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Land market/land policy



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Land markets create and distribute opportunities for private land use. The allocation of uses and the distribution of advantages and disadvantages take place under framework conditions that are established by means of property relations, spatial planning and public investments. Responsive land policy guides the allocation and distribution by balancing plural interests.

1 Land market policy

An understanding of land market policy requires knowledge of the central terms of this policy area. These include the terms *land policy*, *land markets*, *land market policy* as well as *responsive land policy*.

1.1 Land policy

Land policy encompasses state and municipal interventions that influence the value, use and distribution of land (cf. Seele 1994; Davy 2005a; Dieterich 2005; Davy 2012; Kötter/Friesecke 2013; Davy 2014). In Germany, urban land-use planning is closely linked to the exercise of the competing legislative power regarding ‘land law (without the law of service connection charges)’ under Article 74(1) no. 18 of the Basic Law (*Grundgesetz, GG*) (*BVerfG* [Federal Constitutional Court], legal opinion of 16 June 1954, case no. 1 PBvV 2/52, *BVerfGE* [Federal Constitutional Court Decisions] 3, 407 – expert opinion on building law). Because of the constitutional bond of \triangleright *Urban land-use planning* to the land, the Federal Building Code (*Baugesetzbuch, BauGB*) is an important instrument of land policy (\triangleright *Land law*).

For land policy, land is not a fact, but a social construction (Davy 2012: 25 et seq.). Different opinions and diverse claims regarding its use determine how land is managed. One and the same part of the earth’s surface appears to the owner as ‘my property’, to the urban planning authority as a ‘planning area’, to a real estate company as a coveted ‘asset’ or to a citizens’ action group as a ‘wetland’ worth protecting. Land is perceived, among other things, as property, as territory, as an economic asset or as an environmental resource. The plurality of perceptions result in a variety of political claims. Land policy interventions must take into account the plurality of the social constructions of land. The constructivist concept ‘land’ rejects all naturalistic concepts of land (e.g. the ideology of ‘blood and soil’).

1.2 Land markets and land market policy

Land markets distribute the opportunities for land use through sale, legal transfer (rent, lease), personal use or simply by sustained possession. Economic actors consider land to be an asset that is suitable on the one hand for preserving value (capital stock) and on the other hand for generating steady revenues (income stream). The value of all cadastral parcels in Germany is estimated at €10 trillion, and land ownership is the most important component of wealth (Grabka 2014: 29). Almost all wealthy people own land: ‘Among those whose assets exceed twice the average, more than 90% own real estate’ (German Federal Government [*Deutsche Bundesregierung*] 2013: 236).

Since no plot of land is exactly the same as another, land markets tend to form monopolies: each property forms its own market. For land market policy purposes, a distinction must be made between at least several land markets:

- central, suburban and peripheral land markets,
- markets for developed and undeveloped land,
- markets for agricultural land and sylvan land as well as land for residential and commercial purposes,

- markets for owner-occupied property or investment property,
- markets for special real estate (hotels, airports, retirement homes).

Supply and demand on the land markets are determined, among other things, by the economic framework, the land price level and the land rent, the conversion of open space into building land, the degree of commodification, the conditions for loan financing, the range of alternative investment options as well as the quality of the location and the quality of the individual property (cf. sections 5 and 6 of the Ordinance on the Principles for Determining the Market Values of Land [*Verordnung über die Grundsätze für die Ermittlung der Verkehrswerte von Grundstücken, ImmoWertV*]). There are economic links between German land markets and other national and international sub-markets. In recent years, for example, foreign investors have acquired agricultural land on a large scale and at inflated prices, presumably in response to an anticipated food crisis in the People's Republic of China and India. Since the start of the real estate and financial crisis in 2008, commonhold flats (condominium apartments) in Germany have been purchased for prices clearly above their production value, presumably a 'rush towards real estates' in response to uncertainties in the money market.

The land market policy comprises state and municipal interventions that influence economic behaviour regarding the acquisition, possession, use and conveyance of land. The behaviour in the land markets is not limited to legal transactions of land (transaction economy). The amount of land sold nationwide between 2007 and 2012 was only about 1% of the entire German territory (GA-BRD [*Task Force of the Valuation Committees and Higher Valuation Committees in the Federal Republic of Germany*] 2014: 44). In order to understand the behaviour of land market actors, the use of land (transfer to tenants or leaseholders or self-use) and the sustained possession of land are just as important (possession economy): year after year, 99% of the German land area is not sold, but actively used or at least retained by its owners.

