Litigation over compensation of expropriation.
The case of farmland in France.

Working paper

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Introduction

Expropriation is a tool commonly found in the arsenal of public infrastructure developers alongside other tools of land regulation such as zoning or urban planning. Condemning land for public use through expropriation is more and more common in France, as it is in other countries, and is illustrated by the fact that local authorities in France have become by far its principal users, measured both by the number of development projects and by surface area. While exercising expropriation remains the prerogative of the French State, local authorities (towns, counties or their economic interest groups and delegating bodies) are indeed the most likely beneficiaries of projects and therefore assume control of land development.

Another phenomenon contributes to the extended use of expropriation. The days when land expropriation was reserved for large public infrastructure projects have long since passed. Public authorities now regularly resort to expropriation to manage “ordinary” urbanization, combining it and connecting it to zoning policy and urban planning. The trivialized way in which expropriation is implemented provokes controversies in local debates and disputes among local residents and farmers. This is a good place to obtain an overview of the myriad aspects of transformation at play in rural and urban-fringe areas. Indeed, land condemnation for “public use” can be conveniently applied to two phenomena which significantly contribute to the urbanization of farmland: urban sprawl (through the extension of industrial, commercial and private use construction) and city-initiated public infrastructure projects (transportation, land reclamation…).

In the context of an increasing disappearance of farmland, disputes involving the just compensation of owners or users of land condemned for public use provide us with a privileged vantage point from which to analyze the pressure exerted on this land,
particularly on the urban-fringe and specifically in France’s largest urban center, the Greater Paris area. Paradoxically, very few property owners actually go to civil court to contest the expropriating authority’s offer of compensation. According to administrative data on land condemned for public use, around 10% of the total is involved in a claim. The use of expropriation by public authorities, therefore, remains largely a hypothetical affair. The threat is executed only when the land holder refuses the taking by mutual consent and provokes the property transfer through court order, strictly speaking, through the exercise of expropriation. While expropriation is only rarely exercised, it is precisely the existence of these marginal situations (the possibility, always present in the negotiation, of expropriation) which conditions the vast majority of cases of acquisition by mutual consent. Likewise, the tenor of judicial proceedings is conditioned, in return, by the standard profile of negotiated settlements within the framework of expropriation affairs.

The issue raised in this article, through the analysis of this body of disputes, is, therefore, the role played by the courts in the matter. In fact, study of the agricultural land expropriation cases leads us to paint a much more contrasted picture of the situation than the one sometimes puts forth of the court as a simple record-keeper of expropriating authorities’ offers. Not only does the mere notion of farmland imply a variety of situations, but the court also turns out to be a genuine battleground for opposing expectations.

From a legal sociology perspective, the research presented here aims to show that the legal claims strategies in matters of land expropriation cannot be satisfactorily explained without taking into account observable judicial practices at a local level. Indeed, the characteristics of real estate assets, both their private use and public management, are essential elements which explain why within the framework of public use projects, either negotiated settlement or, on the contrary, referral to court, is prescribed as the relevant context for determining compensation.

This review of the current state of the law concerns two aspects which are different but both strongly nested in local land systems. First, we find the situation of individuals with regard to the rights they possess over real estate assets. Indeed, when we speak about land expropriation, it is above all in relation to the stakes behind owners’ property rights. But the law also provides for the protection of the rights of non-owners, such as lease-holders endowed with land-use rights whose business interests may be adversely affected by land development projects. As discussed further in the paper, this situation is unavoidable when dealing with the expropriation of land supporting economic activity in which land leasing is a widespread practice, such as agriculture in France.

In terms of public law, it is essential to take into account local judicial practices, not only to understand the structure of disputes between expropriating authority and expropriated landowner, but also to explain the decision to go to court. Regulatory practices in matters of urban development projects clearly influence the nature of building permits associated
with developed and undeveloped sites. The type of zoning, the building code for construction and extension of existing structures and building standards for public infrastructure projects (land reclamation, roadbuilding, electricity, water…) are all factors which directly influence land value estimates. It seems reasonable, then, to posit the idea that land disputes often directly reflect local urban building codes and, consequently, policies implemented by local authorities. We wish to further underline the fact that expropriation is very often exercised within the context not of large infrastructure projects but of ordinary urban development. Recourse to ‘public use’ prerogatives is thus used as a complement to urban planning policies.

