A History of Land Tenure Arrangements in Northern Ireland

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Abstract

This paper examines the history of land tenure arrangements in Northern Ireland. Much of the literature on land tenure systems suggests that a fixed tenure system will promote economic activity and ensure political security for nations. Northern Ireland has had a fixed tenure and cadastral system for over one hundred years. Yet, Northern Ireland in the twentieth century, has been characterized by violence, insecurity and political unrest. In the place of offering political security, has this tenure system contributed to the insecurity of the nation?

The paper begins with a brief literature review. The literature review offers a caution. In order for a cadastral system to successfully support economic and political security, it is dependent on other national components to already be in place. In addition, the literature review lists some of the objectives nations seek to secure by adopting formal cadastral and tenure systems. Next, a description of Northern Ireland, its economy, population and other facts describing the nation is provided.

The paper describes the cadastral system of contemporary Northern Ireland, including the Land Registry, and some of the complexities in ownership estates. In order to provide insight whether a formal cadastral system will ensure economic or political security, the article provides a history of land tenure systems in Northern Ireland. The history describes the ancient system following St. Patrick's years in Ireland (5th century AD) to English colonization and present day Northern Ireland.

Torrens on Torrens
Robert R. Torrens wrote of the efforts to create the title registration system in Ireland, "I had considered the question of registration of deeds rather than registration of title for some years. The result of the present system of registering deeds has been to increase the expense and delay incident to every conveyance of land...The mode of conveyancing presently is unsuited to the present requirements of this commercial age. It seriously depreciates the natural value of land by reason of its insecurity, costliness, and complexities." (Torrens:17)

1.0 Introduction
The purpose for this paper is to examine the history of land tenure arrangements in Northern Ireland. Northern Ireland has had a fixed tenure and cadastral system for over one hundred years. Throughout the twentieth century, however, Northern Ireland's history has been characterized by violence, insecurity and political unrest. This paper investigates whether Northern Ireland's national cadastral system has contributed to its own insecurity rather than promoting political security.

Northern Ireland has had a comprehensive national cadastre and a formal system of fixed land tenure since the late 1800's. Based on the Torrens system in Australia, the system consists of a registry of deeds, a statutory charges register, and a land registry. These registers, particularly the Land Registry, provide a mechanism for the government of Northern Ireland to guarantee title for registered property.

Two principle objectives, frequently cited in land tenure literature, for developing formal land tenure systems are to promote government security and economic activity. In spite of a well developed cadastre, the 20th century has witnessed tremendous levels of political instability, unrest and violence in Northern Ireland. In addition, unemployment in Northern Ireland, down from over 17% in the mid-1980's, was 14.4% in 1992 and the country is heavily dependent on English support. (Price Waterhouse)

The political protest in Northern Ireland stems from the long history of occupation by the British army. Today, many in the Roman Catholic minority consider the English army to be a foreign power of military occupation, while others support their presence as a way of protecting their interests.

This article provides a history of land tenure systems in Northern Ireland, from the ancient native Irish system of the middle ages to the present day. The paper describes some of the complexities of Northern Ireland's ownership systems in estates and the cadastral system of contemporary Northern Ireland, including the Land Registry.

2.0 Literature Review
Much has been written about the value to a country in developing secure land tenure and cadastral systems. A typical objective for introducing land registration titling systems includes promoting land markets to cause land to move quickly to higher economic uses. (Feder) Since, financial institutions are unwilling to loan cash for investment unless they are assured of recovering the money, another objective for land registration is gaining easier access to credit. (Walijatun) Securing land ownership through titling has the beneficial effect of ensuring the persons named in the registration documents actually own the property. This gives financial institutions greater confidence in their ability to recover loans. A third reason for developing a land titling system is the promotion of a more secure political system. In Hendrix's article on Latin America, he describes DeSoto's position that giving peasant farmers in Peru rights to their own land has made them more conservative and less inclined to resist the government by supporting the rebel Shining Path, making the national government less politically unstable. (Hendrix)

Several authors have suggested that it takes more than just a cadastral system to spur economic growth or create political harmony. Powelson's "bold hypothesis" uncovers a strong correlation between two sets of conditions of land tenure in nations. First, countries which have indigenous or informal tenure systems, continuous warfare, migration, slavery, and non-literacy all go together as countries with fixed tenure systems, literacy, settlement, freedom, and sustained peace go together. With this set of correlation's, Powelson hints that a series of conditions must be in place to develop political and economic efficiency.

