

A Comparison of the System of Public Housing in Hong Kong with the System of Public Housing in Spain

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Abstract— The goal of this paper is to briefly study the system of Public Housing in Hong Kong and Spain, and to compare them. On the one hand, Hong Kong has more than 7.2 million residents crammed into a relatively small land mass, a fact which, among others, provokes that real estate prices are extremely high. Because of the high prices, the Government has had to introduce a large system of public housing (almost a 46% of Hong Kong's population lives under some of the Public Housing Schemes). On the other hand, in Spain, even though Public Housing has a constitutional basis, the system remains still very inefficient and far less important than in Hong Kong.

Keywords- Public Housing, Public Housing Policy, Hong Kong, Hong Kong Housing Authority, Public Rental Housing, Home Ownership Scheme Spain, Spanish Constitution, Real Estate Prices, Property Bubble, Centa-City Index.

I. INTRODUCTION.

Thomas Piketty [1] highlighted that inequality is an important concern in most countries nowadays, claiming that “capital is back,” as the ratio of capital over income is returning to the levels seen at the end of the 19th century. Piketty bases his statement on only one of the elements of the capital: Housing capital. Thus, in numerous countries rising real house prices and shifting distributions of housing wealth have driven much of the change he recorded and analyzed.

If this is the case, housing policy needs to make much use of Piketty's perspective, shaping a new framework for Housing Policies in all advanced economies. In this scenario, public housing must be one of the main housing policies (if not the most significant one), given that providing as many citizens as possible with an affordable house is indeed a way to try to fight the rising inequalities described by Piketty.

It does not exist a single definition of the concept “public housing”, as it may differ depending on the country or jurisdiction analyzed. However, to be able to study this topic in this article, we will follow the definition proposed by Lai Har Chiu [2], which is the definition used in Hong Kong and Singapore: “a wider definition of public housing as applied in Hong Kong and Singapore [is that of] cheaper rental or owner-occupier housing provided by the government or developers involving public funding and public resources (e.g.land) not priced at market rates in the production process. Housing acquired with the support of consumer subsidy alone is excluded”. Being this the case, we will follow the same definition when we talk about public housing in Spain.

The topic of public housing is indeed an area in which not only law and economics matter, but also ideology. As Dagen Bloom [3] remarks:

“The tight connection between leftist modernist planning and public housing that began in the 1920s has made it nearly impossible to look at public housing as a form of urban shelter or as a kind of regular government service; rather, it has taken on a deeper meaning as an expression of an ideological movement of planning and design.”

In this article, we will analyze this topic from an objective perspective, trying to quote all the relevant legislation related to this area in both Hong Kong and Spain, as well as the current situation. However, we will try to avoid ideological debates regarding public housing (even though some idea must be introduced), as our idea right now is not to study the ideological foundations of this subject from a comparative point of view, but only to describe and analyze its current situation.

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II. PUBLIC HOUSING IN HONG KONG.

According to Lai Har Chiu [4], “*despite its reputation as a bastion of the free market economy Hong Kong pioneered the development of Asian-style, large scale and multipurpose public housing development projects*”. Today, Hong Kong’s public housing system operates as one of the largest and most effective public rental housing programs in the world.

We are in front of a situation that could seem to be, at first sight, a big contradiction: being Hong Kong such a capitalistic and financial center, once might have been inclined to consider that public housing would remain something almost inexistent. However, as we are about to see, this is false, as public housing in Hong Kong has indeed a very considerable importance.

Before the Shek Kip Mei disaster¹ in 1953, the Hong Kong government had not shown real interest in public housing. However, as the first resettlement schemes were being planned, it took on a broader role as a housing provider by establishing the semi-independent Hong Kong Housing Authority, whose goal is precisely to provide low-income housing. In the programs that followed, the early building and estates forms, and their locations, are of interest for us, as they brought a substantial new form to Hong Kong’s urban landscape.

Before that moment, the British colonial authorities adopted a non-interventionist policy in Hong Kong’s housing market, a policy that was replaced for a welfarist regime, investing in public housing and education to improve political stability and to provide cheap labor to industrial development [5]. It was through slum clearance with relocating settlers in public housing that the government could obtain urban land to realize its economic agenda.

Governor Murray MacLehose’s announcement of a Ten Year Housing Programme (1973-1982) proposed the construction of 400.000 units to house those who could not find accommodation from the private rental housing supply. In the mid-1970s, the Home Ownership Scheme (HOS) provided subsidized build-for-sale units at discount of 20 and 50% on

the estimated market price of comparable private-sector housing units to those sitting tenants in public rental housing.

However, Huang [6] remarks that:

“What’s worth noting is the nature of subsidized housing, in combination with a resale mechanism at market-related prices that can repay the public investment, has historically enabled the release of the residual value embodied in land circumstances extremely advantageous to the government. Considered the leasehold system in Hong Kong, the scheme has successfully created a commodity from an otherwise partially commodified product”.

Being this the situation, Huang suggests that the actual concern of Hong Kong’s government in the 1960s was mostly how to fully mobilize un-utilized land value to create public revenue, rather than improving housing supply.

This fact is, once again, another proof of the contradictions and dualities existing in Hong Kong’s system: a significant part of Hong Kong’s government revenues come from land revenues. This is the reason why we stated several times that, even if, as a Government which serves the interests of Hong Kong inhabitants, the Government of HK is interested in low real estate prices, the truth is that an important part of the revenues of the Government depend precisely on these prices being as high as possible.

