

**BRITISH EMPIRE, LAND TENURE AND THE SEARCH FOR AN
IDEAL PROPRIETOR: 1868-1875**

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ABSTRACT

Between 1868 and 1875, several land tenure laws (Punjab Tenancy Act of 1868; Landlord and Tenant (Ireland) Act of 1870; and Prince Edward Island Tenants' Compensation Act, 1872 and Land Purchase Act, 1875) were enacted across the British Empire. These laws established some form of security of tenure for the actual cultivators of land by recognizing co-proprietorship of tenants and landlords and/or by transferring proprietorship from landlords to tenants. This study examines how proponents of the rights of cultivators overcame long-standing resistance to any encroachment of landlords' property rights in these socio-politically diverse and geographically dispersed colonies.

Comparative analyses of the historical land tenure arrangements in the three colonies and the contestations around the specific laws reveal two crucial mechanisms which facilitated the institutionalization of peasant-proprietorship. First, there was a fortuitous ideological alignment between important governing agents in the three colonies. Sympathy for the peasants of John Lawrence (Governor-General of India) and his followers in Punjab after the 1857 Rebellion, the desire of William Gladstone and his Liberal government to pacify Ireland in 1868 through a resolution of the centuries-old land question, and the singular focus of the Prince Edward Island legislature by the late 1860s to establish the rights of tenants and convert the leasehold to freehold tenures on the island, reinforced each other in promoting the rights of tenants. Second, these efforts were crucially augmented by the redirection of the debate about how far land tenures being considered across the Empire would impact the sanctity of English principles to one where these existing principles were deemed to be anomalous and thus not applicable to the colonies. The extrication of land tenure considerations in the colonies from the institutionalized practices in England allowed for inter-colony analogies and precedents to support the proprietary rights of the peasant cultivators.

The use of inter-colony analogies not only overcame resistance from the influential aristocratic classes and their supporters across the Empire during the period of the current study but also became the normative tool in expanding peasant-proprietorship well into the twentieth century for successive British governments of all political stripes.

DEDICATION

To my parents, Raghwinder Kaur and Dalbir Singh Aulakh

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CHAPTER 1
INTRODUCTION:
RETHINKING LAND TENURE DURING THE MID-NINETEENTH CENTURY POLITICAL TURMOIL

It is time to revert to just principles, and to regulate the supposed right of the owner in such a manner as to make it at least consistent with the essential conditions of industry, prudence, and material comfort, in the agricultural population.¹

It is hoped that Her Majesty's Government will not consent to any compulsory interference with the laws and rights of the proprietors ... and any measures for the benefit of the tenantry must result from an amicable arrangement with the proprietors.²

If geographical possession of distant lands was what led to the formation of colonial empires,³ then the efficacy with which these lands were governed was critically important for their sustenance. Given the agrarian nature of its numerous colonies, the British Empire instituted elaborate administrative and legal mechanisms to map and categorize boundaries, distribute and allocate land, and collect revenues.⁴ Defining the rights and obligations of different groups was essential for the functioning of this system. Of particular importance were the relationships between landlords and tenants because clarity in the structure and associated incentive systems in these relationships allowed imperial governments to achieve their economic

¹ Letter from J.S. Mill to the *Daily News* on August 12, 1848, where he lamented the miseries of the Irish peasants, in John Stuart Mill, "Landed Tenure in Ireland," in *Newspaper Writings December 1847 – July 1873*, in *Collected Works of John Stuart Mill, Volume XXV*, ed. Ann P. Robson and John B. Robson (Toronto: University of Toronto Press, 1986), 1114–15.

² Letter dated May 13, 1859 to the Queen by a group of proprietors in Prince Edward Island regarding land tenure legislation being contemplated in the colony. Reproduced in Despatches from the Governor (No. 1, 13 May 1859) in "Prince Edward Island" (House of Commons Parliamentary Papers Online, 1864), 1-2.

³ As articulated by Edward Said, "To think about distant places, to colonize them, to populate or depopulate them: all of this occurs on, about, or because of land. The actual geographical possession of land is what empire in the final analysis is all about." Edward W. Said, *Culture and Imperialism* (London: Vintage, 1994), 78.

⁴ For illustrative colonial literature on land tenures across the British Empire, see B.H. (Baden Henry) 1841 Baden-Powell, *Land Systems of British India* (Oxford: Clarendon Press, 1882); Cobden Club (London, England) et al., *Systems of Land Tenure in Various Countries* (London: Macmillan, 1870); Alexander G. Richey, *The Irish Land Laws* (London: Macmillan, 1880).

objectives and facilitated socio-political goals of governing and controlling the disparate colonial subjects.⁵ Despite instituting a variety of land tenure arrangements since the inception of the British Empire,⁶ the above-quoted responses to contemporaneous legislative efforts across its colonies in the middle of the nineteenth century foreground the difficulties faced by colonial administrators in recognizing the rights of the cultivators (tenants) and assigning them some form of security of tenure given the ownership rights of landlords to their property.

This study probes the Empire's attempts to resolve these difficulties by examining a set of laws⁷ promulgated in close temporal proximity, 1868–1875, but across geographically dispersed and socio-politically different colonial sites of Punjab, Ireland, and Prince Edward Island. In (re)structuring landlord-tenant relationships through these laws, Imperial governments had to be attentive to differences arising from the nature of the three colonies and their position within the Empire.⁸ The goal is to understand how competing perspectives about property rights

⁵ As suggested by C.A. Bayly, determining the relative economic and political value of landlords vis-à-vis the cultivators consumed all kinds of European empires in the age of imperialism: "Whereas early thinkers in many traditions believed that a powerful and honorable landowning class helped to maintain social stability, many later liberal thinkers asserted that large privileged landlords were a prop of tyranny and a heavy burden on agricultural productivity.... Still, none of these new governments was really strong enough to collect taxes, raise men of military age, or control local outbreaks of dissidence without the help of landowners and chieftains 'on the spot'." C.A. Bayly, *The Birth of the Modern World 1780–1914* (Malden, MA: Blackwell Publishing, 2004), 296–98.

⁶ For general overviews of laws regarding land tenure relationships, see Thomas R. Metcalf, "Laissez Faire and Tenant Right in Mid-Nineteenth Century India," *The Indian Economic & Social History Review* 1, no. 1 (1963): 74–81; Philip Girard, Jim Phillips, and R. Blake Brown, *A History of Law in Canada* (Toronto: The Osgoode Society for Canadian Legal History and the University of Toronto Press, 2019), esp. chap. 30; Eric Stokes, *The English Utilitarians and India* (Oxford: Oxford University Press, 1989).

⁷ Punjab Tenancy Act (1868), Irish Land Act (1870), and Prince Edward Island Tenants' Compensation Act (1872) and Land Purchase Act (1875).

⁸ Punjab being a non-white and non-settler colony with class and to some extent religion distinguishing the landlords and tenants; Ireland as a "not quite-white" (Catherine M. Eagan, "'White,' If 'Not Quite': Irish Whiteness in the Nineteenth-Century Irish-American Novel," *Éire-Ireland* 36, no. 1 (2001): 66–81) but semi-settler colony where religion was the central distinction between the two groups; and Prince Edward Island as a white settler colony with emerging class and religious distinctions that needed to be addressed. Besides these differences, this study is also attentive to the administrative structures in each of the three

and political economy⁹ were reconciled and accommodated with governance challenges necessitated by the colonies' political conditions and structural diversities *in the search for an ideal proprietor* on whom security of tenure could be bestowed.¹⁰

Given this study's focus on 'security of tenure' in land relationships, it is helpful to outline the broad parameters around which it was debated. As a starting point, I use the more recent definitions adopted by the United Nations Human Settlements Program (UN-Habitat). Land tenure is defined as the "way land is held or owned by individuals and groups, or the set of relationships legally or customarily defined amongst people with respect to land." Security of tenure is the "degree of confidence that land users will not be arbitrarily deprived of the rights they enjoy over land and the economic benefits that flow from it" and "the certainty that an individual's rights to land will be recognized by others and protected in cases of specific

sites of interest, which had implications for the extent of local agency afforded in discussions about land tenure.

⁹ As discussed in more detail in Chapter 2, debates on property rights revolved around absolute sanctity of property and individual versus shared property rights. Political economy arguments revolved around laissez-faire and Ricardian rents and their respective implications for landlord versus peasant proprietorship as the basis of economic improvement. For a general overview of these ideas, see S. Ambirajan, *Classical Political Economy and British Policy in India* (Cambridge: Cambridge University Press, 1978); William Thomas Thornton, *A Plea for Peasant Proprietors; with The Outlines of a Plan for Their Establishment in Ireland* (London: John Murray, Albermarle Street, 1848); Clive J. Dewey, "The Rehabilitation of the Peasant Proprietor in Nineteenth-Century Economic Thought," *History of Political Economy* 6, no. 1 (1974): 17–47.

¹⁰ There is debate amongst historians about whether there was an entity, that of a "British Empire"; see Ged Martin, "Was There a British Empire?" *The Historical Journal* 15, no. 3 (September 1972): 562–69. As argued by Ronald Hyam, "[W]hen you think of it, there was no such thing as Greater Britain, still less a British empire – India perhaps apart. There was only a ragtag of territorial bits and pieces, some remaindered remnants, some pre-empted luxury items, some cheap samples." Ronald Hyam, *Britain's Imperial Century, 1815–1914: A Study of Imperial Expansion* (New York: Palgrave Macmillan, 2002), 1. The question that concerns these historians is whether there was a cohesive ideology of the Empire and a proactively institutionalized administrative structure to govern this Empire. Without getting into these debates, I work on the assumption that even with administrative structures that were locally developed in different colonies, ideas about governance (and specifically about the governance of land) flowed between the colonies, and influenced each another. In fact, one of the objectives of my study is to probe the existence of a common approach and inter-colony analogies in land tenure laws across the Empire.

challenges.”¹¹ Two aspects in these definitions are noteworthy. First, tenure includes land that is “held” or “owned,” implying that both landlords (owners) and tenants (users) can have it and possess the associated rights.¹² Second, there is the need for protection of the rights of both parties, which necessarily involves the role of the state that “enforces property rights, facilitates private contracting, and applies the law fairly to all,” but at the same refrains from engaging in “coercion and expropriation.”¹³

Much of the debate on land tenure during the nineteenth century took place around the relative rights of landlords and tenants and the state’s role in assigning these rights and protecting the ones it assigned and recognized. Two approaches were considered to institutionalize tenants’ security of tenure, and in the process, create “peasant proprietors.”¹⁴ First, security could be established by transferring of ownership to tenants through state assisted voluntary or compulsory purchase of land from existing owners. The second approach involved establishment and/or recognition of shared rights of landlords and tenants. This had various gradations such as fixity of tenure, tenant right of compensation for improvements and

¹¹ UN-Habitat, “Secure Land Rights for All” (Nairobi: United Nations Human Settlements Programme, 2008), 5.

¹² In his late nineteenth-century legal treatise, Holland noted that “proprietary rights may be acquired which vary in extent from absolute ownership to a narrowly limited power of user.... The owner of an object has ... the right, unless he has expressly parted with it, to the possession of that object. But a person who is in possession ... has also a right to continue in possession, and to be restored to possession, should he have been deprived of it; and this sometimes even as against the owner.” Thomas Holland, *The Elements of Jurisprudence*, 10th ed. (New York: Oxford University Press, 1906), 184–85.

¹³ Ross Levine, “Law, Endowments and Property Rights,” *Journal of Economic Perspectives* 19, no. 3 (September 2005): 61.

¹⁴ Dewey, “The Rehabilitation of the Peasant Proprietor in Nineteenth-Century Economic Thought”; Thornton, *A Plea for Peasant Proprietors*; John Elliott Cairnes, “Ireland in Transition: Peasant Proprietorship,” *The Economist*, November 4, 1865.

disturbance,¹⁵ regulated rents, freedom of sale, and some combinations of these.¹⁶ The overall goal of peasant-proprietorship¹⁷ was to find remedies for the “deadly evil of insecurity of tenure, and yet at the same time not shake the stability of property.”¹⁸ The challenge for the Empire was to reconcile these seemingly contrary objectives of maintaining existing rights of proprietors and institutionalizing new rights for the tenants on the same piece of land.

Main Arguments

The main arguments of this study, drawn from comparative analyses of the land laws in the three colonies and the global and local contexts of the Empire within which these were debated and legislated, are as follows. First, the common underlying provisions of the laws encompassed some form of security of tenure for the cultivators, even though the specific rights granted and the legal and administrative processes through which these were to be achieved varied across the three colonies. The proponents of tenants’ rights and/or peasant-

¹⁵ What is “tenant right”? This question generated considerable controversy during much of the nineteenth century and was interpreted in different ways during discussions on land tenure across the Empire. For extended discussions, see Charles Wingfield, *Observations on Land Tenures and Tenant Right in India* (London: Wm. H. Allen and Co., 1869); Martin W. Dowling, *Tenant Right and Agrarian Society in Ulster 1600–1870* (Dublin: Irish Academic Press, 1999); John Elliott Cairnes, “Ireland in Transition: Tenant-Right,” *The Economist*, October 28, 1865; F. Seebohm, “The Historical Claims of Tenant Right,” *The Nineteenth Century: A Monthly Review* 9, no. 47 (January 1881): 19–36. I will elaborate on some of the debates in the respective chapters. For the purpose of this chapter, one can define tenant right as the “just claim of a farmer to compensation for any unexhausted improvements made by him and remaining on his holding at the end of his tenancy.” Julian R. McQuiston, “Tenant Right: Farmer against Landlord in Victorian England 1847–1883,” *Agriculture History* 47, no. 2 (1973): 95.

¹⁶ In essence, in contemporary parlance, discussions in the nineteenth century encompassed both security of tenure *de jure* (that is fixed term, with right of eviction by the landlord in very specific conditions) and security of tenure *de facto* (that is, give better rights/conditions to the tenant in a way that it makes it difficult/costly for the landlord to evict). This is discussed in more detail in Chapter 2.

¹⁷ Peasant-proprietorship is the broad umbrella term used which encompasses both the transfer of ownership to the tenant (full proprietor) and the recognition of shared rights between the landlord and tenant (co-proprietor).

¹⁸ “Irish Land Bill. Hansard Third Series CXCIX” (Hansard (3rd Series), 1870), 359.

proprietorship were able to accomplish this in diverse colonies because of the explicit or implicit support from the Imperial Government during the period of study, which saw the material well-being of the colonies to be critical for the stability of the Empire. Economic improvement of the cultivators through an assignment of proprietary rights was the means through which this objective could be achieved in agrarian societies.¹⁹

Second, the institutionalization of tenants' rights was vigorously contested in the three sites by various supporters of both landlords and tenants on multiple grounds, which included the sanctity of private property rights, political economy theories regarding improvement and development, and the political value of landlords and peasants in sustaining the Empire. These groups' active agency and relative political power ultimately influenced the extent and form of security of tenure granted to the tenants in each colony.

Third, despite differences in the specific proprietary rights granted to the tenants across the three sites, the institutionalization of these rights in diverse colonies was an important step in the overall momentum away from landlordism across the Empire in the latter part of the nineteenth century. Continuing concerns about the well-being of the peasants in different colonies eventually reinforced each other as some of the rights were further solidified in several of the colonies (for example, Irish Land Act 1881, Bengal Tenancy Act 1885, Punjab Tenancy Act 1887, land purchase acts in Ireland in the late nineteenth and early twentieth centuries, among

¹⁹ The thinking was that economic improvement of the peasants would follow because of reduced rack-renting and exploitation from the landlords, investments in the land, the fruits of which will be expropriated by the cultivators, and ability to participate in the market for land and credit. These aspects are fully explored in subsequent chapters. As argued by Andrew Sartori, the liberal impulse in the middle of nineteenth century “to extend rights of property more broadly throughout society ... could find more plausible traction ... [in] those colonies where peasant agriculture still predominated.” Andrew Sartori, *Liberalism in Empire: An Alternative History* (Oakland: University of California Press, 2014), 200.

others). The decoupling of land tenure considerations in the colonies from those existing in England, and creative use of inter-colony analogies, allowed the Imperial government to overcome resistance from aristocratic classes and their supporters at home who were concerned about protecting their own institutionalized rights to property.

Intellectual Context and Intended Contributions

As an investigation of land tenures in diverse colonies of the British Empire during a historical period when it was facing governance challenges related to its expansion and consolidation,²⁰ this study aims to contribute to several interrelated literatures. It hopes to add to the growing corpus of research on the British Empire which has exalted the virtue of “sketching ‘connective’ and ‘comparative’ histories” in order “to learn more about the complex and shifting nature of imperial relations as they evolved over centuries.”²¹ As pointed out by C.A. Bayly, in order to unpack questions of global logic of the Empire and specificities of different colonial sites, one can learn from comparative studies, “even from the interconnections of histories ... distant in space and cultural form” in order to forge a “global social history.”²²

²⁰ Richard Shannon, *The Crisis of Imperialism, 1865–1915* (London: Hart-Davis, MacGibbon, 1974); Duncan Bell, “Victorian Visions of Global Order: An Introduction,” in *Victorian Visions of Global Order: Empire and International Relations in Nineteenth-Century Political Thought*, ed. Duncan Bell (Cambridge: Cambridge University Press, 2007), 1–25; Karuna Mantena, *Alibis of Empire: Henry Maine and the Ends of Liberal Imperialism* (Princeton, NJ: Princeton University Press, 2010).

²¹ Barry Crosbie, “Networks of Empire: Linkage and Reciprocity in Nineteenth-Century Irish and Indian History,” *History Compass* 7, no. 3 (May 1, 2009): 998. Also see C.A. Bayly, “Ireland, India and the Empire: 1780-1914,” *Transactions of the Royal Historical Society* 10 (2000): 377–97; S.B. Cook, *Imperial Affinities: Nineteenth Century Analogies and Exchanges between India and Ireland* (New Delhi: Sage Publications, 1993).

²² Bayly, “Ireland, India and the Empire,” 377–78. Also see Annie Tindley, “‘All the Arts of a Radical Agitation’: Transnational Perspectives on British and Irish Landowners and Estates, 1800–1921,” *Historical Research* 91, no. 254 (2018): 705–22.

The centrality of land in most colonies during the heyday of the British Empire, and its continuing implications in postcolonial societies, has generated a voluminous literature that examines land tenure systems, property rights, tax revenue, and related aspects across historical time periods and geographical settings.²³ This body of literature can be divided into three broad traditions/approaches that developed chronologically. The first consists of colonial-era manuals and reports, the objectives of which were to understand existing practices related to land in precolonial societies and codify and reconcile the respective customary traditions with the implanted systems of the colonizers.²⁴ The manuals formed the bases of administrative, judicial, and legislative institutions put in place in different colonies for the governance of land, and the justificatory narratives about the efficacy of colonial land policies.

These manuals and related laws and regulations furthered the interests of the Empire, and subsequently became important sources for postcolonial scholars, who used these to critically analyze the contradictions and contestations around ideologies and practices amongst colonial authorities in formulating and implementing land policies in various geographical

²³ The implications of historical colonial era land laws and associated property rights of various socio-economic groups on economic development and political stability in postcolonial societies is generating renewed interest across multiple disciplines. For representative studies, see Abhijit Banerjee and Lakshmi Iyer, "History, Institutions, and Economic Performance: The Legacy of Colonial Land Tenure Systems in India," *American Economic Review* 95, no. 4 (2005): 1190–1213; Bruce M. Russett, "Inequality and Instability: The Relation of Land Tenure to Politics," *World Politics* 16, no. 3 (April 1964): 442–54; Jan Michiel Otto, "Rule of Law Promotion, Land Tenure and Poverty Alleviation: Questioning the Assumptions of Hernando de Soto," *Hague Journal on the Rule of Law* 1, no. 1 (March 2009): 173–94.

²⁴ See, for example Baden-Powell, *Land Systems of British India*; Cobden Club (London, England) et al., *Systems of Land Tenure in Various Countries*; Richey, *The Irish Land Laws*.

settings.²⁵ In revisiting and questioning the “one-sided interpretation”²⁶ of approaches, rationales, and justifications for land laws in different jurisdictions outlined in the colonial manuals, this second approach attempted to provide alternative histories by being more attentive to the perspectives of the colonized in understanding the institutionalization of property rights in land.²⁷ This body of research uses diverse theoretical lenses and disciplinary approaches to reassess official histories of the colonial powers, falls within the domain of “national histories,” and examines multiple facets of agrarian social systems and reforms in individual colonial societies.

More recent research, while acknowledging the necessity of such histories because of their attentiveness to local specificities, has also cautioned about the limits of confining these histories to “national and disciplinary silos” as this precludes a “larger conversation about property and colonization.”²⁸ In order to overcome these constraints, a third approach to examining colonial land laws, and one that is of interest in my study, takes a comparative

²⁵ For instance, in re-evaluating the 1793 Permanent Settlement of Bengal (which was the first land tenure settlement in India after the East India Company was granted revenue rights), Ranajit Guha questioned colonial era land tenure manuals: “The manuals were satisfied that the good work England had done in India represented a series of successful experiments which had little to do with the ideas and prejudices inherited by the rulers from their European background. This view of British policy as a ‘rootless blossom’ is not confirmed by the history of the land law that had the longest life under the raj.” Ranajit Guha, *A Rule of Property for Bengal: An Essay on the Idea of Permanent Settlement* (Durham, NC: Duke University Press, 1996), xv. Also see Richard Saumarez Smith, “Rule-by-Records and Rule-by-Reports: Complementary Aspects of the British Imperial Rule of Law,” *Contributions to Indian Sociology* 19, no. 1 (January 1, 1985): 153–76.

²⁶ Guha, *A Rule of Property for Bengal*, xv.

²⁷ For example, see Rusty Bittermann and Margaret McCallum, *Lady Landlords of Prince Edward Island: Imperial Dreams and the Defence of Property* (Montreal: McGill-Queen’s University Press, 2008); R.D. Collison Black, *Economic Thought and the Irish Question, 1817–1870* (Cambridge: Cambridge University Press, 2015); Guha, *A Rule of Property for Bengal*; Stokes, *The English Utilitarians and India*.

²⁸ Allan Greer, *Property and Dispossession: Natives, Empires and Land in Early Modern North America* (Cambridge, United Kingdom: Cambridge University Press, 2018), 23.

perspective.²⁹ In particular, two recent books (Allan Greer, *Property and Dispossession: Natives, Empires and Land in Early Modern North America*;³⁰ Brenna Bhandar, *Colonial Lives of Property: Law, Land, and Racial Regimes of Ownership*³¹) focus on a variety of property rights in land and their associated justificatory logics across multiple sites of different colonial empires. Greer uses the concept of “property formation” in the dispossession of Indigenous peoples in North America (Mexico, United States, and Canada) by the British, French, and Spanish empires during the sixteenth to eighteenth centuries to study the multiple processes through which they “laid claim to the continent’s resources, extended the reach of empire and established policies and jurisdictions for themselves.”³² Bhandar examines the dispossession of land by the British in South Australia, British Columbia, and Palestine in the nineteenth and twentieth centuries. She argues that while colonial governments used a variety of strategies (use, improvement, propertied abstractions, status) and tools (surveying, registration, enclosures) to justify dispossessions, eventually ideas about racial hierarchies were the common underlying narratives that took primacy in this exercise about institutionalizing property rights in the various colonies.³³

²⁹ One strand in this stream of research consists of edited volumes, where different chapters focus on individual colonial sites, and the editors attempt to find linkages and common threads in colonial thinking about land-related property rights, which are then accommodated in a unified framework. As examples, see John McLaren, A.R. Buck, and Nancy E. Wright, *Despotic Dominion: Property Rights in British Settler Societies* (Vancouver: UBC Press, 2005); A.R. Buck, John McLaren, and Nancy E. Wright, *Land and Freedom: Law, Property Rights and the British Diaspora* (Aldershot, UK: Ashgate, 2001).

³⁰ Greer, *Property and Dispossession*.

³¹ Brenna Bhandar, *Colonial Lives of Property: Law, Land, and Racial Regimes of Ownership* (Durham, NC: Duke University Press, 2018).

³² Greer, *Property and Dispossession*, 2.

³³ These studies continue the tradition of John Weaver, who also took a comparative approach to understand the dispossession and allocation of land by various colonial powers. See John C. Weaver, *The Great Land Rush and the Making of the Modern World, 1650–1900* (Montreal: McGill-Queen’s University Press, 2003). The comparative approaches of these books, as well as some of their arguments regarding dispossession and improvement, inform the current study.

These comparative studies foreground how various colonial empires used law, “regarded by the West as its most respected and cherished instrument of civilization,” as their “vital and effective instrument of power during [their] genocidal conquest and colonization of non-Western peoples...”³⁴ I use some of the justificatory logics of dispossession identified in these studies (for example, occupation and improvement) in developing my arguments. However, my study complements these in the sense that it focuses on reassignment and reconfiguration of property rights in land amongst existing landlords and cultivators, rather than dispossession of land of Native/Indigenous populations in various settler colonies, which was the concern of the above-discussed comparative studies. This choice of focus is based on two factors: first, in both Punjab and Ireland, the debate over land rights was not as much related to dispossession as to the recognition of relative rights between landlords and their tenants. Second, even in settler colonies (Prince Edward Island in my context) where land claims involved both Natives and settlers, as suggested by Philip Girard, individual property rights debates in the middle of the nineteenth century revolved around different groups of settlers, while the “First Nations lay outside this dialectic, as their property claims were seen as collective use rights to particular territories or natural resources.”³⁵

Another useful approach (comparative, but one based on analogies and influences) to understand the interconnections between legal regimes across the British Empire is the one used

³⁴ Robert A. Williams, *The American Indian in Western Legal Thought: The Discourses of Conquest* (New York: Oxford University Press, 1990), 6.

³⁵ Philip Girard, “Land Law, Liberalism, and the Agrarian Ideal: British North America, 1750–1920,” in *Despotic Dominion: Property Rights in British Settler Societies*, ed. John McLaren, A.R. Buck, and Nancy E. Wright (Vancouver: UBC Press, 2005), 122. Also see Ian Ross Robertson, “Introduction,” in *The Prince Edward Land Commission of 1860*, ed. Ian Ross Robertson (Fredericton, NB: Acadiensis Press, 1988), ix–xxx.

by S.B. Cook in *Imperial Affinities: Nineteenth Century Analogies between India and Ireland*.³⁶ In examining the analogies between the Irish Land Act of 1870 and the Bengal Tenancy Act of 1885, Cook states that there were “similarities in outlook, motive, method, policy and even, to a limited extent, practice between such very different and distant components of Empire as India and Ireland.... Ideas and procedures developed in one dependency were employed to influence the formulation of very similar ideas and procedures in another dependency.”³⁷ He further argues that the direction of analogies was from Ireland to India, as the “British had been in Ireland far longer than in India and, more to the point, because they generally had a greater knowledge of Ireland than of India.”³⁸

My study expands on this analogies approach to explore multi-directional influences between the three colonies. I argue that proponents of tenant rights (or peasant-proprietorship) were looking at any model they could find across the Empire and beyond that could be used to justify their respective positions and overcome the entrenched positions regarding existing landowners’ rights to property.³⁹ Examination of the debates around the laws in the three sites of interest will show the use of precedents and analogies on questions around property rights and land tenure relationships between the three colonies. The collective institutionalization of greater security of tenure for the cultivators of land in the three colonies subsequently influenced land tenure legislation across the Empire during the last decades of the nineteenth century and well into the twentieth century.

³⁶ Cook, *Imperial Affinities*.

³⁷ Cook, 17.

³⁸ Cook, 30.

³⁹ This is apparent in the debates around each of the laws of interest in this study, and will be elaborated upon in subsequent chapters.

The comparative approach of this study within the specific geographical contexts and the mid-nineteenth-century period also hopes to contribute to ongoing debates on the global logic of the British Empire and its underlying ideologies and institutions, in particular the cohesiveness, consistency, and universality of its overall ideology.⁴⁰ There are two strands of thought underlying contemporary debates on this. One view, falling under the rubric of post-colonial studies, with Edward Said's "Orientalism" as its intellectual foundation, argues that the development of legal and other institutions in the colonies was guided not only by a good governance imperative but also a need for political expediency to control and civilize the inferior non-Western and racially different colonial subjects.⁴¹ As articulated by Duncan Bell, "Victorian thinkers tended to divide the world into different imaginative spheres, each generating radically diverse sociological accounts and competing ethical claims. The most important divide separated the 'civilised' and the 'non-civilised' spheres ... and this bifocal, though fluid, conception of global order provided the theoretical foundations for justifying Empire."⁴² The alternative view contests the "othering" of racialized colonies, and instead sees the British Empire as being "at least as much about class as it was about race and gender, and at least as much about what we might call

⁴⁰ David Armitage, *The Ideological Origins of the British Empire* (Cambridge: Cambridge University Press, 2000); Duncan Bell, *Reordering the World: Essays on Liberalism and Empire* (Princeton, NJ: Princeton University Press, 2016); Jennifer Pitts, *A Turn to Empire: The Rise of Imperial Liberalism in Britain and France* (Princeton, NJ: Princeton University Press, 2005); Uday Singh Mehta, *Liberalism and Empire: A Study in Nineteenth-Century British Liberal Thought* (Chicago: University of Chicago Press, 1999); Sartori, *Liberalism in Empire*.

⁴¹ Edward W. Said, *Orientalism*, 1st ed. (New York: Vintage Books, 1979).

⁴² Bell, "Victorian Visions of Global Order," 9–10.

‘Saming,’ or the reproduction of affinities and similarities, as it was about Othering, or the production and reproduction of difference.”⁴³

Besides the debate around the “saming”/“othering” dichotomy in the ideologies and practices across the British Empire, another theme in its historiography relates to questions about continuity and discontinuity,⁴⁴ both in terms of its territorial expansion,⁴⁵ as well as its ideologies and associated institutions of governance. Regarding the latter, a number of scholars have suggested that various political events during the mid-Victorian period led to a conservative backlash against the universality of liberalism and utilitarianism, which in turn reinforced the ordering of the Empire based on a traditional/modern (or uncivilized/civilized) continuum of its various colonies.⁴⁶ For instance, Karuna Mantena argues that political events in the 1850s and

⁴³ Daniel I. O’Neill, *Edmund Burke and the Conservative Logic of Empire* (Oakland: University of California Press, 2016), 6. Also see David Cannadine, *Ornamentalism: How the British Saw Their Empire* (Oxford: Oxford University Press, 2001).

⁴⁴ John M. MacKenzie, “The British Empire: Ramshackle or Rampaging? A Historiographical Reflection,” *The Journal of Imperial and Commonwealth History* 43, no. 1 (2015): 99–124; Paul Kennedy, “Continuity and Discontinuity in British Imperialism 1815–1914,” in *British Imperialism in the Nineteenth Century*, ed. C.C. Eldridge (London: Macmillan, 1984), 20–38.

⁴⁵ On the question of imperial expansion, the influential article by Gallagher and Robinson (John Gallagher and Ronald Robinson, “The Imperialism of Free Trade,” *The Economic History Review* 6 [1953]: 1–15) challenging the traditional periodization of the nineteenth-century British Empire (that is, pre-1815 active colonization, 1815–1870 period of anti-imperialism or indifference, and the post-1870 new imperialism), has generated an active debate amongst historians regarding the turning-points in the expansion of the Empire and associated aspirations of and implications for free trade. This literature is too vast to be summarized here. For some indicative studies around this debate, see Kennedy, “Continuity and Discontinuity in British Imperialism 1815–1914”; Wm. Roger Louis, ed., *Imperialism: The Robinson and Gallagher Controversy* (New York: New Viewpoints, 1976); Hyam, *Britain’s Imperial Century, 1815–1914*; J.A. Hobson, *Imperialism: A Study* (London: G. Allen & Unwin Ltd., 1902).

⁴⁶ For example, see Shannon, *The Crisis of Imperialism, 1865–1915*; Karuna Mantena, “The Crisis of Liberal Imperialism,” in *Victorian Visions of Global Order: Empire and International Relations in Nineteenth-Century Political Thought*, ed. Duncan Bell (Cambridge: Cambridge University Press, 2007), 113–35; Bell, “Victorian Visions of Global Order: An Introduction”; Bell, *Reordering the World*; Hyam, *Britain’s Imperial Century, 1815–1914*.

1860s (for example, rebellions in India and Jamaica,⁴⁷ the Fenian uprising in Ireland, among others) led to a shift from a “universalist” to a “culturalist” stance in its governance ideologies: “Whereas earlier, reform-oriented, imperial ideologies conceived of native societies in need of radical reconstruction along Western lines, late imperial thinking questioned both the practicality and the theoretical underpinnings of such an interventionist agenda. In place of the universalist project of civilization, a new emphasis on deep-seated ‘cultural’ differences between peoples came to the fore.”⁴⁸

According to this view, the “culturalist” turn led to a retreat from Western ideas about property rights and political economy in the second half of the nineteenth century. In particular, the implications for land tenure were that these ideas were now seen to be only appropriate for colonies perceived to be socio-culturally similar to the metropole (that is, “civilized” and/or “white”) while in others, traditions and customs needed to be foregrounded (that is, “uncivilized” and/or “non-white”). The three sites of interest in my study span the spectrum of what these authors classify on the modernity and/or civilized continuum, and an evaluation of the debates around the pieces of legislation and their specific provisions allows for probing of the hypothesis (claim) regarding the disjuncture in the Empire’s ideology about land tenure as a consequence of the political challenges it faced in the middle of the nineteenth century. An argument probed in my study is that it was not the Western political economy and property rights theories per se which created problems for the Empire in certain colonies, as argued by Mantena

⁴⁷ Rande W. Kostal, *A Jurisprudence of Power: Victorian Empire and the Rule of Law* (Oxford: Oxford University Press, 2008).

⁴⁸ Mantena, *Alibis of Empire*, 1–2.

and others,⁴⁹ but how Western ideas about property rights could be accommodated within the various strands of political economy. I suggest that the turn to “customs” provided an additional tool to negotiate the sanctity of individual and absolute property rights questions head on, rather than being an indicator of the abandonment of political economy theories. In particular, the foregrounding of customs and customary rights during the debates on land tenure achieved dual objectives for proponents of peasant-proprietorship. One, it helped promote the emerging perspective on shared or relative rights of property and its implications for improvement of land by both landlords and tenants. Second, it allowed a decoupling of the land tenure issues from those in England, which were primarily based on contractual agreements, and may have tempered resistance to subsequent land tenure legislation in the colonies.

To reiterate, this study hopes to contribute to the debates around the governance of the British Empire in the middle of the nineteenth century when it faced numerous challenges across the three colonies, and during which land tenure laws were debated. Understanding imperial responses through imposition of similar laws across diverse colonies allows the possibility of understanding the multiple and interconnected concerns related to property rights, political economy, governance, among others. In the following section, I identify some methodological considerations relevant for the comparative legal history approach used in this study.

Methodological Considerations and Organization of the Study

A growing focus of scholarship on comparative aspects of law, with goals of understanding the historical antecedents of evolving legal systems across geographical, political, and socio-cultural contexts, has garnered renewed interest amongst scholars in the disciplines of

⁴⁹ For example, see Hyam, *Britain's Imperial Century, 1815-1914*.

law and history about appropriate methodological approaches needed to make this research more rigorous.⁵⁰ A review of this literature suggests that despite multiple efforts to classify the various comparative approaches and put these in an analytical framework, the diversity in the questions and contexts within this research tradition do not allow isomorphic mapping of approaches to methods. For instance, in his review article, Mark Van Hoecke identifies six methods (functional, structural, analytical, law in context, historical, and common-core) used in comparative legal research.⁵¹ Although he differentiates these on the basis of distinct research traditions, he concludes that the plurality of situations in which each method can apply, and the overlaps in the underlying assumptions, necessitate the use of multiple methods, and the research questions eventually determine the specific combinations of methods in a given study.⁵² However, this literature identifies some important aspects that need attention of scholars engaged in comparative research.⁵³

The first relates to the alignment of methodology with ontology: “Ontology is ultimately crucial to methodology because the appropriateness of a particular set of methods for a given problem turns on assumptions about the nature of causal relations they are meant to discover.”⁵⁴

⁵⁰ For example, see Anthony Musson and Chantal Stebbings, eds., *Making Legal History: Approaches and Methodologies* (Cambridge, England: Cambridge University Press, 2012); Oliver Moreteau, Anceto Masfesser, and Kjell A. Modeer, eds., *Comparative Legal History* (Northampton, MA: Edward Elgar Publishing, 2019); James Mahoney and Dietrich Rueschemeyer, eds., *Comparative Historical Analysis in the Social Sciences* (Cambridge: Cambridge University Press, 2003).

⁵¹ Mark Van Hoecke, “Methodology of Comparative Legal Research,” *Law and Method*, no. 12 (2015). Also see R. Blake Brown, “A Taxonomy of Methodological Approaches in Recent Canadian Legal History,” *Acadiensis* 34, no. 1 (2004): 145–55.

⁵² Van Hoecke, “Methodology of Comparative Legal Research.”

⁵³ For an overview of the pitfalls and rewards of comparative history research, see Philippa Levine, “Is Comparative History Possible?” *History and Theory* 53, no. October (2014): 331–47; David Ibbetson, “The Challenges of Comparative Legal History,” *Comparative Legal History* 1, no. 1 (May 15, 2013): 1–11.

⁵⁴ Peter A. Hall, “Aligning Ontology and Methodology in Comparative Research,” in *Comparative Historical Analysis in the Social Sciences*, ed. James Mahoney and Dietrich Rueschemeyer, 374.

Comparative historical research mostly entails an understanding of causal relationships through deeper analysis of the contexts, the multiple interactions of their various components, and probing how they influence the phenomenon of interest over time. Unlike the experimental (controlled) or empirical (large number of observations) methodologies, the ontology of a comparative historical method requires making sense of relationships from the available information and with small number of sites for comparison, or what is referred to as the “small-N” problem. The methodological concerns of a “small-N” in comparative historical research can be addressed through an in-depth process analysis of carefully chosen sites.⁵⁵

Thus, a second salient consideration is related to what is being compared. In this regard, literature points towards a need for greater attentiveness to the spatial framework of comparative legal history, justifying choices of contexts and consequences that are being compared, and ensuring that the contexts incorporate both similarities and differences to make causal deductions.⁵⁶ Relatedly, the temporal aspects need to be accounted for when “past legal entities that are being compared belong to quite different periods,” since such comparisons are more likely to identify structural differences rather than historical connections.⁵⁷

Third, a comparative historical method based on a few case studies is predicated on the availability of comparable sources which will allow deep analysis. In particular, for a legal historian, the choice of sources used for analysis becomes salient. On the one hand, research can examine the legal outcomes (“law in action”), which entails greater focus on the decisions about

⁵⁵ Mahoney and Rueschemeyer, *Comparative Historical Analysis in the Social Sciences*.

⁵⁶ Dag Michalsen, “Methodological Perspectives in Comparative Legal History: An Analytical Approach,” in *Comparative Legal History*, ed. Oliver Moreteau, Anceto Masfesser, and Kjell A. Modeer (Northampton, MA: Edward Elgar Publishing, 2019), 96–109.

⁵⁷ Michalsen, 100.

actual cases. Alternatively, the locus of attention can be “law in the books,” which involves an examination of codes, legislation, and so on.⁵⁸ The choice between these two (or the extent of relative emphasis) will depend on the objectives of the researcher. For instance, the former becomes more salient for a focus on reform-related questions, while the latter approach takes precedence when the researcher is interested in evaluating the contextual factors influencing the formation of particular legal doctrines or institutions. Furthermore, in a comparative research framework, the comparability of sources and the developmental stages of legal institutions across the contexts determines the level of analysis in the research methodology.⁵⁹

Keeping the above-described methodological considerations in mind, the current study pursues a comparative analysis of the *context* and *content* of the land tenure laws enacted in close temporal proximity but across three diverse colonies of the British Empire.⁶⁰ This entails studying the historical context of the Empire and the three colonies of interest, as well as the theoretical context related to broader thinking of property rights and political economy during the time. The process of enacting new land tenure laws in the three colonies and their content are subsequently evaluated in light of the historical and theoretical contexts.

⁵⁸ David Ibbetson, “Comparative Legal History: A Methodology,” in *Making Legal History: Approaches and Methodologies*, ed. Anthony Musson and Chantal Stebbings (Cambridge: Cambridge University Press, 2012), 131–45; Michalsen, “Methodological Perspectives in Comparative Legal History.”

⁵⁹ Hoecke, “Methodology of Comparative Legal Research”; Michalsen, “Methodological Perspectives in Comparative Legal History”

⁶⁰ In terms of terminology, this study considers a British ‘colony’ in a broad sense of being subject to British rule. Thus, although Punjab was a province in British India, rather than a separate colony, it is considered a distinct colonial site for the purpose of this study because a separate land law was being contemplated for Punjab which was quite different from some of the land tenure arrangements in other provinces of British India (India came under direct rule of the Crown in 1858). As described later in this chapter, there are also different opinions about whether Ireland after the 1800 Act of Union should be considered a British colony. The approach taken in the current study is that it is also a site of British imperial control, and thus can be considered another colonial site. Colonies and colonial sites are used interchangeably in this study.

The following section in this chapter places the three colonial sites within the context of the Empire's consolidation and evolution, and the global and local challenges it was experiencing in the middle of the nineteenth century. The overall goal of this exercise is to foreground similarities and differences between the three colonies and identify relevant characteristics which likely influenced debates on the specificities of security of tenure in the respective pieces of legislation. Complementing the historical context outlined in this chapter is the theoretical context within which debates around land tenure were conducted across the Empire. In Chapter 2, I identify the various threads and evolving ideas amongst political theorists and political economists during the nineteenth century around the antecedents and implications of assignment of rights of property and security of tenure in land tenure arrangements in the colonies. I also discuss the political concerns about the assignment of these rights to either the landowners or the peasants. My main argument in this chapter is that the development of new thinking and re-evaluation of existing ideas on property rights and political economy led to competing perspectives that could support the assignment to and/or recognition of rights of both landlords and tenants. The challenge in each colony was to find ways to resolve and/or reconcile the competing arguments at the three levels of analysis.

In Chapters 3, 4, and 5, I use the historical context developed in this chapter and the analytical framework of Chapter 2 to examine how the global imperatives of the Empire interacted with local conditions in the individual colonies to shape the specific provisions of the land tenure laws. However, before focusing on the specific laws, in each chapter, I discuss the antecedents to the land tenure legislation being contemplated. These include the pre-existing land tenure arrangements, various contestations regarding their reconfiguration, and different

forms of agency promoting or resisting the institutionalization of security of tenure. I foreground the use of various analogies and precedents in discussions and debates leading to the specific laws. In these chapters, I rely on the existing historiography related to the respective land laws of the three colonies, and supplement this with additional archival materials (some of which have not been analyzed in the existing literature). These include correspondence between colonial officials in the three sites and respective counterparts in England, the legislative and public debates and documents in individual sites around these laws, and the numerous biographies and memoirs of people involved in the debates (these include colonial administrators and local protagonists, among others). An understanding of local reactions to and interventions in the discussion leading to the laws also entailed an examination of local media reports in the colonies, reports and petitions by groups of landlords and tenants, as well as public reactions and responses in the British press.

In Chapter 6, I compare various aspects of property rights institutionalized in the three colonies (including rights of landlords and tenants, land alienation, rent, inheritance, etc.) and evaluate the extent of security of tenure granted to landlords and tenants, and the form it takes in its implementation. Although some attention is paid to the workings of tenure relationships after the laws came into effect, the main focus of analysis would be to reiterate the similarities and differences in the relative proprietary rights legislated in the three colonies and evaluate their implications for subsequent land laws across the British Empire by the end of the nineteenth century.

Historical Context: Empire and Its Colonies in the Middle of the Nineteenth Century

Why ... are colonies desirable? In my opinion ... they are desirable both for the material and for the moral and social results which a wise system of colonisation is calculated to produce. As to the first, the effect of colonisation undoubtedly is to increase the trade and employment of the mother country.... But I do not concede that the material benefit of colonies is the only consideration which we are able to plead.... We think that ours is a country blessed with laws and a constitution that are eminently beneficial to mankind, and if so, what can be more to be desired than that we should have the means of reproducing in different portions of the globe something as like as may be to that country which we honour and revere?⁶¹

The above quotation from an address by William Gladstone titled “Our Colonies” delivered in 1855, more than a decade before he would lead the Liberal Party to power in Britain, encapsulates the guiding principles of governing the expanding Empire during the first half of the nineteenth century, one predicated on liberalism and the universality of England’s economic and political institutions.⁶² On the domestic front, the 1850s and 1860s were seen as an “age of equipoise,” characterized by a general optimism because of political and social stability and economic affluence.⁶³ However, global events during this time period within and outside the Empire disrupted the equipoise and created “widespread anxieties over Britain’s place in the world.”⁶⁴ In particular, challenges to British rule in India (the rebellion of 1857, the Blue Mutiny

⁶¹ William E. Gladstone, “‘Our Colonies.’ An Address Delivered to the Members of the Mechanics’ Institute, November 12, 1855” (London: John W. Parker and Son, West Strand, 1855).

⁶² There is a large and growing literature examining the various strands of liberalism associated with colonial ideologies and practices and how liberalism was the guiding political theory of the British Empire during the first half of the nineteenth century. My objective is not to intervene in these debates, but primarily to place the three sites within a generally accepted aim of liberalism, that is, good governance based on the institutions of the metropole. Some specific aspects of liberalism on property rights are discussed in a little more detail in Chapter 2. For more expanded discussion of the debates around liberalism, see Mehta, *Liberalism and Empire*; Pitts, *A Turn to Empire*; Sartori, *Liberalism in Empire*.

⁶³ Bell, “Victorian Visions of Global Order.”

⁶⁴ Bell, 7. Events external to the Empire included the conflict with Russia and the Crimean War, rising competition from the United States especially with respect to the sphere of influence in South America, and the continuing contest with China after the Opium War. See Hyam, *Britain’s Imperial Century, 1815-1914*.

in 1859), New Zealand (the Maori War in 1860), Jamaica (the Morant Bay rebellion in 1865), as well as in Ceylon and Hong Kong, led to debates about the economic costs and benefits to England of its vast imperial network.⁶⁵ More importantly, there were questions about the appropriateness of introducing Western institutions in the colonies: one argument being that these colonies were not yet ready for or receptive to the “civilizing mission” of liberalism; while other arguments suggested that the colonial institutions had disturbed the traditional socio-political hierarchies, thus creating political instability for the Empire.⁶⁶ As mentioned earlier in the chapter, there was a movement to reject the “universalist” governance ideology that was dominant in the first half of the nineteenth century across the Empire and return to the eighteenth-century “culturalist” approach that was attentive to local customs and traditions. For the governance of land, this entailed a return to privileging the interests of landlords and a retreat from peasant-proprietorship.⁶⁷

Thus, when the first Gladstone government took power in 1868, it was confronted with competing pressures around colonial land tenures: on the one side, there was a pro-aristocratic bias which wanted to reaffirm the absolute rights of landlords in order to placate them in the interests of the Empire’s stability. On the other side, the government’s liberal leanings saw the betterment of the peasant-cultivators (especially in the case of Ireland for which the British government was directly responsible) as being more compatible with its overall ideology.⁶⁸ It was under these conditions that the Liberal government dealt with the different pieces of legislation

⁶⁵ Shannon, *The Crisis of Imperialism, 1865–1915*.

⁶⁶ Mantena, “The Crisis of Liberal Imperialism”; C.C. Eldridge, *British Imperialism in the Nineteenth Century* (London: Macmillan, 1984).

⁶⁷ Mantena, *Alibis of Empire*; Hyam, *Britain’s Imperial Century, 1815–1914*.

⁶⁸ Hyam, *Britain’s Imperial Century, 1815–1914*.

being contemplated during the 1868–1875 period.⁶⁹ I briefly discuss the nineteenth-century historical context of the three colonies leading to the time period of this study as it relates broadly to their governance, and more specifically to land tenure.⁷⁰

Out of the three sites of interest, Punjab was the last to come under colonial rule, being annexed by the East India Company in 1849, and governed as a separate province. Given that it was part of the overall British India colonial administrative structure, its governance and land-system post-annexation need to be understood in the context of broader institutions put in place for India by the East India Company. The company, which was granted a charter to trade in 1600, had gained a firm foothold in the eastern part of India after the Battle of Plassey in 1757, and soon thereafter was granted the rights to collect land revenues in Bengal by the Mughal emperor. As the company was increasing its presence in India, there were concerns about the conduct of its officers, both in terms of excesses committed in dealing with the native classes and the machinations through which company officials had amassed tremendous wealth using various nefarious means.⁷¹ In order to mitigate the company's excesses and enhance its accountability, the East India Company's rule in India was brought under the British government's oversight through a series of acts (for example, the Regulating Act of 1773, Pitt's India Act of 1784).⁷²

⁶⁹ Mary E. Daly and K. Theodore Hoppen, eds., *Gladstone: Ireland and Beyond* (Dublin: Four Courts Press, 2011).

⁷⁰ The objective here is to provide a basic comparison of the three sites of interest. A greater elaboration of each site is subsequently provided in the respective chapter (Chapters 3, 4 and 5).

⁷¹ For details about the various accusations against company officials in different provinces in India, including two governor generals and their impeachment trials in the British Parliament, see Nicholas B. Dirks, *The Scandal of Empire: India and the Creation of Imperial Britain* (Cambridge, Mass: Belknap Press of Harvard University Press, 2006); Jim Phillips, "Parliament and Southern India, 1781-3: The Secret Committee of Inquiry and the Prosecution of Sir Thomas Rumbold," *Parliamentary History* 7, no. 1 (1988): 81–97; .

⁷² For details about early administration in India, see Mithi Mukherjee, *India in the Shadows of Empire: A Legal and Political History (1774–1950)* (New Delhi: Oxford University Press, 2009); H.H. Dodwell, ed., *The*

The consolidation of England's political authority via the East India Company over large parts of India led to discussions about appropriate institutions needed to effectively govern the colony and its people.⁷³ The debate revolved around whether the indirect rule put in place in Bengal in the 1770s, which relied on the existing native institutions and administrative structures to govern the colony, should be continued. The alternative was a more direct rule entailing the anglicization of the Indian administration through Western institutions and Western-trained bureaucracy.⁷⁴ The latter view became dominant in the early part of the nineteenth century and numerous institutions were introduced in the colony. In particular, William Bentinck, governor general from 1828 to 1835, is credited with introducing reforms that combined "laissez-faire economics, a utilitarian emphasis on good laws and administration, and a middle-class concern for representative institutions and civil liberties."⁷⁵ These reforms were anchored in the ethical and moral considerations derived from liberal and utilitarian ideas taking shape during that time.⁷⁶ While transplanting of institutions from England for the sake of "good government" in the

Cambridge History of India. Volume VI: The Indian Empire 1858–1918 (Cambridge: Cambridge University Press, 1932); Dirks, *The Scandal of Empire*.

⁷³ In his famous speech in the House of Lords, Lord Grenville rhetorically posed the question: "Must we not, in the first instance, consult the Welfare of the Country for which we undertake to legislate? Are we not bound, above all other considerations, to provide for the Moral improvement of its people, and for their social Happiness ... and the impartial administration of their Laws?" William Wyndham Grenville, *Substance of the Speech of Lord Grenville on the Motion Made by the Marquis Wellesley, in the House of Lords, on Friday, the 9th of April, 1813, for the Production of Certain Papers on Indian Affairs* (London: Printed by C. H. Reynell, 1813), 11–12.

⁷⁴ The East India College in Haileybury, England, was established in 1806 to train young British administrators who joined the Bengal Civil Service and eventually the Indian Civil Service. For details about early administration of the East India Company and the ideological bases behind administrative reforms, see Stokes, *The English Utilitarians and India*; Dirks, *The Scandal of Empire*; Dodwell, *The Cambridge History of India. Volume VI: The Indian Empire 1858–1918*.

⁷⁵ George D. Bearce, "Lord William Bentinck: The Application of Liberalism to India," *The Journal of Modern History* 28, no. 3 (1956): 234–46, 234.

⁷⁶ Stokes, *The English Utilitarians and India*; Alan Ryan, *The Making of Modern Liberalism* (Princeton, NJ: Princeton University Press, 2012); Pitts, *A Turn to Empire*.

colony overcame some of the “precarious and illegitimate beginnings of empire in India,”⁷⁷ these did not incorporate the fundamental prescriptions of political thought grounded in universal and democratic principles related to equal rights and liberties and representative government, aptly captured by Henry Maine’s observation about British rule in India being a “most extraordinary experiment involving the virtually despotic government of a dependency by a free people.”⁷⁸

How was the partial compliance to universal principles of liberalism to be justified?⁷⁹

This fell on political theorists such as J.S. Mill, who was instrumental in creating boundaries based on racial inferiority of colonial subjects, and thus justifying their exclusion from benefits of liberty and representative government: “Despotism is a legitimate mode of government in dealing with barbarians, provided the end be their improvement, and the means justified by actually effecting that end....”⁸⁰ The first half of the nineteenth century thus saw the dual strategies of introducing certain Western institutions in India (including those related to law, education, administration) under the guise of good government and the Empire’s civilizing mission, but at the same time providing ethical justifications of the Empire, especially related to restricted participation of natives in some of these very institutions.

The land tenure system in India also evolved from the eighteenth to the nineteenth century. The initial system instituted in Bengal (that is, the Permanent Settlement of 1793)

⁷⁷ Bell, “Victorian Visions of Global Order: An Introduction,” 118.

⁷⁸ Quoted in Mantena, “The Crisis of Liberal Imperialism,” 114.

⁷⁹ As suggested by Mehta in his influential book on liberalism and empire, “The universalistic reach of liberalism derives from the capacities that it identifies with human nature and from the presumption, which it encourages, that these capacities are sufficient and not merely necessary for an individual’s political inclusion.... However, concealed behind the endorsement of their universal capacities are the specific cultural and psychological conditions that are woven in as preconditions for the actualization of these capacities.” Mehta, *Liberalism and Empire*, 49.

⁸⁰ John Stuart Mill et al., *Utilitarianism: And, On Liberty: Including Mill’s Essay on Bentham, and Selections from the Writings of Jeremy Bentham and John Austin*, 2nd ed. (Malden, MA: Blackwell Publishing, 2003).

privileged the landlords (*zamindars*), fixed their revenue obligations in perpetuity, and gave them almost a free hand in determining and collecting rent from the peasant cultivators.⁸¹ The early nineteenth-century governance ideology of more direct rule necessitated greater contact with the mass of cultivators, and thus the *ryotwari* system was introduced in the southern provinces, whereby the government assessed and collected revenue directly from the actual cultivators of the land.⁸² The primary objective of early land systems introduced by the East India Company was to maximize land revenues which provided the main source of income for the state under native rulers, and the task of whose collection had now been entrusted to the British.⁸³ The land tenure system and the associated proprietary rights were seen as supporting the revenue collection. Furthermore, the choice of land tenure system applied was more a function of the ideological leanings of the colonial administrator in charge at the particular time and place, rather than a careful evaluation of pre-existing structures of land rights, which were not documented and difficult to understand. As suggested by Tirthankar Roy and Anand V. Swamy, the East India Company “chose to define new rights, while proclaiming its intention to not undermine rights already in existence. But there was a contradiction here: if existing rights were not known and identified, how could one know whether or not they were consistent with the new rights being defined? This ambiguity fueled more than a century of political struggle, legislation and court

⁸¹ Guha, *A Rule of Property for Bengal*.

⁸² Given that the state considered itself as the ultimate owner of all land, in effect what these two systems did was to acknowledge implicit proprietary rights to the entity on whom the land revenue was assessed and collected. Tirthankar Roy and Anand V. Swamy, *Law and the Economy in Colonial India* (Chicago: The University of Chicago Press, 2016).

⁸³ Jim Phillips, “A Successor to the Moguls: The Nawab of the Carnatic and the East India Company, 1763-1785,” *The International History Review* 7, no. 3 (1985): 364–89; B. H. Baden-Powell, *The Land Systems of British India, Volume I* (Oxford: Clarendon Press, 1892).

disputes.”⁸⁴ When Punjab was annexed in 1849, the prevalent system of administration under the East India Company at that time was introduced in the province and initial land tenure settlement was based more on the *ryotwari* model and proprietary rights for the actual cultivators of land.

The political environment changed a few years later, with the uprising against colonial rule in 1857 that spread throughout the country and threatened the survival of the Empire in India.⁸⁵ A major structural change in the governance of India after the uprising was its formal transfer from the East India Company to the British Crown in 1858. The rebellion also raised “troubling questions about how far the ‘blessings’ of British rule, and liberal reform with it, were appreciated by those upon whom they were conferred.”⁸⁶ As pointed out by a number of historians, there was a “conservative” turn in the governance ideology of the Empire, which manifested itself in a return to re-emphasizing the traditional native socio-political hierarchies,⁸⁷ and included the privileging of the landed aristocracy.⁸⁸

Discussions on revisiting land tenure in Punjab in the early 1860s, leading to the Tenancy Act of 1868, thus transpired in the following context. Administratively, the province was put under a Lieutenant-Governor. However, the provincial administration did not get any legislative

⁸⁴ Roy and Swamy, *Law and the Economy in Colonial India*, 52.

⁸⁵ For the psychological impact of the mutiny on the Empire and its persistence well into the twentieth century, see Kim Wagner, *Amritsar 1919: An Empire of Fear and the Making of a Massacre* (New Haven, CT: Yale University Press, 2019).

⁸⁶ Thomas R. Metcalf, *Ideologies of the Raj*, vol. 3, part 4 of *The New Cambridge History of India* (Cambridge: Cambridge University Press, 1995), 43.

⁸⁷ Mantena, *Alibis of Empire*; S. Gopal, *British Policy in India, 1858–1905* (Cambridge: Cambridge University Press, 1965); Hyam, *Britain’s Imperial Century, 1815–1914: A Study of Imperial Expansion*.

⁸⁸ Thomas R. Metcalf, “The Influence of the Mutiny of 1857 on Land Policy in India,” *The Historical Journal* 4, no. 2 (1961): 152–63.

authority, which rested with the Governor-General of India and his Council.⁸⁹ The Council (often referred to as the “Supreme Government”) did not have any Indian members during this period. In terms of the governance ideology, this was a period of a conservative turn within British India when it was reconsidering the appropriateness of furthering peasant-proprietorship in the colony.⁹⁰ However, the political expediency logic guiding a return to traditional local hierarchies as a basis of overall governance and a tilt towards landlordism was not as critical in Punjab because the nature of its involvement in the 1857 rebellion. First, no socio-economic group had actively participated in the uprising against colonial rule. In fact, the province had supported the British in defeating the uprising.⁹¹ In evaluating the reasons for the relative calm in Punjab during the uprising, the official report credited it with good overall governance and most specifically its land tenure policies: “[T]he land tax was light; there was no particular grievance to complain of in our revenue system; the tenures had been fairly adjusted; there was no class among the landholders and cultivators ... who had suffered by British rule...”⁹² Second, data about land ownership in the province during that period point towards a landowning class with relatively small land holdings compared to the great landlords or *zamindars* in other provinces, in particular

⁸⁹ Only the presidencies with full governorship (Madras and Bombay) and the Bengal province (because of the legacy of local administration being the first to come under the East India Company) had freedom to legislate for the respective province.

⁹⁰ Eric Stokes, *The Peasant and the Raj: Studies in Agrarian Society and Peasant Rebellion in Colonial India* (Cambridge: Cambridge University Press, 1978).

⁹¹ Ian Talbot, *Punjab and the Raj 1849–1947* (Delhi: Manohar, 1988).

⁹² “A Copy of General Report on the Administration of the Punjab Territories, for the Years 1856–7 and 1857–8” (India Office, Ordered to be Printed by the House of Commons, April 11, 1859), 16, House of Commons Parliamentary Papers Online.

Bengal and Oudh (Awadh).⁹³ A combination of these factors played an important role in the debates around the Punjab Tenancy Act of 1868 and the specific provisions of the act.

Prince Edward Island (or PEI),⁹⁴ the second site of interest, became part of the British Empire after it was ceded by France to England at the conclusion of the Seven Years' War and the 1763 Treaty of Paris.⁹⁵ However, unlike in Bengal, where the East India Company got the rights to collect revenue from land that was already in use, and inherited a land tenure system of pre-existing relationships between landlords and cultivators, British rule on the island started with a clean slate as the indigenous population had already been dispossessed of their land and most of the Acadian population expelled from the island.⁹⁶ The island was divided into sixty-seven lots of 20,000 acres each, and sixty-six of these were distributed through a lottery in London on July 23, 1767, to individuals or groups who were "leading political or military figures, or merchants with already established interests in the region."⁹⁷

The creation of landlords with large holdings in the colony would remain a source of political contestation for more than a hundred years, until the Land Purchase Act of 1875, whereby landlords were mandated to sell their holdings beyond 500 acres to the government,

⁹³ See Table 1.1 at the end of the chapter. As will be discussed in Chapter 3, the rent-free grants of large tracts of land to *jageerdars* (or local chiefs) that were the norm during Sikh rule were slowly abolished after the British annexation of Punjab, partly because a large number of these chiefs had fought against the British during the Anglo-Sikh wars. See Frederick P. Gibbon, *The Lawrences of the Punjab* (London: J.M. Dent, 1908). Given that most of the colonial documents refer to the province as the anglicized 'Oudh' rather than the native 'Awadh', I use the former for the sake of convenience.

⁹⁴ Known as the "Island of St. John" until 1799. The island was initially attached to Nova Scotia, but became a separate colony of the British in 1769, which it remained as such until 1873 when it joined the Canadian Confederation.

⁹⁵ D.H. Murdoch, "Land Policy in the Eighteenth-Century British Empire: The Sale of Crown Lands in the Ceded Islands, 1763–1783," *The Historical Journal* 27, no. 3 (1984): 549–74.

⁹⁶ Girard, Phillips, and Brown, *A History of Law in Canada*, chap. 13.

⁹⁷ Ian Ross Robertson, *The Tenant League of Prince Edward Island, 1864–1867: Leasehold Tenure in the New World* (Toronto: University of Toronto Press, 1996), 13.

which would in turn convert the land into freehold tenures for the cultivators (tenants) in the colony.⁹⁸ I will examine, in more detail, the debates around the passage of the 1875 act (as well as the Tenants' Compensation Act of 1872) and numerous attempts to curb landlordism during the first half of the nineteenth century in Chapter 5. Here I briefly outline the administrative and socio-political context in PEI that would shape these debates on property rights of landlords and tenants.⁹⁹

Unlike in India where much of administrative structure for most of the nineteenth century consisted of colonial officials, Prince Edward Island's governance had included white settlers since its inception as a British colony. This participation took the form of appointed and elected councils and assemblies, whose legislative and executive powers grew over the years, especially after PEI was granted Responsible Government in 1851. However, any law passed by the local legislature that was related to property needed approval (Royal Assent) from the Colonial Office in London (consisting of the Secretary of State for the Colonies, advised by an appointed Council).¹⁰⁰ The implication of this system of governance was that, on the one hand, PEI got

⁹⁸ These revolved around the failure of landlords to fulfill the two conditions of quit rents and settlements, availability of land for the islands' development, absentee landlords, and the broader distributive goals. See Rusty Bittermann and Margaret McCallum, "The Pursuit of Gentility in an Age of Revolution: The Family of Jonathan Worrell," *Acadiensis* 43, no. 2 (2014): 31–56; Rusty Bittermann, *Rural Protest on Prince Edward Island: From British Colonization to the Escheat Movement* (Toronto: University of Toronto Press, 2006); Matthew G. Hatvany, "Tenant, Landlord and Historian: A Thematic Review of the 'Polarization' Process in the Writing of 19th-Century Prince Edward Island History," *Acadiensis* 27, no. 1 (1997): 109–32; J.M. Bumsted, *Land, Settlement, and Politics on Eighteenth-Century Prince Edward Island* (Montreal: McGill-Queen's Press, 1987).

⁹⁹ For a general political history of the island, see Bumsted, *Land, Settlement, and Politics on Eighteenth-Century Prince Edward Island*; Robertson, *The Tenant League of Prince Edward Island, 1864-1867*; Brendan O'Grady, *Exiles and Islanders: The Irish Settlers of Prince Edward Island* (Montreal: McGill-Queen's Press, 2004).

¹⁰⁰ J.C. Beaglehole, "The Colonial Office, 1782–1854," *Australian Historical Studies* 1, no. 3 (1941): 170–89; James A. Gibson, "The Colonial Office View of Canadian Federation, 1856–1868," *The Canadian Historical Review* 35, no. 4 (1954): 279–313.

greater political autonomy since it was composed of people with similar civilizations as that of England, and thus, according to J.S. Mill, were “capable of, and ripe for, representative government.”¹⁰¹ In practical terms, however, this political autonomy was constrained because the ultimate authority resided in the Crown-appointed governors and the London-based Secretary of State, who was also part of the British cabinet. Thus, despite an “egalitarian agrarian vision”¹⁰² in the colony during the nineteenth century, the landlords were able to exercise their influence in England to thwart any abrogation of their rights to property.

Besides considerations around political autonomy of the colony within the British Empire, a few local and regional aspects would also play salient roles on the land question. First, the socio-economic structure in the province by the middle of the nineteenth century was stratified along religious lines, especially with increased immigration from Ireland. In particular, while landlords were primarily Protestant, more and more tenant settlers were Roman Catholics.¹⁰³ The subsequent tenant rights movement in this polarized climate of Prince Edward Island paralleled events in Ireland during that time, where the Irish Catholic tenants were fighting for fixity of tenure, fair rents, and free sale from the Protestant Anglo-Irish landlords.¹⁰⁴ In addition to the influence of events in Ireland, there was pressure on PEI to resolve the land question in the 1860s

¹⁰¹ Cited in Bell, *Reordering the World*, 108.

¹⁰² Rusty Bittermann and Margaret McCallum, “When Private Rights Become Public Wrongs: Property and the State in Prince Edward Island in the 1830s,” in *Despotic Dominion: Property Rights in British Settler Colonies*, ed. John McLaren, A. R. Buck, and Nancy E. Wright (Vancouver: UBC Press, 2005), 146.

¹⁰³ According to the 1871 census, about 40% of the island population consisted of Roman Catholics. See Abstracts of the Returns of the Population of P.E. Island, 1871 in “Journal of the House of Assembly of Prince Edward Island, 1872” (Charlottetown: Thomas Reilly, 1872).

¹⁰⁴ Robertson sees parallels in the “Tenant Leagues” of the 1860s in Ireland and PEI. See Robertson, *The Tenant League of Prince Edward Island, 1864–1867*. There is also some suggestion that the Irish nationalist Fenian movement active in the United States and Ireland had influence in PEI. See Edward MacDonald, “Who’s Afraid of the Fenians? The Fenian Scare on Prince Edward Island, 1865–1867,” *Acadiensis* 38, no. 1 (2009): 33–51.

in light of talks about the Confederation of British North American colonies, all of which had moved primarily towards freehold tenures.¹⁰⁵

Unlike the two sites of interest discussed above, where there is a general agreement about the historical period of “colonial” rule, there is debate amongst historians whether Ireland should be considered as a “colony” of the Empire or as a “kingdom” within the British monarchy, given the long and complex history of England’s engagement with Ireland going back to the Middle Ages.¹⁰⁶ Without getting into these debates, and because of the difficulty of analyzing centuries’ long history of England’s control of Ireland, including land relations, I focus my discussion just on the nineteenth century.¹⁰⁷ Besides the above-mentioned practicality, this choice is also appropriate from an analytical perspective for two reasons. First, it establishes temporal similarity with the other two sites of interest. Second, through the Act of Union in 1800, Ireland was brought under the British Kingdom, the Irish Parliament was abolished, and henceforth Ireland had representation in the British Parliament. The Protestant Ascendancy, consisting of Anglo-Irish landlords who had dominated the political and economic landscape of Ireland, was placated with jobs and patronage in various parts of the British Empire.¹⁰⁸ This legislative union, along with the amalgamation of the exchequers in 1817, was the beginning of a new phase for Ireland within the Empire.¹⁰⁹ However, this new union did not make the “Irish problem” go away, as England had to deal with the political movement for home rule that

¹⁰⁵ Bittermann and McCallum, “The Pursuit of Gentility in an Age of Revolution.”

¹⁰⁶ For an extended discussion, see Chapter 4 of O’Neill, *Edmund Burke and the Conservative Logic of Empire*.

¹⁰⁷ For a broad overview of land tenure in Ireland over its long history, see William Ernest Montgomery, *The History of Land Tenure in Ireland* (Cambridge: At The University Press, 1889).

¹⁰⁸ Bayly, “Ireland, India and the Empire.”

¹⁰⁹ Black, *Economic Thought and the Irish Question, 1817–1870*.

crystalized in the nineteenth century, and more pertinent to my study, it now had to find a solution to the agrarian situation in the colony. In his influential book published in 1848, William Thornton aptly captured the conditions of the vast number of peasants in Ireland:

Ireland is one of the few countries in which there neither are, nor ever were, peasant properties. From the earliest appropriation of the soil, down to the present day, estates have always been of considerable size, and though these estates are now cut up into many small holdings, the actual occupiers of the soil, far from being landowners, are not even leaseholders, but are rackrented tenants at will. In this single phrase may be found a complete explanation of all evils of their condition, and all the defects of their character.¹¹⁰

Poor economic conditions of the peasantry were due to a number of historical and structural factors.¹¹¹ First, the dominance of England and the sectarian differences meant a religion-based class hierarchy, with most landlords being Anglo-Irish Protestants, while tenants were predominantly Roman Catholic, “who, up to 1838, had to pay tithes for the Established Church of Ireland while their own clergy depended entirely on voluntary contributions.”¹¹² Second, unlike in England (and to some extent in the Ulster province in Northern Ireland where tenant-right of compensation existed in practice if not in law), where landlords would invest in the improvement of the land that was leased to tenants, the onus of improvement, such as building wells, roads, and sheds, fell on the tenants. However, tenants did not have the security

¹¹⁰ Thornton, *A Plea for Peasant Proprietors*, 187. Besides being a political economist, Thornton served in the East India Company in the early 1850s, advising the governor general of India on infrastructure development. In 1858, he served as the first secretary in the newly formed India Office in London. Rack-rent is an extortionate or very high rent, the maximum that can be obtained. Tenants at will usually include yearly tenancies, or those which do not have any rights to continued occupation arising either from custom/status or contractual leases.

¹¹¹ Some of the reasons are captured in a tenant family’s chronicles: “We the Catholic majority in Ireland, had for years been treated as second class citizens by the authorities and sadly this was the case during most of my lifetime. This was most evident during the calamitous famine years when the government hardly lifted a finger to help our beleaguered Nation.” Terence Casey, *The Tenant’s Tale: A Chronicle of Life in Rural Ireland during the 19th Century* (Berks, UK: Domlan Scott Ltd., 2013), 83.

¹¹² Black, *Economic Thought and the Irish Question, 1817-1870*, 9.

of tenure, and no provisions for compensation for improvement at the end of their short leases. A third factor, and one that exacerbated the above-mentioned conditions, was the rapid increase of the Irish population. This meant not only immense competition for leasehold land that strengthened the power of landlords but also dire economic consequences for crop failure, such as the one experienced in 1846. Mass emigration during the post-1846 period, when more than a million people from Ireland migrated to North America, somewhat eased the population pressure. The economic conditions of the Irish peasantry in the middle of the nineteenth century, and the potential political fallout from their conditions along with other Irish grievances (on matters such as political representation and religious issues), made agrarian reforms in Ireland of critical importance for the stability of colonial rule in Ireland.¹¹³

However, similar to the other two colonial sites, any security of tenure for the peasants or tenants had to come at the expense of some absolute rights of property of the landlords. In the case of Ireland, the landlords were in a stronger position to resist encroachment to these rights. As discussed above, Punjab and Prince Edward Island fell on the opposite ends of the liberal imagination of the “civilized” continuum,¹¹⁴ which was reflected in the degree of political autonomy granted by the Empire to each. Ireland fell somewhere in between the two.¹¹⁵ For

¹¹³ Matthew Kelly, “Irish Nationalist Opinion and the British Empire in the 1850s and 1860s,” *Past & Present*, no. 204 (2009): 127–54; Henry A. Brann, *Gladstone and Irish Grievance. An Essay*. (New York: Benj. H. Tyrrel, 1881); E.D. Steele, “Gladstone and Ireland,” *Irish Historical Studies* 17, no. 65 (1970): 58–88; Black, *Economic Thought and the Irish Question, 1817–1870*.

¹¹⁴ See J.S. Mill’s views in India and settler colonies discussed above.

¹¹⁵ Because of the majority Catholic population in Ireland as well as its poor economic conditions relative to the population in England, the Irish were considered to be an inferior race, “not quite white.” For a fuller elaboration of this construction of racial inferiority of the Irish during the nineteenth century, see Kevin Kenny, “Race, Violence, and Anti-Irish Sentiment in the Nineteenth Century,” in *Making the Irish American: History and Heritage of the Irish in the United States*, ed. J.J. Lee and Marion R. Casey (New York: New York University Press, 2006), 364–80; Eagan, “‘White,’ If ‘Not Quite.’”

example, J.S. Mill, who was closely involved in the mid-nineteenth-century land question in Ireland, was much more sympathetic to the plight of Irish peasants than those from India.¹¹⁶ Yet the “Irish still remained subordinate in [his] imperial topography; his sympathy did not translate into granting them civilizational equality.”¹¹⁷ Thus, although Ireland had political representation in the British Parliament, which had the authority to pass laws for the colony, the vast majority of representatives came from the class of Anglo-Irish landlords, rather than the peasantry.

The historical context of the Empire as well as the three colonies during the period of interest can be summarized as follows: The Liberal government of William Gladstone, with greater sympathies towards peasant-proprietorship, was at the helm in England, and was theoretically the final authority on any legislation across its colonies. In terms of land tenure, the common problem for the Empire in each of these sites was the need to provide security of tenure for tenants/peasants, who were a large proportion of the total population in each colony, and whose material well-being was perceived to have important economic and political implications. However, tenants’ security of tenure needed to be balanced with the landlords’ rights to property. While this conundrum was common in the three colonies, their differences along the following aspects influenced how it was resolved through the different pieces of legislation: the *perceived similarity of each colony with the metropole* on grounds of religion, race, or “civilized continuum”; the *degree of ambiguity about existing land related property rights*; and the *power and influence of landlords* in promoting their interests locally as well as in the metropole. I probe how these structural differences between the colonies, along with the theoretical context

¹¹⁶ Pitts, *A Turn to Empire*.

¹¹⁷ Bell, *Reordering the World*, 228.

discussed in the next chapter, eventually shaped the extent and form that security of tenure would take across the Empire. A snapshot of some basic characteristics of the three colonies, some of which are directly relevant to land tenure and will be elaborated upon in subsequent chapters, are provided in Tables 1.1 and 1.2.

Security of tenure in land relationships is supposed to benefit the occupiers of land through two mechanisms: first, it provides an *incentive* to make investments for improvement, with the expectation that the fruits from the improvement would flow to the occupiers. Second, security of tenure facilitates the *ability* to make investments for improvements through commodification or marketization of their holdings and participating in credit (that is, use land as collateral) and transfer markets (that is, the ability to sell or rent the land).¹¹⁸ In the context of the current study, the incentive and ability to make improvements was a function of the occupiers' (either landlords or tenants) relationship to the land and the presence of credit and transfer markets in each colony. There were important contrasts of both these mechanisms across the three colonies.

In Punjab, after the abolition of *jageers* (that is, large land grants based on "rank" in the governance hierarchy of the Sikh rule) by the British following its annexation, the data show (see Table 1.1) that the average land holdings were relatively small and there was not much difference in size of the landholdings between proprietors and tenants. The livelihoods of both groups depended on the economic returns from agriculture output, and thus each had a motivation to invest in the improvement of the cultivated land.¹¹⁹ There is also evidence of the existence of

¹¹⁸ Besley, "Property Rights and Investment Incentives."

¹¹⁹ Wingfield, *Observations on Land Tenures and Tenant Right in India*.

credit markets before and after colonial rule in the settlement reports of some districts,¹²⁰ which facilitated the ability to make the investments by mortgaging the land and borrowing from the credit market. In addition, the increased incidence of land alienation in Punjab during the second half of the nineteenth century points towards the commodification of land in the province.¹²¹

Land ownership in Ireland was concentrated in a few hands, while most of the actual cultivation was done by a large number of tenants, but with each tenant holding very small parcels of land.¹²² The onus of improving the land fell on the tenants.¹²³ The size of the proprietors' land holdings, a large number of whom were absentee landlords, along with high rents because of competition for land amongst the tenants, meant that there was not much incentive for the landlords to make investments in improvement of the land. Tenants, on the other hand, had the motivation to improve the land they cultivated because of a dearth of other economic opportunities (except through emigration); however, their small land holdings and lack of security of tenure combined to limit their ability to participate in credit markets to borrow money for improvements. In essence, landowners in Ireland had the ability to invest in

¹²⁰ For example, see Captain E.G. Wace, "Report of the Land Revenue Settlement of the Hazara District of the Punjab 1868-74" (Lahore: Printed at the Central Jail Press, 1876).

¹²¹ See Roy and Swamy, *Law and the Economy in Colonial India*, 66–72. Most of the land alienation came from the 1870s onwards, after the tenancy legislation that granted occupancy rights to the tenants, and thus could have been a consequence of the newly acquired rights. As will be discussed in Chapter 6, the participation of a large number of agriculturalists in the credit market had a perverse effect of growing indebtedness. For the purpose of this chapter, it is important to highlight the availability of the means of commodification of land in the province.

¹²² Data from 1870 show that 750 families owned more than 50% of the land in Ireland. Michael J. Winstanley, *Ireland and the Land Question 1800–1922* (London: Methuen & Co. Ltd., 1984), 11. On the other hand, in 1841 almost 50% of tenants held land holdings of less than five acres. P.M. Austin Bourke, "The Agricultural Statistics of the 1841 Census of Ireland. A Critical Review," *The Economic History Review* 18, no. 2 (1965): 376–91.

¹²³ A large portion of the land in Ireland in 1861 was under pastures (60%), rather than being cultivated for agricultural purposes (40%). Lord Dufferin, *Irish Emigration and the Tenure of Land in Ireland* (London: Willis, Sotheran, and Co., 1867), 154.

improvements but did not have the incentives to do so given that they could extract high rents from their tenants, and agriculture was probably one of their many economic ventures. On the other hand, the Irish tenants had an existentialist relationship with land and thus the incentive to make improvements, but they did not have the financial ability to make the necessary investments.

The relationship to land of different groups and its commodification was more complex in Prince Edward Island. Proprietors were able to commodify their land grants, as evidenced by change in ownership of land in the few decades after the land was allocated in 1767.¹²⁴ However, the change in proprietorship through the market was primarily for land speculation, rather than for its settlement and improvement.¹²⁵ While much of the agitation in PEI in the nineteenth century was to force the large proprietors to either improve the land or give it back to the state, there was a concomitant increase in freehold tenures. This suggests that a market for land was emerging that allowed tenants to convert their leaseholds to freeholds, and the security of freehold tenures could be used to obtain mortgages and credit for investments in and improvement of the land.¹²⁶

In addition to comparing and contrasting land tenure considerations because of the structural differences between the three colonial sites, another objective of this study is to examine their reciprocal influences on each other. As suggested by Cook, “[f]ar from simply serving as a conduit for direct one-way transfers from suzerain to possession, the empire was a

¹²⁴ Errol Sharpe, *A People's History of Prince Edward Island* (Toronto: Rail Publishing, 1976).

¹²⁵ As will be discussed in Chapter 5, the lack of improvement of land by the original grantees was the rationale given for its escheat.

¹²⁶ Andrew Hill Clark, *Three Centuries and the Island: A Historical Geography of Settlement and Agriculture in Prince Edward Island, Canada* (Toronto: University of Toronto Press, 1959).

community of units that related to each other in different ways alternatively as transmitters, mediators and receivers of policy and opinion.”¹²⁷ What were the mechanisms through which these connections worked? An obvious connection is that all colonies were tied to the metropole, and their respective positions within its global network necessitated adherence to the Empire’s common administrative and economic policies.¹²⁸ In turn, the ultimate governance authority of the colonies was the British Parliament (on behalf of the Crown), and the government of the day could influence the transfer of governing practices and methods across the network, as well as exercise the imperial veto to block any legislation in the colonies. For instance, in the context of land tenure during the period of this study, Richard Shannon points out that William Gladstone wanted to resolve the land issues in Ireland by giving greater security of tenure to the tenants and looked for experiences across the Empire: “[T]here had been important precedents in India and Canada for government intervention on behalf of tenants in land tenure disputes. Indeed, Gladstone’s appreciation that concessions to Irish ideas of tenant-right would be a necessary preliminary to achieving an ultimate ‘natural’ tenant-landlord relationship in Ireland owed much to recent Indian legislation.”¹²⁹

Besides the British government, its appointees at the Colonial and India Offices as well as governors and lieutenant governors in the colonies played roles of both promoters and gatekeepers of intra-imperial analogies. For instance, during the debates on the land tenure in

¹²⁷ Cook, *Imperial Affinities*, 18.

¹²⁸ Duncan Bell, *Reordering the World*.

¹²⁹ Shannon, *The Crisis of Imperialism, 1865–1915*, 80. It is also important to note that the British government in power could use analogies to veto legislation in the colonies. For instance, attempts to acquire land from the PEI landlords in the 1850s was resisted by the British government headed by Palmerston on the grounds of its impact on landlord property rights in the rest of the Empire. See Robertson, *The Tenant League of Prince Edward Island, 1864–1867*.

each of the three sites, large landlords were at the helm in India and Prince Edward Island (for example, Lord Dufferin as the Governor-General of Canada; Lord Mayo as the Governor-General of India; and the Duke of Argyll as the Secretary of State for India), and their writings and correspondence reflect the ideological interventions on questions of tenant rights.¹³⁰

Furthermore, the requirements of an elaborative administrative apparatus of the Empire created a large and hierarchical bureaucracy of officials, which, through the required tours of duty across the far-flung outposts, became an important conduit for the transfer of ideas and policies across the colonies. For instance, George Campbell, who started as a young officer in the East India Company's civil service and played an important role in the initial land settlements in Punjab after its annexation in 1849, wrote a book in 1869 on the Irish land question based on his Indian experience, which influenced Gladstone's thinking on the Irish Land Act of 1870.¹³¹ While Campbell was a proponent of peasant-proprietorship, his views were countered by another official of the East India Company, Charles Wingfield, who was more sympathetic towards landlords in India, and brought his views on the Irish land question onto the floor of the British Parliament when he was elected as a Member of Parliament in the late 1860s.¹³² Along with official connections, ideas also flowed through informal channels such as missionaries and shared

¹³⁰ Dufferin, *Irish Emigration and the Tenure of Land in Ireland*; "Private Letters from the Earl of Mayo to the Duke of Argyll, with Enclosures, 1869–1870. In 8th Duke of Argyll Papers," 1870–1869, BL IOR/Neg 423–47; "Gladstone Papers Vol. XVI. Correspondence with the Duke of Argyll. 1869-1870," n.d., British Library, Additional MS. 44.101; "Papers and Letters Relating to the Punjab Tenancy Act, 8th Duke of Argyll Papers," 1869, BL OMF/IOR NEG 4231-4242.

¹³¹ George Campbell, *The Irish Land* (London: Trubner and Co., 1869); E. D. Steele, "Ireland and the Empire in the 1860s. Imperial Precedents for Gladstone's First Irish Land Act," *The Historical Journal* 11, no. 1 (March 1968): 64–83. Also see Patrick O'Leary, *Servants of the Empire: The Irish in Punjab 1881–1921* (Manchester: Manchester University Press, 2011). Charles Metcalfe started as an employee in the East India Company in the 1820s, and was in fact the first emissary of the East India Company to the Sikh rulers in Punjab before its annexation, and eventually became Governor General in both Canada and Jamaica.

¹³² Wingfield, *Observations on Land Tenures and Tenant Right in India*.

experiences of being colonial subjects. In particular, Ireland's position within the Empire ("... as subject to British rule yet aiding British imperialism overseas"¹³³), with the Irish serving as administrators, missionaries, as well as immigrants to Prince Edward Island, gave it a prominent position in the transfer of ideologies and practices across the Empire.

Conclusion

Emerging scholarship on the British Empire is moving beyond the colonizer-colonized dichotomy within the confines of national histories, and increasingly examining multi-directional flows of ideas and people across its global network.¹³⁴ Legal historians are looking into the "myriad ways in which law enabled and facilitated the imperial project" and the various manifestations through which it "was appealed to, and accessed, by colonized and colonized alike."¹³⁵ Through an examination of specific laws related to landlord and tenant relationships across multiple colonial sites, my study attempts to contribute to this area of research which is attentive to shared legal histories arising because of colonial connections.

¹³³ Cook, *Imperial Affinities*, 18.

¹³⁴ Barry Crosbie, "Networks of Empire: Linkage and Reciprocity in Nineteenth-Century Irish and Indian History," *History Compass* 7, no. 3 (May 1, 2009): 993–1007.

¹³⁵ Shaunnagh Dorsett and John McLaren, "The Legal Histories of the British Empire: An Introduction," in *Legal Histories of the British Empire: Laws, Engagements and Legacies*, ed. Shaunnagh Dorsett and John McLaren (Abingdon, Oxon : Routledge, 2014), 2.

Table 1.1
Some Relevant Characteristics of the Three Sites

	Punjab¹³⁶	Ireland	Prince Edward Island¹³⁷
Area	95768 square miles	32595 square miles	2185 square miles
Total population	17.6 million	5.4 million	94021
Cultivated area as a percentage of total land area	32%	27% ¹³⁸	43%
Land tenures (% of total acres)	Proprietors 61.6%; Tenants 37.5%; Other 0.9% ¹³⁹	97% of land cultivated by tenant farmers ¹⁴⁰	Freehold (fee simple) 67.8%; ¹⁴¹ Leasehold 29.2%; Other 3%
Other land tenure features	Average land holdings: Proprietors: 9.2 acres Tenants: 5.2 acres	50% of tenants held less than 15 acres; 44% between 15 and 100 acres	Length of leases: 999 years – 83.5%; 100-999 years – 11.2% Less than 100 years – 4.7%

¹³⁶ “East India (Progress and Condition); Statement Exhibiting the Moral and Material Progress and Condition of India, During the Year 1867-68” (House of Commons, 1869), House of Commons Parliamentary Papers Online. 23% was considered culturable, and the rest as unculturable.

¹³⁷ “Abstract of the Census of the Population and Other Statistical Returns of Prince Edward Island Taken in the Year 1871” (Reilly and Co., Charlottetown, 1871), Prince Edward Island Public Archives and Records Office.

¹³⁸ About 50% of the land area was for Grass and Pasture and 22% Bog and Waste. See “The Agriculture Statistics of Ireland for the Year 1868” (Dublin: Alexandre Thom, 1869), House of Commons Parliamentary Papers Online.

