

## Colonisation and expropriation: the legal consequences of Roman imperialism

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In this paper I will give a short overview of expropriation in Roman law, and especially with regard to land taken from defeated enemies. This paper will investigate the development of the right of expropriation from the early Roman Republic up to the Imperial period. By the first century AD, the rights and obligations of the defeated populations had been clearly defined and laid down in legal works. I will investigate how exactly the Roman state justified the confiscation of land and what this meant in theory and in practice for the people who were deprived of it.

### Expropriation in the modern world

First we will look at the definition of expropriation in the modern world, which will be discussed in detail throughout this conference. The modern legal process of expropriation can be defined as 'neither a punitive nor a restitutive act, but a procedure emerging from a specific need. Inherent in its principles is the public obligation to have a good cause for the acquisition, and to provide just compensation for the property conveyed. It is therefore different from confiscation, even though people subjected to it may feel differently. Expropriation is often necessary from the view of the state, because otherwise landowners might drive up the price of land by refusing to sell it, especially if several owners work together.

In many modern countries indigenous people were until recently often denied legal and political self-government and control over land. Their land was often taken away for use by the colonial power; this was justified by the legal denial that these people had any right to their land, since they often did not know individual landholding, but held the land in common. This denied them any protection of these common lands. Sometimes 'aboriginal title' holds, but this can be transgressed by anyone whose authority derives from the state, and this allows for the expropriation of land without any compensation. Sometimes the indigenous people are not regarded as full citizens of the colonising state, which means that they are not protected by the laws that protect the citizens.

Only recently many countries have introduced laws in order to protect indigenous populations. In 2007, the United Nations adopted the Declaration of the Rights of Indigenous Peoples; this contains among others the rights of indigenous people to become citizens of a state (i.e. have a nationality) and have rights to physical and mental integrity, freedom and personal security. They also have a right to self-government and rights to their ancestral lands. This means that they cannot be transferred to other lands without the free and informed consensus of the people involved, against a rightful compensation. They also have the right to maintain their spiritual links with the land and to transfer them to their descendants. The problem with this is that there is no way to force states to adhere to this declaration; some have not ratified it in any case.

### Expropriation in the Roman Republic

It is taken as given that the Romans usually confiscated a part of the land of their defeated enemies. This could then be used to establish colonies for Roman settlers, either veterans from the armies or the poor in need of land. The legal status of the land that was distributed to settlers is clear: it was usually given in private ownership to the recipient, and would be inherited by his children or other heirs. Citizenship of a colony also carried with it specific, well-defined obligations, e.g. paying taxes to the local community.

The expropriation of land was very common during Rome's conquest of Italy. Already in the regal period we find continuous references to land being confiscated from defeated cities. This continued throughout the Republican period. In 486, for example, the Foedus Cassianum with the Hernici deprived them of two-thirds of their territory. Only in a few cases do we possess any information about how much land was confiscated, at least as a percentage of the total possessed by the enemy. One-third or one-half of the land of the defeated party is often considered the standard amount

taken by the Romans, but this is in fact only rarely attested. In fact variations occurred in the treatment of defeated peoples. The amount of land taken seems to have varied according to the circumstances: peoples who had fiercely resisted the Romans were punished with the loss of a larger quantity of land than those who had surrendered quickly.

The land taken by the Romans became *ager publicus*, land in ownership of the Roman state. Often it was used to establish colonies, that is settlements of Roman citizens who were sent there. They usually were assigned some of the land as private property. Often we can only assume that land was taken because *ager publicus* and colonization is mentioned at some later moment. Since colonies could be founded only on *ager publicus*, we must assume that the land on which they were established had been confiscated previously.

Land could also be taken from one town and given to another, but we only know about this happening in the late Republic. The territory of Caudium and part of Ligures Baebiani was given to the colony in Beneventum in 43 BC, while Mantua lost land to veterans settled at Cremona; Hispellum took land from other towns as well. Various towns all owned land in Cisalpine Gaul. This land brought in a rent to the towns to which it belonged. These expropriations occurred especially during the civil wars of the first century BC, when towns which had been disloyal, first to Caesar and then to the triumvirs, were punished with loss of lands.

