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The geographical consequences of property restitution in Germany's New Bundesländer since unification¹

MARK BLACKSELL, KARL MARTIN BORN and MICHAEL BOHLANDER

This paper is concerned with an aspect of German unification that has largely been ignored in the geographical literature: the settlement of disputes involving the ownership of land and property. The years between 1933 and 1990 in the former East Germany have been described as a gigantic, and prolonged, state sanctioned and inspired land grab, first under the National Socialist government of the Third Reich and, after 1949, by the Communist government of East Germany (JUNG and VEC 1991). During this extended period, huge amounts of land and property were confiscated by the state and either nationalised, or reallocated to new owners. Both the National Socialist and the Communist governments are viewed as having been illegal régimes by the Federal Republic and, since unification, it has been its policy to try and right the wrongs they committed. Property restitution began in what was to become the Federal Republic, though not in the Soviet occupation zone that was to become the German Democratic Republic, as early as 1945 and was to all intents and purposes complete by the time unification occurred. Nevertheless, after the fall of the Berlin Wall in 1989 it was taken for granted that the process would be extended to East Germany and that, in addition, the expropriations by the government of the German Democratic Republic would also be reversed. (MIELKE 1994)

It is important to stress that the general issue of state-inspired expropriation of assets is not one that is confined to Germany. Throughout eastern Europe, and indeed the former Soviet Union as well, the sudden switch from state-run, centrally planned economies, where the whole concept of individual, private, rights was largely an irrelevance, has made the future of private property a matter of intense public debate, with profound implications for the social and economic geography of the countries concerned. Crucially, however, it has not led immediately to the kind of widespread ownership of private property, in particular housing, that is now the norm in most societies in

Northwest Europe. Although in both urban and rural areas the role of the state has been radically altered and decisively diminished, the restitution programmes have led rather to the creation, or more accurately re-creation, of an élite land-owning class with all the associated social and economic ramifications for the nature and workings of society as a whole.

The nature of the problem

In the new Länder settling disputes over the ownership of land and property has been unusually fraught, because of the complexities surrounding the interface with first the National Socialist government of the Third Reich, and more recently the communist government of the German Democratic Republic

The high priority accorded to property restitution is illustrated by the fact that immediately after the fall of the Berlin Wall on 9 November 1989 the West German Chancellor, Helmut Kohl, and his East German counterpart, Hans Modrow, set up a working party to examine the whole question with respect to the actions of the German Democratic Republic between 1949 and 1989. The result was a joint declaration, published on 15 June 1990, on the settlement of unresolved land and property disputes (die Regelung offener Vermögensfragen), which was subsequently incorporated in full as a separate appendix in the actual Unification Treaty of 31 August 1990 and also into the East German Law of Property (MÜNCH 1992).

It is not necessary here to go into all the details of the declaration, but its key provisions are crucial for understanding what has subsequently taken place in terms of property restitution in the new Länder. Essentially, where it can be shown that people have lost title to land or property through illegal actions of the East German régime and have not been adequately compensated, they are able, within a limited time frame, to reclaim it. The declaration states that return should take precedence over the payment of damages for loss (Rückgabe vor Entschädigung),

though under certain circumstances the payment of damages will be the only way of settling the dispute. In this regard, there is specific reference to instances where there has been a change of use, such as a public road being built, when returning the land would not be a practicable and the payment of damages the only option available. There is also a separate clause, excluding any expropriations that occurred between 1945 and 1949, the period before East Germany was founded when the territory of the future state formed the Soviet Occupation Zone. This is a significant exclusion, involving large tracts of land used for military purposes. It is proposed in the declaration that the question of their return should be the subject of separate negotiations with the Soviet Union once unification has actually occurred. Although the Law of Property (§ 2 Abs. 8a VermG) excludes the restitution of properties confiscated during the Soviet occupation the subject has recently been revived with the political rehabilitation of people sentenced for so-called criminal activities under Soviet occupation.

Expropriations which occurred between 1933 and 1945, under the Third Reich, formed no part of the negotiations between Kohl and Modrow, since they were already covered by the Federal German Law of Property, which would automatically come into force in the new Länder once unification occurred. However, the principles are much the same, though in these cases where damages are payable the baseline for calculating the sums involved is the value of the property in 1933.