1.3 Responsive land policy

In addition to land market policy, other areas of land policy must be considered. Land rights policy defines and assigns the rights and obligations in relation to land, especially in property policy (▷ *Land law*; ▷ *Constitutional guarantee of property*). Land use policy influences the type and extent of the use of land, for example through ▷ *Urban land-use planning*. Soil conservation policy serves to preserve and improve the land as an environmental resource (▷ *Soil conservation*; ▷ *Impact mitigation regulation*; ▷ *Environmental policy*).

Commingling nature and institutions into land markets is, according to Karl Polanyi (1957: 178), 'perhaps the weirdest of all undertakings of our ancestors'. For land policy, there are mutual dependencies between nature, institutions and markets. If these dependencies are not taken into account, land policy remains unsuccessful. One example is the 30 hectares target, which was part of the Federal Government's sustainability strategy (reduction of land take to a maximum of 30 hectares per day by 2020), the implementation of which failed due to the unresolved conflict between land law, land use and soil conservation (cf. Davy 2010a). In contrast to such a monorational land policy, a responsive land policy seeks to create a balance between plural perceptions and mediates between public and private interests. To achieve this balance of interests, landowners and other private stakeholders in the land market must voluntarily participate in cooperative solutions (Davy 2005a: 123 et seq.). However, this is not always the

case. Responsive land policy therefore combines voluntary cooperation and self commitment, incentives and rewards as well as state and local authority coercion: successful 'cooperation needs claws!' (Davy 2005b: 70 et seq.).

2 Basic principles of land market policy

2.1 Land rent

Land markets are determined by the opportunities to obtain land rents. The land rent is the benefit of the landowner (e.g. income, production advantage, consumer benefit), which is obtained solely on the basis of their position as the owner and independently of any capital investments or labour (Davy 2012: 39 et seq.). The land rent can be expressed as (actual or notional) income per period (e.g. annual net income, rent savings) or – by capitalising the net revenue – as an asset. It is intuitively understandable that the income stream from a wheat field near a city increases as the population grows (because more wheat is needed, the wheat price rises) or that the income stream from a high-rise office building decreases as the demand for office space dwindles (because less rental income is earned), without the owners investing more or less capital or labour. The landowner's balance of benefits thus includes benefits that neither constitute interest income from investments nor wage income for the owner's labour. The land rent is also referred to as differential rent (differences in the quality of the land), locational rent (particularly favourable location) or monopoly rent (impossibility of increasing land holding in prime locations). In a similar vein, one could also speak of a planning rent (in case planning law makes a more profitable land use admissible, leading to private advantages), an infrastructure rent (public investments leading to private advantages) or an ecological land rent (in case the location has special environmental qualities).

It is difficult to prove that land rents are a benefit that landowners obtain at no cost. Theoretically, the land rent can be understood as a benefit that is indifferent to the current use of the land, a surplus income. An owner does not depend on this benefit to keep the land in its current use. If the land use is not adjusted to changes in the land yield, this indicates the existence of a land rent (which is independent of the landowner's costs).

2.2 Conversion into building land and Bonczek's staircase

The conversion of building land is the most important change of land use. This is typically understood as the development of undeveloped land into mature and serviced building land. Section 5 of the Ordinance on the Principles for Determining the Market Values of Land names four development states as stages of the conversion process:

- agricultural and sylvan land,
- undeveloped land on which development is expected,
- undeveloped land legally designated for development and
- mature and serviced building land.

The model of Bonczek's staircase (cf. Bonczek/Halstenberg 1963; Bonczek 1978) illustrates the influence of ▷ *Urban land-use planning* on land markets: the more intensive the legally permissible use of a plot and the closer a plot is to its full development, the more valuable the property is. When comparing the land value before and after planning, a substantial value increase occurs. In 2013 the average price of one m² of arable land in North Rhine-Westphalia was around €4 and the average price of residential building land (detached and semi-detached houses in a good location in the Ruhr area) between €230 and €400 (OGA NRW [Higher Valuation Committee for Property Values in the state of North Rhine-Westphalia] 2014: 25, 41). The increase in value due to planning (up to and including the value stage of undeveloped land legally designated for development) remains under the current law most of the time with the land owners; only the increases in value related to land readjustment (sometimes also referred to as 'land reallocation') and the provision of local public infrastructure can (in part) be absorbed for the benefit of the public. Bonczek's staircase reminds us that planning-related increases in value motivate owners to undertake value-increasing conversions ('All land uses follow the highest bidder!') and that this development of the land market can be controlled by planning.

