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Less repressive and fairer foreclosure – Evidence from a randomized experiment at the Swedish Enforcement Authority regarding the possibilities to break economic exclusion

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Abstract

Homeowners are facing worse personal finances with high inflation and increasing interest rates. New groups are at risk of overindebtedness and foreclosure. The entire household, including children, are affected by worse health and well-being. This leads to large societal costs. Hence, it is imperative to break the negative cycle of overindebtedness for these households. Foreclosure is enforced by Kronofogden (the Swedish Enforcement Authority) and aims to pay the debts. However, an unintended consequence may be that foreclosure is perceived as repressive. The degree of repression depends on how Kronofogden handles the proceedings. This research project contributes with knowledge about these mechanisms and how they may make it more difficult to break social and economic exclusion by answering the following research question: How repressive are the foreclosure proceedings at Kronofogden?

It is important to understand when and why foreclosure becomes repressive because it may reduce the possibilities to exit overindebtedness as the homeowner's social network is reduced and their social trust is lowered. Today we have limited knowledge about the mechanisms that make the exercise of public authority unintentionally repressive. The knowledge is relevant for public authoritative proceedings both in Sweden and internationally. The authorities may use this knowledge to adapt their handling protocol to avoid future repression.

Introduction and background of the study

Swedish home-owning households are now struggling to make ends meet as they face a double shock to their personal finances: high inflation and increasing interest rates. We may expect that more households will become financially distressed, including previously unaffected middle-class households. For these households, the risk of the ultimate consequence – having to leave your home

due to foreclosure – will become real. This research project is about individuals who have lost or have been at risk of losing their homes due to foreclosure. Foreclosure is the forced sale of the home by Kronofogden (the Swedish Enforcement Authority). During the last ten years, foreclosure has resulted in the sale of 800-1,000 properties per year. Ultimately, foreclosure may result in eviction. Quite often, children are affected since 43 per cent of the homeowners subject to foreclosure between 2000-2014 had minor children (Lundholm 2022). Historically, foreclosed homeowners are also socio-economically vulnerable in terms of low education, unemployment, and low income (ibid; Krumer-Nevo et al. 2017). Furthermore, foreclosure is closely related to the risk of overindebtedness, i.e., an irrevocable state of debt default. In 2016, close to 130,000 individuals had been subject to debt enforcement at Kronofogden for 17 years or more (Vuleta 2018). The total debt at Kronofogden was 101 billion SEK in 2022, an increase by 22 billion SEK since 2017. Besides being socio-economically marginalized, it is common for overindebted persons to experience low self-esteem, hopelessness and feelings of shame, which in turn may lead to social withdrawal (Münster et al. 2009; Sandvall 2011; Micklitz and Domurath 2015; Gutiérrez-Nieto et al. 2017). Overindebtedness is also strongly associated with an increased risk of physical and mental illness, premature death, and suicide (Richardson et al. 2013; Sweet et al. 2013; Ahlström and Edström 2014; Blomgren et al. 2016; Rojas 2021). Ahlström (2015) estimates the annual societal costs for overindebtedness to 200 billion SEK. There are, in other words, both humanistic and fiscal reasons for preventing foreclosed homeowners from morphing into “eternal debtors” (Ramsay 2017).

What about foreclosure?

Foreclosure aims to enforce the payment of debts. When this aim is achieved, foreclosure compensates the creditor and relieves the homeowner of delinquent debt. However, an unintended consequence of foreclosure is that it may also be perceived as repressive. For the homeowner, foreclosure is quite intrusive since it leads to the loss of their home and it is not certain that all debts are paid. If there is little payment of the debts, foreclosure is mainly repressive from the perspective of the homeowner, especially in combination with social stigmatization (Frade 2012). There are also other factors that may lead to more repression, for example, if Kronofogden does not allow the homeowner to actively participate in the foreclosure proceedings. There is little knowledge about the mechanisms that determine the degree of repression as an unintended consequence in public authoritative proceedings, such as

foreclosure (compare Ross and Squires 2011). This is the research problem that this project seeks to engage with. Next, before stating the aim of this research project, we argue why knowledge about this research problem and the case we study is important.

It is important to understand how foreclosure may result in repression for several reasons. Public proceedings should exercise the least possible repression to achieve a given aim. This is both an ethical principle, as well as a legal principle (the principle of proportionality found in, for example, the European Convention for Human Rights). Moreover, we may expect that repressed individuals are at greater risk of economic and social exclusion in the form of, for example, overindebtedness. This is because the level of repression is related to the social capital that is needed to cope with hardship (compare Wacquant 2008). While the relationship between openly repressive exercise of public authority, for example, criminal incarceration, and social capital have been studied (Clear 2008), the more covert forms of repression that we are interested in in this project have not been explored. We believe that this research project is relevant for our understanding of how other vulnerable groups than foreclosed homeowner cope with repression and hardship.

