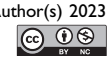
Original Research Article

EJPT

European Journal of Political Theory
1–22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Expropriation as a measure of corporate reform: Learning from the Berlin initiative

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Abstract

A citizens' movement in Berlin advocates for the expropriation of housing corporations and has won a significant majority in a popular referendum in September 2021. Building on this proposal, this paper develops a general account of expropriation as a measure for corporate reform and thereby contributes to the ongoing debate on the democratic accountability of business corporations. It argues that expropriation is a valuable tool for intervention in a dire situation in some economic sector to enable a re-structuring of the governance of the assets in question. Compared with other tools available, expropriation is a more forward-looking, genuinely political measure that does not depend on the legal assignment of guilt but rather proceeds in a pragmatic and problem-oriented manner. It also allows us to reconsider in how far the market mechanism should be employed in the administration of assets. Objections from private property rights against expropriation fail as corporations generally are privileged, quasi-public institutions that can justifiably be subject to democratic interventions. Expropriation is thus an important addition to the arsenal of corporate reform proposals, especially for those concerned with a broad democratization of the corporation.

Keywords

Expropriation, business corporations, corporate accountability, corporate reform, workplace democracy, economic democracy

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Expropriations[1] are regular occurrences in democratic states. When building roads or establishing mining operations, land owners are often expropriated with compensation but without a choice. Some of these expropriations are strongly contested, for example, when they are undertaken to gain access to fossil fuels (Douglas, 2022; Pieper, 2022). Recently, another type of expropriation has been the subject of intense debate in Germany. A citizens' movement in Berlin advocates for the expropriation of private housing corporations and has won a majority of 59% in a popular referendum in September 2021. While expropriation as a means to tackle problems with business corporations has thus enjoyed somewhat of a resurgence in the political landscape, political philosophy has been fairly quiet on it (the only recent contribution is on the use of the term in Marx: Blumenfeld, 2023). Meanwhile, the problems with business corporations do not seem to be getting any fewer and the corporate reform proposals coming out of academia have not exactly enjoyed widespread public appraisal. Corporations evade regulation and exert disproportionate influence over local communities and entire societies. They constitute unjustifiable hierarchies and hold immense amounts of power. Although the literature on these topics is alive and well in legal theory (Lund and Pollman, 2021), business ethics (Hussain and Moriarty, 2018; Scherer and Palazzo, 2011) and political philosophy (Anderson, 2017; González-Ricoy, 2022), none of the prevalent proposals (e.g. Corneo, 2019; Ferreras, 2017; Greenfield, 2008; Hsieh, 2009; Scherer et al., 2013) have gone anywhere in the political process. For example, no progress has been made in granting decision-making rights beyond shareholders anywhere. The most advanced regulation is still the German co-determination system established in the 1950s. No proposal from the academy has found its way as far into the political process as the expropriation movement has. Given this constellation, it seems justified to inquire whether there is anything to learn for theory from practice.

In this paper, I will distil the most important points from the Berlin expropriation proposal into a general expropriation framework as an addition to our arsenal of corporate reform. In developing this account, I argue that current mechanisms for holding corporations accountable rely on judicial proceedings and are therefore too focused on determining guilt and responsibility to make them adequate tools for pragmatic reform. Proposals for reformed corporate governance on the other hand have no mechanism to gain access to specific assets. They are mainly focused on changing general regulation, therefore being unable to tackle problems in specific parts of the economy. Expropriation stands between these two tools – corporate reform and legal prosecution – and gives us a mechanism to gain access to assets that are currently not serving social goals. It is thus a valuable means to realizing reforms regarding how specific assets are governed. It is not tied to any specific reform of entire governance systems but rather enables holding specific corporations accountable by changing future ways of governing their assets.

The paper proceeds as follows. First, I briefly lay out the rationale for reforming business corporations and survey the existing institutional proposals for doing so. Second, I outline the Berlin expropriation initiative and the institutional reform proposal they are championing. With its key points in mind, I will, third, construct the general framework for expropriation measures as a tool for corporate reform. I then show, fourth, why and

how it makes an important innovation in the literature on corporate reform. Fifth and finally, I consider the justificatory framework behind the proposal and engage with a central objection against expropriation, namely the view that it constitutes an undue violation of private property rights before concluding with some general remarks regarding the radical nature of this proposal and practical obstacles.

Reforming corporations

The problems with business corporations are numerous. At the tip of the iceberg sit criminal corporate actions like the Enron or Wirecard accounting scandals, the Volkswagen emissions fraud or the BP oil spill. Even where corporations act within the law, there are significant concerns regarding the environment, especially pollution and contributions to global warming, political concerns with lobbying, corporate control over political speech and concerns about how corporations treat those they are contracting with, their workers and suppliers, for example. Broadly speaking, proposals for corporate reform aim to reduce the number and severity of these instances and bring corporations better in line with social goals. The standard way to achieve this is increased regulation. A more comprehensive set of prescribed and banned behaviours might put business corporations on the right track. At the same time, we might also want to increase corporate accountability (Greenfield, 2008; Hussain and Moriarty, 2018; Pollman, 2019; Scherer and Palazzo, 2007). That is, we might want to amplify the mechanisms by which citizens and the state can hold corporations accountable for their actions. Doing so could allow us to more reliably secure that corporations in fact adhere to increased regulation and punish them adequately for instances where they do not. Additionally, where holding accountable comes with fines, this also provides financial incentives for corporations to align their behaviour with social norms. For cases in which regulation has not yet been passed or where it is difficult to regulate, such mechanisms could incentivize socially acceptable behaviour even where certain actions are not expressly forbidden. Mechanisms here include the introduction of new corporate forms like 'profit-with-purpose' corporations (Levillain and Segrestin, 2019) or novel mechanisms for the evaluation of corporate performance like a social audit (Claassen, 2021) or a peer review mechanism (Simon, 2019).

