

The National Agricultural
Law Center



University of Arkansas · System Division of Agriculture
NatAgLaw@uark.edu · (479) 575-7646

An Agricultural Law Research Article

The Land-Tenure System in Ireland: A Fatal Regime

by

Cynthia E. Smith

Originally published in MARQUETTE LAW REVIEW
76 MARQUETTE L. REV. 469 (1993)

www.NationalAgLawCenter.org

THE LAND-TENURE SYSTEM IN IRELAND: A FATAL REGIME

I. INTRODUCTION

The Great Famine ravaged Ireland from 1845 to 1849.¹ The Irish Famine has been viewed as a "cataclysmic turning point in Irish demographic and economic history."² It is estimated that anywhere from one-half million to three million people perished.³ As a result of the mass starvation within Ireland, there was a great exodus during the Famine years. Over a million Irish crossed the Atlantic to North America, and even greater numbers emigrated across the English Channel to Liverpool, Glasgow, and South Wales.⁴

It is generally accepted that the Irish Famine was caused by a series of potato crop failures brought about by a fungal disease called phythophthora infestans.⁵ The fungus destroyed the potato crops that a majority of the Irish depended upon as their sole means of subsistence.⁶ A number of theories have been offered to explain Ireland's vulnerability to the blight. The theory of overpopulation has received the most attention. The reliance on the potato and the starvation that accompanied the blight was seen as the "price paid by the reckless Irish for their high nuptiality and their large families."⁷ The Great Famine has frequently been analyzed as a case study in Malthusian population theory.⁸ Another theory that has received significantly less attention attributes the devastation of the blight to the structure of the land system in Ireland. "All this wretchedness and misery could,

1. ROBERT KEE, *IRELAND: A HISTORY* 11 (1982).

2. Kevin O'Rourke, *Did the Great Irish Famine Matter?*, 51 *J. ECON. HIST.* 1, 1 (1991).

3. CORMAC O'GRADA, *THE GREAT IRISH FAMINE* 48 (1989) [hereinafter O'GRADA (1989)]. It should be noted that this calculation does not include the deaths of the emigrants who fled during the Famine. See Phelim P. Boyle & Cormac O'Grada, *Fertility Trends, Excess Mortality, and the Great Irish Famine*, 23 *DEMOGRAPHY* 543, 555 (1986).

4. CECIL WOODHAM-SMITH, *THE GREAT HUNGER: IRELAND 1845-1849*, at 206 (1962).

5. Peter Solar, *The Great Famine Was No Ordinary Subsistence Crisis*, in *FAMINE: THE IRISH EXPERIENCE* 112, 112 (E. Margaret Crawford ed., 1989).

6. In 1845, there was a partial failure of the potato crop, and in 1846, 1848, and 1849, there were total failures. *Id.* At the initial sign of blight and crop failure, three million out of 8.5 million Irish relied on the potato almost exclusively for food, and millions more consumed immense quantities. Boyle & O'Grada, *supra* note 3, at 543.

7. O'GRADA (1989), *supra* note 3, at 9.

8. According to Malthus, famine is the last corrective measure to overpopulation: "Famine seems to be the last, the most dreadful resource of nature. The power of population is so superior to the power of the earth to produce subsistence for man, that premature death must in some shape or other visit the human race." THOMAS R. MALTHUS, *AN ESSAY ON THE PRINCIPLE OF POPULATION* 118-19 (Augustus M. Kelly pub., Sentry Press 1971) (7th ed. 1872).

almost without exception, be traced to a single source—the system under which land had come to be occupied and owned in Ireland, a system produced by centuries of successive conquests, rebellions, confiscations, and punitive legislation.”⁹ The limited work on this theory has focused on the problems of inefficient investment in the land.¹⁰

This Comment will consider a second and ultimately fatal problem related to the land-tenure system. In addition to contributing to inefficient investment, the ownership of land by absentee landlords and the distribution of land through tenancies at will allowed landlords to charge excessive rents, commonly called “rent-seeking.” The inefficient investment in the land, coupled with rent-seeking, forced tenants to allocate the best land to crops that could be sold to pay the excessive rent. This allocation led to reliance on the potato as the sole means of subsistence because the tenants could only use small plots of poor land for their subsistence crop. Reliance on a single subsistence crop proved fatal when blight devastated the potato crop in the 1840s. Section II will describe pre-Famine Irish society and the system of land ownership. Section III will analyze the causes of inefficient investment in pre-Famine agriculture and test the hypothesis that inefficient investment alone led to the devastation of the Great Famine. The final section presents the theory that both rent-seeking and inefficient investment in the land made Ireland vulnerable to the impact of the potato blight.