We study foreclosure as a case of authoritative public proceedings that may be repressive as an unintended consequence. Other examples of similar proceedings include taxation and various means-tested social benefits (example: public health insurance). Therefore, what we may learn from the foreclosure case is applicable also to other public proceedings. Importantly, we do not study a case involving policy change but, rather, how Kronofogden has adapted the foreclosure proceedings within the framework of the current regulation. This increases the generalizability of our results since other authorities may consider how to avoid unintended repression in their day-to-day operations.

The Swedish case of foreclosure is relevant to study as an example of a non-recourse legal regulation, i.e., the homeowner is not relieved of unpaid mortgage debt after foreclosure (Harris and Meir 2015). Nonetheless, even though foreclosure may result in arrears, the legal regulation offers few safeguards to ensure that foreclosure's compensatory aim is fulfilled. In practice, foreclosure sale may be carried through even though it results in little payment of the debts. This is especially problematic since research indicates that the compensatory potential of foreclosure in Sweden is related to the socio-economic status of the homeowner and that this status weakened during

2000-2014. (Lundholm 2021; 2022). Furthermore, from an international perspective, the Swedish personal insolvency regulation, which foreclosure is part of, is considered quite unfavorable for the debtors (Haber 2015; Ramsay 2017). We also have to consider the specific context of the Swedish welfare regulation. Given these specific characteristics, what we may learn about repression during foreclosure from the Swedish case is important to understand this phenomenon in other legal and welfare regimes.

This study aims to explore repression as an unintended consequence of foreclosure proceedings and how it may hinder the social and economic rehabilitation of foreclosed homeowners. It contributes with knowledge that is relevant both for the individual and for Kronofogden. From the individual perspective, repression is relevant because it affects how the homeowners cope with overindebtedness and other hardship through social capital. Even though foreclosure has the potential to be compensatory (i.e., result in the payment of debts), there is a risk that the foreclosure process at Kronofogden demoralizes and humiliates the homeowner who then may be less prone to make it out of overindebtedness by, for example, applying for debt relief (compare Sandvall 2016). This repression may be accentuated by how foreclosure often targets overindebted individuals. This vulnerable group tends to use coping strategies that involve avoidance and inactivity, rather than actively engaging with public institutions to achieve economic rehabilitation (Sandvall 2016; Holmgren 2019). According to Sandvall (2011), previous experiences of contacts with and personal treatment by public and private institutions are factors that explain which coping strategies overindebted individuals rely on. In essence, instead of fulfilling its potential to be one important step out of overindebtedness, a repressive foreclosure process may result in stagnation for the individual in social and economic exclusion as the individual is not given any help to handle their overindebtedness. From the institutional perspective, repression as an unintended consequence of public proceedings is relevant for how Kronofogden and other authorities should consider implementing practices that avoid repression. To raise awareness about this problem, this research project contributes with knowledge about the risk of repression and the mechanisms that drive repression. We ask the following main research question: How repressive are Swedish foreclosure proceedings?

Method

Empirically, we answer the research question by surveying and interviewing homeowners who have been subject to foreclosure at Kronofogden about repression. Repression is a multi-faceted concept that may be employed to study both open displays of state violence as well as “soft” exercises of public authority through, for example, stigmatization (e.g., Jämte and Ellefsen 2020). We are inspired by this latter understanding and We take advantage of a randomized controlled trial (RCT) in which Kronofogden randomized foreclosure sales to auction or brokered sale in an effort to investigate which sales form resulted in higher payment. While auction sales are characterized by coercion, no interactions with the homeowner, and no possibility for the homeowner to affect the outcomes through personal involvement, the success of brokered sales depends on collaboration with the homeowner, participation on behalf of, and involvement from the homeowner. Given these different characteristics, the RCT provides an opportunity for us to examine whether which sales form – auction or broker – was employed had an impact on the level of repression as measured by perceived fairness and institutional trust. Due to its characteristics, we hypothesize that brokered sale results in a lower level of repression. This hypothesis is tested with a survey that targets the foreclosed homeowners that were included in Kronofogden’s RCT (study 1). To get richer, more in-depth, and more nuanced data, we also interview the homeowners about their experiences of personal treatment by Kronofogden (study 2). In addition, we do group interviews with regular homeowners (who have not been subject to foreclosure) to ask them about whether they consider the foreclosure proceedings at Kronofogden to be repressive and in what ways with a phenomenographic approach (study 3).

These are the empirical studies that answer the research question. Conceptually, we intend to explore the link between repression and social capital in order to also advance this research project’s aim to explore how repression may hinder social and economic rehabilitation. Here we draw upon the work of Rothstein and Stolle (2008) in arguing that both perceptions of justice and institutional trust are vital parts of the social capital that the individual needs to manage their everyday life and cope with hardship. This includes handling strategies in relation to contacts with public authorities and accessing different social benefits. As such, social capital is an important enabler for how the foreclosed homeowner may find a way out of overindebtedness. Therefore, less repressive foreclosure proceedings may hold the promise of increasing social capital and, thereby, preparing the homeowner to cope with overindebtedness. A homeowner that perceives of the foreclosure proceedings

as relatively fair and trustworthy is more likely to actively engage in future contacts with public authorities and to use enabling coping strategies.