The most comprehensive proposals for increasing corporate accountability advocate for the genuine democratization of business corporations. By vastly increasing the degree to which non-shareholders can determine the course of the corporation, advocates hope to prevent corporate wrongdoings reliably (Scherer et al., 2013). Workplace democrats further criticize the extent to which corporate hierarchies violate basic democratic commitments to equality and autonomy (Frega et al., 2019). Corporations are organized as top–down hierarchies in which employees are at the mercy of their employers and have little to no democratic rights. Instead, most legal constituencies give the primary decision-making rights to shareholders who appoint the top executives of the corporation who in turn wield power over the rest of the employees (Kraakman et al., 2017). Elizabeth Anderson has called this an instance of 'private government' and criticizes three main features (Anderson, 2017): Superiors are unilateral rule-makers not bound to a rule of

law. Their subordinates cannot hold them accountable by any means as there are neither elections nor complaint procedures. Workers have no right to be heard in any matter concerning their work lives.

To rectify these issues, academics have proposed a number of possible corporate reforms. Some suggest to change who owns corporate shares to alter the allocation of decision-making power. Property-owning democracy, for example, is based on the idea that all individuals should own shares to have some say and some material independence (Hsieh, 2009; O'Neill, 2009). Public ownership models on the other hand advocate for making state institutions the shareholders of business corporations (Corneo, 2019). Supposedly, this would put corporations more directly under democratic government as the state institutions are themselves governed democratically. Other strategies for reforming corporations focus more on the rules by which decision-making rights in corporations are allocated. Instead of only empowering shareholders, they argue that other constituencies, workers especially, should also be granted a voice. Isabelle Ferreras has, for example, called for a bicameral model of corporate governance with separate chambers for workers and shareholders (Ferreras, 2017).

Not one of these proposals has had any significant influence on the real problems with business corporations. Neither the tools for corporate alignment with social goals nor the democratization of corporate government has made substantial progress. The most promising regulation regarding accountability is probably the European Union's draft of a corporate sustainability and due diligence directive (Ford et al., 2022). Some countries, France, for example, have passed legislation enabling the creation of purpose corporations (Rock, 2021). Beyond that, there have been regulations for distinct areas of corporate activity like the Basel III framework for banking or the General Data Protection Regulation (GDPR) regarding online privacy, but if they can be called successful at all, that success was only local regulatory success and not a general increase in corporate accountability. From this purely pragmatic perspective alone, it thus seems worthwhile to look at proposals that have made more headway in their realization, like the Berlin expropriation movement. Although this will surely not answer the question of how to gain the political power required for solving all kinds of political problems with corporations, I argue that expropriation generally is a valuable and relatively accessible means to gain access to corporate assets in this process. I further suggest that expropriation proposals not only are more easily realized because of their legal structure but also have significant advantages on a theoretical level. But before I delve deeper into that claim, let me first introduce the movement and my generalized proposal.

The Berlin proposal

There is a movement in Berlin campaigning for the expropriation of large private housing corporations, called *Deutsche Wohnen & Co. enteignen*. In September 2021, it won a public referendum on the issue with over 59% of votes.[2] Because I will build upon the core claims of this movement, let me briefly introduce it before I distil a general scheme for corporate expropriation from it in the next section. The movement started out in 2018 and is not formally affiliated with any political party or organization. It is

organized in a grassroots manner with its highest deciding body being a monthly plenum. Besides this body, the initiative is organized in neighbourhood groups (*Kiezteams*) and seven working groups focusing on topics like public relations or events. In terms of finances, the campaign is entirely reliant on donations and all members work on a voluntary basis. Although starting out in Berlin, there is now also a group championing a similar proposal in Hamburg.

The goal of the campaign is to expropriate all private housing corporations with more than 3000 properties in Berlin via a law passed by the Berlin senate. To reach that goal, the initiative used a mechanism of direct democracy in the Berlin constitution.[3] It specifies a three-step process at the end of which stands a public referendum on the proposal in question. Proposals can either be non-binding, merely calling upon the senate to design a law, or binding, having a concrete law as their object that is passed directly if the referendum succeeds. Out of doubts over the volunteers' ability to draft an impervious law on expropriation that would survive a challenge in constitutional court, the initiative decided to opt for the non-binding referendum. In June 2021, the initiative cleared the last hurdle for the referendum, and the referendum took place parallel to other elections on the 26th of September. It was approved by 59.1% of voters. Subsequently, the then-governing coalition led by the Social Democrats (SPD) installed a commission of experts to examine the legal feasibility of expropriation. This commission has since published its final report and affirmed the feasibility and legality of expropriation as advocated by the initiative (Expertenkommission zum Volksentscheid, 2023). The, as of July 2023, current governing coalition led by the Christian Democrats (CDU) has stated that they will not proceed with expropriation but instead first pass a law for a comprehensive framework for expropriation to further secure the legality of subsequent measures. Given the well-established hostility of the Christian Democrats to expropriation, it remains highly doubtful whether they will actually pursue this proposal further. Meanwhile, the initiative is continuing its campaign and threatens to push for another referendum, this time binding.

The exact content of the proposal is the following. All privately held, profit-oriented housing corporations that own more than 3000 properties in Berlin shall be expropriated. They shall be reimbursed for this act, as the law requires, but the compensation shall be below current market value as the current state of the market is assumed to be the product of illegitimate practices by those same corporations, allegedly leaving apartments vacant for strategic reasons, driving out tenants through harassment and increasing rents by exorbitant amounts. Their properties shall be transferred into the ownership of a public institution (*Anstalt öffentlichen Rechts*) that is to be founded for this purpose. In its statute, it shall include a provision that prohibits the sale of its properties in perpetuity. This institution shall then be governed by a council consisting of representatives of tenants, employees of the institution, members of the senate and elected members from the city's people in equal numbers.[4]

This concrete proposal rests on a number of contingencies: It uses specifically German legal idiosyncrasies, like the constitutional definitions of expropriation and socialization. It is focused on the concrete shape of the Berlin housing market, that is, predominantly rent-based with a prevalence of private institutional landlords, to solve a very concrete

issue, namely a lack of affordable housing. Despite these specifics, I want to argue that it is both possible and promising to distil a general framework of corporate expropriation from the referendum. As I have stated above, I think a general expropriation framework will fill some holes that present proposals for corporate reform leave.