The actual resolution now of property restitution issues in the former East Germany is rendered exceedingly complex in practice by the overlapping web of different legal jurisdictions that have existed periodically in the course of this century. Since 1900, civil law has basically derived from the civil code (Bürgerliches

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Gesetzbuch), devised during the Second, Wilhelmine, Reich, though in the interim there have been numerous additions and modifications. Ironically, East Germany also retained the same civil code (Bürgerliches Gesetzbuch), right up until 1976, when it introduced its own civil code (Zivilgesetzbuch), which better reflected the reality of civil relationships in a communist state. After unification, the Federal law, which as far as civil matters were concerned again meant the civil code (Bürgerliches Gesetzbuch), was extended to cover the whole of the new German state, though there were numerous transitional exceptions in the new Länder. These have gradually been dropped but even so the law itself, including the Law of Property, has continued to change, through government sponsored additions and the normal process of judicial rulings. Thus, when it comes to resolving legal disputes over property restitution issues, the outcome will depend on the precise part of what is now the united Germany where the dispute occurred, and at what date it first arose, as well as the current state of the law, as interpreted by the Federal courts. It amounts to a minefield for interpretation and a potential source of virtually endless litigation, although this potential has for the most part yet to manifest itself in property restitution claims, almost certainly because most of the more difficult cases have not so far reached the courts. (HOFFMANN 1995)

The resolution of property restitution claims

To be in a position to judge the geographical significance of the whole process of property restitution since German unification, it is first essential to provide an overview of the scale of the problem and the way in which it has evolved (Fig. 1). On 30 September 1996 the various Offices for the Settlement of Disputed Property Claims right across what had been East Germany had received a total of 1,039,939 separate claims. However, to gain a more realistic picture of the true extent of what has been happening, it is crucial to distinguish between the number of separate claims lodged and the number of individual items involved, since a single formal claim can include several different properties, or other elements. Thus the number of properties encompassed by the figure for the total number of claims is actually 2,474,136 comprising more than 108,000 businesses, and more than 2.25

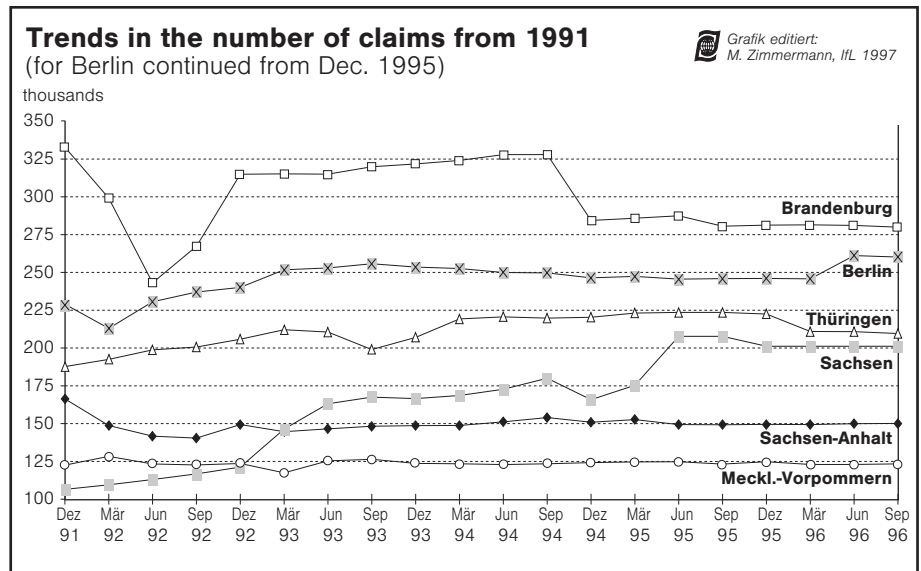


Fig. 1: Trends in the number of restitution claims (for Berlin continued from Dec. 1995) Source: Quarterly reports of the Federal Office for the Settlement of Disputed Property Claims (Bundesamt zur Regelung offener Vermögensfragen) at Berlin, 1991-1996

