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Housing Beyond Profit: A Comparison of U.S. and German Alternative Ownership Models

In recent years the shortcomings of both the market and of the state in providing decent housing for everyone has become particularly apparent. On the one hand housing, until recently a rather conservative inflation hedge, has increasingly become a speculative investment as new financial instruments emerged and ever more capital became available world-wide seeking new investment possibilities. As a consequence not only the building structures as such, but also their financial assets and the assets of those assets have been traded on the market for profit – a process that has led to the well known housing-related mortgage market bubble whose implosion had devastating effects for the millions of people who lost their homes as well as for the economy at large. The recent financial and real estate crisis has made it clear – once again, one is tempted to say – that, despite all rhetoric of the "trickle down effect," there is a major conflict and even a fundamental contradiction between the commodity and speculative aspects of housing and its most crucial purpose: providing decent homes for everyone.

The provision of low-income housing by state institutions on the other hand, which seemed to be an appropriate alternative to the market for at least some time – much more in Europe though than in the U.S. – has likewise ceased to be an option, at least for the time being. Both the U.S. and Germany have ended their respective programs and privatized a large part of their housing stock as part of a general sell out of former public goods. This process has significantly called into question a decades-long social contract especially in Germany where the general public (much more than in the US) refers to the state as a guarantor of the common good.

In light of this development where neither the market nor state institutions are capable of or willing to provide solutions to the housing problems, people in both countries have become increasingly engaged in exploring housing alternatives beyond the solely market-led or solely state-led approaches. In this respect a huge variety of already existing approaches can be found. I will give a more detailed introduction to three models, namely the limited equity cooperatives and community land trusts on the U.S. and the *Mietshäuser Syndikat* or tenement trust on the German side. All of these models are private ones that both function under current market conditions but that also incorporate aspects that point beyond it. They are all models of non-speculative ownership that try to limit or eliminate individual profit to ensure the permanent affordability of their housing stock, working toward the goal of transforming it from a commodity to a more or less collectively owned social good. This essay focuses on those models, their organizational structure and decision-making process, as well as on their forms of control that ensure that their long-term goals will not get displaced by changing short-term interests.

Limited Equity Cooperatives

The most significant characteristic of a housing cooperative is that the people living in a unit do not directly hold title to their individual unit, but own shares in the cooperative corporation. What distinguishes a limited equity cooperative (LEC) from other, more commonly found market rate cooperatives (MRC) is that the price of those shares is not determined by the real estate market, but by a resale formula determined by the particular cooperative's bylaws and subscription agreements. Whereas the share in a market rate cooperative can be sold at whatever price might be achieved and roughly equals the price of a comparable condo, in a limited equity cooperative, affordability is a fundamental concern thus there are restrictions to whom and for how much a housing unit, or more precisely the respective shares, can be resold. Here, the possible equity of the individual household is limited in order to guarantee the permanent affordability of the housing units. The extent to which that equity is limited, however, varies from co-op to co-op and ranges from zero-equity agreements, in which resident-shareholders receive back only what they initially put in, to agreements that allow for a modest growth in equity. In the U.S., there are currently around 425,000 units provided by those LECs.

There is, however, a significant threat to the permanency of this arrangement, which arises from the very organizational structure of the cooperative housing model. As co-ops are governed on the principle of one member, one vote and as each resident-shareholder of a co-op is also a voting member of that co-op, there is always the possibility that those co-op members themselves decide to lift the price restrictions. Over time, especially in gentrified areas when the market value of a cooperative's share has grown to a point where it is substantially higher than the formula-determined price, the economic incentive can become very large for these members to change the coop's bylaws in order to relax or even fully remove resale restrictions and to sell their shares for market rate. Because of this vulnerability, a number of co-ops that were limited equity cooperatives when established are market rate cooperatives today. In DC, for example, almost a quarter of the once eighty LECs that were founded within the last thirty years have been lost to the market.

