *A marginal economy? East Anglian Breckland in the later Middle Ages* (1989), pp. 224–5; J. Titow, 'Lost rents, vacant holdings and the contraction of peasant cultivation after the Black Death', *AgHR* 42 (1994), pp. 100–4; Fryde, *Peasants and landlords*, p. 229.

²⁶ The grant of a term for lives avoids references to holding to 'his and his heirs', and instead is identifiable

tenancies appear to have been created through conversions from hereditary villein tenures, a process which often involved the replacement of the old services and incidents with a cash rent.²⁷ The chronology of, and reasons for, such conversions are obscure. Allen dates their initial spread to the early fifteenth century, although they do not appear to have become widespread until the late fifteenth and sixteenth centuries.²⁸

The third form of fixed-term tenure was a lease for a term of years, again created by the direct conversion of villein tenure.²⁹ Strictly speaking, a lease was an economic contract not a form of tenure, creating a mere chattel interest in, rather than a title to, the land: the conversion was both temporary and at the lord's discretion, and it was by copy of the court roll rather than by indenture.³⁰ The vast majority of leases were held for cash rent at whatever the market would bear in lieu of all servile incidents, so that the lessee entered into a contractual relationship free of feudal obligations.³¹ The area of customary land converted to leasehold increased after 1348–9, peaking in many places between c.1390 and c.1420 and generally declining thereafter.³² What, then, became of customary land when its lease expired and was not renewed? Some lay abandoned, and some was absorbed into the demesne, in both cases falling under the lord's direct control.³³ However, some customary land which had been leased was converted into life tenancies, and some back into heritable tenancies.³⁴ These processes remain dimly understood. How are we to explain the conversion of villein tenure to leasehold? Were landlords or tenants behind the switch?³⁵ Why did leaseholds decline in importance during the fifteenth century?

Note 26 continued

by conveyances such as 'to hold to him for the term of his life' (*ad terminum vitam suam*), 'to hold to him, his wife and his son for the term of their lives' (*ad terminum vite eorum*) usually supplemented by the phrase 'at the will of the lord/according to the custom of the manor'.

²⁷ Faith, 'Berkshire', p. 137; B. Wells-Furby, *The Berkeley estate, 1281–1417. Its economy and development* (2012), pp. 96–101; Bailey, *Decline of serfdom*, pp. 120–2, 157–9.

²⁸ Allen, *Enclosure and the yeoman*, p. 67. See Faith, 'Berkshire', pp. 133, 137, 140–1; A. Jones, 'Bedfordshire: the fifteenth century', in Harvey (ed.), *Peasant land market*, p. 203; Hoyle, 'Tenure and the land market', pp. 7–8; Dyer, *Lords and peasants*, p. 294; and Whittle, 'Individualism and the family–land bond' pp. 57–8.

²⁹ Whittle, 'Leasehold tenure', pp. 139–50; Mate, 'East Sussex land market', pp. 52–5; Larson, *Conflict and compromise*, pp. 163–4. Strictly speaking, there was little difference between a lease and a life tenancy: one was a lease for defined years, the other for defined lives. They are treated separately here for two reasons. First, the language of the lease for years was consistently different: its grant in the court roll, or its enrolment on the manorial account, invariably deploys one or both of the phrases 'to lease [*dimittere*]' or 'to hold at farm [*teneo ad firmam*]', usually without 'at the will of the lord/according to the custom of the manor'. Second,

leases for years and copyholds for lives were regarded as subtly different entities, especially from the sixteenth century.

³⁰ Kerridge, *Agrarian problems*, p. 47; Harvey, *Westminster Abbey*, pp. 248–50.

³¹ Schofield, 'Tenurial developments', pp. 256–60; Whittle, 'Leasehold tenure', pp. 147–8.

³² Harvey, *Westminster Abbey*, pp. 276–7; Dyer, *Lords and peasants*, pp. 293–4; R. H. Britnell, 'Tenant farming and tenant farmers: Eastern England', in Miller (ed.), *Agrarian history*, III, pp. 615–16; C. Dyer, 'Tenant farming and tenant farmers: the West Midlands', in Miller (ed.), *Agrarian history*, III, pp. 640–1; Fryde, *Peasants and landlords*, p. 229; Whittle, *Agrarian capitalism*, pp. 73–4; M. Bailey, *Medieval Suffolk 1200–1500. An economic and social history* (2007), pp. 199–200, 230–2; M. Muller, 'Peasants, lords and developments in leasing in late-medieval England', in van Bavel and Schofield (eds), *Development of leasehold*, pp. 163–5.

³³ Brenner, 'Agrarian class structure', p. 47; Whittle, *Agrarian capitalism*, p. 70.

³⁴ H. P. R. Finberg, *Tavistock Abbey* (1951), p. 250; Hoyle, '"An ancient and laudable custom"', p. 27; F. G. Davenport, *The economic development of a Norfolk manor* (1906), pp. 57–8; R. H. Britnell, *Britain and Ireland, 1050–1530* (2004), p. 437.

³⁵ Brenner, 'Agrarian class structure', pp. 46–7; Hoyle, 'Tenure and the land market', pp. 8–18.

What determined whether they were re-converted to a life tenancy or a hereditary tenancy, and which was the most common form?

II

The proportion of customary land varied on medieval English manors, although, in general, it tended to rise with the size of manor: on average around one third of the peasant land on a small manor was customary, rising to one half on large manors.³⁶ Before the Black Death of 1348–9 the vast majority of English customary land was held on a heritable villein tenure.³⁷ The structure of the rent package attached to this tenure varied greatly in its composition, weight and consistency.³⁸

Between c.1350 and c.1500 customary land continued to be carefully labelled as ‘native’, ‘customary’ and ‘bond’ in manorial documents, but the form of tenure on which it was held, and the structure of its rent package, changed. Individual manors in southern England fell into one of four general categories, based upon the dominant form of tenure: hereditary tenure; a mix of hereditary and fixed-term tenures; tenure for the term of a life or lives; and leasehold for years.

Category 1: Hereditary tenure

On this category of manor, all or the great majority of customary land continued to be held on a hereditary tenure. A small minority of the customary land might have been converted to fixed-term tenures. The rent package became simplified and largely monetarized. By c.1500 these were proto-copyholds of inheritance.

The non-cash elements of the old rent package – such as servile incidents, labour services and payments in kind – either lapsed informally or were replaced with a cash sum through a formal negotiated commutation, or a combination of the two. Labour services were invariably commuted for cash. Some commutations were collective agreements, others negotiated with individual tenants. As the rent package mutated, so the language of conveyances changed. Phrases such as ‘in villeinage/bondage’ were dropped and replaced with ‘at the will of the lord’ and/or ‘according to the custom of the manor’.