II. AN OVERVIEW OF PRE-FAMINE IRELAND

A. *Irish Society and Its People*

Pre-Famine Ireland had two distinguishing characteristics, both of which made the land-tenure system central to the well-being of the Irish people. The first was Ireland’s reliance on agriculture. “Ireland has always been and seems destined to remain a land of agriculture.”¹¹ Before the Great Famine, Ireland was not highly industrialized primarily because of its location and the lack of natural resources necessary for industrial development.¹² Any semblance of industry that existed in 1845 was near col-

9. WOODHAM-SMITH, *supra* note 4, at 20.

10. See Joel M. Guttman, *The Economics of Tenant Rights in Nineteenth Century Irish Agriculture*, 18 *ECON. INQUIRY* 408 (1980); Cormac O’Grada, *Agricultural Head Rents, Pre-Famine and Post-Famine*, 5 *ECON. & SOC. REV.* 385 (1971) [hereinafter O’Grada (1971)]; Barbara L. Solow, *A New Look at the Irish Land Question*, 12 *ECON. & SOC. REV.* 301 (1981).

11. JOHN E. POMFRET, *THE STRUGGLE FOR LAND IN IRELAND: 1800-1923*, at 1 (1930).

12. *Id.*

In addition to lacking the necessary deposits of coal and iron, Ireland’s location on the periphery of Europe has isolated her in times past from the Continent. Geographically, England blocked the way. From the sixteenth century on England and Englishmen, chal-

lapse.¹³ Additionally, the percentage of the labor force in industry was declining prior to the Famine.¹⁴ In 1821, 42.9% of Irish laborers were in industry; by 1841, this number had declined to 28.4%.¹⁵ Because of the lack of industrial job opportunities before the Famine, the vast majority of the Irish population depended upon the land for their livelihood. As one author noted, the "possession of a piece of land was literally the difference between life and death."¹⁶

Rapid population growth was the second distinguishing characteristic of pre-Famine Ireland. It is widely accepted that the population in Ireland was increasing rapidly between 1760 and 1845.¹⁷ Between 1791 and 1841 it is estimated that the population increased from 4,753,000 to 8,175,000.¹⁸ Despite almost uniform agreement that pre-Famine Ireland experienced a population explosion, there is no agreement as to the source of this growth. Factors frequently cited include early marriage, high birth rates, and the role of the family in Irish culture.¹⁹ Whatever the source, the conclusion remains that Ireland was a densely populated country that relied exclusively on its land for support. Therefore, land ownership was particularly significant to the well-being of the country and its people.

B. *The Ownership of Land in Pre-Famine Ireland*

Throughout the fifteenth and sixteenth centuries, the organization of the agricultural community in Ireland resembled feudalism. The head of the

lenged by the exigencies of an awakening Europe, embarked upon a course which led in time to the industrial revolution. But for Ireland, in the shadow of England, there was little share in the immense volume of trade; no need to revamp her economic system to suit its demands; and in consequence there was no awakening.

Id. at 1-2.

13. WOODHAM-SMITH, *supra* note 4, at 31. For example, production in the woolen industry was down 50% in 1845. *Id.* at 31-32.

14. *Id.* at 32.

15. CORMAC O'GRADA, *IRELAND BEFORE AND AFTER THE FAMINE: EXPLORATIONS IN ECONOMIC HISTORY, 1800-1925*, at 25-28, 36 (1988) [hereinafter O'GRADA (1988)].

16. WOODHAM-SMITH, *supra* note 4, at 32.

17. See V. Morgan & W. Macafee, *Irish Population in the Pre-Famine Period: Evidence from County Antrim*, 37 *ECON. HIST. REV.* 182, 182 (1981); see also O'Rourke, *supra* note 2, at 1-2. But see JOEL MOKYR, *WHY IRELAND STARVED: A QUANTITATIVE AND ANALYTICAL HISTORY OF THE IRISH ECONOMY, 1800-1850*, at 30-80 (1983).

18. O'Rourke, *supra* note 2, at 2. Another scholar estimates that the population increased 172% from 1779 to 1841. G. TALBOT GRIFFITH, *POPULATION PROBLEMS IN THE AGE OF MALTHUS* 50 (1926), quoted in WOODHAM-SMITH, *supra* note 4, at 29.

19. See Patrick McGregor, *Demographic Pressure and the Irish Famine: Malthus After Mokyr*, 65 *LAND ECON.* 228 (1989); G.S.L. Tucker, *Irish Fertility Ratios Before the Famine*, 23 *ECON. HIST. REV.* 267 (1970); WOODHAM-SMITH, *supra* note 4, at 30-31. See generally Boyle & O'Grada, *supra* note 3; Morgan & Macafee, *supra* note 17.

