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Figure 2.1 Socialisation: Lawful, affordable, good. A pastiche of Ritter Sport advertisement created by Joanna Kusiak as part of the public art exhibition *Die Balkone* in Berlin Prenzlauer Berg, 2021
(*Source:* Joanna Kusiak)

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All free men, wherever they may live, are citizens of Berlin and, therefore, as a free man, I take pride in the words 'Ich bin ein Berliner.'

John F. Kennedy, President of the United States, and for one day also a Berliner

What's picking a lock compared to buying shares?

Bertolt Brecht, Berliner, Playwright

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WE ARE ALL STAYING PUT

Property and Freedom

1

Because Herr Meier was yelling, I couldn't understand his exact words. Frau Tams, on the other hand, was speaking with soft confidence, folding words I understood perfectly into sentences that sounded baroquely mysterious. But sometimes we get to *feel* the implications of what is happening long before we grasp it in words. That scorching summer, in a cool chamber of the administrative court in Berlin-Mitte, Herr Meier and I had both arrived at the same truth, one that neither of us had really *felt* before: that I, too, was free.

'A student from Poland is not going to tell me what I can or cannot do with my property!' Herr Meier had told me, a few weeks earlier. I had challenged his rent increase, and he had threatened to terminate my contract. When I saw him at his office, with an oil-on-canvas painting of a red sports car right behind his head, I sensed that he took his power advantage for granted. Now, in court, his face was contorted in a furious grimace. I had written my master's thesis on Walter Benjamin in Herr Meier's apartment, and it suddenly occurred to me that my landlord must be experiencing what Benjamin called 'the mythical violence of the law'.[1] In his defence, he kept repeating the word *Eigentümer*, owner. Herr Meier was the owner. And who was I?

Amid the strange music of German legal jargon, I felt the mythical violence of the law burning new pathways through

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my identity. It was as if Frau Tams, a lawyer from the Berlin Tenants' Association, were casting spells on me. With her first spell she turned a poor student into a legal subject. With her second spell she turned a Polish migrant into a rightful Berliner. For her third spell, Frau Tams said nothing: she left me in a space where I could turn myself into whatever I wanted to be. Because I was free. That scorching summer, the law completed in me a new notion of freedom. After years of just being free to go, Berlin had made me free to stay.

2

I have property rights in Herr Meier's apartment; and I am still here, writing these words in another hot Berlin summer, feeling the cool wooden floor of my home beneath my feet. It has been seventeen years since I first moved in, and nearly seven since the last of the four court cases I brought against my landlord, all of which I won. I do not fully grasp Germany's complex tenant protection laws (*Mietrecht*), but this I have understood: as a tenant, I have property rights in my home.

Naturally, Herr Meier remains the *Eigentümer*, the property owner. He is free to sell the whole building, cashing in on its current market value. And he was free to sign the rental agreement with me. But he cannot change the terms of our contract by raising the rent excessively, nor can he terminate it without valid legal grounds. As long as I dutifully pay the rent we agreed, I am a lawful *Besitzerin*, a property holder. This, too, is a form of ownership – the law says that I exercise 'actual control' (*tatsächliche Herrschaft*)[2] over the apartment. This is my home, and Herr Meier cannot enter it without making an appointment with me. Since our last lawsuit, Herr Meier and I have learned to coexist in peace. I accept his freedom, and he accepts mine.

My property rights in Herr Meier's apartment are, like his property rights, protected by the German constitution, the *Grundgesetz*. In May 1993, the Federal Constitutional Court (*Bundesverfassungsgericht*) decided that the rights of a tenant as a

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property holder count as property rights, because they fulfil the purpose of the fundamental right (*Grundrecht*) to property.[3] The fundamental right to property has a broader meaning than the title of ownership as defined by the Civil Code. The *Grundgesetz* protects property as a moral concept, a positive right upholding human dignity and freedom.

In Germany, as soon as a discussion starts about morality or freedom, you'll hear the clip-clopping of hooves as Immanuel Kant comes galloping into the debate on his great Holsteiner horse.

'Now I say,' Kant asserts, in one of the formulations of his 'categorical imperative', 'that the human being … *exists* as an end in itself, *not merely as a means* to be used by this or that will at its discretion; instead he must in all his actions, whether directed to himself or also to other rational beings, always be regarded *at the same time as an end*'.[4]

Rooted in Kantian ethics, the whole *Grundgesetz* can be seen as an attempt to translate categorical imperative into public law. That's why, unlike in the American tradition, all constitutional rights come with constitutional duties.[5] Article 1 declares that human dignity shall be inviolable, and that it is the duty of all state authority to protect it. Article 2 follows with the inviolability of freedom, and states that 'every person shall have the right to free development of their personality insofar as they do not violate the rights of others'.[6] The right to personality, also inspired by Kant, protects a person's intellectual and spiritual integrity. It assumes that, to become fully human, we need both the possibility of acting in the world and a protected sphere of privacy to which we may withdraw.[7] To be free means to be capable of acting like a free moral agent – a capacity that should be restricted neither by an external force nor by dire existential need.