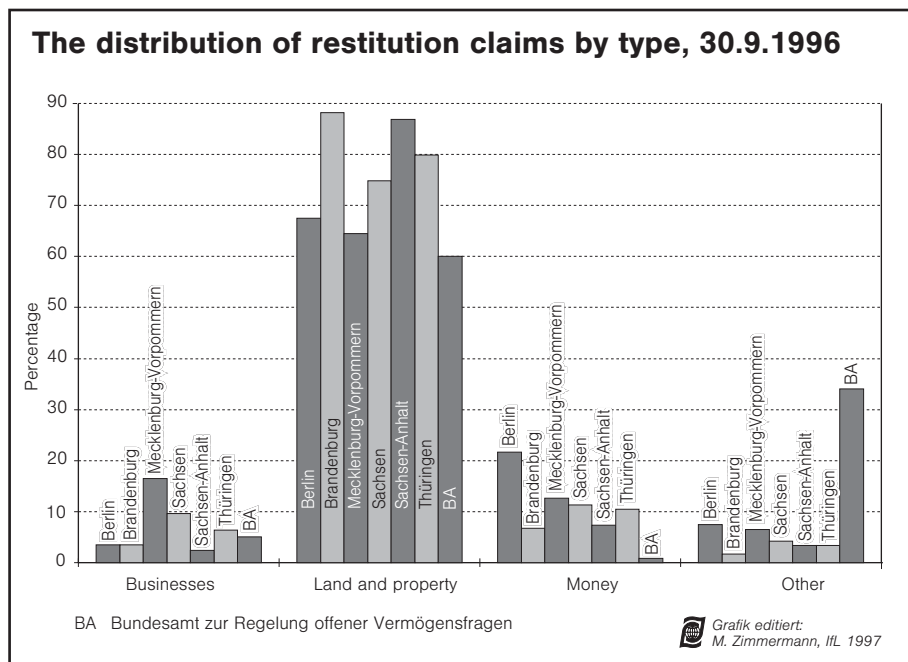
million buildings and plots of land. If one assumes, conservatively, that a minimum of 5 persons are affected for each business and a minimum of 2 persons for each building, then around 5 million people are directly involved, nearly a third of the population of the new Länder.

The most striking feature of the data in Figure 1 is the relative lack of change in the number of claims lodged since December 1991, even allowing for the apparent fluctuations in Brandenburg and Berlin. The latter are in fact a true anomaly, caused by different methods of computer-based data collection in these two areas and the subsequent standardisation of the system throughout the whole of the area of the new Länder. In reality 92 % of all claims for property restitution were registered in the first 15 months after unification. The burden that this placed on the Offices for the Settlement of Disputed Property Claims was enormous, especially in view of the fact that the offices only came into existence after 3 October 1990, with no precedents for how they should be managed and operate. Also, the huge volume of claims in their first year of operation, intimidating enough in itself, gave the impression that the final number would be even larger than in fact it is, because there was no way of knowing that the vast majority of claims would be registered so quickly.

The variations in the number of claims between the five Länder and Berlin, ranging from 123,368 in Mecklenburg-Vorpommern, to 279,967 in Brandenburg, reflect not only differences in area and

population, but also variations in the scope for actually making such claims. The attractions of Berlin, the future capital of the unified Germany, self-evidently account for the high level of interest in reclaiming property there and this interest spills over into the surrounding Land of Brandenburg, where cities like Potsdam are effectively part of the Berlin conurbation. Sachsen forms the core of Germany's major eastern industrial region, based around the cities of Dresden, Leipzig and Chemnitz; while the figures in Thüringen also reveals the strong economic base in this land which adjoins Bayern and Hessen. In contrast, Mecklenburg-Vorpommern and Sachsen-Anhalt are more isolated and rural, with smaller populations and agriculture not industry at the heart of their economies. A lower number of claims here is therefore to be expected, since much of what is being reclaimed in this most northerly of the Länder is individual farms, rather than housing and urban firms and businesses.

If the claims are broken down into their constituent sub-groups, regional variations between the Länder are much more marked. Most obvious is the predominance of claims involving property and land, accounting for 88 % of the total in Brandenburg at one end of the scale, down to 64 % in Mecklenburg-Vorpommern and 68 % Berlin at the other. (Fig. 2) Interestingly, although the total number of businesses subject to a claim is little more than 5 % of the total, the regional distribution is quite different, with Mecklenburg-Vorpommern very much to the



Given the huge number of claims, it is not surprising that settling them has been a slow business, especially in view of the repeated changes to the German property laws. Nevertheless, the data in *Figure 3* reveal that by 30 September 1996, 125,386 (71.5 %) claims involving businesses had been settled, and 1,761,152 (66.0%) of all others. There has been a steady improvement of almost 4 % a quarter in the rate at which claims are being settled, with a sharp increase latterly in the rate at which claims involving land and property are being resolved. Thus the more doom-laden predictions immediately after unification in 1990 and 1991, that it would be well into the next century before all the claims were resolved, seem to have been unfounded and an eventual end to the whole process appears realistically in sight, even though there are marked regional variations. (see BLACKSELL, 1995)