feudal society was the Monarch, who, despite his lack of sovereign power, was the acknowledged superior of the lesser kings.²⁰ The lesser kings, or lords, held the land of the country. The land of Celtic Ireland was controlled by four or five lords who each possessed large tracts of land.²¹ The lords kept a parcel for themselves and divided the remainder of the tract into smaller plots that were distributed to the lower serfs (chiefs and septs) in the form of "landed usages."²² The terms of the usages required the septs and chiefs to provide services to the lords and to pay dues.²³ To maintain possession of their plots, the serfs had to assist the lords in the cultivation of their land, deliver a share of the produce from their own land to the lords, and give their services to the lords in times of war.²⁴ The obligation to fight for the lord was central because the lords were constantly feuding. "Ireland was a land of incessant strife and war . . . [T]he Irish Celts were in a state of perpetual tribal discord."²⁵

During the reign of Henry VIII (1509-47), England sought to end the incessant chaos in Ireland and dispel any risks of rebellion. "Henry laid down an all-important change on paper: all lands in Ireland, whether owned by the Gaelic Irish or Gaelicized English, were to be surrendered to the Crown and then re-granted, thus asserting unquestionably the Crown's claim to ultimate control over them."²⁶ Ireland refused to surrender its land. However, with the accession of James I in 1603, the system of land ownership in Ireland changed dramatically.²⁷ The Celtic feudal system was decimated by a series of confiscations that shifted the ownership of Irish land from the Celtic peasants and their chieftains to the English.²⁸ "There was one purpose and policy in all the 'confiscations,' 'settlements,' 'plantations,' and 'forfeitures' carried out by the English invaders, and that was to seize and own the land of Ireland."²⁹

During the seventeenth century, England confiscated in excess of three million acres of land.³⁰ These confiscations laid the groundwork for the land-tenure and middleman systems that dominated the eighteenth and

20. WILLIAM O. MORRIS, *IRELAND 1494-1868*, at 8 (Cambridge, The University Press 1896).

21. *Id.*

22. *Id.* at 10-11.

23. *Id.* at 10; see also Richard Grabowski, *Economic Development and Feudalism*, 25 J. DEVELOPING AREAS 179, 180 (1991).

24. Grabowski, *supra* note 23, at 180.

25. MORRIS, *supra* note 20, at 4.

26. KEE, *supra* note 1, at 30.

27. MORRIS, *supra* note 20, at 123-29.

28. *Id.*

29. MICHAEL DAVITT, *THE FALL OF FEUDALISM IN IRELAND* 10 (1904).

30. MORRIS, *supra* note 20, at 126.

nineteenth centuries. Under the middleman system, the large tracts of land that had been acquired by the English were let at a fixed rate to a single Englishman who resided in Ireland and was known as the middleman.³¹ The middleman then sublet the property to Irish peasants.³² "This 'middleman system' produced misery: the landlord rid himself of responsibility and assured himself of a regular income, but the tenants were handed over to exploitation."³³

Under the land-tenure system, absentee landlords rented small tracts of land to Irish peasants without the assistance of a middleman. Irish peasants could also obtain plots of land through two additional methods known as rundale and conacre. Land held in rundale was rented in common and subsequently divided among a number of tenants, who received a small variety of plots of different qualities of soil.³⁴ Conacre was a method of "hiring" a very small plot of land to grow one crop.³⁵ All of these arrangements proved to be disastrous for Irish tenants. "The land system thus introduced was a method of government, a badge of conquest, and a means of holding in subjection of the common people."³⁶

Irish tenants and English landlords viewed each other with animosity. "Ireland was a conquered country, the Irish peasant a dispossessed man, [and] his landlord an alien conqueror."³⁷ In addition to being dispossessed of their property, Irish tenants were denied the legal protection once enjoyed under ancient Irish customs and land laws. English land laws were imported into Ireland, and these laws "pushed to their extreme the rights of landlords, and conceded nothing to the occupiers, in respect of their customary rights under the old Irish customs."³⁸ Tenants generally were not given leases.³⁹ Instead, they became tenants at will who could be evicted at anytime and for any reason.⁴⁰ Additionally, tenants received no compensation for improvements made on the land during their tenancy and received no protection from rent increases or eviction.⁴¹

31. WOODHAM-SMITH, *supra* note 4, at 22.

32. *Id.*

33. *Id.*

34. See POMFRET, *supra* note 11, at 18; WOODHAM-SMITH, *supra* note 4, at 33.

35. G. SHAW LEFEVRE, *AGRARIAN TENURES* 101-02 (London, Cassell & Co. 1893).

36. *Id.* at 92.

37. WOODHAM-SMITH, *supra* note 4, at 21.

38. LEFEVRE, *supra* note 35, at 92.

39. "[L]eases were the exception not the rule. . . . In many cases the landlord refused a lease because he had the tenant more completely under his control; in others, the tenant declined because . . . legislation had so greatly increased the cost of the stamp on a lease that he could not find the necessary [money]." WOODHAM-SMITH, *supra* note 4, at 23.

40. *Id.* at 22.

