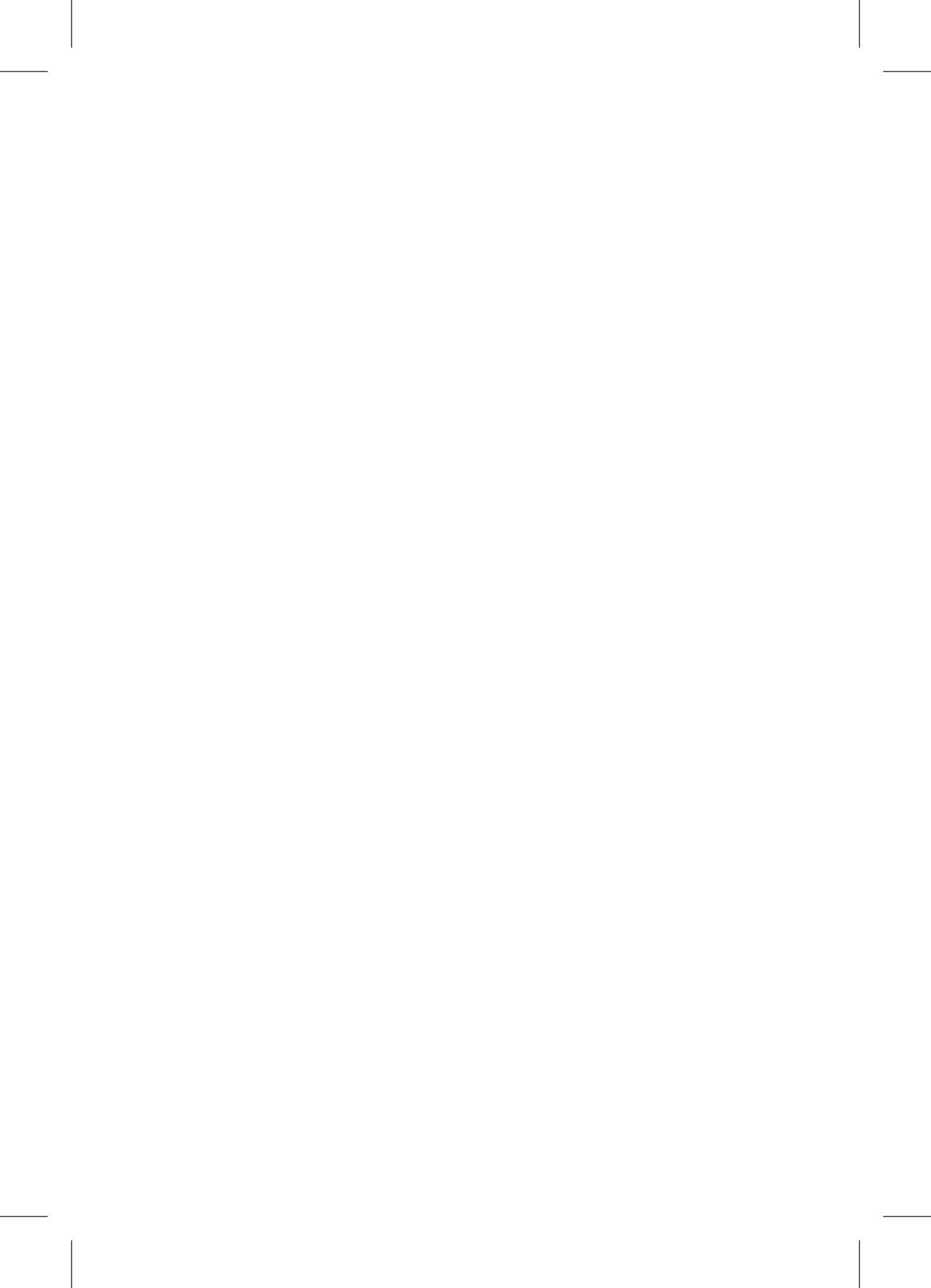


People and Buildings: Comparative Housing Law



# PEOPLE AND BUILDINGS: COMPARATIVE HOUSING LAW

MICHEL VOLS AND JULIAN SIDOLI (EDS.)

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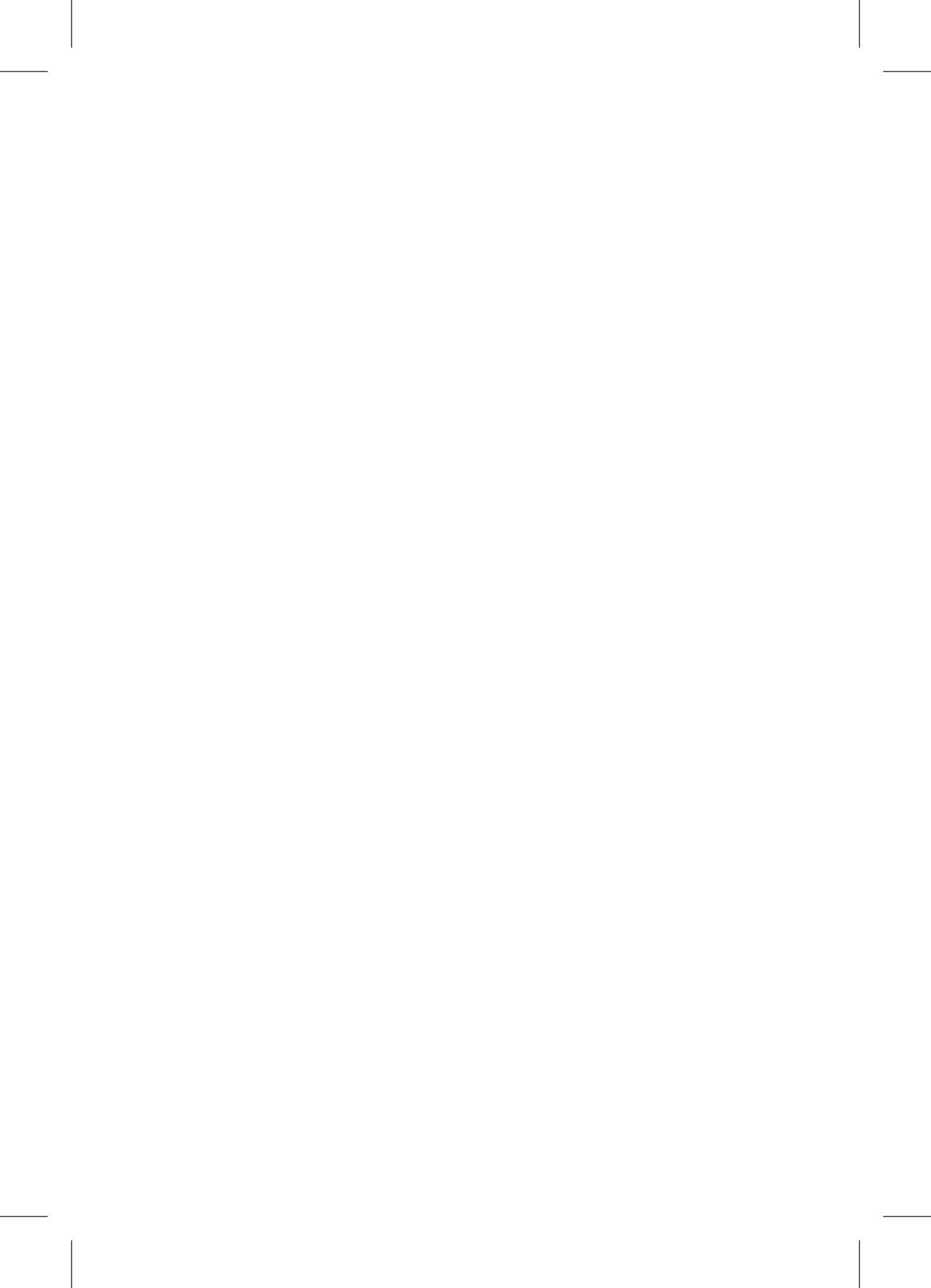
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# 1 COMMON THREADS IN HOUSING LAW RESEARCH: A SYSTEMATIC AND THEMATIC ANALYSIS OF THE FIELD

