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Figure 3.1 The spectres of expropriation in front of the Deutsche Wohnen Headquarters in Frankfurt, 18 June 2019
(*Source:* DWE Archive)

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What you're showing here is the ugly Berlin, the loud Berlin. This is the unserious Berlin. This is Berlin that, in my opinion, has no future.

Michael Zahn, CEO of Deutsche Wohnen, in a panel discussion with a DWE activist

Expropriate!

Albert Einstein, Berliner, a vocal supporter of the 1926 referendum on the expropriation of princes (*Fürstenenteignung*)

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BERLIN BECOMES HIGH-RISK CAPITAL

The Law and the Movement

1

Two careful lines drawn diagonally in an X across the circle. First one line, then the second; and, if I didn't stop her, a little heart as well.

'Mama, how do we say ballot paper in Polish?'

'*Karta do głosowania*. You know, darling, the cross is a bit like a heart already – it's a way of telling the government how we feel about it.'

It's 26 September 2021 – Election Day. In addition to choosing the new national and municipal governments, Berliners are voting in the referendum on expropriating corporate landlords and socialising their housing stock by implementing Article 15. The referendum has been organised by a grassroots campaign, 'Deutsche Wohnen & Co. enteignen'. I joined DWE in 2019.

My daughter marks *Ja* and passes me the ballot. I wonder whether her help is illegal. The clerk at the entrance initially told me I couldn't take Mira with me into the voting cabin. It's to preserve the secrecy of the ballot, she says. My daughter might influence my vote.

As an activist, I regret not thinking of this earlier! The pre-schooler lobby could easily have swung the vote for us by throwing tantrums on Election Day. All they want is their own bedrooms! (Figure 3.2)

'But she's 4!' I take my chances with the election supervisors.

'Can she read?'

'Not yet.'

'OK. She can go in with you.'

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Figure 3.2 Mira on Election Day
(*Source:* Joanna Kusiak)

My little lobbyist can, of course, draw.

Twelve hours later, crowded into a vast hall at the BUFA film studios in Berlin-Tempelhof for election evening, we're watching K. on a big screen. He is talking, live, to the spokesperson of an association explicitly created to lobby against us. *Neue Wege für Berlin* claims to be a social movement, but it consists mainly of

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real estate professionals. In 2019, journalists revealed that this 'social movement' had asked its members to pay a membership contribution of €2,750 each.[1]

A big chunk of this money has presumably been spent on petitioning against DWE. After DWE collected 77,001 signatures for the first phase of preparing for the referendum, *Neue Wege für Berlin* hired a professional agency to collect signatures 'for affordable housing'. Only the fine print on the signature collection sheet specified that this affordable housing would be achieved by abolishing the *Mietendeckel* – a five-year cap on rents legislated by the government in 2020 – and preventing socialisation.[2] Even so, the paid agency workers collected only a fraction of the signatures collected in support of socialisation by unpaid DWE volunteers.

'The campaign has put a finger on something that's a sore point for the city,' the lobbyist is saying. He quickly adds that, according to his association's experts, what DWE proposes is not legally viable. The journalist cuts him off, reminding him that there are plenty of legal analysts who assert otherwise. However, the journalist adds, the leading mayoral candidate, Franziska Giffey from the Social Democrats, sees socialisation as a 'red line' she never wants to cross, while Bettina Jarasch from the Green Party says socialisation would be *ultima ratio*, a last resort.

'We will soon know where Berliners stand,' says K.

Almost 11 p.m., and still no results. After vanishing from the big screen, K. reappears among us in the hall, and we gather round him, excited. Did he hear anything at the television studios? Any leaks? Any predictions?

No. No leaks, and no official predictions. But once the cameras were off, the real estate association's spokesperson approached K. and shook his hand.

'I'm a realist,' the lobbyist said. 'You will win.'

2

We won. Of course we won! With more than 1 million 'Yes' votes, Deutsche Wohnen & co. enteignen got more support than any of the political parties participating in the general election. Still, if a real estate lobbyist was able to predict our victory from

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the standpoint of political realism, this pointed to a critical transition. Back in 2017, when DWE's strategy was first discussed at A.'s birthday party, even some of the activists were sceptical that the idea of expropriation could actually win a majority. The referendum victory was a side-effect of an even more remarkable feat by DWE: creating a major shift in what was considered politically 'realistic' (Figure 3.3). How had we managed to make the impossible realistic?

At first, the prospect of expropriation looked like a big, bold nothing. Anything that has never been done before starts with a confrontation with the void. This negative aspect – the impossibility of creation, the shadow of failure – is always present. It's here, too: if you peer behind the letters of this book, you'll see the blank page I once had to stare at. But if you persist in confronting nothingness with your being, *something* will inevitably emerge. At first, it might be something phantasmal: an almost-nothing, a spectre.

The spectres of expropriation materialised in the daytime. These were real, human ghosts, down-to-earth and dressed for the job, in white bedsheets with cut-out holes for their eyes.