41. LEFEVRE, *supra* note 35, at 93-95.

This lack of protection placed the Irish tenants in a vulnerable position. The tenants were even more vulnerable due to the dramatic increase in population prior to the Great Famine.⁴² The growth in population increased the demand for land, which provided an incentive for landlords to evict tenants and find new tenants who were willing to pay a higher price for the land. To capture the highest rent, landlords advertised for proposals and rented their property to the highest bidder.⁴³ Thus, Ireland's lack of industrialization and growing population forced the Irish tenants to accept these harsh terms of tenancy and adapt to this system of land ownership, despite the injustices and inefficiencies produced by that system.

III. INEFFICIENT INVESTMENT AND THE LAND SYSTEMS OF IRELAND

Historians and economists have explored ways in which feudalism and the land-tenure system, described in the previous section, have affected the willingness of landlords and tenants to invest in improvements.⁴⁴ All agree that "[i]t would be difficult to conceive a system more opposed to the prosperity and progress of an agricultural community."⁴⁵ It has been argued that the land systems of Ireland created impediments to improvement of the land and that this failure led to insufficient capital formation in agriculture, making Ireland susceptible to poverty and the Great Famine.⁴⁶ This section will analyze how feudalism and land tenure precluded efficient investment in the land and will test the hypothesis that inefficient agricultural investment alone made Ireland vulnerable to the potato blight.

A. Feudalism and Inefficient Investment in the Land

Irish agriculture was laden with problems prior to England's unwelcome arrival and the imposition of the land-tenure system. The Celtic feudal system, in effect until the seventeenth century, was inefficient because it discouraged the use of available economic resources to increase agricultural output. The productivity-enhancing investments that could have been encouraged included removing stones, adding fertilizers, leveling fields, improving irrigation, and increasing the use of fodder crops.⁴⁷ However, the

42. See *supra* notes 17-18 and accompanying text.

43. WOODHAM-SMITH, *supra* note 4, at 33.

44. See, e.g., MOKYR, *supra* note 17; O'GRADA (1988), *supra* note 15; Grabowski, *supra* note 23; Anthony Leddin, *Inefficiency in Irish Agriculture*, 11 *ECON. & SOC. REV.* 127 (1980); O'Grada (1971), *supra* note 10.

45. LEFEVRE, *supra* note 35, at 95.

46. MOKYR, *supra* note 17, at 81-82.

47. Grabowski, *supra* note 23, at 183-84. See generally Gregory Clark, *The Cost of Capital and Medieval Agricultural Technique*, 25 *EXPLORATIONS ECON. HIST.* 265 (1988).

nature of feudal society and the institutional arrangements between lord and serf in the feudal system restricted the creation and diffusion of these available and more efficient techniques.⁴⁸

Constant fighting among the lords was common in feudal society.⁴⁹ As a result of this turmoil, the lords had little incentive or opportunity to invest in the land.⁵⁰ If the lord improved his land, it would become attractive to others and increase the likelihood that his land would be a target for attack and conquest. The lord also failed to invest in improvements because such investments were time consuming. Time spent improving the land interfered with fighting and defending the land. As a result, the lord who improved his land had weaker military forces and was more vulnerable to attack.⁵¹

The lord's distrust of the serfs created an additional disincentive to land improvement. Although improvements would have increased the output on the land, thereby increasing the share the lord could demand from the serf, the lord had no incentive to invest in these improvements because he had no guarantee of capturing any of the benefits. The lord had no assurance that the serf would not undervalue his output in order to reduce the dues he owed the lord.⁵² Therefore, the lord's fear that the serf might lie about the gain from the improvements was an additional factor that led to an inefficient investment in the land.

The duties that the serf owed to the lord under the terms of their usages⁵³ created barriers to the serf's investment in improvements of the land. To maintain possession of his land, the serf was forced to work the land of his lord and to provide military services in times of war.⁵⁴ This left little time for the serf to work or improve his own land. The requirement that the serf deliver a portion of his output to the lord also discouraged investment because the serf had no assurance that his lord would not demand delivery of the entire increase in output.⁵⁵ As a result, the serf would not receive any return on his investment, while the lord would capture the entire benefit of the serf's improvements. Thus, the terms of the landed usages, which required the serf to pay dues and provide services, prevented efficient investment in the land.

48. Grabowski, *supra* note 23, at 179.

49. See *supra* note 25 and accompanying text.

50. Grabowski, *supra* note 23, at 187.

51. See *id.* at 184-85.

52. *Id.* at 188-89.

53. See *supra* notes 23-24 and accompanying text.

54. Grabowski, *supra* note 23, at 188-89.

55. *Id.* at 184-85.

The inefficiencies inherent to the Celtic feudal system placed Irish agriculture, the lifeblood of the country, in a dangerous position as the seventeenth century approached. If the inefficiencies were not remedied, Ireland and its people would suffer tremendously from very low standards of living due to decreased agricultural productivity. Unfortunately, no remedy was forthcoming, and the problems with Ireland's land system only escalated with the imposition of the land-tenure system.