Jeffress suggests that there are a series of prerequisites required for a country to develop a successful cadastral system. Successful land tenure systems are dependent on stable political systems, sound educational systems, general health care, communication, and transportation systems. If a nation does not have these components in place, the risk of failure in developing a cadastral system becomes great.

Williamson states that "cadastral systems are not ends in themselves...the success of a cadastral system is not dependent on its legal or technical sophistication, but whether it protects land rights adequately." Williamson suggests that formal land tenure systems provide support for land markets, economic development, and political stability. Cadastral systems should center on rights to land, not simply the mechanics of registering title and processing surveys.

Finally, Williamson lists several important lessons which have been learned from establishing cadastral systems and should be features of successful systems. Some of these include: formal recognition of individual land rights, sensitivity to native culture, and cadastral system design with a national focus.

3.0 The "Six Counties" of Northern Ireland
Northern Ireland is part of the United Kingdom of Great Britain. The other countries making up the Unitedingdom are England, Scotland, and Wales. Situated west of the southern most part of Scotland and the northern most part of England and across the Irish Sea, Northern Ireland has a land area of approximately 5,462 square miles.

Source: Funk and Wagnalls: Microsoft Encarta 1996

3.1 Demographics
The population of Northern Ireland is approximately 1.5 million people (Price Waterhouse:3) The City of Belfast, with its 300,000 people, is the largest population center with Londonderry and Lisburn following, each with approximately 100,000 persons.

The economy of Northern Ireland is based on agriculture and manufacturing. Much of Irish culture (both Northern Ireland and the Republic in the south) is centered on the ownership and productive use of the land. The agriculture sector is featured by rich farming soils. Agriculture also contributes significantly to the manufacturing sector through processing of livestock and dairy products. The most prominent products of the manufacturing sector are textiles and clothing. Ship building and the manufacture of aircraft are major industries around Belfast. (Funk and Wagnalls)

Approximately 80% of Northern Ireland's external trade is with England. (A large portion of these exports are transshipped from England to other nations.) Unemployment rates in Northern Ireland are significant. In 1990, the unemployment rate for the country was 14.4% (Price Waterhouse:5)

3.2 Government
The Anglo-Irish Treaty and the Government of Ireland Act of 1920 authorized the creation of the state of Northern Ireland and the Irish Free State (now named the Republic of Ireland). Northern Ireland, sometimes referred to by proponents of national unity (between the Republic and Northern Ireland) as the Six Counties, is made up of six of the nine counties of the former province of Ulster. Prior to 1920, the English parliament, with representation from Ireland, governed all of Ireland. After the Act of 1920, a parliament for Northern Ireland was created and governed Northern Ireland until 1972. (A feature of present day Northern Ireland home rule is the permanent occupation by the British army.) In 1972, responding to waves of violence protesting the presence of the British army in Northern Ireland, the Parliament in London suspended the Northern Ireland parliament and imposed direct rule from London. Northern Ireland now elects 17 members of Parliament to serve in the British House of Commons.

3.3 Religion
Religion is an important component to the national character of Northern Ireland. Northern Ireland is predominately Protestant. The largest denominations of Protestants in Northern Ireland are Presbyterian, the Church of Ireland (once a branch of the Church of England), and the Methodists. Roman Catholics consist of about one-third of the population. An interesting and important note to this discussion is the close association in Northern Ireland of general Protestant desire to remain in the United Kingdom "Union" with England and Roman Catholic desire for the Six Counties to reunite with the Republic and separate from the United Kingdom. Background to this association follows. A question raised by these associations is whether the current conflict in the nation is a result of religious conviction or other factors in Northern Ireland's history.