A general expropriation model

From this very specific reform proposal, I suggest we can distil a blueprint for corporate reform through expropriation generally. I will now first establish the general features of an expropriation framework and then elaborate on the specific advantages of such a proposal and how it improves upon three dimensions neglected by existing reform proposals: direct political intervention where corporate control becomes harmful, the degree to which the market mechanism is used and feasibility. Finally, I will more explicitly provide justifications for such a measure.

My proposal for expropriation as a policy for corporate reform is best characterized as the forced gaining of access to specific assets by the political community. The core rationale of expropriation is that the private corporate ownership of a certain group of assets has had deleterious consequences for society broadly. To remedy the material or immaterial harm of corporate ownership, the assets in question are supposed to be governed by a different institution and in a different manner. The corporate owners should be compensated for this taking with an adequate amount. This can, but does not have to, be the current market value of the assets.[5] I will now go through the three core features of this proposal: the assets to be expropriated, the expropriation law and the post-expropriation institution.

At the heart of the measure is the identification of assets that should be the target of expropriation. Like the houses in the Berlin case, we have to identify the assets that we think should justifiably be removed from corporate control. What makes an asset owned by a corporation a candidate for expropriation? The deleterious consequences imposed on society justify expropriation. I have enumerated the problems with business corporations earlier. The deleterious consequences can have a material dimension when the corporation fails to give broad and affordable access to important goods or when it imposes high costs on society for private profit. Consequences can also have an immaterial dimension when the corporation fails to allow people a say where the use of goods significantly affects their interests. With this characterization, I follow the existing discussion about corporate reform that justifies intervention, for example, with reference to environmental damages caused by corporations, to corporate crime or to the authoritarian structure of workplaces (Anderson, 2017; Ramirez, 2005; Sjåfjell, 2020). I do not want to champion any specific theory of what exactly the main problems with corporations are and what exactly makes them morally objectionable. Rather, my argument for expropriation as a policy tool comes in where we have accepted that there are significant problems with corporate conduct, as is the consensus in the large body of literature that I have been referring to throughout. To counteract these kinds of harms, expropriation removes assets from the control of a private corporation whose performance has been lacking, according to whatever criteria the political community decides to employ. Examples include sustainability, legality and democracy. This approach also

has the advantage of leaving room for citizens to democratically determine themselves when corporate conduct becomes so problematic that a measure like expropriation is justified. In this paper, I will assume that corporations can be justifiably made subject to these criteria and that they can be spelled out in a coherent manner. Debates around these criteria already exist and their merit is not the focus of my discussion. I am interested in whether and how expropriation can be a means to achieve compliance with these criteria. A more detailed discussion of specific cases might reveal that some problems are more easily tackled via expropriation than others. But before we can embark on that discussion, my paper serves to first get an overview of the logic of and justification for expropriation more generally. Nevertheless, let me provide a brief overview of how expropriation relates to different kinds of problems with corporate conduct.

There are many cases in which failings in a specific area of corporate activity can be traced back to the governance of assets. I already mentioned the case of housing corporations when societies face a housing crisis. Another example is business corporations that are based on the extraction of natural resources. If an oil company persistently fails to adequately protect the environment, their licence for oil extraction or the land that their oil wells are on could be expropriated. Or if an agricultural corporation fails to take adequate care of the soil or violates environmental protection regulations, their land might be expropriated as well. But while housing, land and natural resources are the most straightforward cases, one can also think of other applications. If one was dissatisfied with how a social media corporation managed its site, expropriation would focus more on the intangible social network that they have built. Expropriation here would focus on servers, code and customer data instead of land. But not all forms of industrial production are as effectively targeted via expropriation. While a factory as a building is a relatively easy target for expropriation, the machines in it might already be harder to get a hold of as the corporation might be able to sell them to a foreign sister company and move them abroad. There is no such issue with land, housing or natural resources. Even if such machines are hard to move though, there is still the issue of securing the necessary know-how for their use. While houses and natural resources are fairly similar in how they should be used and administrated, there might be tremendous differences in procedures even between different corporations in the same sector. An expropriation policy for these types of corporations would have to be very mindful of how to transition the full industrial operation within a plant into the new institution.

But not only are some types of assets more easily transitioned into public ownership than others, with more complex corporations, it might become unclear what assets should be expropriated to solve the problems we have with them. Large multinationals like Nestlé or Unilever repeatedly come under public criticism, but this criticism cannot always be traced back to how they manage a specific asset. Similarly, we might object to how large textile manufacturers treat their suppliers in low-income countries, but it is not at all clear how that problem could be solved via expropriation. Financial corporations are perhaps the hardest to target for expropriation. If we wanted to expropriate a business corporation like BlackRock, compensation would have to be paid for their financial assets, likely at or close to market value. But that would simply result in the substitution of some financial assets with money, easily allowing BlackRock to purchase

similar assets again and come into a similar position of power. Thus, expropriation is no panacea to remedy all kinds of problems with corporations. It is a measure specifically designed to solve problems with how corporations manage distinct assets. For cases where expropriation is not an attractive way forward, other proposals might be the better solution. For financial corporations, for example, we might be better advised to enhance regulation while simultaneously trying to curb their power indirectly by establishing parallel systems (Guinan and O'Neill, 2020).