B. Land Tenure and the Factors Contributing to Underinvestment

A number of components within Ireland's land-tenure system further promoted inefficient investment in the land by tenants and landlords. The absence of leases and the prevalence of tenants at will⁵⁶ led to the tenants' inefficient investment in the land. Without a lease, tenants constantly feared eviction, and this fear discouraged all investment in the land. Tenants had no incentive to invest because they had no assurances that they would be permitted to remain on the property long enough to enjoy a return on their investment. Any capital investments in the land, such as irrigation, soil maintenance, or fertilization, stayed with the land, and tenants received no compensation for these improvements when their tenancy was terminated.⁵⁷ Without protection from eviction, tenants were unwilling to finance improvements on the land because the landlord, as owner of the land, reaped all the benefits upon eviction.⁵⁸ Therefore, "the demise of long leases involved a movement from an efficient to an inefficient situation, and thwarted the process of capital accumulation necessary for the development and modernization of Irish agriculture."⁵⁹

The lack of any protection from random and substantial rent increases was another characteristic of the land-tenure system that led to inefficient investment in the land. When the landlord had the power to raise the rent by the full amount of the value of the improvements, underinvestment would occur.⁶⁰ This behavior was possible and prevalent because once the tenant invested in the land, the improvement could not be removed.

Irish tenants would have had an incentive to improve their land if they could have entered into contracts with landlords that would have compensated tenants for improvements made, provided some security of tenure, or

56. Approximately 80% of Irish tenants were tenants at will. Guttman, *supra* note 10, at 413.

57. WOODHAM-SMITH, *supra* note 4, at 22.

58. MOKYR, *supra* note 17, at 82.

59. *Id.* at 83.

60. *Id.* at 86. When the landlord engaged in this type of behavior he was said to be engaging in "predatory behavior." *Id.*

protected tenants from rent increases. However, the high transaction costs of the land-tenure system due to absentee landlords provided a disincentive for landlords and tenants to enter into such agreements.

On the one hand, tenants were deterred by the costs of making and enforcing agreements with landlords that the latter would provide compensation for improvements should the tenant leave the farm. On the other hand, landlords were deterred by the costs of monitoring tenants so that the latter did not misuse improvements financed by landlords.⁶¹

Furthermore, landlords had no desire to enter into any contracts with tenants because such agreements would constrain the landlords' power to evict or raise rent. Because the landlords' goal was to extract as much money from the land as possible, any contractual agreement with tenants would have been an obstacle to this rent-seeking.

In addition to rent-seeking, there were a number of reasons why English landlords neglected to invest in their holdings in Ireland. "The small size of holdings, the uncertain political situation, general economic conditions, the availability of more lucrative investment alternatives—all of these factors may have contributed to the landlords' reluctance to improve."⁶² Landlords were further deterred from investing because they were already making a substantial profit on the rent collected on the unimproved land. Finally, landlords neglected to make improvements because they feared that tenants would use the investment so intensively that the value of the improvement would depreciate at too high a rate.⁶³ Misuse of an improvement was likely to occur when tenants had no security of tenure. However, if tenants had been given some security, misuse would not have been a problem because tenants would have "in the process of maximizing [their] net income, use[d] the improvement optimally."⁶⁴

It is clear that the various land systems operating in Ireland prior to the Great Famine failed to create incentives for landlords or tenants to invest in agricultural improvements. As a result, the land was used inefficiently, and agriculture production in Ireland did not achieve an efficient, maximum output. The backwardness of pre-Famine agriculture caused by the inefficient investment becomes apparent when Ireland's labor productivity in

61. Guttman, *supra* note 10, at 413.

62. O'Grada (1971), *supra* note 10, at 390.

63. Guttman, *supra* note 10, at 412.

64. *Id.* at 412-13.

1845 is compared to England's labor productivity.⁶⁵ British superiority in labor productivity at that time was more than two to one.⁶⁶

Even though Irish agriculture was backward and inefficient, the yields from Irish grain crops were steadily improving, and exportation of grain overseas was increasing throughout the nineteenth century.⁶⁷ The information suggests that, despite inefficient agricultural productivity, plenty of food was being produced in Ireland when the potato blight occurred. It is clear, then, that inefficient investment was not the sole cause, and perhaps not even a major cause, leading to the starvation of millions of Irish when the Great Famine ravaged the country. Therefore, previous explanations that attribute the devastation of the potato blight to inefficient investment are incomplete.

IV. IRELAND'S AGRICULTURAL PRODUCTIVITY AND PARADOXICAL SUSCEPTIBILITY TO THE FAMINE

A complete analysis of the devastation caused by the potato blight must consider why, despite relatively strong yields of other crops, Irish tenants were vulnerable to blight of a single crop. The following section will explore in more detail the agricultural productivity of Ireland during the famine years and suggest reasons that better explain Ireland's vulnerability to the potato blight.