The Context of Farmland Condemnation

The necessary recognition of local law practices

First of all, it may be useful to recall the existing procedure in France in matters of land expropriation for public use. At the origin of the process one finds a development project whose beneficiary may be the State, a local authority or a private individual with delegating authority in the public interest. If acquiring the land by mutual agreement turns out to be too complex or difficult, the decision to declare the said development for public use enables the developer, facing the owners’ refusal to sell, to solicit an expropriation of the land. Depending on the significance of the project, the decision to take the land for public use will be made by a representative of the state administration at the local level (the prefect) or at the national level. This decision may be contested by concerned parties (landowners, but also local residents or associations) who take action by filing a claim with an administrative tribunal. Once the power of expropriation is declared, an alternative solution arises. Either the owners negotiate a settlement or they file a claim against the price of acquisition offered by the developer.

The procedure of expropriation, strictly speaking, occurs only in the latter case. However, the beneficiary of the exercise of expropriation is not invested with the right to declare the expropriation. This task is entrusted to the court, not the administrative but rather the civil jurisdiction. The expropriations judge (lower court magistrate / «magistrat du Tribunal de Grande Instance») drafts the court order which thus transfers the property. This judge also intervenes to set the just compensation, that is to say, the price of acquisition on which the interested parties could not reach agreement. During the procedure, an expert assessor of the tax administration (land tenure service) issues an independent advisory opinion relative to the claims in the dispute, which the judge is free to follow or reject. An out-of-court settlement may interrupt the proceedings at any time. We will see that this opportunity is often seized by the protagonists.

The analysis of judicial disputes, and, more generally, of the expropriation practices in France, is of particular interest on a comparative level insofar as French law is situated in an intermediary position in relation to other judicial systems (Azuela, Herrera, & Saavedra-Herrera, 2009). As comparative law studies have shown, expropriation law in France, as far as compensation is concerned, is midway between the legislation of
countries like Germany, which have rather generous compensation policies, and that of countries like Canada, which have more restrictive policies. Within this template, the French situation is quite similar to the mid-range American one, beyond the significant differences in legislation between the different states of the union (Alterman, 2009).

To that we might add that it is important to put the differences between the two sides of the Atlantic into perspective through the detailed observation of their respective legislations and jurisprudence. Characteristics of American law which are considered highly favorable to landowners such as ‘regulatory taking’ have their equivalent in the French legal system and their scope of application seems somewhat narrow in the United States. Conversely, changes imposed by the European Court of Human Rights seem to point in the direction of a decrease in the prerogatives of the French State, in particular, in the area of property appraisal values (Jacobs, 2008, 2009).

France is often considered as one of the first nations to equip itself with a strong and centralized State. This historical heritage was accompanied by the implementation of a codified legal system as of the beginning of the nineteenth century. However, on this point as well, comparative law research highlights the fact that a strong presence of the State and the existence of a codified system of laws are not necessarily decisive factors in the adoption of landowner-friendly legislation. Moreover, the political history of legislative changes in the matter are seldom rectilinear. Thus, through the 1930’s, French law was organized around a jury trial system, considered as favoring generous compensation, before the legislation evolved in a more restrictive direction. This evolution intensified in response to the country’s needs to rebuild itself during the post-war period.

To draw up a complete profile of the state of the law, one must remember that a systematic evaluation of the owner’s situation can lead to very different results depending on whether one confines oneself to expropriation law or whether one investigates more globally the body of legal rulings which impacts the rights of the latter vis-à-vis the State and local authorities. Thus, German law proposes more generous compensation criteria than French law in matters of land expropriation but imposes strict rules in terms of planning law leading to a situation which practically prohibits hold out behavior on the part of landowners.

Understanding the logic behind the use of courts in matters of expropriation comes down to trying to identify the reasons why owners prefer a dispute to the negotiated sale of their property. This question has been investigated through economic research but in an indirect manner. Economic theory treats the subject of judicial dispute as a particular type of hold-out strategy, that is to say, behavior characterized by the landowner’s reluctance to sell. It is true that in matters of expropriation, these two phenomena are closely linked insofar as a refusal to sell on the part of the landholder often provokes in a quasi-mechanical way the intervention of a judge. Public authorities in this case have no
other choice but to mandate the judicial transfer of the property and request that a judge set compensation.