*Michel Vols & Julian Sidoli*

This is the second book in the series ‘Studies in Housing Law’.<sup>1</sup> Once again it brings together a range of work from diverse scholars and practitioners from a number of countries. The basic rationale underpinning this approach is that there is an opportunity of mutual learning – mutual learning between different jurisdictions, between different scholars and between different methodologies and approaches. It is argued that housing law, because of its diversity – ranging from issues of doctrinal property law on the one hand, to social and environmental aspects on the other – cannot take a narrowly partisan approach. It cannot be the case that all wrongs can be righted by, say, an economically driven approach alone or, alternatively, a sole focus on housing rights. Furthermore, the reality is that the issues and manifestations of such incidences vary greatly between different countries and, indeed, different cities and regions within the same country.

This introduction aims to provide, in addition to an outline of the papers in this volume, an overview of recent housing research as a way of providing the non-specialist reader some insight into current debates. Housing law has emerged as a distinct field in academic legal studies only in recent years. The same can be said of housing law as a distinct field of legal practice. In England and Wales, for example, housing law was a branch of property law until the 1970s even though people have had housing needs since before the establishment of the common law. Through a series of landmark cases involving homelessness, the duties of local authorities with regard to housing to more recent human rights and anti-social behaviour cases, it is now established that housing law is a distinct field of practice.

Academic trends have also followed the lead from practice. A generation ago, housing law was not firmly established as a discipline in its own right. Nowadays, a considerable literature has grown up around housing law. This introduction aims to unravel some common threads in the contemporary study of housing law and housing rights. Besides that, we aim to assess whether comparative analysis in the field of housing law research actually takes place.

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<sup>1</sup> See for the first volume: J. Sidoli del Ceno, M. Vols & M.N.F. Kiehl, *Regulating the City*, Den Haag, Eleven Publishing, 2017.

### 1.1 SYSTEMATIC REVIEW OF HOUSING LAW RESEARCH (2015-2017)

We conducted a systematic review of recent publications on housing law that can be traced via the database of Google Scholar. First, we searched this database for academic publications published between 2015 and June 2017 that contained one of the following words in the title: ‘housing law’, ‘housing right’, ‘housing rights’ or ‘right to housing’.<sup>2</sup> This search on Google Scholar resulted in 176 hits.<sup>3</sup> After we excluded the patents and citations from the search results, 147 publications were left. We assessed all these documents manually and selected the relevant publications written in the English language.<sup>4</sup> Monographs, book chapters and papers in scholarly journals were included in our database, and conference presentations, case notes, newspaper articles, bachelor/master thesis and book reviews were excluded. After this initial selection, 68 relevant publications on housing law and housing rights were found.

In addition, we conducted a more general search on Google Scholar for publications that contained ‘housing law’, ‘housing right’, ‘housing rights’ or ‘right to housing’ in the main text or abstract or title. This search resulted in 7,000 results. With the help of the Harzing’s ‘Publish or Perish’ computer program the number of results was narrowed down.<sup>5</sup> With the help of this program we selected the publications published between 2015 and June 2017 that according to Google Scholar were cited in at least three other publications. Studies that only briefly discussed housing law or rights were excluded from our data set. This resulted in 18 relevant publications that were not already found in the first search round. As a result, we collected a total number of 86 publications concerning housing law for our analysis.

After we collected our data set, codes were assigned to the publications. With each code we refer to ‘a word or short phrase that symbolically assigns a summative, salient, essence-capturing, and/or evocative attribute for a portion of language-based or visual data’.<sup>6</sup> We assessed for each publication which countries were taken into account in the research and whether the publication concerned comparative research that makes comparisons across different countries or cultures. Besides that, we assigned more substantive codes (e.g. ‘eviction’ or ‘squatting’) to each publication to discover common threads in recent housing law research.

As we already expected, our data set shows that contemporary housing law research focuses on housing law all over the world. In the 86 publications in our data set, housing law issues in more than 20 countries are discussed. The most prominent jurisdictions are

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2 All in title: “housing law” OR “housing right” OR “housing rights” OR “right to housing”.

3 The search was conducted on 27 June 2017.

4 We have excluded publications that only had an English title or abstract.

5 See <<https://harzing.com/resources/publish-or-perish>>.

6 J. Saldaña, *The Coding Manual for Qualitative Researchers*, London, Sage, 2009, p. 3.

the United States (discussed in 18 publications), South Africa (15 publications), Spain (10 publications), the United Kingdom (6 publications), Italy (6 publications), Brazil (5 publications) and Canada (5 publications). Moreover, our analysis reveals that most housing law research seems to analyse housing law issues in just one jurisdiction. Only a small minority of papers in our data set presents the results of comparative research: Only 10 publications discuss the results of comparative research.