It should be noted that so far we have spoken about expropriation of land from communities. It is often not clear to whom exactly this land had belonged: we may assume that in the cases of expropriation after the Roman conquest, the land involved may have belonged to the individual citizens, especially the leading citizens who had led the resistance against Rome. In the case of the civil war expropriations, the land taken was most likely the common land held by the towns, although some of the leading citizens may also have been punished with the loss of land.

Some scholars argue that the upheaval was relatively small: 'senatorial properties were excluded from redistribution, as were the smallest estates, so it is likely that in general one group of middle-ranking proprietors was replaced by another, although it is possible that the long-term process of agglomeration of estates may temporarily have been slowed down'.<sup>1</sup> There is very little evidence for this, however; 'senatorial properties' probably refers to the estates of the local elites, but it is unlikely that the land of all local elites was excluded. Obviously the Roman state needed those members of the elite who were loyal to the Roman cause, and their social and economic position must be secured, so their likely retained their land. Those who had led the fight against Rome, however, were most likely exactly those who lost their land, which was then distributed to colonists. We do not know what happened to the lands of small farmers; Appian states that the Romans often did not have the time to map the land immediately and distribute it to settlers, in which case Italian small farmers simply continued to work their lands.

#### Legal justification

No real legal justification for expropriations from defeated enemies or Roman citizens is given in the written sources. There were several circumstances in which defeated communities could be forced to surrender land to Rome. In most cases land was confiscated after a defeat in war, in which the only justification necessary was the law of conquest: the Digest states simply 'property taken from the enemy becomes immediately the property of the taker under the law of nations' (*ius gentium*) (Dig. 41.1.5.7). The *ius gentium* was the law based on the natural course of social contact between peoples, and therefore shared by all peoples; all peoples recognized the conquest as a justification for the expropriation of land. The Digest also gives 'which we have seized from the enemy' as a correct title for ownership, with the same value as purchase, gift, legacy, dowry, inheritance, and noxal surrender (41.2.3.21). Armed conflict was not always necessary, however; occasionally land could be demanded upon the conclusion of a peaceful treaty with Rome. Even then, however, since the treaty was occurred after a state of war between Rome and an enemy, no other explanation was necessary.

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<sup>1</sup> Patterson 2008, 489.

In general the property of enemies was not protected by Roman law; for example, as Paul states in the Digest: 'the tombs of enemies have no religious significance for us. Hence, we can take stones from them and put them to any use, and the action for violating a tomb will not lie.' (Dig. 47.12.4). Some land was for the establishment of colonies, as we just saw, but not all *ager publicus* was distributed to colonists. It could also be leased out by the state to citizens who wanted to use it, or even left open to general use by anyone who wanted it. Still, it is clear that the Roman state considered *ager publicus* its own, even though it had not been used by the state for a long time after its official conquest. This became clear in the Gracchan period in the late second century, when the Roman state wanted to distribute this land to poor citizens, even though it had been used by private individuals for a very long time. This led to all kinds of protest, since people pointed out 'the work they had put in over many years, their planting, their building. Some had bought land from their neighbours—were they to lose the money as well as the land? Some had family tombs on the land or said that holdings had been treated as fully owned and divided up on inheritance. Others claimed that their wives' dowries had been invested in such lands, or that it had been given to their daughters as dowry, and moneylenders could show loans made on this security.' Again, a justification in the legal sense was not deemed necessary; the land belonged to the state and the state could therefore use it whenever necessary, despite the fact that people had clearly been using the land as if it had been in private ownership.

#### The fate of the local population

The legal status of the defeated people when colonies were founded is not very clear, despite much recent work on this. It is often suggested that the population of conquered areas was usually killed or deported. However, this seems in fact to have happened only rarely; the treatment of defeated enemies depended on the way they had behaved toward the Romans. In most cases the original inhabitants of the land were not simply killed, enslaved, or expelled at all. This means that arrangements had to be created which made it possible for the Romans to live together with their former enemies.