In this sense, as Cullen [7] states, “*Hong Kong’s Land related Revenue system also means that the effective monopoly supplier of land, the Government, has a powerful vested interest in maintaining high land prices. Two of the most clear adverse (...) of this are: high (often very high) entry prices to achieve any sort of home ownership; and an inflation impact on the provision of most goods and services due to the high costs of renting or buying business premises*”.

Nevertheless, in our opinion, even if the Government wants to maximize its getting as high a public revenue as possible, we disagree with Huang and we consider that, studying the history of public housing in Hong Kong from the 1950s onwards, the main goal of the Government is actually to improve housing supply.

Anyway, there has been no major housing crisis in Hong Kong because of the existence of its public housing system. As Lai Har Chiu [4] states, “*whatever the official policy objectives have been over the years, an important effect of Hong Kong’s housing policy has of course been the protection of basic housing standards for low-income families(...)* But so far, except in socialist countries² where housing is, or was at one

¹ The Shek Kip Mei disaster took place on Christmas Eve 1953: a fire caused that nearly 6.000 residents living in Shek Kip Mei became homeless. This incident was the cornerstone that proved that housing situation was running out of control in Hong Kong. To provide accommodation to so many people in such a short time, the Shek Kip Mei Estate was built up with a functionalistic approach, using a very simple structure to maximize the utilization of space. Thus, Shek Kip Mei Estate became the first public housing estate, representing a milestone in the history of housing development in Hong Kong.

² Once again, we observe the “socialist-like” system of land related matters in Hong Kong within the world’s most capitalistic economic system.

stage, considered as a basic welfare good, no Asian government has adopted a producer subsidy approach for rental provision on a scale comparable to that of Hong Kong”.

Hong Kong's public housing system is articulated mainly through two different schemes (though there are some minor types that we will not analyze): the Public Rental Housing (PRH) scheme and the Home Ownership Scheme (HOS). Before analyzing them, we must state that the main difference between both schemes is that, in PRH, houses are rented at discounted rates to low-income residents, while, in HOS, housing estates are sold to low-income residents at subsidized prices (subsidized owner-occupied housing).

According to the data provided by the Housing Authority of Hong Kong³, as at 31 March 2015, the Authority has a stock of 782.700 Subsidized Public Rental Housing (PRH)/interim housing flats, accommodating 2.120.000 persons, or a little bit more than 29% of Hong Kong's total population. The Authority plans to build another 76.000 units by 2020.⁴ The average wait to get one of the affordable apartments is 3,1 years (1,7 for elderly applicants).⁵

To this figure, we must add the 16'5% of Hong Kong's population living in subsidized sale flats⁶ (normally under the Home Ownership Scheme).

Thus, if we put all the figures together, we observe that a 45.7% of Hong Kong's total population lives in Public Housing, of which a 29,1% lives in rental houses under the Subsidized Public Rental Housing (PRH system) and a 16,5%

³ Housing Authority of Hong Kong, Data on Public Housing (2015)

<<http://www.housingauthority.gov.hk/mini-site/corporateplan1516/en/common/pdf/corporateplan1516-02.pdf>>

⁴ The Housing Authority's Public Housing Construction Programme (2015/16-2019/20):

<<http://www.housingauthority.gov.hk/en/about-us/publications-and-statistics/forecast-public-housing-production/index.html>>

⁵ Housing Authority, Number of Applications and Average Waiting Time for Public Rental Housing (2016):

<<http://www.housingauthority.gov.hk/en/about-us/publications-and-statistics/prh-applications-average-waiting-time/index.html>>

⁶ Housing Authority of Hong Kong, Housing in Figures (2015)

<<https://www.housingauthority.gov.hk/en/common/pdf/about-us/publications-and-statistics/HIF.pdf>>

in Subsidized Sale Flats, mostly under the Home Ownership Scheme.

The Hong Kong Housing Authority, created in 1972, remains the primary body responsible for running this system and for building new public housing. Its primary role is to provide subsidized public rental housing (PRH) to low income families who cannot afford private rental accommodation. Besides, the Authority also operates interim housing and a transit center to provide temporary accommodation to families facing short-term difficulties in finding suitable accommodation. To address precisely this aspiration of lower to middle-income families for home ownership, the Authority has provided Home Ownership Scheme (HOS) flats.

In Hong Kong, the Housing Policy formulated, coordinated and monitored by the Secretary for Transport and Housing. Besides, the Housing Department supports the Transport and Housing Bureau in dealing with housing-related policies and matters.

The Government promulgated the Long Term Housing Strategy (LTHS)⁷ on 16 December 2014, which set out three strategic directions, namely to avert the current supply-demand imbalance:

- “a. to build more public rental housing units and to ensure the rational use of existing resources;*
- b. to provide more subsidised sale flats, expand the forms of subsidised home ownership and facilitate the market circulation of existing stock; and*
- c. to stabilise the residential property market through steady land supply and timely demand-side management measures, and to promote good sales and tenancy practices for private residential properties.”*

According to the Foreword of the LTHS, housing is one of the most challenging social issues that Hong Kong is facing today. This is because the housing system in Hong Kong is characterized by a serious supply-demand imbalance, housing prices and rents at a level beyond the affordability of the general public, the proliferation of subdivided units, and long queues for public rental housing (PRH).