In order to guard against this possibility and to insure that the co-op's founding commitment to long-term affordability is not displaced by other interests over time, a number of co-ops now modify the composition of their governing board and include people who are not residents and thus will not that easily be tempted to vote for going market rate.

Community Land Trusts

The community land trust (CLT) in its modern-day form is a relatively recent model that has just gained momentum within the last ten years. Nevertheless, it got its inspiration from far older, diverse sources and from cultures where the trusteeship of land for the common good has had a long history, like the idea of the commons in England or the Gramdan movement in India. There are currently 259 CLTs in the U.S. with around 15,000 units. The first attempt to set up a CLT goes back to the civil rights movement in rural Georgia in the late 1960s. In the 1980s, when gentrification began to lead to the displacement of poor people, the CLT model was brought to the cities; the first such attempt took place in DC's Columbia Heights neighborhood.

The key concept of CLTs is a dual ownership structure in which the ownership of the buildings – in most cases single-family houses – is separated from the ownership of the land. This means that people buy and own their houses but they do not own the underlying land, which is owned by the trust and is leased to the homeowners by means of a long term, generally 99 year, ground lease. This very lease that the homebuyers sign with the trust is the main element that CLTs employ to control the present use and future affordability of their housing stock. It is renewable and inheritable, as well as binding to all subsequent owners. It both gives homeowners (and their heirs) an exclusive right to occupy the land on which their houses are located as well as contains all the necessary regulations from the ban on absentee ownership, the income eligibility of future buyers, and the formula for determining the resale price, to name just the most important. Embedded in the lease is also the CLT's right of first refusal when a unit is to be sold. Responsibility for monitoring and enforcing all of these regulations rests with the CLT.

The CLT resale formula is designed to give departing homeowners a fair return on their investment, while giving future homebuyers access to housing at a below-market price. The formula varies, but typically the seller gets the value of the principal payments and down payment plus 25 percent of the accumulated equity, while the trust retains the other 75 percent. Nevertheless, CLTs need some sort of financial assistance, especially in the beginning, often through government subsidies (e.g., through the Neighborhood Stabilization Program) or from churches as well as private donations. Contrary to limited equity cooperatives, people buying a house in a community land trust need a mortgage. Thus very low-income people are excluded, at least from the dominant model. (There is, however, a very interesting New York-based campaign called "Housing not Warehousing" that tries to deal with these things differently.)

Another fundamental difference to the co-op model lies in the way CLTs are governed. The CLT is a community-based organization whose membership is open to any person living within the geographic area that the CLT defines as its community. Unlike the co-op, the CLT is not only governed by its residents, but also by non-residents. Its boards are usually comprised of one-third homeowners, one-third non-resident community members, and one-third public officials. CLTs thus try to balance the sometimes short-term interests of its homeowners with the long-term interests of the larger community by limiting resident control and emphasizing community and public control – a mode of governing that reflects their understanding of the common nature of land.

In recent years the general interest in CLTs has been growing, mainly due to its good performance during the recent financial and real estate crisis and its very low foreclosure rate. Whereas a decade ago, CLTs were mainly grassroots initiatives serving single innercity neighborhoods or narrowly defined rural districts, now a number of urban CLTs encompass multiple neighborhoods, the entire city, or a whole metropolitan area; some are set up by the city, some even by the state. Of course, this process of upscaling has, to a certain extent, changed the CLTs' nature and comes along with a certain ambiguity. On the one hand, upscaling is a necessary precondition for the CLT to serve more people and become a substantial factor in the general provision of housing, but on the other it tends also to depoliticize the model. There is currently a debate and struggle whether CLTs can still stay a transformative model that changes peoples' relation to land and property, and democratizes the decisions about housing, or, rather, whether they become just another tool of protecting the city's investment in affordable housing like deed restrictions, where the organizational structure for self-governing and the emphasis on community control gets lost. (Ironically the city of Chicago wants to set up a CLT just after destroying almost its entire public housing stock.)

