

SYMPOSIUM

The City as a Contested Space: Constitutional Law Perspectives on Urban Housing Disputes: An Introduction

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A. Introduction

In many cities around the world, access to adequate housing has become one of the most pressing challenges of our time. Rapid urbanization, the eviction of informal households, precarious living conditions, rising rents and the financialization of real estate have made secure and affordable housing in cities increasingly scarce. These pressures are compounded by widening inequalities between urban centres and peripheries, the ongoing exclusion of low-income households, and the increasing vulnerability of tenants and informal households at risk of eviction or homelessness.

These dynamics cannot be reduced to technical matters of zoning or market regulation. They cut to the core of what it means to live in a city: who can claim a place in the city, who shapes the urban landscape and who sets these rules? In this sense, housing disputes are never merely about buildings or rents. They concern the fundamental conditions of belonging to and participating in urban life.

This is where urban housing disputes intersect with constitutional law. Struggles over who belongs in the city directly translate into disputes over rights, duties, and the meaning of equality before the law. The city thus becomes a constitutional space—a site where abstract guarantees of liberty, equality, social welfare and democratic participation are tested against specific conflicts over rent, eviction, homelessness, segregation, or gentrification. It is therefore no surprise that urban housing disputes have emerged as a highly contested arena in constitutional discourse, sparking litigation and constitutional argumentation across jurisdictions. This Special Issue, *The City as a Contested Space: Constitutional Law Perspectives on Urban Housing Disputes*, seeks to illuminate these conflicts by situating local housing struggles within the broader framework of constitutional law. Viewing these

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disputes through a constitutional lens enables us to understand how legal systems generally respond to highly politicized distributional conflicts and how these responses vary across jurisdictions.

B. On the Background of this Special Issue

This Special Issue grows out of our personal experience as German legal researchers. In our work, we have witnessed a deepening housing crisis across Western Europe, where rising rents have turned access to affordable housing into a central social concern. In Germany, the average cost of newly concluded tenancy contracts has risen by around 50 % over the past twelve years and by an astonishing 108 % in the capital, Berlin.¹ As constitutional lawyers, we have followed these developments with concern, analyzing the impact of the current legal framework on the realization of fundamental rights and exploring possibilities for a more just housing policy. In our research, the particular circumstances of the German housing market illustrated how constitutional law serves as a reference point in addressing a housing crisis. While Germany is not a case study in this Special Issue, we believe it can still illuminate the foundational framework of the debate.

The housing crisis in Western Europe is above all a crisis of affordability. In urban areas, adequate housing is either unavailable or offered at prices that far exceed what ordinary households can bear. While new construction is geared towards high-end, luxurious developments at high cost, the most vulnerable part of society is left scrambling for few affordable apartments or displaced from urban centres altogether.² Political discourse has long sought to explain and address this crisis through the familiar framework of supply and demand. The dominant response has been to create incentives for private actors to build new housing.³ According to this paradigm, an increase in housing supply remedies the demand and results in a cost-effective equilibrium. In practice, however, this strategy has been entirely unsuccessful. More recent developments suggest that the European housing crises are not merely the result of insufficient supply; rather, they are deeply rooted in the way housing is organized as a market commodity.⁴ Deregulation and the European Central Bank's prime-rate policy caused a sharp increase in private investment in the housing mar-

1 *Oliver Falck / Simon Krause / Pascal Zamorski*, Mieten – Wachstumshemmnis und sozialer Sprengstoff in Großstädten, ifo Schnelldienst 10/2025, pp. 8–9.

2 *Andrej Holm*, Die Lage der sozialen Wohnraumversorgung in Berlin. Stellungnahme für die Expertenkommission zum Volksentscheid «Vergesellschaftung großer Wohnungsunternehmen», Berlin 2022, pp. 9–11.

3 The current federal coalition treaty sets as the primary goal of its housing policy to create incentives for new development by increasing private spending and by decreasing taxation and bureaucracy. Koalitionsvertrag zwischen CDU, CSU und SPD, 21. Legislaturperiode, p. 22.

4 *Susanne Heeg*, Finanzialisierung und Responsibilisierung, in: Barbara Schöning / Justin Kadi / Sebastian Schipper (eds.), Wohnraum für alle?!, Bielefeld 2017, pp. 55 ff.

ket, leading to what has been called its financialization.⁵ Rather than private individuals, large corporations driven by investment funds have taken over the market and established a new logic of profit maximization.⁶ This created specific incentives to invest in low-income neighborhoods and to transform them into areas “desirable” to higher-income groups. The so-called rent gap—that is, the difference between the current and the highest attainable price of a dwelling—became the metric for driving investment.⁷ As a result, developers are specifically targeting low-income areas, forcing residents to move and displacing entire communities. In other words: The market logic itself is part of the problem, not the solution.

In Germany this diagnosis is confirmed by recent legal efforts to tackle the urban housing crisis, which have revealed that existing ordinary legislation is ill-suited to the task. Since the 1980s, public provisions and management of housing have been steadily dismantled.⁸ Instead, the regulation of housing today is located primarily within private contractual law. Previous attempts to counter rising rents centred on the so-called *Mietpreisbremse* (rent brake), a mechanism designed to limit rents for new lease agreements. Through this instrument, the existing system of rent regulation was extended to newly signed contracts.⁹ However, enforcement lies entirely with tenants themselves, which not only creates high practical barriers but also means that there is no reliable data on how well the rent break works.¹⁰ Moreover, the law provides numerous exemptions, which landlords