A small number of publications in our data set are difficult to characterise as part of a common tread in current housing law research. They tend to be textbooks or broad doctrinal studies of housing law in one specific country. For example, Brown discusses a large number of issues within housing law in the United States of America.<sup>7</sup> Other studies discuss the relationship of the housing law/rights and property theory in general,<sup>8</sup> social control and citizenship,<sup>9</sup> gender and housing,<sup>10</sup> strata title and multi-unit housing,<sup>11</sup> residential mortgage-backed securitisation<sup>12</sup> and supportive housing schemes for older adults.<sup>13</sup> Still, our analysis also reveals some common threads in current housing law research.

## 1.2 EXISTENCE, IMPLEMENTATION AND REALISATION OF THE RIGHT TO HOUSING

The issue of whether a right to housing should actually be recognised and how this right should be implemented is a major debate within the housing law discipline.<sup>14</sup> Especially

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- 7 C.N. Brown, *Experiencing Housing Law*, St. Paul, West Academic Publishing, 2016.
- 8 C. Martinez-Escribano, 'Tenancy and Right to Housing: Private Law and Social Policies', *European Review of Private Law*, Vol. 23, No. 5, 2015, pp. 777-795; A.J. Van der Walt & S. Viljoen, 'The Constitutional Mandate for Social Welfare-Systemic Differences and Links between Property, Land Rights and Housing Rights', *PER: Potchefstroomse Elektroniese Regsblad*, Vol. 18, No. 4, 2015, pp. 1035-1090; W. Migliari, 'New Forms of Inequality in Cape Town: A Comparative Economic and Legal Study to Defend the Right to Housing', *Journal of Comparative Urban Law and Policy*, Vol. 1, No. 1, 2017, pp. 111-130.
- 9 D. Fée, 'Housing and Citizenship in the UK: Towards a Conditional Right?', *Revue Française de Civilisation Britannique*, Vol. 21, No. 1, 2016, pp. 1-17; See also M. Vols, 'Banning Criminals and Nuisance Neighbours from Housing: Human Rights Proof? Exclusion and the Dutch Urban Areas Special Measures Bill', in J. Sidoli del Ceno, M. Vols & M. Kiehl (Eds.), *Regulating the City: Contemporary Urban Housing Law*, Den Haag, Eleven Publishing, 2017, pp. 127-143.
- 10 S. Chant & K. Datu, 'Women in Cities: Prosperity or Poverty? A Need for Multi-Dimensional and Multi-Spatial Analysis', in C. Lemanski & C. Marx (Eds.), *The City in Urban Poverty*, Hampshire, Springer, 2015, pp. 39-63.
- 11 Troy *et al.*, 'It Depends What You Mean by the Term Rights: Strata Termination and Housing Rights', *Housing Studies*, Vol. 32, No. 1, 2017, pp. 1-16.
- 12 S. Soederberg, 'Subprime Housing Goes South: Constructing Securitized Mortgages for the Poor in Mexico', *Antipode*, Vol. 47, No. 2, 2015, pp. 481-499.
- 13 E. Iecovich, 'Live-in Care Workers in Sheltered Housing for Older Adults in Israel: The New Sheltered Housing Law', *Journal of Aging & Social Policy*, Vol. 28, No. 4, 2016, pp. 277-291.
- 14 N. Moons & H. Bernard, 'Conceptual and Practical Concerns for the Effectiveness of the Right to Housing', *Oñati Socio-Legal Series*, Vol. 6, No. 3, 2016, pp. 656-675.

in the United States it is a matter of debate whether a right to housing exists at all.<sup>15</sup> For example, Alexander holds that there is no formal federal, state or constitutional right to housing in the United States. Still, her research shows that housing rights movements' illegal occupations and local housing reforms concretise the human right to housing in local American laws. An American right to housing is established through private and local laws and concerns a right 'to remain, a right to adequate and sustainable shelter, a right to housing in a location that preserves cultural heritage, a right to a self-determined community, and a right to equal housing opportunities for non-property owners'.<sup>16</sup>

Various other studies deal with how the right to housing has developed all over the world over the years. For example, Hohmann analyses which role the UN special rapporteurs play in the development of the right to adequate housing. She holds that the rapporteurs' reports are important normative statements, even if the reports' impact has been often muted by practical and political factors.<sup>17</sup> A great number of publications analyse how the right to housing has been implemented in a specific jurisdiction.<sup>18</sup> Yet, some

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- 15 J. Hoover, 'The Human Right to Housing and Community Empowerment: Home Occupation, Eviction Defence and Community Land Trusts', *Third World Quarterly*, Vol. 36, No. 6, 2015, pp. 1092-1109; D. Overfelt & D.L. Brunsmma, 'Rights to Housing', in Blau et al. (Eds.), *Leading Rogue State: The US and Human Rights*, New York, Routledge, 2015, p. 16; K.R. Liba & S. Harding, 'More than a Commodity: The Right to Adequate Housing', in K.R. Liba & S. Harding (Eds.), *Human Rights-Based Community Practice in the United States*, New York, Springer, 2015, pp. 39-59; K. Patel 'Sowing the Seeds of Conflict? Low Income Housing Delivery, Community Participation and Inclusive Citizenship in South Africa', *Urban Studies*, Vol. 53, No. 13, 2016, pp. 2738-2757.
- 16 L.T. Alexander, 'Occupying the Constitutional Right to Housing', *Nebraska Law Review*, Vol. 94, No. 2, 2015, p. 248.
- 17 J.M. Hohmann, 'Principle, Politics and Practice: The Role of UN Special Rapporteurs on the Right to Adequate Housing in the Development of the Right to Housing in International Law', *Queen Mary School of Law Legal Studies Research Paper*, 2016, pp. 1-20.
- 18 See L.E. Perriello, 'Are Foreigners Entitled to a Right to Housing', *The Italian Law Journal*, Vol. 1, No. 2, 2015, p. 365 (on the right to housing in Italy); C. Levy-Vroelant, 'The Right to Housing in France: Still a Long Way to Go from Intention to Implementation', *Journal of Law and Social Policy*, Vol. 24, 2015, pp. 88-108 (on the right to housing in France); J.M. Hohmann, *Protecting the Right to Housing in England: A Context of Crisis*, London, Just Fair, 2015 (on the right to housing in the United Kingdom); E. Murphy, *For a Proper Home: Housing Rights in the Margins of Urban Chile, 1960-2010*, Pittsburgh, University of Pittsburgh Press, 2015 (on the right to housing in Chile); F. King, 'Scotland: Delivering a Right to Housing', *Journal of Law and Social Policy*, Vol. 24, 2015, pp. 155-161 (on the right to housing in Scotland); Martínez-Escribano, *supra* note 8 (on implementation of the right to housing in European tenancy law systems); B.O. Mmusinyane, *Comparative Implementation Strategies for the Progressive Realisation of the Right to Adequate Housing in South Africa, Canada and India*, Pretoria, Unisa, 2015 (on the right to housing in South Africa, India and Canada); Moons & Bernard, *supra* note 14 (on the right to housing in Belgium); A. Diver, 'Putting Dignity to Bed? The Taxing Question of the UK's Housing Rights "Relapse"', *Justiciability of Human Rights Law in Domestic Jurisdictions*, Heidelberg, Springer, 2016, pp. 333-361 (on the right to housing in the United Kingdom); R. Solomon, 'Bounded Political Contestation: The Domestic Translation of International Health and Housing Rights in Australia', *Australian Journal of Political Science*, 2017, pp. 1-16 (on the right to housing in Australia); J. Ponce, 'Affordable Housing, Zoning and the International Covenant on Economic, Social and Cultural Rights: Some Lessons from the Spanish and South African Experiences', *Journal of Comparative Urban Law and Policy*, Vol. 1, No. 1, 2017, p. 8 (on the right to housing in Spain and South Africa).