Being this the scenario, the Strategy adopted a total housing supply target of 480.000 units for the ten-year period from 2015-2016 to 2024-2025, with a 60:40 public-private split in new housing production.⁸ However, the Strategy recognizes

⁸ The details of these projection results, extracted from the text of the Strategy, are set out in the Long Term Housing Strategy- Implementation Milestones as at December 2014:

<<http://www.thb.gov.hk/eng/policy/housing/policy/lths/ImplementationMilestones201412.pdf>>

that setting a target is the easiest part; the hardest part is to achieve that target. Delivering this target requires an adequate and timely supply of land, especially through new development areas and the review and rezoning of some existing sites.

In this sense, Chapter 4 of the Strategy focuses on the “Rational Use of Public Rental Housing Resources (PRH)”, establishing that:

“4.1 PRH is the primary housing solution for low-income families, and the Government is fully committed to providing PRH to those who cannot afford private rental housing. The Government achieves this policy objective primarily through the HA, which develops and implements a public housing programme.

(...)

4.4 The primary source of PRH flats is new developments. As for redevelopment of aged PRH estates, according to the “Refined Policy on Redevelopment of Aged Public Rental Housing Estates” formulated by the HA in 2011, the HA will consider redevelopment of individual estates with reference to four basic principles, viz. structural conditions of buildings, cost-effectiveness of repair works, availability of suitable rehousing resources in the vicinity of the estates to be redeveloped, and build-back potential upon redevelopment.”.

Governance has relevant implications for the formulation and performance of the policies that we have just analyzed. The next figure shows us the current governance structure of the public housing sector in Hong Kong:

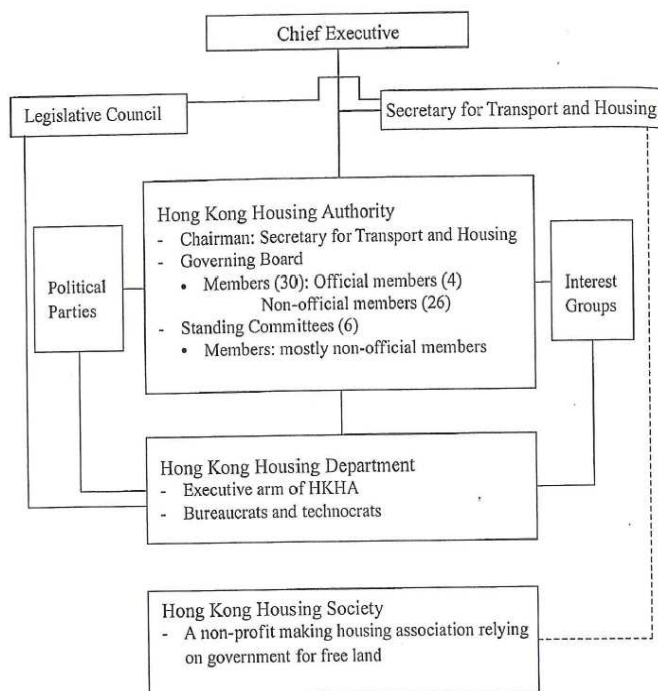


Figure 1. Governance structure of the public housing sector.

FIGURE NUMBER 1: Governance structure of the public housing sector. Source: Rebecca Lai Har Chiu [4].

The main concerns regarding the structure of governance include how stakeholders dominate the formulation and implementation of public housing policy, and whether the framework of governance enables better fulfillment of the needs of low-income families, according to Lai Har Chiu [4].

To achieve this goal of fulfilling the need of low-income families, the Housing Authority implements the Quota and Points System (QPS) for non-elderly one-person applicants. According to the data provided by the Government⁹, as at 31 March 2015, there were about 140,600 QPS applications. Unlike general applicants, under QPS:

- the allocation of the flat is subject to an annual quota;
- the priority of applicants is determined by a points system; and
- the target of providing the first flat offer at around three years on average is not applicable to QPS applicants.

To ensure that PRH flats are allocated to people in genuine need, the Government has implemented the next measures (source, Housing Authority):

- “allocation of PRH flats to eligible general applicants in accordance with the order of registration;
- to be eligible, applicants and their family must undergo tests covering income and assets, and must not own or co-own or have an interest in any domestic property in Hong Kong (for example: trustee, executor, administrator or beneficiary having interests in Hong Kong will not be eligible); or have entered into agreement to purchase any domestic property in Hong Kong, or hold more than 50% of shares in a company which owns, directly or through its subsidiaries, any domestic property¹⁰ in Hong Kong. At the time of allocation, at least half of the family members included in the application must have lived in Hong Kong for seven years and all family members must be still living in Hong Kong;
- public rental tenancies cannot be passed on automatically from one generation to the next. When a tenant dies, a new authorized person, other than the

⁹ Government of Hong Kong,

Fact Sheet on Housing (2015)

<<http://www.gov.hk/en/about/abouthk/factsheets/docs/housing.pdf>>

¹⁰ Domestic property includes any domestic property, uncompleted private domestic property, rooftop structure approved by the Building Authority, domestic building lots and Small House Grants approved by the Lands Department.

surviving spouse, is subject to a comprehensive means test; and

- *long-term tenants (those who have stayed in public rental housing for 10 or more years) with incomes and assets exceeding the limits are required to pay additional rent or leave their flats.”*

The Housing Authority sets PRH rents at an affordable level. As established in the Housing Ordinance (Cap283), the Housing Authority will conduct a review every two years and adjust PRH rent upward and downward according to the changes in the overall household income of PRH tenants. As at 31 March 2015, according to the Government, PRH rent ranged from about 320\$ to 4260\$ and the average rent was about 1700\$ per month.