- 5 In principle, financialization describes a process of managing a certain asset through a fund. Applied to housing, it is understood as a tendency of a drastic increase of the activity of financial actors in the housing market, that brings with it the application of market principles and the necessity to increase shareholder revenue while losing sight of the needs of tenants. A terminological overview can be found at *Manuel B. Aalbers*, *The Financialization of Housing: A Political Economy Approach*, Abingdon / New York 2016, pp. 2 ff. For an overview of financialization in major European cities see *Andrej Holm / Georgia Alexandri / Matthias Bernt*, *Housing policy under the conditions of financialisation*, Sciences Po Urban School Research Report 2023.
- 6 *Andrej Holm*, *Wohnung als Ware: Zur Ökonomie und Politik der Wohnungsversorgung*, in: Sebastian Schipper / Lisa Vollmer (eds.), *Wohnungsforschung*, Bielefeld 2020, p. 76; *Till Baldenius / Sebastian Kohl / Moritz Schularick*, *Die neue Wohnungsfrage*, *Leviathan* 48 (2019), pp. 196, 215.
- 7 The so-called rent gap theory, developed by urban scholar Neil Smith, explains how the profit-driven structure of capitalist land markets can trigger dynamics of residential displacement: *Neil Smith*, *Toward a Theory of Gentrification: A Back to the City Movement by Capital, not People*, *Journal of the American Planning Association* 45 (1979), pp. 538 ff.; cited from *Inga Jensen / Sebastian Schipper*, *Jenseits von schwäbischen Spätzlemanufakturen und kiezigen Kneipen – politökonomische Perspektiven auf Gentrifizierung*, in: Sebastian Schipper / Lisa Vollmer (eds.), *Wohnungsforschung*, Bielefeld 2020, p. 141.
- 8 *Pia Lange*, *Staatliche Wohnraumvorsorge*, Tübingen 2023, pp. 162 ff.
- 9 Previously, § 558 of the Civil Code limited a landlord’s ability to increase rents to a regional average price. § 556d Civil Code now limits the rent for new lease agreements to 110 % of said regional price average. However, it applies only to areas deemed to have a stressed housing market.
- 10 *Anna-Katharina König*, *Vom Papier zur Praxis*, *Kritische Justiz* 58 (2025), pp. 82 ff.

readily exploit.¹¹ The continuing rise in rents demonstrates that the instrument has failed to produce its intended effects. In short, market-based legislation rooted in private contractual law has proven incapable of mitigating the housing crisis.

In Berlin—the city experiencing the sharpest rent increases in Germany—lawmakers sought to address this shortcoming through public law. In 2020 the regional parliament introduced a rent cap that set a legally binding maximum rent, while public authorities were responsible for overseeing compliance and imposing penalties on landlords who exceeded it.¹² While the mechanism itself remained similar to the rent brake, a stronger enforcement dramatically improved its effect. Yet, this approach was struck down by the Federal Constitutional Court, which held that the legislative competence for such regulation lay exclusively at the federal level.¹³ Without the constitution commenting on the matter of rent regulation itself, it suddenly became a crucial hindrance to an alternative housing policy. The court’s ruling came as a surprise to many. Previously, scholars primarily discussed whether individual fundamental rights inscribed by the constitution would prevent a stronger price regulation.¹⁴ Traditionally, constitutional law had largely been perceived as an impediment to effective housing policies: particularly the protection of private property and the right to economic freedom¹⁵ were seen as barriers to stronger regulation.

- 11 Apartments built after October 2014 are excluded entirely from the rent brake (§ 556f Civil Code), as are apartments that were leased to a higher price previously (§ 556e Civil Code). Additionally, it also does not apply to furnished apartments, creating a drastic increase in furnished apartments.
- 12 *Andreas Fischer-Lescano / Andreas Gutmann*, Mietpreisregulierung im Föderalismus, *Kritische Justiz* 53 (2020), p. 4.
- 13 BVerfG, Order of 25 March 2021 – 2 BvF 1/20, 2 BvL 5/20, 2 BvL 4/20 –, BVerfGE 157, 223 – “Berliner Mietendeckel”, english press release: <https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2021/bvg21-028.html> (last accessed on 14 November 2025).
- 14 This issue was discussed primarily after the rent brake entered into force. The Federal Constitutional Court, however, upheld the measure’s constitutionality and affirmed that the legislature enjoys a wide margin of appreciation in the regulation of rental prices. In particular, it held that the prevention of gentrification constitutes a legitimate public-interest objective capable of justifying restrictions on the use of private property. This remains the case even where the measure’s practical effects have not yet been empirically established and continue to be contested by opposing political actors. BVerfG, Order of 18 July 2019 – 1 BvL 1/18 / 1 BvL 4/18 / 1 BvR 1595/18 –, “Verfassungsmäßigkeit der Mietpreisbremse”, paras. 59 ff. The court recently upheld its decision, arguing that generating the maximum profit through rent is not protected by the right to property, BVerfG, Order of 19 March 2026 – 1 BvR 183/25 –, “Verlängerung der Mietpreisbremse”. By focusing solely on rent prices, the court shifted its attention towards financialization, see *Timo Laven*, Missverständnisse zur Mietpreisbremse, *Verfassungsblog*, 27 February 2026, <https://verfassungsblog.de/bverfg-mietpreisbremse/> (last accessed on 4 March 2026).
- 15 While economic freedom is not specifically protected by the constitution, the freedom of occupation is largely interpreted as such, protecting businesses from state interventions. *Fabian Michl*, Das Sondervotum zum Apothekenurteil, *Jahrbuch des öffentlichen Rechts* 68 (2020) pp. 365 ff. For a more critical perspective of the German economic order as set by the constitutional court see *Florian Meinel / Christian Neumeier*, *Die Politische Ökonomie des öffentlichen Rechts, Der Staat* 64 (2025), pp. 97 ff.

