FATHER-SON SUCCESSION ON FARMS

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Russell LaVerne Berry

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This is to certify that the

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FATHER-SON SUCCESSION ON FARMS

Some Possibilities of Father-Son Farm Transfer Arrangements in the United States

By

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A THESIS

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TABLE OF CONTENTS

CHAPTER

CHAPTER I

INTRODUCTION

A. THE PROBLEM

Only when farmers are secure in their possession of a farm are they free to make the long-term investments that are economically and socially desirable not only from the standpoint of the individual farmer but also of the nation.

Soil conservation and soil improvement practices are examples. Liming, draining, terracing, seeding of grass waterways and legumes are long-term investments that can be economically justified by the farmer only when he has secure possession of the land and its income for a long period of time.

Houses, barns and fences frequently need remodeling, repair or replacement. But because such improvements do not pay for themselves over a short period of time, only the farmer with secure possession of the farm can justify the investment of his time and money in making the improvements. A new roof, a water system, and even an adequate electric system are often delayed for many years because the tenant or owner is not secure in his possession of the farm.

Finally, farmers often fail to develop adequately their herds and flocks that would be economically justifiable because their security of possession is not great enough to warrant needed changes in buildings and cropping practices on the farm.

Hence lack of security of possession limits the farmer's opportunity or freedom to combine land, labor, and operating capital in those proportions that will give the greatest net returns over a long period of time. As a result the farm resources may be inefficiently used, and the farm family may be forced to live at a lower standard of living than would be possible if greater security of possession and freedom of operation could be had.

For an excellent report that stresses the need for security of possession in "occupancy" see Family Farm Policy, Ackerman and Harris editors; University of Chicago Press, Chicago, 1947 Chapter XVI by E. B. Hill and committee p. 409 and passim.

Largely because of the greater security of possession and freedom of operation provided, most farmers prefer the risks involved in an attempt to acquire and maintain farm ownership in preference to the insecurity of possession and lack of freedom of operation that characterizes farm tenancy in the United States. From an economic standpoint the tenant farmer, under the tenancy conditions that prevail in the United States at present, is notorious for his lack of security of possession and freedom of operation:

> In the Spring of 1935 over one-third of the tenant farmers in the United States were in their first year of occupancy on the farm they were operating. About one-eighth of the tenants were starting their second year of occupancy. Almost one half had occupied the farm they were operating for 1 year or less. By contrast only approximately one-tenth of the owner-operators had been occupants for so short a period. The proportion of owner-farmers who had occupied their farms for more than 15 years was approximately six times larger than that of tenants; a little over two-fifths of the owners had occupied their farms for 15

years or longer; while only one-fourteenth of the tenants had occupied their farms for so long a period of time. The high degree of tenant mobility is not confined to any particular state or region, though it is more serious in the South and West than it is in the North and East.

Farm Tenancy, Report of the President's Committee, 1937, U.S. Government Printing Office, Washington, p. 50

In 1940 full owners as an average had occupied their farms for seventeen years while tenants had occupied their present farms for only six years.

Max M. Tharp, Farm Tenure Situation, Family Farm Policy, Ackerman and Harris, editors, University of Chicago Press, Chicago, 1947, p. 63

Under existing tenancy conditions, at least, tenancy does not appear to be well adapted to hilly sections and poor soils where dairy, general, and self-sufficing farming is practiced.

Ibid, p. 62

Dairy and general farming requires greater security of possession and freedom of operation than is at present available to tenants. Dairy herds require special improvements that must be paid for over a long period of years. Erosing control, fertility maintenance, and legume hay and pasture crops are usually required on rolling general crop farms. Since a number of years are required to secure the benefits of these practices and crops, such farming is not adapted to insecure tenancy.

Even when tenants have remained for as long as twenty years or more on the same farm, the tenant may remain in possession year after year without knowing when he will be required to move. Under

such circumstances the tenant cannot afford to make long-term improvements on the farm because he can never be certain that he will receive the benefit of his expense and labor.

There are, of course, other reasons why farmers desire farm ownership. Farm ownership is wealth and farmers, like nearly everyone else, are interested in accumulating wealth in order to increase their income, their social prestige, and their old age security.

From the social viewpoint farm owners may take better care of the land, maintain a better standard of living, and, because of their greater wealth and stability, support rural institutions -- the church, the school, and the local government -- in a much more satisfactory manner than do tenants. Farmers who because of their lack of security cannot improve their farms, can scarcely justify improving a community where the returns are often even more remote.

The argument is sometimes advanced that tenants do not need the security of possession necessary to permit them to enjoy the benefits of long-term improvements because the making of such improvements on the farm is the responsibility of the owner of the land and not that of the tenant. While this argument has much logic and truth in it, there are at least three reasons why landlords cannot be depended upon to make these improvements.

In the first place the great bulk of the landlords in this country are retired farmers or their widows who are largely

dependent upon the annual rent for their income during their old age and retirement. Under such circumstances it is not surprising that such landlords are reluctant to make long-term investments in the farm. Their needs are often too great and their life expectancy too short to encourage them to spend their small income in making improvements that may largely benefit their heirs or the tenant.

Again the lack of knowledge of modern farming practices and needs, and the conservatism of retired farmers and widows are potent factors affecting the making of improvements on tenant operated farms. Finally, the fact that the tenant farmer is free to move at the end of any year leaving behind improvements not needed or wanted by the next tenant undoubtedly causes many landlords to make improvements with reluctance and misgivings.

On the other hand, improvements made by the tenant are more likely to be conservative and suited to his needs and he sees them than are improvements made by the landlord. If the tenant has security of possession and can make improvements freely he has much more freedom of action than would usually be the case if improvements were only made by the landlord.

Ownership of farms in fee simple, at its best, then, provides both security of possession and freedom of operation that is needed and desired by the farmers and the nation. Yet, unfortunately, such ownership is often extremely difficult to obtain and maintain. To enter a contract for the title of a farm requires as a rule an

advance payment of at least 25 percent of its value. Since an economic farm unit may cost anywhere from ten to forty thousand dollars or more this "down payment" may be quite large. Quite often the farmer does not acquire title to the land until all the payments have been made. Until he has acquired title he may be dispossessed on as little as thirty days notice for failure to meet his obligations as listed in the contract.

If the farmer can pay 35 percent or more of the purchase price he may secure title at once by giving a note secured by a mortgage for the balance due on the farm. Under such circumstances the farmer has greater security of possession since several months are usually required to foreclose and the farmer may also benefit from mortgage moratorium legislation during periods of economic depression.

Because farmers have difficulty in saving enough money to make the down payment on an efficient farm unit they tend to buy smaller, less productive farms at higher prices per acre. The purchase of an inadequate farm located on poor land aggravates the difficulty of paying for the farm. Because of the relatively smaller net income from such farms, payments are more difficult to make and therefore possession is more insecure.

T. W. Schultz, Capital Rationing, Uncertainty and Farm Tenure Reform, Journal of Political Economics, 48:323-4, 1940

J. Ackerman and L. J. Norton, Factors Affecting the Success of Farm Loans, Illinois Bulletin 465, 1940. p. 470-6

Therefore, even though the farmer has made the necessary down payment on the farm as required by a land contract or a mortgage sale, he may still be insecure in his possession, of the farm until the remaining payments of interest and principal have been met. The meeting of these payments are often such a drain on the farmers' savings that he cannot make the long-term investments in soils, buildings, crops, and livestock that he knows should be made for greatest efficiency over a long period of time.

The land tenure problem of farmers, then, is their insecurity of possession and their lack of freedom of operation on enough productive land for efficient and economical production over a long period of years. Such insecurity of possession is found, not only among tenants, but also among many owners who have been forced by the size of the down payment to buy small inefficient farms located on unproductive land.

B. THE PURPOSE OF THIS STUDY

Three ideas for the solution of the farmer's problem of insecurity and lack of freedom upon the land they operate have been advanced in the United States.

The first of these ideas is that increasing the farmers' purchasing power, chiefly by cheaper and more abundant credit and perhaps land price controls, will enable a high percentage of farmers to attain the security of possession and freedom of operation provided by fee simple ownership.

The second idea is that tenancy legislation such as that in

England is a more practical means of providing farmers with security of possession and reasonable freedom of operation on the farms they occupy.

The third idea is the thesis or hypothesis of this study. This idea is that father-son succession on farms provides a more practical means of achieving greater security and freedom on the land than is generally recognized, being superior under present conditions in the United States to proposed tenancy legislation and perhaps, in the long run, more desirable than cheap and abundant credit and related proposals to increase or maintain the farmer's ability to pay for farm ownership.

The chief purpose of this study then, is to test the validity of the idea of father-son succession on farms by comparing it with the credit idea and the tenancy idea to solve the farmer's problem. A second purpose is to outline the father-son transfer arrangements that appear to be most practical under present conditions in the United States.

C. THE PROCEDURE USED IN THIS STUDY

The investigation of the comparative advantages of credit, tenancy reform, and father-son succession on farms as means of giving the farmers of the United States greater security of possession and freedom of operation in such a large undertaking that it is obviously impossible for even a large staff of research workers to gather much original data on the subject, nor would such a procedure be desirable. Even if the collection of original data by

several workers were possible such a procedure would be open to serious question at many points. For example, much of the history of man's constant struggle to acquire sufficient rights in or control over the surface of the earth to meet his varying economic and social needs would be irretrievably lost because time would have been destroyed or distorted the evidence. The experience of foreign countries with various arrangements to transfer farm property would be gained if at all, only at great expense and difficulty.

To limit the study to original data would be to eliminate the services of many past and contemporary workers in the field some of whom have made brilliant contributions to the solution of this problem. While the collection of additional information is both desirable and necessary in the study of some aspects of this problems, waiting until all possible data are collected before attempting tentative comparisons can scarcely be justified. Probably no other method will more quickly reveal the inadequacy of existing data than an attempt to use it to test an idea for the solution of a problem. Hence, an attempt at comparison will be useful in revealing the points at which additional data are needed and should, therefore, be valuable in directing further study.

Finally, the usefulness of the data depends upon its validity rather than upon when or by whom it was gathered. Primacy of sources does not guarantee the validity of data for all data was primary in the beginning. The uniqueness of this study depends upon the ordering, analyzing, comparing, and evaluating of established

facts in new relationships rather than in collecting original data concerning the problem.

For those reasons the data used in this study has been gathered largely from secondary sources. Or, more specifically, the data has been largely secured from the literature found in the libraries. In addition to library sources, however, free use has been made of the unpublished data collected under the direction of E. B. Hill by Russell L. Berry and Sidney Henderson on a joint research project entitled "Inheritance and the Transfer of Farms from one Generation to the Next", of the Michigan Agricultural Experiment Station and the Bureau of Agricultural Economics of the U. S. Department of Agriculture. While most of the data collected during the study was original field data considerable attention had also been given to library sources. All the data collected has been fully utilized whenever it appeared to be relevant to the theses being tested.

CHAPTER II

HISTORICAL DEVELOPMENT OF INHERITANCE

The purpose of this chapter is to outline briefly some of the ancient and contemporary systems of inheritance by law and by will in order that a clearer understanding can be had of the nature of these arrangements and their relations to the transfer of farm property from father to son under modern farming conditions. Under "Inheritance Customs and Laws" group ownership and succession, gavelkind inheritance, primogeniture, ultimogeniture and equalitarian inheritance are considered.

Under "inheritance by will" the early origin, characteristics,

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The term "inheritance" in strict legal usage refers to property acquired by the law of descent as distinct from that acquired by will or other means. However since the word is generally used and understood to include any property acquired as a result of the death of another person it is used in this sense here.

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and limitations of wills are considered and their effect upon the inheritance laws are noted.

A. INHERITANCE CUSTOMS AND LAWS

Since laws have their early beginnings in the customary practices of families, tribes, and villages, the term "Inheritance by Law" is only a convenient term for all those social arrangements concerning the transfer of landed property that have come to be generally accepted and known. The custom of the Anglo-Saxon village of early England was just as much the law of those times as are many of the written statutory laws of today.

Since inheritance implies that property is received from some

person upon that person's death it is both interesting and instructive to consider the situation that existed when individual ownership of land was unusual or unknown.

1. Group Ownership, Transfer, and Succession

Since earliest times man has desired the rights in land necessary to permit him to make a satisfactory living. In simple, undeveloped societies where food and clothing are collected from the land or from the sea the needed rights are generally held by the family, tribe, clan, or village. Examples of such land holding are found in many

N. S. B. Gras, A History of Agriculture, revised, Crofts, New York, 1940, p. 253-4.

parts of the world where hunting, fishing, grazing, or simple hoe culture is practiced. In the more highly developed countries, a review of their historical development usually reveals the presence of family, tribe, or village ownership at an earlier period. Campbell, in discussing the land tenure of India, has said:

> We are too apt to forget that property in land, as a transferable mercantile commodity absolutely owned and passing from hand to hand like any chattel, is not an ancient institution, but a modern development, reached only in a few very advanced countries. In the greater part of the world the right of cultivating particular portions of the earth is rather a privilege than a property; a privilege first of a whole people, then of a particular tribe or a particular village community, and finally, of particular individuals of the community. In this last stage the land is partitioned off to these individuals as a matter of convenience, but not in unconditional property; it long remains subject to certain conditions and to revisionary interests of the community, which prevent its uncontrolled alienation and attach to it certain common rights and common burdens.

George Campbell, Land Tenure in India, Systems of Land Tenure in Various Countries, Cobden Club, Probyn, editor, London, (1881), p. 215.

In early times village ownership apparently existed in Greece, Rome, Germany, and other countries.

Gras, op. cit., p. 253.

Family ownership still persists in India and in southeastern Europe. In southeastern Europe the patriarchal family is still to be found where each individual born into the family has an equal right to the undivided land.

M. Sering, The Relations of Land Tenure to the Social and Economic Development of Agriculture, Proceedings of the Fourth International Conference of Agricultural Economists, 1936, Oxford University Press, London, 1937, p. 84.

In England the common or Lamma lands, so-called because they were thrown open to public grazing on St. Lamma's Day, are believed to be survivals along with the village commons of the ancient Anglo-Saxon villages in which the land was held as community property.

F. Pollock, The Land Laws, revised, Macmillan Company, London, 1887, pp. 36-42.

In the United States the General Allotment Act of 1887 helped to break up the tribal ownership of the Indians and permitted the division, inheritance and alienation of land to individuals. This system proved highly unsuited to the Indian's manner of life. Their lands shrunk from 187 million acres in 1887 to 52 million in 1935 and the interests of the heirs of the original owner have become badly fragmented. In 1934 the Wheeler-Howard Act was passed in an attempt to restore tribal ownership and enlarge the reservations.

R. T. Ely and G. S. Wehrwein, Land Economics, Macmillan Company, New York, 1940, pp. 98-99.

Apparently family or community ownership has advantages when the type of agriculture is simple and the economy is highly unspecialized.

Under such conditions all who live must have access to the land to carry on their collectional, grazing, hunting, fishing, and hoe culture. With the possible exception of hoe culture all of these activities would be greatly hindered if each individual owned in fee simple a definite share of the land marked off by special boundaries or fences.

Even when hoe culture is practiced in a simple economy where no buildings or fences are needed on the land and floods or fallow were depended upon to maintain or restore the fertility of the soil individual ownership would provide few if any advantages and would create some problems.

A possible advantage is that an individual owner might be more inclined to control the weeds on his plot since he knows that if he does not the weeds will be thicker in the next crops. However, the small size of the hoe plots would make special control of weeds of little benefit unless they were also controlled on neighboring plots. Wind and water borne seeds would often nullify the efforts of the fee simple owner even as it often does today with much larger farms.

Under individual ownership as it exists today neighboring plots might not be worked at all but left fallow as was done every three or four years in the old English farming village.

Pollock, op. cit., p. 37.

Yet because some few plots were growing crops it would be impossible to graze such fallow land with livestock. The problem of protecting the crops from wild animals and thieves might be made more difficult. Cooperation in the work would be more difficult to secure.

Perhaps the chief advantage of family or community ownership over individual ownership was the ease with which the former could be adjusted to changes in the population. In case of the death by war, disease, or old age of several members of the group the redistribution of the land was easily made. Likewise when the membership of the group increased the yearly re-allocation of the land gave added workers an opportunity to make a living.

Community ownership would have still greater advantages when hunting, fishing, and grazing were the chief occupations. Under such circumstances individual ownership would be highly impractical and would require the building of extensive fences, the location of additional water supplies (usually an impossibility) and the maintenance of widely scattered homes where wild beasts, thieves, and robbers abounded. That individual ownership of small tracts is uneconomical in semi-arid grazing areas is demonstrated in the United States by the trend in the Northwest towards collective tenure.

G. H. Craig and C. H. Loomer, Collective Tenure on Grazing Land in Montana, Montana Bulletin 406, 1943.

In time, however, some of the allocations of the village lands became fixed and assumed some of the characteristics of private property. The Roman historian, Tacitus, who described the German institutions shortly after the time of Christ, makes clear that each family held permanent possession of its homestead at that early time. This land was known as heir-land or land that passed by descent or inheritance.

Pollock, op. cit., p. 31.

Since the land was held by the family rather than by an individual, succession occurred much as it did on the common lands of the village. Pollock states:

> In old times it could not be disposed of by the holder, but the custom gradually arose of alienating it by will, and perhaps by purchase, within the limits of the family. Freedom of alienation became greater as the bonds of the village community were loosened. The order of the steps would be of this kind: First, no alienation, but only inheritance; then alienation within the family, but with the consent of possible heirs as well as the community; lastly, the consent of the community would become mere forms.

Pollock, op. cit., p. 21. See also, H. Cabot Lodge, The Anglo-Saxon Land Law, Essays on the Anglo-Saxon Law, Little, Brown and Company, Boston, 1876, pp. 74-80, 108.

Whether free alienation of heir land occurred before the Norman Conquest is unknown.

Pollock, op. cit., p. 21.

When, however, land was willed or given to a son by a father and with the consent of the other members of the family, the son would seem to have acquired greater rights than the other members and in time may have transferred the property without their consent.

The evidence available suggests that because individual ownership was quite generally lacking, the transfer of land from one individual to another was uncommon and unnecessary. Land was plentiful, agriculture was simple, and reallocation of common lands was sufficient for the simple social order. An exception, of course, was book-land which could be devised or sold to strangers if the grant did not prohibit such transfers. However, book-land was not plentiful enough to affect appreciably the tillers of the soil. Book-land is interest-

ing in that it was the nearest approach to modern fee simple ownership that existed in those early Anglo-Saxon times.

2. Gavelkind Ownership and Transfer

Before passing on to the development of individual ownership and transfer under the feudal system a moment's notice should be taken of old Kentish tenure known as Gavelkind. Under Gavelkind tenure the sons shared equally by inheritance in the land of the father. Daughters did not inherit land, perhaps, because they did not bear arms or because they were expected to marry into other families.

Pollock, op. cit., pp. 58, 214-16.