The second important feature of an expropriation policy is the law instantiating the proposal. Expropriation itself is a feature of many, although not all, legal systems (Alexander, 2006).[6] Obviously then, expropriation policies will have to be limited to countries that do have the respective legal provisions. Beyond that, the degrees of freedom that are available to the designers of an expropriation policy might vary, the most important here probably being the possibility of compensation below market value. While the Berlin movement relies on a public referendum to advance, this is not a necessary feature of an expropriation act. Expropriation is undertaken via a single law that can be passed through any channel available. Given the historic reluctance of many legislatures to push for the democratization of corporations, it is however a strategic advantage if citizen referenda can lend an issue publicity or if laws can even be passed directly via public referenda. Like expropriation law generally, public referenda are also a feature of many legal systems.[7] Beyond strategic considerations, however, there is no reason why expropriation would not be possible in a country without provisions for public referenda.

The third and final point to consider for a general framework for expropriation is the governance mechanism under which the assets in question are placed after expropriation. This point is hard to define for expropriation in general because a lot will depend on what exactly the problem with the previous kind of government was and what kinds of governance mechanisms one holds to be justifiable more generally. Some might, for example, argue that it was just the specific business corporation(s) that caused the lamentable state of the economic sector in question, while others would suggest that the problems are caused by business corporations more generally. The post-expropriation institution would then be either another business corporation or a public corporation or perhaps a public institution governed by all constituencies like the Berlin initiative envisions. Another important factor is whether one holds the governance of assets by business corporations generally to be justifiable. Some suggest that private business corporations are unjustified exercises of private government after all (Anderson, 2017; Dahl, 1977; Ferreras, 2017; Malleson, 2014). But expropriation as a means of corporate reform can be agnostic about these points. It is compatible with different post-expropriation mechanisms of governance. The main point is to gain access to the assets in question to install these government mechanisms.

This third point is also helpful to clarify the relation between nationalization and expropriation. In political philosophy, nationalization is conventionally taken to mean the takeover and subsequent administration of a business by the state (cf. Green and Robeyns, 2022; for the partially diverging legal definition, see Ruzza, 2013). Expropriation laws can be a means by which this takeover takes place. The state could

use these laws to gain access to all corporate assets and then administer them through a state-owned enterprise, a public agency or any other public institution it sees fit. But nationalization can also take place via other means. With a publicly traded company, the state could buy all (or a majority of) corporate shares on the stock market. That is to say, not all nationalization projects proceed via expropriation. And conversely, not all expropriation procedures have to put the state in charge. Of course, it is only the state that can lawfully expropriate, but, as I said above, the subsequent government mechanism is to be determined. Expropriation procedures can then more or less amount to nationalization, depending on the extent to which the state holds power after expropriation. Expropriating houses and putting them under the governance of a state agency simply amounts to a particular variant of nationalization, whereas something like the council structure that the Berlin movement envisions differs from what is conventionally understood as nationalization because the state has very little direct power.

Another related concept is socialization. In political philosophy, this term is especially prominent in Marxist theory and used to describe different kinds of broad public involvement in the provision of goods and services in the course of socialist transformation (cf. Blumenfeld, 2023; Gould, 2020). It has historical roots both directly in Marx (e.g. Marx, 1962: 791) and subsequently in German-language socialism (e.g. Korsch, 1919; Neurath, 2004: Part 4). I will not delve further into these debates and the details of this concept. For my purposes, it suffices to say that the relation between expropriation as I discuss it here and socialization is similar to that between expropriation and nationalization. Expropriation can be a means to socialization, but socialization does not have to rely on expropriation. Revolutionary communists might, for example, argue that the socialist movement should not rely on the bourgeois state and its laws but rather take what is to be socialized in the course of violent revolution. Conversely, expropriation as I present it here does amount to socialization where the subsequent governance mechanism implies the broader involvement of the public. But, again, my aim here is not to defend any of these mechanisms. Instead, I defend expropriation as a valuable tool for corporate reform. Within German law, socialization is a distinct concept (Röhner, 2020). Insofar as that is relevant, I will expand on it further when discussing the justification for expropriation below.

The advantages of expropriation

There are three advantages to expropriation as a tool for corporate reform. First and most importantly, expropriation allows for direct political intervention in specific areas where corporate control over assets has caused harm to society. It is a political measure that enables access to those assets in concrete cases and allows us to transform how they are governed and thus to better align them with broad social goals. Let me elaborate upon this point by contrasting expropriation with ways in which we currently try to achieve this. Corporations are held accountable for their alignment with social goals in two manners. First, they are supposed to be reined in via specific regulation and oversight. Societies specify regulatory norms and supervise whether corporations obey these norms. If they do not, they are prosecuted. This mechanism is used, for example,

to control corporation's treatment of workers through labour law and health and safety norms and of the environment through environmental protection, as well as accountability to the general political community through tax law. Second, there are general norms for the conduct of corporate officials, especially the duty of care and the duty of obedience (Greenfield, 2008: chapter 4; Pollman, 2018). These specify that corporate officials in their actions have to exercise due care and cannot engage in unlawful behaviour. These duties are enforceable on the one hand by the shareholders. They can sue in court when they suspect that corporate officials have not exercised due care in their business decisions. On the other hand, the state generally can prosecute criminal behaviour and, at least theoretically, prosecute a corporation for breaking its corporate charter. After all, the charter that founds the corporation in any legal system only allows it to act for legal purposes.