The Court's decision, demonstrating that even rules on legislative competence could limit effective housing policy, only reinforced this perception.

Amidst the inadequate regulation of rents and legal barriers to more effective alternatives, scholars and activists began to rediscover the transformative potential of the German constitution. In 2021 a group of lawyers and housing activists launched a campaign for a so-called "socialization" of large housing corporations in Berlin seen as particularly responsible for rising costs.¹⁶ They based their proposal on Art. 15 of the German Basic Law (GBL), which permits the transfer of land and natural resources to public ownership in exchange for just compensation.¹⁷ In contrast to Art. 14 GBL that protects private property and enables expropriation primarily on an individual level, Art. 15 GBL is ascribed an economy-shaping function that extends beyond individual instances. Its purpose is to replace an entire, previously market-based sector of the economy with welfare-oriented public ownership.¹⁸ Affected businesses should no longer serve the maximization of profit but the common good of society. Art. 15 GBL envisions socialization as an end in itself.¹⁹ It aims to withdraw specific sectors of the economy from a capitalistic distributive order altogether and to place them under democratic control. However, ever since the constitution came into force, this article has never been implemented in practice.²⁰ As a result, it has attracted relatively little attention in public debates and legal scholarship. Yet, it remains one of the most far-reaching economic policy instruments that the constitution has to offer.

Nowhere are the implications of Art. 15 GBL as tangible as in Berlin. The Berlin initiative specifically proposes to transfer up to 220,000 apartments from large corporate landlords into public ownership and to allocate them through forms of democratic participation

16 The so called „Initiative Deutsche Wohnen & Co enteignen“ (Initiative for the expropriation of Deutsche Wohnen & Co), named after the then largest housing company, Deutsche Wohnen. An English summary of their plans can be found under <https://dwenteignen.de/en/argumente> (last accessed on 14 November 2025).

17 Art. 15 GBL: "Land, natural resources, and means of production may be transferred to public ownership or other forms of public enterprise for the purpose of socialization by means of a law that regulates the nature and extent of compensation. Art. 14, paragraph 3, sentences 3 and 4 shall apply mutatis mutandis to compensation."

18 This interpretation was established by *Helmut Ridder*, *Enteignung und Sozialisierung, Veröffentlichung der Vereinigung der Deutschen Staatsrechtslehrer* 10 (1952), p. 140; it is currently undergoing a renaissance, as exemplified by *Tim Wohl*, *Vergesellschaftung als juristische Kategorie*, in: Niklas Angebauer / Jacob Blumenfeld / Tilo Wesche (eds.), *Umkämpftes Eigentum*, Berlin 2025, pp. 227 ff.

19 The constitution clearly references socialization as the purpose. Whether socialization is its own purpose in a proportionality test, is heavily debated by scholars. An overview is provided by the report of the expert commission on socialization in Berlin, *Expertenkommission zum Volksentscheid Vergesellschaftung großer Wohnungsunternehmen, Abschlussbericht*, Berlin 2023, pp. 36 ff. For a historical perspective see *Timo Laven*, *Vergesellschaftung als Selbstzweck?*, *Kritische Justiz* 56 (2023), pp. 318 ff.

20 For a history of Art. 15 GBL see *Timo Laven*, *Zwischen Sozialismus und Sozialstaat? Art. 15 GG in der Staatsrechtslehre des 20. Jahrhunderts*, Tübingen (to be published).

by residents and tenants, thereby providing affordable housing for those most in need.²¹ According to calculations by housing scholars, this would largely cover Berlin's housing needs.²² From a fiscal perspective, proponents argue that such a scheme would be compatible with the constraints of public finance. Under the prevailing interpretation in the literature, Art. 15 GBL does not require a compensation corresponding to the full market value but allows for significant reductions.²³ Moreover, compensation is to be paid in the form of government bonds, thereby reducing the immediate fiscal burden.

In an effort to invoke Art. 15 GBL, the socialization campaign sought to organize a referendum on the issue in Berlin. After three years of collecting support signatures and passing administrative procedures, the vote was finally held in September of 2021. With a turnout of almost 1.8 million voters, more than 57 % supported the proposal.²⁴ The referendum, however, did not itself enact a legal statute. Its purpose was to oblige the Berlin government to draft and adopt a law on socialization. The political response to this mandate was, however, cautious: the regional government set up an expert commission to examine the legality of a socialization. Despite the commission's positive response, politicians have remained fairly silent.²⁵ As a result, efforts are now undertaken to organize a second referendum—aimed directly at passing the bill this time.²⁶

The mobilization of Art. 15 GBL represents an approach that is novel in two distinct ways: Firstly, constitutional law has been used as a key mechanism for a grass roots political campaign in the context of a local housing crisis. It provided the blueprint for a political campaign that gathered a mass following and remains one of the few examples in which