¹³⁹ Government of India, Revenue and Agriculture Department, “Punjab Revenue Report, 1880-1881. in Amendment of the Punjab Tenancy Act, XXVIII of 1868. Proceedings Nos. 21-22, January 1884,” 1884, National Archives of India, NAI. 12.8 percent was held by occupancy tenants and 24.7 by tenants-at-will. While it seems from the figures in Row 5 of this table that Punjab and PEI have similar proportion of freehold and leasehold tenures, it should be pointed out that in Punjab most of the proprietors cultivated their own land, which was not the case in PEI.

¹⁴⁰ Winstanley, *Ireland and the Land Question 1800-1922*. 50% of land owned by 750 families.

¹⁴¹ The percentage of land under freehold increased from about 47% and leasehold decreased from 46% in 1861.

Table 1.2
Land Tenure Administration Characteristics of the Three Sites

	Punjab	Ireland	Prince Edward Island
Antecedents to the land tenure system	Imperial creation of record of rights in the 1850s from those existing under Sikh rule	Mix of land grants after colonization and precolonial customary tenures	Imperial allocation of property rights through land grants (1767)
Authority to make laws	Governor General of India through Council (no provincial authority)	British Parliament	Responsible Government of PEI
Possibility of local agency for land reforms	Low (no Indian members of Council)	Medium (through few elected MPs from Ireland in the British Parliament)	High (through elected legislature)

CHAPTER 2

MULTI-LEVEL CONTESTATIONS AND COMPETING PERSPECTIVES: AN ANALYTICAL FRAMEWORK

To understand the institutionalization of security of tenure during the second half of the nineteenth century in three socio-culturally distinct and geographically dispersed colonies of the British Empire, the methodological approach adopted in this study is one of comparative historical and legal analysis entailing a “systematic and contextualized comparison.”¹ Such an approach necessitates an analytical framework around which the contexts and texts of the land tenure laws can be compared and contrasted.² This chapter aims to develop such a framework that will guide subsequent analyses of the enactment of the specific laws in the three colonies.

An examination of the laws of interest shows that these were discussed and contested around three questions: To whom are rights in land currently allocated? To whom should they be allocated? Are there political implications depending upon whose rights are institutionalized (or not)? On the face of it, these questions were not new, as the very issues informed debates on the origins, development, and implications of property rights in western legal thought³ and formed the bases for land occupation and appropriation by various colonial powers around the world in the preceding centuries.⁴ However, it is probable that the growing consolidation of the

¹ James Mahoney and Dietrich Rueschemeyer, *Comparative Historical Analysis in the Social Sciences* (Cambridge, UK: Cambridge University Press, 2003), 10.

² David Ibbetson, “Comparative Legal History: A Methodology,” in *Making Legal History: Approaches and Methodologies*, ed. Anthony Musson and Chantal Stebbings (Cambridge, England: Cambridge University Press, 2012), 131–45; Mahoney and Rueschemeyer, *Comparative Historical Analysis in the Social Sciences*.

³ J. M. Kelly, *A Short History of Western Legal Theory* (Oxford ; New York: Oxford University Press, 1992); James Tully, *A Discourse on Property: John Locke and His Adversaries* (Cambridge, England: Cambridge University Press, 1980); Alan Ryan, *Property and Political Theory* (Oxford, England: B. Blackwell, 1984).

⁴ Robert A. Williams, *The American Indian in Western Legal Thought: The Discourses of Conquest* (New York: Oxford University Press, 1990); Allan Greer, *Property and Dispossession: Natives, Empires and Land in Early Modern North America* (Cambridge, United Kingdom: Cambridge University Press, 2018); Brenna Bhandar, *Colonial Lives of Property: Law, Land, and Racial Regimes of Ownership* (Durham: Duke

British Empire during the nineteenth century and a shift from an 'expansion' to a 'governance' imperative impelled a rethinking of its justificatory logics on various aspects, including those related to land tenure and property rights.⁵

More importantly, evolving intellectual and political currents of the early part of the nineteenth century provided an impetus to rethink existing land tenure arrangements and explore new ones. First, political and legal thought shifted from absolute sanctity of individual property rights towards concepts of relative or shared rights and distributive justice.⁶ Second, the ascendancy of the discipline of political economy provided new analytical tools to understand relationships between secure property rights and improvement of land and general economic development. Third, political developments within various colonies and spillover of events from outside created new anxieties about the stability and viability of the Empire.

I suggest that these developments encompassing *property rights*, *political economy*, and *political expediency*, and their intersectionality played a crucial role in the deliberations around the laws of interest in this study, and therefore form the anchors or pillars of the proposed analytical framework. While acknowledging interactions between and reciprocal influences amongst the three pillars, these are considered distinct. The contention is that each pillar was sufficient to influence decisions about the principles behind the land tenure laws and their

University Press, 2018); Andrew Fitzmaurice, *Sovereignty, Property and Empire, 1500-2000* (Cambridge, United Kingdom: Cambridge University Press, 2014); John C. Weaver, *The Great Land Rush and the Making of the Modern World, 1650-1900* (Montreal & Kingston: McGill-Queen's University Press, 2003).

⁵ Furthermore, as discussed later, in the context of landlord-tenant relationships, property rights had to be thought through the logic of reassignment and distribution rather than the previous logic of appropriation and possession.

⁶ My objective is not to suggest a causal link between political/legal thought and land tenure, rather it is to understand how discussions about land tenure laws unfolded within the intellectual currents of the time.

provisions. In addition, each is based on different sets of assumptions, and thus it is necessary to consider them as distinct and equally important to an understanding of the land tenure reforms of interest in this study.⁷

This chapter examines each of these in detail and foregrounds the contributions of political theorists, political economists, and colonial administrators in the evolution and institutionalization of the underlying concepts and ideas, and various intellectual and political contestations. It is important to note that some of these colonial protagonists not only provided the intellectual ideas around land tenure but were also actively involved in the administration of the colonies in various capacities.⁸ Wearing different hats often required a tempering of their intellectual positions to accommodate the practical necessities of governance.

While new perspectives about land tenure were taking shape by the middle of the nineteenth century, these were by no means universally accepted. The emerging ideas were competing with entrenched ideas within and across the three domains of analysis. In the following three chapters, I use this analytical framework to analyze how the proponents of tenants' security of tenure were able to overcome the entrenched thinking of proponents of the rights of the landlords in each of the colonies. In particular, these chapters will foreground active *agency* of local and colonial interest groups in promoting either the rights of the landlords or the

⁷ For example, in the aftermath of the 1857 uprising in India, political expediency related to placating the local aristocracy took precedence in institutionalizing land tenure, irrespective of whether a particular province in British India had established property rights for this class or whether this class was the most appropriate from political economy considerations regarding development/improvement of the land. In other instances, during the beginning of the nineteenth century, the sanctity of property rights was the one that took precedence over the other two pillars.

⁸ For instance, J.S. Mill was employed by the East India Company and later served as a member of the British Parliament, Edmund Burke served in the British House of Commons for a long period and was actively involved in imperial policies about governing the Empire, and Henry Maine played a crucial role as a law member of the Governor-General of India Council.

peasants (tenants). These include landlord and tenant groups pushing for their respective rights, involvement of non-state actors such as religious, social, and business organizations in furthering competing interests, and colonial administrators who could exert influence because of their position in the colonial hierarchy and/or experiences in multiple colonies.

In addition to questions about whether the institutionalization of security of tenure for tenants impinges on the landowners' rights of property, there were also contestations around the meaning of tenant's security of tenure and the forms it could take. Furthermore, land tenures and landlord-tenant relationships that existed in England during the middle of the nineteenth century cast a shadow on discussions on the laws being contemplated for the Empire's colonies. In particular, the debates revolved around the appropriateness of English principles and analogies on land tenure relationships in the colonies. In the last part of this chapter, I provide a brief outline of the different forms of security of tenure as well as the salient features of English land tenures that informed debates in the three colonies of interest.

The main objective of this chapter is to arrive at a common framework that encapsulates the intellectual currents prevalent during the nineteenth century around which land tenure discussions took place across the British Empire. This will, in turn, facilitate the development of three subsequent chapters, each focused on the specific laws enacted in Punjab, Ireland, and Prince Edward Island. Since these chapters will necessarily entail a historically informed analysis for each site, I will attempt to keep my arguments in this chapter at a more conceptual level.

Political Theories and the Shifting Perspectives on Property Rights

A major challenge of land tenure for the Imperial governments in the context of my study was regarding reassignment (or new recognition) of property rights. That is, they were not

operating from a *tabula rasa*. In all three cases, some form of land tenure arrangements existed by the middle of the nineteenth century (in the case of Punjab, the British inherited the pre-colonial land arrangements under the Sikh rule; in Ireland, it was centuries-old land relationships between predominantly Protestant landowners and Catholic tenants or cultivators of the land; in Prince Edward Island, the land had been parceled out to landlords through grants of large tracts in the eighteenth century). Thus, the Empire had to deal with some form of rights (legal or customary) residing in existing land relationships. The question was how to sift through these pre-existing arrangements to identify whose right would be prioritized and institutionalized in the proposed legislation. This entailed some form of reassignment because of which the process of legislating the rights became contentious in the three sites. On the fundamental question of who has which rights (in addition to who should have the rights from an economic or political perspective, which will be addressed in the subsequent sections), the following discussion suggests that the various protagonists involved in the discussions during the nineteenth century had a repertoire of theoretical justifications emanating from European political theory which they could tap into for promoting their respective positions. As suggested by Macpherson, “[p]roperty is controversial ... because it subserves some more general purposes of a whole society, or the dominant classes of a society, and these purposes change over time: as they change, controversy springs up about what the institution of property is doing and what it ought to be doing.”⁹ In particular, thinking about property rights oscillated between being seen as “absolute, unitary,

⁹ C. B. Macpherson, ed., *Property, Mainstream and Critical Positions* (Toronto: University of Toronto Press, 1978), 11.

and physicalist” versus being “relative, disaggregable, and immaterial.”¹⁰ I discuss three different and somewhat overlapping threads that explain these shifting ideas about land-related property rights: 1) political theories about individual and absolute private rights; 2) anthropological/evolutionary approaches to stages of development with emphasis on collective/communal property rights; and 3) ‘bundle of sticks’ view on property rights.

I start with Locke’s influential theory on property:

Though the earth, and all inferior creatures, be common to all me, yet every man has a *property* in his own *person*: this nobody has any right to but himself. The *labour* of his body, and the work of his hands, we may say are properly his. Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his *property*. It being by him removed from the common state nature hath placed it in, it hath by his labour something annexed to it, that excludes the common right of other men: for this labour being the unquestionable property of the labourer, no man but he may have a right to what is once joined to, at least where there is enough, and as good, left in common for others.¹¹

In summarizing the prevalent discourses on property during the eighteenth century, Kelly argues that the “philosophy of Locke on the origin and duties of property seemed perfectly satisfactory to the eighteenth century, and the century contains vigorous defences of private ownership, and the attribution of extra weight to the possession of wealth.”¹² Defenders include philosophers such as Emmanuel Kant, who expanded the ideas from ownership to possession and explained the inequity in possession of property in terms of inequalities in the distribution of human talents.¹³ Additionally, they included political writers across both sides of the Atlantic. For

¹⁰ Faisal Chaudhry, “A Rule of Proprietary Right for British India: From Revenue Settlement to Tenant Right in the Age of Classical Legal Thought,” *Modern Asian Studies* 50, no. 1 (January 2016): 348.

¹¹ John Locke, *Two Treatises of Government* (Merchant Books, 1921), 134.

¹² Kelly, *A Short History of Western Legal Theory*, 293.

¹³ Although Kant defended the right to property (through possession) and believed that “having determinate and enforceable property rights is essential for freedom”, however these rights “can be made

instance, Edmund Burke, a conservative member of the House of Commons and an ardent defender of the aristocracy across the British Empire during the latter part of the eighteenth century,¹⁴ argued that “property, together with inequality in its distribution was both inherent in and a condition of civilization; the confiscation of property was something totally unjustifiable, even under the pretext of a common good.”¹⁵ Similarly, James Madison, writing in the *Federalist Papers* in 1787, wanted safeguards against “a rage for paper money, for an abolition of debts, for an equal division of property, or for any improper or wicked project.”¹⁶ Thus, at the end of the eighteenth century, Locke’s theory of property, with its underlying “principle of occupation as the origin of property was widely accepted in discussions of property in civil law and law of nations”¹⁷ In particular, the ‘occupation-labour’ combination provided the justification for dispossession of land from Indigenous populations in the New World Americas,¹⁸ while the

determinate and enforceable only by the state.... [This] is a powerful argument against the traditional Lockean view that no person has the authority to enforce property rights in the state of nature.” Louis-Philippe Hodgson, “Kant on Property Rights and the State,” *Kantian Review* 15, no. 1 (March 2010): 58.

¹⁴ For an excellent study of the life of Burke and in particular his justification of the empire and the need for the preservation of the local aristocracy, see Daniel I. O’Neill, *Edmund Burke and the Conservative Logic of Empire* (Oakland, California: University of California Press, 2016); For an comparison of conservative and liberal justifications of empire, see Uday Singh Mehta, *Liberalism and Empire: A Study in Nineteenth-Century British Liberal Thought* (Chicago: University of Chicago Press, 1999). For a discussion of Burke’s ‘universalism’ and its implications for the empire, see Jennifer Pitts, *A Turn to Empire: The Rise of Imperial Liberalism in Britain and France* (Princeton, N.J.: Princeton University Press, 2005).

¹⁵ Kelly, *A Short History of Western Legal Theory*, 293.

¹⁶ Cited in Kelly, 293. For an expanded discussion of the relationship between different categories of rights, including private property, individual, and political, in early American political thought, see Jennifer Nedelsky, *Private Property and the Limits of American Constitutionalism* (Chicago and London: The University of Chicago Press, 1990).

¹⁷ Fitzmaurice, *Sovereignty, Property and Empire, 1500-2000*, 127.

¹⁸ Bhandar, *Colonial Lives of Property*.

'ownership' justification enshrined 'sanctity' to this absolute private property right which would constrain interference or re-organization of this right once established as a natural right.¹⁹

While Rousseau, in his *Discourse on the Origins of Inequality among Men* (published in 1754), had originally raised the moral implications of inequality "arising from the engrossment of property by individuals,"²⁰ the intellectual currents in the early nineteenth century fully explored the multiple implications of the entrenched notions of property rights around Locke's theory and its variants. In particular, the influence of Jeremy Bentham and James Mill's utilitarianism in the early part of the century and its more radical version propounded by John Stuart Mill in the middle of the century are particularly useful in our context not only because they attempted to explore the linkages between property and distributive justice, but also because these ideas were instrumental in introducing various western institutions (education, legal, judicial, etc.) across the British Empire in the nineteenth century.²¹ On the face of it, utilitarianism's maxim that the ethical choice should be one that will produce the greatest good for the greatest number

¹⁹ Locke's theory of property has had its critics, both his contemporaries and since then, who have questioned various aspects of his arguments. Delving into these in depth is outside the scope of my work. For details see Tully, *A Discourse on Property*; Fitzmaurice, *Sovereignty, Property and Empire, 1500-2000*. Some philosophers questioned the natural rights arguments of Locke, instead suggesting property to be either the creation of the sovereign (Hobbes) or some form of social contract (Hume). It is, however, important to note that during much of the 19th century, Locke's theory (sometimes referred to as 'labour theory of property' or 'labour theory of occupation/appropriation') formed the base line around which additional ideas of property were formulated by a few political theorists, some further supporting the sanctity of property while others questioning some of its implications for distributive justice. I engage with the relevant ideas in the following paragraphs.

²⁰ Kelly, *A Short History of Western Legal Theory*, 292.

²¹ For information on the broader influence of utilitarianism on various aspects of the Empire, including its justification and governance, see Stokes, *The English Utilitarians and India*; Mehta, *Liberalism and Empire*; Andrew Sartori, *Liberalism in Empire: An Alternative History* (Oakland, California: University of California Press, 2014); Duncan Bell, "John Stuart Mill on Colonies," *Political Theory* 38, no. 1 (February 1, 2010): 34–64; Bart Schultz and Georgios Varouxakis, eds., *Utilitarianism and Empire* (Lanham, Md: Lexington Books, 2005).

(maximizing overall utility), and Bentham's acknowledgement of diminishing marginal utility of wealth,²² suggest that equal distribution of goods (property) would have achieved the theory's objective of maximizing overall societal utility. However, these utilitarians continued to be anxious about the implications of distribution of property on the expectations of security from property rights (that is, how to balance equality with security).²³ For instance, Bentham, in his *Principles of the Civil Code* (published in French in 1802 and English in 1830), identified four subordinate ends that should be promoted by the legislator for the happiness of society: subsistence, abundance, equality, and security. He, however, acknowledged the need for tradeoffs because of the impossibility of uniting these ends.

It will sometimes happen that a measure suggested by one of these principles will be condemned by another. Equality, for example, might require a distribution of property which would be incompatible with security. When this contradiction exists between two of these ends, it is necessary to find some means of deciding the pre-eminence.... At the first glance we see subsistence and security arising together to the same level; abundance and equality are manifestly of inferior importance.... Equality ought not to be favoured except in the cases in which it does not interfere with security; in which it does not thwart the expectations which the law itself has produced, in which it does not derange the order already established.²⁴

In essence, although the Benthamite utilitarianists accepted egalitarianism as one of the ends of a political society and legislation, the primacy of security of property (that is, prioritizing the

²² Jeremy Bentham (1748 - 1832), *Pannamomial Fragments*, *Works*, III, p. 228:

“So far as depends on wealth, -- of two persons having unequal fortunes, he who has most wealth must by a legislator be regarded as having most happiness.

But the quantity of happiness will not go on increasing in anything near the same proportion as the quantity of wealth...

The effect of wealth in the production of happiness goes on diminishing, as the quantity by which the wealth of one man exceeds that of another goes on increasing: in other words, the quantity of happiness produced by a particle of wealth (each particle being of the same magnitude) will be less and less at every particle; the second will produce less than the first, the third than the second, and so on.”

²³ Ryan, *Property and Political Theory*.

²⁴ Reproduced in Macpherson, *Property, Mainstream and Critical Positions*, 41-43.

‘disappointment-prevention principle’ over ‘the greatest happiness principle’) did not allow the theory “to bear out in its substance the promise offered by the form in which it was initially cast.”²⁵ The utilitarian ideas regarding political economy would play a more prominent role in terms of land tenure, which I discuss in the following section.

Regarding property rights and distributive justice, it was John Stuart (J.S.) Mill who explored a more radical approach in the middle of the nineteenth century. J.S. Mill (1806-1873) was in a unique position to refine ideas about property rights and land tenure in the colonies and also shape some of the debates about land rights during the nineteenth century. This can be attributed to his education under the influence of his father, James Mill, inculcation in the ideas and limitations of earlier utilitarianism at a young age, and his long career both as an administrator of the East India Company from 1823 to 1858, and as a Liberal member of the British Parliament from 1865 to 1868. Although J.S. Mill continued to believe in the backwardness of colonized societies and the civilizing mission of the British Empire articulated by his father and was unenthusiastic about introducing representative democracy in these colonies (or what Gray calls Mills’ “democratic partisanship” being at war with “an elitist dread of majority tyranny”),²⁶

²⁵ D.G. Long, “Bentham on Property,” in *Theories of Property: Aristotle to Present*, ed. Anthony Parel and Thomas Flanagan (Waterloo, ON: Wilfrid Laurier University Press, 1979), 250; Critics have been puzzled with the inability of the early utilitarians to come to grips with the distributive implications of absolute property rights. Some have attributed this to the anxieties amongst British political theorists in the early part of the nineteenth century of the political implications of redistribution of land during the French revolution. Others highlight the continuing sympathies of a number of theorists to the institution of slavery as property. For details about these, see Schultz and Varouxakis, *Utilitarianism and Empire*; Ryan, *Property and Political Theory*.

²⁶ J.N. Gray, “John Stuart Mill on the Theory of Property,” in *Theories of Property: Aristotle to Present*, ed. Anthony Parel and Thomas Flanagan (Waterloo, ON: Wilfrid Laurier University Press, 1979), 257.

his ideas about property and peasant proprietorship were more progressive.²⁷ I now turn to these.²⁸

In his preface to J.S. Mill's writings on property in *Principles of Political Economy*, Macpherson suggests that Mill viewed the "gross inequity of the existing system ... [as being] due not to anything inherent in the principle of private property and market freedom of accumulation, but only to accidental historical features that had been built into the prevailing system and could be removed from it."²⁹ To break away from the constraints of his utilitarian predecessors regarding balancing security with equality and furthering the cause of distributive justice in land relationships, Mill ("a sociologist with a conscience"³⁰) probed the topic of property from multiple fronts.³¹ One challenge was to address the sanctity of property rights. Here he went back to Locke's labour theory of property, but distinguished land from other forms of property:

That a man should have absolute control over what his own labour and skill have created, and even over what he has received by gift or bequest from those who created it, is recommended by reasons of a very obvious character, and does not shock any natural

²⁷ As articulated by Mehta, the "historian in James Mill, the legislator in Bentham, the educator in Macaulay, and the apostle of progress and individuality in J.S. Mill, all ... fail in the challenge posed by the unfamiliar; because when faced with it they do no more than "repeat," presume on, and assert ... the familiar structures of the generalities that inform the reasonable, the useful, the knowledgeable, and the progressive. [The urge is to] dominate the world, because the language of these comparisons is not neutral and cannot avoid notions of superiority and inferiority, backward and progressive, and higher and lower." (Mehta, *Liberalism and Empire*, 20).

²⁸ Because of his proximate position to Ireland and his stint as a member of the British parliament, J.S. Mill was more involved with the problems of land tenure in Ireland. Here, I discuss his ideas applicable more broadly to property rights. His more specific interventions related to Ireland are discussed in more detail in Chapter 4. For his specific concerns about Ireland, see Bruce L. Kinzer, *England's Disgrace? J.S. Mill and the Irish Question* (Toronto: University of Toronto Press, 2001); Mill, *England and Ireland*.

²⁹ Macpherson, *Property, Mainstream and Critical Positions*, 75.

³⁰ Ryan, *Property and Political Theory*, 145.

³¹ According to Kelly, Mill added two dimensions to the notion of utility which affirmed his commitment to promoting equality: altruism or concern for others and constructing the relationship between utility and justice. See Kelly, *A Short History of Western Legal Theory*, 215–20.

feeling. Moveable property can be produced in indefinite quantity, and he who disposes as he likes of anything which, it can fairly be argued, would not have existed but for him, does no worry to anyone. It is otherwise with regard to land, a thing which no man made, which exists in limited quantity, and which was the original inheritance of all mankind, and which whoever appropriates, keeps others out of its possession. Such appropriation, when there is not enough left for all, is at the first aspect, an usurpation on the rights of other people.³²

Furthermore, he suggested that even if property in land is accepted as a principle, the nineteenth-century land tenure arrangements did not support the idea that the land's owner was contributing any value to the land through his labour: "it is manifestly just that he who sows should be allowed to reap, this justice, which is the true moral foundation of property in land, avails little in favour of proprietors who reap but do not sow, and who assume the right of ejecting those who do."³³ Having questioned both labour theory of property as it applied to land as well as the contributions of existing proprietors to the value creation in land through their own labour, Mill's next challenge was to justify the distributive goals, in particular, that of 'peasant-proprietorship'.³⁴ His immediate concerns were to alleviate the conditions of the peasants, motivated by his belief that the landed aristocracy was the "concrete embodiment" of the "sinister interests" of the British system, in which the "nobility and squirearchy represented the dead weight of dogged obstructiveness ... and were responsible for the degradation of the labourer."³⁵ Here Mill flirted with Communism as a possible solution, writing in his *Principles*:

If, therefore the choice were to be made between Communism with all its chances, and the present state of society with all its sufferings and injustices; if the institution of private property necessarily carried with it as a consequence, that the produce of labour should be apportioned as we now see it, almost in an inverse ratio to the labour The

³² John Stuart Mill, *England and Ireland*, 2nd ed. (London: Longmans, Green, Reader, and Dyer, 1868), 10-11.

³³ Mill, 10-11.

³⁴ Leslie Stephen, *The English Utilitarians* (New York: London: G. Putnam; Duckworth, 1900).

³⁵ Stephen, 192.

remuneration dwindling as work grows harder and more disagreeable ...; if this or Communism were the alternative, all the difficulties, great or small, of Communism would be but as dust in the balance.³⁶

However, he believed that some form of private ownership was necessary for self-development and social welfare of the peasantry, and this could be accomplished through a “national system for ‘raising a class of peasant-proprietors’ which will provide a premium to prudence and economy affecting the whole labouring class.”³⁷ In this regard, Mill stayed away from suggesting expropriation from the landed aristocracy, but instead promoted granting land to peasants from waste lands (at least in the context of Ireland).³⁸

The above discussion has focused on shifting justifications of property rights in land until the middle of the nineteenth century. These justifications revolved around the sanctity of private property related to individual and absolute ownership. I now turn to what is termed as the historical or the anthropological approach to property rights which gained credence in the middle of the nineteenth century, with Henry Sumner Maine, a British legal theorist and long-serving (1862-1869) law member of the Governor-General of India Council, its main protagonist. Through his two books, *Ancient Law* (1861)³⁹ and *Village-Communities in the East and West* (1871),⁴⁰ Maine played an important role in shaping ideas about property rights, especially ones related to land, and was instrumental in bringing two aspects into discussions about land tenure:

³⁶ John Stuart Mill and Jonathan Riley, *Principles of Political Economy: And Chapters on Socialism*, World's Classics (Oxford; New York: Oxford University Press, 1994), 14–15.

³⁷ Stephen, *The English Utilitarians*, 193.

³⁸ Lynn Zastoupil, “Moral Government: J. S. Mill on Ireland,” *The Historical Journal* 26, no. 3 (September 1983): 707–17.

³⁹ Henry Sumner Maine, *Ancient Law: Its Connection with the Early History of Society and Its Relation to Modern Ideas* (London: John Murray, 1901).

⁴⁰ Henry Sumner Maine, *Village-Communities in the East and West: Six Lectures Delivered at Oxford* (London: J. Murray, 1871).

community and custom-based property rights.⁴¹ In his review of Maine's *Village Communities*,

J.S. Mill wrote in 1871:

[The book's] title indicates the double aspect of the important vein of thought which it has opened – the historical aspect, and the practical: the light which it throws on the ancient condition of mankind, and the intimate connection which it establishes between “the early history of society” and “modern ideas”.... The question is opened whether the older or the later ideas are best suited to rule the future.... A question of this nature in regard to property in land is raised by Mr. Maine's new work; which has clearly shown that the absolute ownership, which constitutes the idea of landed property as commonly conceived in England, is both modern as to time and partial as to place.⁴²

The “modern as to time and partial as to place” that Mill alludes to refers to two core ideas underlying Maine's writing on property. First, while acknowledging the natural law origins of occupation and property rights, Maine questioned the dominant idea that natural rights relate to “individual” rights to property. Going back to the Roman law on property, he wrote in *Ancient Law*:

[T]here is a strong *a priori* improbability of our obtaining any clue to the early history of property, if we confine our notice to the proprietary rights of individuals. It is more likely that joint-ownership, and not separate ownership, is the real archaic institution, and that forms of property which will afford us instruction will be those which are associated with the rights of families and groups of kindered.⁴³

⁴¹ Maine's evolutionary anthropological approach on village communities in India has had its share of critics, with even fellow British colonial administrator, Baden-Powell, in his own book, *Village Communities of India*, questioning Maine's methodology and conclusions. Similarly, Bayly argues that the “self-contained and ageless Indian village is another myth which appealed in a relatively sophisticated form to Maine and to the conservative nationalists....Maine's ideas and those of his followers were only historicist, not historical,” (C. A. Bayly, “Maine and Change in Nineteenth-Century India,” in *The Victorian Achievement of Sir Henry Maine: A Centennial Reappraisal*, ed. Alan Diamond (New York: Cambridge University Press, 1991), 395-396). Irrespective of the veracity of Maine's claims about the village communities, what is important is that these ideas did enter into debates around land tenure at least in India and Ireland during the period of the study, and provided the justificatory logics for institutionalizing particular land arrangements.

⁴² John Stuart Mill, “Maine on Village Communities,” in *Collected Works of John Stuart Mill: Writings on India*, ed. John B. Robson, Martin Moir, and Zawahir Moir, vol. XXX (Toronto and Buffalo: University of Toronto Press, 1990), 215–16.

⁴³ Maine, *Ancient Law*, 271.

Having made a case for the origins of property in the form of communal ownership in primitive societies, the next challenge for Maine was to elaborate on the process by which the ‘communal’ transforms to ‘individual’. Explaining this shift, according to him, was the “great problem of legal history,”⁴⁴ and he tried to do so through the logic of a natural process of progress whereby “energetic and acquisitive members tended to rebel against communal authority, introducing an inequality that eroded the foundations of natural communism.”⁴⁵

Although Maine did not provide a convincing rationale for the shift from communal to individual property, except through evolutionary progressivism from ancient to modern, his ‘discovery of village communities’ in India and elsewhere allowed him to make the second point, that of temporality in the development of the institutions of private property. Comparing the nineteenth-century village communities in India (and that of the Irish communities in the seventeenth century) with the ancient Roman communities and the medieval Teutonic communities in parts of Europe, Maine was able to “question the viability and applicability of modern institutions (legal, political, and economic) in societies which have not reached the apposite state of social progress.”⁴⁶

Maine’s relativization of private property (communal versus individual and the progress of society) had important implications for colonial thinking on agrarian policy in the latter half of

⁴⁴ Maine, *Village-Communities in the East and West*, 131.

⁴⁵ Karuna Mantena, *Alibis of Empire: Henry Maine and the Ends of Liberal Imperialism* (Princeton, N.J.: Princeton University Press, 2010), 136–37. In addition, in the *Village Communities*, Maine attributes the shift from communal to individual property to the rise of feudalism whereby the original benefices of land from specific duties became hereditary, and passed from father to son (Maine, *Village-Communities in the East and West*, 132).

⁴⁶ Mantena, *Alibis of Empire*, 120.

the nineteenth century.⁴⁷ One, it questioned the applicability of British ideas about property rights in the colonies at the early stages of progress, and specifically those that related to political economy and the efficacy of different types of land tenure.⁴⁸ Second, by foregrounding status (rather than contract) as the basis of land relationships, Maine brought back customs and customary rights into the discussions of land relationships.⁴⁹ As suggested by Mantena:

The turn to custom would become more radical; anthropological and historical investigations such as Maine's would demonstrate the persistence of customary ideas and practices, themselves taken as signs of the resistance of traditional society to imposed modernization. In India, a growing administrative deference to the imperatives of custom cemented the view that India (and Ireland) could no longer be viewed as a blank slate upon which one could recreate English institutions.⁵⁰

While Maine's main objective was to draw a distinction between communal and individual property rights and justify the historical shift from the former to the latter in terms of evolutionary progressivism, he also alluded to the possibility that property rights need not be unitary. In *Village Communities*, he wrote: "The rights of property, are in the eyes of the jurist, a bundle of powers, capable of being mentally contemplated apart from one another and capable of being separately enjoyed."⁵¹ Although Maine did not fully explore this idea further, seeing property in terms of a bundle of rights was in line with the emerging ideas in the middle of the

⁴⁷ Clive Dewey, "The Influence of Sir Henry Maine on Agrarian Policy in India," in *The Victorian Achievement of Sir Henry Maine: A Centennial Reappraisal*, ed. Alan Diamond (New York: Cambridge University Press, 1991), 353–75.

⁴⁸ I discuss these in more detail in the next section.

⁴⁹ The utilitarianism of Bentham and James Mill loathed the idea of taking customs into consideration in introducing Western institutions in colonized societies and in achieving their goals of civilizing the colonized (Andrew Sartori, "The British Empire and Its Liberal Mission," *The Journal of Modern History* 78, no. 3 (2006): 623–42). For an expanded discussion about the linkages between customs and moral and political backwardness in the colonies by the proponents of utilitarianism and liberalism throughout the nineteenth century, see Pitts, *A Turn to Empire*; Mehta, *Liberalism and Empire*.

⁵⁰ Mantena, *Alibis of Empire*, 147.

⁵¹ Maine, *Village-Communities in the East and West*, 158.

nineteenth century that questioned whether “‘the’ right to property constituted any single and distinct right at all.”⁵²

There are two lines of thought around the ‘bundle of rights’ or ‘bundle of sticks’ view of property: property as a set of analytically distinct elements and the relational nature of property.⁵³ First, one could disaggregate an individual’s absolute right of property into various components such as claims, privileges, powers, and immunities,⁵⁴ or into several basic elements such as rights and duties.⁵⁵ For example, in his three-volume manual, *The Land-Systems of British India*, Baden-Powell, a colonial administrator, explained that the term ‘proprietary right,’ which frequently appeared in revenue books of India in the middle of the nineteenth century, emanated from multiple claimants to the rights of property:

I presume that the use of such a phrase is due to the feeling that we rarely acknowledge anything like a complete unfettered right vested in any one person.... It is true that, in many cases, only one person is called ‘landlord’ or ‘actual proprietor,’ but his right is limited; the rest of the right, so to speak, is in the hands of the other grades, even though they are called ‘tenants,’ or some vague title such as ‘tenure-holders.’... The ‘proprietary right’ seems then a natural expression of the interest held by a landlord, when that interest is not the entire ‘bundle of rights’ (which in the aggregate make up an absolute or complete estate) but only *some* of them, the remainder enjoyed by other persons.⁵⁶

⁵² Chaudhry, “A Rule of Proprietary Right for British India,” 348.

⁵³ Anna di Robilant, “Property: A Bundle of Sticks or a Tree,” *Vanderbilt Law Review* 66, no. 3 (2013): 869–932. The bundle of rights/sticks view is controversial, with some arguing that it undermines the very core of the sanctity of property rights by diluting the individual rights, while others critiquing it for continuing to emphasize the individual (having different types of rights) private rights and not paying more attention to the public or societal factors influencing these rights. See Myrl L. Duncan, “Reconceiving the Bundle of Sticks: Land as a Community-Based Resource,” *Environmental Law* 32, no. 4 (2002): 773–808.

⁵⁴ di Robilant, “Property.”

⁵⁵ Oliver Wendell Holmes, “The Arrangement of Law. Privity.,” *American Law Review* 7 (1872): 46–65; For extended discussion on this, see Daniel H. Cole and Peter Z. Grossman, “The Meaning of Property Rights: Law versus Economics?,” *Land Economics* 78, no. 3 (2002): 317–30.

⁵⁶ B. H. Baden-Powell, *The Land Systems of British India, Volume I* (Oxford: Clarendon Press, 1892), 217–18.

Given the different components of and claimants to property rights, the role of the state becomes important, since it legitimizes individual property rights and protects those rights (that is, “property rights are state-backed entitlements rather than natural rights”⁵⁷) and is capable of rearranging those rights in trying to balance private rights with public good.⁵⁸

Second, there was a shift in seeing property in terms of a relationship between “a person and a thing” to one of a relationship “between persons” which bound the holder of property to “other social actors.”⁵⁹ As argued by Philip Girard, land law in Canada until the beginning of the 20th century showed a “continuing and complex dialogue between the two poles of liberalism contained within the inherited English regime”: facilitative and embedded liberalism. The former approach “posits an ideal that divorces land ownership from social function, privileges the will of the owner over other interests, and seeks maximum exposure of property to the market” while the second “recognizes that landowners have families, live in communities, and participate in societies, and that these other entities may have claims upon land resources held formally by individual owners. Where the former sees abstract individuals, the latter sees *contextualized persons*.”⁶⁰ The relational and multiple component views of property rights, in combination,

⁵⁷ di Robilant, “Property,” 884.

⁵⁸ See the rationale provided by the Supreme Court of Canada in its judgment related to the Prince Edward Island Land Purchase Act of 1875 (which is discussed in detail in Chapter 5). Canada Supreme Court, *Judgment of the Supreme Court of Canada on the Appeal from the Judgment of the Supreme Court of Prince Edward Island Setting aside the Award of the Commissioners under the Land Purchase Act 1875, in the Case of Charlotte Antonia Sullivan*. (Charlottetown, P.E.I.: Henry Lawson, 1877). Also see Margaret E. McCallum, “The Sacred Rights of Property: Title, Entitlement, and the Land Question in Nineteenth-Century Prince Edward Island,” in *Essays in the History of Canadian Law in Honour of R.C.B. Risk*, ed. G. Blaine Baker and Jim Phillips, vol. VIII (Toronto: University of Toronto Press, 1999), 358–97.

⁵⁹ Chaudhry, “A Rule of Proprietary Right for British India,” 371.

⁶⁰ Philip Girard, “Land Law, Liberalism, and the Agrarian Ideal: British North America, 1750-1920,” in *Despotic Dominion: Property Rights in British Settler Societies*, ed. John McLaren, A. R. Buck, and Nancy E. Wright (Vancouver, B.C: UBC Press, 2005), 124.

challenged the unitary and absolute ideas that were the foundations of earlier political theories and allowed for a possibility of their malleability.⁶¹

In the preceding pages, I have outlined the multiple and shifting ideas about property rights during the eighteenth and nineteenth centuries which likely informed discussions and debates regarding the structuring of land relationships in the various colonies of the British Empire. Much of this discussion focused on some foundational principles underlying property rights: who has the rights, whether these are absolute or relative, individual or collective, fixed or shifting. Along with being attentive to these questions, one must address another consideration: the economic implications of various combinations of land rights being contemplated.⁶² Here theoretical insights from the emerging discipline of political economy would play a crucial role, and I turn to these in the next section.

Political Economy, Land Tenure and Improvement

The economic motivation behind the formation, expansion, and continuation of various empires necessitated coherent policies to achieve the desired objectives, and ‘improvement’ was the broad narrative under which land policies were established. It should be noted that

⁶¹ For an extended discussion on the intellectual currents in the nineteenth century that exalted absolute rights to property as essential to society but at the same called for a rethinking of existing property relations based on the lived realities and actual practices across the colonies, see Greer, *Property and Dispossession*, chap. 11. The relational view is discussed at length in Shitong Qiao and Frank Upham, “Evolution of Relational Property Rights: A Case of Chinese Rural Land Reform,” *Iowa Law Review* 100, no. 6 (2015): 2479–2506.

⁶² As pointed out by Peter Robb, colonial authorities could not be “content merely to frame the agrarian structure (that is, establish and define landed property) in the hope of promoting commercial expansion and securing its revenue.” They had to think about mechanisms or policies that would promote the efficient use of land as part of “broader social and economic strategies.” Peter G. Robb, *Peasants, Political Economy, and Law* (New Delhi: Oxford University Press, 2007), 15. For an extended discussion on shifting conceptions of property in the nineteenth century, especially related to improvement or development, see Chapter II of Morton J. Horwitz, *The Transformation of American Law, 1780-1860* (Cambridge, MA: Harvard University Press, 1977).

‘improvement’, as being a mark of civilized society, was initially used to justify the dispossession of land from native societies and appropriating it for settlers.⁶³ From the previously discussed political theory perspectives on property rights, land not cultivated according to European notions of agriculture was considered “no-one’s land or *terra nullius*,”⁶⁴ and a “sign of cultural and intellectual inferiority.”⁶⁵ Accordingly, land used by “[n]omads, herdsmen, hunter-gatherers, or even peasants who moved frequently,”⁶⁶ or for subsistence agriculture, was considered ‘unimproved’ and available for assignment to those who would bring it under acceptable methods of cultivation.

However, once the land was settled and used through European ideas of cultivation, the objective was to improve (or develop) the settled lands, and it was in this context that economic arguments in terms of land tenure arrangements between landlords and tenants came to the fore. As suggested by Weaver, “[i]mprovement and property rights have had a reciprocal association since the Enlightenment. People who improved land deserved property rights; property rights improved societies.”⁶⁷ From this perspective, one can differentiate the way improvement was used in property rights and political economy discourses. While political theory arguments discussed in the previous section relate to the first part (that is, improvers get

⁶³Greer, *Property and Dispossession*; John C. Weaver, “Concepts of Economic Improvement and Social Construction of Property Rights: Highlights from the English-Speaking World,” in *Despotic Dominion: Property Rights in British Settler Colonies*, ed. John McLaren, A. R. Buck, and Nancy E. Wright (Vancouver, B.C.: UBC Press, 2005), 79–102.

⁶⁴ C. A. Bayly, *The Birth of the Modern World 1780-1914* (Malden, MA: Blackwell Publishing, 2004), 299.

⁶⁵ Bhandar, *Colonial Lives of Property*.

⁶⁶ Bayly, *The Birth of the Modern World 1780-1914*, 299.

⁶⁷ Weaver, *The Great Land Rush and the Making of the Modern World, 1650-1900*, 28.

property rights), political economists were concerned with the effects of providing security of tenure (that is, protecting the property rights) to the full exploitation/development of the land.

Within the British Empire, the intellectual developments in political economy, especially related to principles of laissez-faire and rent theory, would provide the economic foundations around which colonial land policies were formulated. However, like the political theory arguments discussed in the previous section, and maybe because of those, these principles within political economy also generated substantial difference of opinions amongst the proponents as well as colonial administrators. While there was agreement that secure property rights were the bedrock for improvement,⁶⁸ the fundamental debate revolved around who gets the “security of tenure” in land relationships, the landlord (the owner) or the tenant (the cultivator)? To elucidate the intersection of political theory and political economy on this security of tenure question, I briefly describe the case of land tenure in Bengal, which was the first part of India to come under the East India Company.⁶⁹ Subsequently, I place this discussion within the emerging discipline of political economy in the late eighteenth through the early nineteenth century.

⁶⁸ For a critical discussion, see Ross Levine, “Law, Endowments and Property Rights,” *Journal of Economic Perspectives* 19, no. 3 (September 2005): 61–88. Subsequent literature has identified three mechanisms through which secure property rights provide the incentives for improvement in land: freedom from expropriation, use of land for collateral, and ability to benefit from trade through sale. See Timothy Besley, “Property Rights and Investment Incentives: Theory and Evidence from Ghana,” *Journal of Political Economy* 103, no. 5 (1995): 903–37; Timothy J. Besley, Konrad B. Burchardi, and Maitreesh Ghatak, “Incentives and the De Soto Effect,” *The Quarterly Journal of Economics* 127, no. 1 (February 1, 2012): 237–82. These mechanisms are closely related to two of three F’s (fixed tenure, and freedom of sale) demanded by tenant right proponents in Ireland (discussed in Chapter 4).

⁶⁹ For details about the institutionalization of land tenure in Bengal, see the influential book by Ranajit Guha, *A Rule of Property for Bengal: An Essay on the Idea of Permanent Settlement* (Durham: Duke University Press Books, 1996); For a general description of land tenure in India see Chapters 3 and 4 of Tirthankar Roy and Anand V. Swamy, *Law and the Economy in Colonial India, Markets and Governments in Economic History* (Chicago ; London: The University of Chicago Press, 2016). A close look at land tenures in Bengal spanning a long period (1793-1859) provides a good context to see the evolution of political economy thought and its implication for security of tenure within a natural experiment setting.

The responsibility for land administration in India for the East India Company came in 1765 when it was granted the *Diwani* rights (that is, collection of land revenues directly from the people) by the Mughal emperor, out of which the company paid an annual tribute to the emperor.⁷⁰ With very limited knowledge about the province and no experience of civil administration, the initial years of revenue collection were chaotic. Low revenue collections and the famine of 1770 brought the first systematic attempt to systematize land revenue administration. The “Farming System” introduced under the Governor-General, Warren Hastings, effectively expropriated all land from the landlords (*Zamindars*), which was subsequently auctioned to the highest bidders for leases of up to five years. Edmund Burke, who was no friend of Hastings,⁷¹ saw this expropriation and public auction as a gross subversion of private rights of property that ripped “apart the prescriptive inheritance passed on by their aristocratic forefathers in the form of ancient institutions and rights.”⁷² Leaving aside criticisms around the sanctity of property rights, the system put in place, in any case, did not solve the problem of revenue collection as the duration of the lease was too short to provide an incentive for the leaseholder to make any substantial improvements in the land.

After setting up a commission to probe the matter further, a new system called the Permanent Settlement was put in place by the East India Company in 1793, which would stay in place in one form or the other until after India’s independence in the second half of the twentieth

⁷⁰ The local ruler of Bengal was defeated in the Battle of Plassey in 1757, and the agreement with the Mughal emperor led to the de facto rule of Bengal coming under the East India Company.

⁷¹ Burke prosecuted the impeachment trial of Hastings in the British parliament. See Nicholas B. Dirks, *The Scandal of Empire: India and the Creation of Imperial Britain* (Cambridge, Mass: Belknap Press of Harvard University Press, 2006).

⁷² O’Neill, *Edmund Burke and the Conservative Logic of Empire*, 111.

century. The settlement restored land to the old landlords, made it inheritable, and fixed land revenue owed to the state in perpetuity. According to its promoters, the new system venerated private property, instituted security of tenure, and “entrusted property to the care of a class of native entrepreneurs who had solid interest in the land and were politically reliable. This alone could establish ‘the permanence of dominion’.”⁷³ These rationale were very much in line with the dominant eighteenth-century political (that is, the sanctity of individual property rights) and political economy (that is, *laissez-faire*)⁷⁴ theories which were tilted in favour of the landlords and aristocrats. Although one of the proponents of permanent settlement had argued about the need for some form of secure tenure for the cultivators (*ryots*) way back in 1776,⁷⁵ the regulation that was adopted in 1793 reserved the right to consider this sometime in the future:

The Governor-General in Council will, whenever he may deem it proper, enact such Regulations as he may think necessary for the protection and welfare of dependent talookdars, ryots, and other cultivators of the soil; and no zemindar, independent talookdar, or other actual proprietor of the land, shall be entitled, on this account, to make any objection to the discharge of the fixed assessment which they have respectively agreed to pay.⁷⁶

⁷³ Guha, *A Rule of Property for Bengal*, 9.

⁷⁴ As discussed below, *laissez faire* theories/approaches saw minimal role of the state (through laws and policies) in coordinating economic activities.

⁷⁵ Minute of Philip Francis: Plan for a Settlement of the Revenues, January 22, 1776:

“Having thus taken ample care of the rights of the Zemindars, and given security to their property, the next step is to make similar provisions for their tenants. The land is the hereditary property of the Zemindar. He holds it by the law of the country. On the tenure of paying a certain contribution to Government. When this condition is complied with, he is master of the land to let it to whom he thinks proper; but when he has given a lease of any part of it to a Ryot, the condition of such lease should be invariably adhered to. In other words, the same security, which Government gives to the tenant in chief, should for the same reasons, descend to the undertenants in their several gradations; so that every rank of society and every member of it may have something to call own.” (Romesh C. Dutt, ed., *Sir Philip Francis’s Minutes of the Subject of a Permanent Settlement for Bengal, Behar and Orissa* (Calcutta: S.C. Auddy and Co., Booksellers and Publishers, 1901), 55.)

⁷⁶ Reproduced in Roy and Swamy, *Law and the Economy in Colonial India*, 36.

Despite several attempts by colonial administrators to revisit the security of tenure for tenants in the first half of the nineteenth century, experiments with a form of peasant proprietorship in other parts of India, and persistent critiques from utilitarian and liberal political theorists of the permanent settlement for privileging landlord interests, it was not until 1859 that changes were made to land tenure in Bengal.⁷⁷ Multiple agrarian insurrections against the exploitative landlords in the 1830s and 1840s, the uprising of 1857, and the Indigo revolt in 1859⁷⁸ finally convinced the colonial government to enact some legislation to protect the tenants.⁷⁹ This took the form of the Bengal Rent Act of 1859 which, while reaffirming the property rights of landlords, created a category of privileged occupancy tenants whose tenures were secured in perpetuity, subject to paying a 'fair and equitable' rent. It was this fair and equitable rent that became controversial in several high-profile legal challenges soon after its passage, and which drew in theoretical debates about property rights and political economy.⁸⁰ The court challenges involved the ability of landlords to increase 'contract rents' (that is, the annual payments) when the value of the output from land increased. However, the legal arguments in the judgments were based on David Ricardo's 'economic rents,' that is, what should be the proportionality of

⁷⁷ For details about the various regulations that further strengthened the hand of the landlords during this period, as well debates about furthering tenant rights, see Radharomon Mookerjee, *Occupancy Right, Its History and Incidents* (Calcutta: Calcutta University Press, 1919); Roy and Swamy, *Law and the Economy in Colonial India*.

⁷⁸ Indigo became a big export from India in the nineteenth century. Indigo production was done in large plantations owned by colonial merchants. The tenant-cultivators in these plantations were forced to grow indigo even when it was not economically viable for them. The tenants finally revolted in 1859, and their insubordination was violently crushed by the planters, with the support from the colonial government. For some of the political and legal aspects of the revolt, see Sartori, *Liberalism in Empire*. For cultural and political aspects, see Nandi Bhatia, *Acts of Authority, Acts of Resistance: Theater and Politics in Colonial and Postcolonial India* (Ann Arbor: University of Michigan Press, 2004).

⁷⁹ Robb, *Peasants, Political Economy, and Law*.

⁸⁰ For details about these cases, especially the "Great Rent Case", see Chapters 3 and 4 of Sartori, *Liberalism in Empire*.

distribution of the gains between tenants and landlords.⁸¹ The crux of the matter was to determine whether improvement in land was attributable to the landlord or the tenant. Furthermore, should an increase in rent be apportioned according to the relative effort, or be expropriated by the owner/proprietor, the landlord? Thus, the question of rights surfaced again, but this time it was within the domain of political economy and revolved around theories of laissez-faire and Ricardian rents.⁸²

The discipline of political economy emerged in the eighteenth century⁸³ and sought to develop principles that could “advise the statesman on how he could best manage the economic affairs of the state so that the wants of the citizens could be met.”⁸⁴ The policy instruments were needed primarily to support the ‘invisible hand’ of the market to promote competitive behaviour between economic actors so that initiatives of individuals are rewarded. Calling this a system of natural liberty, Adam Smith, in *Wealth of Nations*, identified only three duties of the state or

⁸¹ The revenue demands by the state on the landlords were fixed in the Permanent Settlement. Any economic gains from the improvement in land (reflected in the chargeable rent) were theoretically for the landlord to appropriate.

⁸² For details about political economy and land tenure in the three colonial sites of interest, see S. Ambirajan, *Classical Political Economy and British Policy in India* (Cambridge: Cambridge University Press, 1978); R. D. Collison Black, *Economic Thought and the Irish Question 1817-1870*, Reprint edition (England: Cambridge University Press, 2015); Rusty Bittermann and Margaret McCallum, “When Private Rights Become Public Wrongs: Property and the State in Prince Edward Island in the 1830s,” in *Despotic Dominion: Property Rights in British Settler Colonies*, ed. John McLaren, A. R. Buck, and Nancy E. Wright (Vancouver, B.C: UBC Press, 2005), 144–68.

⁸³ The foundational text of classical political economy is Adam Smith’s *Wealth of Nations* published in 1776 (Adam Smith and D. D. Raphael, *The Wealth of Nations*, Everyman’s Library 11 (New York: Knopf : Distributed by Random House, 1991)), and subsequently include writings of Jeremy Bentham (Jeremy Bentham et al., *Jeremy Bentham’s Economic Writings: Critical Edition Based on His Printed Works and Unprinted Manuscripts* (London: Published for the Royal Economic Society by George Allen & Unwin, 1952)), David Ricardo (David Ricardo, *The Principles of Political Economy & Taxation*, Everyman’s Library (London : New York: J. M. Dent & sons, Ltd.; E. P. Dutton & co, 1912)), and J.S. Mill, among others.

⁸⁴ James A. Caporaso and David P. Levine, *Theories of Political Economy* (New York: Cambridge University Press, 1992), 1.

sovereign to facilitate the functioning of this economic system: national defense, administration of justice, and providing public works and institutions related to infrastructure and education.⁸⁵

This doctrine of laissez-faire, with minimal interference of the state in economic transactions, underlay the granting of unambiguous rights to the landowners, including the ability to choose the tenure of land for the tenants/cultivators and determine appropriate rent. As suggested by

Thomas Metcalf:

Those who accepted the theories of laissez faire ... looked on tenancy legislation [that granted security of tenure to the cultivators] as a harmful and retrograde measure. By restricting the landlord, they argued, it would stifle capital investment and perpetuate uneconomic smallholdings. This faith in the landlord as the agent of agrarian progress reflected ultimately the success of large-scale capitalist farming in England.⁸⁶

In contrast, utilitarians such as Bentham and J.S. Mill, while accepting the primacy of the market as the guiding economic principle, nonetheless preferred a more expansive role of the state to promote some form of distributive justice. The economic rationale to achieve this objective, at least in the context of land tenure, was provided by the rent theory proposed by David Ricardo in 1817. Distinguishing contract rent from economic rent, he defined the latter as “that portion of the produce of the earth which is paid to the landlord for the use of the original and indestructible powers of the soil.”⁸⁷ He suggested that the possibility of rent arose for the landlord due to two conditions: a limited quantity of land and the differential quality (fertility)

⁸⁵ Smith and Raphael, *The Wealth of Nations*, 651. Smith also did not see an economic benefit of colonization since imperial ventures necessarily encompassed monopolies and protectionism and thus “interfered with the natural development of commercial economies... and injured the general welfare of society.” Pitts, *A Turn to Empire*, 54.

⁸⁶ Thomas R. Metcalf, “Laissez Faire and Tenant Right in Mid-Nineteenth Century India,” *The Indian Economic & Social History Review* 1, no. 1 (1963): 75.

⁸⁷ Ricardo, *The Principles of Political Economy & Taxation*, 33.

across parcels of land,⁸⁸ and “in the long run, as population and wealth increase, landlords would be able to appropriate a growing share of society’s product. Landlords [thus] did not create rent, they merely appropriated it.”⁸⁹

Ricardo’s theory on the conditions for the emergence of rent in land and its appropriation by the landlords was adopted by those opposed to the political dominance of the landed aristocracy. In his own *Principles of Political Economy* published in 1848, J.S. Mill used the logic of Ricardian rents to explain how the fruits of agricultural improvement went primarily to the landlords:

The economical progress of a society constituted of landlords, capitalists, and labourers, tends to the progressive enrichment of the landlord class; while the cost of the labourer’s subsistence tends on the whole to increase, and profits to fall. Agricultural improvements are a counteracting force to the last two effects; but the first, though a case is conceivable in which it would be temporarily checked, is ultimately in a high degree promoted by those improvements; and the increase of population tends to transfer all the benefits derived from agricultural improvement to the landlord alone.⁹⁰

In his subsequent writings, Mill distinguished between two types of landlords: improving ones and sleeping ones. The increase of rent for the former was due to the “exertion or expenditure of the owner” and thus could not be subject to any objection. On the other hand, the rent increase for the sleeping landlords was due to the “general prosperity produced by the labour and outlay of other people.”⁹¹ The possible alternatives to curb the appropriation of rent by the

⁸⁸ He wrote: “On the first settling of a country in which there is an abundance of rich and fertile land, a very small proportion of which is required to be cultivated for the support of the actual population, or indeed can be cultivated with the capital which the population can command, there will be no rent; for no one would pay for the use of the land when there was an abundant quantity not yet appropriated, and, therefore, at the disposal of whoever might choose to cultivate it” (Ricardo, 34).

⁸⁹ Avner Offer, “Ricardo’s Paradox and the Movement of Rents in England, c. 1870-1910,” *The Economic History Review* 33, no. 2 (1980): 236.

⁹⁰ Mill and Riley, *Principles of Political Economy*, 99.

⁹¹ JS Mill’s address to the Land Tenure Reform Association in 1871, quoted in Offer, “Ricardo’s Paradox and the Movement of Rents in England, c. 1870-1910,” 237–38.

non-improving and absentee landlords included a tax on the landlord's rent (Ricardo's view that "[g]round rents and the ordinary rent of land are, ... perhaps, the species of revenue which can bear to have a peculiar tax imposed upon them")⁹² and the more radical solution proposed by Marx and Engel's in the *Communist Manifesto* for "the abolition of property in land and the application of all rents of land to public purposes."⁹³

As discussed in the previous section, political theorists such as Jeremy Bentham and J.S. Mill were not ready to fully abrogate the principles of private property. However, from a political economy perspective, some form of state intervention to curb the parasitical landlord and improve the conditions of the cultivators could be justified. They were able to accomplish this by supporting greater tenant rights in the form of security of tenure for the cultivators (that is, rewarding those making actual improvements in land) and restricting the ability of landlords to arbitrarily increase the rents (that is, ensuring equitable distribution from the gains from improvement).⁹⁴

Thus, by the middle of the nineteenth century, principles from political economy could be used to justify the appropriation of the fruits of land improvement by either the landlords or the cultivators of land. This, along with the various interpretations about private property, provided colonial administrators with enough theoretical tools at their disposal to navigate the complexities of land tenure relationships and justify their respective views.⁹⁵ However, rights and

⁹² Reproduced in Offer, 236–37.

⁹³ Reproduced in Offer, 237.

⁹⁴ For a detailed discussion of how liberalism was challenged in terms of its universal principles of liberty within the context of modern institutions and the empire, especially in relation to political economy, see Sartori, *Liberalism in Empire*; Sartori, "The British Empire and Its Liberal Mission."

⁹⁵ J. M. Currie, *The Economic Theory of Agricultural Land Tenure* (Cambridge; New York: Cambridge University Press, 1981).

economic benefits needed to be assessed within the political climate of the time in the respective colony. Thus, questions about political expediency and stability of the Empire became the third component in dealing with land tenure and to which I now turn.

Political Expediency and Stability of the Empire

Its chivalry was that of Robin Hood, who is said to have robbed the wealthy and to have given to the poor. Robin Hood, however, managed to secure the favour of those whom he gave his loot. We managed to make them as hostile as those we plundered.⁹⁶

---- Lord Ellenborough, Governor General of India, 1842-1844

The above quotation from the immediate aftermath of the 1857 Indian rebellion, lamenting lack of support for the British by the peasants in the province of Oudh despite being granted secure tenure rights vis-a-vis the landed aristocracy in 1856, highlight colonial anxieties about the political implications of their land policies on the stability of the Empire. A vast majority of the population in the various colonies of the British Empire was economically dependent on land, and existing land relationships were closely tied to the local political and social structures. Any restructuring of land tenure necessarily impinged on existing hierarchies and had destabilizing implications. Furthermore, political movements (with economic and social implications) in the nineteenth century across the Empire created anxieties due to their potential to make common cause with the landlords or peasants involved in the struggle over agrarian rights.⁹⁷ These considerations brought to the fore the necessity of greater attentiveness to the

⁹⁶ Reproduced in Thomas R. Metcalf, "The Influence of the Mutiny of 1857 on Land Policy in India," *The Historical Journal* 4, no. 2 (1961): 155.

⁹⁷ The interests and objectives of political movements did not always have a symmetrical alignment with those of interests of either the landlords or the peasants. For instance, the 1857 Rebellion in India is considered by some historians as an elite insurrection in order to restore the Indian aristocracy to power (see Bipan Chandra, ed., *India's Struggle for Independence, 1857-1947* (New Delhi, India: Penguin Books, 1989)). Similarly, the struggle of the Irish home rule movement did not necessarily have land reforms as one of its primary objective (see Matthew Kelly, "Irish Nationalist Opinion and the British Empire in the 1850s and 1860s," *Past & Present*, no. 204 (2009): 127–54)), and the Escheat Movement and Tenant

political implications of reforms being contemplated in the various colonies.⁹⁸ Within the context of land tenure, political expediency required an assessment of the relative merits of promoting landlord or tenant interests to ensure the stability of colonial rule. Here again, there was disagreement regarding the value of the landed aristocracy in ensuring the Empire's stability, either by directly supporting colonial rule and/or by keeping aspirations of the peasantry in check.⁹⁹

On one side were those who considered the landed aristocracy in the colonies similar to the one in England in terms of its socio-political standing and saw it as a guardian of a stable social order.¹⁰⁰ Landed estates "held together by primogeniture and entail were supposed essential to the maintenance of a beneficial political order."¹⁰¹ A major proponent of this view was Edmund Burke who critiqued British colonial rule in both Ireland and India. He argued that the "peculiarities of Ireland's conquest had warped and transmogrified Ireland's 'natural aristocracy' and destroyed the appropriate relationship between landed wealth and political

League in Prince Edward Island often had diverging interests (see Ian Ross Robertson, "Political Realignment in Pre-Confederation Prince Edward Island, 1863-1870," *Acadiensis* 15, no. 1 (1985): 35–58). I will be exploring these aspects further in the individual chapters on each colonial site.

⁹⁸In one sense, the persistent competition between colonial empires in different parts of world throughout history and the local resistance to these empires because of their despotic features were always a constant threat to their stability (Duncan Bell, *Reordering the World: Essays on Liberalism and Empire* (Princeton, New Jersey : Princeton University Press, 2016); Also see Sidney James Owen, "The Stability of Our Indian Empire.," *The Contemporary Review, 1866-1900; London* 31 (February 1878): 494–519).

⁹⁹From the perspective of the proponents of the aristocracy and those opposed to it, the alternative did not entail giving greater political rights to the masses, as both saw most of the colonized societies as inferior and in need of civilizing before questions about political representation could be considered, see Mehta, *Liberalism and Empire*; O'Neill, *Edmund Burke and the Conservative Logic of Empire*; Pitts, *A Turn to Empire*. The settler colonies were seen somewhat differently in terms of their readiness for limited self-government. See Bell, "John Stuart Mill on Colonies."

¹⁰⁰ Pitts, *A Turn to Empire*.

¹⁰¹ Clive J. Dewey, "The Rehabilitation of the Peasant Proprietor in Nineteenth-Century Economic Thought," *History of Political Economy* 6, no. 1 (1974): 17.

power that it should ideally embody.”¹⁰² Burke was equally critical of the East India Company, calling company administrators “destroyers of the nobility and gentry of a whole kingdom ... [and] birds of prey and passage, with appetites continually renewing for a food that is continually wasting.”¹⁰³ The other side viewed the landed aristocracy as parasitical, tradition bound, and a constraint on the moral and economic progress of the masses, as well as a “heavy burden on agricultural productivity.”¹⁰⁴ According to J.S. Mill, the British government had supported, in both Ireland and India, a “rapacious nobility at the expense of wretched peasant populations.”¹⁰⁵

Literature on non-democratic political regimes suggests that an important determinant of their stability is the capacity to co-opt the “strategically-relevant actors” who are “persuaded not to exercise [their] power to obstruct.”¹⁰⁶ For colonial administrators with a greater affinity towards the aristocracy, the landed gentry in traditional and agriculture-based societies was the natural candidate for co-optation because of its structural similarity with social, political and economic hierarchies in England. Through appropriate economic rewards,¹⁰⁷ inclusion in the civil and military governance of the colony,¹⁰⁸ and grant of certain privileges and perks via colonial

¹⁰² O’Neill, *Edmund Burke and the Conservative Logic of Empire*, 148.

¹⁰³ Reproduced in O’Neill, 111–12.

¹⁰⁴ Bayly, *The Birth of the Modern World 1780-1914*, 296.

¹⁰⁵ Pitts, *A Turn to Empire*, 146.

¹⁰⁶ Johannes Gerschewski, “The Three Pillars of Stability: Legitimation, Repression, and Co-Optation in Autocratic Regimes,” *Democratization* 20, no. 1 (2013): 22.

¹⁰⁷ Jennifer Gandhi and Adam Przeworski, “Cooperation, Cooptation, and Rebellion under Dictatorships,” *Economics and Politics* 18, no. 1 (2006): 1–26.

¹⁰⁸ Owen, “The Stability of Our Indian Empire.”

honours¹⁰⁹ and rituals,¹¹⁰ the aristocratic landlords could be the bulwark for countering popular discontent against colonial rule.

An alternate to this 'pyramid-shaped' hierarchical approach to maintain stability is one that is more bottom-up. Built around notions of legitimacy, political stability is achieved by introducing just institutions that provide a moral right to rule.¹¹¹ Although just institutions normally include provisions for political participation of the governed, in the context of colonial rule, legitimacy efforts may be restricted to economic considerations, that is, building legitimacy by placating the struggling masses through economic upliftment. Supporting security of tenure and related proprietary rights of tenants could thus achieve two political objectives: legitimize colonial rule, and more importantly, quash any remnants of authority and influence of the traditional aristocracy.

Along with the relative importance of the aristocratic class versus the peasants in ensuring political stability in individual colonies, the Empire also had to be attentive to the political implications at home from privileging one class over the other in pursuit of restructuring land relationships. A large number of British administrators across the colonies, as well as cabinet members in the Imperial governments, came from the landowning class. In addition, land grants in various colonies were based on socio-political connections at home and as rewards for military

¹⁰⁹ Bruce Knox, "Democracy, Aristocracy and Empire: The Provision of Colonial Honours, 1818–1870," *Australian Historical Studies* 25, no. 99 (1992): 244–64.

¹¹⁰ E. J. Hobsbawm and T. O. Ranger, eds., *The Invention of Tradition* (Cambridge ; New York: Cambridge University Press, 2012).

¹¹¹ The concept of legitimacy has been a subject of interest to political theorists throughout history, and there is an extensive literature on this topic. For a review of this literature see Peter G. Stillman, "The Concept of Legitimacy," *Polity* 7, no. 1 (September 1, 1974): 32–56; Roy Suddaby, Alex Bitektine, and Patrick Haack, "Legitimacy," *Academy of Management Annals* 11, no. 1 (October 25, 2016): 451–78.

service towards the expansion and maintenance of the Empire.¹¹² The largest of British and Irish landlords held estates in multiple colonies,¹¹³ and “their financial interests and investments often ran through overseas and imperial channels.”¹¹⁴ These landlords had the political capital at home and enough influence in the British parliament to thwart attempts by colonial governments to impinge on their rights to property. Thus, political expediency considerations not only necessitated a balancing act in each of the colonies but also had to be performed in a way to minimize any negative spillovers that could excite landowners and/or peasants at home in England.

If the objective of land tenure laws was to find an ideal candidate who could be bestowed with security of tenure, the discussion in the previous sections shows the complexity in making this choice across the British Empire in the nineteenth century. The ideal candidate needed to have justifiable claims to property, be willing to make the necessary investments to improve the land, and be reliable in terms of providing political support for colonial rule. Exacerbating this complexity were the competing and often oppositional perspectives around property rights, political economy, and political expediency prevalent in colonial thinking concerning each of these three criteria.¹¹⁵

¹¹² Weaver, *The Great Land Rush and the Making of the Modern World, 1650-1900*.

¹¹³ As discussed in Chapter 5, one of the largest proprietors in Prince Edward Island had made his fortune with the East India Company, and was related to England’s Prime Minister.

¹¹⁴ Annie Tindley, “‘All the Arts of a Radical Agitation’: Transnational Perspectives on British and Irish Landowners and Estates, 1800–1921,” *Historical Research* 91, no. 254 (2018): 717.

¹¹⁵ A possible critique of this proposed analytical framework anchored around the three pillars is that it is not parsimonious. For instance, it could be argued that a liberal-minded colonial administrator involved in land tenure discussions would always support the position of relative property rights, political economy arguments for tenants’ security of tenure, and hope to achieve political stability through the economic betterment of the tenants. Conversely, there should be alignment between absolute rights of property, the improving landlord, who would in turn be a natural political ally of colonial rule. If there is such correspondence, then there is redundancy in the framework, as one could come to the same conclusion

Security of Tenure¹¹⁶

Besides the nineteenth-century debates around whether security of tenure should be established for tenant cultivators, there were also different perspectives on what this security entailed and the ways it could be achieved.¹¹⁷ Most of the discussions arose from the harmful consequences of tenants' 'insecurity of tenure'. William Gladstone's address to the British Parliament in 1870 in support of his proposed land act for Ireland captures the essence of the nineteenth-century thinking.¹¹⁸ He argued that "insecurity of tenure" was the cause of "great evil" because "it not only abridges the comforts of the cultivator of the soil, but which limits and paralyzes his industry, and at the same time vitiates his relations ... with the landlords, and ... with

by focusing on any one of the three pillars. There are two responses to this potential critique. First, the relative importance of each of the pillars could vary across administrators. In this case, the differential saliency provides an opportunity for negotiation and accommodation in instituting particular provisions in the law. A useful example in this regard (and which will be discussed in more detail in the Chapter 3) is the conflict between the Lawrence brothers, who were part of the Board of Administration in Punjab after it was annexed in 1849. Both wanted economic improvement of the peasantry, however the mechanisms through which this was to be accomplished differed, one wanted to improve their economic conditions by granting them security of tenure, while the other saw the improvement of peasants through the benevolence of the contented landlords (Harold Lee, *Brothers in the Raj: The Lives of John and Henry Lawrence* (Oxford: Oxford University Press, 2002). Second, there is evidence that colonial administrators and theorists emphasized different logics across the various colonies. For instance, there was wide variance in the solutions proposed by J.S. Mill to tenant difficulties in India, Ireland and the settler colonies such as Australia and Canada (see Bell, "John Stuart Mill on Colonies"; Pitts, *A Turn to Empire*). In both of these examples, different combinations of rationale across the three pillars are evident.

¹¹⁶ There is a vast contemporary literature on the economic and socio-political implications of secure property rights (or security of tenure) coming from various disciplines. Some of these ideas originated from land tenure discussions from the previous centuries. I provide a brief description of these in different chapters, but a detailed discussion is beyond the scope of the current study. For representative publications, see Harold Demsetz, "Toward a Theory of Property Rights," *The American Economic Review* 57, no. 2 (1967): 347–59; Besley, "Property Rights and Investment Incentives: Theory and Evidence from Ghana."

¹¹⁷ See W.F. Finlason, *The History of Law of Tenures of Land in England and Ireland: With Particular Reference to Inheritable Tenancy; Leasehold Tenure; Tenancy at Will; and Tenant Right* (London: Stevens & Hayes, 1870), 140–48 for an extended discussion of the pros and cons of establishing security of tenure through fixing the duration of tenure or ensuring the right of compensation from landlord to tenant.

¹¹⁸ Also see Isaac Butt, *Land Tenure in Ireland; A Plea for the Celtic Race*, Third Edition (Dublin: John Falconer, 1866); James Caird, *The Irish Land Question* (London: Longmans, Green, Reader, and Dyer, 1869).

the law under which and the society in which he lives.”¹¹⁹ Manifestations of insecure tenure included withdrawal of customary privileges of the tenants, arbitrary evictions, and demands for increased rent that “have been made upon the tenant founded solely upon the value which he, by his labour and his capital, has added to the soil.”¹²⁰

While there was general agreement about the causes and consequences of insecure tenure, how to rectify this (that is, create ‘security’) generated wide differences. Some suggested that fixity of tenure, compensation for improvements made by the tenant, and leases negotiated by mutual contracts, were the modes through which security of tenure may be given to the tenants, however it was only the leases that did not impinge on the landowners’ rights of property.¹²¹ According to Gladstone, ‘fixity of tenure’ meant ‘perpetuity’, and “perpetuity of tenure on the part of the occupier is virtually expropriation of the landlord, and ... compensation would have to be paid to the landlord for the rights of which he would be deprived.”¹²² On the other hand, proponents of tenant rights saw only ‘fixity of tenure’ that would lead to a contented peasantry,¹²³ as it provided the requisite incentives for investments to improve the land and adequate time period to recoup the investments. In addition, fixity would protect the tenants from arbitrary evictions.

¹¹⁹ Gladstone’s Address, February 15, 1870 in “Irish Land Bill. Hansard Third Series CXCIX” (Hansard (3rd Series), 1870), 349.

¹²⁰ “Irish Land Bill. Hansard Third Series CXCIX,” 355.

¹²¹ Caird, *The Irish Land Question*.

¹²² “Irish Land Bill. Hansard Third Series CXCIX,” 351.

¹²³ Butt, *Land Tenure in Ireland; A Plea for the Celtic Race* It will become clear in the following chapters that the benefits of fixity of tenure would be debated under different names. While ‘fixity’ was one of the 3Fs demanded in Ireland, the term used in Punjab was ‘occupancy rights’ while in PEI, the objective was to convert leasehold tenures to ‘freeholds’.

Similarly, security of tenure through compensation for improvements also generated diverse opinions which were related less to the principles behind this form of security but more to the processes in implementing it (for example, what types of improvements that could be claimed, within what time frame, whether these needed the consent of the landlord, who determines the value of the improvements, among others). Furthermore, there were questions as to whether a tenant is entitled to compensation for improvements if evicted by the landlord for non-payment of rent and whether a tenant can sell the unexhausted improvements made by him to the incoming tenant (that is, compensation for goodwill).¹²⁴

Underlying the discussions around both 'fixity' and 'compensation for improvements' as means to provide security of tenure to the tenants were questions about the rent payable by the tenants for cultivating the land. These included whether the right to determine the rent was the sole prerogative of the landlord, whether it needed to be controlled, and if so, by whom? Proponents of both fixity and compensation argued that security of tenure for the tenants could not be achieved without reining in the ability of the landlords to arbitrarily raise rents. The argument related to fixity was that if the tenants were guaranteed fixity of tenure subject to paying the rent, the landlord could increase the rent to a level that will lead to arrears on the part of the tenants, thus making fixity obsolete as the landlord could now evict for non-payment of rent. In the case of compensation for improvement, where there was high competition for land amongst the tenants, the landlord could increase the rent to a level that more than compensated

¹²⁴ George Campbell, *The Irish Land* (London: Trubner and Co., 1869); John Elliott Cairnes, "Ireland in Transition: Land Tenure," *The Economist*, October 14, 1865; John Elliott Cairnes, "Political Economy of Land (Originally Published in *Fortnightly Review*, January 1870)," in *Essays in Political Economy: Theoretical and Applied*, by John Elliott Cairnes (London: Macmillan and Co., 1873), 187–230. Some of these debates are elaborated upon the following chapters.

for the payment due to the existing tenant for improvements. In both cases, the landlord could theoretically force an eviction of tenants by raising the rent. Accordingly, 'fair rents' became one of the three pillars (the other being 'fixity of tenure' and 'freedom of sale') in achieving security of tenure for the tenants.

Land Tenure in the Colonies and English Principles

In discussions about land tenures across the British Empire, one of the salient points of discussion was the precedents from where land laws could be derived. A natural point of comparison was that of land tenure relationships prevalent in England. Differences emerged amongst colonial administrators as well as landlord and tenant groups across the colonies as to the appropriateness of applying English principles and practices in the colonies. Some viewed the English land tenure system of the nineteenth century as embodying sanctity of property rights and political economy ideas of laissez faire and capitalist farming. These features were seen as marks of an advanced society, and thus the Empire should strive to transfer these very principles to the colonies. Others also acknowledged the superiority of English land tenure principles, but used Maine's arguments about evolutionary historicism to question the appropriateness of these principles in less advanced societies.¹²⁵ It should be noted that both viewpoints were congratulatory of English land tenure principles, however the question was whether transferring them to the colonies would facilitate the Empire's civilizing mission or whether the uncivilized stage of the colonies made them unfit to adopt these principles.

¹²⁵ Mantena, *Alibis of Empire*, 120.

What were the English principles that served as points of comparison in the debates about land tenure in the colonies?¹²⁶ The most salient principle that guided land tenure in England was the prevalence of ‘contracts’ (rather than ‘status’) in structuring landlord-tenant relationships: “Great Britain is almost the only country in the world in which land-contract has been carried to the length of [the] threefold division of classes into superior capitalist owning the land...; inferior capitalist cultivating under a definite contract; and the labourer working for hire.”¹²⁷ The contracts specified the “money-rents” payable by the tenants, as well the length of the leases and other mutual obligations.¹²⁸ In addition, another structural characteristic that was prevalent in England was the “custom according to which the landlord [undertook] all outlay of an important character needed for cultivation.”¹²⁹ That is, investments in “improvement,” which included farm houses and farm buildings, fences, gates, etc., were made by landlord, and the “rent fixed with reference to the state of things.”¹³⁰

¹²⁶ Delving into the history of land tenures in England is beyond the scope of this study. Here, I summarize the main features of land tenures, especially the ones related to landlord-tenant relationships in the middle of the 19th century. It was these features that were contrasted in debates around the land laws in the three colonies of interest. For more extended treatment of land tenures in England, see; Finlason, *The History of Law of Tenures of Land in England and Ireland*; Mill, *England and Ireland*; Maine, *Ancient Law*; F. Seebohm, “The Land Question: Part II. Feudal Tenures in England,” *Fortnightly Review*, January 1870, 89–107; C. Wren Hoskyns, “The Land-Laws in England,” in *Systems of Land Tenure in Various Countries: A Series of Essays Published Under the Sanction of the Cobden Club* (London: Macmillan and Co., 1870), 92–144.

¹²⁷ Campbell, *The Irish Land*, 16.

¹²⁸ John Stuart Mill, “Speech on Mr. Chichester Fortescue’s Land Bill, House of Commons, May 17, 1866,” in *Chapters and Speeches on the Irish Land Bill*, by John Stuart Mill (London: Longmans, Green, Reader, and Dyer, 1870), 99. Even the ‘copyhold’ tenure (a type of landholding based on the custom of the manor), which was initially held at the will of the lord grew into an occupancy right with fixed rent, first recognized by custom and subsequently by law. See Campbell, *The Irish Land*; Finlason, *The History of Law of Tenures of Land in England and Ireland*.

¹²⁹ Cairnes, “Ireland in Transition: Land Tenure,” 1239.

¹³⁰ “Report from Her Majesty’s Commissioners of Inquiry into the State of the Law and Practice in Respect of the Occupation to the Land in Ireland (Devon Commission)” (Dublin: Alexander Thom, 1845), 16.

Besides these structural characteristics of contract-based relationships, long leases, and landlords making investments for major improvements, a few other features of land tenures in England were identified, which supposedly led to more amicable relationships between landlords and tenants, ones based on “good understanding”¹³¹ and “good feeling,”¹³² rather than mutual hostility and suspicion. The relatively peaceful relationships between the two groups were attributed to the more active involvement of the landlords (that is, few absentee landlords) in their land and with their tenants, both groups being of the “same mind in politics and in religion,” and with few “marks of conquest.”¹³³

Conclusion

This chapter has articulated a framework that would facilitate a comparison of the land tenure legislation in the three colonies. In the following chapters, I examine the debates leading to the enactment of various laws around the three pillars of property rights, political economy, and political expediency, and foreground how these intersected within each colonial site of interest. It will be shown that the nature of the debates on each of these pillars, their relative salience in the discussions, along with the means through which oppositional perspectives were accommodated and/or contested, differed in the three colonies due to their unique characteristics identified in Chapter 1. This heterogeneity ultimately explains the specificities of security of tenure institutionalized in the laws in the three colonies during the 1868-1875 period.

¹³¹ Hoskyns, “The Land-Laws in England,” 124.

¹³² Cairnes, “Ireland in Transition: Land Tenure,” 1239.

¹³³ See speech by Gladstone, February 15, 1870. Reproduced in “Irish Land Bill. Hansard Third Series CXCIX,” col. 339.

I examine the sites in chronological order based on the year the law was enacted, starting with the Punjab Tenancy Act of 1868.

CHAPTER 3
STALLING THE ARISTOCRATIC MOMENTUM:
THE PUNJAB TENANCY ACT OF 1868

The Punjab Tenancy Act [leads] us to hope that Sir John Lawrence is resolved to stamp the institutions of the country and leave his mark upon them.... The prosperity of the yeomanry is more than a mere poet's theme; upon it depend, in a country like this, the stability of the public revenue, and the resistance to famine, and the greatest happiness of the greatest number – to protect them from rack-renting is a duty that we have inherited from our native predecessors, whom we ought at least to equal in humanity and wisdom.¹

Vaé Victis! [Woe to the conquered!] And so, the curtain falls on the last Act of a tragedy.... The last Legislative Act of Sir John Lawrence has appropriately been his worst, and on the silent and deserted walls of the Council Chamber a ghostly hand in writing, in letters of fire. "Mene, Mene, Tekel Upharsin" [God has doomed the Kingdom]. Thou art weighed in the balance and found wanting – Thy kingdom is divided.²

The British annexed Punjab in 1849 and put in place an administrative structure to govern the province, which included hurriedly carried out land tenure settlements.³ However, concerns about the efficacy of these settlements, combined with the changed political situation in India after the 1857 uprising,⁴ led to a rethinking of existing land tenure policies in Punjab (and the rest of British India).⁵ These efforts, initiated in 1860, culminated in the passing of the Punjab Tenancy

¹ Editorial in the Pioneer, "Tenant Right", in *Opinions of the Press in India on (I) The Tenant Right Controversy in the Punjab. (II) The Action Taken by the Government of India. (III) The Legislative Measure Called "The Punjab Tenancy Act," as Collected from the Newspapers, during the Years 1865 to 1869* (Lahore: Indian Public Opinion Press, 1869), 173.

² *Indian Public Opinion* writes of the Debate and passing of the new Tenancy Act by the Legislature in withering language, in *Opinions of the Press in India*, 152. The full comment on the proceedings of the Council is written in the form of a scene from an Amphitheatre, see pages 146-152.

³ 'Punjab' and 'Panjab' are both used in the literature. I use the former in this study and use the latter only when it is cited as such. Some colonial documents also spell it as 'Punjaub'.

⁴ Various terms have been used including mutiny, rebellion, first war of independence, revolt, among others. Some of these are used interchangeably in this chapter.

⁵ Thomas R. Metcalf, "The Influence of the Mutiny of 1857 on Land Policy in India," *The Historical Journal* 4, no. 2 (1961): 152–63; Thomas R. Metcalf, *The Aftermath of Revolt: India, 1857-1870* (Princeton, N.J: Princeton University Press, 1964).

Act of 1868,⁶ which instituted security of tenure for a large number of tenants through the creation of occupancy rights, and included provisions that regulated the rents and allowed freedom of sale of these rights. The almost ten years it took to pass the first land law in the province, and the theatrics in the above-quoted responses to the Act, suggest that it was a controversial and hotly debated piece of legislation. Opponents saw its institutionalization of ‘occupancy tenants’ as an infringement of the property rights of landlords. They characterized it as being “socialist,”⁷ “revolutionary,”⁸ “mischievous,”⁹ and produced by “immaculate conception,”¹⁰ among others.¹¹

Why did this piece of legislation regarding security of tenure in one province arouse such a fierce debate in both India and England, given that numerous laws had been enacted to deal with proprietary rights across British India since the end of the eighteenth century? Although the

⁶ “ACT No. XVIII of 1868, The Punjab Tenancy Act, in A Collection of The Acts Passed by the Governor General of India in Council in the Year 1868: 180-197” (Calcutta: Office of the Superintendent of Government Printing, 1868); For the proceedings of the Governor General in Council on January 17, April 11, and October 19, 1868, see Authority of the Governor-General, “Abstract of the Proceedings of the Council of Governor-General of India, Assembled for the Purpose of Making Laws and Regulations” (Calcutta: Office of Superintendent of Government Printing, 1869).

⁷ Editorial in the *Friend of India*, in *Opinions of the Press in India*, 33–39.

⁸ Editorial “The Eviction of Landlords in the Panjab,” *Friend of India*, in *Opinions of the Press in India*, 140–46.

⁹ *Mischievous Legislation, Being a Series of Articles on Tenant Right in the Punjab. Reprinted from “Indian Public Opinion,” with Appendices* (Lahore: Indian Public Opinion Press, 1868), 1; Minute by Erskine Perry, in “East India (Punjab Tenancy): Copies of the Despatch of the Secretary of State for India in Council Dated the 28th Day of October (No. 80) 1869, to the Governor General of India in Council, on the Subject of the India Act No. XXVIII. of 1868, (Punjab Tenancy Act)” (House of Commons, 1870), 5.

¹⁰ Letter to the Editor of the *Indian Public Opinion* by an Administrator, in *Opinions of the Press in India*, 240–43.

¹¹ These invectives were hurled not just by the English press in India, but also by members of the Secretary of State India Council in their various minutes of dissent to the approval of the Act in late 1869. See “Papers and Letters Relating to the Punjab Tenancy Act, 8th Duke of Argyll Papers,” 1869, BL OMF/IOR NEG 4231-4242.

Act of 1868 was the first land legislation in Punjab, it has not garnered much scholarly attention.¹² The only study dedicated to the Act is an article by G. R. G. Hambly, which foregrounds the role of one colonial administrator, Richard Temple, in the passage of the Act.¹³ By examining the vast archives and identifying the role of various players in the controversies surrounding it, I analyze the associated discussions within the political theory, political economy, and political expediency debates across the Empire in the middle of the nineteenth century discussed in the previous chapter. Part of the lack of scholarly interest in the Act is because of its short life, as another Act replaced it in 1887.¹⁴ However, although the 1868 Act had a short life span in Punjab, its basic principles were enshrined in the Punjab Tenancy Act of 1887. More importantly, as I argue in the subsequent chapters, the underlying debates, and provisions around the Act directly or indirectly shaped subsequent land tenure laws in Ireland and Prince Edward Island.

According to Hambly, the Act of 1868 represented “an important stage in the struggle between the rival revenue schools and administrative traditions which divided Indian officialdom in favour of either the peasant-proprietor or the landlord.”¹⁵ These rival traditions refer to the two schools of thought: one, based on the utilitarian philosophy,¹⁶ strove to give primacy to

¹² Even book length studies on land relationships in Punjab, or extended studies on land tenures in British India, make a cursory mention of this act. See Neeladri Bhattacharya, *The Great Agrarian Conquest: The Colonial Shaping of a Rural World* (New Delhi: Permanent Black, 2019); Tirthankar Roy and Anand V. Swamy, *Law and the Economy in Colonial India* (Chicago, London: The University of Chicago Press, 2016).

¹³ G. R. G. Hambly, “Richard Temple and the Punjab Tenancy Act of 1868,” *The English Historical Review* 79, no. 310 (1964): 47–66. This article pointed me to important and extensive archival materials which form the basis of this chapter.

¹⁴ India, *The Punjab Tenancy Act, XVI of 1887. With Introduction, Notes, Rules and Debates in Council by Madan Gopal ... Second Edition. Revised and Annotated up to End of February 1899.* (Lahore: Gulab Singh & Sons, 1899).

¹⁵ Hambly, “Richard Temple and the Punjab Tenancy Act of 1868,” 65.

¹⁶ Eric Stokes, *The English Utilitarians and India* (Oxford: Oxford University Press, 1989); Uday Singh Mehta, *Liberalism and Empire: A Study in Nineteenth-Century British Liberal Thought* (Chicago: University of Chicago Press, 1999).

tenant proprietorship because it “was the machinery for moral and intellectual advancement among the masses;”¹⁷ and the other, influenced by absolute rights of property and “laissez faire” theory of political economy,¹⁸ saw proprietary rights of the owners of the land as the foundation of social and political order, and extolled the framers of colonial laws to preserve the sanctity of private property.¹⁹ During the early part of the nineteenth century, the East India Company had instituted land tenures based on these two schools of thought. However, after favouring the landlords in the Bengal permanent settlements of 1793, proprietary rights gradually shifted in favour of the tenants in the southern and western provinces in the beginning of the nineteenth century. In the subsequently annexed territories of North-Western Provinces (1836)²⁰, Punjab (1849),²¹ and Oudh (1856),²² the colonial land tenure policies were based on peasant-proprietorship models.²³

The prevailing scholarship further suggests that the ascendancy of the peasant-proprietorship model stalled because of the rebellion of 1857, which created new anxieties for

¹⁷ Cited in Hambly, “Richard Temple and the Punjab Tenancy Act of 1868,” 48.