This inheritance custom is very old in that it is believed to antedate Anglo-Saxon times and continued in the county of Kent until abolished by Parliament at the same time Primogeniture was abolished in 1925.

It is interesting to note that Islamic inheritance laws, which are of comparative recent development, gives a double portion of the land to sons and a single portion to the daughters.

V. Liversage, Land Tenure in the Colonies, University Press, Cambridge, England, 1945, p. 130.

Hebrew law, on the other hand, gave a double portion to the eldest son. This practice of giving the eldest son a double portion was adopted in some of the American colonies for a time but was finally replaced by equal inheritance on the part of the children.

Gavelkind inheritance was the prevailing rule of inheritance in England a century after the Norman Conquest of 1066 and was still

the chief rival of primogeniture as late as the thirteenth century.

Pollock, op. cit., p. 58, 214. See also, G. C. Brodrick, The Law and Custom of Primogeniture, Systems of Land Tenure, Cobden Club, 1881, p. 97.

Gradually, however, by some obscure process, primogeniture was extended from the land held by military service to the comparatively free socage lands. In 1285 the great land holders prevailed upon Parliament to permit them to entail (pass) their estates in perpetuity by enacting the statute De Donis Conditionalibus. This act was so unpopular with the common people that the judges and lawyers succeeded during the next two centuries in circumventing the law and in limiting entails to a life or lives in being and twenty-one years.

Pollock, op. cit., pp. 66-70, 217-8.

This limitation has been adopted quite generally in the United States as common or statutory law. Since voluntary entailed estates are similar in effect to the law of primogeniture the opposition to entails may indicate something of the conflict between the equal division of Gavelkind and the custom and law of primogeniture whereby the land passed to the oldest son.

3. Feudal Ownership and Transfer

With the increase in population there was greater and greater pressure upon the simple tribe or village economy. Roving bands of people found it possible to overthrow the weakly organized communities and exact tribute from the common people.

> The prevailing need of the later Roman and early medieval society was protection--protection against the sudden attack of invaders or revolted peasants, against the unwarranted demands of governmental officers, or even against the legal but too heavy extractions of the government. The protection which the government normally furnished, the weak freedman and the small landowner could no longer obtain. He

> He must seek protection wherever he could get it. These are the great social facts--the failure of the government to perform one of its most primary duties, the necessity of finding some substitute in private life--extending through the whole formative period of feudalism.

George Burton Adams, Feudalism, Encyclopaedia Britannica, vol. 9, 1946. pp. 204-7.

Because of this pressure there gradually developed in England as in Europe and much of Asia the feudal system with its personal and territorial dependence of men upon their lords. While this dependence was brought to full flower by the Norman Conquest of England in 1066, it had its beginnings many generations before.

Pollock, op. cit., p. 31.

The early beginnings of feudalism are to be found in the gravitation of groups into the leaders and the led. Undoubtedly the earliest leaders were in many cases descendants of the leaders who first brought their bands to England. In the lawless times of the pre-feudal period these descendants were undoubtedly looked to as leaders or lords and finally as landlords.

Pollock, op. cit., pp. 30-37, and passim.

> The feudal state was one in which, as it has been said, private law had usurped the place of public law. Public duty had become private obligation. To understand the feudal state it is essential to realize that all sorts of services which men ordinarily owe to the public or to one another were translated into a form of rent paid for the use of land, and defined and enforced by a private contract.

G. B. Adams, op. cit., pp. 206-7.

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4. Primogeniture and Ultimogeniture

Eventually each community became to some extent a semi-independent monarchy which duplicated as nearly as possible the royal court of the king. This duplication of kingly custom is apparent in the custom and law of primogeniture. Kings and lords alike desired to preserve and continue their power and ownership rights in the land. To divide their kingdom or their manor among all their children was an impossibility for the sum of the parts were not equal to the whole and would soon fall prey to a more powerful neighbor. Therefore the custom arose of permitting only the eldest son to succeed his father's titles, land, duties and privileges. No doubt the choice of the eldest son provided, as a rule, the most mature and therefore the best qualified leader for the community. That this system known as primogeniture (first born) had advantages not only for the lord but for the community is well stated by Maine:

> The lord with his vassals, during the ninth and tenth centuries may be considered a patriarchal household... and to such a confederacy succession by Primogeniture was a source of strength and durability. So long as the land was kept together on which the entire organization rested, it was powerful for defense and attack; to divide the land was to divide the little society, and voluntarily to invite aggression in an era of universal violence. We may be perfectly certain that into the preference for Primogeniture there entered no idea of disinheriting the bulk of the children in favor of one. Everybody would have suffered by the division of a fief. Everybody was the gainer by its consolidation.

Henry S. Maine, Ancient Law, revised, Henry Holt and Company, New York, 1888, p. 229.

Under the English feudal system inheritance by the custom and law of primogeniture was the only transfer arrangement permitted

among the nobility. However, the equal division of the land among the sons according to gavelkind tenure appeared to be practiced to a considerable degree for two centuries after the Conquest by the lesser people of the community.

Pollock, op. cit., pp. 56-7, 65.

Gradually the custom of primogeniture became the accepted inheritance law of England as has already been pointed out above.

In some areas of England the inheritance custom of ultimogeniture (last born) prevailed. Under this system the land descended to the youngest son rather than the eldest as in primogeniture. In England, this was known as borough English or "cradle holding." Pollock suggests that "probably the explanation (of borough English) is that there was a time when each son of a family as he came of age was entitled to an allotment out of common land. Thus the sons in turn parted off from the family and were provided for, and the homestead was left to the youngest. Such a state of things is actually recorded in the old Welsh laws.

Pollock, op. cit., pp. 48-9.

Another reason why parents probably preferred to leave the farm to the youngest son might well be that they needed to keep the farm as long as possible for their own use. A father twenty years old when his son was born would be only forty when his son reached his twentieth birthday. Even with the shorter life span of the earlier times this would appear to be a cogent reason for transferring the farm to the youngest son and helping the older son get started elsewhere.

Primogeniture outlasted by several centuries the military tenures which it was developed to preserve. Not until 1925 was the law of primogeniture, ultimogeniture and gavelkind inheritance replaced in England by equal inheritance by all the children. However, the law of primogeniture is seldom applied in modern times because wills, entails and family settlements have been found to be a more satisfactory means of achieving the same purpose--namely, of keeping the land in the family by transferring it from father to son or other close relative.

Primogeniture was introduced into the southern colonies and in New York, while the New England and Pennsylvania colonies adopted the Hebrew custom of giving the son a double portion.

E. L. Bogart, Economic History of American Agriculture, Longmans, Green and Company, New York, 1923, p. 35.

Thomas Jefferson and other Revolutionary leaders were afraid that these laws would make the United States a land of large estates inconsistent with the ideals of democracy and therefore succeeded in getting the laws abolished. Jefferson in writing of his experience in the Virginia legislature says:

> I proposed to abolish the law of primogeniture and to make real estate descendable in parcenary to the next of kin, as personal property is, by the statute of distribution. Mr. Pendleton wished to preserve the right of primogeniture but seeing at once that he could not prevail, he proposed we should adopt the Hebrew principle and give a double portion to the eldest son. I observed that if the eldest son could eat twice as much, or do double work it might be natural evidence of his right to a double portion; but being on a par, in his powers and his wants with his brothers and sisters, he should be on a par also in the partition of the patrimony; and such was the decision of the other members.

F. W. Hirst, Life and Letters of Thomas Jefferson, Macmillan

Company, New York, 1926, p. 133. The same quotation may be found in James Truslo Adams, Jeffersonian Principles, Little Brown and Company, Boston, 1928, p. 16-17.

The Ordinance of 1787 for the government of the Northwest Territory specifically states that the land was to be divided equally among the children when no will was made. When the states carved from

Government in the Northwest Territory (Ordinance of 1787), Michigan Statutes Annotated, vol. 1, Callagan and Company, Chicago, 1936. See also, N. S. B. Gras, History of Agriculture, Crofts, New York, 1940, p. 262.

this territory prepared their inheritance laws equal division of real and personal property among the children was accepted and adopted for all intestate (no will) cases. Many western states used the inheritance laws of eastern states as their pattern. For example, Michigan, Wisconsin, and Minnesota laws of descent are patterned after those of New York State.

In sharp contrast the principle of sole inheritance was never completely rejected in Germany and continues in some form up to the present time. In 1933 the Hereditary Farms Law established the principle of primogeniture, or ultimogeniture where that was the local custom, on all farms between 18.5 and 309 acres in size. Farms of

A press release of the present military government of occupied Germany was issued about a year ago, stating that the Hereditary Farms Law has been abolished along with the other Nazi laws which in some areas includes the principles of primogeniture or ultimogeniture. The exact source of this release is not known.

this size make up less than one-quarter of the total number of farms and slightly more than one-third of the agricultural land. On the other hand, the law of primogeniture was removed from the large estates in Germany in 1937. The apparent contradiction has a logical explana-

tion in that it was considered desirable to preserve the small farms and to break up the larger estates.

Walter Bauer, Agricultural Credit in Germany, U. S. Farm Credit Administration (Bulletin CR-1), 1939, p. 42.

5. Individual Ownership and Transfer

In order to understand the development of equalitarian inheritance it is necessary to know something of the economic, social, and political condition of the post-feudal period. Whereas the feudal system was made necessary by the inability of the central governments to deal effectively with the pressure of population upon available resources, the post-feudal period was marked by a reversal of this trend. This trend towards a stronger centralized government, made possible by the invention of gunpowder, the demonstrated effectiveness of trained national armies, and the development of trade and money, gradually reduced the political power of the community leaders--the lords and landlords--and increased the rights of the common man.

Marc Bloch, Feudalism--European, Encyclopaedia of the Social Sciences, 6: 209, Macmillan Company, New York, 1937.

Unfortunately, however, the economic and social controls of the lords over the common people were retained long after the needs for such controls had largely disappeared. As a result of these changes the lord and his family came to be regarded, not as desirable and necessary units of the government, but as economic and social parasites preserved in their position and landed wealth by the inheritance law of primogeniture and by the privilege of entailing their estates.

G. C. Brodrick, English Land and English Landlords, Cassell, Petter, Galpin and Company, London, 1881, pp. 366-70, 370, 412.

Under such circumstances it is not surprising that there should be considerable pressure to abolish primogeniture, to limit entails, and to substitute equalitarian inheritance laws as a means of achieving greater economic democracy. Since land was the chief form of wealth, equality of inheritance appeared to be a satisfactory method of distributing the wealth among the people.

Jefferson, in his travels in Europe, and particularly in France, became convinced that the system of great landlords with their political power and prestige were incompatible with democracy. Therefore,

F. W. Hirst, Life and Letters of Thomas Jefferson, Macmillan Company, New York, 1926, p. 214 and passim.

he bent his efforts to eliminate primogeniture, first in Virginia, and then in the United States. The fact that primogeniture was abolished is testimony that this principle was unpopular. Furthermore, the substitution of equal inheritance for primogeniture is one of a long series of examples that could be cited to show that ownership of land by many individuals is the product of popular demand on a democratic system rather than the contrary as some have argued.

See for example: L. C. Ligutti and J. C. Rowe, Rural Roads to Security, Bruce Publishing Company, Milwaukee, 1940, pp. 75-6; H. Hoffsommer, Progress of Tenure Groups, Journal of Farm Economics, 23:209, February 1941; and O. E. Baker, Ralph Borsodi and M. L. Wilson, Agriculture in Modern Life, Harper and Brothers, New York, 1939, p. 5.

While the law of primogeniture was considered unfair and undemocratic wherever it was found, Brodrick admits that "The direct effect of the Law of Primogeniture in keeping together great estates and aggrandizing the heads of great families, is probably not very considerable."

G. C. Brodrick, English Land and English Landlords, Cassell, Petter, Galpin and Company, London, 1881. pp. 96-99.

The reason this was true in England was that "The death of a fee-simple holder of land without making a will is in modern times [1887] an exceptional case."

F. Pollock, op. cit., p. 174.

After carefully comparing the French inheritance system of equal division of the legitim with the British system of primogeniture and free devise by will Wedgwood concluded that the differences in the concentration of wealth, such as it is, cannot "be ascribed entirely or even mainly to the different laws of inheritance."

J. Wedgwood, The Economics of Inheritance, revised, Penguin Books Ltd., Harmondsworth, England, 1939, p. 99.

He agrees with John Stewart Mill that inheritance systems do not affect the size of farm holdings because even under the French Civil Code alienation by will or contract provides ample opportunity to prevent uneconomic subdivision.

The argument of Brodrick that "it is certainly a significant fact that no sooner was the Law of Primogeniture swept away in the United States than equal partability became the almost universal custom not withstanding that American landowners are by no means destitute of family pride and enjoy very nearly the same liberty of devising or settling their estates as an English proprietor," is open to question. That the mere removal of the law of primogeniture

Brodrick, op. cit., p. 96-7.

from the statute books had any considerable influence upon the economic behavior of men in a land where freedom of alienation by will, or contract to give or sell is permitted appears to be wishful thinking.

The opportunity to speculate, the heavy forest growth that covered the land, the scarcity of tenants, the availability of cheap or free land in the West, the lack of profitable markets for lumber and agricultural produce were undoubtedly economic factors that played an important role in preventing the development of large estates. Another potent factor was that the democratic form of government yielded readily to the pressure of the frontier farmers for the free distribution of the land to all who would improve it.

E. E. Edwards, American Agriculture--the First 300 Years, Farmers in a Changing World, U. S. Yearbook of Agriculture, 1940, pp. 196, 222-227; and P. J. Treat, The National Land System, 1785-1820, E. B. Treat and Company, New York, 1910, pp. 44, 143, 161.

That the substitution of equal for sole inheritance in the United States seldom causes the division of economic farm units in commercial farming areas is well known. The heirs may hold in common for a long time or they may sell their interests to the heir who works the farm. Again if neither of these possibilities are realized, the farm may be sold to strangers. Only in the areas of rather primitive agriculture does fragmentation or parcellation of inherited farms occur to any appreciable extent. In such subsistence farming areas the size of the holdings can be quite small. In any case the parcellation is not likely to be carried to the point where they are too small for mule and hoe culture or too small to provide the family with the food, shelter, and clothing necessary to sustain life. In areas of commercial farming division may occasionally occur but since the typical farm is already too small for the most efficient farming the tendency is to recombine the small units into larger farms.

J. F. Timmons, Farm Ownership in the United States, Journal of Farm Economics, 30:92-3, February 1948.

Despite the fact that farms are not likely to be divided beyond the points indicated above there is reason to believe that if a high percentage of farm ownership by farmers is desired, considerable thought should be given to the adoption of farm inheritance laws similar to those of Switzerland which permits one heir to take the farm and buy out the interests of the other heirs. If the family

A. Hobson, Agricultural Survey of Europe: Switzerland, U. S. Department of Agriculture Technical Bulletin 101, 1929, pp. 13-14.

cannot agree as to which son should have the farm then a son is chosen by the courts. The son chosen must pay the other heirs their share of the value of the farm as determined by its productive capacity rather than the market price. Norway has a similar inheritance system which gives the farmers a high degree of security. About 90-95 percent of Norwegian farmers own the land they operate.

C. Thomson, Norwegian Agriculture, Foreign Agriculture, 4:80-1, February 1940.

It is, of course, a fact that American farmers can prepare a will that gives the farm to one heir providing that he agrees to make certain specified payments to the other heirs. Such a will has been found in Iowa and another was discovered in Michigan.

H. Read, Keep Your Farm in the Family, Country Gentleman, 117:18 ff, August 1947; and R. L. Berry and Sidney Henderson, Inheritance and Transfer of Farm Property, Michigan Agricultural Experiment Station, Unpublished data, 1945-46.

However, what farmers can do and what they are willing or able to do are by no means the same thing. For example, written leases have been recommended to farmers in this country for many years yet the general adoption of written leases has been unsatisfactory. As a result one group has urged that states incorporate a basic lease

into their statutory law. Such a statutory lease would govern whenever a written lease was not prepared.

Association of Land-Grant Colleges and Universities, Postwar Agricultural Policy, Michigan Agricultural Experiment Station and Extension Service, October 1944, p. 37.

Since considerably less than 20 percent of the people in the United States make a will of any kind, difficulties experienced in

A. Robinson (Wills Are Funny Things, Nation's business 35:64 March 1947) states that only 10 percent of Americans prepare wills. R. R. Powell and C. Looker (Decedent's Estates, Illuminated from Probate and Tax Records, Columbia Law Review 30:919-53, 1930) found that 10 - 15 of the people in two New York counties prepared wills while nearly 20 percent made wills in two Pennsylvania counties.

securing a high percentage of written leases may also be expected to hold for securing a high percentage of wills which give the farm to one son providing he makes certain specified payments to the other heirs for their interests.

There is at present a demand for "Procedures .... to facilitate continuous owner-operation of farms by succeeding generations of the same family,.... to discourage the practice subdividing farms into units too small for economical operation, to permit purchase by the farm operator at a fair income value and to give protection from undue risks to the one who assumes ownership."

Association of Land-Grant Colleges, etc., op. cit., p. 32.

Similar statements have been made and published by other organizations.

North-Central Regional Committee on Land-Tenure Research, Improving Farm Tenure in the Midwest, Illinois Bulletin 502, 1944, pp. 151-2;

Farm Tenure Improvement in the United States, U. S. Department of Agriculture, Mimeograph, 1945, p. 81;

K. H. Parsons and O. E. Waples, Keeping the Farm in the Family, Wisconsin Research Bulletin 157, 1945, pp. 10 - 20.

While it is not stated, this appears to be tacit admission that however desirable or effective equal division of land may have been in an age of large landed estates such equal division should now give way to some form of sole inheritance that would be essentially a modification of primogeniture or ultimogeniture. The adjustments needed to prevent hardship could still be made by will or by contract to give or sell farm property.

B. INHERITANCE BY WILL

In addition to the inheritance customs and laws discussed above which are of very ancient origin, there gradually arose the custom of permitting individuals to change the order of descent of property held by them by a testament or a will. In early Rome such testaments were oral promises made before no less than five witnesses as to the manner in which the property was to descend. Unlike modern wills such testaments were binding, public obligations that, strangely enough, were carried out before the death of the maker.

H. S. Maine, Ancient Law, revised, Henry Holt and Company, New York, 1888, pp. 169, 190, 195 - 200.

This is in marked contrast to modern wills which are comparatively secret, always revokable during the life of the maker, and take effect only upon the maker's death.

Since customary inheritance according to family blood lines is generally considered much older than testaments or wills, it is interesting to inquire into the reasons why the latter were ever

permitted to change the established order of descent and distribution.

Maine, op. cit., p. 189.

One of the reasons for allowing early Roman wills was to permit the head of the family to choose an heir when there was no one of blood relationship to succeed him under the customary inheritance laws.

Maine, op. cit., pp. 185, 189.

Thus by choosing an unrelated heir and giving him the family property by means of a will, a new head of the family was chosen.