- 21 The calculations of the draft of the statute conclude that around 220.000 apartments would be affected, Begründung zum Gesetz zur Überführung von Wohnimmobilien in Gemeineigentum, pp. 15 ff., https://content.dwenteignen.de/uploads/2025_09_26_dwe_vergesellschaftungsgesetz_begrundung_d1802094f7.pdf (last accessed on 14 November 2025).
- 22 Scholars diagnosed a deficit of approximately 300.000 apartments in 2018, *Holm*, note 2, p. 12.
- 23 The debate mostly focusses on the possible percentage of reductions as well as the calculation methods of determining the value. An overview of the predominant opinions can be found at Expertenkommission zum Volksentscheid Vergesellschaftung großer Wohnungsunternehmen, note 19, pp. 63 ff. and pp. 122 ff.
- 24 The official report is published by the regional government: Bericht der Landesabstimmungsleiterin, Volksentscheid über einen Beschluss zur Erarbeitung eines Gesetzentwurfs durch den Senat zur Vergesellschaftung der Wohnungsbestände großer Wohnungsunternehmen, https://download.sta.tik-berlin-brandenburg.de/eb55b8b784d62692/df8fedf66eb0/SB_B07-04-02_2021u00_BE.pdf (last accessed on 14 November 2025).
- 25 *Daniel Haefke*, Verschleppte Vergesellschaftung, *Verfassungsblog*, 5 July 2023, <https://verfassungsblog.de/verschleppte-vergesellschaftung/> (last accessed on 14 November 2025); *Georg Freiß / Timo Laven*, Vergesellschaftungsverzögerungsgesetz, *Verfassungsblog*, 7 July 2023, <https://verfassungsblog.de/vergesellschaftungsverzogerungsgesetz/> (last accessed 14 November 2025).
- 26 The draft version of the bill has been made public in September 2025, however the procedure to organize the referendum will take upwards of a year. The draft is available at https://content.dwenteignen.de/uploads/2025_09_26_dwe_vergesellschaftungsgesetz_2d336724db.pdf (last accessed on 14 November 2025).

thousands of people took to the streets not in opposition to, but in favour of the application of a law. Rather than protecting the private property of the few, the constitution is now used by the people for the people. By invoking a constitutional article, activists were able to lend discursive legitimacy to their demand for adequate housing for all. In this sense, Art. 15 GBL functions as a source of normative legitimacy for what might otherwise appear as a radical proposal. Secondly, this mobilization actively contests the exclusionary mechanisms of private property, putting an established legal doctrine of property protection to the test. Instead, it presents the opportunity of an alternative: a system in which the constitution is not primarily used to protect the interests of the powerful and wealthy, but to secure housing rights for a broader population. Art. 15 GBL thus establishes the progressive potential that even constitutions that primarily focus on individual rights can contain. This shift was not merely political. It also changed the scholarly perception of the transformative potential of constitutional law.

Building on this development, this Special Issue takes the mobilization of Art. 15 GBL in the context of the Berlin housing crisis as its point of departure. While the German example provides the starting point and inspiration for our work, the Special Issue itself is not about Germany. Rather, it uses the questions prompted by the Berlin experience to explore the role of constitutional law in the global housing crisis. Although access to adequate housing has become a global challenge, the ways in which constitutional law shapes, enables and constrains responses to it differ markedly across regions. The issue therefore aims to highlight both the divergences as well as the commonalities in constitutional approaches to this pressing global challenge.

Yet any comparative inquiry into the role of constitutional law in urban housing disputes must take account of the distinct social and legal contexts in which such disputes arise. It is therefore instructive to look beyond the Berlin housing crisis and to reflect on the diverse realities that shape urban housing disputes across the globe.

C. How Urban Housing Disputes Differ

Patterns of living and the organization of housing stem from the interplay of culture, society, politics, market conditions, and history. These forces shape how people live and how housing is distributed within cities. They also lead to regional differences in urban housing systems which are visible in the supply and quality of dwellings, their design, and in the institutions that govern their provision. The conflicts surrounding urban housing are equally diverse. They reflect particular historical experiences, geopolitical pressures, climatic conditions, and religious traditions.

The Berlin housing conflict discussed above illustrates this well. For decades, the city was divided by a wall that marked the Cold War fault line. In the East, a socialist housing regime prevailed, with dwellings allocated primarily by the state, and households typically

spending no more than about three per cent of their income on rent.²⁷ After the Wall fell in 1989, the system transitioned to a market-oriented regime. Inexpensive housing in the East has now quickly become a lucrative asset class for private investors. Speculation in residential property and the subsequent gentrification of Berlin's inner districts reflect this specific historical trajectory. While the city is no longer divided by political systems, it is increasingly divided by wealth.²⁸

By contrast, other cities reveal different lines of conflict. Indian cities, for example, are shaped by the historical conflict between Hindus and Muslims, which is evident in residential patterns and the formation of segregated Muslim enclaves.²⁹ Cities in South Africa display racial segregation rooted in apartheid and the exploitation of Blacks.³⁰ In the United States, tent encampments have become an increasingly visible feature of the urban landscape, linked to decades of restrictive welfare policies and limited social housing provision.³¹ In France, today's banlieues took shape through the large public-housing programs of the 1950s and 1960s, which ultimately reinforced the segregation of households of North African origin.³²

Despite the complexity of the historical, political, and cultural contexts, several broad patterns stand out. A key divide separates cities in the Global South from those in the Global North.³³ In many Southern cities, informal settlements, insecure tenure, and weak