¹⁸ Thomas R. Metcalf, “Laissez Faire and Tenant Right in Mid-Nineteenth Century India,” *The Indian Economic & Social History Review* 1, no. 1 (1963): 74–81.

¹⁹ Daniel I. O’Neill, *Edmund Burke and the Conservative Logic of Empire* (Oakland, California: University of California Press, 2016).

²⁰ Michael Mann, “A Permanent Settlement for the Ceded and Conquered Provinces: Revenue Administration in North India, 1801-1833,” *Indian Economic & Social History Review* 32, no. 2 (1995): 245–69.

²¹ Baden-Powell in his voluminous work also sees the tenant rights question in Punjab from a political economy perspective: “Where tenants have to be protected in this province, it is more commonly on the ground that, though confessedly of an inferior grade, they have substantially aided the proprietary class in founding the village and clearing the soil; or if not that, at least they have helped to bear the revenue for the long years when it was burdensome as to absorb all profit.” B.H. Baden-Powell, *Land Systems of British India* (Oxford: Clarendon Press, 1882), Vol. II, 703.

²² Thomas R. Metcalf, *Land, Landlords, and the British Raj: Northern India in the Nineteenth Century* (Berkeley and Los Angeles: University of California Press, 1979).

²³ Metcalf, “The Influence of the Mutiny of 1857 on Land Policy in India.”

the British.²⁴ In the post-1857 period, and with the transfer of India's governance from the East India Company to the British Crown soon after, political expediency started taking precedence on questions of land tenure, whereby the "Government of India... undertook simultaneously to conciliate the landlords and to protect the peasantry. Their tenancy legislation ... reflects the ambiguities and inconsistencies of such a policy."²⁵ After the uprising, the restoration of proprietary rights to the taluqdar (landlord) in the Oudh land tenure system became the first casualty of this rethinking.²⁶

Thus, when initial land settlements in Punjab were reassessed in the 1860s, the competing perspectives around the three Ps (that is, political theory regarding property rights, political economy, and political expediency) were in play. So how were the proponents of peasant-proprietorship in Punjab able to buck the post-1857 currents that favoured landlords and were able to enshrine the rights of tenants into law? My overall argument is that a fortuitous alignment of three factors --- the emergence of a new discourse relating to the relativization of property rights, local conditions in Punjab, and global concerns of the British Empire --- was instrumental in achieving the objective of greater tenant rights in this piece of legislation.

First, customs and customary rights of property became important considerations during discussions about land tenure in Punjab because of Queen Victoria's proclamation on November

²⁴ For a general discussion on land tenure laws in India during the 19th century, see Mithi Mukherjee, *India in the Shadows of Empire: A Legal and Political History, 1774-1950* (New Delhi: Oxford University Press, 2010); Peter G. Robb, *Peasants, Political Economy, and Law* (New Delhi: Oxford University Press, 2007); Roy and Swamy, *Law and the Economy in Colonial India*, 2016.

²⁵ Metcalf, "Laissez Faire and Tenant Right in Mid-Nineteenth Century India," 80.

²⁶ Thomas R. Metcalf, "The Struggle Over Land Tenure in India, 1860-1868," *The Journal of Asian Studies* 21, no. 3 (1962): 295-307; Baden-Powell, *Land Systems of British India*. I discuss the Oudh situation a bit more later in the chapter.

1, 1858, when India came under the British Crown. The proclamation promised to respect the “feelings of attachment” of Indians to land and pledged to pay due regard to the prevailing ancient rights and customs “in framing and administering the law.”²⁷ Supporters of landlords and tenants seized on to this proclamation and searched for customary rights prevalent in pre-colonial Punjab to promote their respective positions. A focus on customs shifted the debate from ‘absolute’ towards ‘relative’ rights of property and provided a theoretical justification for some form of proprietary rights for the tenants.²⁸ An important point of note here is that the debates around tenant rights in Punjab were primarily amongst the British administrators (or what was referred to as the different schools of European “theoretical opinion”²⁹) and the English language press affiliated with the respective groups.³⁰ The search for pre-colonial customary rights of landlords and tenants, which were in any case not clearly discernible, thus became a

²⁷ “East India (Punjab Tenancy),” 402.

²⁸ Faisal Chaudhry, “A Rule of Proprietary Right for British India: From Revenue Settlement to Tenant Right in the Age of Classical Legal Thought,” *Modern Asian Studies* 50, no. 1 (January 2016): 345–84; Karuna Mantena, *Alibis of Empire: Henry Maine and the Ends of Liberal Imperialism* (Princeton, N.J.: Princeton University Press, 2010).

²⁹ See letter by Secretary of State for India dated October 28, 1869, in “East India (Punjab Tenancy),” 2.

³⁰ During the period when the Act was being discussed, most of newspapers in British India, especially the English language ones, were run by the British in India, and often their ideological leanings were aligned with different groups of administrators. In the specific case of Punjab, the bill under discussion was going against the pro-landlord sympathies prevalent in the rest of British India. Thus, its pro-tenant leanings were opposed by most of the English press. The *Friend of India* (published from Calcutta) and *Indian Public Opinion* (published by the pro-landlord society from Lahore) were consistently hostile to the Act. On the other hand, the *Pioneer* (published from Allahabad) was more sympathetic to the cause of the peasants. Other newspapers cited here (such as the *Lahore Chronicle* and *Gazette of India*) were a bit more even handed in their overall coverage. The only evidence in the archives of native agency consists of some opinions by Extra Assistant Commissioners regarding the situation in pre-colonial Punjab, and a letter written by ‘landlords’ to the Secretary of State for India when the India Office was deciding on whether to veto the Act in 1869. This letter was discounted on the basis that it was the viewpoint of the opposing British officials in Punjab, rather than a genuine reflection of native concerns.

contestation between the two colonial groups as to whose interpretation of these rights would hold sway.

Second, the geographical location of the province at the western frontier of the Empire, the circumstances of its annexation, and its subsequent role during the 1857 rebellion combined to create somewhat different concerns about political expediency in Punjab from those in the rest of British India, and exceptionalism in its governance. This is reflected in the unique administrative structure introduced in Punjab during the initial years and the nature of its first set of colonial administrators. Called the 'Punjab School' of administration,³¹ these included people like John Lawrence (later the Governor-General of India), and his chosen administrators who were more inclined towards the rights of tenants/peasants.³² The ascendancy of this school of administrators in the colonial hierarchy was instrumental in promoting their interpretation of customary rights and shepherding the Tenancy Act of 1868 which institutionalized generous occupancy rights for the tenants.³³

Third, proponents of peasant-proprietorship in India were able to have their way in the Punjab Tenancy Act because their ideology aligned with the new Liberal government of William

³¹ P. H. M. Van den Dungen, *The Punjab Tradition: Influence and Authority in Nineteenth-Century India* (London: Allen & Unwin, 1972).

³² As noted by Hambly on the passage of the Punjab Tenancy Act of 1868: "This important piece of legislation, so completely at variance with post-Mutiny trends, confirmed an impression already obvious during the first twenty years after annexation, that the administration of the Punjab province and the men who governed it tended to be a law unto themselves within the larger framework of British Indian government." Hambly, "Richard Temple and the Punjab Tenancy Act of 1868," 66.

³³ Unlike in Ireland and Prince Edward Island, where active agency of local tenant- and landlord-rights groups was important in the discussion leading to the laws, in Punjab the struggle was amongst the British colonial groups for whom it was an ideological struggle rather than having any material impact on them. It is plausible that because of a lack of native agency, the end game was a 'winner take all', rather than a negotiated and compromised solution. In that sense, the tenant rights institutionalized in Punjab Tenancy Act were much more elaborate.

Gladstone that came to power in England in 1868. As will be discussed in Chapter 4, Gladstone was very eager to settle the Irish land question, and his government was looking for templates across the Empire that would facilitate the improvement of the position of tenants in Ireland.³⁴ The current chapter will show that as the Punjab Tenancy Act moved to the Secretary of State for India Council in England, the implicit support of Gladstone was instrumental in allowing the Secretary of State, Argyll, to override the opposition from members of his Council to some of the Act's provisions related to landlords' absolute rights of property.³⁵

I develop these arguments in more detail by following a chronological sequence of how things unfolded in Punjab: annexation and early administration of the province leading to the initial land tenure settlements; the 1857 rebellion and the new administration of British India under the Crown; the various stages in revisiting land tenure in Punjab from 1863 onwards; efforts to legislate in the Governor-General of India Council; and the final approval from the Secretary of State for India Council in London through the support of the Liberal government of Gladstone.

³⁴ E. D. Steele, "Gladstone and Ireland," *Irish Historical Studies* 17, no. 65 (1970): 58–88; C. A. Bayly, "Ireland, India and the Empire: 1780-1914," *Transactions of the Royal Historical Society* 10 (2000): 377–97; John Stuart Mill, *England and Ireland*, 2nd ed. (London: Longmans, Green, Reader, and Dyer, 1868); George Campbell, *The Irish Land* (London: Trubner and Co., 1869)..

³⁵ "Gladstone Papers Vol. XVI. Correspondence with the Duke of Argyll. 1869-1870," n.d., British Library, Additional MS. 44.101.

Annexation and Early British Rule in Punjab: Administration and Administrators

The period 1799-1849 in Punjab is known as an era of Sikh Rule.³⁶ Ranjit Singh, who ruled from 1799 to 1839, consolidated various principalities under his rule, and it extended from just outside Delhi to Kashmir in the north and Peshawar in the west.³⁷ Up until the death of Ranjit Singh in 1839,³⁸ the British had a relationship of mutual respect with the Sikh ruler and saw the stability of his rule as a natural bulwark against any European threat to the British Empire in India from the west.³⁹ However, his heirs were not able to keep the state intact, and internecine struggles amongst the family members and chiefs led to the first Anglo-Sikh war in 1846 and the establishment of a residency by the British in Lahore, and eventually the second Anglo-Sikh war in 1849 when the province was fully annexed and integrated within British India.⁴⁰

From 1846 to 1858, the administration of Punjab went through three stages: 1) *Residency (1846-49)*, whereby a British resident, along with a council of eight native chieftains, assisted in the administration of the partially ceded territory; 2) *Board of Administration (1849-1853)* consisting of three British administrators, each respectively in-charge of political and military

³⁶ J. S. Grewal, *The Sikhs of the Punjab*, The New Cambridge History of India (Cambridge, England: Cambridge University Press, 1990).

³⁷ Within the territory between Delhi and Peshawar there were numerous Native or Princely States which had their own arrangements with the British. My focus in this chapter is the area under the Punjab province that was part of British India. The Native States had their own land tenure systems, which were subsequently integrated with either India or and Pakistan after 1947. For details see, Fiona Groenhout, "The History of the Indian Princely States: Bringing the Puppets Back onto Centre Stage," *History Compass* 4, no. 4 (2006): 629–44.

³⁸ The British had gained some foothold in Punjab from 1805 to 1846, mainly through protection of smaller principalities. Details about the creeping political annexation is beyond the scope of this chapter. For details of this period, see Chapter 4 of Rajmohan Gandhi, *Punjab: A History from Aurangzeb to Mountbatten* (New Delhi: Aleph Book Company, 2013).

³⁹ Arthur D. Innes and Charles Gough, *Annexation of Punjab* (Delhi: National Book Shop, 1984); Gandhi, *Punjab: A History from Aurangzeb to Mountbatten*.

⁴⁰ N. M. Khilnani, *British Power in the Punjab, 1839-1858* (New York: Asia Pub. House, 1972); Yaduvansh Bahadur Mathur, *British Administration of Punjab, 1849-75* (Delhi: Surjeet Book Depot, 1973).

affairs, finance and land settlement, and judicial aspects of the newly annexed province; and 3) *Commissioner (1853-1858)*, whereby the Chief Commissioner was the overall in-charge of the province, considered capital punishment appeals, and was assisted by Financial (revenue, land settlements) and Judicial Commissioners (ultimate judge in all cases, civil and criminal). The province was divided into four divisions, each headed by a Commissioner.⁴¹ The Divisions consisted of a few districts, headed by a Deputy Commissioner, supported by Assistant Commissioners (mainly European) and Extra-Assistant Commissioners (European or Indian). Commissioners were superintendents of revenue and police and had appellate powers of a civil judge and the criminal powers of a sessions judge. Deputy Commissioners exercised powers of Magistrates and collected revenues in their districts and tried all civil suits over Rs 1000. A separate higher court in Punjab was not established until 1866 when a Chief Court was set up in Lahore consisting of two judges, who were appointed by the Governor-General of India. It replaced the Judicial Commissioners' Court as the final court of appeals of civil and criminal cases in the province. However, in matters of settlement of land revenue, the Financial Commissioner continued to have the final power.⁴²

There are two salient features of early British rule in Punjab which need to be foregrounded here, as these are important in understanding the initial land settlements in the province and the debates leading to the Punjab Tenancy Act of 1868: 1) characteristics and ideologies of colonial administrators in the province; and 2) its 'non-regulation' system of administration.

⁴¹ Delhi was incorporated into Punjab as the fifth division after the 1857 Mutiny.

⁴² Herbert Cowell, *The History and Constitution of the Courts and Legislative Authorities in India* (Calcutta: Thacker, Spink and Co., 1884).

The British administration in Punjab from 1846 to 1858 was dominated by the Lawrence brothers, Henry and John.⁴³ Henry Lawrence (1806-1857) served as the Resident Agent from 1846 to 1849 and headed the Board of Administration from 1849 to 1853. John Lawrence (1811-1879) served on the Board with his brother, was appointed the first Chief Commissioner of the province in 1853, which position he held until 1859 when he was appointed its first Lieutenant Governor. After spending a few years in England (1859-1864), John Lawrence returned to India as Governor- General from 1864 to 1869. The brothers played important military roles during the annexation of Punjab (1846-1849) and marshalled the province's resources in defeating the rebellion of 1857. They came from a military family that served in British armies in India and elsewhere. Henry joined the East India Company as a military man, studying at the military academy and being commissioned in the Bengal Artillery, and John entered it through the Indian Civil Service after studying at Haileybury College, the training ground for young colonial administrators.⁴⁴ These common familial, but different educational backgrounds, influenced their respective approaches to administration. Neeladri Bhattacharya, a historian of Punjab, succinctly points out the ideological bases of the two brothers, which essentially influenced the governance of the province in the following years:

While the Lawrences accepted the ideas of personal rule, masculine paternalism, and a non-regulatory system, they interpreted them in distinct and at times divergent ways. Henry was inspired by a conservative romantic imagination, John by Utilitarianism.... Romantic conservatives imagined village communities in which the aristocracy and the people, patrons and clients, were tied by natural and immemorial bonds. Traditional hierarchies were not to be radically disturbed....Utilitarians and Liberals detested the

⁴³ For details, see Harold Lee, *Brothers in the Raj: The Lives of John and Henry Lawrence* (Oxford: Oxford University Press, 2002); Frederick P. Gibbon, *The Lawrences of the Punjab* (London: J.M. Dent, 1908).

⁴⁴ Gibbon, *The Lawrences of the Punjab*.

aristocracy and searched for industrious yeomen as the founding figures of their agrarian imagination.⁴⁵

The strong paternalistic mode of administration envisioned by the Lawrence brothers in the newly acquired province attracted several promising civil administrators to Punjab, imbibing either Henry's or John's approach to achieving the overall objectives of a firm but just colonial rule.⁴⁶ One of these administrators, Richard Temple (who would rise in the colonial hierarchy to eventually become the Governor of Bombay),⁴⁷ and a fan of John Lawrence,⁴⁸ described the lure of serving in Punjab in the early days after annexation because of its "strategic position" and "historical repute."⁴⁹ While serving together (along with a third member) on the Board of Administration, the Lawrence brothers agreed on general principles of a paternalistic approach to governance, and put up a common front to counter outside criticisms of the Board.⁵⁰ However, differences between them surfaced on questions about land tenure and revenue administration. John Lawrence had instituted a system of fixed land revenue payments in cash, while Henry

⁴⁵ Bhattacharya, *The Great Agrarian Conquest*, 40–44.

⁴⁶ Followers of John Lawrence's vision included Richard Temple, George Campbell, and E.L. Brandreth while Edward Prinsep and D.H. McLeod were closer to Henry Lawrence's ideas. As seen later in the chapter, these were prominent figures during the debates on the Punjab Tenancy Act. Another point of note is that most of the early administrators in Punjab had earned their spurs in the North-Western Provinces in the late 1830s under James Thomason, the Lieutenant Governor, and a follower of Benthamite utilitarianism. I discuss his influence in a little more detail in the next section. See Sir William Muir, *The Honourable James Thomason, Lieutenant-Governor N.-W. P., India, 1843-1853 A.D* (Edinburgh: T. & T. Clark, 1897).

⁴⁷ Richard Temple, *The Story of My Life. In Two Volumes* (London, Paris, Melbourne: Cassell and Company, limited, 1896).

⁴⁸ Richard Temple in his biography of John Lawrence: "He knew that an administrator shines, not only in what he does himself, but also in what he induces others to do, that his policy will in part be tested by the character of the men whom he raises up around him, that the master is recognized in his pupils, and that if his work is to live after him, he must have those already who will hand on the tradition, and will even take his place should he fall in the battle of life. His aim, then, was to establish a system and found a school" (Richard Temple, *Lord Lawrence* (London: MacMillan, 1890), 49).

⁴⁹ Temple, 35–36.

⁵⁰ In particular, they put a common front against Charles Napier, the Commander-in-Chief, on military strategy and the overall non-regulation system of Punjab. See Lee, *Brothers in the Raj*, chap. 11.

preferred a more flexible system of payment in kind, and dependent on the market price of the crops. More importantly, their ideas fundamentally diverged on how to handle the different classes dependent on agriculture, particularly the *jagirdhars*, who held large land grants under the Sikh rule, as a reward for their loyalty and/or military service.⁵¹ According to Charles Aitchison, a subordinate of the Lawrence brothers and future Lieutenant Governor of Punjab, John believed that a prosperous and contented peasantry would be “a more solid foundation of our power than a landed aristocracy. This principle underlay all differences with his brother Henry in the early Punjab days. Large grants of land or money to the Native gentry seemed to him to be much taken from the people, with no corresponding advantage to the Government.”⁵² These differences eventually debilitated the functioning of the Board and it was dissolved in 1853 by the Governor-General, Lord Dalhousie. Henry was appointed as a Resident Agent in the princely state of Rajputana, and John Lawrence, whose ideology was more compatible with the Governor General’s utilitarian leanings, was made the Chief Commissioner of Punjab. Henry’s parting words to John were related to their different views on treating the native aristocrats, and he urged his brother to treat them in “kindly spirit Because they are down, and because they and their hangers on have still some influence as affecting public peace and contentment. I will do to them as I would be done.”⁵³ After Henry departed from Punjab, John Lawrence took full control, and his views on land tenure would take precedence amongst the settlement officers, although as

⁵¹ Gibbon, *The Lawrences of the Punjab*.

⁵² Sir Charles Aitchison, *Rulers of India: Lord Lawrence* (Oxford: The Clarendon Press, 1892), 142.

⁵³ Reproduced in Bhattacharya, *The Great Agrarian Conquest*, 44.

will be seen later in the chapter, Henry's pro-aristocratic leanings were not forgotten by some of the British officers.⁵⁴

Greater ability of colonial administrators to influence policy based on their ideological leanings was facilitated by the 'non-regulation' system of administration in Punjab whereby the "day-to-day operation was based upon an extremely flexible interpretation of basic administrative precepts contained in printed codes and circulars, rather than upon a strict observance of legislative regulations, as was the case elsewhere in British India."⁵⁵ This system was intended to provide "greater accessibility of officials to the people" because the "union of all powers, executive, magisterial, and judicial" lay in the hands of the Deputy Commissioner.⁵⁶ This paternalistic system "largely depended for its success on the personal character, initiative, vigour and discretion of the local officers."⁵⁷ The formalized non-regulation system and the discretion afforded to local colonial administrators, on the one hand, allowed for quicker reforms than had been possible in other provinces. On the other hand, however, a lack of elaborate

⁵⁴ These included Edward Prinsep (Settlement Commissioner) and Donald McLeod (Lieutenant Governor).

⁵⁵ Andrew J. Major, *Return to Empire: Punjab under the Sikhs and British in the Mid-Nineteenth Century* (New Delhi: Sterling Publishers, 1996), 127.

⁵⁶ The paternalism is captured by Rudyard Kipling in his story, "Head of a District." In the story Yardley Orde, Deputy Commissioner of a fictitious district in Punjab, Kot-Kumharsen, is on his death bed, and even here he is worrying about his district. Addressing his assistant: "... the four Khusru Kheyl villages in our border want a one-third remittance this spring. That's fair; their crops are bad. See that they get it, ..." To the native subjects accompanying him, Orde extols: "you must be good men, when I am not here. Such of you as live in our borders must pay your taxes quietly as before. I have spoken of the villages to be gently treated this year.... And Tallantire Sahib will be with you, but I do not know who takes my place. I speak now true talk, for I am as it were already dead, my children, --- for though ye be strong men, ye are children." Rudyard Kipling, "The Head of the District," in *Life's Handicap: Being Stories of My Own People*, by Rudyard Kipling (Charleston, SC: BiblioBazaar, 2007), 173-174.; Also see Lee, *Brothers in the Raj*, 418-19.

⁵⁷ H.H. Dodwell, ed., *The Cambridge History of India. Volume VI: The Indian Empire 1858-1918* (Cambridge: Cambridge University Press, 1932), 87.

regulations, and “governance according to the essence of a rule rather than the letter,”⁵⁸ allowed officers in different districts to use their own interpretations to institutionalize the administrative apparatus. As noted by George Campbell in his autobiography:⁵⁹

It was in May 1846, when I was just twenty-two, that I ... was gazetted to act as Deputy Commissioner ... [in which role] I was magistrate, collector and judge, for in these non-regulation provinces there were no separate judicial establishments.... I was very nearly in the position of a benevolent despot.... [W]e were told to follow the spirit of the regulations, but that was very elastic, and I did pretty much what I thought just and right.⁶⁰

In particular, the initial land settlements and recording of rights in the districts often reflected the ideological leanings of settlement officers, rather than being based on a uniform system. The disparity in details of the settlement reports during the 1850s from different districts later became a point of contention during the debates leading to the Punjab Tenancy Act of 1868. I now turn to the initial land tenure settlements in the province after it came under British rule.⁶¹

⁵⁸ Bhattacharya, *The Great Agrarian Conquest*, 46.

⁵⁹ Campbell (later Sir George Campbell) had a storied civil service career India with the East India Company and later the British administration. His understanding of tenant rights was published in the influential publication of the Cobden Club. George Campbell, “The Tenure of Land in India,” in *Systems of Land Tenure in Various Countries: A Series of Essays Published under the Sanction of the Cobden Club* (London: Macmillan and Co., n.d.), 145–227. His book on Ireland written in 1869 would influence the 1870 land act in Ireland, and is discussed in detail in Chapter 4.

⁶⁰ Sir George Campbell, *Memories of My Indian Career*, ed. Sir Charles E. Bernard (London: Macmillan and Co., 1893), Vol I, 38, 56.

⁶¹ As argued by Bhattacharya, “Colonial power in the countryside was built through a new regime of categories. A vocabulary of terms was essential to comprehend reality, schematise knowledge, and classify social relations. Local peculiarities had to be captured through familiar terms that carried meaning beyond the locality, and which had wider, if not universal, applicability.” He further suggests that in developing these categories, often the ‘logic of enquiry’ (which necessitated looking for differences) conflicted with ‘logic of classifications’ (that demanded a search for similarities). See Bhattacharya, *The Great Agrarian Conquest*, chap. 3. Given these ambiguities of categorization, we see a wide variety of terms used to define pre-colonial land tenures. My objective here is not to evaluate the veracity of the various classifications, especially those related to land revenue settlements. My concern is with the record of rights of various classes of agriculturists, and especially the tenants. More importantly, eventually what matters is how the colonial administrators defined the rights of the different groups, and the debates across colonial groups about their own choices. For the different classifications of land tenure, and some of the difficulties encountered by colonial administrators in Punjab, see Baden-Powell, *Land Systems of British India*, vol. II; J.M. Douie, *Punjab Settlement Manual* (Delhi: Daya Publishing House,

It may be useful to briefly map out the province's socio-political characteristics during the period after annexation and identify how these may have influenced the British thinking about land tenure in Punjab. According to the census of 1868, the total population of Punjab was 17.59 million, which was comprised of Muslims (53%), Hindus (35%), and Sikhs (6%) as the three major religious groups.⁶² On the annexation of Punjab, the British were sensitive to some of the communal tensions between the three communities, and the new administration responded to these problems by revoking some of the existing laws restricting certain religious practices, and making public pronouncements about equal treatment of all sects by allowing each to "practice its customs unless they infringed on the rights of the others."⁶³ While the British were able to deal with the religious fault lines, their bigger challenge was to deal with occupational categories, some of which corresponded with specific religious affiliations. The census distinguished between two broad occupational groups, 'agriculturalists' making about 54% of the population and 'non-agriculturalists' making up the remaining 46%.⁶⁴ However, a vast majority of soldiers in the Sikh army before annexation, and the British army during and after the 1857 rebellion, came from the 'agriculturalist group', and this group was seen as more important in facilitating political stability and economic betterment of the province. For example, the administration consistently

1899); Edwin Arnold, *The Marquis of Dalhousie's Administration of British India, Volume the First, Containing the Acquisition and Administration of the Punjab* (London: Saunders, Otley, and Co., 1862).

⁶² "East India (Progress and Condition); Statement Exhibiting the Moral and Material Progress and Condition of India, During the Year 1867-68" (House of Commons, 1869), House of Commons Parliamentary Papers Online. Although these three groups were dispersed throughout Punjab, the Muslims were predominant in the area west and Hindus to the east of the river Indus. The Sikhs were concentrated in the center, close to the political and religious base of the Sikh Empire (around Lahore and Amritsar).

⁶³ N. Gerald Barrier, "The Punjab Government and Communal Politics, 1870-1908," *The Journal of Asian Studies* 27, no. 3 (1968): 526.

⁶⁴ "East India (Progress and Condition); Statement Exhibiting the Moral and Material Progress and Condition of India, During the Year 1867-68."

identified the Jats (or agriculturalist) as the “flower of the population. Essentially yeomen by lineage and habit, ... they display all their wonted aptitude for stirring war and peaceful agriculture.”⁶⁵ The colonial administration wanted to shift the loyalty of this group from their traditional local chiefs to the British, and made efforts in their land tenure settlements to improve the material well-being of the ordinary cultivators (which contributed the soldiers to its army), even if that entailed chipping away the privileges of the chieftains.⁶⁶ Thus, in the initial years after annexation, the primary objective of the administration was to ensure allegiance of the agriculturalist class to the British.⁶⁷ It was under the above-described context that land settlements in Punjab were undertaken in the 1850s.

⁶⁵ “General Report on the Administration of the Punjab for the Years 1849-50 and 1850-51” (London: Printed for the Court of Directors of the East-India Company by J and H. Cox, 1854), 4.

⁶⁶ This was especially the case for the soldiers in the “Khalsa”, the army consisting of Sikhs during the rule of Ranjit Singh. It fought the Anglo-Sikh wars in the 1840s, was disbanded after 1849, but then a large number of Sikh soldiers were integrated into the British army. These soldiers supposedly played an important role in helping defeat the 1857 rebellion. They were accordingly designated as a “martial race” and the British administrations took various initiatives to placate this religious group through enactment of land tenure laws favorable to the peasantry, allocating them land in the new Canal colonies in the 1880s, and giving them other privileges relative to other religious groups. For details, see Mark Condos, *The Insecurity State: Punjab and the Making of Colonial Power in British India* (Cambridge: Cambridge University Press, 2017); Grewal, *The Sikhs of the Punjab*; Andrew J. Major, *Return to Empire: Punjab under the Sikhs and British in the Mid-Nineteenth Century* (New Delhi: Sterling Publishers, 1996).

⁶⁷ Religious tensions in Punjab resurfaced at the end of the nineteenth century because of indebtedness of the peasants (who were primarily Muslims and Sikhs) to the moneylenders (who were primarily urban Hindus and belonging to the non-agriculturalist class). The British were concerned about the alienation of land from the cultivators and passed an act to stem the tide. However, the new act created other problems that influenced the socio-political relationships. A more detailed discussion is beyond the scope of this chapter. For details, see Norman G. Barrier, “The Formulation and Enactment of the Punjab Alienation of Land Bill,” *The Indian Economic & Social History Review* 2, no. 2 (1965): 145–65; Judicial and Public Department, “Act XIII of 1900, Punjab Alienation of Land Act 1900” (BL IOR J&P 2092, 1900), IOR J&P 2092, India Office Records, British Library; S. S. Thorburn, *Musalman and Money-Lenders in the Punjab* (Edinburgh and London: William Blackwood & Sons, 1886).

Initial Land Tenure Settlements

As described in Chapter 1, the East India Company gained a firm foothold in India in the middle of the eighteenth century after it was granted rights to collect land revenue in Bengal.⁶⁸ Given the agrarian nature of India's economy, land revenue remained the primary source to cover the costs of governing the colony and generate returns for the Company's shareholders.⁶⁹ Accordingly, great efforts were expended to develop an efficient land revenue system, which had various components such as the amount of revenue collection and remission, the form it will take (cash or kind), from whom to collect (landlord or cultivator (ryot), individual or collective (for example, village communities), and assessment time period (fixed in perpetuity or reassessed after a few years), among others. Several land revenue systems, with different combinations of these components, were put in place as more provinces came under colonial rule in the nineteenth century.⁷⁰

After its full annexation in 1849, the British inherited land revenue and tenure systems in Punjab that were in a state of ambiguity.⁷¹ According to colonial interpretations, three categories

⁶⁸ For an overview of the origins of land laws in British India, including the land revenue systems in various provinces, see Chapter 3, "Landed Property: Security and Incentives," of Roy and Swamy, *Law and the Economy in Colonial India*, 27–79.

⁶⁹ For example, in Punjab, land-tax contributed over 80% of the total revenue in 1849-50, the remaining 20% coming from excise and stamps, tributes, and the post-office. See Appendix B in "General Report on the Administration of the Punjab for the Years 1849-50 and 1850-51," 112. This proportion of land revenue to total revenue declined substantially during the second half of the nineteenth century in Punjab as well as in the whole of British India both due to the diversification of the economy and the deliberate efforts by the provincial governments to lower the tax burden on the agricultural classes. This trend has continued in post-colonial India. See Roy and Swamy, *Law and the Economy in Colonial India*.

⁷⁰ For details, see Section V. "The Beginning of British Land-Revenue Systems" in B. H. Baden-Powell, *The Land Systems of British India, Volume I*, 281–323.

⁷¹ For example, there was a wide variation on the mode of collecting the land revenue, in some cases it was collected by 'kardars' (the local or regional chiefs), in others by the heads of villages, and some directly by revenue officials. See "General Report on the Administration of the Punjab for the Years 1849-50 and 1850-51," 56–67.

of land tenures were discernible during the rule of Ranjit Singh: *talukdars* (“as a category of *zamindars* between the vassal chiefs on the one hand and the peasant proprietors on the other. They were known as ... superior owners entitled to a species of head-rent under several designations”⁷²), peasant proprietors (who owned and cultivated the bulk of the land), and tenants. While the centralized system of land revenue and somewhat structured land tenures worked well under Ranjit Singh, in the latter part of his reign, and especially under his successors, “the regular system was allowed to fall into abeyance; [and] the governors [of the districts] ... did what they pleased – farming the revenues ... to contractors, ... getting as much (and paying as little to the Darbar treasury) as they could.”⁷³ Furthermore, rural elites during Sikh rule had been pacified through the grant of revenue assignments (*jageers*), revenue-free lands and pensions.⁷⁴

Soon after its annexation in 1849, the newly formed Board of Administration of Punjab was entrusted with stabilizing land revenues of the province, and the directive from the Governor-General of India made it clear that the *Jageerdars* could only continue to hold rent-free land as a “matter of grace” and a gift from the government, rather than as a right. Furthermore, it mandated that the land revenue “should be assessed upon each village or Tract which constitutes a separate Tenure, so that the Jageerdar or other Holder should not be allowed to rack-rent his Tenants or derive more from the Land than would be taken by the Government,

⁷² Indu Banga, *Agrarian System of the Sikhs: Late Eighteenth and Early Nineteenth Century* (New Delhi: Manohar, 1978), 168-169. According to the author, “[b]y far the bulk of our information on land tenures in the Sikh dominions comes from early British administrators of the Punjab.” This has important implications about how “customary rights” were discerned during the debates on the Tenancy Act. I revisit this issue later in the paper. Also see Baden-Powell, *Land Systems of British India*, vol. III.

⁷³ Baden-Powell, *Land Systems of British India*, Vol. III, 541.

⁷⁴ Major, *Return to Empire*.

whose Place he occupies.”⁷⁵ This policy was predicated on two objectives, chip away the privileges of the traditional land grant holding *jageerdars*, and ensure the well-being of the cultivators.⁷⁶ On the first goal, as mentioned earlier, there was the difference of opinion between Henry and John Lawrence, both members of the Board. While Henry believed that it would be politically expedient and “morally just to uphold the full and in perpetuity the grants and powers [of *jageerdars*]”, even for those who had opposed the British, John opposed such magnanimity both on grounds of loss of revenues for the state and because he regarded them as “parasites.”⁷⁷ The Governor-General agreed with John’s view and revenue-free land holdings were drastically reduced, along with any other powers vested in them during previous rule.⁷⁸

The Board next turned to the broader land tenure settlement and given the previous administrative experience in the North-Western Provinces of the Lawrence brothers as well as a majority of the other colonial officers brought to Punjab, its procedures were adopted in the newly annexed province. Two points are noteworthy here. First, the land settlement in these provinces was based on the political economy theory of Ricardian rents that was being promoted by the Benthamite utilitarians in the first half of the nineteenth century. In particular, a famous Minute in 1819 by Holt Mackenzie, a colonial administrator, “equated the land revenue rights of the State with the right to enjoy the full economic rent,” but warned “against trespassing beyond

⁷⁵ “Sir H. Elliott’s Instructions to Board of Administration as to the Manner of Dealing with Landed Tenures in the Punjab, March 31, 1849,” 1856, House of Lords Papers, Volume XIII, Paper Number 197.

⁷⁶ In its report for 1849 to 1851, the Punjab administration was proud of its achievement of reducing the land revenue demand from the cultivators, while still maintaining healthy revenue flows, which it attributed to taking away the land revenue previously alienated to the *jageers* (through rent free grants). See “General Report on the Administration of the Punjab for the Years 1849-50 and 1850-51,” 110–11.

⁷⁷ Major, *Return to Empire*, 142–43.

⁷⁸ Mathur, *British Administration of Punjab, 1849-75*.

this limit and trenching on the necessary profits of stock and wages of labour.”⁷⁹ The latter objective could be achieved by following the ‘net produce criterion’ in assessing land revenue, whereby revenue was assessed on gross produce minus the expenses of cultivation, wages, and the normal return of capital. Regulation VII of 1822, which was distributed to all settlement officers in the provinces, adopted this criterion and put forth the following principles on which land settlements would be made in the new provinces in British India: a moderate assessment (“being equally conducive to the true interests of Government and to the well-being of its subjects”); and a full inquiry into “ascertaining, settling and recording the rights, interests, privileges, and properties of all persons and classes owning, occupying, managing or cultivating the land.”⁸⁰

Second, there was the practicality of implementing the above-stated principles, which required very detailed information about the gross and net produce of land, and the various types of rights that existed in the pre-colonial era. According to Richard Temple, a settlement officer in the Jullunder district from 1851-56, the difficulty in determining revenue and recording of rights arose because of the mistrust of the native population to alien rule as well as the peasantry being unaccustomed to “minute enquiries into their affairs under any system preceding British rule. Though their memories were long, and their traditions had been cherished, they were not careful to give us accurate information on countless particulars.”⁸¹ However, the speed of establishing settlement records in the province was of urgent importance to John Lawrence (initially in-charge of revenues in the Board of Administration and subsequently having full

⁷⁹ Stokes, *The English Utilitarians and India*, 95.

⁸⁰ Bengal Regulations Vol. 5 1820 to 1825, “Regulation VII of 1822,” 1822, BL IOR V/.

⁸¹ Temple, *The Story of My Life. In Two Volumes*, Volume I, 58-59.

responsibility of the province as Commissioner), and settlement officers “were expected to work at breakneck speed, expedition was the quality most prized in an executive officer, [and] an ‘undue polish’ was constantly decried.”⁸² In order to expedite the settlement process, but stay within the general principles of Regulation VII of 1822, settlements of revenue were made with the village communities, who subsequently allocated the revenue demands to individual cultivators within the community.⁸³ These initial settlements were made for between fifteen and thirty years (depending on the conditions of different districts and villages),⁸⁴ as cash settlements, and revenue demands were modest.⁸⁵

Besides assessing the land revenue, “the framing of the record of rights was a more important matter than the assessment” as its determination “was permanent, and for all practical purposes final.”⁸⁶ The Board of Administration wanted clarity on the proprietary rights of the various agricultural groups with which the government had settled revenues, and thus

⁸² Clive Dewey, *The Settlement Literature of the Greater Punjab: A Handbook* (New Delhi: Manohar Publications, 1991), 23.

⁸³ Campbell, “The Tenure of Land in India”; The basis of these settlements was Regulation VII of 1822 (mufassal settlement) where the revenue payable by the landlord was settled with him, and the revenue to be paid by the village community to the landlord was also settled, see Baden-Powell, *Land Systems of British India*, vol. III.

⁸⁴ The period of settlement was fixed so that the government could reassess the revenues and rents due with changing market and other economic conditions. The hope was that the recording of rights would be permanent, however it was on the rights that the controversy erupted. There was a general satisfaction amongst the agricultural classes on the “modest” revenue demands of the British.

⁸⁵ Details about the land revenue settlements can be found in the following volumes: Baden-Powell, *Land Systems of British India*; Bhattacharya, *The Great Agrarian Conquest*; Mathur, *British Administration of Punjab, 1849-75*; Captain E.G. Wace, “Report of the Land Revenue Settlement of the Hazara District of the Punjab 1868-74” (Lahore: Printed at the Central Jail Press, MDCCCLXXVI); Douie, *Punjab Settlement Manual*. My interest in this chapter is on recording of rights, especially in the context of landlord-tenant relationships. Although these were often tied to land revenue, I focus on the tenant rights in the rest of the chapter.

⁸⁶ Douie, *Punjab Settlement Manual*, 52.

gave leeway to the settlement officers to determine these rights.⁸⁷ The adjudication of disputed rights was taken away from Civil Courts and assigned to the settlement officers. Given the heavy burden placed on them, the settlement officers went back to the guidelines from the North-Western Provinces. Here, their guidance came from its Lieutenant Governor, James Thomason, a major proponent of peasant-proprietorship, and his *Directions for Settlement Officers*.⁸⁸ In particular, Thomason gave great discretion to the government in assigning proprietary rights in situations where there was not enough clarity from existing practices. In such circumstances, he argued that “it rests with the Government to decide whether they will retain it in their own hands, confer it on any class of persons already connected with the Government, or grant it or sell it to strangers.”⁸⁹

In determining the record of rights, the ambiguity arose in the case of tenants who had occupied the land for a long period, and often helped clear the land and settle the villages. For these tenants, the settlement officers in Punjab followed the directions of Thomason that tenants residing in the village who had occupied the land 12 years, and non-resident tenants who had occupied land 20 years should, without reference to any other considerations, be “entered as cultivators having the right of permanent occupancy,”⁹⁰ that is, twelve years of occupancy was considered as a “prescriptive title to proprietary right.”⁹¹

⁸⁷ For a detailed study of the ideology behind and the process of recording the rights, see Richard Saumarez Smith, “Rule-by-Records and Rule-by-Reports: Complementary Aspects of the British Imperial Rule of Law,” *Contributions to Indian Sociology* 19, no. 1 (January 1, 1985): 153–76.

⁸⁸ A major portion of these are reproduced in Chapter IX “The Land Settlement” in Richard Temple, *James Thomason* (Oxford: Clarendon Press, 1893).

⁸⁹ Reproduced in Temple, 145–46.

⁹⁰ Report by the Lahore Tenant Committee, 1865, reproduced in *Opinions of the Press in India*, 9.

⁹¹ Hambly, “Richard Temple and the Punjab Tenancy Act of 1868,” 50. The ‘twelve year’ rule became a default on questions of rights of occupancy. It came from practices in England. For details about the

For the following 15 years (until about 1863), these settlements were operative in the province, and there is no evidence of popular discontent with the initial settlements. Furthermore, during the period of political upheaval around the 1857 rebellion in most parts of India, Punjab did not witness much hostile activity against British rule. That is, unlike in Oudh, where the peasants who had been given similar proprietary rights, but who nonetheless fought with the “superior” *taluqdar* class against the British, peasants in Punjab stayed neutral.⁹² Surprisingly, it was the old *jageerdars* and chieftains that joined the British to quell the rebellion outside Punjab.⁹³ This raises the question as to why these classes of ‘aristocrats’, whose privileges were supposedly taken away by the initial settlement, stayed loyal to the British even when there was an opportunity to join forces with similar ‘superior classes’ from other provinces. Some answers to this puzzle can be discerned from the nature of property rights and the economic realities that existed in Punjab before the British annexation.

One argument is that the “State possessed a traditional claim to a share of the produce, known as the land revenue demand, and was in theory considered the ultimate owner.”⁹⁴ This is

origins of the concept of ‘occupancy rights’, see Radharomon Mookerjee, *Occupancy Right, Its History and Incidents* (Calcutta: Calcutta University Press, 1919).

⁹² For official version of the role of Punjab in the Mutiny, see “Papers ‘Relating to the Mutiny in the Punjab in 1857’” (House of Commons Parliamentary Papers, April 14, 1859).

⁹³ As argued by Major, the mobilization of Punjabis to the colonial cause was a “masterly stroke on the part of the British, and John Lawrence in particular. It probably saved the Empire...” The political strategy in the province after 1858 changed in two important aspects: permanent employment in the armed forces of people from the province which “greatly contributed to the entrenchment of the military in rural Punjabi society. Second, the elites in rural Punjabi society were coaxed back into something like their old positions as intermediaries. The old *chaudhari* class was resuscitated and conciliated through appointments to the offices of *zaildar* and *ala-lambardar*. These new offices provided the British with what they perceived to be a much-needed link between the upper and lower levels of administration. The chieftains were conciliated with new jagirs, new titles and limited administrative powers.” Major, *Return to Empire*, 227–28; Also see Rajit K. Mazumder, *The Indian Army and the Making of Punjab* (Delhi: Permanent Black, 2003).

⁹⁴ Metcalf, “Laissez Faire and Tenant Right in Mid-Nineteenth Century India,” 74.

supported by colonial estimates that the “government share of the gross produce was assumed, as a matter of right, to be a clear half,” and depending on the fertility of the soil, “even more was taken.”⁹⁵ Accordingly, proprietary rights over land for the landlords and tenants were not absolute, but more to do with a relative onus on the collection and contributions of the land revenues. Baden-Powell, in his voluminous treatise, suggests that although clearer proprietary rights for landlords existed in other provinces, the political situation in Punjab during the more than a century preceding British rule did not allow the emergence of a landlord class, and during the period just prior to its annexation, “the Sikhs, caring only for revenue, treated all classes alike: the ‘proprietor’ was no better than the ‘tenant’.”⁹⁶

Another argument put forth is that by giving occupancy rights to one set of tenants, the initial settlement was a continuation of the “customs” the British inherited in the aftermath of the Sikh rule. According to Banga, there were two categories of tenants during the Sikh rule, *muzarian-i-mustaquil* and *muzarian-i-ghair-mustaquil*,⁹⁷ with the former having greater security of tenure than the latter. However, if the proprietor wanted the land for his own use he could eject any tenant, irrespective of the length or the character of his tenancy. “The formal distinction which the [British] administrators came to make between the occupancy tenant (*maurusi*,

⁹⁵ “General Report on the Administration of the Punjab for the Years 1849-50 and 1850-51,” 56.

⁹⁶ Baden-Powell, *Land Systems of British India*, 618 Volume III, Pt. IV. CH. II. The low average size of landholdings of the proprietors supports this argument of a lack of large landholders, such as the *zamindars* of Bengal and *talooqdars* of Oudh who collectively had political clout and influence.

⁹⁷ ‘*mustaquil*’ literary means ‘constant’, while ‘*ghair-mutaquil*’ means non-constant or changing.

literally hereditary) and tenant-at-will (*ghair-maurusi*, literally non-hereditary) was their own creation, but it did have the informal precedent of the practice of the Sikh times.⁹⁸

It has also been suggested that two economic reasons during the Sikh rule in Punjab may have led to the acceptance of the 12-year period for the grant of occupancy rights, including inherited rights, as well as the lack of resistance to the usurpation of landlords' proprietary rights. One was the reality that "labour being of greater value than land, the proprietor had every motive to retain and none to remove his tenant, who helped so materially in bearing all the heavy burdens of the State."⁹⁹ Second, the proprietorship (*wirasat* or *malikee*) would have been valuable only if anything was left from the proceeds of the land after paying the onerous revenues demanded by the state: "the tendency became rather to abandon rights - symbols more of misery than of benefit – than to their exact definition and enjoyment."¹⁰⁰

In addition, the report of the Punjab Administration for the years 1856-1858 attributed the "contentment of the agriculturalists" in Punjab to the light land tax and to "tenures that had been fairly adjusted" because of which "there was no class among landholders and cultivators ... who had suffered by British rule."¹⁰¹ The local administration was indeed attentive to the agriculture conditions in Punjab and gave periodic land revenue abatements depending upon

⁹⁸ Banga, *Agrarian System of the Sikhs*, 180–81; For a discussion on the colonial institutionalization of these categories, and some push-back from administrators in certain districts, see Bhattacharya, *The Great Agrarian Conquest*, 166–70.

⁹⁹ W. G. Davies, *Tenant-Right in the Punjab, and the Punjab Tenancy Act* (Allahabad: Pioneer Press, 1882), 16.

¹⁰⁰ Davies, 10.

¹⁰¹ "A Copy of General Report on the Administration of the Punjab Territories, for the Years 1856-7 and 1857-8" (India Office, Ordered to be Printed by the House of Commons, April 11, 1859), 16, House of Commons Parliamentary Papers Online.

price fluctuations of agriculture produce in the market. It made up the loss in land revenue through new taxes on drugs, opium, and salt.¹⁰²

Revisiting the Initial Settlements

Whatever the veracity of the above-described reasons, it seems that for fifteen years after the initial settlements, there was relative calm in the province, and landlords and tenants co-existed with each other after having accepted the land tenure system of the new rulers.¹⁰³ Given the impending lapse of fifteen years that were to guide the initial settlements, by the early 1860s, it was time to revisit them. With land revenue demands becoming less onerous during the initial settlements, the major contestation in the succeeding periods would be on the record of rights to the land rather than the amount of tax on the produce. However, the revisions were to be done in a new political and administrative context in Punjab and the rest of British India.

Under the Act of 1858, British India was brought under the Crown, and the British parliament had full power to legislate for India when needed. For administering the colony from the India Office in London, a Secretary of State for India was designated, who was a member of the British cabinet and was assisted by a council of fifteen members, half of whom needed to have extensive administrative experience in India. The Secretary of State for India Council was the final authority that approved all legislation initiated in British India.¹⁰⁴

¹⁰² The share of land revenue to total revenue came down from over 80% in 1850 to 75% in 1858, and to 66% in 1863. See “A Copy of General Report on the Administration of the Punjab Territories, for the Years 1856-7 and 1857-8;” and “Finance and Revenue Accounts of the Government of India 1862/63,” 1864, House of Commons Parliamentary Papers Online.

¹⁰³ Given the relatively small average acreage of land cultivated by both landowners and the tenants in Punjab, it is plausible that the province did not have a substantial class of ‘great landlords’ that were prevalent in Bengal and Oudh.

¹⁰⁴ For details on the new administration, post 1858, see Baden-Powell, *Land Systems of British India*, vols. I, Chapter III; Dodwell, *The Cambridge History of India. Volume VI*, chap. XI.

A Governor-General (also holding the title of Viceroy) was appointed to head the government in India with the help of its own Council. The core of the Council consisted of a five-member Executive (during the period of my study, all five were British – 3 administrators, 1 ‘Legal’ and 1 ‘Financial’). Through the Indian Councils Act 1861 of the British Parliament, the Executive Council was made akin to a cabinet with members having different portfolios. It also dealt with foreign policy and general administration of British India and vetted proposed bills coming from the provinces. An expanded Legislative Council with between 6 and 12 additional members considered Bills proposed by the various provinces that did not have their own legislative councils (these included all provinces except Bengal, Bombay and Madras).¹⁰⁵

In 1859, Punjab’s administration was brought in line with other provinces and designated as a regulated province. A Lieutenant Governor headed the provincial administration in Punjab and was assisted by Judicial and Financial Commissioners. A provincial court, the Chief Court, was established in 1866. Under the new administrative arrangements, the provincial government in Punjab could develop codes needed for administering various activities. However, for any piece of legislation, the bills were initiated by committees set up at the provincial level, but their approval had to go through the Governor-General’s Executive and Legislative Councils. As discussed below, the provincial government initially attempted to develop a uniform code that would inform the officials to reassess the initial land tenure settlements. However, the inability to develop such a code led to the drafting of a Bill that made its way to the Governor-General’s and Secretary of State’s Councils and was enacted as the Punjab Tenancy Act of 1868.

¹⁰⁵ Punjab did not get its own Legislative Council until 1921.

To initiate the process of new settlements, and especially related to the recording of rights between landlords and tenants, the Financial Commissioner of Punjab proposed a Tenant Code “with a view of reducing the practice on this important subject to some uniform system.”¹⁰⁶ According to the proposed code, the “owner of the village is the party so recorded at Settlement,... if the owners are numerous, they are represented by their headmen” and these enjoy “all manorial rights.”¹⁰⁷ The code identified four types of tenants,¹⁰⁸ but the one that was of importance was the category of ‘occupancy’ or ‘hereditary’ tenants who were granted semi-proprietary rights (including rights of inheritance and transfer), and who were protected from ejection and arbitrary increase in rent by the proprietors. While proposing the code that would guide the new settlements and “confident in the principles” of his positions, the Financial Commissioner, nonetheless requested that the matter be “ventilated” amongst the European and Native officers.¹⁰⁹

Accordingly, extensive efforts were made by the provincial colonial administration to get opinions of different segments of administrators, settlement officers, agriculturalists, and native gentry and officials.¹¹⁰ In Table 3.2 (at the end of this chapter), I have summarized the responses of District Commissioners from various districts in Punjab on questions related to the presence

¹⁰⁶ Letter from Robert Cust to the Government of Punjab, titled PROPOSED TENANT CODE, October 15, 1860, reprinted in “Selection from Records of the Government of Punjab, Papers Connected with the Question of Tenant Right in the Punjab” (Lahore: C.H. Voss, 1869, 1-16), 1.

¹⁰⁷ “Selection from Records of the Government of Punjab, Papers Connected with the Question of Tenant Right in the Punjab,” 9.

¹⁰⁸ Tenants on fixed and immutable rates for time of settlement, tenants with right of occupancy, tenants at will, and tenants on written lease.

¹⁰⁹ “Selection from Records of the Government of Punjab, Papers Connected with the Question of Tenant Right in the Punjab,” 8.

¹¹⁰ See Landlord and Tenant Enquiry Papers and Appendices II-X (1863) in “Selection from Records of the Government of Punjab, Papers Connected with the Question of Tenant Right in the Punjab,” 17-213.

of occupancy or hereditary tenants, and proprietors' rights in evicting these tenants. As can be discerned from these summary responses, there was a wide divergence in opinion about the existence of these types of tenants, with some suggesting that 'occupancy tenants' were the creation of the British, while others finding different types of occupancy rights in existence before colonial rule. Similar differences of opinion can be seen in responses from different classes of agriculturalists.¹¹¹ While proprietors believed that they had absolute rights over their land before British rule, including the right to evict tenants and increase their rents, tenants believed that prevailing customs did not allow arbitrary evictions (unless the land was to be used by the proprietor), and thus some form of 'protected' and 'heritable' tenancy existed in practice.

More detailed responses were provided by native officials, the Extra Assistant Commissioners.¹¹² Most agreed that prior to colonial rule, a separate category of 'hereditary cultivators' did not exist as a rule. However, certain tenants had more privileged positions than others. As pointed out by Kaim Alle, Extra Assistant Commissioner of Goordaspoor District, "where the proprietors were numerous, there was no need for cultivators – where they were few and weak, the village was mainly kept up by them. Such tenants could never be ejected ... and [t]heir right was founded on the consideration that they had mainly supported the burden of the revenue, that they had borne loss with the proprietors, perhaps first cleared the land they held, left their own to come to live in a half-ruined village."¹¹³ Other local officials, however, did

¹¹¹ Appendix III and Appendix IV in "Selection from Records of the Government of Punjab, Papers Connected with the Question of Tenant Right in the Punjab," 65–99.

¹¹² This was the highest rank attainable by natives in the British bureaucratic hierarchy during that period. It is unclear as to whether the requirement was a certain level of social status or whether they needed to attain other qualifications.

¹¹³ "Selection from Records of the Government of Punjab, Papers Connected with the Question of Tenant Right in the Punjab," 69.

not go as far in terms of such rights and testified that proprietors could evict the privileged tenants, but incidences were rare: “As long as the tenant was honest, and the landlord satisfied he was not ejected. If he, the tenant, misbehaved, he was turned out.”¹¹⁴

The process of gathering opinions from various constituencies from 1860 to 1863 was commissioned to get clarity on existing practices in land tenure relationships in the province before colonial rule and validate the Tenant Code proposed by the Financial Commissioner which could form the basis of new settlements. The evaluation of the various positions outlined above points to the futility of this exercise as there were fundamental differences in opinions not only amongst colonial administrators but also between native officials as well as agriculturalists themselves. Thus, the new settlements were initiated with neither a uniform code to guide the process moving forward nor a uniform understanding of pre-colonial practices. This, in turn, led to diverse approaches by settlement officers in recording the rights of different groups and created the need for some form of legislative action. The most controversial of the new settlements were the ones proposed by Edward Prinsep.¹¹⁵

¹¹⁴ “Selection from Records of the Government of Punjab, Papers Connected with the Question of Tenant Right in the Punjab,” 93.

¹¹⁵ Prinsep (Edward Augustus Prinsep) was a key player in the whole tenant rights controversy in Punjab because it was his revised settlement that raised doubts about the veracity of ‘occupancy rights’ in the initial settlement. Not much is written about him, so I dug up some information in the archives. He was born in Calcutta in 1828 (his father worked for a British firm in India). In 1845, his father petitioned the East India Company to admit his son into Civil Service: “[He] has received the rudiments of a Classical and Mathematical Education, and is desirous to devote himself to the Civil Service of the Honorable Company in India.” (“Edward Augustus Prinsep Petition to Join the Civil Service of the East India Company” (BL IOR/J/1/70/115-24, 1945)). He was admitted to the East India College at Haileybury and joined the civil service in 1848. From 1850 to 1874, he served in Punjab in various capacities including Assistant Settlement Officer during the initial settlements, Deputy Commissioner of various districts, District Settlement Officer, Punjab Settlement Commissioner in-charge of the revised settlements in the latter part of the 1860s (Hambly, “Richard Temple and the Punjab Tenancy Act of 1868”). Prinsep worked under John Lawrence during the latter’s tenure as Commissioner of Punjab in the 1850s, and on becoming Governor General of India in 1865, Lawrence promoted him to the Settlement Commissioner. Lawrence

In 1863, under the overall charge of the Settlement Commissioner, Edward Prinsep, revisions to the initial settlements were initiated in all the districts of Punjab, with Prinsep himself directly or indirectly in charge of six districts.¹¹⁶ He laid doubts about the accuracy of the initial settlement in his report on the Umritsar Division (consisting of three districts), especially regarding tenants granted occupancy rights versus those that were classified as tenants-at-will. For instance, in the initial settlement, 169,000 tenants (or ryots) were classified as tenants-at-will, while 60,000 were classified as hereditary tenants with occupancy rights. However, under the revised settlement, only 15,547 of the 60,000 were given occupancy rights, while rights of 29,588 were changed to long leases,¹¹⁷ and the remaining 12,592 were reduced to tenants-at-will.¹¹⁸ In light of these re-assessments of record of rights of different groups of tenants, Prinsep, in his report to the Financial Commissioner questioned 1) the practice of assigning hereditary rights based on 12 years of occupancy in the initial settlements, and 2) the assumption that

was impressed by Prinsep's "ability, honesty and desire to do good" (Letter from Lawrence to the Lieutenant Governor of Punjab dated March 16, 1865 in "John Lawrence Collection: Viceroy of India 1864-1869" (BL IOR/MSS.EUR./F.90/25-73, n.d.)). Lawrence, however, had doubts about his discipline, and wrote to the Lieutenant Governor of Punjab to look well after Prinsep and "see that he completes his work annually in a systematic manner. Among his many merits this quality I fear still is not one" (Letter dated July 17, 1865 in "John Lawrence Collection: Viceroy of India 1864-1869.") Prinsep's settlement report, discussed in the following paragraphs, where he rescinded a vast majority of the occupancy rights given to tenants during the initial settlement, made him a cause celebre for the proponents of landlord rights (or the Aristocratic Tradition), with the *Lahore Chronicle* (July 8, 1865) calling him "one of the most conscientious and ablest Revenue Officers that ever made that difficult branch of administration their special study,... [and one who] is singularly free from bias or croquet.... His name will become a household word... and his reputation will last long as a benefactor, after many are apparently brighter, but more ephemeral one, are lost in oblivion" ("Edward Augustus Prinsep Papers" (BL IOR/Mss Eur D488: 1848-1898, n.d.)).

¹¹⁶ For a sample district report, see Wace, "Report of the Land Revenue Settlement of the Hazara District of the Punjab 1868-74."

¹¹⁷ This was done at the discretion of the settlement officers, and primarily to appease the tenants whose heritable occupancy rights from the first settlement were being abrogated. As we shall see later, the Chief Court of Punjab took exception to this aspect.

¹¹⁸ Notes by the Secretary to Government, 15th October 1866, in "East India (Punjab Tenancy)," 152.

landlords could not evict the tenants under any circumstance.¹¹⁹ He further wrote that the “subject of the relative position of landlord and tenant is one that must now come under consideration; any new principles that are to be laid out should receive the early attention of Government....I beg I may be placed in receipt of full instructions and as early as possible....”¹²⁰ McLeod, being sympathetic towards the landlords,¹²¹ agreed with Prinsep about the need to bring greater clarity in the new settlements, suggesting that the initial settlements were based on principles uncritically borrowed from other provinces, and did not reflect the “real feelings, wishes, and past usages of the people.”¹²²

In another letter to the Judicial Commissioner of Punjab, McLeod highlighted the analogy between copyholders in England with those of hereditary tenants in India that can be considered by the new committee, as well as the possibility of “facilitating and encouraging the purchase by either party of the rights of the other” when two parties have “permanent rights in the same land.”¹²³ McLeod’s suggestions were implemented soon after, once he was promoted to Lieutenant Governor of Punjab in 1865, through the Lahore Tenant Committee, which was presided by the Judicial Commissioner of Punjab, and had eight additional members (five of them being British Commissioners and Deputy Commissioners, and three native Assistant

¹¹⁹ In his recent book, Bhattacharya suggests that “Prinsep’s argument was ultimately internally contradictory. He used the rhetoric of custom but refused to see customary practice as the source of valid peasant rights. Against peasant claims to security, he was a Benthamite Utilitarian Positivist who saw in uncodified practice nothing but ambiguity and uncertainty.... But this Benthamite skepticism disappeared in relation to the rights of the proprietors.” They were assumed to have “an undoubted right to evict, even if they had never done so in the past.” Bhattacharya, *The Great Agrarian Conquest*, 172.

¹²⁰ Letter dated April 28, 1863, reproduced in “East India (Punjab Tenancy),” 60–63.

¹²¹ I will discuss his role in more detail later in the chapter.

¹²² McLeod letter to Secretary to Government, Punjab dated October 14, 1864, reproduced in “East India (Punjab Tenancy),” 40–41.

¹²³ Letter dated November 7, 1864, reprinted in “East India (Punjab Tenancy),” 41.

Commissioners of settlement). During the two sittings, the committee heard from Edward Prinsep, who presented his findings from the settlement exercise in the Umritsur Division and the recorded responses from various constituents about land tenures in Punjab prior to British rule.¹²⁴ Based on his evaluation of 10,000 entries in his district, Prinsep provided the committee seven categories of tenants with varying rights, but with no category having rights anywhere close to the occupancy tenants identified during the first settlement. Even for resident tenants with long-standing and inherited occupancy, he argued that “the general custom allowed the proprietor power of eviction.”¹²⁵ He urged the committee to institutionalize his schema of these categories and give settlement officers the power to amend the record of rights from the first settlement, so that the government can “rectify the errors it had made itself, remembering that so long as a great wrong remained unrighted, it was unworthy ... to think of any other expediency than justice.”¹²⁶ The Committee concurred with Prinsep that the settlement officer could amend the record of rights with the consent of both parties. However, it did not see it expedient to open every case and recommended that disputed cases could be brought up through regular suits. Furthermore, it did not agree with Prinsep’s classification scheme of different tenants, stating that the proposed categories did not include all possible arrangements, thus making it difficult to “lay out any rule or principle, ... and each case should be decided upon its merits.”¹²⁷

¹²⁴ Report of the Lahore Committee, reproduced in “East India (Punjab Tenancy),” 20–35.

¹²⁵ Report of the Lahore Tenant Committee in “East India (Punjab Tenancy),” 31.

¹²⁶ Report of Lahore Tenant Committee in “East India (Punjab Tenancy),” 35.

¹²⁷ Copy of Letter regarding the Committee’s Report addressed to the Financial Commissioner, May 5, 1865 reproduced in “East India (Punjab Tenancy),” 19–20. The report also noted that it did not have time to consider the question of copyholds and hereditary tenants.

The Lahore Committee thus did not bring much clarity to the tenant-right question and left it to the discretion of individual settlement officers to determine the record of rights in their respective jurisdictions. While the revised settlements from other districts also found discrepancies with the initial ones, the number of re-classified tenants was not as high as those identified by Prinsep. Furthermore, there was no consensus on his conclusions about the right to evictions. For instance, in responding to the question of eviction rights of the landlord, Colonel E. Lake, Financial Commissioner of Punjab, dissented because “even if in theory the proprietor had this right, in practice in some cases he either did not exercise it, or was prevented from exercising it by the Government officer or *kardar*.”¹²⁸

The above discussions point to a situation where revision of the initial settlements in Punjab was not going smoothly for the colonial government. First, it could not agree with a uniform code that would guide the settlement officers. Second, the discretion afforded to each settlement officer led to changing records of rights for both tenants and landlords in different districts, thus creating discontent in rural Punjab. Third, Prinsep’s settlement, which restored the absolute rights of numerous landlords, raised their hopes of reasserting greater political, economic, and social power in the province. The landlords found a strong ally in the Anjuman-I-Punjab society, and its newspaper, the *Indian Public Opinion*, in promoting their interests. The society was founded by Gottlieb Wilhelm Leitner (1840-1899), a Hungarian-born linguist and Orientalist. After being appointed the first principal of the Government College, Lahore in 1864, he formed the “Society for the diffusion of Useful Knowledge” in 1865, which subsequently took

¹²⁸ Memorandum dated 8th March 1865, in “East India (Punjab Tenancy),” 42.

the name, Anjuman-I-Punjab.¹²⁹ The newly formed society wanted to promote the study of vernacular languages and literatures, primarily Urdu but also Punjabi. While the overall aim of this society was to promote orientalist education in Punjab, it became embroiled in the tenancy question due to the nature of its membership. To achieve its goals, it tapped into the native educated and influential community for membership as well as British administrators in the province. Members included the well-off landlords as well as D.H. McLeod, the Lieutenant Governor, and Edward Prinsep, the Settlement, and later the Financial Commissioner. The Anjuman, either because of its orientalist ideological leanings or because of patronage from the native elite, and through its newspaper edited by Leitner, took up the cause of the landlords.¹³⁰ In this mission, it was supported by McLeod who “believed in the efficacy of rule through use of Punjab’s natural leaders.”¹³¹

Thus, when John Lawrence, back from England now as the Governor-General of India (January 1, 1864 to January 1, 1869), was settling down in his new role, he confronted the possible unravelling of the land tenure policies he had put in place in Punjab during the 1850s. I

¹²⁹ Jeffrey Price Perrill and Muḥammad Ikrām Cughṭā’ī, *Punjab Orientalism: The Anjuman-i-Punjab and Punjab University, 1865-1888* (Lahore: Pakistan Writers Cooperative Society, 2018). “Leitner’s vision markedly digressed from the education policy envisaged by Lord Macaulay ... that Indian education should be remodeled in light of Western epistemic traditions” and instead advocated the promotion of local literary traditions. Tahir Kamran, “An Orientalist of His Own ilk: The Uncanny Genius of Leitner | Political Economy | Thenews.Com.Pk,” May 1, 2016, <https://www.thenews.com.pk/tns/detail/560854-orientalist-ilk>. The society hoped to reform education policy in Punjab by establishing a university in the province, revive Arabic and Sanskrit learning, and introducing European science in the curriculum through the use of vernacular languages. Masood Akhtar Zahid, “Orientalism’s Last Battle in the 19th Century Punjab,” *Journal of Pakistan Vision* 10, no. 1 (2009): 27–48.

¹³⁰ For a compilation of the editorials related to the Punjab Tenancy Act, see *Mischievous Legislation, Being a Series of Articles on Tenant Right in the Punjab. Reprinted from “Indian Public Opinion,” with Appendices.*

¹³¹ Perrill and Cughṭā’ī, *Punjab Orientalism*, 247.

now turn to his involvement in the process underway in revising the settlements, and the decision to legislate land tenure in Punjab.

Return of John Lawrence as Governor-General and the Move Towards Legislation

Besides the controversies of the revised settlements in Punjab discussed above, two other notable changes about land tenure had occurred during John Lawrence's absence from India. First, the Bengal Rent Act of 1859 had been passed which institutionalized some occupancy rights for tenants of long-standing and restricted arbitrary enhancement of rent by the landlords.¹³² Second, in the post-Mutiny political anxieties, the occupancy rights granted to tenants in 1856 were taken back and full property rights were restored back to the landlords (*Talookdars*) in the province of Oudh, with Lord Canning, Governor-General of India in 1859, pronouncing:

We must work downwards, through the landed aristocracy and the old hereditary chiefs. If we work upwards, elevating the village proprietors, whilst we thrust aside their heretofore arbitrary masters, ... we shall succeed in nothing but in sowing dissension between the two classes of lords and cultivators of the soil, making discontented subjects of the first, and getting little gratitude from the second.¹³³

As discussed in the previous chapter, the issue of 'fair and equitable rent' in Bengal came under extensive judicial review in 1864-65,¹³⁴ but eventually resolved itself in favour of the tenant, thus not requiring Lawrence's intervention.¹³⁵ However, the restoration of landlord rights at the expense of the 'industrious and improving tenants' in Oudh was complete anathema to

¹³² "Act X. of 1859," *Calcutta Review*, 1864, 278–306. There was discussion in Lawrence's Governor General Council and amongst other colonial administrators about the possibility of introducing the Bengal Rent Act in Punjab, but the idea was abandoned because of its weak protection of tenant rights. See Note by W. Muir, Secretary to Government of India, dated October 15, 1866 in "East India (Punjab Tenancy)," 151–56. A discussion of the main provisions of this Act was provided earlier in Chapter 2.

¹³³ Reproduced in Lee, *Brothers in the Raj*, 404.

¹³⁴ Andrew Sartori, *Liberalism in Empire: An Alternative History* (Oakland, California: University of California Press, 2014).

¹³⁵ Lee, *Brothers in the Raj*.

him, and he made concerted attempts to revert to a peasant-proprietor system during discussions on legalizing Canning's system through a new Act in Oudh. He made a strong plea in his Minute in early 1866, arguing for legally restraining the power of landlords to arbitrarily increase rents of occupancy cultivators because the "Government cannot trust to the personal interest of the landlord ensuring justice and moderation towards the cultivator."¹³⁶

Given the sympathies of most British administrators in Oudh towards the landlords, including the Chief Commissioner, Charles Wingfield,¹³⁷ and the emergence of a strong lobby of provincial landlords, John Lawrence could not sway the tide towards his wishes, and he was able to ensure just a few protections against rent increase for the mostly tenants-at-will in the province.¹³⁸ His focus on land tenure, thereafter, shifted fully towards ensuring rights of tenants that were granted during his earlier stints in Punjab in various capacities.¹³⁹

¹³⁶ Minute by the Governor General of India on Rights of Property and Occupancy in the Soil of the Province of Oudh, February 19, 1866, in "Papers Regarding Tenant Rights in Oudh, Volume 6" (BL IOR/L/PS/6/548 Coll 40/6, 1867), British Library, India Office Records.

¹³⁷ Charles Wingfield, a member of the colonial civil service in India (1840-1866), and later a Liberal member of the British Parliament (1868-1874), was a keen supporter of landlords' absolute rights of property. For his views on tenant rights, see Charles Wingfield, *Observations on Land Tenures and Tenant Right in India* (London: Wm. H. Allen and Co., 1869). In his Note to the Secretary of State in Council in England in September 1869, he wrote: "I regard this act as framed in the spirit of hostility to the landlords, and as calculated to open a source of endless litigation, and to set class against class. It not only gives tenants rights that they never possessed before but puts into their heads to assert all manner of pretensions, and places the landlord at a disadvantage in defending himself from them...." Reproduced in "Papers and Letters Relating to the Punjab Tenancy Act, 8th Duke of Argyll Papers."

¹³⁸ Delving into details about the extensive debates leading to the Oudh Rent Act of 1868 is beyond the scope of this chapter. For details see "Papers Regarding Tenant Rights in Oudh, Volume 6."

¹³⁹ According to an editorial in the *Hindoo Patriot*, "Sir John Lawrence has nearly evoked an agrarian insurrection in Oudh, but the good senses of his Masters in Victoria Hall, the firmness of the Talookdars themselves, and the strong public opinion of both India and England have saved that province from a threatened calamity. What he however could not accomplish in Oudh he now aims to do in the Punjab, his own Canaan." "Tenant Right in the Punjab (Reprint from Hindoo Patriot)" (*The Lahore Chronicle*, February 22, 1868).

Since his return to India in early 1865, John Lawrence had mainly followed the debates about the revised settlements in Punjab from the sidelines. In a series of letters in that year to the Lieutenant Governor of Punjab, he requested the latter to do something about the tenant question: “While we are considering it, Prinsep is going ahead upsetting the arrangements of the last letter, to a greater extent than seems to me to be desirable. The principle on which he acts is probably sound, but he carries it too far in my mind.”¹⁴⁰ However, as the revised settlement gained greater traction amongst the supporters of landlord rights, Lawrence became more involved in the debates surrounding tenant rights in the province.¹⁴¹ Lawrence wrote directly to Prinsep and wished to “see fair play to all parties,” while acknowledging that in the first settlement tenants received favourable terms, as the British officers “may have been misled as to the real state of things ... because under Sikh rule there was practically very little distinction between the proprietors and cultivators, and between rent and revenue.”¹⁴²

With Prinsep not willing to entertain a tempering of his position, and the reluctance of the Lieutenant Governor of Punjab to rein him in from promoting his new settlements, John Lawrence finally decided to become more actively involved in the tenant rights question.¹⁴³ In

¹⁴⁰ Letter dated October 13, 1865, in “John Lawrence Collection: Viceroy of India 1864-1869,” n.d.

¹⁴¹ Richard Temple, who worked in various capacities in Punjab under John Lawrence, wrote that the latter’s personal investment in land tenure of Punjab and the promotion of the security of tenure for the “voiceless” millions of cultivators derived from a sense of justice “towards a deserving and industrious class of British subjects” (Temple, *Lord Lawrence*, 1890, 105–6).

¹⁴² Letter from Lawrence to Prinsep, dated June 4, 1866, reproduced in “Edward Augustus Prinsep Papers.”

¹⁴³ Lawrence summoned Prinsep to Shimla in the middle of 1866 to discuss the settlements. Lawrence subsequently wrote to McLeod about his concerns about the proposed settlements. In a letter dated September 4, 1866, he wrote that although he agreed with Prinsep that the initial settlements were too favourable towards the tenants, he thought that Prinsep’s settlements were going too much in the other direction as his “arbitrators and assessors are all of the Landlord party apparently.” See “John Lawrence Collection: Viceroy of India 1864-1869,” n.d.

his Note of August 30, 1866, he recorded his views: "Inasmuch, then, as certain rights were accorded to cultivators of long residence and occupancy at last settlement, ... it would be inexpedient to allow revenue officers conducting the revised settlements in this province, to make any great or radical change in the status of such tenants who were recorded as having a right of occupancy." He was, however, willing to "remove the evil and redress the injury sustained by the proprietary classes, provided that any redress now given is given in the spirit of fair play to the tenants who have, from the action of the Government, been recognized as hitherto entitled to protection."¹⁴⁴

Lawrence's position was supported by some members of his governing council, including H.S. Maine, the law member of the council. Maine questioned the veracity of Prinsep's record of rights discovered through a "roving commission under which he has assembled juries, if they may be so called, of the cultivating classes." Responding to the new settlements and the Lieutenant Governor of Punjab's Minute¹⁴⁵ which supported these settlements, Maine further added:

The truth appears to be that, when Mr. Prinsep proposes to redistribute these rights, he proposes to redistribute something which is exclusively the product of British rule in the Punjab. The rights are nothing without the enjoyment which they carry with them, and this enjoyment it is proposed to take away from somebody who now has it, and to give it to somebody else.... [I]f the British rule created the property, I cannot see that it has very deeply sinned if it decided somewhat arbitrarily who was to have it. I should say that we should commit an injustice far more deeply felt if we took it away from those who have enjoyed it for 15 to 20 years.¹⁴⁶

¹⁴⁴ Note by His Excellency the Right Honourable Sir John Lawrence, Viceroy and Governor General of India; dated 30 August 1866, in "East India (Punjab Tenancy)," 32.

¹⁴⁵ Minute by D.F. McLeod, September 15, 1866, reproduced in "East India (Punjab Tenancy)," 34–39.

¹⁴⁶ Note by the Honourable H.S. Maine, Member of the Council of the Governor General, reproduced in "East India (Punjab Tenancy)," 157–58.

By the early part of 1867, thus, it was clear within both the Punjab administration and the Governor-General's Council of India that some clarity was needed on the validity of the revised settlements, and a way forward to somehow reconcile the disparities in the rights of occupancy tenants between the two settlements. The Lieutenant Governor of Punjab was more inclined towards the revised settlements, while the Governor-General of India was against any disruption in the occupancy rights given to tenants in the original settlements. In order to move the discussion further, the latter accepted the Punjab government's classification of tenants into three classes:¹⁴⁷ quasi proprietors,¹⁴⁸ long resident tenants (20 years or two generations), and tenants-at-will; but with the suggestion that there was not much to separate the first two categories.¹⁴⁹ However, Lawrence objected to the suggestions about landlord's legal and/customary rights of eviction of the first two categories of tenants: "it is not necessary to search for *rights* which, needing a legal tribunal of their enforcement, cannot be supposed to have had any existence during a state of things when force was the only law; nor yet for traditional *customs*, regarding the precise nature of which the best informed authorities are often

¹⁴⁷ In his Minute on Hereditary Tenants (dated September 15, 1866), and which was in response to John Lawrence's Minute of August 1866, the Lieutenant Governor of Punjab again reiterated that there were three types of tenants in Punjab, 'inferior proprietors' or 'sub-proprietors', tenants who held their lands for long periods, or through several generations, and tenants-at-will. There was no concern about the first and third categories, as they either had full or no property rights, respectively. He was, however, against giving similar rights to the second group. He considered them similar to the English copy-holds and pointed out to the law in England which laid down that "when the enfranchisement of a portion of a copy-hold, would "prejudicially affect in enjoyment or value the mansion house...", arrangements are to be made, for the purchase by the latter of the tenant's interest in such portion." "Selection from Records of the Government of Punjab, Papers Connected with the Question of Tenant Right in the Punjab," 262–63.

¹⁴⁸ These included relatives of actual proprietors or those holding rent-free *jageers* from the State. Many of the latter were abolished after 1849, but a few remained, especially for the *jageerdars* who had shown loyalty to the British during the Mutiny.

¹⁴⁹ Minute by His Excellency the Right Honourable Sir J. Lawrence, Viceroy and Governor General of India, dated 30th April 1867, in "East India (Punjab Tenancy)," 160–63.

most at variance.”¹⁵⁰ He proposed a further consideration on matters of evictions so that there is “no radical alteration in the relations between the two classes [and] subordination of one class and exaltation of another,”¹⁵¹ by following opinions of just one side of the debate:

To enable the Government of India to accept recommendations on a point of such importance something more is needed than the expression of original opinions. If, again, bodies of native gentlemen are consulted, it will not be sufficient to accept their opinion when it is merely a selection (without reason assigned) of one or the other of two diametrically opposed opinions adduced. This description applies to many of the conclusions which Mr. Prinsep’s ... committee pronounced on the conflicting claims of the proprietors on the one hand, and the tenants on the other.¹⁵²

The Punjab government hence set up a committee to come up with a draft bill for “amending and declaring the Law, relating to certain Matters connected with the Tenure of Land in the Punjab”¹⁵³ with objectives of defining occupancy-rights of tenants, regulating rent, and the eviction of tenants, among others.¹⁵⁴ The initial draft was prepared by the Murree Committee,¹⁵⁵ which was subsequently referred to another committee, chaired by E.L. Brandreth, and composed of ten additional members which included Edward Prinsep and four native gentlemen. Their report was sent to the Lieutenant Governor of Punjab for his consideration and dissemination in the public domain.¹⁵⁶

¹⁵⁰ Minute by His Excellency the Right Honourable Sir J. Lawrence, Viceroy and Governor General of India, dated 30th April 1867, in “East India (Punjab Tenancy),” 161.

¹⁵¹ Minute by His Excellency the Right Honourable Sir J. Lawrence, Viceroy and Governor General of India, dated 30th April 1867, in “East India (Punjab Tenancy),” 161–62.

¹⁵² Minute by His Excellency the Right Honourable Sir J. Lawrence, Viceroy and Governor General of India, dated 30th April 1867, in “East India (Punjab Tenancy),” 163.

¹⁵³ “East India (Punjab Tenancy),” 164.

¹⁵⁴ Hambly, “Richard Temple and the Punjab Tenancy Act of 1868.”

¹⁵⁵ For draft Bill, see “East India (Punjab Tenancy): Copies of the Despatch of the Secretary of State for India in Council Dated the 28th Day of October (No. 80) 1869, to the Governor General of India in Council, on the Subject of the India Act No. XXVIII. of 1868, (Punjab Tenancy Act),” 166–69.

¹⁵⁶ For a draft of the Bill dated November 20, 1867, see “East India (Punjab Tenancy),” 174–77.

The draft bill reaffirmed the occupancy rights granted to the tenants in the first regular assessment (and overriding the restrictive ones determined by Prinsep and other commissioners in the revised settlements). In particular, tenants who have “continuously possessed proprietary rights in lands occupied by them, and have lost these rights otherwise [probably alluding to the revised settlement] than by operation of the law of treason, shall, in the absence of special agreement to the contrary, have a right of occupancy in such lands.”¹⁵⁷ The draft went further by giving occupancy rights to tenants who had held the land for 20 years prior to 1848, even if it was not recorded in the first settlement unless it could be proven in court that either the tenant had voluntarily given up the right or the settlement record was erroneous.

The proposed Bill also protected both types of tenants (ones with occupancy rights and others at-will) from an arbitrary enhancement of rent. For the former, rent could only be raised by the revenue or settlement court, and for the latter, the landlord could increase the rent but only through an application via the relevant government agent (*Putwaree*).¹⁵⁸ Other sections provided for abatement of rent when the area of the land or its productive power decreased, court-ordered remission of rent and ejectment on arrears of rent with adequate notice. Furthermore, the Bill allowed landowners to obtain a decree from the court to buy the right of cultivation from an occupancy tenant to support their families (22), and a tenant with occupancy right to sell or transfer his tenure after adequate payment to the landlord (23);¹⁵⁹ as well as

¹⁵⁷ Right of Occupancy in the Bill of 20 November 1867, in “East India (Punjab Tenancy),” 174.

¹⁵⁸ See items 9-12 under section “Of the Enhancement of Rent” in “East India (Punjab Tenancy),” 174–75.

¹⁵⁹ See section “Of Certain Incidents in the Tenure of Tenants Having a Right of Occupancy” in “East India (Punjab Tenancy),” 176.

accommodated tenants' rights to compensation from the landlord for any improvements made on the land (for example, construction of wells, irrigations systems, etc.).

The draft Bill was approved by the majority on the Committee, however, there was dissent on a few provisions, as well as calls for more inquiries before moving it forward. Not surprisingly, Prinsep was the most vocal dissenter on the overall principles of rights to occupancy as well the transfer of tenure by tenants, cautioning that approval of these provisions "will lead to mischief and injustice of the most serious nature."¹⁶⁰ Other members objected to the right of the landlord to buy-off the occupancy-tenant, arguing against the potential rights of the landlord over such tenants and the relatively low bar of making "the landowner's need of the land as the sole condition on which the hereditary tenant may give way."¹⁶¹ Even the four native members on the committee provided their dissent on various sections, including the amount of rent, transferability of rights, occupancy rights, compensation for improvements, etc. There were also questions as to whether they had exhausted all possibilities of garnering unanimous support in the Committee and the necessity for further inquiries: "If a new commission be appointed nothing will result from it except confusion and diversity of opinions."¹⁶²

While the Committee members differed on their evaluation of specific provisions of the proposed bill, the press was scathing in its attack on the draft Bill. Terming it "Mischievous Legislation," *The Indian Public Opinion*, the newspaper of the pro-landlord Anjuman-I-Punjab society, wrote that on the "question of rights in land, the mischief done would be wide-ranging

¹⁶⁰ Comments by E.A. Prinsep to some of the proposed sections in "East India (Punjab Tenancy)," 178.

¹⁶¹ Statement by C.U. Aitchison in "East India (Punjab Tenancy)," 179.

¹⁶² Statement by Mahomed Sultan, Extra Assistant Commissioner in "East India (Punjab Tenancy)," 183.

and enduring, and the consequences impossible to foresee....”¹⁶³ Criticizing the process that led to the introduction of the Bill (including the work of the Lahore Tenant Right Committee), its provisions of hereditary and transferable rights tenants, and lack of consideration for the customs and practices in the province, the newspaper suggested that Brandreth had “forsaken practice for theory” and produced “this abortion as if it was the legitimate offspring of the united intelligence of the Punjab.”¹⁶⁴

After giving another seven weeks to solicit responses, the committee headed by Brandreth formalized the bill into eight parts and forwarded it for consideration to the Governor-General of India Council on January 17, 1868.¹⁶⁵ In an editorial the following day *The Gazette of India* questioned the occupancy rights and enhancement provisions of the bill and lamented that the tenant who was “once submissive to his landlord and on the best of terms with him ... [h]as become independent and litigious and the most troublesome of neighbours, ... and the proprietor [has] sunk to the position of a partner in an Agricultural company with limited liability of the most questionable kind.”¹⁶⁶ Further, the press asked for more time before the bill reached the Governor-General of India Council so that the opponents of the bill could “furbish up our armour and whet our swords, and summon our followers to the battle; allow us an opportunity of telling the Secretary of State and House of Commons that the men who swore to rule the Indian subjects of Her Majesty with impartiality and truth are with their own hands dragging

¹⁶³ Published in the “Indian Public Opinion” on December 24, 1867, in response to the bill introduced in the Council, *Mischievous Legislation*, 1–2.

¹⁶⁴ *Mischievous Legislation*, 3.

¹⁶⁵ For the full Bill as introduced in the Council, see Appendix A in *Mischievous Legislation*, 39–48; For changes made by the Committee to the Bill introduced in Council, see “East India (Punjab Tenancy),” 217–28.

¹⁶⁶ *Mischievous Legislation*, 8.

down the scale of Justice.”¹⁶⁷ While most of the criticism of the proposed Bill was related to the ‘*abrogation of property rights*’ of the landowners through the creation of tenant sub-proprietors, it found support from some sections of the Press based on the ‘*improvement*’ logic. According to the *Lahore Chronicle*:

The ryots in the Punjab derived very little assistance from their zemindars; on the contrary, the improvements of the land have all been owing to the capital and energy of the ryots themselves.... [They] are now to be turned away out of their holdings at the bidding of their capricious lords, and we consider it would be the greatest injustice in their harsh treatment of the ryots.¹⁶⁸

As the Bill moved to the Governor General Council, it went through a few sittings, including in Select Committees of the Council before it was finally passed on October 28, 1868. In the interim period, the main proponent of the Bill, Brandreth, retired and his mantle of shepherding it in the Council passed to Richard Temple.¹⁶⁹ There were active discussions and debates around the various provisions during the multiple sittings on the Bill, which were supplemented by external opinion from the press and other sources. I now move to evaluate these.

Council of the Governor General of India and the Passage of the Punjab Tenancy Act of 1868

In its first sitting to discuss the proposed Bill on January 17, 1868, where Mr. Brandreth introduced its main provisions, the discussion mainly revolved around the process through which it was introduced in the council.¹⁷⁰ Henry Durand, one of the members with greater sympathies

¹⁶⁷ *Mischievous Legislation*, 6–7.

¹⁶⁸ Editorial, *The Lahore Chronicle*, March 14, 1868.

¹⁶⁹ Hambly, “Richard Temple and the Punjab Tenancy Act of 1868.”

¹⁷⁰ Authority of the Governor-General, “Abstract of the Proceedings of the Council of Governor-General of India, Assembled for the Purpose of Making Laws and Regulations,” 43–84.

for the landlords,¹⁷¹ criticized “the immature manner in which this Bill was introduced,”¹⁷² and wanted to see a legal opinion on the Bill, as well as additional information from various constituents in Punjab on its different provisions. Another member wanted the Bill to be referred to a select committee and further “sanction or approval of the Punjab Government.”¹⁷³ In light of the various apprehensions about the proposed Bill, the Governor-General asked the members to consent it to be referred to a Select Committee, and while it deliberated, to get further opinions from the judiciary in Punjab as well as from its Lieutenant Governor.¹⁷⁴

While the bill was being reevaluated by the Select Committee, Lawrence again made a plea to Punjab’s Lieutenant Governor to support the bill in question, writing that since his tenure in India was coming to an end, he would like to ensure that rights given to cultivators in the initial settlements could be preserved. “As a matter of policy,” he wrote, “*it is wise to protect the cultivators. In a great agricultural Country like India, unless we do so, what is to become of them.*”¹⁷⁵ After deliberations by the Select Committee and incorporation of the findings from various reports from the provincial government, the final report on the Bill was moved for consideration by the Council on October 19, 1868.¹⁷⁶ The supporters of the Bill were heartened

¹⁷¹ See eye-witness account of the debate in Council sent to the Friend of India, in *Opinions of the Press in India*, 153–60.