The pace and timing of each individual element of change varied. For example, change occurred rapidly and quickly at Runton Hayes (Norfolk) with the lapse of millsuit, tallage and merchet in the 1350s, and the simultaneous change in the language of conveyances from one standard format in the 1340s (‘held in bondage for him and his heirs’) to another in the 1350s (‘to hold for him and his heirs at the will of the lord making services and customs’).³⁹ At Kibworth Harcourt (Leics.) change was more protracted. Labour services had been commuted since the 1280s, and entry fines lapsed in the 1350s, but tallage and the use of ‘in bondage’ remained until 1427. At this date, after opposition from some tenants and problems filling vacant holdings, the

³⁶ E. A. Kosminsky, *Studies in the agrarian history of England in the thirteenth century* (1956), p. 101.

³⁷ See the references in n. 14 above, plus Dyer, *Lords and peasants*, pp. 106–7; Whittle, *Agrarian capitalism*, pp. 86–91.

³⁸ For general introductions, see Miller and Hatcher, *Medieval England*, pp. 101–33; Rigby, *English society*, pp. 25–34; M. Bailey, ‘Villeinage in England: a regional case study, c.1250–c.1349’, *EcHR* 62 (2009), pp. 430–57.

³⁹ Norfolk RO, WKC 2/167 398 x 8.

lord agreed that henceforth tallage and the term 'bondage' would be dropped, and the level of cash rent be reduced.⁴⁰ The heavy week works attached to holdings at Telham (Sussex) were permanently commuted after 1400, and then in 1457 the lord formally agreed to commute the remaining seasonal services and liability for manorial office for a nominal sum.⁴¹

Category 2. Mix of hereditary and fixed-term tenures

When a large minority or small majority of customary land was held on a hereditary tenure, the remainder was converted to a fixed-term tenure, usually leases for years. The use of the lease in this way peaked in the early fifteenth century, then declined: in some places, the area under fixed-term tenures declined as more customary land was re-granted on a hereditary tenure. Hence, by 1500 hereditary tenure was once again the dominant form of customary tenure as a proto-copyhold of inheritance.

The servile rent package and language disappeared from land held on the hereditary tenure in the same manner as on Category 1 manors. Both were formally removed on land converted to the fixed-term tenure, which was usually required to render just a commercial cash rent. Fee farms were usually deployed from the 1420s to convert the former leases back to a hereditary tenure owing an annual money rent and, perhaps, entry fine. For example, a growing proportion of the standardized customary holdings at Birdbrook (Essex) were converted to leases for lives after the 1390s, mainly due to shortages of tenants, although by c.1500 nearly all had returned to a heritable tenancy.⁴² Most customary land at Fornsett (Norfolk) had been converted to leases for years by the 1370s, but then to hereditary fee farms by the 1470s.⁴³

Category 3: Tenure for the term of a life or lives

Here all or the majority of customary land was converted to tenure for the term of a life or lives. Hereditary tenure and leases for years were either absent or a minority. Life tenancies are a form of leasehold, and some historians routinely describe them as leases, but they seldom contain phrases such as 'to lease', or 'to hold at farm', which are characteristic of leases for years.⁴⁴ By c.1500 these were proto-copyholds for lives.

A commercial money rent usually replaced all servile incidents, except heriot and entry fines, upon conversion to the life tenancy. The use of 'in villeinage/bondage' disappeared at the same time. In a few places life tenancies were created but continued to held in villeinage.⁴⁵ In the 1350s and 1360s the standardized customary holdings in Cuxham (Oxfordshire) were converted to terms of lives for cash rent, usually because not enough tenants could be found after the Black Death to re-occupy them on the old terms.⁴⁶ Other places, such as Sotwell

⁴⁰ C. Howell, *Land, family and inheritance in transition. Kibworth Harcourt, 1280-1700* (1983), pp. 17, 33, 50-2; ead., 'Inheritance customs in the Midlands, 1280-1700', in J. Goody, J. Thirsk and E. P. Thompson (eds), *Family and inheritance. Rural society in western Europe 1200 to 1800* (1986), pp. 132-4.

⁴¹ E. Searle, *Lordship and community. Battle Abbey and its banlieu 1066-1538* (1974), pp. 376-7, 382-3.

⁴² Schofield, 'Market for customary land', pp. 10-14. For other examples, see Harvey, *Westminster Abbey*,

pp. 248-52, 276-84; Whittle, *Agrarian capitalism*, pp. 73-4; and also Bailey, *Decline of serfdom*, pp. 135-8, 145-6, 232-3, 246-50.

⁴³ Davenport, *Economic development*, pp. 57-8, 70-7.

⁴⁴ E. B. Dewindt, *Land and people in Holywell-cum-Needlingworth* (1972), pp. 122-30; Wells-Furby, *Berkeley estate*, pp. 96-7, 105.

⁴⁵ Harvey, *Westminster Abbey*, 254-6.

⁴⁶ Bailey, *Decline of serfdom*, pp. 120-3; see also Wells-Furby, *Berkeley estate*, pp. 106-7.

(Berks.) and Holywell (Hunts.), underwent more gradual conversions from the 1390s: for example, 136 of 149 transfers of customary land at Holywell between the 1390s and 1450s were for life tenancies.⁴⁷ During the later fifteenth century, many customary tenants on the estate of the bishop of Worcester surrendered their hereditary tenures voluntarily to be readmitted immediately on life interests for cash rents instead, and by c.1470 life tenancies were dominant on the Gloucestershire manors of Westminster Abbey.⁴⁸

Category 4: Leasehold for years

In this case all or a majority of customary land was converted to leases for years, usually owing just a commercial cash rent: a few leases were also liable for a nominal entry fine or seasonal labour services.⁴⁹

The lease of customary land was enrolled in either the manorial account each year, and/or recorded at the time of its grant in the manor court roll. Conveyances included the phrases 'leases' and/or 'at farm', but not 'in villeinage/bondage', a significant and decisive change. The length of leases tended to increase during the fifteenth century, and lessees also tended to obtain the right to assign the lease to a third party during its term. Most of the large customary holdings at Brandon (Suffolk) were converted to leases for years in the 1350s and 1360s, and the old villein tenure and incidents virtually disappeared. Leases continued to be renewed during the fifteenth century, and in the mid-1460s the annual rent from these 'lands at farm' was permanently amalgamated with the assize rents of the manor.⁵⁰ Large areas of unfree land throughout Cornwall were held on a conventional tenure, which was effectively a short-term lease.⁵¹

The distribution of these four categories of manor throughout southern England has yet to be established, although Whittle has already noted the preponderance of Category 1 and 2 manors in East Anglia, and of Category 3 and 4 manors in the Midlands, by the second half of the fifteenth century.⁵²

III

What trends in the formulae of land transfers of customary land, and in the use of the copy, are identifiable as manors transformed from hereditary villein tenure to the forms described above? We are still only able to answer these questions tentatively, although a clearer picture is emerging.