2.3 Land valuation

Independent land valuation committees are set up to determine land values (section 192 of the Federal Building Code). The tasks of the land valuation committees include submitting expert opinions on the market value of single plots of land, collecting the data on purchase prices, identifying the standardised land values in designated land value zones as well as publishing information about the local land markets (e.g. land interest rates) and land market reports (sections 193-199 of the Federal Building Code; Ordinance on the Principles for Determining the Market Values of Land). Land valuation is an important component of the German land market policy (cf. Kleiber 2010; Kleiber 2012). The determination of standardised land values in designated land value zones and of the market value of single plots of land was originally intended for the implementation of the Federal Building Code (land readjustment, compensation for compulsory purchase), but is now an important service for all stakeholders involved in the land markets as well as for the tax administration. To determine the market value of a plot (section 149 of the Federal Building Code; sections 15-23 of the Ordinance on the Principles for Determining the Market Values of Land), different methods are considered, depending on the condition and type of use (comparative value method, capitalised revenue value method, production cost method).

3 Objectives of land market policy

The basic objectives of land market policy include the efficient allocation of land for the best possible use as well as the fair distribution of the advantages and disadvantages of land use.

3.1 Best possible use of land

The allocation of land consists of its uses for different purposes, such as cultivation or mining land, as a commercial location, as residential building land or as transport areas (Davy 2005a: 117 et seq.). According to a 2012 statistical survey (Destatis 2013a: 22) the settlement and transport

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area takes up around 13.5% of the German federal territory (around 357,000 km²; daily increase by 74 ha); the forest land is around 30.2% and agricultural land around 52.2%.

The benchmark for a successful land allocation is the efficiency of the land use. Land use is efficient when nothing is wasted. Possible efficiency standards differ depending on whether the focus is on the landowner's highest profit from using the land (business efficiency), the greatest possible overall economic utility (macroeconomic efficiency) or the maximisation of the environmental benefit of the land use (ecological efficiency). A distribution-neutral efficiency measure checks whether a given allocation can be changed for the benefit of at least one economic actor without worsening the situation of another economic actor (Pareto efficiency).

Land policy's objective of allocation is to achieve the politically desired land use. Regardless of which efficiency standard is applied, the better – and ultimately the best – possible use of the land is always the objective of efficient allocation. The German *Policeywissenschaft* (in its original sense of scientific advice given to the enlightened, yet absolutist ruler of the state as opposed to the modern meaning 'police science') had already established as the objective of allocation that 'all of the land within the state be used in the best possible way' (von Justi 1760: 120). Guiding principles for urban development (section 1(5) of the Federal Building Code) specify the allocation goal of the best possible land use. Above all, urban land-use plans are to ensure 'sustainable urban development'. Regardless of the ambiguity of ▷ *Sustainability* as the lodestar of urban development, important guiding principles for land market policy can be derived from the concept of a *green economy*, in particular the connection between economic development, environmental protection and the fight against poverty (UN 2012: 10 et seq.). The land policy allocation objectives are specified through ▷ *Urban land-use planning* and – if this corresponds to their preferences and economic capabilities – implemented by stakeholders in the land markets (e.g. by developing a designated residential area; ▷ *Real estate sector*).

