



When should the state expropriate?

A new approach in Berlin, Germany

by

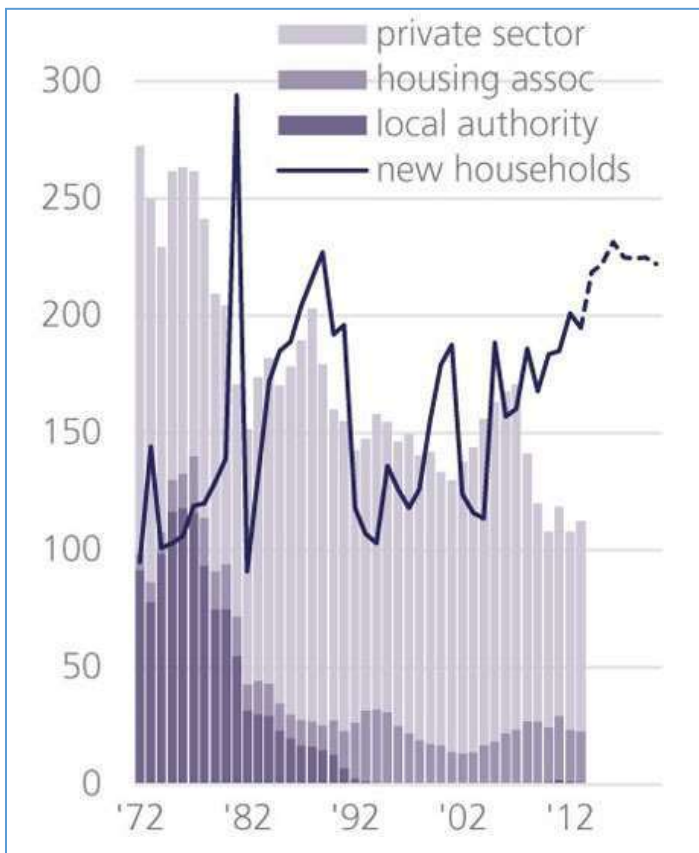
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Recently an article was posted on German News site Tagesschau regarding the housing crisis in Berlin. The findings resonated with me and I thought it would be interesting to share the key elements of it.

All around the world housing is in high demand and a lot of municipalities and communities declared a housing crisis. To define the crisis, Shelter 2016 lists several criteria: home ownership is slipping out of reach (gap between income and house price), hugely expensive housing costs (higher mortgages stretch home finances), more families rent privately (unstable market, lack of standard) and sadly a rise in homelessness.

Whilst each consecutive government is pledging more housing stock the reality is bleak – following graphic highlights the ever growing gap in UK:



The number of new households each year has exceeded the number of homes built in every year since 2008, and the gap has grown in recent years, new dwellings (bars) by tenure, and new households (line), 1972-2013 (projections of new households to 2020).

To counter the effects of the shortage of housing stock drastic measures will have to be used to avert a national crisis – could expropriation be one way out?

Expropriation of your property for new train lines being built or a new traffic scheme being planned happens frequently (see HS2 project in UK). To socialise complete private housing companies to remedy the housing crisis is political and legal new terrain - but just this is the aim of a citizen's initiative in Berlin.

The German basic law (GG)¹ differentiates between socialisation and expropriation. Article 15 GG defines socialisation as follows: *Land, natural resources and means of production may for the purpose of socialisation be transferred to public ownership or other forms of public enterprise by a law that determines the nature and extent of compensation. With respect to such compensation the third and fourth sentences of paragraph (3) of Article 14 shall apply mutatis mutandis*²

Simply put – this defines the authorisation for socialisation based on economic policy considerations, notably of entire industry segments. This measure was never made use of in Germany in this form to date, therefore no judgment or precedent can be found in the legal system.

Article 14 GG, § 3 defines the “classic expropriation”³ when the state can legally interfere with the basic right of property. Here the overlaying principle is that the expropriation needs to serve the common good and must be proportional. The legislator has dealt with this frequently, contrary to Article 15 GG there are numerous and clear judgements to the legality and prerequisites and boundaries of expropriation. Of course this relates to all questions of adequate compensation as well.

Socialisation by legal act?

It is clear that socialisation can only be invoked via parliamentary act – in case of the Berlin citizen’s initiative only the Berlin State Parliament can ratify such an act – the executive branch cannot carry out socialisation on its own.

A petition – as initiated currently in Berlin – can only be the political impetus but never the legal basis for socialisation. Article 15 GG envisions compensation, but how much must be balanced between the public and the involved parties. There is disagreement between lawyers regarding the level of compensation: some demand market-value based compensation whilst others peg the sum below current market level.

In the end the basic law will decide whether socialisation will be enshrined in law – given that the topic is highly contentious and unknown legal territory this will most likely be a case for Supreme Court ruling in years to come.

In UK this form of ownership was mostly practised on national level (rail, mail, utilities etc.) but never with private companies as such. It will be interesting if this initiative from Berlin will find followers here in an attempt to resolve the housing crisis.

¹ GG Grund Gesetz (the equivalent of a constitution)

² **Mutatis mutandis** is a Medieval Latin phrase meaning “the necessary changes having been made” or “once the necessary changes have been made”. It remains unnaturalized in English and is therefore usually italicized in writing

³ Expropriation shall only be permissible for the public good. It may only be ordered by or pursuant to a law that determines the nature and extent of compensation. Such compensation shall be determined by establishing an equitable balance between the public interest and the interests of those affected. In case of dispute concerning the amount of compensation, recourse may be had to the ordinary courts.

Conclusion:

Expropriation is not a new approach – it has been discussed in UK by the Labour Party in some form and shape for a while to alleviate the issue of empty second homes. A state-led redistribution of such housing stock will target the very foundation of the ownership structure. Whilst this works for strategic infrastructure projects – think of airports, highways, HS2 etc. this will create massive disruptions in the private market.

It is up to the legislator to make the right move but led by the various industry bodies to create a fair solution that does benefit all, as this is legal new-land, any such initiatives will have a long way to pass through courts, parliament and implementation.



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