researchers hold that the lack of enforceability undermines the existence of the right to housing.<sup>19</sup> For example, several Canadian studies discuss the landmark *Tanudjaja v. Attorney General (Canada)* case in which it was decided that the right to housing as a positive right is not justiciable.<sup>20</sup> Lirio do Valle's analysis of litigation on the right to housing in Rio de Janeiro shows very similar results with regard to the situation in Brazil.<sup>21</sup>

A large body of literature has been published on the situation in South Africa.<sup>22</sup> Chenwi gives an overview of how the South African government struggles to implement the right to housing.<sup>23</sup> Although the country has progressive housing laws, case law, policies and programmes, the situation on the ground remains critical. Chenwi holds that lessons can be learnt from South Africa's approaches and strategies to implement the right to housing. She argues that litigation, and the threat of litigation, advocacy, social mobilisation, education and improved participation (meaningful engagement) are key elements of a successful strategy in enforcing the right to housing. Tchawouo Mbiada assesses which role political accountability mechanisms such as the ombudsman can contribute to the realisation of

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19 Solomon, *supra* note 18.

20 D. DesBaillets, 'The International Human Right to Housing & the Canadian Charter: A Case Comment on *Tanudjaja v. Canada* (Attorney General)', *Windsor Yearbook of Access to Justice*, Vol. 32, 2015, pp. 121-138; D. Bullen, 'A Road to Home: The Right to Housing in Canada and Around the World', *Journal of Law and Social Policy*, Vol. 24, 2015, pp. 1-9; Y. Dirks, 'Community Campaigns for the Right to Housing: Lessons from the R2H Coalition of Ontario', *Journal of Law and Social Policy*, Vol. 24, 2015, pp. 135-142; T. Heffernan, F. Faraday & P. Rosenthal, 'Fighting for the Right to Housing in Canada', *Journal of Law and Social Policy*, Vol. 24, 2015, pp. 11-45. See also M. Young & S. Bender Johnston, 'A Tale of Two Rights: The Right to the City and a Right to Housing', in J. Sidoli del Ceno, M. Vols & M.N.F. Kiehl (Eds.), *Regulating the City*, Den Haag, Eleven Publishing, 2017, pp. 11-39.

21 V.R. Lirio do Valle, 'Enforcing Socio-Economic Rights through Immediate Efficacy: A Case Study of Rio De Janeiro's Right to Housing', *Tulane Journal of International & Comparative Law*, Vol. 25, No. 1, 2016, pp. 1-44.

22 See S. Wilson, J. Dugard & M. Clark, 'Conflict Management in an Era of Urbanisation: 20 Years of Housing Rights in the South African Constitutional Court', *South African Journal on Human Rights*, Vol. 31, 2015, pp. 472-503; P.T. Modhi, 'The Role of Third Parties Contracted by Government in Realising the Right to Access Housing in South Africa: Legislative and Policy Reform-Feature', *ESR Review: Economic and Social Rights in South Africa*, Vol. 16, No. 2, 2015, pp. 11-13; G. Muller, 'Proposing a Way to Develop the Substantive Content of the Right of Access to Adequate Housing: An Alternative to the Reasonableness Review Model', *Southern African Public Law*, Vol. 30, No. 1, 2015, pp. 71-93; C. Tshoose, 'A Closer Look at the Right to have Access to Adequate Housing for Inhabitants of Informal Settlements Post Grootboom' *Southern African Public Law*, Vol. 30, No. 1, 2015, pp. 94-111; D. Ranslem, 'Temporary' Relocation: Spaces of Contradiction in South African Law', *International Journal of Law in the Built Environment*, Vol. 7, No. 1, 2015, pp. 55-71.; Patel, *supra* note 15; L.R. Cirolia, W. Smit & J. Duminy, 'Grappling with Housing Issues at the City Scale: Mobilizing the Right to the City in South Africa,' in P. Herrle, A. Ley & J. Fokdal (Eds.), *From Local Action to Global Networks: Housing the Urban Poor*, Farnham, Ashgate, 2015, pp. 159-174; T. Monson, 'Everyday Politics and Collective Mobilization Against Foreigners in a South African Shack Settlement,' *Africa*, Vol. 85, No. 1, 2015, pp. 131-153; Ponce, *supra* note 18; K. Kornienko, 'Waiting, Hope, Democracy, and Space: How Expectations and Socio-Economic Rights Shape Two South African Urban Informal Communities', *Journal of Asian and African Studies*, Vol. 52, No. 1, 2017, pp. 34-49.

23 L. Chenwi, 'Implementation of Housing Rights in South Africa: Approaches and Strategies', *Journal of Law and Social Policy*, Vol. 24, 2015, pp. 68-87.

the right to housing.<sup>24</sup> Van der Walt and Viljoen discuss the relationship of the right to housing, land rights and property rights in a theoretical analysis of South African law. They hold that in the South African context, housing rights should be seen ‘as discrete constitutional rights that stand on their own constitutional foundations and that they do not need to be protected as property rights. On the other hand, they are not fundamentally circumscribed or opposed by property rights either’.<sup>25</sup>

### 1.3 HOUSING AFFORDABILITY

Another important topic in contemporary housing law research concerns affordability of housing.<sup>26</sup> For example, Migliari shows how risky real-estate investments may affect the right to housing and result in new urban forms of inequality.<sup>27</sup> Ponder analyses the effects of gentrification on housing affordability in the United States.<sup>28</sup> Furthermore, Desmond and Bell discuss the lack of affordable housing and the dismantling of rent control regulations in the United States.<sup>29</sup> With regard to the United Kingdom, Hohmann’s analysis shows the lack of affordable housing in that country as well.<sup>30</sup> Other research deals with the effectiveness of legal interventions that aim to advance housing equity. Ramsey-Musolf, for example, found that compliance with California’s Housing Element Law increased over the years. However, the study reveals deficient low-income housing production and a surplus market-rate housing production.<sup>31</sup>

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24 C.J.T. Mbiada, ‘The Public Protector as a Mechanism of Political Accountability: The Extent of Its Contribution to the Realisation of the Right to Access Adequate Housing in South Africa’, *Potchefstroom Electronic Law Journal*, Vol. 20, 2017, pp. 2-34.