¹⁷² Authority of the Governor-General, “Abstract of the Proceedings of the Council of Governor-General of India, Assembled for the Purpose of Making Laws and Regulations,” 57.

¹⁷³ See comments by William Muir in Authority of the Governor-General, 58–60.

¹⁷⁴ Authority of the Governor-General, 78.

¹⁷⁵ Letter dated March 6, 1868 reproduced in “John Lawrence Collection: Viceroy of India 1864-1869” (BL IOR/MSS.EUR./F.90/54, n.d.), British Library, India Office Records. (Italics mine)

¹⁷⁶ For the full proceedings of the discussion in Council on this sitting, see Authority of the Governor-General, “Abstract of the Proceedings of the Council of Governor-General of India, Assembled for the Purpose of Making Laws and Regulations,” 400–481.

by the opinions received from the Chief Court of Punjab,¹⁷⁷ which endorsed the urgent need for legislative action arguing that the “confusion” into which land tenure had been thrown could not “be remedied in any other way.”¹⁷⁸ More importantly, the Court questioned the legality of some aspects of the revised settlements done under the guidance of Edward Prinsep, especially the grant of long leases to tenants whose occupancy rights of the first settlement were rescinded. The Court opined that “when the revision goes so far as to create a new tenure altogether, the settlement officers transcend their powers, and their orders on that account alone are invalid.”¹⁷⁹ Furthermore, the Lieutenant Governor, D.F. McLeod, who was earlier in favour of the revised settlements, and did not feel the need for legislation,¹⁸⁰ now supported the Select Committee’s deliberations and the decision to move the Bill to the Governor General in India Council.¹⁸¹

With support from the Chief Court and the Lieutenant Governor of Punjab, Richard Temple introduced the Bill to the Council for discussion and approval. Suggesting that the Bill had been attentive to the proprietary rights of both tenants and landlords, he outlined the seven chapters of the Bill and provided a brief rationale for the various sections. The main points of accommodation of the two groups around five key chapters are summarized in Table 3.1.

¹⁷⁷ See Minute by the Chief Court on the Proposed Bill to define and Amend into Law Relating to the Tenancy of Land in the Punjab, 1868 sent on August 8, 1868, in “East India (Punjab Tenancy),” 281–89.

¹⁷⁸ “East India (Punjab Tenancy),” 287.

¹⁷⁹ Minute, signed by two judges of the Chief Court in Punjab, August 8, 1868, in “East India (Punjab Tenancy),” 287. The creating of “new tenure altogether” pertains to the granting of long leases to the tenants whose occupancy rights were rescinded.

¹⁸⁰ In his reply to Lawrence’s letter of March 6, 1868, McLeod wrote in his letter to Lawrence (dated March 21, 1868) that he had no appetite for legislating tenant rights in Punjab, and thus would not want to personally participate in any discussions related to the bill. (“John Lawrence Collection: Viceroy of India 1864-1869” (BL IOR/MSS.EUR./F.90/52, n.d.), British Library, India Office Records.)

¹⁸¹ Minute by the Lieutenant Governor on the Report of the Committee appointed to consider the Provisions of the Punjab Tenancy Bill, as amended by the Select Committee of the Legislative Council, in “East India (Punjab Tenancy),” 291.

Probably the most important part of the Bill was Chapter II (Of rights of Occupancy) because it was around the question of tenants having occupancy rights that the whole debate over land tenure in Punjab had taken place.¹⁸² These provisions created four categories of “superior class of tenants” (Chapter II, Section 5, 1-4), and the fifth (Chapter II, Section 6) comprising those who had been recorded in the initial and revised settlements as occupancy tenants.¹⁸³ In essence, anyone identified as a hereditary tenant in colonial records was now deemed to have the related rights of proprietorship.

¹⁸² See Appendix for the full text of the Act.

¹⁸³ Authority of the Governor-General, “Abstract of the Proceedings of the Council of Governor-General of India, Assembled for the Purpose of Making Laws and Regulations,” 402.

Table 3.1
Comparative Provisions in the Punjab Tenancy Act of 1868 in Favour of Tenants or Landlords

Regulation/Chapter	For Tenants ¹⁸⁴	For Landlords
Rights of Occupancy (Chapter II)	Occupancy status affirmed for tenants with any of the following: 1) with hereditary cultivation of land, 2) whose names with such rights recorded in the records of initial or revised settlements, 3) who have continuously occupied land as <i>jagirdar</i> for not less than 20 years; presumption of occupancy	Landlord can rebut presumption of occupancy right of the tenant through a regular suit if the latter has voluntarily attested to the contrary (that is, error in recording), or within the preceding 30 years, similar tenants have been ejected; Non-acquisition of right of occupancy by mere lapse of time.
Rent (Chapter III)	Rent cannot be enhanced for any tenant unless by agreement or decree of Court; differential maximum rent enhancement for different classes of tenants defined in Chapter II	Power of enhancing rent for both occupancy tenants and tenants-at-will affirmed, but through decree of Court; limits the grounds for abatement of rent to decrease in size of land or decrease in land's productive powers
Ejectment (Chapter IV)	Occupancy tenants can only be ejected through a decree of Court for arrear in rent	Tenant-at-will can be ejected merely by notice
Leases, Alienation and Succession (Chapter V)	Occupancy tenant has the right to 1) sub-let (lease) the land in his occupancy, unless restricted in the agreement with the landlord; and 2) alienate the land, but the land for sale has to be offered first to the landlord at market value by most classes of tenants; Male lineal descendants or male collaterals have right of succession	Landlord's right of pre-emption in case of alienation of land by occupancy tenant
Compensation for Improvements (Chapter VI)	Grant of compensation for improvements made by both occupancy tenants and tenants-at-will on eviction	Right of terminating occupancy through payment of compensation

¹⁸⁴ It should be noted that extent of tenants' rights granted in the Act was a function of their relationship to the land they cultivated. This included the length of occupancy, improvements made in the land, as well as the proximity of their residence to the land (that is, the Act made a distinction between resident and non-resident tenants of the villages associated with the land).

The bill negated the revised settlements of Edward Prinsep by acknowledging tenant occupancy rights from either of the two settlements and putting an onerous burden on the landlords to overcome the presumption of these rights through the courts. Similarly, the Bill restricted landlords' ability to enhance rent or ejectment of tenants with occupancy rights, while giving a freer hand in the case of tenants-at-will. Although some members offered a few minor amendments to different provisions (especially related to ejectment and compensation) during the discussions in Council and asked for more time for further discussion and input, John Lawrence and Richard Temple, with active support Maine, pushed the Bill tabled by the Select Committee and it was approved by a six to three margin. By affirming and strengthening proprietary rights of the tenants, the Punjab Tenancy Act of 1868 was a victory for the proponents of peasant-proprietorship theory of land tenure, but against "post-Mutiny trends ... within the larger framework of British Indian Government."¹⁸⁵

Given the composition of Council, with a majority members more favorable towards peasants, and with the backing of the Governor-General, the passage of the Bill was not much in doubt. Nonetheless, the arguments put forth by the various members during the discussion on the day of its passage brought to the fore the broader questions about customary versus legal rights in land tenure, the importance of political expediency in the post-1857 British India, and the appropriateness of a uniform land tenure system in the whole of India given the political-economic diversity across the various provinces.

One of the main points of contention was the customs and/or customary rights that existed in land tenure in Punjab prior to British rule, and how far these should be accommodated

¹⁸⁵ Hambly, "Richard Temple and the Punjab Tenancy Act of 1868," 66.

in institutionalizing new tenure arrangements. The issue of customs came up during discussions on the twelve-year rule applied in the initial settlement as a guiding principle to acknowledge occupancy rights of the tenant, as well as in subsequent debates related to the inheritance of these rights and questions of ejectment. The Anjuman-I-Punjab Society, reflecting primarily the viewpoints of the landlords, made a distinction between 'rights' and 'customs' to counter the argument made by the proponents of the Bill that tenant had "acknowledged rights" of occupation:¹⁸⁶ "Rights can hardly even be understood, -far less to be acknowledged, where there is neither law to define them, or an administration of justice, to protect it. Custom, on the other hand, can exist, for it depends not on a definition of law, but by the common consent of the people who practice it." Similarly, *The Friend of India*, a newspaper, argued that "[t]his is not a country of large undivided estates or of non-resident landlords like Ireland; there is no competition among tenants, and no system of rack-rent. On the contrary, equitable customs everywhere-prevail, which are morally binding both on landlord and tenant, and the infraction of which would leave social stigma on either party who broke them."¹⁸⁷

Thus, amongst the opponents of the legislation, its inability to accommodate the existing customs prevalent in Punjab was unacceptable, especially given the post-1858 guiding principle proclaimed by the Queen of paying due regard to ancient rights and customs of India in framing and administering law in the colony. However, the question of which customs were prevailing on land tenures was a difficult one to disentangle.¹⁸⁸ The debate in the Council on October 28, 1868,

¹⁸⁶ Report of the Law Committee of the ANJUMAN, sent to Edward Brandreth, i-xxi, in *Opinions of the Press in India*, v.

¹⁸⁷ *Opinions of the Press in India*, 125.

¹⁸⁸ For example, even to the broader distinction between occupancy tenants and tenants-at-will (*mouroosi* and *ghair-mouroosi*) was contested by the ANJUMAN, see *Opinions of the Press in India*, v.

wrestled with this issue at length. The Governor-General argued that in the absence of written deeds or public records under the Sikh rule in Punjab, the settlement officers had to rely on oral testimony about prevailing customs, which differed not only across villages but even across sections of society within a single village.¹⁸⁹ Another member of the Council, William Mansfield, however, using opinions of the early-nineteenth century British officials, claimed that although occupancy rights of tenants were not customary, the ability of landlords to evict any tenant was prevalent in the province under the Sikh rule. Richard Temple opined that even though certain local customs on land tenure in Punjab can be traced, they are “not provable, or not ... absolutely ascertainable. If that were to be sole guide, the opinions of no two officers would agree: in no two districts would the result be similar.”¹⁹⁰

Given the varied positions within the Council on identifying and isolating customs and customary rights in determining security of tenure, H.S. Maine, with his law background, cautioned members of the futility of basing their decisions on this issue alone:

I observe ... that in a great number of cases [during the Settlements], the persons under examination, whether landlords, tenants, or witnesses, were asked whether a particular class had a right to a particular thing.... Now, everybody who has paid even a superficial attention to the subject is aware that there is no more ambiguous term than Right, or some shade of it.... *Primá facie* when you ask whether a class had rights of a particular kind, you mean legal rights; but legal rights imply a regular administration of fixed laws, and there was confessedly no such administration under Sikh rule.... Perhaps ... it may be said that rights about which enquiry was made were customary rights – rights arising under a custom. But here ... I find myself in greater difficulties than ever ... [f]or in papers relating to the Panjáb settlement, the word ‘custom’ is used in a sense certainly unknown to jurisprudence, and I believe also to popular usage.... According to the understanding of lawyers, ... the foundation of a Custom is habitual practice, a series of facts, a succession of instances, from whose constant recurrence a rule is inferred. But the writers of these

¹⁸⁹ Authority of the Governor-General, “Abstract of the Proceedings of the Council of Governor-General of India, Assembled for the Purpose of Making Laws and Regulations,” 441–44.

¹⁹⁰ Authority of the Governor-General, 403.

papers perpetually talk of customs of eviction, or enhancement, or of rack-rent, and in the same breath admit the non-existence of any practice of the kind alleged.¹⁹¹

Questioning the custom based rationale of determining occupancy and other rights in land tenure in both initial and revised settlements, Maine exhorted Council members to focus on the political expediency in institutionalizing, through legislation, the tenure relationships that were put in place in post-annexation Punjab, and the potential virtues of the peasant-proprietorship model. Considerations of political expediency were somewhat different in Punjab than in Oudh during that time. While the reversion of occupancy rights from the tenants to the landlords (*taluqdars*) in Oudh was based on the need to placate the 'superior class' and ensure their allegiance to the Empire in the post-1857 political environment, such compulsions were not present in Punjab since the landlord class had accepted (even if grudgingly) the initial settlements. However, Maine argued that given that land tenure arrangements had now existed for more than a decade, "[t]here could be no more dangerous precedent than the wholesale obliteration by the Government of vested rights [to the tenants] ... merely on the ground that the Government made a mistake."¹⁹² Furthermore, alluding to the earlier conditions in Punjab when land was cheap and in plentiful supply, but labour was scarce to clear the land, Maine posed rhetorical questions on the economic value of giving greater rights to the actual cultivators or tenants: "Why should not the British Government, under the peculiar circumstances of the Punjab, establish rights of occupancy in the tenants whom it found in the province at annexation? Who is it that has created in Punjab the rent of land and its value for sale or letting, which were

¹⁹¹ Authority of the Governor-General, 419–20.

¹⁹² Authority of the Governor-General, 421.

practically unknown there under Native rule?"¹⁹³ This economic rationale was supported by another member, Noble Taylor, who was of the view that "[t]he hereditary cultivator is the real man of progress; as a rule, it is he and no other who puts his labour and his capital into the land, and it is upon his industry and frugality that all agricultural development depends."¹⁹⁴ John Strachey also affirmed the beneficial relationship between security of tenure and economic progress suggesting that the "class of tenants with a permanent interest in their holdings [is one] from which almost all real improvement of the land in India is derived." He also went further by visualizing how the proposed occupancy rights could influence land tenure in other parts of the Empire, and may eventually reach the metropole: "England is the only country in the civilized world in which any other doctrines are seriously held; but when we see what is going on in this regard to the position of the occupiers of land in Ireland, it seems hardly possible to doubt that great changes in the tenure of land may not be far distant even in our own country."¹⁹⁵

Much of the discussion of the Bill in the Governor-General in India Council, thus revolved around the broader debates that had been festering amongst the peasant-proprietorship and landlord-proprietorship camps of colonial officials, supported by their respective backers in the Press.¹⁹⁶ No minds were changed during the discussion, and the Bill was passed and sent for

¹⁹³ Authority of the Governor-General, 414.

¹⁹⁴ Authority of the Governor-General, 426.

¹⁹⁵ Authority of the Governor-General, 432.

¹⁹⁶ One interesting suggestion was that similar to what had been done in Austria and Russia, the Punjab Tenancy Act should have gone further and given permanent leasehold to the tenant and compensation for the landlord in order to "expressly extinguishing the double rights in the same property which the landlord and the ryot were said to possess." See Authority of the Governor-General, 437-438.

assent to the office of Secretary of State for India. The next battle would have to be fought by influencing opinions in England.¹⁹⁷

The Secretary of State for India Council in London and the Punjab Tenancy Act

As the Bill moved to England for consideration and approval in the early part of 1869, there were further attempts to stall the passage of the legislation. A petition signed by over '200 chiefs, gentry, and landowners' was sent from Lahore to the Duke of Argyll, Secretary of State for India, in February 1869¹⁹⁸ stating that although the motives of the bill's proponents were to "do justice between the landowners and tenants of this province; ... the provisions of the Bill are not in accordance with the customs, usages, and wishes of the people," which the Queen, in Her Proclamation of the 1st November 1858, had promised in "framing and administering the law."¹⁹⁹ The petition requested a reconsideration of the Bill in light of the "devotion" that the Punjab upper classes had shown to the British during the 1857 rebellion as well their proven "loyalty" to the Empire. The petition was endorsed by the Lieutenant Governor of Punjab, who in his memorandum to the Secretary of State requested due consideration to the landlords' petition, and also wrote at length on the necessity of reconsideration of some of the sections of the Bill

¹⁹⁷ In a letter to Henry Maine dated January 1, 1869, J.S. Mill expressed concerns about how the debates around the Act had foregrounded a "reaction towards landlordism [in India] of the present English type, at the very time when in England opinion is, though slowly beginning to turn the contrary way.... Until now the strong contrary convictions of Sir John Lawrence have moderated the mischief, but India has now got an Irish landlord [Lord Mayo] to rule over her & it is quite uncertain whether his official superior the Duke of Argyll will be any check upon his landlordism. In "Francis E. Mineka and Dwight N. Lindley, eds., "Letter from J.S. Mill to Henry Maine, January 1, 1869," in *The Later Letters of John Stuart Mill 1849-1873*, vol. XVII, Collected Works of John Stuart Mill (Toronto and Buffalo: University of Toronto Press, 1972), 1536–37.

¹⁹⁸ In the letter it was mentioned that a similar petition was sent to the Governor General of India in February 1868, see "East India (Punjab Tenancy)," 402.

¹⁹⁹ Petition sent to the Duke of Argyll, Secretary of State for India in April 1869 to reconsider approval of the Punjab Tenancy Act, see "East India (Punjab Tenancy)," 402.

relating to the Chapters on occupancy rights, ejection, alienation, and improvements.²⁰⁰ In the meantime, the Earl of Mayo, and Irish landlord, had assumed the mantle of the Governor-General of India in January 1869, and he was keen on bringing closure to the long and contentious debate around land tenures in Punjab.²⁰¹ In his letter to the Duke of Argyll, Mayo acknowledged that there was great difference in opinions about the provisions of the Bill and the way it was passed. However, he suggested that “many of the arguments against the Bill are unsubstantiated and most of them exaggerated” and more importantly, there was no “penchant for revisiting [it].”²⁰²

The difficulty of dealing with diverse opinions is reflected in a series of letters sent by the Duke of Argyll to the British Prime Minister, William Gladstone. In one of his letters he wrote about the “violent feelings for and against it.” Although he was personally satisfied with its provisions, he was anxious that the majority of his Council would be opposed to its provisions.²⁰³ In subsequent letters, he lamented the opposition within his council about his memo of not vetoing the Act but was heartened by the letters he received from the Governor-General of India, Lord Mayo, supporting his position. Argyll was pleased that Mayo had come to the same conclusion as he had on the merits of the Act and potential harm to overall legislation in India if he were to veto the Act. Argyll informed Gladstone that according to Mayo the “agitation against

²⁰⁰ Memorandum on the Punjab Tenancy Act dated April 18, 1869 in “East India (Punjab Tenancy),” 403–7.

²⁰¹ As argued by Metcalf, *The Aftermath of Revolt*, 200–202 although Mayo came from an aristocratic Anglo-Irish family, “he was fully aware of the misery of the Irish cottier tenant, and [was] determined to avoid a repetition of ‘the Irish difficulty’ in India.”

²⁰² Letter dated July 21, 1869 in “Private Letters from the Earl of Mayo to the Duke of Argyll, with Enclosures, 1869-1870. In 8th Duke of Argyll Papers,” 1870 1869, BL IOR/Neg 423-47.

²⁰³ Letter dated August 23, 1869 in “Gladstone Papers Vol. XVI. Correspondence with the Duke of Argyll. 1869-1870.”

[the Act] is not Native, but entirely European. This, however, may be true merely because the natives do not understand how their interests are affected.”²⁰⁴

The discussions of the Bill in the Secretary of State for India Council were contentious, with supporters and opponents of the Bill making similar arguments that dominated debates in the Governor-General Council in India,²⁰⁵ and the assent to the bill given after the tie-breaking vote of the Secretary of State (8-7).²⁰⁶ With the support of the Earl of Mayo,²⁰⁷ the sympathetic ear of the Liberal Prime Minister Gladstone,²⁰⁸ and the backing from J.S. Mill²⁰⁹ and the now-retired John Lawrence,²¹⁰ the Secretary of State for India sent his approval of the Punjab Tenancy Act of 1868 on October 28, 1869. Argyll justified his decision by responding to the three criticisms of the Act:²¹¹ 1) whether there was a necessity of legislating tenure relationships; 2) whether full

²⁰⁴ Letter dated September 14, 1869 “Gladstone Papers Vol. XVI. Correspondence with the Duke of Argyll. 1869-1870.” In an article published in *Pioneer*, a pro-peasant newspaper, the writer rebuts the claims made in the petition signed by the “gentry” arguing that the “memorials and petitions are not what they profess to be; that they do not fairly represent the feelings of the landlord class in the Punjab as a whole.” see W. G. Davies, *Tenant-Right in the Punjab, and the Punjab Tenancy Act* (Allahabad: Pioneer Press, 1882), 27.

²⁰⁵ For a detailed Minute of the dissent to the eventual approval of the Bill by the Secretary of State for India on October 28, 1869, by Erskine Perry (5-12) and other members of the Council (12-17), see “East India (Punjab Tenancy).”

²⁰⁶ “Secretary of State Council of India Proceedings on the Punjab Tenancy Act,” October 29, 1869, BL IOR/C/22-23.

²⁰⁷ In a letter dated August 8, 1869 Mayo wrote to Argyll: “you will now be in a position to judge whether you will take the usual course and announce that the Bill will be “left to its operation.” All I can say is that at present advised I do not think that any evil effect will arise from your doing so.” “Private Letters from the Earl of Mayo to the Duke of Argyll, with Enclosures, 1869-1870. In 8th Duke of Argyll Papers.”

²⁰⁸ Hambly, “Richard Temple and the Punjab Tenancy Act of 1868.”

²⁰⁹ See letter from Argyll to Gladstone, August 23, 1869 in “Gladstone Papers Vol. XVI. Correspondence with the Duke of Argyll. 1869-1870.”

²¹⁰ See Notes by John Lawrence dated August 6, 1869 and October 8, 1869 in “Papers and Letters Relating to the Punjab Tenancy Act, 8th Duke of Argyll Papers.”

²¹¹ “East India (Punjab Tenancy),” 1–5.

consideration was given to the circumstances of the case, and; 3) whether there was a possibility to pass another compromise bill that would be materially different from the one passed.²¹²

Responding to these three criticisms of the Act, Argyll alluded to the Minute by the Chief Court which favoured legislation to clarify the confusion about land tenures after Punjab came under British rule, pointing to the proliferation of cases where the “proceedings of the settlement officers were coming into collision with the legal principles which ruled the decisions of the Civil Courts.”²¹³ He opined that the strong theoretical positions held by administrators in British India precluded the possibility of an alternative bill having broader acceptance.²¹⁴ Furthermore while acknowledging that some occupancy rights granted to tenants may be erroneous (in light of Prinsep’s findings), he saw virtue in the provisions of the Act that allowed rectification of the errors through the means of a regular suit before the court of revenue officers. On the criticism

²¹² While supporting the bill as it was passed by the Governor General Council of India, Argyll, in a separate letter to Mayo dated November 1, 1869, expressed his reservations on one aspect of the bill, one related to the right of sub-letting by the occupancy tenants, especially its implications for security of tenure in Ireland: “I need not point out to an Irish Landlord the dangers which are connected with such power. No doubt that the danger depends on the conditions of Society. Heretofore in India the competition for land has not been such as to lead to this obvious subdivision. On the contrary under former governments the difficulty has been to get Tenants who will occupy and cultivate. But you must recollect that our settled Rule has brought in wholly new conditions. We shall have fewer wars – and I hope also fewer famines. Under Peace and Plenty the population must increase at a rate not before known, and if a low kind of good is available, such as the Potato, we may have here in the Punjab the same preference of the population on the means of subsistence which led to so much misery in Ireland” (“Letter from Argyll to Mayo, November 1, 1869,” n.d., BL IOR Mss Eur Photo Eur 466, f141.). I will examine this aspect in the next chapter, especially in relation to Argyll’s position on the Irish land act that was being pushed by Gladstone during that period.

²¹³ “East India (Punjab Tenancy),” 2.

²¹⁴ H.S. Maine had also written to Lord Mayo on July 8, 1869 about the need for legislative action: “Quite apart from the question whether the system of rights which Mr. Prinsep and his co-adjutors claim to have discovered, has or has not any real foundation, it is a system absolutely incapable of being worked by Courts of Justice.” “Letters and Other Papers from Sir Henry Maine, 1869-1874, 8th Duke of Argyll Papers,” n.d., BL IOR Neg 423-47.

received from both colonial and native opinions about the Act not adhering to the post-1858 guiding principles of accommodating local customs, Argyll wrote:

[I]t is our duty to ascertain, as nearly as we can, what the relative rights and relations of land owners and land occupiers actually were before we took the country, to give to those rights and relations a new sanction, and not to upset or to interfere with them. Here, however, we are encountered by another of the main facts of the whole case, namely, that the pre-existing rights and relations of the agricultural classes were complex, and are to us obscure; that in no case do they rest, as in Europe, on written documents, or on long course of judicial decisions, or, in fact, on anything but local custom. These customs are of infinite diversity; they have been handed down by tradition only; and they have long been liable to such invasion by the agents of arbitrary Governments, and have consequently been so broken and disturbed that the widest differences of opinions may arise on the ultimate principles of tenure which they involve.²¹⁵

Thus, by the end of 1869, after a period of over twenty years of British rule, the province of Punjab had its first piece of legislation on land tenure. In its annual report on the Material Progress of India, the Proceedings of the Governor-General of India noted that “[i]t is matter of congratulation to learn on the highest and most impartial authority that events have justified the expectation of those who were convinced of the justice of the measure, and that the Act [Punjab Tenancy Act of 1868] is working most satisfactorily.”²¹⁶ In response to the continuing dissent from Edward Prinsep, who was now the Financial Commissioner of Punjab, the assistant to the Governor-General of India wrote on March 13, 1870 that it is “Lord Mayo’s wish at the present time to carry out loyally the orders of the Secretary of State and not to admit any fresh questions being raised on an act which is now fairly launched on its trial, and good, or bad, has best be carried through.”²¹⁷

²¹⁵ “East India (Punjab Tenancy),” 4.

²¹⁶ Authority of the Governor-General, “Abstract of the Proceedings of the Council of Governor-General of India, Assembled for the Purpose of Making Laws and Regulations,” 53.

²¹⁷ “Edward Augustus Prinsep Papers.”

Conclusions

Questions about land tenure and tenant rights in Punjab in the mid-1860s, after the expiry of the initial settlements, generated a tremendous amount of debate and controversy in both India and England. The eventual Act was in line with the peasant-proprietorship model as it gave generous occupancy rights to the tenants.

The controversy surrounding the passage of the Act foregrounded several important considerations for the British administration in the period after the 1857 rebellion and the 1858 transfer of power to the Crown. The vocal and oppositional positions of colonial officials on land tenure in Punjab highlighted the necessity of accommodating regional and local specificities in institutionalizing laws and regulations in British India. The peasant-proprietorship model, with greater rights for the tenants vis-à-vis the landlords, and based on utilitarian principles of political economy, was hardly an innovation under colonial rule in Punjab as it had been implemented in the early part of the nineteenth century in southern and western provinces, and its variants had slowly crept their way up north by the middle of the century.²¹⁸ Despite its introduction in multiple provinces, the theoretical ideas behind peasant-proprietorship could as easily be countered by those adhering to the principles of laissez-faire and sanctity of property rights.²¹⁹

²¹⁸ D. A. Washbrook, "Law, State and Agrarian Society in Colonial India," *Modern Asian Studies* 15, no. 3 (July 1981): 649–721; Tirthankar Roy and Anand V. Swamy, *Law and the Economy in Colonial India, Markets and Governments in Economic History* (Chicago; The University of Chicago Press, 2016).

²¹⁹ H.S. Maine aptly captured the difficulty of applying principle of political economy in India: "I suppose that whole volumes have been written ... on the question whether the great share of the profits of cultivation taken by the British Government of India (like all Oriental governments) is properly called land-tax or rent, and on the question whether the protected or hereditary tenancy of the East is or is not a violation of the rights of property; or in other words, whether it can be reconciled with the Western conception of ownership." Henry Sumner Maine, "The Effects of Observation of India on Modern European Thought. The Rede Lecture Delivered Before the University of Cambridge, May 22, 1875," 1875, BL IOR MSS Eur F127/238. Similarly, in his letter approving the Punjab Tenancy Act of 1868, Secretary of State of India, Argyll, wrote on October 28, 1869 that the dispute about land tenures in Punjab involved

The inability of the proponents of either school to win the debate on tenant rights with their respective principles of political economy forced them to look for alternate ways to further their respective cause.

The two groups attempted to use customs or customary rights as the overarching rationale on which land tenure rights needed to be determined and institutionalized. However, attentiveness to customs as a basis for the security of tenure posed a challenge because of the inability of colonial administrators to comprehend the local customs, given their limited experience in the province,²²⁰ and the lack of clearly discernible customs on land tenure prevalent there.²²¹ In one sense, the occupancy and related rights of tenants and landlords formalized in the Act would become the accepted customary rights in subsequent land tenure laws in Punjab.²²²

“a radical difference between two schools of theoretical opinion, who regard from two opposite points of view the slender basis of fact which alone appears to be ascertainable. “East India (Punjab Tenancy),” 2.

²²⁰ See dissent by Sir Erskine Perry to the Secretary of State for India’s decision to approve the Act, in which he argued for the “existence of customary law as to land tenures amongst the natives of India, on their scrupulous obedience to it, and the inexpediency on the part of the foreign legislator in interfering with these customs in compliance with some European theory.... Customs which, though faint and obscure, and not easily traceable by an inexperienced English investigator, are still to be distinctly ascertained by a patient and impartial administrator....” In “East India (Punjab Tenancy),” 6, 10.

²²¹ Banga, *Agrarian System of the Sikhs*; Metcalf, “Laissez Faire and Tenant Right in Mid-Nineteenth Century India”; C.L. Tupper, *Punjab Customary Law: Volume 1. A Selection from the Records of the Punjab Government*, vol. I (Calcutta: Office of the Superintendent of Government Printing, 1881); C.L. Tupper, *Punjab Customary Law: Volume II. Statements of Customary Laws in Different Districts*, vol. II (Calcutta: Office of the Superintendent of Government Printing, 1881); C.L. Tupper, *Punjab Customary Law: Volume III. Questions on Tribal and Local Custom*, vol. III (Calcutta: Office of the Superintendent of Government Printing, 1881).

²²² An important point of note here is that H.S. Maine’s ideas about communal property rights reflected in the ‘traditional village communities’ which he proposed in his books (Henry Sumner Maine, *Ancient Law: Its Connection with the Early History of Society and Its Relation to Modern Ideas* (London: John Murray, 1901 and Henry Sumner Maine, *Village-Communities in the East and West: Six Lectures Delivered at Oxford* (London: J. Murray, 1871)) were not invoked by him during the various debates related to the Punjab Tenancy Act. It was only in the 1870s that elaborate efforts were made by some of Maine’s followers in Punjab to codify customs in different districts. These are beyond the scope of this chapter. See Tupper, *Punjab Customary Law*; Post-colonial historians of Punjab have also tried to probe the veracity of the

There was then a third rationale, that of political expediency, on which the proponents and opponents of tenants' occupancy rights could base their arguments. As discussed before, the landlords in Oudh, with the help of their colonial allies, were able to win back their property rights after 1858 on grounds of providing greater stability to the British rule in India. However, these political expediency arguments were not straightforward in Punjab. First, unlike other provinces, Punjab did not witness a widespread revolt against colonial rule in 1857, and the marshalling of its support by John Lawrence was crucial in suppressing the rebellion.²²³ Second, John Lawrence was able to get political and military support from the traditional chieftains as well as the peasantry. While the former chieftains were placated after the revolt with honorary titles (such as Honorary Magistrates and *Zaildars*), the well-being of the peasantry needed to be accomplished through more tangible economic benefits, especially since "Punjab became the nursery of the Indian army right through the end of the Raj. The British were grateful to the Punjabis for their role in suppressing the rebellion, particularly to the Sikhs, who had been conquered less than a decade earlier."²²⁴ Because of these factors, and the lack of a class of great landlords in Punjab, the political expediency arguments during the debates on the Punjab Tenancy Act did not feature the 'aristocracy versus peasantry' dichotomy prevalent in land tenure

tenurial categories and associated rights debated in the nineteenth century. Some have found support for the two types of tenants (that is, one with occupancy rights and others merely at-will) (see Banga, *Agrarian System of the Sikhs*). Others have argued that the classification of tenure in Punjab were merely a way to find convenient juridical categories to fit pre-existing English notions of landlord-tenant relationships (see Bhattacharya, *The Great Agrarian Conquest*). It is also plausible that given the large size of the province, and with different levels of development of land for agriculture and diversity of settled and nomadic tribes, there was such a variety of customary tenures which could be interpreted either favoring the landowners or the tenants, and thus supporting the viewpoints of both groups of administrators.

²²³ Major, *Return to Empire*; Gandhi, *Punjab: A History from Aurangzeb to Mountbatten*.

²²⁴ Mazumder, *The Indian Army and the Making of Punjab*, 11. Punjab contributed 18.8% to the British India army in 1880, which had increased to 44.5% in 1919.

discussions in other provinces.²²⁵ Rather, the political expediency argument was more to do with the political implications of taking away the hereditary occupancy rights granted to the vast number of tenants (that is, the creation of peasant-proprietorship) in the first settlements.²²⁶

The preceding discussion suggests that the theoretical arguments and practical realities in Punjab did not lend themselves towards a strong enough case for or against peasant-proprietorship. Eventually, active agency and relative power within the colonial hierarchy of proponents of the rights of peasants were the crucial factors in achieving substantive tenancy rights in Act. An important insight here is that the agency (by both supporters and opponents of tenant rights) came primarily from British colonial administrators. Even the supposed intervention by the Anjuman-I-Punjab society and the Petition by the province's gentry were perceived to be the viewpoints of the group of British officers in India with aristocratic bias, rather than a reflection of true opinions of the native classes.

Despite the controversy over the Act, it was a salient piece of legislation. First, it was an important turning point for supporters of tenant rights in India, as it slowed down the post-1857

²²⁵ Although the Petition signed by landlord groups (cited earlier) did try to make this case.

²²⁶ See earlier cited views of John Lawrence and H.S. Maine during discussions in the Governor General of India in Council. It is interesting to note that a communication by Charles Wingfield to the Secretary of State for India Council in September 1869 raised a pertinent point about 'landlordism' in Punjab and the potential harm to proprietors with small holdings of the tenant occupancy rights: "Punjab is a country of peasant proprietors, and can it be a wise policy to irritate and alienate the proprietary peasantry, a far more powerful class than the great proprietors of Oudh and Bengal, because more numerous, and the class from which was drawn the Sikh soldiery which helped us to suppress the mutinies?.... [The] average extent of the holdings of the peasant proprietors is estimated at about 14 acres. Is it not economically unwise to multiply interests in such small holdings, which are not sufficient for the maintenance of the rightful owners" (Reproduced in "Papers and Letters Relating to the Punjab Tenancy Act, 8th Duke of Argyll Papers)." However, his viewpoints did not gain much traction during the time, but became a concern at the end of the nineteenth century because of indebtedness of the 'peasant proprietors'. See Norman G. Barrier, "The Formulation and Enactment of the Punjab Alienation of Land Bill," *The Indian Economic & Social History Review* 2, no. 2 (1965): 145–65; Judicial and Public Department, "Act XIII of 1900, Punjab Alienation of Land Act 1900."

movement towards restoring the traditional social and economic hierarchies, and eventually allowed for greater security of tenure for peasants in various laws in British India by the end of the nineteenth century. Second, the success in Punjab emboldened the Liberal government in England at that time to reassess land tenure in other colonies, and thus shifted the momentum against landlordism across the British Empire. The most immediate cause was that of tenant rights in Ireland, to which I turn in the following chapter.

Table 3.2

District Officers' Replies to Punjab Financial Commissioner's Circular 96-3229, Dated August 1, 1863²²⁷

District/Division	What was the position of most favoured non-proprietary cultivators previous to annexation?	Could the proprietor eject them in favour of others, and if so on what terms?	If the power of eviction of others was not recognized, could he evict in case he wanted land for his own cultivation?
Amritsur Division – Officiating Commissioner	We may have created the class of “hereditary cultivators”		
Amritsur District – Deputy Commissioner	Two types of specially privileged non-proprietors – <i>Bhaewal</i> or co-partner, <i>Booteh Mar</i> – close to a hereditary cultivator, cultivated wasteland	Proprietor had right to eject, but bound by custom to account for improvements	Equal right of eviction in his favour
Sealkote District – Deputy Commissioner	Abundant land but scarce labor, cultivators thus possessed unacknowledged rights	Power to evict existed, but rarely exercised	
Jullundhur Division – Commissioner	Most proprietors were reduced to “level of cultivators, and were glad to find tenants who would permanently occupy the land, and help ... bear the burden of a heavy Government demand”	No uniform practice	
Jullundhur District – Deputy Commissioner	Resident and non-resident cultivators. Right of possession recognized if revenue paid regularly to the Kardar (revenue collector for the State)	Kardar could oust both proprietors and cultivators	
Kangra District – Deputy Commissioner	Tenure of cultivators only at will		
Umballah District – Deputy Commissioner	Their position equal to that of proprietors		
Loodianah District – Deputy Commissioner	Tenants at will, however if proprietor could not pay the revenue, the Government took it from cultivator and saw the latter as the owner of the land	Yes, and without making any concessions	
Delhie Division - Commissioner	No recognized class. However, mutual dependency between different classes		
Delhie District – Deputy Commissioner	No favoured non-proprietor	Right to evict existed, however the Rajah could intervene and reinstate	

²²⁷ “Selection from Records of the Government of Punjab, Papers Connected with the Question of Tenant Right in the Punjab,” 47–63.

		cultivator “as a matter of favour”	
Kurnal District – Deputy Commissioner	Cultivator of land assured of possession as long as he lived and was willing to cultivate the land (land of not much value)		
Goorgaon District – Deputy Commissioner	Non-proprietors had rights to permanent occupancy		
Hissar Division – Commissioner	No recognized intermediate class between proprietor and cultivator. Hereditary cultivator a creation of the British		
Rawul Pindee Division - Commissioner	No recognized usage of cultivators with special privileges. However, the state did not make any distinction between proprietors and cultivators	Right to evict existed, and without compensation. Landlord – tenant relations guided by common interest	
Jhelum District – Deputy Commissioner	No hereditary cultivator. However, long relationships kept with cultivators	Could be ejected	
Shahpoor District – Deputy Commissioner	For cultivators who had “broken up the wasteland” or sunk wells in the land, “it was the custom to allow [such tenants] a certain amount of indulgence compared with ordinary tenants.”		
Goojrat District – Deputy Commissioner	No distinction between hereditary and non-hereditary tenants, all of one class. However, tenants of common wastelands brought under cultivation were recognized as proprietors.	Power to eject in favour of others fully recognized, no concessions needed. However, seldom ejected, “proprietors were glad enough to have cultivators to come between them and the official”	
Mooltan District – Deputy Commissioner	No right of possession recognized in non-proprietary cultivators	Could evict, however with concessions for improvements	
Jhung District – District Commissioner	Existence of favoured non-proprietary cultivators called “Athogi”	Could not evict as “good tenants were valuable to proprietors and appreciated by them”	
Googaira District – District Commissioner	No distinction observed amongst cultivators. Cultivators could not sell or mortgage their lands, but had right to sub-let. Some cultivators, however, who were favoured by Kardars or Government had rights to occupancy	Right to eject, no compensation given	

Moozuffurgarh District – Deputy Commissioner	Existence of hereditary cultivators, whose rent could not be increases, heirs could not be ousted	No power of ejection	Rights reverted to proprietor after death of cultivator and only when there was no heir
Derajat Division – Commissioner	Original landlords established villages and brought lands under cultivation with the help of cultivators who were “induced to settle under agreements of recognized sub-proprietorship”	“impolite to disturb existing condition”	
Dera Ismael Khan District – Deputy Commissioner	“ <i>Bootmar</i> ” and “ <i>Luthband</i> ” resemble hereditary cultivators, no period of occupancy is required to establish their right	Cannot be ousted	
Dera Ghazee Khan District – Deputy Commissioner	Practice to give half share of the land to cultivators who cleared the jungle and brought tracts of wasteland under cultivation	Had right to eject cultivator from own share of the estate	
Bunnoo District – Deputy Commissioner	No hereditary cultivators	Non-proprietary cultivators entirely at the mercy of owners	
Peshawur Division – Commissioner	Hereditary cultivators did not exist		
Peshawur District – Deputy Commissioner	Long existing cultivators had “prescriptive rights to retain their holdings” based on the arbitrary will of the owner	Ejected with compensation for improvement	
Huzara District – Deputy Commissioner	Tenure of non-proprietary cultivators at the will of the owner	Could be ejected	
Kohat District – Deputy Commissioner	Continuous possession for 40-50 years by cultivators had same privileges as a proprietor, except power of sale		

CHAPTER 4
'AN INDIAN REMEDY FOR IRISH DISCONTENT'¹:
THE LANDLORD AND TENANT (IRELAND) ACT OF 1870

William Gladstone became Prime Minister of England for the first time in December 1868, and upon taking the helm of the Liberal government, his mission was to “pacify Ireland,”² which, at that time, was reeling from religious, political, and economic discontent. Gladstone “believed that if the Irish were shown the Westminster Parliament addressing their grievances by spectacular acts of legislation, then this would encourage their adherence to the existing political structure.”³ Accordingly, his first legislative effort regarding Ireland resulted in the Irish Church Disestablishment Act of 1869, whereby the Church of Ireland would no longer be the official church sanctioned by England and lose its privileges such as seats in parliament and economic endowments. Severing the connection between the Protestant Church of Ireland and the State was expected to remove “every vestige of grievance on the part of the great majority” of Catholics concerning “the inequality of treatment of religious bodies.”⁴ Soon after, Gladstone turned his attention to the land question, which was the cause of intense discontent amongst a large part of the Irish population. Despite numerous commissions set up by the British government since 1800 to find ways to assuage the concerns of the predominantly Roman Catholic Irish tenants vis-à-vis the Protestant Anglo-Irish landlords,⁵ and multiple legislative

¹ “An Indian Remedy for Irish Discontent,” *The Friend of India*, January 13, 1870, sec. Editorial.

² Roy Jenkins, *Gladstone* (London: Macmillan, 1995), 290.

³ Matthew, Introduction to the Volume, in H.C.G. Matthew, *The Gladstone Diaries with Cabinet Minutes and Prime-Ministerial Correspondence: Volume Seven, January 1869-June 1871* (Oxford: Oxford University Press, 1982), liii.

⁴ Baron G. Shaw-Lefevre Eversley, *Gladstone and Ireland: The Irish Policy of Parliament from 1850-1894* (London: Methuen, 1912), 29.

⁵ For example, “Report from Her Majesty’s Commissioners of Inquiry into the State of the Law and Practice in Respect of the Occupation to the Land in Ireland (Devon Commission)” (Dublin: Alexander Thom, 1845); W. Neilson Hancock, “Report on the Landlord and Tenant Question in Ireland, from 1860 Till 1866; with

attempts to alleviate the Irish grievances by granting some form of security to the tenants,⁶ the Irish land question remained unsettled in 1869. The Irish aspired to gain security for tenants through fixity of tenure, fair rents, and freedom of sale (which came to be known as the “three Fs”). At the same time, the landlords saw any concession on these demands as an abrogation of their rights to property.

Starting his engagement with the study of the land question in August 1869, Gladstone spent the next few months discussing his ideas about a legislative solution with his cabinet. These discussions led to a bill in the British parliament in February 1870, and after a series of amendments in the House of Commons and House of Lords, the Landlord and Tenant (Ireland) Act was passed in August 1870.⁷ The act legalized the tenant-right custom,⁸ provided tenants compensation for improvements and disturbance in contractual relationships, and allowed a pathway for peasant-proprietorship through the voluntary purchase of land from landowners, which the state would facilitate. Although these provisions did not fully incorporate any of the “three Fs,” the act was nonetheless seen as an achievement given the past failures over almost

an Appendix Containing A Report on the Question From 1835 Till 1859” (Dublin: Alexander Thom, 1866); “Report from the Select Committee on Tenure and Improvement of Land (Ireland) Act; Together with the Proceedings of the Committee, Minutes of Evidence” (House of Commons Parliamentary Papers, 1865).

⁶ Wm. A. Dunning, “Irish Land Legislation Since 1845. I.,” *Political Science Quarterly* 7, no. 1 (1892): 57–79; Wm. A. Dunning, “Irish Land Legislation Since 1845. II.,” *Political Science Quarterly* 7, no. 3 (1892): 500–521; R. Barry O’Brien, *The Parliamentary History of the Irish Land Question. From 1829 to 1869; and The Origin and Results of the Ulster Custom* (London: Sampson Low, Marston, Searle, and Rivington, 1880).

⁷ “Landlord and Tenant Act (Ireland) 1870” (1870).

⁸ As discussed in more detail later in the chapter, the Ulster custom was understood to entail some security of tenure through compensation for improvements and goodwill. This was quite distinct from the 3Fs, whose main pillar was fixity of tenure. For a book length study of the origin and practice of the Ulster tenant-right custom, see Martin W. Dowling, *Tenant Right and Agrarian Society in Ulster 1600-1870* (Dublin: Irish Academic Press, 1999).

seventy years. Even the pro-tenant Irish newspaper, *The Freeman's Journal*, gave tempered support to the act:

We know that the Irish tenant never will be satisfied till he is absolutely protected against arbitrary eviction and arbitrary increase of rent. At the same time, however, we recognize the benefits conferred by the measure, incomplete though it be, and we accept it, if not with gratitude, at least with satisfaction and as [an] important advance towards the complete settlement of the Irish Land Question.⁹

This chapter aims to probe why and how this Act made headway in legislating some security for Irish tenants, especially given the multiple previous failures spanning almost seventy years since the 1800 Act of Union. Because of the centrality of the land question in the history of Ireland, there is a vast body of literature on the topic which provides detailed accounts of the various arguments put forth to support or oppose attempts to institutionalize different rights in landlord-tenant relationships. This literature includes contemporaneous accounts by various public officials in England and Ireland,¹⁰ the writings of political theorists and economists promoting different rationales for various rights inherent in these relationships,¹¹ official reports commissioned by the British parliament to study the land question in Ireland,¹² and more recent

⁹ Editorial on the Passing of the Irish land bill "The Land Bill," *The Freeman's Journal*, August 3, 1870, sec. Editorial.

¹⁰ For example, see Alexander G. Richey, *The Irish Land Laws* (London: Macmillan, 1880); Lord Dufferin, *Irish Emigration and the Tenure of Land in Ireland* (London: Willis, Sotheran, and Co., 1867); Isaac Butt, *Land Tenure in Ireland; A Plea for the Celtic Race*, Third Edition (Dublin: John Falconer, 1866).

¹¹ John Stuart Mill, *England and Ireland*, 2nd ed. (London: Longmans, Green, Reader, and Dyer, 1868); John Stuart Mill, "Landed Tenure in Ireland," in *Newspaper Writings Deceember 1847 - July 1873*, in *Collected Works of John Stuart Mill, Volume XXV*, ed. Ann P. Robson and John B. Robson (Toronto and Buffalo: University of Toronto Press, 1986), 1112–15; William Thomas Thornton, *A Plea for Peasant Proprietors; with The Outlines of a Plan for Their Establishment in Ireland* (London: John Murray, Albermarle Street, 1848); John Elliott Cairnes, "Ireland in Transition: Land Tenure," *The Economist*, October 14, 1865; Cobden Club (London, England) et al., *Systems of Land Tenure in Various Countries* (London: Macmillan, 1870); Gerald Fitzgibbon, *The Land Difficulty of Ireland with and Effort to Solve It* (London: Longmans, Green, Reader, and Dyer, 1869).

¹² "Report from Her Majesty's Commissioners of Inquiry into the State of the Law and Practice in Respect of the Occupation to the Land in Ireland (Devon Commission)"; Hancock, "Report on the Landlord and

scholarship that uses vast archival materials to make sense of the complex history of Irish land tenure under colonial rule.¹³ While these studies differ in their specific focus, level of detail, and historical time frame, they point towards the presence of competing perspectives at multiple levels, which made it difficult for the proponents of tenants' security of tenure to achieve their objectives: the English idea of laissez-faire economics continued to be dominant in Ireland despite mid-nineteenth century attempts by political economists to foreground small farms and peasant proprietorship as ways to alleviate the suffering of tenants without sacrificing productivity; the persistence of views of the sanctity of individual ownership and property rights; the privileging of contract rather than status as the basis for the relationship between landlords and tenants; and the political power of Anglo-Irish landlords and their allies in the British parliament to resist any encroachment on their rights. Historian Bruce Kinzer aptly captures the roadblocks for the institutionalization of security of tenure for tenants for much of the nineteenth century:

Such concepts as 'fair rent,' 'fixity of tenure,' and 'free sale' of an occupant's holding could not be reconciled with the thoroughly predominant English understanding of property rights and freedom of contract. This does not mean that the Irish farmers enamoured of tenant-right rejected the principle of private property; they considered tenant-right as a species of private property. The problem faced by any reformer who aspired to promote tenurial security for Irish tenants was that orthodox political opinion refused to concede such status to tenant-right, whose essence was deemed incontrovertibly alien to the conception of property regnant in England.¹⁴

Tenant Question in Ireland, from 1860 till 1866; with an Appendix Containing A Report on the Question from 1835 till 1859."

¹³ E. D. Steele, *Irish Land and British Politics: Tenant-Right and Nationality 1865-1870* (Cambridge, England: Cambridge University Press, 1974); Bruce L. Kinzer, *England's Disgrace? J.S. Mill and the Irish Question* (Toronto: University of Toronto Press, 2001); Barbara Lewis Solow, "A New Look at the Irish Land Question," *The Economic and Social Review* 12, no. 4 (1981): 301–14; R. D. Collison Black, *Economic Thought and the Irish Question 1817-1870*, Reprint edition (England: Cambridge University Press, 2015); William Edward Vaughan, *Landlords and Tenants in Mid-Victorian Ireland* (Oxford, England: Clarendon Press, 1994).

¹⁴ Kinzer, *England's Disgrace?*, 95.

The pertinent questions then become as follows: What changed in 1870 that allowed tenants in Ireland to finally achieve some form of security? How did the proponents of tenant rights overcome resistance from the other side related to the sanctity of property rights, political economy arguments of efficiency, and the power of landlords? The existing literature points towards the agency of William Gladstone in shepherding the landlord-tenant bill through the British parliament due to his desire to bring peace and prosperity to Ireland in light of the historical Irish discontent and contemporaneous Fenian movement that was beginning to impact British public and political opinion.¹⁵ Gladstone believed that the threat of Feniansim could be minimized by drawing a “a line between the Fenians & the people of Ireland, & to make the people of Ireland indisposed to cross it.”¹⁶ He saw the church and land bills for Ireland as possible ways to counter the growing influence of the Fenian movement.

The literature further suggests that in contemplating the land tenure question in 1869, Gladstone was aided by the recent writings of political economists who were peeling away the entrenched virtues of laissez-faire policies and large-scale capitalist farming by considering precedents from other parts of Europe where state intervention to create small-scale farming had been successful.¹⁷ Furthermore, it has also been argued that to overcome the hurdle from advocates of the sanctity of landlord property rights and of “contract” as the basis of land tenure

¹⁵ For example, see E. D. Steele, “Gladstone and Ireland,” *Irish Historical Studies* 17, no. 65 (1970): 58–88; Eversley, *Gladstone and Ireland*.

¹⁶ Letter from Gladstone to General C. Grey, 28 March 1869. Add MSS 44536, f. 134. Reproduced in Matthew, *The Gladstone Diaries With Cabinet Minutes and Prime-Ministerial Correspondence*, 45.

¹⁷ Black, *Economic Thought and the Irish Question 1817-1870*; Barbara Lewis Solow, *The Land Question and the Irish Economy, 1870-1903* (Cambridge, MA: Harvard University Press, 1971); Joel M. Guttman, “The Economics of Tenant Rights in Nineteenth Century Irish Agriculture,” *Economic Inquiry; Oxford* 18, no. 3 (July 1, 1980): 408–24; Timothy W. Guinnane and Ronald I. Miller, “The Limits to Land Reform: The Land Acts in Ireland, 1870–1909,” *Economic Development and Cultural Change* 45, no. 3 (1997): 591–612.

relationships, Gladstone relied on the Empire's experiences in India to justify the legalization of the tenant-right in Ireland based on customary status as the guiding principle influencing the relative or shared rights of landlords and tenants. In this regard, the "little book... on Indian tenures as applied to Ireland" by George Campbell, a prominent civil servant in British India,¹⁸ played a prominent role in inspiring "the thought underlying the Irish land Act of 1870."¹⁹

Picking up on the influence of George Campbell's book on the Irish land question identified by his contemporaries and later historians, this chapter further probes the ways in which the Indian precedents regarding land tenure, including the ones articulated by Campbell, influenced conversations about the tenant-right issue in Ireland as well as the ultimate provisions that found their way in the final act. My main argument is that Gladstone's involvement in the Irish land question at the beginning of August 1869 coincided with two phenomena related to land tenure in India.²⁰ First, the Punjab Tenancy Act of 1868 recently passed by the Governor-General of India's Council was making its way to the Secretary of State for India, the Duke of Argyll, who was himself a landlord of significant holdings in Scotland, as well as a prominent member of the Gladstone cabinet. The Act, despite intense opposition from proponents of landlords' property rights in India and England, institutionalized substantial security of tenure for

¹⁸ As described in Chapter 3, George Campbell (later Sir George Campbell) was a prominent officer in British administration in India who played an important role in land settlements in various provinces, including the first settlement in Punjab. I will further discuss his involvement in Ireland later in the chapter. Campbell's book, based on his travels across Ireland in 1869 during a furlough from India, was written in two parts and circulated through individual connections.

¹⁹ This statement has been attributed to Gladstone's biographer, John Morley. Cited in S.B. Cook, *Imperial Affinities: Nineteenth Century Analogies and Exchanges Between India and Ireland* (New Delhi: Sage Publications, 1993), 56.

²⁰ Surprisingly, the existing literature has not looked at the influence of the Punjab Act, which was in the process of approval in England in the middle of 1869 when discussions started about the proposed act for Ireland. Similarly, Campbell's influence, aside from the acknowledgement of his influence on Gladstone, has not been fully explored. I describe this influence in greater detail in this chapter.

tenants. Correspondence between Gladstone and Argyll during this period shows that the simultaneous consideration of approving the substantial rights of tenants proposed in the Punjab act and the initiation of discussions regarding appropriate rights in Ireland were becoming intertwined. However, the precedent of custom-based tenure (as well as the rationale behind the efficiency of small farms based on European experience) was not considered enough of a justification for tenant-right in Ireland because of the dominant perspective in England that Irish land tenure was to be guided by English landlord-tenant relationships with their important contractual elements. That is, Ireland was perceived to be like England (or even an extension of England), and thus Irish land tenure had to be legislated on English principles of absolute property rights, laissez-faire policies, and contractual freedom within landlord-tenant relationships.

There had to be a conceptual leap from these perspectives for any headway to be made regarding the land question in Ireland. It was here that the second phenomenon related to India's land tenure came into play, that is, the circulation of Campbell's book in the middle of 1869, which caught Gladstone's attention as he began to put serious thought into solving the Irish land question. The specific recommendations Campbell propounded for Ireland were not novel per se, as similar suggestions had been made in various writings and reports in the preceding decades. I suggest that the value of Campbell's book in influencing the ongoing discussions about Irish land tenure was that its reception in various circles, and the public discussion of his ideas, helped change the narrative from India being an exception on the question of customary rights of tenants, to England being the exception in terms of contracts as the primary mechanism guiding landlord-tenant relationships. In this regard, Campbell's contributions need to be seen in

terms of their more fundamental role in decoupling the Irish land question from England and recoupling it with land tenures in India, rather than the specificities identified in the literature.²¹

The acceptance or critique of Campbell's principles regarding the applicability of Indian precedents to the Irish situation solidified a theoretical shift whereby Irish land tenure issues were de-coupled from historical English practices. With this shift, the political economy rationale for peasant-proprietorship of smallholdings from other European countries and property rights implications of co-proprietorship from Indian examples could be used to rethink Ireland's land tenure and legislate respective rights in landlord-tenant relationships. Of course, the proximity of Ireland to England and the complex nature of Irish landlords' economic interests and political influence would affect the extent of the rights that tenants could secure relative to that of the rights legislated in Punjab. Nonetheless, the Irish Land Act of 1870 was a significant turning point that was eventually used as a springboard for subsequent legislation across the British Empire.

Although the main objective of this chapter is to understand the various precedents for and influences on the passage of the act in 1870, I first identify the origins of the landlord-tenant problem under colonial rule in Ireland. This is followed by a discussion of the various legislative attempts to resolve the land question from 1800 onwards and the identification of the oppositional or competing ideas in play that deterred the passage of any meaningful legislation until the land act of 1870. Historical antecedents to the land question in Ireland and the fate of various attempts to address it are essential for understanding the situation Gladstone inherited

²¹ E. D. Steele, "Ireland and the Empire in the 1860s. Imperial Precedents for Gladstone's First Irish Land Act.," *The Historical Journal* 11, no. 1 (March 1968): 64–83; Eric Stokes, *The English Utilitarians and India* (Oxford: Oxford University Press, 1989) I discuss the specific positions of these historians regarding Campbell's book later in the chapter.

when he took up the land question in 1869 and the eventual passage of the first substantial land act that favoured tenants.

Historical Antecedents to the Land Question in Ireland: A Brief Outline²²

The Irish land question, which preoccupied successive British governments for much of the nineteenth century, had its roots in the different waves through which Ireland was occupied since the beginning of the twelfth century and the related legal regimes that evolved to govern the changing land relationships. Before the Norman conquest of Ireland in the latter part of the twelfth century, ancient Irish laws governed the land relationships (often referred to as “Brehon Law” after the wandering lawyers/judges, or Brehons, who interpreted the written texts and applied them to the situation at hand).²³ A few distinct features of these laws are relevant here. First, the key unit in the land system was the clan or tribe, within which existed a hierarchical order of property owners and their clients who performed various reciprocal services for each other.²⁴ The overall structure in Ireland was decentralized, with more than one hundred clans,

²² I rely on the following sources in developing this section and outlining the different stages of England’s rule in Ireland prior to its eventual union in 1800: C. F. Kolbert and Timothy O’Brien, *Land Reform in Ireland: A Legal History of the Irish Land Problem and Its Settlement* (Cambridge: University of Cambridge Department of Land Economy, 1975); J. C. W. Wylie, *Irish Land Law*, 2nd ed. (Abingdon, Oxon: Professional Books, 1986); Andrew Lyall, *Land Law in Ireland* (Dublin: Oak Tree Press, 1994); William Ernest Montgomery, *The History of Land Tenure in Ireland* (Cambridge, England: At The University Press, 1889); M Longfield, “Tenure of Land in Ireland,” in *Systems of Land Tenure in Various Countries: A Series of Essays Published Under the Sanction of the Cobden Club* (London: Macmillan and Co., 1870), 1–91; W. H. Crawford, “Landlord-Tenant Relations in Ulster 1609–1820:,” *Irish Economic and Social History* 2 (1975): 5–21; F. Seebohm, “The Historical Claims of Tenant Right.,” *The Nineteenth Century: A Monthly Review* 9, no. 47 (January 1881): 19–36; F. Seebohm, “The Land Question: English Tenures in Ireland,” *Fortnightly Review*, December 1869, 626–40.

²³ Montgomery, *The History of Land Tenure in Ireland*; Henry Sumner Maine, *Ancient Law: Its Connection with the Early History of Society and Its Relation to Modern Ideas* (London: John Murray, 1901).

²⁴ It seems that within each clan, the superior class of landowners could grant some of their surplus land to the lower classes, thus creating a landlord-tenant relationship. According to Wylie, such tenurial relationships were based on contracts that were “terminable at will.” Wylie, *Irish Land Law*, 8. Interestingly, during the nineteenth-century debates on landlord-tenant laws, the main point of

each ruled by a chief; these clans were grouped together, and each group paid homage to “the lordship of some royal overlord.”²⁵ Second, the Irish law of succession (and the associated inheritance of land) was governed by unique features. *Tanistry* was a law of succession that decreed that the chieftaincy of the clan and any property connected to it would pass on to the worthiest male (*tanist*), who was chosen by the clan during the tenure of the exiting chief. The *tanist* did not have to be the eldest son of the chief. Furthermore, under the *gavelkind* system, the chief of a clan would divide the land owned by a deceased clan member and distribute it to different households within the clan.²⁶ These features of the clan-based system and the possibilities for inter-generational redistribution of land made individual land ownership rights neither absolute nor inheritable.²⁷

This traditional system of Irish land was disturbed by the Norman conquest of 1172 when Henry II of England invaded Ireland, and several Irish chiefs acknowledged him as their king. Henry II “made grants of Irish land to some of the Norman barons, who were to hold it, in return for feudal services, as tenants-in-chief of the King.”²⁸ These changes had two crucial implications for land relationships: the introduction of a system of feudal tenure arrangements and the emergence of Anglo landlords in Ireland. Both results profoundly reshaped the land tenure relationships in the country. However, since only a small part of Ireland was conquered at the

discussion was not the ancient Irish laws but rather the custom that developed in Ulster after the plantations and settlement during the seventeenth century.

²⁵ Wylie, 8.

²⁶ Henry Sumner Maine, *Lectures on the Early History of Institutions* (London: John Murray, Albermarle Street, 1905), 99; Wylie, *Irish Land Law*, 9.

²⁷ For more details of the different features of the Brehon Laws as it applied to land tenure, see Chapter II of Montgomery, *The History of Land Tenure in Ireland*.

²⁸ Kolbert and O’Brien, *Land Reform in Ireland*, 10.

time, the feudal tenure system took shape in a limited area (the “Pale”), where most of the superior tenants were probably settlers from England and Wales.²⁹ Other regions continued with the pre-existing Irish tenure system, and even some of the Anglo (or Anglo-Norman) landlords established relationships with their Irish tenants based on Brehon laws.³⁰

The two systems continued to co-exist until the beginning of the seventeenth century when two waves of conquests in a period of a few decades led to England’s fuller territorial control over most of Ireland and the complete “imposition of English common law and the displacement of Irish law.”³¹ In particular, the prevalent practice of *tanistry* and *gavelkind* were considered incompatible with English common law and were thus replaced by the feudal concept of succession, *primogeniture*. In terms of land confiscation and resettlement, a scheme to induce the chief Irish landowners to accept the English monarch as the king of Ireland after the Crown of Ireland Act of 1542 and to redefine their relationship with the English Crown according to feudal principles was well underway at the beginning of the seventeenth century.³² The process was accelerated in 1607 when a failed rebellion by Irish chiefs in Northern Ireland led to the confiscation of their lands by the English Crown and the settlement of the Ulster plantation, where land was granted primarily to English and Scottish settlers, and the Irish were forced to

²⁹ Wylie, *Irish Land Law*.

³⁰ Kolbert and O’Brien, *Land Reform in Ireland*; Montgomery, *The History of Land Tenure in Ireland*. The Anglo-Irish barons’ adherence to the Brehon Laws was frowned upon by the English, as were intimate relations between the English and Irish, which were banned through the 1366 Statute of Kilkenny.

³¹ Wylie, *Irish Land Law*, 16. Dooley characterizes this period as one of conciliation and coercion: The English monarch, “at one level... was prepared to... offer English titles of nobility and landownership to any Gaelic lord prepared to renounce his Gaelic title, surrender his lands, recognize the king, and promise to promote English law and custom,” but at the same time, the king continued military campaigns against hostile Irish lords. Terence Dooley, “Land and The People,” in *The Oxford Handbook of Modern Irish History*, ed. Alvin Jackson (Oxford: Oxford University Press, 2014), 107–8.

³² Wylie, *Irish Land Law*.

become tenants.³³ The ensuing landlord-tenant relationship in the Ulster plantations took a unique form, which would play an essential role in nineteenth-century efforts to resolve the Irish land question, and is discussed later in the chapter.³⁴

While the Ulster plantation was considered relatively peaceful and successful and there were attempts in the period immediately after 1607 by the Attorney General in Ireland, John Davies, to rectify the earlier wrongs of the land confiscation of native Irish people,³⁵ the rest of Ireland continued to see active resistance against English encroachment upon their land. A failed rebellion in 1641 led to the further forfeiture of Irish lands. This was followed by the expeditions of Oliver Cromwell from 1649 to 1652 which took a sectarian turn; led to the full conquest of Ireland, the confiscation of rebels' lands, and the establishment of new settlements; and heralded the period of the "Protestant Ascendancy," which would last into the nineteenth century.³⁶

³³ A colony of English and Scottish Protestants, consisting of people from all walks of life (such as weavers, artisans, labourers), was also established in Ulster, and the new settlers "established an era of apparent prosperity, and until 1641 lived side by side with the native race with less open hostility than might have been accepted." Montgomery, *The History of Land Tenure in Ireland*, 64. It is estimated that between 1603 and 1641, 70,000 English and 30,000 Scots migrated to Ireland, primarily to the province of Ulster. Dooley, "Land and The People."

³⁴ Seebohm, "The Historical Claims of Tenant Right."; Dowling, *Tenant Right and Agrarian Society in Ulster 1600-1870*. While the Protestant tenants in Ulster (who immigrated from England and Scotland) received similar tenancy conditions as existing in England, the Irish Catholic tenants in the province were also afforded better terms because of the high competition amongst landlords to secure suitable tenants for their land (Crawford, "Landlord-Tenant Relations in Ulster 1609-1820").

³⁵ D. Alan Orr, "Sir John Davies's Agrarian Law for Ireland," *Journal of the History of Ideas* 75, no. 1 (2014): 91-112; D. Alan Orr, "From a View to a Discovery: Edmund Spenser, Sir John Davies, and the Defects of Law in the Realm of Ireland," *Canadian Journal of History* XXXVIII (2003): 395-408. According to Davies, Ireland could only be peaceful and integrated with England through an equitable distribution of land and the adoption of English common law.

³⁶ Cunningham, "Oliver Cromwell and the 'Cromwellian Settlement' of Ireland"; Kolbert and O'Brien, *Land Reform in Ireland*.

By the middle of the seventeenth century, England's occupation of Ireland was complete. Most of the land was confiscated from the Irish and distributed to Protestant landlords, with some restitution granted through the transplantation of Irish landowners to the province of Connaught. Data show that before 1641, Irish Catholics owned nearly sixty percent of land in Ireland; this was reduced to twenty percent by 1665 and a mere fourteen percent by the end of the century.³⁷ While the resettlement of land under Protestant Anglo-Irish landlords continued, there were difficulties with the efficacy of the English feudal tenure introduced to Ireland. In his essay "Tenure of Land in Ireland," published in 1870, M. Longfield, a judge of the Landed Estates Court in Ireland, analysed this challenge as follows:

The laws which govern the relation between landlord and tenant are not very different in England and Ireland; but there are some differences in their pedigrees, and in some collateral circumstances, which have made them produce very different effects.... In both countries the law is based upon the feudal system, which gave the landlord a certain superiority over his tenants. But the feudal relation, with its reciprocal rights and duties, never existed in Ireland. Here the landlord never led his tenants to battle; if they fought on the same field, it was on different sides.... The relations that existed between them were hostile. According to the old feudal law, the lordship could not be transferred without the consent of the tenant, lest an enemy might be made his feudal superior; but in a great part of Ireland a sudden and violent transfer of the lordship was made to persons whom the tenants only know as their victorious enemies.³⁸

Given the difficulty that feudal tenure arrangements faced in gaining traction in Ireland and the general trend away from such tenure arrangements even in England by the latter part of the seventeenth century, there was movement in Ireland towards leasehold tenure arrangements. Under these conditions, landlords granted tenants long leases, including those structured as "three lives" or "999 years" tenure, among others. While these long leases created

³⁷ Wylie, *Irish Land Law*, 19.

³⁸ Longfield, "Tenure of Land in Ireland," 1.

some level of security for the tenants, these beneficial aspects could be availed only by Protestant tenants in Ireland because the penal laws (such as the Irish Statute of 1703) “debarred Catholics from purchasing land and limited the length of the lease they could obtain to 31 years.”³⁹ Thus, most of the Irish tenants had relatively short leases during the late seventeenth and eighteenth centuries.⁴⁰

The problem for Irish tenants was further exacerbated by the “absenteeism” of a vast majority of the Anglo-Irish landlords. They preferred to live in England and let intermediaries manage their estates.⁴¹ The preponderance of absentee landlords led to two difficulties: First, landlord-tenant relationships remained at arm’s length and were often even hostile,⁴² and second, the middlemen, who worked on commission, tried to extract the maximum rent from the tenants, accomplished through short-term leaseholds and sub-grants. The Irish tenant was thus in a precarious position, as he held the land “under a very short lease, or a periodic tenancy such as from year to year; his acreage was so small that it barely supported him and his family.”⁴³

³⁹ Wylie, *Irish Land Law*, 22–23.

⁴⁰ The only respite they received was from the Act of 1793, which granted them 40-shilling franchise, whereby freehold tenants with such a franchise could vote for the Irish parliament. Since tenants tended to vote for their respective landlords, it was in the latter’s interest to have as many freehold 40-shilling tenants as possible. This act was withdrawn in 1829. O’Brien, *The Parliamentary History of the Irish Land Question. From 1829 to 1869; and The Origin and Results of the Ulster Custom*. The number of Catholic freehold tenants increased substantially during the operation of this act (1795 - 4,768; 1796 - 64,752; 1803 - 147,159; 1828 - 191,732; 1830 – 14,246). Montgomery, *The History of Land Tenure in Ireland*, 100.

⁴¹ Wylie, *Irish Land Law*; Black, *Economic Thought and the Irish Question 1817-1870*, chap. III.

⁴² There was also the question of whether the remittances of rent from Ireland were detrimental to Ireland because of capital outflows.

⁴³ Wylie, *Irish Land Law*, 23. There were four types of leasehold tenancies in Ireland: certain term tenancy, periodic tenancy, tenancy at will and tenancy at sufferance. According to Wylie, tenancy at will “may continue indefinitely” but the tenant’s tenure is “so uncertain and insecure that it is difficult to quantify his estate and he seems to have nothing which he could convey to third parties” Wylie, 162. Thus, ‘tenant-at-will’ came to connote a tenant who was at the mercy of the landlord in terms of the ability to cultivate the land, and who did not have any interest in the land. In the discussions around the Punjab Tenancy Act discussed in the previous chapter, tenant-at-will was contrasted with an occupancy-tenant. In Ireland,

In addition to the land and penal laws that discriminated against Catholic tenants,⁴⁴ new commercial codes were put in place to protect England's industry by discouraging exports from Ireland. For instance, the export of Irish agricultural products, such as meat, butter, and cheese, was prohibited, and a thriving linen industry was hampered through onerous import tariffs in England.⁴⁵ The combined effect of all of these was that "the English nation kept the Irish native race enthralled to the soil.... The legislation which for a century deliberately shut the door to the growth of Irish commerce, and which systematically laboured to reduce to subjugation the native race, bound them to the land by barring all other means not only of wealth but of bare subsistence."⁴⁶ Thus, after its union with Ireland in 1800, England inherited a disgruntled Irish population that was heavily dependent on agriculture but lacked adequate means to sustain itself.

Resolving the Irish Land Question, 1801-1860: Multiple and Multi-Level Attempts and Failures

Following the Union with England in 1800, "the English statesmen hoped that... everything would be changed in the political, social, and material conditions of the country. A new era of prosperity and contentment would, it was said, now dawn upon Ireland."⁴⁷ With the

according to Montgomery, "the endeavours to ... reduce to a minimum the established proprietary rights of native holders in the land ... resulted in throwing ... the bulk of the native race in the position of mere tenants at will" Montgomery, *The History of Land Tenure in Ireland*, 90.

⁴⁴ For details, see W.N. Osborough, "Catholics, Land and the Popery Acts of Anne," in *Endurance and Emergence: Catholics in Ireland in the Eighteenth Century*, ed. T.P. Power and Kevin Whelan (Dublin: Irish Academic Press, 1990), 21–56.

⁴⁵ Kolbert and O'Brien, *Land Reform in Ireland*. Some of the export restrictions of Irish products were reduced by the time Ireland joined the Union in 1801, but by the time the Irish industry was decimated, with only a few textile mills in the north of the country, and the main exports being reduced to raw materials for input in England's industry (Francis G. James, "Irish Colonial Trade in the Eighteenth Century," *The William and Mary Quarterly* 20, no. 4 (1963): 574–84).

⁴⁶ Montgomery, *The History of Land Tenure in Ireland*, 84–85.

⁴⁷ O'Brien, *The Parliamentary History of the Irish Land Question*, 25.

granting of the “direct representation of the Irish people at Westminster,”⁴⁸ the Irish members of parliament also hoped for a new beginning that would alleviate the hardships emanating from existing religious, political and economic conditions. However, any improvement for a vast majority of the Irish engaged in agriculture had to come by changing the tenurial relationships with their respective landlords, most of whom had Anglo origins and mainly resided in England or Scotland. Thus, while there was an opportunity for the Irish to voice their concerns in Westminster, the landlords also found natural allies in English landlords in the parliament in resisting any pressure to enact laws that would undermine their position. More importantly, since discussions about land tenure were now happening in the British parliament, landlords' and tenants' relative rights and responsibilities in Ireland became intertwined with those existing in England. Consequently, any potential concessions by the Irish landlords were perceived to have implications for their brethren in England. This implicit collusion between landlords and their supporters undermined all efforts at multiple levels (for example, by the Irish, the British government, and political economists) to find ways to address the land question in Ireland. The only laws that were enacted were those that either helped the landlords during periods of crisis or reaffirmed their absolute rights vis-à-vis their tenants. In the following pages, I foreground the main issues underlying the debates at various levels.⁴⁹ My main objective is to highlight the

⁴⁸ Wylie, *Irish Land Law*, 24.

⁴⁹ There were almost yearly efforts by private members of parliament to introduce bills that would give some rights to the tenants, as well as numerous other bills introduced by the government during this period. Since all of these met the same fate, I do not discuss all of them; I merely highlight the somewhat shifting ideas proliferating during this period. All these efforts have been detailed in Montgomery, *The History of Land Tenure in Ireland*; O'Brien, *The Parliamentary History of the Irish Land Question*; Dunning, “Irish Land Legislation Since 1845. I.”; Dunning, “Irish Land Legislation Since 1845. II.”

evolving and persistent ideas about relative rights in land relationships during this period, which led to a stalemate on the land question into the 1860s.⁵⁰

During the first few years after the Union, Irish efforts at Westminster were focused on reducing some of the earlier religious and economic restrictions put in place on the Catholic Irish, leading to the Catholic Relief Act of 1829.⁵¹ In the meantime, the economic conditions of the Irish people during the first two decades were “still [full] of misery, wretchedness, and discontent. The relation of the landlord and tenant remained unchanged; the poverty and hardships of the people unrelieved.”⁵² To examine this situation, the first of numerous select committees was appointed in 1819. Its report identified two problems afflicting the agricultural economy of Ireland: a lack of employment opportunities and the underdevelopment of the agriculture sector. The committee recommended the need for significant efforts in reclaiming wasteland and increasing capital investment in the agricultural economy to improve its efficiency and productivity.⁵³ While no tangible legislative or policy changes ensued because of this report, its analyses and recommendations initiated meaningful conversations amongst political economists during that period regarding the mechanisms for improving agriculture (for instance, the efficiency of small versus large farms), as well as the role of the state in these efforts (laissez-faire versus state

⁵⁰ The debates and contestations around the land question in the nineteenth century did not happen in isolation, as they were part of the wider demands by the Irish for greater political and religious rights. Furthermore, while the legislative progress on the land question was somewhat slow, numerous laws were enacted to suppress some of the political activities, including coercion habeas corpus acts (which Black refers to as “an uneasy vacillation between a policy of coercion and one of conciliation.” Black, *Economic Thought and the Irish Question 1817-1870*, 12). Greater elaboration on these is beyond the scope of this chapter, but details of these laws can be found in Michael J. Winstanley, *Ireland and the Land Question 1800-1922* (London: Methuen & Co. Ltd., 1984); Dooley, “Land and The People.”

⁵¹ Wylie, *Irish Land Law*.

⁵² O’Brien, *The Parliamentary History of the Irish Land Question*, 25.

⁵³ For a detailed analysis of the report, see O’Brien, chap. II.

intervention policies), both of which had relevance for the landlord-tenant relationships in Ireland.

The orthodox viewpoint in political economy during the first few decades of the nineteenth century held that capital investment in large farms, like the English model, was the only way to improve the agricultural economy in Ireland. This viewpoint is aptly captured by the following letter to David Ricardo in 1822:

[N]o permanent or substantial good can be done till all small farms and small tenancies are got rid of. They are the curse of Ireland. They are calculated to destroy that wholesome dependence of the lower upon the upper classes which is one of the master links of society; and to encourage habits of idleness, which are the bane of all moral feeling. I am aware, there would be difficulty in carrying this measure into execution, but the object is most important. The two deficiencies in Ireland are *want of capital* and *want of industry*. By destroying small tenancies, you obtain both.⁵⁴

The withdrawal of the 40-shilling franchise in 1829 (which removed the incentive to have many tenants) and the sub-leasing act of 1832 (which prohibited sub-letting by the tenants) aimed to facilitate the move towards larger farms.⁵⁵ However, the benefit of the consolidation of land into large farms was predicated on the assumption that the uprooted farmers (tenants) could be accommodated in other sectors of the economy. This remained a challenge because other sectors were not sufficiently developed to absorb the large number of farmers who would be displaced. Moreover, the population of Ireland increased rapidly during that period, going from 2.85 million in 1785 to 5.36 million in 1803 and 8.18 million in 1841.⁵⁶ Part of the population pressure was alleviated in the 1840s because of famine deaths and emigration of people out of Ireland. However, a vast majority of the remaining population continued to depend on

⁵⁴ Letter to David Ricardo in 1822, cited in Winstanley, *Ireland and the Land Question 1800-1922*, 32.

⁵⁵ O'Brien, *The Parliamentary History of the Irish Land Question*.

⁵⁶ Montgomery, *The History of Land Tenure in Ireland*.

agriculture, farming an average of approximately eight acres of land under onerous tenancy relationships with their landlords or the latter's middlemen agents.⁵⁷

Given the reality of small farms in Ireland and the devastation resulting from the famine, a few political economists in the 1840s, using examples from some European countries with successful small-farm systems, started challenging the orthodox view of large-scale capitalist farming. For example, G. Poulette Scrope, a political economist, suggested that the "small farm system can in Ireland be made as conducive as it is in Belgium to the comfort of the population and the increase of production: but that the secret of this comfort and increased production – in other words, of the industry by which both are created – lies in the possession by the cultivator of a durable and certain interest in the results of his labour."⁵⁸ William Thomas Thornton fully articulated this viewpoint⁵⁹ in his influential book published in 1848, *A Plea for Peasant Proprietors: With the Outlines of a Plan for their Establishment in Ireland*.⁶⁰ He made two primary arguments related to the benefits of small farms and peasant proprietorship. Suggesting that "[e]ver since political economy was raised by Adam Smith to the dignity of a science, its British professors have been almost unanimously of the opinion that small farms are incompatible with the prosperity either of agriculture or of agricultural labourers,"⁶¹ he presented data showing that the productivity of small farms in continental Europe (for example, France and Belgium) was

⁵⁷ It was estimated that in 1845, approximately 10,000 landlords owned the bulk of the land, 50,000 to 100,000 were considered large tenants (cultivating between 50 and 80 acres), and more than 2.5 million tenants farmed on 8 acres of land. Dooley, "Land and The People."

⁵⁸ Reproduced in Black, *Economic Thought and the Irish Question 1817-1870*, 30.

⁵⁹ Thornton was an economist and a civil servant. He worked in the India Office for more than twenty years and wrote a number of important works related to overpopulation and its remedies. G. Le G. Norgate and John Vint, Thornton, "William Thomas (1813–1880), Economist and Civil Servant." *Oxford Dictionary of National Biography* (Oxford University Press, 2004).

⁶⁰ Thornton, *A Plea for Peasant Proprietors*.

⁶¹ Thornton, 1.

very similar to that of large farms in England. He believed that farmers in Ireland with holdings of approximately eight acres could be incentivized to make the necessary improvements in land while simultaneously earning a decent living:

A small landowner, whose whole produce belongs to himself, is of course richer than he would be if he had to pay rent.... He can more easily bear the expenses of cultivation, of procuring proper implements and manure, of drainage and irrigation, and he can keep more live stock.... He has... very much strong motives for effecting improvements.⁶²

He further argued that small farms in Ireland are perceived to be “defective” because they “are wanting certain conditions, without which no farms, whether small or great, nor their occupiers, can be expected to flourish. There are no bounds to the tenant’s liabilities, and no security against his ejection.”⁶³ Tenants could not make a better bargain with their landlords because they had no alternative other than to till the latter’s land, and there were too many tenants chasing too few land options and thus agreeing to pay as much rent as was asked. Using the example of the province of Ulster, where the size of the holdings was similar to that in other Irish provinces, Thornton pointed out that the lower competition for land and the prosperity of the tenants were due to the fact that the tenants there “enjoyed something approaching a comfortable subsistence.... They are not mere tenants in the ordinary sense of the word but possess a proprietary right which limits that of the landlord, and restrains his power of raising the rent, or ejecting the actual occupant.”⁶⁴

Thus, according to Thornton, the key to thriving agriculture in Ireland was not large-scale capitalist farming but rather small farms, with farmers having some security of tenure. However,

⁶² Thornton, 41.

⁶³ Thornton, 187.

⁶⁴ Thornton, 202.

since the existing landlords would not accept any security of tenure that constrained their property rights (including the ability to raise rents and eject tenants), the only way out was through the peasant proprietorship of wasteland, which the state could purchase from landlords and allocate to tenants. This would ease pressure on agricultural land and provide the necessary incentives for improvement and industry for farmers. John Stuart Mill supported Thornton's views in a series of articles published in 1848 in the *Morning Chronicle* and integrated into the first edition of his *Principles of Political Economy*.⁶⁵ Mill did not see value in introducing English capitalist farming in Ireland and did not agree with the Irish Repeal Association's call for fixity of tenure,⁶⁶ arguing that this "would be a violent disturbance of legal rights, amounting to almost a social revolution."⁶⁷ Instead, he saw the solution as the reclamation of wasteland as a public works project by the government and its subsequent distribution "to the Irish peasantry, either through outright grants-in-deed, or through permanent tenures under a quit-rent."⁶⁸

The debates amongst political economists centred around the pros and cons of large and small farms, with proponents of large farms arguing for laws that would consolidate farms and facilitate capitalist investment in them, while the Thornton-Mill scheme favoured the establishment of peasant proprietorship through state intervention and the purchase of

⁶⁵ Mill, "Landed Tenure in Ireland"; Also see E. D. Steele, "J.S. Mill and the Irish Question: The Principles of Political Economy, 1848–1865," *The Historical Journal* 13, no. 2 (June 1970): 216–36; Lynn Zastoupil, "Moral Government: J. S. Mill on Ireland," *The Historical Journal* 26, no. 3 (September 1983): 707–17.

⁶⁶ I discuss this in the following paragraphs.

⁶⁷ Quoted in Zastoupil, "Moral Government," 710.

⁶⁸ Zastoupil, 710. The scheme of Thornton and Mill differed from the tenants' land purchase option that was proposed and led to the 1870 Act (referred to as the "Bright Clause," for the former was a project for "home colonization", with a proprietor status for the colonists, leaving the landlord-tenant relationship unaltered in the rest of the country but freed from the aberrations which had brought it into disrepute. Black, *Economic Thought and the Irish Question 1817-1870*, 31. I discuss the "Bright Clause" later in the chapter.

wasteland from willing landlords in Ireland. According to the historian Collison Black, the “general trend of ideas had long been in favour of the first approach.... The Famine may have ruined many Irish landlords, but it did not shake the strength of the landed interest at Westminster. No measure which appeared to threaten ‘the just rights of property’ could have been carried out through the House of Lords at that time, and there can be no question that such schemes as those of Mill and Thornton fell into this category.”⁶⁹ Thus, until the 1860s, the government upheld the former view and facilitated the continuing viability of large-scale capitalist endeavours through the enactment of laws such as the Incumbered Estates Act of 1849. This act authorized the sale of estates that were adversely impacted by the famine to be sold to new owners through the discharge of any incumbrances. The aim of the act was to both protect large landlords and inject fresh capital into larger farms.⁷⁰

While debates amongst political economists regarding the appropriate size of land holdings and the viability of peasant proprietorship in Ireland as a pathway to security of tenure were ongoing, two other initiatives took shape intending to achieve security for tenants within their existing relationships with landlords. The underlying basis of these initiatives was the concept of “tenant-right,” which could take two forms: the “tenant-right of occupancy” and the “tenant-right of compensation for improvements.”⁷¹ The former, which became popularly known

⁶⁹ Black, *Economic Thought and the Irish Question 1817-1870*, 34.

⁷⁰ Wylie, *Irish Land Law*; Montgomery, *The History of Land Tenure in Ireland*.

⁷¹ Over the course of the nineteenth century, people interpreted “tenant-right” in different ways prompting it to be called “a phantom that melts away under every attempt to define it and that, chameleon-like, appeared to assume a different aspect every time it presents itself.” William Dwyer Ferguson, *The Tenure and Improvement of Land in Ireland Considered with Reference to the Relation of Landlord and Tenant and Tenant-Right* (Dublin: E.J. Milliken, 1851); Cited in Vaughan, *Landlords and Tenants in Mid-Victorian Ireland*, 67.

as “fixity of tenure,”⁷² was purportedly coined by a Town Clerk of Dublin, who defined it as the “abolition of all tenancies at will... and in their stead that a fixed tenure in the land, for a given time, should be created by the statute law, so that the farmer should have his land for that period free from ejection, save for non-payment of rent.”⁷³ The tenant-right of compensation, which is often referred to as the “Ulster tenant-right” encompassed tenants’ expectation of receiving compensation for the improvements they made to the land during their tenure. I discuss each of these in greater detail in the following paragraphs, and to distinguish them, I refer to their popular forms: “fixity of tenure” and the “Ulster tenant-right.”

The idea of fixity of tenure in Ireland originated in a series of speeches and writings by an Irish landlord, William Conner,⁷⁴ who promoted “a valuation and a perpetuity” in landlord-tenant relationships whereby rents should be fixed by an independent valuation (rather than through market competition). Tenants should have an “undisturbed occupation of the soil” as long as they pay the rent set by the valuation.⁷⁵ The underlying rationale for his prescriptions was that landlords could not be weaned away from rack-renting their tenants, given the great demand for a limited amount of land. Furthermore, his ideas echoed the labour theory of property discussed in Chapter 2, in that “the labourer was entitled to the fruit of his labour and that the law should

⁷² This was very much akin, in principle, to the occupancy rights in the Bengal Rent Act of 1859 discussed in Chapter 2 and those institutionalized through the Punjab Tenancy Act of 1868 discussed in Chapter 3.

⁷³ Reproduced in Black, *Economic Thought and the Irish Question 1817-1870*, 26.

⁷⁴ Not much is known about Conner except information from an article published in 1922 on the centennial of his first pamphlet of 1822. The author of this article notes in reference to Conner that “[t]o have devoted the best part of one’s manhood and the greater part of one’s fortune to fighting the cause of a class not one’s own, and to have been the pioneer in the advocacy of measures long afterwards adopted by the great agrarian reformers of modern times, must surely be allowed to constitute some slight title of remembrance, if not to gratitude.” George O’Brien, “William Conner,” *Studies: An Irish Quarterly Review* 12, no. 46 (1923): 279. Because of his fierce position against the exploitation of Irish farmers by landlords, Conner was charged and convicted for sedition in 1842.