3.2 Just distribution of the advantages and disadvantages

The distribution of the advantages and disadvantages of land use describes who receives the advantages of land use and who is burdened with the disadvantages of land use (Davy 2005a: 118 et seq.). The distribution of the benefits and burdens of land use is relevant for land taxation, when, for example, property or income taxes are or are not levied on land ownership and land use (assets of German land worth approximately €10 trillion have not been subject to property tax between 1997 and 2025). The decision as to whether ▷ *Planning gain* remains with the owners or is absorbed for the benefit of the public is also relevant to distribution. Distribution through land policy includes above all the distribution of rights of disposal and rights of use of the land. Nationwide, only around 46% of all residential units are inhabited by their owners (Destatis 2013b: 149). The ownership rate is highest in Saarland (64%), in Rhineland-Palatinate (58%) and in Lower Saxony (55%) and lowest in Hamburg (23%) and Berlin (15%). The negative effects of the low ownership rate nationwide are limited by tenant protection law, which gives tenants a position similar to ownership – for example through protection against the termination of tenancy (*BVerfG*, order of 26 May 1993, case no. 1 BvR 208/93, *BVerfGE* 89, 1 – tenant's right of possession). Factual, indirect and non-monetary advantages and disadvantages are important for distribution, albeit difficult to assess. The disadvantages for the neighbours of a neglected property and the advantages for the neighbours of an ecologically upgraded plot of land are distributed even without changing the formal property title.

The land question is an issue of justice (cf. Dieterich/Dieterich 1997). For German land market policy, section 1(5) sentence 1 of the Federal Building Code defines the benchmark as ‘socially just land use that corresponds to the common good’. This standard combines elements of utilitarian justice (‘common good’) and social justice (‘socially just land use’). The implementation of this distribution objective is limited by the capability of public budgets as well as by the

▷ *Constitutional guarantee of property*. Spatial ▷ *Urban commons* as well as the accessibility of public space (▷ *Public space*) for people with no or little income are of particular importance for securing the ‘spatial minimum subsistence level’ (cf. Davy 2010b).

4 Instruments of land market policy

Land market policy employs a variety of instruments. Commodification as well as regulatory land use control are among the widely accepted instruments of land market policy, while cost-oriented land management or the implementation of a land reform have an innovative character, which is less accepted.

4.1 Commodification

In order for a land market to emerge in the first place, ‘the land’ must be prepared for commerce. Commodification includes all measures through which land becomes a usable economic asset and a marketable commodity (cf. Renner 1965). Important components of commodification are civil property law, the land survey, the real estate cadastre and the land register. The real estate cadastre shows what plots of land exist, and the land register lists the owners of these cadastral parcels. In addition, statutory public law (e.g. transport legislation, designation as a public park) designates land as excluded from a restricted use and dedicated to public use. Such regulatory designations are called decommodification.

4.2 Regulatory land use control

The designation of permitted or intended land uses in preparatory and binding land-use plans implement the land policy objectives (▷ *Preparatory land-use plan*; ▷ *Binding land-use plan*). In addition, the Federal Building Code contains a large number of instruments that are used to implement the land uses designated by land-use plans (land management). These include the temporary freeze on development (sections 14 et seq. of the Federal Building Code), the municipality’s right of pre-emption (sections 24 et seq. of the Federal Building Code), the compensation for planning damages (sections 39 et seq. of the Federal Building Code), land readjustment (sections 45 et seq. of the Federal Building Code), compulsory purchase of land required for public purposes of urban development (sections 85 et seq. of the Federal Building Code), the provision of local public infrastructure (sections 123 et seq. of the Federal Building Code) as well as measures for nature conservation (sections 135a et seq. of the Federal Building Code). German planning law offers even more options to control land uses in particular situations (e.g. urban regeneration). Sectoral planning laws – pertaining, for example, to environmental protection, water management, roads and highways, railways or mining – also offer options for regulatory land use control.

4.3 Cost-oriented land management

Cost-oriented land management is not a uniform instrument of land market policy, but a bundle of loosely related interventions. Economic behaviour is not only influenced by the expected revenues, but also by the costs involved. Private or operational costs incurred by the property owner include expenses for the acquisition, continued ownership and use of a property (e.g. purchase price, construction and maintenance costs, management costs). Opportunity costs refer to the benefit of the best alternative land use that the landowner foregoes as a consequence of the current use. Social costs are the negative consequences of the use of the land, which are not incurred by the land owner but by the general public (municipality, residents, passers-by) (e.g. non-internalised environmental pollution). Transaction costs are expenses incurred by the land owner that relate to a change or redesign of the rights and obligations of the land owner (e.g. negotiation costs, notary fees for a property purchase). Some objectives of land market policy can be promoted by influencing these costs in a targeted manner, especially in a possession economy with low yield expectations (Davy 2006: 110 et seq.).