A standard picture of colonisation suggests that the Romans occupied the town of the former inhabitants and distributed the land around it to the colonists. **SLIDE** The locals were pushed to the lands on the edge of the colony, usually into the mountains or other infertile lands the Romans did not want to use themselves. However, this reconstruction is much too simple; it may be valid in some cases, but there were many other possibilities for the distribution of land between Romans and local inhabitants.

Most of our information about confiscation of land in the imperial period comes from the works of the Agrimensores. This is a collection of various technical manuscripts regarding the measurement and distribution of land. Most of the legal information involves the distribution of land to colonists after the land had already been confiscated. About the process of expropriation there is very little information, but we can gain some small insights. Hyginus in the early second century AD described what happened to original inhabitants of conquered areas, when colonies were founded: 'When the founder was expelling the other landholders and preparing the lands for division, he does not seem to have changed the legal status of those owners whom he permitted to remain on their holdings; for he did not order them to become citizens of the colony.' (Hyginus (1) 86.18-21). Some people were clearly expelled, but others were allowed to remain on their land, although did not receive the same rights as the colonists.

For the Republican period we have very little evidence. The *lex agraria* of 111 BC, a law detailing arrangements of *ager publicus*, states that if a colony was founded, some original inhabitants had to give up their land. But they could receive new land in another part of the colony in exchange for this land.

However, in neither of these cases it is made clear whether they always received the same amount they had held before; in many cases they received land which was of lesser quality and value than the land they had before, as in the case of the Tricastini at Arausio in the late first century. These

were to original inhabitants of the land in which the colony Arausio was founded in the late first century BC. They were granted the right to keep some of their own lands; on the map of the territory some land was marked TRIC RED, i.e. *Tricastinis reddita*, as seen here ([SLIDE](#)). The lands assigned to the Tricastini are mostly in the less fertile mountainous areas ([SLIDE](#)); the modern landscape of the area is indeed quite hilly and mostly covered in forest ([SLIDE](#)). Perhaps, therefore, the Tricastini did not continue to use the land they had held originally, but land of lesser quality on the margins of the colony.

In colonies the original inhabitants were therefore dependent on the wishes of the colonial founder in order to gain lands; they depended on a gift from the Romans. But once they had been assigned land in the territory of a colony, this land could not be touched by the colony, since it was held as a gift directly from the Roman state. It is not entirely clear whether indigenous people held their land in individual ownership after the Roman conquest, and whether they had done so before. Most likely the Roman state did not recognize land in the provinces as fully private. By the process of *deditio*, i.e. formal submission to the power of Rome, the submissive party had lost all the rights to their land. It is not clear whether the land granted to the original inhabitants was split up into individual parcels; and since a tribute was due to the Roman state, it was most likely not considered fully private by Roman law.

#### Expropriation from private landowners

Finally, we will look briefly at expropriation from private owners of land. In Roman law, and in law generally, the term expropriation by its nature can only apply to owners, not possessors, holders or users. Therefore only people who are legally considered owners can be protected by Roman law – if they are not owners according to Roman law, then their lands can easily be taken by the state. Of course, the Roman state is free to confiscate assets as a result of due legal process – conviction in a trial often brought with it the confiscation of some or all of the guilty party's possessions – but this is fundamentally different from the expropriation of goods from people who were not protected by Roman law. Nevertheless, the interests of the state could damage private citizens: 'Lucius Titius bought land in Germany beyond the Rhine and paid part of the price. His heir, when sued for the balance, put up the defence that by imperial command, part of the land involved had been sold and part assigned to veterans as their reward. I ask: does this risk of eviction lie at the vendor's door? Paul replied that the vendor is not affected by evictions occurring subsequently to the sale and so the price of the land could be claimed.' (Dig. 21.2.11pr). Here, however, we are not dealing with expropriation as such, but with a conflict between two individuals.

People who were not Roman citizens could not enjoy all aspects of the Roman *ius civile*. Still, even they were protected in some ways, e.g. against random expropriation of their property by people who were not acting with *imperium*, that is military commanders acting with the full authority of the Roman state. Thus, tax collectors who took unauthorized goods from people under the command of the state, had to pay back twice the sum taken (Dig. 39.4.1.pr), unless he returned all the goods before the trial started.