Figure 3.3 Election evening games: Will it be possible to overthrow the rule of corporate landlords?
(*Source:* Ian Clotworthy/DWE)

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They were nothing like Karl Marx's spectres of communism that were once said to be haunting Europe.[3] They were not ideological, and they were not a metaphor. They were angry. In June 2018, a small group of them appeared outside Deutsche Wohnen's Berlin office, holding banners and chanting 'Expropriate!' *Enteignen, enteignen!* Very few people saw them; there were only a couple of journalists to take pictures. But the ghosts saw one another, and they believed in themselves – as spectres.

The spectres of expropriation preceded DWE as a movement. They recruited themselves from the Berlin-wide network of Deutsche Wohnen tenants. In 2016, in response to a wave of rent increases by Deutsche Wohnen, some activists launched a working group they called 'Jumpstart' (*AG Starthilfe*). The group's mission was to help tenants to organise, so that people on an estate could come together and challenge individual rent increases collectively.

'Jumpstart' activists devised a procedure called an 'Organising Blitz'. They would identify the most proactive tenants, meet them at their housing estate, and offer them a short training course on the principles of organisation. Then trainers and trainees would disperse for a couple of hours to knock on people's doors, tell them about possible ways of dealing with the rent increases and invite them to a community meeting two weeks later. The response was huge, and tenants started to connect across estates, as well.

If you talked to the spectres of expropriation – those few bold tenants who, dressed in old bedsheets, stood outside a multi-billion-euro corporation and declared that they would expropriate it – they would tell you that, in a democracy, you always have more power than you think. You only need to be aware of the power you already have.

The seeds for DWE's referendum victory were planted long before the launch of the campaign. Berliners have been training themselves in public referenda since 2011, when the city voted to de-privatise (buy back) the Berlin water company. The 2014 Tempelhofer Feld referendum was another great success, preventing luxury real-estate development on a former airport and maintaining it as an iconically non-designed Berlin public space.

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The 'rent referendum' (*Mietenvolksentscheid*), coinitiated in 2015 by a grassroots movement called Kotti & Co., was never held. Its initiators made some formal mistakes in their proposed legislation, and so were unable to proceed with the referendum, even though they had a lot of public support. This early failure may have been crucial for DWE's future success: the activists learned that, in order to operate politically on a legal footing, one has to adapt to the very precise terms of the law.

By the time the spectres of expropriation appeared outside Deutsche Wohnen, another activists' working group (*Vergesellschaftungs-AG*) had already sketched out the legal strategy for expropriating corporate landlords. But no journalists were there to take pictures of that.

Of the small number of activists who first conceptualised the strategy for socialisation, none was a trained lawyer. Back in 2017, most lawyers barely remembered that Article 15 even existed. Some later claimed it was an 'empty clause' that had become 'obsolete' from lack of use.[4] But if you are not a lawyer, you apply common sense. Can it be that a constitutional right expires, or goes off, like an old piece of cheese, forgotten at the back of the fridge? This didn't seem reasonable. Once the activists had drafted the first strategic documents, they consulted a few friendly lawyers. And boy were the lawyers surprised! *Actually, this could work!* The boundaries of the realistic were slowly giving way, starting with the legal profession.

But there is no beaten track to implementing Article 15 – and the law is a jungle of technicalities. Learning from the mistakes of the 2015 'rent referendum', the activists trod carefully. Berlin's state constitution allows for two different types of referendum: a legislative referendum (*Gesetzesvolksentscheid*) and a resolution referendum (*Beschlussvolksentscheid*). The first puts a complete piece of legislation to the vote. The second garners political support for a project, which the Senate then legislates itself. Because Article 15 was new terrain, even for experienced lawyers, DWE went for the second option: a resolution referendum.

A resolution referendum allowed DWE not to rush into drafting the appropriate legislation, risking a formal mistake. But the activists didn't rush the referendum, either. They took a whole year to

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gather the relevant legal expertise, during which time the movement was already using Article 15 as leverage in the public debate. Because while expropriating 240,000 apartments may sound 'radical' and 'impossible', it is much harder to dismiss a fundamental right inscribed in the *Grundgesetz* as a radical fantasy.

'I wouldn't have thought this possible.' Frank Plasberg paused in the middle of his prime-time television show *Hart aber Fair* ('Hard but Fair') to reflect on what was happening. 'For the last eleven minutes, we've been talking seriously about expropriating a corporation in Germany.'[5] It was March 2019. A few weeks earlier, *Tagesspiegel* had published a poll showing that almost 55 per cent of Berliners considered the expropriation of corporate landlords to be a 'reasonable' option.[6]

On 6 April 2019, amid the crowd of 40,000 people who had joined the 'Rent Insanity' (*Mietenwahnsinn*) demonstration in Berlin, DWE started to collect the 20,000 signatures required for the first stage of the referendum. By the end of that first day, the activists had already collected more than half of the signatures they needed.