⁷⁵ Black, *Economic Thought and the Irish Question 1817-1870*, 24.

protect his property just as it protected the landlord's property."⁷⁶ While not denouncing the institution of property, Conner pointed towards a goal of "dual ownership" or co-proprietorship between landlords and their tenants, whereby the tenant also had a property right that went beyond contractual right.⁷⁷

Fixity of tenure and fair rents thus became two important pillars amongst the Irish in their quest to resolve the land question in the middle of the nineteenth century. To this was added the third "F," that of "freedom of sale," whereby tenants could sell their interests in the holdings to incoming tenants without their landlord's interference.⁷⁸ These principles underlay the demands of the Irish Repeal Association of the 1840s, which also had political goals of ending the Union, and of the Tenant League formed in 1850 under the guidance of William Sharman Crawford,⁷⁹ a Protestant landlord and two-term member of parliament, and Charles Gavan Duffy,⁸⁰ a member of parliament and the founder of the radical Irish newspaper, *Nation*.⁸¹ These

⁷⁶ O'Brien, "William Conner," 282.

⁷⁷ Black, *Economic Thought and the Irish Question 1817-1870*.

⁷⁸ "Freedom of sale" connoted a tenant's right to "dispose of his saleable interest to the highest bidder, subject to the landlord's approval of the purchaser." The saleable interest could include the value of the improvement's made by the tenant as well as the "difference between the competitive market rent and the lower or 'fair rent' he actually paid" (Lindsay Proudfoot, "Tenant Right," in *The Oxford Companion to Irish History* (Oxford: Oxford University Press, 2002). A tenant's saleable interest could be substantial, with one estimate that in the 1870s outgoing tenants "received as much as twenty years' purchase of the rent of their holdings" (Vaughan, *Landlords and Tenants in Mid-Victorian Ireland*, 71).

⁷⁹ Sidney Lee and Alan O'Day, "Crawford, William Sharman (1781–1861), Politician and Landlord in Ireland." *Dictionary of National Biography* (Oxford University Press, 2008).

⁸⁰ R. B. O'Brien and Brigitte Anton, "Duffy, Sir Charles Gavan (1816–1903), Journalist and Politician." *Dictionary of National Biography* (Oxford University Press, 2008).

⁸¹ Crawford continued his attempts to improve the land situation by introducing multiple private member's bills in parliament. Duffy conceived of a Freehold Land Society that would buy land from the landlords and resell it through instalments to small holders. Black, *Economic Thought and the Irish Question 1817-1870*. While this scheme was like the Thornton-Mill proposal, its implementation was hampered because of the land purchase financing. Furthermore, Duffy was charged with sedition because of his nationalistic views. These multiple frustrations forced him to emigrate to Australia in 1855, where he had a successful political career, including a stint as the prime minister of Victoria.

movements expected the Irish members of parliament to promote bills that would lead to the institutionalization of tenants' security of tenure by writing the "three Fs" into law. However, an ideological shift within the movement emanating from different priorities regarding Irish political and economic conditions weakened any collective efforts towards this goal.⁸² Moreover, these demands did not gain any adherents in the English government because "however strong the conviction of the Irish tenants that they had a moral right of occupancy, it would have been impossible, in view of the strength of landlords' representation in the parliaments,... to secure any statutory recognition of such a right."⁸³

The Irish achieved a more favourable outlook for security of tenure via the tenant-right of compensation, when, in 1843, the devastation of the famine in Ireland and the persistence of Irish members of parliament prompted the government to appoint a royal commission to inquire into laws and practices regarding the occupation of land in Ireland. Headed by the Earl of Devon, the commission's five members (all landlords) examined a large body of official and unofficial literature, gathered testimonials from various quarters, and submitted their report to Parliament in 1845.⁸⁴ One of the crucial contributions of the report was its clear articulation of the Ulster tenant-right, which was subsequently used in various discussions on the land question:⁸⁵

In the account given by witnesses throughout Ireland, the mode in which occupiers hold their land, the most striking peculiarity is the custom prevalent in the northern counties, called the tenant-right. The origin of this custom... [is] a consequence from the manner in

⁸² Eversley, *Gladstone and Ireland*.

⁸³ Black, *Economic Thought and the Irish Question 1817-1870*, 26.

⁸⁴ "Report from Her Majesty's Commissioners of Inquiry into the State of the Law and Practice in Respect of the Occupation to the Land in Ireland (Devon Commission)."

⁸⁵ As mentioned earlier, the origins and characteristics of the Ulster tenant-right have been interpreted in various ways. The Devon commission's interpretation became the officially accepted definition. For the various angles of the Ulster tenant-right, see Crawford, "Landlord-Tenant Relations in Ulster 1609-1820"; Seebohm, "The Historical Claims of Tenant Right."; Vaughan, *Landlords and Tenants in Mid-Victorian Ireland*, chap. 4; Montgomery, *The History of Land Tenure in Ireland*, chap. VIII.

which property was generally granted and dealt with in that part of the country. Large tracts having become the property of public bodies, or of individuals resident at a distance, the landlords were well contented to let their farms to those who undertake the cultivation and entire management, reserving to themselves a rent, but making no expenditure, and exercising little interference with the land. Under these circumstances, it seems neither extraordinary nor unreasonable, that a tenant quitting a farm, either at his own desire or from any difference with his landlord, should obtain from his successor a sum of money, partly in remuneration of his expenditure, and partly as a price paid for the possession of the land.... From this state of things a feeling of proprietorship appears to have grown up in the tenant, which continues in a great degree to the present day.⁸⁶

This description of the origin of the tenant-right encompassed several aspects peculiar to Ulster (and, more importantly, in stark contrast to land tenure in England): absentee landlords, investments/improvements made by tenants rather than landlords, a sense of “shared” proprietorship, and compensation for improvements and goodwill flowing from incoming tenants to outgoing tenants. The report further stated that the accepted custom placed “the relation of landlord and tenant upon the footing most advantageous for both” and could explain the relative prosperity of Ulster tenants and peace in the province.⁸⁷ The report then detailed the various ways in which tenants’ compensation for improvements (which were approved by their respective landlords), so prevalent in Ulster, could be legislated for the whole of Ireland.

Ideas for using tenant compensation for improvements to address the grievances in Ireland’s agricultural industry gained traction amongst successive mid-nineteenth-century British governments. Soon after the report was submitted, Lord Stanley, a cabinet member in Robert Peel’s government, introduced a tenant compensation bill for Ireland in August 1845. In introducing the bill, he contrasted the landlord-tenant relationships in Ireland with those in

⁸⁶ “Report from Her Majesty’s Commissioners of Inquiry into the State of the Law and Practice in Respect of the Occupation to the Land in Ireland (Devon Commission),” 14.

⁸⁷ “Report from Her Majesty’s Commissioners of Inquiry into the State of the Law and Practice in Respect of the Occupation to the Land in Ireland (Devon Commission),” 15.

England. He argued that given the inadequate involvement and investment in Ireland of absentee landlords and the precarious economic situation of their tenants with small landholdings, there was a need for legislating mechanisms to compensate the tenants upon the expiry of their lease.⁸⁸ In this regard, the bill provided for a government office headed by a commissioner that would determine the nature of improvements made by an outgoing tenant and the amount of the resulting compensation paid by the landlord. Stanley was emphatic in his speech that the bill would not interfere with landlords' discretion regarding whom to grant the lease, the time period of the lease, or the rent to be charged. Nonetheless, the bill was not well received by the House of Lords and was eventually withdrawn. Similar bills introduced by different governments in the following years regarding compensation for improvements by tenants met the same fate.⁸⁹ In analysing the fate of these bills, Dunning pointed out that the tenant's proposed "power of arbitrary improvement" threatened the landlord's interest in his land, and the "good landlords as well as bad stood aghast at the results that would ensue, if every ignorant tenant... should have by law the right to work out his conception of 'improving' the holding and then to charge the landlord. The abstract justice of compensation was not disputed, but the determination of what would constitute an improvement was a vexatious matter."⁹⁰ Furthermore, the landlords considered the proposal of a commissioner determining compensation as interference with and confiscation of their rights of property.⁹¹

⁸⁸ Lord Stanley, "Compensation of Tenants (Ireland) Bill," Pub. L. No. Hansard Third Series, Volume 81, 211-235 (1845).

⁸⁹ For details about these numerous bills introduced by successive governments as well as others introduced by private members in both houses of parliament in the 1840s and 1850s, see O'Brien, *The Parliamentary History of the Irish Land Question*. Dunning, "Irish Land Legislation Since 1845. I."

⁹⁰ Dunning, "Irish Land Legislation Since 1845. I.," 64-65.

⁹¹ O'Brien, *The Parliamentary History of the Irish Land Question*.

By the 1850s, all attempts to address the land question in Ireland and improve the conditions of a large proportion of the population dependent on agriculture through legislative action were defeated through the combined efforts of Anglo-Irish and English landlords in the British parliament. While these landlords made common cause on the grounds that any scheme that “infringed [upon] the rights to property in Ireland might be held as a precedent for England,”⁹² the proponents of the three schemes (that is, peasant proprietorship through the purchase of wasteland, security of tenure through the “three Fs”, and the tenant-right of compensation for improvements) could not coalesce towards a united front to counter the political power of the landlords and the entrenched ideas about absolute rights to property and political economy.⁹³ Those advocating for the landlords felt confident enough to counter any possibility of the institutionalization of the tenant-right by passing an act in 1860 that deemed that “[t]he Relation of Landlord and Tenant shall be... founded on the express or implied Contract of the Parties, and not upon Tenure or Service, and a Reversion shall not be necessary to such Relation, which shall be deemed to subsist in all Cases in which there shall be an Agreement by one Party to hold Land from or under another in consideration of any Rent.”⁹⁴

⁹² Black, *Economic Thought and the Irish Question 1817-1870*, 37.

⁹³ The Bengal Rent Act of 1859 (discussed in Chapter 2) was passed in the Indian province. This act was predicated on custom and tenure, and it granted perpetual inheritable tenancy and protection against rack-renting to the tenants with a certain number of years of occupancy. See Andrew Sartori, *Liberalism in Empire: An Alternative History* (Oakland, California: University of California Press, 2014). It is interesting that until the 1860s, the various laws passed in India regarding land tenure did not figure in the discussions about land tenure in Ireland. See W.F. Finlason, *The History of Law of Tenures of Land in England and Ireland: With Particular Reference to Inheritable Tenancy; Leasehold Tenure; Tenancy at Will; and Tenant Right* (London: Stevens & Hayes, 1870). It was only in the late 1860s that some political economists pointed to Indian precedents as a way to tackle the Irish land question, and Campbell’s book played an important role in this movement.

⁹⁴ “Landlord and Tenant Law Amendment Act (Ireland), 1860. (Deasy Act), 23 and 24 Vic. c. 154” (1860), sec. III. Another act in 1860, the Tenure and Improvement of Land (Ireland) Act (‘Cardwell’s Act’), did legislate limited tenant-right of compensation for certain improvements carried out with the consent of

Stalemate in the 1860s and Shifting Aspirations and Perspectives Regarding the Land Question

The two land acts in 1860, one affirming landlord-tenant relationships based purely on contracts,⁹⁵ and the second allowing limited sub-leasing and compensation for improvements by tenants, were legislated during a period when the Irish Tenant League's influence had waned, and the landowners in Ireland were enjoying economic prosperity in the post-famine period due to the increased prices of agricultural products, the consolidation of large farms (more of which were devoted to pasture rather than to tillage), and the decreased population pressure caused by mass emigration out of Ireland.⁹⁶ Accordingly, there was a general belief amongst landlords in Ireland that the land question had resolved itself. They declared in Parliament that at "no period was Ireland in a greater prosperity" than in the late 1850s and that at that time, it "was one of the most tranquil countries in the world."⁹⁷ However, beneath this optimism of the Irish landlords and their supporters in England were simmering political tensions stemming from the bleak economic conditions facing the majority of the Irish population.⁹⁸ Although, for a while, the optimists provided evidence of the health of Ireland's economy as reflected in nationally

the landowner. The two acts, with emphasis on the importance of written contracts between landlords and tenants, took the recommendations of Neilson Hancock who undertook a follow-up report to the Devon Commission. Hancock, "Report on the Landlord and Tenant Question in Ireland, from 1860 till 1866; with an Appendix Containing A Report on the Question from 1835 till 1859."

⁹⁵ For the antecedents to this law and its subsequent implications, see Alan Dowling, "The Genesis of Deasy's Act Comments and Notes," *Northern Ireland Legal Quarterly* 40, no. 1 (1989): 53–63.

⁹⁶ Black, *Economic Thought and the Irish Question 1817-1870*; Solow, "A New Look at the Irish Land Question." The shift from tillage to pasture in Ireland was attributed primarily to the higher labour requirements for the growing of crops than for pasture, and the labour shortages due to famine and emigration in the 1840s and 1850s. For a detailed discussion, see Solow, *The Land Question and the Irish Economy, 1870-1903*.

⁹⁷ Cited in Norman McCord, "The Fenians and Public Opinion in Great Britain," *University Review* 4, no. 3 (1967): 228.

⁹⁸ For example, *The Times*, in an editorial of October 1863, wrote that Ireland "was never in a state of greater tranquillity. Never perhaps, since the Union was there such an entire absence of complaints against the government." Cited in McCord, 230.

aggregated agricultural statistics,⁹⁹ “the nationalist press assailed the executive and its policy, pointing to the continuing emigration of small tenants and the reduction of tillage as evidence of decay rather than prosperity.”¹⁰⁰ Weaker harvests during the first few years of the 1860s again led to calls for some security of tenure in terms of tenants’ compensation for improvements. Still, these calls continued to be resisted by the government, and then Prime Minister Palmerston even declared in 1865 that any “tenant-right is landlord wrong.”¹⁰¹

However, the land question took centre stage in the latter half of the 1860s: there was a new urgency behind efforts to address the question due to an increase in minor, local disturbances in Ireland aimed at exploitative landlords and, more importantly, because of the more significant, international revolutionary Fenian movement that originated in North America but had political, social and economic goals for the Irish in Ireland. The strength of the campaign and its use of violent tactics worldwide to achieve its objectives brought it to the attention of governments and the public at large.¹⁰² It generated two types of responses, one that aimed to suppress it through more stringent criminal laws that would facilitate the prosecution of acts detrimental to public order; and another that sought to once again rethink the economic conditions of the large agricultural population in Ireland among which the Fenian movement was

⁹⁹ Hancock, “Report on the Landlord and Tenant Question in Ireland, from 1860 till 1866; with an Appendix Containing A Report on the Question from 1835 till 1859.”

¹⁰⁰ Black, *Economic Thought and the Irish Question 1817-1870*, 44.

¹⁰¹ Black, 50. It will be shown in Chapter 5 that Palmerston was a key figure in opposing the tenants' rights movement in Prince Edward Island.

¹⁰² Eversley, *Gladstone and Ireland: The Irish Policy of Parliament from 1850-1894*.

gaining a vast following.¹⁰³ The latter included revisiting the laws governing landlord-tenant relationships.

Accordingly, new legislative attempts were made to grant some concessions to the tenants. In 1866, the Secretary for Ireland, Chichester Fortescue introduced a bill proposed by the Liberal members of Parliament that would replace the 1860 Cardwell Act regarding compensation.¹⁰⁴ The bill divided the tenants into two groups: holding leases of thirty-one years or more and holding shorter leases. Any compensation for improvement in the first group was to be regulated through contracts between landlords and tenants. In contrast, tenants in the second group would receive compensation “measured by the increase in letting value caused by such improvements, on determination of tenancy.”¹⁰⁵ In 1867, Lord Naas¹⁰⁶ introduced a bill on behalf of the Conservative government that offered to advance public money to tenants for certain types of improvements that they could make without their landlord’s consent.¹⁰⁷ Each of the two bills was attacked by both sides, with the landlords’ supporters making the usual arguments that the new law would interfere with landlords’ absolute rights to property. While acknowledging some positive movement in the tenant-right to compensation for improvements in the two bills,

¹⁰³ A detailed discussion of this movement is beyond the scope of this chapter. Some representative sources fully explicating its history include John W. Boyle, “Ireland and the First International,” *Journal of British Studies* 11, no. 2 (1972): 44–62; McCord, “The Fenians and Public Opinion in Great Britain”; O. Rafferty, *The Church, the State and the Fenian Threat 1861–75* (New York: Palgrave, 1999).

¹⁰⁴ Fortescue would play an important role in the 1870 Land Act. For a detailed discussion, see Steele, *Irish Land and British Politics: Tenant-Right and Nationality 1865-1870*.

¹⁰⁵ Black, *Economic Thought and the Irish Question 1817-1870*, 50.

¹⁰⁶ Naas took up the title of Lord Mayo and became the Governor General of India in 1868. Despite being an Irish landlord and having taken the landlord position with respect to Ireland, he supported the Punjab Tenancy Act of 1868 after succeeding John Lawrence in 1868. See Chapter 3.

¹⁰⁷ Dunning, “Irish Land Legislation Since 1845. I.”

the other side was now not content with gains in only this aspect. They wanted action towards their greater demand of security of tenure, which included the “three Fs.”

In this regard, the proponents of tenants were heartened by new writings from Irish nationalists, political economists, and even some landlords¹⁰⁸ that expanded the logic behind tenants' rights beyond just compensation for improvements. These writings encouraged more ambitious demands, but unlike in the 1840s, there seemed to be a convergence of new ideas amongst the various proponents of the rights of tenants. Thus, when Gladstone became prime minister in 1868 and embarked on an attempt to pacify Ireland and contain the political situation through laws favourable to the Irish, including those related to land tenure, he had to find ways to balance the traditional and persistent arguments of landlords on political economy and property rights with the expanding demands for legal rights of Irish tenants, which were also now anchored within these very frameworks. Before discussing the path pursued by Gladstone in dealing with the land question, it is helpful to outline these new writings and ideas emerging in the second half of the 1860s.¹⁰⁹

The solidification of fixity of tenure as the objective of the Irish nationalists in the late 1860s was likely influenced by the writings and activism of Isaac Butt (1813-1879), a professor of political economy at Trinity College Dublin in his early life and later a practicing lawyer, member

¹⁰⁸ For examples, see James Caird, *The Irish Land Question* (London: Longmans, Green, Reader, and Dyer, 1869); Dufferin, *Irish Emigration and the Tenure of Land in Ireland*.

¹⁰⁹ This is by no means an exhaustive list of all writings during that time, but it gives a very good idea of the various perspectives behind landlord-tenant relationships and the specific solutions proposed. In the following section, I address Gladstone's efforts to draft a bill during the latter half of 1869. During that time, he was especially influenced by the writings of Gerald Fitzgibbon and George Campbell, and I discuss their special contributions in that section.

of parliament, and leader of the Irish Home Rule Movement.¹¹⁰ Butt was sympathetic to the political, religious, and economic aspirations of the Irish people and defended several Irish charged with conspiracy during the Fenian movement in the 1860s. He was also closely associated with the Tenant League and articulated his concerns about the economic conditions of Ireland in his book, *Land Tenure in Ireland: A Plea for the Celtic Race*, published in 1866. He attributed the rise of the Fenian movement to the dire economic conditions in Ireland, where the “position of the occupiers of the soil [was that] of serfs, without any security either for their tenure or the fruits of their industry. They are dependent for their very means of existence on the will of their landlord, while the amount of that which is called rent is regulated, not by any economic law, but the disposition of the landlord to extort, and their own ability to pay.”¹¹¹ Arguing against emigration as a remedy to ease pressure on the land, which he described as a “flight not TO America but FROM Ireland,”¹¹² he saw the only remedy to the Irish land question as coming from the elevation of the “occupier from his position of serfdom, by giving him an interest in the soil; to do so at any price – to do so by giving him that without which every other remedy is but a miserable palliative – by giving him FIXITY OF TENURE – while we leave to the owner of the soil every right and every power, except those which he cannot continue to exercise without the waste and destruction of human life, and without bringing ruin both on himself and the entire community.”¹¹³

¹¹⁰ Alan O’Day, “Butt, Isaac (1813–1879), Politician and Lawyer” DNB (Oxford University Press, 2008), 22; Lawrence J. McCaffrey, “Isaac Butt and the Home Rule Movement: A Study in Conservative Nationalism,” *The Review of Politics* 22, no. 1 (1960): 72–95.

¹¹¹ Butt, *Land Tenure in Ireland*, 6.

¹¹² Butt, 100.

¹¹³ Butt, 6–7. [Capitals in original source]

This fixity of tenure could be accomplished by converting the short-term tenancies to a term of sixty-three years at a rent fixed at a fair letting value. The landlords would continue to have the power to evict upon non-payment of rent.¹¹⁴ Butt did not see his proposal as amounting to peasant proprietorship and made a forceful rebuttal, in 1867, to critics of his proposal who called it “revolutionary,” “communistic” and “subversive of the rights to property”: “I leave the ‘Protestant’ proprietors in possession of their position and their estates. My plan, if carried out, would not diminish by a single unit the number of existing proprietors. Whatever be the merits of the system of peasant proprietorship, the destruction of the present class of landed gentry, whether in England or in Ireland, would be a revolution in our social and political system.”¹¹⁵

Butt’s idea about the fixity of tenure as the most viable path for the economic upliftment of Irish tenants received backing from influential quarters in Ireland. John Gray, an Irish member of Parliament and the owner of an influential newspaper, the *Freeman’s Journal*,¹¹⁶ promoted this scheme to his constituents. Gray’s close association with the Roman Catholic clergy ensured its support.¹¹⁷ Butt, along with another Irishman, revived the Irish Tenant League in 1869 with the express objective of moving beyond just compensation for improvements and fighting for fixity of tenure. Irish nationalists maintained this position during the debates in Parliament around the bill brought forward by Gladstone in February 1870.

¹¹⁴ Isaac Butt, *The Irish People and the Irish Land: A Letter to Lord Lifford; with Comments on the Publications of Lord Dufferin and Lord Rosse* (Dublin: John Falconer, 1867).

¹¹⁵ Butt, 8.

¹¹⁶ David Steele, Gray, Sir John (1816–1875), Newspaper Proprietor and Politician. *Dictionary of National Biography* (Oxford University Press, 2004).

¹¹⁷ The influence of John Gray and his followers was strong enough that Lord Chancellor of Ireland warned Gladstone that “the success or failure of the Land Bill depends on the *Freeman’s Journal*; if it says, We accept this as fixity of tenure, every priest will say the same, and vice versa.” Cited in Black, *Economic Thought and the Irish Question 1817-1870*, 53.

While Irish nationalist thought on the land question had evolved from demanding “compensation for improvements” to “fixity of tenure” as the way to uplift the peasantry economically, there was also a shift in the thinking of political economists regarding how the Irish land question could be addressed. In this regard, the writings of J.E. Cairnes and J.S. Mill were particularly noteworthy in placing the land question within appropriate legal, economic, and political frameworks that could justify the fixity of tenure. The hope was to put forth a more united front to counter the entrenched power of landlords in Parliament and achieve some legal protections for the betterment of Irish tenants that had been elusive during the previous decades.

Cairnes,¹¹⁸ an economist and friend of J.S. Mill, wrote a set of four articles in 1865 for *The Economist* under the title “Ireland in Transition.”¹¹⁹ In these articles, he challenged the applicability of the accepted individual and absolute theory of private property as applied to land, as well as the political economy arguments that favoured large-scale capitalist farming working under free trade principles. Using examples from other European countries, he argued that the “doctrine of open competition and contract as the remedy for all social disorders arising from land tenure may be as sound as its admirers believe, but it has certainly failed hitherto to recommend itself to the convictions of any large proportion of mankind.”¹²⁰ He then outlined the role of the State in facilitating “industrial organization” in Ireland:

¹¹⁸ R. D. Collison Black, “Cairnes, John Elliot (1823–1875), *Economist*.” *Dictionary of National Biography* (Oxford University Press, 2004).

¹¹⁹ Cairnes, “Ireland in Transition: Land Tenure”; John Elliott Cairnes, “Ireland in Transition: The Future of Irish Industry,” *The Economist*, October 21, 1865; John Elliott Cairnes, “Ireland in Transition: Tenant-Right,” *The Economist*, October 28, 1865; John Elliott Cairnes, “Ireland in Transition: Peasant Proprietorship,” *The Economist*, November 4, 1865.

¹²⁰ Cairnes, “Ireland in Transition: Land Tenure,” 1238.

[B]y rendering it possible to carry out that sort of industry for which Ireland is naturally suited on farms of moderate dimensions.... [T]his may be accomplished by... acting out the maxim that the labourer is worthy of his reward – of that natural reward which consists in the thing he has produced. A tenant-compensation scheme... would... give practical effect to this principle; and the removal of the existing obstructions to the acquisition of land in small portions by the cultivators [for example, the establishment of peasant proprietors through the use of the capital lying in Irish banks]... would be only a more complete and expeditious mode of attaining the same end.¹²¹

Cairnes was pleading for an acknowledgement of tenants' labour involved in improving the land (that is, the tenant-right of compensation) and establishing the peasant proprietorship of small farms (that is, security of tenure). The importance of Cairnes' articles lay not in the novelty of his recommendations, but in the way he came to his conclusions through a comparison of the evolution of land tenure in Ireland and that in England. This comparative approach allowed him to argue that the demands by the supporters of Irish tenants could be accommodated through the principles of political economy and property rights, albeit in a somewhat different manner than how these principles worked in England. Accordingly, Englishmen should not "persist in believing that laws under which agriculture has flourished with *them* must of necessity be suited for a people pervaded by ideas and habits very different from theirs."¹²²

Decoupling of the land question in Ireland from the prevalent ideas in England was also taken up by J.S. Mill, whose own thinking had evolved from the 1840s when he, along with Thornton, had proposed peasant proprietorship through the redistribution of wasteland. Mill was in a unique position, having engaged with the land question through his writings over a thirty-year period and serving as an elected Liberal member of Parliament during the mid-1860s, where he actively participated in the debates around landlord-tenant relationships. In a speech

¹²¹ Cairnes, "Ireland in Transition: Peasant Proprietorship," 1334.

¹²² Cairnes, 1334.

during the discussion of the above-mentioned ill-fated tenant compensation bill introduced by Fortescue in 1866, Mill urged members of parliament to legislate on the land question for Ireland “according to Irish exigencies, and no longer according to English routine.”¹²³ Highlighting the differences between the two countries in terms of the relative attachment of tenants and landlords to the soil, the onus of capital and labour outlays regarding improvements to the land, and trust between landlords and tenants, among other considerations, he rhetorically posed and answered the following question:

People often ask – why should that which works well in England not work well in Ireland? [O]r why should anything be needed in Ireland which is not needed in England? Are Irishmen an exception to all the rest of mankind, that they cannot bear the institutions and practices which reason and experience point out as the best suited to promote national prosperity? ... No, Sir, Ireland is not an exceptional country; but England is. Irish circumstances and Irish ideas as to social and agricultural economy are the general ideas and circumstances of the human race; it is the English circumstances and English ideas that are peculiar.¹²⁴

Mill took a more radical approach to the Irish land question in his book *England and Ireland*, published in 1868.¹²⁵ In addition to reiterating the general ideas about property rights and political economy he had proposed in the various editions of the *Principles of Political Economy* (see Chapter 2), Mill approached the Irish land question in three new ways. First, he

¹²³ John Stuart Mill, “Speech on Mr. Chichester Fortescue’s Land Bill, House of Commons, May 17, 1866,” in *Chapters and Speeches on the Irish Land Bill*, by John Stuart Mill (London: Longmans, Green, Reader, and Dyer, 1870), 97.

¹²⁴ Mill, 98. In particular, Mill pointed out that England was an anomaly because of the predominance of land tenure arrangements whereby rents are fixed by contract between landowners of great estates and capitalist farmers, and the latter have the wherewithal to take care of their interests. Furthermore, he argued that English landlords are more attached to their land and thus undertake the necessary investments for improvements.

¹²⁵ For the general analysis of Mill’s book and its reception in various quarters in England and Ireland, see Kinzer, *England’s Disgrace?* E. D. Steele, “J. S. Mill and the Irish Question: Reform, and the Integrity of the Empire, 1865–1870,” *The Historical Journal* 13, no. 3 (September 1970): 419–50; Zastoupil, “Moral Government.”

linked the rise of the Fenian movement in the 1860s and the ensuing violence to the failure of successive governments in England to address the various grievances of the Irish, including those related to the conditions of the peasantry. Highlighting the apathy the English upper and middle classes had towards Ireland, Mill stated that “[w]hat seems to them the causelessness of the Irish repugnance to our rule, is the proof that... they have allowed what was once indignation against particular wrongs, to harden into a passionate determination to be no longer ruled by any terms.”¹²⁶ He further argued that the Irish land question now had to be viewed through the lens of political expediency as well, for “[l]et our statesman be assured that... nothing which is not accepted by the Irish tenantry as a permanent solution of the land difficulty, will prevent Fenianism, or something equivalent to it, from being the standing torment of the English Government and people.”¹²⁷

Second, in the 1840s, Mill had proposed limited peasant proprietorship through the voluntary purchase and re-distribution of wasteland from landlords to peasants. However, he did not support any legislation that impinged on the rights to property. He took a radical leap in the 1860s by recommending the “permanent possession of land, subject to fixed burthens,”¹²⁸ as the only path to resolving the land question. According to him, the fixity of tenure had become a necessity, as when “the land of a country is farmed by the very hands that till it, the social economy resulting is intolerable, unless either by law or custom the tenant is protected against arbitrary eviction, or arbitrary increase of rent.”¹²⁹ He then proposed the implementation of his

¹²⁶ Mill, *England and Ireland*, 7.

¹²⁷ Mill, 44.

¹²⁸ Mill, 21.

¹²⁹ Mill, 20.

scheme through a commission that would determine a fixed rent: “[E]very farm not farmed by the proprietor would become the permanent holding of the existing tenant, who would pay either to the landlord or to the State the fixed rent that has been decided upon.”¹³⁰

Third, to assess whether England could implement this new land tenure regime based on the unique situation in Ireland, Mill invoked the example of a variety of land tenure systems instituted in India under the East India Company and, since 1858, under the British Crown. He argued that this was proof that “Englishmen are not always incapable of shaking off insular prejudices, and governing another country according to its wants, and not according to common English habits and notions.”¹³¹ Given the similarities between the agricultural economies of Ireland and India, Mill argued that “[w]hat has been done for India has now to be done for Ireland; and as we should have deserved to be turned out of the one, had we not proved equal to the need, so shall we lose the other.”¹³²

Through these three interventions on the Irish land question, on the one hand, Mill aligned his prescriptions around fixity of tenure with those of Irish nationalists such as Butt and Gray. On the other hand, by bringing into attention the precedence of English land tenure ideas being adapted to local conditions in India, Mill provided a path forward to settling the Irish land question without being constrained by their origins in England. As will be shown in the following

¹³⁰ Mill, 37.

¹³¹ Mill, 22.

¹³² Mill, 22–23.

section, this Indian analogy would play an essential role in the context of the approval of the Punjab Tenancy Act in 1869 and in George Campbell's book published in the same year.¹³³

During the last session of Parliament in the early part of 1868, the Irish land question was debated once again under the Conservative government, and Mill elaborated on his proposals regarding fixity of tenure. These were not favourably received even amongst other Liberal members of parliament, including Gladstone, who at that time had not given much independent thought to Irish land and was not willing to go beyond what Fortescue had conceived in 1866 in terms of compensation for improvements. Soon after, there were new elections that resulted in a Liberal government headed by Gladstone, and his first effort was to take up the Irish church issue. It was not until the middle of 1869 that he returned to the land question.¹³⁴ J.S. Mill lost his seat in parliament and did not directly contribute to the ensuing parliamentary debates under the new Liberal government. However, Gladstone continued to consult him in private, as evidenced by the correspondence between them.¹³⁵

Gladstone's Engagement with Irish Land in the Shadows of India's Land Tenure¹³⁶

Gladstone started giving his full attention to the Irish land question in the middle of 1869 after accomplishing his first goal of legislating the Irish Church Disestablishment Act, writing to

¹³³ Campbells' expertise with land tenure in India was well accepted, and he was commissioned by the Cobden Club in 1868 to write an essay for a collection it was putting together. See Cobden Club (London, England) et al., *Systems of Land Tenure in Various Countries*.

¹³⁴ Black, *Economic Thought and the Irish Question 1817-1870*; Steele, *Irish Land and British Politics*.

¹³⁵ Matthew, *The Gladstone Diaries With Cabinet Minutes and Prime-Ministerial Correspondence*.

¹³⁶ My objective in the section is to probe how George Campbell's book and Indian analogies related to the Punjab Tenancy Act influenced Gladstone and his cabinet as they finalized the land bill that would be introduced in parliament. The broader literature on this is large and has been thoroughly analysed by Steele, *Irish Land and British Politics*. His book, however, does not fully explore the Indian precedents, particularly the Punjab Tenancy Act. Accordingly, my analysis builds on the work of Steele and other historians by adding another layer of thought that led to the passage of the first meaningful land act for the Irish.

his cabinet colleague, John Bright that “[i]f we succeed with the Church, & fail with the land, we shall have done less than half our work.”¹³⁷ In his subsequent correspondence with various members of his cabinet, he acknowledged the complexity of the Irish land question, stating that the “literature of the subject is large, larger than I can muster: but I feel the benefit of continuing reading upon it. We have before us a crisis, & a great crisis, for us all,... and I do not mean to fail through want of perseverance.”¹³⁸ The debates in parliament in the previous years and the new writings were coalescing towards two approaches to deal with the Irish land question. The first, related to tenant compensation for improvements as a form of security, and with antecedents in the Ulster tenant-right custom foregrounded by the Devon commission report in 1845, had gained some currency even amongst proponents of landlord rights. However, the form it would take and the administrative processes involved in implementing any legislation were still very much contested.¹³⁹ The second, which was gaining currency amongst Irish nationalists and was backed by writings of Mill and Cairnes, among others, wanted security for tenants through fixity of tenure and some constraints on rents. Complementing these two approaches was the idea of security through peasant-proprietorship established via land purchase and distribution; although this idea had gone somewhat out of favour, it still had its adherents, including John Bright,

¹³⁷ Gladstone letter to J. Bright, 22 May 1869, Add MS 43385, f. 30. Reproduced in Matthew, *The Gladstone Diaries With Cabinet Minutes and Prime-Ministerial Correspondence*, 72–73.

¹³⁸ Letter to Duke of Argyll 29 November 1869, Add MS 44538, f. 6. Reproduced in Matthew, 182. As pointed out by Eversley, “the subject of Irish land tenure was new to [Gladstone]. He had never previously taken part in the debates on Irish Tenant Right Bills. It did not call into play his great genius for finance. It bristled rather with difficulties of great complexity and subtlety.” Eversley, *Gladstone and Ireland*, 41.

¹³⁹ For a broader discussion of the multiple concerns regarding compensation, especially from the perspective of landlords, see Hancock, “Report on the Landlord and Tenant Question in Ireland, from 1860 till 1866; with an Appendix Containing A Report on the Question from 1835 till 1859”; Dufferin, *Irish Emigration and the Tenure of Land in Ireland*; James Caird, *The Irish Land Question*.

Secretary of the Board of Trade in the Gladstone ministry.¹⁴⁰ Thus, when Gladstone started educating himself on Irish land, there was a vast literature (much of it “trashy” according to his letters) that he needed to master to navigate the specific proposals that had garnered support within influential quarters. Two works caught his attention from the vast literature, *The Irish Land* by George Campbell and *The Land Difficulty of Ireland With an Effort to Solve It* by Gerald Fitzgibbon, both published in 1869. Gladstone recommended these books to his cabinet colleagues.¹⁴¹ While he engaged with these works and the wider literature and started discussions within his cabinet about an Irish land bill in the fall of 1869, he first had to deal with another land tenure issue that came to him indirectly through the Secretary of State for India, the Duke of Argyll, and related to the provisions of the Punjab Tenancy Act of 1868.

As discussed in Chapter 3, the controversy around the Punjab Tenancy Act of 1868 revolved around security of tenure for many tenants. Under the guiding principle of “status,” tenants were granted occupancy rights and compensation for improvements; thus, this controversy was akin to the ongoing “fixity of tenure” and “tenant-right” discussions in Ireland. The act had gone further by taking away the ability of landlords to arbitrarily increase rent and making it possible for occupancy tenants to sub-lease and alienate the land.¹⁴² These two provisions made the Punjab act very similar to the “three Fs” aspirations of Irish. The debates about the act in the Punjab revolved around the very principles of the sanctity of property rights and political economy that were being contested in Ireland. Furthermore, the debates happened

¹⁴⁰ Black, *Economic Thought and the Irish Question 1817-1870*.

¹⁴¹ For numerous references to these pamphlets, including the days when he read them, see the letters to his colleagues and entries in his daily diaries reproduced in Matthew, *The Gladstone Diaries With Cabinet Minutes and Prime-Ministerial Correspondence*.

¹⁴² The main sections of the act are summarized in Table 3.1, Chapter 3.

not amongst the landlords and tenants in Punjab but within the community of British administrators, both in India and England.¹⁴³ After its passage in India, the act came to the Secretary of State for India, the Duke of Argyll, for final approval. In his council's discussion, there was again a split between the supporters of the two groups. Argyll sent the complete documents and a draft of his decision letter to Gladstone. He wrote:

One of those dreadfully complicated questions connected with Land Tenures of India came before me when we entered office. It is the question of an Act passed by Lawrence just before he left India, regulating the Land Tenures of the Punjaub [sic]. Very violent feelings for and against it prevail in India and a memorial has lately been sent home professing to emanate from the landowners of the province praying that I suspend or disallow the Act. I have gone into the subject very carefully and am satisfied that this course cannot be adopted. Will you read a memorandum on the Act which I have drawn up for the Cabinet (some months ago) – and now the Draft Despatch which I have just sent to Council?¹⁴⁴

Gladstone supported Argyll's decision to approve the Punjab act with all the provisions for tenants' security of tenure:

I think your papers on the Punjaub [sic] Tenancy Act presuppose a more close knowledge of the subject than I possess. My impression would have been that the Prinsep process [denying occupancy rights to a large group of tenants] was radically questionable, unless an express title for the readjustment of all rights had been reserved: & that if this had been reserved, it must have been very rashly exercised to make it right then to go back upon it. But as far as I can judge from the papers, I should think the conclusion of your draft despatch the right one.¹⁴⁵

The affirmation of the Punjab act showed that both Gladstone and Argyll were not ideologically opposed to the principle of "fixity of tenure" emanating from "status," with occupancy rights that

¹⁴³ G. R. G. Hambly, "Richard Temple and the Punjab Tenancy Act of 1868," *The English Historical Review* 79, no. 310 (1964): 47–66.

¹⁴⁴ Letter dated August 22, 1869. Reproduced in "Gladstone Papers Vol. XVI. Correspondence with the Duke of Argyll. 1869-1870," n.d., British Library, Additional MS. 44.101 Add Ms 44101, F. 55, IOR, British Library. The main points of the said Despatch are summarized in Chapter 3.

¹⁴⁵ Letter dated August 30, 1869. Add MS 44537, f. 42. Reproduced in Matthew, *The Gladstone Diaries With Cabinet Minutes and Prime-Ministerial Correspondence*, 122.

amounted to the co-proprietorship of the landlord and tenant.¹⁴⁶ On the contrary, both saw the act as an appropriate way to structure land tenure relationships without concerns about its implications for the absolute rights of property. The shepherding of the act in the Governor-General of India's Council by John Lawrence and the Secretary of State of India Council by the Duke of Argyll, despite intense opposition from the proponents of landlords' absolute property rights, also showed that active agency could swing the balance towards the rights of tenants and the associated security of tenure. The experience of the Punjab Tenancy Act, both in terms of its provisions and the process through which it was enacted, thus provided ample precedent for Gladstone in dealing with the Irish land question in 1869.¹⁴⁷ Whether and how he would use it

¹⁴⁶ Lord Mayo, who, as an Irish landlord and cabinet member in the conservative government, had opposed any substantive rights for the Irish tenants in 1867, was fully supportive of the Punjab Act upon taking over as the Governor General of India in 1868. Argyll, himself a Scottish landlord, wrote to Mayo on November 1, 1869: "My opinion on the general principle of the Act is favourable, but I must direct attention to one part respecting which I entertain the gravest doubts. I refer to the power given to all occupancy tenants to sublet their holdings wither in whole or in part. I need not point out to an Irish landlord the dangers which are connected with such power." "Letter from Argyll to Mayo, November 1, 1869," n.d., BL IOR Mss Eur Photo Eur 466, f141.

¹⁴⁷ Several British officials who had served in India in the 1860s pointed to numerous similarities between India and Ireland on land tenure. For example, in a letter to the Secretary of State for India, John Lawrence wrote: "I have seen a good deal of Ireland for a man whose life has been so much spent in India; and it has always stuck me that the main cause of Irish discontent arises from agrarian circumstances. No people can be contented and loyal, who have not the means of decent subsistence. Ireland, on a small scale, is a type of India." "Iddesleigh Papers, Letter John Lawrence to Stafford Northcote," July 7, 1868, IOR BL Add. MSS. 50226. Also see Northcote's comments during a session of the 1869 meeting of the Association for the Promotion of the Social Sciences. Edwin Pears, ed., *Transactions of the National Association for the Promotion of Social Science, Bristol Meeting 1869* (London: Longmans, Green, Reader, and Dyer, 1870), 166–71. Charles Wingfield, a major proponent of landlord rights in Oudh, and later a member of the British parliament wrote in the preface to his book on the tenant-right in various parts of British India: "As the relations of Landlord and Tenant in Ireland are about to become the subject of legislation, and Indian precedents have been suggested as affording a guide to the settlement of this question, I have thought it might not be altogether out of place to sketch of the landed rights and institutions of the people of India.... Those who are well acquainted with Ireland can judge under what circumstances of the two countries present any points of resemblance." Charles Wingfield, *Observations on Land Tenures and Tenant Right in India* (London: Wm. H. Allen and Co., 1869), 3.

depended on his determination about the suitability of a precedent set in one of the empire's colonies for use in another. On this front, George Campbell's book played a salient role by facilitating the decoupling of the Irish land question from English principles and coupling it with those of another British colony.

The possibility of the Punjab act serving as a precedent for the Irish land question was not confined to official discussions but was also taken up by several newspapers. For example, the *Pall Mall Gazette*, a moderately conservative newspaper, published a series of articles in August 1869 about what could be learned from Indian precedents, especially from the Punjab Tenancy Act and its precursor, the Bengal Rent Act of 1859.

In the course of the discussions upon the Irish land question... a good deal has been said... about the precedent which is afforded by Indian legislation for the treatment of such questions. It... has been said that if the Indian Legislature could pass such measures as the Punjab [sic] Rent Law of 1868 and the Bengal Rent Law of 1859 for the protection of the ryots and creating something very likely fixity of tenure, there can be no reason why the Imperial Parliament should not pass similar measures for Ireland.¹⁴⁸

More specifically, the paper suggested that Indian legislation could be used to enforce somewhat of a compromise between landlords and tenants in Ireland related to rent increases, and the customary Ulster tenant-right "could be converted to positive law... by proceedings not altogether unlike those of an Indian settlement in principle."¹⁴⁹ While noting multiple possibilities for recent Indian legislation to inform some aspects of the Irish land question, the articles did, however, question the ability of Westminster to undertake radical reforms: "[T]he relative power of the Indian Legislature is far greater than that of Parliament. A small body of legislators, backed in the last resort by overpowering armed force and separated by the impassable gulf of race and

¹⁴⁸ "India and Ireland," *The Pall Mall Gazette*, August 16, 1869, sec. Editorial, 625.

¹⁴⁹ "Outlines of the Irish Land Question," *The Pall Mall Gazette*, August 4, 1869, sec. Editorial, 465.

language, can and do habitually do act towards the different classes which are under their sway after a fashion which Parliament is by no means likely to imitate.”¹⁵⁰

An editorial of the more conservative newspaper, *The Times*, also discussed the potential applicability of Indian precedents to the Irish land question but wanted to ward off any possibility of customary tenures and occupancy rights in the Punjab act finding a place in the land law being discussed by the cabinet. It cautioned that “[w]hile Parliament and the country are anxiously awaiting Mr. Gladstone’s scheme for a new agrarian settlement of Ireland a memorable example of the difficulties incident to such a settlement has just been furnished by one of our Indian Provinces.” It then went on to discuss the controversy of the first and second settlement around occupancy rights (as discussed in Chapter 3) leading to the Punjab Tenancy Act and argued that the Punjab act “is no precedent to the Irish land bill.... The creation of occupancy rights in the Punjab is wholly inapplicable to Ireland now, however applicable it may have been in the days of... JAMES I. We are no longer dealing with people deriving their notions of land tenure from Brehon Law.... [T]he Irish landlord is a very different being from the native landlord of the Punjab,... and is far more necessary part of the land system, apart from his legal or moral rights.”¹⁵¹

These examples show that substantive discussions were happening in official and non-official circles about the possibility of seeing the Irish land question through other angles that went beyond English notions of property rights, political economy, and land tenure. However, not everyone was entirely enthusiastic about Indian precedents influencing Irish land

¹⁵⁰ “India and Ireland,” 625.

¹⁵¹ “Editorial,” *The Times*, February 15, 1870, sec. Editorial.

relationships, and it was the circulation of George Campbell's book that influenced these sceptics. Before discussing its reception in various circles, I briefly outline the circumstances under which Campbell wrote his book in two parts and the specific arguments and recommendations in the book that brought it immense attention, including from Gladstone, who referred to it numerous times in his diaries during the latter part of 1869.¹⁵² Campbell began *The Irish Land* with the following explanation:

I am not an Irishman, and have no personal connection with Ireland; but I have... spent my life in intimate relations with the land in different countries, and in various stages of society; and believing that a stranger, possessed of some special knowledge, and free from local entanglements, may sometimes obtain a better bird's-eye view than a native, I have applied myself to try to discover the merits of this question.... I shall only add a word in explanation of my position. I was born and bred among the agriculture of Scotland; and my present personal interests, experience, and *home* knowledge, are principally derived from that source. I am therefore thoroughly alive to the advantages of the commercial system of farming as carried to its legitimate issue in Scotland. On the other hand, in India, it has been my profession to deal with great land questions in many different parts of that country, and in greater variety than falls to the lot of most men.¹⁵³

This self-described motivation to look into the Irish land question as a "stranger" through first-hand evidence he had gathered during two trips to Ireland while on furlough from the British Indian civil service in 1869 suggests an assumption of impartiality on the part of Campbell in providing a path forward to the Irish land question. However, it should be noted that throughout his career as a bureaucrat in India (see Chapter 3, Initial Settlements in Punjab), he was always associated with the 'peasant-proprietorship' group amongst the British Indian administrators. He was an early follower of John Lawrence's "Punjab School" in the 1840s, being one of the officers who institutionalized occupancy rights in the North-Western Provinces and Punjab during the

¹⁵² Matthew, *The Gladstone Diaries With Cabinet Minutes and Prime-Ministerial Correspondence*.

¹⁵³ George Campbell, *The Irish Land* (London: Trubner and Co., 1869), 3–4.

initial land settlements. Later, as the Commissioner of the Province of Oudh, he led the resistance against the usurpation of the rights of the tenants during the post-1857 mutiny, which swung the pendulum in favour of the landlords in India.¹⁵⁴ Furthermore, during his furlough in 1868, he had considered contesting the elections to the British parliament as a strong Radical on the Liberal Party ticket.¹⁵⁵ From Campbell's political leanings in politics and persistent sympathies towards the peasants in various Indian provinces over an extended period, it was clear what direction he would lean on the Irish land question.

Campbell made two extended trips to Ireland in the spring and autumn of 1869, and each of the two parts of the book was written after the respective trip. Drafts of his writings were circulated in private before they were publicly disseminated in the form of a book. The "little" book was relatively short – less than 200 pages, which were approximately equally divided between his impressions after each trip. Campbell was aware of the legislative stalemate of the 1860s and the new ideas being proposed in various quarters, both within and outside official circles (for example, those of Butt, Mill, Cairnes, and Bright). Thus, instead of providing a comprehensive history of the evolution of land tenure and all legislative attempts to address the land question, Campbell focused on a few relevant issues or questions at the time of his writing. His practice-oriented approach through specific policy and legislative recommendations and the simplicity of his arguments were probably the reasons behind the buzz created by the book when the Gladstone government took up the land question. In particular, Campbell provided much-

¹⁵⁴ An editorial cautioned readers to look at Campbell's publication in the context of his ideological leanings regarding landlord and tenant relationships. "An Indian Remedy for Irish Discontent," *The Friend of India*, January 13, 1870, sec. Editorial.

¹⁵⁵ Sir George Campbell, *Memories of My Indian Career*, ed. Sir Charles E. Bernard, 2 vols. (London: Macmillan and Co., 1893).

needed clarity on the appropriateness of “contract” versus “status” as the guiding principle in landlord-tenant relationships, on the different aspects of the tenant-right and its implications for the security/fixity of tenure aspirations of the tenants and resistance from landlords, and on the legislative/administrative processes through which these principles could be institutionalized. In discussing these aspects, Campbell extensively used the precedents from India and his own experiences in the land settlements over the previous three decades.

Campbell saw the problem of any landlord-tenant relationship as emanating from the fact that there were “two claimants to the right to occupy the land,” with the result that “you cannot satisfy both: you can only compromise between them.”¹⁵⁶ In Ireland, this inherent adversarial relationship was compounded by the different religious affiliations of landlords and tenants and the clash of two sets of laws governing land relationships, one based on English laws and the other on the laws or customs of Ireland. The problem could be solved by finding a way in “which the law of the land and the custom having the force of law may be brought into harmony and made to work together.”¹⁵⁷ In this regard, Campbell did not see any reason to disturb existing land tenure relationships in Ireland that were based on the English principles of “contract,” which were institutionalized by Deasy’s Act of 1860 (discussed above). Instead, the legislative efforts should focus on those relationships that were perceived by the tenants to be guided by customs, and the “definite customs should be confirmed by law.”¹⁵⁸ Much of the book’s first part was then devoted to describing the settlement of Irish land in the seventeenth century and the origin and persistence of customary tenure arrangements, with their underlying tenant-right implication.

¹⁵⁶ Campbell, *The Irish Land*, 5.

¹⁵⁷ Campbell, 7.

¹⁵⁸ Black, *Economic Thought and the Irish Question 1817-1870*, 55.

Campbell saw parallels between the settlement of land by the British in various Indian provinces and Sir John Davies's settlement in the north of Ireland during the rule of James I at the beginning of the seventeenth century. He even suggested that if the "names were changed in [Davies's account, it] might be taken almost word for word as the report of an administrator of an Indian province,"¹⁵⁹ with the chiefs and tanists in Ireland being the equivalent of Indian "Zameendars and Talookdars." In both places, individual and absolute rights were sparse, and the relationships between landowners and cultivators were based on customary practices, which included a sense of "co-proprietorship." However, while the prevailing customs were recorded in India and tenants' rights "were secured not only in theory but by [an] effective record of rights,"¹⁶⁰ the legalization of customs was not attempted in Ireland.¹⁶¹ Even after the abolition of Brehon law and the introduction of common law, Campbell argued that customary practices continued side by side in Ireland. Similar to the situation in India, there was more competition for tenants than for land, and thus Anglo-Irish landlords continued to allow customary practices

¹⁵⁹ Campbell, *The Irish Land*, 25 Campbell also alludes to Henry Maine's ideas about the prevalence of village communities in Ireland, like those in India, where concepts of individual and absolute property rights had not yet taken hold.

¹⁶⁰ Campbell, 29.

¹⁶¹ Another economic historian, Fredric Seebohm, in a series of articles published in the *Fortnightly Review* in 1869, supported Campbell's argument. Like Campbell, he saw no problem with the "tenant farmers" whose relationships with landlords were guided by contracts. However, "[t]he real difficulty... lies in the mode of dealing with... that class of tenants [whom he calls "peasant farmers"] who are creatures of tenure, who hold their holdings to the circumstances that their ancestors... were found upon the land when Irish tenures were abolished and feudal tenures substituted for them." The wrong done to these tenants "did not so much consist of the abolition of the old Irish tenures and the introduction of English ones... as in the neglect or refusal on the part of England and Anglo-Irish law to recognize the just rights of the Irish under those very feudal tenures which English herself forced upon them." In essence, status tenure was recognized under the feudal system in England but not in Ireland. Seebohm, "The Land Question: Part I. English Tenures in Ireland," 626. See, in particular, the reference to Campbell's book on page 107 in F. Seebohm, "The Land Question: Part II. Feudal Tenures in England," *Fortnightly Review*, January 1870, 89–107.

to retain their tenants.¹⁶² Only when an increase in population in the eighteenth century led to a greater demand for land did the landlords gain the upper hand. With this power, the landlords increasingly evoked English common law in their land relationships with the tenants. The solution to the land question thus lay in the legalization of customs that the Irish believed were the basis of their relationships with the landlords.

Having laid the case for the need to give legal sanctions to customs prevalent in different parts of Ireland, Campbell next approached the interconnected concepts of the tenant-right, fixity of tenure, and compensation for improvements as components of prevailing customs that needed to be formally institutionalized. Here, Campbell outlined practices in England and Ireland regarding the relative responsibilities of making necessary improvements to land, reaffirming the findings of the Devon Commission in 1845 that the onus of these fell on the tenants. Tenants' investments in these improvements and the subsequent increase in the value of the land in the open market (referred to as "goodwill") constituted the tenant-right. He argued that such a tenant-right existed in Ulster (as pointed out by the Devon Commission) and in other parts of Ireland. The real difficulties lay in determining where in Ireland such a right to compensation existed and how to determine the compensation for improvements because of the various intangibles involved, such as retrospective versus prospective compensation, the degree of approval needed from the landlord, and valuation of goodwill. Given these difficulties, Campbell

¹⁶² "The landlords were rather Asiatic zemeendars than English landlords, and the occupiers were not English tenants, but rather ryots holding very small tenures according to the custom, managing the land in their own way, transmitting it to their descendants under their own laws, and paying to the landlord his customary dues." Campbell, *The Irish Land*, 37.

argued that “you can never satisfy the people by any scheme of compensation for improvement except one which runs into and really becomes in practice identical with ‘fixity of tenure.’”¹⁶³

Campbell devoted the final few pages of Part I of his book to outlining his plan for passing and implementing the relevant legislation. Here, he was emphatic that any bill must go much further than the previous bills introduced in Parliament and critiqued many of the contemporaneous schemes in the public domain (such as those proposed by Butt, Mill, Bright, and others discussed above) for not being bold enough.¹⁶⁴ He then offered his plan as follows:

Considering the question historically... an obvious suggestion would be to do what has been done on India and Prussia and Russia – to recognize the occupiers as in some sense co-proprietors of the soil. A law similar to Indian law might be passed, giving to the classes of tenants who may have supposed to hold rather by status than by contract... a definite right of occupancy – fixity of tenure in fact. Provision might be made for the right to sell, subject to reasonable veto of the landlord....¹⁶⁵ The rent would be subject to revaluation from time to time... It might well be said that all this would only be giving to people by law what in practice they already have.¹⁶⁶

Campbell realized the radical nature of his proposal to settle the Irish land question through fixity of tenure and wondered whether the landlords, with their considerable influence in both houses of Parliament, would accede to such “a one-sided compromise,” noting that the “plan is one which a strong and impartial foreign Power might perhaps adopt – which we might adopt if Ireland were in India.”¹⁶⁷ However, he insisted that the legalization of customs for the protection of tenants was critical and recommended the establishment of a commission, along

¹⁶³ Campbell, 72.

¹⁶⁴ Campbell, 74–84.

¹⁶⁵ Campbell is probably referring to the Punjab Tenancy Act of 1868, which had very similar provisions. See Chapter 3.

¹⁶⁶ Campbell, *The Irish Land*, 85–86.

¹⁶⁷ Campbell, 86–87.

with courts of conciliation and arbitration, to oversee the enactment and implementation of the law.

The analytical approach used by Campbell to build his arguments involved a de-coupling of the land question in Ireland from the entrenched ideas prevalent in England and shifting the comparator to land tenures in India. Accordingly, throughout the first part of his book, Campbell foregrounded the similarities in the difficulties England faced in dealing with land tenure in India and Ireland and viewed the solutions to the Irish land question through the Empire's experience with land settlements in India, particularly those that had institutionalized a form of peasant proprietorship through fixity of tenure (the most recent one being the Punjab Tenancy Act of 1868). As mentioned before, Gladstone was given the first part of the book by C.E. Trevelyan, a member of the Indian Civil Service, in early August 1869. Gladstone was impressed enough with Campbell's arguments that he requested that copies be sent to a number of his cabinet colleagues.¹⁶⁸ It is unclear whether Gladstone read the second part of Campbell's book, which was completed in the latter part of October 1869, as the notes in Gladstone's diaries refer specifically to the first part. In any case, the second part of Campbell's book did not fundamentally alter his analysis of the situation or the thrust of his recommendations. Instead, he provided additional details and clarifications to address some of the critical feedback he had received from some readers of the first part.¹⁶⁹ In addition to receiving the attention of Gladstone

¹⁶⁸ Matthew, *The Gladstone Diaries With Cabinet Minutes and Prime-Ministerial Correspondence*.

¹⁶⁹ Some of the substantive issues discussed in Part II pertained to the mechanism through which rent would be determined, how to resolve the situations in parts of Ireland where contracts were not prevalent but there was also ambiguity surrounding the relevant customs, and how to improve the conditions of a large number of Irish who were neither landlords nor tenants but worked on the land as labourers. Since these issues are not germane to my arguments, I do not elaborate on Part II of the book.

and his cabinet colleagues, Campbell's book garnered much attention in various other quarters. Discussions around his ideas augmented the shift (discussed above in relation to the Punjab Tenancy Act) away from seeing the Irish land question purely through English ideas and practices¹⁷⁰ and towards incorporating precedents from other parts of the world, especially from India. In the following paragraphs, I describe a cross-section of responses to Campbell's book. Of course, not everyone accepted his analogies and recommendations, but the fact that there were public discussions around these likely facilitated new perspectives about the Irish land question and possible remedies.

J.S. Mill enthusiastically endorsed Campbell's use of Indian analogies and precedents through numerous letters the two exchanged after Mill read the draft of the first part of the book.¹⁷¹ Mill thanked Campbell for sharing the draft and agreed with the principles around which the latter had analysed the Irish land question and the details of his recommendations. Mill noted that "Englishmen who know India are the men who can understand and interpret the social ideas and economic relations of Ireland. They are not the slaves of English technicalities, and they know that the English form of property in land is neither a law of the universe nor an immutable

¹⁷⁰ Addressing the concerns about negative spill overs on English land tenure from the institutionalization of substantive rights for Irish tenants, Campbell emphasized in Part II of his book that "we should put aside altogether the bugbear of the dreadful things which may happen to England if the Irish are satisfied in their own way – that the question should be considered as an Irish question, regarding only the principles of right and justice, as applicable to the state of things existing in Ireland." Campbell, *The Irish Land*, 111.

¹⁷¹ Although Mill was favourably disposed towards Campbell's idea, he did caution about the usefulness of a commission proposed by Campbell to adjudicate some of the thornier issues: "I have no doubt that your plan would work to the ends you intend by it, if the Commission were an entirely unprejudiced one. But all the probabilities are that it will be a Landlords' Commission. All Englishmen of the higher ranks who have not learnt better things in Ireland or India, have their prepossessions strongly on the side of landlordism." Letter from J.S. Mill to George Campbell, dated January 4, 1870. Reproduced in John M. Robson, Michael Laine, and Marion Filipiuk, eds., *Additional Letters of John Stuart Mill* (Toronto: University of Toronto Press, 1991), 215–16.

principle of morality.”¹⁷² After reading the second part of the book, where Campbell provided a more fine-grained explanation of his previous analysis, Mill was even more laudatory and wished the book could be put in the hands of everyone involved in the Irish land question: “I have read nothing that comes near it in fullness and clearance of knowledge it communicates of the real ‘situation’ in Ireland.... I wonder how long it will take the English people to find out, that the Indian service is their best, or rather their only, good school for administrators; and to make the use they might make of that service for difficult works in other parts of the empire.”¹⁷³ J.E. Cairnes, whose ideological leanings were similar to those of Mill, also gave high praise to Campbell in an article published in an influential magazine, the *Fortnightly Review*. He noted that the proposed scheme would “at the cost of minimum disturbance to the actual machinery of Irish society... accomplish what would be a real and effective security of tenure for the Irish tenant – would accomplish this in a manner suited to the ideas and habits of the country, while combining with this end the further considerable advantage of reserving for landlords under the new system a place and function in the national economy.”¹⁷⁴

The ideas put forth by Campbell regarding co-proprietorship and fixity of tenure as ways to resolve the land question were enthusiastically welcomed in Ireland. *The Freeman’s Journal* published the transcript of a lecture given by a prominent Irish member of Parliament at a town hall in Brighton. In this lecture, the speaker, Professor Fawcett, emphasized the virtue of Indian

¹⁷² Letter J.S. Mill to George Campbell, July 9, 1869 reproduced in John M. Robson, Michael Laine, and Marion Filipiuk, eds., *Additional Letters of John Stuart Mill*, 209.

¹⁷³ Letter J.S. Mill to George Campbell, December 31, 1869, reproduced in Robson, Laine, and Filipiuk, 214–15.

¹⁷⁴ John Elliott Cairnes, “Political Economy of Land (Originally Published in *Fortnightly Review*, January 1870),” in *Essays in Political Economy: Theoretical and Applied*, by John Elliott Cairnes (London: Macmillan and Co., 1873), 220.

land tenure in settling the Irish land question and noted that Campbell's work was particularly valuable because of his experience in the Indian Civil Service: "[H]e looks upon the question from a different point of view than that from which English politicians look at it. In all their schemes of land settlement [in India] they recognize this fact – that the land is the joint property of the proprietor and those who cultivate it."¹⁷⁵ In another editorial, the more radical Irish newspaper and mouthpiece of the Irish Tenant League, *The Nation*, commended Campbell "for recognizing the occupiers as in some sense co-proprietors of the soil and for giving tenants who have come in without special contract, and have invested their own capital in the soil, or who have paid the previous holders for the privilege of occupancy, a definite right of occupancy, fixity of tenure, in fact with due provision for sale and inheritance under fair conditions, and for periodic re-valuation." The editorial, while not agreeing with Campbell's proposal of a commission determining who had these rights, nonetheless concluded that since "the suggestion has been publicly made by an Imperial Indian Land Commissioner,... [it] is a most encouraging sign of the times."¹⁷⁶

The Tablet, a Catholic newspaper published from London, printed a series of editorials in 1869 and 1870 regarding the Irish land question in which it critically evaluated Campbell's book and the applicability of his ideas based on the suitability of the Indian precedent for the situation in Ireland. While appreciating Campbell's "proposition that in Ireland landlords and tenants are, in point of fact, joint proprietors of lands,"¹⁷⁷ and calling the ideas presented in the book "the

¹⁷⁵ "Professor Fawcett, M.P., on the Land Question," *The Freeman's Journal*, October 23, 1869, sec. Report, 4.

¹⁷⁶ "George Campbell," *Nation*, August 28, 1869, sec. Editorial, 9.

¹⁷⁷ "Irish Land and Mr. George Campbell," *The Tablet*, November 27, 1869, sec. Editorial, 813.

best and most interesting attempts we have seen to elucidate the whole matter,"¹⁷⁸ the editorials particularly emphasized the contrast made between the land situation in England and Ireland. They noted for their readers that "in England land is an appendage to the great man's state, an adjunct to the wealthy man's importance: land in Ireland is the poor man's only source of livelihood. In England, therefore, land may be let and relet in the open market to the highest bidder without more danger to the common weal than any other article of commerce; but in Ireland the legislator has to follow the example of every known government in the world – with the solitary exception of England – and so to order the tenures of land that the inhabitants may sustain life upon the produce of their labour."¹⁷⁹

Campbell's book also caught the attention of more mainstream newspapers in India and England. An editorial titled "An Indian Remedy for Irish Discontent" in *Friend of India*, a pro-landlord paper published in Calcutta, espoused the belief that when Mr. Gladstone unfolded "his plan for satisfying the landed interests of Ireland, it will be found that Mr. George Campbell's little book, *The Irish Land*, has had considerable influence on the measure... because the suggested application of Indian precedents to Irish tenures and customs give to this work a peculiar value."¹⁸⁰ The *Times of India*, published in Bombay, called Campbell's application of his experience to the case of Irish tenants "one of the clearest and soundest of recent contributions to the literature on this question."¹⁸¹ Similarly, the editorial of the London-based *The Economist*, titled "The Last Opinions Upon Irish Land" discussed the pros and cons of Campbell's proposals,

¹⁷⁸ "Mr. G. Campbell on Ireland," *The Tablet*, November 27, 1869, sec. Review, 819.

¹⁷⁹ "The Irish Land Question," *The Tablet*, January 22, 1870, sec. Editorial, 99.

¹⁸⁰ "An Indian Remedy for Irish Discontent," 33.

¹⁸¹ "An Important Witness," *Times of India*, December 29, 1869, sec. Editorial, 3.

and concluded that these “must be considered most heedfully; for of all great plans – of all plans which promise to do much – it certainly is by far the best.”¹⁸² Even the conservative newspaper, the *Saturday Review*, in its editorial, titled “The Use and Abuse of Indian Precedents,” saw possible value in Campbell’s comparative framing of the Indian and Irish conditions stating that “[i]t is not to be denied that there are some curious resemblances between Ireland and India.... the fact that in both countries the people live almost exclusively on the produce of a soil barely sufficient to sustain their numbers.... It is obvious that successes and failures of Englishmen who for nearly a century have been striving to place a country which exhibits so many of the conditions of Ireland under an equitable land-law must have considerable interest and value at the present juncture.”¹⁸³

The favourable reception of Campbell’s recommendations and underlying rationale to resolve the Irish land question across a spectrum of prominent decision-makers and influencers in England suggests that the conditions were finally ripe to enact meaningful legislation on the Irish land question, with potential implications for “pacify[ing] Ireland” and improving the economic conditions of a significant portion of its population dependent on agriculture. The pertinent question in the middle of 1869 thus revolved around the extent to which Gladstone was willing and able to implement the “radical” ideas proposed by Campbell and others, the public dissemination of which had raised the expectations of the Irish. Accordingly, I now turn to Gladstone’s efforts to draft a bill with his cabinet and its eventual introduction and fate during the parliamentary session of 1870.

¹⁸² “The Last Opinions Upon Irish Land,” *The Economist*, January 22, 1870, 95.

¹⁸³ “The Use and Abuse of Indian Precedents,” *The Saturday Review*, November 27, 1869, sec. Editorial, 692.

Converting Ideas into Law: The Development and Passage of the Irish Land Bill

From looking at Gladstone's diaries and correspondence, it seems that his ideas about what constituted an appropriate land bill started to take shape from the middle of August 1869. By this time, he had read and internalized Campbell's ideas.¹⁸⁴ The other pamphlet that had caught Gladstone's attention was the one written by Fitzgibbon. Whereas Campbell developed his proposals by contrasting the history of land tenure in Ireland and England and proposing solutions to the Irish land question based on Indian precedents, Fitzgibbon based his arguments on the theoretical concepts of "property rights" and "improvements" as they applied to land:

The capacity of improvement, no doubt, is an incident inherent in the land, and belongs to the owner. But this word "BELONGS," when used in relation to land, has a meaning essentially different from its import, when applied to a chattel.... [W]hen a man says land belongs to him, he means nothing more than the fact, that the State, of which he is a subject, protects his exclusive possession of it. This protection imports... an obligation... to use it as the common interest of society, and of a rational owner would dictate.¹⁸⁵

He highlighted the practice in Ireland whereby a landlord (especially an absentee one) who has "never derived any benefit from the land than the rack rent which a half-starved tenant has paid for it – who has not undertaken any steps ... to alter the present condition of his estate, has no right to complain, if his tenant ... be allowed to double, or quadruple the value of the land, and be protected in the enjoyment of the improvement which he has made."¹⁸⁶ Fitzgibbon proposed that the tenant should have the liberty to make improvements in the land and that

¹⁸⁴ See letters to the civil servant Trevelyan (dated August 13) reproduced on page 115, and J. Lambert (dated August 24) reproduced on page 120 of Matthew, *The Gladstone Diaries With Cabinet Minutes and Prime-Ministerial Correspondence*. The tone of the letters suggest that he was favourably disposed towards the ideas and solutions proposed by Campbell, and he urged both to read and disseminate his pamphlet.

¹⁸⁵ Fitzgibbon, *The Land Difficulty of Ireland with and Effort to Solve It*, 40.

¹⁸⁶ Fitzgibbon, 40.

these improvements be protected through the grant of parliamentary leases “of a term, on the old rent, and of duration proportional to the magnitude of his addition to the permanent agricultural value of his farm.”¹⁸⁷

For Gladstone, these proposals were important for two reasons. First, Fitzgibbon was aiming towards some form of “fixity” in tenure and rent, which was in line with the aspirations of the Irish. Second, and equally important, was the fact that these ideas about security of tenure were proposed by a conservative economist who had been a critic of Gladstone and who, as late as 1868, had “declared... that there was no need for exceptional legislation on Irish land tenures.”¹⁸⁸ In his correspondence with a number of his cabinet colleagues, Gladstone urged them to read Fitzgibbon’s pamphlet, emphasizing that it was a “very important sign of the times.”¹⁸⁹

In proposing an Irish land bill, Gladstone considered the issue to be “how far between the minimum and the maximum approach” the government should land.¹⁹⁰ Given the previous reception of bills proposed in 1866 and 1867 (especially Fortescue’s bill of 1866 discussed above), the minimum approach entailed some form of compensation for improvements made by a

¹⁸⁷ Fitzgibbon, 41. He further suggested that this scheme for determining the extent of improvements and the duration of the lease would be implemented through the appointment of “impartial’ public officers. Interestingly, Fitzgibbon’s scheme of compulsory leases was also endorsed by George Campbell in Part II of his book. However, instead of relying on the discretion of these public officers, who might be influenced by the landlords, Campbell suggested that the scheme could be implemented by indenting “on the India Office for a few good settlement officers – they are to be had in great abundance at present, and so many Indian settlements are approaching completion, – and the thing is done.” “Irish Land and Mr. George Campbell,” 188.

¹⁸⁸ Black, *Economic Thought and the Irish Question 1817-1870*, 63.

¹⁸⁹ Gladstone Letter to Fortescue, the Irish Secretary, dated September 15, 1869. Carlingford MSS CP1/60, Reproduced in Matthew, *The Gladstone Diaries With Cabinet Minutes and Prime-Ministerial Correspondence*, 129–30.

¹⁹⁰ Jenkins, *Gladstone*, 316.

tenant. Most members of Parliament had accepted this principle, but it was the implementation of this practice that courted controversy. The maximum approach involved granting security to tenants through fixity of tenure, fair rents, and freedom of sale, that is, the “three Fs.”¹⁹¹ Although in his correspondence with various people in August and September of 1869, Gladstone had emphasized that he was studying the land question with an open mind and had not committed to any specific proposal, the tone of the letters and of entries in his diaries suggest that he was leaning more towards the “maximum” approach, particularly regarding the “fixity of tenure.”¹⁹² This can be seen by his references to pages 68-73 of Campbell’s book,¹⁹³ where the author elaborated on improvements and compensation and concluded that “fixity of tenure, compensation for improvements,... and [the] tenant-right... to sell, are all nearly one and the same thing.” Furthermore, he conveyed to a number of his cabinet colleagues information about Fitzgibbon’s proposal for grant of long leases to tenants as compensation for improvements, suggesting that this was a sign of “[c]oncession from among the landlord & Conservative class.”¹⁹⁴ Gladstone believed that ideas coming from liberal (that is, Cairnes, Campbell, and Mill) and conservative (that is, Fitzgibbon) viewpoints regarding fixity of tenure and their favourable public reception indicated by the narratives in the press, suggested that the time was right to enact bold legislation that would come close to the expectations of the Irish. Convinced by the arguments

¹⁹¹ Jenkins, *Gladstone*; John Morley, *The Life of William Ewart Gladstone: 1859-1880*, vol. 2, 3 vols. (Toronto: George N. Morang & Company, Limited, 1903).

¹⁹² According to Steele, Gladstone had drafted a "secret" document with proposals for fixity of tenure and fixity of rent. See Steele, *Irish Land and British Politics*, 117. I have not been able to access that particular document.

¹⁹³ See Gladstone letter to Fortescue, December 2 1869 in which he noted that he was “much struck with Campbell’s argument pp. 68-71” Carlingford MSS CP1/72, reproduced in Matthew, *The Gladstone Diaries With Cabinet Minutes and Prime-Ministerial Correspondence*, 186.

¹⁹⁴ Gladstone letter to E. Cardwell, War Secretary, Dated September 21, 1869. Reproduced in Matthew, 135. Cardwell was in the pro-landlord camp within the cabinet.

of Mill and Campbell that Irish land tenure had to be re-thought in light of practices in other parts of the world, especially the experience in India, rather than those prevalent in England, Gladstone composed a comparative table highlighting the differences between England and Ireland on the historical antecedents and established practices related to land tenure (this table is reproduced below). He probably expected that foregrounding these differences would help convince those in England who viewed the Irish land tenure as an extension of English principles.

Table 4.1
Comparing Land Tenure in Ireland and England in Gladstone's Diary Entry from
September 17, 1869¹⁹⁵

<i>Land Tenures in Ireland</i>	<i>Land Tenures in England</i>
Tradition & marks of conquest, & of forfeiture still subsist	They do not subsist
Landlord does not find capital for improvement	Landlord finds capital for improvement
Landlord frequently absentee	Landlord rarely absentee
Landlords extensively object to leases	Landlord rarely objects to leases
In the parts of Ireland not under Tenant-Right, the law which gives tenants improvements to landlord is rigidly construed & applied	The law which gives the tenants improvements to landlord is mitigated, and even in some cases reversed, by local custom
Landlord commonly (in the said parts of Ireland) differs from tenant in religion and politics	Landlord commonly agrees with tenant in religion and politics
Administration of justice, & local discharge of other public duties, not extensively entrusted to landlords, & not conducive to good relations with tenants	Administration of justice & local discharge of other public duties, generally entrusted to landlords, and highly conducive to good relations with tenants
Ireland occupier (yearly) holds by custom	England. By contract

¹⁹⁵ From Add MS 44661, f. 50, National Archives. Reproduced in Matthew, *The Gladstone Diaries With Cabinet Minutes and Prime-Ministerial Correspondence*, 130–31.

Having studied the broader literature on Irish land and holding his own ideas about how to proceed, Gladstone asked the Irish Secretary C.S.P. Fortescue to begin drafting a land bill for the 1870 parliamentary session and start engaging the cabinet to eventually back the proposed legislation. These discussions went on for several months, with the cabinet approving the bill to be presented to parliament on January 25, 1870. Gladstone noted in his diary that the “*great* difficulties of the I.L. Bill *there* are now over – Thank God.”¹⁹⁶ The “*great*” difficulties referred to here relate to the complex and sustained discussions within the cabinet regarding the principles, scope, and provisions of the proposed bill.¹⁹⁷ During his correspondence with cabinet members and in following members’ pronouncements in their public speeches and lectures,¹⁹⁸ Gladstone realized that his goal of achieving legislation close to the “*maximum*” option (that is, fixity of tenure) would be challenging. Moreover, there were fundamental differences even amongst cabinet members who were favourably inclined towards the aspirations of the Irish. For instance, John Bright, a proponent of peasant proprietorship, insisted on the land purchase scheme. At the same time, Fortescue believed that an elaborate scheme of compensation for tenants’ improvement would give the necessary security of tenure but also had “grave misgivings about the wisdom of Gladstone’s scheme to make custom the essential basis of the legislation.”¹⁹⁹ Gladstone also had to contend with cabinet members who were squarely on the side of the Irish

¹⁹⁶ Matthew, 228.

¹⁹⁷ Going into detail of these discussions is beyond the scope of this chapter. These have been discussed in minute detail by Steele in his book-length study. See Steele, *Irish Land and British Politics*. Here, I provide a general description of the various camps within the cabinet and their positions.

¹⁹⁸ For a discussion of speeches made by three of his cabinet members in September of 1869, see Steele, 127–36.

¹⁹⁹ Black, *Economic Thought and the Irish Question 1817-1870*, 67.

landlords²⁰⁰ and saw any concessions to tenants beyond some rudimentary compensation for prospective improvements as an impingement on their rights of property.²⁰¹

Gladstone's detailed correspondence with the Duke of Argyll is illustrative of the former's difficulty with these cabinet members. As discussed above, Argyll, as the Secretary of State for India, approved the Punjab Tenancy Act in August 1869, which legalized the status-based occupancy rights of tenants. Furthermore, on the question of how compensation for improvements was to be determined in Ireland, he urged Gladstone to take India as a model, offering "to have the clauses dealing with compensation in the Punjaub [sic] Act printed separately for the cabinet."²⁰² However, Argyll was less willing to use the Punjab precedent to grant security of tenure to the Irish tenants, writing to Gladstone that while he understood the theoretical justification for security of tenure as a motivator for investments, he believed that

²⁰⁰ To bolster the landlords' viewpoints within the cabinet, Argyll coaxed Gladstone to somehow involve Lord Dufferin in the cabinet discussions. See Argyll Letter to Gladstone, October 13, 1869 in "Gladstone Papers Vol. XVI. Correspondence with the Duke of Argyll. 1869-1870." Dufferin considered himself a benevolent landlord in the north of Ireland and had written extensively on various schemes that had been proposed to solve the Irish land question. See Dufferin, *Irish Emigration and the Tenure of Land in Ireland*. Gladstone accommodated Dufferin in the cabinet discussions, and Dufferin ended up furthering Gladstone's ideas. It should be noted that Lord Dufferin would be appointed Governor General of Canada in 1872, where he played an important role during the land legislation of Prince Edward Island during the 1872-1875 period. I will discuss this more in the next chapter.

²⁰¹ The cabinet ministers opposed to substantive concessions to the Irish included the Duke of Argyll (Secretary of State for India), Robert Lowe (Chancellor of the Exchequer), Earl of Clarendon (Foreign Secretary), and Edward Cardwell (Secretary for State for War). For details about their individual positions and correspondence with Gladstone regarding the Irish land bill, see Steele, *Irish Land and British Politics*, chaps. 4, 5 and 6.

²⁰² Duke of Argyll Letter to Gladstone, October 13, 1869 in "Gladstone Papers Vol. XVI. Correspondence with the Duke of Argyll. 1869-1870." In another letter dated December 2, he again uses the precedents of the Punjab Act regarding specific clauses to be included to address improvements: "I send you my re-print of the Chapter in the last Punjaub Tenancy Act, which relates to tenants' improvements. The government in India being in the position practically of landowner has rights of law and usage which the government has not in Europe. Yet even there these clauses provide that improvement which are to be compensated must be of specific classes. [encloses Chapter VI of the PTA]." Duke of Argyll Letter to Gladstone, December 2, 1869 in "Gladstone Papers Vol. XVI. Correspondence with the Duke of Argyll. 1869-1870."

Irish tenants who had such security might adopt “the habit of hoarding profits, instead of reinvesting them in land.”²⁰³ Argyll was also sceptical about the political expediency of arguments of atonement for England’s historical wrongs in Ireland:

It is true no doubt, that Ireland formerly has been ill-used and ill-governed; and it is true also that the diseased condition of the country is due in some measure to those old sins of England. But for the last two generations at least there has been a general disposition to deal justly with Ireland, and not only a disposition, but a steady progress in legislative reform. I feel quite sure that the language of self-reproach and humiliation may be easily overdone in the present state of Ireland, and this is entirely thrown away on the spirit of Fenianism, and I think it tends to make men, already excited, expect sweeping changes, corresponding in importance to the depth of the repentance we express.²⁰⁴

These considerations led Gladstone to abandon his goal of “fixity of tenure.” He had already rejected the idea of “fixity of rent” because he thought that the government “could not ... convert the landlords into [mere] stipendiaries.”²⁰⁵ Gladstone understood that rejecting two essential elements related to the security of tenure expected by the Irish would not be well received by their representatives. He tried to engage with several of them, including two Irish members of Parliament, John Gray and J.F. Maguire, and H.E. Manning, the Catholic Archbishop, by proposing alternative paths to achieve security of tenure. However, he did not receive encouraging responses from any of them.²⁰⁶ Gladstone next leaned on the Irish secretary, Fortescue, and both agreed to find a solution that did not equate to the minimum of mere

²⁰³ Argyll Letter to Gladstone, December 2, 1869 in “Gladstone Papers Vol. XVI. Correspondence with the Duke of Argyll. 1869-1870.”

²⁰⁴ Argyll to Gladstone, November 29, 1869 in “Gladstone Papers Vol. XVI. Correspondence with the Duke of Argyll. 1869-1870.”

²⁰⁵ Gladstone letter to John Gray, November 28, 1869. Add MS 44423, f.233, Reproduced in Matthew, *The Gladstone Diaries With Cabinet Minutes and Prime-Ministerial Correspondence*, 181.

²⁰⁶ See the extensive exchange of letters from September to December 1869 in Matthew, *The Gladstone Diaries with Cabinet Minutes and Prime-Ministerial Correspondence*.

compensation for improvements.²⁰⁷ To this end, the ideas revolved around legalizing the Ulster custom (which had been promoted by George Campbell as well) for the whole of Ireland and expanding compensation in the case of a tenant's eviction from merely that for "improvements" to also include some for "disturbance." Fortescue wrote in a memo to Gladstone that a bill incorporating these elements may not go "to the extent of the popular demand in the way of fixity of tenure and rents fixed by public valuation" but could possibly "make up in *breadth* for what it may want in *length*."²⁰⁸

Gladstone and Fortescue were able to obtain a majority consensus around their two pillars of "custom" and "disturbance,"²⁰⁹ which formed the basis of Bill 29 introduced in the House of Commons on February 15, 1870.²¹⁰ Section 4 of the bill addressed the "minimum" expectations regarding compensation for improvements, which had stalled during multiple legislation attempts prior to 1870. The proposed legislation presumed that all improvements were made by tenants and granted retroactive compensation at the termination of the tenancy for past (within the last twenty years) and future improvements to any leasehold of fewer than thirty-one years.

²⁰⁷ Gladstone warned Fortescue that "the proposition, that more than compensation to tenants for their improvements will be necessary in order to settle the Irish land laws, will be unpalatable or new, to several of these [cabinet members]." Gladstone Letter September 27, 1869, Add. MSS 44121, British Library.

²⁰⁸ Chichester Fortescue, "Memorandum on the Irish Land Bill to Gladstone," September 13, 1869, British Library Add. MSS 44121.

²⁰⁹ "Compensation for disturbance" was highly contested by a number of the cabinet members on the grounds that this would seriously constrain the landlords' discretion in choosing the right tenant. Lord Dufferin was a bit more sympathetic to this clause, although he preferred the term "compensation for anticipated profits." For details on this, see Steele, *Irish Land and British Politics*, chaps. 5 and 6.

²¹⁰ William Gladstone, Chichester Fortescue, and John Bright, "Irish Land: A Bill to Amend the Law Relating to the Occupation and Ownership of Land in Ireland," Pub. L. No. 29 (1870).

The trickier part in moving beyond the minimum was to find ways to make it difficult and costly for a landlord to evict an existing tenant. The Devon Commission of 1845 and other writings since then had recognized the security of tenure implicit in the Ulster tenant-right, whereby the tenant not only was entitled to compensation for eviction but also for the goodwill arising from the increase in the value of land because of his or her improvements.²¹¹ Gladstone hoped that the Ulster custom could be extended to the whole of Ireland in line with the wishes of the Irish nationalists, but fierce resistance from various segments within his cabinet led to a retraction of that objective. Instead, the bill divided all tenure agreements not subject to the provisions of a contract into three categories.²¹² The first category (Section 1) comprised land tenure agreements in the province of Ulster, and the tenant-right custom in usage in the province was legalized.²¹³ In forming the second category (Section 2), the bill recognized that there might be customs in use outside Ulster that involved compensation being given to an evicted tenant. In such cases, a tenant could claim compensation for disturbance from the court, though with certain restrictions related to arrears in rent, subletting, and the length of the lease. The first two categories legalized the customary tenant-right where it could be shown to be in usage. The third category (Section 3) included all other tenants not covered by either customs or contracts. A tenant in this category, if “disturbed in his holding by the act of the landlord,” was entitled to compensation for

²¹¹ George Campbell also saw the value of this custom, arguing that “fixity of tenure would be sufficiently secured by any rule of compensation which would make it ordinarily unprofitable to landlords to buy out tenants.” Campbell, *The Irish Land*, 73. This is one of conclusions that appealed to Gladstone.

²¹² The proposed bill recognized the existence of “status/custom”- and “contract”-based land tenures in Ireland, and the provisions of the bill applied to only those tenures that were not bound by a contract (including instances where a landlord may have purchased the tenant-right from the tenant). This approach was in line with that suggested by George Campbell.

²¹³ Under the Ulster tenant-right custom, a tenant was entitled to make claims for improvements as well as for goodwill.

disturbance, the amount of which would be determined by the court on a sliding scale.²¹⁴ This provision was qualified (Section 8), whereby ejectment for non-payment of rent would not be “deemed disturbance of the tenant by act of the landlord [and thus would be ineligible for compensation], unless the Court decided [otherwise]... on special grounds.” The overall principle behind “compensation for disturbance” had been vehemently opposed during the earlier cabinet meetings by those arguing for “freedom of contract,” who were particularly loath to give any compensation to tenants who were being evicted for non-payment of rent. This issue was prominent in debates about the bill in both houses of Parliament, particularly in articulating the scope of the “special grounds.” The House of Commons preferred that the charging of “excessive rents” by the landlord be a special condition whereby the court could award compensation to an evicted tenant for non-payment of rent. At the same time, the House of Lords was inclined towards the phrase “exorbitant rent.” The latter was eventually inserted into the final bill. In addition to these provisions regarding compensation for improvements and disturbances, which were based on the ideas of two of the bill’s promoters, Gladstone and Fortescue, the bill also accommodated the wishes of the third promoter, John Bright. The bill (Part II) encouraged the voluntary sale of land to tenants by landlords, and tenants willing to make such purchases from

²¹⁴ Compensation was determined based on the value of holdings: Less than 10 pounds – seven years rent; between 10 and 50 pounds – five years rent; between 50 and 100 pounds – three years rent; above 100 pounds – two years rent. Like the provisions related to compensation for improvement, the tenant could not claim compensation for leases greater than thirty-one years. Instead, Section 16 provided an option for the landlord to grant a lease of at least thirty-one years in lieu of compensation. This was in line with the suggestions Fitzgibbon put forth in his book. However, this section was contested during the subsequent debates in parliament on various grounds, including the appropriate length of the lease, and the clause was eventually excluded from the final bill.

amenable landlords could borrow up to two-thirds of the cost from Commissioners of Public Works with an annual interest of five percent to be paid back over thirty-five years.