The highlighting by economic theory of retention strategies results in an explanation of disputes (or the breakdown in negotiations) in terms of moral hazard. The behavior of landowners is analyzed through the manner in which they anticipate future compensation, from which they may benefit thanks to public use projects. The compensation is in this way considered to be at the origin of a distortion of the investment. It incites landowners to overinvest in their real estate (increasing its value through development, for example). This over-capitalization may lead to an escalation in price capable of blocking the public use project by increasing its cost beyond what is deemed acceptable by local authorities. This interpretation in terms of moral hazard actually leads to a reorientation of the debate on the nature of compensation toward one concerning the criteria for recourse to expropriation. According to this angle, public authorities would have to in fact give up a project once it became clear that the net profits of such a project for the community risk being outweighed by the optimal yield owners have attributed to their assets (Blume & Rubinfeld, 1984; Blume, Rubinfeld, & Shapiro, 1984; Fischel & Shapiro, 1988).

Based on the hypothesis of moral hazard, economic research on the subject has put forward the existence of various costs which may explain the breakdown of negotiations between owners and public authorities and consequently the land hold-out attitude. It is first of all, and in a general way, the simple result of a high transaction cost triggered by the mechanism of over-investment described above. Other factors such as the fragmented nature of a property may also exacerbate matters. A public use initiative will be considered as even more expensive for a community if the lots are fragmented and the number of landowners numerous (Miceli, Sirmans, 2007). Inversely, the prospect of a small compensation could limit hold-out, but is sometimes considered a risk linked to mediocre upkeep of the land and low investment due to the existence of a demoralization cost stemming from anticipated losses (Fischel & Shapiro, 1988).

Research studies based on the moral hazard hypothesis remain rather evasive regarding rules at the disposal of public authorities to absorb private land rent and, generally, do not explore the impact property rights and local regulations on hold-out strategies. Furthermore, they do not rely on empirical data but rather on those of a theoretical nature. In particular, the hypothesis of investment distortion is not supported by an observation of market prices or estimates formulated within a judicial or mutual consent context. It is difficult to make general extrapolations based on this hypothesis insofar as many cases of expropriation concern undeveloped land, which is more often the object of inflated valuation than overinvestment. In addition, landowners in this situation do not control investment decisions involving infrastructure (roads, clean-up or electricity), a domain in the hands of the public sector.

Other studies, inspired within the framework of political economics, insist, on the contrary, on strategies devised by public sector players, which help explain mediation in
favor of consensual acquisition or dispute (Munch, 1976). This angle of investigation benefits from a shying away from a focus on owner-based strategies insofar as the hold-out behavior and, in fine, the decision to go to court, is the result of a rational calculation on the part of both owners and the deciding authority for a public use project. Hence, inflated compensation strategies may be observed on the part of local authorities desirous of pushing a project through quickly so as to avoid contentious delays. Seemingly irrational differences between the property value and the public authority’s offering price may thus be explained when taking into account the time factor, a burden weighing solely on the project developer. In a more radical manner, inquiries further points out that economically unattractive projects generate nonetheless generous compensation offers when the proffered aim is above all political or when local economic interests aggressively lobby local politicians for their backing (Garnett, 2006). The findings of such research benefit from a position of empirical observation. However, they make it difficult to formulate general conclusions since the data are based on an analysis of specific projects. We propose to weigh these hypotheses against the empirical analysis of a corpus of judicial claims, based on the targeted issue of farmland expropriation.

What does it mean to condemn “farmland?”

The notion of “farmland” does not exist as such in French expropriation law. The law alludes to the question of agricultural land in numerous ways. Two are referred to here so as to better peg the notion of “farmland.” To begin with, plots may be classified as “agricultural zones” from the point of view of planning regulation documents. This denomination does not exclude the fact that we will find developed lots with buildings for dwellings or industrial or commercial purposes in these “agricultural zones”. If we turn our attention to the question of property appraisal, we will then refer to rules and regulations associated with expropriation law and even more so with tax law in order to determine the quality of property under consideration. Indeed, land appraisal lies primarily within the jurisdiction of the tax administration, be it in the context of its mission to make sales public and levy taxes and fees (mortgage record-keeping) or as part of its mission as appraiser of public properties, in particular those acquired through expropriation (land tenure office).

The value of “farmland” may be appraised with reference to the revenue generated by its associated production or, as is the more usual case, by referring to its fair market value in comparison to the values of property of a similar nature. The problem being that in the latter case the label “farmland” or “rural property” is a result of a negative definition. Lands labeled farmland or miscellaneous rural properties are those which are not likely to be develop.¹ According to the conditions set forth in the legislation concerning expropriation, developable land, in addition to being zoned for construction, must be equipped with the infrastructure necessary for development (roads, electricity, water and

¹ In the framework of this study, we have thus referenced only undeveloped land, considered by the courts as ‘undevelopable.’
sanitation). It is only when the testing of these conditions yields a negative result that one can speak about the intrinsic characteristics of the land in question with respect to their “agricultural use” (disposition of plots, agronomic potential, infrastructure necessary for production, etc.).

