

Law and the Afterlives of Utopia

Reckoning with Pasts and Futures in Berlin's Housing Movement

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7.1 Introduction

That the legal code depends for its operation on histories of interpretation and application as well as on frameworks of meaning that bear upon its textual corpus is surely a commonplace in legal scholarship, perhaps especially in anthropology. Yet much like the human DNA, the legal code too may include silent messages, inactive sections whose effective significance, for lack of usage, has remained opaque. Such silent codes may register the political interests or moral compasses of bygone times (e.g., Thompson 1975). They may also remain in the legal code as traces of lost worlds, as the afterlives of defunct futurities inscribed with a measure of permanence yet uncannily at odds with the social life that surrounds them. But what happens when, against all expectations, they become reanimated in a present with which they appear so out of sync? How, and with what effects, do they become reactivated and conjured out of oblivion to finally find their significance in the service of contemporary projects? How do they shift from their silent oblivion into the center of political controversy in juristocratic moments of resurgent investment in law as a site of struggle and a promise of justice?

Such is precisely the case of a constitutional article that in recent years has become a point of contention in the struggle for affordable housing in

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Berlin. Article 15 of the German Basic Law (henceforth, the German Constitution) authorizes the state to “socialize”¹ privately owned land, industries, and natural resources. Despite its clear and explicit wording, however, it has never been used in the history of the Federal Republic. To be sure, it stands as a historical relic from an era in which notions of collective ownership and the public good seemed, for many, to represent legitimate claims on and limits to the sanctity of private property. It is doubtful that any similar formulation could find its way into law nowadays. And yet, here it is, a clear, straightforward proclamation of the constitutionally backed authority of the state to socialize private property and hand it over to the public, independently of the usual allowance that legal codes generally grant for expropriation by eminent domain.

In this chapter, I examine the struggle of a grassroots initiative to expropriate and “socialize” hundreds of thousands of apartments in Berlin from real-estate conglomerates by appealing, without precedent, to the German Constitution. In the face of legal loopholes in existing rent control legislation, unbridled financial speculation, and spiraling rents in the German capital, the *Deutsche Wohnen & Co. Enteignen* (Expropriate Deutsche Wohnen & Co.,² henceforth DWE for its German initials) campaign has in recent years fought to force the uncooperative governing coalitions of Berlin to transfer massive privately owned housing stock to collective, public ownership. It did so by taking recourse to law at multiple scales, from the Federal Constitution’s socialization article to the Berlin state Constitution’s instrument of popular referendum and its statutory law, where the expropriation would need to be legislated. Meanwhile, opposition to the campaign has come in the form of its ridicule as utopian and naive, of juridical delegitimization, of political lobbying, and of generous funding to counter-campaigns in the media. But it has also appeared as the advancement of less-radical – and arguably less effective – legal measures of rent control that have sought to defuse the movement’s rising momentum. Hence, the DWE initiative has from its beginnings been forced to reckon with and invest its resources in a complicated juridical struggle in which, building on the

¹ The German word is *Vergesellschaftung*, or socialization, which carries somewhat different associations than *Nationalisierung*, or nationalization. While the official English translation of the Basic Law uses “nationalization,” here I use socialization, which remains more faithful to the original and, in my opinion, better transmits the utopian dimension of the Article.

² *Deutsche Wohnen* was one of the major private real-estate holders in Berlin, and yet the campaign targets all real-estate conglomerates with massive investments in the city.

relatively recently codified instrument of popular democratic participation of the referendum, which in Berlin sets extremely high standards for success, and navigating a complex yet leaky regime of rent legislation, it aimed to reanimate the constitutional afterlives of past futures of mass utopia in the neoliberal present.

My discussion draws on a year of active participation in the movement from 2019 to 2020, during which I was a member of two workgroups, I canvassed neighborhoods, organized tenant groups, helped out with direct actions and demonstrations, plastered the city with posters, remained attentive to several email lists and chat groups, and had the opportunity for numerous informal conversations with activists and volunteers, as well as on follow-up interviews and ongoing review of developments and materials since then. The chapter proceeds in four sections. I first look at the relationship between law and futurity, particularly the shift toward the future-oriented prescriptivism of modern western law and its relationship with utopian thinking. Next, I describe the legal frameworks that in Germany define the juridical context, the possibilities, and the limits for the expropriation campaign, including not only the Federal Constitution but also Berlin's referendum law and the different rent-control legal mechanisms that have already been implemented. I then turn to consider housing as an arena for mass utopian imaginaries and the political mobilizations that have emerged around it, both globally and, more specifically, in Germany. Finally, I examine the DWE movement and its campaign to reanimate the utopian potentialities of law through the referendum on the expropriation of real-estate multinationals.