25 Van der Walt & Viljoen, *supra* note 8.

26 Martínez-Escribano, *supra* note 8 (on rent control in various European countries); Soederberg, *supra* note 12 (on low-income housing in Mexico and mortgage-backed securitisation); N.M. Davidson, ‘Affordable Housing Law and Policy in an Era of Big Data’, *Fordham Urban Law Journal*, Vol. 44, 2017, pp. 277-300 (on the impact that big data may have on affordable housing policy); Solomon, *supra* note 18, pp. 374-375 (on political debates about housing affordability in Australia).

27 Migliari, *supra* note 8.

28 E. Ponder, ‘Gentrification and the Right to Housing: How Hip Becomes a Human Rights Violation’, *Southwestern Journal of International Law*, Vol. 22, No. 2, 2016, pp. 359-383.

29 M. Desmond & M. Bell, ‘Housing, Poverty, and the Law’, *Annual Review of Law and Social Science*, Vol. 11, 2015, pp. 15-35.

30 Hohmann, *supra* note 18.

31 D. Ramsey-Musolf, ‘Evaluating California’s Housing Element Law, Housing Equity, and Housing Production (1990-2007)’, *Housing Policy Debate*, Vol. 26, No. 3, 2016, pp. 488-516.



#### 1.4 DISCRIMINATION, SOCIAL EXCLUSION AND MINORITY PROTECTION

The prevention of discrimination, social exclusion and the societal need for minority protection are also widely debated in current housing law research.<sup>32</sup> A number of US publications deal with racial segregation and the Fair Housing Act that aims to reduce housing discrimination.<sup>33</sup> Zasloff describes the history of this legislation's origins. He holds that we should rethink the scholarly consensus that the Fair Housing Act failed.<sup>34</sup> Besides that, recent European housing law research analyses whether and how international housing rights (i.e. UN treaties, Article 8 ECHR, European Social Charter) protect minority groups such as Travellers and Roma.<sup>35</sup> Lastly, a number of other publications discuss legal interventions that aim to achieve a balanced socio-spatial distribution of social groups in residential areas.<sup>36</sup>

#### 1.5 HABITABILITY, HOUSING QUALITY AND VACANT AND ABANDONED HOUSING

Another common thread in contemporary housing law research concerns habitability, housing conditions and quality as well as substandard, vacant and abandoned housing.<sup>37</sup>

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- 32 Monson, *supra* note 22 and Patel, *supra* note 15 (both on housing allocation and ethno- and xenophobia in South Africa); Chant & Datu, *supra* note 10 (on gender and discrimination issues in housing law); J.D. Gonda, *Unjust Deeds: The Restrictive Covenant Cases and the Making of the Civil Rights Movement*, Chapel Hill, UNC Press Books, 2015 (on race and housing in the United States).
- 33 R.G. Schwemm, 'Fair Housing Litigation After Inclusive Communities: What's New and What's Not', *Columbia Law Review*, Vol. 115, 2015, pp. 106-126; A. Cavin, 'A Right to Housing in the Suburbs: James V. Valtierra and the Campaign Against Economic Discrimination', *Journal of Urban History*, 2017 (on the *James v Valtierra* Supreme Court ruling and exclusionary zoning and economic segregation).
- 34 J. Zasloff, 'The Secret History of the Fair Housing Act', *Harvard Journal on Legislation*, Vol. 53, 2016, pp. 247-278.
- 35 D. O'Donovan, 'Breaking the Cycle of Discrimination? Traveller/Roma Housing Exclusion and the European Convention on Human Rights', *International Journal of Discrimination and the Law*, Vol. 16, No. 1, 2016, pp. 5-23; C. Coman & C.I. Rezeanu, 'The "Free" Movement of Roma in the EU: From the Presumption of the Fundamental Right to Housing to Forced Evictions and Expulsion', *Bulletin of the Transilvania University of Brasov. Series VII: Social Sciences Law*, Vol. 9, No. 2, 2016, pp. 81-90; A. Dobrushin & T. Alexandridis, 'International Housing Rights and Domestic Prejudice: The Case of Roma and Travellers', *Social Rights Judgments and the Politics of Compliance: Making it Stick*, Cambridge, Cambridge University Press, 2017, pp. 436-472.
- 36 K. Borevi & B. Bengtsson, 'The Tension between Choice and Need in the Housing of Newcomers: A Theoretical Framework and an Application on Scandinavian Settlement Policies', *Urban Studies*, Vol. 52, No. 14, 2015, pp. 2599-2615; T.C. Wong & C. Goldblum, 'Social Housing in France: A Permanent and Multi-faceted Challenge for Public Policies', *Land Use Policy*, Vol. 54, 2016, pp. 95-102.
- 37 Desmond & Bell, *supra* note 29 (on habitability and code enforcement in the United States); Hohmann, *supra* note 18 (on non-decent housing in the private rental sector in the United Kingdom); Ponder, *supra* note 28 (on effects of gentrification on habitability). Two recent publications deal with housing conditions and the right to housing in disaster areas: Y. Liang, 'Satisfaction with Economic and Social Rights and Quality of Life in a Post-Disaster Zone in China: Evidence from Earthquake-Prone Sichuan', *Disaster Medicine and Public Health Preparedness*, Vol. 9, No. 2, 2015, pp. 1-8; J.E. Dwyne Barenstein, 'The Right to

For example, Feris analyses the relationship of the human right to sanitation and the right to adequate housing.<sup>38</sup> Furthermore, publications concerning habitability focus on slum housing conditions and government strategies to eradicate urban slums.<sup>39</sup> Other research does not focus on slums, but on other types of residential premises. For example, Manda describes how the Japanese 'Vacant Housing Law' gives local authorities in Japan powers to identify vacant premises and to oblige property owners to repair or remediate them. He concludes that the United States should develop strategies to prevent a potential exacerbation of vacant and abandoned housing-related blight over the courts of the next 45 years.<sup>40</sup> With regard to the United States, Davidson discusses how big data analysis will help policy makers to ensure housing quality more efficiently and effectively.<sup>41</sup>

## 1.6 HOMELESSNESS

Investigating homelessness is a continuing concern within housing law research too.<sup>42</sup> With regard to the European context, Kenna et al. analyse several measures to prevent and address homelessness.<sup>43</sup> Hohmann holds that levels of homelessness in the United Kingdom are rising points to a 'retrogressive step in the enjoyment of the right to housing, and thus a serious failing in the Government's obligations under the ICESCR'.<sup>44</sup> Nonetheless, King

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Adequate Housing in Post-Disaster Situations: The Case of Relocated Communities in Tamil Nadu, India', in P. Daly (Ed.), *Rebuilding Asia Following Natural Disasters: Approaches to Reconstruction in the Asia-Pacific Region*, Cambridge, Cambridge University Press, 2016, pp. 236-260.