To enable such moral freedom, further down the line Article 14 guarantees the right to property. Remarkably, though, all three clauses of the Article intended to protect property also imply its limitation. The first clause states that the contents and limits of property guarantees shall be defined by law,

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implying that they are not absolute. The second clause declares that property entails obligations, and that its use shall also serve the public good. The final clause allows for expropriation in the interest of the public good.

Coming from the Kantian tradition, the limitations of property seem logical: property is a positive right, created within the context of a society and subordinated to its needs. But when you mention the limitations of property to people in England, or in the United States, moral panic ensues. Can someone please call in John Locke? Locke is to the Anglo-Saxons what Kant is to the Germans: the main philosopher theorising property and freedom. According to Locke, property is a result of mixing things with labour. This argument is foundational for Western liberalism, and is often used to justify the unlimited accumulation of property.

Here comes Locke, riding in on his English Thoroughbred. Called to defend unlimited property rights, he throws up his hands. In *Two Treatises of Government*, he set three clear restrictions on the accumulation of property: you can only accumulate as much as you can use before it spoils; you must leave 'enough and as good' for others; and you can only appropriate property through your own labour.[8] That's the trouble with writing books – you cudgel your brain to figure out the complexity, and people only remember what's convenient.

The Federal Constitutional Court remains true to Kant. In Germany, it was the Kantian right to freedom, not social welfare rights, that gave tenants property rights in the 1993 ruling. The Court noted that an apartment in which a person lives is 'the spatial centre of free development of their personality' and a person's 'free space of independent activity'.[9] It thus possesses the constitutional attributes of property, regardless of the title of ownership. If the property rights of a tenant collide with those of a landlord, they must be measured against each other: which have a more relevant impact on the personal freedom of the rights holder?

The right to property as a home is deemed more relevant for personal freedom than the right to property as a means for

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gaining wealth. The owner's *Eigenbedarf* – the right to make direct personal use of one's property – always trumps tenant rights: 'The landlord is protected in his freedom to use the dwelling again himself as his centre of life (or to have it used by privileged relatives) in case of his own need.'[10] However, a tenant cannot be uprooted simply because it would bring the landlord more money. A tenant must be treated not as a means of profit, but as a full human – dignified and free.

3

I was not born free to go – but I was raised to go for freedom. I was born in Poland in 1985, at the midpoint of the dramatic arc of the Solidarność movement. In August 1980, workers hung two wooden boards with twenty-one demands at the entrance to the Gdańsk shipyard. They wanted freedom of speech and association, and the release of political prisoners. They also demanded salary increases, paid maternity leave and better access to housing. After more than two weeks of intense strikes and negotiations, Solidarność was launched as the first free trade union in communist Poland. Soon, its membership had increased to 10 million – a third of Poland's working population.

By 1981, Solidarność was one of the biggest social movements in the history of the world. Its programme was deeply democratic, combining political liberties with economic self-governance. Alarmed by this vision, the authoritarian government took away people's freedom. In December 1981, tanks rolled onto the streets as the government introduced martial law, de-legalising Solidarność and imprisoning its activists. A mere eight years later, Solidarność won a landslide victory in Poland's first democratic elections. At the time, I was just learning to read, focusing on the big fonts of the newspaper headlines. *WOLNOŚĆ* – freedom – was everywhere, and it became a basic tenet of my childhood that people can move the immovable by becoming a movement.

The two things I remember most vividly from the early period of Poland's new freedom are: a TV commercial for a global brand

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of scouring cream ('cleans effectively, doesn't scratch'); and the screams that echoed around my prefab estate after dark. The commercials, played before the evening cartoons, were a beacon of the new reality. The adults interrupted their household chores to watch them with us – shiny promises of a capitalist world so abundant that even our stoves could feel safe. The screams in the dark outside my window suggested that the reality was actually far scarier. In Łódź, the working-class city where I grew up that was soon to be dubbed 'the Polish Detroit', violence spiked with the collapse of the textile industry. This collapse was triggered by neoliberal shock therapy, an economic programme first tested by Pinochet in Chile and legally adopted in Poland on the day of my fourth birthday.

Unlike the scouring cream, the shock therapy had to be abrasive in order to be efficient.[11] That, at least, was the opinion of the economic experts who ordained it. With a triple blow of privatisation, deregulation and austerity, the shock therapy brought in international investors while removing social safety nets; it opened up lucrative business opportunities while creating unemployment and hyperinflation. In its efficiency, it quickly divided Poles into 'winners' and 'losers' of the transformation.[12] My family landed in between. My mother was a widowed teacher; unlike industrial workers, she didn't lose her job, but her salary was constantly losing value. The mixture of austerity and hyperinflation turned us into a social class that is common in eastern Europe, but confusing for Western Europeans: the educated poor.

The new system told us it was our freedom and responsibility to become who we were meant to be – winners, or losers. Ambitious as I was, at age 18 I became both. In May 2004, I won the silver medal at the International Philosophy Olympiad in Seoul – a global essay competition for gifted high-school students – and was accepted on an elite liberal arts study programme at the University of Warsaw. Six months later, walking the streets of Warsaw, I felt I had no home. Without money or social networks, all I could afford on the 'free' housing market was a tiny room with a barred window in a grumpy old

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lady's apartment. I had no rights, and no formal contract. My landlady rummaged through my things, and strictly timed my showers.