Anyway, to sum up public housing in Hong Kong, we must conclude by remarking once again the importance of public housing in Hong Kong, mainly under the two principal schemes, PRH and HOS that, in total, provide housing for almost a 50% of Hong Kong's total population.

III. IS THERE A PROPERTY BUBBLE IN HONG KONG?

The Government of Hong Kong is the monopoly supplier of land and, at the same time, the predominant provider of housing. It is the monopoly supplier of land because of the system of landholding existing in Hong Kong (a system in which all the land is vested to the Government and there is no freehold land except for the land in which St. John's Cathedral stands, being all land under a leasehold regime).

And it is the predominant provider of housing because the Government decides how many new public houses should be built, and the Government is in charge of building them, through the Housing Authority, as we already explained.

It seems clear that one of Hong Kong's (if not the main one) biggest concerns is high real estate prices. Even if, when academics talk about high real estate prices they mainly refer to prices in private housing, there exists a clear relationship between public housing and private housing that should not be denied: the more expensive private housing is, the more people are going to need to get access to some kind of public housing.

In this sense, the Centa-City Index¹¹ shows us that average home sale prices have skyrocketed over 300 percent since 2003 average home sale prices have skyrocketed over 300 percent since 2003, and the tendency seems for prices to keep increasing, or at least not decreasing:



FIGURE NUMBER 2: Centa-City Index at September 2016.
Source: Centadata.

There is no single cause for this constant increase in real estate prices in Hong Kong, but many: lack of building land, demographic trends and rising population, Government policies regarding land premia, land-hoarding by developers, investments in the real estate market from Mainland Chinese investors, an undervalued Hong Kong dollar... Our goal in this article is not to study all these causes, as this would be material for an article *per se*. Our goal is to study if there is a property bubble in Hong Kong

A property or real estate bubble may be defined, according to Roberts, as “a temporary situation where asset prices become elevated beyond any realistic fundamental valuations because the general public believes current pricing is justified by probable future price increases” [8]. The problem is, if this belief is sufficiently important to make an important number of people to purchase the asset (in this case, real estate assets), then prices will continue to rise. Thus, more people will be convinced to buy. This gives birth to a self-sustaining

¹¹ It is compiled by the real estate agency Centaline and the City University of Hong Kong. According to the CityU, “the Centa-City Index (CCI) is a monthly index based on all transactions records as registered with the Land Registry to reflect property price movements in the previous 1-2 months. As land registration takes time, any index based on the Land Registry's sale and purchase data inevitably could not provide the most up-to-date information. On the other hand, index based on the current contract price data is a good indicator of the most recent price movements in property agent market share, thus the Centaline transaction data are able to reflect the market situation.”

reaction, until the pool of buyers is exhausted and the volume of buying declines.

Consequently, prices will stop rising and they will even fall, as the buyers no longer believe that future prices will increase. And, at the end, it becomes possible that this bubble bursts (in the same way that the bubble burst in Spain because of the global financial crisis in 2008):

“Once prices begin to fall, the fear of being priced ‘out’ forever changes to a fear of being priced ‘in’ forever. A buyer who overpaid and over-borrowed will be in a circumstance where they owe more on their mortgage than the property is worth on the open market. They cannot sell because they cannot pay off the mortgage. They become trapped in their homes until prices increase enough to allow a breakeven sale. This puts the conditions in place to reverse the cycle and causes prices to drop precipitously” [8].

Real estate bubbles normally occur following a land boom, as we have just explained. To identify bubbles before they burst, economists have developed several financial ratios and economic indicators that are used to evaluate whether homes in an area are fairly valued. If current levels are compared to previous levels that have been unsustainable in the past (i.e. led to crashes, for example), a guess can be made as to whether a given real estate market is experiencing a bubble. In this sense, these indicators describe the two related aspects of a housing bubble: the valuation component, which measures how expensive houses are compared to what most people can afford, and the debt component, which measures how indebted households become in buying them for home or profit, and also how much exposure the banks accumulate by lending for them.

When talking about the housing affordability measures, the price to income ratio (PIR) is the basic affordability measure for housing in a given area. On the other hand, when talking about housing debt measures, the housing debt to income ratio is the basic measure, and it measures the ratio of mortgage payments to disposable income.

Now that we have already analysed what a real estate bubble is, we have to ask: is there a real estate bubble in Hong Kong? The answer to this question is not simple at all. In fact, there are many theorists who claim that there actually exists a property bubble in Hong Kong, while other theorists claim otherwise.

Among the authors who claim that there is a real estate bubble in Hong Kong, we can claim the economist Eugene Lai, who, in his article “The Present And Future of Hong Kong’s Property Bubble”, posted in the website The Market

Mogul¹², considers that there exists a property bubble in Hong Kong which has been induced due to an increasing demand and an insufficient supply for housing:

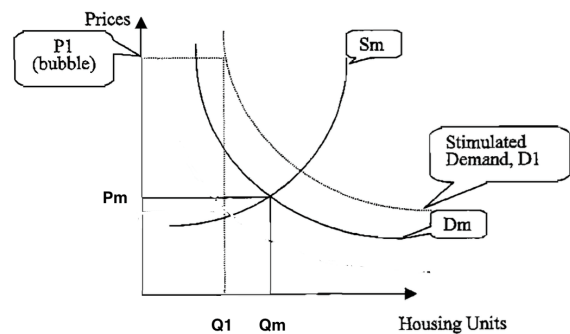


FIGURE NUMBER 3: Causes of the Property Price Bubble in Hong Kong. Source: Eugene Lai (2016).

