

# Property rights: wrong if you think you can defend them

Aidan Kane \*

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The public defence of private property rights in Ireland is not for the faint-hearted nor the socially ambitious.

The promotion of traditional political civil liberties such as freedom of speech and freedom of association can, thankfully, rely on stout advocates, but private property rights rarely find advocacy from these sources.

By the same token, a fascinating debate has emerged on the purported extension of the language of rights to the "socioeconomic" domain, but property rights, as the most economic of rights, rarely figure in that discussion, unless as objects of suspicion and attack.

Most recently, the starting presumption of the work of an Oireachtas Committee is that the route to policy action in the housing market is blocked by unduly strong constitutional protection of private property.

It is remarkable in itself that it is judged unremarkable to consider restricting what the Constitution acknowledges as fundamental "natural law" rights in order to solve the imbalance between demand and supply in one market.

A number of factors explain this state of affairs. Perhaps surprisingly, modern mainstream textbook economics has, until relatively recently, neglected the centrality of private property rights to market order. This body of analysis proceeded assuming that property rights were well defined, so that voluntary exchange could take place within a stable framework.

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\*Department of Economics, NUI Galway.

This was a reasonable assumption for long-lived liberal market economies, blessed with the rule of law, but was not sustainable for those transition economies, Russia being the most notable example, where these institutions were not deeply anchored.

The uneven experience of these societies in constructing or rebuilding market societies threw new light on the prerequisites for functioning markets, and the dangers of taking them for granted.

More than this, the dominant neoclassical school of thought in economics, far from being a charter for nonintervention, as its radical critics often allege, in some ways opened the door to wide-scale state involvement in the economy. In this schema, "market failure" becomes a warrant for government action to provide corrective "solutions", including the wholesale reallocation of property rights.

Policymakers are generally socialised into variants of this influential way of thinking, not least by a training in economics.

It is certainly a less permissive way of thinking than merely to presume that "if there is a problem the state should solve it", in that it requires some notion that the state will do better than the market left to itself. But there are dangers nonetheless.

In particular, this view stands in opposition to the notion of private property rights as rights in themselves, needing no justification other than, in the language of the Constitution, "man, in virtue of his rational being".

In this view, unfamiliar to the current public debate, fundamental rights are precisely that. They are a starting point within which policy proceeds, ends in themselves, and not means to ends. The role of the state is seen as a necessary mechanism to secure liberties, such as property rights, but is only permissible to that limited, indeed minimal, extent.

In contrast, the dominant public policy mentality now regards such rights as mere instruments to secure some higher goal to which the state is dedicated.

In democratic societies, that can ultimately mean that such rights are rights only insofar as they serve the aim of a majority, and are subject to the vagaries of the numbers game that is voting. The way is then open for those in the political system who have an interest in extending the reach of the state gradually to undermine those very rights that the formation of constitutional

order was meant to secure.

This is more or less where we are with the debate on housing and private property rights in Ireland. The wider goal to which it is asserted the state must direct its energies is a purported right to "affordable housing" - or more precisely, the "right to buy housing at a price acceptable to one side of the transaction".

Even if this were not problematic in itself, the focus on weakening private property rights as a means to the end of "affordable housing" does raise some concerns.

For example, in the public discussion, a general notion of property is conflated with the specific property of land and/or houses, so the possibility of inadvertently and inappropriately extending the state's claims on private resources through an amending measure is a real one.

Also, this line of thought represents an attempt to find the most legally lazy way of solving a complex problem. It takes no account of the salient raft of interventions on the part of the state in the housing market, not least of which are the taxation privileges accorded to house buyers and sellers, which contribute to high prices.

Add to this mix the state's incapacity to fulfil its presumed role of a planning authority, or to provide sound monetary conditions, and we then observe one state intervention - at a radical level - designed to undo the damage caused in part by its previous interventions.

The easy thing to do, on the approval by voters, is simply to take publicly from existing property-owners some of what they own, and give those assets to others.

We do have a taxation system that could do this in a transparent way, but it is politically more feasible to vote ourselves the largesse directly in the form of the share of land and/or houses of those people who own them, as they have committed the cardinal sin of attempting to make profits, and are thus undeserving of constitutional protection.

The ultimate destination for this piece of economic misadventure will be a clamour from the newly propertied if and when housing becomes much more affordable than they would like - if house prices fall by very much.

The state, with no discernible limits to its responsibilities, will then face demands to support the asset value of accommodation. "Rights-based legislation for property-owners" perhaps?

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