7.2 Law, Future, Utopia

European legal codes and praxes begin to genuinely orient themselves toward the future only in the modern period, whereas previously they were generally concerned with regulating the resolution of conflicts and disputes within existing social orders and political regimes. It is with the rise of modernity as an ideological force and an aspirational horizon that law turns to earnestly busy itself with laying out blueprints for what should be, rather than what is. Like other projects and imaginaries of modernity, it thus acquires a temporalized, future-oriented, utopian dimension. The US Constitution and the Declaration of the Rights of Man are perhaps the two most well-known examples of the inscription into legal documents of visions of utopian futures that mark a radical break with the past and the present, even if they reflect and emerge from

prior historical developments of western imperialism and their attendant ramifications for legal and philosophical thinking.

The increased investment in codifying futurities into law went hand in hand with the important place that utopian thinking has come to occupy in modernity, which temporalized the previously spatial distance that marked the difference between utopia and the here-and-now and projected it onto a future horizon (Jameson 2004; Levitas 2010). While specific imaginaries of the future and their associated political agendas have varied greatly, they have all in one way or another relied upon and mobilized notions of historical progress – human, scientific, technological, and political. Of special importance to the present discussion, hope as a collective form of temporal attachment has found particular expression in the class-struggle social movements of the nineteenth and early twentieth centuries and in the idioms of the political parties that purported to represent, within liberal-bourgeois juridical frameworks, the interests of the workers and the oppressed; not least by pushing forward agendas that called for the rethinking of property rights or the abolition of those very frameworks within which they operated.

In more recent decades, scholars have written about a crisis of the utopian thinking that had accompanied modernist political projects. Fredric Jameson, for example, has argued that utopian thinking has turned unsustainable in an increasingly polarized world and that its postmodernist weakening has obstructed the imagination of historical difference and, with it, of alternatives to the present (Jameson 2004). According to Susan Buck-Morss, the fall of the Iron Curtain brought into sharp relief the emptiness of the utopian promises of mass prosperity that both capitalism and communism have proclaimed yet equally failed to deliver (Buck-Morss 2000). Other authors have similarly written about the difficulty of imagining meaningful futurities in the post-Fordist, post-cold war, neoliberal historical moment (Lomnitz 2003; Berlant 2007; Guyer 2007; see also Hartog 2017). With the notable exception of Samuel Moyn, however, few of these farewells to utopian imaginaries have reflected upon the juridical implications of the shifts they have described. For Moyn, human rights discourses, institutions, and legal framework have become the globally dominant utopian project starting in the 1970s as a displacement of earlier dominant utopian imaginaries that were centered on prosperity and equality (Moyn 2018, 2012). Their rise, then, has accompanied the demise of socioeconomic redistribution and class struggle as the defining registers of political aspirations.

To be sure, DWE activists emphatically insist that decent housing is a basic human right. Here, however, I use the concept of utopia to refer precisely to those once-prevailing, Marxist-inspired ideologies of collective ownership over the means of production that promised a future free of exploitation and to which the socialization article of the German Constitution owes its existence. The invocation of the constitutional article, which has never been used, by a grassroots movement in the contemporary context accordingly amounts to the reanimation of specific legal figurations of utopian attachments that have since become effectively defunct.

Looking at the DWE movement's legal strategy through this lens contrasts with two common approaches to the law in the social sciences. The first, dating at least as far back as Karl Marx's critique of liberalism but today strongly inspired by Foucault and Bourdieu, understands law as an instrument of control and domination in the service of power, for example as part of neoliberalism's punitive turn (Loic Wacquant 2001, 2012; see also Harcourt 2010; Kalb 2012), as the ethopolitical management of risk and control (Rose 2000), as racial criminalization (Feldman 2001) or as a regime of recognition of indigenous rights (Povinelli 2002; see also Greenhouse 2022). A second approach considers law as offering at least some protection from the excesses of power, whether in the efforts of Christian congregations to push back against what they perceive as encroachments upon their religious freedoms (McIvor 2020), in postconflict struggles for restitution for war-related damages (Lyons 2018), or in indigenous claims to juridical autonomy within state-sanctioned frameworks of "customary law" (Wright 1988; Jackson & Warren 2005; Hale 2006).

Of course, much anthropological literature has subscribed to neither of these two approaches entirely, instead underlining the contradictory and ambivalent potentialities and limits of legal regimes (Goodale 2017). And indeed, such ambivalences are palpable in the case of housing activism in Berlin, where law guarantees certain protections while also enabling wild real-estate speculation in the first place. But the approach taken here is different, inviting us to consider law as an archive of past futures and to look at how and to what effect such afterlives are reanimated and brought back into the limelight of political struggles in moments of juristocratic insurgency. The questions that arise, then, are how the seemingly outdated utopian aspirations that are reflected in Article 15 of the Constitution resonate with and become mobilized for a grassroots agenda that appears similarly at odds with contemporary understandings

of property and rights; how they enter into friction with broader legal frameworks that govern property and real estate; how they challenge dominant political ideologies and present-day futurities in postreunification Berlin; and what transpires if and when their limits and their failures force a reckoning with the broken promises of law.