Two months later, the spectres of expropriation showed up to spook shareholders at Deutsche Wohnen's general assembly in Frankfurt. This was just a few days after the campaign submitted its petition with 77,001 signatures – almost four times more than the requirement.

Soon afterwards, the government legislated the *Mietendeckel*, a five-year cap on rents. Alarmed by the success of the petition, the governing SPD party pitched the *Mietendeckel* as a 'milder' alternative to socialisation. When I interviewed a lawyer who co-wrote the *Mietendeckel* legislation, she said she saw the rental freeze as a side-effect of socialisation suddenly being seen as an option available within the system. What was previously considered 'too radical' became a 'mild alternative'.[7]

'Dear shareholders, we are your biggest investment risk!' This was how S., surrounded by the bedsheet-wearing spectres of expropriation, opened the DWE press conference outside Deutsche Wohnen's headquarters in Frankfurt. The day the government announced it would freeze rents for five years, Deutsche Wohnen stocks fell by 8.7 per cent. S. advised

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shareholders to sell their shares immediately. Democracy – popular, and constitutional – was turning Berlin into high-risk capital.

The frontiers of political realism were now shifting too quickly for some. Andreas Geisel, Berlin's senator for interior, decided to slow it down. His office was responsible for checking the legal viability of this initial referendum proposal. Once this was confirmed, the campaign could move on to the second stage – which meant collecting more signatures. However, there was no official deadline by which the Berlin Senate had to reply. It had in fact already commissioned a legal opinion, which had confirmed a few months earlier that the proposal was indeed valid,[8] but Herr Geisel's office did not respond for more than eleven months.

In September 2020, the movement filed an urgent appeal (*Eilantrag*) against the Senate for its inaction, after which the Senate completed the check in two days. The movement then asked to review the Senate's documents using the Freedom of Information Act. Together with some journalists, DWE was able to reveal that the Senate's delay was intentional. On the day of the DWE lawsuit, one of Herr Geisel's coworkers wrote in an internal email: 'If the lawsuit is accepted, we won't stand a chance.'[9]

The campaign turned the Senate's delaying tactics into an advantage, using the extra time for internal restructuring. The second stage of the referendum campaign would require activists to collect 175,000 valid, physical signatures in just four months. But now everyone was staying home. The global COVID-19 pandemic had started.

Unlike many other social initiatives, DWE grew exponentially throughout the pandemic. On the one hand, people *felt*, acutely, how vital it was to have a home – and were even more afraid of rent increases in the light of COVID-related recession. On the other hand, in times of general uncertainty, DWE's legal-political framework provided people with a clear and measurable goal. The activists surfed the wave of online socialising to grow a network of *Kiezteams*, DWE's neighbourhood units. Once the strict terms of the first lockdown were relaxed, their members were able to meet physically in the local parks, provided they maintained social distance. Amid the global

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loneliness of the pandemic, DWE effectively organised people to meet their neighbours even *more*.

Almost 350,000 signatures – more than twice as many as were needed to organise the referendum – were collected between February and June 2021, amid intermittent lockdowns, without mass events, and with lousy weather persisting until mid-May. The *Kiezteams* competed internally to get record numbers of signatures, while also supporting one another, sending activists from the central districts to help also in the neighbourhoods on the periphery (Figure 3.4). Then, in the run-up to the referendum, the *Kiezteams* campaigned door-to-door. Door-to-door campaigning is very unusual in German culture. But the ground for this had been prepared when the 'Jumpstart' group was teaching tenants how to organise themselves, back when expropriation still looked like a big, bold nothing. Or like a spectre: down-to-earth, and dressed for work.



Figure 3.4 Collecting signatures in Berlin-Marzahn
(*Source:* Ian Clotworthy/DWE)

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3

When I tell my daughter ghost stories at bedtime, she sometimes asks me if the story is *real*. With some stories, I'm not sure how to answer. When a group of people dressed up as ghosts appear in public with a copy of the *Grundgesetz*, are they *real* spectres of expropriation? You can see their shoes poking out from underneath the bedsheets. And yet their appearance caused stocks to fall. Trick or treat?

The referendum organised by DWE was certainly real. My daughter remembers putting a real ballot paper into a real box. Real people counted the votes of other real people, and it was the most successful referendum in Berlin's history.[10] Still, its results were never implemented. Is democracy real, or is it just a story I tell my daughter at bedtime? 'Some stories are just fictions,' I explain to Mira, 'but there are some fictions that we have to make real together.'

On 26 September 2023, exactly two years after we celebrated the results of the first referendum, Deutsche Wohnen & Co. enteignen announced that it would organise a second one (Figure 3.5). This time, it will be a legislative referendum (*Gesetzesvolksentscheid*). The movement has commissioned a renowned law firm specialising in public and constitutional law to write the legislation. The lawyers' fees and other campaign expenses have been crowdfunded. The campaign's new slogan is 'Our Berlin – Our Home – Our Law'.