The question raised by this classification exercise is thus that of the market segment to be retained for the comparative evaluation and it is in reference to its market position that we will define the real estate assets as “agricultural properties.” This classification, while convenient for the needs of the study, nevertheless encompasses extremely heterogeneous market sub-sectors. The market for “land set aside for urban development” (developable land from a planning law standpoint but lacking infrastructure) is one where prices are significantly higher than the one for land which is by law undevelopable. Similarly, the market for forested plots offers lower prices within our sample than that for land which has been developed for agricultural purposes.

From this point of view, these properties are not defined by their material consistency or the fact that they have been developed (abandoned land may in fact possess agricultural potential). It is moreover worth remarking that some judgments give scant indication as to the nature of the existing activities or production on the lots in question. It must be specified that these properties may be constructed on, when we find a dwelling or commercial building. As the expropriation of agricultural buildings remains the exception in our sample, we have dealt here only with undeveloped land. The expression “farmland” also comprises by assimilation other rural land types related to specific markets, such as green spaces. Nor is the definition of farmland restricted to agricultural zoning, a characteristic of zones set aside for urban development in the middle or long term being that they are often made up of agricultural plots which have little or none of the infrastructure necessary for urbanization. Furthermore, cultivated land may also be found in urban areas. Due to its very particular position on the market, this type of land (by the way, nearly absent from our study sample of cases) has also been excluded from our field of study.

### Field of study

The field of study is composed of a total of 170 judicial claims cases involving agricultural properties. These cases were under the jurisdiction of the greater Paris area – Melun, Versailles and Pontoise. No other farmland-related cases were identified in the other jurisdictions of the outlying areas surrounding Paris. All judgments were rendered during 2007, which is our year of reference. The total of takings in question corresponds to a little less than two hundred hectares (nearly 500 acres), expropriated through twenty declarations of expropriation for a variety of public uses. The scope of the present study is limited to the analysis of claims relative to the compensation of condemnees, to the exclusion of other types of cases adjudicated by the expropriation jurisdictions (setting

2 Article L.13-15 of the French Expropriation code
Condemnation and consumption of farmland: from major infrastructure projects to ordinary urban development

The stakes behind condemned land in rural areas are generally associated with the implementation of transport infrastructure projects. Impressive images of major public works sites and massive civil engineering structures (high-speed train lines or major highways) slicing through bucolic landscapes undoubtedly contribute to this association of ideas. Public use projects linked to roadway development do consume significant amounts of farmland; however, the more classical mechanism of urban growth, while less spectacular, plays a non-negligible role as well. These projects are based on public use declarations linked to lands zoned through negotiation for development or other works carried out on land zoned for urban development.3

Whether it is development linked to urbanization or transport infrastructure, most of the public use projects are located on the immediate or near urban-fringe, on the periphery of the greater Paris region and on the edge of urban growth. While smaller in terms of surface area than the transport infrastructure projects, urban development projects, as far as financial considerations are concerned, were paramount in the disputes. Three fourths of the sums allocated by the courts were absorbed by the 7 urban development projects involved in the study compared to only 10% for roadway infrastructure, just behind general use development (15%). As aforementioned, this result can be explained by the heterogeneous character of market sub-sectors which compose the whole of the land group designated for the needs of the study as “farmland.” A consequence of the trivialized use of expropriation is that it is no longer simply a tool reserved for infrastructure development projects. It appears rather to have become a way to exert significant leverage in “ordinary urbanization.”

Judicial proceedings as the setting for competing claims

The court as arena for dispute?

We cannot expect valid hypotheses based on an empirical analysis of registered legal claims if we do not raise the question of the profile and motives of the various players seeking judicial intervention. In the case of judicial claims, the profile of claimants is essential if we wish to understand the social and economic role played by the judicial institution. As statistical analysis carried out in the United States has shown, and

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3 By “urban development,” we mean here development projects declared for public use, implying opening the land up to urban infrastructures (and, if necessary, ensuring the conformity of urban planning documents). Among other land types, land zoned through negotiation for development is concerned.
confirmed by similar studies conducted in France, the majority of civil dispute cases adjudicated by the courts go “uncontested” (Friedman, 2011). The typical profile of these cases is characterized by the following factors: the claimants are regular users of the judicial system; most of the time they are legal entities with economic power (banking or credit institutions or insurers); they often win their cases faced with weak opponents (defendants who are rarely present at hearings and even more rarely represented by counsel); they are generally natural persons.