7.3 The Legal Frame(s)

In order to consider these questions, a few words about the legal frameworks that shape the juridical terrain within which the DWE campaign has proceeded are necessary. The document to which I have straightforwardly referred as the German Constitution is, in fact, anything but a straightforward constitution. Composed by reluctant German representatives as demanded by the occupying Allies and under the latter's watchful gaze, it was conceived and designed from the start to provide a provisional, temporary legal basis for the Federal Republic until such day as a united, unoccupied Germany could freely deliberate and sovereignly decide upon a lasting constitution. Hence its baptism as "The Basic Law" (*Grundgesetz*) rather than "The Constitution" (*Verfassung*). The Basic Law accordingly determined that it would expire when the German people freely adopt a constitution (Art. 146), a condition broadly understood to refer to an eventual reunification and an end to the occupation. However, in 1990, rather than becoming entangled in a drawn-out constitutional process that, furthermore, would have entailed the integration of the voices of former East Germans, viewed with suspicion by West Germans after four decades of communism, reunification was instead rushed through using a much speedier and simpler article that merely stipulated the right of German territories to join the Federal Republic and adopt its Basic Law (Art. 23). Thus, with minor modifications to articles that concerned German reunification and the sovereignty of the occupying powers, the Basic Law, born under division and occupation as a temporary placeholder, transitioned mostly untouched into the permanent constitutional law that was expected some day to replace it, without the country ever going through a free and sovereign constituent process.

Like most other parts of the Basic Law, then, reunification left Article 15 untouched. At the time of its writing, it represented a provisional political compromise between the Social Democratic opposition, still committed – at least officially – to the Marxist ideas of workers' ownership over the means of production and the eventual establishment of a

socialist order, and the ruling conservatives. But its roots reach at least as far back as the 1918 November revolution, when workers' and soldiers' councils demanded the expropriation of German industry and forced a similar compromise in the 1919 Weimar Constitution, which also protected private property while leaving the possibility of socialization open (Hoffrogge 2021b). Following 1945, socialist political commitments were reinforced by a profound and broad distrust of heavy industry for its complicity with the Nazi regime, a sentiment shared by many conservatives. The general skepticism with which the private property-based free market economy was received in the immediate postwar years in the Federal Republic manifested itself plainly, for example, in the 72 percent who supported the inclusion of a socialization article in the Hessen state Constitution in 1946 or in the ten million-strong general strike for price controls in 1948 (Hoffrogge 2021a).

To be sure, Marxist-inspired ideas of collective ownership of the means of production had continued to resonate with certain sectors of West German society – especially labor unions – well into the early 1980s, as the powerful metal workers' union's (IG Metall) failed 1983 campaign to socialize the struggling steel industry using Article 15 demonstrates (Hoffrogge 2021c). Yet it is unlikely that a similar article would have found its way into a new German Constitution in 1990, some three decades after the Social Democrats officially left Marxism behind. At the same time, if it appears out of sync with today's hegemonic ideas of the sanctity of private property rights, at the time of its ratification the article was already a testament to a lost utopian horizon. Conceived under the shadow of the Iron Curtain and the triumphant domination of American capitalism in Western Europe, the Basic Law gave birth to a Federal Republic that would remain under conservative political reign and in the economic grip of ordoliberal orthodoxy for two decades before the recession of the mid-1960s paved the way for a thoroughly reformed, welfarist Social Democratic Party to power. Article 15 was, in this sense, from the very start already the afterlife of a past future. The present struggle to reanimate it is therefore doubly resurrectionist in nature.

A helpful way of explaining the peculiarity of Article 15 is to contrast it with the immediately preceding Article 14, which guarantees the rights of private property and its inheritance as well as the possibility of taking by eminent domain. Before the launch of the DWE campaign, housing activists had already raised the possibility of expropriation, especially with reference to Article 14's second paragraph, which proclaimed that "Property entails obligations. Its use shall also serve the public good," a

condition which, in their view, the financial speculation-based profit maximization strategies of the real-estate multinationals clearly contravened (see, e.g., Villinger 2016). But Article 14 opens with the primacy of private property and only subsequently allows for expropriation by eminent domain with fair compensation. This has two important implications: first, expropriation may target only particular properties, not entire industries, and only with due justification; and second, it consists of a transaction of exchange at market value between the state and private owners.