Both of these ways of holding corporations accountable are strictly legal procedures that operate under high standards for assigning responsibility. Their goal is to assign guilt and punishment for past actions. But there are situations in which that is not at all the biggest priority. In dire situations, it is typically the first priority to secure the continued functioning of whatever system is involved. Think of the global financial crisis, for example. The first priority in that situation was to ensure the continued operation of the financial system, not to find out who was legally culpable for causing it. Similarly, a housing crisis first and foremost calls for pragmatic solutions to rising rents, predatory practices and bad housing conditions. While legal prosecution typically tries to assign causal responsibility in the past, social problems are better solved by making plans and determining responsibilities for the future (cf. for legal responsibility Hart and Honoré, 1985; for forward- and backward-looking senses of responsibility, see Talbert, 2022; for an interesting comparison of how both are employed in prosecuting corporations, see Bziuk, 2022). It is these situations in which expropriation should be employed. Expropriation is a way to gain access to the assets under corporate control in a dire situation and employ them in line with social goals to solve the urgent problem at hand. As such, expropriation should not be seen as punishment. Expropriating a corporation does not necessarily mean faulting them for the state of the economic sector in question. In fact, expropriation even comes with compensation for the target corporation, something that does not happen when the state seizes evidence in criminal investigations.

Rather, expropriation is best construed as a way of policy-making. It is a response to the fact that the previously employed policy of letting a corporation govern certain assets has failed. That does not necessarily imply that the failure was the corporation's fault. It could also be the case that incentives for governing assets are necessarily misaligned, for example, because externalities are involved that are hard to measure or because there are network effects. Because of the failure of the previous policy, a political decision is made to reconfigure the governance of these assets to improve the situation. Expropriation is the first step in that process and gives the opportunity to put assets under new government. Because this is a political decision, it does not have to prove the guilt of the corporation to a high standard, like 'beyond reasonable doubt'. That is not what the decision is about. The fact that the situation in the economic sector in question is dire is reason enough for a government or the people directly to rethink their economic

policy. This also allows for a faster procedure. The high standards of judicial proceedings come with long processing times and ample opportunities for resourceful corporations to delay and distract. Political decisions can also be objected to, but the targets of expropriation do not have the same institutionalized powers to intervene. The logic of expropriation is thus the politicization of the very fact of corporate power over assets. It allows us to pragmatically alter the structure of an economic sector and improve the accountability of governance over the assets in question in cases where current, corporate governance has failed to achieve the envisioned goals. While judicial procedures can be used to hold accountable in the sense of determining guilt and responsibility, expropriation can be used to improve alignment with social goals by reforming who governs the assets in question. In that sense, judicial procedures are backward-looking to determine past faults, while expropriation is forward-looking to improve accountability in the future.

Even though expropriation is not explicitly aimed at punishing corporations per se, the threat of expropriation might well have disciplining effects. While the internal logic of expropriation differs from legal prosecution and punishment, both might appear fairly similar from the perspective of business corporations. The threat of expropriation is something corporations will have to take into account once it has become an available policy tool. This threat alone might sometimes align corporate behaviour with social goals, just as the threats of legal prosecution and increased regulation sometimes seem to deter corporations from committing crimes (Schell-Busey et al., 2016). But deterrence alone is not the distinctive feature of expropriation. Legal prosecution can already deter individuals from committing crimes, and the threat of regulation can already have a collective deterrence effect on a sector. The only advantage expropriation here provides is its comparatively greater effect and its superior speed and flexibility. Expropriation is a more severe intervention than most legal fines and regulations.

Here, expropriation touches upon an existing debate about the respective merits of privatization and nationalization (cf. the contributions in Schwartzberg and Knight, 2018). Of course, I cannot recite this debate in its entirety here, but let me briefly lay out how I think it relates to my argument about expropriation. Very generally, in the 1980s, privatization was seen as a political measure justified similarly to how I justify expropriation. State-owned enterprises and other public institutions were failing their tasks and not fulfilling the goals that the state had given them (Heath and Norman, 2004: 256ff.). As citizens were apparently unable to hold the relevant officials accountable within the existing structures, the idea of privatization was to task the private sector with similar goals and to achieve accountability via the market mechanism and the empowerment of shareholders in corporate governance. The business corporations performing these services would strive to do so at low cost and high quality to remain profitable. But if that was the rationale for privatization about 50 years ago, is it not ignorant to now open the doors for more state involvement to cure the very same problems that privatization was supposed to solve? The first thing to note in response to this objection is that the experience of privatization has not been uniformly positive (cf. for an empirical overview for the USA: Johnston and Romzek, 2010). As an empirical fact, it does not hold true that privatization always improves performance. In some cases, other forms of governance might be

superior. Secondly, privatization was mainly employed against state-owned enterprises and traditional government departments. However, these are not the only institutional configurations available after expropriation. As I have emphasized earlier, expropriation as a policy is open to different governance configurations. Here, it will be important to think carefully about what the best option in any given case is. For housing, it might turn out that more direct decision-making rights for tenants are important for accountability. In other cases, such rights might be less important and centralized bureaucrats can wield the majority of decision-making power. In some cases, it might turn out that it was merely contingent malpractice on the part of a specific business corporation that caused the grievances and that the best post-expropriation framework is a different private business corporation. I can remain agnostic about what is the correct path forward in any specific case. Expropriation remains an important tool to gain access to implement any of these reforms. Finally, the merits of privatization also have to be weighed against democratic arguments. Some authors argue that the privatization of some important functions is objectionable for democratic reasons (Cordelli, 2020). Seen in this light, some of the historical examples of privatization might also be objectionable. Expropriation represents one possible way to remedy these objectionable restructurings and pave the way towards more democratic institutions.

Overall then, the privatizations of the 1980s are by no means unambiguous success stories. Some have failed on purely instrumental metrics, while others might be objectionable for democratic reasons. Additionally, expropriation is not necessarily predisposed to recreate the same problems that privatization was supposed to solve as there is ample room for the design of different governance mechanisms ex post. Expropriation policies will have to carefully consider this empirical evidence of nationalization and privatization, but there is no general argument against expropriation here.