Fig. 2: The relative distribution of restitution claims by type, 30.9.1996

Source: Quarterly reports of the Federal Office for the Settlement of Disputed Property Claims (Bundesamt zur Regelung offener Vermögensfragen) at Berlin, 1991-1996)

fore. There is not really sufficient information available to be able to give a categorical explanation for this, but almost certainly this reflects the large number of farms in this Land being reclaimed from the collective farms of the communist era. The distribution in the former East Berlin is also quite distinctive. In comparison with the five Länder, there

are fewer claims involving property and land and proportionately more involving money. The reason for this is the peculiar conditions stemming from Berlin's status as a divided city, which made it easier to resist straightforward state requisition as such by the East German régime, so that most claims are for financial recompense for an inadequate purchase price.

The crude figures on the settlement of claims are, however, somewhat misleading, since, as has already been pointed out, each claim can incorporate several distinct elements, and there are a wide range of different outcomes. *Table 1* shows that, if the individual claims are broken down into their separate elements, then 67.9 % (1,886,538) had been settled by 30 September 1996, and that the rate of settlement was fairly evenly spread across the three main categories of business, land and property, and money.

The data on the outcome of settlements are quite difficult to interpret, because many are very technical, involving legal niceties rather than practical differences. They are consequently of little relevance to the discussion of the overall geographical pattern of property restitution which is the primary concern of this paper. Therefore, the data in *Table 2* relate just to businesses and to land and property, and distinguish between only the four largest categories of settlement. As can be seen, 31.8 % (39,869) of settlements involving businesses, and 41.7 % (653,000) of those involving land and property, had been refused by 30 September 1996, and only in 19.7 % (23,545) of settlements involving businesses, and 25.3 % (396,694) of settlements involving land and property, had there been the unqualified return of the assets in question. To be sure, there are substantial regional differences between the Länder. In Mecklenburg-Vorpommern, for instance, 61.0 % of claims involving businesses, and 48.8 % of those involving land and property have been

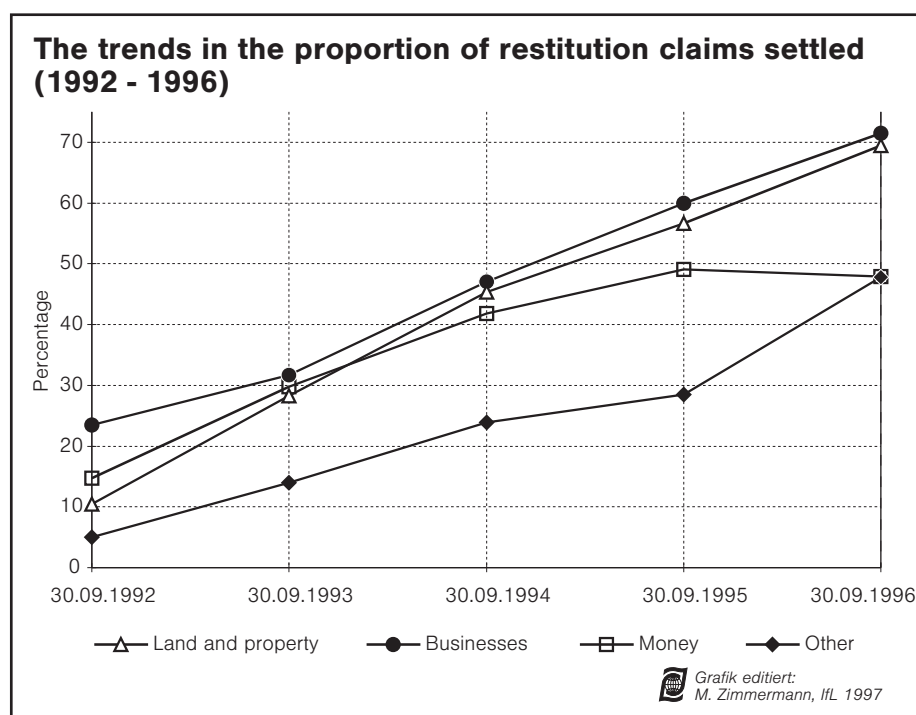


Fig. 3: The trends in the settlements of restitution claims (1992 - 1996)