Another slogan of the new referendum is: *Allet mussma selba machn* (Figure 3.6). In the Berliner dialect, this means: 'We have to do everything ourselves.' We have to write the socialisation law ourselves, even though one million Berliners had already ordered the government to do so, using the resolution referendum as prescribed by the Constitution of Berlin. But a resolution referendum is a *political* tool: it is not legally binding.

To implement the results of the resolution referendum, the government would have to write appropriate legislation. Both the mayors who have governed since the referendum – first Franziska Giffey of the Social Democrats (SPD), then Kai

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Figure 3.5 DWE announces the second referendum in front of the Rotes Rathaus (Berlin City Hall), 23 September 2023
(*Source:* Ian Clotworthy/DWE)

Wegner of the Christian Democrats (CDU) – have opposed socialisation. Their resistance is hardly surprising: both their parties have been receiving campaign funding from the real estate lobby. The only way to bypass the government's inaction is to write the law ourselves and put it to a direct vote.

Was DWE politically naïve in trusting that politicians would implement the will of the majority? Shouldn't the initiative have gone straight for a legislation referendum, in the first round? Maybe – but I don't think so. Because back in 2017, when DWE first launched its campaign, Article 15 was like an unloaded gun, and everyone had forgotten what the bullet looked like.

The power of Article 15 is both real and fictional. It's the power of a legal fiction. To call something a 'fiction' might sound dismissive, but the normative power of the law depends on legal fictions.[11] The law creates fictions by abstracting from

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Figure 3.6 'We have to do everything ourselves': The spectres of expropriation dancing in front of the Rotes Rathaus (*Source:* Ian Clotworthy/DWE)

reality, then empowers these fictions to transform reality. That a corporation can count as a person is a legal fiction with real-life consequences. But rights are legal fictions as well. As suggested by Eric Voegelin, the idea of constitutionally guaranteed rights may be nothing more than a superstitious belief in the power of law.[12] For what does a constitutional right to socialisation mean if nothing has been socialised?

The rule of law's cardinal fiction – one that sustains its democratic legitimacy – is the idea of a free and equal subject. Born into a social context, we are not born equal: in our wealth, or in our capacities. Depending on the circumstances of our lives, we do not enjoy the same amount of freedom. By denying these structural inequalities, the law can perpetuate them. But by insisting on freedom and equality, the law can also pull reality closer to fiction: it can make us *count* as equals, thereby making the system balance out some of the existing inequalities. That the law considers us 'free and equal' is not, therefore, a neutral thing: it contains both a brutal lie and the utopian horizon of democracy.

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The power of a legal fiction is a power potential: in order to shape reality, legal fictions must be empowered. What empowers a legal fiction? First, the law itself. Law is a self-reproducing ('autopoietic') system that constantly replicates its own elements and structures.[13] Each legal textbook and each judicial ruling strengthens some legal arguments while omitting others, creating precedents and tendencies in jurisprudence.

Legal fictions are also empowered by legal experts. Because what legal theorists claim – that the law is a self-reproducing system – is itself a legal fiction, an abstracted truth. The law reproduces 'itself' in the hands of the lawyers. Lawyers are not neutral cogs in the machine of legal reproduction: they actively shape it. The law consists of language, and it is therefore malleable and subject to interpretation. To interpret the law is to decide its meaning, and the impact it would have on reality. The leeway of interpretation is the inner politics of the law.

Private attorneys are lawyers whose job is to infuse the law with politics that are beneficial to their clients. The wealthiest clients – which nowadays are usually corporations – hire more and better lawyers. That's why, when it comes to securing and multiplying wealth, the law has never been the static rules of the game: 'The rules themselves have become the centre of the game.'[14] The fraudulent legal engineering revealed by the Panama Papers is only the logical consequence of private lawyers' efforts to serve their high-paying clients.

Another strain of politics is brought to the law by conviction-driven activist lawyers, either self-appointed or supported by popular mobilisation. In the midst of all this are public lawyers: judges and legal officials appointed by the system. They too are people, and as such they are never entirely free of their own agendas. But they are appointed by the system to maintain the law – to hold within the legal system a protected space for reasoning about what is right and fair, and to 'morph politics and produce a universalising argument'.[15]

There is a formal gate through which politics enters the law officially and unapologetically: legislation. Written in legal terms but empowered by politics, legislation is where the

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contingency of politics stabilises into a 'system'. In a representative democracy, it's usually the job of parliament to legislate, and the job of the legal system – via the constitutional court, for example – to ensure that the legislation does not violate the terms of the law. To transform the system via new legislation, you need support from both politics and the law.

When DWE was starting out as a movement, it had hardly any support on either side – a small group of activists with a supposedly 'obsolete' legal clause. The ingenuity of the DWE strategy lay in trusting Article 15 more than the lawyers did, and using it as leverage to support the political postulate of expropriation with the normative power of the *Grundgesetz*. The power of the *Grundgesetz* has mobilised the people, and the power of the people has mobilised the lawyers. In this way, legal expertise was effectively 'outsourced' by the movement: as soon as the first polls showed that the majority supported socialisation, the Berlin Senate, political parties and think tanks started commissioning legal opinions, the overwhelming majority of which confirmed the legal viability of socialisation.