By contrast, Article 15 implies a fundamental questioning of private property rights. Rather than proceeding from the sanctity of private property to then condition the possibility of its expropriation on proper justification and adequate compensation, it simply allows the transfer of “[l]and, natural resources, and means of production” to public hands for the sake of socialization. While the difference may appear minor, according to constitutional experts its implications are – or could be, since the article has never been put to the test – far reaching. The formulation suggests an understanding of private property not as a primary right but rather as an affordance of the sovereign state that may, accordingly, also be withdrawn. It is not only that entire economic sectors can be socialized, but also that justification is beside the point and that adequate compensation, in this reading, would accordingly consist not in the market value of the property but rather in whatever the state deems a fair and affordable restitution. In the case of Berlin, this means that the extremely low rates at which investors massively bought properties at a time when real estate in the German capital was dirt cheap, and the nearly bankrupt government desperately sold off many of its assets at bargain prices, could serve as the ground for calculating compensation, rather than today’s skyrocketing real-estate values. The entire financial viability of the DWE campaign, in other words, rests on this constitutional residue of past ideologies of collectively owned property.

Although, at least hypothetically, the Constitution offered a legal path for the campaign, given that the expropriation would need to proceed through statutory measures the question remained of how to bring the Berlin legislature to enact the appropriate laws. This problem has been especially challenging given the absolute hostility of the ruling Social Democratic Party (SPD) and later Christian Democratic Union (CDU) (not to mention the liberals in the opposition) to the initiative, even while polls have shown broad support for it among voters across the political spectrum. In part as a bulwark against the return of populism and

totalitarianism, Germany's federal law makes no allowances for referendums, and yet, for the very same reason, it grants the federal states relatively broad autonomy to do so. While Berlin's state law does permit referendums, it sets considerable obstacles for pursuing them successfully.

The rules are rather complicated and depend on the type of decision that is to be put for referendum, but for the purposes of the present discussion the process consists of three phases. First, a request for a consultation of popular interest in the referendum must be filed, accompanied by 20,000 signatures of residents with voting rights. Following a review of the legality of the proposed referendum by the government, popular interest must be substantiated by demonstrating, again with signatures, the support of at least 7 percent of eligible voters – some 170,000 people at present. The government must then proceed to administer the referendum within a legally binding time limit, either as part of a general election or independently. Winning the referendum requires a simple majority and the turnout of at least a quarter of eligible voters. The proposal itself can include either a bill, which if approved automatically becomes law, or alternatively a demand, which if passed obliges parliament and the government to act upon it.

The possibility of forcing an unwilling political elite to use Article 15 to expropriate large real-estate investors through the legal instrument of the referendum therefore implied that the initiative needed to become a broad-based, grassroots movement capable of mobilizing the necessary signatures, turnout, and votes. I will return soon to describe how – and how successfully – DWE confronted this challenge. For now, I want to note that this required of the movement to publicly engage another legal regime, namely housing and rent laws in Germany in general and Berlin specifically, and make a compelling case about their inadequacy – the very reason that, as far as the activists were concerned, the campaign had kicked off in the first place. In order to counter steep rent rises across urban areas in Germany, the federal parliament passed a law authorizing individual states to apply rent hike limits (*Mietpreisbremse*) to specific housing markets, restricting increases according to average rates in the immediate vicinity as determined by an index produced and published by the federal government. In Berlin, the regulation applies throughout the city, yet it excludes both new buildings and significantly renovated apartments. Another legal mechanism, based on the Federal Construction Law, allows municipalities to declare certain neighborhoods as “milieu-protected areas” (*Milieuschutzgebiet*, officially *soziale Erhaltungssatzung* or social conservation statutes), activating a number

of regulatory restrictions – for example, prohibitions on converting rented to ownership-based housing and on luxury renovations or a municipal right of first refusal for buildings on sale – that aim to preserve the social structure of the area and constrain rapid demographic shifts. Finally, as the DWE campaign gathered pace and, in a move that many interpreted as seeking to sabotage its growing appeal, the Berlin parliament approved a five-year rent freeze, which, however, was struck down a year later when the Federal Constitutional Court determined that the state lacked the legal jurisdiction to do so. The success of the DWE campaign depended significantly on the effectiveness with which it could expose to a broad public the various loopholes that allowed real-estate speculators – and particularly large multinationals – to bypass such legal and regulatory restrictions. Before turning to discuss how the initiative achieved this goal, in what follows I briefly consider the relationship between housing, utopia, and social movements more broadly.

7.4 Housing and Mass Utopia

The right of every person to decent housing has long stood at the center of utopian imaginaries and political agendas in different historical contexts and under different ideological regimes. In Germany, the right to housing was codified in the Weimar Constitution, which was heavily influenced by socialist ideas and hence remarkably progressive for its time. After World War II, the Constitution of the German Democratic Republic (GDR), which, in many ways, preserved the constitutional principles of the Weimar Republic, similarly recognized the right to proper housing. In the Federal Republic, meanwhile, neither the Basic Law nor any other legal instrument has guaranteed the right to housing, and yet the right is acknowledged in several international charters to which the FRG was a signatory or a participant, including, for example, the United Nations Universal Declaration of Human Rights and the European Social Charter.