- 27 *Axel Schildt*, *Wohnungspolitik*, in: Hans Günter Hockerts (ed.), *Drei Wege deutscher Sozialstaatlichkeit*, München 1998, p. 180.
- 28 *Talja Blokland / Robert Vief*, *Making Sense of Segregation in a Well-Connected City: The Case of Berlin*, in: Maarten van Ham / Tiit Tammaru / Rūta Ubarevičienė / Heleen Janssen (eds.), *Urban Socio-Economic Segregation and Income Inequality: A Global Perspective*, Cham 2021, p. 251; in the same vein see also: *Hartmut Häußermann / Andreas Kapphann*, *Berlin: Von der geteilten zur gespaltenen Stadt? Sozialräumlicher Wandel seit 1990*, Wiesbaden 2002.
- 29 See, for example: *Laurent Gayer / Christophe Jaffrelot* (eds.), *Muslims in Indian Cities: Trajectories of Marginalisation*, New York 2011; *Abdul Shaban / Zinat Aboli*, *Socio-Spatial Segregation and Exclusion in Mumbai*, in: Maarten van Ham / Tiit Tammaru / Rūta Ubarevičienė / Heleen Janssen (eds.), *Urban Socio-Economic Segregation and Income Inequality: A Global Perspective*, Cham 2021, pp. 154 ff.
- 30 *David Everatt*, *Poverty and Inequality in Gauteng City-Region*, in: Philip Harrison / Graeme Götz / Alison Todes / Chris Wray (eds.), *Changing Space, Changing City: Johannesburg after apartheid*, Johannesburg 2014, p. 64.
- 31 For an inquiry into this phenomenon see: *Julie Hunter / Paul Linden-Retek / Sirine Shebaya / Samuel Halpert*, *Welcome Home: The Rise of Tent Cities in the United States*, March 2014, https://homelesslaw.org/wp-content/uploads/2018/10/WelcomeHome_TentCities.pdf (last accessed on 14 November 2025).
- 32 *Richard L. Derderian*, *Les Banlieues: Suburban Space and National Identity*, in: Richard L. Derderian (ed.) *North Africans in Contemporary France: Becoming Visible*, London 2004, p. 148.
- 33 For a global comparison of urban housing systems between the Global South and the Global North, see: *Aysegül Can*, *Informality and Affordability: Approaches from the Global South and Opportunities for the Global North*, *Critical Housing Analysis* 6 (2019), pp. 1 ff.; *Jan Nijman / Yehua Dennis Wei*, *Urban Inequalities in the 21st Century Economy*, *Applied Geography* 117 (2020), pp. 1 ff.; *Charlotte Lemanski*, *Hybrid Gentrification in South Africa: Theorising Across*

urban infrastructure prevail. Urban housing disputes thus focus on legal security of tenure, access to basic services such as electricity and water, and the persistent risk of displacement or eviction. In Northern cities, housing crises tend³⁴ to look different. As illustrated by the case of Berlin, rising rents, the financialization of housing markets, and the social consequences of gentrification dominate housing conflicts.

Despite these differences, cities in the Global North and the Global South cannot be understood apart from one another. They are tied together by a shared colonial history. Much of the wealth and urban fabric of Europe's metropolises arose from colonial expansion and extraction.³⁵ Commodity flows, such as tobacco, coffee and sugar, enabled cities like Hamburg,³⁶ Amsterdam,³⁷ Lisbon,³⁸ and Berlin³⁹ to flourish, leaving lasting marks on infrastructure, architecture, and urban prosperity. The counterpart to this history is visible across many cities in the Global South, which were shaped by European appropriation of land, resources, and labor.⁴⁰ Many of these postcolonial cities⁴¹ took shape along major trade routes or in resource-rich regions,⁴² and their internal geographies still reflect colonial hierarchies, with districts once reserved for colonial elites often adjacent to extensive areas of entrenched poverty.⁴³ In this context, the term "Global South" does not refer to

Southern and Northern Cities, *Urban Studies* 51 (2014), pp. 2943 ff.; Ryan Powell / Abdou Malig Simone, *Towards a Global Housing Studies: Beyond Dichotomy, Normativity and Common Abstraction*, *Housing Studies* 37 (2022), pp. 837 ff.; Darinka Czischke / Alonso Ayala, *Housing in the Global North and the Global South*, in: Anthony M. Orum / Javier Ruiz-Tagle / Serena Vicari Had-dock (eds.), *Companion to Urban and Regional Studies*, Hoboken 2021, pp. 579 ff.

- 34 The conflicts discussed above in cities of the Global South are by no means confined to those settings; they also surface in cities of the Global North, not least when it comes to informal housing: *Can*, note 33, pp. 1 ff.
- 35 *Christoffer Kølvraa*, *Decolonizing European Colonial Heritage in Urban Spaces – An Introduction to the Special Issue*, *Heritage & Society* 13 (2020), p. 1.
- 36 *Frank Eckardt/Johanna Hoerning*, *Postkoloniale Städte*, in: Frank Eckardt (ed.), *Handbuch Stadtsoziologie*, Wiesbaden 2012, pp. 275 ff.
- 37 *Csilla E. Ariese*, *Amplifying Voices: Engaging and Disengaging with Colonial Pasts in Amsterdam*, *Heritage & Society* 13 (2020), pp. 119 ff.
- 38 *Márcia Chuva / Paulo Peixoto*, *The Water that Washes the Past: New Urban Configurations in Post-Colonial Lisbon and Rio de Janeiro*, *Heritage & Society* 13 (2020), pp. 108 ff.
- 39 *Ulrich van der Heyden / Joachim Zeller* (eds.), *Kolonialmetropole Berlin. Eine Spurensuche*, Berlin 2002.
- 40 As *Garth Myers* argues with regard to African cities: *Garth Myers*, *African Cities: Alternative Visions of Urban Theory and Practice*, London 2011, pp. 51 ff.
- 41 For the different forms of the postcolonial city, see: *Gerrit Adriaan de Bruijne*, *The Colonial City and the Post-Colonial World*, in: *Robert Ross / Gerard J. Telkamp* (eds.), *Colonial Cities*, Dordrecht 1984, pp. 231 ff. *De Bruijne* distinguishes between cities founded by colonial regimes, cities that played a central role in the colonial administrative system, and cities whose structures continue to exhibit "Western" elements.
- 42 *Myers*, note 40, p. 51 ff.
- 43 With regard to African cities: *Catherine Coquery-Vidrovitch*, *The History of African Cities South of the Sahara*, Princeton 2005, p. 5; *Myers*, note 40, p. 54.

a geographic boundary but rather is an analytical lens for tracing how colonial legacies continue to shape urban development.⁴⁴ This shows that the notion of the “Global South”, as discussed in comparative constitutional scholarship⁴⁵ (including in this journal⁴⁶), is also central to comparative housing studies. Bringing these fields together promises fruitful insights into the interplay of law, policy, urban governance and its colonial legacies.