As of 2023, this has been also confirmed by the final report of the Expert Commission on Socialisation. The commission, consisting mainly of constitutional lawyers with a few experts on housing finance, spent a whole year deliberating the legal nuts and bolts of the DWE project. Mayor Franziska Giffey, who set up the commission, made almost no effort to conceal the fact that its real political aim was to delay or even avoid implementing socialisation. Yet the commission's final report ultimately provided a solid legal basis for a second referendum, having mobilised legal expertise to clear a range of issues crucial for the legislation project.

A political battle is being fought within the law regarding which legal fictions will be empowered and which will remain dormant. The most anti-democratic way of dealing with the law is to conceal this battle, or pretend that its terms are always the neutral domain of independent experts.

Rights are legal fictions that need to be empowered. There are no wealthy clients willing to hire the best lawyers to protect

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popular rights, so the people must participate in the law, mobilising legal expertise not through money, but by popular summons. Because it's not only lawyers who can empower the legal fictions of rights; it's also the people. That's why, in a democracy, the law is far too important to be left to lawyers.

4

I never wanted to study law and, formally, I never did. Where I come from, poor kids studied law to stop being poor, and rich kids studied law because that was what their parents did. I wanted to understand the world, so I studied philosophy and social sciences. I also never planned to become a 'scholar-activist': it's a label that was given to me only after I left Poland. In Warsaw, most of my university professors had been involved with the Solidarność movement; engaging with reality was considered a crucial aspect of intellectual education. From a close family member, who runs a public philosophy seminar in a small town attended by artists and shopkeepers alike, I learned that thinking can also be a form of public service.

In Berlin, I chose to turn thinking into a living. I became an academic. But once I settled into my Berlin freedom, the brutality of the Polish shock therapy struck me with renewed force. I returned to Warsaw as a researcher, determined to make sense of the many urban crises triggered by privatisation and deregulation, a state-driven dismantling of the state. People called these overlapping crises 'chaos', because it felt as if a blind force had taken control of our city. But the more data I collected, the clearer it became that this chaos was *organised* into multiple orders of profit-driven dispossession.[16] I teamed up with Warsaw's social movements to analyse what later became known as 'Reprivatisationgate', Poland's most spectacular case of legal corruption.

In the early 2010s, Warsaw was losing ground – literally, and for real. Thousands of tenants were being evicted, as their buildings were allegedly being 'restituted' to the historical owners dispossessed by the communist regime, and a budgetary crisis

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was looming because of the scale of the compensation claims. But the odd thing was this: the parliament never legislated property restitution because of Warsaw's complicated history. After the city was razed to the ground by the Nazis, the people rebuilt it in a collective effort, on a different urban grid, with public funding.[17] What was nationalised in 1945 was a pile of rubble. What was now to be 'returned' was critical public infrastructure: schools, university buildings, public parks and housing. The issue was simply too contentious. More than twenty proposed restitution bills were rejected, one after the other, by consecutive parliaments of various political colours.

There was no restitution law, no democratic mandate for the restitution – and yet newspapers were reporting restitution-driven evictions on an almost daily basis. How was this possible? The answer, I discovered, was the legal fictions. It turned out that the judiciary had engineered a discreet path to proceed with restitution on a case-by-case basis, ignoring the political conflict and bypassing the democratic process.

Combining incompatible legal acts from Poland's three different political systems (pre-war democracy, state socialism and the current one), the lawyers bent the letter of the law and broke its spirit. They did things such as use a post-war reconstruction decree from 1945 as a tool for privatisation, or designate a twenty-family tenement block as a 'single-family house' in order to privatise it.[18] The talk was of 'historical justice', but most of the land was being 'restituted' to professional businessmen who had bought restitution claims – cheaply, because with no restitution legislation in place, the claims were deemed worthless. In this way, a small clique of businessmen – many of whom were lawyers – took over Warsaw's prime real estate.[19]

By the time the legal corruption behind Reprivatisationgate was finally exposed – by activists, journalists and scholars working hand in hand to crack open the legal black box – it was too late. Warsaw's stolen land had been laundered, just as the law is able to launder drug money: by passing it through a chain of legitimate transactions. Warsaw's best apartments, rebuilt by the people under state socialism, then stolen *through*

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the law under – or rather, despite – democracy, had become 'clean' investment properties.

In 2016, sitting in one such investment apartment in Warsaw, I drafted the proposal for a research project that underlies the book you are now reading. The apartment had been rented for me through a well-known online portal, by an institution that had invited me to speak at a conference about – ironically – the Polish housing crisis. I immediately recognised the building from my research. It was very clean and expensive: all the apartments had been converted into offices and temporary rentals.

Architecturally, this Warsaw short-term rental was much like my Berlin home: an early twentieth-century tenement with spacious rooms and high ceilings. And in each case the current status of both these apartments was the result of the way legal fictions had played out politically within judicial proceedings. The Warsaw tenants had been evicted through legal fictions. I, through legal fictions, was able to stay in Berlin.