Mietshäuser Syndikat / Tenement Trust

The German *Mietshäuser Syndikat* is a nationwide tenement trust that is at the same time a form of ownership and a network of self-organized house-projects. Those house-projects have nothing to do with the large-scale U.S. public housing projects. Quite on the contrary, most of them are urban tenement buildings with 10-20 units managed by their residents, whose motives for joining the trust range from the desire for a collective self-determined way of living to the attempt to remove at least some housing structures from the market or the search for means of protection against gentrification and rising rents.

The tenement trust was founded in the early 1990s in Freiburg, a small city in southern Germany, but is active all over the country today and is currently comprised of 85 self-organized house-projects. As an organization as well as a legal framework, it can be seen as a reaction to the often disillusioning experience of once idealistic, non-profit projects, of former squats or co-ops that over time have been capitalized upon and sold for a gain when the members became tempted by privatizing their once common property. The overall idea of the tenement trust is to provide an organizational and legal structure that ensures that its house-projects will be permanently taken off the real estate market. Similar to the CLTs, a dual form of ownership is at the core of its framework. The ownership, however, is not divided between the house and the land, as in the CLTs, but the very building structure belongs to two parties. The residents of each house-project do not directly hold title to the property; instead this belongs to a limited liability company (LLC) that has been founded specifically for this purpose. This LLC is comprised of two partners: the Association of Tenants living in this particular project and another LLC, representing the overall tenement trust. The overall tenement trust again is comprised of all individual house-projects, or more specifically, of all their Tenant Associations.

The tenement trust thus employs a circular model, in which the individual LLCs of each house-project are the basic modules and the overall trust serves both as their interconnecting link and as the controlling body in every single project. Using a genuine capitalist form of corporation – the limited liability company – this organizational structure works very well in dissolving individual and even group ownership. It makes sure that the house neither belongs to the tenants, nor to the overall trust. The tenants (as partner 1) hold normal rental contracts with the house-project's LLC and are responsible for all project related matters from its financing over building measures to the change of tenants. The overall tenement trust (as partner 2), however, holds a significant control function and has a right of veto in all questions concerning the project's ownership structure. The selling of the house or the privatization of a unit can only be undertaken when signed off by both partners – a fact that will never come about as it requires that the other current 85 house-projects that comprise the tenement trust give their approval. The trust's organizational structure thus ensures that the project cannot be sold or commodified in any way, but will permanently stay common property.

In principle, the financing of those house-projects works in a conventional way by borrowing money from a bank. There are, however, two special features involved in its financial structure. First, the necessary down payment for the mortgage (which in Germany amounts to 20 percent of the overall price) does not have to be raised by each individual alone; rather it is the group as a whole that is responsible for it. Thus it is also possible that people with very little money or those on welfare participate, though there is no general low-income requirement either. Second, this down payment is often raised by aquiring a range of small direct credits with low interest rates between 0 and 3 percent provided by friends or alternative institutions.

Contrary to the two other models, people participating in the tenement trust do not receive state subsidies. The idea of autonomy has been a key element to most of its participants. This is also reflected in another important aspect of the tenement trust, the so-called Solidary Fund. All tenants pay a minimum of 10 cents per square meter and month in this common treasury. The underlying idea is that if the costs of the project decline (due to the fact that the mortgage gets payed off), the resulting gain should not be used individually or by the respective group alone but will be channeled back to the common project to help finance new initiatives, as well as the ongoing advisory and public relations work. Contrary to CLTs, the surrounding neighborhoods play little to no role in the organizational structure of the tenement trust as such. Only the residents are part of the house-projects' Associations, though interested individuals can become members of the overall trust, too.

Very recently there has been a growing, though still minor, interest in the legal structure of the tenement trust and whether it could be made applicable for municipal issues, for example in the re-emerging debate around the question of recommunalization of privatized public goods and services. So far the issue of control of state institutions is, despite the experience of the recent sell-out, strangely absent from this debate, yet the dual ownership model that works so well both with the CLTs and the tenement trust might be considered as a method of control of government agencies to ensure that the recommunalized public goods stay common property this time.