Source: Quarterly reports of the Federal Office for the Settlement of Disputed Property Claims (Bundesamt zur Regelung offener Vermögensfragen) at Berlin, 1991-1996)

	June 92	June 93	June 94	June 95	Sep 96
Businesses	9,379 (19.4)	11,022 (22.8)	18,660 (38.6)	95,715 (50.3)	125,386 (71.5)
Land & Property	129,261 (7.6)	517,513 (23.0)	885,317 (37.9)	1,175,526 (57.1)	1,565,832 (69.4)
Money	36,891 (13.8)	74,398 (29.4)	119,292 (40.8)	147,362 (49.4)	142,525 (47.9)
Other	6,422 (4.4)	16,320 (11.9)	27,314 (26.8)	35,784 (35.1)	52,795 (47.7)
Total	181,953 (8.4)	619,253 (24.1)	1,050,583 (37.8)	1,382,989 (55.2)	1,886,538 (67.9)

Table 1: The settlement of claim elements¹ in the new states, and the former East Berlin on 30 September 1996

Source: Quarterly reports of the Federal Office for the Settlement of Disputed Property Claims (Bundesamt zur Regelung offener Vermögensfragen) at Berlin, 1991-1996

refused, whereas the comparable proportions for Brandenburg are 31.0 % and 31.5 % respectively. It is impossible to say, without a detailed investigation of the individual case files, whether this reflects: differences of approach between the various offices responsible, systematic variations in the nature of the assets being claimed, the social and economic circumstances in particular Länder, or a combination of these. Whatever the explanation, however, it undoubtedly means that there are substantial differences, both within and between the new Länder, in the experiences associated with post-unification property restitution. It also gives a warning that it is dangerous to read too much into individual case studies, however dramatic the stories they have to tell. (DAHM 1994)

The data in Table 2 underline the success with which the policy return taking precedence over the payment of damages

for loss (Rückgabe vor Entschädigung) has been adhered to. By the 30 September 1996, damages had been paid in only 9.0 % (11,254) of individual business claims, and in 4.4% (65,523) of individual claims involving land and property. The table also shows that 10.8% (13,496) of business claims, and 13.0% (202,730) of land and property claims, that were theoretically settled, were in fact voluntarily withdrawn by the claimant. There is also considerable regional variation in the pattern. In Berlin, for instance, 36.4% of business claims were not proceeded with, and in Thüringen 19.2% of land and property claims.

Finally, there is one important point that needs to be made about the „Other“ category with respect to businesses in Table 2. At 20.9% this may seem rather a high figure to consign to a catch-all category, but the reason for is that it includes claims which have been adjudged legiti-

mate, but which because of the complexity of unravelling ownership have not yet been implemented. Such delays are of considerable significance for the timetable of urban redevelopment and are explored in more specific detail in the next section. The equivalent „Other“ category for land and property contains a similar, though very much smaller element, because here the ownership issues have been easier to resolve.

Overall, therefore, the scale of transfers of ownership across the five new provinces and Berlin is rather less than might first appear from the published statistics, but with 421,339 claims allowed in full and more than 30 % of the total still to be processed, it still represents a massive social and economic upheaval. Equally, since the geographical spread of claims is so uneven, the intensity of the upheaval resulting from claims being settled varies too. In what used to be East

A. Business					
	Returned (incl. removal from state administration)	Refused	Damages awarded	Withdrawn	Other *)
Berlin	6.0	47.7	3.2	36.4	6.7
Brandenburg	39.8	21.0	8.8	2.8	27.6
Mecklenburg-Vorpommern	12.5	61.0	4.5	8.4	13.6
Sachsen	30.7	17.4	11.5	11.1	29.3
Sachsen-anhalt	17.7	26.0	5.7	20.1	30.5
Thüringen	9.0	17.1	13.8	8.2	51.9
Total	20.6	31.8	9.0	10.8	27.8
B. Land and Property					
Berlin	42.5	18.4	1.3	8.6	29.2
Brandenburg	39.2	31.4	4.0	12.8	12.6
Mecklenburg-Vorpommern	27.8	48.8	4.6	13.0	5.8
Sachsen	27.7	54.4	5.3	1.2	1.4
Sachsen-anhalt	39.3	44.9	4.6	9.6	1.6
Thüringen	29.9	43.0	5.5	19.2	2.4
Total	34.2	41.7	4.5	12.9	6.7

¹ Each submitted claim can incorporate several different properties and other elements.

