

Ius Commune Conference 2017

Workshop: Property and Inequality

Friday, 24 November (09.00 – 12.00)

Building: Aristo Utrecht

Room:

Participants

Introduction Individual property rights provide powers to the rightful holder, over specific objects of property rights. These powers to use and dispose are grounded in the individual's autonomy. It is the owner's to exercise these powers to use and to abuse – or dispose: *dominium est ius de re corporali perfecte disponendi*. Civilian dogma encompasses these qualities in the wording of principles – ownership is the pinnacle of property rights; it is effective against the whole world, thus absolute, excluding others. These individual property rights are furthermore constitutionally protected against infringements, from private as well as public persons and institutions. It is a system working on the basis of a free market as well as a constitutionally entrenched legal equality of all persons engaging in property transactions. It is a legal area strongly about certainty and predictability concerning property rights.

Yet, our social-economic reality tends to increasing inequality between persons and in societies. This important issue of course may be addressed in various ways. From the perspective of property law the ultimate and extreme top-down option taken by some legislators is expropriation in order to redistribute. It is easy to argue that on the basis of the above-mentioned characteristics and principles private property law is not the legal realm to be used. But this stance misses the point: we hold these characteristics and principles for self-evident, and indeed they serve important public interests. But these interests have always provided some way for other public interests as the expectation interests and trade interests in case of acquisition a *non domino*, the prevention of theft, or the preservation of national cultural property. Considering the importance of the division between haves and have-nots we are called upon to at least think about property law's capacity to play a role in this respect. Are there no other public interests at play where poverty and inequality (re)appear from back-stage? Is private property law as it is able to address manifestations of inequalities? Would its ability be wider in other property law systems? Does Common law provide a better starting point? Are the old 'Germanic' systems - largely forgotten in modern debate - with its common property an option to turn to? Is there room for additional fairness in property law? Where do the powers of the *dominus* end - be it in the case of ownership or of any other property right? Does Bartolus' *nisi lege prohibeatur* still suffice? Questions like these will be addressed in this workshop.

Chair:

Michael Milo (Utrecht University)

Peter Sparkes (University of Southampton)

Levelling land. The ineffectiveness of removing the property qualification for voting

Privilege Dhlwayo (University of Stellenbosch)

The landowners' right to exclude and equality – in a constitutional system

Jan Biemans (Utrecht University)

Compassion and European private law: credit agreement directives, security rights and small companies

Björn Hoops (University of Groningen)

Property and squatting. When does the interest of the squatter prevail against the interest of the owner?

Lizette Grobler (University of Stellenbosch)

Reforming the law of usufruct: Gender-based exemptions from the usufructuary's duty to provide security

Leon Verstappen (University of Groningen)

On the Land Portal Foundation

Willem Loof (Maastricht University)

Unmarried cohabitants, pension rights and equality