⁴⁷ Dewindt, *Needingworth-cum-Holywell*, p. 134; Faith, 'Berkshire', pp. 140–1, 148, 156. For other examples, see Harvey, *Westminster Abbey*, pp. 254–6; Dyer, 'West Midlands', p. 640; Bailey, *Decline of serfdom*, pp. 156–59, 250.

⁴⁸ Dyer, *Lords and peasants*, pp. 106–7, 294; Dyer, 'West Midlands', p. 640; Harvey, *Westminster Abbey*, p. 280.

⁴⁹ Larson, *Conflict and compromise*, pp. 164–5; Bailey, *Decline of serfdom*, pp. 139, 175, 209, 222.

⁵⁰ Muller, 'Peasants, lords', pp. 165–73; the amalgamation of the rent in the mid-1460s is evident when

comparing University of Chicago, Joseph Regenstein Library, Bacon mss. 664 and 665. For other examples of this category of manor, see Bailey, *Decline of serfdom*, pp. 251–4.

⁵¹ J. Hatcher, *Rural economy and society in the Duchy of Cornwall, 1300–1500* (1970), pp. 52–79; id., 'Social structure: Devon and Cornwall', in H. E. Hallam (ed.), *Agrarian history of England and Wales*, II, 1042–1348 (1988), pp. 677–8; Fox and Padel, *Cornish lands of the Arundells*, p. lvii.

⁵² Whittle, 'Individualism and the family-land bond', pp. 49–59.

Conveyances of customary land held on fixed-term tenures ceased to include the overtly servile phrase 'holds in villeinage/bondage'. From the 1350s this phrase also began to disappear from the conveyances of hereditary tenure on some manors, a change which was usually associated with the lapse of servile incidents such as tallage, merchet and millsuit.⁵³ This change is clearly identifiable after the first plague outbreak, especially on manors of lower-status landlords, and therefore started much earlier than the traditional timeframe of c.1390–c.1420.⁵⁴ Both the 1350s and the 1390s were periods when landlords experienced particular difficulties in recruiting tenants for customary land. Many responded by making various adjustments to improve the dignity of the tenure and to widen the distinction between customary tenants and tenants in villeinage. Their subsequent success in finding new tenants for much of the untenanted land confirms that these adjustments mattered to the tenants themselves. Many were newcomers to the customary land market, or migrants into the manor, and therefore not hereditary serfs of the lord, who were attracted to tenures which neither conferred nor implied personal servility.

Two particular aspects of the changing formulae of conveyances are worthy of closer exploration, namely the chronology, geography and coincidence of the use of two key phrases: 'at the will of the lord [*ad voluntatem domini*]', and 'according to the custom of the manor [*secundum consuetudinem manerii*]'. The meaning of 'at the will of lord' is capable of misunderstanding. It did *not* mean that the land was vulnerable to seizure and eviction on the landlord's whim, because lords had to, and did, respect the qualifying terms upon which it was held, such as the contractual length of the term or the customary right of an heir to inherit. The purpose of the phrase 'at the will of the lord' was to reinforce unequivocally that the title to the land could only be pleaded in the lord's manorial court, and therefore that this was customary not freehold tenure.⁵⁵ After the Black Death of 1348–49 it was increasingly inserted into conveyances of customary tenure, both heritable and fixed, especially in East Anglia.⁵⁶

Before 1350 the phrase 'according to the custom of the manor' was more frequent and ubiquitous than 'at the will of the lord', although it was less common in East Anglia.⁵⁷ Thereafter, its usage became more common, and it was routinely included in conveyances of life tenancies (although seldom, if ever, in leases for years).⁵⁸ By the late fifteenth century the phrase was being added to conveyances of hereditary tenures in East Anglia.⁵⁹ 'According to the custom of the manor' meant that the title to the land could only be defended in the lord's court, without nailing the point as directly as 'at the will of the lord'. But it also conveyed the

⁵³ Bailey, *Decline of serfdom*, pp. 241–2, 262–3, 288–92; Harvey, *Westminster Abbey*, p. 275.

⁵⁴ Bailey, *Decline of serfdom*, pp. 105, 115, 121, 137, 156–8, 172, 199, 220, 241–2, 246.

⁵⁵ Kerridge, *Agrarian problems*, pp. 38–9, 138–9; Harvey, 'Some aspects of the peasant land market', pp. 335–6; Z. Razi and R. M. Smith, 'The origins of the rolls as a written record', in Z. Razi and R. M. Smith (eds), *Medieval society and the manor court* (1996), p. 54n; Bailey, *Decline of serfdom*, pp. 291–2.

⁵⁶ Howell, *Land, family and inheritance*, p. 51; Howell, 'Inheritance customs', pp. 132–3; J. Ravensdale,

'Population changes and the transfer of customary land on a fourteenth century manor', in R. M. Smith (ed.), *Land, kinship and life-cycle* (1984), pp. 200–1; Bailey, *Decline of serfdom*, pp. 291–2.

⁵⁷ Ravensdale, 'Transfer of customary land', p. 200; Searle, *Battle Abbey*, pp. 194, 376; Dewindt, *Needingworth-cum-Holywell*, pp. 122–30, fns.; Faith, 'Berkshire', pp. 124, 130, 151, 156; Tompkins, "'Let's kill all the lawyers'", pp. 75–9; Bailey, *Decline of serfdom*, p. 292.

⁵⁸ Bailey, *Decline of serfdom*, p. 292 n. 21.

⁵⁹ *Ibid.*, pp. 173, 222, 247, 249–50, 292.

wider meaning that manorial custom dictated the arrangements for customary land, such as the days on which the rent was paid, the arrangements governing entry fines, and other local restrictions on sub-letting and disposal.⁶⁰ Custom bound the landlord as much as the tenant, who, as contemporary lawyers recognized, 'cannot break the custom which is reasonable in these cases'.⁶¹

The practice of granting a written copy of the court record of a customary land transaction was rare in c.1300 and commonplace by the late fifteenth century, although copyhold as a distinct and identifiable tenure did not emerge until the sixteenth century. The chronology of its spread between those dates is impossible to chart with precision, because survivals of individual copies are so rare, although Faith observed that during the second half of the fourteenth century incidental references to copies become more frequent in Berkshire.⁶² In fact, Faith's observation holds good for other areas of the country, too, because there is also evidence for the use of copies in this period from places as far apart as Essex, Gloucestershire, Suffolk, Buckinghamshire and County Durham.⁶³ The issue of a copy primarily benefited tenants by providing them with written proof of title, signalling the lord's good faith with respect to it, and enhancing the dignity of customary land by emulating the freeman's land charter.⁶⁴ From the landlord's perspective, the contents of the copy overtly reinforced the customary status of the tenure, an obvious benefit when the differences between free and customary tenures were diminishing. Both lord and tenant would have obtained obvious benefit from the spread of copies during the 1350s and 1360s, when the turnover of land was high, when distant relatives and newcomers were acquiring customary land for the first time, and when the range of customary tenures was widening rapidly. The wider use of the copy made very good sense in such conditions, because it improved the security of the tenure and reduced uncertainty about its terms.⁶⁵ Hyams has suggested that copyhold was the 'logical conclusion' of a process begun by the introduction of the statute of *Quia Emptores* in 1290, because this had formalized the legal importance of written precision and registration in protecting tenures.⁶⁶ It is now apparent that the use of the copy spread rapidly after 1350 and was already widespread by the end of the fourteenth century.