Expropriation from private owners of land often occurred in the course of public building projects. It was usually expected that the state compensated the expropriated landowners in some way, mostly by a gift of money in return for the land. There are instances of people refusing to sell: in 179 BC Marcus Licinius Crassus refused to let an aqueduct run across his land. Agrippa's Aqua Virgo [SLIDE](#) makes a long detour; this may have been caused by the refusal by certain landowners to sell their land, occurring late in the surveying stage. Frontinus' work on the aqueducts of Rome describes the problems occurring in repairing them: 'since almost all the aqueducts ran through the fields of private parties and it seemed difficult to provide for future outlays without the help of some constituted law; in order, also, that contractors should not be prevented by proprietors from access to the conduits for the purpose of making repairs, a resolution of the Senate was passed, which I give below: 'That when those canals, conduits, and arches, which Augustus Caesar promised the Senate to repair at his own cost, shall be repaired, the earth, clay, stone, potsherds, sand,

wood, etc., which are necessary for the work in hand, shall be granted, removed, taken, and brought from the lands of private parties, their value to be appraised by some honest man, and each of these to be taken from whatever source it may most conveniently and, without injury to them, remain open and their use be permitted, as often as it is necessary for the transportation of all these things for the purposes of repairing these works.' (Aq. 124-5). He also praises the restraint of the state in expropriating land: 'with admirable justice, our forefathers did not seize from private parties even those lands which were necessary for public purposes but, in the construction of water-works, whenever a proprietor made any difficulty in the sale of a portion, they paid for the whole field, and after marking off the needed part, again sold the land with the understanding that the public as well as private parties should, each one within his boundaries, have his own full rights.' (Aq. 128).

In the *lex Ursonensis*, a local law dating to 44 BC, it is stated: 'Whatever lands a majority of the decurions then present determine, provided that no water is brought through any building not constructed for that purpose, it shall be lawful and right to bring an aqueduct through the said lands, and no person shall do anything to prevent an aqueduct from being so brought' (ch. 99). It is not clear whether this was private or public land, and if it was private, whether any compensation was paid to its owners.

In the first century BC there were various land distribution schemes for the poor; since very little *ager publicus* was available, the state had to come up with other ways in which to acquire land. In Cicero's speech *De lege agraria*, people are offered money in exchange for their land, which would then become *ager publicus* and be distributed to the poor. Cicero suggests that people will refuse to sell just to drive up the price that the state will have to pay, making the cost of the land too high. The law was quite clear that land would not be bought from the unwilling, so that prices would rise until enough people were willing to sell. In the end, everyone would be willing to sell if the price was high enough. Caesar therefore in 59 enacted that only the price in the official census records was to be paid.

During the civil wars, land was also taken against payment. Siculus Flaccus describes how during the confiscations in the first century BC people received money in exchange for land: 'some people, as instructed, made their property returns on the basis of a valuation; money was given to them in accordance with the valuation, they were removed from their land, and the victorious veteran soldiers were settled there'. This rather sounds like the modern process of expropriation, where a monetary compensation is paid in exchange for land. Augustus in the *Res Gestae* emphasizes the legality of his measures in acquiring land to settle his veterans: 'To the towns of Italy I paid money for the lands which I assigned to soldiers. ... The sum which I paid for estates in Italy was about six hundred million sesterces, and the amount which I paid for lands in the provinces was about two hundred and sixty million' (RG 16). When he built the theatre of Marcellus, he did so 'on ground purchased for the most part from private owners' (RG 21). Nevertheless, it is hard to believe that this land was bought against the full market price, or that it was in fact bought for very little, in order to punish disloyal towns.

### Conclusion

We may conclude that for the expropriation of land from defeated enemies, no more justification was necessary than the law of conquest. In the case of expropriation from Roman citizens, a monetary compensation was expected, at the normal market price. Such purchases could be compulsory, if an owner did not want to sell. In times of war, however, it is unlikely that the price was fair, since the aim was also to punish disloyal towns and individuals. In short, expropriation existed in the Roman period, and was subject to some of the same constraints as we see in modern legal systems.