The human right to adequate housing, of course, implied as its correlate the obligation of states to provide housing to their citizens. Across the Iron Curtain, housing became an important index of the relative merit of contrasting economic and political regimes as well as a crucial sphere for producing the legitimacy of nation-states. In Germany, with its housing stock critically depleted due to the destruction of the war and with the arrival of many millions of ethnic Germans expelled from Eastern Europe, the provision of housing represented a particularly grave

challenge for the two nascent states. While the strategies for confronting the housing crisis in East and West were different and reflected contrasting approaches to the relation between the market and the state, the provision of housing itself constituted in both cases a crucial component of the promise of mass utopia upon which both socialism and capitalism had built their claims to legitimacy. Nor were these promises limited only to the national scale. East German engineers, machines, and materials, for example, were sent in the 1970s to Vietnam as part of internationalist socialist solidarity to assist in the postwar reconstruction and particularly in the building of residential complexes (Schwenkel 2020).

If, throughout the twentieth century, adequate housing emerged as both a right and a utopian horizon or promise that oriented state-building projects, the urban housing movements that have proliferated throughout the globe, and which have operated in the interstitial space between this promise and its failure, in turn have articulated their own futurities and their own critiques of the present. Looking at locations as geographically far apart as Mumbai, New York, or Barcelona, researchers have argued that housing activists have created new forms of democratization, giving rise to utopian hopes (Appadurai 2002; Parés 2019; Mathers 2021). The sorts of grassroots democratic participation that such movements have developed, according to scholars, have generated novel imaginaries and configurations of citizenship, at times achieving a degree of autonomy from the constraining territorial scale of the nation-state (Holston 2001; Murphy 2016; Pérez 2022). In San Francisco, São Paulo, Mexico City, and elsewhere, studies have described how housing activism and other urban movements have consolidated communities and strengthened solidarities in contexts of deep social inequalities and marginalization, signaling potentialities for hope and emancipation (Howard 2014; Stavrides 2019; Kopper 2021; Law 2022). One need not necessarily subscribe to the deeply optimistic appraisal that much of this literature makes of the potentialities of housing activism – much less agree with it on the actual effects that such urban mobilizations have had – to note the unmistakable air of utopian futurities that frequently enough offer inspiration for their struggles and that mark, as well, their scholarly understandings.

As in many other cities, Berlin housing activism has come in many colors, some uncompromisingly militant and profoundly radical in their commitment to alternative forms of social relations, others seeking redress for grievances formulated and pursued within existing legal, administrative, and political institutions and idioms. At the same time,

like much else in Berlin, housing activism has reflected as well the unique position of the city within the (geo)political history of Germany, Europe, and the world at large. Long before reunification, the western part of the former capital, which had remained officially under the sovereignty of the occupying Allies, had become a refuge for young Germans in search of alternative lifestyles who found in it a cosmopolitan respite from what they experienced as a suffocating and provincial German culture, a tax-free haven where one could thrive with relatively modest resources, and a much-desired exemption from compulsory military service. While squatter communities were already well established in West Berlin, the fall of the wall ushered in a period of massive squatting of vacant, run-down residential buildings in former GDR central districts, which suffered from severe underpopulation because of East Germany's cost-effective prioritizing of new construction on the city's peripheries over the far more expensive renovation and conservation of older housing stock built to outdated standards and equipped with aging infrastructure. Apart from the sheer number of empty buildings available, the squatters benefited as well from the People's Police's helpless confusion under a collapsing political regime and from the legal uncertainty about the private ownership of state properties throughout the former GDR. In many cases, squatters aspired to create autonomous, anarchist communities. As the city consolidated its unified police force and questions of ownership had largely been resolved, and notwithstanding sometimes violent resistance by squatters, throughout the 1990s the buildings had mostly been evicted.

In more recent years, however, while housing activism in Berlin has continued to reflect the geopolitical division of the city, it has largely emerged as local responses to the impact of processes of rapid gentrification, financialization, and speculation. In the decade after reunification, Berlin's population stagnated and rents remained low. As I mentioned above, it is during those years – starting in the late 1990s but especially following the meltdown of the Berlin state bank (Bankgesellschaft Berlin) in 2001 – that the insolvent, heavily indebted Berlin government sold off many state properties throughout the city, including some 200,000 apartments as well as land designated for residential construction, to investors and developers at bargain prices. The 2008 global financial crisis precipitated a further massive injection of capital into Berlin's housing market by publicly traded multinationals looking for safe investments (Hoffrogge 2019). The combined effect has been an extensive financialization of the city's housing market.

The arrival of the federal government to the new capital from its previous headquarters in Bonn, the national economic recovery from a long stagnation, major investments in urban infrastructure, and massive renovations of residential buildings funded with EU and Federal subsidies all contributed to Berlin's renaissance as a lucrative real-estate market. Within two decades, previously frontier western districts that had once straddled the Berlin wall and had become home to many immigrants and low-earning residents because of their lack of appeal to well-to-do West Germans had rapidly metamorphosed into coveted central areas. In the former east, where the better-off had relocated to newly constructed buildings on the city's periphery that offered additional space and modern facilities such as central heating or private bathrooms and kitchens, central neighborhoods that suffered from structural deterioration, aging infrastructure, and outdated living conditions and that, as a result, housed mostly working-class and less well-off residents, had turned into fashionable, cream-colored attractions for baby-stroller gentrifiers.