4.0 History of Northern Ireland Land Tenure Systems
Ireland and later Northern Ireland have been occupied by the British for over 800 years. Throughout these centuries, a large segment of the Irish population has desired the English to leave. In spite of the years of union between the countries, both in the state of Northern Ireland and in the Republic, for different reasons, the Irish consider themselves separate peoples from the English. The Roman Catholic population has largely considered themselves Irish first. Many Protestants in Northern Ireland who favor continued union with England consider themselves "Ulstermen" and simply require protection of their interests by English forces.

No discussion of modern Northern Ireland land tenure systems would be complete without an understanding of the history of land ownership in Northern Ireland. "The history of Northern Ireland's legal system is bound up with its political history." (Dickson:1) Today's political unrest and recent violence has, in many ways, roots from the manner in which the land of Northern Ireland came to be occupied. The following narrative is a summary of the history of Northern Ireland land ownership systems leading to contemporary times.

4.1 Ancient History
Prior to St. Patrick first coming to Ireland in the 5th century AD, tribal chieftains ruled the lands. The people of these days were semi-nomadic, non-Judeo-Christian pagans. These early people of Ireland subsisted on farming, livestock, fishing, and hunting.

St. Patrick was a towering personality in the history of Ireland. Fundamental to the story of Patrick was not simply that he brought Christianity to the nation, but also that he brought the rule of law. Myths and legends about Patrick hold that he was responsible for the conversion of the Ancient Irish to the Christian faith. (In those pre-Reformation centuries, Christianity meant the Roman Catholic church - or the Church). So great was Patrick's influence on Ireland that for nearly 1,000 years, the controlling law of Ireland, written in a publication called the "Senchus Mor" around the time of the conversion to Christianity, was known as Cain Patrick or Patrick's Law. (Bryant:1)

The land tenure system of ancient Ireland laid out in Cain Patrick was somewhat different than the systems of today. "The entire economy of Ireland prior to the 16th century was based on the cow." (Fitzgibbon:17) Land tenure in these times was based on capital and not on the land itself. A tribal chief would lend stock to a tenant. The tenant then had the right to occupy land for the period of time of the agreement between the parties. In return for the stock, the landlord/chief would receive an annual return from the stock. The annual return was equivalent to a percentage of the value original stock and could take the form of cattle or work for the chieftain. Upon completion of the tenure, the chieftain was entitled to receive payment of the equivalency of the original stock. Since the receipt of the annual share provided a comfortable income to the landlord, typically a new arrangement would be made upon the end of the term. A feature of this "Daer stock tenure," was "carefully constructed contracts between chief and tenant which recognized each of the parties as equal in the transaction." (Bryant:71) This equality provided an early form of security of tenure for each party.

Senchus Mor also provided a mechanism for adjudicating disputes. This portion of the law, Brehon Law, was named for the class of judges administering the law. The Brehons were professional arbitrators whose responsibilities included setting up tribunals within communities where, "disputes between tribesmen could easily be determined." (Bryant:244)

In 1169, the English army, under King Henry II, conquered much of the southern part of Ireland. Shortly afterward, Henry declared all of Ireland subject to English law. In the areas of Ireland, controlled by England, this was the case. However, over the next several centuries, Brehon law generally prevailed as the English were gradually repelled by the Irish. English law lost influence and by 1500 extended only in the area around Dublin. (Dickson:11) All this was to change early in the 17th century.