Another reason why the Romans cherished very highly the privilege of making a will probably was that their laws of intestate descent and distribution were imperfect in some respects or were poorly administered.

Maine, op. cit., pp. 211-17.

The privilege of making a will gave them an opportunity to make a fairer or more equitable distribution of their property. Such wills never seemed to be used to disinherit the family. On the contrary they appeared to have been necessary if the children of daughters or other women relatives were to share in the property as they were excluded under the early inheritance laws of Rome.

Maine, op. cit., pp. 214-6.

The later European development of inheritance laws limited rather strictly the use of a will. The French Civil Code of 1809, which still continues in force and has been widely adopted in Europe, permits the testator to devise or bequeath only one-half of his

property if he has one child, one-third if he has two children, one-fourth if he has three children and so on. Such strictures on the devising of property are quite general outside the Anglo-American region of the law.

O. K. McMurray, Laws of Succession, Encyclopaedia of the Social Sciences, 14:441, 1937.

In England the practice of making wills was customary before the Norman Conquest. Devises of book-land by will were permitted; and the devise of heir-land within the family and with approval of the other heirs was known.

Pollock, op. cit., p. 21.

McMurray states that "Even before the Norman Conquest intestacy was regarded as something accidental; the church encouraged the drawing of a will as a duty."

McMurray, op. cit., p. 408.

However, the privilege of making a will did not become a part of the statutory law of England until 1540 when the Statute of Wills was adopted. This law permitted the person to devise all his land held by socage tenure and two-thirds of that held by military service but applied only to lands held at the time of making a will. This

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H. T. Tiffany, Real Property, adbridged, Callaghan and Company, Chicago, 1940, p. 732; McMurray, op. cit., p. 438.

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statute was strengthened in 1677 by the Statute of Frauds which required that the will be signed by the testator and by witnesses whenever land was devised.

McMurray, op. cit., p. 438.

A new Wills Act in 1837 made wills apply to all the property held by the testator at his death and otherwise strengthened the laws and helped to prevent frauds.

In the American colonies the act of 1677 (Statute of Frauds) furnished a model for legislation concerning wills. The Statute of Frauds still governs the making of wills in some states, although most of them have adopted with slight changes the English Wills Act of 1837.

McMurray, op. cit., pp. 439-41.

C. SUMMARY AND CONCLUSIONS

Perhaps the most persistent idea to be gained from a review of the literature concerning the historical development of the inheritance laws and wills is that the inheritance laws were successful only when they were carefully drawn in the light of economic and social conditions of the times. No greater mistake can be made by the casual observer than to conclude that because certain customs and laws no longer appear applicable that they were harsh laws that placed a heavy burden on the common people without contributing anything of value to the society in which they existed.

Tribal, clan, or village ownership appears to play a useful and desirable role in simple or primitive agriculture. Gavelkind inheritance was no doubt suited to a period when new land was plentiful and each man had more than he could effectively till. Borough English, or ultimogeniture, was undoubtedly suited to a period when other lands were readily available for the older sons, thus leaving the "home farm"

to the younger son. The system of primogeniture appears to have been an important social invention in the lawless Middle Ages. And finally equalitarian inheritance appears to be an expression of the desire to break up or prevent the formation of large landed estates that gave the landlords wealth, prestige, and political power far beyond that justified in a highly centralized but democratic state.

Wills are essentially private arrangements to transfer property encouraged in old England by the church and elsewhere by the rigors of statutory law.

CHAPTER III

A REVIEW OF THE LITERATURE

The purpose of this chapter is to show by a critical review of the literature published in the English language, that (A) an adequate comparative analysis of credit, tenancy reform, and father-son succession as a means of providing security of possession and freedom of operation on farms has not here-to-fore been made; and (B) an adequate comparative evaluation of the laws of descent, wills, and sales arrangements as means of transferring farm property from father to son has also not been made.

A. COMPARATIVE STUDIES OF CREDIT, TENANCY REFORM, AND FATHER-SON SUCCESSION ON FARMS

Very little research work has been done on the comparative evaluation of the possible solutions to the farmer's land tenure problem. However, the lack of research directed towards the solution of specific problems of land tenure has not gone unnoticed. In a survey of land tenure research in the United States only fifty-eight studies were found by Wehrwein and Kelso to have been made prior to 1933 and these were mostly on farm tenancy.

J. Ackerman, Status and Appraisal of Research in Farm Tenancy, Journal of Farm Economics, 23:277-81, February, 1941

By 1940 an additional 102 studies had been made and fifty-three additional studies were under way at the various agricultural experiment stations. Apparently no study had been made of father-son transfer

arrangements prior to 1940 and only three were reported as under way at that time.

By combining the three classifications of Ackerman as given above, it appears that roughly 85 percent of the studies were concerned with describing tenure by areas, by characteristics of landlords and tenants, or in describing the effects of tenure on the farmer and his community. While such studies have undoubtedly done much to make clear the nature and importance of the tenure problems, and particularly the tenancy problem, such descriptions do not test the relative merits of various proposals for the solution of the problem.

Another 9 percent of the studies "dealt almost exclusively with recommendations" concerning "written leases, longer term leases, compensation for unexhausted improvements and disturbance, graduated land tax and homestead tax exemption". The remaining six percent might be classed as miscellaneous and include the three studies on "land tenure, ownership, and transfer" referred to above.

Ibid, p. 281

Maddox, pointing out that descriptive studies, valuable and necessary as they may be, do not solve problems, has called for research that will aid the policy maker in choosing wisely among the alternatives of possible action in the tenure field.

J. G. Maddox, Land Tenure Research in a National Land Policy, Journal of Farm Economics, 19:102-111, February 1937

Hill writing nine years later calls for less emphasis on the descriptive study in farm finance, farm management, and land tenure and more emphasis on possible solutions to the problems described.

F. F. Hill, Research Developments in Farm Finance, Journal of Farm Economics, 28:114-125, February 1946

Salter, Thomsen, and McLeod, in separate papers, have made much the same criticisms of research efforts in their respective fields.

Leonard A. Salter, Jr., The Content of Land Economics and Research Methods Adapted to its Needs, Journal of Farm Economics, 24:226-246, February 1942

F. L. Thomsen, A Critical Examination of Marketing Research, Journal of Farm Economics, 27:947-962, November 1945

Alan McLeod, Research and Educational Programs in the Marketing of Milk and Dairy Products, Journal of Farm Economics, 28:144-57, February 1946

A review of the literature for this study of father-son succession revealed only one book, and one popular article that compared in some degree, credit, tenancy reform, and father-son succession as means of providing farmers with security of possession and freedom of operation on the land.

H. W. Spiegel, Land Tenure Policies at Home and Abroad, University of North Carolina Press, Chapel Hill, 1941, 171 p.

M. C. Young, How Stabilize Farm Ownership, Nation's Agriculture, 16:5, 16-17, March 1941

Another small book, a popular pamphlet, and a journal article discuss in some degree the relative merits of credit assistance and tenancy reform.

V. Liversage, Land Tenure in the Colonies, University Press, Cambridge, England, 1945, 151 p.

M. R. Benedict, Farm People and the Land after the War, Pamphlet 28, National Planning Association, Washington, 1943

K. Brandt, Toward a More Adequate Approach to the Farm Tenure Program, Journal of Farm Economics, 24:206-225, February 1942

A number of research reports and articles have been written on credit, others on tenancy reform, and still others on father-son succession on farms (hereditary farms, primogeniture, etc.) but none

of these are comparative in their analysis and hence will not be reviewed in this chapter although many of them will be cited and, to an extent, reviewed in the following chapters of this study. The fact that these articles are not reviewed in this chapter is not to be interpreted as a criticism of these reports and articles. Many of them are excellent and have contributed much to the solution of the problems of this study.

Spiegel's Land Tenure Policies at Home and Abroad discusses such topics as objectives of land tenure, land tenure and public control, development of American land law, ownership and tenancy, the alienation of land, the inheritance of land, land tenure and farm credit, farm tenancy in Europe and the United States, rent, the economic foundations of farm tenancy, American farm tenancy policies and finally a brief chapter on English land tenure policy and another comprising one-third the book on "Land Tenure Under the Swastika".

Spiegel, op. cit., passim

Perhaps it is unfair to the author to call this study a comparison of credit, tenancy reform, and father-son succession on farms (German hereditary farms). Spiegel states that, "There seems to be no book in existence that presents in coherent form the exposition and analysis of land tenure policies which have been developed at home and elsewhere in recent years. In the present book an attempt is made to discuss these policies from a general point of view in order to convey information and to stimulate discussion of the issues involved."

Spiegel, op. cit., Preface, p. vii

Whether comparisons are intended or not, they can scarcely be avoided in the discussion of many of the topics listed above. Yet this encyclopedic treatment of many aspects of land tenure policy at home and abroad is largely descriptive. "No attempt has been made by the author to appraise the ultimate objectives of the agricultural policies in both these countries [England and Germany]."

Spiegel, op. cit., p. 91

In the first chapter, however, soil conservation, production adjustment, and relief for disadvantaged classes are listed as "three fundamental objectives," yet little use is made of these objectives to measure the effectiveness of the tenure systems described.

Spiegel, op. cit., p. 1

On the other hand, there are statements throughout the book that suggest that the author is interested in supporting the thesis that "governmental interference" with the individual ownership of the land in fee simple prevents the maximization of the national net income and leads eventually to a "new feudalism."

Spiegel, op. cit., p. 1-6

He states:

> The English tenure policy offers a perfect example of the dynamics which are inherent governmental action. Once the path of intervention is chosen, each step necessitates the next, and a retreat becomes unfeasible .... The English doctrine of tenure which denies the proprietor an absolute right has facilitated the growth of governmental interference with the landlord-tenant relationship, and it helps to explain the present tendency towards national ownership. There can be hardly any doubt that the infringements of the rights of landlords introduced by the Agricultural

> Holdings Acts have prevented some landlords from sinking funds in land which is only nominally their own. There can be even less doubt that the propaganda for public ownership which has been going on for decades has worked in the same direction.

Spiegel, op. cit., p. 110

Despite his dislike for the governmental interference a definite impression is left that he prefers the English to the German tenure policies as is apparent in the following naive comparison:

> Maximization of the national dividend has ceased to be the goal and has been replaced by the strife for a larger domestic output of food [in England] or the policies which are based upon the belief in the absolute superiority of the agricultural occupation over others [in Germany]. The resulting pauperization is illustrated in the following table, which contrasts the consumption of selected foodstuffs (livestock products and imported fruits) in European countries with that of the United States .... Germany's consumption is far below that of the United States ....

Spiegel, op. cit., p. 91. Italics not in original.

Why the idealization of agriculture as an occupation would necessarily pauperize a country is not made clear.

Similar fallacies of reasoning are apparent at other points. The argument that sole inheritance, prevents disinherited children from establishing homes, and contracting marriage and therefore explains the high percent of illegimate children is open to question.

Spiegel, op. cit., p. 149

As a matter of fact, sole inheritance of farms does not necessarily disinherit the other children as is frequently claimed. The parents' lifetime savings are not invested in the land and therefore can be divided among the children as is still done in England. The sole

heir receives only the opportunity to make his living as a farmer. The other children can usually find similar opportunities in industry and when they cannot they are permitted to return to the farm.

Young also appears to favor the English tenure system.

Young, op. cit., p. 5

After pointing out the farmer's need for credit and the weaknesses of the incorporation of individual farms he discusses large estates held for renting to farmers:

> Here is a basis for more permanent management. Under this arrangement, farm plans can be developed over a long period of years. If the estate is large and prosperous, there is no immediate pressure for revenue and longtime improvements can be undertaken. There are numerous cases of well operated large estates in which these possibilities are fully realized.

Young, op. cit., p. 5

However, he admits that they can be poorly managed and may be broken up by inheritance if owned by an individual. He does not discuss the difficulty of getting farmers to accept the idea of tenancy when ownership and the wealth and social status that it provides appears to be possible of achievement.

The hereditary farms idea is discredited by calling it "the essence of the feudalism of the Middle Ages in which each individual was born into an environment from which he could never hope to escape."

Young, op. cit., p. 16

This statement appears to be much too strong. Forcing one son to become a farmer even though he prefers some other line of work was never a part of primogeniture as it was developed in England and Germany. On the contrary, in Germany the farm could be taken away

from a son who did not operate it efficiently.

Concerning the use of subsidized governmental credit Young states that this idea has been given a thorough trial in Denmark with the result that 86 percent of the total value of all farm property including buildings, livestock, and equipment is mortgaged to the government. The cheap and abundant credit has resulted in high land values in comparison to farm incomes by stimulating and increasing the competition for land. While tenancy has been reduced to about 6 per cent "...the government now has the problem of dealing with a very large and growing class of delinquent borrowers, many of whom will have to be dispossessed." Young believes that for these people, who probably outnumber the former tenant class, security of tenure has probably decreased.

> It now appears that this program may lead to ownership of land by the state. The farmer, thus, becomes in substance merely a tenant with the government as landlord. He pays very high total interest and amortization charges in lieu of cash rent. His tenure is subject to the whims of local government committees and to the vacillating policy of the government. There is very great danger that this experiment may be tried in the United States.

Young, op. cit., p. 16

There is much here for careful thought and further investigation as the author himself points out. However, it seems questionable that the extension of cheap and abundant credit for land purchase in the United States comparable to that of Denmark could possibly result in greater insecurity than exists among tenant farmers at present.

Although the author states that "no solution has been proposed," the evidence he presents favors large landed estates owned

by individuals or corporations and rented to tenant farmers. Under such a system "rack-renting" might again appear and the whims of individual landlords or corporations can often be more arbitrary and heavy handed, if not vacillating, than would government committees and landlords.

Liversage in his small book discusses in successive chapters tribal tenure, feudal tenure, various forms of tenancy, and finally owner-occupation. The advocation of owner-operation and its dangers are then discussed. Subdivision and fragmentation, farm indebtedness--its extent and consequences, the weaknesses of owner occupation, remedies and modern policy are then taken up in separate chapters.

Liversage, op. cit., passim

In general the weaknesses of owner-occupation of the land in the British colonies is well presented, and the abuses caused by credit are pointed out. The conclusion of the author is that insofar as the British Colonies are concerned state ownership and improved tenancy is the lesser evil. Obviously, however, as Liversage is careful to point out, this conclusion based upon experience in the

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Liversage, op. cit., p. 144-5

British colonies cannot be applied to the tenure problems of other countries where the social milieu, objectives, and administrative forces are quite different.

Benedict's discussion of ownership versus tenancy as a means of providing farmers with greater security takes up only six pages of a popular pamphlet; yet brief as it is, it states the problem and

compares the possibilities of solving it by credit and by tenancy reform.

Benedict, op. cit., p. 13-20

He states,

> It is clear that well toward half the farms of the United States are operated by tenants and no program thus far initiated seems likely to lessen that proportion either substantially or quickly. For reasons already pointed out, and more fully stated by the President's Farm Tenancy Committee, the conditions of tenancy are in the main far from satisfactory. Since these facts are generally accepted it would seem more significant and practical to place major emphasis on betterment of the conditions of tenancy than to pursue the will-o-the-wisp of universal owner-operation.

Benedict, op. cit., p. 14-5

Whether or not universal owner-operation is a will-o-the-wisp probably depends upon the degree of ownership one has in mind. If Benedict was thinking of full ownership of farms in fee simple by farmers, then his statement is probably true. However, it appears possible from the experience of Denmark, Ireland, Switzerland and Norway that great security of possession by farmers can be achieved when a large share of the equity in the farm is owned by the government or the rights of alienation are subject to limitations. Both the Danish "credit ownership" and the Swiss and Norwegian "family ownership" limited and prescribed as it may be, appears to offer reasonable security of possession and freedom of operation that compares favorably with that of the English tenant farmer.

Brandt believes that sole inheritance such as found in the German Hereditary Homestead Act of 1933 removes farmers from the

profit-and-loss incentive and therefore prevents promotion and elimination of farmers within the limits of fair practices. As a result, he argues, political promotion and elimination would have to be used with all its evil consequences.

Brandt, op. cit., p. 208

While it is true that the farmer would be less likely to lose his farm under these circumstances, it does not seem that it necessarily follows that the farmer would be removed from the profit-and-loss system just because he was no longer under the necessity of buying the land. He would have to maintain the farm, meet current expenses out of receipts and otherwise conduct an efficient business if he is to make his living as a farmer. His situation would not be greatly different than that of any tenant farmer. The selection of the son to carry on the farm business could be made on the basis of custom and family desires rather than politics as Brandt suggests.

> Brandt concludes that: "Most of the available measures to strengthen owner-operation and to expand it at the cost of tenancy are not feasible. Ownership with higher incumberance does not offer the supposed greater security, and frequently leads to great sacrifices in income as well as greater risk."

Brandt, op. cit., p. 224

Brandt like Benedict looks to tenancy reform to provide greater security of possession and freedom of operation for farmers and neglects the comparative difficulty of getting such legislation under existing conditions in the United States.

B. COMPARATIVE STUDIES OF INHERITANCE LAWS, WILLS AND SALES ARRANGEMENTS

The purpose of this section is to show by a critical review of the literature that a useful comparative analysis and evaluation of the laws of descent, wills, and contracts as arrangements for transferring farm property from father to son has not been made.

The laws of descent, wills, and contracts have existed as customary practice and law since time immemorial. Because they are old and important social institutions there is a great deal of literature in all civilized countries concerning them. Almost any library is certain to have one or more books in which the characteristics of these arrangements for transferring property are discussed. In the larger libraries and especially law libraries scores of articles and books can be found dealing with the legal aspects of these arrangements.

Despite the vast amount of descriptive material available, no attempt to compare and evaluate these arrangements for transferring farm property from father to son has been found in the literature reviewed.

Gibson and Walrath have recently reviewed the literature in the United States on the inheritance of farm property.

W. L. Gibson, Jr., and A. J. Walrath, Inheritance of Farm Property, Journal of Farm Economics, 29:938-51, November 1947

A review of fifteen bulletins and articles revealed that only one of these was specifically concerned with the transfer of farm property from the father to the operating son by inheritance. As a result of their review of these and other studies they concluded, "the best methods of inheritance and transfer of farm property from one generation to the next are not known."

Ibid. p. 591

A search of the titles included in the bibliography of this study substantiates this conclusion concerning the comparative merits of the laws of descent, wills, and contracts to give or sell the property to a son.

A study by Allred and Briner emphasizes the importance of inheritance in the progress of farmers in acquiring ownership but does not consider the relative merits of the laws of descent and wills.

C. E. Allred, and E. E. Briner, Inheritance as a Factor in the Progress of Tennessee Farmers, Tennessee Rural Research Series Monograph 83, 1938

Since about 95 percent of the farmers in the United States are sons of farmers and since two-thirds of the farmers are classed as farm owners with some equity in their farms it is to be expected that inheritance has an important role in helping sons acquire farm ownership.