Table 2: The nature of settlements involving A) Businesses and B) Land and Property, by state on 30 June 1995 (%)

Source: Quarterly reports of the Federal Office for the Settlement of Disputed Property Claims (Bundesamt zur Regelung offener Vermögensfragen) at Berlin, 1991-1996. „Other“ includes settlements involving businesses where claims have been approved but not yet implemented.

Berlin, for instance, 6,346 claims affecting businesses and 128,288 affecting land and property have been settled, all involving at the very least a change in titular ownership. In all the five new Länder, the number of businesses subject to successful claims for restitution runs into thousands, the peak being the 23,907 in the heavily industrialised province of Sachsen. The same is true for land and property, where no province has less than 100,000 successful claims and Brandenburg, at the upper extreme, has 295,941. At the very least such statistics make it clear that few people, in any walk of life, in the former GDR have remained untouched by the policy of restitution and its consequences.

Property restitution and urban and rural change

In the totality of the fundamental changes that occurred in the new Länder in the upheaval of unification, property restitution is clearly only one element amongst many and it is very difficult to specify precisely the nature and scale of its impacts. It has been argued in some quarters that because bodies, such as the Trust Agency (Treuhändanstalt) the quasi public authority set up to oversee the sale into the private sector of state-run enterprises, were granted such wide discretionary powers, any delays caused by the uncertainties of property ownership would have been effectively neutralised (PRÜTZEL-THOMAS 1995). The problem with such a claim is that it, just as much as extravagant claims to the contrary, is based on very little empirical evidence. It is still a moot point how much disputes over rightful ownership arising have, for instance, further slowed the painful process of economic readjustment for firms and businesses, or held back the desperately needed refurbishment of housing and the urban infrastructure.

However, although the general picture across the new Länder may still be confused, there is a growing body of piece-meal evidence to suggest that the effects of property restitution claims cannot, and should not, be ignored. In this section we attempt to draw together some of this emerging evidence and to show how it has affected the dynamics of urban and rural change.

The most widespread effects of property restitution claims are in the major cities, especially Berlin, Leipzig, and Dresden, where large sections of the housing stock had been taken into public

ownership, either directly through expropriation, or by nationalising the rights of use over the buildings. Unification provided the opportunity for the original private owners, or their heirs, to reclaim such property, but until questions of ownership have been determined, the sitting tenants are left in a state of limbo and the conditions are ideal for encouraging blight. The tenants affected have little idea who their new landlords will be and until the issue has been resolved there is a moratorium on undertaking anything other than the most basic maintenance on the buildings. Since much of such property has never been modernised and is in a very poor state of repair, the uncertainty of tenants about their long-term future is compounded by the substandard, and deteriorating, conditions.

The initial reaction amongst residents, virtually all of whom are either tenants or people uncertain about their status as owner-occupiers, has been one of anger and bewilderment, followed by increasingly organised grassroots resistance against the faceless private landlords who have taken the place of the East German state. The process has been best publicised and probably most effective in Berlin (DAHME 1994), but has certainly not been confined to the capital. In Leipzig, Smith (1996) has carefully documented the stages of protest by one particular group of affected residents, illustrating graphically the empowerment that can be gained from organisation and group action. The process then moved on a stage further with attempts to build a national campaign on behalf of affected residents, through organisations like The Society of Tenants, Users and Owner-Occupiers (Vereinigung der Mieter, Nutzer und selbstnutzenden Eigentümer). Now such pressure groups are being incorporated into national organisations such as the German Tenants' Society (Deutscher Mieterbund), thus bringing them into the mainstream of housing action.

Despite the increasingly sophisticated organisation of tenant groups, the blight caused by the uncertainty over eventual ownership of property is everywhere apparent. In Potsdam on the outskirts of Berlin, for instance, the original residents of an inner-city residential neighbourhood were rehoused and renovation of the area begun, only for the whole process to be halted due to an unresolved dispute over ownership. Squatters took advantage of the hiatus, moved in and now form

a focus for protest and unrest in the heart of the city. Although such problems have been a familiar feature of inner city urban renewal in many other countries in Europe and North America in the second half of the 20th. century, in the new Länder they are given a significant extra edge by the overlay of uncertainty caused by property restitution.