In many respects, disputes involving expropriation may seem close to this case in point. They oppose a financially dominant legal entity (the expropriating authority or its delegating bodies) and an individual property owner, who is usually a natural person. Expropriation cases are generally of the configuration, as described by legal sociology, where, facing more or less isolated individuals who are not used to the workings of the judicial system, we find a courthouse regular, who has defined his pretentions in function of a more global strategy with long-term “rule-of-thumb” intentions (Galanter, 1974). The financial offer made by the State or local authorities in the context of a dispute is indeed a function of a context which overlooks the judicial arena: it takes into account the negotiations being carried out or which have been concluded between willing parties, and it is in relation to this negotiated transaction that the expropriating authority positions itself.

The legislator organizes expropriation proceedings precisely around this power-play between an isolated case and the backdrop consisting of multiple negotiations previously carried out by the expropriating authority. Beyond a certain surface area threshold or when a certain number of landowners are involved, the law requires the judge to “take as a basis” for compensation appraisal the said transactions. In addition to considering the impact of such negotiations on an isolated claim, the expropriating authority is also likely to strategize well beyond the scope of the public use project in question. For agreeing to generous compensation or recognizing certain prejudicial claims means taking the risk of setting a legal precedent through jurisprudence that could affect future development projects on the same lands.

Several elements, a priori, are signs which do not bode well in terms of the chances of success of landowners whose land has been taken without their consent. One is the high rate of failure of administrative claims filed against declarations of expropriation. Another is the imbalance, criticized by the European Court of Human Rights, between the landowner on one side and the administration on the other (expropriating authority and tax services, whose role is to propose an independent appraisal and compensation to the judge). In this respect, certain synthetic findings which have been taken out of context give the distinct impression of an imbalance which is to the detriment of landowners. The fact that 61% of judicial decisions are made in favor of expropriating person’s pretentions or through an agreement to which this authority has given its approval, can indeed be interpreted as corroborating this finding. However, a more
detailed reading of the configurations of claims may very well lead analysis in other directions.

In expropriation proceedings, a certain number of claims correspond precisely to the profile of “uncontested” cases referred to above. Cases in which the court sides entirely with the expropriating institution in the absence of alternatives formulated by an absent and unrepresented landowner fall into this category. But contrary to certain areas of civil dispute, this type of case is far from being the norm in cases of expropriation (23% of cases). Expropriation proceedings and compensation decisions often seem to derive, in the above case, from the failure on the part of the landowner to respond to official offers, from a delay in the identity of the latter or from the fact that the landowner’s financial interests are limited (which is often the case in the condemnation of a leasehold, as we will see later).

As a matter of fact, it by no means obvious to consider decisions which benefit from the agreement of both parties (21% of the sample total) as situations favorable to the condemning authority. It is true that in some of these cases, there is no genuine judicial debate: from the outset, the expropriating authority requests the intervention of the judge with the single aim of having a settlement validated. The expropriating institution seeks to give more weight to a transaction carried out amicably and which will thus be given a reference value. However, the judge could also be asked to validate a pending agreement resulting from ongoing negotiations, after which the expropriating authority agrees to increase the compensation offer. Taking the case to court thus turns out to be rewarding for the condemnee, who through the lever of an official claim, manages to turn a breakdown in negotiations in his favor.

If we investigate more specifically the condemnees’ chances of success when there is a confrontation between their claims and the offers of the expropriating person, it makes more sense for the analysis to stick to situations which arise within the scope of what we could call “the dispute arena.” By this expression, we mean the body of cases where opposing claims are confronted and for which the judge must truly hear a case and decide between distinct scenarios. If, in this way, we set aside the cases in which the expropriating authority triumphs without glory and without having had to confront an alternative offer and focus on decisions where the judge hears a case and decides it through the assessment of various scenarios (the situation for a little more than half of the cases), the situations in which the court amends the compensation upward appear very frequently (68%).

4 Furthermore, the expropriating authority may wish to have a settlement validated by a judicial decision insofar as the judgment is endowed with the probative force of an authentic act

5 To that may be also added a small number of cases (7% in our case sample) in which, despite the absence of legal submissions filed by the condemnee, the judge increases compensation by following the government appraiser’s estimate.
Expropriation disputes…often without property

The right to compensation concerns any material prejudice for which the link with the expropriation is direct and certain. Hence, the same real estate asset may be the object of distinct prejudices: that of the landowner deprived of the value of his property, but also that of the person deprived of income procured from economic activity for which the land is a support. This problematic is particularly relevant in France where legislation favorable to the protection of leaseholders has vastly promoted tenant farming. In a region such as the greater Paris area, more than 80% of arable farmland is cultivated through indirect farming.