Following Lai, the author makes reference to studies carried on by the Real Estate Research of the bank UBS in which it was stated that Hong Kong might be facing another financial bubble as current housing prices are seen as “fundamentally unjustified”, meaning this that benchmark metrics such as the previously quoted price-to-income ratio and price-to-rent ratios have reached all-time highs.

In fact, Lai [9] quotes four reasons that, in his opinion, explain why there is a property bubble in Hong Kong:

1. The lack of building land. This is indeed a big problem in Hong Kong’s real estate system, as there is a mismatch between the demand of the society and the supply of land.
2. Low percentage share of GDP of the construction industry and real estate services. Lai points out that, comparing Hong Kong and similar economies such as Singapore, Hong Kong has an average ratio of approximately 8% while that of Singapore is approximately 14 % annually. Such little amounts of investment would lower gross living space of Hong Kong, resulting in a mismatch between gross living space and the Hong Kong population.

¹² Lai, Eugene, “The Present and Future of Hong Kong’s Property Bubble”.

In The Market Mogul (2016):

<<http://themarketmogul.com/the-present-and-future-of-hong-kongs-property-bubble/?nabc=1>>

3. Government policies. These last few years, “the Government has tried to implement different policies to curb property prices by trying to eliminate speculators from the market” (Lai, 2016). An example of this policy is the Double Stamp Duty, which targets non-first-time buyers and which is the doubling of stamp duty in property purchase valued at HK\$2 million or above to 8.5% from previous 4.25%, as well as Buyer’s Stamp Duty (BSD), which is a 15% tax levied specifically on companies and non-permanent residents who buy properties in the city.

Lai considers that *“even if it is true that these policies have reduced the sale volume by eliminating speculators from the market (as the next figure shows us), it is also true that there might be a psychological effect on the supply side, as policies might affect the property developer’s perspective on the projected weakening demand and prospects of the market due to increase in transaction costs, thus the willingness for producers to supply more properties would decrease. Therefore, in the long run, the supply of properties decreases, which will undoubtedly push up the property price.”* (Lai, 2016).

4. Globalised financial markets. In the past, homebuyers were mainly local people, while currently foreign investors are entering the Hong Kong real estate market. Being this the case, the continuous capital inflow into Hong Kong has kept home prices high and made home ownership increasingly unaffordable.

However, we consider that there is no property bubble in Hong Kong, but a constant increase in prices. In our opinion, no bubble will burst in Hong Kong, as there is enough liquidity backing the system, and the last cooling measures introduced will probably prove to be successful at the end (Double Stamp Duty).

In the worst case scenario, we think that there will be corrections in real estate prices, but not the burst of a bubble, at least not in the next years.

Carrie Lam, the new Chief Executive of Hong Kong, admitted that the property market has left ordinary Hong Kong people behind, and that the only key is to provide more public housing. In this sense, Carrie Lam proposed the “public-private partnership scheme”. In this scheme, the idea is that developers instead of the Housing Authority will take up the construction of public housing projects.

It is too soon to know if this project will be successful or not, but it seems a good step. At least, it shows that politicians in Hong Kong are aware that providing more public housing is indeed the key.

IV. PUBLIC HOUSING IN SPAIN.

Regarding public housing in Spain, there are two features that differ from the system in Hong Kong, as we will explain thoroughly through the next few pages. First of all, public housing in Spain has a constitutional basis, while in Hong Kong it does not. Secondly, the importance, statistically speaking, of public housing in Spain is much more reduced than in Hong Kong, as we will see.

Article 47 of the Spanish Constitution (SC from now on) regulates the right to housing, stating that (the translation is ours; please check the footnote to see the original Spanish text)¹³:

“All Spaniards have the right to enjoy decent and adequate housing. The public authorities shall promote the necessary conditions and establish appropriate standards in order to make this right effective, regulating land use in accordance with the general interest in order to prevent speculation. The community shall have a share in the benefits accruing from the town-planning policies of public bodies.”

However, there is a problem related to this right to housing: it was not included in the Spanish Constitution as a fundamental right (arts.30-38), but as a guiding principle of the government action in social and economic matters (arts.39-52). This distinction is relevant from a legal point of view, as rights are enforceable, while these guiding principles are a guideline to the public authorities telling them how they should proceed.

In this sense, art.53 SC establishes that these principles will inform the legislation, judges and public powers, but will be directly enforceable only if there is a law that develops them.

Being this the case, these principles contained in Chapter III SC are no actual rights. In this sense, the Spanish

¹³ Spanish Constitution, Art.47, original Spanish text:

“Todos los españoles tienen derecho a disfrutar de una vivienda digna y adecuada. Los poderes públicos promoverán las condiciones necesarias y establecerán las normas pertinentes para hacer efectivo este derecho, regulando la utilización del suelo de acuerdo con el interés general para impedir la especulación.”

La comunidad participará en las plusvalías que genere la acción urbanística de los entes públicos.”

Constitutional Court (Tribunal Constitucional) stated in its case STC 80/1982, of December 20th, that (the translation into English is ours)¹⁴ *“the immediate legal value of articles 39-52 of the Spanish Constitution must be balanced taking into consideration what is established in article 53.3 [which] does not allow us to considerate them rules without content, forcing the public powers to have them into consideration when interpreting the rest of constitutional rules as well as the laws”*.