After c.1350 a growing proportion of customary land was converted to fixed-term tenures, in which a money rent replaced most, if not all, of the old customs and services. So what determined whether the majority of customary land on a given manor remained on a hereditary customary tenure or was converted to a term?

The principal characteristic of those manors where hereditary customary tenures continued to dominate is that they maintained a ready supply of tenants throughout the generally depressed agrarian conditions of the later Middle Ages, and so they did not experience widespread vacancies of customary land for any length of time, especially after the Black

⁶⁰ Whittle, *Agrarian capitalism*, pp. 92–3.

⁶¹ Kerridge, *Agrarian problems*, p. 139.

⁶² Faith, 'Berkshire', pp. 130, 138, 140, 151; Harvey, 'Some aspects of the peasant land market', pp. 337–8.

⁶³ Kerridge, *Agrarian problems*, p. 141; Harvey, 'Home Counties', p. 671; Schofield, 'Market for customary land', p. 11; Wells-Furby, *Berkeley estate*, p. 106;

Larson, *Conflict and compromise*, p. 195; Bailey, *Decline of serfdom*, pp. 292–3.

⁶⁴ Harvey, *Westminster Abbey*, p. 284.

⁶⁵ Smith, 'English peasantry', p. 354.

⁶⁶ P. R. Hyams, 'What did Edwardian villagers understand by law', in Razi and Smith (eds), *Medieval society and the manor court*, pp. 81–3.

Death of 1348–49 and 1361–62, and in the sharp agrarian downturns of the 1390s and the 1450s. The capacity of such manors to find tenants for most of their customary land owed much to their structure of landholding, which was characterized by sub-divided holdings, a permissive seigneurial approach towards a peasant land market, and a high proportion of smallholders.⁶⁷ Such structures were found mainly in East Anglia, the Home Counties and the south east, where population densities, commercialized agricultural production, and concentrations of wealth were discernibly higher than in other areas of England.⁶⁸ These features combined to create a deeper pool of prospective tenants locally, many of them seeking to acquire parcels of land to augment their smallholding, and an established culture of absorbing newcomers to the property market. They also generated higher land values and a more active customary land market, which meant that rights of inheritance were an important mechanism for protecting the resale value of customary land. In other words, such heritable land ‘was valuable because it could be bought and sold, rather than because it could be inherited’.⁶⁹

Another explanation for the durability of hereditary customary tenure on Category 1 and 2 manors is that landlords were prepared to make concessions on the rent package in order to maintain its attractiveness to existing and prospective tenants in a deteriorating market. The lapse of tallage, the commutation of labour services, the switch of merchet from unfree landholdings to hereditary serfs, and the changing language of conveyances, all improved the dignity of this tenure, further distancing it from villeinage. Many landlords were offering such improvements in the second half of the fourteenth century, some voluntarily and others in the teeth of tenant demands. Only in a few places were powerful landlords able to maintain unreformed tenure in villeinage much beyond c.1400, usually out of stubbornness or an innate conservatism, but invariably in places where landholdings were fragmented and the land market was active.⁷⁰

Retaining hereditary tenure did not involve dramatic change, whereas a decision to convert to fixed-term tenures required conscious and momentous decision-making on the part of both landlord and tenant. What made them do so? A full answer to this question will require more comparative work on the common features of Category 3 and 4 manors, and those of Categories 1 and 2, but a number of explanations immediately present themselves. One explanation is that some landlords promoted conversions to fixed-term tenures because they preferred them to villeinage. Brenner regarded the introduction of leases as strongly beneficial to landlords, and therefore a seigneurial initiative, and Fryde argued that life tenancies were characteristic of conservative lordships, reflecting their ‘harsh treatment of the peasantry’: both authorities regarded fixed-terms as detrimental to tenants, who could be evicted or subject to

⁶⁷ Harvey, ‘Aspects of the peasant land market’, pp. 338–51; B. M. S. Campbell, ‘Population pressure, inheritance and the land market in a fourteenth century peasant community’ and R. M. Smith, ‘Families and their land in an area of partible inheritance: Redgrave, Suffolk, 1260–1320’, both in Smith (ed.), *Land, kinship and lifecycle*, respectively pp. 120–3 and pp. 135–96; A. E. Levett, *Studies in manorial history* (1938), pp. 252–4; Poos, *Rural society*, pp. 12–13; Whittle, ‘Individualism and the family-land bond’, pp. 44–5;

Bailey, *Medieval Suffolk*, pp. 54–5, 59–63; Bailey, *Decline of serfdom*, pp. 105–6, 113–15, 220–2.

⁶⁸ For the general characteristics, see B. M. S. Campbell, ‘Benchmarking medieval economic development: England, Wales, Scotland and Ireland, c.1290’, *EcHR* 61 (2008), pp. 906, 924, 929.

⁶⁹ Whittle, ‘Individualism and the family-land bond’, p. 56.

⁷⁰ Mullan and Britnell, *Land and family*, pp. 62–5.

rent hikes at the end of the lease.⁷¹ There are certainly some examples of landlords who, for whatever reason, actively promoted fixed-terms in preference to hereditary tenures. Durham priory had converted most of its customary land to leases by the fifteenth century, whereas the neighbouring bishopric did not, because the priory was more active in the management of its lands and in greater need of cash.⁷²

The assumption that landlords were *always* the main beneficiaries of fixed-term tenures, and therefore the driving force behind their introduction, is implausible. Some tenants, too, saw real advantages in fixed-term tenures, notably their uncomplicated and money-based rent structure, the absence of servile incidents, and the flexibility either to relinquish the land or to renegotiate its rent package at the end of the term. The availability of land for a fixed duration, often in parcels and locations offering choice to the tenant, proved successful in attracting new tenants from different backgrounds to customary land during periods of agricultural uncertainty or downturn.⁷³ Hoyle correctly emphasizes that conversions to leases were not initially, and not necessarily, contentious to tenants.⁷⁴

In any given locality, at any given time, the introduction of fixed-term tenures could have been either a landlord-driven or tenant-driven initiative: or, indeed, it could have been driven by their mutual interests.⁷⁵ After all, fixed-term tenures were flexible both ways: tenants could choose not to renew at the end of the lease, or could negotiate new terms, while landlords retained the option of restoring the land to villein tenure. Trying to ascertain exactly whether fixed-term tenures were the preference of landlord or tenant is ultimately an exercise in *a priori* reasoning rather than evidence-based proof, because the documents themselves seldom offer any definitive explanation. The most powerful line of reasoning is that for at least a century after 1350 fixed-term tenures were primarily a tenant-driven initiative, because this was essentially a buyer's market.⁷⁶ There is some concrete evidence to support this supposition. Time and again, conversion to fixed-terms was the only way of finding any tenants to occupy abandoned customary land, who were therefore consciously preferring them to the old tenure in villeinage;⁷⁷ some tenants paid to obtain seigneurial permission to convert their holdings to life tenancies;⁷⁸ and landlords occasionally flagged their intention to reconvert leases to villein tenure if a willing tenant should appear in the future.⁷⁹

The most striking common characteristic of Category 3 and 4 manors is that they experienced severe shortages of tenants for their main customary landholdings at some point

⁷¹ Brenner, 'Agrarian class structure', pp. 46–50; Fryde, *Peasants and landlords*, p. 270.