4.2 English Plantations of Ulster
Ironically, prior to 1600, Ulster was a center for resistance to the colonial domination by the English. Although it was the subject of raids by the Vikings and later the Normans and Scots, it had never really been conquered. (Fitzgibbons:13) Ancient Irish law remained more or less intact in Ulster until this period. Throughout Europe at this time conflict and warfare consumed the continent. At the root of much of the conflict was the forces of the new Protestant Reformation in

England and the Roman Catholic world, led by Spain and France. Religious fervor gripped England and provoked fear and hatred of the Roman Catholic faith.

Some of this warfare spilled into the still Roman Catholic northern parts of Ireland. The English, under the Tudor kings, (Henry VIII to Elizabeth I) seized and sold lands occupied by Roman Catholics, including properties owned by the Church. The Irish in Ulster, led by Hugh O'Neill, Ulster's "principle chieftain, the real King of Ireland," rose up against the English in 1603 and were soundly crushed by the English. In 1607, O'Neill and one hundred of the most important people in Ulster fled the country to Rome. This " 'flight of the earls' is generally agreed by historians to be the real end of the Gaelic civilization as a political entity." (Fitzgibbon:18)

4.3 1st Plantation
The period from 1603 to 1642 saw dramatic change in the legal system and land tenure in Ireland. In 1607, in a famous piece of litigation, the Case of Tanistry, the English courts declared Brehon Law to be "incompatible" with the common law of England and was extinguished. Beginning with King James I, the first Stuart monarch, the English began the Protestant "Plantation" of Ulster. The Plantation consisted of "granting" the lands to persons loyal to the Crown.

Land grants were given or sold to former soldiers, in lieu of pay, loyalists who could purchase rights to the land, and a new class of owners called "undertakers." The undertakers were a type of real estate broker who would buy lands from the Crown and find "good" English tenants to lease the land. By 1642, three million of the three and one half million acres of Ulster was owned and controlled by the new lords, sanctioned by English law. (Fitzgibbon:30) At the same time only 10,000 of the 100,000 population were English or Scot. The remaining ninety percent were native Irish. All this made the Irish angry.

4.4 2nd Plantation
In 1642, the same year Oliver Cromwell came to power in England, Hugh O'Neill's nephew, Owen Roe O'Neill and an army of rebellious Irish, rose once again against English rule. The next eight years were a very brutal time for Ulster. O'Neill's army engaged in a scorched earth policy toward the new English lords. Those Protestants who could not escape were massacred. When Cromwell arrived in Ireland with his army in 1649, he brought with him an intensity of hatred for Roman Catholics and for the Irish people, based in part on the reprisals of the previous eight years. (Fitzgibbon:35)

The clearances and murder of Roman Catholics and nationalists in Ulster during Cromwell's Plantation have been compared with Hitler and the Nazis' Holocaust in the Eastern Europe in the 1940's. Cromwell adopted a three part policy toward Ireland. First, the Roman Catholic Irish had to leave. Cromwell wanted no Irish ownership of Irish land. The Irish were expelled to the counties in the extreme west of Ulster. The expression "Hell or Connaught" was born from this episode. Irish who refused or otherwise could not leave were murdered. Such was their loathing that Cromwell and his followers believed that the Irish people and Catholics were evil and should be exterminated. In their view, if they would not go to the west, then they would systematically be sent to hell sooner than later.

The second part of Cromwell's policy, similar to the first plantation, was the replantation of the colony of loyal English. By the end of Cromwell's reign, the population of Protestants in Ulster had grown from 10,000 to over 100,000. Only slightly more than 10 per cent of Ulster still belonged to the naive Roman Catholic Irish. The final part of the policy was the attempt to abolish the Roman Catholic faith. Practicing the faith was outlawed. Priests were outlawed as well. It was these events which first caused the Nationalist movement to become entwined with the Roman Catholic religion.