It does not imply, however, that these principles, among which we find the so-called “right to housing”, have no legal relevance or are void of content. The content of the right to housing is quite wide, so wide that we will only analyze some of its features, the features that will allow us to study public housing in Spain afterwards.

Apart from being a constitutional principle as well as a subjective right¹⁵, it is a right of access to housing as well, a subjective right to access housing (and it is so even if it was drafted as a principle only, because of the legal development that has taken place based on art.47 SC). This is indeed the most significant content derived from art.47 SC, a, according to López Ramón [10] (the translation into English is ours)¹⁶, *“the lack of this content would mean that the subjective right to housing would be only the right recognized to those people already having a house to enjoy it”*. This subjective right means that the public authorities in Spain have a duty of providing housing to those that cannot obtain it in the housing market. Therefore, public housing in Spain has a constitutional basis.

As we explained before, every social right as well as every constitutional principle, to be actually enforced, must be turned into legislation, a legislation that should determine the

¹⁴ Original Spanish text of this extract of the STC 80/1982:

“El valor normativo inmediato de los artículos 39 a 52 de la Constitución ha de ser modulado en los términos del artículo 53.3 de la Norma Fundamental [precepto que] impide considerarlos normas sin contenido, obligando a los poderes públicos a tenerlos presentes en la interpretación tanto de las restantes normas constitucionales como de las leyes”

¹⁵ The right to housing can be considered a subjective right as long as we take into consideration the legislative development that has taken place in this subject based on art.47 SC (even though art.47 SC, as we have just explained, is not directly a subjective right but a principle).

¹⁶ Original Spanish text of López Ramón’s quote [10]:

“Ello es así sin duda porque se trata del contenido más importante, en ausencia del cual el derecho subjetivo a la vivienda equivaldría simplemente al derecho de quienes dispusieran de vivienda a disfrutar de la misma”.

exact content of the right. The lack or scarcity of legislative development cannot imply the denial of that subjective right. More specifically, the right of access to housing must be understood as directed to those people who do not have money enough.

Because of all that, we can affirm that there exists in the Spanish law a subjective right of access to housing as a feature derived from the subjective right of housing (art.47 SC) and developed on art.5.a) of the Consolidated Land Act (*Texto Refundido de la Ley del Suelo*), as well as in some Statutes of Autonomy.

Article 5.a) of the Consolidated Land Act establishes that all the Spanish citizens have the right to (the translation is ours)¹⁷:

“Enjoy a decent, adequate and accessible house, according to the principle of design for every person, that constitutes its home, free of noise and other contaminating immission of any kind that exceeds the maximum limits admitted by the applicable legislation and in an adequate environment and landscape”.

The complete realization of this right to access housing (not necessarily as an owner, though) involves that the right holder must be carefully determined, as this right is not vested to any citizen, but to those citizens who lack a house and the means to get one. As “those citizens who lack a house and the means to get one” is a rather ambiguous statement, a detailed regulation is needed to establish what income is considered low enough, the familiar conditions, whether this right is applied to migrant people or not, etc.

In the Spanish case, the right to access housing is mainly implemented through the public housing system; public housing in Spain is known as *viviendas de protección oficial* (VPO) (Official Protection Housing, though we will use “VPO” from now on) or, more recently, as *viviendas protegidas* (Protected Housing). The main objective of VPO in Spain is to permit that those citizens with a lower income can acquire or rent decent houses at fair prices according to their economic possibilities. As all the different Autonomous

¹⁷ Original Spanish text of article 5.a) the Consolidated Land Act (*Real Decreto Legislativo 7/2015, de 30 de octubre, por el que se aprueba el texto refundido de la Ley de Suelo y Rehabilitación Urbana*):

“Todos los ciudadanos tienen derecho a:

a) Disfrutar de una vivienda digna, adecuada y accesible, concebida con arreglo al principio de diseño para todas las personas, que constituya su domicilio libre de ruido u otras inmisiones contaminantes de cualquier tipo que superen los límites máximos admitidos por la legislación aplicable y en un medio ambiente y un paisaje adecuados.”

Communities have passed laws on this subject, there is no uniform regime in all Spain, which makes the study of this topic much more complicated. What we will try to do is to provide the main features of the system in this article, as studying the legislation of this topic in the 17 Autonomous Communities would be redundant.

The current legislation in this area existing in Spain has been adopted during the period corresponding to the property bubble, as an attempt by the Autonomous Communities to compensate the extremely high prices of the not public houses (what is usually called “*vivienda libre*”, free housing). In this sense, autonomic laws have tried to find a balance between the two objectives of public housing in Spain, namely providing housing in lower prices to low income citizens and giving incentives to promoters in order to allow them cheaper houses, by providing them with affordable land.

Regarding the subjective requirements to get access to public housing, the autonomic legislation has developed some complex mechanisms whose goal is to make sure that only those who are really in need may have access to public housing, even though the requirements are different depending on the Autonomous Community. The demand for public housing is such that public housing is normally granted by draw.

Apart from that, there is such a need of affordable land that some plans and some autonomic legislation has included some standards regarding the minimal percentages of public housing, what is known as *reservas de suelo* (land reserves). This concept refers to that percentage of new houses that will have to be public within a plan. In this sense, article 20.1.b) of the Consolidated Land Act establishes a land reserve from, at least, a 10% to the 30% of the new residential buildable area¹⁸.