So here was my project: to explore and democratise the discreet politics of legal fictions. Crafting legal fictions is a standard legal procedure. But the more the technical jargon of the law conceals these operations, the easier it becomes to smuggle power agendas into the law. Once this mechanism was exposed, the inner politics of the law could be democratised without forfeiting the law's systemic independence. The lawyers would still make decisions about the terms of the legal system – but while the lawyers work the letter of the law, the people can protect its spirit.

I planned to work closely with the Berlin tenants' unions, learning how lawyers like Frau Tams make strategic use of legal technicalities in defending tenants. In January 2017, I pitched this project to King's College, Cambridge, which agreed to fund it. In May 2018 – halfway through my maternity leave – I gave a talk about my project at the Humboldt University of Berlin. I argued that we had to reclaim the law as a democratic tool for social change. A student approached me afterwards, asking if I had heard of the campaign that had just been launched: Deutsche Wohnen & Co. enteignen.

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When I first met with some of DWE's activists, I realised that everything I wanted to research they were about to explore in practice. And so I joined the movement, and I cannot neatly separate whether I joined because of my research objectives or because of my convictions. But having studied the biographies of the Solidarność intellectuals – reading books, participating in the home seminars they organised for their students and also researching their corruption, as I did in my first job – I have learned one thing in particular: it was not in the 1980s, when they were out on the streets fighting for the ethics of solidarity, but in the 1990s that some of them – by then in secure academic posts and playing the role of the neutral expert – stopped acknowledging their bias.

5

The Berliner Kurt Lewin, a social psychologist who first conceived the term 'action research', was also the first to use the term 'feedback' in a social science context, borrowing it from electrical engineering. He visualised action research as a spiral of steps: each step is an independent cycle of gathering information through research, strategising an overall plan, strategising the next step, intervening in the system and evaluating the results of the intervention. The learning acquired through each cycle is implemented in the planning phase of the next cycle.

The purpose of action-research is strategic, which means there is a strong incentive to avoid partiality and wishful thinking. Any too-neat research conclusion will quickly be destroyed in practice. Academics often joke about 'Reviewer 2', a humorous designation for the anonymous, spiteful colleague who finds, or even invents, faults in your research paper, no matter how hard you've tried. For an action researcher, the real 'Reviewer 2' is practice.

But being a scholar-activist is a delicate task for reasons other than methodology. You need to learn to navigate the tension between being a member of the movement while also being an external observer. As a scholar, the purpose behind my methodological rigour is to speak with authority about my research

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findings. The movement, however, strives for democracy: DWE avoids giving one voice greater authority than others. Just like the law, democracy is driven by a normative fiction of freedom and equality. And so, as we take on different roles within the movement – some more visible than others – we still take care that we all *count* as equal in the movement's decision-making process.

The principle of equality in decision-making translates into DWE's approaches to expertise. On the one hand, democracy does not mean rejecting the expertise; especially when working with the law, we rely a lot on lawyers' precise, technical advice. On the other hand, no expertise – not even legal – is allowed to dominate the discussion unquestioned. In situations where the movement made the decision to rely on external experts – for example, when hiring a law firm to draw up the legislation for the second referendum – the movement also delegates a small group of activists to mediate between the firm and the movement, translating and explaining the experts' decisions during the plena so they can be followed or questioned by the movement's democratic grassroots.

The methodological value of being an action-researcher is not limited to any specific kind of expertise. Rather, the value of the method lies in constantly switching between the 'immersive' position of an activist and a detached scholarly perspective. This makes it possible analytically to grasp patterns that occur within the movement, while also developing a feel for the way these patterns are forged on an everyday level.

There is only one consensus within DWE: to socialise housing using Article 15. We disagree about many other things, often fiercely. Nor is it the case that the things we disagree about are politically insignificant. But the one thing we all agree on – the socialisation of housing using Article 15 – is important enough that disagreement becomes constructive. That's why, viewed from the outside, DWE strategy is based on paradoxes. A paradox is simply 'a better witness to truth'.[20]

First of all: DWE is radical – but it's also radically legal. In referring to the *Grundgesetz*, it mobilises the state's constituent power (*verfassungsgebende Gewalt*) to curb misuses of this

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power, transforming the system from the inside. Not unlike *Solidarność* in the 1980s, it gains legitimacy by holding the system to its promises by both political *and* legal means. As a radically legal movement, DWE mobilises the power of the people and the power of the system simultaneously.

That is why – secondly – DWE is simultaneously anti-systemic and pro-systemic. This is reflected in the campaign's use of two terms: 'expropriation' (*Enteignung*), its main political slogan, and 'socialisation' (*Vergesellschaftung*), which is the proper legal term for what DWE is proposing. By postulating to 'expropriate' corporate landlords, DWE taps into people's anger at the dysfunctionality of the system. But it mobilises this anger to renew the system rather than destroy it. Proposing a radical change, DWE also plans to embed this change within the existing legal framework.