The distinction between cities in the Global South and the Global North, however, is not the only one that can be made. Urban housing conflicts can take many forms, and so do the criteria by which they can be classified and compared. One might distinguish between forms of protest and mobilization,⁴⁷ or between the legal and institutional forms of housing provision,⁴⁸ or between a city’s demographic trajectory.⁴⁹ Scholars examining urban housing conflicts from a comparative law perspective should bear in mind these possibilities and the diversity of local contexts. Comparative housing studies—the sociological counterpart to comparative law—offer a rich body of material to guide that inquiry.⁵⁰

D. What Do Urban Housing Disputes Have in Common

Although different historical and local conditions shape urban housing disputes, they also show significant similarities. At their core, they revolve around competing claims to scarce urban resources, in which diverging and often opposing needs and interests collide. The

- 44 Along similar lines, see also: *Can*, note 33, p. 2; *Philipp Dann*, Southern Turn, Northern Implications: Rethinking the Meaning of Colonial Legacies for Comparative Constitutional Studies, *Comparative Constitutional Studies* 1 (2023), p. 181.
- 45 *Philipp Dann / Michael Riegner / Maxim Bönnemann*, (eds.), *The Global South and Comparative Constitutional Law*, Oxford 2020, pp. 1 (4); *Dann*, note 44, pp. 174 ff.; *Daniel Bonilla Maldonado* (ed.), *Constitutionalism of the Global South: The Activist Tribunals of India, South Africa, and Colombia*, Cambridge 2013; *Milena Petters Melo / Thiago Rafael Burckhart*, A Constitutionalism “of” the Global South? Epistemological Reflections on Emerging Constitutional Trends, *Revista de Estudos Constitucionais, Hermenêutica e Teoria do Direito* 14 (2022), pp. 420 ff.; *Michaela Hailbrunner*, Transformative Constitutionalism: Not Only in the Global South, *The American Journal of Comparative Law* 65 (2017), pp. 527 ff.
- 46 See for example the Special Issue on “Cities and the Global South”, *World Comparative Law* 53 (2020).
- 47 See for example: *Gertjan Wijburg / Richard Waldron*, Social Movements against Housing Financialization: An Introduction to the Special Issue, *Critical Housing Analysis* 11 (2024), pp. 56 ff.
- 48 *Jim Kemeny*, *From Public Housing to the Social Market. Rental Policy Strategies in Comparative Perspective*, London 1995.
- 49 *Jaekyung Lee / Galen Newman / Yunmi Park*, A Comparison of Vacancy Dynamics between Growing and Shrinking Cities Using the Land Transformation Mode, *Sustainability* 10 (2018), pp. 1513 ff.
- 50 *Walter Matznetter*, Quo vadis, comparative housing research, in: Sebastian Schipper / Lisa Vollmer (eds.), *Wohnungsforschung*, Bielefeld 2020, pp. 161 ff.; *Jim Kemeny / Stuart Lowe*, Schools of Comparative Housing Research: From Convergence to Divergence, *Housing Studies* 13 (2), 1998, pp. 161 ff.; *Manuel B. Aalbers*, Towards a Relational and Comparative Rather than a Contrastive Global Housing Studies, *Housing Studies* 37, 2022, pp. 1054 ff.

persistence and intensity of such housing disputes stem from the dual role of housing in capitalist societies: housing is both a market commodity and a basic social necessity - two functions that inherently stand in conflict with one another.⁵¹ In urban settings, these functions collide within the confines of very limited space, making competing claims especially visible. While the specific form of tension between housing as a commodity and housing as a social necessity varies across historical and geographical contexts, the underlying contradiction recurs in cities worldwide, making housing a paradigmatic site in which broader conflicts over distributional justice and urban belonging are played out. To grasp the meaning of this fundamental contradiction, it is necessary to examine the dual nature of housing in more detail. Such an inquiry not only illuminates the structural tensions at the heart of urban housing disputes but also provides a basis for understanding how constitutional law becomes entangled in these struggles.

1. Housing as a Social Necessity

Every society depends on housing in a very literal sense: people need a place to live that protects them from the elements and unwanted intrusion, and provides a private space for family life, rest, and everyday routines. Housing also is the platform from which people participate in work, education, as well as cultural and political life. Although dwelling arrangements have varied across centuries and cultures, the need for a place to live has never changed.

Against this backdrop, housing differs from other essential goods in several decisive respects. It is inherently scarce, tied to a fixed location, and its production requires significant labor, capital, and time.⁵² Therefore, expanding the housing stock demands planning, finance, construction capacity and supporting infrastructure. Moreover, the adequacy of housing is inseparable from its location. The proximity of housing to employment, schools, transport, and health services is part of its social value. Housing supply is, therefore, not freely transferable across space; a vacant unit on the periphery is not a meaningful substitute for a scarce unit near employment or transit. These features reduce supply elasticity, raise adjustment costs, and make shortages slow and difficult to remedy.⁵³ Urbanization magnifies these constraints, as large numbers of people share limited space. Within cities, housing needs are concentrated precisely where land is most limited, and where competing claims for residential, commercial, infrastructural, and environmental land use are most intense.

51 *Andrej Holm*, *Wohnung als Ware. Zur Ökonomie und Politik der Wohnungsversorgung*, *Widerprüche* 31 (2011), p. 10.

52 *Barbara Schöning / Lisa Vollmer*, *Wohnungsnot gestern und heute*, in: Sebastian Schipper / Lisa Vollmer (eds.), *Wohnungsforschung*, Bielefeld 2020, p. 181.