I received scholarships for academic excellence, but they were not enough to cover standard Warsaw rents. The private rental market was 'free', while scholarships at a public university were subject to austerity. Realising that I was struggling, some of my well-meaning professors felt compelled to offer advice. One urged me simply to buy a flat. He suggested that I take out a mortgage in Swiss francs to save money. This was a popular option in eastern Europe at the time, promoted by financial experts as a clever way of saving on interest rates. My family was too poor to take out a mortgage, which turned out to be a blessing in disguise. Years later, I would describe the bursting of the Swiss franc mortgage bubble in my PhD thesis.

Meanwhile, another professor who appreciated my research skills found me a job: analysing press reports about a corruption scandal involving prominent Solidarność figures and Warsaw real estate. I quickly realised that it included the land beneath the luxury apartment (the office space provided by my employers) I was sitting in, conducting the analysis. My employers were friends of my professor, and of the freshly imprisoned protagonist of the scandal. They hired me privately to try to make sense of what had happened. The salary was decent and, combined with the scholarship, it meant that I finally had enough money to rent a small place overlooking a six-lane highway.

And then I left. I was offered a scholarship in Berlin to conduct research for my master's thesis on Walter Benjamin. The stipend was offered by an eastern European institution, and by German standards it was rather low. But so was my Berlin rent. For the first time in my life, I didn't need to work double shifts, and could focus on studying and writing. I was only supposed to stay six months, but my rental contract was open-ended. I felt too free to give it up, so I stayed in Berlin.

I wasn't the only one to stay. Poles are the second largest migrant population in Berlin. The older generation tells stories of escaping the constraints of communism for the freedom of

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democracy. We, the millennial migrants, arrive freely and en masse. Once here, we often realise that we, too, have escaped. We've escaped the cut-throat struggle of neoliberal austerity for the freedom of *social* democracy.

On my first day as a Berliner, I dropped my suitcase in the hall and went for a walk. Just five minutes later, I found myself in the middle of Bruno Taut's Carl Legien Estate, a stunning example of 1920s modernism. I was so hungry for the Berlin experience that I dwelled on every little detail. I peeked into the windows of a ground-floor apartment, and checked what was growing in the allotment gardens in a green courtyard. I tailgated an old lady through the Bauhaus-style entrance, just to smell the staircase.

I tested my German on the little announcement sheet: *This estate has been acquired by Deutsche Wohnen*. It was 2007. The housing crisis from which I had just found refuge was following me to Berlin. Back then, though, I didn't know that. I took some photos of the stunning Bauhaus vistas (Figure 2.2) and went home.



Figure 2.2 Bruno Taut's Carl Legien Estate in Berlin Prenzlauer Berg (*Source:* Karsten Buch)

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4

One cultural phenomenon that really struck me during my first year in Germany was an advert for chocolate. Ritter Sport has been using the same, familiar slogan since the 1970s: 'Square. Practical. Good.' (*Quadratisch. Praktisch. Gut.*). The chocolate is indeed square-shaped; this was a breakthrough invention by the company's founder in 1932. Clara Ritter wanted to create a more practical, standard-weight chocolate bar that would fit neatly into everyone's pocket. Her square chocolate bar is patented, along with its practical wrapper, which you can open simply by breaking the bar in half. Ritter Sport has remained one of Germany's bestselling products for almost a century.

I was stunned. I didn't know any other culture that would advertise chocolate as *practical*. The chocolate ads I was familiar with would either romanticise the sweetness of childhood or lure their target audience with the promise of more adult pleasures, images of silky-smooth chocolate slowly melting behind full, feminine lips. I realised that what Germans sought in their chocolate was the ultimate delight of … functionality.

It made sense. Ritter Sport is the chocolate equivalent of Bauhaus – not only because of its geometry. Both Bauhaus and Ritter Sport strive for universality; their functionality pledges to work for everyone. They do not over-promise, or aspire to being 'incredible'. All they want is to be credibly good. Their beauty is humble, and stems from quality rather than seduction. Part of their goodness is the fact that everyone can afford a piece of it. It's not Belgian truffles or Italian palazzos: it's German functionalism at its best.

The German propensity for functionalism permeates the entire culture. An important part of it is the willingness to think of issues in terms of 'systems', even if not all their elements have been designed together in a conscious or purposeful way. The housing system is an excellent example. It wasn't 'designed' in one go, but was negotiated over time to accommodate the social, political and economic functions housing was expected to fulfil.

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The social functions of housing were recognised in the nineteenth century. Germany's tenant protection laws date back to the Kingdom of Prussia. These rights were progressively strengthened to overcome the acute housing shortages after the First and Second World Wars. To ensure that everyone had fair access to housing, local authorities were legally empowered to control its allocation. Consecutive governments legislated for a rent cap, introduced new measures to prevent discrimination in the housing market, and restricted the valid reasons for eviction. Many of these regulations are still in place today.