4.4 Land reform

Numerous land reformers were inspired by the value theories of classic economics (Smith, Ricardo, Marx), which dealt in detail with land rent. They were convinced that land rents provide unjustified income for landowners. On the one hand, George (1892) and Damaschke (1922) concluded that the land rent had to be obtained from owners through a land value tax ('single land tax'). On the other hand, Howard (1898) developed the concept of a garden city. Its land would have to be acquired by trustees. The users of each plot of land in the garden city would only receive temporary use rights, with the land rent being used to pay for the infrastructure. Bernoulli (1946) finally advocated for an active municipal land policy: the local authority should buy back all urban land from private landowners, grant them building rights and use the land rent to finance the purchase price.

In Germany, the instrument of land reform is only significant as a historical reminder (e.g. Article 155 of the Weimar Constitution of 1919), which is probably due to the shameful handling of the legacy of the 'democratic land reform' in the Soviet occupation zone (cf. Modrow/Watzek 2005; Paffrath 2004). In accordance with the decisions of the European Court of Human Rights, the Federal Republic of Germany was not obligated to return the land confiscated for the Soviet land reform to the previous owners (ECHR Great Chamber of 2 March 2005, 71916/01 and others – von Maltzan et al. v. Germany), but was allowed to expropriate land from the new farmers without compensation and retain it for itself (ECHR Great Chamber 30 June 2005, 46720/99 and others – Jahn et al. v. Germany). Since then, land reform in Germany has been associated with the negative image of being a sleight of hand. Regardless of this, pressing issues for a current land reform debate are easy to identify: inefficient ownership structures as a result of demographic change, strengthening property in land as an instrument of social policy, the sharing of benefits between the owners of land that can be used for building purposes and the owners of land not designated for development.

5 Spatial planning and responsive land policy

A responsive land policy acknowledges the different perspectives and plural rationalities of the social construction of ‘the land’ (Davy 2005a). This especially applies to the situation-specific definition of the rights and obligations of land owners by the federal or state legislature (cf. *BVerfG*, order of 15 July 1981, case no. 1 BvL 77/78, *BVerfGE* 58, 300/335-336 – wet gravel extraction). The use rights concerning a federal highway must be different from the use rights that apply to a building plot, and the use of an industrial and commercial area must follow different rules than the use of a community garden or a landscape conservation area (cf. Davy 2012). The commodification of the land must not treat every site like a plot for building a detached single-family house (cf. Davy 2014). Successful land market policy therefore combines restricted (private) land uses with shared (common) land uses (▷ *Urban commons*). A building plot in private ownership can only be used reasonably if it is connected to the urban commons (e.g. a street). While an individually agreed price has to be paid for the building plot in the relevant land market, the public should be able to use roads without individual fees. Conversely, many urban commons only make sense if they are linked to private land uses. For example, it would be extremely uneconomical to build roads that have no function in the provision of local public infrastructure whatsoever.

Responsive land policy has plural ownership rules for different land uses. At the very least, the following land uses are to be distinguished (cf. Davy 2012; Davy 2014):

- restricted (private) land uses:
 - insular uses of land (e.g. detached single-family house);
 - kinship uses of land (e.g. business premises in a shopping street);
 - corporate uses of land (e.g. sales offices of a large company);
 - container uses of land (e.g. single business premises in a shopping centre).
- shared (common) land uses:
 - opportunistic uses of land (e.g. driving on a public street);
 - collaborative uses of land (e.g. shared use of an urban community garden);
 - infrastructural uses of land (e.g. water supply and sewage disposal);
 - environmental uses of land (e.g. breathing).

The distinction between restricted and shared land uses provides spatial planning with a great latitude to shape such spaces, as varied combinations are possible. Therefore, urban land-use planning can create a polyrational mixture of private and common land uses (cf. Davy 2012; Davy 2014). In some cases, this requires removing the control of land use from the land markets, thus undertaking decommodification (cf. Kolocek 2013). In any case, the property relations for the various land uses must be designed in such a way that they facilitate the intended allocation and distribution effects. The standard benchmark for this in Germany can be found in section 1(5) sentence 1 of the Federal Building Code, which prescribes ‘a socially just land use that corresponds to the common good’.

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