The Irish Land Bill was introduced in the House of Commons on February 15, 1870. In introducing the bill, Gladstone made a long speech where he alluded to the various legislative attempts since the Union in 1800 to settle the land question in Ireland and the causes of their failures. He attributed these failures to a lack of understanding of the fundamental differences between England and Ireland in the way that land tenure and landlord-tenant relationships had evolved and become institutionalized (see Table 4.1 above), thus necessitating “special legislation on the subject of the occupation of land in Ireland” based on its specific needs.²¹⁵ He referred to the findings of the Devon Commission Report of 1845, which pointed out that “insecurity of tenure is the great mischief” that had to be faced. In keeping with the consideration of the vast differences between the supporters of landlords and tenants in Ireland and England as to the remedy to this “insecurity,” Gladstone gave an elaborate justification of how these differences would be dealt with in the proposed bill:

Sometimes we hear the remedy described by perpetuity, sometimes by fixity, sometimes by security, sometimes by certainty, and sometimes by stability of tenure. All these five words express in different forms the different shapes which it is desired the remedy should assume. As among these, I shall regard the word “fixity” as meaning perpetuity, and I shall consider stability, certainty, and security as mutually corresponding,... and express the idea of a tenure which would enable a man to pursue his industry without fear of loss from any change that may happen to him on the part of the landlord; they do not express the transference to him of the essential right of property in the soil.²¹⁶

He then reiterated that fixity or perpetuity of tenure contravened the rights of property. Thus, his government was not willing to “entertain or propose” such options as a “mode or form of

²¹⁵ “Irish Land Bill. Hansard Third Series CXCIX” (Hansard (3rd Series), 1870), col. 340.

²¹⁶ “Irish Land Bill. Hansard Third Series CXCIX” col. 350.

remedy” to the Irish land question.²¹⁷ Instead, he argued that the tenant-right custom in Ulster, which the proposed bill wished to sanction by law, showed that it was “possible to find a remedy for this deadly evil of insecurity of tenure, and yet at the same time not shake the stability of property.”²¹⁸ After explaining the overall principle of the bill around the “security” or “stability” of tenure, Gladstone then outlined its specific provisions.²¹⁹

Given the overwhelming vote of approval for the bill in the House of Commons, it seemed that Gladstone was on a path to push through the first substantive piece of legislation favourable to Irish tenants.²²⁰ However, the proponents of Irish tenants both within²²¹ and outside

²¹⁷ “Irish Land Bill. Hansard Third Series CXCIX,” col. 354.

²¹⁸ “Irish Land Bill. Hansard Third Series CXCIX,” col. 359.

²¹⁹ Gladstone was cautiously optimistic about the reception of the Bill in the House of Commons, writing to Argyll the day after (February 16, 1870) that “thus far the reception of it has been so favourable as almost to make me tremble. The Irish popular party are disposed (at present) to accept it: our immediate friends decidedly approve: None I believe are better pleased than the Conservatives, their pleasure partaking largely of the character of relief.” Gladstone Letter to Argyll, February 16, 1870, Add MS 44538, f. 76, reproduced in Matthew, *The Gladstone Diaries With Cabinet Minutes and Prime-Ministerial Correspondence*, 237–38.

²²⁰ The main resistance in the House of Commons did not come from the opposition, but from some of the liberal members of parliament, particularly Sir Roundel Palmer, who made a strong objection to the principle of “compensation for disturbance.” See “Irish Land Bill. Hansard Third Series CXCIX”; Palmer’s objections are nicely summarized by Black, *Economic Thought and the Irish Question 1817-1870*, 68–69. The other objection concerned whether the claim of disturbance of the third category should expire at thirty-one or twenty-one years. George Campbell, who was following the proceedings of the House of Commons from the outside, wrote about his impressions of the proposed bill on April 20, 1870. He was pleased that Gladstone had done him “an honour” in alluding to his book during his speech. He wrote that while he did not feel the “most gratified by the first announcement of the Bill” because “it was not quite in the lines” of his proposals, on reflection, he “could not but confess that... the great principle of the measure... appeared to go much nearer to satisfying both parties.” George Campbell, *The Progress of The Land Bill* (London: Trubner and Co., 1870), 3.

²²¹ See the speeches by two Irish members of parliament, John Gray and J.F. Maguire (both of whom Gladstone had tried to engage during the deliberations in the cabinet before the bill was introduced) in “Irish Land Bill. Hansard Third Series CXCIX.” While Maguire was at least appreciative of the government’s initiative in bringing the bill forward, Gray continued to have misgivings about the bills’ inadequacy in providing security of tenure.

Parliament²²² were less than enthused by the bill because it rejected fixity of tenure, despite Gladstone's explanation in a letter to Archbishop Manning that "oftentimes the circuitous road is really the only one practicable, & is to be much preferred to scaling and descending precipices."²²³ The bill faced greater scrutiny in the House of Lords, where proponents of landlord rights were much more entrenched. However, the landlords in Gladstone's cabinet, Dufferin and Argyll, strongly defended the need to legalize tenant-right customs and provide some semblance of security of tenure for tenants. Various amendments were proposed related to an adjustment to the sliding scale regarding compensation for disturbance for the third category of tenants and "special provisions" in case of evictions for non-payment of rent mentioned above. Some of these were accommodated in the revised bill; however, the government could fend-off any changes proposed in the House of Lords that would have radically changed the bill's essential character.²²⁴ The Landlord and Tenant Act (Ireland) 1870 was passed and became law on August 1, 1870,²²⁵ and with it, Gladstone was able to achieve two goals that he had set for himself in 1868 during his attempts to "pacify" Ireland: church and land bills. However, he was forced to include the Coercion Bill with the Land Bill. Fenian activity in Ireland had led to pressure on the government

²²² See the extensive correspondence between Gladstone and Archbishop Manning of the Roman Catholic Church regarding the latter's disappointment with the bill's limited attention to Irish expectations regarding the "three Fs" in Matthew, *The Gladstone Diaries With Cabinet Minutes and Prime-Ministerial Correspondence*.

²²³ Private Letter from Gladstone to Manning, February 16, 1870. Add MS 44538, f. 77, reproduced in Matthew, 238.

²²⁴ For a more extended analysis of the specific amendments proposed in the House of Lords, see Dunning, "Irish Land Legislation Since 1845. I.;" Steele, *Irish Land and British Politics*; Campbell, *The Progress of The Land Bill*.

²²⁵ Landlord and Tenant Act (Ireland) 1870.

to give special powers to courts and police through the Coercion Bill to deal with the associated increase in crime in Ireland.²²⁶

Conclusion

[The main purpose of the Irish Land Bill] was to endeavour to establish harmony between Great Britain and the sister island that had not been effectually attained. By the aid of the... Parliament we have been... enabled... to lay the foundation... of relations between the principal classes of the community in an agricultural country... which will give promise of greater contentment, greater wealth,... and above all a nearer approach to that union of heart and sentiment....

—Speech by William Gladstone, August 1, 1870²²⁷

We are now done with the 'Irish Land Bill' but assuredly not with the Irish Land Question.

—Editorial, *Nation*, August 6, 1870²²⁸

These two responses to the Irish Land Act of 1870 after it received royal assent and became law capture the distinct perceptions of its value in easing the volatile political situation and fulfilling the aspirations of the Irish peasantry. Critics saw it as a sincere but weak attempt by the government to address the land question – one that did not go far enough to provide the necessary security of tenure.²²⁹ An observation neatly captures this view that through this act,

²²⁶ See Jenkins, *Gladstone*.

²²⁷ From Gladstone's speech at a banquet after the Irish Land Act had received royal assent. Reproduced in "Irish Land Bill," *The Cork Examiner*, August 3, 1870, sec. Editorial.

²²⁸ "Irish Land Bill," *Nation*, August 6, 1870, sec. Editorial.

²²⁹ Some historians also saw the 1870 Act as having gone too far. For example, at the end of his exhaustive study, Steele concludes that "[i]n the Land Act of 1870 Parliament sacrificed on the altar of Anglo-Irish

the “government had reached the point where the Irish agitation had been eighteen years before.... British concession had got as far as the Ulster tenant right; Irish demand was far away at ‘the three Fs.’”²³⁰ It would take another eleven years and a second Gladstone ministry for the Irish to achieve that security of tenure through the Irish Land Act of 1881.²³¹ However, despite its failure to fully resolve the land question in Ireland, there is a general agreement amongst contemporaneous observers and later historians that the act of 1870 was useful because it “was the first measure placed on the Statute Book to recognize that the occupier as well as the owner had a right in the land; the first measure, in other words, which reversed the trend towards insistence on ‘free contract’ as the basis of landlord-tenant relations, and was based, partially at least, on the concepts of status and custom.”²³² No doubt legalizing the tenant-right through this act, even if only partially satisfactory to the Irish tenants at the time, encouraged both Irish nationalists to push for their demands and the British government to consent to these efforts in future legislation.

The objective of this chapter was not to evaluate the success or failure of the 1870 act but rather to probe the conditions in 1870 that made it possible to enact this legislation, given the failures of the previous seventy years. I have attempted to show that competing perspectives emanating from different conceptions of property rights and political economy (as articulated in Chapter 2) were in play in Ireland during much of the nineteenth century. Until the early 1860s,

union the notion that the individual’s rights of property were indefeasible, and with that cherished notion the concomitant freedom of contract.” Steele, *Irish Land and British Politics*, 315.

²³⁰ Dunning, “Irish Land Legislation Since 1845. I.,” 72.

²³¹ I will discuss the aftermath of the 1870 Act and its implications for the 1881 act in some more detail in the concluding chapter (Chapter 6).

²³² Black, *Economic Thought and the Irish Question 1817-1870*, 69; Also see Montgomery, *The History of Land Tenure in Ireland*; Jenkins, *Gladstone*; Campbell, *Memories of My Indian Career*.

the supporters of Irish landlords were able to singularly coalesce around ideas about the absolute sanctity of ownership property rights, the contract between landlord and tenant as the guiding principle in land relationships, and large-scale capitalist farming as the only route to Ireland's prosperity. On the other hand, although the proponents of the Irish peasantry had similar perceptions about the causes behind the country's misery, the solutions they identified to alleviate the conditions were quite diverse and often conflicting (for example, "co-proprietorship" through occupancy rights, "peasant proprietorship," and "compensation for improvements"). The coalition of Irish and English landlords in Parliament was able to thwart any legislation around these schemes because of three inter-related factors: i) their united efforts in opposing any dilution of their shared perceptions about absolute rights to property; ii) the widely accepted viewpoint that Irish land tenure was similar to or a close extension of the guiding principles of English land tenure, especially concerning the "contract" between landlord and tenant, and that any change in this guiding principle for Ireland would adversely impact English landlords; and iii) the unwillingness of successive governments in England to aggressively push for a solution to the Irish land question due to the political power and influence of the landlords relative to that of nascent Irish movements such as the Irish Tenant League.

The 1860s brought new dynamics to the Irish land question on multiple fronts related to the abovementioned factors, which allowed the proponents of the Irish peasantry to more effectively push for their perspective and eventually make some gains through legislation. A significant development was the political situation arising from Fenianism (and its spillover in England), which increased the urgency to craft effective policies for dealing with Ireland. While

one viewpoint was that Ireland should be dealt with using an iron hand and coercive means,²³³ another view – the one adopted by Gladstone – was that religious, social and economic reforms in Ireland would wean a majority of the Irish away from Fenianism.²³⁴ This necessitated, among other things, resolving the Irish land question, which was one of the main grievances of the Irish. In this regard, a substantial majority in the House of Commons after the 1868 elections allowed Gladstone to use his political capital to push for legislation that would provide security of tenure to the Irish peasantry, even if this involved taking on the solid and entrenched landlord lobby within the parliament (specially the House of Lords) and beyond.

The legislative efforts regarding Irish land resulting from Gladstone's active involvement and agency were facilitated by the dissemination of new ideas in the 1860s from various sources that attributed the success of small farms in other parts of Europe to the security of tenure granted to cultivators. These sources countered the entrenched political economy arguments of the capitalist farming system operating within a laissez-faire policy framework because Irish land tenure agreements and their underlying characteristics were more akin to those of other countries than to English practices. The economic betterment of Irish agriculture as a whole and that of the large population of peasant cultivators could thus be accomplished within the existing structure of small-scale farming if proper incentives could be provided through legislation that granted security of tenure.

²³³ Jenkins, *Gladstone*; Richard T. Shannon, *Gladstone: Heroic Minister 1865 - 1898* (London: Allen Lane, The Penguin Press, 1999).

²³⁴ Gladstone letter to General C. Grey, March 28, 1869. Cited in Matthew, *The Gladstone Diaries With Cabinet Minutes and Prime-Ministerial Correspondence*, lii–liii.

There was still the hurdle of countering the view of absolute ownership property rights, which had been effectively used in the past to thwart any institutionalization of security of tenure for Irish tenants. Here, the Indian precedents from the recently approved Punjab Tenancy Act and the public dissemination of the writings of George Campbell, an administrator with long experience in land settlements across various provinces of India, allowed the concept of co-proprietorship in custom or status-based tenurial relationships to become an effective counter to the absolute rights of landlords in contract-based relationships. Thus, the combined effect of active agency and the use of analogies and precedents from Europe and India allowed a way forward, overcoming the entrenched perspectives that had opposed the legalization of the rights of tenants in Ireland for such a long time.

One final note on the influence of Campbell's book on the Irish Land Act of 1870 and beyond is warranted. While his work has been credited for influencing Gladstone by bringing to attention the historical similarities between custom-based land tenure in India with those in Ireland and thus the appropriateness of legalizing such tenure in the proposed bill for Ireland, there is some debate amongst historians about the enduring contributions of Campbell's ideas. At one end is the observation by Eric Stokes in his influential book *English Utilitarians and India* that in dealing with the Irish agrarian problem, "it was Liberals with Indian experience, like... Sir George Campbell, who first taught their party that the State might justly lay hands on the sacred institution of private landed property."²³⁵ On the other hand, E.D. Steele, who has probably written the most on the Irish Land Act of 1870, concludes that Campbell's influence was, in the end, insignificant because his book did not "point to a single course of action by the state on the

²³⁵ Stokes, *The English Utilitarians and India*, 122.

Irish problem,”²³⁶ and none of his specific recommendations made it into the act that was eventually passed. My analysis suggests that Campbell’s influence was neither radical nor insignificant, as argued by these historians; instead, Campbell’s work was more influential in showing an alternative way to view colonial land tenure. His ideas facilitated a fundamental shift whereby the land question would, from then onwards, no longer be solely tied to the property rights and political economy principles prevalent in England. Instead, the Empire could use analogies and precedents from across its various colonies rather than being constrained by English principles.²³⁷

The usefulness of this approach of inter-colony analogies would be tested soon after the passage of the Irish act in 1870 in dealing with landlord-tenant relationships in another part of the British empire. Like Ireland, Prince Edward Island had a long history of unresolved issues regarding land relationships. I now turn to analysing whether and how lessons from Punjab and Ireland played any role in facilitating a resolution there.

²³⁶ Steele, “Ireland and the Empire in the 1860s. Imperial Precedents for Gladstone’s First Irish Land Act.,” 64.

²³⁷ For some examples of the use of such analogies, see Cook, *Imperial Affinities: Nineteenth Century Analogies and Exchanges Between India and Ireland*; Barry Crosbie, “Networks of Empire: Linkage and Reciprocity in Nineteenth-Century Irish and Indian History,” *History Compass* 7, no. 3 (May 1, 2009): 993–1007.

CHAPTER 5
THE IMPERIAL HEDGE IN PRINCE EDWARD ISLAND:
TENANTS' COMPENSATION ACT, 1872 AND LAND PURCHASE ACT, 1875

As the government of William Gladstone was considering the institutionalization of tenant rights in Punjab and Ireland, the Colonial Office had to deal with the land question in another colony, Prince Edward Island (PEI). Like Ireland, the land issue in PEI had been simmering for almost a century. The two colonies also shared histories of land allocation “by rank”¹ under British rule, a preponderance of well-connected absentee landlords, and persistent demands for the betterment of economically struggling tenants. In the context of the granting of Dominion status to Canada in 1867 and the ongoing political discussions in PEI about whether to join the Dominion,² there was another round of prodding by PEI’s legislature of the Imperial Government³ around 1869-1870 to resolve the long-standing land question. Unlike in Ireland, where the Gladstone government was the primary agent behind the institutionalization of the rights of cultivators, and the challenge was to overcome resistance within the British Parliament, the Parliament had no role in PEI. Rather, the Imperial Government influenced property-related legislation initiated by the local legislature through the Colonial Office when PEI was a separate colony and through the Governor-General of Canada once it joined the Dominion of Canada.⁴

¹ John C. Weaver, *The Great Land Rush and the Making of the Modern World, 1650-1900* (Montreal & Kingston: McGill-Queen’s University Press, 2003).

² Francis W.P. Bolger, *Prince Edward Island and Confederation, 1863-1873* (Charlottetown, P.E.I.: St. Dunstan’s University Press, 1964).

³In much of the official correspondence regarding Prince Edward Island, the terms “Imperial Government” and “Colonial Government” are used to distinguish the government in England from the one in PEI. The former includes the Secretary of State for the Colonies, the Colonial Office, and other departments dealing with the colonies. “Colonial Government” refers to the government set up on the island, which took many forms (these are discussed later in the chapter). I use this distinction throughout this chapter.

⁴ In Punjab, the debate about rights of tenants involved two groups of British administrators, and the Imperial Government, through the India Office, was in a sense arbitrating between them.

However, in making this decision, the Imperial Government had to be mindful of the impact of any legislation approved in PEI on land tenure across its other colonies and political implications at home.

After extensive correspondence between the various authorities in England, PEI and Ottawa and fierce resistance by resident and non-resident proprietors, two acts passed by the Prince Edward Island legislature, the Tenants' Compensation Act, 1872 and the Land Purchase Act, 1875, received approval from the Imperial Government. The former, modeled on the Irish Land Act of 1870, established that a tenant could claim compensation from the landlord for improvements made on the leased land at the "expiration of his lease or upon the legal determination of his tenancy, by any act of himself or his landlord."⁵ The latter Act mandated the compulsory purchase of all landholdings over 500 acres. Compensation to the proprietors was to be determined by three commissioners, one each appointed by the Governor-General of Canada, the Colonial Government, and the individual proprietor. The appropriated land would subsequently be sold to tenants, thus converting their tenures from leasehold to freehold.⁶ It is apparent from the following extracts of letters written by the proprietors to the Imperial Government protesting each Act that they considered them a subversion of their rights to property and believed that the acts went beyond legislation attempted in other colonies.

[B]y the [The Tenants' Compensation] Act ... it appears ... that every axiom and rule, constitutional or prescriptive of the ancient common law and statute of Great Britain, with regard to real property and its rights ... are at once to be swept away and annihilated.⁷

⁵ "The Tenants' Compensation Act, 1872," Pub. L. No. Cap. X (1872).

⁶ "Land Purchase Act, 1875," Pub. L. No. Cap. XXXII (1875).

⁷ A letter signed by eighteen proprietors sent to the Secretary of State for the Colonies requesting withholding of the Royal Assent to the Tenants' Compensation Bill. Reproduced in "Correspondence

There is no exaggeration in calling [the Land Purchase Act] ... an Act of Confiscation. It is treatment that never yet has been inflicted on the unoffending owners of land in a peaceful Province. We have heard of wholesale confiscations of land in former times in our country, in Ireland, and in other countries; but it has always been under the pretense that the expelled owners were traitors, and had engaged in rebellion.⁸

Approval of these two acts in quick succession raises two questions. First, why did the Imperial Government encourage the use of the provisions of the Irish Act regarding compensation for improvements as a means to provide security of tenure to the tenants, being fully aware that the long-standing objective by the Prince Edward Island legislature was to provide security through the conversion of leasehold to freehold tenures? Second, why did the Imperial Government sanction a more extreme form of abrogation of rights in PEI in 1875, that is, the state facilitated transfer of property rights of unwilling proprietors, given its reluctance to entertain the milder three F's (fixity of tenure, fair rent, and freedom of sale) that would have at most acknowledged co-proprietorship of landlords and tenants in Ireland a few years earlier? While the existing historiography has not paid attention to the first question,⁹ the answer to the second question can be discerned from the following arguments made in the literature.

Relative to the Land Tenure Question in Prince Edward Island" (Presented to both Houses of Parliament by Command of Her Majesty, August 1875), 13, British Parliamentary Papers.

⁸ Letter from Lady Georgina Fane, a proprietor in Prince Edward Island, to the Colonial Office, November 25, 1874 protesting the compulsory purchase of land legislation under consideration. Reproduced in "Correspondence Relative to the Land Tenure Question in Prince Edward Island," 43–44.

⁹ Passing references are made about tenant compensation acts in a few studies, and it is generally assumed that these were fleeting attempts to deal with the land question on the way to full conversion of leasehold to freehold tenures. For example, see Ian Ross Robertson, "Introduction," in *The Prince Edward Land Commission of 1860*, ed. Ian Ross Robertson (Fredericton, NB: Acadiensis Press, 1988), ix–xxx; Margaret E. McCallum, "The Sacred Rights of Property: Title, Entitlement, and the Land Question in Nineteenth-Century Prince Edward Island," in *Essays in the History of Canadian Law in Honour of R.C.B. Risk*, ed. G. Blaine Baker and Jim Phillips, vol. VIII (Toronto: University of Toronto Press, 1999), 358–97; Rusty Bittermann and Margaret McCallum, "Upholding the Land Legislation of a 'Communitic and Socialist Assembly': The Benefits of Confederation for Prince Edward Island," *The Canadian Historical Review* 81, no. 1–15 (2006): 31–56.

The received view is that the conversion from leasehold to freehold tenure in the colony was following the land tenure norms of North America: “Islanders breathed the air of North America, where freehold tenure was the norm. Rent-paying was anathema, identified with the Old World, and believed to be inconsistent with a spirit of independence.”¹⁰ This natural propensity towards freehold tenures gained momentum by the end of the 1860s because of a political alignment in PEI between political and sectarian groups, which provided a unified position against leasehold tenure, facilitated by the efforts of the Tenant League.¹¹ In this regard, the colony’s negotiations leading to and after joining the Dominion of Canada allowed the local Government to use its “legislative power to trump the ‘sacred rights’ of property and break the concentrations of land ownership on the Island,”¹² and also have the necessary financial wherewithal to buy out the landlords through the \$800,000 loan provided as part of the Confederation agreement.¹³ Accordingly, the “settlement of the century-old land question was the greatest blessing that the Island received from the terms granted by the Dominion.”¹⁴

Legislative freedom from “direct supervision of the British Government”¹⁵ after joining the Confederation was also the rationale given by the Secretary of State for the Colonies¹⁶ during

¹⁰ Ian Ross Robertson, *The Tenant League of Prince Edward Island, 1864-1867: Leasehold Tenure in the New World* (Toronto; Buffalo; London: University of Toronto Press, 1996), 7.

¹¹ Ian Ross Robertson, “Political Realignment in Pre-Confederation Prince Edward Island, 1863-1870,” *Acadiensis* 15, no. 1 (1985): 35–58; Robertson, *The Tenant League of Prince Edward Island, 1864-1867*.

¹² Bittermann and McCallum, “Upholding the Land Legislation of a ‘Communitistic and Socialist Assembly,’” 15.

¹³ Bolger, *Prince Edward Island and Confederation, 1863-1873*, 292.

¹⁴ Francis W.P. Bolger, “Long Courted, Won at Last,” in *Canada’s Smallest Province: A History of P.E.I.*, ed. Francis W.P. Bolger (Charlottetown, P.E.I.: Prince Edward Island 1973 Centennial Commission, 1973), 230.

¹⁵ McCallum, “The Sacred Rights of Property,” 364–65.

¹⁶ It should be noted that by the time this act was approved, the Liberal government of Gladstone had been replaced by the Conservative government led by Disraeli, and it had appointed a new Secretary of State for the Colonies.

a debate in the House of Lords regarding the approval of the Imperial Government to the Land Purchase Act of 1875. He emphasized that the Act was “passed by the Colonial Legislature of Prince Edward Island, and which consequently receives the sanction, not of the Crown through the Imperial Government at home, but the sanction of the Governor-General of Canada.”¹⁷

Numerous studies supporting the above-summarized narrative examine the PEI land question primarily from the perspective of the prevalent conditions in North America, both in terms of the political situation related to the Dominion of Canada and the proximate analogies of freehold tenures. According to this view, the primary rationale against large landholdings in the colony was the importance of freehold as the normative expectation amongst people cultivating land in the Empire’s other colonies in North America.¹⁸ As argued by John Weaver, British colonies in North America had “ephemeral, would-be aristocrats, but no enduring, institutionalized aristocratic class.... A will to possess real property gripped the public. Land availability and the will to possess were solvents that jeopardized new-world estates that had tenants.”¹⁹

¹⁷ Response by the Secretary of State for the Colonies, The Earl of Carnarvon, to a question in the House of Lords, July 26, 1875, on concerns about and implications of the Land Purchase Act on the property rights of landowners in PEI. Reproduced in “Correspondence Relative to the Land Tenure Question in Prince Edward Island,” 49.

¹⁸ See, for example John McLaren, A. R. Buck, and Nancy E. Wright, “Property Rights in the Colonial Imagination and Experience,” in *Despotic Dominion: Property Rights in British Settler Societies*, ed. John McLaren, A. R. Buck, and Nancy E. Wright (Vancouver, B.C.: UBC Press, 2005), 1–21. At the most, these studies make a passing reference to Ireland in comparing the land question in PEI. Philip Girard, “Land Law, Liberalism, and the Agrarian Ideal: British North America, 1750-1920,” in *Despotic Dominion: Property Rights in British Settler Societies*, ed. John McLaren, A. R. Buck, and Nancy E. Wright (Vancouver, B.C.: UBC Press, 2005), 120–43; Bittermann and McCallum, “Upholding the Land Legislation of a ‘Communitistic and Socialist Assembly.’”

¹⁹ Weaver, *The Great Land Rush and the Making of the Modern World, 1650-1900*, 213. The establishment of large estates through allocation of land by rank in Prince Edward Island was somewhat of an anomaly. In much of British North America (and especially in the 19th century), land was increasingly allocated through the market (that is, through freehold land sales rather than free grants of large estates).

I argue in this chapter that from the viewpoint of the Empire, the land question in Prince Edward Island had components that were similar to other colonial sites and had implications for the governance of the whole Empire. Thus, the imperial thinking on the land question was guided by happenings in various colonies, even those beyond North America. This becomes clear when examining the land question in PEI in the early 1870s, whereby discussions on land tenure converged through similar legislation involving tenant right of compensation, compulsory purchase, and peasant proprietorship. The Imperial Government hedged its bets by taking a two-track route to resolving the PEI land question, both involving the use of inter-colony analogies and decoupling the land question from England. From 1870 to 1872, it first used the Irish land act as a model to establish tenant compensation in PEI, a period when it was uncertain whether the colony would join the Dominion of Canada. Second, after PEI joined the Dominion in July 1873, the Imperial Government absolved itself from its land question on the pretext that under the new governance arrangement, the Dominion had the right to resolve land tenure issues based on local considerations. In both cases, the Empire attempted to disconnect the PEI land question from conditions in England by linking it to either the one being considered for Ireland (tenant-right) or the one that seemed to be the norm in North America (freehold tenure). Through this dual approach (based on inter-colony analogies rather than precedents from England), the Gladstone government hoped that the new laws in PEI would help in realizing its overall objective of extending peasant-proprietorship across the Empire, while at the same time minimizing the political fallout emanating from potential threats to aristocratic rights and privileges in England. It argued that land tenure issues regarding tenant rights and peasant

proprietorship were specific to its colonies and thus could be dealt with through inter-colony analogies and solutions.

My main objective in this chapter is to emphasize the importance of legislative efforts in PEI and the interventions of various Imperial governments on both aspects: tenant rights and freehold proprietorship. I pay special attention to the legislative efforts regarding the former, which have not received attention in existing scholarship. For the latter, I mainly rely on the extensive historiography²⁰ related to attempts to convert leaseholds to freeholds from soon after the land was allocated in 1767, all the way till this question was finally settled in 1875. This literature includes studies providing a broader picture on the evolution of the land question in Prince Edward Island,²¹ discussions about different aspects of property rights in PEI,²² origins of the PEI land question in the eighteenth century,²³ early nineteenth-century Escheat movement,²⁴

²⁰ Matthew G. Hatvany, "Tenant, Landlord and Historian: A Thematic Review of the 'Polarization' Process in the Writing of 19th-Century Prince Edward Island History," *Acadiensis* 27, no. 1 (1997): 109–32.

²¹ Philip Girard, Jim Phillips, and R. Blake Brown, *A History of Law in Canada* (Toronto ; Buffalo ; London: Published for The Osgoode Society for Canadian Legal History by University of Toronto Press, 2019), chap. 30; Rusty Bittermann and Margaret E. McCallum, "Upholding the Land Legislation of a 'Communitistic and Socialist Assembly'"; Margaret E. McCallum, "The Sacred Rights of Property"; Ian Ross Robertson, "Introduction," in *The Prince Edward Land Commission of 1860*, ed. Ian Ross Robertson (Fredericton, NB: Acadiensis Press, 1988), ix–xxx.

²² McCallum, "The Sacred Rights of Property"; Matthew G. Hatvany, "The Proprietary Burden?" *The Island Magazine* 44 (1998): 3–7.

²³ J.M. Bumsted, *Land, Settlement, and Politics on Eighteenth-Century Prince Edward Island* (McGill-Queen's Press - MQUP, 1987); J.M. Bumsted, "The Land Question on Prince Edward Island and the Quitrent Controversy of 1802-1806," *Acadiensis* 29, no. 2 (2000): 3–26; J.M. Bumsted, "The Origins of the Land Question on Prince Edward Island, 1767-1805," *Acadiensis* 11, no. 1 (1981): 43–56.

²⁴ Rusty Bittermann, *Rural Protest on Prince Edward Island: From British Colonization to the Escheat Movement* (University of Toronto Press, 2006); Rusty Bittermann and Margaret McCallum, "When Private Rights Become Public Wrongs: Property and the State in Prince Edward Island in the 1830s," in *Despotic Dominion: Property Rights in British Settler Colonies*, ed. John McLaren, A. R. Buck, and Nancy E. Wright (Vancouver, B.C: UBC Press, 2005), 144–68.

the activities of the Tenant League and the threat of Fenianism in the 1860s,²⁵ and the push for complete conversion of leasehold to freehold tenures in the colony in the 1870s.²⁶ The different phases of the contestation around the land question in PEI corresponded with three broad periods related to its governance arrangements with the Empire, and accordingly, I divide my discussion into these periods: i) 1767 to 1851 (appointed lieutenant-governor as the head of Government); ii) 1851 to 1867 (responsible-government with legislative discretion to the locally elected Government), and iii) 1868 to 1875 (the period leading to and immediately after PEI joined the Dominion of Canada). In my analysis, I foreground how shifting governance arrangements informed discussions around property rights, political economy, and political expediency at the Colonial and Imperial levels, and how these were negotiated in the various laws, leading eventually to the Tenants' Compensation Act of 1872 and the Land Purchase Act of 1875.

²⁵ Edward MacDonald, "Who's Afraid of the Fenians? The Fenian Scare on Prince Edward Island, 1865-1867," *Acadiensis* 38, no. 1 (2009): 33–51; Robertson, "Political Realignment in Pre-Confederation Prince Edward Island, 1863-1870"; Robertson, *The Tenant League of Prince Edward Island, 1864-1867*.

²⁶ Bittermann and McCallum, "Upholding the Land Legislation of a 'Communitic and Socialist Assembly'"; Rusty Bittermann and Margaret McCallum, *Lady Landlords of Prince Edward Island: Imperial Dreams and the Defence of Property* (Montreal: McGill-Queen's University Press, 2008).

Land Allocation to Responsible Government (1767-1851)

Power is the capacity to structure the possible fields of action of others. In new worlds, one way in which European sovereign authorities exercised power over fellow Europeans was through the allocation of property rights.²⁷

France ceded Prince Edward Island to England in 1763. On taking possession, the first order of business for the new colonial ruler was to set up a process of settling the land and establishing an appropriate government to run its affairs. While it considered several proposals²⁸ as to how and to whom the land would be allocated, the Imperial Government in 1764 sent a team, led by the Surveyor of Lands, Captain Samuel Holland, to survey the Island. The surveying team divided the land into 66 Townships or Lots of about 20,000 acres each and an additional 6000 acres reserved as Demesne Lands of the Crown.²⁹ In 1767, the Imperial Government decided to grant the 66 lots “directly and separately to persons deserving the patronage of the Crown.”³⁰ Two lots were reserved for a group of petitioners who had already established trading

²⁷ Weaver, *The Great Land Rush and the Making of the Modern World, 1650-1900*, 178.

²⁸ One of the proposals came from the Earl of Egmont who (along with other notable people which included politicians, military officers, etc.) proposed setting up a feudal domain with himself as the overlord, and with a hierarchy of manors and freeholders with different sizes of land holdings. His proposal was not considered seriously, but given his close connections to the British monarchy, the Imperial Government attempted to placate him by offering him five townships for a total of 100,000 acres. He declined the offer, although several influential people who had backed his proposal put their names for consideration in the scheme that was adopted. For more details on the process leading to the initial distribution of the land in PEI, see Bumsted, *Land, Settlement, and Politics on Eighteenth-Century Prince Edward Island*; Errol Sharpe, *A People's History of Prince Edward Island* (Toronto: Rail Publishing, 1976); Francis W.P. Bolger, “The Beginnings of Independence, 1767-1787,” in *Canada's Smallest Province: A History of P.E.I.*, ed. Francis W.P. Bolger (Charlottetown, P.E.I.: Prince Edward Island 1973 Centennial Commission, 1973), 37–65; Andrew Hill Clark, *Three Centuries and the Island: A Historical Geography of Settlement and Agriculture in Prince Edward Island, Canada* (Toronto: University of Toronto Press, 1959).

²⁹ Bolger, “The Beginnings of Independence, 1767-1787.”

³⁰ Bolger, 37. While the way in which the colony's land was parcelled out to influential people in a single day has been seen as the root cause of the subsequent difficulties in resolving the land question, Bumsted suggests that “there was nothing peculiar or distinctive about the allocation of large tracts of land ... to proprietors, subject to conditions and quitrents.” The system was like those of other settlements in North America and especially the one used in Nova Scotia, to which PEI was attached in the early years of British rule. “The only distinctive feature of the St John situation was the resurrection of earlier British practice

and fishing enterprises on the Island since 1764, and the remaining 64 lots were allotted based on a lottery to people selected from a list of 166 petitioners who had applied for the land grants.³¹ The land grants were made on the conditions that each lot was to be settled within ten years with one Protestant settler per hundred acres, and the landholder to pay an annual quit rent³² (calculated based on the surveyors' assessment of the value of the land) directly to the Colonial Office in London.³³

Initially intended to be a part of Nova Scotia, a separate colony was decided on in 1769 following the petitions from the newly minted proprietors of the colony.³⁴ Walter Patterson, a recipient along with his brother of a lot in the initial lottery, was appointed Prince Edward Island's first Governor, a post which he held until 1786.³⁵ In the directions provided to him by the Privy Council in London, the Governor would head the Government, assisted by a Council of twelve members consisting of a resident Lieutenant Governor, Chief Justice and "of such ... persons, chosen by you from amongst the principal inhabitants and proprietors of land in our said Island."³⁶ The instructions further required the formation of a House of Assembly or House of Representatives, whose scope should be carefully considered so that "no colour or pretence is

of expecting that the quitrents could both be collected and could serve as an immediate revenue, one that would quickly be taken as sufficient to support the colonial administration" Bumsted, *Land, Settlement, and Politics on Eighteenth-Century Prince Edward Island*, 26.

³¹ See Footnote 2 in Bolger, "The Beginnings of Independence, 1767-1787," 356.

³² Quit rent was a nominal rent payable by the land grantee to the state in lieu of performing any service for the latter.

³³ Sharpe, *A People's History of Prince Edward Island*.

³⁴ For details of the process of establishing the first government, and its subsequent evolution, see Frank MacKinnon, *The Government of Prince Edward Island* (Toronto: University of Toronto Press, 1951). The head of the government was changed from Governor to Lieutenant Governor in 1784.

³⁵ For details about his life and the various land proprietorship ventures in North America, see Harry Baglole, "Patterson, Walter." *Dictionary of Canadian Biography*, Volume IV (1771-1800) (University of Toronto/Université Laval, 2003).

³⁶ Reproduced in Appendix B of MacKinnon, *The Government of Prince Edward Island*, 347–343.

given for the assumptions or privileges ... which have not been allowed to Assemblies in our other colonies.”³⁷ Besides the structure of the Government, the instructions to the first Governor made it clear that “no law or ordinance respecting private property be passed without a clause suspending its execution until our royal will and pleasure is known....”³⁸ The first Assembly in PEI was constituted in 1773.

The expectation from the Imperial Government was that the functioning of the colony’s government would not impose any financial burden on it as the quit rents collected from the grantees of the 66 lots would pay for the government’s expenses. The landlords would have enough income to pay the quit rents derived from the rents collected from the settlers. A few aspects of these land allocation and governance arrangements are noteworthy as these undermined some of the assumptions that were made regarding the political and economic viability of the colony. First, as pointed out by John Weaver in the quotation at the beginning of this section, the Imperial Government allocated property rights to landlords based on their rank in society, which was determined both by their past services and expectations of future services to the Empire. Given the influence of the landholders in both military and civil matters across the various colonies, it would have been challenging to hold them strictly to the initial conditions of their grants.³⁹ Second, the structure of the Government, and the discretion of the Governor (and later the Lieutenant Governor) to appoint members of the advisory council, had the potential to create a governing body of friends and family who could collude to further their objectives but which might not be in the best interests of the colony as a whole. Third, the incorporation of a

³⁷ Reproduced in MacKinnon, 332–33.

³⁸ Reproduced in MacKinnon, 333.

³⁹ Bumsted, “The Land Question on Prince Edward Island and the Quitrent Controversy of 1802-1806.”

suspending clause regarding all legislation related to private property meant that the “opportunities for Island-made solutions to the land question ... were circumscribed by the colonial situation Legislative initiatives to limit the power of landlords ... ultimately, before they became law, had to pass the scrutiny of officials in the Colonial Office in London.”⁴⁰

These initial arrangements in the governance of PEI would combine in various ways to create intractable conditions for dealing with the land question over the next century. In the years following the formation of a government, landlords had not fulfilled the conditions of their land grants. For example, by 1779, most proprietors had not paid any quit rents, and 49 of the lots did not have a single settler. This trend continued as 23 lots remained uninhabited in 1793.⁴¹ By 1802, proprietors were in arrears of quit rents to the Imperial Government to the tune of 60,000 pounds sterling.⁴² While failing to fulfill the conditions of their grants, a large number of the landlords had commoditized their holdings by selling to other landlords or land speculators from across the British Empire.⁴³ For example, in 1817, only 7 of the 67 lots were owned by original grantees or their heirs, which decreased to 2.5 in 1823. The ownership became very concentrated, with 46 lots owned by 11 landlords in 1823.⁴⁴

Thus, it was clear soon after the colony's formation that the land grantees had not fulfilled the conditions of their grants, both in terms of quit rents and settlements. This posed revenue

⁴⁰ Bittermann and McCallum, “Upholding the Land Legislation of a ‘Communitistic and Socialist Assembly,’” 2.

⁴¹ Clark, *Three Centuries and the Island*, 50.

⁴² Clark, 81.

⁴³ For a full list of original grantees of the lots, and their subsequent year of sale and new owners, see Appendix B in Clark, 263–69. Also see Bolger, “The Beginnings of Independence, 1767-1787,” 31–42.

⁴⁴ Sharpe, *A People's History of Prince Edward Island*, 63.

problems for the local Government,⁴⁵ and it started the quest to rectify the situation by either forcing the landlords to fulfill the conditions of their grants or forfeiting their land to the Government, which could then be re-allocated, including through the conversion of leaseholds to freeholds for the cultivators/settlers.⁴⁶ Thus, the idea of escheat took shape in the early years of the colony and it evolved into various forms until the 1840s.⁴⁷ While the Imperial Government was aware of the nonfulfillment of the conditions of the grants, and the impact of this to the revenues for the colony,⁴⁸ its development, and broader socio-political implications, it did not assent to any of the numerous acts passed by the local legislature up until the middle of the nineteenth century that would adversely impact the rights of the proprietors.⁴⁹

Many studies have examined the reasons for the persistence of the land question during the 1764-1851 period and the Colonial and Imperial governments' unwillingness and/or inability to resolve the land question emanating from non-fulfillment of the land grant conditions. In

⁴⁵ Revenue shortfalls impacted the salaries of local government officials.

⁴⁶ An Ordinance was passed in 1771 under which the local government could use a judicial procedure to distraint land with quit rent arrears and sell it off. This process was different from escheat where the land went back to the Crown for these arrears. This particular Ordinance was not recognized by the Imperial Government. See Bumsted, "The Origins of the Land Question on Prince Edward Island, 1767-1805."

⁴⁷ Bittermann, *Rural Protest on Prince Edward Island*. Escheat involved the revoking of proprietorial land grants because of non-fulfilment of their conditions, and subsequently redistributing the land to other settlers.

⁴⁸ According to Bumsted, although there were arrears in quit rents in PEI, they still amounted to "more money ... paid over the years ... than in any contemporary British colony in North America. Unfortunately, the colony's revenues did not depend upon *some* quitrent payments by *some* proprietors." Bumsted, *Land, Settlement, and Politics on Eighteenth-Century Prince Edward Island*, 36 (italics in original).

⁴⁹ For details of the various legislative acts passed regarding the land question, see Bolger, "The Beginnings of Independence, 1767-1787"; Francis W.P. Bolger, "The Demise of Quit Rents and Escheat, 1824-1842," in *Canada's Smallest Province*, 95-114; Bittermann, *Rural Protest on Prince Edward Island*; Bittermann and McCallum, "When Private Rights Become Public Wrongs"; Bumsted, *Land, Settlement, and Politics on Eighteenth-Century Prince Edward Island*; Matthew George Hatvany, "Tenant, Landlord, and the New Middle Class: Settlement, Society, and Economy in Early Prince Edward Island, 1798-1848" (ProQuest Dissertations Publishing, 1996).

reviewing this literature which examines specific acts/periods in detail, some broad themes can be discerned. Probably an important factor influencing the Imperial Government's affinity towards the landlords across the whole Empire was the aristocratic tradition in England, which manifested itself in land allocation in its newer colonies to "well-connected individuals who had performed special service."⁵⁰ Thus, retracting these grants for not fulfilling the conditions was politically inexpedient. Furthermore, many PEI proprietors resided in London and continued to exert influence in the imperial political circles to protect their property rights. In addition, during the period under discussion, Britain was involved in two wars (against America and France). The arrears in landlords' quit rents were excused because of their "great sacrifices" in the Empire's war efforts. Consequently, the Imperial Government reduced those arrears from approximately 60 thousand to less than 19 thousand pounds sterling in 1802.⁵¹ The inability of the grantees to fulfill the condition of settling a certain number of cultivators was attributed to the onerous requirement of settlers having to be Protestants and the unavailability of enough of them willing to move to a geographically hostile terrain of PEI.⁵²

The proclivity of different Imperial governments in the eighteenth and early nineteenth centuries to be protective of landed interests was facilitated in the case of Prince Edward Island by the emerging political factions and their activities within the colony. As pointed out by

⁵⁰ Weaver, *The Great Land Rush and the Making of the Modern World, 1650-1900*, 202.

⁵¹ Bumsted, "The Land Question on Prince Edward Island and the Quitrent Controversy of 1802-1806."

⁵² The population of the Island grew from approximately 7000 in 1805 to 23,000 in 1827, and further to 47,000. See Clark, *Three Centuries and the Island*, 66. Many settlers came from Scotland and Ireland and tended to be Catholics. See Bumsted, *Land, Settlement, and Politics on Eighteenth-Century Prince Edward Island*.

Bumsted, “the documentable rapacity of the Island’s officials vis-à-vis the proprietors⁵³ was one of the principal factors behind the refusal of the British government to penalize the proprietors for their failures [It] was not likely to attack private property, but the proprietors did not have to invent arguments to defend it; the behaviour of the Island’s office-holders spoke for itself.”⁵⁴ The roots of the initial political conflict in the colony were the various attempts by resident proprietors, which included the first Governor Patterson and his appointees on the Legislative Council, to distraint the land of the absentee landlords. As a result, Patterson increased his landholdings from the initial allocation of one lot to three (consisting of 60,000 acres) by the end of his term.⁵⁵ However, differences amongst the colony’s elite led to two factions, one insisting on holding the absentee landlords to the original conditions. The other, referred to as the ‘cabal’ or ‘Family Compact’ wanted to challenge the resident landlords and thus aligned itself with the absentee or non-resident landlords.⁵⁶ The intra-colony feud amongst the elites (consisting of resident landlords, the lieutenant governors, their cronies, government officials, and land agents) continued until the nineteenth century. The Imperial governments recalled the first three

⁵³ These included illegal land grabs of absentee proprietors by members of the Executive Council and allocating the land to friends and family. For details, see Bumsted, *Land, Settlement, and Politics on Eighteenth-Century Prince Edward Island*.

⁵⁴ Bumsted, “The Origins of the Land Question on Prince Edward Island, 1767-1805,” 47.

⁵⁵ Sharpe, *A People’s History of Prince Edward Island*.

⁵⁶ This group was initially led by the Stewart family, whose patriarch was Peter Stewart, the first Chief Justice appointed by Patterson. Apparently, the Stewarts were not happy with most of the land appropriated by Patterson, and the falling apart was triggered because of an alleged affair between Patterson and Peter Stewart’s wife. This group subsequently included some of the local agents of the absentee landlords, as well as other members of the local elite unhappy on being left out by the resident landlords in the land grab. After Patterson was recalled to London in 1787, the Compact aligned with the new Lieutenant-Governor, Edmund Fanning, to force the sale of Patterson’s holdings for a pittance. For details of the extended influence of the Family Compact, see Francis W.P. Bolger, “Prince Edward Island Rejects Confederation, 1864-1867,” in *Canada’s Smallest Province*, 156–84; Bolger, “The Beginnings of Independence, 1767-1787”; Bumsted, *Land, Settlement, and Politics on Eighteenth-Century Prince Edward Island*; Sharpe, *A People’s History of Prince Edward Island*.

lieutenant governors, and they had to make embarrassing exits from their positions because of accusations of corruption and mismanagement.⁵⁷ Therefore, until the beginning of the 19th century, “the land question was not really a popular issue at all, but one created by contending factions of elites ... for their own political, economic and social advantage.” Since there were “more place seekers than places ... political conflict and factionalization [were] bound to be not only inevitable but fierce.”⁵⁸

The voice of the tenants on the PEI land question began to take shape at the beginning of the nineteenth century when the goal of the agitation for non-fulfillment of original conditions became the redistribution of the escheated land to the tenant cultivators, rather than the aggrandizement of the colony’s elite of the earlier years. This shift occurred because of the dissemination of fresh ideas on land tenure introduced by newcomers to the colony and their immersion in local politics.⁵⁹ The enfranchisement of Catholics (who constituted about a third of

⁵⁷ Bolger, “Prince Edward Island Rejects Confederation, 1864-1867”; Bumsted, *Land, Settlement, and Politics on Eighteenth-Century Prince Edward Island*.

⁵⁸ Bumsted, “The Origins of the Land Question on Prince Edward Island, 1767-1805,” 45–46.

⁵⁹ Some of the prominent people were Joseph Robinson, William Cooper and George Dalrymple. Robinson, a Loyalist who had settled in the Colony after the American Revolutionary war by leasing land from an absentee landlord, wrote a short manifesto titled ‘To the Farmers in the Island of St. John, in the Gulf of St. Lawrence’, that was widely circulated. It highlighted the difficulties of the tenant cultivators and recommended a court of escheat that will direct the land to small cultivators “in direct proportion to the strength and number of their families,” and these cultivators will pay quit rents directly to the Crown (Cited in Bolger, “Land and Politics, 1787-1824,” 69). William Cooper settled in PEI from England in 1818 as a resident farmer, and for a few years acted as a land agent to an absentee landlord. He took the cause of the tenants after being fired as the land agent, got elected to the Assembly in 1831, and led the escheat movement until the 1840s. Anchoring his ideas on the labour theory of value, he justified the expropriation of land from the landlords through escheat as a form of just allocation of property rights to those who add value (Bittermann and McCallum, “When Private Rights Become Public Wrongs”; Bolger, “The Demise of Quit Rents and Escheat, 1824-1842”). Dalrymple came to PEI in the early 1820s and became a businessman. He was a “strong proponent of the use of state resources to facilitate economic development” and saw the dismantling of the hold of the landlords and having broader land ownership as key to the colony’s development (Bittermann and McCallum, “When Private Rights Become Public Wrongs,” 149).

the population, and a large part of the tenantry)⁶⁰ in PEI in 1830 “induced a greater democratization of colonial politics” which provided weight behind reforming the land tenure system through legislation proposed by the elected Assembly.⁶¹ Proponents of land reform in PEI won sizeable majorities in the legislature in the 1830s and passed several acts prescribing escheat as well as to increase the local revenues through a land tax.⁶² Most of these initiatives were disallowed by the Imperial governments, including the one through a personal visit by William Cooper to England in 1839 to make the case for a Court of Escheat directly with the Secretary of the State for the Colonies.⁶³ As pointed out by Clark, “[n]early every year of the [eighteen] twenties and thirties brought some action by the current Governor or the Assembly; the ingenuity of various devices proposed was only matched by the unbroken record of failure to move either the proprietors or the home government.”⁶⁴

While land reform through escheat did not make any headway and the associated movement fizzled out by the early 1840s, its proponents got some support from unexpected quarters. The new Lieutenant Governor in 1837, Charles A. FitzRoy, initially seemed more

⁶⁰ This followed the Catholic emancipation in England in 1829.

⁶¹ Bittermann, *Rural Protest on Prince Edward Island*, 58.

⁶² The legislation around escheat in the Assembly was contested between supporters of Cooper, who saw the land question in terms of ‘justice’ for the cultivators and proposed a general escheat of all land that had not adhered to the original conditions, and those of Dalrymple who viewed the problem in terms of ‘development’ and proposed selective escheat of only those landlords that were unwilling to invest in development of roads, bridges, etc. Going into more details about the various versions of the acts related to escheat during the 1830s is beyond the scope of this chapter, since they all met the same fate from the Imperial Government. For an extended discussion on the differences between the two groups, and the success or failure of the escheat movement, see Bittermann, *Rural Protest on Prince Edward Island*; Bittermann and McCallum, “When Private Rights Become Public Wrongs”; Bolger, “The Demise of Quit Rents and Escheat, 1824-1842”; Hatvany, “Tenant, Landlord, and the New Middle Class.”

⁶³ The Secretary of the State for the Colonies refused to meet Cooper, and instead wrote directly to the then Lieutenant Governor of PEI categorically rejecting the Court of Escheat. See Bolger, “The Demise of Quit Rents and Escheat, 1824-1842,” 110–12.

⁶⁴ Clark, *Three Centuries and the Island*, 81.

sympathetic to the cultivators and wanted the proprietors to grant concessions to the tenants to wean them away from demands of escheat. In a letter to the Secretary of State for the Colonies, he pointed out that a tenant would be willing to pay a fair rent for occupied land as long as he can get a “tenure of sufficient endurance to ensure to his family the profits of his industry.” To improve the conditions of the tenants, he recommended long leases at fair rents, pathways for tenants to purchase the property, and compensation for their improvements at the end of their leases.⁶⁵ Furthermore, in his report of 1839 on Britain’s North American colonies, Lord Durham⁶⁶ was also critical of the way the land was allocated in PEI in the first place, as well as the inability of the Imperial Government to enforce the conditions of the grants. He noted that the “political history of Prince Edward’s Island is contained in the system pursued with regard to its settlement, and the appropriation of its lands...; and its past and present disorders are but the sad result of that fatal error which stifled its prosperity in the very cradle of its existence, by giving up the whole Island to a handful of distant proprietors.”⁶⁷ He further opined that the distant proprietors did not contribute to improving the land, and held the land “as sort of a reversionary interest, which requires no present attention, but may become valuable some day or other through the wants of the inhabitants.”⁶⁸ As an immediate remedy, Durham recommended approval of the

⁶⁵ Quoted and summarized in Bolger, “The Demise of Quit Rents and Escheat, 1824-1842,” 108–9.

⁶⁶ Considering the political unrest in the Empire’s North American colonies in the 1830s, Lord Durham was given the title of Governor-in-Chief in 1837 and entrusted to probe the sources of these difficulties and recommend possible solutions. Although much of the report deals with the problems related to Lower and Upper Canada, Durham also looked at the situation in other colonies, including Prince Edward Island. In particular, he commented on the land question of the colony. For details, see Sir Charles Lucas, ed., *Report on the Affairs of British North America from the Earl of Durham, February 11, 1839*, 3 vols. (New York: August M. Kelley, 1912); Ged Martin, “Lambton, John George [Nicknamed Radical Jack], First Earl of Durham (1792–1840), Politician,” *Oxford Dictionary of National Biography*.

⁶⁷ Lucas, *Report on the Affairs of British North America from the Earl of Durham, February 11, 1839*, Volume II, 198.

⁶⁸ Lucas, 242 Volume II.

Land Assessment Act that the PEI Assembly had passed. This Act had proposed a tax on the colony's land, which would be used to develop it and make it financially self-sufficient. These recommendations were accepted by the Imperial Government who assented to the Act, abolished the quit rents related to the initial land grant conditions and payable to the Crown, and instead instituted a local tax that the local legislature would control.⁶⁹

By the 1840s, the first phase of dealing with the land question in PEI came to an end. Much of the struggle of the preceding period was around quit rents and settlement conditions of the original grants, with escheat as the primary remedy. The disallowance of escheat by the Imperial Government as a solution to the land question required a search for alternative pathways. By the end of this period, there were beginnings amongst the various constituents of the colony to see the land question through more nuanced arguments around property rights and political economy,⁷⁰ with some of these ideas originating from similar debates about land tenure in other British colonies, including Ireland. These new ideas and the possibility of achieving responsible Government were the altered conditions under which the next phase of PEI's land question was contested after 1851. Before delving into analyzing the new contestations on the land question during the 1850s and 1860s, it is instructive to point out a couple of essential facts. First, as shown in Figures 5.1 and 5.2, there was a consistent increase in freehold tenure (both in terms of the number of people holding freehold tenure, and the area of land covered by

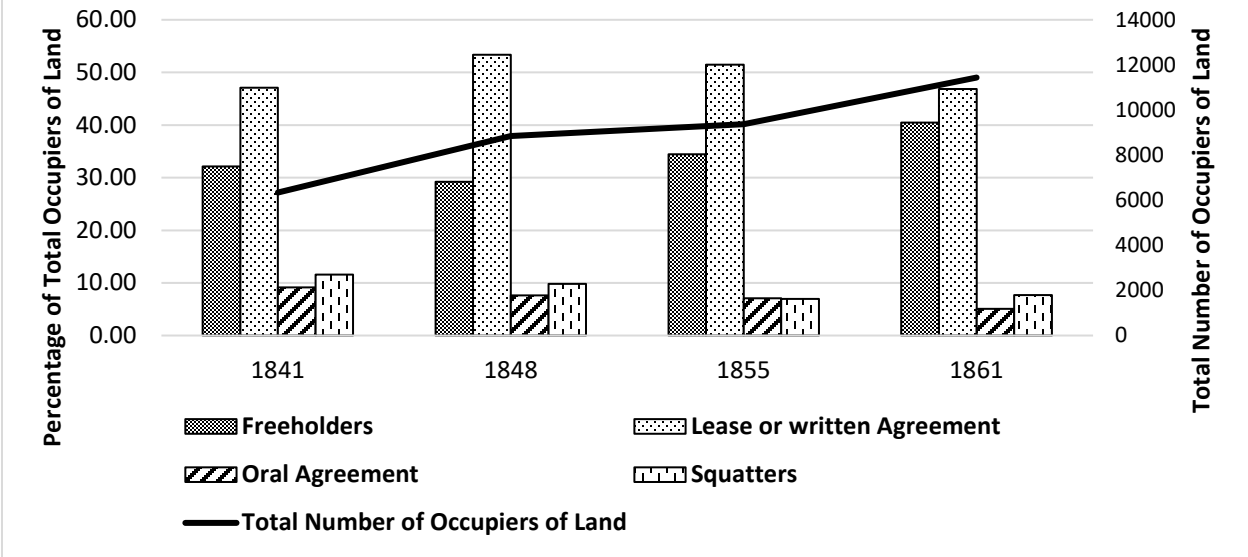
⁶⁹ Bolger, "The Demise of Quit Rents and Escheat, 1824-1842."

⁷⁰ In particular, the two groups amongst the reformers of the 1830s and 1840s (that is, the pro-development one led by Dalrymple, and the other led by Cooper promoting justice) evoked the ideas of *laissez faire*, distributive justice and improvement in their discussions about land tenure, which were quite similar to the ones shaping debate in Europe. For details see Bittermann and McCallum, "When Private Rights Become Public Wrongs."

such tenure) from the period after 1840, despite the lack of any legislation facilitating the land market. Second, as shown in Table 5.1, the efforts coming out of the PEI legislature after 1851 did not have escheat as the main objective. Instead, there were parallel efforts “to soften the workings of the leasehold systems through expansion of tenant rights, and to commence the gradual abolition of leasehold tenure through the purchase of proprietary estates by the local government and resale of the farms to actual occupiers.”⁷¹ As mentioned before, much of the literature has focused on the abolition of leasehold tenure rather than the other objective of expanding tenants' rights. In the following two sections, I evaluate the debates around both these objectives.

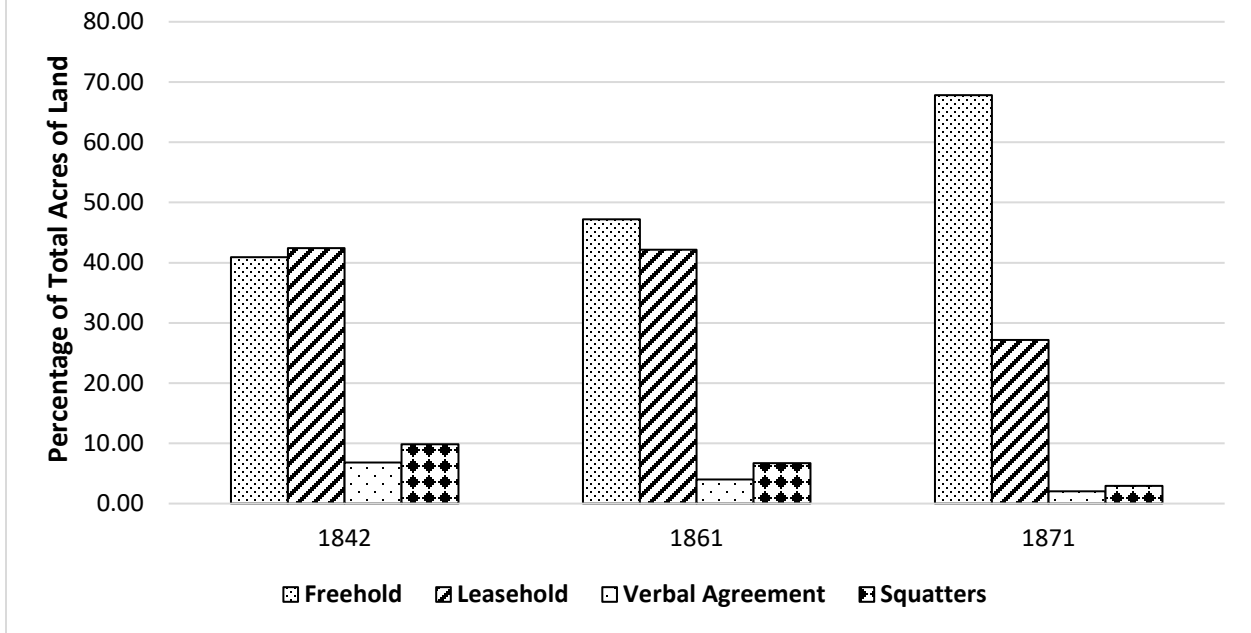
⁷¹ Robertson, “Introduction,” xvii. Although a number of studies have acknowledged that the land question in PEI after 1851 was debated around property rights rather than escheat, and have identified both tenant rights and tenant proprietorship as alternative paths pursued by the local legislature, most of the subsequent analysis of these studies ends up focusing on the latter aspect. Thus, the literature has delved into the various acts in the right-hand column of Table 5.1, while making just passing references to the acts in the left-hand column. For example, see Robertson, *The Tenant League of Prince Edward Island, 1864-1867*; Bittermann and McCallum, “Upholding the Land Legislation of a ‘Communitistic and Socialist Assembly’”; McCallum, “The Sacred Rights of Property.”

Figure 5.1
Land Tenure in Prince Edward Island:
Number of Occupiers



Sources: Clarke, 1859 (Table III, page 95). In addition, freeholders in 1841 were 32% of total holders of the land but held 41% of total land. In 1861, they were 40% and held 50% of the land.

Figure 5.2
Land Tenure in Prince Edward Island:
Acres of Land



Sources: Computed by the Author from Abstracts of the Census of the Population and other Statistical Returns of Prince Edward Island (1842, 1861, 1871)

Table 5.1
Prince Edward Island Legislation on the Land Question (1851-1875)

Tenant Right (Compensation for Improvements)	Peasant-Proprietorship/Land Purchase (Leasehold to Freehold Tenure)
<i>An Act to Secure Compensation to Tenants in Prince Edward Island, and Thereby to Promote the Improvement of the Soil</i> (1855) ⁷² Royal Assent Withheld	<i>An Act for the Purchase of Lands on Behalf of the Government of Prince Edward Island, and to regulate the sale and management thereof, and for other purposes therein mentioned</i> (1853) ⁷⁶ Royal Assent Granted
<i>The Tenants' Compensation Act, 1871</i> ⁷³ Royal Assent Withheld	<i>An Act to give effect to the Report of the Commissioners on the Land Question</i> (1862) ⁷⁷ Royal Assent Withheld
<i>The Tenants' Compensation Act, 1872</i> ⁷⁴ Royal Assent Withheld subject to an Amending Act	<i>An Act for settling differences between Landlord and Tenant, and to enable Tenants on certain Townships to purchase fee simple of their Farms</i> (1864) ⁷⁸ Royal Assent Granted
<i>An Act to Alter and Amend "The Tenants' Compensation Act, 1872"</i> (1873) ⁷⁵ Royal Assent Granted	<i>The Land Purchase Act, 1874</i> ⁷⁹ Royal Assent Withheld
	<i>The Land Purchase Act, 1875</i> ⁸⁰ Royal Assent Granted

⁷² "An Act to Secure Compensation to Tenants in Prince Edward Island, and Thereby to Promote the Improvement of the Soil," Pub. L. No. CAP. XI (1855).

⁷³ "The Tenants' Compensation Act, 1871," Pub. L. No. Cap. IX (1871).

⁷⁴ The Tenants' Compensation Act, 1872.

⁷⁵ "An Act to Alter and Amend 'The Tenants' Compensation Act, 1872,'" Pub. L. No. Cap. XXIV (1873).

⁷⁶ "An ACT for the Purchase of Lands on Behalf of the Government of Prince Edward Island, and to Regulate the Sale and Management Thereof, and for Other Purposes Therein Mentioned," Pub. L. No. CAP. XVIII (1853).

⁷⁷ "An Act to Give Effects to the Report of the Commissioners on the Land Question," Pub. L. No. CAP. IV (1862).

⁷⁸ "An Act for Settling Differences between Landlord and Tenant, and to Enable Tenants on Certain Townships to Purchase the Fee Simple of Their Farms," Pub. L. No. Cap. II (1864).

⁷⁹ "Land Purchase Act, 1874," Pub. L. No. Cap. III (1874).

⁸⁰ Land Purchase Act, 1875.

Responsible Government to Dominion (1851 – 1867)

One of the Durham Report recommendations of 1839 was to consider responsible Government in British North America,⁸¹ which was actualized in the following years with Nova Scotia getting it in 1848, New Brunswick and Upper and Lower Canada in 1849, and Prince Edward Island in 1851.⁸² The new political arrangement meant that the head of the government would be the locally elected leader, the Premier, of the majority party.⁸³ The two main limitations put by Imperial authorities were that “responsible government did not extend to political relations with foreign countries or to attempted settlement of the land question through infringing on property rights.”⁸⁴ The latter constraint meant that the ultimate authority on approving any legislation on the land question remained with the Imperial Government in London. Soon after, the elections led to the formation of the government under George Coles, head of the Liberal party that had been a significant supporter of the escheat movement.⁸⁵ In the following years, this party alternated in forming governments with the Conservative party that grew out of the Family Compact, which had been more sympathetic to the landlords. Over time, the two parties

⁸¹ Lucas, *Report on the Affairs of British North America from the Earl of Durham, February 11, 1839*, Volume 1, 137-152.

⁸² For details of the circumstances of PEI’s road to responsible government, see W.S. MacNUTT, “Political Advance and Social Reform, 1842-1861,” in *Canada’s Smallest Province*, 115–34; Sharpe, *A People’s History of Prince Edward Island*; MacKinnon, *The Government of Prince Edward Island*; Girard, Phillips, and Brown, *A History of Law in Canada*, chap. 27.

⁸³ The powers of the Lieutenant-Governor were drastically curtailed, and some of them appointed after 1851 were reluctant to accept the new political reality. See MacKinnon, *The Government of Prince Edward Island*.

⁸⁴ MacKinnon, 94.

⁸⁵ Ian Ross Robertson, “Coles, George,” *Dictionary of Canadian Biography*, Volume X (1871-1880) (University of Toronto/Université Laval, 2003).

also took a sectarian character, with the Liberal party supported by Catholic residents of PEI and the Conservative by Protestants.⁸⁶

Anticipating the re-emergence of the land question after attaining responsible Government in PEI, the Imperial Government made its position clear on the property rights of landowners in the colony. In a strongly worded letter to the new Lieutenant Governor of PEI, the Secretary of State for the Colonies wrote:

On your proceeding to assume the Government of Prince Edward Island, I am particularly anxious to direct your attention to a question ... of the Landed Tenures.... [R]epeated applications have been made ... to consent to measure to deprive Proprietors under the original grants of their Estates.... Her Majesty's Government feel themselves bound to adhere to the decisions so repeatedly adopted by my predecessors in this matter, and ... both on grounds of justice to the Landed Proprietors, and of the permanent interests of the community of Prince Edward Island, they regard such a measure as impractical.⁸⁷

Although a few proponents of the escheat movement (including its leader William Cooper) were elected to the legislative assembly and continued to promote it in debates around various land bills, successive governments after 1851 took the cue from the Imperial Government to search for alternative pathways that did not entail penalizing landholders for non-fulfillment of their

⁸⁶ Robertson, "Political Realignment in Pre-Confederation Prince Edward Island, 1863-1870." The Catholic residents included increasing number of immigrants from Ireland.

⁸⁷ Letter from Secretary of State for the Colonies, the 3rd Earl of Grey (Henry Grey) to the Lieutenant Governor of PEI, Sir Alexander Bannerman, dated February 12, 1851. Reproduced in "Appendix to the Journal of the House of Assembly," 1850 Appendix Y. The need to move beyond holding proprietors to the initial grant conditions of 1767 was further reiterated in 1855 by the next Secretary of State for The Colonies, who wrote that "whatever character may properly attach to the circumstances connected with the original grants, which have been often employed against the maintenance of the rights of the proprietors, they could not, with justice, be used to defeat the rights of the present owners who have acquired their property by inheritance, by family settlements, or for valuable consideration." Letter from Labouchere dated December 21, 1855, reproduced in "Journal of the House of Assembly of Prince Edward Island 1856" Appendix E.

original land grant conditions.⁸⁸ One such path was through the purchase of lands by the Government from willing landholders,⁸⁹ which was seen as more palatable to the Imperial Government because it overcame the two perceived flaws of the escheat doctrine, the compulsory nature of the appropriation and lack of compensation.⁹⁰ Accordingly, the first of the land purchase acts was passed in 1853 and received the Royal Assent.⁹¹

Intending to improve the prosperity of the tenants through the conversion of their “leasehold tenures into freehold estates, at an easy rate, and on fair terms,”⁹² the Act instituted the Commissioner of Public Lands who would invite public tenders from landowners for sale of their parcels of land (with a minimum of 1000 acres) to the Government, with the aggregate price of cultivated and un-cultivated land for sale not to exceed seven-shillings and six pence per acre. Purchased land would then be offered to the current tenants and occupiers of that land. They could get the fee simple by producing evidence of occupancy and paying twenty percent of the

⁸⁸ William Cooper was elected to the Assembly after 1851, and he continued to push for a Court of Escheat in the subsequent years. Although he was a member of the governing Liberal party, he opposed all other land legislation (including the land purchase and tenants’ compensation) arguing that this acknowledged the proprietorship of the landlords. He claimed that the landlords had forfeited their rights in not fulfilling their initial conditions, and thus escheat was the only way that the tenants could get justice. In the debates leading to the new land legislation, Cooper had to be reminded by the Premier multiple times that the Imperial Government had shut the pathway through escheat. For these debates, see “Debates and Proceedings of the House of Assembly of Prince Edward Island. First Session of the Twentieth General Assembly,” 1855, Public Archives and Record Office of Prince Edward Island. For an extended biography of Cooper, see Harry Baglole, “Cooper, William (d. 1867),” *Dictionary of Canadian Biography*, Volume IX (1861-1870) (University of Toronto/Université Laval, 2003).

⁸⁹ As discussed in the previous Chapters 2 and 4, the idea of peasant proprietorship through the allocation/sale of wastelands reclaimed by the State was taking shape in Britain, amongst its proponents being political economists such as William Thornton and J.S. Mill, as well as members of the government such as John Bright. Voluntary sale of their lands by landlord proprietors was not considered an encroachment on their property rights.

⁹⁰ Robertson, “Introduction.”

⁹¹ An ACT for the purchase of Lands on behalf of the Government of Prince Edward Island, and to regulate the sale and management thereof, and for other purposes therein mentioned.

⁹² Preamble, An ACT for the purchase of Lands on behalf of the Government of Prince Edward Island, and to regulate the sale and management thereof, and for other purposes therein mentioned.

purchase price within six months. The Act entrusted the PEI treasury to take a loan of up to thirty-thousand pounds from the market (“Bodies Corporate or Politic”) to facilitate the process. Three estates were purchased under the Act from 1854 to 1859 (81,303 acres of the Worrell Estate for 24,100 pounds sterling⁹³ and smaller portions of the Selkirk and Stansfield estates for about 8,500 pounds sterling).⁹⁴

While the 1853 Act did lead to the purchase of some land from landlords with significant holdings and their conversion to small freeholds, the future success of this approach was in question for several reasons. First, the financial constraints faced by the PEI government in facilitating further purchases. It had used up the 30,000 pounds allowed by the Act, and needed more money for future purchases. During the following years (to the end of the 1860s), it made numerous unsuccessful appeals for Imperial loan guarantees to implement land purchases. Second, the reluctance to provide loans to PEI was partially due to the perceived mismanagement of the land purchase, especially the Worrell Estate.⁹⁵ It is alleged that the local representatives were able to inflate the estate's price and skim 10,000 pounds for themselves, with the Worrell family receiving just over 14,000 pounds.⁹⁶ The exorbitant price for the land and the fraud associated with it undermined the credibility of the program. Third, Section XXVI of the 1853 Act deemed that where the tenants and occupiers of land purchased by the Commissioner of Public Lands did not come forward to buy that land, the Commissioner could sell that land “in parcels

⁹³ See Appendix H for the documents related to the sale of Worrell Estate in “Journal of the House of Assembly of Prince Edward Island 1855,” 1855.

⁹⁴ Clark, *Three Centuries and the Island*, 93.

⁹⁵ For details about the origin and eventual sales of this estate, see Bittermann and McCallum, “The Pursuit of Gentility in an Age of Revolution: The Family of Jonathan Worrell.”

⁹⁶ For details of this so called “Worrell Job” see Robertson, “Introduction”; Sharpe, *A People’s History of Prince Edward Island*.

not exceeding three hundred acres in any one Township to any one person.” In this situation, the existing tenants would continue their leaseholds but now pay rent to the new landlords (Section XXXVII). Based on these two sections, a person could purchase any amount of land in several Townships, and continue with the leasehold system with existing tenants. These two sections created a perception that the Act's objectives were more to get rid of the large landlords (especially the non-resident or absentees) rather than abolishing the leasehold system.⁹⁷ Furthermore, in subsequent attempts at further land legislation in PEI, the landlords often alluded to how the 1853 Act enabled the “authorities to sell and dispose of lands under the Land Purchase Bill to their numerous FRIENDS AND ADHERENTS.”⁹⁸

Thus, a combination of financial constraints and lack of credibility of the program led to a slowdown in further land purchases after the initial disposal of the three estates. While the PEI legislature continued its attempts to get the Imperial governments to underwrite future purchases, its other pressing concerns were to get more landlords to offer their lands for sale voluntarily. The subsequent land legislation dealt with the issue of tenant compensation and, as discussed below, its specific provisions attempted to address both these concerns.

The Government introduced a tenants’ compensation bill in the Assembly in 1855,⁹⁹ and after some discussion on its scope,¹⁰⁰ it was approved by large majorities in both houses of the

⁹⁷ This aspect has been alluded to in Hatvany, “The Proprietary Burden?”

⁹⁸ See various petitions of the landlords and minutes of the Executive Council of August 27, 1855 in Appendix (E) of “Journal of the House of Assembly of Prince Edward Island 1856.”

⁹⁹ “An Act to Secure Compensation to Tenants in Prince Edward Island, and Thereby to Promote the Improvement of the Soil,” Pub. L. No. CAP. XI (1855).

¹⁰⁰ Some members wanted that all tenants, irrespective of the length of their tenure, and circumstances of the end of their tenure, should be eligible for compensation for improvement. Although this was accommodated in the Preamble to the Act that was eventually passed, the specific provisions of compensation applied only to those tenants ejected because of non-payment of their rents. For details

legislature, although two members noted their dissent in the Legislative Council.¹⁰¹ The main provisions of the Act were: i) A tenant ejected from land (which was in wilderness state at the time of occupancy) by the landlord because of non-payment of rent shall be entitled to receive compensation for improvements made during his occupancy; ii) The amount of compensation will be determined by three arbitrators, all being residents of the Island (one each appointed by the tenant and landlord, and the third chosen by the appointed arbitrators), who would take into consideration the increase in the value of the land because of the improvements, the amount of rent, and length of lease, etc. The award amount could be challenged in Court by either party; and iii) The landlord could either pay the compensation or forego the rent.

As expected, the landlords were up in arms and sent numerous petitions to the Colonial Office requesting disallowance of the Act.¹⁰² Some of their objections were related to the specific circumstances of land tenure in PEI. In contrast, others pointed out the implications for broader questions about property rights, especially compared to the landlord-tenant relationships in England. Concerning conditions in the colony, the landlords pointed out that very low rents (about one shilling per acre) and long leases (usually 999 years) allowed the tenants to earn enough profits and recoup their investments in improving the land, thus making compensation for improvements unnecessary. The landlords had particular concerns about the fairness of three

on the debates, see “Debates and Proceedings of the House of Assembly of Prince Edward Island. First Session of the Twentieth General Assembly.”

¹⁰¹ These members questioned the need for such an act given the general cordial relationship between most landlords and tenants and warned that the proposed “class legislation” will “create hostility between them.” “Debates and Proceedings of the Legislative Council of Prince Edward Island for the Session of 1855” (Charlottetown: F.W. Hughes, 1855), 57–58.

¹⁰² These petitions are reproduced in Appendix (E) of the “Journal of the House of Assembly of Prince Edward Island 1856.”

arbitrators (who had to be PEI residents) in determining compensation “because in the Colony, ninety-nine persons out of every hundred have a direct fellow feeling and personal interest on behalf of the tenant, and quite the reverse towards a landlord.”¹⁰³ It was suggested that a more unbiased way to determine compensation “would be by setting up the tenant’s interest, subject ... to the conditions of his lease, and the arrears in rent due...; and then finding, by public sale, what such leasehold interest will bring...”¹⁰⁴ In their petitions, the proprietors also highlighted the political motivations behind the legislation. Citing a speech by the Premier in the Assembly on March 29, 1855, where he suggested that the purpose of the compensation act was to compel the proprietors “to come in and offer their lands to the Government under the land purchase Bill,” the proprietors questioned whether the bill was really intended to further the interests of the tenants.¹⁰⁵

Besides doubts about procedural fairness to the landlords under the prevailing conditions in PEI, the correspondence also pointed out the various implications of the Act for broader principles regarding property rights. The underlying principle motivating the compensation act in PEI was one pushed by William Cooper in the 1830s “that the labour invested by settlers in

¹⁰³ Letter from R.F. Stewart to John Russell, May 19, 1855. Reproduced in “Journal of the House of Assembly of Prince Edward Island 1856” Appendix E.

¹⁰⁴ Letter from proprietors to the Colonial Office, June 4, 1855. Reproduced in Appendix (E) of “Journal of the House of Assembly of Prince Edward Island 1856” It should be noted that the proposed process of determining compensation was like the one practiced in Ireland where the incoming willingness of the amount of rent paid by the incoming tenant (and comparison with existing rent) was an indicator of the value of the outgoing tenant’s improvements. One major difference, however, was that in Ireland there was competition for limited land amongst large number of tenants, while in PEI there was competition for tenants to improve large tracts of wilderness land. This difference was one of the reasons for low rents and long leases in PEI.

¹⁰⁵ See letter signed by over 30 proprietors addressed to the Queen, June 19, 1855. Reproduced in Appendix (E) of “Journal of the House of Assembly of Prince Edward Island 1856”; For full text of the referenced speech, see pages 50-57 of “Debates and Proceedings of the House of Assembly of Prince Edward Island. First Session of the Twentieth General Assembly.”

clearing their land gave them titles naturally superior to the allegedly forfeited claims of absentee proprietors.”¹⁰⁶ However, while the escheators saw the need to transfer full property rights from landlords to the actual cultivators of land, compensation for tenants’ improvement could be seen as an acknowledgment of co-proprietorship in the sense that both landlords and tenants shared the fruits of the increased value of the land.¹⁰⁷ The landlords’ petitions did not question the value of the improvements made by the tenants, and they believed that the low rents and long leases allowed for recouping the investments. Instead, they saw the rewarding of the tenant for non-payment of rent as subverting the long-established legal norms governing contractual relationships between landlords and tenants by which “payments of the rent reserved in such contracts have ever, by the law of England, been compelled to be made with rigour and strictness.” One of the petitions further pointed out that in the case that “the extraordinary power vested in the landlord [is] ... abused, ... the tenant of Prince Edward Island ... has the same advantage given by the law of replevin, and may avail himself of any plea in bar ... as fully as the tenant in England can.”¹⁰⁸ Most of the objections to the compensation act by landlords were based on comparing its principles and procedures with those practiced in England, and saw the proposed legislations as “a monstrous innovation upon all those principles which ... had been ... consider[ed] fixed and established by justice and usage, in regard to such property.”¹⁰⁹

¹⁰⁶ For a detailed discussion on the arguments made regarding the labour theory during various stages of the PEI land question, see McCallum, “The Sacred Rights of Property: Title, Entitlement, and the Land Question in Nineteenth-Century Prince Edward Island.”

¹⁰⁷ This was one of the rationales for compensation rights of tenants taking shape in the context of Ireland by the mid-1850s (see Chapter 4).

¹⁰⁸ Letter from numerous proprietors to the Queen regarding the Tenant Compensation Act, June 29, 1855. Reproduced in “Journal of the House of Assembly of Prince Edward Island 1856” Appendix E.

¹⁰⁹ Letter from R.F. Stewart to John Russell, May 19, 1855. Reproduced in “Journal of the House of Assembly of Prince Edward Island 1856” Appendix E.

The Lieutenant Governor of PEI, Dominick Daly, supported the Act on grounds that the “tenantry have long been anxious for this measure ... and... it was desirable ... that their reasonable expectations should not be disappointed” especially at a time when the PEI government was trying to resist the resurrection of escheat as a remedy for the land question by certain elected members of the assembly.¹¹⁰ He further reiterated that in Great Britain, where real property is generally let in an improved state, “public policy has pointed out that improving tenants should be sustained from loss,” which makes it even more urgent to approve similar legislation in PEI “to protect those whose lives must be spent in arduous task of reclaiming [land] from ... state of primitive nature.”

The Imperial Government, convinced by arguments made by the proprietors and/or their “proprietary influence,”¹¹¹ refused consent to the compensation act. Before stating the reasons behind the decision, a letter from the Secretary of the State for the Colonies to the Lieutenant Governor of PEI reiterated that every responsible Government has certain obligations, and thus cannot expect the Imperial Government to recommend the Crown’s assent to “Colonial Acts which are variance with the principles of justice, and invade those rights of property which are the foundation of social organization....”¹¹² He then provided the rationale:

This Bill provides that where a tenant is unable or unwilling to fulfill the contract between him and the landowner by which the tenant has agreed to pay to the landowner a fixed annual rent, ... the landlord must either forego the rent, and thus let the land pass practically to the tenant, or he must pay to the tenant a sum equal to 20 years’ purchase

¹¹⁰ Letter from D. Daly to the Secretary of State for the Colonies, June 28, 1855. Reproduced in “Papers on the Subject of Affording the IMPERIAL GUARANTEE to a LOAN for the Service of PRINCE EDWARD ISLAND” (House of Commons, April 16, 1858), 5–6.

¹¹¹ Robertson, “Introduction,” xvi.

¹¹² Letter from G. Grey, Colonial Office, to Lieutenant Governor Daly regarding Bill Numbers 913 and 915 sent for Royal Assent in 1855. Reproduced in “Colonial Bills: North America” (The House of Commons, July 26, 1864), 41–43, House of Commons Parliamentary Papers Online.

of what is termed the “annual profit to the landlord created by the tenant’s or lessee’s improvements on the soil.” ... In the one case he would make over to the tenant the land itself: in the other case he would make over to the tenant sum which might even go beyond the value of the land. Such a measure of undisguised spoliation cannot be sanctioned by Her Majesty.¹¹³

The overall imperial reluctance in legalizing tenants' rights, including through compensation, in the mid-1850s was due to similar concerns in PEI and Ireland, that is, the impact it would have on the landowners in England. The British Prime Minister, Palmerston,¹¹⁴ who had intervened in similar legislation in Ireland as discussed in the previous chapter, also weighed in on the proposed tenant-right legislation in PEI, writing to his Secretary of State for the Colonies on December 19, 1855, that we must not “establish a principle of authorized spoliation even in a remote corner of the Queen’s Dominions.... [T]he owners have as good a right to their Property as you or I... have to our Estates; and it would be as unjust and of as bad example to *extinguish* the Rights of these owners, as it would be to *extinguish* our Rights and to fix the conditions on which we should be

¹¹³ Letter from Colonial Office to Lieutenant Governor of Prince Edward Island, November 17, 1855, regarding “An Act to Secure Compensation to Tenants in Prince Edward Island, and thereby to promote improvement if the soil.” Letter reproduced in “Colonial Bills: North America,” 42. In addition to this act, the letter also stated the refusal of Royal Assent to another land law, “An Act to impose a Rate or Duty on the Rent rolls of the Proprietors of Certain Township Lands in Prince Edward Island, in order to defray the Expenses of any Armed Force which may be required for the withdrawal of the Troops and for further Encouragement of Education.” The latter was disallowed because, according to the Colonial Office letter, it amounted to “oppressive class legislation.”

¹¹⁴ The Third Viscount Palmerston (British Prime Minister 1851-1858, 1859-1865) was himself a landlord having holdings in England and Ireland (David Steele, “Temple, Henry John, Third Viscount Palmerston (1784–1865), Prime Minister” *Oxford Dictionary of National Biography* (Oxford University Press, May 2009). His sister Elizabeth was married to Laurence Sullivan, one of the large proprietors of Prince Edward Island. Their daughter, Charlotte was one of the last holdouts to the PEI Land Purchase Act of 1875 (discussed later in the chapter), see Kenneth Bourne, ed., *The Letters of the Third Viscount Palmerston to Laurence and Elizabeth Sullivan, 1804-1863* (London: Offices of the Royal Historical Society, University College London, 1979); Bittermann and McCallum, *Lady Landlords of Prince Edward Island*. According to the historian E.D. Steele, for Palmerston, the “sanctity of property was the bedrock of civilization. While he lived, neither the Prince Edward Islanders nor the Irish tenants could obtain concessions of principle at the landlords’ expense from the British government” E. D. Steele, “Ireland and the Empire in the 1860s. Imperial Precedents for Gladstone’s First Irish Land Act.,” *The Historical Journal* 11, no. 1 (March 1968): 64.

compelled to make over our Farms to the Tenants.”¹¹⁵ This ended the aspirations embodied in the proposed Act to secure some rights for tenants related to their improvements. The sense of dejection in the colony soon after it had been granted responsible Government was aptly captured by an editorial in the *Examiner*, a local paper with leanings towards land reforms:

Our reader will learn with some surprise and much regret, that the royal allowance has been withheld from two Acts passed during the last session.... It is mortifying and humiliating to think that a Colony..., with all the machinery of self-government, cannot be allowed to make such laws as are necessary to promote their own interests, without an irresponsible faction of land-owners --- most of them out of the country --- being allowed to interfere between the Crown and the colony, and to dictate to the former what measures the latter should be allowed to adapt.¹¹⁶

Similar to the situation in Ireland in the 1850s, there was not much headway in terms of rights of tenants within the existing land tenure system in Prince Edward Island, and soon after the disappointment regarding the 1855 compensation Act, the focus of the legislature shifted again to the conversion of leasehold to freehold tenures. In this regard, encouragement was given by the new Secretary of State for the Colonies, H. Labouchere. In his first correspondence with the Lieutenant Governor of PEI in December 1855, he agreed with his predecessor's decision in declining assent to the compensation act. He reiterated that the Imperial Government would not entertain any legislation related to escheat. However, he was willing to consider means through which tenants could become proprietors provided that “it be effected without injustice

¹¹⁵ Cited in E. D. Steele, *Irish Land and British Politics: Tenant-Right and Nationality 1865-1870* (Cambridge, England: Cambridge University Press, 1974), 44–45.

¹¹⁶ “Rent Roll and Tenant Compensation Bills,” *The Examiner*, December 10, 1855, sec. Editorial, 87; There were passionate debates in both houses of parliament lamenting the disallowance of the act, as well as on the petitions of the various proprietors that may have led to the decision. See “The Parliamentary Reporter: Debates and Proceedings of the Legislative Council and House of Assembly of Prince Edward Island for the Session Ending 14 April 1856” (Charlottetown: Examiner Office, 1856).

to the proprietors.”¹¹⁷ He saw the voluntary sale of land by proprietors either directly to the tenants or to the state as a possibility but suggested that the cost of this would have to be borne by the Colonial government. This encouragement led to the legislature’s next phase to find ways to convince landowners to sell their holdings voluntarily.