Politically, the German republic expects the housing system to fulfil both the liberal ideal of freedom and the conservative ideal of rootedness. Both require stability, guaranteed either by private ownership or by tenant protections. 'What is necessary for freedom is not wealth,' Hannah Arendt once stressed. 'What is necessary is security and a place of one's own shielded from the claims of the public.'[13] So it's not just Kant: philosophical tradition abounds in arguments about property being a necessary condition for freedom and democracy. What is unique about the German rule of law, however, is that it assumes the state is responsible for providing *access* to (housing) property, even as it also maintains the unequal distribution of property ownership.

Finally, affordable housing was always functionally important for the German economy. Broad access to affordable housing was a strategic element of West Germany's post-war 'economic miracle' (*Wirtschaftswunder*). Because rent is a major expense in household budgets, keeping rents low made it possible to keep salaries low without risking social unrest. This, in turn, lowered the cost of production, boosting Germany's export capacity. That's why, even in 'capitalist' West Berlin, most new housing was either built by public and non-profit institutions, or had strictly regulated 'social' rents.

Over the course of history, all of these different functions of housing were being inscribed in law. Of course, even with the best laws there can be no guarantee that they will be enforced. The idea that we are all equal before the law turns out to be an

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illusion when we are confronted with structural imbalances of power.[14] To counter this imbalance, as early as 1888, Berlin tenants organised themselves into the Berliner Mieterverein, a legally oriented association that effectively functions as a tenant union, lobbying for better regulations and ensuring that the existing ones are enforced. Around 250,000 Berlin households are members of one of the three existing unions.[15]

Tenant unions are a game changer because of the legal protection insurance included in the modest membership fee. If a conflict between a tenant and a landlord cannot be resolved without litigation, the union provides a lawyer, and the insurance covers all the costs incurred. In this way, the union empowers people to seek justice in courts – people who could never otherwise afford to do so, or have other reasons for balking at the prospect of a lawsuit: because they are migrants, for example, or lack knowledge, or have experienced discrimination. I, too, would never have dared to sue Herr Meier had I not had the assistance of Frau Tams, the impressively capable union lawyer, and the certainty that I would not end up in debt even if I lost. With the union behind me, losing seemed less damaging than not trying to win.

The Berlin housing system was forged in the process of political, social and legal negotiations about the different functions it had to fulfil. There was plenty of room for improvement, but also enough room for the people. Just like the popular chocolate, Berlin's housing system squared different expectations to fit the common pocket. It wasn't perfect – no system is – but it was reliably good. It functioned.

5

When the system stopped functioning, people tried different strategies. One Saturday in 2015, a whole choir squeezed into the elevator of a building in Kreuzberg.

'*Guten Tag*, you are connected with the maintenance service of Deutsche Wohnen,' the choir intoned, like a priest chanting. 'All our lines are busy at the moment … If your name is Ahmed or

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Hatice, or if your income is low for any other reason, press one … If you have a complaint, please deal with it yourself. Please hang up. Please give up. Please press one and we will terminate your contract as soon as possible.'[16]

The building they sang in was near Kotti, which is what Berliners call the area around the Kottbusser Tor subway station. The municipal non-profit housing company that built it, GSW, was privatised in 2004. In 2013, it was acquired by Deutsche Wohnen. Soon, Deutsche Wohnen had become a paradigmatic example of Berlin's new type of landlord: the stock-listed corporation.

From the perspective of tenants, the system stopped functioning when the corporate landlords arrived. They could literally feel it. The heating broke down in the middle of January, when temperatures in Berlin were around minus six Celsius. No one came to repair it for more than three weeks. The *Hausmeister*, the caretaker responsible for building maintenance, had been replaced by a call centre, where an automated voice provided zero assistance to the accompaniment of a synthesised tune. At the same time, tenants were also receiving letters about impending rent increases.

From the perspective of Deutsche Wohnen, the system was functioning splendidly. Their stock prices kept on rising. In their annual reports, corporate managers proudly highlighted their successes in implementing ever-new 'measures with rent-increasing potential', by which they meant cutting maintenance and terminating rental contracts prematurely. The latter strategy could be especially profitable: it allowed the landlords to 'unlock the reversionary potential' and raise rents by up to 30 per cent, which translated to an increase in shareholders' dividend payments.[17]

Crucial to unlocking this potential was Deutsche Wohnen's legal department. A team of well-paid corporate lawyers was tasked with removing any legal obstacles to increasing rents, or else finding loopholes in existing regulations. One such loophole involves raising the rent on the grounds of ecological modernisation. This led to frustrating situations in which Deutsche Wohnen would 'modernise' a building's insulation to justify a rent increase, but would not repair faulty heating or remove

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mould – this is legally classified as 'maintenance', and cannot be cited as the grounds for a rent increase.

As well as raising rents for individual tenants, Deutsche Wohnen's lawyers also launched a full-frontal attack on the existing regulations. In 2017, the corporation filed a lawsuit aimed at invalidating the 'rent mirror' (*Mietspiegel*), a benchmark introduced in 1974 to establish upper rent limits based on the average rent in a given area. As it owned more than 115,000 apartments in Berlin, Deutsche Wohnen was also driving up the benchmark by increasing rents in its own housing stock.[18] Its tenants sought help from the tenant unions, but with an army of corporate lawyers against them, the union lawyers were permanently on the defensive.