W. A. Anderson, The Transmission of Farming as an Occupation, Rural Sociology, 4:433-448, 1939 and 5:349-351, 1940
See also R. T. McMillan, Farm Ownership Status of Parents as a Determinant of the Socio-economic Status of Farmers, Rural Sociology, 9:151-60, June 1944

Parsons and Waples in a study of farm ownership in a low tenancy area of eastern Wisconsin conclude that a high degree of ownership has been maintained by the willingness of the parents to sell the farm to a son at considerably less than its market value:

> The most important fact about inheritance in this area is that the matter is not settled in terms of a competitive market valuation of family assets upon the death of the parents. It is not the rule that parents hold their property until death at which time the farm is placed upon the market and the personal property disposed of at auction. Rather it appears that parents make individual settlements with their children, helping each as family circumstances permits, at the time the children mature.

K. H. Parsons and E. O. Waples, Keeping the Farm in the Family, Wisconsin Research Bulletin 157, 1945, p. 12

Since this is a study of a single community in which sales arrangements were largely used, no attempt is made to compare the economic and social advantages of sales arrangements with the laws of descent and wills as means of transferring farm property from father to son. That such sales at less than the market price are effective in keeping a high degree of ownership in a community cannot be questioned. Before urging the widespread adoption of father-son sales arrangements, however, their advantages and disadvantages in comparison with the laws of descent and wills, as they exist at present and may exist in the future need further study.

Parsons and Legrid have prepared a popular statement

K. H. Parsons and J. J. Legrid, Planning for the Descent of Property in the Family, Wisconsin Extension Circular 364, 1945

concerning the Wisconsin laws of descent, ~~concerning~~ the preparation of wills and transfers by sale or gift before death. This useful publication points out some of the well known advantages and disadvantages of the various arrangements that can be made. While the successful use of sales and gift arrangements are pointed out the authors give only limited approval. "We have no intention of giving wholesale endorsement here to such property arrangements. Any such plan should be worked out thoughtfully and with caution."

Ibid. p. 20

Since no serious study had been made of the comparative merits of these arrangements such caution is commendable. However, this comment

does suggest the need for a comparative study of these arrangements.

Earlier, Hill had discussed the problem of transferring farm property from father to son. Gifts and sales of the deed to the son before the death of the parents are considered.

E. B. Hill, Father and Son Farm Partnerships, Michigan Special Bulletin 330, 1944, p. 24 - 36

A will devising the farm to one son providing the son pays to the other heirs certain sums of money according to the provisions of an attached contract is also suggested. Although some of the advantages and disadvantages of these arrangements are mentioned there is no attempt to compare and evaluate them in the manner that is proposed in this study.

Hannah discusses very briefly how holding land in fee simple, in joint tenancy, and in life estates and remainders affects the problem of keeping the farm in the family.

H. W. Hannah, Family Interest in the Ownership of Land, Journal of Farm Economics, 23:895-899, November 1941

Joint tenancy with the rights of survivorship by the parents and perhaps one son or daughter is suggested as a possibility. "A conveyance to one son with charges on the land in favor of the other children is another possibility." A gift of the deed subject to a life estate for the parents and trust arrangements with a professional farm management agency as trustee is also briefly discussed but no detailed comparison and evaluation is attempted.

In a recent popular article Timmons discusses very briefly

John F. Timmons, Transferring Farms Within Families, Land Policy Review, 9:3-7, Winter 1946

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the possibility of giving the farm to a son. Nothing is said about giving the farm to a son subject to a life estate by the parents, giving the son a survivorship interest under a joint tenancy arrangement or how such arrangements would affect the security and freedom of the parents and son. The possibility of selling these estates to the son is also not mentioned. However, selling the farm to a son is discussed although it is not called a sale. Timmons suggests that payments made by the son to the parents be roughly equal to the payments that would be made if the capital value of the farm was invested in annuities for the parents.

Ibid. p. 6

Wills and the laws of descent are also discussed by Timmons but no attempt is made to compare and evaluate any of these arrangements although some advantages and disadvantages are pointed out. The point is made that annuity payment plans "have much to offer in the interests of promoting the security of parents, the welfare of their children and the continuity of the organization of the farm."

Ibid. p. 6

Hady and Johnson have suggested that the Farm Security Administration -- now the Farmers Home Administration -- or preferably other corporations especially designed, buy farms from farmers who wish to retire and then lease or sell such farms to younger farmers.

Frank T. Hady and Sherman E. Johnson, The Farmer at 65, Land Policy Review, 4:18-22, March 1941

Bonds could be used to pay for the farms the authors suggest, or perhaps an annuity plan could be worked out for farmers who need to liquidate their farms.

Eke has suggested a plan whereby older farmers could sell their farms and use the proceeds to buy a guaranteed life annuity from the government.

Paul A. Eke, Farm Old-Age Security: Chance for Youth and Veterans, Land Policy Review, 8:23-26, Summer 1945

Parsons and Waples

Op. cit., p. 25n

point out that others

Harwood and Francis, Insurance and Annuities From the Buyers Point of View, American Institute for Economic Research, Cambridge, Massachusetts, 1935, p. 151

have previously recommended that parents purchase from an insurance company an annuity and give their children the remainder of their estate as an inheritance. Parsons and Waples, however, do not recommend the actual purchase of an annuity. Under their plan the son buys the farm and makes guaranteed annuity payments to the parents as long as they may be expected to live as calculated in insurance mortality tables. The annuity tables are merely used to determine the amount of the monthly or yearly payments. "As a practical matter these contingencies could be covered by selling the farm to the purchasing child at something less than a strictly business valuation."

Parsons and Waples, Op. cit., p. 26

Botts does not favor guaranteeing the annuity payments for a specific number of years.

Ralph R. Botts, Use of the Annuity Principle in Transferring the Farm from Father to Son, Journal of Farm Economics, 29:423-24, May 1947

He points out that guaranteed "refund annuities are seldom used in

connection with older lives because of the effect of the mortality factor in reducing the amount of the monthly installments." He believes that the purchasing son should pay the annuity as long as the parents live and that the risk of the son paying more than the farm is worth due to the fact that the parents live longer than the average is offset by the chance that they may die earlier than the average. Since the son does not have the protection of a large number of cases he would be assuming a great deal more risk than an insurance company. He would have a fifty-fifty chance of paying more or less than the value of the farm unless the parents' health was known to be unusually poor for their age.

If the parents' health were known or suspected of being unusually poor, it would be difficult to secure the family understanding and agreement on the sale of the farm on an annuity payment plan such as Botts suggests. The plan, in effect, puts a price on the parents' lives that might have unpleasant psychological effects on the family.

While this discussion of annuity payment plans is somewhat beside the point since a comparison of various payment plans is not considered in this thesis, it does emphasize that sales arrangements for father-son transfers are seriously considered even though no comparative study has been found of the merits of the laws of descent, wills, and sales or gift arrangements as they exist at present or as they may be changed in the future.

C. SUMMARY AND CONCLUSIONS

This review of the literature amply demonstrates the need for further study of the alternative ideas of credit, tenancy reform,

and father-son farm succession on farms as a means of providing farmers with greater security of possession and freedom of operation. Likewise there is an apparent need for the evaluation of alternative arrangements to achieve father-son succession on farms. Little appears to be known about the comparative merits of the laws of descent, wills and sales arrangements for transferring farm property from father to son. These ideas and arrangements will be discussed in the remaining chapters.

CHAPTER IV

SOME POSSIBLE SOLUTIONS

The purpose of this chapter is to explore two ideas that might give the farmer greater security of possession and freedom of operation on the land. The first idea is that tenancy legislation, similar to that of England, will give farmers in the United States comparable security and freedom on the land. The second idea is that cheap and abundant credit for land purchase will help most farmers acquire the security and freedom provided by fee simple ownership.

A third idea for providing farmers with greater security and freedom on farms will be discussed in the next chapter. This idea is that private family arrangements for father - son succession will give the son greater security and freedom than will public tenancy legislation or subsidized credit. The relationship of these three ideas for providing greater security and freedom for farmers can be seen from the following classification:

Proposals for Providing Farmers with Security and Freedom on Farms

I. Public or governmental assistance:

   A. By legislation to improve farm tenancy
   B. By increasing the farmer's purchasing power chiefly by subsidized credit

II. Private or family assistance:

   A. By partnership, rental, and purchase arrangements between parents and son or son-in-law before the parents' death
   B. By inheritance by law and will after the parents' death

From this classification it can be seen that a broad question posed by this study is: "What are the relative merits of public versus

the private terms of giving farmers greater security of possession and real freedom of operation on the land?"

A. TENANCY IMPROVEMENT BY LEGISLATION

There is a growing conviction among many economists and farm managers that farm ownership by farmers is a "will-o-the-wisp" and that no program thus far initiated in the United States is likely to counteract the long-time trend towards more and more tenancy. Therefore they believe that a more practical approach to the land tenure problem is to be found in attempts to improve tenancy. Practically

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M. R. Benedict, Farm People and the Land after the War, National Planning Association pamphlet 28, 1943;
Farm Tenancy, Report of the President's Committee, p. 18;
Farm Tenure Improvement in the United States, U. S. Dept. of Agriculture, Mimeographed, 1945, pp. 132-4;
Post-war Agriculture Policy, Report of the Committee on ..., Association of Land-Grant Colleges and Universities, October 1944, pp. 36-7;
North-Central Regional Committee on Land-Tenure Research, Improving Farm Tenure in the Midwest, Illinois Bulletin 502, 1944, pp. 155-9;
Michigan's Major Agricultural Problems with Suggested Solutions, A Report of the Agricultural Advisory Committee of the Michigan Planning Commission, 1946, p. 16;
K. Brandt, Toward a More Adequate Approach to the Land Tenure Program, Journal of Farm Economics, 24:224-5, February 1942;
R. T. Ely and C. J. Galpen, Tenancy in an Ideal System of Land Ownership, American Economic Review, Supplement 9:188-9, March 1919;
H. C. Taylor, Agricultural Economics, Macmillan Company, New York, 1919, pp. 190-351; and many others.

all these authorities recommend that the farmer be given greater security of possession and freedom of operation such as has been provided in England by legislation. Compensation for undue disturbance and unexhausted improvements and freedom of cropping has given the English farmer an average period of occupation of "... about 15 years, which was as long as that of complete owners in the United States and longer than that of owners of mortgaged farms."

A. W. Ashby, The Relations of Land Tenure to the Economics and

Social Development of Agriculture, Proceedings of the Fourth International Conference of Agricultural Economists, 1936, Oxford University Press, London, 1937, pp. 98-9.

While improving farm tenancy will undoubtedly solve the tenant farmer's problem it does not necessarily solve the problems of the landowner as is demonstrated by developments in England. There, "The main anxiety now is whether the landowner will be able or willing, for the future to fulfill what is regarded as his normal responsibilities--the maintenance and the modernization when necessary of farm house, hired men's houses, barns, farm roadways and the drainage systems."

J. A. S. Watson, Land Ownership, Farm Tenancy and Farm Labor in Britain, Agricultural History, 17:77-8, 1943

Agricultural depressions, heavy taxation, and particularly the increasingly heavy death duties (inheritance taxes) have greatly improvished many of the great land-holding families and has made farm ownership an unprofitable activity except for colleges, universities, insurance companies, and financial corporations which are, of course, exempt from the death duties.

Ibid., passim

The disintegration of the landed estates has been accompanied by a rise in the number of farmers who own the land they operate from about 12 percent in 1919 to about 36 percent in 1927.

E. Thomas, Tenure of Agricultural Land in Britain, Chapter V, Family Farm Policy (Ackerman and Harris, editors) University of Chicago Press, Chicago, 1947, pp. 167-8;
Ashby, (op. cit., pp. 95-6) points out that some of these are "home" farms of landowners. Also many landowners have found it profitable to combine and manage farm operations on land previously rented out.

Since then there has been apparently little change.

Ibid., p. 167 n; and A. N. Duckham and J. A. Young, Rural Planning in the United Kingdom, Journal of Farm Economics, 29:1081-2, November 1947

From this it is apparent that about one-third of England's farmers are still confronted with the problems of securing and maintaining farm ownership despite the remarkable security provided tenants by the Agricultural Holdings Act of 1883 and subsequent legislation, the latest of which is the Agricultural Act of 1947.

This act provides among other things that the tenant cannot be given notice to quit without the approval of the Minister of Agriculture. See Duckham and Young, Ibid., p. 1082

The experience of the modern English owner-occupier in financing and transferring his farm has apparently not been too successful. Some of the more enterprising farmers probably have been discouraged by lack of facilities to purchase land.

Ashby, op. cit., p. 99

Duckham states that:

> As seen from North America, perhaps the most noteworthy feature of the land tenure proposals of the various political parties and farming groups in the United Kingdom is that no major interest stands 100 percent for the owner-occupied farm. The landlord-tenant system seems to be generally preferred, provided that the tenant has reasonable security of tenure, i.e., cannot be moved from his farm unreasonably, and provided that the landlord can and does keep the farm buildings well equipped and in good condition.

Thomas, op. cit., p. 171. Additional remarks of A. N. Duckham who presented Thomas' paper to the conference

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Whether the state should assume the functions of the private landlord is the subject of a lively debate in England. When the

private landlord is inefficient there appears to be general agreement that the land should be purchased and managed by the government.

Thomas, op. cit., p. 169-71

The Agricultural Act of 1947 provides that the government may dispossess inefficient landlords, and tenants and compensate the landlord or rent the farm to another tenant as the case may be but the land has not yet been nationalized.

Duckham and Young, op. cit., p. 1081-2, 1083

While England has apparently solved the problem of security of possession and freedom of operation for about two-thirds of her farmers by legislation, the problem of the ownership of farm land has unquestionably been accentuated by taxes and legislation concerning rents and tenants' rights.

Watson, op. cit., p. 77; Ashby, op. cit., p. 95; Thomas, op. cit., p. 166-9

Whether or not the land is finally nationalized is perhaps less important than it seems. As Ashby has said: "When the State uses drastic political powers to establish or maintain individual ownership of farms, the private property in farms takes on the character of public property."

Ashby, op. cit., p. 101

Perhaps the chief reason why tenancy legislation is not adopted in the United States is that, "there is no large group of landowners who contemplate the more or less permanent ownership and leasing of their lands."

Benedict, op. cit., p. 19

The fact that about one tenant farmer in five was related to the landlord in the United States in 1930 suggests the landlord situation.

M. M. Tharp, Farm Tenure Situation, Family Farm Policy (Ackerman and Harris, editors), University of Chicago Press, Chicago, 1947, Table 9, p. 100

Also suggestive is the fact that less than one-fourth of the leased farms were rented on a cash basis in 1940.

Ibid., Table 7

Whereas in England practically all renting is on this basis.

Thomas, op. cit., p. 164

Some economists believe that cash-share and share renting limits the farmers' freedom of operation.

H. C. Taylor, op. cit., p. 142

Schickele has pointed out that livestock share renting "is a business partnership rather than a tenancy" and therefore restricts the farmer's freedom of operation.

R. Schickele, Effect of Tenure Systems on Agricultural Efficiency, Journal of Farm Economics, 23:195, February, 1941

Under such close blood or business relationships and with very few landlords owning two or more farm units, it is not surprising that little interest has been shown in improving tenancy conditions in the United States. As Salter has pointed out, when most landlords are local retired farmers who seldom own more than one farm little or no problem is believed to exist, however, the problem is generally believed to increase directly as the landlord becomes absentee, ur-

ban, corporate or alien.

L. A. Salter, Jr., Tenure Policy Formulation in a Democracy, Family Farm Policy, (Ackerman and Harris, editors), University of Chicago Press, Chicago, 1947. p. 127

The prospects for tenancy reform on the English pattern does not appear too bright for the immediate future in view of the differences in background and ownership in the two countries.

J. D. Black and others, Farm Management, Macmillan Co., New York, 1947. p. 119

This situation may change rapidly, however, unless private or public credit is supplied to agriculture on a greatly expanded scale. There can be no doubt that the trend towards greater mechanization which makes desirable the operation of larger units of land calls for capital that the individual farmer is not capable of providing.

Recently the Union Oil Company of California ran full page advertisements in popular magazines declaring that "Each Union Oil employee has a $38,000 kit of tools." The company argued that this investment was necessary for efficiency but that since there were nearly ten thousand employees the best way of providing the tools for these employees was to pool the savings of many thousands of people under a corporation.

This method of obtaining capital is in sharp contrast to the farmers' method of acquiring a "kit of tools" i.e. land, and operating capital. Unintentionally this advertisement illustrated vividly a growing problem of the American farmer. Society cannot give the farmer forty thousand dollars worth of capital and the farmer cannot be expected to save this amount during his lifetime. Individuals,

corporations, or the government must lend purchase money or lease the land to the farmer if he is to farm on an efficient and economical scale.

At any rate the conclusion seems warranted that the tenancy situation must become much worse before it gets any better. Before tenancy legislation similar to that in England is adopted, farmers must recognize that farm ownership by "the credit road" or any other road is largely an impossibility. The idea of the government lending the farmer the necessary capital will be considered in the following section of this chapter.

B. CREDIT AND OWNERSHIP

Since ownership in fee simple, at its best, provides security of possession and freedom of operation, the logical solution to the problem in the minds of many people is to help farmers acquire farm ownership. As farms cost money, the most obvious means of helping farmers acquire such ownership, and the one that has attracted the greatest amount of attention and effort in this country, is to increase the farmer's purchasing power in terms of land. This can be done either by increasing the farmer's income and borrowing ability or by reducing the price of land or both.

Subsidizing the farmer's income and providing abundant credit at low interest rates are two examples of such efforts in this country. The Agricultural Adjustment Administration payments and the later Soil Conservation payments were subsidies intended to increase the farmer's purchasing power. Such an increase in purchasing power

in terms of land should help them acquire farm ownership. Government credit for land purchase has had a long and interesting history. Such governmental credit was first made available as early as 1787 but was withdrawn in 1820 when widespread delinquency in payments wrecked the system.

P. J. Treat, The National Land System, 1785-1820, E. B. Treat & Co., New York, 1910. p. 44, 143, 161

Lower land prices, preemption, and homesteading was substituted for easy credit during the next hundred years. Despite such a liberal land policy 25 percent of the farmers of the United States were found to be tenants in 1880.

The disappearance of suitable land for homesteading and general farming; the remarkable increase in land prices (they doubled in the ten years 1900-1910); and the shocking increase of farm tenancy from 25 to 37 percent during the period 1880-1910 caused renewed agitation for farm credit that finally resulted in the passage of the Federal Farm Loan Act in 1916 and the setting up of the Federal Land Banks that are the backbone of our present farm credit system.

W. G. Murray, Agricultural Finance, revised, Iowa State College Press, Ames, 1947. p. 340-1

The avowed purpose of the new Federal Land Banks was to encourage and assist farmers to achieve farm ownership. Supporters of the act were confident that many tenant farmers would avail themselves of this opportunity to become farm owners. In this, however, they were disappointed.