It is against this background of swift and drastic urban transformations and multinational financial speculation that many tenants' initiatives have come to life in the past two decades. Yet by and large they have remained focused on resisting changes in particular neighborhoods or even in particular buildings slated for eviction or major renovations, which allow landowners to bypass legal limits on rent hikes. One notable exception was the abortive 2015 campaign launched by a tenant association for a city-wide referendum on a bill that would have introduced better regulations on Berlin's remaining publicly owned housing companies. After the proposed legislation was shown to be legally unsound and certain to suffer defeat at the courts, the city government and the activists reached a compromise that granted some of the campaign's demands and the referendum was abandoned.

Finally, we cannot hope to understand the nature of housing activism in Berlin without considering the special place of rent in the city. With an unparalleled 85 percent of residents living in rented housing, Berlin towers far above any other major European urban area as a renters' city. This has meant, first, that the city's inhabitants are relatively well informed about their legal protections and benefit from the active and competent advocacy and support of tenant associations, on which they can count for free legal counseling and representation (Kusiak 2021). Second, it has also meant that for the overwhelming majority of its inhabitants the steep rise in real-estate values did not translate into a

similar increase in the values of their properties but rather into a sharp climb in rent prices, which has far outpaced the increase in incomes and has created a strong incentive for landowners to evict older residents. The rent squeeze has affected not only residents but equally small retail businesses, many of which have not been able to compete with large chains and high-end shops. As a result, mobilizations with a focus on rent issues have taken on a critical contemporary problem and, potentially at least, could compellingly address very wide publics.

7.5 Socialize It!

This was precisely what the DWE initiative set out to do. Convinced that existing rent-control laws have proven utterly inadequate for responding to the escalating housing crisis, throughout 2017 activists deliberated on campaigning for a radical, unprecedented goal. They would use the legal instrument of the referendum to force the government to invoke Article 15 of the Constitution in order to socialize the properties of all private companies holding 3,000 or more apartments in the city. In this way, the campaign would leave unaffected (and unthreatened) both small property owners and the large housing collectives (*Wohnungsgenossenschaften*) that own and rent almost 200,000 apartments throughout the city. More radically still, the proposal would require the government not only to expropriate the multinationals that have been heavily speculating in Berlin's lucrative real-estate market but also to hand over the socialized apartments to their tenants, who would self-administer the buildings collectively. In the opinion of lawyers who have participated in the initiative as well as of constitutional experts with whom the campaign has consulted over the years, Article 15 would provide a solid constitutional basis for establishing the jurisdiction of the Berlin government to undertake the unilateral expropriation and, as importantly, would grant the state, rather than investors, the authority to determine the rate of fair compensation. This, in turn, would guarantee a viable and affordable financial plan for the socialization that would see the Berlin treasury recover its costs through rent in the medium term. Informed by the experience of the failed 2015 referendum campaign, this time around activists opted to put forward not a statutory bill but rather a resolution, which would require Berlin's parliament to subsequently formulate and approve the corresponding legislation.

With its agenda sufficiently hammered out, by 2018 the campaign was ready to go public. It won immediate and broad – though not always

favorable – attention from the media and from political figures, in no small part thanks to the apparent outlandishness of its proposal. The many activists who joined the initiative composed a heterogeneous assemblage. Some were experienced, long-time organizers and members of leftist groups who identified in the campaign the potential for advancing anti-capitalist social agendas; others were disaffected tenants of multinational-owned properties or of buildings slated for sale to real-estate investors who sought assistance and solidarity with their local struggles and found the campaign's platform especially appealing; some were veterans of the 2015 referendum campaign or other housing activist groups; a few were active in labor unions or affiliated with political parties, especially the socialist *Die Linke*, which announced its support for the campaign early on; several were academics whose research interests focused on urban problems. Generally speaking, they included a broad generational spectrum and a balanced gender composition as well as a wide mix of class and educational backgrounds, with a marked underrepresentation of residents of outer districts and, especially given that many of the regular activities took place in a central neighborhood with a high ratio of Middle-Eastern immigrants, a certain scarcity of ethnic diversity.