The effects of the corporate rent-increase offensive have gradually spilled over to affect the whole system. While Deutsche Wohnen was the biggest of the corporate landlords, with a market share of around 6 per cent, several other corporate landlords were using similar strategies: Vonovia, ADO Properties, Covivio, Akelius, Grand Properties, Heimstaden, Adler Group and Pears International. Together, they owned at least 240,000 apartments in the city. By 2018, Berlin – which used to be one of the most affordable capital cities in Europe – was the world number one 'city with the fastest-rising property prices', with a 20.5 per cent price increase in just one year.

Why did the stock-listed landlords decide to dismantle the housing system that had been balancing people's needs against other functions of urban housing for more than a century? Couldn't corporations somehow adapt to the system? No, they could not – because although corporate landlords operate *within* the Berlin housing system, structurally they belong to a completely different system: the global financial system.

These two systems cater to very different, even opposing functions. The purpose of the Berlin housing system has been to provide housing to Berliners, while also supporting the political and economic functioning of the city. Its legal regulations, inscribed in public administrative law, were conceived to uphold these functions. A stock-listed corporation, on the other hand, is

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a creature whose existence is governed primarily by corporate law. Its main purpose is to maximise shareholder profit.

As an invention of legal engineering, corporation is as ingenious as the nuclear bomb. This was the opinion of Adolf A. Berle and Gardiner C. Means, the authors of *The Modern Corporation and Private Property*, published in 1932, which remains the most quoted book in corporate governance studies. Although corporation derives its power from concentrating property rights, it can only achieve this by 'blasting the atom of property', purposefully destroying all the links that constitute the liberal understanding of property.

The liberal understanding of property (as inscribed, among others, in the German *Grundgesetz*) sees property as a relationship between a person and a thing (me and my jacket), mediated by a social contract (the state declares it illegal for others to steal my jacket). By fissioning these two relationships, corporation produces 'a centripetal attraction which draws wealth together into aggregations of constantly increasing size, at the same time throwing control into the hands of fewer and fewer men'.[19] This gives it truly 'nuclear' power.

How was it possible to blast the atom of property? In order to achieve this, legal engineers wrapped the concept of property in legal fictions. Inventing 'legal fictions' is a standard legal procedure. For the purposes of legal coherence, the law may establish something as true, even if it is not true in reality.

Corporation is one such legal fiction, because it assumes the corporation to be a person. Literally, incorporation means creating a new *corpus* – a new body. This body is fictional, and fully disembodied. Corporation has neither materiality nor needs; it does not have to eat or sleep. Factually, corporation is a 'nexus of contracts', but – and this is the 'quantum leap in legal engineering'[20] – this 'nexus of contracts' is endowed with some of the rights of a human person, including the right to property.

The purpose of corporate personhood is to break the link between a person and a thing. This makes corporate property unintuitive and hard to understand. Let's take the example of Deutsche Wohnen. We tend to assume that Deutsche Wohnen is owned by its shareholders, and that by owning Deutsche

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Wohnen, the shareholders also own the apartments. But legally speaking, none of this is true.

Firstly, no real people own Deutsche Wohnen – not even the shareholders. This is confusing even to experts. While the EU shareholders' rights directive explicitly states that 'shareholders do not own the corporation',[21] a Google search will still direct you to plenty of credible-looking pages suggesting otherwise. Corporate property beats common sense, because we are used to the idea that companies are owned by people who, in this way, also indirectly own the companies' assets. My landlord owns my apartment via a limited liability company (GmbH), which is owned by him. This is different in the case of a corporation: Deutsche Wohnen is equivalent not to Herr Meier's company, but to Herr Meier himself.

Secondly, no real people own Deutsche Wohnen's apartments. The corporation owns the apartments, and the shareholders own the shares. Shares are bundles of contractual obligations: legally enforceable promises of chunks of corporate profits. Isn't owning profits from the apartments effectively a form of owning the apartments? – No. Unlike real owners, shareholders have no right to make decisions about the corporation's assets. They cannot move into an apartment claiming *Eigenbedarf* (the owner's priority of personal use).

Financial property, like shares, is detached from material things. The purpose of owning stock is purely financial gain. The advantages are easy liquidity, low taxation and a lack of duty of care. If you own an apartment, you are responsible for it: you get things repaired and pay land taxes. If you want to sell it, it takes time and effort, and your profits are taxed at relatively high rates. Shares, on the other hand, can be bought and sold in nanoseconds. Also, while a corporation cannot be owned by an actual human, it can be owned by another corporation, which helps avoid taxes.

In 2021, Deutsche Wohnen was bought by Vonovia, another corporate landlord. But what was formally sold were 86.8 per cent of its corporate shares, not any of Deutsche Wohnen's more than 115,000 Berlin apartments. Indirect sales of land are not taxed unless the buyer acquires at least 95 per cent of the shares.

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Vonovia was therefore exempt from the taxes a real person would have to pay if they sold so much as a single apartment.