The second advantage of expropriation is that it is an accessible instrument for corporate reform (cf. for accessibility as a form of feasibility Cohen, 2009: 59; Gilabert and Lawford-Smith, 2012). Unlike other proposals for increased corporate accountability, the Berlin case is clear empirical evidence that social movements can successfully mobilize support for expropriation. While the legal situation, both regarding expropriations and regarding direct democracy, varies widely between states, they are generally not idiosyncratic measures that exist in Germany only (Alexander, 2006; IDEA, n.d.). One reason for this accessibility might be that because any act of expropriation will rely on a single law being passed, the object for advocacy is clearly delineated. There is no need to campaign for changes in multiple areas of corporate regulation with complicated interrelations, only for one expropriation law that focuses on a single group of assets. Public debate can therefore remain focused on that specific issue. But improved accessibility might also just be the result of expropriation focusing on sectors where the situation is especially salient. In cases like the Berlin housing market, knowledge about the severity of the defects is widespread because people either are directly affected themselves or know people who are.

The accessibility advantage makes the expropriation framework an especially valuable addition to proposals for corporate democratization specifically. The question of how to transition existing corporations into the ownership of a wider group has received some attention in the literature. Generally, proponents of the democratization of corporations

envision changing general regulation to bring this about (Anderson, 2017; Ferreras, 2017). Some have discussed other transition mechanisms like mandatory worker buyout schemes, for example Corneo (2019) and Malleson (2014). Both of these strategies depend on passing general legislation on a national level at least. Given that one of the general concerns in this debate is the power that business corporations wield in the political sphere, this should not be all theorists say about democratization. If a core element of the diagnosis is the massive power that corporations hold, any proposed solution should explain how it can come about despite and against that power. This sentiment is echoed by recent realist contributions in political theory more generally. They emphasize that proposals for political reform should not remain quiet on how they can compete with and succeed against entrenched interests and established power (Bagg, 2021; Phulwani, 2016). The expropriation proposal does better on this metric, because it points out a type of reform that can be achieved against entrenched interests. Expropriation is more easily achieved, because it focuses on a single law and it gives an attractive target for mobilization. A comparison between general corporate law reform and the Berlin expropriation movement lends plausibility to the idea that people are more easily mobilized for a tangible reform regarding assets that directly affect them than for abstract changes in corporate law. Additionally, expropriation curbs corporate power concretely via removing assets from corporations that directly lend them power over people.

Third and finally, the proposal has the potential to free the use of formerly corporate assets from the market. While the business corporation as such is intricately linked to market-based coordination, reform via expropriation does not have to take over this connection. After expropriation, assets do not have to be governed in the market. One of the explicit goals of the Berlin campaign is to remove the housing in question from the market to ensure affordable rents.[8] This distinguishes the expropriation proposal from many corporate reform proposals that either are uncritically reliant on the market or reject it for all occasions. There is a wealth of critiques of the market as in itself dominating and anti-democratic (Gourevitch, 2013; O'Shea, 2020; Roberts, 2017; Vrousalis, 2021) as well as critiques of the standard economic justifications of the market (Hausman, 1992: chapter 4). But this does not seem to have discouraged the relatively uncritical endorsement of the core market mechanisms by others (Heath, 2014). This situation is mirrored in the existing literature on corporate reform when most authors focus on arguing why markets are either beneficial or detrimental for all types of corporations. Authors find support or rejection for their proposals in some fundamental convictions about the workings of the market mechanism. However, as this debate has been going on for decades and a final verdict does not seem to be forthcoming, it might be worthwhile to think about more parsimonious arguments regarding the market mechanism. Perhaps, we should think about market organization on a case-by-case basis so that we only have to make concrete judgements about a specific instance of a market instead of some fundamental judgements about markets as such. Expropriation enables both the possibility to distance the future government of assets from the market and the continued government of assets by market criteria.

Overall then, a general expropriation framework taking up the core features of the Berlin proposal is well able to fill some of the holes that existing measures for corporate

reform leave. I shall emphasize again though that this does not mean that I take expropriation to be the panacea of corporate reform. Besides practical issues regarding the choice of goods that are to be expropriated and the determination of a suitable post-expropriation governance mechanism, there are also other important normative concerns when it comes to the legitimacy of expropriation. As some readers will have been lamenting throughout their reading, expropriation of course points right at the heart of liberal capitalism, the guarantee of private property. Those readers perhaps associate expropriation not with a citizens' movement from Berlin but with reckless state-organized robbery conducted by one-man or one-party dictatorships under the eyes of corrupt courts and defunct legal systems. In my final section, I therefore want to delve deeper into the justification for expropriation. I will elaborate upon the substantial arguments for expropriation as well as its general democratic credentials and then engage in further detail with the objection from private property rights.

Justifying expropriation

Expropriation surely is a controversial policy proposal. Opponents of the Berlin proposal have criticized it as ruinous for the Berlin economy, a step back into socialist GDR politics and the first sign of approaching communism. Let me therefore now elaborate on the justificatory structure behind the proposal to make more plausible why expropriation is also a sensible policy, morally speaking. What makes expropriation legitimate? I will provide one general argument as well as three points from a procedural democratic perspective. Lastly, I will defend expropriation against objections from the right to private property.

One way to justify expropriation argues from the public duties of corporations. Some business corporations fail society to such an extent that their licences to operate should be revoked, and expropriation is one way of doing so. In that sense, expropriation is the political analogue to the legal instrument of the 'corporate death penalty' that penalizes corporate misbehaviour either with fines large enough to drive the corporation into bankruptcy or directly with a withdrawal of licence (Greenfield, 2008: chapter 4; Hulpke, 2017; Ramirez, 2005). This view presupposes that corporations are not merely creatures of private contract (Ciepley, 2013; for an overview, see Claassen, 2023). As is evident from the legal and historical bases of the corporate form, business corporations enjoy privileges granted by the state that cannot be acquired elsewhere. As opposed to partnerships, corporations enjoy full legal personality with limited liability, entity shielding and asset lock-in. These help to significantly lower capital costs and establish the corporation's own, separate property that can survive changes in management and ownership. The extent of these privileges is further unobtainable via private law; they can only be gained via state grant. Because they are set up by the state and for the benefit of the public, corporations should thus be accountable to state and society. They do not represent exercises of private autonomy but public interventions into the economic sphere. Because corporations are public or political in that sense, they should be held to higher standards than private individuals and subject to more regulatory intervention.