While the initiative proved appealing for many and grew rapidly, its relationships with other institutions, groups, and organizations have been uneven. Whereas the electoral base of each of the ruling coalition parties has shown majority support for the initiative in poll after poll, their leadership, as I have already noted, has been divided, with the Social Democrats, the Conservatives, and the Liberals consistently opposing and struggling to smother it, the Greens remaining undecided and arguing for pursuing other, less radical solutions for the spiraling rents, and only the Socialists fully endorsing the campaign. Similarly, while some labor unions have come out in favor of the initiative, others have not. Meanwhile, the city's housing collectives have opposed it, despite their own adversarial relationship with real-estate multinationals, evidently out of concern for protecting their own properties (Hoffrogge 2021a). Finally, DWE's relationship with other housing movements and tenant associations was also complicated. On the one hand, the initiative practiced solidarity by offering organizational know-how and hands-on assistance to other groups, running activism workshops, moderating tenant assemblies, facilitating city-wide networking of local struggles, and mobilizing massive turnouts and staging spectacular, eye-catching performances in marches and demonstrations. On the other hand,

activists reported resentment from members of other groups who felt that DWE had monopolized the attention of the media and had marginalized their own campaigns.

Strategically, DWE kept a clear focus on winning the referendum and on confronting the challenging hurdles that had to be overcome in order to do so. This overarching objective defined the strategies and the activities of all the different teams: the “start-help” workgroup reached out to budding tenants’ groups throughout the city, provided organizing know-how, and canvassed neighborhoods; the “action” workgroup produced demonstrations, marches, and poster campaigns, designed and distributed propaganda materials, and offered logistical support; the “socialization” workgroup hammered out the juridical, budgetary, and institutional frameworks of the proposal so that it would be both compelling and viable; the “collection” workgroup dedicated its efforts to guaranteeing the successful collecting of sufficient signatures in support of the referendum, building and coordinating local neighborhood teams throughout the city; the public relations workgroup handled all external requests for information about the campaign; while the coordinating committee served as a supervisory board where representatives of the different workgroups and others directly elected by the plenary assembly came together to guarantee the smooth operation of the campaign as a whole. The general plenary assembly held weekly meetings to discuss campaign-wide issues, vote on decisions and proposals, and receive updates from the different workgroups, where much of the concrete labor took place.

The utopian impulse that stood at the center of the campaign, both in its conjuring of the constitutional afterlife of past hopes and in its imagining of a radically different future, brought with it ambivalent, contradictory effects. On the one hand, DWE has been ridiculed as peddling naïve fantasies. Detractors, often speaking on behalf of real-estate investors, as representatives of political parties, or in their role as reporters and commentators in the public sphere, have argued that DWE’s proposal is, in fact, anti-constitutional, and, even if accepted, would therefore collapse before the legal challenges that would surely follow it; that its financial plan is unrealistic, underestimating the compensation that the state would need to pay private companies and overestimating its capacity to recuperate the expense with rents, and would end up driving Berlin into bankruptcy; that it would be politically impossible to find a majority that would support the necessary legislation, much less implement it, within any plausible electoral scenario in

Berlin; and, finally, that it represents populist demagoguery that would hinder an effective response to the rent crisis by deterring investments in construction and development rather than a feasible, serious solution to the problem. In brief, the unprecedented ambition and scope of the campaign have allowed its critics to dismiss it as utopian in a derogative sense.

On the other hand, the undeniable success that DWE has had in recruiting and motivating activists as well as in winning broad enthusiasm among Berlin's inhabitants and, indeed, far beyond it can hardly be understood without considering the extraordinarily daring, seemingly fantastical, in other words, utopian goal that it has introduced into the debate about housing and rents in the city. The absolute radicalism of a horizon that promised to rethink entirely the status and legitimacy of private property, when viewed both in relation to existing instruments for regulating the real-estate market and in relation to more general ideological presuppositions on which such instruments have been based, marked the campaign from the start as uniquely attractive for many who have lost faith in more-of-the-same solutions. The campaign's membership expanded rapidly and with it, too, its capacity for action and communication.

By summer of 2019, about a year after its public inauguration, the initiative collected within three months some 77,000 signatures (of which about 50,000 were eventually certified), handily completing the first phase of the referendum, the request for consultation of popular interest, which granted up to six months for gathering a minimum of 20,000 signatures of eligible voters. The Berlin government blocked its review of the proposed consultation for as long as it could but, after more than a year and following massive protests and the launch of a legal procedure against it, was eventually forced to concede that the text appeared legitimate and approve it, at which point the parliament received the proposal and had four months to deliberate and respond to it. Given that, as expected, the legislators failed to accept the proposal by turning it into law, in February 2021 the initiative proceeded to the next phase, which required the campaign to collect some 175,000 signatures, corresponding to 7 percent of eligible voters in the city, within four months. By the end of that period, DWE submitted some 350,000 signatures, far above the required minimum. The referendum was accordingly included in the Berlin state ballots during the federal elections of September 2021 and won the astounding support of 59 percent of the electorate.