A. *Agricultural Productivity: 1800-49*

Export statistics support the conclusion that despite inefficient investment in the land, Ireland's agricultural output was increasing steadily. Table I depicts the increasing productivity and exportation of Irish grain crops during the nineteenth century.

TABLE I: IRISH GRAIN EXPORTS TO ENGLAND, 1801-45⁶⁸

Year	Quarters
1802	461,371
1815	821,192
1825	2,203,962
1835	2,679,438
1845	3,251,907

65. *Id.*

66. O'GRADA (1988), *supra* note 15, at 52.

67. *Id.* at 52-53; see also O'GRADA (1989), *supra* note 3, at 29-30.

68. O'GRADA (1988), *supra* note 15, at 57.

On the eve of the Great Famine, one quarter of all grain crops, including two-fifths of the oat crop, were being exported.⁶⁹ Other statistics support the conclusion that three-fifths of Ireland's total agricultural output was marketed abroad prior to the Famine.⁷⁰ In order to export such quantities, the tenants' agricultural productivity must have been increasing despite the failure of tenants and landlords to invest in improvements on the land.

Even when blight ravaged the potato crop in Ireland, the production and exportation of grain continued.⁷¹ It was estimated that during the 1840s, Ireland was producing enough grain to feed eighteen million people. However, little of this food stayed within the country; "a ship sailing into an Irish port during the famine years with a cargo of grain was 'sure to meet six ships sailing out with a similar cargo.'"⁷² The paradox of Ireland's situation was that, despite the abundant quantities of food produced during the potato blight, millions were starving. Irish peasants were forced to endure the horrible sight of convoys, loaded with precious food, leaving Ireland and its starving masses.⁷³

B. The Land-Tenure System and the Exploitation of Irish Tenants

The sad irony and inhumanity of exporting food from a starving country forces one to ask why Irish tenants chose exportation over consumption of the grain. Upon examination it becomes clear that Irish tenants exported their grain because they had no other choice. Irish tenants, hopelessly exploited under the land-tenure system and the English land laws, were forced to pay excessive rents for their small plots of land. To pay these rents, tenants had to export immense quantities of the marketable grain they were able to grow. This need to pay rent, coupled with the lack of any incentive to improve the land, forced tenants to rely on potatoes as their sole means of subsistence, making Irish tenants vulnerable to loss when this crop failed. Therefore, it was the landlords and the land-tenure system that compelled reliance on a single subsistence crop and forced Irish tenants to starve when that crop failed.

The unscrupulous character of the English landlords is well documented in Irish history and literature.⁷⁴ Profit was the only motive of the

69. *Id.* at 51.

70. *Id.*

71. During 1846, Ireland exported approximately 258,000 quarters of wheat, 701,000 hundredweight of barley (worth approximately one million pounds), and 1,000,000 quarters of oats and oatmeal. WOODHAM-SMITH, *supra* note 4, at 75.

72. *Id.* at 75 (quoting John Mitchel, an Irish revolutionary).

73. *Id.* at 76-77.

74. See DAVITT, *supra* note 29, at 3-9.

absentee landlords,⁷⁵ and the middlemen of the land-tenure system in Ireland were referred to as "land sharks," "bloodsuckers," and "the most oppressive species of tyrant that ever lent assistance to the destruction of a country."⁷⁶ The land-tenure system in Ireland placed landlords in a powerful position, and tenants were at their mercy because the Irish depended upon the land for survival. "The Irish landlord was highly favored in that the whole rural population of the country was competing for the commodity which he controlled; and he proceeded to take full advantage of the situation."⁷⁷

Since profits were the landlords' only motive, they instituted a property rights scheme that ensured maximization of their financial gains from their holdings in Ireland. The English land laws provided tenants with no protection from substantial and arbitrary rent increases. Thus, landlords raised rents at any time and in any amount. Additionally, the laws gave landlords complete discretion to allocate the land among the Irish peasants. To collect as many rents as possible from a parcel of land, the landlord subdivided the land into a number of small plots. These small plots were then allocated to the tenants, forcing them to make their living on very small, yet very expensive, pieces of land.

In addition to the imposition of an advantageous land system and land laws, the natural force of population growth within pre-Famine Ireland assisted the landlords in the exploitation of the Irish tenants. As a result of the unprecedented population growth in pre-Famine Ireland, the demand for land increased dramatically. Increased demand drove up the price individuals were willing to pay for rent,⁷⁸ which in turn provided a greater incentive for the landlord to evict tenants and further subdivide his holdings.

