

The Roman Law on the Demolition of Buildings (E. J. Phillips)¹

Article review

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Statement of Thesis

There was an extremely unusual Roman law forbidding the demolition of buildings in urban areas, likely originating in the late Republic. While the impetus for this law is unknown, it likely served to protect the homes of the poor from aristocracy looking to expand their estate, and to prevent the inevitable increase in rent following the “up scaling” of previously affordable *insulae*. Later Imperial legislation prohibited demolition and unroofing in the countryside for aesthetic reasons. These laws were in effect throughout the Empire and persisted to be recorded in the Digest.

Summery of Article Content

While the earliest law of the City has not been passed down, there are examples from municipalities whose laws generally reflect those of the metropolis. The earliest of

¹ Phillips, E. J., "The Roman Law on the Demolition of Buildings," *Latomus* 32 (1973) 86-95.

these (prior to 62 B.C.) is found in the charter of Tarentum (present day Taranto, Italy), which requires senatorial permission prior to demolishing a building. The charter of Urso (near Osuna, Spain) in 44 B.C. had a similar message, though more serious requirement of 50 witnesses at the senatorial hearing². The brevity in both digest passages suggests that a more detailed law was already in place in Rome.

Later passages (mid first century B.C.) suggest circumvention of the law by intentional neglect; that is, if one purchased property with debris preventing construction it was permissible to remove the obstruction – and it was easy enough to let an existing building decay to debris. A letter from Cicero suggests inherence would be subject to the same privileges as sale insofar as demolishing neglected buildings to rebuild. Fires could achieve the same leveling effect as neglect but faster, which might explain the story of Crassus buying property close to burning buildings: not only would the prices be low, there would be an opportunity for new construction projects on plots of contiguous property.

Laws prohibiting demolition are extremely unusual, and without evidence their purpose remains an educated guess. They are probably not intended to discourage ostentatious or gaudy developments, or to regulate construction practice, because there is

² “No person shall unroof or demolish or dismantle any building in the town of the colony Julia, unless he furnishes sureties, at the discretion of the *duumvirs*, that he has the intention of rebuilding the same, or unless the *decurions* allow such act by decree, provided that not less than fifty are present when the said mater is discussed. If any person acts in contravention of this regulation he shall be condemned to pay the colonists of the colony Julia the value of the said building and shall be sued and prosecuted by any person at will for that amount in accordance with this law.” – Johnson et. al, “Ancient Roman Statutes,” (2003) 99

no indication that planning permission was required for undeveloped sites. Known examples affect only property within towns and municipalities, which were crowded as early as the third century B.C. suggesting a shortage of housing. In these circumstances prohibiting demolition could be an attempt to prevent a decrease in the number of urban homes.

The homes of the poor required the most protection. In Rome, like London in the 1800's, homes of the lower class were often interspersed amongst the estates of wealthy, rather than in the isolated neighborhoods found today. The inexpensive abodes and *insulae* of the poor make attractive additions to the neighboring mansions of the upper class, and occupants therein were especially susceptible to losing their homes. The law against demolition offered protection from this threat.

While some *insulae* may have been poorly constructed slums, tearing them down to build new, safer, *insulae* is not as philanthropic as it sounds. There were well built *insulae* similar in status to the high-rise condominiums of today, with similarly high rents – 2,000, 3,000, even 10,000 sesterce (HS) per year – well beyond the means of the poor. With only an estimated 360 HS per year to spend on housing, it is unlikely that the working class could afford to live anywhere but older, run-down *insulae* and *tabernae*. While not ideal, the slums were required to sustain the growing population and the law against demolition helped keep them intact.

A later law, recorded in bronze around A.D. 45, addresses the loophole of intentional neglect and sale and expands the scope of the law from the city to the countryside. While rules for owners making legitimate modifications to their property

were eased, the penalty for demolition doubled to twice the purchase price – and held the seller liable if he knew the buyer's intentions to demolish the property.

The countryside could not have the same housing shortage as the city, and the requirement to leave a small farmhouse standing would not prevent the expanding of a *latifundia* (so long as it was out of sight of the *villa*). Instead, this later legislation affects a better class of property and was concerned with aesthetics: In the countryside, it may have been profitable to disassemble surplus buildings for valuable materials (marble slabs, timber, roofing tiles, art, etc.) and leave the rest in ruin. Making this illegal prevented salvage groups from buying houses (without the property) and leaving behind a trail of rubble.

Both laws concerning the city and the countryside are recorded in the Digest, suggesting that they are complementary. This is logical since they address different issues, with different types of property, in different areas.

Critique

For the earlier law regarding demolition in urbanized areas, Phillips makes a convincing argument. Similar legislation has been used in modern times when resources are scarce and the population is growing. There is sufficient evidence, with the multi-story buildings and surviving records to show that if unrestricted, the wealthy in Rome could have easily bought up blocks of slums to expand their estates, leaving the working class to live in overpopulated *insulae* or homeless altogether.

His stance on the second group of laws, concerning the countryside, is less convincing, and his characterization of prior research as “economic nonsense” and “surely wrong” does not lend credibility to the argument. It is unlikely that the aristocracy of the ancient world would be so concerned with the appearance a few scattered ruins that they would pass a law forbidding the deconstruction of buildings. Besides, there are more efficient ways handle the problem, for instance requiring *complete* demolition rather than none at all. The law does not address the problem of existing ruins, which were bound to be more plentiful than new ones. In any case, laws regarding demolition of buildings are clearly meant to protect the poor, since the wealthy would have no trouble rebuilding, or cleaning up, afterwards.

Instead, I believe the law reflects an attempt to prevent illegitimate sacking of property. Consider the number of soldiers away on campaign who would normally occupy country homes. It would be extremely profitable to (systematically) strip these homes for valuable materials, and without a record of land ownership such enterprise would be hard to dispute. Completely forbidding the demolition of buildings, posing severe penalties to violators, and providing legal actions available to anyone should it occur would discourage such endeavors.

Overall the article was a thorough, succinct, and academically founded overview of a fascinating and unique area of ancient law. Phillip’s opinions were not rare but easy to spot and mostly agreeable. The majority of the article was logically structured, though the first and last paragraphs seem out of place and it lacks a formal introduction and conclusion. I definitely enjoyed it, and learned a lot.

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