- 38 L. Feris, 'The Human Right to Sanitation: A Critique on the Absence of Environmental Considerations', *Review of European, Comparative & International Environmental Law*, Vol. 24, No. 1, 2015, pp. 16-26.
- 39 Daniel et al., 'Slum Housing Conditions and Eradication Practices in some Selected Nigerian Cities', *Journal of Sustainable Development*, Vol. 8, No. 2, 2015, p. 230 (on slum clearance in Nigeria); Monson, *supra* note 22 (on slums in South Africa and the right to housing); Patel, *supra* note 15 (on slum upgrade programmes in South Africa); V.K. Nagaraj, 'From Smokestacks to Luxury Condos: The Housing Rights Struggle of the Millworkers of Mayura Place, Colombo', *Contemporary South Asia*, Vol. 24, No. 4, 2016, pp. 429-443 (on eliminating 'slum culture' in Sri Lanka); J. Speer, 'The Right to Infrastructure: A Struggle for Sanitation in Fresno, California Homeless Encampments', *Urban Geography*, Vol. 37, No. 7, 2016, pp. 1049-1069 (on downtown encampments of homeless people in California); Kornienko, *supra* note 22 (on township improvements in South Africa).
- 40 P. Manda, 'Preparing our Housing for the Transition to a Post-Baby Boom World: Reflections on Japan's May 26, 2015 Vacant Housing Law', *Cityscape: A Journal of Policy Development and Research*, Vol. 17, No. 3, 2015, pp. 239-248.
- 41 Davidson, *supra* note 26.
- 42 Speer, *supra* note 39 (on homeless people in California invoking their right to urban infrastructure); P. Watt, 'Gendering the Right to Housing in the City: Homeless Female Lone Parents in Post-Olympics, Austerity East London', *Cities*, Vol. 70, 2017 (on homeless female lone parents in London).
- 43 Kenna et al., *Pilot Project – promoting Protection of the Right to Housing – homelessness Prevention in the Context of Evictions Final Report*, Brussels, European Commission Directorate-General for Employment, Social Affairs and Inclusion Directorate Soc, 2016.
- 44 Hohmann, *supra* note 18, p. 4.

found that the homelessness legislation in Scotland makes a commitment to homeless households. Still, 'the challenge now is delivering on that'.<sup>45</sup>

### 1.7 EVICTIONS AND THE RIGHT TO THE CITY

Another major topic within contemporary housing law research are evictions and forced displacement of people.<sup>46</sup> In nearly all continents, researchers have analysed this topic. A seminal study on evictions in North America is the recent work of Desmond. In *Evicted: Poverty and Profit in the American City*, he describes the devastating effect of evictions on Milwaukee's urban poor during the recent housing crisis. Desmond advocates an American right to housing as well as legal and policy solutions to advance that right.<sup>47</sup> Several publications build on his work. For example, Alexander explores how the right to housing could be implemented on a local level through resolutions and ordinances.<sup>48</sup>

Other North American studies discuss evictions, tenure security and housing rights.<sup>49</sup> For example, Lee assesses the effects of privatising public housing on tenants' housing rights. Her analysis reveals that public housing in the United States offers tenants greater security in tenancy, and that privatisation puts these and other tenants' rights at risk.<sup>50</sup> Furthermore, Ponder describes the negative effects of gentrification on legal security of tenure in New York City.<sup>51</sup>

With regard to evictions in Europe, a research team led by Kenna conducted an impressive comparative analysis of evictions and the prevention of homelessness within Members States of the European Union. They present rich comparative data on not only the numbers of evictions but also risk factors in eviction and preventative measures.<sup>52</sup> Other publications assess the role of European Union law, European human rights law (Article 8 ECHR) as well as the International Covenant on Economic, Social and Cultural Rights within the procedural as well as substantive protection against eviction.<sup>53</sup>

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45 King, *supra* note 18, p. 161.

46 P. García Amado, 'Connecting Tenure Security with Durable Solutions to Internal Displacement: From Restitution of Property Rights to the Right to Adequate Housing', *International Migration*, Vol. 54, No. 4, 2016, pp. 74-86 (on displacement of urban internally displaced persons); Fée, *supra* note 9, pp. 6-8 (on evictions and anti-social behaviour).

47 M. Desmond, *Evicted: Poverty and profit in the American city*, Crown, 2016. See also Desmond & Bell, *supra* note 29.

48 L.T. Alexander, 'Evicted: The Socio-Legal Case for the Right to Housing', *The Yale Law Journal*, Vol. 126, No. 2, 2016, pp. 431-447.

49 Hoover, *supra* note 15.

50 J. Lee, 'Rights at Risk in Privatized Public Housing', *Tulsa Law Review*, Vol. 50, No. 3, 2015, pp. 759-801.

51 Ponder, *supra* note 28.

52 Kenna *et al.*, *supra* note 43.

53 O. Saunders, 'Article 8 in Housing Law: No Home for Human Rights Values', *Southampton Student Law Review*, Vol. 6, No. 1, 2016, pp. 72-90 (Article 8 ECHR in the United Kingdom); K. Casla, 'The Rights we

A large and growing body of literature assesses the legal protection against eviction in Africa. The majority of publications focus on the situation in South Africa.<sup>54</sup> Chenwi gives an overview of the most relevant case law that protects South Africans against the loss of their home.<sup>55</sup> Ebrahim discusses the importance of a coherent and reasonable waiting list in eviction proceedings under South African law.<sup>56</sup> Other studies to housing law in other countries in the African continent also address eviction issues.<sup>57</sup>