Not until 1937 did the number of loans made by the Federal Land Banks to purchase farms exceed 20 percent of the total farm

loans made in the United States. For a number of years during the twenties only about 8 percent of the loans made were for the purchase of farms; the great bulk of the loans being made to refinance previous indebtedness. Even under these circumstances, governmental

Ibid., p. 342

farm credit may have played an important role in checking the rate of increase in farm tenancy. In other words, the increase in farm tenancy might have been even greater than it was during this period without governmental farm credit. Unfortunately, however, the figures on tenancy do not show the effect, if any, of the farm credit system.

Despite the new farm credit system, farm tenancy continued to increase from 37 percent in 1910 to 42 percent in 1930. During the next ten years the farm credit system was reorganized and expanded and business conditions improved. No doubt these changes had their effect in decreasing tenancy to about 39 percent in 1940. By 1945 tenancy had decreased to 32 percent, the lowest level in fifty years. This remarkable decrease was caused principally by the wartime increase in farm incomes, people leaving the farms for other occupations, and technological improvements which permitted the operation of larger acreages. Over half of the nation's decrease in tenancy during the war years occurred in the South where these changes had been most pronounced. The effect of credit on the decrease of tenancy is not mentioned.

M. M. Tharp, Farm Tenancy at Low Ebb, Agricultural Situation, 31:5-6, March 1947

Casual analysis of these efforts to help farmers acquire farm ownership reveals that they can be classified as efforts to increase the farmers' income, increase his borrowing ability, or to control (lower) land prices. The object in any case is to increase the farmers' purchasing power in terms of the things they buy--including land. Recent proposals to increase governmental loans from 65 percent to 85 percent or more of the value of the farm,

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American Farm Economics Research Committee, The Federally Sponsored Credit Services to American Agriculture -- Suggestions for Improvement and Coordination, Journal of Farm Economics, 29:1445, Part II, November 1947; E. L. Butz, Postwar Agricultural Credit Problems and Suggested Adjustments, Journal of Farm Economics, 27:284, May 1945; J. D. Black, Agricultural Credit Policy in the United States, 1945, Journal of Farm Economics, 27:592, August 1945

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to control land prices

North Central Regional Committee on Land Tenure Research, Preventing Farm Land Price Inflation in the Midwest, Iowa Bulletin P-72, 1945; W. G. Murray, Implications of Land Value Control, Journal of Farm Economics, 26:240-57, February 1944; C. H. Hammar, A Reaction to Land Value Control Proposals, Journal of Farm Economics, 25:822-34, November 1943; W. G. Murray, Land Market Regulations, Journal of Farm Economics, 25:203-218, February 1943

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or to give farmers "parity" income are attempts to increase the farmer's purchasing power that will directly or indirectly help farmers achieve a high degree of security of possession and freedom of operation through fee simple ownership.

Those who favor more liberal credit point to the fact that Denmark has achieved a high degree of stability of occupancy and freedom of operation through the liberal use of credit. The fact that such a high degree of ownership (about 94 percent) has been secured by substituting mortgage indebtedness for tenancy has not gone

unchallenged. The extent of the mortgage indebtedness was estimated by "informed and responsible persons" in Copenhagen as being "in the neighborhood of 60 percent" of the 1937 total sale value of Danish farms and 90 percent of the comparatively low tax values.

W. Bauer, Agricultural Credit in Denmark, U. S. Farm Credit Administration Bulletin CR-2, 1940, p. 9

Apparently, however, these figures may not represent the true financial condition of the Danish farmers because they appear to mortgage their farms for other reasons than purchase and production. Some examples can be given. Mortgaged farms are more readily salable. The borrower is issued bonds instead of money which he may keep to facilitate division of the estate upon his death and to reduce his taxes. Finally holding the bonds may be an inexpensive form of lottery gambling as the bonds may be called for cash by the association.

Ibid., p. 8-14

Whatever may be the true status of the mortgage indebtedness of the Danish farmers, they can retain secure possession of their farms as long as they meet their payments which are amortized over a long period of years. Whether the "financial guardianship"

E. C. Young, Farm Credit and Government, Journal of Farm Economics, 20:568-9, 1938

placed upon the farmer as a result of his mortgage indebtedness to the state is too high a price for the security of possession and freedom of operation appears to be a debatable question. Since Denmark has a democratic form of government it does not seem likely that unjustifiable limitations would be placed upon such a large

part of their population. On the other hand, Danish farmers may fail to meet their obligations during an economic depression with the result that the state will be forced to take over the land and the farmer will merely become a tenant on public rather than private land.

E. C. Young, How Stabilize Ownership, Nation's Agriculture, 16:5,16-17, March 1941

There are some reasons for doubting that abundant credit at low interest rates makes it easier for farmers to acquire farm ownership. Bauer in discussing the Danish credit system says, "Giving borrowers the opportunity to acquire farm property through large loans and long amortization periods without substantial outlay in cash contributes to forcing land values upwards and narrows the farmers' margin of economic safety. This is rather undesirable in a country such as Denmark where owing to the pressure of the population on the land the demand for farms is always considerable."

Bauer, op. cit., p. 35-6

That there is a direct relationship between the net farm income and the price of land has long been recognized. This relationship has been used to determine the productive value of land by dividing (capitalizing) the average expected earnings of the farm by current interest rates.

R. T. Ely and G. S. Wehrwein, Land Economics, Macmillan Co., New York, 1940, p. 120

In addition to the productive value, anticipated and amenity values are also calculated in figuring the price of land. While there is

Ibid., p. 120-1

no doubt that farmers consider such factors as income, probable increases in land values, and the amenity values of a farm, there are reasons to believe that since the demand for farms is in excess of supply,

C. Taeuber, Replacement Rates for Rural Farm Males, Ages 25-69 Years by Counties, 1940-1950, U. S. Department of Agriculture, Mimeographed, December 1944; H. M. Coverley, The Dilemma of the Land Hungry, Land Policy Review, 3:20-25, September 1940; Samuel Liss, Farm Habilitation Perspectives in the Postwar Period, Journal of Farm Economics, 29:735-6, August 1947; C. E. Lively and R. B. Almack, The Rural Population Resources of Missouri, Missouri Research Bulletin 306, 1939, p. 35

farmers tend to use every resource available to outbid other farmers for the land. If this is true, lower interest rates and longer amortization periods will, in the long run, merely permit land prices to be bid up to the point where any advantage of the easier terms are offset by higher prices. Since agricultural adjustment and soil conservation payments increase farm income it is reasonable to expect that such payments, in the long run, would be bid up into the price of land if other factors remain constant.

H. C. Taylor, Land Tenure and the Social Control of the Use of Land, Proceedings of the Fifth International Conference of Agricultural Economists, 1938, p. 146-7. See also L. H. Bean's discussion of this paper and Dr. Taylor's reply p. 158 ff

The increase in land prices that can be expected from abundant subsidsized credit may aggrevate another problem. The large down payment requirements on the purchase of a farm often force farmers to choose small uneconomic sized farms located on poor soils as has already been emphasized.

Shultz, op. cit., p. 323-4

Some of the difficulties caused by the choice of such farm units has also been pointed out.

Ackerman and Norton, op. cit., p. 470-6

Black believes that the most serious defect of the farm credit system in the United States is the lack of loans to enlarge farms.

J. D. Black, op. cit., p. 284-5

He agrees with two other authorities that the down payment on farms should be reduced, or, stated differently, that loans to farmers should be made up to 85 percent or more of the value of the land and improvements to be purchased.

Butz, op. cit., p. 592 and Research Committee, op. cit., p. 1445 n (W. G. Murray)

C. SUMMARY AND CONCLUSIONS

Tenancy legislation comparable to that in England does not appear to be well suited to the present stage of land tenure in the United States. There are few large landed estates that are customarily rented to tenants by landlords. Also there are few tenants that expect to remain in the tenant class. Hence, there is little demand for legislation to give tenants greater security of possession and freedom of operation in an "agricultural ladder" tenure system.

Subsidized governmental credit may fail to make it easier for farmers to acquire farm ownership although their security may be somewhat increased as "credit owners" or "government tenants" in

comparison to renters from private landlords. In the meantime, pressure will undoubtedly continue on our democratic institutions for aid to help farmers acquire ownership, and credit in greater abundance at lower cost and on easier terms will undoubtedly be the results. Such credit will lead to high mortgage indebtedness to the government and in periods of economic depression too much foreclosure and governmental ownership of the land. Such a course may prevent entirely the formation of the large private estates similar to those of the English landlords and therefore largely eliminate the possible need for tenancy legislation on the English model. If the credit road does lead to government ownership, there will undoubtedly be needed some kind of tenancy legislation that will regulate the relations of the tenant farmers and the government. Whatever may be the final choice or compromise between the credit road to farm ownership and the legislative road to secure tenancy, there is little reason to hope or believe that the changes will be rapid or the issues clear. The prospects are that both tenants and owners will continue to be insecure for many years to come. In the meantime farmers may do what they can to assist their sons acquire farm ownership of the home farm. The broader aspects of father-son succession on farms will be discussed in the next chapter.

CHAPTER V

FATHER SON SUCCESSION ON FARMS

In Chapter IV, "Some Possible Solutions", two popular ideas for providing farmers with secure possession and reasonable freedom of operation were reviewed and critically analyzed. In this chapter a third idea for the solution of this problem is discussed and analyzed. This idea is that father-son succession upon farms may largely eliminate the insecurity of tenancy and "credit ownership" as it exists in the United States.

A. INHERITANCE AND SUCCESSION IN FARMING IN THE UNITED STATES

If social institutions may be expected to change only slowly and by degrees what may the individual farmer do that will help to remove the difficulty of acquiring security of possession and freedom of operation? In order to answer this question a brief examination of the farmer's situation is necessary. In the first place it should be noted that two thirds of the farmers own some equity in the farms they operate. Many other farmers have considerable personal property. Furthermore there is reason to believe that about 95 percent of the present farmers are sons of farmers.

W. A. Anderson, The Transmission of Farming as an Occupation, Rural Sociology, 4:441-2, 1939; or see p. 7-8 of Cornell Bulletin 708, 1941, bearing same title and by same author.

Therefore it is logical to expect that the transfer of wealth from parents to children should play an important and decisive role, in helping the children to get started farming and to eventually acquire

ownership. A recent study by Allred and Briner sustains and emphasizes this point.

C. E. Allred and E. E. Briner, Inheritance as a Factor in the Progress of Tennessee Farmers, Rural Research Series Monograph 38, 1938

Because nearly all farmers are sons of farmers and two-thirds of them own some equity in their farms considerable interest has developed in the possibilities of father-son farm transfers and succession. If some means could be found of transferring farm ownership from father to son in a fair and equitable manner that gave full security and protection to the parents and their children then the difficulties that farmers have in buying farms under competitive market conditions will disappear. Likewise the problem of insecure tenancy would also disappear.

B. FOREIGN EXPERIENCE WITH HEREDITARY FARMS

Those who favor the father-son succession idea point out that Switzerland has had an inheritance law since 1912 which permits one son to take over the farm at its appraised agricultural value and make compensatory payments to the other heirs for their interests in the farm.

Asher Hobson, Agricultural Survey of Europe: Switzerland, U. S. Dept. Agri. Technical Bulletin 101, 1929, p. 13-14

In Norway the custom of passing farm property from father to eldest son (primogeniture) is very old and is now protected by statutes. Under these laws the eldest son receives the farm providing that he compensates the other children for their interests.

P. Borgedal, The Farm and Family Farm as Social Institutions, Proceedings of the Third International Conference of Agricultural Economists 1934, p. 203, and, C. Thomson, Norwegian Agriculture, Foreign Agriculture, 4:30-1, February 1940

In both countries the value placed on the farm is less than the market price and, therefore, the son who gets the farm does not run the risk of paying more than is justified by the agricultural earning capacity of the farm. These systems have virtually eliminated tenancy as a means of holding land. In Norway only about 5 percent of the farmers are tenants.

In parts of Germany, Czechoslavakia, Poland, Lithuania, and Finland customs and laws closely related to those of Switzerland and Norway have existed for many centuries.

M. Sering, The Relations of Land Tenure to the Economic and Social Development of Agriculture, Proceedings of the Fourth International Conference of Agricultural Economists 1936; Oxford University Press, London, 1937, p. 83

The German Hereditary Farms Law of 1933 applied the principle of sole inheritance to all farms between 18.5 and 309 acres in size. Payments in money to the other children such as made in Switzerland and Norway were eliminated, although the son was required to support all dependent members of the family who, through no fault of their own could not make a living elsewhere.

H. Kalden, The Peasant Inheritance Law of Germany Iowa Law Review, 20:350-88, 1935; Walter Bauer, Agricultural Credit in Germany, U. S. Farm Credit Adm. Research Bulletin CR1, p. 42. The present allied military government of Germany has abolished this law according to Professor C. L. Stewart of the University of Illinois.

C. AMERICAN BACKGROUND, EXPERIENCE AND POSSIBILITIES

Even in the United States where the inheritance laws gives each

child equal rights in the inherited property something similar to the Swiss and Norwegian inheritance systems was apparently sometimes put into effect by the probate courts:

> When the estate is inconsiderable, or when it cannot be divided without great injury, that is to say, when partition would materially lessen its value, the court having jurisdiction may decree the whole or any part of the land to one of the heirs, who would be called upon to pay such sum of money to the others as commissioners appointed by the courts should deem to be just and fair. When it is considered advisable that the land be so decreed to any one of the heirs, the eldest male is to be preferred to the others and the males to the females. I believe this to be a wise discretion which is possessed by the various Probate Courts; and it is generally a matter of agreement among all interested in the estate -- which of the heirs shall take the land, and how much money the heirs so taking shall pay to the others for their shares.
>
> C. M. Fisher,(Counsellor-at-Law, United States), Farm Land and the Land-Laws of the United States, Systems of Land Tenure in Various Countries, (Probyn, editor) Cobden Club, London, 1881

That such an unbelievable procedure was possible is shown by the following statutory law of Michigan:

> When any such real estate cannot be divided without prejudice or inconvenience to the owners the probate court may assign the whole to one or more of the parties entitled to a share therein, who will accept it, always preferring the males to the females, and among children, preferring the elder to the younger; Provided, the party so accepting the whole shall pay to the other parties interested their just proportion of the true value thereof, or shall secure the same to their satisfaction; and the true value of the estate shall be ascertained by commissioners appointed by the probate court, and sworn for that purpose.
>
> Compiled Laws of the State of Michigan, 1929, Section 15736

In 1939 the probate laws of Michigan were revised but the paragraph quoted above was retained virtually unchanged except that the clause preferring males to females and the elder to the younger children

was omitted and "two disinterested persons" instead of "commissioners" are to determine the value of the property.

Michigan Statutes Annotated, 1943, Sect. 27.3178 (173)

Unfortunately, perhaps, this law appears to be little known and used. Some possible reasons for this strange state of affairs can be advanced but they should not be accepted as final without further investigation. Perhaps the chief reason that this law is seldom applied is that the land may have to be sold to pay the debts of the estate and is not therefore available for division among the heirs.

Ibid, Sect. 27.3178 (165)

A further reason appears to be that the probate courts are not concerned with the division of the property unless such division or partition is requested by one or more of the heirs.

Ibid, Sect. 27.3178 (177) Compiled Laws Michigan 1929, Sect. 15741

The court is concerned with the determination of the size of the estate, the payment of debts, the determination of the legal heirs, and their interests in the property.

Michigan Statutes Annotated, 1943, Sect. 27.3178 (163)

Another possible reason for little use of this statute is that one of the heirs apparently must petition for a division of the property and the sale of property to one heir takes place only when the disinterested persons appointed to make the division report that such a division cannot be made without injury to the value of the

property and therefore injury to the heirs.

Michigan Statutes Annotated, 1943, 27.3178 (163) and (173)

Undoubtedly many of the heirs consider a public sale as the fairest way of determining the value of the property. This view would be encouraged because the public sale would result in a higher price and therefore more dollars for each the heirs except the buying heir. Finally, there may be a feeling among those interested that if the parents wanted one son to take over the property they would have made a will giving the property to a son on condition that he make certain payments to the other children. Unfortunately no discussion of these points was found in the sources of probate practice consulted. It might well be that nothing more is needed than a vigorous educational program to secure for farm families in the states having statutory provisions of this kind, benefits claimed for similar laws in Switzerland and Norway.

Whatever may be the explanation of the failure or inability to use the law quoted above current American practice in settling estates appears to be the selling of such property at a public administrator's sale to the highest bidder.

Michigan Statutes Annotated, 1943, 27.3178 (468)

Then, the proceeds of the sale are divided among the heirs according to their interests as determined by the probate court.

There would, of course, be no objection to such a sale if the price arrived at represented the long-time agricultural value of the

land. Unfortunately, however, there is reason to believe that farm lands tend to be bid up beyond their normal agricultural value by the number, ignorance, and wealth of the bidders who desire farm ownership. In the previous chapter this tnedency was seen to be one of the chief limitations to the idea that cheap and abundant credit would help farmers acquire farm ownership. On the other hand the chief advantage of father-son succession on farms is that such a system removes the farm from the competitive market.

Sering, op. cit. p. 81

Therefore, when a son must buy the farm at a public administrator's sale he is not likely to enjoy one of the chief advantages of such succession. The farm will cost as much as a comparable farm purchased from strangers and therefore there would be no particular advantage to buying the home farm and there would be some important disadvantages as will be pointed out later (See section G).

The inheritance laws of the United States apparently do not provide adequate means whereby one son may buy out the other heirs at something less than the market price of land. Because of this the son is subject to the same competitive forces of supply and demand that make it difficult and often im ossible for farmers to acquire ownership when land is considered as any other commodity to be bought and sold to the highest bidder in the market.

Fortunately, the farmer can prepare a will giving his farm to a son on condition that this son make certain payments to the other heirs for their interests in the farm.

W. D. Rollison, Clauses in Wills and Forms of Wills, Annotated Matthew Bender & Co., Albany, New York, 1946. Section 50; A number of interesting cases involving conditional wills are discussed in American Law Reports, Annotated 62:585-59, 1929. See also, Stark Richie, Wills -- Devise or Bequest on Condition that Devisee Pay Debts or Legacies, Michigan Law Review, 40:574-81, 1941-42

When the payments to be made under such a will are based on the normal agricultural value of the farm rather than upon the market price of the land something very similar to the Swiss and Norwegian inheritance systems can be achieved.

A clause from a conditional will prepared for and used by a Michigan farmer reads as follows:

> I hereby give and devise into my son. . . all my real estate of every name and kind, and wherever situated, being more particularly my farms in . . . the same to be his and his assigns forever, except however, that under the express condition and obligation that he pay my daughter . . . dollars, and that he pay to the widow of my deceased son . . . dollars, and children of my deceased son . . . dollars . . . It is my will that said sums of money above specified and all thereof be paid by said son . . . within one year of the date of my death and without interest and the said real estate is hereby charged with such obligations and payments. Should however my said son . . . not pay said sums of money and all thereof as in this paragraph set forth, then in that event said land and all thereof hereby devised into him under the conditions hereinbefore set forth shall become a part of my estate and I hereby give and devise the same as follows: one third thereof to my son . . . one third thereof to my daughter and one third thereof to . . . widow and . . . daughters of my deceased son, share and share alike, the same to be theirs, and their heirs and assigns forever.