¹⁸ Original Spanish text of article 20.1b) the Consolidated Land Act (*Real Decreto Legislativo 7/2015, de 30 de octubre, por el que se aprueba el texto refundido de la Ley de Suelo y Rehabilitación Urbana*):

1. *Para hacer efectivos los principios y los derechos y deberes enunciados en el título preliminar y en el título I, respectivamente, las Administraciones Públicas, y en particular las competentes en materia de ordenación territorial y urbanística, deberán:*

(...)

b) Destinar suelo adecuado y suficiente para usos productivos y para uso residencial, con reserva en todo caso de una parte proporcionada a vivienda sujeta a un régimen de protección pública que, al menos, permita establecer su precio máximo en venta, alquiler u otras formas de acceso a la vivienda, como el derecho de superficie o la concesión administrativa. Esta reserva será

At last, before ending the study of public housing in Spain, we must analyze the statistics in order to see how significant (or not) it is in Spain. When it comes to analyzing the data, the main problem we are facing is that there are actually no data regarding how many Spanish citizens live under some of the kinds of public housing, or how many public houses in total exist in Spain. This lack of data is a clear proof of the inefficiency of the system of public housing in Spain.

We have identified the reasons that allow us to state that the system of public housing in Spain is inefficient and obsolete, and requires an urgent update (otherwise, it will lose its sense):

1. The lack of a uniform regime in Spain: the Central Government and the 17 Autonomous Communities pass laws in this area, so the system becomes very complicated. One of the results of these complications is what we just explained, the lack of reliable data stating how many people live in public houses.
2. Another inefficiency of the system is the fact that, in some Spanish provinces (in 10 of the 52 provinces), the price of “private” houses is indeed lower than the price of public houses, which is an absolute contradiction.¹⁹
3. According to the same source (*El Mundo*), 330.000 citizens have applied for some kind of public house, though they are still waiting. At the same time, however, 13.500 public houses are empty.²⁰

determinada por la legislación sobre ordenación territorial y urbanística o, de conformidad con ella, por los instrumentos de ordenación, garantizará una distribución de su localización respetuosa con el principio de cohesión social y comprenderá, como mínimo, los terrenos necesarios para realizar el 30 por ciento de la edificabilidad residencial prevista por la ordenación urbanística en el suelo rural que vaya a ser incluido en actuaciones de nueva urbanización y el 10 por ciento en el suelo urbanizado que deba someterse a actuaciones de reforma o renovación de la urbanización.”

¹⁹ Source :

El Mundo (2015)

<<http://www.elmundo.es/economia/2015/06/02/556c986046163f5f298b458f.html>>

²⁰ The topic of *empty houses* (*viviendas vacías*) in Spain is a topic that is being studied by many scholars right now, because of its practical importance.

Being this the case, there are no data regarding the total amount of citizens living in public houses, as we said. The Spanish Ministry of Development (*Ministerio de Fomento*)²¹ provides some data related to public housing, but they only provide the total number of provisional and definitive public housing gradings per year from 1991 to 2016, data that are insufficient for our study, even though they allow us to see the significant reduction of public houses planned (these data are, once again, a proof of how inefficient the Spanish system is, as, how can a system work correctly if the central Government does not know for sure how many public houses exist in the whole of Spain and how can it be efficient if some people wait for one of these houses but at the same time many of them are empty?):

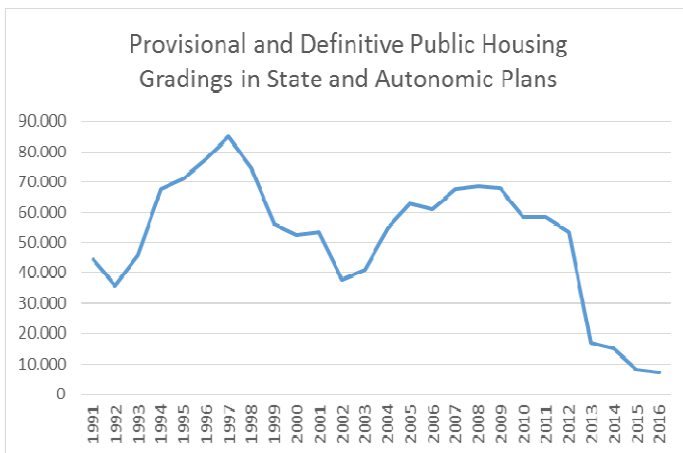


FIGURE NUMBER 2: Provisional and Definitive Public Housing Gradings in State and Autonomic Plans. Source: Oriol Caudevilla, after the data extracted from the Spanish Ministry of Development (2017).