Some of the most striking examples of the blight that can ensue from unresolved property restitution claims arise when the owners of former industrial plants try to reclaim not only the plant itself, but also associated assets, such as housing, parks, and other communal facilities. Such instances abound, affecting communities both large and small. For example, in Sorge, a village of 200 inhabitants in the Oberharz region of Sachsen-Anhalt, the heirs of the Vogel family, whose iron foundry works had been confiscated in 1949 registered a claim of the return of their property. The site comprised 75% of the area of the whole community, including the main public park, the lake, the cemetery, and numerous buildings. The Land Office for the Settlement of Disputed Property Claims in Halle deemed that all the property should be returned, but the village appealed and the Administrative Court ordered that the two sides should agree upon an out of court settlement. The claim was first filed in 1990 and five years later seems no closer to being settled. In the meantime, the village has been able to do nothing to improve the tourist facilities on which it is now almost totally dependent, since the iron foundry closed. (Frankfurter Rundschau vom 6. September 1995, S. 7).

A similar situation occurred in the city of Gotha in Thüringen. In the 1930s one Jewish family had their porcelain factory and all their other property confiscated and they were driven out of Germany. The property was first reallocated to non-Jews and then partly nationalised by the East German régime after 1949. The heirs have now sought to reclaim their property and a similar impasse to that which still blights the village of Sorge in the Oberharz threatened. In this instance, however, it has proved possible to agree upon an out of court settlement, though even that has not finally resolved the issue. As was mentioned above in the interpretation of the statistics in *Table 2*, there is a large number of claims for restitution where the legitimacy of a claim has been agreed, but it has not proved possible so

far to implement it and this is precisely the situation now facing the city of Gotha (GLANTZ 1996). In terms of the legal process the question of ownership has been resolved, but the implementation is still awaited and in the meantime the blight continues. In the case of Gotha this has meant locating most new firms on green field sites on the outskirts of the city.

The three examples described above are not intended to be fully representative, but taken in conjunction with the general picture of the scale of property restitution, they provide an insight into the widespread toll that the process is exacting right across the new Länder. Nowhere has escaped the effects of the uncertainty and in some communities the whole process of post-unification infrastructural redevelopment has been delayed and jeopardised.

Conclusion

The policy of allowing citizens, or their heirs, of the former territory of the East Germany to return after German unification and reclaim assets of which they had been deprived „illegally“ by the GDR, and the Third Reich, régimes is highly controversial and, politically, a calculated risk (BLACKSELL 1995). In effect, the German government is compensating for wrongs that, in the cases of many of the claims, could be said to have already been righted, at least partially.

Refugees from the GDR, and indeed German refugees from elsewhere in eastern Europe, were given favoured status in West Germany from its foundation in 1949 and were rapidly integrated into the country's successful social and economic infrastructure. In comparison with many other refugee groups they certainly were not in need of special economic support.

On the other hand, West Germany had never recognised the GDR and had always formally adopted the position that unification within an enlarged Federal Republic was merely a matter of time, however remote this appeared in reality. Therefore, when the political opportunity suddenly presented itself in November 1989, it had no realistic choice but to act and, in doing so, activated a latent expectation amongst thousands of its citizens that they could reclaim what had once rightfully been theirs, though powerful voices were raised against such wholesale revisionism at the time. (Schmidt, 1993).

Once a decision had been taken to embark on a policy of restitution, the

sheer scale of the enterprise, with more than 2.5 million separate items of land and property covered by the claims, represented a huge administrative, and political, challenge. After over six years work, more the 30 % of claims have still to be settled and the consequences of the ensuing uncertainty are mounting, with all the attendant blight that is particularly damaging in the new Länder, where speed in the unification process is at a premium.

Nevertheless, as with so much else associated with German unification, if short-term difficulties can be overcome, there is much that is positive about the property restitution. The new Länder desperately need resources for economic development and social reconstruction; property restitution has the medium to long-term potential to inject significant private, as opposed to public, investment and capital into the rebuilding programme and thus to spur on, and broaden the base of, the unification enterprise as a whole. As yet, it is too early to make a definitive judgement as to the ultimate balance of advantage, but it is clear that the whole issue of property restitution has been, and remains, a matter of critical importance for understanding how the former East Germany has been integrated into the unified Germany.

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