⁷² A. T. Brown, 'Estate management and institutional constraints in pre-industrial England: the ecclesiastical estates of Durham, c.1400–1640', *EcHR* 67 (2014), pp. 699–719. For another example, see the Berkeleys in Gloucestershire, Wells-Furby, *Berkeley estate*, pp. 96–7.

⁷³ Smith, 'English peasantry', p. 361; Fryde, *Peasants and landlords*, p. 63; P. R. Schofield, 'Tenurial developments and the availability of customary land in a later medieval community', *EcHR* 49 (1996), p. 262, 264.

⁷⁴ Hoyle, 'Tenure and the land market', pp. 9–11, 18.

⁷⁵ Larson, *Conflict and compromise*, pp. 165–7.

⁷⁶ *Ibid.*, pp. 162–3, 201, 227; Muller, 'Peasants, lords', p. 164.

⁷⁷ Dyer, *Lords and peasants*, pp. 166, 292; Faith, 'Berkshire', p. 124; Dewindt, *Needlingworth-cum-Holywell*, p. 205; Schofield, 'Tenurial developments', pp. 255–6; Wells-Furby, *Berkeley estate*, p. 105; Bailey, *Decline of serfdom*, pp. 106, 136–7, 170–1, 187, 244, 247–8, 251–2, 320.

⁷⁸ Faith, 'Berkshire', pp. 137, 151.

⁷⁹ Searle, *Battle Abbey*, p. 377; Faith, 'Berkshire', pp. 124–5; Mate, 'East Sussex land market', p. 53; Fryde, *Peasants and landlords*, p. 229; Schofield, 'Tenurial developments', p. 257; Whittle, *Agrarian capitalism*, p. 71.

in the later Middle Ages, usually in the 1350s, the 1390s and/or the 1450s. Such shortages were most acute on manors dominated by large, standardized holdings, usually held on impartible inheritance and/or with relatively inactive land markets: for years after the Black Death many of these holdings lay unoccupied in some places. The only way to revive the customary land market in the challenging conditions of the 1350s and 1390s on these manors was to offer unoccupied holdings on fixed-term tenures for money rent.⁸⁰ Why were tenant shortages more severe here than on Category 1 and 2 manors? One reason is that large standardized holdings carried greater operational risk than did smallholdings, especially to new tenants in periods of agrarian downturn: this factor was especially potent in the 1350s, when the economic uncertainty of the immediate post-plague era and the sudden shortages of labour made large holdings burdened with labour services appear risky. Converting these holdings to a fixed-term tenure reduced the risk by replacing labour services with a money rent, and by providing a formal opportunity to renegotiate the annual rent downwards, and to re-evaluate options, at its termination.

Another reason for the incapacity of such manors to find sufficient tenants was the structure of their customary landholding. The dominance of large, standardized holdings held on impartible inheritance, and the absence of an active market in land, meant there were fewer opportunities for local people to establish a foot on the property ladder. This served to limit the number and proportion of smallholders, and encouraged the out-migration of many landless people, both of which limited the size of the pool of potential replacement tenants locally. Those remaining in the pool had little direct experience of running a holding, which might have added to their reticence about acquiring a large one in economic conditions where some experienced tenants were abandoning theirs.

The willingness of tenants to opt for an impermanent tenancy in preference to rights of inheritance seems counter intuitive. The reasons for doing so were varied and complex. One explanation is that a fixed-term tenure offered short- to medium-term flexibility, which mitigated risk in an uncertain and deteriorating market, and therefore outweighed the long-term security of inheritance rights. This is similar to Faith's point that peasant families tended to relinquish rights of inheritance during periods when land was abundant and cheap.⁸¹ Yet this does not explain why, say, Worcestershire tenants from the mid-fifteenth century were actively relinquishing inheritance rights around the same time as some of their East Anglian counterparts were once again returning to them. Thus the general economic climate provides only part of the answer.

Whittle has argued that peasants in the Midlands sought fixed terms as a release from the tenurial inflexibility of villeinage, where landlords had imposed a policy of impartible inheritance and few customary land sales, a rigid regime which had stultified the development of a land market.⁸² Her perspective that life tenancies were a release from serfdom is far more convincing than Fryde's view that they were an instrument of its re-imposition.

⁸⁰ R. A. Lomas, 'Developments in land tenure on the Prior of Durham's estate in the later Middle Ages', *Northern Hist.*, 13 (1977), p. 39; Fryde, *Peasants and landlords*, p. 68; Muller, 'Peasants, lords', pp. 163, 165; Bailey, *Decline of serfdom*, pp. 121, 136, 157–8, 170–1,

187–8, 232–3, 247–8, 250–1.

⁸¹ Faith, 'Peasant families', pp. 88–92.

⁸² Fryde, *Peasants and landlords*, p. 270; Whittle, 'Individualism and the family-land bond', pp. 53, 58.

Another explanation is that the strong land-family bond, which had been a characteristic of communities in central-southern, midland and northern England, broke down rapidly from the end of the fourteenth century, coinciding with a sharp fall in kin density. The decline in the density of relatives residing locally had a deleterious impact upon a system which had traditionally been highly dependent upon kinship links for finding tenants for customary land.⁸³ After c.1400 the only viable option was to attract new tenants from outside the conventional range of family connections, but the customary land market was relatively inactive and not very commercialized in these parts, and therefore did not readily produce alternative tenants.⁸⁴ Thus when there were insufficient heirs to succeed to customary holdings, when those holdings had limited resale value, when the land market was inactive, and when agriculture was depressed, then the premium upon inheritance rights was low, and fixed-term contracts appeared attractive to tenants of customary land.

Fixed-term tenures were known all over the country, so what determined which particular type of fixed-term tenure came to dominate customary land on a given manor? On a few manors, especially before c.1420, different types of fixed-term tenures existed side-by-side for a while.⁸⁵ Others experimented initially before settling upon a preferred choice.⁸⁶ For example, in the 1380s and 1390s both leases for years and life tenancies were introduced at Brightwalton (Berks.) until the latter became the dominant form, and Durham priory first utilized life tenancies before switching to leases for years.⁸⁷ Such fluidity blurred the clean demarcations of the four manorial categories identified above, but, for the most part, a single dominant fixed-term tenure tended to emerge sooner or later on most manors, rather than a variety existing side-by-side.