Common Features, Criticism, and Possible Replies

In conclusion, what are the most important features that those alternative models of ownership foster and all have in common? First, they limit individual profit in order to ensure permanent affordability of their housing stock and remove it from the speculative market. They ensure tenancy and democratize the provision as well as the management of housing through different forms of resident participation and enhance community control, though they have different interpretations of what is their respective community. They lock government and other subsidies, if used, in the building structures, other than the usual private homeownership model where those subsidies are eventually transformed into individual equity. Finally, and of prime importance, they provide housing on the principle of need, not profitability.

There are, however, a variety of criticisms that touch upon important topics and dilemmas inherent in those models, of which this paper could only very briefly point to three of them. The first one regards the scale or production volume of those alternative models of tenure and very rightly points to the fact that these are still small scale initiatives and thus serve only a limited amount of people. The second criticism questions the very approach of those models, namely that they focus on projects and not on protest and carrying through policy measures. This argument emphasizes that the successful enforcement of policy measures, for example rent control, will eventually benefit a much larger amount of people than those singular projects can. The third charge might be more popular in Europe and accuses those models of privately doing the job the state actually is supposed to do – to redistribute resources in order to provide housing for low-income people – and thus in a way cushions, legitimizes, or even indirectly strengthens current neoliberal politics.

With regard to the last argument, it is true that within the current market-based system, the provision of low-cost housing is virtually impossible without some sort of financial support and thus, in the end, a major shift in public spending priorities or taxation would be needed (unless a fundamental societal change occurs). Yet in light of the ongoing massive sell-out of former public goods by state institutions and their large passivity with regard to the pressing housing problems, private initiatives and agreements might be a more promising means to keep housing out of the speculative field, at least for the time being. Yet the target of upscaling those alternative models of ownership remains without doubt an important one and a real challenge, in which those questions concerning the roles and relationship between the private and governmental sector, the distribution of societal wealth, and the overall goal of those models certainly arise over and over and require considerable ongoing debate.

Although it may not help to play the policy against the project approach, one should make make sure not to promote those models as the ultimate solution. Nevertheless it is important to create those examples of alternative housing models, those spaces of testing and real world knowledge transfer that one might visit and evaluate or that could also inspire other people. Not least they also prove that something else is possible beyond the dominant market-driven speculative or state-led top-down models. Particularly in view of the mainstream narrative it is crucial to take those examples of alternative economics seriously to also build discoursive power that can alter the existing debate on housing and challenge its commodity nature as well as its role in our economic and social system as a whole.

References

Angotti, Tom: “Community Land Trusts and Low-Income Multifamily Rental Housing: The Case of Cooper Square, New York City”, Working Paper Lincoln Institute of Land Policy 2007

Bratt, Rachel: “Community-based Housing: Strengths of the Strategy amid Dilemmas that Won’t Go Away”, in: Davis, John Emmeus: “The Affordable City. Towards a Third Sector Housing Policy”, Philadelphia, 1994

Davis, John Emmeus: “Shared Equity Homeownership. The Changing Landscape of Resale-Restricted, Owner-Occupied Housing”, New Jersey 2006

Davis, John Emmeus (ed): “The Community Land Trust Reader”, Cambridge 2010

DeFilippis, James: “Unmaking Goliath. Community Control in the Face of Global Capital”, New York 2004

Huron, Amanda: "The Work of the Urban Commons: Limited-Equity Cooperatives in Washington, D.C.", unpublished Dissertation, New York 2012

“Housing not Warehousing”, for more information on the campaign see: www.picturethehomeless.org

International Independence Institute: “The Community Land Trust. A Guide to a new Model for Land Tenure in America”, Cambridge 1972

Mietshäuser Syndikat Broschüre N.5: “Rücke vor zur Schlossallee”, Freiburg 2011

Thaden, Emily: “Outperforming the Market: Making Sense of the Low Rates of Delinquencies and Foreclosures in Community Land Trusts”, Working Paper Lincoln Institute of Land Policy 2010