R. L. Berry and S. Henderson, Inheritance and Transfer of Farms from one Generation to the Next, Unpublished data, Michigan Agr. Exp. Sta., 1945-46

An Illinois testator devised a farm to his son adding, "But

before he shall receive said farm under this will he shall pay to my daughter Sophia Jacobs, as her share in said farm, the sum of $1,000 and to my wife's son William Ditz the sum of $500 . . . and upon my son filing the receipts of such payments to county clerk of Whiteside County Illinois, he shall have the above described lands under this will."

Jacobs v. Ditz (1913) 260 Ill. 98,102 NE 1077

In Iowa a farmer, Charles Bruene, is reported to have made a conditional will which gave a son Fred the right to buy out the other heirs at one hundred dollars per acre. The son, Fred, did this upon his father's death and has now made another conditional will which permits his son, Dick, to buy out the other heirs at one hundred dollars per acre.

H. Read, Keep Your Farm in the Family, Country Gentleman, 117:13ff, August 1947

Such wills are far superior to the inheritance laws in the United States. The inheritance laws divide the property among the heirs and the son who hopes to acquire farm ownership often has to buy out the other heirs at a public administrator's sale. When the son must buy the home farm at a public auction the chief advantage of father-son farm transfers has been destroyed as pointed out above. Under such circumstances the son might just as well buy a farm from strangers.

D. HEREDITARY FARMS AND PRIVILEGED CLASSES

Criticism of father-son succession on farms, ~~i.e.~~ primogeniture, ultimogeniture, hereditary farms, or sole inheritance, has

Note that these terms refer only to the inheritance of land or farms and not to the parents' personal property which is usually distributed equally among all the children (see p. 40-41 above).

been frequent. However much of the criticism was directed towards its use to hold together the large landed estates that resulted from the feudal system in Europe and other parts of the world. In England sole inheritance (primogeniture and in some areas ultimogeniture) was the rule until it was finally abolished in 1925. However, as Pollock pointed out over sixty years ago the English laws of inheritance (primogeniture) had shrunk into comparative insignificance as a result of the complete freedom that people had of making wills and family settlements.

F. Pollock, The Land Laws, revised, Macmillan Co., London, 1887, p. 175-6

Agitation to remove the law of primogeniture was apparently based upon the conviction that, "If the legal rule of primogeniture in the strict sense were abolished, the artificial primogeniture of our (English) family settlements could not long survive it."

Pollock, Ibid., p.175

The objective, of course, was to break up the large landed estates and the economic, social, and political power that was associated with them.

E. HEREDITARY FARMS AND EQUALITY OF INHERITANCE

A favorite point of attack on primogeniture is that it is unfair to the younger children. Yet as Mill and Brodrick point out this was not generally true.

J. S. Mill, Principles of Political Economy, revised, D. Appleton and Co., New York, 1905, Book 2, p. 284-5

G. C. Brodrick, English Land and English Landlords, Cassell, Petter, Galpin & Co., London, 1881, p. 103-4

The family savings are not ordinarily invested in the land when sole inheritance is practiced. The right to use the land during a lifetime is in a sense the gift of the community that by law or custom permits primogeniture. The arbitrary selection of the eldest son to manage the estate or to carry on the farming operations does not disinherit the other children because the same society provides them with other opportunities of making a living. Furthermore the property accumulated by the parents with or without the aid of their children is divided by statute equally among the children. Wills and family settlements with regard to the personal property generally follow closely the statutes.

Pollock, op. cit., p. 170; and especially Brodrick, op. cit., p. 97

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1. If Applied in the United States

If primogeniture were to be put into effect in the United States only the children of parents who had invested their life savings in the farm would be disinherited. The reasoning behind this statement is as follows: Children have no rights in the land except insofar as they have earned them by their efforts or been led to expect them by the promises of the parents or the existing provisions of society of which the inheritance laws are examples. Therefore, if the inheritance laws were changed the first generation of children would not receive the inheritance that they had been led to expect and would be disinherited unless the government chose to compensate them for their loss. The second generation of children (save one) would not expect an inheritance and therefore would not

be disappointed. Also, since the father of the second generation received the farm as a gift neither he nor his children would have invested money in the purchase of the land. The father of the second generation merely inherited an opportunity to farm the land during his lifetime and to transfer it to a son or son-in-law. The father's lifetime savings, accumulated with or without the help of his children, could be distributed among the children as was provided by the English Statute of Distributions and the state laws concerning the distribution of personal property in the United States. Thus, the children would receive by inheritance whatever the family had accumulated during the father's lifetime and no disinheritance would take place.

Brodrick, op. cit. p. 103-4, states the argument presented in this paragraph but in a different context.

The children would not receive equal interests in the farm because primogeniture " vests the control of property, wherever it prevails, not in a series of hereditary landowners, but in a series of hereditary life tenants, or "limited owners", as they are now called . ."

G. C. Brodrick, The Law and Custom of Primogeniture, Systems of Land Tenure in Various Countries (Probyn, editor) Cassell, Petter, Galpin & Co., London, 1881, p. 151

Since the sole heir under the hereditary law receives only a life interest (a usufruct), therefore he cannot sell or give what he does not have and, from the standpoint of economy and efficiency, does not need. He has secure possession during his lifetime; he is not required to sink his savings into the purchase of the farm. Why

then should he be given the right to sell or give what he has not earned or purchased?

2. As Applied in Germany

The fact that there is no disinheritance except possibly in the first generation of children is illustrated by the effects of the German Hereditary Farm Law of 1933. This law required that all farms between 18.5 and 309 acres be transferred from the father to one child only. The other children have no claim to the capital value of the farm although they are entitled to receive some education and support as minors and home refuge when they cannot find work elsewhere.

In those cases where the German farmers were originally free simple owners of their land this law reduced their rights over the land to a considerable extent as has been pointed out by Galbraith who states:

> The law has of course meant a marked alteration in property rights in the land. The farmer's ownership has become conditional upon his ability to live and operate the farm himself . . . It is easy to see the challenge which the law presents at each turn to established attitudes towards property. The right of sale has been eliminated; the privilege of leaving has been taken away; the right of free disposal at death no longer exists; even the right to choose the heir to receive the property has been impaired. Since the value of farm property consists in part in these privileges, the law has, in practical effect been a confiscation of farm property for the benefit of the heirs who are eligible under the law. Or insofar as the disposability or liquidity accounted for a part of the value of farm property this value has been destroyed.[1]

This statement is accurate only when it is applied to those farms that had not already adopted the ancient German's custom of

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[1] J. K. Galbraith, Hereditary Land in the Third Reich, Quarterly Journal of Economics 53:474-5, May 1939

sole inheritance, or to those farms that were held in the equivalent

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Sering, op. cit., p. 31

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of fee simple ownership. Certainly the loss of property rights as a result of this law are not serious from an economic or farm management viewpoint. The life tenant of the land had security of possession and reasonable freedom of operation that appears to be far superior to that of an insecure tenant or a credit owner in the United States.

Once the fact that there is no disinheritance of the other children or violation of the security of the parents when farm property is transferred by law or custom to only one son is appreciated, another important point becomes clear. This is that the parents can transfer possession of the farm property to the sole heir as soon as they can no longer work the land profitably, or when they wish to retire. When the rent (or their cost of maintenance as in Germany) exceeds what they can earn by their own efforts the transfer can be made with benefit both to the parents and the son. The son will benefit because he is often ready to take over the farm before the parents are ready to retire (This is discussed below). The parents' lifetime savings are not invested in the land and are likely more readily available for use by the parents during their years of retirement. Finally upon the parents' death the remainder of their lifetime savings can be distributed among the children as is the common practice or law even in countries that practice sole inheritance of real property.

F. HEREDITARY PRINCIPLE AND FLEXIBILITY OF FARM SIZE

Another charge frequently made against the hereditary farms idea is that such sole inheritance would tend to fix or "freeze" the size of farm units. Changes in the size of farms are desirable and necessary if farm operators are to take advantage of technological improvements and changes in market demands that are constantly taking place. Both the individual farmer and the nation are affected by the efficiency with which foods and fibers are produced.

However, the charge that hereditary farms would tend to become fixed ignores the well illustrated fact that man made laws seldom suspend or supersede for long the more fundamental economic laws -- particularly in a state that enjoys as high a degree of democracy as exists in the United States. Furthermore in the case of the hereditary law or custom the purpose is not to suspend economic laws but to aid in their operation by giving the farmer the necessary security of possession and freedom of operation to operate efficiently and economically over a long period of years.

Those farms that consistently lose money because of their uneconomic size would tend to be vacated by the life tenants, in favor of employment in other industries. Or if he desired, he could compete with others for farms lacking heirs and therefore available for distribution. The uneconomic unit that he vacated could then be combined with adjoining farms. Such a process might conceivably result in a more rapid combination of farm lands than is possible when land can be freely bought and sold.

The difficulties of combining uneconomic units under the present tenure system is well illustrated in the West where a novel idea has been adopted to meet the problem. See H. C. Craig and C. N. Loomer, Collective Tenure on Grazing Land in Montana, Montana Bulletin 406, 1943

G. THE TIME-GAP IS A SERIOUS PROBLEM

A more serious difficulty of sole inheritance or hereditary farms is that the son is generally ready to take over the operation of the farm long before the parents are ready to retire or their death may be expected to occur. To construct a picture of this "time gap" the age at which sons start farming, the age of the parents and the age at which the parents may be expected to die is needed.

Over 75 percent of the farm owners in one township in Michigan who had not done non-farm work got started farming before their twenty-sixth birthday.

R. L. Berry and Sidney Henderson, Inheritance and the Transfer of Farms from one Generation to the Next, unpublished data, Michigan Agricultural Experiment Station, 1945-46

The median age of this group was twenty-three years. In Iowa 504 farmers were found to have started farming at a mean age of about 23 years.

J. A. Starrak, Problems of Beginning Farmers in Iowa, Iowa Research Bulletin 313, 1943, p. 521

Census data compiled by Beegle and Loomis

A. Beegle and C. P. Loomis, Life Cycles of Farm Rural Nonfarm and Urban Families in the United States as Derived From Census Materials, Rural Sociology, 13:72, March 1948

indicate that rural-farm males marry at about twenty-five years of age and that the fathers are about 51 years old when the first child

(if a son) marries and about 56 years old when the last child (if a son) marries. Daughters marry about three years earlier as an average.

In order to calculate the gap between the time the son is ready to start farming and the time that the parents die, the life expectancy of the parents at the ages of 51 and 56 must next be determined. The "complete expectation of life" at the ages of 50-60 inclusive, is presented in Table I

L. I. Dublin and A. J. Lotka, Length of Life, Ronald Press Co., New York, 1936, p. 370 Table XIII, American Experience Table

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By bringing together the data concerning the age at which the sons start farming and marry, the age of the father at the time the sons marry and the life expectancy of the parents the extent of the time gap can be determined. Assuming that the sons get started farming at the same age that they marry then the time gap equals the average life expectancy of the father and the mother. Therefore, if the youngest child is a son, he will have a time gap that equals the life expectancy of the father whose age is fifty-one or a gap of 20.20 years as an average. If the last child is a son the time gap is the same as for the fifty-six year old father, or 16.72 years. In general, then, the gap from the time the son is ready to start farming to the time of the parent's death can be expected, to be 17 to 20 years.

The average age at which property is inherited provides additional evidence as to the extent of this time gap. Wedgwood, who made an investigation of some two hundred cases of inheritance

TABLE I

LIFE EXPECTANCY OF AMERICAN PEOPLE AT VARIOUS AGES

Age	Life Expectancy in Years	Age	Life Expectancy in Years	Age	Life Expectancy in Years
40	28.18	50	20.91	60	14.10
41	27.45	51	20.20	61	13.47
42	26.72	52	19.49	62	12.86
43	26.00	53	18.79	63	12.26
44	25.27	54	18.09	64	11.67
45	24.54	55	17.40	65	11.10
46	23.81	56	16.72	66	10.54
47	23.08	57	16.05	67	10.00
48	22.36	58	15.39	68	9.47
49	21.63	59	14.74	69	8.97

L. I. Dublin and A. J. Lotka, Length of Life, Ronald Press Co., New York, 1936, p. 376 Table XIII, American Experience Table

in England, reported:

> I found that the average age at which the larger inheritances were received was about forty-two years of age, in the case of men. Over fifty per cent inherited between the ages of thirty-six and fifty inclusive. Less than one in six inherited under the age of thirty years, and a little more than one in ten over the age of fifty-five years. The inheritances taken into account were in the large majority of cases those coming from fathers.

J. Wedgwood, The Economics of Inheritance, Penguin Book, Ltd., Harmondsworth, England, 1929 p.33 n

Since the son is assumed to be ready to start farming by the age of twenty-five there would be a 17 year time gap before he received a farm at the age of forty-two. Their gap corresponds closely with the 17-20 year gap as calculated above.

If the farm property is held jointly by the father and the mother or if a will is made giving the farm in fee simple to the mother then the gap will likely be still longer since the mothers are usually three years younger than the fathers and live about three years longer -- making a total of six years that the mother

Beagle and Loomis, op. cit., p. 72

may be expected to hold the property in her name.

This is a rough estimate only. The fact that the American Life Tables apparently include females as well as males would probably reduce this estimate somewhat.

The fact should not be forgotten that these figures are averages. Many first child sons will arrive at the age of twenty-five before their father is 51, thereby making the gap for them still longer. On the other hand there will be numerous last child sons who

will reach farming age when the parents are over 50 and who, therefore will have a shorter time gap. The extent of the time gap (or time lap) can best be shown for the various age combinations in tabular form as in Table II. This table shows that 82 percent of the children will have a time gap of five to twenty years or more. Importantly, however, 62 percent will have a time gap of ten years or less. On the other hand only 18 percent of the children will arrive at twenty-five years of age within five years (gap or lap) of the time the parents"retire", at the age of sixty-five. Only 6 percent of the children will be twenty years of age or under when the parents reach sixty-five. Stated differently, only 6 percent will have a "time lap" of 5 to 10 years or more in which the parents may have to rent the farm because the youngest son may not be ready to start farming.

What percent of farm families have children born after the father is thirty-five ? Or in how many farm families is the 18 percent of the children with five or less years of gap found? Loomis found in a survey of North Carolina white farm owners that the average age of the fathers at the birth of the fourth son was about 37 years.

C. P. Loomis, The Growth of the Farm Family in Relation to Its Activities, North Caroline Bulletin 293, 1934, p. 10

This suggests that only those families having four or more children are likely to have a child that is twenty-five or younger when the parents reach the age of sixty-five.

TABLE II

TIME GAP OR LAP BETWEEN TIME SON IS READY TO START FARMING AND FATHER IS READY TO RETIRE UNDER ASSUMED CONDITIONS

Range in Ages of Mother (a) Years	Age of Mother (a) Class Mark	(a) Estimated Average Annual Births per 1000 Women	Percent of Total Children Born	Cumulative Percent Less Than	Cumulative Percent and Over	Probable Ages of Fathers (b) Years	(c) Age of Father When Son is 25 yrs Old	(d) Time-Gap or Lap Assuming Father Retires at 65
15-19	17	75	10	10	100	20	45	20
20-24	22	205	28	38	90	25	50	15
25-29	27	194	26	64	62	30	55	10
30-34	32	135	18	82	36	35	60	5
35-39	37	85	12	94	18	40	65	0
40-44	42	36	5	99	6	45	70	5
45-49	47	7	1	100	1	50	75	10
Totals		737	100					

[a]From, United States Census, 1940 Standardized Fertility Rates and Reproduction Rates. Table 8, Estimated Average Annual Births per 1,000 Rural-Farm Women 1935-1940 in the North Central States.

[b]W. S. Thomson, (Population Problems, McGraw Hill Book Co., New York, 1942. p.108) indicates that in the United States the husbands are as an average about three years older than their wives.

[c]Interviews of 61 farmers in one area of Michigan revealed that 75 percent of them started farming before their twenty-sixth birthday. The medium age was twenty-three years. R. L. Berry and Sidney Henderson, Michigan Agr. Exp. Sta. Unpublished data, 1945-46.

[d]The red figures represent the "gap" between the time the son is ready to start farming at 25 years of age and the time the father is ready to retire at 65 years of age. The black figures indicate "lap" under the same conditions. Allan Beegle and C. P. Loomis, (Life Cycles of Farm, Rural Non-Farm, and Urban Families in the United States as Derived from Census Materials, Rural Sociology 13:72, 1948) report that the average age at which rural males die is 64.1 years

H. PARENTS RETIREMENT SHORTENS TIME GAP

The extent of the time gap may be reduced in those cases where the fathers are able and willing to retire at some time prior to their death. Unfortunately only limited data appears to be available on the retirement age of farmers. A study of one hundred retired farmers in Wisconsin indicated that most of them retired between fifty and sixty years of age. Since this survey was made in 1923 or shortly after a period of farm prosperity retirement may have taken place at an earlier age than would be the case in less prosperous times.

V. L. Turner, Causes and Conditions of Retirement of Retired Farmers Living in Mt. Hope Wisconsin, Bureau of Agricultural Economics, U. S. Dept. of Agr. March 1926. Mimeographed preliminary report.

In the Iowa study of 504 young farmers referred to above who had been farming independently for nearly four years and had a mean age of twenty-six, the fathers were found to have a mean age of fifty-eight. Of the fathers 63 percent were still actively engaged in farming and only 17 percent were retired. The remaining 20 percent were deceased. Unfortunately, the ages of the 17 percent retired fathers is not reported. However, it may be assumed that they included some of the older fathers in the group and therefore would be considerably older than the median age of fifty-eight.

Starrak, op. cit., p. 521-2

A recent nation wide opinion poll of farmers only 9 percent stated that they planned to retire before sixty years of age.

"The Farmer Speaks" Successful Farming, 45;3, February 1947

Another 9 percent planned to retire between sixty and sixty-five; and 14 percent planned to retire at sixty-five or over. Nearly 50 percent stated that they did not plan to retire at all! However, the fact that 50 percent of the farmers had no plan to retire does not mean that they will not plan to do so, or be forced to do so at some time in the future. Furthermore, the question asked ("At what age do you (or your husband) plan to retire?") may have put the farmer "on the defensive"and elicited the retort "I don't plan to retire". If the question had been less presumptuous and had been directed to farmers who had passed their fifty-fifth birthday more usable information might have been secured as to farmers' retirement plans.

In Branch County, Michigan, located just above the Ohio-Indiana line, 20 percent of the farmers were found to be 59 to 68 years old and 10 percent were 69 or older!