Thirdly, the possibility of avoiding regular taxation is one of the ways in which corporate property fissures the link between the owner and the society in which the assets are embedded. Because corporation is a fictitious persona, corporate property literally belongs to no one. Many shareholders do not even know what assets are hidden behind their shares. In a financialised chain, in which shares in one corporation are owned by another corporation, ownership becomes depersonalised and geographically detached.

This was the main concern of Berle and Means: corporate managers control assets they do not own, while also wielding enormous power over the social context in which those assets materially exist.[22] That was why they pleaded for democratic checks and balances to hold corporate managers accountable. This was in 1932 – and if things have changed since then, they've gone in the opposite direction.

Currently, the most common principle of corporate governance is the maximisation of shareholder value. For that, rather than creating new value in the real world, corporate managers receive huge premiums. This has been criticised even within the corporate world itself. In the words of Jack Welch, the late CEO of General Electric, shareholder value is 'the dumbest idea in the world', because it sacrifices long-term goals for short-term profits.[23]

In corporate lingo, there is a special word for the non-financial results of corporate operations: *externalities*. Externalities do not appear on corporate balance sheets; only profit is deemed relevant and recorded. Corporate law does not oblige corporations to account for externalities: legally, these are 'other people's problems'.[24] In corporate reports, an 80-year-old Frau Müller who is freezing in her apartment, and her neighbour who can no longer afford his rent, are externalities. Neither corporate managers nor shareholders see us – Berliners – as Kantian dignified and free subjects. To them, we are just externalities.

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6

Our cities are becoming externalities, too. According to the sociologist Saskia Sassen, the massive corporate buying of urban land after the 2008 financial crisis is altering the historical meaning of the city as a place of diversity. The scale of corporate ownership of cities is unprecedented: already, a single investment fund owns more of London than either the City of London or the King of England.[25] The prioritised function of this land is the extraction of profit.

Urban politics is ultimately land politics. To govern a city is to govern a territory. Cities in Ancient Greece and Rome were open to foreigners, but these foreigners could not own land without special permission. Now, urban land is increasingly owned by abstract legal entities that are socially and spatially detached from the urban community. By owning the urban land, they effectively cogovern our lives, influencing urban politics while remaining sheltered from its impact. This has consequences for both democracy and rights.

Cities were the birthplace of democracy, ancient and modern, because of their openness and diversity. In cities, even relatively powerless people could participate in popular politics and create culture. By virtue of their presence and visibility, they could 'make their powerlessness complex'.[26] Now, as urban land is subordinated to the logic of profit on a mass scale, cities are becoming significantly more closed and homogenous.

Functionally, corporations are profit-extracting machines of enormous power. Given power over urban land, they are legally enabled to sacrifice the social, cultural and political functions of the city to the logic of profit. In London and New York, thousands of homes are deliberately kept empty to increase their value as investment properties.[27] San Francisco and Sydney lack essential workers: teachers, nurses and garbage truck drivers cannot afford the overblown rents. This is no longer 'gentrification': these cities struggle to function.

How has it all happened? Back in 2008, the financial crisis was caused by the speculative housing and mortgage bubble in the

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US urban areas. Central banks around the world responded to the crisis with low-interest-rate policies and 'quantitative easing', injecting extra money into the financial system to encourage borrowing and spending. Suddenly, the financial elites responsible for the crisis had lots of cheap money to spend once more. They sent out their emissaries – stock-listed corporations and investment funds – to scan the globe in search of new opportunities, and soon they descended on cities.

'Why are these houses so cheap?', a London client asked a Berlin real estate broker in 2014. 'Are they radioactive?' The broker laughs as he tells this story to Andreas Wilcke, the director of the documentary *City as Prey*.[28] When corporate capital discovered Berlin, its housing – kept purposefully affordable for decades by the regulations of the system – cost an eighth, or even a tenth, of the London equivalent. Later in the film, we see the same broker with another client, who points at a building in the Berlin district of Friedrichshain and asks how long it would take to modernise it, in order to raise the rents. 'You know, first of all you must have an idea how to take out all the tenants,' the broker replies, in slightly halting English.

In this respect, corporate landlords had an immediate advantage over individual ones: their legal departments had more and bolder ideas about how to 'take out all the tenants' or get around the regulations. For them, Berlin was just a collection of assets that, because of the democratically negotiated regulations, were 'under-priced'. If only these regulations could be lifted or circumvented, the assets would catch up with global prices. From this perspective, Berlin looked like an El Dorado for investors. Furthermore, the city's own politicians proceeded to put this El Dorado on discount sale.

Before the 2008 global financial crisis, Berlin had its own real-estate financial crisis in 2001: the 'Berlin Bank Scandal'. The financial institution at the centre of this scandal was the Bankgesellschaft Berlin (BGB), a public–private consortium of banks that included the Landesbank Berlin, the Berlin Hyp building society and a number of smaller banks. Founded in 1994, BGB reflected the ambition of the then-ruling Christian

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Democratic Union (*Christlich-Demokratische Union Deutschlands*, CDU) to turn Berlin into a banking metropolis like London and Frankfurt. At the same time, however, the CDU's frontline politicians couldn't resist using BGB to enrich themselves as well. The main tool for this was various 'VIP funds': de-risked real estate funds tailor-made for political cronies.