Thirdly, DWE is a single-cause movement that builds a broad social base by approaching this cause from multiple angles. The vision of socialisation is holistic, addressing the needs of different people and sectors. DWE thinks through the impact of socialisation on the local economy, the social welfare system and ecological transformation. Within its own structures, DWE commits to inclusion without striving for consensus on identity politics. It thus avoids sectarian splits while maintaining a strong focus.

Fourthly, DWE maintains productive tension between the concrete and the universal. It builds a community, starting from the concrete experience of living in a particular neighbourhood, then empowers this community using systemic abstractions. It connects all the dimensions of globalisation: it is a local movement that uses the national legal framework to counter global finance. This approach, simultaneously functional and territorial, is reflected in the way DWE is internally organised into task-oriented working groups (*Arbeitsgruppen*, AGs) and local neighbourhood units (*Kiezteams*).

Fifthly, DWE does not believe in the day after the revolution. Democracy – the normative ideal that all people meaningfully participate in governing themselves – is a utopia that must be approximated, but it will never be completed. In order to move

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ahead, DWE mediates between its vision and the status quo, working to close the gap between them. It also works towards widening this gap at its other end, pushing the boundaries of what is perceived as 'achievable' within the current system. Because democracy is not just a destination to move towards. Democracy is also the movement.

6

By the time DWE organises its second referendum, my daughter – born in the same year as the movement – will be nearly 10. For DWE, it will have been a decade of organising: persistently, voluntarily, unpaid. At peak moments in the referendum campaign, the movement mobilised more than 3,000 people, and there is a relatively stable core of more than 100 activists. But if a popular movement is successful, diverse and growing, internal conflicts are inevitable. There is also push-back from without; the boundaries of political realism are not easily moved. How has DWE maintained its energy and efficiency, in spite of internal and external resistance?

To stay alive, a movement needs two things: energy and structure. The structure derives from analysis: it aims to break strategy down into tasks, direct energy towards these tasks and evaluate results in order to update the strategy. The energy comes from emotions. No matter how rational the strategy is, people must *feel like moving*, especially when all movement seems blocked.

Most social movements are born of anger. Anger is a crucial political emotion, as it is 'loaded with information and energy'.[21] Its healthy root is care, including self-care. We get angry because our needs are not met, or because someone destroys something that we value. Berlin's tenants were angry because they feared losing their freedom – either by losing their home, or by spending a disproportionate amount of their salary on rent.

DWE provided a structure that channelled people's anger into a legal form: the right to socialisation as inscribed in Article 15. Because this form was partially empty, DWE used the energy of

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anger to build a campaign that fills Article 15 with meaning. In this way, DWE mobilised people's righteous anger to reclaim a constitutional right. Because anger doesn't need to break the law – it can also renew it.

Somewhere in this process, anger transforms into joy. A. tells me she learned this from Brazil's Landless Workers' Movement: 'You join because of what you want to change, but you stay because of how you feel.' Because of the way A.'s laughter ripples through what is technically a research interview, I can *feel* that she means it.

Born in Brazil, A. joined DWE through the 'Jumpstart' working group. She then realised that many of the tenants do not speak German and, as migrants, would have no right to vote in the DWE referendum. For them, A. launched 'Right to the City', an English-speaking working group within DWE. She also brought *mística* to DWE: a procedure that is indeed somewhat mystical, which has become an essential element of DWE's alchemy of emotions.[22]

What fruit would you be, if you were a fruit? As a lemon, I, too, take pleasure in producing raw facial expressions. That's why I can't help but laugh when A. tells me about the time she first proposed to some 'serious' German activists working on the law that each work meeting could start with a question like that, or perhaps a reading from a poem, or singing a song. It allows people to connect to their feelings, and to one another, before moving on to a 'technical' working agenda. Before you are an activist, you are a person with a soul.

Starting with the Right to the City working group, a sense of audacious playfulness has gradually disseminated throughout the movement. Nearly all of DWE's 'serious' public events and political hearings are now accompanied by something light and joyful, like performances by the official DWE cheerleading squad, or an 'expropriation fashion show': haute couture in yellow and purple. 'At first, everyone was asking, "What does it all have to do with expropriation?" I say, "Nothing and everything,"' laughs A., 'because there will be no expropriation without a strong community.'

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DWE's dual organising principle – that of community-building, and that of legal and procedural push – was already present in the merger of the legal-oriented 'socialisation' working group with the neighbourhood-activating 'Jumpstart'. The development of the movement's organisational structure (Figure 3.7) further reflects this logic. Parallel to the working groups, there are fourteen '*Kiezteams*', neighbourhood units focused on the local community. When making decisions, DWE relies on a mixture of direct and representative democracy. Working groups and *Kiezteams* send their representatives to the 'Coordination Circle' (*Ko-Kreis*), a managing team that gathers input from the movement's structures and drafts strategy proposals. These proposals are discussed and voted on at the bi-weekly general assembly (*Plenum*).