Only some authors, like Rodríguez Alonso [11], have tried to analyse the total amount of Spanish citizens living in public rental houses (not including in these data those people who own a public house after buying it in a lower subsidized price, but only those who rent some kind of public house). Rodríguez Alonso states that, in Spain, only a 1% of the total houses is intended to be rented under a public housing rental scheme. This statistic is extremely alarming, as the total percentage is inferior than in many other European countries, which is a proof, once again, of how inefficient this system is. In this sense, the next figure shows us what we have just explained:

Porcentaje de vivienda social sobre la totalidad del parque de viviendas. 2007

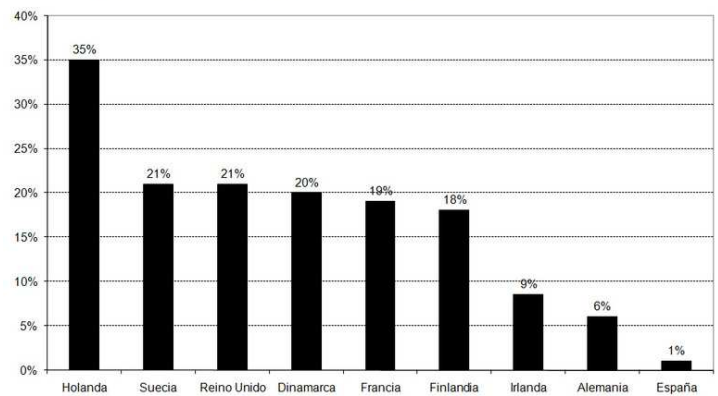


FIGURE NUMBER 3: Percentage of Public Houses by the Total Amount of Houses. Source: Rodríguez Alonso, after data obtained from the CECODHAS The European Liaison Committee For Social Housing (2007).

V. COMPARISON AND CONCLUSIONS

To sum up the comparison between the system of public housing in Hong Kong and that of Spain, we should conclude by saying that, as previously stated, the system in Spain has a constitutional basis, while in Hong Kong it has no constitutional basis, but it is formally a policy implemented by the government. Apart from that, the main difference is the importance and efficiency of the system in each jurisdiction: while in Hong Kong almost a 50% of the population live in public houses, in Spain this figure remains unknown (though some studies suggest only a 1% of the total houses in Spain are public houses). This lack of data also shows us the fact that, while the system in Hong Kong is well planned and designed, the system of public housing in Spain is not only much less important, but also not well organized.

In the case of Hong Kong, we consider that Public Housing has shaped Hong Kong. In other words, in our opinion, Hong Kong would not be Hong Kong if Public Housing had not been so outstanding. In the programs that followed the Shek Kip Mei disaster, the early building and estates forms, and their locations, brought a substantial new form to Hong Kong's urban landscape. The first public houses consisted generally of slab blocks, rising to twenty storeys, placed in angular, often rectilinear formations. As Shelton [12] reminds us, "*facilities were more extensive and space standards more generous than in resettlement housing: for instance, they included, kitchen, bathroom and balcony and the space allocation was almost double with 3'9m² per person*". On the other hand, in Spain, we cannot affirm that Public Housing has shaped the country, as it has been a not very relevant area as we have just seen.

We have already studied whether there exists or not a property bubble in Hong Kong, concluding that, even though

²¹ Spanish Ministry of Development (*Ministerio de Fomento*), data on public housing (*Vivienda y Rehabilitación Protegidas*), 2017:

<<http://www.fomento.gob.es/BE2/?nivel=2&orden=31000000>>

most authors consider that there is one, this is not the case, in our opinion.

There is a constant increase in prices, but no bubble, as there is enough liquidity backing the system, and the last cooling measures introduced will probably prove to be successful at the end (Double Stamp Duty).

In the worst-case scenario, we think that there will be corrections in real estate prices, but not the burst of a bubble, at least not in the next years.

We have also quoted Carrie Lam, the new Chief Executive of Hong Kong, who admitted that the property market has left ordinary Hong Kong people behind, and that the only key is to provide more public housing.

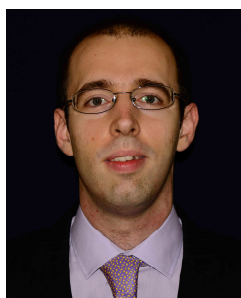
In the next figure, we make a graphic comparison of both systems to conclude:

	Hong Kong	Spain
Regulation	No constitutional or legal basis. Public housing is a policy set out by the Government and implemented by the Housing Authority.	Constitutional basis and legislative development: State legislative development and legislative development by the Autonomous Communities as well.
Importance	High importance: almost a 50% of Hong Kong's population lives in Public Houses (45,7%).	Little importance. The Government has surprisingly no data, but studies suggest that only a 1% of Spanish houses are intended to be rented under a public housing rental scheme.
Level of Efficiency	Efficient system: a significant part of the population is covered by the system and data are clear.	Inefficient system: lack of data, no uniform regime because of the Autonomous Communities, prices of public houses sometimes higher than the ones of "private" houses and citizens waiting for public houses while many of them are empty.
Schemes	HOS (subsidized build-for-sale unites)/ PRH (rental at discounted rates)	VPO (subsidized build-for-sale unites/ rental at discounted rates)
Administrative Organization	Centralized system, policies implemented by the Housing Authority.	No uniform centralized regime as most Autonomous Communities have passed laws on this subject.
Eligibility Requirements	Quota and Points System, the basis is the low income. Main requirements: a) be at least 18 years old; b) the applicant and family members must be residing in HK and have the right to land in HK; c) the applicant's household monthly income and total net asset must not exceed the prevailing limits; d) the applicant and his family must possess no domestic property in HK, and e) at the time of the allocation, at least half of the family members must have lived in HK for 7 years and still live in HK.	Point system too, the basis is the income as well. Autonomous Communities may establish extra requirements, but these are the general requirements: a) not having been granted a public house previously; b) not owning a "private" house in property; c) being registered in a public Registrar of Public House Applicants; d) the applicant's household monthly income and total net asset must not exceed the prevailing limits; e) not having obtained any kind of housing subsidy in the last 10 years.

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