The situation escalated when Klaus Landowsky – the boss of Berlin Hyp and, at the same time, deputy leader of the CDU parliamentary group – offered a loan of 600 million marks to a real estate company called Aubis, run by two old CDU colleagues. Hoping to profit from the legally enforced privatisation of East German housing stock,[29] Aubis bought up prefab concrete blocks in East Berlin, intending to renovate them and then relet the apartments at higher rents. All the risk was shifted from the investors to the public bank. When Aubis went bankrupt, it pulled down the whole Berlin banking system – and the city's budget.[30]

Klaus Wowereit, the new Social Democrat (*Sozialdemokratische Partei Deutschlands*, SPD) mayor, decided to tackle the crisis with a combination of harsh austerity and privatisation. This was when the large portfolios of housing in Berlin, both East and West, were sold off cheaply to private equity funds. This privatisation wasn't free of political profiteering either: as if by magic, several prominent SPD politicians involved in privatisation landed prominent jobs in the private equity sector after they resigned from office.[31] GSW and GEHAG were bought and sold several times by various private equity funds before eventually ending up with Deutsche Wohnen.

'What's picking a lock compared to buying shares?' As early as 1928, in *The Threepenny Opera*, the musical drama for which he is probably best known, the Berliner Bertolt Brecht warned about the ease with which corporations can 'steal' value that has been collectively produced. Corporations claim to contribute to the (market) value of the city, but all too often they turn our lively neighbourhoods into someone else's lifeless gold. As of January 2024, 91.8 per cent of Deutsche Wohnen's shareholders are other corporations or asset managers such as BlackRock. None of them is based in Berlin.[32]

Berlin has been made by Berliners. Even the market value of Berlin real estate stems primarily from its location: the cultural

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and economic attractiveness of the whole city, collectively created by its citizens, past and present. However, the market value is not the only value that matters. For Berliners, a functioning municipal housing system has been crucial to upholding other values too: freedom, equality and solidarity.

Berliners were not prepared to abandon these values. So when the corporate landlords first took over our housing, we rolled out our well-established repertoire of protest and resistance. We sang in the elevators and chanted on the streets. We occupied public squares, created networks and mobilised the union lawyers, who fought, case by case, for each person's right to stay. However, what worked with Herr Meier would not be enough to stop the corporations.

Hovering over Berlin, corporations were the Jabberwock (Figure 2.3) – a beast that can only be so large and powerful *because* it is fictional. Corporations are legal fictions, made by the law and living in the law. They can gradually leverage their legal power to *become* the law. Many academic books have been written about this.[33] T-INA Darling, a Berliner artist and DJ, wrote a song:

I bought your house
I bought your ground
For just about two million pounds
I'm gonna open your floor
Break through your door
I am the law
I am the law

Can real people ever win against a corporation – a monstrously empowered legal fiction? In Lewis Carroll's *Through the Looking-Glass*, to slay the Jabberwock a person needs to take the 'vorpal sword' in hand – a weapon that is equally powerful, because it is equally fictional.

7

In Prenzlauer Berg, where I live, there is a large block of streets that has only survived because some real people crafted a weapon from legal fictions. The quarter around Oderberger Strasse in East Berlin was home to punk rock and political

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Figure 2.3 Jabberwock, a powerful fictional creature from Lewis Carroll's nonsense poem *Jabberwocky* featured in his book *Through the Looking-Glass, and What Alice Found There*. Illustrator: John Tenniel.
To kill this fictional creature, a person needs a fictional 'vorpal sword'.

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dissidence. It didn't fit the image of the socialist regime, so in the 1980s the local government decided to demolish it.

Activists saved the block by applying the laws of an authoritarian state that had written them merely to serve as a cover. Leveraging formal rules of political participation, they managed, first of all, to take control of a local *Wohnbezirksausschuss* (a residential district committee, commonly referred to by the acronym WBA). WBAs were a subdivision of the National Front of the German Democratic Republic (GDR). The National Front was an alliance of political parties and organisations that secured the supremacy of the ruling Socialist Unity Party with a pretence of collaboration. It was just a façade to make socialism appear more democratic – yet it had formal legitimacy within the system.

'We analysed the laws of the GDR and found that the residential district committees could put up their own candidates [to the National Front],' one activist recalls. 'It was just that nobody had ever done that before.' The opposition effectively took over the local WBA. One of the activists was even elected to the Prenzlauer Berg district assembly, which made him the first opposition MP in the GDR, before the last parliamentary elections in March 1990.[34] The group had successfully prevented the demolition, and in the block of streets they had saved they created the 'Hirschhof', a neighbourhood meeting point with an open-air stage. The acronym WBA was transformed into *Wir Bleiben Alle*: We Are All Staying Put. After reunification, this became the main slogan for the housing struggle across the whole of Berlin (Figure 2.4). It often appears along with a symbol: a house raising the fist of its chimney to the sky.