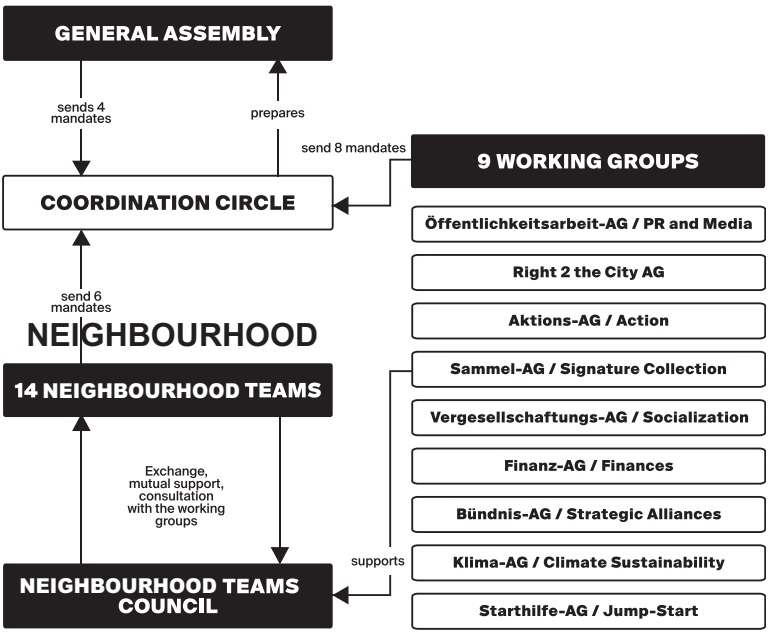


Figure 3.7 DWE's organisational structure
(*Source:* DWE)

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After DWE's General Assembly decides that DWE will organise another referendum, I ask activists how they feel about it, looking back on the huge effort they put into organising the first one. Their responses are mostly stories of joyful persistence. T.'s eyes sparkle when he recalls how, the first time he was hanging out posters, he knocked over the glue bucket and had to scrape all the glue off the pavement with his bare hands. K. got anxious when, after knocking on a stranger's door for the very first time, he was shouted at and accused of being a Communist – but the next person offered him tea and biscuits. A. tells me, somewhat apologetically, that she is 'almost happy' at the thought of doing it all over again.

7

The Berliner Albert Einstein voted 'Yes' in the expropriation referendum. The physicist was a vocal supporter of the 1926 referendum to expropriate the property of the former ruling houses without monetary compensation (Figure 3.8). The petition for the referendum (*Volksbegehren*) was organised jointly by



Figure 3.8 Poster for the 1926 referendum to expropriate the property of the former ruling houses (Translation: "Not a penny for the princes! Let them apply for unemployment benefits!")
(*Source:* Wikipedia/Creative Commons)

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the Social Democrats (SPD) and the Communist Party (KPD), but support was unexpectedly high in the stronghold regions of the liberal and centrist parties. More than 12.5 million people signed the petition.

The principle of lobbying existed long before the term was invented. The wealthy use their wealth to secure support from the politics. In 1926, an association of former princes (*Vereinigung Deutscher Hofkammern*) allied with the conservative parties and launched an aggressive campaign to counter the expropriation referendum. The lobbyists spread misinformation, claiming that the referendum wanted to abolish private property altogether rather than curb aristocratic wealth. President Paul von Hindenburg abandoned all pretence of political neutrality: the official anti-referendum posters quoted his words describing expropriation as 'gross ingratitude' (*groben Undank*) to the monarchy.

Arguing that the expropriation of princes would require an amendment to the Constitution, President von Hindenburg changed the criteria for winning the referendum from a simple majority to a minimum 50 per cent voter turnout. Was this move legally justified? As usual with the law, there were valid arguments for and against. Perhaps if the initiative had called for socialisation (the idea was already present in Article 156 of the Weimar Constitution) rather than expropriation, it would have been possible to win through a simple majority.

In the expropriation referendum Einstein supported, more than 14 million people (96 per cent of all the referendum participants) voted in favour of expropriation. But the turnout was only 40 per cent – very high, considering the intense agitation for a boycott, but not high enough. Because of the additional legal hurdle introduced by the president, the referendum failed.

Reader, if you doubt whether DWE's project of the socialisation of housing will ever be realised, you are in the right place. This is the frontier of political realism. Can *demokratia* – the power of the people – still win out over the power of the wealthy? I honestly don't know. As a scholar, I have good reason to be sceptical. There is a lot of rigorous research that shows how

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effectively a wealthy few have harnessed the law to hijack the system of representative democracy, and how deeply their power advantage is ingrained in the system's self-perpetuating logic.[23]

As an activist, I believe that *believing in change* makes change possible. And as a scholar-activist, I am in the business of learning, with and from the movement that has visibly shifted the frontier of political realism, making the previously impossible real. And I have learned that in order to gain more power, you must first become aware of the power you already have – and use it.

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