The landlords took advantage of this volatile market for land by continually subdividing their holdings and by letting property to the highest bidders. Because of the desperate demand and necessity for land in pre-Famine Ireland that resulted from the country's lack of industrialization, tenants were willing to pay high prices for whatever minute parcel of land they could acquire. Prior to the Great Famine, the 1841 Census reported that landlords had subdivided their holdings to such an extent that forty-

75. The "successive owners of the soil of Ireland regarded it merely as a source from which to extract as much money as possible." WOODHAM-SMITH, *supra* note 4, at 21.

76. *Id.* at 22 (endnote omitted).

77. POMFRET, *supra* note 11, at 19.

78. The total supply of land is fixed and thus, by definition, is perfectly inelastic. When a good is perfectly inelastic, the demand for that good sets the price people are willing to pay. See PAUL A. SAMUELSON & WILLIAM D. NORDHAUS, *ECONOMICS* 666 (13th ed. 1989).

five percent of the tenants' holdings consisted of fewer than five acres.⁷⁹ Tenants were also forced to pay rents that were eighty to one hundred percent higher than the rents in England for these small plots.⁸⁰ These rent prices often exceeded the actual value of the property.⁸¹ Tenants had no choice but to pay these extorted rents because failure to pay resulted in eviction that was "tantamount to a sentence of death by slow torture."⁸² Landlords showed no mercy for tenants who were unable to pay rent⁸³ because there were plenty of other tenants who were willing to let the land. Survival meant paying rent at any cost.

In order to pay the high rents, tenants had to extract as much money as possible from their small plots since the land was their only source of income. To maximize the profit from the land, tenants allocated a majority of the plot to marketable crops that could be exported, thus allowing them to pay the rent. Unfortunately, once the rent was paid, tenants had little money left to buy food. Not only did the land have to be profitable, but it also had to provide food for the family. However, the high rents required that most of the land be used to pay the rent, leaving less than one acre of land to grow food for the traditionally large Irish family.

C. *The Ramifications of the Rent-Seeking*

The excessive rents charged by landlords forced tenants to export all marketable grain crops and led to dependence on the potato as the sole means of subsistence. The potato was the best and only choice for Ireland's subsistence crop for several reasons. The potato was not a good cash crop: "Potatoes had a low value to weight ratio and were thus not an attractive crop to market given the high transport costs of the pre-Famine period."⁸⁴ The potato was also the only viable option due to the small acreage available for the tenants' subsistence crop.

Irish tenants needed a crop that produced a high yield and provided a sole means of subsistence. The potato is the only single food that can sup-

79. WOODHAM-SMITH, *supra* note 4, at 34. It should be noted that the calculation of this census figure did not take into account holdings under one acre, which were probably extensive prior to the Famine. *Id.* at 34-35.

80. *Id.* at 33.

81. In one study, the letting price was estimated to exceed the actual value of the land by 11.7%. O'Grada (1971), *supra* note 10, at 388.

82. WOODHAM-SMITH, *supra* note 4, at 32; see *supra* text accompanying notes 12-16.

83. WOODHAM-SMITH, *supra* note 4, at 271 ("Landlords were applying not for an eviction order but for a judgment against the tenant who owed rent; he was put in prison and his wife and children were left to fend for themselves.").

84. Patrick McGregor, *The Impact of the Blight upon the Pre-Famine Rural Economy in Ireland*, 15 *ECON. & SOC. REV.* 289, 292 (1984).

port life when fed as the sole article of diet.⁸⁵ In addition to being nutritional, the potato is also an inexpensive crop to grow. For example, the potato produces the nutritional value of corn at one-third the cost.⁸⁶ Additionally, large quantities of potatoes can be grown on small pieces of land. "[A]n acre and a half would provide a family of five or six with food for twelve months, while to grow the equivalent grain [would] require . . . an acreage four to six times as large. . . ."⁸⁷

One final attractive characteristic of the potato is that the production of such an abundant yield does not require that the crop be planted in fertile, improved land. Instead, the potato could be grown on mountain sides or on wet, unimproved ground.⁸⁸ The ability of Irish tenants to grow potatoes on poor land was of utmost importance under the land-tenure system. As discussed earlier, the land-tenure system created disincentives for improvement.⁸⁹ Therefore, tenants did not improve any of the land and used the naturally good land to grow cash crops that required good soil for maximum yield. Thus, tenants were left with the worst plots for subsistence crops. Because the potato was one of the only crops that would thrive on these poor lands, Irish tenants had no choice but to rely on the potato as their sole subsistence crop.

Although the potato has a number of qualities that make it an excellent subsistence crop, its susceptibility to disease makes sole reliance on the potato dangerous.⁹⁰ Prior to the Great Famine, the potato crop had failed many times in Ireland.⁹¹ However, despite its likelihood for crop failure, Irish peasants had no other choice. They either had to rely on the potato or cut back on the amount of exports and face the possibility of eviction because the rent could not be paid.