In the decade following the disappointment from the disallowance of the compensation act, most of the efforts at legislative and political levels in PEI were directed to expand the land purchase program. The specific initiatives/activities included the establishment of a land commission, passing a few land acts (not all of which got the Royal Assent), and agitation of the Tenant League. Several studies have extensively documented attempts at land tenure reforms during this period,¹¹⁸ so my purpose is to provide a brief outline of how things unfolded after 1855 and to foreground the evolution of various rationale used by different stakeholders to either promote or resist these reforms.

The inability of the PEI legislature to achieve its objective of either directly improving tenants' rights in existing leasehold tenures or forcing landlords to part with their land through the onerous demands of compensation in the disallowed Act led it to go back to the option of purchasing land from willing landlords. From 1856 to 1859, the legislature attempted to resurrect the previous land purchase act by requesting a loan of 100,000 pounds to be guaranteed by the

¹¹⁷ Letter from Labourchere dated December 21, 1855, reproduced in “Journal of the House of Assembly of Prince Edward Island 1856” Appendix E.

¹¹⁸ Ian Ross Robertson, ed., “Report of the Commissioners Appointed by the Queen to Inquire into the Differences Prevailing in Prince Edward Island to the Rights of Landowners and Tenants with a View to a Settlement of the Same on Fair and Equitable Principles, July 18, 1861,” in *The Prince Edward Land Commission of 1860* (Fredericton, NB: Acadiensis Press, 1988), 183–208; Robertson, “Political Realignment in Pre-Confederation Prince Edward Island, 1863-1870”; Robertson, *The Tenant League of Prince Edward Island, 1864-1867*; MacDonald, “Who’s Afraid of the Fenians?”; Bittermann and McCallum, “Upholding the Land Legislation of a ‘Communitic and Socialist Assembly.’”

Imperial Government.¹¹⁹ Despite multiple pleas, the loan was not approved, and except for the purchase of a part of one estate in 1859, there was no more land offered for sale from the proprietors. To get land tenure reforms moving again, PEI requested the Imperial Government to appoint a “Commission ... to inquire into the existing relations between landlord and tenant, and to negotiate with the proprietors for such abatement of present liabilities, and for such terms for enabling the tenantry to convert their leaseholds into freeholds.”¹²⁰ After consulting with some large landowners, including Sir S. Cunard,¹²¹ who was one of the largest proprietor in PEI owning almost 212,000 acres, the Secretary of State for the Colonies gave the go-ahead for establishing a Commission, consisting of three members, one each being appointed by the Imperial Government, the PEI Assembly, and the landlords. The Commission was to have wide latitude in looking at the land tenure issues in totality, and it was expected that all parties would accept its decisions.¹²²

¹¹⁹ See extensive correspondence between the Lieutenant Governor and the Colonial Office, as well as the joint addresses of the PEI legislature to the Crown in “Papers on the Subject of Affording the IMPERIAL GUARANTEE to a LOAN for the Service of PRINCE EDWARD ISLAND.”

¹²⁰ “COPY of the ADDRESS to Her Majesty, Adopted by the House of Assembly of Prince Edward Island on the 9th Day of May 1859, Praying for the Appointment of A COMMISSION to Inquire into the Existing Relations of LANDLORD and TENANT in That Colony: And, COPY or EXTRACTS of the Subsequent CORRESPONDENCE of the Secretary of State for the Colonies with the Governor of Prince Edward Island and Landowners and Others of That Colony, Relating to the Same Subject” (House of Commons Parliamentary Papers, 1864).

¹²¹ For details about Cunard, including his extensive role in discussions on land tenure and his influence with the Colonial Office, see Phyllis R. Blakely, “Cunard, Sir Samuel,” *Dictionary of Canadian Biography*, Volume IX (1861-1870) (University of Toronto/Université Laval, 2003).

¹²² See letter from Secretary of State for the Colonies to the Lieutenant Governor, March 21, 1860 in “COPY of the ADDRESS to Her Majesty, Adopted by the House of Assembly of Prince Edward Island on the 9th Day of May 1859, Praying for the Appointment of A COMMISSION to Inquire into the Existing Relations of LANDLORD and TENANT in That Colony: And, COPY or EXTRACTS of the Subsequent CORRESPONDENCE of the Secretary of State for the Colonies with the Governor of Prince Edward Island and Landowners and Others of That Colony, Relating to the Same Subject.”

The Commission submitted its report in July 1861. Its main recommendations were for the Imperial Government to guarantee 100,000 pounds to continue the program of voluntary sales under the Land Purchase Act of 1853, arguing that this amount should be able to buy 800,000 acres of land currently under leasehold tenures.¹²³ It further recommended that given the wide variation in the existing tenures and the quality of land, the purchase price should be negotiated between individual landlords and tenants, and arbitration used in case they could not come to an agreement. The report further suggested that if the new initiative did not facilitate voluntary sales, a compulsory compromise would be needed that would give most tenants the right to purchase the land currently occupied at a fair valuation. It then provided a detailed formula of how fair valuation could be determined.¹²⁴

While the report was accepted by the PEI government and soon after it passed legislation in 1862 that would give effect to the recommendations of the three commissioners,¹²⁵ the landlords did not find the report favourable for two reasons:¹²⁶ i) the underlying principle whereby the “award was giving the tenant’s *claim* to freehold priority over proprietor’s *legal*

¹²³ For the full report of the commissioners, see Robertson, “Report of the Commissioners Appointed by the Queen to Inquire into the Differences Prevailing in Prince Edward Island to the Rights of Landowners and Tenants with a View to a Settlement of the Same on Fair and Equitable Principles, July 18, 1861,” 183–203.

¹²⁴ Besides the landlord-tenant relationships, the report also made comments and recommendations on other aspects related to quit rents, escheat, fishery reserves and Indian claims. A detailed discussion of these is beyond the scope of this chapter. For a summary of the report, see Sharpe, *A People’s History of Prince Edward Island*, 106.

¹²⁵ An Act to give effects to the Report of the Commissioners on the Land Question.

¹²⁶ For numerous letters written by proprietors, see section “Correspondence with Landowners and Others” in “COPY of the ADDRESS to Her Majesty, Adopted by the House of Assembly of Prince Edward Island on the 9th Day of May 1859, Praying for the Appointment of A COMMISSION to Inquire into the Existing Relations of LANDLORD and TENANT in That Colony: And, COPY or EXTRACTS of the Subsequent CORRESPONDENCE of the Secretary of State for the Colonies with the Governor of Prince Edward Island and Landowners and Others of That Colony, Relating to the Same Subject.”

right to his property,” and ii) the practicality of selling their estates in small chunks to individual tenants, which would keep the administrative costs of estates constant while reducing the revenues.¹²⁷ The Imperial Government sided with the proprietors and declined assent to the Act on procedural grounds that the Commissioners were “authorized by the proprietors to make an award themselves, but they were not authorized to transfer the duty of making that award to others.”¹²⁸ By recommending the use of arbitrators to determine the awards, the Commissioners had exceeded their authority, and thus any legislation coming from their recommendations could not be approved.

With a comprehensive solution to the land question in PEI expected from the Commission again proving elusive, the legislature passed a more limited act in 1864, popularly known as the ‘Fifteen-Year Purchase Bill’. It gave tenants with “an unexpired term of not less than forty years ... a right or option to purchase the fee simple of the lands ... at fifteen years’ purchase, of the yearly rent reserved....”¹²⁹ The Act was supported by some proprietors and received the Royal Assent, although it led to the purchase of a mere 2,911 acres of land by 45 tenants during the 1864-1868 period.¹³⁰ This period corresponded with the short-lived Tenant League activities, which used the strategy of resisting the collection of rents from the tenants to force a change in

¹²⁷ Robertson, “Introduction,” xxii.

¹²⁸ Copy of Despatch from His Grace the Duke of Newcastle to Lieutenant Governor, August 9, 1862. Reproduced in “COPY of the ADDRESS to Her Majesty, Adopted by the House of Assembly of Prince Edward Island on the 9th Day of May 1859, Praying for the Appointment of A COMMISSION to Inquire into the Existing Relations of LANDLORD and TENANT in That Colony: And, COPY or EXTRACTS of the Subsequent CORRESPONDENCE of the Secretary of State for the Colonies with the Governor of Prince Edward Island and Landowners and Others of That Colony, Relating to the Same Subject.”

¹²⁹ An Act for settling differences between Landlord and Tenant, and to enable Tenants on certain Townships to purchase the fee simple of their Farms.

¹³⁰ Robertson, “Introduction,” xxiv.

the leasehold land tenure system.¹³¹ However, the Colonial government finalized the purchase of the sizeable Cunard estate in 1866 by taking a loan from the market and a few additional acquisitions of smaller estates in the following years. By the end of 1871, the PEI government had purchased more than 450,000 acres of land owned by the big landholders. However, there were still more than 380,000 acres owned by proprietors.¹³² The next phase of contestation involved the conversion of these remaining acres from leasehold to freehold.

Before discussing the various pieces of legislation that were subsequently enacted to fully resolve the land question, it is useful to briefly discuss some of the underlying ideas around property rights that were foregrounded during the 1860s and the shifting political contexts under which the land tenure reforms were contested. Both aspects played an important role during the final phase discussed in the following section. Along with arguments that proprietors had foregone their rights to their land because of the non-fulfillment of the original grant conditions and the cultivators/tenants had earned some co-proprietorship because of their efforts in clearing the land and increasing its value, two additional rationales were inserted into the discussions. The first was a resurfacing of the idea of balancing private rights and public goods.¹³³

¹³¹ For details about the origins and activities of the Tenant League including its shared ideology and tactics with a similar movement in Ireland, as well its contributions to the settling of the PEI land question, see Robertson, *The Tenant League of Prince Edward Island, 1864-1867*; For details about the concerns about the Fenian movement spilling over in the colony, see MacDonald, "Who's Afraid of the Fenians?" According to MacDonald, the Fenian issue in Prince Edward Island had implications for "two enduring, treacherous, and divisive issues: the century-old Land Question and the genie of sectarian discord. These helped define how the [movement]... was perceived and then dealt with in the little island colony" 35. For detailed official correspondence related to the civil disturbances related to the League's activities, see Appendix (G) of "Journal of the House of Assembly of Prince Edward Island, 1866" (Charlottetown: Frederick W. Hughes, 1866).

¹³² Bittermann and McCallum, "Upholding the Land Legislation of a 'Communitic and Socialist Assembly.'"

¹³³ This had been one of the arguments used by both factions within the escheat movement of the 1830 discussed earlier. See Bittermann and McCallum, "When Private Rights Become Public Wrongs."

The Land Commission Report countered the sanctity of private property arguments of the landlords by emphasizing that “though the law has sacredly guarded the rights of property, whenever the possession or abuse of property becomes prejudicial to the public interests, the rights and prejudices of individuals can be constitutionally controlled for the public good.”¹³⁴ Similarly, in a legal opinion sought in England by the Secretary of State for the Colonies on the PEI Act on the Commission’s recommendations, two legal experts (who were also members of the British Parliament) opined that the “Act ... must be founded and justified ... solely for reasons of public advantage, ... and for ... the general good.”¹³⁵ In both these communications, examples of precedents cited from across the Empire around public good and private rights included the rights of copyholds in England, seigneurial tenures in Lower Canada,¹³⁶ slave-holders in the West Indies, and encumbered estates in Ireland, among others.

Second, discussions about land reforms in Prince Edward Island increasingly reiterated the reason behind the persistent demands for freehold tenures because of its geographical location. The Commissioner’s report noted that it was “difficult for any European to understand why almost every man in America considers it a personal degradation to pay rent. In the British

¹³⁴ Robertson, “Report of the Commissioners Appointed by the Queen to Inquire into the Differences Prevailing in Prince Edward Island to the Rights of Landowners and Tenants with a View to a Settlement of the Same on Fair and Equitable Principles, July 18, 1861,” 191.

¹³⁵ Letter from W. Atherton and Roundell Palmer dated June 9, 1863. Reproduced in “COPY of the ADDRESS to Her Majesty, Adopted by the House of Assembly of Prince Edward Island on the 9th Day of May 1859, Praying for the Appointment of A COMMISSION to Inquire into the Existing Relations of LANDLORD and TENANT in That Colony: And, COPY or EXTRACTS of the Subsequent CORRESPONDENCE of the Secretary of State for the Colonies with the Governor of Prince Edward Island and Landowners and Others of That Colony, Relating to the Same Subject.”

¹³⁶ Given the geographical and temporal proximity of the abolition of seigneurial tenures in Lower Canada and leasehold tenures, parallels are drawn between the two. For an understanding of the difference in the two types of tenure, as well the reasons for the abolition of the former in 1854, see Michael B Percy and Rick Szostak, “The Political Economy of the Abolition of Seigneurial Tenure in Canada East,” *Explorations in Economic History* 29, no. 1 (January 1, 1992): 51–68.

Islands leasehold tenure is the general rule, and freehold the exception. A wealthy man pays rent with no more sense of inferiority than he feels when he pays taxes. On this side of the Atlantic a very different sentiment grew ... where every industrious man may own a freehold.... The tenantry of Prince Edward Island share the common sentiment of the continent which surrounds them.”¹³⁷ The land question in the colony was emphasized to be a mixture of “Old World issues and New World environment and expectations.”¹³⁸ It thus required approaches different from those adopted in other parts of the Empire.¹³⁹

In dealing with continuing requests from the PEI legislature to find ways to resolve the land question in the second half of the 1860s, the Imperial Government also had to be cognizant of the changing political situation in North America, especially concerning the impending dominion status for Canada under a Confederation of its colonies as well as the British Empire’s economic and political relationship with America.¹⁴⁰ The political and economic fallout from the British role during the American Civil War led to a serious consideration of a federation in the 1860s.¹⁴¹ Although Prince Edward Island hosted the conference in 1864 to discuss the union, there was not

¹³⁷ Robertson, “Report of the Commissioners Appointed by the Queen to Inquire into the Differences Prevailing in Prince Edward Island to the Rights of Landowners and Tenants with a View to a Settlement of the Same on Fair and Equitable Principles, July 18, 1861,” 195.

¹³⁸ Robertson, *The Tenant League of Prince Edward Island, 1864-1867*, 7.

¹³⁹ This aspect was repeatedly emphasized in both legislative and public domains. See debates in the House of Assembly and Legislative Council after 1865 as well as editorials in the local newspapers such as the *Examiner* and *The Herald*.

¹⁴⁰ For some representative contemporaneous and historical accounts of the events leading to the Confederation in general, as well the specific considerations for Prince Edward Island, see Phillip A. Buckner, *Canada and the British Empire* (Oxford: Oxford University Press, 2010); Joseph Howe, *Confederation Considered in Relation to the Interests of the Empire* (London: Edward Stanford, 1866); Bolger, *Prince Edward Island and Confederation, 1863-1873*.

¹⁴¹ This included the British support for the South in the war, the ending of the reciprocal trade agreements with the British colonies by America, and a general perception that America may have political designs over these colonies. Buckner, *Canada and the British Empire*.

much local public support for joining the Confederation.¹⁴² In the period leading to the eventual Confederation in 1867, both the Imperial Government and the other North American colonies provided various sticks and carrots to coax Prince Edward to join it, but the PEI legislature rebuffed these.¹⁴³ The Island government continued to flirt with the Dominion of Canada after 1867 to get better terms for joining the Confederation and with America for possible deals related to stronger political and economic ties.¹⁴⁴

When Prince Edward Island broached the land question again in 1868, the Imperial Government had to find ways to accommodate pressures from multiple directions. As suggested by Robertson, on one side, the PEI landlords had the support of the British governing class because of the “inescapable mental linkage between land issues in Prince Edward Island and the United Kingdom.... In a political system based on custom, precedent, and convention, only the foolhardy would overlook the danger of creating precedents which could be turned against them.”¹⁴⁵ On the other side was the convergence towards the common goal of getting rid of the leasehold system across the spectrum of political and religious factions in Prince Edward Island.¹⁴⁶ These oppositional demands had to be considered in the context of the uncertainty about Prince

¹⁴² Some of the reasons behind the opposition were insularity of the population because of the colony’s location, and loss of political and economic independence. For details, see Francis W. P. Bolger, “Nation Building at Charlottetown, 1864,” in *Canada’s Smallest Province*, 135–55.

¹⁴³ The sticks included the threat by the Imperial Government to pass the costs of the Lieutenant Governor’s salary as well as the costs of maintaining law and order by getting troops from Nova Scotia during the Tenant League agitation to the local government. The carrots included the promise of a \$800,000 loan from the impending Dominion of Canada to PEI in order to buyout the large landlords. For details, see Bolger, “Prince Edward Island Rejects Confederation, 1864-1867”; Bolger, *Prince Edward Island and Confederation, 1863-1873*.

¹⁴⁴ Given PEI’s close economic ties with America, the end of the reciprocity treaty hurt it economically, with exports to America as a percentage of total exports declining from 42% to 9%. See Sharpe, *A People’s History of Prince Edward Island*, 114.

¹⁴⁵ Robertson, *The Tenant League of Prince Edward Island, 1864-1867*, 27.

¹⁴⁶ Robertson, “Political Realignment in Pre-Confederation Prince Edward Island, 1863-1870.”

Edward Island's decision to either become part of the Dominion of Canada or continue as a separate colony of the British Empire. The Imperial Government followed a two-track approach to resolve the land question. Each strategy was predicated on the particular choice PEI would make about its political future.

Irish Precedent, Shadow of the Dominion and the PEI Land Question (1868-1875)

Encouraged by the purchase of the large Cunard Estate in 1866, the PEI government sent feelers to many proprietors in 1867 to assess a willingness to sell their land holdings under the provisions of the Land Purchase Act of 1853. Most of the proprietors were either unwilling to sell or wanted a purchase price well beyond that allowed by the Act.¹⁴⁷ Accordingly, in early 1868, the Executive Council requested the Lieutenant Governor to forward its Minute to the Colonial Office, which pointed out that every effort had been expended to get the landlords to sell their estates voluntarily. Since the leasehold system no longer existed “across the narrow strait which separates this Island from the Dominion of Canada,” the Minute requested support for compulsory settlement to “obliterate the last traces of the leasehold tenure in British North America.”¹⁴⁸ The plea was denied by the Secretary of State for the Colonies, Richard Temple-Grenville, who saw no “special reason in the minute of Council, which ... would justify, on the ground of public policy, the proposed direct appropriation of private property.”¹⁴⁹

¹⁴⁷ See Letter from the Lieutenant Governor to the Secretary of State for the Colonies, 11 January 1868. Reproduced in Appendix (CC) of “Journal of the House of Assembly of Prince Edward Island 1868” (Charlottetown: Frederick W. Hughes, 1868).

¹⁴⁸ Minute of the Executive Council, containing its views on Land Tenures, and submitting considerations on which it seeks sanctions of the Imperial Government to the introduction in the Local Legislature of a measure compelling Proprietors to sell their interests in their Estates. Reproduced in “Journal of the House of Assembly of Prince Edward Island 1868” Appendix CC.

¹⁴⁹ Letter from Secretary of State for the Colonies to the Lieutenant Governor of Prince Edward Island, March 2, 1868. Reproduced in “Journal of the House of Assembly of Prince Edward Island 1868” Appendix CC.

The following year, with the formation of the Liberal Government in England under William Gladstone, the PEI Executive Council tried again with the new Secretary of State for the Colonies, the Earl of Granville. In its address, the Council argued that “numerous precedents may be quoted, in which private property has been dealt with by law when its possession by individuals proved inimical to the public interests.... If...the commutation of their leasehold tenures was conceded to the people of Lower Canada ..., as a matter of justice or policy, can a like privilege be refused to the loyal people of Prince Edward Island?”¹⁵⁰ In addition, the Council requested that the Imperial Government guarantee a loan of 100,000 to 150,000 pounds for the purchase of wilderness lands on the Island. While conveying to the Colonial Government the low possibility of a loan guarantee, the thrust of Granville’s response was meant to put subtle pressure on PEI to join the Confederation:¹⁵¹

Having regard to the evident uncertainty whether the Colony of Prince Edward Island will or will not soon unite itself to the Dominion of Canada, I am not prepared to enter on the consideration of a question with which, if such union were to ensue, the Imperial Government would probably cease to concern itself, the Land Question, therefore, should, in my opinion, be left as far as possible for the decision of those who, under the altered circumstances of the colony, would have to carry out the execution any measures connected with it.¹⁵²

While the PEI government was pondering in early 1870 the course it would take on joining the Confederation in light of its negotiations with the Dominion and the local public opinion on the

¹⁵⁰ Minute or Address of the Executive Council of Prince Edward Island to the Secretary of State for the Colonies about Land Tenures, February 6, 1869. Reproduced in “Journal of the House of Assembly of Prince Edward Island, 1866” Appendix S.

¹⁵¹ This letter in which the Imperial Government stated its position that the land question in Prince Edward Island will not be under its purview if the colony joined the Dominion of Canada was cited by the PEI legislature on numerous occasions to push the compulsory land purchase legislation after 1873. This is discussed below.

¹⁵² Letter from Secretary of State for the Colonies to the Lieutenant Governor of Prince Edward Island, March 13, 1869. Reproduced in “Journal of the House of Assembly of Prince Edward Island, 1869” Appendix S.

issue, an opportunity arose for it to make legislative headway on the question of compensation for tenants which had been on the backburner since the last attempt in 1855. There was excitement in PEI about the legislation being contemplated by Gladstone to institutionalize tenants' rights in Ireland.¹⁵³ Accordingly, an address was sent to the Queen in April 1870 stating that many tenants in PEI held short leases and were therefore “exposed to the grievous hardship and losing the hard earned fruits of many years industry and economy” at their expiry. Having heard that “Gladstone had introduced a Bill into the Commons house, which provides for the compensation of tenants in Ireland who may be evicted from their lands on which they may have made valuable improvements,” the address prayed for a similar measure that could be sanctioned for the tenantry in PEI.¹⁵⁴ The response from the Secretary of State for the Colonies, Granville (who was himself shepherding the Irish land act through the House of Lords during that time), was encouraging. He wrote that while he was “not prepared to express any general opinion or to give fresh instructions to the Lieutenant Governor respecting the settlement of this difficult question,” he would give his best attention to any measure prepared in the legislature embracing the “principal provisions of the Bill introduced in the Imperial Parliament” for the tenants in Ireland.¹⁵⁵

¹⁵³ For details, see “The Parliamentary Reporter! Or Debates and Proceedings of the House of Assembly of Prince Edward Island for the Year 1870” (Charlottetown: Patriot Book and Job Printing Rooms, 1870); “Debates and Proceedings of the Legislative Council of Prince Edward Island for the Session of 1870” (Charlottetown: F.W. Hughes, 1870); “Journal of the House of Assembly of Prince Edward Island, 1870” (Charlottetown: Thomas Reilly, 1870).

¹⁵⁴ Address to Her Majesty the Queen by the Legislative Council of Prince Edward Island, April 18, 1870. Reproduced in “Debates and Proceedings of the Legislative Council of Prince Edward Island for the Session of 1870,” 1870, 123–34.

¹⁵⁵ Letter from Granville to Government of PEI, July 10, 1870. Reproduced in “Correspondence Relative to the Land Tenure Question in Prince Edward Island,” 3.

Encouraged by Granville's response, the PEI government introduced a bill that passed unanimously in both the PEI House of Assembly and the Legislative Council in April 1871.¹⁵⁶ The Tenants' Compensation Act¹⁵⁷ was sent to the Secretary of State for the Colonies for approval by the Imperial Government,¹⁵⁸ along with a minute from the Executive Council of Prince Edward Island providing a rationale for the bill, as well as a petition by a number of proprietors requesting its disallowance.¹⁵⁹

The main provisions of the Act were: i) Compensation for permanent improvements at the end of the lease for "any tenant occupying lands under a lease or agreement, verbal or in writing, or any memorandum of agreement whereby any term or estate is reserved to the landlord, which lands shall have been in a wilderness or unimproved state when the possession was given...;" ii) Tenant applies to Supreme Court who appoints three arbitrators to determine the compensation for improvements (which could include clearing the land, new buildings, works to increase the productive power of the land, etc.). The award could be appealed to the Supreme Court by either party; iii) Landlord to have fourteen days to decide after the award is made as to

¹⁵⁶ For debates and discussions around the provisions of the bill in the House of Assembly and the Legislative Council, see "Debates and Proceedings of the Legislative Council of Prince Edward Island for the Session of 1870" "The Parliamentary Reporter! Or Debates and Proceedings of the House of Assembly of Prince Edward Island for the Year 1870" (Charlottetown: Patriot Book and Job Printing Rooms, 1870). The primary thrust of the debates was the inclusion of appropriate provisions that would be acceptable to the Imperial Government given that the previous attempt to legislate compensation for tenants in 1855 was disallowed.

¹⁵⁷ The Tenants' Compensation Act, 1871.

¹⁵⁸ In his letter to the Secretary of the State for the Colonies dated April 17, 1871, the Lieutenant-Governor gave his provisional assent to the bill, but at the same conveyed his concerns about the "Act as an improper interference with the rights of property and opposed to the general principles of the law of contracts." Letter from Robinson to Kimberley, April 17, 1871. Reproduced in "Correspondence Relative to the Land Tenure Question in Prince Edward Island."

¹⁵⁹ The minutes and petitions are reproduced in "Correspondence Relative to the Land Tenure Question in Prince Edward Island," 5–10.

whether he will pay the compensation, or instead grant a lease of 999 years to the tenant at the last year's rent; iv) Compensation can only be claimed by the original tenant who made the improvements, and v) There was to be no entitlement for tenants where tenancy had been forfeited for non-payment of rent or breach of other conditions. In the explanatory minute accompanying the Act, the Executive Council acknowledged that a majority of the leases on the Island were for 999 years, and the "grievances intended to be redressed are those whose lands have been granted to tenants on lease for short terms...." These twenty to forty-year leases were not enough to clear the wilderness land and recoup the investments made in making the land productive (unlike in the mother country where tenants cultivated more developed land). It further suggested that tenants on short leases could not avail of the purchase opportunity given in the Fifteen Years' Purchase Act of 1864.

The landlords' petition to the Imperial Government reiterated the same points that were made in their opposition to the 1855 Act (that is, the prevalence of long leases in PEI, low rent paid by the tenants), and in addition highlighted that it was the landowners who invested in roads, bridges, etc. It is these investments that increased the value of the land.¹⁶⁰ The Secretary of State for the Colonies, The Earl of Kimberley,¹⁶¹ who succeeded Granville in July 1870, declined assent not because of the landlords' objections, but because the Act went far beyond the one passed by the Imperial Parliament for Ireland, and identified specific provisions that needed to

¹⁶⁰ Memorial and Petition of Mr. Stewart and others to the Earl of Kimberley, June 10, 1871. Reproduced in "Correspondence Relative to the Land Tenure Question in Prince Edward Island," 7-10.

¹⁶¹ Kimberley had served as the Lord Lieutenant of Ireland in the 1860s and had been actively involved in assisting Gladstone in the Disestablishment of the Church of Ireland. See "Wodehouse, John, First Earl of Kimberley (1826–1902), Politician," *Oxford Dictionary of National Biography* (Oxford: Oxford University Press).

be brought in line with the Irish Act.¹⁶² His first primary concern was regarding the options available to the landlord: pay compensation or give lease for 999 years. “[T]he provision by which the only alternative left to the landlord ... is open to the gravest objection. It would compel the landlord to transfer the ownership of the land to the tenant in every case where he might be unable or unwilling to purchase the tenant’s improvements.” He cited section 21 of the Irish Land Act of 1870 whereby a tenant “who may be decided by the Court to be entitled to compensation by the landlord cannot be compelled by process of law to quit his holding until the amount of compensation due to him has been paid to him or deposited; but, on the other hand, under that Act, the landlord retains his right to re-enter upon the land at any time, subject to the condition of compensating the tenant for his improvements.” He further cited the Irish Land Act regarding time limits within which improvements were made, compulsory arbitration in the PEI act, especially by people who may be impartial towards the landlords, and more precise rules of determining improvements.

Kimberley concluded that while many of the “provisions of the Irish Act are inapplicable to Prince Edward Island,” especially ones related to customary tenant-rights, “those sections which relate to improvements seem to ... to afford the basis upon which, with the necessary alterations, a measure might be framed with advantage to the Colony,” and to which he might advise the Queen Majesty to give her assent. Such an act “would give reasonable satisfaction to the claims of the tenants without depriving the landlords of their rights.”

¹⁶² Letter from the Earl of Kimberley to Lieutenant Governor Robinson, sated September 2, 1871. Reproduced in “Correspondence Relative to the Land Tenure Question in Prince Edward Island,” 10-11.

Despite the disappointment of the fate of the 1871 act, the PEI legislature was encouraged by the tone of the letter communicating the disallowance, with one member noting that it “was of a much milder nature” than they had ever seen from the Colonial Office upon the Land Question.¹⁶³ Another member pointed out Granville’s letter was a reflection that “the views and intentions of the British Government are changing on that subject. They now concede the injustice of the way in which the Island was granted away.”¹⁶⁴ The PEI government proposed another bill, the Tenants’ Compensation Act, 1872 which was approved unanimously by the House and Legislative Council. This Act embodied the suggestions of Kimberley and its overall principles and specific provisions were for the most part exactly those of the relevant sections (that is, those involving landlord-tenant relationships based on contracts) of the Irish Land Act.¹⁶⁵ In particular, the new Act took out the requirement of a 999-year lease instead of compensation, formalized the presumption that the tenants made improvements, and allowed the deduction of arrear in rents from the compensation for improvement. It further clarified the role of the Supreme Court and arbitrators in determining the compensation amounts.

The Secretary of State for the Colonies and the Lieutenant-Governor of PEI received numerous petitions from proprietors, either individually or groups, arguing for the disallowance

¹⁶³ “Debates and Proceedings of the Legislative Council of Prince Edward Island for the Session of 1872” (Charlottetown: Henry Cooper, 1872) June 14, 1872: 78.

¹⁶⁴ “Debates and Proceedings of the Legislative Council of Prince Edward Island for the Session of 1872,” June 14, 1872: 82.

¹⁶⁵ For a section-by-section comparison of the PEI and Irish acts, see a letter written by the Solicitor-General of PEI, Louis H. Davies, to the President of the PEI Executive Council, dated November 21, 1872. Reproduced in “Correspondence Relative to the Land Tenure Question in Prince Edward Island,” 21–23. The letter was written in response to a petition by a number of proprietors (See pages 12 to 15) who argued that the proposed act had diverged from the instructions of the Secretary of State for the Colonies.

of the Act.¹⁶⁶ After another iteration of two amendments/additions,¹⁶⁷ the Secretary of State transmitted to the Governor-General of Canada that the two acts had received the Royal Assent. Since the PEI legislature passed the main Act of 1872 before the colony joined the Dominion of Canada on July 1, 1873, the final approval for the Act and its amendment lay with the Colonial Office.¹⁶⁸

Thus, during the period of uncertainty¹⁶⁹ about whether PEI would join the Dominion, the Imperial Government encouraged and consented to a piece of legislation granting some security of tenure for the tenants because of the improvements made by them on the land they occupied. The provisions of the Tenants' Compensation Act of 1872 closely followed the Irish land act of 1870. Since the Imperial Government instructed the local legislature to use the Irish precedent to craft the tenants' compensation bill for PEI, questions about the appropriateness of inter-colonial analogies arose during the debates around the bill in the legislature and subsequent memorials from proprietors. The proprietors argued that the land tenure conditions in PEI were very different from those in Ireland given the excess of land available relative to its demand in PEI, thus "enabling the tenant to make his own terms with the landlord," including that of long

¹⁶⁶ See Inclosures 1, 3 and in No. 6 (pages 12-26) and Inclosures 1 and 2 in No. 7 (pages 29-31), in "Correspondence Relative to the Land Tenure Question in Prince Edward Island."

¹⁶⁷ An Act to alter and amend "The Tenants' Compensation Act, 1872."

¹⁶⁸ For the relative responsibility of the Colonial Office and the Governor General of Canada in approving the PEI legislation before and after it joined the Dominion, see the exchange of letters between Kimberley and Dufferin in the latter part of 1873. Reproduced in "Correspondence Relative to the Land Tenure Question in Prince Edward Island," 33-35.

¹⁶⁹ This period also coincided with the Red River Rebellion to the west of the Dominion, which also involved a resistance to Imperial land tenures and trading rights established in the 17th century. For more details comparing the two movements (in PEI and the Red River settlement), see J.M. Bumsted, "Island Resistance: Two Popular Movements for Political Change in the Era of Confederation," *Acadiensis* 27, no. 2 (1998): 135-41. However, from the archives it is not clear whether the Imperial Government perceived any connections between the two movements.

leases and low rents, while in Ireland “the population being in excess of the area to be occupied, causes the tenantry to outbid one another in their offers of rent....”¹⁷⁰ Further, they pointed out that the primary rationale behind the Irish Act was to give tenants fixity of tenure, which already existed for tenants in PEI under the norm of longer leases.¹⁷¹

Discussions in the PEI legislature, on the other hand, foregrounded similarities between the conditions of tenants in the two colonies. For instance, in response to the proprietors’ petitions, the Executive Council of PEI noted that “[i]nsecurity of tenure produce[d] the same effects in Prince Edward Island which are observed in Ireland and elsewhere, and demand[ed] the same remedy – a Tenants’ Compensation Bill.” It further reiterated that they were “not demanding for the tenants of Prince Edward Island any greater privileges than the tenants of land in Ireland enjoy, though if the extent of such privileges depended on the relative difficulties and hardships which have been surmounted, as Mr. Gladstone seems to intimate, then the tenants of this island ... would be entitled to the more complete freedom of tenure.”¹⁷²

In essence, unlike the 1855 act, where discussions took place around the differences and similarities between PEI and Britain concerning landlord-tenant relationships, the 1872 act

¹⁷⁰ The Memorial and Petition by sixteen proprietors addressed to the Secretary of State for the Colonies regarding the Tenants’ Compensation Act, 1872. Reproduced in “Correspondence Relative to the Land Tenure Question in Prince Edward Island,” 12–15; The more favourable conditions of tenure enjoyed by the tenants in PEI compared to those in Ireland was also noted by John Francis Maguire, a Member of Parliament in the British Parliament from Ireland in the book that he published after a visit to North America in 1867. In particular, he identified the extremely low rents and long leases prevalent in PEI. For details see Chapter II of John Francis Maguire, *Irish in America* (New York: D&J Sadlier, 1873).

¹⁷¹ Letter from Georgina Fane to the Earl of Kimberley, March 29, 1873 protesting the injustice of the 1872 Compensation Act. Reproduced in “Correspondence Relative to the Land Tenure Question in Prince Edward Island,” 29–30.

¹⁷² Extract from the Minutes of the Executive Council of Prince Edward Island addressed to the Lieutenant-Governor, December 28, 1872. Reproduced in “Correspondence Relative to the Land Tenure Question in Prince Edward Island,” 23–24.

invoked a comparison between PEI and Ireland. Thus, Ireland came into the discussions more centrally. The landlords continued to emphasize that any form of compensation for tenants needed to be evaluated based on universally accepted property rights (that is, those prevalent in England), and the Irish land law was to be considered an exception. On the other hand, the PEI legislature and the Colonial Office saw similarities between land tenure arrangements for tenants in PEI and Ireland. Hence, the appropriateness of the Irish land act as a relevant precedent for the 1872 Act.

While the Imperial Government was contemplating the approval of the compensation acts, Prince Edward Island had decided to join the Dominion of Canada on July 1, 1873.¹⁷³ Any act passed by the Colonial legislature under the new political arrangement would have to go for approval from the Governor-General of Canada, on the advice of the Dominion government. PEI's decision to join the Dominion in 1873 had more to do with economic necessity than from public support, as the "great majority of the people ... did not take up the question *cum amore*, and when the day arrived that the union was a *fait accompli*, they did not have a cheer to give."¹⁷⁴ The immediate financial crisis was the massive debt the PEI government had taken to build an elaborate railways network on the Island in 1871. The costs of building the network by 1872 far exceeded the initial projections. The local Government saw no other way out other than to reconsider the offer on the table from the Dominion. Among other things, the proposal included Canada assuming PEI's railway debt and finishing the project, starting a steamship service to

¹⁷³ For details on the negotiations regarding the Confederation, see Bolger, "Prince Edward Island Rejects Confederation, 1864-1867"; Bolger, "Long Courted, Won at Last"; Bolger, *Prince Edward Island and Confederation, 1863-1873*; MacKinnon, *The Government of Prince Edward Island*.

¹⁷⁴ Editorial in the Patriot, July 3, 1873. Cited in Bolger, "Long Courted, Won at Last," 230. (Italics in original)

connect the Island with the mainland, and guaranteeing a loan of \$800,000 to convert the remaining land from leasehold to freehold tenures.¹⁷⁵

With a loan guarantee to purchase the remaining land from proprietors and the assurance given by the Secretary of State for the Colonies, Granville, in 1869 that the Imperial governments would take a hands-off approach to the land question once PEI became part of Canada,¹⁷⁶ the island legislature went to work to finally resolve the land question. Following the approval of a Minute by the Executive Council of PEI on November 18, 1873, circulars were sent to the proprietors (or their agents) of large estates to “ascertain ... the lowest price per acre, in cash, at which [they] will be prepared to sell ... [their] Township Lands in Prince Edward Island, including all arrears in rent due thereon.”¹⁷⁷ The responses from the proprietors were mixed; a few did not want to sell their estates, some were willing to entertain selling if the whole land could be sold at once at a reasonable price, and others wanted the Government to make an offer. Some proprietors provided specific demands, both in terms of the number of acres that could be sold

¹⁷⁵ “Minutes of Conference between the Committee of the Privy Council of Canada, and the Undersigned Delegates from the Colony of Prince Edward Island, on the Subject of the Union of That Province with the Dominion of Canada,” *Royal Gazette*, March 17, 1873. The specific rationale and terms were as follows: “The Island Government holding no lands from the Crown, and consequently enjoying no revenue from that source for the construction and maintenance of Local Works, it is agreed that the Dominion Government pay, in half-yearly instalments, and in advance, to the Government of Prince Edward Island, \$45,000 per annum, less five percent upon any sum not exceeding \$800,000, that the Dominion Government may advance to the Island Government for the purchase of Lands, now held by large proprietors.”

¹⁷⁶ This letter of Granville was quoted numerous times during the debates in Prince Edward Island’s House of Assembly and Legislative Council leading up to the Land Purchase Act of 1874. See “The Parliamentary Reporter! Or Debates and Proceedings of the House of Assembly of Prince Edward Island for the Year 1874” (Charlottetown: J.H. Fletcher, 1874); “Debates and Proceedings of the Legislative Council of Prince Edward Island for the Session of 1874” (Charlottetown: Macgowan & Haszard, Printers, 1874).

¹⁷⁷ For correspondence with the various proprietors, see “Journal of the House of Assembly of Prince Edward Island, 1875” (Charlottetown: Henry Cooper, 1875) Appendix I.

and their price. Prices ranged from 16s per acre, \$4 per acre, 1250 pounds sterling for 1000 acres, 15 years' rent plus arrears, etc.

Refusal by the proprietors to voluntarily sell their land led to the passing of the Land Purchase Act, 1874 which made it mandatory for “any proprietor owning or possessing five hundred acres of land, or upwards” to offer the land for sale. The Government and the proprietor would each appoint a Commissioner, who would then choose a third person to serve on the three-person panel. This panel would determine the purchase price based on several factors (for example, the price of land in the vicinity, number of acres leased and the length of the leases, rents paid and in arrears, etc.) and make the award to the proprietor.¹⁷⁸

The proprietors were up in arms against the proposed legislation. They wrote numerous petitions to both the office of the Governor-General of Canada in Ottawa and the Colonial Office in London, characterizing the Act as the “most radical attack upon the rights of property,” “an outrage against modern civilization,” and “one ... that could only emanate from a Communist or Socialist Assembly,” among others.¹⁷⁹ The Earl of Dufferin was the Governor-General of Canada at the time, having been appointed to the office in the summer of 1872 by Gladstone. Being a proprietor of a large estate in Ireland, he was sympathetic to the landlords and had reluctantly supported the Irish land act of 1870.¹⁸⁰ However, with the fall of the Gladstone government in

¹⁷⁸ Land Purchase Act, 1874; For debates on the specific provisions of the Act, including whether the compulsory purchase should be lands over 500 or 1000 acres, see “The Parliamentary Reporter! Or Debates and Proceedings of the House of Assembly of Prince Edward Island for the Year 1874”; “Debates and Proceedings of the Legislative Council of Prince Edward Island for the Session of 1872.”

¹⁷⁹ For a collection of these petitions to both offices, see “Correspondence Relative to the Land Tenure Question in Prince Edward Island”; Appendix (E) “Journal of the House of Assembly of Prince Edward Island, 1875.”

¹⁸⁰ For the role played by Dufferin on the PEI land question, his overall approach to land tenure issues across the Empire, as well ideas on the governance of the colonies, see Annie Tindley, *Lord Dufferin, Ireland and the British Empire, c. 1820–1900: Rule by the Best?* (London: Routledge, 2021); Bittermann

England in the early part of 1874, the new Conservative Government appointed Henry Herbert, the Fourth Earl of Carnarvon as the Secretary of State for the Colonies. Carnarvon was well versed with the Empire's North American colonies, having previously served in the same capacity from 1864 to 1867 during the negotiations around the Confederation.¹⁸¹ After consulting with the Dominion government¹⁸² and Carnarvon,¹⁸³ Dufferin declined assent to the Land Purchase Act of 1874 because it did not "provide for an impartial arbitration, in which the proprietors would have a representation, for arriving at a decision on the nature of rights, and the value of the property involved, and also for securing a speedy determination and settlement of the matters in dispute."¹⁸⁴ Objecting more to the procedure in determining the awards, rather than the principle of compulsory purchase, Dufferin took the suggestion given by Carnarvon in a secret dispatch¹⁸⁵ and recommended that the third Commissioner (the other two being chosen by the PEI

and McCallum, "Upholding the Land Legislation of a 'Communitistic and Socialist Assembly'"; Richard Davenport-Hines, "Blackwood, Frederick Temple Hamilton-Temple-, First Marquess of Dufferin and Ava (1826–1902), Diplomatist," *Oxford Dictionary of National Biography* (Oxford University Press, 2008); Andrew Gailey, *The Lost Imperialist: Lord Dufferin, Memory and Mythmaking in an Age of Celebrity* (London: John Murray Press, 2015).

¹⁸¹ For details, see Peter Gordon, "Herbert, Henry Howard Molyneux, Fourth Earl of Carnarvon (1831–1890), Politician," *Oxford Dictionary of National Biography* (Oxford University Press, 2008).

¹⁸² See Memo from the Deputy Minister of Justice, dated December 23, 1874, evaluating the specific provisions of the Land Purchase Act, 1874 "Correspondence Relative to the Land Tenure Question in Prince Edward Island." For more extensive opinions on the said Act within the Dominion government, see "Sessional Papers. Second Session of the Third Parliament of the Dominion of Canada, Volume VIII," 1875.

¹⁸³ For the extensive correspondence between Dufferin and Carnarvon regarding the PEI land question as well as other aspects of governance in British North America, see C. W. De Kiewiet and Frank H. Underhill, eds., *Dufferin-Carnarvon Correspondence, 1874-1878* (Toronto: The Champlain Society, 1955).

¹⁸⁴ Letter from the office of the Governor General of Canada to the Lieutenant Governor of Prince Edward Island, December 19, 1874. Reproduced in Appendix (E) of "Journal of the House of Assembly of Prince Edward Island, 1875."

¹⁸⁵ Letter from Earl of Carnarvon to Earl of Dufferin, November 2, 1874. Reproduced in "Correspondence Relative to the Land Tenure Question in Prince Edward Island."

government and the respective proprietor) should be appointed by the Governor-General of Canada.

Taking into consideration the objections raised by Dufferin on procedural aspects and those by the proprietors on the wording of the Preamble (which laid the blame on the landlords to come to a satisfactory solution to the land question in PEI),¹⁸⁶ the legislature passed another bill, the Land Purchase Act, 1875.¹⁸⁷ The Governor-General gave this Act assent despite another round of petitions from the proprietors.¹⁸⁸ With the approval of the Act and the appointment of Commissioners, the task of finally forcing the large landholders to sell their property to the State was initiated.¹⁸⁹ Some landlords contested their awards in the Supreme Courts of PEI and Canada, but without success.¹⁹⁰ The judgement of the Supreme Court of Canada to the final appeal from a proprietor reiterated the long-debated question in PEI regarding the need to balance private property rights with the public good:

The [Land Purchase Act] ... ought ... to be viewed ... as the settling of an important question of great moment to the community, and in principle like the abolition of the

¹⁸⁶ The Preamble to the 1875 merely mentioned that the land purchase was being initiated because of the terms negotiated with respect to the colony joining the Confederation.

¹⁸⁷ Land Purchase Act, 1875.

¹⁸⁸ Letter from Dufferin to Carnarvon, May 14, 1875. Reproduced in "Correspondence Relative to the Land Tenure Question in Prince Edward Island."

¹⁸⁹ The implementation of the Act was the responsibility of the province and the Dominion, with no specific obligations of the Imperial Government. Much of the correspondence between the Governor General of Canada and the Colonial Office after the former gave assent was more informational (especially regarding the happenings in the two courts) rather than with any substantive aspect. See "Further Correspondence Relative to the Land Tenure Question in Prince Edward Island," April 1876, House of Commons Parliamentary Papers Online.

¹⁹⁰ The period after the passage of the Act, including the work of the Commissioners, the awards, and subsequent legal contestations, has been extensively examined in numerous studies. A detailed discussion of these aspects is not germane to my arguments. For some representative work, see Bittermann and McCallum, "Upholding the Land Legislation of a 'Communitistic and Socialist Assembly'"; Bittermann and McCallum, *Lady Landlords of Prince Edward Island*; Rusty Bittermann, "Lady Landlords and the Final Defence of Landlordism on Prince Edward Island: The Case of Charlotte Sullivan," *Histoire Sociale / Social History* 38, no. 76 (2005): 204–33.

Seigniorial tenure in Lower Canada, and the settling of the land question in Ireland. In carrying out measure as these, there may be cases where the law works harshly, where important rights may seem to be disregarded, and private interests are made to yield to the public good....¹⁹¹

From the perspective of Prince Edward Island, the Land Purchase Act of 1875 finally resolved the more than a hundred-year contestation over the initial land grants and creation of a class of large landlords. It brought its land tenure system closer to that which existed in North America. However, from the viewpoint of the Empire, the expropriation of land from unwilling proprietors, even if it entailed adequate compensation, went against the preservation of the sanctity of property rights that had been the bedrock of its land tenure policies at home and across its colonies. The Imperial Government had promoted an alternative way to resolve the land question in 1872 by acknowledging co-proprietorship through tenants' rights to compensation for improvements in case PEI decided not to join the Dominion and continued as an independent colony. However, PEI's decision to become part of the Dominion and the promise made by Granville of non-interference on the land question in 1869 in case the colony joined the union left the Imperial Government no choice but to consent to the Act in 1875. The main task for the Colonial Office and the Governor-General of Canada now was to minimize the impact of their acceding to the "Communitistic" piece of legislation in other colonies and answer questions at home about their commitment to protecting property rights. The Imperial Government

¹⁹¹ Canada Supreme Court judgment on the case involving the commissioners' award of land purchase of the Charlotte Sullivan. In *Judgment of the Supreme Court of Canada on the Appeal from the Judgment of the Supreme Court of Prince Edward Island Setting aside the Award of the Commissioners under the Land Purchase Act 1875, in the Case of Charlotte Antonia Sullivan*. (Charlottetown, P.E.I.: Henry Lawson, 1877), 17.

(through the Colonial and the Governor-General of Canada's offices) took a three-pronged approach to justify its decision and absolve itself from these potential repercussions.

First, it attributed its decision to the difficulties brought upon themselves by proprietors because of their reluctance to fulfill the obligations under the original grants. For example, while being challenged in the House of Lords on his decision to support the Land Act of 1875, Carnarvon laid the blame on the PEI landlords for non-compliance to the conditions and their absenteeism leading to a situation that "property which was lightly won was lightly treated."¹⁹² Dufferin, on the other hand, attributed the land problems in PEI to the different norms in North America, writing to the Colonial Office in 1874 that "[p]roprietorial rights, in the sense in which they exist in England, are very unsuitable to the atmosphere of this country, and I imagine a perpetual agitation will prevail in this island until its land tenures are assimilated to those of neighbouring provinces."¹⁹³

Second, to soften the blow of compulsory land purchase on the proprietors, the Imperial Government attempted to ensure procedural fairness in their dealings with the Commissioners and the Prince Edward Island Land Commission, which oversaw the post-award formalities. The insistence on having the Governor-General's appointee as one of the three commissioners was meant to protect the landlords' interest. Dufferin chose Hugh Childers, a respected member of the British Parliament, as his nominee. In his request to Childers to take on the task, Dufferin

¹⁹² Response by Earl of Carnarvon in the House of Lords, July 26, 1875, to a question from a member. Reproduced in "Correspondence Relative to the Land Tenure Question in Prince Edward Island," 47–49.

¹⁹³ Letter from Dufferin to Holland in the Colonial Office, June 9, 1874. Cited in Tindley, *Lord Dufferin, Ireland and the British Empire, c. 1820–1900*, 128.

emphasized the importance of his appointment to the perceived fairness of the process to all parties:

Public opinion on this side of the Atlantic is so adverse to proprietorial rights, that the owners, who are mostly absentees, and reside in England, find themselves in a very obnoxious position, and I understand, would be glad enough to arrive at some compromise.... I am very anxious to entrust the business to a person of such political standing and experience as will inspire confidence. The very fact of your having been a member of the Government which passed the [Irish] Land Bill will render you acceptable to the Anti-Landlord party, while the proprietors themselves would feel that, inasmuch as something has to be done, they would probably never be likely to find themselves in safer hands.¹⁹⁴

Third, the Imperial Government tried to distance itself from the compulsory land legislation by emphasizing that because of the new political arrangements with the Dominion of Canada, the Imperial Government did not have the authority to interfere with its internal matters. The standard response of the Colonial Office to the petitions coming from the proprietors on the Land Purchase Act was that “the land question in Prince Edward Island is not one with which the Secretary of State is authorized to deal by the Constitution of Canada: but the decision in this matter rests with the Governor-General of Canada,”¹⁹⁵ who takes advice from the Dominion Government.

Despite these attempts, Dufferin and Carnarvon could not escape the scrutiny in England on the impingement of property rights in the British Empire under their watch. As noted by the *Saturday Review*,

¹⁹⁴ Letter from Earl of Dufferin to Hugh Childers, February 23, 1875. Reproduced in Edmund Spencer Eardley Childers, *The Life and Correspondence of the Right Hon. Hugh C. E. Childers, 1827-1896* (London: J. Murray, 1901), 232.

¹⁹⁵ Letter dated June 26, 1875, from Colonial Office to F.C. Morgan, an M.P. in the House of Commons, who had forwarded a letter from one of the PEI proprietors regarding the land purchase bill. Reproduced in “Correspondence Relative to the Land Tenure Question in Prince Edward Island,” 46.

The compulsory transfer of property in Prince Edward Island may perhaps have alarmed nervous English landowners who have become acquainted with the transaction by occasional conversations in Parliament. The precedents of which the Irish Land Act was the first are likely to accumulate with constantly diminishing regard for rules which were once deemed immutable. Every separate Act of interference with property is excused, and perhaps justified, by the special circumstances of the case; but the common principle that private right must yield to real or supposed public convenience acquires additional practical importance by each successive recognition of its validity.... Lord DUFFERIN and Lord CARNARVON may be acquitted of willingness to tamper with the foundations of property; but their authority will be hereafter invoked in favor of schemes for redistribution of land.¹⁹⁶

Conclusions

The land question in Prince Edward Island, with origins in the way the whole Island was divided into Townships or Lots which were parceled out to prominent people in 1767, was finally resolved in 1875 through an act passed by the Colonial legislature that made it compulsory for proprietors to part with their holdings that exceeded 500 acres. My objective in this chapter was to probe the circumstances that led the Imperial Government to approve this extreme form of land tenure reform which entailed a forced transfer of proprietorship from landlords to tenants, especially given the opposition it had to overcome in contemplating granting tenants occupancy rights in Punjab and compensation for improvement/disturbance in Ireland, each of which entailed at most an acknowledgement of co-proprietorship of both landlords and their tenants. Most of the detailed historical accounts on the PEI land question have suggested that the Imperial Government did not have any other choice because of the norm of freehold tenure in the Empire's North American colonies. The grant of Dominion status to Canada in 1867 and the

¹⁹⁶ "Landed Property in Prince Edward Island," *The Saturday Review*, March 18, 1876, sec. Editorial, 355–56.

decision by PEI to become part of the Dominion in 1873 forced the Imperial Government to accede to the colony's demands, even if it meant abrogation of property rights of landlords.

The prevailing historical accounts are based on two underlying assumptions. First, it is assumed that the Imperial Government was reacting to the evolving political situation in Prince Edward Island from the middle of the 1860s (that is, a political alignment of different political factions, all demanding an end to leasehold tenure, pressure from the Tenant League and the Fenian movement, and the new governance arrangements with the Dominion). It was politically expedient to let go of its defense of the proprietors after 1873. The second assumption is that the Empire's other colonies in North America had rid themselves of leasehold tenures. All that PEI aspired was to have its land tenure system compatible with these geographically proximate colonies.

In this chapter, I have attempted to unpack both assumptions. Regarding the second assumption, as shown in Tables 5.1 and 5.2, the percentage of cultivators and the percentage of acres of land under freehold tenures were consistently on the rise in PEI since the 1840s.¹⁹⁷ It could be argued that the trend in the colony was towards freehold tenures. In addition, as reported by Catharine Anne Wilson in her detailed studies on tenants in Canada, leasehold tenures persisted in all the colonies/provinces during the 19th century.¹⁹⁸ Progression towards

¹⁹⁷ The increase could be attributed to the natural commodification of land, with more and more cultivators having the wherewithal to purchase land from willing proprietors. For details on the emergence of a prosperous middle class in PEI both within the leasehold system and growing number of small freeholders, see Hatvany, "Tenant, Landlord, and the New Middle Class." In addition, the redistribution of land under the Land Purchase Act of 1853 had converted large acreage from leasehold to freehold.

¹⁹⁸ For example, in 1844/48, there were almost 43% farm tenants of all occupiers of rural land in Ontario, and 33.2% in Quebec. At that moment, there were 61% of farm tenants in PEI. The number of occupiers with leasehold tenure remained over 15% in Ontario until the end of the 19th century. See Table 3.1 in Catherine Anne Wilson, *Tenants in Time: Family Strategies, Land, and Liberalism in Upper Canada, 1799-*

freehold tenures in PEI till the end of the 1860s, and the fact that it was converging towards those in the proximate colonies, calls into question whether the primary objective in PEI was to convert leasehold to freeholds, or whether it was merely to get rid of the big landlords, a large number of whom continued to be absentee landlords throughout this period.¹⁹⁹

Regarding the first assumption that the Imperial Government played a reactive role, that of a gatekeeper to protect the proprietors as long it was possible, this chapter has shown how it attempted to actively shape land tenure during the period of uncertainty (1867-1873) about whether PEI would continue with the existing arrangements as a separate colony of the British Empire or join the new governance arrangements as part of the Dominion of Canada. The decision of PEI to choose the latter option probably explains the conclusion of existing scholarship that the Imperial Government's decision to consent to the provisions of the Land Purchase Act in 1875 was politically necessary and could be justified based on local analogies of freehold tenures. On the other hand, efforts on behalf of the Imperial Government by Granville and Kimberley, the two Secretaries of State for the Colonies, to shape legislation on tenants' security of tenure during the 1870-1873 period using the precedent of the Irish land act in case PEI remained a separate colony also shows the commitment of the Gladstone government towards its goal (similar to one in Punjab and Ireland) of institutionalizing some proprietary rights of the peasant-cultivators and improve their economic well-being.

1871 (Montreal and Kingston: McGill-Queen's University Press, 2009). Also see Catherine Anne Wilson, *New Lease on Life: Landlords, Tenants, and Immigrants in Ireland and Canada* (Montreal, CA: McGill-Queen's University Press, 1994).

¹⁹⁹ Hatvany, "The Proprietary Burden?"

As was the case in Ireland, the Imperial Government's use of inter-colony analogies and precedents to push land tenure legislation in PEI also facilitated in overcoming some of the entrenched ideas about property rights and political economy that had been used to resist land tenure reforms entailing recognition of any proprietary rights of the tenants. The demands to get rid of the large landholdings in PEI started soon after the initial land grants in 1767 and continued during the next hundred years through various means (for example, escheat, quit rents, land purchase) and agency (for example, Escheat Movement, Tenant League), and under different local governments and governance arrangements with the Empire. For much of the period until the middle of the nineteenth century, the thinking on property rights and the political economy of land tenure amongst Imperial governments was quite unitary, that is, absolute rights of the landowners and efficiency of large landholdings, and any attempts to acknowledge co-proprietorship or improvements by the cultivators were resisted across the Empire. Additionally, in the case of Prince Edward Island, supporters of landlords within the colony and wider imperial circles were able to effectively counter any attempts to infringe on the landlords' property rights because of the proponents of tenants' lack of a coherent logic on property rights, shifting objectives of the land tenure reforms, and differences in the means through which land reform was to be accomplished.²⁰⁰

By the 1860s there was a shift in thinking about property rights across the Empire, which along with the political alignment between different groups with a coherent goal of getting rid of the leasehold system in Prince Edward Island,²⁰¹ led to pressures on successive Imperial

²⁰⁰ McCallum, "The Sacred Rights of Property."

²⁰¹ Robertson, "Political Realignment in Pre-Confederation Prince Edward Island, 1863-1870."

governments to rethink their approaches to land tenure on the Island. However, as seen in Ireland, while the Gladstone government was sympathetic to the aspirations of the tenantry, it had to overcome resistance from the proprietors and their supporters. In the case of Ireland, the resistance was overcome by shifting the comparator for Irish land tenures from England to India through recourse to general principles around customary rights of tenants. However, similar custom-based arguments could not be made in PEI because the origins of landlords' proprietary rights were the least ambiguous, having been given by the Imperial Government itself in a single day in 1867. In proposing the Irish land act as a model, therefore, the Government identified the specific provisions of the Irish Act that were relevant to the situation in PEI.²⁰² This approach succeeded in shifting the discussion about tenant rights in the PEI legislature relative to those in Ireland. However, the proprietors' petitions continued to insist on comparing conditions in PEI with those in England.

The eventual resolution of the land question in Prince Edward Island in the early 1870s was predicated on the colony's choice regarding its political future. The Imperial Government prepared itself for both possibilities. It hedged its bets by encouraging the PEI government to think of legislation that could be justified through the Irish or the North American analogies depending on which political course was adopted. Because it decided to join the Dominion, the Land Purchase Act of 1875 is remembered as having converted the leasehold to freehold tenures

²⁰² In the case of Ireland, the Imperial Government used the analogy from India regarding the 'principle' behind tenant rights (that is, status and customs), although the actual provisions of the Irish act were quite different from the ones in the Punjab act. For the PEI act, some of the provisions were borrowed from Ireland.

In Prince Edward Island.²⁰³ It would be a matter of scholarly curiosity to imagine/conjecture how the leasehold tenure system would have fared in the colony if its government did not undertake the ambitious project of developing the railways and continued as a separate colony of the British Empire.

²⁰³ I was not able to find any information on the Tenants' Compensation Act of 1872, including any indication of its repeal. Probably, it continued on the books to deal with remaining leaseholds, including the ones from proprietors with less than 500 acres of land. The province did pass a comprehensive Landlord Tenant Act in 1939 related to agricultural land, suggesting that some types of leasehold persisted in PEI well into the 20th century.

CHAPTER 6
CONCLUSION:
INSTITUTIONALIZATION OF PEASANT-PROPRIETORSHIP

Between 1868 and 1875, several land tenure laws were enacted across the British Empire, which established some form of security of tenure for the actual cultivators of land by recognizing co-proprietorship of tenants and landlords and/or by transferring proprietorship from landlords to tenants. Co-proprietorship was established by acknowledging heritable rights of occupancy, along with regulated rents and freedom of sale of these rights in Punjab; legalization of the tenant-right in customary tenures, and establishment of rights of compensation for improvement and disturbance in other tenures in Ireland; and extension of similar rights of compensation for leasehold tenures in Prince Edward Island. The transfer of proprietorship was accomplished through voluntary land purchase from willing landlords in Ireland and compulsory purchase of landholdings greater than 500 acres in PEI, assisted by financial support from the State in both colonies (see Table 6.1 for a summary).

This study has sought to explain how the proponents of peasant-proprietorship overcame long-standing and fierce opposition from supporters of landlords in each of the colonies, who saw any legalization of tenants' rights as an encroachment upon the existing landowners' rights to property. Through a comparative analysis of the historical land tenure arrangements in the three colonies and the contestations around the specific laws, I have identified two mechanisms that facilitated the institutionalization of peasant-proprietorship across the British Empire.

First, active agency by influential actors was necessary to counter the resistance from proponents of landlords' rights to property, both locally and in England. In the case of Punjab, it was the strong ideological orientation against landlordism and sympathy for the peasants of John

Lawrence (in his capacity first as the Lieutenant Governor of Punjab soon after its annexation and initial land settlement, and then as the Governor-General of India when the Act was passed in 1868) and his followers, who held important administrative positions in Punjab during the time. Collectively, and with the implicit support from the Liberal government in England after 1868, this 'Punjab School'¹ was able to overcome the momentum after the 1857 rebellion in favour of restoring the land rights and associated privileges of the local aristocratic classes across British India. The primary agency to legalize the rights of tenants in Ireland came from Gladstone, who, on the one hand, was neither ideologically driven as the 'Punjab School,' nor entirely in agreement with political economists such as J.S. Mill and his associates regarding fixity of tenure and peasant-proprietorship.² He, nonetheless, understood a need to 'pacify Ireland' because of political expediency considerations that arose from increased unrest amongst the population and pressure from Irish leaders to resolve the land question. The long-standing land question in Prince Edward Island was resolved through the political alignment of various political groups by the late 1860s, who were guided by increasing popular pressure to make a coherent push for establishing rights of tenants as well as converting the leasehold to freehold tenures on the island.³

The importance of active agency in promoting tenants' rights is in line with the conclusions of the extensive historiography of land tenures of each colony. However, my study

¹ G. R. G. Hambly, "Richard Temple and the Punjab Tenancy Act of 1868," *The English Historical Review* 79, no. 310 (1964): 47–66; P. H. M. Van den Dungen, *The Punjab Tradition: Influence and Authority in Nineteenth-Century India* (London: Allen & Unwin, 1972).

² John Stuart Mill, *England and Ireland*, 2nd ed. (London: Longmans, Green, Reader, and Dyer, 1868); John Elliott Cairnes, "Ireland in Transition: Peasant Proprietorship," *The Economist*, November 4, 1865; Isaac Butt, *Land Tenure in Ireland; A Plea for the Celtic Race*, Third Edition (Dublin: John Falconer, 1866).

³ Ian Ross Robertson, "Political Realignment in Pre-Confederation Prince Edward Island, 1863-1870," *Acadiensis* 15, no. 1 (1985): 35–58.

has extracted new aspects relevant for understanding the broader debates on land tenures that were missed by existing scholarship because of its focus on the respective colony in isolation. For instance, in the case of Punjab, the limited scholarship on the Tenancy Act of 1868 has primarily evaluated the contestation between two rival schools of revenue administration, each promoting competing versions of property rights and political economy. However, the current study shows that an essential outcome of the various debates on the occupancy rights of tenants in Punjab was the foregrounding of customs and customary rights in landlord-tenant relationships. Although the eventual grant of substantial security of tenure for large numbers of tenants had more to do with the relative power of the proponents of peasant-proprietorship in Punjab than on the definitive identification of pre-colonial customary rights, attentiveness to customs brought the legalization of status tenures as a legitimate way to think about property rights in the relationships between landlords and tenants. Recognition of customary rights of tenants played an essential role in establishing the security of tenure in Ireland through the 1870 Act.

Similarly, much of the existing scholarship on the Prince Edward Island land question has focused on various attempts to convert leasehold to freehold tenures for much of the nineteenth century, culminating in the Land Purchase Act of 1875. However, the scholarship has largely ignored parallel efforts from the 1850s onwards towards establishing tenants' rights within the existing leasehold system of land tenures. By uncovering the debates around the establishment of tenant rights in the colony and the use of Irish precedents to institutionalize these in the Tenants' Compensation Act of 1872, my study provides a comprehensive picture of the land question and highlights the conundrums faced and strategies employed by the Imperial governments to deal with the land question in light of its overall land tenure policies.

Probing these new connections between the colonies was instrumental in my study's uncovering the second mechanism which played a critical role in overcoming resistance to establishing tenants' rights: the extrication of land tenure considerations in the colonies from institutionalized practices in England. It is clear from the multiple contestations discussed in the previous chapters that active agency by itself was not enough to overcome resistance from existing landholders because the proprietors in each of the colonies, and their politically connected supporters across the Empire, used the land tenure principles prevalent in England to resist encroachment on their rights embodied in the proposed laws. The resort to inter-colony analogies and precedents, which disengaged land tenures of the colonies from the existing principles guiding land relationships in England, eventually helped in surmounting the opposition.

I have highlighted how the Empire was able to institutionalize security of tenure in very distant colonies between 1868 and 1875. However, there is still a remaining question about whether this shift toward peasant-proprietorship was sustained within the colonies and across the Empire in subsequent years. In the following sections, I first briefly describe the evolution of land tenure arrangements in these colonies after passing the respective laws (summarized in the last row of Table 6.1). Next, I elaborate on the importance of inter-colony analogies in facilitating a fundamental shift in colonial land tenure policies by the end of the nineteenth century across the Empire, whereby 'peasant-proprietorship' replaced 'landlords' absolute property rights' as the default option. Finally, I come back to one of the questions posed in the introductory chapter: how do the processes behind and outcomes of land tenure relationships discussed in this study inform broader debates encompassing the late nineteenth century ideologies and governance approaches of the British Empire?

Table 6.1
Institutionalization of Peasant-proprietorship

	Punjab	Ireland	Prince Edward Island
Acts	Punjab Tenancy Act of 1868	Landlord and Tenant (Ireland) Act of 1870	Tenants' Compensation Act, 1872 Land Purchase Act, 1875
Security of Tenure for Tenants/Cultivators	<i>Co-proprietorship:</i> Rights of occupancy; Regulated rent; Right to alienate holdings	<i>Co-proprietorship:</i> Legalize customary tenant-right where existed (compensation and goodwill); Compensation for improvement and disturbance in other tenures <i>Proprietorship:</i> Voluntary purchase	<i>Co-proprietorship (1872 Act):</i> Compensation for improvements in leasehold tenures <i>Proprietorship (1875 Act):</i> Compulsory purchase of holdings greater than 500 acres
Agency	'Punjab School' of British Administrators led by John Lawrence	Gladstone led Liberal Government and Irish Members of Parliament	PEI Legislature
Analogies/Precedents	Pre-1857 ryotwari system; Customary tenures in Pre-British Punjab and recorded during the first settlements (the 1850s)	Customary tenures of pre-colonial Ireland and those from India (including the ones in Punjab)	Irish Land Act of 1870; Norms of freehold tenures in British North America
Post-script	Strengthening of procedures and expansion of occupancy rights in the 1887 Tenancy Act (which continues till the present day in both West (Pakistan) and East (India) Punjab)	Security of tenure through the 3 F's (fixity, fair rents, freedom of sale) established through the Act of 1881; Voluntary purchase legislation in the 1890s; Compulsory purchase legislation in the early part of the twentieth century	A preponderance of freehold tenures; continuing restrictions on the size of holdings for non-resident proprietors

Institutionalization of Peasant-Proprietorship

Of the three colonies of interest in the study, the compulsory purchase of landholdings greater than 500 acres in Prince Edward Island was the most radical or extreme in terms of abrogation of property rights of proprietors, despite the Imperial Government's attempts to soften the blow for proprietors by ensuring they get a fair price for the land through the appointment of impartial commissioners.⁴ For the most part, after the Supreme Court of Canada's decision in 1876, upholding the commissioner's awards in the case of one holdout proprietor, the Empire took a hands-off approach to any further questions on PEI's land tenures, arguing that these were domestic matters of the Dominion of Canada.⁵

The Land Purchase Act of 1875 successfully created smallholders through the conversion of tenants' leasehold to freehold tenures. According to PEI's Commissioner of Public Lands Report,⁶ the government purchased 343,216 acres of land (of the remaining 380,000 leaseholds

⁴ There is not much information in the archives regarding the working of the Tenants' Compensation Act of 1872. It could well be that its provisions were rendered moot immediately after the land purchase act given that almost 95% of the land was converted to freehold in the next few years.

⁵ One intervention came in early 1876 when the PEI legislature passed an amending act to the Land Purchase Act of 1875 to clarify some of the provisions because of the Supreme Court of PEI's decision to set aside the commissioners' awards for a few proprietors. On the advice of Canada's Minister of Justice, Dufferin disallowed the act. In his letter to Carnarvon dated June 27, 1876, Dufferin reiterated that while the "annulling or disannulling of this act becomes altogether a domestic question" (especially because "English proprietors are out of the running" as their claims have already been dealt with), he thought that it wouldn't be a "bad thing to make these Provincial Parliaments understand that they will not be allowed to expropriate private property, unless they take pains to have their bills properly drawn, and the interest of the persons affected as carefully guarded as may be compatible with the attainment of the object in view." See C. W. De Kiewiet and Frank H. Underhill, eds., *Dufferin-Carnarvon Correspondence, 1874-1878* (Toronto: The Champlain Society, 1955), 254.

⁶ Report of PEI Commissioner of Public Lands Addressed to the Lieutenant Governor, dated November 4, 1880, in "Prince Edward Island. Further Correspondence Relative to the Land Tenure Question. Presented to Both Houses of Parliament. February 1881" (London: Her Majesty's Stationary Office, 1881), 50–55, House of Commons Parliamentary Papers Online; Also see Appendix in Rusty Bittermann and Margaret McCallum, *Lady Landlords of Prince Edward Island: Imperial Dreams and the Defence of Property* (Montreal: McGill-Queen's University Press, 2008), 151–54.

in 1873) from 57 proprietors by 1880. Out of these, 193,847 acres were bought by 2781 tenants, with an average purchase of approximately 70 acres (77% of the tenants' purchases were for less than 100 acres).⁷ As a result, by 1881, only 6.2 % of the land in PEI was held as leasehold, which declined further to 5.5% in 1891 when the government purchased the last of the land. Interestingly, PEI surpassed the other British North American colonies regarding the percentage of land held as freehold tenures (the corresponding figures of leasehold tenures in 1881 were: Ontario 11.7%, Quebec 9 %, New Brunswick 7.6%, Nova Scotia 7%).⁸

Besides the success in converting leasehold to freehold tenures, data also show the preponderance of small landholdings with an average farm size between 80 and 90 acres until the end of the nineteenth century.⁹ Furthermore, the percentage of the total area occupied as farmland increased from 74% in 1871 to 87% in 1891. The ratio of the occupied area improved, and fit for cultivation increased from 43% in 1871 to 59% in 1891.¹⁰ As pointed out by Bittermann and McCallum, after the Land Purchase Act, "large-scale landownership would be illegal, as subsequent legislation limited the number of acres that any individual, resident or alien, could own."¹¹

⁷ 77% of the purchases made by the tenants were for less than 100 acres each, which was very similar to the land purchased (approximately 400,000 acres) through voluntary sales from 1854 to 1873.

⁸ See Table 3.1, Appendix B in Catherine Anne Wilson, *Tenants in Time: Family Strategies, Land, and Liberalism in Upper Canada, 1799-1871* (Montreal and Kingston: McGill-Queen's University Press, 2009), 231.

⁹ See Table IX, Farm Numbers and Sizes, 1861-1952 in Andrew Hill Clark, *Three Centuries and the Island: A Historical Geography of Settlement and Agriculture in Prince Edward Island, Canada* (Toronto: University of Toronto Press, 1959), 134.

¹⁰ See Table XII in Clark, 152.

¹¹ Bittermann and McCallum, *Lady Landlords of Prince Edward Island*, 15. Current legislation limits ownership by corporations to 3000 acres and for individuals to 1000 acres.

Overall, the above-described data suggest that the compulsory purchase achieved the twin objectives of redistribution and development in Prince Edward Island and brought the colony's land tenure system closer to the proximate provinces of Canada. More importantly, for the Empire, the implementation of compulsory purchase and its perceived success in fulfilling the political aspirations of the colony and economic aspirations of a vast majority of its people could subsequently be used as a precedent in other colonies.¹²

If the compulsory land purchase in Prince Edward Island was the most extreme in terms of expropriating property rights from one group and assigning to another, the provisions of the Punjab Tenancy Act were the most comprehensive in granting rights of co-proprietorship for the tenants (that is, it embodied security of tenures through the '3Fs'). The Act liberally recognized the occupancy rights of large numbers of tenants (fixity of tenure), put constraints on the ability of landlords to arbitrarily raise rents (fair rent), and allowed tenants to alienate the land on which they had rights of occupancy, subject to landlords' rights of first refusal (freedom of sale). Even for tenants without occupancy rights (that is, tenants at will), the Act provided similar security of tenure regarding rent enhancement and compensation for improvements.

Given the legalization of extensive rights for the tenants and the goal of creating peasant proprietors, which were at odds with the trend in the rest of British India after 1857, what was the legacy of the Punjab Tenancy Act? As discussed in Chapter 3, the Punjab Act generated considerable debate between sets of British administrators in India and England. It was approved by the Secretary of State for India, the Duke of Argyll, using his tie-breaking vote in Council.

¹² In the early part of the twentieth century, compulsory purchase laws were passed in Ireland to convert leasehold to freeholds, and land laws in Punjab facilitated both the landlords and tenants to buy out the proprietary rights of each other.

However, there were concerns about whether the provisions of the Act would create hostility amongst the different classes of agriculturalists and lead to increased litigation (because the filing of regular suits was the primary mechanism for both landlords and tenants to exercise their rights provided in the Act). These concerns led the Duke of Argyll to caution the Governor-General of India that the “exact effect of [the Punjab Tenancy Act] ... cannot perhaps be certainly known until the provisions of the Act have been made the subject of judicial interpretation...” and instructed the latter that his administration should watch the operation of the act “with the closest care and ... devise measures for affording every possible facility to all classes, whose rights are effected, to prove “in a regular suit,” but cheaply and easily, any errors which the First Settlement may have involved.”¹³

The Governor-General instructed the Punjab administration to provide monthly updates on the working of the Act. Various reports submitted from the province affirmed satisfactory progress. For example, in the preamble to one of the reports in 1870, the Financial Commissioner of Punjab noted that “[n]o excitement whatsoever has occurred from the introduction of the Act in any class of people connected with the land.” Therefore, he did not “anticipate that any excitement or any difficulty will occur in working the Act.”¹⁴ Satisfied with similar reports from the Punjab Government and the supporting data, the Governor-General of India wrote to the

¹³ Letter from Secretary of State for India to the Governor-General of India, 28 October 1869. In “East India (Punjab Tenancy): Copies of the Despatch of the Secretary of State for India in Council Dated the 28th Day of October (No. 80) 1869, to the Governor-General of India in Council, on the Subject of the India Act No. XXVIII. of 1868, (Punjab Tenancy Act)” (House of Commons, 1870), 5.

¹⁴ Memorandum by the Financial Commissioner of Punjab on the Statement of Tenancy Cases, June 29, 1870. In Government of India, Foreign Department, “Suits under the Punjab Tenancy Act from Date of Introduction to End of May 1870. No. 1. K.W. Proceedings, September, Nos. 17-23,” 1870, National Archives of India, NAI.

Secretary of State for India in 1871 that the Act was working smoothly: “The tenants who lost status under the operation of the recent settlements have been very active in suing to recover the lost position; but the proprietors have been singularly apathetic, and the provisions enabling them to evict occupancy tenants on payment of compensation are most rarely put in force.”¹⁵ Further data over the next few years assuaged apprehensions of both the British India government and the India Office about the workings of the Act and any adverse socio-political implications (see Table 6.2 below that summarizes the Sections of the Act on which most of the suits were filed).

¹⁵ Letter from Government of India to the Secretary of State for India, January 18, 1871. In Government of India, Foreign Department, Revenue A, “Suits under the Punjab Tenancy Act from June to September 1870. K.W. Proceedings, Nos. 16-28,” 1871, National Archives of India, NAI.

Table 6.2
Working of the Punjab Tenancy Act of 1868:
Number of Suits Filed During the 1870-1874 Period¹⁶

Year	Suits by Tenants for Rights of Occupancy (Section 5)	Suits by Landlords to Rebut Presumption of Occupancy Rights (Section 6)	Suits by Landlords for Enhancement of Rent (Section 10)
1870-71	1351	1454	109
1871-72	1451	838	638
1872-73	1725	423	555
1873-74	2272	192	461

¹⁶ Government of India, Department of Revenue, Agriculture and Commerce, "Land Revenue and Settlements: Working of the Punjab Tenancy Act. Proceedings - Nos. 13 to 16," December 1874, National Archives of India, NAI. In the Minute accompanying this report, the Lieutenant Governor expressed satisfaction with the working of the Act, noting that the apprehension during the passage of the Act that its provisions would lead to "excessive litigation ... proved to have been groundless." This report further showed that most of the landlords' suits (almost 90%) for ejection were targeted towards tenants without rights of occupancy. Being satisfied with the working of Punjab Tenancy Act during this time period, the Governor General of India rescinded in 1874 the requirements on the Punjab government to provide detailed data on the suits filed related to the Act.

While the Act of 1868 was considered a success in terms of achieving its objectives of creating a vast majority of cultivators in Punjab as peasant proprietors,¹⁷ a few issues came up during the ongoing revision of settlements in certain districts related to provisions regarding the period of occupancy and residency status of the cultivators that qualified them for occupancy rights, and the landlords' use of proximate rates to increase rents of their tenants.¹⁸ Some of these concerns about specific provisions of the 1868 Act, and additional procedural issues identified during the compilation of new settlement reports in the 1870s and 1880s, led to the enactment of the Punjab Tenancy Act of 1887.¹⁹ Although the new act replaced the Act of 1868, the "principles of the tenant-right remain[ed] the same,"²⁰ These were further solidified and

¹⁷ In his memorandum in August 1882, the Lieutenant Governor of Punjab noted that in "other provinces vast tracts of land ... are the property of a few great zamindars, the mass of people being tenants. Here the mass of the people are themselves the proprietary body cultivating their own lands." The land tenure data from 1882 shows that 62 percent of the land was cultivated by proprietors themselves, and 13% by occupancy tenants. Thus, in total 75% of the cultivators had proprietary rights, the remaining 25% being tenants at will. See "Amendment of the Punjab Tenancy Act, Proceedings- Nos. 33 and 34" (Government of India Revenue and Agriculture Department, 1882), NAI National Archives of India.

¹⁸ In the Sirsa District, where the initial settlement in 1852 was done within the provisions of North-Western Provinces (to which it was associated at the time, it became part of Punjab after the Mutiny), during the revisions it was discovered that numerous tenants with earlier occupancy rights would be deemed as tenants at will according to the Punjab Act because they were not residing in the area and did not have continuous occupancy, although they had done most of the improvements and brought land under cultivable state. See J. Wilson, "Final Report on the Revision of Settlement of the Sirsa District in the Punjab, 1879-83" (Calcutta: Calcutta Central Press Company, 1884). In another district, there was great demand for land leading to very high rents. Thus, landlords could always find a few tracts with high rents and use their precedents to increase rent of their tenants. See Part IV, Chapter II in B. H. Baden-Powell, *The Land Systems of British India, Volume III* (Oxford: Clarendon Press, 1892).

¹⁹ This act was much more comprehensive than the 1868 Act, with 112 sections (compared to 45 sections in the previous act). See "The Punjab Tenancy Act, 1887. A Collection of the Acts Passed by the Governor General of India in Council in the Year 1887" [Calcutta: Superintendent of Government Printing, 1888].

²⁰ For a comparison of the main sections of the two acts, see Baden-Powell, *The Land Systems of British India, Volume III*, 712–13. Also see Neeladri Bhattacharya, *The Great Agrarian Conquest: The Colonial Shaping of a Rural World* (New Delhi: Permanent Black, 2019), 167.

expanded for different categories of tenants with occupancy rights and enacted new provisions related to fair rents and freedom of sale.²¹

The establishment of security of tenure for large numbers of tenants, and the preponderance of proprietors who cultivated their land, meant that the land tenure system in Punjab after 1868 provided appropriate incentives for investments in improving the land. Occupiers of land, both proprietors and occupancy tenants, could use their respective rights to access credit markets and appropriate gains by selling their rights in the market. Evidence points towards increased land alienation and borrowings from the credit market after the passage of the 1868 Act. For instance, it was estimated that the sale of land in Punjab almost quadrupled from 88,000 acres in 1874 to 371,000 acres in 1896, and the mortgaged land increased from 143,000 to 673,000 acres during the same period.²² However, a negative consequence of the security of tenure to access the market was the increased indebtedness of Punjab's agricultural classes and the alienation of their holdings to urban moneylenders. This created tensions along the rural/urban and Hindu/Muslim divides that required state intervention in the form of the Punjab Land Alienation Bill of 1900, which put constraints on the market for land and access to credit.²³

²¹ The Punjab Tenancy Act of 1887 continues to be operational in both West and East Punjab. Although it was revised numerous times both under British rule (1887-1947) and subsequently in India and Pakistan, the institutionalization of shared proprietary rights of occupancy tenants along with the landowners can be traced to the Punjab Tenancy Act of 1868.

²² See Appendix A in N. Gerald Barrier, *The Punjab Alienation of Land Bill of 1900* (Durham, N.C: 1966), 103.

²³ For an extended discussion on the socio-political implications of land alienation in Punjab at the end of the nineteenth century, see Norman G. Barrier, "The Formulation and Enactment of the Punjab Alienation of Land Bill," *The Indian Economic & Social History Review* 2, no. 2 (1965): 145–65; Preet S. Aulakh, "Law, Identity and Imperial Logics of Exclusion: The Case of the Komagata Maru Passengers," *The Journal of Imperial and Commonwealth History* 45, no. 5 (2021): 866–98; S. S. Thorburn, *Musalmans and Money-Lenders in the Punjab* (Edinburgh and London: William Blackwood & Sons, 1886); Malcolm Lyall Darling,

Despite the unintended consequences of secure tenures in Punjab, akin to Prince Edward Island, the lasting result of the land tenure legislation was a further institutionalization of peasant-proprietorship in the colony.²⁴ Unlike these two provinces where the land laws established stable land tenure arrangements, the Irish act of 1870 was perceived as a first step in resolving the land question in Ireland. However, subsequent legislation in Ireland built upon the limited security of tenure legalized in 1870 to move toward peasant-proprietorship by the end of the century.²⁵

The Irish Land Act of 1870 recognized co-proprietorship between landlords and tenants (by legalizing customary tenant-right where it existed and establishing compensation for improvement and disturbance in other agreements). It provided a pathway for complete proprietorship through the 'Bright Clause'. While the Act was acknowledged as one passed because of "an earnest and sincere desire to protect the Irish tenant," it was considered

The Punjab Peasant In Prosperity And Debt (Oxford: Oxford University Press, 1928); Pervaiz Nazir, "Origins of Debt, Mortgage and Alienation of Land in Early Modern Punjab," *The Journal of Peasant Studies* 27, no. 3 (April 1, 2000): 55–91.

²⁴ For land tenures in Punjab after the 1880s (including new settlements in the Canal Colonies), see Imran Ali, "The Punjab Canal Colonies" (Phd Thesis, Canberra, The Australian National University, 1979); Imran Ali, *The Punjab Under Imperialism, 1885-1947* (Princeton, NJ: Princeton University Press, 2014).

²⁵ The land question in Ireland continued to be controversial well into the twentieth century and generated a large literature on the subject. This literature includes contemporaneous accounts and official reports as well as detailed analysis of the economic and political consequences on the 1870 act by historians and economists. Full engagement with this literature is beyond the scope of this chapter. My main objective here is to briefly outline some of the limitations of the 1870 act related to security of tenure, and how later legislation addressed these to further institutionalize peasant proprietorship. For some representative works on the above-mentioned literature, see "Report of Her Majesty's Commissioners of Inquire into the Working of the Landlord and Tenant (Ireland) Act, 1870.," Presented to Both Houses of Parliament (Dublin: Alex Thom & Co., 1881); Wm. A. Dunning, "Irish Land Legislation Since 1845. II.," *Political Science Quarterly* 7, no. 3 (1892): 500–521; Barbara Lewis Solow, *The Land Question and the Irish Economy, 1870-1903* (Cambridge, MA: Harvard University Press, 1971); Joel M. Guttman, "The Economics of Tenant Rights in Nineteenth Century Irish Agriculture," *Economic Inquiry* 18, no. 3 (July 1, 1980): 408–24.

“imperfect and inadequate” soon after its passage because of a failure to incorporate the ‘3Fs’ expectations of the Irish.²⁶ Subsequent workings of the Act affirmed the perceived inadequacy of its provisions. Regarding the ‘Bright Clause,’ there were few takers because tenants wishing to purchase the land required a down payment of 33% of the price, which proved to be a big hurdle and led to the “creation of only about 700 peasant proprietors by 1881.”²⁷ The compensation clauses created multiple problems, which were documented in a report of the Bessborough Commission. This commission was appointed in 1880 to inquire into the workings of the 1870 Act in light of the declining agriculture conditions from 1876 onwards²⁸ and political pressure arising from the growing Home Rule movement and the activities of the Land League in Ireland.²⁹ The Act had provided for two types of compensation: the unexhausted value of improvement made by a tenant that could be claimed from the landlord on leaving his holding; and loss suffered that could be claimed because of termination (disturbance) of a tenancy. In both cases, the Act provided for the court to determine whether a given tenancy was covered by the tenant-right custom and the amount of compensation.

Furthermore, the 1870 Act did not provide for fixity of rent, which led to landlords increasing rents to force tenants to fall into arrears and initiate eviction proceedings. Given the

²⁶ Letter by Isaac Butt, cited in R. D. Collison Black, *Economic Thought and the Irish Question, 1817-1870* (Cambridge, England: Cambridge University Press, 2015), 70.

²⁷ Daniel Patrick Moriarty, “The Transformation of Rural Ireland: The Irish Land Purchase Policy of the Conservative Party in Britain, 1885-1923” (Ph.D., United States -- North Carolina, The University of North Carolina at Chapel Hill).

²⁸ Value of agriculture production fell from 72 million in 1876 to 55 million pounds a few years later. There were increased evictions of tenants because of the difficulty in paying rent. Moriarty, 19.