In this way the indigenous Irish became disenfranchised from their lands. Over time, the harshness of Cromwell's rule gave way to feudal landlord/serf relationships between the English and their Irish tenants. The new English lords, for their part, became "super-patriot Ulstermen." Hardworking, able farmers and shrewd merchants, the new lords quickly built a robust economy in Ulster. However, remembering the bloody 1642 Owen O'Neill uprising, Ulstermen took on a type of siege mentality. They understood how much they needed English support without that support, how much mercy they might expect to receive from the Irish. (Fitzgibbon:35)

5.0 Contemporary Cadastral Systems
The following section describes the land tenure system of contemporary Northern Ireland. Understanding the cadastral system of Northern Ireland requires an introduction of the complexities of the estates of ownership which is unique to Northern Ireland and the Republic in the south.

5.1 Northern Ireland Land Tenure Today
Land tenure in the state of Northern Ireland has changed since the time of Cromwell's conquest. Over the three and a half centuries since Cromwell, many Acts of Parliament have restored rights to tenant farmers. Many land reforms have taken place, particularly since the 1800's. Two examples of the many Acts were the Landlord and Tenant Law Act (Ireland) of 1860, known as Deasy's Act and the Land Purchase Acts of the 1880's.

Deasy's Act eliminated the feudal relationship between landlord and tenant and converted the relationship to a contract-based landlord and leaseholder arrangement. The Land Purchase Acts gave the Irish tenant secure land tenure for the first time in centuries. The significant feature of the Land Purchase Acts was the provision for leasehold tenants to purchase a freehold interest in the land. On occasion, the tenant was able to purchase fee simple interest in the land, but more commonly, the estate was converted into lease devises such as the fee-farm grant.

5.2 Complexities - Types of Estates
The fee-farm grant is a type of fee simple tenure where land is held in perpetuity in exchange for a yearly rent. (Wylie:336) This type of tenure offers no reversion to the former landlord and grants secure title to the former tenant. In addition to fee simple and fee farm grants, land tenure in Northern Ireland is also given in the form of other types of leasehold relationships. Some examples of these include: leases for lives (for a certain number of years or perpetuity), rights of residence (life estate), and conacre. Conacre is a form of occupancy where license for use of land is given for a specific use, typically farming. This arrangement is similar to the sheep farming arrangement of the crofters of the Scottish Highlands. (MacLeod:1996)

These various arrangements have caused the land tenure system in Northern Ireland to be very complex, especially in the cities. In rural farmland, the Land Purchase Acts tended to create single fee owners of land. In the cities, however, complex "pyramids" of title are common. As property is leased and sublet, it has become difficult to determine which party has title for many properties in the cities. "The pyramid of interest created under tiers of fee-farm, fee-tail, subfee-farm, and long leases have caused considerable conveyancing problems." (Sheridan:17) For these reasons, the government of Northern Ireland can guarantee title (through the Land Registry) for only 50% of properties in the country.

5.3 Cadastral System
The Northern Ireland cadastral system is based on a nationwide government maintained ordnance survey which has been developed over time since the 1800's. The ordnance survey is a system of large scale topographical maps which relies on recognizable physical demarcation of parcel boundaries. (Barr:27) Certification of title in the Land Registry of Northern Ireland is based on these ordnance survey maps. Land tenure registration is recorded in three separate registers in Northern Ireland, the Registry of Deeds, the Land Registry, and the Statutory Charges Registry. These registries are a component of the Department of the Environment for Northern Ireland. At present, none of the three registries are computerized.

5.4 Registry of Deeds
The Registry of Deeds for Ireland was first established in 1708. This registry permits recording of deeds or deed abstracts as evidence of ownership of land. This Registry and each of the three registries in Northern Ireland, are open to public access. Complete copies of deeds are not necessarily held in the registry. The function of the registry is "acknowledge the existence of a deed and record an abstract of the deed, known as a memorial." "The Registry does not guarantee that any document registered is valid or has any legal effect: it merely records the document's existence." (Department of the Environment, Land Registry publication, http://www.doeni.gov.uk/land.htm.) However, when a case is adjudicated, a full recorded deed will take precedence over an abstract. (McCallan interview) The Registry of Deeds is indexed by name. Searches for properties must be made by owner name.