F. M. Atchley, E. F. Rehman and D. L. Gibson, Rural Youth in Branch County Michigan, Michigan State College, Farm Management Dept. Bulletin 340, 1944, p. 26

Gray and others compiled data from the reports of nearly eight thousand farmer-landlords which indicates that nearly 15 percent of these landlords retired between the ages of forty-five and fifty-five; 35 percent between the ages of fifty-five and sixty-five; and about 45 percent at 65 and over! In the opinion of the

L. C. Gray, C. L. Stewart, H. A. Turner, J. T. Sanders, and W. J. Spellman, Farm Ownership and Tenancy, U. S. Dept. of Agr. Separate from Yearbook 1923, No. 897, p. 527, Figure 24

authors this and other data presented justifies the statement that

farmers "retreat from the land" rather than retire from it.

Whether or not the data presented above justifies the assumption that parents retire as an average at the age of sixty-five is, perhaps, not too important. The important point to be remembered is that if the parents retire the time gap for the son will be shortened. The retirement of the parents gives the son an opportunity to become a tenant or to acquire by gift or purchase the remainder interest (with the parents reserving a life estate) or fee simple ownership before the parents' death.

I. SOME WAYS OF BRIDGING THE TIME GAP

Fortunately, the time-gap outlined above is being bridged with more or less success in several different ways in the United States. A common characteristic of these methods of bridging this time gap is that the son is forced to seek employment on the home farm or elsewhere until the parents retirement or death permits them to become a tenant or an owner-operator of the home farm.

Employment on the home farm may be either as a hired man with or without regular wages or as a partner of the father. In one community of Michigan where the farmers are of Germanic descent the practice is to help the older sons get started elsewhere and to keep the youngest son at home until the parents retire. To compensate the youngest son for his labor he is furnished food, clothing and some spending money and, upon the retirement of the parents, the son is frequently permitted to buy the home farm at a discount of as much as one thousand dollars per year for every year that the son stayed on the farm beyond his twenty-first birthday.

R. L. Berry and Sidney Henderson, Inheritance and Transfer of Farms from one Generation to Next, Michigan Agr. Exp. Sta. and Bureau of Agr. Economics, USDA, Unpublished data, 1945-46.

In addition to this unusual method of payment there are many parents who hire a son to help with the farm work on terms more comparable to those given unrelated hired laborers.

Father-son partnerships or share agreements appear to be a popular way of bridging the gap between the time the son is ready to start farming and the parents are ready to retire if one can judge by the number of partnerships bulletins and circulars issued and distributed by the various agricultural colleges. Such partnerships appear to be practical on the larger farms with sufficient volume of business and earning capacity to support two families. Separate housing for the son and his family and willingness of the father and son to compromise are usually listed as requirements.

E. B. Hill, Father Son Partnerships, Michigan Special Bulletin 330, 1944, p. 8

When the parents retire but wish to retain ownership of their farm until their death renting the farm to a relative appears to be quite common. Of the tenant farmers in the United States 19 percent were related to their landlords in 1930.

Thorp, op. cit., Table 9

In Branch County Michigan 29 percent of the tenants were found to be related to the owners in 1940.

F. M. Atchley, E. F. Rebman, and D. L. Gibson, Rural Youth in Branch Co. Michigan, Michigan Farm Management Bulletin 340, 1944, p. 25.

Other means of bridging the time gap between father and son are found in off-farm employment opportunities. The son may become a hired man or a tenant on some other farm or take full or part time employment in industry. Experience in trade and industries may be of considerable value to the young man in that it gives him an opportunity to test his abilities and to choose more wisely his vocation.

J. SOME ALTERNATIVE TRANSFER ARRANGEMENTS

Instead of permitting the son to inherit an interest in the farm upon their death by the laws of descent, or by a will the parents may give or sell the farm to the son when they retire. Since the son acquires ownership by such a gift or sale his security of possession and freedom of operation is greatly increased. Furthermore, he acquires such possession at an earlier age -- a factor of considerable importance in reducing the time gap and therefore, in facilitating father-son transfers of farm property.

The sale of the farm property to a son by a sales agreement or land contract may be of considerable benefit to the parents as well as the son. Such a sale permits the parents to secure possession of some of their lifetime savings that they have invested in the farm property. Access to these savings may of course determine to a large extent the parents ability to retire or to acquire the medical attention that they may need during their declining years.

On the other hand the son will have the opportunity to buy

the farm at a private sale from his father rather than at a public sale as is generally the case when the laws of inheritance applies or a will is probated which divides the property among all the children.

Probably the most acceptable plan to most farmers and their families would be to sell the farm to the son at something near its long-time agricultural value. In this way the parents or their heirs in case of their death would receive full payment for the farm from the purchasing son. The son who bought the farm under these circumstance would then inherit a share in the parent's personal property along with the other heirs. Included in the personal property would be the funds paid by the son to the parents for the farm -- providing that such payments were not needed or spent by the parents during their years of retirement. In any case the sale of the farm to a son and the later division of the parents remaining estate would be separate and distinct. If properly done no question as to its fairness to any of the members of the family should arise.

The fact that any value less than the market price can be set on the farm without working a hardship on the parents or the other heirs save for the first generation has already been discussed in Section E of this chapter but the point may be further illustrated:

Suppose the son was sold a farm at one hundred dollars per acre that would sell at public auction for 150 dollars. Assuming that the farm could be sold for its present market price of 150 dollars per acre when the parents die then the other children would

receive a smaller inheritance than they would if the farm had been sold at 150 dollars per acre. But if there is a family understanding or settlement to the effect that son A is to get the farm for one hundred dollars providing he transfers it to one of his sons (a grandson) for the same amount, are the other children of the second generation disinherited? The answer is no, they are not. This is true because the father of the second and succeeding generations invested only one hundred dollars per acre in the farm and each son must reimburse the other children for their equal interests. The father's savings in excess of the one hundred dollars per acre invested in the farm will be found in the remainder of his estate and can be divided equally or equitably among the children by the laws of inheritance or by will.

By the same reasoning setting any other value on the farm to be transferred to a son by sales arrangement or will can be justified whether that price is "one dollar and other valuable considerations", "love and affection" or any other figure up to the full sale value of the farm. Therefore giving (or selling) the farm to a son subject to a life lease or life estate for the parents can be justified and carried on generation after generation without disinheriting a single heir after the first generation.

Even the disinheritance caused in the first generation can often be prevented. When there is only one heir there is of course no disinheritance of other heirs. When there are two or more heirs disinheritance can be prevented only when the parents have considerable

other property that they can settle upon the other children. By such settlements or gifts the other children can be compensated for their decreased inheritance caused by the gift or sale of the farm at less than its market value. A will, which gives the son who got the farm at less than its market value a smaller share of the remaining property, can be used to make an adjustment to prevent the partial disinheritance of the other children. Gifts by the living parents can also be made to prevent partial disinheritance during the first generation.

The choice of these various arrangements to give or sell a farm to a son will depend largely upon the family circumstances at the time of the transfer. Parents who have sufficient property other than the farm to provide comfortably for their needs during their old age and retirement and to compensate the other children for their "disinheritance" may give or "sell" the farm to the son for the customary "one dollar and other valuable considerations". Other parents who have some other property but not enough to warrant a 100 percent gift may give (or sell) the farm to a son subject to a life lease or life estate for themselves. When this is done they can continue to operate the farm, rent it to the son, or rent it to strangers if they so desire.

Again, the family circumstances may be such that the parents prefer to sell the farm to the son at its long-time agricultural value. Under these circumstances a sales agreement or a land contract can be use. The sales agreement is generally used when

the buyer can pay 25 percent or more of the purchase price in cash and is willing to give a note secured by a mortgage for the balance due in exchange for title to the farm.

The land contract is generally preferred when the buyer cannot pay at least 25 per cent of the purchase price of the farm. Such a land contract gives the seller considerably more control over the land and permits dispossession on much shorter notice than does a mortgage because title to the land is not transferred until the conditions and payments specified in the contract have been met.

K. SUMMARY AND CONCLUSIONS

The chief difficulty in the way of father-son succession on farms appears to be the "time gap" between the time that the son is ready to start farming and the time that the parents are ready to retire. Yet about 62 percent of the sons of farmers are apparently born late enough during the parents' lives that the time gap is ten years or less. A time gap of this extent can be bridged in a number of ways of which father-son partnerships or business agreements and renting are familiar examples.

The laws of inheritance in the United States do not provide as satisfactory a method of transferring farm property from father to son as do the laws of Switzerland and Norway. However, those farmers who desire to do so can prepare a conditional will which sets up provisions and conditions similar to the Swiss and Norwegian law whereby one son can buy out the other heirs at the normal agricultural value of the farm.

The time gap can be reduced if and when the parents retire by selling the farm to the son at the long-time agricultural value of the farm. The sale (or gift) may be of the fee simple or remainder interests.

Contrary to popular belief giving or selling the farm to a son at less than market value according to the principle of primogeniture or sole inheritance does not disinherit the "other children", of each generation as is frequently claimed. Only the children of the first generation in which such a practice is initiated can be disinherited and, by judicious use of the personal property, even this may often be prevented.

The charge that father-son succession creates a "caste system" ignores the fact that practically all farmers are sons of farmers and that a son is not required to accept a life interest in the farm although it is usually to his advantage to do so.

Another popular objection to father-son succession on hereditary farms is that such tenure makes it difficult to combine small inefficient units into larger more practical farms. However, it does not appear that this difficulty is much if any greater than it is under fee simple farm ownership.

Claims that governmental interference destroys the farmer's right to sell or mortgage the farm under father-son succession overlooks the fact that the heir to the land has not acquired by purchase or other means the right to sell or mortgage the farm. He has merely the right to use the land during his lifetime. In effect

father-son succession on farms makes each heir merely a life tenant upon the farm. Since he does not have to purchase the farm, his entire life savings will be invested in other property which may be divided equally or equitably among all the children.

The chief objection to primogeniture in England and in the colonies was that it helped to keep intact large landed estates which were the chief form of wealth and gave the owners much social and political prestige and power that is incompatible with democratic ideals. On the other hand the holding of farms by farmers generation after generation is not generally regarded as undemocratic, but as a desirable factor in preserving the ideals on which democracy is based.

The general conclusion of this chapter is that father-son succession on farms has possibilities of solving for some families at least, the problem of giving their sons who desire to form secure possession and freedom of operation on the land. The chief advantage of father-son transfers of farm property is that the price of the land can be controlled, thus preventing the difficulties caused by excessive land prices of the public sale.

CHAPTER VI

SUMMARY AND CONCLUSIONS

Farm management has been defined as the problem of combining land, labor, and operating capital in those proportions that will give the greatest net returns over a long period of years. Yet before the farmer can apply his labor, build his barns, improve his land, or develop his herds and flocks, he must have reasonably secure possession and freedom on the land he operates. Reasonably secure possession is necessary because the returns from the labor and improvements put on the farm can only be had over many years of time. On the other hand, secure possession without reasonable freedom of operation might still prevent the farmer from making the improvements and growing the crops and livestock that will yield the greatest net returns over a long period of years.

Every farmer, therefore, has the problem of getting secure possession and the associated freedom of operation on enough productive land for economical and efficient farming over a long period of years. The purpose of this study was to compare and evaluate three ideas for decreasing the difficulty that farmers have in acquiring security of possession and freedom of operation of farms. These competing ideas are (1) that increasing the farmers' purchasing power chiefly by means of cheap and abundant credit will help farmers acquire the security and freedom provided by farm ownership; (2) that tenancy reform provides a more satisfactory means of giving farmers security of possession on the land they operate; and finally (3) that father-

son succession on farms is a more satisfactory solution to the problem.

A. TENANCY IMPROVEMENT BY LEGISLATION--SUMMARY

In the United States renting or leasing a farm land has seldom provided farmers with security of possession and associated freedom of operation. Tenancy in the United States has been popularly regarded as an unsatisfactory but necessary step in the young farmer's progress up the "agricultural ladder" to farm ownership.

The landlords are usually retired farmers, widows, or city investors owning as a rule only one farm. Since the life expectancy of retired farmers and widows is uncertain and their ability and willingness to make needed improvements often limited, the tenants possession and freedom is seriously hampered. City owners, on the other hand, may know even less about farming, may lose interest in the farm, and may easily become dissatisfied with the tenant thus limiting the tenant's security and freedom on the farm.

By no means can all the blame for the tenant's short occupancy of the land be placed upon the landlords. As has already been pointed out, farmers usually consider tenancy as a temporary condition and each year tenants buy farms leaving the landlord no alternative but to seek another tenant. If the farm vacated is productive and profitable the landlord will be able to attract one of the better tenants from a neighboring farm. Then the owner of the neighboring farm also seeks a good tenant and the process is repeated over and over until a farmer with the poorest farm often rents to a farmer's son who has had

no previous renting experience. Thus the progress up the agricultural ladder to ownership is not necessarily a series of large steps from laborer, to tenant, to owner but a gradual climbing up of the most capable or most fortunate young farmers from the poorer to the better farms as the opportunity is provided by the removal or movement of the farmers on the better farms. The whole process can be described as a "chain reaction" in which the movement of one farmer near the top of the ladder often causes a whole series of shifts of tenants and laborers at the lower levels.

In addition to the vertical movement of laborers, tenants, and owners described above, there is undoubtedly some horizontal shifting within each level. Such shifting might come about because tenants and the landlords fail to agree on the cropping and livestock practices to be followed. These disagreements are likely to be frequent and serious because of the custom of crop share or crop and livestock share renting often gives the tenant operated farm a surplus of managerial ability obscurely divided, if divided at all, between the landlord and tenant. Another reason for horizontal shifts occurs when farmers with special aptitudes and skills shift to farms that are more suited to their abilities but do not necessarily advance to better farms.

Finally, attractive alternative opportunities in the city may leave only the less capable sons to become tenants on farms. Landlords may easily become discouraged with the poor management of tenants. As a result the landlord may shift tenants in rapid succession in an attempt to find a more satisfactory or capable man to manage

and operate his farm. To require that a landlord must be satisfied with a tenant that meets only a minimum standard of husbandry in a rule that is not likely to meet with popular favor and is questionable from an economic viewpoint.

Under the conditions outlined above the prospects for the adoption of legislation in the United States to give farmers greater security of possession and freedom of operation on farms does not appear to be very strong. There is neither the permanent landlord class nor a permanent tenant class such as exists in England to cause widespread and persistent demand for greater security of possession and freedom of operation on farms. Undoubtedly many capable tenants who look forward to renting or buying larger or more desirable farm units would be opposed to tenancy legislation that tended to immobilize them on present inadequate units.

Perhaps tenancy legislation could be framed that would permit tenants to progress up the agricultural ladder but still give them reasonable security of possession and freedom of operation on the farms they occupy. This could be done by requiring that the landlord compensate the tenant for unjustified disturbance and unexhausted improvements, but giving the tenant the right to move at will without compensating the landlord. Such one-sided legislation might be difficult to enforce because the landlords of America are as temporary in their ownership as tenants are in their possession when compared with English landlords and tenants.

Unless the farm is sold to another landlord, or in other words to a city investor, the sale would be almost certain to terminate the

tenant's right to hold possession. In other words, whenever a farm was sold to a farmer, possession would have to be relinquished by the tenant if the buyer is to operate the farm. Thus the tenant farmer would be insecure in his possession of the farm and to a considerable extent limited in his freedom of operation because he would not be certain that he would enjoy the fruits of his labor. Even though the tenant was not forced to move by a sale to a man who desired to farm the land for as much as ten to twenty years, yet the insecurity would exist. Such a state of insecurity would be an incentive for a good tenant to buy a farm. Such a purchase would set off a whole series of movements down to the lower rungs of the ladder.

The conclusion seems warranted, then, that tenancy legislation, while quite successful in England, is not adapted to the needs of a country where both landlords and tenants are but transitory stages in the farmer's climb to owner-operatorship, retirement, and finally to the sale of the farm to some other ambitious or fortunate farmer--or, rarely, to a city investor. If much of the farm ownership of this country eventually becomes concentrated in the hands of landlords, corporate or otherwise, who hold the land for investment or prestige purposes and tenants have little opportunity to buy farms, only then will there be a need for tenancy legislation comparable to that of England. The strong feeling against concentration of the ownership of lands in the hands of city investors is likely to prevent such concentration for many years to come.

B. CREDIT AND OWNERSHIP SUMMARY

The ownership of farms by farmers is an early and persistent ideal in the United States despite the fact that such ownership was apparently made possible by the economic conditions of a new country rather than by provisions for equal inheritance as is frequently claimed. The abundance of cheap, but uncleared and unbroken land, the lack of population pressure, the rapid increase in land prices were the important factors that made the United States a nation in which a high percent of the farms were owned by those who cleared, drained and improved them.

The immigrant did not become, or long remain a tenant because he had the alternative of cheap, if unimproved land, readily available on which his improvements would be his own. The immigrant farmer and his sons had this opportunity to buy land because the large investors found it generally more profitable to divide and sell the land on the rising market to farmers rather than hold, clear, and lease the land to tenants. Labor was too scarce and expensive to permit such clearance, and yet rent could not be expected until the land was capable of producing crops. The absence of large city or industrial markets was undoubtedly another factor which hindered the development of large landed estates worked by tenant farmers.

With the increase in population, the disappearance of new land, and the development of commercial farming, the frontier relationships described above have been reversed, but the nation still clings to the idea that each farmer should accumulate enough savings to buy

at least a controlling interest in a farm that may cost thirty thousand dollars or more. Despite the strength of the ownership ideal and the aversion to tenancy and landlords that exists among farmers and their leaders, nothing has proved effective in preventing a rapid increase in farm tenancy except the current war induced inflation of farm produce prices. This inflation enabled many farmers to pay off mortgages contracted during the previous decade and to pay for farms purchased during the early years of the war.

Many plans have been proposed to increase the farmers' purchasing power in relation to land that would, in effect, do what the war induced inflation has already done, i.e. increase the percentage of farm owner-operators. Cheap and abundant government credit, land price controls, and, to some extent, governmental subsidies have been advocated and, in the case of credit and subsidies, tried.

While these measures intended to increase the farmer's purchasing power may be effective in helping farmers acquire ownership in the short run, there is little reason to believe that they will be effective over a long period of time. The reason for this statement is that an increase in the farmer's purchasing power while other factors are held constant tends eventually to increase land prices to the point where any advantages of the increased purchasing power is lost. Increasing the farmer's income merely permits him to bid land prices up to the point where the advantage of the increased purchasing power no longer exists.

Land price controls have been suggested to prevent the bidding up of land prices when the farmer's income is increased but has not

found much popular support. The "grey" and "black" markets that flourished under other governmental attempts to control prices of consumer goods and urban rents suggests the difficulties that might be encountered. The fact that the owners of farms for sale are largely retired farmers, their widows, or their estates raises the question as to whether it is desirable to institute price curbs which would often favor the younger farmers at the expense of the retired farmers, or, as is frequently the case, favor the son at the expense of his retired father.