53 *Ibid.*

II. *Housing as an Asset*

In market economies, housing also functions as a commodity. It is produced for sale or rent, priced according to supply and demand, and treated as an asset that can generate profit. This market logic allocates housing by price, steers new construction toward higher-profit segments, and rewards scarcity of housing with rising values. Where demand for housing is strongest, land values and expected returns are highest.⁵⁴

These mechanisms often conflict with the previously outlined function of housing as a social necessity. People still require a place to live even as prices climb, and the social costs of inadequate housing do not appear on private balance sheets. When market prices determine access to housing, households with low incomes are the first to be excluded by rising rents or purchase prices. The immediate consequence is the segregation and crowding of low-income households and displacement into substandard or informal arrangements; at the extreme, individuals fall into homelessness. None of this reflects a reduced need for housing, but only a reduced ability to pay. This shows that the features that optimize housing as an asset tend to undermine its function as shelter. The need for housing is strongest where jobs, schools, transport, and services cluster. Those same locations are where land values and expected returns are highest. To sum it up: The places with the greatest social need are precisely the places where the commodity logic operates most intensely.

This market-based provision of housing has its historical origins in nineteenth-century Europe when private property in land and private rental law was legally consolidated and standardized. Enclosures and the creation of land registers converted land into an asset that could be bought, sold and rented, while ownership and contracts became enforceable through courts.⁵⁵ At the same time, industrialisation drew large numbers of people into fast-growing cities. Many workers moved into overcrowded substandard tenement blocks, which had been constructed by the propertied elites to generate profit. It is in this context that the modern “housing question” emerged: The idea of housing as exclusionary private property clashed with the social need for adequate housing.⁵⁶ Through imperial rule and commercial networks, these property regimes spread globally, overlaying or displacing local tenure systems such as collective customary use.⁵⁷ Today, the private right to property

54 For insightful accounts of the political economy of housing, see: *Peter Marcuse / David Madden*, In Defense of Housing: The Politics of Crisis, London / New York 2016; *Aalbers*, note 5.

55 *Katharina Pistor*, The Code of Capital, Woodstock / Princeton 2019, pp. 30 ff.

56 The “modern housing question” was first articulated by *Friedrich Engels* in his study of industrial Manchester. *Friedrich Engels*, Die Lage der arbeitenden Klasse in England [1845], Marx-Engels-Werke, 1962, pp. 225 ff.;

57 For the complex and multifaceted forms of imperial property transfer, see: *Allan Greer*, Property and Dispossession, Cambridge 2017; *Naama Blatman / Alistair Sisson*, Rethinking Housing Inequality and Justice in a Settler Colonial City, in: Keith Jacobs / Kathleen Flanagan / Jacqueline De Vries / Emma MacDonald (eds.), Research Handbook on Housing, the Home and Society, Cheltenham / Northampton 2024, pp. 548 ff.

has become a central organizing principle of urban life. While its design and effects may vary across contexts, the fundamental tension between housing as a commodity and housing as a social necessity remains.

III. Constitutional Law in Urban Housing Disputes

Amid these competing interests and claims over housing, constitutional law has a particular part to play. Constitutions establish the basic frameworks for organizing the allocation of resources, such as housing, and thus provide the normative ground on which housing systems are designed. By setting fundamental commitments, such as property rights, social rights, equality or dignity, constitutions frame how a state may organize access to housing. As such, constitutional law becomes an important touchstone in disputes over who may access housing, on what terms, and subject to which constraints. In litigation and policy debate, it serves as a benchmark to defend or resist particular distributive arrangements. The Berlin campaign we introduced above, which invokes Art. 15 GBL to transfer large housing companies into public ownership, stands as just one example among the many movements contesting exclusionary housing systems with the means of constitutional law.

In practice, such housing disputes often take the form of questions of constitutional justification. Courts might ask whether eviction moratoria, rent regulation, social-housing quotas, or vacancy controls are compatible with constitutional standards. Moreover, constitutional law may authorize specific regulations, impose positive duties of protection and define the outer limits of private autonomy. Where a constitution recognizes a right to housing⁵⁸ or minimum conditions of existence,⁵⁹ litigation turns on the scope and enforceability of that guarantee. Where such rights are absent, attention often turns to how far property clauses can be interpreted to secure effective access to housing for all.⁶⁰ The institutional design of a constitution matters as well. Federal arrangements, the separation of powers, and the allocation of competences between the state and municipalities determine who may regulate, which instruments are available and how interventions affect urban housing

58 See, for example: Sec. 26 of the Constitution of the Republic of South Africa from 1996; Art. 65 of the Constituição da República Portuguesa 1976; Art. 6 of the Constituição da República Federativa do Brasil de 1988.

59 See, for example in Germany: BVerfG, Judgment of 9 February 2010 – 1 BvL 1/09 –, BVerfGE 125, 175-260 – „Gewährleistung eines menschenwürdigen Existenzminimums“, see also: Press Release - No. 5/2010 of 9 February 2010.

60 Much of the case law and academic literature on the German housing crisis centers on how far private property can be limited to give effect to its social obligation: BVerfG, Order of 18 July 2019 – „Mietpreisbremse“; *Anusheh Farahat*, Eigentum verpflichtet: die Sozialbindung des Eigentums am Beispiel des Berliner Mietendeckels, *JuristenZeitung* 71 (2020), pp. 602 ff.; *Alexander Blankenagel / Rainer Schröder / Wolfgang Spoerr*, Verfassungsmäßigkeit des Instituts und der Ausgestaltung der sog. Mietpreisbremse auf Grundlage des MietNovGE, *Neue Zeitschrift für Miet- und Wohnungsrecht* 11 (2015), pp. 1 ff.; *Charlotte Kreuter-Kirchhof*, Verfassungsmäßigkeit von Mietpreisbremse und Mietendeckel?, *Die Öffentliche Verwaltung* 3 (2021), pp. 103 ff.

crises.⁶¹ Taken together, these constitutional parameters shape urban housing systems and determine the way in which housing disputes are articulated and resolved. How we read these constitutional provisions and the priorities we derive from them ultimately decide how particular housing conflicts are settled. For this reason, struggles over urban housing are, unavoidably, also struggles over the meaning of constitutional law.