Once again, some landlords and tenants must have had their own particular preference for either leases or life tenancies, the specific reasons for which are unknowable to the historian. Yet there is also a discernible tendency for manors to settle upon the type of fixed-term tenure which was already best-known locally. Life tenancies were known, but not common, before 1350 in parts of Gloucestershire and Oxfordshire, but then in the 1350s and 1360s they spread in both these counties. Leasing and/or sub-leasing small parcels of customary land had been rare in such areas before and after 1350.⁸⁸ When faced with severe shortages of tenants, especially in the unprecedented conditions following the Black Death, landlords and tenants opted for the fixed-term tenure which was already familiar to them. Once life tenancies had established a toe-hold in these areas, they subsequently gained in

⁸³ Z. Razi, 'The myth of the immutable English family', *Past & Present* 140 (1993), pp. 6–36.

⁸⁴ The variations are explored in Harvey, *Peasant land market*; Whittle, 'Individualism and the family-land bond', pp. 49–59; Whittle, *Agrarian capitalism*, pp. 92–100.

⁸⁵ Harvey, *Westminster Abbey*, p. 280; Bailey, *Decline of serfdom*, pp. 135–8, 199–201.

⁸⁶ Bailey, *Decline of serfdom*, p. 324.

⁸⁷ Faith, 'Berkshire', p. 133; Larson, *Conflict and compromise*, p. 163.

⁸⁸ W. H. Hart (ed.), *History and Cartulary of the*

Monastery of St Peter, Gloucester (3 vols, Rolls Ser., 1863–67), III, pp. 110–12; R. H. Hilton, *A medieval society. The west Midlands at the end of the thirteenth century* (1966), p. 138; Harvey, *Westminster Abbey*, pp. 212–14, 281–2; Wells-Furby, *Berkeley estate*, pp. 96–7; Bailey, *Decline of serfdom*, pp. 119–20, 157–8. The land market in Berkshire was relatively inactive, and life tenancies became established there in the later Middle Ages, M. Yates, *Town and countryside in western Berkshire, c.1327 to c.1600. Social and economic change* (2007), pp. 142, 176, 178, 182.

popularity, gradually displacing the remaining hereditary tenures during the course of the late-fourteenth and fifteenth centuries.

Life tenancies of customary land were unusual before 1350 in East Anglia and the Home Counties. In contrast, small quantities of customary land had been converted to leases for years, while the practice of sub-letting parcels of villein land for short periods was very well established. Both practices derived from the commercialized and precocious nature of the land market in these regions.⁸⁹ After 1350 leases quickly became the fixed-term tenure of choice, and by the 1390s they were widespread.⁹⁰ Acquiring vacant customary holdings on short-term leases bestowed benefits upon both landlord and tenants in the uncertain and commercially-sensitive land market of the post-plague era, because it presented frequent opportunities to relinquish the land or to renegotiate its terms in response to fluctuating conditions.⁹¹

The area of customary land converted to leases and life tenancies increased in the second half of the fourteenth century, but thereafter their trajectories of development differed sharply. During the fifteenth century, more and more customary land was converted to life tenancies in central, southern and western England, including through voluntary surrenders of, and conversions from, hereditary tenure. In contrast, after c.1420, the area under leases for years in East Anglia and the Home Counties declined. Some customary lands at lease were re-granted for longer and more generous terms, but many were not renewed upon expiry. Most of the latter were returned to a hereditary tenancy, often through the device of the fee farm.⁹²

What explains these different trajectories of development of fixed-term tenures? Life tenancies continued to spread during the course of the fifteenth century in those areas of England where the regional land market was relatively inactive, where competition for land was limited, and where fewer heirs were available to inherit. In such places, heirs were unlikely to be outbid if they wished to inherit a family holding, and so they ceased to value the right to inherit. Thus an indifference to inheritance rights was characteristic of places where, not just times when, land had little resale value and was easy to acquire.⁹³

In East Anglia, the Home Counties and the south east, where the customary land market was active and commercialized, and where the family-land bond had been broken early, leases for years became popular when the grain market was volatile but contracting between c.1350 and c.1420, because they provided both landlord and tenant with greater flexibility during the uncertainty. They provided tenants with the flexibility to build up, to restructure, or to run down a property portfolio relatively quickly, and enabled landlords to respond to this demand without making any permanent concessions on tenure. However, when the land market finally settled into the stable trough of the Great Slump of the mid-fifteenth century, leases for short terms lost their popularity. As the land market picked up in the second half of the fifteenth century, so town dwellers, gentry landlords and Londoners invested increasingly in customary land in the south and east.⁹⁴ If landlords were to attract these newcomers to the rural land

⁸⁹ Bailey, 'Villeinage in England', pp. 441–2.

⁹⁰ F. M. Page, *The estates of Crowland Abbey* (1934), p. 112.

⁹¹ Van Bavel and Schofield, 'Introduction', p. 15.

⁹² Davenport, *Economic development*, pp. 57–8; Bailey, *Decline of serfdom*, pp. 34, 173, 200–1, 222, 232–3, 248–50.

⁹³ Faith, 'Berkshire', p. 157; French and Hoyle, *Character of English rural society*, pp. 25, 39; Whittle, 'Individualism and the family-land bond', pp. 51–4.

⁹⁴ R. H. Britnell, *Growth and decline in Colchester, 1300–1515* (1986), pp. 259–60; Jones, 'Bedfordshire', pp. 189–90, 234–5, 258; Harvey, 'Home Counties', p. 675;

market, and if they were to entice potential buyers away from the large quantities of heritable freeholds available for purchase nearby, then customary land had to possess inheritance rights and it also had to be free of its old, demeaning, servile incidents.⁹⁵ Hence leases gradually disappeared from Category 2, and even some Category 4 manors, during the course of the fifteenth century, to be replaced by heritable tenures.

These trends provide the first real insight into the genesis of the highly distinctive regional distribution of copyholds in sixteenth-century England. By c.1400 life tenancies were already firmly established in western counties such as Berkshire, Gloucestershire, Oxfordshire and Wiltshire, and became increasingly common thereafter.⁹⁶ They remained uncommon in East Anglia and the Home Counties, where instead a combination of hereditary tenure and leases for years dominated (Categories 1 and 2).⁹⁷ In other words, the broad contours of the sixteenth-century pattern of distribution were already established. This emerging pattern owed much to decisions which can be securely dated to the 1350s and 1360s.⁹⁸ As leases declined and as life tenancies increased in popularity during the fifteenth century, so the regional differences in the distribution of tenurial forms sharpened.