²⁹ The Home Rule movement was led by Isaac Butt and the Land League by Charles Stewart Parnell, both Irish nationalists, and elected Members of Parliament during the period. The 1879-1882 period is often referred to as one of “Land Wars.” See Michael J. Winstanley, *Ireland and the Land Question 1800-1922* (London: Methuen & Co. Ltd., 1984), 27–31.

competition for land for the cultivators, new tenants were willing to pay the higher rent, which more than covered for the compensation for improvement or disturbance assigned by the court to the evicted tenant. The Irish Act of 1870, thus, “suffered ... from one fundamental weakness; it did not give Irish tenants the basic security of tenure they sought. They did not want compensation after the eviction; they wanted protection from eviction itself.”³⁰ The Bessborough Commission recommended that the Act be reformed so that all types of land tenure relationships in Ireland (customary as well as yearly) are brought under a common law that incorporates the principles of Fixity of Tenure, Fair Rents, and Free Sale. Gladstone, who was back as Prime Minister for the second stint in 1880, accepted the recommendations of the Commission and introduced a bill, which was enacted as the Land Law (Ireland) Act 1881.³¹

Thus, in 1881, the security of tenure institutionalized for the Irish tenants was like the one granted in the Punjab Tenancy Act of 1868 for the ‘occupancy’ or ‘hereditary tenants’. Subsequent legislation in Ireland by both liberal and conservative governments³² involved the creation of more peasant proprietors. Over the next few decades, a substantial amount of land

³⁰ J. C. W. Wylie, *Irish Land Law*, 2nd ed. (Abingdon, Oxon: Professional Books, 1986), 29.

³¹ “The Irish Land Bill. Speech Delivered by the Rt. Hon. W.E. Gladstone, in the House of Commons, On His Motion Introducing the Land Law (Ireland) Bill, April 7th, 1881” (London: The National Press Agency, Limited, 1881); The Duke of Argyll, who had supported the Irish Land Act of 1870 now broke ranks with Gladstone on the more security of tenure being proposed in the 1881 Act. He subsequently resigned from the cabinet. See his speech in “The Bessborough Commission. Speech Delivered by the Duke of Argyll, During the Debate in the House of Lords on July 1st, 1881” (London: P.S. King, Parliamentary Bookseller, 1881). During the debates on the 1881 Act, there were hardly any references that compared land tenures prevalent in England and Ireland. Much of the debate was on the necessity of establishing security of tenure for the Irish peasants.

³² While the support from the liberal governments was expected, the initial support for the land purchase schemes from the conservative governments was aimed at getting the best possible price for the landlords who were suffering economically in the 1880s. However, by the end of the century the conservatives also saw the political benefit of an economically prosperous peasantry. For an extended discussion, see Moriarty, “The Transformation of Rural Ireland.”

was purchased from willing landlords and redistributed to the tenants through various land purchase acts. This trend eventually culminated in the compulsory land purchase legislation in 1923.³³

The brief discussion of the workings of the acts of interest in this study shows that the movement towards security of tenure and peasant-proprietorship was either fully implemented (in the case of Prince Edward Island) or solidified (in both Punjab and Ireland) by the 1880s. Ideological contestations went in favour of those i) who saw property rights as shifting rather than fixed, and thus could be assigned to and shared by different occupiers of land, and ii) who believed that improvements were not strictly a function of the size of land holdings and capitalist farming, but were dependent on the security of tenure and associated incentives for improvement to actual occupiers/cultivators of the land. In addition, by the end of the nineteenth century, assumptions about the aristocratic classes being indispensable to the stability of the British Empire were being challenged, and there was a growing recognition across the political spectrum in England about the political advantage of economically content peasants.

Intra-Imperial and Inter-Colony Analogies

In his study of land tenure reforms in Ireland and India, S.B. Cook argued that although “different in many aspects, Irish and Indian legislation of the 1880s reflected a similar orientation. Each represented a similar confluence of ideology and policy prescriptions based on accumulated official experience of rural economies and tenurial systems.... Through an intellectual and

³³ For details on the eventual shift from leasehold to freehold tenures in Ireland, see Wylie, *Irish Land Law*, 29–41; C. F. Bastable, “The Irish Land Purchase Act of 1903,” *The Quarterly Journal of Economics* 18, no. 1 (1903): 1–21; Dunning, “Irish Land Legislation Since 1845. II.”; Varley, Tony, “Gaining Ground, Losing Ground: The Politics of Land Reform in Twentieth-Century Ireland,” in *Land Questions in Modern Ireland*, ed. Fergus Campbell and Varley, Tony (Manchester: Manchester University Press, 2013), 25–64.

administrative circuit of exchange, one component of the empire, (Ireland) exerted an extraordinary degree of influence on the development of another, (British India).”³⁴ Labelling these as ‘intra-imperial analogies’,³⁵ Cook argued that this process entailed “a recognition that Britain’s experience in Ireland was at least remotely relevant to that of other places under British rule,” and thus policies introduced in the governance of Ireland could be suitably adapted and applied across its network of colonies.³⁶

Numerous historians subsequently followed Cook’s approach and identified various English principles (including those related to land tenure, education, and administration systems) transferred from Ireland to India.³⁷ This body of work comes to the following broad conclusions: i) that there was a one-way flow from Ireland to India, because “Ireland acted as the ‘colonial point of reference’ and a ‘laboratory for empire,’” and thus ideas “fashioned in Ireland” were applicable in India;³⁸ and ii) the main objective of these analogies was to justify the transfer of English principles and policies across the Empire on grounds that their applicability in Ireland made them appropriate for adoption in similar colonial contexts. Foregrounding similarities between Ireland and India thus allowed for the dictat that what is good for Ireland is also suitable for India.

³⁴ S.B. Cook, *Imperial Affinities: Nineteenth Century Analogies and Exchanges Between India and Ireland* (New Delhi: Sage Publications, 1993), 130, 134.

³⁵ A widely accepted definition of reasoning by analogy is that structural similarity or isomorphism between analogues being compared increases the “likelihood that they have some further property in common.” Julian S. Weitzenfeld, “Valid Reasoning by Analogy,” *Philosophy of Science* 51 (1984): 137, 139.

³⁶ Cook, *Imperial Affinities*, 26–27.

³⁷ For representative works, see Barry Crosbie, “Networks of Empire: Linkage and Reciprocity in Nineteenth-Century Irish and Indian History,” *History Compass* 7, no. 3 (May 1, 2009): 993–1007; Alan Lester, “Imperial Circuits and Networks: Geographies of the British Empire,” *History Compass* 4, no. 1 (2006): 124–41; Patrick O’Leary, *Servants of the Empire: The Irish in Punjab 1881-1921* (Manchester: Manchester University Press, 2011).

³⁸ Jane Ohlmeyer, “Ireland, India and The British Empire,” *Studies in People’s History* 2, no. 2 (2015): 169.

The current study suggests that the institutionalization of peasant-proprietorship across the British Empire was established through inter-colony analogies and precedents. Unlike ‘intra-imperial’ analogies, which functioned to justify the diffusion of policies based on English principles across the Empire, ‘inter-colony’ analogies aimed to decouple the colonies from those very principles. The latter approach foregrounded shared conditions between the colonies and highlighted how these contrasted with conditions prevalent in England. These differences made English principles unsuited or inappropriate for the colonies.³⁹ I have argued that developments around property rights, political economy, and political expediency had created conflicting perspectives by the middle of the nineteenth century, which precluded movement on the land question in two colonies (Ireland and PEI) and were in the process of reversing the security of tenure for peasants in Punjab (through the privileging of the land-owning class). Part of the stalemate was due to existing norms of viewing colonial land tenures solely through the lens of prevailing practices in England. The challenge for the Imperial Government, whose ideological affinity was more towards the peasants, was to find ways to overcome resistance from the privileged classes in England which saw any encroachment on rights to property as a threat to their position. The use of ‘inter-colony’ analogies allowed for a redirection of the debate from one about how far land tenures being considered across the Empire would impact the sanctity of

³⁹ J.S. Mill, in his speech on an Irish land bill in 1866 in the British Parliament, had argued that “Irish circumstances and Irish ideas as to social and agricultural economy are the general ideas and circumstances of the human race; it is English circumstances and English ideas that are peculiar.” John Stuart Mill, “Speech on Mr. Chichester Fortescue’s Land Bill, House of Commons, May 17, 1866,” in *Chapters and Speeches on the Irish Land Bill*, by John Stuart Mill (London: Longmans, Green, Reader, and Dyer, 1870), 98. George Campbell also made a similar point in his book where he pointed out “as the world now stands, it is we [that is, England] who are abnormal, and the Irish system is that which is more general.” George Campbell, *The Irish Land* (London: Trubner and Co., 1869), 16.

English principles, to one where the English principles were considered an anomaly and thus not applicable to the colonies because their situation was akin to each other rather than to the metropole. This decoupling of colonial land tenures from England also allowed for multi-directional analogies.

We see evidence of such inter-colony analogies when the Punjab precedent of customary tenures and occupancy rights was cited to legalize the Ulster and related custom-based tenant-right in Ireland, and subsequently the establishment of security of tenure through the '3Fs'; the legalization of tenant-right in Ireland serving as a model for PEI's Tenants' Compensation Act of 1872; and compulsory land purchase in Prince Edward Island informing discussions in the push for increasing peasant-proprietorship in Ireland in the 1880s and beyond. For example, Charles Stewart Parnell, a leader of the Land League, called PEI as the "New Ireland" which, like its namesake, had struggled under the suffering of landlords, and argued that the "compulsory expropriation of the landlords..., with full consent of her British Majesty" provided for an "apt illustration" of a principle that would be suitable for Ireland.⁴⁰

The debates around the various laws examined in this study show that proponents of security of tenure for cultivators increasingly used 'inter-colony' analogies to separate the land tenure issues in each colony from the institutionalized practices in England. However, defenders of the property rights of landowners were persistent in their attempts to highlight how any security of tenure for the cultivators would impinge on the fundamental English principles about the sanctity of property rights and undermine the contractual arrangements between landlords

⁴⁰ Charles Stewart Parnell, "The Irish Land Question," *The North American Review* 130, no. 281 (1880): 400–401.

and tenants. In essence, the debate was between those who believed in the universality of English land tenure principles, which needed to be religiously applied across the Empire, and others who saw colonies more similar to each other and very different from the metropole, thus necessitating solutions that were appropriate for the colonies, even if they diverged from the principles practiced at home. The use of inter-colony analogies, which were predicated on shared conditions and experiences between the colonies, not only overcame resistance from the influential aristocratic classes and their supporters across the Empire but also became the normative tool in expanding peasant-proprietorship well into the twentieth century for successive British governments of all political stripes.

Governance Ideologies of the British Empire at the end of the Nineteenth Century

The above discussion then brings us to the final question as to how the land tenure reforms examined in this study inform the late nineteenth-century ideologies and approaches to the governance of the Empire. There are two sub-themes and related questions: i) whether the Empire extended the 'civilized' hierarchy that underlined its approach to political representation in the various colonies to considerations about land tenure? (This relates to the 'othering' versus 'saming' debate about the Empire's overall governance ideology);⁴¹ and ii) whether the Empire retreated from its principles of property rights and political economy in institutionalizing land tenures around customs and customary rights? (Encompasses the broader debate on liberalism's

⁴¹ Duncan Bell, *Reordering the World: Essays on Liberalism and Empire* (Princeton, N.J.: Princeton University Press, 2016); Thomas R. Metcalf, *Ideologies of the Raj*, The New Cambridge History of India; III, 4 (Cambridge, England: Cambridge University Press, 1995); Edward W. Said, *Orientalism*, 1st Vintage Books ed. (New York: Vintage Books, 1979); David Cannadine, *Ornamentalism: How the British Saw Their Empire* (Oxford: Oxford University Press, 2001).

‘universalist’ versus ‘culturalist’ approach in governing the Empire).⁴² These questions are fairly broad, and numerous studies provide extensive analyses on these debates.⁴³ My objective here is to focus on how the processes and outcomes of land tenure discussions in the three colonies offer some valuable insights to these broader debates on the British Empire.

Concerning the first question about any hierarchy around the civilized continuum, the findings from this study point towards a consistent approach across the three colonies by both defenders of landlords’ rights of property as well as those who saw the need for providing security of tenure to the cultivators. That is, the *zamindars* or *talookdars* in Punjab/India, the landlords from the era of conquest and Protestant Ascendancy in Ireland, and the absentee landlords who acquired their landholdings through generous grants for past service to the Empire in Prince Edward Island, were all seen to have similar rights of property, which needed to be protected by the Empire, and any encroachment was seen as ‘communistic’ in the three colonies. On the other side, the yeoman farmer in Punjab, the struggling tenant in Ireland, and the adventurous immigrant farmer of PEI were all perceived to be suffering because they could not fully appropriate the value of their labour and thus needed security of tenure that recognized their value creation and provided additional incentives for improvement in the land they cultivated. Proponents of both views bolstered their positions by using analogies from different

⁴² Karuna Mantena, *Alibis of Empire: Henry Maine and the Ends of Liberal Imperialism* (Princeton, N.J.: Princeton University Press, 2010); Duncan Bell, “Victorian Visions of Global Order: An Introduction,” in *Victorian Visions of Global Order: Empire and International Relations in Nineteenth-Century Political Thought*, ed. Duncan Bell (Cambridge: Cambridge University Press, 2007), 1–25.

⁴³ Particularly useful studies on liberalism and empire in the latter half of the nineteenth century are: Uday Singh Mehta, *Liberalism and Empire: A Study in Nineteenth-Century British Liberal Thought* (Chicago: University of Chicago Press, 1999); Andrew Sartori, *Liberalism in Empire: An Alternative History* (Oakland, California: University of California Press, 2014); Jennifer Pitts, *A Turn to Empire: The Rise of Imperial Liberalism in Britain and France* (Princeton, N.J.: Princeton University Press, 2005); Bell, *Reordering the World*.

colonies and saw any encroachment to the rights of property and reassignment or redistribution of these rights through similar logics. Foregrounding 'sameness' of landlords' rights or the tenants' material conditions across the different colonies was an important tool to bolster respective perspectives during the various debates on land tenure during the nineteenth century.

The argument about the abandonment of the Empire's liberal pretensions comes from the purported conservative turn towards restoring traditional socio-political hierarchies (including property rights of the landed aristocracy) in British India and the emphasis on customary tenures in both India and Ireland. While it is probably true that a "crisis of imperialism"⁴⁴ emanating from various political movements from east to west during the 1850s and 1860s led to a rethinking of the Empire's aspirations of creating "little Englands"⁴⁵ in its various colonies, claims about abjuration of its objectives of protecting the small landholders are based on a partial understanding of what was happening around the Empire.⁴⁶ As shown in this study, land tenure legislation in the three colonies during the 1868-1875 period had a common objective: establishing proprietorship for the cultivators either through greater security of tenure or by transferring full property rights from landholders to tenants.

⁴⁴ Richard Shannon, *The Crisis of Imperialism, 1865-1915* (London: Hart-Davis, MacGibbon, 1974).

⁴⁵ Mantena, *Alibis of Empire*, 200.

⁴⁶ For example, it is suggested that in the 1860s the "policy in Ireland moved towards greater recognition and protection of the tenant, while in India the attempt to record and preserve the status of the tenant gave way to a policy more favourable to the rights and interests of superior landholders." Ronald Hyam, *Britain's Imperial Century, 1815-1914: A Study of Imperial Expansion* (New York: Palgrave Macmillan, 2002), 143. The current historiography of post-Mutiny land tenures in India ignores the happenings in Punjab. As discussed in Chapter 3 of this study, the 1868 Act was enacted primarily to establish the rights of the peasants. Similarly, much of the Empire literature does not include what was happening in the North American settler colonies. However, as discussed in Chapter 5, the efforts in PEI during that time were geared towards the establishment of freehold tenures for the cultivators in line with similar norms in other provinces of the Dominion of Canada.

Furthermore, this study has shown that a turn to custom in establishing tenants' rights was not an abandonment of the principles of property rights and political economy; rather, it was a useful tool to bring acceptance of new thinking on property rights (that is, shared and relative rights) and political economy (that is, socio-economic benefits of small landholdings) to overcome the entrenched ideas about absolute rights of landlords and large-scale capital farming as the engine of improvement and economic growth.⁴⁷ As argued by Sartori, "the political vector represented by the liberal discourse of custom is best understood in terms of an expansively radical impulse in later nineteenth-century liberalism, rather than in terms of contractive reaction"⁴⁸ suggested by some historians.

Nonetheless, the shift from denigrating customs and customary rights in order to justify dispossession of land (as foregrounded by a number of comparative studies)⁴⁹ to attempts at their rediscovery to justify reallocation of property rights (as shown in the current study) provides possibilities for future research that can probe the ways in which the Empire dealt with such contradictions in its ideologies and administrative principles as it transitioned from the largely

⁴⁷ In fact, a recommendations of the Bessborough Commission was to have one law for all tenancy arrangements in Ireland, irrespective of whether the original rights were established through customary tenant-right or through the provisions of the 1870 Act for other arrangements. "Report of Her Majesty's Commissioners of Inquire into the Working of the Landlord and Tenant (Ireland) Act, 1870." It should also be emphasized that debates about leasehold tenures in Prince Edward Island during the time did not invoke customs or customary rights, and even in subsequent debates around and provisions of land tenure legislation in Punjab (Punjab Tenancy Act of 1887) and Ireland (Land Law of 1881) there is minimal resort to customs.

⁴⁸ Sartori, *Liberalism in Empire*, 201.

⁴⁹ Allan Greer, *Property and Dispossession: Natives, Empires and Land in Early Modern North America* (Cambridge, United Kingdom: Cambridge University Press, 2018); Brenna Bhandar, *Colonial Lives of Property: Law, Land, and Racial Regimes of Ownership* (Durham: Duke University Press, 2018); John C. Weaver, *The Great Land Rush and the Making of the Modern World, 1650-1900* (Montreal & Kingston: McGill-Queen's University Press, 2003).

'expansion' imperative until the eighteenth century to the one of effective 'governance' during the nineteenth century.

BIBLIOGRAPHY

PRIMARY SOURCES

Manuscripts/Archives

- Edward Augustus Prinsep Papers. Mss Eur D488: 1848-1898. British Library, India Office Records.
- Edward Augustus Prinsep Petition to Join the Civil Service of the East India Company. IOR/J/1/70/115-24, 1945. British Library, India Office Records.
- Fortescue, Chichester. "Memorandum on the Irish Land Bill to Gladstone," September 13, 1869. Add. MSS 44121. British Library, India Office Records.
- Gladstone Papers Vol. XVI. Correspondence with the Duke of Argyll. 1869-1870. Additional MS. 44.IOI. British Library.
- Government of India, Department of Revenue, Agriculture and Commerce. "Land Revenue and Settlements: Working of the Punjab Tenancy Act. Proceedings - Nos. 13 to 16," December 1874. National Archives of India, NAI.
- Government of India, Foreign Department, Revenue A. "Suits under the Punjab Tenancy Act from June to September 1870. K.W. Proceedings, Nos. 16-28," 1871. National Archives of India, NAI.
- Government of India, Revenue and Agriculture Department. "Punjab Revenue Report, 1880-1881. in Amendment of the Punjab Tenancy Act, XXVIII of 1868. Proceedings Nos. 21-22, January 1884," 1884. National Archives of India, NAI.
- Government of India Revenue and Agriculture Department. Amendment of the Punjab Tenancy Act, Proceedings- Nos.33 and 34, 1882. National Archives of India, NAI.
- Iddesleigh Papers, Letter from John Lawrence to Stafford Northcote, July 7, 1868. Add. MSS. 50226. British Library, India Office Records.
- India Council Minute Book, January 1865 to December 1870. C.126. British Library, India Office Records.
- India Council Summary Minutes, October 28, 1869. IOR/C/22-23. British Library, India Office Records.
- India Political. Collections and Despatches, 1869. L/PS/6/548. British Library, India Office Records.
- Ireland: Irish Land Acts, 1881-1929. Their History and Development, H045/13764. The National Archives Kew.
- John Lawrence Collection: Viceroy of India 1864-1869. BL IOR/MSS.EUR./F.90/25-73. British Library, India Office Records.

Judicial and Public Department. "Act XIII of 1900, Punjab Alienation of Land Act 1900." J&P 2092, 1900. IOR J&P 2092. British Library, India Office Records.

Lieutenant Governor Fonds, 1871-1880. RG1. Prince Edward Island Public Records and Archives.

Letter from Argyll to Mayo, November 1, 1869, n.d. Mss Eur Photo Eur 466, f141. British Library, India Office Records.

Letters and Other Papers from Sir Henry Maine, 1869-1874, 8th Duke of Argyll Papers, n.d. Neg 423-47. British Library, India Office Records.

Letters from Secretary of State, 1849 to 1859, Colonial Office – Prince Edward Island, CO 227. Prince Edward Island Public Records and Archives.

Maine, Henry Sumner. "The Effects of Observation of India on Modern European Thought. The Rede Lecture Delivered Before the University of Cambridge, May 22, 1875," 1875. BL IOR MSS Eur F127/238.

Maine Collection. London School of Economics.

Maine, Sir Henry, Papers. European MSS: MSS.Eur.C.179. British Library. India Office Records.

Papers Regarding Tenant Rights in Oudh, Volume 6. BL IOR/L/PS/6/548 Coll 40/6, 1867. British Library, India Office Records.

Papers and Letters Relating to the Punjab Tenancy Act, 8th Duke of Argyll Papers, 1869. OMF/IOR NEG 4231-4242. British Library, India Office Records.

Prince Edward Island Original Correspondence. CO 226. Prince Edward Island Public Records and Archives.

Private Letters from the Earl of Mayo to the Duke of Argyll, with Enclosures, 1869-1870. In 8th Duke of Argyll Papers, 1870 1869. IOR/Neg 423-47. British Library, India Office Records.

Richard Temple Collection. European MSS F. 86/84. British Library, India Office Records.

Secretary of State Council of India Proceedings on the Punjab Tenancy Act, October 29, 1869. BL IOR/C/22-23.

The [Irish] Land Act of 1870, and Proposed Reforms, July 21, 1880. CAB 37/2/37. The National Archives Kew.

Bills and Acts

ACT No. XVIII of 1868, The Punjab Tenancy Act, in A Collection of The Acts Passed by the Governor General of India in Council in the Year 1868: 180-197." Calcutta: Office of the Superintendent of Government Printing, 1868.

Act X. of 1859. *Calcutta Review*, 1864, 278–306.

An Act for settling differences between Landlord and Tenant, and to enable Tenants on certain Townships to purchase the fee simple of their Farms, Pub. L. No. Cap. II (1864).

An ACT for the purchase of Lands on behalf of the Government of Prince Edward Island, and to regulate the sale and management thereof, and for other purposes therein mentioned, Pub. L. No. CAP. XVIII (1853).

An Act to alter and amend “The Tenants’ Compensation Act, 1872,” Pub. L. No. Cap. XXIV (1873).

An Act to give effects to the Report of the Commissioners on the Land Question, Pub. L. No. CAP. IV (1862).

An ACT to secure compensation to Tenants in Prince Edward Island, and thereby to promote the improvement of the Soil, Pub. L. No. CAP. XI (1855).

Bengal Regulations Vol. 5 1820 to 1825. “Regulation VII of 1822,” 1822. BL IOR V/.

Gladstone, William, Chichester Fortescue, and John Bright. Irish Land: A Bill to Amend the Law relating to the Occupation and Ownership of Land in Ireland, Pub. L. No. 29 (1870).

Land Purchase Act, 1874, Pub. L. No. Cap. III (1874).

Land Purchase Act, 1875, Pub. L. No. Cap. XXXII (1875).

Landlord and Tenant Act (Ireland) 1870 (1870).

Landlord and Tenant Law Amendment Act (Ireland), 1860. (Deasy Act), 23 and 24 Vic. c. 154 (1860).

Stanley, Lord. Compensation of Tenants (Ireland) Bill, Pub. L. No. Hansard Third Series, Volume 81, 211-235 (1845).

The Punjab Tenancy Act, 1887. A Collection of the Acts Passed by the Governor General of India in Council in the Year 1887. Calcutta: Superintendent of Government Printing, 1888.

The Tenants’ Compensation Act, 1871, Pub. L. No. Cap. IX (1871).

The Tenants’ Compensation Act, 1872, Pub. L. No. Cap. X (1872).

Official Reports and Proceedings

“A Copy of General Report on the Administration of the Punjab Territories, for the Years 1856-7 and 1857-8.” India Office, ordered to be Printed by the House of Commons, April 11, 1859. House of Commons Parliamentary Papers Online.

“Abstract of the Census of the Population and Other Statistical Returns of Prince Edward Island Taken in the Year 1871.” Reilly and Co., Charlottetown, 1871. Prince Edward Island Public Archives and Records Office.

Authority of the Governor-General. “Abstract of the Proceedings of the Council of Governor-General of India. Assembled for the Purpose of Making Laws and Regulations.” Calcutta: Office of Superintendent of Government Printing, 1869.

Canada Supreme Court. *Judgment of the Supreme Court of Canada on the Appeal from the Judgment of the Supreme Court of Prince Edward Island Setting aside the Award of the Commissioners under the Land Purchase Act 1875, in the Case of Charlotte Antonia Sullivan*. Charlottetown, P.E.I.: Henry Lawson, 1877.

“Colonial Bills: North America.” The House of Commons, July 26, 1864. House of Commons Parliamentary Papers Online.

“COPY of the ADDRESS to Her Majesty, Adopted by the House of Assembly of Prince Edward Island on the 9th Day of May 1859, Praying for the Appointment of A COMMISSION to Inquire into the Existing Relations of LANDLORD and TENANT in That Colony: And, COPY or EXTRACTS of the Subsequent CORRESPONDENCE of the Secretary of State for the Colonies with the Governor of Prince Edward Island and Landowners and Others of That Colony, Relating to the Same Subject.” House of Commons Parliamentary Papers, 1864.

“Correspondence Relative to the Land Tenure Question in Prince Edward Island.” Presented to both Houses of Parliament by Command of Her Majesty, August 1875. British Parliamentary Papers.

“Debates and Proceedings of the House of Assembly of Prince Edward Island.” Public Archives and Record Office of Prince Edward Island.

“East India (Progress and Condition); Statement Exhibiting the Moral and Material Progress and Condition of India, During the Year 1867-68.” House of Commons, 1869. House of Commons Parliamentary Papers Online.

“East India (Punjab Tenancy): Copies of the Despatch of the Secretary of State for India in Council Dated the 28th Day of October (No. 80) 1869, to the Governor General of India in Council, on the Subject of the India Act No. XXVIII. of 1868, (Punjab Tenancy Act).” House of Commons, 1870.

“Finance and Revenue Accounts of the Government of India 1862/63,” 1864. House of Commons Parliamentary Papers Online.

“Further Correspondence Relative to the Land Tenure Question in Prince Edward Island,” April 1876. House of Commons Parliamentary Papers Online.

“General Report on the Administration of the Punjab for the Years 1849-50 and 1850-51.” London: Printed for the Court of Directors of the East-India Company by J and H. Cox, 1854.

Hancock, W. Neilson. “Report on the Landlord and Tenant Question in Ireland, from 1860 till 1866; with an Appendix Containing A Report on the Question from 1835 till 1859.” Dublin: Alexander Thom, 1866.

“Irish Land Bill. Hansard Third Series CXCIX.” Hansard (3rd Series), 1870.

Journal of the House of Assembly of Prince Edward Island, 1855-1878.

Lucas, Sir Charles, ed. *Report on the Affairs of British North America from the Earl of Durham, February 11, 1839*. 3 vols. New York: August M. Kelley, 1912.

"Minutes of Conference between the Committee of the Privy Council of Canada, and the Undersigned Delegates from the Colony of Prince Edward Island, on the Subject of the Union of That Province with the Dominion of Canada." *Royal Gazette*. March 17, 1873.

"Papers on the Subject of Affording the IMPERIAL GUARANTEE to a LOAN for the Service of PRINCE EDWARD ISLAND." House of Commons, April 16, 1858.

"Papers 'Relating to the Mutiny in the Punjab in 1857.'" House of Commons Parliamentary Papers, April 14, 1859.

"Prince Edward Island." House of Commons Parliamentary Papers Online, 1864.

"Prince Edward Island. Further Correspondence Relative to the Land Tenure Question. Presented to Both Houses of Parliament. February 1881." London: Her Majesty's Stationary Office, 1881. House of Commons Parliamentary Papers Online.

"Report from Her Majesty's Commissioners of Inquiry into the State of the Law and Practice in Respect of the Occupation to the Land in Ireland (Devon Commission)." Dublin: Alexander Thom, 1845.

"Report from the Select Committee on Tenure and Improvement of Land (Ireland) Act; Together with the Proceedings of the Committee, Minutes of Evidence." House of Commons Parliamentary Papers, 1865.

"Report of Her Majesty's Commissioners of Inquire into the Working of the Landlord and Tenant (Ireland) Act, 1870." Presented to Both Houses of Parliament. Dublin: Alex Thom & Co., 1881.

Robertson, Ian Ross, ed. "Report of the Commissioners Appointed by the Queen to Inquire into the Differences Prevailing in Prince Edward Island to the Rights of Landowners and Tenants with a View to a Settlement of the Same on Fair and Equitable Principles, July 18, 1861." In *The Prince Edward Land Commission of 1860*, 183–208. Fredericton, NB: Acadiensis Press, 1988.

"Sessional Papers. Second Session of the Third Parliament of the Dominion of Canada, Volume VIII," 1875.

"Sir H. Elliott's Instructions to Board of Administration as to the Manner of Dealing with Landed Tenures in the Punjab, March 31, 1849," 1856. House of Lords Papers, Volume XIII, Paper Number 197.

"The Agriculture Statistics of Ireland for the Year 1868." Dublin: Alexander Thom, 1869. House of Commons Parliamentary Papers Online.

"The Bessborough Commission. Speech Delivered by the Duke of Argyll, During Teh Debate in the House of Lords on July 1st, 1881." London: P.S. King, Parliamentary Bookseller, 881.

“The Irish Land Bill. Speech Delivered by the Rt. Hon. W.E. Gladstone, in the House of Commons, On His Motion Introducing the Land Law (Ireland) Bill, April 7th, 1881.” London: The National Press Agency, Limited, 1881.

“The Parliamentary Reporter: Debates and Proceedings of the Legislative Council and House of Assembly of Prince Edward Island.” Charlottetown: Examiner Office, 1856.

“The Parliamentary Reporter! Or Debates and Proceedings of the House of Assembly of Prince Edward Island for the Year 1870.” Charlottetown: Patriot Book and Job Printing Rooms, 1870.

“The Parliamentary Reporter! Or Debates and Proceedings of the House of Assembly of Prince Edward Island for the Year 1874.” Charlottetown: J.H. Fletcher, 1874.

Wace, Captain E.G. “Report of the Land Revenue Settlement of the Hazara District of the Punjab 1868-74.” Lahore: Printed at the Central Jail Press, MDCCCLXXVI.

Wilson, J. “Final Report on the Revision of Settlement of the Sirsa District in the Punjab, 1879-83.” Calcutta: Calcutta Central Press Company, 1884.

Primary Published Sources

Baden-Powell, B. H. *The Land-Systems of British India: Being a Manual of the Land-Tenures and of the Systems of Land-Revenue Administration Prevalent in the Several Provinces*. 3 vols. Oxford: Clarendon Press, 1892.

Bentham, Jeremy, Werner Stark, Robert A. Fenn, and Robert A. Fenn. *Jeremy Bentham’s Economic Writings: Critical Edition Based on His Printed Works and Unprinted Manuscripts*. London: Published for the Royal Economic Society by George Allen & Unwin, 1952.

Bourne, Kenneth, ed. *The Letters of the Third Viscount Palmerston to Laurence and Elizabeth Sullivan, 1804-1863*. London: Offices of the Royal Historical Society, University College London, 1979.

Bright, John. *The Diaries of John Bright, with a Foreword by Philip Bright*. London: Cassell and Company, limited, 1930.

Butt, Isaac. *Land Tenure in Ireland; A Plea for the Celtic Race*. Third. Dublin: John Falconer, 1866.

———. *The Irish People and the Irish Land: A Letter to Lord Lifford; with Comments on the Publications of Lord Dufferin and Lord Rosse*. Dublin: John Falconer, 1867.

Caird, James. *The Irish Land Question*. London: Longmans, Green, Reader, and Dyer, 1869.

Cairnes, John Elliott. “Ireland in Transition: Land Tenure.” *The Economist*, October 14, 1865: 1238-1239.

———. “Ireland in Transition: Peasant Proprietorship.” *The Economist*, November 4, 1865: 1333-1334.

- . “Ireland in Transition: Tenant-Right.” *The Economist*, October 28, 1865: 1301-03.
- . “Ireland in Transition: The Future of Irish Industry.” *The Economist*, October 21, 1865: 1238-1239.
- . “Political Economy of Land (Originally Published in Fortnightly Review, January 1870).” In *Essays in Political Economy: Theoretical and Applied*, by John Elliott Cairnes, 187–230. London: Macmillan and Co., 1873.
- Campbell, George. *The Irish Land*. London: Trubner and Co., 1869.
- . *The Progress of The Land Bill*. London: Trubner and Co., 1870.
- . “The Tenure of Land in India.” In *Systems of Land Tenure in Various Countries: A Series of Essays Published under the Sanction of the Cobden Club*, 145–227. London: Macmillan and Co., 1870.
- Campbell, Sir George. *Memories of My Indian Career*. Edited by Sir Charles E. Bernard. 2 vols. London: Macmillan and Co., 1893.
- Cobden Club (London, England). *Systems of Land Tenure in Various Countries*. London: Macmillan, 1870.
- Darling, Malcolm Lyall. *The Punjab Peasant in Prosperity and Debt*. Oxford University Press, 1928.
- Davies, W. G. *Tenant-Right in the Punjab, and the Punjab Tenancy Act*. Allahabad: Pioneer Press, 1882.
- De Kiewiet, C. W., and Frank H. Underhill, eds. *Dufferin-Carnarvon Correspondence, 1874-1878*. Toronto: The Champlain Society, 1955.
- Douie, J.M. *Punjab Settlement Manual*. Delhi: Daya Publishing House, 1899.
- Dufferin, Lord. *Irish Emigration and the Tenure of Land in Ireland*. London: Willis, Sotheran, and Co., 1867.
- Dutt, Romesh C., ed. *Sir Philip Francis’s Minutes of the Subject of a Permanent Settlement for Bengal, Behar and Orissa*. Calcutta: S.C. Auddy and Co., Booksellers and Publishers, 1901.
- Ferguson, William Dwyer. *The Tenure and Improvement of Land in Ireland Considered with Reference to the Relation of Landlord and Tenant and Tenant-Right*. Dublin: E.J. Milliken, 1851.
- Finlason, W.F. *The History of Law of Tenures of Land in England and Ireland: With Particular Reference to Inheritable Tenancy; Leasehold Tenure; Tenancy at Will; and Tenant Right*. London: Stevens & Hayes, 1870.
- Fitzgibbon, Gerald. *The Land Difficulty of Ireland with and Effort to Solve It*. London: Longmans, Green, Reader, and Dyer, 1869.

- Gladstone, William E. "'Our Colonies.' An Address Delivered to the Members of the Mechanics' Institute, November 12, 1855." London: John W. Parker and Son, West Strand, 1855.
- Grenville, William Wyndham. *Substance of the Speech of Lord Grenville on the Motion Made by the Marquis Wellesley, in the House of Lords, on Friday, the 9th of April 1813, for the Production of Certain Papers on Indian Affairs*. London: Printed by C. H. Reynell, 1813.
- Hoskyns, C. Wren. "Land-Laws in England." In *Systems of Land Tenure in Various Countries: A Series of Essays Published Under the Sanction of the Cobden Club*, 92–144. London: Macmillan and Co., 1870.
- Kipling, Rudyard. "The Head of the District." In *Life's Handicap: Being Stories of My Own People*, by Rudyard Kipling, 171–93. Charleston, SC: BiblioBazaar, 2007.
- Locke, John. *Two Treatises of Government*. Merchant Books, 1921.
- Longfield, M. "Tenure of Land in Ireland." In *Systems of Land Tenure in Various Countries: A Series of Essays Published Under the Sanction of the Cobden Club*, 1–91. London: Macmillan and Co., 1870.
- Maguire, John Francis. *Irish in America*. New York: D&J Sadlier, 1873.
- Maine, Henry Sumner. *Ancient Law: Its Connection with the Early History of Society and Its Relation to Modern Ideas*. London: John Murray, 1901.
- . *Lectures on the Early History of Institutions*. London: John Murray, Albermarle Street, 1905.
- . *Village-Communities in the East and West: Six Lectures Delivered at Oxford*. London: J. Murray, 1871.
- Matthew, H.C.G. *The Gladstone Diaries With Cabinet Minutes and Prime-Ministerial Correspondence: Volume Seven, January 1869-June 1871*. Oxford: Oxford University Press, 1982.
- Mill, John Stuart. *England and Ireland*. 2nd ed. London: Longmans, Green, Reader, and Dyer, 1868.
- . "Landed Tenure in Ireland." In *Newspaper Writings December 1847 - July 1873, in Collected Works of John Stuart Mill, Volume XXV*, edited by Ann P. Robson and John B. Robson, 1112–15. Toronto and Buffalo: University of Toronto Press, 1986.
- . "Maine on Village Communities." In *Collected Works of John Stuart Mill: Writings on India*, edited by John B. Robson, Martin Moir, and Zawahir Moir, XXX:213–28. Toronto and Buffalo: University of Toronto Press, 1990.
- . "Speech on Mr. Chichester Fortescue's Land Bill, House of Commons, May 17, 1866." In *Chapters and Speeches on the Irish Land Bill*, by John Stuart Mill, 97–107. London: Longmans, Green, Reader, and Dyer, 1870.

- Mill, John Stuart, Jeremy Bentham, John Austin, Mary Warnock, and John Stuart Mill. *Utilitarianism: And, On Liberty: Including Mill's Essay on Bentham, and Selections from the Writings of Jeremy Bentham and John Austin*. 2nd ed. Malden, MA: Blackwell Pub., 2003.
- Mill, John Stuart, and Jonathan Riley. *Principles of Political Economy: And Chapters on Socialism*. World's Classics. Oxford; New York: Oxford University Press, 1994.
- Mineka, Francis E., and Dwight N. Lindley, eds. "Letter from J.S. Mill to Henry Maine, January 1, 1869." In *The Later Letters of John Stuart Mill 1849-1873*, XVII:1536–39. Collected Works of John Stuart Mill. Toronto and Buffalo: University of Toronto Press, 1972.
- Mischievous Legislation, Being a Series of Articles on Tenant Right in the Punjab. Reprinted from "Indian Public Opinion," with Appendices*. Lahore: Indian Public Opinion Press, 1868.
- Opinions of the Press in India on (I) The Tenant Right Controversy in the Punjab. (II) The Action Taken by the Government of India. (III) The Legislative Measure Called "The Punjab Tenancy Act," as Collected from the Newspapers, during the Years 1865 to 1869*. Lahore: Indian Public Opinion Press, 1869.
- Parnell, Charles Stewart. "The Irish Land Question." *The North American Review* 130, no. 281 (1880): 388–406.
- Pears, Edwin, ed. *Transactions of the National Association for the Promotion of Social Science, Bristol Meeting 1869*. London: Longmans, Green, Reader, and Dyer, 1870.
- Ricardo, David. *The Principles of Political Economy & Taxation*. Everyman's Library. London: New York: J. M. Dent & sons, Ltd.; E. P. Dutton & co, 1912.
- Richey, Alexander G. *The Irish Land Laws*. London: Macmillan, 1880.
- Robson, John M., Michael Laine, and Marion Filipiuk, eds. *Additional Letters of John Stuart Mill*. Toronto: University of Toronto Press, 1991.
- Seebohm, F. "The Historical Claims of Tenant Right." *The Nineteenth Century: A Monthly Review* 9, no. 47 (January 1881): 19–36.
- . "The Land Question: Part I. English Tenures in Ireland." *Fortnightly Review*, December 1869, 626–40.
- . "The Land Question: Part II. Feudal Tenures in England." *Fortnightly Review*, January 1870, 89–107.
- "Selection from Records of the Government of Punjab, Papers Connected with the Question of Tenant Right in the Punjab." Lahore: C.H. Voss, 1869.
- Smith, Adam, and D. D. Raphael. *The Wealth of Nations*. Everyman's Library 11. New York: Knopf: Distributed by Random House, 1991.
- Temple, Richard. *James Thomason*. Oxford: Clarendon Press, 1893.

———. *Lord Lawrence*. London: MacMillan, 1890.

———. *The Story of My Life. In Two Volumes*. London, Paris, Melbourne: Cassell and Company, limited, 1896.

“The Irish Land Bill. Speech Delivered by the Rt. Hon. W.E. Gladstone, in the House of Commons, On His Motion Introducing the Land Law (Ireland) Bill, April 7th, 1881.”
London: The National Press Agency, Limited, 1881.

Thorburn, S. S. *Musalman and Money-Lenders in the Punjab*. Edinburgh and London: William Blackwood & Sons, 1886.

Thornton, William Thomas. *A Plea for Peasant Proprietors; with The Outlines of a Plan for Their Establishment in Ireland*. London: John Murray, Albermarle Street, 1848.

Tupper, C.L. *Punjab Customary Law: Volume I. A Selection from the Records of the Punjab Government*. Calcutta: Office of the Superintendent of Government Printing, 1881.

———. *Punjab Customary Law: Volume II. Statements of Customary Laws in Different Districts*. Vol. II. Calcutta: Office of the Superintendent of Government Printing, 1881.

———. *Punjab Customary Law: Volume III. Questions on Tribal and Local Custom*. Vol. III. Calcutta: Office of the Superintendent of Government Printing, 1881.

Wingfield, Charles. *Observations on Land Tenures and Tenant Right in India*. London: Wm. H. Allen and Co., 1869.

Newspapers

Charlottetown Herald (Prince Edward Island)

Delhi Gazette (India)

Economist (England)

Freeman's Journal (Ireland)

Indian Public Opinion (India)

Irish Examiner (Ireland)

Irish Times and Daily Advertiser (Ireland)

Lahore Chronicle (India)

Mayo Examiner (Ireland)

Nation (Ireland)

Patriot (Prince Edward Island)

Paul Mall Gazette (England)

Pioneer (India)

Royal Gazette (Prince Edward Island)

The Cork Examiner (Ireland)
The Examiner (Prince Edward Island)
The Friend of India (India)
The Globe (England)
The Guam Herald (Ireland)
The Island Magazine (Prince Edward Island)
The Liverpool Daily (England)
The Punjabee (India)
The Saturday Review (England)
The Spectator (England)
The Tablet (England)
The Times (England)
Times of India (India)

SECONDARY SOURCES

- Aitchison, Sir Charles. *Rulers of India: Lord Lawrence*. Oxford: The Clarendon Press, 1892.
- Ali, Imran. *The Punjab Under Imperialism, 1885-1947*. Princeton, NJ: Princeton University Press, 2014.
- . "The Punjab Canal Colonies." Ph.D. Thesis. The Australian National University, 1979.
- Ambirajan, S. *Classical Political Economy and British Policy in India*. Cambridge, England: Cambridge University Press, 1978.
- Armitage, David. *The Ideological Origins of the British Empire*. Cambridge, England: Cambridge University Press, 2000.
- Arnold, Edwin. *The Marquis of Dalhousie's Administration of British India, Volume the First, Containing the Acquisition and Administration of the Punjab*. London: Saunders, Otley, and Co., 1862.
- Aulakh, Preet S. "Law, Identity and Imperial Logics of Exclusion: The Case of the Komagata Maru Passengers." *The Journal of Imperial and Commonwealth History* 49, no. 5 (2021): 866-898.
- Baglole, Harry. "Cooper, William (d. 1867)," *Dictionary of Canadian Biography*, Volume IX (1861-1870). University of Toronto/ Université Laval, 2003.
- . "Patterson, Walter." *Dictionary of Canadian Biography*, Volume IV (1771-1800). University of Toronto/ Université Laval, 2003.

- Banerjee, Abhijit, and Lakshmi Iyer. "History, Institutions, and Economic Performance: The Legacy of Colonial Land Tenure Systems in India." *American Economic Review* 95, no. 4 (2005): 1190–1213.
- Banerjee, Sukanya. *Becoming Imperial Citizens: Indians in the Late-Victorian Empire*. Next Wave. Durham, NC: Duke University Press, 2010.
- Banga, Indu. *Agrarian System of the Sikhs: Late Eighteenth and Early Nineteenth Century*. New Delhi: Manohar, 1978.
- Barrier, N. Gerald. *The Punjab Alienation of Land Bill of 1900*. Durham, NC: Duke University, 1966.
- . "The Punjab Government and Communal Politics, 1870-1908." *The Journal of Asian Studies* 27, no. 3 (1968): 523–39.
- . "The Formulation and Enactment of the Punjab Alienation of Land Bill." *The Indian Economic & Social History Review* 2, no. 2 (1965): 145–65.
- Bastable, C. F. "The Irish Land Purchase Act of 1903." *The Quarterly Journal of Economics* 18, no. 1 (1903): 1–21.
- Bayly, C. A. "Ireland, India and the Empire: 1780-1914." *Transactions of the Royal Historical Society* 10 (2000): 377–97.
- . "Maine and Change in Nineteenth-Century India." In *The Victorian Achievement of Sir Henry Maine: A Centennial Reappraisal*, edited by Alan Diamond, 389–97. New York: Cambridge University Press, 1991.
- . *The Birth of the Modern World 1780-1914*. Malden, MA: Blackwell Publishing, 2004.
- Beaglehole, J.C. "The Colonial Office, 1782-1854." *Australian Historical Studies* 1, no. 3 (1941): 170–89.
- Bell, Duncan. "John Stuart Mill on Colonies." *Political Theory* 38, no. 1 (February 1, 2010): 34–64.
- . *Reordering the World: Essays on Liberalism and Empire*. Princeton, New Jersey: Princeton University Press, 2016.
- . "Victorian Visions of Global Order: An Introduction." In *Victorian Visions of Global Order: Empire and International Relations in Nineteenth-Century Political Thought*, edited by Duncan Bell, 1–25. Cambridge, NY: Cambridge University Press, 2007.
- Besley, Timothy. "Property Rights and Investment Incentives: Theory and Evidence from Ghana." *Journal of Political Economy* 103, no. 5 (1995): 903–37.
- Besley, Timothy J., Konrad B. Burchardi, and Maitreesh Ghatak. "Incentives and the De Soto Effect." *The Quarterly Journal of Economics* 127, no. 1 (February 1, 2012): 237–82.

- Bhandar, Brenna. *Colonial Lives of Property: Law, Land, and Racial Regimes of Ownership*. Durham, NC: Duke University Press, 2018.
- Bhatia, Nandi. *Acts of Authority, Acts of Resistance: Theater and Politics in Colonial and Postcolonial India*. Ann Arbor, MI: University of Michigan Press, 2004.
- Bhattacharya, Neeladri. *The Great Agrarian Conquest: The Colonial Shaping of a Rural World*. New Delhi: Permanent Black, 2019.
- Bittermann, Rusty. "Lady Landlords and the Final Defence of Landlordism on Prince Edward Island: The Case of Charlotte Sullivan." *Histoire Sociale / Social History* 38, no. 76 (2005): 204–33.
- . *Rural Protest on Prince Edward Island: From British Colonization to the Escheat Movement*. Toronto: University of Toronto Press, 2006.
- Bittermann, Rusty, and Margaret McCallum. *Lady Landlords of Prince Edward Island: Imperial Dreams and the Defence of Property*. Montreal: McGill-Queen's University Press, 2008.
- . "The Pursuit of Gentility in an Age of Revolution: The Family of Jonathan Worrell." *Acadiensis* 43, no. 2 (2014): 31–56.
- . "Upholding the Land Legislation of a 'Communitistic and Socialist Assembly': The Benefits of Confederation for Prince Edward Island." *The Canadian Historical Review* 81, no. 1–15 (2006): 31–56.
- . "When Private Rights Become Public Wrongs: Property and the State in Prince Edward Island in the 1830s." In *Despotic Dominion: Property Rights in British Settler Colonies*, edited by John McLaren, A. R. Buck, and Nancy E. Wright, 144–68. Vancouver, B.C.: UBC Press, 2005.
- Black, R. D. Collison. "Cairnes, John Elliot (1823–1875), Economist." *Oxford Dictionary of National Biography*. Oxford: Oxford University Press, 2004.
<https://www.oxforddnb.com/view/10.1093/ref:odnb/9780198614128.001.0001/odnb-9780198614128-e-4345>.
- . "Economic Policy in Ireland and India in the Time of J. S. Mill." *The Economic History Review* 21, no. 2 (1968): 321–36.
- . *Economic Thought and the Irish Question, 1817-1870*. Cambridge, England: Cambridge University Press, 2015.
- Blakely, Phyllis R. "Cunard, Sir Samuel," Volume IX (1861-1870), *Dictionary of Canadian Biography*. University of Toronto/Université Laval, 2003.
- Bolger, Francis W.P. "Long Courted, Won at Last." In *Canada's Smallest Province: A History of P.E.I.*, edited by Francis W.P. Bolger, 207–31. Charlottetown, P.E.I.: Prince Edward Island 1973 Centennial Commission, 1973.

- . “Nation Building at Charlottetown, 1864.” In *Canada’s Smallest Province: A History of P.E.I.*, edited by Francis W.P. Bolger, 135–55. Charlottetown, P.E.I.: Prince Edward Island 1973 Centennial Commission, 1973.
- . *Prince Edward Island and Confederation, 1863-1873*. Charlottetown, P.E.I.: St. Dunstan’s University Press, 1964.
- . “Prince Edward Island Rejects Confederation, 1864-1867.” In *Canada’s Smallest Province: A History of P.E.I.*, edited by Francis W.P. Bolger, 156–84. Charlottetown, P.E.I.: Prince Edward Island 1973 Centennial Commission, 1973.
- . “The Beginnings of Independence, 1767-1787.” In *Canada’s Smallest Province: A History of P.E.I.*, edited by Francis W.P. Bolger, 37–65. Charlottetown, P.E.I.: Prince Edward Island 1973 Centennial Commission, 1973.
- . “The Demise of Quit Rents and Escheat, 1824-1842.” In *Canada’s Smallest Province: A History of P.E.I.*, edited by Francis W.P. Bolger, 95–114. Charlottetown: Prince Edward Island 1973 Centennial Commission, 1873.
- Bourke, P. M. Austin. “The Agricultural Statistics of the 1841 Census of Ireland. A Critical Review.” *The Economic History Review* 18, no. 2 (1965): 376–91.
- Boyle, John W. “Ireland and the First International.” *Journal of British Studies* 11, no. 2 (1972): 44–62.
- Brann, Henry A. *Gladstone and Irish Grievance. An Essay*. New York: Benj. H. Tyrrel, 1881.
- Brown, R. Blake. “A Taxonomy of Methodological Approaches in Recent Canadian Legal History.” *Acadiensis* 34, no. 1 (2004): 145–55.
- Buck, A. R., John McLaren, and Nancy E. Wright. *Land and Freedom: Law, Property Rights and the British Diaspora*. Aldershot, UK: Ashgate, 2001.
- Buckner, Phillip A. ed. *Canada and the British Empire*. Oxford: Oxford University Press, 2010.
- Bumsted, J.M. “Island Resistance: Two Popular Movements for Political Change in the Era of Confederation.” *Acadiensis* 27, no. 2 (1998): 135–41.
- . *Land, Settlement, and Politics on Eighteenth-Century Prince Edward Island*. Montreal: McGill-Queen’s Press - MQUP, 1987.
- . “The Land Question on Prince Edward Island and the Quitrent Controversy of 1802-1806.” *Acadiensis* 29, no. 2 (2000): 3–26.
- . “The Origins of the Land Question on Prince Edward Island, 1767-1805.” *Acadiensis* 11, no. 1 (1981): 43–56.
- Cannadine, David. *Ornamentalism: How the British Saw Their Empire*. Oxford: Oxford University Press, 2001.

- Caporaso, James A., and David P. Levine. *Theories of Political Economy*. New York: Cambridge University Press, 1992.
- Casey, Terence. *The Tenant's Tale: A Chronicle of Life in Rural Ireland during the 19th Century*. Berks, UK: Domlan Scott Ltd, 2013.
- Chandra, Bipan. *India's Struggle for Independence, 1857-1947*. New Delhi, India: Penguin Books, 1989.
- Chaudhry, Faisal. "A Rule of Proprietary Right for British India: From Revenue Settlement to Tenant Right in the Age of Classical Legal Thought." *Modern Asian Studies* 50, no. 1 (January 2016): 345–84.
- Childers, Edmund Spencer Eardley. *The Life and Correspondence of the Right Hon. Hugh C. E. Childers, 1827-1896*. London: J. Murray, 1901.
- Clark, Andrew Hill. *Three Centuries and the Island: A Historical Geography of Settlement and Agriculture in Prince Edward Island, Canada*. Toronto: University of Toronto Press, 1959.
- Cole, Daniel H., and Peter Z. Grossman. "The Meaning of Property Rights: Law versus Economics?" *Land Economics* 78, no. 3 (2002): 317–30.
- Condos, Mark. *The Insecurity State: Punjab and the Making of Colonial Power in British India*. Cambridge: Cambridge University Press, 2017.
- Cook, S.B. *Imperial Affinities: Nineteenth Century Analogies and Exchanges Between India and Ireland*. New Delhi: Sage Publications, 1993.
- Cowell, Herbert. *The History and Constitution of the Courts and Legislative Authorities in India*. Second Edition. Calcutta: Thacker, Spink and Co., 1884.
- Crawford, W. H. "Landlord-Tenant Relations in Ulster 1609–1820:" *Irish Economic and Social History* 2 (1975): 5–21.
- Crosbie, Barry. "Networks of Empire: Linkage and Reciprocity in Nineteenth-Century Irish and Indian History." *History Compass* 7, no. 3 (May 1, 2009): 993–1007.
- Cunningham, John. "Oliver Cromwell and the 'Cromwellian Settlement' of Ireland." *The Historical Journal* 53, no. 4 (2010): 919–37.
- Currie, J. M. *The Economic Theory of Agricultural Land Tenure*. Cambridge; New York: Cambridge University Press, 1981.
- Daly, Mary E., and K. Theodore Hoppen, eds. *Gladstone: Ireland and Beyond*. Dublin: Four Courts Press, 2011.
- Darling, Malcolm Lyall. *The Punjab Peasant In Prosperity And Debt*. Oxford: Oxford University Press, 1928.

- Davenport-Hines, Richard. *Blackwood, Frederick Temple Hamilton-Temple-, First Marquess of Dufferin and Ava (1826–1902), Diplomatist*. London: Oxford University Press, 2008.
- Demsetz, Harold. "Toward a Theory of Property Rights." *The American Economic Review* 57, no. 2 (1967): 347–59.
- Dewey, Clive. "The Influence of Sir Henry Maine on Agrarian Policy in India." In *The Victorian Achievement of Sir Henry Maine: A Centennial Reappraisal*, edited by Alan Diamond, 353–75. New York: Cambridge University Press, 1991.
- . *The Settlement Literature of the Greater Punjab: A Handbook*. New Delhi: Manohar Publications, 1991.
- Dewey, Clive J. "The Rehabilitation of the Peasant Proprietor in Nineteenth-Century Economic Thought." *History of Political Economy* 6, no. 1 (1974): 17–47.
- Dirks, Nicholas B. *The Scandal of Empire: India and the Creation of Imperial Britain*. Cambridge, Mass: Belknap Press of Harvard University Press, 2006.
- Dodwell, H.H., ed. *The Cambridge History of India. Volume VI: The Indian Empire 1858-1918*. Cambridge: Cambridge University Press, 1932.
- Dooley, Terence. "Land and The People." In *the Oxford Handbook of Modern Irish History*, edited by Alvin Jackson, 107–25. Oxford: Oxford University Press, 2014.
- Dorsett, Shaunnagh and John McLaren, eds. *Legal Histories of the British Empire: Laws, Engagements and Legacies*. Abingdon, Oxon: Routledge, 2014.
- Dowling, Alan. "The Genesis of Deasy's Act Comments and Notes." *Northern Ireland Legal Quarterly* 40, no. 1 (1989): 53–63.
- Dowling, Martin W. *Tenant Right and Agrarian Society in Ulster 1600-1870*. Dublin: Irish Academic Press, 1999.
- Duncan, Myrl L. "Reconceiving the Bundle of Sticks: Land as a Community-Based Resource." *Environmental Law* 32, no. 4 (2002): 773–808.
- Dunning, Wm. A. "Irish Land Legislation Since 1845. I." *Political Science Quarterly* 7, no. 1 (1892): 57–79.
- . "Irish Land Legislation Since 1845. II." *Political Science Quarterly* 7, no. 3 (1892): 500–521.
- Eagan, Catherine M. "'White,' If 'Not Quite': Irish Whiteness in the Nineteenth-Century Irish-American Novel." *Éire-Ireland* 36, no. 1 (2001): 66–81.
- Eldridge, C.C. *British Imperialism in the Nineteenth Century*. London: Macmillan, 1984.
- Eversley, Baron G. Shaw-Lefevre. *Gladstone and Ireland: The Irish Policy of Parliament from 1850-1894*. London: Methuen, 1912.

- Fitzmaurice, Andrew. *Sovereignty, Property and Empire, 1500-2000*. Cambridge, England: Cambridge University Press, 2014.
- Frost, Mark R. "Imperial Citizenship or Else: Liberal Ideals and the India Unmaking of Empire, 1890–1919." *The Journal of Imperial and Commonwealth History* 46, no. 5 (September 3, 2018): 845–73.
- Gailey, Andrew. *The Lost Imperialist: Lord Dufferin, Memory and Mythmaking in an Age of Celebrity*. London: John Murray Press, 2015.
- Gallagher, John, and Ronald Robinson. "The Imperialism of Free Trade." *The Economic History Review* 6 (1953): 1–15.
- Gandhi, Jennifer, and Adam Przeworski. "Cooperation, Cooptation, and Rebellion under Dictatorships." *Economics and Politics* 18, no. 1 (2006): 1–26.
- Gandhi, Rajmohan. *Punjab: A History from Aurangzeb to Mountbatten*. New Delhi: Aleph Book Company, 2013.
- Gerschewski, Johannes. "The Three Pillars of Stability: Legitimation, Repression, and Co-optation in Autocratic Regimes." *Democratization* 20, no. 1 (2013): 13–38.
- Gibbon, Frederick P. *The Lawrences of the Punjab*. London: J.M. Dent, 1908.
- Gibson, James A. "The Colonial Office View of Canadian Federation, 1856-1868." *The Canadian Historical Review* 35, no. 4 (1954): 279–313.
- Girard, Philip. "Land Law, Liberalism, and the Agrarian Ideal: British North America, 1750-1920." In *Despotic Dominion: Property Rights in British Settler Societies*, edited by John McLaren, A. R. Buck, and Nancy E. Wright, 120–43. Vancouver, B.C: UBC Press, 2005.
- Girard, Philip, Jim Phillips, and R. Blake Brown. *A History of Law in Canada*. Toronto; Buffalo; London: Published for The Osgoode Society for Canadian Legal History by University of Toronto Press, 2019.
- Gopal, S. *British Policy in India, 1858-1905*. Cambridge, England: Cambridge University Press, 1965.
- Gordon, Peter. "Herbert, Henry Howard Molyneux, Fourth Earl of Carnarvon (1831–1890), Politician." *Oxford Dictionary of National Biography*. Oxford University Press, 2008.
- Gray, J.N. "John Stuart Mill on the Theory of Property." In *Theories of Property: Aristotle to Present*, edited by Anthony Parel and Thomas Flanagan, 257–82. Waterloo, ON: Wilfrid Laurier University Press, 1979.
- Greer, Allan. *Property and Dispossession: Natives, Empires and Land in Early Modern North America*. Cambridge, England: Cambridge University Press, 2018.
- Grewal, J. S. *The Sikhs of the Punjab*. The New Cambridge History of India; II, 3. Cambridge, England: Cambridge University Press, 1990.

- Groenhout, Fiona. "The History of the Indian Princely States: Bringing the Puppets Back onto Centre Stage." *History Compass* 4, no. 4 (2006): 629–44.
- Guha, Ranajit. *A Rule of Property for Bengal: An Essay on the Idea of Permanent Settlement*. Durham, NC: Duke University Press Books, 1996.
- Guinnane, Timothy W., and Ronald I. Miller. "The Limits to Land Reform: The Land Acts in Ireland, 1870–1909." *Economic Development and Cultural Change* 45, no. 3 (1997): 591–612.
- Guttman, Joel M. "The Economics of Tenant Rights in Nineteenth Century Irish Agriculture." *Economic Inquiry* 18, no. 3 (July 1, 1980): 408–24.
- Hall, Peter A. "Aligning Ontology and Methodology in Comparative Research." In *Comparative Historical Analysis in the Social Sciences*, edited by James Mahoney and Dietrich Rueschemeyer, 373–406. New York, NY: Cambridge University Press, 2003.
- . "Historical Institutionalism in Rationalist and Sociological Perspective." In *Explaining Institutional Change: Ambiguity, Agency, and Power*, edited by James Mahoney and Kathleen Thelen, 204–24. Cambridge: Cambridge University Press, 2009.
- Hambly, G. R. G. "Richard Temple and the Punjab Tenancy Act of 1868." *The English Historical Review* 79, no. 310 (1964): 47–66.
- Hatvany, Matthew G. "Tenant, Landlord and Historian: A Thematic Review of the 'Polarization' Process in the Writing of 19th-Century Prince Edward Island History." *Acadiensis* 27, no. 1 (1997): 109–32.
- . "The Proprietary Burden?" *The Island Magazine* 44 (1998): 3–7.
- Hatvany, Matthew George. "Tenant, Landlord, and the New Middle Class: Settlement, Society, and Economy in Early Prince Edward Island, 1798-1848." ProQuest Dissertations Publishing, 1996. <https://search.proquest.com/docview/304265267?pq-origsite=primo>.
- Hobsbawm, E. J., and T. O. Ranger, eds. *The Invention of Tradition*. Cambridge; New York: Cambridge University Press, 2012.
- Hobson, J.A. *Imperialism: A Study*. London: G. Allen & Unwin Ltd, 1902.
- Hodgson, Louis-Philippe. "Kant on Property Rights and the State." *Kantian Review* 15, no. 1 (March 2010): 57–87.
- Hoecke, Mark Van. "Methodology of Comparative Legal Research." *Law and Method*, no. 12 (2015). <https://doi.org/10.5553/REM/.000010>.
- Holland, Thomas. *The Elements of Jurisprudence*. 10th ed. New York: Oxford University Press, 1906.

- Holmes, Oliver Wendell. "The Arrangement of Law. Privity." *American Law Review* 7 (1872): 46–65.
- Horwitz, Morton J. *The Transformation of American Law, 1780-1860*. Cambridge, MA: Harvard University Press, 1977.
- Howe, Joseph. *Confederation Considered in Relation to the Interests of the Empire*. London: Edward Stanford, 1866.
- Hyam, Ronald. *Britain's Imperial Century, 1815-1914: A Study of Imperial Expansion*. New York: Palgrave Macmillan, 2002.
- Ibbetson, David. "Comparative Legal History: A Methodology." In *Making Legal History: Approaches and Methodologies*, edited by Anthony Musson and Chantal Stebbings, 131–45. Cambridge, England: Cambridge University Press, 2012.
- . "The Challenges of Comparative Legal History." *Comparative Legal History* 1, no. 1 (May 15, 2013): 1–11.
- India. *The Punjab Tenancy Act, XVI of 1887. With Introduction, Notes, Rules and Debates in Council by Madan Gopal ... Second Edition. Revised and Annotated up to End of February 1899*. Lahore: Gulab Singh & Sons, 1899.
- Innes, Arthur D., and Charles Gough. *Annexation of Punjab*. Delhi: National Book Shop, 1984.
- James, Francis G. "Irish Colonial Trade in the Eighteenth Century." *The William and Mary Quarterly* 20, no. 4 (1963): 574–84.
- Jenkins, Roy. *Gladstone*. London: Macmillan, 1995.
- Kamran, Tahir. "An Orientalist of His Own ilk: The Uncanny Genius of Letner | Political Economy | TheNews.Com.Pk," May 1, 2016. <https://www.thenews.com.pk/tns/detail/560854-orientalist-ilk>.
- Kelly, J. M. *A Short History of Western Legal Theory*. Oxford; New York: Oxford University Press, 1992.
- Kelly, Matthew. "Irish Nationalist Opinion and the British Empire in the 1850s and 1860s." *Past & Present*, no. 204 (2009): 127–54.
- Kennedy, Paul. "Continuity and Discontinuity in British Imperialism 1815-1914." In *British Imperialism in the Nineteenth Century*, edited by C.C. Eldridge, 20–38. London: Macmillan, 1984.
- Kenny, Kevin. "Race, Violence, and Anti-Irish Sentiment in the Nineteenth Century." In *Making the Irish American: History and Heritage of the Irish in the United States*, edited by J.J. Lee and Marion R. Casey, 364–80. New York: New York University Press, 2006.
- Khilnani, N. M. *British Power in the Punjab, 1839-1858*. New York: Asia Pub. House, 1972.

- Kinzer, Bruce L. *England's Disgrace? J.S. Mill and the Irish Question*. Toronto: University of Toronto Press, 2001.
- Knox, Bruce. "Democracy, Aristocracy and Empire: The Provision of Colonial Honours, 1818–1870." *Australian Historical Studies* 25, no. 99 (1992): 244–64.
- Kolbert, C. F., and Timothy O'Brien. *Land Reform in Ireland: A Legal History of the Irish Land Problem and Its Settlement*. Cambridge: University of Cambridge Department of Land Economy, 1975.
- Kostal, Rande. W. *A Jurisprudence of Power Victorian Empire and the Rule of Law*. Oxford: Oxford University Press, 2008.
- Lee, Harold. *Brothers in the Raj: The Lives of John and Henry Lawrence*. Oxford: Oxford University Press, 2002.
- Lee, Sidney, and Alan O'Day. "Crawford, William Sharman (1781–1861), Politician and Landlord in Ireland." *Oxford Dictionary of National Biography*. Oxford University Press, 2008. <https://doi.org/10.1093/ref:odnb/6648>.
- Lester, Alan. "Imperial Circuits and Networks: Geographies of the British Empire." *History Compass* 4, no. 1 (2006): 124–41.
- Levine, Philippa. "Is Comparative History Possible?" *History and Theory* 53, no. October (2014): 331–47.
- Levine, Ross. "Law, Endowments and Property Rights." *Journal of Economic Perspectives* 19, no. 3 (September 2005): 61–88.
- Liversage, V. *Land Tenure in the Colonies*. Cambridge, England: Cambridge University Press, 1945.
- Long, D.G. "Bentham on Property." In *Theories of Property: Aristotle to Present*, edited by Anthony Parel and Thomas Flanagan, 221–56. Waterloo, ON: Wilfrid Laurier University Press, 1979.
- Louis, Wm. Roger, ed. *Imperialism: The Robinson and Gallagher Controversy*. New York: New Viewpoints, 1976.
- Lowry, Donal. Review of "Imperial Affinities: Nineteenth-Century Analogies and Exchanges between India and Ireland. By S.B. Cook. New Delhi, Newbury Park & London: Sage Publications. 1992." *Irish Historical Studies* 30, no. 117 (May 1996): 137–38.
- Ludden, David. *The New Cambridge History of India. Volume IV. An Agrarian History of South Asia*. Cambridge, England: Cambridge University Press, 1999.
- Lyall, Andrew. *Land Law in Ireland*. Dublin: Oak Tree Press, 1994.
- MacDonald, Edward. "Who's Afraid of the Fenians? The Fenian Scare on Prince Edward Island, 1865-1867." *Acadiensis* 38, no. 1 (2009): 33–51.

- MacKenzie, John M. "The British Empire: Ramshackle or Rampaging? A Historiographical Reflection." *The Journal of Imperial and Commonwealth History* 43, no. 1 (2015): 99–124.
- MacKinnon, Frank. *The Government of Prince Edward Island*. Toronto: University of Toronto Press, 1951.
- MacNUTT, W.S. "Political Advance and Social Reform, 1842-1861." In *Canada's Smallest Province: A History of P.E.I.*, edited by Francis W.P. Bolger, 115–34. Charlottetown, P.E.I.: Prince Edward Island 1973 Centennial Commission, 1973.
- Macpherson, C. B., ed. *Property, Mainstream and Critical Positions*. Toronto: University of Toronto Press, 1978.
- Mahoney, James, and Dietrich Rueschemeyer. *Comparative Historical Analysis in the Social Sciences*. Cambridge, UK: Cambridge University Press, 2003.
- Major, Andrew J. *Return to Empire: Punjab under the Sikhs and British in the Mid-Nineteenth Century*. New Delhi: Sterling Publishers, 1996.
- Mann, Michael. "A Permanent Settlement for the Ceded and Conquered Provinces: Revenue Administration in North India, 1801-1833." *Indian Economic & Social History Review* 32, no. 2 (1995): 245–69.
- Mantena, Karuna. *Alibis of Empire: Henry Maine and the Ends of Liberal Imperialism*. Princeton, N.J.: Princeton University Press, 2010.
- . "The Crisis of Liberal Imperialism." In *Victorian Visions of Global Order: Empire and International Relations in Nineteenth-Century Political Thought*, edited by Duncan Bell, 113–35. Cambridge, NY: Cambridge University Press, 2007.
- Martin, Ged. "Lambton, John George [Nicknamed Radical Jack], First Earl of Durham (1792–1840), Politician." *Oxford Dictionary of National Biography*. Oxford university Press, 2008. <https://doi.org/10.1093/ref:odnb/15947>.
- . "Was There a British Empire?" *The Historical Journal* 15, no. 3 (September 1972): 562–69.
- Mathur, Yaduvansh Bahadur. *British Administration of Punjab, 1849-75*. Delhi: Surjeet Book Depot, 1973.
- Mazumder, Rajit K. *The Indian Army and the Making of Punjab*. Delhi: Permanent Black, 2003.
- McCaffrey, Lawrence J. "Isaac Butt and the Home Rule Movement: A Study in Conservative Nationalism." *The Review of Politics* 22, no. 1 (1960): 72–95.
- McCallum, Margaret E. "The Sacred Rights of Property: Title, Entitlement, and the Land Question in Nineteenth-Century Prince Edward Island." In *Essays in the History of Canadian Law in Honour of R.C.B. Risk*, edited by G. Blaine Baker and Jim Phillips, VIII: 358–97. Toronto: University of Toronto Press, 1999.

- McCord, Norman. "The Fenians and Public Opinion in Great Britain." *University Review* 4, no. 3 (1967): 227–40.
- McLaren, John, A. R. Buck, and Nancy E. Wright. *Despotic Dominion: Property Rights in British Settler Societies*. Vancouver: UBC Press, 2005.
- . "Property Rights in the Colonial Imagination and Experience." In *Despotic Dominion: Property Rights in British Settler Societies*, edited by John McLaren, A. R. Buck, and Nancy E. Wright, 1–21. Vancouver, B.C.: UBC Press, 2005.
- McQuiston, Julian R. "Tenant Right: Farmer against Landlord in Victorian England 1847-1883." *Agriculture History* 47, no. 2 (1973): 95–113.
- Mehta, Uday Singh. *Liberalism and Empire: A Study in Nineteenth-Century British Liberal Thought*. Chicago: University of Chicago Press, 1999.
- Metcalf, Thomas R. *Ideologies of the Raj*. The New Cambridge History of India; III, 4. Cambridge, England: Cambridge University Press, 1995.
- . "Laissez Faire and Tenant Right in Mid-Nineteenth Century India." *The Indian Economic & Social History Review* 1, no. 1 (1963): 74–81.
- . *Land, Landlords, and the British Raj: Northern India in the Nineteenth Century*. Berkeley and Los Angeles: University of California Press, 1979.
- . *The Aftermath of Revolt: India, 1857-1870*. Princeton, N.J.: Princeton University Press, 1964.
- . "The Influence of the Mutiny of 1857 on Land Policy in India." *The Historical Journal* 4, no. 2 (1961): 152–63.
- . "The Struggle Over Land Tenure in India, 1860-1868." *The Journal of Asian Studies* 21, no. 3 (1962): 295–307.
- Michalsen, Dag. "Methodological Perspectives in Comparative Legal History: An Analytical Approach." In *Comparative Legal History*, edited by Oliver Moreteau, Anceto Masfesser, and Kjell A. Modeer, 96–109. Northampton, MA: Edward Elgar Publishing, 2019.
- Montgomery, William Ernest. *The History of Land Tenure in Ireland*. Cambridge, England: At The University Press, 1889.
- Mookerjee, Radharomon. *Occupancy Right, Its History and Incidents*. Calcutta: Calcutta University Press, 1919.
- Moreteau, Oliver, Anceto Masfesser, and Kjell A. Modeer. *Comparative Legal History*. Northampton, MA: Edward Elgar Publishing, 2019.
- Moriarty, Daniel Patrick. "The Transformation of Rural Ireland: The Irish Land Purchase Policy of the Conservative Party in Britain, 1885-1923." Ph.D., The University of North Carolina at

- Chapel Hill. Accessed October 15, 2021.
<https://www.proquest.com/docview/303577476/abstract/AF2FA97AFDB4B20PQ/1>.
- Morley, John. *The Life of William Ewart Gladstone: 1859-1880*. 3 vols. Toronto: George N. Morang & Company, Limited, 1903.
- Muir, Sir William. *The Honourable James Thomason, Lieutenant-Governor N.-W. P., India, 1843-1853 A.D.* Edinburgh: T. & T. Clark, 1897.
- Mukherjee, Mithi. *India in the Shadows of Empire: A Legal and Political History (1774–1950)*. New Delhi: Oxford University Press, 2009.
- Murdoch, D.H. “Land Policy in the Eighteenth-Century British Empire: The Sale of Crown Lands in the Ceded Islands, 1763-1783.” *The Historical Journal* 27, no. 3 (1984): 549–74.
- Musson, Anthony, and Chantal Stebbings. *Making Legal History: Approaches and Methodologies*. Cambridge, England: Cambridge University Press, 2012.
- Nazir, Pervaiz. “Origins of Debt, Mortgage and Alienation of Land in Early Modern Punjab.” *The Journal of Peasant Studies* 27, no. 3 (April 1, 2000): 55–91.
- Nedelsky, Jennifer. *Private Property and the Limits of American Constitutionalism*. Chicago and London: The University of Chicago Press, 1990.
- Norgate, G. Le G., and John Vint. “Thornton, William Thomas (1813–1880), Economist and Civil Servant.” *Oxford Dictionary of National Biography*. Oxford University Press, 2004.
<https://doi.org/10.1093/ref:odnb/27367>.
- O’Brien, George. “William Conner.” *Studies: An Irish Quarterly Review* 12, no. 46 (1923): 279–89.
- O’Brien, R. B., and Brigitte Anton. “Duffy, Sir Charles Gavan (1816–1903), Journalist and Politician.” *Oxford Dictionary of National Biography*. Oxford University Press, 2008.
<https://doi.org/10.1093/ref:odnb/32921>.
- O’Brien, R. Barry. *The Parliamentary History of the Irish Land Question. From 1829 to 1869; and The Origin and Results of the Ulster Custom*. London: Sampson Low, Marston, Searle, and Rivington, 1880.
- O’Day, Alan. “Butt, Isaac (1813–1879), Politician and Lawyer.” *Oxford Dictionary of National Biography*. Oxford University Press, 2008. <https://doi.org/10.1093/ref:odnb/4222>.
- Offer, Avner. “Ricardo’s Paradox and the Movement of Rents in England, c. 1870-1910.” *The Economic History Review* 33, no. 2 (1980): 236–52.
- O’Grady, Brendan. *Exiles and Islanders: The Irish Settlers of Prince Edward Island*. Montreal and Kingston: McGill-Queen’s Press - MQUP, 2004.
- Ohlmeyer, Jane. “Ireland, India and The British Empire.” *Studies in People’s History* 2, no. 2 (2015): 169–88.

- O’Leary, Patrick. *Servants of the Empire: The Irish in Punjab 1881-1921*. Manchester: Manchester University Press, 2011.
- O’Neill, Daniel I. *Edmund Burke and the Conservative Logic of Empire*. Oakland, California: University of California Press, 2016.
- Orr, D. Alan. “From a View to a Discovery: Edmund Spenser, Sir John Davies, and the Defects of Law in the Realm of Ireland.” *Canadian Journal of History* XXXVIII (2003): 395–408.
- . “Sir John Davies’s Agrarian Law for Ireland.” *Journal of the History of Ideas* 75, no. 1 (2014): 91–112.
- Osborough, W.N. “Catholics, Land and the Popery Acts of Anne.” In *Endurance and Emergence: Catholics in Ireland in the Eighteenth Century*, edited by T.P. Power and Kevin Whelan, 21–56. Dublin: Irish Academic Press, 1990.
- Otto, Jan Michiel. “Rule of Law Promotion, Land Tenure and Poverty Alleviation: Questioning the Assumptions of Hernando de Soto.” *Hague Journal on the Rule of Law* 1, no. 1 (March 2009): 173–94.
- Owen, Sidney James. “The Stability of Our Indian Empire.” *The Contemporary Review, 1866-1900* 31, (February 1878): 494–519.
- Percy, Michael B, and Rick Szostak. “The Political Economy of the Abolition of Seigneurial Tenure in Canada East.” *Explorations in Economic History* 29, no. 1 (January 1, 1992): 51–68.
- Perrill, Jeffrey Price, and Muḥammad Ikrām Cughṭā’ī. *Punjab Orientalism: The Anjuman-i-Punjab and Punjab University, 1865-1888*. First edition. Lahore: Pakistan Writers Cooperative Society, 2018.
- Phillips, Jim. “A Successor to the Moguls: The Nawab of the Carnatic and the East India Company, 1763-1785.” *The International History Review* 7, no. 3 (1985): 364–89.
- . “Parliament and Southern India, 1781-3: The Secret Committee of Inquiry and the Prosecution of Sir Thomas Rumbold.” *Parliamentary History* 7, no. 1 (1988): 81–97.
- Pitts, Jennifer. *A Turn to Empire: The Rise of Imperial Liberalism in Britain and France*. Princeton, NJ: Princeton University Press, 2005.
- Powell, J. “Wodehouse, John, first earl of Kimberley (1826–1902), Politician.” *Oxford Dictionary of National Biography*. Oxford University Press, 2008.
<https://view/10.1093/ref:odnb/9780198614128.001.0001/odnb-9780198614128-e-36987>.
- Proudfoot, Lindsay. “Tenant Right.” *The Oxford Companion to Irish History*. Oxford: Oxford University Press, 2002.
- Qiao, Shitong, and Frank Upham. “Evolution of Relational Property Rights: A Case of Chinese Rural Land Reform.” *Iowa Law Review* 100, no. 6 (2015): 2479–2506.

- Radaelli, Claudio M. "Policy Transfer in the European Union: Institutional Isomorphism as a Source of Legitimacy." *Governance: An International Journal of Policy and Administration* 13, no. 1 (2000): 25–43.
- Rafferty, O. *The Church, the State and the Fenian Threat 1861–75*. New York: Palgrave, 1999.
- Robb, Peter G. *Peasants, Political Economy, and Law*. New Delhi: Oxford University Press, 2007.
- Robertson, Ian Ross. "Coles, George." *Dictionary of Canadian Biography*, Volume X (1871-1880). University of Toronto/Université Laval, 2003.
- . "Introduction." In *The Prince Edward Land Commission of 1860*, edited by Ian Ross Robertson, ix–xxx. Fredericton, NB: Acadiensis Press, 1988.
- . "Political Realignment in Pre-Confederation Prince Edward Island, 1863-1870." *Acadiensis* 15, no. 1 (1985): 35–58.
- . *The Tenant League of Prince Edward Island, 1864-1867: Leasehold Tenure in the New World*. Toronto; Buffalo; London: University of Toronto Press, 1996.
- Robilant, Anna di. "Property: A Bundle of Sticks or a Tree." *Vanderbilt Law Review* 66, no. 3 (2013): 869–932.
- Roy, Tirthankar, and Anand V. Swamy. *Law and the Economy in Colonial India*. Chicago, London: The University of Chicago Press, 2016.
- Russett, Bruce M. "Inequality and Instability: The Relation of Land Tenure to Politics." *World Politics* 16, no. 3 (April 1964): 442–54.
- Ryan, Alan. *Property and Political Theory*. Oxford, England: B. Blackwell, 1984.
- . *The Making of Modern Liberalism*. Princeton, NJ: Princeton University Press, 2012.
- Said, Edward W. *Culture and Imperialism*. London: Vintage, 1994.
- . *Orientalism*. 1st Vintage Books ed. New York: Vintage Books, 1979.
- Sartori, Andrew. "A Liberal Discourse of Custom in Colonial Bengal." *Past & Present*, no. 212 (2011): 163–97.
- . *Liberalism in Empire: An Alternative History*. Oakland, California: University of California Press, 2014.
- . "The British Empire and Its Liberal Mission." *The Journal of Modern History* 78, no. 3 (2006): 623–42.
- Schultz, Bart, and Georgios Varouxakis, eds. *Utilitarianism and Empire*. Lanham, Md: Lexington Books, 2005.
- "Secure Land Rights for All." United Nations Human Settlements Programme (UN-Habitat), 2008.
- Shannon, Richard. *The Crisis of Imperialism, 1865-1915*. London: Hart-Davis, MacGibbon, 1974.

- Shannon, Richard T. *Gladstone: Heroic Minister 1865 - 1898*. London: Allen Lane, The Penguin Press, 1999.
- Sharpe, Errol. *A People's History of Prince Edward Island*. Toronto: Rail Publishing, 1976.
- Smith, Richard Saumarez. "Rule-by-Records and Rule-by-Reports: Complementary Aspects of the British Imperial Rule of Law." *Contributions to Indian Sociology* 19, no. 1 (January 1, 1985): 153–76.
- Solow, Barbara Lewis. "A New Look at the Irish Land Question." *The Economic and Social Review* 12, no. 4 (1981): 301–14.
- . *The Land Question and the Irish Economy, 1870-1903*. Cambridge, MA: Harvard University Press, 1971.
- Steele, David. "Gray, Sir John (1816–1875), Newspaper Proprietor and Politician." *Oxford Dictionary of National Biography*. Oxford University Press, 2004.
<https://doi.org/10.1093/ref:odnb/11343>.
- . "Temple, Henry John, Third Viscount Palmerston (1784–1865), Prime Minister." *Oxford Dictionary of National Biography*. Oxford University Press, 2009.
<https://doi.org/10.1093/ref:odnb/27112>.
- Steele, E. D. "Gladstone and Ireland." *Irish Historical Studies* 17, no. 65 (1970): 58–88.
- . "Ireland and the Empire in the 1860s. Imperial Precedents for Gladstone's First Irish Land Act." *The Historical Journal* 11, no. 1 (March 1968): 64–83.
- . *Irish Land and British Politics: Tenant-Right and Nationality 1865-1870*. Cambridge, England: Cambridge University Press, 1974.
- . "J. S. Mill and the Irish Question: Reform, and the Integrity of the Empire, 1865–1870." *The Historical Journal* 13, no. 3 (September 1970): 419–50.
- . "J.S. Mill and the Irish Question: The Principles of Political Economy, 1848–1865." *The Historical Journal* 13, no. 2 (June 1970): 216–36.
- Stephen, Leslie. *The English Utilitarians*. New York: London: G. Putnam; Duckworth, 1900.
- Stillman, Peter G. "The Concept of Legitimacy." *Polity* 7, no. 1 (September 1, 1974): 32–56.
- Stokes, Eric. *The English Utilitarians and India*. Oxford: Oxford University Press, 1989.
- . *The Peasant and the Raj: Studies in Agrarian Society and Peasant Rebellion in Colonial India*. Cambridge, UK: Cambridge University Press, 1978.
- Suddaby, Roy, Alex Bitektine, and Patrick Haack. "Legitimacy." *Academy of Management Annals* 11, no. 1 (October 25, 2016): 451–78.
- Talbot, Ian. *Punjab and the Raj 1849-1947*. Delhi: Manohar, 1988.

- Thorburn, S. S. *Musalmans and Money-Lenders in the Punjab*. Edinburgh and London: William Blackwood & Sons, 1886.
- Tindley, Annie. “‘All the Arts of a Radical Agitation’: Transnational Perspectives on British and Irish Landowners and Estates, 1800–1921.” *Historical Research* 91, no. 254 (2018): 705–22.
- . *Lord Dufferin, Ireland and the British Empire, c. 1820–1900: Rule by the Best?* London: Routledge, 2021.
- Tully, James. *A Discourse on Property: John Locke and His Adversaries*. Cambridge, England: Cambridge University Press, 1980.
- Van den Dungen, P. H. M. *The Punjab Tradition: Influence and Authority in Nineteenth-Century India*. London: Allen & Unwin, 1972.
- Varley, Tony. “Gaining Ground, Losing Ground: The Politics of Land Reform in Twentieth-Century Ireland.” In *Land Questions in Modern Ireland*, edited by Fergus Campbell and Varley, Tony, 25–64. Manchester: Manchester University Press, 2013.
- Vaughan, William Edward. *Landlords and Tenants in Mid-Victorian Ireland*. Oxford, England: Clarendon Press, 1994.
- Wagner, Kim. *Amritsar 1919: An Empire of Fear and the Making of a Massacre*. New Haven, CT: Yale University Press, 2019.
- Washbrook, D. A. “Law, State and Agrarian Society in Colonial India.” *Modern Asian Studies* 15, no. 3 (July 1981): 649–721.
- Weaver, John C. “Concepts of Economic Improvement and Social Construction of Property Rights: Highlights from the English-Speaking World.” In *Despotic Dominion: Property Rights in British Settler Colonies*, edited by John McLaren, A. R. Buck, and Nancy E. Wright, 79–102. Vancouver, B.C.: UBC Press, 2005.
- . *The Great Land Rush and the Making of the Modern World, 1650-1900*. Montreal & Kingston: McGill-Queen’s University Press, 2003.
- Weitzenfeld, Julian S. “Valid Reasoning by Analogy.” *Philosophy of Science* 51 (1984): 137–49.
- Williams, Donovan. “The Council of India and the Relationship Between the Home and the Supreme Governments, 1858-1870.” *The English Historical Review* 81, no. 318 (1966): 56–73.
- Williams, Robert A. *The American Indian in Western Legal Thought: The Discourses of Conquest*. New York: Oxford University Press, 1990.
- Wilson, Catherine Anne. *New Lease on Life: Landlords, Tenants, and Immigrants in Ireland and Canada*. Montreal and Kingston: McGill-Queen’s University Press, 1994.

- . *Tenants in Time: Family Strategies, Land, and Liberalism in Upper Canada, 1799-1871*. Montreal and Kingston: McGill-Queen's University Press, 2009.
- Winstanley, Michael J. *Ireland and the Land Question 1800-1922*. London: Methuen & Co. Ltd., 1984.
- Wylie, J. C. W. *Irish Land Law*. 2nd ed. Abingdon, Oxon: Professional Books, 1986.
- Zahid, Masood Akhtar. "Orientalism's Last Battle in the 19th Century Punjab." *Journal of Pakistan Vision* 10, no. 1 (2009): 27–48.
- Zastoupil, Lynn. "Moral Government: J. S. Mill on Ireland." *The Historical Journal* 26, no. 3 (September 1983): 707–17.