Cases involving tenant farmers occupy a place of their own in the civil dispute arena of expropriation. In our sample, one case in three adjudicated by expropriation jurisdictions is an “agricultural eviction” case where the farmer, who is a simple leaseholder, is compensated solely for the loss of earnings, by a “lost usage” indemnity rather than a “dispossession” compensation. Yet, it is essentially in the cases of eviction that the issue of economic prejudice linked to the disruption of farming activity is raised. Indeed, there are very few landowners who, in addition to their dispossession compensation, will claim indemnity for lost usage due to the loss of farming income. This is either because they know nothing about the farming sector or because they have given up this activity.

Agricultural eviction cases present an unusual profile as well, insofar as the role played by collective negotiation, as a backdrop for individual disputes, is more important than in other types of cases. In fact, the tax administration concludes memoranda of understanding with farming representatives (Chambers of Agriculture and farm-sector trade unions, etc.) with a view to set indemnity brackets designed to serve as reference points for future expropriations. These negotiated scales concern both dispossession and loss of usage indemnities. While the method of comparative assessment seems to be the one of choice for condemning authorities in order to estimate dispossession indemnities, expropriating authorities systematically refer to these negotiated brackets for loss of usage compensation. Consequently, the claims of evicted tenant farmers are most of the time focused on other types of compensation, a shift in focus that alters the tenor of disputes, as we shall see next.

That which is incidental is not necessarily insignificant...

The principle according to which any material prejudice having a direct and certain link with the transfer of property must be compensated justifies the idea that for the same target of expropriation, prejudices other than dispossession or eviction may also be open to indemnification. Compensation for these prejudices, qualified as ancillary, is added to the principal indemnity for dispossession or displacement.

The prejudices which farmers might claim for compensation are impressively diverse in nature. Thus, in the different judgments setting compensation for condemned farmland, we find claims relative to modalities of breach of tenant-farming contracts or claims of
prejudice linked to damaged land as well as issues concerning the disruption of economic activity. Some farmers, for example, file a claim for a specific indemnity linked to the loss of a stable or autonomous economic situation (the case for tenant-farmers whose long-term leases afford them judicial protection). Others demand that the enhancements brought to the land over time (indemnity for “land and crop improvements”) be taken into consideration. Some claimants raise the issue of the difficulties created by the fragmenting of parcels, a dissection of land which implies extra wear and tear on farm vehicles due to added mileage.

One consequence of the proximity of farmland to the urban zones characteristic of large metropolitan areas like the Paris region is the continual extension of infrastructures linked to urban sprawl. In expropriation cases involving farmland, claims for ancillary indemnities are thus often linked to the devaluation of the surplus land leftover. This is in particular the case for expropriations which destructure a farm and make it more complicated and costly to keep the activity viable. The most commonly found arguments are those relative to the dismantling of a farm or to potential crop loss. The destructuring and dismantling of farms and farmland is argued on the basis of prejudice generated by successive expropriations. The overlapping effect, at a regular pace, of public works projects (e.g. highway links progressively developed for the “Francilienne” expressway) and creeping urban sprawl have resulted in the repeated amputation of numerous farms in the Paris region. Farmers often find themselves facing situations of “potential crop loss.” The consequence is that they cannot maintain production at the same level of profitability. Remaining parcels are insufficient, and their configuration makes it hard for farm vehicles to get around them. Meanwhile, the farm buildings have become oversized for the land which is left.

The “whittling away” of farmland is thus carried out through both the poorly controlled spread of new space-hungry urban development or “sprawl” and the progressive densification of the highway grid which sometimes goes so far as to push rural spaces into an inextricable vice grip. A striking illustration of this is provided by the disputes generated by the development of the Paris bypass or ring-highway, where in certain areas the overlapping in the phases of road construction lead to extreme situations.