Forced to rely on the risky potato crop because of the harsh terms of tenancy imposed by the land-tenure system, Irish tenants were dealt a fatal blow when this crop was decimated by the blight. The tenants' sole means of subsistence was destroyed. They could not eat the grain they grew because they needed the profits to pay rent, and "[i]t would be a desperate man who ate up his rent, with the certainty before him of eviction and

85. MOKYR, *supra* note 17, at 8.

86. O'GRADA (1989), *supra* note 3, at 11.

87. WOODHAM-SMITH, *supra* note 4, at 35.

88. *Id.*

89. See *supra* Section III of text.

90. WOODHAM-SMITH, *supra* note 4, at 38.

91. The failures, of varying degrees and in different locations within Ireland, occurred during the following years: 1728, 1739, 1740, 1770, 1800, 1807, 1821, 1822, 1830-37, 1839, 1841, 1844, and 1845. *Id.* at 38-53.

'death by slow torture.'"⁹² Additionally, it has been suggested that the Irish peasants did not rely on wheat because they did not know how to convert grain into edible products.⁹³ Unfortunately, when the potato failed, starvation occurred resulting in the death of millions.

The starvation of Irish peasants in the 1840s was no different in this respect from any population, indeed any species, pressed into a marginal niche and dependent upon a single source of food. Pandas that only eat the leaves of a single variety of bamboo are vulnerable to loss when this bamboo is destroyed. Kirtland warblers that only nest in one particular type of tree are susceptible to extinction when this type of tree is destroyed. Similarly, Irish tenants who relied only on the potato were vulnerable to starvation when this crop failed. Irish peasants, however, were not pressed into their niche by any evolutionary imperative or population explosion. They were forced into dependence on a single crop by greed institutionalized in a legal system that gave landlords tremendous power to demand ever increasing rents.

V. CONCLUSION

The land-tenure system in Ireland proved to be fatal to the Irish because it facilitated the exploitation of tenants. The land-tenure system encouraged inefficient investment and rent-seeking, leading to a reliance on the potato as the sole means of subsistence. The failure of the potato was a death sentence for the victims of the land-tenure system. Therefore inefficient investment and rent-seeking were the major causal mechanisms in the Great Famine.

The devastation of the Great Famine could have been significantly reduced had the property regime provided tenants with more protection from exploitation. Greater tenant protection would have required that the land-tenure system be modified in ways that would have deterred rent-seeking by landlords. The imposition of either rent controls or a land tax would have prevented landlords from charging excessive rents, and these reduced rents would have permitted Irish tenants to eat more of the crops they were producing. A rent control would have denied landlords the opportunity to raise rents and would have discouraged eviction of tenants because they could not have collected higher rent from any other tenant. Therefore, landlords would have been precluded from rent-seeking.

92. *Id.* at 76.

93. Charles Trevelyan, Head of Treasury (Ireland), wrote: "There is scarcely a woman of the peasant class in the West of Ireland whose culinary art exceeds the boiling of a potato. Bread is scarcely ever seen, and an oven is unknown." *Id.* (endnote omitted.)

A progressive land tax may also have been successful in preventing rent-seeking because it would have created a disincentive for landlords to raise the rent.⁹⁴ Under the progressive land tax scheme, a landlord would be taxed heavily if he attempted to raise the rent to levels that forced tenants to export the vast majority of their crops to pay these rents. Any benefit that the landlord might have received from the higher rents would have been negated by the tax, therefore creating a disincentive to raise rents beyond an optimal level.

A more radical solution to the problems caused by the land-tenure system would have involved dismantling the entire system and redistributing property from the landlords to the Irish tenants. Removing landlords from the land system would have solved the rent-seeking problem. However, removal would have been difficult. Landlords were unwilling to sell the property because they earned a greater profit from renting. By selling their property, landlords could collect only a fixed return, whereas if they continued to let the property, the rent charged could be increased over time. Thus, the only way redistribution would have occurred in Ireland was if the English government intervened, seizing the land from the English landlords and redistributing to the Irish tenants. This was highly unlikely because of the political consequences. Giving the land back to the Irish meant surrendering control of the country, something the English were unwilling to do at that time.

CYNTHIA E. SMITH*

94. Even though a land tax would have created a disincentive to raise rents, it would not have also created a disincentive for the landlord to use the land efficiently. Henry George's Single-Tax theory established that "[p]ure land rent is in the nature of a 'surplus' that can be taxed heavily without distorting production incentives or impairing productive efficiency." SAMUELSON & NORDHAUS, *supra* note 78, at 667. For a more detailed discussion of the Single-Tax theory, see HENRY GEORGE, *PROGRESS AND POVERTY* (the Robert Schalkenbach Foundation 1987) (1879).

* I wish to thank Richard Trethewey, Professor of Economics, Kenyon College, and Alan Madry, Assistant Professor, Marquette University Law School, for invaluable comments on earlier drafts.