A number of publications in our data set concern evictions in South America.<sup>58</sup> For example, Freeman and Burgos describe the ‘thinning’ of Rio de Janeiro’s *favelas*. Poor city dwellers are removed from their homes by a combination of threats, promises, disinformation, psychological terror and intentional generation of insecurity.<sup>59</sup>

We also found several studies on evictions in Asia. Shin and Kim describe the displacement of poorer owner-occupiers and tenants in the light of Seoul’s highly speculative urban development processes and gentrification.<sup>60</sup> They hold that popular resistance against eviction has been undermined by brutal state oppression and stigmatisation of the evictees

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Live in: Protecting the Right to Housing in Spain through Fair Trial, Private and Family Life and Non-Retrogressive Measures’, *The International Journal of Human Rights*, Vol. 20, No. 3, 2016, pp. 285-297 (Article 8 ECHR in Spain); B. Sanchez & J. Carlos, ‘The UN Committee on Economic, Social and Cultural Rights’ Decision in IDG V. Spain: The Right to Housing and Mortgage Foreclosures’, *Journal européen des droits de l’homme*, Vol. 2016, No. 3, 2016, pp. 320-339 (International Covenant on Economic, Social and Cultural Rights); O’Donovan, *supra* note 35 (Article 8 ECHR in Ireland); J.S. Mullor, ‘The Right to Housing and the Protection of Family Life and Vulnerable Groups’, in M. González Pascual & A. Torres Pérez (Eds.), *The Right to Family Life in the European Union*, New York, Taylor & Francis, 2016, pp. 214-231. See also M. Vols, P.G. Tassenaar & J.P.A.M. Jacobs, ‘Dutch Courts and Housing Related Anti-social Behaviour. A First Statistical Analysis of Legal Protection against Eviction’, *International Journal of Law in the Built Environment*, No. 2, pp. 148-161; M. Vols, M. Kiehl & J. Sidoli del Ceno, ‘Human Rights and Protection against Eviction in Anti-social Behaviour Cases in the Netherlands and Germany’, *European Journal of Comparative Law and Governance*, Vol. 2, 2015, pp. 156-181.

54 Van der Walt & Viljoen, *supra* note 8; Wilson *et al.*, *supra* note 22; Mmusinyane, *supra* note 18.

55 Chenwi, *supra* note 23. See also S. Fick & M. Vols, ‘Best Protection against Eviction? A Comparative Analysis of Protection against Evictions in the European Convention on Human Rights and the South African Constitution’, *European Journal of Comparative Law and Governance*, Vol. 3, 2016, pp. 40-69; M. Vols & S. Fick, ‘Using Eviction to Combat Housing-Related Crime and Anti-social Behaviour in South Africa and the Netherlands’, *South African Law Journal*, Vol. 134, No. 2, 2017, pp. 327-360.

56 S. Ebrahim, ‘The Right to Housing: Challenges Associated with the “Waiting List System” Ekurhuleni Metropolitan Municipality v. various Occupiers, Eden Park Extension 5 2014 3 SA 23 (SCA)’, *Southern African Public Law*, Vol. 30, No. 1, 2015, pp. 112-121.

57 Daniel *et al.*, *supra* note 39 (on slum clearance and evictions in Nigeria).

58 L. Earle, ‘Housing, Citizenship and the Right to the City’, in L. Earle (Ed.), *Transgressive Citizenship and the Struggle for Social Justice*, London, Springer, 2017, pp. 27-64.

59 J. Freeman & M. Burgos, ‘Accumulation by Forced Removal: The Thinning of Rio De Janeiro’s Favelas in Preparation for the Games’, *Journal of Latin American Studies*, Vol. 48, 2016, pp. 1-29. See also: S.H. Rocha Franco, ‘Human Dignity and the Right to Adequate Housing in the Global Mega-Events Era: A Discussion from the Favelas of Rio De Janeiro’, in E. Sieh & J. McGregor (Eds.), *Human Dignity*, London, Springer, 2017, pp. 263-277.

60 H.B. Shin & S.H. Kim, ‘The Developmental State, Speculative Urbanisation and the Politics of Displacement in Gentrifying Seoul’, *Urban Studies*, Vol. 53, No. 3, 2016, pp. 540-559.

as being motivated by self-interests for more compensation. In the 1990s and 2000s, the resistance led to more compensation of evictees and alternative accommodation in public rental flats. Still, Korea's 'culture of property' impels people to keep distance from denouncing redevelopment projects and undermines popular resistance against eviction. In another study, Nagaraj describes the forced removal of working-class poor communities in Colombo and its effect on the right to the city of city dwellers.<sup>61</sup> Lastly, Ho analyses urban private ownership and evictions in China.<sup>62</sup>

Protest against eviction is a common thread in contemporary housing law research. Several researchers assess popular resistance against displacement all over the world. Dirks, for example, discusses how in Canada protest and community organising are used to produce systemic social change in housing law.<sup>63</sup> A large number of studies analyse the protest against evictions in Spain during the financial and economic crisis in the 2010s. For example, Álvarez de Andrés *et al.* discuss how the Spanish Mortgage Victims Group successfully prevented over 1,100 evictions throughout the country.<sup>64</sup> Other publications deal with squatting, informal settlements, the right to the city and protest against eviction too. Vuksanovic-Macura & Macura analyse the battle of the residents of a squatter settlement in Belgrade in the first half of the twentieth century against the loss of their home.<sup>65</sup> A number of studies relate squatting with Lebevre's concept of the right to the city. Grazioli holds that the forms of organisation and life stemming from squatting can contribute to updating the definition of the right to the city.<sup>66</sup>

61 Nagaraj, *supra* note 39.

62 C.Y. Ho, *Neo-Socialist Property Rights: The Predicament of Housing Ownership in China*, London, Lexington Books, 2015.

63 Dirks, *supra* note 20. See also R. Robinson, 'Catherine Lennon's Story: Lessons from Front Line Advocacy on the Human Right to Housing', *Journal of Law and Social Policy*, Vol. 24, 2015, pp. 143-154.