The celebrations that followed the success of several years of intense work that set its sight on the referendum, however, were dampened by

the results of the elections, in which the socialist *Die Linke*, the only political party that has consistently and unambiguously expressed its support for the initiative, suffered losses and entered the three-way governing coalition as the smallest party together with the socialization-skeptic Greens and Social Democrats, limiting its capacity of negotiation. Procedural electoral irregularities in 2021 eventually triggered a new election in 2023, bringing the CDU to power with the SPD as a junior coalition partner and killing any remaining hope that the government might follow the results of the referendum. The current conjuncture in Berlin has been marked by a clear lack of political will in both the executive and the legislative and in both the coalition and the opposition to move forward with an agenda evidently supported by a significant majority of the electorate. The period since the referendum has witnessed repeated delays and, in the view of activists, bad-faith tactics in discussions over how to implement the referendum.

In early 2022, these discussions culminated in the appointment of a committee with a mandate to recommend in favor or against the resolution as well as to review a draft socialization bill that DWE submitted. The initiative and the coalition parties each nominated delegates to the committee, almost all of whom were legal experts. Some DWE activists expressed little faith in the procedure and viewed it as a cynical ploy for delaying and evading implementation, citing the committee chair's known anti-socialization position, the decision to deliberate behind closed doors, and the yearlong mandate granted to it for issuing its verdict. Others showed cautious optimism, describing the majority of the committee's members as well respected, independent specialists and assessing the probability that most would endorse the referendum resolution as high. But, even with a favorable resolution, activists' expectations that the government would follow through the committee's work with appropriate legislation remained very low.

In spring of 2023, the committee concluded its work and ruled almost unanimously in favor of the constitutionality of DWE's proposal as well as for the legal soundness of the draft bill that the initiative had prepared. As activists had expected, the government, whose leadership had meanwhile changed from Social Democrats to Conservatives, remained uncooperative despite the results of the review process. Having exhausted all avenues and possibilities of negotiation, the DWE responded by launching a new campaign for a second referendum. This time around, voters will decide on an actual socialization bill, which, if approved, will automatically become statutory law in the state of Berlin. At the same time, all

my interlocutors agree that even if socialization becomes law and regardless of how this happens, it will immediately face multiple legal challenges for alleged unconstitutionality as well as for a range of other juridical grounds, such as its compatibility with EU law or with the international trade agreements of the single market.

7.6 Conclusion

At the time of writing, then, the DWE initiative remains very much open-ended, with a wide range of possible outcomes. Its supporters, once again, embark upon the straining and uncertain path of securing enough signatures to hold a referendum and winning enough votes to approve the proposed bill. Many are skeptical about the prospects that the bill would withstand the onslaught of the multiple legal challenges that it is certain to face. Even if the initiative overcomes these hurdles, how the implementation of the law by an unwilling executive would proceed remains unclear. Yet, these great uncertainties notwithstanding, the activists with whom I have spoken recently feel strongly emboldened and vindicated by their triumphs, motivated to carry on their fight.

But the very success of the campaign might prove difficult to assess. Even if, for whichever of the reasons above, socialization as proposed by DWE fails, the effects of the campaign may very well prove consequential in at least four different ways. First, the massive mobilization that DWE achieved and the way in which its message resonated with such broad sectors of Berlin's inhabitants have placed the problem of affordable housing at the center of the city's politics, testifying palpably to the profound dissatisfaction of tenants with the government's policies. Although eventually struck down by the Constitutional Court, Berlin's rent-freeze law clearly emerged out of such preoccupations and the pressure on its government to address the crisis by other means – legal or administrative – is likely to continue, regardless of the fate of socialization. Second, Berlin's DWE campaign has already inspired socialization initiatives in Hamburg and Bremen, the Federal Republic's two other city-states, where the voting population's urban character raises the possibility of similar support. Interest in launching socialization campaigns has arrived from other federal states as well, though higher proportions of rural and small-town constituencies and higher rates of homeownership would no doubt present different and more challenging hurdles for such initiatives. Another, third aspect in which the DWE campaign may prove significant is its influence on other housing

struggles, both in Germany and beyond it, even in contexts where socialization is not a legal option or a political objective. Housing initiatives from other parts of Germany and from many foreign countries have been keen to learn from DWE's experience and its effective organizing and campaigning strategy and have reached out to it for dialogue and exchange. Finally, the socialization campaign may serve as inspiration for struggles in fields other than housing, especially in Germany. Thus, for example, environmental activists could take up its example to campaign for the socialization of the entire energy sector or mining industry.

For all of the above, to speak of a moment of reckoning with juristic-investments would seem premature for the case of DWE, where, despite setbacks, disappointments, and innumerable obstacles, the law – both constitutional and statutory – continues to stand at the core of the political struggle. That it continues to do so, and with such powerful traction, owes in great part to how it codifies, mediates, and permits the awakening of presumably moot utopian horizons of collective ownership that appear dated and out of place in the neoliberal present and yet, at the same time, seem once again extraordinarily compelling for so many. This utopian past, sedimented in the legal code as a silent message, a never-used constitutional article, suddenly appears ready to hand, available for redeeming the future, for galvanizing not only radical political imaginaries but equally the commitments to take to the streets in pursuit of their realization.

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