Historically, these privileges are by no means surprising. Modern corporations have their origins in the colonial Dutch and British East India Companies of the 17th century. To finance their colonial expeditions, both countries endowed their companies with similar privileges. For a long time, the founding of corporations still required explicit state grant by crown or parliament. Today however, a mere administrative act suffices. This fact has led some, notably Abraham Singer, to argue that understanding corporations as entities by grant is mistaken (Singer, 2018). Instead, he argues that corporations simply form part of the basic economic infrastructure, like markets, for example. Nevertheless, Singer too asserts significant public responsibilities for corporations but derives them by integrating justice and efficiency concerns inherent to the corporate form. If we accept that business corporations have public duties and responsibilities along either of these lines and we find that a specific corporation is failing its public purpose for which it was imbued with privileges, this would give us one reason for reform. And expropriation represents one way for such a reform that effectively curbs the current operations of the corporation. It follows the rationale of revoking the corporate licence to operate by seizing current corporate assets and thus putting a stop to the flawed dealings of the corporation.

Besides this reason that motivates expropriation at the outset, there is more to say about its legitimacy by procedure. Expropriation gains legitimacy first from the democratic justification of the law in general. In a democratic society, that law is not the result of a dictatorial regime imposing its will but the result of a democratic process. If passed by a parliament or the like, expropriation has the same procedural legitimacy as other laws and regulations. If exercised through direct democracy, it has whatever improved or lessened democratic legitimacy one associates with that procedure. One might say it better represents the will of the people because of their direct involvement, or one might say it is more prone to populist takeovers, less conducive to genuine deliberation and therefore less legitimate.

But democratic legitimacy for expropriation does not only come from the reasons for and the method of expropriation. It also derives from the institutional scheme through which the assets will be governed afterwards. This makes expropriation with subsequent democratic control over the assets particularly well legitimated. After all, it improves the ability of citizens to determine the course of their lives by granting them a voice in the decisions that most affect them. Now, the ex-post institution does disenfranchise shareholders, but that should not worry us. After all, their claim to a say is only derived from their financial involvement with the company. They do not own the corporation so there is no special claim here either (Ciepley, 2019; Ireland, 1996; Robé, 2011). After proper compensation, shareholders will not have that stake anymore but will retain their financial means. If they are otherwise involved with the corporation after expropriation, they will be granted decision-making rights because of that.

Despite these democratic justifications, there is nevertheless significant and justified concern because expropriation constitutes a violation of property rights. The corporate owners of the assets are forced to give up control and sell for a fixed price. Now, the severity and novelty of such a violation should not be exaggerated. Property rights in democratic societies are never absolute; they are always spelled out through limitations

and regulations in law. Additionally, expropriation is a constant occurrence and legal given in many democratic states (Alexander, 2006). Nevertheless, the objection from private property deserves attention if I want to make expropriation a plausible candidate in corporate reform. My short rebuttal will be based on two points. First, building on the German legal case, I want to defend the general legitimacy of expropriation as a means of economic policy. Second, I will consider the normative status of the corporation specifically to argue that there are ontological and conceptual reasons that weaken a corporation's claim to property rights.

Expropriation is generally understood purely as an infringement of an individual's right to private property. However, the German constitution offers an opportunity to develop a different understanding. Article 15 reads as follows:

> Land, natural resources, and means of production can, for the purpose of socialization, be transitioned into common property or other forms of social economy, through a law that defines the form and extent of compensation. For compensation, article 14, paragraph 3, sentences 3 and 4 apply.

Unlike the folk understanding of expropriation and the corresponding article 14 of the German constitution, this article does not talk of the taking of property from individuals. Rather, it talks about the establishment of a new organizational mode of the economy (see the *locus classicus* for this position Ipsen (1952); a recent reformulation is Röhner (2020); the commission of experts on the Berlin expropriation case employs a similar if less radical interpretation; see Expertenkommission zum Volksentscheid (2023): part C). It constitutes a change in the entire framework of how property is organized in a society, a re-structuring of everybody's liberties and not an intrusion into private right (cf. for a similar if much more critical argument applied to US law: Epstein, 1985). Under this reading, article 15 offers a second and distinct way of justifying expropriation. It is based on the idea that the institution of private property is mainly a legal grant that can be altered by democratic decision-making should the demos so desire (cf. for the idea of property as an office: Katz, 2008). Expropriation is merely the use of the state's regular democratic discretion in policy-making to introduce a basic shift in the economic structure. Expropriation thus is not so much an infringement upon an individual, pre-social right but a reconfiguration in the way we distribute property rights. While even in this interpretation we cannot wholly ignore individuals' property rights and the burden that expropriation puts on them, it does shift the emphasis in the weighing of values. We are now not weighing individual property rights against state intrusion; we are considering whether basic state economic policy represents undue hardship for some.

Besides this general argument about how we should think about the justification for expropriation and socialization, there is also an important point to be made regarding the corporation as a target for expropriation specifically. After all, under my proposal it is only the corporation whose property rights will be directly infringed upon. From an ethical perspective, it is not trivial at all whether private property rights that natural persons enjoy should be extended to groups as well. There has been considerable debate around the social ontology of corporations and the question of what rights and

duties apply to them (List and Pettit, 2011; Neuhäuser, 2011). And in this debate, there are very few who advocate for the full assignment of individual rights to corporations. The values to be considered instead would have to be the rights of the individuals that form the group that is the corporation. What the impact of an expropriation on those is, is a complicated question and deserves careful attention. In the case of the Berlin proposal, for example, constituencies to be considered are the workers who are currently employed by the corporation for managing the properties and the shareholders whose shares are valued based on the economic opportunities presented by owning the housing. None of these people would however have their property rights violated. Rather, the broad economic and social consequences of expropriation would have to be considered.