64 E. Alvarez de Andrés, M.J. Zapata Campos & P. Zapata, 'Stop the Evictions! the Diffusion of Networked Social Movements and the Emergence of a Hybrid Space: The Case of the Spanish Mortgage Victims Group', *Habitat International*, Vol. 46, 2015, pp. 252-259; E. Alvarez de Andrés, P. Zapata & M.J. Zapata Campos, 'Networked Social Movements and the Politics of Mortgage: From the Right to Housing to the Assault on Institutions', in C. Gurdgiev, L. Leonard & M.A. Gonzalez-perez (Eds.), *Lessons from the Great Recession: At the Crossroads of Sustainability and Recovery*, Emerald Group Publishing Limited, 2016, pp. 231-249. See also: I. Barbero, 'When Rights Need to be (Re) Claimed: Austerity Measures, Neoliberal Housing Policies and Anti-Eviction Activism in Spain', *Critical Social Policy*, Vol. 35, No. 2, 2015, pp. 270-280; C. Flesher Fominaya, 'Redefining the Crisis/Redefining Democracy: Mobilising for the Right to Housing in Spain's PAH Movement', *South European Society and Politics*, Vol. 20, No. 4, 2015, pp. 465-485; S. Gonick, 'Disrupting Neoliberalism's Ideologies: From Civil Death to Civil Disobedience in Madrid's Right to Housing Movement', *Urban Madrid*, 2015, pp. 51-59.

65 Z. Vuksanovic-Macura & V. Macura, 'The Right to Housing: Squatter Settlements in Interwar Belgrade The Defense and Demolition of Jatagan-Mala', *Journal of Urban History*, Vol. 1, 2016.

66 M. Grazioli, 'From Citizens to Citadins? Rethinking Right to the City Inside Housing Squats in Rome, Italy', *Citizenship Studies*, Vol. 21, No. 4, 2017, pp. 393-408; N. Nur & A. Sethman, 'Migration and Mobilization for the Right to Housing in Rome', in P. Mudu & S. Chattopadhyay (Eds.), *Migration, Squatting and Radical Autonomy: Resistance and Destabilization of Racist Regulatory Policies and B/Ordering Mechanisms*, New York, Routledge, 2016, p. 78; C. Di Feliciano, 'Subjectification in Times of Indebtedness and Neolib-

We acknowledge that the scope of this short literature review is limited in terms of the language of the publications assessed. A great number of publications on housing law are published in languages other than English and do not receive the international attention that they deserve. Furthermore, this literature review has only focused on publications that were published recently, which contained some specific words in the title or were cited at least three times. Despite its exploratory nature, we believe that our review still offers some general insight into the contemporary debates within the study of housing law. We hope that our study can function as a building block for further research projects that assess a larger, more diverse set of publications on housing law research.

### 1.8 OVERVIEW OF THIS BOOK

The papers in this volume of *Studies in Housing Law* focus on several aspects in the current debates within the study of housing law. In Chapter 2, ‘The Changing Vision of the Home: Rethinking Housing and Intimacy’, Shelly Kreiczer-Levy continues to develop the concept of the home in housing law. Instead of focusing on individual traits of the home, she discusses living arrangements as a core feature of the relational and communal home. Kreiczer-Levy focuses on the role of intimacy in shaping the use of the home and relationships in it. In the chapter, she analyses the impact of intergenerational households and the sharing economy, in particular Airbnb, on the use of the concept of home in law.

In Chapter 3, ‘Empty Homes and Needy People: Time for a New Housing Policy in Portugal and Elsewhere?’, Dulce Lopes presents a detailed insight into the problems concerning vacant housing in Portugal. She analyses the gap between the proliferation of empty or vacant houses and the social and human needs for housing. Lopes advocates a new housing policy in Portugal that strikes a better balance between property and housing, liberal and social rights, essence and existence. This policy should improve existing mechanisms and establish other intervention institutes that allow for a socially sustainable availability of permanent dwellings.

In Chapter 4, ‘Strata Title: The New Feudalism’, Cathy Sherry discusses the ways in which changes to property law which facilitate the kinds of developments developers would like to market, such as strata title legislation, can have an unanticipated, far-reaching effect on communities. Sherry holds that governments have allowed change to be driven by private developers, who are primarily concerned with making money. Yet, these changes have occurred with insufficient appreciation of their ramifications.

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eral/Austerity Urbanism’, *Antipode*, Vol. 48, No. 5, 2016, pp. 1206-1227. See about the right to the city as well: Chant & Datu, *supra* note 10; Cirolia *et al.*, *supra* note 22; Nagaraj, *supra* note 39, pp. 438-440; Speer, *supra* note 39; Ponce, *supra* note 18, pp. 108-110; Rocha Franco, *supra* note 59; Watt, *supra* note 42; Earle, *supra* note 58; Young & Bender Johnston, *supra* note 20.

In Chapter 5, 'Planning Contracts under Swiss Law: A Tool for Special Housing Needs and the Problem of Breach of Contract', Nathalie Adank discusses planning contracts that link housing policy with efforts to use land as rationally as possible. Planning contracts are considered to be an incentive for the private sector to cooperate with local authorities, as well as a useful tool for cities to foster the development of housing projects. Adank analyses how cities should deal with a breach of planning contracts by the private party to the contract. She focuses on the importance of public interest in solving this question. She holds that the creation of a right of purchase is the best remedy to address a breach of a planning contract by the private party to the agreement.

In Chapter 6, 'The Recurring Dream of Affordable Housing in Indonesia: A Human Rights Perspective', Erna Dyah Kusumawati analyses challenges faced in recognising and implementing the right to adequate housing in Indonesia. She analyses the right's legal basis under Indonesian law and assesses the development of Indonesian housing policies. Dyah Kusumawati concludes that a rights-based approach may help to improve the housing situation and problems in Indonesia.

In Chapter 7, 'Tenant's Right to Respect for Home: A Challenge for Swedish Tenancy Courts?', Haymanot Baheru discusses tenure security in landlord and tenant law in Sweden. She assesses whether there is a legally relevant meaning of the concept of 'home' in the context of the Swedish Land Code. Moreover, Baheru explores the understanding of the concept of 'home' within the scope of Article 8 of the European Convention on Human Rights and Fundamental Freedoms. Her analysis reveals that Swedish tenancy courts have had to deal with the question of how the European right to respect for the home impacts the statutory tenure protection in the Swedish national legislation. Still, a case law analysis raises the question of whether the doctrinal method used by the Swedish courts can satisfy the procedural protection Article 8 provides.

In Chapter 8, 'The Right to Housing and the Right to a Second Chance', Stefan van Tongeren and Michel Vols present a first overview of the facilitation and frustration of the housing of ex-offenders by Dutch landlords and local authorities. Their case law analysis suggests that although the housing of ex-offenders seems to be causing legal problems, this is not frequently occurring. Still, van Tongeren and Vols hold that the few published judicial decisions may only be the tip of the iceberg. Furthermore, they hold that the rejection and exclusion of prospective tenants based on their criminal record clearly restricts their right to housing, but not necessarily constitute a violation of this right. Still, empirical research is needed in order to comprehend the scale on which ex-offenders in the Netherlands and elsewhere are being excluded from (social) housing and whether these practices violate the right to housing.

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