IV

The varied processes of tenurial change also help to explain how different rent packages came to be attached to sixteenth-century copyholds. The decline of servile incidents and renders in kind left a rent structure comprised mainly of an entry fine payable upon admission to the land; an annual cash rent; and perhaps a heriot. The size, timing and nature of the heriot were fixed by local manorial custom, and had changed little during the late Middle Ages. The levels of cash paid as entry fines and as annual rent, and whether either of these could be altered upon a change of tenancy, were key variables in determining whether the profits of agriculture accrued to the tenant or landlord.⁹⁹ Some copyholds rendered low and fixed annual rents, others high and variable entry fines, and others rendered various combinations of the two.¹⁰⁰ Life tenancies and leaseholds with variable rents and fines tended to benefit the landlords of early modern England, hereditary tenures with fixed rents and fines benefited the tenants.¹⁰¹

The varying rent packages of sixteenth-century copyholds were determined by the original rent structure attached to the holding under villein tenure, the manner in which that tenure

Note 94 continued

Mate, 'East Sussex land market', pp. 56–7; Fryde, *Peasants and landlords*, p. 272; Whittle, 'Individualism and the family-land bond', pp. 49–50; C. Dyer, *Making a living in the Middle Ages. The people of Britain, 850–1520* (2002), pp. 306, 344–5; M. Bailey, 'A tale of two towns: Buntingford and Standon in the later Middle Ages', *J. Medieval Hist.*, 19 (1993), p. 364.

⁹⁵ The dominance of free holdings in the south-east is mapped in B. M. S. Campbell, 'The agrarian problem in the early fourteenth century', *Past & Present*, 188 (2005), map 3 on p. 35.

⁹⁶ Whittle and Yates, 'Pays reel or pays legal?', p. 12;

J. Hare, *A prospering society. Wiltshire in the later Middle Ages* (2011), pp. 117–18.

⁹⁷ Harvey, *Westminster Abbey*, p. 283; Bailey, *Decline of serfdom*, pp. 322–6.

⁹⁸ Harvey, *Westminster Abbey*, pp. 255, 279; Bailey, *Decline of serfdom*, pp. 119–20, 157–8.

⁹⁹ Whittle, *Agrarian capitalism*, p. 64.

¹⁰⁰ Whittle, 'Landholding and land transfer', pp. 241–2. For examples of the variations in levels of annual rents and entry fines from manor to manor, see Whittle and Yates, "'Pays réel ou pays légal?'", pp. 8–14.

¹⁰¹ French and Hoyle, *Character of English rural society*, pp. 31–2.

mutated during the fourteenth and fifteenth centuries, and, by extension, the way in which the servile incidents were treated during that transformation. Thus customary land converted to a life tenancy was likely to have an annual cash rent fixed for the duration of the term, at something like a market rate, and an entry fine/heriot upon a change of tenancy. Similarly, a former lease converted to a hereditary fee farm in the late-fifteenth century produced a copyhold of inheritance with a cash rent based on the market rate at the time of the conversion, but now fixed in perpetuity, and an entry fine which might be either variable or fixed depending upon local custom.

The evolution of the rent package on copyholds by inheritance is more complex, because it was mainly determined by the treatment of the various traditional servile incidents over the course of the later Middle Ages.¹⁰² Had they been allowed to lapse informally without any financial compensation, or had they been removed through formal negotiation and recompense, or a mixture of the two? Was the annual cash rent fixed at a low, nominal, level or at something like a commercial rate?

Where labour services were a sizeable component of the original rent package, then their treatment was influential in determining the final level of money rent on the holding: they could either be allowed to lapse, or commuted permanently at the old customary valuation, or formally removed through a new negotiated sum.¹⁰³ The resultant money rent was low if the labour services had lapsed without any financial *quid pro quo*, or sometimes if they had been commuted at the customary monetary valuation and the sum added permanently to the annual rent charge.¹⁰⁴ This is because the customary valuation for labour services had often been set in the early thirteenth century, and based on the value of labour not land. Similarly, if other servile incidents, such as tallage and millsuit, had just lapsed over time without any formal monetary compensation; if the original cash component of the rent package had been low and fixed centuries before; and/or if the landlord had agreed at some point in the fifteenth century to freeze entry fines at a low rate, then the resultant rent would be low.¹⁰⁵ A combination of such factors meant that by 1460 heritable customary holdings at Telham (Sussex) paid a fixed and low annual rent per acre, although entry fines were variable; whereas at Kibworth Harcourt entry fines had been formally agreed in 1427 through collective negotiation.¹⁰⁶ Conversely, if the original monetary component had been high, if entry fines were based on whatever the market would bear or some multiple of the annual rent, and if servile incidents had been formally commuted through negotiation for an appropriate cash sum, then the overall cash charge on a copyhold by inheritance would be fixed and relatively high.

The ways of sealing a negotiated commutation were many and varied, ranging from a single collective agreement with all tenants to remove all servile incidents, to a series of one-off agreements with individual tenants at different times to remove a particular incident. There are examples of landlords negotiating a collective cash sum in lieu of the old rents in kind,

¹⁰² Whittle, *Agrarian capitalism*, p. 67.

¹⁰³ Harvey, *Westminster Abbey*, pp. 269–71; Fryde, *Peasants and landlords*, pp. 211–12; Bailey, *Decline of serfdom*, pp. 244–5, 249–50, 256.

¹⁰⁴ Harvey, *Westminster Abbey*, p. 271.

¹⁰⁵ For example, M. K. McIntosh, *A community*

transformed. The manor and liberty of Havering, 1500–1620 (1991), pp. 94–9. See the lapse of tallages and petty fees on the Worcester estates, Dyer, *Lords and peasants*, pp. 284–5, 290.

¹⁰⁶ Searle, *Battle Abbey*, pp. 382–3; Howell, 'Inheritance customs', p. 134.

such as capons, and of individual agreements to replace tallage with a compensatory money payment, rather than allowing them to lapse.¹⁰⁷ The most common method was for a landlord to agree a single payment with an individual tenant to cover the loss of all servile incidents. For example, from the mid-fifteenth century individual parcels of customary land in Norton (Hertfordshire) were increasingly granted for 'rent service', in which a higher money rent now replaced all the old incidents except heriot.¹⁰⁸

Negotiated commutations and collective agreements were invariably documented in manorial court rolls, creating a written record which provided protection against any subsequent challenge. Thereafter, it would prove difficult for landlord or tenant to alter the terms without joint agreement. However, rent packages which had lapsed informally and gradually during the later Middle Ages were more vulnerable to challenge from sixteenth-century lawyers, because, in the absence of any formal compensatory payment, it could be argued that a theoretical liability for the old services still existed. This is not to argue that later landlords and their lawyers would seek to restore a specific servile incident, but the intrinsic looseness of some historic arrangements provided them with a legal toehold to argue their right to vary rents and entry fines. Some tenants of hereditary tenures appeared to sense this vulnerability, and moved to address it as the land market began to stir again.¹⁰⁹ At Hargrave (Suffolk) in the late 1480s and early 1490s a number of hereditary tenants surrendered their customary holdings, but then either they (or their assignees) were readmitted on a hereditary tenure paying a higher cash rent: a formal surrender and readmission with, effectively, a negotiated commutation to seal off the possibility that ancient services and incidents might one day be restored. This intention was reflected in a change to the language of the conveyance, in which the words 'holding for services and customs' were replaced with 'rendering to the lord each year Xs'.¹¹⁰ Thus it is apparent that the scope for sixteenth-century landlords to challenge and manipulate the terms of tenure was enhanced whenever those arrangements remained loose and imprecise.¹¹¹

V

Between the fourteenth and sixteenth centuries the terms on which customary land was held in England was transformed from hereditary villein tenure into copyholds and leaseholds

¹⁰⁷ Bailey, *Decline of serfdom*, p. 151; *Chertsey Abbey cartularies*, II (Surrey Rec. Soc., 12, 1958), pp. 90–1.