But, in the end, not everyone did manage to stay put. Soon after the housing activists had saved their block, the people of the GDR overthrew the entire regime. East Berliners were ecstatic about their hard-won political freedom. Most had no idea at first that, as collateral for reunification, they were about to lose their homes.

Today, there are hardly any former East Germans living in Prenzlauer Berg. They couldn't afford to stay. First their buildings were 'reprivatised' – returned to the owners who had been

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Figure 2.4 *Wir Bleiben Alle* – 'We Are All Staying Put': An occupied tenement block at Brunnenstrasse 183; occupiers evicted by the police on 27 October 2009
(*Source:* Jotquadrat/Wikipedia/Creative Commons)

expropriated after the Second World War by the East German state. But because the buildings required extensive renovation, only 5 to 8 per cent of the original owners wanted, or could afford, to keep them.[35] Hardly any East Berliners could afford to buy these buildings – the income and wealth gap between East

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and West was considerable. For the richest West Germans, however, the buildings were cheap. With some specially legislated tax exemptions, they were virtually free: the majority of the purchase and renovation costs became tax deductible.

These tax deductions only made sense for affluent people – and so Prenzlauer Berg was effectively donated to the West German upper classes. In 1997, *Der Spiegel* described it as 'the greatest tax present of all time', and Saxony's conservative finance minister Georg Milbradt spoke of it as 'capital formation for the West'.[36] East Berliners tried to keep their homes by occupying the buildings. The fact that they couldn't became a long-standing source of anger and frustration at the new system, which in this respect had not delivered on the constitutional promise of freedom.[37]

I too live in a house from which East Germans are long gone. I learned the history of Prenzlauer Berg from A. and M., two scholar-activists from East Berlin who became my dear friends. M. lives in a housing cooperative, and has managed to stay in Prenzlauer Berg. A. has moved out. Whenever I walked around the district with M., he would tell me the history of every house. But neither M. nor A. have ever blamed me for being a 'gentrifier'. They believe in fixing the broken system, not putting the blame on those who come here searching for home. For Berlin to feel like home, we must keep on making it home together: East and West, migrants and Germans, those who were born here and you who have just arrived. *Wir bleiben alle*: We are all free to stay.

On the night of A.'s forty-seventh birthday, I stayed home. I fell asleep breastfeeding my eight-week-old daughter, which was how I missed the party that, according to urban legend, was the birthplace of Deutsche Wohnen & Co. enteignen. Of course, it couldn't just have been this one party; revolutions start in many places at once, as if spreading through the air. Still, in certain moments and places the air condenses, and potential is transformed into energy. This is what must have happened that night at Aquarium, a venue right next to the Kotti. It was October 2017.

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Let me tell you what I heard. The Aquarium was packed – it must have been. A. is Berlin's ultimate scholar-activist: diligent and legendary, brilliant and humble. Electro music blasted from the speakers, mixed with 1980s punk rock. The playlist will definitely have included 'Transmission' by Joy Division, one of A.'s all-time favourites. There's a line in the song: *The things that we've learnt are no longer enough.* I doubt that anyone there was thinking about the lyrics, but there were enough people who were feeling precisely this: *The things that we've learnt are no longer enough.*

That night, T-INA Darling was the DJ. But the dancing didn't start until 2 a.m., because the room where it all happened was supposed to be the dancefloor. M. was a bit irritated; he was eager to dance. He too had a small child at home, *and this could be a party, for once, not another work meeting*. But there were so many people in the room! Apparently R. had spent a whole vacation trying to figure out how this could work, talking it through with a bunch of friends on some Greek island. This, here, could be the perfect sounding board – a group of people who knew Berlin inside out.

We will never know who was the first to come up with the idea – and it doesn't matter. By then, we all knew we had to tackle the problem at its roots. We would not be able to change the logic of finance, so we needed to shield our homes from this logic. We didn't need to 'smash the system', only to save our system from being smashed by the inhumane power of the corporate Jabberwock.

If the solution was hiding, it was hiding in plain sight. Right at the heart of the *Grundgesetz* there lay a 'vorpal sword': Article 15. It was a legal fiction of the highest order: a fundamental right forged by Germany's constituent power. This all-but-forgotten right allows for land, natural resources and means of production to be made public property for the purpose of 'socialisation' (*Vergesellschaftung*). As a democratic weapon, Article 15 comes with one proviso: the socialised property must be held collectively by the people. It cannot simply be subordinated to the state. It must be democratically managed.

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The mighty sword of Article 15 has always been there, just like the constitution. Suddenly, everyone wondered why we had never dared to use it. Article 15 offered a *practical* revolution: lawful, affordable, good.

That night, the question was not *if* – the question was *how*. That's why the dancing didn't start until 2 a.m. And after that, people didn't want to wait any longer. The DJ put on 'Waiting Room', a 1989 post-hardcore song by Fugazi, one of A.'s all-time favourites:

I'm planning a big surprise
I'm gonna fight for what I wanna be
And I won't make the same mistakes
Because I know how much time that wastes and function
Function is the key!

And then they danced and danced, as if our freedom depended on it, pounding the ground to summon the Berliner spirit. And I danced with them too, until I woke up: free to be home, embracing the future.

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