5.5 Land Registry
The cadastral system adopted in the Act for Ireland of 1891 closely resembles the Australian Torrens system. (Niblack:245) This act authorized the 1892 creation of a Land Register for certifying title as part of the land reform acts of the late 19th century. Once a parcel or property is accepted into the Land Registry, the government guarantees the title. After a first time registration is made, future transactions are no longer recorded in the Registry of Deeds. Fee farm, fee simple and tenancies for lives are valid estates for entry into the registry. The Land Registry issues several types of title, including absolute title and possessory title. Possessory title is a qualified type of title based on possession of the land. After a certain number of years, a statute of limitation converts this form of title to absolute. (Barr:26) The Land Registry also records interest in land holdings such as rights of way and mortgages. (http://www.doeni.gov.uk/land.htm)

The application for first time title involves providing information pertinent to the process of determining ownership of properties. This information includes maps or surveys. "Since we are a

map based system, a person applying for title will include all relevant documents and a map of the parcel. We will verify the validity of the map against the Ordnance survey." (McCallan) This map need not be a boundary survey.

The Land Purchase Acts created the complexity of estates described above. Prior to the acts, there was only one legal estate in the land (the lords). Subsequent to the acts, the "equitable estates" described above came into existence. The pyramid of interests in the cities has made the process of certifying title difficult in the cities. Therefore, even though the vast majority of rural lands in Northern Ireland is titled, very little of the land in the cities is titled. This has the effect of making land transactions more difficult as the title search is performed through the Registry of Deeds.

5.6 Statutory Charges Registry
This registry was established in 1951 to provide purchasers of land with a method of checking whether a property is affected by statutory restriction which may not be easily discovered otherwise. The Statutory Charges Registry is a mapped based registry.

5.7 Compulsory Registration of Title Order (Northern Ireland) - 1995
In November 1995, a first time title registration order declared was declared for two areas of Northern Ireland. The purpose of this order was to require that all land conveyances occurring in these areas after June 1, 1996 are registered in the Land Registry. This includes properties inherited through a will and any property for which a mortgage is sought. By introducing this project the government hopes to "gradually bring all unregistered property into the Land Registration system." (Land Registers:3)

6.0 Conclusion
Northern Ireland has a modern and sophisticated legal cadastre arrangement. Notwithstanding this, the nation has been in continuous conflict since its founding in 1920. Yet it has rich farm soil, aging but impressive manufacturing facilities, and the financial support of England. What makes Northern Ireland so different? Hodson commented on the collapse of the state of the South African government in the early 1990's. "South Africa has one of the most developed cadastre systems in the world...there is no country in which land parcels area more closely defined." (Hodson:7) In South Africa, the cadastral system provided a useful "legal framework for distorted land use control." (IBID:15) However, the policies of Apartheid proved politically insufferable. The land ownership system was likely the cause for the collapse of the government.

Powelson argues that the nations of northeastern Europe, including England, had the opportunity to work out their feudal arrangements over time through the evolutionary process of contract feudalism. Landlords, tenants and mercantile factions engaged in negotiations over the centuries and took on equality in political status through the development of democratic government. This form of evolution was not available to the Northern Irish. Williamson noted that a key feature of a land tenure system is to "adequately protect rights in the land." English rule, while favored by a majority of the population, has failed to create a system of freedom and equality necessary for political stability.

As noted above, much of the land tenure literature indicates that other institutional components should be set in place before a cadastral system will fulfill its objectives. A secure political system in the country is one such component which is not in place. Finally, the contemporary land tenure system does not address native Irish rights. Recent peace talks, between factions in England and Northern Ireland, have included the possibility of joint rule of Northern Ireland between England and the Republic. Could the government of Northern Ireland face a similar prospect as the former South African government? The current government of Northern Ireland guarantees the title of ownership for property registered in the system. But if the political divisions are not resolved, who will guarantee the government?

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