In one case involving a farm located in the town of Tremblay-en-France (département of Seine-St-Denis), a farmer filed a claim for compensation against “successive expropriations.” She was the target of three successive phases of expropriations on her land over a period of fifteen years. The combined effect of the development projects was a 40% reduction in the size of her property! In another case in the same département, a grain producer who claimed he was no longer in a position to profitably farm his land, which had been reduced to a bare minimum, successfully demanded that the condemnor proceed with a “total expropriation,” that is to say, the acquisition of the whole of the parcels which the farmer held, including those which were not within the perimeter of the planned development project. These extreme situations in which the destructuring of farm holdings is significant by reason of successive expropriation, which may end up
compromising the viability of any farming activity, lead to a displacement of the dispute. From a punctual confrontation between a developer and a farmer, the dispute now falls into the realm long situated within the evolution of urban-influenced territories of open-space, little by little dissected by public works.

Claims relative to incidental compensation thus play a significant role in expropriation disputes. When expropriated landowners file compensation claims, the latter include ancillary indemnification in one case out of four. The final compensation obtained through such claims remains highly limited since their cumulated amount represents on average only 14% of all compensation awarded per case. It constitutes without a doubt one of the important elements which the expropriated landowners take into account in their decision to refuse a negotiation (and thus, indirectly, to provoke a dispute). Indeed, while the final indemnities awarded by the court on the grounds of ancillary prejudice are proportionally modest, they represent a sizeable portion of total claims submitted (28% on average, or twice the sum retained by judges), a figure which tends to show the importance they play in the dispute strategies devised by the targets of expropriation.

Claims of reparation for prejudice suffered other than that covered by the principal compensation play a prominent role in agricultural eviction cases since this type of indemnity represents on average close to half (45%) of all financial claims filed by displaced farmers. The specific situation of agricultural displacement cases results from the fact that “loss of usage” indemnities are by nature lower than those for “dispossession.” But it can also be explained by the high amount of ancillary claims accompanying this type of legal dispute. In fact, in a certain number of eviction cases, the only real financial issue involves incidental prejudice, as the displaced farmer does not contest the main loss of usage compensation, which usually falls within the collectively negotiated brackets.

The success of expropriated claimants in the courts: a picture in contrasts

The judge facing appraisal scenarios

In the judicial context, the expropriating authority, the land-tenure office and the court establish compensation estimates. We can estimate, for each, the difference (in percentage) between their appraisal and that of the expropriated landowner, all the while distinguishing between the type of prejudicial indemnity, be it principal or ancillary. For the purposes of this study, we consider only cases which emanate from the realm of what we have called “the dispute arena.” Moreover, we have discarded outlying figures which

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6 That is to say, proceedings responding to two conditions: the target of expropriation formulates an estimate (excluding cases where expropriating authorities’ claims are granted in the absence of the claimant), and this estimate diverges from the offer of the expropriating authority (which excludes, this time, cases in which there is agreement). Following these criteria, we have thus retained 56 claims relative to principal compensation and 81 relative to incidental indemnification (knowing that a single principal claim may give rise to several incidental claims).
do not fall within standard deviation and concern situations of extreme disagreement (cases in which the expropriated landowner’s estimate is more than threefold that of the expropriating person). Each claim (principal or incidental) filed with the court is thus the object of four distinct appraisals (those of the expropriating authority, of the target of the expropriation, of the land tenure office and, in the end, the one of the judge him or herself).

As far as principal compensation is concerned, it is striking to notice that in one case out of two, the estimates of the expropriating authority, the land tenure office and the court, all three of them, diverge by at least 40% from those of the expropriated landowner. Analysis of sums awarded by the judge show, however, a greater amplitude than the estimates of the other judicial protagonists. While usually following the appraisal of the expropriating authority and the land tenure office, the judge does not hesitate, on the other hand, to award principal compensation which is closer to the estimate of the target of expropriation, if not equal to the latter’s claims (in about ten cases in the sample). The cases in which the court closely espouses the claimant’s estimate generally correspond to ones involving urban growth where the claim of an “added-value situation” is deemed admissible (or what is also referred to as a “privileged situation”). This increased value in price applies to land whose characteristics of location and configuration bring it closer to the market of developable land, without the conditions actually being met for it to qualify as such from the point of view of legal status. The acknowledgement of a privileged situation generally leads the judge either to base compensation on a comparison with other land holdings considered to be in privileged situations themselves or, in the absence of adequate terms of comparison, to apply a flat-rate increase with regards to fair market value references which are not endowed with this added value.