E. Dimension of Housing Disputes

The Special Issue is interested in examining how the role of constitutional law in housing varies across different contexts, what hinderances and opportunities it may entail, how it is mobilized and demobilized in different legal systems, and how constitutional courts have treated housing disputes within those systems. To approach these questions, our texts shed light on the different dimensions of conflict that constitutional law encounters when addressing housing issues.

The experiences in Germany described above highlight two diverging functions that constitutional law can assume. On the one hand, it can contain a progressive potential that lends legitimacy to a discourse and empowers political actors seeking transformative change. On the other hand, it can simultaneously hinder campaigns advocating social reform. While the protection of individual rights, such as the right to property or freedom of trade, appears as an obvious challenge to the allocation of housing, more technical aspects of constitutional law can also be significant. The distribution of competences between regional states and the federal state, for instance, may prevent regional actors from enforcing legislative changes.⁶²

Our first article in this special issue builds on this insight by examining two contrary approaches in two different constitutional systems. In her article, Shradha Dubey compares the constitutional regimes of Colombia and India, focusing on how attempts to decentralize governance have shaped housing policy in both states. Although both countries constitutionally recognized local forms of self-government in the early 1990s, the outcomes of decentralization have diverged sharply. While Colombia's strong and coherent decentralization has enabled a more effective urban housing governance, India's structurally weak and inconsistently implemented decentralization has hindered Mumbai's ability to address its severe housing challenges. In India, broad state discretion over the devolution of powers and financial resources enables states to bypass municipal decision-making, weakening the potential of local measures. As a result, conflicting state-level interests can impede regional projects aimed at resolving a housing crisis in a specific city. Shradha Dubey's article shows that constitutionalised decentralization improves housing outcomes only when it is both structurally well-designed and meaningfully implemented.

61 *Ran Hirschl*, *City State*, Oxford 2020, pp. 10 ff.

62 *Ibid.*

The articles by Junaid ul Shafi and Eklavya Vasudev shift the focus from formal to substantive conflicts. They explore how housing issues intersect with other policy fields, emphasising how housing can reinforce existing societal problems and come into tension with unintended side effects of otherwise desirable political projects. Taken together, they highlight the need to integrate constitutional housing questions into a wide range of political considerations.

Junaid ul Shafi investigates the interrelation between housing and religious discrimination. His article argues that housing in Indian cities is a central arena in which religious identity—especially Muslim identity—shapes access to space, rights, and security, producing deeply segregated urban landscapes. Residential segregation is therefore not accidental but systematically produced. Private housing markets discriminate openly on religious grounds, as landlords, brokers, and resident associations routinely deny rentals or sales to Muslims. This creates religio-spatial filtering that pushes Muslims into contained, Muslim-majority areas. The state reinforces this segregation: planning and zoning decisions frequently label Muslim settlements as “illegal”, “encroached”, or “unauthorised”, justifying demolitions and heightened policing. Demolition drives disproportionately target Muslim neighborhoods, treating them as out of place or illegitimate. In this way, state power acts on religious identity by controlling where Muslims can live and by making their neighborhoods vulnerable to arbitrary action. The article underscores the consequences of constitutional gaps: where discrimination law applies only to state actors, private housing markets remain governed by religious prejudice. At the same time, strong constitutional protection of religious freedom may help foster a more just housing market.

Eklavya Vasudev offers a critical perspective on the intersection between housing and environmental needs. His article examines how environmental regulation in India has come into increasing conflict with the urgent need for urban housing and sets this conflict in comparison with housing regulation in South Africa. While environmental protection is a constitutional imperative in India, the way courts and governments apply environmental principles often disproportionately burdens the urban poor, especially those living in informal settlements on lands deemed “encroached” or “ecologically sensitive.” As a result, environmental law becomes a tool that reshapes urban space in exclusionary ways. Judicial expansions of the public trust doctrine have allowed courts to classify large areas of urban land as inalienable public resources requiring protection. This has enabled authorities to evict settlements, demolish homes, and prohibit regularization often without providing adequate alternatives. Informal settlements are framed as environmental threats, while upscale commercial or luxury projects in similar zones are more easily regularized. Thus, a doctrine intended to safeguard ecological resources is mobilised selectively, reinforcing spatial inequality. The article highlights that in contrast to the case law of the South African constitutional court, environmental jurisprudence in India rarely recognizes housing as a competing constitutional interest. The paper stresses that housing must be understood through its intersections with conflicting political aims rather than as an isolated policy field.

Taken together, the three articles show how closely legal mechanisms and social contexts are intertwined in shaping housing outcomes. Across the different settings discussed in this Special Issue, constitutional law proves to be highly context-dependent: it is shaped by the legal systems, housing regimes, and the social conflicts in which it is entangled. Housing, in turn, is not a self-contained policy field but a central site where conflicts over race, religion and environmental protection are negotiated and where constitutional norms are constantly invoked, contested and reinterpreted. The contributions in this Special Issue invite readers to approach constitutional law with this ambivalence in view: as a site where the limits and possibilities of transformative housing politics are continuously negotiated and produced.



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