Conclusion

In the present article, I have presented my general framework for expropriation as a tool in the arsenal of corporate reform. The framework proposes expropriation as a tool to gain access to important and misused assets from business corporations by compulsorily transitioning them into new ownership. I argued that such a framework fills an important gap between general corporate reform and criminal prosecution and has important advantages regarding political practice and market orientation. Furthermore, I presented justifications for expropriation from the public duties of business corporations as well as the democratic procedures through which expropriation is undertaken. Let me now end this paper by considering two further questions to provide more context and better relate the proposed measures to other types of corporate reform.

First, I would like to mention an obstacle to expropriation that so far went unmentioned: investment protection treaties. These are highly controversial bilateral treaties that protect foreign investors from all kinds of state measures that diminish the expected profits on investments undertaken (Bonnitcha et al., 2017). Several convincing critiques of this practice exist, but it is probably premature to assume that they will disappear any time soon (Kniess, 2018; Ratner, 2017). The experience of arbitrary expropriation was one of the key drivers for the creation of this regime so it seems straightforward to expect that it might also have implications for any expropriation policy. However, judgements on the consequences of the investment protection regime for expropriation are hard to make in the abstract, given that the details of the treaties vary and given that the details of concrete expropriation policies will also vary. Nevertheless, let me make some general points on the extent to which investment protection treaties are a practical obstacle to expropriation. The first thing to note is that these treaties do not protect all investors. Any one specific treaty only protects natural and legal persons from the specific countries that are parties to the contract. This is an important limitation as we can see from the Berlin case where none of the corporations to be expropriated are protected by a relevant treaty simply because they are not from a country that has such a treaty with Germany (Expertenkommission zum Volksentscheid, 2023: 106ff.). If an investment protection treaty exists and a party of the relevant nationality would be subject to expropriation, the chances of success for a complaint depend on the details of the treaty in question. Some include exceptions for social purposes that could arguably apply for expropriation

and socialization. Other treaties do not. In that case, the further question would be whether the compensation paid as part of the expropriation is sufficient. Compensation significantly below market value would probably be considered insufficient, for example. But, importantly, investment protection treaties do not protect against the taking of property per se. They are focused on appropriate compensation, not on a possible wrong that lies in the fact that investors are forced to sell. Overall then, these treaties might represent an obstacle, but a generalization is difficult given the variance between them and the variance between expropriation policies. The commission of experts for the Berlin expropriation case deems the risk from investor protection treaties low (Expertenkommission zum Volksentscheid, 2023: 106ff.), but for other cases, the risk might be higher. Given this fact, the existence of these treaties should be considered a practical obstacle of varying importance rather than a general objection to the kind of expropriation policy I defend.

Second, I want to address the question of to what extent this is a radical or utopian proposal as opposed to other schemes that might perhaps be considered more realistic. To this I can reply that the expropriation scheme I propose is not a suggestion to expropriate everything from all corporations instantaneously. The reform proposal I am arguing for does not include a perfect outcome that it works towards. It is part of an ongoing conversation about how the problems with business corporations can be remedied, but it does not take a side for any more comprehensive vision that we should work towards. In this sense, it is not radical or utopian, because it does not paint a picture of a radically different or perfectly democratic economy. But in another sense, it is radical. The proposal does constitute a significant intervention. It is very much not a policy of small steps or minor tweaks. As such, it is a measure designed for dire situations and grave ongoing problems where perhaps other measures have failed before. It is more a measure of last resort than a first step. But, given the grave problems we face, the extent to which business corporations are involved in them and the lack of progress in effectively regulating them, it is perhaps time for such a measure.

Acknowledgements

For valuable comments on previous drafts of this paper, I want to thank Barbara Bziuk, Rutger Claassen, Alex Gourevitch, Maurits de Jongh, Chi Kwok and Tully Rector. For helpful discussions, I would also like to thank audiences at the Democracy and the Corporation workshop in Utrecht, the annual conference of the Association for Social and Political Philosophy in Durham and the Utrecht Philosophy Graduate Conference.

Declaration of Conflicting Interests

The author declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The author disclosed receipt of the following financial support for the research, authorship, and/or publication of this article: This work was supported by the H2020 European Research Council (grant number 865165).

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Notes

1. I use expropriation as a catch-all term for a public appropriation of assets that does not require the owners' consent. The technical legal terms and details vary; compulsory acquisition, takings or eminent domain are also used. For the sake of brevity, I forgo closer discussion. See for example, Epstein (1985) and Ruzza (2013).
2. Where I do not say otherwise, all facts about the initiative are taken from its websites in German (https://www.dwenteignen.de/) and English (https://www.darumenteignen.de/en/).
3. §§ 59, 62, 63 of the constitution of Berlin as well as §§14–19 of the Berlin referendum law (*Abstimmungsgesetz*). Berlin both hosts the national German government as the country's capital and is a federal state (*Bundesland*) with its own constitution. National German law overrules local Berlin law, but where there are no national laws, the provinces can make their own.
4. This setup can be traced back to German socialists like Korsch (1919).
5. I will expand further on the question of compensation when discussing objections in the last section.
6. Again, for brevity, I forgo further discussion of the legal details.
7. See the database on direct democracy by the International Institute for Democracy and Electoral Assistance: https://www.idea.int/data-tools/data/direct-democracy.
8. My paper is not concerned with the plausibility of these claims about the origins of the housing crisis in Berlin. Nothing depends on their plausibility. They merely serve as an example for the kind of rationale that is served by removing assets from the market. As long as there are some assets for which market organization is not the right choice, the advantage that I suggest exists.

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