It is worth elaborating further on this phenomenon in order to highlight its relevance. Why are targets of expropriation often tempted to claim a privileged situation? Most of the time, the answer resides in the zoning policy decisions adopted by local elected representatives. So as to create ample room to maneuver for urban growth and appeal to constituents, towns tend to designate significant portions of their territory as “urban development zones.” Yet, these zones which have been targeted for construction projects are characterized by a very high internal heterogeneity, since we find in such zones areas which can be urbanized in the short term along with other land which is not yet equipped with infrastructure (or perhaps may be sometimes simply undevelopable). In the last case, infrastructure improvements are strictly a condition sine qua non for urban development to take place, unlike land which is already grid-connected and can be developed quickly, without the constraints of infrastructure enhancements.

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7 The amounts retained for the principal compensation are presented with disregard for the “relocation” indemnity awarded by the court. This lump-sum indemnity, which is generally not contested, aims to help the target of expropriation cover the costs of acquiring a property similar to the one which was taken.
Generally speaking, the following signal is sent to landowners whose holdings are legally zoned for urban development but not yet grid-connected: *you’re next in line*, during the second phase of development. The policy decision in favor of urban growth, which is rather favorable to landowners, is, to a certain extent, a source of confusion. It leads to the designation of developable plots endowed with different building rights and to fostering a feeling of inequity among landowners whose property is not immediately developable. This feeling of inequity is reflected in the numerous cases where an added value situation claim is at the heart of the dispute. Paradoxically, we can state here as well that the incentive to resort to a legal claim is not to be found in strictly individual considerations, but is rather the consequence of a political preference for urban sprawl policies.

Added value situation claims are thus a significant source of diverging appraisal in terms of assessing the amount of principal compensation. By contrast, diverging appraisals appear as being of a very different nature in the case of incidental compensation. This contrast can be explained by the specific character of the indemnity for prejudices suffered. Unlike principal compensation, which can be evaluated in diverse ways, but whose principle is not in itself questionable (excepting rare cases), incidental compensation in itself may be the object of legal challenges. Relatively uniform differences in appraisal may give way to very heterogeneous divergences and, above all, to a situation where the judge occupies a singular position vis-à-vis that of the expropriating authority or the land-tenure office. In fact, as far as court-estimated incidental compensation is concerned, the general trend is quite the same as in the case of principal compensation (more than half of appraisals are around 40% lower than that of the claimant). Situations in which the judge follows neither the offer made by the expropriating institution nor the opinion proffered by the land-tenure office is, however, more frequent (in 28% of cases, the judge grants the claimant’s demands). On the contrary, the representative of the land-tenure office and the expropriating person, even more so, are reluctant in one case out of two to even admit the principle of incidental compensation and are opposed to its award. Condemnors offer incidental compensation which is particularly unfavorable since they generally make offers which are at least 80% lower than what the claimant is requesting. The expropriated landowner’s chances of success are thus greater in the legal debate surrounding incidental compensation. Estimating the monetary value for this type of particular prejudice, which is often of a more individualized nature and incompatible with standardized methods of appraisal, is difficult. This complexity is without a doubt an element in explaining its singular position.

**The “marginal” success of the targets of expropriation**

Within the context of land acquisitions carried out by expropriation, the situations of the disputes engendered ultimately have a doubly marginal character. First of all, they are marginal in terms of the ratio between the number of claims filed and the total number of amicable settlements. It is revealing that redress proceedings are systematically
considered by expropriating authorities or their delegating bodies as isolated cases and are often perceived as irrational. The character of these disputes is additionally marginal in terms of the gains obtained by expropriated landowners as a result of these proceedings. The success of the targets of expropriation (in the broadest sense of the term, which includes dispossessed landowners and displaced tenant-farmers) appears thus as a “marginal” one, insofar as the upward revision of the expropriating authorities’ offers of compensation by the judge most often results in a relatively minor price difference (lower than 9% in one case out of two).

However, in both cases, this margin has its importance. It is highly likely that the small fringe of those who “hold out” against a negotiation plays a role that surpasses the scope of their reduced number. In fact, the price set for compensation in a judicial setting serves as a reference for future development projects and, therefore, the expropriating institution will be induced to take it into consideration when planning these projects, a factor which will define the condemnor’s “rule of thumb” in the long term. This notion is corroborated by the fact that negotiations, rather than schematically breaking down during a legal dispute, often continue within the context of court proceedings, as illustrated by the high rate of court-validated settlements. Moreover, while the gains obtained by expropriated landowners through judicial proceedings often prove to be limited, the latter’s claims are more seriously taken into account when they formulate an alternative offer to that of the expropriating authority. From this point of view, in matters of expropriation, the court as dispute arena fully assumes its role in the adversarial process.
Bibliography