¹⁰⁸ Grants of customary land were conventionally described as held 'in villeinage at the will of the lord for services', but land where an annual cash sum had formally replaced the old services was held 'in villeinage at the will of the lord by rent service': the latter also owed suit of court, entry fine and heriot. For examples, see Hertfordshire Archives and Local Studies, Ms. 65532, court held Apr. 1439; and Ms. 65534, courts held May 1450, Apr. 1452, and May 1454.

¹⁰⁹ This also appears to be the explanation for the activity documented by Mate, 'East Sussex land market', pp. 61–2.

¹¹⁰ Suffolk RO, Bury St Edmunds, E3/15.10/1.27. This is directly comparable to the Norton example, above, where the replacement of the words 'for services' with 'by rent service' signified a formal commutation. Similarly, at Winston (Suffolk) the introduction of a new and higher cash rent on some customary land resulted in the replacement of the phrase 'services and customs' with 'according to the custom of the manor', Bailey, *Decline of serfdom*, pp. 249–50. These examples provide further support for the argument that subtle changes to the vocabulary of conveyances sometimes carried real significance.

¹¹¹ Hoyle, 'Tenure and the land market', p. 9.

of various sorts. Landlords respected the title to these customary tenures, as long as the tenant observed the terms on which they were held. Their rent packages were simplified and increasingly monetarized. The dignity of these tenures was lifted through the removal of both servile incidents and overtly servile language from conveyances, and the issue of copies of the manorial court roll entry of the land transfer. The general effect of these developments was to loosen the tight tenurial tangle which had caused such problems in the early fourteenth century, to open up the customary land market to new tenants and capital, and to rationalize and reconfigure the terms on which around one half of the land was made available to the peasantry.¹¹² The entry of new types of tenant, many from higher social backgrounds, into the customary land market added impetus to tenurial change, including to the language of conveyances, the spread of copies and the monetarization of the rent package. The greater presence of higher-status tenants in the customary land market maintained the pressure upon landlords to respect the title to customary tenures, and helps to explain the growing protection extended to copyholds under the common law during the late fifteenth and sixteenth centuries.

Historians have generally assumed that the main changes to customary tenures occurred during the course of the fifteenth century. They were certainly consolidated then, but there is now conclusive evidence that they had gained their initial and decisive impetus in the 1350s and 1360s, as some landlords offered immediate tenurial concessions in the aftermath of the Black Death in their desperation to attract tenants. The remarkably full uptake of customary land by the mid-1360s owed something to the introduction of monetarized fixed-term tenures, and to improvements to the dignity of villein tenure, and hardly anything to seigniorial compulsion and repression.¹¹³ Indeed, the pace of tenurial change was likely to sharpen in periods when tenants were either scarce or turning over more quickly, because it created more opportunities for renegotiating the terms and conditions of land tenure, and accelerating the move away from villein tenure. It is now indisputable that the rapid growth of various types of fixed-term tenures for commercial rents was the most significant tenurial development of the second half of the fourteenth century, so that by c.1400 life tenancies were already established, and concentrated in, those regions of England where they came to dominate during the early modern period. Many fifteenth-century tenants chose actively and consciously to relinquish rights of inheritance in preference for less secure, fixed-term, tenancies of various kinds, confounding Brenner and Fryde's notion that such tenures were primarily a seigniorial initiative. Ironically, the decisions taken by these tenants would prove detrimental to their successors in the very different market conditions of the sixteenth century.¹¹⁴

There is still much that remains uncertain. The timing and local geography of late medieval tenurial change is still only vaguely known, and other factors – such as ecology – might have

¹¹² Campbell, 'Agrarian problem', pp. 69–70; Whittle, *Agrarian capitalism*, pp. 302–5; Mate, 'East Sussex land market', pp. 56–7; Schofield, 'Market for customary land', pp. 8–10, 16; Bailey, *Decline of serfdom*, pp. 332–6.

¹¹³ M. Bailey, 'The myth of the seigniorial reaction in England after the Black Death', in M. Kowaleski,

J. Langdon and P. Schofield (eds), *Essays in honour of Bruce M.S. Campbell* (forthcoming).

¹¹⁴ Harvey, *Westminster Abbey*, pp. 283–4; Muller, 'Peasants, lords', pp. 167–8; Bailey, *Decline of serfdom*, p. 336; Brown, 'Estate management'.

influenced the choice of tenure within particular sub-regions.¹¹⁵ However, the transformation of customary tenures already reveals something significant about the nature of medieval manorial custom, which is often depicted as immutable, established 'time out of mind' and therefore difficult to shift.¹¹⁶ In practice local 'customs, although notionally unchangeable, did change over time'.¹¹⁷ After the arrival of the Black Death, villein tenure proved malleable and mutable in many places, especially on the manors of lower status landlords: only the requirement to plead the title to customary land in the manor court proved non-negotiable. Thus when some sixteenth-century landlords challenged their tenants' rights to inheritance and the nature of their rent package, backed by sharp lawyers and the incentive of rising land scarcity, they were actually drawing upon a long-established culture of manipulating the terms and conditions upon which customary land was held. The emergence 'of both copyhold and tenant right depended not so much on the state of the law, as on the character and circumstance of countless tenants, innumerable lords'.¹¹⁸ Had it been otherwise, it is hard to envisage how villein tenure could ever have been transformed into copyholds and leasehold.

¹¹⁵ For example, arable villages tending towards insecure copyholds and pastoral areas towards copyholds of inheritance, French and Hoyle, *Character of English rural society*, p. 31.

¹¹⁶ Bennett, *Life on the manor*, pp. 100–1; M. L. Bush,

'Tenant right under the Tudors: a revision revised', *Bulletin of the John Rylands Library*, 77 (1995), pp. 161–88.

¹¹⁷ Whittle, *Agrarian capitalism*, p. 89. See also Hoyle, 'Tenant right', p. 53.

¹¹⁸ Hoyle, 'Tenure and the land market', pp. 14–15.