Economists and farm leaders who favor cheap and abundant credit as a means of increasing the number of farm owners point to the experience of Denmark where such credit has practically eliminated farm tenancy. They also emphasize the fact that present credit facilities require such large down payments that farmers often purchase small, inadequate farms located on poor soils because they do not have the necessary savings to make a down payment on a larger farm.

Critics of the Danish credit program have pointed out that land prices are very high and that mortgage indebtedness and delinquency on loans is excessive. As a result of such conditions it is claimed that the Danish farmer is little more than a "credit tenant" paying high total interest and principal payments to the government in lieu of cash rent to private landlords. The fear has been expressed that these conditions will lead to the eventual nationalization of the land.

Whether or not these conditions makes the farmer less secure in his possession and less free in his operation of the land than he

would be under private landlords is not stated. The fact that the "landlord" or the landlord function is shifted from individuals with high mortality rates to stable governmental institutions would seem to give the farmers greater security of possession and, therefore, greater freedom of operation. If the interest or rent charges were excessive in relation to farm earnings, adjustments could undoubtedly be secured from the government at least as easily as from private landlords.

Another objection raised to the cheap and abundant credit idea is that the government would have to determine who was to be given the privilege of buying or renting the farm. The implication is that the government could not devise as satisfactory a means of choosing capable farmers as does unrestricted competition for farms where the chances of family fortune, family size, and time of birth play such important roles and comparative willingness to sacrifice the family's standard of living is often the deciding factor in determining who shall secure ownership.

Governmental selection of farm purchasers would presumably place greater emphasis upon the qualifications of the individual rather than upon his fortunate circumstances of birth or family. Excessive bidding up of the price of land could be readily checked since in most cases only those who meet certain standards would be eligible to borrow money with which to buy the land.

Whatever may be the dangers or possibilities of cheap and abundant governmental credit, there are strong reasons to believe that it will be tried. Farmers generally are opposed to large landed

estates, whether private or public, and to the associated tenancy system, unregulated or regulated. Logically enough they prefer the wealth, social prestige, security of possession and freedom of operation that is associated with fee simple ownership of the land. Since farmers are politically potent there seems to be little reason to believe that their desire for cheaper and more abundant credit to enable them to secure some degree of ownership will long be delayed especially since the capital needed to farm an economic unit has been rapidly increasing. Those who fear governmental controls that may come with subsidized credit must consider that the alternative of large private estates farmed by tenants also require governmental controls that may eventually lead to land nationalization as appears to be the case in England.

C. FATHER-SON SUCCESSION ON FARMS SUMMARY

Before accepting subsidized governmental credit as the best solution to the farmer's problem of insecurity of possession and lack of freedom of operation, a third idea must be considered. This idea is that, instead of depending upon subsidized governmental credit and land price controls, father-son succession arrangements may be made which will keep farm tenancy at a minimum. Such father-son succession arrangements have been incorporated into the inheritance laws of Switzerland and Norway with the result that tenancy is kept at a very low percent. In both countries the children inherit equal interests in the farm property but one son is given the opportunity to buy out the other children's interests at the long-time

agricultural value of the land rather than at the market price. In Germany the Hereditary Farms Law of 1933 was developed on a similar plan but payments to the other heirs are restricted to support and education of younger children and "home refuge" for members of the family who, through no fault of their own, could not make a living elsewhere.

In the United States where limited data suggests that at least 95 percent of the farmers are sons of farmers, where 20-30 percent of the tenants are related to landlords, and where inheritance from parents is recognized as an important factor in helping farmers achieve farm ownership; several states have a probate law similar to those in effect in Switzerland and Norway. This law provides that property which cannot be divided without injustice or hardship to the heirs shall be assigned to one of them providing this heir is willing to buy out the other heirs at the appraised value of the property. Unfortunately this law appears to be seldom used. By authority granted under another statute the property is generally sold at a public administrator's sale whenever the property is left to two or more heirs and a division of the property or a settlement is desired.

A public administrator's sale will cause the land to be bid up beyond its long-time agricultural value or up to its full market price. Hence, there often is no advantage to the son in buying the home farm. The son can take his share of the sale price and buy a farm elsewhere or, more likely, the son can buy a farm several years before he would inherit an interest in the home farm and then use

his share of the inheritance money to buy a farm.

Fortunately, a conditional will can be prepared for farmers that gives the farm to one son on the condition that he pay the other heirs for their share of the long-time agricultural value of the farm. In this way American farmers can help a son achieve ownership of the home farm in a manner that is comparable to the Swiss and Norwegian inheritance system. A difficulty of this solution is that many farmers may fail to prepare the conditional wills that are necessary to make the transfer effective.

A more serious problem of father-son succession on farms is the "time gap" that occurs between the time that the son is ready to start farming and the time that the parents are ready to retire. Data based on census indicates that this gap will be about twenty years for the first born child, if a son, and about seventeen years for the last born child, if a son. The probable average age at inheritance in these two cases would be forty-five and forty-two respectively. A very important consideration is that 62 percent of the sons would apparently have a time gap of ten years or less. In 6 percent of these cases the son would be twenty years old or less at the time of the parents' death.

As indicated in the outline given near the beginning of this chapter, the sons can sometimes enter "partnership" arrangements with the father if the farm is large enough to employ and support two families or if the parents wish to partially retire. Then, when the parents retire the son can often rent the farm from the parents. The retirement age of farmers is uncertain but important

as it has a definite bearing on the length of the time gap that the sons must bridge before they can take over the farm as a renter or as a purchaser. In one Michigan county 10 per cent of the farmers were found to be sixty-nine years old or older. Reports from nearly eight thousand farmer-landlords indicated that about 45 percent of them retired at 65 years of age or older. Perhaps the important thing to consider is that parents who live as long as the average farmer of their age group or longer probably would retire some years earlier thus giving the son a chance to take over the farm before their death.

The manner in which the son takes over the home farm upon the retirement of the parents is important. The son may rent or buy the farm from the parents. Renting the farm from the parents will often be as unsatisfactory as renting from strangers for precisely the same reasons given above. The chief reason why renting is unsatisfactory is that the son is generally insecure in his possession of the farm. Chiefly because he lacks secure possession, he is not free to make the improvements that are needed and which the parents are often unable to make.

Fortunately, the son can be given greater security of expectations if the parents have prepared a conditional will whereby the son can buy out the other heirs at the long-time agricultural value of the farm upon the parents' death. Selling the son an option to buy the farm upon the parents' death might give the son still greater security but would decrease the security of the parents.

As a general rule the best arrangement for giving the son security and yet protecting the parents and the other children is to sell the farm to the son when the parents retire. Such a sale gives the son security of possession and freedom of operation. It gives the parents access to their lifetime savings invested in the land, thus permitting the parents to use such savings to meet their needs during their old age and retirement. The other children cannot claim that they are disinherited because they, with the operating son, will eventually inherit any property that the parents may have upon their death.

When the parents have nearly sufficient savings for their old age and retirement they may give the farm to the son reserving a life lease or a life estate for themselves. Unless parents can make a similar gift to the other children, this may be considered as an unfair disinheritance. If, however, the father also received the farm as a gift subject to a life estate for <u>his</u> parents with the understanding that the farm is to be transferred in this manner from generation to generation, then the other children who do not get the farm have no grounds for feeling that they have been disinherited.

Stated somewhat differently, the passing of a farm from father to son at less than its market value or as a free gift does not disinherit the other children except possibly during the first generation of such a plan or in case a son should sell the farm to strangers. The lifetime savings of the parents would be available in personal property for dividion among the heirs equally or equitably according to merit. The father having received only a life interest in the

farm is not at liberty to sell or mortgage it, or divide it among his heirs. Therefore, contrary to general opinion, primogeniture and entailed farms as they existed in England, Germany, and other countries did not disinherit the other children.

Some of the children may be disinherited when the farm is first sold or given to a son, but after the first generation no disinheritance normally occurs unless the son violates the family agreement and sells the farm. When the son sells the farm for more than he paid for it, disinheritance may be said to occur.

Disinheritance during the first generation of such an arrangement will not occur, of course, when there is only one son. Again, disinheritance during the first generation in which such practices are adopted can often be prevented even when there are two or three children by giving one son the farm and by giving the other children enough personal property or other real property to balance the value of the farm given to the son.

Since most American farmers will probably choose to sell the farm to a son at or near its long-time agricultural value, the lengthy discussion of the fact that no disinheritance occurs under systems where the sole inheritance of land is common except perhaps when such a program is first started may seem unwarranted. However, even when the farm is sold at the long-time agricultural value, there is some disinheritance of the first generation. Instead of the heirs getting a share of the full market value of the farm, they may receive 20-30 percent less. Even here disinheritance may be prevented by giving a larger share of the personal property to the other

children. In any case, however, disinheritance will not occur again as long as the farm is sold at the same value or price each year because the lifetime savings of the parents beyond the normal value of the farm will be found in the personal property of the parents and therefore can be divided equally or equitably among all the children. This means that parents can set a value of one hundred dollars per acre (or any other figure they care to choose) on their farm and a family agreement or understanding can be worked out to transfer the farm from father to son, or son-in-law, at this price generation after generation with no danger of disinheritance after the first generation unless one son sells the farm. In case the son sells the farm at more than he paid for it he should divide the difference among his brothers and sisters.

A number of other objections to father-son succession on hereditary farms have been advanced but have been found to be largely fallacious. For example, to argue that a hereditary system of farm ownership <u>creates</u> a caste system ignores the fact that almost all farmers are sons of farmers and therefore a "caste system" already exists. To argue that sole inheritance would lead to the concentration of the land in the hands of a few farmers and is therefore undesirable ignores the fact that our present inheritance laws seldom divide the ownership of farm property. Furthermore, the need is for larger not smaller farm units if the American farmer is to achieve a degree of efficiency which will give him a standard of living comparable to other large groups in the economy. To argue that the parents lose the right to sell or mortgage the farm is to ignore the

fact that since each successive life tenant pays nothing for the farm, and merely maintains it in as good a condition as when he first got it, he has not earned, by purchase or otherwise, the right to sell or mortgage it. And finally, to argue that hereditary farms involve interference and control by governmental agencies ignores the fact that the alternative solutions of cheap credit as in Denmark and tenancy legislation as in England also involve large areas of governmental control that appears to be rapidly approaching land nationalization. Furthermore, to argue that hereditary farms involve governmental interference with ownership ignores the fact that such governmental "interference" may be much more desirable than the present insecure possession of partial or credit owner-operators and tenants. The conclusion is, therefore, that the possibilities of father-son succession upon hereditary farms deserve more serious consideration than it has received in the past.

D. GENERAL CONCLUSIONS

The major conclusions of this study are therefore as follows:

1. Tenancy legislation similar to that of England does not appear to be adapted to the "agricultural ladder" tenure system as it exists at present in the United States.
2. Cheaper and more abundant credit may be expected to increase land value in the long run and therefore burden farmers with higher total interest and principal charges unless land prices are controlled. In times of depression widespread delinquency may force the government to take over the ownership of many

farms. In one sense the farmer may be considered as a tenant on a government farm paying high total interest and principal charges in lieu of rent. Nonetheless the farmer may have greater security under these conditions than he would under private finance or landlords.

3. The "time gap" between the time the son is ready to start farming and the time the parents are ready to retire or are deceased appears to be about seventeen years for the youngest son and twenty years for the eldest.
4. The average age of the sons at inheritance is forty-two years for the youngest and forty-five years for the eldest.
5. Despite the extent of the average time gap about 62 percent of the sons will have a time gap of ten years or less.
6. The chief advantage of father-son succession on farms is that the family can control effectively the price that the son has to pay for the land.
7. Most of the arguments used against the idea of sole inheritance of land are not valid.
8. When the inheritance laws divide the ownership of a farm among several heirs and the operating heir must buy out the other heirs at a public administrator's sale, there is no advantage of such inheritance over the purchase of a farm from strangers.
9. A conditional will provides a much more satisfactory arrangement whereby one son can buy out the other heirs than is provided by inheritance laws which divide the farm ownership but provide no means other than a public sale by which one heir may buy out the other heirs.

10. The time gap can be reduced if the parents will give or sell the farm to a son upon their retirement at or below its normal long-time agricultural value.

11. Such a sale (or gift) of the farm at less than market value does not disinherit the other children except possibly in the first generation, or when one son decides to sell the farm at its market value and fails to divide his gain among the other children.

12. Father-son succession does not create a caste system since a very high percentage of farmers are already sons of farmers.

13. Father-son succession does not necessarily make it impossible to combine small and inefficient units.

14. Father-son succession does not appear to require greater governmental "interference" than does tenancy reform or subsidized credit.

15. The general conclusion is that the possibilities of father-son succession on hereditary farms has quite generally been underestimated and needs further investigation.

APPENDIX

APPENDIX A

OUTLINE OF STATUTORY DESCENT AND DISTRIBUTION OF PROPERTY IN MICHIGAN

Prepared by Russell L. Berry --Farm Management Department--Michigan State College

When there is no will the residue of the estate --after all debts, court costs, allowances for widow and children, etc., have been paid -- is divided as follows:

I. UNMARRIED MAN OR WOMAN, WIDOW OR WIDOWER WITH NO CHILDREN OR DESCENDANTS OF CHILDREN:
The Property goes to:
(a) Parent or parents or if they be dead, to
(b) Brothers and sisters and children of dead brothers and sisters by right of representation or if they be dead, to
(c) Nephews or nieces or if they be dead, to
(d) Next of kin, (or in cases IIIb and V to widow or widower respectively) or if they are none to the
(e) State primary school fund, or as in case III c to the widow, depending upon the court.

II. WIDOW OR WIDOWER LEAVING CHILDREN OR DESCENDANTS OF CHILDREN:
The property goes to the children in equal shares or to their descendants by right of representation.

III. MARRIED MAN LEAVING NO CHILDREN OR DESCENDANTS OF CHILDREN:
The widow has these choices:
(a) To take her share under her husband's will if he leaves one, or
(b) To take her distributive share of one-half of the property; the balance will go to the heirs as in Case I above, or
(c) To take her dower and homestead. The balance will go to the heirs as in Case I above.

IV. MARRIED MAN LEAVING CHILDREN OR DESCENDANTS OF CHILDREN:
The widow has these choices:
(a) To take her share under her husband's will if he left one, or
(b) To take her distributive share of one-third of the property, with two-thirds going to the children, or
(c) To take her dower and homestead with the balance going to the children or to their descendants by representation.

V. MARRIED WOMAN LEAVING NO CHILDREN OR DESCENDANTS OF CHILDREN:
Her property goes one-half to her husband with the remainder to the other heirs as in Case I.

VI. MARRIED WOMAN LEAVING CHILDREN OR DESCENDANTS OF CHILDREN: Her property goes one-third to the husband and two-thirds to the children or their descendants by right of representation. If there be but one child the widow or widower receives one-half and the child one-half of the personal property. The division of the real property, however, does not change.

DOWER IN MICHIGAN

"Dower" in the Michigan laws of inheritance refers to a widow's right to receive for her lifetime the income from one-third of the lands owned by her husband during their marriage, unless she has signed away such rights.

HOMESTEAD IN MICHIGAN

A "Homestead" in the Michigan laws of inheritance refers to either:

(a) A house and quantity of farm land of not over 40 acres, and not exceeding $1,500 in value, or

(b) A house and lot in town of not over $1,500 in value. If there are children the homestead is exempt from debts of the estate and the widow has the use of it as long as any of the children are under 21 or as long as she remains unmarried or without a homestead in her own right.

DOWER AND HOMESTEAD SELDOM CHOSEN

Dower and Homestead usually represent considerably less estate than the widow receives under the provisions of the will, if any, or as provided by the law. Hence dower and homestead are seldom chosen by the widow except when the debts chargeable to the estate threaten to leave her with little or no property.

REAL PROPERTY HELD JOINTLY BY HUSBAND AND WIFE

When husband and wife hold real property jointly "by the entireties" the laws of inheritance do not affect the property until both husband and wife are dead. Husband and wife may make a joint will to dispose of the land upon their death or they may jointly give or sell the land, but they cannot dispose of it separately as long as both live. When one of the parents dies the survivor may dispose of the land as he or she desires.

ONLY GENERAL PROVISION GIVEN

The outline of statutory distribution of property in Michigan given above cites only the more general provisions of the law. Persons desiring further information should consult a lawyer.

APPENDIX B

January 21, 1946

Mr. E. R. Hancock
County Agricultural Agent
Corunna, Michigan

Dear Sir:

This letter is in compliance with your verbal request.

You asked can a parent safely turn a farm over to his son so as to give the son a reason for staying on the farm? Yes, this has been accomplished by a deed reserving to the parent a life lease. That is not a good method. It places the title in the son and leaves possession in the parent. The parent often wishes to get rid of the responsibility. Title should stay with the parent and give the son responsibility of managing the farm. The life lease plan pays the son before he has performed his part of the transaction.

I recommend a land contract. With that method, the son gets possession and can go to work knowing the place will be his. The parent gets security without responsibility and without work.

This contract can specify exactly what the consideration is to be. If the parents seek their necessaries of life and their security from the time of the transaction to their death, the contract can specify exactly that. These provisions, which the child must comply with in order to own the land, would go in the paragraph of an ordinary land contract where the money consideration is usually entered.

This contract can be recorded so that the buyer is protected and is sure to get the land if he carries out all the provisions of the contract. The buyer can get his deed as soon as he can show the administrator that he has carried out all of the terms of his land contract. It is not necessary for him to wait until the estate is fully probated.

The actual deed is made to the buyer by the administrator of the parent under the authority of Act 223 of the Public Act of 1917 as amended by Act 396 of the Public Acts of 1919.

You see the title of this real estate would still stand in the Register of Deeds Office as belonging to the parent subject to the rights of the purchaser under the land contract. This is the feature which protects the parent. The child is protected because the land contract is specific in its terms and provides just what the child must do

APPENDIX B

before he can own the property. Usually in drawing these contracts the son or daughter who purchases is to pay certain cash per week or month to the parents for ordinary and certain necessaries of life. Then, in addition to that, the child is to pay all doctor bills, hospital bills, nurse bills and other items which might be incident to sickness, but these items are quite uncertain. Sometimes the child agrees in the contract to pay all debts of the parent existing at the time the contract is made, and the debts are listed. Then the child is to see that proper funeral expenses are paid and a marker or monument erected at the grave of the parent.

The one who inspects this contract and passes on the question as to whether all the terms have been lived up to is the administrator of the deceased parent's estate. Therefore, the purchases has a fully competent person to do business with.

You wee, the parents, if they are fully mentally competent at the time the contract is drawn, have a perfect right to sell their property for a big price or a little one. No one has a right to interfere with the sale either before the parent's death or afterwards if the parent was mentally capable of making a valid contract.

There is more that could be said, but we think this fully covers the entire transaction.

Yours very truly,

ROY D. MATTHEWS
Judge of Probate

RDM:EMK

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